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VOTING IN THE HOUSE OF REPRESENTATIVES—RULES, PROCEDURES, PRECEDENTS, CUSTOMS AND PRACTICE

HEARING

BEFORE THE

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

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

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CONTENTS

	Page
I. Opening Statements:	
1. Delahunt, Hon. William, Chairman	1
2. Pence, Hon. Mike, Ranking Member	2
II. Appendix:	
Speaker's Opening Day Announcement	37
Letter of Resignation, Charlie Johnson	40

VOTING IN THE HOUSE OF REPRESENTATIVES—RULES, PROCEDURES, PRECEDENTS, CUSTOMS AND PRACTICE

THURSDAY, OCTOBER 25, 2007

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

The committee met, pursuant to call, at 8:30 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. The hearing of the select committee will come to order. The subject of this hearing today is Voting in the House of Representatives—Rules, Procedures, Precedents and Customs.

Without objection, all Members' opening statements will be made part of the record.

[The information follows:]

The CHAIRMAN. Let me begin with a brief statement. First, let me say that I think that today's hearing is an important hearing. One of the main things that I was struck by as I began delving into the substantive aspects of this inquiry, which is mentioned in the select committee's interim report and includes the duties and discretion of the offices of the House and the presiding officer related to voting and the duration of a vote, is that the rules of the House, the House standing rules, that is, that govern the conduct on an electronic vote only provide illumination on certain aspects of these subjects.

I had previously been unaware of which electronic votes are governed by precedents and customs that I daresay a few of us were aware of and understand. Clause 2(a) of Rule 20 states, and I am quoting, "Except as otherwise permitted under Clause 8 or 9 of this rule or under Clause 6 of Rule 28—or rather 18, the minimum time for our record vote, a quorum call by electronic voting, shall be 15 minutes." Clause 1 of Rule 20 states that on the tie vote, a question fails. That seems to be it.

So much of what occurs on the floor of the House is governed by precedents, customs and practice. Therefore, much of what dictates the sequence of events that comprise a floor vote is not black letter law, and it would appear that some of it is not even memorialized in writing.

So that is why today is a particularly important hearing, the purpose of which is to inform the members of the committee, and I daresay our colleagues outside of this committee, as well as the American people, of the custom and practice, precedents and influence, and in many ways, goes to the heart of this institution. And I can't think of anyone more prepared to serve as witnesses at this hearing than the two individuals who sit before us and who I will introduce momentarily.

First let me say that I am confident that the information that will emerge from this hearing will be integral in laying the foundation for the factual inquiry with which we are charged.

The subject of this hearing—institutional models—as with the subjects of the committee's previous hearing, is not within the immediate expertise of any members, and is therefore critical for us to understand in fulfilling our charge. However, I am also inquisitive as to how we may inform our other responsibility, which is the recommendation of changes to the House rules.

One of the most valuable things I think we will take away from this experience is the understanding of the most integral, innermost operations of the House of Representatives, the institution, if you will, because the greater our understanding of not only the meaning of the rules, customs and practice, but also the reason and history behind them, and our determination that their operation and purpose are generally fair and logical if we so determine, the greater our commitment to preserving their integrity.

Let me call on Mr. Pence for his opening statement.

Mr. HULSHOF. Mr. Chairman before you yield to Mr. Pence, you might want to supplement the record in that we have had a meeting of the select committee that wasn't public when we met on the floor through the walkthrough. Perhaps if you could give a brief recitation in that the press is not allowed to accompany us on the floor, that we actually saw for ourselves the process.

The CHAIRMAN. That is a very good point, Mr. Hulshof. We did, I think it was a week ago, have an opportunity to actually observe and participate in a vote. Not a real vote obviously, but a vote that was, I think, most illuminating, which ran through the various sequences that the Clerk's office and a Parliamentarian explained in some great detail. I think we all left that floor having a greater appreciation for the coordination that is required between the various individuals that conduct, if you will, the operations that make the House of Representatives function as a democratic institution.

I see the Clerk of the House, Lorraine Miller, has joined us. And I want to commend and extend our collective appreciation for that particular effort. It really was illuminating. And again, I would say I think we all left with a better appreciation of the complexity and the coordination that is required. And now Mr. Pence.

Mr. PENCE. Thank you, Chairman. Thank you for calling this third hearing. I would agree with you that what we are about in this third hearing, as we have been about in the first two is institutional knowledge. And I am grateful for the manner with which this committee has cooperated thus far and hope and trust that we will remain cordial and collegial as we move out of this background institutional knowledge phase into upcoming hearings that will be

exploring the facts and circumstances around the vote of August 2, 2007.

As you said, this is the third in a series of educational hearings about the voting process. We have heard from the Clerk. As you just mentioned, we have been on the House floor. We received a briefing on the voting process. And today our hearing, I expect, will delve deeply into the rules, procedures, precedents, customs and practices associated with voting in the House.

Our witnesses are two individuals with extraordinary experience and knowledge. And I might add extraordinary reputations for integrity in this institution. I would love to welcome them to the select committee and thank them for their long careers of service to the United States and to this institution. I will leave it to the Chair to introduce our two witnesses. But when I think about the cumulative wake of the years of experience assembled at this table, I am encouraged that we will leave this hearing better informed and with a much greater appreciation for the proper workings of the House of Representatives in the tallying of the vote than we have even up to this point.

Let me say again, I appreciate the collegial manner, particularly the chairman and my Democratic colleagues who have demonstrated to us on the Republican side we have serious business to do here, and I am grateful that we are taking it seriously. Because there are some tough questions at hand. The reality is even in this educational background phase, questions have been raised that need to be answered.

Today, I expect more questions will come to our minds as we hear from these experts. But I remain confident that we are building a good foundation of knowledge on which we will be able to draw substantive conclusions about the events of the night of August 2nd. And finding answers is really what we are here to do.

Our select committee has been tasked with two jobs, getting to the bottom of what happened on the night of August 2, 2007 during the roll call vote 814, and making recommendations to the House regarding the protection of members voting franchise and the House voting system. This is a solemn duty to investigate the irregularities of August 2nd and we approach it in that manner. The integrity of the House of Representatives is completely dependent on the integrity of the vote that takes place on the floor of the House. Every American is entitled to have a voice in the people's House and to know that their representative's vote counts. With our work today and over the past few weeks, I believe we are taking proper foundational steps to answer questions we have about that night and to develop the kind of recommendations that will ensure the fundamental integrity of this institution. Thank you, Mr. Chairman, for calling this hearing and thank our witnesses and look forward to the testimony.

The CHAIRMAN. Thank you, Mr. Pence, and let me proceed by introducing our witnesses. And as you indicated, these are individuals of great integrity and erudition. Their reputations are well known to all of us. Mark O'Sullivan received his bachelor of arts at the University of Massachusetts——

Mr. LATOURETTE. Everybody makes a mistake.

The CHAIRMAN [continuing]. In 1975. Mark is a member of the Red Sox nation. He has served the House of Representatives since 1977 in the House Post Office, Office of the Door Keeper and Office of the Clerk and Legislative Operations. In 1978, Mark was appointed assistant Tally Clerk and served in this position until 1983. From 1983 to 1987 Mr. O'Sullivan served as assistant general clerk. He returned to the position of Tally Clerk until January of 2003 when he was appointed Chief Tally Clerk, a position which he currently serves with great respect from all members of the House.

And again, alluding back to the hearing that was conducted on the floor of the House, I certainly, and I think I speak for most of the members, have now a much more fully—well, I have a much greater appreciation for the function of the Tally Clerk. In this position, he is responsible for the electronic voting system which records members' votes on the House floor and for authorizing the release of roll call votes to the Clerk's Web site and the Government Printing Office for printing in the Congressional Record. He supervises a staff of four assistant tally/floor action reporting system clerks. He has served under six House Speakers, seven House Clerks, and three House Parliamentarians.

We are also fortunate to have one of those distinguished Parliamentarians here with us today, Charlie Johnson, who received his bachelor of arts from Amherst College, also in Massachusetts, which is obviously part of the Red Sox nation, and his Juris Doctor from the University of Virginia Law School in 1963. He is admitted to practice in the bars of the District of Columbia and the United States Supreme Court. He served in the Army National Guard Army Reserve from 1963 to 1966. And the Navy JAG Reserve Commission from 1967 to 1971. He was appointed to the Office of the Parliamentarian on the House of Representatives in May of 1964. He served as assistant Parliamentarian from 1964 to 1974. From 1974 to 1994 he served as deputy Parliamentarian. He then served as Parliamentarian of the House from September 16, 1994 through May 20, 2004—40 years, 40 years to the day after his first appointment.

He has served as an adjunct professor on congressional procedure, political leadership and recent congressional history at the University of Virginia Law School, and given lectures and seminars at numerous institutions, including Catholic University Law School, Georgetown University Law School, and his alma mater, Amherst College. He has been the editor and author of numerous publications. He was the editor of House Rules Manual of the 104th 105th, 106th, 107th and 108th Congresses. He co-edited House Practice, the second edition. He is currently consulting to the Parliamentarian on writing of House precedents. He is also the co-author with Sir William McKay, recently retired clerk of the House of Commons, of an upcoming book on Parliament and Congress. And lastly, he has been a batting practice pitcher with the L.A. Dodgers and the Pittsburgh Pirates for the past 5 years. Congratulations.

Mr. DAVIS. The Atlanta Braves could use a middle reliever.

Mr. LATOURETTE. Mr. Chairman, before the witness, could I say something about Mr. Johnson. Because of part of this committee's

assignment is to serve as an educational tool for the Members, I just wanted to relay an experience that I had when I was elected in 1994. I had never been in the legislature and I got here and some of the old bulls, Ralphs, to then Speaker Gingrich, asked, 'why are they keeping the Democrats' Parliamentarian, Mr. Johnson?' And they said, well, we are in the majority now, we shouldn't be keeping the Democrats' Parliamentarian. I think your introduction of Mr. Johnson is right on the money. Over the 12 years that I had the pleasure to present from time to time, he wasn't the Democrats' Parliamentarian; he was the Parliamentarian of the House. And his counsel was why I thought and Mr. Davis thought he was such a valued witness. What he has to say about rules, practices and precedents I think is unimpeachable and he is going to be fair.

And I would also like to tip my hat to you, Mr. Chairman, and I see that you have sought counsel of one of his former assistants, Muftiah McCartin; I had the pleasure of working with her for 12 years. And I make the same statement about her and what she said about rules, practices and procedures and I believe and I trust that, so I look forward to this hearing. Thank you.

The CHAIRMAN. Thank you, Mr. LaTourette. Let me just echo that the people that are before us, the people that are sitting in this audience who are part of the operations of this House and the people that are behind us, while they might be appointed by Democrats or Republicans, I think it is important for the American people to understand that they are Institutionalists and they care about this institution. I think all of us are aware of that because in many cases, we have personal relationships with these individuals. And they carry out their duties in a nonpartisan way.

And I know that the testimony we will elicit from them will be fair and accurate and will be made in a way that hopefully will be reflected enough on the party which will enhance the confidence of the American people and the integrity of this institution. We have said that differently in different ways, all of us, but that is why we are here. I know that neither one of our witnesses have a written statement.

STATEMENTS OF CHARLES E. JOHNSON, FORMER PARLIAMENTARIAN OF THE HOUSE OF REPRESENTATIVES; AND MARK O'SULLIVAN, CHIEF TALLY CLERK OF THE HOUSE OF REPRESENTATIVES

The CHAIRMAN. So why don't we just simply go to questions first. And let me pose a question to Mr. Johnson. Charlie, in Chapter 50, Section 2 of your book entitled House Practice; A Guide to Rules, Precedents and Procedures of the House, there is this statement. Parliamentary law, a term that encompasses both formal rules and usages has come to be recognized as binding on the assembly and its Members. The formal rules, which are our standing rules, are readily available in two different House publications. The Chair's interpretation of those standing rules has been compiled. We know where we can go and get it, thanks to the dedication of the Office of the Parliamentarian over an extensive period of time, many years, to create a body of precedent that gives us some clarity and predictability in the application of the standing rules themselves.

But when it comes to the usages or customs of the House that govern procedure they are not completely captioned, if you will, in the compilation of precedents or publications setting forth the standard rules. As stated by Mr. Hinds, the Parliamentarian, in the early 1990s, these customs are the unwritten law. That is his term, unwritten law. There are quotes around "unwritten." And we hope to glean some of those usages and customs of the House today.

But before we embark on that training, can you please explain to the committee the relative importance of usage and custom. When does a custom or usage become so well established that it is elevated to be a binding procedural law? Is it as binding as a well-settled rule of the Chair, a standing rule, if you will? And would your answer be different if the Chair had occasion to opine on a usage or custom? Can you discuss the providence of custom and usage in the Morton House where the majority of Members have only been here since 1999? I myself came here in January 1997. How does the House go about changing a usage or custom? I mean, can the Chair, by deviating from a usage or custom, establish a new precedent? Or how do we go about changing usage and custom? Mr. Johnson.

Mr. JOHNSON. Thank you, Mr. Chairman. I think you started this inquiry off correctly about practice as a general proposition. Perhaps it is not totally accurate to say that all usage and custom is not written. Because just in the last few days, as I have tried to collect my thoughts in preparation for this hearing, I went back into Hinds' and Cannon's precedents beginning where you just did with our own House practice book, which has a three-page chapter on precedent.

And the first citation in that chapter, which you cited, brings you to Hinds' precedents, Volume I, the preface. Now, what are Hinds' and Cannon's precedents? They are the compilations respectively from 1789 until 1907, when Asher Hinds, during his time as then-clerk to the Speaker's table, (he didn't have the title of Parliamentarian, and then a Member of Congress, took Speaker Thomas Reed's seat from Maine in the late 1890s. But he had it within him, with whatever staff he could summon, to publish those first five volumes. And they "speak volumes." [1]

You read briefly the unwritten law commentary in his preface. But let me put this in a little more context, because custom and usage is contextual. The people who have immediate access to it are perhaps people like myself and Members and staff on both sides. I see right here today distinguished staff on both sides who have accessed and are interested in looking at precedent, at black letter rule, precedent, custom, usage, tradition. But there is more available than meets the eye. And that is part of what the House realized in 1970 by enacting the Reorganization Act of 1970. The law requires the Parliamentarian, (who, by law, is appointed by the Speaker as a nonpartisan attorney, together with all the assistant Parliamentarians as nonpartisan attorneys) to compile the procedural precedents of the House. At that time they had not been published since Clarence Cannon finished his compilation through

[1] Subsequently Clarence Cannon, who himself became a Member, published Volumes 5–8; covering the period 1907–1936.

