AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

ORGANIZATIONAL MEETING ON ADOPTION OF COMMITTEE RULES

HEARING

BEFORE THE

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

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

SEPTEMBER 27, 2007

WASHINGTON, DC

U.S. GOVERNMENT PRINTING OFFICE

41–984 WASHINGTON : 2008

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

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

WILLIAM D. DELAHUNT, Massachussetts, *Chairman*

ARTUR DAVIS, Alabama
STEPHANIE HERSETH SANDLIN, South Dakota

MIKE PENCE, Indiana, Ranking Member
STEVEN C. LATOURETTE, Ohio
KENNY C. HULSHOF, Missouri

CONTENTS

	Page
I. Opening Statements:	
1. Delahunt, Hon. William	1
2. Pence, Hon. Mike	2
3. Davis, Hon. Artur	3
4. LaTourette, Hon. Steven C.	4
5. Herseth-Sandlin, Hon. Stephanie	5
6. Husholf, Hon. Kenny	6
II. Appendix:	
Amendment by Mr. Latourette	31

ORGANIZATIONAL MEETING ON ADOPTION OF COMMITTEE RULES; CONSIDERATION OF INTERIM REPORT; AND HEARING ON VOTING IN THE HOUSE OF REPRESENTATIVES

THURSDAY, SEPTEMBER 27, 2007

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

The committee met, pursuant to call, at 9:11 a.m., in Room H–313, The Capitol, Hon. William D. Delahunt (Chairman of the committee) presiding.

Present: Representatives Delahunt, Davis, Herseth Sandlin, Pence, LaTourette and Hulshof.

The CHAIRMAN. A quorum being present, the select committee will come to order.

Today we are meeting to do three tasks: adopt our committee rules, adopt the internal report, and to hear for the first time—of what we expect to be multiple occasions—from the Office of the House Clerk. We will wait for the gentlelady from South Dakota, who was at her other select committee.

I now recognize myself for 5 minutes to make an opening statement, but before I do, let me note I will then go to Congressman Pence as the Ranking Member. And in subsequent hearings, it would be our hope that just he and I would make opening statements. But on this initial hearing, any member of the panel that wishes to make an opening statement is most welcome.

I would be remiss not to begin by thanking the Chair of the House Rules Committee, Louise Slaughter, and the Ranking Member, David Dreier, for making their hearing room available to the select committee.

I also want to welcome everyone to this initial meeting of the select committee that has been mandated by the House to review roll call No. 814. I would note that none of the Members sought this particular assignment, but each of us appreciates the role and the significance of the House in our unique constitutional order, and recognize that the integrity of the system by which we cast our votes on the House floor is essential to the confidence that the American people have in this institution, aptly described as the people's House.

We are all institutionalists. Each of my colleagues has served this House well. Each is admired and respected on both sides of the aisle and enjoys a reputation that reflects the finest traditions of

this institution. I am genuinely honored to serve with them. But I do believe, though I am not naive, that this augurs well for a successful effort, for I have no reservations about the motives and bona fides of these Members, and I am confident that, at a minimum, we will be able to demonstrate a degree of civility and comity that reflects well on the House of Representatives and is expected by the American people.

Today we will adopt a set of rules and an interim report that will yield order and efficiency, and ensure bipartisanship, cooperation, and, most importantly, transparency. This would not have been possible without the assistance of the Congressional Research Service. I would note that as the committee took stock of resource issues, the Ranking Member and I requested the assistance of CRS, and we have been indeed fortunate to have access to Judy Schneider and Mike Campbell, whose expertise is truly remarkable. They have been a superb resource as we get under way, and we are in their debt. Thank you, Judy, and thank you, Michael.

The CHAIRMAN. With that, let me yield to the Ranking Member, the gentleman from Indiana, Mike Pence.

Mr. PENCE. Thank you, Mr. Chairman. And at this first formal meeting of the select committee to investigate the voting irregularities of August 2, 2007, let me say I am humbled to serve as the Ranking Member. I will seek to confirm the confidence placed in me by approaching this task with a firm commitment to fairness and effectiveness.

I am especially grateful to serve with my Vice Ranking Member, Steve LaTourette of Ohio, and Congressman Kenny Hulshof, whose years of experience exceed mine, and whose reputations for integrity will, as the Chairman noted, greatly enhance our ability to move forward.

Allow me, Mr. Chairman, to echo the esteem which you expressed for all the members of this committee. Based on the caliber of the Members appointed by the Democratic majority, including the Chairman, and given in evidence of our preliminary and informal discussions prior to this hearing, I am confident we will be able to proceed with this inquiry in a bipartisan manner that puts the interests of the American people over partisan politics.

I am especially grateful for the Chairman's cooperation in the securing of resources for this committee and very much look forward to continuing to work with you and all the members of this committee to ensure that we have the resources necessary to conduct this investigation in a manner befitting the seriousness of the issues.

The Constitution of the United States enshrines the right of every Member of the House of Representatives to vote on the floor of the House on behalf of the people they were elected to serve. This select committee has been charged with a solemn duty: to investigate voting irregularities on August 2, 2007. The integrity of the House of Representatives is completely dependent on the integrity of the vote that takes place on the floor of Congress. Every American is entitled to have a voice in the people's House and to know that their Representative's vote counts.

As the ancients knew, honesty in measurement is central to the administration of justice. In the book of Leviticus that I read just

this morning, it provides, quote, "Do not use dishonest standards when measuring length, weight or quantity. Use honest scales and honest weight."

The events of August 2, 2007, where confusion and anger reigned on the House floor, represented a serious breakdown in the voting system of this institution, and the integrity of the means of measurement was called into question. That night the Republican minority voted to deny taxpayer-funded benefits to illegal immigrants in roll call vote No. 814. According to the voting machine and the minority, the Republican motion to recommit prevailed. According to the man holding the gavel and the majority, the Democratic majority prevailed.

This conflict between parties, man and machine, must be thoroughly investigated. This select committee must follow the facts and let the chips fall where they may. Whether they lead to findings of an abuse of authority to benefit illegal immigrants, or to glaring holes in the rules of the House, or to other determinations, we will expose the truth of what happened and ensure the voting franchise of every Member of Congress is protected.

And let me say as I close, Mr. Chairman, we will approach this task in a fair, thorough and solemn manner, for as the scholar Norm Ornstein wrote recently, quote, "The dynamic here between the parties is not just game playing, it is serious business. The House is fragile enough that we could end up with truly nasty and counterproductive behavior deeply damaging to the country and the long-term operation of the Congress," closed quote.

I look forward to working with my colleagues in both parties on this committee. I appreciate the spirit of cooperation and comity that has characterized our discussions to date. Members of the minority commit today to continue in this spirit to ensure that the Members, officers of the House, or staff who were responsible for this incident be held to account and to develop recommendations to ensure that this never happens again. We owe the American people and the people's House nothing less.

The CHAIRMAN. Thank you, Mr. Pence. And let me turn to the Vice Chair of the select committee, the distinguished gentleman from Alabama, Artur Davis, and see whether he wishes to make any opening remarks.

Mr. DAVIS. Mr. Chairman, thank you for recognizing me. I will be extremely brief because I know that we are here to begin this process today and not to orate. But let me just say a couple things by way of perspective.

The first one is this: Many of the American people do not realize how exclusive this institution of the House of Representatives has been since 1789. As of this day, September 27, 2007, less than 13,000 American citizens have ever served in this place. The smallest county in my congressional district has the same number of people. Many of the counties that many of us represent have substantially greater numbers of people. This is one of the smallest, most exclusive fraternities and sororities, if you will, in the world, and we are mindful of that, Mr. Chairman.

We are also mindful of this solemn charge we have been given by our colleagues. Our colleagues voted overwhelmingly in a bipartisan manner to charge a group of Members to conduct a searching

inquiry of the moment on August 2, 2007, when the routine turned unusual, and a process that we have come to take for granted experienced some unexpected bumps and turns.

All six of us take this responsibility enormously seriously, and I echo what the Chairman and Ranking Member have said. We are honored. Not one of us sought out this assignment. This is the fourth committee for some of us. But we have all agreed to serve—if I can be so bold to say what I think all of us are thinking—we have all agreed to serve, because whenever the House is in question, whenever its practices are in question, Members have a stake in doing all that we can to ensure to preserve its integrity. And I am sure that is the spirit that will motivate us.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Davis. I will now go to the Vice Ranking Member of the select committee, the distinguished gentleman from Ohio, who, during the Republican era as the majority party, distinguished himself, on many occasions, as the presiding Member and someone whom I look forward to working with because of his special expertise and his exceptional talent, Mr. LaTourette of Ohio.

Mr. LATOURETTE. Thank you very much, Mr. Chairman. As I was getting ready for this hearing last night, I began to think about—and I believe I am the oldest-serving Member, the Member who has been in the House the longest.

