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MEMBER BRIEFING ON VOTING IN THE HOUSE OF REPRESENTATIVES—THE ROSTRUM AND THE ELECTRONIC VOTING SYSTEM: A "WALKTHROUGH" BY THE CLERK OF THE HOUSE LORRAINE C. MILLER

HEARING

BEFORE THE

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

HOUSE OF REPRESENTATIVES,

ONE HUNDRED TENTH CONGRESS
FIRST SESSION

OCTOBER 18, 2007

WASHINGTON, DC

U.S. GOVERNMENT PRINTING OFFICE

★42–170 WASHINGTON : 2008

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

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

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STEPHANIE HERSETH SANDLIN, South Dakota

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

MEMBER BRIEFING ON VOTING IN THE HOUSE OF REPRESENTATIVES—THE ROSTRUM AND THE ELECTRONIC VOTING SYSTEM: A "WALKTHROUGH" BY THE CLERK OF THE HOUSE LORRAINE C. MILLER

THURSDAY, OCTOBER 18, 2007

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

The committee met, pursuant to call, at 8:05 a.m., in the House Chamber, The Capitol, Hon. William D. Delahunt (chairman of the committee) presiding.

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

Ms. MILLER. Good morning. Let me just tell you what our agenda is today. What we want to do is give you, the select committee, a slow walk through a typical vote so that you will be able to see how we actually execute a vote on your behalf.

Then the first thing I want to do is we have—we took the liberty of getting probably the three most essential people in making sure your vote is accurately recorded. The first person, I think, that you need to know is the seated tally clerk.

Today Mark is our seated tally clerk. So what does Mark do? He operates the EVS system, and he enters all the well votes. So he is essential. We can't operate without having the seated tally clerk.

Mr. LATOURETTE. Is Mark's last name O'Sullivan? Is he the chief tally clerk?

Ms. MILLER. Yes, Mark O'Sullivan, Mr. O'Sullivan.

The second person who is really key to this process is the standing tally clerk. Today that position will be played by Frances Chiappardi, who is our Chief of Legislative Operations.

What does Frances do? When Members come to the well, she will take the well cards; she writes the roll call number on the well card. She has to make sure that the Member's name is legible, because a lot of times you will just hand it to her, and we have to make sure we are able to identify who it is.

Then, she gives that well card vote to the seated tally clerk, who enters it into the EVS system, and then, at the conclusion of a vote, the standing tally clerk will then write out the tally and give it to the Parliamentarian, who then gives it to the presiding officer for announcement.

The other person that is really essential to this is the reading clerk.

Where is Kristen? Hello, Kristen.

Kristen reads all of the communications that the House receives, the messages, the motions, and the legislation. Then she inserts any amendments when we are carrying on legislative business. If someone has an amendment, it is Kristen's responsibility to make sure it gets inserted properly.

At the end of the vote, when the Chair calls it, when a Member changes a vote with less than 5 minutes left, then that is announced at the rostrum.

So when we are in the final 5 minutes of a vote, if someone comes to the well and wants to change a vote, it is announced, "Mr. Pence, off aye, on no," and that is our typical procedure.

Mr. LATOURETTE. Is that because the voting stations are locked out of changes with 5 minutes left to go in a 15-minute vote?

Ms. MILLER. Yes.

What we are going to do now is try to go through a typical vote and just let you see how—I was amazed that so many Members didn't know that we had a computer screen. There is a terminal here on the floor that we use to record your votes.

The CHAIRMAN. Ms. Miller, in a 5-minute vote, as opposed to a 15-minute vote, is there a lock, or is it just kept open?

Ms. MILLER. A lock?

The CHAIRMAN. A lock. In other words, to change a vote at that point in time, can it be accomplished through a voting card, or does it require a Member?

Ms. MILLER. You can change it there at your voting station. Then once it is done, you will have to come to the well.

So what typically happens, the presiding officer will give an announcement, and our distinguished Parliamentarian Mr. Sullivan——

Mr. SULLIVAN. Do you want me to start?

Ms. MILLER. Yes.

Mr. SULLIVAN. The trigger for Mark to open the vote so Members can record at the stations is when the Chair says, "The yeas and nays are ordered. Members will record their vote by electronic device." Instead of having the Clerk call the roll of names, the Chair is invoking the computer. That is Mark's cue to turn the system on.

Mr. PENCE. Can I ask you a question, Lorraine? The Parliamentarian is talking about the practice of Members to record their votes by electronic device. The House rules, do they make reference to that kind of an announcement, or is it accurate that the House rules are silent on the electronic voting machine?

Mr. SULLIVAN. They are not silent. The default system for a recorded vote is to direct the Clerk to call the roll of Members and have them respond by yelling yes or no. But the Chair has the discretion, whenever he or she wants, to invoke the electronic system instead. That, of course, is in more than 99 percent of the cases.

The CHAIRMAN. But there is no specific mention of it.

Mr. PENCE. Just for clarification, is there a specific reference to the electronic voting system in the House rules?

Mr. SULLIVAN. Yes.

Mr. PENCE. There is.

Mr. LATOURETTE. Is it in rule 20?

Mr. SULLIVAN. Yes.

The CHAIRMAN. Is it a lengthy rule? Could you summarize in part?

Mr. SULLIVAN. It says in clause 1(b), for example—I think it is mentioned in more than one place, but in clause 1(b) of rule 20, it says, "If a Member requests a recorded vote, and that is supported by the requisite number, the vote should be taken by electronic device unless the Speaker invokes another procedure to record the votes provided in this rule."

The CHAIRMAN. That is sufficient. Thank you.

Mr. PENCE. Do the rules give any further definition of the electronic device? Does it give any specificity about that relative to—I have been told in informal discussions that since 1977, the rules have not really discussed in any great detail the electronic voting system.

Mr. SULLIVAN. The rules have not mentioned that there would be 46 voting stations, that they respond to smart cards, or that they be linked to a wall display, or that they even be linked to a wall control. That is all nontextual.

Mr. PENCE. Thank you.

Ms. MILLER. The Parliamentarian, the presiding officer, has given us the preliminary to the cue, so, Mark, our next effort is to initiate a vote. He is going to do this slowly.

