INTERVIEWS CONDUCTED DURING THE COURSE OF THE INVESTIGATION OF THE VOTING IRREGULARITIES OF AUGUST 2, 2007

HEARING

BEFORE THE

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

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

2008

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CONTENTS

Page

February 4, 2008

Interview of Frances Chiappardi, Office of the Clerk 1
Interview of Ed Sorensen, Office of the Clerk 35
Interview of Goldey Vansant, Office of the Clerk 63

February 6, 2008

Interview of Allys Lasky, Office of the Clerk 77
Interview of Mary Kevin Niland, Office of the Clerk 91
Interview of Max Spitzer, Office of the Parliamentarian 117

February 8, 2008

Interview of De'Andre Anderson, Office of the Clerk 127
Interview of Kevin Hanrahan, Office of the Clerk 149

February 14, 2008

Interview of Ethan Lauer, Office of the Parliamentarian 187
Interview of Tom Wickham, Office of the Parliamentarian 223

February 15, 2008

Interview of George Kundanis, Office of the Speaker of the House of Representatives 243
Interview of Jay Pierson, Office of the Minority Leader of the House of Representatives 257

February 21, 2008

Interview of Rob Cogorno, Office of the Speaker of the House of Representatives 273

February 22, 2008

Interview of Jerry Hartz, Office of the Speaker of the House of Representatives 293
Interview of Jo Marie St. Martin, Office of the Minority Leader of the House of Representatives 309

February 25, 2008

Interview of Catlin O'Neill, Office of the Speaker of the House of Representatives 339

February 27, 2008

Interview of John Sullivan, Parliamentarian of the House of Representatives . 353

April 8, 2008

Interview of The Honorable Roy Blunt, Minority Whip 399
Hon. Roy Blunt One-Minute Speech, August 7, 2007 415

Page

April 9, 2008

Interview of The Honorable John A. Boehner, Minority Leader 417
Interview of The Honorable Michael R. McNulty 427
Exhibit 1 to the Interview of The Honorable Michael R. McNulty 465
Exhibit 2 to the Interview of The Honorable Michael R. McNulty 466

April 16, 2008

Interview of Catlin O'Neill, Office of the Speaker of the House of Representatives 469
Interview of The Honorable Steny Hoyer, Majority Leader 495

May 8, 2008

Interview of Max Spitzer, Office of the Parliamentarian 537

May 9, 2008

Interview of Ethan Lauer, Office of the Parliamentarian 547
Insert for May 9, 2008 Ethan Lauer Interview 562

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

MONDAY, FEBRUARY 4, 2008.
Washington, DC.

INTERVIEW OF: FRANCES CHIAPPARDI

The interview in the above matter was held at Room 1017, Longworth House Office Building, commencing at 10:01 a.m.

APPEARANCES

OUTSIDE COUNSEL, MAJORITY: THOMAS J. SPULAK, ESQ., KING & SPALDING, LLP, 1700 PENNSYLVANIA AVENUE NW., WASHINGTON, DC 20006–4706

OUTSIDE COUNSEL, MINORITY: MARK R. PAOLETTA, ESQ., ANDREW L. SNOWDON, ESQ., DICKSTEIN SHAPIRO, LLP, 1825 EYE STREET NW., WASHINGTON, DC 20006

Also Present: Muftiah McCartin, Deputy Staff Director, Committee on Rules; Hugh Nathanial Halpern, Republican Staff Director, Committee on Rules; Davida Walsh, Legislative Counsel, Representative Delahunt; and Chanelle Hardy, Counsel, Representative Artur Davis.

Mr. SPULAK. Good morning, Frances. I think you know who we are.

Ms. CHIAPPARDI. Yes.

Mr. SPULAK. And we appreciate your coming here on this notice. I'm going to—the Select Committee to investigate Roll Call 814 was established in House Resolution 611.

I'll read to you our mandate for you to think about as we——

The REPORTER. Excuse me, sir. I hate to interrupt, but you're kind of far away and I——

Mr. SPULAK. Okay. I'll speak louder. Do you want me to speak louder?

The REPORTER. If you could speak louder or maybe——

Mr. SPULAK. Everyone will be speaking as well.

Anyway, to investigate the circumstances surrounding the record both requested by the gentleman from California, Mr. Lewis, on the motion to recommit H.R. 3161, including the Chair's ruling over the objections of the Parliamentarian; further that we have recently informed witness—this relates to documents which you can use, the same guidance today in terms of your testimony—that regarding the scope of our investigation, you should address information that refers to the votes themselves, including the duration and

termination of the vote, how and why the problems with the votes came about and the efforts to resolve the issues.

We're not interested in information about the actual creation of the Select Committee or anything that went on in relation to that.

So—so with that, we would ask you to begin by telling us your own personal experiences with that, with those events, and—and after that, we'll ask you questions from your testimony.

Ms. CHIAPPARDI. Well, I was not here. And I actually had—I had left Mark O'Sullivan, who is the Tally Clerk, and I am the——

Mr. PAOLETTA. Can I just interrupt? This is Mark Paoletta.

Can we get back for one second and just have you on the record just explain your job responsibilities or the position you hold, your title, your responsibilities all that kind of stuff, so we have a good grounding on that.

Ms. CHIAPPARDI. I'm Frances Chiappardi, and I'm the Chief of Legislative Operations. I am charged with supervising the clerks that work on the rostrum—the Reading Clerks, Enrolling Clerks, Tally Clerks, Bill Clerks, Digest Clerks—just to make sure that the flow of paper from the rostrum down to HT–13, where our office is, that everything is flowing smoothly, that we have enough people, to do the job.

I actually fill in as a Tally Clerk because I had been a Tally Clerk for 8 years. So if we have a problem or someone is out, I can actually take a vote. And that is what I do.

I usually go up and take the cards because we are short-staffed; and Kevin Hanrahan is also a Reading Clerk and he is one of the Tally Clerks. we are trying to make sure that everybody can do all the jobs.

That evening——

Mr. SNOWDON. How long were you a Tally Clerk?

Ms. CHIAPPARDI. Six years.

Mr. SNOWDON. So you've been with the Clerk's Office 16 years, total?

Ms. CHIAPPARDI. No. I've been with the Clerk's Office for 10.

Mr. SNOWDON. Okay. How long have you been—you've been the Chief——

Ms. CHIAPPARDI. Chief, I've been the Chief for 4 years.

I was not there on the evening of Roll Call 814. Because we had been working so late, Mark O'Sullivan and I decided that we would leave since Kevin Hanrahan was on the floor, Teresa Austin was the FARS Clerk on the computer downstairs in HT–13. And De'Andre Anderson was the Tally Clerk—the seated Tally Clerk taking the vote.

We just decided it would be easier if Mark and I came in at 8:00 because I could do FARS, he could go upstairs and be the seated Tally Clerk. So we figured with just one vote—one series of votes left, that—I just thought that I could leave, that there wouldn't be a hitch; that—I was confident that everything would go smoothly.

The first time I've ever left before a vote, before we finished voting.

Anyway, that said, I got home, I automatically turned the TV on to watch the House floor even though I just got home. And I noticed the commotion going on. I got on the phone. I called the Tally Clerk Office and I was speaking with Teresa Austin.

These people are fairly new in the sense that Teresa has only been a Tally Clerk for about a year and 3 or 4 months. She had been a Bill Clerk and she also worked on one of the committees over here that doesn't really relate to this. So she was—even though she knows the job, there are certain things that occur on FARS, the Floor Action Reporting System, where you are putting in information—which—then comes up on the Internet, tells you what we're doing now, what is on the House floor.

And so I said to her, What is going on? She said, De'Andre can't get the vote down. And I said, Well——

EXAMINATION BY MR. PAOLETTA

Q. At what point is this? When you're——

A. It was right when—I guess it is when I saw the commotion on the floor. And I called in and I said, What is going on? And she said, De'Andre is having a problem getting the vote down, which means taking the vote down, putting the screens down.

So I said to her, I know what it is, it happened to me before. It is what I would call an anomaly, though I've been able to get out of it because—what happens is that if the Speaker—you're taking a vote, the Speaker is closing the vote out, you're listening to him, We get cues from the Speaker.

We do certain actions when they are saying certain things. So when they say, Does anybody wish—has every Member voted? Does anyone wish to change their vote? Normally, if there is no activity, there are no upticks on the boards, we will close the vote stations in the Chamber. We'll just close all voting stations because that means we're going to prepare the sheet, the tally slip, to give to the Speaker. And so there—if you leave the machines open, you won't have a true tally,

If people want to vote, they're running into the Chamber—they have to come down and vote in the well.

Q. Right. Isn't that—I thought it was 5 minutes from the end that you shut off the——

A. No, no. Oh, no. Not at all. No, no. The machines aren't closed until the Speaker asks, Does anyone wish to change their vote? And if there are a lot of people still coming into the Chamber, we leave the voting stations open.

It is only at the very end when we get the nod from the Speaker—that he says, "Okay, we're ready," that, no one else is in the well, no one is coming in—they say, "Okay." And so we shut—we shut the stations, the standing Tally Clerk writes the slip out and hands it to the Parliamentarian—and the Parliamentarian gives it to the Speaker.

And what happened was—I think; I wasn't there, but I said to Teresa, probably because of all the commotion, De'Andre—since he—they called the vote 214–214. I guess he turned them—turned the voting stations off and set the vote to final, which means that you're going to close it down.

When he did that and then Members came down to vote in the well, he had to go back into a screen, which is the well voting screen. And from there—you have to follow the screens to—close vote stations. You're repeating a process because the screen won't let you do anything else. And so when he tried to release the

screens, it wouldn't let him because he had already set the vote to final once before.

Does that make sense?

EXAMINATION BY MR. SPULAK

Q. It is. But isn't it—isn't it—or is it common for—not common. Does this happen regular enough that the Tally Clerk will sort of get the cue, will begin closing down because there is an announcement. But someone shows up and the Chair decides that the vote really isn't closed——

A. Right.

Q. And so then you have to go back and open it up?

A. We do, actually.

The Parliamentarians may say to us, Are the machines open, and we'll say, No. But there are a lot of people coming in, and they'll just say, open the machines. So we'll open the machines because—it is much faster than having 50 people come in and vote at the well, which would probably take 25 or 30 minutes.

So this is a regular practice that goes on and it has been since they started voting.

Q. You said that—you said that you had some experience with there being a problem in trying to do that, to open——

A. Well, see, only I knew—well, I don't know if it was a problem. I called it an anomaly.

It was just—I wouldn't think about it because it didn't happen that often. It wasn't often that a Speaker would say after we, you know, went through just—I mean, they were saying, And the motion to reconsider is—once they say, "laid on the table," we close the vote and the screens go dark.

But right at that point and the motion to reconsider and, the Speaker will say, Oh, I'll let that person in because it wasn't final in his mind. So I had to go back in, and I couldn't get the vote to close.

So then I realized—I escaped out and went in from the main screen and went into Terminate Vote. And that's the way I was able to do it.

So I thought that is what De'Andre—though, I don't know—but that's what I thought De'Andre was experiencing when he said that—Teresa told me that De'Andre couldn't get the vote down, that he had set the vote to final, and when he was trying to get out of the well vote screen it wouldn't let him. because—if he had escaped out, gone into the main screen, hit Terminate Vote, he would have been able to bring the boards down.

I wasn't there, though, I'm just assuming all of this.

Mr. SNOWDON. Can we show her this, which is a memo that the Clerk's Office prepared and one of the——

EXAMINATION BY MR. SNOWDON

Q. Have you—have you seen that before? I believe you were given a copy of that and asked to make some edits to it. I think most people were.

There is a section in there that talks about the procedure for closing down a vote. And maybe it makes some sense just to sort of walk through the five steps so that we know sort of what—what

the Clerk does versus what the Chair does in each of these steps in a typical—typical interaction; and then we can get into sort of where you think—you know, what screen De'Andre may have been in at the time and what the problems were with that.

I mean, have you seen that memo before?

A. I don't think I did. No.

Q. Do you want to take a look at the section on the second page? It is talking about closing the vote.

A. The process for closing the vote?

Q. Right. And just see if you think that is correct, and maybe we can walk through it briefly.

A. Okay. All right.

The seated Tally Clerk selects the option on the EVS terminal screen to close the voting stations. And that is on the left-hand side. There is—when he would say, Does anybody wish to change their vote, the Reading Clerk reads any changes. If no one is in the well to vote—there is a button you click, Close vote stations. When you close the vote stations,—they are dead; there is no electricity. even if you put your card in to check your vote.

Q. But the magic words they are waiting for there are for the Chair to ask——

A. Does any Member wish to change his or her vote?

Q. Okay. Can you think of any other time or any other way that they would go to that first step without the Chair using——

A. Never.

Q. [continuing]. That terminology?

A. No. Honestly, I can't tell you. I know that people think that some people may have a bad day. But the men that I have worked with, that have worked here on Capitol Hill for over 30 years, and the people that have retired since I've been there couldn't impress upon each and every person who works here how important it is. And it is not our decision to make.

Even when I was there, it is very stressful sitting in that chair because you're waiting for the Chair. You're taking your cue from them. The Tally Clerks never make a decision on their own. They just never do.

Q. And I'm just wondering, is there any other terminology that the Chair would use to get them to get to that first step?

A. No. Does any Member wish to change his or her vote? And that's when—you're looking around to see if any one is coming in the Chamber, is any one in the well. You're looking at the Parliamentarian. You're looking at the Speaker.

And, of course, also the leadership, if they want to hold the vote open, they'll say they are not ready to close the vote. So we take all our cues by—looking at five or six different people.

But you're waiting to get that cue from the Chair that they are ready.

Q. But if the Chair says that, then you're going to go ahead and implement that step regardless of what other cues you may be getting from——

A. No. If a lot of Members are coming into the Chamber, we will not close the vote stations. And that typically happens on a first vote, the first vote of the day or the week. At the 15-minute mark, there might be 150 people who have voted, you know, out of 435.

So, typically that is—a lot of times people complain, but you know, they just keep the vote open and Members know, oh, there are, you know, only 150 people voting. They know they can take their time to get to the Chamber because they're not going to close the vote because there is not a quorum so far.

So we leave the machines open until—they say, Does any Member wish to change his or her vote? And they say, There are a lot of people coming in; don't close the stations.

Q. Who would say that?

A. The Parliamentarian.

Q. Okay. So there would be—there are times when—even when they use those magic words that the seated Tally Clerk might still elect——

A. The Parliamentarian will talk with the Chair, with the Speaker.

BY MR. PAOLETTA

Q. I mean, the Chair obviously sees the vote tally.

A. Right.

Q. So why would he be—in those instances when, you know, it is 150 people voting on the first vote of the day or whenever, why would he say——

A. Well, because you have some people—well, I don't want—I don't want to be flippant. But you have some Members that are trying to be cute. I can give you an example; when a Member is in the Chair he keeps on saying, And the vote is, and the vote is, trying to get people to vote.

Q. He is saying that into the microphone?

A. Yes. Some people are serious and other people aren't; it all depends on who is in the Chair.

Q. Okay. But once he says that, if there have only been 150 people voting——

A. I don't know why, but they do.

Q. But then the decision is made by the—who makes the decision not to close the voting stations?

A. Well, we are told not to close them.

You know what I mean?

Q. By whom?

A. The Parliamentarian will talk with the Chair and they'll just say, Keep the voting stations open.

Q. But it is the Chair who is—he is sort of—he is the one who is——

A. Right, because he realizes that there aren't—that people haven't voted.

Q. Okay. Okay.

BY MR. SPULAK

Q. So he realizes what—he realizes that——

A. There were a lot of people coming into the Chamber to vote.

Q. So it is his intention, or her intention, not to close it, notwithstanding what they try to say?

A. Right. Exactly.

I know it doesn't make sense, but they just don't——

Even though they go through those steps—every day is different.

I mean, you're just listening—I don't know. We took over 1,000 votes this year and we had a problem with one.

BY MR. SNOWDON

Q. Would you say that that tends to be inexperience from the Chair, or is it them——

A. I would say it is pressure, pressure put on the Chair to close the vote. That is what I believe created the problem.

Q. For 814?

A. Yes.

Q. Okay. I think we'll get there in a little bit.

But I just want to make sure that I understand sort of the process, how it typically happens. And—and I think what you said—and if I'm wrong, correct me—is that they use the magic words. If any Member wishes to vote or change their vote, that is, the vast majority of the time, your signal to turn off the electronic voting system——

A. Yes. Sure.

Q. [continuing]. Except when the Chair——

A. Right.

Q. [continuing]. Doesn't really mean that because there are people milling around, and they're using that as sort of the stick to get people to actually cast a vote?

A. Exactly. Yes, to hurry through.

BY MR. PAOLETTA

Q. And I don't mean to belabor this, but—so, let's keep to this example of 150 people, okay?

So he says that—there is a little discussion amongst the Parliamentarian, right? The Chair essentially says, Don't close the voting stations, right?

A. Right.

Q. Okay. So what happens when he finally decides to——

A. Well, then, they go through the process again.

Q. So he calls it out again?

A. Sure——

Q. Okay.

A. Have all Members voted?

And then he'll say, Does any Member wish to change his or her vote? And then we'll go through that same process, and we'll say, Are you ready, and they'll say, Yes. And that's when the slip will go up to the Chair—I'll close the vote stations.

The standing Tally Clerk will write the slip out, give it to the Parliamentarian. The Parliamentarian gives it to the Chair, and the Chair starts to read the total.

And what we do is when we call—at that point the vote stations are closed, and we click—as he is reading the total, we go to a screen that says, Terminate Vote, and—the vote totals are there. So the Tally Clerk is looking at the vote totals to make sure that the——

Q. It is corresponding?

A. Right. And then he starts saying, you know, it was 214, 212——

Ms. CHIAPPARDI. Do you know the language, Muftiah?

Ms. McCARTIN. On this vote?

Ms. CHIAPPARDI. On this vote.

BY MR. SNOWDON

Q. What—can we just sort of walk——

A. A motion to reconsider is the—that is what we're listening for, "the motion to reconsider is laid upon the table." As soon as they say "table," we release the boards. We just terminate the vote completely.

So—the lights go down on the—summary boards. It usually goes without a hitch for each vote.

It is not as complicated as it sounds.

Q. Can I just back you up a second and make sure, because——

A. Sure.

Q. [continuing]. Just so I understand them.

I'm sorry. I know this is sort of second nature to you, but it is still kind of new to me.

So "wishes to vote" or "change" their votes, and then you get to the second step and then the seated Tally Clerk hits the Terminate Vote option——

A. Right.

Q. [continuing]. On the menu. And basically they will only do that if there are no Members in the well?

A. Yes.

Q. Okay. If there are Members mingling around in the well or if they have vote cards that they haven't turned in yet, they don't—they don't get to that second step of——

A. Right.

Q. [continuing]. Terminating the vote option?

A. Right. They'll close the vote stations, but we'll stay at the well voting screen and then they will just call—the Reading Clerk will call out the Member names and how they voted. Because if it is a change, the Congressional Record Clerks need to know that.

So we've already filled out a sheet if there were any changes. The Reading Clerk typically gives the sheet to the Congressional Record Clerks, so that when the changes have already been read and somebody else comes down to vote in the well, they call them out, Mr. Smith of New Jersey votes——

Q. Who keeps the change?

A. The Tally Clerks write the sheet out and then they give it to—they put it on the—they give it to the Reading Clerks to read at the end of the vote. When they ask for changes, that is when——

Q. Does the court reporter also keep a change vote?

A. We give it down to the Congressional Record Clerk, so I don't know what—and I'm assuming they give that to—the stenographer when they leave the floor so that if they've already taken the sheet, the Tally Clerk can't fill it out, but the Congressional Record Clerk does because the Reading Clerk is calling out the vote.

Q. Okay. So you've got—at this point the Chair has used the magic words about Members "wishing to vote" or "change" their vote, and then nobody is down in the well. So then you get to the third step, which is the Tally Clerk setting the vote to final, which—and at that point, the Chair, according to this, should be reading the written tally sheet?

A. Yes.

Q. And the written tally sheet is prepared by whom?

A. The standing Tally Clerk. The Tally Clerk that is standing in front of the seated Tally Clerk. They take the cards in the well, put a number on it, the roll call number on it, and they hand it to the seated Tally Clerk, who puts that information into the computer.

Q. Okay. Are they—is there a process to essentially reconcile those two so that somebody is looking at either the well cards that are turned in or the tally sheet and comparing that against what is in the——

A. No. Not until the vote is closed.

Q. Not until the vote is closed?

A. Right. There is no way that you can do that—once the vote is completed, then we have a process where we print out well votes. And then the Tally Clerk downstairs—the Tally Clerk upstairs calls down and goes through——

Q. Okay.

A. [continuing]. Card by card, and the Tally Clerk downstairs checks off. And if there is a problem or a mistake, they'll say to them, No, it should "aye," not "no."

Q. Is there a process where the written tally sheet or tally slip is matched, the totals are compared to EVS?

A. Oh, yes. Definitely.

Q. Okay. When does that take place?

A. [continuing]. After the Tally Clerk has closed the vote. If I'm the seated Tally Clerk, I will say, 384 to 20 or something, whatever, just so that as they're writing it down, they know.

Q. As the standing Tally Clerk is writing it down?

A. Yeah.

Each one does it differently, though. That's why a lot of them—we read it off the board, but the Tally Clerk is still saying, this is the total and it is just easier.

A. And that is why the voting stations are closed, because it means that you can't have an uptick and that it is a "static number," as John Sullivan would say.

BY MR. SPULAK

Q. So sometimes you would take the information for the tally slip off the board?

A. Yes. I would say 90 percent of the time.

But it is also—you're also, talking with the seated Tally Clerk and, saying that this is the total. And the same total that is on the boards, the summary boards, is the same total that is on the EVS.

Q. So there is a check?

A. Yes.

Q. The standing Tally Clerk is checking with the seated——

A. Seated Tally Clerk.

Q. To make sure that the two numbers agree?

A. Match.

Q. And that there is a concurrence?

A. Yes, sir.

BY MR. SNOWDON

Q. Okay. Does that take place before or after the third step? Okay, and the third step on here, it talks about the seated Tally Clerk setting a vote to final.

Will they set the vote to final until the tally slip has been prepared and sent up to the Chair?

A. No. No, actually, not. Because the slip is made before the screen. That is final.

Really, that has nothing to do with—I don't know why it is in there.

Q. Why what is in where?

A. Final. Because it doesn't really mean anything. Because the totals never change.

Q. So what happens with that tally—with that tally sheet? It is prepared and then it goes from the standing Tally Clerk——

A. To the Parliamentarian. The Parliamentarian gives it to the Speaker.

Q. Okay, so the——

A. The Parliamentarian actually checks it. They look at it.

Q. They look at it compared to what? And what are they comparing it to?

A. Actually, I would assume that maybe they're looking at the boards.

Q. The boards are still up? The boards haven't been cleared?

A. No. Not until they say, "The motion to reconsider is laid upon the table." And once they say "table," that is when—they clear the boards.

BY MR. SPULAK

Q. Frances, explain for a second this final—you seem to indicate that final didn't really mean anything.

A. No, it doesn't, because it is just—I don't know why they—whoever, developed the system, it doesn't really mean anything. it has been up there. Sometimes, if the Tally Clerk, will click final because—the Chair had been reading the totals and almost set the motion to reconsider, but decides that they don't want to disenfranchise any Members, so they say, Reopen the stations, or, Take these well votes. Even though it says "final" up there, you can still add votes. It doesn't mean anything.

Q. So, finally—and on that point, when it says "final," that doesn't mean that Members can't vote?

A. Right. Exactly. They can. We can take well votes. We can add. We can open the stations. They can vote.

A. And we can also take a well card and add a vote, and we've done that over the years that I've been here. we do it all the time. It has never really—it didn't make a difference.

BY MR. SNOWDON

Q. So the vote is being set to final, and that is what is going—what appears on the display board; that is number—in the third step of a five-step process, right?

A. Right. It is just another one of the steps you need to bring the boards down——

Q. Sure.

A. [continuing]. For whoever developed the system.

Q. Right. But the ultimate finality of a vote isn't until all five steps are completed?

A. Right. Exactly. Yes.

Q. Despite this sort of misnomer of "setting the vote to final"?

A. Yes.

BY MR. SPULAK

Q. To you, what does "ultimate finality" mean?

A. It means the boards are down.

Q. And what consequence is that? I mean, a vote could not be entered?

A. No, not at all. Right. Right.

Q. Not by machine? Not by well card?

Mr. PAOLETTA. Well, let's back up on that. Go ahead. I'm sorry.

Ms. CHIAPPARDI. Well, actually that's—we've never had anyone vote after that point. I mean, once it is down, we've never had a Speaker say, Add a vote.

BY MR. PAOLETTA

Q. Well, you had the board up there, right? Okay. Your key to bringing the board down is "laid upon the table"?

A. Right.

Q. Okay. So what if somebody said "laid upon the table," right, and for a minute or two the board stays up?

A. I've never seen that happen.

Q. Right. But is it the board going down or is it "laid upon the table"?

A. Well, it is actually "laid upon the table" because the Parliamentarians will tell us that is final; Once he says that, the vote is finished,

BY MR. SPULAK

Q. Based on what you just said, there is nothing automatic. The Chair may say, "The motion is laid upon the table"; that is the signal for the seated Clerk to do something?

A. Right.

Q. And if the seated Clerk doesn't do it——

A. Oh, yes, you're right. The boards could stay up; you're right.

And that actually—I don't remember—I know I viewed the tape that evening. But I don't remember what he said, truth be told, afterwards.

But it is—normally, when the motion to reconsider is laid on the table, the Tally Clerk wants to release that vote. They don't want the boards to be up.

It is just a process. Because we may have votes stacked, and it all depends on who is in the Chair. If they talk really fast. I know that when other Members on the other side of the aisle—Mr. Simpson, he would talk so fast that I remember one time saying to Charlie Johnson, I'm only as fast as the computer.

I can't go any faster. I have to wait.

Q. I'm sorry. So Mr. Simpson—who is Mr. Simpson?

A. Oh, he was a Member of Congress who had been a Speaker Pro Tem at one time.

Q. In what years?

Mr. HALPERN. Probably mid-90s?

Ms. CHIAPPARDI. Sometime in the '90s.

BY MR. SPULAK

Q. And the point about speaking so fast that you couldn't keep up was because you believed that he wanted the vote to end quickly, and that is—this is why you couldn't go fast enough for him?

A. Right. Right.

So you're going through the process, and it is just—you want to bring the vote down. That's why I'm saying, you wouldn't want to leave the boards up. Because you have to go on to your next step because sometimes the process moves very quickly and you're following the Chair. So you have to, that's the way it is.

You know, sometimes you dread when certain people are in the Chair. It's just, part of the job. You know, you really have to be on top and just quick.

Everybody moves at a different pace, Some people are—get a little nervous—with 2-minute votes, very stressful for the Tally Clerk. And that's what they did: They did nine 2-minute votes that night, and without a hitch.

Q. So with this different pace—now you're speaking more generally with your history, some people are faster, some people are slower. I mean, is it clear to you that there are some times when because of a particular vote, sometimes it is going faster and sometimes it is going slower?

A. Oh, sure. Yeah. It all depends on who is in the Chair and what—what you are voting on.

Q. And this has been your experience over the last 10 years?

A. Yes. It is always different.

BY MR. SNOWDON

Q. So to sort of segue back to this briefly—I don't want to spend too much time on it.

The signal for the Clerk in the third step here, the Tally Clerk to set the option to final—that is one of the commands—is that the Chair is reading the tally slip?

A. Right.

Q. Okay. When I say—when it says "reading," I assume that means he is reading it out loud?

A. Yes.

Q. What—are there other keys or commands that could get the seated Tally Clerk to—to set the vote to final if the Chair is not reading?

A. No.

Q. Okay.

When this particular case, as I understand it, do you know whether there was a tally sheet or a tally slip prepared?

A. No, there was not.

Q. Okay. So——

A. There was not.

Q. How would De'Andre Anderson, who is the seated Tally Clerk, have gotten to the third step to set the vote to final here without the Chair reading a document that apparently didn't exist here?

A. I know—I honestly—I don't know. I wasn't up there, so I don't know, what was going through his mind.

Maybe Kevin Hanrahan would have a better feel for that because he was the Standing Tally Clerk and he has been a Tally Clerk—he has worked here for over 20 years.

Q. Have you talked to De'Andre about it?

A. I have. I didn't really want to talk to him too much about it because of the Committee.

But I read his; I read the memo that he had written, and provided—and I provided that to the committee.

And I think it was—everybody was very confused, Mr. Mc——

Q. McNulty?

A. [continuing]. McNulty of New York was calling the total out. And De'Andre is, I'm still entering cards in, you know—I've got these—I could see it on the TV, he still has cards and Mr. McNulty is calling the vote and De'Andre is, what is going on, and he is looking at John Sullivan saying, I'm still entering votes.

Or maybe Tom Wickham—I don't know which Parliamentarian was up there. And then I think—I guess there was a lot of confusion. There was just a lot of confusion.

Q. Do you know at what point—and obviously, you know, we'll speak to De'Andre.

But do you know at what point—what is your understanding of when he got to the third step?

A. I think because they were—De'Andre said that they had decided that they were moving on to another vote. Somebody wanted to reconsider the vote—stand up and write—go to reconsider.

Mr. Hoyer wanted to go to reconsider.

And so he was, Oh, my God, what do you mean? So he put the vote to final, I'm assuming, because he thought he had to bring the vote down; and then he couldn't—that was my—that is what I thought: He can't get the vote down because he set the vote to final and went back to do a well vote. And then when you try to set the vote to final again, it won't let you unless you escape out and go to——

Q. So the glitch that you talked about before, the anomaly, I think you called it, that you have encountered in the past, was basically—was in this third step where you're trying to——

A. Yes.

Q. [continuing]. Set the vote to final?

A. Yes.

Q. Okay. The fourth step.

Mr. SPULAK. Can I say something real quick?

BY MR. SPULAK

Q. If you had been there, based on—based on your experience—and I think I'm just saying what you said earlier—and you had encountered that same situation, could you have opened it so that it would have reopened instead of freezing, if you will?

A. I would—yes. I would think that if it was the same problem that I encountered, yes, I could have brought the vote down. And

that's why I was very surprised. Because in talking with Mark O'Sullivan, who has been here 32 years, in 32 years no one has ever aborted a vote.

BY MR. SNOWDON

Q. Is it your understanding that this is where the problem that night took place, in the third step?

A. Yes.

Q. Okay. Let me just run through quickly the last two, just for a typical vote. I just want to make sure I fully understand it.

So then, typically, the Chair is reading the tally sheet that has been passed out by the Parliamentarian. As he is doing that, that is the signal for the seated Tally Clerk to set the vote to final.

Then the Chair—the fourth step, the Chair uses the magic words about the motion being laid upon the table?

A. Right.

Q. And at that point, the option that the Tally Clerk has is to release the vote, which is another one of the commands on EVS?

A. Yes.

Q. And then the fifth command is essentially a confirmation of——

A. Yes.

Q. [continuing]. The—releasing the vote?

A. Yes.

Q. At that point, the boards go down, and it is game over?

A. Yes.

Q. Okay.

So what—why don't you tell us your understanding of sort of where things got a little off track on the night of the 2nd.

A. It is when Mr. McNulty closed the vote—called the total—called the vote while De'Andre was still entering roll calls. No one has ever done that since I've been here. And Mark O'Sullivan, in his 32 years, he said that no one has ever done that before.

So, here you're with well cards, you're entering the cards in, and the Chair is calling the vote. I mean, ultimately it is his call, but the Tally Clerk has never encountered, you know, having someone closing the vote while they're still in the process of entering well cards.

Q. So De'Andre is still entering well cards, and he is trying to keep up. And then they go on after Mr. Hoyer moves to reconsider——

A. Right. I think that's where——

Q. He needs to shut it down really quickly?

A. Yes. And I know that he told me that John Sullivan leaned over and told him, De'Andre, Are you going to close the vote? And De'Andre said to him, I'm trying.

And so I said to Kevin Hanrahan—Kevin Hanrahan said that there was a lot of confusion and he didn't—he thought that they were going to—he said, It was very confusing, Frances. He said that you didn't know what was going on.

So I said, because I tried to ask him, "Why couldn't you help him get the vote down?" Because he said that he didn't know what was going on, and he is a veteran. He has been here for a long time.

Then they had other people come down to provide well cards, which changed the total, the vote total, again.

BY MR. SPULAK

Q. What you've said about De'Andre and John. You said that John asked him if he was going to close it down and De'Andre said he was trying?

A. Yes.

Q. You said earlier that you read De'Andre's recollections that he wrote down.

A. Yes.

Q. And I presume we all have. So in that—at least from my reading of that, he said that he continued to enter cards as he had them.

A. Yes.

Q. So I just wanted to make sure I understand.

Although he said he was trying to close the vote down, I would infer from what he said in his memo that he was only trying to do it after he had entered all the cards that he thought he was supposed to enter.

A. Right.

Well, I realize that the first three cards that he had received while Mr. McNulty—and you can see it on the tape, that De'Andre still has cards; you can see them on the glass. Kevin had given him three cards, and he was in the process of entering those when Mr. McNulty called the vote.

And it was after that time, that three other Members came down and changed their votes, but it was long after—well—minutes after.

Well, I can't speculate on what would have happened or what would not have happened. But if De'Andre had closed the vote, the total would have been different, okay? But because he couldn't get the vote down, it afforded other Members to come down to change their vote. So Kevin Hanrahan took the cards and gave them to De'Andre and he entered them.

BY MR. SNOWDON

Q. So you think what happened is—and if you know this is what happened, let me know; or if you sort of think this is what happened—De'Andre has three cards, three well cards. And at that point he is—he is entering those three, even though the Chair has called 214 to 214. So he proceeds to enter those three. And then at that point he goes to the third step, which is setting the vote to final?

A. Yes.

Q. And as he is doing that, then three more cards come in. So he then tries to back up after he has set the vote to final and then put those back in?

A. Right.

Q. So he was entering the ones he had already been given——

A. Yes.

Q. [continuing]. Then trying to close it. And after he closed it by setting it to final, then three more—he was handed up three more.

A. Yes.

Q. He tries to then put them in, and that is where the system kind of froze up.

A. Right. I don't know if that is exact—I guess you'd have to talk to him about at what point he actually finalized the vote at that point.

BY MR. SPULAK

Q. Right. But it was probably—it was probably after—it was probably—well, let me say this a different way. Correct me if I'm wrong.

The Chair made a statement. He had these three cards; he was going to enter those cards, but now he is picking up this cue. He went ahead and entered the three cards and then tried to follow the procedure of responding to the cue.

A. Right.

Q. So he goes—so he tries to go to final. He can't—there are other Members who want to change their vote; and as he tries to get back in to enter those, he is going to continue this process——

A. Right.

Q. [continuing]. That freezes up and now he can enter them, but he can't bring the vote down?

A. Right. Exactly. Because he had already set the vote to final. And once you back out of the—to leave the well screen vote—again, it says Close Vote Stations, Terminate Vote, Set Vote to Final.

Well, you've already done that, and for some reason, even though I had learned early on that that was a problem, because I was a little quick on the buttons, faster than some of the other Tally Clerks. Mark O'Sullivan is a little bit slower.

And so I just realized that even though I had set it to final, somebody else came back down into the well to vote, I learned early on, that was a problem for me, because if I tried to release the votes again, I couldn't. So I would have to escape out, go to the main screen, go to Terminate Vote and then follow the procedure there.

And it was just something I never—Teresa and I have encountered that, Teresa Austin and Kevin Hanrahan.

BY MR. SNOWDON

Q. Is that something that the—that all the Tally Clerks would know how to do, or is that something——

A. De'Andre did not know how to do it, because he is a new Tally Clerk and it was not something he had ever encountered before.

BY MR. SPULAK

Q. But again, based on what I asked you earlier, had he known what you knew and perhaps what others had known——

A. Right. I think—I'm assuming—I can only assume that he would have tried to go out and release the boards by going through the main screen to terminate the vote.

Q. And what would have happened had he done—had he done what you know what to do?

A. Well, they wouldn't have had to abort the vote.

Q. Let me ask you to go back, because what you said, I think, is fundamental to what we're doing here.

You said that Mr. McNulty called the vote while—while De'Andre still had cards?

A. Yes.

Q. How—how—how would Mr. McNulty have known that De'Andre had cards that he hadn't entered or that he hadn't entered as yet?

A. Well, actually the Chair—normally, the Parliamentarians will say to the Chair, "The Tally Clerk is still entering the cards." But the Chair can actually see right down.

Q. But would he know—yes.

But would he know—he sees the cards on the glass, but would he, or she know——

A. No, I don't know that. I don't know. But I just know that a lot of times the Parls will say, "They're still entering cards."

BY MR. PAOLETTA

Q. But typically there is a sheet handed out, right?

A. Yes. Oh, yes, always.

Q. A tally slip?

A. The tally slip, yes.

BY MR. SNOWDON

Q. Have you ever seen a vote where a tally slip wasn't given to the Chair?

A. No.

Q. How many votes—similar votes to 814 did they do that night?

A. Do you mean a motion to—a motion to recommit?

Q. Right. How many amendments were there?

A. Oh, there were nine amendments prior to the motion to recommit, 2-minute votes. And they went off without a hitch.

Q. And in each of those cases, was a written tally sheet passed up to the Chair?

A. Yes. We call it a slip.

Q. Slip?

A. Yes.

BY MR. PAOLETTA

Q. Before we leave it, that tally slip went to the Chair. What happens with that slip?

A. It is thrown in the garbage.

Q. It is thrown in the garbage?

A. Yes. Because the vote is over and no one—no one keeps it.

BY MR. SNOWDON

Q. You talked a little bit about the—sort of the personalities, the mannerisms of different people in the Chair and how that can make your lives as Clerks on the rostrum more or less difficult, depending on whether they are, you know, fast talkers or quiet talkers or whatever.

A. True.

Q. What—how often has Mr. McNulty been in the chair in your experience?

A. Well, considering—was this August? He was—he had been in the chair quite a bit and he has prior experience. So, he was—we never had a problem with him. He was very good.

Q. Is he a fast talker? Is he somebody that spoke fast——

A. No. He was——

Q. You guys couldn't keep up?

A. No. He was—nobody—not that—we never talk badly about any of the Members. But it is just like——

Q. Some are better than others?

A. Yes, some are better than others. It is—they know the process or they listen to the Parliamentarians instead of interjecting their own—what they think is supposed to happen—and they don't know the parliamentary procedures

So if they listen to the Parliamentarians, or Gay or Brian, then they follow what is supposed to happen. And Mr. McNulty—we consider him a very good person in the chair, we—find him easy to work with—we can follow him; everything is fine.

Q. So what do you think happened that night? There had been, what, eight other 2-minute votes earlier that evening?

A. Nine.

Q. Nine. And in each case, the steps we talked about had been followed to the letter?

A. Right.

Q. What happened on 814?

A. Well, I—I don't want to—I mean, I think it was a political—I think that it was—he was pressured into closing the vote. It was very apparent to everyone.

Q. What is your basis for saying that?

A. Because Mr. Hoyer was screaming at him to shut the vote.

Q. Screaming at Mr. McNulty?

A. Yes.

Q. You weren't there. Obviously——

A. No, I wasn't. But my staff told me.

Q. Okay. And to the best of their, you know—your recollection of what they told you, what specifically was Mr. Hoyer saying?

A. Close the vote. Close the vote.

Q. Okay. Had the Speaker voted at that point?

A. I don't know. I don't know.

BY MR. PAOLETTA

Q. And how—how typical is it for the majority leader to be speaking in that manner to the Chair?

A. Well, we've seen that, though. We saw that when Tom DeLay was Majority Leader, he would come down and tell the Chair—because he was—wanted to get the vote moving and close it. And he would do the same thing, close the vote.

Q. But is this the first time where they closed the vote or he announced the vote without the tally slip?

A. Right. Yes, it is. It is.

Q. And why do you think he went ahead without getting a, you know, tally slip or——

A. I don't know. I don't know.

BY MR. SNOWDON

Q. At the time when that direction was given, were there other Members in the well?

A. I don't know. I wasn't there; I don't know. But—I think there were, as a matter of fact, because De'Andre—Kevin said that they were still—he was handing De'Andre cards that he had received.

Q. Do you know whether Mr. McNulty—getting back to one of the earlier steps—I think it is the first step—when the Chair asked whether Members "wish to vote" or "change" their votes, do you know whether he used those magic words for 814?

A. Actually I don't—I don't remember. I'd have to review the tape again. He did because Kevie Niland must have read the tally, the change sheet, because it was given to the Congressional Record Clerks.

Q. Then the second step that we talked about is, the Clerk gets the EVS terminal ready to terminate the vote and the seated Tally Clerk does that when there are no Members that are in the well?

A. Right.

Q. Is that right?

A. Yes.

Q. So would it be readily apparent to the Chair that there were Members in the well?

A. Yes. Because a lot of times they'll say, One more, or they'll—you know, they'll talk to the Chair and say, they're coming in screaming, One more, or, I have a change; or sometimes they're quietly over there getting a card, and the Chair will see that; or we'll say, We have a change, Someone is changing their vote. And we—and they make the change.

Q. So the Chair——

Mr. SNOWDON. I'm sorry, Tom.

Mr. SPULAK. Go ahead.

BY MR. SNOWDON

Q. So the Chair would have been aware that there were Members in the well——

A. Yes.

Q. [continuing]. At the time he decided to call the vote at 214 to 214?

A. Well, I know I can't speak for Mr. McNulty because I wasn't there. If I had been there on the rostrum, I would have been able to answer that question.

But since I wasn't there, I don't know.

Q. As the Clerk Supervisor, or even as the Tally Clerk, would you have been in a position to say something to either the Parliamentarian or the Chair saying, Look, there are people in the well?

A. If I had been on the floor, yes, I would have.

Q. What would you have done?

A. I would have gone to the Parliamentarian and said, "They are still entering cards;" and then they would have relayed, assessed the situation and talked to the Speaker.

Q. Does the Speaker—the Speaker or the Chair?

A. The Chair. I should say the Chair. The Chair.

Q. Is there ever an occasion for the Clerk to speak directly to the Chair, or is it always channeled through the Parliamentarian?

A. No, sometimes—it all depends.

If I'm standing and collecting the cards, or in the chair, sometimes I'll turn around and look and say to the Chair, "We have a change," or, "I'm taking a change" or—if I'm standing there just saying, "We have a change."

Q. Is—if someone is in the well, are they in the well solely for the purpose of voting or do people just hang around?

A. Sometimes people mill around. They'll be talking. There are a lot of people in the well, as a matter of fact.

Q. But you can see people are actually sitting there filling out cards?

A. Right. Yes.

Q. Because they're colorful and——

A. Yes, you can tell.

BY MR. SPULAK

Q. But to that point—and going to what you said earlier, Frances, Mr. McNulty was an experienced presiding officer?

A. Yes.

Q. And to this point that Members—what you say that Members do sometimes, "mill around the well," a Member that—and, I mean, how long does it take to fill out a card?

A. Not that long. A. couple of seconds.

Q. A few seconds?

A. Yes.

Q. So a Member—sort of in the confusion of what goes on, a Member could fill out a card, hand it to the Clerk, it could have already been registered. The Chair looks down; he or she may see—from my understanding of the well—not knowing——

A. Right.

Q. [continuing]. Whether they intend to vote, whether they have voted or whether they're just standing there?

A. Correct. That's true.

Q. With respect to the members of your staff who heard Mr. McNulty being told by Mr. Hoyer to close the vote, was that coming directly from Mr. Hoyer or was that coming through his staff?

A. Well, it was my understanding that it was Mr. Hoyer who had said to the Chair, "Close the vote."

Q. How many different times?

A. I don't remember. I'm sure that Kevin Hanrahan or De'Andre would be able to answer that. I wasn't there.

Q. Which members of your staff did you hear that from?

A. Teresa Austin.

Q. Was she on the floor or——

A. No. She is the FARS Clerk. She was downstairs. She was listening. She puts the information into the computer. Allys Lasky, she was the Journal Clerk.

Q. Okay.

A. And Kevin and De'Andre.

Q. Were they all pretty consistent in what they told you?

A. Yes.

BY MR. SPULAK

Q. You saw them take a——
A. Yes.
Q. Did you see Mr. Hoyer say this on the tape?
A. I don't think I did. No.

BY MR. SNOWDON

Q. One of the things that—you mentioned that you had seen the memo De'Andre wrote.
A. Yes.
Q. I can give you a copy of it, but I'll quote one sentence from it. Quote, "We have never closed down a vote when there was an uptick in the tally or when Members who have turned in a well card wanted to vote or wanted to change their vote," unquote.
Is that—is that your experience as well?
A. Yes, it is.
Well, let me clarify. There have been times when the Chair has called the vote, the motion to reconsider is laid on the table, someone is running down the aisle. Again, we take our cue from the Chair. If the Chair bangs that gavel, the vote comes down.
Now, they'll run down—we've had that, and I actually had to tell a Member just a couple of weeks ago—I said, "I'm sorry, sir, the vote is closed," even though the boards were down, he was still running down there to give a card; and I just had to say, "I'm sorry, the vote is closed."
Q. Well, you mentioned the gavel coming down. Are you speaking euphemistically or are you speaking literally?
A. No. I—well, most—99.9 percent of the times they say, The motion to reconsider is laid upon the table, and they'll bang the gavel.
Q. In this particular case, do you remember when Mr. McNulty gaveled the vote?
A. I do not. I have not seen the tape for quite—I have not seen the tape since August. So I'd have to——
Q. I mean, it is my recollection—correct me if I'm wrong—that he announced the 214 to 214 and then he gaveled it. Is that——
Mr. SPULAK. Maybe——
Mr. SNOWDON. I'm just wondering which is the——
Mr. PAOLETTA. Sort of the finale?
Mr. SNOWDON. Yeah, the coup de grace.

BY MR. SNOWDON

Q. Is it laid upon the table or is it the gavel?
A. No, it is laid upon the table. But then they just gavel.
You know—but like the Chair said, it is his decision or her decision to allow a Member to vote, not ours.
Q. Sure.
A. If they say the vote is over, the vote is over.
Q. Okay. But would you interpret that—if you had been sitting up there on the evening of August 2nd and the Chair had said, 214 to 214, bang, would you interpret that as finality, or would that—there not have been——
A. Not if I was still entering cards in.

I've never had that happen, it has never happened before. So I'd have to turn around and say to the Parliamentarians, "What is going on? What am I supposed to do," you know, take the cards; not take the cards? It has never happened before. That's why I say it was very confusing up there. It was. No one had ever done that before without a tally slip, while the Tally Clerk is still entering the cards.

We've never experienced that before, so I guess no one knew what to do.

BY MR. SPULAK

Q. Frances, let me ask. I understand that there was some confusion after the case. And notwithstanding the fact that Mr. McNulty tried to bring the vote to a close, De'Andre had well cards.

A. Yes.

Q. And my sense is—and I'm not sure; this is fairly contemporaneous—but those votes, the votes that he had that you say, It has never happened before—but those votes were entered?

A. Yes.

Q. Right?

A. He was entering them as Mr. McNulty was——

Q. So notwithstanding fact that there may have been—where there was an attempt—a clear indication that the vote was over, De'Andre counted those votes?

A. Yes, he did.

Q. So at that point in time, and presumably from—at least from what we understand; correct me if I'm wrong—those were all the votes that he had?

A. Yes.

BY MR. SPULAK

Q. He was not saying, "Well, gee, I'm entering one. I have three. I better stop here."

He—he continued. He cleared everything he had.

A. Yes.

Q. So the issue was that at that time, as I understand it, was that Mr. McNulty called the votes that perhaps had not entered—had not been entered or—and I'm not leading you—is it possible that McNulty thought that those vote cards were entered? I mean, I don't know what it is. We can ask him that question, but it's possible a man who has experience as the Chair looked up at the board.

A. I don't think so, because normally the Chair doesn't call the vote unless they have the tally slip. That is what that tells them that we're, that the vote is ready to be called.

I don't know.

BY MR. SNOWDON

Q. It is my understanding that all the votes, that the well cards were entered except Mr. Boehner's vote.

A. Right.

Q. Can you—why wasn't——

A. I asked Kevin that, I asked why Mr. Boehner's card was not entered. And they said that because it was at that time they decided to abort the vote. So, at that point, they figured, you know, why bother. Because Mr. Boehner wanted to be on the prevailing side, he wanted to change his vote from "yes" to "no" so that he could vote for the motion to reconsider. But because they decided to abort the vote, they didn't enter the cards. Mr. Hoyer had already voted no; it was just a duplicate card.

BY MR. SPULAK

Q. In your experience, someone from, in other words a leadership person, from the side that appears that—the losing side—will enter a vote in order to—in order to get on the prevailing side to reconsider.

A. Yes.

Q. Are—because we find this curious as well, are the Clerks are familiar with that practice, with the political practice that you'll——

A. I think Kevin Hanrahan is. I'm aware of it. I don't know about De'Andre, but yes, everyone is supposed to be familiar and know the legislative process.

Q. I think that—you said because it was aborted. At the time of the decision to supercede, had you heard that Mr. Hoyer—that they knew that the motion to reconsider was going to be made by Hoyer? So there was no reason to be on the other side to ask for it, because the majority in fact was going to ask for it?

A. Truth be told, I don't—no, I don't think they made that—I just think that because the vote was going to be aborted— they wanted to get that vote down and go to the motion to reconsider. That's why De'Andre could not bring the boards down.

Q. To get to the motion to reconsider.

A. Right, exactly.

Q. Which is what Mr. Boehner was trying to do by changing his vote?

A. Correct, So they aborted the vote and then went on to the motion to reconsider, but at that point.

EXAMINATION BY MR. HALPERN

Q. Frances, can I just follow up on something you said earlier. You were describing what was—your staff relayed to you that it was a very hectic evening, noted that there were nine 2-minute votes in a row. Those were on the amendments—those were on the amendments——

A. Yes.

Q. Correct? Those were actually in Committee?

A. Yes, it was in the Committee of the Whole.

Q. Okay. So you complete those 2-minute votes?

A. Yes.

Q. The Committee rises?

A. The Committee rises.

Q. And then there would be roughly 10 minutes of debate?

A. Ten minutes of debate.

Q. On the——

A. Motion to recommit.

Q. What—just either in this case in specific or in general, what are the Tally Clerks doing during that—during that interim, during that period?

A. During that 10-minute period?

Q. Yes.

A. Usually they are setting the vote up. They are calling downstairs to proof the well cards from the nine votes, and then they are setting up the vote, getting the vote ready for the motion to recommit.

Q. So there is conceivably a little bit of time for them to get a breather, close that out, the prior stuff——

A. Yes.

Q. [continuing]. And get ready for the next——

A. Yes.

Q. Stage?

A. Exactly.

Q. Correct?

A. Correct.

Mr. SNOWDON. I'll show you this.

BY MR. SNOWDON

Q. Take a look at that. Is that—I believe that was from your production?

A. Actually, this was the following morning, I went upstairs to the rostrum when I got in at 8 o'clock, and I found this sitting on the rostrum—where the Tally Clerk sits.

Q. And just for the record, do you want to read the Bates number from that. The full number down here.

A. Oh, it's Clerk 1579.

Q. And what is that document?

A. This is what we call the change sheet that we give to the Reading Clerks to announce when—but this isn't the exact sheet. This is a—De'Andre——

Q. Now would he typically maintain his own sheet?

A. No, we just actually fill out the sheet, give it to the Reading Clerk. A lot of times it's not complete, because what happens is they ask for changes and then other Members come into the well. So that they will get a sheet that doesn't have all these names on it that we have written. So he actually made this sheet up——

Q. De'Andre?

A. De'Andre did, from the well card votes from the cards that he had.

BY MR. SPULAK

Q. For what purpose?

A. Actually, I think someone told him to make a slip of—make a copy to record this.

BY MR. SNOWDON

Q. Whose—there's a little box down at the bottom. Do you know whose handwriting that is?

A. "Turned in cards but did not enter it into system." I don't recognize this—the—the handwriting, unless it is De'Andre's.

Q. Did you have a meeting with Russ Gore where you told him you thought it might be John Sullivan's handwriting?

A. Oh, oh, I might have, yes, maybe, actually.

Q. Why would John Sullivan have written on De'Andre's sheet?

A. Did I say that it was John Sullivan's, did I? I don't know.

Mr. SPULAK. No, you said it was De'Andre's. You said it was John Sullivan.

Mr. SNOWDON. Well, I'm reading from notes, Clerk 1392, where there was, I believe, a meeting with Frances and Russ Gore: Handwritten change sheet, it has De'Andre's handwriting. Someone else may have said that it was John Sullivan's handwriting.

Do you know whether that's John Sullivan's handwriting?

Ms. CHIAPPARDI. No, because I—I'm not familiar, you know what I mean—I don't read anything of John's.

Mr. SPULAK. Can you tell me to what you're referring, there is just a portion there that you said——

Ms. CHIAPPARDI. Right.

Mr. SNOWDON. It is Clerk 1392.

Mr. SPULAK. Right. Of the—of the document.

Mr. SNOWDON. The box on the bottom.

Ms. CHIAPPARDI. The box on the bottom.

Mr. SPULAK. Yeah.

Ms. CHIAPPARDI. Sorry if I did say that. I'm not—honestly, if John Sullivan wrote something, I would not recognize his handwriting.——

Mr. SNOWDON [continuing]. Deny the statement.

I'll show her this, Tom. It is 2396.

BY MR. SNOWDON

Q. It is an e-mail from Russ Gore to you and Joe Strickland.

A. Yes.

Q. 2395 is a change sheet, and it says: I believe they are out of order because there is an attachment to this e-mail. It says: "See the attached copy of the vote change sheet that Joe Strickland has." It appears to be different than the one you have. Any thoughts on why that is the case?

A. Well, I did—actually, that morning, when I came in that morning——

Q. I mean, have you seen that document before?

A. I did actually—I did see this. When I came in that morning, I called Trudi—Trudi Terry I think her name is. She's the—I'm embarrassed to say I don't know her last name. I called her up, and I asked her, I said, "can I get a copy of the change sheet?" And she said, we threw it out. She said—I have the e-mail. She said, "I can't find the document you're looking for."

Q. Is that something that's typically kept as an official record?

A. No, they throw it out after—the Tally Clerks proof the copy that comes up to the Floor that goes into the Congressional Record, and they go through with the well cards and make sure that the Congressional Record Clerks have the changes that will appear in the record, that they are correct.

Q. Do you know why those two would have been so different?

A. No, gosh, no.

Q. And the one you're referring to for the record is Clerk——

A. 2395.
Q. And that is an official——
A. Change sheet.
Q. Change sheet?
A. Change sheet.
Q. Okay.
A. I have no clue why it's like that. I don't know,
Q. After the events of August 2nd, it seemed like there was a lot of——
Mr. PAOLETTA. Hold on a second.
Mr. SNOWDON. Oh, sorry?
Ms. CHIAPPARDI. That's okay.

BY MR. SNOWDON

Q. It just seems like there was a lot of effort to make sure that the computer voting records were brought back up?
A. Yes.
Q. People were scrambling to preserve records. Did anybody think to direct either the folks on the rostrum or the maintenance—the cleaning people not to be emptying trash cans for notes or slips that—it seems like——
A. I know.
Q. A lot of effort was made to preserve records, and some of the records that were actually the most relevant——
A. Were thrown out.
Q. [continuing]. Were thrown away. And I'm just wondering if that sort of entered anybody's thinking at the time?
A. Now I was not there. I did go up and check the garbage pails when I came in, hoping that the cleaning crew had not been there. That's when I found that sheet on the rostrum. I asked De'Andre, and he said, yes, that he was directed to make a tally sheet of all the changes that he had from the well cards, and so that's what he did.
Ms. MCCARTIN. Can I ask one clarification on that?
Mr. SNOWDON. Which document?
Ms. MCCARTIN. This sheet.
Mr. SNOWDON. This one.
Ms. MCCARTIN. Yeah, on that one.
Is this something—and compare the other one——
Mr. SPULAK. And that is De'Andre's sheet you're talking about.

EXAMINATION BY MS. MCCARTIN

Q. This is the recreation.
A. Yes.
Q. And that's the change sheet that the——
A. The Reading Clerk.
Q. The reading clerk, okay. So this——
A. This is what De'Andre——
Q. [continuing]. Would have read?
A. Yes, yes.
Q. This is a recreation of the well votes, right?
A. Yes.
Q. So these are not necessarily both the same document. This is not necessarily a recreation of this document, right?

A. Correct.
Q. [continuing]. Because these are all the well votes?
A. These are all the well votes.
Q. Okay.
A. Yes, thank you.

BY MR. SNOWDON

Q. But this says these are all the well votes, and for the record——
A. These are the switches.
Q. [continuing]. There is one column of "aye," and one column of "nay," and then there's one column of "switches." The switches should be the same as the change sheet.
Ms. MCCARTIN. Not, not——
Ms. CHIAPPARDI. No, okay, this is what happened.

BY MR. SNOWDON

Q. Explain this.
A. These people changed their vote before the Reading Clerk read the list: Bean, Mario Diaz-Balart, Mr. Space and Mr. McNerney.
Q. McNerney.
A. Mr. Mitchell, Ms. Gillibrand, Mr. Lampson, Ms. Ros-Lehtinen and Lincoln Diaz-Balart changed their votes after the Reading Clerk read this sheet. Looking at this without going back and reviewing the tape, that's what I get from this, is that Kevie read these, and then these other Members—I know Ms. Gillibrand came down at the last minute, just from my memory, Ms. Gillibrand——
Q. And Kevie is Kevie Niland, the Reading Clerk?
A. Kevie Niland, the Reading Clerk.
Q. And at what point in the process is Kevie Niland reading the change sheet into the record? Is that before or after Mr. McNulty had——
A. Well, he would have——
Q. [continuing]. Gaveled the vote?
A. Well, I don't know, I'd have to go back and check. It might have been before he closed the vote. I'm not sure. I'd have to go back and review this. I don't remember, sorry. I should have reviewed the tape before I came. I don't have one.
Mr. SPULAK. There was a Super Bowl last night, we understand.
Ms. CHIAPPARDI. Actually, I'm not in possession of—I gave them all to Clerk staff, to Russ Gore. So I——

BY MR. PAOLETTA

Q. Was this the only thing on the rostrum when you went through the next morning, this sheet?
A. Yes.

BY MR. SNOWDON

Q. You talked a little bit about Mr. Hoyer directing Mr. McNulty to close the vote. From the tapes, there's some conversation between Mr. Hoyer and John Sullivan.
A. I——

Q. Did your staff—did your staff tell you anything——
A. No, they did not.
Q. [continuing]. The next day about——
A. No.
Q. With respect to any instructions that Mr. Hoyer may have given McNulty about closing the vote, was it simply to close the vote now, or was it—were vote numbers mentioned?
A. They just said that he—he told Mr. McNulty to close the vote.
Mr. PAOLETTA. And were there any—did your staff inform you of any conversations or anyone directing any comments from Mr. Hoyer or the leadership staff to the Clerk's staff themselves as opposed to the Chair?
Ms. CHIAPPARDI. No.

BY MR. SNOWDON

Q. I want to talk briefly about the aborting vote unless you guys want to——
Mr. SPULAK. Go ahead.

BY MR. SNOWDON

Q. What—have you ever seen a vote aborted?
A. No. I know that years ago they would use the quorum call to get people to come to the Floor, they would abort it after they'd get 100 members, and that was just normal practice. They would get a quorum—enough people, and then they would abort it, but they haven't used that in years. They haven't used that since I've been here.
Q. So, of your staff, you said there were some folks on your staff who would have known the procedure to go back to the main screen to then keep the vote opened?
A. Yes.
Q. And who would have known?
A. Well, Teresa Austin, Teresa told me that she had encountered that before.
Q. Okay.
A. I have and so has Kevin Hanrahan. Mark O'Sullivan has not.
Q. Well, Kevin Hanrahan's on the rostrum that evening?
A. Yes, he was the Standing Tally Clerk.
Q. Do you know why either Teresa or the operations center or Kevin Hanrahan wouldn't have——
A. No.
Q. Did they know De'Andre was having problems with trying to get back into the vote?
A. Yes.
Q. Why wouldn't they have instructed him what steps to take in order to do that?
A. I don't know. I asked Kevin, and he just told me that was not the case, that he didn't think that they were trying to bring the vote down. He said it was very confusing. I guess he can speak to you better about that. I can't. I don't know what was going on there. I wasn't there.
Teresa was downstairs having a very hard time with the FARS because we have a system called LIMS, Legislative Information Management System, which is for the House Calendar. All the in-

formation that we input into that is for the House Calendar, and the legislative activity guide, the members voting, everything that goes out to the Web. So when—we had never aborted a vote, so what happens is that it is a very old—it was created in 1973, this system. It's very old, so it has a lot of patches to it, you have to know how to tinker with it to get the right motion in. And, you know, it's just—so she was having a very hard time aborting the vote, bringing another vote up, and so, no, she didn't think——

BY MR. PAOLETTA

Q. What did Kevin say to you actually?

A. I asked him, I said, I thought De'Andre was having a hard time bringing the vote down. I said, why didn't you tell him to escape out and go to the main screen? He said, Frances—because that wasn't the case. He said, he wasn't sure what was going on, and he knew that they wanted to go to the motion to reconsider. I don't know.

BY MR. SNOWDON

Q. When he said—I'm sorry?

Mr. SPULAK. Go ahead, finish.

BY MR. SNOWDON

Q. When he said, "that wasn't the case," what—I'm a little confused.

A. I don't know. He would be the person to talk to honestly. I spoke with him the next morning. He had been there over 24 hours. He had been there waiting for the legislative computer people to recreate, get—find that information, the file for the vote, which they did find it, which showed how each Member voted. And he had to go back in and enter the information into LIMS and FARS, the Floor Action Reporting System. And so when I spoke to him, he was——

Mr. SPULAK. I'm sorry.

Ms. CHIAPPARDI [continuing]. He said it was very confusing, unlike anything he's ever encountered before.

BY MR. SNOWDON

Q. So, in your mind was it still a similar problem to one that you all have—had dealt with before, or was this a totally new problem?

A. I don't know. If I had been there and on the computer, I would have known. But unless—it's easy for me to speculate.

Q. But the events, the sequence of events——

A. Yes.

Q. [continuing]. Is similar to something you had had a problem with before?

A. Yes, yes, it was. And I expressed that to the Clerk and Teresa when I called her on the phone. I said, I know what's happening; I think I know what's happening

Q. At the time you called Teresa——

A. I couldn't get to the Floor. There was no way I could call upstairs to the people on the rostrum.

BY MR. SPULAK

Q. Frances, we will ask Kevin this. You used, I guess, a term of art, you said, when you were asked why didn't Kevin do this, you said that he—you don't believe that he thought they were trying to bring the vote down?

A. Correct.

Q. Does that mean that he thought that they wanted to leave the vote open?

A. I don't know. Honestly, I don't.

Q. Well, what's the opposite of bringing the vote down?

A. Leaving it open. Right, yes, I know. I don't know what was going through his mind. I don't know. I asked him, why he did not go up there and try to bring the system down?

Q. And you've already said this—you guys have more questions you think? Well, you can, I just wanted to know if we're getting to the end.

Mr. SNOWDON. Close.

BY MR. SPULAK

Q. So you said this, but now in the context of these last few things we've said, so why do you think they made the decision to abort if you've never seen one before, but why do you think in the context of what you just described to us they made the decision to abort?

A. Because it was my understanding that John Sullivan asked Ed Sorenson, who is the Deputy Clerk, and he is the person who wrote the program for the EVS, asked him what their options were and, since De'Andre couldn't bring the vote down, Ed said the option was to abort the vote. And so Ed directed De'Andre to abort the vote, because they wanted to move on to the next vote.

Q. From what you know, personally or what you heard from others that night or the day after, notwithstanding the apparent differences in these sheets, which may or may not be real, and the decision to abort, were any votes—and I'm asking personally, but from what you've heard, were any Members not recorded or not recorded accurately on that night, just from what you've heard——

A. No.

Q. [continuing]. From complaints or anyone saying, how did this happen, or anything?

A. No, no, not that—no one's told me that they felt that they weren't recorded. The only one would be John Boehner.

Q. I understand.

BY MR. SNOWDON

Q. So you think it was, to the best of your knowledge, it was John Sullivan and Ed Sorenson who decided that the best way to move on to the next vote was to——

A. Right——

Q. [continuing]. Was to abort?

A. [continuing]. To abort the vote. Because John said to Ed, what are our options, and——

Q. And was essentially that the only option?

A. Well, at the time, I guess Ed thought that was the only option.

Q. Did he know the work-around that you all had discovered from other similar——

A. I don't know if he did know that, but he—well, again, I can't—I don't know. Honestly, I can't speak for him. Again—if you're not there, it's hard to——

Q. Sure.

A. [continuing]. Know what was going through somebody's mind.

BY MR. HALPERN

Q. I have one other, again, sort of a background thing. I apologize if we covered this, just stop me, and I'll——

A. Okay.

Q. In sort of—well, during the normal course of business that appears here during the day, are you on the Floor during most of the vote series?

A Yes, I am. I am usually up for every vote unless I'm in a meeting.

Q. Does the Clerk's Office sort of have a protocol or sort of a roster for who's—who's in charge during a particular vote?

A. No. I, actually—as the Chief, I go up, and I'm there to offer any support if they need it, because I know the EVS and the Bill Clerks. I'm there to help if there's a problem. I will take the well cards just because there are so many Members in the well. But Ed Sorenson usually stands there, as did other Deputy Clerks who know the Floor, in the past, if Members need a new voting card.

Q. Right.

A. And he's also—he can answer if Members are having problems with a voting station, he can check it out.

Q. So—but there is usually a fairly high-ranking member of the clerk's office, either at the chief level or the Deputy Clerk level——

A. Yes, always——

Q. [continuing]. Overseeing——

A. Right, we are usually both up there. I'm there for the staff, and he's there to—to help if there is a problem with the voting.

Q. And you were not there that evening?

A. No, I was not. I went home early about 10 o'clock with Mark O'Sullivan so that we could come in early the next day, and I just want to add that I worked 85 hours that week.

Q. Totally understandable.

Mr. PAOLETTA. She turned the TV on when she got home.

Ms. CHIAPPARDI. Because we were working so late, we needed to have people go home and be fresh so that when we came in——

BY MR. HALPERN

Q. Absolutely. I guess the follow-on question is, do you have somebody else in the Leg Ops shop who, when you're not on the Floor, would stand in the same support role that you normally provide?

A. No, actually, but I am looking into hiring a deputy. There has not been a deputy in my job for the last years— I don't know if it is 12 years or 13 years, I'm not sure, but I'm going to hire a deputy.

BY MR. PAOLETTA

Q. One of the things we're actually doing for the committee is to come up with a series of recommendations, you know, so that this doesn't happen again.

A. Right.

Q. Do you have any comment or recommendation that we should consider to address, you know, making sure this doesn't happen again?

A. Well, I know that we've tried to recreate the anomaly. I've been up on the Floor many times with the legislative computer staff, and we can't—it hasn't happened again. It's just very strange, I just couldn't get it to happen.

Q. Do you think sort of formalizing or institutionalizing some of the practices a little bit more, like the tally slip or things that seem to have been working as a practice——

A. Yes.

Q. [continuing]. Are there things that you would recommend to ensure that, you know——

A. Well——

Q. [continuing]. Everyone's on the same page up there? It's still the Chair's sort of decision at the end of the day, but——

A. Right.

Q. [continuing]. That——

A. Yes, I would definitely make recommendations that the Chair would work in tandem with the Parliamentarians just so that they know, because they are there to just guide them, you know give them guidance on the parliamentary procedure. If they just go off outside of that, yes, I would recommend making the tally slip part of the process; that they not close the vote without getting a slip because it's been working for the last—since 1973, and to my knowledge, this is the first time that they've had a problem.

Q. Okay. What about the EVS system?

A. Well, we——

Q. You said it was created in '73 and it has a lot of patches?

A. Yes, but——

Q. Okay. It is sort of very cumbersome?

A. Well, not for us, not for the Tally Clerks to operate actually.

Q. So this——

A. Recently they've updated it where we were able to use a mouse. When I first started here, it was pretty—just very cumbersome, very old. But it is easier now that they have added a Windows application to the EVS. Before, it did not have that.

Q. Is there a wireless mouse?

A No. I don't know. A lot of Members—I don't—this isn't relevant—but I know the one thing that we do get a lot from the Members is that, every time they come in, and this is a Member who has probably been there 30 years, and they are always saying why are the machines—I can't vote, the machines are closed. And you know, they are saying, why can't we just have it like in Kansas—I said, I don't know, because I've never been to Kansas.

BY MR. SPULAK

Q. I'm sorry. You mean, so that they would like to be able to change their vote up until no time at any machine?

A. Yes, but also it is a process whereby, when the vote is over, it is over. Once the time runs out, the vote is done. You have a lot of Members who talk about that, but I know—it's different in the House of Representatives,

Mr. SPULAK. Well, thank you so much.

Mr. PAOLETTA. Thank you very much.

Ms. CHIAPPARDI. You're welcome.

[Whereupon, at 11:30 a.m., the interview was concluded.]

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

MONDAY, FEBRUARY 4, 2008.
Washington, DC.

INTERVIEW OF: ED SORENSEN

The interview in the above matter was held at Room 1017, Longworth House Office Building, commencing at 11:40 a.m.

APPEARANCES

OUTSIDE COUNSEL, MAJORITY: THOMAS J. SPULAK, ESQ., KING & SPALDING LLP, 1700 PENNSYLVANIA AVENUE NW., WASHINGTON, DC 20006

OUTSIDE COUNSEL, MINORITY: MARK PAOLETTA, ESQ., ANDREW SNOWDON, DICKSTEIN SHAPIRO LLC, 1825 EYE STREET NW., WASHINGTON, DC 20006

Also Present: Muftiah McCartin, Deputy Staff Director, Committee on Rules; Hugh Halpern, Republican Staff Director, Committee on Rules; and Davida Walsh, Legislative Counsel, Representative Delahunt.

EXAMINATION BY MR. SPULAK

Q. Thank so much for coming. You have already received letters from the committee, and I'm sure you have an idea of what it is that——

A. Right.

Q. [continuing]. We're trying to do.

So you may know that the Select Subcommittee was established by House Resolution 611, which, in part, requires us to investigate the circumstances rounding the record vote requested by the gentleman from California on the motion to recommit H.R. 3161, including the Chair's ruling over the objection of the parliamentarian. On a later note, we—relating to the e-mail documents we tried to get some idea of the scope of what we're looking for. And what we said recently was that we're looking for information that in any way refers to the votes themselves, including the duration, termination of the vote, how and why problems with the votes came about in efforts to resolve these issues.

A. All right.

Q. So that's what we're here about today. We will ask you to give us a little bit of background about yourself.

A. Uh-huh.

Q. Your job, your experience, how long you have been here, what your responsibilities are. And then you can begin telling us what you know about these events, we'll ask you questions about that as well. I was reminded earlier by my colleague, this is a deposition, so if you could speak loudly and give oral answers instead of head nods or whatever so the record will reflect your response. With that, tell us about yourself.

A. Okay, you won't have trouble listening to me, my voice sort of carries. Well, I've been with the House, I think it's close to 6 years now. I came first as Director of Applications Development in the Office of Legislative Computer Systems and worked there for the first four years. The last year I became the deputy chief of that office and continued, actually my job as Director of Applications Development as well. And about 2 years ago, when Gerry Vans retired, Karen Haas asked me to be deputy clerk in charge of basically technical operations and things of that sort. So I began, I think it was May 1st 2 years ago, 2006 and continue until today.

My job is basically to supervise things relating to offices that have technical operations, computer operations and stuff like that. I started that line of business in 1980 when, after reading one paper too many, I left Kalamazoo College where I was a professor of 17th Century Spanish literature, and actually with big interest in medieval literature, and it was one of those things I read one paper too many at the age of—ripe age of 30-something and thought oh, my God, I'm going to stay here for the rest of my life and escaped.

And it was sort of interesting because my then wife got a job in this area and moved to the area and I was looking for a job. I don't know, working on Latin American affairs or something like that; I was always interested in those issues, but there was nothing available. And one day I saw an advertisement for Buroughs Corporation, they wanted people in the training department, and I basically bullied myself into this man's office, and I told him that if it could be learned, I could learn it and I was a damn good teacher.

And I had prior background in mathematics, actually, that was my first real major, mathematics, and then I took a BA in philosophy. And then thinking that I couldn't wrestle with Kant, I went into literature. Sorry, that's sort of the long story.

But I, you know, have 20-something years in this field. I have done some pretty nifty things. I performed one of the first implementations of the defense data network for Buroughs Corporation. I was intimately familiar with communications software, but at the same time, it is the kind of software that keeps you awake at night and people call you because even though the error may not be in communications, you are sort of the link and so everybody calls you, forget this.

So, I have a substantial background in programming, applications development. And one of the reasons I was hired was that the voting system needed upgrading. I mean, we had an old VAX system and getting parts for it was becoming a nightmare because it was an old system, but the critical thing about that system was that it was a fault-tolerant system, and by "fault-tolerant," what that means is that the hardware has enough detecting systems that could keep itself running, even though part of the hardware

might be failing, and usually that is done by having redundant systems.

The problem was that the system was so old that we had to go on eBay and the parts were getting more and more expensive, we were getting parts from England, parts from Germany. It was sort of a nightmare. So——

BY MR. PAOLETTA

Q. That was the EVS system?

A. Yes, that was the previous version.

So what happened was, I was asked to research how we were going to do it.

BY MR. SPULAK

Q. What year was this in?

A. Oh, 2002.

BY MR. PAOLETTA

Q. Research what?

A. Research what to do. They had contracted with a software company, the House had to replace the system. And in my estimation, these guys were in way over their heads, they didn't understand distributed programming and yet had a system that I would describe as cool, and cool was a word that I banned from the office when I came in. Because, you know, cool is very fun to do, but means that a lot of times you interject a lot of things that can fail, and then the failure points multiply. And we literally had a nightmare with the system that they had developed. I suggested that basically we do away with it.

I furthermore recommended that instead of creating it in a Windows platform, as initially planned, we use a UNIX platform, UNIX is a more mature platform and it is a platform that really doesn't have as many upgrades. Anybody who uses a PC realizes that periodically you get these little messages you have an upgrade. Well, an upgrade is always panic and if you have a system that you want to be stable, you don't want to be doing upgrades every other week.

So I suggested that we look into UNIX and we chose hardware by a company named Stratus, which is the most reputable platform maker, hardware maker for redundant systems for—and the interesting thing is that what they had, what they provided was something that is technically called lockstep. And lockstep means the computer is basically divided in half, and each half has two computers. Every instruction it gets done 4 times, 2 on each side. And when the instruction is finished, the results are compared.

If they compare correctly, the machines keeps running, you literally don't know which side of the computer you're running in because it is the same. But what happens is if at any point the two instructions, the result doesn't match, one side takes itself off-line and notifies the system operators.

Actually literally, this computer calls home, calls to Stratus, but we had to disable that because we wanted to have it, you know, in a way that nobody could get in, but it's a phenomenal—it's really as state-of-the-art as you can get. And basically every top organiza-

tion that wants that kind of system buys from Stratus, nobody else. So we chose that.

And what we did was basically the minimal set, we did what is in computers is called a port, we took the software that runs on the VAX and whatever would run on this thing we basically moved. And whatever didn't, then we had to rewrite those parts because there were different operating systems, different communications systems. So basically that was the path we chose. And sometimes only after a great deal of disagreement with my previous boss, because I felt that there were some sections that needed to be written and he felt it was not necessary to rewrite them. I kept saying, this is bad code. And being a little bit of a perfectionist, I don't like having something that is not right. So, but we did it, we did it in a bit less than a year, which was great because that gave us plenty of time to test.

And since then it was put into production—I'm terrible with dates, but I think it was 2004, I'm pretty sure, but for some reason, even though I was a mathematician, at some point numbers mean nothing to me. To this day I would say that if you have a question about the voting system, I'm a safe person to go to because I wrote—or reported—the heart of it, all the rules engine, what we call the rules engine.

In other words, whenever something happens there are rules that you have to apply, and it was a giant piece of spaghetti code that I had to disentangle and put in a way that it would be easily supportable, but I really know the voting system inside out now.

BY MR. SPULAK

Q. Since it became operational, how would you say it has operated? Are you happy with it? Have there been any instances of issues that you would share?

A. There was one instance in the first year which was due to the fact that they didn't agree with the fact that I wanted to rewrite certain sections because it was bad code. We hit one of those sections. It is one of those things that sometimes, you know, nothing happens for 20 years, you know, year 21 somebody does this crazy thing and it happened. And it was sort of interesting because my boss wanted to eat my liver.

BY MR. PAOLETTA

Q. This is the first year?

A. Yes.

Q. And how did it come about?

A. What happened was whoever was chairing, which I think was Mr. Bass—had well voted and then went to the bathroom or something like that, came back and used his card. And he just kept his finger on the thing and basically overran a buffer. And basically, he wrote too many things in an area that was not enough, because of his insistence that he wanted—because what happens is that one of the rules is if you vote on the well, you cannot vote with your card the next time—I mean, during that vote.

So I remember arriving in this total chaos. And it was sort of funny, I was renewing my license, I was trying to give instructions, examine this that and the other. My boss receives me with fork

and knife. And said, I will eat your liver. And one of the guys in my development team comes running and says, the error was in the old code. It was the most welcomed thing I've ever heard in my life, it was like ah, thank you.

But all in all, no, the system has performed very well. We have had—the couple of times that we have had a problem was operator error, and as a result, I'm involved right now in the process of revising everything, because I don't know, I suppose it is a little bit like everything. You've got processes that work for 20 years and then something that nobody expected to happen suddenly happens and you trip on something.

I think we need to review all the processes, set up all the necessary alarms. And I'm actually currently sort of having a lot of fun because I'm doing some programming, but I'm devising basically a monitoring system to monitor the program that operates the computer in a more encompassing way, so that at any point we can detect failures well before there's a problem.

But no, I, literally, I would bet my life on this system. I'm very proud of it, I think we worked with an enormous amount of care because we know how—and that's why it has been so frustrating to see that operation errors have cost us embarrassment, and that doesn't please me.

Q. You mention the deputy clerk for technical operations? What we need, the offices that support that—what are the various offices within the Clerk's office that——

A. Legislative computer systems——

Q. Okay.

A. [continuing]. Is the main one.

Q. Okay.

A. Then Printing Services, Office of Printing Services.

Q. Okay, okay.

A. And then Legislative Resource Center, because actually we do a lot of work——

Q. I see.

A. [continuing]. Between them and LCS. As a matter of fact, all—a lot of software has been developed and is being used right now for lobby disclosure.

Q. Right, right.

A. And there will be more as we basically make some processes, internal processes, so we worked intimately with them.

Q. I see.

BY MR. SPULAK

Q. You talked about operational, what sort of training system do you have for—how do I want to say this—I guess there are different operators, different ways to interface.

A. Right.

Q. Presumably, there are people that are working behind the scenes and then there are others who actually use the system, the operators that I'm thinking specifically about the people who work at the podium——

A. Right.

Q. [continuing]. But there may be others. And so thinking about that and maybe there are different kinds of training——

A. Right.

Q. But if you talk for a second about how people are trained, you can give us an idea about the total number of people that interface with this system. And finally on the people who work at the podium, how they are trained?

A. The people who are behind the scenes are at LCS, they are the ones who basically are the system operators and hardware technicians. These are people that have really—we hire people who have significant knowledge of hardware. In other words, they know how to replace and repair things quite well, a good knowledge of electronics. And in addition to that, we are training them to have a significant level of expertise with the UNIX system as UNIX administrators. The goal is to have not just the main UNIX administrator, who is a guy with many, many years with experience, but have the guys who basically run operations at the console develop the same kind of knowledge.

It will take years, it takes years to get a good UNIX administrator, but we are working on that, because I think the more they understand, the better they will be so that's mainly where we're going with those guys.

With the people who work in Frances's operations in leg ops, who are the ones who run, we have provided some training, we have gone with them to the console and showed them everything. As a matter of fact, the console operations, this is an important point, the console interface has not changed now for a gazillion years basically.

Q. Hmm.

A. The only thing that has changed is the look and feel a little bit because it went from what we call a dumb terminal—all of you are too young to remember this, but we used to have those green screens with awful things, okay, but we took what looked like that and we replicated in Windows. And the reason was that most people who get hired out of college have no experience with, you know, an old dumb terminal. And we wanted to give them something that was still the same thing, operationally—you do the same things time after time and you never change that, but it looks like a Windows thing, which becomes more familiar to the younger crowd, which is what eventually we'll have to deal with.

As a matter of fact, we had to wait until the head tally clerk retired before we could change the system because he was averse to Windows. And so the moment he retired, we were all celebrating and high-fiving because the project could continue. It was—but you know, basically, you know, from that point of view, we have done it in a way that it will be minimally intrusive to the way we operate. As a matter of fact, they designed the interface with us. We—every step, we just basically——

BY MR. HALPERN

Q. They?

A. The tally clerks. We would go there and say okay, this is what you have now, this is what we're designing. Is there anything that you don't like? Tell us. Because that's basically, modern software that is somewhat enlightened is developed like that, with a user, because the user is the one who has to use it—for me to tell them

how to do things would be arrogant and stupid. So we trained them and we had manuals for them and everything. And you know, after we did the initial training, but they get new people and introduce the tally clerks, the existing tally clerks initiate the other ones into the system.

BY MR. SPULAK

Q. Would it be you who would—I guess it would be you who would train, but more importantly, would it be you who would assess their proficiency or would it be Frances?

A. It would be Frances. I would defer to Frances.

Q. Do you think Frances understands the system as well as she should?

A. I think she does, yes.

Mr. SPULAK. Any other questions as to the foundation here?

Ms. MCCARTIN. Can I ask one?

BY MS. MCCARTIN

Q. The system looks very much like it did when it was developed in '73.

A. Right.

Q. So I think that has led some people to characterize the system as being old.

A. Correct.

Q. Could you talk a little bit about why the system looks the way it looks, and also could we have your opinion on whether you think the system is "old and has lots of patches?"

A. Okay. It looks the way it looks because one of the mandates that we had was to be the least intrusive we could be to the looks of the Chamber, you know, the whole concept. Yeah, we could have a new, you know, main display with screens and this and that and the other. But I think it would be an insult to the architectural sort of integrity of the Chamber to do something like that.

So a lot of—if you look at the summary displays on the side, they look sort of—but at the same time they disappear. I remember the first time I was shown the system—I came into the Chamber and they lit it up and I thought, "wow, this is phenomenal." I thought it was really exciting. What they did was excellent in that they preserved the integrity of the Chamber and yet added this thing. So a lot of the look is due to that.

I would say the other thing that I liked about it and is in the system—particularly the components of the system are not cool, they are solid. In other words, that—what we call the kiss rule was used, you know. It was kept simple, and that really has been its strength.

The oldest part of the system perhaps, is the—is the main display, but, you know, we have kept it up, it is upgraded, it is not something—is it something that someday I would like to change? It would be great. And the reason is that right now whenever a Member leaves, we have to manually, you know, change the nameplates and balance the look and everything. You know, it takes us about an hour or something like that, you know. It would be really nice to have something like a totally LED-driven display which—the problem with that is we have about—I think there are 5 or 6

inches of depth to work on that wall, which means we need to wait until the technology gets a little bit better and miniaturizes a little bit more. I figure in the next 5 to 10 years, we'll have that capability.

The other thing is we would need a fair amount of time. And we would need to wait until, you know, the Chamber is being refurbished completely so that we have enough time to do it. Because it is not something that you can do in a month. It is something that would take, you know, 3, 4, 5, 6 months. And at this point, there is no reason to do it.

Now, would it be something that—I wouldn't—if I were to redesign that, I would redesign it using the same basic parameters that they used, which was a very simple and yet elegant solution to the problem of having something there that doesn't look like a scoreboard, that I think would be horrible. I've seen other chambers around in visiting and, no, I think that what we have is a much better solution.

And is it solid? Yes, it is. Now, am I going to tell you that one day we are not going to have, I don't know, a cable short or something like that? I can't say that, you know. We all assume that every time we turn on the light that, you know, the light will turn on, right? Until, you know—all we can do is monitor everything. When we see something is getting old, we replace it. We do a lot of preventative maintenance. But, you know—you know, does anything work every time? I don't know. I haven't seen that yet.

BY MR. SPULAK

Q. And on the—you were speaking about hardware. I think we would ask you whether you have any suggestions or thoughts about improving the software. But I think—I think I had asked if you guys agreed to think about that question and then we can talk more about what happened on this—on this whole thing with the system, because it may be that you could be thinking—now that I know how that happened, maybe we could do something that——

A. Oh, no. Absolutely.

Q. To address——

A. No, honest, you know, I look forward to have the time to sort of reevaluate some components of the system that I would—you know, everything can be improved. And I think if we don't learn from, you know, things that happen, it would be just an incredible case of idiocy.

Q. So if you will, you told us that since—since the rollout and the implementation, you knew of this one incident with Mr. Bass that created a snafu, if you will. And then we had the situation last August.

A. Right.

Q. Is that—is that the first time—I mean, is that the second time that you think there was a situation that was——

A. Yeah, except that the situation last August in a sense was different because the situation with Mr. Bass was what I call—there was a bug in the software. And I think—I'm still, you know—I suppose since this investigation was going on, I stayed away from people I didn't want to go, and—because I didn't want to feel like I was intruding with people. And I suppose when all of this is done

and over, you know, there will be more frank discussions, because I want to find out more as to exactly what happened. I think I know what happened, but yet I am completely puzzled by the fact that it was not brought to my attention.

Q. Well, lead us up to that point. You're saying that you think this problem preexisted that evening.

A. It was the way the system always worked. The question is, you know, to be perfectly frank, I would say that—and this is my opinion, okay? But I suppose you want me to be frank and tell you—I would say if there was something that failed there, it was the fact that people were exhausted. People had been working very long nights for a long time, and I think when people are tired, people make mistakes. And that is something that we need to keep in mind. And if we don't learn that, I think it would be a sad mistake.

BY MR. PAOLETTA

Q. So why don't you take us through your recollection of sort of what happened that night, sort of—you know——

A. What happened that night was something that I had seen many times that had sort of concerned me, is somebody starts calling the vote, and then something happens, you know, somebody says, "one more," or whatever.

Q. What do you mean, calling the vote?

A. Well, at the very end of the vote, when they give the numbers and they recite this whole thing, you know—and time and again, it had happened that as they did that, somebody said, "one more," and they were allowed to basically, you know, vote.

And so the whole thing was that, you know, the words were spoken and yet, you know, the system was still running. And——

BY MR. SNOWDON

Q. I'm going to show him the clerk's memo again. Have you seen this document?

A. I think I have.

Q. Okay. And on the second page of it, there is—there is a process for closing the vote.

A. Correct.

Q. Okay. And it walks through five different steps and sort of matches up what the—what the tally clerk is supposed to do in the system versus the cues that he is receiving either directly from the Chair by words that the Chair uses, or observations as to whether people are in the well or not.

Is that your understanding of how the system works and is there anything in there that you would change or disagree with?

A. Let me reread it now.

Q. On Page 2.

A. On Page 2 in——

Q. The second paragraph from the top.

A. The second paragraph from the top.

Q. The process for closing the vote.

A. Yes.

Ms. McCARTIN. The second full paragraph.

Mr. SORENSEN. Uh-huh. Right. Correct. Yeah. Those are normally the steps that occur.

BY MR. SNOWDON

Q. Okay. Are those normally, or are those universally the steps that occur?

A. No. They are normally, because sometimes, you know, they—they write the tally sheet, they start reading it, and then eventually somebody comes and says, you know, that they want to vote. And basically they give them the courtesy of restarting the process again.

Q. Okay.

A. So this is the normal thing. However, once it is started, it can sort of be reset and restarted again.

Q. Okay. What—it's—it seems that somewhere approximately in the second to third step, the seated tally clerk is entering some votes into the system, some handwritten votes into the system?

A. Correct.

Q. The Chair has called the vote?

A. Uh-huh.

Q. He then is moving to set the vote to final, which is the third step in the system——

A. Correct.

Q. And then there are additional votes, handwritten well votes that need to be put in, and that is where the problem arose. Is that your understanding of where the problem arose?

A. That is my problem—that is my understanding of the problem, is that——

Q. And what happened there? I mean, is that a system's problem? You mentioned human——

A. No. I think that that is what I would call operation error.

Q. Okay. And what—why?

A. I don't know why. I mean, you know, again, I think partly these people are tired. I don't know. But normally—as you read from there, the tally clerk would not be passing a tally sheet with the numbers for the vote until all the voting has been—all the written votes have been processed.

Q. Right. But the tally clerks, both standing and seated, take their cues from the Chair, correct?

A. They do.

Q. Okay. So the tally clerk is really doing what the Chair is directing them to do? And if the Chair is directing them—is saying that the vote is closed, what should the tally clerks, in your opinion, have done that didn't take place here?

A. Well, I think—you know, what I think they should have done, I don't know what they should have done, to be perfectly—I don't know what I would have done. I would have been confused, as confused can be. And I think that that was part of the problem is people were puzzled because the process did not occur the way it normally did.

BY MR. SPULAK

Q. And if I can ask—okay. But something did happen.

A. Right.

Q. And something did happen and I think we generally agree on the facts. We can—part—part of our mandate is to find out why. But I think we all know——

A. Right.

Q. [continuing]. Generally that there was a call from the Chair, the seated clerk wasn't sure if it was open or it was closed, and something happened. He tried to make it—he tried to say—I think, which is very generally—tried—not tried, set it to final——

A. Correct.

Q. [continuing]. And then wanted to enter other votes.

Mr. PAOLETTA. Tried to back up——

Mr. SORENSEN. Correct. And that is something they can do. That is something they have done before.

BY MR. SPULAK

Q. Okay. So I assume we all agree with that. What happened that night? Why could——

Mr. PAOLETTA. Yeah. I think in terms of backing up, I think my understanding—correct me if I'm wrong—it is actually a work-around to back up, but it is not—I mean, it is not—I think that is what his——

Mr. SPULAK. Right. I understand, Mark. You're right.

BY MR. SPULAK

Q. I mean, tell us about this work-around. But I think that is for you to tell us that there was a work-around. I just want to know what happened——

A. No, no. What happens is—you know, the interesting thing, as I remember somebody else made, what is the implication of setting the vote to final? And the implication is nothing, there is no implication. All it does is it flashes the word "final" instead of the time. Instead of time being zero, time is—it shows final.

Why is that done? I don't know. It is part of the thing that the system had from the get-go and that is it. This—this is not the first time this happened. This is something that happens frequently and it happens frequently——

Q. What is it?

A. The—the—you know, the vote being set to final, and yet votes be entered after it is set to final. That is—was a common practice in all the years that I've been here. And it is just a function of the Chair is starting to call the vote, okay, declaring that the vote, you know, has gone this way or that way, and somebody coming into the Chamber at the last minute, and then basically allowing these people to vote. There were people——

BY MR. PAOLETTA

Q. When you say call the vote——

A. Calling the vote is start saying the words, this vote the yeas are blah, blah, blah, the nays are so, and then everything that is said after that.

Q. And the motion is laid upon the table?

A. Correct.

Q. And then it actually—people have come in——

A. Correct.

Q. [continuing]. It is backed up, and so it is not the end of the vote?

A. That is one of the things that I was always concerned about, that there didn't seem to be a hard and fast. You know, I'm—I am a technician. I like things to be clear. It bothers me when there is, you know, and the point, I assume, is that there has always been an understanding that as a courtesy to the Members who want to vote—and everybody knows how important it is to keep a good voting record, you know—this was—you know, it was done. So as long as the operator didn't hit the—you know, release the vote, you know, release the——

Mr. SNOWDON. The boards.

Mr. SORENSEN. The boards, it was something that was a practice.

BY MR. SPULAK

Q. So you've been concerned over the years about the confusion——

A. Oh, absolutely. Oh, absolutely. And as I said, I'm—I'm a technical person in spite of my background in literature. But I like clarity. And I think if nothing else, what I hope gets out of this, is hard and fast ritual, if you want, that is followed every time.

Q. And we—so there is a situation and, as you said, you went to finally try to come back to allow some votes to be entered, and apparently something happened to the system at that point. You said it happens all the time; that is, trying to go back in after that. It seems like in this particular case, for some reason he could not do that.

A. Well, the thing is that once you set the vote to final, if you go back to enter in votes that are done manually, then when you go to the screen that says "terminate vote," one of the options that you have is set vote to "final." And the other one is release. If you just hit, you know, "final," then what happened was it would say the vote has already been set to final.

Mr. SNOWDON. Right.

Mr. SORENSEN. And if something happened there, it may have been that—you know, being late and being tired, he may have gotten confused and thought—because if the vote had not been set to final, it would have basically set it to final and then asked the person if he wanted to release the displays and exit.

BY MR. SNOWDON

Q. So it is set vote to final, and then it is release the vote, and then it is confirmation of release the vote?

A. Well, yeah, yeah.

Q. So what you are suggesting is that he had set it to final and then——

A. Then went back to—went back to do the——

Q. Right?

A The manual—the well votes. And then instead of just hitting release——

Q. He hit——

A. [continuing]. He hit set vote to final, and he got this message that the vote is set to final.

Q. Well, how would he have entered the new well—let's say he had set it to final. Wouldn't you have to somehow unfinalize that in the system?

A. No.

Q. In order to put in well votes?

A. No.

Q. So it will take them?

A. Right.

Q. So what he should have done is put in the new well votes and then hit release?

A. Right.

Q. Instead of hitting——

A. Correct.

Q. Is that—I mean, that is obviously a pretty, I think, simple mistake to make.

A. Yes.

Q. Just hitting a wrong button?

A. And to be perfectly frank, what we have done after this incident is we set it up so that if you—if the vote is set to final, and you hit set vote to final——

Q. Nothing——

A. [continuing]. Basically what we do is we still ask you, okay, do you want to release? Because it doesn't make any difference. So in order to avoid having another problem like this, which we had never had—again, this is one of the things that—where you learn from a bad situation.

Q. But when he set it to final for the second time, that basically locked up the system; is that correct?

A. Huh-uh, huh-uh. It didn't lock up the system. Basically he kept coming back. He kept hitting—hit, you know, "set vote to final" and he kept getting the message saying vote is set to final.

Q. Well, did somebody then—he is having this trouble. Did you know, or were you on the rostrum at the time?

A. I was not on the rostrum and I did not know he was having this problem. As a matter of fact, the first time I realized that something was pretty wrong, was when, you know, they started another vote. And the displays were—the system was still running the previous vote.

Q. Okay. Well, who—at some point, a decision was made to abort the vote.

A. Yes.

Q. Okay. Who made that decision?

A. The Parliamentarian made that decision. I went—when they started the next vote, I basically said you cannot do this, you know. To begin with, I noticed that the Clerk was very uncomfortable at that point. People were yelling and screaming. It was pretty chaotic. And so I basically went and asked to speak with John Sullivan. And I said, "John, there is a vote running. You need to make a decision on that vote." And here is perhaps where I made a mistake, because I used the technical terms that we use all the time with the votes. And I said you can either "terminate" the vote or you can "abort" the vote.

Q. Who did you say that to?

A. To John Sullivan.

Q. John Sullivan.

A. And he—I think he asked me, what does it mean to abort the vote? I said abort the vote basically just makes it go away and——

Q. What did you mean—I'm sorry.

A. And I said, you know, you will lose the data. And eventually the decision was to do that. It was clear that he quite did not understand what I meant by that, because right after we aborted the vote, John was quite distressed when it became obvious to him what that meant.

Q. What did you mean when you said that you could terminate the vote?

A. Terminate the vote is just, you know, going to the thing—I would have gone and just clicked the button to say release display and exit, and the vote would have been done.

Q. Why didn't you just tell Mr. Sullivan at that point not to abort the vote but to terminate the vote?

A. To begin with, I just didn't know what was going on. I didn't know if the vote was meant to be aborted, to be perfectly frank—but I did not understand what was going on because I could not believe that we have—you know, lights were lit, the vote was still going, and yet they had started a new vote.

BY MR. PAOLETTA

Q. And where are you at this time?

A. I was on the side of the rostrum and I went and asked. I mean, you know, perhaps I should have been——

Q. Did you go speak with De'Andre at all?

A. I basically—when we were going to abort the vote, yes, I did. But, you know—and I basically told him what to do. But I——

BY MR. SNOWDON

Q. It seems to me that aborting the vote is sort of the nuclear option here. I mean, we have spoken to people that have worked for 10, 20 years—read their submissions—they've never seen a vote aborted.

A. Correct.

Q. That is something that is very unusual. And I guess I'm wondering why there wasn't a little more discussion—if it was easy enough to just click the release-the-vote button to get this back into normalcy, why that—why that option wasn't discussed in a little more detail before the abort-the-vote decision was made?

A. Well, to begin with, you have to realize that, A, nobody had made me aware of the fact that De'Andre was having a problem. I stayed away from the rostrum because that is not my—you know, I'm there to give, you know, technical support. I basically—what I noticed is that I could not understand why the Chair would start another vote when there was a vote going. That to me was completely puzzling, and I didn't know what was going on.

So I had a question: Does the previous vote count or not?

BY MR. SPULAK

Q. What did you say to De'Andre when you walked up to him? You were talking over his shoulder.

A. I, you know—basically I said, you know, do you know how to abort the vote? And I said, you know—I showed him how to do it.

Q. But at this point it was specifically "abort" that you were showing him?

A. Yeah, yeah.

Q. That decision had already been made?

A. I think so, yes.

BY MR. PAOLETTA

Q. Let me just—can we just back up in terms of that night when the vote starts and the motion to recommit?

A. Right.

Q. You're in the Chamber?

A. Yes.

Q. And you're off to the side?

A. Yes.

Q. Okay. Tell me what you see happening—in particular, obviously, near the end—in terms of what Mr. McNulty is doing; the interaction; what you are hearing up there in terms of direction from either Mr. Hoyer or anyone else as to what the Chair is supposed to be doing and anything else during that—during the vote—during that period. I understand that your responsibilities are technical. And you're standing there. But you're an eyewitness, right?

A. Correct.

Q. So I wanted to have the opportunity for you to tell us what you saw and heard when that was all happening.

A. Well, to be perfectly frank, I didn't know—I was not paying particular attention to any of that, and the Chamber was pretty loud, and all I know is what Mr. McNulty did, which he suddenly called the vote. And that is——

Q. Did you hear Mr. Hoyer direct him to close the vote?

A. I didn't.

Q. You did not? Okay. Okay. So you saw—the first time you're paying attention is when Mr. McNulty is calling the vote?

A. Right.

Q. And you thought that was unusual?

A. Well, it was unusual because I never saw the——

Q. [continuing]. The slip?

A. The slip.

Q. The tally slip?

A. Being passed.

Mr. SPULAK. At what point did you find that unusual? Because he first announced the vote, what time it expired, and he said the vote—and he asked them whether they wanted to change their vote. So was it at that time that you thought it was unusual, or the second time?

A. It was when he basically called the numbers and went through the recitation that they always do. But I had not seen the slip and I knew that De'Andre was still working on input, which is, you know, uncommon.

BY MR. PAOLETTA

Q. And do you recall any conversation at the time amongst De'Andre, or Mr. McNulty or the Parliamentarian as that—you know, just before he is making that call?

A. No.

Q. No. And right after, do you remember anything?

A. All I know is that people were just going around like crazy and that was, you know—it was——

BY MR. SPULAK

Q. If I could, then, so when did you first become aware that there was a problem? You know, when did you become——

A. When the next vote was started. I mean, then I thought there is something really wrong going on here, because they shouldn't start the next vote until the previous vote gets——

Q. So your involvement really was how to release the vote at that point so they could start the next vote?

A. Correct. That is correct.

Q. So when you come on the scene, if you will, it was because whatever—what had happened had already happened?

A. Correct.

Q. There were three votes that were—there were three more switches that happened, and there were a couple of minutes that had gone by, and now they want to move—Mr. Hoyer moves for—Mr. Hoyer moves to reconsider?

A. Correct.

Q. And then they find out that they can't release the prior vote to start the new vote. So—okay. Where in all of that did you——

A. Well, when that—when they started the next vote, that's when, you know, I was being puzzled. What does that mean? Does that mean that the previous vote doesn't count? Does that mean—I mean, what—I had never seen something of the sort. You never start a vote until you finalize the previous vote.

Q. Okay. But that's a good question. I mean—but that is also a different issue, and I'd like you to address it. The first question is, do we terminate or do we abort?

A. Correct.

Q. Was that the first——

A. That was when the next vote had started—I—that's when the question I posed to John Sullivan.

BY MR. PAOLETTA

Q. Right. They start the vote and it is still up. And so then there is the discussion about terminating or aborting, correct?

A. Correct.

Q. Now, I'm just sort of puzzled. You're the deputy clerk——

A. Correct.

Q. [continuing]. For technical operations?

A. Correct.

Q. Okay. You're standing right there.

A. Correct.

Q. De'Andre Anderson is having a technical problem with the system.

A. Right.

Q. Okay. So is it uncommon or common for there to be technical challenges on the rostrum and the person who is in charge of the technical part is consulted? I'm just trying to figure out why you're not consulted while they're trying—while they're trying to——

A. That is the part that puzzles me is why nobody brought it to my attention.

Q. I mean—and the question is, are there times in the past when there are problems on the rostrum and you're consulted, and you come up there and say you need to do X, Y and Z?

A. I have—prior to that, I can't remember—I think I may have once. But I have asked a couple of times—after that they become much more, you know, proactive about asking questions—so when they had any doubt, you know, I was consulted immediately.

Q. I mean, it is your system, correct? You built it?

A. Yeah.

Q. So they're trying to back up the system—I mean, they're trying to back up in the system, right?

A. Right.

Q. And it is just interesting to me that——

Mr. HALPERN. Before we leave that whole subject, may I just ask you a couple of questions?

Mr. SORENSEN. Yes.

BY MR. HALPERN

Q. How many deputy clerks are there?

A. Two.

Q. There's two. There's you and currently——

A. Deborah Spriggs.

Q. In terms of folks who are sort of on duty that night, realizing that we are in appropriation season, it is very long, everybody is working long hours, who all was on for that night as sort of the management level in the Clerk's Office?

A. I was.

Q. You were. So you were the sort of ranking person from the Clerk's Office——

A. Right.

Q. [continuing]. On duty that night? Okay.

And—but you didn't—if you look at the tape, it was clear that people were at least concerned with the way things were going at—the first time Mr. McNulty attempts to announce the result. But at what point did you actually sort of take notice and become involved? Was it still at that point when you were—you were moving on to when they had actually started with the motion to reconsider? Because there was also another intervening action.

A. Correct.

Q. Which was Mr. Hoyer's unanimous consent request to officiate the vote?

A. Correct.

Q. But—just so I've got this straight. You're saying that you became involved sort of at the point when you started the next vote?

A. Correct. Because I was expecting at that point, you know, between the Chair and the Parliamentarians to tell the tally clerks to basically finish this vote.

BY MR. SPULAK

Q. Prior to—prior to—prior to making the decision on terminating or aborting, was there any discussion about whether the votes at the time—that which was in the system—did not accurately reflect what had occurred? In other words, everybody who—do you know what I'm saying? We didn't enter this, or we didn't find—as far as you know?

A. No.

Q. I'm trying to understand—the issue was not related to, then, what was in the system at the time?

A. Correct.

Q. The question was how do we get out of it to start another vote?

A. Yeah.

Q. Is that right? I don't want to speak for you. Is that right?

A. Yeah.

Q. So as far as you see, then, at that point that is really when the problems at least really started?

A. Correct, correct.

Q. And we go back to this terminate and abort. You had offered John these two options to terminate and abort. John only asked you what "abort" meant.

A. Correct.

Q. Perhaps he should have asked you what does "terminate" mean?

A. Correct. I know—and if nothing else, perhaps that is where, you know, I would go with 20/20 and think that, you know, perhaps I should have been more explicit.

Q. Okay. So—okay. And it is what it is. So—and so you did abort. Maybe my friends will go in more detail about how it happened. But it did happen and that released the boards and they began the next vote?

A. The next vote. And that was also when John became aware of, you know, the full implications.

Q. Well, tell us about that.

A. The abort and the——

BY MR. SNOWDON

Q. It is my understanding from what you said earlier, that De'Andre was putting in the new well cards, and then the mistake was hitting final—or not—yeah, hitting final again, as opposed to the release the——

A. Correct.

Q. [continuing]. The release the vote function, and then the confirmation of release. He has written a memo that describes sort of what he did that evening. And according to—to Mr. Anderson—it says he heard the Chair announce the tally and gavel down the vote. And after he had entered in the names of Members that had turned in well cards to the EVS following Mr. Mario Diaz-Balart, I heard you shut down the vote. And he goes through the steps starting, you know, 1, 2, 3. And then it wasn't until he got to the fifth step, which is the confirmation of releasing the vote, that he wasn't able to release the vote; that he kept clicking, clicking,

clicking, and the vote wouldn't release. And I thought what I had heard you say before is that if De'Andre Anderson had just hit the "release-the-vote" button——

A. Correct.

Q. [continuing]. As opposed to the "final" button, then this problem would have been eliminated. But it sounds like he did go through the different steps, including the release-the-vote, and he was still having problems. Is that your understanding of what happened.

A. I—I didn't ever read that memo. So I couldn't tell you. I—you know, if you say that that is what he found, I'm puzzled, because that is something that we had never encountered before. If he had gone through the steps of, you know, set vote to final and immediately after that release displays and exit, the vote would have finished.

Q. Okay. Because we also heard from Frances Chiappardi this morning that there were some instances where she was aware of that they had done a similar thing; they had gotten to the third step which is the finalize-the-vote function on the EVS and that people wished to vote with the well card——

A. Correct.

Q. [continuing]. And the only way she could get out of that was I think what Mr. Paoletta referred to, is a work-around where she had to go into the main menu and then come back in. Had that ever been communicated to you?

A. Basically if you don't release the displays and exit, okay. If you—if you hit final and then you're asked do you want to release displays and exit, if you say no, I seem to remember that at that point, you were left in—I would need to take a look again in the either finalized vote, basically, menu with all the options, or you may even go back to the main menu, in which you can go basically—or go back to the main menu and go—because you need to enter some votes, you go into the well voting, and then you enter the well votes, and then you go back to the terminate vote, and then at that point, since you already had said final, all you needed to do was release displays and exit.

BY MR. SPULAK

Q. Were you aware of this work-around that—Frances said that she knew it, and Teresa knew it. And so——

Mr. PAOLETTA. And Kevin Hanrahan.

BY MR. SPULAK

Q. [continuing]. Indicating that this was a situation that had occurred in the past?

A. I remember one that Teresa said that the system got stuck. And I remember saying, what do you mean? And she couldn't explain. So we couldn't go there. The unfortunate thing is that a lot of times when you're dealing with people who don't have a technical background, to say the system got stuck, you know—what does that mean? No. But honestly, what happens is the communication is not a clear communication because they—they just tell you that the system was stuck. And, you know, what do you mean, it was stuck, you know? And in my mind that is not stuck. And

that—I don't know—that—I would say that the interface perhaps was less than perfect, but it was the interface they've always had, and we have always erred on the side of keeping the same interface because that is where they are familiar.

Q. The system interface?

A. Correct.

Q. Basically the screen. What they're seeing—what they are being asked to do?

A. Correct.

Q. You said earlier—and let me put it in some context. You said because of that, this won't happen again?

A. Correct.

Q. So what did you do to stop——

A. Well, what we did is, if you click on the button that says "set the vote to final," even if the vote had been set to final before, we just give you the option of releasing the displays and exit. So it is the same interface, no matter what. So we figured that that would be a good thing to do so that this never rears its ugly head again.

Q. And people know about this? You've talked to——

A. Correct.

Q. Everyone has gotten some sort of training on this?

A. Yes. That's correct.

BY MR. SNOWDON

Q. I want to show him—I want to show you this. It is clerk 2883. It is an e-mail that——

A. Yes. This was—this was our first attempt at reconstructing everything.

Q. And did you draft the memo which is——

A. Yes. Yes, I did. I did this report. And the reason we had to sort of basically resort to looking at the type was—you know, at that point, we thought that was all the information that we had regarding the system. The one thing I remember—a lot of the documentation until now, until the last rewriting of the system, was basically word of mouth. And one of the things that happens when a vote is aborted is that the structure that contains all of the votes gets written to a file. So you have the state of the vote as it happened that gets saved.

Q. Is that the checkpoint file?

A. That is the checkpoint file. And basically what is done is it gets renamed because—at the end of a vote, we always save the checkpoint file and save the votes to the database. We do both.

Q. Is the database the transaction file?

A. No, no. The database basically is another means of having that information in tabular form. This is just basically a vote. This is what you call it, a binary file that we just write. And that—basically what it is, is we write to memory the structure where all the votes are being tallied.

See, when somebody votes, you know, we put that information in there. And it just—for every Member, what the last entry was. And in some case, even the previous entry because we have—we save one—if a person votes, let's say, yea, and then changes to nay, we save the last two. So that gets written.

There is another file which, again, folklore said that never got saved, and that was the transaction log. The transaction log basically keeps track of every transaction in the system. And that gives you a timeline of what happens. And the transaction log also, when I looked at the code, got renamed, except there was—actually there still is a body in that code in that it gets renamed, but the way it is renamed means that it gets written to what is called in Unix, the home directory of the user under which the program executes. Okay? And the good thing was that we backed up the system that night and that file was saved. And that is why we had both at the end of the vote: the checkpoint file, which told you exactly how things were at the moment the vote was aborted; and the transaction log which reflects every vote entered into the system.

BY MR. SPULAK

Q. So as far as you know, no data was lost?

A. No data, not an iota was lost.

Q. Now, when you—and I think it is important. When you spoke with John—when you were speaking with John—we've seen the tape; there is a lot of confusion. There's a lot of people there. And people are interrupting conversations. Is it possible that he didn't understand what you were saying?

A. Oh, I'm certain that is the case. And that is where—to the day I die, I'll be hitting myself over the head for not being more explicit.

BY MR. PAOLETTA

Q. Well, can you tell us about the conversation?

A. It was very short. It was basically, John, there is a vote going, and you guys are just starting another vote. You have to make a decision. And basically it is the two alternatives that you can, you know, terminate the vote, you can abort the vote, and then he——

Q. And what did you—you said you explained "abort." How did you explain "abort"?

A. I said that if—basically we'll close everything, but the data will be lost.

Mr. SPULAK. I'm sorry.

BY MR. SPULAK

Q. You thought——

A. We won't save the data; I'm sorry

Q. But—but—but—but didn't you know about this checkpoint and about this——

A. Oh, yeah. Oh, no, no, no.

Q. So what does data will be lost——

A. It means it doesn't get put into the tables in the database and in the proper place.

Q. Okay. But—but you never inferred that the information was going to do that?

A. No, no. The information—I knew that if the information was ultimately available, you just had to go and get it.

Mr. PAOLETTA. In what form?

Mr. SORENSEN. If is in binary form it is a binary file. A. binary file means—is a way to save space instead of writing everything in human characters. We just preserve it in the computer sort of structure.

BY MR. SPULAK

Q. Sorry to ask you to speculate, but do you think you would have had a different opinion if, in fact, you knew that there was no way to ever know—in other words, if "abort" meant we have no idea what happened here, we can never recreate it, even if we bring the CIA. in—but would you have had a different——

A. I think I would have, yes. I do think I would have.

Q. But that was not the case?

A. That was not the case, so—you know, but—but I would say——

Q. It was a good expedient for the moment?

A. I don't know if it was expedient or not. To me the point is I could not understand why there were two votes going if—you know, to me it was not a matter of expediencies. Expedient would have been to save the vote if the vote was meant to count.

Q. That is interesting.

A. So the question is—I didn't know if that vote was meant to just be, you know, not counted.

Mr. PAOLETTA. How do you have a vote that is not counted?

Mr. SORENSEN. Because the same way when it happened the next day and we had a problem in the system, and we had to abort the vote.

Mr. SNOWDON. Could you take a look——

BY MR. PAOLETTA

Q. But that vote hadn't been called, right? It was—and this is a vote where you had——

A. No, but I——

Q. I mean, you heard the Chair call the vote, right?

A. The reason—but, yeah. But hold on a second. The vote after he called it then, he didn't call it again. And people had voted in between then and the next thing. I was—for the vote—for me to think that that vote counted, the Chair would have had to have called the vote again and say this is it.

Q. I see. Okay.

A. Because that is what had always happened.

Mr. SPULAK. But again, the important point was, Ed, that regardless of whether it counted or not, the data was going to be there if someone wanted to look at it?

Mr. SORENSEN. Correct.

BY MR. PAOLETTA

Q. Let me—you were talking about these different files. And the transactional file is not the binary one, right?

A. They are both binary. Yeah, we save everything in binary form.

Q. When you were talking about that transactional file—and I think you mentioned that folklore had it that that wasn't saved.

A. Correct.
Q. So at the time you're advising him about aborting it——
A. Right.
Q. Okay. In terms of your knowledge of what would be saved——
A. What would be saved was the status of the vote when the vote ended, which told you what the totals were and who had voted how. I mean, the order in which I thought was something that we would not have access to, but we would have access to the finals.

BY MR. SPULAK

Q. But we did have that as well?
A. Yeah, yeah.
Q. You were going to get everything?
A. Correct. I was able to recover everything.

BY MR. HALPERN

Q. Can I just follow on that for just a second? You were very confident that you were—you would always have access to this data, or that you had access to——
A. Well, let me put it this way. This is something we had never done. Was I confident that—I suppose, you know, to a certain degree, yes. You know, was I certain? There is never a certainty. When I went to recover everything, the first thing is back up the system so that we would have a picture of things so that we could go back to it.
I was meticulous beyond belief. I was asked, why did it take you so long—is you don't compound one problem with another. And what we did is we rehearsed it in another system, then we went step by step—I mean, I was painfully telling everybody what we were doing as we would document what we did. And, yes, you know——

BY MR. HALPERN

Q. So the way you described it is whether you realized it at the moment or later, Mr. Sullivan had a different understanding of what "abort" meant?
A. Correct.
Q. I think——
A. Well, it became obvious later on, yes.
Q. Right. So I guess the question is: Who, besides you and maybe some of the other legislative computer systems folks, knew that that data was still going to be there?
A. Nobody.
Q. Nobody?
Mr. SPULAK. I'm sorry. I don't understand that. What was in your opinion—what was Mr. Sullivan's state of mind at the time?
Mr. HALPERN. I think what Ed has said was that at least it became apparent at—when we started moving onto the motion to reconsider, that that data was gone.

BY MR. HALPERN

Q. Am I understanding what you said?

A. Yeah, that it was not accessible to the system through the normal ways.

Mr. SPULAK. Right, right, right. And I mean, I really think this is very important. Ed is—Mr. Sorensen——

Mr. SORENSEN. No, Ed is fine.

BY MR. SPULAK

Q. You're a technician and you speak in technical terms. We don't.

A. Yeah.

Q. When you say the data was gone, you were talking about the whole data file with the votes and everything. You did not think that that was recoverable, but you thought that the vote—that the results of the vote?

A. Correct.

Q. That snapshot of what happened when—when we hit abort, we'll know what that says?

A. Correct.

Q. Mr. Sullivan agrees with that, right, and he has given us a little explanation. And he says that he spoke with you and he said that you had said everything would be lost in the immediate term, but that it would be recoverable.

So it seems to me that—anyway, it seems to me that you and John were on the same page, at least in terms of the fact when the decision was made, the results would be—the results would be recovered?

A. I believe so. But to be perfectly frank, that night is a blur to me.

Q. He is going to come in and we'll ask him that.

A. But that was pretty much—you know—and he said, you know, can we restore, you know, the records? And I said yeah. And, you know, it took time.

Q. Right.

A. It was a long night. But—and——

BY MR. HALPERN

Q. And this may be answered someplace else. But you had 814 and that got aborted?

A. Correct.

Q. And the next record vote was on the motion to reconsider?

A. Correct.

Q. What was—do you recall what the number of that one was?

A It was—as it was done, it was 814. Because when you abort a vote, you back up the numbers. And part of the recovery was to move the votes one up.

Q. So the users of—the sort of rank-and-file EVS users——

A. Correct.

Q. [continuing]. Would have seen the motion to reconsider appear as 814?

A. Correct.

Q. And as far as the public dissemination of that data to the—would have shown up as 814 until the following morning when——

A. Until we finished all the recovery, yes.

Q. Okay. So the—like I said, the information that was available to the vast majority of users of the system both——

A. Correct. It basically—it went to 814. They were expecting to see the motion to recommit. They would not have that data available, which was something that became evident immediately.

Mr. HALPERN. Thank you.

Mr. SORENSEN. Yes.

BY MR. SNOWDON

Q. I just have two quick questions.

On this document that you have been handed, on the second page, it says roll call—and I'm looking under roll call 814. Roll call 814 was mistakenly aborted?

A. Correct.

Q. What should have been—we talked about the information being recoverable. Why were you saying it was a mistake to abort 815?

A. Because it became obvious that that was not what was intended initially.

Q. And in your mind there was a way other than aborting to restore the vote?

A. Absolutely. I agree. I do agree. And that is part of the information that was not communicated at that point.

BY MR. PAOLETTA

Q. When did you become aware that John Sullivan realized that he, you know, aborting it was——

A. Well, it was——

Q. Did he say something to you?

A. It was—at the end he said, can we restore the records of the House? And I said, yes, we can.

BY MR. SPULAK

Q. Can I back up? Can I ask who—I don't want to—I think it presumes—whose mistake was it? Was it—and this presumes it was John Sullivan's mistake that it was aborted. But whose mistake was it now in your opinion?

A. I don't know. I think——

BY MR. PAOLETTA

Q. Well, who made the decision to abort?

A. Well, I gave him the options and he made that decision. But I would say I am as responsible for it because we didn't communicate as clearly as we should have.

Q. Right.

A. And I regret it, but it was—at that point it was the way we perceived things to be, and obviously we were in error.

BY MR. SPULAK

Q. But I'm going to say one thing. You said we were in error. And maybe you're familiar with the basketball term, "no harm, no foul."

A. Correct.

Q. What were the consequences of this decision that were negative?

A. Well, to me the consequences was the animus. You know, there were a lot of people who were upset and, you know, I—I see as my responsibility to have happy customers.

Q. But hold on. The animus that resulted from the mistaken decision, if in fact you had had more time and you convinced John that terminate was the right option, you're suggesting that there wouldn't be any animus?

A. Oh, no. There would have been some anyway. No. I agree. I——

Q. Let me—what exactly was the—would have been different on that moment?

A. My problem is, again, is I'm a perfectionist. And when something doesn't go right, I feel responsible for that. Do I wish I could redo the thing and instead of minimize, you know, all that? Yes.

BY MR. PAOLETTA

Q. How would you have done that?

A. Well, if we had had time to talk at greater length, I would have said, John, let's sit here and let's discuss—he was dealing with a whole bunch of people. People were coming and going.

Q. That's what I wanted—was he—it's a quick conversation, right?

A. Yes.

Q. Because of what, because of the——

A. Because of what is happening on the floor.

Q. Was he feeling pressured?

A. Oh, I do believe that there was the pressure that comes from a floor that is almost in chaos and people saying, I want to vote but I cannot vote, because, you know, the system—the displays were up and everything, and people could not vote and there was sort of confusion.

BY MR. PAOLETTA

Q. Did he—do you remember him making any comments about what anyone had told him or what they were expecting of him or anything——

A. No.

Q. [continuing]. In terms of—he sought you out?

A. No.

Q. You walked up to——

A. Basically I went to him when I thought we need to do something about this. To me the—what I felt was that there was a lot of confusion, and that I think confusion puts pressure on people.

BY MR. SPULAK

Q. So we're clear, when you said people were saying I want to vote, they were talking about wanting to vote on the subsequent motion?

A. Correct.

Q. Not on the prior vote?

A. Correct. And so there was, you know, I would say that there was a great degree of confusion. And I thought that that was something that affected us all. I suppose you were there. It was not a pleasant evening.

BY MR. SNOWDON

Q. I have one last document, and maybe you can explain what this means, it's an e-mail——

A. Yes.

Q. [continuing]. Exchange with you and Gordon Brace, and for the record——

A. Correct.

Q. [continuing]. It is clerk 2811. Can you just sort of explain what this, particularly the "being sort of pregnant" comment?

A. Yes, it was—it was. Gordon has sort of a strange sense of humor, and I think it partly it was making light, and that he was asking basically for me to explain what had happened. And it was—what it was that I think what he says about the log file just showed it as stopped, is something to the effect that we had closed down the stations. As a matter of fact, in looking at it now, I'm sort of curious exactly what he meant by that, and I need to go and take a look at the log files to understand, you know, what prompted this thing.

Q. Would this somehow suggest when the log file shows that it stopped, would that somehow suggest that the system was——

A. Wedged?

Q. [continuing]. Locked up or——

A. No, no. I can challenge anybody to try to wedge that system at that point, and I can guarantee you that it will not happen.

BY MR. SPULAK

Q. Even if that were the case, what would that mean?

A. Pardon me? To be wedged?

Q. Yeah.

A. Oh, I'm sorry, it is to be stuck in a situation where it could not recover.

Q. Okay, not to recover, but not—but it was clear in the end—I think we have different—at least we all may have different ideas of what that means.

A. Correct.

Q. For me, it would mean that I couldn't vote anymore?

A. Correct.

Q. That somehow the system wasn't allowing, disenfranchising voters, but that's not what it meant?

A. At that point the stations had stopped, in other words. But that's part of the procedure, once you make the vote to final, you—the stations remain locked, and that means you can only vote at the well.

Q. What are you going to do, there was no evidence that De'Andre, at any time, could not enter votes, it was the fact——

A. Correct.

Q. [continuing]. That he was entering well card votes?

A. Correct.

Q. The only problem was how to stop being able to enter well cards?

A. Exactly.

Q. I have just one last question, we're going to hear from Goldey Vansant, we'll hear from the director, but it would help us, what interrelationship did he have with you on that night?

A. None, he was not here.

Q. Okay.

A. His deputy was here.

Q. And that was?

A. Bob Maddox.

Mr. SPULAK. Gentleman, ladies?

[Nonverbal response.]

Thank you so much.

Mr. SORENSEN. Okay. But you need anything else, let me know, I will be glad to—okay.

[Whereupon, at 1:14 p.m., the interview was concluded.]

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

MONDAY, FEBRUARY 4, 2008.
Washington, DC.

INTERVIEW OF: GOLDEY VANSANT

The interview in the above matter was held at Room 1017, Longworth House Office Building, commencing at 1:28 p.m.

APPEARANCES

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Also Present: Muftiah McCartin, Deputy Staff Director, Committee on Rules; Hugh Halpern, Republican Staff Director, Committee on Rules; and Davida Walsh, Legislative Counsel, Representative Delahunt.

Mr. SPULAK. You know the select committee was established by House Resolution 611, which, among other things, was mandated to investigate the circumstances surrounding the recorded vote that was requested by the gentleman from California Mr. Lewis on the motion to recommit H.R. 3061, including the Chair's ruling over the objections of the Parliamentarian. And recently we sent out some guidance, which you probably received, so you can identify the scope. And what we are asking for is information relating to the votes themselves, those two votes, which were that vote and the subsequent motion to reconsider, including the duration and termination of the vote, and how and why problems with the votes came about, and efforts to resolve those issues. So that is what our scope is.

We are being transcribed, so kind of speak loudly and clearly rather than nod your head or whatever so we can get all of it.

Mr. VANSANT. Certainly.

EXAMINATION BY MR. SPULAK

Q. And with that, what we have been doing is we have been asking individuals to just sort of give some background about themselves, and how long they have been with the House, what they do, what your responsibilities are. And then from that you can go into what you know about the vote and anything subsequent to that. Of

course, allow us the opportunity to interrupt you from time to time and ask some questions. And we will try not to be rude, and we will get this over with soon.

A. All right. I have been with the House of Representatives since March of 1997. I started with Legislative Computer Systems at that point under Robin Carle as Clerk of the House. I was brought in to establish a help desk for Clerk employees for computer-related problems.

I have worn many hats in Legislative Computer Systems throughout the years. Lately, or my latest move was in March—or, pardon me, April of 2005, when I was named Chief of Legislative Computer Systems. Let's see.

Q. What do you do in that capacity?

A. That is mostly an administrative-type position. I have a deputy who handles day-to-day business for me. But I am very involved with the electronic voting system. The coverage in our office, when we are in session and votes are going on, if we go late in the evening, beyond normal business hours, my deputy and I split the duty of staying there into the evening to cover the votes. He will do one night, I will do the next, that sort of thing. The same with our two hardware technicians that we have in there. One or the other of them will also pull late-night duty, so to speak.

Q. I am just curious. So between you and your deputy, one or the other is available. During the day, or during the normal hours, are there others who are involved or who are responsible for this?

A. During the day, no. During the day we have both me and my deputy on.

Q. Okay.

A. And both hardware technicians are available during normal business hours. That's correct.

Q. The only difference is when there is late duty, only one of you is on call?

A. Exactly. When we go beyond about 6 p.m. in the evening.

Mr. SNOWDON. Who is your deputy?

Mr. VANSANT. Bob Maddox.

BY MR. SPULAK

Q. Okay. I think that is good for background. Can you tell us your involvement or what you know about—because you may not have been there on that night; is that correct?

A. That is correct.

Q. You probably know a lot about——

A. I was blissfully asleep at the time.

Q. Only to be awakened——

A. At 4:15 the next morning when my deputy, Bob Maddox, called me to let me know that there had been an issue during the evening; gave me a very brief account of, you know, what they were doing at that point to try and resolve the problem of the aborted vote. And at that point I left immediately and came in here, arrived here just before 6 a.m. the following morning, as the crew that was reconstructing the vote from the available files on the voting system were just finalizing their check-out to make sure that all the votes had been recorded correctly on there.

Q. And had they been?

A. Yes. Yes.

Q. What else did—so Bob was on call, and he was——

A. Yes, he was the one on duty that evening.

Q. Did he tell you what happened, you know, just sort of specifically to the system?

A. To the system, yeah. What I was told was a vote was in progress, and at some point they saw the vote aborted. On the EVS operator's terminal up there, we can see various things about the system, if there is a problem with a voting station, if there is a printer that has gone off line, that sort of thing. And it also keeps us advised as to the status of the vote, when it has been started, when the displays have been turned off, when the vote has been declared final, that sort of thing. And he did say they were very surprised to see "vote aborted" come up there rather than "vote final" for that particular vote.

Q. Then what happened? Did he tell you what they did next or——

A. Right. What they did at that point, they didn't think because the vote was aborted that there was any data available on the system to reconstruct it. However, Ed Sorensen, who was also on duty that night doing floor duty and is very, very familiar with the inner workings of the system, did come over and find a file that is written not the same way as a normally termin—or pardon me, a normally finalized vote, but another file written in a separate location from all of that that contained information about that vote.

Q. I mean, does Ed have expertise that the people who were watching the screen and thought that there—that the data would be lost, does Ed have greater knowledge or different knowledge than they do, or are they trained the same way, these people?

A. No. Ed very much has greater knowledge.

Q. I am sorry, the people who watch the screen, what is their background?

A. These are hardware technicians. They are there in the evening in the event something happens to a printer on the House floor, a vote station goes down, that sort of thing. We will get a call from the floor saying, vote station 34 is no longer responding. They will then go down to the floor and take a look at that station, that printer, whatever the piece of hardware happens to be, and resolve that issue. That is why either Bob Maddox or I are on duty, because we like to always leave someone in LCS to monitor what is going on with the voting system.

Q. So Ed came over sometime after that decision—after it flashed aborted, to try to find this data?

A. That's my understanding, yes.

Q. And he found it, you said?

A. Yes.

Q. And was it that data that they were using when you arrived to try to recreate the results?

A. Yes.

Q. What happened after that morning? So now they found the data. What role did you guys have in this?

A. The votes—there had, of course, been another vote after that one that evening. The votes had to be renumbered so that things would remain in sequence, which was not a difficult thing to do at

all. That is quite easy. And the system was restarted. The vote information, the correct vote information with the correct vote numbers was transmitted to GPO to be included in the Record, and also to our Web site to be made available to the public. That all happened early that morning.

Q. After you took care of these matters, what else—was there further discussion about what had occurred? Was there any remaining concern?

A. Yeah. Well, certainly there was discussion among us in the office about, you know, exactly what had happened? Why was the vote aborted? You know, all that sort of thing. Pretty much all speculation at that point as to why things had proceeded the way they had.

Q. Okay. Were you aware—I mean, was there any specific discussion about how to avoid this happening in the future?

A. No, not from the standpoint of EVS operations, no, not at all.

Q. Ed told us that they fixed the—that there was some change made to the software, to the interface, so that that would never happen again. He didn't tell us exactly what had happened, but presumably from then until now that has happened. Are you aware of that?

A. That discussion, I believe, took place later on that month, when we were sitting down talking about the way things go on. And, in fact, there was a decision made to change the interface slightly at that point in the termination of a vote.

Q. You said "at that point." Was there any subsequent changes to that, or that was——

A. I believe that is the only change.

Q. From that point going forward?

A. Yes.

Mr. SPULAK. I don't have any further questions.

EXAMINATION BY MR. SNOWDON

Q. Bob Maddox was there that morning helping Ed Sorensen recollect this data and put it back together?

A. Yes.

Q. Did he have any discussions with Mr. Sorensen about why the vote was terminated—or, excuse me, why the vote was aborted?

A. I have no knowledge of that. I have no idea.

Q. Well, did you ever ask him after the fact, you know, if he had heard anything about why the vote was aborted? Pretty unusual.

A. Yes, as a matter of fact, I did ask him about that. And he said, no, he is not entirely sure why it was aborted.

Q. Okay.

Mr. SNOWDON. I don't have anything else.

EXAMINATION BY MR. PAOLETTA

Q. Let me ask, when you are there, during normal business hours on the night that you serve, where are you physically?

A. When a vote is not in process, I am in my office, usually working on administrative duties.

Q. Okay.

A. When the bells go off for a vote, I am immediately into our back area. Our office is divided into 2401, which is what we call

the front area; 2403. It is two suites connected by a glass partition. As soon as the bells ring for a vote, I go into the back and am at the station with the EVS operator while votes are in progress.

Mr. SPULAK. In Rayburn?

Mr. VANSANT. In Rayburn, that's correct.

BY MR. PAOLETTA

Q. And you are watching it?

A. Yes. Yes.

Q. So what typically happens, you know, based on your experience, when a vote is called? Sort of walk us through what your understanding is. You know, people are voting, and then what happens? How do you sort of close a vote?

A. We don't close a vote at all. That is all controlled by the tally clerk on the House floor. We are in a monitoring position for system status and hardware up in Rayburn. The vote is controlled completely by the tally clerk on the House floor.

BY MR. SPULAK

Q. So is it accurate to say that—I mean, you are not involved in the interface with the machine on the floor, and your employees are not; is that correct?

A. That is correct. There is two ways to log on to the EVS. One is called primary mode, the other one is called secondary mode. When we are in session, the production system is brought up, the tally clerk logs on in primary mode. Okay. They have the control of the system at that point. We log on in secondary mode. We are in a monitoring position.

Q. Real quick. So it is your role—because I am trying to understand this—it is your role that you make sure that the system itself, the platform, is working. But in terms of operating it, you are not in charge, nor are your colleagues in charge of that.

A. That's correct.

BY MR. PAOLETTA

Q. I am sorry, I was just going back to—I wasn't meaning you are in control of the votes.

A. Okay.

Q. What I meant is, as has been explained to me, there is—the Chair, right, will, quote, say, "Do any Members wish to record a vote, change their vote," right?

A. Yes.

Q. Okay. And then ultimately there is a tally slip——

A. Right.

Q. [continuing]. That is handed up?

A. Yes.

Q. Do you generally watch that? Do you see that on the screen?

A. We generally do see that happening on the screen, yes, yes.

Q. Okay. So in this vote, right, did you notice that a—I guess it was Bob Maddox—but did you hear that the slip had not been handed up?

A. No.

Q. Okay. When did you first learn that?

A. That a slip had not been handed up?

Q. Yeah. Like when people were recounting the night and——

A. Probably during the next day when I heard that there was a tape, videotape, of that vote in the Clerk's Office, and somebody mentioned that fact.

Q. Okay.

A. Yeah.

BY MR. SNOWDON

Q. Could I have you take a look at this, if you would? I apologize, I should have more copies. Tom, it is 2263. This is an e-mail that Gordon Brace sent at about 12:30 that morning to several people, including you.

A. Okay.

Q. It says, you know, we are essentially always 5 minutes away from being in the Washington Post.

A. Yeah, I remember this e-mail.

Q. And be prepared for a real interesting day. And it describes some of the events that, you know, happened that night.

Did you have conversations with any of these folks about what happened the night before? I mean, you get this e-mail, which is obviously a pretty urgent e-mail, and you come in at "0-dark hundred" in the morning and try to help, you know, put the pieces back together.

A. Yes. Yes. We talked—I talked with Gordon, with Bob, with Ed.

Q. Okay. So what did they tell you about sort of the substance of this e-mail? That, you know, the vote had been called before it should have been and——

A. Yes. Only that the vote had been aborted, and they were not clear why it had been aborted.

Q. Okay. Well, this also, though, refers to—if I could just borrow it for 1 second here—it says the Speaker pro tem called the vote before it was supposed to be called. That is a little different than aborted. Did you ask him about that?

A. Oh, thank you. Yes, I do know what he means by that, about the—I guess we would call it the premature announcement of the Speaker in the chair of the result of the vote.

Q. Sure.

A. That's what I believe he is referring to.

Q. Okay. Why don't you tell us, you know, what you learned about that.

A. Only that they said that he had called the vote while there were still votes going on. That's about it.

Q. Have you ever seen that before in your experience?

A. In the 11 years I have been here, let me think. I have many times seen the Speaker start to call the vote and then stop when someone else has run into the well to vote. That is correct.

Q. That is a little different than what happened here, though, isn't it?

A. Well, it sounds like it. Again, I didn't witness any of this.

Q. So you didn't really get—did you get a full debrief when you arrived in the morning and you were getting a call at 4-something

in the morning and in here before 6 o'clock? I would think the natural question would be what happened?

A. That's exactly right.

Q. And were people just too busy trying to recreate these computer files to really talk, or did they tell you exactly what they saw?

A. At the moment I came in, they were completing verifying the validity of the vote. It was probably another 15 minutes before that was all done. We then had to transfer the votes over, of course, GPO, Web, that sort of thing. And it was about that point, I would say probably a half hour, 45 minutes after I got there, that we sat down and started talking about what in the world happened?

Q. Give me a sense of what you were being told. I mean, were people pretty matter-of-fact about it? Were people pretty animated about it? What types of things were you being told about what happened the night before? I assume it is not that common for you to get woken out of your bed at 4:30 in the morning, so obviously you must have been curious as to what went on.

A. That's right.

Mr. SPULAK. Could I interrupt for a second?

BY MR. SPULAK

Q. Why were you called at 4:15 in the morning? Was it to assist in the recreation of the vote? I mean—or just generally because you are in charge, they wanted you there? Why was it important to get you there at 4:15 in the morning?

A. Well, actually, to tell you the truth, I wish they had called me earlier. I would have been in there much earlier. I would have preferred that they called me at 1 a.m.

Q. What would you have done differently than what they did?

A. Differently than they did? Probably nothing.

Q. Just as the boss you wanted to be there?

A. And to be there to see if there was anything I could contribute.

Q. But from what you knew, would there have been anything that you could have contributed to what they did differently?

A. In the end, probably not, because the fellows working on it, you know, Ed for example, were the technical folks that really understand the ins and outs of the system.

Q. The person who wrote this e-mail which Mr. Snowdon referenced, was he there that night?

A. Yes, he was. He was one of our hardware engineers. He was the scheduled late hardware engineer that evening.

Mr. SPULAK. Thank you.

BY MR. SNOWDON

Q. So did anybody give you the debrief the next day, or was it——

A. Well, yes. Of course we discussed what went on. We went over the fact that the vote had been aborted. Nobody knew why it had been aborted. Where the data was found to reconstruct the vote.

BY MR. PAOLETTA

Q. There is this part—obviously, you know, there is a point where there is a decision to abort, right? So that's what you are referencing. But there is also this phase where Mr. Anderson is actually trying to—the system is not doing what he wants it to do, right? And right, he is trying to back up, right, to enter the well votes? He said it is a final, and then he is trying to back up to enter more well votes, and he is trying to go back to final, and the system won't let him do that.

Now, as I understand your role, he is the primary, right, and then——

A. Yes.

Q. [continuing]. You are sitting there, your person up in your shop is secondary, so he is witnessing all this, right?

A. Right.

Q. Okay. So it has been recounted to us that this has happened several times where Frances Chiappardi told us that—and other people that you referenced——

A. Yes.

Q. [continuing]. That you get to that point, you back up, and there is sort of a work-around, all right, where you need to do X, Y, and Z to sort of get back to where you want to go.

A. Right. I think part of the problem here may be the terminology.

Q. Okay.

A. "Roll call 814 was aborted after it was finalized." That can't happen. The vote is either finalized, or it is aborted. What happens at the normal termination of a vote, when we are reaching near the end of a vote, they turn the vote stations off, okay?

Q. Yes.

A. At that point anyone else who comes into the Chamber, or who even was in the Chamber and hasn't voted yet, can go to the well and cast their vote.

Q. Right.

A. Okay. The reason for doing that is to have the system in a somewhat stable state——

Q. Okay.

A. [continuing]. So that by the time the tally clerks write down the sheet, turn around and give it to the Speaker, the Speaker isn't announcing, and somebody suddenly is sticking a card in the vote station.

Q. Right.

A. Okay. So Gordon's statement in this e-mail here is, frankly, not accurate. The vote is either finalized—if it had been finalized, it would have been closed out. All the data would have been saved at that point.

Q. Right. So my question is there is a person in your office that is hooked in and in the secondary mode, I think you said?

A. Yes.

Q. Watching everything transpire, right?

A. Right. Yes.

Q. So is that person—would that person be watching, or is there some sort of communication where Mr. Anderson is not being able

to do what the computer—you know, what he is wanting it to do? He is trying to terminate the vote, right, to get back to releasing it, and he can't. And so there seems to be—what is sort of puzzling to me is there is this person who is trying to make the computer do something, okay?

A. Yes.

Q. Mr. Sorensen is in the Chamber, but nobody is consulting him. He is the extremely sophisticated, you know, technical person——

A. Right.

Q. [continuing]. Who is sort of right there, but not being consulted. And there is a person in your office who is actually watching this——

A. Yes.

Q. [continuing]. Happen, right? Real time.

A. Right.

Q. Is that right?

A. That is correct.

Q. Okay. So it was explained to me that there is a number of people who are—have seen the tally clerk who have had this problem before, right, and have learned a work-around, that you need to sort of go back to the main menu and then sort of back in, okay?

A. Okay. Right.

Q. That what Mr. Anderson was doing was not—he was trying to go—he tried to change the—he was at final, he sort of wanted to go back and enter the well votes, and then he tried to go to final again, right? Now, his memo may be a little bit different, but the system is not cooperating with what he wants to do.

A. Yes. Okay.

Q. Okay. Mr. Sorensen is there, nobody is consulting him. Somebody is in your office watching this. And is anyone saying, because I assume between the two of you—I shouldn't assume, but——

A. Okay.

Q. [continuing]. Between the two of you, you have watched this happen before?

A. Yes.

Q. Because I think Kevin Hanrahan, Frances Chiappardi, and Teresa——

Ms. McCARTIN. Austin.

Mr. VANSANT. Austin, yes.

BY MR. PAOLETTA

Q. [continuing]. Have had this problem and have, you know, worked the system or, you know, given it direction to do what it wanted. But nobody is—people are, you know—so I am trying to figure out what your office—what the person in secondary mode is doing——

A. Yes.

Q. [continuing]. While this is happening. Before the decision to abort, he is actually trying to clear it. What happens is they can't. They want to move onto another vote. And that is when Mr. Sorensen is consulted, or Mr. Sorensen goes up to John Sullivan and says, you can't start another vote without, you know——

A. Closing.

Q. Right. So that is when the decision to abort is. But before we get to that——

A. Yes.

Q. [continuing]. Right—you know, what is the person who is in secondary mode doing while Mr. Anderson is trying to clear out the system? Is he just watching it to make sure the system isn't failing, or is he——

A. I see what you are saying.

Q. [continuing]. Does he have the ability to say, hey, you need to do X, Y, and Z to go back and clear it out?

A. No. What he is seeing on the monitor there is the fact that the vote stations have been closed.

Q. Yes.

A. And he probably saw—there is a normal process. Let me go back to that before I get to this vote.

Q. Okay.

A. A normal process after that tally sheet is filled out and handed to the Speaker.

Q. Right.

A. As they are announcing, the tally clerk prepares to set the time to final on the displays.

Q. Okay.

A. Okay. You see that on the summary displays up there. In the normal process, a lot of people never see that happen, because they will set the time to final, close the vote as soon as he says, "And the motion to reconsider is laid upon the table." Done.

Q. Okay.

A. Okay. I am not clear if the time was set to final and then it stayed there for a while. This is something I don't know the answer to because I wasn't there to see it.

BY MR. SNOWDON

Q. Let me show you this, and maybe this will help with that.

A. Okay.

Mr. SNOWDON. And this is, Tom, Clerk 64.

BY MR. SNOWDON

Q. Have you seen this before?

A. Yes, I have.

Q. Okay. And it talks in here about Gordon——

A. Showed "final" in the "time remaining" area.

Q. Okay. Can you explain what that means in this context and why the EVS Stratus console operator—and is that Stratus EVS operator, is that Bob Maddox? Is that your deputy, or is that somebody different?

A. Gordon and Bob both function as Stratus EVS operators in the EVS.

Q. So what does it mean when it says that it showed final, but the EVS operator console didn't show final? I mean, if the EVS——

A. What he means by that is that it did not show the vote as having been closed out.

Q. Okay. Because I want to be clear.

A. Okay.

Q. And the Clerk's Office people have been very explicit that——

A. Okay.

Q. [continuing]. There are two types of final. There is the initial final, which is the command to finalize the vote in the EVS, but then you got to go through two more steps in order to effectively finalize-slash-terminate the vote. You have to then go into close displays, and then you have to confirm that before the vote is essentially a done deal.

A. Right.

Q. They have gone to great lengths to point out the distinction. Just because you hit the final command in the EVS, that does not mean that the vote is final. I am still confused as to what—if you all are monitoring this in a secondary capacity——

A. Yes.

Q. [continuing]. You are not seeing what De'Andre is seeing on his screen and the trouble he is having?

A. No, we are not seeing that on the screen. As I said, we are only seeing status. We are not seeing a duplicate of his screen.