1936. They had been completed but had not been fully published as precedent. There were citations in the House Manual and in an abbreviated book called Cannon's Procedure. And then with cryptic citations.

Just last week, you received once again your leather-bound rule books, the small print which comprises up to date citations to precedent for the most part, rulings of the presiding officers, which perhaps have a little greater standing because they are potentially subject to the will of the House through appeal.

Now, when I retired in May, on May 20th of 2004, I submitted a two-page resignation letter. That letter discussed the importance of precedent and honored the Members and staff I had been privileged to help advise. And it said that appeals from rulings had traditionally not been taken in the House because the Chair's competence and fairness has been honored as a tradition and custom. I still think that is true and it has to be true. But as you know, all six of you know, there have been a proliferation of appeals from rulings, perhaps not so much to have a vote of the House on the propriety of the Chair's ruling, which after all is all that an appeal is about, but rather from time to time to represent the issue as a vote on the underlying merits of the proposition, which I think is wrong as far as using appeals.

But let us face it, it has happened and it will continue to happen. But when those rulings are made by the Speaker, and nine out of 10 are not appealed, they are then incorporated in the House Manual every 2 years. They then go into the House Practice book. The second edition has been out since 2003. My predecessor, Bill Brown, and I put it together with our staff. But then there are traditions and customs. Let me just read this paragraph from which you quoted. "The value," and this is out of Asher Hinds' introduction, "the value of precedents in guiding the action of a legislative body has been demonstrated by the experience of the House of Representatives for too many years to justify any arguments in their favor now. We have no other means of building up parliamentary law, either in the mother country or here, said a great lawyer who was also an experienced legislator." And while the quote, unfortunately, is of a Senator, so perhaps you can minimize the precedential value, the Senator was speaking of precedent value in both Houses.

Except by instances as they arise and treatment of them and disposition of the law and of the good reasons that should govern these considerations. And the great legislator who had served a lifetime in the House of Representatives and the Senate concluded that, as you quoted from, and this is another Senator, John Sherman in the 44th Congress, concluded that, "The great body of the rules of all parliamentary bodies are unwritten law. They spring up by precedent and custom. These precedents and customs are this day the chief law of both Houses of Congress." So I think that really does properly characterize the value of precedent and practice. The question is——

The CHAIRMAN. If I can interrupt, do you agree with that statement?

Mr. JOHNSON. Yes. But I don't agree that they are not necessarily written. They are published often, not always but often in

the precedents in footnotes, in the House Practice book as parliamentarian's notes, not as dispositive precedent but as guides. And the reason they have value is because they are prepared by an office which by law and unbroken custom has the responsibility as nonpartisan attorneys of preparing them, publishing them and advising all Members based on them. That was the law in 1970. Ongoing publication.[2]

The CHAIRMAN. If I can again interrupt. But is there a discrete compilation or a compendium that is readily available to Members?

Mr. JOHNSON. It is.

The CHAIRMAN. In other words—let me rephrase it. For someone who is not particularly conversant with parliamentary procedure, and that depends on the individual member, but I dare say that there are many Members who fit that particular description, but if, on occasion, they wanted to access without going to the parliamentarian's office, how would you go about it, how would you locate the precedent on a particular issue that you were concerned about?

Mr. JOHNSON. Well, all the precedents from Hinds, Cannon, Deschler, Deschler and Brown are on-line. Plus there are 11 volumes of Hinds' and Cannon's precedents from 1789 through 1936. Then there are now 16 volumes of Deschler and Deschler-Brown. Lew Deschler was Parliamentarian for 46 years from 1928 to 1974. He hired me. And obviously being the Parliamentarian for 46 years gave him some stature. He also for most of his time was not required to permit uninhibited access to his scrapbooks and precedents as he compiled them. The law came along in 1970 and required publication and total public access, which was right. But they are in print and online. The question is how many people, number one, know they are there and know how to access them and sometimes seek help in accessing them? Which again, the parliamentarian's office is available to do for all Members on a confidential basis in an attorney-client relationship if necessary.

That is not to say Members and staff can't do their own research, and they often do. They are well advised, I think, to seek their interpretation of the results of that research from the parliamentarian's office. There are sources that clearly have expertise, both on committee staff, CRS, where help can also be obtained. A couple of days ago I started looking for a precedent in this general area of voting. Because I knew since I was here in 1964, the voting system from 1964 through 1973 was the roll call. That was how the yeas and nays were recorded; it was done on tally sheets. This is rather fascinating. Because it is the only, that I could find, printed discussion of the role of the clerks in preparing the result. It was an occasion in 1918. And this is recorded in Cannon's Volume VIII, Section 3162.

This is in print. This is usage, but it is also precedent because the Chair was called upon to rule on an occasion when a conference report was announced as defeated 149 to 150. The next day it became apparent that the clerk's tally was wrong by one vote and that the correct vote was 150 to 149, adopting the conference report, clearly a decisive change. So the issue came up about chang-

[2] Where they are not written, they are based on trust in the Parliamentarian's advice articulated by that office or through the Chair.

ing the Journal and, in effect, approving the conference report, which the day prior, the Speaker declared to have been rejected. Cannon wrote that, "where an error of the clerk in reporting the yeas and nays, the Speaker announces a result, whereby an error of the clerk, the Speaker announces a result different from that shown by the roll, the status of the question must be determined by the vote as actually recorded." And then the House on motion amended the Journal of the prior day's proceeding.

But let me just read a paragraph. This touches in a general way on where the committee, I believe, is headed. The Chair, and this is Speaker Champ Clark of Missouri, a distinguished Speaker of the House in 1918. The Chair, with the consent of the House, would like to make a few remarks about this matter. These are "remarks." This is not a ruling precisely. Because the House did not challenge the amendment of the Journal, because everyone knew that the revised tally sheet was a correct one, the Speaker felt it necessary to make this comment. This is the first time for a long while that this has been done. And perhaps not a dozen men in the House ever saw the thing done before. But this is not unprecedented.

Now, the way the Chair arrives at a yea and nay vote in the House is by these tally clerks handing up the figures. Of course, the Chair cannot go down there and count the votes. And would not know how to do it if he did go down there. They have some system of their own whereby when they get through with the roll, they know the number of the yeas and nays and those present. And then these clerks at the desk take the tally sheet out and go over it, one of them a Democrat, and one of them a Republican. And I never heard of anybody that disputed the integrity of either.

So there is a description which captures until 1973, 184 years of practice that two tally clerks process the roll call vote. Whether they are patronage, one Democrat and one Republican, I don't think is particularly relevant. The important thing is that the role of the tally clerks has traditionally been nonpartisan as Speaker Champ Clark has said, which commanded both, a usage or a custom of the House. When the House went to electronic voting in 1973, that role was never perceived to be changed, the role of the Tally Clerk in compiling the result was not considered to be sufficiently different to require a black letter rule on what the ongoing role of the tally clerks was to be. The assumption, was that traditional and custom was always, as Speaker Clark said, to be controlling. Yes, sometimes errors occurred, but the Chair was never guided by anything other than the proper role of clerks. That was the custom and remains so, I believe.

Since electronic voting, and I saw it come in, it came in gradually. The first one or two years[3] of getting away from the yeas and nays, which took 45 minutes, a system called recorded tellers was used. It is still a fallback procedure in the rules, whereby the yeas went up the left aisle and nays went up the right aisle and the clerks separately read or give them ballot cards tallied with two separate sheets the result. That was when the House began to allow recorded voting in the Committee of the Whole, number one,

[3] 1971–1972

which was a major reform in 1970 in the Legislative Reorganization Act.

Until then, amendments were not roll called in the Committee of the Whole. And so defeated amendments were not a matter of record since they were not reported to the House. And so the House, in its wisdom, decided to allow recorded votes in the Committee of the Whole. They did not have electronic voting, but they knew that the call of the yeas and nays was going to take a long time on amendments in the Committee on the Whole, especially back when there were open rules and you had a number of amendments and amendments to amendments voted on in real-time.

So they come up with this temporary system, all the while having a contract to find an electronic voting system that worked. But in those few years, the tallies were kept separately up each aisle and then the numbers were reported by the Members who had been appointed tellers by the Speaker or the Chairman of the Committee of the Whole and announced separately the yeas and the nays. The names were printed in the Record and the Journal, but once electronic voting was used, the tally clerks again at the rostrum were expected and invariably prepared that final result on a tally slip.

I assume that, in your walkthrough the other day you saw that process in action. The tally clerk's role is indispensable. You saw the preparation of that tally sheet deriving from the electronic mechanism. There was one occasion on June 21 and 22, 1995, and it is cited, again this is precedent, in Volume XIV of Deschler-Brown Chapter 30 Sec. 31.18. It involved, as Congressman LaTourette may recall, a situation that was very unfortunate where the Chair, on an amendment of the Committee of the Whole, announced the result from a slip showing 213 to 214.

Just as two minority Members were approaching down two different aisles, the Chair with the slip in his hand, because the Tally Clerk at that moment, when he handed up the slip, was not aware that those Members were coming in, and as he handed up the slip, two Members appeared and the Chair would not allow those two Members to vote, and announced the result as 213 to 214. Well, the minority leader, Rep. Gephardt and the minority were quite upset. The Committee rose immediately and the House adjourned.

There was going to be a refusal to proceed the next day until that vote was rescinded.

Speaker, Speaker Gingrich, and Majority Leader Armey readily agreed that for the sake of the institution's getting on with business to entertain unanimous consent in the House, the vote was rescinded and taken again the next day. But that is the only occasion of that kind of a problem that I can remember.

The CHAIRMAN. There wasn't a select committee as a result of it?

Mr. JOHNSON. There was no question of privilege, there was no select committee as a result. It was worked out by a rescission of the action the next day by unanimous consent.

The CHAIRMAN. I am going to go to my ranking member, my friend from Indiana. I also am going to apologize to both witnesses and to my colleagues because I have a very significant meeting that I am already late for. So I am going to excuse myself and hand the gavel over to Mr. Davis.

Mr. PENCE. Thank you, Chairman. I have to confess that I have not spent very much time in the former parliamentarian's company. And I haven't been this challenged since my first day of law school. I thank you for your thoughtful and careful presentation of the assumptions, the precedents, traditions and customs of the House of Representatives about voting. I also want to say I appreciate you helping this committee and anyone that might look into this hearing in the future to understand the weight of history on this institution, which has been a thus far successful unbroken commitment to democracy.

And again, I feel a little bit of an extra burden about that weight of history at this moment by virtue of your testimony. Let me, if I can, let me focus on a couple of big picture issues. I am open to Rule 20. And Mr. Johnson, I specifically wanted to ask you, Mr. O'Sullivan may have an opportunity to jump into this, the express language here is, unless the Speaker directs otherwise, the Clerk shall conduct a recorded vote quorum call by electronic device in such cases, et cetera, et cetera.

I guess the first and foundational question that I have is what does the language, the Clerk shall conduct a record vote mean. And I guess by that I want to get specifically to the issue of who controls the floor, who conducts a vote, in the plainest sense of the term. It seems to me that in your testimony today, and reflecting on historical precedent, that the Tally Clerks play a critical role. That, in fact, I was amused at Speaker, is it Champ Clark in your testimony to, his comment that the Chair does not go down to where the clerks are tallying the vote and they wouldn't do it and wouldn't know how to do it, to paraphrase the quote.

And so I guess the first question I have, and then I have a couple follow-ups on your testimony Mr. Johnson. Could you just speak in the very broadest terms to what that language of the rule means and respond very broadly to the question, who controls the floor? Who conducts a vote? And by that, I mean is it the Chair? Is it the presiding officer? Is it the Parliamentarian? Is it the Clerk or his or her designees? Mr. Johnson, maybe you can respond.

Mr. JOHNSON. You ask who "controls." Perhaps that is a term slightly different from who "conducts." But the rule obviously and properly puts control in the presiding officer—the Speaker—or by extension the chairman of the Committee of the Whole by the rule that incorporates the Speaker's responsibilities by reference. So the Chair, in his or her nonpartisan capacity conducts the vote, and it can't be any other way. The word "controls" the vote is perhaps a little bit more subjective.

But ultimately, as I hope will be revealed, the conduct and the control do and should remain in the Chair. Now, the fallback, and you read, Mr. Pence, from what has been the rule since electronic voting, that the presumption and the expectation is that the electronic system will be utilized in preference to the alternatives of roll call, or the standby recorded tellers, because it is more accurate. The presumed infallibility of the electronic system has been consistently documented by rulings that are in the small print just below the segment you read, which suggests that unlike old roll call votes where Members could come in and ask unanimous consent to change their votes after the vote was announced because

they claimed that the Tally Clerk had not heard their response. There was the element of human fallibility that allowed the Chair to entertain a unanimous consent request by Members, who claimed that they were in the Chamber trying to vote and had not been heard by the Tally Clerk.

Under the old roll call system, those votes were allowed to be cast as long as they didn't change the result. Members were allowed to come in the next day and say I am recorded as not present, I voted aye, I want the permanent record changed to show what the vote was. As you all know now, a Member can come in and have his or her statement appear immediately following a vote, but not to change the result. The correct interpretation from Speaker Albert on forward was that the presumed infallibility of the electronic system eliminates that fiction of Members' claiming that they weren't heard. That has been honored. Again, that is a usage. More than that, it is precedent where chairs have relied invariably on the accuracy of the system, coupled with the ability of members to verify their votes at any and all voting stations. It is that responsibility that the Speakers have imposed on Members.