Now, Mark has been watching the floor proceedings, and he knows that we have H.R. 2020 in consideration, which you guys have been talking about. We are simulating that this is the passage of H.R. 2020.

You notice on the screen that means on passage it is the yeas and nays. Here are listed a lot of options. Let me turn around so I can see. It can say on passage, on agreeing to the amendment, on the motion to suspend the rules and pass, like we do on a suspension.

So he has those options to choose from. So we know that we are on passage, and we would then be asking for the yeas and nays. So he has got his screen cued up. You are ready to go.

He presses on "go," and then it says, "Start this vote?" That is all done so quickly. Now, we are taking the time now, but this is done in very rapid succession. Start the vote, because the presiding officer has already said, "Members will record their votes by electronic device." He will then click on "yes," and that starts two things: The displays come up, and the clock starts.

We are in a 15-minute vote. So your displays are up, the clock is running.

Now, what he does now is he is going to go to a well vote, because right now all 46 of the voting stations are open, and he is going to——

Mr. DAVIS. How many voting stations are there?

Ms. MILLER. There are 46 on the floor, 46.

Ms. HERSETH-SANDLIN. Mark, could you go back, after you started the vote, that first screen came up again?

Mr. O'SULLIVAN. Back to the primary.

Ms. MILLER. This is our primary screen.

Mr. GORE. Which is slide 1.

Ms. HERSETH-SANDLIN. As soon as you start the vote, this comes up, and then you hit "well voting."

Ms. MILLER. Yes. For the first 10 minutes you can go to any of the 46 voting stations and vote, and change your vote. After the 10 minutes—he is waiting here, until Members start coming to the well. So what we would like to do is for Mr. Pence and Mr. Delahunt to go vote, if you wouldn't mind.

For Mr. Pence, watch the board and his name once he inserts his card, and he casts the vote.

Mr. GORE. The display boards also show virtually immediately the 1.

Ms. MILLER. So we have a "yes" and a "no." The clock is still running. This is typically what happens, but there are so many of you that are voting, we are just doing this as an example.

The CHAIRMAN. Madam Clerk, Mark is seeing exactly—this is just a secondary as opposed to the primary; that is the control, right?

Mr. O'SULLIVAN. What you are seeing is what I am seeing.

The CHAIRMAN. But you are controlling.

Ms. MILLER. He is controlling it.

The CHAIRMAN. That you would describe as——

Mr. O'SULLIVAN. Part of the primary menu.

Ms. MILLER. But that is the control.

The CHAIRMAN. But that is the control?

Ms. MILLER. This is the control. That is the monitor here.

The CHAIRMAN. Everything you are seeing on the floor, what the Majority and Minority see are the——

Ms. MILLER. Same thing.

The CHAIRMAN. A reflection, an instantaneous reflection of the control, of the input?

Ms. MILLER. Of the seated tally clerk, yes.

Mr. PENCE. Point of clarification, if I may—no, no, Stephanie.

Ms. HERSETH-SANDLIN. No, no, go ahead.

Mr. PENCE. The question I had, is Mark's position, is——

Ms. MILLER. He is the seated tally clerk.

Mr. PENCE. My question, Madam Clerk, is the seated tally clerk involved in the transaction that takes place between a Member's vote and an electronic device and the appearance of the vote on the wall on either board?

Ms. HERSETH-SANDLIN. He is not doing anything for that first 10 minutes, right?

Ms. MILLER. No. As you vote at the voting station, he doesn't make it appear there, it automatically does that. The system itself will place your vote.

Mr. LATOURETTE. When does he enter the well cards that are changes at the end of the vote? If I have lost my card in the first 5 minutes, does he do that now, or does it wait until the end?

Ms. MILLER. No, he can do that now. He can put you in now, and it will be displayed. That is one of the things that we wanted to do. If one of you wanted to change your vote or someone came to the well to vote now——

Mr. HULSHOF. May I do that?

Ms. MILLER. Sure.

Mr. HULSHOF. I am sorry, Mr. Delahunt.

Ms. HERSETH-SANDLIN. That is the same thing. In the first 10 minutes he just kind of sits back and waits.

The CHAIRMAN. Actually, in the first 10 minutes——

Ms. HERSETH-SANDLIN. Unless someone goes up and they don't have their card.

Ms. MILLER. He is given the card——

The CHAIRMAN. If I may, Madam, because I know the stenographer—if we can just pose our questions and allow her to take them down, and the rest of us will go back to regular order, so to speak.

Ms. MILLER. What typically happens, a Member will give the standing tally clerk a well card and immediately look up to see if the vote is posted. It does take the seated tally clerk a couple of seconds to enter it. Then it is electronically shown. So, Mr. Hulshof——

Mr. O'SULLIVAN. I will have to verify the screen.

Ms. MILLER. Yes, he must verify every well card vote. Every vote must be verified, and then he accepts that, and there he is. That happens for every well card vote. It is verified, and then it is displayed.

All right. Why don't we have someone change their vote before the 5 minutes?

You are free to——

The CHAIRMAN. I am going to change.

Ms. MILLER. You want to do it at the well? You can do it at a voting station.

The CHAIRMAN. I can't, right? I will do it at the well. Let me ask as a matter of course, and I just wrote Delahunt down, that is sufficient for your purposes?

Mr. O'SULLIVAN. We would know, but we would like to get the state, delegation and the district, particularly for the duplicate names.

Ms. MILLER. Mark is going to enter—see. He does. Mr. Delahunt. Now, notice on the screen it says, "Vote, aye." He was "no." Now his vote is "aye." He has to accept that, and then it changes on the board.

The CHAIRMAN. Madam Clerk, the time that is involved, I presume there haven't been any studies done, but what would be the estimate of——

Ms. MILLER. How long it takes?

The CHAIRMAN. Right. Ten, fifteen seconds before you verify?

Ms. MILLER. No. What he is saying, once you enter a vote in the system, and then it gets——

Mr. O'SULLIVAN. Ten seconds.

Ms. MILLER. Remember——

The CHAIRMAN. This is a cue?

Mr. O'SULLIVAN. Depending on how many cards I have, there may be a delay by the time I receive your card; it may be my tenth card, so it kind of clogs up. But once I get to your card, it is only a matter of a few seconds.