BY MR. SPULAK

Q. Okay. I was just going to ask is that because that is not the role? I thought you said earlier that your people are watching for hardware malfunctions.

A. That's correct.

Q. And it would seem to me what you just said, the reason why you wouldn't look for that type—but I don't want to put words in your mouth——

A. Okay.

Q. I mean, you are not looking over to see the tally clerk's shoulder to see how he or she is performing.

A. We cannot see that screen from Rayburn.

Mr. SPULAK. Okay.

BY MR. SNOWDON

Q. Would you be able to notice, then, if he was having a problem like he had that night where if the system for whatever reason kind of locked up, would you see—it suggests that there is—they are noticing——

A. Yes.

Q. [continuing]. From the operations center a problem here. I mean, they——

Mr. PAOLETTA. Something strange has happened.

Mr. VANSANT. They are seeing something unusual, yes, yes.

BY MR. SNOWDON

Q. Right. So wouldn't you all want to be able to know sort of in real time if the system—if the tally clerk, who is really the one operating the system, can't do what he needs to do for whatever reason, would you all want to know that real time? And do you have the ability to find that out?

A. We do not have that ability in real time. If the tally clerks in the past have had a problem with the system, they have picked up the phone and called us.

Q. Okay. Did that happen that evening?

A. That did not happen.

Mr. PAOLETTA. I see.

BY MR. SNOWDON

Q. Okay. What, then, would you do if a tally clerk had called you?

A. Yes.

Q. Do one of your people go to fix it? Do you call Ed Sorensen, who is on the floor? How is that——

A. If it is a process of figuring out where you are on the screen and being able to navigate to another portion of the screen, in this particular instance we probably would have asked them to call Ed Sorensen over and have them show him what was happening on the screen.

Mr. SNOWDON. Okay.

BY MR. SPULAK

Q. You mean, at that point in time is Ed Sorensen the highest and best authority on what is going on with the system?

A. Yes. He knows more about the system than anyone. When it was migrated from a VAC–VMS platform to its current UNIX platform, he oversaw that entire process.

EXAMINATION BY MR. HALPERN

Q. Can you tell me a little bit about what happens in the normal process after the vote is closed, finalized? You talked about what you do for GPO for the Record, for the Web, and things like that.

A. Yes.

Q. Can you sort of describe that process, how long it takes, that sort of thing?

A. Certainly. In the event of—for example, as is often the case, as we are reaching the end of a debate and we are getting to our last votes on a bill, there are usually several amendments that have to be voted on before that. The amendments are voted on one at a time, closed. We do not transfer any of that information. Once the final bill itself has been passed or failed, however which way it goes, we wait for a phone call from the tally clerk to say that we have verified all the votes, including checking all the well vote cards, and these votes are now good to release. Once we receive that call, it is usually 5 to 6 minutes for us to pull that vote off the EVS and put it out to GPO, to LIMS, which is another internal system we have, and to the Web. So once we receive that notice from the tally clerk it is okay to release, it is a matter of minutes.

Q. And—but the vote information prior to that point is still available to other sort of read-only users of EVS; for instance, at the whip tables and——

A. At the whip table, at the well desks in the back.

Q. Right.

A. It is all available there. That is part of the vote history at that point.

Q. Okay. And because the vote was aborted this time, that data was not available to the rank-and-file users. Is that——

A. That is correct. It was not saved in the proper location for that to happen.

BY MR. SNOWDON

Q. I want to go back briefly to one thing you had said before.

A. Sure.

Q. And that was about it not being technically correct what he said, that because it had been finalized, the vote had been finalized, it couldn't be aborted. And when you are referring to finalized, you mean that the five-step process has been completed, the boards have been released and——

A. That is exactly what I mean, that we have now at this point closed out the vote.

Q. Okay.

A. I think what he means by "final" here is seeing "final" in the time display.

Q. Okay. So what he is saying could, in fact, be accurate if that is what he means?

A. That could be accurate. That is exactly true.

Q. And that is your understanding of what happened that evening, that the——

A. Yes.

BY MR. PAOLETTA

Q. So, based on your sense of in terms of talking to colleagues and getting debriefed, what do you think went wrong that night, if anything?

A. You are asking me for an opinion?

Q. Yeah.

A. Okay. I will be happy to share that with you.

My opinion is that things were very confused up in the front of the House Chamber at that point, and we had a tally clerk up there who maybe was not quite as experienced as the rest of the staff. I do believe he was the newest one on at that time. And that confusion led to some incorrect keystrokes.

Q In terms of trying to back up the system to——

A. Right.

Q. I see.

A. Yes.

Q. What about the lack of a tally slip? What is your view on calling the vote, or beginning to call the vote, without a tally slip? Was that——

A. It is my understanding that should never happen.

Q. Okay. And it happened here?

A. Again, I didn't see it. I don't know for a fact.

Q. Do you have any—again, you weren't there that night. You have been debriefed to some extent. Do you have any recommendations? And one of the things the committee is charged with doing is coming up with a series of recommendations so that we don't have what happened that night happen again.

A. Yes. Okay.

Q. So do you have any recommendations for us?

A. Well, one, of course, has already been acted on. That was the slight change in the procedure for terminating the vote process, which we did go ahead and implement.

The other thing is whoever is up there in the chair acting as pro tem should always be aware of what the correct procedures are for finalizing a vote.

Q. Do you think he was not aware of what the correct procedures were?

A. I have no idea if he knew or not.

Mr. PAOLETTA. Okay.

Mr. SPULAK. All right. We have no further questions. Thank you very much. This was very helpful.

[Whereupon, at 2:05 p.m., the interview was concluded.]

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

WEDNESDAY, FEBRUARY 6, 2008.
Washington, DC.

INTERVIEW OF: ALLYS LASKY

The interview in the above matter was held at Room 1017, Longworth House Office Building, commencing at 9:30 a.m.

APPEARANCES

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OUTSIDE COUNSEL, MINORITY: MARK R. PAOLETTA, ESQ., ANDREW L. SNOWDON, ESQ., DICKSTEIN SHAPIRO LLP, 1825 EYE STREET NW., WASHINGTON, DC 20006

Also Present: Muftiah McCartin, Deputy Staff Director, Committee on Rules; Hugh Halpern, Republican Staff Director, Committee on Rules; and Davida Walsh, Legislative Counsel, Representative Delahunt.

Mr. SPULAK. Good morning, Allys. I appreciate your coming here today to the Select Committee.

The Select Committee was established to investigate the voting irregularities of August 2, 2007, and particularly surrounding the circumstances involving the vote requested by the gentleman from California, Mr. Lewis, and his motion to recommit H.R. 3161, including the Chair's ruling over the objection of the Parliamentarian.

Moreover, we've communicated to you and others the fact that what we're interested in, in terms of the scope of the questions relating to the votes themselves, including the duration and termination of the vote and how and why the problems with the votes came about and efforts to resolve issues. So that's pretty much what we're going to address today.

EXAMINATION BY MR. SPULAK

Q. We would ask you to start by retelling us your background, what your responsibilities are in general and then anything that you know about the votes themselves—actually, the first vote and the motion to reconsider on August 2nd.

A. Okay. My name is Allys Lasky. I am an Assistant Journal Clerk for the House of Representatives under the Clerk's Office. I have been in this position since September, 2006. I've been working

on the floor during that time. We switch back and forth between an electronic file we work out of in our office and on the floor. So, generally, I'm listening to floor proceedings 40 to 60 percent of the day. So I don't listen to everything because there are breaks and whatnot, but I've been through most floor proceedings, if not several times.

My responsibility as a Journal Clerk is to record the Parliamentarian actions of the House of Representatives. We don't cover the debate themselves or the spoken words. We strictly cover the actual actions: a call to order, a demand for a vote.

The actual vote tally we don't record. In the minute book, which is the book we use on the floor of the House of Representatives, we don't record who voted which way. We strictly record the actual tally: the yeas, nays, presents and whether the vote was passed—well, passed or failed.

If a vote is recalled, then we cross it out. That's probably happened two or three times in the year and a half I've been here. The vote has been—they have a motion to strike the vote from the previous vote, which I believe is not exactly what happened. There was a motion to redo the vote.

On that night—it was later in the week; it was a Thursday night—the best I can say is it was an extended vote.

Votes generally—the first vote in a series starts at 15 minutes; and each additional vote is 5 minutes. It was a 15–minute vote. It definitely went past the 15 minutes, which it usually does.

My understanding is the minutes allotted for a vote are the absolute minimums that Members have to get to the floor. It's a set standard that we run the bells; you have 15 minutes; after that 15 minutes, we can close the vote. We've given you an amount of time, a set amount of time. And then usually each sequential vote is 5 minutes, unless they've gotten a special order, in which each sequential vote is 2 minutes in duration.

On that night, the tally was close; and I don't have the records.

EXAMINATION BY MR. SNOWDON

Q. Where are you sitting?

A. I sit right to the right of the Tally Clerk, and my one responsibility is—because it's basically 15 minutes of no legislative activity because it is a vote, and I'm only recording the tallies, what the Journal Clerks do is we alphabetize the cards.

When a Member votes in the well and fills out the red, green or present card, then they get handed to the Tally Clerk, who is standing on the first level of the well. That person puts the roll number in the upper-left-hand corner and then hands it back to the Tally Clerk, who is on the machine and actually entering it manually into the computer.

And then, when he gets done or she gets done entering it into the computer, they hand it to me; and I alphabetize it. Because it relieves them of a little bit of pressure and time. They don't need to be—because what happens is, at the end of the vote, they immediately call—and this is to my best of my knowledge—they call downstairs at the first opportunity to go through the tally with the Tally Clerk who is on the computer down in our office to make sure

it matches up. But if it's alphabetized, it will match the computer and then they know if there's any discrepancies.

Other than that, I'm strictly there observing and staying out of the way.

BY MR. SPULAK

Q. You said this particular vote was the vote that was extended?

A. I wouldn't say "extended" officially, because very rarely does a vote actually end when that clock hits zero. It's a very—it almost never happens, honestly. I mean, that's just the minimum amount of time that Members have to vote. It is then up to—it is my understanding—the Speaker pro tem to officially close the vote; and there seem to be several ways that can be indicated.

One of the things that the Journal is used for by the Parliamentarian is the first vote in a series they'll note how many Members voted. If 400 Members voted and the next vote we're at 400, well, then they know they can reasonably close the vote because they're not expecting more Members. So it kind of helps for attendance level for that day.

But, yes, it had definitely been extended in the sense that it went past the 15-minute countdown, but as to how long—and it's not an irregular practice, by any means.

Q. Is there anything else?

A. No. The thing is, it's such a fluid process.

And I will say this. One of the things I noticed is the two Tally Clerks, Kevin Hanrahan and De'Andre, were both—they didn't care about what was happening on the floor; and that's their job, as I understand. Their job is to enter those votes as those cards come across the table.

They weren't looking around. They weren't listening to the Members. Every vote Members start screaming to close the vote. That's just the way it is. There's always—once the clock goes down and as time passes—a rumbling starts in the Chamber to close the vote, especially a vote that's been held open longer than usual, and especially depending on the time of day. If it's late at night and people want to catch their planes home, they're more hurried to get out of there, there's more rumblings in the Chamber. That's not unheard of.

What was weird about that night was the fact that the Speaker pro tem called the vote reading it off the screen. I have never seen that happen. The votes always—the Tally Clerk, who is on that first level of the rostrum, has a stack of papers; and on it, the tally score. He keeps a black pen with him; and he writes out the tally. And the tally is handed to the Parliamentarians and then the Parliamentarians hand it to the Speaker pro tem.

Because what happens is, a lot of times, the computer hasn't caught up to the board. The Tally Clerk at the computer may have three or four cards that he's entering. You can only enter those cards a certain way. It's a manual process. It's not an automatic process. I mean, you can have several seconds lag time between when somebody fills out the card, hands it to the Tally Clerk, they write the roll call number on it, it goes back to the Tally Clerk on the computer, he actually gets to enter it and then hand it over to me and then it shows up on the screen.

And I think that's where some of the confusion began with this process—the Speaker pro tem called it from the screen when there were still votes in the Tally Clerk's hand. It hadn't been turned in.

And up to this point it's always been the Tally Clerks finish entering all those votes, then the Tally Clerk on the first level of the rostrum writes out that score—for that result—as a word, and hands it up to the Parliamentarian and then over. There's a definite chain of sequence.

BY MR. SNOWDON

Q. What's that piece of paper called?

A. It's just the tally.

Q. Is it a tally sheet or tally slip?

A. Yes, a tally sheet. It's a white piece of paper, probably three by five inches; and it says yeas on one side, nays on the other and then present. Not a lot of votes have a present and so they'll make sure to point that out.

This isn't the first time that something like this has begun to happen. There have been instances before where an SPT will start to read the vote from the board. But generally, in my opinion, it's almost like a way to get Members to get their votes in. When the Members start hearing certain key phrases come from the SPT, they start moving down the aisles to get their final votes in.

Because votes change. They do have the option to change their vote. I mean, there's times I've stapled three different tally cards, tally cards for one Member, together on different votes on one vote. Because they come into the Chamber, they want to know if you vote yea, they were like, oh, no, I wanted to vote nay and then like, oh, no, actually I really did want to vote yea on this.

Q. How many that evening—there have been a series of roll call votes on amendments and this was like—what—the eighth or ninth in that series, is that right?

A. No. This was the motion to recommit, and that's a little bit different. There was a pause. So that's why it was a 15-minute vote. It stopped legislative proceedings. That's why we went back to a 15-minute vote versus the 2-minute votes they had been doing on the amendments.

Q. And for all the 2-minute votes have you seen the typical procedure that evening where a tally slip was passed up from Kevin Hanrahan to the Parliamentarians, to the Chair?

A. Yes. I mean, that's my recollection. I have never known that the actual tally vote was read off of the screen and not passed up by that slip of paper in my observance up there, in the times I've been up there.

One of the most—and I think I was saying this before, it's happened where Members will start to do that, but they're stopped. Whether it's the Tally Clerks getting the Parliamentarian's attention to turn to the Member and say wait. It's just on that evening it was literally—it was sped through. There was no chance to say, "hey, you don't have the slip."

Q. Let me ask you about those occasions where you've seen the Chair look to the screen and start to call the vote. I mean, is it your impression in those instances that the Chair really intended to call the vote or was the Chair just using that sort of as a stick

to get people down to cast their vote so that they could actually close it?

A. Both. I've seen people who will use it and will pause, and I've seen people that literally have to have been stopped.

Q. Okay.

A. And I think that comes from—unfortunately, when Speakers are in the chair, they're in the chair a couple of hours a week. There might be a week before the next time in the chair, and just unfamiliarity of the process.

It's not—it's just a simple—it's hard to wrap your brain around the fact I think sometimes that, well, the vote is right there up on the board. Why can't I just read that? You know, what do you mean there's a slip of paper making its way up to me? I don't think it's intentional to close a vote. I just think it's a matter of visual perception.

Q. It seemed a little unusual that evening, since there had been a series of votes before where the normal procedure had been followed for 8, 9, 10 times and then suddenly it's done differently in this vote; wouldn't you agree with that?

A. Absolutely. And I think what you're referring to is the fact that at that time the majority leader, who is not seen as a traditional member of the floor, saying, hey, let's hurry up the vote, came down the aisle across the floor and was saying, close this vote now. There was something—I wouldn't say—there was tension on the side of the rostrum as to why the vote wasn't being closed, and it was coming from a Member of leadership, not just a Member of the House of Representatives.

Q. Tell us exactly what you heard Mr. Hoyer say. Who did he say it to and what did he say?

A. I'm just recollecting my thoughts. Because I haven't viewed the tape, and this is coming from memory from August. So I apologize if it's a little vague.

But, to the best of my knowledge, Mr. Hoyer came down the aisle, the center aisle, onto the floor for the vote. This vote was close in tallies. In fact, I believe at that time the actual vote was up. The motion was passing, is my recollection, but you would have to get the electronics to verify. And at that moment there was a commotion and he was in a sense shouting—not to be shouting but to be heard over all the other conversations in the room—at the Chair to close the vote, at—looking out to other people.

There are different members of leadership. There are staff members who relay—they don't control the floor, but they are the ones who relay the messages from the Members to the Chair when we want to close this down. Because there is—it's not—the best thing I can say is it is a political procedure. It's not set in stone. The vote is open past 15 minutes; and it's up to the person in the chair to close it. So there is influence as to why that happens.

Q. Sure. So Mr. Hoyer comes down. Mr. Hoyer casts his vote. You said he came down the center aisle?

A. I can't say that he voted in the well at that point. He may have voted on the electronic machine coming down the aisle. But when he made it to the well, he moved off to the left, typically between the chairs where the Members sit and where one would walk

up into the rostrum, and he had said, "I want this vote shut down now."

Q. Okay. There's——

A. And I can't say that's exactly the words, but the sentence was to the fact that shut this vote down now.

Q. Who did he say that to, the Chair?

A. In my observance, it was to the Chair. It was directed at the Chair. When you're in a room full of people, I don't know that you can specify. I mean, it's not like he was having a one-on-one conversation with somebody. It was shouted at the Chair. I can—you know, the best of my knowledge is I could say that for sure once it was shouted at the Chair. As to how many more times it was repeated to those around him and other Members——

Q. How many additional——

BY MR. SPULAK

Q. How many times?

A. It was more than once.

Q. More than once, but could you put a limit, do you think, on that? I'm just trying to get an idea how many times, because we've seen the tape.

A. Right. Maybe four or five times at the most. It wasn't a dozen. It wasn't like anybody was screaming, ranting in a row. But it was, "I want this vote down. I want it shut down now." It was more directed at each person he could see who could make it happen—towards the Chair, towards the managers on the floor, towards the Parliamentarians.

Q. So they weren't all necessarily directed at Mr. McNulty?

A. No.

BY MR. SNOWDON

Q. You're sitting right next to De'Andre Anderson at that point?

A. Uh-huh.

Q. Do you recall at the time Mr. Hoyer came down, went up to the rostrum, said for the first time close the vote, what was De'Andre Anderson doing at that point?

A. He was entering the cards. He didn't pause.

Q. Okay. So he——

A. He's still entering the—he is still entering the well vote cards that had been given to him.

Q. Okay. So he's in the process of doing what he's assigned to do, to enter these cards in order to finalize the vote before it's taken down, is that correct?

A. Correct.

Q. Okay. Do you recall what Kevie Niland was doing at this point?

A. Kevin Hanrahan?

Q. Kevie Niland.

A. Kevie Niland? She's the Reading Clerk. And, no, actually, I don't, because my view of her is blocked. She sits on the left side of the rostrum.

I'm assuming—traditionally, at that point she would at some point start standing up. They read the changes, and changes had started to come in. Especially once it was—there was the point

where the vote was called. The gavel came down. The vote was called. It was called 214 to 214, I believe. And at that point there were still cards coming in. And De'Andre was still doing those cards. Kevin was still accepting those cards.

Q. Okay. Let me just—I'm sorry, just for clarification. You say cards were still coming in. Were they coming in from Members to Kevin Hanrahan or were they coming in——

A. No.

Q. I'm sorry, let me just finish the question so it's clear.

A. Yeah.

Q. Were they coming in from Members to Kevin Hanrahan, or when you say "coming in", were they coming in to De'Andre from Kevin Hanrahan or both?

A. Both. They were still coming in to Kevin and then being handed up to De'Andre. And the last two cards that came in were from the minority leader, John Boehner, and from the majority leader, Steny Hoyer. Those I remember distinctly being the last two cards that came in.

BY MR. SPULAK

Q. Could you maybe put that in some sort of template of context? The last cards came in from Mr. Hoyer and Mr. Boehner at some point. But, how long had passed since the first card had been coming in?

A. Well, I mean, the first card started coming in as soon as the vote starts, so that's the beginning of the 15 minutes. I don't have the exact—I don't know exactly how long the vote was open. If either of you do, then it would be—well, even then, I don't know officially. Because there was—it was asked at that time, "do we put these in?" Because several seconds had lagged before the Majority and Minority Leader came forward to put those cards in.

We had that—there's always that little rush at the end of changed votes, people changing, especially on a close vote like this. Those people had been entered, and this was after the tally had been read. But still it was changing on the score because De'Andre was entering it and the final button hadn't been—it hadn't been closed electronically.

BY MR. SNOWDON

Q. When you say—you said cards were still coming in when the vote was called, I think——

A. Correct.

Q. [continuing]. Is what you said? When you say the vote was called, how did the Chair call the vote on that night?

A. Read it off the screen, off the electronic.

Q. What did he do? He read the tally——

A. Correct.

Q. [continuing]. Off the screen? And then what did he do? Did he gavel it? Did he say it was——

A. Motion to reconsider is laid upon the table, and the gavel came down. I mean, I can't say for sure. That's the language that would be used in general. But all I know is the gavel came down, and he had called the vote. As to whether the correct terminology was used, I can't testify to that.

Mr. PAOLETTA. Is it okay?
Mr. SPULAK. Go ahead.

EXAMINATION BY MR. PAOLETTA

Q. I just wanted to go back—I'm sorry, Mark Paoletta.
You mentioned Mr. Hoyer coming down and you thought he said several times, four or five times max, that he had said close the vote down. Do you remember anyone on the rostrum responding to him?
A. I know at some point there—no, in the sense that my back was turned. But, obviously, at some point he had a conversation with John Sullivan. John Sullivan is the head Parliamentarian.
Q. Right.
A. At some point, John Sullivan stepped down to talk to him about it. As to exactly what was said, I don't know. My back was turned.
Mr. SNOWDON. Did you hear what they said?
Ms. LASKY. The only thing—there was one statement I heard, and that was Mr. Hoyer to John Sullivan saying, John, don't you ever do that to me again. I won't stand for it.

BY MR. PAOLETTA

Q. And do you know the context?
A. I just know it was in reference to the fact that—in my observation, it was in reference to the fact that Mr. Hoyer wanted the vote closed, but Parliamentary procedure would dictate that that's not the way to close the vote, that it hadn't been officially closed. Because, as I said, De'Andre was still——
Q. Right.
A. Because at this point, even though De'Andre and Kevin weren't turning around to, you know, ask what to do, they were doing their jobs. There was—they turned around to make sure nobody was trying to get their attention to stop doing their jobs—make sure that they weren't missing a signal or cue from the Parliamentarians.
Because there are a lot of signals and cues. We rely on the Parliamentarians extensively for what the actual procedure is, when to close the vote. Because that slip goes to them, and then it goes to the Chair.
Q. Right.
A. So——
Q. So you heard Mr. Hoyer say that to Mr. Sullivan?
A. Yes.
Q. And do you remember Mr. Sullivan's response?
A. There wasn't—I did not hear a response from Mr. Sullivan.
Q. So in terms of Mr. Hoyer making this request, that's the only additional comment that you specifically recall hearing, is that part——
A. That's correct.
Q. Was there anything else either from Mr. McNulty or from someone else up in the rostrum?
A. No.
Q. No?
A. No.

BY MR. SPULAK

Q. You were just saying that they, perhaps, were waiting or wanted to be sure that they weren't being told to stop doing what they were doing, is that right, De'Andre and Kevin?

A. They——

Q. Well, my question——

A. They were open, but sort of—they were open to—they weren't ignoring anybody. There was no "I'm going about my own actions". If there had been any cue from anybody official, from the Parliamentarians, to stop entering the votes or anything, they would have known about it, in my opinion.

Q. And from what you know, were they receiving any signal to stop recording votes?

A. Absolutely not, no. Because, I mean, I was looking around, too. I mean, in a word, it was kind of chaotic, a lot of conversations going on.

Q. You said earlier—and some of them were unrelated to—I mean, people were doing their jobs?

A. Absolutely.

Q. You said earlier that the Speaker pro tem called the vote while the cards were still coming in. Were those cards reflected on the board eventually?

A. Yes.

Q. After he called this 214–214 and these additional votes were being reflected on the board, is that correct?

A. Yes.

Q. What happened?

A. There was a lot of uproar in the Chamber. I think that's when a lot of people started getting upset because the vote had been called 214 to 214, but it was changing on the tally board as each vote was entered. And from there, that's when you know you saw a lot of people starting to run around, find out what was going on, question the authority of what was going on. But those are all side conversations going off on the well.

Q. Let me ask if you can remember the—sort of the timing of this. Mr. McNulty called it off the board, as you said, at 214–214; De'Andre was entering votes; and almost immediately after Mr. McNulty called 214–214 the board reflected 215–213. Is that correct?

A. Correct.

Q. Anyway, the offering party had prevailed. Were there votes that were continuing to be entered even at that point and so that the board was changing?

A. Until—what I can say is, until Mr. Hoyer and Mr. Boehner came down and each put in a well vote, cards were accepted. At no point were cards turned away, were Members turned away. If every single—in my opinion, if 20 Members had decided at that time to come down and change their votes, it would have been allowed. That vote was not closed in the well.

Q. And so I think you used the word this was a "fluid" process.

A. [Nonverbal response.]

Q. So from the 214–214 call to the immediate changing of 215–213, this process was ongoing. It had never stopped at 215–213?

A. No.
Q. More votes were coming in?
A. Right.
Q. And the results were changing?
A. And it was changing. And it may have seemed that it stopped, but it's just a matter of that manual process of entering the votes.
Q. Let me ask this. Do you remember——
Mr. SPULAK. One last question, Mark?
Mr. PAOLETTA. Sure.

BY MR. SPULAK

Q. Do you remember at any point that the minority or leadership or staff were asking to close the votes at any point?
A. Specifically, no. I wouldn't say that it didn't happen, though. Because, like I said, I mean, it was no different than any other vote where, once time starts to run down, Members on both sides start wrestling for the vote to be closed.
But as far as anything as significant as a member of leadership or something coming down to the well, there wasn't any—there wasn't anything as specific as when Mr. Hoyer came down and asked for the vote to be closed.
Mr. SNOWDON. Let me——
Mr. PAOLETTA. But just in terms of the well voting and the cards being accepted, I mean, Mr. Boehner's card was never entered, right, so his was accepted and that was never entered into the vote?
Ms. LASKY. That I——
Mr. SPULAK. The ADS.
Mr. PAOLETTA. The ADS, right. His change card, right, was never accepted.
Ms. LASKY. It was accepted by Kevin and handed to De'Andre. At one point, De'Andre turned around and asked one of the Parliamentarians, do I enter this? Okay? And that was for his and Mr. Hoyer's. As to what his response was——
Mr. PAOLETTA. Whose response?
Ms. LASKY. One of the Parliamentarians. It was either Tom Wickham or John Sullivan. I believe it was Tom Wickham, because I believe Mr. Sullivan was down on the floor, but I can't be sure. It was definitely one of the two gentlemen.
But I don't recollect what the response was. Because at that point I think there was so much going on that they realized they were past the actual tally and entering of the cards. It was more dealing with bigger fires.

BY MR. SNOWDON

Q. Let me just go back a little bit to the sequence of events. Do you recall Speaker Pelosi casting a floor vote—I mean, a vote in the well?
A. I don't recall, but she may have. I specifically don't have a recollection either way. She usually doesn't and so——
Q. Okay. So Mr. Hoyer comes down, and you said it's not atypical for various people, I assume including the majority leader, to say close down the vote?
A. Correct.

Q. In this particular case, do you recall what his tone of voice was?

A. He was livid. He was not happy. He came down, and—I think a lot of it was because the vote was so close and the bill, if it had passed, would have gone back to committee, is my understanding. And that in his face he was livid and not—I mean, he was very upset. It was a very direct tone: "Close down this vote now."

Q. Okay. And is that something you've typically seen with people?

A. No. There's a lot of—it's no different—I mean, I hate to use the analogy, but at a baseball game when people get riled up and they start screaming, is that general screaming or not? This was different that night. There was that direct, "I want this," to the sense to close the vote down. And it was, like I said before, directed at the Chair. And then to several—to anybody who could probably make that happen.

Q. How long, to the best of your recollection, after Mr. Hoyer made those statements did the Chair—how long was it until the Chair gaveled the vote?

A. It was mere minutes. It wasn't a long time. It's not like he said it, and the Chair thought about it.

I want—you know, to my recollection, I want to say that it wasn't that he said it and it automatically happened. I think it was said a few more times before Mr. McNulty actually closed the vote. But it wasn't—it wasn't instantaneous, but it also wasn't an afterthought, like he said it and 5 minutes later it happened, is the best I can tell you.

BY MR. PAOLETTA

Q. Do you remember any interaction between Mr. McNulty and Mr. Hoyer?

A. Not one on one. Anything that happened was with Mr.—to my recollection, with Mr. Hoyer standing on the floor. Mr. McNulty was several feet away up in the chair.

Q. Did you hear anyone else giving instructions directly to Mr. McNulty?

A. No, other than what the Parliamentarians might have been doing. But that's just more surround movement. Things are happening, but you don't have the exact recollection or ability to know exactly what was happening.

BY MR. SPULAK

Q. After—let's go back to the sort of sequence again, and correct me if I'm wrong. But after Mr. McNulty said 214–214, the votes, there was—other votes were reflected on the board, plus votes that had already been entered, and more votes were being entered even at that point. So, in your experience, was there any attempt to close the vote or to stop it?

I think you already testified about it, but was there any attempt to stop that voting after that point or, again, you called this vote but voting continued. Is it your impression that there was any attempt to stop any further voting?

A. There wasn't—okay, splitting that question—I'm going to answer that from different perspectives.

On the part of the Tally Clerks, no, they continued to enter the cards they had in their hand, as had been procedure for the year and a half that I've been there. If somebody is in the well—the general perception is that if somebody is in the well they have the right to vote. If somebody is at the table writing out their card, voting is paused.

Several times—we go through several slips of paper sometimes on one vote of the tally sheets. The tally—I've seen the Tally Clerks write out the tally three or four separate times and that piece of paper get wadded up and thrown in the trash because somebody has come down the aisle and they've suspended closing that vote to let that person vote.

So from the Tally Clerks, no, there was no motion—there was no—they didn't make any type of action to close the vote. They kept doing what they were doing. They kept taking the cards and entering them until they had been told otherwise.

Q. And when did that happen?

A. Really at the—it just really—it really almost didn't happen. It just kind of slowed out until nobody was in the well anymore. And that's typically what happens to a certain extent.

From the Members, yes, there were still repeated cries that the vote—it wasn't to close the vote. It was that, hey, the vote is closed. Why is the score changing?

So—I think I've answered it.

Q. But there was a time when the score that was on the board was different than the score that Mr. McNulty had called, and in fact different parties were winning at that point?

A. Say that again for me?

Q. I apologize.

A. No, it's very confusing.

Q. When Mr. McNulty called it, the majority had prevailed, but almost immediately after the board reflected that the minority was prevailing?

A. Reflected the minority prevailed until it switched back.

Q. Right.

A. Correct.

Q. So if the vote had closed at that point, the minority would have prevailed?

A. I want to say it would have, because there's that fluid motion when the vote actually closes, typically. When a vote is that close, it's held open until every vote——

That's kind of what was—that's another thing that was different. There was this rush to close a vote that was uncertain. Usually, when it's that close, the Leadership pulls back. The Whips do their jobs. They get the votes. They talk to people and say, hey, "this is—" I don't know. I've never heard these conversations going on. But it's the assumption that's made, and that's kind of the perceived perception. Because then you'll see Members come up and change their vote.

There is nothing to stop that vote from being held open longer. It happens all the time. We've had 20, 25-minute votes in order to—I wouldn't say get the outcome you want but to make sure everybody has voted the way they want to vote for the final.

Because, like I've said, votes—some Members change their votes three times in one vote.

BY MR. SNOWDON

Q. Let me make sure I understand what you're saying. And that is, in the past, you've seen situations where, for lack of a better term, in order to achieve the outcome you want you've seen leadership, Whip, go to Members and encourage them to change their vote, is that correct?

A. Correct.

Q. This seemed to be different somehow, is that right?

A. Correct.

Q. Explain to me why this is different.

A. It's different because the vote was—it was demanded that the vote be shut down, as opposed to getting Members to change their votes. And when that happened you had the original—the SPT read it as 214 to 214. And then De'Andre kept entering the cards; and it became 215 to 213.

And then some—and I don't know if this is exactly what happened—there was more cards that came in. And whether those cards were cards that had been given—had been accepted when the vote was read or after the vote was read—I don't know if it was Members——

BY MR. SPULAK

Q. Which vote?

A. The difference being these were Members who were changing their votes in order to affect the outcome or Members who had already voted regardless of the outcome.

Q. But there's no way that those cards would have been given prior to other cards that were entered and announced with the suggestion that they were held onto for some reason? That's not what happened?

A. No, no, no, cards are never held onto. But, I mean, it's just a Member turns their vote in and then a few minutes later will change their mind or be convinced otherwise.

BY MR. SNOWDON

Q. So, in your experience, what you saw on August 2nd was unique because the actual voting process was being used to achieve the desired result, as opposed to persuading people to vote in a certain way; is that correct?

A. I don't know that there was enough time for that—what you're saying to happen. I think what happened is Mr. Hoyer came in, saw the vote and demanded it be shut down without realizing what the vote actually meant.

Because, to my recollection, what I thought was weird is that when he started shouting for the vote to be shut down the minority was winning. That vote was at that 215–213 range before it was called, okay? That's what I did not understand. And I remember looking around, going why is he calling for a vote to be shut down that the majority is losing?

Mr. PAOLETTA. When he called it, it was 214–214?

Ms. LASKY. When Mr. McNulty called the vote.

Mr. PAOLETTA. I see.

Ms. LASKY. When Mr. Hoyer asked for the vote to be shut down, the minority was winning the vote. And that's what set off this weird chain of events of nothing I've ever seen before.

BY MR. SPULAK

Q. I just want to clarify one thing. The demand to shut off the voting never really—never really was put into effect because you've testified that the voting continued notwithstanding what Mr. McNulty said?

A. Correct.

Q. Isn't that right?

A. Yeah.

Q. So, as far as you know, was anyone denied an opportunity to vote?

A. No.

Q. Or was anyone denied an opportunity to change their vote?

A. Not that I—nobody was turned away.

Mr. PAOLETTA. Mr. Boehner's was never entered, right?

Ms. LASKY. You would have to ask the Tally Clerks that. I know the card was handed over. I know the question was asked, do we enter these? As to what the outcome was, I don't know.

They were handed over to me. As I said earlier, my sole responsibility during a vote is I alphabetize the tally cards. Once they've been entered, received and the Tally Clerks are done with them, I keep them in a pile and keep them alphabetized. Mr. Boehner's and Mr. Hoyer's were given to me, but I don't have the know-how whether they were entered or not.

BY MR. SNOWDON

Q. At the time, there's obviously a lot of commotion going on——

A. Uh-huh.

Q. [continuing]. In the well. And at the time Mr. Hoyer came down and went up to the rostrum—excuse me, my voice is kind of going a little bit—and directed that the vote be closed down, were there actual Members in the well who you could see filling out cards?

A. Yes. I mean, the well was not clear of Members voting.

BY MR. PAOLETTA

Q. So would it have been apparent from where you're sitting—it's only what you can——

A. Correct.

Q. From where you're sitting, you're seeing Mr. Hoyer come down the middle aisle?

A. Correct.

Q. Would it be clear to him that he's seeing Members in the well?

A. I don't know if it could be clear to him, but I don't know why it wouldn't be clear to him.

Q. Okay.

A. Because it wasn't clear.

And to the point that the other thing to think about is, at that point, the Tally Clerk—once the voting starts to trickle down in the well, the Tally Clerk has the pad in his hand. He's looking up at the screen to write the numbers down. That pad wasn't out in Kevin's hand. He was still collecting cards.

At that point, there were no signals—there was no—there was nothing going on in the well that would indicate that that vote was ready to close. There were still a lot of people milling about. There were still Members actually voting, writing their names on their cards. And I mean—so the tally—and that tally sheet was nowhere near being filled out when the vote was called.

If that's unclear, please let me know.

BY MR. SPULAK

Q. Are you aware of any prior instances when a Chair closed the vote when there was in the well two votes?

A. To the best of my knowledge, every effort has always been made that if a Member is in the well to keep that vote open for them. There have been instances where a Member is coming down the aisle, but when the Speaker pro tem will close the vote—go through the motions of calling the vote, the motion to reconsider is laid on the table and banging the gavel.

Q. Even if the Speaker pro tem thought that they were intending to get to the well in order to change their vote?

A. I can't say either way. If it's—at some point, even the Speaker can only give so many chances for a person to vote before it starts to become, or it seems, ridiculous.

The Speaker calls for the last vote, there is a procedure that happens: "does any Member wish to change their vote?" It's read across the floor; and the Members have plenty of opportunity to change their votes. But often they're out in the hallways, they're milling about.

And, to the best of my knowledge, I do know—I mean, I've seen Members who have been irate about not getting their vote in. Yes, it's happened where Members didn't get their vote in. As to exactly how many meters they were away from the well, I couldn't tell you. I mean, they were there on the floor yelling one more, one more.

But when "one more, one more" has been yelled five different times over the course of 5 minutes, at some point the SPT—we have to move on to business. We could sit all day for a vote on "one mores".

BY MR. SNOWDON

Q. At some point after all this, there was a decision made to abort the vote. Were you aware, sitting next to De'Andre, that he was having problems getting the board down?

A. Yes.

Q. Was he saying anything either to you or to Kevin Hanrahan or even to himself that would indicate that he couldn't get the vote——

A. To come down.

Q. [continuing]. Closed and brought down?

A. Yes. In that instance, and to the best of my recollection, what happened—De'Andre was saying, I can't get it to come down. I can't get it to come down.

Q. Who was he saying that to?

A. Mainly to—he wasn't saying it to anybody specific. You know, he was just saying it aloud, okay? I heard him——

At that point, one of the Parliamentarians—I believe it was Tom Wickham, but it may have been John Sullivan—leaned over and said, De'Andre, we need to get this vote down.

And I had turned to him because De'Andre—De'Andre was trying to do everything he could. And I turned to him and said, he can't. There's something wrong with the computer and it won't come down, okay. Whether or not that was the correct assessment on my part, but that was the idea I got, is that it couldn't come down. It was frozen. And De'Andre was trying to do the best he could to get it to come down.

I told, like I said, the Parliamentarian who leaned in to say, hey, we—because everybody—it was just fuel to the fire, that vote staying up there like that.

Q. Did he explain to you or could you look over and see where he was on the screen and what he was trying—command he was trying to hit in order to bring the vote down?

A. No. The way that computer is set up is it's a table with a screen underneath it. And I really—at the best from my vantage point I can see half of the screen, maybe, in addition to which the keyboard is underneath the table. So you're kind of—it's half hidden, and I have no way of knowing. I know he was frantically trying—doing the keystrokes that he thought would get it to come down, but to no avail.

Q. So he can't get it down.

And then at some point was there a conversation where Ed Sorenson leans over and gives him some instructions?

A. At one point, yes. We got—and I don't know if it was—I know—I don't know if it was myself or one of the Parliamentarians—but Ed Sorenson, the Deputy Chief, Deputy Clerk, was on the floor for that vote. And knowing that he was a former member of the legislative computer systems team, one of us—I don't know. I mean, I remember trying to get his attention. Whether it was me or one of the Parliamentarians got him to come up onto the rostrum to help De'Andre figure out what was going on. Because at that point, De'Andre—I mean, he was doing everything he could to no avail.

Q. And so what happens there? Where was Mr. Sorenson? If he was trying to get his attention, I think, given what's going on, he would have made himself immediately available.

A. Absolutely. During——

Q. Was it difficult—let me finish the question. Was it difficult to get his attention?

A. No. Mr. Sorenson, during votes, his duty is to replace Member voting cards. Whenever a Member loses a card or it isn't working, he stands up at the bottom of the rostrum in front of the bill clerks, which is directly between—kind of off to the side. But he's at the rostrum, that lower level, waiting to talk to Members.

So he was there. I mean, he was probably six feet from me. His attention—I mean, he knew—I wouldn't say he knew. I can't. But it was easy to get his attention, and he did come up to assist us.

Q. Describe that conversation once he came up.

A. The conversation between him and De'Andre, I didn't hear. The only thing I heard is he specifically turned around to the Parliamentarian, John Sullivan, to confirm that the vote was to be aborted. And he specifically said, if we do this, there is absolutely no way of bringing back this vote. This vote is gone out of the system.

He was very definitive about letting the Parliamentarian, one of the—saying that to the area where the Parliamentarians were standing and getting an answer back that—whatever answer it was that he needed to go ahead and do that.

BY MR. SPULAK

Q. Do you think—well, what do you think that meant, that the vote would be lost in the system?

A. My understanding was that——

Q. At the time, what did you think it was?

A. Yeah, absolutely. I mean, from just a few quick statements, that he was—whatever it was, he knew that it would totally be erased and that the next vote would be roll number 814 again. Because it would be as if that vote never happened. There would be nothing in the system to the orders of that vote.

Q. I mean, aside from the vote number, and you understood it to mean that 814—that the next vote would be 814?

A. That's what I thought was going to happen, that the next vote was going to be 814. Because, at that time, I wondered if I was going to have to change it in the minute book. Because I had roll number 814 being that vote and whether the next vote was going to have to be number 814. But we went on with 815.

Q. Was there any discussion other than your hearing that about what it meant "being lost in the system"?

A. Not that I know of. Not that I can recollect.

BY MR. SNOWDON

Q. So you're trying to get Mr. Sorenson's attention, and he comes up onto the rostrum. Did he—as soon as he came up onto the rostrum, did he immediately have a conversation with De'Andre or did he have a conversation with the Parliamentarians first?

A. I don't know what conversation—he may have had a conversation on his way up to the rostrum. I don't know. That's behind my back. When he walks up, he's walking up around me. As to whether he said something to one of the Parliamentarians, I don't know.

What I know is he came up directly. He leaned over De'Andre to see what was happening on the screen, and they conversed. As to what was said, I don't know. Because you have to understand he's right here leaning over. There's no way for me to hear that.

Q. Sure. But in terms of the timing, you signal him and you see him start to walk up and he's got to kind of walk around to come down?

A. Right.

Q. But was it a situation where he had paused behind you for a considerable amount of time, to the point where you decided, look, I saw him start walking up here. What's he doing? Or was it a fairly quick movement from where he started to get to De'Andre on the rostrum?

A. I have no reason to think that—I did not get the impression that he stopped to have any conversations. As to whether something was said while he was walking—but there was at no point where I turned around, going, where's Ed?

Q. So if there was a conversation, it wasn't a long conversation?

A. Right. It was as if two people pass in the hallways, you might just say something. But there was, to my recollection—I mean, I had no reason thinking back to think why is it taking him so long. I mean, he was up there.

Q. Okay. So he and De'Andre converse. Did you ever—when Mr. Sorenson turned around to talk to John Sullivan, did you ever hear him say to Mr. Sullivan, "we can either terminate the vote or abort the vote?"

A. No, I don't have any recollection of that, of there being any type of terminate or abort, no.

Q. So he just presented to Mr. Sullivan, here's our option and that's to abort the vote?

A. I wouldn't say that.

Q. Okay.

A. Because at some point I don't—I didn't get the impression that he came up with it on his own, to remove the vote. There were conversations going on all around me. All I can say is, after he and De'Andre conversed, he may have been turning around to talk to the Parliamentarians at this point. There are conversations that could have gone on that I can't attest to, that I have no knowledge of.

All I can say is, at some point, Ed Sorenson turned around and said, if this is what we—to the point if this is what we do, then this vote is erased and gone.

Now, as to whether or not he came up with that idea on his own, he had already mentioned it, somebody had asked him to do it, I don't know how that came about. I just know that at some point he turned around to clarify, if I do this, this is what will happen, and got some sort of verification from somebody, that——

Q. When he was there talking to De'Andre, did you see him making sort of an effort to try to get out of that situation where the computer was frozen up? Could you tell whether he was giving De'Andre instructions as to sort of how to go back into the main screen so that the vote could get taken down?

A. I can't say either way what they were doing. I'm sorry. I don't know if they were going through the steps, or whether De'Andre could have been showing him what he had tried to do. I just know

that there was a time when it was just Ed and De'Andre, and the mouse was moving on the screen and——

Q. How long was that interaction?

A. Maybe a few minutes. Not—you know, not longer than that.

BY MR. SPULAK

Q. Following up from Mr. Snowdon's question, this mouse moving, was that to initiate this abort or was that mouse moving before the decision and the steps that were taken to abort?

A. I would say it was moving before. Because there was action—I mean, before Ed turned and said, the statement I've given you—if we do this, this is what happens—there was action—there was action on the computer terminal. Not like action and then things were changing. But De'Andre and Ed were trying to do something. Whether it was work through the problem or begin solving it, I don't know. I just know that there were actions being taken.

Q. When did you find out that the data of the vote would be recaptured?

A. Honestly, it surprised me that one—and this is just coming from computer technical knowledge. My understanding is nothing is ever permanently erased, that it can always be dredged up somehow. So that was kind of surprising to me, the fact that this whole thing can be—is going to be erased. I was like, well, there's always got to be a back-up somewhere.

As to the fact whether they went looking for the back-up, it was honestly a few weeks ago I was on the floor and we were doing something else and one of the guys from LCS mentioned that they had been there all night trying to recover the data. And I was like, oh. He was like, yeah, I logged 36 hours that day. I was like, you had nice overtime.

Q. Your surprise that it could be recovered—notwithstanding your own computer knowledge that it should be——

A. Right.

Q. [continuing]. Was based on your interpretation of the word "gone", the data is gone—I'm sorry, the vote is gone, not the data is gone—the vote is gone?

A. Right. Just so I can paraphrase and make sure I understand the question, my understanding that night was when Ed said that it's like he made it to be that that data would be gone. There would be no retrieving it. It would be gone. It would be erased like it never happened. And to me that means gone, irretrievable in the system.

Q. But did he use the word "data" or did he use the word "vote"?

A. Vote, vote. I can't say that he used the word data. He said the vote will be.

Q. And to whom did he say that?

A. It would have been one of the Parliamentarians who was standing behind me. I believe he directed it at John Sullivan, is my recollection, that it was directed. This is what's going to happen.

I mean, he didn't act on his own accord. He had outside—I mean, there wasn't, oh, this is what we're going to do to fix this. He turned around to make sure that somebody understood that. Now whether, like I said, if he got the answer—maybe somebody didn't

answer him. But, as far as I know, he got an answer from somebody; and they did whatever it is they did.

Q. Did anyone on the podium object to that course of action? De'Andre, Kevin, anyone say, no, don't do that?

A. Not that I know of. But that's one of those—there's so many conversations going on and directions being shouted that somebody could have and I might not have heard.

BY MR. HALPERN

Q. Speaking of other folks on the podium, what was Kevin Hanrahan doing while De'Andre was having these problems?

Again, this is sort of——

A. To the best of my recollection, Kevin had moved off to the side, as is traditional for the Tally Clerk in front who's been taking the cards to do, and was out of the way. I mean, there's really nothing he—De'Andre may have had a couple of questions for him, and he tried to answer them. He wasn't so far that he couldn't answer any questions.

But because of the way the system is set up, it's not like he could see the screen and direct De'Andre as to what to do. I mean, he was staying out of everybody's way and then, just answering questions if there were any to be answered. He didn't disappear, but he was there.

Mr. CRAWFORD. During the time when Ed was talking to De'Andre or to the Parliamentarians about the decision to abort or the implications of losing the vote, was there any—do you recall any input from either the leadership or leadership staff on that decision?

Ms. LASKY. No.

BY MR. HALPERN

Q. Not necessarily this specific vote but sort of in your general experience of the last year and a half you've been on the floor, in terms of sort of supervisory personnel on the floor from the Clerk's Office during a particular vote, what's your experience there?

You said that Mr. Sorenson's job is usually to hand out voting cards. Do you usually have sort of other staff or other clerks—front office staff there? What's your experience on that?

A. Well, generally, it is Mr. Sorenson's responsibility. If for some reason he can't do that, then either Frances Chiappardi, the Chief of Legislative Operations, or Deborah Spriggs, the other Deputy Clerk, will come down. There's always somebody with that book. Because it's also not about—maybe everybody has their voting cards—to take those requests and get the voting cards made as quickly as possible.

Sometimes the Clerk will be present. But never are they—and Frances Chiappardi, the Chief of Legislative Operations, will be on the floor, too.

But they're never there interfering with our responsibilities. They're strictly off to the side, usually staying on that back wall with a lot of staff, other staff members, watching things happen, being there in case something should go wrong so that there's that chain of command to go up.

But it's never a matter—also, a lot of times, I know, because Frances is trained as a Tally Clerk—she was a Tally Clerk for several years before she became the chief—in times when we've been short-staffed, she'll actually take the tallies. She'll be in one of the Tally Clerk's roles.

A. It doesn't have to be a tally clerk who's accepting those cards and writing the roll call number on it. I've done it at the beginning of a vote while we're waiting for everybody to get up because the bells have rung.

But I think the most important thing to say is that nobody's ever up there interfering, micromanaging or affecting our jobs or responsibilities. They're strictly there in a supervisory——

Q. I think that gets to what I was trying to get to. But there usually is some back-up supervisory personnel in case there's a problem. Is that——

A. Correct. Because the voting is the most—is the time when all of the Members are on the floor. It's the time that is most likely for something—in my opinion—to go amiss or just for a Member to have a question. A lot of times—it's when we're the busiest, because the Members like to multitask. They're not going to go up to the floor and ask a question during the middle of a debate. But if they were already there voting—whether it's, "how do I set up a discharge petition?" "How many votes do you think we have left?"—there's a lot of just organizational opportunities that come up.

And it helps to have those people there who are familiar with all of the operation—job responsibilities of the floor staff to answer those questions so that the Tally Clerks aren't being bothered while they're trying to take the tally.

Mr. SPULAK. Thank you.

Mr. PAOLETTA. Thanks.

[Whereupon, at 10:42 a.m., the interview was concluded.]

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

WEDNESDAY, FEBRUARY 6, 2008.
Washington, DC.

INTERVIEW OF: MARY KEVIN NILAND

The interview in the above matter was held at Room 1017, Longworth House Office Building, commencing at 2:45 p.m.

APPEARANCES

OUTSIDE COUNSEL, MAJORITY: THOMAS J. SPULAK, ESQ., GEORGE CRAWFORD, ESQ., KING & SPALDING LLP, 1700 PENNSYLVANIA AVENUE NW., WASHINGTON, DC 20006

OUTSIDE COUNSEL, MINORITY: MARK R. PAOLETTA, ESQ., ANDREW L. SNOWDON, ESQ., DICKSTEIN SHAPIRO LLP, 1825 EYE STREET NW., WASHINGTON, DC 20006

Also Present: Muftiah McCartin, Deputy Staff Director, Committee on Rules; Hugh Halpern, Republican Staff Director, Committee on Rules; and Davida Walsh, Legislative Counsel, Representative Delahunt.

Mr. SPULAK. Hi. Welcome. Thanks for being here this afternoon and representing the Select Committee. The Select Committee, as you know, has a mandate to investigate the events on August 2nd related to Roll Call 814. We're interested in hearing about the votes themselves and anything about the motion to reconsider as to what problems went on with the votes and sort of related issues.

This is a deposition so please speak up, wait until we finish our questions before you answer. It will be easier that way. Sort of head-nodding doesn't get translated on the record, so just say yes or no.

Again, so thanks for being here. We will ask you to start by describing your position, what you do in the House and your experience, and we'll move into what you know about that day.

EXAMINATION BY MR. SPULAK

Q. So if you can just sort of start and kind of tell us what your job is, how long you've been here, those kinds of issues.

A. Okay. My name is Kevie Niland. I am the Reading Clerk for the House of Representatives. I've been in the position since September 13, 1999. So prior to that I worked for the Clerk of the House and in the capacity of clerks to the reporters in the Office of Official Reporters. And prior to that I served as an Administrative Assistant to the Clerk of the House, Donn Anderson.

Prior to that I worked for a Member of Congress by the name of Melvin Price from Illinois. And prior to that I worked for a Member of Congress by the name of Clarence Miller from Ohio.

As Reading Clerk of the House—there's two of us, and our duties are the same. There's a minority and majority clerk. I'm responsible for transmitting messages to the Senate, as well as building the bill. As amendments are added, I have the engrossing copy at the desk, the only copy. And as amendments are passed, I add those amendments to the bill. And I'm also the official keeper of the legislative papers. And I also have to be able to recognize and identify all 435 Members of the House. I think that covers my duties—and other duties, as assigned.

Q. Maybe you said it, but you also announce vote changes from the well?

A. Okay. During procedure, then, I am called upon, when a bill is first brought up on the floor, then I master report the title, which I do, I report the title. I report any and all motions that are offered also, as well as any motions to recommit or any privileged resolutions. All that is read out loud to the body.

During a vote, when it is—when we're in the voting process, then I usually have to re-designate the title of a bill or the amendment that's up for consideration. Then I have to re-designate that amendment and who the sponsor of the amendment is. Then at that point, for the Reading Clerk, what we do during the voting procedure is in our daily workbook, what we keep up at the desk, we log in the start time of the vote and the end time of the vote. That's also marked on the back of amendments, start and end time of a vote, as well as the vote tally. I know I submitted papers, and the committee should have those papers.

And then as a vote starts to wind down and Members are milling around, usually, in the well, which is typical standard procedure, then—you know, you can tell that Members are going to change their votes, which often happens all the time.

Then the vote usually closes and then Members come in. And my job then is to stand up, because I have line of sight from where I'm standing and I can call—I'll say to the Tally Clerk, Hold it, there's somebody coming. And at that point I'll say the Member's name. I've been told that you can never hear me because it's so noisy because of all the members talking. But I know that I said the Member's name. And then if they submit a card to change or vote, because they've lost their vote card or misplaced it, then I call the vote.

For example, Mr. Miller, George Miller of California, Mr. George Miller of California votes "aye." Or if he should change his vote, then it's Mr. George Miller of California, off "aye," on "no" for Mr. George Miller of California.

So when the vote closes, then I make note, again, of the closing time from the clock straight ahead in the well—I mean on the floor—and write it in our daily log bill. And if the amendment passes or the bill passes, I stamp it accordingly, "passed" and I initial it. Or if lost, then I stamp it "lost" and initial it.

From that point, then—I mean, that's standard operating procedure for a Reading Clerk as far as votes are concerned. When we first open a series of votes, then it's also my responsibility to take

the vote from whoever is presiding in the chair as Chairman or Speaker PT. And then I take the vote card from the Speaker and write the tally number on the top left-hand corner of the vote cards—I'm sure you've seen them, the green or orange—green or yellow—green or red or faded red cards—and then turn it over to the Tally Clerk where he can then process into the voting system.

EXAMINATION BY MR. SNOWDON

Q. When a member fills out either a voting card or a change card in the well, passes it, it gets handed to the standing Tally Clerk——

A. Correct.

Q. [continuing]. Who then hands it to the seated Tally Clerk——

A. Correct.

Q. [continuing]. To enter it into the—at that point do you wait for the seated Tally Clerk to actually enter that into EVS before you read it, or is that going on contemporaneously?

A. No. I read it out, call out his name first, and as I'm calling the name out, then the seated Tally Clerk is typing it in. And then I wait for him to make the changes and I call the changes from the screen.

Q. Okay. So it's pretty much contemporaneous with the seated Tally Clerk?

A. Yes.

Q. Why don't you walk us through August 2, 814 in particular?

A. Okay.

BY MR. SPULAK

Q. Before we do that, you were announcing this?

A. Yes.

Q. You're doing this on your own, or are you doing it at anyone's direction?

A. Oh, no, I'm doing it on my own. As I see the Members come in the well, I alert the tally clerks.

Q. Maybe you said this, and I apologize.

A. That's okay.

Q. You announce it to the Tally Clerk. The Member writes out the card and hands it to the standing clerk; is that right?

A. Correct.

Q. And he gives it to the seated clerk, right?

A. Correct.

Q. So you never touch the card?

A. That's correct.

Q. You just see the process going on——

A. Correct.

Q. [continuing]. And you're alerting the seated clerk to the fact that cards are going to be coming for these people, so they can like go to that part of the screen and find them to enter it; is that what it is?

A. Correct.

Q. And, again, you do it on your own?

A. Right.

Q. Nobody is telling you faster, slower, not now, later?

A. Right. That's correct. And actually when it's really, really busy and there's a line of cards to be—or stack of cards to be entered into the system, then the seated Tally Clerk will tell me, okay, we've got a bunch here, we'll just pace ourselves so we don't mess up—because that can happen. I mean, I can look at the screen and I will say, instead of Mr. George Miller I may say Mr. Gary Miller, and realize, you know, wrong card. Oops.

Q. I'm confused about this. There is a change sheet, right?

A. There is.

Q. And based on what you've said, do you read off that sheet?

A. I do read off the sheet.

Q. And who keeps the sheet?

A. Then it's turned over to the clerks of the Official Reporters.

Q. Who writes the names down on the sheet?

A. The Tally Clerk does as the changes are made.

BY MR. SNOWDON

Q. Which Tally Clerk?

A. The seated Tally Clerk.

Ms. MCCARTIN. Just on that process then, but the change sheet is only read in the beginning?

Ms. NILAND. In the beginning, that's correct.

Ms. MCCARTIN. And then it reverts to the process you were explaining before.

Ms. NILAND. Right.

BY MR. SPULAK

Q. Okay. So that's important. So there's not—you don't read from a sheet throughout the entire change process?

A. Right.

Q. It's only the initial——

A. The initial change, right.

Q. I understand now. Thank you.

BY MR. SNOWDON

Q. August 2nd?

A. August 2nd. The defense appropriations bill, right?

Q. Ag.

A. Ag, okay, Ag. Thank you. It's been 6 months. A series of votes on amendments. And unanimous consent was agreed upon to make the votes 2 minutes. And I don't remember how many votes there were. I don't know if we started, what, at 8—but roll call vote number 810, or 809 and then all the way up to 814, 15, 16, I don't remember. It was just a series of 2-minute votes. I can't recall anything going wrong until roll call vote 814. It was on a motion to recommit. And that was a—I can't remember if that was a 15-minute vote or at that point a 5. No, it was a 15, followed by a 5, which is standard for appropriations bills in final passage.

At that point it started out normal, normal as can be for late at night. And I just, I can remember Mr. Hoyer coming down the aisle as the vote was closing or getting close to being closed out, telling—I think it was Mr. McNulty—the Chair, to close the vote. And I remember I was still calling changes, because there were a few Mem-

bers that were still hanging out in the well being arm-twisted, which is something that we usually see. And I'm still calling changes, and the next thing I know I hear Mr. McNulty giving the vote tally.

Q. What exactly did Mr. Hoyer say to Mr. McNulty?

A. I don't remember—or close the vote, and to get the vote closed I heard him say as he was coming down the aisle to close the vote.

Q. Do you know how many times he said that?

A. I don't recall.

Q. Was it clear that there were Members in the well still filling out voting cards at that point?

A. Yes.

Q. And you were up at the podium actually reading changes that were being put into the——

A. Calling changes at that point.

BY MR. SPULAK

Q. When you were calling the changes during the time when Mr. McNulty announced the vote, right, you were still calling them and he announced it, the votes that you were calling had been entered; is that correct?

A. I don't know.

Q. I mean under that process, would the seated clerk have already entered them prior to the time that you would announce it?

A. Would the seated—the Tally Clerk have entered it prior to the time? Yes, yes.

Q. Were you aware—I mean you had a list in front of you, or at least you knew who you were trying to call at that point?

A. Right.

Q. Were there other cards that hadn't been entered?

A. I don't recall.

Q. When you were calling those last votes, were there people in the well?

A. Members, yes.

Q. And you believe that they were there to change their vote or to vote the first time?

A. Well, usually when a Member—it's hard to say, because for the most part when a Member is standing there in the well talking to another Member and they're holding a card in their hand and they're turning the card because they want to make a change, and they're fingering the card because they can't decide what they want to do, usually that is the signal—it's hard to say, because sometimes they're going to make a change, or other times they'll just turn and walk away and say forget it.

Q. But you saw some of that while you were there—I mean at that point in time?

A. Yes.

BY MR. SNOWDON

Q. Is part of the typical process as the well cards are being entered by the seated Tally Clerk and you're reading the changes, at what point in that process does the standing Tally Clerk fill out the tally slip to pass to the Parliamentarian to pass to the Chair?

A. It's standard operating procedure to hear—or not standard operating procedure, but what has happened since this Congress is that there's a staff person on the majority side that will signal to close out the vote. And then once we're finishing, the tally clerks are finishing processing what they have to process, then that standing Tally Clerk—and no other Members are coming up to vote or change their votes—then the standing Tally Clerk will fill out the slip and hand it over to the Parliamentarian.

Q. Will the standing clerk typically wait for you to finish reading before he fills out the slip?

A. Oh, yes, yes.

Q. In this case, did you see Kevin Hanrahan, the standing Tally Clerk, fill out that slip?

A. I don't remember.

Q. Do you know, as you sit here today, whether a tally slip, tally sheet, was ever filled out for roll call 814?

A. I don't remember.

Q. There's some—as part of this production from the Clerk's Office there's some notes, and some of those are an interview you did with Russ Gore. And there's a notation, quote, "Wait, I'm still making changes," end quote. No one heard. Do you know what that refers to?

A. I believe I said to the seated Tally Clerk, which was De'Andre at the time, I said, you know, wait, I'm still making changes.

BY MR. SPULAK

Q. Changes to what?

A. There were changes still—changes to—still calling changes.

Q. Oh, you were still calling changes, okay.

BY MR. SNOWDON

Q. And at that time that's when the Chair had called the vote?

A. Yes.

Q. What did you do at that point? Did you look to Mr. Sullivan or look to the tally clerks to let them know that changes were still being made?

A. No. I believe I may have turned to the Parliamentarians just to look to see what was going on. I would have to look at the tape again, because I haven't seen it and I can't remember.

Q. Had you ever experienced in your years as a Reading Clerk, had something similar happen where you were still in the process of making changes when a vote got called?

A. No.

Q. Have you ever seen a vote get called without a tally slip being passed from the standing Tally Clerk to the Parliamentarian to the Chair?

A. No.

Q. Do you have any thoughts as to why that occurred in 814?

A. Yeah, I have plenty of thoughts. I guess the majority wasn't too happy with the outcome of the vote.

Q. And what are you basing that on?

A. Because this has never happened before.

Q. Well, can you describe Mr. Hoyer's either demeanor or tone of voice when he was telling the Chair to close the vote?

A. Describe his voice or his demeanor? Urged it to close the vote and anxious to get it closed.

Q. Did you ever hear any conversations between Mr. Hoyer and Mr. Sullivan after the vote—after the Chair attempted to close the vote at 214 to 214 and there are still cards being counted? Was there a conversation between Mr. Sullivan and Mr. Hoyer?

A. Not that I heard.

Q. So after the initial attempt to close the vote at 214, De'Andre Anderson is still processing well cards; is that correct?

A. Well, wait a minute. He's still processing well cards?

Q. Well, putting them into the EVS?

A. Yeah, I think—I can't—I don't recall so I would have to look at the tape.

BY MR. SPULAK

Q. Do you not recall after the first time that you were interrupted by Mr. McNulty calling the 214–214, do you not recall calling other votes after that?

A. Honestly I don't. It's 6 months ago. I've been through a lot.

Q. Let me ask that maybe a different way. Maybe you don't remember calling other votes but—and maybe you answered Mr. Snowdon—you don't remember whether other votes were cast from the well, either votes or changes subsequent to the calling of 214–214?

A. Say it again?

Q. After Mr. McNulty called 214–214——

A. Right.

Q. [continuing]. Are you aware that other votes were entered into the EVS?

A. I'm not aware.

BY MR. SNOWDON

Q. Let me just go back to your statement. You're in the process of reading out changes that are being made. And you said, "Wait, I'm still making changes," which suggests to me—and please correct me if I'm wrong—that you weren't at your last change at the time to 214?

A. Right.

Q. So there were other changes——

A. I——

Q. I'm sorry. So the court reporter doesn't, you know, beat me up when we're talking over each other—there were other changes that needed to be made that you were going to have a problem making, since the Chair had just closed the vote; is that accurate?

A. Yes.

Q. And do you have a rough idea as to whether that was one other vote you needed to call or make the change, or whether it was three or half a dozen? Do you have any recollection of that?

A. Maybe—I can remember two Members standing in the well talking and holding the card and turning them and fingering them and trying to decide what to do.

Q. Do you remember which Members those were?

A. Mario Diaz-Balart and Lincoln Diaz-Balart.

Q. How about Mr. Space, do you remember Mr. Space being in the well?

A. No.

Q. Would you be willing to—we can set this up to review the tape at a later time?

A. Sure.

Q. Because that might help sort of—because I very definitely remember you after the—when it was called, you sort of marching ahead and calling out names like you were going to get these names read. Do you remember that at all?

A. Yeah. Now that you're saying that, I'm sure I probably did.

Q. You sort of stand up and you start saying these names even after it's been called. That's sort of the thing I remember the most about watching the tape. So it might be useful for, I don't know how many people we've interviewed that were on the floor a lot, but you are fairly—so maybe we can do that after, whenever we get the tape, and set it up and you can watch it. And if it sort of jogs your memory any more about what happened that night, that might be helpful.

A. Okay. That's fine.

BY MR. SNOWDON

Q. There came a point where Mr. Anderson was having trouble, that the next—I mean, to go on to the motion to reconsider, and he had trouble getting the vote down. Do you recall that that evening?

A. Vaguely, yes.

Q. Did you have any discussions with him about it?

A. No.

Q. No?

A. No. They have enough to focus on. They don't need the Reading Clerk bothering them.

Q. So you're standing, I mean just physically you're right next to him?

A. Uh-huh.

Q. You're at the podium and he's sitting right there. Did you ever hear any conversations he may have had with Ed Sorensen about either bringing down 814 or aborting that vote?

A. No. I'm sure at that point it's after 814, right? Then I'm probably sitting down trying to record the time the vote closed and write down the tally and just sit down to duck to get out of the way.

Mr. HALPERN. One quick thing. Just to go back a little bit. When you were describing the process to close a vote and indicating the majority staff member would indicate to the Chair to start closing the vote, you prefaced it by saying either in this Congress or since the beginning of this Congress. Is that for any particular reason? Was it because the process came from the 109th or the 110th?

Ms. NILAND. No. It's still the same.

Mr. HALPERN. It's still the same. Okay. Thank you.

Mr. SPULAK. Let me ask this to the group. I mean, certainly you're privy to review the tape if you would like. But if we can refresh your memory a little bit, at least about what was on there, not about what you were thinking was on there, because that's

what you will see when you see the tape, is what we will tell you happened. Perhaps that will help you?

Ms. NILAND. Sure. Yeah, I would like to.

Mr. SPULAK. Mark, if you want to do that, rather than having to bring her back after she reviews the tape. I mean, unless you think it's critical that she——

Mr. PAOLETTA. Well, I just think it's helpful because she was there. The tape is, what, 15 minutes long. I mean, she can watch it in her office. I don't want to make it more of a production. I just think it might jog your memory more in terms of what was happening on the floor. Are you amenable to doing that?

Ms. NILAND. Sure, I'll watch the tape.

Mr. SPULAK. We might have a copy here and we might do it right now if that's okay.

Ms. NILAND. Okay.

EXAMINATION BY MR. PAOLETTA

Q. I just want to go back over this. So you remember when it's getting close, right, Mr. Hoyer coming down the aisle correct?

A. Yes.

Q. And what do you remember him saying?

A. Close the vote, close the vote.

Q. Close the vote?

A. Yes.

Q. And it was directed to whom?

A. To the Chair.

Q. To the Chair. And then how many times do you remember him saying that?

A. I don't remember how many times he said that. I couldn't tell you. Once, twice, three times.

Q. Okay. And what do you recall happening?

A. Mr. McNulty hitting the gavel and saying, "On this vote," and then announcing the vote tally. I mean that's what I recall hearing.

Q. Okay. And any other conversations up on the rostrum that you were hearing at the time? You know, I think we asked about Mr. Sullivan and Mr. Hoyer. You don't remember hearing that part?

A. [Nonverbal response.]

Q. Or the Mr. Sorensen/Anderson conversation?

A. No.

Q. No other conversations about what was going on at that point?

A. No. I remember Mr. Sorensen just looking over, and I remember Ed looking over De'Andre's shoulder, but I don't recall any conversations that they had. I didn't hear any. You've got to remember it's very loud in there at that time of night. Especially the night before they're trying to—the night they're trying to get away. And it was, what, 10:00, after 10:00 or 10:30. Nothing good happens on the floor after 7:00.

BY MR. SNOWDON

Q. Let me ask you this. When a vote is going on, if you're standing at that podium, center stage, is there anything that you're doing up there other than announcing vote changes, reading vote

changes? Is there any other reason why you would be standing up there?

A. Just to see what Members come in.

Q. Okay. So you——

A. To be able to see who's coming in the door and who's running towards the well to make a vote, to either cast a vote or to make a change. And then with 2-minute votes it's easier. During the course of that night, I'm sure I probably was standing during the whole vote series because it's just easier to keep the stack of amendments up there at the rostrum, write the tally, write the closing time, stamp it, flip it over and then be ready to designate the next amendment, so I just stay standing.

Mr. PAOLETTA. Are we waiting to play the tape?

Mr. SPULAK. We're just trying to see if we can show it on something here.

BY MR. PAOLETTA

Q. In terms of closing the vote, on a scale of 1 to 10 how unusual is it in the way it was closed here in terms of what you've seen? It seems like you've been in the House for a long time. I mean how unusual was it to close it down when Members are still in the well and that you were still processing cards?

A. On a scale of 1 to 10, 10 being the most unusual?

Q. Yes.

A. Ten.

BY MR. SPULAK

Q. Is it not more usual in circumstances where there's sort of contested votes that votes are kept open longer, that there's an attempt to keep votes open longer as opposed to shorter?

A. Yes.

Q. And that's been your experience during the whole time you've been at the House?

A. Yes.

Q. Do you remember any particularly, on a scale of 1 to 10, 10 in terms of holding a vote open?

A. Well, I would say, a vote at the 109th Congress on—the health care bill? No.

Mr. PAOLETTA. The Medicare bill.

Ms. NILAND. Yeah, on that bill. That was off the chart.

BY MR. SPULAK

Q. I'm just curious. Was there direction from the then-leadership to keep it open?

A. Now, I wasn't—at one point during the course of the night I had rotated off and the other Reading Clerk was up there, who is now retired. So I really don't recall.

EXAMINATION BY MR. CRAWFORD

Q. But is it usual for the majority leadership to try to dictate when a vote is closed down?

A. After the minimum time?

Q. After the minimum time.

A. Then to dictate?

Q. Well, just to tell the Chair to close the vote, whether it was at the end of 3 hours or at the end of 18 minutes?

A. That's usually—that's normal yes.

Q. For the majority leadership?

A. Yes.

BY MR. PAOLETTA

Q. But generally not with Members in the well when they're trying to change their vote?

A. You know, a couple of weeks—well, was it last week, the week before last, whenever we were in, it was close to one of the first days back, I remember a Member being—two Members, actually, being closed out of a vote. It was on a suspension bill.

Q. Okay.

A. I don't—I can't remember the one Member, but I can remember the second one. And he said—he gave the Chair a hard time: "I was in the well, I was in the well." But he had already closed the vote. A lot of it is perception, too, of a Member thinking that they're in the well and they've got——

Q. Right.

A. So if they're there in the well, they think that—this Member thought he was going to be recognized. He rushed in first and then kind of slowed down.

Q. But institutionally, that's generally controlled by the fact that there's a tally slip that's handed up to the Speaker to say here it is, right?

A. Right.

Q. So if that's not—so in terms of perception or some sort of checkpoint, the checkpoint has always been that there's a tally slip that's handed up?

A. Yes.

Mr. PAOLETTA. Okay.

BY MR. SPULAK

Q. Except on that point—and I'll ask this as a question—in that particular case it was a suspension. But in that case of a suspension, the Chair called it——

A. Uh-huh.

Q. [continuing]. The Chair called the vote, and he was handed——

A. Oh, yes.

Q. [continuing]. I presume he was handed a tally slip?

A. Oh, yeah, right.

Q. It's not that the tally slip cut off the vote, it's that the Chair called the vote——

A. Called it.

Q. [continuing]. And then the tally slip was given? But I ask on that particular vote if you can remember whether those two votes would have made a difference in the outcome of that—of the legislation?

A. No. It was the naming of a post office or something, a courthouse or something.

Q. They just wanted to be recorded?

A. Yes.
[Recess.]

BY MR. SPULAK

Q. Now that you've had an opportunity to watch the videotape of the events relating to roll call 814, we have some more questions that we would like to ask you. Andrew or Mark, do you——

EXAMINATION BY MR. HALPERN

Q. Can I start? And it's actually more a general question which I think will set us up for where we're going. Just in general is it a—this is based on some of the other discussions we've had—is it a fair characterization to say that when the majority signals to the Chair that it's time to close the vote, that's sort of the signal to you and the tally clerks to start the process of closing that down?

A. It's more of a signal to the Chair. Because if we're still calling votes or if the tally clerks are still entering, we're going to still keep on doing that. I mean finishing what we're—finishing what we are doing.

Q. Is the Chair then looking to you all—and by "you" I mean the group of you—for some cue or indication that it——

A. If it's an experienced Member in the chair, usually they do, they'll look. And they know to wait until they see the slip.

BY MR. PAOLETTA

Q. So after watching the tape, are you refreshed in any more specificity as to the events that night?

A. Yes.

Q. Okay. Will you relate that to us?

A. As far as Mr. Hoyer coming down the aisle and I'm still calling votes?

Q. Yes.

A. And I'm just proceeding as I normally would, except there towards the end with Mr. Boehner's vote, I didn't call his vote because I wasn't sure what was going on at that point. And I was waiting to hear from the Parliamentarian or higher authority to finish out.

Q. Did you hear on the tape, I think, Mr. Anderson asks whether he should record Mr. Boehner's vote—Mr. Boehner's and Mr. Hoyer's vote? Do you remember that? He asked Mr. Sullivan that?

A. I think he did—I heard, yes, something about recording it. I didn't catch it all.

Q. And I'm not trying to just go off the tape to jog your memory. Do you remember that—because you were looking at them—but when they're having that conversation, it's obviously 6 months ago, so I understand that. But do you remember that at all in terms of—you know, I was going to ask you—that was the word I wrote down, "Boehner." Mr. Boehner's vote wasn't recorded, right?

A. Right.

Q. So do you remember why it wasn't recorded?

A. No. I'm guessing at that point, because there was just so much confusion going on, I was waiting for somebody to cue me. Because it was very chaotic and very, extremely—not nerve wracking, but

just very confusing. And at that point I just thought, well, Mr. McNulty had called the vote, but yet there was still a Member in the well. And I didn't call them just because I was waiting for a cue from a higher authority.

Q. My understanding, this at the beginning I think when we were, maybe it's from the hearings that the committee had, sort of when is the end of a vote, you know? There may be 20 different answers to that, right? But is it when somebody calls the vote, the number, announces it—I think I read somewhere where it said a motion is laid upon the table, and there's some discussion about whether you need to have a period, if you will, at the end of "table," so it's an end of a sentence, okay. And so Mr. McNulty actually says that, right, the second time——

A. The second time.

Q. [continuing]. Laid upon the table. And then after that you actually continue reading votes, okay. That second time when you were watching—so when do I get up? And then you stood up and, even after he did that, you were reading votes. Do you recall——

A. Because I believe the cards were there, the vote cards were there on the desk where the Tally Clerk was making the changes.

Q. Okay.

A. So if he's—because he was slow at making the changes.

Q. I'm sorry, go ahead, George.

Mr. CRAWFORD. I think what he says is that on this the ayes are 214, the nays are 214, the motion is not agreed to, I don't think he gets to the point of laying the motion to reconsider on the table in that second announcement.

Mr. PAOLETTA. Okay. Is not agreed to; is that right?

Mr. CRAWFORD. That's right. He doesn't say motion for reconsideration.

BY MR. PAOLETTA

Q. If he had said that, would that be a signal to you to stop reading?

A. Rephrase that again?

Q. If he says it's 214–214, the motion is not agreed to, and it's laid upon the table?

Mr. CRAWFORD. Motion to reconsider.

BY MR. PAOLETTA

Q. Right. If he had said that and you still had well cards——

A. If the Tally Clerk was still processing well cards, I would have turned then to the Parliamentarian. And I know that the Tally Clerks would have turned, too, and said we're still processing.

BY MR. SPULAK

Q. And until—at that point, until the boards went down, in your mind the vote is still on; is that right, technically?

A. In my mind?

Q. Yes.

A. At that point I was very confused, as the next person, as to whether or not, but——

Q. But, no, I'm saying normally. Because here the boards never went down, which was the reason for the aborting?

A. Right. Okay.

Q. I'm saying in the situation you hear the Chair saying that and you're still calling some, you're next to the seated clerk. Would you continue because as far as you were concerned the vote was still open until the lights came up and the boards went down?

A. Right. Yes, I would—that's normal to assume that, that the vote—I'm still calling changes or calling votes. And then the slip would have been handed over and a vote would have been announced and the motion to reconsider is laid upon the table.

Q. I want to go back, now that you watched it, to a question that we asked you earlier. From the time that Mr. McNulty called at 214–214, votes continued to be cast in the well?

A. Processed.

Q. Processed and counted?

A. Right.

Q. I'm asking you that.

A. Yes, because I'm still calling them.

Q. Right.

A. So there are obviously some cards there that had to have been processed.

Q. And of all the votes, of all the cards that were handed in that night, the only one that you didn't call and perhaps wasn't counted was Mr. Boehner's?

A. From the tape, yes, that's correct.

Mr. SPULAK. I have nothing else.

BY MR. PAOLETTA

Q. One of our responsibilities is for the Select Committee to make recommendations so that this sort of thing, this confusion, doesn't happen again. So given your long experience, you know, working on the rostrum, do you have any recommendations for us as to how to sort of prevent that from happening again?

A. Let the staff at the rostrum do their job and don't let the Members interfere with what's going on.

Q. Okay.

BY MR. CRAWFORD

Q. Did any Member try to stop you from doing your job during this vote?

A. Not directly, no.

Q. So nobody approached you and said, Don't read these changes?

A. Right.

BY MR. SNOWDON

Q. Can you elaborate on that? When you say don't let the Members interfere, can you give me a little more explanation to that? Do you mean leadership? Are you talking about individual Members?

A. Leadership and individual Members. I mean we're staff and we know what we're supposed to do up there at the rostrum and

we take our job seriously. So, you know, it's our retirement, it's our livelihoods. And I think everybody up at the rostrum is very serious about their jobs. And just for Members that don't really get a—they only get a crash course when they come in as new Members, it just seemed like there was more interference from the Members, and it was not having anything to do with staff making mistakes.

BY MR. CRAWFORD

Q. Can I just clarify? The pressure was Member-to-Member pressure, it wasn't Members on the Clerk's staff?

A. Correct. Or Member to Parliamentarian.

BY MR. SNOWDON

Q. When you say Member to Member, it was Member to Chair?

A. Right, that too. Mr. Hoyer and Mr. McNulty.

Q. Based upon your recollection from that night and based upon what you saw on the tape——

BY MR. PAOLETTA

Q. Well, I'm sorry, but what about the interactions with Mr. Sullivan? He's not a Member, right? He's staff; Mr. Sullivan is a Parliamentarian?

A. He's a Parliamentarian.

Q. Right. So he's not a Member, so it's not Member to Member?

Mr. CRAWFORD. I was trying to make the distinction—I made the distinction between Members of the Clerk's staff.

Mr. PAOLETTA. Oh, I'm sorry.

Mr. CRAWFORD. The actual conduct of the vote and the processing of the roll cards.

Mr. PAOLETTA. Okay.

BY MR. SNOWDON

Q. Based upon your recollection and then what you saw on the tape, you've got a lot of experience, where do you think things got off track that night for that vote?

A. I don't know, I honestly don't know.

BY MR. HALPERN

Q. Would you say that the initial attempt by the Chair to announce the vote at 214–214 created a lot of the confusion? Is that a fair assessment?

A. No.

Q. And why, if you can elaborate a little bit on that?

A. Again, this was the last bill that was up for consideration before we adjourned for the August recess. And it was late at night. And there was a push. And at one point there were how many amendments—maybe we had 30, 40-some. And then a typical universe is done, and then we're down to just a handful of amendments. And suddenly you know what was really important suddenly now is just a few amendments and the push to get out before the recess.

So generally I think bills that are considered right before we adjourn, there's always—there seems to be problems—or not prob-

lems but just, yeah, problems. It's just not—the system isn't—not a whole lot is taken into consideration to the time that's needed to complete a new appropriations bill. And taking up a bill before the break, right before we go out, it can be rushed.

BY MR. SNOWDON

Q. You handled a bunch of amendments and a bunch of votes that day prior to 814?

A. Uh-huh.

Q. And in each of those cases the vote went off without a hitch; isn't that right?

A. The series of 2-minute votes prior to 814? Yes.

Q. And what is your sort of understanding of what the purpose of the standing Tally Clerk passing the tally sheet to the Parliamentarian to the Chair, what purpose does that action serve?

A. What purpose? To notify, to let the Chair know what the end result of the vote is.

Q. Doesn't it also ensure—and I don't want to put words in your mouth—but doesn't it also ensure that there has been an opportunity for all of the well votes to be processed and put in the system before the Chair calls the vote?

A. The slip is the end result of the tally of the vote.

Q. So would it be fair to say that one of the places where this got off track on the evening of August 2nd was that there was no tally slip passed from the standing Tally Clerk to the Parliamentarian to the Chair?

A. Ask your question again?

Q. Wouldn't it be fair to say that one of the places that vote 814 got off track that evening was that there was no tally slip passed from the standing Tally Clerk to the Parliamentarian to the Chair?

A. That's fair to say, yes.

Q. Why do you think—do you have an opinion as to why the standing Tally Clerk didn't create a tally sheet that night for 814?

A. Because I think he was just as—no, I can't speak for him. I don't know.

Q. Do you think he was given an opportunity to create a tally sheet before the Chair closed the vote?

A. I don't know.

Q. In your opinion, did Mr. Hoyer directing the Chair to close the vote possibly influence the lack of a tally sheet for roll call 814?

A. I don't know.

Q. Do you have an educated guess?

A. No.

BY MR. SPULAK

Q. Considering everything that you've reviewed and we've talked about, as far as you know is there anyone—was there any Member that night who wanted to vote who wasn't ultimately given an opportunity to do so?

A. I don't recall that—every Member that voted, as far as I can recall, voted. Nobody was shut out.

Q. And Members were accurately recorded? I mean, the changes and everything were sort of accurately reported so that every Mem-

ber who intended to vote a certain way, that was reflected in the outcome?

A. Well, now looking at the tape, because I'm not sure if Mr. Boehner's vote got——

Q. With the exception of Mr. Boehner.

A. Yes.

BY MR. CRAWFORD

Q. In your mind would it be fair to characterize Mr. McNulty's 214–214 call as premature and not the final call?

A. Yes.

Q. The final call being 212 to 216?

A. Yes.

BY MR. PAOLETTA

Q. And why do you think he called it at 214–214?

A. Because Mr. Hoyer coming down the aisle, close the vote, close the vote.

Mr. SNOWDON. I don't have anything.

BY MR. SPULAK

Q. I don't want to—that was the case. You say that's what he did to close the vote. But in fact he didn't close the vote; isn't that true? Isn't that what we talked about, the fact that 214–214——

A. Ended up.

Q. [continuing]. Changed because other—and in fact every Member was given a chance to vote and changed their vote?

A. Right. Yes.

BY MR. PAOLETTA

Q. So it was Mr. Hoyer's intention to close the vote at that moment, based on his conduct of coming down the aisle; is that your opinion?

A. Yes, that's my opinion.

Q. And that was Mr. McNulty's intention when he called it prematurely, was to close it at the point he announced it 214–214?

A. Yes.

Q. And then he recognized his error and had to read a sheet that was prepared by the professional staff as to why he had called it prematurely?

A. Yes.

Mr. SPULAK. Thank you very much.

Mr. PAOLETTA. Thank you.

Ms. NILAND. You're welcome.

[Whereupon, at 4:00 p.m., the interview was concluded.]

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

WEDNESDAY, FEBRUARY 6, 2008.
Washington, DC.

INTERVIEW OF: MAX A. SPITZER

The interview in the above matter was held at 1017 Longworth House Office Building, commencing at 2:00 p.m.

APPEARANCES

OUTSIDE COUNSEL, MAJORITY: THOMAS J. SPULAK, ESQ., GEORGE CRAWFORD, ESQ., KING & SPALDING LLP, 1700 PENNSYLVANIA AVENUE NW., WASHINGTON, DC 20006

OUTSIDE COUNSEL, MINORITY: MARK R. PAOLETTA, ESQ., ANDREW L. SNOWDON, ESQ., DICKSTEIN SHAPIRO LLP, 1825 EYE STREET NW., WASHINGTON, DC 20006

Also Present: Muftiah McCartin, Deputy Staff Director, Committee on Rules; Hugh Halpern, Republican Staff Director, Committee on Rules; Davida Walsh, Legislative Counsel, Representative Delahunt.

Mr. SPULAK. Max, thanks for coming here today. You received several communications from us, the select committee, in investigating the events related to what I'll call 814. I'll ask you some questions regarding your involvement in that. We'd ask you to limit your comments to the votes themselves, both 814 and the subsequent motion to reconsider.

It is a deposition, speak up, try to answer questions orally. Head nodding doesn't help, she can't interpret that.

Mr. SPITZER. Sure.

Mr. SPULAK. You have to wait until we finish asking a questions before you answer. That way we won't have to back up.

BY MR. SPULAK

Q. So now I'll ask you to tell us who you are, how long you've been with the House, what your responsibilities are, and then after that what you know about those events?

A. Okay. My name is Max Spitzer. I started in the Parliamentarian's Office in August of 2006. I've been there about a year and a half now. I'm the lowest rung in the Parliamentarian ladder and so I get a lot of the first reads of bills that come in for referral. I haven't had a whole lot of floor experience, but occasionally I'd go out there and manage bills that come on suspension, those are fairly routine sorts of things, and generally handle the questions

that come into the office on procedural matters, committee procedures, things of that nature.

Q. So at this point you're not regularly involved in advising the Chair on——

A. Not really, just during suspensions, just making sure that they recognize the people and, yeah, just generally sort of routine things.

Q. So tell us, if you will, what you know about the events of August 2nd.

A. I actually preface it by saying that August 2nd was about 2 days before my wedding and so I was probably thinking more about that than anything else at the time. But I went on to the floor during that last vote.

Q. So you had not been on the floor for those previous votes on amendments?

A. Possibly in and out, but I remember coming out to the floor at that late hour just basically saying goodbye to everyone, because I was taking Friday off because of the upcoming wedding. So I just got stuck out there a bit longer. I'm trying to think. I went out there, I remember that there was—I don't remember too much before the vote, but when the vote happened, there was a lot of people around there, a lot of things going on.

From what I remember, the majority was very keen to get the vote sort of wrapped up and finished up. And a couple times Steny Hoyer said to John Sullivan, can we wrap this up? And John was saying that there's still Members in the well submitting ballot cards and that you have to wait for all of those to get entered into the computer system before we could proceed.

And after that happened, then there was another instance where the votes kept changing as different ballot cards were entered in the computer system, refreshing itself. And at one point from what I remember of the last sequence of events was that the Chair was looking not to John Sullivan, but to Steny Hoyer to close the vote. And so the Chair just called the vote at that moment before everyone had—everyone who was in the well had finished sending their cards and the Tally Clerks had finished entering them into the system.

Normally when the vote is completely finalized, one of the Tally Clerks will hand up a sheet of paper with the vote numbers up to the Parliamentarian, and the Parliamentarian will hand it up to the Chair to announce the vote. And from what I remember that sequence of events didn't happen, the Chair called it without getting the numbers from the Tally Clerks.

And from what I recall, the board, the electronic display board, you know, it takes a second for the computer to refresh itself as they are entering the numbers and so the Chair called it one way, the system refreshed and the vote board said a different result, and that's when pandemonium happened on the floor then.

BY MR. SNOWDON

Q. Where were you physically at that point? While this was going on you said you were on the floor. Where were you on the floor?

A. Right by the—I guess it is technically the Clerk's desk or the Sergeant at Arms' desk. The Parliamentarians use that desk and the two chairs. I was probably in one of those two chairs.

Q. Up against the back wall?

A. Yeah.

Q. Were you sitting down or standing up? Do you know?

A. I think I was sitting down, but I could have been standing up. I don't remember.

Q. You said, I think, Mr. Hoyer asked John Sullivan several times to wrap things up.

A. Uh-huh.

Q. Can you be more specific as to exactly what he was saying, how many times he said it, what his demeanor was at the time he said it?

A. He was really anxious to get the vote closed at that point. I remember one instance where he said—he was talking to John saying, can we get this thing wrapped up? And John saying, there's still votes in the well and Hoyer seemed to have backed off from that. And then the second time was when he had sort of bypassed John, he went straight to the Chair and said close this vote, and the Chair at that point gaveled it at that point.

Q. How long after the comment to the Chair was it before the Chair gaveled the vote?

A. Maybe a minute. I really can't recall how much time passed. It was sort of a very chaotic series of events. I can't remember. He was pretty agitated at that point.

Q. Okay. I'm going to hand you a document to take a look at. I think it's—if I'm correct, it's the only document that you provided.

A. Uh-huh.

Q. Did you conduct a search for all your records?

A. Yes, this is the only thing that was relevant for this.

Mr. SNOWDON. Tom, do you want to take a look? It's—that's I believe the sum total of——

Mr. SPULAK. Do you want to see it?

Mr. CRAWFORD. Let me see.

Ms. MCCARTIN. Yes.

BY MR. SNOWDON

Q. Do you want to take a look?

A. Okay.

Q. I'll represent to you that the highlighting on there is mine, but this is—this was produced to us as is. Can you tell me what that document is?

A. After the vote sequence and all the chaos Ethan Lauer, one of the other Parliamentarians, said that I should go back to the office and just write up what I perceived happened just then, because everyone was confused as to what exactly happened when things had happened and so we just wanted to compare notes. And so that's when I created this document.

Q. So you created that document?

A. Uh-huh.

Q. Did you create it that evening?

A. Yes.

Q. I'll ask you a couple of things about it.

The clock goes down—I'll go through the different points. The clock down to zero. Number 2, the vote reaches 214 to 214. Number 3, Hoyer yells to the Chair to close the vote. What was the—if you can remember, what was the time—how much time elapsed between number 2 and number 3, the 214 to 214 and then Mr. Hoyer yells to the Chair close the vote?

A. I really can't remember.

Q. When he yelled at the Chair to close the vote, do you remember what words he used?

A. No, not specifically, just close the vote or something similar.

Q. And it was specifically directed to the Chair?

A. Yes, either—either the Chair or the Parliamentarians or possibly the Tally Clerks.

BY MR. PAOLETTA

Q. How many times did he say it, once?

A. I remember one particular instance where he was saying we should close this vote right now, and John saying hold up, we've got people casting ballots in the well, we have to let them cast their ballots. And then after a little while, in keeping with them—yeah, on the time, the second time is when the vote again reaches 214 to 214, number 6 on that list. That's the second instance.

BY MR. SNOWDON

Q. So you were—did you hear the entirety of the conversation between Mr. Sullivan and Mr. Hoyer at that point?

A. Not the entirety of the conversation.

Q. You said but John says—and I'm quoting from number 4 here, but John says that there are still Members' cards that need to be processed in the computer and the Chair holds up. Who is John Sullivan saying that to?

A. I think Hoyer at that point.

Q. Does John Sullivan communicate that to the Chair as well?

A. I think so, but I don't recall.

Q. So how is it—you say the Chair holds up. Unless Mr. Sullivan said something to the Chair, how would the Chair know to hold up. You have Mr. Hoyer yelling to the Chair to close down the vote. Mr. Sullivan says to Mr. Hoyer the vote is still being processed and the Chair holds up. How would the Chair know to hold up?

A. I think the Chair at that point would just be looking at the conversation Hoyer and John Sullivan were having at this point, and sort of looking for guidance. And John says there is still things to be processed, then the Chair recognizes that Hoyer is not telling him to close it right at this moment.

Q. So number 5, the vote changes after cards are processed, new Members arrived. Number 6, the vote again reaches 214 to 214. Hoyer tells the Chair to call it and the Chair calls it, without any paper and without the computer refreshing.

Can you walk me through that entry?

A. Sure. Without any paper, it just refers to the slip of paper that the Tally Clerks hand up to the Parliamentarian. I don't think the Chair had any paper at that point. Normally the Chair just reads whatever is handed up to him. And without the computer refreshing, like I said, it takes some time once the Tally Clerks have

entered a ballot card into the system for both the computer that they are working on and I guess the screens that reflect that to enter that number, and there's some delay there. I'm not sure. It is probably just a number of seconds at that point.

BY MR. SPULAK

Q. Max, you're saying this after the fact. I mean, at the time that you're watching this, you had no idea that the computer was about to refresh?

A. Right.

Q. You couldn't have known anything was entered in order for it to refresh.

A. Right. I saw the Tally Clerks were entering things into the computer, but at that time for all I knew the boards were refreshed, but at the time I did know that it does take a couple of seconds, but I didn't know about the board.

BY MR. SNOWDON

Q. For number 6, I'm going to assume here that because all of these are in one entry that the vote reaches 214, Hoyer tell the Chair to call it, the Chair calls it. Because those are a single entry, they happened very quickly sequentially, is that accurate?

A. Probably. I think they were, but I couldn't really tell you how much time had elapsed. It was a very quick sequence of events, so pretty much from 1 to 9 it was a pretty quick process.

Q. Even within 6, those would have happened fairly quickly. Mr. Hoyer tells the Chair to call it, it's 214 to 214,——

A. Yeah.

Q. The Chair, a minute—when you sit in silence for a minute it can take a fairly long time. Was it under a minute or over a minute?

A. It was probably pretty quick because otherwise I think there would have been more time from John Sullivan saying hey, there's still ballot cards to be entered. I think the same process that happened earlier when John was saying hey, there's still ballot cards, I don't think there was time for that to happen a second time around that Hoyer said to the Chair let's close it and the Chair closed it more or less.

Q. Do you recall what Mr. Sullivan's reaction was at that point, because the first time around, according to entry number 4, Mr. Sullivan had told Mr. Hoyer there's still votes being processed and the process of closing the vote got held up.

A. Uh-huh.

Q. In this particular case, it sounds like it happened the second time so quickly——

A. Uh-huh.

Q. [continuing]. That Mr. Sullivan didn't have a chance to do that?

A. Yeah.

Q. Is that correct?

A. I don't remember exactly what his reactions were at that point. I don't have any specific recollections.

Q. And what was your reaction?

A. Um.

Q. Did you think something was amiss at the time?

A. I just—I thought it was surprising that no one had—I mean the way the vote—the votes usually happen, I had been there occasionally, being that Parliamentarian between the Tally Clerks and the Chair and, you know, I get the paper up from there, and I pass it on to them. That's how the vote is done. I was a little surprised that that didn't happen, but other than that, that was just my reaction.

Mr. SNOWDON. Okay. Go ahead, Tom.

Mr. SPULAK. Thank you.

BY MR. SPULAK

Q. When the board did refresh and it reflected 215, 213 I believe——

A. Uh-huh.

Q. [continuing]. What happened then?

A. All I can remember is that there was a lot of Members yelling at that point because they saw that the Chair had called it one way and the boards were displaying a different total and a different result. And so there was a lot of yelling and confusion. I think I was probably talking with some of the others just trying to figure out what exactly had happened.

Q. Did it become clear at some point that in fact the vote was not final at the 214–214 and that it was still open?

A. Yeah, I think at some point it was clear that there was still ballot cards that had been submitted that weren't in the computer system.

Q. Was there any attempt by the Chair or majority leadership or anyone at the podium not to count those cards?

A. I don't think so. I think at that point once the Chair called it, all the Tally Clerks just sort of froze. They weren't sure what to do at that point since they still had cards, but they didn't want to enter them at that point after the Chair had already called it so——

Q. They didn't want to enter them?

A. I mean, I presume that once they—once they hear the Chair, there was a lot of confusion. They heard the Chair call the final vote closed and they still had cards there. So I think everyone just froze to make sure that they weren't doing anything else.

Q. But did they eventually count them?

A. I don't know, I'm not sure.

BY MR. PAOLETTA

Q. How long have you worked in the Parliamentarian's Office?

A. About a year and a half.

Q. A year and a half. And have you ever seen anyone from leadership come and direct a Chair to close the vote, you know, when Members were still in the well or when Tally Clerks had voting cards?

A. Not generally, I mean there's—there's a 15-minute minimum that they have and usually that first vote in the sequence can go quite a bit longer to let Members get there in time.

Q. Right.

A. But then at that point the Chair looks to the majority side to say are we done.

Q. And who does he usually interact with—who does the Speaker pro tem usually look to; is it a leadership staffer or is it a Member? Who is directing him generally to say, you know, let's go?

A. I would say generally a staffer, people like Catlin O'Neill or someone on the majority leader staff. Occasionally the majority leader or another Member are there, but usually I think it would be a staffer.

Q. Did it surprise you when you heard Mr. Hoyer saying close the vote?

A. Um, it—I mean, the majority usually looked to the majority staffer or a Member to close the vote. So it's not unusual for him to say close the vote. He was very agitated at that point. I think it's clear that he wanted to make sure that the vote was closed at a particular point when they had—when they felt that they had the majority.

Q. You mean at 214–214?

A. Yes.

Q. Or when it when it was set?

A. Right.

BY MR. SNOWDON

Q. From looking at the tape it seems to be a fairly heated exchange between Mr. Hoyer and Mr. Sullivan, did you witness that?

A. I think, you know, they were both—Hoyer was pretty agitated, I think John Sullivan was agitated, but I remember there was some quite a few animated discussions before then. I didn't hear all of it, but——

Q. At one point——

BY MR. PAOLETTA

Q. I'm sorry, but you did hear some of it, though? But——

A. Yes. I remember the general thing was saying—Hoyer saying we need to close this vote now and John Sullivan saying there are still votes that need to be entered in the computer.

Q. Okay. Well, was he saying that when he was standing next to him or was it when he was coming up?

A. Um, he was—he was coming up and saying that the vote needed to be closed, and at some point he got to that first step on the rostrum and was talking to John Sullivan.

Q. Right. Do you remember any more of that part?

A. Nothing specific, just sort of discussion about when it is proper to close that vote.

Q. And what was Sullivan saying?

A. That there are Members still in the well submitting cards and that the computer Tally Clerks had cards that had yet to be entered in the system and those needed to be processed before the vote could be closed.

Q. Do you remember Mr. Hoyer's response?

A. I don't remember. I remember John Sullivan convinced him that first time around that he should wait until the votes are counted.

Q. Okay.

BY MR. SNOWDON

Q. At some point Mr. Sullivan begins writing out a note, writing out something. Did you have any input in helping him draft that?
A. No, I don't remember that.
Q. Do you know what he was writing out?
A. No.
Q. Okay.

BY MR. PAOLETTA

Q. Do you remember him writing it?
A. You know——
Q. Standing there sort of writing?
A. The Parliamentarians are always writing things for the Chair to say different points, and so I don't have any specific recollection of that.

BY MR. SNOWDON

Q. This was all sort of blowing up that night, Mr. Sullivan's up there and I think Ethan Lauer, I believe, comes up?
A. Uh-huh.
Q. Are you seated the whole time? Are they coming to you and asking you to help with various things as all of this is going on or are you just sort of sitting there watching?
A. Yeah, I was pretty passive at that point. Like I said, I'm the most junior Parliamentarian there. I don't have a whole lot of responsibilities and everything. And like I said, I was really going out there to say goodbye to everyone to take off the next day for the wedding. So my mind is on other places for that evening, I'm sure, but——
Q. Okay. At some point a decision was made to abort the vote. Did you witness any conversations between Mr. Sullivan and Ed Sorensen about aborting the vote?
A. I remember that there were conversation. I think there was some confusion about Ed Sorensen was using terms like abort the vote and things about the system, and John was talking to him about that and I think they were just trying to figure out what should we do at this point given that there are still votes to be counted and still things to be entered into the system, and yet the vote was already called. I don't remember any other specifics about that conversation other than trying to work out how to proceed now that the vote has been sort of suspended in this process in the computers, how exactly it would all work.
Q. Do you recall who initiated that conversation, and by that, did Ed Sorensen go to John Sullivan to begin this discussion or did John Sullivan go to Ed Sorensen?
A. I don't recall who started that.

BY MR. PAOLETTA

Q. Do you remember any discussion about if they aborted the vote they would lose all the data or the vote would be lost or something like that?
A. Yeah, there was some—there was some concern about what would happen to the data from the vote and——

Q. Do you remember that discussion, I mean more specifically?
A. No, not more specifically than that, just that they were talking back and forth about that.
Q. Okay.

BY MR. CRAWFORD

Q. The discussion on aborting the vote, did that take place after all the well cards had been processed?
A. I don't remember what happened to the vote cards that were not processed when the vote was called.
Q. But you saw the vote go from 215 to 213, crawl down to 212 to 216 and Kevie making the announcements of people "off aye," "on no"?
A. Uh-huh, right.
Q. So that would seem to lead to the fact that the conclusion that there were well cards being processed——
A. Uh-huh.
Q. [continuing]. Throughout that time period?
A. Which time period?
Q. From Mr. McNulty calling it at 214–214 with well cards. You were saying you didn't know if those well cards had been processed.
A. Uh-huh.
Q. But the vote was changing subsequent to the 214–214 call, which would indicate that the well cards were being processed?
A. From what I recall, the Chair called it 214–214, the computer refreshed to 215–213. At that point I don't recall whether they were still entering votes. My recollection was that they stopped, everyone sort of froze.
Q. But did the board go from 215–213, 214–214, 213–215 212–216; subsequent to the call of 214–214, the computer refreshed to 215–213?
A. I don't recall.

BY MR. SPULAK

Q. Do you remember the Reading Clerk calling names of people who were switching votes?
A. After the Chair had called 214–214? I don't recall that.

BY MR. SNOWDON

Q. What about before? At the time the Chair called 214–214 was the Reading Clerk standing there reading——
A. Before that. That's standard procedure. So I don't have any specific recollection, but I think that's what she was doing then.

BY MR. PAOLETTA

Q. Do you remember any discussion about Mr. Boehner or Mr. Hoyer's cards, when they came up to the well and they both had their cards; do you remember any of that?
A. No.
Q. Okay.
A. No.
Q. Okay.

Mr. SPULAK. Anything else you'd like to say?

Mr. SPITZER. No.

Mr. SPULAK. We thank you for being here and appreciate your time. Congratulations on your wedding.

A. Thanks.

[Whereupon, at 2:30 p.m., the interview was concluded.]

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

FRIDAY, FEBRUARY 8, 2008.
Washington, DC.

INTERVIEW OF: DE'ANDRE ANDERSON

The interview in the above matter was held at Room 1017, Longworth House Office Building, commencing at 2:00 p.m.

APPEARANCES

OUTSIDE COUNSEL, MAJORITY: THOMAS J. SPULAK, ESQ., KING & SPALDING LLP, 1700 PENNSYLVANIA AVENUE, NW., WASHINGTON, DC 20006

OUTSIDE COUNSEL, MINORITY: MARK R. PAOLETTA, ESQ., ANDREW L. SNOWDON, ESQ., DICKSTEIN SHAPIRO LLP, 1825 EYE STREET NW., WASHINGTON, DC 20006

Also Present: Muftiah McCartin, Deputy Staff Director, Committee on Rules; Hugh Nathanial Halpern, Republican Staff Director, Committee on Rules; and Davida Walsh, Legislative Counsel, Representative Delahunt.

Mr. SPULAK. So, De'Andre, thank you for coming here this afternoon.

As you know, we are here representing the Select Committee to Investigate the Voting Irregularities of August 2. And what we want to do today is to ask you to talk about what you know about the—your involvement in the vote of August 2, Roll Call 814, what happened around it, why it was kept open and those types of issues; ask you to address the—address the votes themselves, the vote on 814, the subsequent motion to reconsider.

It is not the Select Committee's creation or those kinds of things. Let's focus on that.

Maybe Mr. Snowdon already told you it's a deposition, so we'll just ask you to speak clearly and loudly, respond to questions "yes" or "no," as opposed to head nodding. If you don't understand a question, you can ask us and wait until we finish the question so we can get done talking first.

Anyway—so to begin with, can we ask you to tell us a little bit about your involvement in the House, what your position is, what your responsibilities are, how long you've done it.

And then, after that, we'll go and talk specifically about the night of the 2nd.

Mr. ANDERSON. Okay. De'Andre Anderson. And I am an Assistant Tally Clerk. I've been an Assistant Tally Clerk since September

18, 2006. My responsibilities are operating the electronic voting systems, processing committee reports and inputting information on FARS to where the public views it on the Clerk's Web site. And that's pretty much it.

Mr. SPULAK. But you, as part of your role, you man the EVS monitor or terminal on the podium. Is that correct?

Mr. ANDERSON. That's right.

Mr. SPULAK. And that's why you're here today, because you were manning the terminal on August 2 during Roll Call Vote 814?

Mr. ANDERSON. That's correct.

Mr. SPULAK. Okay.

EXAMINATION BY MR. SNOWDON

Q. De'Andre, we heard from Kevin Hanrahan this morning, who's also a Tally Clerk, and he does—is both a Standing Tally Clerk and a Seated Tally Clerk. Do you perform both of those functions as well?

A. I do.

Q. And on August 2, were you doing both of those or were you just working as the Seated Clerk on August 2?

A. On the whole day of August 2, I do not remember if I was the Standing Tally Clerk on August 2 or not. But for Roll Call 814, I was the Seated Tally Clerk.

Q. And I said off the record that I wanted you to walk through some of the standard procedures that you all used to close a vote.

I'm going to hand you a document which—take a look at it. Let me know if you've seen it or a draft of it before. And specifically, on the second page, the first full paragraph on the second page, there's a description of the process that the Tally Clerks go through to close down a vote.

And if you haven't seen that, please feel free to take whatever time you need to read it. And I just want to see if you have anything to add, change or——

A. Okay. Okay.

Q. Have you had a chance to take a look at that?

A. Yes I have.

Q. Have you had a chance to see this before or is this the first time you've seen it?

A. I've seen something like this before. I believe Russ showed me something like this before.

Q. Okay. The paragraph you just read walks through five steps, which is the standard procedure for closing down a vote and the EVS system. Is the substance of that paragraph accurate?

A. It is, yes.

Q. Is there anything that's not accurate in there?

A. Not that I can tell, offhand.

Q. Okay.

Is there anything you could add that you don't think is properly reflected in that paragraph?

A. During a regular vote, no. This looks like what we go through.

Q. Let's just walk through the five steps quickly and what you do. Let's pretend for the purpose of this exercise that you're a Seated Tally Clerk.

A. Okay.

Q. What you do depending on the various cues from the Chair. Let's start with the first step and walk us through to the end.

A. Okay.

Actually, when I'm done inputting the well votes, or when the Parliamentarian feels we're ready to close the vote, I check with them and ask, "Are you ready for me to close the station?"

I close the voting stations, tell the Standing Tally Clerk that I have closed the voting stations; he writes out the tally, or she writes out the tally; I hit Terminate Vote——

Q. You're kind of going through these pretty quickly.

So the first one—in order to close out the voting stations, are you waiting for a particular command from the Chair before you do that?

A. I'm waiting to get the nod from the Parliamentarian.

Q. Okay. Does the Chair have to use any magic words at that point or not? I mean, it says here, it says for the first, The Seated Tally Clerk selects the option on the EVS terminal to close the voting station; this typically occurs when the Chair asks whether any Members wish to vote or to change their votes.

I mean, is that—it's really—you're saying it's the Parliamentarian's cue that causes to you close the voting stations, as opposed to what the Chair is actually saying?

A. The Parliamentarians, I ask them if they're ready to close the vote, and they give me an indication. But I think the Chair begins that process.

Q. Okay. So you would add probably to this first step—it seems like there's a missing component there, and that's that the Parliamentarians are involved in that first step because you're looking, for that, to them for direction as to whether to go ahead and close the voting stations?

A. Right.

Q. Okay. And then in the second step, you hit the Terminate Vote option?

A. That's correct.

Q. And do you do a survey to see if there are Members in the well?

A. I don't do a survey.

Q. Who does it? Does someone look around to see if there are Members in the well who might be filling out well votes?

A. Well, it could be a number of people. But, I don't do a survey.

Q. Okay. We were told by Mr. Hanrahan this morning that if he is the Standing Tally Clerk, he will—before he begins to fill out a tally sheet, he will wait for instructions with—without exception, will wait for instructions from the Seated Tally Clerk for him to go ahead and start to prepare the tally slip.

A. Absolutely.

Q. Okay. Where does that action fit in on this—on this sequence of events? At what point on these five steps will you tell the Standing Tally Clerk to go ahead and prepare the tally slip?

A. I tell him that I'm closed. And that's when I've gotten my information beforehand from the Parliamentarian that we're ready to close the vote.

Q. Okay. So the Parliamentarian tells you to go ahead and close them?

A. Right.

Q. You close them. And then at that point you tell the Standing Tally Clerk, We're closed?

A. Right. Yes.

Q. Okay. Do you instruct him to go ahead and fill out the slip?

A. No. Because saying I'm closed is the signal for the Standing Tally Clerk to fill out the slip.

Q. Okay. So he fills out the slip. At that time have you gone to the third command, which is to make the vote final?

A. Once he is handing the slip to the Parliamentarian, at that time I go to the third and select Final.

Q. Okay. You were pretty clear in your—do you remember writing a memo?

A. I do.

Q. And you spent a fair amount of time making the point that there was a big distinction between the Final entry for making the vote final on the EVS system, as opposed to the Final showing up on the display?

A. That's right.

Q. Okay. So why don't you explain that for the record what you meant by that distinction.

A. Okay. Final is the third step in our process where it doesn't show up on the board. But it takes us to the next screen so that we could see the tally of that vote.

Q. On your screen?

A. On our screen—so that when the Chair is reading the tally, we verify that what he's reading matches what we have in our screen.

Q. Okay. And then at that point you're at the fourth step, which is to release the boards?

A. That's right.

Q. And then the fifth step is to confirm the release of the boards, in which case everything comes down?

A. That's correct.

Q. Okay.

Does this protocol on here occur in every vote that you've been involved in?

A. Yes.

Q. And have you ever been involved in a vote where a tally—a tally sheet was not prepared by the Standing Tally Clerk passed to the Parliamentarian and then passed to the Chair?

A. No.

Q. Okay.

Let's go to August 2, and why don't you just tell us sort of in your own words—obviously, we're interested in 814.

A. Okay.

Q. That wasn't the first vote that you all had done that night, was it?

A. No, it wasn't.

Q. You had done a series of 2-minute votes prior to that?

A. That's correct.

Q. And in each of those 2-minute votes, had this standard closing-the-vote protocol been followed?

A. Yes, it had been.

Q. In each instance, had the tally sheet been prepared by the Standing Tally Clerk and then passed up to the Parliamentarian, to the Chair?

A. Yes.

Q. Okay. Why don't you start with 814 and obviously somewhere along the line in 814, the wheels started to come off?

A. Yes.

Q. Why don't you tell us where in the process, in your judgment, the wheels started to come off the train a little bit.

A. Well, I would probably have to start with the Chair calling the vote as I was typing in a well vote. And the Chair announced the vote and pounded the gavel. And that's pretty much where it started.

Q. Okay. Prior to that, were things pretty much proceeding as normal with that vote?

A. As far as I can remember, prior to that, everything was going normal for me. I don't know about out in the Chamber, but for me, yeah.

Q. Okay. Did you hear—prior to the Chair banging the gavel for 814, did you hear anyone instructing the Chair to close the vote at a particular point in time?

A. My head was in the screen, but I did hear to my right someone yelling to someone else.

Q. Do you know who was yelling and what was being said?

A. Well, I believe that it was the majority leader. I've been working here since 1999. Sometimes you don't even have to look up to know voices from all the speeches that I've heard.

But I do believe that it was the majority leader.

Q. What was the tone of his voice at that point?

A. I don't know his tone, I wouldn't be able to tell you that.

EXAMINATION BY MR. PAOLETTA

Q. What did he say?

A. What's that?

Q. What do you remember him saying?

A. I remember him talking to someone to my right. I don't know really who he was talking to. I really don't; I can't tell you that.

And I really don't know everything that he was saying. But I do know that he was saying, "close the vote."

BY MR. SNOWDON

Q. Do you recall—well, first of all, how many times did he say that? Was it once or was it more than once?

A. I heard him say it twice, "Close the vote."

Q. Okay. And after the second time, do you have a recollection of how long it was between when he said that and when the Chair gaveled the vote and called it, "214 to 214"?

A. I wouldn't be able to give you that exact time of how long in between.

Q. Are we talking a matter of seconds or a matter of minutes?

A. Oh, yeah, it was seconds.

Q. You provided a memo. How long after the events of August 2 did you prepare this memo?

A. That memo right there?

Q. Yes, sir.

A. The actual typewritten memo, probably 2 months after.

Q. Okay.

Was there an earlier handwritten version of this memo that you prepared?

A. Yes, there was.

Q. Okay. And how long after the sequence of events did you prepare the handwritten version?

A. That was probably 4 or 5 hours. I mean, I went home after.

Q. So it was contemporaneous to the events?

A. Yeah.

Q. Have you had a chance to review this recently?

A. Yes.

Q. Is there anything in here—and for the record, I mean the typewritten version is pretty much verbatim to the handwritten version with changes to it, correct?

A. With changes, correct.

Q. Because the handwritten version has some things that are crossed out, written in, so this is really——

A. Yes.

Q. Is there anything in here that—as you sit here today, you don't think is accurate?

A. No.

Q. Okay. So if we go through some of the things in this memo, this is still your recollection of what happened that night?

A. Absolutely.

Q. Do you recall—and it says—well, do you recall during the course of 814 whether the Chair said, asked the question whether there were any Members wishing to vote or change their votes?

A. During 814?

Q. Yes, sir.

A. I don't recall that.

Q. Okay. Would it refresh you if I said—and this is page 2 towards—and this is specifically talking about 814 now—towards the end of the vote, as always, the Chair announcing in the House, Are there any Members wishing to vote?

And then the Chair proceeded and asked, Are there any Members wishing to change their vote? And this announcement prompted some Members to change their vote on 814?

A. Okay. That's what happened then.

Q. Okay.

Was that—would that have then triggered the Parliamentarian to give you the go-ahead to close the voting stations if the Chair had said that?

A. After I had completed working on the well cards, I would have asked the Parliamentarians, "Are we ready to close the vote?"

Q. Okay. So the Chair says that; and at that point there are well cards handed—handed up. So you never looked to the Parliamentarian then to get his okay to close things, because —

A. Not if I got well cards, no.

Q. I'm just going off what you said here. It says, "Towards the end of the vote, as always, the Chair uttered those phrases."

It says, "This announcement"—meaning, "Are there any Members wishing to vote or change their vote"—"this announcement prompted some Members to change their vote on Roll Call 814.

My coworker, Kevin Hanrahan handed me well cards of three Members who wanted to change their vote—Ms. Ros-Lehtinen and the two Diaz-Balarts?"

A. That's right.

Q. And so you were handed those well cards and you started to input them into EVS?

A. That's correct.

Q. So you wouldn't, at that point, have gotten to the point of looking to the Parliamentarian to see if it was time to close the vote?

A. That's right.

Q. Did you get all three of those cards entered into the system?

A. Before——

Q Walk me through that. You are in the process of entering the three well votes. And in the process of putting all three in, something happened.

A Yes. I entered Ms. Ros-Lehtinen. And then I put that well card off to the side.

And I entered Mr. Lincoln Diaz-Balart. And I put that well card off to the side.

And I was entering Mr. Mario Diaz-Balart's vote into the system. And as I was doing that, the Chair pounded the gavel, announced the vote and pounded the gavel.

Q. And what was your—what was going through your mind at that point?

A. Well, I was stunned that, first of all, the process had been bypassed. And I basically just continued to do my job as Seated Tally Clerk.

Q. Okay. What did that entail?

You said you continued to do your job. So what did you finish doing?

A. Well, I just entered his name. Of course, John Sullivan, the Parliamentarian—I told John Sullivan that I had one more card.

Q. What did he say?

A. He didn't respond after that. He just nodded his head.

EXAMINATION BY MR. SPULAK

Q. Can I ask—you say that you were entering this last of three cards at the time that the Chair announced the vote?

A. Yes.

Q. How long does it take to enter one vote? I mean, you had stopped. You were entering—you heard it. Did you not finish the process?

A. I finished the process.

Q. Okay?

A. Yeah. Yeah.

BY MR. SNOWDON

Q. Okay. So you ultimately—the Chair announced 214–214; he's gaveled it. You went ahead and put in Mr. Mario Diaz-Balart's vote.

We've heard from some people that certain Chairs tend to maybe do things in the process to encourage Members to come in and cast their vote, that Members may be milling around, and so, you know, they might sort of fake closing a vote in order to get people off the stick and to come and vote so that they can get it finalized.

Have you seen that before?

A. Well, they always give a 2-minute warning. I don't know if you're trying to say that that's a sign to hurry up or anything like that.

I have seen some Chairs do some—you know, play some games up there. Yes, I've seen that.

Q. Was that your impression of what was going on for 814?

A. No. I mean, Mr. McNulty, he didn't do anything in between that time to, you know, fake or play games or anything like that, no.

Q. So when he announced it, "214 to 214," and gaveled it, you had every reason to believe that he had—he intended for the vote to be closed at that point?

A. Well, when I was—yes. I had every reason to believe that, yes.

Q. So you finished entering Mr. Diaz-Balart's well vote that you had——

BY MR. PAOLETTA

Q. You mentioned, De'Andre, that you had told John Sullivan that you have one more card to enter, right, and close the vote?

A. Yes.

Q. Do you recall that he had said to you, De'Andre, are you going to close the vote? Do you remember that?

A. Yes. Yes.

Q. Was that odd? Or how did you——

A. I don't—I don't really know why he asked me that. So I don't know. I can't really tell you.

BY MR. SPULAK

Q. De'Andre, do you think that—was he asking you—sometimes a question can be a statement.

A. Right.

Q. Was he asking you if you were going to close it, or do you think he was telling you to close it?

A. You know, I don't really know. I can't really answer that fairly.

Q. Is it fair to say, based on your testimony, that you thought—that you did not think he was telling you to close it because you continued to enter well votes after that?

A. I don't know. I don't know.

I really—I don't know. I really can't answer that.

Q Okay. But then why did you—why did you continue to enter them?

A. It's my responsibility. It's my job as the Seated Tally Clerk to enter all well votes.

Q. Would it have been—would you have done that if you had been told not to continue?

A. Yes, if he would have told me to close it down. Because, you know, they're the ones in charge, so I would have closed it.

Q. Again, so—I don't want to put words in your mouth, but it is fair to say that you must have not unequivocally thought that he was telling you to close it because you continued to enter votes?

A. I don't know.

BY MR. SNOWDON

Q. Just for the record, in this memo that you prepared, which you drafted, that's phrased in the form of a question——

A. Yes.

Q. "De'Andre, are you going to close down the vote?"

So you obviously thought that he was asking that as a question. If you thought he was giving you a command, it probably would have been a period or an exclamation point, right?

A. Right. I mean, it's a question.

Q. So something in his tone or his syntax suggested to you that he was—he was asking you, you know, what you were going to do as opposed to instructing you something specifically, correct?

A. That's correct. It was a question.

Q. Okay. So at that point, according to this, you hurried to shut down the vote.

A. After?

Q. After you had finished entering those well cards.

A. That's correct.

Q. Where in the process of closing down the vote, in the five steps, were you at this point?

A. Where in the five steps, when I was typing his name or—?

Q. Right.

When you're in the process of closing things down, you've closed the voting station——

A. Right.

Q. [continuing]. And you've put in the well cards.

Are you in the second step, are you in the third step?

A. I'm right at the beginning. I'm right at the beginning. So I'm going—closed—I mean, I'm doing this as fast as possible——

Q. Sure.

A. [continuing]. Because I'm already 5 seconds behind.

Usually these things happen when they pound the gavel and announce the tally. It happens simultaneously. I mean, I believe simultaneously.

So I'm doing this as fast as possible. I'm probably 4 or 5 seconds behind already.

Q. Did there come a point in this process where the system froze up on you?

A. Yes. At the fifth step of the process I could not release the vote. I could not press the fifth step. And I clicked it and clicked it and clicked it, and it wouldn't come down.

Q. Okay.

Now we've heard that one explanation for why the system may have frozen up and that you weren't able to get the boards down was because you had somehow gone into the third step and finalized the vote and then gone back in to add some additional well votes and clicked Finalize again, rather than going to the Terminate function; and that that's what caused this to lock-up. Is that what happened?

A. Clicked the Terminate function—clicked the Final function before I hit Terminate?

Q. That you'd already hit Final, and as the well votes came in, you put those in and clicked Final again, as opposed to hitting—and the system told you, It's already Final; it's already Final. And you didn't—rather than hitting Terminate, you hit Final for a second time.

Is that what happened?

A. At what point?

Q. Well, I'm asking you. I mean, it sounds like you put in these three well votes——

A. Oh, you are talking about Mario Diaz-Balart's?

Q. Correct. And then you went ahead and got all the way to the fifth step without a problem and then you had the problem at the fifth step?

A. That's correct.

Q. Did you try to enter any additional well votes after Mario Diaz-Balart's, prior to having problems in the fifth step?

A. Prior to having—no.

Any change, you mean?

Q. Any well vote cards. Any new ones that came in.

A. I didn't have any problems. There were a lot of well votes that I entered, you know.

Q. Okay. I just want to make sure I've got the sequence.

You've entered these three. You are in the process—you've got two of them entered, you are in the process of entering the third.

The Chair calls the vote?

A. Right.

Q. You then proceed to scramble to try to get that one put in and go through the five steps to get the vote closed?

A. That's right.

Q. Per the direction of the Chair?

A. That's right.

Q. You get to the fifth step and the system is giving you a hard time?

A. Yes.

Q. Okay. Between the time where you entered Mr. Diaz-Balart's vote and the fifth step, did you try to enter any more well vote cards?

A. No. No.

BY MR. SPULAK

Q. How long—how long from the—how much time transpired from the time that you entered into the last Diaz-Balart change and when you began trying to get to the fifth step? Was it seconds?

A. Seconds, yeah.

Q. So you finished entering it. And then you're thinking—and correct me if I'm wrong, but you're thinking, Okay, now I've got to shut it down.

So you started taking the next steps to shut it down?

A. Right.

Q. How long did it take for you to determine that you were having trouble?

A. Well, when I got to the fifth step——

Q. How long did it take you to go from entering into in the Diaz-Balart card to getting to the fifth step?

A. I can't give you a——

Q. A few seconds?

A. Seconds, yes. That's correct.

I mean, it was definitely seconds, because I was pressing buttons. Usually the process is very slow and I have a lot of time. But this was quick.

Q. So let me ask this, going back—this is the third time and I apologize.

But you—you—you entered in the two votes, you entered Ros-Lehtinen and you entered Lincoln Diaz-Balart's card?

A. Yes.

Q. You heard the Chair—you're sort of mid-keystroke, you heard the Chair start announcing the vote. You—I guess you paused to have some communication with Mr. Sullivan. And then you determined that you were going to continue to enter the vote.

As far as you were concerned, the vote was not ended until you entered that vote; is that right?

A. Well, no.

I basically told John when he asked me the question, that I had one more card. And so no decision was based on anything I said.

Q. But no one told you not to enter that?

A. Right. No one told me that.

Q. So you went ahead and entered it?

A. That's right.

Q. And you went to the keystroke to finalize the vote?

A. That's right.

Q. And it took a matter of seconds before you found out, Hey, there's a problem here?

A. Yes.

BY MR. SNOWDON

Q. Did there come a point after you got to the fifth step and couldn't close it, where Mr. Hanrahan gave you some additional well cards to enter?

A. There was a point after I've tried to click—you know, we tried closing it down. Kevin was faced toward me; he was getting ready to write down the tally on the sheet.

And later on there were some people who came. Kevin turned around and——

Q. How much later on, are we talking seconds or minutes?

A. I don't know. I really don't know.

BY MR. PAOLETTA

Q. I just want to back up, actually—because you're actually the guy who was right in the middle of that.

So going back to this point about the—so when Mr. McNulty calls the vote——

A. Yes.

Q. [continuing]. Because there's that thing where it's a refresh, right? You had one more card. You hadn't entered it when he called it? It was in your hand?

A. No. I was entering it.

Q. You were entering it?

A. Yeah.

Q. So it's not like—it's not like you had already entered it? Because my sense is that it was actually entered and it hadn't refreshed, right? Because it was a second later that it actually changed and then the House erupted.

So you had entered it actually when—when—when Mr. McNulty called it. It just hadn't been reflected on the screen?

Do you remember that?

That's like a split second, but do you remember that?

A. I was entering it when——

Q. Okay. So it wasn't like you hadn't entered it. He called it, and then you went ahead and started like the initial process for entering that particular vote. You were entering it, and you may have already entered it? It's just that it hadn't been reflected on the—on the—on the screen?

Mr. SPULAK. Those are two statements with question marks. So if you could separate them.

Mr. PAOLETTA. Sure.

BY MR. PAOLETTA

Q. Do you remember—when you heard the vote called by Mr. McNulty and gaveled, had you entered that last well vote into the system?

A. It sounds like you're asking me what letter I was on while I was——

Q. Yes.

A. Sir, I really don't know. I don't know the letter.

Q. Had you begun entering it when you heard the vote called?

A. Yes.

Q. So when the vote was called, you were in the process of entering the last well vote?

A. That's correct.

Q. Okay. Okay.

BY MR. SPULAK

Q. Do you have to press the Enter button after—I bring this—you're typing in some letters. Do you have to hit Enter in order for it to go into the EVS?

A. Yes.

Q. And had you hit Enter prior to the time that Mr. McNulty was calling the vote?

A. No.

Q. Okay. Then I think we're—you understood it; we didn't.

BY MR. SNOWDON

Q. Let's see. Now we've been told that there is a—there is sort of something of an anomaly in the system where people have had problems with the system locking up, and there's a way to escape out, I guess, the main screen and then be able to terminate a vote, bring down the boards.

Are you familiar with that work-around?

A. I'm familiar with that.

Q. Did you try to do that? Did you try to hit escape to go out of—when you couldn't—when you got locked up in the fifth step, did you try to do that process?

A. No, because that process is only done when you want to go back and enter some other well votes.

Q. Did there come a point where Kevin Hanrahan gave you some additional well votes to put in?

A. Yes. Yes.

Q. Now, had the system not locked up on the fifth step, would that vote have been closed and the boards have come down at that point?

A. Yes, the boards would have come down.

Q. Did you go ahead and enter those additional well votes?

And tell us whose votes those were.

A. Yes. After trying to close the vote or release the board, there were three additional well cards that I had received. And those were Mr. McNerney, Mr. Space and Mrs. Gillibrand, I believe.

Q. Before entering those, did you check with the Parliamentarians about what to do?

A. I did. I asked John Sullivan, "was it still open?" And John responded, "We have bigger problems than that right now."

Q. Okay. What did you think he meant by that?

A. I don't know. I really don't. It was just chaos on the floor. I don't know.

Q. Did you, around that point, hear any conversations between Mr. Hoyer and Mr. Sullivan?

A. No. They were off to my right. So I didn't really hear. John was right—right behind me when I asked him that question, faced toward the Chair, and he said, "We have bigger problems than that right now."

BY MR. PAOLETTA

Q. Actually, De'Andre, it might be useful since you actually took the time to write this—and we are really appreciative of it—to actually review it, because that's a little bit off from—and I think it's just the timing.

You said that that conversation did happen. But I think you entered these three. Okay, it's with Mr. Boehner's vote I think that conversation happened.

But why don't you just take a second to just read through that, and then we can just——

A. Where are you talking about?

Mr. SPULAK. Page 4. It's sort of toward the top.

Mr. PAOLETTA. Actually, why don't you just read the rest of your statement?

Do you mind if he does that?

Ms. MCCARTIN. Not at all.

Mr. ANDERSON. Okay.

Mr. PAOLETTA. Okay. And why don't you just read the rest of the statement? Because we're going to keep walking through it.

Mr. SPULAK. You want him to read it out loud?

Mr. PAOLETTA. Oh, no. I just want him to read it so he——

Mr. ANDERSON. Okay. Where am I at? Which one?

Mr. PAOLETTA. I'm sorry. So you held off—oh, I see. Right there.

Okay. Okay. Go ahead. I apologize.

Mr. ANDERSON. What were you saying?

BY MR. SNOWDON

Q. You ask—you get these three additional well cards from Kevin Hanrahan, and you ask John Sullivan for some instruction at that point. And I guess the question that was pending—at least that I had asked was, at that point had you heard any communications or conversations between Mr. Hoyer and Mr. Sullivan? And you said that you had not.

Now, did you ever look behind you and see Mr. Hoyer and Mr. Sullivan talking?

A. Well, I saw John back here, right behind me. He was—his back was toward me when I asked him this question.

Q. Okay. And you don't have a good understanding even when you are sitting here today what Mr. Sullivan meant by, We've got bigger problems than this?

A. I don't know what he might have meant. I mean, I can't tell you what he meant.

Q. Sure.

BY MR. SPULAK

Q. But you—again, you didn't interpret that to mean that you could not enter the vote, did you?

A. Oh, no.

Q. Because you did?

A. Right. Yeah.

BY MR. SNOWDON

Q. At that point, either before or after Mr. Hanrahan handed you those three additional well votes for Gillibrand, Space and McNerney, had you told him that you were having problems closing down the system?

A. No. Because I told him that I had another vote or I had another well vote.

But I hadn't told him that I had problems closing down the system. It was——

Q. Do you know—do you remember how long it was—between when you got to the fifth step, and it wouldn't release the boards, how long was it before Mr. Hanrahan gave you those three additional well votes?

I mean, were you trying to close the thing down for a minute or two or was it pretty much like boom, boom?

A. It wasn't a minute or two, no.

I—you know, I don't have an exact time frame.

Q. I'm just asking you for a rough. I mean, are we talking 10 seconds? Are we talking 30 seconds? Are we talking 5 minutes?

A. It wasn't in the minutes. But it was definitely somewhere around 10 seconds, 15 seconds, something like that.

Q. Okay. So you got the cards, you proceeded to enter the cards.

Did there come a point when Mr. Hoyer, Mr. Boehner submitted cards?

A. There was a point where those two Members submitted well cards.

Q. Okay. Were those cards put into the system?

A. No, they were not.

Q. And why, why is that?

A. Well, I checked to see if Mr. Hoyer had voted. And I noticed in the system that it showed me that he had already voted the way he wanted to vote with the well card.

Q. So what would have happened had you tried to put to Mr. Hoyer's vote in?

A. It would have gave me a "Y" or whatever his vote was.

Q. He's already voted the same way. Why are you wasting my time?

A. Pretty much. Yeah.

Q. What about Mr. Boehner's card? Did you try to put that into the system?

A. I tried. I looked to see if he had voted and noticed that he wanted to change his vote. But on instructions from people surrounding me, I held off on him.

Q. Okay. And who were the people who were surrounding you that gave you the instructions?

A. Well, there were Parliamentarians around me. Kevin was around me, and so we just held off.

BY MR. SPULAK

Q. Excuse me. But you don't remember—I mean, do you have—I mean, a guess of who it was that told you?

A. Well, we just held off because we didn't know——

Q. I'm sorry. Finish, please.

A. We didn't know where we were going from there. So we just held off on putting—inputting those Members' votes.

Kevin was in front of me, the Parliamentarians were behind me.

Q. As far as you know, that's the only vote that you didn't enter?

A. Yes. Yes.

BY MR. PAOLETTA

Q. And who do you remember saying, Hold off?

A. I believe it definitely was John Sullivan.

Q. And was there—and when you said you were surrounded, was it only John Sullivan who was speaking?

A. Tom Wickham was around.

Q. Okay.

And what about Kevin, was he speaking?

A. Kevin was, of course, in front of me. And I don't remember what he said. But he could have perhaps possibly told me.

Q. Did you think that was unusual? I mean, the Members put a vote in to change his vote—put a well card in to change his vote.

A. Right, yeah. Put a well card to change his vote. But there was so much chaos going on that, you know, I can see why they'd tell me to hold off.

Q. Well, has that ever happened before where you had a well card vote that you—you know, that was already—you know, that was in your hand that you didn't record?

A. Well, there was chaos. And I can see why they might have said, Hold off.

Q. No. I understand that.

But the question is, do you ever recall another instance when a well card vote has been placed in your hand that you have it——

A. Right.

Q. [continuing]. And you end up not entering it?

A. I have never had that situation.

Q. Okay. And when he said, Hold off, was there any time after that where you were able to say, "I still have a well card vote to enter"?

"Hold off" just means "hold on," right? Like don't enter it?

A. Right.

Q. Or maybe it means something else to you.

But was there a time after that where you—where you were able to say, I still have a well card vote to enter?

A. Well, they knew that I had two well cards.

Q. Well, the other one was sort of the same?

A. Yeah. So—I mean, they knew that I had two well cards.

BY MR. SNOWDON

Q. At some point, Mr. Sorenson came up to you?

A. Yes.

Q. Why don't you walk me through that conversation?

A. Ed came up to me and asked me, "What are we going to do with this vote?"

I said, "I don't know. We're waiting on John Sullivan. You'll have to go ask him."

Ed then left me to go talk to John Sullivan. I don't know what was discussed or——

Q. Did you tell him at that point that you had had problems bringing the screens down?

A. No. I do not think I told him that.

Q. Do you think he was aware of that? Did he say—let me—let me be a little clearer.

Did he say anything that would lead you to believe that he knew that you had had a problem bringing the boards down?

A. You know, I think he might have been aware of the fact that I had problems because I couldn't get out of that vote.

I don't know for sure, though. I don't know for sure because we aborted the vote, so——

Q. Okay. Let's talk about that.

Mr. SPULAK. Can I ask a question?

Mr. SNOWDON. Sure.

BY MR. SPULAK

Q. Why would he have said to you, De'Andre, what are we going to do with the vote, unless he thought there was a problem with the vote?

A. Probably because we're still in limbo, you know.

Q. But how did he know you were in limbo?

A. Because the board—the board hadn't released. So he's probably looking at the board, Why is it still up there?

Q. Okay.

BY MR. SNOWDON

Q. Had they called for the motion to reconsider already, at the time that he came up to you?

A. I cannot remember that, if they had gone forward. I can't remember that.

EXAMINATION BY MR. HALPERN

Q. Were you aware of—sort of the procedural status of the House, like where—what was transpiring?

Obviously, you had a lot going on in front of you. Were you aware of sort of the other steps that Members were taking from the mikes or elsewhere in the Chamber?

A. I was aware, but people were screaming.

Q. For instance, the video record and the record vote effort by the majority leader to make a unanimous consent request, were you aware that that was going on?

A. Well, my head was in the screen, and I was looking at whatever was on the screen. But I did overhear Members talking through the mike.

Q. And then—the next step, I believe, was that the minority leader then made the motion to reconsider.

Were you aware that that motion had actually been propounded?

A. Yes.

Q. And Mr. Sorenson came up to you after that point?

A. I can't remember that.

BY MR. SNOWDON

Q. So Mr. Sorenson comes up to you—I want to go through this chronology quickly. He asks you, What are we going to do with this vote?

A. Yes.

Q. Did he mention the word "abort" at that point?

A. He 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.

Q. Do you know whether, on the way to the rostrum to talk to you, Mr. Sorenson had spoken with John Sullivan?

A. I don't know that. I don't know that for sure.

Q. Is that the first time you had heard the possibility of the vote being aborted?

A. That's the first time that I was asked whether we were going to abort a vote.

Q. Here's what's confused me a little bit. It seems like, from the little I know of this process, that aborting the vote is sort of the nuclear option.

A. Yes.

Q. That it's almost never done, at least in recent—in the recent past, and most people have never been involved in doing it.

And Mr. Sorenson comes up to you—and I haven't quite understood why rather than the two of you discussing how to go about closing out the vote and what steps might be taken to close things out—that seems to have been bypassed, and somehow we got into

aborting it without even having him try to give you some guidance of how you might close out the vote without aborting it.

I mean, is that—is that fair?

Or did the two of you discuss, you know, what additional remedial steps you might take in order to get this thing closed out without aborting it?

A. I don't know what was in Ed's head. I do know that was the first time that I had been asked on whether to abort a vote or not. I don't know if he was trying to think of any other steps.

Q. Well, did the two of you talk about any other steps?

A. No. Because, from my standpoint, all I was interested in was doing what——

Q. Sure.

A. [continuing]. Ever I was told.

Q. I don't doubt that for a second.

I'm just wondering whether he came up to you—did you guys talk about anything, any possible steps other than aborting the vote?

Or was that really the only thing that he mentioned?

A. He asked me, What are we going to do with the vote? And are we going to abort it? That's really—that's all he asked.

BY MR. SPULAK

Q. Excuse me. Did you have any ideas—I mean, if you did, you would have tried them. But did you have any ideas about some alternative, other than abort, at that point when you were talking with Ed?

A. Did I have any ideas?

Q. In other words, did you have any—any thoughts about how you might get yourself out of that situation, other than abort?

A. At that time?

Q. Yes.

A. I wasn't thinking of how to get out of—but, there is a step. But I wasn't thinking of going further out of the system to—to do that step.

No. At that time I was just thinking of doing whatever I was told.

Q. That's good.

BY MR. PAOLETTA

Q. De'Andre, when he was discussing aborting the vote with you, what was your understanding of what would happen with the vote and sort of—the vote, would it disappear? Was there any discussion that, We're going to lose this data?

Or what was your understanding of—when you hit that abort vote, what would happen?

A. I didn't have any thoughts in my head. When you're the Seated Tally Clerk, you're just used to going through the process, basically just like you are a robot. I'm not having any thoughts in my head of whether information is going to be lost.

Q. Did you hear any discussions about that?

A. Did we have any discussions?

Q. Did you hear any discussions about, if we abort it, we'll lose the——

A. No, I didn't hear any.

Q. [continuing]. Vote?

Okay. Did you hear any conversations between Mr. Sullivan and Mr. Hoyer? I know it was noisy in that commotion. But do you remember during—you know, during all of this whether Hoyer, Mr. Sullivan were talking at all?

A. I saw them off to the right, talking.

Q. Okay.

A. I heard them off to the right, but I don't know what they were saying. Yeah.

Q. Okay.

BY MR. SNOWDON

Q. One of the things we've been—the Select Committee's been tasked with doing is coming up with some——

Mr. PAOLETTA. I'm sorry.

BY MR. PAOLETTA

Q. So let me just get this straight. When Mr. McNulty called the vote the first time——

A. Yes.

Q. [continuing]. You hadn't hit the Enter button, right?

A. When he called the vote the first time, I had not hit the Enter button.

Q. Right. And it was your understanding, based on the way he—or was it your understanding, based on the way he called it, that he wanted to end right then—when he gaveled it, that it was over?

A. Yes.

Q. When he called, "214–214"?

A. It was my understanding that, when I'm finished, of course, that he would want to end the vote, yes.

Q. But he actually called out the number before you had entered that last vote?

A. Yeah.

Q. Which would mean that that vote wouldn't have counted at 214–214, right?

A. The procedure for the Seated Tally Clerk is to enter the well votes that he or she has in his or her possession. For whatever reason, I don't know if it would have counted——

Q. Who may not know?

A. The Chair may not know.

Q. Was Mr. McNulty experienced in the Chair?

A. You know, I don't know. I don't know what his experience is in the chair because—of course, that may have been his first time in the chair that year.

BY MR. SPULAK

Q. De'Andre, when you are entering votes, do you have any—any accurate way of knowing whether the tally board is reflecting what you've done at the time?

I mean, we've heard that there is a—there is a—there is a slight delay, or a delay between the terminal and the board. But do you

personally have any idea of knowing what the board is saying at the time that you had done something or are doing something?

A. Only after the fifth—or fourth step, do I know that what I have on the screen matches the board.

Q. You said something that I want to ask about, about that.

The Standing Tally Clerk, when he—when he writes out a tally slip, we were told—and perhaps when you do this, as well—that you take that off the board?

A. Yes.

Q. And then the tally slip is given to the Chair to read?

A. Yes.

Q. And then you get to step 4 and you look at the screen in order to validate what was on that slip that was read by the Chair; is that correct?

A. That's correct.

Q. Let me ask you, going back to the voting—I just have a question or two.

Do you remember—do you remember entering the Speaker's well card?

A. I don't. I don't remember entering her well card.

Q. Okay. I don't have any further questions.

Mr. PAOLETTA. For the record, I was incorrect.

So you weren't off on that; that was me. I had—was misremembering what I had read, so I apologize.

Mr. ANDERSON. That's all right.

BY MR. SNOWDON

Q. One of the things the Select Committee's been tasked with doing is coming up with some recommendations for what—how the process can be improved so that the situation may not happen again.

Do you have any thoughts on what may have contributed to this and what changes you think might improve the process?

A. Well, we've discussed that and, you know, I think that if Members would like to close the vote when they see fit, you know, maybe they should have a button up there that they can push; or whenever they wanted to close a vote, have that option.

That's really all that I can say. If that's what they want to do.

Q. Let me ask you one last procedural question. And I think you said before that in every vote that you had been involved with and that you had seen, there had been a written tally sheet that was prepared and passed up for the Chair to read; is that right?

A. That's correct.

Q. In your mind, what is the—what purpose does that step of preparing a tally sheet serve?

A. Well, it's a reflection of what the seated tally clerk has in the EVS.

Sometimes, if the Chair was just to read from the board, eyesight may come into play. The actual paper in front of them gives them the accurate count of what's in the system.

Q. So would you say that that step in the process is important to ensuring the integrity of a particular vote?

A. Yes.

BY MR. SPULAK

Q. Actually, I've got one other question. And that is that your statement says that—and then we'll go back over this, because I don't think—your statement says that when you received the votes from Mr. Hanrahan regarding Gillibrand and Space and McNerney, at that point John said—you asked John, and John said, We have bigger problems than that, right? That's on page 4 in the middle.

A. Yes. That's correct.

Q. Is it possible that—is it possible that that—that that happened later on, that he said, We've got bigger problems than that, when you were being given the well card of Mr. Hoyer, and you were asking him how to deal with the duplicate?

A. Is it possible? It's possible.

Q. And here's why. Clearly, you guys—when you record something, days later you forget. But here's why it's important:

If you got those well cards on Gillibrand and Space and McNerney, all I think we're trying to figure out, all I'm trying to figure out is, did you enter them without consulting?

A. No.

Q. It wouldn't matter either way because you did enter them?

A. No.

I consulted John, and I know that he said it at this point also. But you're asking me if he also said it back then?