The CHAIRMAN. You might be the oldest Member, actually.

Mr. LATOURETTE. I was going to say I don't think I am the oldest Member, but this is my seventh term. I am a member of the historic Republican class of the 104th Congress. I had never served as a legislator before. I was a prosecuting attorney by nature, so a lot of the things I saw in 1995 were foreign to me. I had never encountered them.

I remember going to Republican conference meetings, and hearing some of my new Republican friends say, "40 years we have been in the wilderness, and now it is payback time. We are going to treat the Democrats the way they have treated us for 40 years." Then, as I was here a little bit longer, about 6 months later, I became friendly with a number of the people on the Democratic side. They would say to me, "We were bad, but we were never this bad." I took that to heart.

Then we sort of fast forward 12 years, and because of some missed cues on our part, the majority has now shifted again. The 110th Congress is an historic Congress in that we have the first woman Speaker of the House in the history of our country. And I think we are all honored to serve in this country. I know from a Republican perspective, it is nice that we have made history. Now let's get back to the way it was for 12 years.

But I hear the same things. I hear some of my Democratic friends say, "You abused us for 12 years; now it is payback time." And I hear some of my Republican friends say, "We were bad, but we were never this bad." And that brings us to this committee and why I think while perhaps the world isn't watching, I hope that our colleagues who aren't serving on the committee are watching.

During our first get-together a number of us on this committee said, in discharging its responsibility fully and fairly, the com-

mittee has the opportunity to bring the temperature down here on the House side, and I hope that is where we go. And I will tell you that there are a number of steps that we are going to have to take and a number of steps that we have already taken that give me hope. And I just want to outline those steps and tell our colleagues that aren't here today why they should be encouraged by what we are about to embark on.

There are a number of things that didn't have to happen. We didn't even have to be in this room. When Minority Leader Boehner made the motion to create this select committee, the majority leader Mr. Hoyer could have moved to table it, and it would have been a partisan vote, and there never would have been a select committee. The majority chose not to do that. The majority leader said that he recognized that there were some difficulties with rollcall 814, and he didn't stand in the way of setting up the committee. I think that is an important thing to recognize and give credit to the majority for doing.

The second thing that you and other Members have talked about, each side could have picked really partisan people to be on this select committee. And Mr. Pence quoted Mr. Ornstein's article. He predicted that this would be a 3–3 tie; we are just going to be partisans, we will pretend to be fair, but we are not going to get anywhere. And I don't think that is the case. I think the leadership of both parties deserves credit for employing people that, at least in my understanding, will attempt to be fair.

And then lastly, after our last get-together, I was tasked to meet with Congressman Davis to talk about things like scheduling and how we will move forward, and I found nothing but cooperation, and I found nothing but a willingness to work together. And I think that we are off to a good first few steps, and I look forward to continuing this way. It is an honor to serve with you men and woman, and I look forward to it.

The CHAIRMAN. Thank you, Steve. And let me go to my right and recognize the gentlelady from South Dakota, Stephanie Herseth-Sandlin.

Ms. HERSETH SANDLIN. Thank you, Mr. Chairman.

I will echo the comments previously made in terms of how I deem it an honor to serve with very distinguished and respected colleagues to look into the circumstances surrounding a particular rollcall vote, but also the broader charge of making recommendations that may be necessary to ensure that we can avoid such circumstances in the future; and to do this historically, to understand the practices, the traditions of the institution, of what happened on the House floor in the past, how we conduct our work, how we work with one another, and how much we rely on those who are on the House floor to help us as we cast our votes on behalf of our constituents.

And as was commented upon as well, we have man, machine, and parties and competing circumstances, again, with this vote, but taking the broader view, laying the foundation, following the facts, and making recommendations that are good for the institution, that are fair to all of our colleagues, and certainly making sure that the commitment to our constituents and the integrity of the

votes that we cast on their behalf is ensured for this Congress and Congresses to come.

And the seriousness with which we all undertake these responsibilities on the select committee can't be overstated in terms of where the accountability will reside as we look into a particular rollcall vote, but, again, providing the clarity that may be necessary going forward. And I agree with my colleagues that the comity and cooperation that has already marked our work, that we anticipate would continue to mark our work, will impact the broader environment in which we work here in the House of Representatives.

So thank you, Mr. Chairman, Ranking Member Pence, for what we have already accomplished in a relatively short period of time, and working with all of us to ensure that the process going forward with the select committee is one that is transparent, that is fair, and that is focused on the betterment of the institution.

The CHAIRMAN. Thank you, Congresswoman. And let me now go to the gentleman from Missouri with whom I have worked in the past. The circumstances brought us together again on a difficult task, but one in which I know he will conduct himself, as he always does, in a manner that speaks well of his personal integrity, his independence and his fairness, and that is Kenny Hulshof.

Mr. HULSHOF. Thank you, Mr. Chairman. Thank you for your courtesies, thank you for your friendship. I appreciate that.

It is humbling to be here with the caliber and integrity of the Members that are here. It is an unfortunate matter that such an event occurred in August that necessitates this select committee, but it is fortunate not just for the institution, it is fortunate for the American people the caliber of those that are here sharing the dais with me, with whom I am privileged to serve to get to the bottom of this matter.

Mr. Delahunt, my friend, references the other occasion with which unusual circumstances brought us together. The last time I served in this type of investigatory capacity, it was, again, centering on a vote on the House floor; not voting irregularities, but the Medicare Modernization Act in November of 2003, and there were some allegations made by certain Members. And as a result, the Ethics Committee and the investigative subcommittee were impaneled. I was the Chair of that subcommittee, and Mr. Delahunt was fortunate enough to also share time.

And as I recall, with reference to something you said, Mr. LaTourette, to some of the naysayers out there, I recall before that investigative subcommittee that there were those who predicted doom and gloom, predicted gridlock, predicted that the ethics process could never hold our peers accountable. In that instance it was necessary; the House rules required us to toil in confidentiality, so the public could not see what we were doing in that instance. But I believe that the process and the eventual report that admonished the then majority leader proved those pessimists wrong.

I believe in this instance that we will go where the facts will take us; we will judge those facts accordingly and take whatever appropriate actions are deemed necessary. And I have no qualms at all certainly about the Chairman and about his dedication to that goal. I think, as everyone has said, the integrity of the institution is at

stake, and we will, I believe, perform our service in a manner that will elevate the integrity. And I appreciate that, Mr. Chairman.

I yield back to you.

The CHAIRMAN. Thank you, Kenny. The first agenda item is the adoption of the select committee's rules. And before I recognize the gentleman from Alabama, let me thank the gentleman from Alabama, Mr. Davis, and the gentleman from Ohio, Mr. LaTourette, for their work. During the course of the past week, they have come together, and I think this was acknowledged by Steve LaTourette, and worked together in a way that I think befits what we have all been saying in terms of a common ethic to work in a way that is bipartisan.

And with that, let me recognize the gentleman from Alabama.

Mr. DAVIS. Thank you, Mr. Chairman.

I will ask the staff to publish the document that we will submit for consideration labeled Rules of the Select Committee to Investigate the August 2, 2007, Roll Call Vote 814. And let me thank my friend from Ohio, Mr. LaTourette. Both of us were charged with the responsibility for coming up with the rules for this select committee, and we both believe that there was no need to reinvent the wheel. We believe that, given our small size and our charge to be expeditious, there were some minor tweaks that we needed to make to help us do our business in a more orderly fashion, but we arrived at an overwhelming consensus in how we should do this.

The document being put in front of the Members and the staff today is very straightforward. In effect, what we have done, translated in plain English, is to adopt the rules of the normally governed regular committees of the House of Representatives with three exceptions. I will outline them.

Every committee is charged with setting a regular meeting day. Clause number 1 states that the regular meeting day for this committee should be the first Thursday of each month at 9 a.m. As all who are here are very well aware, the Chair has the discretion first, and the Ranking Member, to add to that, to task additional meetings to help us finish our business in the next several months. But the regular meeting time that we will establish will be 9 a.m. on Thursday. And again, the Chair will make decisions as to whether our next meeting will be 2 weeks from now, whether we will proceed every 2 weeks from this point on, or whether our schedule will be more truncated to that.

The second provision deals with questioning witnesses. Obviously, we are a very small committee. I believe that at this point we are the smallest committee in the House of Representatives with only six members. The questioning time at which we have arrived, clause 2, is 30 minutes for each side. The Chair and Ranking Member shall determine how to allocate that questioning time, and, of course, as always, the Chair retains discretion to permit additional rounds of questions and additional questioning time. But the baseline should be 30 minutes allocated to each side for 1 hour total.

Final provision. Clause 3 refers to the time for submission of supplemental minority or additional views. The timeframe we have agreed on is 3 calendar days unless the committee should agree to a different time. That is the position of the committee Chairman

and concurrence of the Ranking Member. Again, very simple, very expeditious.