Again, not black letter rules that the Speakers have imposed on Members to verify their votes. Together that practice has built up since 1973 to where the electronic vote is conclusively presumed infallible. There was only one glitch in all the time I can remember. It involved an anomaly where Rep. Roybal-Allard's vote mysteriously appeared in a vote. But she was clearly not there and she said so. As you probably learned, you can trace stations and cards all the way through a vote. They couldn't find that her card had ever been inserted, yet there was her name shown electronically. Bill Thomas and the House Administration Committee performed an informal investigation and came back with a technical explanation that the anomaly may have happened electronically for some very strange reason, that it would not happen again, and the House accepted that.

Mr. PENCE. Let me interrupt, if I can. You started out by responding that there have been controls and conducts in your statement that obviously the Chair ultimately under our system of government controls. I recognize that. But specifically, who conducts the vote under the rule? Who in terms of the history, the tradition, the express rules.

Mr. JOHNSON. Tally Clerks at the direction of the Chair.

Mr. PENCE. The Tally Clerks at the direction of the Chair conduct the vote?

Mr. JOHNSON. Yes.

Mr. PENCE. And they conduct the vote in the manner as we have heard in previous hearings and heard you describe?

Mr. JOHNSON. Yes.

Mr. PENCE. By the assembling of the vote? You testified that that has traditionally been a nonpartisan process. Was there a time in history of the institution—I thought you seemed to imply that there wasn't a time where there was a Republican and a Democratic Tally Clerk, is that correct?

Mr. JOHNSON. I think there have always been two Tally Clerks. More recently those old traditional patronage slots are dispersed based on merit and not necessarily on patronage. But even so,

some of those old patronage Tally Clerks, I remember them, were very competent and very dedicated, and you wouldn't have known which was on whose patronage. I guess Mark and Lorraine can speak better to the pedigree. But as far as I know, the Tally Clerks were and continue to be appointed solely to do business of conducting a vote.

Mr. PENCE. So it wasn't on a patronage basis, but you are saying as far back as you can see there has always been a tradition of the Tally Clerk that conducts the vote operating in a nonpartisan manner.

Mr. JOHNSON. Absolutely. And I say that not just as a casual observer, but having been the Parliamentarian or Deputy for many years, because there is a de facto relationship, talking about conduct, where the Parliamentarian, as the agent of the Chair working with the Tally Clerks, a further assurance that the vote is being conducted correctly. While the elected Clerks supervise, the Clerks of the House supervise the operations of the Tally Clerk's Office, yet there has always been a de facto tacit understanding, never contested, but always amicable, that when those Tally Clerks are on the rostrum and conducting a vote, they will be taking the advice and working with the parliamentarians because the parliamentarian's role derives as agent of the Chair.

Mr. PENCE. Clerk, did you want to speak to that broad question about who conducts the vote, what your understanding is as the chief Tally Clerk?

Mr. O'SULLIVAN. Mr. Pence, at the direction of the Chair we would initiate a vote. I guess we would use the term. We would open up the electronic voting system for the vote on the question at hand. And so we were at the direction of the Chair. When do we initiate the vote and ultimately when to close it. So I guess in a sense we would be, like Charlie said, sort of an agent of the Chair to operate the system and be there to make sure that all Members are recorded.

Mr. PENCE. So if I may, Mr. O'Sullivan, at the direction of the Chair, you conduct——

Mr. O'SULLIVAN. We would initiate the vote.

Mr. PENCE. You initiate the vote, but then you conduct the vote in a manner that—is it your understanding that the Chair is in roll call or the conduct of the vote or do you perceive that the conduct, the administration, the assembling of the vote is the purview of the Clerk under the rules and under the traditions?

Mr. O'SULLIVAN. We have to make sure Members are recorded, that their votes are cast and recorded.

Mr. PENCE. I want to be sensitive to the balance of our panel, but let me ask you a couple of follow-up questions. Thank you. If I can. Mr. Johnson, again, you were talking about the electronic voting system during your previous testimony. And you said the assumption and procedure, the tradition, the custom, and then, I think, I have to look at the record, you made a professorial sidebar but then you came back to, I think your phrase was the Tally Clerks was the custom. Did I hear correctly in your testimony that this business of the tally clerks in their role in their assembling of the vote, that that is the core of the way that a vote has been con-

ducted and essentially certified throughout the history of the institution?

Mr. JOHNSON. Yes. That would reflect what I was trying to say. I did not mean to engage in semantics between "control" and "conduct." As you will discover if you haven't already, I suppose there are always efforts to try to control timing of a vote from various parts of the Chamber. Those efforts are resisted properly by the Chair by use of the tally clerks' slips. So the term "control" in that sense has a more loaded meaning than I meant to convey.

I am not trying to say that the Chair is susceptible to any kind of influence—which would diminish the accuracy of the vote.

Mr. PENCE. The last question was just specifically on the incident referred to Deschler Brown, volume 14 that took place in 1995. I think you testified that in that instance the Tally Clerk had handed a slip to the Chair and using the slip the Chair announced the result. And then the next day by unanimous consent that vote was vacated and the vote was retaken; is that correct?

Mr. JOHNSON. Yes.

Mr. PENCE. The Chair had called the vote as a consequence of what we would call the ordinary operation of the Tally Clerk's roll?

Mr. JOHNSON. As I recall, I was there, the moment that the Clerk handed off the tally slip at 213 to 214, those Members were just beginning to emerge separately down the side aisles into the well. The Clerk had processed every other vote up until that moment and was handing up the slip when those Members approached and the Chair finally announced the result and said the amendment is not agreed to. But the Chair, with the slip in his hand, which I think had been properly handed up at that moment, relied upon the slip, although the new Members were visible to the Chair.

Mr. PENCE. This really is the last question and I will yield back to the vice chairman.

You made a very interesting statement about there had been a long period in the history of the institution where there had not been appeals to the ruling of the Chair, if I heard you correctly.

Mr. JOHNSON. Yes.

Mr. PENCE. And that there has been in your words a proliferation of appeals. I certainly wouldn't ask the Chief Tally Clerk to respond to this. Why—why is this that important? I mean, many people looking in—frankly many Members on the floor will think, well, if you disagree with the Chair, we will appeal the ruling of the Chair. But I thought that you implied in your statement that there was something extremely important that reflected in that time and history when people did not appeal the rulings of the Chair, and I wondered if you might elaborate on that.

Mr. JOHNSON. Mr. Pence, I was trying to make the point—maybe it seems it is self-serving, but it shouldn't—that the appeals began to proliferate not because Members were in disagreement about the accuracy of the Chair's rulings, but rather to establish voting records—this has gone on with appeals from both sides—voting records on the merits of the underlying proposition, for example, on the consideration of an amendment which was not in order because the Rules Committee prohibited it.

There have been several occasions where the Members have offered such an amendment anyway knowing that it was going to be ruled out of order. An appeal of the ruling of the Chair was a demonstration of the frustration with a special rule that might be governing that process. But the notion that appeals would be used to establish voting records which could then be perhaps spun in various circles, Members being for and against a proposition was misguided because, where the real vote was on the propriety of the Chair's ruling.

When the appeals began to creep back in, when Bob Michel was minority leader, he would support the Chair. He would never support an appeal from his side if he thought the Chair's ruling was correct. I think the most institutionally minded Members, regardless of party, would support the Chair.

There are precedents which say the Chair's count for a quorum for the yeas and nays of a division cannot be appealed. The Chair's statement of the numbers cannot be appealed directly. There is that new rule which you may be asking about—and I am not the expert on that—which says the Chair cannot hold a vote open solely to change the outcome.

Mr. PENCE. You are saying that what was included in the history of the institution was only utilized when there was an actual question about the tally of the vote or the interpretation of the rules, which has turned into a more substantive opportunity to record actual content, and that is a helpful clarification.

I thank my colleagues and yield back.

Mr. DAVIS. Thank you, Mr. Pence. Let me actually pick up, Mr. Johnson, on an observation that you made. You were in your exchanges with the chairman, Mr. Delahunt; you were drawing distinctions between custom, practices, precedents, and the formal textual rules of the House of Representatives. I don't want to dwell too much on the difference, but I want to make one observation and perhaps get you to respond to it.

One of the issues whenever the House or a committee of the House examines the propriety of a presiding officer's actions is obviously whether or not there was a violation of the rules or whether perhaps there was a violation of custom and practice. And those of us who are lawyers are familiar with the idea of notice. And one of the governing concepts in the civil and criminal rule is that you are on notice as to whether your conduct is actionable or in violation.

The strongest kinds of notice exist when someone violates a textual rule; I assume you agree with that. Something that is written down. If you are in a position of responsibility, you are often presumed to know the written rules, the written obligations. And it is possible for someone to take you through the text and then through a history of interpretation of the text.

If the allegation is that a custom and practice was violated, it strikes me that might—by definition—raise some problems from a notice standpoint. I think you would probably agree with me that the body of custom, practice, precedent—because it is not necessarily captured in one place because it is based on the tendencies and given subjective interpretations—it may be harder to flesh out a textual definition of the violation.

We have a rule book in front of me right now. If I am alleging that somebody violated a rule, I can point to a clause and a page and a text and say that your actions don't comply with them. If I am saying that you violated a custom or practice or precedent, it strikes me that may be harder. Can you react to my observations?

Mr. JOHNSON. I agree with all of those observations. It may be harder to respond if compelled to look for text to put something in context, but not necessarily impossible. That is why I tried to anecdotally suggest that if the Chair would want to know whether any Speaker had ever opined about the role of the tally clerks, one could do some research, as I did yesterday into Hinds' and Cannon's Index, volumes 9 through 11, under the category "the yeas and nays." There was a little caption that led me to the actual precedent I just read from. It wasn't as immediate as looking for a black letter arrangement in the rule book.

Now, the small print that follows this and other rules are citations either to the date volume and section citations to printed precedents or if those are not yet published in the precedents, they are citations to dates and to permanent record pages. If it is the Speaker's own ruling, his or her name, Speaker Pelosi or Speaker Hastert for example, will appear parenthetically next to the citation. And if any other Member, Speaker pro tem or Chairman of the Committee of the Whole, there will not be a citation to the Member in the Chair.

But in any event, it is less frequent, I would dare say there are fewer people, certainly fewer Members and perhaps fewer staff who take the time and have the inclination to research some of these small still usage and tradition descriptions. It is not impossible, but I don't disagree with your characterization.

Mr. DAVIS. The rules are much more available to Members and presiding officers than the customs and practices and precedents the House, as a general rule. I would assume you agree with that. In terms of being able to resort to one as opposed to the other.

Mr. JOHNSON. Readily resort to, yes.

Mr. DAVIS. And let me go back to the 1995 example, because I think it is instructive for obvious reasons and it is one that perhaps most of my colleagues were not familiar because some of us on this panel have been here fairly recently. Some Members were here in 1995—maybe perhaps one member of this panel was here in 1995.

As I understand the scenario there was a Republican majority control in 1995, after the '94 elections. The presiding officer obviously was a Republican and as you describe it, there was a tally sheet 214 to 213, properly handed to the presiding officer. Apparently accurate reflection of the recorded vote. As the presiding officer reaches out to pick up the tally sheet, two Members of the minority, two Democratic Members, come forward apparently manifesting their intent to vote. Apparently their vote had not been recorded. It was not a matter of a change. Their vote had not been recorded. The presiding officer chose to not give them the courtesy of recognizing them. There was consternation on the floor. There was a motion to adjourn. Apparently some discussions back and forth between the leadership, and the next day the vote was set aside.

As I understand responses to Mr. Delahunt, there was no privileged resolution. Did I understand that correctly? There was no privileged resolution around the dispute?

Mr. JOHNSON. It did not seem necessary to either side of the leadership. The minority leader, as aggrieved as he was, used "usual channels," you might say as a British description, to get it reversed by unanimous consent.

Mr. DAVIS. Was there a textual rule that you understood to have precluded the presiding officer's actions on that day?

Mr. JOHNSON. A textual rule? No, because he was announcing the result based on at least a momentary certification from the Clerk. So I don't think there was a textual rule. It was a matter again of the custom and tradition of the Chair being fair.

Mr. DAVIS. And just to stop you in that point for a moment, you would certainly agree that in 1995, then as now, there was no textual rule referring to the courtesy of recognizing Members who wish to vote. None of that was covered by the text then and now?

Mr. JOHNSON. Unless you point to the first clause of the code of conduct, which says that all Members, including the Chair, shall conduct themselves at all times in a manner reflecting creditably on the House and within "the spirit and letter" of the Rules. To me that reference to the spirit of the Rules speaks volumes, and it is part of the code of conduct. There is no precise rule on the case in point.

Mr. DAVIS. Then and now, there is no provision of the rules that specifically states that if a Member manifests an intent to change a vote, there is no rule that really governs that scenario specifically?

Mr. JOHNSON. Let me point further to consistent opening day announcements of policy by Speakers, going all the way back to Speakers Foley and Gingrich. Through the early nineties, votes were held open interminably because Members could signal through the cloakrooms that they were on their way and the Chair—a tradition grew that the Chair would honor Members who had asked that the vote be held open and the business of the House was being impacted adversely. Speaker Foley first reversed this policy in 1993.

Then one of the first things on opening day in 1995 that Speaker Gingrich announced was that he was going to adhere to a strict 17-minute cutoff. They wanted to change Members' behavior. And you have to do it with some consequence in mind. You can't just urge them on opening day to be prompt. The consequence was that if you were not there, the Chair was going to have a tally slip and announce the result based on the vote at that moment in time. But it would be based on a slip.

The Chair also said and has continued to say to this day, Madam Speaker's statement on January 5th, 2007 was that the Chair will never in effect disenfranchise a constituency by not allowing a Member in the well to vote or change his or her vote. So that consistent policy has electronic voting underlay, and so that is "black letter" as a printed announcement that has underlain every subsequent Congress since 1993, whether under a Republican or Democratic Speaker.

Mr. DAVIS. Let me follow up on that before I move to my other questions. In your experiences in the House, from what you recall, how many instances were there privileged resolutions involving alleged violations of custom and practice and precedent?