Ms. MILLER. Ms. Herseth.

Ms. HERSETH-SANDLIN. If Mark is given a number, if the cards are coming relatively quickly, Mark, do you enter each Member's name, the vote, and verify each one separately; or with the columns

that we have here, could you take four or five cards, enter the names, put the vote in and not go to the next screen to verify all five?

Mr. O'SULLIVAN. I have the option to do more than one. I could fill in the screen.

Ms. MILLER. He could fill the entire screen there with well card votes, and then they would be verified in massive numbers. So he could do 10 at a time if he chose to.

Mr. GORE. Almost to 5 minutes.

Mr. PENCE. Madam Clerk, quickly, you have used the word "verify" several times. Can you just give me 10 seconds on how he verifies the vote, who he verifies the vote with before he presses "accept"?

Ms. MILLER. Mark.

Mr. O'SULLIVAN. What I am verifying is I have—I am inputting the correct vote. So I have a green card, a yea vote for Mr. Hulshof. I am going to make sure that it says "Hulshof, yea." So that is the verification. This card is matching the input.

Mr. PENCE. Thank you.

Ms. MILLER. We are approaching 5 minutes. Would someone—Mr. Pence, would you quickly change your vote?

Mr. PENCE. Electronically?

Ms. MILLER. Yes, sir. You have 36 seconds. Okay. You can see that he changed from green to red and that the summary boards also changed, okay? Now we are approaching a 5-minute mark. After 5 minutes, when you get to 5 minutes, you cannot change your vote at the voting stations. You have got to come to the well.

Mr. Davis, would you come and vote at the well?

Ms. Herseth, will you attempt to vote at the voting stations?

Mr. O'SULLIVAN. She can vote, there is no change.

Ms. MILLER. Okay, why?

Ms. HERSETH-SANDLIN. Because I haven't voted yet.

Ms. MILLER. Okay.

Ms. HERSETH-SANDLIN. This has happened to me before, if I vote "yes," and then I realize, oh, no, they switched the order, and I try to stick it back in and vote "no," can I do that in 5 minutes? I will try to do that.

Ms. MILLER. Okay.

Where are you, Ms. Herseth?

Ms. HERSETH-SANDLIN. I am up there—but then I say, oh, I want to vote "no," it won't let me.

Ms. MILLER. Okay. You have to come to the well.

Mr. O'SULLIVAN. Since Mr. Davis is a duplicate, this is normally how I would handle a duplicate name.

The CHAIRMAN. Mark, can you speak a little louder?

Mr. O'SULLIVAN. This is how I would handle Mr. Davis, when we have duplicate names. I generally put in the last name and then call up the list and choose the Member I am looking for. If I type in "Davis" in the system, I am going to get this list.

Ms. MILLER. These are the listings of all the Davises that are current Members of the House and voting.

Mr. O'SULLIVAN. I just pick, happens to be first one. So I say "yea," and then it pulls his name out into the verify screen, verifying this card.

Ms. MILLER. Okay. You verified it, you accept it.

Mr. PENCE. Madam Clerk, it is my understanding as well that when someone does what Ms. Herseth-Sandlin just did, that the system will record both her vote and her attempt to change the vote on the electronic system; is that correct?

Ms. MILLER. Yes, it will. Any time a Member inserts a card into the receptacle, it is recorded. There is a file that is created.

Mr. PENCE. Even if the vote cannot be changed at that point, there is still an electronic record made of the attempt to change it.

Ms. MILLER. Even if Members are just checking the vote to make sure.

Ms. HERSETH-SANDLIN. Is there a distinction in the system if I had voted yes, took my card out, put my card in, but didn't push any buttons, and the red light—the green light would brighten up? So what Mr. Pence is asking, if I tried to hit the red button, and it didn't light up, that is——

Ms. MILLER. It will tell us.

Ms. HERSETH-SANDLIN. It will tell you that I hit the red button?

Ms. MILLER. It will tell you that you attempted to check or to change, yes.

The CHAIRMAN. It distinguishes between checking and changing.

Ms. MILLER. Or voting, Goldey, it distinguishes between checking and changes?

Mr. VANSANT. It does.

Ms. MILLER. It is a file that is created.

Mr. DAVIS. Now, when we say there is a distinction between checking and changing, is it when you stick it in, and you attempt to do what you have already done, that is simply recorded for duplicative action? Actually, what is the distinction from checking and changing from the machine standpoint?

Ms. MILLER. Goldey Vansant, who is our Chief of Computer Systems—Goldey, stand up.

Mr. VANSANT. I didn't quite hear.

Mr. DAVIS. What is the distinction between checking and changing from a machine standpoint. You say a machine distinguishes between the two. What are you doing?

Mr. VANSANT. If you verify what we are seeing actually, the transaction, we are seeing it hard in—under your name. If you have already voted, it indicates to us that it has lit the appropriate light on the station, and indicates that as a verified vote. When you take the card out, we now see an entry. Card out, the time is recorded at that point.

If you are inside the 5-minute mark, you have inserted your card, and then you attempt to change your vote, we will see an entry in there that says, "Attempt to change vote." If you take the card out, there will be another line entry that says, "Card out."

Ms. MILLER. It is very sophisticated. The transaction log, that is very interesting. A lot of times we will have Members to say, I attempted to vote, it didn't take my vote. We always pull the transaction logs, and it will tell you what you have done and how many times you have tried to verify it. Sometimes you will see Members who just come back to a different voting station around the Chamber and attempt to verify their votes.

Mr. GORE. I will just add that transaction log, you all will have a copy of it. We will be able to go back and see the second, exact second, in which that was done.

Ms. MILLER. Yes, it even times it. It is pretty precise.

Mr. PENCE. Madam Clerk, I guess under FOIA, all of this would be public documents, but how public, how accessible to the public is that electronic record at this point in time?

Ms. MILLER. I think we have exempted ourselves.

Yes, we are exempt employees, but we don't——

Mr. LATOURETTE. Right. You may not have voted for it.

Ms. MILLER. Right. We are exempt of FOIA. We, on occasion, will share it with a Member; never with the press, never, ever, ever, because we see that as your personal vote. It is not to be disclosed.

