

# INVESTIGATIVE HEARING REGARDING ROLL CALL 814, DAY 2

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## HEARING BEFORE THE SELECT COMMITTEE TO INVESTIGATE THE VOTING IRREGULARITIES OF AUGUST 2, 2007 HOUSE OF REPRESENTATIVES ONE HUNDRED TENTH CONGRESS

SECOND SESSION

MAY 14, 2008

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

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## INVESTIGATIVE HEARING REGARDING ROLL CALL 814, DAY 2

WEDNESDAY, MAY 14, 2008

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

The Committee met, pursuant to call, at 9:39 a.m., in Room 1539, Longworth House Office Building, Hon. William D. Delahunt [Chairman of the Committee] presiding.

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

The CHAIRMAN. The Select Committee will come to order.

I want to apologize. I am the one responsible for us beginning somewhat late. I hoped to start at 9:30.

I would like to invite the panel—Mr. Hartz, Ms. O'Neill, and Mr. Pierson—forward; and there will be, by agreement, no opening statements today. We will just proceed directly to the panel.

Let me introduce everyone; we will begin with Ms. O'Neill. She currently serves as the Deputy Director of Legislative Operations for the Speaker of the House. She began her career in the recording industry, promoting recording artists and negotiating contracts involving intellectual property rights for a recording company. She later served as special events coordinator for then-Congresswoman Nancy Pelosi, until her experience in negotiations and event planning translated to working in political campaigns. In 2002, she joined the Bill Richardson for Governor Campaign as regional field director and became political director for the campaign in 2003. It was later that year that she returned to the U.S. House of Representatives as Assistant to the Democratic Leader, Ms. Pelosi.

And, as I indicated, she currently serves as Deputy Director of Legislative Operations. She serves as a liaison between the Speaker's Office, the Democratic Caucus, and staff, Republican legislative staff, offices of the House, White House legislative staff, and Senate leadership staff.

How do you do all that? What a job.

Mr. LATOURETTE. And is that all on her card, Mr. Chairman?

The CHAIRMAN. I am feeling badly for you at this point in time.

She is also responsible for advising other Members as to the legislative schedule and the business on the House floor, and I would note that she is also a significant part of Red Sox Nation. She has deep roots in Massachusetts. I knew her grandfather, her dad, her Uncle Tom. And she is one of the favorites of the Democratic Cau-

cus. And I know that she also has respect and affection from the other side.

And next is Jerry Hartz. This is a very short statement for you, Mr. Hartz. You weren't in the entertainment industry, that's obvious.

What a beginning, Mr. LaTourette, could you please excuse yourself?

Mr. LATOURETTE. I think I have seen him in things.

The CHAIRMAN. This is not a good beginning. I think we need a recess. You can tell there is a collegiality here in this particular Committee. While we have our differences, we obviously work well and enjoy each other on a personal level.

Mr. Hartz is on the staff of the Speaker; and he ascended there in 2002, when she became the Democratic Whip and later the Democratic Leader. As Executive Floor Assistant, he helps coordinate floor activity for the Democratic leadership offices; and he is the Speaker's designated staff person for the work of the Rules Committee. He graduated from Central University of Iowa with a B.A. in history and Magna Cum Laude honors.

And last, but certainly not least, is Jay Pierson, who graduated from Westmont College in Santa Barbara with a degree in English literature. He later received a master's degree in English literature from Long Beach University and a Ph.D. in English literature from the University of Maryland. Dr. Pierson's career in the House of Representatives began in 1978 in the Office of the Journal Clerk. He began working in the Republican Cloakroom in 1979 and began his current position as Floor Assistant to the Republican Leader in 1986.

And I should also note that Mr. Pierson is truly a jack-of-all-trades for the Republican Party. He is well liked and well respected by the Democrats and is a very knowledgeable professional.

We welcome all of you here today, and we shall begin. We discussed among ourselves the procedure for today; and we will begin with the gentleman from Alabama posing questions, Mr. Davis.

**TESTIMONY OF CATLIN O'NEILL, OFFICE OF THE SPEAKER, U.S. HOUSE OF REPRESENTATIVES; JERRY HARTZ, OFFICE OF THE SPEAKER, U.S. HOUSE OF REPRESENTATIVES; AND JAY PIERSON, OFFICE OF THE MINORITY LEADER, U.S. HOUSE OF REPRESENTATIVES**

Mr. DAVIS. Thank you, Mr. Chairman.

Let me welcome the panel. And just by way of clarity, so the panel has a sense of what we are doing, we have figured out that we are going to divide the time 40 minutes on the Democratic side, 40 minutes on the Republican side, and 10 minutes of rebuttal, similar to yesterday.

Ms. O'Neill, for your purposes, I am going to open with perhaps about 20 minutes worth of questions for you and then yield the balance of that time to Ms. Herseth Sandlin, who will pose questions to Mr. Hartz and Mr. Pierson. So for about 20 minutes the gentlemen can relax a little bit. I am going to focus on Ms. O'Neill.

Ms. O'Neill, thank you for taking the time to be here, first of all; and let me thank you also for meeting with the staff and being interviewed twice before.

As you all know from yesterday, the Committee took interviews, deposition testimony, from a variety of witnesses. And, Ms. O'Neill, you were actually interviewed twice, as I recall; and both of those times obviously required you to leave your very busy work on the floor of the House. Both of the interviews were reasonably extensive, and we thank you for being so courteous. We thank you for being on call yesterday in case we got to you, and we thank you for being here.

Let me begin.

The chairman, you know, read a description of the many things you do on the floor of the House. We are obviously focused today on what your responsibilities are with respect to the presiding officer and the interaction you typically have with the presiding officer. Can you just briefly characterize for us what your responsibilities are in that regard?

Ms. O'NEILL. With regard to the presiding officers of the House, I schedule them for slots during the course of a legislative week and, in doing so, putting them in the Chair when we are in the whole House as well as in the Committee of the Whole. I communicate with them through their offices. If their offices need to get them any information, I get that to them.

As far as votes are concerned, I keep them up to date on when votes are, what the votes will be on, et cetera. There is constant communication between myself and the Chair.

Mr. DAVIS. And as I understand it, you work to schedule the lineup of presiding officers in the House. Is that correct?

Ms. O'NEILL. That's correct.

Mr. DAVIS. And Mr. McNulty, as I understand it, was one of a group of individuals who were designated as regular presiders over the House. Is that right?

Ms. O'NEILL. That's correct.

Mr. DAVIS. And it is my understanding that Mr. McNulty was placed in that group because of his experience and his expertise in presiding over the House.

Ms. O'NEILL. That's correct.

Mr. DAVIS. And, obviously, Democrats just came into the Majority in 2007 after a hiatus, but, as I understand it, Mr. McNulty regularly presided during the last time the Democrats presided. Is that right?

Ms. O'NEILL. That's right.

Mr. DAVIS. And I would assume you agree, Ms. O'Neill, with what every single witness said yesterday, that Michael McNulty has a reputation for being one of the outstanding presiding officers in the House?

Ms. O'NEILL. Indeed he does.

Mr. DAVIS. And are you aware that reputation extends to the Republican side, that Mr. Boehner has described Mr. McNulty as one of the fairest presiding officers?

Ms. O'NEILL. I am.

Mr. DAVIS. Now, with respect to your responsibilities and your connection with the presiding officer, there were a lot of questions yesterday about whether you have a role in the process of closing the vote out. So I want you to talk about that for just a moment.

Ms. O'NEILL. The process of closing a vote has many people playing a role: the leadership staff on the Democratic side, sometimes the staff on the Republican side, if we need to hold a vote open because someone is coming from off the Hill and there is a whole host of people in a van coming from the White House or whatnot. But, generally speaking, it is the leadership staffers on the Majority side saying to me, when I am down at the rostrum, now is a good time to close the vote.

Mr. DAVIS. And after the clock passes zero—obviously, a vote can't close before it hits zero. After the clock passes zero, it is routine that many Members have still not voted. Is that correct?

Ms. O'NEILL. That's correct.

Mr. DAVIS. And even on a motion to recommit at the end of a long voting series there is always a group of Members who at zero-zero, despite being on the floor all night, have still not managed to make their way to vote. Is that right?

Ms. O'NEILL. That is right.

Mr. DAVIS. And it is not uncommon for Members on a close motion to recommit or a controversial motion to recommit to take some time to think about it.

Ms. O'NEILL. That's also correct.

Mr. DAVIS. And is it fair to say that there is some lobbying that is going on by each side to get Members to cast the vote that each party wants them to cast?

Ms. O'NEILL. Certainly.

Mr. DAVIS. And vigorous lobbying. That is commonplace on the floor of the House on a close vote, isn't it?

Ms. O'NEILL. That's right.

Mr. DAVIS. And when the decision is made to close a vote—and when I say “close a vote” I am saying banging the gavel, announcing a result and announcing the resolution, announcing a numerical result, announcing the resolution of the issue, who has the ultimate discretion as to when to do that?

Ms. O'NEILL. The Chair.

Mr. DAVIS. In fact, could it be any other way?

Ms. O'NEILL. No.

Mr. DAVIS. The presiding officer has the discretion. What is your role or what input do you typically offer, if any, regarding when a vote should be closed?

Ms. O'NEILL. When the leadership table has communicated to me that a vote needs to be closed, I tell the Parliamentarians, the Chair, that area, it is time for us to close the vote. Between the time that I suggest we close the vote and the actual vote is closed, sometimes often minutes go by because people are saying one more, and their votes haven't been tallied yet, or there is a myriad of reasons that it doesn't happen at the exact point that we are ready.

Mr. DAVIS. And one of those reasons is that sometimes you suggest to a presiding officer that he close a vote and he decides to keep it open. Is that right?

Ms. O'NEILL. I am sorry. Could you repeat that?

Mr. DAVIS. One of the reasons that a gap passes between your suggestion and a vote being closed, I imagine, is that sometimes a presiding officer just chooses not to listen to you. Is that right?

Ms. O'NEILL. That is right.

Mr. DAVIS. Because, ultimately, it is the presiding officer's discretion; and sometimes a presiding officer will move to close a vote and he may hear someone yell one more or something to that effect. Is that right?

Ms. O'NEILL. That is right.

Mr. DAVIS. Has there ever been an instance, Ms. O'Neill, when you have suggested that someone close a vote for the purpose of preventing a Member from casting a vote?

Ms. O'NEILL. No.

Mr. DAVIS. Has there ever been a moment when you suggested that a presiding officer close a vote in an effort to keep Members in the well from casting a vote?

Ms. O'NEILL. No.

Mr. DAVIS. Let's look at the tape for a moment; and the first thing I want to ask our videographer to turn to is a portion of the tape that is 22:46:42, if we can turn that on. And you have the screen in front of you, Ms. O'Neill. 22:46:42. You are an orange circle on this screen. I will represent that to you by agreement.

[Tape played.]

Mr. DAVIS. Do you see yourself?

Ms. O'NEILL. Yes.

Mr. DAVIS. Let's stop the audio for a moment. What are you doing at this point?

Ms. O'NEILL. Communicating with the presiding officer.