Q. Yeah.

A. I don't know if he said it twice, but I do know that he said it at this point.

Q. Okay. That's good.

Mr. PAOLETTA. Thanks.

Mr. SNOWDON. Thanks for your time.

[Whereupon, at 3:20 p.m., the interview was concluded.]

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

FRIDAY, FEBRUARY 8, 2008.
Washington, DC.

INTERVIEW OF: KEVIN HANRAHAN

The interview in the above matter was held at Room 1017 commencing at 10:00 a.m.

APPEARANCES

OUTSIDE COUNSEL, MAJORITY: THOMAS J. SPULAK, ESQ., KING & SPALDING LLP, 1700 PENNSYLVANIA AVENUE NW., WASHINGTON, DC 20006

OUTSIDE COUNSEL, MINORITY: MARK R. PAOLETTA, ESQ., ANDREW L. SNOWDON, ESQ., DICKSTEIN SHAPIRO LLP, 1825 EYE STREET NW., WASHINGTON, DC 20006

Also Present: Muftiah McCartin, Deputy Staff Director, Committee on Rules; Hugh Halpern, Republican Staff Director, Committee on Rules; and Davida Walsh, Legislative Counsel, Representative Delahunt.

Mr. SPULAK. Good morning, Kevin. Thank you for being here this morning. As you may know, the Select Committee to Investigate the Voting Irregularities of August 2nd is charged with trying to determine what occurred on August 2nd relating to roll call vote 814 and the subsequent motion to reconsider.

Mr. HANRAHAN. Okay.

Mr. SPULAK. So including holding—you know, when the vote was called and the matters that occurred after that. So we're going to ask you to tell us what you know about that from your firsthand experience, or perhaps we'll ask you also what you heard or what you found out about that afterward.

Mr. HANRAHAN. Sure.

Mr. SPULAK. I want to try to limit it to the votes themselves, to what occurred on that night and what happened subsequent to that. In terms of the Select Committee's creation and things like that, we're not interested in that.

I remind you that it's a deposition, so please speak clearly. Your responses should be verbal as opposed to head-nodding or anything like that. I would ask you to wait until the questions are concluded before you answer, so you can sort of get what we're trying to ask and answer it accurately.

EXAMINATION BY MR. SPULAK

Q. To begin with, we ask you to give us a little background about yourself, your time in the House, what your responsibilities are, and then—from then we'll proceed with what happened on August 2nd.

A. Okay. I came to work for Congress in November of 1978 for then-Congressman John Cavanaugh from Nebraska. I worked on his staff for about 4 months and came to the Office of the Clerk in March of 1979—in the Office of the Tally Clerk at the time, which is now incorporated into the Office of Legislative Operations, but essentially is the same position since that time that I've held. The work hasn't changed all that much. The responsibilities are still the same.

We are charged with producing the House calendar on a daily basis which is mandated by the rules of the House. And we also produce the Members' voting record, the official voting records. And we typically twice a year put those together and mail them out to each Member office.

In addition to that, we are charged with running the electronic voting system computer in the House Chamber. We receive and process committee reports. We work with the Parliamentarians in that respect. That's something that we've always done. And beyond that, there are duties that are assigned over time that are random, I guess, that we're charged with. But basically those are the four or five areas that we concentrate in.

Q. You also serve as a clerk on the floor, a Tally Clerk; is that right?

A. Yes, right.

Q. Are you ever a seated Tally Clerk?

A. Oh, yes, frequently.

Q. So you run the EVS system?

A. Yes, many times.

Q. So on August 2nd, you were a standing Tally Clerk that day?

A. That night I was in the standing position, yes.

Q. I'm just curious, how do you determine who is going to stand and who is going to sit, typically?

A. Typically, we have a rotation of approximately 2 hours. One of us is always up on the floor. And as the votes are called and taken, another member from our office will go up and assume that standing position to assist the Tally Clerk who is already there. And so it's a random thing.

Mr. SPULAK. I see. Okay.

Mr. SNOWDON. Tom, before we get into second, can we get through some background?

Mr. SPULAK. Absolutely. Sure.

EXAMINATION BY MR. SNOWDON

Q. I'm going to give you a document. Take a look at that. Have you seen this before?

A. No, I don't think—well, I may have seen bits and pieces of it. I have not seen this complete document. I may have seen some of this stuff that's in it.

Q. Okay. I wanted to just spend a little time going through the process for closing a vote in the EVS system. And there's a paragraph on the second page, it's the second paragraph—or first full paragraph on the second page, starting with the process for closing the vote, and it goes through various steps.

Why don't you take a minute just to read through that? And I just want to ask you if those steps are completely accurate, if you have any additions or comments, and then maybe we can just walk through it quickly?

A. Okay. This is essentially intact. This is fairly complete, yes.

Q. Is there anything that you would add or change to this?

A. Well, not to the document itself. But I think that it's important to point out that this represents a protocol that we have been using and continue to use ever since I came here. It hasn't changed in 30 years. And it's applied for a reason, because it allows us to provide quality control to the House. In other words, by following this protocol without alteration on any given roll call, at any given time, it allows us to certify that to the best of our knowledge the tally in its final form is not only accurate, but correct in the sense that each and every Member who wanted to be recorded is recorded properly in the disposition they chose.

So to that extent, I think it's clear that we need to point out we're using a set protocol for something that I can only describe at best as a moving target. Each and every roll call that the House takes is different than the one before and it's different than the one that will follow. They're like snowflakes in that respect. And I say that because the dynamics are different from the time frame allotted for the vote—15, 5, 2—lately we're doing a lot of those; the number of Members who utilize and choose to vote in the well; and out of that number of Members who choose to vote in the well, whether they're initial votes or coming back to change. And whether those votes are cast early in the vote, the middle of the vote, towards the very end of the vote or a last-minute change of heart by half a dozen people. That can change the dynamic of the entire thing.

And we still have to apply this protocol to each and every situation, as best we can, to make sure that when it's over that we have met every point that's done here, and that the Chair is—when the Chair is reading that slip, that it is the one that is going to go into the books because it's correct and it's final, as far as we can tell.

There's a drop-dead point that I think almost everybody universally accepts, and that is the motion to reconsider being laid on the table. Those words have to be uttered by the Chair. In effect, when you get to that point, for all intents and purposes—barring, I guess, an act of God or some other stupid thing—that's when we're through. But up to that point, our job is to effectively look for, find and identify each and every Member who is physically, vocally, somehow making his or her intent known within some physical distance of that well that they are not recorded, want to be recorded or need to change a vote. And we're going to try to get each and every one of them. And not only get them in the system, but get them accurately recorded.

Now, that applies to everybody across the board. There is no delineation as to who gets to and who doesn't. The final disposition

as to when a vote is typically over, we rely heavily on the Chair uttering those words.

Q. The words being that the motion is laid upon the table?

A. The motion to reconsider is laid upon the table. Now, we've had situations where the Chair has gotten halfway through that sentence, and all but to the last syllable of the last word, and a Member has presented him or herself in the well and they need to get recorded and proceedings have been stopped to allow that. So we—my job essentially is to find these Members, because I know where they hide. I'm not being facetious. Members are notorious. Some of them will out of habit, for whatever reason, wait until the last second. They just like to do it that way. Others will spend the entire time of the vote clock counting down, standing in front of us in the well, having a conversation with somebody and totally forget that they have to get recorded.

Now, you might be asking yourself well, how do you know they're not? Well, we have in the system, aside from the standard display that shows the yeas, the nays, and the not voting, we've got a program that says everybody who voted in the well on the last vote. I can pull that up. And out of that list it will tell me who isn't there yet. So I know that if they've been there on a regular basis, I know to look for them. And I know from which direction they're going to come, wherever their habits take them. And if it's a seriously close deadline and I know that there's been five or six votes, and this Member has made all of them, and we're missing this Member on this one vote, and say it's final passage, and they've made all the amendments up to that point, certainly they would want to be recorded on final passage, you would think. So I'll turn around and I'll mention it to the Parliamentarians. And I'll say, Look, Congresswoman Waters has been here for every vote, she's not here yet and I think maybe we ought to see if you can spot her, maybe we can find her. I mean, just give her every chance to get here.

And you know if they don't get there, they don't get there. But it's not going to be because we aren't aware that they should be there and they're not there. We do know to look for them. And we are charged with, in my opinion, making sure every Member gets every available opportunity to get recorded on every vote. Because as you know in the House, once votes are final—it's not like in the Senate—there's no going back. You're recorded. And if I make a mistake and I record somebody wrong, I'll take the heat for it and I may not be here the next day, but that Member is stuck with that vote. They are forever stuck with that disposition.

Q. I think the analogy you used was that roll call votes tend to be like snowflakes?

A. Yes.

Q. Meaning they're all slightly different for one reason or another?

A. Correct.

Q. Would it be fair to say, then, that this protocol is essential in order to ensure a completely accurate result, even given the variations among different roll call votes?

A. Yes, I think that's exactly the point that I'm trying to make; that the protocol is required. It's what keeps us from having August 2nd all the time.

Q. Okay. Well, let's run through these five steps very quickly. It's written down and the document speaks for itself. But I would just like to make sure that I fully understand each of the steps and what the Tally Clerk, the seated Tally Clerk is doing in relation to the Chair.

It says the first step is when the Chair asks whether any Members wish to vote or change their vote?

A. Right.

Q. What does the seated Tally Clerk do in response to that language from the Chair?

A. In the first example, the initial inquiry asking if all Members are recorded, it's a benchmark, it's just a warning that we're moving toward closing things up. The Tally Clerk that's seated is not required to do anything at that point. But if the Chair then follows right away with the inquiry as to whether any Members wish to change their votes, if we have a—you're familiar with the list of changes that we keep? Has anybody talked to you about that?

Q. Uh-huh.

A. So you know what that is. That's the point at which you hand it to the Reading Clerk. And the Reading Clerk is then going to read the names of the Members who up to that point have come to the well and effect the changes from off aye, on no, and so forth. That list is then read. At that point now we're waiting for—it's a pause more than anything. We anticipate that once that list is read, assuming there's no activity, nobody hanging around, nobody late, nobody—and also the summary board is not upticking in any fashion, it's a static number—that's when we're going to anticipate closing down the vote. And the standing Tally Clerk is going to start thinking about writing that tally down in anticipation of handing it up to the Chair to read.

Q. Has the Tally Clerk, seated Tally Clerk, already closed the voting station, the electronic voting station at that point?

A. In a perfect world if it worked the way—as I said, we try to keep our options open for all Members who come in late. In a perfect world, ideally you should be closing vote stations when the changes are being read. That's when you shut those down. I've learned over time that it's easier sometimes, especially if I know, and I've anticipated—I can tell by the total number how many Members are here from the last one and who are here at this one. If we're missing 25 or 30 Members and—I don't know, in the summertime during appropriations season, the Appropriations Committee is always coming in as a group—it makes no sense to keep the vote stations closed and require each and every one of those Members to come to the well one at a time and cast a vote. It takes forever. So I'll reopen the stations. It's not a flag that I send out, there's no signal, except that if you're standing out there and looking at the voting boxes, the blue light will come back on. Members know that means they can insert their cards and cast votes. And there's always somebody out of that group who will come to the well, in addition. And so when that's done and the upticking has stopped, then we revert back to closing the station.

The Chair will invariably inquire again finally, hopefully, if anybody needs to change and if everybody has voted who wants to. From that point on, then the seated Tally Clerk is waiting. It's a tandem. The Chair is going to be reading on this vote the yeas are this, the nays are this. And as that's being read you're moving through these screens to close and finalize that vote. Ideally it should be a match when the Chair is reading that total and——

Q. When you say the Chair is reading the total, what are you referring to, what is he reading from?

A. Oh I'm sorry, the tally slip that the standing Tally Clerk has written from the summary board.

Q. That's an important element here. So why don't you tell me at what point in this process the standing Tally Clerk writes out the tally slip and then what he or she does with that tally slip after it's filled out?

A. The tally slip in and of itself is, I guess, two things. It's a bit of a throwback to manual roll calls when there was no summary board to read from and the Chair couldn't announce the total until we gave him something anyway. So we're preserving a little bit of maybe some history from that standpoint. It's symbolic to that extent.

But it is also a collective effort by consultation, I talk to the Parliamentarians, I talk to the—if I'm standing, the seated Tally Clerk and I talk to the Reading Clerk who is probably still standing near there. Those two, Parliamentarians and Reading Clerks, have line of sight. They can see things. I'm blocked on one side by the rostrum. I can't see past that, or the podium. They can see if there are Members approaching or coming in, even the doorways. And so it's helpful. We've talked to each other. We know that we're static now. There is nobody approaching. Everybody is changed who wants to. The Members are recorded who want to be recorded. And the numbers are not changing up on the summary board. So now it's okay, we will talk among ourselves.

The seated Tally Clerk will say to the standing Tally Clerk, I am closing the voting stations, write the tally down. And at that point that's when I will start to think about putting those numbers on that sheet of paper.

Q. Is that something that's actually said? Is that a look?

A. No, it's a statement. It's I've closed the voting stations, write it. That's what I tell who I'm with when I'm seated; that go, this is it, I've shut it down, write the total. And at that point——

Q. Has there ever come a point in the past where you, being the standing Tally Clerk, has ever gotten that instruction, whether those specific words were used or not, and you noticed something and you said, it's not time for me to actually write this slip yet?

A. Sure.

Q. Give me an example of when you would have gotten that type of instruction and in your judgment said it's actually not appropriate for me to do the slip at this point?

A. Well, an example might be—well, I don't know, there's lots of examples. But the seated Tally Clerk is generally focused on the keyboard at that point, because we're now closing the vote and you have to look at what's in front of you. So you may or may not see what I see as a standing Tally Clerk. There could be somebody

standing there who wasn't there 2 seconds ago. And if we're at the point where they can still be recorded and want to be recorded, then I will turn around and say, I'm not writing it because there's a Member here.

It's also possible, and this is not spoken, this is just something that you have to know to wait for, there is a bit, I don't know how much and I don't know what to categorize it as, but a tiny little bit of lag time between the time a well vote is entered and a button is pushed and that number upticks. So if I have taken a well card and I've processed it and handed it back to whoever is in the chair, and they are busy entering the thing and they tell me——

Q. Just, I'm sorry to interrupt you, a point of clarification. You say you handed it to the person in the chair?

A. Yes.

Q. You're not talking about the Speaker's chair?

A. No, no.

Q. You're talking about the seated Tally Clerk?

A. The seated Tally Clerk, right, who is entering that vote into the system. They can tell me, okay, that's it, I've got it, it's in. I know from experience to wait. I'll wait a heartbeat, a pause, however you want to describe it, because I want to see that number. I know it's going to change. I want to see it change, and then I will write the numbers. I don't just copy it because it's up there. If I've given something back here, I know it's going to change. And there's just a bit of a lag time, and it's very easy to lose track of what you're doing and write down something incorrectly when you don't think about that. You have to remember that. And the system is only as fast as it is. It's not long. It's probably—I bet if I had to label it, it's not even a half second. But it's long enough to look away and look back and that number has switched, and it can throw you totally off. And if you're not paying attention you won't know for sure what number you're dealing with, whether that's the one you need or whether there might be a change again or what.

The other downside to this is that while you're opening voting stations to allow a large group of Members, while simultaneously processing well votes, it's conceivable that a Member for the same reason—there's just that little bit of lag time that somebody pops in the back door just as you're about to finish things in the well and you reasonably are certain that everybody who wants to vote has voted—a Member can still vote, pop it in, and then you close the vote station and you think you're done. But that little lag time will collect that vote and it will pop that number up there, up or down one, whatever the disposition might be. It's just that little tiny little bit of time.

So I've learned, and we teach everybody who is up there to do the same thing, to wait a heartbeat, just pause and be sure that there's no more upticks and there's no electronic activity and there's nobody standing around who wants to get recorded, before you write that number down.

Q. So the seated Tally Clerk knows to give the standing Tally Clerk a verbal command to write out the tally slip?

A. Yes.

Q. Do you ever as the standing Tally Clerk, you've been doing this for a long time, just sort of do that on your own, or are you always waiting for them to give you that verbal command?

A. Oh no. If I'm the standing Tally Clerk I will check with not only the seated Tally Clerk, but the Parliamentarian to be sure that we're ready to write this down. I mean there are times when Members will come in late. As I've said over and over, it happens repeatedly. You may write that number three or four times and then toss the sheet down because it's not going to be the one you want. But you never—I will never give that sheet up to anybody until I've asked from the Parliamentarian's standpoint, who is supposedly talking to the Chair and the seated Tally Clerk, that we're all on the same page; that you've closed the system, the voting stations are not open, we have no more upticks and nobody sees anybody, that's when I'll write that number. And I will ask first before I do that.

Q. So you—to walk through this hypothetically, you're the standing Tally Clerk, you've asked—you've checked with the seated Tally Clerk, you've checked with the Parliamentarian, you've written out the tally slip, and that is in the third stage of this closing the vote process?

A. Uh-huh.

Q. So at that point the seated Tally Clerk presumably is no longer processing any well votes, or they wouldn't have told you to write out the slip?

A. Correct.

Q. They have set the vote to final, and you are then doing what with the tally sheet that you filled out?

A. At that point, as long as we're all on the same page, I am copying down what I see up on the board and I'm handing that sheet to the Parliamentarian who in turn is going to give it to the Chair and give the Chair the okay to begin the closing statement, which announces the numbers that everybody can see on the summary board.

Q. And that closing statement is that the motion is laid upon the table?

A. It begins with, "On this vote the ayes are, the noes are." And then, barring any interruptions, the Chair will then proceed to lay the motion to reconsider on the table. And that's when the drop-dead point comes. At that point I think if an act of God, something happened, that's up to the Chair at that point to let somebody in at that point. But once a vote is announced and those words are spoken, we're trained that that's the end of it. And we're ready to—that's locked in, done, and we're ready to go to the next motion, whatever it might be.

Q. What do you need to do then to move on to the next motion? So you hear the word "table," and as the seated Tally Clerk what are you doing, what are you hitting in EVS to move on?

A. There are icons, the icon to shoot the word "final" up on the board. But then after that there are, I think there's two more steps to—you get a verification screen essentially with the summary, the tally. And you're supposed to be reading that tally along with the Chair. In other words, what the Chair is reading should be what I'm seeing on the screen. And when we hit the announcement that

we're all done, one more screen, there's an icon to take the displays down and clear everything out. And then you move on to the next motion to get ready for whatever vote is following.

Q. Okay. So you hear that it's laid upon the table, you do a spot check, you hit release the vote, you hit confirm, release the vote; then the boards are down and you're are ready to move on?

A. Right.

Q. In your, what, 25-plus years of experience, have you ever been involved with the closing of a vote without a tally slip?

A. No.

Q. Why don't you tell us about August 2nd?

A. Okay. It started out as a—like everybody, 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.

In the course of the motion to reconsider the—it's obvious as you watch, and was to everybody, that the tally was closing in, it was getting to be even on both sides and very likely to be a bit of a tight vote. That happens. It's not unusual. We know how that works. And the protocol doesn't change. We do nothing differently in this situation, except maybe heighten your attentiveness to make sure you get the votes that come in, make sure they're done right. Because as we now know, one vote one way or the other can cause all kinds of havoc. But other than that, the protocol remains the same.

And De'Andre and I were processing our well votes. And we had next to no time left. I don't remember if there were any seconds or not. It might have been zero, it might have been a couple ahead of that. But there was an effort made to hurry up the closing of that vote.

Q. Okay. Can you elaborate on that for me a little bit?

A. It was a vocalization. And it came from—the majority leader was in the well and he wanted the vote closed because it was obviously going to be a tie. And the initiative was probably not to his liking, but——

Q. What did he say?

A. In short, and in plain simple language, it was "Close this vote now."

Q. Who was that directed to?

A. To be honest, I don't know. I think it might have been everybody in general. He could have been talking to the Chair, he could have been speaking to John Sullivan, I don't know. It was more of a general statement.

Q. Well, nobody on the rostrum, with the exception of the Chair, has the authority to do that, correct?

A. That's correct.

Q. So if he's directing somebody to close the vote now, wouldn't that necessarily have to be the Chair?

A. You would assume so, but you asked me who it was directed at. And I would have to be inside his head to know that. I don't know who he meant to talk to, but that was the gist of what the statement was he said.

Q. How many times did he say it?

A. There were at least a couple times that I can remember. And there may have been more. But again I have other stuff to think about, so I wasn't listening to everything he said and to whom he said it. But I also have to say that it is not unusual for this kind of thing to happen. It's happened before. And our job is to essentially stick to our protocol and not pay attention to that kind of thing. We still have to go through these steps regardless of what anybody thinks or wants. Because if you don't do that, you throw out your quality control and you have—it's wide open at that point. I can't say right or wrong, good or bad, because I haven't been allowed to do what I'm supposed to do.

So our job is to essentially—you keep your head down, concentrate on what you're doing and try to get the well votes in, if there are any to be processed, and wait for the prompts that you hope will come from the standard inquiries from the Chair to have Members vote who want to vote and changes if there are any. And all that stuff has to happen. It's not my rule. This is the protocol that we were trained to use, and it's been in place forever.

Now, the only difference that night—and I wish it had gone a different way, because I've seen this before, I've never seen the Chair buy into it, never. I wish he hadn't done it, but he did. And I happened to be standing there filling out or processing a well card, which I then turned around and handed to De'Andre for insertion into the system. At that exact moment, I don't know based on what—maybe from the goading from the side over here where the majority leader was, who at that point was I think taking Jonathan Sullivan's head off—for whatever reason, he bought into it. He banged the gavel and he called the a vote as a tie.

Q. When you say "he" you're referring to the Chair?

A. Mr. McNulty was in the chair. There was nobody—I couldn't believe what I was hearing, I couldn't. And the reason I couldn't is because of what I said earlier. And that is, I know where those well votes are, I know exactly what he's doing, De'Andre is doing back here. I know exactly that that number is going to change and it's going to change in about half a second.

Q. So at the time the Chair called—well, let me back you up a second. Had the voting stations been turned off at that point?

A. At that point they were; yes, I think so.

Q. And it—I'm sorry go ahead.

A. At that point I believe we had gotten to the point where I think the initial inquiry was made at that point for all Members to be recorded. And the vote stations may—actually, I don't remember. As I said, we open and close them more than once throughout the process. It just depends on the situation. But the point was that we still had well vote activity.

Q. I'm going to get you there, but let's just go step by step.

A. Okay.

Q. Do you recall whether Mr. McNulty had used the—you know, asked the questions whether there were any Members wishing to vote or change their votes?

A. At that point he may have started to. But we had the interruption coming from this—from the other side. The majority leader was there at that point. And I have to sort of listen to what's going on there, because I have to know what he's going to be doing. But

I've also got to be paying attention to what I'm doing. And at that point my recollection was, and continues to be, that the call came before the protocol had been observed.

Q. Well, at the time he made the call—and he actually gaveled the vote, correct?

A. Yeah, he banged the gavel.

Q. Banged the gavel. Did De'Andre have a well vote card in his hand?

A. Yes. He had the one I just handed him. He was processing it.

BY MR. SPULAK

Q. And whose was it, do you recall?

A. It was one of the Diaz-Balarts', I believe. I'm not certain. I think that was who it was, but it may not be. He probably would remember it because he actually had it in his hand. But in essence it has more to do with the fact that we had a well vote at all, that we actually still were processing these things. And I HAVE to—I can't say it enough. I can't tell you how stunned I was to hear what was going on before I knew we were done with processing those well votes.

BY MR. SNOWDON

Q. We've heard from more than one witness that, on occasion, Chairs will use a little bit of, I don't know if "gamesmanship" is the right word, but to try to make sure that—to get people to vote. There will be people milling around. And they essentially use that as a little bit of a stick to get people to once and for all cast the vote so we can finalize it and move on.

A. Sure.

Q. Have you seen that as well?

A. Yes. I can also tell you that, since we're into this, there have been conversations that I've been in the middle of, because I'm standing or sitting right there, between the Chair and Members who maybe routinely occupy the chair at one point or another, good-naturedly or however you want to describe it, discussing with each other just how well they are managing these 2-minute votes. "And when I bang a 2-minute vote, it's 2 minutes when I'm here, not when you're here." They laugh and giggle about it.

But the point is that if this protocol is to be observed the way it's supposed to be observed, then that time frame doesn't mean anything. It doesn't matter how fast you are or how quick you are or whether you did 2-minute votes right down to the minute or the second, ten in a row. What matters is we observed our protocol and we got it right.

Q. So you had seen some of that gamesmanship?

A. Sure.

Q. In your judgment, was that what was going on with respect to 814?

A. No, I don't think it was gamesmanship. I think, I think—this is my opinion, because I can't get inside anybody's head—but from where I was standing I think the Chair bought into the hurry-up, the 2-minute offense, if you will, and went ahead and closed a vote, or tried to, because he thought, I guess, it was the right thing to do. Now, I don't know. I don't know what he thought.

Q. But it's your understanding that when he gaveled the vote at 214 to 214 it was in effect to close that vote, not just to use that as a way to encourage Members to vote?

A. No. My thought right away was, oh, shit, that's what I thought, we are in for it now. Because as soon as those words came out of his mouth, that tally changed because De'Andre had just hit enter on that card I gave him.

Q. At that point were there other Members in the well who had well cards, either that they had filled out or were in the process of filling out and had not yet handed to you?

A. At that exact moment, no. But within a very short period of time, seconds, Members did appear in the well to cast some well votes. Changes mostly.

Q. Did you—you've obviously done this a long time. Did you say anything to either De'Andre or John Sullivan about what was going on at that point?

A. I know I didn't have to talk to John because he was as stunned as I was. But De'Andre and I were still trying to, as best we could, hang in with our protocol. And that means that I knew in my head that the number called, first of all, wasn't going to stand, because as soon as he said the number, it was different. So I knew that wasn't the end of the vote. I knew it wasn't over. By any standard it wasn't over.

And under those circumstances, because we had not been allowed to observe our standard protocol—it's okay sometimes to get through these steps and then back up and do them again, depending on the situation. As Members present themselves you do back up. You can get to the be-all, end-all, right to the edge of the envelope and be on the verge of being done and somebody can show up. And if it's at all possible we'll try to accommodate them. But in doing so you back up to a point where the Chair will then re-inquire, have all Members been recorded, are there any Members who want to change. You can do that several times. And it happens a lot that way.

Q. Well, this sounds from what you've said, this sounds like the situation on August 2nd was different?

A. Totally.

Q. Why? Tell me why it's different, where you've gotten to the point in the past where the vote has progressed and someone has come in and you've backed up a couple steps. Tell me why this was different.

A. As soon as the Chair made the announcement that night and banged that gavel, our protocol—we were thrown off, we were gone, we were done. We were off track and we were in no man's land at that point.

Now, why was it different than any other time when that happens? Well, for two reasons. One, the obvious reason, is that that tally was deadlocked and then suddenly ticked the other way. Now, the disposition means nothing to me. I don't care about the outcome of anything, except that we get it right. That's what I'm there for. The difference that night is that once we're thrown off of our protocol, whatever happens after that, it becomes difficult, even impossible, for us to maintain quality control and turn in a result that we can say, because we followed our protocol, this is a good

number, these are the numbers you can live with, work with, accept, that's it. The vote is as good as it's going to get. Notwithstanding the outcome. Nobody cares about that. Nobody at that desk cares about the outcome. We just want to make sure that we do our part to get the Members recorded properly from the disposition they've chosen and in a timely fashion within the protocol that we follow.

Now, the difference that night, let's say hypothetically, suppose that vote was 399 to zero and the Chair inadvertently or however called a vote prior to the time we're done with well votes and it's going to change it to 400 to nothing instead of 399 to nothing. Common sense tells you it's just not going to be a big deal. There might be some squawking about timeliness of casting that last vote. Maybe people will say well, How come last week when I was late, I got shut out once but you let that guy in? Well, that's easily dealt with, way more easily dealt with than this kind of tally we had that night. Especially on the issue that was involved. 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. It just wasn't even good. And so you throw the chaotic nature of the whole atmosphere into this process that we are trying to stick to and you get a result that's decided at that very second—not the final, because we had some well votes subsequent to it—but the very second that it was called as a tie and then clicked over to a one-vote difference in the other direction, all of a sudden you've got a major problem. And the only question you can really fall on is, did we do—what did we do to do our part to make sure that that tally was correct? And the only way we can make sure that happens is if we're allowed to stick to our protocol, and the Chair and everybody else does what they're supposed to do and say what they're supposed to say.

If you jump the gun, for whatever reason, any reason, you throw this all out, and you've thrown everything to the wolves at that point. There's no way to know, that I can say—that doesn't mean that the result is wrong, it means I can't tell you that it's right because I wasn't following my protocol.

Q. Is this the first time since you began as a Tally Clerk in 1979 that you had a concern about the integrity of a vote?

A. No. I mean yes, it is the first time, at least in this sense. I mean I've sat through dozens of close votes. That isn't the issue. We know how to deal with that.

Q. I'm not talking about the closeness of a vote. I'm talking about the integrity of a vote.

A. Oh, no, no. This is the be-all, end-all. This is the one sole time where we've had a situation like this where what we did and we normally do was superseded by somebody else's actions. So the short answer is this is the only time that I can remember that I've ever had a problem like this.

Q. We've been told, and have every reason to believe, that the Tally Clerks, all the Clerk's staff, really take their instructions from the Chair and that they're not exercising discretion, they are following these protocols and they are doing those at the direction of the Chair. In this particular case the Chair calls the vote at 214

to 214 and gavels it. And you, and apparently De'Andre, continue to process well votes; is that correct?

A. Right.

Q. So had De'Andre followed the instructions of the Chair, there were well votes that would not have been entered into the system. If he had begun the process of finalizing and releasing the vote, there are votes that would not have shown up in the EVS system; is that correct?

A. That's probably true, yes. But I need to mention also that I can't emphasize enough the—I've heard it mentioned that there was no—nobody saw any physical activity, let's say, in the well for a period of time that night just prior to that vote being called. And assumptions were made that, because of that, it was probably okay to proceed with pushing to shut this vote down.

Q. Can you elaborate on that?

A. Sure.

Q. Where have you heard that, and was that your experience being right there?

A. Well, before I get into answering that question I want to preface it by saying that physical activity in the well is non-reliable, totally. And it happens at least twice a week. You can find it anytime you want to look.

The first vote of the week when we typically have our 6:30 call, our three vote calls every Tuesday night, Members are coming in from airports and wherever they've been. It's not unusual for a large group of Members to come in and fill well cards out and then throw a stack of them at us and then disappear to wherever it is they're going, to talk to their friends and visit with whomever. They aren't standing in the well. But that doesn't mean we don't have a stack of well cards to process. That's not an indication that there's nothing happening. I mean, we're putting those things in one at a time.

And the same result can happen on the last vote of a week when everybody wants to hit the airports to leave. They'll charge up, they'll throw a well card and head for the door. So there's nobody there, but that doesn't mean we still don't have that stack of cards to process. It's not reliable.

BY MR. SPULAK

Q. To what does that apply, Kevin?

A. Well, the mention was—I'm about to get to the point where the mention was made of would there have been well cards not processed had the Chair's call been allowed to stand. The answer to that is, yes, despite the subsequent presence of Members in the well who wanted to vote, if we had not been processing a well vote at the time the call was made. I knew that tally wasn't right. Now, had I not had anything to hand back there and that board had been static for a period of time at 214 to 214 and a call made to close it, I am not saying that subsequent well votes wouldn't have been processed. But I would have at that point turned to John and gotten an okay to—okay, this has been sitting there at a tie, it was called a tie; what do you want me to do, are we going to allow these guys to be processed or not? So we had to get a call. That's a procedural standpoint. That's beyond my pay grade. That's the

protocol we follow. What made it different is that I knew, I knew that vote was wrong. I didn't need to be told. I knew it was wrong.

BY MR. SNOWDON

Q. Well, let me back you up a second. You knew it was wrong substantively, correct?

A. Yeah.

Q. Because De'Andre was still in the process of entering a well vote that you just handed him?

A. Right.

Q. You also knew it was wrong procedurally; is that right?

A. Up to that point, sure, because it was way early. Even if he hadn't been doing anything, we were still ahead of the game. I mean, I wasn't even prepared to write something down to give to the Chair.

Q. By "something" you mean a tally slip?

A. The tally slip, right.

Q. And so clearly De'Andre did not give you the verbal instruction we were talking about earlier to start preparing the tally slip?

A. No, because he was not at point where he would have given me that instruction. He would have told me when he was done, "Okay I'm finished, I've got this vote in, now we can start to go moving towards the closing process." And at that point I would have been prepared to do one of two things; either write the tally, because he said we were done; or, as I said, you anticipate arrival of Members. And we try as best we can to accommodate them with their initial votes or changes. And we always have. There is no getting around that.

Q. You mentioned that Mr. Hoyer came in and that there was this pressure to hurry the vote?

A. Right.

Q. Can you give me an idea of how long was it after Mr. Hoyer said that, that the Chair called the vote at 214–214 and gaveled it closed?

A. I would have to say that it wasn't instantaneous, but I would guess a few seconds had passed. He had time to—in retrospect I think probably 10 seconds, maybe.

Q. You all had done a series of 2-minute votes?

A. Just prior to that, right.

Q. In each of those cases had you followed the protocol for closing the vote?

A. Yes.

Q. In each of those cases were you the standing Tally Clerk?

A. Yes.

Q. In each of those cases had you prepared a written tally slip to pass to the Parliamentarian to pass to the Chair?

A. That's correct.

Q. Was Mr. McNulty in the chair both of those times as well?

A. I don't remember. I don't think so, because we would have had a Chairman—at that time of night sometimes they do double duty. But I think we had a Chairman of the committee who was in the chair, and Mr. McNulty assumed the chair when we came back into the House.

EXAMINATION BY MR. PAOLETTA

Q. I just want to go back to one statement you made. I think it's clear, but just in terms of hanging out there a little bit for me. You said that when we first started talking about Mr. Hoyer coming down and indicating when the vote closed, I think Andrew said something about has that happened in the past in terms of somebody wanting to close a vote down, and it got into sort of a gamesmanship discussion.

But were you talking about in terms of you said, yeah, it's been done in the past——

A. Yes.

Q. [continuing]. Does that mean other Members or other majority leaders have come down and said shut a vote down?

A. Yes.

Q. And—okay. And when that happened they started the procedure to close it as opposed to calling it immediately?

A. Typically that means that—we cooperate as best we can. We're not in charge of anything. We work with everybody. Now, when we get the indication that the majority, whoever it is, wants things to move along——

Q. Right.

A. [continuing]. We're going to do our best to comply with that, but not without sticking to the script.

Q. Right.

A. Now, we may hurry through it. But each and every point of that script is going to be met before anything is done officially.

Q. And there hasn't been a time, to your recollection, when a vote was called and there were votes still being processed with the seated Tally Clerk?

A. Okay. We're getting into semantics. Calling a vote, sure, it's been attempted. But I think intent has to be involved here. Because Members aren't always any more aware—in fact, let me back up a second. Nobody but us is aware—the Tally Clerks I'm talking about—is aware of whether there are any well votes to be processed. We will communicate to the Parliamentarians as best we can, when we have a lot of them, so they know that we're busy with them. But the Members don't go to the Journal Clerks, the Bill Clerks, the Reading Clerks, the Chair or the Parliamentarian to cast votes. They come and see us. We're the only ones who would know whether we've got anything.

To that end, occasionally the Chair may not know that we're still processing something and may begin to inquire. You can hear. I mean I hear it happen all the time. They'll talk to the Parliamentarian and say, "Are we ready to go, can I call this vote?" And if the Parliamentarian is aware that we're still busy, they'll say not yet. But that's when everybody is cooperating.

Q. And the check on that is there's a slip handed up?

A. At the very end.

Q. Right.

A. Right. I mean, not call it, but to begin the process to move towards calling it. The slip is never done until we've matched each and every one of these closing things and everybody is on board that we're done, that there's nobody around who wants to vote.

BY MR. SPULAK

Q. On that point, I think you've already said that the slip won't be done until everyone has agreed, but yet there are multiple slips at times, because you have agreed at that point in time that things may change after——

A. Absolutely.

Q. [continuing]. So they'll be other slips?

A. Absolutely. That happens routinely. We tear up and throw four or five of those away sometimes. Again, it's a call that you make. But you still use the protocol, but you may back up a step and then go forward again and back up again and go forward. It depends when Members come in and you have the—you know, some people in the chair are, I don't know what the word is, more lenient than others about allowing it, depending on—to be honest, without going into specifics, some of the biggest complainers about votes taking too long are the ones who are the last ones in, all the time. And it happens regularly. It's not like it's once in a while. It's subjective as all hell.

BY MR. SNOWDON

Q. Let me ask you this. Mr. Spulak asked you about the process of going through multiple tally slips?

A. Right.

Q. It strikes me that there's a significant difference here because as opposed to giving the Chair a tally slip where they begin the process of calling a vote and closing a vote down and then Members come in and vote, in this particular case there was never an initial tally slip that would have been a catalyst for the Chair to begin that process; is that correct?

A. Well, the catalyst from the—the tally slip is never going to be a catalyst. That's a result. That's after we've reached all these points of inquiries and noticing whether there's anybody there. And the instruction comes from the seated Tally Clerk that everything is closed down, we're ready to proceed. Then the slip is written. It's not meant to be a catalyst. The catalyst is a prompt from the Parliamentarian to tell the Chair that you can now inquire about initial votes, changing of votes, pausing them to see if there's any activity.

I mean, you wait for all kinds of things to give everybody the best chance that they have to get in there and do what they have to do. The slip is written when we all agree that as far as we can tell, nobody is around and nobody wants to do anything and the tally is as good as it's going to get. That's when you write it.

Now, everything around here lately is hurry up. Everybody wants everything yesterday. And that's unfortunate, in some cases, because these protocols take as long as they take. There's no shortcuts and there's no hurrying through anything at the expense of accuracy. I have never been told by anybody to sacrifice accuracy for speed, never.

BY MR. PAOLETTA

Q. Well, you just mentioned recently. So have there been other examples of this?

A. Oh, no, no. I'm just pointing out that occasionally we hurry through the protocol. That's been done, I mean. But even when you—you have to have some wherewithal if you're the seated Tally Clerk. Even if you're being hurried, you have to not be afraid to turn around and say stop it, because we've still got something happening here, and I don't care how much of a hurry you're in, I still have a well vote to process, or there's somebody standing here who wants to get recorded and they're physically there. Arguably they're where they're supposed to be. You can't not—I mean, that's up to the Chair to say huh-uh if they want to. But you have to know that if that Member complains I'm going to say, "You talk to them. I didn't shut you out. They did."

BY MR. SNOWDON

Q. You mentioned that the Tally Clerks were the only ones that were aware of how many well votes there were and what the status. Wouldn't the Reading Clerk, if she's at the podium reading the changes as the seated Tally Clerk is putting them in, wouldn't she also be aware of the fact that there were changes coming in and well votes being processed?

A. It's a fair question and a good one, and I can answer that because I am also a Reading Clerk. I do that work. I've done both, I do both, I still do both.

The Reading Clerk may, if he or she is still standing there, may yeah, may very well be aware. But the Reading Clerk has got other stuff to do too. And if we are at, as in this case, this particular case, this was a motion to recommit with instructions. The Reading Clerk is busy at that point, if she's doing her job, and I know Kevie was, getting ready to report back the amendment that was about to be agreed to based on those instructions.

So she may be standing there, she may be over at her desk once we're done calling votes. She's not going to stand there forever. She may go back and do whatever she's going to do. So she may not know in every instance that there is still something happening on my side of the desk.

Q. When you reviewed the tape, do you recall where Kevie was at the time the vote was called at 214 to 214?

A. I don't remember, no. I could look at it, to know from looking. But whether she was at her post standing at the podium, I don't know, because I had other stuff myself to do that night. I was busy trying to be ready to move in whatever direction we were going. And then the hammer fell and then at that point——

Q. Well, if she's at the podium reading changes, is there any way that the Chair would not know that there were still votes being put into the system?

A. Let me—could you——

Q. I think there might have been a double negative or two in there, so let me try to back that one up. If the Reading Clerk is up reading changes, as is typically the case as they're being put in by the seated Tally Clerk, wouldn't the Chair have had to know, based upon hearing her read those changes, that there were still votes being put into the EVS system?

A. That's a fair question. Yes, that would be an assumption you could make. But again, having done both of these jobs I know from

experience as a Reading Clerk that I may announce something that was subsequently entered into the system, and I'll leave immediately right away and sit down and be called right back a half second later because someone has reappeared in the well. I may not even sit down before I have to be summoned back to announce whatever this vote is that has just been submitted. So the Chair could easily use that presence of the Reading Clerk to make assumptions. But the Reading Clerk can disappear and reappear in such quick fashion.

Q. I'm not even talking about the physical. I mean, the visual of the Reading Clerk. But the Reading Clerk is actually reading aloud that people are changing their votes when they're at the podium, correct?

A. Yeah. You mean, the list submitted from the Tally Clerk at the initial——

Q. And as the Tally Clerk—I mean, we were told by Kevie that her standard process is, as the seated Tally Clerk puts those in the EVS, she's sort of leaning over looking over his shoulder and reading those——

A. Yes.

Q. [continuing]. As that is being done?

A. Yes.

Q. So if she is actually up there verbally reading changes out loud, wouldn't the Chair have had to know that there are changes being put into the EVS system?

A. Only—well, okay, in your example, yeah sure. But—but the Reading Clerk is typically summoned by the seated Tally Clerk and notified that I need you here to read these. So her return, or my return, whoever the Reading Clerk might be, would certainly signal that something is going on. But there can be—the Reading Clerk could read that list and there can be a lapse, and then he or she returns to what she's doing and there's nobody there for 1 or 2 or 3 seconds, until there's a need for that Reading Clerk to be summoned to read whatever subsequently may come in. Now, whether that—that happens all the time. I mean I bounce around ad nauseum sometimes because of late arrivals.

Oh, here's an example. This happened in December. I don't know if you remember Mr. Kucinich had a resolution of impeachment that he wanted to submit. And Mr. Hoyer moved to table it. And the vote proceeded along party lines, just the way you might expect, until about halfway through; and then somebody got the idea that, hey, maybe this is a way to have a debate, we don't want to table it. So the word went out to change, I want this to pass—or to not pass, I want the tabling motion to fail so we can debate this.

Well, it happened to be at the point in time when we were almost through. I had to process——

Q. Meaning you can't change with a voting card?

A. With a voting card. I had to do 193 well votes that day. And aside from the impetus that provided us with that side show, the time spent doing it got on everybody's nerves. Everybody was upset because it was taking forever. But that's what happens. So the Reading Clerk is over there doing her thing, and all of a sudden I need you here, I only have about 190 of these things we need to call.

So I mean, you never know. You're summoned up there and you do what you have to do whenever you have to do it. The Chair can make assumptions at any given time, but that changes so quickly that before the words are out of your mouth the situation can be totally radically different.

So that's why we talk to each other among ourselves. Everybody checks with everybody as to whether you can see anybody coming; do you see the board changing, do you hear anybody? I mean, vocally you hear all kinds of stuff. Every time the elevator door opens out in the hall some doorkeeper will shout one more. Whether there's anybody there or not I don't know, but we all stop, everybody waits to look and see if there's going to be an appearance. And if we're at the point where that has to be allowed, then we take care of it. But it's a stopping point. It interrupts everything and it takes time.

Q. There came a point in this process where De'Andre, according to a memo that he's provided to us, a vote is called, he proceeds to enter; at least one more well vote, I believe it was Mario Diaz-Balart's vote who gets put in?

A. That's correct.

Q. He then proceeds, because the Chair has indicated that the vote is to be closed to go through the steps of trying to finalize the vote and close it out. At some point in that process the system locked up; is that your understanding?

A. That's my understanding, yes.

Q. At what point in the process did the system lock up and what, if anything, did De'Andre tell you about that?

A. It was a—let's see.

Mr. SPULAK. I'm going to interrupt. I should let you answer, but I don't think actually that's what happened. And I don't think it's accurate to tell that to Kevin, to have him rely upon it. In fact, the system didn't lock up at that point because De'Andre was continuing to——

Mr. SNOWDON. No, what I was representing is what De'Andre has represented in writing. That may not be in fact what happened, but his understanding of what happened.

Mr. SPULAK. I don't think that's what he said. He said that he turned around to John and asked him at that point, Are we still processing votes? And then he was entering other votes. And he said, Because that's my job.

I don't think he could have done that if the system was locked in the sense that you're describing it.

Mr. PAOLETTA. He said he kept pushing that button, pushing the button and it wouldn't respond.

Mr. SPULAK. To release the vote. That was after that.

BY MR. SNOWDON

Q. If you look at page 3 of De'Andre's, and we'll obviously ask him this afternoon: Having heard the Chair announce the tally and gavel down the vote, after I had entered the names of Members (who had turned in well cards into the EVS), following Mr. Mario Diaz-Balart's, I heard you shut down the vote. I followed all the steps I usually do in closing a vote: Closed the voting station, first

step; terminated the vote, second step; finalized the vote, third step; released the vote, fourth step.

Then it goes into a parenthetical about distinguishing between hitting final and finalizing on the boards.

Then I got to the fifth step of the process, (the last step), which is, "quote", are you sure you want to release the vote, "unquote", and I did 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 to 10 seconds of trying to release the boards, more Members came into the well of the House to vote and submitted well cards.

So according to what he's saying, he processed Mr. Mario Diaz-Balart's vote. He then tried to close it out and release the boards and the system froze up on him, at which point in time he was given several additional well cards.

Did you know at that point that De'Andre was having trouble closing out the vote in the EVS system?

A. At that point, I need to be sure, I want to answer this as best I can from my experience sitting at that table. I believe that being locked out from closing the vote down is not a deterrent to remaining at the well vote screen and allowing you to enter well votes. You can still do that. But you can't get out of there to move towards the closing process because of some anomaly that other people have experienced. And I think one time I may have bumped into it, but I knew about it at that point and how to get out of it.

And I think if you look at the video you can—I thought that's what it was. And I leaned over the desk, albeit looking at the thing upside down, and tried to help him get out of there. That's when I learned, when he said, "I can't get out of the screen."

Q. But at that point, from what I understand from what he said—and again I'm not representing whether it's accurate or not, that's just what he said in writing——

A. Sure.

Q. [continuing]. Is that he was trying. But for the system locking up there he would have closed out that vote and released the boards. The system wouldn't let him do that.

A. Right.

Q. And at that point he got some additional well cards from you, obviously, since they would have handed them to you——

A. [Nonverbal response.]

Q. [continuing]. Which he was unable to put into the system. But for whatever reason, whatever anomaly there was, he could not close the vote out. Is that your understanding of what happened?

A. Well, it makes sense. I have to say that it's a two-person operation. And I don't know that I can say what he—I mean, he was in the chair. I don't know what he did exactly. And I don't know the order in which he did it because I expected the same protocol we all follow, because that's what we're trained to do.

Bad luck that night. I don't know what happened to the EVS. I don't know what caused that and what caused his problem. My understanding at the time was that we were still good to go to process the well votes. And I didn't know until after those votes were processed that he had a problem with getting out of there. At that point, I think, I leaned over to try to help walk him through what

I knew to do. Had I been in the chair I would have tried to do these things.

Q. And is that to escape to the main screen?

A. Yeah.

Q. And sort of work around it that way?

A. There's a—yeah, an icon on the main menu that allows you to back door, I guess, to terminate the process. You can go in that way and shut the summary boards down. But he evidently couldn't get off the well voting screen, which also has an icon at the bottom which is a release to move to the next step, and he couldn't get out of that.

Now, I don't know—I still don't know what that was all about and how that happened, I honestly don't know. Bad luck at a bad time, to start with. But beyond that, I did everything that I could to help him. Beyond that—now, Ed Sorensen was up there. And Ed is the guy who takes this thing apart and puts them back together. And if he couldn't figure it out—I mean that in the sense of if I'm the driver of a car, I may be a good driver but I'm not a mechanic. Well, if the mechanic can't figure it out, then we got a problem. And that's where I thought we were at that point.

Q. Before Mr. Sorensen came up to the rostrum and started talking to De'Andre, did the two of you talk? Did he ask you for help?

A. Yeah, because he said, I can't get out of this screen. And my first thought was that, okay, you went to that final thing and now you're locked out, because it's happened to other people. And since that happened, we were provided with a—you know, the circular route.

Q. Well, did you suggest the circular route to him?

A. Yeah. That's what I was doing.

Q. Did it work?

A. No. He said that he could not click on the—it's the cancel icon, I think, is the one at the bottom right of the screen, I think. Cancel is what gets you out of everything and moves you to a place where you can then return to the main menu. In fact, I think it might be two cancels, two in a row; one to get out of there and another one to cancel whatever it's showing you to get to the main menu. He couldn't get out of that screen at all. And so at that point——

Q. At that point had you already handed him the cards for Mr. Space, Ms. Gillibrand and Mr. McNerney?

A. Prior to that discussion, I think those well votes were—well, they might have been subsequent. I can't remember. Or at least certainly right on top of it, because the situation wasn't locked down. We could still certainly take those well cards.

Q. But you don't remember the order of whether you gave him the well cards, he then put them in—he had already been having trouble according to this.

A. Okay.

Q. You gave him the well cards, and whether he put them in. And then you had the discussion about how to work around to close it down; or did you have the discussion about how to close it down, then the additional well votes came in, you couldn't close it down, he puts in the well votes and then he had the discussion with Mr. Sorensen?

A. The sequence as best as I can remember had to be that the well cards came first. And then he realized that—I mean, he could still do that. He wouldn't have known there was a problem because well cards can be entered. The problem came when he tried to get out of there.

Q. Well, apparently he already tried to get out. It says that he was allowed to keep putting in well votes. He already tried to get out and had a problem, and then he was given the additional well votes which he could input.

A. I knew about it at the point in time where I was beginning to expect to shut this thing down. That's when I think I first really realized that he couldn't get out of there. And that's when we had the try this, try that, session that didn't work. And so——

Q. Did you then summon over Mr. Sorensen or did he come on his own?

A. I think he came on his own, because we were—De'Andre was in obvious distress over what was happening because he—and also just from plain sight, the Chair was trying to move things along and nothing was happening with the summary boards. And he then walked up to see, I guess to see what he could do. And it was explained—De'Andre explained to him, I guess.

Q. Were you there for that conversation?

A. I was physically there, but I don't know that I remember anything that was exchanged between those two. And I have to point out, too, just as a reminder that it was noisy in there.

Q. Sure.

A. I mean it was totally noisy.

BY MR. PAOLETTA

Q. I want to just back up. I think you made a reference again earlier about—I think you said Mr. Hoyer was about to take John Sullivan's head off?

A. That was my impression, yeah. I hope you're not going to put that in the record. I want to stay employed.

Q. Sure. But I want to actually just explore and just get a sense of what you recall him saying. You're there, I know you're busy and you're trying to do your job, but obviously you heard enough to make you think he's upset. Do you recall that conversation at all?

A. What I heard was something to the effect that you don't run this place, we do. And I heard that because—I guess because there might have been a lull in the noise level for half a second. But I didn't catch all of what was said because—well, first of all, just by point of habit. The standing Tally Clerk has to be looking at one or two of the summary boards in order to write the tally. You have to look at somewhere to get it. And my habit typically has been mostly to—it's just more comfortable for me to stand with my left elbow hooked over the desk facing the summary board and the Republican side of the room. So my back was turned essentially to a lot of what was going on back here. I could hear some of it. I didn't see all of it. But I was aware it was going on.

I don't always know for sure what I hear said—and sometimes you hear things—and I never know sometimes whether to take it seriously or not, because I've heard some weird things said up there, very weird. And half the time people joke and it is a joke,

and sometimes it isn't. But if you're not sure, the best thing to do is to shut up, lay low and let it get over with.

But my recollection of that particular night was it was extremely unpleasant for what John had to listen to. And I think it was uncalled for. I don't think it had a place.

Q. I think you do hear on the tape the statement, "We run this place, you don't," when you're watching it on there. Someone had mentioned something like, Don't ever do that to me again. Do you remember that?

A. I'm sorry, I don't remember hearing that.

Q. Do you remember anything else about that conversation as to why it was, you know, so unpleasant, as you said, for Sullivan to be listening to this?

A. I'm trying to dance around not using the profanity that was laced in there, but some of that was there. And I think—you know, as I said, I've seen and heard a few things. I've been here longer than some people, not as long as some others, seen some strange things, heard some strange things. I think those words, those kinds of things, if they're said to somebody on the street, you should probably be thankful that you've got a full set of teeth. I just don't think you should talk to anybody that way, and I also think he was wrong.

BY MR. SPULAK

Q. Was this part of the same conversation when he said, We run this place, you don't?

A. Yes. Part and parcel of some of that. The initial approach was generally directed at—you know, we talked about maybe the Chair should have been the recipient of the initial "shut this vote down now" comment. But again, that's the cleaned-up version.

There was some other stuff said. I think maybe, and I hate to do this, I don't even know if it's right, I'm guessing, McNulty knows better. He's been up there a hundred times, if he's been once. He's 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. I don't get it.

Q. Do you remember what——

Mr. SPULAK. Mark, if we're going to adjourn at noon according to the schedule, I've got some questions.

Mr. PAOLETTA. I'm sorry, I have one last question.

Mr. SPULAK. Perhaps you guys can take 5 minutes to wrap up.

Mr. PAOLETTA. Okay.

Mr. SPULAK. Okay.

BY MR. PAOLETTA

Q. Do you remember anything John Sullivan said, sort of the response?

A. Typically, when John is involved, he's very low key. I don't know what he said. I don't think he raised his voice. I think if he did it wasn't audible to me. But John doesn't typically, as far as I can tell, operate like that.

Q. Had you ever seen any Member or majority leader interact with the Parliamentarian that way?

A. Sure. Yeah, it happens. But again, it's the whole thing that happened that night that makes it different from any other night, is the Chair's response. I mean, I've heard it a hundred times: Close this vote now. I've heard all kinds of admonitions and hurry ups and we've got things to do and I don't like the way it's going, hurry up, all that stuff. But I've never seen the Chair make an early call like that without——

Q. Okay. Thanks.

A. [continuing]. Going through protocol.

BY MR. SNOWDON

Q. I just want to briefly ask you this. The decision was made at some point to abort the vote?

A. Right.

Q. What can you tell us about that? Who made that decision and how was that decision arrived at?

A. Well, the decision was arrived at, and I'm telling you this mostly because this is what I learned after the fact. The abort idea, I'm not sure whose idea that was. But the abort idea was evidently because we were unable to take those summary boards down and move to what was already in place; a motion to reconsider that had been made. And the Chair had announced that the question was on the motion to reconsider, but we still were stuck in this loop.

Abort is, I now know, the way to get those—what they intended to clear those boards and move to the next step so we can get the next motion up.

But as a point of history, given the situation that I heard that night and the stuff that was going on, the atmosphere, the poisonous stuff being said, I thought for a moment that maybe somebody had come to their senses and decided to throw it out and do it again, because—not in the motion to reconsider, but just take the whole thing over again. And there's a reason I thought that. I think I mentioned it to Muftiah once in a conversation. We used to do this in the Committee of the Whole, it was routine. It's called a notice quorum. And the idea was to get 100 Members here, and once that tote board hit 100, the Chair would gavel the quorum call void, because you theoretically had a quorum.

The abort key, which is on our system, it's there, it's what you use. It throws the whole thing out and reuses the roll call number just as if it never happened. I thought I saw a chance here for maybe that to be a way out of this that night, because it was that bad. I mean, it was awful. I thought well, okay, here's a way to not argue about whether we're moving for this motion and closing this one out, we're just going to throw it out and do it all over again. That was my initial thought.

I subsequently came to realize that the intent to do that was to clear the board so we—and we were never going to do it again in the sense of throw it out and do it over. There was going to be a—and there was—a motion to reconsider that was adopted. And the question came up again subsequently on that same motion to recommit later.

So it did happen, but not the way I envisioned. But that was the thought process that I was initially going through, was the abort idea. It made sense to me initially, because I knew there was a his-

tory for it. There was at least a precedent for doing something like that.

BY MR. SPULAK

Q. But other than the precedent, why else did it make sense to you in practical terms?

A. Practically? Because the initial—obviously we had a discrepancy over what anybody thought should have happened in terms of the final outcome because of the early call. And throw that in from where I was standing, it took a little while. We were there 4 or 5 minutes, I think, through this whole process while it worked itself out. But it never got any better, it didn't get any more civil, it got worse and worse. And I thought, okay, maybe this is a way to do it.

Q. But didn't Mr. Hoyer try to do that by moving the vacate the vote? Wouldn't that have had the same impact?

A. Yeah, he did. And in fact he did make that motion. I heard him do it. I don't remember at that point—I want to say that the—okay. All at this exact same moment he is behind me over here on my left as I'm looking at the Chair at this microphone. I heard him try to vacate, to move to vacate. I heard Mr. Boehner on that side moving to adjourn. And I heard subsequently the Chair made some sort of reference to the vacating not being in order, I think.

Q. Because the vote was still open?

A. Because the vote was still open. He then changed his point of reference to a reconsideration, which was, I guess, parliamentarily better than what he was trying to do, but we still had that open vote problem. And subsequently the end result was the reconsideration after we aborted that vote to get the stuff going again; reconsideration adopted, question recurred, and it failed again on a voice vote at that point.

But it did happen the way everybody, I think, wanted it to, but not in the fashion I envisioned, at least from the aborting standpoint.

Q. Thinking back to what you said a little bit ago, do you remember where Mr. Hoyer was when he first told the Chair to close it?

A. If I'm standing at the rail and looking at the Chair, he would have been approximately where the lectern is in the well, on the Democratic side, somewhere in that area, I think, approaching the well.

Q. So he had already crossed through the well and he was on the left side of it?

A. Either that or coming right through that area. He may not have actually been at the rail yet, but he was closing in. That's my recollection.

Q. And you said that he was talking to—you weren't sure to whom he was actually talking, but——

A. Looking directly in the direction of the Chair, but speaking to whom I don't know exactly.

Q. Do you remember if the Chair was looking at him at some point?

A. No, I don't, I'm sorry, because we at that point were still occupied with the well votes, so I wasn't really looking at where Mr. McNulty's eyes were.

Q. Do you remember whether there were any well cards at the time that Mr. Hoyer approached the podium?

A. If my recollection is correct, the time that he approached was approximately about the same time we were working on that Diaz-Balart well vote. It was in my possession at that point. And if you had been walked through what we do when we get these well cards, we have to jot the well card number up in the corner and then hand it to the Tally Clerk who is seated.

So my guess would be, from remembering that night, that I probably had it at that point, or had just gotten it when he initially approached at his request to move things along. And then there was a subsequent conversation involving John off the side of the rostrum which we've mentioned. And the next thing I know, the gavel falls and——

Q. Do you remember the Speaker voting?

A. Do I remember did she vote? I don't remember, but if she did and she voted in the well, that's easily retrievable.

Q. Do you know when Mr. Lampson voted?

A. Directly, no, I don't.

Q. No, by well card?

A. No. Mr. Lampson, I don't remember exactly, but my guess would be that he came probably in the—I guess the first surge, the normal procedure that we would be employing of well voting.

Q. Just as a general rule, why do clerks read the score off the tally boards? Couldn't you read it off of the screen? I mean, isn't that the most accurate way of knowing? I mean, I know you wait to see things.

A. I understand.

Q. I'm not suggesting that you're wrong. I'm just curious. For real quality control why wouldn't you get it off of the source, the screen?

A. I think from a practical standpoint to do it that way, the way the system is set up, to get to the point where you're looking at the tally on the screen, typically we are at that point when the Chair is already reading what we've given them. But as has been pointed out, if you're at that point and you have to back up, because there are going to be additional well votes entertained, it's a marginally difficult place to be to get back to the well screen.

It's not a big deal. None of these things are in and of themselves. But collectively when time is an issue, and also with collective stuff going on around you, it's easy to lose track of what you're doing. The individual who is seated at that machine is, aside from trying to process and close out the existing vote, if it's a motion like we had that night, if you know what you're doing, what's going to happen is once that vote is over the Chairman of the committee is going to report back to the House forthwith, if that's the language in the motion, and there will be an amendment. That's voteable.

You've got to know to be ready to put that vote up if somebody desires. You've got to be thinking about that. And if you get past that point, you also revert back to engrossing the third reading, which is also voteable. Typically we don't do that. I mean, usually it's glossed over so fast people don't realize you did it. But somebody aware of what they're doing could demand a roll call on that.

If you're paying attention to what you're doing, you've got to be thinking about that kind of stuff.

And so to back up from that point, which is a good question, because, yeah, it would be maybe reliable to some people, but it's supposed to be the same here as it is up there. So you can get yourself caught in all kinds of knots if you're there and have to back up and then think about, oh yeah, now we're going to here or there or wherever.

Some of those motions you can store ahead of time, you can anticipate that they're coming. They're standard motions on passage, suspend the rules and agree to those things, the simple ones. But the off-the-wall stuff, that's got to be keyed in its entirety through a blank screen that's allowable for you to do that.

And, shoot, I'll just throw one out. Barney Frank had one not that long ago. We had a motion to table the motion to reconsider ordering the yeas and nays on a motion to adjourn. That's where we wound up on that one. Luckily there was time enough. I think I was in the chair that day, myself in my seat. There was enough discussion for me to have a few seconds to jot down all the alternatives I could think of. So I had a pad with something to write that I could look at and know to take bits and pieces of these things and throw them in there so when the vote came I had something up there that was correct.

But you have to—it's not as easy as it sounds. You have to be able to wrap up what you're currently doing and be ready to do whatever is coming next. And the less you have to do bouncing around in that system, the better off you are to make that happen. So I'm not answering your question, I bet, the way you wanted——

Q. Oh, no.

A. [continuing]. But it's certainly something you could do. But it's supposed to be the same in the system as that board. So in a perfect world you should not get into trouble reading it off that summary board.

Q. I'm not trying to—and I know how strongly you feel about what happened that day and how it interrupted the process, but—and this goes in part to one of the questions Mr. Snowdon asked.

Do you remember, had there been any—prior to the time that Mr. McNulty called, had there been much activity on the board? In other words in the seconds, 30 seconds or so?

A. Oh, leading up to it?

Q. Yeah. Had it been switching?

A. Yes. It had been incrementing one, two on each side. At one point it was passing by 5 and then another one losing by 5, and then it would creep up. And then the point that it was about to match is when the process began with Mr. Hoyer coming to the well. I mean I understand fully what his intention was. I know exactly what he wanted to do. But the end result was we just weren't allowed to do what we're supposed to do, and this is what happens when you get off that track.

Q. Notwithstanding that, could he have—if he didn't believe that there were other votes about to be cast, whether there was someone in the well or not, let's leave that aside. If he looked at the board and saw the board at 214–214 and he was not aware that there were any votes being cast or changed from the well, could he

have—even though he wasn't following the procedure, was there any way that he could have felt that that is what he thought the vote was at that time?

A. Sure, absolutely. But that's the—the problem with that is that we are the only ones who know what the well votes are.

Q. I understand.

A. So the assumption—sure, yes, he can make that assumption. But it's a luck of the draw. Maybe you're right, maybe you're not.

Q. Right. I understand. And let me just say that I think that—well, okay, that's—I mean, I think that's what happened, but I'm not testifying.

A. I wish it hadn't. But I don't think that—as I said, he's not the first one to come down to the well and try to move things along. That happens all the time.

Q. And that happened when the current minority was in the majority?

A. Yes. Mr. DeLay was there all the time, barking at people to move things along. But the response—our response to that, no matter who is asking, is to facilitate this protocol and match it up with what their desires are. And that means moving it as best we can without sacrificing accuracy and without sacrificing the protocol itself. Because that's the quality control. That's what says this is a reliable result. And we're the only ones who can do that.

Q. Let me ask you—and so Mr. McNulty called out; sort of immediately thereafter, Kevie started announcing some changes. And then at that point it should have been 215–213 with the motion carrying; is that right?

A. It could have been, yeah, because we had subsequent changes that ultimately altered that.

Q. Right. That was later. But I'm talking about almost immediately after the first 214–214 call the board refreshed——

A. Yes.

Q. [continuing]. And it showed 215–213?

A. Exactly.

Q. Then there was a lot of human cry about that?

A. Right.

Q. What was the minority attempting to do, do you think, at that point?

A. Do you mean procedurally, or do I know what they're thinking or trying to convey?

Q. Yes.

A. My guess would be, just from experience, that they were expressing a fair amount of unhappiness with a vote being called a tie and therefore being defeated, when clearly, a millisecond later, they had a victory by one vote.

Q. And then what happened?

A. Well, the noise level just grew and grew at that point. And essentially we just—we stopped for a brief period. We didn't do anything, forward, backwards, nothing. We had—at that point, Members recovering from the initial shock then began to approach the well and submitted well votes which we processed. And again, we took them because I knew that we weren't done. I mean, the protocol is what it is. Subjectively, the Chair can call a vote anytime he or she wants to, but not while we're still processing votes.

I mean that's not me, that's just common sense. You just can't do it.

Q. Did anyone tell you or De'Andre or anyone else to stop processing votes?

A. No, no one said stop. And initially, I think, De'Andre turned around, as was earlier mentioned, and made sure it was okay to proceed taking the well votes, which he got the okay to do. But no one said stop doing anything.

Q. And so eventually, if you will, that vote ran its course, right? Everyone who wanted a change, everyone who wanted to vote, everyone was recorded and recorded accurately, as far as you know?

A. To the extent that we were proceeding with—yeah. Now, there are two well cards that you know about.

Q. Yes, yes, yes.

A. And why that occurred, I can only say that the House had stopped. The confusion got to be so bad that we simply quit doing anything. We weren't going anywhere and the noise level was deafening and John was doing his best to pick the pieces up and make something happen out of what was going on around all of this. And ultimately, I think, if my memory is right—I know, because they were both the minority and majority leaders, I know what the intent was: They both wanted to wind up on the prevailing side so they could move to reconsider, depending on what the outcome was. As it turned out the scales tipped in the direction—actually it didn't. But Mr. Hoyer's vote was a duplicate, he was already voting aye.

Q. So you couldn't have entered that if you wanted to?

A. No. The system would have told us that he was recorded already. But the other, Mr. Boehner's vote, would have effectively moved him to the——

Q. Prevailing side?

A. [continuing]. Prevailing side. But at that point, Mr. Hoyer had already—we were well into doing what he would have wanted to do anyway. We had just reached that "all stop" point and everything came to a standstill. And for whatever reason, right or wrong, that card and Mr. Hoyer's card were simply left. All I can do to explain that away is to say that we were so far off our protocol that we were wandering around, just moving, trying to see where we're going next. And then you throw in the cantankerous EVS. That made a bad situation even worse.

BY MR. SNOWDON

Q. The only—last question I have is one of the things the Select Committee has been tasked with is coming up with some recommendations to make sure this type of situation doesn't occur again.

Do you have any thoughts or comments about what the major problems were that evening and how they could be addressed?

A. Well, that evening in general, yeah, I do actually have some ideas. I won't bore you with the step-by-step process that we go through to process each and every well card that comes through there. But I will say that because of how we do what we do to guarantee this accuracy as best we can, 2-minute votes are a terrible idea. They don't accomplish anything. They don't save any time.

And in the end, you need total cooperation from the Members. They've all got to be there already. And minimal well votes, minimal. I mean more than five and you've got trouble, because you're running into a time constraint.

The other recommendation that you might want to look at would be, I don't think it's ever going to happen, but we currently don't have assigned seats and we don't have dedicated voting stations for the Members. You have probably seen at one time or another—I have—the Maryland State Assembly has that setup. Roll calls take—I don't know what they're given, 5 seconds or something. They put the question, everybody is in their chair, they hit the button, the tally is up and it is over. That assumes everybody is already there for whatever stack of votes you might have coming. You have to get everybody there.

So the answer to that would be—I don't know how you would do it—encourage everybody to get there, not wait. I mean, typically—it just happened yesterday and it happens every day—the clock is down to zero and there are still 250 people not here, sometimes 300. Now, that's the first vote in a series, I grant you. And after that, then everybody is there. But how you get them there, I don't know. I even heard Mr. Hoyer one day exhort everybody and tell them, You're going to get locked out if you're not here.

The very next roll call, the one right after that, after that statement was made, the clock went down to zero and we had 200 people still not there. So I don't know how you do it. But getting everybody there somehow, some way. They have to be encouraged to get over there.

Now, another way to look at it might be, we currently have a function in the system that locks out changes. When the clock reaches 5 minutes or less, Members who want to change now have to come to the well to effect their change. Initial votes are still accepted, changes are not. You have to come to the well to do that. Well, maybe you ought to lock in a system function that closes the vote stations without me doing anything at zero, zero, zero. So that everybody who comes in after that mark is going to have to come to the well. It will take forever, but maybe that's how you make the point. Get there before zero, zero, zero so you can use your card and get it over with.

But again, I mean, I don't know how you do that, I don't know how you make anybody do that. If I had a nickel for every time we've had to wait for some committee to adjourn what they're doing and come over, not one or two, but the whole committee, they've all got to vote. Well, you got to let them all vote. It takes time. In and of itself it's not a big deal. But collectively a bunch of votes like that, and a stack, and time starts going out the window on a Friday when everybody wants out, it gets to be—it causes people to get ugly. And so how you effect that again, I'm not sure. But timeliness is a huge problem.

And I know everybody has stuff to do. They all have places to go and things to do. Hanging around in the Chamber, not leaving the Chamber when there's a stack of votes; don't go out to the Speaker's Lobby, don't go talking on your cell phone, don't go to the club group, stick around. There are perennial offenders, and I know

who they are. I know where to look for them, I know where to find them, I know where they're coming from.

And as I said earlier, we bend over backwards to find them and let them know that they need to get in here and vote. But again, as the time has elapsed, you're adding on extra time to allow that to happen. That comes out of everybody's pockets, so I don't know how you do it. But they have to be somehow convinced that it's in their best interest to stick around and be done. Other than, I don't know, having assigned seats and going down that road, I don't know how you can move this along any faster.

Or, change this whole protocol entirely. Change it to whatever, I don't know, but change it to something. But give the Chair more leniency, I don't know, or more authority, more direct authority to, for instance, close a vote. The Chair saying "All time has expired," you and I both know that that's going to go right over. They're not going to pay any attention to that. And they're not going to listen to me if I tell them they have to hurry up, they're just not. But if the Chair says something to the effect, maybe change what the Chair says, that the vote is now closed, those words are uttered. And then you move to read the tally.

Well, we're already in the business of looking at video, so if you have a problem, you go back, and if the Chair has said those words, too bad, get there earlier. But that's the Chair's authority, not mine. That's a direct authority from the presiding officer to say, We're done, you're late, I'm sorry.

You have one or two times of that happen to you and maybe you'll get over there sooner, I don't know. But I just don't know what else you do when no one is compelled to be here at a particular place and they don't have a dedicated place to go vote. They can vote anywhere they want. I mean, literally sticking your head in the back door with no time left and sticking your card in. That works. People do it all the time, because they're somewhere else and they're late. And if they do it, they're physically in the Chamber, but they're at that drop-dead point where we're about to close everything out, well, then they get to come to the well. That just eats up more time.

God, I don't know, guys, there's a hundred things you could come up with to save seconds here and there and move things along a little better. You know, you have to remember too that there are situations. There are the Ike Skeltons of the world who require someone to hold the card while they sign it, because they have the use of one hand and not two. There are the Henry Hydes, who toward the end of his career we actually had to have a designee, a staffer, bring his card to the well because he couldn't do it himself. Now, we had that all set up ahead of time. That's not supposed to happen. I mean, under any most dire circumstances, Members cast votes, nobody else. But in that situation. I think we did do it for Mr. Daschle, I think we did it for Mo Udall. Towards the end of his career he was in bad shape. And then I think Mel Price, too. I mean the list goes on. You have to factor all those things in, into the time constraints that are eaten up in allowing Members to exercise their right.

And so 2-minute voting, when you throw all that stuff in there, it's a misnomer. It doesn't help. Five minutes is about the limit.

That works. And even that's more like 7, usually. But saving time with 2-minute votes, particularly when you have a stack like we did that night prior to that motion, we had like seven, eight or nine of those 2-minute votes, we did all those just fine because we kept right to our script and we had cooperation from the Members.

I don't think we had more than eight or nine, at the worst, on any one of those votes in terms of well cards. And everybody hung around. Mr. Al Green of Texas, I remember that night, stood in the well the entire time and just handed me a card for each vote. He didn't leave. He just had a whole stack of them all filled out and he waited.

Now, I realize that you can't do that with everybody, because if you've got 20 or 30 people who want to use the well that night, then you've got a crowd down there. But in theory, one or two Members, that moves things along, because I know they're there and I know where to go get them. It's subjective to the extent that I can't make anybody do these things. But beyond that—the only procedural thing I can come up with is 2 minutes, just throw it out, it doesn't help.

We have to, among other things, verify those well cards with another Tally Clerk downstairs. And with more than five or six or seven well cards—now, this is just a little history I'll throw out at you, because we used to do things one way, now we do them a different way. We used to have, lots of you will remember this, we had a card with the Members' names alphabetically listed and numbered 1 through 435. And when they voted in the well we wrote two numbers, the roll call number and their index number, and that index number is what went into the system. So if Mr. Abercrombie voted in the well, it would be a 1Y for a "yea" vote and a 1N for a "no" vote. Now, we don't do that anymore. We put them in the system by their names and however many characters are needed to make it unique. So if you put J-A-C, because Jackson Lee is in the well, you're going to get her and Jackson of Illinois and anybody else with those first few letters. So you have to call through those and make sure you get the right one. That's the first problem.

Secondly, when you put those cards together to read them back to the clerk, downstairs they're alphabetical. Putting numbers on those cards was easy. You just had to organize them numerically. That was no big deal. But now you have to read each card and do them alphabetically. And if you look at some of those signatures recently, I only know who they are because I recognize the signature. It doesn't say anything. I just know who it is.

But you have to figure that, okay, it's Mr. Poe, which by the way, is totally illegible, but I know it's a P, so that's where it goes. But you've got to read the cards, find it, stick it in there and get it alphabetical. You can't just look at the corners and shove them in numerically.

Okay. You're saying to yourself, Why in the hell are you telling us this? The point I'm making is that it takes time to do that and we can't release these votes to anybody until that step is taken care of. And that step can't be taken care of if you're mired in a stack of 2-minute votes. You're going to be up to here in cards. And so it slows the release of the information to the Internet and every-

where else it goes, because we can't release them until we're through proofing them.

So 2-minute votes don't buy you time for that. You wind up with seven or eight of those, you'll have seven or eight of them sitting there unreleased. Nobody knows what happened.

Now, in amendments it's not that big a deal because typically Committee of the Whole actions aren't released anywhere until the day is over or the disposition of the bill that the amendments pertain to is finished. Then everything goes at once.

But a stack of suspension votes in the House, that stuff just sits until we proof it. It doesn't go online. It doesn't go—nobody can see it, nobody can get at it. And that includes the links of the Clerk's Web site, the leadership Web site. They all have links to roll calls and nobody can see any of those, including the Members. So 2-minute votes don't help at all.

Now, I don't think it's ever going to go away because everybody seems to like them. But you asked me so I want to tell you. It makes things difficult and it doesn't improve much of anything at all, and I don't think it saves that much time.

Mr. SNOWDON. All right. Thank you.

Ms. MCCARTIN. Can I ask a couple of questions?

Mr. SPULAK. Yes, please.

EXAMINATION BY MS. MCCARTIN

Q. When Kevie announces, when the Reading Clerk announces a vote, usually she'll say when the well card is turned in—this is towards the end here, after the change sheet—she'll say "Mr. Diaz-Balart," and then she'll pause. And then the Tally Clerk will put it into the system and then she'll say "off no" or "on aye," or she'll announce the change, right?

A. Right.

Q. She will normally announce the change after De'Andre puts it into the system, right?

A. She is supposed to be—or the Reading Clerk, whoever it is, is reiterating what he or she sees from that screen. So let's say, by way of example, that a well vote is submitted and it's Mr. Abercrombie who gives us a green card. The Reading Clerk is not supposed to stand there and say because I recognize that's Mr. Abercrombie, I can say Mr. Abercrombie voted aye. First of all, we don't know if that's a change or an initial vote. And that doesn't happen until it appears in the system. The Reading Clerk is supposed to be reading that, working in tandem with the Tally Clerk to make those announcements. That's why there's a pause and a delay. You don't just know and say something.

Secondly, transferring those well cards is—think of it like checkers. You can move your piece around that board until you're blue in the face, but until you take your hand off of it, it doesn't count.

Well, a Member can stand there and until that card is out of his or her grasp and into our possession—and even at that point they can pull it back—it doesn't count, it's nothing, it's just something we're working on. And until it moves from the standing Tally Clerk to the desk behind and has been entered into the system, that's when the Reading Clerk will announce the name and then the disposition, because he or she can read it from that screen and it's

now known that it's either a change or initial vote. If you jump the gun on that and say something, you get just what we had happen with the Chair doing something out of order.

Q. So it's possible, then, that if the tape shows that McNulty is making the announcement over Kevie's voice, it's possible then that De'Andre had processed every card that he had at that point, right?

A. Conceivable, yeah, but we still——

Q. But then there is the uptick problem?

A. Yeah. There is that little built-in hook, and you have to just wait for it.

Mr. SPULAK. That's why you have the system?

Mr. HANRAHAN. Yeah.

BY MS. MCCARTIN

Q. And another point. You say that the Leaders sometimes give you well cards to protect their prerogative to reconsider. Now, when you have those cards, you wouldn't make that decision yourself as to whether or not to process those or not?

A. Oh, no, no, no.

Q. You would always turn to either the Leader himself or maybe the Parliamentarian and ask if these cards should be processed, right, when you think that the cards are given to you just to preserve the prerogative and you're not sure——

A. Oh, no, no. Well votes given to me are well votes cast. I don't care what the reason is and what the motivation might be.

Q. So in the case of the Boehner card—Hoyer's card, that's just a dupe—but in the case of the Boehner card would you assume that De'Andre would have turned to the Parliamentarians to say, "What do I do with this?"

I guess the point that I'm trying to make is when you say that Boehner wasn't recorded because you were so "off track," I'm trying to figure out what that means. I mean surely De'Andre would have turned, correct, to at least the Parls and say, "Should I process this card?"

A. Typically, yeah. And I think that maybe he did. Again, when you talk to him, you can ask him when and how he got that, what he did with it, and what he thought he should do with it. I know it got through me in the standard procedure, because he had all the cards with him at the desk. But we were in that black hole at that point.

So, yeah, to answer your question he probably did and should have turned around to mention that, but not because it was a leadership card. Anybody at that point should not take anything because of the situation that we're currently in.

Q. But actually in that vote, everything was processed except for the Boehner card, right? I mean you continued to process cards?

A. Mr. Hoyer's card, I'm not sure about. Because it was a dupe, I don't know. It would not have changed anything. I may have looked—I have to tell you that when we have these kinds of votes, we know—I know anyway—to start looking for the leadership to come around just for that reason—I mean to look for these guys. And so it's not a surprise to get it.

Q. Right. One other question. When the Chair bangs the gavel, under your protocol is the banging of the gavel an official cue, or are you looking for words?

A. We're looking for words. The gavel is a nice benchmark and it gets everybody's attention, but it doesn't substitute for the actual vocalization that a motion to reconsider has been laid on the table.

Q. So with respect to the integrity of that vote, in the end, do you feel that the final vote that was announced, the final vote—not the premature announcement, but the final vote—the Boehner card aside, do you feel—can you put your professional stamp of integrity on that vote in that all the votes were processed, all the changes were processed, all the votes were recorded accurately, Boehner aside?

A. That's an interesting question. And the answer to it has to be that while I have no reason to question it, because we didn't stick to the protocol, officially I can't say that I had anything to do with—I'm not saying it's wrong, I'm just saying because we didn't do what we were supposed to do, I can't say.

Q. And what's missing from the protocol in the very end?

A. Well, the standard procedure whereby we would have the Members notified that we're about to close, and then we would have the inquiries made about changes and initial votes and all the rest of it, and then the conversations among all of us as to whether we're closing this vote. And if the answer is "yes" all around, then the Tally Clerk, seated, shuts the voting stations down, for the last time hopefully, and says, that's it, it's done, write the numbers. At which point I write the numbers and push them up to the—I guess John was up there, I don't remember.

BY MR. SPULAK

Q. But from what you may know subsequent to that, are you aware that any Member said, "My vote wasn't recorded" or "My vote wasn't recorded accurately; I wanted to vote and I didn't get a chance"?

A. Outside of the obvious card Mr. Boehner gave us, no. Nobody complained to me, or, that I know of, to anybody that they were incorrectly recorded.

Q. Members sometimes do when they feel that's the case?

A. Sure, I would hear about it, no question.

Q. My final question is based on—well, at the time that the decision was made to abort the vote, and subsequent to that, do you think that that decision was made to try to destroy the evidence of the vote or to destroy the data so that it wouldn't be able to be viewed at a subsequent time?

A. No, I don't think so. I just don't believe that was true. I think that was a conscious decision made as a last ditch effort to clean things up so we could move on. And I don't think there was any—any thought in anybody's mind about killing it so that it could never be found and burying it someplace. I just don't think that was anybody's thought, I really don't.

I think it was a totally conscious decision to how do we best—what do we do? We have obvious things going on here, we've got to move, how do we effect clearing that off so we can get to the

next point? And as it turned out, I mean, we all know that that data is stored anyway. So it was retrievable.

But, no, I don't think so. I think everybody was just, what do we have to do to move this along and how do we best do it. And that was the only option we had at that time.

Now, given the atmosphere, I mean I can't go back to that enough. On a quiet evening, with no controversy, maybe you do things differently, I don't know. I mean personally, would I have liked to have seen somebody take a microphone and inquire of the Chair, "Could the Chair please tell us where we are, what's the status, where are we here?" that would have bought maybe everybody some calming time, maybe a little bit of—it certainly would have bought us a little time to maybe regroup and maybe, I don't know, handle things more smoothly, a little better, I don't know. But that never happened.

It was just not that kind of a night. It was never calm and it was never collected. It was just rat race after rat race after rat race, and it was one side and the other trying to move things along. They all had their own business and their own goals as to what they were trying to achieve. None of that matters to any of us. But we do need to pay attention to it because it requires a response from us under normal circumstances. If a vote is going to be called on something, we have to be ready.

BY MS. MCCARTIN

Q. And just to reiterate what you said earlier that although you weren't—as I recall—you weren't sure, but you believed that the voting stations were closed when that final announcement was made?

A. I think so, yeah. De'Andre could probably fill that in for you a little better. But again, under perfect circumstances, I probably would have been able to answer that question for you better because De'Andre would have said, "I've closed them, write the tally."

Q. Right, right.

A. We never got to that point, so I'm guessing as to what may or may not have happened. It's difficult. If you're in that chair you do all sorts of things. And you have more going on in your head than I care to remember sometimes, you know.

Q. And you're good.

A. The second people who have the worst situation are the Parliamentarians. Those guys, I give those guys that night, on a scale of 1 to 100, they get a 200 for just putting the pieces back together and trying to make things go forward as best as possible. It was a bad night. I don't know, maybe one of the worst ones I've seen, if not the worst. And the workload that 3 months, June, July and August, was maybe the worst I've ever been through in my time here. We set a record last year with roll calls. And I can only say that this works and it's been substantiated by the 813 votes prior to that and the 300-some-odd that we had afterwards. And the outstanding differences were just what we've talked about today. And if you throw protocol out the window, you get August 2nd a lot.

Mr. SPULAK. Thank you so much.

Ms. MCCARTIN. Thanks.

Mr. HANRAHAN. I hope it was helpful. I appreciate you letting me talk. I know I talked your head off.

Mr. SPULAK. I think we all learned a lot.

Mr. HANRAHAN. I appreciate that. If you need anything else, I'm available.

[Whereupon, at 12:24 p.m., the interview was concluded.]

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

THURSDAY, FEBRUARY 14, 2008.
Washington, DC.

INTERVIEW OF: ETHAN LAUER

The interview in the above matter was held at Room 1017, Longworth House Office Building commencing at 2:15 p.m.

APPEARANCES

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Also Present: Muftiah McCartin, Deputy Staff Director, Committee on Rules; and Davida Walsh, Legislative Counsel, Representative Delahunt.

EXAMINATION BY MR. SPULAK

Q. Ethan, thank you for being here today. As you may know, the Select Committee to Investigate the Voting Irregularities of August 2nd, 2007 was formed to investigate the events surrounding roll call vote 814 and the subsequent motion to reconsider. Matters including the duration of the vote and calling of the vote are things in which we are interested. So we would like you to address that, your involvement in those events, your observations. We will ask you specific questions about those as well.

But before we start, we would like you to, you know, introduce yourself, tell us what your current job responsibilities are, what you do, and then begin in a narrative form, if you will, to tell us your recollections of the events of August the 2nd related to roll call 814 and the subsequent motion to reconsider?

A. Okay. Well, my name is Ethan Lauer, E-t-h-a-n L-a-u-e-r. I am an assistant Parliamentarian in the office of the House Parliamentarian since 1999. I was in the House Chamber August 2nd during the events in question. And my role was to advise the Chair on the proceedings, as we do every day. And you just want a recap of things from my perspective on that?

Q. Sure. Sure.

A. Okay. The vote on the motion to recommit was pending. And it was a 15-minute vote. And I remember as the time began to

wind down, a lot of times we rely on a message or a signal from someone on the Speaker's staff as to what they predict for the vote, whether there is a big meeting going on, or elevators are stuck, or there is any reason that the vote is going to be delayed for some reason. And I wasn't really paying attention to what was going on during the vote. We were kind of relieved that the end of the day was upon us. And the Speaker's aide said you should be on your toes, have the Chair on his toes, this may be a close vote.

EXAMINATION BY MR. PAOLETTA

Q. Who said that?

A. That was Catlin O'Neill——

Q. Okay.

A. [continuing]. From the Speaker's office. And so that was kind of when I snapped into consciousness of what was happening. And it was very close. You have, I am sure, seen the review. There was a lot of changing of votes and late—I guess late, people just waited until the very last second to vote. So I assume that the vote wasn't held open very long. I guess as soon as the minimum of 15—I think that's right, pretty much shortly after, or as soon as the minimum 15-minute duration expired that we were at—almost everyone who had voted or was going to vote had already voted, and there was some changing, and it was close. And so we were—I was—the job that we do at that point is to get the signal from the Speaker that everybody who is in that they know of in the vicinity has voted and there are no problems, no subway problems or whatever that would cause a delay.

And then we wait for the tally clerks to finish processing all of their votes, well cards. You probably heard all the description of how the well voting works. And to get a final result from their standpoint that all the changes and all the votes and all the vote changes that are going to happen, that they have been processed and plugged in. And then we get a slip from them indicating what the final tally was, relay that to the clerk—I am sorry, to the Chair. And so that she can announce what the final was. I guess it was he that night can announce what the final was.

So that is kind of where I was, standing as you have seen kind of next to the rostrum next to the highest level of rostrum where the Speaker is, and focusing on the tally clerk to finalize everything that they had going. And the Chair tried once to announce a result. I guess it was a 214–214, a tie vote, which is a tie vote loses, and he was—we were—able to stop him from going any further because there were still votes. Tally clerks hadn't finalized everything on their end. It was still a moving, a moving—a shifting tally.

BY MR. SNOWDON

Q. How did you do that? You said you were able to stop him. What did you say or do to stop him?

A. Usually, we—one of the tools we have is a mute button. We can turn off the Chair's amplification so that he can't—his announcement can't be heard. I am not sure if that—if we were able to do that. I think it was that the Parliamentarian, John Sullivan, came up and must have said something to him to pull him short.

Because I remember that his—I think his words were amplified when he tried to announce that result.

Q. Do you recall, did he start to give that result with amplification, and then Mr. Sullivan hit the mute button so that the back end of that was cut off or did Mr. Sullivan just say something to him mid-stream, at which point he stopped saying anything at all?

A. I can answer that based on the review of the tape, honestly. I don't have a personal recollection. Is that—you want me to tell you what I have seen?

Q. What you have seen. If that refreshed your recollection, that's fine.

A. Well, I think what I saw was that it was, his announcement was amplified, so I was not quick enough with the button. I don't think anyone else hit the button. Maybe he even saw, maybe Mr. McNulty even saw that there were Members in the well who were saying they were still trying to get in, or someone from behind me was able to get his attention.

Q. Do you recall whether he stopped on his own volition or whether you or Mr. Sullivan affirmatively said or did something which caused him to stop the first time?

A. That I don't know. I would like to think we instigated the stopping, but I can't really tell you whether that's the case.

Q. Okay. You think we would be able to tell that from the video?

A. That's—some of what I am saying is coming from recollections of watching that. I would be happy to look at it. As I said, I think he was amplified. And then in the tape, as I recall, Mr. Sullivan does come up shortly thereafter. So he may have been indicating, trying to have a desire to stop it at that point.

Q. And why did Mr. Sullivan stop it at that point?

A. I think he probably saw the same thing that we were seeing, that there was no finalization from the processing in of the votes at that point. There were still Members whose cards—when the Members vote in the well they fill out a——

Q. Right.

A. [continuing]. Card, and then they hand it to the one tally clerk, who I guess maybe writes the roll call vote number on it or something, makes some notation on it and hands it to the second tally clerk, who has actually got the computer terminal.

BY MR. CRAWFORD

Q. If I can interrupt you there.

A. Yeah.

Q. You said you would like to believe that you or someone in the Parliamentarian's office indicated to Mr. McNulty to stop. But you don't know for sure that somebody did ask him to stop. As far as you know from reviewing the tape and your recollection, Mr. McNulty might have stopped on his own volition. Is that true?

A. Yes, that's true.

BY MR. SNOWDON

Q. Okay. I am going to hand you a document. Let me know whether you have ever seen this before.

A. Yes, I have.

Q. Can you tell me what this is?

A. Yes. This is a combination of notes. The portion that is typed, typewritten was done by another assistant Parliamentarian, Max Spitzer. And the handwritten notes were mine. Right after the whole evening was over, I tried to jot down bullet points of what had occurred as blow by blow as I could. And then I asked Max to do that independently, because he was in the Chamber for some or all of it. And then I wanted to compare the two to make sure we had an accurate recollection, written recollection of what happened.

Q. So are all the handwritten notations on this yours, even the ones that are up at the top——

A. Yes.

Q. [continuing]. Next to the written portion?

A. Yes, those are mine too.

Q. Okay. And did you review the written portion that Max had done to see if that was your recollection as well?

A. Yes. And then I made those handwritten notes on points of clarification or correction.

Q. Okay. So number four, it says the Chair begins to call it at 214–214, but John says there are still Members' cards that need to be processed in the computer and the Chair holds up. When you were—I guess actually technically when Max says, but John says there are still—who is John? Is that Mr. Sullivan?

A. That's Mr. Sullivan.

Q. And who is Mr. Sullivan saying that to?

A. I assume he is saying it to Mr. McNulty in the Chair.

Q. Okay. So does that refresh your recollection as to whether you or Mr. Sullivan said something to the Chair to get him to cease the call at that point as opposed to the Chair doing it on his own volition?

A. It makes sense, because Max was sitting down at the lower sergeant at arms desk. So someone who was entering the rostrum space and coming up to the Chair would have to walk right by Max. So he would have had a good vantage point to know who was coming up. And as I said, not my own recollection, but from viewing the tape, I see that Mr. Sullivan does come up behind me right after Mr. McNulty begins that first announcement. So that does jive. I don't remember personally whether he did actually walk up behind me. I don't think I was able to focus on that.

Q. But you believe he said something to the Chair? Would there be any other purpose for him walking up behind you but to say something to the Chair?

A. Well, sure. I mean he could have been coming up on any number of things, either ongoing or in the future or something he needed to tell me.

Q. But he didn't—when he came up behind you, he wasn't talking to you, was he?

A. I have a hard time remembering.

Q. Let's go through number four. You made some additions to what Mr. Spitzer had said. You want to read the first one under point number four what you added?

A. Yes. I am just going to use another copy that's clearer. On number four?

Q. Uh-huh.

A. Well, the first note I made was Max had typed, the Chair begins to call it 214–214, and then I wrote in, without paper.

Q. What does that mean?

A. That indicates that the Chair had not yet received that slip of paper that I had mentioned earlier.

Q. The tally sheet?

A. The tally sheet from the tally clerk, from which ideally the Chair would announce the vote.

Q. Well, you say ideally. Have you ever seen the Chair announce a vote without a tally sheet?

A. I can't—I don't think I have ever seen that.

Q. So instead of ideally it should probably be universally?

A. Yeah. I can't speak for all time, but I can't remember a time when I have been assisting the Chair that the Chair has called it without a slip.

Q. Okay. And what about the notation at the end?

A. My note at the end says there are two Members in well with cards plus two at tally's desk.

Q. Okay. So that means there are a total of four members who are filling out well cards at that point?

A. I think that would mean that there would be, yeah, two members in the well manipulating cards.

Q. Okay.

A. Plus just two, two cards that were sitting on the tally's desk waiting to be addressed by the tally clerk in the total.

Q. I just want to back you up one second. The item number three, Hoyer yells to the Chair, close the vote. Do you recall what Mr. Hoyer said specifically and how many times he said it?

A. I do not. I do not recall what specifically he said or how many times he said it.

Q. Okay. So the gist was to close down the vote. And do you remember his tone or—was it very matter of fact, go ahead and close this down? Or was it more of a directive to close it down now?

A. It is—I don't know more than just general—Max wrote "yells." And that's—that would be—I can't remember any more than just hearing—because I was trying to focus on watching the tally clerk, so that I knew when the vote had stopped moving so I could get the slip. So I don't know—I don't think I looked at Mr. Hoyer at that point. But you could hear—there was a lot of ruckus, but you could hear people trying to help the Chair, help the Chair do his job, which is not helpful to getting it done the right way. But I don't know what——

Q. Okay.

A. [continuing]. Specifics were yelled.

Q. Let's back that up. When you used the euphemism there were a lot of people trying to help the Chair do his job, I assume you mean that Mr. Hoyer was giving instructions to the Chair. Is that right?

A. I would assume there were people trying to give instructions to the Chair.

Q. Who typically gives instructions to the Chair in your experience?

A. I don't know if there is a typical individual, but I have seen over time representatives from the various vote counting entities,

the whipping systems try to send signals up to the Chair to say you have to close this down now or, you know, things that convey that message.

Q. Okay. And is that that your recollection that something like that happened on August 2nd?

A. I think—I don't—I wasn't—I wasn't looking back there. So I don't know if I can tell you who did it or what was said. But I know there was pressure trying to be put upon the Chair to close the vote.

Q. And do you recall that said? Well, let me back that up. What is the time differential between the end of item three and the beginning of item four? Okay? So presumably, you know, you looked at these notes from Mr. Spitzer roughly contemporaneously with the vote, and I assume that if you disagreed with any of those, you would have made an edit or something, a correction to it. Is that fair? That if there was something in here you disagreed with you would have changed it.

A. Yeah, I think that's fair.

Q. Okay. So Mr. Hoyer, in some fashion, directs the Chair to close the vote. You are not entirely sure of the exact words he used. And then at some point thereafter, the Chair begins to call it at 214–214, and Mr. Sullivan holds him up. Do you know how long after Mr. Hoyer directed the Chair to close the vote, it was before the Chair attempted to call it at 214–214?

A. No.

Q. Was it seconds? Was it minutes? Was it——

A. I hate to answer that, because I can't even tell you——

Q. Okay.

A. [continuing]. With a positive ID who was—where the pressure was coming from. It was—like I said, it wasn't—I don't remember there being a lot of time elapsing between the clock having exhausted the minimum 15 and, you know, the events escalating. But I don't know if I can give you——

Q. Good.

A. [continuing]. A specific on that.

Q. So the Chair holds up, looks, I am just going through these steps, the Chair holds up, it seems like there is some additional well cards that are entered. Then we get to step six, where it says the vote again reaches 214–214. Hoyer tells the Chair to call it. The Chair calls it. And then in parentheses, without any paper and without the computer refreshing. Okay. Is that your recollection of what happens? I understand that these are Mr. Spitzer's words, but is that your recollection of what happened?

A. That is,—again, I am trying to recall on his part where he wrote Hoyer tells the Chair to call it. You know, my back—my back was to everything behind me. I was facing the Chair and the tally clerks. So Mr. Hoyer or anyone coming up on the rostrum would have been to my back. So I don't know if I can verify that part of it. But the rest I agree with what he wrote.

Q. Okay. When you say without the computer—or well, when Mr. Spitzer says without the computer refreshing, can you tell me what that means?

A. Yes. That indicates that there was a vote, a vote from the well on the card that the tally clerk had processed, had entered into the

computer terminal, but the display, the displays in the Chamber had not yet picked up the fact that that vote was entered.

Q. Well, does it mean that he had fully entered it or could he have been in the process of entering it?

A. It could have been in the process, I guess.

Q. Okay. How long does it take for the system to refresh once it is entered into the system?

A. I have been told about a second.

Q. Okay.

A. I don't know.

Q. It is my understanding that—and if any of this is incorrect, please, stop me, correct me—that the typical process for closing down a vote is once it reaches zero-zero-zero, the Parliamentarian will inquire to the Chair or direct the Chair to give the admonition, "are there any members wishing to vote or change their vote," looking around and seeing that there aren't Members in the well. And the Chair will do that. That the tally clerk will wait for instructions, seated tally clerk will wait for instructions from the Parliamentarian that they should begin the process of preparing the tally slip, which is then filled out, sent back to the Parliamentarian, and given up to the Chair, at which point the Chair will close out—and direct that the motion is laid upon the table, bang, and everything is closed. Is that typically the way it works?

A. Yes. Can I modify one thing you said?

Q. Please.

A. At the very beginning, I just wanted to make sure that there wasn't a misunderstanding that the Parliamentarian would be instructing the Chair on when to begin to wrap up the vote. I would just like to say we would be just passing on that, that the decision that was made that the vote was ready to be closed, as opposed to the ones actually making that decision.

Q. Sure. How is that done, though? You are working hand in hand with the Chair and you are trying to sort of advise the Chair essentially that you are good to go to close the vote if you want to.

A. Right.

Q. Correct?

A. Right.

Q. And how is that decision made? Are you receiving instructions from leadership staff, from the Speaker's staff? Are you just literally looking around to make sure that there aren't any Members in the well who might be voting? I mean how are you—what cues are you taking to advise the Chair, look, you are good to go to close it if you want to?

A. From the Speaker's staff.

Q. From the Speaker's staff?

A. Yes.

Q. Okay. Do you recall on 814 looking to the Speaker's staff to get that instruction?

A. Yes.

Q. Okay.

A. That was, I mentioned Catlin O'Neill was the one that first contacted me about the vote.

Q. Okay. And you said I think that——

BY MR. PAOLETTA

Q. I thought she said you should be on your toes?

A. Yes.

Q. That is not closing the vote?

A. No, but that just means they are going to be ready to go close rather quickly on this one as opposed to normally when it is the first vote, a 15-minute vote you would maybe have it open for 20 or 25 minutes or more. But I think that was an indication this one wasn't going to be that way. This was one we should be ready to close rather quickly after the minimum time was up.

BY MR. SNOWDON

Q. So how would that work? You get that instruction. And is that something that is conveyed to you verbally? Is it something that is a hand signal? How does that work?

A. It could be either.

Q. Okay. You remember what it was in this case?

A. I don't remember—well, this one—well, she talked to me originally, the warning that Mark mentioned.

Q. But that was verbal?

A. That was probably the last contact I had with her.

Q. And that was verbal——

A. That was verbal.

Q. [continuing]. As opposed to an e-mail or anything like that. And so at that point, you received that instruction. And then when the clock goes down to zero in this case, and you have been told that once it gets to zero, you should be looking to wrap it up pretty quickly, what is your cue at that point? Are you solely looking at the well to see if there are Members in the well? Are you looking at the seated tally clerk? What are you looking at?

A. Both. Yeah. Once we know that it is ready to be closed, then I think part of our job is to help the Chair scan the Chamber to be on the lookout for anyone who may be coming in late who has got—who is still trying to be entered. So we help watch the aisles and the well and the tally clerks to make sure that they are done as well. And we also do tell them, they will ask us are we okay to close this? Because then they do certain things and turn off electronic terminals and so forth.

Q. And that is also their signal to direct the standing tally clerk to prepare the tally slip. Correct?

A. I assume that those two go hand in hand, that they don't prepare that tally slip until all the stations are closed, obviously, so the vote doesn't move.

Q. And they won't do that without conferring with the parliamentarians too, correct?

A. Right. I mean because we won't take the slip until——

Q. Okay.

A. [continuing]. They give it to us.

Q. Now, let's take a hypothetical. If you receive an instruction that we want this thing to be closed down pretty quickly after it reaches zero-zero, and you had looked and seen that De'Andre Anderson or whoever the seated tally clerk happened to be was not processing well votes, okay, if there were well votes, they had been

put into the system, would you have then said to Mr. McNulty you are okay to go ahead and close this? Would that be the normal course?

A. Yeah. I mean, the normal course would be to hand—to get the slip.

Q. But isn't there a preliminary—don't you—you give him some instruction or some—that might be the wrong word. There is some communication between the Parliamentarian and the Chair which causes the Chair to then say are there any Members wishing to vote or change their vote. Right?

A. Yes.

Q. And that is separate, that's before the parliamentarians get to the point of handing up the tally slip, which allows the Chair to finalize the vote. Right?

A. Yes.

Q. So what would cue you typically to say to the Chair you are okay to go ahead and call for votes or for changes?

A. A signal from the Speaker's office.

Q. Okay. And did that take place in this case?

A. All I can say is I think it must have, because it is so—it is such a part of the routine. But——

Q. So is the tally slip, and that apparently didn't happen here either.

A. That's true.

Q. I mean wouldn't that have shown up in this chronology if it had happened, if it is such an integral part of the process? Wouldn't you expect to see it somewhere in this chronology?

A. To tell you the truth, maybe not. It is just such a formality. It happens on every vote. That I don't know that we would note when the Chair had, you know, made those statements asking for votes and for vote changes.

Q. Okay. But that would be something that would happen after the zero-zero-zero?

A. Yes.

Q. Okay.

BY MR. PAOLETTA

Q. Let me just, where were you, Ethan, during this? Where were you on the rostrum?

A. I am to the right, the Speaker's right.

Q. And you were looking forward?

A. Yes. Forward into the well at the tally clerk and the Chair.

Q. And do you remember Mr. Hoyer coming down the aisle? Because in terms of trying to recollect, do you remember, you know, Ms. O'Neill's thing about being on your toes, and I know that in terms of closing the vote, that happens a lot, you are saying, right, so if you are trying to recollect, do you remember Mr. Hoyer coming down and saying close the vote, and that might be sort of the triggering action as opposed to the Speaker's sort of indicating to close the vote? Is that jogging anything?

And I am just asking because you are facing forward. Apparently he comes down the aisle, right, and we have had several people tell us, you know, he says something. And you don't seem to recall it. I am just thinking visually, you know, that do you recall that at

all, him coming down the aisle and approaching the rostrum and giving directions so that—it may be that that's what is setting off the closing as opposed to the Speaker in the normal course of the Speaker's staff saying close the vote. Is that? You don't remember?

A. Well, I have seen it on the tape.

Q. Right.

A. I am sure it happened. I don't know that I was focused on him, his movement down the aisle at that point or not.

Mr. PAOLETTA. Okay.

BY MR. CRAWFORD

Q. So Ethan, if you saw it on the tape you might also recognize or realize that when the Majority Leader comes down the center aisle and clears the well that there is nobody in the well except Mr. Cleaver, who has been engaged in a conversation with somebody? So there is nobody in the well at that moment trying to change their vote? Do you recall that when you reviewed the tape?

A. At the moment when——

Q. Mr. Hoyer——

A. [continuing]. Mr. Hoyer comes down.

Q. [continuing]. Comes down the aisle and then clears the well.

A. Well, I thought maybe the Speaker was voting as well.

Q. They actually cross each other——

A. Okay.

Q. [continuing]. As she is going on her way to the well, but she is not in the well at that moment.

A. Okay. Then I take your word that there was no one there. I don't remember. But I take your word for it.

Q. Okay. Did you listen to the tape with earphones on?

A. No.

Q. Okay. Because you can audibly hear the Speaker pro tem ask if Members have other Members who wish to vote or change their vote. You actually can hear him if you have the headphones on when you are listening to the tape.

BY MR. SNOWDON

Q. I guess my question is you seem to think that the conversation between the Parliamentarian and the Chair about saying it is okay to say are there Members wishing to vote or change their vote would likely have happened because it was so routine, but yet one of the triggers for that would be to see that there were no tally cards being processed and that there are no Members in the well. Am I misunderstanding that?

A. Well, that could be a trigger, or sometimes that announcement is made even when there are still Members there, because just the act of the Chair maybe hitting the gavel and asking those questions will jar people who are not paying attention to the fact that there is a vote about to close and will get, you know, stragglers to get their votes in. So it can occur before the well is cleared.

Q. Okay. When we get to item 6, where it says the vote again reaches 214–214, Hoyer tells the Chair to call it, which you have stated that you don't particularly remember Mr. Hoyer saying anything at that point, and the Chair calls it without any paper and without the computer refreshing, we have heard testimony from

other people that occasionally, and I don't know if this is the right word for it, but there is some gamesmanship on the part of the Chair, that the Chair, to motivate Members to make up their minds and cast a vote, will sort of go to the brink of announcing a vote just to finally get them to vote and so it can be closed. Do you see that?

A. I am not sure I see that. You think in other instances?

Q. Well, we have been told that in other instances the Chair will sort of initiate some of the magic words in order to get people who might be milling around in the well with the vote card to finally, you know, decide to vote so that the thing can be closed out. Have you ever seen that in your experience?

A. No. Well, the announcements, or the questions the Chair, the two questions the Chair typically asks, have all Members voted? Does any Member wish to change his or her vote? That I know can be done, has been done when there are Members milling about.

Q. What about the next announcement, which is the Chair will start to actually announce the vote total, suggesting that the vote's about to be closed in order to motivate Members to vote? Have you ever seen that?

A. I am not sure how that would happen in the normal course, because we wouldn't—hopefully wouldn't have a passing of a slip of any sort while there were still Members who had cards in their hand on that vote.

Q. Don't on occasion you get multiple slips?

A. Sure.

Q. Okay. And wouldn't that be one event that would result in multiple slips, where he gets a slip, the Chair goes to announce it, some other Members at that point sort of rush to get their cards in and it causes a new slip to be sent up?

A. Yes, that can happen.

Q. Okay. Looking here on 6, when the Chair calls it, was it your impression from Mr. McNulty's actions that he intended to close the vote at that point?

A. I assume that's why he—that's why he tried to call it at that point, to close it.

Q. Okay. And do you know whether he had been made aware, as you had, that this vote, the leadership wanted this vote closed as quickly as possible after the clock hit zero-zero-zero?

A. I don't know if he was made aware of that or not.

Q. But you had been made aware of that?

A. Yes.

Q. And I think we have covered this before, but you personally have never seen a vote closed without a tally sheet. Is that right?

A. I believe that's 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.

Q. And did the seated tally clerk look to you for instructions that it was okay for them to proceed with preparing the tally sheet in this case, as they typically do?

A. Well, yeah, usually it is the standing tally clerk, the one who gets—receives the well votes that actually does—writes out the slip.

Q. But isn't the communication typically between the seated tally clerk and the Parliamentarian, and then the seated tally clerk will convey to the standing tally clerk that it is appropriate to go ahead and prepare the tally sheet?

A. Yeah, it's kind of a three-way conversation.

Q. Okay.

A. Basically, you know, they will—yeah.

Q. Whichever combination. Let's look at the tally clerks collectively, because I don't want to make this more complicated than it needs to be.

A. Okay.

Q. The tally clerks collectively will look to the Parliamentarian to give them the green light to go ahead and prepare the tally sheet so that the vote can be closed. Is that accurate?

A. Yes.

Q. Okay. Because we have been told, and if I am wrong please correct me, that the tally clerks are not going to prepare a tally sheet without the okay of the parliamentarians. They are just not going to do it as a matter of principle. Okay. Is that your understanding?

A. Well, I don't know—it is more—it is more logistical. I mean they can—once the seated—the tally clerk who is operating the electronic machines, and plugging in changes——

Q. Uh-huh.

A. [continuing]. I mean once they have done everything they are going to do, I mean then they—then I think they tell the other one who is preparing the slip, you know, that the system is closed.

Q. But they are not going to do that without checking with you guys first. Right?

A. Yeah, I guess that's accurate. They ask is it okay to close.

Q. Yeah, so they check with you——

A. Okay.

Q. [continuing]. And then you say yes or no, and once they—if you say yes, they tell the standing tally clerk go ahead and prepare the sheet.

A Okay.

Q. Did that happen in this case?

A. I don't think we ever got that far.

Q. De'Andre Anderson is actually still entering names?

A. Yeah, he still has cards that are being entered, so——

Q. Okay. So.

BY MR. SPULAK

Q. Let me ask, I mean, do you know that for a fact?

A. Pardon?

Q. Do you know for a fact, Ethan, that he had not entered all the cards that were in front of him?

A. Yes. I mean, well, we know that—that the system hadn't taken everything that had been fed into it.

Q. Yes, understood. But that's different than whether he had finished entering the three cards that he had in front of him. Isn't that right?

A. Yeah. I guess that is a distinction.

Mr. SPULAK. Okay. Thank you.

BY MR. SNOWDON

Q. Well, let's sort of play that out a little bit. You said that from the time De'Andre finishes, whoever the seated tally clerk finishes inputting a name into the system it takes I think in your words about a second for it to refresh. Is that correct?

A. That's what I have been told, yes. We have been told that.

Q. Okay. So playing that out, the Chair calls it at 214–214 and then gavels it, there is no way he can get that all out in a second. So if De'Andre or whoever the seated tally clerk was had already finished entering a well card at that point, by the time the Chair's done announcing it 214–214, that thing is going to have refreshed. Would that be a fair statement?

A. I don't know the actual amount of time this refresh cycle takes versus the amount of time it took the Chair to make his announcement.

Q. Well, do you think somebody can, say, call a vote at 214–214 in under a second?

A. Probably not, if you also announce what the outcome is, the motion is or is not agreed to. It would seem that would take more than a second.

Q. And that's what happened here. It was not just a number, but it was also that the motion wasn't agreed to. Right?

A. I assume that was the case the second time, the second time through, of 214–214.

Q. That would probably take a lot more than a second. I would say it would probably take two, three, four, five seconds at least?

A. I assume it would take more than a second, yes.

Q. Okay. So would you think it would be safe to assume that Mr. Anderson was still in the process of entering a well card at the time the Chair began to call the vote based upon those numbers?

A. Based upon those numbers that makes sense, yes.

Q. Okay. Did there come a point where you became aware that there were problems closing out the vote and bringing the boards down?

A. Was there—I am sorry?

Q. Was there a problem that you became aware that the tally clerk was having a problem getting the vote closed out and bringing down the boards?

A. Yes.

Q. And when did you become aware of that and how?

A. I don't really have a good answer here either. It seemed like by the time the proceedings had gone all the way to where we had a motion to reconsider pending. I don't really know where the problem originated, but there was talk of having to abort the vote in order to get onto a new vote.

Q. I think I have gotten a little bit ahead of myself, so let me back up. We talked to Mr. Wickham this morning. And at some point after the Chair called the vote, the parliamentarians drafted a statement for the Chair to read. Were you part of that effort to draft a statement for the Chair?

A. I was observing, yes.

Q. Who drafted the statement?

A. I think Mr. Sullivan drafted it.

Q. And do you know the gist of what that statement was?

A. Yes. The gist was that the Chair had—was premature in the first—his first effort to try to call the outcome of the vote, and that there were still changes and/or new votes being processed, and that once all those were in, the result was actually as follows.

Q. Okay. Well, actually, just so we are clear, the Chair tried to call the vote twice.

A. Yes.

Q. Right? And what you are referring to is actually the second time?

A. Yes, it is.

Q. When the Chair actually did close the vote. The first time they tried to close the vote and Mr. Sullivan interceded and the Chair stopped. The second time the Chair actually announced the total and gaveled the vote. And that's what you are referring to?

A. I am referring to the second time.

BY MR. CRAWFORD

Q. For point of clarification there, although the Chair announced 214–214, the motion is not agreed to, the vote was not closed. Other votes were processed after that.

A. That's correct.

Q. Okay.

A. That's correct.

BY MR. SNOWDON

Q. So what was the gist of the statement that Mr. Sullivan wrote out?

A. It was a way for the Chair to announce the final in more detail than simply filling in numbers to indicate the premature calling and then a processing of additional votes and then a new total.

Q. When we are in step six and the Chair calls it, did Mr. Sullivan say anything to the Chair at that point like——

A. I don't believe so.

Q. [continuing]. What are you doing? You don't have a tally sheet? I mean, was there any of that conversation?

A. I don't think so.

BY MR. SPULAK

Q. Excuse me. Ethan, why did Mr. Sullivan write that statement? Why do you think it was necessary to say the words that he did? To have to have Mr. McNulty say those words?

A. I think because it was an unusual circumstance that required more explanation by the Chair of what was happening.

Mr. PAOLETTA. Why was it unusual?

Mr. LAUER. Well, it was unusual because the Chair made an announcement of a total and then the board changed to reflect a different total.

BY MR. SPULAK

Q. Did anyone tell the seated tally clerk or the standing tally clerk or anyone at the rostrum not to accept any votes during that period of time after the second attempt to close the vote?

A. I didn't, and I am not aware if anyone else did.

Q. So during that time, it was as if he—as if he never attempted to close it the second time, would you say, for all practical purposes?

A. I think from the—from the tally clerk's perspective, I think that's true, because as was shown, additional votes were entered.

Mr. SPULAK. Okay.

BY MR. SNOWDON

Q. What about from your perspective? Did you view this as a definitive declaration from the Chair that the vote was to be closed at that point?

A. I think I would say that the Chair tried to—tried to pick a point in time to close it but, as was shown, it wasn't really—that wasn't really a time of closure, it was a time of movement.

BY MR. SPULAK

Q. Do you know if—I think you answered this—do you know if the Chair was aware at the time that he was calling or tried to call it that second time of whether there were any votes that were being counted?

A. Do I know whether the Chair was aware of that?

Q. Yes.

A. I can't say specifically. I mean, he had seen—he had seen that from the first time of trying to close it that that was the problem the first time, was that the vote had not yet settled. So it is very possible that he would still—should have still been aware that there could be—that could still be an ongoing issue.

Q. Right. But my question was more specifically whether—I mean, again, I think that's true, of course, that he—there could have been others. But do you know that he knew for a fact that there were votes that were being entered that might not have already been reflected on the board?

A. I don't know that. I don't know if he would have known that for a fact.

Q. Do you remember—you said you don't recall who it was that was talking to Mr. McNulty, if there were any instructions being given to him. But do you remember where he was looking at the time that folks were giving him instructions? You were looking at him probably. Is that correct? But he would have been looking somewhere else. Were you able to know where he was looking?

A. I can't say. I was looking at him and at the well at the tally clerks. I can't say where he was specifically looking.

Q. I am going to ask you to speculate, if you would. If someone were giving him instructions it is possible that it was to his right. Is that right? I mean is that——

A. Yes.

Q. [continuing]. Where that might have come from?

A. That makes sense, yes.

Q. So he would be looking, if he were to look at who was giving him instructions, he would be looking to his right. Is that right?

A. That is correct.

Q. So if he was looking to his right and having a conversation, or maybe not even a conversation, listening to what was being told

to him, he wouldn't be looking straight ahead into the well. Is that correct? Well just based on my hypothetical.

A. Correct.

Q. I am not saying that happened. But isn't that right?

A. That's correct.

BY MR. PAOLETTA

Q. But he does have the ability to move his eyes even though his head may be looking this way, right, over to the well. You didn't see his eyes move, or do you remember his eyes moving?

A. No.

Q. Okay. All right.

BY MR. SNOWDON

Q. Let me make sure I understand the sequence again. I apologize if we have hit this before. But the first time Mr. McNulty begins to call it, Mr. Sullivan steps in and says that there is still Members in the well, and the Chair holds up. I assume that's not particularly uncommon for that type of thing to happen. Is that right?

A. That's right.

Q. When that does typically happen, oftentimes when the Chair then wants to call a vote in the future, at some point in the future will the Chair typically look to the parliamentarians to see if it is now an appropriate time to do that? Essentially, there has been one incident, they have sort of been put on notice that it is not an appropriate time to call it because there are people in the well or for whatever reason. The next time they go to close the vote, do they typically check with the Parliamentarian to see if, you know, now would be a good time?

A. I would say no, because if there are subsequent votes or subsequent changes that will result in a new slip. So kind of I guess they are receiving the slip from us. I assume they would take that as saying we don't see anybody else milling with a vote card.

Q. Okay. But this is a little bit uncharted water, because in neither case in this particular vote did the Chair have a slip.

A. Correct.

Q. So the answer to your last question from my hypothetical was based on the fact that the Chair really wouldn't need to do that because the Chair would have a tally slip from you all, the parliamentarians, indicating that it was okay to go close the vote. Right?

A. Right.

Q. But that never, in fact, happened here because there wasn't a tally slip to start with?

A. Right.

Q. Okay. So I guess it makes it not all that good a hypothetical, I guess.

BY MS. MCCARTIN

Q. Can I ask a question, Ethan? If De'Andre released the vote right after the Chair's 214–214 second announcement, and he released it of course, but there was the uptick of the 215–213, wouldn't the precedents have supported that that would have been

the final vote? The final tally would have been 215–213, and that his announcement would have been merely an erroneous announcement?

A. That is a possible outcome if that was it. And then the Chair had said——

Q. Yeah, assuming that De'Andre released it, assuming that the possibility of Members in the well voting—this is again another hypothetical—that that wasn't an issue, so you know, we don't have the possibility of Members voting in the well, De'Andre released, the final tally would have been 215–213, and not as McNulty called it at 214–214, because at that point, you know, those votes were in the system. Otherwise there would not have been the uptick. So those votes were in the system. So that would have been the final tally.

A. Yeah. It is uncharted, as we said, but yeah, that's right, it could have been—it could have been an outcome where we would have had the slip and the finalization, then the Chair—then it would have been 215 to 213.

BY MR. SPULAK

Q. Right. But as long as the boards hadn't gone down, if someone else presented themselves in the well and you recognized that, that slip would have been moot and you would have moved onto another tally presumably. Isn't that correct?

A. I am confused on where we are in the hypotheticals.

Q. We are at 215–213.

Ms. MCCARTIN. But the vote's still on. The vote's still out there.

Mr. SPULAK. The vote's still on, but a slip is given. If you can think about the facts of this case.

A. Okay.

Q. A slip had been given at 215–213, and as we know, other Members appeared in the well immediately thereafter, immediately after the 215–213 uptick.

Mr. PAOLETTA. I am sorry, did you say a slip had been given?

Mr. SPULAK. I am saying if a slip had been given.

Mr. PAOLETTA. Oh.

BY MR. SPULAK

Q. But other Members appeared in the well, would you not have allowed them an opportunity to vote and a new total would have ensued?

A. That happens. Yes. That would be—that would be an acceptable course to get all the votes in that are supposed to be coming in.

Q. And so do you remember that after that uptick, were there other—you know what I am talking about after, after it went from 214–214 to 215–213—that other Members appeared in the well?

A. That's my recollection of what happened.

Q. And their votes were entered?

A. Yeah, I believe they were. That's why the subsequent changes took place.

Q. Yes. Right. Okay.

BY MR. PAOLETTA

Q. Okay. All right. I am going to ask you one question, and then sort of jump back a second or jump up. Two questions actually. Do you remember John Sullivan speaking to De'Andre Anderson saying—about closing the vote after he had gotten the three cards and he was entering them? Do you recall John Sullivan saying De'Andre, are you going to close the vote?

A. The three cards following——

Q. The Diaz-Balarts and the——

Mr. CRAWFORD. Ros-Lehtinen.

BY MR. PAOLETTA

Q. Ros-Lehtinen, right, the three Floridians. Okay. And De'Andre is entering them in. And as Mr. McNulty calls 214–214 and then Mr. Sullivan has a conversation with De'Andre. Do you remember that? It sounds like you don't.

A. No, I don't remember that.

Q. Okay. All right. Now, as we understand it, De'Andre was trying to clear the vote after those three that he inputted, all right, so the 214–214, and he is inputting that last one, McNulty calls it, and then it ticks up. Okay? That he is trying to clear the vote, okay——

A. Oh, okay.

Q. But the button is stuck, the computer is not—the board is not responding. Okay?

A. Okay.

Q. Okay.

Mr. CRAWFORD. Were you aware of that at that time?

Mr. LAUER. No, this is news to me.

BY MR. PAOLETTA

Q. Okay. Okay. Now, let's put it in the hypothetical category, okay? He is trying to, okay, clear the board because Mr. Sullivan has asked him are you clearing the vote? Mr. McNulty has just called it at 214–214. If he releases the board, which is what he was trying to do feverishly, all right?

A. Okay.

Q. And it goes down, right? And then Members show up in the well? What do you do there?

A. I think it is too late then.

Q. You think it is too late because why?

A. Because the logistics overtake any discretion of the Chair. It would be I think the best approach there.

Q. Okay. And so you are not—so you are not aware of De'Andre trying to clear the vote or Mr. Sullivan talking to him?

A. No.

Q. Okay. So sort of the jump up question is, big picture, is this any way to run a vote, in your view, based on your experience as the assistant Parliamentarian since 1999? I mean what we are talking about is—well, so, based on your sort of experience and knowledge of how to close a vote, how to record a vote, is what happened on 814 any way to close a vote?

A. No.

Q. Okay. And why not?
A. Because things like what happened can happen.
Q. Well, just delineate them for me.
A. Well, any number of problems.
Q. Okay.
A. I mean, the mere case of the refreshing not taking place, or even not entering, the tally clerk having validly submitted well votes or well changes in his possession that just have not yet been plugged into what the Chair might be looking at on the boards.
Q. Okay. And as a basic baseline for closing a vote do you think it is, you know, a requirement, if you will, for good practice, okay, not requirement in that there is a written policy or written rules, of having a tally slip in hand so that it relieves the Chair of having to know are there people still in the well or that there has been some sort of first cut that this is—that this is ready to be announced? Do you understand?
A. Yeah. I am sorry, the question was——
Q. Do you think as a basic, you know, minimum you would need to have a tally slip at least once presented to the presiding officer?
A. Yes.
Q. And that wasn't followed here. Right?
A. No, it was not followed.
Q. So that was unprecedented in your view, right?
A. In my experience.
Q. Okay. And the fact that we are talking about and questioning you about do you remember exactly when things were inputted was all—sort of flows from the fact that the Chair didn't wait for a tally slip to be given to him. Would you agree with that? Something sort of caused this river of confusion or, you know, and so I am trying to sort of pinpoint as to where something went, you know, off track to have all these questions about exactly when is a vote closed.
A. Yeah. I think that this case demonstrates the need, the utility of that slip where not just being an unnecessary formality, but actually serving a purpose.
Q. Okay. Do you remember Mr. Boehner's well card being given to the clerk, tally clerk?
A. Yes.
Q. Do you remember if that was entered or not?
A. My note indicates that it was not.
Q. Okay. Right. And do you know why it wasn't entered?
A. No. I don't know why.
Q. Do you think he was disenfranchised?
A. I think—well, gosh, I don't know. That's kind of a big question.

BY MR. SPULAK

Q. Are you aware that he complained about the fact that his vote wasn't counted?
A. No.
Q. Has it happened on occasions that Members might complain to the Parliamentarian's office about a vote that they thought they were entered or it was the wrong way?
A. Can I come back—go back for one second?
Q. Absolutely.

A. I think—I thought part of the plan was it was a possible motion to reconsider coming from Mr. Boehner if the vote, in fact, was going to be one where the motion to recommit was rejected. I thought maybe he was switching from a yes to a no to make himself eligible to move that reconsideration. So I don't know—unless that was his first vote of the day—or first vote on that issue. I don't know.

BY MR. PAOLETTA

Q. It was a change. But it was in the—it was in Mr. Anderson's possession and it was never entered. Do you remember——

A. Oh.

Q. Do you remember Mr. Sullivan—do you remember De'Andre Anderson asking Mr. Sullivan what to do about it?

A. I mean, can I answer from what I viewed?

Q. Yeah.

A. I mean, I think that was at the time when Mr. Sullivan had prepared the explanation for the Chair. I think that the Chair's reading of that——

Q. Right, but—okay. I am sorry.

A. I am trying to keep my timeline accurate. I thought maybe that preempted, that they were trying to squeeze that vote change in—I don't know. I think it got overtaken, the entering of that got overtaken by the Chair going ahead with that announcement.

Q. Yeah, just under the scenario of it is never closed until it is announced, this thing was sitting in the rostrum's hands, if you will, not called yet, and it was never counted?

A. Yes. Yes. Well, that's bad. That's a mistake then.

Q. Okay. And that's why I asked do you think he was disenfranchised?

A. Then yes, his vote or vote change should have been counted. If it was in the possession of the rostrum staff, absolutely.

Q. Right. And so when—I believe Mr. Sullivan said something like hold on, we have bigger problems?

A. That's what it sounded like on the tape.

Q. Okay. So he doesn't have the authority to say don't count a vote, right?

A. Yeah, I wouldn't think he would say that, no.

Q. Okay.

A. I leapt back from your question. And I didn't want to forget about your question.

BY MR. SPULAK

Q. No, that's okay. I was just saying I asked you if you were aware of any concerns after 814 about Mr. Boehner's card not being counted either by him or anyone else. And then I went on to say, to ask isn't that something—I mean doesn't that happen occasionally, where a Member may believe their vote wasn't recorded or recorded accurately, and might they not come to the Parliamentarians and make them aware of that?

A. Yes. Yeah. When someone doesn't get entered, or when the Chair doesn't stop for someone running down the aisle waving their hand, absolutely, the Chair has issued apologies.

BY MR. PAOLETTA

Q. But let's be clear here. This was sitting in De'Andre Anderson's hand.

A. Oh, yeah. Yeah.

Q. The well card was in his hand before the vote was called, right?

A. Yeah, that's right.

Q. I mean under the scenario that it's not called until it is called, which is when he said 212–216, the motion is not agreed to, right, that is sort of the final time it was called. Right?

A. Right.

Q. That well card was sitting in De'Andre Anderson's hand and it wasn't counted.

A. That's—I think that's what happened.

Q. So that's different than somebody running down to the well and the Speaker pro tem has cut off the voting. Right?

A. Yes.

BY MR. SPULAK

Q. You said that—you said that it happens where leadership staff or others will inform or instruct the Chair that it is time to close the vote. Is that correct?

A. Yes.

Q. And you have been—have you been on the floor since '99, since you started with the Parliamentarian's office?

A. Yeah, not so much in the early years, but more and more as the years go by.

Q. So I would ask is that a common role of the leadership to communicate with the presiding officer about when a vote should be called?

A. Yeah. And the reason I say hand signals is because——

Q. Well, I am just saying anything. Is it just a role? You can be more specific if you would like, but my question was is that a common function or role of the leadership to tell the Chair call it now, let's close the vote, or perhaps conversely, say let's leave it open?

A. It's—I would say it's routine that the Chair, usually through our office, gets confirmation from someone on the Speaker's staff, usually one person, one designated person that after the minimum time has run that it's okay for the Chair to begin to try to close the vote. That's—that's how we do it. I mean that's how a vote is—that's how all the votes are completed.

Q. Right. Right. I don't want to interrupt you. Go ahead, please.

A. But I was going to say when the larger leadership input—I would call it intervention, it comes between that routine practice of the Chair relying on one person to convey that message, that we have seen from time to time try to jump, to get a jump-start on things or to cut off that normal chain of communication.

BY MR. SNOWDON

Q. Sorry, you lost me there a little bit. It is typical to have communication with one person or——

A. Yes.

Q. Okay. And in this case that was different, there was more than one person?

A. Well, I was kind of speaking more generally to the question is does from time to time—do from time to time other representatives from leadership positions try to coax the Chair, help as we say, help the Chair take an action in closing a vote? And I say, yes, that does occur and is not helpful to that normal established line of communication.

Q. And did that happen with respect to 814?

A. Yes.

Q. And the normal line of communication would be you and Catlin O'Neill——

A. Yes.

Q. [continuing]. Saying something to one of the Parliamentarians. What was the additional unhelpful line of communication that took place on August 2nd?

A. That's—that's the intervention of who we are focusing on, Mr. Hoyer, trying to get the Chair to close it at certain points.

BY MR. SPULAK

Q. Why would that be any different? He is in the leadership as well, isn't he?

A. Yes, it's different in that the problem when—I am speculating from the Chair's—any Chair's standpoint is to cut corners, that they will be tempted to cut corners when someone in a leadership role is saying this thing has to be closed at such and such point that we lose out on the kinds of things that other people view as extra formality, but actually serve, as we have demonstrated, serve a real purpose of verifying that everything is settled.

Q. In the end, whose responsibility would it be to decide when to close the vote, even if being encouraged by an actual member of the leadership? Who has control of the situation?

A. Well, the Chair.

Q. You know, we heard some interesting testimony, someone said that they have been doing this for 29 years or so, and that they have seen this happen many times, but this was the first time that they had actually seen the person in the Chair do what the leadership was telling them to do. Would you agree with that?

A. I would verify that that is the first time I have seen the Chair not wait for the formality of the slip.

Q. So it would be—I am not testifying for you, but it would be—I mean you have seen, you have seen the Chair be informed or instructed to close a vote, but they decide—and, in fact, they may do it, but they do it, they do it in a more measured fashion, allowing the process to proceed.

A. Yes. I agree that there have been attempts to influence the Chair and say I also agree they have not been as successful as they were that night.

Q. And would you say that you saw that over the last 8 years?

A. Yeah, that's—I mean that's why I mentioned the hand signals, because when it was the Republican side, we would have to look all the way across the rostrum for the Speaker's person. And then——

Q. How would they do that?

A. They would just basically come up and give a head nod, some sort of notification to us that there were no problems, no reason to keep holding it open.

Q. And then you would communicate that to the Chair?

A. Yes. And then we would tell the Chair so and so has said it's okay.

Q. Who would that so and so have been in the past, if you can remember?

A. That would have been the equivalent of Catlin O'Neill in this case, Emily Seidel or Karen Haas for Mr. Hastert.

Mr. SPULAK. Okay.

BY MR. PAOLETTA

Q. But it basically is a hand signal to say okay, start closing—begin closing the vote. Right? So it is get that tally sheet collected up, and they are looking in the well and all that stuff. Right?

A. Yeah. I don't know where they are—I think they are more focused on their own vote counters that they say we have got everybody who we know is in town has been entered or there is no major problems.

Q. Right. It is usually a staff person, right?

A. Yes.

Q. Okay. So in this case, it was Mr. Hoyer, who you don't remember, but virtually everyone else who remembers it says he was quite exercised, right?

A. Yes. Oh, yes, I remember his being exercised.

Q. You remember him being exercised?

A. Yes.

Q. So could that have created a dynamic that Mr. McNulty was reacting to that hey, this isn't Catlin O'Neill who is telling me to close the vote, this is actually Steny Hoyer who is coming straight at me, you know, quite exercised?

A. Absolutely.

Q. Okay. So was that—do you remember that kind of stuff happening in the past, too——

A. Yes.

Q. [continuing]. Where a Member would come straight at him and say close the vote.

A. Yes.

Q. And what would happen in those instances?

A. We would have to try to stop the Chair and intervene, and intervene with the person who was trying to intervene with the Chair.

Q. Okay. And then things got—you got the tally slip together and handed it out?

A. Yes.

Q. Why do you think Mr. McNulty actually called it like he did? Because it looks like when he called it at 214–214, that's what he wanted the—you know, that was the result up on the board, and that's, you know, when he called it, right? He didn't wait for the tally slip, right?

A. Correct.

Q. Okay. Why do you think he did that?

A. I don't know. I assume it was the pressure to win the vote—well, lose the vote—no, defeat the motion, basically.

Q. Right.

A. And the pressure he was getting from off the rostrum.

Q. You have been there 9 years as a Parliamentarian?

A. Yes.

Q. Nine years?

A. Almost 9.

Q. Almost 9. Okay. And you haven't seen any other vote called without a tally slip, right?

A. Yeah. And 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.

Q. What about Mr. McNulty?

Mr. SPULAK. I am sorry, what?

Mr. LAUER. I know. I first said it never happened, and then I said I can't guarantee that that's accurate. There may have been one other time.

Mr. PAOLETTA. If you think of it, let us know.

Mr. LAUER. I don't remember the issue, I don't remember the vote. It was in the—a prior Congress. So it was with the Republican majority.

Mr. SPULAK. Were you working here then?

Mr. LAUER. Yes. I was working here. I might have even been on duty. I don't remember. I don't know if I can ever document that happening.

BY MR. PAOLETTA

Q. Okay. Mr. McNulty, he—well, if you do think of it, please let us know.

A. Absolutely.

Q. Mr. McNulty, is he experienced in the Chair?

A. I wasn't here the first time—or the last time this party was in the majority, but I think he was, was an occupant of the Chair with some frequency during that regime.

Q. Okay.

A. So I think he did have prior experience.

Q. Was he doing it, though, during the past several months? This is August, so 8 months, right?

A. I think he did. We can verify that, but I think he did some, spent some time in the Chair.

Q. Okay.

A. Yeah, he spent some time in the Chair. He did.

Q. When you heard him call out the vote, you know, at that point were you surprised? What was your reaction?

A. Yeah. I was stunned.

Q. You were stunned?

A. Yeah.

Q. Okay. Why?

A. Both because the vote changed and because he hadn't—you know, he hadn't gotten any verification of what the final from what had been entered was going to be.

Q. And do you remember—and I apologize—in terms of the discussion of aborting the vote, do you remember any discussion about losing the data?

A. Yes.

Q. Okay.

A. You want me to elaborate?

Q. Yes.

A. Okay. Yeah, that was the whole problem was that was what was keeping the clerk from aborting was the fact that that would cause a loss of all the vote data from that vote.

Q. And what was your understanding of that at the time? Do you remember the discussion?

A. Yeah. And I never understood, and I am not sure—I still don't understand why it couldn't just be closed out normal, like a normal vote. And part of my theory was maybe that because it was a weird case where there was, you know, unanimous consent requests to vacate it, which got objected to, and then a motion to reconsider that maybe De'Andre might have thought they wanted to redo.

That wasn't like closing out a vote and starting a motion to reconsider as a whole new vote, that somehow what was being asked of him was basically a redo, like the unanimous consent request to vacate it. But I don't know, that's really—that doesn't—that's really not a very nice thing to say, because that presumes that he didn't know what a motion to reconsider was, which I am sure he does.

BY MR. SPULAK

Q. So you are suggesting that that was more of a—I mean, that wasn't—that decision was not based so much on the sort of technological situation where they were, but more on his belief that——

A. No, I don't want to—I don't want to put those words in his mouth and presume that he didn't know what he was doing. That's not what I am—I don't mean to imply that. But I don't know that we ever heard if there—what the technical problem was or why that was—the only option was abort.

Q. Why did you say that you thought that it was—words you used, strange or whatever—because all the data of the vote would be lost? Why did you believe that? Why did you believe that the data would be lost?

A. I believe we were told that.

Q. By whom?

A. By Ed.

Mr. PAOLETTA. Sorensen?

Mr. LAUER. Sorensen in the Clerk's Office.

BY MR. SPULAK

Q. Do you know what he meant by lost? Was there any discussion about what that meant that the data would be lost?

A. Well, eventually, you know, he said they could get it back through some laborious retrieval process. But I don't know if that—that might have come up later. I mean they might have—the decision to abort might have been done prior to learning that you could actually in some way reconstruct the vote. But yeah, I think about

it, I think you are right that that was not presented as an option at the time.

Q. But in order to actually, in a parliamentary sense, abort a vote, wouldn't you have to vacate the vote? In other words, notwithstanding what happened to the actual data, wouldn't the vote still have stood?

A. Yes. I would—yeah, I think they would be different, different events. I mean, vacate would indicate that whatever action the House took as a result of that vote is also vacated.

Q. Correct. Correct. Except vacate is—I am sorry, abort is not a parliamentary process. Isn't that correct?

A. That's correct.

Q. So if you made a decision to abort a vote, first of all, it would just be among—it would be among the folks at the rostrum trying to decide how to deal with the EVS system, right? It would have no consequence or bearing on the votes that were cast, notwithstanding the fact that you might not be able to figure it out right away. But if I were a Member and I voted aye, and there was a decision to abort the vote in the EVS system, I would still have voted aye. Isn't that correct?

A. Yes, that's correct.

Q. What I am suggesting is you would have had to have vacated the vote to actually have some consequence to the vote. Separate from the data.

A. Yes. Yes. The act of abort was a technological event, not one that changes whether a vote actually happened or that there was an outcome. But yeah, I agree with that.

Q. Just a few more questions. Going back, did you say that—did you say that in the past, you have seen Members, in addition to staff, give instructions to the Chair about wrapping up a vote?

A. Yes.

Q. And that was Republican Members as well as Democrat Members?

A. Yeah. I am more conscious of the Democrat because on that side of the rostrum. So if people were——

Q. I am talking about when the Republicans were in the majority.

A. Right. I would be less aware of that because we are on the opposite side. So them coming up to the Chair is not as—it is not as much in our little work space.

Mr. CRAWFORD. That would have been done on the time keeper's side.

Mr. LAUER. Yeah. Right. I am pretty sure it was done. There were influences.

BY MR. SPULAK

Q. And we are talking about closing votes, but presumably that also—I actually shouldn't say "presumably," did that also happen for keeping votes open, where Chairs—where presiding officers have been instructed by Members of leadership to not close a vote, to leave it open?

A. I guess there is less—there is really less—there is less need for that because the Chair normally wouldn't even begin to take action until given some kind of assurance that it was okay.

Q. But are you aware of instances where after 15 minutes expired maybe a longer period of time transpired, 15, 20 minutes, where there is no activity in the well and no apparent new votes coming in or vote changers, but the vote remaining open?

A. Yes.

Q. When Mr. McNulty called the vote 215–213, what was the—what was the mood on the floor after that?

Mr. SNOWDON. I am not sure he ever called it.

Mr. SPULAK. I am sorry.

BY MR. SPULAK

Q. When the board changed to 215–213, what was the mood on the floor?

A. Well, there was outcries, jubilation I guess from the side that had prevailed. It was very noisy.

Q. Did they prevail?

A. Well, that's a good question.

Q. But why would they have prevailed?

A. From the look at—from the display on the two displays that are above the side doors showing the 215 and 213 tallies.

Q. Right. But would it—were there Members in the well at that time from what you are aware?

A. I think there were.

Q. Let's assume. You think there were, but even if you are not sure, and I would say let's assume that at the moment there was the uptick of 215 to 213, there were Members in the well. Would those Members have been given an opportunity to have their—to have their votes—normally to have their votes counted? If they were in the well at the time that that happened?

A. That's a very—that's a very fine line. That's difficult for—to know what will happen, because sometimes—we have seen the Chair pull back and take additional votes. And we have seen sometimes they haven't. And there is outrage and outcry afterwards.

Q. Isn't there an opening—isn't there the Speaker's opening day statement that says that if Members are in the well, they will have an opportunity to vote?

A. I think that I would have to review the language, but it says something like that presiding officers will have the Speaker's support to endeavor that all those who are in the well trying to vote will be counted.

Q. Right.

A. Yes. That's a longstanding statement.

Q. Right. So based on that, if there were Members in the well, they should have been counted.

A. Yes.

Q. Did you think that the motion to vacate was a good solution? If you think—if you believe there was a problem, do you think the motion to vacate was a good solution at that time?

A. I think that would have probably been a good solution. It would have been a solution. I don't know if it would be good or not. But given the way that—yeah, I mean given the way it was—it concluded, it might have been a good idea to try to start it over.

Mr. PAOLETTA. I have a few things. A couple things.

BY MR. PAOLETTA

Q. Do you remember, Ethan, again, we have gotten some testimony, you may not remember it, but Mr. Hoyer came down, you heard some, you know, direction, he comes back up on the rostrum. Do you remember him talking to Mr. Sullivan then?

A. Yes.

Q. Do you remember what he said?

A. He said we control this House, not the Parliamentarian.

Q. And do you remember anything like don't ever do this to me again?

A. No. That was the only thing I heard him say.

Q. That's the only thing? Okay.

A. I think he was engaged with Mr. Sullivan and Mr. Wickham on lower tiers of the rostrum at different points.

Q. I see.

A. I don't know what they have said, but he was a presence there.

Q. And do you remember Mr. Sullivan saying anything, or any responses he had to Mr. Hoyer?

A. I think he tried to point out the fact that there were still cards the tally clerks were still processing.

Q. I see. So Mr. Hoyer—what did Mr. Hoyer say? Did he realize that there were people in the well and he was trying to close the vote or——

A. I don't remember, or I don't know that I heard anything more after his initial statement to us, to John.

Q. Okay. Do you think this is the worst sort of vote closing you have seen since you have been here?

A. Trying to answer it objectively, as far as this is probably the worst breakdown of the mechanics of the way a vote is supposed to be closed. Other than that one time. As I said, there may have been another instance where there was not a slip given. But this was much worse because of the change that occurred.

Mr. PAOLETTA. Right. Okay.

Mr. LAUER. Can I add?

Mr. PAOLETTA. Yeah.

Mr. CRAWFORD. I think you have some questions.

EXAMINATION BY MS. MCCARTIN

Q. Well, a couple things. When you said that you couldn't hear John's response to Mr. Hoyer, but that you think that he was pointing out that there were votes being processed at the time, did you recall Mr. Hoyer trying to intervene in that process, or did he just accept John's point of view or information that in fact these things were being processed at the time?

A. I don't know what—I don't know what his response was. I don't know.

Q. Okay. And on the other conversations that they were having, do you think they were having conversations on vacate and the motion to reconsider? Do you think that the Parliamentarian suggested vacating and the motion to reconsider as a way to try to, you know, remedy any problem that may have been going on?

A. I don't know where the idea originated from, but I know that was—that was discussed up there was—and I would like to—I assume Mr. Wickham talked about that, about his role in trying to make sure there was someone qualified or knowing who was going to make certain motions. And so that was being discussed on the rostrum, yes.

BY MR. SPULAK

Q. If I might, as I recall on the tape at one point, Mr. Blunt was up there behind you on the right side of the rostrum, and maybe even other Members of the Republican leadership. Do you remember that?

A. Yes.

Q. And do you remember did they speak with anyone?

A. Again from review of the tape, I think Mr. Blunt, possibly Mr. Price of Georgia spoke with Tom Wickham.

Q. And do you know what they spoke about?

A. No.

Q. You wouldn't know if it was suggested to them that the best course of action would be to vacate the vote, do you?

A. No. I don't know if that's the case.

BY MS. MCCARTIN

Q. And just as a point of clarification, a unanimous consent request to vacate is not under the Speaker's guidelines something that is required to be cleared by the minority?