The CHAIRMAN. This is a bit of a digression, but does that include all congressional records?

Ms. MILLER. We are exempt from FOIA.

Mr. LATOURETTE. So carry on.

The CHAIRMAN. That was the first good question I have asked today.

Ms. MILLER. Needless to say, we have lots of press inquiries asking for those records. We just don't do it unless you guys want us to do it.

Mr. LATOURETTE. The way the new Majority is going, they might want to do it.

Ms. MILLER. Okay. We are fine now. So we have 4–1. There is obviously one Member who hasn't voted, correct?

Mr. O'SULLIVAN. Ms. Herseth-Sandlin, on the vote, after the 5 minutes, when the clock hits 5 minutes, she submitted this red change card, which I am going to enter and put it on the list. I am going to put it on the vote. So here is the change.

Ms. MILLER. Mark, we are about to close the vote.

John, what would you say, what would the presiding officer be saying as we get down to the end of a vote?

Mr. SULLIVAN. There are two phases. The first phase is marked by the Chair's utterance, "Have all Members voted," or, "Does any other Member desire to vote?"

The second phase is marked by the Chair's utterance, "Does any Member wish to change their vote?"

When the Chair makes that second utterance, it triggers the activity between the tally clerk and the reading clerk to announce those changes that occurred after the 5 minutes.

The changes that occurred by card at the stations are not read by the reading clerk, and the changes effected in the first 10 minutes of the vote by ballot card in the well likewise are not read. So the only one of the changes of the transactions this morning that would be read so far would be Ms. Herseth-Sandlin, which is after the 5-minute lockout by card in the well.

So when the Chair says, "Have all Members voted," that—usually wait a decent interval after that because that usually reminds somebody that they haven't voted yet, and then there is a little bit of activity.

Then when the Chair thinks it is really going to close, she will ask, "Does any Member wish to change a vote," and that triggers the activity with Mark and Kristen.

Ms. MILLER. Then Kristen will read.

Ms. BRANDON. A new piece of paper with all the lists of off "aye," on "no"; and off "no," on "aye"; and off "present," on "no"; and off "present," on "aye."

Ms. MILLER. All this is going on very rapidly, the well cards that are after the 5-minute vote, and we are scrambling. We are making sure those are listed, and then the reading clerk will announce the Ms. Herseth-Sandlin vote, everybody that is at the end of the 5-minute vote.

I see a query on your face, Mr. Hulshof.

Mr. HULSHOF. Only I assume this would be a printout that Mark would trigger, or is this handwritten as far as the names off "aye," on "no"?

Ms. MILLER. It is handwritten. We won't have time for a printout. Remember, this is the last 5 minutes of the vote. The other day I sat here, because I couldn't believe it myself. What they typically do is all the well cards then are alphabetized quickly, and if we have the time between the actual announcing of the results of a vote, the seated tally clerk will call downstairs and say, here are the well votes. These are the names I have that are voted at the well.

For verification, we, not only on the screen, but we try to double-check to make sure that—double, triple-check to make sure we have accurate accounting of the well card votes.

So he is calling down trying to make sure that our leg ops has the same list.

The CHAIRMAN. When you say "calling down," Lorraine, what do you mean by "calling down"?

Ms. MILLER. Oh, yes. He sits there with a phone. There is a phone right there.

The CHAIRMAN. Who is he calling?

Ms. MILLER. He is calling a leg ops person downstairs in HT–13.

Mr. DAVIS. What would happen if there was a discrepancy detected after the phone call? What would happen if there was a discrepancy?

Mr. O'SULLIVAN. That would be after the tally is announced, so that is a correction to the vote. And if I have these cards and entered one wrong through the whole process to close the vote, the tally is announced, and then when I check with my staff, check downstairs, they print out a list of what the EVS says. The cards I put in, I read these cards against that list, and they don't match, and one is wrong, then I have to inform the Parliamentarian and then start correcting the tally to the various people that need to be informed, and inform the presiding officer.

Mr. DAVIS. What happens if a discrepancy is detected after a vote is announced? You just described a scenario that happens before a vote is announced. What if it happens after a vote is announced?

Mr. O'SULLIVAN. I will describe the vote a little bit. During a vote we would like to check these cards several times. So during the vote, as I get a chance, what I do is I hit this. You see on the screen, you get this well vote icon. This is going to tell me all the Members I have entered.

What I do is I take my cards and run it, proof it against this list. Hopefully they match, but if, for example, they don't, this is the point where I can correct it before the vote is final.

The CHAIRMAN. How frequently does that occur?

Mr. O'SULLIVAN. Not that often.

The CHAIRMAN. In the course of 1,000 roll calls.

Mr. O'SULLIVAN. Over 1,000? A handful. The error rate is pretty small.

The CHAIRMAN. As you are entering the votes manually, you are also keeping a manual record. You are writing down on your sheet?

Mr. O'SULLIVAN. Just only the Members that change, submitted a card to change their vote.

Ms. MILLER. After the 5 minutes.

The CHAIRMAN. But you are keeping this record on this sheet?

Mr. O'SULLIVAN. During the last 5 minutes.

Ms. MILLER. Only the last 5 minutes.

Mr. O'SULLIVAN. Once the Clerk reads that sheet, that sheet is given to the official reporters, and then any further changes are just verbally read by the reading clerk, and the official reporter picks it up that way.

The CHAIRMAN. Say that again, Mark?

Mr. O'SULLIVAN. Once the reading clerk reads that list, that list is submitted to the official reporter. Any further changes that occur are handled—as I enter them, the reading clerk calls them up, and the official reporter picks it up.

The CHAIRMAN. They are not recorded then on this?

Mr. O'SULLIVAN. Not on that sheet.

The CHAIRMAN. That is just a verbal communication between you, the sitting clerk and the reading clerk.

Ms. MILLER. Yes, sir.

Mr. HULSHOF. In fact, I think all of us probably have been more attentive to you since we have come together as a committee. I know you haven't noticed us watching you.

The CHAIRMAN. We are watching you closely, Mark.

Mr. HULSHOF. But on that scenario, Mr. Delahunt suggested, after the reporter gets the official list, that actually the reading clerk is witnessing the Member rushing up to the well, grabbing the red card.