Mr. DAVIS. And what are you saying to him? Do you have any recollection at all of what you are saying?

Ms. O'NEILL. Not at that moment, no.

Mr. DAVIS. Let's just look at the screen to get situated. Unfortunately, because of the way the board is set up, we can't quite tell how much time is left in the vote. But I will represent to you that 3 minutes before that, based on a timeline I have, Mr. McNulty had announced that there were 5 minutes left to vote. So we will assume perhaps approximately 2 minutes may be left on the vote at this point; and you will see that the score is 195 yeas, 206 nays.

You have just said that there is nothing remarkable about this conversation. What kind of thing would you typically say to a presiding officer as the vote closes down to the 2-minute mark late at night?

Ms. O'NEILL. To gavel time—time limits, that 5 minutes—to let the Chamber know that 5 minutes have passed or that 2 minutes have passed or that 10 minutes have passed, in an effect to get people to vote, because 15 minutes have gone by and they may not realize whether they voted or not.

Mr. DAVIS. In effect, you are suggesting to him the clock is running out so let's kind of have people hurry along.

Ms. O'NEILL. That is right.

Mr. DAVIS. And there are things the Chair does to hurry it along. The Chair will announce, 2 minutes left to vote. Any Members wish to change their votes?

Those are common words that are used, is that correct?

Ms. O'NEILL. That is correct.

Mr. DAVIS. Now, I will represent to you that the clock reaches zero. The vote is left open for a little while.

I am going to ask you about another point that came up several times yesterday. If we can go to the point in the tape where Ms. O'Neill is pictured in some interaction with Mr. Hoyer and see if we can find the exact moment where that exchange occurs. Mr. LaTourette, do you happen to know as we reference the time—

The CHAIRMAN. 22:49:46.

Mr. DAVIS. 22:49:46. If we can go to that.

Mr. Hoyer is the red circle. You see yourself, Ms. O'Neill? You are the orange circle.

[Tape played.]

Mr. DAVIS. All right. Mr. Hoyer is walking into the well, walking towards you. Let' stop.

Does that in any way refresh your recollection of any conversation between you and Mr. Hoyer that night?

Ms. O'NEILL. No. My previous testimony stated the only conversation that I recall having with Mr. Hoyer is about having 13 members out that needed to vote.

Ms. O'NEILL. And, obviously, that is not this moment, because we see only six individuals have not voted. Is it fair to say in a typical course of a vote, particularly a close vote, that you have regular interactions with the Majority Leader?

Ms. O'NEILL. That is fair to say, yeah.

Mr. DAVIS. And I don't know about you, Ms. O'Neill, but the way my memory works is, frankly, unless there is something unusual about a conversation I might not remember it a day later, much less a year later.

Ms. O'NEILL. Uh-huh.

Mr. DAVIS. You just said you have no particular memory of this conversation with Mr. Hoyer. Do you have any memory of what you do after the conversation? You seem to turn perhaps toward Mr. McNulty.

Ms. O'NEILL. No.

Mr. DAVIS. Do you have any recollection of any point that night when you said to Mr. McNulty you need to close this vote?

Ms. O'NEILL. I never said that.

Mr. DAVIS. And do you have any recollection of the Majority Leader walking up to Mr. McNulty and saying, Mr. McNulty, you need to close the vote?

Ms. O'NEILL. No.

Mr. DAVIS. You have any recollection of the Majority Leader saying to you that you need to instruct Mr. McNulty to close the vote?

Ms. O'NEILL. No.

Mr. DAVIS. And at this point the vote is called at a time that is approximately 10:26:51. Let's go to that point if we can, 10:26:51, about 7 minutes later. You can turn the audio down while you are going through that.

I will represent to you that during that time frame, as you may know, Mr. McNulty started to call the vote at 214–214, but he stops. Is it fairly common—keep the audio off for a moment. Is it fair to say, Ms. O'Neill, that Members will sometimes begin to call the vote, and they will hear someone yell one more, and they will step back?

Ms. O'NEILL. Absolutely.



Mr. DAVIS. So there is nothing unusual at all about the first instance where Mr. McNulty goes 214 to 214 and then stops. That kind of thing happens all the time, doesn't it?

Ms. O'NEILL. Yes.

Mr. DAVIS. Let's go to the much more decisive moment, which is 22:56:21.

Mr. LATOURETTE. I think 22:51:14, Artur.

Mr. DAVIS. All right. 22:51? I am sorry. 22:51. All right. Reading my notes wrong. Let's just go to 22:51 and just watch that for a moment. When we get to 51, let's just start the audio.

All right. Go ahead. Just watch this, Ms. O'Neill.

[Video played.]

Mr. DAVIS. All right. At this point, Ms. O'Neill, Mr. McNulty calls the vote, announces a result.

Let's go back to the wide angle for the tape again. All right. Look at the screen.

And if we could actually go back a few seconds earlier to the point right before he calls the vote. Let's stop.

All right. Are you in the tape at this point?

Ms. O'NEILL. Yes.

Mr. DAVIS. Where are you?

Ms. O'NEILL. To the left of the screen, left of the rostrum.

Mr. DAVIS. All right. Not particularly close to Mr. McNulty.

Ms. O'NEILL. That's right.

Mr. DAVIS. You are not engaging in any conversation with Mr. McNulty. Is that correct?

Ms. O'NEILL. That's correct.

Mr. DAVIS. Is the Leader in the screen at that point?

Ms. O'NEILL. No, not that I can see.

Mr. DAVIS. Are you close to the Leader at that point?

Ms. O'NEILL. Not that I am aware of.

Mr. DAVIS. So it appears to me, Ms. O'Neill, that Mr. McNulty is calling the vote on his own with no input from any member of the staff, yourself included. Do you agree with that?

Ms. O'NEILL. Yes.

Mr. DAVIS. It appears to me that Mr. McNulty is calling the vote on his own, with no input from any Member of Congress, including the Majority Leader. Do you agree with that?

Ms. O'NEILL. I do.

Mr. DAVIS. Now, one of the other points of contention is that after Mr. McNulty calls this vote—and, as you know, he has acknowledged he was in error. He has said as recently as yesterday that he looked up at the board, saw 214 to 214, believed that that was an accurate reflection of all Members voting, he did not realize that the last well card had not been processed on the board. He immediately recognized the error, because right after he said 214 to 214 the board actually went to 215 to 213 the other way. In other words, he missed the last vote.

Right after that, you may recall that several Democratic Members went up and cast votes in the well; and they changed their votes. Do you recall that?

Ms. O'NEILL. Yes.

Mr. DAVIS. Mr. LaTourette and Mr. Pence raised an issue yesterday as to why those Members were allowed to cast their votes or

why the voting process continued. Did you have anything whatsoever to do with the fact that these Members were allowed to continue to process their votes?

Ms. O'NEILL. No.

Mr. DAVIS. To your knowledge, did any, Member of the Democratic side, Member or Leadership, have anything to do with the decision to allow these Members to continue to cast their votes?

Ms. O'NEILL. Not that I am aware of.

Mr. DAVIS. Do you have any recollection, Ms. O'Neill, of any individual attempting to cast a vote in the next few minutes and being denied that opportunity?

Ms. O'NEILL. Not that I am aware of.

Mr. DAVIS. Do you have any memory of any Member complaining that night that they were attempting to change their vote but were denied the opportunity?

Ms. O'NEILL. No.

Mr. DAVIS. I want to ask you for a few moments about the tally sheet that was discussed yesterday at some length.

There was testimony from a number of people yesterday in the Parliamentarian's Office and from the Reading Clerks that a tally sheet is, as a matter of custom and practice, given to a presiding officer before a vote is announced. Now, as someone who has been in the Chair a few times, it is my recollection, Ms. O'Neill, that actually there are several pieces of paper that are often put in front of a presiding officer. My recollection is that it is not uncommon for the Parliamentarian to put a script in front of you that tells you what to say when you are recognizing Members. Is that correct?

Ms. O'NEILL. That is correct.

Mr. DAVIS. My recollection is it is not uncommon for the Parliamentarian to put a slip in front of you that describes what language ought to be used when you close a vote. Is that also correct?

Ms. O'NEILL. That's correct.

Mr. DAVIS. And it is my recollection that at the end of a vote Parliamentarian will give you a tally sheet. Is that correct?

Ms. O'NEILL. That's right.

Mr. DAVIS. Is there anything in the rules about any of those three pieces of paper?

Ms. O'NEILL. Not that I am aware of.

Mr. DAVIS. And those three pieces of paper are essentially a script that provides guidance as to what the presiding officer is to say. Is that right?

Ms. O'NEILL. That is right.

Mr. DAVIS. Is it your experience, Ms. O'Neill, that very experienced presiding officers often don't feel the need to rely on the paper that is handed them by the staff?

Ms. O'NEILL. Yes, absolutely.

Mr. DAVIS. And it struck me as I was listening yesterday, Ms. O'Neill, that a presiding officer like Mr. McNulty may have reasonably seen a tally sheet as the equivalent of the script that they put in front of you. Does that seem reasonable to you?

Ms. O'NEILL. That is reasonable.

Mr. DAVIS. In other words, sure, it is here, it is normally given to me, but I don't necessarily need it. Does that make sense to you, that a presiding officer of his experience might think that?

Ms. O'NEILL. Yeah, he might think that.

Mr. DAVIS. And have you seen experienced presiding officers in effect sometimes ignore the piece of paper and just use their own words and announce their own result?

Ms. O'NEILL. Yes.

Mr. DAVIS. Have you ever suggested to a presiding officer that the tally sheet was any different from the other pieces of paper that the Parliamentarian puts in front of you while you are up there?

Ms. O'NEILL. No.

Mr. DAVIS. Have you ever in your work with preparing presiding officers and getting them ready to leave the floor, have you ever suggested to one that a vote could not be called without a tally sheet being presented?

Ms. O'NEILL. No.

Mr. DAVIS. Has any member of the parliamentary staff ever said to you that you must instruct your presiding officers to wait for a tally sheet?

Ms. O'NEILL. No.

Mr. DAVIS. Has anybody ever said to you that you have to instruct your presiding officers to wait for any of the pieces of paper that are handed to you when you are up there?

Ms. O'NEILL. No.

Mr. DAVIS. One last battery before I yield to Ms. Herseth Sandlin.

There is an e-mail that you may be asked about by my Republican colleagues that you sent to Mr. McNulty the day after the vote. Do you remember that e-mail?

Ms. O'NEILL. Yes.

Mr. DAVIS. Have you seen that in the course of your depositions?

Ms. O'NEILL. Yes.

Mr. DAVIS. Can you relay the substance of that e-mail to us?

Ms. O'NEILL. I am trying to think what the language that I used was.

Mr. DAVIS. And they will show you the document.

Ms. O'NEILL. Apologizing for putting him into that position. Something to the effect of the pressure he must feel.

Mr. DAVIS. Mr. LaTourette, do you have a copy of that e-mail by any chance?

Mr. LATOURETTE. I am sorry. Maybe. Hold on. I have a packet of documents. I have a copy of the e-mail.

Mr. DAVIS. I would just like to put it in front of you, and I would also like to ask that someone hand Ms. O'Neill a copy if we have an extra copy floating around.