Mr. JOHNSON. I would say they have begun to proliferate. Perhaps one of the most memorable was the collateral challenge to the 3-hour vote prescription drug vote by questions of privilege from the Minority Leader on more than one occasion, even going over into the next Congress by alleging recurring violations of custom and practice. The questions of privilege—you have to distinguish between what a question of privilege can do and cannot do. It can't be a substitute for a rules change. You can't have a question of privilege say that the rules should have said something when they did not.

So questions of privilege have been ruled out of order when they are attempts to change the rules or their interpretation. Questions of privilege go to the dignity and integrity of proceedings. The question was sometimes what the resolved clause was trying to answer with regard to custom and tradition, and in the case of the 3-hour vote it was to conclude that a breach of custom had occurred and assert that it should never happen again.

Mr. DAVIS. One quick question about that. How many instances do you recall privileged resolutions challenging action of a presiding officer in terms of calling a vote?

Mr. JOHNSON. I don't know that I have seen any, other than in the aftermath of what happened August 2nd there were other such questions of privilege.

Mr. DAVIS. I am asking prior to August 2nd.

Mr. JOHNSON. I can furnish that for the record. One I can remember, Tip O'Neill was in the Chair, on whether a roll call vote—the television should cover the floor during a vote as unedited coverage. That was offered as a question of privilege.

Mr. DAVIS. But with respect to the very narrow question, I take it your answer is that you don't have any recollection today of an instance where a presiding officer's calling of the vote was challenged?

Mr. JOHNSON. No, because the avenue is there most of the time for an immediate confirmation.

Mr. DAVIS. And just to clarify, a Member can stand up and move for reconsideration of the vote if they so choose?

Mr. JOHNSON. Yes, in the full House.

Mr. DAVIS. And you mentioned the other avenue, informal discussion between the leadership to move by unanimous consent to set the vote aside.

Mr. JOHNSON. Yes.

Mr. DAVIS. Let me turn to the rule that was added by the new majority in the House in January of this year. It is a one-sentence addition to the clause 2(a), rule XX. This is a quote: A record vote by electronic device shall not be held open for the sole purpose of reversing the outcome of such vote.

The language is interesting because frankly in my experience a lot of Members don't actually know the language. They know that we did something to address the lengthy vote delay regarding the 2003 Medicare bill. And by way of anecdote, even in discussing this

provision, a number of Members will say that my understanding is that the vote can't be held open for purposes of influencing the vote. That is not written here. Not only is the word "influencing" not used, the word "purpose" is not used without the modifier "sole."

A number of Members have said you cannot hold open the vote for the purpose of changing the vote. That is an inaccurate statement of the rule. Many formulations that I have heard anecdotally do not accurately state the rule.

The rule says "for the sole purpose of reversing the outcome." Let me raise two scenarios to both of you and get reaction. By definition "sole purpose" seeks to inquire as to the presiding officer's intent. And as all of us know there can be multiple intents behind action. Someone could decide to leave a vote open with one possible intent being influencing the outcome or reversing the outcome. One could have another intent of leaving a vote open to allow Members to think about changing their votes or to reconsider on both sides.

Obviously both sides are sitting there capable of being lobbied by the Members and capable of changing and a Member could leave a vote open for those two reasons—or the presiding officer could leave a vote open for those two reasons and have a third in mind. Perhaps there is a Member who is not here and we don't know where that Member is and that Member could be en route. That Member could be in Maryland or in the tunnels.

A Member—a presiding officer could have a fourth instinct, uncertain whether or not there are Members who are attempting to change their vote, could see motion in the well, not sure if people are moving around or if they are moving towards the well to change their votes.

All of that to say, the rules seem to focus very clearly on exclusivity of purpose and they preclude and exclusively forbid a particular kind of purpose. But by definition it seems to me that the rules contemplate that a presiding officer could be motivated by multiple factors. Let me get you to respond to that. Does that make sense to you?

Mr. JOHNSON. Yes, it is the mens rea of the Chair that is the test of whether this rule is violated. Who rules on what? The Chair, him or herself. The Chair presumably knows its intent. Others can claim to know because they have seen pressures brought to bear externally, but it is the Chair's intent as discerned by the Chair at that moment in time as the vote is being kept open. I think that there have been several parliamentary inquiries in this Congress under this rule during the pendency of a vote, to which in two or three cases that I have seen the Chair has responded to the parliamentary inquiry that either the Tally Clerk has not yet finished processing changes or the Chair is aware that other Members are on their way to vote.

Those are statements of public record showing that the Chair can, and does, have other considerations in mind, more than reversing the result.

Mr. DAVIS. And as you understand the rules, Mr. Johnson, there is no provision of the rule which requires the Chair to declare or the presiding officer to declare his reason for delaying the vote.

There is no provision that anywhere requires a statement of intent on the part of the Chair?

Mr. JOHNSON. To the contrary. I think that would be inappropriate for the Chair.

Mr. DAVIS. And certainly if there is no custom, practice or rule to the contrary, it would be enormously unusual.

Mr. JOHNSON. Let me point out, Mr. Davis, as the Chairman said, I am under contract as a consultant with the Parliamentarian to work on the precedents. But I am very close to the Parliamentarian and his staff and I honor them and they are dear friends, and I would do everything appropriate to tell people, when asked, that they are doing the right thing in the interpretation of this rule and they should be supported in their advice.

But the question of how you challenge an alleged point of order on this rule is very difficult because it could come during a vote which is in progress. And if the Chair overrules the point of order because that was not his sole intent and some Member appeals the ruling of the Chair, the system is incapable, as I understand it, of allowing another recorded vote to be conducted within a pending vote. So the system would not allow a dispositive vote on the appeal from the Chair's ruling if it ever comes to that. And hopefully it won't.

So when, if at all, is a point of order cognizable? Is it immediately following the announcement of the result? I think it does constitute a question of order from which an appeal can be taken. Now, there is some——

Mr. DAVIS. Let me stop you one second. I want to move and give other Members a chance to ask questions. Let me pose one question before I go to Mr. LaTourette. It deals again with the text of clause 2(a) of rule XX. As I said earlier, a number of Members mistakenly believe that it says changing the outcome, influencing the outcome, altering the outcome. It says "reversing the outcome."

So let me give you a scenario as my last question and you can react to it. I could imagine a vote being kept open, let's say the number is 214 to 213. That is the number on the board. That is the number as far as the presiding officer knows. I could imagine a scenario where the presiding officer leaves that vote open for an extended period of time. There is an outcome that is on the board that has not yet been rendered final. One side is leading 214 to 213. The presiding officer keeps the vote open. I can certainly imagine that there might be a challenge in that instance on the theory that the numbers are up, there is no one attempting to change their vote. Mr. Presiding Officer, you are keeping the vote open simply for the purpose of reversing the outcome. That is one scenario. That kind of scenario seems to be expressly covered by this rule. You can't reverse something which has not yet occurred.

There is another scenario where the vote is tied, that there is no outcome one way or the other in either situation.

Mr. JOHNSON. There is an outcome.

Mr. DAVIS. That is right. The motion does not carry if it is tied. But there is also a tradition and custom, as I understand it, of giving Members a chance—what I understand, the preference is for there to be a margin one way or another. You can react to that.

I understand that the rules don't require that, but I want to get your reaction as to whether or not that is the custom.

If for whatever reason the vote is tied, and that seems to be a different scenario than if there is a one-vote margin one way or another. Can you comment on that?

Mr. JOHNSON. I believe I can. Because the rules say, in the case of a tie, the question shall be lost. So that is a result dictated by black letter rule. And I don't think there is a custom or tradition that says, well, let's just wait and see if someone changes so it is not a tie because it is more decisive. I don't think—I have never advised an occupant of the Chair to wait and see if someone will change from a tie.

Mr. DAVIS. But at 213 to 213 that would mean hypothetically the motion to recommit would not carry.

Mr. JOHNSON. Yes.

Mr. DAVIS. Therefore, someone who keeps the vote open to reverse the outcome, you would have to create a scenario that it was a motion to carry. 213 to 213, the motion fails.

Mr. JOHNSON. A reversal is the key, you are right.

Mr. DAVIS. 213 to 213, the outcome would be that the motion fails. To reverse the outcome would mean that the motion would have to carry. Correct?

Mr. JOHNSON. That is correct.

Mr. DAVIS. And the other scenario of it being 214 to 213 the vote being kept open for the purpose of someone flipping votes and turning it the other way?

Mr. JOHNSON. Or someone else coming in. In either scenario you do not have 435 Members voting. On November 21st, 2003, all Members were there.

Mr. DAVIS. Let me go to Mr. LaTourette.

Mr. LATOURETTE. Thank you very much, Mr. Davis, and thank you, Mr. Johnson, for your testimony. I have three lines of inquiry but before I get to those three lines I want to follow up on some items that Mr. Davis mentioned in his questioning. Specifically, Speaker Pelosi at the beginning of this Congress, I think that is what you are referring to, the relevant part of her announcement, was that: Members will be given a reasonable amount of time to accurately record their votes. No occupant of the Chair will prevent a Member who is in the well before the announcement a chance to cast his or her vote.

That is what you are referring to?

Mr. JOHNSON. Yes.

Mr. LATOURETTE. And again going back to the unfortunate event of 1995 that was included in the Speaker Gingrich's opening statement as well.

Mr. JOHNSON. Yes.

Mr. LATOURETTE. So it could be argued that what the then occupant of the Chair did was violate the Speaker's opening statement by not allowing those two Members of the minority who appeared in the Chamber and were trying to vote from casting their vote.

Mr. Chairman, I ask unanimous consent that Speaker Pelosi's opening day announcement be included in the record.

Mr. DAVIS. No objection.

[The Speaker's opening day announcement may be found in the Appendix.]

Mr. JOHNSON. One little nuance. The Members were approaching the well, they were in the Chamber. And the use of the word "well" means that they are in the Chair's immediate view as perhaps opposed to coming down an aisle.

Mr. LATOURETTE. In my mind, as a Member, that is a distinction without a difference. You have people trying to vote.

Mr. JOHNSON. I don't dispute that.

Mr. LATOURETTE. And the other one on the remedy for a violation of rule XX. If a point of order is made during the course of the roll call vote, there is no opportunity to appeal the ruling of the Chair. Isn't the answer because it is hortatory and the remedy is a question of privilege?

Mr. JOHNSON. That is a precise question the Parliamentarian is looking at right now. Another argument might be that it is subject to a point of order immediately following the vote, after which if the Chair is overruled on appeal, that could vitiate the vote. It does not necessarily change the result back to what it might otherwise have been. I don't think anyone would suggest that if the Chair is overruled in his decision that he wasn't holding the vote up solely to reverse the result and the House disagreed, that that would immediately change the result. It may vitiate the vote by operation of the rule.

That is a matter of new interpretation. But the question of privilege could be another approach to it.

Mr. LATOURETTE. And I would have to say, having this new rule in place, Mr. Davis's questions really point to the fact that it is a rule that does not mean anything because how are we ever going to call on the person in the Chair unless he or she admitted it? It is a rule change that leaves me puzzled.

Mr. JOHNSON. It does not mean anything unless and until the House, if permitted, reverses the Chair. Then it may mean something.

Mr. LATOURETTE. This isn't a question, but a statement—but you almost have to have the occupant of the Chair saying yes, I did it.

Mr. JOHNSON. Yes.

Mr. LATOURETTE. I want to talk to you about the role of the presiding officer. On page 804, in reference to the Speaker pro tem's obligation on the count of the division.

I think this applies to all. One of the suppositions on which parliamentary law is founded is that the Speaker will not betray his duty to make an honest count of the division.

Is that reference to your letter of May 20, 2004? On page 2, the first full paragraph you write: "I believe that the long-standing tradition and role of the Chair in rendering impartial and proper decisions has been maintained and appreciated despite the switch in party majorities and despite occasional efforts to appeal various rulings. It has been reassuring when bipartisan majorities understand and support the rulings of the Chair solely on the basis of their propriety as nonpartisan institutional standards with precedential significance."

And I think that is the paragraph you were discussing earlier and I would ask unanimous consent that that be made part of the record as well.

Mr. DAVIS. Without objection.

[The letter from Mr. Johnson, Congressional Record, May 20, 2004, may be found in the Appendix.]

Mr. LATOURETTE. We all know the Speaker of the House is elected by the majority party. The occupants of the Chair are representatives of the Speaker, appointed by the Speaker. And so for the past 12 years the occupants of the Chair have all been Republicans and since the beginning of this Congress they have all been Members of the Democratic Party.

Could you describe from an institutional standpoint, what is the role of the presiding officer? Is he or she a partisan? Is he or she a Democrat in the way they conduct business? Are they combatants in debate or are they above the fray?

Mr. JOHNSON. They are above the fray. They should be.

They are not combatants. They don't participate in debate.

They are not supposed to.

Regardless of the partisanship of the person appointed—we have always been very insistent with the Speaker's staff when asked, regardless of who the Speaker happens to be, the staff requests from all Members asked to preside that they adhere to certain guidelines. Whether the Member is on the committee handling the bill; whether the Member is competent in the Chair. That is not information to be published, but the fact that so-and-so is in the Chair and so-and-so is not might be an indication that the Speaker's staff believe that our advice about who is being called on to preside should be heeded.

That is not always the case. on occasion there are Members who appear and disappear into and out of the Chair without advice from the Parliamentarian. The important point is once that Member is in the Chair, that an immediate conversation becomes appropriate between the Parliamentarian and the presiding officer, whether it is someone brand new or someone who has partisan stripes or whatever, to try to assure fairness and anticipate problems.

So that if the Member feels that he or she cannot be nonpartisan or detached going forward, anticipation in this role is absolutely essential. You have to be able to look forward to see what might be happening on the particular issue and whether the person in the Chair can be impartial.

I have asked people, I was not embarrassed to ask some Members in the Chair, "Do you feel you are appropriately in the Chair at this point?" And usually they say yes, but sometimes they will not even be aware that there is a potential perceived conflict, much less an actual conflict.

And that conversation is in confidence. On your walkthrough the other day you probably saw the mute button.