So, obviously, recognizing the Member, and often it is the same Member or group of Members that are running behind. So it is not as if she is just relying upon your word; she is watching this scenario unfold, correct?

Mr. O'SULLIVAN. Right. Not every Member who is coming to the well is changing. They are also submitting initial votes, particularly late in the vote.

The CHAIRMAN. Those, again, are not recorded on this sheet?

Mr. O'SULLIVAN. No. They would be called off, but the reading clerk would not say, "Off 'aye,' on 'no.'" They would just say——

Ms. MILLER. Mr. Pence votes "aye."

The CHAIRMAN. You are observing this. Particularly in, you know, in a vote of consequence, you are watching, you are observing. Kristen, are you watching and observing as well, or are you just taking your cue from Mark?

Ms. BRANDON. No, I watch here. I watch Frances, I watch who is filling the card, I watch what Mark does. I watch the computer screen as well, especially for changes.

How do I know it is a change or just an initial vote? That is why I have to look on here, and Mark will give me a cue as what to say, and I will verify that through the computer screen.

Ms. MILLER. There is a lot of coordination and contact going on between the Parliamentarian, the tally clerks both standing and seated, and the reading clerk. That is why they all have to be in sync.

Yes, Mr. LaTourette.

Mr. LATOURETTE. After the time is expired then and the presiding officer asks do any Members wish to change their vote, do you do anything to lock out the station so the only way they can vote is to come to the well for that initial vote? Then what do you do?

Mr. O'SULLIVAN. There is an icon here, bottom left, "Close vote stations."

Ms. MILLER. Do you see it? You are on the bottom there, on the left.

Mr. O'SULLIVAN. When the Speaker asks for changes, and those changes are all announced, and it is apparent that no other Members are trying to enter the Chamber and vote initially, that is when I will get the "Close vote stations," and down here on the bottom right, it just confirms to me that the voting stations are closed.

Ms. MILLER. You see on the bottom right it says, "Voting stations are closed."

Mr. O'SULLIVAN. To allow as many Members who have their badges to vote out on the voting station instead of forcing them to come to the well.

Mr. LATOURETTE. Is that discretionary with you, as opposed to what you see going on?

Mr. O'SULLIVAN. It is a little bit of a judgment call, but it is after the point where the changes have been announced.

Mr. LATOURETTE. But you make the judgment as the seated tally clerk.

Ms. MILLER. Half the time they will turn to the presiding officer and say, "Do you want the Member to vote?" That is where the discretion really comes from the presiding officer.

Mr. O'SULLIVAN. The Parliamentarian, the presiding officer.

Ms. MILLER. Mr. Hulshof.

Mr. HULSHOF. Is that a reversible decision, or once you click the "Close vote station," and we see, in fact, "Vote stations are closed," can you undo that entry?

Mr. O'SULLIVAN. Yes.

Ms. MILLER. Yes, because there can be 20 Members, 15 Members that all of a sudden rush to the floor. Usually there is a coordination with the Parliamentarian.

Mr. SULLIVAN. If, under the circumstances, it is more efficient to reopen the stations because some meeting just broke up and a dozen Members walked in, we would suggest that Mark reopen the stations.

Mr. DAVIS. Let me follow up on that. The whole decision-making around closing the vote station, is that due to a particular rule or

to a particular textual rule, or is that the custom and practice on the part of those of you who sit in these positions?

Mr. SULLIVAN. Custom and practice. Even, I believe, it is correct to say that the timing, linking the closing of the stations to the reading and the changes, that is just the way the protocol developed. It is not textual in the black letter of the rules.

Mr. DAVIS. So when you make the decision to hit "Close vote station," that is your subjective judgment that there are no Members in the process of changing votes, and that the Chair is about to call the vote.

Mr. O'SULLIVAN. In practice, we close the vote station almost all the time as soon as the reading clerk reads the changes.

Ms. MILLER. That is typical.

Mr. O'SULLIVAN. That is the end of the vote.

Mr. DAVIS. Now, what about the scenario that we see probably four or five times a year when a vote that has been opened for a period of time, the clock is at zero, but in real time 10 minutes has elapsed, 20 minutes has elapsed, and it is obviously uncertain when the vote is going to be called, and it is probably uncertain whether any Members might change votes. Can you speak to the custom and practice in that scenario?

Mr. O'SULLIVAN. The voting stations would be left open until——

Ms. MILLER. Until the Chair tells us that the vote is going to be closed, yes, until we get a signal from the presiding officer. We rely upon the presiding officer to tell us what you are going to do, what you want us to do.

Mr. DAVIS. Even if the reading clerk has read the list of off "aye," on "no," the list of well votes, if there is a scenario in which a number of minutes have elapsed from real time, and it is uncertain when the vote is going to be called technically, can you leave the vote stations open, or would it be in your discretion to close them?

Mr. O'SULLIVAN. I think generally we would leave them open. If we were told that the vote was going to be kept open, we would normally——

Mr. DAVIS. If you were told the vote was going to be kept open, who, in custom and practice, would be telling you that?

Mr. O'SULLIVAN. Probably the Parliamentarian. We would have some information that there were Members who were stuck in an elevator, or there were Members who just left the White House, a meeting with the President, some reason why the vote was being kept open on an indefinite basis.

Mr. DAVIS. Let's say hypothetically the clock had been at zero for, in real time, 10 minutes, and it was clear that there were Members milling around the well. The vote was tied, or the vote—let's take that the vote was tied. There were Members moving around the well. At that point, as the Parliamentarian, would you receive an instruction from the Speaker, or would you be making your own subjective judgment at that point as to when to close the vote stations?

Mr. SULLIVAN. In the absence of any instructions from anybody else, if we perceived that all Members were done voting, regardless if they were milling about, we would suggest to the presiding officer that he proceed to close the vote.

If there were some—you know, if the leadership told us, "We are waiting for a meeting to break up in the Rayburn Building," then we would tell the presiding officer, "They would like you to just bide your time. There is a meeting about to break up."

Mr. DAVIS. The last question I would ask, again, the hypothetical is that the vote is tied, say, 212–212. In that instance, trying to get a sense of how the Parliamentarian would assess that kind of situation, and what factors would guide an instruction to close the vote station?