Mr. DAVIS. Can you just read your e-mail, Ms. O'Neill?

Ms. O'NEILL. "I have to apologize on putting you in that position, but you did a remarkable job under a tremendous amount of pressure that I will never fully comprehend. Many, many thanks and gratitude, Catlin."

Mr. DAVIS. You were asked in your deposition about the use of the phrase "putting you in that position". What did you mean, Ms. O'Neill, when you said that?

Ms. O'NEILL. Putting him in the Chair as a presiding officer during a crazy moment on the House floor, where people were scream-

ing on both sides of the aisle. I can't even begin to imagine what that was like.

Mr. DAVIS. This e-mail is a document that you sent to someone whom you respect, someone you view as a very good Member, and someone who had admitted he made a mistake that night. Is that correct?

Ms. O'NEILL. That is correct.

Mr. DAVIS. I will yield to Ms. Herseth Sandlin.

Ms. HERSETH SANDLIN. I am going to begin my questions, Mr. Pierson, with you, if that's okay. I want to thank you for being here today and for your testimony earlier this year as well. And the Committee is very grateful for your complete cooperation with our investigation but also for your three decades of service to this institution and the American people.

Mr. Pierson, could you just describe for the Committee your role on the House floor, what your duties consist of?

Mr. PIERSON. I basically am there to help Republican Members when they come on the floor if they are not sure what we are voting on, if they have come from committee or somewhere. I am a parliamentary—I have a lot of knowledge about parliamentary procedures. I am certainly not an expert—the Parliamentarians are the experts—and also kind of a liaison between what I find out on the floor to our Cloakroom. They are pretty much tied up on the phones. So I am there to help them figure out if there are schedule changes and that kind of thing.

Ms. HERSETH SANDLIN. And if we could just fast forward to the night in question, August 2nd, your testimony earlier this year that you provided to the Committee, to the Select Committee on April 7th, you testified on page 21 of your testimony that, quote, the rules of the House weren't broken, unquote. Is that still your opinion?

Mr. PIERSON. Yes.

Ms. HERSETH SANDLIN. But, in fact, there were—as the Committee heard yesterday and as Mr. Davis was just questioning Ms. O'Neill, there were customs and best practices that weren't followed. Is that your opinion?

Mr. PIERSON. That's correct.

Ms. HERSETH SANDLIN. And what do you think happened on the floor that night? I mean, what do you think were the primary factors contributing to the controversy?

Mr. PIERSON. The main factor, overwhelming factor, was pressure, heavy pressure by the Majority Leadership to close the vote. That, in turn, triggered pressure on Mr. McNulty to call the vote before actually reading the slip. He didn't have a slip.

And, incidentally, it just happened that because he didn't have that slip the Tally Clerks were not prepared to close the vote. And, as everybody knows, there was a card that came in, and just about the time McNulty announced 214–214 the board said 215–213, and the word “final” appeared on the board.

Ms. HERSETH SANDLIN. And are you aware that Mr. McNulty has testified before this Select Committee that he did not feel pressure from leadership or receive any instruction to close the vote?

Mr. PIERSON. I am not aware of that.

Ms. HERSETH SANDLIN. You were asked in your testimony earlier this year as well about the fact that the Minority did have a couple of options for redress that evening, and we covered some of this during yesterday's testimony as well. Now, they had the option of vacating the vote, as was requested by Mr. Hoyer. Can you explain why the Minority objected to vacating the vote?

Mr. PIERSON. Well, I can only give you my opinion. I didn't suggest to anybody to object. But if you vacate the vote you virtually take away the entire vote all evening that happened and you start the vote over again, and the Majority Leader twists some arms and they win the vote.

I mean, you are better off with the 215–213 on the board with the words final—or the word final up there than you are vacating the vote and starting all over again when you are in the Minority.

Ms. HERSETH SANDLIN. Now, the Minority had the option of essentially redoing the vote through a motion to reconsider, as was also requested by Mr. Hoyer. Can you—in your opinion, why was that unacceptable to the Minority, which I think ultimately led to some Members of the Minority walking out of the Chamber?

Mr. PIERSON. I am not sure it was necessarily unacceptable, because it happened, and there was a reconsideration vote, and Mr. Hoyer moved it. In fact, I had suggested to him earlier that it is possible we would move to reconsider. It is just an option out there all the time.

I mean, when you are in the Minority you don't get much; and we were in the Minority part of my career and in the Majority part of my career. It is a whole lot better being in the majority. But you don't get much, so you grab what you can. And a reconsideration vote is similar in a sense to a vacate vote in the sense that you end up having the vote all over again and you end up losing. And we thought we had won. It said 215–213, final.

Ms. HERSETH SANDLIN. And I think that as you have testified today it is consistent with your earlier testimony on April 7th where you stated, in fact, quote, if you vacate it, you give kind of an imprimatur of validity, unquote, so therefore it would have been preferred to, quote, leave it out there as something that was done wrong by the majority, unquote.

Mr. PIERSON. Yes.

Ms. HERSETH SANDLIN. You testified to the effect that if the vote hadn't been called when it was by Mr. McNulty in what turned out to be an erroneous call the Minority would have lost any anyway and would have complained that the Democrats held the vote open too long. Why do you believe that?

Mr. PIERSON. Well, because in the end the vote came up 212–216, although Mr. Boehner's card switch wasn't allowed. But still we lost the vote in the end, and the result would have been the same.

Ms. HERSETH SANDLIN. But you have seen concerns raised by Members of the Minority throughout the 110th Congress about the issue of enforcing Rule XX clause 2(a).

Mr. PIERSON. Yes.

Ms. HERSETH SANDLIN. Correct?

Mr. PIERSON. Right.

Ms. HERSETH SANDLIN. And are you familiar with Mr. McNulty's testimony before this Select Committee that his reason for call-

ing—closing the vote prematurely as he did was a good-faith effort to enforce Rule XX clause 2(a)?

Mr. PIERSON. I am not familiar with that, but if he said that I think that is rather a stretch.

Ms. HERSETH SANDLIN. Would you explain why?

Mr. PIERSON. Yeah, because at 214–214 the motion would have gone down. And it is easy to say, well, we wanted to close the vote as soon as possible because we were enforcing Rule XX clause 2(a), and there is no specific time limit when it says for the sole purpose of holding open a vote. I mean, what does that mean? Two minutes? Five minutes? Eight minutes? Ten minutes? There is no specificity there. So any Chair could say, oh, I closed the vote because we didn't want to abridge that rule.

Ms. HERSETH SANDLIN. But you would agree it is a subjective—

Mr. PIERSON. Sure. It is very subjective.

Ms. HERSETH SANDLIN [continuing]. Call for the Chair?

Mr. PIERSON. Yes, sure.

Ms. HERSETH SANDLIN. And while you just in your opinion think that it would be a stretch for Mr. McNulty to claim that that's what he was trying to do, you also testified that Mr. McNulty is, quote, a very decent guy. Do you still believe that today?

Mr. PIERSON. Yes.

Ms. HERSETH SANDLIN. And do you believe that he would ever intentionally break the rules of the House?

Mr. PIERSON. I guess it is the definition of what is intentional. I mean, when there is heavy pressure from the leadership and you are put in the Chair by the leadership, it is a difficult situation. I mean, so intentional? Perhaps not. I don't think it went through his mind, hey, I am going to break a rule here or I am going to win this vote for us. It is just there was a lot of pressure on him.

He is an excellent Chair. And of all the people to have up there it was ironic. I think probably he is the best Chair the that Democrats have. So with that kind of pressure, I don't know whether it was intentional or not.

Ms. HERSETH SANDLIN. But do you believe that he acted with the best of intentions on August 2nd and, as he testified before this Committee yesterday, just made a mistake in good faith?

Mr. PIERSON. I would say it was a mistake. I don't know about his good intentions. I can't read his mind. I don't know what he was thinking up there. But he has been in the Chair many, many, many times. You always use the slip. He didn't. And just the time he called the vote it went 215–213.

So I don't know what was in his mind. But from the outside looking in, it looked like there was a lot of pressure on him. He called it at the wrong time. Now, whether it was intentional or not, I don't know, and I don't know what he was thinking.

Ms. HERSETH SANDLIN. We have also heard testimony about the fact that Mr. Boehner submitted a well card, as you just mentioned in your testimony, to change his vote near the end of the process. And Mr. Boehner testified that he submitted that change card, quote, to be on the prevailing side of the vote in case there was a move to reconsider the vote, unquote. Is that your understanding of why Mr. Boehner submitted that card?

Mr. PIERSON. Yes.

Ms. HERSETH SANDLIN. And is that common practice?

Mr. PIERSON. It is common practice when you want to reconsider, yes. We don't do that very often, but—

Ms. HERSETH SANDLIN. So you don't think that Mr. Boehner changed his card because he had a change of heart on the substance of the issue?

Mr. PIERSON. No.

Ms. HERSETH SANDLIN. However, the well card wasn't processed; and Mr. Boehner's vote wasn't changed.

Now, you were asked in your earlier testimony on April 7th whether if Mr. Hoyer hadn't moved to reconsider there was an option that Mr. Boehner may have moved to reconsider. That's what you had spoken to Mr. Hoyer about on the floor. Is that correct?

Mr. PIERSON. Right.

Ms. HERSETH SANDLIN. But then you had also stated in your testimony, when asked if Mr. Boehner would have moved to reconsider if Mr. Hoyer had not done so, that that was a hypothetical question, but, "I think if we had our heads on straight, we probably wouldn't have." Is that still your view?

Mr. PIERSON. I suppose. I mean, in situations like that, things are happening so fast that you can't sit out and have like a little time out to sit down and say what is the best thing to do. Normally, when you want to cause a problem or you don't like a particular vote and you reconsider, it is something that is made in a snap judgment.

If I had to go back and look at it from where I am looking at it now, I absolutely wouldn't have reconsidered because we would have lost the reconsider. So, in that sense, I would say perhaps not if we had time to think about it. But that is why he was in the well, yes, to change his vote so he could be on the prevailing side.

Ms. HERSETH SANDLIN. Okay. Mr. Hartz, thank you for being here today. It is a very memorable introduction of you to the panel.

In your words, will you describe your role in the Speaker's Office?

Mr. HARTZ. Yes. I have been up here 21 years. I started with David Bonior. I am the Director of Floor Operations for Speaker Pelosi, which means I oversee in general the operations of the floor to make sure they go smoothly between the different leadership offices and that some of the concerns that she would have as Speaker for the whole body are met.

Ms. HERSETH SANDLIN. Moving straight to the night of August 2nd, you were on the House floor. Correct?

Mr. HARTZ. Yes.

Ms. HERSETH SANDLIN. And the Speaker of the House was on the floor as well, correct?

Mr. HARTZ. Yes.

Ms. HERSETH SANDLIN. And is that a common occurrence for the Speaker to be on the floor and to vote on a pending matter before the House?

Mr. HARTZ. Certainly for the Speaker to be on the floor is very common. It is not, you know, too common for her to vote. It is at her discretion; and, generally, she votes when she considers it an important vote.