A. I can check that, but I don't think so. Those are reserved usually for consideration of legislative items. So I would not think anything of that nature would have been ever covered by the guidelines.

Q. Okay. And one last thing on the—do you think that most Members really understand—who are in the Chair, in your experience, really understand the uptick issue, you know, that the computer actually has a little bit of a lag time to refresh the board, or do you think that some Members may see it as instantaneous?

A. Oh, absolutely that's not understood. Even the notion of the lag between a Member submitting a well card in the first place, and that well card being reflected in some sort of electronic display. That can take quite some time if there is a backlog, especially when there is frequent use of well cards.

And I know that has come up that they don't understand why their vote hasn't been shown or hasn't been changed and we actually have to show them a stack of unprocessed well cards. So I think that's——

Q. So perhaps a good recommendation for the select committee would be sort of an education in that kind of—in that part of the process?

A. Yes. Or ways to minimize well voting in general if it causes this misunderstanding and displeasure.

BY MR. SPULAK

Q. I was going to ask would that be a recommendation that, perhaps difficult to construct, but if possible, to eliminate well voting?

A. Yeah. I don't know if it could be eliminated, but I know that unnecessary or excessive use of well voting does cause backlogs that then lead to problems—lead to short tempers and impatience and things. So it is always probably in the best interests of Members to vote electronically.

BY MR. SNOWDON

Q. Do presiding officers get any sort of primer or instructions on how to run the vote?

A. Well, I know that when the new batch of presiding officers came on board in January of '07 that Mr. Sullivan did offer private tutoring sessions with anyone who wanted—thought they were going to want to be in the Chair. And I don't know what he covered in those sessions. But there at least was some instruction on how to behave generally in the Chair and——

Q. Did that instruction, did all of the presiding officers receive that instruction?

A. I can't say that for sure. I don't know if that's the case. I would be surprised if some of the ones who had presided in the 103rd or earlier would have signed up for that. I assume it would be all new Members, but——

Q. Okay. You talked about Members not necessarily understanding the concept of an uptick or that, you know, not knowing why it took so long for their well vote to show up on the board. Do you know whether Mr. Sullivan emphasized to the presiding officers that they needed to wait for a tally sheet, and why they needed to wait for a tally sheet before calling a vote?

A. I don't know if that was covered. But we do—new to this Congress was we prepare a sheet for almost every vote that has the two standard questions that the Chair asks, have all Members voted? Does any Member wish to change his or her vote? As well as how to announce it, on this vote the yeas are such and such, the nays are blank, and then the result, the bill is passed or whatever. And that is new for this Congress that we didn't used to use that when we had more experienced chairs. So there was that modicum of instruction I think was given.

Q. I mean that instruction gives them the magic words that they are supposed to use for these various steps. But does it also give them the cues that they are supposed to either give or receive in order to get to those various steps?

A. Well, there is, there is a parenthetical that mentions ignoring the board and getting the number from the slip.

Q. And where is that? Is that posted or glued to the rostrum that they have so that they can easily refer to it? Is it something that is given to them on a laminated note card? Is it something—how do they get this?

A. It is just a sheet of paper.

Q. Where is it?

A. We put it on—we put it in front of them during the vote, with things circled and crossed off that don't apply. It is just a fresh sheet on every vote.

Q. So would Mr. McNulty have had that document for this vote?

A. I assume he would have, since we give it to the Chair almost on every vote.

Q. Do you know what happened to this document?

A. I do not. I would have been the one to have given it to him if he had it.

Q. And would this document have said, for example, to ask them if there are any Members to vote or wishing to change their vote? Would that have been——

A. It would have said that, yes.

Q. And would it have specifically referenced the tally sheet, reading off the tally sheet and not looking at the board when announcing the vote?

A. Yes.

Q. And would it specifically have said that the motion to recommit is laid upon the table as the final language to close the vote?

A. Yes.

Q. And did you mark this document up in any way? Were there certain sections that you circled or starred or highlighted?

A. Yes. There would have been things basically crossed off. Because it lists seven or eight frequent outcomes of events, motions, amendments, bills and so forth. And normally I cross off the ones that don't apply to the pending vote.

Q. If Mr. McNulty had followed the steps as laid forth on that piece of paper that you gave him prior to 814, would we be in the situation we are in today?

A. No.

Q. And did anybody retrieve that document at the conclusion of the evening of August 2nd?

A. Not—I didn't. And I don't know if anyone else did. I would doubt it. But I—when there is a more experienced person in the Chair, sometimes we don't—we don't give it to them. But I don't remember if I gave it to him or not.

Mr. SPULAK. Why would you—why would this document have to say don't read the tally off the board but from the tally slip? Why do you think someone has to be told to do that? Is it possible that it's sort of instinct to try to get them to read the tally off the board? Would Members think that that was an accurate reflection?

Mr. PAOLETTA. What does the language say on that page?

Mr. LAUER. I wish I would have brought one. I think it is a parenthetical. Ignore—it might say ignore board. And there is reference to the slip. I can't remember the language.

BY MR. SNOWDON

Q. Can we get a copy?

A. "Get number from slip," or something like that.

Q. Can we get a copy of that?

A. And it has been refined and updated throughout the Congress, so the question would be whether we have August 2nd vintage.

Q. How about giving you the current, and if you can track one back to the August 2nd vintage, that would be great.

Mr. SPULAK. Right. But let's be sure that—well, I think we need to also try to get one from August 2nd, unless there have been any changes.

Mr. PAOLETTA. You are pretty certain that the August 2nd one would have said something about the tally slip and the board, not relying on the board?

Mr. LAUER. Yeah. I am pretty sure it did, it did say that, to make sure that that was the way they did it.

Mr. SPULAK. Again, if you will, can you come back to my question? Why is that something that you think is important to point out?

Mr. LAUER. I think—because of all the inexperienced presiding officers that were going to be taking the Chair starting this Congress. And also as a bulwark against them relying on anything other than the slip, either the board or instruction from people who are trying to intervene in the proceeding.

BY MR. SPULAK

Q. Why do you think they would take tally off of the board?

A. If they were feeling pressure to close a vote before it was ready to be closed.

Q. You don't think it could be because they thought that the board reflected the vote?

A. Well, yeah, I guess—I mean that's where they would naturally look. Those are the only two places they can see the outcome.

Q. So if you will, they could take it off the board, believing that that was the accurate indication of the vote, and think they were doing the right thing. And I am not asking you to agree with that if you don't agree with that.

A. Sure, if they weren't told anything else.

Mr. SNOWDON. But they had been told something else?

Mr. LAUER. Yeah.

BY MR. SPULAK

Q. Again, let me say, Ethan, and I am not trying to put too fine a point on this, they could be told to wait for the slip because that is the process. Right?

A. Right.

Q. We do things because that's how we do things. But they could also believe that the board would have the same vote as the slip would have and that the board would be accurate. I mean, isn't it possible for them to believe that?

A. Yes.

Mr. CRAWFORD. And in fact, when we had our briefing on the floor, when they ran through the voting system with Kevin Hanrahan, if you recall, was asked or said that he got the numbers to put on the slip from the board. So it's very circular in terms of where does the number come from to read from the slip. It comes from the board. Well, don't read the board, read the slip.

Mr. PAOLETTA. Not entirely.

Mr. CRAWFORD. No, that's what he said during the briefing. Get the numbers from the board.

Mr. PAOLETTA. Right, but he is looking at that and he also knows there are no more well votes to be counted.

Mr. Crawford. We are talking about——

BY MR. SPULAK

Q. Do you believe that to be true, that the numbers for the tally slip come off the board?

A. Yes.

Q. Why don't they come off the machine? Why don't they come off the display of the terminal? Wouldn't that be the most accurate number? Wouldn't that give you total assurance that all the upticks had happened?

A. Well, I guess logistically the standing tally clerk. I don't know if they can see.

Q. Understood.

A. If they would, they would be reading upside down. But I guess your question is couldn't the seated tally clerk make the slip?

Q Make the slip?

A. I guess they could.

BY MR. SNOWDON

Q. Doesn't the seated tally clerk—I mean, I believe what Kevin Hanrahan said, and I could be wrong about this, was that there was a process, some point in the process does he pass—does the standing tally clerk, once he has filled out the slip, does he pass that to the seated tally clerk?

A. No.

Q. No. It goes straight to the parliamentarians?

A. Yes.

Q. I thought there was some point in the process where somebody checked the tally slip against what was on the computer screen——

Mr. SPULAK. If you will——

Mr. SNOWDON [continuing]. As a double check.

Mr. SPULAK. If you will, we were told by Mr. Anderson that he listens to what the Chair calls and verifies that by looking at the screen to make sure that it reflects what that's what he said, which gets to my point that that seems to be the best quality control, since he is checking it and he has the numbers in front of him. But anyway, we are having this discussion because of recommendations, which is part of our mandate.

BY MR. CRAWFORD

Q. Ethan, I would like to ask you just a couple questions about the tally slip itself. The tally slip is an indication that the system has been closed for further input and that all the well votes and well changes have been processed. Is that correct?

A. Yes.

Q. But the tally slip is blind when it comes to whether other Members are trying to vote once that tally slip has been produced?

A. Yes.

Q. So that's what leads to situations where multiple tally slips have to be filled out during a vote——

A. Yes.

Q. [continuing]. Where other Members appear?

A. Yes.

Q. And then those votes processed, and another tally slip is then produced. Are you aware of any situations when a Chair has announced a vote off of a tally slip while other Members have appeared and has refused to open the vote?

A. Yes.

Q. And is that—in your opinion, would that be a disenfranchisement of those Members even though a tally slip has been produced?

A. Definitely there have been situations that are inconsistent with the notion of taking any vote of a Member who is in the well trying to vote. It is always a fine line and very difficult for the Chair and the rostrum to recognize when that has happened, when there is someone who is yelling just to be yelling across the Chamber at anything else versus someone who is yelling one more, which is the standard phrase they use to indicate that they are coming down to vote, or whether someone is yelling one more because there is someone, you know, 50 feet outside the Chamber.

And it is difficult, the Chair is reading the slip and often times the sheet, so they are not necessarily looking at the well. But yeah, there have been times, I am sure, when Members righteously felt that they were prevented from voting when they were in the well or the proximity of the well trying to get in on a vote.

Q. So the production of a tally slip, in and of itself, is not a guarantee that all Members have had the opportunity to vote?

A. Well, it's supposed to be a guarantee that——

Q. That the system has been closed to further input. That's what the tally slip represents, that the system has been closed to further input at that point.

A. Yes. And that all the input that the tally clerk has been——

Q. Processed?

A. [continuing]. Processed.

Q. But does not reflect, in and of itself, the fact that there may be Members who are trying to vote, but the system has been closed at that point. There may be Members who are pulling cards from the well, at the table at the well, for instance, while the Chair has the tally slip?

A. Yes.

Q. All the tally slip indicates is that all the votes that have been cast at the voting stations, have been cast via well card or changed via well card have been processed. But there is no reflection in that tally slip that other Members are attempting to vote, and the Chair can read from that tally slip with the knowledge that the votes have been processed up to that point, but can ignore the votes that are attempting to be voted. Does that make sense?

A. Well, the first part, that the Chair is supposed to be able to take that slip as an indication that the tally clerk is done entering what's in the tally clerk's possession.

Q. In his possession, yes.

BY MR. SPULAK

Q. You said something. The receipt and the reliance upon a tally slip does not necessarily include the fact that people who wanted to vote weren't given an opportunity to vote. Is that correct?

A. Say that one more time.

Q. The receipt and reliance on the tally slip by a presiding officer does not reflect the fact that there might have been Members who wanted to vote, who were in the well but were not given an opportunity to. Those votes would not be reflected on the tally slip.

A. Well, I mean I would hope it would be an indication that the tally clerk was not aware.

Q. Yes.

A. Was not ignoring——

Q. Yes, understood.

A. [continuing]. Cards being thrust in his direction.

Q. Understood.

Mr. PAOLETTA. I guess—yeah, but one of the reasons you have a tally slip is to prevent those things from happening, so that you have the professional staff, right, calculating and figuring out who is still desiring to vote, and that there is something made that is a manifestation of the professional staff's seeing that there are no more Members desiring to vote. And when you short-circuit that by calling a vote without a tally slip, then you run the risk of disenfranchising Members who wish to vote. Right? That's why you have a tally slip, is to actually prevent, you know, or help minimize the possible disenfranchisement of a Member who wishes to vote.

A. Well, it certainly with regard to any well votes or vote changes that have been submitted to the Clerk, that absolutely is what it is meant to verify, that those have been entered. And just the second part of whether it assures the Chair that no one is being disenfranchised, that no one is trying to vote, I don't know if it goes that far.

BY MR. CRAWFORD

Q. Ethan, are you aware of any time where the Chair has been in possession of a tally slip and has not allowed Members who have appeared in the well to vote and announced the vote from the tally slip in his possession at that point?

A. Yes.

Q. So there are—that's my point, is that the tally slip only verifies a closed system and the votes being processed within that closed system, but does not necessarily reflect that there aren't other Members who have appeared subsequent to the production of that tally slip and who want to vote and who are not allowed to vote. That was my only point.

Mr. SPULAK. In that instance, are you aware of an instance where that occurred and where the solution was to vacate the vote? The vote on which the Members were not allowed to vote?

Mr. LAUER. Yeah, I think that has happened.

Mr. PAOLETTA. Do you remember when?

Mr. LAUER. No, I think it might have been before I joined the office, but I think I had read that that had occurred in the mid-90s?

Mr. CRAWFORD. Okay. That's all I have.

Mr. LAUER. Can I add one thing?

Mr. PAOLETTA. Yeah.

The WITNESS. I just wanted to go back to I feel bad that I disparaged De'Andre.

Mr. PAOLETTA. And I didn't take it at that.

Mr. LAUER. And really I should have remembered what you had said, that he was trying to finalize, or he was actually trying to electronically move on.

Mr. PAOLETTA. Yeah.

Mr. LAUER. And that wasn't working. So that should have told me right there that that was—it was not because he wasn't sure what the next action was, but rather it was because he was facing electronic problems. So——

Mr. PAOLETTA. Okay.

Mr. LAUER. That makes sense then.

Mr. SPULAK. We are going to make every effort we can to keep these transcripts just among ourselves for our own purposes. And so you shouldn't worry that someone will see your statement.

Mr. LAUER. Okay.

Mr. SNOWDON. Let's go off the record.

[Whereupon, at 4:14 p.m., the interview was concluded.]

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

THURSDAY, FEBRUARY 14, 2008.
Washington, DC.

INTERVIEW OF: THOMAS J. WICKHAM

The interview in the above matter was held at Room 1017, Longworth House Office Building, commencing at 10:09 a.m.

APPEARANCES

OUTSIDE COUNSEL, MAJORITY: THOMAS J. SPULAK, ESQ., GEORGE CRAWFORD, ESQ., KING & SPALDING LLP, 1700 PENNSYLVANIA AVENUE NW., WASHINGTON, DC 20006

OUTSIDE COUNSEL, MAJORITY: MARK R. PAOLETTA, ESQ., ANDREW L. SNOWDON, ESQ., DICKSTEIN SHAPIRO LLP, 1825 EYE STREET NW., WASHINGTON, DC 20006

Also Present: Muftiah McCartin, Deputy Staff Director, Committee on Rules; Hugh Halpern, Republican Staff Director, Committee on Rules; and Davida Walsh, Legislative Counsel, Representative Delahunt.

Mr. SPULAK. We will go on the record.

Tom, this is the Select Committee to Investigate the Voting Irregularities of August 2nd, 2007. It is charged with investigating the events of that day, and what happened, and the duration of the vote, and the calling of the vote, and also to make recommendations regarding perhaps future ways of avoiding the issues of that day. So we would like your comments about what happened on that day. And I will ask you any recommendations you can make.

EXAMINATION BY MR. SPULAK

Q. To begin with, however, we ask you to identify yourself, give us an idea of what you do, what your responsibilities are, how long you have done that, and then we will begin to ask questions to you about the day. So please begin.

A. My name is Thomas J. Wickham. I have been with the Office of the Parliamentarian since 1995. I served as the Deputy Parliamentarian since 2005. The office provides parliamentary advice and consultation to the Speaker and the Members, committees, and outside groups. My job as Deputy Parliamentarian is to oversee the office's role in some respects, and report to the Parliamentarian on the various issues.

The first responsibility of our office is to guide the presiding officer during the sessions of the House on the proper parliamentary

procedure. I think that is probably the area of focus today. I, also, in my capacity, review the Journal of each day's proceedings so that it can be approved. The Journal, obviously, of August 2nd was an interesting one. In addition to that, we work with the committees on referrals of bills and on proper committee procedure with regard to meetings and hearings. And we get calls from the public on a whole range of parliamentary issues occasionally, things that are dealing with parliamentary issues at the State legislatures. Plus your local garden club or professional association will call us for help. We try to be available to everyone, but we are a small office with six attorneys and three Clerks. So our main aim is to satisfy our responsibilities to the House, assisting the presiding officer, and then going down the line in descending order of importance.

Q. Thank you. Now I will just ask you to describe to us in narrative form what you would like to tell us about what occurred on the August the 2nd roll call vote 814.

A. Yes. I think what I prepared and submitted to the committee was an attempt to do that in August. I haven't really revised it since August. And that represents the most real-time explanation of what I saw.

At that time Ethan Lauer, another of the assistant parliamentarians, was advising the Chair. And a number of us were also out there. We try to have as many of us out during votes, as many parliamentarians out during votes, so that we can handle—that is the time of greatest contact with the membership and time in which questions arise about past acts or future what is going to happen from a parliamentary sense. And during that proceeding, Ethan was assisting the Chair. John Sullivan was also out there.

During the vote on the motion to recommit, I was over discussing a matter with Mr. Bishop of Utah. He is a former Rules Committee member. And I consider him to be one of the Members I am friendly with. I saw that the vote was getting close. I think somewhere around the 2- or 3-minute range, I went back over to the rostrum to see if I could be of assistance. And then I sat, as my written submission——

Q. You said, and then I——

A. And then I took my place at what I sometimes call the elbow. There is—the Journal Clerk sits on the rostrum, and then there is just a little section of the rostrum that juts out. It is about 5 feet from the presiding officer. And I watched the events unfold and saw that at one point the presiding officer attempted to close the vote at 214–214 and got maybe a couple syllables into it and stopped. And then, during that time, there was a lot of movement up in the well. And then, at that point, went back to waiting, as we do, for the processing of votes in the well, waiting for the official tally slip to be prepared and such——

EXAMINATION BY MR. SNOWDON

Q. Can you elaborate on that a little bit? We have heard from some of the Tally Clerks that the typical process is, if a well vote comes in, it will be passed to the standing Tally Clerk; standing Tally Clerk will pass it to the seated Tally Clerk, who enters it into the EVS system; and at some point, when the Chair gives an indi-

cation that they are supposed to start the process of closing the vote, that the seated Tally Clerk will look to the Parliamentarian to get direction that, yes, in fact we are ready to close the vote. The seated Tally Clerk will then give a verbal instruction to the standing Tally Clerk to that effect, that yes, we are ready to close the vote, that he should go ahead and start to prepare the tally slip.

A. Yes.

Q. Tally slip is filled out by the standing Tally Clerk, passed to the seated Tally Clerk, passed to the Parliamentarian—or I guess it goes actually directly from the standing Tally Clerk to the Parliamentarian?

A. That's correct.

Q. Parliamentarian gives it to the Chair, and then the vote is closed. Is that a correct sequence of events?

A. Yes. I think you started after the point where we would tell the presiding officer, "you can now ask if all Members have recorded their votes and then ask if any Member wishes to change their votes."

Q. Okay. And at what point—what would cue you to ask the presiding officer or tell the presiding officer that?

A. Well, a number of things. We obviously would wait for the duration of the vote, the electronic voting board to reach zero——

Q. Okay.

A. [continuing]. At that point. And then we observe the numbers of Members voting. If we are obviously a long way from having a full complement of Members, we realize that it is going to take longer than the minimum duration. And so we get a feel from it there. We also take input from the whips' tables, from other Members, anyone who comes up and says, "listen, this is a special situation for reason X or Y; we need to—we might need to keep the vote open or not."

Q. Do you also take into account how many Members are in the well?

A. Yes. I mean, we would not want to start closing the vote when Members are in the well. The Speaker's opening day policy is to not close a vote when a Member is in the well.

Q. Do you also take into account if there have been earlier votes that evening and you have a sense of how many Members——

A. Yes.

Q. [continuing]. Have voted? And just for his sake, for the stenographer's sake let me just finish the question and you can answer it. Do you take into account how many people have voted in those earlier votes, so you have a sense of how many Members are in the Chamber and how many Members are likely to vote in this vote?

A. Yes. And one of the ways we do that is once again referencing the Journal. The Journal would keep the total number of votes cast on the past votes in official form. And we would consult that in comparison to where that current vote stood.

Q. Okay. And the sequence of events we talked about before, where you give—you say something to the chair to the effect that, you know, it looks like you can go ahead and use the magic words, "Are there any Members wishing to vote or change their vote," and then that leads to the tally slip and ultimately the closing of the vote.

A. Yes.

Q. Had that process been carried out in its entirety in the prior votes that evening?

A. Yes, I believe so.

Q. Okay. So why don't you tell us now, going back to 814, pick up from there and tell us how 814 differed from that typical process?

A. Well, I think that there was an attempt, first attempt to try and close the vote—to bring the vote to finality without the official tally slip. I think he may even have got some numbers out. And then there was a stoppage there. I was hoping that was a realization that the process had not come to its completion.

Q. I am going to give you this document, which I believe is the memo that you prepared shortly after the events. The second bullet talks about Mr. McNulty making an initial attempt to close the vote at 214 to 214. Is that where you are in the sequence——

A. Yes.

Q. [continuing]. That you are describing?

A. A verbal statement on this vote. And then I believe he may have gotten out 214. I am not sure. It does say 214 to 214, so perhaps he even said that.

Mr. SPULAK. If I may.

BY MR. SPULAK

Q. You said that you were hoping that that indicated that he recognized that the process——

A. Had not come to full completion——

Q. Right.

A. [continuing]. At that point.

Q. But in fact, he did stop?

A. Yes.

Q. And he did——

A. Yes.

Q. [continuing]. Allow the process to continue?

A. Yes.

BY MR. SNOWDON

Q. Do you know what caused him to stop? Was it something that the Parliamentarian said? Was it something that leadership said? What——

A. I don't know. My hope is an acknowledgment that the process had not run to its completion.

Q. Right. But there was something that sounds like he got to mid-sentence and pulled back initially. Could you get a sense of what caused him to initially pull back? Was he looking around and seeing people in the well? Was he looking over to the Whips' table or the Leadership and then saying something? Could you get that sense?

A. I can't say, no. I did not get that sense as to why.

Q. So it wasn't the Parliamentarians waving their arms going, whoa, wait, stop, we are not there yet?

A. I don't believe so. I don't know. Maybe there was a verbal exchange between Ethan and the presiding officer. But I am not aware of that.

Q. Okay. And then your next bullet talks about Mr. Hoyer approaching Mr. Sullivan?

A. Yes.

Q. Chronologically, how long after step two did step three come?

A. As far as time-wise?

Q. Time-wise.

A. Matter of seconds, I would imagine, 10, 15 seconds.

Q. Okay. Why don't you elaborate on three? You said Mr. Hoyer expressed his displeasure. Do you want to be as specific as you can about how he voiced——

A. I believe he said, "the Parliamentarians don't run this place or run this House." I can't remember it exactly. I have seen the video a couple of times and heard the audio, but it is something to that effect.

Q. Okay. At some point, we have been told that Mr. Hoyer has said several times, "close the vote," directing to the Chair, to the Parliamentarians, to whoever is on the rostrum, "close the vote now." Did you hear him say that?

A. No. Not on that occasion. I don't think I have ever heard him say "close the vote" or—I mean, "I want it closed." However, that wouldn't be something unusual to hear from a lot of sources.

Q. Sure. Do you recall him saying it that evening?

A. No.

Q. Okay. You say expressed his displeasure. What was the tone of his voice?

A. It just seemed like it was—he was displeased. He specifically referenced the Parliamentarian and running this place, and that we do—or I am not sure what the second part of that was, but he was displeased about something and made his point and then left very quickly.

Q. Okay. Have you ever heard that type of comment made before? You said you have heard "close the vote," and that is not necessarily that uncommon. Have you heard somebody indicate to the Parliamentarians that the majority controls the Chamber and not the Parliamentarians?

A. Not in so many words, but that—that is not an unusual expression. In our line of work, we are often seen as umpires, someone trying to uphold the proper procedure, and that sometimes upsets people.

BY MR. SPULAK

Q. If I may, notwithstanding how it was said, is that not a true statement, what Mr. Hoyer said?

A. Yes. Absolutely true. The Parliamentarians don't run the House.

BY MR. SNOWDON

Q. But it was your understanding that Mr. Hoyer seemed upset because the Parliamentarians were trying to uphold proper procedure?

A. He was making a point to Mr. Sullivan about who ran the place. And he seemed to be making it in a—he seemed to be irritated.

Q. Okay. At that point, had in your mind the Parliamentarians or the Clerk's folks on the rostrum done anything improper?

A. Not that I could tell, no.

Q. Okay. Why don't you go ahead and finish walking us through these points. So Mr. Hoyer leaves. I am sorry, let me back up. Did Mr. Sullivan respond to Mr. Hoyer?

A. He may have. I didn't hear any response. He may have, but I didn't hear a response.

Q. Okay. So pick up on point four. Mr. Hoyer makes his point. Then what happens?

A. Immediately we turned to each other, and I'd say, "there were Members being—Members in the well trying to vote." And then Mr. Sullivan said, "yes," and the cards were being processed by the Tally Clerks as well.

Q. He said that to whom?

A. To me.

Q. And do you recall whose well cards were being processed by the Tally Clerks at that point?

A. I don't remember the specifics, just that there were cards being processed.

Q. Okay. So De'Andre Anderson is the seated Tally Clerk that evening, is still processing well votes. Was he in the midst of processing well votes when we get to step five, which is Mr. McNulty announcing the vote at 214 to 214, the motion failed, and banged the gavel?

A. Yes.

BY MR. SPULAK

Q. Can I ask, when you say he was in the process of entering, I mean, do you know if he had completed entering the cards?

A. I don't know. I would just say generally that cards were on the computer screen or in the working area.

Q. Is it possible that he had already entered them?

A. It is possible. Just between Mr. Sullivan and I, and our discussion was in reaction to the situation, I saw Members in the well. My back was turned when Mr. Sullivan and Mr. Hoyer were talking. I saw Members in the well. And John stated to me that he had seen cards being processed. So the next step I would have assumed was those cards coming up and then being processed by the Tally Clerk. But I can't say where he was—where he was in the process at that time.

BY MR. SNOWDON

Q. Okay. So the next step is the Speaker again announced the vote at 214 to 214 for the second time; says that the motion failed; and he bangs the gavel. Explain what the difference was between this step and what you have listed as the second step, which is that he made an initial attempt to close the vote. What additional language, what additional actions did the Speaker do this time around?

A. From my recollection, it was just more of a complete, or an attempt to be a complete action. Saying that the motion failed and banging the gavel, rather than just saying the numbers.

Q. Okay. We have heard from some people that sometimes Speakers, for lack of a better term, engage in a little bit of gamesmanship for a variety of purposes, including to sort of prod Members to finally go ahead, get your vote in, so we can get this thing closed out, that they sort of say some things, kind of get to the edge, you know, to get people to finally make a decision. When we get to the, I guess it is the fifth step, and he announced the vote, motion failed, bang the gavel, was it your understanding that that was some sort of gamesmanship to get people to vote, or was it your impression that he was truly trying to close the vote down at that point?

A. I think it was the latter.

Q. Okay.

EXAMINATION BY MR. PAOLETTA

Q. Latter meaning he was trying to close the vote down?

A. He was trying to close the vote.

BY MR. SNOWDON

Q. Okay. Was it your impression that him trying to close the vote was related to any of the comments made by Mr. Hoyer?

A. I don't know.

BY MR. PAOLETTA

Q. What was your reaction?

A. My reaction to the closing of the vote?

Q. Yes, at that point.

A. Well, I think it took a little bit of time to sink in, and then a realization that the computer was still processing votes, and that the statement that he had made was not reflective of the board.

Q. Frankly, do you remember your reaction that obviously there were Members still in the well, cards were being processed, and your hearing a vote sort of closed, do you remember what you were thinking?

A. I don't really have a sense of what I was thinking at that time. I was watching the events unfold. And then when I saw the board and the board expressing one total and the—what he had just said saying something else, I knew that something was amiss. I wasn't quite sure of what that was.

BY MR. SPULAK

Q. Tom, you said that you knew something was wrong because the board did not—I think you said the board did not reflect what he had called or something. Is that right?

A. Correct.

Q. But at the time that—well, do you know on what the Chair relied to make the call?

A. I don't know.

Q. Do you know if he was looking at the scoreboard?

A. I would suspect that. I don't know that for sure.

Q. So you don't know for sure. You don't know what the board said at the time that he called it?

A. That's correct.

Q. You don't know that at the time that he called it——

A. That's correct.

Q. [continuing]. The board didn't say something differently than what he pronounced?

A. That's correct. I do not know that.

Q. Do you know that Mr. McNulty didn't know that votes had been entered or that votes had been entered but didn't reflect on the board at the time?

A. I don't know what his state of knowledge was at that time.

Q. From what you know—well, were you observing him?

A. Yes. I was observing him, watching the Tally Clerks, and watching what was going on in the well. Mostly at that time, one of the things that the Parliamentarian who is not assisting the presiding officer does is try to watch the well to see where Members are in the process of voting, whether there is someone else coming in, someone else in the well that desires to vote or change a vote.

Q. So it sounds like you and—you were looking at a lot of different places at one time, or at least you were trying to look a lot of places?

A. Yes.

Q. Would you have seen where Mr. McNulty was focusing his attention in the seconds preceding his announcement?

A. No, I do not know that as a certainty.

Q. Do you know where Mr. Hoyer was standing?

A. I don't know.

Mr. PAOLETTA. Thank you.

BY MR. SNOWDON

Q. Okay. I just want to go to the next step here. It says, within a second or two thereafter, the tally board, reflecting well votes that had been cast but not yet integrated into the system, switched to show 215–213 and also indicated final. Would that suggest to you that at the time Mr. McNulty said that the motion failed and banged the gavel, the seated Tally Clerk was still in the process of entering well votes?

A. Yes.

Q. All right. We talked a little bit about the process whereby you have a conversation with the Chair saying that you can go ahead and use the magic words of, "does anyone wish to vote or change their vote?" Did you have that conversation with the Chair?

A. No.

Q. So that's—that part of the typical process never took place on 814?

A. I wouldn't be the one to have done that.

Q. Who would be doing that?

A. Mr. Lauer.

Q. When I say "you," I guess I should be more specific that it's someone from the Parliamentarian's Office. Do you know whether that conversation ever took place between Mr. Lauer and the Chair?

A. I don't know.

Q. Okay. But then we also went through the process whereby you would—seated Tally Clerk would look to you to give you, you

being the Parliamentarian, whoever that may be, I guess Mr. Lauer in this case——

A. Yes.

Q. [continuing]. Would give a verbal that, okay, we have entered the well votes and looked for direction from the Parliamentarian that they can go ahead and prepare the slip which would lead to the closing of the vote. Did that ever take place here?

A. I don't know. I don't know. I was watching the general proceedings but was not in verbal range of either of those two parties.

Q. Okay. What about the preparation of the tally slip? Did that ever take place here?

A. Not that I know of.

Q. Okay. Have you ever been involved in a vote where a written tally slip was not prepared and sent up to the Chair prior to the closing of a vote?

A. No.

Q. Going to the next step, at that moment, it became clear that the vote had been closed prematurely. Explain that. I mean, how did it become clear at that point? Was it solely because there was no tally slip or—clearly, you noticed——

A. Yes.

Q. [continuing]. That things were off the tracks at that point——

A. Yes.

Q. [continuing]. Pretty much right away.

A. The thing that was most obvious to me is that the rostrum staff was operating as if the vote was still ongoing. It was the processing of votes, the Reading Clerk was reading votes that were cast in the well or changes.

Q. But in your mind, the vote had been closed?

A. That there was an attempt to close it, but that was clear that that attempt did not correspond with the work of the other rostrum staff.

Mr. PAOLETTA. Professional staff.

BY MR. SNOWDON

Q. The professional staff was continuing to do what they were supposed to do, even though the Chair had attempted to close the vote?

A. That's correct.

BY MR. SPULAK

Q. And so, at that point, not only—let me ask, not only were the staff doing their job, but in fact, were votes still being—well, were well cards still being submitted?

A. Yes. Yes. As far as I could tell, I mean, the—and the difficulty of this is I have seen the tape on a couple of occasions. And I made these notes. But my belief is that there were still cards being processed well after the 214–214 statement was made, indicating to me that there was really no finality here from a parliamentary standpoint.

Q. Did the Chair do anything to try to foreclose the continuing acceptance of votes?

A. Not that I know of.

Q. So you had used the term, and I may have misinterpreted it, but you said the vote was closed at one point. But in fact, although the Chair attempted to close, the vote was never closed?

A. That's correct. It was an attempt to close the vote, and it was a premature attempt.

Q. So would you think that anyone was disenfranchised on that day?

A. The vote and the discussions that occurred after the initial attempts took a lot of time. So I assumed that they were still processing votes at that time. And the displays were changing as well. So I don't know of anyone disenfranchised.

Q. I mean, either personally or from what you heard, any Member complain that their vote was not recorded or recorded accurately on that day?

A. Not that I know of.

BY MR. PAOLETTA

Q. Do you remember whether Mr. Boehner's vote was recorded? His change?

A. Mr. Boehner's change?

Q. Yes.

A. There was an attempt by Mr. Boehner to change——

Q. Right.

A. [continuing]. For purposes of the motion to reconsider. I am not sure what occurred with that particular vote.

Q. Let's just go back to sort of the—so when the Chair called, the presiding officer called the vote at 214–214, right, it was your view it was his intent to actually close the vote at that moment. Right?

A. Yes.

Q. Okay. And he had not to your knowledge gotten any tally slip; right?

A. That's correct.

Q. So, in your view, had he broken with regular practice by not waiting for a tally slip to be handed to him?

A. There was an attempt to close the vote, and it was premature. It did not follow the regular procedure.

Q. He did not follow the regular procedure?

A. The attempt was premature and did not follow the usual practice of getting an official tally slip handed to him.

Q. And what does the tally slip do, in your view, in terms of a check on calling a premature vote or a vote which would result in someone being disenfranchised?

A. It is a certification that the system, the electronic voting system, is closed to further input; that there is not going to be any changes after that.

Q. Okay. And you have never been involved with a vote where an official tally slip hasn't been handed up to the presiding officer?

A. Not that I know of.

Q. Are you aware of one?

A. No.

Q. And at 214–214, if it had been closed, right, with the intent to reflect the intent of the Chair, it would have resulted in it being an incorrect call, right, an incorrect result because there was another vote that clicked up? Right?

A. Yes.

Q. Which reflected the vote that was being processed at the time that Mr. McNulty intended to close the vote?

A. Yes. I think that my notes indicate that the most sanguine or the most telling part of this whole process was the closing of the vote without that official white tally sheet.

Q. Were you aware that De'Andre Anderson was trying to clear the vote? He was trying to release out of the system?

A. The only indication I would have of that is the word "final" on the board.

Q. Okay.

A. That's one of the steps towards clearing the system.

BY MR. SNOWDON

Q. Do you know if he was having problems with that?

A. I did not know until later in the proceeding, until the Deputy Clerk advised me that we needed to talk to Mr. Sullivan about that.

Q. Okay. It says here that the Parliamentarians as a group began to work on a statement for the Chair to indicate that the vote had been closed prematurely and to provide for an official tally. Who drafted that statement? And to the best of your recollection, exactly what did it say?

A. Mr. Sullivan drafted it. And I believe it was a statement just to say that the vote had been closed prematurely and to indicate that—what the real official tally was.

BY MR. SPULAK

Q. And would you call that a tally slip?

A. In that situation, since there wasn't a tally slip at the beginning, it was going to be the equivalent of a tally slip at that point.

Q. And Tom, you said, just back—I just want to be clear, you said that the tally slip was the way to know that the EVS system had been closed, I think you said, and reflected the vote. But in fact, aren't there occasions where there are more than one tally slip because the Chair will allow others to vote?

A. Absolutely, yes.

Q. So I guess "closed" is a sort of an ephemeral term, I guess. It could be closed several times?

A. True. There are tally sheets that are prepared and then are discarded for one reason or another. Usually, it is because of the arrival of another Member.

BY MR. PAOLETTA

Q. Right. But were you ever involved with a vote where there was never a tally slip? There may be multiple tally slips, but were you ever involved with a vote where there was not a single, not a single tally slip prepared?

A. Not that I can remember.

Mr. PAOLETTA. No. Okay.

EXAMINATION BY MS. MCCARTIN

Q. And on the point where the Chair announced the second time 214–214 and there was the uptick, so that it actually was 215–213, had there been no other Members in the well, so that that was indeed the final vote, do you believe that the precedent suggests that in fact it still would have been a premature announcement because his announcement did not reflect the actual tally? And so, at that point in time, don't you think that at least the Parliamentarians would have advised that the 214–214 was still premature, and in fact, the actual tally would have been 215–213? So nobody really would have been disenfranchised because at that point we would have been in a place where——

A. Yes.

Q. The Chair would have had to recognize the tally was wrong, or his announcement was wrong.

A. It was an erroneous statement of result.

BY MR. PAOLETTA

Q. But with that result, it would have been an entirely different outcome; right? The motion would have—the bill would have gone back to committee; right?

A. On a tie vote, the motion does not carry.

Q. No, no, it would have been 215——

A. Right.

Q. I mean, if it was premature, and Muftiah is saying, it was really 215–213, right, it would have been an entirely different outcome?

A. Correct, 214–214 would have resulted in the motion not carrying.

Q. And Mr. Anderson was actually trying to clear the vote at that second, right?

A. The use of the word "final" would suggest that.

Q. And he was trying to push the button to actually clear the board, which would take down all the numbers, which would have been at 215–213?

A. My understanding is that it's the second to last button that he pushed. The second to last button in the process—the second to last step.

BY MR. SPULAK

Q. If in fact, if in fact the board did reflect 215–213 at that time and there were other Members in the well, would you have advised the Chair to leave the vote open and allow those other Members to be counted?

A. Yes.

Q. And that could have changed the 215–213 outcome——

A. Yes.

Q. [continuing]. Yet again. Isn't that right?

A. Yes.

BY MR. PAOLETTA

Q. What would happen if the board cleared? Because that was Mr.—John Sullivan had said, "are you closing the vote?" I have one

more vote left. And when I finish the vote—once he entered that third vote, right, which became 215–213, he was attempting several times to clear it. Okay. Once that board goes down, right, what happens to the vote?

A. At that point——

Q. Yeah.

A. [continuing]. It is over. I mean——

Q. Right. So there would be no—Tom's point is it would still be premature. But if the vote went down, okay, at that point, would you be able to re-up the vote again and then—obviously, it was chaos, right?

A. Yes.

Q. Okay. So do you understand this point?

A. I don't want to suggest that at that point we would say the vote is over. There is no—there is no way to——

Q. Have you ever cleared the board before where it went—I guess, right, all the votes went down, all the names went down, and then reopened it again and had the same tally?

A. We have had malfunctions much earlier in the process and then dealt with it in other ways with regard to the displays.

Q. Right. This would have been—this wasn't a malfunction. This would be the person on the rostrum clearing the vote per the Parliamentarian's directive, right, are you closing the vote? So have you ever had an occasion——

A. I don't know if I would say that the Parliamentarian tells him to close the vote. I think that the discussion is whether the system should be closed to further input. And I think the Tally Clerk could speak to this, but their action with regard to clearing the displays——

Q. Yes.

A. [continuing]. Is cued off of the Member's statement—off of the statement by the presiding officer.

Q. Have you ever been involved in a situation where the board cleared and then you opened it, you put—aside from malfunctions, okay, have you ever been involved with an instance where they cleared the board, and then because it was premature, they put it back up sort of with the same vote tally?

A. Not that I can recall, no.

Q. Okay.

BY MR. SNOWDON

Q. It is my understanding that—and if this is not correct, you let me know—that De'Andre Anderson is processing three well cards.

A. Yes.

Q. I believe it is Ms. Ros-Lehtinen and the two Diaz-Balarts. And he gets, he is in the middle of processing Mario Diaz-Balart's well card when the vote is called. At that point, the third card finally enters, and it shows 215 to 213. There is a second batch of three well cards that I believe are Gillibrand, Space and McNerney. Do you know, did you see those three individuals in the well at the time Mr. Anderson is trying to close out the system?

A. I can't say as to who I saw. I saw Members in the well, but I did not see what specific Members were trying to vote.

Q. Okay. Do you know, at the time he was trying to close out the system and was having trouble with it, whether those individuals had filled out well cards at that point?

A. I don't know.

EXAMINATION BY MR. CRAWFORD

Q. So, Tom, you don't recall that when Ms. Ros-Lehtinen and Messrs. Diaz-Balart were at the table filling out their card, you don't recall Mr. Space filling out his card at the exact same moment?

A. I don't recall the specifics. I may have notes, handwritten notes, as to the specific Members, but we usually don't identify them specifically. I do remember the Floridians just because it was unique, them coming up as a group. But after that, which Members did what is——

BY MR. SNOWDON

Q. Okay. I want to hand you this document. It is some handwritten notes. Take a look. And I have some specific questions, but is there anything on here that refreshes your recollection at all?

A. Yeah. It looks like Lampson and Mitchell are the ones that I identified. But this—the fourth point here was—was in response to Mr. Hoyer, immediately after Mr. Hoyer approached, when I turned to Mr. Sullivan, and we had that discussion that there are two Members in the well. And then I see the Floridian switch, but I am not sure I have a recollection of who else was involved, whether there were other Members.

BY MR. SPULAK

Q. To that point, Tom, can you remember when you saw Mr. Lampson and Mr. Mitchell approaching the well——

A. Yes.

Q. [continuing]. Do you remember if the Floridians were also in the well?

A. I don't. I remember, and the reason why sometimes we are able to remember the specific Members is that we are giving verbal cues to the Tally Clerks and the Parliamentarians that there is someone else who wants to vote. Sometimes we will say "Lampson." Sometimes we will say "Mitchell," so that the Clerk will know that Members are still trying to vote and to not close the vote.

Q. But I just want to clarify what you said, because it sounded like, it sounded like this all occurred at once. But you don't remember if the Floridians were also in the well at the same time?

A. I can't tell. I just know there were Members there. And which ones and who was filling out a card, I just don't remember specifically.

BY MR. SNOWDON

Q. Tom, when did you prepare these handwritten notes?

A. That looks like it was——

Q. And I guess I should ask the preliminary question, are these your notes?

A. Yes. They are my notes, and I believe I looked at them—I composed them after watching the video maybe 1 or 2 days after.

Q. And if you say, Floridians switched, do you have any reason to think they wouldn't have been in the well at the time?

A. No.

Q. And it says, vote continues, Hoyer arrives.

A. Yes.

Q. What happened there? Did Mr. Hoyer say anything else?

A. That I believe is the second coming of Mr. Hoyer. I apologize, but I don't know if we are at the same point in the timeline. But as the draft is coming up of what the Chair should say in response to this premature attempt to close, I started thinking ahead as to what the next step is—reconsideration. And that's when I tried to get Jay Pierson, the Senior Floor assistant, and basically anyone that I talk to on the way there, to indicate that perhaps the next step is a motion to reconsider. Mr. Hoyer then comes up, and then there is discussion about what the next action should be.

Q. Did you suggest to Mr. Hoyer a motion to reconsider?

A. I probably did. I told a number of people that. I think the discussion then took place of whether the motion to reconsider was the best course of action or a unanimous consent request to vacate the vote.

Q. And he initially asked for a unanimous consent to vacate the vote?

A. That's correct.

EXAMINATION BY MR. HALPERN

Q. To your knowledge, did Mr. Hoyer attempt to clear that unanimous consent request with the minority prior to making it?

A. I don't know.

BY MR. SNOWDON

Q. On the third page of your typed-up notes, it says: The Deputy Clerk approached me and informed me that we needed to engage Mr. Sullivan about a problem with the voting machine. What did Mr. Sorensen tell you about problems that they were having with the voting machine?

A. Well, he was very insistent—to his credit—that we go and find Mr. Sullivan and talk to him and have him report to John what the problem was. Obviously, John was engaged elsewhere. So Mr. Sorensen and I went to John, and then he indicated that the machine was stuck.

Q. He, being who?

A. Mr. Sorensen indicated the machine was stuck and that he needed John's permission to abort the vote or—whether John wanted to abort the vote.

Q. At that point, was the option of terminating the vote discussed?

A. No.

Q. So did Mr. Sorensen present it that aborting was the only option?

A. That is the way it sounded to me, but I will tell you that I don't have a great familiarity with the technical nature of the voting system, so——

Q. Well, let me—I want to hand you this document. And we will get to some other of your recommendations later. But if you look at the third point which is on the second page, it says: A greater understanding of the options available to the body when the machine malfunctions is necessary. This was evident when the seemingly unnecessary decision to abort the vote of August 2nd, 2007, was made. When you said "seemingly unnecessary decision," what did you mean by that?

A. I thought that there was another way. But I realize that I may be speaking beyond my technical capabilities here. But clearly more knowledge was required of that situation. I wish that discussion had been longer and covered more ground and there had been more questions asked by myself. And that didn't happen.

Q. So did—I am a little unclear. Who came up with the recommendation to abort the vote? Was that Mr. Sullivan, or was that Mr. Sorensen?

A. It was presented to us as, do we want to abort the vote?

Q. Okay. Were any other options presented?

A. Not to my knowledge, no.

Q. Okay. Aborting a vote sounds, for lack of a better term, sort of like the nuclear option, okay, the option of last resort. Would you agree with that?

A. I think the question of aborting it—the way that term was used—could have been taken to say "abort," meaning clear the displays, get the vote off or, as you say, something greater than that.

Q. Doesn't it mean something more than that? Because in order—I mean, every single vote, even a typical vote, at some point you got to get it off the board?

A. Yes.

Q. So, clearly, we are not just talking about getting the vote off the board. There is a technical problem, and they are trying to find how to fix that. Right?

A. Yes.

Q. Okay. You didn't just think that "abort the vote" meant simply getting the vote off the board; did you?

A. No. It was something more than that. But whether or not it was just taking the displays down and storing that data elsewhere or something more extreme is—was not clear. And that's the greatest failure on my part—not exploring that more.

Mr. SPULAK. If I could ask——

Mr. SNOWDON. Sure.

BY MR. SPULAK

Q. But go to this point, what would nuclear have meant to you? Because it is not clearing the board. May I suggest, is what you are saying that the data would have been lost? I mean, what else could it have meant—the "nuclear option?"

A. Some option other than exiting the vote. And whether "abort the vote" was a technical term to throw out the data short term or throw out the data forever, I didn't have a full grasp of that.

Q. If I can ask, the situation at the time was that it could not close the vote. Is that correct?

A. According to what was reported to us, the electronic voting machine was stuck. It was not moving from its current display.

Q. Right. But did that mean that votes couldn't be entered?

A. I don't know at that point. I know that with the term—with the word "final" up there, votes can still be entered and can still——

Q. Right.

A. [continuing]. Be reflected on the displays. But based on where we were at that point, I don't know.

Q. And when "final" first appeared, and that was at 215–213, other votes were entered and were reflected on the board. Is that correct?

A. Correct.

Q. And there had been several minutes that had transpired during which votes were entered and the system was whatever its status was at the time. Is that correct?

A. It was operational. It was ticking one way or the other, and it had the word "final" on it.

Q. So, at the time that there was this concern about the system being stuck and the discussions about abort, all the votes had been entered?

A. As far as I know, yes. In fact, the concern was that we were actually proceeding with another vote—on a motion to reconsider.

Q. Yes. And so that's my question. At that point, the desire or the need to do something, which included aborting, was in fact to bring an end to that vote so that you could proceed to a subsequent vote?

A. Use the electronic voting system for the current pending vote. That's right.

Q. Do you believe that this desire to abort the vote had anything to do with the results of 814, or was it just to get to 815?

A. I believe it was the latter.

BY MR. SNOWDON

Q. Why didn't somebody say, "stop, stop, we are having trouble with the voting machine, with the EVS system, you guys are trying to go onto the next vote, we are not in a place to do that now. Stop." I mean, I recognize that the Chair controls the proceedings. But this is an unusual set of circumstances. Why didn't somebody just say "stop"?

A. I don't think anyone put the two pieces together that—that the voting machine was stuck and that we wanted to proceed with the motion to reconsider. I was thinking solely about the parliamentary situation; we need to be ready for a motion to reconsider or a unanimous consent to—at first the unanimous consent to vacate the vote; second, if that were not successful, a motion to reconsider. The technical aspect of the vote was not something that I was thinking about, the voting machines or the displays.

Q. Let me ask you this, do you think that if the motion to reconsider wasn't proceeding at that point that they would have aborted the vote? The impression that I get, maybe I am wrong here, is that things were so confused and they—we need the system because we are in the process of another vote, so the only way we can get there is to abort it. Is that fair?

A. I think yes. The Chair had already begun the proceedings on the vote on the motion to reconsider. Then it became evident to me

that the vote on the previous recommittal was still—the displays of the vote—were still on. And then that was pointed out to me by the Deputy Clerk to say, "listen, we have a problem. We are on 814 and we should be on 815."

Q. Is there a process by which you can back up and say, "we are having a technical glitch, we can't clear the boards, let's take a pause, let us fix the problem and then we will move onto the motion to reconsider"?

A. I am not aware of one in the middle of a vote. I think the vote had already occurred, and it was now just having the technical aspects of our system catch up with the parliamentary part. And I was not as expert in the technical parts as I would like to have been.

BY MR. SPULAK

Q. What was the mood on the Floor during that time?

A. A lot of anger, a lot of acrimony.

Q. And this was coming from the minority side?

A. Most of my conversations were with the minority side, but I am sure there were members of the majority that were not happy about it as well.

Q. So would you say that the Chair was under a great deal of pressure from the minority to do something?

A. Yes, I think that there was anger about the circumstances surrounding the vote on 814, and people were looking for a way to address that situation. In my mind, the next parliamentary step was to move to reconsider that vote.

Q. Well, do you think that if the situation had been calmer that maybe there wouldn't have been so much pressure to try to find a solution immediately?

A. I would like to hope so, yes. I have never been in a situation where we were on the next vote and the machine continued to reflect a previous vote.

BY MR. CRAWFORD

Q. Tom, have you been in a situation where a recorded vote by electronic device has been ordered, the machine has malfunctioned, and the vote takes place by other means?

A. Yes.

Q. So that could have been an option, although it would have taken an hour to call the roll?

A. That would have been an option, yes.

BY MR. SNOWDON

Q. Let me ask this. The boards haven't come down for 814.

A. Yes.

Q. Isn't it standard operating procedure, before moving onto the next vote, for the Chair to look up and see that the boards have come down?

A. I don't believe the Chair would be——

Q. I mean, the Chair is the one that has to call for that vote; right?

A. That's correct.

Q. And so isn't there some—I mean, if the boards are still up from a previous vote, wouldn't you expect the Chair to at least see that the boards have cleared before calling for a new vote?

A. No. I just think that the normal operating procedure would be to look to the Member seeking recognition—determine whether it is a valid parliamentary motion, and allow the boards to take care of themselves.

BY MR. SPULAK

Q. Do you think that the best course of action would have been to vacate the vote?

A. My thought at that time was that it was an option for the membership. I don't know if I would have a recommendation between the two. I mean, I think that is something for the body to decide—whether or not the Members wanted to wipe that vote clean or rather use the available parliamentary method of a motion to reconsider.

BY MR. SPULAK

Q. Has the motion to vacate been successfully used in the past on circumstances where there has been confusion over a vote?

A. Yes.

Q. And was that used during the time, in your recollection, was that used during the time when the current minority was in the majority?

A. I believe so. I don't have the specifics.

Mr. PAOLETTA. Okay.

Mr. HALPERN. Can we go off the record for just a minute?

[Discussion off the record.]

BY MR. PAOLETTA

Q. Question, Tom, have you ever been involved with an aborted vote before?

A. No.

Q. Okay. And was there any discussion at that time, when they were considering aborting the vote, right, Mr. Sorensen comes over and says that you were going to lose all the data; at the time that they were considering aborting the vote, was there anything about, we are going to lose the data——

A. There was something to that—he said that all the data associated would be lost.

Q. Would be lost. Okay. Do you remember hearing that?

A. Yes.

Q. Okay. So, at the time they were considering aborting it, the thought process was that they would lose all the data?

A. That was what he said to us. Whether that was short term, long term, or——

Q. Okay.

A. That's beyond my technical capability.

Mr. SNOWDON. Final question.

BY MR. SNOWDON

Q. You prepared a memo of recommendations?

A. Yes.

Q. Do you still stand by all these recommendations in terms of improving the process?

A. I would like to revisit them in light of some of the presentations we have had on the voting system. Those are from August, and I did not change them.

Q. Okay.

A. But expanding on them in light of the presentations that the Clerks had, I would like to have that ability to revise.

Q. We would very much appreciate that. One of the things we have been charged with is coming up with some recommendations to improve the system. If you would like to supplement or edit these, please feel free to do so. And we would obviously like any recommendations that you have.

A. Okay.

BY MR. SPULAK

Q. Tom, I have one question. And just to follow-up on your question to Mr. Paoletta, losing data could have meant, in your words, were sort of short term and long term.

A. Yes.

Q. Which meant losing could have meant for now, but we restore it?

A. Temporary or permanent, that's right.

Mr. SPULAK. Okay.

Mr. SNOWDON. Let's go off the record.

[Whereupon, at 11:11 a.m., the interview was concluded.]

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

FRIDAY, FEBRUARY 15, 2008.
Washington, DC.

INTERVIEW OF: GEORGE KUNDANIS

The interview in the above matter was held at Room 1017, Longworth House Office Building, commencing at 2:00 p.m.

APPEARANCES

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OUTSIDE COUNSEL, MINORITY: MARK R. PAOLETTA, ESQ., ANDREW L. SNOWDON, ESQ., DICKSTEIN SHAPIRO LLP, 1825 EYE STREET NW., WASHINGTON, DC 20006

Also Present: Muftiah McCartin, Deputy Staff Director, Committee on Rules; Hugh N. Halpern, Republican Staff Director, Committee on Rules; and Davida Walsh, Legislative Counsel, Representative Delahunt.

Mr. SPULAK. George, thanks for coming here today.

As you know, this Select Committee to Investigate Voting Irregularities of August 2nd, 2007, is charged with investigating the circumstances surrounding roll call vote 814 and subsequent motion to recommit including the duration of the vote and related occurrences. So we'd like you to tell us about your own personal experiences related to that.

EXAMINATION BY MR. SPULAK

Q. Before you do that, we'd ask you to tell us about yourself, your position in the House, your experience. And you can begin that narrative.

A. Okay. I'm George Kundanis. I started with Tom Foley, Congressman Tom Foley in December of 1976. He was, at that time, the Democratic Caucus Chairman. And I took up his leadership duties as his staff person in 1977. He then became Whip leader and eventually Speaker. He then, of course, got defeated and left.

And I became Dick Gephardt's, the Minority Leader's floor assistant—one of his floor assistants. And then he left. And I became one of the assistants and eventually policy director and then deputy chief of staff for Leader and then Speaker Pelosi.

A lot of my job revolves around interaction with Members, and that's, I think, what value I have at this point. I might have done

other things in the past, but, I mean, I tend to be giving them information, taking their complaints. As many leadership staff do, we are surrogates at times. I mean, there's 200 Members, and they all want to talk to Ms. Pelosi at the same time, but obviously they all can't. So our presence on the floor often serves as a place for them to come and tell us something that they want her to know.

And also, related to this matter, we've tended also—you know, lately each of us, a number of us, have tended to try to make sure that everyone has voted. So some of us spend time on the floor seeing who hasn't voted and looking around at Members and reminding them. As most of you probably know, since both of you worked on the Hill before, Members will just sit there sometimes and forget. Especially if there is more than one vote, they'll forget that they voted or whether they have voted or haven't voted.

So we have, sort of, gotten a system where a number of us, sort of, run people down and make sure that they vote. And sometimes if we feel they haven't the right way, we ask them if they haven't. You know, we have no control over them, but we—did you really want to do this? And they tell us yes, and we walk away.

And, obviously, we want to make sure our own boss, the Speaker, you know, she has the option of voting or not voting, so we have to, sort of, deal with that situation on the floor and make sure we know that. And sometimes we direct people to talk to people who we think we would like to try to influence.

Then, do you want me to go into the day?

Q. Sure.

A. My history, as I've just said, is with Tom Foley. My first 17 years here, I worked with Tom Foley. And Tom Foley was known in the House as being a fairly—he ran the Agriculture Committee, and it still is but at that time it was a very bipartisan committee. And also, when he took over, I think he was perceived as not being as partisan of a Speaker of others, you know, Jim Wright.

And I think that Foley, sort of, always was very—was a parliamentarian—was parliamentarian to the Democratic convention, parliamentarian to Speaker O'Neill when Speaker O'Neill was Speaker. And he always instilled in me and was always the model of, sort of, making sure that you have to be nonpartisan in your rulings in the Chair and nonpartisan in the way you deal with the Chair. And so, he drilled that into me in many, many different ways.

And so, whatever mess was occurring on the floor at that time, I mean, my thought at the time was just let everybody vote, and if something goes wrong, let's revote, and let's make sure that everybody votes. Because we're not going to gain anything—having been in the minority for 12 years, I know what it looks like when it looks like you, sort of, pulled one over on people. I said, let's make sure that everyone has voted and everyone is happy with the vote and, if necessary, do it again. Whatever it takes to ensure the minority that they feel that they didn't get some kind of a screwy deal.

And so, that was all I was thinking on the floor, at the time. I didn't have control over the Chair. Others, sort of, deal with the Chair. And the Speaker wasn't in the Chair, obviously. And so, that was, sort of, my thoughts at the time.

But I didn't have any, sort of, direct—I remembered seeing the numbers changing and him gaveling, but I didn't have any direct communication with him or direct communication with the people that were directing him to the Chair.

So I didn't know why it happened. All I could think of was the minority experience that we'd had and, if I had been in the minority, what I would think. And I just kept thinking we have to find some way to assure the minority that they are getting a fair deal, and we have to do whatever we need to do to do that.

That's why I suggested—and, you know, I was one of many people, and I'm sure he probably would have made the decision on his own—but I suggested to the leadership that we do something like this, because I think it's really important that people find out what happened and make sure that, if it's something that in any way aggrieves the minority, that it never happens again, but also sensitizes our own people to the need to make sure that everyone who's on the floor and voting gets to vote and there is no, you know, no fooling around.

EXAMINATION BY MR. PAOLETTA

Q. Where were you standing at the time that 814 started? Do you recall that?

A. Well, I usually—my position I like—it's like the Members always go to the same spots on the floor. The staff, in a sense, does the same thing. As you know, both sides have the computer in the back and computer in the front. And I usually, sort of, stand right around where, God rest his soul, Congressman Lantos used to sit. He used to sit next to the computer, and I stood facing him, you know, sort of, looking at the computer upside down, and just sit there and watch and see if people voted. Sometimes we'd end up calling—let's say, whatever Member hadn't voted and you know that you'd seen them during the day, you say, well, call his office and make sure he comes over here, or something like that.

So we're watching the computer and a printout of what's going on in the vote, mostly to see, you know, obviously, who has voted the opposite way that we voted, but also the absentees. And we look around the floor. Sometimes, as I said, one of my great concerns is people sitting on the floor and then missing a vote, and then they come up and scream at us and say, "Why didn't you tell me?" So we try to work to try to make sure that—for a while there, we had Jesse Jackson, Jr., helping us, of all people—no apparent reason why. But we would tell him somebody hadn't voted, and he would just scream at them and say, "You haven't voted yet," you know, across the hall. And so finally they told him to stop, because they felt like they were being abused. He was our interlocutor there for a while.

It's not a glamorous job, but a part—you know, we are part of a team. Everybody does their own job. I mean, that's usually where I am. I rarely, sort of, stray from there except if I'm going to do something for her, I mean, if she tells me to go get somebody or to find somebody.

Q. And when do you recall first noticing that something was not going according to standard practice?

A. Well, my recollection was that it was when the other side started getting angry. I saw the flip—I remember looking up and seeing the flip for the vote. And then he had called—maybe I'm wrong; this is just a vague recollection—but he called it, and then the vote looked like it was the wrong way, and then it was like, what are we going to do now? And then the thought, at that time, was stop and let's just make sure that everybody's, you know, copacetic before you—and, you know, don't go any further. You know, if you don't have everybody, you know—again, we'd been in the minority for 12 years, so, you know, we had all of our feelings of feeling, at times, that we were not being fairly dealt with. So, you know, I was highly sensitized to that idea that I didn't want to be in a situation where I was any part of it.

But, I mean, I wasn't, at that point, in an actual situation that I could have done anything about it. I was just like an observer. I was in the gallery, looked back. That was that.

Q. Do you remember Mr. Hoyer coming down the aisle?

A. I'm——

Q. Because you're off at a table, right?

A. I'm the other way.

Q. So you may not—but he comes down the aisle. Do you remember that at all? Do you remember him saying anything?

A. No, sorry.

Q. Okay, so the first time you're, kind of, aware of anything——

A. Is when I hear the gavel, and I look up, and the number switched.

Q. It was 214–214, and then right after it says that——

A. It flipped to——

Q. It kicks up to 215–213?

A. Yeah, that's right. I looked up, and I thought, how is that possible?

Q. Okay.

A. I'm thinking hopefully that time would cure it out or that somehow somebody would explain to me what had just happened.

Q. And what did you do when that happened?

A. I was like an observer. I was waiting——

Q. Did you stand by your station there?

A. I think I was still there, yeah. I don't remember moving.

Q. Okay.

A. Again, I was sitting there staring at the—I mean, again, some of our Members tend to—Pennsylvania people sit in the same spot; the Blue Dogs sit in the same spot. A lot of our Members vote in the same spot when they vote. The staff is a little bit like that, too. We, sort of, stay where—because there isn't a lot of leadership staff, so if I start floating around, it's like I'm in other people's space. So I, sort of, stay where—I try to feel like I'm part of a team, and not just that I solve all problems, you know, "I'll do it."

EXAMINATION BY MR. SNOWDON

Q. I believe you said that you generally don't have direct communication to the Chair?

A. That's correct.

Q. Who on the leadership staff would generally have direct communication to the Chair?

A. The way that we established it in our office is that Jerry Hartz is our floor assistant. Let's say it's a noncontroversial issue that we feel we can deal with. In a noncontroversial or almost any situation, Catlin O'Neill is the person who is the person who will communicate to the Chair that she thinks that, you know, we think everybody has voted, and then the Chair will dispense.

Now, Jerry Hartz is also the person, because he is our main floor assistant, who will—she'll say to him, "Jerry, is everybody in?" But even in those situations, you know, Jerry to Catlin—and sometimes, I remember, people know—Members know what they want to do, but if they are looking for direction—I'm sorry; put quote marks there—"direction" from leadership staff, it usually comes from Jerry to Catlin to the Chair.

Q. Now, will you have any involvement in communicating with Jerry about what Catlin should tell the Chair?

A. Very, very, very rarely. I mean, occasionally there will be a situation where, you know, 435 people have voted and I'll say, "435 people have voted. Can we go now?" It is sort of like, yesterday, where we had, like, eight suspension votes and everyone was trying to leave for Valentine's Day, it's like, "Come on, get where you're going."

But, I mean, that's sort of what it is, that level. But he still does what he wants, and I don't direct her, because I don't feel that's appropriate. I'm part of a team; it's not my job to do that. And so I try to just stick to complaining or something like that.

Q. It's our understanding that Catlin O'Neill, with respect to 814, told the parliamentarians, "This is going to be a fairly close vote. We want you to, essentially, as soon as it gets to 0–0–0, wrap it up pretty quickly." Were you involved in—did you know she was telling the parliamentarians that in advance?

A. No. Like I said, I mean, if consulted, my sense is it will always be a losing game to try to prevent Members from voting, Democrat or Republican. I think this is what happens when, occasionally, if there's misunderstandings or disagreements. I just think it's just easier to, sort of—like yesterday on the floor, or the day before yesterday, we lost a big vote on extending FISA. Well, we lost. You know, the world went on. We're all alive. You know, we survived it.

And having been in the majority for so long, from '77 to '94, we lost an enormous amount of times in those years. I mean, there would be big votes. They discharged the majority from, you know, consideration. They'd beat us on the floor on things. But, you know, we lived, and we fought another day. So it was not the end of the world.

I think, ultimately, the majority is going to find its way to majority, and I just don't see any reason to, sort of—and I've had to deal with Democratic Members who have been angry with me at times for quick dispensations of votes, and I just don't—I don't want to deal with them.

Q. You cut yourself off there. I think you said, you don't see any reason to sort of—and then you moved on to the next. What were you intending to say?

A. I don't see any—I don't know that she did that. I mean——

Q. I know, but you meant?

A. I'm operating independently, but I'm saying that I don't see any reason not to ensure—I mean, one of the things that I try to do is ensure that everybody has voted on our side, because I know everybody and that sort of thing. And I don't see any reason not to try to find a way to get 435 people voting all the time, if that's possible.

Q. Do you think that's what happened on August 2nd?

A. I was confused. I wasn't involved, and I didn't see what was going on. I was confused. I wanted that to be the result, and I would've wanted a revote, if that was necessary to assure the minority. I would've wanted this to occur if people still had questions.

But I honestly—if I wasn't standing up there, I don't think I would have—if I was standing up—I used to do it when I was in the majority, is I used to stand up there with Foley in chair and, sort of, be with the parliamentarians and see what was going on. So, in that situation, I know what it's like to know all the backs-and-forth and who's, you know, screaming and whatnot.

But I was distant from that, so I couldn't—and it wasn't part of my job, so I was just, sort of, like I said, I watched it and was looking at it. I mainly just, sort of, stared at the numbers, because, first of all, I couldn't believe it when I saw it, and then I thought, well, they're going to change it or something's up. I couldn't figure——

Q. You said that Mr. Foley was—something about a parliamentarian in his own right.

A. Definitely.

Q. In the times—you guys spent a lot of time on the floor. Have you ever seen a Chair call a vote without having a written tally sheet?

A. I can't remember an exact instance. I can remember people sometimes reading things off the monitors. But I don't know if, in that times, they may have had the thing in their hand—or, I just can't—I don't recall. I don't recall—I don't recall an instance of that, no.

Q. Did you ever hear any discussion that Mr. McNulty was directed to close the vote when it got to a certain number?

A. No.

Q. For example, 214–214?

A. No. Absolutely not. I would have—no.

Q. Would you have heard that, do you believe, if that had been his instruction?

A. I doubt it. Again, I'm not in that, sort of, line of control. I mean, people weren't asking my opinion, as far as, you know, there was—it is a separate, you know, separate structure that deals with the Chair and who's in the Chair and how the Chair, you know—that advice goes up to the Chair. Like I said, sometimes I'd have the ability sometimes to, at the margins, be able to influence the chain, but I'm not in the chain.

Q. Well, the reason I ask is, have you watched the videotape?

A. I have seen it once, yes.

Q. I don't know if you recall this or not. There's one instance where, after all this has started to blow up a little bit, Mr. McNulty says—and it's a little unclear exactly who he says it to—but says, "I called it at 214–214," almost like he's saying, "I did what I was

told." That's the impression that comes across to me from the tone of his voice.

Do you recall seeing that instance on the tape?

A. No.

Q. Do you recall——

A. But I wasn't—I watched the tape once just to see what happened, and that wasn't the part I was paying attention to. I can't say—I wasn't there. I just didn't see it.

Q. What part were you paying particular attention to?

A. Me.

Q. How'd you look?

A. Not very good. Old.

Q. What were you looking at? What were you—you said you were looking at yourself.

A. Usually when I look at the floor or any tapes of the floor, I'm looking for friends, looking for myself. It's egotistical, but that's just, sort of, what I do.

Q. Did you notice on the tape Mr. Hoyer having a little bit of a confrontation with Mr. Sullivan?

A. At the time I watched the tape, I saw Mr. Hoyer up there with Mr. Sullivan. You know, I couldn't discern what was going on, but I did see the two of them up there, sure.

Q. And did you see Mr. Hoyer pointing his finger at Mr. Sullivan in a fairly animated tone?

A. I think that's probably right.

BY MR. PAOLETTA

Q. Do you remember seeing that the night of?

A. No, I wasn't looking there.

Q. You weren't looking there, okay.

A. I was looking at the numbers. Part of what we try to do is try to win the votes, you know, in a fair way. So, you know, since you don't have complete control over the vote, you're trying to figure out, what do I need to do to get back into the vote? Is there somebody who we can change or ask them to change? So I'm more consumed—my part of the job is more consumed with that than it is who's doing stuff in the chair.

BY MR. SNOWDON

Q. Let me ask you this. If the vote is prematurely called at 214–214—and I'm basing that off the Chair's own acknowledgment of that subsequently—and meanwhile the board shows 215–213, and then shortly thereafter I think there are three additional change cards that are turned in—Gillibrand, McNerney and Space—did you have any involvement in discussing with those people changing their vote? Because, ultimately, I believe that the final—do you know what the final vote was?

A. No.

Q. Did you speak to any of those three people about changing their vote?

A. No. Sometimes part of my job is to, sort of, talk to people, to talk to people. But I don't recall being involved in that, in that part of it. I think it was—the people that were working on—to the extent that there might have been people working those people, they

were working them throughout the vote. I mean, it wasn't like something that would have come spontaneously or suddenly you think I'm going to go up to this person and talk to them.

It was much more—I mean, in these key votes—and I'm sure it's true on the Republican side, too—you, sort of, have a good idea of who you've got and who is, sort of, floating. And so, the people that are floating probably have little guardian angels who are, you know, talking to them. But there's there is not really a need to say, "Oh, by the way, go get that person." You know who's with you, you know who's against, and you know who's in play.

Q. Well, and is that true for changing votes, as well? I mean, if somebody has voted——

A. I——

Q. Just for her sake, let me just try to spit it out for you.

A. Yeah, yeah. Okay, I'm sorry.

Q. Is that true that somebody may have voted one way, they essentially get a pass on a vote even though it might be going against what the majority wants, because they are in a difficult district or whatever. But then if things get tight at the end, they need to be, sort of, encouraged to vote with the majority, if things are really getting neck and neck?

A. Yeah, there's a lot of motivations for it. There is an ultra-safe Democrat who, over the last few months, has been pursuing other activities, but who also, at times, you know, comes in and out, you know, is willing sometimes to help if necessary, but would like—has a balancing act on those kinds of things.

And so people, yeah, a number of people for a number of reasons, when we get to those kinds of votes, have a certain ambivalence, they have conflicting pressures. And so, sometimes when you've gotten it down to the yeses and the noes, and the small amount of people that are in between, the small amount of people in between usually are in between because they have conflicting imperatives that are upon them, maybe multiple imperatives. And so that's why, I think, both Democrats and Republicans end up occasionally switching, because, well, you know, I can see why I can go yes, I can see why I could go no; you know, I'm down to the last minute.

In the old days, when we first got the voting machines, where you actually put the thing in, they would tabulate how many times people switched votes, because you have the little machine and you could just go back and forth. One time somebody 1,200 times changed their vote. Now, obviously, they were just playing with it or if they had a little child who was playing with it. But it's just, sometimes, people just—it's just not that clear in their minds. Now, obviously we're trying to influence them sometimes, but other people are influencing them the other way.

So I think if you did a study of the floor, you would see that there are a lot of people on both sides who change a lot of times. When it gets to key votes, it's usually—we're trying—we are obviously trying to influence; they're obviously getting pressures from others, you know.

Q. Sure. Understandably. Do you know whether anybody was working those three people?

A. No.

Q. At some point, there was a discussion about aborting the vote. Do you know anything about that?

A. I remember being on the periphery. Again, my only thought was, at that point—and I don't even know what the state of play was at that point. My only thought was, let's find a way to make sure that everybody is copacetic with the vote. And so, whatever would further that, that would be what I would be for. Because I didn't think it was, as I said before, I don't think it was—it wasn't personally, to me, that important what the final result was, yes or no, or victory or defeat. It was that, if in victory, it would be that both sides were comfortable with it and, in defeat, that people understood there was a fair vote, you know, we lost and we lost.

EXAMINATION BY MR. CRAWFORD

Q. Can I interrupt, George? I think you might be confused by Andrew's question.

Were you ever aware that there was a problem with the computer?

A. No.

Q. Okay.

A. I mean, we were all obviously wondering what happened, but nobody knew why that happened.

Q. So when you're talking about making sure that people are fine with things, are you talking about a way to—the motion to reconsider or—attempt to vacate?

A. Yeah.

Q. That's a different issue than the decision to abort the vote to pull the display down.

A. Oh, okay. I was thinking much more the idea that, for a motion to reconsider, just if the minority felt something had happened.

Mr. CRAWFORD. I just wanted to clarify that.

Mr. SNOWDON. Sure, no, I appreciate that. I think that was perhaps misunderstood.

BY MR. SNOWDON

Q. Did you have an opportunity to speak with Mr. Hartz or Catlin O'Neill about these events after the fact?

A. You know, I mean, I tried to get—sometimes tried to get a hold of information, but they both felt that they were on the periphery and didn't really feel that they had that much involvement.

Mr. McNulty has been a Chair for a number of times and was one of the, what we thought, better Chairs that we put in the chair, and he took a lot of pride in it personally. And so, at least from a staff perspective, it would seem unlikely that he would take my order, take Catlin's order. Catlin's junior to me too. And Jerry usually hangs out at the computer with me. So it would never occur to me to think that they would've had that kind of an influence over him.

Q. What about Mr. Hoyer? Would he have had that kind of influence over Mr. McNulty?

A. I don't know. Mr. McNulty is a very—if you haven't already interviewed him, he's an extremely strong person. He may not look like it because he's got the back problem or whatever, but a very

strong person. And, like, when we—to us, one of the most important votes was the vote on the war, and when the Speaker went to talk to him to try to see if we could get his vote on a deadline for the war or, you know, what was a compromise which would have also seemed to be somewhat supporting the war, he was rigid. And nothing she could say could get him to change his—his brother had died in Vietnam. He was never going to vote for anything that had anything to do with war.

And so, in that sort of situation—I bring it up now to make the point, here was the Speaker, it was the most important vote to her, and she couldn't move him an inch. And so, that's, sort of, my view of Mike McNulty, like, he just, you know, he doesn't move very easily. And she's not an inconsiderable push either. And since it was the most important vote to her, I'm sure she would have tried to convince him pretty hard, but —

Q. What do you think happened that night? Why do you think Mr. McNulty closed the vote prematurely, or called the vote prematurely?

A. I think, up to that point, he had a spotless record, I think, as the Chair. I think even probably the Republicans felt that he had a spotless record. And I think, for whatever reason—I mean, that's the only way I can figure it out—is he made a mistake. And he has, since that time, announced his retirement. I think he was appalled at what happened and appalled that his judgment was being called into question. And I think that had an impact on his decision not to run again.

Q. What was his mistake, in your opinion?

A. I don't know. I mean, I don't know if it was the machines or if it was the—if he felt that he may have called it early. I don't know.

Q. I'm going to read you something that somebody we've spoken to earlier has said. He stated—and this is a person who has fairly considerable experience on the floor. And he stated that he'd seen pressure previously on Chairs to close down or hold open particular votes, but prior to August 2nd, he—and I'm going to quote now—"had never seen the Chair buy into it, never."

Is that your opinion as to what happened on August 2nd?

A. I just don't know. But I do know him, and I do know his—I have seen him in the chair before. I know he's a person we put in the chair a lot for these kinds of votes. He was in the chair because he was a strong person who could deal with a difficult situation. And it is, as I said, an example of the vote that the Speaker wanted. I find it very hard to believe that he would do other than what he thought was right at the time.

That may, in retrospect, as you guys analyze this, turn out not to be the correct situation and he may have made a mistake, I don't know. But my experience with him and the Speaker's experience with him is that he is very hard to—once he decides something, it's very hard to get him to do something other than what he feels is best.

Q. We've heard from several people that Mr. Hoyer directed the Chair to close down the vote and close it down now more than once that evening, and that after one of those times, seconds after one of those times was when Mr. McNulty said that it was not agreed

to, called it a 214–214, banged the gavel. And you didn't see that or hear that happen?

A. No.

Q. And if——

A. And also, a lot of times, random people scream at the Chair, "Gavel it." You don't even know who they are, half the time. I think, had somebody not been in the chair a lot before that, I could see maybe somebody thinks, oh, they can be swayed. But an experienced person in the chair knows that the imperative is that everybody votes. That's imperative, and it should not be altered. If somebody is in the chamber, even if somebody is down the hall and they're screaming, "One more," you wait until everybody votes.

And that's why he's been perceived, I think, in the past, by Republicans and Democrats, as a good Chair of the Whole, because I think it's perceived that he is trying to make sure that that occurs.

So, I mean, like I said, she tried to influence his vote and couldn't influence his vote. I mean, somebody coming up to him and telling him to do it, I just don't think—this is all speculation, but the type of person that I know, I wouldn't be able to do that, I wouldn't be able to convince him.

Q. But it's not just somebody; it's Mr. Hoyer.

A. Well, even the Speaker, she couldn't change him on something that was important to her.

I'm not trying to argue.

Q. Sure.

A. This is something you guys are going to have to discover. You're going to have to talk to him, you're going to have to talk to Hoyer. I'm just saying that my personal experience would lead me to think that it'd be very hard to get him to do something that he doesn't want to do.

BY MR. SPULAK

Q. George, it may not have been in this case, but I think you said that there is always pressure on the Chair to close the vote. Has that been your experience over your career?

A. Well, there are always random people who scream, "Shut it down," or, "It's time to go." But that's why you put an experienced person in the chair, because you're supposed to ignore that. Because of this. I mean, I don't think Mike McNulty would ever, in his worst nightmares, have wanted this to occur, where his judgment is being questioned and that he was perceived in any way of not having been fair.

So I think that an experienced Chair would realize you're supposed to tune people out. That's not—you know, you know, just, I mean, you know, when——

Mr. SPULAK. Off the record? Oh, do you——

Mr. HALPERN. No, I just have a couple very quick questions.

EXAMINATION BY MR. HALPERN

Q. The Speaker voted during this vote?

A. [Nonverbal response.]

Q. Obviously the Speaker doesn't have to vote. Can you tell me was it her decision on her own to vote on this one, or was there

a discussion from staff or from another leadership office that it would be important for her to vote on this?

A. Well, if you know the Speaker, the Speaker, she almost 99.9 percent of the time will make her own decisions on this stuff. So she would've thought about it—any of these kinds of critical votes, she would've thought about it beforehand and decided on her own whether she was going to vote or not.

And so, I mean, the staff—I mean, I'm not trying to be too humble here, but staff play in this would be, "Mrs. Madam Speaker, you said you wanted to vote; you haven't voted yet," or something like that. It wouldn't be, "Don't you think you ought to vote?"

I mean, when she first became Speaker, she, unlike—I mean, Foley reveled in the idea of not having to vote. Once he became Speaker, he never wanted to vote again. He was happy and delighted, didn't want to go to the floor. But she, having ran as a person who spent a lot of time with the Members, she spent a lot of time on the floor, and we couldn't get her out of voting. So she was voting for, you know, the suspensions and stuff like that. So finally, after a while, we convinced her, you know, that she didn't have to vote on everything and she should only vote on things that she thought was important or made a difference.

But she decided that. Most of the time, if we tell her that, she'll say, "Yeah, I know," or something, but she won't——

Q. Were you aware that the Speaker was the tying vote on this particular matter?

A. No. But I would think that, in any situation where it's going to be a close vote, I would hope that she would vote.

BY MR. PAOLETTA

Q. I haven't looked at the tape at this part in a while, but my recollection, George, is that you're at the table and you signal to her—she's talking with a bunch of people——

A. Right.

Q. [continuing]. Or Members, and you signal to her and she turns and goes to vote. Do you remember that?

A. No, but it could've been that, it could've been a reminder, but it also could've been—we were working the computer.

Mr. CRAWFORD. I think that's Jerry who signals for her, motions for her——

Mr. KUNDANIS. Well, in any case, I mean, we were talking to her. What I'm supposed to do is translate to her if she hasn't voted, or if she said she was going to vote, or if there are people that it might be useful for her to talk to. If I was pointing or wasn't pointing, it would probably have been, you know, "These are some of the things you need to do."

BY MR. PAOLETTA

Q. Okay, but it looks like it's right at the time when it's going to become a tie vote. So is there any recollection of that, like, we need to——

A. No, I think she would've decided a long time before she got to the floor that she was going to vote. And it may have just been that she had just not done it at that point, because she may have—it may have been that she was trying to work the voters first, fig-

uring she could vote, nobody is going to gavel her down, so she doesn't really have to rush.

Q. Right, okay.

Mr. SNOWDON. You wouldn't think.

Mr. KUNDANIS. You wouldn't have to rush up there to vote. She's going to get to vote when she wants to. I mean, sometimes her initial—her usual MO is to come up and ask us, you know, how is it going, how does it look, how many absences on both sides, who is voting, you know, which way, are there people who I should talk to, and stuff like that. It's more informational than it is directional.

Mr. PAOLETTA. Okay. Thanks.

Mr. SPULAK. Thank you, George.

Mr. KUNDANIS. Thanks, everybody.

[Whereupon, at 2:43 p.m., the interview was concluded.]

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

FRIDAY, FEBRUARY 15, 2008.
Washington, DC.

INTERVIEW OF: JAY PIERSON

The interview in the above matter was held at Room 1017, Longworth House Office Building, commencing at 10:10 a.m.

APPEARANCES

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Also Present: Hugh Halpern, Republican Staff Director, Committee on Rules.

EXAMINATION BY MR. SPULAK

Q. Good morning, Jay. Thank you for coming here this morning.

As you know, the Select Committee to Investigate the Voting Irregularities of August 2, 2007, was formed to investigate the circumstances surrounding roll call vote 814 and the subsequent motion to reconsider. We are interested in any observations or comments that you have about those events, including the duration of the vote and related matters.

We would like to begin by you giving us some background about yourself and your experience in the House, and then after that tell us in narrative form any comments or observations about roll call vote 814.

A. Well, my name is Jay Pierson. I have worked on the Hill and on the floor for 30 years; did a year at the rostrum as a journal clerk, my first year; 7 years in the Republican cloakroom; and the rest as a floor assistant to either Speakers or Minority Leaders, as the case may be, for the rest of that time.

My job is basically to make sure the Republican Members know what's happening when they walk on the floor—I'm a parliamentary procedure-type guy—timing of votes, what legislation does, and a little bit about every piece of legislation, not a lot, but a little; and then basically as a kind of a liaison when we were in a Majority, mostly a liaison from what was happening at the rostrum to the cloakroom, make sure they knew what we were doing. And

now it's just any information you pick up on the floor, making sure what our cloakroom knows what is going on, because they are answering so many phone calls and stuff and so we have to keep them up to snuff. That's all it is.

Q. That's a lot. August 2.

A. Well, I would say there are three things about August 2 that I remember most. I mean, I thought you would be asking me specific questions, but I will tell you what I think happened. What I think happened is a factor of three things.

One is overreaching by the Majority Leader or the leadership on the Democratic side, but it was Steny Hoyer pushing hard to close a vote when it wasn't ready to close; a mistake by McNulty in the chair—who I want to mention is probably their best Chair—he is a wonderful guy, and he just got a lot of pressure; and their—just really bad timing on what actually happened technically at the rostrum when the vote actually happened. So those three things are what happened.

You probably saw me on the video going across to talk to Hoyer. I am sure you will probably ask me about that. As best I can recollect, I said to him, we are going to move to reconsider, and he said, we are going to do that. I said, fine, and walked away. That's the only time I was talking to him. I normally wouldn't talk to him, but I just thought that the whole thing was such a mess that we ought to figure out what to do from there. And he said, no, we are going to do that.

And that's my take on it.

Q. Well, to that, was there any discussion about vacating the vote?

A. I don't recall. That's certainly not—not with myself and Hoyer, no. I actually don't recall that.

Q. Would—to you, would that have been an option?

A. Well, the problem with the whole thing was that they were—you know, I brought all this stuff home and looked at it, and it got moved. [Non-relevant material redacted.] I couldn't find it, so it's not real fresh.

But, basically, as you all know, the vote total did not change. So from a Republican point of view, had you vacated the vote and done it again, we would have lost the vote. That's sort of obvious. So that's one way to get out of a parliamentary snit is to vacate and revote or to reconsider either way. But there were other factors involved in the terms of wanting to win the vote. We thought we had won the vote.

If you vacate or you reconsider, you are going to lose the vote. So in the sense it wasn't really something that you would want to do. You wanted it to stick on the—you wanted to stick it up there as 215–213 final, if my numbers are right, and leave it final, not revote it and say, oh, you lost.

So I don't recall specifically, certainly not with Hoyer, and I don't recall on our side thinking about vacating, probably for that reason.

Q. I don't want to get ahead of ourselves because you probably want to go back, but that's a point that I think we will want to revisit is this question about whether the vote changed and wheth-

er, when it was 215–213, the Minority had won. But we will talk about that later.

Does anybody want to—do you want to back up a little or —

Mr. PAOLETTA. Sure.

Mr. SPULAK. Go ahead.

EXAMINATION BY MR. SNOWDON

Q. Well, why don't we start with you mentioned three points that contributed to this problem.

Let's start with the first one, I think you said overreaching by Mr. Hoyer, pushing him to close the vote when it wasn't ready to be closed. Do you want to elaborate on that?

A. Yeah. I mean, you guys who have worked on the floor or the Hill know the Majority closes down the votes. There's an understanding that if anybody is in the Chamber, not just in the well, but in the Chamber somewhere, and the Chair is looking out there before they close, and they say, hang on, they hear somebody yell, that you are going to hold the vote open for that person.

So most votes, as you know, are overwhelming. It's not a problem, but on a close vote it's a difficult thing to decide when you close it and when you don't. I think the Democrats are the same as we are. The push is never to close the vote when someone is in the well especially—or in the Chamber. You know, there's noise, it's 400 guys out there talking and whatever, and sometimes the Chair can't hear. But generally that's the way we always did it. On our side we always closed the gate.

We had a person kind of in between the Chair and being the whip. The whip is looking at the vote and deciding we want to close the vote. We know where our votes are. We have got a couple of guys off the reservation; that's fine, because we are going to win it anyway.

They would never close it directly from the whip to the Chair. They would always close it to Karen, who became the Clerk, but somebody like Karen or Emily out there in between kind of negotiating it. It's just a bypass through that person.

I don't see that on the Democrat side so much, so it could be a problem. Actually, I am not sure it's a problem, it's just a different way of looking at it. Steny on that particular vote was basically trying to close that vote himself.

If you watch the video, you will know he went up to the Parls, and if I had my notes, I could tell you exactly what he said. But I think he pointed at John or one of the Parls and said, "We control this House, you don't."

And that's okay, that's true. There's nothing wrong with that except in the tight position at the moment. It just showed how much he was pushing to get this thing closed. In a sense, technically it's true he does control it, but the people who really control the votes are the tally clerks who can say everybody is in, here is the slip, read the slip. And that was where that problem happened.

So we wanted to win votes just as bad as Steny did, obviously, when we were in the Majority. It's just that combination of things that caused—caused the problem.

BY MR. SPULAK

Q. Just curious. Did you use this intermediary, the staff, to relay the message because of the fact that the whip would have been on the other side of the rostrum and really couldn't have the same access to the——

A. No.

Q. I am just curious.

A. Well, I don't think we did this on purpose, it just happened this way. But I am guessing here that we—the Speaker controls the Chair. The whip does not appoint the Chair, the Majority Leader doesn't appoint the Chair. It's the Speaker's Chair.

We had always felt that we would have a Speaker person who is the telling the Chair, okay, it's ready to go. So I don't know how the Democrats feel about that or have even thought about it and—but I think that's usually the reason we have Karen or Emily or somebody in between, you know, telling our Chair what to do.

We put them there. So it wasn't that we would stop that, stop that. It would just be an intermediary thing. Don't forget, it's our Chair. We are all on the same team, supposedly. You all know how that works.

BY MR. PAOLETTA

Q. Say, you mentioned Mr. Hoyer speaking—I am sorry, Tom, are you done?

Mr. SPULAK. No, that's all right.

EXAMINATION BY MR. PAOLETTA

Q. Speaking with Mr. Sullivan about running the place, do you remember anything before then with Mr. Hoyer coming down the aisle and directing comments to the Chair or to the rostrum——

A. Uh-huh.

Q. [continuing]. About the vote? You don't remember that?

A. No. The only reason I know what Hoyer said was I could hear on the video.

Q. Oh, you weren't there.

A. There was too much noise, but you could clearly hear that on the mike.

Q. When you said the three things, you said that Mr. Hoyer was trying to close down the vote. From your recollections of that night, what gave you that impression?

A. Oh, that he was actually trying to close it down?

Q. Yes.

A. I wouldn't know directly from the first point, only when you put all three of them together, he was obviously trying to close it down, because you could see him—I mean, I would see him going up to the rostrum and back.

Q. Right.

A. I don't remember him yelling at McNulty or anything like that. They do, partly because they do close the votes.

Q. I am sorry, where were you during the vote?

A. Oh, I am all over the place, but generally on the Republican side in the aisles or up the toward rostrum of the Republican side.

I may have gone to the Parls at once. I can't remember, but I did see Hoyer that one time. Other than that, I am just on our side pretty much, and there's a lot of noise.

Q. I am really interested in what you—I know it's been a while, and I have great familiarity with losing my notes, too, or misplacing them, so I completely understand that, too, but I am really trying to focus on what you remember from that night. The videotape we have shown to some people because it's helpful, because they were so in the mix, okay, there, and all that.

But at the beginning of this vote here on the Republican side?

A. Yes.

Q. Right, okay. So the first thing you kind of remember from that night, not necessarily from the tape, from that night, is what, in terms of the going off track in terms of closing the vote? What's the first thing that you can remember thinking, hey, there's something wrong here?

A. The first thing I would know that was actually wrong was at the end when McNulty read from the board instead of the paper, and that goes to my three points. I mean, what basically happened—I will just explain it this way, and you can ask a further question if you want.

Q. Okay.

A. What basically happened, because he was pushed so hard to read the vote, and the board read something like 214–214, I think——

Q. Right.

A. And he read that. And you look up at the board, and by the time—what happens basically is when he says, and the motion to reconsider is laid on the table, then the tally clerk kicks the button that says "final." Unfortunately for the Democrats, because he wasn't reading from the board—or from the paper, there was no paper, and unfortunately for them, when the vote card changes were coming in, it takes a second or two to get a vote into the system, so that even if the guy has it there, and he is typing it in, it takes a little bit of time for the computer to actually click in and show. And then between the time McNulty said a motion to reconsider was laid on the table at 214–214, and the button was hit and it went 215–213, it went final.

That's obviously a huge problem. I don't think before that, I am thinking the whole time, gee—again, you generally lose in the Minority, you don't win. I wasn't thinking, oh, there were guys who were sitting in the well trying to vote, or we had some changes, but they went in.

Q. Okay. So this first time really, as you can recall, becomes an issue for you in terms of this is sort of not regular is when Mr. McNulty calls and the tick goes up on board?

A. Yes, because, you know, I am not watching the Speaker—you see the paper, every vote, and I have seen thousands of votes.

Q. Right.

A. You always see the guy with the paper. I am ready to write the votes down. So until they have that paper and actually do it—because sometimes someone says, one more, and you crumple the paper and get another one. So you are not always looking to see if, you know, the paper transferred.

I didn't even think about it because it's just routine until I saw that the vote was like that.

Q. Did you see any paper transferred?

A. No.

Q. Okay. So when the uptick goes, right, and then there's some commotion on the floor, right, what do you recall then?

A. Well, if it hadn't said final, the vote would still be open. It wouldn't be a problem. That was the problem. If—I mean, you see 215–213, you won; but if it doesn't say final on the board, and, say, you haven't said, a motion to reconsider is on the table, you can have switches. That happens all the time.

EXAMINATION BY MR. CRAWFORD

Q. May I interject? When you review the tape, what Mr. McNulty says is, 214–214, the motion is not agreed to, and he never gets to the point of saying a motion to reconsider was laid on the table. The video shows that.

A. Okay. Where I am getting my information from is what should happen when it goes final then.

Q. Yes.

A. What should happen when it goes final, when he lays it on the table, then the computer is hit, and then the final goes up. So in that case whoever was the tally clerk might have jumped the gun.

I don't know. I don't want to get the tally clerk in trouble. I don't recall whether he, you know—in August whether he actually laid it on the table. But I am told that that's when it actually goes up final. So somebody hit that button.

BY MR. SPULAK

Q. Jay, aren't you familiar with perhaps many instances when final is on the board, but, in fact, due to new votes in the well or vote switchers, that that number is changed?

A. I am not. I am not saying it doesn't happen. As I said, 90 percent of our votes, 95 percent of our votes, things you look at the board, you never think—I never thought about the actual process of the tally clerk and what happens when.

Because of this problem, I kind of looked into it. But I have never looked up and saw final and then have them take that back off. It shouldn't happen.

Q. Okay.

A. Once a motion to reconsider is laid on the table, and someone comes into the well and says, hey—so if the process worked correctly, and if the tally clerk waits until it is laid on the table and then hits the button, it wouldn't be changes. Now, I have seen a couple of votes in my time, less than a handful of votes, where they had to—the Chair announces the vote, tally change due to mistakes somehow. It wasn't important to a big vote, but the actual number had actually changed. And in the cloakrooms we get a copy of all the votes and people coming in with a new copy saying, hey, this is the final, there was some problem.

But I don't ever recall seeing final and then changes.

BY MR. SPULAK

Q. So let me revisit what I mentioned earlier. That's why you would say that when the vote said 215–213 immediately after Chair had called it 214–214, a final was up, it was your impression, and perhaps the others on your side, that the vote was over and should have been called in favor of the prevailing side?

A. Yes, yes.

Q. So, was that the crux of the unhappiness on the Republican side?

A. Oh, yes. If you hadn't seen final on the board, the vote was still open.

Q. So the fact that there were others in the well at that point, and if you saw the tape, you would see that there were others that were representing themselves in the well, and that the votes were cast after that, which ultimately changed the 215–213, it would have been—it was your opinion and perhaps those of others that those votes should not have been counted?

A. Yeah, once it says final. I am assuming that the reconsider was laid on the table. It apparently wasn't. So that's a screw-up there.

Once it says final, it should be final, especially when it is in print. You know, the mistake on the board—as I said, if they hadn't seen that, you could say the vote is not over.

BY MR. CRAWFORD

Q. We have also heard testimony from the folks in the Clerk's Office as well as in the Parliamentarian's Office that the presentation of the word "final" on the board has no parliamentary significance, that it is a step along the way of closing down the vote, and it signals that the time value has been set to final, but it doesn't indicate that the vote itself is closed down.

Are you familiar with that distinction?

A. Yes. As Tom asked, I had never seen like a final and then changes, although that may happen. But I suppose there's nothing in the rules that says when the board says this, the vote is over, that's true.

It's just that the emotion of the moment is, it says final; why does it say final if it's not final? Yes, I don't know any rule that states that the board has anything to do with it, yes.

BY MR. SNOWDON

Q. Jay, you said you were somewhat of a student of parliamentary procedure, and you obviously have had a lot of experience on the floor. Have you ever seen a vote closed out without the written slip or the written sheet handed to the Chair?

A. No, never. The only reason I would be the kind of a person who would notice that, almost always, talking to some Members, is that I write those votes down. There have been times when I have written them down and I find out, whoops, somebody is still voting in the well.

So what I do, I start looking at the paper specifically when I write it—I don't write the paper before he reads it, because, as I said, he crumples it up and throws it away sometimes, and you

have changes. But I am looking to see—you know, when the vote is really over is when I see the guy with the paper, so I write the vote down.

No, I have never seen that.

Q. You mentioned that when the Republicans were in the Majority, there was an intermediary that would essentially convey instructions from the whip or, I guess, even the Majority Leader to the Chair.

Was that—and if you answered that, I apologize—but was that purely a factor of convenience, or was there some other reason why that intermediary would be used?

A. My guess is—you could talk to one of these people. My guess is it was more of—not convenience, and it's not like we wouldn't shut—I don't think we ever had that person count a man what the whip wanted, but it's simply a way of saying that it's our Chair. We put them there. We are all on the same team. We are all Republicans, of course. But we schedule the Chair, and that's why we had this person there.

Some of these things on the floor happen because somebody just happens to develop that as part of their job. I mean, we didn't write anything, we didn't even think about it. Probably it's just that Karen or one of the—it was always a woman—was always out there during votes and did that. It's not that we would have said, don't close it down, it's just a pass-through kind of.

Q. We heard from somebody yesterday that, in fact, the Parliamentarians regularly get instructions from the now Majority staff to give them an idea of if it's going to be a close vote, and they may want to begin the process of closing down the vote very quickly after the clock strikes zero zero zero. Is that your understanding of how it happens?

A. Probably, and I don't mean to say that Steny does that a lot of stuff, but Catlin in the Speaker's Office is out there. I don't watch to see whether when the whip says close it down, Catlin says close it down. She is usually up at the rostrum. Coming up, they probably do some form of this also. But on a close vote like this, obviously, he—I didn't see them doing that.

Q. Okay. Well, let me represent to you that we were told that in this particular vote, Catlin O'Neill did, in fact, inform one of the Parliamentarians that—especially this was going to be a close vote, so when it gets to zero zero zero, you guys should be looking to close it down pretty quickly, so be on your toes.

A. Uh-huh.

Q. If that is all that had happened in this particular instance, do you think we would have had the problem that happened on August 2?

A. Well, yeah. You take the Steny part of it out of it—I am sorry—Mr. Hoyer out of it, and you still have the problem with the paper, you know. Even if Mr. Hoyer—if that was the only thing he did, close the vote, and you wouldn't have the final, and then screw up with the paper, then it wouldn't have made any difference. But, in this case, yeah.

Q. Let's just back up a second because there are a lot of different steps in that sequence which you talked about.

I think you said that there were three factors resulted in the problem, right? You identified those three things, the second being a mistake by Mr. McNulty.

Do you believe that Mr. McNulty would have made that mistake but for Mr. Hoyer's direct involvement in the process?

A. No, he wouldn't have made that mistake. He is the best Chair they have, or he is among the best Chairs they have. He used to do it back when we were in the Minority before.

I mean, I have never—I don't think any Chair would do that, except in this case I think it was pressure on him. A Chair couldn't—we have Chairs that make mistakes on the floor all the time, as you know, say funny things like that. But I have never seen any Chair close it down, probably because the Parls are right over right here making sure that the paper—to do it otherwise—yes, Chairs make mistakes all the time. They say funny things, and you might have a Chair over-read. So I think it was that pressure.

Q. I am sorry, do you think this was a mistake, a simple mistake by Mr. McNulty?

A. Depends on how you define simple mistake. I mean, it was a tremendous pressure on him from their leadership, and he is put there by their leadership. No, I don't think it was a simple mistake. I think it was due to the pressure that Steny was putting on them to close the vote.

A simple mistake would be someone who didn't know—maybe his first time in the chair. He didn't know about the paper, so he read the board. That's a simple mistake. This is a lot more complex and a lot more pressure on him to do that. That is why he read without the paper. He knows about the paper. He had done it many years before when they were in the Majority, so.

Q. Well, I assume that when the Republicans were in the Majority, there were certain votes where there was pressure from the leadership to either close the vote down quickly or keep the vote open for some period of time after the clock went to zero zero zero; is that right?

A. Sure, sure.

Q. Did you ever see any situations when the Republicans were in the Majority where there was pressure that resulted circumventing the established procedures for closing down a vote?

A. Oh, boy, that's a hard one to think about. There had been times on the floor when both parties were in charge when Members thought they should have been able to vote, and the vote was shut down. Somebody was in the well or coming down the aisle. We used to see them out the back when they are coming up the steps. You could hear people yelling and coming up the steps from the outside and keep votes open.

So I honestly do not recall a time when we shut down a vote and disenfranchised somebody, and there was, you know, a stink about it, and somebody came and said, hey, I am sure it happened, big vote, little vote, whatever. They are all mixed up in my head.

But there are times when the votes have been shut down, and someone was in the well. Some of the time you can see the Chair looking—can't hear, it's a mess, a lot of noise. Sometimes the Chair just can't hear somebody saying, one more, and so they shut the vote down.

So, yes, that's happened, but not without reading the slip. I mean, that's kind of the key to the thing. So it would be inadvertent in that case, I think, inadvertent.

Q. And at some point there needs to be some finality, right? I mean, Members can be hanging out in the lobby or coming——

A. Sure.

Q. [continuing]. In late. At some point, unless you finalize a vote, you are never going to get any business done.

A. Right.

Q. I assume some Members are procrastinators, for lack of a better term; is that right?

A. Sure.

Q. And are certain Members more notorious about that than others?

A. Yes. I couldn't—if you asked me to name one, I couldn't name them. But of course there are. They come when there's 2 minutes left. They run over from here because they know it's going to be held.

Probably the biggest mistake we ever made in the Majority is not in '95 coming in and saying, all right, we mean when we say 15 minutes with 2 grace minutes, and we will shut down votes except in extraordinary circumstances. We just kind of let it slide. And they have done the same thing.

Steny was on the floor 2 months ago maybe talking about that very thing. We need to close votes down. But it's always a difficult thing sometimes when you have Members—you know, sometimes you have Members at the White House, sometimes you have Members in a meeting, you get the Appropriations Committee doing something important, they are almost done. You can't make any hard and fast rules. You have got to have, you know, flexibility. It's where you draw that line on each individual vote that gets you in trouble.

In fact, I was surprised many times when I was near our whip and we were in the Majority on difficult votes where they wouldn't shut the vote down, even though you would look at the board and we had won, because the whip delayed in this case—knew that X and Y needed to vote "no" even though everybody else was voting "yes," go get them—even though I would have closed it down if it was mine—if we won it, let's close it.

They held it open for that very reason, but it's generally in the case when everybody has voted, and you knew that; you knew that—the Democrats didn't—you guys have all voted. You have guys who vote a certain way for their folks in their districts.

So, yes, that's a hard thing to go back and try to remember if we ever closed a vote on purpose when we knew somebody was in the Chamber. I doubt it, but it's hard to say.

Q. In your opinion, what is the purpose of the tally slip?

A. The purpose is the tally—there's only two people on the floor, one person maybe, but maybe two people, who really know whether or not the vote should be closed, and that's the guy on the machine——

Q. Seated?

A. Seated—and the person who is talking to him, taking the cards, hands in the cards. That person knows if there's any more

cards because there's nobody in the well, and when the tally guy is done, she writes—she usually writes the slip, and those two people know when the vote should actually be final.

The number goes on the slip and back up. At that point if somebody else runs in the Chamber, and it's up to the Chair to say, I am reading it or not. But those are the two people are the ones who actually know. That's where the 2-second error was. I don't know, I haven't talked to the tally people, but whatever time it takes to get that card in, that's where one of the screw-ups was. So they didn't get that slip because neither of those people were ready to write the slip and hand it up to the Speaker.

Q. So why do you think the Speaker, in your opinion, read the result and banged the gavel at that point if he hadn't received a slip?

A. Pressure from the leadership, the Democratic leadership.

Q. What we were told yesterday, the leadership had, through Catlin O'Neill, already instructed the Parliamentarians that—the rostrum folks that when it got to zero zero zero, they were supposed to begin closing the vote down. That message had already been communicated. So why would you think Mr. Hoyer would need to interject himself directly into that process?

A. I don't recall how the vote changed, except from 214–215, 213–216—212, what it was prior to that. I mean, Hoyer can read the board or the computer. I don't know if he was—he probably didn't look at that computer very often on the floor. He can read the board. And any leader can read the board and know whether they are losing or winning. And you close the vote down when you win, not when you lose. So his pressure would be, hey, we are starting to close this thing down.

As I said, it's fuzzy on just how you close the vote down, who is in the Chamber and who is not. We know so and so is here, and yet—oh, I saw him in the cloakroom, okay, we will wait. You got all that in the mix. But generally you are looking at the board. If you are going to win the vote, you close it down.

That was the pressure. I don't know when he looked at the board, but I am assuming he wanted to close it, and it was 214–214. I mean, that's fairly simple. You want to win the vote, so you tell him, hey, now is the time, close it down.

Unfortunately for him he got caught in the middle with the cards, you know, from going in and out, and it wasn't really final.

BY MR. SPULAK

Q. Jay, to that point, although the message was delivered to the Chair, or was offered by the Republicans and their staff, are there no instances when Members would communicate to the leadership or otherwise communicate their desire to the Chair?

A. Oh, sure. Sure, sure, sure. We have people, by—in the whip, when the computer is going, you know, cut it off. But generally, I mean, it would have been cut off, but generally we had somebody in between saying, okay. So, yes, it would have happened anyway.

Q. And notwithstanding the fact that this particular process or lack thereof was followed, I think you just said that when there were votes that were close and, perhaps, with the Republican Majority in the lead, would there have been some sort of sense of ur-

gency communicated to the Chair that the vote should be called not at that specific time, but let's close down the voting——

A. Start the process.

Q. I understand, you start the process. Maybe in this particular case——

A. Sure.

Q. I mean, isn't that the role of the Majority to win votes?

A. You got it. Yes.

BY MR. SNOWDON

Q. Do you think that that justifies the Majority bypassing established protocols in order to win votes?

A. Established protocols. No. I mean, if you mean—I mean, as we talk, the idea that you have a slip and that the board says final, that is not the Rules of the House. So if you mean by that kind of established protocol, no, you shouldn't do that.

But there are no rules. Rules of the House weren't broken. Just like we held the vote open for 3 hours, you can hold the vote open for 3 days if you want. There's a fuzzy area in there. No, they are not rules, but protocol, no.

This is what happens when you do. It got really screwed up big time by not waiting for the slip, you know, making sure. Had he had the slip at that point, then, I mean, all bets are off at that point. I don't know what the slip would have said. Depends on when he actually called. And in the end they lost the vote anyway.

So had Hoyer waited—we didn't know this at the time, I assume, but had he waited, it would have been 212–216. We would have had the slip, and the vote would have been over, we lost it. We would have screamed that they held too long, but that happens all the time.

Q. Do you think that's what happened here?

A. Yeah, definitely.

Q. At some point a decision was made to abort the vote. Do you know anything about that?

A. I don't recall anything about that. I mean, you can't vitiate—I don't know if that's the term the Parls use—but vitiate a vote by unanimous consent and go back and revote. But obviously you are not going to get unanimous consent in a situation like that.

It's not a motion, it's my understanding, it's a unanimous consent request. And we would never let that happen, so——

Q. When I said abort, this is actually a technical term for the people who run the EVS system, that one of the options on the system, because they got stuck apparently, was to abort the vote. Were you aware of any discussions going on about aborting a vote?

A. Not that I recall about aborting a vote.

BY MR. SPULAK

Q. Excuse me. Were you aware of the fact that they were having problems with the computer system during the minutes after the 215–213 appeared on the board and the word "final" appeared on the board?

A. I was aware that for some reason the vote never appeared in the system, yes, yes. It disappeared and couldn't find it. And then, of course, the next day the system malfunctioned. But that day,

yeah, if I remember rightly, it disappeared from the screen—the computer screen on our side.

Q. But you weren't aware why that happened?

A. No. I am now because I talked to them about it, but it was just bad timing to have that happen after the vote, like, what happened here, you know, it disappeared.

So, yes, I don't know whether that affected the actual vote.

Q. At the time did the disappearance of that information on the screen, did that contribute to the mood——

A. Oh, definitely.

Q. [continuing]. On your side of the aisle?

A. Oh, definitely, yes. It was like throwing gas on the fire.

Q. Why?

A. Well, because you just had a very controversial vote you thought you won, and then of all of a sudden, where is it? It's not on the screen. And people were like, this is nuts, corruption, or whatever. We can both call it a cover-up.

Q. Cover-up?

A. Cover-up. You can't even find it on the screen. So, yes, that was kind of bad, not good.

Q. But as far as you know, there was no intention—either then or now, was there any intention on the part of the Majority to make that go away because of a desire to cover up what had happened?

A. Huh-uh, I don't think so. I think it was just bad timing, a bad cable, whatever it was.

BY MR. CRAWFORD

Q. You were not aware of the machine freezing up with the seated tally clerk——

A. No.

Q. [continuing]. When that was transpiring?

A. During the vote?

Q. During the vote.

A. No.

BY MR. PAOLETTA

Q. Jay, did you hear of anyone complaining on the rostrum, you know, when they called the vote without the slip, you know, right after that?

So you are not aware of the problems with the computer, but as somebody who was there in that vicinity, did you hear anyone from the professional staff in particular from the Clerk's Office or the Parl's Office talking, making comments about what was happening, the fact that there wasn't a slip?

A. Huh-uh.

Q. No?

A. Never heard a thing from over there.

Q. Okay. So what was going on? The vote is called, uptick, commotion in the Chamber, right? And so what do you remember after that? What did you do?

A. I don't—I don't—I mean, other than screaming and yelling, you know, the same thing they used to do to us when it was a close vote.

This is a little worse, because it was a problem, but just totally unhappy. And you couldn't find out from the computer screen either. It just erupted. Now, I didn't look at what happened after that vote other than reconsideration. I think we walked out or something.

Q. When the 215 went up, where were you?

A. When they actually called it and said final?

Q. Yes.

A. I was probably in the well, but I don't remember. I mean, I move around a lot.

Q. Do you remember what you did after that; like when it went up to 215, where did you go?

A. Well, I was thinking about reconsidering and all of that. I was probably listening to Members and then went to Steny. I presume it was after that.

Q. Okay.

A. But that took some time. I mean, there was a lot of stuff going on. So other that that, I just—I mean, I wandered all over the place listening to Members and asking questions. Members wanted to know what is the next step, what could we do, you know, that kind of stuff.

BY MR. CRAWFORD

Q. Jay, do you remember being called up by the Parliamentarians up to the rostrum?

A. You know, I have no idea what—no, I don't. But I remember seeing that tape that John came over to me in the well and said something. I have no idea what he said.

Q. But you don't recall somebody called Tom Wickham; and then Kevie leaning over and telling you that they wanted you; you walking over and having a conversation with Mr. Wickham; Mr. Blunt up on the rostrum?

A. I don't remember.

Q. You don't recall?

A. Huh-uh.

BY MR. SPULAK

Q. Why do you think—obviously I will just ask you why do you think your Members objected to the request to vacate?

A. Part of it was psychological, I suppose, but, I mean, practically speaking, if you vacate the vote and have it again, you are going to lose. You know you are going to lose. So why do it—leave it out there as something that was done wrong by the Majority. If you vacate it, you kind of give an imprimatur of validity. Okay, well, vacate the vote. Of course vacate the vote. You know you are going to win it from the majority side, so let's get rid of this thing and have another vote, and now it's all okay. So you never want that to happen if you can help it.

Q. So if you move to reconsider, you would just take a few more steps?

A. Right.

Q. And that's what happened, right?

A. Right.

BY MR. CRAWFORD

Q. Jay, you have said that you were thinking about the motion to reconsider. Did you take steps to ensure that that would occur?

A. I don't remember if it was Blunt or Boehner or who was at the table in that general area. I must have talked to somebody about reconsidering, and that's why I went up to Mr. Hoyer.

I have known Mr. Hoyer for a long time. It's not like we are friends, but he will talk to me. He is pretty nice about stuff. And so I just thought it might be nice to let him know that this is a must that we might reconsider.

And that's when I went over to him and said that. He said he was going to do it. So I don't think we—I don't think I had papers out, all this stuff out, and said, here is what we ought to do. We didn't even go that far. When Hoyer said they were going to do it, obviously they would go to him, not to us. I don't think we had really started that process at all.

BY MR. SPULAK

Q. I am sorry, but, in fact, if Mr. Hoyer had not moved to reconsider, Mr. Boehner would have?

A. Hypothetical, counselor. But I think if we had our heads on straight, we probably wouldn't have. I don't know. Sometimes in the middle of that stuff, you do something and you think back on it and think, "ahh, probably wasn't the best thing to do." Just let it hang out there. So probably we would not if we had been thinking about it.

BY MR. CRAWFORD

Q. Do you recall after Mr. Hoyer asked unanimous consent to vacate and that was objected to, that Mr. Sullivan came off the rostrum and met you?

A. I do recall him, but I can't remember why or what he said. I didn't know that's when it was, but I do remember he came down and said something to me.

BY MR. SNOWDON

Q. You mentioned some factors that resulted in the problem. What do you think can be done or should be done to ensure that this type of thing doesn't happen again?

A. You are always going to have pressure on votes. You can't take that part of it out.

I find it hard to believe that anybody will ever be in the chair again and read a vote without a slip. I personally don't think—I haven't really thought about this, but I don't think there's anything that can be done. I mean, this is politics. You have got moments when people are excited about stuff, and I think it was an odd combination—if Mr. Hoyer hadn't put that kind of pressure on him, none of it would have happened.

But nevertheless, there was that kind of 2-second cap, kind of, or whatever you want to call it, and the non-slip. All of that, put it all together, was the problem.

I don't think there is anything you can do. I think the Parliamentarians will either be more aware of the fact, as if they weren't al-

ready, that you have got to have that slip before you do the vote. So I don't think there's anything you can do about it.

Q. Is there anything that can be done institutionally in order to insulate the Chair from that direct pressure from the leadership of whichever party is in control of the House?

A. No, I don't think so. I mean, if you had an independent Chair, someone who is totally independent of either party, not a Member or something, perhaps; but, no, that's just part of the process, just the way the place works.

BY MR. SPULAK

Q. Jay, do you believe that the Chair was aware that these votes that eventually expressed themselves on the tally board—do you think that he was trying to make the announcement before those actually were reflected on the board?

A. Do you mean going to his motives, whether he saw them and read it anyway?

Q. Yes.

A. I don't know when he saw, and I don't think McNulty would do that. But, under pressure, people can do anything. But, no, I mean, he is a very decent guy.

I just—I think it was simply the pressure on him. And I don't think he looked down and saw two guys ready to change and did it anyway, but I wouldn't know that. I didn't ask him, so——

Mr. SPULAK. Thank you so much.

[Whereupon, at 10:55 a.m., the interview was concluded.]

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

THURSDAY, FEBRUARY 21, 2008.
Washington, DC.

INTERVIEW OF ROB COGORNO

The interview in the above matter was held at Room 1017, Longworth House Office Building, commencing at 10:08 a.m.

APPEARANCES

OUTSIDE COUNSEL, MAJORITY: THOMAS J. SPULAK, ESQ., KING & SPALDING LLP, 1700 PENNSYLVANIA AVE., NW., WASHINGTON, DC 20006

OUTSIDE COUNSEL, MINORITY: MARK PAOLETTA, ESQ., ANDREW SNOWDON, ESQ., DICKSTEIN SHAPIRO LLP, 1825 EYE STREET, NW., WASHINGTON, DC 20006

Also Present: Muftiah McCartin, Deputy Staff Director, Committee on Rules; Hugh Halpern, Republican Staff Director, Committee on Rules; and Davida Walsh, Legislative Counsel, Representative Delahunt.

Mr. SPULAK. Rob. Good morning. Thank you for coming in with us today.

Mr. COGORNO. Sure.

Mr. SPULAK. As you may know, the Select Committee to Investigate the Voting Irregularities of August 2, 2007, is charged with investigating and making recommendations on sort of matters related to roll call vote 814 and the subsequent motion to recommit, including the timing of the vote and sort of subsequent actions to that. So we'll ask you to in a narrative form tell us your recollections and your involvement in that vote. But before that I'll ask you to identify yourself and tell us a little something about your background and your experience at the House.

Mr. COGORNO. Okay. My name is Rob Cogorno. I was the floor director for the majority leader up until last week. And I had worked for him in both the minority and majority status in that same capacity. And so my primary role in the majority was to set the schedule. I mean, that's the majority leader's role is to determine the schedule and the flow of business. And so that was I would say overall you know my biggest responsibility was to work with the committees and so forth, and you know make sure that the bills were ready to go when we wanted to have them ready to go.

EXAMINATION BY MR. SPULAK

Q. Good. Okay. Can you tell us about your recollections of August 2 in relation to roll call vote 814?

A. Okay. Well, I'll preface it by saying that was, as any of us who were around then, a fairly intense week. So you know, it was a lot of late nights and all of that. But we were trying to get a lot of business done that week. If memory serves me, the children's health care bill, energy bill, finishing up appropriations, and I'm not sure I'm missing a whole bunch of other stuff, so it was a very hectic week. But what I do recall is you know we were finishing up the ag appropriations bill and it was I think sort of—I don't know. I couldn't tell you the exact time. But that whole week was somewhat still a blur. But we were finishing up that bill and obviously we had had the recommit vote.

And you know as in all these situations, you know, I frankly, until towards the end of the vote, I wasn't even paying that much attention to how the vote was going because my mind is always on the next—you know, you're on to the next thing and what's next and what's next. And towards the end of the vote, you know, it became a very close vote and you know Members were switching votes right and left, and you know, my recollection is basically that Mr. McNulty, when he called the tie vote, what I recall is that he had not gotten the slip from the clerk yet. And there were still a few votes, as often happens where when Members are changing their votes, it takes a while before their vote—you know, when they either change their vote or vote for the first time for the card to get translated and then show up on the computer, and then the final vote was, you know, what the final vote was when, you know, when he actually called it.

Q. Okay.

EXAMINATION BY MR. PAOLETTA

Q. Where were you at that time, sort of during that—near the end, so you start paying attention to it, you realize it's close?

A. Right.

Q. Where are you actually on the floor?

A. Memory serves me, I was where I normally—I tend to stand kind of by the computer terminal on you know near the front there on our side.

Q. Okay. And what do you remember happening as it got close? Do you remember? Did you speak to Mr. Hoyer about the closeness of the vote?

A. He came over. At one point in time he did—there were a bunch of us, as there normally are, a bunch of staff, not just myself, but staff from the whip's office and other people huddling around the screen when you know there's any kind of a close vote. And at one point he did—I do remember him coming over at that one point in time, but he had also been kind of up by the, you know, by the desk, by the——

Q. In the well?

A. Yeah. Up, sort of up by where, like, where the Parliamentarians are.

Q. Oh, okay. Let me back up one second.

A. Sure.

Q. Have you watched the tape at all of that night?

A. We—yeah, once like way—I mean, way back at the, like, at the beginning.

Q. Right after it happened?

A. Yeah. Yeah.

Q. And you haven't watched it since then?

A. No. I mean there was—there was—well, there was—that night we had a meeting, I think, afterwards, like there was a small like leadership meeting and lots of back and forth and people were trying to you know capture what they could capture. I don't know however they were doing it from C-SPAN, little snippets. And as I recall, the Clerk's Office did provide a CD that had the whole thing on it. And I watched it. I can't say whether it was the next day or the day after, something like that.

Q. Okay. So you're at the table with the computers, right?

A. Uh-huh.

Q. And at some point if you recall, Mr. Hoyer actually walks towards——

A. Uh-huh.

Q. [continuing]. The desk?

A. Uh-huh.

Q. Towards the well, right, towards the rostrum?

A. Uh-huh.

Q. And had you talked to him at that point? You know you're sort of—you said you weren't paying attention, you are thinking about the next vote and the next stuff. So at a certain point you're starting to pay attention. And do you talk to him before he starts walking down? Because you see on the tape—we have the tape here?

A. Sure, sure.

Q. But he starts walking down and I'm just trying to get a sense. Had you just talked to him or not? Do you remember anything like that?

A. No, I don't.

Q. Okay. Do you remember him walking down? Do you visually sort of recollect him walking down towards the rostrum and he's saying something to the Chair or directed to——

A. Well, I saw him at one point standing there, yeah, talking to the Chair. But I don't recall having spoken to him before he did that, no.

Q. No? Who would be responsible on the floor and his team for sort of alerting him that there's a close vote, and you know, he may need to sort of do what majority leaders do?

A. Well, oftentimes, you know, he—he's sort of on his own. You know it's not an unusual circumstance that you know you're in a situation where it was a close vote or just in the course of business, he'll come from wherever he is, and I'm kind of doing, you know, my thing. And he'll show up and sometimes he'll come right up to me and ask me something, what's going on. Other times, Members will come up to him and he's doing, you know, what he's doing, responding to what they're telling him or asking him or——

Q. Do you remember him coming up to you on this?

A. At one point, he did come over and I don't know the sequence. I don't know if it was when he first came in, you know, to the Chamber and walked up to the, you know, into the well or not. But at one point—as I said you know there were a bunch of people, you know, kind of hanging around the screen. And he did come up at one point. But I couldn't say exactly where in the, you know, sequence that was.

Q. And do you remember what he said or what the conversation was?

A. It was basically about, you know, closing the vote, have people—has everybody voted, you know, that kind of thing. It was sort of a typical thing, I mean, at the end at any close vote, whether you are majority or minority, you know, both sides are tying to make sure, all right, has everybody voted? Who's here? And are they recorded the way they want to be? And, you know, you're working at it at the last minute. So it was sort of in that context as I recall, yeah.

Q. And do you remember any response from you or anyone else in terms of the people that were gathered, that responded to him or——

A. I mean, it was just sort of general chatter like it is sort of at the end of, you know, of any close votes, like who's still out, you know, who, you know, is the whip, you know, talking to, that kind of thing. I couldn't say specifically.

Q. Okay. Do you remember Mr. Hoyer saying close the vote?

A. He came over and said—it was something, about you know, is it time to close the vote or something, something to that effect, yes.

Q. I'm sorry. Okay. Do you remember him saying it as he's walking towards the rostrum?

A. No. It was more—no. It was more in the context of—again, when I was kind of sort of standing where I was, there were a bunch of people coming around and then him—I think he'd already been down there and then was like coming back as I recall.

Q. I see. I see. Okay.

EXAMINATION BY MR. SNOWDON

Q. What was his demeanor when he came back?

A. Demeanor?

Q. Demeanor.

A. Well, I guess I would say agitated. I mean, you know, it was the heat of the moment. So——

Q. What was he agitated about? I mean, because—we've heard from one person who's described him as "livid," that the vote was not being closed down when he wanted it closed down. Would you agree with that assessment when he came back to you from being up on the rostrum?

A. Livid? That's a little strong. But yeah, I mean, he was definitely—he was definitely agitated, yeah.

Q. Why? Why was he agitated?

A. I think partially because, you know, it was, you know, we were in the heat of the moment there. It was a close vote and I think the, you know, the people get hot.

Q. Well, but it's one thing to be anxious that the vote may or may not be going your way.

A. Right.

Q. Agitated suggests that there was something that was happening that he didn't like. Do you understand the difference? Or maybe I'm putting too fine a point on it. But to be anxious that you may lose a vote is one thing. To be agitated is, to me, something different. Agitated is your word. Can you tell me why he was agitated or with whom he was agitated?

A. I think just—I don't know if any one particular person. I think more just, you know, the situation, you know, that we found ourselves in. I mean, it's a tough—it's a tough spot. I mean, you know, when you're, you know, at that—the razor's edge of a close vote like that. So——

Q. Did he express any annoyance with Mr. McNulty?

A. I don't—not that I heard, no.

Q. What about with the Parliamentarians? Did he express any annoyance with them at that time?

Mr. SPULAK. Andrew, can I interrupt for one second?

Mr. SNOWDON. Sure.

Mr. SPULAK. I'm confused. I think the questions are asking Rob if this was directed to him. But I'm not sure that Rob said that Mr. Hoyer came back at any time and spoke directly to him. Is that—did that happen? Did he come back after he approached the podium—you said, he approached the—he won vote over, did he come back and talk directly to you?

Mr. COGORNO. Well, I mean, it was sort of he came—he came back and there were a bunch of us standing there. So I would say me, along with, you know, other people. It wasn't I—as I recall, it wasn't, you know, pulling me aside and saying, hey, you know, what's going on here kind of thing.

Mr. SPULAK. Okay. I'm sorry. So go ahead.

BY MR. SNOWDON

Q. I'd be happy to have her read back the question if you want. But what did he seem agitated about? Was it just the closeness of the vote? Or was he agitated at somebody in particular, either the Chair, Parliamentarians, the folks from the Clerk's Office, his staff? Who did he seem agitated with?

A. I mean, there was no—just it was just sort of generally. I mean, I couldn't say—I mean, it wasn't like he came up to us and say, oh, I'm upset about this person or that person. It wasn't that. It was just sort of like, why don't we—like why aren't we done? Why isn't the vote closed, essentially.

Q. Was the vote closer than you all anticipated it to be? I mean, I would assume that before you start a vote, you probably have a decent idea of how your Members are going to vote. Maybe—that could be a completely erroneous assumption on my part. But was this a closer vote than you anticipated?

A. Well, we—I mean, yes and no, I guess. I mean, on recommits, since by the nature, we don't know what they are until—oftentimes, until, you know, we first get them. So yeah, and there have been, you know, some close ones in the past. Whether this one was unexpectedly close, I mean, again, I was sort of—to be honest, not

paying much attention until, you know, until towards the end. And then it was like wow, this really is going to be a close one. But anticipating that ahead of time, no. As a general rule, the majority—your job is to try to defeat the recommits. So you know, whether we would have anticipated this particular one would have been any closer than any others, no.

Q. Okay. We've also been told that Catlin O'Neill, at some point, as the vote starts to wind down, gives a heads up to the Parliamentarians that when it gets to 0:00, they should be on their toes and try to close the vote as quickly as possible. Were you aware of that?

A. In a general sense, I think that's right. I mean, she is the one that you know when we've checked and we know that you know everyone you know has voted that we know is here you know on that day or night, she's the one that ultimately sort of gives the nod to the Chair.

Q. Who would—who would tell her that? Would she do that on her own or would somebody——

A. Well, it's kind of a combination of the whip's people, basically that cluster of us that are sort of hanging around the terminal.

Q. And how do you tell her that? She's up sort of at the edge of the rostrum. Is there a hand signal? Does somebody walk up and tell her? Does somebody send her an e-mail? How——

A. Usually it's—I think if somebody will just like give a nod or say yes, it's time or we're done, you know, whatever. But it's usually just because of the distance and especially if there's a sequence of votes and so there's a lot of people, you know, filling that space. A lot of times it's just with a nod or something. It's not—or somebody actually goes over and says something to her.

BY MR. PAOLETTA

Q. Did you walk over to her at all during that time period?

A. I don't recall having done so.

Q. I'm just sort of curious. I spent 10 years on the Hill, but I did oversight, never sort of floor stuff. So I'm more or less oblivious to that stuff. Are there—is there a lot of e-mailing going on at that time? Or is it because you're all standing right there, you are talking to each other?

A. No. I mean, generally speaking, like in the middle of the vote—I mean, there may be e-mails about, you know, oh, you know, Congressman or Congresswoman so and so is like 20 seconds away, you know their plane just landed and they're in the car and they'll be here in 20 seconds. Can you see about holding the vote, you know, so that he or she can make it kind of thing. But——

Q. When Catlin O'Neill's standing, you see her on the tape sort of off to the side. But before that vote gets started sort of, is she over at the table with you guys and then sort of drifts over there? How does that work? So for each vote, you're saying, okay, here's what kind of happens and——

A. Yeah. In general she kind of comes—she sort of does move back and forth. I mean, yeah.

Q. Okay.

A. So that she can also see what the totals are, how we're doing, who's out.

Q. On the computer, into the screen.

A. Correct. Correct.

Q. I see. Okay. So you don't recall Mr. Hoyer going towards the rostrum and saying, close the vote?

A. I don't recall that. I recall sort of afterwards, like I said when he came back——

Q. Do you think he's already gone down there and come back up?

A. As I recall it, yeah.

Q. Do you remember him talking to John Sullivan up in the rostrum?

A. He was definitely talking to the Parliamentarians, whether it was John or Whitcomb, I couldn't be positive. But he was definitely having conversations with them.

Q. Did you hear it?

A. No.

Q. No? Okay. And did he recount it to you at all afterward? Or did anyone who was there recount it to you?

A. Not that I recall, no.

Q. Okay. Now you mentioned, Rob, that Mr. McNulty, you—I think you—correct me. I think you said—did you notice that he was calling the vote without the tally?

A. When he—when he, yeah. When it was tied.

Q. Yeah.

A. It was crazy and it was loud and all that. But I don't recall having seen the piece of paper that normally—the white slip that normally goes up. I don't recall him having received that.

Q. And did you—were you cognizant of that at the time, I mean, when he was calling it, was that going through your mind, where is this slip?

A. I don't—I couldn't say that I was actually sort of consciously thinking about it.

Q. Okay.

A. I mean like dwelling on it. But just hey, it seemed to me that he kind of looked up at the——

Q. Display?

A. Display on the side and saw that it was 214–214 and then he gaveled it and called it that way without having—at least, from what I can remember—without having received the slip.

Q. And do you recall any other vote on the floor where it was called without a slip being handed up?

A. Yeah. Gosh, I mean, it may have happened. But—yeah. I mean, most of the chairs I think are pretty well, you know, I think—my understanding is, and that's not sort of my daily work, sort of managing that part of it. But they're instructed I think to wait until the slip you know comes up.

Q. Do you know if there's—are you aware of the—we've learned about there's a sheet that's sort of is up there on the sort of podium.

A. Uh-huh.

Q. For the Speaker Pro Tem to sort of walk you through what you're supposed to do. Are you aware of that sheet?

A. No. That's not really my——

Q. Okay. So you saw him look up——

A. My recollection was—right. He looked up and then called it tied 214–214.

Q. And then what happened?

A. As I recall—well, again, it was like obviously very loud and confused. But some people had still not either—I don't remember the exact sequence, whether some people were still changing their votes or if they had already put in their cards and they just hadn't been um you know properly tallied yet. But it was clear that there was still something going on that, you know, after that because it was crazy and you know people were talking and yeah. Yeah.

Q. Okay.

BY MR. SNOWDON

Q. When he called the vote, did you look up at him in the rostrum?

A. I was looking—well, I saw—I mean, like we all were, looking at the total. So I remember seeing that. And then looking—looking back over to him, obviously, you know, when he gaveled it down and when he called the vote. So——

Q. Did you see what the reading clerk or the tally clerks were doing at that point?

A. I don't recall—I don't remember like staring at them particularly, no. It was more looking at—looking at him, I guess.

Q. Okay. Do you know why he would have called the vote without getting the tally sheet?

A. No. I don't know. I think he must have just—since things weren't—I guess, maybe total hadn't moved. I'm just get guessing here. I have no idea. But maybe because the total hadn't moved and it seemed like nobody else was hanging around. I don't know, but——

Q. Did anybody ever—either that evening or subsequently ask Mr. McNulty what happened?

A. I know there were some conversations that happened, you know, people definitely talked to him and, you know, I think the next day—was it the next morning? At some point, you know, he made a statement expressing, you know, his regrets or however he said it, you know, for having you know gaveled it when he did. But anybody talking to him, you mean, like right then?

Q. Well, did you or any of your colleagues——

A. Talk to him?

Q. [continuing]. Have a chance?

A. No.

Q. Did Mr. Hoyer talk to him?

A. I wasn't—I believe that Mr. Hoyer and a couple of other Members did talk to him later that night and/or the next morning. But I wasn't part of that discussion. So——

Q. Was that related—was that discussion relayed back to you?

A. I think in sort of general—nothing specific as I recall, just sort of in general terms. Obviously, he felt, you know, very badly because he took his role as, you know, presiding in the chair very seriously. Excuse me. You know, when we were in the majority before, he did it a lot and I think the Members always considered him to be very good in the chair and very fair and all that. So I know he was very, you know, he was very personally, you know, upset about it.

Q. So he sounds like an experienced Chair. Did he offer an explanation as to why he would have not followed what is by all accounts pretty standard operating procedure for closing down a vote?

A. Again, I don't—I would just have to look at, you know, what he said and I guess it was the next day when he—when he, you know, either almost did a 1 minute or in some way he made an apology to the House. I would have to look at that.

Q. I mean, we've seen some pretty generic things including, you know, a memo that I guess was circulated to you among others, describing what happened that evening, talking about the—he had—this is the second paragraph on the bottom. Announced to the Chamber that he erred in prematurely closing the vote. I guess my question is—that's sort of a conclusion. And was it ever articulated why? Was it a simple mistake? Was it pressure he was feeling from Mr. Hoyer or somebody else to close the vote? What caused him to close the vote prematurely?

A. I mean, I couldn't—I don't know. I couldn't say.

BY MR. PAOLETTA

Q. Well, okay. We've talked to a lot of people?

A. Uh-huh.

Q. Virtually everyone sort of recalls Mr. Hoyer walking towards the rostrum, sort of——

A. Uh-huh.

Q. In sort of a forceful way saying close the vote. But you don't remember that, right?

A. I don't remember him—I don't remember him sort of saying—again, my only recollection of actually talking to him was sort of after those discussions, whatever he was doing with the Parliamentarians down there and then coming back sort of afterwards, you know, as, you know, as we talked about. But I don't—I don't recall him, no.

Q. You don't recall him doing that. Okay. And I think we've gotten a fair bit of testimony that talks about the pressure on Mr. McNulty to close the vote and that was coming from Mr. Hoyer. But you don't have any sense of that or any recollection of that?

A. I mean, I—I mean, not that I—in the sense of having like heard him say anything, no. I mean, clearly, you know, he was down there talking to the Parliamentarians. He was down in the well. So, I mean whether he said something directly to Mr. McNulty, I—I mean, I obviously wouldn't have heard it. I don't recall him saying anything directly. But he may have. I don't know. I couldn't—I couldn't speak to that.

Q. Okay. Or to the Parliamentarian, John Sullivan. If you've watched the tape, as you indicated you did——

A. Uh-huh.

Q. [continuing]. I think one of the things everyone hears on it is, We run this place. You don't. Do you remember hearing that on the tape? The foundation of the question would be, do you remember him saying that during that night, you know, do you recall him that night him going up there?

A. Something—when he came—when he came—after the conversations he was having in the well when he came back and sort

of, you know, said—I think that—he may have said something to that effect to kind of the staff, you know, to those of us here, is something, you know, that were standing by the computer, something to that effect.

Q. You mean that he had said that to Sullivan or that he was just saying it to you guys?

A. To—I think more to us, like sort of, you know, we run the floor or we run the House or something, yeah, something to that effect.

Q. Okay. And did he say—there is at least one comment we heard was that he said to Mr. Sullivan, John, don't ever do this to me again. I won't stand for it. Or words to that effect. I don't know if you guys remember that. But did he say anything like that along those lines when he came back to you?

A. No.

Q. Did you hear him say that?

A. No.

Q. And when he came back, he didn't recount anything along those lines to you?

A. Not—no.

Q. Okay. So again, what's sort of puzzled us is, Mr. McNulty's a very experienced, you know, Chair. And there's no slip handed up, which, from our understanding, may be the only time that's ever happened. Nobody has pointed out a specific instance when that hasn't happened at least one slip.

A. Uh-huh.

Q. Other slips have come up——

A. Something changes. Right.

Q. But in terms of a baseline slip going up, this is the only time. And so—so it just seems to sort of—like we're just trying to get an understanding of what would have caused Mr. McNulty to close it down from the people who were actually on the floor such as yourself.

A. Uh-huh.

Q. When he did.

A. Again, I mean as best I can recall from, you know, my vantage point where, you know, I was standing, it was just sort of that, you know, again like the heat of the moment. I mean obviously, you know, it's a close vote. And, you know, look at the board and well, okay, 214–214, you know, it's done, I mean, you know, proposition fails on the tie vote and he did it. Whether, you know, meaning closed it down. Whether that was in response to something that he was specifically told, I can't, you know, I can't speak to that.

Q. All right.

BY MR. SNOWDON

Q. You said that Mr. Hoyer came back and said something to the staff to the effect that we run—we run this place. What was his—can you put that in context for me? Because there's a couple different sort of connotations to that, depending on how it's said. And did you get a sense of what he meant by that? For example, was he angry with the staff for not doing something, that the vote wasn't being closed down quickly enough? Was he angry at the Parliamentarians for doing something? Was he saying it in the con-

text of, I just had a conversation with John Sullivan and this is what I told him? Was he just sort of generally saying it? I mean, does that make any sense?

A. Yeah. I mean, I think, at least from when the bit that I caught, it was more like I said just kind of a general sense and I think expressing a sense of frustration. But I don't know what had, you know, transpired between him and Sullivan that may have, you know, that he may have been reacting to. I don't know. I couldn't—I couldn't, you know, say.

Q. I will show you this. And excuse my lack of knowledge. But what is this document? Who prepares this? And when is it prepared?

A. This—I think, this—somebody in our staff I'm sure did this to—it wouldn't have—I couldn't tell whether you it was that night or the next morning. But it was definitely, you know, after the vote.

Q. So this isn't something you would know sort of in advance?

A. No, no. This is definitely—yeah. No. This is——

Q. I realize it says that they were switching. But do you ever know in advance somebody's going to switch a vote?

A. Well, no. I mean—you mean like before a vote? No. I mean there would be no way of knowing. I mean, switching happens during the vote normally. And especially I mean that's part of what, you know, the whip operations on both sides do. I mean, if you see somebody, you know, that might not be voting with the party, you know, the whip or, you know, the whip's operation will talk to them and say, you know, why are you voting, you know, that's——

Q. Do certain people sort of get a pass on a difficult vote for them, but then if it gets close—they get a pass with the understanding if it gets close, they're going to sort of be whipped into back voting with the rest of the party?

A. I think those conversations happen, sure.

Q. I mean, is that something that you would know in advance?

A. I don't really—in my—in my responsibilities, no. I mean, I very rarely have those kinds of conversations. Yeah.

Q. Do, you know, why this document was created?

A. I think—my guess—and it's just a guess. My guess is that he, you know, must have asked somebody on the staff. And I think I know. My guess is it's Brian on our staff would have looked at. But it could have been somebody else looked at the vote. And again, I don't know if it was that night or the next day. But, you know, sort of said, okay, I want to, you know, I want to know, who did we end up in the parlance losing and who changed their votes, you know, in either direction?

BY MR. SPULAK

Q. In your experience, which is rather lengthy on the floor, both in the minority and in the majority, I presume you've seen a lot of close votes, if you will?

A. Uh-huh.

Q. Would you describe this as a close vote?

A. Uh-huh.

Q. During a close vote, is it common for there to be a lot—I'm sorry. Is it common for there to be sort of expressions of Members'

desire that a vote be closed if perhaps their side is ahead or kept open if their side is behind?

A. Sure. I mean people will, you know, everybody will, you know, start, oh, you know, we're up by one, we're down by two or whatever it is. Sure, people will sort of scream, you know, scream that out. Yeah.

Q. And to whom are they screaming, is it the Chair?

A. Yeah. I mean, a lot of people—a lot of times there are Members that will just sort of generally yell up, hey, hey, hey close it, close it kind of thing.

Q. And this has happened both when Democrats were in the majority and Republicans as well?

A. Sure.

Q. Specifically on August 2, after the vote was called the second time, from watching the tape, there's lots of—apparently lots of agitation all over the Chamber. Is that your recollection?

A. Uh-huh.

Q. And from where was that coming? Or is there—was there one particular side of the aisle from where that was coming?

A. Well, sure. I mean, I think there were—and I don't recall the exact sequence. But there was some talk on the Republican side. I don't remember if somebody actually took a mike and said something. But I know that it was clear that, you know, that they were upset. And as I recall then there were some other discussions. And I think—I think the sequence was then either Mr. Hoyer asked to speak out of order to, you know, or to move to reconsider—made an offer to reconsider the vote or something like that.

So there was some back and forth, you know, in that—in that context. But I couldn't say, anything—any specific conversation that at least I was privy to in terms of, you know, clearly what was going on on the Republican side and what their response would be.

Q. Did you have any conversations with anyone from the Republican side, with any, you know, staff or a Member?

A. At that time?

Q. Yes.

A. I don't recall.

Q. You don't work for Mr. Hoyer now, but you did for a long time. And is it correct that you've been on the floor with him in a lot of close votes?

A. Yeah.

Q. Have you ever seen him—have you ever seen him or know him to ask the Chair to break any procedure or any rule?

A. Break rules?

Q. Or to do anything improper?

A. No.

Q. Have you ever known him to do anything improper?

A. No.

Q. You're talking about his demeanor when he came back from the Chair, although you don't have much recollection about what he was doing when he was there?

A. Right.

Q. But he came back and you used the word "agitated." I think Mr. Snowdon was trying to get to the bottom of what that was. Is it reasonable to say that it had been a long day, this was a close

vote and at that time it didn't appear as though it was coming out the way that the Democrats would have wanted it to come out, and that he was not happy about that. Is that fair to say?

A. Yeah. I guess. I guess that's fair. Yeah.

Q. I mean that's just—generally with all of your experience, is anybody ever happy on the floor when their side doesn't win in the vote?

A. The answer to that is no.

Q. So it would not be uncommon for him to be upset?

A. Correct. Correct.

Q. I don't have anything else.

BY MR. PAOLETTA

Q. Oh, well, I—Rob, do you remember after sort of the first calls it right and then do you remember the—are you aware the tally clerk was trying to sort of clear the vote off after—it clicked up, right. It was 214–214.

A. Right.

Q. And then it happens that just as he calls it, it goes up one.

A. Yeah. 215–213.

Q. That's when everything erupts.

A. Yeah.

Q. Do you remember or were you aware at that time sort of that night that the seated tally clerk, De'Andre Anderson was trying to clear the computer and it froze up, did you hear any discussions about that?

A. No.

Q. At that time, or even sort of that night in terms of what happened?

A. No. My only recollection was, it did tick up but then there were still some other cards, some other Members, I don't know, three—however, many here and there was some—I do remember I think somebody said oh, the Florida Republicans are changing or something. And I don't know when those cards actually got into the system or not. But——

Q. Okay. And there was a—at some point, right, they were moving onto the next vote. But the board hadn't come down, it was still—it was still up there and he was trying—the seated tally clerk was trying to clear the board. Were you aware of any discussions about——

A. No.

Q.[continuing]. Aborting the vote?

A. Well, the only discussion that I recall was, as I said, you know, before, that there was—because there was all this angst about what had gone on, I think there was an offer of either essentially vacating that vote and doing it, again, kind of thing. But I don't recall anything about a particular clerk or something being frozen and having trouble clearing it or anything.

Q. Or Ed Sorensen, did you have any discussions with him that night about how to deal with essentially what they were considering a malfunctioning, you know, computer?