Did John demonstrate? The button along the edge of the rostrum allows the Chair and the Parliamentarian to have a conversation unheard by the two audio systems, in-house or public. The proper utilization of that button, the light will show if the microphone is on, and the ability to have that conversation is essential.

I have to believe that occupants of the Chair should be advised if they are not inclined to be above the fray.

Mr. LATOURETTE. Let me get to something else you talked about in preparation of tally slips and some observations made by the Speaker in 1918. The staff pointed out during the walkthrough the press and public was not with us, so we have purloined some tally slips and I just wanted to have a tally slip displayed as I ask you some questions.

Is that something you recognize?

Mr. JOHNSON. Yes.

Mr. LATOURETTE. That is the tally slip that is currently in use by the House of Representatives.

Mr. O'SULLIVAN. We refer to that—we would call that a page from a yea-nay pad.

Mr. JOHNSON. Slip.

Mr. O'SULLIVAN. When we refer to the tally slip, it is the preparation for the call of the roll. It is another document that we use traditionally for the election of the Speaker. But if we have to call the roll we would use the tally sheet.

Mr. LATOURETTE. What do you call this? A slip?

Mr. O'SULLIVAN. I always call that a slip from the yea-nay pad. If it is tally sheets people are familiar with, that is fine.

Mr. LATOURETTE. So whatever it is called, this is the document that the standing Tally Clerk prepares at the conclusion of the vote?

Mr. O'SULLIVAN. That is correct.

Mr. LATOURETTE. And Charlie—Mr. Johnson, during our walkthrough the other day we had the opportunity to speak with the current Parliamentarian of the House, Mr. Sullivan, and he indicated on page 43 of the transcript, not in response to any question, he said, "May I say something about the production of this 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 came from a voting system that was closed to further input at the time those numbers were written down."

I have two questions: One, do you agree with Mr. Sullivan's observation about the importance of the slip?

Mr. JOHNSON. Yes.

Mr. LATOURETTE. And what is your understanding of the significance of that slip in a vote?

Mr. JOHNSON. It is a de facto certification from the Tally Clerk, from the entire Clerk's operation, transmitted to the Chair, that there are no more changes being processed into the system. As far as that Clerk is certifying at that moment—and those moments change, that the slip handed up is the result as the system has absorbed it with voting stations closed and no other cards being processed at that moment.

Mr. LATOURETTE. So it is the Clerk's certification pursuant to rule XX to the Chair through to the Parliamentarian that is the accurate count on the vote?

Mr. JOHNSON. Yes.

Mr. LATOURETTE. In your 40 years as Parliamentarian or in the Parliamentarian's office, including the 1995 episode that we have

talked about, are you aware of any recorded vote conducted in the House of Representatives where a slip or a tally sheet has not been transmitted by the Clerk to the Chair?

Mr. JOHNSON. No. There have been some belated simultaneous transfers as the Chair is reading, and this has happened—the Clerk is handing up the slip, the Parliamentarian is handing it to the Chair, perhaps as the Chair may be reading from the board, because the board says "final" on it. And if there is any discrepancy—Mark, you will have to correct me—where if the Chair is reading numbers that for whatever reason don't coincide with what is on the slip, the Parliamentarian can use the mute button and say this is not being corroborated by the slip.

Mr. LATOURETTE. And let me ask you that. If there were an instance where a slip is never transmitted by the Clerk through the Parliamentarian's chair, how could the Chair call the vote?

Mr. JOHNSON. How could in fact or how could properly?

Mr. LATOURETTE. Properly.

Mr. JOHNSON. Well, I would urge that there would be no other proper alternative to the announcement of the numbers and the announcement of the result. And I think—I hope John made it clear that it is the announcement of the procedural result, not necessarily the characterization as final on the board—and not necessarily the recitation of numbers. I can't count the number of times when the Chair has read numbers from a slip only to have the Tally Clerk hand up another slip. Those are the up-to-the-moment numbers and that can happen several times in one vote.

But I can't imagine a way, because the machine — unless the machine is inoperable somehow at the last second, the Tally Clerk reports an inoperability, I can't imagine the Chair's doing anything other than following a certification from the Clerk.

Mr. DAVIS. If you would yield for a moment let me inform the panelists and the Members there has been one vote that has been called on a motion to adjourn. Obviously we are at the very beginning of a 15-warning and I expect the vote to be on at least 20 minutes or so. I would propose that Mr. LaTourette, if you are near the end of your questions, that we go to you, that we stop so that we can cast this vote, adjourn for about 5, 10 minutes or so and reconvene.

Mr. LATOURETTE. I appreciate that. I have one more line of questioning. I hope I can complete it in 10 minutes.

The issue of pressure on the occupant of the Chair. And during your testimony you indicated that—the note that I made is that it is not uncommon for influence within or without the Chamber to be attempted to be placed on the occupants of the Chair. And I wrote down you said "properly rejected." What do you mean by that?

Mr. JOHNSON. I mean there is a distinction between when the Chair receives a signal from leadership, it is usually a signal, either verbal or some other way communicated from the majority leadership. The Chair has obviously been appointed by the majority, that as they view their monitor, from their perspective, if the Chair can close the vote, he should. Not that he must. Not that he is going to be excoriated by the Speaker if he does not. From the leadership's perspective they would prefer that the vote either stay

open or close. There are signals that have been used over time—that suggest to the Chair what the leadership would like to see consistent with a proper call of the result.

Mr. LATOURETTE. What do you mean—you indicated that that is not uncommon. I have seen it, we have all seen it. What did you mean by the phrase "properly rejected" and what I took you to mean——

Mr. JOHNSON. It means if the Chair knew that the vote was not fully processed, he would properly reject the importuning of the leadership to shut the vote down.

Mr. LATOURETTE. And on the issue of pressure, Mr. Davis in his question talked about the difference between black letter laws and the rules and precedent and the notion—I don't know if all of us are lawyers—that there is notice. You can't be punished for conduct that you did not know was wrong.

When there is a person in the Chair, what interaction between the person in the Chair and the Parliamentarian in terms of advising the occupant of the Chair that they are comporting with the rules, customs, and traditions of the House? Is there one?

Mr. JOHNSON. Yes, and I think I alluded to it earlier. Preferably it is a constant interaction. It is a confidential interaction. And it is an anticipatory interaction. Because the Parliamentarian wants the Chair to be doing the right thing and being perceived to be doing the right thing. The conversation is ongoing, and the conversation can begin before the person is appointed. The best occupants of the Chair, I think if they are doing it for the first or second time, come for advice in advance, for a private tutorial if you will.

Or new Members may be asked to preside during Special Orders during which time any of the Parliamentarians may talk to those Members and find out if they are interested in returning to the Chair in a more difficult role in some future time, and to answer any and all questions. Not to be a lecturer, but to answer any and all questions.

Mr. LATOURETTE. And then my last question, you indicated during the 1995 vote that we have been discussing. Were you the Parliamentarian on the floor at that moment in time?

Mr. JOHNSON. I think so.

Mr. LATOURETTE. And did you offer advice to the occupant of the Chair that he was engaged in behavior that was, if not a violation of the Speaker's announcement on opening day, certainly——

Mr. JOHNSON. It happened so quickly during that announcement that I believe I did say there are Members that haven't been recorded. I did not hit the button and say to the Chair you are wrong, doing the wrong thing, you are going to be criticized. I did not have that much presence of mind. I wish I had.

Mr. LATOURETTE. Would that have been an appropriate role for the Parliamentarian?

Mr. JOHNSON. I think so.

Mr. DAVIS. What we will do is temporarily adjourn and reconvene, and it is the Chair's understanding that there is only one vote and the Members can quickly cast it and return so that Ms. Herseth-Sandlin and Mr. Hulshof have a chance to question. The hearing is adjourned for 10 minutes.

[Recess.]

Mr. DAVIS. The Chair reconvenes the Select Committee. I recognize Ms. Herseth-Sandlin.

Ms. HERSETH-SANDLIN. Thank you, Mr. Chairman. And Mr. Johnson, thank you. It was 24 days after you retired that I arrived to the Congress, and it has been fascinating to listen to your responses to the Members this morning. We have learned an awful lot. I think my colleagues have, and I look forward to sharing information with others of my colleagues.

I do want to pick up on the line of questioning that Mr. LaTourette was pursuing as it relates to the interaction between the Parliamentarians and the presiding officer as time is drawing down. And it looks as though in terms of the steps prior to calling the vote.

Could you talk a little bit about—you had mentioned that there had been times that the Chair is starting to read or has read the numbers and then another tally slip is presented. Can you talk about what leads to multiple tally slips being prepared and presented to a presiding officer?

Mr. JOHNSON. Yes. As the vote winds down, there are cue cards available. Some Chairs really read them, others have enough experience or at least think they know what is on the cards. The Chair first asks are there any other Members who wish to be recorded. You have all experienced that. And only after that does the Chair inquire are there any other Members who wish to change their votes? That question from the Chair is often the signal to the Tally Clerk potentially to shut down the voting stations. When the Chair asks for changes.

Mr. O'SULLIVAN. In practice, though now it is a cue, but we don't immediately—if other Members are appearing to vote we don't immediately close the voting stations.

Mr. JOHNSON. That is right. If the Chair has asked that and knowing that there are going to be a number of Members voting, clearly it is a signal for the stations to be kept open even after the Chair's first inquiry. But once the slip is handed up and the Chair begins to read from it, many times the Tally Clerk will say to the Parliamentarian, "here is another slip, because someone else has just come in." The Tally Clerk won't have given a slip initially until he feels that everyone is in the system that they know about. Either electronically or by voting cards that have been submitted at the rostrum, the red or green or amber cards which are either submitted because a Member may have forgotten his electronic voting card or because it is a vote change within the last 5 minutes of a 15-minute vote.

And until the Tally Clerk correctly compiles a list of changes, because changes are always announced, as I recall, by the Reading Clerk, who is given the list of changes by the Tally Clerk and read just prior to the announcement. That list of changes obviously goes into the Record and it is considered important contemporaneously because it shows leadership and other Members who are changing. And changes made electronically within the first 10 minutes of a vote are not going to be on that list. Or if it is a 5-minute vote and a Member has changed their vote electronically that Member will not be on that list. But if a Member submits a card at the well,

he or she will be on the list. And it is appropriate I think for changes to be shown.

But even so, I don't think the Tally Clerk prematurely hands a slip up knowing there is still some processing to enter into the system. I don't ever recall that. But at certain moments where the Tally Clerk feels that he has cleared all the cards that are in his possession and marked them and preserved them, then a slip comes up. And very often Members will then appear to change votes or to vote initially. They may have been in the Chamber but just choosing not to vote until they are certain of their vote. And so all of those reasons perhaps account for new slips coming up. Is that responsive?

Ms. HERSETH-SANDLIN. Yes, and so perhaps both you, Mr. Johnson and Mr. O'Sullivan can answer the next question, we talked about a proliferation of things here in the last few years. Have you seen incidences in which Members are going to the well to change their votes in far more frequency over the last few years than previously or has it always been the case that there are a lot of last minute changes of votes in the well?

Mr. O'SULLIVAN. Ms. Herseth, that is a little bit difficult to answer. It depends on the roll call and the issue at hand. In general, I think the number of Members voting in the well have come down a little bit.

In 1995, there was a change in Congress from the Democrats to the Republicans. In the beginning of that Congress for some reason we had an incredible number of well votes the first few months. And to the point where it was being questioned, was this sort of coordinated? We were having 40, 50 well votes per vote.

Ms. HERSETH-SANDLIN. Let me clarify. I am asking specifically—and you mentioned it is difficult to answer, it depends on the vote. Let me clarify, have you seen within the last couple of years increased incidences of Members who have voted on the EVS or even in the well who change their vote in the final moments or even after time has run out when voting on a motion to recommit?

Mr. O'SULLIVAN. I would—probably say no. But with this caveat. Usually if a vote is going to create well votes at the end, it would be that type of motion, a motion to recommit. If we were going to have a vote that would cause a lot of well voting, it would probably be a motion to recommit or a motion where you get into sort of a double negative. If you vote yes, you are against it or if you vote no you are for it. One of those things.

Ms. HERSETH-SANDLIN. And is it in those instances where there may be multiple tally sheets that are prepared and submitted but ripped up?

Mr. O'SULLIVAN. Slips, yes, could be.

Ms. HERSETH-SANDLIN. And would it be your advice, Mr. Johnson, as the Parliamentarian—you said earlier that anticipation is the key and conversations between the Parliamentarian and the presiding officer—would it be your opinion that there should be a conversation between the presiding officer and the Parliamentarian in anticipating an incidence of changing votes in the final moments or after time has run out on a particular motion whether it is a motion to recommit or other type of——

Mr. JOHNSON. I would urge that conversation if the Chair is uncertain or hesitant to take an initiative. But hopefully, and I can say from experience, the best occupants of the Chair are very accustomed to viewing the scenario directly in front of them, with the Tally Clerk only a few feet away and they know that it is the Tally Clerk standing in the well who is talking to the Tally Clerk at the machine and then filling out the slip. The Chair sees that and the best occupants of the Chair don't need the Parliamentarian to tell them to wait for the slip or wait for another slip because they will see and react to the dynamic of that situation. Or at least they see Members coming into the well, or if they see a dynamic where they think that the result may not be final on that slip, they will look potentially for another slip.

But that is not to say that there aren't occasions and there probably should have been more occasions where the Parliamentarian's conversation with the Chair would have been helpful, if not necessary.

Ms. HERSETH-SANDLIN. And you had said in response to questions of Mr. LaTourette that while you couldn't recall another situation where the presiding officer called the vote before the certification of the tally slip, you don't recall these simultaneous transfers where the Chair was reading from the board because the board had "final" on it.

Does the Parliamentarian advise the presiding officer that he or she should not refer to the board at any point in the proceeding, but wait until the tally slip is presented?

Mr. JOHNSON. Yes. Yes, I would say, having been through so many of those votes, there are times when you are either distracted or not as attentive as you should be to that precise moment. But the most important thing for the Parliamentarian, talking about acting with anticipation, is to prioritize what is most important at that time. Because there are many times where there may be a potential for distraction as Members and staff approach the Chair and the Parliamentarian is trying to keep them at a distance. At that moment the priority is to pay attention and to the advise the Chair.