Ms. HERSETH SANDLIN. And what was your role that evening specifically relating to when the Speaker is on the floor to vote?

Mr. HARTZ. Well, we knew once we found out what the recommit is, which we don't have any advance knowledge of, that this was probably going to be a close vote. And she was there. We were looking at Members and how they were voting; and, as the time ran out, it looked like that she would be needed to vote.

Ms. HERSETH SANDLIN. And while it is rare for her to vote and, as you just explained, at her discretion, when she does vote, is it common for you to give her a signal or communicate to her in some way when it is time for her to vote or when we are running down on time or—

Mr. HARTZ. It would depend on the situation, but it could go either way where she decides on her own or I tell her, you know, time has run out; you better vote.

Ms. HERSETH SANDLIN. I don't think I have any further questions unless Mr. Delahunt or Mr. Davis have any follow-up questions for the witnesses.

The CHAIRMAN. Thank you. I have a few questions, and I am going to direct them to Mr. Pierson. And as I said when I introduced him at the beginning, he is a professional that really has the respect of the Members in the Democratic Caucus. He has got a very pleasant style, and he is known to be an individual of substance. And he does know something about the institution, after serving there for some 30 years—you talk about pressure, Jay—and we have heard it yesterday on several occasions in terms of questions posed by my colleagues in the Minority.

And you described—I think you used the term “overreaching pressure” or maybe the Majority Leader was overreaching in terms of creating pressure to influence the actions by Mr. McNulty by closing the vote. What led you to that conclusion? What did you observe? What did you see? What did you know?

Mr. PIERSON. Mainly just observing Mr. Hoyer. I mean, I am all over the floor when I am on the floor, so I don't sit and watch him on every vote. But on this kind of a vote it was very close, and you could see him going up to the rostrum area.

The CHAIRMAN. How many times did you see him go up to the rostrum?

Mr. PIERSON. I can't remember, but I remember on the tape him going up and talking to the Parliamentarians. And now whether Mr. McNulty heard that I don't know. And, of course, I can't tell you that I was over there listening to what Mr. Hoyer was saying.

The CHAIRMAN. How many times—if you remember, how many times did he have an interaction with the Parliamentarians on the rostrum?

Mr. PIERSON. Probably twice that I can remember. One in particular you can hear on the tape. I mean, that is kind of audible and obvious. Whether I would have remembered that without the tape I don't know. But that is—you can see it on the tape. And pressure is a matter of—

The CHAIRMAN. Of perception.

Mr. PIERSON. Of definition, basically. I mean, I wasn't there. I didn't hear him screaming at McNulty to close it. But being in the Majority for 12 years, I mean, we, you know, sometimes wanted to



close votes also. We didn't close them without slips. But, nevertheless, there is that feeling that the Whip is ready. Let's close this thing out. And that is, in a sense, is pressure in the sense you are telling the Chair, hey, hit the gavel. It is time to go.

The CHAIRMAN. But your answer is that the evidence of the pressure that led you to that conclusion was on two different occasions you saw an interaction between Mr. Hoyer and the Parliamentarians.

Mr. PIERSON. Yes.

The CHAIRMAN. And is there any other evidence of the pressure?

Mr. PIERSON. No.

The CHAIRMAN. So it is—it goes to those two particular occasions?

Mr. PIERSON. Right.

The CHAIRMAN. Do you have a memory of the duration of those two interactions? Were they brief?

Mr. PIERSON. Yes. Yes. The one that I—I didn't just see, I heard.

The CHAIRMAN. You heard that on the tape.

Mr. PIERSON. I heard Mr. Hoyer telling the Parliamentarians something. And that was very brief. Now, whether he stayed up there for a long time, I don't know. I am too busy doing other things. But I saw him go up, say something.

The CHAIRMAN. If I suggested to you it was a matter of less than 3 seconds—

Mr. PIERSON. No, I would say it was more than that. Probably half a minute, 20 seconds, something like that.

The CHAIRMAN. 20 seconds?

Mr. PIERSON. Yeah.

The CHAIRMAN. Well, we have—we will have a chance as the Committee to review the tape to determine the duration, and we are trying to reach an agreement as to the duration of these interactions. I am calling them interactions. In the questions posed by other Members, the term conversations is being used. But after my own review, if these were conversations, they were so brief one party would only have had the opportunity to say anything.

But, in any event, your conclusion as to overreaching pressure was these two interactions between the Parliamentarians and the Leader.

Mr. PIERSON. Yes.

The CHAIRMAN. You observed no interaction between Mr. McNulty and Mr. Hoyer?

Mr. PIERSON. No.

The CHAIRMAN. You talked earlier about having heard it on the mike. You couldn't have heard it because of where you were situated at the time on the floor or because of the deafening noise that enveloped the Chamber that evening?

Mr. PIERSON. No, where I was situated.

The CHAIRMAN. Where you were situated.

Well, getting to the issue of noise, it was loud that night.

Mr. PIERSON. I have heard it before, but it was loud, yes.

The CHAIRMAN. I know.

Mr. PIERSON. Yes.

The CHAIRMAN. But it was particularly loud that night. In fact, on page 11, you say specifically, according to your interview, it was

loud that night. There was too much noise. But you could clearly hear the mike.

Mr. PIERSON. Clearly hear the mike?

The CHAIRMAN. You could clearly hear Mr. Hoyer because of the mike. That one interaction that we are talking about.

Mr. PIERSON. On the DVD, yes.

The CHAIRMAN. Right. On the DVD.

Mr. PIERSON. Of that night.

The CHAIRMAN. Okay. But it was loud. It was, as I said earlier, raucous; and in the past, as you have indicated, the Chamber does become loud. And when you have, as you said, 400 guys out there talking, whatever, and sometimes the Chair can't hear, that very well describes the situation that evening.

Mr. PIERSON. Sure.

The CHAIRMAN. Would you agree with that?

Mr. PIERSON. Yes.

The CHAIRMAN. I can understand the perception that you had in terms of looking up and seeing that display board say final. We have also heard testimony that simply the final being displayed on the summary board has no parliamentary significance. Are you aware of that?

Mr. PIERSON. Yes.

The CHAIRMAN. But, again, I don't disagree. Because it makes common sense to me, if I were to look up and see the summary board and it says final, it ought to be final or it ought not to be on the summary board.

Mr. PIERSON. Right. Agree.

The CHAIRMAN. But we know that it wasn't final in terms of parliamentary consequences. And yet your boss, the Minority Leader, in his interview with us stated that he felt that the Minority was disenfranchised because the vote was final and that he reached that conclusion based upon the display on the summary board. And it would appear from your interview that you reached that conclusion as well.

Mr. PIERSON. Yeah. A lot of Members. I mean, the word final says final. I don't think it was just the fact that it said final. It was also the fact that it was different than what the Chair called. You have two different things there.

The CHAIRMAN. Right. And you also indicated that—I think your words were, when there was a problem with the computer and the information went dark, that that was throwing fuel on the fire—

Mr. PIERSON. Right.

The CHAIRMAN [continuing]. In terms of the anger on the Minority side.

Mr. PIERSON. Right.

The CHAIRMAN. And I would submit that that is also understandable.

And, subsequently, you learned that there was a technical problem. Is that fair and accurate?

Mr. PIERSON. Some kind of technical problem where they had to abort the vote, yes.

The CHAIRMAN. But it was a technical problem. It was nothing to do—

Mr. PIERSON. As far as I know. I am not a Tally Clerk. But, in talking to them, I understand there was some kind of problem getting out of that vote and getting to the reconsideration vote.

The CHAIRMAN. Thank you, Jay.

Mr. DAVIS. Mr. Chairman, could I ask unanimous consent to follow up on one thing that you asked Mr. Pierson about before I forget it, frankly? And I will be happy to have the Republicans have an extra 1 minute.

Mr. PENCE. An extra 3 minutes.

Mr. DAVIS. My question was only seeking 1 minute. If they want an extra 3, that's fine, too.

The CHAIRMAN. Go ahead.

Mr. DAVIS. Thank you, Mr. Chairman.

Let me just follow up on one thing, Mr. Pierson. I will do it now. Otherwise, I may forget it later.

The Chairman asked you about the source of the pressure that night that was going on in the Chamber, and you ventured your opinion that the source of the pressure was the Democratic leadership. Is it fair to say, Mr. Pierson, that a number of Republicans had complained over the course of 2007 that Democrats, despite rule 2(a), were sometimes keeping votes open?

Mr. PIERSON. Yes.

Mr. DAVIS. In fact, is it fair to say that that had become a running subject of controversy, that there were certain Members of the Minority who were regularly complaining that you guys are violating your own rule. You remember that kind of controversy on the floor?

Mr. PIERSON. Sure.

Mr. DAVIS. In fact, do you remember a number of instances in 2007, Mr. Pierson, prior to the night of August 2nd when Members of the Minority would go to the floor and would make parliamentary inquiry regarding rule 2(a)?

Mr. PIERSON. Yes.

Mr. DAVIS. Do you remember a number of instances prior to August 2nd, 2007, when Republican Members would go to the floor and very heatedly argue that rule 2(a) had been violated?

Mr. PIERSON. Heatedly? I don't know about that.

Mr. DAVIS. Let's not quibble about that.

Mr. PIERSON. Yes.

Mr. DAVIS. With some level of passion and belief?

Mr. PIERSON. Yes. Yes.

The CHAIRMAN. Enervation is the word.

Mr. DAVIS. In fact, Mr. Pierson, the night in question, August 2nd, weren't there Republican Members saying close the vote down?

Mr. PIERSON. I don't recall that.

Mr. DAVIS. Is it possible that in all the cacophony that night there were some Republican Members yelling close it down, too?

Mr. PIERSON. I suppose it is possible, but—

Mr. DAVIS. It was after 10 o'clock, after a long day of voting, we were near recess, we were trying to get out of there, weren't there Republicans who were also yelling close it down?

Mr. PIERSON. I don't know.

Mr. DAVIS. You can't say there weren't, can you? And if Mr. McNulty sat here and said yesterday that he felt pressure from controversy over rule 2(a), you are not in a position to contradict that, are you?

Mr. PIERSON. No.

Mr. DAVIS. Thank you, sir.

The CHAIRMAN. Mr. Pence? We will give you an additional whatever you need.

Mr. PENCE. Thank you, Mr. Chairman. Thank you for your courtesy and for calling this second day of investigative hearings.

I want to welcome the panel, and I also want to acknowledge how much easier it is to sit on this side of the table than it is to sit on that side of the table.

I also want to acknowledge the recognition that answering questions from people in our position as Members of the House when you are in staff positions in the House is also especially awkward, and so I want to bring my questions in a measured spirit of fairness. But we do have questions.

Mr. PENCE. Now let me begin with Mr. Pierson, and thank you for your testimony and your service to the House. You arrived on Capitol Hill in 1978, worked in the Republican Cloakroom. Is that correct? Thereabouts?

Mr. PIERSON. Yes.

Mr. PENCE. And then I am told that you took your current position as Republican Floor Assistant in 1988.

Mr. PIERSON. '86.

Mr. PENCE. Thank you for the correction.