Mr. Chairman, Mr. LaTourette and I were also asked again to consider the question of a timetable, a template for how we intend to do our business, and we have decided to not publish that document, not to make it public. But there is a draft document that will be circulated internally to Members and staff that does lay out a projected schedule. For those who are here and who are interested, I will summarize it this way without getting into details.

We intend to be expeditious. We intend to finish the public hearing phase of this work before the House adjourns this year. We intend to leave ourselves adequate time before the end of the year to complete a written report, which may or may not include supplemental minority views. But we intend to get the hearing phase of this finished before we adjourn.

The schedule, Mr. Chairman, at which we have informally arrived, is one that will again look into the foundational work. As you will see today, we will have a witness who will not act as a fact witness, but who will lay a foundation for the August 2 vote and various technology and machinery associated with it. We will move forward. We will have witnesses who will talk about the rules and customs of the House with respect to voting, and then for the end of our work, Mr. Chairman, we will have fact witnesses.

Mr. LaTourette and I have arrived at a tentative list of fact witnesses, fact witnesses defined as those who have specific knowledge of the events in dispute that night, staff members and relevant Members. And once again, that list has been circulated internally.

If it is appropriate, Mr. Chairman, I would like to yield now to Mr. LaTourette for any comments on the rules or any amendment he may offer.

[Text of the amendment may be found in the Appendix.]

The CHAIRMAN. Mr. LaTourette.

Mr. LATOURETTE. Thank you very much, Mr. Davis. I want to, again, publicly indicate what a pleasure it has been to work with you on this process.

We just have one minor dispute that will be the subject of an amendment whenever the Chair feels it is appropriate, dealing with the quorum of the committee.

I think we have provided a good rules package, and I think there has been great input on both sides, and we are ready to move forward. That is all I have to say about the rules.

On the schedule, I want to make a couple of observations about the schedule, and that is, I think that it is our work that can really help to educate other Members of the House as to what the traditions are here. Everybody is busy. A lot of people don't know how the electronic voting system got installed, a lot of people don't know what the rules are, and then that leads to some people getting mad when maybe they shouldn't get mad. So I think that, by laying the foundation today with the Clerk's Office, then moving through historians in the next couple of hearings, and talking about the precedents in the House, that the only cautionary note—and I know that you have been great in working with us on resources—the schedules Congressman Davis and I talked about do contemplate having staff in place, staff for the committee by the time we finish the his-

tory section so we can appropriately prepare for the gathering of the facts relative to August 2.

And I want to publicly thank the Clerk of the House Ms. Miller in not only what she and her staff have done to date, but, echoing my comments in my opening remarks, a lot of people think that because the Democratic Party is the majority, that she is the Democratic Clerk of the House. Well, she is not. She is the Clerk of the House, and the way that she and her staff have discharged her responsibilities to this moment in time in saving evidence and identifying to Congressman Davis and I who on the dais might know things, might not know things is really exemplary. And I want to thank you publicly for that.

Mr. LATOURETTE. And whenever you are ready, Mr. Chairman, I have an amendment. It is not at the desk because we don't have a desk yet. But I have an amendment.

The CHAIRMAN. We have a table. Let me call up the draft of the committee rules and ask unanimous consent they be considered as read and open to amendment at any point.

Mr. LATOURETTE. And I have such an amendment.

The CHAIRMAN. Mr. LaTourette.

Mr. LATOURETTE. I believe that Members have the amendment. The amendment deals with the issue of quorum that we were not able to agree on. The standard rules of the House for committees——

Mr. PENCE. This is a parliamentary inquiry of the Chair. Since we don't have a clerk, is there—is it appropriate to have the clerk report the amendment, or simply have a Member read it?

The CHAIRMAN. Why don't I read the amendment then?

Mr. LATOURETTE. Perfect.

The CHAIRMAN. Someone suggested I should become a clerk.

"Amendment to the rules of the select committee to investigate the voting irregularities of August 2, 2007, offered by Representative LaTourette. Strike (3) in the second sentence and insert (4). Add at the end of the following new section 4, A Quorum: For the Purpose of Taking Testimony and Receiving Evidence, One Member from the majority and one Member from the minority shall constitute a quorum unless otherwise agreed to by the ranking minority member."

Mr. LaTourette, your amendment.

Mr. LATOURETTE. Thank you very much, Mr. Chairman.

As has been proposed by Mr. Davis, the standard rules of the House would indicate a quorum of this committee would be three Members. And again, standard committee rules would indicate that for the purposes of taking testimony, you would only need two Members and those Members could be of the same party.

We have only one evenly split committee currently in the House today and that is the Ethics Committee, and those rules indicate that they cannot actually begin proceedings or take testimony unless the majority is present. And that, by definition, because it is five and five, indicates that there has to be six Members, and somebody has got to be from the other party. You can't get to six without having both Republicans and Democrats in the room.

This simple change to the quorum—I can't imagine a situation where all six of us wouldn't be present, but were there such a situ-

ation, we are proposing that a quorum for the purposes of receiving testimony and evidence be two rather than three at a minimum, and that we have to have at least one Republican one Democrat.

And I yield back.

Mr. DAVIS. Mr. Chairman, I will claim time to speak in opposition to the amendment and just to give some perspective to the committee. It is sometimes difficult to appreciate and translate these rules which were written in English into the plain language in which we speak in every day, so I will try to do that.

So the difference in the rules, as they have been submitted in the LaTourette amendment, is a fairly simple one. Normally the rules don't contemplate a bipartisan quorum. Rules translated to a committee of this size would establish a quorum for taking testimony of not less than two. Mr. LaTourette's amendment would add the additional requirement that it be a bipartisan quorum, one Democrat and one Republican.

And I certainly understand Mr. LaTourette's perspective, and it goes without saying that our colleagues meant this to be an evenly balanced body. The resolution, frankly, could have been amended on the floor to give Democrats the majority on this committee. My leadership chose not to do that. If I can be so bold as to speak for them, I suspect it was because they knew it was important that the final product of this select committee not be one that was rendered on a party-line basis, but there be a final product that reflected bipartisan consensus. That was the aim and the goal of this committee. So we did reserve the advantage that the voters delivered to this committee.

I think I 100 percent agree with Mr. LaTourette. I cannot imagine a circumstance where we would proceed to take testimony and not have a bipartisan representation in this room. For us to do that would, frankly, flout the understanding that our colleagues charged us with. We presented the rules as they are again to describe for consistency what the rules employed are by the committees, and because other committees don't include the partisan point, we have chosen not to do that or to have a bipartisan requirement. So I will make an observation, Mr. Chairman, and then yield back.

The CHAIRMAN. The ranking member Mr. Pence.

Mr. PENCE. Thank you, Mr. Chairman. I will be very brief.

I take the gentleman from Alabama's point to heart. I think it is a valid point to say a majority quorum contemplates that if one party is in the majority. But in this case I believe Mr. LaTourette's amendment is appropriate, Mr. Chairman. And just to ensure the confidence of the membership and the broader public in the bipartisan nature of our deliberation, I would heartily endorse the LaTourette amendment.

The CHAIRMAN. Well, in that spirit, if the gentleman yields back——

Mr. PENCE. Yield back.

The CHAIRMAN. And that is fair, Mr. Pence. And we were talking about bipartisanship and comity. I will support the amendment by the gentleman and——

Mr. DAVIS. Then I will withdraw any objection, Mr. Chairman.

The CHAIRMAN. Thank you.

So if there is no further discussion, the question is to the draft committee rules as amended by Representative LaTourette—I certainly demonstrated my knowledge and familiarity with the rules of the House. I think that underscores the observation by Mr. LaTourette that this select committee provides all Members an opportunity to educate themselves as well as the people about the practices and the procedures in the rules of the House.

On the amendment, all those in favor say aye. Aye.

Having no need for a roll call vote, the amendment is adopted.

If there is no further discussion, the question is on agreeing to the draft committee rules. Those in favor, say aye. Aye.

Those opposed to, say no.

Hearing none, in the opinion of the Chair, the ayes have it, and the select committee's rules are adopted.

The second agenda item is adoption of the interim report. As Members know, the interim report must be filed by September 30, which is Sunday, and it is my understanding the House is not expected to be in session tomorrow, which is Friday.

At our preliminary meeting we requested that the Congressional Research Service prepare a draft or interim report and then provide that document to Mr. Pence and myself, which CRS has done. We have disseminated it to our colleagues on both sides, and the document before the select committee today reflects any changes suggested by committee members to that draft.

Is there any discussion or amendments to the interim report?

Mr. Pence.

Mr. PENCE. Thank you, Mr. Chairman.

Let me just say that I am very grateful for the approach which you endorsed early on in some of our preliminary discussions that we would fulfill our statutory obligation in the September 30, 2007, report without going forward into debates about facts and controversies that the committee would not have the ability to have investigated up to that point.