Mr. SULLIVAN. If it appeared that all Members had voted, and that was just where the chips fell, we would tell the presiding officer to announce the vote, and whatever the proposition was had failed upon a tie vote.

Mr. DAVIS. But it would be up to the presiding officer whether or not to follow your statement?

Ms. MILLER. Yes.

The CHAIRMAN. Yes. It is not an instruction, it is a recommendation.

Mr. SULLIVAN. If the presiding officer thought there were still Members about to vote or about to change their votes, he would tell us, "Oh, I don't think that is the thing to do."

Ms. MILLER. Ms. Herseth had a question.

Ms. HERSETH-SANDLIN. Well, when you said—I think you clarified, Mr. Sullivan, that you are getting information from leadership, so custom and practice has been for a number of years that it is not just the presiding officer that is kind of observing and engaging, it is Members of leadership that may be providing information to the Parliamentarian that is relevant to when to close the vote.

Mr. SULLIVAN. There are periodic reports from either whip's organization or either leadership table about Members being caught in some kind of a security situation at the south door, or Members being in an elevator, or a meeting going on, then we feed all of that data to the Chair.

As a matter of course, on almost every vote the decision to begin the closing protocol, it is received from third parties. How to execute that protocol should be the presiding officer's job and not a third party's job. But the decision to embark on closing is a political judgment, I guess, by the leadership.

Ms. MILLER. Mr. Pence.

Mr. PENCE. I am just wondering about—it seems to me there is a distinction here between making the decision to close the vote stations and a decision to terminate the vote or complete the vote; is that correct?

Mr. SULLIVAN. Yes.

Mr. PENCE. We actually talk here, and this is very illuminating, but we are talking about the decision to close the voting stations, what you take into account at that point, and I am anxious to hear what other considerations factor into the decision to actually terminate the vote.

Mr. SULLIVAN. On closing the voting stations, I don't think we ever get any input from outside, because people aren't that deep in the weeds. It is just the assessment of the people up here on the totality of the circumstances where the path of efficiency lies.

If there are still Members trickling into the Chamber, it makes sense to leave the stations open. For those who have their card, it is a lot quicker.

Mr. PENCE. So some of what the Parliamentarian was just reflecting on is associated with the decision to terminate.

Mr. SULLIVAN. And announce a result, yes.

Mr. PENCE. And announce a result. Thanks for that clarification.

Mr. HULSHOF. I think we are about to move on then to really closing the vote. Before we do that, can you give us the differences between a 15-minute vote, which we have just experienced—what, if any, differences are there at the voting stations in that instance and a 5-minute vote?

For instance, are the voting stations—my understanding is that one can actually change a vote even when it shows 0, 0, 0 on a 5-minute vote so long as you have not closed the voting stations there, correct?

Mr. SULLIVAN. Yes, 5-minute vote, 2-minute vote. You are allowed to change throughout the whole vote until that icon is hit, and they are closed.

The CHAIRMAN. But that doesn't prevent—that, again, as Mr. Pence was speaking to—that doesn't begin to terminate the vote?

Mr. SULLIVAN. Not to that extent.

The CHAIRMAN. I understand the focus on the machines, but the reality is that even when the stations are closed, the opportunity is to do it manually.

Ms. MILLER. Yes. Come to the well.

The CHAIRMAN. And continues until the announcement to terminate.

Mr. PENCE. May I ask one push-away-from-the-table question for a second? The Parliamentarian's role in all of this—I see a lot of moving parts. The Parliamentarian I see almost never moving, but is it proper to understand that the Parliamentarian is overseeing and orchestrating this process throughout?

I guess I am asking, is the Parliamentarian calling the play, or is the Parliamentarian simply there in an advisory capacity?

Ms. MILLER. I see it more as a coordinator. We have some integral parts of it. It is a coordination, I think. We rely upon the Parliamentarian because he and his folks know the rules.

John, as I see it, we have got these moving parts, is he the captain?

Mr. SULLIVAN. We are just here to help. We are the liaison between the seated tally clerk and the Chair. I would not say that we, in any sense, supervise the seated tally clerk, because none of us would be capable of doing the seated tally clerk's job.

Mr. PENCE. That is very helpful.

Mr. SULLIVAN. The seated tally clerk is usually the coolest customer in the Chamber.

Ms. MILLER. Yes, they really are. They can't be interfered with by the commotion or Members talking or whatever is going on in the Chamber. They have got to be focused.

Mr. PENCE. If I may, so the Clerk's organization, people employed by you in your office, are administering and recording and processing the vote.

Ms. MILLER. Yes.

Mr. PENCE. The Parliamentarian acts as a liaison between the Clerk's process and the Chair.

Ms. MILLER. Very much so.

Mr. PENCE. Fair?

Mr. SULLIVAN. That is fair.

Ms. MILLER. Yes.

Mr. O'SULLIVAN. I will just say as we get to the end, I am waiting for cues from the Parliamentarian on what steps to proceed to.

The CHAIRMAN. Because he is communicating with the presiding officer.

Mr. SULLIVAN. Sometimes it is just that we have a better view than Mark does. He might not be able to see somebody on the west side of the well.

Ms. MILLER. One of the things the reading clerk tries to do is anticipate your actions here, as you are winding down debate and figuring out what you are going to do, and if it is a motion to recommit, are you going to vote it, or are you going to voice it, those kinds of things. So we have our antennas out trying to figure out what procedure you are going to do.

Mr. DAVIS. Let me ask just one quick question, Lorraine. I know we do have to get out of here by a certain time, so I will try to be very brief.

We have talked about—we have used the word "protocol" several times. I guess by protocol we mean a custom and practice that is followed, that governs a given scenario. Is there any kind of a new protocol that sets in what I will call a prolonged vote situation? The vote is tied. It has been at zero for a while.

Obviously the vote on the prescription drug bill 4 years ago is an example of a prolonged vote scenario. We have seen others where it is clear there is some deadlock, it is clear there is lobbying going on in the Chamber. Is there any protocol from the standpoint of the Parliamentarian or the tally clerk that settles in when we are in that kind of a prolonged vote count scenario?