So you have enjoyed your current position since 1986. And so you have served in Republican minorities, Republican majorities, and now back in Republican minorities.

Mr. PIERSON. That's correct.

Mr. PENCE. Under—let me say during your tenure as the Republican Floor Assistant when the Republicans had the majority, was direction—I think I heard you say today—was direction from the Republican Leadership to the Chair about closing a vote common or uncommon?

Mr. PIERSON. Common.

Mr. PENCE. Very common.

Mr. PIERSON. Common.

Mr. PENCE. And let me give you a chance to restate I think it was a statement you just made. Did you ever during your tenure in the majority or the minority—in the majority, rather, did you ever see the Republican majority and the presiding officer close a vote without allowing the Clerk to produce a tally slip?

Mr. PIERSON. No.

Mr. PENCE. Do you ever recall—well, let me withdraw the beginning of that question. Let me let you reinforce one other point here. Your testimony today is that you perceived that the Majority Leader, Steny Hoyer, was putting pressure on the Chair to close the vote. Is that correct?

Mr. PIERSON. That's correct.

Mr. PENCE. The Chairman of this Committee focused on occasions and evidence, but it was your perception as someone who has worked in and around the floor of the House of Representatives for

30 years that the Democrat Majority Leader was putting pressure on the Chair to close the vote.

Mr. PIERSON. That's correct.

Mr. PENCE. As to Mr. Davis's final line of questioning, do you think Mr. Hoyer was trying to close the vote to enforce clause 2(a) of Rule XX?

Mr. PIERSON. No, I don't.

Mr. PENCE. Why do you think he was trying to close the vote?

Mr. PIERSON. Because he thought he had won, that the motion had gone down 214 to 214.

Mr. PENCE. So it wouldn't surprise you if you learned that Mr. Hoyer's testified repeatedly to this Committee that, in fact, when he ordered or expressed a desire that the vote be closed he wanted to see the vote closed, quote, while we were prevailing, close quote. Mr. Hoyer—you think he was trying to close the vote because they were winning the vote. So it wouldn't surprise you that he essentially said that to the Committee.

Mr. PIERSON. No, it would not. It would not surprise me.

Mr. PENCE. He used the phrase, to close the vote while we were prevailing. Thank you.

And thanks again for your service to the House, which I think all the Members of this Committee recognize as distinguished and principled.

Mr. Hartz, I would associate the same statements with your career.

Mr. HARTZ. Thank you.

Mr. PENCE. And I appreciate your cooperation with this Committee.

Just a couple quick questions for you, Mr. LaTourette may or may not explore this.

There is, at a point on the tape—and we can produce it, but in the interest of time, I will ask you a few questions.

Did you give Speaker Pelosi a signal to vote during Roll Call 814?

Mr. HARTZ. Yes. The time was expired or rapidly expiring, and I wanted to make sure she had a chance, if she wished to vote.

Mr. PENCE. Okay. So those of us that have interpreted the hand signal from you, that was indicating that the Speaker should vote.

At what point did you realize Roll Call 814 was going to be a close vote?

Mr. HARTZ. I don't think I would have had any knowledge until the motion to recommit was offered—we have no advance notice of this—so not until we knew what the content was, and then we assumed it would have been a close vote.

Mr. PENCE. Is it common for the Speaker of the House to vote? Is it uncommon? My perception is that Speaker Pelosi votes more often than her immediate predecessor, but give us a sense of that.

Mr. HARTZ. Well, I think it is really at her discretion. It is when she considers it an important vote. I would say, in general, issues that she cares a lot about substance-wise, she would vote on, some of the agenda items that we've talked about in this Congress—minimum wage, things like that.

Other times, you know, she is a member of the Majority and she has the right to vote.

Mr. PENCE. But to your testimony moments ago, would it be fair to say she considered this an important vote?

Mr. HARTZ. Yes.

Mr. PENCE. And that was the reason for her presence on the floor?

Mr. HARTZ. Well, I think she would have been on the floor—I mean, as I recall, there was a whole series of votes here. And she is often on the floor——

Mr. PENCE. Let me restate, because I want to acknowledge the Speaker of the House is often on the floor. That was the reason for her casting a particular vote in this instance. She thought it was an important vote.

Did it contribute—to your knowledge, did it contribute to your thinking, or the Speaker's thinking, this would also be a close vote?

Mr. HARTZ. It probably was a factor in this instance, yes.

Mr. PENCE. It was a factor.

Did you have any conversations—and I am not playing a gotcha game here; this was a question you were asked in your deposition, and you indicated you do not recall a specific conversation.

But for the record today at this hearing, did you have any conversations with our other witness, Catlin O'Neill, about the timing of closing Roll Call 814?

Mr. HARTZ. I did not.

Mr. PENCE. You did not recall, or you did not have a conversation?

Mr. HARTZ. I think the only conversation I would have had with her is, you know, this is going to be a close vote, “get ready” kind of thing. But I did not tell her to close the vote.

Mr. PENCE. Okay. Do you know whether any members of Leadership staff had any such conversations or discussions with Ms. O'Neill?

Mr. HARTZ. No, not that I am aware of.

Mr. PENCE. When did you first learn that Mr. McNulty had not, in your words, “waited for the paper,” referring to the tally slip that was not produced in connection with Roll Call 814?

Mr. HARTZ. I did not learn of that until after the fact when I spoke to John Sullivan, the Parliamentarian.

Mr. PENCE. Now, you answered this in the affirmative—and, again, this is not a gotcha moment, so I want you to know you answered in the affirmative.

Did John Sullivan tell you later that evening that Majority Leader Steny Hoyer had been putting a lot of pressure on the vote?

Mr. HARTZ. Yes, he indicated that. That was my first awareness of that.

Mr. PENCE. So you were not—that is a follow-up. You were not aware or did not perceive the pressure, but John Sullivan did tell you that evening that Mr. Hoyer had been putting a lot of pressure on the vote?

Mr. HARTZ. He said that. You will have to remember, I was at the leadership table a long ways away from the rostrum, and as we have heard, there is a lot of noise and cacophony in the Chamber.

Mr. PENCE. What prompted your decision that it was time for Speaker Pelosi to cast her vote?

Mr. HARTZ. Well, I think the clock had either expired or was very close to expiring. It was clearly a close vote, and, you know, there wasn't much chance for her to vote if she was going to vote.

Mr. PENCE. And to the best of your recollection, as a senior Democrat floor aide, did you have a vote goal or a target in mind? Did you know, for example, that 214 to 214 was the tally that would ensure the Democrats to prevail?

Mr. HARTZ. No. I mean, it depends on absentees and everything. I don't think I had—I don't recall—any specific vote number in mind.

Mr. PENCE. At the time that your hand went out, do you recall being aware that that vote by the Speaker, at your urging, would in that moment tie the vote 214 to 214?

Mr. HARTZ. I don't think I would have known that. I mean, there are always votes going in. It is real time, and within seconds things change. So I don't think I would have had any specific knowledge that this was the vote that was going to get it.

Mr. PENCE. Great. Thank you, Mr. Hartz. Thank you for your service to the House.

Mr. HARTZ. Thank you.

Mr. PENCE. And to the American people.

Ms. O'Neill, thank you for appearing, I think this is your third time before the Committee.

Ms. O'NEILL. Third time.

Mr. PENCE. Let me say on behalf of the Minority, we appreciate your cooperation and your availability, and we also understand, as I said before to the whole panel, the uncomfortable position that this puts all of you in.

Let me see if I can get through some questions, but try and mitigate that to some extent, because what we are struggling with here, as a Minority, is trying to make things add up that don't seem to add up.

So I want to go through basic fact questions, and Mr. LaTourette will very likely take you more through the narrative. But a few key points.

One of your responsibilities on the floor is to schedule the presiding officer for the votes; is that correct?

Ms. O'NEILL. That is correct.

Mr. PENCE. You may want to step a little closer to the microphone for the record. Thank you.

You have testified that you personally asked Mr. McNulty to be the presiding officer for Roll Call 814?

Ms. O'NEILL. Yes, he was responsible for doing the motions to recommit and final passage on all the agricultural appropriations—I mean, all the appropriations bills.

Mr. PENCE. And I think it has been your testimony consistently that you consider Mr. McNulty to be an experienced presiding officer?

Ms. O'NEILL. That is right.

Mr. PENCE. You stated during your interviews with the Select Committee that the only conversation you had with Mr. McNulty during Roll Call 814 was that it was going to be a tight vote and that he should bear with you.

Is that still your testimony.

Ms. O'NEILL. That is still my testimony.

At my second testimony I further added to that that at some point I would have likely gone up to him to say gavel at 10 minutes, 5 minutes, 2 minutes remaining, so we can get an effort to get people in.

Mr. PENCE. Reminding him to encourage Members to vote?

Ms. O'NEILL. Right.

Mr. PENCE. But at no point after the time had lapsed—let me ask you, after the time had lapsed, did you add one more—

Ms. O'NEILL. No.

Mr. PENCE [continuing]. Signal, encouraging him to close the vote?

Ms. O'NEILL. Not that I am aware of.

Mr. PENCE. When did you first become aware that the vote was going to be close?

Ms. O'NEILL. That is hard to say. Between probably 3 minutes and 5 minutes before the vote was closed.

Mr. PENCE. Did you have any conversations with the Speaker that she might need to vote because the vote was going to be close?

Ms. O'NEILL. No.

Mr. PENCE. The video—and I expect Mr. LaTourette will let you comment on this specifically. The video of Roll Call 814 shows that you had at least three separate—what are we calling them, Chairman?

Ms. O'NEILL. Interactions.

The CHAIRMAN. Interactions.

Mr. LATOURETTE. Apparent interactions.

Mr. PENCE [continuing]. Apparent interactions, or very brief conversations with Mr. McNulty in one instance, immediately before he attempted to close the vote.

If all you told him was that it was going to be a tight vote and he should bear with you, why did you need to speak to him so many times?

Ms. O'NEILL. I have conversations with the Chair on a regular basis. I have no recollection of any conversation with him outside of the ones I have mentioned in my previous testimony, but I am in constant communication with the Chair.

Mr. PENCE. Mr. Hoyer has been very candid with this Committee that he wanted the vote closed as soon as Speaker Pelosi had voted, making the vote 214 to 214. Mr. Hoyer has acknowledged as recently as yesterday before this Committee—speaking loudly, I think his testimony was. At least twice, I think he has testified he intended to be heard.

We have received testimony from six witnesses serving on the rostrum, including one that was seated beyond Mr. McNulty, all of whom testified that they heard Mr. Hoyer indicate his desire that the vote be closed.

Do you recall hearing Mr. Hoyer direct that the vote be closed?

Ms. O'NEILL. I have no recollection of that.

Mr. PENCE. The videotape of Roll Call 814 shows that you had a conversation with Mr. Hoyer at the base of the rostrum. You stated in your interviews with the Select Committee that you only recalled one conversation with Mr. Hoyer about Roll Call 814, during



which you discussed the fact, I think, that there were 13 Democratic Members who had not voted.

But if I told you that at the time of this particular conversation there were not 13 votes still outstanding, would that surprise you? Is it possible there was another conversation that happened in that moment, and what might that have been?