I believe this report lays a solid foundation for us to begin our work, and I believe it will serve to inform the Members of Congress about our work to date and the manner whereby we intend to go forward. And that, in combination with the deliberations of today, I believe represents a good start.

I would raise the issue that while we did move a recitation of the rules cited by CRS as relevant to this discussion to an appendix. I would like to engage the Chair in a colloquy on—about the inclusion of these rules in an appendix to the report as descriptive and not proscriptive. I think we don't know yet, Mr. Chairman, what rules of the House will bear upon this inquiry until we enter into a detailed investigation of the facts and circumstances surrounding what occurred on August 2.

I am mindful, though, of the good-faith effort of my staff at the Congressional Research Service to simply identify rules that may pertain to our inquiry, but I might welcome a colloquy with you about ensuring the Members in the minority that the appendix is in a very real sense merely a good-faith effort to describe the rules that we believe at this moment to be relevant to the inquiry.

The CHAIRMAN. If the gentleman would yield?

Mr. PENCE. Pleased to yield.

The CHAIRMAN. I would concur with your interpretation. Clearly, you know, this is the product by the Congressional Research Service, and it is not meant to be comprehensive without further review by the committee. I would also note that it does not draw any conclusions.

My own observation was with the naming of the select committee involving the term "irregularities," I think if I had been aware of the naming of the committee while the resolution was being considered on the floor, I would have raised the issue that that was conclusory, and it was really the task or the responsibility of this select committee to determine what the facts are.

But that is of no great consequence, and I certainly concur with your interpretation of the appendix as drafted by the Congressional Research Service.

Mr. PENCE. Reclaiming my time, Mr. Chairman.

Thank you for that clarification. The only other issue I would raise as we work through this draft is the issue that you mentioned in your opening statement and our colleagues mentioned, and that is the question of resources. There is a line on page 3 that makes specific reference to a copy of a letter.

I know there has been a good-faith effort on the part of the majority and minority staff to speak with one voice to request the leadership of both parties in the Congress to find a means either by resolution or through leadership accounts to fund this committee. I don't believe we arrived at an agreement with either leadership on that, I don't believe we are quite to the letter yet, but I want to renew to the committee and to any that would be looking on that we need the resources to engage in the kind of solemn and serious and fair inquiry that I believe every member of this committee deemed this morning to be appropriate in this matter.

And so with that, the Chairman may need to make, by unanimous consent, a change to the draft relevant to the resources issue, but I will take the opportunity to renew my profound concern that we resolve that issue, as Mr. LaTourette said, well before we arrive at the truly fact-gathering aspects of this inquiry, or it will, in my judgment, both hamper our ability to complete our work and, more likely, simply delay our ability to complete this inquiry in an expeditious manner.

And with that, I would yield back.

The CHAIRMAN. I thank the gentleman for his observations. I concur, and again, I would hope that by Monday or Tuesday of next week, given our rather hectic schedule today and the fact that we are in recess tomorrow, that we will have that letter to our mutual satisfaction completed and forwarded for expedited action by the leadership of both sides. And I am confident that that can occur.

If there is no further discussion, the question is on agreeing to the interim report. Those in favor, say aye. Aye.

Those opposed, say no.

In the opinion of the Chair, the ayes have it, and the interim report is agreed to.

Without objection, the staff is authorized to make sure such changes are made as may be necessary to reflect the actions of the select committee. Hearing no objection, so ordered.

In order to meet our September 30 deadline and to provide all Members of the House with rapid access to the interim report, Mr. Pence and I have agreed that we will insert the interim report in today's Congressional Record. The committee can at a later time have it printed.

Mr. PENCE. Mr. Chairman?

The CHAIRMAN. Sure, Mr. Pence.

Mr. PENCE. I am sure this falls into the category of parliamentary inquiry, my inquiry to the Chair. I would request the Chairman, as with all other committees, to ensure a transcript also be published in the normal course of business proceedings of the select committee.

The CHAIRMAN. Without objection.

The third agenda is to hear from the Office of the Clerk. The Office of the Clerk provided the select committee with a letter listing an initial inventory of 21 items which the Clerk's Office has preserved for use in the committee's investigation. I will have to consult for a moment with staff.

Russell Gore in the Office of the Clerk is here to explain the items listed in the letter. He is accompanied by the distinguished Clerk of the House, Lorraine Miller.

Mr. Gore.

Ms. MILLER. Morning, Mr. Chairman——

The CHAIRMAN. Good morning.

Ms. MILLER [continuing]. And members of the select committee. We are delighted to be with you today and to explain some of the items that we have preserved.

If you will allow me to just make a couple points as we get involved in this. I take personally the charge of being the Clerk of the House seriously. And our main objective is to take the votes, tally those votes, and preserve the records of the U.S. House of Representatives, and we do that.

One of the other things that I want to assure you, we look at this, as Mr. LaTourette mentioned, in a nonpartisan way. We are your agents to make sure that your votes are recorded and reported accurately, and so we take that very, very seriously. Our staff is excellent. I must say that in all candor. We take our job very, very seriously, and politics really doesn't come into play even in any part of our work for you.

Ms. MILLER. I wanted to take a second just to walk you through one of the things that I wanted to do, and I pledge to you the openness of the Office of the Clerk. Taking it seriously is one thing, but executing that and giving you the kind of information and support you need for your work we will do. And I hope we have tried to demonstrate that.

One of the things that we did on the night of this event, I sent an e-mail out before the House resolution was passed to all of our staff to say let us save everything you have, no matter what it is, no matter if—we didn't even try to make a determination if it was relevant or not. That didn't matter. We wanted to preserve everything that we could in order to be of help. So the documents and the data that we preserved were done immediately because of that Resolution 611.

So we were very broad. There may be duplicates. We erred on the side of preservation.

There are three offices that are basically involved, and I can go through this fairly quickly. There are three offices of the Office of the Clerk, of our nine offices, that are basically involved. The Office of the Official Reporters—voila, the ladies that are taking the stenographic work; the Office of the Legislative Computer Services; and our Legislative Operations personnel.

I took the liberty of asking the Chief of each of those offices, Joe Strickland of Official Reporters; the Legislative Computer Services' Goldey Vansant, who is accompanied by our Deputy Clerk, Ed Sorensen; and our Legislative Operations person, Frances Chiappardi, and Frances has taken the liberty of bringing a couple of her guys, Kevin and De'Andre, who were there the night in question. So if you have any questions of them, they are here and available.

So the documents that are preserved come from these three groups: From Official Reporters, the Legislative Computer Systems, and the Legislative Operations staff.

So in the Official Reporters, what you have is a transcript of the floor proceedings, all of the documents from the initial—from the transcription to the transmission and then what actually goes to GPO, the Government Printing Office.

You have the steno files that are electronic files that contain the shorthand transcription. You have the shorthand files, which are then converted to full English, and then they are saved to text files. Those text files actually get printed, so you see the paper of those text files. We have those for you.

And then we send to GPO KSLUGs. These are the technical terms about—these are the partial segments that go and are actually inserted in the Congressional Record. So periodically during the day, KSLUGs are sent to GPO for printing.

There is also—you have the audio files. These are the recordings of the floor activity through the feeds by electronic equipment and by cassette. And that is what you have from the Official Reporters.

Do you want to add anything, Russell, to that?

Mr. GORE. No. Thank you very much.

I believe that that—and those, that item, that description consists of essentially most of what are items 1 through 14 of the August 4th letter that you have been looking at.

So I think what we thought would be helpful—so the Clerk has explained the steno files, the text files, the KSLUGs, and as you will see, there is some redundancy in items 1 through 14. That is in part because even if we had five versions or five copies of it, we saved everything.

We thought it might be helpful if the members of the committee have questions regarding items 1 through 14, with that background, maybe ask us, and we could provide some further.

Ms. Miller. And Mr. Strickland is here. Joe. He is here.

If you have any questions, we would love to——

The CHAIRMAN. I would call on any member of the committee that has any inquiries to make, and at the suggestion of the Clerk——

Mr. LATOURETTE. If it is appropriate, a couple of things I do have some questions about, just what the stuff is that has been retained. But I thought it would be instructive as well, Mr. Chairman, it might help other Members as we move forward, we have a poster over here that we took from the night of the vote before all hell broke loose, that has people sitting in their chairs, and I thought it may be helpful if we put up the poster and ask the Clerk to identify what jobs the people at the dais have and what they do.

See, everybody is calm. Nothing bad is happening here.

But I think we all know the presiding officer, the speaker, Mr. McNulty.

Mr. Gore or Madam Clerk, could you identify the other people at the dais and what their jobs are?

Ms. MILLER. The display, the TCR, blocks the stenographic folks in the well. Those are the folks that are actually recording the proceedings.

And then on the rostrum, there are a number of us.

The CHAIRMAN. Would you be kind enough to stand?