Ms. MILLER. For us, we wait.

Mr. SULLIVAN. That is off protocol. Off the record, we would go to the leadership and say, "This vote should be closed. The motion to reconsider might be available. The right course is to close it." And our advice is to accept it or not.

Mr. DAVIS. Now, what would lead you to give advice one way or another? What would inform the Parliamentarian's judgment as to what recommendation to make to the leadership?

Mr. SULLIVAN. When the totality of the circumstances would indicate that all Members are done voting.

Mr. DAVIS. But ultimately it would be if she characterized it a political judgment on the part of the leadership whether to continue lobbying or whether to continue the vote.

Mr. SULLIVAN. In the case you mentioned, I think it was the judgment of the leadership, rather than losing the vote and entering a motion to reconsider to recoup that loss, it was better—the iron was hot, and something was bubbling, and they wanted to let it bubble to the top.

Mr. DAVIS. That is an entirely permissible consideration as far as the Parliamentarian is concerned?

Mr. SULLIVAN. We don't feel like we can push the Speaker around, if that is what you mean.

Mr. DAVIS. So it wouldn't be the Parliamentarian's call, it would be the leadership's call in that scenario?

Mr. SULLIVAN. We try to tell them what we think is the best course of action, and I am sure they give it due consideration.

Mr. DAVIS. Okay.

Ms. MILLER. We would be in a holding pattern.

Mr. LATOURETTE. Not to be a nitpicker, but the rules have changed, and now it is my understanding that the rules of the House don't permit you to keep the vote open for the sole purpose of affecting the outcome.

Is that a correct reading of the new rule?

Mr. SULLIVAN. Clause 1(b) of rule 20 does include language, I think, as far as parliamentary. I think it is hortatory. I think it would be enforced by collateral means, not on the spot. But you are right, it is there.

Mr. PENCE. One more question. I think in response to Mr. Davis, you said when the totality of the circumstances indicated that all Members have voted, or——

Mr. SULLIVAN. They are done voting. Nobody is trying to change.

Mr. PENCE. Members are done voting. Is it fair to say that the controlling factor with regard to your recommendation is whether or not all Members are done voting?

Mr. SULLIVAN. I believe that is the central consideration.

Mr. DAVIS. Would it also—just to follow up Mr. Pence's point, would it also be relevant if it appeared Members were mulling or reconsidering their vote?

Mr. SULLIVAN. I think so.

Mr. DAVIS. If the leadership communicated to the Parliamentarian that Members were mulling their vote or reconsidering their vote, would that be the recommended factor to close the vote generally?

Mr. SULLIVAN. In that circumstance, the leadership is really conveying the information to the presiding officer, perhaps through us. I don't want to depict the Parliamentarian as being in charge of, you know, pushing Members of Congress around.

The presiding officer is the one who rules on things with our advice. We never say that we rule on something.

Mr. DAVIS. Just one last point on Mr. LaTourette's observation about the rule change that was made earlier this year by the new Majority. The rule change, as I understand it, relates to the fact the vote can't be kept open for the sole purpose of—what is the phrase? If I can actually capture the phrase—affecting the outcome.

Does that exclude a scenario in which the Chair simply wanted to allow Members to have a chance to fully consider their decision, because I understand in one box you have got affecting the outcome. There is another box, it seems, in which Members may simply be reconsidering or reevaluating their vote.

Is there anything in the new rules that says or precludes the possibility of a vote being kept open for the purpose of allowing Members to reconsider and reevaluate? Is that scenario addressed in the new rules?

Mr. SULLIVAN. I don't think the rule is that specific.

Mr. DAVIS. That is a very judgmental, subjective analysis.

Mr. SULLIVAN. We have advised the presiding officer on a couple of questions during Congress that the Chair has to mark a difference between achieving a result and reversing a result.

Mr. DAVIS. Technically you could have Members on both sides who could be reevaluated, so it wouldn't necessarily be if the result was changing, it would be that Members on both sides were possibly reconsidering, and ultimately the Chair was trying to effect the intent of the Members; is that right?

Mr. SULLIVAN. That is right. I think the hardest case is the mulling, because that is a period of inactivity. Mulling is a very passive activity.

The CHAIRMAN. To mull.

Ms. MILLER. We are about to begin our set-up for session. We need to close this vote. I don't want to cut off questions, but clearly they are going to be coming in here in a minute trying to set up for the session.

Mark, let's move to close the vote. Our vote stations are closed.

Mr. O'SULLIVAN. If I can say one thing; for our purposes, when we close that vote station, that is to allow the tally clerk here to know that the tally on the board is not going to change from any action out there. So the vote station is closed. The only activity is going to occur here.

So when I have then quoted the last vote card, and the vote station is closed, I can tell the tally clerk, okay, the tally is good to be recorded. Then I would go to this next screen, which is the terminate vote.

The tally clerk at that point, when the Speaker said, "All time has expired," she would write the tally.

Ms. MILLER. Have we entered Ms. Herseth-Sandlin?

Ms. BRANDON. Yes.

Ms. MILLER. There are only five, six votes——

Mr. LATOURETTE. I decided I don't want to vote on this.

Ms. MILLER. You don't want to vote?

Mr. LATOURETTE. I don't want to vote.

Ms. MILLER. We wanted you to be the one that—we are ready to close this vote, and Mr. LaTourette comes down the aisle and says, "One more, one more."

Mr. GORE. Wait, wait, wait.

Ms. MILLER. You are setting it to final. Have you set it to final?

Mr. O'SULLIVAN. No. Do you want me to finalize it?

Ms. MILLER. Yes, set it to final.

Mr. O'SULLIVAN. The Speaker would have read the tally at this point, if it gets to final. The Chair might have begun to say on this question, "The yeas are three, the nays are"—and then hold back because Mr. LaTourette wanted to enter. Do you want me to——

Mr. GORE. Wait just a second.

Mr. O'SULLIVAN. Do you want me to finalize it?

Ms. MILLER. Yes.

Mr. O'SULLIVAN. Let me go back one step here. Let me go back to the terminate votes. Okay, when the Speaker starts to read the tally, I am going along with him with this box here, and then when

he says, "The motion to reconsider is laid on the table," that is my cue to hit this icon that will put the word "final." That is normal.