Ms. O'NEILL. The only conversation I remember having with Mr. Hoyer is that there were 13 Members out. I also am not privy to information down at the rostrum. So I may have said there were 13 Members still out, and perhaps that wasn't the case.

But the only information, the only conversation I recollect is 13 Members.

Mr. PENCE. Thank you.

When asked about that particular conversation, during his interview Mr. Hoyer stated, "I don't recall specifically, but I am clearly saying to Catlin that we need to shut down the vote when we are prevailing."

Does that refresh your recollection at all about that conversation?

Ms. O'NEILL. No.

Mr. PENCE. Now, Mr. Hoyer did go on to say, and he repeated this again yesterday, that you don't work for him.

Ms. O'NEILL. That is right.

Mr. PENCE. And that he couldn't technically instruct you to do anything because you work for the Speaker. He did testify, though, previously, page 93 of his deposition, that he had no doubt you would "be certainly interested in what the Majority Leader believes ought to be done."

As a general rule, are you interested during votes about the preference of the Majority Leader, about when a vote should be closed?

Ms. O'NEILL. The Majority Leader, the Whip, their staffs, everybody. People are operating with tons of different information, so I am collecting all that. It is helpful.

Mr. PENCE. In this instance, what the Majority Leader clearly believed ought to be done is that the vote be closed down while the majority was prevailing, according to his testimony. If that is what the Majority Leader said to you, as he claims, it seems highly unlikely that that conversation you had with Mr. McNulty immediately thereafter would not have included that message.

Wouldn't you agree with that?

Ms. O'NEILL. No, I wouldn't agree with that.

Mr. PENCE. Why not?

Ms. O'NEILL. Because I have no recollection of it.

Mr. PENCE. There is a point in the videotape where Mr. Hoyer has a fairly heated exchange with John Sullivan. Do you recall hearing or seeing that exchange? It is fairly famous.

Ms. O'NEILL. I saw it.

Mr. PENCE. You saw it in real time.

Did Mr. Hoyer ever tell you what he was upset about?

Ms. O'NEILL. No.

Mr. PENCE. Mr. Hoyer told the Select Committee that he was angry because he believed that one of the Assistant Parliamentarians, Ethan Lauer, who testified yesterday, had instructed Mr.

McNulty not to close the vote immediately after the Speaker had voted.

Did you ever hear Mr. Lauer or any other Parliamentarian say to Mr. McNulty that he should not close the vote?

Ms. O'NEILL. No.

Mr. PENCE. Did you ever hear any Parliamentarians interrupt Mr. McNulty's first attempt to close the vote?

Ms. O'NEILL. No.

Mr. PENCE. Let me ask you one final question, and I will yield to Mr. LaTourette.

Before his angry outburst toward the Parliamentarians, did you say anything to Mr. Hoyer about the Parliamentarian advising Mr. McNulty, or the timing of closing the vote?

Ms. O'NEILL. No.

Mr. PENCE. So you didn't communicate anything to him about any preference of the Parliamentarian or the Parliamentarian's interpretation of the rules?

Ms. O'NEILL. No.

Mr. PENCE. Thank you.

I will yield to Mr. LaTourette.

The CHAIRMAN. Before you yield, Mr. Pence, I would like to acknowledge the presence of the gentleman from Missouri.

Mr. HULSHOF. Good morning.

The CHAIRMAN. A fine member of this panel.

Now let me yield back.

Mr. LATOURETTE. Thank you very much. I want to add my welcome to Mr. Hulshof, and although she has spoken, Ms. Herseth Sandlin. Things prevented them from being here yesterday, and it is always best when we are at full complement.

I want to begin with an observation that I think the House of Representatives is lucky to have all three of you working for us.

And with Mr. Pierson, I have had the pleasure of knowing for 14 years, and everything the chairman said about you is right, and you are someone that I feel confident going to not only for information, but good information.

One of the disappointments we probably have around here is that we don't get to know the staff on the other side as well. I would venture to say that Democratic Members don't know Mr. Pierson as well as they know the two of you, and vice versa.

I think, as I talk to people, the fellow that preceded me was a guy named J. William Stanton who talked about the good old days—as a matter of fact, when your grandfather was Speaker—and the fact that while people had differences, they set those differences down at 5 o'clock and they got along well together.

So I have made it the practice of trying to observe what goes on with the other side.

Mr. Hartz, I will tell you, although I don't know you very well, I have always called you "Dave Bonior's guy," because that is where I first saw you. I paid attention to you because you always pay attention to people who are kicking your butt, and you kicked our butts on a pretty regular basis. And that is not to disparage your current leadership or anything else.

Ms. O'Neill, I also observed you from when you were transferred from your first post, I didn't know about your entertainment ca-

reer, but from your first post to your floor duties; and from what my observation is, you do just an outstanding job and you do exactly what Speaker Pelosi asks you to do. So, again, the House is lucky to have you, all three of you.

Mr. Pierson, I want to begin with you and go quickly through your observations in your interview and then what you have said today.

On page 5 of your interview, in answer to, I don't remember whether it was the gifted counsel for the Majority Mr. Spulak or our counsel, Mr. Paoletta, who is also gifted, that there were three things that you thought caused this series of events.

Do you remember what those three things were that you identified?

Mr. PIERSON. The three things were pressure from the Majority Leader; not calling the vote from the slip; and the timing of the fact that a card came in after Mr. McNulty called the vote, but hadn't gone through the tally, the computer tally, so when it came up on the board it was different from what he called.

Mr. LATOURETTE. On page 6 you talk about, I think in response to Ms. Herseth Sandlin's question, this whole notion of whether it is a good strategy to do the motion to reconsider once we found ourselves in this position where the Chair had called the 214 to 214 and it was really 215 to 213.

And I was trying to have this conversation with Mr. Hoyer yesterday, but he wasn't very compliant with my observations.

So I think you have described it accurately, and that is, if the facts really were that at the time what was in the machine, the people that had voted, it really was 215 to 213, it would always be beneficial for the Majority to have that vote reconsidered, because there were 19 Democrats that had voted in favor of the Republican motion to recommit.

Having been someone that operated in the DeLay administration in the majority, I am familiar with the feeling of having my arm in a sling on a number of occasions and having been encouraged to cast a vote that was a team vote.

And there is no doubt in your mind, is there, that if there was a reconsideration based upon the fact there are more Democrats in the House than the Republicans, they would have prevailed?

Mr. PIERSON. Correct.

Mr. LATOURETTE. So it is a little bit like it was cast yesterday, that was so fair. Well, it is a little bit like—maybe we will talk about a sporting event. It is a little bit like maybe the Cleveland Cavaliers playing the Boston Celtics, and LeBron James launches a ball from half court and scores as time is expiring, clearly winning the game. But somehow they say, well, you know what, that is not so good; we have to do a redo. So we are going to redo LeBron James' shot from half court and pray he makes it.

I mean, that is what they were giving us. It was a gift, a nicely wrapped box, but you open the box and there is nothing in the box, right?

Mr. PIERSON. Yes, I agree.

Mr. LATOURETTE. Okay.

And to Mr. McNulty, you were asked about Mr. McNulty's state of mind, and I think that is not appropriate. Only Mr. McNulty

knows what his state of mind is, and only Mr. McNulty testified, as he has done—and I think openly, honestly.

And every member of this panel considers Mr.—McNulty to be a good, decent, honest human being, a great presiding officer, a credit to the institution and his party. But I think—as I was growing up, there was an expression that the road to hell is paved with good intentions.

So this issue of intentions, Mr. McNulty indicated that because of his concern about clause 2(a), he made the decision that he needed to close the vote after the Diaz-Balart, Mario Diaz-Balart, vote was entered. And to my mind—and I may be crying in the wilderness, but that—and Mr. Hoyer told us, everybody told us, that the state of mind of the Speaker on the enforcement of 2(a) is the only thing that matters. Well, the guy with the discretion said he closed the vote because to keep it open after Mario Diaz-Balart would have violated 2(a).

So he may have had the best intentions; he may have made a mistake. He did make a mistake. And I think he has been a great honest guy. But just like—and I told him, if I am driving down my street, and I think it is 35 and it is really 25, I have made a mistake, but I have still have gone 35. And he still closed the vote, in my opinion, in a way that was not appropriate.

On page 9, you indicated your observation that Steny was trying to close the vote himself. Do you remember saying those words?

Mr. PIERSON. I don't recall that I said "himself," but I mean, it was his pressure on the Chair that led to the problem.

Mr. LATOURETTE. Thank you, Mr. Pierson.

Could I ask that the three witnesses be given the two-page document called Video Highlights. And then just while that is being handed out to you, I want you to know that we have come up with new and improved ways to identify apparent interactions between people on the floor that evening and the tape so we don't have to get into—you don't have a color code?

Perfect.

So I think you already saw it, but just for the purpose of viewing, so we don't get into it, the parties have stipulated, Ms. O'Neill, that when we watch a slice of videotape, you will have an orange halo around yourself; Mr. Hartz, you will have a yellow halo around yourself; the Majority Leader will have a red halo; the Speaker of the House will have a purple halo; Mr. Sullivan will have a green halo; and I really don't think I am going to talk Ms. Gillibrand or Mr. Space. So when we get to that portion, if you just sort of pay attention to your halo and the other halos of individuals who I am going to chat with you about.

And if we could queue up, begin with you—well, before we get to the tape, Ms. O'Neill, in, I don't remember which one of your interviews, but you indicated you were not familiar with a document that the Parliamentarians provided to Speakers pro tem called the prompt sheet. Do you remember?

Ms. O'NEILL. Yes.

Mr. LATOURETTE. Okay. Could we put that up on the board?

This was identified yesterday by Mr. Sullivan, the Parliamentarian of the House, as a document that has been prepared by the Parliamentarian's Office to be placed in front of Speakers pro tem.

The indication was, I think—I forgot to ask Mr. McNulty—but I came away with the impression that it probably was not in front of Mr. McNulty on that evening because he was such a great and experienced Chair.

But, again, have you not ever seen that?

Ms. O'NEILL. I have never seen that.

Mr. LATOURETTE. Mr. Hartz, have you ever seen it?

Mr. HARTZ. I only saw it after the fact.

Mr. LATOURETTE. Never before.

Mr. HARTZ. Not before.

Mr. LATOURETTE. Are you aware of whether or not it is before the Speakers pro tem since the sort of dust-up we had on August 2nd?

Mr. HARTZ. I am not.

Mr. LATOURETTE. How about you, Mr. Pierson? Ever seen it?

Mr. PIERSON. I have never seen this specifically, but I know there are a lot of cards the Parliamentarians have that they give to either Chairmen or Speakers, because they need to read exactly what is on the card. So I have never seen this specifically. But, yes, they have lots of stuff up there.

Mr. LATOURETTE. Now let's get to apparent interactions.

If—Hugh, could you run chapter 4 for us?

Maybe if you watch the TV there you can do better. Just 4, and then stop. Okay, there is chapter 4.

Ms. O'Neill, did you recall that apparent interaction with the Chair?

Ms. O'NEILL. No.