There may be a glance at the board and at the slip. If they don't jibe and if the Chair happens to be reading from the board and you are handing him up a slip that does not jibe with it, you would stop him. But almost always what he is saying from off the board, assuming he is not reading from the slip, does jibe with what he is being given in his hands.

So to talk about the contemporaneousness of that transfer, it is usually not a problem. But it can potentially be a problem. So when there is any doubt if it is brought to the Parliamentarian's attention or the Tally Clerk's attention or to the Chair's attention, they could stop and indicate to everyone that they are relying solely on the slip.

Ms. HERSETH-SANDLIN. So if a presiding officer began to call a vote reading numbers from the electronic board and the Parliamentarian did not yet have a tally slip in hand, you would hit the mute button and advise the presiding officer that a tally slip had not been prepared, "final" did not occur yet on the board?

Mr. JOHNSON. That would be the proper role of the Parliamentarian. Whether it is done in all cases, you know, there are so many mitigating factors and they are not excuses but that should be the role of the Parliamentarian.

Ms. HERSETH-SANDLIN. And then Mr. O'Sullivan, how again is it, I know we talked some about this in the walkthrough, but given that Mr. Johnson did make reference specifically that there had been simultaneous transfers and the presiding officer may be looking up at the board and seeing "final." How is it, again, that the seated Tally Clerk makes the decision to put "final"? Is it because a tally slip has been prepared?

Mr. O'SULLIVAN. Ms. Herseth, no. The word "final" should appear after the presiding officer has announced the tally and has disposed of the issue at hand. Either the motion to reconsider is laid on the table or if there is no motion to reconsider, in the case of an amendment, the amendment is not agreed to and they move on. At that point the word "final" normally appears.

Now, there have been instances where, as I think John Sullivan mentioned, you get to that final period where a Member presents himself in the well, and the presiding officer many times will allow that Member to be recorded. So then at that point the word "final" may have appeared because the Tally Clerk hit the key to begin to exit the system. You hit final and exit—and then you release the displays, by which, in effect, you exit the system. And if you hit the word "final" you still can input votes. That is sort of the situation sometimes.

Ms. HERSETH-SANDLIN. Which occurred on roll call 814, because I believe that there were still cards that the seated Tally Clerk was entering, processing into the system after "final" appeared.

Mr. O'SULLIVAN. I wasn't there that evening, so I don't want to speak for the person who was there.

Ms. HERSETH-SANDLIN. And we will revisit, but you have explained how that could occur.

Mr. O'SULLIVAN. It is possible.

May I say something? I would say it is rare. It is really—it happens rarely, but it can happen where the word "final" appears and votes are still entered. But the normal 98, 99 percent of the time, even higher, is to wait until the final disposition of the question and then the word "final" and then release the displays.

Ms. HERSETH-SANDLIN. Mr. Johnson, do you recall what year rule XIX, section 2 on motions following the amendment stage of the motion to recommit was added to the rules?

Mr. JOHNSON. The guarantee—I am sorry; would you repeat that question?

Ms. HERSETH-SANDLIN. In rule XIX, motions following the amendment stage, motion to recommit, do you recall what year a motion to recommit, that section was added to the written rules?

Mr. JOHNSON. Well, an iteration of the current rule became a rule as of 1909.[4] That was the Joe Cannon revolt.[5] That was a huge issue because the Speaker was not only Speaker but he was Chairman of the Rules Committee, which had been reporting rules

[4] The rule was adopted in 1880, then an iteration of the current rule restricting the authority of the Rules Committee became a rule as of 1909.

[5] The revolt against Speaker Joe Cannon.

denying recommittal motions[6] and going right to final passage, probably as large a watershed moment as the House has faced in its procedural history.

Until that time in 1909, when motions to recommit were being offered, they were being offered by the chairman of the committee to make so-called sweetheart corrections in order to deny the minority opposition the right to offer a substantive motion.

So after the amendment was adopted in 1909, it stood until 1995, when the current rule was put in place. That was the result of a series of motions to recommit which were restricted by the Rules Committee in the late 80's and early 90's. The Rules Committee, relying upon a 1934 ruling,[7] even in the face of the 1909 rule that guaranteed one motion to recommit, rule did not say "which[8] shall always be allowed to contain proper instructions." And so Speaker Foley, I think correctly, but certainly in difficult rulings, which were appealed, which are all listed in here,[9] ruled that it was within the authority of the Rules Committee to report a rule that limited, as long as it did not totally deny a straight motion to recommit. Those eight rulings were based on a 1934 precedent which was the only precedent in all those years. But it was a proper basis, even though there were appeals.[10]

Appeals have proliferated. 1990–1994 was a watershed period in the incidence of appeals. But there was a real dispute, the Republican minority felt that they were aggrieved, that the Rules Committee was shutting down proper motions to recommit.

So the Hamilton-Dreier Committee on Congressional Reform in its 1993–94 bipartisan recommendation, and then the Republican rules package in January of 1995 presented the current rule that focused on the minority leader or his designee that they could not be denied instructions in a motion to recommit if they were proper. That is the current form of the rule, I believe.

Ms. HERSETH-SANDLIN. Thank you. Back to the tally slip. Some of what we have heard about the circumstances regarding roll call 814 is that no tally slip was ever prepared. Can you recall any instance, Mr. O'Sullivan, in which a tally slip was never prepared for a roll call vote?

Mr. O'SULLIVAN. No. Like Charlie said, there may have been a situation where a Member jumped the gun and read the board as we were sending up a tally slip. It was just proceeded to finalize, close the vote on that basis. But off the top of my head I cannot recall a tally being announced without a slip.

Ms. HERSETH-SANDLIN. But is it your understanding that the circumstances regarding roll call 814, even after there was an initial call by the Chair almost simultaneous with the "final" appearing on the board, and then Members who were in the well changing votes that continued to be entered after "final" was there, is it your understanding that even after all of that there was no tally slip——

Mr. O'SULLIVAN. That is right. That is right.

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[6] To the minority.
[7] By Speaker Rainey
[8] "Which, if offered by the Minority Leader or his designee.."
[9] Section 859 of the House Manual.
[10] They were unsuccessful appeals which set further precedent.

Ms. HERSETH-SANDLIN. One final question, Mr. Johnson. After we integrated the electronic voting system in 1974 and the roll of the Tally Clerks, as you stated at the outset of today's hearing, was never perceived to change once the electronic voting system was adopted. And I think you joined the Clerk's office, Mr. O'Sullivan, 4 years later in 1978.

Mr. O'SULLIVAN. Right.

Ms. HERSETH-SANDLIN. Do either of you ever recall any discussions, either within the Clerk's office or in the Parliamentarian's office, or in consultation with prior Speakers, or Speaker Pelosi as she assumed the Speakership this year—again going back to the issue of the infallibility of the electronic voting system, but recognizing the quality assurance Mr. Sullivan pointed out in our hearing last week—has there ever been a discussion about changing the manner in which the Tally Clerks or their responsibilities and the need for a tally slip or addressing the situation of multiple tally slips in light of the electronic voting system and what it can provide the presiding officer?

Mr. JOHNSON. Early in the history of the electronic voting, there were—I guess it was Carl Albert. The first 1 or 2 years of electronic voting permitted Members to change their votes as often as possible from voting stations even up to the very final moment. And that, as you can imagine, was leading to all kinds of uncertainty. Yet, there was still a slip. The uncertainty of the result with no instant accountability—there was going to be accountability the next day when people read the Record, but they were not going to see who was making the last-minute changes from terminal X in the last row. And votes would flip-flop unpredictably to the point where the Speaker—it was Carl Albert's Speakership—with the minority leader agreed, that in the last 5 minutes of the 15 vote changes had been to be controlled in the well so that the Tally Clerks could get the changes—number one, and that there would be changes announced. They imposed that kind of discipline. The Members were not going to get a free ride so as not to show changes, as some were doing for that brief time, and the Tally Clerk was going to have some time to prepare that list of changes as well as to submit a tally slip to the Chair.

There was never the absence of a slip. Initially, those slips changed rather quickly because votes would flip-flop two or three times within seconds before that adjustment was made by the Speaker. But otherwise, I don't think the role of the Tally Clerk over time has ever been under discussion.

Mr. O'SULLIVAN. The whole procedure of conducting votes and the closing of votes is almost the same since I have been here. Every vote has little permutations, a little different, a Member's arrival, and things like that. But the whole idea is basically done the same.

Ms. HERSETH-SANDLIN. And I said—I apologize, Mr. Hulshof, one final clarification. Mr. Johnson, you had stated that you thought it would have been a proper action that you think it would be a proper action for a Parliamentarian, in the event a presiding officer starts to prematurely call a vote in the absence of a tally slip, to hit the mute button and advise the presiding officer of that. Would it also be proper action of the Parliamentarian to converse with the

Tally Clerks to ensure that the tally slip was ultimately prepared and presented?

Mr. JOHNSON. Yes.

Mr. DAVIS. Before the Chair recognizes Mr. Hulshof, it appears that maybe another vote is being called which apparently is a motion to adjourn. So let me ask you, how many minutes do you think your questions will take? Obviously we have not enforced time limits today. The Chair would like to be fair.

Mr. HULSHOF. I will attempt to conclude questioning to give us the opportunity to walk downstairs and vote. If you let me go forward, perhaps I can conclude.

Mr. DAVIS. The Chair recognizes Mr. Hulshof.

Mr. HULSHOF. Thank you, Mr. Chairman. Bringing up the rear, so to speak, a lot of these questions have been asked. I am hoping to tie up some loose ends. I guess the first one—I know Mr. Delahunt had another commitment—is to submit for the record Speaker Champ Clark, whose home county is now in the Ninth Congressional District that I am privileged to represent. I don't have this on firsthand authority but my guess would be that he would be part of Cardinal Nation, not Red Sox Nation. Let me get that out early on.

Mr. O'Sullivan, a lot of our focus has been on custom, precedent, usage, and Mr. Johnson has received I think the bulk of the inquiries. Let me, again just tying up a loose end, you were extremely helpful during our walkthrough last week. You spent over an hour with us. That has not been part of the record per se. But demonstrating for us specifically all of the procedures, the safeguards that the Clerk's office has put in place in order to get to that certification. That was extremely helpful.

And, again, while you haven't had a lot of questions just a couple of follow-up questions. You now, as I heard you in the last response, you now have adopted our verbiage, that the tally slip, even though the tally slip as you designed is something other than this diagram that is just to your right, correct?

Mr. O'SULLIVAN. We have the official tally sheet which we would use to call the roll, if we had to.

Mr. HULSHOF. But for the presiding officer, this tally slip is the certification for the presiding officer?

Mr. O'SULLIVAN. Yes.

Mr. HULSHOF. And reading from the board is not certification by the Clerk; is that also true?

Mr. O'SULLIVAN. I would think, yes. This is what we would say is the tally.

Mr. HULSHOF. And as you stated before, roll call vote 814 you were not present?

Mr. O'SULLIVAN. That is right.

Mr. HULSHOF. This was during one of the appropriations bills, there were a lot of amendments.

Mr. O'SULLIVAN. Right.

Mr. HULSHOF. And I think you had already gone home for the night recognizing that the next day was going to be another day full of votes and to keep a fresh Clerk in the chair, you had gone home for the evening and you were not there that evening; is that right?

Mr. O'SULLIVAN. That is correct. That is correct.

Mr. HULSHOF. Mr. Johnson, I want to just supplement the record in some of the things that you have referenced. For instance, one of the things that you referenced was Speaker Gingrich—the practice of receiving signals from the outside, that Speaker Gingrich changed the policy and in fact in our rule book that is reflected, is it not, on page 808, for those who choose to avail themselves of this, that in essence about two-thirds of the way down—I am reading now: Starting in the 104th Congress, the Speaker has announced that each occupant of the Chair would have the Speaker's full support in striving to close each electronic vote at the earliest opportunity and that Members should not rely on signals relayed from outside the Chamber to assume that votes will be held open until they arrive.

And every subsequent Speaker, including Ms. Pelosi, has adopted that condition; true?

Mr. JOHNSON. Yes.

Mr. HULSHOF. In fact, you also just referenced under Ms. Herseth-Sandlin's question this practice of in the last flurry of votes being switched, I think that is also referenced as precedent on page 109—I'm sorry—on page 807: In 1975, Speaker Albert announced that changes could no longer be made at the electronic stations, but would have to be made by ballot card in the well. And further, that changes may be made electronically during the first 10 minutes, but changes during the last 5 minutes would have to be made by ballot card in the well.

Mr. JOHNSON. That was the reference I made earlier to Speaker Albert. That confirms the 1975.

Mr. HULSHOF. Yes. There has been some back and forth between my friends Mr. Davis and Mr. LaTourette about the new clause in the rules about the reversal—reversing the outcome. And, in fact, at the bottom of page 807, there have been some parliamentary inquiries concerning the rule on holding votes open solely for the purpose of reversing the outcome. And it says at the top of 808: The Chair is constrained to differentiate between activity between the establishment of an outcome on the one hand and activity that might have as its purpose the reversal of an already established outcome on the other.

And so that is the quandary, is it not, as we determine, try to determine the state of mind of the presiding officer?

Mr. JOHNSON. Those three dates, Mr. Hulshof, are the sole precedents in this Congress up to the time of publication of the Manual. There may have been some subsequently, I don't know. But those three are worth examining to see whether all of them were just responses to parliamentary inquiries or any of them were points of order. None of them were appealed at that point, but that is the body of precedent such as there is under this new rule.

Mr. HULSHOF. Again, to clarify a few points raised by previous questions, in this vote in 1995 there was certification by the Clerk, was there not, a written tally sheet prepared prior to the presiding officer announcing the vote? You are nodding.

Mr. JOHNSON. Yes, I am sorry. The first of what should have been several tally slips, or at least another one had been handed to him. That is my recollection. Where it said 213 to 214, and he

immediately read from that slip as Members—two Members were coming into the well.