Ms. MILLER. Sure.

The CHAIRMAN. I don't know if that causes problems in terms of the recording.

Ms. MILLER. Kevie is the reading clerk. And then——

Mr. LATOURETTE. What is her job?

Ms. MILLER. She actually is multifaceted. What you actually see her doing is getting up and reading a bill, if there is an amendment or a bill is being introduced. But what Kevie and Kevin, who is also a reading clerk, what they are very expert at is knowing and anticipating your floor actions so they can—if there is a—some kind of motion that is coming up, they anticipate that to make sure that they are prepared, anticipating the presiding officer and what the Parliamentarian may suggest.

Mr. LATOURETTE. During the course of the vote, it is my understanding, and I want you to tell us, but that the reading clerk is involved in changes; is that correct?

Ms. MILLER. Yes. Kevie will announce—the reading clerk will announce, for instance, if a Member decides to change a vote off "aye" for "no" for a Member, or, Mr. Delahunt votes aye. And so especially when the Members come to the well, this is a—this is an interesting operation of what happens in the well.

The CHAIRMAN. If I could interrupt.

Is that the customary seat for the reading clerk?

Ms. MILLER. Yes. That is the customary seat for the reading clerk.

The other person that is really key—there are two other people that are really key: the seated tally clerk, who happens to be De'Andre here, and the standing tally clerk.

When Members are voting, when they come to the well, that standing tally clerk then takes the Member, writes their name on the card, hands it to the tally clerk, who notes it, puts the district on there, the roll call number of that vote, that particular vote, and they hand that well card to the sitting tally clerk. The seated tally clerk is at the computer, at the EVS system itself, and as Members vote their well cards, that gets entered into the computer.

Mr. LATOURETTE. And there is nobody standing, but my understanding on August the 2nd, Kevin Hanrahan was the tally clerk, and I think he is sitting at the moment because we are not doing a vote. So he takes the well cards and hands them up to De'Andre, and what does De'Andre do during a vote?

Ms. MILLER. Well, when he hands the card to them, De'Andre then enters the Member's vote into the EVS system. So there are fluctuations because he is entering those well card votes into the system as the vote is going.

Mr. LATOURETTE. Does he, as the seated tally clerk, turn the machine off and on? How does it even go on?

Ms. MILLER. He controls it, yes.

Mr. LATOURETTE. Is there anybody else at the dais in this photograph that is involved in the actual taking of a 15- or a 5-minute vote from your office?

Ms. MILLER. The taking of?

Ms. CHIAPPARDI. No. The tally clerk records the——

Ms. MILLER. She records.

Mr. LATOURETTE. And the woman in yellow is—not Kevie. The other woman in yellow.

Ms. MILLER. That is Gay.

Mr. LATOURETTE. What does she do?

Ms. MILLER. She works for the Parliamentarian. She is the timekeeper. She is the person that says to the presiding officer, you have this much time left on a vote, or, you need to recognize—she is kind of the eyes and ears of the presiding officer.

Mr. LATOURETTE. On the other side of Mr. McNulty, just for the record purposes, that is the Parliamentarian?

Ms. MILLER. Yes.

The CHAIRMAN. Will the Chairman yield for a moment?

The function of the standing clerk or the standing tally clerk is to receive from the Members——

Ms. MILLER. From the well.

The CHAIRMAN [continuing]. From the well the voting—the voting card, if you will.

Ms. MILLER. Yes.

The CHAIRMAN. And that standing tally clerk then turns around and submits it to the sitting tally clerk.

Ms. MILLER. Yes. After—usually that tally clerk will then note on there the roll call vote that is in process that he is voting on—he or she is voting on.

The CHAIRMAN. But the only function, if you will, of the standing tally clerk is to receive it from the Member and to turn around and physically hand it to the sitting tally clerk.

Ms. MILLER. And at the end of the vote, the presiding officer indicates that the vote is finished, that standing tally clerk will then write out the tally.

The CHAIRMAN. That——

Ms. MILLER. Based on what they have in the machine.

The CHAIRMAN. Standing or sitting?

Ms. MILLER. Standing. And then will give it to the Parliamentarian, who will then give it to the presiding officer.

Mr. LATOURETTE. Thank you very much.

I don't have any questions on the picture. I do have a couple of quick questions about the letter, and I appreciate the Chair's indulgence.

The WAV files that you have identified you obtained, and my understanding is those are audio files that are maintained by the Office of the Official Reporter, and they may have conversations with you, Mr. Gore. They may or may not—they may contain more audio than went to C-SPAN or less.

Have you retained those in a way that there is a cassette that each member in this committee could have to listen to those WAV files? Have you put the 45 minutes together?

Mr. GORE. We have not yet put anything together in the way you have described. Part of what we have done with the evidence is it has been stored. We haven't done anything with it so that once the committee decided what they wanted we would then, with the committee's approval, make copies. It hasn't been done.

If I could just clarify—the way—after you and I spoke, we went back and we looked into this, and the way we understand it is that the microphones on the floor, while they are all the same microphones, they actually have several different lines that go into them. So, for instance, the video and the audio, the video control is one line that is controlled by I believe it is the Office of the Chief Administrative Officer, whereas the WAV files that you are referring to, those come from a different line in the same microphones.

The person who turns them on and turns them off, for instance, when the person gets up to speak at the podium, may turn them on slightly before or slightly after because it is a different person. So, to the extent they may contain more information, it would be based on something of that nature.

Mr. LATOURETTE. That is what I understood.

Mr. CHAIRMAN, I would just ask in that regard that we all have a copy of the videotape of that night just so I can get myself ready, and I would think the other Members might want to do that, too. If we could ask the Clerk's Office—if you want unanimous consent or whatever—to see if we can't ask the official recorder to put together these audio files for the time in question on either side of when the vote started, when the vote ended, and then we can determine if they had more or less information that may be available on the videotape.

The CHAIRMAN. Yeah. I would at this point take Mr. LaTourette's request as a unanimous consent request, and there is no objection, and I would request the office to——

Mr. PENCE. If the gentleman will yield on this point, I would like to follow up.

Very quickly on these WAV files, where are these recorded from? We understand that there is one audio track with—that is preserved. That was the audio track of what was broadcast?

Ms. MILLER. Right.

Mr. PENCE. I have asked Lorraine, is it your understanding that with regard to video/audio tracks, the only audio tracks that have been preserved is the audio track of the video file that was broadcast; is that your understanding?

Ms. MILLER. That is my understanding, but I need to—I believe that is the case. Yes. We will double check, but——

Mr. PENCE. That was represented to us in some informal conversations down in the, for lack of a better term, the control room for the video operations.

To Mr. LaTourette's point, because I will have a few of my own questions on my own time, but to follow up on Mr. LaTourette, these WAV files represent different audio tracks, and my question is what microphones are you referring to the WAV files being collected from? Are these the floor microphones? Are they microphones on the dais itself?

Ms. MILLER. Let us defer to Joe. Joe Strickland is our Chief of Official Reporters.

Mr. STRICKLAND. Mr. Pence, the steno machines that our reporters use on the floor actually have built into them a digital recording device, and there is a line run right into the steno machine. And that feed that going directly into the reporter's machine is coming from the microphones that are on the floor controlled by—as Russ was saying, controlled by the LCS folks upstairs turning them on and off when they are needed.

There is no ambient mic like this sitting on a table someplace. There is no open room mic. This is a means—and she is doing it right now. It is a means for the reporter to have better hearing. It is difficult to hear on the floor.

Mr. PENCE. Let me ask—and this may be subject to the technical hearing later with some of the technical people—just from your impression, is what the stenographer is hearing, is that different than what the Members are hearing or someone watching on television might be hearing, or do you think there is——

Mr. STRICKLAND. Only to the extent—it is the same microphone. Only to the extent that our feed may be turned on and turned off at a different time than the feed that C-SPAN may turn on. But it is the same microphone.

Mr. LATOURETTE. I just have two more questions.

In your letter to us with the list of 21 things, you identify 7 employees of the office that you have mentioned who you asked that their e-mails be retained. And my question, in a response after our meeting, Mr. Gore, you said nobody wants to read anybody's e-mails, but you indicate that some of these e-mails, they contain privileged communications. I am wondering what would the privileged communication be? I get what personal stuff is, but what would be a privileged communication?

Mr. GORE. Well, for instance, on communications that I, as the counsel, may have had with the Clerk. Additionally I also—my e-mails would contain—I have a dual role from having previously worked in the Office of House Employment Counsel, where we represent individual offices, and there are communications in those e-mails that would be attorney-client privilege.

That is largely what I was referring to without—of course, we haven't looked at these e-mails so that it is conceivable there could be some other privilege that would apply, but that is the one I was referring to.

Mr. LATOURETTE. My question is could you perceive any privileged communications dealing with the circumstances of this roll call 814?

Mr. GORE. I can't.