Mr. LATOURETTE. If I represented to you, based upon my understanding of where the clock is on the vote, that there are about 5 minutes left in the vote, would that be consistent with your observation that you would go down at 5 and 2? Is that a fair—

Ms. O'NEILL. On my second testimony I had said that after watching the tape, my assumption being that I was telling the Chair to prompt the Chamber with the gavel to get Members in to vote.

Mr. LATOURETTE. I think that is 5 though, and I am not trying to trick you.

Could we go to chapter 5, please.

Do you recall that apparent interaction?

Ms. O'NEILL. No.

Mr. LATOURETTE. If I represented to you that in just a moment Mr. McNulty is going to bang the gavel and say, there are 2 minutes left, would it be a reasonable guess that is what you were describing to us?

Ms. O'NEILL. It certainly would.

Mr. LATOURETTE. Could we go to Video Highlight, chapter No. 6. Stop it at 49, 22:49.

Do you have a recollection of that apparent interaction with the Chair?

Ms. O'NEILL. No.

Mr. LATOURETTE. If I indicated to you that—I thought we would get to it, but that shortly after this apparent interaction, Mr. McNulty bangs the gavel and indicates, asks if any Members want to vote or change their votes, would that sort of be a good guess—

timate of why you were having that apparent interaction with the Chair?

Ms. O'NEILL. Yes.

Mr. LATOURETTE. Chapter 7. And, Mr. Hartz, I am going to ask you to perk up, because you are in this one.

Stop it there, please.

Mr. Hartz, you were the yellow circle that we have now taken away. I would ask you, did you see your—and I am sorry, I don't know whether it was your right or left arm. Did you see your right or left arm just make a signal?

Mr. HARTZ. Yes.

Mr. LATOURETTE. And is it fair to say that the signal was given to the Speaker of the House, Ms. Pelosi, who was the blue circle?

Mr. HARTZ. Yes.

Mr. LATOURETTE. And is that what you were discussing, that you were indicating to her that she should probably get over there and vote?

Mr. HARTZ. Yes.

Mr. LATOURETTE. Thank you very much.

Play.

Stop it there, please.

Ms. O'NEILL, at this moment in time, I referred to this as sort of the Olympic rings. It appears your ring has now joined Mr. Hoyer's ring.

Is it reasonable to say that that represents some apparent interaction between you and the Majority Leader?

Ms. O'NEILL. It is reasonable, yes.

Mr. LATOURETTE. Could you—and I would ask all members and staff to watch the clock, could you just say the words, "Close the vote now," for me? Could you just say those words?

Ms. O'NEILL. Say, "Close the vote now"?

Mr. LATOURETTE. Yes. Could you do that for me.

Ms. O'NEILL. Close the vote now.

Mr. LATOURETTE. I didn't even see a second go off the clock, for the chairman's edification.

Could you continue rolling the tape.

All right, stop it there.

There again, Ms. O'Neill, there appears to be an apparent interaction between you and Mr. McNulty following the reasonable assumption that you and the Majority Leader had an apparent interaction. Do you recall?

Ms. O'NEILL. That conversation? No.

Mr. LATOURETTE. Thank you.

Ms. O'NEILL. But I would represent to you if I were getting a signal from anybody to close a vote, I would keep the Parliamentarians informed of closing the vote, because they need to help do that.

Mr. LATOURETTE. Sure. But, again, your testimony is you don't recall, that is what happened?

Ms. O'NEILL. Yes.

Mr. LATOURETTE. So all the questions Mr. Davis asked you about "typical this" and "typical that," you just don't remember?

Ms. O'NEILL. No.

Mr. LATOURETTE. Let me say to you both, I think what makes us suspicious is that if you watch that chapter 7—and if you want me to play it again for you, I would be happy to do it. But if you watch chapter 7 and you watch the scoreboard and you watch what occurs, within the space of something that starts at 49 minutes after the hour and 30 seconds and only takes 20 seconds, we have the following sequence of events:

We have your signal to the Speaker to vote;

We have an apparent interaction between you and the Majority Leader;

We have an apparent interaction between you and Mr. McNulty;

We have the Reading Clerk announce the Speaker's vote, which ties it at 214–214; and

We have Mr. McNulty closing the vote.

So I know that there is a perception in your party that we are all right-wing nuts, and in our party that you are all liberal wackos. But you understand our suspicions, right? You understand what looks funny about chapter 7 to us?

Mr. Hartz, you understand?

Mr. HARTZ. The only thing I would say is, this was like a really chaotic moment in time, and with your experience and knowledge and many years here, it all sort of happens so quickly, to assume this is all that coordinated is very difficult. I mean, people are changing in the well all the time, and they clearly were changing even after this vote. So that kind of precision is hard to execute.

Mr. LATOURETTE. I got you. And I would, I think, go back to my complimenting to you. I think you guys are great. I think you did a great job of getting it to a tie and closing the vote. But that is my perception.

My last question before I want to yield to my friend from Missouri, the next Governor of the State of Missouri, Ms. O'Neill, you were more than forthright in providing documents to the Committee, e-mails and such, that may have—that were pursuant to the document request.

And I would ask an e-mail to be put up, and it appears to be an e-mail exchange between you and somebody by the name of Brandon Daly. Who is Brandon Daly?

Ms. O'NEILL. He is our Communications Director.

Mr. LATOURETTE. For the Speaker of the House?

Ms. O'NEILL. For the Speaker of the House.

Mr. LATOURETTE. And I asked you about this the second time you were kind enough to come in for an interview.

At one point it says, and you—you have it? Okay. It says words to the effect, they continue to bring up “the slip.”

“The slip,” is it in quotation marks?

Ms. O'NEILL. Yes.

Mr. LATOURETTE. “The slip,” they are referring to the tally slip that was never produced on Roll Call Vote 814 on August 2nd; is that right?

Ms. O'NEILL. That is right.

Mr. LATOURETTE. Okay. I think I asked you who the “they” were, and we had some testimony yesterday that this sort of became the buzz of the House, that there was no slip immediately after it occurred.

But I thought you had told me that you thought that it was a commentator on Fox News—I know a favorite of the Democratic Party—and/or C-SPAN. We went back and could not find some “theys,” talking about the absence of a slip.

So I just want to be clear. Is it still your recollection and observation that when you—and this was the next morning that you crafted this e-mail to Mr. Daly, right—that the “they” you were talking about, it is your belief then and today that the “they,” who were sort of making an issue out the fact that there was no slip, was someone on television?

Ms. O’NEILL. It was someone on television.

Mr. LATOURETTE. It was not a member or the staff?

Ms. O’NEILL. No.

Mr. LATOURETTE. Lastly—and I apologize for this, Mr. Pierson—Boehner’s card, John Boehner’s card that would have put him—and, again, the procedural importance of that is that by issuing a change card, to go off “aye,” on “no”—it put Mr. Boehner in an opportunity, if he had so chosen, by being on the eventual prevailing side, to make a motion to reconsider, if that were the Republican strategy.

The fact that that vote was not recorded as a change deprived him of the opportunity to do that; is that right?

Mr. PIERSON. Right.

Mr. LATOURETTE. Now, I know that there has sort of been this “no harm, no foul” attitude in a lot of the questioning, and the issue is, well, big deal, because Hoyer made a motion to reconsider anyway, which you and I talked about was who wanted it, because we knew we were going to lose.

But the fact of the matter is, it is a big deal, because John Boehner represents 630,000 Americans, and on this particular occasion, for whatever reason, he could have decided to change his vote because it was a Tuesday and he thought, on Tuesdays I always change my vote with a well card. It doesn’t matter.

What matters is that his vote wasn’t counted.

And today, even with all this stuff that we have done in this hearing, today this vote wasn’t 214–214. This vote wasn’t 215 to—well, I would argue maybe it was 215 to 213, but it wasn’t 212 to 216.

The accurate vote, from people who actually wanted to vote, no matter how long it took, was 211 to 217; and that is not reflected anywhere in the records of this House, is it?

Mr. PIERSON. No.

Mr. LATOURETTE. Thanks.

I yield to Mr. Hulshof.

Mr. HULSHOF. Thank you, Mr. LaTourette.

Let me just follow up, because a lot of good questions have been covered. We have seen the videotape. We have reviewed your testimony.

Mr. Hartz, let me go back just to some general questions. You were inquired of by my friend, Mr. Pence, about the Speaker’s propensity to vote, and occasionally she does, I think you said, on a substantive issue. Or certainly on the agenda items, it is important to cast a vote and then trumpet that vote, especially if you prevail.



Are you aware, sir, that, first of all, the bill that we were considering that day, there were a lot of amendments. Do you remember the bill itself, what it was?

Mr. HARTZ. Ag appropriations, yes.

Mr. HULSHOF. Ag appropriations. We had a lot of amendments, didn't we?

Mr. HARTZ. Yes, you did.

Mr. HULSHOF. You talked about, it was a long week and there was a recess impending, and this was late into the evening.

Would it surprise you to know or, in fact, do you know that on Roll Call Votes 803 to 813, amendments to the ag approps bill, the Speaker did not vote? Are you aware, on that series of 10 or 11 votes, that she did not cast her vote?

Mr. HARTZ. I was not aware, but I guess that doesn't surprise me.

Mr. HULSHOF. You were talking about—the first opportunity that the Majority side gets to see what is the substance of a motion to recommit is often as it is being introduced or filed or read by the Clerk—and a copy, of course, is provided to your side—and that is when you realized the substance contained within the motion.

Is that a fair characterization?

Mr. HARTZ. That is correct.

Mr. HULSHOF. When you learned that the substance of the motion to recommit was bringing up yet again the issue of taxpayer benefits to illegal immigrants, did that signal in your mind, uh-oh, this is a tough one, or, this is going to be a close vote?

Mr. HARTZ. We approach every recommit that the Minority offers with extreme caution, and we assume it is going to be something like that.

So, yes, that would have been a signal that there was going to be, you know, an issue here.

Mr. HULSHOF. Ms. O'Neill, let me ask you to chime in here as well. Even though you perhaps are not as involved in the policy, you are, of course, involved in making sure the votes run smoothly and, from the Majority's point of view, trying to succeed as often as possible.

You mentioned that you understood—in fact, I think you told the presiding officer, Mr. McNulty—this was going to be a close vote. Was that because you also recognized that the substance of the vote was somewhat controversial, that is, benefits to illegal immigrants?

Ms. O'NEILL. No. It was more based on the number of people that had not yet voted.

Mr. HULSHOF. I thought it was your testimony in earlier statements that actually you knew it was going to be a close vote, and you so advised Mr. McNulty earlier in the vote, not that it was towards the end when you were looking to see the actual tally on the board that we watch.

Ms. O'NEILL. No. I believe that I informed him that it was going to be a close vote, probably midway through the vote, 5 minutes or so, based upon the number of people that hadn't been voting.

Mr. HULSHOF. For the benefit of folks who watch C-SPAN at home, what we watch and what we have seen as far as Democrat votes, Republican votes, those who have cast an "aye" vote, a "nay"

vote, a “present” vote or those not voting, that information is available to Members at the leadership tables, is that true, on the computer screen?

Ms. O’NEILL. Correct.