A. No. I don't recall that.

Q. Okay. And did you have any discussions with Mr. McNulty that night?

A. I don't recall anything—having any discussions with him. The next morning if memory serves me there was a—I think maybe we had a caucus meeting or something where, you know, I'm sure I've, you know, must have said something to him but sort of in passing like no conversation.

Q. Right. What about when—again, from the time he calls it, right, and there's the uptick and then, you know, he calls it again and then, you know, then it's ultimately 216–212 is it?

A. Yeah.

Q. Or 212–216. And there's a lot of time when people are sort of milling about, right, and then the Republicans leave.

A. Uh-huh.

Q. Did you at all at that time during that whole sort of sequence talk to Catlin O'Neill about what happened, you know, she's the one who's supposed to be giving the signal to the Chair, right?

A. Right. Right.

Q. What—do you recall any conversations with her?

A. I don't, no.

Q. No. Okay. So there's this really tight vote and there's no slip handed up and pandemonium breaks out. Do you recall talking to anybody about sort of what just transpired? Because to my—in my sense, you know, from what I've learned, it's unprecedented, right, to have called the vote without a slip, unprecedented. So on a vote that, you know, it could have been, you know, you know 250 to whatever the remainder is, right, nobody would care if a slip was not handed up. But they can't even remember that. There's always a slip, even if it's, you know, a blowout vote?

A. Right.

Q. But here it's a tie vote and there's nothing, you know, handed up?

A. Right.

Q. But you seem to sort of not be dwelling on, but you kind of remember.

A. Right.

Q. So did you ask anyone what just happened up there? Did you talk to the Parls or did you talk to—I know you had a lot of things going on so if you didn't, you didn't. I'm just trying to get a sense. Did you walk around to Catlin or did she come over or——

A. Gosh, if I talked to her right after that, I have no—no recollection of it.

Q. Okay. And what about McNulty's staff or anybody about, hey, what happened there, you know, why did he do what he did?

A. No.

Q. No? Okay. Do you recall if Mr. Hoyer specifically, on a previous vote, telling the Chair to close it down? I mean there's a lot of, as you said, there's a lot of Members who yell lots of things.

A. Right, right.

Q. But they're not the majority leader.

A. Correct.

Q. So do you remember any other time—and I will sort of stipulate that you don't remember him saying that in this instance?

A. Right.

Q. But do you ever remember Mr. Hoyer, you know, making comments to the Chair to close it down?

A. I mean, I couldn't cite a specific example, but I think, sure, like a lot of, you know, like a lot of the Members probably—hey, it's time to, you know, shut her down kind of thing. But I couldn't point to like a specific, you know, instance but yeah. I'm sure that that has probably happened.

Q. And when that usually happens, Rob, based on your experience on the floor, what happens when somebody says, close the vote down, what then—what's next supposed to happen?

A. Well, I think it's the Chair's call ultimately. They have to make sure that—and they're pretty, you know, pretty I think—what's the right word? Sticklers about making sure, you know, making the announcement, is there anybody in the Chamber who hasn't voted? Is there anybody in the Chamber who wishes to change their vote kind of thing. So ultimately it's, you know, I think it's, it's their call. People are going to be screaming at them all the time. But at the end of the day, they have to, you know, they have to make that, you know, make that determination when in their view, you know, it's done and everybody who wants to cast their vote has, you know, has casted their vote.

Q. And does that generally include, you know, because again, down on the floor it certainly seems more raucous. But that slipped, you know, close it. You start saying those words about does any Member wish to vote, record or change his vote?

A. Right.

Q. And then the slip?

A. Uh-huh.

Q. So even though Members are sort of yelling that out and even if it's the majority leader, it's going to trigger a process to close the vote?

A. Right. Yeah. I mean, you know, sometimes people will come in, you know, close vote or not, you know, 400–2, somebody comes running in. The slip's being written and it's on its way up. And somebody will come running, one more and somebody will come running down the aisle. So you have to take their vote and then, you know, then——

Q. Change the slip?

A. Exactly.

Q. Okay. But this didn't happen here, right?

A. No. I mean I think it was more—everybody, you know, who was—I don't know that the total ever really changed. I mean, I suppose I'd have to go back with you guys to figure that out. So I think it was more about people—it wasn't a situation where somebody came running in at the last minute, oh, I haven't voted yet. It was more people changing their votes and the delay it took in getting all those switches recorded.

Q. Right.

BY MR. SNOWDON

Q. Rob, we've heard from a variety of people and yourself included that it's not uncommon for the leadership to want to close down a close vote. And that obviously makes a lot of sense. In your experience with Mr. Hoyer though, since he's been the majority leader, is it typical that he would say that to you or someone in his staff who then relays it to Catlin O'Neill, who then conveys it

to the Parliamentarians or the Chair? Or is it on occasion where he will directly—as it appears in this case, directly relay that to the people on the rostrum?

A. Again, I mean I couldn't say that he never had, you know, a conversation like that, you know, in the past in a close vote.

Q. Would it be typical?

A. Typical? I mean, I wouldn't say typical in the sense that, you know, there are lots of close votes. But not—and, you know, not—it's very rare that you get into a situation like this one where it was, you know, very heated and so I wouldn't—no, not typical I guess I wouldn't say.

Q. Can you appreciate though the distinction between he wants to close the vote?

A. Right.

Q. Can you appreciate the distinction between him coming to his staff and saying, let's close this down and going up to the rostrum as I will represent to you we've heard from several other witnesses and saying in a fairly loud voice, close it down now. Can you appreciate the distinction between those two things?

A. Sure. Yeah.

Q. And I would assume that the former is a lot more typical than the latter. Would you agree with that?

A. Sure.

Q. And can you think of any other specific examples where you either saw or heard at the time or subsequently where Mr. Hoyer directly interjected himself into the process as opposed to either saying something to staff and having it run sort of the normal course?

A. I can't think of a specific one. But I also couldn't say that that didn't happen, you know, at some point in time.

Q. Would it be fair to say it's a lot more common that if he wants to close down a vote, which is I think perfectly natural, that he would come to you all and have you guys—have his staff put the wheels in motion to do that?

A. Yeah. I mean, that would be—I guess. But he'd also—that's why—I don't know that I would say typical or not because he's, you know, he kind of moves around. And there will be plenty of times where he's looking for me and I can't find him and vice versa. So, you know, he kind of—to use the staffer's parlance, like freelances. He'll do things. He's the majority leader. It's not like he comes to me or anybody on the staff and like, you know, checks off everything.

Q. Well, sure. But maybe he's not going to you. Maybe he's going to another staffer if he can't find you. I want to sort of distinguish between sort of running this through the staff versus doing it himself, whether that's through you or through Catlin O'Neill or anybody else on the staff, depending on who he can find in a particular moment.

A. Right.

Q. Can you comment on that distinction? I mean, I would assume that if he interjects himself directly you would probably hear about that, either at the time or afterwards, is that fair?

A. Sure. Yeah. I mean I'm sure I would have. Like I said, I can't—I can't think of a specific instance, but it would not surprise me that, you know, that there were some. I mean——

Q. Would you say it's uncommon?

A. Uncommon?

Q. Uncommon for him to do that directly?

A. Well, it's not—I mean uncommon in the sense of day in and day out, yeah, uncommon.

BY MR. SPULAK

Q. Is it uncommon for there to be what we've been calling votes of consequence, something that is an important vote and it's very close, is that a daily occurrence?

A. Daily? No. I mean—but, you know, with some regularity, but not——

Q. But is it more likely in the instances that you're describing that may occur with Mr. Hoyer directly intervening as opposed to through a staff that he would do so on votes that were—that were more important than—and what I've suggested are more uncommon?

A. Sure.

Q. Than common votes which are either not that close or not that important?

A. Sure. Sure.

Q. You know, we've been talking about the involvement of Mr. Hoyer in specific instances. But let me ask you and I think you've said this already. But isn't it—isn't it, I mean, in your experience both in the majority and in the minority that leadership will play a role in communicating with the Chair about the timing of a vote?

A. Yes.

Q. And while we've heard that—and even with the—well, we've heard that a lot of this communication today is done through a representative of the Speaker's office and that when Republicans weren't were in the majority, there was a similar practice. You may or may not know about that. I mean, are you aware of that?

A. Yeah. I mean, I can sort of recall the same sort of thing, a hand signal or a nod or something to the Chair, you know, when they wanted to close a vote.

Q. We also heard from at least one, if not—if not more of our witnesses who said that they were familiar with times when former majority leader Tom DeLay would sit in the front of the—in one of the front rows in the Chamber and would make a motion, sort of a cutting sign to the Chair to indicate when he wanted a vote to end. Are you familiar with that?

A. I mean, I couldn't say that I, you know, recall a specific instance of him doing that. But clearly, you know, signals go from, you know, send mirror image from the computer screen on that—on the Republican side of the aisle, somebody there signaling to the Chair when it was time to, you know, to shut it down.

Q. But in this instance, and I'm asking specifically, are you aware of actual Members of the leadership and not their staff——

A. Right.

Q. [continuing]. Sending signals orally or——

A. I mean, I can't—sitting here right now, I can't recall a specific incidence of that but I wouldn't be surprised if that had happened.

BY MS. MCCARTIN

Q. On the "signaling" issue, Rob, and in your experience on the floor, you have the Chair that needs a signal, you have the Parliamentarian that needs a signal, you have the clerks that need a signal. You have the whip operation that's doing some signaling, you have the Speaker's Office, whichever side, waiting for the whip operation. But all of this signaling is in one Chamber; and in your experience, is the signaling sometimes a little murky? It's not like there's a chain of command so that a signal goes to that person, and that person signals to that person, and that person signals to that person. Sometimes is it a little murky where there is a signal and everybody's watching it and almost simultaneously people engage, has that been your experience as well?

A. Uh-huh. Yes.

Q. And one other question, on the notion that the whip operation knows where the votes are, particularly a motion to recommit, which is sometimes not shown to you until it's actually called up.

A. Right.

Q. But just generally, we've had almost 1,200 votes last year. Of those votes, what percentage would you say was actually whipped?

A. Percentage. 5 to 10 maybe. I mean——

Q. 5 to 10 percent of 1,200 votes?

A. I mean, like a big bill like the budget resolution or something like that, there aren't that many of those kinds of votes in a given cycle, so maybe something like that.

Q. So the notion that the Whip operation comes to the floor sort of knowing where every vote is going to end up, is actually, you know, I mean, you have your common sense and the Members have their common sense and the whip organization has their common sense. But the extent to which people are whipped on any given vote is maybe 5 to 10 percent——

A. Right. I mean I'm just ball parking it. But yeah.

Mr. PAOLETTA. Did you have anything?

BY MR. HALPERN

Q. Yeah. Actually I wanted to back up a little bit. Can we talk about sort of the immediate aftermath of what was going on? I want to start before the vote actually closed.

A. Uh-huh.

Q. There was a point at which everything had sort of slowed down, most of the changes had been processed at that point, but the vote still wasn't actually closed. Do you remember at any point around there Mr. Boehner going down to the well and submitting a change card? Or submitting a card, I should say.

A. Yes. I do—I don't remember if I actually saw him do it or somebody said, oh, Mr. Boehner is, you know, going to the well. Yeah. Yeah.

Q. At that point, did you or to the best of your knowledge anybody else have a conversation with Mr. Hoyer about what that could signify or next steps or anything like that?

A. I don't know if I said anything to him specifically. But yeah, I mean, there was definitely some discussion as I recall now, some discussion about, you know, is he going to move—is this like a reconsideration thing or something, it would be sort of general chatter about, you know, why he might be doing that, yeah.

Q. Are you aware that the majority leader then submitted his own well card at that point?

A. I don't remember that.

Q. Okay. He did. We have it. It was a duplicate of his machine vote. But he did, he did submit it.

A. Okay.

Q. So there wasn't any—to the best of your knowledge, any direction from the staff to the majority leader asking him to do that or suggesting that he do that?

A. No. Huh-uh.

Q. All right. Let's step forward just a minute. The Chair has then called the vote, called it for the majority. At that point, at least on the video recording, the majority leader makes an unanimous consent request to vacate the vote?

A. Uh-huh.

Q. You know, from years of working on the floor, both in your latest position and from years in Mr. Hoyer's whip operation that the standard procedure when you're going to make a unanimous consent request is try and, you know, get a signal to the other side or try and clear it with the other side. Do, you know, was there any effort made to try and clear that particular unanimous consent request?

A. I don't recall, no.

Q. Okay. Obviously that was objected to, given the—and then at that point the leader decided to make the motion to reconsider. Again, was there a suggestion from the sort of assembled leadership staff that that should be his next move or was that done on his own, to use your word, sort of freelancing?

A. Yeah. I'm trying to—I don't recall any sort of specific, you know, direction or conclusion. I think it was more when—when the—with when it was—when he, you know, asked UC and that was turned down. I think he just sort of did it on his own. I mean, I don't recall any specific conversation about that.

Q. One last thing, and forgive me if this crosses a little bit with Mark's questioning. When you have sort of the assembled group at the leadership table, if I understand what you've described correctly, the normal process would be there's some consensus decision that everybody's in, that it's time to shut things down. You always signal to Catlin. Catlin would then signal to the rostrum, okay, let's close that down.

A. Uh-huh.

Q. Clearly that didn't happen here. Was there any sort of surprise or confusion among the group at the leadership table at the time Mr. McNulty, you know, started calling the vote at 214–214 that he was doing that without the—without the input or without the signal from the leadership table?

A. I don't know that I would say—I mean, again, because it was so kind of heated moment that I don't know that anybody was—that that sort of—what you describe accurately as sort of the typ-

ical, you know, process happened or didn't happen, no. I mean, yeah.

Q. Okay. Thank you.

A. Uh-huh.

BY MR. PAOLETTA

Q. So I just wanted—so do you think that Mr. Hoyer's actions that night in any way had anything to do with Mr. McNulty calling the vote in the manner he did?

A. I mean, you know, obviously I—I have not spoken to him about, you know, why he did what he did but, you know, just sort of human nature I would think that sure, he might have, you know, had some effect on him. I mean——

Q. Okay.

BY MR. SPULAK

Q. Rob, you said earlier when I asked you if you were aware of Mr. Hoyer ever doing anything or wanting something improper, what I meant by that was in violation of the House rules. I think you said the answer to that was no. And in light of what you just said that, that what Mr. Hoyer said could have had an impact on Mr. McNulty, in your opinion, based on your experience with Mr. Hoyer and based on it personally and professionally, do you think Mr. Hoyer was asking Mr. McNulty to violate the rules or practices? Do you think that Mr. Hoyer was thinking—and it's your opinion, that he wanted Mr. McNulty to call this vote without receiving a tally slip?

A. No.

Q. And finally, when you think Mr. Hoyer was trying to do what leadership has done for—what leadership typically does and that is communicate to the Chair their interest in the vote ending or——

A. Sure.

Q. Okay.

[Whereupon, at 11:11 a.m., the interview was concluded.]

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

FRIDAY, FEBRUARY 22, 2008.
Washington, DC.

INTERVIEW OF JERRY HARTZ

The interview in the above matter was held at Room 1017, Longworth House Office Building, commencing at 2:12 p.m.

APPEARANCES

OUTSIDE COUNSEL, MAJORITY: THOMAS J. SPULAK, ESQ., KING & SPALDING, LLP, 1700 PENNSYLVANIA AVENUE, NW., WASHINGTON, DC 20006

OUTSIDE COUNSEL, MINORITY: MARK R. PAOLETTA, ESQ., ANDREW L. SNOWDON, ESQ., DICKSTEIN SHAPIRO LLP, 1825 EYE STREET, NW., WASHINGTON, DC 20006

Also Present: Muftiah McCartin, Deputy Staff Director, Committee on Rules; Hugh Halpern, Republican Staff Director, Committee on Rules; and Davida Walsh, Legislative Counsel, Representative Delahunt.

EXAMINATION BY MR. SPULAK

Q. Jerry, thanks for coming today. As you may know, the Select Committee to Investigate the Voting Irregularities of August 2nd, 2007, is charged with investigating the circumstances surrounding roll call 814 and the subsequent motion to reconsider. We are also interested in issues related to the matters affecting that, including the duration of the vote and other types of events of that afternoon. So if you will, first begin with telling us a little about yourself, your experience, your job responsibilities, and then start telling us about August the 2nd.

A. Okay. Jerry Hartz. I worked on the Hill for 21 years. I started with David Bonior 1987, was associate to Rules when Tom was up there. Have done a lot of different jobs in leadership, all pretty much pertaining to the floor. Bonior was whip, and then Pelosi became Leader. I switched over from Bonior to her. And then she became Speaker.

So my current job is to be Director of Floor Operations, which means sort of overseeing all the different functions on the floor in a big way, not a, you know, micromanaging kind of way, making sure that offices kind of fit together, you know, pretty much make things go as they are supposed to for the Speaker.

Q. August the 2nd.

A. Long time ago. You know, I mean, there was this vote. It was close. You know, it was back and forth, seesawing, as they often do in these kind of situations. You know, the vote was closed. I think it was closed prematurely in terms of the paper not being read that was handed to the Chair. That was the mistake that was made. And, you know, then all the controversy ensued from that.

On top of it, you know, the complication was these machines went down, which caused a big problem. It is a very fragile computer system that we have, and it doesn't, you know—it wouldn't be like these BlackBerrys. Let's put it that way. It needs—can be fragile. So all of that, you know, compounding in terms of the situation caused the events.

Q. Were you aware that the computers were malfunctioning when they were?

A. No. No. I mean, I don't think we had had any of that happen while we were in charge in 2007. I don't remember when the last time was when we had sort of a stall like that.

Q. But, I mean, if you will, on August the 2nd, during roll call vote 814, were you aware that there was a problem with the computer system at the time?

A. Only after the fact, only after it became apparent that we—you know, everything was like nothing was moving and—you know, so not ahead of that.

Q. Were you involved in any discussions relating to the computer malfunction with people who were trying to fix it?

A. Well, I think we were trying to figure out how long it was going to take to get it back up. I don't remember at this point how long that took. But, you know, just trying to get people to get the thing back up so people can function and the Members could, you know, vote.

Q. Okay. We are getting ahead of ourselves here, but go ahead if you guys have something.

EXAMINATION BY MR. PAOLETTA

Q. Okay. So, Jerry, when the vote is proceeding, right, and it is getting close, where are you on the floor at that time?

A. I am usually either at the computer or helping trying to find Members who haven't voted.

Q. Okay. And do you remember where you were at that time, you know, specifically on August 2nd around, you know, when it is zero zero zero, and it's, you know, somewhere around 214–214?

A. I don't remember precisely. I assume I was at the computer looking to see who hadn't voted, making sure people get in to vote. I think the Speaker voted. We wanted to make sure she got in to vote.

Q. Okay. Did you encourage the Speaker to vote?

A. Yes, I encouraged her to vote, yes.

Q. Okay. And do you remember when you—because I have seen the tape, you know, and there is a signal, and she goes to vote. Was there any discussion about making sure she votes so that it—because it was that close, or had you discussed it with her beforehand; do you know?

A. Before that particular vote I don't remember that I talked to her about, you know, voting. She only votes occasionally. So, you know, no, not ahead of time I wouldn't have.

Q. Okay. And when it is getting close, do you remember Mr. Hoyer walking down the aisle towards the rostrum?

A. No, I don't remember.

Q. Okay. So in terms of just I am trying to get your best recollection.

A. Right.

Q. I know it's a while ago. But you are at the desk, it's close, and what is the first thing you remember sitting here today about, you know, what happens? Do you remember Mr. McNulty calling the vote?

A. Not off the top of my head. I mean, I know that it was close. I remember some of the stuff that happened afterwards, when we were trying to figure out what was going on.

Q. Okay.

A. But——

Q. Do you remember any efforts to have him close the vote either from Mr. Hoyer or from Catlin O'Neill or whomever is generally, you know, in charge of signaling to the Speaker pro tem, you know——

A. Right.

Q. Do you remember anything about that?

A. In this instance it seemed like it all happened very quickly. I don't remember a particular signal or anything like that, if that's what you are asking, no.

Q. Okay.

A. Not that I was involved in.

Q. Do you know why he closed the vote in the manner he did?

A. I don't. I mean, like I say, normally the paper comes up from the well. I don't know if he just looked up at the board and just decided, you know, close it or—without, you know, getting the paper. The normal process is through the paper. And I don't know why he did anything sooner.

Q. And, Jerry, do you remember—and I am just trying to piece together——

A. Sure.

Q. [continuing]. You know, what sort of people remember from that night. Do you remember looking at Mr. McNulty and noticing he wasn't using the paper, or is that just afterward?

A. Yeah, that would have—I mean, none of that would have been all that visible from where we are. I mean, you know, there is a lot of activity, a lot of hustle and noise, and, you know, how that all flowed, and just all of a sudden, boom, no, I don't remember that that—you know, seeing all of that.

Q. Okay. So——

A. I don't think I was near the rostrum, as I recall. I was probably at the committee table, so I am quite a ways away from there.

Q. Right. Like I said, I am just asking——

A. Right.

Q. [continuing]. Whether you remember whether the paper was passed up or not, and you don't.

A. I don't remember.

Q. Okay. And did you have occasion to speak to Mr. McNulty afterward, you know, immediately afterward, or during that period as to why he called the vote in the manner he did?

A. I don't think I talked to Mr. McNulty about it.

Q. How about Mr. Hoyer or the Parls or anyone like that?

A. Well, the Parls, yeah, I mean, clearly once that all happened and there was—you know, the machines went down and everything, then, you know, I was trying to figure out what was going on at that point and would have talked to the Parls primarily.

Q. Do you remember who you spoke with?

A. I know I talked to John Sullivan, I am sure Tom Wickham, you know, both at the time, after, trying to piece together what happened.

Q. What do you recall them telling you?

A. That Mr. McNulty had not waited for the paper, as we normally would before we close the vote.

Q. Do you remember who said that?

A. I think that would have been John Sullivan.

Q. Okay.

A. And that, you know, that's a problem. And I think we all recognized that was a problem. And then I think, you know, Mr. Hoyer asked to have the vote vacated. It was objected to.

Q. Right.

A. McNulty then, I think—I am not sure who did what first, but McNulty said, you know, I made an error, the Chair made an error. I remember him announcing from the Chair that he had made a mistake in terms of not waiting for the paper.

Q. Now, do you consider McNulty a pretty experienced Chair?

A. I would, yes.

Q. Yeah. So that's sort of what's puzzling, right, as we sort of try and piece together that night, and we will talk to him in due course, but as to why he, who by all accounts is a pretty experienced Chair——

A. Right.

Q. And we just got this paper today, I don't know if you are familiar. This is, I think, what was up on the rostrum. Are you aware that there is a piece of paper that's up on the podium for the Speaker pro tem?

A. Yeah. I mean, those are—I mean, the Parliamentarians handle all the paper up there, but these are the prompt sheets for—you know, for what the Chair is supposed to do.

Q. Okay. Are you aware of any other time, other than this vote, when a vote was called or closed without a tally sheet being handed up?

A. I don't remember another occasion. There might be, but I don't remember.

Q. Okay.

EXAMINATION BY MR. SNOWDON

Q. Does Catlin O'Neill work for you?

A. She is under my direction and supervision, yes.

Q. Okay. We have been told by one of the Parliamentarians that with respect to 814, she had indicated to the Parliamentarians this is a close vote, essentially be on your toes when it hits zero zero

zero, you know, you should start to close it down pretty quickly. And apparently that's not a completely uncommon——

A. Right.

Q. [continuing]. Thing to do. Would she have initiated through that communication with the Parliamentarians without you directing her to do that?

A. I think we work in concert in that way. We sort of know what the situation is going to be if there is a close vote. So, yeah, I mean, we would have probably had a conversation about it. But, you know, I think she would have also had the ability to initiate something on her own as well.

Q. Do you remember specifically whether or not the two of you had a conversation about it that night?

A. I think we all knew this was a close vote. I don't remember specific conversation with her about it, but, you know, it wouldn't surprise me if there was. I mean, we knew this was going to be a difficult vote, so, yeah, we would probably have had a conversation.

Q. Okay. And did you have an opportunity to speak with her after these events to have her tell you what she told the Parliamentarians or what she told the Chair?

A. Yeah. I mean, we talked about this, because it was—you know, it was a controversial vote, and we were all trying to figure out exactly what happened, what things went wrong. And, you know, we all had different pieces of the puzzle. We were in different locations. So, yeah, we would have talked about it afterwards. And we were trying to, you know, determine what had happened, when it happened, why it happened, you know. So, yeah, we talked about it.

Q. And is that communication between the Speaker's senior staff——

A. Uh-huh.

Q. [continuing]. And the Parliamentarians, is that fairly common?

A. Well, I mean, ultimately the person in the chair, you know—the Parliamentarians, at least I think, they would say—you know, they are there to help and——

Q. Sure.

A. [continuing]. You know, prompt and everything. But, you know, the person with the gavel has a lot of power in terms of the moment of the time. So, you know, there is only so much you can do and think about ahead of time. And, you know, ultimately, you know, McNulty made his decision when he made it to do the gavel. And it, you know—you are not able to precisely time all of that.

Q. Sure.

A. He has got an issue of his own.

Q. But if it is a vote that——

A. Right.

Q. [continuing]. That you want to close down fairly quickly——

A. Right.

Q. And I understand this happens when the Republicans are in the Majority——

A. Yes.

Q. [continuing]. And now that the Democrats are in the Majority, and that is nothing inherently problematic with that. That's sort of the way it operates.

When that is communicated, is that communicated to the Chair, or is that communicated to the Parliamentarians, who sort of indicate to the Chair that, you know, we have gone through our checklist to close down a vote, and we are going to maybe start that sooner than we otherwise would if the vote wasn't——

A. Right.

Q. [continuing]. So close?

A. I mean, normally——

Q. Walk me through that process.

A. Yeah, I think normally we would—you know, that probably would be to the Parliamentarians. The Parliamentarians do the prompting to the Chair. I mean, you know, I can't account for everything that Catlin would say at one moment or another up there, but, you know, I think generally our view is that the Parliamentarians are the ones who are there to prompt the Chair.

Q. Okay.

A. You know.

Q. And would you say that on a vote that you knew was going to be close, that that was the exception or the rule?

A. To?

Q. Well, just that there would be some communication. I presume you don't need communication on every single vote.

A. No.

Q. The process sort of works itself out the vast majority of the time.

A. Right.

Q. And when you are giving directions to the Parliamentarians or the Chair, it is for a specific reason, and that that's—correct me if I am wrong here, but that would be when it is going to be a close vote or a controversial vote or something of that nature?

A. I think that's a fair assumption. I mean, normally what we are trying to do is just make sure our Members voted, or, if they made a mistake, that they get corrected. But yeah, I mean, if there is a close vote coming, I think we would have thought, you know, maybe to communicate that, you know, we are going to be sort of on our toes.

Q. Okay. We have been told by several people that towards the end of 814, Mr. Hoyer comes down, comes up to the rostrum and says several different times in a variety of ways, essentially, close this vote down now, and that he is fairly animated when he is doing that. Did you see that at all?

A. I didn't hear that. I don't think I was up there. I mean, I can't, you know—I have heard about that, but, I mean, I didn't witness that myself. I mean, I——

Q. Is that something you would consider—and again, we are saying that the communication from the leadership staff to the Parls and the Chair isn't all that unusual.

A. Right.

Q. How unusual is it in your experience for the Majority Leader to directly interject himself into that process?

A. Well, you know, I mean, the Majority Leader does, you know, at least nominally have control over the floor. I mean, that's his responsibility. But, you know, again, I don't think it would be a hugely normal thing to do. But it wouldn't be abnormal if it happened on a close vote that, you know, we are trying to, you know, get everybody in, get the thing closed and move on. So he wouldn't interject himself on every vote, but, you know, on a close vote he might.

Q. Why would—and maybe this is just sort of my own naiveté in terms of how things actually operate on the floor, but why wouldn't—if he wanted it closed, why wouldn't he come to you all, the staff, and say, you know, say what you need to say to the Parliamentarians or the Chair and route it through you all as opposed to doing it himself? I mean, that's been my lingering question here, because it seems like things get off track because of the additional pressure that Mr. Hoyer personally asserted over the Chair. Do you agree with that?

Mr. PAOLETTA. What was your sense in that?

Mr. HARTZ. Well, he is a Member.

Mr. SPULAK. I am sorry, what is the question?

BY MR. PAOLETTA

Q. The question is do you think that Mr. McNulty, because of the manner in which the call to close the vote came about, which is that Mr. Hoyer specifically addressed Mr. McNulty to close the vote, did that cause Mr. McNulty to sort of bypass normal protocol, which is to get the slip, right, and just close it down right away?

A. Well, I would—to finish your question, I mean, Mr. Hoyer's a Member. And so, yes, normally—I mean, we have very close working relationships with, you know, both his staff and with him. But, you know, he is a Member, and, you know, when he decides, as Members do, to—I mean, they have the ability to—you know, they are above us.

In terms of your question, I didn't—I don't—I was not on the podium at that point, so I can't—I mean, I think it would be speculation and hearsay to say what the interaction between those two was, because I wasn't up there. I believe I was at the committee table or looking for Members to vote, so I didn't hear any interaction with them.

Q. At some point, though, you go up to the rostrum?

A. I think after the fact——

Q. To talk to Sullivan?

A. Yes.

Q. Were you there when Mr. Hoyer is talking to Sullivan? Because there are a couple moments, right, a couple points where he actually has a conversation with John Sullivan. Do you recall that?

A. I don't remember, you know, who all was in the conversation. It could well have been that Hoyer and Sullivan and I and others were all together at one point, or a couple times. I think this, again, was sort of figuring out, you know, what had happened and when it had happened. And I don't think there was an understanding by most of us that, you know, the card hadn't been read. John was explaining to—you know, as this had happened that, you know, as he calls it the—you know, the card coming up the pipe

has to be coming up to the Chair, and that hadn't happened when McNulty called the vote.

Mr. SPULAK. You mean the slip? Excuse me.

Mr. HARTZ. The slip.

Mr. SPULAK. The slip. Okay.

The Witness. Exactly. The slip of paper with the final tally on it. If I am—part of my memory is that there was actually more than one piece of paper, and then people kept, you know, switching or adding their votes to this thing. So while there may have been—I don't know that it actually got passed to the Chair, but, you know, as there are in these kinds of things, there are multiple pieces of paper flying around.

BY MR. PAOLETTA

Q. I don't think there was a paper ever produced.

A. It never actually got sent up.

Q. No. Because there was one well card vote that was still being processed, right, by De'Andre, as I understand, the seated tally clerk, and Kevin Hanrahan hadn't——

A. Put it up.

Q. [continuing]. Written down, I believe, to hand up.

A. I couldn't remember if the switching caused different tallies or something.

Q. Okay. Do you remember, Jerry—again, what we have heard is that Mr. Hoyer said something along the lines of, we run this place, you don't. Do you remember that comment?

A. I don't remember it specifically.

Q. And it was directed to Mr. Sullivan.

A. Well, I assume.

Q. Yeah. But I just wanted to be clear. You don't remember that?

A. I don't think I heard that, no.

Q. And——

A. Not directly.

Q. Okay. And was there anything else? You mentioned that you had talked to Mr. Sullivan, and he said that Mr. McNulty hadn't waited for the slip?

A. Right.

Q. Did he say anything else; do you recall?

A. I think he might have indicated to me that Mr. Hoyer had been putting a lot of pressure on, you know, the vote. But again, I didn't hear that directly, so, you know, in terms of my understanding and trying to figure out what had happened——

Q. Right.

A. [continuing]. I mean, that was mentioned by John. John is the one that helped me piece together what happened after the fact.

Q. And that's—I mean, that's helpful. So that's why I am sort of focusing on it. Do you remember what else he said?

A. Other than the slip hadn't been sent up, and that Hoyer was, you know—no, I mean, I don't remember anything specific. I mean, the machinery going down was a whole situation in and of itself.

Q. Okay. On that one I think what happens is, you know, once again I think it is called, right, and then there is an uptick, and I think at that point is when it is not going down, it is just frozen.

A. Right.

Q. Like they are trying to clear the computer?

A. Right.

Q. The seated tally clerk is trying to push the button to clear it.

A. Right.

Q. Do you remember that part? Or what do you remember about that?

A. Just everything was frozen on, you know, the boards, and nothing was being added. So, you know, everybody's immediate concern is how long is that going to take to repair? And I don't know actually what the process is. I don't know if they reboot, they shut it all down and reboot or what.

Q. And do you remember any discussions at that point at the rostrum around there, Mr. Sorensen in particular, about how to fix this?

A. Yeah. I don't remember specifics, but definitely we were trying to figure out how to get this vote going again. And I think that's—the combination of both what had happened with McNulty calling the vote too soon and the vote going down led Mr. Hoyer to want to move to vacate the vote and start all over.

Q. Do you remember whether Mr. Sorensen—do you remember what Mr. Sorensen said in terms of trying to fix it? It's been a while, I know.

A. I don't remember.

Q. Do you remember him saying—so you don't remember what he said?

A. Not specifically, no.

Q. Okay. Do you remember him saying anything about aborting the vote?

A. No.

Q. No? Okay. Terminate versus aborting?

A. Tell me what that means. I mean—what do you mean "abort"?

Q. Well, as I understand it, it's not something that's typically used, very rarely used, but it is where you would essentially abort the vote so that essentially the vote would have never happened. So 814 would actually get reset, and the next vote that you would take would actually be 814.

A. Oh. No. I don't remember that specifically. I think we were all trying to figure out after the fact, you know, then vacating the vote and starting over. I mean, that's what Mr. Hoyer moved.

Q. Okay.

A. But I don't remember anything during this frozen period.

Q. Okay. Do you remember—you went up and talked to Sullivan. Do you remember what you did sort of after that? Did you go back to the table or—and again——

A. I don't remember.

Q. Did you turn left or right?

A. That was a crazy period of time, with a lot of legislation moving through. So I don't remember. I am sorry.

Mr. PAOLETTA. Okay.

BY MR. SPULAK

Q. Jerry, you have been on the floor for over 20 years. Is it fair to say that on votes of consequence like this, that whether it was the Republican Majority or the Democratic Majority, that there is

communication with the Chair by either Members or staff about closing the vote?

A. Yes.

Q. And ultimately that's so that their side would prevail; is that correct?

A. That's correct.

Q. Is it fair to say that in those 20 years that there is no one set way that those communications happen; that is, usually or only through staff, or usually or only through Members, or no, leadership members? Is it sort of dependent upon the circumstances?

A. I think that's correct.

Q. I think there was a reference that Catlin O'Neill said that this was going to be close, so close it down. I think what Mr. Lauer's testimony was, "it is going to be close, so be on your toes."

Mr. PAOLETTA. Be on your toes, yeah.

Mr. SPULAK. Be on your toes, which I think is different. But be that as it may, presumably, and correct me if I am wrong, that that kind of message probably happens a lot: It is going to be close, be on your toes. Right?

A. Uh-huh. Yes. We actually haven't had that many close votes normally, but, yes, if there is one, I think, yeah, we would say that.

Q. If you were to say that, is the purpose to tell the Chair to violate the House practices?

A. No.

Q. Or the House rules?

A. No.

Q. And, in fact, if it has happened—if it happens somewhat on a regular basis related to close votes, has there been any other instances when, in fact, any Majority, to your knowledge, has somehow violated the rules or the practices in calling the vote?

A. No. I mean, I think one of the frustrations, like in 2003, when we had the Medicare vote that was held open for 3 hours, the frustration we had in talking to the Parliamentarians is that the rules on holding open votes, there aren't any. So, you know, we actually put in our rules package because of that vote, you know, a desire to close votes quickly. And we have tried, I think, to actually operate as a Majority to not hold votes open. So, I mean, that—I don't know what factor, if any, that played into this night. But so——

Q. Correct any of this statement that I am going to make.

A. Okay.

Q. Stop me, tell me I am wrong or that—you know, in a close vote, with the Majority prevailing, after all time has expired, after the House has been notified by the Chair, does anyone desire to vote, does anyone wish to change their vote——

A. Uh-huh.

Q. [continuing]. And there is no one in the well at this particular time, and the Majority was prevailing, do you anticipate that the Chair would probably gavel the vote closed?

A. Yes.

Q. I mean, isn't—I ask you in your experience, Republicans in control, Democrats, isn't that what Chairs do?

A. Yes.

Q. It is not as though they wait some period of time to make sure that no one in the Chamber is even thinking about changing their

vote. You know, it is they are ahead, no one is in the well, time has expired, they make the announcement, and so they gavel it closed.

A. Yes.

Q. Isn't that just the general way that the House is run?

A. Yes.

BY MR. SNOWDON

Q. Can I give you a twist on that?

A. Yes.

Q. Let's assume that it's a close vote, and the Majority is prevailing, and there are people in the well either filling out vote—well vote cards or mingling, would you think it is appropriate for the Chair to close the vote at that point?

A. No. I think that if there are people still in the well casting their votes, that the Chair should not close the vote at that point. The practices of the House would be not to do that.

Q. Okay. And what about if the tally clerks are still entering well votes? Would you consider it improper procedure to close the vote at that point?

A. Yeah. Until the paper comes up, you know, official, you know—you know, that is when the vote is supposed to be closed.

Q. And you never had after those events a conversation directly with Mr. McNulty to ask him what happened?

A. Me with McNulty? I don't believe that I——

Q. Who would have spoken with Mr. McNulty?

A. I don't know that a staff person would—I don't think I engaged—if I did, it was in a context of a number of people being there. But I don't believe I talked to Mr. McNulty directly.

Mr. SPULAK. Would you ever have that kind of conversation with a member?

Mr. HARTZ. No. That's really a Member conversation. It is not staff.

BY MR. SNOWDON

Q. Okay. Did your boss have a conversation with Mr. McNulty about that?

A. I don't know that she did actually. I don't know.

Q. Did Mr. Hoyer; do you know?

A. Well, in the context of what was happening around the podium that night, he might have.

Q. After the fact, postmortem.

A. Nothing that I know about.

Q. Okay. I mean, you are the Director of Floor Operations——

A. Correct.

Q. [continuing]. For the Speaker. So you are the sort of senior staff person in charge of what's happening on the floor of the House; is that right?

A. Correct.

Q. Okay. And this is obviously something that was a pretty serious problem in terms of the activities on the House floor.

A. Correct.

Q. And were you ever asked or did you take it upon yourself to, you know, inquire of Mr. McNulty's staff or anybody else as to what went on that night?

A. I am a staff person. The difference here is that Members are probably going to engage on their own, and I can only do so much of as a staff person. I work for the Members. I don't remember talking to McNulty's staff about this, no. I don't think I did. I mostly talked to John Sullivan and Catlin to sort of understand what had happened, since she was closer to the situation than I was. But that was pretty much the extent of my involvement with this was to sort of understand, you know, that the card hadn't been handed up, and the vote was prematurely called. I mean, Mr. Hoyer did move to vacate the vote, and there was an admission from the Chair that it had been prematurely called. So I think that, you know, there was acknowledgment here that a mistake had been made, and it was attempted to be corrected, and the Republicans objected.

EXAMINATION BY MR. HALPERN

Q. Can I ask you a question on that part?

A. Uh-huh.

Q. To the best of your knowledge, was there any effort made to communicate that to the Minority, either at the Member level or the staff level, prior to the unanimous consent request being made?

A. I don't know, Hugh. I don't know. Typically, there is—you know, the communication goes through the Leader's staff to—you know, the Leader's staff, not necessarily through the Speaker's staff. I mean, not that I don't talk to the Leader's staff, but whether that communication happened Leader to Leader, I don't know.

BY MR. SPULAK

Q. Do you recall during the time after the vote was called and there was confusion that Mr. Blunt was up on the podium on the Democratic side? Do you remember that?

A. No, I don't remember.

Q. Do you remember Mr. Dreier speaking with Mr. Hoyer or with John Sullivan?

A. Well, there was a meeting—I mean, I don't know what happened that night per se.

Q. No, no, no, this is —

A. This is right at the time?

Q. This is during 814.

A. I don't remember.

EXAMINATION BY MS. MCCARTIN

Q. And also, Jerry, in your understanding, a unanimous consent to vacate the vote and start over again would essentially be the same as adoption of the motion to reconsider, had that passed. You are still back to redoing the vote.

A. Redoing the vote, yes.

Q. So even though the UC was vacated, there was still the opportunity—I mean, even though the UC to vacate was objected to, there was still the opportunity to move to reconsider.

A. Didn't we do that?

Q. There was. There was.

A. I don't know which order was which.

Q. The vacate first. There is still the opportunity. And were you aware that there was, you know, conversations back and forth about the opportunity to move to reconsider and whether that motion was going to be——

A. Between the two sides?

Q. Uh-huh.

A. I don't recall that I was involved in that, but there might have been. I mean, I assume Mr. Hoyer was talking to Mr. Boehner and Mr. Blunt on this. But that's my assumption.

Q. And also, Jerry, in all your experience on the floor as well, the unanimous consent request to vacate a vote, is that under the Speaker's guidelines as something that absolutely has to be cleared by the Minority before the Chair could recognize for that unanimous consent request?

A. Gees, I don't know. I would assume it would be, right? No? It's not? I don't know. I honestly don't.

BY MR. HALPERN

Q. At the end of the day, was it your impression that—you know, false starts and changes—was it your impression that at the time the Chair made his announcement——

A. Uh-huh.

Q. [continuing]. Of the error and announced what he believed to be the final tally, was it your impression that all the votes submitted had been counted?

A. When McNulty announced it? No. I mean, people were still in the well.

Q. No, no, I mean, at the end, after——

A. Oh.

Q. After he——

A. The 216 or whatever it was?

Mr. PAOLETTA. Right. 212–216.

Mr. HARTZ. Yeah. I think at that point the votes had been cast, as far as I could tell.

BY MR. HALPERN

Q. Would it surprise you to find that there was at least one well card that had not been entered into the system at that point?

A. Yeah. I didn't know about that.

BY MR. PAOLETTA

Q. Yeah, on the—it's Mr. Boehner's. And you can see on the tape, you know, De'Andre asks——

A. Is this for reconsideration he did this or something?

Q. Yeah. But he says, I have this card, and Sullivan says something like, we have much bigger problems than that. Hold off, we have much bigger problems than that. And it never gets entered.

A. Cast.

Q. Cast. So sort of, you know, at the 10,000–foot level perhaps what do you think happened?

A. Uh-huh.

Q. You know, why do you think, you know, that vote happened the way it did, the closing of that vote happened the way it did?

A. I think it was a close vote. I think there was a lot of pressure, there was a lot of switching and confusion. And whenever that is going on in the well, it causes a lot of—I mean, this is all—it is machinery that is doing this, but it is humans as well. So there is a lot of confusion. So I think there was a lot of confusion about what was happening, when it was happening.

I think Mr. McNulty didn't wait for the card as he should have, and he made a judgment to go ahead and gavel it at whatever it was, the tie vote marker. He admitted that was an error. And then we tried to redo the vote by, you know, reconsideration, vacating and et cetera, because we realized that that was not what should have happened. And his own admission and Mr. Hoyer's admission were indications that—you know, that that's—that shouldn't have happened that way. So we were trying to do it the right way.

Q. And, Jerry, in terms of sort of, you know, looking forward and sort of making sure that—you know, doing things to sort of ensure that those types of things don't happen again, what would you recommend in terms of either change of procedure or, you know——

A. I think it is just really important, and, you know, we as a new Majority have a lot of Members, some experienced, but not many experienced in terms of being the Chair. So there is a learning curve that, you know, the Republicans had after 12 years that we didn't have. I think we are getting much better at that now. But this was one of those things that happened along the way where, you know, people need to be reminded how it's supposed to work. And so that happens through instruction, but it also happens through experience.

So I would be hopeful that, you know, as we get people in the Chair we will make sure that they understand that that slip of paper has to be coming up, and that's the final word before they gavel, and sort of what the general protocol is for closing a vote. And, you know, you try to avoid problems like that in the future. But it comes a lot through both telling somebody to do it, and then they just have to learn it. They have to experience it. There is a certain rhythm to being in the Chair, and I think our Members would admit that they still are learning it.

Q. Yeah. The thing that's just obviously strange, not to belabor it, but obviously McNulty was pretty experienced. So, you know——

A. I can't get into his head. I don't know exactly what he did and why he did it. But, you know, he admitted that he made a mistake, so——

Mr. PAOLETTA. Okay.

BY MR. SPULAK

Q. Do you remember what happened after the Speaker voted? Do you remember who voted after the Speaker voted?

A. I am not sure where she voted in the process, but there was all this—there was several of our Members that came down, I would say four or five of our Members that came down, and then there were like Diaz-Balart and Ros-Lehtinen and some people

from the Republican side. So all of that was happening. I assume she voted before that, and all that happened after the fact. But that's what was going on at the end was that tallying or, you know——

Q. Did you say that you saw the Chair talking with Mr. Hoyer?

A. I think Mr. Hoyer was up on the podium at some point talking to the Chair. I don't know just when.

Q. And where would he have been? He would have been on the right side of the podium; is that correct?

A. Yes. Yes.

Mr. SPULAK. Okay. We are off.

[Whereupon, at 2:52 p.m., the interview was concluded.]

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

FRIDAY, FEBRUARY 22, 2008.
Washington, DC.

INTERVIEW OF JO MARIE ST. MARTIN

The interview in the above matter was held at 1017 Longworth House Office Building, commencing at 10:00 a.m.

APPEARANCES

OUTSIDE COUNSEL, MAJORITY: THOMAS J. SPULAK, ESQ., KING & SPALDING, LLP, 1700 PENNSYLVANIA AVENUE, NW., WASHINGTON, DC 20006

OUTSIDE COUNSEL, MINORITY: MARK R. PAOLETTA, ESQ., ANDREW L. SNOWDON, ESQ., DICKSTEIN SHAPIRO LLP, 1825 EYE STREET, NW., WASHINGTON, DC 20006

Also Present: Muftiah McCartin, Deputy Staff Director, Committee on Rules; Hugh Halpern, Republican Staff Director, Committee on Rules; and Davida Walsh, Legislative Counsel, Representative Delahunt; and Zuraya Tapia, Clerk of the Committee.

EXAMINATION BY MR. SPULAK

Q. Jo Marie, thank you for coming this morning. As you may know, the Select Committee to Investigate the Voting Irregularities of August 2, 2007 is charged with investigating the circumstances surrounding roll call voting for the Committee to pass the motion to reconsider. Now, that would include also things like the duration of the vote and things related to that. So if you will tell us in narrative form what you know about it personally or any recollections, and we'll ask you questions about that as well. But before you begin that let me ask you to give us a little bit about your background, your experience on the Hill and the like.

A. Okay. Sure. My first experience on the Hill was 1983 working for the House Rules Committee. And that's actually when I met Tom Spulak. He was the—you were the General Counsel, weren't you, or were you Staff Director?

Q. Both.

A. Okay. For Claude Pepper.

Mr. PAOLETTA. More Pepper?

Ms. ST. MARTIN. Yeah. I did that for a summer. It was between my first and second year in law school. Then I did not return to the Hill until after I graduated law school and graduated in '85. I'm licensed in two jurisdictions; Tennessee and the District of Co-

lumbia. Right after law school I worked for the Department of Labor for a year. And then in 1986 I actually took a job with the Committee on Education and Labor. Was hired actually by Jim Jeffords, who was the ranking Republican at the time. And then really actually worked for, my boss was Bill Goodling. And my boss was Bill Goodling up until '92. And I left the Hill, went home to Tennessee for a couple of years and was in private practice down there. And then when we won the majority Mr. Goodling asked me to come back and do his general counsel work for what was renamed the Education—well, actually it was renamed the first time the Economics and Opportunity—whatever it was called, Educational Opportunity—Economics and Educational Opportunities Committee, something like that, which was not exactly the best choice of names. But anyway it was renamed again the Committee on Education and Workforce. And was Mr. Goodling's General Counsel for the six years he was chairman. And then when Mr. Boehner became chairman of the committee he asked me if I would stay, and I was very happy to do that. And so he was my chairman at the committee, Education and Workforce Committee until he was elected the majority leader. And he asked me to come and be his General Counsel in the majority leader's office and to run his floor operations. So I'm also his Director of Legislative Operations, which was one of the toughest years of my life actually. And then of course the elections didn't go so well. We went back into the minority. And Mr. Boehner then asked me to stay, you know, and run his floor operation, which is what I've been doing still as General Counsel and his Director of Legislative Operations, now in the minority. And that's pretty much my life Story.

BY MR. SPULAK

Q. Very good. Can you tell us a little bit about August 2nd?

A. Where do you want me to start?

Q. Well, pretty much where you've been.

Mr. PAOLETTA. Around 10 o'clock.

Ms. ST. MARTIN. All right. I would say my first, and I have really pretty clear recollections, at the point when the vote was extraordinarily close. I was standing, this is what I recall very pretty distinctly, I was standing up at the Republican leader table. And as I recall, I was also chatting with Mr. Lewis. Mr. Lewis was there, he was managing the bill, and had actually offered the motion to recommit. And when it was getting close, you know like in the 212–212 range, that's when people were like oh, my God, we're having all these Democrats vote with us. And it became very apparent that the Democrats were struggling, I mean really struggling with this vote. And it became somewhat hurried or frantic, I guess is the word I would use, on the Democrat side. Because realizing it was getting to the point where we were going to win this motion to recommit, and we had won other motions to recommit. It was on the heels of, and I don't remember how many we had won at that point. I think we were up to 22 recommits we've won. Which just, and I know, I know Muftiah is aware of this, I don't know if you're aware of this, Mark, but it is unprecedented for the minority to be winning motions to recommit, I mean it's just unprecedented. It happens so rarely. So it was one of these things that you could tell

they were having a very tough time. So I became very aware. You know, like watching where our guys were going. The issue, the underpinnings of the issue of course had to do with illegals getting Federal money for jobs, which was really a difficult issue, I guess is the right way to put it, for a number of Democrat Members. So anyway we were really heading into winning this vote. And at the point at which Mr. McNulty banged the gavel and said 214–214, the boards showed very clearly 215–213 final. And there was this almost stunned sense on the floor of like what just happened. And Republican Members, it went pretty quickly, went from stunned to anger. And that's when the chanting began, you know shame, shame. Because—and it stayed up there on the boards I would say—and I'm just, you know, sort of trying to estimate because time seemed to stand still at that point. But it probably was about maybe a minute and a half it stayed up on the boards. And then the boards went blank. And the chanting I think went on for, I don't know, maybe 30 seconds, maybe longer. And it was real—I mean, I can't tell you how much chaos there was on the floor; Members shouting, you know they stole the vote, and people turning to me and saying you know, what do we do.

And my mindset, and I guess it's from my years of, and I don't know you all know this, but my training and my background, I do parliamentary procedure, I know parliamentary procedure extremely well. So my mindset was how do I protect minority Members, how do I protect Boehner, how do I make sure that there is a preservation of minority rights. And I remember people turning to me and asking me like has this ever happened before, because I've never seen anything like this ever. It was just, it was stunning.

And at some point I needed to find out, because it was becoming apparent that even though McNulty had called it 214–214, it was very apparent that something else was happening, like either the vote wasn't going to be closed or something like that. So I actually went around to find out from the Parliamentarians where are we; you know, where do you consider this procedurally to be. And as I recall, I was told that they decided to reopen the vote, something like that. And I went back over to tell Boehner, you know like even though the vote was closed, you know it was gaveled closed, now they're saying it's open. And they started letting Members vote again. And they were switching Members to vote, to switch the vote.

And at some other vote I, again thinking Boehner, thinking protecting Boehner, thinking protecting the minority, I knew I wanted Boehner to switch his vote to the prevailing side so he could move to reconsider. So at some point I'm pretty sure I told John Sullivan that I was going to get Boehner to change his vote to the prevailing side so that we could move to reconsider. And then Hoyer actually preempted that and then went to a reconsideration of that vote. And you know Boehner was not happy about any of this obviously. And I think Boehner actually moved to adjourn during some point of this. And again, the floor, I can't just even explain it to you, it was loud, it was chaotic, it was just a very interesting point. And so then once the reconsideration vote came along, it was this feeling of a kangaroo process, like we were a Third World Banana Republic at that point. And so Boehner actually decided we're not

going to vote final passage, because we won this motion to recommit; they've stolen it from us, you know we're not going to participate in this anymore. And so we actually left the floor and actually went to the Republican cloakroom trying to get Members not to vote final passage and, you know, to leave. And after that we ended up over in Boehner's office to discuss what had happened and sort of what the next step was going to be.

And that's actually when we decided to create the resolution creating this committee. And I actually set up a meeting for that night. And we all met in the conference room. And I doled out assignments to people about what I needed in order to put this resolution together. And people, you know, provided me with information about——

Mr. PAOLETTA. You know, we don't need to—I mean unless you are——

Mr. SPULAK. No.

Mr. PAOLETTA. We're really just interested in the vote. I mean it's helpful, but we just want to sort of keep it to sort of what happened in terms of why it happened the way it did.

Ms. ST. MARTIN. Sure.

EXAMINATION BY MR. PAOLETTA

Q. Okay. When the vote is going on and you started noticing it was real close, you were at the Republican table?

A. Uh-huh. That's what I recall. I mean I was over there in that area. I might have been right behind the table, maybe in the aisle.

Q. And look, it's been a while since all this happened, so recollections are—you know, whatever you can recall.

A. I know I was on the Republican side at that point.

Q. Were you looking at the rostrum, do you remember?

A. You know, it's funny. I have impressions about that night about exactly what I remember. I can remember seeing the stress on the Parliamentarian's face.

Q. Okay. Mr. Sullivan?

A. Yes.

Q. Okay.

A. I can remember that. I can remember it being—you know, it was incredibly chaotic and incredibly stressful that I remember.

Q. So before it hits 214–214, okay?

A. Right.

Q. Do you recall, or as it's hitting 214, do you recall Mr. Hoyer coming down the aisle?

A. I have since seen the video, and I'm very aware of what that video conversation was. And I'm very aware—because that actually became part of what we wanted to be in the resolution. And the resolution that created this committee Hoyer actually suggested we strike all the whereas clauses. So one of the whereas clauses actually had to do with what Mr. Hoyer had said to the Parliamentarian, that I run the floor, you don't.

Q. I see. Okay. Do you remember him that night doing that or is it mostly from the video?

A. You know, I saw—I honestly cannot tell you if it's my actual recollections. I remember I was watching the Democrats like crazy though. And I remember them doing like this and waving people

like you have to vote this way and you know doing the finger in the face you know. It was very, very chaotic. And it was—you could tell there was a lot of pressure, a lot of pressure put on people. Because this was one—I mean I don't know if you're aware of this or not, but to lose this vote meant the bill went back to committee. It was a promptly recommit, which is a—this is the one you as the majority cannot afford to lose, you cannot, because it sends the bill back to committee and you have to re-report the bill, you have to go through a number of procedures, you cannot report the bill that night. And you could tell that the level of stress on the Democrats was to the breaking point, you could just see it.

Q. So as you saw from the video, but Mr. Hoyer walks down, right?

A. [Nods head.]

Q. Do you remember—but you don't specifically recall that, sort of it was chaotic in terms of whether you saw him coming down?

A. I don't know if my memory is from watching the video or if it was actually from watching him. I have watched him quite often on the House floor. I have watched him—you know, he is one that doesn't spare words on what he thinks that ought to happen. So it may be my actual memory, it may also be my memory——

Q. From the tape?

A. [continuing]. From the tape.

BY MR. SPULAK

Q. Have you ever seen him talk to the Chair before?

A. Yes.

Q. How was that?

A. I would say in the same sort of vein, you know coming over. Now, he hasn't done it since this, but yes, he would actually go over and you could tell that there was an exchange that was not exactly particularly the most cordial of exchange.

Q. And this was an attempt you think to have the Chair close the vote as well?

A. I would not presume to know what was in Mr. Hoyer's mind, but my observations of what was happening, the absolute answer to that is an unqualified yes.

Q. But have you ever seen the Chair close a vote in the same manner that this one was closed?

A. Again, as I say, this was an extraordinary. I had never seen anything like this before where the vote got closed before—what obviously happened was it wasn't done yet.

Q. So again to sum up what you said, although Mr. Hoyer may in the past have communicated to the Chair in a harsh way to close the vote, that's never happened before; the Chair has never closed the vote in this manner or in any—you know, in any improper manner?

A. Again, Tom, I will have to tell you that sequence of events and having the Chair gavel a 214–214 final when clearly the board was saying 215–213 final, it's extraordinary. Now, whether or not it has happened in a situation where—and I will tell you, when we are in the Committee of the Whole and it's getting close to having to force a revote because you have the Delegates voting, I have seen those sorts of pressures exerted because they don't want to have to

have a revote. So the Committee of the Whole situation I have seen that sort of pressure exerted, yes.

Q. So my next question to that was but has the Chair ever done anything that you think that was improper in closing the vote?

A. I'm not sure I would know. I'm not sure that I would have the ability to be within the realm of knowing. It's not like they're going to be talking in front of me when I walk over there.

Q. You said that he called the vote at 214–214 when the board said 215–213?

A. Final.

Q. We have heard testimony from a lot of individuals that said that the board did say 214–214 when he called it, but there was the sort of instantaneous uptick from votes that were entered by the Tally Clerk—I think in this particular case it was the Diaz-Balarts and Ms. Ros-Lehtinen—that registered almost, I won't say contemporaneous but certainly immediately after he called it. That seems to be a little different than what you're saying. You're suggesting that he called it but the board said 215–213; in fact it said 214–214?

A. I don't think I am saying anything different, to be honest with you. It was so close and it was so tight. And as I say, I was watching it because—I mean I was watching it because people were saying, you know, like they couldn't get over how many Democrats were voting with us. And realizing, wow, you know, we're going to win, this is a big one and we're going to win it. And when literally he calls it, you know I'm looking towards the Chair, and then that's when I'm looking at the board and it says 215–213 final. So your testimony from other people is not inconsistent with what I'm saying.

Q. Okay. I didn't think so, but I just wanted to make it clear. Were you aware that there were individuals voting in the well prior to his calling it 214–214?

A. I was aware that Members were voting in the well. I was aware of the fact that it just—again, the only way I can describe this is it was this very feeling of rush, feeling of desperation, this feeling of—that broke into chaos. But it was very—you could see, you know as I say, there was waving arms and pointing and you know you got to get down there kind of gesturing. It was just very, very rushed.

Q. At about what time during the vote was this attempt to get people to begin to vote?

A. Towards the end when we were realizing when we were—no, correction. Before the call of 214–214, but—and I'm almost certain we were at 000 on the board, I am almost certain of that. But I began to watch it when, really closely when it was, you know, the whip guys, Blunt's guys, were telling me like this is getting interesting. And that's when I started watching it. And it was—I mean again this is impressions of my memory of exactly when that was. But we—and I also have this impression of remembering them telling me that you know we had like 17 Democrats voting. That is something I have an impression of. Whether that's not—is absolutely the right, what I was told, maybe not. But it was that kind of discussion was going on about how many Democrats we had. And you could see. And it really gets interesting watching the other

side because you see the pressure they're exerting trying to get their guys to change the vote.

Q. Do you remember where Mr. Hoyer was when Mr. McNulty read the tally off the board?

A. I have no actual recollection of his, you know exactly where he was. Again, the video, I watched the video. So that will have some impact on my memory, I'm sure.

Q. And from watching that?

A. Yeah. I mean he was walking actually all the way up onto the second tier of the dais yelling at John Sullivan. And my impression is he was yelling at McNulty. And when McNulty actually called it, that exact moment I'm not—I know he was somewhere down there but I don't know where.

Q. On the right-hand side?

A. On the Democrat side, on the Democrat side.

Q. You said that at some point about a minute and a half, I think you said, the board went blank?

A. Yeah, I recall they—and when exactly it went blank I don't have a present recollection of. But at some point the board did actually, like it came down. It wasn't the 214—I mean, 215–213 final was gone. And that's part of the reason why I had to go and ask like, okay, where are we, you know.

Q. Did the names come off as well?

A. And I will tell you, because the next day they had so much trouble with the boards my memory I think may be a little blurred on the names coming down. And I will also tell you there was discussion later about whether or not Boehner, because when I had to get Boehner to change his vote there was discussion about whether or not the boards actually ever registered Boehner as changing his vote. And he did. Because I got him to go down there and change it. So he could vote on the prevailing side on the motion to reconsider.

Q. But it's not—so you recall that, I don't want to put words in your mouth, but that the boards went down. And then you said that people were allowed to vote again. So is it correct to assume that what you think happened was that the boards went down and voting or the ability to vote or to enter votes had ceased and that at some point thereafter there was——

A. I want to be really clear about this.

Q. Yeah, me too.

A. The board said 215–213 final. And that was up there for, I'm guessing, a minute. It felt like an eternity. But it was literally a minute and a half, and then that went off. But at some point I left the Republican leader table and went over to ask the Parliamentarians where are we, because I need to know where we are, because I need to protect Republican Members, I need to protect Boehner. I mean, that was my whole mindset, my whole thought is I have to protect Republicans. And that's when I found out the vote was reopened.

So I go back over to our side to report this. And I told Boehner, I was like you need, I'm going have to have you vote on the prevailing side, which at that point meant I'm going to have to have you vote no on the recommit so he could move to reconsider. And at some point I told John Sullivan this.

Q. When did you become aware that there were Members in the well who wanted to change their vote?

A. Well, that's an interesting question, because it was so chaotic at that—at the point right before McNulty calling it you could see—again, I cannot stress to you enough about how much pressure you could see going on with getting people to, attempting to get people to change their votes. Now, it's getting people to attempt to change their votes and then actually—I mean, you know how Members are. They'll pick up a card and then change their mind and not actually vote, or they'll stand there and wait to think about what they're going to do. So you're asking me to presume what it is that I would think is happening. But I can tell you there were Members that were there. And it was just very shocking when it was gaveled closed.

Q. You were on the—you were at the Republican leadership table. Do you remember where the Diaz-Balarts and Ms. Ros-Lehtinen were at the time that the first two, at the time that the first vote was called, and the 214–214 was the second time, do you remember where they were the first time?

A. No, no.

Q. Do you remember the Speaker voting?

A. Pelosi you mean?

Q. Yes?

A. No.

Mr. SPULAK. Go ahead, Mark.

BY MR. PAOLETTA

Q. Jo Marie, you were standing at the table. Let's go back to right before he calls 214–214. I just want to walk through that. So as you could tell from the tape you know Mr. Hoyer goes down. But do you remember when you're looking toward the rostrum whether you saw a slip handed up to the Speaker pro tem?

A. I don't. I don't have a recollection of that, no. But I will tell you I've watched the tape and I'm aware that there was no paper sent up.

Q. How long have you worked on the floor in sort of responsibilities for floor operations?

A. I became—well, for the committee I did all the floor operations for the committee, and took that responsibility really in '89 probably. I have to figure that out, Mark, but about that time when we sort of really—well, Goodling realized that he needed to have somebody who really understood procedure and needed to really understand how that worked. And it was interesting, there was another guy and I sort of split those duties, and learned it. You know, I was schooled from the Bob Michel days with Billy Pitts and you know really sort of cut my teeth on that. So I consider myself learning the floor processes from probably '89 forward. Then of course when we became the majority, not only do you have to know and understand what it is that the majority does, you need to really know what the minority's rights are, and learned it even better as majority counsel. And then once Boehner became majority leader in February of 2006 you know I took over floor operations and have been in that role since.

Q. And in all that time have you ever seen a vote where the slip wasn't handed up?

A. Never.

Q. What's your view, what's your understanding of the slip, like tally slip. What function is that supposed to serve, in your opinion?

A. It's supposed to be the official paper of the House that is what the actual final vote is. It's like, in committee for instance, my clerk, her documents were the official papers of the committee. If there were ever a question about what a vote was in committee we would go back to her official documents. And it's my understanding that that's what that is, it's an official document of the House.

Q. And so that gets handed up from the Tally Clerk, right, the standing Tally Clerk?

A. Yes. It's either from Kevie, Kevie usually hands it up, or I guess you know now it's Susan is the other one who does it. It used to be Paul Hayes. Since he's retired, but, yes, the Clerk.

Q. And so that's sort of the check on calling a vote?

A. Correct.

Q. It's ensuring that everyone who has wanted to vote has voted?

A. Correct.

Q. And you're correct, that wasn't handed up this night for this vote. So in your recollection you can't remember any other time when it's happened?

A. No, no. Let's put it this way, I am unaware of it ever being a situation where it didn't happen. There's a lot of negatives there.

Q. No, no, no.

A. To my knowledge it has never happened.

Q. That's what we've heard from a lot of people. The night of the vote, you know, right after he's called it at 214–214, did you ever have any discussions with Democrats? I know you were sort of obviously focused on your Members and all that.

A. No.

Q. But did you have any contemporaneous explanation of what had happened?

A. Not with Democrats, no.

Q. Not with Democrats. And what about with any other Republicans that had just spoken to any of the Democrats or with Mr. Sullivan or, you know, any of the——

A. No, the Parliamentarians—I honestly did not go into, you know, what just happened. It was more I was trying to find out where are we, where do you consider this to be. They were under a lot of pressure, and I didn't need to add to that, but that's another story.

BY MR. SPULAK

Q. What was your answer, Jo Marie, when you asked him where we were?

A. Where we were? When I went to find out, you know, because it was becoming obvious that the 214–214 gavel may not be the 214–214 gavel, I went over to find out is that true, you know, are you all still considering to reopen this vote. And the answer was yes. So that's when I realized yep, you know, I got to do what I got to do, which was to get Boehner to flip his vote, you know, protect our rights.

I will tell you my whole mindset at that moment was I need to protect the minority, I've got to do that. So conversations that—I mean, you know your question about what kind of conversations were Members having, well, they were having things like they stole that vote, you know can you believe, you know, and asking me has this ever happened before. I was like, no. So that was the context of what was happening around me at that moment.

Q. Jo Marie, forgive me if this sounds like I'm trying to serve a position here, because I'm not, but I'm trying to understand, you say that the vote was closed. At the time that the Chair called the 214–214 did you think that the vote was closed?

A. Yes.

Q. Then the board said 215–213?

A. It was, again it wasn't and then. It was he called it and I looked up and it said 215–213 final. And Members were all going like, look. And I—you know you're literally in this world of like you can't believe you just witnessed what you witnessed. And literally I'm like you know he just called it and we lose because you know an even vote means we don't win the recommit, but the board is saying we won the recommit. And it was one of those moments that you just go oh, my God, I can't believe this just happened.

Q. Do you believe that when he—well, first do you know where he got the tally, where Mr. McNulty saw it?

A. I watched the tape very carefully, very carefully.

Q. And where did he get it from?

A. It appears from the tape, at least it is my impression of that tape, that he is looking at the board. And then he looks back front, he takes the gavel and that's when he bangs it 214–214. So I think what he did, and again not that it matters what I think, but what I think he did was I think he was watching that, the board up there, and thinking he can go off the board and close the vote and not wait for the piece of paper and gavel it based on what he's watching on that board. And the amount of time it takes him to look at the board, to go forward, take the gavel to the dais, it flipped on him.

Q. So the information that he was calling the vote from was on the board at 214–214?

A. That is my impression, although I will tell you, I will tell you it's not like you can see in the video what it is he's actually looking at. But it's also very obvious that he's looking up towards the gallery, towards the right-hand gallery if you're standing on the dais, and it's very obvious that he looks in that direction. Now, I don't know, maybe somebody was standing up there saying to him, you know, like stop, I don't know. Who knows. That would be totally you know speculation on my part. But the video makes it look like that. And that was the impression that we had that night when we were, you know, creating this committee.

Q. But on this notion that the vote was closed, notwithstanding the manner in which he called the vote, if he called it at 214–214 and closed the vote, then 215–213 would have been the wrong call, it would have been 214–214, isn't that right?

A. No. I don't agree with that at all. I don't agree with that at all.

Q. Again, I said notwithstanding the manner in which he called it. I thought it was your statement that he closed it at 214–214?

A. No, no, I did not state that. You cannot see it in the video. Maybe it was 215–213 and he decided to say 214–214. That's possible. I'm not going to concede that. I have no way of knowing that. You're asking me to go into the land of speculation, and that's exactly what that is. But I will tell you when he gaveled it, in the amount of time it took me to turn and look at that board, it was 215–213 final.

Q. I understand. But all I'm saying is that he called it 214–214 and gaveled it, isn't that right?

A. Yes, absolutely gaveled it at 214–214.

BY MR. PAOLETTA

Q. Is it your view, Jo Marie, that given what we discussed regarding the tally slip and I believe there's a piece of paper, are you aware there's a piece of paper I guess up on the podium for the Speaker pro tem in terms of what you're supposed to do?

A. I didn't know about that.

Q. Okay. We've heard that there's a sheet that's put up there by the Parliamentarian?

A. That I am aware of; that they're very careful about the sequence of events that——

Mr. Paoletta. We each haven't gotten it, have we?

Ms. Tapia. No, we have.

Mr. Paoletta. Well, we don't need it right now. But it says—well, actually it's in reference to this, I think. But there it is right there. It says rely on tally slip. But the point is that without necessarily having seen that your understanding is a tally slip was provided to the—and that's a procedural step?

A. Correct.

Q. So is it your view that Mr. McNulty violated procedures by calling the vote from the screen and not relying on the tally slip?

A. Yes.

Q. And whether it was 215–213 or 214–214, the bottom line is it's not the proper way to call a vote because there were people in the well, there were tally cards, well cards being entered. All of that would be—you know, you would avoid all that if you're waiting for a tally slip to call the vote?

A. Correct.

Q. And that's not what happened here?

A. Correct.

BY MR. SPULAK

Q. If I can come back to my questioning. So the vote is 215–213. Is it your belief that at that point the vote should have been closed?

A. At 215–213?

Q. Yes.

A. Well, the Chair had banged the gavel. It was clear from the board it was 215–213 final. Something was wrong.

Q. What does final mean to you on the board?

A. That it's closed, the vote is closed, it's done, you're finished.

Q. Are you not aware of instances where it has said final and votes continued to be entered after that for whatever reason, someone appearing in the well or for some other reason?

A. You know, since this has happened we've actually watched it. And I'm getting into the area of speculation, but there have been a couple of times where it has happened since. But we've been somewhat wondering why, as though it's a—I suspect that it's being done on purpose because it's been since this vote.

BY MR. PAOLETTA

Q. Do you remember any time before?

A. No, never.

BY MR. SPULAK

Q. If the Chair hadn't closed the vote and it went from 214–214 to 215–213, what do you think would have happened?

A. What should have happened or what I think would have happened?

Q. No, I'm sorry, not procedurally. What do you think the dynamic of the leadership would have been if it was 215–213?

A. And they called it correctly?

Q. They had not called it at all?

A. At 215–213?

Q. Yeah.

A. That is such speculation I don't know, I don't know.

Q. May I suggest is it possible that there would have been attempts to change Democratic votes to——

A. Well, that is what was going on at that moment actually. That was happening during that moment. So that would be a logical, a logical possible way to proceed, yes.

Q. Are you, in your experience, are you aware of instances where 000 is on the board for some period of time, there's a close vote, somebody changes a vote and there's nobody in the well and at that point the Chair bangs the gavel and announces it?

A. If I can give actually just a little bit of history on this. The House rules were—the Democrats actually when they took over this past year prided themselves on we're not going to hold votes open. And there's even a House rule somewhat to the effect of, you know, it's like a violation of a House rule if you hold a vote open.

Q. I think it says in order to change the outcome of a vote?

A. That would be correct, that would be correct. So there is this pressure that was going on for a while of not having a vote held open past, you know, so many minutes. And I can't help but think that some of that may have been at play here. But it clearly wasn't because then the vote was held open for a long time after it was called 214–214, which clearly changed the outcome. But it was—that House rule I think has been in the back of their minds that this has been something that they don't want to be perceived as violating.

Q. And part of the reason for this rule do you think was reaction to other votes that perhaps were held open too long when Republicans were in the majority?

A. Again, I didn't write the rule.

Q. But you have no speculation as to why that rule was there?

A. I did not write the rule.

Q. But my question was do you have any speculation as to why that was there?

A. If we're going to speculate, then I would speculate that they did it for exactly the reasons you're saying.

Q. Okay. Jo Marie, I apologize, I know you answered this. When you asked the Parliamentarians where are we, did you ask the question is the vote open?

A. The——

BY MR. PAOLETTA

Q. Actually, Jo Marie, can you remember when you asked them that?

A. It was after the 214–214.

Q. Okay.

A. It was——

Q. And where was Mr. Sullivan? Was he up on the rostrum right by the Speaker, by the Speaker pro tem?

A. Again, this is one of the things that I have watched the video, and I actually do remember this, I remember talking to Wickham. I'm pretty sure that John Sullivan was preoccupied when I talked to Wickham. And Wickham was the one who told me yeah, the vote is opened. And I was like—and you know, and I have a long-term relationship with all the Parliamentarians, and it's not like I'm going to stand there and scream at them about what happened. So I had a very quick conversation, went back to tell Boehner where we were, that the vote was opened. And at that point told him, I was like, you know, you're going to have to vote the other way because I've got to get you to reconsider this vote. And that's the ironic part about all this, is like you know the reconsideration, you know it's always the majority is out is the way to do that, instead of pushing your Chair to gavel something that's not accurate. That's the way you do it. The majority has so many procedural—I mean they do. The majority controls so much of the process that to resort to something like this is just unthinkable.

EXAMINATION BY MR. SNOWDON

Q. We've heard from——

BY MR. SPULAK

Q. Before you do that, in your conversation with Tom Wickham is it possible that he said the vote is open as opposed to opened, because certainly the latter suggests that it had been closed, the first indicates that it was never closed. Because this is the first time that we've heard someone speculate that the vote was closed only to be reopened. That's why I'm asking?

A. Again because it had been gaveled closed, because the board said final, that is my recollections of how things were.

Q. I understand. But what I'm asking is, what I'm trying to ask here is notwithstanding the fact the vote was gaveled, I'm asking about whether the ability to accept votes continued uninterrupted after that happened?

A. There was almost suspended animation. When he called the vote and the board said 215–213 final, I will tell you people were in shock. There is just no other way to describe it. They were literally in shock. It was this—and it went immediately from shock to shame. And the chants began and it was shame, shame, shame. So were they taking votes during that period? I don't recall them taking votes during that period. It felt pretty final. It felt like it was done, which is why you know when at some point I'm realizing that they are allowing more votes I went over to the Parliamentarian to ask, you know, had this been reopened.

Q. So it was your belief that it had been closed at 214–214, it was final?

A. Yeah, I mean he had banged it closed.

Q. And this——

A. And announced 214–214.

Q. That's right. But then there was this instantaneous uptick on the board to 215–213, right?

A. And again it said final, correct.

Q. And it was your belief that the 214–214 would stand as the final vote and that the vote was over at that point?

A. Well, again, people were asking me, you know, did we win, did they win, what's the story. And I was like I've never seen anything like this ever.

Q. But did anyone tell you that in fact the 214–214 was going to stand as the final call?

A. The Chair did.

Q. No, the Chair banged the gavel. I'm saying a subsequent time to that.

A. Do you mean like a Parliamentarian or something?

Q. No. Because if you watch the tape, just as you described, Mr. McNulty bangs the gavel, he announces this 214–214, now the board says 215—when I say now, please don't give any temporal significance to that, but after that, and I don't know when it happened, but after that it said 215–213 it was your belief that——

A. No, it wasn't that. I'm telling you, Tom, it was there was no—there was no daylight. If you even asked me what I would believe what was happening, there's a part of me that thinks that the second that that—I mean it may have said 213—I mean 215–213 when he said it.

BY MR. PAOLETTA

Q. When he turned away from the board it changed as he was calling it?

A. You know, you're asking me these split second moments. And I'm just telling you my—it was so fast where I'm looking at him and then I'm looking at the board and it was——

BY MR. SPULAK

Q. For the moment I will concede in more specific terms.

A. It wasn't like 3 minutes later or it wasn't even like 4 seconds later, it was right then.

Q. We would concede that. But—I will concede that. But my question is it was your state of mind at the time that the 214–214

was in fact the final call and that your 215–213 vote would not be in play, if you will?

A. Yeah, yeah, yeah. It was—I actually honestly thought what was going to happen at that moment, I thought they are going to leave this at 214–213, they were going to somehow, you know, spin away the 215–213 final up on the board.

BY MR. PAOLETTA

Q. I'm sorry, Jo Marie, you said 214–213. You meant 214–214?

A. Yeah. When he said 214–214 final, I assumed that that's it, they're going to stick to this. I assumed that it was, that this was—you know he called it, it's 214–214. Again, our Members were furious because you know everything we were seeing was showing that we had won. And it was a—yeah, it was a tense moment.

BY MR. SPULAK

Q. You didn't have any thought that maybe the Chair made a mistake and they're going to keep this vote open at this point because of the obvious mistake in the call?

A. The Chair had called it, Tom. I mean the Chair had said 214–214 final. I don't—I'm not one who, you know, can step in and say to Mr. McNulty you know——

Ms. MCCARTIN. Can I——

BY MR. SPULAK

Q. Please finish what you were saying. Mr. McNulty—I'm sorry?

A. I can't tell Mr. McNulty, you know, excuse me, where did you get this from. I'm a Republican staffer. I can't do that.

Q. But couldn't—I'm not suggesting anyone did anything wrong—couldn't Mr. Boehner or someone have gone up to the Chair immediately and said what are you doing?

A. Well, I'm sure people did, I'm sure people did.

BY MR. PAOLETTA

Q. Was it your view that it was the Chair's, he was exercising his prerogative to close this vote, as improper as it was, was it your impression and your Members' impression that he just at that point decided this vote is closed?

A. Well, I will say it was closed, he closed that vote. He said 214–214 final and it was closed. And the minority even said it was closed.

Q. And that was your impression?

A. It just said a different thing than what the Chair had just called.

Q. And you had Members asking you——

A. Furious. Oh, yeah.

Q. [continuing]. Is this closed?

A. Oh, yeah.

Q. So they sort of had the impression it was closed?

A. Oh, yeah. And literally immediately people were saying they stole that vote. I mean it was immediate.

EXAMINATION BY MS. MCCARTIN

Q. Okay. So Jo Marie, with your 20 years of parliamentary expertise, can you explain to us the parliamentary significance of the gavel and the parliamentary significance of the gavel on the board, in your experience?

A. Well, again, this was extraordinary. I have never seen anything like what happened that night. But when the Chair bangs the gavel and calls something that is supposed to be the end. That's it.

Q. Okay. So in your experience there is—and that's very important I think to your view of what happened—that you really believe that there was a parliamentary significance to the gavel and to the word "final"?

A. Let me answer it this way. Every Member in that Chamber—well, I don't know every Member, but I can tell you Republican Members in that Chamber thought it was final.

Q. Right. And one other question. Are you familiar at all with the precedence where had the vote actually been closed at the time that he banged the gavel, because at the time he banged the gavel and the board flashed 215–213, if the precedence would support that that was a mistaken announcement and basically doesn't count and basically under the precedence, you know, if there's a disagreement between the Chair's announcement and the final tally, the final tally wins out from the announcement?

A. I think the question really, Muftiah, is why did he do it. You know where did it come from and why did he do it.

Q. Yeah, we're just trying to find out why he did it.

A. In an extremely volatile atmosphere over a motion to recommit, why did he do it, why would he, you know, pull out of thin air a number and bang it closed, why would he do that?

BY MR. SPULAK

Q. Wait. Let me ask, he didn't pull the number out of thin air, according to your statement?

A. No. I told you I don't know. I saw him look over. Who knows what he saw because you can't see it in the video.

BY MR. PAOLETTA

Q. He didn't pull it off the tally sheet?

A. Correct, he didn't pull it off the tally sheet, that's clear. And who knows where he got that from. I don't know, I don't know. Maybe somebody yelled it to him, I don't know.

Q. If you look at this sheet now it says ignore scoreboard, rely on tally slips, so it is almost like it's thin air because it's telling you to ignore the scoreboard.

BY MR. SPULAK

Q. But—all right. I don't think—let me just say for the record I don't think the tally board is thin air, but that's okay. Go ahead.

BY MR. SNOWDON

Q. Jo Marie, we've been told that it's not uncommon for the leadership to encourage the Chair or give some instructions to the

Chair to close votes quickly when it's going to be a close vote. And you've obviously worked for Mr. Boehner when he was in the leadership and now the minority leader. Is that accurate? Does the leadership, whether it's the leader himself or herself or the staff sometimes convey to the Chair that they want, you know, votes closed quicker, certain votes closed quicker than other votes?

A. I'm not sure I have, you know, a—let's put it this way. I never told the Chair to close a vote quickly, I never did. Whether or not that has happened or not, I would not be surprised if it hasn't happened where you know you—because we've told the Chair before like, you know, on this particular vote it's probably going to be close, so you know stay attentive, that sort of thing. It's also been my personal belief that it's better to do things in a deliberative way than do things in a hurried way.

Q. When you say stay attentive, stay attentive to what?

A. The Members voting, you know, making sure—on a vote where you're having a close call or something, Members will actually hang back to find out can I vote a certain way, should I vote a certain way. And you know will hold what it is how they want to vote until pretty much the end to see how the vote is going so that the majority doesn't lose the vote. When we were in the majority.

Q. Was this vote different, was 814 different than the scenario we——

A. It was very rushed.

Q. I'm sorry, let me just get it out so she can get a clear transcript. Was 814 different than the scenario we just described and, if so, how?

A. Yes. It was very rushed. You could tell it was extremely chaotic. It was just very, very chaotic at the end. Members were changing their votes. It was just extraordinarily chaotic. Because usually what happens is you'll get down to those last votes and then there's—you know, there's that point where you either know you're going to lose the vote or you know you're going to win the vote and then you're done and you go through this normal process and you bang it closed. This one clearly was different because you know the piece of paper wasn't there, it was just screaming and chaotic and Members still voting and it was just very different, yes. Clearly it was different. We wouldn't be here if it wasn't so different.

BY MR. SPULAK

Q. It wouldn't be any different if there were a piece of paper?

A. Well, I think the answer to that is yes. If there had been a final piece of paper, then you would have known where the Members were that had voted.

Q. But if the Chair had said quick, give me 214–214?

Mr. PAOLETTA. I don't think the tally slip would have given it to the Tally Clerk because there was somebody just completing a vote.

Mr. SPULAK. Don't speculate on that.

Mr. PAOLETTA. Well, there were two well cards that were in De'Andre Anderson's hand, so I don't think Kevie Hanrahan would have handed up a slip without——

BY MR. SPULAK

Q. If there truly had been a conspiracy the Chair would have told the Clerk give me the piece of paper and whatever I say is on there, is on there. But anyway, so that's my question. My question is would it have been any different if there was a piece of paper?

A. Well, I will just tell you, Tom, there just seemed to be so much pressure that was exerted that night. I hate to even think what might have happened if that kind of pressure had —

Q. Correct. But let me ask this. I think I asked this question and I wasn't quite sure of the answer. You know, in all your experience have you not seen Chairs, both Democrats and Republicans, call a vote, in a proper way, but call a vote when their side was prevailing, again assuming —

A. I've never seen a vote like this, I've never seen a vote like this.

Q. But what was different about it, the fact that there wasn't a piece of paper?

A. The fact that the Chair calls it at 214–214, it is clear from everything you don't know where he got that from, and the board says 215–213 final. What about that do you not understand?

Q. I understand that. I'm asking you a more general question. And that is, is it not a rather common occurrence that——

A. No, no.

Q. Well, my question——

A. What happened that night is not a common occurrence.

Q. I understand that, but I'm asking this question. That the leadership would attempt to wrap up a vote following all proper procedures, but try to wrap up a vote quickly when their side was prevailing? When I say quickly I mean after 000 and in following all the proper procedures?

A. I don't understand what you're trying to say here.

Q. That the leadership will attempt to follow normal procedures but wrap up a vote, close a vote when their side is prevailing?

A. You never disenfranchise Members, Tom. That's what you're asking.

Q. No, that's not what I'm asking.

A. Well, then what are you asking?

Q. I'm asking if after all the time has expired and there's no one in the well at this particular time, will the leadership say okay, let's close it now?

A. Well, if there's no one in the well voting, there's no one appearing to be voting and it's time to close the vote, then you close the vote.

Q. When is it time to close the vote?

A. When you're at that point and you have—you know, it becomes obvious that Members have voted.

Q. Let me finish, Mark. Go ahead.

A. It becomes obvious Members have voted, you have your little piece of paper, you hand it up to the Chair, the Chair takes the piece of paper, announces the vote off the piece of paper and you're done.

Q. In your experience are you not aware sometimes where time has expired, one side is prevailing and that there is an attempt by the other side, the other side is losing, there's an attempt by the

other side to try to change Members, either by seeing conversations on the floor of people who had voted, and in your experience, I'm asking that you would assume yeah, the other side is trying to change some votes, but they're not in the well yet, they're in the aisle, they're back at the table, they're talking, and it would be clear to you that yeah, they're trying to switch some votes because it's close and if they can switch a vote or two they might change the outcome? You're not aware of that happening?

A. I have never seen anything like what happened that night on this vote ever.

Q. Let me just ask another question or two. Were you consulted about what you know? Was anyone on your side consulted about this unanimous consent request that they take the vote?

A. Mr. Hoyer I think at one point attempted it on the floor. Again I'm remembering this from the video.

BY MR. PAOLETTA

Q. Yeah, but were you—sorry.

A. No, no, no.

BY MR. SPULAK

Q. And the request was objected to?

A. I know there were—no. Again, I'm remembering this from the video. I'm pretty sure that there were objections that were yelled out, I'm pretty sure.

Q. I mean would that not have been a solution to——

A. No. The solution that should have been done in my personal opinion was it should have been a reconsideration vote, which is ultimately what finally they got to that point, but it was after they had switched some votes and after they had—you know, they realized—part of me thinks that I actually planted that idea in their head because you know I went over and said Boehner is going to change the prevailing side so he can reconsider his vote, and that's you know——

Q. You said earlier that his vote was recorded.

A. There was——

Q. Well, it wasn't.

A. It was not?

BY MR. PAOLETTA

It was not recorded.

BY MR. SPULAK

Q. And so my question is you weren't aware of that at the time?

A. No.

BY MR. PAOLETTA

Q. Because of the chaos?

A. Oh, it was so chaotic. I can't even begin to tell you how much chaos there was.

BY MR. SPULAK

Q. If you were aware of it at the time and if you knew that Mr. Hoyer was going to move to reconsider, would you have——

A. I don't know what I would have done, because it was such a mess on that floor. And, Tom, the level of anger over what had just happened, I mean, it was so—it was—it's right up there with, oh, my God, they'll do anything, including steal a vote.

EXAMINATION BY MR. HALPERN

Q. Can I ask you just a couple of questions?

A. Yeah, sure.

Q. One, I would like to go back way before that particular night.

A. Okay.

Q. When you were working for the newly minted majority leader——

A. Yes.

Q. [continuing]. And you were in something of a more unique situation because you were a new person coming into an already established floor operation——

A. That is correct.

Q. [continuing]. At the beginning of that process, was there some discussion with the other floor offices as to sort of what the logistics were and how the mechanics of this worked?

A. You know, I don't know formalized—probably not formalized. I've worked, obviously, with you and Seth and folks so much that, you know, I felt very welcome and very, you know, much part of the team.

Q. Was it pretty clear coming in sort of in the division of responsibilities that—well, let me rephrase that slightly. In the division of responsibilities, was closing votes the responsibility of the majority leader?

A. No.

Q. Was that—who was sort of in that chain? Was it the whip? Was it the Speaker?

A. The Speaker is the one who actually gavels the vote closed.

You know, clearly, there is—you know, when you're watching a vote and watching it go to final, the Chair is taught and schooled about how you do close a vote. Now, I was never involved in that process of schooling the Chair on how to do that.

Q. In your experience, was it usually—obviously, there was somebody from the Speaker's office who sort of had the—was the final conduit to the Chair, saying you're okay to start closing this thing down. But in your experience was that generally a communication between the whip folks and the Speaker office?

A. Yeah. I'll be honest with you. As the Republican leader, as the majority leader, we were not the ones closing votes. That's correct.

BY MR. SPULAK

Q. Who was?

A. The Chair. The Chair did it, the Speaker. The guy in the chair would be the one closing the vote. And the Parliamentarians, of course, watch very carefully. They watch to see if Members are coming, and you listen very carefully to what it is the Parliamen-

tarians say, and you know at some point it's obvious nobody else is voting and not changing the vote, and so you close it.

Q. But there weren't communications from perhaps the Speaker's office to the Chair that, you know, let's close down this vote, let's wind up this vote?

A. I have never seen what happened that night, ever.

BY MS. MCCARTIN

Q. Do you think then if it's coming from the Parliamentarians, if the decision is to leave the vote open longer, is that a decision the Parliamentarians make?

A. I will tell you I know John Sullivan feels very strongly about not disenfranchising Members. I know this. I am very aware of this, that he views this as the Holy Grail. You do not disenfranchise Members, and if Members want to change their vote or need to change their vote you don't close a vote. If there's a Member that is attempting to vote or change their vote, you don't do it. And I have no reason to believe that his view would change. I mean, that has been my history of working with him, so—you know.

BY MR. SPULAK

Q. On that question, are you aware of any instances where Chairs have tried to close a vote down only to be interrupted by the Parliamentarian because of this point that you're making, of their deep concern about not disenfranchising any Members?

A. I can't tell you the specifics of like where in that process—of when it has happened. But I have witnessed where you'll have somebody yell out like, you know, oh, Mr. Boehner is coming, you know. And they'll actually raise their hand; and the Parliamentarians will see it and be like, oh, Mr. Boehner is getting ready to vote. And then the Member comes running down into the well and Boehner grabs the card, signs his name and turns it in. That is not an uncommon occurrence.

Mr. PAOLETTA. I have a couple of questions, but go ahead.

Mr. HALPERN. Is it on this line? Because I want to bring her back to that era. Whatever makes sense.

Mr. PAOLETTA. Go ahead.

BY MR. HALPERN

Q. Sort of in the months leading up to that, I would like to talk about the mood of Republicans and sort of the level of trust that was out there.

This was, obviously, a vote on the motion to recommit. To your knowledge, had Mr. Hoyer expressed some frustration with the Republican success on the motion to recommit?

A. Oh, yes. As I say, this was extraordinary. I mean, I don't know if you all are aware of this or not, but we even caused a bill to have to be pulled off the House floor right before the motion to recommit was going to be voted. It was on the D.C. vote bill. It had to do with a gun ban amendment in the District of Columbia. As I recall, it was Lamar Smith who offered it.

And, you know, it's an embarrassing thing when the leader has to pull a bill off the floor. And he did. He had to pull it off the floor

because he realized—at least I'm sure this is what he realized; otherwise, he wouldn't have pulled the bill—that he would have lost that recommit, too. And that was, again, one of those recommits that the Democrats could not afford to lose.

BY MR. PAOLETTA

Q. How many recommits did the Republicans lose when they were in control?

A. You know, I should know the exact answer to this. I think, as a matter of fact, people have actually told me this, that one was done on purpose because we needed to fix a bill. So the recommit was actually adopted to fix the bill. And I think there might have been one other. But I'm just doing this based on, you know——

Q. But it was very, very, very rare?

A. Never. You never lost a recommit. I mean, you just didn't. It was one of the things that you just didn't have happen. And that's the reason why—it has been so amazing that, you know, we've won so many of them. And had this bill had to be pulled from the House floor—yeah, last year wasn't actually the best year for the Democrats.

BY MS. MCCARTIN

Q. Well, can you explain for the benefit of Mark and Andrew the difference between the motion to recommit on that bill and the motions to recommit that have been adopted so far this year?

A. Do you mean on the D.C. vote bill?

Q. No, just generally, what has there been—20 something motions that have been——

A. That have been adopted? Yes. Two of which have actually become public law.

Q. So the motion to recommit has been very successful this year.

A. Extraordinarily successful.

Q. I want to ask a question instead of saying something. Can you explain to them, because I think it might be helpful for them to understand the difference between the motions that have succeeded this year and that particular motion?

A. You're talking the promptly versus forthwith?

Q. Yeah.

A. The ones that we have had passed so far are done under a process that would immediately amend the bill. It's just like another amendment. It's a Republican amendment that's being offered.

And I also don't know if you know this or not, but the Rules Committee has been just about as closed as it's ever been. I think actually the Democrats just tied the number of closed rules in the history—recent history of the House in the closed rules they've done. So we haven't been allowed to offer amendments. We haven't been allowed to do anything. They just really shut this place down.

So our only avenue really has been the recommit, and so we've been offering up Republican policy recommits. And we get to sort of choose if we want to amend the bill immediately or if what we want to do is to say, look, the bill really needs to get back to Committee. This amendment needs to be added.

So the forthwith is you amend the bill immediately. If it gets adopted, then you go to final passage and you know the outcome is the outcome whatever that is.

If it's a forthwith—promptly, I'm sorry. If it's a promptly recommit, then what it does is it says that the bill needs to go back to committee for further amendment, including this one. The committee should adopt this one and conduct other ones, but they need to have the committee basically go back and really look at this bill again and then send it back to the House after they've dealt with this amendment.

So the Lewis amendment that night and the Lamar Smith amendment on the D.C. vote bill, both were stated as——

Mr. PAOLETTA. Promptly.

Ms. ST. MARTIN. As promptly, yes. I need to double-check with Lamar Smith, but I'm almost certain that was a promptly recommit. But I know the Lewis one was a promptly recommit, and basically it would send it back to committee with the amendment.

So, you know, here we were. We were getting ready to adopt this amendment, and it would have sent it back to committee.

You know, I actually—do you have a copy of the Lewis recommit here? I just want to make sure it's promptly.

Mr. PAOLETTA. I don't know.

Mr. HALPERN. It was.

Ms. ST. MARTIN. It is? I had that moment of like I'm pretty sure it's promptly. Yeah, that's right, yeah. So it would send it back to committee and then the committee would have to, you know, consider and then report back to the House and then you would be back at that stage again.

BY MS. MCCARTIN

Q. And why is it that the Republican leadership would offer promptly as opposed to forthwith if the promptly is just go back to committee and do this specific amendment and the Parliamentarians have said, well, if you go back to committee that's the amendment that you have to do or consider? You know, I mean, why that instead of just doing a forthwith?

A. Sometimes the bill is not so bad that you think, you know, this one additional amendment and then let the bill go. Other times, you think the bill—the underpinnings of the bill are such that the committee needs to consider this amendment in the context of a larger bill and actually rethink that process. So that's why you send it back to committee as opposed to immediately amending the bill. I mean, we've done this over and over again on bills, that it's just been an additional amendment that is considered.

Q. But then why not just send it back? Why not just do a straight motion if you think that the bill——

A. Because you want it amended with that particular amendment on it.

Q. But the committee can only do that one particular amendment. Then why send it back? Why not just do the forthwith?

A. So that they can rethink the whole thing.

Q. And maybe not report it back to the House at all?

A. Correct.

BY MR. HALPERN

Q. Jo Marie, are you aware of some press reports where the majority leader expressed a desire to rethink the minority's right to the motion to recommit?

A. Yes, yes, yes.

Q. Is it fair to say that our—that the Republican Members were also aware of those?

A. Yes.

BY MR. PAOLETTA

Q. Do you mean before the vote?

A. Yes, yes. After the—after the D.C. gun vote, the Democrats threatened to take away the recommit, which, of course, is really the Holy Grail to——

Q. The minority?

A. Correct. It is a huge minority right.

Q. How long has it been around?

A. I think we actually guaranteed it in the 104th Congress. We guaranteed it to the minority. We guaranteed it to the Democrats. So we never took the Democrats right to recommit.

Q. Is this going back to the 1800s?

A. It's been around a long time. You know, I don't know exactly what year. But what the—I actually do not know what year the recommit came into being. I mean, I'm afraid to even guess. But it's been around a long time. It's been around ever since I've been here. But it was not a guaranteed thing. And the——

Q. The Republicans guaranteed it?

A. [continuing]. Previous Democrat majority actually took it away upon occasion.

Q. Oh, really?

A. Yeah.

Q. Back in the '80s?

A. Yeah. Like a rule wouldn't give us a recommit.

Q. I see.

A. But under—in the 104th Congress we actually instituted into the rules that the recommit is a guaranteed thing, and the only way you can take it away is if you get a rule to take away it in the rules. It's a two-step process, is the only way it can be done.

BY MR. HALPERN

Q. So you've got the sort of public statements?

A. Yeah.

And, also, just so you're aware, when those public statements came out, you know, we had to sort of resort to the only tools available to us, which was tell Mr. Hoyer, you know, if you're going to even think about changing the recommit—and what they were talking about doing is actually changing the test of germaneness on the recommit, which would have had an enormous impact on our ability to advance what would otherwise have been a legitimate amendment—Republican amendment onto, you know, completely under House procedure, and they were going to change the test of germaneness which hasn't been touched since 1822 or something. And it would have changed how the germaneness rules work in the

House and this long-standing history of how germaneness rules work.

At least the press accounts of it and sort of what Hoyer was actually stating at the time would have indicated that they were going to take this enormous right away from us.

BY MR. SPULAK

Q. But that never happened, right?

A. It's still out there, Tom. I'm still worried about it.

Q. Isn't it true that it was recent changes by the Democrats to rules which facilitated the opportunities for these?

A. I'm sorry. Restate the question.

Q. Changes to the House rules in this Congress that facilitated the ability of Republicans to offer these motions to recommit?

A. How so? I'm not aware of it. How so?

Q. Hasn't the adoption of PAYGO assisted in the ability to have a wider test of germaneness?

A. No, no, no. Those two things have nothing to do with each other. I know that that's the argument that's put forth, but that's absolutely not right.

BY MR. HALPERN

Q. So using all this sort of context that evening, would it be accurate to say that the Republican Members viewed what was going on at the rostrum as more than just a simple mistake?

A. That Republicans did? Absolutely, absolutely. I mean, you're absolutely—what you're hearing right now is absolutely the mood. That we've been winning recommits, Hoyer threatens to take away our ability to do recommits by changing the test of germaneness on them, had to pull the D.C. vote, all of this, and led up to, oh, my God, they just stole a vote. I mean, that's just the way it was.

Q. Clearly, there was this divergence between sort of the utterances of the Chair, what was showing up on the board—there was little communication or no communication from the majority side, is that correct, on what's going on here?

A. You mean majority to us?

Q. Yes.

A. No communication.

Q. So it's fair to say that Republican Members were sort of left to guess what was going on here?

A. Well, "guess" is a funny word because it wasn't guesswork. They closed the vote 214–214 final. The board said 215–213 final. It was just—there was no guesswork in this. And it wasn't until it became somewhat apparent that it looked like they were reopening the vote that, you know, I went over to ask and said, excuse me.

Q. In the normal course of events, both when you were in the majority and over the past year, year and change, that the Democrats have been in the majority, when there have been errors in the Chair or wherever, has it been sort of the normal course that somebody would come over and flag that for you and say—and try to figure out a way to resolve it?

A. If you're asking me do I have a lot of communications with the Democrats on the floor, absolutely, you know. I will also tell

you—I mean, it's one of these things—you know, every morning my staff actually talks to Pelosi and Hoyer's floor staff about what the day is going to look like, how many vote stacks are we going to have, you know, what's the day going to look like, you know, are we still going to proceed with suspensions, are we going to then turn to, you know, the energy tax bill and are we going to, you know, whatever, and just sort of map out the day for what it's going to look like.

On days where we feel particularly aggrieved over something the Democrats have done, you know a logical outcome of that is to expect process motions, which we communicate to the Democrats.

A more recent example of it was actually last week where we had an agreement not to have the House open during Tom Lantos' funeral and yet the Democrats decided to open the House during the funeral, which caused a great deal of consternation on our side coming on the heels of a closed rule providing for no separate vote on a contempt resolution against the President's chief of staff and his former counsel. With no separate vote on that. The most closed rule I've ever seen in my life. So do we talk? Absolutely. Do we communicate? Yes, we do. Are we pleased with how the Democrats have decided to conduct these closed rules? No, not pleased; and we have communicated that as well. Is that what you're getting at?

Q. Well, I'm thinking more to this particular evening. There was no effort to try and flag for you, hey, there's a problem here; we need to figure out a way to fix that. Is that safe to say?

A. That is safe to say. There was no discussion.

Q. Okay. Thanks.

BY MR. PAOLETTA

Q. Jo Marie, I just wanted to go back on a couple of things that we've talked about with other people. It doesn't sound like you have any knowledge of, but I just wanted to just touch it.

One is De'Andre Anderson. At some point, you know, after the vote, it's been called, and then it up ticks to 215–213—whether it's at the exact moment—but he's trying to clear off the computer, and there's a problem with the computer. Are you aware of that or were you aware of it at the time?

A. Not at the time.

Q. Okay.

A. I found out later that they, quote, unquote, dumped the data, is what I was told.

Q. Okay.

A. And Karen Haas, who is the former Clerk at the House, she somewhere during—it was after, after we left the floor, we were back in Boehner's office and then let's say I had, you know, convened a meeting over in our conference room. Karen actually came to that meeting. And one of the things that Karen told us was you need to get them to preserve all the records. You just need to get them. And I remember that was one of the things. It was like, you know, Karen can you help with this, because, you know, she's been a Clerk of the House. And then that's when this idea of trying to assure records were preserved so that we would know and understand what happened first came into being.

Q. I see.

A. But, no, I never even heard this guy's name until this moment.

Q. De'Andre Anderson?

A. Yeah.

Q. Or Ed Sorenson?

A. Ed I know, but I don't know De'Andre.

Q. At some point, you know, there's a discussion on the rostrum about, you know, how to get that board to come down. Because that's what was the problem, and he talked about aborting the vote. Were you aware of any of those discussions?

A. Not at the time, not at the time, no. This was after the fact that—this might—may have even been like a couple of days later that I found this out. It might have been the next day. I just really don't remember. But I do remember the term being, yeah, they dumped the data, being how it was sort of said. And, you know, at first I was like, oh, God.

Mr. SPULAK. But that was afterwards?

Ms. ST. MARTIN. Yeah. It wasn't when we were on the floor, no.

BY MR. PAOLETTA

Q. And then I think the last thing is, we've had a little discussion here, but to the extent there's been any efforts in the past that you're aware of to close a vote by whomever, right, it's always been with the understanding that every vote that's sort of in is going to be counted. So even if it's let's close it down now, it's that, whatever that means in terms of timing, it's going to capture every vote that's—certainly, if a well card has been handed up and is in the rostrum sort of area——

You know, there may have been instances in the past where somebody is running down the aisle and whether he's in the well or not or something—but to the extent that they are in the seated Tally Clerk's hand or the standing Tally Clerk, that whatever effort has been made to close a vote, it has been always the intention and the practice actually and in fact counting votes that have been in, you know, that the Tally Clerk or the seated Tally Clerk's hand, right?

A. Yes.

Q. And that whenever you close the vote, it is not to result in the disenfranchisement of any Member?

A. Yes.

Mr. SNOWDON. One last question.

BY MR. SNOWDON

Q. I think one of the first things you said today was that you recalled when the vote got very close towards the end it became very apparent that the Democrats were struggling and there was a lot of finger pointing and it looked like efforts to persuade Democratic Members to vote or to change their votes. Do you recall who was doing the finger pointing or the convincing?

A. Any specific people?

Q. Yeah.

A. These are impressions that I had, so specific people—I can remember—I want to say Hoyer was doing it. There was just a lot of movement on that side. I don't know that I recall a particular

person. It was just very—a lot of movement, a lot of chaos and this feels of urgency, I guess is the right word. You could see it in the way people were talking to each other and staff are clearly all in that mode.

Q. Who in particular if you can recall?

A. I know Hoyer was doing it. It is one of those things where I wish I had a specific recollection of individuals, like, I do remember Catlin being pretty agitated. That's—you know, to go into specific people, I'd rather have a very clear—it was just one of those things, watching people, watching their faces and watching conversations and I don't—I'm not comfortable enough, I guess is the right word, to finger point at people. Yeah, I remember Hoyer and I am pretty sure Catlin was one who was trying to—you know, she was moving around a lot over there.

BY MR. SPULAK

Q. Is it uncommon in close votes and particularly important votes that as you get down to no time, that leadership on both sides doesn't—I'm not talking about afterwards. I'm saying leading up to zero, zero, zero on a close vote of consequence, if you will, is it not uncommon for the leadership to be whipping, to be talking——

A. I have never seen anything like this, Tom.

Q. You've never seen anything like the people trying to change votes? I'm not talking about afterward. I'm just talking about leading up to the vote—I mean, leading up to closing the vote.

A. The—I've never seen anything like this. I've never seen anything like this. I don't know how else to respond to you.

Q. I mean, I think—I think to the extent—in direct reference—to the extent there is—you know, it seems to me—I didn't spend any time on the floor—but, you know, the difference is that if you're trying to get people to change their vote and you're keeping the vote open, it is not going to be frantic, it is going to be deliberate. And in this case, it was that they were closing a vote down, you know, without going through the process, and that is the part that seems to be a lot more frantic and chaotic because——

A. That is correct. That is absolutely correct.

Q. The flip of keeping a vote open is a completely different dynamic than, you know, get a number, close it and there is no process followed?

A. That is absolutely correct.

Q. I mean, would you agree with that?

A. Absolutely correct. The thought that you would attempt to create your own outcome by making the vote go faster is not an outcome you want. That is just not what you want. It is better to slow things down, make sure everybody has voted, make sure everybody has voted the way they want to and settle things before you go to bang that gavel and call that vote. I mean, that is just—that is the way it should be done.

Ms. MCCARTIN. Can I add something?

BY MS. MCCARTIN

Q. So listening to you this morning, it seems as though, then, given the relationship between the parties, what is going on with

the motion to recommit, you know, the frantic—the chaos, that in your mind there was an intention that—that McNulty's state in your mind—that McNulty's state of mind was to gavel that down and potentially even to disenfranchise Members?

A. At that moment I thought they had stolen the vote, yes.

Q. After all was said and done—I realize, you know there was a lot of chaos going on, but when all was said and done at the end, did any of your Members complain that they were not recorded—or Boehner's side, your boss' side. We realize that is a separate case there. But did any Member on your side of the aisle complain that they were not recorded or recorded properly?

A. They complained bitterly that they felt like the vote had been stolen from them. That what the complaint was, Muftiah, and it wasn't like we were getting into a discussion about, oh, so and so didn't get to vote. The anger was really directed towards the fact that it—you know, now what? I'll do anything, including steal a vote.

Q. But no specific Member came to you and said they didn't record my vote or they didn't record it accurately?

A. I have no recollection of a Member complaining about that to me. My recollections were all about how did this happen, have you ever seen this happen before, no. They stole the vote. That was the complaint.

Mr. SPULAK. May I have one last question?

Ms. ST. MARTIN. But I also didn't ask anybody either, just so you know. I didn't ask them were you disenfranchised. Did you feel disenfranchised. I didn't ask that question either.

BY MR. SPULAK

Q. If I may ask you to speculate.

A. It's your favorite thing to do, Tom.

Q. This is pure speculation. Given the outcome and given where the Democrat votes were, if they had just decided just to leave it open as long as they needed to change votes—and I say that because there were votes there in the end to—and switchers who were there to push it prior to the time that the vote was finally called. So what I'm asking you, do you think the result would have been different if they just decided to leave it open as long as they needed to find the votes and to switch the votes?

A. The Democrats chose not to do that. They chose not to do that, Tom. They decided instead to do what happened that night. I don't know why they chose to do that. It clearly was a mistake to do what they did, very clearly a mistake to do what they did. And I hope they learned a valuable lesson from it.

BY MR. PAOLETTA

Q. It would seem that if they did that they might have been thinking there weren't the votes to switch and, you know, they needed to close it at that moment. But that's speculation.

A. Speculation that I would also think is within the realm of possibility. Because I will tell you, Tom, once they reopened it after all of that that went on, you know, who knows if it had been held open what our side would have been able to do. You know, at that point when they had made up that kind of incredible breach of

House processes, it—I could even speculate to you that Democrat Members suddenly were like, oh, our team is in the toilet right now, we need to help them out.

So maybe they wouldn't have gotten the votes if they had done it properly. It would have been on the policy and not on the mistake that was made. And those votes that switched could have been based on that. You have to get into a Member's head.

Mr. SPULAK. I see. Okay. We're done.

[Whereupon, at 11:49 a.m., the interview was concluded.]

CERTIFICATE OF DEPONENT/INTERVIEWEE

I have read the foregoing pages, which contain the correct transcript of the answers made by me to the questions therein recorded.—Witness Name.

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

MONDAY, FEBRUARY 25, 2008.
Washington, DC.

INTERVIEW OF CATLIN O'NEILL

The interview in the above matter was held at Room 1017, Longworth House Office Building, commencing at 12:10 p.m.

APPEARANCES

OUTSIDE COUNSEL, MAJORITY: THOMAS J. SPULAK, ESQ., GEORGE CRAWFORD, SENIOR GOVERNMENT RELATIONS ADVISOR, KING & SPALDING LLP, 1700 PENNSYLVANIA AVENUE, NW., WASHINGTON, DC 20006

OUTSIDE COUNSEL, MINORITY: MARK R. PAOLETTA, ESQ., ANDREW L. SNOWDON, ESQ., DICKSTEIN SHAPIRO LLP, 1825 EYE STREET, NW., WASHINGTON, DC

Also Present: Muftiah McCartin, Deputy Staff Director, Committee on Rules; Hugh Halpern, Republican Staff Director, Committee on Rules; and Davida Walsh, Legislative Counsel, Representative Delahunt.

Mr. SPULAK. Catlin, thanks for coming this morning. As you may know, the Select Committee to Investigate the Voting Irregularities of August 2, 2007 is charged with investigating the circumstances surrounding roll call vote 814 and the subsequent motion to recommit. Some areas that we're interested in include the duration of the vote and matters like that. We'll ask you to describe for us in a narrative form what you remember about that afternoon. But first, I will ask you to tell us a little bit about your experience on the Hill, your job responsibilities today.

Ms. O'NEILL. I was hired in 2003. George Crawford hired me. And originally I was more or less the minority leader's executive assistant. And then about 2 years into that, there was a position open on the floor, assistant—floor assistant and I took that position and was trained by Howard Moon and Jerry Hartz and have been in that role ever since.

Mr. SPULAK. Okay.

EXAMINATION BY MR. PAOLETTA

Q. What are your responsibilities now?

A. My responsibilities pretty much have to do with making sure everything's flowing and running on time. I mean from making sure that the Chamber is warm or cold—cooler, depending on

Members—and closing a vote, putting the presiding officer in the chair, scheduling the Chair, just exchanging information with whomever needs it. More troubleshooting I think, sort of catch-all.

Mr. PAOLETTA. Okay.

EXAMINATION BY MR. SPULAK

Q. So what did you do in furtherance of those responsibilities for roll call vote 814 on August 2?

A. I—okay. Well, I think at 11:45 on a Thursday night or so, Rosa had just finished her remarks, people were going crazy. It went from a very great feeling on our side to, oh, my God, what the hell is going on? I remember getting the list of Members who hadn't voted yet, seeing them on the floor, looking at the numbers and saying, oh, this is going to be tight; and then telling the Chair, I think we have—you know, we're going to have a tight situation here and just wait for me to let you know.

And then I—when I close a vote, I sort of look to the desk, the manager's table, to see if we're ready or not ready to go; if Members have gotten in, how many people have gotten in. So I don't actually have much access to the minute-to-minute information on who's voted, who hasn't voted unless I'm running back and forth to the desk.

So I said, let's just, you know, bear with me until I get a signal from them. And then chaos ensued. And at that point I didn't really know what was going on or what was happening or——

EXAMINATION BY MR. SNOWDON

Q. What did you say to the—I mean, are you communicating to the Chair with hand signals, or verbally?

A. Verbally. I mean it sort of depends on how many people are on the rostrum, who's approaching the rostrum. I usually tell the Parliamentarians that we're ready to close a vote. I told Mr. McNulty because I think there was 3—3 minutes actually left on the clock—and said, this is going to be tight, so just bear with me.

Q. So what does that mean, "bear with you," what are you then going to tell him down the road to——

A. We're ready to close.

Q. Okay. So does that mean he should be sort of on notice that when the clock gets to 0:00 that he should look to you to close it down quicker? Or what does that——

A. It's sort of amorphous. I'm waiting for a signal, some sort of idea and then I can say to the Parliamentarians or the Chair at that point, we're ready to go. Which doesn't really necessarily mean that they're going to do what I tell them to do. I mean, I think that—people who are in the chair tend to think that it's their call because it's the discretion of the Chair.

Q. But if you, as a typical rule, tell the Chair sort of to wait for my cue, this is sort of an unusual vote, a close vote, to wait for my cue before you close it down, do they typically abide by that? Or do they sometimes go do their own thing?

A. Go do their own thing anyway. They're a Member of Congress.

BY MR. SPULAK

Q. When you say you close the vote, as you've just said, you don't close the vote. But is it essentially your role to—or as you see it, to let the Chair know when all the Democrats that you think are going to vote have voted?

A. Yeah.

Q. Is that the purpose for the communication?

A. Yes. And sometimes the Republicans as well. I mean, there's a lot of let's try and get everybody in and let's get it timely. It's more like, let's keep things moving, let's go. But it's not me, obviously, talking to the Chair and saying, it must be closed now. Because I also know that there's a process in place that has to happen. When I am to say, now would be a good time to close the vote, minutes go by.

BY MR. PAOLETTA

Q. Where were you standing during this vote, do you recall?

A. Right by the Parliamentarian's desk on the floor.

Q. Okay. And did you stand there the whole time?

A. No. I was moving around. I was giving out pieces of paper with the people who hadn't voted to see if I could find them.

Q. Okay. And when it got—as it got tighter, you got the list of Members who hadn't voted yet. Randy said this is going to be tight, you talked to Mr. McNulty and said, bear with me. What happened after that?

A. After that, I think—I mean at some point I definitely went to the way back desk to inform the floor staff that they should be looking for these Members in the back corner.

Q. Okay. This is before he initially calls it?

A. Yeah.

Q. Okay.

A. And then I went back into the well and then—I never—there was no communication at that point I don't recall, between me and him.

Q. Do you remember, Catlin, Mr. Hoyer coming down the aisle?

A. Yes. Well, not the aisle, but I remember him being in the well.

Q. All right. Do you remember what he was saying—or what was he doing?

A. He and I had a conversation that I said, there's 13 people who still haven't voted.

Q. Okay.

A. And then that was all we said to—that's the only words we exchanged.

Q. Did you have a list of that? Did you show it to him or did you just say——

A. No. I had a list in my hand. I didn't show it to him.

Q. So we've heard—and, you know, we've watched the videotape, right, and Mr. Hoyer comes down the sort of the center aisle. Is it after he comes down that you're talking to him?

A. Yeah. I mean, I guess.

Q. Okay. Do you remember him coming down? You know, you can hear it on the tape and we've heard it from others, he says something like, close the vote?

A. Yeah. He—I was in the well standing by the door where the Parliamentarian's desk is. And that was after he and I had talked about there being 13 Members. And at that point I believe I went to talk to the floor staff to go find the 13 Members, and then came back. And what happened after that, I saw him in the well. It wasn't—I was preoccupied with Members.

Q. Okay.

A. I can't say definitively that I heard anything.

Q. Okay. All right. And can you—at a certain point, right, Mr. McNulty calls out 214–214, correct?

A. Numbers—correct, I guess. 214–214.

Q. Do you remember anything before that? I mean you talked to Mr. Hoyer, you're trying to find—you're trying to find—talking to staff about finding Members. Do you remember anything else before that, before Mr. McNulty calls out the vote?

A. No.

Q. Okay. And what's your recollection of when he called it out? What was your reaction?

A. I don't remember him hearing—him calling the vote. I just remember looking out and thinking, something's going on, what's going on? And trying to figure out what had happened.

Q. Oh, okay. So did you hear him call out 214–214?

A. Huh-uh.

Q. Okay. What do you remember Mr. McNulty doing?

A. I mean, he was in the chair. I don't have—I mean, after that? Or at that point or——

Q. Right.

A. I mean, I had always put him in the chair because he was the best. He had been in the—the last majority. He knew what he was doing.

Q. Okay. And let's just back up a little bit. So the normal process is, you're standing there when you get the signal from the table that it's ready to close; is that how it works?

A. There wasn't a normal process. That's part of the problem. I mean, between suspensions and recommits, I mean the Chair sometimes calls it before they think everyone's in; they're looking at the numbers, they think everyone's in and they move forward to close the vote. And sometimes I just, you know—we let that go because we're ready to move on. I mean, it—there's no hard fast sort of rule that applies to everything.

Q. Okay. But on a close vote, is there a general sort of procedure that you are following so that you know the folks at the computer are seeing who's voted and they can——

A. I wish there was.

Q. Really. Okay. So you had told them to bear with you——

A. I said I think this is going to be close. And I actually felt as though I was the only person that was aware that it was going to be close. I mean, it's late at night and everybody's carrying on, having a good time. We're right off of this——

Q. Do you remember talking to any of the Parls, the Parliamentarian staff, about it being a close vote?

A. No.

Q. Okay. Do you remember saying anything like be on your toes to any of the Parl staff?

A. No. No.
Q. Okay.
A. They usually are. So——
Q. Okay. All right. So what do you next remember after, again, you—McNulty calls out the vote. You don't remember that?
A. No. It went from we're voting to chaos. I mean literally. I mean, I don't know what I was doing at the time, but I had to sort of backtrack and figure out what had happened.
Q. Okay. Do you remember Mr. McNulty—I'm sorry—Mr. Hoyer speaking with Mr. Sullivan right—sort of right near you?
A. They were talking; that I saw.
Q. Do you remember what was exchanged?
A. I wasn't privy to that conversation. I was down on the floor.
Q. Okay. How far away, though? I mean you're——
A. Like by the door.
Q. Okay. So you're not in earshot to hear what was being said? Okay. Did you have any further conversations with Mr. Hoyer?
A. No.
Q. Or Mr. Sullivan?
A. I'm not certain but I'm—I would probably have gone to Mr. Sullivan and said, what happened? What's going on? But with regard to the vote.
Q. Right. And do you remember—did you do that or——
A. Maybe one of the Parls, maybe I shouted it out. I mean just trying to figure out how do we move forward, what happened, what's going on.
Q. Okay. And do you remember anyone saying anything to you about what had happened?
A. I'm sure someone did. I can't—I don't know who it was. It could have been a staff member. It could have been—at some point I realized that we need to move forward because something happened. I don't—I don't know.
I mean, I'd be sort of speculating if I was just—I don't—at some point I figured out what was going on. How I found out what was going on is up for discussion.
Q. You don't know?
A. Yeah.
Q. Okay. Okay. Do you remember Mr. McNulty reading off the script that Mr. Sullivan gave to him?
A. No.

BY MR. SNOWDON

Q. Have you watched the tape?
A. Yeah, I have.
Q. How long—how long ago?
A. Right after it happened.
Q. Okay. And on that tape, there's a point where Mr. Hoyer says to Mr. Sullivan, you know, "We control this Chamber, not you." Do you remember seeing that on the tape?
A. I remember him—seen talking to each other, but I don't——
Q. Do you know what their body language was—you couldn't hear what they said. What was the body language? Was it a happy conversation?
A. No. No.

Q. Okay. There's another point on the tape where Mr. McNulty says, "I called it at 214 to 214." And he's also—I'm not saying when he actually called the vote, but after this process starts to go on, he's saying that almost looks like he's providing an explanation to somebody. Were you near the rostrum when he said that?

A. Well, I remember it from the video. But, no. I mean, I may have—I was probably out by the first door, by the Parliamentarian's desk.

Q. Okay. Does it jog your memory at all as to who he might have been talking to?

A. No idea.

Q. I mean, would you agree that it almost looks like he's saying that I—you know, I did what I was supposed to do and sort of that was his demeanor when he made that comment?

A. I can't say. I don't remember exactly what it was he said.

Q. Okay. You—I think you said that you are aware that there's a process in place for closing votes. So when you convey to the Chair or to the Parliamentarians that it's time that, you know, wrap it up on a particular vote, that they have to do, you know, their process and that can take a couple of minutes; is that right?

A. Yes.

Q. What's your understanding of what that process entails?

A. My understanding of process is that if a Member votes by card, it is then turned into the first desk at the rostrum, at which point it is verified that—I believe this is right—that the person who accepts the card verifies that they have gotten it and from said Member. And then they turn it to the next desk at the rostrum, where it is manually entered. And then I believe once the Chair says, Have "all Members voted?" that starts the process of the Reading Clerk starting to read the names of the person who manually voted. And then once that's all done, you have some sort of—whether they're gratuitous or not—people yelling one more. There's a wait to get people to the well. Then that process goes again. And then at some point everybody realizes that all Members who are present are voting, write it on a card, and they give it to—the person at the front desk writes it on a card. They give it to the Parliamentarian. The Parliamentarian hands it to the Chair.

Q. Okay. Have you seen that process take place when you were on the floor?

A. Yes.

Q. Can you think of any situations where that process didn't take place prior to August 2?

A. Yes. But it was happening.

Q. I'm not following you.

A. The process was actually happening. Members have read off the board before—prior to receiving the card.

Q. Okay. But the card was being prepared?

A. On this specific occasion I have no idea.

Q. Okay. What about on prior occasion? Have you ever seen somebody share a call vote without receiving a tally slip?

A. In their hand, yes.

Q. Can you recall any—the specifics of that?

A. No. I don't—specifics; maybe it's a suspension, maybe I don't know what vote it is. No.

Q. Okay. I'll represent to you that we've heard from numerous people in this investigation that Mr. McNulty did call that vote without getting a tally slip. Were you aware of that at the time?
A. Yes.
Q. Okay. And how did you become aware of that?
A. I have no idea.
Q. Do you recall being aware of that that evening, or is this something you learned after the fact?
A. That evening. That evening.

BY MR. PAOLETTA

Q. You mean when it was happening?
A. Not when it was happening. After.

BY MR. SNOWDON

Q. So you think somebody told you that?
A. Yes.
Q. It wasn't like you were looking and saw Mr. McNulty, you know, reading off the board without the slip in hand?
A. Did not see that.
Q. Okay. Do you recall seeing Members in the well at the time he called the vote?
A. I'm sure there were Members in the well.
Q. Okay.
A. There are always Members in the well. I don't recall though.
Q. We've also seen a document that the Parliamentarians put up on the rostrum, or up on the Speaker's podium, that sort of walks through the cues that the Speakers are supposed to use to close down a vote. Have you seen that?
A. No.
Q. Do you, as somebody who is involved in scheduling the Speakers, give them any cues or guidance or anything before they take the Chair?
A. Not really. It was sort of a learning process for everybody.
Q. Mr. McNulty sounds like he's a pretty experienced Chair. Do you know why he would have called a vote without having the tally slip in his hand on a particularly close vote?
A. No.
Q. If your job, or one of your responsibilities, is to signal the closing of the vote, is that true for every vote? Or is that really limited to particular situations?
A. More or less true for every vote.
Q. Okay. We've, again, been told by several people that Mr. Hoyer came up onto the rostrum and said several different times, close the vote, or close the vote now. Recognizing that you didn't hear that that night, how common an occurrence is that for the majority leader to come up and give sort of direct instruction?
A. To——
Q. The Chair, the Parls, the Clerks, whoever's up on the rostrum.
A. It's happened in the past.
Q. Can you ballpark it for me? Half a dozen times, 50 times?
A. Half a dozen times. I mean, not frequently.
Q. Okay. In what type of situations does that typically happen, if you can summarize that?

A. Time. Has to do with keeping votes open too long. I mean, in my experience it's been not wanting to keep votes open too long, and move on to the next order of business.

Q. So it's not necessarily the fact that it's a close vote?

A. No.

Mr. SNOWDON. Okay.

BY MR. PAOLETTA

Q. Do you recall that any of them were—well, do you recall anyone in particular that the majority leader would have done it, on or did it on? You said half a dozen times?

A. In the chair?

Q. Yeah. Where the majority leader directly addressed the Chair to close it down.

A. Directly addressed the Chair, no. Usually it's me.

Q. Right. But you mentioned that you thought he maybe had done it maybe a half dozen times?

A. Yeah.

Q. Do you remember any of those votes that he did it on specifically?

A. No.

BY MR. SPULAK

Q. Catlin, excuse me. Are you familiar that the majority leader has in the last, I don't know, month or so admonished the House that he wanted to see votes ended just generally quicker?

A. Yes.

Q. Across the board; not just on some votes but on all votes?

A. Yes.

Q. So is this what you are alluding to sort of generally in trying to get the Chair to close the vote within a shorter period of time so that the House can move on?

A. Yes.

BY MR. PAOLETTA

Q. Okay. Did any of them have to do with—were any of them involving a close vote like this one?

A. Not that I recall.

BY MR. SNOWDON

Q. How—did the majority leader ever come to you and say—give you instructions to tell the Chair to close down a vote?

A. No. It's more of a we need to move this along.

Q. Said to who, to you?

A. To me.

Q. Okay. And then does he expect you to relay that to the Chair, to go ahead and close it down?

A. Not necessarily. I wouldn't think so. I think it's more of a can we get on with the show, please?

BY MR. PAOLETTA

Q. But then, from that, you would probably tell the Chair to close it down?

A. No. I would make sure that the desk is—the manager's table has the necessary people in or, you know, if they were looking for people who were coming in to vote, oftentimes——

Q. Okay. So let's actually just focus on this a little bit more. Move it along, or we need to move along is one thing. Okay. Sort of the words, "close this vote," "close the vote now," or "close the vote" is a little different than "we need to move this along." Okay.

So do you ever recall the majority leader using those words or those type of words? I mean I can understand, let's move this along, let's go, what's going on, you know. That's not the same as sort of directing, you know, comments to the Chair that are—close this vote. Do you remember the majority leader saying close this vote?

A. Not definitively, no.

Q. Okay. You mentioned that you recall where the Chair has closed the vote without getting a slip.

A Uh-huh.

Q. I'm not sure if anyone else said that before in us getting testimony, so I'm sort of curious about that. Do recall any of the votes?

A. It's definitely more a casual atmosphere. A suspension vote. I don't recall anything specifically.

Q. Okay.

A. I think it's a case where they look at the board and they see 400 people are voting for this, and 3—and we've been waiting for 5 minutes. Have all Members voted? Does any Member wish to change their vote? And then they start to call the vote.

Q. Okay. In your understanding, what's the tally slip supposed to do?

A. I think it signifies this is the final vote and it's going to be read from the actual clerk. Quality control is put in place. I mean, I think that's what it is.

Q. So it signifies from the sort of professional staff that are taking the votes and the well cards and all that, they've all been inputted?

A. Yeah.

Q. Okay. So do you remember any other time when there was a close vote that it was read without a slip?

A. No.

Q. And Mr. McNulty's an experienced chair, right?

A. Very.

Q. So do you have any idea as to why he may have closed it without a tally slip?

A. Not a clue. He knows what he's doing.

Q. All right.

Were you aware, you know—when he called it, did you look into the, you know, into the well or into the rostrum and see the seated Tally Clerk trying to input—or that he was still inputting cards?

A. There were many things that confused me. But there was still action going on at the rostrum. People were—I just—it took me a minute to figure out that something even had happened that was going to raise everybody's blood. So——

Q. Right.

A. I don't—I certainly don't remember looking at the rostrum and thinking anything other than, What the hell is going on?

BY MR. SNOWDON

Q. Well, did it look like—from what you saw on the rostrum, I presume—correct me if I'm wrong—that you looked to the rostrum pretty shortly after you sort of heard the commotion, right? Did it look to you from what was happening on the rostrum that the vote was in a—they were in a position to close the vote?

A. I didn't—that thought didn't even occur to me.

Mr. SNOWDON. Okay.

BY MR. PAOLETTA

Q. At a certain point, De'Andre Anderson is trying to clear the machine. You know, it's up there and he's trying to terminate the vote. And there's a discussion with Ed Sorensen?

A. Yes.

Q. Do you recall that?

A. I saw that.

Q. You saw it?

A. Yes.

Q. What do you remember seeing?

A. They were talking on the second level of the rostrum. I believe John Sullivan was there. And I guess it was De'Andre at the computer. I don't know what the problem was. I believe that after that conversation happened, I asked what was going on, but I don't—I mean, it was sort of just chopped up to I think the machine isn't—it's not responding.

Q. Do you remember who said that?

A. No.

Q. Okay. And I'm just trying—I haven't looked at the tape in a little bit. But you're over—as you are looking at the rostrum over on the left-hand side, Ed Sorensen is over there too. Is he close to you?

A. No.

Q. He's not?

A. No.

Q. Do you remember where he was or what he was doing as that vote was sort of getting tight?

A. No.

Q. After he called it?

A. No. Generally speaking, he's in front of the first level of the rostrum. But I don't remember seeing him there or not seeing him there.

Q. Okay. And so you just—you saw them talking, Ed Sorensen, John Sullivan and De'Andre Anderson, on the rostrum on the second level?

A. Yeah. Yeah.

Q. And then you recall somebody saying their computer's not responding?

A. Yeah.

Q. And you don't remember who it is?

A. No. I mean, it may have went to one of the other Parliamentarians. My belief in general is, when the Parliamentarians are in a discussion or something, that it will get worked out and then I'll find out about it.

Mr. PAOLETTA. Okay. Okay.

BY MR. SNOWDON

Q. Did you subsequently, you know, the following day, days after, learn anything additional about what happened that night?

A. No. I mean, outside of watching the video, no.

Q. Did you ever talk to anybody who spoke to Mr. McNulty and he'd explained to them what had happened?

A. Nope.

Q. Okay. How—when you get instructions to close the vote, how do you typically get those? Is that by BlackBerry? Is that by hand signals? Is that by——

A. A lot of shuttling back and forth.

Q. Who does the shuttling?

A. Me.

Mr. SNOWDON. Let the record reflect that she pointed at herself.

BY MR. SNOWDON

Q. Do you recall there being a lot of e-mail or any e-mail traffic that evening or the following day discussing what happened that night?

A. Most of my e-mail traffic related to drinking heavily. So no; I mean, not really. It was a lot of sort of reactionary, like, what the hell? Let's go out and not come back.

Mr. SNOWDON. Okay.

BY MR. SPULAK

Mr. SPULAK. Do you remember before the vote was called saying to one of the Parliamentarians, this is going to be close so be on your toes? And this was directly to one of the Parliamentarians. I think it was Ethan.

A. It very well may have, but——

Q. And that would have been consistent with what you were saying, how you generally communicate with the Chair?

A. Yes.

Q. Or with the podium regarding votes that you think are going to be close?

A. Well, it's important for everybody up there to have as much information as possible. So I mean, I believe—and whether this happens or not, I have no idea—but if I tell the Parliamentarian or the Chair, they all are aware of it and tell each other.

EXAMINATION BY MS. MCCARTIN

Q. And isn't it also sometimes the case where the cues are given to one person but everybody sees them, so telling one person, it's sometimes like telling everybody, because they're all in the same space and people are listening and it's not like you turn to different people and say the same thing?

A. Exactly.

EXAMINATION BY MR. CRAWFORD

Q. Catlin, you said that you get a signal sometimes by shuttling from the table that everybody's in, everybody's recorded and pre-

sumably the majority is prevailing, so you can move to close the vote. Did you get that signal from the table that night?

A. Yes. There was—I mean no. No. I mean no. Actually, that's not true. I didn't get any definitive signal. But there was a lot of shuttling back and forth, trying to find Members to get in; who's where? But there was no close the vote.

Q. Okay. So in your mind when you—when you spoke to Mr. McNulty, were you giving him a signal to close the vote at that moment?

A. Absolutely not.

Q. So you didn't get a signal or communication from the table to close the vote, and you didn't pass on any message to Mr. McNulty to close the vote?

A. No.

BY MR. SNOWDON

Q. Do you remember the Speaker voting?

A. No. I mean, I know that she did. I think she did. But I don't remember her actually voting.

Q. Okay. So you don't remember where she was in terms of the sequence of——

A. No.

Q. [continuing]. The vote being closed down?

A. No.

Q. This looks like a situation where you told Mr. McNulty that—to bear with you. And then he closed the vote without bearing with you, I guess, for lack of a better term. I mean generally, you said Speakers are Members, and they can do their own thing, despite what you might suggest to them.

Does that typically work where they—they hold the vote open longer? Or are there other instances you can recall where they closed it down quicker than you would have liked?

A. There have been instances.

Q. Instances of both?

A. Where it's been closed down more quickly than I would have liked or my staff would have liked—our staff. Oftentimes you have—there's so many staff on the floor and they're all receiving different pieces of information. X, Y, Z Members are in a van on their way back from the White House and they need to vote. Doesn't get to me until the vote's being closed, or closed. I mean——

Q. Do you ever go to the Chair and get them to, you know—before they put that period on the final sentence, get them to keep it open a little bit longer if you get that information, you know, at the 11th hour that somebody's——

A. Yes.

Q. And will they typically do that or——

A. Typically, because they're in the motions of closing a vote, I will tell the Parliamentarians and say, can we hold on a second? We're waiting for—you know, we're waiting for someone. And yeah, they'll try and stop. Sometimes they don't. They just keep moving through.

Q. And are you the one that typically catches backlash from the Members who don't get the chance to vote? Or how does that work?

A. I don't know if they know that yet. I'm hoping they don't. But sometimes. But it—you know, it's out of frustration always.

BY MR. PAOLETTA

Q. Did you talk to the Speaker at all about it?
A. No.
Q. Do you know if she was concerned or unhappy?
A. No idea.
Q. And anyone on Mr. Hoyer's staff?
A. No. I mean, again, after we got through the night, it was more of a what's going on, what happened?
Q. Right. And nothing during that night as it's——
A. No.
Q. And what about Mr. McNulty's staff?
A. The last contact I had with McNulty's staff was probably earlier in the day, saying the motion to recommit and final passage will happen at approximately X, Y, Z time; can he be ready to go?
Mr. SPULAK. Thank you.
[Whereupon, at 12:45 p.m., the interview was concluded.]

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

WEDNESDAY, FEBRUARY 27, 2008.
Washington, DC.

INTERVIEW OF JOHN SULLIVAN

The interview in the above matter was held at Room 1628, Longworth House Office Building, commencing at 8:09 a.m.

APPEARANCES

OUTSIDE COUNSEL, MAJORITY: THOMAS J. SPULAK, ESQ., GEORGE CRAWFORD, ESQ., KING & SPALDING LLP, 1700 PENNSYLVANIA AVE, NW., WASHINGTON, DC 20006

OUTSIDE COUNSEL, MINORITY: MARK PAOLETTA, ESQ., ANDREW SNOWDON, DICKSTEIN SHAPIRO LLP, 1825 EYE STREET, NW., WASHINGTON, DC 20006

Members Present: Representatives Davis of Alabama, Pence, and LaTourette.

Also Present: Muftiah McCartin, Deputy Staff Director, Committee on Rules; Davida Walsh, Legislative Counsel, Representative Delahunt; Chanelle Hardy, Counsel, Representative Artur Davis; Russ Levsen, Communications Director/Deputy Chief of Staff, Representative Herseth Sandlin; Zuraya Tapia, Clerk, Select Committee to Investigate the Voting Irregularities of August 2, 2007; and Hugh Halpern, Republican Staff Director, Committee on Rules.

Mr. DAVIS of Alabama. Let me begin by welcoming everyone this morning as the Vice Chair of the Committee. The Chair of the Committee will be joining us shortly. The Ranking Member of the Committee, Mr. Pence is here and the Vice Ranking Member, Mr. LaTourette is here, and John Sullivan, our witness of the morning is here as well. John, thank you for being here. Just so we have it on the record I'm going to ask every person who is present to go around the room by way of introduction. Starting across from me everyone simply identify yourself for the record.

Mr. CRAWFORD. George Crawford with King & Spalding.

Mr. SNOWDON. Andrew Snowdon with Dickstein Shapiro.

Mr. PAOLETTA. Mark Paoletta with Dickstein Shapiro.

Mr. SPULAK. Tom Spulak with King & Spalding.

Ms. WALSH. Davida Walsh with Congressman Delahunt.

Mr. LEVSEN. Russ Levsen with Congresswoman Stephanie Herseth Sandlin.

Ms. MCCARTIN. Muftiah McCartin, Committee on Rules.

Ms. HARDY. Chanelle Hardy, Office of Congressman Davis.

Mr. HALPERN. Hugh Halpern, Committee on Rules.

Ms. TAPIA. Zuraya Tapia, Clerk for the Committee.

Mr. DAVIS of Alabama. Let me thank you all for being here. John, thank you. We've had some conversation before we started about the best format to manage your time well to give us an opportunity to discuss these events in a good fashion that allows us to be comprehensive but not redundant. What we're going to do, the normal practice in these interviews has mainly been staff conducted. Because of your importance as a critical player, if you will, in these events, we wanted to be a little bit more structured with your interview. So both the majority and minority side, if you will, have elected to have Members drive most of the questioning today. And Mr. LaTourette and I have been asked to play that role.

Again, the Chair ranking member of the committee will be here and certainly, if he wishes to ask questions yield to him. We're going to begin by having the staff lay some foundation. As you've noticed to your right, behind our court reporter there is a video screen. There is a tape of the events that night. We've tried to narrow it down to the relevant portion of time. We're going to have the staff on both sides of the aisle walk you through that videotape, so you can begin by, in effect, describing to us and laying some context around the things that we'll see.

You also have a statement that you've been gracious enough to provide. You're certainly perfectly welcome to refer to that statement. We've all seen it. No need to read it per se as we've seen it. But again you're welcome to refer to that at any time. If you have any other notes, you're certainly free to refer to those too.

So we will go through the tape, ask the staff to begin, lay a foundation and then after they've done that, I will begin the first round of questions. And then Mr. LaTourette will have a round of questions. I will finish with the concluding round. Do you have any questions about the procedure this morning or any general questions you want to ask us about how we intend to do this today?

Mr. SULLIVAN. No, thank you.

Mr. DAVIS of Alabama. All right. Then with that said, let me ask which members of the staff will be laying our foundation with the videotape.

Mr. SPULAK. I believe that Mr. Paoletta wanted to.

Mr. DAVIS of Alabama. Very good. Well, we welcome our chairman. Thank you for joining us today.

EXAMINATION BY MR. PAOLETTA

Q. John, thank you for coming here this morning. I think the best way to sort of proceed with gathering your recollection of the events of that night is to actually walk through the tape. Not frame by frame, but various segments of it stopping and asking what you recall. We have all watched it a lot and you may have watched it. When was the last time you watched it actually?

A. I think I've watched it about 1.2 times. That night I watched a segment of it. I forget exactly why. It was something to do with the transcript produced by the official reporter. And then once since I've watched the whole thing. But I didn't want to study it. I wanted to have my recollection.

Q. Okay. Actually, before we start running the tape, just give me your best sense of when you first recall events that night. Do you recall the vote that's 814 starting?

A. No. I think I might have been in my office at the start of the vote.

Q. Do you remember when you first got to the floor during this vote?

A. My earliest recollection is I was on the west side of the Chamber talking with Lynn Westmoreland. We were sitting in chairs at or near the front row across the aisle from one another. He is an aficionado of prompt instructions in recommittal, and we were discussing that wrinkle of the pending motion. And then I was at the Republican manager's table talking to Bill Sali because he wanted to know why the Chair wouldn't entertain Mr. Barton's unanimous consent request and make it a five-minute vote.

And I was explaining to him why that kind of unanimous consent request is not entertained. And then I remember when I left that and walked over to the east side of the Chamber through the well, I noticed that the Speaker was voting. I don't know how frequently she votes. But ordinarily when a Speaker is voting by ballot card in the well, that suggests something to me. So I looked up at the scoreboard. And that's when I realized it was a close vote and it was nearing the end of the time. I don't know, we might have been past the 15-minute point at that point, I'm not sure.

I think from that point forward, I was mainly on the east side of the rostrum near the hopper or up near the Chair. But I do recall a couple times going back into the well. I remember talking with Jay Pierson and Mr. Hobson and Mr. Westmoreland at the center or west portion of the well. And I remember talking, whispering something to Mr. Hoyer and to George Miller at the east well microphone at one point. I also remember a number of discussions with Members at or near the hopper at the bottom of the rostrum during those closing moments.

Q. We're going to start the tape in a second, but do you recall Mr. Hoyer coming down the aisle and saying something directed towards the Chair or towards the rostrum?

A. Not down the aisle. I had I think three exchanges with Mr. Hoyer at the hopper or on the rostrum, but I don't remember anything in the aisle.

Q. Do you remember him saying close the vote?

A. Words to that effect, yes.

Q. Let's cue the tape up. I think we tried to bring it pretty far along in this vote. I just wanted to start it a little bit early so that you could just sort of orient yourself with the screen.

A. I think that's probably me at the Republican manager's table with my back to us talking to Anne Thorsen and Bill Sali.

Q. Okay. He calls it at 22:50. Do you want to just move it just a little bit in to maybe 49.

Mr. LATOURETTE. I think before you do that he should see what he referred to as the Speaker voting.

Mr. PAOLETTA. Okay.

Mr. LATOURETTE. Because that's at the statement he just mentioned again.

Mr. DAVIS of Alabama. John, do you have a sense of where that is?

Mr. SULLIVAN. After I leave that conversation at the Republican manager's table, I come back to the Mace——

Mr. PAOLETTA. Can you stop the cue. Pause it when John is talking.

Mr. SULLIVAN. After I leave that conversation, I believe I come through the well to the Mace side of the rostrum, and I believe that that's when I saw the Speaker handing in a ballot card.

Mr. LATOURETTE. And the Speaker is right to the left of 193:9, right, that's the Speaker of the House?

Mr. SULLIVAN. Okay. Right. That is me leaving the Republican manager's table now.

BY MR. PAOLETTA

Q. Where are you, John? I see you, okay.

A. I'm the guy drinking out of a bottle of water much to my chagrin.

Q. John, can you point yourself out there? Where are you?

A. Under the yea column header.

Q. Okay. At that point John, I know it's pretty noisy there, but it looks like there's an interaction between Catlin O'Neill and Mr. McNulty. Did you hear any of that?

A. No. Where is Catlin?

Q. She is sort of right where the Democratic—maybe by the overseeing democratic. Mr. McNulty sort of turned towards her. You don't recall anything from that?

A. No, I don't.

EXAMINATION BY MR. SPULAK

Q. John, you hear her call Mr. Lampson? What were you doing immediately prior to that? I know you're coming up to the Chair. Why is it that you were coming up there at this point?

A. I would have been up there sooner, but I think I was engaged with somebody at the hopper explaining why the vote couldn't be closed yet. The two Tally Clerks there, one with his back to you, the standing Tally Clerk, Kevin Hanrahan, and the one just to the left of the Reading Clerk's podium, De'Andre, were engaged in processing ballot cards processed in the well. And that process takes a little while. And sometimes long after Members have stopped submitting them, they're still plugging them into the computer. Somebody standing at the hopper yelling "close the vote, close the vote" needed to be told you can't, there are ballot cards being plugged into the computer, the vote is not ready to close.