Mr. HULSHOF. There also has been some reference to the vote on November 21st of 2003, known as the Medicare vote. And I think you stated—again let me underscore this—that all Members were present in the Chamber; correct? In fact you recall, as I do, and I had the occasion to personally examine that vote in great detail in another forum, that even after the period of 3 hours or nearly 3 hours had passed not all Members had recorded their votes. Do you recall that specifically?

Mr. JOHNSON. No, I would say it stood at 216 to 218 for most of that 3-hour period with only one Member who was present abstaining, who had not yet voted. I remember who it was and where he was.

Mr. HULSHOF. As do I.

Mr. JOHNSON. He drew attention.

Mr. HULSHOF. In the interest of time, let me get to the final couple of questions that I have, and again on the role of the presiding officer. In legal jargon what comes to my mind is the neutral and detached magistrate that the law contemplates. I am talking about civil law, criminal law and perhaps that doesn't necessarily fit concisely our own rules but that we are looking for that presiding officer to be that fair, that neutral and detached magistrate. Would you agree with me?

Mr. JOHNSON. Yes.

Mr. HULSHOF. You mentioned competency in the Chair. Again just as a point of reference, when I used to work in the radio station, I had come from a campus station, I got stuck in the overnight time slot, midnight to 6, until I became a little more conversant putting sentences together and what have you.

In a similar way, I think both parties have done this. Newly elected Members often get the Special Order times because there it is often not controversial rulings that they would have to make, but it allows them to log time in the Chair and gain some experience and then perhaps they are prepared to be in the Chair during more difficult times. Is that a fair assessment?

Mr. JOHNSON. Yes.

Mr. HULSHOF. There is something to the competence of the presiding officer. Is there a confidence level that you had as a Parliamentarian with certain Members? Probably as we can all acknowledge that Mr. LaTourette logged a lot of time, probably more than anyone on the select committee. Is there a confidence level that comes with the Parliamentarian depending upon who is in fact in the Chair?

Mr. JOHNSON. Yes.

Mr. HULSHOF. Again, why is that?

Mr. JOHNSON. I suppose it is human nature and experience as much as anything. It is not only a personal friendship that may have developed, but it is a respect that, for example, if a Parliamentarian is temporarily distracted or not attentive or whatever, that that occupant of the Chair will presumably have had enough experience and incentive to take an initiative.

Mr. HULSHOF. And given a presiding officer who had extensive experience presiding over the body, even during some difficult

times, would most certainly—maybe not understanding all the precedents or the written precedent, but would certainly understand the custom, the usage, the normal practice, the ebb and flow, if you will, even during a very difficult vote; would he not?

Mr. JOHNSON. I would assume so, certainly hope so.

Mr. DAVIS. Mr. Hulshof, are you near?

Mr. HULSHOF. Yes, sir. In the interest of time, Mr. Chair, I would yield back.

Mr. DAVIS. Thank you, Mr. Hulshof. I think we have 3 minutes left in the vote. Let me thank our two very able witnesses for being here and enlightening us today. Our witnesses will have 5 days to supplement the record.

The Select Committee is adjourned.

[Whereupon, at 11:09 a.m., the committee was adjourned.]

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 110th CONGRESS, FIRST SESSION

Vol. 153 WASHINGTON, FRIDAY, JANUARY 5, 2007 No. 2

Senate

The Senate was not in session today. Its next meeting will be held on Monday, January 8, 2007, at 11:30 a.m.

House of Representatives

FRIDAY, JANUARY 5, 2007

The House met at 9:30 a.m.

The Chaplain, the Reverend Daniel P. Coughlin, offered the following prayer:

"Like the eyes of a servant
on the hand of her mistress
so our eyes are on the Lord our God.
till He shows us His mercy."

Lord, giver of all good gifts, You know as an institution the House of Representatives is served by many staffers and workers. As the 110th Congress begins its work, bless all who labor here on Capitol Hill. From police to parliamentarian to painter, recording clerk to reporter, both physician and political adviser, all are a blessing to the Members who are here to serve You and Your people by governance.

Assist them in their daily tasks, for all contribute to the common undertaking and serve this country. Be present to them in the midst of routine and show them Your mercy, both now and forever. Amen

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House her approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER. Will the gentleman from Texas (Mr. POE) come forward and lead the House in the Pledge of Allegiance.

Mr. POE led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all

APPOINTMENT OF MEMBERS TO PERMANENT SELECT COMMITTEE ON INTELLIGENCE

The SPEAKER. Pursuant to clause 11 of rule X and clause 11 of rule I, the Chair appoints the following members of the House to the Permanent Select Committee on Intelligence:

Mr. REYES, Texas, Chairman
Mr. HOEKSTRA, Michigan

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. The Chair customarily takes this occasion at the outset of a Congress to announce her policies with respect to particular aspects of the legislative process. The Chair will insert in the RECORD announcements concerning:

first, privileges of the floor;

second, introduction of bills and resolutions;

third, unanimous-consent requests for the consideration of legislation;

fourth, recognition for 1-minute speeches;

fifth, decorum in debate;

sixth, conduct of votes by electronic device;

seventh, use of handouts on the House floor; and

eighth, use of electronic equipment on the House floor.

These announcements, where appropriate, will reiterate the origins of the stated policies. The Chair intends to continue in the 110th Congress the policies reflected in these statements. The policy announced in the 102nd Congress with respect to jurisdictional concepts related to clause 5(a) of rule XXI—tax and tariff measures—will continue to govern but need not be reiterated, as it is adequately documented as precedent in the House Rules and Manual.

Without objection, the announcements will be printed in the RECORD.

There was no objection.

1. PRIVILEGES OF THE FLOOR

The Chair will make the following announcements regarding floor privileges, which will apply during the 110th Congress.

ANNOUNCEMENT BY THE SPEAKER WITH RESPECT TO STAFF

Rule IV strictly limits those persons to whom the privileges of the floor during sessions of the House are extended, and that rule prohibits the Chair from entertaining requests for suspension or waiver of that rule. As reiterated by the Chair on January 21, 1986, January 3, 1985, January 25, 1983, and August 22, 1974, and as stated in Chapter 10, section 2, of House Practice, the rule strictly limits the number of committee staff on the floor at one time during the consideration of measures reported from their committees. This permission does not extend to Members' personal staff except when a Member's amendment is actually pending during the five-minute rule. It also does not extend to personal staff of Members who are sponsors of pending bills or who are engaging in special orders. The Chair requests the cooperation of all Members and committee staff to assure that only the proper number of staff are on the floor, and then only during the consideration of measures within the jurisdiction of their committees. The Chair is making this statement and reiterating this policy because of Members' past insistence

[] This symbol represents the time of day during the House proceedings, e.g., [] 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

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upon strict enforcement of the rule. The Chair requests each chairman, and each ranking minority member, to submit to the Speaker a list of those staff who are allowed on the floor during the consideration of a measure reported by their committee. The Sergeant-at-Arms, who has been directed to assure proper enforcement of rule IV, will keep the list. Each staff person should exchange his or her ID for a "committee staff" badge, which is to be worn while on the floor. The Chair has consulted with the Minority Leader and will continue to consult with him.

Furthermore, as the Chair announced on January 7, 2003, in accordance with the change in the 108th Congress of clause 2(a) of rule IV regarding leadership staff floor access, only designated staff approved by the Speaker shall be granted the privilege of the floor. The Speaker intends that her approval be narrowly granted on a bipartisan basis to staff from the majority and minority side and only to those staff essential to floor activities.

ANNOUNCEMENT BY THE SPEAKER WITH RESPECT TO FORMER MEMBERS

The Speaker's policy announced on February 1, 2006, will continue to apply in the 110th Congress.

ANNOUNCEMENT BY THE SPEAKER, FEBRUARY 1, 2006

The SPEAKER. The House has adopted a revision to the rule regarding the admission to the floor and the rooms leading thereto. Clause 4 of rule IV provides that a former Member, Delegate or Resident Commissioner or a former Parliamentarian of the House, or a former elected officer of the House or a former minority employee nominated as an elected officer of the House shall not be entitled to the privilege of admission to the Hall of the House and the rooms extending thereto if he or she is a registered lobbyist or an agent of a foreign principal; has any direct personal pecuniary interest in any legislative measure pending before the House, or reported by a committee; or is in the employ of or represents any party or organization for the purpose of influencing, directly or indirectly, the passage, defeat, or amendment of any legislative proposal.

This restriction extends not only to the House floor but adjacent rooms, the cloakrooms and the Speaker's lobby.

Clause 4 of rule IV also allows the Speaker to exempt ceremonial and educational functions from the restrictions of this clause. These restrictions shall not apply to attendance at joint meetings or joint sessions, Former Members' Day proceedings, educational tours, and other occasions as the Speaker may designate.

Members who have reason to know that a person is on the floor inconsistent with clause 4 of rule IV should notify the Sergeant at Arms promptly.

2. INTRODUCTION OF BILLS AND RESOLUTIONS

The policy that the Chair announced on January 3, 1983, with respect to the introduction and reference of bills and resolutions will continue to apply in the 110th Congress. The Chair has advised all officers and employees of the House that are involved in the processing of bills that every bill, resolution, memorial, petition or other material that is placed in the hopper must bear the signature of a Member. Where a bill or resolution is jointly sponsored, the signature must be that of the Member first named thereon. The bill clerk is instructed to return to the Member any bill which appears in the hopper without an original signature. This procedure was inaugurated in the 92d Congress. It has worked well, and the Chair thinks that it is essential to continue this practice to insure the integrity of the process by which legislation is introduced in the House.

3. UNANIMOUS-CONSENT REQUESTS FOR THE CONSIDERATION OF LEGISLATION

The policy the Chair announced on January 6, 1999, with respect to recognition for unanimous consent requests for the consideration of certain legislative measures will continue to apply in the 110th Congress. The Speaker will continue to follow the guidelines recorded in section 956 of the House Rules and Manual conferring recognition for unanimous-consent requests for the consideration of bills, resolutions, and other measures only when assured that the majority and minority floor leadership and committee chairmen and ranking minority members have no objection. Consistent with those guidelines, and with the Chair's inherent power of recognition under clause 2 of rule XVII, the Chair, and any occupant of the Chair appointed as Speaker pro tempore pursuant to clause 8 of rule I, will decline recognition for the unanimous-consent requests chronicled in section 956 without assurances that the request has been so cleared. This denial of recognition by the Chair will not reflect necessarily any personal opposition on the part of the Chair to orderly consideration of the matter in question, but will reflect the determination upon the part of the Chair that orderly procedures will be followed; that is, procedures involving consultation and agreement between floor and committee leadership on both sides of the aisle.

4. RECOGNITION FOR ONE-MINUTE SPEECHES

ANNOUNCEMENT BY THE SPEAKER WITH RESPECT TO ONE-MINUTE SPEECHES

The Speaker's policy announced on August 8, 1984, with respect to recognition for one-minute speeches will apply during the 110th Congress. The Chair will alternate recognition for one-minute speeches between majority and minority Members, in the order in which they seek recognition in the well under present practice from the Chair's right to the Chair's left, with possible exceptions for Members of the leadership and Members having business requests. The Chair, of course, reserves the right to limit one-minute speeches to a certain period of time or to a special place in the program on any given day, with notice to the leadership.

5. DECORUM IN DEBATE

The Chair's announced policies of January 7, 2003, January 4, 1995, and January 3, 1991, will apply in the 110th Congress. It is essential that the dignity of the proceedings of the House be preserved, not only to assure that the House conducts its business in an orderly fashion but also to permit Members to properly comprehend and participate in the business of the House. To this end, and in order to permit the Chair to understand and to correctly put the question on the numerous requests that are made by Members, the Chair requests that Members and others who have the privileges of the floor desist from audible conversation in the Chamber while the business of the House is being conducted. The Chair would encourage all Members to review rule XVII to gain a better understanding of the proper rules of decorum expected of them, and especially: to avoid "personalities" in debate with respect to references to other Members, the Senate, and the President, to address the Chair while standing and only during, and not beyond, the time recognized, and not to address the television or other imagined audience, to refrain from passing between the Chair and a Member speaking, or directly in front of a Member speaking from the well; to refrain from smoking in the Chamber; to deactivate any audible ring of wireless telephones when entering the Chamber, to wear appropriate business attire in the Chamber; and to generally display the same degree of respect to the Chair and other Members that every Member is due.

The Chair would like all Members to be on notice that the Chair intends to strictly enforce time limitations on debate. Furthermore, the Chair has the authority to immediately interrupt Members in debate who transgress rule XVII by failing to avoid "personalities" in debate with respect to references to the Senate, the President, and other Members, rather than wait for Members to complete their remarks.

Finally, it is not in order to speak disrespectfully of the Speaker; and under the precedents the sanctions for such violations transcend the ordinary requirements for timeliness of challenges. This separate treatment is recorded in volume 2 of Hinds' Precedents, at section 1248 and was reiterated on January 19, 1995.

6. CONDUCT OF VOTES BY ELECTRONIC DEVICE

The Speaker's policy announced on January 4, 1995, with respect to the conduct of electronic votes will continue in the 110th Congress with modifications as follows.

As Members are aware, clause 2(a) of rule XX provides that Members shall have not less than 15 minutes in which to answer an ordinary record vote or quorum call. The rule obviously establishes 15 minutes as a minimum. Still, with the cooperation of the Members, a vote can easily be completed in that time. The events of October 30, 1991, stand out as proof of this point. On that occasion, the House was considering a bill in the Committee of the Whole under a special rule that placed an overall time limit on the amendment process, including the time consumed by record votes. The Chair announced, and then strictly enforced, a policy of closing electronic votes as soon as possible after the guaranteed period of 15 minutes. Members appreciated and cooperated with the Chair's enforcement of the policy on that occasion.

The Chair desires that the example of October 30, 1991, be made the regular practice of the House. To that end, the Chair enlists the assistance of all Members in avoiding the unnecessary loss of time in conducting the business of the House. The Chair encourages all Members to depart for the Chamber promptly upon the appropriate bell and light signal. As in recent Congresses, the cloakrooms should not forward to the Chair requests to hold a vote by electronic device, but should simply apprise inquiring Members of the time remaining on the voting clock. Members should not rely on signals relayed from outside the Chamber to assume that votes will be held open until they arrive in the Chamber. Members will be given a reasonable amount of time in which to accurately record their votes. No occupant of the Chair would prevent a Member who is in the Well before the announcement of the result from casting his or her vote.