Mr. LATOURETTE. Last question I have, Mr. Chairman, on these 21 things, and you described the tally sheet before, Madam Clerk, I don't see a tally sheet that was retained from that evening; is that right?

Ms. MILLER. There wasn't a tally sheet. No. There wasn't one.

Mr. LATOURETTE. Just so I am clear, the standing tally clerk never prepared a tally sheet for this vote?

Ms. MILLER. No, because we were still voting, and there were votes going on in the well.

Mr. LATOURETTE. I got that. But first of all, my question is did you retain a tally sheet? The answer is no. And the second question is was there ever a tally sheet?

Ms. MILLER. No.

Mr. LATOURETTE. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. DAVIS.

Mr. DAVIS. Thank you, Mr. Chairman.

Let me pick up on the very last question Mr. LaTourette asked, and let me try to make sure that I understand.

Exactly what is a tally sheet?

Ms. MILLER. A tally sheet is the sheet that the tally clerk with the votes would actually give to the Parliamentarian to give to the presiding officer to announce the vote. And that is based on—it is a combination of all of the votes from the well, from our voting stations, and that is what we—that is what we announce. And that always is the same that we have in the computer in our EVS system.

Mr. DAVIS. What triggers the writings—the tally sheet is handwritten?

Ms. MILLER. Yes.

Mr. DAVIS. What event triggers—first of all, what individual; is it the tally clerk who literally writes in the information on the——

Ms. MILLER. No. The tally clerk writes it.

The CHAIRMAN. The standing or the sitting?

Ms. MILLER. The standing one.

Mr. DAVIS. What event literally triggers the tally clerk to fill in the final tally sheet?

Ms. MILLER. The presiding officer has a litany of things they may say: Is there a Member who wishes to vote? Is there a Member in the Chamber who wishes to change a vote?

Based on those kind of declarations by the presiding Chair, that is the way we proceed to end the vote.

Mr. DAVIS. So let me, I guess, state it this way and see if you agree with this.

The standing tally clerk prepares the sheet when he or she believes that the vote is about to be called; is that correct?

Ms. MILLER. Yes.

Mr. DAVIS. And the tally clerk would not prepare a tally sheet in the normal course of business if he or she did not believe that a vote was about to be called?

Ms. MILLER. Absolutely.

Frances, is that——

Ms. CHIAPPARDI. Yes. Normally the tally clerk will—I do this.

The CHAIRMAN. Could you identify yourself?

Ms. CHIAPPARDI. I am Frances Chiappardi. I am the Chief of Legislative Operations.

Normally what we do is when the Chair asks if there are any changes, that signals to the tally clerk that the time actually is usually at zero, and that they are going to start to close the vote. And so what we do is as soon as he said, Are there any changes, the tally clerk will—if no one is down in the well, will turn—will close the vote stations.

Mr. DAVIS. Let me stop you at that point.

Is it the discretion of the tally clerk to decide whether or not to close the vote stations as you understand the way that the job works day in and day out?

Ms. CHIAPPARDI. Yes, it is. Well, the tally clerk closes only when the Chair says, Does anyone wish to change their vote, and there are Members that are not coming down into the well or into the Chamber. A lot of times people will yell, "One more, one more," and so the tally clerks will leave the electronic stations open.

Mr. DAVIS. I will yield.

Mr. PENCE. If the gentleman would yield, I would simply ask the Chair if the gentleman from Alabama's inquiry, while certainly being asked of the committee, but to ask our current witness what the discretion of the position is more relative to the practice. It may be useful for us to focus these witnesses on what the practice is. We will be hearing shortly from witnesses about what the tradition of the institution is.

Mr. DAVIS. Sure, and I certainly will take that correction.

Reclaiming my time. I am trying to—I don't know that we will hear from you ladies and gentlemen again. I want to make sure that I know what the job is, what the job description is of these individuals.

Ms. MILLER. And we do invite the committee, this is a very interesting process, and to understand how the EVS system works, we would be delighted.

For months I have been sitting out there on the floor observing it. Having worked around here a number of years is one thing, but to actually know how that—how the voting system works is fascinating and something that we invite you to investigate.

The CHAIRMAN. It is my intention to take a view, if you would, and, you know, accommodate Members' schedules as well as the floor schedule, just simply to walk down on the floor and have the appropriate personnel explain to us in very tangible terms what happens.

Mr. DAVIS. Let me go back to my questions about the tally clerk again.

The absence of a tally sheet, it infers what; or what do you imply, Ms. Miller, from the absence of a tally sheet?

Ms. MILLER. The vote is still open. We have not closed the vote if we don't have a tally sheet.

The presiding officer—we look for the particular ups and the particular downs. If there is no activity in the system where Members are coming in to vote one way or the other, and it is stagnant and stable based on the presiding officer's instructions of what he says while he is presiding, that is what we—that triggers our actions.

Mr. DAVIS. Just to clarify. Mr. LaTourette points out there is not and has not been a tally sheet in connection with the disputed August 2nd vote.

Ms. MILLER. No.

Mr. DAVIS. Never was a tally sheet?

Ms. MILLER. No.

Mr. DAVIS. Let me shift to the board itself, which is what Members are able to see when we are in the Chamber.

I understand we are not getting to the factual issue, but I want to clarify the procedure.

When "final" flashes across the board, when the word "final" flashes across the board, and there is a number, what event triggers the display of the word "final"?

Ms. MILLER. When "final" flashes across the board, that means that we are in the process of closing down the voting stations, okay.

So on the floor—there are 46 voting stations on the floor that are available for Members to vote. And so "final" means that we are closing down the voting stations and then the—we are moving to a final process of closing out that vote. But that doesn't mean, necessarily, that the vote is closed.

Mr. DAVIS. So the word "final" could appear on the board without a vote being closed?

Ms. MILLER. Yes.

Mr. DAVIS. What member of the staff makes the determination as to when "final" would be displayed?

Ms. MILLER. Well, again, everything is triggered by the presiding officer and what that presiding officer says when they are in the Chair, which triggers our reaction to go to step 2, step 3 or step 4 in order to close the vote.

So the voting stations may be open, but Members come to the well or—the voting stations may be closed, but Members still come to the well even with "final" up there. So it depends on what the instructions we get from the presiding officer.

Mr. DAVIS. So the display of the word "final" itself does not have any determinative consequence?

Ms. MILLER. No.

Mr. DAVIS. Okay.

Ms. CHIAPPARDI. That is correct.

What normally happens when the final—the tally clerk is in the process of closing the vote down, and the Chair is saying—you know, the tally clerk is listening to the Chair, and apparently the Chair probably was in the process of saying, "The motion is agreed to, and without objection," and while they are saying that, the tally clerk has a screen which they are—there is a button that they click. You go to terminate vote, set time to final, and release the boards and the summary boards.

Mr. DAVIS. And who literally does that.

Ms. CHIAPPARDI. The tally clerk.

Ms. MILLER. The seated tally clerk.

Ms. CHIAPPARDI. The seated tally clerk.

The CHAIRMAN. Will the gentleman yield for a moment?

Why the necessity for displaying "final" when, in fact, it is not final? I mean, is there—does it just pop up?

Ms. MILLER. Well, it is——

The CHAIRMAN. But it is the tally clerk that triggers the display that——

Ms. MILLER. For us it is a signal that we are going—this is ending the vote for us technically. And that has been traditionally the way the system has been set up. And so we are—it actually signals that we are on the road to a final vote and closing it out.

Mr. DAVIS. Let me try to shift gears to another aspect of the physical evidence. Those of us who are on the floor obviously can look at the well, and we can observe whether there is activity, whether there appears to be people picking up cards to change their votes.

Tell me which of these items would be the visual preservation that night of people being in the well around the vote cards. Are there any items that would capture that moment for our review?

Ms. MILLER. We do have a DVD that captures that, and then one of the things that we did, we preserved the well cards. So we have the original well cards that the Members cast their votes on.

Mr. DAVIS. And this is my last question before I yield. If you can look at the list of 21 items, let me direct you to number 19. And I am—I am uncertain what it means. That is why I ask about it. It says, 18 well card votes including 2 that were not processed from Majority Leader Hoyer, which was a duplicate of Minority Leader Boehner.

What does that mean?

Ms. MILLER. Well, Mr. Hoyer, as I understand it, decided that he wanted to vote no and had already voted no. And so it was a duplicate.

Mr. Boehner was going to vote no because I believe he wanted to reconsider.

Mr. DAVIS. And a motion to reconsider, just so we are clear on the rules, that has to be made by a Member who is on the noncarrying side. I am sorry, on the carrying side. The motion to reconsider comes from a person on the carrying side.

Ms. MILLER. So we save those.

The CHAIRMAN. Mr. Pence.

Mr. PENCE. Thank you.

I want to thank the Clerk for your service. I know I speak for everyone on the panel. We appreciate the dignity and integrity with which you operate your office every day and your staff.