Q. It that a common occurrence for people to be yelling "close the vote, close the vote"?

A. Yes.

BY MR. PAOLETTA

Q. John, do you remember who you were speaking with at what point?

A. One of them was Mr. Hoyer.

Q. So Mr. Hoyer, at that point, is speaking with you?

A. Yes.
Q. That's your recollection?
A. Yes.
Q. And what do you recall him saying?
A. I was doing most of the talking. I was trying to explain to proceed at that point when the Tally Clerks were still trying to process cards was folly.
Q. Obviously, you're talking to him, but he must have said something to you to prompt you to explain it to him. So do you recall his exact words to you?
A. No. He wanted the vote closed. I don't recall his exact words.
Q. Okay. So you think you've been talking to him just before you enter the screen here?
A. There may have been others involved. Mr. Hoyer is the one I recall. I think I was probably just off the left margin in the screen there near the hopper.
Q. Okay. So you've come up here.
Mr. CRAWFORD. Can I ask a question? At that point, John, when you're down talking to the Member, Mr. Hoyer and others about why the vote can't be closed, and Mr. McNulty halts the call at 214–214, did you ask him to stop?
A. No. I think that circumstances pulled them up short.

BY MR. PAOLETTA

Q. Okay. Freeze it right there. Okay, John, do you remember this exchange?
A. Yes.
Q. Okay, please tell me what Mr. Hoyer said to you?
A. Words to the effect of we control this House, not you, the Parliamentarian is not in charge here, something like that.
Q. He seems to say something more when his back—we can hear that on the tape, right? But there's a little bit more of an exchange. Do you recall what that was when you were talking to him?
A. Just the kind of sentiments that I just expressed; that I wasn't running the show basically.
Q. And what did you say?
A. I said I'm not trying to say that we run the place. I don't know if this is exact. But what I was trying to communicate is we know we're staff here, but the presiding officer can't jump the Tally Clerk. I mean those guys are plugging votes into the computer and you can't just read a number off the wall, you have to say wait for the product of a closed electronic voting system.

BY MR. SPULAK

Q. John, up to that point, I think you just answered George's question that you hadn't said anything, but up to that point, had either you or Ethan Lauer, the Parliamentarian, given any instructions or commands or suggestions to the Chair?
A. No. I was on my way to help Ethan explain to Mr. McNulty that you couldn't read a result off the wall.
Q. But do you know had Ethan done that?
A. I don't know what steps he may have taken in that direction at that point. They obviously had not been successful. The first time he tried to announce a number just from reading it off the

scoreboard, that was the signal that I had, you know, to stop him. I was detained a little bit down at the hopper. Then I was headed up to there to try and do that, and I was, again, distracted from that. But I think later on, there was a decent interval in which I could have got the job done and I failed to.

Q. I'm just merely trying to determine whether, in fact, anyone had been telling the Chair to do something and that the Chair may have ignored or anything?

A. I think the Chair was hearing a lot of advice on both ends. He was hearing people hold the sentiment Mr. Hoyer shared, "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. And you know there were—the Chair gets plenty of advice from the Floor in situations like that and he was hearing a lot.

BY MR. PAOLETTA

Q. The interesting thing, right, John, is that—and we're sort of jumping off a little bit of just walking through the tape, but I think it's appropriate here—it's pretty common that Members are yelling to the Chair to close the vote, or you know, words to that effect, right, in various votes?

A. Uh-huh.

Q. Okay. And in this one, Mr. McNulty starts to read the vote off the board without a tally slip, right?

A. Right.

Q. Have you ever seen that happen during your time in the Parliamentarian's Office?

A. I don't think so. I don't think I've ever seen a completed announcement without the benefit of a tally slip. By "tally slip," I mean, a little white sheet. A tally sheet is a very large document if we had a call of the roll.

Q. So let's be clear. We're talking about the tally slip that the clerk writes out—the vote for reading?

A. It's a little white form. And its main purpose is an assurance that the numbers written on it were put there after the system had been closed for further input and the numbers were static. It's probably the most important quality control device in the announcement of a vote. So to read a number off the wall, that's not a static number, that's a snapshot of that computer refresh cycle. And there might be other electrons on their way to the board. And to read a number from that board is liable to be contradicted the next time the computer refreshes. So I believe it's true that we've never before closed a vote like that 214–214 announcement without the benefit of a tally slip.

BY MR. SPULAK

Q. John you said that you had never seen a Member actually complete it. And by that I would interpret you saying that Members sometimes try to do it——

A. Yes.

Q. [continuing]. Whether it's purposeful or inadvertent?

A. No, I don't think it's purposeful. They don't understand the danger of reading it off the wall. And to that end, sometimes if we prepare a prompting sheet for them we might put on it don't read

it off the wall, look at the slip. The numbers are going to be the same. If there is a slip extant, then the numbers on the wall are frozen. And a lot of Members use the wall as a teleprompter of sorts so that they don't look like they're reading. But they have a slip in their hand and the numbers are the same invariably.

So from time to time, a Member will think that he can just close it and he doesn't realize what we're waiting for. Sometimes—you know, all voting is obviously stopped, nobody is in the well, nobody is handing in any cards. But the Tally Clerks still have 11 red and green cards that they're working on. And the Chair doesn't really take note of it and he thinks the vote is over, so we have to arrest that.

Q. Do you know if the Chair—you know, Mr. Lauer talked to us—are you aware if the Chair had this prompting slip or this piece of paper that has instructions that night, because we've seen it in one of the things and it says don't call the score?

A. I don't know if we had one of those in front of Mr. McNulty. I bet we didn't, because he's a fairly experienced Member at that. But the form that we would have had would say wait for a slip or rely on slip or ignore scoreboard. It's had different forms over time.

Q. Again, the reason why that's there is because it is a natural tendency of the Chair to look at the scoreboard?

A. Yes. And very few Members understand what's going on at the Tally Clerk station. Not that it's too complex for anybody, I understand, it's beneath their radar.

Q. Would you say that Mr. McNulty knows what's going on?

A. I don't know. He's spent a lot of time in the chair. He was a frequent presiding officer in the previous Democratic majority.

Q. Which was 13 years ago?

A. Yes. But I don't know that a presiding officer necessarily takes cognizance of the clerical activity that's going on at his feet. They just—presiding officers are very good about just taking the raw material we give them. And the only reason I began to put that, ignore the scoreboard, rely on the slip thing is because we recently, both in 1995 and 2007, had a brand new, a set of brand new presiding officers who were utterly unfamiliar with the physical plant of the rostrum. And rather than teach them everything about a tally clerk's job, we just said ignore the scoreboard.

BY MR. PAOLETTA

Q. Okay. Let's walk through the tape a little bit more and get back to some of these other issues. Can you stop it there for a second. John, do you remember—you're off the screen—do you know who you're talking to at that point?

A. No. It might have been another conversation with Mr. Hoyer, but I'm not sure. I think there might have been three relatively discrete——

Q. Well, Mr. Hoyer is going to come back in at 50:40, so you'll see him come up again.

A. There were other Members down there, and I forget who they were.

Q. Okay. Roll it.

BY MR. SPULAK

Q. Can you stop it? John you had just approached the Chair for a moment and then you sort of backed away. What were you trying to do?

A. I was going to say don't read it off the wall, don't do it again. And that was the decent interval that I had to get the job done and failed.

BY MR. PAOLETTA

Q. Right there. Keep running. Okay. Stop right there. Do you remember what Mr. Hoyer is saying to you then?

A. Not exactly. I do recall that slightly before that when Tom Wickham and I were down a step or two, we were discussing how the second 214–214 announcement could not be sustained, that it just, it could not be accorded legitimacy and we had to let the Tally Clerks keep processing. Then I was going over to speak with De'Andre about where they were, you know, how many cards they had. And then Mr. Hoyer approached me. And I don't recall what that conversation was about.

Q. Somebody that we interviewed said that they heard Mr. Hoyer say something to the effect, don't ever do this to me again, John, I won't stand for it. Do you recall him saying that?

A. No. But I was very focused on something else at the time. I think whatever he said to me my response was to say, "this is what these guys are doing here." You know, I took the opportunity to show him close up.

Q. And what was your sense of what Mr. Hoyer wanted you to do?

A. I don't know. I think he knew at that point we were in uncharted territory. I don't think he was proposing solutions, or he may have been recriminating in the way that you've expressed.

Q. Do you think he was discouraging you to close the vote?

A. No. I think he knew at that point that we were at a stage where the only thing to do would be to allow the Tally Clerks to complete their work.

Q. So why would he need to talk to you again, I guess, if that's going on?

Mr. DAVIS of Alabama. I don't want to impose too much of the formal rules here, but by definition if we can limit the questions to what John knows as opposed to interpreting what Mr. Hoyer may know.

Mr. PAOLETTA. Okay.

Mr. DAVIS of Alabama. Simply because John, you wouldn't have any way of knowing obviously unless Mr. Hoyer stated to you what he was thinking.

Mr. SULLIVAN. Right.

Mr. DAVIS of Alabama. I apologize for interrupting.

Mr. PAOLETTA. That's all right.

BY MR. PAOLETTA

Q. At this point, when you were talking to De'Andre, what's your recollection with that? Is that when he's having trouble with what he's still entering?

A. He still has cards. I don't recall the exact conversation. I was trying to assess where they were. My conclusion was that the only course we could follow is to let the Tally Clerks keep doing what they were doing, figure out what the real result was and have the Chair make an announcement saying that I messed up with my premature announcement and here's the real deal.

BY MR. SPULAK

Q. Is that something, John, that, in a parliamentary sense, you felt comfortable with, even though it was uncharted? Did you feel as though the vote had not been closed and that it was open and should remain open to additional voting?

A. Well, what was uncharted about it to me was that it was an unequivocal statement of a result by the presiding officer, but it was one that just by the surrounding circumstances could not be accorded legitimacy. I believe, now I'm not sure about this, but I believe the minute he uttered that there was an uptick on the board, a change in the numbers on the board. Which it was a manifestation to me that, you know, there were still electrons flying around. And then I looked at the Tally Clerks and saw that they had still other cards to input. It wasn't just that the last card had hit the board. There were several more cards to be done.

Q. So if, in fact, the vote had closed at that moment, let's assume you or someone had said, no, we need to close it at this point, although the board might be reflecting 215–213 there were still votes that had to be entered that Members had cast and had passed up to the Tally Clerk to be entered, and so to have closed it at that point in time would have been to disenfranchise those cards, is that correct?

A. Yeah. That, and the board was not the result. The result was what the Chair announced. And those two differed at that point. And the precedents that I'm aware of in this area that basically say if there is a mistake by human intervention, then you can, by unanimous consent, correct the mistake, they're limited to cases in which the result would not change. I'm not sure what the rationale for that was, but the basic rule is that if Members are recorded incorrectly because of somebody else's human error, and it would not change the result on the pending question, then even after the fact, those Members may be recorded correctly.

The House can order that they be recorded as they—and those precedents largely arose with—well, they all arose with calls of the roll before the electronic voting system. The precedents of the electronic voting system are based on the idea that the machine is infallible and so there is no human intervention. And if a Member pushes the wrong button, that's the way the ball bounces. Here the human intervention that put us in uncharted territory was the presiding officer's premature announcement of the result. So it was a case not previously solved.

Q. We've heard testimony that at this point in time when 215–213 appeared also on the electronic tally board, the word "final" appeared. What significance do you attach to the fact that the word final appeared at that time?

A. I don't attach any legal or parliamentary significance to it at all. To me, it's a clock setting. The difference between final and

zero is where the Tally Clerk is in his sequencing out of the electronic voting system. I think final is the step before turning off the display, you know it's a stored vote.

Q. So the fact that it said final didn't add any parliamentary credence of the fact that the vote was closed at this point?

A. No. The thing that we key on in the finality of a vote is an unequivocal statement of the result by the Chair. So ostensibly, Mr. McNulty's completed 214–214 announcement was a result. But my judgment was that under the circumstances, it was impeached by the surrounding circumstances, immediately contradicted by an uptick on the scoreboard. And when I gathered myself, I saw red and green cards sitting in front of the Tally Clerk.

BY MR. PAOLETTA

Q. John, actually I think at 22:51:31 can you—actually, I think Gillibrand and Space have not given their cards in, so actually when he calls it, and she is actually just walking towards the well, so I don't know if it makes a difference to you, but you know the Members may be in the well, they may be close to the well, but I don't think they've given up their tally cards, okay, they actually do it right after. So there aren't, when there's the uptick there aren't cards in Mr. De'Andre's or Mr. Hanrahan's hands.

A. I think there were cards displayed in front of De'Andre.

Q. Those could have been the three from the three Floridians?

A. I think all of the things that were going on late here were within the number 428. I don't think there were any additional votes. Although a 429th vote could have come in. I don't think that whoever the last guys to hit the well were, I don't think that those were the only cards extant as they were being handed in. I think there were still others being processed by the clerk.

Q. Go to 51:31:17. She walks up right there. Do you see Gillibrand right there? So I don't think Mr. Anderson, if you're looking at him, I don't think he has any cards that he's processing. So the question is, okay, and we can sort of, I don't want to take all the Members' time, but if under your understanding, John, if Mr. McNulty called it for the unequivocal statement as you said, right, at 214–214, okay, but the vote, the electron was flying and it changes up, right, right after that or even simultaneous, okay, whatever it is, I don't think somebody is looking and we don't have it on the tape, but it goes up to 215–213, and he makes an unequivocal statement of the result, which turns out to be wrong, okay, but he's now just closed the vote, right, wouldn't the correction be that the 215–213 result is instead, you know, switched as the final?

A. No, it was never the subject of an announcement.

Q. What?

A. It was never the subject of an announcement. The only announcement from the Chair extant was fatally undermined by that 215–213 uptick. And that uptick can't replace the announcement.

Q. But it was still the result. Does it mean that you then sort of reopen it if he's made that definitive declarative statement in order to then accept more cards? He makes the statement the motion is not agreed to. And at that moment it ticks up, right? So he's incorrect in his announcement, but has he closed the vote?

A. You can't impute the new numbers on the board to that announcement and pretend that the Chair announced those numbers, you don't have a valid announcement at that point.

Mr. LATOURETTE. John, I think the question is at the moment that the Chair made the definitive statement 214–214, the true vote was 215–213?

Mr. PAOLETTA. Correct.

Mr. LATOURETTE. And I don't think that the question is suggesting that it was 215–213, because he never announced that. I think the question is at the moment he made the definitive statement which closed the vote, that wasn't the accurate vote?

Mr. SULLIVAN. Well, I don't have a perfect recollection, but I think the uptick occurred immediately after he finished the sentence.

Mr. LATOURETTE. Okay.

Mr. SULLIVAN. At any rate, the only thing that can constitute the result is an announcement of the Chair. The only announcement of the Chair that we had couldn't be accorded legitimacy. And I believe that De'Andre had cards on the plexiglass.

BY MR. SPULAK

Q. Let me ask this. Let me, as another way of asking the same question. At the time that this occurred, the Chair made the 214–214 statement, but immediately thereafter it switched to 215–213, was there any option of replacing the 214–214, let's assume the vote is closed because of the statement, was there an option of replacing the 214–214 with 215–213 as the final number just if things were to have stopped right then?

A. Probably an announcement by the Chair. We couldn't just impute those.

Q. I'm just saying based on what happened. I think that there's a sense, and forgive me if I'm wrong, that although the Chair called it 214–214 and closed it, the closure, if you will, should have remained extant, but the outcome should have been replaced with 215–213. I believe you said that that could not be the result?

A. No.

Q. So at that point, I assume your decision was, and your suggestion was, well, we can't let this stand because there are still votes here. So we will just continue to vote because obviously things are different than 214–214, is that correct?

A. Yeah. To me, the first facet of illegitimacy is not that there are more cards. I didn't even notice that at the time. My first notion was that this announcement was immediately contradicted by parol, and it can't be accorded legitimacy. Nobody in the Chamber could stand for that.

Q. And so if it did stay at 214–214, Members would have been disenfranchised?

A. Yeah. Again, one of the reasons why I believe that the Tally Clerks were still processing cards is I think that when Mr. Hoyer came up there, I was pointing to something for him to see. You know there's still work to be done here, cardboard has to be changed to digits here. So we had both the immediate contradiction of the announcement and the appearance of other Members' votes

still to be changed. I think these were all changes at that point. I don't think any of these were newly cast votes.

Mr. LATOURETTE. Can you stop it for a second. Back it up, Hugh. And I'll give you the voting station outline that indicates it was 50 seconds from the time that De'Andre entered the last Diaz-Balart card to the time that he got the Space, Gillibrand and McNerney cards. Well, I think the first one is Space. And if you see at the moment that it's called and you have the uptick, roll it, Space and Gillibrand are now turning in their cards. And I assume McNerney is going to come up here pretty quickly and he's going to give him a card.

So I mean what do you think? So at the moment that it's called, before De'Andre doesn't have a Space card, he doesn't have a Gillibrand card and he doesn't have a McNerney card, and there's a full 50 seconds, there's nobody in the well trying to turn in a card. Maybe it's critical, maybe it's not, but there could not be a conversation at that moment in time that De'Andre still has those three cards which are going to take him to——

Mr. PAOLETTA. That's exactly right, John, because it's a little bit later when at 52——

Mr. DAVIS of Alabama. Let me make one suggestion. First of all, if we can, I'm not trying to impose too much in the way of rules here, but obviously we have a witness who is here to give us his impressions of what happened. We'll have the opportunity to have a discussion and a vigorous discussion between Members about how to interpret those events. But rather than having Members offer interpretations or having staff offer interpretations, if we could at least frame questions for Mr. Sullivan.

Mr. LATOURETTE. Not to be ruled out either, but I'm going to tell you, John, who I have a great deal of respect for, said he's watched it 1.2 times, he has a recollection. And I would suggest this tape by watching it could refresh that recollection of what occurred. And when matched up with when people voted there is no way based upon what just happened that De'Andre Anderson had the Gillibrand, Space or McNerney card when this was going on. I'm just asking whether he agrees with it.

Mr. SULLIVAN. That would appear to be true to me.

Mr. LATOURETTE. That's all I wanted.

Mr. DAVIS of Alabama. And John, you're certainly free to comment on the interpretation from a Member. But again, if I can just simply make the request that we pose questions to him rather than arguments to him.

Mr. LATOURETTE. Listen, I want to get along and everything else, but are you saying that I'm misinterpreting the tape; that what we just saw with Space——

Mr. DAVIS of Alabama. No, I'm not arguing with you at all, sir.

Mr. LATOURETTE. What I'm saying is do you think that Space and Gillibrand just weren't turning in the cards which were passed? I mean, is that my interpretation or does somebody disagree with me?

Mr. DAVIS of Alabama. I assume that's a question to you, John.

Mr. LATOURETTE. Well, he answered the question. I'm asking you because you're saying I'm putting a spin on what we just saw?

Mr. DAVIS of Alabama. I don't mean to be argumentative. I'm just asking that questions be posed.

Mr. CRAWFORD. Can we just go back to see. We can actually see the clicker. I think what you see on the vote log is when the votes are actually processed in the machine as opposed to when he is in possession of them.

Mr. LATOURETTE. That's correct, I agree with that.

Mr. CRAWFORD. So I think there's probably a 40-second lag from when he gets possession to when they're registered on the log.

Mr. LATOURETTE. Okay, sure.

BY MR. PAOLETTA

Q. 51:37:17 is when McNulty calls it, okay. Can you stop right there. John, you obviously are turning and writing. What's your recollection of what's going through your mind or what you're doing here?

A. I'm preparing what in that uncharted territory would be the tally slip. But you know, I thought it needed more than just an announcement at that point, it needed an admission of sorts.

Mr. DAVIS of Alabama. And John, just so the record is reasonably clear, if you could identify the time frame you're referring to right now so that the reporter at least has a record of that. What's the minute time frame?

Mr. SULLIVAN. We're looking at 22:52:39. That's when I turned my back to the Chamber and began to write something on the podium before Mr. McNulty.

Mr. DAVIS of Alabama. Mark, can I make one other suggestion again? I know it's difficult because we're watching the tape in real-time, and we're trying to have a reporter take things down. It might be if we could attempt as we ask questions, if we're asking about a particular sequence, we could reference the time frame so that the record is clear.

Mr. PAOLETTA. Okay. Thank you.

BY MR. SPULAK

Q. John, I want to go back for one second on the fact that you saw cards in front of Mr. Anderson. It's possible those cards were the three Floridian cards, isn't that right as well, the fact that you saw cards? You didn't know who they were?

A. I wasn't really focused on who was in the well and where these cards were coming from. In watching the tape with you this morning, one of the things I'm impressed with is how long I spent talking with Tom Wickham at the bottom step of the rostrum there. My spin on it would be that I was knocked back on my heels by these events a little more than I remembered and that I took a longer time to make the judgment that it couldn't be accorded legitimacy, first, and then what are we going to do, second.

Q. Would you have made a different decision today?

A. Well, if I could redo this I would have redoubled by efforts to get to Mr. McNulty before he announced again from the wall. I think that was my biggest failure.

Q. I'm saying in terms of allowing the vote to remain open.

A. I think I would do the same. I think when faced with an illegitimately announced result we had to then let things settle and

get a product of a closed system. The uncharted territory here was the announcement of a result before the Tally Clerks had done their shutdown from the periphery. I mean, the voting stations may well have still been open. A 429th vote could have come in from the back rail. There are 47 input devices in the Chamber, 46 boxes that Members use their smart cards at and the Tally Clerk's terminal. And the Tally Clerks shut those down.

You know, they go from 47 to one to zero in a methodical way to produce that tally slip. And at the very end the seated Tally Clerk says okay we're down to zero input devices. I don't know what words they use exactly, but something that says, "I've shut down even mine. I'm not inputting anymore and the boxes are all shut down. So if you wait for a second or two the scoreboard will give you a static number." And then the standing Tally Clerk says "okay," goes up to the board, waits a beat and writes down the numbers. So the uncharted territory that we're in was having an announcement extant that didn't rely on that or, you know, follow our best practices.

Q. Would you have expected to hear a parliamentary inquiry from a Member asking, "Where are we right now, what's the status?" because I don't believe that ever happens?

A. There may well have been some Member trying to do that. The Chamber was about as raucous as it gets. This week of proceedings in the House were, I don't mean to be judgmental, but it was the ugliest week I can remember in the House. There was no reticence on the part of at least half the membership as these events were going on.

Q. Do you think there was some benefit to the confusion that was going on?

A. I'm hard-pressed to find a benefit.

Q. If you wanted to claim that you thought that one thought that the vote was final and that it should have been final at 215–213 would there have been some benefit in not having propounded a question where are we right now?

A. I don't know. I don't engage in those kinds of calculations. I'm not trying to pose as Pollyanna, but that kind of thinking is a little bit foreign to me.

Mr. DAVIS of Alabama. Let me again, just for administrative purposes, why don't we try to get Mr. Sullivan through the relevant point of the tape that we want to cover. Let's lay the foundation by doing that and then we'll turn to the Member questions to get into more content.

Mr. PAOLETTA. Stop it there for a second. Do you remember that conversation with Mr. Hoyer?

Mr. SULLIVAN. Yes.

Mr. DAVIS of Alabama. This is at 22:56.

BY MR. PAOLETTA

Q. Thank you. 22:56:07?

A. I had just completed writing the statement that was going to be the modified tally slip and left that with the presiding officer, and Tom and Ethan, and told them I was going to go talk to people about options for throwing oil on the water. My conversation with Mr. Hoyer was my advice to him that if he wanted to try to do

something here, it would be a unanimous consent to vacate the conduct of that vote. And I believe that I was trying to contrast the utility of that move with the motion to reconsider. That it was superior, both in terms of its tendency to smooth things down and in terms of its legislative economy.

Q. Do you remember Mr. Hoyer's response?

A. He was in listen mode at that point, I believe. I don't think he responded.

Mr. SPULAK. If I can stop here at 23:57:08. You're now speaking with——

Mr. PAOLETTA. Jay Pierson.

BY MR. SPULAK

Q. You're speaking with the minority floor staff?

A. Uh-huh.

Q. And there are others present from the minority staff side I believe is that correct?

A. Yeah. I think we were joined at some point by Mr. Hobson. Right now on the screen I see myself, Jay Pierson and Lynn Westmoreland. And standing off to the side is Jo-Marie St. Martin, who is Mr. Boehner's counsel. I can't recognize the person to her right.

Q. And what's the nature of this conversation?

A. Objection had been heard. I don't know if it was—I guess it was obvious on the tape. But Mr. Hoyer asked to vacate, objection was heard, and I was just consulting with Jay about whether they had a better solution in mind. That in terms of finishing the business and letting Members go, and in terms of trying to achieve justice on the motion to recommit, I could see no more immediate or suitable solution than a do-over, as it were. And so I was just making sure that such an option wasn't going to be foreclosed just by a visceral objection, then maybe, maybe people could see the benefit. So I was talking with Jay on those bases, I believe. Again, I'm surprised not to see Mr. Hobson because in my memory, that conversation at some point or other included Mr. Hobson.

Q. Was it just you speaking with them, and only you asking if they had any other ideas? Did they offer any?

A. Not any particular procedural gambits. Jay may have apprised me of the level of outrage, how unthinkable it might be that they could achieve unanimous consent to vacate the proceedings.

BY MR. PAOLETTA

Q. Can you stop for a second. John, is it your recollection that what Mr. McNulty just said was what you had written for him?

A. More or less.

Mr. DAVIS of Alabama. At 22:50.

Mr. SULLIVAN. I think I may have written more than that. And it may not have been the exact words, but it certainly was the gravamen, something in the nature of an admission that the Chair had not properly announced the result before. And then—I wrote blanks in for the final count. And I'm not sure whether I filled in the final numbers before I left it with Tom and Ethan or whether they filled it in. I think I did. I think I wrote the 212–216 in there before I went to try to cajole people into being friends. I think when

Mr. Boehner was making his parliamentary inquiry there it must have been when I was talking with Mr. Hobson off to the——

Mr. PAOLETTA. Okay. Mr. Davis, do you want to get through this? I have a couple of questions about—it's a little bit off.

Mr. DAVIS of Alabama. Okay. Why don't we treat this then as a natural starting point. I'll jump in and ask questions working us back after this point.

Mr. PAOLETTA. Okay.

Mr. DAVIS of Alabama. John, let me try to lay a little bit of foundation for the night if we can before we get back into the tape. This was a vote on a motion to recommit or regarding the ag approps bill, is that right?

Mr. SULLIVAN. Yes.

Mr. DAVIS of Alabama. And Mr. McNulty was in the chair as the presiding officer. Do you remember or have any estimate of how many times Mr. McNulty presided over the floor during the course of 2007 prior to that night?

Mr. SULLIVAN. No.

Mr. DAVIS of Alabama. Had it been—my understanding is that the Speaker's office has a group of Members who regularly agree to preside, some are frequent presiders, is that also your understanding how the process works.

Mr. SULLIVAN. Yes.

Mr. DAVIS of Alabama. Would you characterize Mr. McNulty as someone who frequently presided over the Chair, and if so, what is it that makes one a frequent choice?

Mr. SULLIVAN. He was certainly intended to become a frequent presider. I don't know if he had yet gotten in that group. He had been a frequent presider prior to 1995.

Mr. DAVIS of Alabama. Focusing on 2007, is there any number you would offer us as to a guess as to how many times Mr. McNulty presided during actual regular business on the Floor.

Mr. SULLIVAN. No, I don't know.

Mr. DAVIS of Alabama. Do you have any sense of it? Was it 15 times, could it have been as few as five or six, do you have any sense at all?

Mr. SULLIVAN. I would guess closer to five than 15.

Mr. DAVIS of Alabama. And you mentioned that Mr. McNulty had been a frequent presider during the last time the Democrats controlled the House. There was a 13-year gap, correct?

Mr. SULLIVAN. Yes, sir.

Mr. DAVIS of Alabama. Do you have any understanding of any formal training procedure that occurs for Members who are presiding officers during this particular session.

Mr. SULLIVAN. Not formal. If a Member wants to sit down with me and find out what resources will be available from our office to them while they're in the chair, I do that. I've done it with maybe 50 Members.

Mr. DAVIS of Alabama. Do you have any recollection of Mr. McNulty prior to this night, it was August 2nd, prior to the night of August 2, 2007, do you have any recollection of sitting down with Mr. McNulty to discuss the duties or the rules relating to presiding over the Chamber.

Mr. SULLIVAN. No, I have no recollection of doing that.

Mr. DAVIS of Alabama. And there's nothing unusual about that I take it?

Mr. SULLIVAN. No.

Mr. DAVIS of Alabama. Do you have any recollection prior to the night of August 2nd of ever discussing with Mr. McNulty any kind of a scenario around closing out a vote or what would be the propriety around closing out a vote?

Mr. SULLIVAN. No.

Mr. DAVIS of Alabama. Do you have any memory prior to the night of August 2nd of anything unusual occurring when Mr. McNulty was in the Chair?

Mr. SULLIVAN. No.

Mr. DAVIS of Alabama. And in terms of how the process normally works, do you have any recollection of—let me back up. What happened that night was unusual you said several times. The most unusual aspect of it was the calling of a vote without a tally sheet. Does that still strike you as the most unusual aspect of that night?

Mr. SULLIVAN. Yes.

Mr. DAVIS of Alabama. Had there been any occasion during 2007 when a Member had attempted to call a vote without a tally sheet.

Mr. SULLIVAN. I don't recall, but I think that I had never, before very recently, I'm not sure if it was 2007, but it was in the 2000s that we began to say "ignore scoreboard," because of the tendency of Members to look at the scoreboard.

Mr. DAVIS of Alabama. How long have you been in your position?

Mr. SULLIVAN. I've been the Parliamentarian for 4 years. I've been in the office for 21.

Mr. DAVIS of Alabama. During those 4 years in which you've been Parliamentarian, do you have any recollection of any controversy around the existence of a tally sheet prior to August 2nd?

Mr. SULLIVAN. No.

Mr. DAVIS of Alabama. And is there a written rule that you know of in the House rules and manual describing the significance of the tally sheet and the vote process?

Mr. SULLIVAN. No.

Mr. DAVIS of Alabama. Is there any written rule that you know of in the House rules and manual stating in effect the circumstances in which a vote should be called?

Mr. SULLIVAN. Not in, you know, operational detail. There's a precedent that mentions the tally slip. That was a case in the 19th century, and there was a motion to adjourn and the vote was by the yeas and nays. And the Chair had the tally slip in hand to call the vote on the motion to adjourn, but paused to transact a leave of absence request. And people took umbrage at that; "you can't do that, you already had a tally slip in your hand, for God's sake." That's the earliest mention of a tally slip I could find.

Mr. DAVIS of Alabama. And I kind of asked you not to speculate a lot on what Members know and don't know, but it is pretty fair to say that that incident is not well known by Members.

Mr. SULLIVAN. Certainly.

Mr. LATOURETTE. The older ones may remember.

Mr. DELAHUNT. I may pose a question to my colleague, Mr. LaTourette, if he does remember.

Mr. DAVIS of Alabama. Let me ask you, John, with respect to the night of August 2nd, the vote closed. Obviously the vote went to zero at some point. The number on the board was showing zero. Do you have any recollection of how long this vote stayed open between zero and the first attempt to call the vote by Mr. McNulty at real-time?

Mr. SULLIVAN. No, I don't. I would guess that the total duration of the vote was in the neighborhood of 20 or 25 minutes, but——

Mr. DAVIS of Alabama. But you're not. Again, I'm focusing on the first time he attempted to call the vote at 214. Do you have any specific recollection? Does watching the tape in any way shape your recollection how much actual time passed between zero zero and the first attempt to call the vote at 214.

Mr. SULLIVAN. No. Even as we watched it this morning, I wasn't focusing on that.

Q. Again, we're not here to testify. But looking at some time line, and we have been looking at the tape this morning, it appears that at 22:49:01, Mr. McNulty bangs the gavel and asks the typical question, are there any Members who wish to vote, "are there any Members who wish to change their vote?" And at 22:50:06 there is a gaveling and an attempt of announcement at 214 that's about a minute or so. Does that shape your recollection or change your recollection at all?

Mr. SULLIVAN. No. That rings true to me.

Mr. DAVIS of Alabama. When Mr. McNulty, and again let me make sure my phrasing is matching your description of these events, as I've heard you describe today, and as I've read your statement there were two premature efforts by Mr. McNulty to call the vote, is that correct?

Mr. SULLIVAN. That's right.

Mr. DAVIS of Alabama. The first premature effort appears to occur around 22:50:06, 22:50:07. Does that seem about right from what you see on the tape?

Mr. SULLIVAN. Yes.

Mr. DAVIS of Alabama. What was premature about Mr. McNulty's effort at that point?

Mr. SULLIVAN. The process by which the Tally Clerks go from 47 input-devices to one to zero and produce a tally slip. In this case, the process to signify that the system had been closed to input and that the numbers were produced by that closed system had not yet been transacted. That made it premature to me.

Mr. DAVIS of Alabama. When did you get a sense that Mr. McNulty was about to call the vote?

Mr. SULLIVAN. The first—when he made the first abortive attempt to announce 214–214. And that was when I wanted to and when I should have made sure it didn't recur.

Mr. DAVIS of Alabama. So it sounds as if you're saying that literally when Mr. McNulty verbally stated on this vote the yeas are 214 the nays are 214 that that statement on his part was what triggered you to think he was going to call the vote.

Mr. SULLIVAN. Yes. That took me by surprise. And I believe I was detained at the hopper a little bit before I could do anything. And then again, I think at some point, I had enough time to do what needed to be done.

Mr. DAVIS of Alabama. Let me slow down and stop you on that point and make sure I understand. Again, focusing on the first premature calling of the vote around 22:50:07, prior to Mr. McNulty making his statement from the rostrum did you have any sense that Mr. McNulty was about to call the vote?

Mr. SULLIVAN. No.

Mr. DAVIS of Alabama. Had Mr. McNulty sought any advice from you or any consultation from you as to when the vote should be called prior to 22:50:07?

Mr. SULLIVAN. I don't believe so. I don't know if I had been all the way up to the top of the rostrum at that point.

Mr. DAVIS of Alabama. Did any Member, to your recollection, have a conversation with you about the appropriateness of calling the vote prior to 22:50:07 when McNulty made the first premature call?

Mr. SULLIVAN. It's possible. Because I was down near the hopper and I remember several times explaining to several people that a vote couldn't be closed when cards were being processed.

Mr. DAVIS of Alabama. This was late at night. This was—do you remember the exact actual hour of the day this event occurred?

Mr. SULLIVAN. I think the numbers that we're looking at are clock settings: 2200 hours. I think it was after 10 p.m.

Mr. DAVIS of Alabama. And my recollection, again, tell me if you agree with my recollection, my recollection was that there had been a number of votes that day, there had been a lot of vote sequences that day?

Mr. SULLIVAN. I believe so.

Mr. DAVIS of Alabama. And that Members regularly come back and forth to the floor, that's your recollection?

Mr. SULLIVAN. Uh-huh.

Mr. DAVIS of Alabama. Is it fairly commonplace at night when we move into the evening, 10:00, 11:00, 12:00, that Members standing on the floor were regularly ask you or ask others why can't the vote be called, is that a fairly typical conversation in a late night setting?

Mr. SULLIVAN. Yes.

Mr. DAVIS of Alabama. Would there have been anything unusual at that time of night about Members engaged in a conversation about why the vote couldn't be called?

Mr. SULLIVAN. No.

Mr. DAVIS of Alabama. When Mr. McNulty makes his first premature calling of the vote, when were you able to physically get to him to tell him that you thought there was an untoward action on his part?

Mr. SULLIVAN. I don't think I succeeded in having that conversation with him until I was up there writing that admission-plus-tally slip statement.

Mr. DAVIS of Alabama. Okay. Well, again, backing up to the first premature announcement. It's clear from the tape that McNulty literally stops and he says on this vote the ayes are 214 and the nays are 214 and then he stops at that point, is that correct?

Mr. SULLIVAN. Yes.

Mr. DAVIS of Alabama. Can we go back to the tape, if we can do it in a fairly quick fashion, back to the first premature calling around 22:50:08?

Mr. PAOLETTA. 22:49:54.

Mr. LATOURETTE. I thought it was 22:50:06.

Mr. PAOLETTA. 50?

Mr. LATOURETTE. Yes.

Mr. DAVIS of Alabama. I've got 50:06 too. But the tape controls, so we'll see in a moment who is right.

Let's stop it there and let's work up, stopping at 22:50:06. Let's start. Let's stop at that moment. I think it's about 22:50:11 apparently when he literally makes the statement. My recollection from the times I've been on the floor is that there's a sequence that happens when a Member calls a vote. Can you describe what that sequence is; verbally what a Member typically says when a vote is actually called?

Mr. SULLIVAN. Ordinarily they will sound the gavel to apprise the person who controls the PA system that they want to be amplified. And they'll say words to the effect of, "have all Members voted" or, "does any other Member desire to vote?" The next utterance, usually after an interval, is "does any Member wish to change a vote?" In ordinary operations, barring any other consideration, the Tally Clerks usually would take that as a cue to shut down the 46 voting stations when the Chair asks for changes and when the Reading Clerk begins to announce from the podium the changes.

Then if nothing else happens or nothing goes awry, the next utterance would be the Chair's announcement of the result from the tally slip.

Mr. DAVIS of Alabama. When does the normal nomenclature the Chair uses announce the final vote?

Mr. SULLIVAN. On this question. Sometimes they'll say, "On this motion," "on this amendment," the yeas are more numerous than the nays, the proposition is carried.

Mr. DAVIS of Alabama. Is it commonplace for the presiding officer to state the motion is defeated, the motion is carried, something to that effect?

Mr. SULLIVAN. Yes.

Mr. DAVIS of Alabama. Did that happen with respect to the first premature calling of the vote by Mr. McNulty?

Mr. SULLIVAN. No.

Mr. DAVIS of Alabama. For that matter, did it happen with respect to the second premature calling of the vote by Mr. McNulty?

Mr. SULLIVAN. I think he did. I think he did complete a statement of the result, not just numbers but also result.

Mr. DAVIS of Alabama. With respect to the first premature calling, he does not complete the description of the result?

Mr. SULLIVAN. No. And that frequently happens where a Member gets through the numbers but not the result, and then that slip is dispensed with in favor of an update from the Tally Clerk.

Mr. DAVIS of Alabama. After Mr. McNulty makes the first premature calling of the vote, votes actually still continue?

Mr. SULLIVAN. Yes.

Mr. DAVIS of Alabama. I think the notes indicate that Mr. Lampson, and perhaps Mr. Mitchell voted. Is that your recollection?

Mr. SULLIVAN. I don't recall who was transacting cards.

Mr. DAVIS of Alabama. The first premature calling of the vote by Mr. McNulty, in your opinion, did it have the effect in any way of thwarting Members from changing their votes?

Mr. SULLIVAN. Not to my knowledge.

Mr. DAVIS of Alabama. And it certainly appears not because other Members went to the well. Do you have any recollection of Members being in the well, attempting to fill out vote cards after Mr. McNulty's first premature calling of the vote?

Mr. SULLIVAN. Not specifically, no. I know that there were further well votes transacted, but I have no visual.

Mr. DAVIS of Alabama. So you don't remember the identity of the Members, but you do recall other Members attempting to transact vote changes after the first premature calling of the vote?

Mr. SULLIVAN. Yes.

Mr. DAVIS of Alabama. And do you remember anything happening after the first premature calling of the vote that would have deterred members from attempting to change their card. Was there anything about what Mr. McNulty said that would have prevented Members from continuing to change their votes if they wished to do so?

Mr. SULLIVAN. No, I don't believe so.

Mr. DAVIS of Alabama. Now, give me some indication just so I can understand. Mr. McNulty begins to make a statement. He says that the vote, the yeas are 214, the nays are 214, and he stops at that point. Tell me why there was no consequence if you will to Mr. McNulty's statement, tell me why that did not prevent Members from transacting in the well?

Mr. SULLIVAN. The vote is not complete until the Chair announces the result. And just stating what the numbers are doesn't complete that job. The Chair then says the disposition of the proposition.

Mr. DAVIS of Alabama. Okay. So the fact that Mr. McNulty does not state a disposition of the proposition, that's important, is it not?

Mr. SULLIVAN. Yes.

Mr. DAVIS of Alabama. And it's important because votes continue, Members continue unimpeded to be able to change their votes at that point?

Mr. SULLIVAN. Yes.

Mr. DAVIS of Alabama. Now, when did you have your first interaction with the leader Mr. Hoyer with respect to the premature calling of the vote? Do you remember when you had your first interaction with him regarding the propriety of calling the vote?

Mr. SULLIVAN. I think my first interaction may have preceded the premature abortive attempt at 214–214. There was interest in completing the vote as soon as possible. And I believe that I had a conversation with Mr. Hoyer down near the hopper. A conversation that I've had with a lot of Members frequently in 2007. About the fact that just because they don't see anybody in the well doesn't mean that the well votes are in the system. There are events that follow the submission of a ballot card in the well that may take a

little bit longer than an anxious Member might like. And that, for that reason, that's why the Chair was not closing the vote yet, because the Tally Clerks were still working.

Mr. DAVIS of Alabama. Was there anything about that first conversation of Mr. Hoyer that struck you as unusual?

Mr. SULLIVAN. No. It's a——

Mr. DAVIS of Alabama. Typical conversation?

Mr. SULLIVAN. Yeah, a perennial conversation.

Mr. DAVIS of Alabama. Did you hear—again, we're focusing right now on the first premature calling of the vote by Mr. McNulty, prior to the premature, the first premature calling, did you hear any conversation between Mr. Hoyer and Mr. McNulty?

Mr. SULLIVAN. I can't be sure. I know that Mr. Hoyer spoke in a loud voice a couple of times during this sequence. I would imagine that Ethan Lauer and Mr. McNulty were within earshot, but I don't know exactly when in the sequence that occurred?

Mr. DAVIS of Alabama. But speaking from your personal recollection, can you tell us what Mr. Hoyer said to Mr. McNulty if anything before the first premature calling of the vote, what did you actually hear?

Mr. SULLIVAN. I can't say in specific words, but he was anxious to have the vote closed.

Mr. DAVIS of Alabama. Anything unusual about a Member asking a presiding officer to call a vote after a zero has lapsed?

Mr. SULLIVAN. Well, for a majority leader to do it was not ordinary. There is always, you know, somebody who wants to catch an airplane or wants to go to dinner.

Mr. DAVIS of Alabama. When you say it was not ordinary for a majority leader to do, was there anything that was violative of the rules of the House for a majority leader to orally request that a vote be called?

Mr. SULLIVAN. No.

Mr. DAVIS of Alabama. Does it violate the custom or procedures of the House as you know it for a majority leader to request that a vote be called?

Mr. SULLIVAN. No.

Mr. DAVIS of Alabama. And when you heard Mr. Hoyer's request that the vote be called, was that troublesome to you or bothersome to you in any way?

Mr. SULLIVAN. No. Whenever leadership says we're ready to have this vote closed, we take that as a legitimate communication that they're ready for the Chair to close it down by the numbers.

Mr. DAVIS of Alabama. And certainly in the 4 years in which you were parliamentarian, do you recall any other instances in which either the Democratic or Republican leader has requested that a vote be called?

Mr. SULLIVAN. It is routine for the whip systems and the leaders' tables to communicate to the rostrum that this vote is ready for a closing. They don't purport to tell the Chair how to execute that sequence. They just tell him we're ready for you to begin the execution of that sequence.

Mr. DAVIS of Alabama. Now, after the first premature calling of the vote, did you have any occasion to have a conversation with Mr. McNulty about why his actions were premature?

Mr. SULLIVAN. After? Well, when I had that conversation with him during and after the composition of that sheet of paper, I believe I explained why we needed more than just a mere tally slip, we needed to admit error.

Mr. DAVIS of Alabama. Let me slow you down at that point. Did that exchange happen before or after the second premature calling of the vote, because you said there were two premature callings?

Mr. SULLIVAN. This was after. This was after the second completed 214 announcement?

Mr. DAVIS of Alabama. So let's work with each of them separately.

Mr. SULLIVAN. Okay.

Mr. DAVIS of Alabama. Between the first premature calling by Mr. McNulty and the second premature calling, do you remember any conversation with Mr. McNulty?

Mr. SULLIVAN. No. I did not apprise him that that should not recur.

Mr. DAVIS of Alabama. You did not apprise him?

Mr. SULLIVAN. No. That was the mission I was trying to complete, and I didn't get it done.

Mr. DAVIS of Alabama. In retrospect would that have been your opportunity; to have apprised Mr. McNulty that he had made a mistake and why he had made a mistake?

Mr. SULLIVAN. Yeah. Yes. I'm sorry for the—yeah. I think that what I should have been able to do is the minute I heard the first abortive attempt to engage in bad practice, I should have immediately gotten to Mr. McNulty and made sure that he understood that's not the way it goes.

Mr. DAVIS of Alabama. Do you know if Mr. McNulty understood what he had done wrong after the first premature calling?

Mr. SULLIVAN. No, I don't have any way of knowing.

Mr. DAVIS of Alabama. Did Mr. McNulty, in between the first premature calling and the second premature calling, seek your counsel on what he should do?

Mr. SULLIVAN. No.

Mr. DAVIS of Alabama. Did you hear Mr. McNulty seek the counsel of any Member of the parliamentary office or any staff Member on the dais as to what he should do between the first premature calling and the second premature calling?

Mr. SULLIVAN. No. Ethan Lauer was with him, but I don't know what went on between them.

Mr. DAVIS of Alabama. Has Mr. Lauer indicated to you that Mr. McNulty sought his counsel between the first premature calling and the second premature calling?

Mr. SULLIVAN. We haven't discussed it.

Mr. DAVIS of Alabama. And did you hear Mr. McNulty, and again, this is probably apparent to all of us in this room, that Mr. McNulty has to remain at the rostrum the whole time while he's the presiding officer, is that correct?

Mr. SULLIVAN. Uh-huh.

Mr. DAVIS of Alabama. So there would be no occasion for him to leave the rostrum?

Mr. SULLIVAN. Not unless replaced.

Mr. DAVIS of Alabama. Okay. Do you remember hearing any Member of the Congressional staff, Speaker staff, leader staff, whip staff, have any conversation with Mr. McNulty between the first premature calling of the vote and the second premature calling of the vote?

Mr. SULLIVAN. No.

Mr. DAVIS of Alabama. Do you remember any Member having any conversation with Mr. McNulty between the first premature calling of the vote and the second premature calling of the vote?

Mr. SULLIVAN. Only from afar, I mean, people shouting at him.

Mr. DAVIS of Alabama. Sure. But you don't remember a more directed, more personalized conversation?

Mr. SULLIVAN. No.

Mr. DAVIS of Alabama. Do you remember the typical "close the vote, close the vote" for people who were trying to get home?

Mr. SULLIVAN. Yes. I think Ellen Tauscher may have, I know I saw her this morning go up one time, but I think another time she ascended the rostrum and got all the way to him.

Mr. DAVIS of Alabama. Was that important to you when it happened?

Mr. SULLIVAN. No.

Mr. DAVIS of Alabama. It's not unusual?

Mr. SULLIVAN. I think she was just showing moral support or something to that effect.

Mr. DAVIS of Alabama. And it's not unusual for Members to come up and have some exchange with presiding officers?

Mr. SULLIVAN. No.

Mr. DAVIS of Alabama. Again, let's see if we can focus our time frame. Based on the notes we have based on the time line that our staff has prepared there is a gap, again we're around 22:50:06–07 when the first premature calling happens. The second premature calling is several pages, but only one minute later I believe. We can go on the tape to around 22:51:20. Now, if you will just watch this. Let's stop. 22:51:29 it appears that Mr. McNulty is making the second premature calling, is that correct?

Mr. SULLIVAN. Yes.

Mr. DAVIS of Alabama. You were just watching the tape, you heard in the interval between 22:50:08 and 22:51:28, the clerk calling out various Members changing their votes, is that correct?

Mr. SULLIVAN. [Nonverbal response.]

Mr. DAVIS of Alabama. Ms. Ros-Lehtinen, you heard her make a vote change?

Mr. SULLIVAN. [Nonverbal response.]

Mr. DAVIS of Alabama. You heard Diaz-Balart, one of the Diaz-Balarts make a vote change?

Mr. SULLIVAN. [Nonverbal response.]

Mr. DAVIS of Alabama. You have to answer audibly so she can——

Mr. SULLIVAN. Oh, yes. I've been answering in the affirmative to each of the questions.

Mr. DAVIS of Alabama. All right. You were looking at the tape. Tell me if you agree with my observation that Mr. McNulty is standing solitary at the rostrum appearing to be engaged in con-

versation with no one between the first vote, first premature vote calling and the second premature vote calling?

Mr. SULLIVAN. Yes.

Mr. DAVIS of Alabama. During that time frame, no Member, staff, no Member approaches him, do you agree with that?

Mr. SULLIVAN. Yes.

Mr. DAVIS of Alabama. The second premature calling of the vote, tell me again what is premature this time about Mr. McNulty's actions?

Mr. SULLIVAN. We still have not completed the ordinary sequence of surety from the Tally Clerk. We have not—after the Reading Clerk reads those changes, and she's doing that virtually simultaneously with De'Andre's entry into the system, and then De'Andre affirms that he's done, tells the standing Tally Clerk, "I'm closing the system now," and the standing Tally Clerk then takes the snapshot that has become static rather than dynamic and puts it on a tally slip. And the second announcement was just as premature as the first for not letting that entire process unfold.

Mr. DAVIS of Alabama. There was no tally sheet with respect to the finality of the vote?

Mr. SULLIVAN. That's right.

Mr. DAVIS of Alabama. Do you remember telling Mr. McNulty that night that he needed to have a tally sheet before he called the vote?

Mr. SULLIVAN. No, I don't.

Mr. DAVIS of Alabama. And again, I'm referring to the whole night, not just simply the gap between the first premature calling and the second premature calling. Do you recall at any point that night you verbally stating to Mr. McNulty there had to be a tally sheet before the vote was called?

Mr. SULLIVAN. I might have after the fact. I don't know if we spoke after the fact that day or the next day.

Mr. DAVIS of Alabama. But——

Mr. SULLIVAN. But not, not when it could do some good.

Mr. DAVIS of Alabama. Do you remember saying to Mr. Hoyer, the leader, that there had to be a tally sheet before the vote was called?

Mr. SULLIVAN. No.

Mr. DAVIS of Alabama. Do you remember saying to any Member of the leader staff or any Member of the congressional staff that there had to be a tally sheet before the vote was called?

Mr. SULLIVAN. No.

Mr. DAVIS of Alabama. Do you remember Mr. Hoyer asking you if there needed to be a tally sheet before the vote was called?

Mr. SULLIVAN. No.

Mr. DAVIS of Alabama. Do you remember any discussion with anyone that night about the significance of a tally sheet before the vote was called?

Mr. SULLIVAN. No.

Mr. DAVIS of Alabama. After Mr. McNulty makes the second premature calling of the vote, did you have any occasion to explain to him that he had erred again?

Mr. SULLIVAN. When I was composing that statement for him and then describing the situation and what I was about to do in the well with Mr. Hoyer and so forth.

Mr. DAVIS of Alabama. Now let's focus on that for a moment, because you said that you didn't tell him that there had to be a tally sheet. What did you tell him he had done wrong after the second premature calling?

Mr. SULLIVAN. I probably phrased it in terms of just reading numbers off the scoreboard, like you can't announce a result off the scoreboard. But I don't remember saying anything about the tally slip in particular.

Mr. DAVIS of Alabama. So I understand this happened a while back, but your best recollection is that what you told Mr. McNulty he had done wrong was that he was reading the result off the board instead of receiving confirmation?

Mr. SULLIVAN. I believe so. I might have gotten into the detail of a tally slip with him. But usually we wouldn't get that deep in the weeds. We try and keep it simple.

Mr. DAVIS of Alabama. Did Mr. McNulty appear to understand what you were saying to him when you were telling him that he should read the result off the board, did he appear to be following you?

Mr. SULLIVAN. I believe so. I think that the object lesson of the uptick to 215–213 was not lost on anyone.

Mr. DAVIS of Alabama. Now, let's focus on that for a moment. What you describe the uptick of 215–213 happens after the second premature calling of the vote?

Mr. SULLIVAN. Yes.

Mr. DAVIS of Alabama. You stated that the result that was on the board, 215–213 final, had no parliamentary consequence, is that correct?

Mr. SULLIVAN. Yes.

Mr. DAVIS of Alabama. Did any Member that night ask you if a board saying final had any parliamentary consequence?

Mr. SULLIVAN. I think probably. I was asked dozens of questions.

Mr. DAVIS of Alabama. Would it be your best recollection that you would have explained to any Member who asked you that it meant nothing from a parliamentary standpoint that the word "final" was on the board?

Mr. SULLIVAN. Yes. I thought you meant about the 215–213. About final, I believe I did answer several questions about that. And I told them that that's basically a clock setting that the software engineers use to mark a certain step in the exit sequence by the Tally Clerk.

Mr. DAVIS of Alabama. So if any Member or staff or anyone that night had asked you about the consequence of the board stating final you would have explained to them that there was no parliamentary consequence whatsoever?

Mr. SULLIVAN. Right.

Mr. DAVIS of Alabama. Now——

Mr. DELAHUNT. Mr. Davis, can you yield?

Mr. DAVIS of Alabama. Yes.

Mr. DELAHUNT. Can you identify if you have a recollection, can you identify those Members who inquired of you relative to the word "final" appearing on the board, hence, and its significance?

Mr. SULLIVAN. No. The only Member whose conversation I know I spoke with, but I don't know if it included the final thing, was Louie Gohmert. He had a number of questions after the events. But I don't know if his set of questions included the final thing.

Mr. DAVIS of Alabama. What about Mr. Boehner, the minority leader? Do you remember any conversation with Mr. Boehner that night about the significance of the word "final" being on the board?

Mr. SULLIVAN. I don't believe so. I don't remember talking with Mr. Boehner himself. I think I may have talked with his counsel.

Mr. DAVIS of Alabama. What about any of Mr. Boehner's staff, do you recall a conversation with them about the significance of the word "final" being on the board?

Mr. SULLIVAN. I don't recall particularly. But I believe I had one or more conversations with Jo-Marie St. Martin, who is his floor counsel and could have. I think I would have consistently said the word "final" is not a legal or parliamentary condition.

Mr. DAVIS of Alabama. So again, I understand you don't have a pinpoint recollection of who you talked to or what they may have asked you about this, but you're very confident that if any Member or staffer asked you about the significance of final, that you would have been consistent on your answer there was no parliamentary significance?

Mr. SULLIVAN. Yes. There was a great deal of misinformation in the Chamber at this point. I remember a parliamentary inquiry. I don't know if it was transcribed. But a Member alleging in the parliamentary inquiry that the Chair did have a slip in his hand and it said 215–213 on it.

Mr. DAVIS of Alabama. That would have been wrong?

Mr. SULLIVAN. And that was utterly apocryphal.

Mr. DAVIS of Alabama. Now, after the second premature calling of the vote the notes reflect that other Members, Ms. Gillibrand and Mr. Space, went to the well to change their vote. Do you recall that?

Mr. SULLIVAN. No. I know there was activity in the well, but I don't recall, except from my viewing of the tape this morning, that it was they.

Mr. DAVIS of Alabama. From your viewing of the tape this morning and that Mr. LaTourette asked you about earlier, do you agree that it appears after the second premature calling there was still voting changing activity that went on?

Mr. SULLIVAN. Yes.

Mr. DAVIS of Alabama. Did Mr. McNulty's second premature calling in any way thwart Members from continuing to change their votes?

Mr. SULLIVAN. Not unless somebody thought that's all she wrote and walked out of the Chamber.

Mr. DAVIS of Alabama. But barring that misunderstanding, the fact that he made the premature calling, did that itself thwart any Members from continuing to change their votes?

Mr. SULLIVAN. Not to my knowledge.

Mr. DAVIS of Alabama. Now, our notes indicate and the time line indicates that after the second premature calling of the vote, there is a gap of several pages, but in real-time, approximately about 6 or 7 minutes. I think our notes indicate that at 2:58 that Mr. McNulty bangs his gavel and he reads the explanation, if you will, that I think you helped him craft. Let's see if we can go to 2:58—I'm sorry, 22:58. By the way, as we're making our way to that point, as you discussed with Mr. McNulty what he needs to do to fix it, what did you tell him were his options?

Mr. SULLIVAN. Part of the time I spent explaining what I was writing down for him, explaining that we had an unsustainable ostensible announcement of a result and we needed to apprise the House that it could not be accorded legitimacy and that the system, when allowed to settle, produced different numbers, albeit no change in the result, and that would be the result, but it had to be preceded by at least some acknowledgement of error. I then had a——

Mr. DAVIS of Alabama. Let me stop you. Let's go back to again the point where he reads correction.

Mr. SULLIVAN. That conversation also included my—I told him I now intend to go down to the well and see what could be worked out in the way of throwing oil on the water.

Mr. DAVIS of Alabama. So your role at this point, if I can characterize it, your role is to create some water, your role is to correct Mr. McNulty's erroneous actions that night, and your role was to see if the two sides could come to some agreement as to how to lift ourselves out of this morass, does that sound about right?

Mr. SULLIVAN. Yes.

Mr. DAVIS of Alabama. All right. Let's see if we can hear Mr. McNulty's reading at 22:58. Let's stop at this point. Did Mr. McNulty do what you asked him to do?

Mr. SULLIVAN. Yes.

Mr. DAVIS of Alabama. And did Mr. McNulty, in any way, show any resistance to doing what you instructed him to do to remedy the situation?

Mr. SULLIVAN. No.

Mr. DAVIS of Alabama. Did Mr. Hoyer interfere in any way with your efforts to give instructions to Mr. McNulty?

Mr. SULLIVAN. No.

Mr. DAVIS of Alabama. Did Mr. Hoyer make any suggestions or instructions to Mr. McNulty that contradicted what you told Mr. McNulty to do?

Mr. SULLIVAN. No.

Mr. DAVIS of Alabama. Did you hear any Member of the Congressional staff make any suggestions to Mr. McNulty that countered what you told him to do?

Mr. SULLIVAN. No.

Mr. DAVIS of Alabama. And did Mr. McNulty's statement, in your opinion, clarify the vote that night for the final result of the vote?

Mr. SULLIVAN. Yes.

Mr. DAVIS of Alabama. What did you consider the final result of the vote to be at that point?

Mr. SULLIVAN. Ayes 212, nays 216.

Mr. DAVIS of Alabama. Do you have any reason to believe that that was an inaccurate reflection of the will of the House that night?

Mr. SULLIVAN. No.

Mr. DAVIS of Alabama. Do you have any reason to believe that that 212–216 final did not include the vote of any Member who wished to cast a vote?

Mr. SULLIVAN. No.

Mr. DAVIS of Alabama. Do you have any reason to believe that that 212–216 final was erroneous in any way?

Mr. SULLIVAN. No.

Mr. DAVIS of Alabama. Did Mr. Boehner, or for that matter, any Member of the minority ask you if you believed that the 212–216 final was an accurate reflection of the will of the House that night?

Mr. SULLIVAN. Nobody asked me that.

Mr. DAVIS of Alabama. And if they had asked, you would have told them that the 212–216 final directly reflected the will of the House that night?

Mr. SULLIVAN. I would have said it was the number produced by the system.

Mr. DAVIS of Alabama. Now, we've covered the heart that I wanted to cover with you. But just to make sure that we're clear about what happens next, we saw that Mr. Hoyer twice goes to the floor and at one point makes a motion to vacate, at one point a motion to reconsider. I assume that you had some colloquy with Mr. Hoyer as to the best way to fix this situation?

Mr. SULLIVAN. Yes.

Mr. DAVIS of Alabama. Was Mr. Hoyer interested in your opinion from what you could tell?

Mr. SULLIVAN. Yes.

Mr. DAVIS of Alabama. Did Mr. Hoyer resist your suggestion to him as to the best way to remedy the situation?

Mr. SULLIVAN. No.

Mr. DAVIS of Alabama. What was your advice to Mr. Hoyer, because he does two things; he does a motion to vacate, then a motion to reconsider? I assume that was based on your colloquy with him?

Mr. SULLIVAN. Yes.

Mr. DAVIS of Alabama. Why did he change from one to the other?

Mr. SULLIVAN. I don't know that he changed. But I didn't—I wanted to make sure that he saw the unanimous consent to vacate as being a superior solution to a motion to reconsider.

Mr. DAVIS of Alabama. Superior from a procedural standpoint?

Mr. SULLIVAN. And from a bedside manner standpoint, if you will. Unanimous consent showing some kind of consensus.

Mr. DAVIS of Alabama. Was Mr. Hoyer deferential to your suggestion as to the best way to proceed?

Mr. SULLIVAN. He listened to me and he used the first tool I suggested, I don't want to call it deferential.

Mr. DAVIS of Alabama. Going back, you've mentioned that you had several exchanges with Mr. Hoyer and then you've characterized those exchanges. Let me focus on one of them, the statement that you recall him making, something to the effect of we control

the House, not the Parliamentarians. Have I got it right what you recall him saying?

Mr. SULLIVAN. Words to that effect.

Mr. DAVIS of Alabama. Is there something incorrect about that statement, in your opinion?

Mr. SULLIVAN. No.

Mr. DAVIS of Alabama. Is it your opinion based on your time as the Parliamentarian that the Parliamentarian is subordinate to the elected leadership?

Mr. SULLIVAN. Yes.

Mr. DAVIS of Alabama. Is it your opinion that it would be appropriate for a presiding officer to follow the instruction of a leader to call a vote assuming that that reflected the will of the House?

Mr. SULLIVAN. I think it's appropriate for the presiding officer to begin the sequence of calling the vote. But I think it's his independent duty to do it by best practice and not by some tempo suggested ad hoc by a leader or other person.

Mr. DAVIS of Alabama. Was there any point that night when you recall Mr. Hoyer doing anything that you considered to be a violation of the House rules?

Mr. SULLIVAN. No.

Mr. DAVIS of Alabama. Was there any point that night when you recall Mr. Hoyer doing anything that you considered to be a violation of the customs and traditions of the House?

Mr. SULLIVAN. No.

Mr. DAVIS of Alabama. At this point I'm going to yield to Mr. LaTourette.

Mr. LATOURETTE. Thank you. George and I have had an opportunity to visit the restroom and we've been at this awhile. Would it be all right if we took a five-minute break for John and the court reporter?

Mr. DAVIS of Alabama. Yes.

[Recess.]

Mr. DAVIS of Alabama. John, if I can, there were two questions I neglected to ask you, and I want to do that before I yield to Mr. LaTourette. The first one I think I ended by asking you a line of questions about Mr. Hoyer. I want to ask you the same line about Mr. McNulty. During this exchange that we've been watching, the events surrounding the premature calling of the vote and the efforts to fix the premature calling of the vote, did Mr. McNulty, in your opinion, ever commit any violation of the rules of the House as they're written?

Mr. SULLIVAN. No.

Mr. DAVIS of Alabama. Did Mr. McNulty, to your knowledge, ignore or refuse to follow any instructions that you gave him as the parliamentarian?

Mr. SULLIVAN. No.

Mr. DAVIS of Alabama. And did Mr. McNulty violate the customs or procedures of the House in any way that you know?

Mr. SULLIVAN. Well, he departed from best practice on that announcement, but other than that, no.

Mr. DAVIS of Alabama. Do you have any reason to think that Mr. McNulty knowingly departed from best practices.

Mr. SULLIVAN. No, I don't.

Mr. DAVIS of Alabama. Thank you. Mr. LaTourette.

Mr. LATOURETTE. Thank you. John, first of all, I made the observation when we had a public hearing and Charlie Johnson. And when the Republicans became the majority party in 1995, there was a lot of grumbling that Charlie Johnson was being kept. When we huddle up they say, hey, do you know what, why are we keeping the Democrat's Parliamentarian? And I made the comment then that Charlie Johnson wasn't the Democrat's Parliamentarian, he was the Parliamentarian of the House. And I grew, over time and still today, have the highest respect for him. And I don't know whether the same happened in 2007 while you were being kept as the Republican Parliamentarian.

But I do want to lay upon the record that I have the highest regard for you. And in the time that I had the pleasure of being in the Chair, I got nothing but good advice and solid advice. And I have enjoyed our conversations about the institution. I think you're institutional. So if I ask you a tough question, it's not because I think you're—I think you're great. And let me also say having been in the Chair a number of times, I know it's not easy, and so I don't want to cast aspersions of Mr. McNulty either.

As a matter of fact, my staff—I'm very much looking forward to moving forward. Our staff indicated, and I don't think you were on the floor, Ms. McCartin was on the floor during the material appropriations bill in 2000 when there was a quorum call, in which I had a tally slip. And more than 100 Members showed up and I moved forward so that we could get to the series of amendments. I'm excited to see how the equivalency is going to be brought out if it's brought out as we move forward. And I apologize.

I had to say I'm sorry I screwed up. Not because I didn't have a tally slip, not because I didn't follow the rules. I felt that Members were goofing around and not coming back from dinner. And so again, it's tough, a lot of pressures. So it's not unusual for the occupant of the Chair to get some advice, either from the leadership or other Members. Congressman Young of Alaska is pretty well known for yelling regular order moving forward. But I think what's unusual, and I would ask you if you agree with me, what's unusual in this case, because one of our other witnesses has indicated, what's unusual in this case is that the occupant in the chair bought into it and actually did something, followed the urging from the audience if you will. Is that a pretty fair assessment?

Mr. SULLIVAN. I can't diagnose Mr. McNulty's state of mind or motive. I know that he had all kinds of people wanting him to move faster for sundry reasons. Not just the political anxiety over the result, but also "I want to go home."

Mr. LATOURETTE. Right. And I want to focus on your conversations with the majority leader. And I want to read to you some observations made by a witness that's already appeared. Kevin Hanrahan on that evening was the standing Tally Clerk. He was being questioned about whether or not you were engaged in any conversations and whether they were unpleasant. His answer was—I'm trying to dance not using the profanity that was laced in there, but some of that was there. And I think you know I've sat and I've—I've seen and heard a few things. I've been here longer

than some people, not as long as some others and seen some strange things, heard some strange things.

I think those words, those kind of things, if they're said to somebody on the street, you should probably be thankful you've got a full set of teeth. I just don't think you should talk to anybody that way, and I think he was wrong, referring to Mr. Hoyer. So do you remember the words that the majority leader spoke to you that evening aside from words to the effect?

Mr. SULLIVAN. Well, I know he said—again, I have to say words to the effect because I can't say it's a direct quote, but he did say words to the effect of, "the Parliamentarian doesn't run this place, we run this place." And he may have said that in several different ways.

Mr. LATOURETTE. But was he profane?

Mr. SULLIVAN. Not to my recollection.

Mr. LATOURETTE. You don't recall him swearing?

Mr. SULLIVAN. I've spent a lifetime being yelled at, and you know I don't register that kind of thing.

Mr. LATOURETTE. Do you think that this was——

Mr. DAVIS of Alabama. Did you ask him if he was an Irishman?

Mr. LATOURETTE. No, but I think he was a former marine. But you don't recall the majority leader being profane?

Mr. SULLIVAN. 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.

Mr. LATOURETTE. Okay. You indicated that in your written statement and again today that one of the things that caught your attention and why you thought maybe you better get to the rostrum was you noticed that the Speaker was preparing to vote, right?

Mr. SULLIVAN. That just clued me in to look at the scoreboard and notice at that point I think it was a very tight margin. I don't remember the numbers, but it was—because I was totally off in a different world talking to Bill Sali and Lynn Westmoreland and paid no attention to the political anxiety that was afoot.

Mr. LATOURETTE. And when you see the Speaker, no matter who the Speaker is, but when you see the Speaker, Speakers, typically by tradition, don't vote every vote, right?

Mr. SULLIVAN. That's been changing over the years. In the late 1980s if I saw the Speaker voting by a well card, I would think, oh, the MX missile is about to go down by one vote. Because it was exceedingly rare for Mr. O'Neill or Mr. Wright or Mr. Foley to vote on any question, unless needed to break a tie. But since then, since the '90s, it's been less arresting to see the Speaker recorded. And even to introduce bills through the hopper occasionally, which was unheard of before.

But nevertheless you do notice the Speaker late in a vote, handing in a card, and it makes me look at the scoreboard and ask what's going on.

Mr. LATOURETTE. Let me ask you, even though you've noticed that there has been a change in the House, typically the Speaker, whether it's Mr. Hastert or Ms. Pelosi or Newt Gingrich, the votes are typically on signature pieces of legislation, regular votes as they come in. The 6 for 06, for instance, which heralded at this new

majority, I would be surprised if the Speaker of the House didn't vote at all on those because she considers them to be accomplishments for herself and her party. But on a motion to recommit, I think that we can believe that it's the second, and that is that it's going to be close, is that fair?

Mr. SULLIVAN. Yeah, I think so.

Mr. LATOURETTE. So—I mean, I'll just throw in the record that we had over 1,000 votes in 2007. I believe the Speaker voted 100 times. So it's in the 10 percent figure. So that's what cued you in that something was afoot?

Mr. SULLIVAN. That made me look at the scoreboard. And the scoreboard, you know, that late in the vote having that close a margin is unusual.

Mr. LATOURETTE. And do you remember what the issue was in the motion to recommit?

Mr. SULLIVAN. I remember that the form of the motion was promptly, which means that it was inimical to passage. It would not occasion a forthwith report operating as though an amendment in real-time. It may have had some sort of immigration content to it, I don't recall. I believe it was in the form of a limitation on funds. And as a consequence, if it had not been a promptly motion, it would have been liable to a point of order.

Mr. LATOURETTE. If it was, in fact, having to do with immigration, are you just based upon your observation of the ebb and flow of the House what occurred in 2007, would you agree with the observation that the issue of illegal immigration and motions to recommit has been troublesome for the new majority, particularly the new Members?

Mr. SULLIVAN. I'm an amateur observer of these things, but, yeah, it seems like that's a hot button.

Mr. LATOURETTE. And in particular, on this particular vote there were always 200—well, on this vote there were always 230 Democrats voting and always 198 Republicans voting. But it becomes close when some people on the majority side leave the reservation and join the minority. Did you have the conversation that evening with Catlin O'Neill concerning this vote?

Mr. SULLIVAN. Probably. I mean, I——

Mr. LATOURETTE. Well, do you recall?

Mr. SULLIVAN. No.

Mr. LATOURETTE. How about Jerry Hartz?

Mr. SULLIVAN. No.

Mr. LATOURETTE. How about George Kundanis.

Mr. SULLIVAN. I don't recall having a conversation. After the fact, I remember securing assurances from Catlin and Jerry that the Chamber would not be needed, that the electronic voting system could be worked on overnight. Because we were in recess and there was a theoretical possibility that the House would reconvene. So I wanted to establish that between 1:00 a.m. and 7:00 a.m. the engineers could be working with the electronic voting system. But that, I believe, was an e-mail contact. And other than that, I don't remember any transactions with them.

Mr. LATOURETTE. I want to talk to you about the well cards that evening. There came a time when there were two well cards that weren't processed by De'Andre Anderson. One was Mr. Hoyer's

which was a duplicate, so I guess there would be no reason to process it. And the same with Mr. Boehner. And I'll make the assumption that Mr. Boehner submitted a well card to change his vote so he could be on the prevailing side to make a motion to do something procedural. Why was Mr. Boehner's well card not processed?

Mr. SULLIVAN. I don't know. My surmise would be that it was perceived as provisional. That he put it there in case he needed to qualify to move to reconsider. And when the majority leader, evinced his intention to enter that motion, Mr. Boehner didn't need to qualify, and so he might as well be recorded the way he felt about the motion and not the way he needed to be to qualify.

Mr. LATOURETTE. I get that answer, but who made that—I mean, he turned in a well card?

Mr. SULLIVAN. Well, that's my surmise. I don't know why it went unprocessed. There were two unprocessed cards. I guess Mr. Hoyer's was a dupe.

Mr. LATOURETTE. That's what we've been told.

Mr. SULLIVAN. I would surmise that Mr. Boehner's was understood to be provisional.

Mr. LATOURETTE. I guess I'm having trouble getting my head around that. So if I as a Member go down and say I want to go off IMA and I give the standing Tally Clerk a card, he passes it over to the seated Tally Clerk, who makes the decision not to process my vote?

Mr. SULLIVAN. I agree. You would think that no discretion would be exercised, no one would try to read Mr. Boehner's mind on it.

Mr. LATOURETTE. Well, and so again to the integrity of this vote, I mean is it appropriate that Mr. Boehner's card wasn't processed?

Mr. SULLIVAN. I guess not. Unless Mr. Boehner said something to the Tally Clerk when he handed in the card saying in case I need to qualify for a motion to reconsider. I don't know whether he did or not.

Mr. LATOURETTE. Well, I mean I guess we'll ask him. But saving that he had that conversation, and again, I don't even know how that would work. It's like being a little bit pregnant. When I've turned in my card, I've either voted or—I mean, let me ask you this from a rules standpoint and a procedure standpoint in the way the House runs. I mean, can I like wander down to the well and give the standing Tally Clerk a card and say, you know, don't count it unless we're losing or don't count—is that the way it works?

Mr. SULLIVAN. No. But I could see one of the leaders saying, I mean to change my vote if necessary to qualify for a motion to reconsider, but I'll give you a high sign or I'll give you a nod if I really mean it or something like that.

Mr. LATOURETTE. But failing Mr. Boehner doing that, is there any explanation that you can think of that's reasonable as to why his card wasn't processed?

Mr. SULLIVAN. No.

Mr. LATOURETTE. And would the non-processing of Mr. Boehner's card violate a rule, practice, custom?

Mr. SULLIVAN. It would be wrong. I can't point to a black letter that says so, but the duty of the Tally Clerk is to record a Member's vote as he casts it. May I make one aside?

Mr. LATOURETTE. You can say whatever you want.

Mr. SULLIVAN. Of everybody at the rostrum that evening, the two who did their jobs best were the two Tally Clerks, and in the face of people trying to make it hard for them.

Mr. LATOURETTE. I know.

Listen—and I don't know that any Member or any member of the staff would quibble with that, to tell you the truth. I think that they were put in a bad spot by events that were occurring. And your description that it was the most raucous—I mean, as a Member I kind of had fun that night, but I imagine if you're on the receiving end of it, you're Mr. McNulty or you're a member of the professional staff, it probably wasn't fun.

But, again, back to Mr. Boehner's card. If Mr. Hoyer's card was a duplicate, then that's where the Reading Clerk would say Mr. Hoyer already voted yes or no or whatever he voted. But the non-processing of a Member's card who has voted is wrong, right?

Mr. SULLIVAN. Technically, the duplicate should have been processed as well, in which case the Reading Clerk, rather than saying "off aye and no, Mr. Hoyer," would say "Mr. Hoyer voted no," meaning this is a duplicate, we already have that in the system.

Mr. LATOURETTE. And, in this instance, unless Mr. Boehner—and we'll talk to Mr. Boehner—was given some instruction he didn't want us to have, Mr. Boehner was disenfran—he didn't have the opportunity to have his vote recorded as he intended to have it recorded.

Mr. SULLIVAN. That's correct. If he wanted to be a "no", he didn't get what he wanted.

Mr. LATOURETTE. When you were kind enough to be with us during the walk-through that we did on the House floor, your observation—may I say something about producing the slip—we're talking about the tally slip. This is probably the most important quality assurance process step in the process. Because when I get that slip I know that the numbers that are written on that slip come from the voting system that was closed to further input at that time and that those numbers were written down. You haven't changed that view since that time?

Mr. SULLIVAN. No.

Mr. LATOURETTE. And when Charlie Johnson came and testified, he said 40 years he was in the Parliamentarian's Office and never recalled a vote being called without a tally slip.

And there were some questions about Mr. McNulty when Catlin O'Neill was interviewed by the staff of the committee. She said one of the reasons they put Mr. McNulty in the chair is he's one of the best on their side. Would you agree with that? He's one of the best?

Mr. SULLIVAN. Yes.

Mr. LATOURETTE. And so for him to call the vote without a tally slip it's more than unusual. I mean, he——

And as a matter of fact, at the time Charlie Johnson retired, he sent a letter to the Speaker saying it's been my pleasure to have been in the chair a lot when the Democrats were the previous majority. And I assume we can ask them—well, actually, we don't have to ask them. Catlin O'Neill indicated the reason that they put him in the chair is he's good. And there are some people that are good and some people maybe we don't put them in the chair or we don't put them in the chair during a contentious subject.

So Mr. McNulty was one of the better presiding officers of the old Democratic majority and also the new Democratic majority. Is that a fair observation from you?

Mr. SULLIVAN. Yes.

Mr. LATOURETTE. And do you still—I know when we were in charge you used to prepare—I don't know whether it was you or Charlie, but the Parliamentarians used to draw up a list of gentle suggestions that maybe this person would be good for when there's trouble on the floor, this person would be good for Special Orders and this person—maybe you don't put this person in the chair. Do you do that for the Democrats?

Mr. SULLIVAN. Yes.

Mr. LATOURETTE. And where on your list is Mr. McNulty?

Mr. SULLIVAN. If there were five tiers, he would be in the top of them.

Mr. LATOURETTE. And so, according to how I understood things ran when we were in the majority, if you got word when you arrived in the morning that the Republicans were going to cause trouble through a series of procedural motions, whatever the case may be, we were mad and it seems we're getting madder as we go along, if you knew that we were going to be mad, would you recommend that a guy—well, not a guy, but Mr. McNulty be in the chair?

Mr. SULLIVAN. Sure.

Mr. LATOURETTE. This taped business about "don't read the thing before the slip," do you remember when the Parliamentarian started that?

Mr. SULLIVAN. Very recently, it wasn't until very recently that we had anything like that for the presiding officer. Before, it was just oral prompting. We would just hand him the slip and say the words, "on this question . . ." and they knew what to do from that point.

More recently—before 2007 but very recently—we've had occasion to provide greater comfort to Members in the sequence by which they close the vote and the words by which they announce the result and then, hence, the creation of that sheet.

I remember I used to write it out for Mr. Hastert, because he didn't spend a lot of time in the chair, and I didn't expect him to know the rote recitation.

But the typed form probably is even more recent than—well, it was after Charlie's retirement, I know that. It was during my stint as the head of the office.

Mr. LATOURETTE. Let me ask you this. When you say it was "after Charlie's retirement", were the Republicans still the majority party?

Mr. SULLIVAN. Yes.

Mr. LATOURETTE. And it was placed on the rostrum? Taped on the rostrum? Given to the person?

Mr. SULLIVAN. It would be handed. And it was an opportunistic, episodic. I mean, if you were in the chair, I would not have used it. If someone who was less familiar or evincing discomfort, then I would use it.

Mr. LATOURETTE. Do you have any knowledge as to whether or not Mr. McNulty was in possession of the document that day?

Mr. SULLIVAN. I don't. But he wouldn't be the kind of guy that I would think it necessary for.

Mr. LATOURETTE. Because he knew about it?

Mr. SULLIVAN. Yeah.

Mr. LATOURETTE. He knew not to close a vote without a tally slip?

Mr. SULLIVAN. He knew the incantations of it well enough so he didn't need that prompting.

Mr. LATOURETTE. The statement that the majority leader made to you that "we run the place; the Parliamentarians don't" you indicated is correct. And in that regard the majority calls the tune. They schedule the floor. A Member of their party is the occupant of the chair who is invested with a great deal of discretion.

But you don't mean by saying that Mr. Hoyer was correct in that observation that they can just do whatever they want to do, do you?

Mr. SULLIVAN. No.

Mr. LATOURETTE. And so, relative to a vote, Rule 20 indicates that when the Speaker announces a vote the Speaker can determine whether it's electronic device or that the vote was taken in some other manner, but they still have to follow the rules as to how the vote is taken and the rule says that the clerk shall conduct the vote, right?

Mr. SULLIVAN. Right.

Mr. LATOURETTE. So would it be appropriate for the majority party, as the folks are running forward, just to come up with their own system of conducting a vote in the middle of a vote?

Mr. SULLIVAN. No.

Mr. LATOURETTE. So when you assented to Mr. Davis' observation that Mr. Hoyer was right that they run the place, they do because they schedule the floor, but they're still constrained by the rules.

Mr. SULLIVAN. They can tell the Chair to begin the process of closing. They can't tell him how to conduct the process of closing. He follows the school solution for that.

Mr. LATOURETTE. Okay. So they run the floor. And it's not uncommon—I mean, having been in the chair I remember Mr. DeLay taking his finger across his throat many times, and that was to mean not that he wanted to execute me, but it was that he wanted me to close the vote, begin the process. So that's when the occupant of the chair says, "Have all Members voted? Does any Member wish to change their vote?" And the changes come in, but then you wait for the slip?

Mr. SULLIVAN. Right.

Mr. LATOURETTE. And the failure of this evening was that Mr. McNulty didn't wait for the slip?

Mr. SULLIVAN. Yes.

Mr. LATOURETTE. On the second call that you've had the opportunity to witness today, again during our walk-through and also I think again today, that what threw us into uncharted territory is when Mr. McNulty issued not only the numbers but said the motion is not agreed to, right?

Mr. SULLIVAN. Right.

Mr. LATOURETTE. Based upon rule, practice, custom, tradition, in your mind that closed the vote at that moment in time in terms of not properly but that those are fatal words, right?

Mr. SULLIVAN. Yeah. That's the unequivocal statement of a result that ordinarily would mark the end of a vote.

Mr. LATOURETTE. So when you then—and I gave you a lot of credit. Because I've watched the tape, not 1.2 times, but I have probably watched it 20 or 30 times. And the way that you kept your cool—not only the folks from the Clerk's Office, but the way you kept your cool I think is more than commendable. But you've used the word "uncharted" territory. There was no book for you to determine what to do at this moment in time, right?

Mr. SULLIVAN. No.

Mr. LATOURETTE. So it was what we call in Ohio "seat of the pants" time, right?

Mr. SULLIVAN. Yes.

Mr. LATOURETTE. You had it figured out. So when you wrote the statement for Mr. McNulty I think that either today or at previous times you called it the provisional equivalent of a tally slip.

Mr. SULLIVAN. It was a tally slip and then some, yes.

Mr. LATOURETTE. But you've prepared it, though?

Mr. SULLIVAN. Yes.

Mr. LATOURETTE. The Clerk's Office didn't prepare it?

Mr. SULLIVAN. No.

Mr. LATOURETTE. In the normal course of closing a vote and the production of the tally slip, the tally slip is produced by the seated Tally Clerk, handed to the Parliamentarian, who then hands it to the occupant in the chair. That didn't happen with the final observation that Mr. McNulty made.

Mr. SULLIVAN. No.

Mr. LATOURETTE. When De'Andre was before the Committee, are you also aware that the machine froze at one point, the EVS?

Mr. SULLIVAN. At the end, yes.

Mr. LATOURETTE. And I think that, when you watch, I think De'Andre is desperately trying to get out and move to the next level, and I think he's indicating to you that the EVS is frozen, and your words, which are audible, are we got bigger problems than that at the moment. Do you recall that?

Mr. SULLIVAN. Yes.

Mr. LATOURETTE. At some moment in time you conversed with Mr. Sorenson about the malfunction of the EVS. And Mr. Sorenson, did you ask him what your options were or did he tell you what your options were?

Mr. SULLIVAN. He told me.

Mr. LATOURETTE. And basically one of the options was that the vote could be aborted?

Mr. SULLIVAN. There was only one option.

Mr. LATOURETTE. And that was it?

Mr. SULLIVAN. Yeah.

Mr. LATOURETTE. We've had some testimony from some of the Tally Clerks that there was another option. Are you aware?

Mr. SULLIVAN. Well, after the fact, it was revealed to me that there was another option. It was more painstaking. But Kevin Hanrahan or Mark Sullivan, one of them, both Tally Clerks told

me that there was some way they could have gone around the problem and fixed it. But the briefing I received on the spot was that there was but one option. You can go without the electronic voting system from this point forward this evening or you can free it for continued use.

Mr. LATOURETTE. And I think they called that work around, the second option, the work around.

Mr. SULLIVAN. Right.

Mr. LATOURETTE. But at that moment in time on August 2nd you weren't aware that there was a work around. You were advised by Mr. Sorenson that the only way to get out and continue to use the EVS was by aborting roll call 814.

Mr. SULLIVAN. Well, he didn't say aborting roll call 814. He said abort.

Mr. LATOURETTE. Abort.

Mr. SULLIVAN. I understood him to be telling me—first of all, he told me there was but one option. Other than using a call of the roll for the succeeding votes, the only option was to abort. And I asked him what that meant. And his response made me think in terms of active memory, storage memory, that we would have to lose active memory, albeit retaining storage memory. And so I equated it with just freeing the screens, aborting the displays in favor of the next set of displays. And I failed to ask him, well, why don't we have a second option? I just made him affirm, yes, that is the only option. And I said, well, in that case, then abort.

Mr. LATOURETTE. And when you made that decision—and let me ask you, is that your decision to make as the Parliamentarian or should that have been made by the occupant in the chair?

Mr. SULLIVAN. It may have been presumptuous on my part to do it, but it was only me that evening. I guess the next time I would probably go to the Chair and say we should brief him——

Mr. LATOURETTE. Right.

Mr. SULLIVAN [continuing]. And see if he had some guidance on it, on whether we should forget about the electronic voting system and do calls of the roll for the balance of the evening.

Mr. LATOURETTE. Because under Rule 20 the Speaker determines how the votes are conducted.

Mr. SULLIVAN. That's right.

Mr. LATOURETTE. The Speaker or the Speaker's representative in the chair could have made the decision that, as you indicated, okay, the machine is broken so we're going to call the roll, count heads, do well cards, whatever you want to do, figure it out.

Mr. SULLIVAN. Yes.

Mr. LATOURETTE. Based upon your conversation with Mr. Sorenson you were of the opinion that active memory would be lost but not—so you always believed that roll call 814 would be preserved someplace.

Mr. SULLIVAN. Yes.

Mr. LATOURETTE. And Mr. Sorenson assured you of that?

Mr. SULLIVAN. Yes.

Mr. LATOURETTE. Had you ever seen the system aborted in your time here?

Mr. SULLIVAN. When we quit in favor of a call of the roll or to restart, yes. I don't know if we used the word "abort" or terminate.

But I remember an attempted use of the electronic voting system being aborted.

Mr. LATOURETTE. And I think—I don't know whether you told me some other day—that you called the Government Printing Office or suggested that they leave the space open in the Congressional Record so things could be——

Mr. SULLIVAN. There was going to be a volume break in the Record, and it's just a question of where they would put the break. And I asked the Clerk to the Official Reporters, the people in the front row of the rostrum, to call the GPO and tell them that the volume break should occur before the fracas. Because I was concerned that the engineer's reconstruction of the roll call—and I was mostly concerned about the Journal the next morning—that it might take all night, and I didn't want the—well, they wouldn't have the data to give to GPO after 10:00 p.m. if it did take all night.

Mr. LATOURETTE. You were asked a series of questions about whether or not Members approached Mr. McNulty as he was in the chair. I think I agree with your assessment that Mrs. Tauscher was just coming up to offer moral support because he was having a tough night because people were yelling and screaming. The conversation—the audible conversation that you were having with the majority leader occurred just to the left of the Speaker, Mr. McNulty, right? It was on the upper step.

Mr. SULLIVAN. To the Chair's right, that's right.

Mr. LATOURETTE. And we're able to hear it on the tape above 435 people yelling. Was Mr. Hoyer's demeanor calm?

Mr. SULLIVAN. No.

Mr. LATOURETTE. Was his voice loud?

Mr. SULLIVAN. I suppose so, yeah.

Mr. LATOURETTE. John, I'm going to tell you what I think happened and then invite your observation.

During this roll call—and Mr. Davis is right. We had a whole series of amendment votes preceding this, 2-minute votes, as a matter of fact, a number of amendments to the Agricultural Appropriations bill before we got to this moment in time.

But on this vote there were always—it didn't matter whether it was 214–214, 215–213, 212–216. And then the majority leader made this point: There are always 428 people voting on this roll call. We never had the situation where somebody came running in the back and tried to make it 429. And of those 428, 230 of them were always Democrats, and 198 of them were always Republicans.

And during 2007 I think that the Congress has been roiled by the issue of how to deal with illegal immigration, in particular conservative Democrats, newly elected conservative Democrats. If you look at the 19 Democrats who left the reservation, I think you're going find that that's who they were. If you look at the switches at the end, you have three Democrats—you have Mr. Space, Mrs. Gillibrand and Mr. McNerney coming in and creating the 212–216.

What I think happened—and you can tell me that you don't know, you don't agree or you do agree—is that, without having these vulnerable freshman Democrats who don't want to go home and explain a tough vote on immigration—this wasn't an attempt to win. They always could have won. It was to win without having

these 19 Democrats do the walk of shame and change their card and have to go home and explain why they voted this way on illegal immigration.

That's why the Speaker voted, that's why the majority leader was exercised, and that's why Mr. McNulty banged the gavel, despite being one of their most experienced presiding officers, twice to try and make it 214–214. What do you think?

Mr. SULLIVAN. That's outside my universe.

Mr. LATOURETTE. Okay. I don't think I have anything else.

Mr. DAVIS of Alabama. I have some very brief redirect, just following up with some things that Mr. LaTourette raised.

One of the questions is about Mr. Boehner and the well card that was not processed. Do you have any recollection, John, that Mr. Boehner registered any complaint that night that his card was not processed?

Mr. SULLIVAN. No.

Mr. DAVIS of Alabama. Do you have any recollection of him making a parliamentary inquiry as to why his card was not processed?

Mr. SULLIVAN. No.

Mr. DAVIS of Alabama. Do you have any recollection of any Member of the minority registering any complaint that Mr. Boehner's card was not processed?

Mr. SULLIVAN. No.

Mr. DAVIS of Alabama. And do you know of anything that would have prevented Mr. Boehner from registering a complaint if he felt wrong in any way that night?

Mr. SULLIVAN. No.

Mr. DAVIS of Alabama. Do you remember any member of Mr. Boehner's staff explaining to you that his well card was not processed that night?

Mr. SULLIVAN. No.

Mr. DAVIS of Alabama. Do you know anything that would have prevented any member of Mr. Boehner's staff of registering a complaint that he felt he was disenfranchised in some way?

Mr. SULLIVAN. No.

Mr. DAVIS of Alabama. Who would Mr. Boehner have given his well card to? Which particular individual by name would he have likely given his well card to?

Mr. SULLIVAN. I would expect it to be Kevin Hanrahan, the standing Tally Clerk.

Mr. DAVIS of Alabama. And Mr. Hanrahan is obviously an experienced individual. Do you believe that Mr. Hanrahan would be aware of the context in which a minority leader might be coming forward to change his well card in this circumstance?

Mr. SULLIVAN. Probably.

Mr. DAVIS of Alabama. And the context Mr. LaTourette correctly described, it would be one of him attempting to change his vote so that he could then be on the winning side to make a motion for reconsider, is that correct?

Mr. SULLIVAN. Yes.

Mr. DAVIS of Alabama. And would Mr. Hanrahan have understood that, to your knowledge?

Mr. SULLIVAN. I think he probably would. He's a very cool customer and situationally aware. He doesn't hold himself out as a parliamentary expert, but I think he——

Mr. DAVIS of Alabama. He's been around long enough to understand that context?

Mr. SULLIVAN. Yes.

Mr. DAVIS of Alabama. And did Mr. Boehner, to your memory, ever go to the floor to make a motion to reconsider?

Mr. SULLIVAN. No. I think he tried to offer a motion to adjourn at one point, which was not in order at that stage of the proceedings.

Mr. DAVIS of Alabama. But would that have anything to do with the well card?

Mr. SULLIVAN. No. I think he might have intended at one point to offer a motion to reconsider. But then he saw that that was going to be the majority leader's fallback position, and I think he stood down. I don't know that he handed the card to Kevin.

Occasionally, a Member will just leave a card on that ledge, and the Tally Clerks will find it after the fact, and they'll come to me and say we have an unprocessed card here. And I say, well—I will say, well, let me go to the Member.

I'll take the card to the Member and say, this was found on the rostrum after the last vote. It was unprocessed. Did you mean it? The Tally Clerks are going to have to keep it as an unprocessed card unless you want to take it and tear it up. And usually the Member will take it and tear it up.

I don't know whether Mr. Boehner's was such a card and they just never brought it to my attention that night. It could be that it was just found on the ledge.

Mr. DAVIS of Alabama. Okay. Now, even after—let me go, if we can, back to the tape to 22:51, if we can. I don't want to spend a lot of time on this, but I want to clarify one thing Mr. LaTourette asked you about.

All the way back to 22:51:26 what you will see at that time frame is this second erroneous calling of the vote, if you will, the second premature calling of the vote; and I want to focus on what happens right after that. So let's actually get back to that point.

Just to lay the foundation, as Mr. LaTourette correctly pointed out, what distinguished the second premature calling from the first premature calling is that in the second instance Mr. McNulty does say, the motion is not agreed to. He does make an announcement of the result. Do you recall that Mr. Sullivan?

Mr. SULLIVAN. Yes.

Mr. DAVIS of Alabama. And Mr. LaTourette I believe made the point with you that his announcement of that result in ordinary course would have terminated the vote. Do you recall that?

Mr. SULLIVAN. Yes.

Mr. DAVIS of Alabama. Okay. Let's stop. Let's just listen if we can. Let's stop at this point.

My notes reflect, Mr. Sullivan, that after Mr. McNulty erroneously says the vote is not—or the motion is not agreed to, the three Members—Mr. Space, Ms. Gillibrand and Mr. McNerney—went to the well, entered well cards and were announced as off no, on aye, or off aye. Do you agree with that recollection?

Mr. SULLIVAN. Yes.

Mr. DAVIS of Alabama. Just for purposes of everyone understanding what happened here, can you explain why Space, Gillibrand and McNerney were able to continue vote changes even after the erroneous statement that the motion is not agreed to?

Mr. SULLIVAN. It is my judgment that the result could not stand. It didn't have legitimacy because it was prematurely announced without the benefit of a closed system. The system being open, it remained open. And there were other votes trickling in or changes trickling in.

Mr. DAVIS of Alabama. So you made what I think we all agree was the correct judgment to allow Members to continue to change their votes even after the dispositive statement was made the motion is not agreed to.

Mr. SULLIVAN. Yes. I'm shocked watching the tape at how long I lingered with Tom Wickham expressing to him my diagnosis of the situation. But that was my diagnosis, that legitimacy could not be accorded to that announcement.

Mr. DAVIS of Alabama. That was your judgment. I think we agree it was the correct judgment.

Did any Member attempt to impede you from exercising your judgment with respect to keeping the vote open.

Mr. SULLIVAN. No.

Mr. DAVIS of Alabama. Did any Member attempt to impede you from exercising your judgment to keep the vote open?

Mr. SULLIVAN. No.

Mr. DAVIS of Alabama. And as a consequence of that there was no prejudicial effect to any Member who wished to change his or her vote based on Mr. McNulty erroneously stating the result. Do you agree with that?

Mr. SULLIVAN. I assume that that's true.

Mr. DAVIS of Alabama. Well, we know that it was true because Members continued to change their votes.

Mr. SULLIVAN. A Member might have been moved to leave the Chamber.

Mr. DAVIS of Alabama. But we have no idea. And we do know that three Members continued to change their votes.

Mr. SULLIVAN. Yes.

Mr. DAVIS of Alabama. I have no other questions. I will yield to the chairman if he has any questions.

Mr. DELAHUNT. I have no questions.

Mr. PAOLETTA. Actually, can I consult with Mr. LaTourette?

Mr. SPULAK. I have two or three quick questions.

BY MR. SPULAK

Q. John, Mr. LaTourette asked you who prepared this modified tally slip, if you will, and you indicated it was yourself. He asked, was it the Clerk; and you said, that's correct.

A. Sure.

Q. And by that perhaps I infer that he was indicating should that have come from the Clerk. You could have asked the Clerk for a slip, but you had more to add than just the numbers. You wanted to add sort of a statement of where things were and the apology

to the House, having prematurely called it. So is that the reason why you did it rather than just asking the Clerk to do it?

A. Yeah. That and it was—I hate to use lipstick on a pig—but asking the Tally Clerk to produce a slip at that point seemed to me like trying put a band-aid on an artery. I guess we're saying the same thing. We needed an admission and a tally slip at that point.

Q. You could have asked the Clerk to produce one and they would have done it.

A. It would have been putting trappings on it.

Q. Is there any evidence that Mr. Hoyer was asking the Chair to do something inconsistent with the rules or inconsistent with the normal protocol for closing a vote?

A. No. I mean he had a sense of urgency about getting the vote closed.

Q. But that happens at times?

A. Yes.

Q. Again, no suggestion that he was saying call it without a slip?

A. No.

Q. Let me ask one thing that has not been touched on, and that is regarding the decision to abort. In your prepared statement that you were kind enough to submit, you indicated that Mr. Dreier was with you or standing next to you when you were having this consultation with Mr. Sorenson about aborting.

A. [Nonverbal response.]

Q. So is it your belief that Mr. Dreier was aware?

A. I don't know how attentive he was. I wouldn't be surprised if he was interested in the conversation. I just have a clear recollection that he was standing there. At a number of points there were people like Mr. Dreier or Jo-Marie or Mr. Blunt at the foot of the rostrum listening to some of the conversations that were taking place. I don't know whether Mr. Dreier particularly would have paid attention to the abort conversation.

Q. But, in any event, he didn't say anything about it?

A. No.

BY MR. PAOLETTA

Q. John, I don't know if this has been asked directly, but did Mr. McNulty ever explain to you why he called the vote in the manner he did?

A. No.

Q. There's that brief exchange when you were writing it out there and he leans in and he starts talking to you. Do you recall that exchange?

A. I recall having an exchange with him. He wasn't entirely a listener, and I think he spoke, but I don't remember what he said.

EXAMINATION BY MR. SNOWDON

Q. Mr. Sullivan, Mr. Davis asked you a series of questions about whether during the interval—this is between the first premature announcement of the vote and the second—whether you observed any Members approaching the Chair to give them instructions, and I think your answer was no, is that right?

A. Uh-huh.

Q. Do you recall the conversation that you had with Mr. Hoyer or Mr. Hoyer said—and I believe this was referenced by Mr. LaTourette—we control this House and not you. Do you recall when that conversation took place?

A. That took place more than once, but the one that I think you're familiar with is sort of midway between the hopper and the Chair.

Q. Would it have been—if you look at the screen now, do you recall whether—and we can rewind it if necessary—but do you recall whether that conversation took place roughly where you are on the screen?

A. No.

Mr. DAVIS of Alabama. Which is 22:53:20.

Mr. SULLIVAN. No it did not. I think.

Mr. SNOWDON. Why don't we go ahead and rewind it, if we could, to 22:50:45, roughly.

Mr. LATOURETTE. While we're rewinding it, I would like—based upon Mr. Davis' observation, I hope we can agree Mr. Boehner attempted to make a parliamentary inquiry after this happened, and he was denied recognition by the Chair. So we can ask Mr. Boehner what his parliamentary inquiry was going to be, but to suggest that he didn't have something that he wanted to ask the Chair is not appropriate.

Mr. DAVIS OF Alabama. Well, we can agree that he wanted to make an inquiry, and we can ask him what he wanted to inquire about.

BY MR. SNOWDON

Q. Stop there. And was that the conversation where Mr. Hoyer told you that we control the House and not you?

Mr. DAVIS of Alabama. At 22:50:46.

Mr. SULLIVAN. I'm not sure. But, obviously, he got as far as the mace in terms of proximity to the Chair. I agree with you on that.

Mr. DELAHUNT. Can you rewind that again to where Mr. Hoyer is talking to John?

Mr. DAVIS of Alabama. You may need to raise the volume.

Mr. DELAHUNT. Okay. Freeze it as he's coming up. The time then is 50:42.

Mr. SNOWDON. Do you recall now —

Mr. DELAHUNT. That conversation?

Mr. SULLIVAN. I didn't hear the audio just now, but if somebody else heard control the House, then now is the time —

Mr. DELAHUNT. So that lasted less than a second.

BY MR. SNOWDON

Q. Well, for the record, I think we established earlier that the initial attempt to close the vote was at 22:50:08 and that the second premature calling is 22:51:29. So this conversation that you had or Mr. Hoyer had with you would have been during the interval between the first and second premature calling of the vote, is that accurate?

A. I believe so.

Q. And would that have been within earshot of the Chair?

A. Probably so.

Q. And do you know as you sit here today whether or not the Chair overheard that conversation?

A. No.

Mr. DAVIS of Alabama. Any further questions?

John, thank you for taking your time and for coming here this morning.

Mr. LATOURETTE. I hope it was pleasant.

Mr. DAVIS of Alabama. The proceedings stand adjourned.

[Whereupon, at 10:48 a.m., the interview was concluded.]

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

TUESDAY, APRIL 8, 2008.
Washington, DC.

INTERVIEW OF ROY BLUNT, MINORITY WHIP

The interview in the above matter was held at Room 1628, Longworth House Office Building, commencing at 1:05 p.m.

APPEARANCES

REPRESENTATIVES WILLIAM D. DELAHUNT, ARTUR DAVIS, STEPHANIE HERSETH SANDLIN, MIKE PENCE, AND KENNY C. HULSHOF

The committee met, pursuant to call, at 1:08 p.m., in Room 1628, Longworth House Office Building, Hon. Artur Davis [Vice Chairman of the Committee] presiding.

Present: Representatives Davis, Herseth Sandlin, Pence, and Hulshof.

Mr. PENCE. We will go on the record.

I am Mike Pence, the Ranking Member of the Select Committee established under H. Res. 611. I want to welcome our witness, Representative Roy Blunt from Missouri, the minority whip of the House of Representatives. Thank you for coming.

Mr. BLUNT. Thank you. Thank all of you for looking into this, and the time you have taken on it.

Mr. PENCE. I think the record should reflect the members that are present: Mr. Pence, Mr. Hulshof on the Minority side; Mr. Davis, and Ms. Herseth Sandlin on the Majority side. It's my understanding that Mr. LaTourette will be joining us.

Mr. DAVIS. I am Artur Davis, Mr. Blunt, Vice Chair of the committee.

Mr. Ranking Member, if I can just make a few other protocol-related points.

Mr. Blunt, what we have agreed to do—and we know that your time is very precious, 45 minutes, and we are going to work very hard to keep that because you have important things to do—what we have decided is the best procedure is for the Ranking Member, Mr. Pence, to open with a round of questions for you of 15 minutes.

After that, I will ask you 15 minutes' worth of questions. We will probably take a break of about 5 to 7 minutes at that point. Should you wish a break at any point before that, obviously you're free to ask for it. Then we will end with a Democrat round of 7½ minutes and a Republican round of 7½ minutes.

Mr. PENCE. Thanks, Artur.

BY MR. PENCE

Q. Mr. Blunt, as you know, we are operating under a House resolution adopted August, 3, 2007. This select committee was instituted to investigate the circumstances surrounding the record vote requested by the gentleman from California on the motion to recommit H.R. 3161.

The record should reflect we are joined by the Chairman of the committee, Mr. Delahunt.

Mr. Blunt, were you in the House Chamber on the evening of August 2, 2007?

A. I was.

Q. Could you describe for the committee the mood in the Chamber that evening?

A. Well, the mood in the Chamber was relatively routine until we got to this vote. I'd say it's fair to describe the mood of the Chamber at the end of this vote as heated. The circumstances turned out to be outside of the normal procedures, and, in fact, significantly more outside of the normal procedures than I realized at the time.

But this was about the second or third instance where the Majority's new rule on not holding votes open for the purpose of changing the vote appeared to have changed. But complicated even more by the Chairman's actions are the Speaker pro temp's actions that ended the vote—I thought the way all votes had been ended—until later I had a chance to review what happened and found out that the normal procedures that are followed to complete a vote in every other instance that I am aware of was just simply ignored during this process.

Q. Let me ask you specifically about that. The morning after—and I'd ask unanimous consent to submit a copy of your speech on the floor of the House on August 3rd.

Mr. DAVIS. Without objection.

[The information may be found in the Appendix.]

BY MR. PENCE

Q. Quoting from that speech, Mr. Blunt, you said, "I have left the House encouraged, I have left the House proud, I have left the House not so proud. I have never left the House ashamed before."

I wanted you to elaborate on that point. Why would you have left the House ashamed?

A. I was ashamed not of any actions that I was part of, but just the conduct of the House, the way that this vote was completed. The determination on the part of the Majority to win at any cost seemed so at odds with the position that the Majority had staked out for itself earlier in the year. Even though this wasn't the first time that we crossed the line, it was clearly the most egregious time we crossed the line.

Q. Let me ask you specifically—and you alluded to this in your earlier statement. Also referring to your remarks on the floor on August 3, you said, "I decided for 4 years when the vote would quit, as a whip. That was my job," you said. "We never stopped the vote until the clerk handed the person a piece of paper that said what the vote was, and the vote of that piece of paper was 215–213."

That was your statement on the floor that morning.

A. It was. It was.

Q. You said you since learned that your understanding of what had occurred that evening was different. In what way?

A. Part of the process and procedure on the House floor is that the person that is below the Speaker's rostrum—I am not sure what the official title for that particular employee of the House is—but the designee of the clerk fills out a piece of paper, hands that piece of paper to the Speaker; and on every vote I am aware of, the Speaker reads the vote and then concludes the vote as they announce what the tally was.

I assumed that had happened. I wasn't watching the Speaker pro temp carefully at the time, what he had in his hand. I just knew that he had announced the vote. I also knew that when he announced the vote—even though the vote on the screen was at one point, just watching, as I have for a long time, the well of the House—that the vote would have been 215–213. I was assuming that that was what he was given.

I don't know where the Speaker was receiving direction, or if he was receiving direction. I do know that in the years of our Majority, when I was the majority whip, whoever was serving as Speaker would always look at the whip's area to see if it was time to conclude the vote, if all of our Members had voted and, to the best of our knowledge, every Member on the floor, Republican or Democrat, had voted, and then we would indicate that we were done.

I am confident that there was never a time during the previous Congresses that I have been involved in when an actual employee of the House was pressured to hand a piece of paper to the Speaker that didn't have an accurate count on it, or when a Member was in any way encouraged to ignore the employees of the House who were doing their job.

Q. For the record, state when you became the chief deputy whip.

A. I became the chief deputy whip in I think January. Early 1999. I think January of 1999. Then I became the whip in January of 2003.

Q. So your statement today would be that at no time during your work as chief deputy whip or as majority whip that you had witnessed an incident where a vote had been closed without a tally sheet.

A. Without a tally slip being completed, that's correct.

Q. Going back to your testimony the next day on the House floor, you made those remarks with the assumption that that procedure had been conformed with.

A. I did.

Q. So let's see if I can amplify that a little bit. In your career of Congress over the past—I think you were elected in 1996, is that correct?

A. That is right.

Q. During your career in Congress, did you ever see a vote closed by a presiding officer without that presiding officer first receiving a written tally slip or tally sheet?

A. With the exception of this one, no. A vote that had an actual roll call. Obviously, a presiding officer on a suspension vote or a vote where no roll call is reflected wouldn't get a tally sheet. But

in any circumstance where a vote was actually taken, I know of no other situation where the employees of the House were not allowed to do their job.

Mr. PENCE. I want to alert the staff for a moment. I want to take a look at the video before I yield here in a few minutes. If we can activate the video and go to on the clock what would be 22:54:06.

BY MR. PENCE

Q. Mr. Blunt, you're going to see a video recording of a very short portion of the events that night. Your statement is you were on the floor. There is a moment here that we are interested in getting your recollection of. 22:54:06. If we can fast forward it here.

There's a point on the tape you approach the rostrum and you appear to be having a conversation.

A. Was that with Tom?

Q. Let's let you take a look at it.

A. All right.

Q. 22:54:06.

A. This would be some punishment if we had to watch our whole career, even 16 times.

Mr. DELAHUNT. This has been a very punishing task, I can assure you. It's better today without LaTourette being present.

BY MR. PENCE

Q. 22:54:06. My questions to you, Mr. Blunt, will be what were the two of you discussing, to your recollection on the conversation, and what were you being told about what was going on at the time? I want you to have a chance to look at it and reflect on it.

22:54:06. I think that is where it begins. When we get there, the record should reflect that we begin the tape at 22:54:06.

I will just ask the witness to describe what was going on at that time when the tape begins.

A. Okay. There I am, talking to Tom.

Q. You're up to the left of the rostrum as you face forward.

A. Uh-huh. Right.

Q. Can you stop the tape there for a moment here? What were the two of you discussing?

A. Mr. Pence, I am not absolutely sure what we were discussing at that time. I was under the impression that the procedures had been followed and the Speaker had called the vote. Now, the Speaker had called the vote. What I didn't know is the procedures hadn't been followed. My belief is that I was asking Tom Wickham how this process could be continuing, because I thought it was over. And I don't recall what his comments were.

Jay came up at about that same time, and knows about as much about the House rules as anybody on our side does, who's been here a long time.

Q. Jay. Who are you referring to?

A. Jay Pierson, who I have only known for 11½ years.

Q. But Jay approached. There appears to be a Member.

A. Darrell Issa is right there by me on what would be my right. I think I am just challenging—or not challenging; I am just asking how we even had any options once the vote had been decided and

the tally clearly, at the moment the Speaker decided the vote, would have been 215–213.

Q. In the favor of the Minority.

A. In favor of the Minority's motion, even though the electronic total may have reflected something different than that. That was not reflective of what the clerks would have tallied by that time. I have watched this for a long time. There's not that much activity on the floor, that once you have got a starting point near the end of a vote, you can't watch the cards that are going in, the red and green cards are going in, and know what's happened. You have changed one, you have changed two, you have changed three. Again, I was assuming that that tally that I think is essential was part of the process.

Q. And in assuming that, you assumed the vote was closed.

A. I assumed the tally had been handed up. And I knew if it would have been handed up, it would have said 215–213. And the Speaker then, even though he was reading the wrong thing, I just assumed the process had completed itself and he had not responded to what the clerks had handed him.

Q. Final question, in the interest of your time, and I'll yield to the Majority member. What explanation were you given? You said you asked why was this still being permitted to go on. What explanation do you recall that you were given?

A. I think it was something like, We are trying to work this out. At that point I think I maybe listened to whatever Jay said and walked away a little disgusted that the procedures could be in that kind of chaos on something that should have been as simple as voting on a motion to recommit.

Mr. PENCE. Okay. That is all the questions I have in the first session.

Mr. DAVIS. Thank you, Mr. Pence.

BY MR. DAVIS

Q. Mr. Blunt, let me pick up with one observation that you made in your statement on August 3rd on the floor and that you repeated several times here today. You state that you believe that the correct vote on the motion to recommit was 215–213 in favor of the motion. What is your basis for your belief that the vote was 215–213?

A. Well, Mr. Davis, it would have been 215–213 at the moment the Speaker called the total. You have got all the records here and you should be able to establish that. But my basis was watching the number of votes that changed, and which way they changed, in that however long it was when there was not much activity except less than a handful of votes changing, it wasn't that hard to keep track of what the vote would have been.

Q. Was there ever—and I think we have established that there was never a tally sheet that reflected 215–213. In fact, there was never a tally sheet, period.

A. Exactly.

Q. So your conclusion was not based on your seeing a tally sheet.

A. It was not.

Q. Was it based on your looking at the board at one point—and it's my recollection, I think, that the board was 215–213. Do you remember seeing that on the board?

A. I don't remember that. I think that may be the case. But I don't remember that.

Q. Could that have informed your recollection, the 215–213?

A. No. No. The 215–213 vote was a response of I think three of our Members changing their vote. All you had to do is subtract 3 and add 3. Frankly, you get pretty good at that if you're the whip on the House floor, knowing how this process has gone on. I am sure you all have records that can be used to verify that, or that are easily verified whether my observations on the floor were correct or not.

Q. Now you mentioned in response to the Ranking Member's questions that when you were talking to Mr. Wickham, that you were asking about why the process was continuing.

A. Right.

Q. What do you mean when you said "process was continuing"?

A. Once the tally is completed, which should happen before the Speaker calls the vote, the process is—in my view, is over at that time. That is the moment when you should be ready to move on to other business. And not knowing that the procedures had not been followed in the most basic way, I was assuming they had been followed in the correct way.

Q. When you say "the process was continuing," were Members continuing to change their votes in the well?

A. I don't know if at that time Members were changing their votes or not.

Q. We watched the tape several times.

A. I am sure you know a lot more about this tape than I do.

Q. I will represent to you that there were various Members, various Democratic Members—Mr. Space, for example, Mrs. Gillibrand; may have been some Republican Members as well—who were in the well, picking up vote cards, presumably to change their votes. Do you have a memory that contradicts that, or do you contradict that representation? This is at the time you were talking to Mr. Wickham.

A. My memory would be that whatever happened, happened after the Speaker had ended the vote. I think he later said he prematurely ended the vote, whatever that means. I don't think our rules actually provide for a premature ending of the vote.

Q. Is it your position that the presiding officer, Mr. McNulty's actions in any way prevented Members from changing their votes?

A. My position is that it should have prevented Members from changing their votes.

Q. Did it have that effect?

A. I am not sure what effect it had because I don't think there was ever even a tally on this vote, even after other Members changed their votes. I am not sure that this vote was ever properly concluded.

Q. But is it your position that Mr. McNulty's actions thwarted any Member from changing his or her vote?

A. I think what I just said was my position is that his actions should have ended the vote when he took it.

Q. But it did not.

A. Since there was no tally, I don't know if any voter—any Member ever actually officially changed their vote or not.

Q. But, again, it's not your position or contention that it happened. You simply don't know.

A. Don't know what?

Q. Don't know whether or not the presiding officer's actions had the effect of preventing any Member from changing his votes. I understand you may not know, and you can say that.

A. I think the presiding officer's actions could have easily confused Members enough that they might not have voted the way they intended to.

Q. Did any Member report to you he or she was confused in a way that would have prevented them from changing a vote?

A. I don't recall Members reporting that.

Q. You said in your statement that you made on the floor on August 3rd, I want to quote from it, "I decided for 4 years when that vote would quit, as the whip. That was my job."

Are you saying in effect that, as the whip, it was more or less your decision when to close a vote when you were in the Majority?

A. When we were in the Majority, whoever was in the chair would rely on the whip to know if all Members had voted and it was time to close the vote.

Q. Was that role of the whip ever codified in terms of the rules?

A. No. And I have no idea if the whip on the other side gave similar direction or not, or whether the Speaker, just based on their knowledge—which is not very full if you're in the chair—decides on their own that all the Members are in, they voted. Surely that is not the case, but it might be.

Q. But you don't know.

A. I don't know.

Q. Let me refer you, if I can, to a document. I refer to it in shorthand as the Republican amendment that was offered to the rules resolution at the beginning of 2007. This is a section of proposed rules that the Minority submitted.

I am going to refer you to the part, section 305, that says: Regular Order for Legislation. I will hand that to you. Why don't you take a look at that?

Second page, section 305. I will let you look at that, Mr. Blunt. Just let me know.

This is something you have seen before. This is from the proposed Republican rules that were submitted at the beginning of this session. If you look on Regular Order for Legislation, you will see on number 4, "Floor votes shall be completed within 15 minutes, with the customary 2-minute extension to accommodate Members' ability to get to the House Chamber to cast their votes. No vote shall be held open in order to manipulate the outcome."

You testified today several times about the importance of a tally sheet and your recollection that in your experience a vote had not been closed without a tally sheet. Is there a reference in the proposed Republican rules to the necessity of a tally sheet to close the vote?

A. I don't think there's any reference here to how we vote at all.

Q. Let me just ask you, do you know if the current House rules that were adopted contain a reference to a tally sheet?

A. I don't know that.

Q. Do you know if the proposed Republican rules that were submitted last year contain a reference to the necessity of a tally sheet?

A. I believe these rules make several—I don't know that. I think they make several assumptions about voting, from the electronic voting system itself, to the fact that someone officially keeps track of what that vote was and enters that into the record. None of those things I believe are specified in the rules the Majority submitted or the rules the Minority proposed as changes.

Q. Just so we are clear, when the Majority was held by the Republicans, did the rules at that time contain any reference to a tally sheet being a necessity for calling a vote?

A. No. I don't know that they did. I also don't know where the procedures of the Clerk of the House are referenced or how those procedures are followed through with the daily work of the House. But I do know that many of those procedures are assigned to the Clerk.

Q. Now, when you approached the rostrum to speak to Mr. Wickham, were you able to overhear any conversation between Mr. McNulty and any member of the Democratic leadership?

A. No.

Q. Were you able to hear any conversation between Mr. McNulty and any staff member of the Democratic leadership?

A. No.

Q. Do you have anything to offer, any light to shed, on any conversations that may have happened between Mr. McNulty and any member of the Democratic leadership or any member of the staff?

A. I don't have.

Q. You mentioned that you were in the chair as the presiding officer, that your ability to see and perceive what goes on in the Chamber is limited. You would agree that the presiding officer, the vote board, if you will, that reflects, that electronically reflects how the Members have voted, that is behind the back of the presiding officer?

A. Yes.

Q. There is normally a vote sheet as opposed to a tally sheet that is generated while a vote count is going on that lists how Members have voted. I am sure you have seen that kind of document as the whip. It gives you a sense of who hasn't voted, how current Members have voted.

A. I guess I have seen the sheet, though normally both of the whips' tables have a computer, and you can generate that. But normally you look at the computer to see who's here, who's not here, who's still out that we know is in the building somewhere.

Q. Now to your knowledge, that particular computer printout, that is not available to the person that is the presiding officer, is it?

A. To my knowledge, it's not.

Q. So if Mr. McNulty was in the chair, he would not have been in a position to see the board, he would not have been in position to see the vote sheet that I just referenced. Do you agree with that?

A. I believe that is right.

Q. And do you have any recollection—just, again, we have seen this tape more times than you have, I suspect, but you'll remember that there's a point when Mr. McNulty makes what clearly appears to be an erroneous premature calling of the vote. That happens before you go up there. You remember that.

A. I don't remember that I thought at the time it was either erroneous or premature.

Q. But you thought there had been a calling of the vote. Do you remember at the moment Mr. McNulty made that call if there were Members who were actually in the well?

A. I don't remember.

Q. So you certainly couldn't shed light on——

A. There might have been at the time. I haven't reviewed the tape, and I don't remember.

Q. Do you remember any Member—every now and then we'll hear someone yelling, "One more," or something like that. Do you remember any Member orally manifesting an intent to change their vote in the moments before Mr. McNulty made his first call?

A. I don't remember.

Q. When you went up to talk to Mr. Wickham, do you remember what you did after you left the conversation with Mr. Wickham?

A. No.

Q. Did you attempt to be recognized at that time as a Member?

A. I don't recall that I did.

Q. Did you attempt to make a parliamentary inquiry? Because you indicated that you had expressed concern to Mr. Wickham about what had happened, why the process was continuing.

A. I think we had other Members who were making inquiries at the time.

Q. But you don't remember making an inquiry?

A. No. I might have. But I don't remember making one.

Q. Do you remember discussing with your leader, Mr. Boehner, at that time what the appropriate course of action should be for the Minority?

A. Again, we had a brief discussion. But it was I think after the second—after the revote.

Q. One of the remedies that would have been available to the Minority that night, Mr. Blunt, would have been to call for the vote to be set aside, or to call for another vote. Do you agree that that would have been a remedy that was available to the Minority on the night of August 2nd?

A. I actually don't agree, based on what I know now, that the vote had ever concluded. So I am not sure there was any remedy available at the time to rectify the situation that had occurred.

Q. But would that have been a possible subject for parliamentary inquiry to determine?

A. We'd have had to watch the tape again. I suppose we would have had more ability to have a parliamentary inquiry and say, Why weren't the things that are normally done here, done? I was assuming, and I believe everybody was assuming, that the Speaker was not working either without direction from somebody else on the floor or without following procedures that are always followed.

Q. You said in your statement, as I wrap up my questions, you said in your statement the day after the vote, you refer to a week of violations, the principles of the House, you refer to being ashamed of the House.

What rules violations do you contend happened on the night of August 2nd?

A. Clearly, there was a violation of the rule where the vote was held open, if it was held open, or reopened, or whatever was done to change the outcome of the vote. It's not the last time it happened, not the first time it happened, but probably the most egregious time it happened.

Q. Just to have some perspective, Mr. Blunt, do you remember November 22, 2003, in the Medicare Modernization Act vote?

A. I do.

Q. Do you recall, just in context, do you recall that vote was held open for a number of hours? I believe it was approximately 3 hours; is that correct?

A. I think that is right.

Q. Do you believe that the decision of the leadership was a violation of the rules that were in place at that time in 2003?

A. No.

Q. Do you believe that the decision of the leadership would be a violation of the rules today if we retrospectively applied them?

A. It would.

Q. Tell me why, sir.

A. Actually, the night of this is an interesting course of discussion here. On the night of the 2003 vote, not all the Members on the floor had voted until that 3-hour period was over. There was one Member that was there the entire time, never left the floor, and only when that Member voted was the will of all the Members on the floor registered. That Member didn't change his vote, that Member hadn't voted. That Member was on the floor.

But the key here is that the Majority decided they were going to change the rules so that no effort would be made to change a vote in order to manipulate the outcome. That rule was violated on August 2nd; it was violated again on the rule on the outside ethics committee that we had just a few weeks ago. And, in fact, right after that May vote you've referenced, the Democrat whip was asked if he would pledge never to work to change a vote after the time had run out. And he said no, he wouldn't make that pledge, because the purpose of the House is to get the work of the House done.

Q. All right.

Mr. Davis. Keeping with the time limits that we agreed on, why don't we stop and take a 5-minute break and we will come back for our last 10 minutes?

Mr. BLUNT. I am actually fine, if you all are. But we can take a break if you want to.

Mr. DAVIS. Take a break for 2 or 3 minutes then.

[Recess.]

BY MR. HULSHOF

Q. Mr. Blunt, Mr. Davis asked you some questions about the 2003 Medicare vote. And I think you referenced one Member who had not voted. That was a Democratic Member, was it not?

A. It was.

Q. In fact, did the Democratic Member vote for or against the measure? Do you recall?

A. I think at the end of the process when he finally voted, he voted for the measure.

Q. The aftermath of that—again, I simply explore this as it was raised from Mr. Davis' questions of you—there were actually Members of the Majority party who were sanctioned by the ethics committee, correct, after that Medicare vote?

A. That is right.

Q. Regarding the proposed alternatives that Mr. Davis inquired of you, and I think the relevant portion, "No vote shall be held open in order to manipulate the outcome." You are familiar, aren't you, that the House actually has custom and practice that may not be designated specifically in a rule, but in fact is something that is determined over a course of many years?

A. I am.

Q. Who primarily determines whether the precedence of the House had been followed or violated?

A. The Parliamentarian.

Q. Do you know the name John Sullivan?

A. I do.

Q. Who is John Sullivan?

A. He is the Chief Parliamentarian of the House.

Q. John Sullivan has given information to the subcommittee. Let me ask you to agree or disagree with the following statement he made to us regarding the tally slip. Mr. Sullivan said, "It's probably the most important quality control device in the announcement of a vote." On page 12, by the way. Again, "probably the most important quality control device in the announcement of a vote."

Do you agree or disagree with that statement?

A. I agree with that statement.

Q. There's been some discussion, and Mr. Davis asked you about the actual vote tally, and you referenced the computer logs or the computer tallies that we can do.

A. Right.

Q. But as far as the tally sheet itself, make sure we are understanding the same piece of paper or document, the only one of 435 Members who's actually privy to the tally sheet would be the Speaker Pro Tem, correct?

A. That is right.

Q. And what is your understanding of how the tally sheet is actually generated?

A. I am not sure I understand the exact procedure. But the clerk and the designees of the clerk fill out a tally sheet. They are directly in front of the Speaker. They turn around and hand that tally sheet to the Speaker, who then reads the final total from that tally sheet.

Q. Regarding the substitute, the rules package, the substitute rules package, whether or not you participated in helping generate that substitute, when drafting this alternative, did you, personally—did you believe that it would be necessary to actually codify or require in writing a tally sheet to these rules?

A. No. I don't think these rules talk about a lot of detailed procedures like pushing the green button instead of the red button or where those are located on the House floor. Those are the procedures that the House traditionally follows, and an important part of the process.

Q. As someone who watches the weekly colloquy between yourself and Mr. Hoyer, let me express my opinion. It appears as I watch the colloquy between you and Mr. Hoyer, that you have, the two of you have a good relationship—or I don't know if affection is the right term. Would you consider Mr. Hoyer a friend?

A. I do.

Q. On the evening Mr. Pence just showed you some of this footage, a few seconds, do you recall if you had a discussion with Mr. Hoyer that evening about this vote?

A. I don't recall any discussion with him that evening about the vote or about any of the votes that could have or did follow.

Q. What, if any, discussion have you ever had with Steny Hoyer about roll call vote 814?

A. I don't know that we have had detailed discussion about this, except a discussion about—really, our discussion was actually about Mr. McNulty. Mr. Hoyer was sharing with me Mr. McNulty's concerns about how his position could be perceived here. And I reached out and talked to him after that and told him that I didn't know anybody on either side of the House that thought that he had intentionally done anything that was unethical or that he should spend undue time worrying about this. It's just something we needed to work out and not see repeated in the future. That was, I think, the only discussion Mr. Hoyer and I had about this.

There are some things that, if you're Members of Congress, as we all are, that you can sustain both your friendship and your working relationship better if you just decide there's some topics that it doesn't do a lot of good to continually revisit. And this would be one of them.

Q. Did you have a conversation with Mr. McNulty?

A. 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 the respect that the Members have for him personally.

Q. Your answer suggests—and I don't want to put words in your mouth, so let me ask—so what then was expressed to you by Mr. McNulty as far as concerns that he had?

A. I don't recall. My impression was that he just didn't want the Members to think that his motivations had been in any way unethical.

Q. I presume that this time you were talking to Mr. Wickham, was that the only time you recall going into the clerks' area on that evening?

A. I may have gone down there one other time when I thought—it could have been another day. I think I went down another time when one of our Members I thought was getting pretty exercised about this. I just walked down to try to calm that situation down.

Q. To make sure that I am clear from Mr. Davis's questions, during the time that you were up on the rostrum do you recall overhearing any conversation or part of a conversation by Mr. Hoyer, by leadership staff, other than your conversation with Mr. Hoyer?

A. I don't recall any.

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

Mr. PENCE. I have one further question.

BY MR. PENCE

Q. I want to follow up, referring to your conversation with Mr. McNulty. You indicated to him—and I think all of us as Members understand the spirit of your remarks to him—you specifically said there was a sense that what he had done was unethical.

Let me ask you a question. Is it your statement today that the Speaker pro tem that night, and Democratic leadership, circumvented the standard operating procedures to effect the outcome of the vote and change what you believe was the proper outcome of the vote of 215–213?

A. That is my view.

Q. Back to our earlier line of questioning, did you or your staff during your tenure as Majority whip, or chief deputy whip, did you or your staff ever direct, suggest, or encourage a presiding officer to circumvent standard operating procedures while closing down a vote in order to achieve a desired result?

A. No.

Mr. PENCE. No further questions.

Mr. DAVIS. I have just a few questions before I yield to my colleagues to see if they have any, Mr. Blunt.

BY MR. DAVIS

Q. Let me pick up directly on Mr. Pence's line of questions. I had an occasion to depose Mr. Sullivan, the Parliamentarian, and I asked him this question: "Did Mr. McNulty, in your opinion, ever commit any violations of the rules of the House, as they are written?" Mr. Sullivan's answer is "No."

Do you disagree with Mr. Sullivan's answer?

A. I don't know that I agree or disagree. I'd have to think through all the background of that discussion to probably be able to answer it the way he did. I think that it's clear that Mr. McNulty violated the traditional procedures of the House.

Q. One of the things that the select committee has been charged with doing is making an assessment, obviously, of what Mr. McNulty did and why he did it. I asked Mr. Sullivan the question: "Did Mr. McNulty, to your knowledge, ignore, refuse to follow any instructions that you gave him as the Parliamentarian?" Mr. Sullivan answers "No."

Do you challenge that or disagree with that?

A. I don't disagree with it. But I don't think it would be all inclusive of the actions that Mr. McNulty took. I am sure that the Par-

liamentarian didn't tell him, Don't wait for the tally sheet, for instance.

Q. I asked Mr. Sullivan actually about what you've referred to as customs and protocols, is the way I phrased the question. "And did Mr. McNulty violate the customs or procedures of the House in any way that you know?" Mr. Sullivan's answer, "Well, he departed from best practice on that announcement. But other than that, no."

Mr. Sullivan refers to best practice instead of customs and protocol. Do you challenge Mr. Sullivan's answer?

A. I don't agree with his answer.

Q. I asked the question of Mr. Sullivan, "Do you have any reason to think that Mr. McNulty knowingly departed from best practices?" Mr. Sullivan's answer is, "No, I don't. Do you challenge Mr. Sullivan's answers?

A. I don't know if Mr. Sullivan had ever presided before or——

Q. McNulty.

A. Mr. McNulty had ever presided before. But if he had, I don't know how he could not have been more aware of the procedures of how you complete a vote.

Q. Do you have any evidence, or is it your contention, Mr. Blunt, that Mr. McNulty called a vote that he knew to be contrary to the actual result on the floor?

A. I don't believe, as it turns out, there was an actual result on the floor. So I don't know that I can evaluate that.

Q. The answer would be "no."

A. No, I don't know that there was an actual result on the floor. Any calling of a vote would have been contrary to a result that hadn't occurred yet.

Q. The final question on that point. Do you believe or is it your contention here today that Mr. McNulty acted in a manner to deliberately prevent other Members from casting or changing their votes?

A. I guess my conclusion would be that Mr. McNulty did not enforce this rule that you referred me to, section 305, subsection 4.

Q. I am actually about to go right there, just to take one last crack at that question. Do you believe that Mr. McNulty acted in a manner to prevent other Members from changing or casting their votes?

A. I think he didn't follow the rule I already cited, 305.4. And if the Speaker doesn't enforce it, I don't know what purpose it has.

Q. Let me end by referring you to the rules. I am looking at page 806 of the rules that have been adopted for this session. Do you remember I asked you a number of questions about the Republican proposed rules, if you will. Of course those were not adopted.

A. Imagine that.

Q. Imagine that.

I want to refer you to page 806. If you will look toward the middle of the page you will see the relevant portion that deals with circumstances in which a vote may or may not be called. It says, "A record vote by electronic device shall not be held open for the sole purpose of reversing the outcome of such vote."

A. Yes.

Q. That is different language from what the Republicans proposed, is it not?

A. I don't know.

Q. Just so our record is clear, if you will look at the proposed Republican rules, it says, "No vote shall be held open in order to manipulate the outcome."

A. This is different language.

Q. Is it your position, Mr. Blunt, that Mr. McNulty violated the rules, as adopted?

A. My position is he didn't enforce the rules, as adopted.

Q. In what manner?

A. And as a Speaker, that is his job.

Q. In what manner?

A. He allowed the vote to be held open—assuming the vote was ever properly concluded, which I am not sure at all—he allowed it to be held open for the purpose of reversing the outcome of such vote.

Q. What would be your factual basis for that conclusion?

A. No additional Members voted. And the only things that happened after the vote was held open, if it was held open—since it was never completed, it is a little hard to argue this—but the only votes that changed, were changes of votes that been cast that changed the outcome.

Q. Finally, let me refer you—we also took testimony, or more accurately, the staff took testimony from Jay Pierson, who we discussed earlier. Mr. Pierson was asked if there were violations of rules that night. His answer—actually, let me just read the question and the answer:

"Do you think that justifies the Majority bypassing established protocols in order to win votes?

Mr. Pierson's answer, "Established protocols? No. I mean, if you mean—I mean as we talk, the idea that you have a slip and that the board says final, that is not the rules of the House. So if you mean by that kind of established protocol, no, you shouldn't do that. But there are no rules. Rules of the House weren't broken. Just like we held the vote open for 3 hours, you can hold the vote open for 3 if you want. There's a fuzzy area there. No, they are not rules. But protocol, no?"

Do you agree with Mr. Pierson's answer?

A. No. I think under the rules that this Congress passed, you can't hold the vote open for the purpose of changing the vote. You might hold the vote open for the purpose of letting the Members vote, which I think is a different purpose than the purpose of changing the vote.

Q. So it would be permissible for a presiding officer to hold a vote open for the purpose of allowing Members to vote, or change their vote?

A. No. I don't believe that is what I said. What I said was you can hold the vote open for the purpose of allowing Members to vote. Members on the floor who just choose not to vote is one kind of inexplicable example of that. A more easily accepted example might be 10 Members who are stuck in an elevator.

Q. Let me give you this example. Would it be permissible for a presiding officer to hold a vote open in order to allow Members in the well to change their vote?

A. Under this rule, if the sole purpose you're holding the vote open is to change the outcome, no. This is the Majority's rule, it's not my rule.

Q. But sole purpose, this is an important point, that is why I want to pursue it. If another purpose of the presiding officer was to allow Members in the well to change their vote, would that be permissible under the rules?

A. I don't know that it would. It's arguable. But it might be.

Q. Arguable?

A. It might be arguable. In the ethics vote the other night, more freshly in my mind, we had a substantial period of time where Members were obviously being persuaded to change their vote. There weren't Members in the well changing their vote. There were Members of the Majority surrounding people and encouraging them to change their vote. And the sole purpose of that was to change the outcome.

Mr. DAVIS. I yield to my colleagues.

Mr. PENCE. I don't think we have any further questions.

BY MS. HERSETH SANDLIN

Q. Mr. Blunt, when you said when you were on the rostrum in that video we watched, and you were trying to find out what was going on, one of the responses was, "We are trying to work this out."

A. I thought the response was something like that. It wasn't a particularly satisfying response.

Q. Did you take the response to mean that they were trying to work things out from a Parliamentarian perspective only?

A. That is what I thought the response did. But my review of these tapes immediately after that led me to believe maybe they were trying to decide who was in charge of the parliamentary procedures, the Parliamentarians or the Majority.

Q. Were you aware at that time that there were technical problems with the electronic voting system?

A. No. I was aware that the vote disappeared overnight, which I thought was interesting.

Q. But at the time, you didn't overhear any conversations by leadership, you weren't hearing any conversation among officers of the Clerk as it related to the electronic voting system?

A. No.

Ms. HERSETH SANDLIN. That is all I have.

Mr. DAVIS. Mr. Blunt, thank you.

Mr. DELAHUNT. I just have one final question.

BY MR. DELAHUNT

Q. When you looked up and you saw the 215–213, did you see the word "final"?

A. I don't recall getting that information off the——

Q. Off the display?

A. Off the display.

Q. You had no memory of it?

A. And I thought I said I didn't remember. I was not watching the display, I was watching the changes that were being made and

just calculating to myself what the vote would be as those changes were made.

Q. Because the reason I ask the question is that I was wondering whether you might have, when you saw the term "final," did that provoke in you any kind of——

A. I don't even know that——

Q. I mean, I didn't even see it.

A. Did the term "final" ever occur up there, and when did it occur? At what point?

Mr. DAVIS. It's actually not disputed, Mr. Blunt.

Mr. BLUNT. I'm only asking for information here.

Mr. DELAHUNT. I wonder if it might have influenced some of your conclusions.

Mr. BLUNT. I don't recall seeing it at all.

Mr. DAVIS. That was the point of what I asked you earlier. There was a point where it was 215–213, the motion carries, and it said "final."

Mr. BLUNT. I would have been more than happy to accept that. Thank you.

[Whereupon, at 2:15 p.m., the interview was concluded.]

MOTION TO RECOMMIT AGREED TO—(HOUSE OF REPRESENTATIVES—AUGUST 03, 2007)

(Mr. BLUNT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BLUNT. Mr. Speaker, let me say when we left here last night, I have left the House frustrated, I have left the House encouraged, I have left the House proud, I have left the House not so proud. I have never left the House ashamed before.

Now what I just heard here this morning, I don't agree with it, the idea that somehow we have massively violated the traditions of the House and the only penalty is we will be more careful in the future.

I decided for 4 years when that vote would quit as the whip. That was my job. We never stopped the vote until the Clerk handed the person the piece of paper that said what the vote was, and the vote on the piece of paper was 215–213.

The remedy for the House that would solve this problem is to let the vote stand. A majority of this House voted that illegal immigrants would not receive these benefits. That is what the vote was about. All you've got to do is go back to committee, amend the bill and come back to the floor.

You lost the vote. I didn't hit the gavel. I didn't speak over the clerk who was trying to read the vote. The chair did. The Chair decided the vote was over. It doesn't matter what that board says. What matters is what the tally was.

A week of violations of the principles of the House culminated last night in such an excessive way that Republicans walked off the floor, and it was a deserved walkout. And I am ashamed of the House.

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

WEDNESDAY, APRIL 9, 2008.
Washington, DC.

INTERVIEW OF JOHN A. BOEHNER, MINORITY LEADER

The interview in the above matter was held at H–204, Conference Room, the Capitol, commencing at 1:15 p.m.

APPEARANCES

Representatives William D. Delahunt, Artur Davis, Stephanie Herseth Sandlin, Mike Pence, and Steven C. LaTourette.

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Also Present: Muftiah McCartin, Deputy Staff Director, Committee on Rules; Hugh Nathanial Halpern, Republican Staff Director, Committee on Rules; Ed Cassidy, Minority Subcommittee Staff Director, Committee on Rules, Subcommittee on Rules and Organization of the House; Davida Walsh, Legislative Assistant, Representative Delahunt; Chanelle Hardy, Counsel, Representative Davis; Russ Levsen, Communications Director/Deputy Chief of Staff, Representative Herseth Sandlin; Josh Pitcock, Legislative Counsel, Representative Pence; Joe Guzzo, Chief of Staff, Representative LaTourette; and Jo-Marie St. Martin, General Counsel/Floor Operations Director, Office of the Republican Leader.

Mr. DAVIS. We welcome the Minority Leader of the House of Representatives, John Boehner.

Mr. Boehner, our practice today is Mr. LaTourette, I think, is going to ask you an opening set of questions. Then I will ask you a set of questions after that. I don't envision that the two of us together will, frankly, take more than 20 minutes. And then we'll yield to other Members who are present, Ms. Sandlin is here, see if she has any questions.

Would you like to make any statement before we get started? You obviously know we're here to talk about the August 2nd select committee.

Mr. BOEHNER. I don't think I have any need to make a statement.

Mr. DAVIS. Okay. All right.
Steve.

EXAMINATION BY MR. LATOURETTE

Q. Mr. Boehner, first of all, during the course of Roll Call 814 on August 2nd, we had a deposition earlier today where Mike McNulty was the Speaker pro tem. And at one point on the videotape of the activities that night, you are seen going down to the well of the House and putting in a well card. So let me ask you first, before you did that, 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 or don'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

Q. Let me just pick up, Mr. Boehner, on the questions about your attempt to change your vote.

A. No, no, there was no attempt. I did change my vote.

Q. Okay. All right. Well, that is what I was referring to; when you picked up the card, and you went to the well and you changed it.

A. Yes.

Q. You said that you were not aware that night that the vote was not recorded as changed?

A. That's correct.

Q. Can you tell us how you feel or how you felt the Minority was prejudiced that night by the failure to process that vote?

A. If need be at some point thereafter to move to reconsider that, my vote would have had a—since it had not been recorded, I, as a Member of the House, was being disenfranchised by the fact that it was never recorded.

Q. Well, did you make an attempt to make a motion to reconsider that night?

A. Would I?

Q. No, did you? Did you make an attempt to make a motion to reconsider?

A. I did not.

Q. Can you tell us why you did not do that?

A. In the confusion that was going on in the Chair and in the well of the House, I'm not sure that moving to reconsider was the right course of action for the Minority, because, frankly, I thought that we had won the vote.

Q. Now, just so we have a sense of exactly what the Minority's position is in this particular matter, are you contending that Mr. McNulty had anything to do with your vote change not being properly processed that night?

A. I have no idea who is responsible for the fact that my vote wasn't changed.

Q. Now, let me just ask a little bit to make sure I fully understand the point about the reconsideration. Did the Majority Leader Mr. Hoyer in effect make a motion to set aside the vote at some point or to vacate the vote?

A. He moved to vacate the vote, but I don't believe the Chair ever ruled on his motion in reviewing the tape over the weekend. Subsequent to that he moved to reconsider the vote.

Q. And do you know what the result was of that effort by Mr. Hoyer to move to reconsider?

A. I think the vote was reconsidered.

Q. And what was the result of the vote to reconsider?

A. I believe that the Majority won their vote to reconsider.

Q. Just so we're crystal clear, there was a motion to reconsider that was advanced on the floor that night, and there was a vote that occurred on the motion to reconsider; is that correct?

A. There was, but in my opinion too little too late.

Q. Now, was there a point when Mr. Hoyer had a conversation with you about finding some procedural device to set aside the vote, in effect just to have another vote on the motion to recommit? Was that discussed with you?

A. No.

Q. And do you know of any conversations that happened within the Democratic leadership?

A. No.

Q. Now, let me try to move forward a little bit, Mr. Boehner. It will be extremely brief today. But one of the things which this committee is charged to do is not simply to investigate, if you will, what happened on August 2nd, but to make recommendations to the House as to what might be better practice going forward.

One of the points of contention, as you know, is that there was no tally sheet apparently when Mr. McNulty called the vote. To your knowledge, do the rules require that a tally sheet be given to the presiding officer when he or she calls a vote?

A. I'm not sure that there's a rule that would provide that, but having presided in the Chair during our years in the Majority, I think it's a common practice that the Chair does not announce the vote until that tally sheet is handed to the presiding officer.

Q. You say it's common practice during the times that you presided when your side was in the Majority. Did any Parliamentarian ever tell you that it was a requirement that a tally sheet be on hand to announce a vote?

A. I don't want to say that it was a requirement. It was strongly suggested that the official vote is the vote on the tally sheet that's given to the presiding officer by the Clerk.

Q. Do you believe that the presiding officer of the House has the ultimate discretion as to when to call a vote?

A. If they have sufficient information that the vote had been closed and that there are no Members seeking to change their vote.

Q. Whose determination would that be?

A. It has to be the Clerk's, because the presiding officer doesn't have all the information necessary in order to make that call on the vote until they get the tally sheet from the Clerk.

Q. Let me quote you clause 2(a) of rule 20, which, as you know, is the relevant rule that's being discussed here. It says, quote, a recorded vote by electronic device shall not be held open for the sole purpose of reversing the outcome of such vote.

Do you recall that's language that the new Majority adopted last year?