7. USE OF HANDOUTS ON HOUSE FLOOR

The Speaker's policy announced on September 27, 1995, which was prompted by a misuse of handouts on the House floor and made at the bipartisan request of the Committee on Standards of Official Conduct, will continue in the 110th Congress. All handouts distributed on or adjacent to the House floor by Members during House proceedings must bear the name of the Member authorizing their distribution. In addition, the content of those materials must comport with standards of propriety applicable to words spoken in debate or inserted in the Record. Failure to comply with this admonition may constitute a breach of decorum and may give rise to a question of privilege.

The Chair would also remind Members that, pursuant to clause 5 of rule IV, staff is prohibited from engaging in efforts in the Hall of the House or rooms leading thereto to influence Members with regard to the legislation being amended. Staff cannot distribute handouts

In order to enhance the quality of debate in the House, the Chair would ask Members to minimize the use of handouts.

8 USE OF ELECTRONIC EQUIPMENT ON HOUSE FLOOR

The Speaker's policy announced on January 27, 2000, as modified by the change in clause 5 of rule XVII in the 108th Congress, will continue in the 110th Congress. All Members and staff are reminded of the absolute prohibition contained in clause 5 of rule XVII against the use of a wireless telephone or personal computer upon the floor of the House at any time.

The Chair requests all Members and staff wishing to receive or send wireless telephone messages to do so outside of the Chamber, and to deactivate, which means to turn off, any audible ring of wireless phones before entering the Chamber To this end, the Chair insists upon the cooperation of all Members and staff and instructs the Sergeant-at-Arms, pursuant to clause 3(a) of rule II and clause 5 of rule XVII, to enforce this prohibition

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. The Chair will entertain five 1-minute speeches on each side.

FISCAL RESPONSIBILITY

(Mr SALAZAR asked and was given permission to address the House for 1 minute and to revise and extend his remarks)

Mr. SALAZAR Madam Speaker, the administration has turned a projected 10-year, $5.6 billion surplus into a nearly $3 trillion deficit. Over the past 6 years, America's debt has climbed 50 percent to more than $28,000 per person. It is so bad that this administration has borrowed more money from foreign nations than all previous 42 U.S. Presidents combined. That is the fiscal mess that we inherit from the 109th Congress.

We believe it is time that we finally get our fiscal house in order. Today, we will restore the pay-as-you-go rules that were instrumental to the budget surpluses we experienced in the early 1990s. Pay-as-you-go budgeting with no new deficit spending is a key first step. This will reverse the budget deficits that are currently passing billions of dollars in debt to our children and our grandchildren.

It was wrong to eliminate pay-as-you-go in 2002. We need to begin to treat our Federal budget in the way that working families treat their budgets, and pay-as-you-go is a good first step

Madam Speaker, I hope that this House can act in a bipartisan fashion to restore fiscal responsibility to Washington.

OLE NUMBER 48—GERALD FORD

(Mr. POE asked and was given permission to address the House for 1 minute.)

Mr. POE. Madam Speaker, when President Gerald Ford played football for Michigan, he was the team's center on offense. He touched the ball on every play. The play could not begin without Gerald Ford snapping the ball. Others on the team, however, the quarterback, running back and receivers, made all the headlines, but that was fine with Gerald Ford. As the center he was neither on the right nor the left but in the middle of the charge to move the ball over the goal line.

Gerald Ford and Michigan were successful. Michigan won two national championships. Gerald Ford was offered contracts with NFL teams, such as the Detroit Lions. He chose law school instead, served in World War II, fought in that great war, and was a Member of this very House.

When he became President, ole No. 48, President Ford, took the ball again, but this time on the field of American discontent about corruption and war. He stayed in the center and once again was successful in moving Team America across the goal line of healing and hope.

However, when entering a room, President Ford always preferred the band not play the traditional Hail to the Chief but, rather, the Michigan fight song.

Thank you, President Ford, for playing ball for Team America.

And that's just the way it is.

BRING THE TROOPS HOME

(Mr. KUCINICH asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KUCINICH. Madam Speaker, Congress as a coequal branch of government must be prepared to act to bring our troops home from Iraq. Congress must have an exit plan and take steps to implement it. President Bush has every intention of keeping the troops in Iraq through the end of his term. However, the money is there to bring the troops home now. If Congress appropriates more money for Iraq, the war will escalate and more troops and innocent civilians will die. The American people voted for a new direction. That direction is out of Iraq. Let us rescue our troops. Let us rescue a domestic agenda. Let us reverse policies which have created chaos, massive civilian casualties and destruction in Iraq. Let us reunite the community of nations in the cause of stabilizing Iraq.

The U.S. cannot do this as occupiers or as agents of contracting and oil interests. We can do this only once we have stated our intention to end the occupation. Next week I will be presenting to this Congress a workable plan which can enable our Nation to bring the troops home, assure an international peacekeeping force and begin to close this perilous chapter in our Nation's history.

CONGRESS IS ACTUALLY GOING TO WORK 5 DAYS A WEEK TO MAKE AMERICA BETTER

(Mr. COHEN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. COHEN. Mr. Speaker, as Democrats take control of Congress this week, the American people are going to see some stark differences in how we run this institution compared to the way it has been run for the last 6 years

First, the House is actually going to be in session 5 days a week most weeks Last year, the Republican Congress was known as the do-nothing Congress because it met fewer days than any Congress in 6 decades.

Not only is this House going to be in session more often, it is actually going to do its job while we are here. For years, Republican Congresses refused to conduct proper oversight of the Bush administration, instead choosing to rubber-stamp its policies.

Democrats take oversight responsibility seriously, and are prepared to hold this administration accountable for its successes and its failures. In hearings, we're going to ask administration officials some tough questions so that we can make government work again for all Americans.

Mr. Speaker, at a time when our Nation is at war and with so many domestic and international issues that must be addressed, the American people rightly want us here doing our job. The new Democratic Congress will not disappoint.

On a personal note, as one of the new freshmen elected here, America, you have a great freshman class, a great deal of talent, and I think you can feel proud of your new Speaker, Madam PELOSI.

HOUSE DEMOCRATS PLAN TO RESTORE DEMOCRACY IN THE HOUSE OF REPRESENTATIVES

(Ms. SOLIS asked and was given permission to address the House for 1 minute.)

Ms. SOLIS. Good morning, Mr. Speaker, and buenos dias.

You know, folks, this is the people's House, but for much of the last 6 years, House Republican leaders chose to run it with an iron hand—one where only the voices of the special interests were heard in this House. Opposing voices were always ignored.

House Democrats vowed to restore democracy in this House and today we live up to that promise by committing to a fair and democratic process and the end of the 2-day workweek. Our proposal specifically prohibits holding votes open for the sole purpose of affecting the outcome. We all remember the Medicare prescription drug vote I

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. Requests for 1-minute speeches will be entertained later in the day.

RESIGNATION AS PARLIAMENTARIAN OF HOUSE OF REPRESENTATIVES

The SPEAKER laid before the House the following resignation as Parliamentarian of the House of Representatives:

THE SPEAKER'S ROOMS,
HOUSE OF REPRESENTATIVES,
Washington, DC, May 20, 2004.

Hon. J. DENNIS HASTERT,
Speaker of the House of Representatives, Washington, DC.

DEAR MR. SPEAKER: After forty years of service in the Office of Parliamentarian, I believe that the time is appropriate for me to submit my resignation in completion of a wonderfully satisfying career under seven Speakers. By this action, I shall with your permission remain available to fulfill the requirement in law to publish precedents accumulated during my tenure and that of my beloved predecessor, the late Wm. Holmes Brown.

This decision is made especially difficult by the loyal support and friendship you have shown to me, Mr. Speaker. You have enabled my office to serve the House and all its Members at a time of profound institutional change, by coping with new pressures and realities while mindful of the importance of continuity of the practices and precedents of the House and of the dignity and integrity of its proceedings. Speaker Foley, who appointed me to this position, other Speakers, and Minority Leaders, whose personal friendships I have also cherished, have likewise been particularly supportive of this office.

One need only refer to the prefaces of Hinds', Cannon's, and Deschler's Precedents to gain a sense of the extent of the procedural evolution in the House for the first 190 years of the Republic, and then compare with that documented history the nature and pace of more recent changes, to understand the enormity of contemporary developments. Along the way, important matters of Constitutional separation of powers and continuity of government have occupied high profile status requiring the attention of my office. Numerous incremental changes have considerably altered the procedural landscape during my career. Examples include increased turnover in Membership, committee seniority status, budgetary disciplines, appropriations practices, an ethics process, televised proceedings, multiplicity of committee jurisdictions, oversight and authorization prerequisites, the impact of changing Senate processes, disposition of matters in conference, review of Executive actions, authorities to recess, to postpone and cluster votes and consolidate amendments, an issue-specific super-majority vote requirement, electronic capabilities, committee report availabilities, five-minute rule and other special rule variations, and the interaction between traditional spontaneity of the House's proceedings and trends toward relative predictability of time constraints and issues presented.

I believe that the longstanding tradition of the role of the Chair in rendering impartial and proper decisions has been maintained and appreciated despite the switch in party majorities and despite occasional efforts to appeal various rulings. It has been reassuring when bipartisan majorities understand and support the rulings of the Chair solely on the basis of their propriety as nonpartisan institutional standards with precedential significance. Respect for appropriate means of disagreement remains the foundation upon which so much depends. I express special gratitude to those Members on both sides of the aisle who served as fair and effective presiding officers during this time. We share a unique bond.

In fact, my decision is made easier by the certain realization that my office is immediately capable of providing all required services to the House. That is made possible by the total dedication and competence of my deputies, assistants and clerks. Beyond the fact that they offer to the House more than 100 years in cumulative nonpartisan professional experience, they are my dear friends whose institutional loyalty and commitment have been unfailing. Together, with frequent infusions of humor and with an essential ability to communicate honestly with all who inquire, they serve in the public interest. In retrospect many of my own most valuable experiences were as Deputy and Assistant, in furtherance of the office's collective response to questions. I am particularly proud of the involvement of my office in the preparation of the recodification of the Rules in the 108th Congress working with a bi-partisan task force. By this letter through you Mr. Speaker, I also wish to honor the many staff who, over the years, have respected and protected the collegial traditions of the House by their professionalism and by being true to Speaker O'Neill's reminder of the abiding "importance of being nice".

My affection for the House which began when Parliamentarian Lewis Deschler hired me in 1964 has been sustaining. It has been nurtured by occasional skepticism, by the never-ending nuances of questions and responses which have confronted the House, by cherished relationships with Members and staff past and present, and by exchanges with parliamentarians from over the world. I expect to communicate the value of this unique experience to young people contemplating public service. Thank you, Mr. Speaker, for having permitted me this opportunity, and for your friendship.

With your permission, this resignation will take effect May 31, 2004.

Very respectfully yours,
CHARLES W. JOHNSON,
Parliamentarian.

The SPEAKER. With great regret, the Chair accepts the resignation of the distinguished Parliamentarian of the House, Charles W. Johnson, effective May 31, 2004.

APPOINTMENT AS PARLIAMENTARIAN OF HOUSE OF REPRESENTATIVES

The SPEAKER. Pursuant to section 287a of title 2, United States Code, the Chair appoints John V. Sullivan as Parliamentarian of the House of Representatives to succeed Charles W. Johnson, resigned.

Will the gentleman from Illinois (Mr. LAHOOD) kindly assume the Chair.

EXPRESSING THE GRATITUDE OF THE HOUSE OF REPRESENTATIVES TO ITS PARLIAMENTARIAN, THE HONORABLE CHARLES W. JOHNSON.

Mr. HASTERT. Mr. Speaker, I offer a resolution (H. Res. 651) expressing the gratitude of the House of Representatives to its Parliamentarian, the Honorable Charles W. Johnson, and ask unanimous consent for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 651

Whereas Charles W. Johnson was appointed to the Office of the Parliamentarian of the House of Representatives in May 1964 and, over the ensuing 40 years has continuously served in that Office under seven successive Speakers, the past 10 years as Parliamentarian of the House of Representatives under the appointments of three successive Speakers;

Whereas Charles W. Johnson has unfailingly endeavored to apply pertinent precedent to every parliamentary question, in recognition of the principle that fidelity to precedent promotes procedural fairness and legitimacy; and

Whereas Charles W. Johnson has institutionalized in the Office of the Parliamentarian his demonstrated commitment to consistency in parliamentary analysis: Now, therefore, be it

Resolved, That the House of Representatives expresses its profound gratitude to the Honorable Charles W. Johnson for his unrivaled record of devoted service and steady, impartial guidance as its Parliamentarian.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

PARLIAMENTARY INQUIRY

Mr. DREIER. Mr. Speaker, parliamentary inquiry.

The SPEAKER pro tempore (Mr. LAHOOD). The gentleman may inquire.

Mr. DREIER. Mr. Speaker, is a motion to table this resolution in order at this time?

The SPEAKER pro tempore. The gentleman from Illinois (Mr. HASTERT), the distinguished Speaker, will control 1 hour.

Mr. HASTERT. Mr. Speaker, I yield myself such time as I may consume, after which I yield my time to the gentleman from Texas (Mr. DELAY) and ask unanimous consent that he be allowed to control that time.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. HASTERT. Mr. Speaker, 40 years ago Charlie Johnson, fresh out of Virginia Law School, came to work for the Office of the Parliamentarian. Little did he know that 40 years later, almost to the day, he would be announcing his retirement from that same office.

Charlie, we are going to miss you.

You have been a rock. You have advised seven different Speakers and countless Speaker pro tems on how they should rule on various parliamentary questions. You have advised thousands of Members and even more staff in how to draft their amendments. You have given us advice on committee jurisdiction, the favorite part of my job.

The Parliamentarian in the House takes on special significance, more so than any other legislative body. You