Ms. MILLER. Thank you.

Mr. PENCE. Let me ask, with regard to your testimony today, you said you alerted your staff to, quote, 'Save everything you have,' and that was, quote, 'done immediately.'

I wasn't entirely clear on what precipitated your request to preserve documents and e-mails. Was it the events of August 2nd, or was it the passage of the resolution to form this select committee on August 3rd?

Ms. MILLER. Actually I sent the e-mail before the passage of the Resolution 611 simply because I wanted us, irregardless of what—we had no idea that the select committee was coming up, but I wanted us, as an office, to know what happened. And so that is why I initially—I wanted to make sure we had everything that we could, possibly could, to make sure we knew what happened.

Mr. PENCE. Let me—there has been some talk of this—the standing tally clerk, the seated tally clerk and this business of tally sheets.

There were—with the Chairman's indulgence, and I would stipulate that we haven't established this time line yet, but in looking at a video that every member of the committee has viewed, in a 2-minute period of time, the vote was actually called twice by the Chair at 214 and 214, one of which may have simply been inadvertent.

My question to you is you said this morning there were no tally sheets. Were there no tally sheets relative to either call, to your knowledge?

Ms. MILLER. No.

Mr. PENCE. During that 2-minute——

Ms. MILLER. No. No tally sheets. No.

Mr. DAVIS. Will the gentleman yield for clarification?

Mr. PENCE. I would be happy to.

Mr. DAVIS. And I think this is probably inadvertent phrasing on the part of my friend, the Ranking Member, but obviously we are not here to put into evidence or to make any representations regarding the events, the factual disputes that night. I simply wanted to clarify the ranking member's observations about there being two instances where the vote was called that was possibly a point of dispute, if I am not correct, Mr. Pence.

Mr. PENCE. Reclaiming my time. It is possibly a point of dispute, and I concede the point. I am not interested at this point in beginning the factual debate, but only to clarify whether or not there was—at any point in the relevant time of vote calling—there was no tally sheet.

Ms. MILLER. There was no tally sheet.

Mr. PENCE. No tally sheet to this final?

Mr. HANRAHAN. No. No tally sheet.

Ms. MILLER. No.

Mr. PENCE. If the record can reflect that.

Ms. MILLER. Kevin Hanrahan was the standing tally clerk on the evening in question, and De'Andre was the seated tally clerk.

Mr. PENCE. And he testified from the gallery here that there was no tally sheet anytime.

Ms. MILLER. Yes.

Mr. PENCE. Let me get on to what interests me as much, if not more, and that is this business of electronic voting and the electronic voting system.

I am wondering very much when I, as a Member, go to the floor and vote, when I vote by a card, there is the light by my name on the wall, and as I watch it, the light board that flanks the Chamber changes almost instantaneously.

Ms. MILLER. Yes.

Mr. PENCE. When I turn a card in to the standing clerk, there is a time lag where I presume someone in your organization is entering that data that appears on the wall?

Ms. MILLER. Yes.

Mr. PENCE. Can you describe the differences? Is there a human discretion in the electronic voting system between when a Member votes and when it is displayed on either of the light boards in the

Chamber? And what is the role of the inputting in the electronic voting system at the dais?

Ms. MILLER. When a Member goes to the voting station and inserts his card, presses this vote choice, that is an instantaneous mechanical recording of what that Member votes. Instantaneously. You stick the card in the receptacle; you vote aye, nay, or present; it is instantly displayed.

The difference in the well card voting is that that Member's name and the actual vote, all of that has to be reported. That takes a few seconds, and that is where the delay comes in.

Then the system——

The CHAIRMAN. Will the gentleman yield for a moment?

It has to be typed in?

Ms. MILLER. He has a keyboard. He has an actual keyboard.

Mr. PENCE. And who precisely does that in the picture?

Ms. MILLER. De'Andre here, who is our seated—the seated tally clerk. Before him, right below him is a computer. It is a computer, and he sits there and he types it in. He goes to different kinds of programs to find Mr. Pence, and then types in "Pence" and your vote, and then that gets recorded on the display.

Mr. PENCE. And as we proceed we will explore the rules of the House, Mr. Chairman, but I find the rules of the House bereft of any reference to electronic voting, to my knowledge. And it seems that what you are suggesting is there is human involvement, the Clerk's Office is involved when paper ballots are submitted, but there is no human involvement in the electronic voting system; is that——

Ms. MILLER. No. Technically correct, but it is not something of a discretion of—the seated tally clerk is not sitting there saying, oh, well, I am going to delay putting this in.

Our object here is to expeditiously enter a Member's vote and get it displayed as quickly as they can, and then it gets shown on display boards.

Mr. PENCE. Now, as I said in my opening statement, this was—this is a conflict in some respects between parties and men in the Chair and the machine. It is much more complex than that. But I am very interested in one more question, and it—the gentleman from Alabama explored this effectively, but I would like to hear it again.

The term "final" or—and I am not sure I know whether it says "time final" or "final"—that appears on the rectangular light board in the Chamber.

Ms. MILLER. Yes. On the sides.

Mr. PENCE. Can you say who activates that? I mean, many of us have been on the floor for very long votes, and the term "time final" never appeared on the board. Is it a striking of the gavel that initiates that? Is it the paper process of the tally clerks? Is it the tolling of a certain period of time?

I am just—given the importance of that term that appeared that night, I think we all might agree of the inflammatory nature of that term appeared, who pushes that button?

Ms. CHIAPPARDI. The tally clerk.

Ms. MILLER. The tally clerk. The seated tally clerk.

Mr. GORE. It is important to understand that, and when the committee sees the voting process, there is a menu screen that the tally clerk has which has a number of different steps, and actually there are five steps to go through. They are not procedural. They are technical steps to do—set the vote to final. And setting to final, which I believe actually the screen says, is, I think, step 3 in the process. But the vote is not closed at that point. That is just the third step in the process.

So I just want to make sure that the committee understands that this is part of the several steps, and the tally clerk doesn't say, Okay, I am now going to determine that the vote is final. The tally clerk does that in part of the process, and, of course, the tally clerk can explain this in more detail when the tally sheet is being completed and the vote is being called.

The CHAIRMAN. Would the gentleman yield?

Mr. PENCE. I would be pleased to yield.

The CHAIRMAN. During the course of voting, unless I am just oblivious, there have been multiple occasions where on the display on the side I have seldom noted the word "final" being displayed. I mean, that would appear to vary. Why on some occasions is "final" displayed and would appear, and on the vast majority of cases it is not displayed?

Ms. CHIAPPARDI. What happens—it is normally because another Member comes into the Chamber, and the Chair affords that Member the opportunity to vote.

The tally clerk is in the process of closing the vote down because the Chair has read 214 to 199, and the bill is passed and without objection. And then someone will ultimately come in the Chamber, and the tally clerk at that time would click the button, terminate vote, set time to final, release the summary reports. And in that process, it is supposed to go like this: The Chair will say, Stop, and while they are in that process, there is no way you can take that click back because they were going through to shut the vote down. And so they are stopped by, "One more, one more," and affording a Member the opportunity to vote.

And so sometimes it will say "time final," though it is—you know, the time has run out, the vote is not closed.

Mr. DAVIS. Will the gentleman yield?

Mr. PENCE. Reclaiming my time, I would be pleased to yield to Mr. LaTourette.

Mr. LATOURETTE. Having been in the chair for 12 years, in my experience it is always the same five people who come into the Chamber and yell, "One more, one more."

The CHAIRMAN. They will not be named.

Mr. DAVIS. I will be extremely brief.

I want to make sure I understand exactly the last point that was made. My understanding, and this is from recollection of sitting in the Chamber, rarely does "time final" appear on the board. Is there an agreement about that, that it is a fairly rare event for "time final" to be displayed in the normal course of amendments and motions?

Mr. GORE. I believe. And I understand the confusion, I believe that, and we will clarify this, but it is always displayed, but it is

usually that the five-step process is so quick that it is instantaneous.

Ms. CHIAPPARDI. Right. You don't see it. And the tally clerk—some of the tally clerks actually wait until the Chair gavels down the vote and then clicks through those four or five steps just simultaneously.

Mr. DAVIS. You say some of them do. What is the other practice?

Ms. CHIAPPARDI. Sometimes when we have a new tally clerk, someone who is, you know, fairly new, they are not—they are not as fast; they are a little slow.

Mr. PENCE. Reclaiming my time.

Yield to Mr. Hulshof.

Mr. HULSHOF. This five-step process, I recall obviously hundreds and hundreds of occasions with which we vote, and being in the Chair is the last step. Where is the last, the point of no return? Because it is my recollection that as Members, even tardy Members, once the display boards go dark, you cannot retrieve that. Is that the last click of the button, if you will, that—the point of no return that you cannot retrieve that?