A. Well aware.

Q. I'm sorry?

A. Well aware of it.

Q. Who had the responsibility, in your opinion, of enforcing clause 2(a) in any given context on the floor?

A. The Majority Leader.

Q. And what would be your basis for that?

A. I think it's common practice that the Majority Leader has the ultimate responsibility for the floor. It was that case during the Republican Majority here in the House, and it's pretty clear that's been the practice of the Democrat Majority in the House.

Q. Actually, this may be a side point, but Mr. Blunt, we had a chance to talk to him yesterday, and we looked at the statement that he made on August 3rd, a 1-minute statement that he made on the record, and he stated that it was his recollection that he, as the whip, had had the responsibility of making that decision. Did you have a——

A. The decision to?

Q. Close a vote.

A. No. For a lot of the Republican Majority, the whip's area on the floor is where it would actually occur, but typically in consultation with the Majority Leader.

Q. Do you think it would be a helpful thing for the House to incorporate the requirement of the tally sheet in the rules?

A. I do.

Q. And your reason would be?

A. There is always a lapse between the vote that the Clerk may have and what's actually on the board, as what happened that night. It has happened before where what was up on the board was not reflective of the actual vote because changes had not been processed.

Q. And have you seen other presiding officers make that mistake of not realizing or not appreciating that all of the votes had been processed?

A. I don't recall an instance where that has occurred.

Q. How long have you served with Mike McNulty?

A. Eighteen years or seventeen-and-a-half years.

Q. Is he a Member that you have got to know; is he a Member of whom you have an opinion?

A. He's a good Member and a nice guy.

Q. Do you believe him to be an honest individual?

A. Yes.

Q. Do you believe him to be an ethical individual?

A. Yes.

Q. Do you believe that he knowingly violated any rules on the night of August 2nd, any rules of the House?

A. No, I don't believe that he knowingly violated any rules.

Q. Do you believe that he knowingly attempted to prevent any Member from voting that night?

A. Do I think he knowingly prevented?

Q. Right. Or attempted to?

A. No. I do believe that he made a mistake. And frankly, at one point in the proceeding, he admitted that he had made a mistake.

Q. And we should certainly let you know that we had a chance to talk to him, and I think we would all agree he was very candid today about saying that he made a mistake, that it was—whatever he did was inadvertent in the sense of not wanting to disenfranchise the Members.

In fact, just one final point on that. Mr. McNulty told us this morning that all of his efforts were—all of his efforts and actions that night were with an eye toward making sure that all Members who were in the well had an opportunity to vote or to change their vote if they were in the well.

Do you have any reason to dispute what Mr. McNulty said?

A. No. But whether he knowingly disenfranchised Members or not, the fact is if he made a mistake, Members were disenfranchised, and if there had been a pause of 10 seconds, they could have rectified the correct vote.

Q. Has any Republican Member or any Member of the Minority suggested to you either on August 2nd or since August 2nd that he or she attempted to vote that day and could not vote?

A. No.

Q. The final questions relate to clause 2(a). It specifically says that votes shall not be opened for the sole purpose of reversing the outcome of such vote. As I recall, when the Minority submitted its own proposed rules last year, the proposed language that you submitted was a little bit different. Do you recall that?

A. I do not.

Q. I'm sorry?

A. I do not.

Q. Okay. Well, let's just focus for a second on the sole purpose. To me that implies that the test is exclusivity; that a violation of a rule lies on whether a presiding officer is solely motivated by reversing the outcome of such vote. Is that a reasonable interpretation?

A. I don't believe so.

Q. Tell me what's unreasonable about it.

A. There is a new rule that makes it very clear that keeping a vote open for the sole purpose of changing the outcome——

Q. Let me ask my question perhaps a little bit more clearly.

A. And clearly that vote was held open to change the outcome. But there's no remedy for this rule, and so we could debate it until the cows come home.

Q. Well, I don't want to do that. I just want to ask you one question. If a Member or presiding officer had multiple motivations for keeping a vote open, by definition that would mean the presiding officer had not violated the rule; do you agree?

A. I agree.

Q. I have no further questions, but I yield to Ms. Herseth Sandlin.

EXAMINATION BY MS. HERSETH SANDLIN

Q. Mr. Boehner, you had mentioned when you saw 215–213 and "final" on the board, in your mind that was the correct vote, that was the final determination?

A. Because it would not show up on the board as final unless the Clerk at the front desk had, in fact, called it final.

Q. How familiar are you with the electronic voting system that has been in place and that the Clerks operate?

A. I'm no expert on it.

Q. And so you're not familiar with the steps that the person, the seated Clerk, goes through?

A. No, but I've watched the board for 17 plus years, and when it's final, a tally sheet goes up there. Typically you'll see it up on the board, the final outcome, with "final" behind it.

Q. Were you aware at the time of any technical complications with the electronic voting system that evening in the midst of that vote?

A. No, not up to that point. Apparently there were problems later, having reviewed the proceedings of that night.

Q. Do you recall that you requested a recorded vote on the motion to reconsider offered by Mr. Hoyer?

A. I do.

Q. Do you recall seeing any Democratic Members in or near the well following the changed votes of three Republican Members; Ms. Ileana Ros-Lehtinen, and Mr. Diaz-Balart, both Mario and Lincoln?

A. I remember some Democrat Members coming to the well of the House, but I can't recall whether they were before our three Florida Members changed their votes or after.

Q. Would you agree that if there were Democratic Members in or near the well contemplating a change to their vote, that they should have been allowed to exercise their vote?

A. If, if there were Members seeking to change their votes or contemplating changing their votes, they should be allowed to change their votes. But if I recall, looking through after reviewing the proceedings from that night over the weekend, there was a 6–minute period where there was no movement. And it appeared that—it appeared to me, as I think it appeared to the presiding officer Mr. McNulty, that the vote was finished.

Q. So your recollection of leaving was that it was a significant span of time, 5 minutes or more, between when Mr. McNulty called the vote and when any Democratic Member submitted a card in the well?

A. That's correct.

Q. I don't think I have any further questions.

BY MR. DAVIS

Q. Just to follow up on that point, Mr. Boehner, you referred to what is about a 6–minute window—we have listened to the tape several times—about a 5- or 6-minute window between the time when Mr. McNulty erroneously calls the vote, if you will, and the time that Mr. McNulty reads a statement clarifying what the final result was. I'm agreeing with you now basically.

A. No, no. I'm talking about the time frame up until McNulty called the vote at 214 to 214.

Q. Okay, okay. Well, let me focus just for a moment, though, on that period, the period between when McNulty erroneously calls the vote and then when he reads the statement from the Clerk—from the Parliamentarian. Looking at the tape several times, what happens during that time frame is that Mr. Sullivan spends part of it writing out a statement for Mr. McNulty to read; part of that time frame, it appears, is spent in consultation between Mr. Sullivan and other Members of the parliamentary staff; and during part of that time frame, Members do change their vote, and it's called out: Off aye, on no, Ms. Gillibrand; off aye, on no, Mr. Space.

Is all that consistent with your recollection of what happened that night?

A. Yes. All of that occurred after the erroneous call of the Chair.

Mr. DAVIS. All right. Mr. LaTourette.

BY MR. LATOURETTE

Q. Just because those of us that aren't in leadership, but we aspire to be in leadership someday, is there——

Mr. DAVIS. Are you announcing your candidacy today?

Mr. LATOURETTE. As soon as John—I'm running for my life.

BY MR. LATOURETTE

Q. Is there a procedure where—you know, everybody thinks that there's no comity in the House floor. But isn't it a common practice that you all, you being the Majority and the Minority, clear things with each other before they're brought to the floor from time to time?

A. During the time I was the Majority Leader, even to today, there's a lot of conversation between the floor staff, sometimes between the Majority Leader or the Majority and the Minority, about the floor schedule or issues that are coming to the floor.

Q. After Mr. McNulty calls the vote at 214–214, which isn't right because it's really 215–213, and Mr. Hoyer then goes to the well to make his—to first ask unanimous consent to vacate the vote, which is objected to, he then makes a motion to reconsider the vote. Was there any discussion—I think you said you didn't have any conversations with Mr. Hoyer, but are you aware of any conversations between the Majority staff and the Minority staff to clear a request for a motion for reconsideration?

A. I do not.

Q. And given your experience both in the Majority and in the Minority, would that have been an appropriate and ordinary course of the way that the business of the House floor would be transacted?

A. I think on an ordinary day there would have been some conversation.

Q. That's all I have.

BY MR. DAVIS

Q. I just have one concluding question, Mr. Boehner. What is it that you would suggest is the course of action for this committee?

I'm trying to get a sense of what remedy the Minority would like to see this committee impose.

A. Well, I think there are two issues. Is there a remedy for what happened the night that this vote was called erroneously? At this point probably not. Frankly, one of our votes was disenfranchised. What happened? We're out of that legislative year, and the issue no longer is relevant. But an acknowledgement that it was mishandled and that we were, in fact, disenfranchised, I think, is important for the committee to state.

Secondly, the other charge to the committee was to figure out how do we avoid this in the future.

Q. Can I just ask you one question following up to that, Mr. Boehner? You mentioned the disenfranchisement, and in response to my earlier question, you said that no Member had indicated that she was disenfranchised. You know that at some point Mr. McNulty reads a statement from Mr. Sullivan stating that the vote was 216 to 212 in the negative. Do you recall that?

A. I do recall that. That was a substantial time after both the presiding officer and the Clerk thought the final vote had occurred.

Q. Do you have any reason to believe or any evidence to offer the committee that 216 to 212 was not an accurate reflection of the 428 Members of the House?

A. That is not an accurate reflection of when the vote was called, because Mr. McNulty called it at 214–214, when actually, according to the board, it was 215–213 final.

Q. What makes you——

A. Now, whatever happened thereafter, frankly, is irrelevant to me and irrelevant to our Members who were disenfranchised.

Q. Let me ask you this: What is your basis for concluding that 215 to 213 final in favor of the motion was an accurate result? Is it just the fact that it appeared on the board?

A. On the board, and it said final.

Q. Is that your basis for the——

A. That's my basis for it. That's what I saw on the board.

Q. Okay. All right. No further questions?

A. And so as a result, calling the vote at 214–214 disenfranchised one or more votes on our side of the aisle in favor of the proposition that was on the floor.

Q. If the 215–to–213 statement on the board was accurate?

A. Correct.

Mr. DAVIS. All right. No further questions.

Mr. LATOURETTE. All right. Thanks, John.

Mr. DAVIS. Thanks, John.

EXAMINATION BY MR. PENCE

Q. I have a quick question, if you could. Let me apologize for our tardiness with the committee here.

A. I understand.

Q. Thank you for coming in.

I just had one clarification and then one question, a clarification following the line of reasoning Mr. Davis just described. Since your vote was not recorded, we assume your vote was not recorded as changed. And we would dispute even what was the final account

of 212 to 216. In fact, you would have been on the prevailing side had your changed vote been recorded?

A. That's correct.

Q. Okay. That was an important clarification. So you do have reason to dispute even the number that appeared in the final?

A. That's correct.

Q. Let me ask you, having been on the floor that night, but not especially cognizant of what was happening, I observed you at the time, and we've been looking at time clocks, and I don't know precisely which time the gavel came down that you responded spontaneously and with a great deal of emotion. But do you recall the moment that I'm referring to? You were to the right of the Chamber about in the second row. The gavel came down, and I think you pumped your fist in the air, and you seemed to be upset with the outcome?

A. This was after the second call of the Chair on the vote on the 216.

Q. 215–213?

A. No, no, no, no. This was at the—I don't recall exactly——

Q. 216–212.

A. [continuing]. When I got a little excited.

Q. What I wanted you to tell the committee was essentially what I saw as a visceral reaction from you that was very spontaneous. What did that derive from? What were you immediately concluding about events in that moment that generated the strong reaction that sent you to the leadership table?

A. I don't recall at this point at what point in the proceedings. It seems to me, as best I can recall, is when it was announced we had this 216, whatever the number was, on the—212 number, which, you know, was some 5, 6, 7, 8, 10 minutes later, what I would describe as the second call of the Chair.

Q. Okay. But your objection was—and I'm sure Mr. LaTourette and Mr. Davis got to this. I'll look at the transcript. Your objection was to the administration of the vote; your conclusion was that the rules and traditions and practices——

A. My conclusion was that we had won when the vote was closed, and that Mr. McNulty made a mistake in calling it at 214–214, when, in fact, while he was calling it, 215 yea, 213 nay, "final" was posted on the board.

Mr. PENCE. Okay. I think that's all I have. Thank you.

Mr. DELAHUNT. I have no questions.

[Whereupon, at 2 p.m., the interview concluded.]

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

WEDNESDAY, APRIL 9, 2008.
Washington, DC.

INTERVIEW OF CONGRESSMAN MICHAEL R. McNULTY

The interview in the above matter was held at Room 1628, Longworth House Office Building, commencing at 9:20 a.m.

APPEARANCES

Representatives William D. Delahunt, Artur Davis, Stephanie Herseth Sandlin, Mike Pence, and Steven C. LaTourette.

OUTSIDE COUNSEL, MAJORITY: THOMAS J. SPULAK, ESQ., KING & SPALDING, LLP, 1700 PENNSYLVANIA AVENUE, NW., SUITE 200, WASHINGTON, DC 20006

OUTSIDE COUNSEL, MINORITY: MARK R. PAOLETTA, ESQ., DICKSTEIN SHAPIRO, LLP, 1825 EYE STREET, NW., WASHINGTON, DC 20006

Also Present: Hugh Nathaniel Halpern, Republican Staff Director, Committee on Rules.

Mr. DAVIS. Good morning, Mr. McNulty. Welcome. Again, my apologies to you and to my colleagues. I got stuck in traffic at a meeting with Frank Pallone about some health care issues over on the Senate side.

You know the purpose of this interview today is to talk with you about the vote on August 2, 2007. As you know, the Congress for the House appointed a Select Committee to investigate various issues. But I think if we had our heads on straight, we probably wouldn't have any investigation surrounding that vote.

Let me begin.

EXAMINATION BY MR. DAVIS

Q. We, obviously, want to spend some amount of time today taking you through the videotape of the proceedings that night. And let me just ask you at the outset: Have you had an opportunity to review the videotape before today?

A. I have. I did it once during the August break last year. And then the committee sent over a copy of the tape, and I reviewed it again last night.

Q. Let me just ask you, before we go into the tapes, some general background questions that might ground us a little bit today.

A. May I make a request before you do that?

Q. Certainly. Certainly.

A. I know this is an informal discussion, but I drafted a statement during the August break last year after I reviewed the tape, and I've been waiting for 8 months to say something about it. And I would like to give you copies of that draft that I made last August.

Could I just briefly go through that? It will only take a couple of minutes.

Q. Certainly. If you would pass that around, give all of us a chance to look at it. Appreciate that.

Mr. PAOLETTA. Just as a procedural matter too, can I ask a question? What are we doing in terms of the timeline today?

Mr. DAVIS. I would anticipate taking about half an hour with you, Mr. McNulty.

Mr. MCNULTY. I'll be here as long as you want me here.

Mr. DAVIS. Then Mr. LaTourette will have about half an hour, Steve, if that works for you.

Mr. DELAHUNT. Are you guys going to go 15, 15, 15?

Mr. PAOLETTA. We'll go half-hour, half-hour and then maybe 15 on each side?

Mr. DAVIS. I think that's right, yes.

BY MR. DAVIS

Q. Mr. McNulty, when did you say you prepared this document again?

A. I prepared it during the August break last year, because I was of the impression that I would be speaking to the committee as early as September.

Q. Were you requesting to read this into the record?

A. I'd like to.

Q. Okay. Would you please do that?

A. "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 Tem on August the 2nd, 2007.

"And I also want to ask that my floor statement of August the 3rd be included in the record, Mr. Chairman.

"The vote in question was on 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 tally 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."

Mr. DELAHUNT. Mike, let me just say something. I think it's important that we put out, at least on behalf of the Democrats on the committee—and I think I speak for the entire caucus—we were all present there during your remarks. We heard your remarks. It is universal—and I'm sure I speak for most of the Republicans, if not all of the Republicans; I can let Mike and Steve address that—you command respect. We know that you are a person of integrity.

There is absolutely no reason for you to feel in any way diminished or in any way awkward about the occurrences that night. You are not on trial here.

What we are trying to do is to determine, as we look forward, A, what happened, okay, and how we can improve the process itself.

But I mean that. I know I speak for the entire Democratic Caucus.

Mr. MCNULTY. I understand that, Mr. Chairman.

Mr. DELAHUNT. You are very well-liked, you are very well-respected. You're admired. We want you back in that chair.

Mr. MCNULTY. I really appreciate that very much. But I do want to make it clear, because there has been so much wild speculation about what happened, what the motivations were, what the Majority Leader did or didn't do, what the Parliamentarian did or didn't do.

And the fact is that none of these problems would have occurred had I not called that vote prematurely. I was wrong to do so, and I admitted it the day after. That fact remains. I am the reason we are all sitting here.

Mr. DELAHUNT. Mike, if I had to sit here for every mistake I've made, I'd be here 24 hours a day.

Mr. MCNULTY. No, I understand.

Mr. LATOURETTE. If I had a nickel, I'd be rich.

Mr. DELAHUNT. So please understand, you know, that this is not about Mike McNulty. It is about the process.

Mr. MCNULTY. I understand.

Mr. DELAHUNT. You have demonstrated, time and time again, skills and talent as a presiding officer. As a member of our caucus and a Member of the House, you command respect. You happened to be there at a time when a mistake was made, and that's it.

Mr. MCNULTY. I appreciate that.

And on the other things you mentioned, I have voluntarily refrained from being in the chair since that time. I have not been in the chair since. And I hope that some time before my term expires I will be able to do that. But the reason I did that was because I felt, especially in the months immediately following my error, that if I went into the chair that some Members might object to that. And so I will not do anything to disrupt the proceedings of the House.

Mr. DELAHUNT. Well, again—and I've made this statement to you, and, again, I know I'm speaking for the Democrats—we, I want to see you back in that chair, because you do preside with fairness, with integrity and with skill. And please end this voluntary absence and get back there, because we need people like yourself in the chair.

Mr. MCNULTY. I'm going to consider doing that, but I'm going to talk to Leader Boehner before I do that.

Mr. DELAHUNT. Okay.

BY MR. DAVIS

Q. Let me, Mr. McNulty, actually pick up on, if I can, Minority Leader Boehner. Let me point you to the second page of your statement. You quote a statement from Minority Leader Boehner. Was that a statement that he made to you, personally, or was that a statement that was made on the House floor?

A. No. That was a statement on the House floor.

Q. Okay. Okay. Now, let me go back, if I can——

A. He made that statement after I made my statement of apology.

Q. Okay. And just so we have a fairly clear record of all of this, understand that a significant part of the focus of these questions for the next hour or so is obviously to establish a record, to give you a full opportunity to explain what your thinking was tonight.

It is not done with an accusatory air, at least speaking for myself. It is done simply with a desire to give you your first opportunity, frankly, to really walk through with your colleagues what happened, your first opportunity to review some portion of the video with your colleagues. And that is the full spirit of my questions——

A. Great.

Q. [continuing]. And I'm sure it will be the full spirit of Mr. LaTourette's, as well.

Let me lay just a little bit of background before we begin to look at the tape and try to isolate the events that night.

Prior to August 2nd, it is our understanding, from talking to various witnesses, that you were one of a group of Members who was designated as regular presiding officers of the House. Is that right?

A. Not in any formal way, but I presided frequently because I was asked to do so by the Speaker's staff.

During the time when the Democratic Party was previously in the Majority, I probably presided over the House more than any other Member of the House. There were three regular Speakers Pro Tem at the time—Sonny Montgomery, Ron Mazolli and me—and, to a lesser extent, Kweisi Mfume and a couple of others. But I probably presided as much as, if not more than, any other Member of the House during my first 6 years here.

Q. When the Democrats resumed the Majority in January 2007, you came back into your role of being a regular presiding?

A. I presided on the floor. I was given the honor of being one of the presiders on the first day of the new session, our first day back in Majority.

Q. Do you remember that, at the beginning of this session of Congress, there was a passage of a new rules package by the Democratic Majority?

A. Yes, I'm very much aware of that. One of the new rules was one of the ones that I cited, which has been cited by Members on the floor a number of times since its initial enactment.

Q. Are you referring to 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"?

A. I am.

Q. When the new Majority went about assembling and preparing itself to lead the chamber, were there any kind of training sessions that were set up for people who were going to be presiding officers?

A. Not that I'm aware of.

Q. Do you remember receiving any kind of a briefing of any nature from the leadership office, from the Speaker's office, regarding the interpretation of the new House rules?

A. No.

Q. Do you remember receiving any kind of a briefing from, say, the Parliamentarian or any member of the Parliamentarian's office regarding the new House rules that were passed?

A. No.

Q. Obviously, we are going to be focusing almost exclusively, as far as the rules go, on clause 2(a).

Do you remember receiving any kind of a briefing or having any kind of an extended discussion with the Parliamentarian's staff about exactly what it means to enforce clause 2(a)?

A. No.

Q. Is it fair to say that the enforcement of clause 2(a) is in the hands of the presiding officer at any given time?

A. I would say so.

Q. And say just a little bit more about that, kind of how you as a presiding officer understood your role with respect to 2(a).

A. Well, any time I'm in the chair, I take it very seriously. And I try to study the trends that are going on in the Congress at the time, as well.

I have been particularly sensitive to rights of the minority. I have been complimented by the Members of the minority many times for my service in the chair, particularly the first 6 years, on the number of votes that I called for the minority. When Majority

Members didn't show up and the vote was obviously for the minority, I called it for the minority. And I was criticized for that roundly for a long time, especially by senior Members of the House, but I did it because it was the right thing to do.

I noticed this year that, a number of times, Members of the minority cited that particular new rule. At the time that they cited it, I really didn't think it was applicable, either because not much time had elapsed after the vote or the vote was not that close to begin with.

But it did occur to me that, at some point in time, there was going to be a vote that was very, very close, and after time had expired, the Chair would have to consider the enforcement of that new rule. I did not expect it to be that night.

Q. Let me stop you at that point.

Did you believe that the enforcement and the interpretation of that rule was in the hands of the presiding officer?

A. Certainly.

Q. I didn't mean to cut you off. I just wanted to——

A. Yes. On that particular night, it occurred to me, as we were winding down on that vote, this is the time. I mean—and I fully expect—and, again, I emphasize that I was wrong when I called the vote when I did, but I fully expect that, if I did not call that vote at some point and I had just let things play out, I believe that objection would have been made later that night after that vote.

Q. So, if I understand what you're saying, you mentioned that you tried to follow what you described as trends in the chamber. Had there been a pattern of close motions to recommit during 2007? Do you happen to remember that?

A. I couldn't say that off the top of my head, how many close ones there were. I know there have been some.

Q. Let's just focus on——

A. There was one in the last couple of weeks that was close.

Q. Let's just focus on August 2nd then.

As I recall, this vote happened at night. It happened in the late evening hours, around 10 o'clock or so.

A. Really late.

Q. The motion to recommit would have occurred at the end of a sequence of votes. Is that your recollection also?

A. Right.

Q. There was a series of amendments before that?

A. That's correct.

Q. There would have been argument on the motion?

A. Right. And I wasn't in the chair for those. I came to the chair for the motion to recommit and final passage.

Q. Had you received any particular instructions regarding that particular motion to recommit from the leadership?

A. No. And I must admit to you, I didn't know what the motion to recommit was going to be when I ascended the chair.

Q. So no one had approached you and had said, "This is an important motion; it may be close," nothing of that nature?

A. No.

Q. Let's go ahead and let's begin the tape. Let's just see if we can go to 22:49.

Mr. McNulty, you will notice that right now it's queued at 22:38, so it will take us a little bit of time. What is on the screen is a summary of the votes as they are coming in. It will take us a few minutes to work our way up to the first critical point that we want to talk about.

But as we're doing that, obviously what you are seeing—let's stop. We've stopped at—let's see if we can go back to 22:49:01.

Okay. Let's stop right here. Okay.

Mr. McNulty, we have stopped at 22:48:59. Can you tell from looking at the board—you see that the vote count is 205 for the motion, 210 against it. Can we adjust the screen to see how much time is left at this point?

Mr. HALPERN. The time code obscures it.

Mr. DAVIS. Okay. Okay. Let's just turn it on "play" and watch for a moment.

BY MR. DAVIS

Q. Mr. McNulty, if you would just watch the tape for a moment.

A. Sure.

[Video shown.]

Q. Let's stop the tape. All right.

Mr. McNulty, you will see, at 22:49:59, it is 214 for the motion, 213 against. You are at the rostrum, and you appear to be turning to your right.

Tell us what you're doing when you turn to your right. Are you able to see yourself?

A. I see myself, yes, but I can't even make out who was next to me there.

Q. Okay. Let me just capture this moment for you. It is a little bit hard to do because the seconds move so quickly.

The time sheet that we have reflects that, at 22:49:01, that you banged the gavel and you said, "Are there any Members who wish to vote? Are there any Members who wish to change their vote?"

What is the significance of that nomenclature when the presiding officer says that?

A. Well, that begins the process of wrapping up the vote.

Q. Tell me what you mean when you say, that begins the process of wrapping up the vote. When does the presiding officer typically make that announcement, "Are there any Members who wish to vote?"

A. When it appears that all Members—when there are no Members in the well attempting to turn in cards, or when—and this happens quite frequently—when a Member of the Majority staff—typically since the new year, the beginning of 2007, Catlin O'Neill sometimes will come and say, "Time to wrap it up."

Q. Did Ms. O'Neill approach you on this occasion and tell you that it was time to wrap the vote up?

A. No.

Q. Now, we are literally frozen at 22:49:59. And the time sheet that we have prepared by the staff indicates that Speaker of the House Nancy Pelosi casts a vote at this point.

Let's see if we can actually run it to the point where it goes to 214.

[Video shown.]

Let's stop.

All right, you will see at this point, Mr. McNulty, that 214 to 214 goes up, which reflects that the Speaker had cast a vote.

It is unusual, is it not, for the Speaker to vote in the normal course of things?

A. It is.

Q. As an experienced Member of the House, what did it say to you when the Speaker cast a vote?

A. I would just assume from that that it was because the vote was close and she thought her vote might be critical.

Q. When the Speaker cast her vote, the total tally was 214 to 214, which is a numerical score of 428. Was that number, 428, meaningful to you that night?

A. It wasn't meaningful to me at all, at that particular moment.

Q. Let me ask that another way.

A. Upon reflecting later on, it was meaningful because there were talks about people being denied votes and so on. That number adds up to 428, and that is the number of people who voted after all of the votes were counted so that, so that, after that particular time, since I know of no way to take a vote off the board, nobody else voted. There were just changes in votes.

Q. Let me make sure I understand your point. You had been in the chair—you had been on the floor during the previous votes that night.

Do you remember whether the number 428 was consistent with the number of Members who had voted and the iterations running up to this motion to recommit?

A. I do not remember that, no.

Q. Okay. Do you remember whether, at the point you were in the chair, that you had any sense that 214 to 214—because, obviously, it is not 435. It's less than 435. Members are frequently absent.

A. Right. Right.

Q. Do you remember having any recollection that 428 reflected an accurate count of the number of Members who were at the chamber voting that night?

A. I don't remember that, no.

Q. All right.

A. It's easy to look up that record and see how many people voted, but I don't know the——

Mr. LATOURETTE. Just for the record, that's not accurate.

Mr. DAVIS. Well, that's why I'm asking him.

Mr. LATOURETTE. Okay.

BY MR. DAVIS

Q. All right, 214 to 214.

Now, let's see if we can run up to the point that Mr. McNulty makes his first call, which should be momentarily.

[Video shown.]

Let's stop.

All right, Mr. McNulty, you are speaking at this point. Can you tell us what you are doing?

A. I was calling the vote at 214–214.

Q. And, at this point, the clock has reached zero; is that correct?

A. Well, it's past zero.

Q. Do you happen to have any general sense—I understand you may not have the answer down to the seconds and minutes, but do you have a general sense of how long had lapsed since the clock passed zero?

A. I don't, but after reviewing the tape again last night, I think, in my mind, I thought it was longer than it actually was.

Q. Just tell us what was your reason at this point—but let's literally listen to what you say. Let's play the sound.

[Video shown.]

Let's stop again.

According to the transcript we have, you state on this vote, "The yeas are 214; the nays are 214." And it seems from the tape that you stopped at that point; is that accurate?

A. I did, yes.

Q. All right. Tell us why you stopped.

A. Because someone either said "one more vote" or "additional vote" or something like that. And then, shortly after that, some additional Members appeared at the well to vote.

Another thing that I have consistently done in the chair is to try to protect the right of every single Member to vote even if they are late. And that goes to even on a vote that's not close at all. A lot of times, Members get frustrated with the pace of events, and on a vote that's not close at all, some of them will come in late and be back in the chamber and yell "one more vote" and come down the aisle. I've seen some people bang the gavel and close the vote.

I would not do that, because, in my view, it is not just protecting their vote as an individual Member. As far as I'm concerned, that individual represents about 650,000 American people, and they have the right to have their vote cast.

Q. Now, when the result is called or when the result is announced on the floor, is there a particular catchphrase or particular terminology that the presiding officer would actually use to close a vote?

A. Yes.

Q. What is that?

A. In this particular case, this was a motion to recommit. In order to close the vote, you would have to say, "The motion is not carried," or, "The motion is defeated"——

Q. And you stopped before you did that?

A. [continuing]. Or that it is carried.

Q. And you stopped before you did that?

A. I did stop before I did that.

Q. Is it your experience, Mr. McNulty, that it may not be an everyday occurrence, but it is not uncommon for a presiding officer to begin to call a vote and then to be interrupted by someone saying "one more" or something of that nature?

A. It is quite common.

Q. Is that essentially what happens at this moment?

A. Yes.

Q. Now, let's play the tape again for a moment.

[Video shown.]

What is happening next, Mr. McNulty? If you watch the tape, describe for us what is happening.

A. Additional Members are coming to the floor to change their votes. And, well, I had made my decision to call the vote as soon as all Members had voted. And in this particular sequence, the last person I saw filling out a change card was Mario Diaz-Balart. And I had decided in my own mind to call the vote after that vote was recorded——

Q. Let's stop at this point. Now, let's backtrack through that.

A. [continuing]. Assuming nobody else showed up in the chamber with a card.

Q. Okay. Now, with respect to the moment that we've discussed previously, when you began to call the vote and then stopped, did any Member of Congress instruct you or direct you to call the vote at that point?

A. No one instructed me to call that vote at any time that night that I recognized. And I'll 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.

Q. So, when you began to call the vote and you stop yourself because you see activity going on in the chamber, was it your decision and your decision alone?

A. It was.

Q. Now, moving forward, you were describing—and I think we can hear the tape—you hear Mr. Lampson coming and his vote being announced. You see Ms. Ros-Lehtinen, two other Florida Members, the Diaz-Balart brothers. That is consistent with your recollection from watching the tape?

A. Yes.

Q. Now, when did you anticipate that—now, you just told us this, but I want to make sure we are absolutely clear about it.

When did you anticipate that you were going to call the vote? What were you waiting for?

A. After the last vote change was announced.

Q. Do you remember what was on the board at this point, the board that reflects the vote total? And was that important to you?

A. All I remember is it was close.

Q. Was that important to you, as the presiding officer?

A. No. I had made up my mind that I was going to call the vote after the last vote change had occurred.

Q. And who did you believe was the last vote change?

A. Mario Diaz-Balart.

Q. And you were basing that on looking in the well and observing Members and their activities; is that correct?

A. Yes.

Q. Now, if we go through and look at the time sheet that we have—let's actually just watch it on tape. Let's go into the next time.

[Video shown.]

Let's stop.

All right. We have stopped at 22:51:30. And, Mr. McNulty, at 22:51:30, you called the vote.

A. Yes.

Q. Now, let's back up from that. What the tape reflects is that you were standing alone at the rostrum as this 1 minute or so

passes between when you first began to call the vote and stop and when you actually call the vote.

Do you agree that the tape reflects that you are standing alone?

A. Yes.

Q. And there is no member of the staff who is standing close to you or engaging in any conversation with you; is that correct?

A. Correct.

Q. And there is no Member of the House who is standing close to you or engaged in conversation with you?

A. Correct.

Q. And you have explained why you called the vote at 22:51. The distinction between the language you use at 22:51:30 and the language you used earlier is that, at 22:51:30, you say on this vote, "The ayes are 214; the nays are 214. The motion is not agreed to." The extra words, "The motion is not agreed to," would be tantamount to a calling of the vote here; is that correct?

A. That is correct.

Q. Did you believe, when you made that decision, that every Member of the House who wished to vote had voted?

A. Yes.

Q. Did you believe that your calling the vote prevented or thwarted any Member of the House from casting a vote?

A. No. Can I make one comment about this?

Q. Sure.

A. Because I think it is really critical——

Q. Certainly.

A [continuing]. Because this is my error.

I called the vote right after Mario Diaz-Balart's vote was announced. I looked at the board. It said 214–214. I called the vote at that point.

I believe technically what happened—and I think this is important—is that Mario Diaz-Balart's vote, although it had been entered into the system and announced by the Clerk, had not yet shown up on the board, because there's this little time lapse in between in getting that up there.

Q. Did you know that at the time you were in the chair?

A. I didn't think of that at the time. I thought it was included. I intended for it to be included.

Q. Did you believe it had been included?

A. I believed it had been included, yes, absolutely.

Q. Would you have called the vote if you did not believe that it had been included?

A. Absolutely not. I told you how strongly I feel about reporting every single Member's vote. And it was my intention to call it after Mario's vote had been recorded.

And it said 214–214 on the board. I banged the gavel, called the vote at that point. And almost immediately thereafter, the vote tally changed on the board—in other words, the vote was recorded—and that ended up in the 215–213——

Q. Now, let me stop you again at this point.

A. [continuing]. On the board.

Q. One of the points of contention that has arisen as we have looked into this matter is the question of a tally sheet. Were you presented with a tally sheet before you called the vote?

A. I was not.

Q. How significant, in your mind, was the absence of a tally sheet?

A. Well, 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 and we could get into one of these 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 that——

Q. Clause 2(a).

A. [continuing]. Clause 2(a).

So I decided, after Mario's vote, when I saw no one else in front of me with a card, attempting to get a card, ready to vote, that I would call the vote.

Q. Going back to the tally sheet, you have had occasion to review the rules in your career, and I suspect you reviewed the rules in preparation for coming here today—is that right?—the relevant rules as they relate to calling a vote.

A. Well, I'll be very honest with you. I don't put myself up as an expert on the rules. Whatever proficiency that I have in the chair basically has been the result of repetition and listening to the Parliamentarian, starting with Bill Brown, who was my original mentor in the chair, and Charlie Johnson and now John Sullivan, both of whom I think are just absolutely terrific.

I don't hold myself up as an expert of the rules. I did not pore over the rules in preparation for this discussion.

Q. Let me tell you why I asked that.

A. Yes.

Q. Did any of the three individuals you mentioned, all of whom were Parliamentarians, did any of them ever mention to you prior to the night of August 2nd that a tally sheet had to be given a presiding officer before he could call a vote?

A. No. And, as a matter of fact—and I've had very few discussions with anybody about this since then, because I didn't know what was proper, so I've kind of just kept to myself on the thing.

But the one thing that I did do the day after is I asked Charlie Johnson—or John Sullivan, excuse me—I asked John Sullivan one question the next morning, because it was my understanding that a tally sheet, although it was the normal order of things, was not required by the rules. I wanted to make sure that I didn't violate any rules, and I asked him point-blank that question. I said, "Is a tally sheet required by the rules?" He said, "No."

He then explained to me why it's a good thing to wait for the tally sheet.

Q. But he didn't tell you that it was a requirement or a rule?

A. Right. Right.

Q. And, by comparison, when the presiding officer is in the chair, there are certain phrases that are typically used, is that correct, at various points? There are certain phrases that are considered to be best form in terms of how Members are recognized. There are certain phrases that are considered to be best form in terms of what should be said when a vote is called, but none of those have the binding effect of rules typically.

A. Right.

Q. Okay.

Now, at this point, you call the vote at 22:51:30. And, again, I want to save us the time of just walking through every moment of this tape. But I think we all agree that there is consternation in the chamber. There is noise that comes from the floor after you call the vote, and it's clear that the minority is displeased.

Do you agree with that?

A. I think that's putting it mildly.

Q. All right. Now, give me a sense—because I don't want to waste your time, given your time constraints, walking you through every moment of the tape—give me a sense of what happens next after this consternation from the floor.

Would it help you to watch the tape?

A. No. I think I recall what happened immediately thereafter, because I was just kind of stunned when I looked up at the board and I saw the 215–213 and the word "final" after it. I'll be very honest with you; I did not know what to do next.

So I turned to John Sullivan, and John said to me, "I am going to write a statement for you to read," at which point I remember the words of Bill Brown, who once said to me, "When you are in the chair, when in doubt, do what the Parliamentarian says." And that's exactly—I mean, I was just so disappointed in myself for causing what I caused that night that I just decided to do whatever John told me to do at that point in time.

Q. What did he tell you to do?

A. He said, "Wait for me to write out a statement, and then read it."

Q. Let's see if we can go on in the tape a little bit further ahead, to—let me get the exact page here—22:58. About 7 minutes lapses here, Mr. McNulty, from 22:51 to 22:58. Let's run the tape to that point.

During this 7 minutes, you are conferring with Mr. Sullivan about what to do. Are you conferring with any member of leadership about what to do?

A. No.

Q. Are you conferring with any member of the staff of leadership about what to do?

A. No, I don't believe so.

Q. Okay. Let's run it down to the point where Mr. McNulty speaks, which I believe is at 22——

A. Now I'm reading a statement.

Q. Let's just listen to it.

[Video shown.]

A. I'm referring to Mario at this point.

Q. Let's stop. Can you just explain what you said, Mr. McNulty?

A. Yes. Well, that's probably an inartful way of saying it, but I was trying to express the thought that I called the vote at 214–214, and there was a vote in the system that didn't show up on the board yet.

Q. Okay. You referred to 212–216. What is the basis for the 212–216 number?

A. That is what was the conclusion of that statement that John wrote out for me, said that after all the votes were—those other

changes that came in afterward. So there were other changes that came in.

Q. There were Democratic and Republican changes, were there not?

A. I'm not sure. I think they were mostly Democratic changes.

Mr. DELAHUNT. Changes after the Mario Diaz-Balart vote?

Mr. MCNULTY. That's correct. Right.

Mr. DAVIS. Okay.

Mr. MCNULTY. And that was part of the statement that John wrote for me, saying that I called the vote prematurely, I think I said, while votes were in the system, or whatever I said there. I was just referring to that there was a vote announced that didn't show up on the board.

BY MR. DAVIS

Q. But you were following Mr. Sullivan's instructions at this point?

A. That's correct. I basically read the statement that he gave to me.

Q. Now, was there also a point that you learned there was a problem with the machines malfunctioning that night? Do you remember learning of that?

A. Yes, well, the system broke down. When we went to the motion to reconsider the vote on the motion to recommit, the system failed.

Q. Now, again, to save time, obviously, if you look at the time sheet of what happens, some gap passes. There is a motion to reconsider that is offered. There is apparently some decision or some evaluation as to what the next step should be.

Can you briefly, in your own words, tell us what is happening on the floor after you called the vote, in terms of the whole motion to reconsider?

A. I'm not sure exactly when this occurred but I think before we got to the motion to reconsider, that Steny Hoyer went to the microphone and asked that the vote be vacated. I believe that that's what happened.

Q. What was the result?

A. There was just a massive objection to that.

Q. A massive objection from whom?

A. On the floor, there were just shouts of "no."

Q. What was the result of Mr. Hoyer's motion?

A. Then he made a motion to reconsider the motion to recommit, the vote on the motion to recommit. And I called for that vote to be held, but the system didn't go up.

And then, I think, if you would play—I think Leader Boehner called for a motion to adjourn or something, which I was instructed by the Parliamentarian could not be entertained during a vote. But that further, I think, fueled the anger on the floor, because Members were probably saying, "Well, what vote? There's nothing up on the board."

Q. So you say——

A. They tell me the system, the electronic system, didn't go up right away. It eventually did go up.

Q. Okay.

Now, I'm going to turn to Mr. LaTourette, but let me just ask a few final, concluding questions of you.

As you deal with the motion to adjourn, as you deal with the motion to reconsider, you were in close consultation with the Parliamentarian as to how to resolve all of these motions; is that correct?

A. Correct.

Q. And were you receiving close guidance from Mr. Sullivan as to what to do with respect to Mr. Hoyer's motion and, ultimately, Mr. Boehner's motion?

A. Yes. I'm not sure if John instructed me on all of those. I mean, there were others there. Ethan might have been there.

Q. Other members of the Parliamentarian's staff.

A. I think it was mainly John though.

Q. All right. And as you made decisions and as you made rulings regarding the motions by the two leaders, Mr. Boehner and Mr. Hoyer, you made those rulings consistent with instructions given to you by members of the parliamentary staff, principally Mr. Sullivan; is that correct?

A. That is correct, because, at that point in time, I was still concerned about the error that I had made. So I just decided to follow the instructions of the Parliamentarian.

Q. You said several times—and we appreciate your candor then and now—that you made an error that night. Was there ever a moment that night when you intended to violate the rules of the House?

A. No. And, in fact, I did not violate the rules of the House.

Q. Was there ever a moment that night—you understand we ask you these questions because it's important to have your answer documented.

Was there ever a moment that night when you intended to act in a manner that would have disfranchised any member of the House?

A. That's the last thing I would do.

Q. In fact, to the contrary, was it your goal that night to act in a manner that permitted every Member of the House who wished to vote to do so?

A. Yes.

Q. Were your actions that night at all times consistent with your desire to reflect the actual intent of the Members of the House with respect to the final vote?

A. Yes.

Mr. DAVIS. I'll yield to Mr. LaTourette.

Mr. LATOURETTE. Thank you very much.

Mike, thank you for your answers. As someone who has presided from time to time, I know that being in the chair is sometimes it's autopilot and sometimes you get an August the 2nd. I feel for you. And I appreciated your comments the following morning.

And I have watched the tape a lot of times. And having to be in that situation, having to apologize to the House is a tough thing, and I appreciated you doing it then, and I appreciate your answers today.

EXAMINATION BY MR. LATOURETTE

Q. I want to go back to your pedigree for just a second. You came here in 1983?

A. No. I came here in 19—I was elected in 1988 and started in January of 1989.

Q. Okay. During that time, you were tapped by the then-Democratic leadership to be the Speaker Pro Tem from time to time?

A. Starting with Speaker Wright, yes.

Q. And you indicated that, aside from yourself, there were maybe two other Members who did it a lot and maybe some others.

A. Those are the ones I remember that seemed to do it most frequently. There were a number of others in the group, but I was clearly in the chair a lot during those 6 years.

Q. By "a lot," are you able to quantify it in terms of hours? For instance, well, let me ask you this: Did you do the appropriations bills?

A. I did a lot of appropriations bill.

Q. So would it be fair to say hundreds of hours?

A. I don't know. You know, you can probably just Google that and find out. But, I mean, I acknowledge I was in the chair a lot.

Q. Okay. As a matter of fact——

A. Even people who are in the chair a lot make mistakes.

Q. Well, I'm not saying that they don't.

At the time of Charlie Johnson's retirement, you put a statement into the record that, basically, as a lot of us did who admired Charlie Johnson, commended him for his service to the House. You talked about people like Muftia and John Sullivan and Tom giving you guidance and assistance. In fact, you speak to how they taught you, trained you and how much you appreciated their guidance, and it caused you to be one of the outstanding presiding officers in the House, right?

A. Well, I never characterized myself that way——

Q. Well, I would.

A. [continuing]. But I'm honored that others have said that.

Q. Well, I would. And, quite frankly, you should know when John Sullivan was here, when the Republicans were in the Majority for 12 years, we had Karen Haas, and she would work with the Parliamentarians, and the Parliamentarians—quite frankly, as you know, some people are well-suited to be in the chair, and some people don't have the temperament to be in the chair, especially during tough times.

The Parliamentarian's office, according to John Sullivan and when the Republicans had the Majority, would develop a list that, when there was going to be a ruckus on the floor, you would tap this person. I asked Mr. Sullivan where he would put you. He said, if he had a ranking system of one through five, you'd be in the top group in terms of experience. So you should know, not only by your colleagues but also by the Parliamentarian staff, that you are recognized as an exceptional presiding officer.

In light of that, when the new Majority came in during 2007, we talked about the fact that you presided on opening day. I recall seeing you in the chair a lot from the beginning of January through August. Is that a fair observation?

A. It is.

The only thing that changed in that regard was, after a while, I was being put in the chair not just frequently but for very long periods of time. I now have a physical condition that impacts me, and there was a point in time—I forget what month it was—that I said to Catlin, for the longer bills I would prefer not being in the chair, because it's difficult for me to stand for a long period of time. So they kind of adjusted that, to putting me in the chair more for recommit and passage, which are relatively brief periods of time.

Q. Most times. So you are now a closer. You became a closer?

A. I guess that would be a pretty accurate description.

Q. In response to Artur's question, I believe that there were 10 amendment votes in the Committee of the Whole prior to recommit and passage. You were not the Chairman of the Whole House. You came in as the Speaker Pro Tem.

You mentioned Catlin. Is that Catlin O'Neill?

A. That is correct.

Q. Is Catlin O'Neill the designee in the Speaker's office who schedules presiding officers?

A. Yes.

Q. Is she the one who asked you to preside and to close on this particular occasion?

A. She is.

Q. From the time when you were in the chair as Speaker Pro Tem in the old Majority and now when you had begun to preside or did begin to preside in the new Majority, aside from clause 2(a) that we've been talking about, did you notice any other difference, in terms of were the rules different? Was presiding different? Was it handled any differently than you recall?

A. Not that I can recall, Steve.

Q. Pretty much, the votes were the same, they were called the same?

A. The language was the same on calling the votes and so on. Of course, I've done it so many times through the years that, you know those little cards that they give you? I mean, most of the time, I don't even need them.

Q. Right. Do you recall any instance, either in the old Majority or since you have presided beginning in 2007, when you called the vote without the benefit of a tally slip?

A. No.

Q. Okay. Would you——

A. Prior to 2007, there was no clause 2(a) of Rule XX.

Q. Right. We'll get to 2(a) in just a second.

Charlie Johnson testified in a public hearing that—his experience with the House was 40 years. He said that it's never happened. John Sullivan said the same thing.

So I think it wouldn't surprise you that the evidence before this committee, at this moment in time at least, is that this is the first time in at least 40 years that a vote has been called without the benefit of a tally slip.

A. Well, I couldn't say that of my own personal knowledge, but that may very well be, based on the testimony that you have received. That's why I've acknowledged that it was a mistake. And

I don't know how many different ways I can say that, but it was a mistake.

Q. Well, I got that.

There are nine vignettes that I'd like to run through quickly on the tape. The first one is going to occur at 22:38:59.

If you could, just run it for, like, 30 seconds.

[Video shown.]

Now, do you see yourself?

A. Yes.

Q. Okay. Well, I don't see what I was looking for.

Mr. PAOLETTA. Mr. LaTourette, I think it's before that. I think it's at 22:38:45, which is when the person comes down from the——

Mr. LATOURETTE. I'm looking for the first time when he bangs the gavel.

Mr. PAOLETTA. Yes. At 22:38:45, you'll see, I believe, Catlin O'Neill coming down to the rostrum. You are sitting there, okay? Do you see her running down toward you?

Mr. MCNULTY. Yes.

Mr. LATOURETTE. Stop it there.

Mr. PAOLETTA. She's saying something.

BY MR. LATOURETTE

Q. Okay. You're seated. The person that has just come running down the aisle to address you is Catlin O'Neill.

Do you recall what Ms. O'Neill has indicated to you at that moment in time?

A. I don't exactly remember what she said to me, but it may have been that they expected it to be a close vote or something like that.

Q. Okay. When we roll it forward, I think when she leaves, it's the time when you first bang the gavel.

Mr. PAOLETTA. Keep rolling.

Mr. LATOURETTE. Go ahead and roll it.

BY MR. LATOURETTE

Q. So she's leaving the rostrum. You stand.

A. Yes.

[Video shown.]

Q. To your understanding, is that when you were asking for changes, do you recall?

A. [Nonverbal response.]

Q. You don't know. Okay.

Mr. PAOLETTA. It's around the 5-minute mark.

Mr. LATOURETTE. Okay. Let's go to 22:46, if we could.

[Video shown.]

Okay. Run it again.

Mr. DAVIS. Steve, what are you looking for?

Mr. PAOLETTA. It's 38:38.

Mr. LATOURETTE. I'm looking for Catlin to go up and talk to him again.

BY MR. LATOURETTE

Q. At that moment in time—freeze it there at 22:46:43—again, Catlin O'Neill has risen to the rostrum, and you are having a conversation with her, it appears.

Do you recall what——

A. That's Catlin O'Neill?

Q. Yes, I think so. I thought it was.

A. I don't remember that conversation.

Mr. DAVIS. Well, obviously, the purpose—hold on one second, Mr. McNulty. Obviously, the only person testifying here today is you.

Mr. MCNULTY. Yes.

Mr. DAVIS. So the appropriate question is, does that refresh your memory as to who it was? If it doesn't, you can say it doesn't, but the only person here testifying is you.

Mr. MCNULTY. I can't even tell who that is.

Mr. LATOURETTE. Okay.

Could you go to 48:50?

[Video shown.]

Mr. MCNULTY. Yes, that looks like Catlin.

BY MR. LATOURETTE

Q. Okay. Then, as the witness—it looks like Catlin—do you recall having a conversation at that moment in time with Catlin O'Neill? If you do, what was the substance of the conversation?

A. I believe at one point—and I don't know whether it was then or before—I think she said to me that it was going to be a close vote. I believe she did say that to me, but she didn't say anything about calling the vote or the timing of the vote or anything like that.

Q. Gotcha.

A. Now, I'm guessing that—I don't know. I shouldn't guess. I don't even know if time has expired on the vote at that point.

Q. Right.

A. Maybe it has.

Q. Let me ask you this: Do you recall her ever advising you to watch for the Speaker to vote——

A. No.

Q. [continuing]. Or that the Speaker would be voting?

A. No.

Q. How did you become aware that Speaker Pelosi voted?

A. I don't even remember that.

Q. Okay. If we could go to 22:49——

A. I mean, I know she did, because you showed it to me earlier.

Q. Right. Right. If you could, just watch the interplay at 22:49. I have it at 32, so maybe back it up to about 22:49:10.

Mr. DAVIS. That's our 15–second margin of error.

Mr. LATOURETTE. Yes. I'm not as good as you are, Artur. Let's see. Could you freeze it there?

BY MR. LATOURETTE

Q. Do you see the Speaker of the House under the word "present"?

Mr. SPULAK. She has a green suit on.

Mr. LATOURETTE. We'll roll it, but I think——

Mr. MCNULTY. Where is she?

Mr. LATOURETTE. She's under the "P-R-E-S."

Mr. DAVIS. Well, again, the appropriate question is: Can you see that, Mike? If you can't, the answer is "no."

Mr. MCNULTY. I can't.

Mr. LATOURETTE. Okay. Well, then, we're going to roll it.

BY MR. LATOURETTE

Q. I would ask you to watch that person I believe to be the Speaker of the House, Mrs. Pelosi, okay?

A. I've got it now.

Q. Okay. All right.

[Video shown.]

So the Speaker is now wandering to the rostrum, okay?

A. Okay. Are you sure that was the Speaker? That looks like Betty McCollum to me.

Q. Again, freeze it there now. The Speaker appears to be entering a well card. Would you agree with that?

A. I just saw the person who you said was the Speaker sit down over here.

Q. Well, never mind. We'll extrapolate this all by ourselves. Just roll it.

Mr. DAVIS. The only appropriate questions to Mike are "What can you see?"

Mr. LATOURETTE. Right.

[Video shown.]

Stop it there, please.

The vote is 214 to 213.

Then roll it, please.

[Video shown.]

Mr. MCNULTY. I think that's the Speaker there, not the person in the green suit who sat down.

BY MR. LATOURETTE

Q. Okay. I'll ask you this question. Maybe you can't answer it based upon your observation of the tape, but it appears to me that the vote is 214 to 213. The Speaker casts her vote. When that vote is announced by the reading clerk, it becomes 214–214.

Do you agree with that, or you can't tell?

A. I can't tell, but that may very well be true. I mean, if she were the last one to vote and then the vote was 214–214, then her vote made it that way.

Q. Right.

Could you go to 22:49:40?

[Video shown.]

Now, stop it there for just a second.

Do you see Catlin O'Neill in that picture?

A. Can you give me an idea of where she is? Maybe I can——

Q. I think she's above the letter "M" in "Democrat."

Mr. PAOLETTA. That's her right there. Do you recognize her?

Mr. MCNULTY. No.

BY MR. LATOURETTE

Q. Okay. So that Artur doesn't jump all over me, do you think that's Catlin O'Neill?

A. I think it is.

Mr. PAOLETTA. Black suit, white shirt. Do you see? She has the red hair.

Mr. MCNULTY. I think it is.

Mr. LATOURETTE. Okay. Let's just roll it for a little bit.

[Video shown.]

Now, stop it there, please.

BY MR. LATOURETTE

Q. It appears that you are again having a conversation with Catlin O'Neill.

A. I don't know that I was having a conversation.

Mr. PAOLETTA. She's going to walk towards you again, by the way.

Mr. MCNULTY. Okay. I looked in the direction of the leadership a number of times that night to get direction.

BY MR. LATOURETTE

Q. Well, as Artur has correctly pointed out, it is your testimony, not mine. Do you recall what we just saw, that you and she appeared to be exchanging words?

A. Well, I'm looking at it. I think we did at that point, or at least I was listening, whatever.

Q. Do you have any recollection of what she said?

A. I don't at that point, except the reason I remember this is that no member of the staff or Member of the Majority told me when to call that vote. I wished they had.

Q. Right.

A. I was looking for direction——

Q. Okay.

A. [continuing]. And I didn't get it.

Q. Okay.

A. So I did what I thought was right.

Q. Okay.

The tally is now 214–214. If we could roll it just for a minute to 22:50:06.

[Video shown.]

That is when you called the vote the first time, but you don't complete the sentence.

A. Right.

Q. Okay. Keep rolling.

[Video shown.]

Lampson just changed, fair?

A. Right.

Q. Okay.

A. I stopped because somebody was in the House with a card, attempting to change the vote, and then others followed.

Q. Okay. Could you stop it here, please?

At 22:50:31, you see the Ros-Lehtinen and Diaz-Balart brothers in the well, filling out well cards; is that fair?

A. Yes.

Q. Okay. Now, going to your testimony, I had understood you to say that, based upon your observations and on your understanding of the new rule 2(a), that, in your mind, you were going to announce the vote as final after the Mario Diaz-Balart card was announced and added to the tally.

A. Right.

Q. Now, does that mean——

A. If there were no other persons——

Q. Changing.

A. [continuing]. Coming up to change their vote.

Q. Okay. Well, you did, in fact, then call the vote again at 214–214, added the words "and the motion is not agreed to" because it was a tie.

A. Correct.

Q. So does that evidence the fact that you didn't believe there were any other changes occurring at that moment in time and it was appropriate to close the vote?

A. Yes.

Q. Okay. And does that interpretation, then, indicate to you as the presiding officer that any additional changes or attempts to change votes after 214–214, when the Mario Diaz-Balart card was entered, that the vote would have been held open for the sole purpose of effecting the outcome?

A. At that point in time, Steve, what I did because I was upset with myself for whatever had occurred, because I knew something went wrong, the words of Bill Brown rang in my ears, "When in doubt, follow the directions of the Parliamentarian." All I did after that point was to just do what John and the Parliamentarian suggested.

Q. But I want to go to the moment in time——

A. So I was kind of upset at the time with myself.

Q. Sure. Right.

A. And I wasn't having philosophical thoughts about what might occur next.

Q. Right.

A. I was trying to figure out what I had done wrong.

Q. Right.

A. And I just turned to John, and I just decided to do whatever he instructed me to do.

Q. I got that. But one of the problems that the minority has with this new rule is we think it's sort of a soup-sandwich, in that it doesn't mean anything. The rule says that you can't keep the vote open for the sole purpose of effecting the outcome. The only way that we can ever determine that is to crawl into the head of the presiding officer——

A. Right, yes.

Q. [continuing]. Because the presiding officer could say, "Yes, I did it to affect the outcome of the vote, but I also did it on Tuesday and I like 20-minute votes on Tuesday" or "I know that somebody was coming back from lunch."

So I had understood you to say, though, as the presiding officer, as the person who was in charge of enforcing the new rule 2(a), I thought you had said that you had reached the conclusion after the

Diaz-Balart card was entered that for you to keep the vote open beyond that would have been in violation of your interpretation of rule 2(a) and would have been—and I think you said Members of both sides—would have been for the sole purpose of effecting the outcome of that vote.

A. I was concerned about that.

Q. Did you believe that to be the case?

A. What I believed to be the case was that if I had held the vote open further that that would be brought up as point of order.

Q. Okay. But after you called the vote—and, quite frankly, when you spoke the magic words, and that is "214–214," and you made the additional declarative sentence, that the motion is not agreed to——

A. Right.

Q. [continuing]. Are you aware, knowing that practices and precedence is pretty unbroken by the House, that that was the vote, that that called the vote?

A. I believe so.

Q. Right. I mean, Mr. Sullivan has indicated that that is right.

A. It would mean the vote is called at 214–214 unless the Chair changes or makes some other ruling——

Q. As you sit here today——

A. [continuing]. Or until I got the instruction on the written sheet from John.

Q. But you know sitting here today, and maybe you knew that night, that when you called the 214–214 and you said that the motion is not agreed to, that the vote was really 215 to 213 when the Diaz-Balart card was entered?

A. I can't say that legally and parliamentarily because that was not the interpretation of the Parliamentarian. Now, I put myself in the hands of the Parliamentarian after that vote. I called it at 214–214. I assume that if the correct, legal and parliamentary vote was 215–213, John would have told me to make that announcement. And if he had, I would have.

Q. And I accept that. After you called it again——

A. But he didn't.

Q. I understand. But after you called it again at 214–214, there were additional changes.

A. That is correct.

Q. Additional well cards were added.

A. The big additional change was that Mario's vote ended up being recorded, and that resulted in the 215–213.

Q. Right.

A. And then, while John was writing out this statement for me to read, other Members—I think mostly, if not exclusively, Democrats—came and changed their votes.

Q. Okay.

A. And those were included. And as he was writing it out, he looked up at the board, when he was getting to the end of it, and put down the 212–216.

Q. Could we just roll that? Because I don't want to—you could stop it for just a second. I don't want to get you hung up, but the sequence that you indicated to Artur, I think that you got some things out of order.

A. Okay.
Q. I'd just like you to watch——
A. Sure.
Q. [continuing]. And specifically John writing that slip out, you reading it before Hoyer asks to vacate the vote and Hoyer asks to reconsider. I don't think that you read John Sullivan's statement until after Steny first moved to vacate the vote and then moved to reconsider.
A. Yes, you may be correct on that.
Q. Okay.
A. Yes.
Q. All right. Roll it from when the——
A. Yes, I think that probably is the correct——
Q. Roll it from when the three——
A. Did I say that wasn't the case?
Q. I thought you had it backwards.
A. Oh.
Q. I thought you said that you read the statement and then that there was other activity.
A. Oh.
Q. Okay. Roll it from the Diaz-Balart brothers.
[Video shown.]
Could you stop there?
At that moment in time, did you observe any Members who were attempting to turn in well cards?
A. No. The reason I was calling it quickly at that point was I wanted to call it before more Members started to change their votes.
Q. Again, back to my previous question, because you believed, at that moment in time, that to hold the vote open any longer would have been for the sole purpose of either side attempting to affect the outcome?
A. I think the votes before that were also for that purpose.
Q. Okay.
Mr. DAVIS. Let me add one thing, Steve, just so the record is clear on this. We are referring to "that moment in time," and obviously, we are having the benefit of hearing the tape. This young lady can't always capture what we're referring to.
You are referring to 22:51 when you make the calling of the vote that contains the phrase, "The motion is not carried," just so the record is clear on that.
Mr. MCNULTY. That's correct. That's correct.
Mr. DAVIS. All right.
Mr. LATOURETTE. Let's roll it for a little while.
[Video shown.]
Could you stop it there?

BY MR. LATOURETTE

Q. At 22:51:45, it looks like Ms. Gillibrand, I believe, has just submitted a well card. Did you see that?
A. No.
Q. Before I get in trouble with Artur over here, roll it back for, like, 20 seconds.
There. Okay.

A. Okay.

[Video shown.]

Q. Could you stop it again, please?

John Sullivan is not at 22:51:43. John Sullivan is not attending you. You were still being attended by Ethan.

A. Okay.

Q. That's "okay." Is that right?

A. Yes.

Q. Would you continue on?

[Video shown.]

Could you stop it there, please?

It appears that Mr. Space is entering a well card and has changed, that Ms. Gillibrand has entered a well card, and that now Mr. McNerney of California appears to be entering a well card. Would you agree with that?

A. Yes.

Q. Okay. We are now at 22:52:06.

Okay, go ahead.

[Video shown.]

Okay, could you stop there?

At 22:52:11, the Majority Leader climbs the rostrum. Mr. Sullivan is still not next to you. It is still Mr. Ethan Lauer; is that correct?

A. Yes.

Q. Okay.

[Video shown.]

Stop it there, please.

At 22:52:34, it now appears that John Sullivan is beginning to write something. Is that what you were referring to before?

A. Yes.

Q. Okay. Before Mr. Sullivan begins to write the statement that you are eventually going to read that evening, you permitted three Democratic change cards to be read, after you called the vote at 214–214, from Ms. Gillibrand, Mr. Space and Mr. McNerney.

I have heard what you said about following the Parliamentarians, but I did not see any Parliamentarian giving you any advice at that moment in time.

A. No, but I think John had previously said to me he was going to write out a statement.

Q. Okay.

A. So I wasn't going to do anything until I got that statement.

Q. Okay. Roll it again, please.

[Video shown.]

I think 56:37 is where we want to get to.

Mr. DAVIS. Again, just to capture what is on there, Mr. McNulty, we see that Mr. Sullivan is visibly writing something for a period of time.

Mr. MCNULTY. Yes.

Mr. LATOURETTE. Right there. It's whenever you see the Leader get to the microphone.

[Video shown.]

Could you stop it right there?

BY MR. LATOURETTE

Q. The Leader has moved to vacate the vote. At this moment in time, you have not read Mr. Sullivan's statement; is that correct?

A. I don't believe so.

Q. Okay. Could we go to 57:36?

[Video shown.]

Stop it there.

The Leader, you'll agree with me, has just moved to reconsider?

A. Yes.

Q. Could we go to 57:58?

[Video shown.]

Stop it there.

A. Yes. I remember, after Steny made that request, one of the Parliamentarians said to me, you can't entertain that motion until you announce what the vote was.

Q. That's when you read the——

A. That's when I read the statement.

Q. [continuing]. Statement that Mr. Sullivan had prepared for you?

A. Right.

Q. After you called it the second time at 214–214 and said that the motion is not agreed to, you saw three Democratic vote changes: Gillibrand, McNerney and Space. That turned it from 215–213 to 212–216.

Can you, as the presiding officer, indicate for what purpose you kept that vote open beyond your declaration of 214–214 other than for the sole purpose of having the outcome of the vote affected?

A. I did it for the sole purpose of following the directions of the Parliamentarian after I had committed an error.

Q. Since Mr. Sullivan was not in contact with you until the end of that sequence, did you receive that communication from Mr. Lauer?

A. What communication?

Q. Whatever he told you to do. Are you saying that a Parliamentarian told you to keep it open and to take more changes?

A. No, nobody used any words like that. After I called the vote at 214–214, shortly thereafter, John said to me, "I'm going to write out a statement for you to read." I was looking for direction.

Q. Okay.

A. He said that, and I did not do anything——

Q. Okay.

A. [continuing]. Until he had finished writing that statement.

Q. Okay.

A. It was during that period of time that those votes occurred, so I wasn't doing anything affirmatively about keeping the vote open. I just wasn't going to do anything to further complicate the problem I had caused.

Q. Just so I am absolutely clear, is it your recollection that John Sullivan said to you that he was going to write out a statement to you before those three Democratic Members went in to change their votes?

A. I think so, but I'm not exactly sure on that, Steve.

Q. Okay. Last question. I appreciate the Majority's patience.

At one point on the tape—and we can play it, if you want—that is sort of well-known to the members of the committee, the Majority Leader goes up to the rostrum and approaches Mr. Sullivan, and his words are, "We run this place, not you." Did you hear those words?

A. I was looking in that direction because I was looking for direction all that night. But Steny came up and said something in kind of an agitated manner to John, which I believe were those words, because I've read those since then and I've heard people say that and I don't have any reason to dispute it. If you ask me to say what Steny said to John, I could not tell you.

Q. Okay.

A. I believe those were the words, but there was so much going on in the chamber and there was so much noise and I was kind of fixated on that board, that I was not involved in that conversation. I believe that's what he said, because other people did hear him.

Q. Again, I don't want Artur yelling at me anymore. As you sit here today, you don't have any independent recollection that those were the words spoken by the Majority Leader?

A. I do not.

Q. But you saw him not happy?

A. He was not happy.

Mr. LATOURETTE. Okay. Thank you.

Mr. DAVIS. I'm just going to ask you some very brief redirect on one last area that Mr. LaTourette touched on, and then I'll yield to Ms. Herseth Sandlin.

BY MR. DAVIS

Q. Mr. LaTourette was asking about the fact that three Democratic Members were changing their votes after you made the calling of the vote. When the three Democratic Members—McNerney, Space and, I think, Gillibrand—were in the well, changing their votes, is it true that the Clerk was calling out their vote changes?

A. Yes.

Q. Did Mr. Sullivan at any point suggest to you that you should tell the Members that they could no longer vote?

A. No.

Q. Did Mr. Sullivan, to your knowledge, in any way do anything to prevent the Clerk from reading out the vote changes those Members were making?

A. No.

Q. Did anything happen to in any way impede those Members from changing their votes?

A. I do not believe so.

Q. Did Mr. Sullivan suggest to you that there was anything inappropriate about those Members changing their votes?

A. No.

Q. In fact, you believe that you had incorrectly called the vote, correct?

A. I did.

Q. The consequence of that would be that the vote had not been properly called, so the vote would be ongoing; am I right?

A. At that point in time, Artur, I was just at a point where I was so upset with myself that I just was going to follow the direction of the Parliamentarian. And that's just what I did after that.

Q. So, with respect to what Mr. LaTourette focused on at the end, the vote changes by Democratic Members, your actions would not have been for the purpose of influencing the vote. As I understand your testimony, your actions would have been for the purpose of allowing the Parliamentarian to clarify the situation?

A. Right.

Mr. DAVIS. I yield to Ms. Herseth Sandlin.

EXAMINATION BY MS. HERSETH SANDLIN

Q. So, just to be clear, Mr. McNulty—and I think you have answered this, but just to be clear on the record, as we have asked you what the Parliamentarians may have been communicating to you during this time when you had recognized the premature call of the vote and you were waiting for the Parliamentarians, Mr. Sullivan in particular, for guidance when he was writing out a statement, you weren't telling the Parliamentarians or the Clerks anything at this time?

A. No. I was clearly in a listening mode at that point.

Q. So you didn't tell them to enter those changes. You didn't tell them not to do so. You weren't instructing the Clerks or the Parliamentarians as to anything related to the three Democratic Members——

A. That's correct.

Q. [continuing]. Who were in the well.

A. I was waiting for the statement that John was preparing for me.

Q. Did anyone from leadership or did any other Member ask you to either allow or to deny any vote changes?

A. No.

Q. Could we go to 22:50? Let's let it roll until about 22:50:20 or 25.

Watch, if you could, and pay particular attention, Mr. McNulty, to the well and to the counter at the well.

[Video shown.]

Right now. Could you stop it right there?

Mr. McNulty, could you identify the three Members who appear to have just picked up a card and who are submitting vote changes?

A. I believe that's Ileana, Lincoln and Mario.

Q. Ileana Ros-Lehtinen, Lincoln Diaz-Balart and Mario Diaz-Balart?

A. I believe so.

Q. At that point, did you notice the three of them approaching the well simultaneously?

A. I did.

Q. Was it at that point in your mind that you determined that you were going to call the vote after Mr. Mario Diaz-Balart's vote was entered?

A. Yes, if no other Member showed up in the well to vote.

Q. Can you explain why it was again that—did the fact that the three of them approached simultaneously have anything to do with that determination?

A. No. I was just waiting for the last person to change his vote.

Q. Okay. With regard to the earlier questions with regard to Catlin O'Neill, when at various times it is obvious that it is her and at other times when it is not immediately obvious, but when we slow the tape down it appears that there was some back-and-forth, is that common practice in terms of someone who is a designee of leadership, since you can't see the board while you are presiding, just being a conduit of informing you of the count that we think that we have of Members present and voting? Again, I think you had mentioned this. Just signals or information exchanged, indicating the need to wrap up the vote, is that common practice?

A. It's common to have communication with the Speaker's representative.

And there are a lot of reasons sometimes of why a vote is held open a little bit longer. A lot of times during appropriations season, the appropriators are marking up a bill, and the vote is on, and the Speaker Pro Tem will be advised to wait a little bit longer because they're just finishing up the meeting, and they're just finishing up that bill, and it will take a little while to get to the floor to vote.

Sometimes there is a bill signing down at the White House, and a couple Members are late getting back, something like that, and you hold open the vote as a courtesy to those Members sometimes.

Q. To the best of your recollection, again, as to any communication you had with Ms. O'Neill or with any other designee or representative of leadership, none of those conversations were out of the ordinary course of that exchange of information?

A. No.

Ms. HERSETH SANDLIN. Thank you.

That's all I have, Artur.

Mr. DAVIS. Mr. Chairman?

Mr. DELAHUNT. No questions.

Mr. DAVIS. As a courtesy, we let the Republicans ask any questions.

Mr. Pence, do you have any questions?

Mr. PENCE. Thank you, Mr. Davis. I do have a series of questions.

EXAMINATION BY MR. PENCE

Q. Mike, thank you for coming in. Thank you for your apology. It is consistent with your character and reputation that you have been as candid as you were on the floor the next day and today. I think, as I have told you privately on the floor, I hold you in high regard.

A. Thank you.

Q. I admire you for your sense of professionalism and for your fairness.

Let me say I think that that is why I and the other members of this committee on the minority side are struggling so much with this, with the facts of this incident. This was not a Mike McNulty moment. It was not. I want to say that while I am complimenting you.

Let me just ask you a couple of questions. Mr. LaTourette did an exceptional job walking through, getting what many of our inquiries were, but I want to make sure I understand what your statement was. This is a courtesy question just by way of clarification.

Very early on in Mr. Davis's questioning, I think he actually asked you—although I'm happy to check the record—if Ms. O'Neill approached you. Your response this morning was "no." I think——

A. I interpreted that as meaning did she approach me about instructing me to call the vote.

Q. Thank you.

A. Yes.

Q. Good.

A. Because she did not. Steny Hoyer did not. No Member or member of leadership instructed me to call that vote when I called it.

I do recall now, when I see the tape, when Catlin approached me. At one point, she said to me—and I think it was actually before the time had expired—"This is likely to be a close vote." She communicated that to me at one point, but that was the sum and substance of the comment.

Q. I accept that clarification entirely about how you understood Mr. Davis's question.

So you recall before viewing the tape this morning that you had spoken to Catlin O'Neill a number of times during the course of this vote?

A. It would be common practice to talk to the Speaker's representative when you're in the chair.

Q. Okay. With regard to your presence in the chair, you said, and I think I have the quote, "I came to the chair for the motion to recommit and passage." Again, my notes indicate this morning that you said that no one from leadership had approached you.

Again, am I to understand—they certainly approached you about going to the chair, but they did not approach you about an outcome?

A. That's correct.

Q. Okay.

A. Catlin, I think, asked me at least earlier in the day, if not the day before, to handle that vote and a succeeding vote on an appropriations bill, which, of course, I didn't do.

Q. Why do you think that was?

A. It's just a matter of normal scheduling. They usually give you advance notice of when you're going to be in the chair——

Q. Okay.

A. [continuing]. Just for scheduling purposes, so it doesn't conflict with a committee meeting or something like that.

Now, I think they anticipated that that vote was going to occur a lot earlier in the day than it did. Obviously, it wasn't conflicting with any schedule at that point in time.

Q. Okay.

A. Usually, Catlin calls David in our office and gives me a heads-up as to when they want me to be in the chair.

Q. I didn't spend like LaTourette and McNulty time in the chair when we were in the Majority, but I spent a fair amount of less exciting hours there.

Was it your practice—and I am inferring this from the comment you just made—that when your office is called about presiding in the chair, it has to do with specific legislative moments or bills and not time frames? You weren't called to be in the chair from 6 o'clock on that evening?

A. Right. It happened a couple times earlier in the year, with regard to time frames. A couple of times, I was asked to open the session, so you're there from the very beginning. So that's a time frame.

Q. Okay.

A. Then there were a couple of time frames—they had kind of a schedule thing in the early part of the year that they thought would work, saying, you know, "Can you be in the chair from 2:00 to 4:00 or from 4:00 to 6:00?" or things like that, so that you could better manage your schedule with regard to your committee work and so on.

Now, what changed for me after a period—and I think they changed that procedure after a period of time. What changed for me after a period of time was they were putting me in the chair for some very long periods of time, and I have this post-polio condition that makes it difficult for me to stand for extended periods.

Then I made the formal request of Catlin if she could use me more, as Steve mentioned, as a closer, you know, to go in for recommit and passage rather than being there for hours during the Committee of the Whole or something like that.

Q. So, on this specific one, you were asked to essentially preside over the motion to recommit and passage?

A. That is specifically what I was asked to do, to do recommit and passage.

Q. That didn't strike you as particularly odd or unusual? That was common?

A. That was becoming the practice for me, as far as my service in the chair was concerned.

Q. Okay. All of the members of the committee have copies of this e-mail. I want to show you an e-mail that is from the evening of August 2nd at about 10 minutes before midnight. It is from Catlin O'Neill to an M. Mike.

A. Yes.

Q. I want to have you take a peek at that and tell us if that is an e-mail directed to you. Then there also is an accompanying response.

Talk to us about that e-mail. Is that your response? Is that an e-mail from her to you?

A. Those are both accurate.

Q. Okay.

A. Yes.

Mr. DAVIS. Let's make this an exhibit to the deposition.

Mr. PENCE. Please.

[McNulty Exhibit No. 1 was marked for identification.]

BY MR. PENCE

Q. Let me refer to it here, Tom, so I can get the language right.

The e-mail which you now identify was sent to you at 23:50:49 from Catlin O'Neill says, quote, "I have to apologize on putting you

in that position, but you did a remarkable job under a tremendous amount of pressure that I will never fully comprehend. Catlin."

A. Yes.

Q. Then on top of this, which I'll submit for the record, your response was, "Thanks, Catlin. I think we did the best we could under the circumstances. Thanks for all your good work. See you in the a.m. Mike."

A. That's accurate.

Q. Right.

A. Yes.

Q. Can you tell us for the record how you would interpret her apology? What did she mean, that she put you in that position?

A. I think she was just reacting to the chaos, confusion and anger that was caused by my error. I don't know what she was apologizing for, because it was my fault. I did it, and I just responded the way that I did.

I probably should have said I did the best I could under the circumstances after it had occurred, but the occurrence, itself, was not the best I could have done.

Q. Thank you.

I've got just a couple more questions based on your testimony today. Our chairman has a low threshold for redundancy, so I'm not going to test him on it.

The first call at 214–214 in your testimony today and on the video—I don't have a time clock. Although, some staff may help me with that. As Mr. LaTourette walked you through the video, the video suggests, and you dispute, that immediately after the Speaker voted, you attempted to close the vote, right? Is that a fair characterization?

A. Yes. I didn't remember that the Speaker was the last one to vote, but that's obvious from the tape, that that was the one that made it 214–214.

Mr. LATOURETTE. Or Corrine Brown, right?

Mr. PENCE. That was 22:50:06, for the record.

BY MR. PENCE

Q. So your testimony today was that you did not even observe the Speaker voting. Was that a coincidence, that moments after the Speaker voted you called the vote 214 to 214?

A. Yes. I mean, it's hard to remember exactly what my thought was at the time back at the second, but I was fixated on that board, and I was fixated on the number of objections that had been made over the course of the past year or so to possible violations of that new clause.

Q. Right.

A. I thought I——

Mr. DELAHUNT. If the gentleman would yield, have there been a lot of complaints about violations?

Mr. MCNULTY. Well, there have been a number of them. I've observed a number of them. I can't quantify how many. I mean, there was one in the last 2 weeks.

Mr. LATOURETTE. Serial offenders.

BY MR. PENCE

Q. Let me get to the second 214–214 call. And, Mike, really, I'm just trying to understand your mindset.

As I watched the video, as Mr. LaTourette walked you through it, and in your statement today, you indicate that you called the first vote prematurely, because you then observed——

A. I think the second one was premature, too. The reason I stopped after the first one was that there was some indication that somebody else wanted to vote.

Q. Precisely. My question is with regard to that. After then—and I think your statement today was not only on the tape, but you recall observing the Diaz-Balart brothers and Ms. Ros-Lehtinen voting.

A. I thought that was going to be the end of the line——

Q. Right.

A. [continuing]. Right there.

Q. Now, this is a total gut check. If the vote was 214 to 214 and you saw three people changing their votes——

A. No, no, no.

Q. [continuing.] Why did you call it——

A. No, it wasn't 214–214 at that time.

Mr. LATOURETTE. Right.

Mr. MCNULTY. It had changed. I mean, it was 214–214 when I first prematurely called the vote. It wasn't 214–214 when those three came to the board; it had changed. A couple of other people had changed, I think.

BY MR. PENCE

Q. Okay. So your statement this morning was not that you had only seen the Diaz-Balarts. Your sense was that more people than them were changing votes?

A. I think, indeed, some other people did change their vote.

Q. Okay. That is your impression or your recollection?

A. What I thought—I thought Mario Diaz-Balart was the end of the line, though.

Q. The end of the line?

A. Right.

Q. Right. I just want to understand, your recollection is that——

A. Yes. I just made the decision, absent any direction——

Q. Right.

A. [continuing.] From anybody——

Q. Right.

A. [continuing.] Because I wasn't getting any direction, that, at the end of the line, I was going to call that vote.

Mr. DAVIS. Would you yield for one second? This is an important point I want to clarify.

In response to those questions, Mr. McNulty, you are saying that you thought that all vote changes were being reflected on the board?

Mr. MCNULTY. I did.

Mr. DAVIS. Okay.

Mr. MCNULTY. And obviously I was wrong in that regard, because, when I called it the second time at 214–214, the last vote,

which I believe was Mario's vote, had not yet gone through the computer system and hit that board. I called it at 214–214, and boom, all of a sudden it's 215–213. And that showed up on the board almost immediately after I called the vote at 214–214, and I believe that that was Mario's vote being recorded.

BY MR. PENCE

Q. Mr. LaTourette asked you if Catlin O'Neill asked you to preside and close. You responded "yes" to that. You didn't mean that she asked you to close the vote?

A. No, no, no.

Q. I want it to be clear.

A. She asked me prior to me ascending the chair. As a matter of fact, not just then but earlier in the day, it was on my schedule to do the recommit and passage of the Agriculture appropriations bill.

Q. Right.

A. No, she never during the time of the vote asked me to close the vote.

Q. And you said this repeatedly. It is your testimony today that at no time did anyone in leadership indicate to you when to close the vote?

A. That is correct.

Q. Not from the leadership table? Not Catlin O'Neill speaking to you?

A. I wish they had, but they didn't.

Q. Has it been your experience over the many years you served in the chair that the leadership table or the leadership staff will indicate to you, from time to time, you can close the vote or that you should close the vote?

A. Absolutely.

Q. And that did not occur at all?

A. That did not occur.

Q. I wanted to ask you about when the Majority Leader came up, but I'm fairly certain Mr. LaTourette explored that more thoroughly.

You saw that incident; you did not hear?

A. I heard something, but I could not repeat on my own now as to what the words were. Steny came up, had a conversation with John. I know some people speculate he had a conversation with me. He did not. He came up and had that conversation with John and then left.

Q. You said he was not happy.

A. He didn't look happy to me.

Q. Why do you think he was not happy?

A. I'm not going to try to get inside of Steny's head on that. He came up, and he said something to John, and then he left. And I later believe it was those words that you have mentioned, because other people heard him and it has been published since then.

Q. Well, if you did not hear, then I don't want to ask what was said.

A. I didn't.

Q. Let me ask you one or two other quick questions.

A. Sure.

Q. At 22:54:35 on the tape, which we could go to, 22:54:35, you see the Minority Leader, John Boehner, casting a vote.

Do you recall John Boehner voting—submitting a change card, rather?

A. I see him doing it right now.

Q. Do you recall it at the time?

A. No. I think I was looking in another direction.

Q. Okay. So you don't recall the Minority Leader submitting a well card to change——

A. I don't off the top of my head, no.

Q. Okay. Are you aware that Mr. Boehner's change was never recorded?

A. I have heard that that was the case, yes.

Q. But you don't have any contemporaneous memory of it?

A. I don't.

Q. With regard to clause 2(a) of Rule XX, I want to understand your interpretation of that. One more question, although Steve asked an awful lot on this.

Do you believe that clause 2(a) of Rule XX means that anyone in the well who desires to change a vote after time has expired should be precluded from doing so?

A. Oh, my God, no, no. I think that anybody who is in that well obviously seeking to vote or to change their vote ought to be allowed to do so, no matter how much time has expired. That's my opinion. Even if they're not in the well and if I observe them or if they're coming down the aisle, holding their cards up in the air, I'll wait. I've done it many times, much to the consternation of the entire body sometimes when it hasn't been a close vote and it's a getaway day or something like that.

Q. Well, I have one other fact question, and then I'm done.

At the time of the first call—and Artur probably has a good time check here, a time clock of the 214 to 214? If we could go back to that on the video——

Mr. HALPERN. The first one, sir?

Mr. PENCE. Yes, the first 214 to 214.

Mr. PAOLETTA. It's at 22:51:25.

[Video shown.]

Mr. PENCE. Is that the first one?

Mr. MCNULTY. That's the first one.

Mr. PENCE. Stop there. Maybe rewind it. Just run it, so that we can all around the table get a sense of the real-time here.

BY MR. PENCE

Q. Mike, you called the vote after the Speaker cast her vote. You called the vote for whatever reason in your mind.

Ms. HERSETH SANDLIN. Would the gentleman yield on that, just for a point of clarification?

Mr. PENCE. I'd be happy to.

Ms. HERSETH SANDLIN. My understanding is that, either shortly after or almost simultaneously with the Speaker having voted, there was only one bang of the gavel.

Are we interpreting that as the first time he attempted to close—the question to you, Mike, is, I mean, were you attempting to close

the vote with the one bang of the gavel? Or why would you bang the gavel?

Mr. MCNULTY. You can't close the vote with a bang of the gavel. That's meaningless. You don't close the vote by declaring what the outcome is.

Ms. HERSETH SANDLIN. Okay. So just the one bang of the gavel——

Mr. MCNULTY. I stopped short of doing that because I either heard or saw someone else who wanted to vote.

Mr. PAOLETTA. I think what you're referring to is the 5-minute or the 10-minute mark of the vote when he first stood up and banged it once.

Ms. HERSETH SANDLIN. No. When Mr. LaTourette took him through, trying to identify the Speaker and when she voted, there was a moment where the gavel came down one time. Time had elapsed at that point, I understand.

Mr. MCNULTY. Oh, yes, yes.

Ms. HERSETH SANDLIN. Okay. So we're not going to refer to that as trying to attempt to close the vote.

So the first time you attempt to close the vote, in your mind, was when you actually spoke——

Mr. DAVIS. When the motion had failed.

Ms. HERSETH SANDLIN. [continuing.] 214–214?

Mr. MCNULTY. No. The only time I closed the vote was then. No. I was attempting to close the vote earlier at 214–214. I stopped short of doing it because I recognized that other people wanted to vote.

Mr. PENCE. Excuse me.

Ms. HERSETH SANDLIN. I think we're all on the same page.

Mr. PENCE. Yes.

Ms. HERSETH SANDLIN. But about a minute or so before that, as Mr. LaTourette took you through, trying to identify the Speaker and her vote, there was a moment almost simultaneously or shortly thereafter when you brought the gavel down one time but didn't say anything.

In your mind, that was not an attempt to close the vote?

Mr. MCNULTY. It was probably just to get the attention of the House.

BY MR. PENCE

Q. Let's take a look at it. There are going to be facts, ultimately, that are in dispute on this committee. I know that will come as a shock to you, Mike, so I don't want to inadvertently characterize what you were doing.

I think your testimony just a few moments ago was you were attempting to close, but you suspended your attempt to close the vote?

A. Maybe it would be better to say I was intending to close the vote, but I stopped short of doing it because it was obvious to me that other Members were going to vote, and I would not do that.

Mr. DAVIS. Let me jump in and make one point.

Both Mr. McNulty and I, actually, are in a markup that started 15 minutes ago. I don't want to interfere with any of your questions, but it seems to me at some point right here we've been argu-

ing about the conclusions, and we've been asking him if he agrees with us, and he's not on the committee. So, if we're covering new factual ground, that's one thing, but if we're just simply——

Mr. PENCE. You bet. You bet. You actually just took more time than I was going to.

BY MR. PENCE

Q. If we could play the tape just one more time, I want to ask you about that very moment and whether or not you saw Ileana Ros-Lehtinen and the Diaz-Balarts coming down and your recollection of when you——

A. I don't know if it was that or whether it was somebody on the other side.

Q. Take a look at it here.

A. I may have just heard something.

Mr. PENCE. Did we go past it, Hugh?

Mr. HALPERN. No. It hasn't happened yet.

Mr. PENCE. Okay, because I think——

Mr. DAVIS. This either clarifies your recollection or it doesn't. I mean, the only relevant witness here is you.

Mr. MCNULTY. Yes.

[Video shown.]

See, I'm looking toward our side.

Mr. PENCE. It's, maybe, 3 seconds before we see those three Republican Members enter the screen.

Mr. MCNULTY. Right.

BY MR. PENCE

Q. But it's your testimony today that you don't recall having seen them coming down to vote?

A. No. I was obviously looking the other way there. But I stopped the vote because either I heard somebody say "one more vote" or I saw somebody on our side move toward the well, but I had it in my mind that I wasn't going to prevent someone from changing their vote.

Mr. PENCE. I have no further questions.

Let me close by thanking you for your cooperation from the very beginning with this select committee. I can't speak for every Republican in the conference, but let me personally say that it would be my hope to see you be able to return to the chair and to participate in whatever role as a Member of the body that you desire to participate in. Your cooperation with this committee is commendable, and we very much appreciate your time and service.

Mr. LATOURETTE. While you're being gracious, could you yield to me for just two very quick things? I know you have to go to a markup, but new ground, Mike, has occurred, and I want to echo those remarks.

BY MR. LATOURETTE

Q. Somebody asked you about the Boehner card. Were you privy to any conversations, as you were up on the rostrum that evening, between anyone concerning Boehner's well change card?

A. No.

Q. Did you even know it had occurred until much later?

A. I don't even recall it happening. I recall hearing about it later on, but no.

Q. Okay. Then the last question is—we have asked a lot about Catlin O'Neill. On page 6 of her testimony before the committee, she indicates that, "I told Mr. McNulty because I think there was 3 minutes actually left on the clock, and said this is going to be tight, just bear with me."

Do you recall her speaking those words?

A. Well, that clarifies my recollection of her saying—I said "close." She said "tight."

Q. Right. But I guess I want to focus on "just bear with me." Do you recall her saying "bear with me"?

A. I don't recall that.

Q. Okay. Thanks.

A. I believe she said it if she said she said it.

BY MR. DAVIS

Q. Just on that note, one quick point. On the e-mail that was presented to you where Ms. O'Neill says, "I have to apologize on putting you in that position," Mr. Pence asked you a number of questions about that. What did you understand "that position" to mean?

A. I think she felt bad for me because I felt terrible about myself. I think that's what—she was just trying to commiserate with me a little bit, as a number of other Members did.

Q. But you did not—again, you said a number of times today that there was never a point when she instructed you to call the vote, so——

A. I wish she had.

Q. Right, but that position certainly does not refer to closing the vote.

A. Right.

Mr. DAVIS. All right. We're done. Thank you, Mr. McNulty. Thank you.

We should probably put in his statement, too.

[McNulty Exhibit No. 2 was marked for identification.]

[Whereupon, at 11:15 a.m., the interview was concluded.]

EXHIBIT 1

O'Neill, Catlin

From: M. Mike
Sent: Thursday, August 02, 2007 11:59 PM
To: O'Neill, Catlin
Subject: Re:

Thanks, Catlin. I think we did the best we could, under the circumstances. Thanks for all your good work. See you in the AM. Mike
---
Sent from my BlackBerry

-----Original Message-----
From: O'Neill, Catlin
To: M. Mike
Sent: Thu Aug 02 23:50:49 2007
Subject:

I have to apologize on putting you in that position. But you did a remarkable job under a tremendous amount of pressure that I will never fully comprehend.

Many many thanks and gratitude.

Catlin

EXHIBIT 2 **April 9, 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 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 beleive 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 descrepency 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 with 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.

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

WEDNESDAY, APRIL 16, 2008.
Washington, DC.

INTERVIEW OF CATLIN O'NEILL

The interview in the above matter was held at Room 1017, Longworth House Office Building, commencing at 10:54 a.m.

APPEARANCES

Representatives William D. Delahunt, Artur Davis, Stephanie Herseth Sandlin, Mike Pence, and Steven C. LaTourette.

OUTSIDE COUNSEL, MAJORITY: THOMAS J. SPULAK, ESQ., GEORGE CRAWFORD, ESQ., KING & SPALDING LLP, 1700 PENNSYLVANIA AVENUE, NW., WASHINGTON, DC 20006

OUTSIDE COUNSEL, MINORITY: MARK R. PAOLETTA, ESQ., ANDREW L. SNOWDON, ESQ., DICKSTEIN SHAPIRO, LLP, 1825 EYE STREET, NW., WASHINGTON, DC 20006

Also Present: Muftiah McCartin, Deputy Staff Director, Committee on Rules; Davida Walsh, Legislative Counsel, Representative Delahunt; Chanelle Hardy, Counsel, Representative Davis; Russ Levsen, Communications Director/Deputy Chief of Staff, Representative Herseth Sandlin; Joshua M. Pitcock, Legislative Counsel, Representative Pence; and Joe Guzzo, Chief of Staff, Representative LaTourette.

Mr. DAVIS. All right. Miss O'Neill, thank you for being here today. You have been previously questioned, I believe, by counsel for the select committee. I'm trying to find the exact date.

Mr. SPULAK. February 25th.

Mr. DAVIS. February 25th, 2008. The Republican side of the committee, as you know, has requested the right to re-interview you, and we have not objected to that. We agreed when we started this process that we would certainly permit any side that wished to do a re-interview to do so. However, you have been previously—we all have a copy of the deposition, so we're hoping to be expeditious today.

What we are going to do is I'm going to yield the opening bloc of time to the Republican side since they're the ones who requested your interview. They're going to go for approximately 15 to 20 minutes, then I will ask you a round of questions. We will have a second round, and Mrs. Herseth Sandlin will conduct for the Democrats. The Republicans will decide who they wish to conduct it.

Do you have any questions before we get started.

Ms. O'NEILL. No.

Mr. DAVIS. Mr. Paoletta.

EXAMINATION BY MR. PAOLETTA

Q. Catlin, thanks for coming back today.

A. Couple of things we wanted to cover for two reasons. One is we went ahead with the interview. It has taken some time to produce the documents, and I think it was agreed upon by the committee that we would go ahead with interviews, and once we got the documents, if we had any additional follow-up, we would have the right to call you back. I think, based on your production, we wanted to ask you a couple of questions. We are going to leave that to later in the interview.

A. Okay.

Q. Obviously, Mr. LaTourette and Mr. Pence are going to handle that.

The other thing is, you know, this happened back in August. We spoke to you in February. I think you said you had watched the tape once shortly after the incident, the vote. And we didn't have the tape running when we were going over it with you, and I thought it would be better, given your role in the vote, to sort of walk through the tape with you and get your sense and see if it jogs your recollection. I've gone over your testimony. I think we sent a copy to you yesterday.

A. I watched it last night.

Q. Did you read your testimony?

A. Yes, and I watched the video last night.

Q. I thought the best thing to do was to ask you to walk through the tape. It is primarily do you recollect XYZ, seeing from a visual, and perhaps you have a better recollection today upon watching it last night.

A. I do.

Q. Okay, good.

So I think what I want to do is just walk through the tape, and you can maybe pull your chair back. And then we may actually stop midway through to turn it over to Mr. Davis, and then we will pick it back up on the back end of his questioning.

A. Okay.

Q. So, in our first interview, you had mentioned that the only conversation that you had with Mr. McNulty was that this was going to be a tight vote and to bear with him?

A. Yes.

Q. Do you remember that?

A. Yes.

Q. Is that accurate as you sit here today?

A. Yes.

Q. We are going to pick up at 22:38. Actually, at 22:35. You are going to see yourself leaving the rostrum and walking up towards the Democratic leadership table. Okay?

A. All right.

Q. Do you see yourself?

A. I suspect that's me.

Q. I think you are in a black suit with a white shirt?

A. Yeah.

Q. Okay. Okay. You are walking up now. Do you see that?

A. Right.

Q. Okay. Question: Do you remember doing that?

A. No.

Q. Okay. You walked up to the table, to the leadership table. Do you recall anything that was said during your time up there?

Mr. DAVIS. Mark, can you reference the time?

Mr. PAOLETTA. Sure. It's 22:35:12.38. Thank you.

Ms. O'NEILL. Do you have an idea of where the time is on the vote at this point?

BY MR. PAOLETTA

Q. I think it's 5 minutes that you have walked up there. Yeah, it's a little bit—he calls the vote at 22:34. So it's actually a little bit—about a minute, a minute and a half. You come back down at the 5-minute mark, as you will see in a second. You walk up to the leadership table. Do you remember anything about that conversation?

A. No. I suspect I was just trying to figure out how many people had gotten in.

Q. Okay. At 22:38:30, you are going to see yourself—do you see yourself running down?

A. [Nonverbal response.]

Q. Can you stop it there?

Catlin, do you remember that?

A. This is what actually jogged my memory last night. It is based on his response. During last summer, I was trying to have the Chairs gavel down at 5 minutes or 2 minutes, or 1 minute, in an effort to get people in, because oftentimes when Members hear the gavel, they don't know how much time is left in the vote. So I assume, not being a Member myself, they go and put their cards in and they vote.

Q. This is a 15-minute vote, right?

A. Uh-huh.

Q. This is after 5 minutes?

A. I assume—I see—my assumption of what I did at that moment is that I looked at the board, saw that we were getting close to 5 minutes or around 5 minutes, and I ran to him and said: Gavel 5 minutes left in the vote.

Q. I think it's at 10 minutes that you do that.

A. It may well be at 10 minutes.

Q. That's the question. So it is a 15-minute vote?

A. Right.

Q. And after 5 minutes you had gone up to the leadership table, you come running down to speak to Mr. McNulty.

A. Uh-huh.

Q. And I'm not a floor person, so I wanted to get a sense of why, do you recall why, you ran down and spoke to him at the 10-minute mark of the 15-minute vote?

A. The only thing that I would assume I would have said was, can you gavel it, say there is X amount of time left, so we can get more people to enter their votes in.

Q. Okay. And with 10 minutes left, you are running down the aisle. Do you normally run down the aisle?

A. Yeah, often running.

Q. Okay.

Mr. DELAHUNT. If I can interrupt for a minute. Excuse me, I don't mean to distract you, but——

Mr. PAOLETTA. I didn't see you.

Mr. DELAHUNT. I snuck up.

These are assumptions that you are making. We don't know that there is 10 minutes left.

Mr. PAOLETTA. Yes, sir. It is 22:33 where he starts the vote. That is 22:38. That is 5 minutes—I'm pretty certain that it is a 5-minute lapse in the vote. And the question is on a 15-minute vote, why is Catlin—does she recall why she comes running down from the table to speak to Mr. McNulty.

Mr. DELAHUNT. But she is making the assumption that it was—as you say, was to inform the Chair to utilize the gavel. You don't know that.

Ms. O'NEILL. Well, I'm basing this after watching it last night following what he did. It sounded like he gaveled down not long after I walked up to him to say there's X amount of time left in the vote.

BY MR. PAOLETTA

Q. That is correct. And it is 10 minutes, though. And the question, is that normal on 15-minute votes to have the gavel at 10 and have the Chair announce that there are 10 minutes left in a 15-minute vote?

A. There is no rhyme or reason really. I mean, it was late at night. My personal theory was people were hanging out. Fifteen minutes they are all there. If we gavel it, more people will get in. Five minutes perhaps, gavel again, more people will get in. Two minutes left, more people will get in. I don't do that on every single vote. I do it on some, not others.

Q. How often on a 15-minute vote do you think when you are working the floor does the Chair gavel it at 10 minutes?

A. I cannot say. Sometimes I remember to tell them, sometimes I don't.

Q. Okay. But is it your practice that at 10 minutes—that's what I'm trying to establish. Is it your practice?

A. There is no practice.

Q. Okay.

Mr. SPULAK. If I may interject, if we were to let the tape run, at 22:58:54, Mr. McNulty announced, Members have 10 minutes left to vote.

Mr. PAOLETTA. Yeah. Okay. Thank you. Run it.

Okay. At 22:46:26.

[Playing videotape.]

BY MR. PAOLETTA

Q. And then can you identify Catlin? Can you see yourself, Catlin?

A. Not right now.

Q. Back it up.

A. Right there. Yes, I think that's me, coming down.
Q. Yes.
Mr. DAVIS. And you are pointing at 22:46:32:33, roughly?
Mr. PAOLETTA. Yes.

BY MR. PAOLETTA

Q. Okay. Can you see yourself talking to Mr. McNulty?
A. Yes, I can.
Mr. DAVIS. At 22:46:44.

BY MR. PAOLETTA

Q. Do you recall that conversation?
A. No.
Q. Okay. So there's about 5 minutes left. Okay.
A. Uh-huh.
Q. And you walked up from the leadership table it looks like. Do you agree with that?
A. I saw myself below. I don't know if I was coming down the aisle or coming from the leadership.
Q. If you are up there, where would you normally be?
A. Everywhere.
Q. Okay. So do you recall whether you were up at the leadership table that night?
A. Yes, I was at the leadership table that night.
Q. Okay. And do you think you were at the leadership table, do you recall being at the leadership table around that time?
A. I can't—I can't say for certain.
Q. Okay. And in this interaction with Mr. McNulty, do you recall anything of your conversation with him?
A. No, not that specific time.
Q. Okay.
A. I mean, I had said earlier, at some point I said, this will be a tight vote. That may have been the time. I don't know when it was that I actually said that.
Q. Right. I think what you said in your interview is this was going to be a tight vote, bear with me, wait for the signal. When do you recall saying that to him?
A. I don't remember.
Q. You don't remember?
A. Huh-uh.
Q. When would you typically say that to him, at the beginning of the vote, or once you get a sense that it is going to be tight?
A. Once I get a sense that it is going to be tight.
Mr. DELAHUNT. Can I interrupt once more? Can you refer to the point in the transcript for my benefit where she said, wait for the signal?
Mr. PAOLETTA. Page 5. On page 5, in response to a question from Mr. Spulak, Catlin says: I remember getting the list of Members who hadn't voted yet, seeing them on the floor, looking at the numbers and saying, oh, this is going to be tight, and then telling the Chair, I think we have—you know, we are going to have a tight situation here, and just wait for me to let you know.
Further on down on page 5: So I said, let's just—you know, bear with me until I get a signal from them.

And back up, Mr. Chairman, it says in the previous paragraph: I sort of looked to the desk, the manager's table, to see if we were ready or not, ready to go.

BY MR. PAOLETTA

Q. So, Catlin, just to be clear, when you say, when I get a signal from them, you are talking about the leadership table?

A. I'm talking about the leadership table.

Mr. SPULAK. I think the record should reflect that Catlin never said that she would give the Chair a signal. She was looking for a signal from one of her colleagues on the staff; is that correct?

Mr. PAOLETTA. Well, it says: I'm waiting for a signal, sort of an idea then I can say to the Parliamentarians or the Chair at that point we're ready to go. So it does seem like——

Mr. DAVIS. Why don't we do this. The objection I think that you're getting, Mark, is that we have only got one witness today. So, by definition, you are saying "it seems like" the only person who can really speak to what her mind-set is, I believe, Ms. O'Neill. So if you want to ask her about her previous testimony, that's perfectly fine. If you want to ask her if she stands by that, that's fine. But if you could try to limit yourself to letting her interpret what she did, because that is what——

Mr. PAOLETTA. Sure. I think the Chairman asked me to read the segments of her testimony, which is what I am doing. Tom interrupted me, and so we are here.

Mr. DAVIS. Okay.

BY MR. PAOLETTA

Q. Okay. So let's just return to the tape.

22:47:15. You are going to see the Speaker walk into the Chamber, and you're following her, I believe——

Mr. DAVIS. Well, why don't we ask her if she sees that, rather than testifying that is what she sees.

Do you see that, Miss O'Neill?

Ms. O'NEILL. No.

Mr. DAVIS. Okay. Let's just have it play instead of freezing it.

Miss O'Neill, tell us when you see yourself.

Ms. O'NEILL. I think I'm Democratic Republican at the 19.

Mr. DAVIS. At 22:47:29.

Ms. O'NEILL. Wait a second, I'm sorry. I thought I was over here. That's me right there.

Mr. DAVIS. So you recognize yourself at 22:47:37; thereabouts?

Ms. O'NEILL. Right. I don't see the Speaker.

BY MR. PAOLETTA

Q. There is the Speaker right there, right?

A. Right, I got it.

Mr. DAVIS. At 22:47:13.

Mr. PAOLETTA. Can you pause it for a second?

BY MR. PAOLETTA

Q. The Speaker is right about here, but she had just walked in. She is right about here in a light blue suit.

Mr. DAVIS. And, Mark, the point at which you just signaled with your hands is 22:47:17.

Mr. PAOLETTA. Yes.

Mr. DAVIS. Is there a question?

BY MR. PAOLETTA

Q. Do you remember speaking to the Speaker at any point? She is right in your vicinity. She's walking in.

A. No.

Q. This is at 22:47:41 we paused it on. Do you remember the Speaker coming in at that point? If you recall, the Speaker is the one who cast the vote. It is 214–213, as we will see later on; 214–213, when she cast the vote, it becomes 214–214. She is entering the well at this point. Do you remember speaking to her at all?

A. I don't remember her being in the vicinity of me.

Q. Okay. Okay.

Mr. DAVIS. Mark, how much do you have?

Mr. PAOLETTA. We will probably have at least 40 minutes or so as we walk her through this.

Mr. DAVIS. Well, why don't you go for another 5, and then I will ask you to yield to me, and I will have a few questions for her.

BY MR. PAOLETTA

Q. Okay. If you look on 48:15, okay? You are going to see—I believe you are going to see yourself walking from the leadership table back to the rostrum and speaking to Ethan Lauer. Do you remember doing that?

A. No.

Q. Let's just go to 49:30. Okay. Stop right there.

Catlin, this is what I see. Tell me if you disagree with it when we start to play this. I believe Mr. Hartz has given the signal to the Speaker to vote. The Speaker is going to vote. You are going to see her hand on the well card. Then you are going to see a conversation between Mr. Hoyer and yourself. He is standing at desk in the well, and he says something to you. You lean into him, and then you're going to turn around and speak to Mr. McNulty.

Okay. At that point you're going to see that the Speaker has voted. It hasn't upticked on the screen. And then once you speak to him, you are going to see Mr. McNulty bang the gavel to close it at 214—or his first attempt to close it at 214–214. Watch the tape and tell me if you agree with that, and then we will ask you if you recall. Okay?

A. If I see the Speaker correctly, she is right here.

Mr. DAVIS. At 22:49:39.

Ms. O'NEILL. I don't see Jerry.

Mr. SNOWDON. Can you see yourself?

Ms. O'NEILL. Yes, I see myself.

Mr. SNOWDON. Can you see Mr. Hoyer?

Ms. O'NEILL. No.

Mr. LATOURETTE. Well, she's missed Mr. Hartz making——

Mr. PAOLETTA. Why don't you back it up. Okay.

Mr. DELAHUNT. I think it would be helpful, Miss O'Neill, if, with the assistance of Mark, if you could point to the individuals that were——

Mr. PAOLETTA. Mr. Hartz is going to be over here. You will see his left hand go up.

Mr. DELAHUNT. Can you point to where Mr. Hartz is?

Mr. PAOLETTA. I have to watch it happen, but it is right around here. The Speaker is right there. She is talking to somebody. I believe she is going to see the signal, and she is going to turn quickly around and go vote. When she is about to do that, you will see the screen be 214 to 213, and her well card is going to make it 214–214.

Mr. DELAHUNT. Where is Mr. Hoyer?

Mr. PAOLETTA. Mr. Hoyer, I believe, is going to be right down—he is not there yet.

Mr. DAVIS. Why don't we actually watch this.

Mr. PAOLETTA. This is where Mr. Hoyer is going to be standing.

Mr. DAVIS. Why don't we actually watch this? I think it helps.

Mr. PAOLETTA. Right there. You see that?

Ms. O'NEILL. Yes, I saw that.

Mr. LATOURETTE. She has seen it.

Mr. PAOLETTA. The Speaker is going to vote. It is 214–213, okay?

Mr. SNOWDON. The conversation between her and Mr. Hoyer is about to happen.

Ms. O'NEILL. All right.

BY MR. PAOLETTA

Q. That is Mr. Hoyer right there. He has been talking to you. Do you see yourself turn and talk to Mr. McNulty?

A. Uh-huh.

Mr. PAOLETTA. Back it up. It leads to a significant point. I just want to make sure that the Members see it.

Mr. DAVIS. Why don't you finish out on your line of questioning which you are trying to elicit at this point.

BY MR. PAOLETTA

Q. You are talking to Mr. Hoyer. It is 214–213, Catlin, when you spoke with us, and you didn't have the benefit of the tape. I think what you testified to—and, Andrew, what page is it on? I think what you testified to was the only time you spoke to Mr. Hoyer, there were 13 Members left to vote, you had a slip in your hand, you don't think you showed it to him, but went to go find Members.

Ms. O'NEILL. Uh-huh.

Mr. DAVIS. Hold on, hold on. Why don't we actually point to the pages. I'm not trying to hold you, Mark, to the rules of a deposition in courtrooms all over the country, but if you can point to the page and point to her previous testimony.

BY MR. PAOLETTA

Q. On page 8 at the bottom. Catlin, do you want to read it?

Mr. DELAHUNT. Why don't you read it out loud.

BY MR. PAOLETTA

Q. Do you recall Mr. Hoyer coming down the aisle?

A. Not the aisle, but I remember him being in the well.

Q. All right. Do you remember what he was saying and what he was doing?

On page 9: He and I had a conversation that I said, there's 13 people who still haven't voted. Okay?

A. And then that was all we said, that's the only words we exchanged.

Q. Okay. So at this point in the tape, Catlin—and, again, you did not have the benefit—this was in August. We interviewed you in February. We didn't have the tape running. But at this point, right, there is not 13 Members left to vote?

A. On that point, I can't tell from where I am who is in and who is out. So in my view of the world—and that's not to say that this is a conversation where we had—I told them there were still 13 people out. That's the only conversation I recall having with him, so I have to assume that is the one. But I don't have a computer down there that tells me who is in and who is out.

Q. Okay. Further down on page 9, okay, we said: Do you remember him coming down? You know, you can hear it on the tape, and we have heard it from others, something like close the vote.

A. Yes, I was in the well standing by the doorway by the Parliamentarian's desk, and that was after I—he and I talked about there being 13 Members. And at that point I believe I went to talk to the floor staff to go find the 13 Members and then come back.

Q. Now, on this tape, at this point, at 22:49:53, with the vote being 214–213, and Speaker Pelosi just having voted, it looks like—and tell me if you agree with me—that you speak to Mr. Hoyer, you turn around, and you speak to Mr. McNulty?

A. Uh-huh.

Q. So it doesn't look like, at least from my perspective, that you were going off and looking for 13 Members.

A. No.

Q. It looks like you are having a conversation with Mr. McNulty.

So upon looking at this tape, do you recall a conversation you had with Mr. Hoyer at that point?

A. The only conversation I recall having with Mr. Hoyer is that there are still 13 Members out.

Q. Okay.

Mr. DAVIS. Why don't we do this, Mark. Why don't we kind of treat this as a natural stopping point for the first round of questions and let me question her. Then, because I have to leave, I will yield to Ms. Herseth Sandlin.

Mr. PAOLETTA. Sure.

EXAMINATION BY MR. DAVIS

Q. Let me begin by going back to your previous deposition on February 25th. Had you reviewed the tape prior to that?

A. Right after the August 2nd situation. So maybe a couple days later.

Q. So prior to February 25th this year when you were previously questioned, you had reviewed the tape, to your recollection, once?

A. [Nonverbal response.]

Q. You have to answer verbally.

A. Yes.

Q. And that one time would have been shortly after August 2nd, 2007; is that right?

A. Yes.

Q. And if I understand correctly, during your first round of questions, for some reason no one walked you through the tape, no one asked you questions about the tape; is that correct?

A. That's correct.

Q. And how many days a week—well, let me back up. Every day that we are in session, you are assigned to work the floor and carry out your responsibilities; is that correct?

A. That's correct.

Q. And is it fair to say that in the course of those days when a vote is on, you have a number of conversations with the leadership about the process?

A. That is correct.

Q. And, for example, you were here yesterday?

A. Yes.

Q. How many votes did we have yesterday?

A. I have no idea.

Q. Give me a ballpark count.

A. One or two series, four or five votes.

Q. Did you have repeated conversations with members of the leadership yesterday about the process here on the floor?

A. About the process—I mean, yes, I had repeated conversations with Members on the floor.

Q. And the night of August 2nd, that would have been essentially like any other night that you would have had repeated conversations with a variety of people. You would have had repeated conversations with the various presiding officers that day; is that correct?

A. That's correct.

Q. You would have had repeated conversations with the Majority Leader that day, August 2nd?

A. That's correct.

Q. You would have had perhaps repeated conversations with other Members; is that correct?

A. That's correct.

Q. From what—again the only person here to testify is you, but a number of us have conversations with you during a vote?

A. That's correct.

Q. And sometimes you're being asked, is this the last vote? How much time is left on the vote? What do you expect the Republicans are going to do next? Is that the kind of repeated conversation that goes on when you are performing your day-in, day-out task?

A. That's right.

Q. Is there any possible way that you could recollect any of those conversations with precision—let me do my lawyer's math—7 months later?

A. No.

Q. In fact, could you even recollect conversations you had yesterday with any precision?

A. I can't remember how many votes we had.

Q. You were asked a number of questions, or you were just asked a series of questions by Mr. Paoletta, about how many conversa-

tions you had with Mr. Hoyer. Is there any way that you can say with certainty sitting here today how many conversations you had with Mr. Hoyer on the night of August 2nd?

A. No.

Q. When you have testified to us, your attempt is to give us your best recollection of the conversations you had; is that right?

A. That's correct.

Q. Is it your testimony today and on February 25th that you recall a particular conversation with Mr. Hoyer that night?

A. That's correct.

Q. And is it your testimony that that particular conversation you recall, for some reason you believe at that point there were 13 Members who had not voted?

A. That's right.

Q. Is it possible that there were other conversations you had with Mr. Hoyer that night?

A. Yes.

Q. Let me back up and ask you a more global question. What is Mr. Hoyer's role as Majority Leader with respect to votes that occur on the floor?

A. Well, he controls the schedule with regard to votes, trying to get the schedule to move forward and deeming it appropriate to close them at a certain time in order to have the schedule move forward.

Q. And how long have you been in your current position?

A. A year and a half.

Q. All right. During the course of that year and a half, has Mr. Hoyer since then been the floor leader for the Democratic Caucus?

A. That's correct.

Q. Consistent with his role as floor leader, does he exercise discretion as to when votes should be closed?

A. Yes.

Q. We received testimony from Mr. Boehner last week in this kind of deposition setting that when he was the Republican Leader—he is still Republican Leader—when he was the Majority Leader for the Republicans, that he played a similar role of controlling or exercising control over the floor for the Republicans. Do you recall that as being consistent with the role that you understood Mr. Boehner to play when he was Republican Leader—Majority Leader?

A. I would assume that would be the case, yes.

Q. All right. Who, to your understanding, makes the decision as to when a vote should be called? Is it the Majority Leader, or presiding officer or some other individual?

A. It tends to come from leadership staff in consultation with leadership members to close a vote. And I am supposed to receive that information and then give it to the Parliamentarians and presiding officer.

Q. Is there anything—you were asked a number of questions today and a number of questions on February 25th about what you said to Mr. McNulty, whether you gave instructions to Mr. McNulty. On a typical scenario, what are the instructions that you convey to a presiding officer in the course of a vote? What kinds of instructions do you convey?

A. Not many. It generally comes down to letting them know, through the Parliamentarians mostly, that we're ready to close the vote.

Q. And on the night of August 2nd, do you recall having any conversations with the Parliamentarians that night relevant to this inquiry?

A. I don't recall any specific instances. I assume that over the course of that vote, I said something to them saying along the lines of: This is going to be close. I'm told in my first testimony that I told Ethan Lauer that. I try to keep the Parliamentarians as informed as possible and hope they share that information with the Chair, and if they don't, I tell the Chair.

Q. And do you consider it permissible for you to communicate directly with the presiding officer? Anything unusual about you doing that?

A. I—no. I mean, not unusual. I try to keep a healthy distance though.

Q. Is Mr. McNulty a very experienced presiding officer?

A. Indeed he is.

Q. And you are one of the people who sets the schedule for presiding officers; is that right?

A. That's right.

Q. Did you view McNulty as one of the more experienced presiding officers?

A. Yes.

Q. Did you view him as one who required a lot of input from the Parliamentarians?

A. No.

Q. Did you view Mr. McNulty as one who required a lot of input from the leadership staff as to how to do his job?

A. No.

Q. And this particular night with respect to the August 2nd vote, do you recall there being any point when you actually gave Mr. McNulty an instruction to close the vote?

A. No.

Q. And, in fact, last week we took Mr. McNulty's deposition, and we questioned him about whether or not he received any instruction from you, and he stated that he did not receive any instruction. I think he stated that he may have looked to it at one point and not received it.

Last set of questions I will ask you before I have to go due to a scheduling conflict that I have. You have heard a lot of conversation in the course of this inquiry about rule 2(a) of clause XX. Are you familiar with rule 2(a) of clause XX?

A. Yes.

Q. Can you tell me what that is?

A. To not hold a vote open for the express purposes of changing the outcome.

Q. That is a new rule that was enacted by our new Majority; is that correct?

A. That's correct.

Q. And who has the responsibility, as you understand it, for enforcing that rule on the floor? Do you have any understanding of that?

A. I—no, I don't.

Q. You don't have any role, though, with respect to that?

A. No.

Q. And was there any point on the night of August 2nd when the Parliamentarians attempted to do something, and you instructed them to stop?

A. No.

Q. Was there any point when the Parliamentarians attempted to give input to Mr. McNulty, and you advised Mr. McNulty not to follow the Parliamentarians?

A. No, never.

Q. Was there any point when you heard Mr. Hoyer instruct Mr. McNulty not to follow the input of the Parliamentarians?

A. No.

Q. Was there any point when you heard any of the Parliamentarians or any member of the rostrum staff complain that they were being impeded by you in any way?

A. No.

Q. Was there any point when you heard any member of the parliamentary staff indicate any concern or fear that he were being impeded by Mr. Hoyer?

A. No.

Q. When the Speaker cast her vote, that would have tied the score, if you will, at 214–214?

A. I'm aware of this now.

Q. So you don't have any independent recollection of that?

All right. Last set of questions before I have to literally sneak out, or I'm going to be very late for something.

Mr. LATOURETTE. That is the second time you said that.

Mr. DAVIS. That's right. I keep trying to buy time here. She is so sure of her answers.

BY MR. DAVIS

Q. Mr. Paoletta, I think, asked you several questions about your interactions with Mr. Hoyer, several questions about your interactions with Mr. McNulty. Is there anything based on your questions that refreshes your memory or adds any clarification to you as to any conversations you've had with Mr. Hoyer?

A. With Mr. Hoyer?

Q. Yes.

A. No.

Mr. DAVIS. Okay. All right. I'm going to stop at this point, Mr. Paoletta. We will let you pick up your round of questions, and then Mrs. Herseth Sandlin will pick up any follow-up, and Mr. Delahunt, if he chooses, after that.

The only cautionary note that I would add, we are not in any way trying to curb or constrain the questions here today, and I don't want to be one of those folks who spends more time objecting than letting you ask questions and just getting there. But Miss O'Neill has been questioned once before. I can't speak to why she wasn't shown the tape before, but obviously the tape has been available.

I understand that there will be questions that will be posed regarding e-mails that didn't exist and were not shown to her pre-

viously. But I would suggest and ask you to constrain the questions as we go forward to material that could not have been covered during her first deposition or to material that, frankly, may be a contradiction or impeachment. You are certainly entitled to ask about that.

But it does occur to me that a significant chunk of your first questions were, frankly, a rehash of the questions that were put to her February 25th. So out of deference to her schedule, because we do have the House in session right now, and there are responsibilities that she does need to conduct on the floor, I would simply ask that you try to restrain questions to new ground or to questioning her about previous statements.

Mr. LATOURETTE. I agree that it should be new, but I think I have a different view. I thought he was walking her in a pretty good way through the tape that she didn't have the benefit of February 25th——

Mr. DAVIS. I don't want to be one of those lawyers that spends more time arguing——

Mr. LATOURETTE. I don't either, but we would ask you to pinpoint the tape and whether she recalls something or doesn't recall something. But I thought you were doing a great job.

Mr. DAVIS. And, Mr. Chairman, I have to leave to make it to something, and I will come back after that.

Mr. DELAHUNT. Mark, I think I would make one request here. I think you would agree that if you are going to set out a series of facts that exist in the transcript, if you would read into the record her responses at that time as opposed to summarizing them, so that she understands that.

Mr. LATOURETTE. And I would just—from my perspective, I don't want any of this to be a gotcha for her. I think she didn't watch the tape on February 25th, and I would hope the questions are, now you see the tape, does it cause you to have a different answer?

Mr. DELAHUNT. I don't disagree. I think it is important—have you had a chance, Catlin, to review your transcript?

Ms. O'NEILL. Yes.

Mr. DELAHUNT. Okay. When you're posed a question, don't feel the need necessarily for an immediate answer, but reflect on it to see if it does refresh your memory, your recollection. And I think Mark will adopt my request, hopefully, and read to you the basis for the question if he's going to refer to the transcript.

Ms. O'NEILL. Okay.

BY MR. PAOLETTA

Q. Catlin, I wanted to pick up back on this sequence here which is at 22:49:50, which—I guess right around there where you are speaking to Mr. Hoyer, and you turn and speak to Mr. McNulty. Okay. So do you see Mr. McNulty?

A. Yes, I see Mr. McNulty.

Q. Do you see Mr. Hoyer?

A. Yes, I do.

Q. He is right about the "R" of "Democratic."

A. Yes.

Q. Stop right there, Andrew.

What I saw on that tape, and tell me if you agree with it, is that you have spoken to Mr. Hoyer at 214–213. The Speaker had just voted, and as you're looking at the screen now at 22:50:07, Catlin, it says 214–214. You have turned in the sequence we watched and spoke to Mr. McNulty for about 10 seconds or so. He seems to lean in and listen a little bit more to what you are saying, from what I can tell. And tell me if you agree with that.

A. Yes.

Mr. DELAHUNT. I'm having problems identifying Catlin. Can you just for a second, just to the point to where she is?

Mr. PAOLETTA. Sure. That's Catlin right there. Pull it back, Andrew. Here, where she is talking to Mr. Hoyer.

Mr. DELAHUNT. So she is on the floor.

Mr. PAOLETTA. She is on the floor.

Mr. DELAHUNT. Who are the individuals between her and Mr. McNulty on the rostrum?

Mr. PAOLETTA. Do you see this right here, Mr. Delahunt?

Mr. DELAHUNT. Hold on.

Mr. PAOLETTA. This is Mr. Hoyer right here.

BY MR. PAOLETTA

Q. Do you agree with that, Catlin?

A. Yes.

Mr. PAOLETTA. And this is Catlin, and we are at 22:49:44.

Mr. DELAHUNT. And who is the Parliamentarian next to Mr. McNulty?

Mr. LATOURETTE. It's Ethan Lauer.

Mr. DELAHUNT. Okay. And is that the standing or sitting tally clerk?

Mr. LATOURETTE. It's the recording clerk and the seated tally clerk.

Mr. DELAHUNT. No. Who is that gentleman right there right under "H."

Mr. PAOLETTA. De'Andre Anderson.

Mr. DELAHUNT. So we have De'Andre, we have Ethan Lauer, and then Mr. McNulty, and then if you can point out for me Mr. Hoyer.

Mr. PAOLETTA. That's Mr. Hoyer right there. He's come from over here, and he has been standing here for about 10 seconds. At that point——

Mr. DELAHUNT. Catlin is where?

Mr. PAOLETTA. Over here. And, Mr. Delahunt, you see it is 214–213, and the Speaker has just actually turned her vote card in. Now, as you will see——

Mr. DELAHUNT. We need slow motion on this.

Mr. SNOWDON. We can do that.

Mr. DELAHUNT. Do a slow-mo.

Mr. PAOLETTA. Right there. Okay. Right here at 22:49:49, she's just spoken to Mr. Hoyer. She's turning a little bit more. Now he leans in. I'm watching him lean in to Catlin. They are obviously, I believe, communicating. Okay? Now it is 214–214 at 22:50:05, and Mr. McNulty has just gaveled the vote. Stop it right there.

BY MR. PAOLETTA

Q. So my question, Catlin, is do you recall that conversation?

A. No.

Q. Okay. When you say you didn't give an instruction to close the vote—and I believe, returning to my seat—on page 28 of your testimony, George Crawford asked: Did you get that signal from the table that night?

Answer: Yes. There was—I mean, no. No, I mean no. Actually that's not true. I didn't get any definitive signal.

A. May I—if I may. Having read this last night, I was answering what I thought Crawford's question was going to be, which is you said that you get a signal sometimes by shuttling it from the table that everybody is in. My "yes" was to that, just to clarify.

Q. Okay. So moving down this page, it says—this is George Crawford: So in your mind when you—when you spoke to Mr. McNulty, were you giving him a signal to close the vote at that moment?

A. Absolutely not.

Q. So you didn't get a signal—this is the question—so you didn't get a signal or communication from the table to close the vote, and you didn't pass on any message to Mr. McNulty to close the vote?

A. No.

Q. Now, we talked about—that is pages 28 and ending on page 29 of her testimony.

So, Catlin, it seems from the tape that you speak to Mr. Hoyer, who I think we've previously discussed with you had been signaling and stating to close the vote, right, when he was down in the well? We've heard it on the tape.

Mr. SPULAK. Did Catlin ever say that she heard Mr. Hoyer signaling to close the vote? You have said that, but is that reflected in the record?

Mr. PAOLETTA. I think Catlin said that she watched the tape the first time and heard that on the tape.

Ms. O'NEILL. No, I didn't say that.

BY MR. PAOLETTA

Q. I think you say—well, we can move on. Did you hear Mr. Hoyer say that?

A. No.

Q. Okay. Did you turn—what I want to focus on is you said you never gave an instruction to close the vote?

A. I never gave an instruction.

Q. I want to explore the word "instruction," because it certainly looks like from the tape that you speak to Mr. Hoyer, and you turn to Mr. McNulty, who immediately attempts to close the vote. So do you recall any conversation with Mr. McNulty where you suggested in any way a signal to close the vote?

A. There was no signal to close the vote.

Q. Okay.

Mr. PENCE. If I could interject a question. Do you recall being surprised when he closed the vote moments after you spoke to him?

Ms. O'NEILL. Yes.

Mr. DELAHUNT. Could I interrupt, too?

The way that Mark posed the question to you, he stated that it appeared that you had a conversation, albeit, from what I could see, extremely brief. And he bases that on Mr. McNulty leaning to-

wards you. Do you have any memory of a conversation at that particular moment?

Ms. O'NEILL. No, I don't.

Mr. DELAHUNT. Even after viewing the tape?

Ms. O'NEILL. Even after viewing the tape.

BY MR. PAOLETTA

Q. Is it possible that you had a conversation with him?

Mr. LATOURETTE. Well, I think the same thing Artur—anything is possible. Everybody looked at the tape. I think she is talking to him; she doesn't remember.

Mr. PAOLETTA. Okay. Okay.

BY MR. PAOLETTA

Q. Stop it right there. Okay.

Catlin, we asked you this back in February, but do you see Mr. Hoyer on the dais now?

A. Yes.

Q. And it looks like he is talking to Mr. Sullivan. Do you agree with that?

A. I do.

Q. And where are you at this point? I believe you are right off the screen on the left-hand side of the screen. We're at 22:50:42.

Ms. HERSETH SANDLIN. Do you see yourself on the screen?

Ms. O'NEILL. No, I don't see myself on the screen.

Mr. PAOLETTA. Back it up for a second.

Ms. HERSETH SANDLIN. At this point, at 22:50:57, you're saying—do you see yourself?

Ms. O'NEILL. No, I don't see myself on the screen.

Mr. PAOLETTA. Are you backing it up?

Ms. O'NEILL. I see it.

Ms. HERSETH SANDLIN. At 22:51:10.

Mr. PAOLETTA. Pause for a minute.

Mr. DELAHUNT. I apologize, but my eyesight isn't quite as good. You are right on—there you are, thank you.

Mr. PAOLETTA. Back it up, Andrew.

Mr. DELAHUNT. Who are you facing towards there?

Mr. PAOLETTA. I think it's Tom Wickham.

BY MR. PAOLETTA

Q. Tom Wickham is the tall guy leaning on the elbow, I guess, there. I just want to see if there is a different angle to show. There you are.

A. Yes, I saw that.

Mr. PAOLETTA. Pause it when you get to that screen shot, Andrew. Right there.

BY MR. PAOLETTA

Q. Do you see yourself, Catlin?

A. Yes.

Q. It's at 22:50:13, right? And you are right off the elbow, right behind Tom Wickham, correct?

A. Correct.

Q. And I'll ask, do you recall you being there at that moment?
A. Yeah, yeah.
Q. Okay. You do?
A. Not at that moment. I recall being there the entire night.
Q. Do you recall at that point leaving that area at any time?
A. Yeah, a little off, but in that same general area on the floor. And when I say "a little off," closer to the doors, which is what I was alluding to in my last——
Q. Now we're at 22:50:13, and, Catlin, you are on the left-hand side of the screen, half off and half on. Okay? Do you recall whether there was a conversation at that point with Mr. Hoyer or anyone else, Mr. Sullivan, occurring off the screen?
A. No.
Q. Okay. You can see your shoulder, correct?
A. Uh-huh. Yes.
Q. And that looks like you are left at 22:50:25. Okay.
So I just wanted to run that tape for you, Catlin. And again, we're not—there is nothing that I've intended to do that is a gotcha during all of these questions. It is really to try to get the benefit of your recollection upon looking at the tape.
So upon looking at that, do you recall that conversation with Mr. Hoyer and Mr. Sullivan?
A. I recall seeing that, yes.
Q. You recall seeing it; do you recall hearing it?
A. No.
Q. Okay. And when Mr. Hoyer leaves the rostrum—go forward—do you recall him saying anything to you at that point when he walked off?
A. No.
Q. Do you recall what he did when he walked by?
A. No idea.
Mr. PAOLETTA. Okay. I don't have any further questions right now.

EXAMINATION BY MR. SPULAK

Q. May I ask, you said you recall seeing it. Do you recall seeing it as it occurred?
A. Yes. I was very much at that moment trying to figure out in my head what was going on. And I usually defer to the Parliamentarians to work things out. So—and I don't want to get in their way, and I certainly don't want to ever seem like the leadership is doing anything to put the Parliamentarians into a position. So I sort of defer to them always.
Q. Can you describe the sound level in the Chamber at that time?
A. Yes. It was late at night, very late. Off of a long week, but the previously long week before that. Loud; oftentimes how it is when everybody returns back to the first day of school. It was loud, rambunctious. People were talking. And then whatever happened elevated that noise level. People were coming to me, probably, I assume, what is going on, what is going on, what is going on? Everybody is trying to figure out what is going on. Mass confusion.
Mr. SPULAK. We have the benefit of hearing that conversation on the tape because it was occurring very close to a microphone, but

is it possible that you didn't hear what was going on because there was noise in the Chamber?

A. Highly.

Mr. LATOURETTE. Again, not possibly. You didn't hear.

Ms. O'NEILL. I didn't hear.

Mr. LATOURETTE. She didn't hear.

BY MR. PAOLETTA

Q. A couple more questions. Do you have any idea as to why Mr. Hoyer was upset that night?

A. No.

Q. Mr. Davis asked you a series of questions about——

Mr. PENCE. May I interject? Is it your recollection that he was upset that at moment?

Ms. O'NEILL. Yes, yes.

Mr. PENCE. Thank you.

BY MR. PAOLETTA

Q. In the typical course of the day, there is a lot of votes for you. Your responsibility is to be on the floor. You have a lot of conversations with Parliamentarian staff, with the leader's staff, in terms of the Majority Leader with respect to votes, correct?

A. Yes.

Q. Okay. And this happened on August 2nd. I think we interviewed you——

A. 25th of February.

Q. 25th of February. And that is several months after the incident, and yet you remember at least one conversation with Mr. Hoyer. Is that an unusual type of conversation to have with Mr. Hoyer, that there are 13 Members outstanding, or is that sort of a run-of-the-mill type of conversation on any number of votes as to how many Members are still outstanding?

A. Run-of-the-mill. I mean, we want everybody to have the most up-to-date information. I didn't know where he was coming from. There were still 13 Members out.

Q. Okay. My question is—my point is that you recalled that conversation several months later. So was this an unusual role for you the night of August 2nd?

A. Yeah, I mean, it had come to be unusual. Had there been close votes before that? Yeah.

Mr. PAOLETTA. Okay. I turn it over to the Members.

EXAMINATION BY MR. LATOURETTE

Q. I just have three questions, sort of three strains of questions.

Are you aware today, or were you aware that night, what the issue was in the motion to recommit, that it was this immigration business?

A. No. I knew it was immigration, but the actual——

Q. But did you know, I think, there were 19 Democrats that voted for the motion to recommit? Did you recognize those as sort of the usual Blue Dogs that have some angst with this immigration thing?

A. [Nonverbal response.]

Q. Could you say yes or no?

A. Yes. Sorry.

Q. And is that one of the things that led you to believe that this was going to be a close vote, because you were losing the Blue Dogs, or you were losing somebody, 19 somebodies?

A. What led me to believe that was looking at the number of people who hadn't voted——

Q. Right.

A. [continuing]. And thinking that they'll likely be part of these Blue Dogs and go the other way, so.

Q. Are you aware before the motion to recommit of a meeting that took place in the Democratic cloakroom with some of those Blue Dogs and the Chair of the Democratic Caucus and Mr. Emanuel?

A. No.

Q. Today you indicated typically, in response to Mr. Davis, you are supposed to receive instructions and communicate those instructions to the Parliamentarian and/or the presiding officer. But you are saying none of that happened on August 2nd?

A. None of it happened.

Q. Okay. My last line is after—and thank you for complying with the document request. I have an e-mail that is sent from you to Brendan Daly. Brendan Daly is the Speaker's spokesperson?

A. Uh-huh.

Q. At 11:49 a.m. And let me show it to you. It's the top one.

Mr. DELAHUNT. What is the date on this?

Mr. LATOURETTE. August the 3rd, the next morning.

Mr. DELAHUNT. Is that the day after?

Mr. LATOURETTE. Yes, it is the next morning.

BY MR. LATOURETTE

Q. And just to read it into the record, it says: FYI, they continue to bring up this slip issue . . . no slip was ever issued.

Do you recall writing that e-mail?

A. Yes.

Q. Is that your e-mail to Brendan Daly?

A. Yes, it is.

Q. And the slip that is being referred to is the tally slip?

A. Correct.

Q. That is typically handed up from the Clerk's Office to the Parliamentarian to the Chair?

A. Yes, correct.

Q. And you are aware as you sit here today that there was no tally slip for this roll call vote, 814?

A. Correct.

Q. And I read your testimony—and, again, not to get you—but I think when you gave your observations on February 25th, you said that you may recall that have happening before maybe on a suspension. The Parliamentarian, Charlie Johnson, said it has never happened in 40 years. Did you think that it ever happened before, or you don't know if it ever happened before?

A. What I was trying to say in my earlier testimony was I have seen Members read it off the board prior to getting the slip as it was being prepared.

Q. But that slip is always prepared. And we know that no slip was prepared in this instance. The question I have, who are "they" in your e-mail?

A. C-SPAN.

Q. C-SPAN was saying that there was no slip prepared?

A. Right. I don't know if you recall, the following day we were in recess trying to fix the computer, and they were playing the August 2nd vote over and over again on C-SPAN, and they had someone commenting over the video footage. I believe that's my recollection of what it was.

Q. So the "they"—because—let me give you the longer e-mail. Mr. Daly writes back to you—and I didn't want to bring this into the record because we all say stuff like this—but something about, they are all crazy right-wingers. Don't let them get you down.

Who are the crazy right-wingers that he is referring to? The people on C-SPAN?

A. No.

Q. Okay. He's referring to Republicans, isn't he? So the question I have——

Mr. PENCE. Particular Republicans.

Mr. LATOURETTE. I know they weren't talking about me, Pence.

BY MR. LATOURETTE

Q. So the question is when those two e-mails are put side by side, I have to tell you when I read your e-mail, what I thought, there was some conversation going on with floor staff, maybe Minority floor staff, maybe somebody in the Parliamentarian's Office, maybe somebody in the Clerk's Office, that was bringing up this "no slip" issue. So as you see these two e-mails side by side, you don't think that is the case? You think you were talking about somebody on C-SPAN?

A. I was talking about C-SPAN.

Q. Okay. And just so I'm clear, because now I'm going to have to go back and get whatever C-SPAN was doing, that e-mail by you to Mr. Daly was 11:43 on the next morning after we discover that the machine is broken and all of that stuff was going on. Is that when you recall seeing the C-SPAN playing it because we had some down time?

A. Yes. They were playing it over and over and over again, and I wanted to kill myself.

Q. And the person, the "they" that you are referring to in that e-mail to Mr. Daly that "they keep talking about the slip issue," are you—it is your recollection that somebody on C-SPAN——

A. Or Fox it says here, I'm sorry. I'm referring to Fox and C-SPAN, but, yes, C-SPAN was running the loop.

Q. But you recall somebody on either Fox or C-SPAN bringing up the slip issue on television?

A. Yes.

Q. And is it your recollection that it was a host of like Washington Journal, or did they have a guest?

A. I can't remember.

Q. Okay.

Mr. DELAHUNT. Were you on Washington Journal, Mr. LaTourette?

Mr. LATOURETTE. I will call you the next time I'm on Washington Journal.

BY MR. LATOURETTE

Q. The reason I asked you is the fact that there wasn't a slip wasn't known to me and I think the members of the committee until the Clerk's Office gave us their documents.

And so let me back up. When is the first time you were aware that there wasn't a slip?

A. I became aware of it that night.

Q. And how?

A. I don't know how I became aware of it.

Q. Did you recall engaging in any conversations with anybody about the fact that there hadn't be been a slip when Mr. McNulty called the vote?

A. No.

Q. But, again—and it's your recollection that controls—but you think if we go back and watch—and I just want to make sure it is not the night, it's the morning?

A. It's the morning, the next morning.

Q. Either Fox or C-SPAN. Are they the crazy right-wingers? Never mind.

Mr. DELAHUNT. Or was it Fox?

BY MR. LATOURETTE

Q. Either Fox or C-SPAN has somebody on there replaying this again and again and again, and Mr. Daly says when he gets the press release out, he is going to put it all to rest, and it is all going to be good again. But until then, they have somebody that is bringing up the slip issue, is your recollection, as early as 11:45 on August 3rd?

A. Yes.

Mr. LATOURETTE. Thank you.

Ms. HERSETH SANDLIN. May I follow up on that line of questions?

EXAMINATION BY MS. HERSETH SANDLIN

Q. You stated that you became aware there was no tally slip sometime that evening. Was that after Congress had adjourned for the evening?

A. I don't know.

Q. But all of these details you didn't become aware of until after the vote in question had come to a completion?

A. It could have happened while all of that confusion was going on. It was bits and pieces of information. What happened? What's going on? I don't know who I picked it up from. I don't know when I picked it up. It was certainly that night. Whether it was after we had gone into recess, I don't know.

Q. You said you reviewed the tape again. Were you—as you watched the tape, were you specifically looking for whether or not Mr. McNulty was ever handed a tally slip?

A. No.

Q. Can we go back to that area on the tape? It would be 22:50. Maybe we can go to 22:49:50. If we can stop it there and play it all the way through to 22:50:15.

And, Miss O'Neill, if you could specifically watch the interaction between Mr. McNulty and the standing reading clerk.

Can you just describe generally the nature of the interaction that you just witnessed?

A. Am I watching Kevie?

Q. Kevie, the standing read clerk.

A. I didn't see any interaction.

Q. No exchange of a slip?

A. No exchange of a slip.

Q. That's all I have in terms of responses to Steve's questions.

EXAMINATION BY MR. PENCE

Q. We have a vote that was just initiated a couple of minutes ago, so I will be very quick.

Number one, Catlin, thank you for your cooperation with this committee. Thank you for coming back. Thank you for your document production. I have a lot of respect for your family.

A. Thank you.

Q. A very proud name.

You said—Mr. Davis, he asked something to the effect does Mr. Hoyer use discretion as to when to close a vote? Your response to that was yes. But I understand your testimony today—correct me if I am wrong—he did not exercise any discretion, to your recollection, in this vote?

A. No. I—there is no rhyme or reason. I mean, right.

Q. I just want to be clear on that and not repetitive.

I want to ask you about the e-mail that we spoke to Mr. McNulty about in your document production. It was—I think everybody has got a copy. Mr. McNulty identified himself as M. Mike, who received an e-mail from you shortly before midnight on August 2nd, 2007, your e-mail to M. Mike. Let me ask you first, is that your e-mail?

A. Yes.

Q. Okay. And your recollection is also consistent with Mr. McNulty that this was directed to Congressman McNulty?

A. Right.

Q. You wrote: I have to apologize for putting you in that in position, but you did a remarkable job under a tremendous amount of pressure that I will never fully comprehend.

When I asked Mr. McNulty in his testimony to the select committee last week, can you tell us for the record—and it is on page 73 of Mr. McNulty's deposition—I asked, can you tell us for the record how you would interpret her apology; what did she mean that she put you in that position? He said, I think she was just reacting to the chaos, confusion and anger that was caused by my error. I don't know what she was apologizing for because it was my fault.

Let me ask you for the record what were you apologizing for?

A. Well, in hindsight, my choice of words weren't probably terrific. But he—I felt terrible for him. I mean, he was so despondent.

And I didn't think anybody was reaching out to him, and so I felt that someone should. And it was just merely a consolation e-mail.

Q. When you use the phrase "putting you in that position," in what way do you recall meaning when you said—how do you put him in that position?

A. Well, he was in the Chair. It was——

Ms. HERSETH SANDLIN. May I interject?

Catlin, you were responsible for scheduling presiding officers?

Ms. O'NEILL. Correct. That's correct.

Mr. PENCE. Thank you.

BY MR. PENCE

Q. I asked you earlier, I interjected, did Mr. Hoyer seem upset at that moment in the tape? I don't know the time, but the moment we all just spoke about. Do you have any recollection of why you thought he was upset at the time?

A. I don't—I can't speculate why he was upset.

Q. Does he frequently become upset on the floor?

A. He gets agitated at times, yes.

Q. Do you recall any other incident where he became agitated with the Parliamentarian in that nature since the August 2nd vote?

A. Since? No.

Mr. PENCE. I don't think I have any further questions.

Mr. PAOLETTA. I have a couple of follow-up.

BY MR. PAOLETTA

Q. Cat, I just wanted to go back to the e-mail Mr. LaTourette was reviewing with you, and I just want to make sure I understand. When you say this is the e-mail of August 3rd, the 11:49 e-mail from you to Brendan Daly: They continue to bring up the slip issue, and then dot-dot-dot, no slip was every given to the Chair. The first part of the sentence, "they continue to bring up the slip issue," what were "they" saying about the slip?

A. I believe—let me think. I believe the thought was that the slip—the slip was given—I don't actually—I don't remember. But maybe that a slip was given to the Chair. I can't remember, though.

Q. Okay. Okay.

A. I have to assume that that was what it was. As I said, no slip was ever given to the Chair. So to counter what——

Q. Just a couple more brief questions. Did you ever talk to Mr. Hoyer about this vote after—you know, after the sequence on this tape?

A. No.

Q. Was there any time during that night or after or the following days when you had occasion to speak with him about what happened that night?

Mr. SPULAK. Answer orally, please.

Ms. O'NEILL. No, no.

BY MR. PAOLETTA

Q. What about Mrs. Pelosi? Did you have any conversation with Mrs. Pelosi?

A. No.

Q. Or anyone on her staff about what happened that night in terms of the way the vote was closed, or anything relating to the vote that night?

A. No.

Q. Did you ever have any conversations with Mr. Clyburn?

A. No.

Q. Or his staff——

A. No.

Q. [continuing]. About the vote?

And again, on the e-mail that's with Mr. McNulty, you said, you did a remarkable job under a tremendous amount of pressure. What's the—can you describe to me what you mean by pressure?

Mr. PENCE. What you meant by pressure.

BY MR. PAOLETTA

Q. What you meant by pressure.

A. I can't understand—being in the Chair and being up there and trying to manage the floor when people are yelling "shame" on one side and "liars," and the other side is yelling, it's just unbearable, in my mind, and that is what I mean by pressure.

Q. And the last part, I will never fully comprehend; what did you mean by that?

A. Being in the Chair.

Q. Being in the Chair.

BY MR. PENCE

Q. Let me, one final question. Mr. Davis said to you—there was a line of questioning about how many communications you have on the floor, and I was the deputy whip when we had the Majority, and I understand the interactions.

I think he asked you if there was any possible way that you could remember conversations in that context, and I think your testimony today was no, or something in the negative.

In your year and a half in your capacity, do you ever recall an incident where a vote became this disruptive, resulted in a walkout, and generated the level of controversy that this vote generated?

A. In the year and a half, no.

Mr. PENCE. Thank you.