Ms. MILLER. Do you see that? Did everybody understand that? You got that? Okay.

Mr. O'SULLIVAN. At this point I guess we are in a scenario where a Member does arrive.

Ms. MILLER. A Member does come.

Mr. O'SULLIVAN. Presiding officer has said, "Record the Member."

Ms. MILLER. That one gets torn up, and another tally sheet is made.

Mr. O'SULLIVAN. I can leave this green. I go to my well voting.

Mr. PENCE. Ms. Miller, consistent with your testimony at our last hearing, the Chair is announcing on the basis of the tally sheet that is handed forward.

Ms. MILLER. To the Parliamentarian, and then to the presiding officer.

Mr. PENCE. But even if it has been announced, your testimony today is that at that point you can rip the tally sheet up and revise the vote.

Mr. SULLIVAN. The Chair didn't complete an unequivocal statement of the result. He can pull back and receive another slip.

Mr. PENCE. What constitutes an unequivocal statement of the result? Is it the phrase, "A motion to reconsider was laid upon the table"?

Mr. SULLIVAN. Not necessarily. Sometimes the motion to reconsider is not applicable, so that can't be a talisman. Again, it is totality of the circumstances. I can recall on occasion when a Chair uttered what in a transcript would look like an unequivocal statement of result, but it is just because the last syllable was coming out of his mouth just as he wanted to pull up because a Member was running down the aisle. That vote was taken because 700,000 Americans wanted it to be recorded.

The fact that the Chair—we rationalize that the Chair hadn't put the period on the end of the sentence in that circumstance. But usually if the Chair says, "The amendment is adopted," that is the unequivocal statement of the result. "The bill is passed."

When he utters that sentence, that should be the end of the vote.

Ms. BRANDON. Mr. LaTourette.

Mr. O'SULLIVAN. Votes "no."

Ms. BRANDON. Mr. LaTourette votes "no."

Mr. SULLIVAN. 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 that those numbers were written down.

So there is a communication between the seated tally clerk and the standing tally clerk, or Mark affirms to Frances, "I have closed the system to further input." Frances waits for a beat so that the refresh cycle of the computer will give her a static rather than a dynamic result on the scoreboard, and she will be assured, then, that the numbers she is going to take off the wall and put on the paper won't be impeached by an uptick a second later, because Mark has told her, "There aren't going to be any upticks, the sys-

tem is closed. Nobody can input anything except me." That is when Frances puts the numbers on the slip. That slip that I gave to the Chair, the Chair knows this is the product of a closed system.

The CHAIRMAN. Until LaTourette runs in, you have got that in your hand.

Mr. O'SULLIVAN. Hopefully Mr. LaTourette is noticed before the Chair reaches the period on that sentence, "The bill is passed," or, in this case, "We lack a quorum." In this case the bill would fail.

Mr. DAVIS. Let me ask you one question about that, the exact scenario, Mr. LaTourette comes in. As the exact vote is being read, the whole judgment of finality, would it be the Parliamentarian's judgment or the presiding officer's judgment that governs finality?

Mr. SULLIVAN. If it is judgment, we would advise him.

Mr. DAVIS. The presiding officer.

Mr. SULLIVAN. Yes.

Mr. GORE. Let me just point, as we all saw, it said "final" now for some time as we have gone through this, but when Mr. LaTourette's vote was added by Mark, the vote from 3–2 changed to 3–3, even though it said "final" the whole time.

The CHAIRMAN. Just one quick question. You had mentioned earlier that communications between the leadership and the presiding officer, invariably does it go through you, or will, on occasion, leadership designate a member of the leadership team to communicate directly to the presiding officer?

Mr. SULLIVAN. I think occasionally the presiding officer talks to people other than us.

Ms. MILLER. Any other questions on that point?

Ms. HERSETH-SANDLIN. One last question. Custom and practice on the quality assurance of the tally sheets, is there any reference to tally sheets or another phrase used to describe them in the rules?

Mr. SULLIVAN. No.

Ms. MILLER. The time to set the vote, the time to final, and then the vote has been set to final already. So that is another verification, and we are ready to go. Then laid upon the table, and we are done.

If there are other questions that you have, what I really thought we would do is run through it, and then run through it again with questions.

Mr. LATOURETTE. We took care of that for you.

Ms. MILLER. We are at another place.

Mr. PENCE. It is very helpful.

Mr. Chairman, thank you for suggesting it.

The CHAIRMAN. I think if at some point in time the committee considers, it could be helpful to have another session.

Ms. MILLER. Yes, sir, not a problem.

The CHAIRMAN. Along these lines, that we will be seeking you out.

Mr. DAVIS. Mr. Chairman, one scheduling question. For the Members, given that we have lost a week because of Mrs. Davis' funeral last week, is it the Chair's intent that we convene next Thursday?

The CHAIRMAN. I will look to the Members, and seeing everyone nodding, the answer is yes.

Mr. LATOURETTE. Mr. Chairman, when Mr. Davis and I put together a timeline, my understanding would be the next hearing would be along the lines of collecting the precedence from the Parliamentarian.

Also Mr. O'Sullivan was the chief tally clerk and was not in the building on the night of roll call 814; is that right?

Ms. MILLER. No.

Mr. LATOURETTE. You weren't involved in that at all, and I think Mr. Davis and I contemplated about bringing him in to question.

Mr. DAVIS. That is right. That would be next week.

Ms. MILLER. Did this work, the monitoring? There was no way that six of you could stand behind Mark this morning.

The CHAIRMAN. We thought it would be good if we could just——

Mr. HULSHOF. This is completely off the subject track here. My suggestion might be that the next session of Congress, the newly-elected Members, you should do this exercise for those Members, because if you have veteran Members that did not understand the process until this very——

The CHAIRMAN. Moment.

Mr. HULSHOF. This has been very helpful, and I think maybe incoming Members should also gain an appreciation of it.

Ms. MILLER. We will do it.

The CHAIRMAN. That could very well be a recommendation.

Ms. MILLER. Thank you very much. We appreciate it.

[Whereupon, at 9:12 a.m., the select committee was adjourned.]

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