Mr. GORE. That is the fifth step. It is confirm and release of the display boards, I believe, is the fifth step.

Ms. MILLER. And then they are gone.

Mr. HULSHOF. But on any of the previous steps, the tally clerk could actually go back and redo or retrace those steps if, and as you talked about, the Chair is indulgent with those tardy Members. It is just that last or final step that once—I mean, that is truly the final because you cannot retrieve or bring back up that electronic board. But you can—up until that point, you can go back, and so even if—and you are correct, and my recollection is that often that word "final" is just briefly appearing, but it is part of the process.

Thank you, Mr. Pence.

Mr. PENCE. Reclaiming my time.

I would just again thank the Clerk and her team for their testimony today. It has been very illuminating.

I do find myself, Mr. Chairman, thinking your thought about a walk-through would be helpful, if not——

The CHAIRMAN. Critical.

Mr. PENCE. At some point as I tried to look at the process here, and I think about what has been collected and the cards—you know, whether or not a reenactment at some point would be helpful.

Ms. MILLER. Sure.

The CHAIRMAN. A Civil War reenactment.

Mr. PENCE. Let me ask one further question.

Mr. LATOURETTE. One other thing just for the Members that just struck me when you talked about a reenactment. I didn't know this until I talked to Mr. Gore, but they can actually give you a computer printout of where everybody voted that night, what time you voted, if you stuck your card back in to confirm your vote, and we actually can reconstruct this vote and where people voted based upon that, and I think we may want to get there.

Ms. Miller. Thank you. I was about to say that, because we do—a lot of times we have Members that will repeatedly stick their card into the voting stations just to check the vote, and we can tell

you which voting station they stuck that card in and what time they did.

Mr. DAVIS. We can tell you which Members, too, by the way.

The CHAIRMAN. Even when they check their vote.

Ms. MILLER. Yes.

Mr. PENCE. Reclaiming my time.

I would alert Members, Mr. Chairman, I think in the September 20th communication from your office, I think the Member-by-Member voting station or information was sent to the committee, and I might offer it for the record, submit it for the record.

The CHAIRMAN. Without objection.

Mr. PENCE. Lastly, the whole subject of these, the documents that you have collected immediately, and I do find myself wanting to commend you for not waiting on Congress to inquire into the event that occurred on August 2nd. I commend you for taking strong leadership in your office to ascertain what occurred on an administrative level and preserving documents.

Where are the 18 well cards, all of that which is described in the——

Ms. MILLER. They are locked in our Legislative Operations Office under lock and key.

Ms. CHIAPPARDI. I have them.

Ms. MILLER. Yes. They are locked up. Everything—everything we have has been locked and secured because we just wanted to make sure, until we received instructions from the committee on how you wanted to use them, we haven't tampered with them or anything. We have locked them up.

Mr. PENCE. That concludes my questions. I thank the Clerk and her team, Mr. Chairman. And I yield back.

The CHAIRMAN. Stephanie.

Ms. HERSETH SANDLIN. Yes.

Thank you for your testimony and responses to the questions my colleagues have proposed.

We have explored quite a bit here in terms of the broader practice of what each member of your office and the roles that they perform, and, of course, there is a tendency to kind of want to get at the specific events and procedures as to how they relate to the circumstances surrounding this roll call.

You had sent us a PowerPoint presentation as well. Do you have published updated documents or other materials for each office within your office? You mentioned sometimes, you know, the things get entered more slowly when you have new employees, new clerks coming on. So I would like to see and perhaps make part of the record anything in your office that is printed for training materials for new people in each office that go into detail that you utilize for everyone to understand the five-step process here of closing a vote.

I mean, we appreciated how you set it out in a very concise way in the PowerPoint, but I think we should make part of the record as really official standard operating procedures from your office as to the description of each person's responsibility and how that relates to the Parliamentarian's Office, how it relates to the presiding officer.

Are you aware of those materials being available, copies, in the Parliamentarian's Office and in the Speaker's Office? Are they shared among all three offices involved here?

Ms. MILLER. I don't think so. No.

Ms. HERSETH SANDLIN. And we will certainly be taking testimony from folks, Parliamentarians, because I think what also is important isn't just the description, the understanding of each of the four people in your office as the vote is going on, but then what is—what is the understanding of the Parliamentarian specifically as it relates to these tally sheets; what is the understanding of the presiding officer?

I think we have, you know, some published materials here that help provide guidance, but whether or not everyone is on the same page as to what is standard operating procedure, I think, is the area we continue to need to explore here, and we are laying the foundation today. So if we could get those materials that are available. So I think that is, you know, more of the specific things were explored already, but I did want to make sure that I posed the question of what is available in written format for new people in your office, and how they are being trained, and what describes their responsibilities on the House floor during the vote.

Okay. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Steve.

Mr. LATOURETTE. I just have one clean-up that is again involving Mr. Gore and you, Madam Clerk. You have identified the people that might make good fact witnesses relative to the events of August the 2nd, and in that picture you have identified for us Mary Kevin Niland, who is the reading clerk on that particular evening; and De'Andre, who is the seated tally clerk; Kevin, who is the standing, even though he is not standing in the picture; and you also indicated Ed Sorensen, who is the Deputy Clerk.

Is there anybody else from your operation that you think would be useful for this committee to hear from relative to the facts and circumstances in the operation of the vote on August 2nd, or is that it?

Ms. MILLER. No, sir. Those are the folks that are most directly hands-on folks that you really would benefit from hearing from.

Mr. LATOURETTE. Thank you very much.

Last thing, Mr. Chairman, I would say is that Congressman Davis had a great idea, in my opinion, during some of our discussions, and that is that we might want to, as we collect fact witnesses, send a letter out to the membership of the House under our signatures saying any Member—so they feel included—any Member that has something to say about what you saw, or you think you have information that would help this committee reach its conclusions—I think you guys did that in the Medicaid Part D vote. As I remember you sent out a letter, and I thought Congressman Davis says he always does that, and that is an excellent suggestion, and I would ask unanimous consent, if that is the appropriate thing, to have the committee do that.

The CHAIRMAN. I think that is an excellent suggestion, and I would request that yourself and Mr. Davis draft that letter.

Mr. DAVIS. I thought we might be volunteering ourselves.

The CHAIRMAN. I think that is an excellent suggestion.

Let me note that I found this very informative, illuminating, and the Clerk's Office might want to consider having a similar on-the-floor exposition of the process itself for the membership, because, again, I can assure you that many Members are ignorant of how this process works. And I know that I have a number of subsequent questions for further clarification that I am not going to pose at this point in time, but I think most Members would be candid and acknowledge that they are ignorant of this system, and it could be very, very informative. So I offer that as a suggestion.

Ms. MILLER. Yes, sir. And Mr. Blumenauer has sent the—sent us a letter signed by several Members wanting just such a demonstration. But I agree with you. I sit out there sometimes and just having casual conversations with Members about what is going on in the rostrum, and you would be surprised at how much they don't know.

The CHAIRMAN. Ms. Miller, I would not be surprised.

Ms. MILLER. But we have—but I do want to say one thing. I believe emphatically that our system is sound. Our EVS system is a very good sound system. It has been upgraded over the years. We have invested quite a bit so that we can accurately—you can actually take those votes, we can tally those votes, and we can assure you that our system is very good. And we have a great crew of people who maintain it.

The CHAIRMAN. I have no doubt about the quality of the personnel.

I think it would be helpful to the committee if you could provide the committee with the dates of those upgrades and what the enhancements amounted to in terms of the efficiency and the effectiveness of the system.

Ms. MILLER. We will.

The CHAIRMAN. Any further questions?

Well, the Chair thanks the panel. As I indicated, Ms. Miller, Mr. Gore, you have been very helpful. I want to thank my colleagues on the panel for their work in this matter, and I particularly again want to thank Mike and Judy from CRS, because we would not have—we wouldn't have been here today with a draft report and a set of rules without their guidance and assistance, and we look forward to your continued help and cooperation.

Mr. PENCE. I would just echo your sentiments about our Judy Schneider and her team at Congressional Research Service. We are without the resources at this point in the life of this select committee now organized. We would simply not have been able to meet our statutory obligations that we have met in the business portion of these hearings. So I am grateful to them, very grateful to the panel.

And, Mr. Chairman, after you get your daughter married off, I am looking very much forward to a vigorous schedule of hearings and inquiries and a resolution to this issue.

The CHAIRMAN. Thank the gentleman, and the select committee will stand in recess.

[Whereupon, at 10:58 a.m., the select committee was adjourned.]

APPENDIX

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

OFFERED BY REP. LATOURETTE

Strike "(3) " in the second sentence and insert "(4)";

Add at the end the following new section (4):

"(4) QUORUM. For the purpose of taking testimony and receiving evidence, one Member from the majority and one Member from the minority shall constitute a quorum, unless otherwise agreed to by the ranking minority member."