Ms. HERSETH SANDLIN. I have just a couple of question follow-ups since we have a pending vote.

BY MS. HERSETH SANDLIN

Q. Is it unusual to see Members of either party upset or agitated on the House floor?

A. No.

Q. In fact, that night did you see Members from both parties who were upset?

A. Yes.

Q. And in response to an earlier question, conversations with the Speaker's Office, you don't recall having any conversations with the Speaker or anyone on her staff other than the e-mail exchange with Brendan Daly?

A. That's right.

Ms. HERSETH SANDLIN. That's all I have.

Mr. DELAHUNT. Do you have any?

Mr. SPULAK. No.

We are off the record.

[Whereupon, at 12:08 p.m., the interview concluded.]

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

WEDNESDAY, APRIL 16, 2008.
Washington, DC.

INTERVIEW OF STENY HOYER, MAJORITY LEADER

The interview in the above matter was held at Room H–107, the Capitol, commencing at 5:30 p.m.

APPEARANCES

Representatives William D. Delahunt, Artur Davis, Stephanie Herseth Sandlin, Mike Pence and Steven C. LaTourette.

OUTSIDE COUNSEL, MAJORITY: THOMAS J. SPULAK, ESQ., GEORGE CRAWFORD, ESQ., KING & SPALDING LLP, 1700 PENNSYLVANIA AVENUE, NW., WASHINGTON, DC 20006

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Also Present: Muftiah McCartin, Deputy Staff Director, Committee on Rules; Hugh Nathanial Halpern, Republican Staff Director, Committee on Rules; Ed Cassidy, Minority Subcommittee Staff Director, Committee on Rules, Subcommittee on Rules and Organization of the House; Davida Walsh, Legislative Counsel, Representative Delahunt; Chanelle Hardy, Counsel, Representative Davis; Russ Levsen, Communications Director/Deputy Chief of Staff, Representative Herseth Sandlin; Joshua M. Pitcock, Legislative Counsel, Representative Pence; and Terry Lierman, Chief of Staff, Office of the Majority Leader.

Mr. DAVIS. Let's go on the record.

Mr. Leader, thank you for allowing us to use your office for this questioning today.

As you know, the House voted last year to impanel a select committee to investigate allegations of irregularities around a vote that occurred on a motion to recommit on the night of August 2, 2007. Six of us were selected to participate in this process, and this is the time for us to ask you some questions about the events that night.

The way we're going to structure today's proceedings, because we want to be enormously respectful of your time, I'm going to ask you an opening round of questions. I will then yield to Mr. LaTourette, who will ask you a round of questions. And then we will have some informal redirect, if you will, after that. I may yield to Ms. Herseth

Sandlin or Mr. Delahunt, and Mr. LaTourette may yield to his Republican colleagues on the committee.

At some point there are counsel, Mr. Paoletta and Mr. Spulak, and they may intersperse while the questions are formally being done by the Members. And we've agreed that that is the best way to do this. Sometimes we ask something that's extremely unclear, as we Members are prone to do. They may jump in to clarify it, or as we struggle with the videotape.

Mr. HOYER. I hope I don't give extremely unclear answers.

Mr. DAVIS. But we are wanting to be enormously respectful of your time, Mr. Leader. So even though they aren't formal stipulations, Mr. LaTourette and I have come to some general conceptions about time constraints. We envision that we should be able to finish our business in under 1 hour.

Are there any questions you have before we get started?

Mr. HOYER. No. The only thing I would like to say at the beginning, I know that all of you have spent a lot of time on this effort, and the report I have is that everybody has been very conscientious and forward. And I know the institution appreciates that.

Mr. DAVIS. And, Mr. Leader, we appreciate your cooperation. I know that once we're finished with these questions, I believe Mr. Delahunt might like to make some comments, and Mr. Pence, as the Ranking Member, might like to, and that's irrespective of any questions they might have.

Let us begin.

EXAMINATION BY MR. DAVIS

Q. As you know, the events in controversy happened on the night of August 2nd. They involve a motion to recommit. Mr. McNulty of New York was in the chair.

I want to direct you in the very beginning to the rule that has been at issue, frankly, as we've had our conversations and had our testimony over the last several months. It is Rule 2(a) or clause 2(a) of Rule XX, the new Rules adopted by the Democratic Majority after we took control in November 2006. The relevant provision I will quote: A record vote by electronic device shall not be held open for the sole purpose of reversing the outcome of such vote.

That has become the critical provision that we've spent time talking about. Would you just briefly tell the select committee how that provision came to be in the new rules?

A. That, as I'm sure probably most of you realize, was an outcome of the 3-hour vote, or somewhat short of 3 hours, about 2 hours and 15 minutes, at which there became a great controversy, as you recall, and I can't recall the Member's name, but who alleged that he had been—his son was running to replace him.

Mr. LATOURETTE. Nick Smith.

Mr. HOYER. Nick Smith. His son was running to replace him. And the next morning, of course, he said on a radio show that he had been threatened; he thought that if he did not change his vote, they wouldn't be supporting his son. And as you know, further proceedings, I think, in the Ethics Committee, came out of that as well.

So there was a great deal of concern, particularly for those of us who went through that vote—it went for about 2 hours and a

half—the proposition being offered was losing votes. It was not until, I think, that—I hadn't watched the tape recently—but the last 10 minutes that votes were changed. And once one or two or three votes were changed, then a series of votes on both sides of the aisle were changed. This Rule——

Mr. DELAHUNT. Mr. Hoyer.

Mr. HOYER. I was hoping we might get through before you came.

Mr. DELAHUNT. I'm sorry? I came because I read this; Hoyer Earns Trust with House GOP. I don't know why we're even bothering now.

Mr. HOYER. You have to admire our press people for their timing of important stories.

BY MR. DAVIS

Q. And I was going to put that in evidence, Mr. Hoyer.

A. I certainly will not object.

In any event, this Rule obviously is an outgrowth of that. So I think that's how it came about.

Q. And once this new rule has been adopted, what is your belief, Mr. Hoyer, as to who has the authority or the responsibility for enforcing this rule, if you will, on the floor?

A. Well, the Speaker obviously has the responsibility for enforcing all the rules.

Q. By Speaker you mean the person who was the presiding officer at the time?

A. The presiding officer, the Speaker or Speaker pro tem. This is, if we focus on the specific rule, extraordinarily difficult to enforce, in my opinion. The Rule itself, I think, is a difficult rule, a difficult rule because what it was really designed to do is respond to a situation where there is what clearly on our side was perceived as an abuse of power by keeping a vote open as long as it was kept open. The Rule, however, of course, did not refer to time. It says simply that you can't hold it open for that purpose.

It is somewhat, I will tell you honestly, unrealistic in that both sides—it's hard to enforce because you don't know who is talking to whom—but it is my presumption that on both sides people do talk to one another about how they think people ought to vote. That is obviously what we do for business, all 435 of us. So it is not unusual that we would do the same thing on the floor with our colleagues, and I think that goes on.

Then the question becomes a very difficult one: At what point in time is a vote being held open solely for that purpose, or is it being held open for other purposes? And it's a very difficult thing, I would think, to enforce.

Q. You said that the presiding officer has that discretion. There's been some argument as we've conducted these proceedings about the role of the Parliamentarian, and the role of the Parliamentarian in enforcing clause 2(a), or for that matter any other provisions of the rules. Can you talk for a moment briefly about what you understand the Parliamentarian's proper role to be in interpreting that clause 2(a)?

A. First of all, a little background. Obviously, as some of you probably know, I was president of the Maryland Senate and was the sole presiding officer, because as those of you who have served

in State legislatures, it's not as sporadic as the Federal, and the presiding officer usually presides, and I did that. My perception of the parliamentarian at the State level, my parliamentarian, and my perception of the Parliamentarian today is that the Parliamentarian is an advisor and counselor to the Speaker in particular and to the House in general for the purposes of advising the Speaker and the House on the rules and on precedent and how the Parliamentarian perceives them as properly being applied. It's an advisory role to the Speaker and the House.

Q. And once the Parliamentarian plays the advisory role, would you agree that it's then in the hands of the presiding officer to decide how to interpret that advice?

A. Not only would I agree with that, but I feel that very strongly. And I believe in comments that have been made by Parliamentarians through the years that I've heard, that it is ultimately clearly the Speaker and the presiding officer that makes the decision on the application of the rules. The Parliamentarian is an advisor, obviously, in our case, very professional, very experienced and excellent, whether we're talking about Mr. Sullivan or Mr. Johnson or Mr. Brown or their predecessors.

Q. And obviously we are an elected body. And there is a Majority that has enormous discretion in deciding when to schedule bills, when to bring things to the floor.

A. The discretion is sometimes overstated.

Q. For the Majority to operate effectively, would you agree that that requires the presiding officer as opposed to the Parliamentarian to have ultimate discretion as to what the rules are and what they mean?

A. Well, let me go back. The answer is yes. And I may have a bias, having been a presiding officer for 4 years. And the Maryland Senate president is elected. I didn't serve as a—because I was Lieutenant Governor. I was selected like the Speaker of the House.

The presiding officer ultimately is the authority to initially rule. The House or Senate can obviously overrule a presiding officer. We just had a vote on doing that today. But it is the presiding officer that ultimately has the responsibility of determining what rulings to make from the chair.

Q. And as you've pointed out——

A. Let me make a point on that. On the 3–hour vote, it was either the presiding officer or the Speaker himself or Mr. DeLay who made a determination that for the 2 hours that the vote was relatively static, that the vote should not be called. There's no rule on that. As a matter of fact, as some of you may remember, when I was asked 1 or 2 or 3 days later about the press when there was this uproar about would I pledge if we were elected not to keep the vote open, I responded, no, I would not pledge that, and that I didn't think that—that while I thought it was an abuse of power to keep the vote open 3 hours, I did not believe it was against the rules. So I have a record of having said that, and it was because I believe the presiding officer had that authority. It is his decision or her decision alone, in my opinion, when to close the vote.

Q. And let me touch on that specific one. We've been talking about the general question of interpreting clause 2(a), and now let me turn to the very specific point of when the vote is called, if you

will. I assume from your comments you would believe it's the presiding officer who has the discretion as to when to call a vote?

A. Yes.

Q. And with respect to the presiding officer having discretion as to when to call a vote, what are the factors that presiding officers should keep into mind or keep into account as they make that decision?

A. To call the vote?

Q. Yes.

A. Well, sometimes it's pretty simple. All time is expired under a structured rule. Under an open rule, as we are now considering the beach bill, obviously the presiding officer should respect those who want to be recognized. And as long as somebody wants to be recognized, and debate has not been limited by the Committee of the Whole or the House, then the presiding officer clearly should continue to recognize people. The presiding officer, I think, has the authority not to do that, but I think that would be inappropriate.

Q. Let's just focus on the narrow context of the calling of a vote. Looking at clause 2(a), looking at your own experience as a presiding officer and your experience as Majority Leader, give me an example of appropriate considerations that a presiding officer may use after the clock has passed zero as to when a vote should be called.

A. Well, I think clearly if the presiding officer, A, thought that all debates had ended—and in this case, of course, there is a time limit on motions to recommit, so there was a time limit frame—called the vote, the vote proceeds 15 minutes, which is under the rules the time frame that it shall be at least 15 minutes—again, that's why I thought the presiding officer in the 3–hour had not violated the rules, because it doesn't say how long it could be. So I thought it could have been 3 hours. However, the presiding officer needs to make a judgment as to whether or not, during the course of the vote, after the 15 minutes, the rules are being complied with. And if the presiding officer believed he was keeping the vote open solely for the purposes of changing the votes on either side, I think he or she could make a judgment that he or she ought to bring the vote to a close to preclude that from happening. But I think it is in the discretion of the Speaker of when to bring that vote to a close after the 15 minutes.

Q. Would it be permissible for the presiding officer to keep a vote open for the purposes of giving Members an opportunity to change their mind, for example?

A. Certainly.

Q. Would it be permissible for a presiding officer to keep a vote open for the purposes of giving Members an opportunity to change their mind, for example?

A. Certainly.

Q. Would it be permissible for a presiding officer to keep a vote open for the purpose of allowing both sides to continue lobbying Members?

A. If the presiding officer made a judgment that the sole purpose under the rule was to change the result, I think if he was acting pursuant to the rule, I think he would have the discretion or she would have the discretion to shut down the vote. My own view is

that after 15 minutes, the Speaker has almost unbridled discretion to bring the vote to a close. And under the rules, we give Members 15 minutes. As you know, we've had discussions about this, and I've articulated on the floor after a series of votes that we really wanted to try to keep these to 15, no more than 17, because Members were delaying, and what it was doing is delaying every other Member waiting on it.

But if the Speaker knows, for instance, that there's a meeting going on in the House Armed Services Committee and people are coming, I think the Speaker certainly has discretion to keep the vote open. And, in fact, as I've said before, I think the Speaker has discretion to keep the vote open essentially without limit, which is why I didn't think a rule was violated by the Speaker presiding at the—I thought it was not proper to do so, but I didn't think a rule had been violated.

Q. Let me leave this topic, but ask you this one final question based on a question I asked Mr. Boehner. Last week we were in Mr. Boehner's office, and I posed the following question to him: If a Member or presiding officer had multiple motivations for keeping a vote open, multiple motivations for keeping a vote open, by definition that would mean the presiding officer had not violated the rule, referencing clause 2(a); do you agree?

A. I agree with that.

Q. Mr. Boehner also for the record stated that he agreed, he would agree with the same statements.

Let's talk generally about how presiding officers are selected and how they're put in the chair. You play a role, do you not, in putting together the list of presiding officers for the Majority?

A. No. The Speaker does that. The Speaker—obviously, this is the Speaker pro tem. And that's within the province of the Speaker to appoint a Speaker pro tem.

Q. Based on your knowledge of how the process works, does the Speaker in effect and the Speaker's Office compile the list of Members who are regularly asked to be presiding officers?

A. Yes.

Q. And is there a preference for putting more experienced presiding officers in the chair during more contested votes such as a motion to recommit?

A. Yes.

Q. Mr. McNulty, you would agree, up to the time of this controversy, August 2nd, was a frequent presiding officer over the House?

A. Not only is, I think, Mr. McNulty a competent, accomplished presiding officer, but I think perceived by all Members as a very fair individual of high integrity, and I think he is that. And as a result he both has talent and respect, and he was because of that, I think, very qualified and therefore sought after by the Speaker's Office to preside.

Q. And, in fact, Mr. McNulty's reputation as a presiding officer was strong enough, as you recall, that he was one of a small group of Members asked to preside in the opening days of the session in the end of 2007; is that correct?

A. Yes.

Q. All right. Let's turn specifically now to the night of August 2nd. We've spent an enormous amount of time going into all kinds of details around that night, and we want to try to home in today on the very specific things that are relevant to you. Let me just set a little bit of context.

This was a close vote. It was on a contentious issue, the question of illegal immigrants, if I'm not mistaken—the question of illegal immigrants, if I'm not mistaken, and whether or not they can receive particular benefits. And you recall there were a series of motions to recommit on that topic during 2007; is that correct?

A. Yes. What really made it controversial, though, it was a promptly motion. And the reason that promptly motions are so controversial is because essentially they, while technically not killing the bill, in this instance it would have effectively killed the bill vis-à-vis considering it because we were going to adjourn the next day. So it would have had to go back to committee.

Q. And as we've said——

A. So that made it pretty controversial.

Q. We've spent a lot of time looking at the tape. In the interest of time, I'm not going to—Mr. LaTourette may choose to, but I'm not going to spend time on this round of questions taking you through it, but I'll set the stage.

The Speaker cast a vote that night, which is unusual. And once the Speaker cast her vote, the motion appears to go to 214 to 214. There's a back and forth on the floor. At some point Mr. McNulty calls the vote. And as you, I suspect, are aware, Mr. McNulty has acknowledged that his first calling of the vote was premature.

Are you aware that Mr. McNulty has made that acknowledgement?

A. I think he made that from the rostrum.

Q. Was it your perception—well, let me ask a different way. Do you agree, first of all, that Mr. McNulty was correct in acknowledging her that night?

A. I think when he called the vote, I think all Members had voted, and it was within his authority to call the vote at that point in time.

Q. And you were obviously on the floor that night?

A. Uh-huh.

Q. Was it fair to say there was a lot of motion and a lot of movement around the rostrum that night from Members and staffers, a number of people?

A. I think it is self-evident. The answer is yes.

Q. And again, we've seen the tape a number of times, and it's obvious to us listening to the tape there was a lot of noise. There were Members on the Democratic side who were audibly saying, call the vote; is that correct?

A. Yes.

Q. That's not uncommon at all on a late night for Members to urge the presiding officer to call the vote?

A. As I recall, over the last 27 years it's not uncommon on either side.

Q. That's right, that's right. And when Mr. McNulty is about the business of calling the vote, do you remember where you were in the Chamber at this point? I'm talking about the premature calling

of the vote, or what he describes as the premature calling of the vote. Do you remember where you were?

A. I think I was in the well. And I've looked at the tape, obviously, and I'm not sure exactly where I was. I see myself walking at some point in time, I think around 22:50. But I think I—I was somewhere in proximity to the well. I may have been immediately in front of the desk, I may have been back from the desk.

Q. If you had been the presiding officer that night—after the clock left zero, a period of time goes by. If you had been the presiding officer, when would you have felt it was appropriate to call the vote?

A. When Mr. McNulty called it prematurely.

Q. Tell me why, sir?

A. Because I believe the Speaker—first of all, the Speaker was the last one to vote of those who had not voted. I didn't see her vote. I don't recall her voting. I've seen the tape, obviously, so I see her vote. When 16 minutes had transpired and, I think, a second, the Speaker voted. It was 214–214.

Q. And let me stop you there, Mr. Hoyer. 214 to 214. When votes happen in the Chamber after a series of votes, in effect both sides are aware of how many Members have been present and voted for the night; is that correct?

A. Yes.

Q. And what was the meaningful thing about the iteration 214 to 214?

A. We knew that there were 428 people voting.

Q. Counting the Speaker?

A. Actually, the Speaker was the last one to vote. All the Members that I think had been voting—I don't know this precisely, so I don't want to say precisely—but it was certainly—let me be very candid. Certainly every Member had had the opportunity to vote. My recollection was when the Speaker voted, there was nobody else in the well. Her vote made it 214–214. Mr. McNulty called the vote.

Q. What's the effect of a 214–214 tie on a motion to recommit?

A. The proposition fails on a tie.

Q. Because the motion has to carry at all ties?

A. A motion has to have a majority of those voting.

Q. So once all Members appear to have voted, based on the numerical count, including the Speaker, it's 214 to 214, if you had been the presiding officer, would you have felt you had the discretion at that point to call the vote?

A. Yes.

Q. Based on the fact that all Members have voted?

A. Yes.

Q. And a result had been reached?

A. Yes.

Q. And do you remember engaging in conversation yourself at this point? And when I say "this point," I'm talking about the time frame in which Mr. McNulty makes his first calling of the vote, do you remember engaging in conversations yourself with anyone in the Parliamentarian's shop about the propriety of calling the vote?

A. We all recall that.

Q. All right. Tell us what you recall of those conversations.

A. Let me explain the circumstance, because if there's anything I regret that night, John Sullivan, whom I not only respect, but like—I was relatively animated at that point in time, as you've seen. It was 214–214, and Mr. McNulty called the vote, which I thought was appropriate at that point. I thought he was acting within his discretion as the Speaker. And then what occurred, from my perception, was the—not Mr. Sullivan, but the other Parliamentarian whose name I don't know——

Mr. PAOLETTA. Ethan Lauer?

Mr. HOYER. Yeah, I guess it was Ethan Lauer—appeared to me to be saying to Mr. McNulty—again, I could not hear anything, so I'm telling you what appeared to me to be the case—appeared to be saying to Mr. McNulty he could not do that.

BY MR. DAVIS

Q. Referring to Mr. McNulty?

A. Yeah. He was talking to Mr. McNulty. I had no conversation with Mr. McNulty that night. Now, when I say that, I don't mean I wasn't looking and Mr. McNulty didn't want the vote closed at some point in time. However, it was very close, it was late, we had been through a lot. And I went up and told Mr. Sullivan, as you've heard in no uncertain terms, that I thought it was not the job of the Parliamentarian to tell the presiding officer when he could or could not shut down the vote.

Q. Stop at that point, Mr. Hoyer. In your previous tenure as a long-term Member——

A. He could advise him, but he couldn't tell him.

Q. In your previous tenure as a long-term Member of the House, do you recall any other instance when you heard a Member of the parliamentary staff tell a presiding officer that he or she could not call a vote?

A. Well, I think all of us recall Linder in the '95 action——

Q. Right.

A. [continuing]. Where you had two people, and the Parliamentarian saying you had two people coming down, and Mr. Linder made a determination not to accept their vote.

Q. And just to stop there, the context of that was Members in the well manifesting an intent to change their vote, Mr. Linder ignoring that, and the Parliamentarian telling him that the better practice would be to recognize those Members; is that right?

A. Yes.

Q. Other than the Linder incident, which we've heard of greatly——

A. Can I say something about Linder?

Q. Yes, please.

A. I think Linder was within his authority to close down the vote.

Q. Yes.

A. The reason he was within his authority, from my perception, 15 minutes had run. These Members were late on voting. If I wanted to delay the vote for an hour, I could send in one Member every 30 seconds walking down the aisle and say, one more vote, and it would be a way to delay the vote forever. I believe the Speaker at any time after 15 minutes has the discretion to close the vote.

Q. In fact, a good——

A. And I think Mr. Linder had that discretion. Whether he acted appropriately, as I said, I think if you see people in the well, you ought to extend to them the ability to vote; however, having said that, I think it's within the Speaker's discretion not to do so after the 15 minutes, otherwise the Speaker would not have the authority to stop the vote if a large number of people decided they were simply going to vote every 10 seconds.

Q. Other than the Linder incidence you've been very specific about, do you recall any other incidence?

A. There was an incident, I understand, I read somewhere in 2000. I cannot remember, Mr. LaTourette; was that the incident in which you were involved?

Mr. LATOURETTE. It might have been. I had a quorum call.

Mr. HOYER. It was a quorum call.

Mr. LATOURETTE. I don't think it was tied.

Mr. HOYER. And as I reiterate, I think Mr. LaTourette was within the ambit of his authority as presiding officer.

BY MR. DAVIS

Q. Okay. Let's go back again to the exchange you heard between the individuals who work for the Parliamentarian's Office.

Mr. PAOLETTA. Mr. Davis, you're at 25 minutes now.

Mr. DAVIS. Okay. I'm closing it out. But the more I get rid of that, the less I do on redirect.

Mr. LATOURETTE. Go ahead. We're going to take the same amount of time.

BY MR. DAVIS

Q. Let's go back again briefly to the conversation that's occurring between Mr. Hoyer and between Mr. Sullivan. Had you finished describing your role in that conversation?

A. Well, I went up and told John in no uncertain terms, as we've all heard on the tape, John, we run this House; that's not the business of the Parliamentarians to run the House.

Q. And let me stop you at that point.

A. Well, that wasn't the exact phrase, but it was very close.

Q. I questioned Mr. Sullivan several weeks ago, and this was the question that I put to him: Going back you've mentioned that you had several exchanges with Mr. Hoyer, and then you characterized those exchanges. Let me focus on one of them; the statement that you recall him making, something to the effect of, we control the House, not the Parliamentarians. Have I got it right that you recall him saying that? Mr. Sullivan says, words to that effect. Then I ask Mr. Sullivan, is there something incorrect about that statement, in your opinion? And Mr. Sullivan says, no.

A. I think I was right. It was the animation with which I said it.

Q. And Mr. Sullivan agrees with you. And then the next question——

A. I was rude.

Q. [continuing]. That I asked Mr. Sullivan, is it your opinion, based on your time as the Parliamentarian, that the Parliamen-

tarian is subordinate to the elected leadership? Mr. Sullivan says yes to that as well, and you would agree with that?

A. I would certainly agree, and I would say I think Mr. Sullivan agrees with my characterization of what the role is of the Parliamentarian. The Parliamentarian is an advisor. The Parliamentarian is not a line officer. The Parliamentarian is for the purposes of advising particularly Speakers who do not preside on a regular basis. And none of us who—know the rulebook the way the Parliamentarians do and need to repair to the Parliamentarian for good advice and counsel, because I think all of us want to make sure that the rules are applied fairly because we want to maintain comity in the House to the extent we can, I think. I try to do that, and I hope others would try to do it.

Q. Now, we know that Mr. McNulty attempts to call the vote, calls the vote, in effect aborts his calling of the vote——

A. Right.

Q. [continuing]. And then Members do actually at that point come forward and change their votes in the well. You do recall that?

A. Yes.

Q. And you remember there's an intense conversation that goes on between the Parliamentarian and between Mr. McNulty as to what to do in effect?

A. Yes. I saw that. I was not there, but I saw that.

Q. And at some point, Mr. Hoyer, even though Mr. McNulty had called 214–214, the motion fails. Some said Members continue to change their votes. There comes a point Mr. McNulty read a statement into the record in effect stating that he prematurely calls the vote. Do you recall that?

A. Yeah.

Q. And what is your state of mind at this point?

A. I thought that clearly that was the perception of the House, or if not the House, the Republicans in the House. Now, I'm not sure, because I don't have the time frame in front of me as you do, he called the vote 214–214 twice.

Q. Right.

A. The first time I think he could have—my own view is he could have stopped the vote at that point in time. I think it would have been within his rights. The problem with the second vote—and as you recall, and the tape will show, I went up and talked to Mr. Sullivan twice. The second time he called the 214–214, contemporaneously with him calling it the board showed 215–213.

Q. Yes.

A. Within seconds after that, I'm not sure how many seconds, I went up and told Mr. Sullivan, I may have even asked Mr. Sullivan, I said, John, we cannot let this stand, we're going to have to vacate this vote, how is the best way to do that? And the reason I did that was while I certainly think at 214–214 we were fully within our rights to call the vote, 16 minutes had passed, and Members had voted, in order to maintain comity, you have to be fair. And when people are hearing 214 and seeing 215–213—and let me make a comment on that, because I know this slip thing has been an issue. When you see the person write the slip, you will see them look up at the same place we look, not the machine on the

desk. They'll look up, and they'll write it down, and they'll give it to the Speaker. The Speaker is looking at the same machine. That machine historically has been perceived as the definitive record of how we voted. But when the Speaker articulated the 214–214, and the machine reflected a different vote, I immediately believed that that could not stand. And if I had been in the Minority at that point in time, I would have been outraged. And the Republicans were outraged. I could understand that. So I went up to Mr. Sullivan and I said, you know, we've got to vacate this vote. Now, I went down, and then, as you recall, a lot went on before we ultimately got to a point where I then did that.

Q. So in effect, Mr. Hoyer, you had two choices; you could have sought to preserve Mr. McNulty's call, if you will, or alternatively you could have sought to set aside that call, and the choice that you made was to set aside Mr. McNulty's call; is that correct?

A. Yes.

Q. And the risk of that choice could have been another vote; is that correct?

A. Yes.

Q. And you didn't even know for a fact how many Democratic Members even remained in the Chamber at that point?

A. You know, I was not talking about any other Members at that point in time. And I frankly didn't, until I saw the tape, know exactly what was going on in the well at that point in time. So my—I had no idea of who had left or who was there, but I just thought that vote couldn't stand.

Q. And there was obviously uncertainty over that?

A. Yes.

Q. The point I'm making is that by seeking a new vote in effect, it's possible some Democratic Members who had voted against the motion might have even gone home; is that correct?

A. It's possible.

Q. There would have been a risk the Democrats might have lost another vote; is that correct?

A. Certainly possible.

Q. And you incurred that risk because you were concerned about the comity of the House that night?

A. Yes.

Q. You made a motion at some point to set aside the vote?

A. Can I add to that?

Q. Yes.

A. Not only was I concerned with the comity of the House, but I was concerned about the perception of our own fairness. And when you call 214–214, and it reflects 215–213, I think if I were on the other side, I would say something is wrong here, and I thought we couldn't let that stand.

Q. You made a motion to set aside the vote?

A. Actually I first asked for unanimous consent that it be vacated. There was objection.

Q. Who was the objection from?

A. It was at my back. It seemed to be from your side, the Republican side of the aisle.

Q. It seemed to be from the Minority side, too.

A. I can't say who made it, because I think there were more than one. It seemed to me multiple voices that I heard.

Mr. LATOURETTE. A chorus.

Mr. HOYER. Yeah, there was a chorus, so I couldn't identify anybody. So I then immediately made a motion to reconsider the vote by which the motion to recommit had failed.

BY MR. DAVIS

Q. What was the result of the motion that you made?

A. Well, it was passed.

Q. Do you remember how the Minority reacted to that motion? Was there a particular reaction?

A. They walked out. Not all of them. I think some 40 voted. I did know the exact number, but I don't have it in front of me. About 40 stayed in the Chamber, and the rest of the Republicans left.

Q. And was there any procedural effect as to the large number of Republicans who left the Chamber at that point, any procedural effect on the motion that you made?

A. No.

Q. The motion carried that you made to reconsider?

A. Yes.

Q. Procedurally what happened?

A. And the reason it passed is because all my Members, I think, knew I wanted it to pass, and I think they felt—I ultimately think they thought that was the right thing to do.

Q. Was there a revote that occurred?

A. There was.

Q. And what was the result of that revote?

A. Similar. I don't know the exact numbers, but again, the Republicans are not en masse returned, so there were 40, 50 votes voting on the ag bill. There were a lot of people for the ag bill. It wasn't particularly controversial, as you recall. The only thing that was controversial was the funding mechanism. No, that's a different bill. It was the motion itself to recommit.

Q. In your opinion, Mr. Hoyer, did Mr. McNulty at any point commit any violation of the rules of the House that night?

A. No.

Q. In your opinion, Mr. Hoyer, did Mr. McNulty act in any matter that suggested the willful intent to disenfranchise Members of the House?

A. No.

Q. And did you at that point instruct him or direct him to act in any manner that would have intentionally thwarted or disenfranchised an intent to vote by any Member of the House?

A. No.

Mr. DAVIS. I yield to Mr. LaTourette.

Mr. LATOURETTE. Thank you. Does somebody have the time?

Mr. PAOLETTA. Yes. Thirty-five minutes.

EXAMINATION BY MR. LATOURETTE

Q. Mr. Hoyer, I want to echo Mr. Davis' observation. Thank you for making yourself available. And we're going to watch the tape in a minute, not quite yet. And you should know just from the Minority side, I think this committee has been a huge success in that

your side could have appointed pretty obnoxious Members. You didn't. We could have appointed pretty obnoxious Members, and although Delahunt thinks I'm an obnoxious Member, I think we work pretty well together, and I think we'll produce a product that the House can be proud of.

A. I will tell you, I was very pleased when I saw the Republican appointees, and I believed on our side the Speaker had appointed people who were matched by the other side. As I said at the beginning, I thank you for your time.

Q. I agree with you, and I think our product will reflect that.

I don't want to be a nitpicker on the last line of questioning before I get into where I was going to start, but——

A. But you're a lawyer like me.

Q. But I'm a lawyer, and I'm going to. But the sequence of events is a little off in that Mr. McNulty, you're correct, he attempts to call the vote after the Speaker votes 214–214. He stops and doesn't add the magic words that the motion is not agreed to, which the Parliamentarian indicates to us is the parliamentary way to conclude a vote. When he calls it the second time, which now—go ahead.

A. The Parliamentarian says that's the normal way.

Q. Yes, that's right.

A. I understand that.

Q. Okay.

A. My view is that's not the only way, it is the normal way. And if you will watch the tape, as I know we're going to do, when he called it 214–214——

Q. The second time or the first time?

A. The first time.

Q. Yes.

A. The numbers go off the screen. I don't know who runs that screen, but at that point in time, obviously whoever runs the screen thought the vote was over, too.

Q. Right.

A. Because when you watch the tape, that's what struck me. First I'm trying to find out where is the vote because we're all interested in what the vote is doing. It goes off the screen.

Q. But again, and we'll leave this, if you don't agree with me, you don't agree with me, Charlie Johnson indicates for 40 years Sullivan, his time here, that the magic words—they call it the magic words—and so you say whatever the vote is, and then you move on to say, and the motion is not agreed to, or the bill is passed?

A. He did not. I agree with that.

Q. But the second time he did, is what I'm getting at.

A. Yes, I agree.

Q. And it's that one that creates this anomaly of he has called the 214–214, and the board and the machine says 215–213. It's the second one.

A. Can I?

Q. Sure.

A. The reason I made the observation, if you will note on the tape, it was after the first one that I went up——

Q. Yes, I know.

A. [continuing]. Not after the second one, because after the second one I thought there was a problem.

Q. That's right. And that's my nitpick, because what you've indicated to us is that because you recognized—you said that couldn't stand, because clearly when he called it the second time at 214–214, it wasn't 214–214, it was 215–213.

A. Correct.

Q. But for some reason the vote was held open further, and you didn't move to vacate at that moment in time. You then let other—somebody let other Democratic Members go to the floor, and you announced that the vote was actually 212 to 216. I mean, we eventually got the 212–216. So your decision to decide that the vote couldn't stand apparently was not reached until after you prevailed 212 to 216?

A. No, I don't think that's accurate. I'll have to look at the tape to remind myself, but I think as soon as he said 214–214, and it reflected 215–213, very—I want to look at the tape, and we're going to look at the tape, but very, very shortly thereafter, I went up to John and told him that I thought that was not something that we could maintain.

Q. And I don't disagree with you. And I appreciate as a Republican the fact that you first moved to vacate and then moved to reconsider. But before that happened, somebody made the decision to continue on. After McNulty has called it incorrectly and said the motion is not agreed to——

A. Right.

Q. [continuing]. People come in the well after not being in the well for 3 minutes and change the vote to give you the margin 212–216.

A. We have this dispute about the magic words. He said the magic words. But I have seen often presiding officers handed the slip of paper, read the slip of paper on this vote, and then see somebody come down the aisle——

Q. Right. I have, too.

A. [continuing]. And stop the vote even after they've said the magic words——

Q. Right.

A. [continuing]. And allow the person to vote, have it changed and recalled.

Q. Right.

A. So it was not an unusual circumstance.

Q. I don't know if I agree with that, but I will say, though, that Mr. McNulty, in the opinion of the Parliamentarian, spoke the magic words. And we've talked a lot about the fact that the power to call the vote is invested in the Speaker and then her designee, the Speaker pro tem?

A. Right.

Q. Mr. McNulty testified to us that it was his judgment that to keep the vote open after the Mario Diaz-Balart well card was entered would have been violative of Rule 2(a), and he intended to close the vote after the Mario Diaz-Balart vote was entered. If that is Mr. McNulty's position, that as the presiding officer that you say is invested with the authority to close the 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?

A. No.

Q. Going back to where Mr. Davis started, the issue on the motion to recommit, we would say it had to do with illegal immigration, you would say it's political posture and sort of trying to catch vulnerable Democrats on a procedural vote. But the issue was——

A. I probably would say that.

Q. I know. I've heard you say that.

A. I believe it.

Q. The issue was, whether it was in your mind a legitimate issue or not, is illegal immigration?

A. Right.

Q. There were press accounts prior to that evening that that issue was causing some angst within your caucus, particularly among your freshmen and your Blue Dogs. Were those press accounts accurate?

A. Well, enough were, which is why you offered them.

Q. That's right.

A. But you know you call things——

Q. That's correct.

Are you aware that prior—when did you become aware what the issue was on the motion to recommit?

A. I can't recall exactly. It was shortly before—I'm not sure how soon it was given by Mr. Lewis to Ms. DeLauro. Whenever he gave it to her, I learned about it shortly thereafter.

Q. Are you aware of a meeting that took place in your cloakroom with this group of vulnerable freshmen and the Chairman of your caucus Mr. Emanuel prior or during this vote?

A. No.

Q. During this entire sequence did you ever have a conversation with Mr. McNulty while he was in the chair?

A. No.

Q. Did you ever issue any instructions to Mr. McNulty?

A. I want to—I was saying, you know, we need to shut down the vote.

Q. Right.

A. Now, it was not a conversation, because I was never proximate to him. The only time I got close to him was when I was talking to Sullivan, John Sullivan. But I never had a conversation with McNulty, Mr. McNulty.

Q. About with Catlin O'Neill, did you ever have a discussion with Catlin O'Neill about the way the vote was going or what should be done?

A. I may well have had a conversation. I don't remember specifics of a conversation. Clearly I wanted the vote to terminate at the time that the votes were in.

Q. Right. And if we can go then to the first clip. I want to show you——

Mr. DAVIS. Mr. LaTourette, could I interrupt you for 1 second. I have to duck out for about 60 seconds for the purpose of recording my votes on a markup in Ways and Means. I don't want that to interrupt the proceedings.

Mr. LATOURETTE. Okay. Are you competent to take over, you two?

BY MR. LATOURETTE

Q. I would like to go to the first clip. And let me just, while they're finding the marker—the first clip, I think—and I would ask you to watch for—is going to be the time when the Speaker of the House votes. When you're about there, could you just stop so I can describe it to the Leader? And what I think happens—and then I would like you to watch it and tell me whether you think I've seen correctly and you agree with it or not—is that Jerry Hartz—you're familiar with who Mr. Hartz is?

A. Huh-uh.

Q. He's at the Democratic leadership table. He's got a dot on his head.

A. No, that's Rob. That's Rob Cogorno, my guy, and Jerry Hartz.

Q. Well, you got to go back here because I want to describe it, and then we're going to have the Leader watch it. I believe you'll see Mr. Hartz make a motion with his arm.

Mr. PAOLETTA. With his left hand.

BY MR. LATOURETTE

Q. You'll then see the Speaker of the House, who is in the well in the light blue suit under the word "present" at the moment, I think, go and take out a well card.

A. Now, who are you saying that is?

Mr. DAVIS. That's Nancy.

Mr. HOYER. No, Nancy is over here. Is this Nancy here? Okay, fine. The Speaker.

BY MR. LATOURETTE

Q. Yes.

A. I got you. For the purposes of the record, further referred to as the

Speaker.

Q. We'll call her the Speaker.

Then over here above the M in "Democratic" is Catlin O'Neill?

A. Right.

Q. And shortly we're going to see your head in conversation with Catlin O'Neill.

A. Right.

Q. Can you just run this clip, and then I have some questions. So I would ask you watch Mr. Hartz first, the Speaker next.

A. Where am I? Oh, here I am.

Q. There goes the Speaker.

Mr. PAOLETTA. Do you want to back up one more time? You're going to see this person raise his hand to the Speaker, who is sort of facing in his direction. At that point she turns to go to signal what we believe to go vote.

Mr. HOYER. All right.

Mr. PAOLETTA. So she turns to go vote right there.

Mr. LATOURETTE. There's the arm.

Mr. PAOLETTA. She's going to vote right here.

Mr. HOYER. Right.

Mr. LATOURETTE. Could you stop it for just a second?

BY MR. LATOURETTE

Q. At the moment it's 214 to 213?

A. Right.

Mr. LATOURETTE. All right. Roll.

Mr. PAOLETTA. And that's Catlin right here.

Mr. LATOURETTE. And stop it there. I believe Catlin O'Neill is engaged in a conversation with you. We believe that's your head.

Mr. PAOLETTA. This is you right here.

Mr. DAVIS. Does that appear to be your head to you, Mr. Hoyer?

Mr. HOYER. It appears to be my head. And obviously I'm talking to Catlin.

Mr. LATOURETTE. All right. Let's roll again.

Mr. HOYER. You will observe there's nobody else. It's 214–214 when you go a couple of seconds.

BY MR. LATOURETTE

Q. Well, it's 214–213 at the moment.

A. And there's nobody else in the well.

Q. Okay. Can you stop it now, please?

You left Catlin O'Neill at 22:49:55:27?

A. Right.

Mr. DELAHUNT. Steve, will you yield for a moment? Actually, he did not leave. When he is down there, Catlin backed up.

Mr. LATOURETTE. Walked away from him.

Mr. DELAHUNT. If you would, I would be interested in the amount of time that they had any, if they had any, exchange over what we're talking about.

Mr. LATOURETTE. I can ask questions after he sees it. I just wanted him to see it before we talked about it.

Can you roll it now? And stop it there.

BY MR. LATOURETTE

Q. It appears that Ms. O'Neill is talking to Mr. McNulty. Ms. O'Neill, Mr. McNulty, and in a minute he'll bend over.

A. Okay.

Q. And in a minute it's going to click to 214–214. And then—okay, can we stop there?

So I guess I want you to tell me if you don't agree with that sequence. I think what we saw in that sequence was Mr. Hartz at the Democratic leadership table waving his arm; the Speaker going into the well, taking a well card; the vote is 214 to 213; you have a conversation. And you say you don't recall the conversation?

A. I don't recall specifically, but I'm clearly saying to Catlin that we need to shut down the vote when we're prevailing.

Q. Okay. And was it your expectation, or do you believe that that's what she was communicating to Mr. McNulty?

A. I don't know.

Q. You don't know. Okay.

But do you agree that after her conversation with you, she went and appeared to be having a conversation with Mr. McNulty?

A. It appears that way.

Q. Okay.

A. But Mr. McNulty would know far better than I what the conversation was.

Q. I know. And when it clicks over——

A. And Ms. O'Neill.

Q. Correct.

And when it clicks over, it becomes a tie. Now, Mr. McNulty has made his first attempt to close the vote?

A. Right.

Q. And it is your observation that he was within his right to do that because we were beyond 15 minutes?

A. We were at 16 minutes and 1 second.

Q. But he didn't close the vote, and the vote stayed open?

A. Correct.

Q. And I indicated to you that the vote stayed open. There were two changes on your side, Lampson, and I don't remember the other one. Mitchell. And then the three Cuban Americans on our side came down and changed their vote. And as I indicated before, Mr. McNulty testified before the committee that it was his view that as the presiding officer, after the Mario Diaz-Balart card was entered, he was closing the vote because that was his interpretation in compliance with 2(a), and you don't disagree with that?

A. No. If that was his interpretation, then I certainly don't disagree with what his—I believe Mr. McNulty is an extraordinarily honest person of high integrity. If that's what he says, I believe him.

Q. I do, too. I think he does a great job in the chair and got stuck in a tough situation.

A. He's a wonderful human being.

Q. He's a wonderful human being.

I don't want to—we've tried not to trick anybody in these interviews, and so I want to go through. Where we find ourselves as Republicans are that we have a set of people saying that no instructions were given, and we have some people who have said instructions were given on closing this vote at this moment, this first premature call as opposed to the second premature call. And I think you've indicated that your recollection of the conversation with Ms. O'Neill would have been that when we're winning, we need to close it?

A. I think my general feeling was that 15 minutes had transpired, it was within the Speaker's authority to close the vote at his discretion, and that when we were prevailing, we ought to close it down.

Q. Okay. Good.

A. That's my general proposition.

Q. And that's why you're the Majority Leader.

A. And it's my responsibility.

Q. I just want to read to you some observations from the professional staff that's been interviewed by the committee relevant to whether or not you had made observations to Mr. McNulty. And I want to start with Mary Kevin Niland, who was the reading clerk on that night. And on page 8 of her transcription, at the bottom of the page she says, at that point it started out normal, normal

as can be for that late at night. And I just, I can remember Mr. Hoyer coming down the aisle as the vote was closing or getting close to being closed out telling I think it was Mr. McNulty the Chair, to close the vote.

Do you recall that as you came down the aisle?

A. You mean came down the aisle?

Q. Yeah.

A. I think I got closer. I don't—I would have to look at the tape as to what—I said that, but when I said it coming down the aisle—because I don't think—coming down the aisle I don't think—I don't recall when I said that, but I did say it. But now, you understand, I wasn't having a conversation with Mr. McNulty. He was in the chair, and I said, close it down.

Q. Right. But who was your observation directed to?

A. To the Chair.

Q. And do you have reason to——

A. But he didn't respond.

Q. No, I got you.

A. That was my general wish for what would happen.

Q. Do you have reason to believe you said it in a voice loud enough that Mr. McNulty heard you?

A. Yes.

Q. Then going to——

A. I don't know that he did hear me, but I think I said it in a voice loud enough. That was my objective, to have him hear me.

Q. I'm now turning to—I'm going to just read you what everybody else said, and then I'll ask questions.

Allys Lasky, who was the assistant tally clerk sitting next to De'Andre Anderson on that night, on page 10 says—the question is, so Mr. Hoyer comes down, Mr. Hoyer casts his vote. You said he came down the center aisle? The answer is, I can't say that he voted in the well at that point. He may have voted on the electronic machine. But when he made it into the well, he moved off to the left, typically between the chairs where the Members sit and you would walk in to the rostrum, and had, you know, said I want this vote down, shut it down now. And I can't say that's exactly the words, but the sentence was to the fact of shut this down now; who did he say it to, the Chair; and then her observation it was the Chair?

A. I think that's accurate. He wanted the vote shut down.

Q. Right.

Mr. Sullivan, the Parliamentarian, on page 7 of his transcript: You remember him, Mr. Hoyer, saying, close the vote, words to that effect? Yes. And on——

A. They all heard me say it.

Q. Well, apparently they did. Only one person didn't hear you say it. Well, he says it a couple of times. And then lastly Mr. Hanrahan, who was the standing tally clerk; Mr. De'Andre Anderson says it, too, and Mr. Hanrahan says it.

I'm sorry, I'm usually more organized than this. I apologize.

On page 24, now, the only difference that night, and I wish it had gone a different way, because I've seen this before——

Mr. DAVIS. Whose testimony is this, Steve?

Mr. LATOURETTE. Kevin Hanrahan.

BY MR. LATOURETTE

Q. Because I've never seen this before, I've never seen the Chair buy into it, never. I wish he hadn't done it, but he did. And I happened to be standing there filling out or processing a well card, which I then turned around and handed to De'Andre for insertion into the system. At that exact moment, I don't know on what, maybe a goading from the side over there where the Majority Leader was, who at that point, I think, was taking John Sullivan's head off, for whatever reason he bought into it, he banged the gavel, and he called the vote as a tie.

That's Mr. Hanrahan's observation. So my question is——

A. It's my understanding that Mr. Blunt has publicly said it was his job, and the Leader, the present Minority Leader, believes it was his job to determine when the vote should be closed.

Q. And I don't disagree with you.

A. So the fact that Mr. Hanrahan had never seen it happen before seems odd to me.

Q. Well, I think the issue is closed and closed according to the protocol. And what a lot of—you talked about the slip, for instance. Charlie Johnson said this is the first time in 40 years he can recall the vote being closed without the benefit of the tally slip, which is not just prepared by reading off the board, it is in consultation between the standing and the seated tally clerk, who verified the computer with the board to make sure that the information that's being passed to the presiding officer is accurate. And Mr. Sullivan and Mr. Johnson both indicate that that is the way that the clerk, pursuant to Rule XX, certifies to the presiding officer that the correct vote has been received.

A. And I think that's proper procedure.

Q. But you're aware that there was no tally slip?

A. I am.

Q. And both times—well, actually all three times Mr. McNulty called this vote——

A. Can I respond to that?

Q. Sure.

A. I think the Speaker, it would have been his right to—at the time Ms. Pelosi cast the vote to say, give me the slip and—said, give me the slip. It would have been 214–214. He did not do that. I think that was a mistake, and I think he referred to it as a mistake.

Q. Okay.

A. But let me make it clear that my view is because that is appropriate procedure. It is not required by the rule.

Q. No, it's not.

A. In my view.

Q. And you're right. Nobody says it's a rule.

A. But I think it is good practice.

Q. Sure.

Let's go to the next clip, which is the sort of famous statement that you've been talking about. If we could queue up when the Majority Leader approaches Mr. Sullivan.

A. Now, that is the time I'm going up and telling him that I don't think the vote can stand. You will notice that the screen is down,

so the vote has been called. At that point in time I believe that's the conversation where I'm saying to him I want to vacate the vote because the call did not reflect the numbers on the board.

Q. I would like to go to the——

A. That was a less animated conversation.

Q. I would like to go to the animated conversation.

A. I'm sure you would. I was animated.

You've gone by it.

Q. No, I think it's coming.

A. Oh, yes. He comes on. Okay.

Q. Okay. You can stop right there.

But is it accurate that that's when you uttered words to the effect that the Majority runs——

Mr. DAVIS. Just so we're clear about the time, 22:50:45 is the time frame we're referencing or thereabouts.

Mr. HOYER. And I was there for what, 2 seconds?

BY MR. LATOURETTE

Q. Right.

A. It took me a very short time to tell him my message.

Mr. DELAHUNT. Steve, if we can go back, just for the record purposes.

Mr. LATOURETTE. As long as it comes out on your time, Delahunt, I don't care.

Mr. DELAHUNT. I don't care. If we can just take a look at that again and begin with when the Leader approaches to when the Leader leaves, and it would appear that he had a card. Okay. So we're at 50 what?

Mr. HOYER. 50:36.

Mr. LATOURETTE. It's not up there yet, though.

Okay, that's 50:39. When he started talking——

Mr. DELAHUNT. So at 50:43. So we're talking 4 seconds. It didn't look like a conversation that I would note.

BY MR. LATOURETTE

Q. It didn't look like a two-sided conversation.

A. Right. It was not a conversation.

Q. Is that your recollection when you indicated to Mr. Sullivan that we run the place and not the Parliamentarians?

A. Yes. And that is my conviction, and I believe it today. I think it's accurate. And I think certainly the Majority party from 2001 to 2007 believed that as well. What I regret is being quite so animated.

Q. Right. Well, is it a—I don't want to say what your mood was, but were you angry?

A. Yes.

Q. And what were you angry about?

A. I believe the vote had been concluded, and it should have been concluded. I believe the Parliamentarian, not Mr. Sullivan, was—and I had no idea what they were saying, but my perception was that the Parliamentarian was in effect instructing the Speaker that he had to not shut down the vote. And that was why I got angry, because I believe the vote of 214–214, as I've looked at the tape—and there's nobody in the well after the Speaker voted, and I think

that the Speaker was clearly within his rights to shut it down. And I believe that Mr. McNulty, unlike myself, who would have shut it down at that point in time, is an extraordinarily fair individual, has great respect for the Parliamentarian, as I do, and I think the Parliamentarian stopped the vote from being—not Mr. Sullivan, but——

Q. Right. Mr. Ethan Lauer?

A. Yeah. That was my perception. I don't know that's the case, but that was my perception from wherever I was. I guess I must have been off on the side. And, yes, I got angry about that. And I did go up to Mr. Sullivan and tell him that we ran the House, not the Parliamentarians. I believe that is absolutely accurate. Again, I feel badly because I really like and respect John, and I was as animated as I was, but I was angry.

Q. And to that point I think we all appreciate your expression of regret. But again, I want to turn to Mr. Hanrahan's testimony and ask you if you agree with his characterization of not just that conversation, but other conversations you might have had with Mr. Sullivan during the course of this vote?

A. Mr. Hanrahan, I take it, is the man standing at the desk?

Q. He's the standing tally clerk.

A. Okay. Do you want to run the tape back while I'm discussing with Mr. Sullivan, and would you all watch Mr. Hanrahan?

Now, if I were trying a case, I would tell the jury that Mr. Hanrahan was not paying attention to me. And you heard what I said to Mr. Sullivan. At no time did I say anything that was disrespectful, although I was animated.

Mr. DAVIS. Can we stop the tape when the Leader is speaking?

Can you repeat what you just said, Mr. Leader?

Mr. HOYER. At no time did I say, in my opinion, something that was disrespectful to Mr. Sullivan. I was animated, and I was angry, and I stated what I believed to be absolutely the fact; that the Majority runs the House, the Speaker is in charge, not the Parliamentarians. They're to advise. My perception was that they had stopped the vote, and that made me angry.

Q. Okay.

A. I may have been incorrect, you understand, because I was not close enough to know what the conversation was. But I did see what I thought the result was; the vote was attenuated.

Q. But aside from that 5, 6 seconds, wherever on the rostrum, you also had a conversation with Mr. Sullivan on the floor in the well and off to the side. And I'll show you a clip in a minute where you had a 4-minute conversation. So that wasn't your only exchange with Mr. Sullivan. You're not saying that, right?

A. Oh, no, no.

Q. Let me read what Mr. Hanrahan said, because I think that this an important point, and I don't think that your integrity should be impugned if it is not correct.

Mr. Hanrahan, on page 56 in response to a question, says, my recollection of that particular night, it was extremely unpleasant for what John had to listen to, and I think it was uncalled for, I don't think it had a place.

Further down on the page, I'm trying to dance around not using the profanity that was laced in there, but some of that was there.

And I think, you know, as I said, I've seen and heard a few things; I've been around here longer than some people, not as long as some others, seen some strange things, heard some strange things. I think those words, those kind of things, if they're said to somebody on the street, you should probably be thankful that you've got a full set of teeth. I just don't think you should talk to anybody that way. I also think that he was wrong.

That was Mr. Hanrahan's take.

A. When I was talking to Mr. Sullivan, I presume you questioned him about that. I don't know how many of you have known me for very long. I don't know anybody that has heard me use profanity on the floor with a staff member. I don't do that.

Q. But do you understand——

A. As a matter of fact, I don't use profanity that much, period.

Now, was I angry? I was angry. And did I have further discussions with Mr. Sullivan along the lines? The answer to that is yes. Now, I don't remember exactly what the specifics were, but the general tenor was what I said.

Q. Okay.

A. But Mr. Hanrahan is wrong.

Q. And that's all I was trying to get to.

A. Yeah. And I hope Mr. Sullivan corroborated that. I don't know.

Q. Mr. Sullivan doesn't recall what you said.

A. I think my own view would be had I used profanity to Mr. Sullivan, he would have recalled it.

Q. Can we just go to this long conversation between the Majority Leader and Mr. Sullivan; then I just have two questions, and I'm finished.

A. Is this down at the well?

Q. I don't remember where it is, sorry. Is this going to take you a couple of minutes?

Let me ask you just a couple of questions while they're doing that so we don't take more of your time than we need to. Were you aware that night, or are you aware today, that the Minority Leader's card, well card, Mr. Boehner's card, was not processed at all?

A. I've heard that.

Q. Do you have any explanation as to why the Minority Leader of the House attempted to change his vote and his vote was not reflected?

A. I think it was inappropriate. And I was—when I heard that it wasn't counted, I was surprised, because when I saw the 216–212 vote, I thought the vote ought to be—I mean, the 212–216, I thought the vote ought to be 211–217. The irony is I saw John change his vote, and in an abundance of caution and in a frenzy, I wanted to make sure I was beside his side because I had an intention to make a motion to recommit—I mean, to reconsider. So I voted no. The irony, of course, is I voted no already, so I didn't need to do that.

John's no vote, I understand, was not counted. I have heard the rationale for not counting it. I think it was inappropriate. It was a decision by a ministerial office not to do something. That was my whole—that's my point, by the way, with respect to the Parliamentarian, who is a ministerial officer, not a line officer. He's an advi-

sor. And whoever made the decision not to count John's vote, Mr. Boehner's, the Leader's vote, made a mistake.

Q. And what reason——

A. Because had I not decided to make the motion to reconsider, Mr. Boehner would have been in a position where he could not have made that. That was inappropriate. I don't know why that decision was made.

Q. And so we had some questions about whether or not the Minority was disenfranchised, and sometimes we operate under the no harm, no foul rule.

A. Right.

Q. So since you made the motion to reconsider——

A. But still I think it was inappropriate.

Q. But because it deprived Mr. Boehner the opportunity to make it if he chose to make it.

A. And I want to say for the record, as far as I know, nobody on our side of the aisle had anything to do with that.

Q. You believe it was made by the Parliamentarian or the Clerk?

A. It must have been made by the clerk. I understand Mr. Boehner says he didn't request that it not be counted.

Q. That's correct.

Mr. LATOURETTE. Do we have it now? Can you point out where?

Mr. PAOLETTA. Mr. Hoyer is right here. That's Mr. Sullivan that just sat down in the chair.

Mr. LATOURETTE. We believe that this conversation——

Mr. HOYER. This is later.

Mr. PAOLETTA. Stop there a second. We are at 23:13:12. And, Mr. Hoyer, we can back it up, but you were about here about 20 seconds ago, and you walked around over there.

Mr. HOYER. Okay?

Mr. LATOURETTE. Let me just ask counsel, how long do you think this conversation took?

Mr. PAOLETTA. This clips is—I have it from 23:12:56 to 23—well, we actually cut it. It's 4 minutes long that I counted that you are sitting talking to Mr. McNulty.

Mr. HOYER. When do I come down to the rostrum; do you know?

Mr. PAOLETTA. We're long past this. The Republicans have left the Chamber. Most of them have left the Chamber. And you are over there with McNulty, and now John Sullivan has just—he sat down as you approached.

Mr. LATOURETTE. This now passage of the farm bill.

Mr. HOYER. Okay. I know what this discussion was about?

BY MR. LATOURETTE

Q. So do you remember having a conversation, a lengthier conversation?

A. Yes.

Q. Can you tell us what was going on?

A. I was apologizing. I thought I acted inappropriately; again, not in what I was saying in terms of substance, but I respect and like John Sullivan, and I should not have, in my view, been as animated and evidenced my anger in the public fashion that I did. So I was apologizing to John, but at the same time saying, John, I believe that it was inappropriate to stop that vote. The Parliamen-

tarian does not have that authority to do it; the Speaker who was acting was in authority. But I want to apologize to you because I acted inappropriately.

Q. And then just three more questions, and that is going back.

A. I was right in the wrong way.

Q. I understand. We all are on a regular basis.

But going back, understanding your view on the first aborted McNulty call——

A. Right.

Q. [continuing]. And your feelings and how you got animated about that.

A. Right.

Q. Again, the second McNulty call where he says 214–214, and the motion is not agreed to, if Mr. McNulty, being invested as an experienced presiding officer, has indicated that it was his judgment that to keep the vote open any longer after the Mario Diaz-Balart card was entered would have, in his opinion, been violative of this new clause 2(a) of Rule XX, you wouldn't disturb that judgment because he's the guy that should make that call?

A. Yes.

Mr. DELAHUNT. Steven, if I can, will you yield?

Mr. LATOURETTE. Yes, of course.

Mr. DELAHUNT. And on that particular issue you had no conversation with the Chair?

Mr. HOYER. No.

BY MR. LATOURETTE

Q. But at that moment in time, I think we all know that the vote was really 215 to 213, because the uptick is the Mario Diaz-Balart card that turns it. McNulty's mistake, I would ask you—and you either agree or disagree with me, and if you don't, I'll argue it someplace else—McNulty's mistake was the three Cuban Americans changed. The machine didn't uptick the last Diaz-Balart card that turned it from 214–214 to 215–213 that got us into this pickle. And so when McNulty calls it, the 428 Members that have really voted had voted 215 to 213?

Mr. DAVIS. Let me—and again, we are not trying to necessarily stick to the rigid rules of a deposition and the Rules of Civil Procedure, and obviously, Steve, we've both taken a lot of leeway for the sake of time as far as leading the witnesses go, but you've made a pretty blatant assertion that the vote was 215 to 213, and certainly Mr. Hoyer is entitled to say if he agrees or disagrees.

Mr. LATOURETTE. That was my question.

Mr. DAVIS. All right.

Mr. LATOURETTE. I'm asking him if he agrees with that or not.

Mr. DAVIS. All right.

Mr. HOYER. Well, let me. We're talking about fractions of seconds here?

BY MR. LATOURETTE

Q. Right.

A. When Mr. McNulty, the Speaker, looked at the board, it reflected 214–214?

Q. That's correct.

A. And he called it 214–214?
Q. That's correct.
A. At almost obviously the exact same time the clerk was inserting Mario Diaz-Balart's vote——
Q. That's right.
A. [continuing]. And immediately reflected on the board?
Q. That's correct.
A. I think Mr. McNulty was accurate in calling it at 214–214 from his perception.
Q. Right.
A. He made a mistake.
Q. Right.
A. Because the machine in that split second——
Q. Right.
A. [continuing]. Changed what he visually saw to a different——
Q. Right.
A. So I think he made a mistake——
Q. Right.
A. [continuing]. In the sense that he did not make a mistake in what he said. He saw 214–214, and that's what he reported.
Q. Right.
A. He made a mistake in that that was not what was coming into the machine at the time.
Q. Right.
A. But it was a split second.
Q. I don't think we disagree.
A. Right.
Q. And that mistake could have been rectified if he waited for the tally slip to be handed up from the clerk. The fact of the matter is at the moment in time when he called 214–214 because he saw it, 428 Members had either voted at the electronic voting station, so it is by well card?
A. Right.
Q. And the accurate number in terms of the votes that were actually in the possession of the Clerk's Office at that moment in time would have made the vote 215 to 213 no matter what Mr. McNulty saw?
A. Right. It seems to me, however, if I can——
Q. Sure.
A. [continuing]. I don't want to be argumentative——
Q. Well, I do.
A. [continuing]. It seems to me the proposition is after our three guys changed, we didn't want any of your guys to change?
Q. Right.
A. We have already agreed that votes—he was keeping the vote open.
Q. Right.
A. He closed it, it was inappropriate, and what he was told, there were other people in the well to change their vote.
Q. Right.
A. And I've seen that over the years. This was not an unusual experience, from my standpoint. But obviously my view at that point in time, as I've explained to you, is when he called 214–214, and then the machine immediately reflected 215–213, I thought

that perception and the reality was something that if that vote ended up that way—now, the vote kept going, and we won. Notwithstanding that, I thought the vote needed to be reconsidered.

Q. Sure. And I got that, and I appreciate it, and we're not splitting hairs, nor, I hope, being argumentative.

A. I was referring to me, not you.

Q. Fine. But if we go to that, after the Diaz-Balart call——

Mr. DAVIS. I think I called you argumentative.

Mr. LATOURETTE. You've called me a lot of things, but it's like water off a duck's back.

BY MR. LATOURETTE

Q. But there is a lag. I mean, when you finally get Space, Gillibrand and McNerney—not you personally, but Space, Gillibrand and McNerney are the three Democrats that come down and turn it from 215 to 213 to 212 to 216. There's nobody in the well.

A. When you say "finally"——

Q. I'm saying there's nobody in the well when Mr. McNulty calls it the second time. McNerney, Space and Gillibrand are not attempting to change their votes. I just want to say, your observation—I mean, you're right. I mean, just as you wanted it closed when it was a tie and the thing would have not prevailed, yeah, as a Republican, once the Cuban Americans voted, we were pretty happy with the result. But in both instances there was nobody in the well, and it was not until there was a space of time that your three Democrats then came down and cast those——

A. Relatively short, wasn't it?

Q. It was a couple——

Mr. DAVIS. I'm going to question him about it. I have some redirect.

Mr. DELAHUNT. Steve, will you yield? I mean, I think you raise a—you know, obviously there are perceptions here. And again, going back to the tape, I don't know whether the three Democrats were in the well or close to the well. We can only speculate what McNulty observed. But maybe we ought to rerun the tape just to determine after Diaz-Balart filed his card, I don't know, I haven't watched the tape as often as you have, but maybe one of the three Democrats that changed could be observed. And it will be interesting to note the time lag from the last—from the Diaz-Balart——

Mr. HOYER. Well, let's look at it?

BY MR. LATOURETTE

Q. Let me ask one question, then I'm done, and we'll look at the tape. You referenced the Medicare Part D vote that stayed open for 3 hours?

A. Yes.

Q. And in that instance I agree with you. The vote rule said that the vote has to be a minimum of 15 minutes, and then it's closed to the discretion of the Chair. And so the issue was did the Chair abuse their discretion on that evening? I understood the Democratic angst, and not only understood the Democratic angst, but three Members of this select committee were on the Ethics Committee at the time they considered that, and our conclusion was

that while nobody broke any of the rules, particularly Rule XX, that we did feel that our Majority Leader at the time acted in a way that did not reflect favorably upon the conduct of the House during the course of that event. And he received a rather famous letter of admonishment that your party then used to talk about culture of corruption and a whole lot of other things.

And the question I would have to you is I don't think——

A. I think the Majority Leader's actions that night as it relates to when the vote opened or shut was really not the angst that we were caused. The angst was more by Nick Smith the next morning saying in effect that he had been bribed or offered a bribe.

Q. Well——

A. I mean, to be accurate, that was what I think generated much of the——

Mr. DELAHUNT. Steve, if you would yield for a moment——

Mr. HOYER [continuing]. Angst on our side, the discussion on our side.

Mr. DELAHUNT [continuing]. And direct that to the Chair of the subcommittee, former Chair of the subcommittee. I think we're all aware that but for the statement by Nick Smith, that a subpanel or a complaint of a subpanel sua sponte on the part of the Ethics Committee would not have occurred. I think, you know, we spent a lot of time on that, and Mr. Hulshof did a tremendous job raising it.

Mr. LATOURETTE. He did.

Mr. HOYER. The reason I made the point that I thought a rule was not violated, I didn't think a rule was violated. And I'm glad the press asked me that would I pledge to shut it down. I don't think that was the problem.

BY MR. LATOURETTE

Q. But that gets to my question. I don't think we can debate, because you also considered actions by other Members, Mrs. Miller of Michigan and others, who didn't threaten Nick Smith or anything else.

But getting to the question that I have of you, with that as the backdrop, if the select committee reaches a conclusion that clause 2(a) of Rule XX was not violated by the Majority or the Speaker pro tempore, I would ask you the question that was asked of our Majority Leader: Do you believe that your conduct on that evening reflected unfavorably on the House in a way that contributed to where we find ourselves today?

A. I don't think it reflected unfavorably on the House. I think it reflected unfavorably on me, because I think what reflected favorably on me and the Democratic Majority was that without a break, there was an immediate determination, and you saw me standing at the well with my arm on the lectern for 2 or 3 minutes waiting to immediately vacate the vote. Whatever the outcome, ultimately the 212–216, whatever the outcome was, I believed that I would be able to deal more fairly on both sides of the aisle if I vacated that vote immediately and allowed everybody the opportunity to revote in a less charged atmosphere. Unfortunately that did not occur because you guys left.

Q. We left. We had enough.

Mr. LATOURETTE. I'm done asking questions. Do you want to roll the tape before we leave?

Mr. DAVIS. Well, let me go back into the tape. And I'm going to try a little bit in my redirect to the scope of this cross examination to yield to my colleagues.

Why don't we go to 22:51, if we can. We're going to go to a point on the tape 22 minutes and 51 seconds. And when we get to that point, I'm just going to ask you to watch until I ask the tape to stop.

22:51. All right. Stop right here. Well, if you can get to 22:51. Well, tell you what, go to 22:51 and just let it run until I tell you to stop.

Okay, stop. Let it run. Stop, stop. All right.

BY MR. DAVIS

Q. At this point, Mr. Hoyer, for what appears to be 22:51:28, Mr. McNulty is speaking, and he's beginning to call the vote. Do you agree with that?

A. Yes.

Q. Do you agree with me that he is standing by himself at the rostrum without any Member of the House being physically close to him?

A. Yes.

Q. Are you even in the camera shot at this point?

A. Not that I can tell, no.

Q. All right. At 22:51:28, which is the approximate point at which Mr. McNulty begins to call the vote, can you even see yourself on the screen?

A. No.

Q. So you're obviously not in a position to give any kind of direction, or it doesn't appear you're in a position to give any kind of direction to Mr. McNulty right now, are you?

A. It doesn't appear. You know, we can't see the whole breadth of where I was. I'm not sure where I was at that point in time.

Q. Before—and you had been watching this tape a moment ago—before Mr. McNulty called the vote, what did he appear to be doing to you?

A. Here?

Q. Yes.

A. Looking at the board, looking up at the board.

Q. Did he appear to be looking toward you or looking down, or does he appear to be looking up at the board?

A. It appears to me to be looking up at the board.

Q. Let's see if we can just go back for a moment just so we can watch what—let's go back a few minutes, back to 22:51:20, if we can. Let's go backwards for just a few seconds and watch this, Mr. Hoyer. Stop. Okay. Just watch this, Mr. Hoyer.

Stop.

We were able to hear audibly sound in the Chamber at this point, 22:51:30:28; do you agree?

A. Uh-huh.

Q. At that point——

A. Yes.

Q. [continuing]. Can you hear yourself or anyone else orally directing Mr. McNulty to call the vote?

A. No.

Q. Do you see Ms. Catlin O'Neill anywhere near Mr. McNulty at the point he calls the vote?

A. No.

Q. And do you remember where you were at this point?

A. No. I was on the floor.

Q. Right. But do you remember where you were with respect to the rostrum?

A. No.

Q. And let's start the tape again at the point Mr. McNulty says, the motion is not agreed to, and let's let it run until I tell you to stop; with the sound playing until I tell you to stop.

Go ahead, stop.

What did you just hear, Mr. Hoyer? Did you hear the clerk calling out Mr. Space changing his vote?

A. Yes.

Q. I'll represent to you that Mr. Space appears to change his vote at 22:52. Does that seem about right to you?

A. Yes.

Q. Using my lawyer's math, at the time the vote is called is around 22:51:28. Mr. Space changes the vote approximately 28:32 seconds later. Does that sound about right?

A. Uh-huh.

Mr. DAVIS. Let's play the tape again.

Mr. DELAHUNT. Would the gentleman yield for a moment?

Mr. DAVIS. Yes.

Mr. DELAHUNT. If you can go back to the original—I'm trying to think. 22:50. Just before he brings the gavel down, maybe 10 seconds before that. If you could ask Mr. Hoyer—or if you yourself could identify the two gentlemen to the left and ask Mr. Hoyer if he can identify them?

Mr. HOYER. To the left of——

Mr. DAVIS. Not now.

Mr. PAOLETTA. Back to 22:50?

Mr. DELAHUNT. Yeah, back to 22:50. Okay. Right there. Mr. Hoyer, can you identify—I think there are two Members as we're looking at it to the left?

A. At the desk?

Q. At the desk.

A. Mr. Lampson and Mr. Space. And Emanuel Cleaver is the third one to the left.

Q. Okay. And that's at 22:51. All right. If you can roll it a bit more.

Mr. PAOLETTA. Before you do that, it might be useful to back up the tape to see how long Mr. Space has been standing in the well with a well card there, and obviously Mr. McNulty sees him, and I assume is using his discretion to determine that he doesn't have an intention of voting. But again, I think it's relevant in terms of looking at this scene to see how long Mr. Space has been there, because it seems like he's standing there quite a long time.

Mr. DAVIS. Well, let me make this observation. We'll have an opportunity to have discussion between the committee.

Mr. HOYER. We'll have an opportunity to back up and say, now, what's exactly the situation.

Mr. DAVIS. We'll have an opportunity to have discussion staff level, at the Member level, and to make our arguments to ourselves and what we think happened. In deference to the Leader's time, I don't know that we're getting anywhere by saying let's go back here, and let's see, and maybe this could mean this.

Mr. DELAHUNT. Just let me respond for just a moment. It would appear, okay, that they're actually changing their vote via a card.

Mr. LATOURETTE. Well, that's not correct because Mr. Lampson has already changed his vote minutes earlier. And so Mr. Lampson can't—he could if he wanted to, but that's not what's going on. So I agree with Artur, we can argue this, and I think we should be asking the Leader what he thinks he sees.

Ms. HERSETH SANDLIN. And if I can make one more point. We've talked with Mr. McNulty. I don't think we can make statements that he obviously saw Mr. Space, because I don't think that question was ever posed to him.

Mr. DELAHUNT. I agree.

Mr. LATOURETTE. Right.

Mr. DAVIS. And again, the purpose I think we would agree is to question the Leader on what he saw. We can argue ad nauseam about our interpretations, but let's go back to the tape again.

Mr. Delahunt, did you have a question that was posed to the Leader at this point?

Mr. DELAHUNT. No. To be candid, I was just really trying to understand the sequence here. Because my memory is that the three Cuban Americans came, they voted, and now I'm observing Space and Lampson subsequent to their changing their votes. And maybe Mr. Hoyer can answer.

Mr. HOYER. I think Lampson changed his vote before the three Miami Representatives changed theirs?

Mr. DELAHUNT. Prior to?

Mr. HOYER. Yes.

Mr. DELAHUNT. And we can verify by the writing. But Space, and again we have to go back to the record to determine when Space voted.

Mr. DAVIS. Well, let's pick up on Space, because we do have that audibly.

BY MR. DAVIS

Q. Before we move in that direction, Mr. Hoyer, by my count, at 22:51:28 Mr. McNulty calls the motion is not agreed to. Approximately 32 seconds later Mr. Space votes. Does that seem consistent with what you saw?

A. Yes.

Q. All right. Let's play the tape.

Ms. HERSETH SANDLIN. Mr. Davis, if you would just yield to me.

About 32 seconds later is when the reading clerk calls it?

Mr. DAVIS. Right, exactly.

BY MR. DAVIS

Q. That's all we can know, when she calls it. He obviously changed it before that?

A. We know that Space changed it before that or it wouldn't have gotten to the reading.

Q. Right. So 32 seconds passes when Space is announced?

A. Yes.

Q. Let's pick up at 22—let's see if we can go to 22:51:56. Again, play it until I tell you to stop.

Stop at this point, 22:52:15.

Do you see Mr. McNerney, Mr. Hoyer?

A. Yes.

Q. What does Mr. McNerney appear to be doing?

A. Changing his vote.

Q. And from what I can see on the tape, we've seen Mr. Space change his vote or be announced as changing his vote at 22:51:56; we've seen Mr. McNerney approaching the well at 22:52:15; and I'll represent to you to save time, but according to the time sheet, we have Ms. Gillibrand is announced as changing her vote.

A. She's walking away. You can see her head.

Q. And I'll represent to you that according to our time sheet, at 22:53:05, or 52:53, I'm sorry, the clerk announces Ms. Gillibrand as off no, on aye. So in a span of approximately 2 minutes, three Democratic Members are announced as changing their vote; is that correct?

A. Yes.

Q. During the time that this occurs——

A. I accept it was 2 minutes, or I know it was 2 minutes.

Q. All right. During the time frame, it is basically what we see on the screen, Mr. McNerney changing his vote, Mr. Space before that?

A. Right. Three Republicans, five Democrats.

Q. Only at the point that I see McNerney walking up there do I see you back in the screen; do you agree with that?

A. I'm at that point in time, as I said earlier, talking to—about to talk to John, John has got his head turned away from me, to tell him that, John, I don't believe that this is sustainable, I don't think we ought to maintain this, and I want to vacate the vote.

Q. Let me stop you at this point. Mr. LaTourette asked you a number of questions about the fact that these Democratic Members are changing their votes. And I think he made the point to you that even after the vote was called, these Democratic Members were allowed to go on and change their votes. That was a point that he made to you. Do you recall him making that point?

A. Yes.

Q. Do you do anything whatsoever that affects the fact that Mr. Space and Mr. McNerney changed their votes and turned in well cards?

A. I was not—the answer is no. I wasn't observing that, nor did I talk to any one of those five during the course of this vote.

Q. And did you give any instruction to the Parliamentarian that these individuals be allowed to change their vote?

A. No. My discussion was about the 215–213 or 214–214 call. That's what I was concerned about.

Q. Based on what you just saw on the screen, Mr. Space and Mr. McNerney, does anyone appear to be doing anything that allows

them to go up and cast their vote, or they appear to be acting on their own?

A. Well, they appear to be acting on their own.

Q. And I guess what I'm asking you is this: Mr. LaTourette was making something of the fact that after Mr. McNulty calls the vote, the Democratic Members were, quote/unquote, allowed to go up there and change their vote. Does there appear to be anyone making a decision as to whether or not these Members were allowed to change their vote, or does it just appear to be happening?

A. Well, it appears to be happening.

Q. And in effect it appears from watching the tape that even after Mr. McNulty says the motion is not agreed to, it appears that the process continues, and Members continue to change their votes; is that right?

A. Even after the magic words.

Q. Even after the magic words, it is obvious that Members go forward and change their vote; is that right?

A. Yes.

Q. And does anything—all right.

A. Which I do not—as I've said many times, that is not an unusual circumstance.

Q. Have you seen numerous other instances, Mr. Hoyer, when a presiding officer begins to call the vote, and someone yells, one more, and he stops and backs off of that?

A. Yes. I referenced that earlier.

Q. All right. And did it appear that the clerks believed that the process was continuing from the fact that they were processing the well changes?

A. Obviously, yes.

Q. You were asked a series of questions from Mr. LaTourette about whether, quote/unquote, direction was given to the presiding officer. Putting aside the question of what we saw and what we didn't see, do you agree that the Majority Leader has the authority to give direction to a presiding officer as to whether to call a vote?

A. If you mean can I order him or her to do something, I think no. Is it the job of the Majority Leader to try to manage the floor? I think, as Mr. Blunt and Mr. Boehner and I have all agreed, that is part of my responsibility.

Q. Is it perfectly permissible for a Majority Leader to suggest to a presiding officer that a vote be called?

A. Yes.

Q. And is it up to the presiding officer whether or not to follow that suggestion?

A. Yes.

Q. Did Mr. McNulty follow the suggestion that a vote be called on August 2nd?

A. You would really have to ask Mr. McNulty. I can't—I know what Mr. McNulty said, so I'm not—but I don't know whether—his response is—I think Mr. McNulty is the kind of individual, it's been my experience for every day that I've known him in this House, that he did what he thought was right.

Q. Now, let me frame the question differently.

A. Now, whether he did it at my suggestion or somebody else's suggestion, I didn't have a conversation with him. I did, as I've

said, hope that the vote would be closed when we were prevailing so the bill would not go back to committee, yes.

Q. Your hope was that the vote would be closed when the Speaker cast her vote?

A. That's correct.

Q. Did Mr. McNulty close the vote at that point?

A. No, he did not, much to my consternation, as you observed.

Q. All right. You were asked a series of questions about the tenor of your comments to Mr. Sullivan. I just want to refer to page 76 of Mr. Sullivan's deposition. Mr. LaTourette asked Mr. Sullivan, but was he profane? The "he" being you. Mr. Sullivan's response was, not to my recollection. On page 77 of the deposition, Mr. LaTourette says, but you don't recall—he asked again, 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. The final—did you have any reaction to that, by the way, Mr. Hoyer, that I read from Mr. Sullivan?

A. I don't think I said that, but, you know, it was—I didn't have the instant replay button. It was a pretty animated situation, no doubt about it.

Q. This was a heated conversation during a tense and close vote; is that correct?

A. Yes.

Q. All right. And you apologized, whatever you did say?

A. That's what was my second conversation. I was disappointed with myself.

Mr. DAVIS. All right. Let me yield to Mr. Delahunt to see if he has any questions.

Mr. DELAHUNT. I don't have any questions.

Mr. DAVIS. All right. I don't have any other questions of you.

Mr. LATOURETTE. Great. I'm going to turn to my Republican colleagues and see if they have anything.

EXAMINATION BY MR. PENCE

Q. Well, let me thank you, Leader, for making your office and your time so available and for the cooperation of your staff. And let me also thank you for the spirit with which you have approached this episode. And I appreciate your candor today. I have a few clarifying questions, but I won't take nearly as long as Artur.

A. Thank you.

Q. That wasn't intentional. Because I want to be sensitive to your time.

Quickly on a side bar, you remember House Resolution 611 that we assented to the day after they created the select committee?

A. Yes.

Q. The first paragraph reads, resolved that the officers of the House of Representatives are immediately directed to preserve all records, documents, recordings, electronic transmissions or other material regardless of form related to the voting irregularities of August 2, 2007.

Do you recall, is that the correct language of the resolution you agreed to on August 3rd?

A. Right.

Q. Would it be your expectation that that would direct all of the officers of the House to preserve the referenced documents?

A. Yes.

Q. And not simply the Clerk of the House of Representatives?

A. Yes. All officers of the House of Representatives.

Q. Would it surprise you to learn that the Chief Administrative Officer had deferred to Lorraine Miller's judgment about the individuals to whom that applied? Would you consider that to be appropriate on the part of the CAO or not, or would you have expected the CAO to make an independent assessment of documents to be preserved given the resolution adopted by the House?

A. Well, this is the first I've considered this matter. My reading of this is pretty straightforward. All officers of the House.

Q. All right. Thank you.

A. I don't know what transpired between the two of them.

Q. We do, so thank you.

My questions are going to be a little bit hodgepodge, and I want to reiterate the tone that Mr. LaTourette expressed. And I really appreciate what I sense were your heartfelt comments about the way this investigation has been conducted. This is not a gotcha game. I think both parties have appointed people to this committee who care very deeply about the House, and I understand that the issues about the conduct of a vote are the very center of the integrity of the House. And so don't—if you don't understand the question I'm asking, or it feels like it's unfairly posed, I'll rephrase it.

In your testimony, I think with Mr. Davis's questions, you first introduced in your responses the notion of what you first called the slip thing. You said you will see them look up. You said any time during a vote you will see them look up when they call the vote, and forgive me for paraphrasing, but your testimony today was—and let me say I believe this is accurate—that the House rules are silent on the tally sheet?

A. Right.

Q. Would it surprise you to know that this committee has received testimony that there was no recollection of a vote being recorded in the House in the past 40 years without a tally sheet from successive Parliamentarians?

A. Mr. LaTourette mentioned that in his questioning to me. I don't know that it would surprise me. The answer is, no, I don't know that would surprise me.

Q. But you saw the tally sheet as a practice. In fact, I think your testimony this evening was it was a good practice?

A. Uh-huh.

Q. But it was, quote, not required by the rules. It is an appropriate procedure, you said, but it is not required by the rules.

A. I still feel that way.

Q. When did you become aware, to the best of your recollection, that a tally slip had not been produced in connection with this roll call?

A. Relatively recently. And it was sometime after this event. I, frankly, didn't focus on the issue of a tally sheet.

Q. Sometime relatively recent to this evening or relative to that evening?

A. Well, I heard the issue was raised sometime after, it may have been a couple of months after the incident.

Q. Okay. It could have been a few months after?

A. It could have been. I really don't remember. But it was—the tally slip issue did not come up until subsequently, sometime subsequently, but it was raised. Prior to that time I had no idea.

Q. So it would be your testimony today that at the time of the evening of August 2nd, you were not aware that a tally slip had not been produced in the—and to use your phrase—in the ordinary good practice?

A. I don't know if I said "ordinary," but "good practice." I said it would be good practice. It is good practice.

Q. But you were not aware that——

A. My testimony is that I learned sometime after the evening in question that there had not been a slip.

Q. So in fairness to you, at the time this vote was recorded and announced and this controversy happened, you were not aware that a tally slip had not been produced?

A. That's correct. It would have made no difference, however. I want to reiterate, I do not believe a tally slip is necessary.

Q. Okay.

A. I do not believe the clerk can refuse to give the Speaker a tally clerk and hold the Speaker in limbo on calling a vote. The tally clerk obviously acts at somebody's direction. The tally clerk at some point in time—and that's why I mentioned the 3-hour vote—the tally clerk obviously was never asked to give a slip. The vote was static for a very long period of time. The tally clerk obviously was not asked by the Speaker to give him a slip. Best practice would have been let me have the 214–214 slip when Pelosi votes or as she had voted.

Now, the problem with this tally slip is if you have a fast clerk, you can get the slip right away. If you have a slow clerk, a lot can happen in a slow clerk. As I said, I was presiding officer for 4 years. I think I was very fair, and I knew when to gavel, knew when to hold them and knew when to fold them, and I think the Speaker——

Mr. DELAHUNT. Sometimes you were fast, Mr. Hoyer, and sometimes you were slow.

Mr. HOYER. Sometimes I was fast, and sometimes I was slow. And I would be shocked if any presiding officer on either side of the aisle who had presided for any period of time did not understand that concept fully. I know Mr. DeLay understood that because I saw him on a number of occasions, and maybe others as well, make it very clear as to when the vote will end. As you recall, on the 3-hour vote, it was very quickly concluded once the votes were garnered.

BY MR. PENCE

Q. Yes, I recall that now. I also recall, for the record, that there was at least one Member of the Minority who had not voted during the entirety of these accounts.

A. And that has been mentioned to me. Now, if Mr. Wu had not voted for the next 3 hours, I think nobody would conclude that we ought to keep the vote open.

Q. Believe me, Mr. Hoyer, I have no desire to go back.

A. You and me both.

Mr. DAVIS. Mr. Wu may still not have voted.

Mr. DELAHUNT. Maybe he wishes he had voted.

BY MR. PENCE

Q. Let me ask you a couple more questions, and then I'll yield to my colleagues.

In Mr. LaTourette's dialogue with you tonight, you explained, and I thought explained your reason very clearly, about the decision to—your sense of what was happening at the time on your first attempt to call, the second call. But I think you told—and I'll paraphrase here, and we, of course, have the record, and I'm not asking you to confirm this is precisely what you said—Mr. McNulty looked at the board at almost exactly the same time the clerk was inserting the votes of the Diaz-Balarts and the change of 215 to 213. McNulty was calling from his perception because of the machine.

Is it—I guess my question is if at the moment that the so-called magic words happen and the vote was called, if, in fact, at that moment, with the changes that have occurred, the vote was 215 to 213, why the decision to vacate and to take that procedural route as opposed to Mr. McNulty acknowledging a premature call, accepting the changed votes of the Members of the Minority?

A. First of all, by that time the vote had changed. And as I said, it's not unusual in my experience that the vote is not closed even after the magic words if there are other people voting, which was the case. And ultimately we technically won. Three votes changed on your side and five on our side; we technically won the vote. But my view was that technically winning, I want to actually win, and I wanted to win, but I did not want to win with your side believing that we had done so with an inappropriate call, the 214–214, when the board reflected 215–213.

Q. And so your sense, and I really want to understand this, when you say you technically won, are you referring to the vote first——

A. No, I don't think technically anybody won, because I really don't believe—Mr. LaTourette and the Parliamentarian and I apparently have a difference. The magic words do not make something happen. Before the magic words were said, as I said, whoever puts the vote up, the screen locked it as you saw it. The screen disappeared; on the first vote after the Pelosi vote and then the call for 214, the screen disappears. No magic words, but whoever runs the screen—who runs the screen? Does anybody know? I don't know who runs the screen.

Q. We do.

A. I know the House runs it, but you don't run it, I hope.

Q. We know who runs it.

A. I'm a little more nervous than I was when I started this.

Q. We know who runs it.

A. My point being I don't know the authority that runs the screen, but it went down, and it went down because their percep-

tion was the vote had closed. My comment was I perceived that as well. Later in the next vote there were clearly people changing votes. He called it what he saw, 214, and then he called it, and in the same instant he was calling—I mean, it was instantaneous that they then locked in a new vote. My only point was that he then hesitated because he saw the difference, and because I think he is the kind of person he is, he thought, wait, I've got to find out what's happening here, and then there were other people voting, and he allowed the vote to continue.

I do not believe that was an unusual circumstance as I've seen that a number of times over the years, over the 27 years I've been here.

Q. Let me explore just one or two other quick things, and I'll yield back.

A. How long do you think we're going to go?

Mr. HULSHOF. I only have one question.

Mr. PENCE. I only have maybe about 10 more minutes max depending on your answers.

Mr. DELAHUNT. So make them short; yes and no, please.

BY MR. PENCE

Q. I want to thank you for your candor on the subject of, I think you said when you looked at the video, and I don't have the time check, but in good faith the section of the video where you were speaking to Catlin O'Neill, and she turns and speaks to Mike McNulty. Your testimony today was, I'm clearly saying to Catlin to shut down the vote. When we were prevailing, quote, my general feeling was that 15 minutes had expired. You added, it's time to close it down, that's my responsibility.

Would it surprise you that both Mr. McNulty and Catlin O'Neill testified that they received no instruction from you about closing the vote?

A. Instruction? You know, Catlin works for the Speaker. Is Catlin interested in my observations and desires? I think she is. I don't think I can instruct Catlin. So I'm not surprised that she didn't receive any instructions, because I think she perceives that instructions come correctly from the Speaker. However, I don't think there's any doubt in anybody's mind in this room that Catlin is certainly interested in what the Majority Leader believes ought to be done, and I was telling him what I thought ought to be done. I can see where she would say I did not instruct her, because I don't think I did instruct her in that sense.

Q. But you clearly had communicated to her——

A. Yes.

Q. [continuing]. When you wanted the vote closed, whether it was an instruction or not?

A. Yeah. But, I mean, I'm not surprised that she wouldn't say I didn't instruct her.

Q. Sure.

A. I don't think anybody on our side of the aisle, there was any doubt what we wanted. Everybody was yelling, as you recall, on both sides.

Q. Let me make a—and I particularly—just between peers and colleagues, I hope God will spare me having to sit with one of my

colleagues and watch a repeated video replay of my next bad hair day. So I want to thank you for your willingness to submit to this process. But also I guess I just want to be very sensitive and say to you that was a very late point in the legislative process, and it was very late at night, and I appreciate your candor and humility about it. I hope you hear what I'm trying to say.

A. I thank you.

Q. I'm not being judgmental about your tone or temperament. I don't seek to be. And I appreciate your candor about your emotions at that time. I think you said—well, let me ask real quick. Do you have any recollection of seeing the Diaz-Balarts voting when you were approaching the Parliamentarian?

A. No.

Q. That seems very contemporaneous——

A. But I was focused on the Parliamentarian, the Chair, and obviously I've watched the tape a number of times, and I know when they started to come out. I was particularly interested that after—when Ms. Pelosi voted, whether anybody was in the well. And I know they weren't in the well because that was my focus, because if they had been in the well, then I think good practice would have been to not shut the vote down. But there was nobody in the well. He said 214–214.

I think he was entitled to do that as the Speaker. I think he made that judgment. I was sorry that he didn't follow through on it, and, to wit, I got animated.

Q. And you were animated in that moment because you believe that the Speaker pro tem, with or without the tally slip, was fully within his rights to call the vote at 214 to 214, and your objection, to paraphrase tonight, was that you didn't believe the Parliamentarian—that it was appropriate for the Parliamentarian to stop the process at that moment?

A. Now, of course, as I said in answer to Mr. LaTourette, I don't know what the Parliamentarian was saying. I'm talking about my perception. My perception was that the Parliamentarian had attenuated the vote. I got very animated.

Now, to be honest with you, I have had in years past discussions with Mr. Brown, as far back as Mr. Brown. Now, again, I come from the background of having been a presiding officer for 4 years where I served every day as presiding officer, not just from time to time, and I didn't need anybody to tell me when to shut down a vote. And I don't believe that's the Parliamentarian's authority to tell the presiding officer. I think it is appropriate that we rely on the good judgment and advice of the Parliamentarian.

Q. When you spoke to Mr. Sullivan at the end——

A. At the end?

Q. At the far end when we were all—Republicans were out of the building.

A. Is that when I spoke to him? Had you left?

Q. Yes, sir. It was about 23:14:15, at least that we saw you talking to him.

A. The longer conversation of Mr. LaTourette.

Q. Your testimony tonight was, I was apologizing, I should not have been so animated.

A. I was doing that.

Q. I told John it was inappropriate for the Parliamentarian to stop that vote.

A. I told him I was right in substance and wrong in form.

Q. Thank you.

A. I didn't say those words, but that's what I meant.

Q. When you spoke to Mr. Sullivan at the end, did he mention whether he had asked Ethan Lauer or whether Ethan had instructed the Chair not to close the vote?

A. No, we never discussed that.

Q. You didn't get into that?

A. No. We never had a—I've never had a discussion to this day about that with either Mr. McNulty or Mr.—I had no idea, because it was really irrelevant at that point in time. The water was over the dam.

Q. Right.

Just really one more question. This is more of a—you know, I think the Members of the Minority on this select committee share your high regard for Mr. McNulty. I think that's pretty safe to say. Is it possible in your mind that your demeanor that night may have unintentionally created an environment of more pressure on him to close a vote? I mean, do you have anywhere that you may have maybe inadvertently created an environment where he felt more pressure to drop the gavel than he would have otherwise?

A. Certainly possible.

Mr. PENCE. I don't have any other questions.

EXAMINATION BY MR. HULSHOF

Q. Just one, Mr. Leader. I'll let you off the hook easy. You've expressed your opinion about the role of the tally sheet. You've expressed your opinion about the authority of the Parliamentarians. You've been candid in your expression of acknowledging the statement that we control the House, not the Parliamentarians. My question is simple. Under the rules, who is charged with conducting the vote and maintaining its integrity?

A. The Speaker.

Q. If I showed you Rule 2, subparagraph (a), would your answer be any different? The first sentence.

A. No. Clearly, the Clerk is the ministerial officer for carrying out the responsibility of looking at the machine, tallying the vote. But it's the Speaker—you asked me whose responsibility it is.

Q. I said who is in charge with conducting a record vote?

A. Yes. The Clerk.

Mr. HULSHOF. Thank you. Nothing further.

Mr. DAVIS. Ms. Herseth Sandlin, do you have any questions?

Ms. HERSETH SANDLIN. I don't have any questions.

Mr. DAVIS. That concludes the proceedings.

[Whereupon, at 7:45 p.m., the interview concluded.]

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

THURSDAY, MAY 8, 2008.
Washington, DC.

INTERVIEW OF MAX SPITZER

The interview in the above matter was held in Room 1017, Longworth House Office Building, commencing at 1:13 p.m.

APPEARANCES

Representative William D. Delahunt.

OUTSIDE COUNSEL, MAJORITY: THOMAS J. SPULAK, ESQ., KING & SPALDING LLP, 1700 PENNSYLVANIA AVENUE, NW., WASHINGTON, DC 20006

OUTSIDE COUNSEL, MINORITY: ANDREW L. SNOWDON, ESQ., DICKSTEIN SHAPIRO LLP, 1825 EYE STREET, NW., WASHINGTON, DC 20006

Also Present: Hugh Halpern, Republican Staff Director, Committee on Rules; Davida Walsh, Legislative Counsel, Representative Delahunt; Chanelle Hardy, Counsel, Representative Davis.

Mr. SPULAK. Max, thank you for coming back again. You will recall that you were with us once previously. We reviewed your testimony. We've interviewed other people and, as a result, have some follow-up questions.

Mr. SPITZER. Okay.

Mr. SPULAK. So Mr. Snowdon wants to start with some questions. Please do.

Mr. SNOWDON. I want to reiterate what Tom said. Thank you. I realize this is not the most convenient, so we will try to be quick.

EXAMINATION BY MR. SNOWDON

Q. This is a video of Roll Call 814.

A. Uh-huh.

Q. The circles are there simply to facilitate people identifying certain individuals who were involved in the events that night.

A. Okay.

Q. When was the last time—or have you ever seen the video of Roll Call 814?

A. I think that the Parliamentarian's Office had a copy at some point shortly after the vote. I guess it probably would have been in September that we saw it, because I left for the August recess the day after this vote. So that would have been probably the only time that I saw it.

Q. Okay. And do you see yourself in this video at this point?

A. If I do, it would be somewhere over near the Parliamentarians or I guess the Sergeant at Arms' desk.

Q. Let the record reflect you are referring to the far left side of the screen?

A. Yes.

Mr. SPULAK. Andrew, if we can, we're at 22:49:27:12 at the time when he identifies himself.

BY MR. SNOWDON

Q. Okay. Do you want to run this—let the record reflect—can you identify the people who are in the various colored circles? Do you know who those people are?

A. It's kind of hard to tell you. Do you mind if I move closer to the screen?

Mr. SPULAK. When you do, if you will identify the color of the circle.

Mr. SPITZER. Sure. Okay. It's kind of hard to tell who these people are. Honestly.

BY MR. SNOWDON

Q. Why don't you roll it, and as you see this progress if you can identify those people, please let me know.

A. In the red circle, that looks like Hoyer coming down.

Q. That's the majority leader?

A. Yes. The blue, I can't tell who that is.

Q. Okay. Stop it there, stop it there. Okay. Back it up a little bit. Okay. Stop there. This is at 22:49:50.

Do you see the intersection of the orange and the red circle?

A. Uh-huh.

Q. Can you identify who those people are? I previously said that the red circle is Mr. Hoyer. Do you know who is in the orange circle?

A. Honestly, I can't tell from this.

Q. Okay. If I represented to you that was Catlin O'Neill, does that help refresh your recollection as to who that might be?

A. You know, there is always a lot of people in that area moving around. It could be Catlin.

Mr. SPULAK. In any event, you don't have any personal recollection of Catlin O'Neill being in proximity to Mr. Hoyer at 22:49:50:07?

Mr. SPITZER. I don't.

BY MR. SNOWDON

Q. Where would you have been at 22:49:50:07? Where would you have been?

A. Probably standing somewhere in that area at the very far left.

Q. Can you approximate how many feet you would have been from where those two red and orange circles intersect?

A. Probably 6 feet. Something in that range.

Mr. SPULAK. But you don't have a recollection of having been there at that time? I believe you said if you were there, you would have been at this point 6 feet away; is that correct?

Mr. SPITZER. That's correct.

Mr. SPULAK. But again——

Mr. SNOWDON. We can solve that pretty quickly.

BY MR. SNOWDON

Q. So did you hear any part of the conversation between Ms. O'Neill and Mr. Hoyer at that point?

A. No.

Mr. SPULAK. Can I interrupt, Andrew? He says he doesn't recall them being together. So how can he recall a conversation?

Mr. SNOWDON. Let's run through the video a little bit, until we get to the point the camera angle shifts.

Okay. Actually, pause it there.

BY MR. SNOWDON

Q. Okay. Do you see that at 22:49:59 there appears to be a conversation between Ms. O'Neill in the orange circle and the Chair?

A. Uh-huh.

Q. Being Mr. McNulty? Do you recall observing that conversation?

A. I do not.

Q. Okay. I think we'll see from the video that when we get a little farther the camera angle changes and you're going to be extremely close to where Ms. O'Neill is standing right now. Okay? Do you know why you wouldn't have seen that conversation? Would there have been somebody blocking you from where she is standing?

A. Probably not. I mean, there was a lot of stuff going around. If—I mean, I was there that night. I assume that probably at this point I'm standing somewhere in this vicinity. I was looking around, checking the boards, looking around the Chamber. I don't have any specific recollection of seeing the conversation between Catlin O'Neill and anybody that night.

Q. Would that have been unusual for Ms. O'Neill to have been having a conversation with the Chair?

A. No. No. She is the floor person, and she has a lot of contact with the Chair. I think she schedules all of the Chair people, so I think she has a lot of contact with them.

Mr. SPULAK. Let me say, for the record, you see them approximate to each other. We don't know that they are having a conversation.

BY MR. SNOWDON

Q. Can you see—rewind it. Keep going a little bit farther back until the conversation between Catlin and Mr. Hoyer breaks up. There, that's fine.

I'd like you to watch as Ms. O'Neill approaches towards the Chair. Based upon the hand gestures of the Chair and the actions of the Chair, does it appear to you as you watch this video that they are having conversation?

A. That's what it looks like to me.

Q. Keep going until we get to the point where the angle of the camera changes. Stop it there.

Do you know who is in the green circle?

A. Would you mind just playing a couple seconds of it? Looks vaguely like John Sullivan's head. That would be my guess. Yeah, that looks like John Sullivan.

Q. Do you recall seeing a conversation—or Mr. Sullivan, Ms. O'Neill and Mr. Hoyer being—do you recall——

Mr. SPULAK. Do you want to mark the time, Andrew?

BY MR. SNOWDON

Q. Sure. Go back a little bit here. At 22:50:03, Mr. Sullivan and Mr. Hoyer and Ms. O'Neill appear to be in close proximity on the rostrum. Do you remember seeing them in close proximity on the rostrum that night?

A. I don't recall. I remember Mr. Hoyer and John Sullivan having conversations. I don't recall if Catlin O'Neill was part of that, but it appears that she was.

Q. Do you recall that conversation?

A. No.

Q. Okay. Go ahead, Hugh. Can you pause it there?

Do you see yourself on the video now?

A. Yeah, right there.

Q. Okay. And this is at 22:50:13. And let the record reflect that he's pointing—how would you describe where you are? Are you standing or seated?

A. Looks like I'm standing. I think—I can't tell if I'm behind the Sergeant at Arms' desk or directly in front of it, but in that vicinity.

Q. Okay. Do you have any reason to believe that you had just walked up to where you are standing now at 22:50:13? Or had you been there for some period of time before this?

A. I don't recall when I got to the Chamber.

Q. Okay. Can you point to where Mr. Lauer is?

A. Right here. [Indicating.]

Q. Okay. Go ahead, Hugh. Pause it there.

There, at approximately 22:50:36–37, Mr. Hoyer walks up on the rostrum and has some words with John Sullivan. Did you hear what he said that evening?

A. I don't recall that evening. I just heard now. I think I heard him say, but I don't recall that evening.

Q. Do you recall seeing him that evening walk up to the rostrum and have an exchange with Mr. Sullivan?

A. Yeah, I do remember them having an exchange.

Q. What was the nature of the exchange?

A. Basically, Hoyer was upset that the vote was going the way it was and was talking to John to close the vote.

Mr. SPULAK. May I interrupt?

You were just asked if you remembered the conversation. You said you didn't. But then Mr. Snowdon asked you if you remembered the nature of the conversation and you just described it. So what is that based on?

Mr. SPITZER. I don't recall the specific words that were being used. I just heard something on this tape. I don't specifically recall that, but I do remember a conversation between the two of them about closing the vote.

Mr. SPULAK. About closing the vote. Can you expound on that? What do you mean by "closing the vote"?

Mr. SPITZER. That Mr. Hoyer wanted the vote closed and John Sullivan explaining that they were processing the cards in the well, the tally clerks were.

Mr. DELAHUNT. May I interrupt you for a moment?

Who is the Member in the well—who is the individual in the well who would appear to be bending, looking down—correct.

Mr. SPITZER. I honestly can't say from this angle.

Mr. DELAHUNT. Can you back it up just a little bit?

Mr. HALPERN. Yes, sir.

Mr. DELAHUNT. That's fine. We have the three—you can——

Mr. SNOWDON. Back it up to 22:50:29. Pause it. Does that help? Back it up a couple of frames.

BY MR. SNOWDON

Q. Does that help show you who that is?

A. No, I can't tell who that is.

Q. If I told you that that was Mr. Space, would that refresh your recollection?

A. I—if that's who you say it is, then that's who it is, but I don't recall.

Mr. DELAHUNT. Well, what you can say is, as you saw that clip——

Mr. SPITZER. Uh-huh.

Mr. DELAHUNT [continuing]. That there were three Members that appeared to be voting? Is that an accurate statement?

Mr. SPITZER. That's what it looks like, yeah.

Mr. DELAHUNT. And that other individual would appear to have gone to the table to secure a card. And just a few more seconds. And he is now approaching the desk, and the other three Members are leaving.

Mr. SPITZER. Uh-huh.

Mr. DELAHUNT. And he would appear to be voting; is that an accurate——

Mr. SPITZER. Yeah, it looks like he went up to the table and got a card.

Mr. SPULAK. Would you say that he was in the act of voting?

Mr. SPITZER. Currently?

Mr. SPULAK. Yes.

Mr. SPITZER. Yes.

BY MR. SNOWDON

Q. Can you tell from that picture how many well cards he has?

A. I can't.

Q. Or what the nature of the well cards is?

Mr. SPULAK. May I ask who is the "he" that has well cards, plural?

Mr. SNOWDON. I'm asking if he can tell if the individual who Mr. Delahunt referred to in the well in the act of voting——

BY MR. SNOWDON

Q. Can you tell from that picture if he has one well card or more than one well card?

A. I don't know.

Q. Let me represent to you Mr. Hoyer indicated to the Select Committee during an interview that he was upset and voiced his frustration to Mr. Sullivan at that point in time because he was under the impression that one of the Parliamentarians had instructed Mr. McNulty not to close the vote because there were still votes being processed.

Given where you stand, did you ever observe Mr. Lauer give any such instruction to Mr. McNulty that evening?

A. I don't recall if he did or not.

Mr. SPULAK. Do you recall if Mr. Sullivan did?

Mr. SPITZER. My guess would be——

Mr. DELAHUNT. The question was "if you recall."

Mr. SPITZER. I don't recall.

Mr. DELAHUNT. We don't want you guessing.

Mr. SPITZER. I don't recall specifically who had the conversation with Mr. McNulty about closing the vote.

Mr. SPULAK. But you did say that your recollection just of the conversation between Mr. Hoyer and Mr. Sullivan was Mr. Sullivan saying that there was still well voting. I think that's what you said. Can you be as precise as you can about that?

Mr. SPITZER. From my recollection, Mr. Sullivan was telling Mr. Hoyer that Members had submitted ballot cards and it takes a little while for the tally clerks to enter them into the computer and that's what was causing the delay.

Mr. SPULAK. I think that's different than what you said. If you want to read it back, I think you said there was still well voting. Is it possible that's what you said?

Mr. SPITZER. It's possible. I use the term "well voting" to encompass the whole process of a Member getting a ballot card and giving it to the Clerk.

BY MR. SNOWDON

Q. What exactly do you remember? I'd like to hear sort of your exact recollection.

Mr. SPITZER. May I sit down?

BY MR. SNOWDON

Q. Please. You said you didn't, until you sat and listened to the video, recall Mr. Hoyer's exact words. But that you——

A. Uh-huh.

Q. [continuing]. Did recall from that evening the general nature of the conversation that Mr. Hoyer was having with Mr. Sullivan.

A. Uh-huh.

Q. Can you tell us exactly what you remember them discussing?

A. Mr. Hoyer wanted to close the vote, and he—Mr. Sullivan was explaining that there was still well votes that needed to be processed, and that's what was causing the delay. That's really the extent of my recollection of that.

Mr. SPULAK. Do you recall any response that Mr. Hoyer gave to Mr. Sullivan?

Mr. SPITZER. No, I don't.

Mr. SPULAK. So you don't remember him objecting to what Mr. Sullivan had said?

Mr. SPITZER. Well, he was very agitated. I don't recall whether he said, you know, any specific words.

BY MR. SNOWDON

Q. "He" being Mr. Hoyer?

A. Yes.

Q. Do you recall seeing any conversations at all directly between Mr. Lauer and Mr. McNulty?

A. I don't have any specific recollections. I know that Mr. Lauer was up there sort of coordinating things. There is always a Parliamentarian up there, so I would assume they would be having a conversation.

Mr. DELAHUNT. But you don't have any memory?

Mr. SPITZER. I don't have any recollection.

BY MR. SNOWDON

Q. Did you ever give any instructions to Mr. McNulty not to close the vote because there were still votes being processed?

A. No, I did not.

Q. And we've watched sort of the relevant sequence of events on this tape. Did you see at any point on this tape Mr. Sullivan having such a conversation with Mr. McNulty?

A. Did I see it on the tape?

Q. Yes.

A. I did not see it.

Q. Do you recall Mr. Sullivan having any conversation from that evening?

A. I seem to recall at one point that Mr. Sullivan talked to Mr. McNulty.

Q. Prior to this?

A. Yeah, my recollection.

Q. Prior to this, Mr. Sullivan had a conversation?

A. Prior to this moment?

Q. Yes, sir.

A. I can't say at what point it was. At some point during that vote.

Mr. SPULAK. So it's possible that it could have been after 22:50:42:12?

Mr. SPITZER. After or before.

Mr. SPULAK. I understand.

BY MR. SNOWDON

Q. You appear—well, let me ask it this way. About how far are you away from where Mr. Sullivan and Mr. Hoyer are having this conversation?

A. Probably the same distance as earlier, 6 or 7 feet.

Q. And can you estimate how far Mr. McNulty is from that conversation?

A. Probably about the same distance. There are a couple steps up on the rostrum, probably 4 or 5 feet from there.

Q. Did you notice whether he was looking at them having this conversation?

A. From the way it is frozen here it looks like he is looking in that direction.

Mr. SPULAK. But do you have any recollection?

Mr. SPITZER. I don't have any recollection specifically.

BY MR. SNOWDON

Q. Take it to tab 8. Pause it there.

Now that's when Mr. McNulty closes the vote?

A. Uh-huh.

Q. Do you recall any conversations immediately after this between Mr. Sullivan and Mr. McNulty where Mr. Sullivan told Mr. McNulty to hold the vote open, to keep the vote open?

A. I don't recall.

Q. Do you recall any conversations at all at this point between Mr. Sullivan and Mr. McNulty? And, again, you appear to be about 6 or 7 feet away from where Mr. Sullivan is standing on the rostrum.

A. I don't recall.

Mr. SPULAK. May I ask, is that not the same question you asked? If it is different, you can explain. You asked him earlier, did Mr. Sullivan ever tell Mr. McNulty to keep the vote open? And he said, could have been at some point. And then you are asking them again, did he ask him to keep the vote open?

Mr. SNOWDON. I'm talking—it's different temporal time periods. The one question I asked before was, prior to that point in time, had there been a discussion between Mr. Lauer, Mr. Spitzer or Mr. Sullivan not to close the vote and to keep it open?

Mr. SPULAK. Right.

Mr. SNOWDON. Now I'm asking, has there been any conversation from this point forward?

Mr. SPULAK. I understand. So maybe you are trying to figure out where it happened. But I believe his testimony was he thought it happened, but he didn't know whether it happened before the previous reference point or after.

Mr. SNOWDON. Correct.

Mr. SPULAK. Now you are asking the question, the temporal. Are you trying to determine whether his recollection was at this point in time 22:51:32:07? Because I think he said there was one time when it happened. Is that correct, Max?

Mr. SPITZER. Yeah, I seem to recall one instance where Mr. Sullivan was talking to Mr. McNulty. I'm not sure where in the process.

Mr. SPULAK. Allow me to ask this. Do you know has it happened yet? Or if you don't know, you don't know. But has it happened yet?

Mr. SPITZER. I don't know.

BY MR. SNOWDON

Q. At this point, Mr. McNulty has closed the vote. And let the record reflect we are at roughly 22:51:30, because he's already gav-

eled it. So I'm going to go forward and show you a conversation between Mr. Sullivan and Mr. McNulty, and let us know if that's the conversation you recall from that evening between Mr. Sullivan and Mr. McNulty or if there was another one.

Mr. SPULAK. I'm sorry—can I—while you were there, I just wanted to ask——

Mr. SNOWDON. Sure.

Mr. SPULAK [continuing]. If he knew who was in the red circle at the bottom of the screen. We can go back.

Mr. SNOWDON. It's all right. Put it on. I'm sorry.

Mr. SPULAK. I will ask you, do you know who that is?

Mr. SPITZER. In that circle, I do not.

Mr. SPULAK. Do you recognize that individual as being a Member?

Mr. SPITZER. I don't honestly know.

Mr. SPULAK. Okay.

Mr. DELAHUNT. Let me, if I may, run it back for a second. That female that is approaching the desk appears to be voting.

Mr. SPULAK. In fact, Mr. Delahunt, run it back. Because before we see Mr. McNulty, we see her there as well. So stop it there at 22:51:22:15. She's at the table—may I represent that she's at the table where you pick up well cards; is that correct?

Mr. SPITZER. That looks like what she's doing.

Mr. SPULAK. I'm sorry. Go ahead.

Mr. DELAHUNT. Is it fair to say that she is then approaching—now if you will watch her, she appears to be approaching the desk and appears to be bending over and is handing something to Mr. Hanrahan. Do you see that?

Mr. SPITZER. Yes.

Mr. DELAHUNT. Am I accurate in my description of what you saw, or what I see?

Mr. SPITZER. Yes.

Mr. DELAHUNT. Okay. Thank you.

Mr. SPULAK. Thank you.

BY MR. SNOWDON

Q. Stop it there. Mr. Sullivan appears to be writing something, and there may be some conversation between Mr. Sullivan and Mr. McNulty at 22:52:37, roughly.

Is that the conversation that you recall Sullivan having with Mr. McNulty?

A. I honestly can't say. I know that they had a conversation at some point in these proceedings. Whether that is the specific one that I recall or not, I couldn't tell you.

Q. Do you recall Mr. Sullivan beginning to write something for Mr. McNulty?

A. I don't have a specific recollection of that.

Mr. SNOWDON. That's all I have. Thank you.

Mr. SPULAK. Thank you.

[Whereupon, at 1:37 p.m., the interview was concluded.]

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

FRIDAY, MAY 9, 2008.
Washington, DC.

INTERVIEW OF ETHAN B. LAUER

The interview in the above matter was held at 1017 Longworth House Office Building, commencing at 10:00 a.m.

APPEARANCES

OUTSIDE COUNSEL, MAJORITY: THOMAS J. SPULAK, ESQ., KING & SPALDING LLP, 1700 PENNSYLVANIA AVENUE, NW., WASHINGTON, DC 20006

OUTSIDE COUNSEL, MINORITY: ANDREW L. SNOWDON, ESQ., DICKSTEIN SHAPIRO LLP, 1825 EYE STREET, NW., WASHINGTON, DC 20006

Also Present: Hugh Nathaniel Halpern, Republican Staff Director, Committee on Rules; and Davida Walsh, Legislative Counsel, Representative Delahunt.

Mr. SPULAK. Ethan, thanks for coming today. Do you recall being here back in February, February 14th?

Mr. LAUER. Yes.

Mr. SPULAK. And so we just have a few follow-up questions to ask you about that, and Mr. Snowdon will begin to ask you those questions.

EXAMINATION BY MR. SNOWDON

Q. Mr. Lauer, thank you again for coming in here today. We do have a few follow-up questions after your last interview. You were the Parliamentarian on duty for Roll Call 814?

A. Yes.

Q. We asked you a series of questions in the first interview. I just want to try to clarify a little bit. And those questions pertained to whether you specifically—there's a series of events. Mr. McNulty attempts to call the vote at 214–214 and stops. Do you recall that?

A. Yes.

Q. Okay. There are two instances where he calls it at 214–214. The first one he does it, stops; the second one he actually banged the gavel and said the motion is not agreed to. Do you remember both of those instances?

A. I remember they both happened, yes.

Q. Do you remember approximately how far apart they were time wise?

A. No. I mean, I've seen it on the video, and it was some minute to 2 minutes maybe. It was in that range.

Q. I want to focus now on the first one where he calls it and stops. Prior to that did you specifically say to Mr. McNulty anything to the effect of you need to stop this, you need to stop this call because there are still cards being processed or there's still Members voting?

A. I don't think I did.

Q. You don't think you did or you didn't? I mean how comfortable are you with that response?

A. I don't remember doing it, so I don't think I did it.

Q. Do you know, did you see Mr. Spitzer do that?

A. No.

Q. Did you see Mr. Spitzer have any communication at all with Mr. McNulty that evening?

A. No.

Q. And again, focusing now on the first call of the vote, do you know whether Mr. Sullivan did that?

A. I don't know off—I can't say for sure. My back was to everybody else in our office. I was looking at the Tally Clerk and the Reading Clerk's podium. So I'm not sure who—again, the video and the memory are mixing, but I know Mr. Sullivan does come up behind me. And I assume he was trying to stop Mr. McNulty because he saw the cards as well still being processed.

Q. And that is particular to the first time, the first closing?

A. Now I don't know. I think probably the first one.

Q. You're reasonably certain, however, that you didn't do anything in terms of saying something to Mr. McNulty about stopping?

A. I think that was a shortcoming.

Q. After when Mr. McNulty does close the vote, when he calls it the second time, when he calls it at 214–214, bangs the gavel and said the motion is not agreed to, at that point where were you standing physically, do you remember?

A. In the same spot right next to the Speaker's podium.

Q. So you're standing right there?

A. Right.

Q. Did you say anything to Mr. McNulty to the effect of this vote needs to stay open?

A. No.

Q. In your mind, at that point had the vote been closed?

A. I don't know. It's hard to say. It didn't happen the normal way.

Q. Would you consider announcing the result and saying the motion is not agreed to be an unequivocal statement of result?

A. It's a gray area in the practice. I mean, the system was still open and operating and the Chair—yet the Chair had tried to take a snapshot of where things were at a given time.

Q. But if the Chair intended to close the vote at that point, and I'll represent to you that the Chair has indicated that he did intend to close the vote at that point, would you as a Parliamentarian have said that that was within his discretion to close the vote at that point?

A. Well, yeah. I mean, he could have closed the vote at—you know at any point after 15 minutes, after the minimum time is up.

But properly, you know, by setting a time when no more input would take place.

Q. After he closed the vote the second time to 214–214, banged the gavel, the motion is not agreed to, did Mr. Sullivan immediately have a conversation with him in which he told him that the vote needed to stay open?

A. I don't think so.

Q. Would you have been—given where you were standing—I'm sorry, just let me finish the question so she doesn't get angry at me. If you, being the Parliamentarian on duty that evening, and given where you were standing, if Mr. Sullivan had immediately come up to have a conversation with Mr. McNulty, would you have been privy to that conversation?

A. I would have been right in the middle of it, yes.

Q. And to your recollection he did not have a conversation with Mr. McNulty immediately after that?

A. I think he did not. That's my memory, that no one really said anything. Everyone was taken aback.

Mr. SNOWDON. Tom, do you have anything?

Mr. SPULAK. Yeah.

EXAMINATION BY MR. SPULAK

Q. You were asked by Mr. Snowdon about the vote being closed the second time, and he represented that it was closed. You responded that it was a snapshot of. He tried to take a snapshot of what? Can you explain what the snapshot was, and how would you compare that to the closing of the vote, or at least the attempted closing of the vote? I mean, presumably if the vote was closed, it was closed, it wasn't a snapshot. A snapshot, at least to me, infers that the process was ongoing. So can you explain what you meant by the snapshot?

A. Well, when I think of closing, you know closing is where there's a termination of any more input, and also the processing of anything that has come in before that termination point. And that's why—I don't think those steps ever happened either of the times that Mr. McNulty spoke. That's why in my mind I don't think of it as much as a closing as him announcing where things stood at a given point when he chose to act.

Q. But am I correct in inferring that, you say where he was at a point. That point wasn't the end in what you're describing, is that correct? That there was a point, but there was time after that point where the vote was still open, is that correct?

A. Well, it was such a unique circumstance. When you say open, I mean I think the clerical process of accepting and logging in votes was still going on, and yet the Chair had tried to cut things. Like I say, at one point in time tried to make that be the result. And it's just an unfortunate circumstance. I don't know what to call it, you know.

BY MR. SNOWDON

Q. Let me ask you this. If the vote had not immediately, the board had not immediately upticked to 215–213 after Mr. McNulty had taken those actions, after he had banged the gavel, said 214–

214, the motion is not agreed to, would there have been any doubt in your mind that the vote was closed at that point?

A. Yes.

Q. There would have been a doubt?

A. Yes, there would have been a doubt.

Q. Why would there have been a doubt? The time has gone to zero, he is a presiding officer, has discretion to close a vote at any point after that. Why would there have been a doubt in your mind that that vote was closed?

A. Well, I think there were still votes that had yet to be reflected on that question.

Q. Well, if—the issue arose because one vote, the one that made it 215–213, Mr. Mario Diaz-Balart's vote, was still in the process of, I guess technically it had been entered, but the electrons were still flying to get that result reflected on the board, okay. And that was the only vote really in play, still in play at the time that he gaveled it and said 214–214. If that hadn't happened, if he had waited another split second and read 215–213, would that vote have been closed in your mind at that point?

A. Well, not in the normal way that it's done.

Q. In what sense?

A. With verification from the Clerk that the system is not taking any more votes and there are no more coming in.

Q. The tally slip?

A. Yes. And that the tally slip reflects what the system has captured as the final result.

Q. I just have one last question. And that is, throughout the course of 814 you seem to be roughly in the same spot close to where the Chair is. And I think we talked in the first interview about at one point Mr. Hoyer comes up and has a rather heated exchange with Mr. Sullivan very near to where you're standing, is that accurate?

A. Yes.

Q. Was there a, for lack of a better term, on the rostrum at that point in time, was there a palpable sense of pressure to close the vote in your opinion?

A. Yes.

Q. And that was coming from Mr. Hoyer?

A. I would say he was a part, big part.

Q. And who else was a part of that?

A. I can't pinpoint any specific person, I'm sorry. A lot of yelling. Mr. Hoyer was the person who was entering the rostrum area. So that's why I associate him with conveying the pressure.

Q. When we look at the video, and we're not going to show it now, but I'll represent to you that there is a conversation that appears to take place. This is before the first calling of the vote between Mr. Hoyer and Catlin O'Neill. And immediately thereafter Catlin O'Neill turns around and appears from the tape to have a conversation with Mr. McNulty. Did you see that exchange between Catlin O'Neill and Mr. McNulty?

A. I don't remember. Are you saying that was before, before Mr. McNulty said anything?

Q. That was before Mr. McNulty's attempt to close the vote the first time where he pulls up short. Did you see the exchange between Ms. O'Neill and Mr. Hoyer?

A. No.

Q. Did you see the subsequent apparent exchange between Ms. O'Neill and Mr. McNulty?

A. I mean, it must have been right there, but I don't remember it happening. I don't remember anything about it.

Mr. SPULAK. I've got a few.

BY MR. SPULAK

Q. You said that one of the reasons why the vote, in your opinion, couldn't have been closed was because there was still—I'm reading your testimony from February——

Mr. SNOWDON. What page, Tom?

Mr. SPULAK. Well, actually, I really want to refer to what he just said. He referenced it in several places. Well, let me just ask you here. You said that there was still, I believe you said there was still voting activity?

Mr. SNOWDON. Are we talking about what he just said?

Mr. SPULAK. Yes, what you just said. That there were still cards.

BY MR. SPULAK

Q. Do you remember that? We could read it back?

A. Yes.

Q. Okay. Look at page 13. And I think this is referring to your notes. My note at the end says there are two Members in the well with cards, plus two at the tally's desk. And this is in relation to the fact that there was still activity. That's what I'm asking. At the time that Mr. McNulty called it the second time. But you just said that one of the reasons why you didn't think it was closed was because there was still—I don't know what words you used, but do you understand what I'm saying?

A. Yes.

Q. So what did you think was going on, because you described two things. There are cards. Presumably you're talking about voting cards that are in front of the seated Tally Clerk——

A. Yes.

Q. [continuing]. When you say that there's cards? And then two at the tally's desk. What does that mean, at the tally's desk? I mean these are your words?

Mr. SNOWDON. Where are you, Tom? I'm sorry.

Mr. SPULAK. In my transcript it's on page 13.

BY MR. SPULAK

Q. I'm just trying to understand what you meant by that, two at the tally's desk? Well, let me ask, did you mean that there were two Members in the well who were trying to vote?

A. So I said the well and the desk were the two places I mentioned?

Q. Well, that's what you said. I can show it to you.

A. By desk I mean the desktop where the seated Tally Clerk operates the computer terminal.

Q. Okay. Those were the two that were —

A. I would call that the desk, the Tally Clerk's desk. And the well would be the Members with the voting cards trying to hand them in.

Q. Okay. So you recall—do you recall that? I mean these were your notes that you took shortly after the incident. But do you recall that today?

Mr. SNOWDON. Well, let's back up one second.

BY MR. SNOWDON

Q. Were they your notes or were they Mr. Spitzer's notes?

A. We each took notes and then I combined them right after, that night, minutes after the end of the voting for that night.

Q. Okay.

A. So it was a combination.

Q. It was a combination. So do you specifically remember what Mr. Spulak is telling you now was a component of your notes, or was it a component of Mr. Spitzer's notes?

A. I would say it was probably my notes because I had the better vantage point.

Q. Okay. And just to be clear, are you talking about the first attempt to close the vote or the second attempt to close the vote?

A. I don't know.

BY MR. SPULAK

Q. Okay. All right. That's fine.

A. I don't know. Probably the second. Because the first was just—well, came and went so quickly and didn't seem to have the focus that the second one did, so probably the second one.

Q. Back to the attempt of—back to the second call—back to the second time Mr. McNulty, I don't want to say attempted uptick, but the second time it was called, again, you suggested this morning that it wasn't actually closed at that point, and you offered some reasons. When you spoke with John Sullivan, he indicated that what appeared to be, and correct me if I'm wrong here, but he seemed to indicate that it was not an unequivocal statement because of the fact that the numbers were wrong, that although he may have, you know, said words that would otherwise appear to formally close the vote, the fact that the total was not, the total that was immediately reflected on the board meant that that was not an unequivocal statement and the fact that the vote was still open?

Mr. SNOWDON. Tom, I'm going to disagree a little bit. He does say it's an unequivocal statement of result. He then says, that said, that the vote couldn't stand because of the uptick. But he does pretty clearly say that in his definition that was an unequivocal statement of result.

Mr. SPULAK. Okay. I'll accept that.

BY MR. SPULAK

Q. But do you have an opinion of that, do you have an opinion of why that couldn't stand?

A. Well, the type of announcement couldn't stand, I agree with that.

Q. And why is that?

A. Because it was a—it's a snapshot of prior, of a time that had already come and gone. It wasn't based on anything other than where the vote stood at a certain time.

Q. Well, then let me ask, why could we not just say the vote was closed to further input and substitute the 215–213 number that was immediately reflected on the board in place of the 214–214? So under that situation the vote would have been closed, but the motion would have prevailed. Why could that not have been the result, in your opinion?

A. That's a tough question. I thought about that. I don't know if I have a real good answer why not other than the—you know, the mistake, mistake, I'm going to say it was a mistake, for the Chair to try to close it in such an opportunistic way at a time when—I mean, speculating that it was the result the Chair wanted, then just, it just put it in, put everything in such a strange spot that—I mean, just like taking the 215–213. It would still just be picking a time when to stop, when to stop taking any further input, as opposed to trying to take all the input that you know that is out there and then getting a result.

Q. Without sort of qualifying him as an expert we'll just assume that he has experience in the Chair, or assisting the Chair.

Mr. SNOWDON. Assisting the Chair.

BY MR. SPULAK

Q. So you said that there's an opportunistic moment to close the vote. Isn't that, in your professional experience, isn't that part of the general process of presiding officers to close votes at opportunistic moments? I mean is there any—well, let me change that impression to say, is there anything in and of itself incorrect about closing a vote at an opportunistic moment, assuming that everyone has voted, or assuming—well, strike that, I'm sorry. Is there anything in and of itself wrong about closing a vote at an opportunistic moment; that is, when the majority has prevailed?

A. I would say yes.

Q. That it is wrong to close a vote at an opportunistic moment?

A. Well, it's wrong to try to preclude input on an opportunistic basis.

BY MR. SNOWDON

Q. In your opinion is that what happened on 814?

A. Well, I don't want to speak for his motive, but that's certainly possible.

Q. Well, you mentioned that 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?

A. No.

Q. And did he make it very clear to everybody on the rostrum that that's the result he wanted?

A. I don't think he used those words.

Q. That wasn't my question. Did he make it very clear, by either his words or his demeanor, that that was the result he wanted, in whatever words he used?

A. I think it was his intent that the vote fail. If it was possible for the vote to fail, obviously that is what he would desire.

Q. And he made that expressly clear?

A. I mean he—I assume that would line up with closing a vote when that was the pending outcome.

BY MR. SPULAK

Q. If I may, I think what you're saying, and please tell me, is that he didn't say he wanted to win, but he wanted the vote to close at a particular time, and it's your opinion that by closing it at that particular time his goal of seeing the motion not prevail would have been achieved?

A. I think that was understood.

Q. I understand. But let me go back and ask this on this opportunistic concept. If Mr. Hoyer had—well, we just said that he wanted, you believe he wanted the motion to fail. If Mr. Hoyer had asked, had suggested, or had asked the Chair to close the vote at a time when there were no Members in the well voting and where the Chair had made the announcement to the body that—you know, alerting the Members to the fact that he was asking does anyone want to change their vote, sort of going through the normal procedure of wrapping up a vote. There was no one in the well, more than 15 minutes had expired and Mr. Hoyer states to the Chair, close the vote. Would you concede that that was opportunistic in your definition of the word?

A. No, I don't think so.

Q. Well, how would you describe that? Well, let me ask this. Would that have been wrong? Do you believe there would have been anything wrong with asking the Chair to close the vote at a time when 15 minutes had expired and there was no one else who appeared to want to vote or to change their vote?

A. That act by the Chair of closing the vote at that time sounds like normalcy. That sounds like that's how it's always done.

Q. Yes. So you wouldn't attach, or would you attach any sort of negativity, if you will, to a majority leader who was telling the Chair to close it at that point?

A. Well, yeah, it would be better for him not to be involved in that process, but just to let the Chair do it in the normal fashion.

BY MR. SNOWDON

Q. Why is that?

A. Because it interferes with the normal operation.

Q. Because the majority leader, given his position within the majority party, necessarily has substantial influence over the Chair, who is also a Member of that party, would you agree with that?

A. Well, sure. Just think. Anybody—the more people you have trying to help the Chair do the job, just it never helps.

Q. And would you agree that the majority leader is not anybody?

A. Sure.

BY MR. SPULAK

Q. Let me follow up with this. But what would be wrong if there would be, and correct me if I'm wrong, you said that it would be normal process, and presumably, and if I may, normal meaning it would be appropriate, to close a vote at a time when there did not appear to be anyone who wanted to vote or to change their vote. Do you agree with that, that that would not only be normal, but that that would be appropriate?

A. Barring some bizarre subway or elevator problem that was keeping people, or some meeting that everybody knew, we were waiting for a committee or something, yeah, that would be, that sounds like the normal vote.

Q. So I'll ask again. Then what would be wrong about someone encouraging the Chair to do what is not only normal, but correct?

A. Well, just in my vantage point there is no need for that. It looks like you're trying to—it just feels to me like then you're trying to not just let the vote resolve under the regular process, but there's an attempt—you know, I ask myself why does there need to be any more instruction or any more help on resolving this vote. It just seems funny to me. I don't know if there's anything wrong with it.

Q. Well, finally in this area, have you seen instances where the Chair is encouraged to close a vote at a particular time during a vote?

A. Yes.

Q. Is that rare, is that somewhat common, is it very common? Can you sort of describe how often you see this?

A. You see it. You see people, Members and staff, out on the floor, signals and gestures, desires to close. I mean obviously it's usually associated with bigger type votes, not the every day kind of vote. But you know there's always been that kind of behavior.

Q. So in your professional opinion, then you would think—I mean do you think that all of that should be prohibited?

A. I don't think any of it is helpful to the Chair.

Q. Do you think there should be—one of the things that we're tasked with doing is to make recommendations. Do you think a recommendation should be that there should be no communication from the Members to the Chair regarding the timing of the closing of a vote?

A. Potentially it seems it would be tricky, because obviously, you know, the guys who just want to get on the plane or just general shouting. But there's got to be some—I don't know, I would have to look at that to see whether that's feasible. I think that could be a good policy. Understand, I'm coming at this from a rule standpoint, how workable this could be as a rule. But obviously definitely as a general policy amongst the voting whipping regimes on each side that they not try to influence what the Chair is doing. I think that—I don't see that as being—that's probably a good thing.

Q. All right. Just one last question. Mr. Snowdon asked you if anyone—well, if either yourself or Mr. Sullivan had a conversation with Mr. McNulty immediately after his call the second time, and you said no, is that correct?

A. [Nonverbal response.]

Mr. SNOWDON. You need to answer audibly.

Mr. LAUER. Yeah. I'm trying to recall whether Mr. Sullivan or I had a conversation with the Chair immediately after.

BY MR. SPULAK

Q. Immediately after.

A. I don't remember saying anything right after it happened. I don't remember anybody saying anything to the Chair either.

Q. Do you remember if there was any conversation at some time after the vote was called, and at any time after the vote was called?

A. Yes.

Q. And do you have any idea what that conversation consisted of?

A. No. I know Mr. Sullivan began to write, as he always does, he wants to write something for the Chair, get something on paper, to figure out where we were. And I don't know what—I don't remember what he was saying, if anything, to the Chair. But he was writing, you know, on the rostrum right next to the Chair. I don't know what he said.

BY MR. SNOWDON

Q. So is your recollection that the first conversation between Mr. Sullivan and the Chair after the Chair called the vote the second time would have been when Mr. Sullivan started to write out the script for the Chair?

A. That sounds right.

Mr. SNOWDON. Do you have any more, Tom?

Mr. SPULAK. Yes.

BY MR. SPULAK

Q. Mr. Sullivan said that what he wrote out was, you know, both an explanation and the functional equivalent of a tally slip. From what you know, what the statement that the Chair read, does that describe what the Chair read from your recollection?

A. I know that's what he was trying to do. I think, again, another shortcoming of mine, was again there was yet, I think, Mr. Boehner's vote was not reflected on what Mr. Sullivan had written. So, again, we had an outdated—it had become outdated already by that time. I think at the time he prepared it, that's what he, Mr. Sullivan, believed he was doing, and that's what it would have represented. But we were not—I was not vigilant to update it as more votes came in. So I think ultimately it probably failed as well on that regard.

Q. Again, Mr. Sullivan called this the functional equivalent of a tally slip. Would you agree that that's what it was? Was it the functional equivalent of a tally slip, notwithstanding Mr. Boehner's card?

A. At the time it was prepared—yeah, I guess I would want to check whether the electronics—I assume the electronic system was closed, the electronic voting stations. They must have been already closed such that, you know that assures the Clerk when they prepare the slip that the number won't change unless the Tally Clerk

operating the terminal makes the change to verify that the number is static. So assuming that was the case, then, yes, that was what that document was meant to represent.

Q. Would it matter to you that Mr. Sullivan prepared that or that a standing Tally Clerk prepared it? Assuming that the information was accurate, would it matter to you that it was prepared by the Parliamentarian as opposed to the Clerk, would it still be a tally slip?

A. Well, obviously the part—the statement for the Chair you know would not be something the Tally Clerk would want to prepare.

Q. I'm not talking about the statement part, I'm talking about the vote number.

A. And the question is whether it mattered who wrote it?

Q. Yes, that's the question.

A. Well, it's such a, we hope, once in a lifetime event. But I guess ideally what we could have done was write the words to the Chair with blanks and then verified or let the Tally Clerk fill in the numbers, I suppose would be the most regular order we could get out of that scenario.

BY MR. SNOWDON

Q. And in fact, the reason that the Tally Clerks are the ones that prepare the tally slip is because they're the ones that control the electronic voting system, and they know for certain when that system is closed to further input, isn't that right?

A. Yes.

BY MR. SPULAK

Q. I'm sorry, but to that point I'm asking specifically at this point in time, if Mr. Sullivan was preparing that slip, and he said that at the time he prepared it, that it was going to be the functional equivalent of a tally slip. If you don't know, you don't know, but I'm just asking this question theoretically, by him—would he not have checked with the seated Tally Clerk to get the number that was available at that time to put on the slip? Would you assume that that's what happened?

A. Yes.

BY MR. SNOWDON

Q. Do you know that's what happened?

A. No.

Q. Prior to August 2nd or in Roll Call 814, have you ever seen or heard of the Parliamentarians preparing the tally slip?

A. No.

BY MR. SPULAK

Q. But let me follow it up. Assuming that Mr. Sullivan checked——

Mr. SNOWDON. I mean, I think he's already said, Tom, he doesn't know whether he checked or not.

Mr. SPULAK. I know. I understand that.

BY MR. SPULAK

Q. I'm just asking you, assuming that he had asked the Tally Clerk what is the number, and the Tally Clerk gave him the number and he wrote that on the piece of paper, would it matter that the Parliamentarian prepared it versus the Clerk? Is there anything sort of unique or special or required that the Tally Clerk prepare the slip? I'm not saying under normal circumstances. In order to provide the quality control that we understand the tally slip to represent, for those purposes would it matter who wrote the numbers down on the piece of paper?

A. It's just the way that it's always done. It's such a part of the process, I'm sure, I assume, you know, in retrospect—I mean, would Mr. Sullivan have rather done it just leaving blanks, getting those numbers directly from the Tally Clerks themselves and then write it on there? I assume that would have been the most ideal, the most normal thing to do in an unusual circumstance. It's just such an odd—I can't envision another area where anyone other than the Tally Clerk would have ownership of the slip.

Q. All right. One last question. Based on what you know, would you say that there wasn't—this was on the third call, this was on the final call—would you say that there was no tally slip, that there was never a tally slip provided to the Chair on Roll Call 814?

A. Yeah, there was no—not the usual slip that is produced by the Tally Clerks.

Q. But that's not my question. Would you say that considering the circumstances, would you say there was no tally slip?

A. Well, in the way that we know what a tally slip is, no, there was not that tally slip. Is that what you're asking?

Q. I'm asking if there was, in your opinion, and if that's your opinion, that's fine, I'm asking for what a tally slip represents, would you say there was no tally slip provided?

A. I would say there was none.

Q. There was none?

A. None.

Q. Thank you.

BY MR. SNOWDON

Q. I have one last one. I promise.

Mr. Spulak asked you a while back about essentially imputing the uptick number on the board to the Chair's announcement, and you had some uncertainty about whether that would have been a viable alternative, a viable action from a procedural standpoint. Let me ask you another hypothetical, similar vein. If the Chair had simply said after he looked up and saw the uptick at 215–213, I made a mistake, the true number is 215–213, the motion is not agreed to and banged the gavel, in your opinion would that have been a valid result procedurally as well as substantively?

A. This is where my memory is bad, but I thought if there were still voting cards that had been turned in, but had not yet been, you know, electronically entered, I would still think that would not be the right result.

Q. Well, the Chair doesn't have to accept those cards, does he? The Chair is not under an obligation to accept—I mean, the Chair

can make a determination after the time has expired that this is going to be the time where we're cutting it off. Isn't that within the discretion of the Chair?

A. Okay. Well, I mean, maybe we're talking about two different things. I mean, there's Members who are holding cards that are trying to cast their vote in that fashion. I mean there technically——

Q. And do you know whether that was going on at the time the Chair called the vote the second time?

A. I thought—yes, I thought there were at least—I think there were two Members——

Q. Who was that?

A. [continuing]. Who were in the well. I don't know if I—I might only remember it from the tape. I don't know if I remember it from then.

Q. I mean, there were plenty of Members in the well. Do you know if there were Members in the well specifically with the intention of voting? Mr. Clyburn I believe is in the well. Mr. Lampson, who has already entered a well change card and had it recorded, is hanging out having a conversation with somebody in the well. So do you remember if there were Members in the well with the intention of voting?

A. I don't know if I can say that for sure. I don't remember that.

Q. Okay. Let's go back to the original question. That is, if Mr. McNulty had determined that he was going to cut off voting at a certain point in his mind and that vote upticks, the final vote, the one he determines is the last vote to be recorded, that upticks to 215–213 and he says, I made a mistake, I announced it at 214–214, the real result is 215–213, the motion is not agreed to and hits the gavel, would that in your mind have been procedurally and substantively a closed final vote?

A. Not if Members had already turned in cards that simply had not yet been electronically processed. I think that would be wrong to exclude those, to try to draw the distinction between——

Q. A Member who has filled out a card but not yet turned it in and a Member who has actually turned in a card, is that the distinction?

A. Yes, I think so. Technically I think you're right. Under the black letter of the rule the Chair does not have to take those well cards. But the Speaker's opening day policies for many, many Congresses have been that the occupants of the Chair are going to be expected to take—not exclude people who are in the well trying to vote. And we've seen instances where that's caused huge problems, where that has happened and the Chair has had to apologize the next day and so forth. That's more of a "should." The Speaker is not supposed to exclude those versus technically can they be excluded versus I think the cards that are actually already, have already been turned in. In my opinion, I would like to say those are part of that vote total, they just have not yet been reflected electronically. I would think that would be the best way to view it.

Q. Well, going back to the original question, if Mr. McNulty had determined where that stopping point was going to be in his mind and he announces 214–214, then sees the uptick, if he had said, I made a mistake, the real result is 215–213, the motion is not

agreed to, hit the gavel before anybody else had turned in a card, would that have been a valid final vote?

A. Yeah, if there were no more cards in the Tally Clerk's possession.

Q. Had been turned into the Tally Clerks?

A. If everything had been entered and there were none in their possession, then, yeah, I think the Chair could have said he was mistaken because of the delay and so forth, and that the final vote was actually the other way, sure.

BY MR. SPULAK

Q. I have just one thing. You said in your previous testimony—at one point today you also said, although I think you may have contradicted yourself, but you did say that there were two Members in the well, or at the desk I believe you said?

A. Okay.

Q. Isn't that what you said?

Mr. SNOWDON. Well, what did you say? What do you recall? And if you want to give me a page.

Mr. SPULAK. Well, it's the same reference. It's on page 8.

BY MR. SPULAK

Q. And again, as I'm looking for this, the point is, and I'm not asking you to be certain, I'm just asking, is it possible that there were Members in the well who at the same time it was called, there were cards on the desk that you just talked about being entered, but also that there were Members in the well who were—where is that? Well, let's go back to this note that you said that you prepared. My note at the end says—and this is on my page 13, Andrew, February 14, 2008. My note at the end says there are two Members in the well with cards plus two at the tally's desk. And so I'm not holding you to that statement. I'm just asking, is it possible that in addition to the cards that you saw on the desk there were Members in the well who may have wanted to vote at that time?

A. Right. I mean, that's what I said I had written down.

Q. Is that what you believe today?

A. Yeah. I think there were—I think that was my impression, was that there were—two jumps out of my mind as the number that had cards, that were holding cards, trying to figure out, I don't know if they were filling them out. I think there were two. What I wrote down is probably more accurate than my memory, so I hope that that's right.

BY MR. SNOWDON

Q. Let me ask you one more hypothetical. Obviously the Chair doesn't want to disenfranchise anybody, any Chair, I mean that's really not what they do. But if a Member has filled out a well card and has held on to it for an extended period of time, okay. They don't know what they're going to do, they've held on to it for a minute or 2 minutes and milled about in the well. Do you think that it would be reasonable for the Chair to look at that Member and assume that if they wanted to vote, wanted to enter that

change card already, they would have done so at that point and gone ahead and closed it? Otherwise the vote could stay open virtually indefinitely if a Member has a card and is just standing around in the well. Would you agree with that?

A. I'm sorry, your question was?

Q. It was a very inarticulate question. If a Member picks up a well card, fills it out but holds on to it for an extended period of time, a matter of a minute or 2 minutes, would you think that it would be reasonable for a Chair to see that, assume that if the Member wanted to vote, wanted to enter that card, they would have done so already and gone ahead and decided to close the vote if they felt that it was appropriate to do so?

A. Well, I think in those kind of cases a lot of times we'll have some intelligence on what's happening. The Tally Clerk will ask or will check, has that person voted, because they might be there waiting for the next vote to start. But you're assuming——

Q. A person voted, this is a change.

A—the person has—or it is a change. And we assume we don't know anything from the Member, we haven't asked them is this for this vote or the next vote and they say it's for this vote or we don't know anything? A lot of times what happens is we know what that Member is doing, whether it's the current vote or not.

BY MR. SPULAK

Q. Because I mean it's possible that without that information the Chair wouldn't know whether that was an initial vote or a change, isn't that correct?

A. Right.

BY MR. SNOWDON

Q. The Chair could see up on the board, can't they, that that person has already voted?

A. No. It's behind the Chair. But they could ask the Tally Clerk to check.

BY MR. SPULAK

Q. But you're saying that often you rely on information in order to help you understand what's going on?

A. Yes.

Mr. SPULAK. Is that it? Thank you very much. We're off.

[Whereupon, at 11:05 a.m., the interview was concluded.]

Memorandum

To: Select Committee
From: Ethan Lauer, Assistant Parliamentarian
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.

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