Mr. HULSHOF. But ultimately, Mr. Hartz, what we look at, or what most Members generally in a vote—we see the tally board on either end or either side of the Chamber, which basically shows the clock winding down and the continuous tally as the votes are being tabulated by the Clerk.

Is that a fair statement?

Mr. HARTZ. Correct. And then, of course, there is the big board behind the rostrum as individual Members vote.

Mr. HULSHOF. Right. So recognizing early on this was going to be a close vote, would you agree the issue was somewhat controversial?

Mr. HARTZ. Yes.

Mr. HULSHOF. The issue had been raised numerous times by Republicans in various amendments and other motions to recommit; is that a fair assessment?

Mr. HARTZ. Yes.

Mr. HULSHOF. And that issue itself caused some angst, did it not, within the Democratic Caucus?

Mr. HARTZ. Yes.

Mr. HULSHOF. In fact, I think, Ms. O’Neill, even you referenced earlier in a question of you in a previous statement that the Blue Dogs—that you recognized somewhere along the way the Blue Dogs—and, again, for those not conversant in our parlance, the conservative Democrats—were voting in favor of the motion to recommit. Is that right, Ms. O’Neill?

Ms. O’NEILL. I was just aware of who wasn’t voting. And, yes, there were Blue Dogs on that list.

Mr. HULSHOF. Mr. Hartz, getting more specifically to the policy, one of the reasons this is such a tough issue within your own caucus is because there are conservative Democrats who have a difficult time with this issue.

Is that true?

Mr. HARTZ. Well, I think—yes, I think there are many issues that both sides struggle with.

Mr. HULSHOF. And as the vote then was drawing to a close, your prediction that this was going to be a close vote was, in fact, verified.

I mean, this was a close vote. In fact, I think, and we could go back—I don’t want to take the time in the few seconds I have remaining. But when you signaled to the Speaker that she should go cast her vote, the motion—as she was making her way to the well to get the card, the motion to recommit was succeeding 214 to 213, and that was—in fact, one of the reasons why the Speaker was signaled to vote, was because—I mean, it was a razor-thin margin; is that true?

Mr. HARTZ. I don’t remember what was exactly on the board at that point. I think I was mostly concerned that she get in. The time had expired. But if you said it was 214 to 213, I will take your word for it, obviously.

Mr. HULSHOF. Well, I think the video speaks for itself, and rather than take the time and going through it, perhaps we will have some time later on.

Let me, Mr. Chairman, if you will indulge me for one last question, in essence.

The CHAIRMAN. Sure.

Mr. HULSHOF. The characterization that Mr. LaTourette just provided as far as the scenario of events, particularly as it relates to chapter 7, with the pressure by the Majority Leader, Mr. Hoyer, and Ms. O'Neill, while you indicate that you did not hear the outburst, you saw the outburst, you would agree, would you not, that "agitated," maybe "angry," would you agree that was the characterization of what you witnessed?

Ms. O'NEILL. Certainly. But that is not uncommon.

Mr. HULSHOF. Mr. Hoyer frequently is subject to agitation—

Ms. O'NEILL. All Members. All Members.

Mr. HULSHOF. Let me defer at this point. You have been indulgent with your time, Mr. Chairman. I will yield back to you at this point for our next round.

The CHAIRMAN. Okay.

Ms. Herseth Sandlin.

Ms. HERSETH SANDLIN. You go ahead.

Mr. DAVIS. I just had a few observations and probably won't take very much time. I will direct these towards the panel and perhaps get some reaction. Since Mr. LaTourette made some observations, I do want to respond to at least one of them.

I find it very interesting that when we started our hearing yesterday, we were very focused on the erroneous vote calling, which happens at 10:51:26. We were very focused at the beginning of this hearing on the point when Mr. McNulty slams down the gavel, calls the vote, announces the procedural resolution.

It is interesting that as we end here today, for whatever reason, we are no longer focused on that. And I found it very interesting that in 42 minutes of questions from the Minority, there was not a single question that related to the actual point where the vote was closed.

Did you happen to notice that, Mr. Hartz?

Mr. HARTZ. Yes.

Mr. DAVIS. Did you happen to notice that, Ms. O'Neill?

Ms. O'NEILL. Sure. Yes.

Mr. DAVIS. It is interesting to me, and I didn't mean to you leave you out, Mr. Pierson. I assume you probably noticed that omission too, or perhaps you weren't paying attention.

Mr. PIERSON. I did not notice it.

Mr. DAVIS. Let me tell you what I think that suggests, frankly, and perhaps get some reaction from those on the panel, if they wish to comment on it.

I don't think there is any longer a question of culpability, other than the mistake that Mr. McNulty admitted—which he admitted, by the way, on August 3rd, 2007, \$500,000 ago.

So it is interesting that the 42 minutes of questions by the Minority were used to focus essentially on another event that wasn't even the subject of the resolution that has us here. That event, as I would describe it, is the exchanges between the Majority Leader

and Ms. O'Neill and Mr. McNulty and the point where Mr. McNulty starts to call the vote and then pulls himself up.

And I would say, based on my limited experience as someone who has been here for no more than 6 years, but for 6 years now, if we were to have an inquiry about every time a presiding officer starts to call a vote and then stops, that we would need not a Select Committee, but a Permanent Committee on the State of Mind of People Who Started to Prematurely Call Votes.

Just last week I recall our instances when someone started to call a vote and someone said, stop, one more, or something like that. And I don't recall anyone saying, gee, what was the state of mind around that presiding officer to call that vote when somebody was in the well? It happens with some regularity.

So I would simply make the observation that, at the end of the day, what we have is no evidence whatsoever in this record that the Majority Leader was anywhere near Mr. McNulty at the time he actually does make his mistake. I would submit there is no evidence in this record that Ms. O'Neill, you were even close to or had anything to do with Mr. McNulty when he makes his mistake.

And the final observation that I would make, this business about a tally sheet, it is also interesting that during 42 minutes of questions, there was no refutation to an observation I made during the direct exam.

There is a lot of paper on the rostrum. There are prompt sheets. There are prompt sheets for what you do to recognize people. Is that correct, Mr. Hartz?

Mr. HARTZ. Yes.

Mr. DAVIS. There are prompt sheets that they will tell you what language to use when you call a vote; is that correct, sir?

Mr. HARTZ. Yes.

Mr. DAVIS. There are prompt sheets that direct a variety of procedural circumstances on the floor; is that correct?

Mr. HARTZ. Yes.

Mr. DAVIS. And I see them faithfully given to every presiding officer. I see some use them, I see some ignore them. The ones that tend to ignore them, guess what, tend to be the ones that have been up there all the time.

And if you put all that paper in perspective, it sounds entirely reasonable to at least one Member, the one speaking right now, that an experienced presiding officer might have viewed a tally sheet as the equivalent of all the other paper that is there. This is what we give you to give you some instruction on how to say it right; and if you are an experienced person, frankly, you may feel you don't need it.

Now, frankly, after all this controversy, I think there is going to be more attentiveness on the part of presiding officers to waiting for a tally sheet.

But don't we all wish we had 20-20 hindsight?

So I will yield to Ms. Herseth Sandlin.

Ms. HERSETH SANDLIN. Just a couple of points of clarification.

Mr. Hartz, did you signal or tell Ms. O'Neill at any time to instruct Mr. McNulty to close the vote?

Mr. HARTZ. I did not.

Ms. HERSETH SANDLIN. And Mr. Pierson, did you view Mr. McNulty's testimony yesterday to the Committee?

Mr. PIERSON. No.

Ms. HERSETH SANDLIN. Are you familiar with the testimony Mr. McNulty provided in a prior interview with the Committee?

Mr. PIERSON. No.

Ms. HERSETH SANDLIN. So you are not familiar with his testimony that he felt no pressure and received no instruction to close the vote?

Mr. PIERSON. That is right.

Ms. HERSETH SANDLIN. And are you familiar with yesterday's testimony, Mr. Pierson, from the Parliamentarians or any interviews with the Parliamentarians or members of the Clerk's Office that there was a discussion among members of the Parliamentarians and Clerks not to process Mr. Boehner's card?

Mr. PIERSON. No, I am not familiar with that.

Ms. HERSETH SANDLIN. And one last point, Mr. Pierson.

There was a line of questioning to Mr. Hartz and Ms. O'Neill about perceived consternation among some conservative Democrats about the substance of the issue in the motion to recommit, in the procedural matter of the motion to recommit.

Do you recall that three members of the Minority, three Members from the Florida delegation, changed their vote on the motion to recommit?

Mr. PIERSON. Yes.

Ms. HERSETH SANDLIN. So is it fair to say that there is consternation among some Members of the Republican Party on the substance within the procedural motion to recommit?

Mr. PIERSON. On that particular motion? Yes.

Ms. HERSETH SANDLIN. On that particular motion, the substance within that particular motion?

Mr. PIERSON. Yes.

Ms. HERSETH SANDLIN. I think that is all I have, Mr. Chairman.

The CHAIRMAN. Thank you, Ms. Herseth Sandlin.

I am not going to make any observations, but I am going to note, Jay, your testimony on page 28 of your interview.

In terms of talking about the slip and talking about the display of "final" on the summary board, this is what you said at your interview: "The idea that you have a slip and that the board says 'final,' that is not the rules of the House." Do you remember saying that?

Mr. PIERSON. I don't remember that. But it is not in the rules, that is true.

The CHAIRMAN. You went on to say, they are not the rules, but protocol.

Listening to your testimony, I think that you are of the belief that the slip is an important instrumentality of quality control, is that fair?

Mr. PIERSON. Extremely important, yes.

The CHAIRMAN. Let me ask you this. In terms of the display of the word "final" on the board, what is your opinion in terms of whether that ought to be a continued practice? Or would you have any objection to its elimination to avoid confusion in the future? If you have an opinion?

Mr. PIERSON. I think it is nice to have it up there. I think in this case, it went up too soon, obviously. The Tally Clerk—I don't know how they operate, but—hit a button that put “final” up when it wasn't really final.

So I think it is nice to have it up there, But in this case, it caused a lot of consternation.

I think had we just lost the vote, it would have been bad enough, and we may have complained and said, it was held open. But when you see final on the board, everybody's thought is, oh, it is final, not it is semifinal.

The CHAIRMAN. But it can lead to confusion?

Mr. PIERSON. It did this time. It is the only time in my 30 years I have seen that.

The CHAIRMAN. But I am just giving you my own opinion. I don't think it is really necessary, so why do it? I am beginning to reach that conclusion. But that will be a subject of our Committee deliberations.

Maybe I will make an observation. I agree with Mr. LaTourette that the vote should have been 211 to 217, and I think another mistake was made. But I do not think it was made as a result of any actions by the majority, but it was a mistake that was made within and among the professional staff.

It was obviously unintentional. I don't know if you have an opinion on that, Mr. Pierson.

Mr. PIERSON. Could you repeat the last part?

The CHAIRMAN. In other words, I am saying that I think it was simply a mistake. And the mistake that was made—not processing the vote by Mr. Boehner—was a mistake that was made on the rostrum.

Mr. PIERSON. I think it was chaos; and that is what happened, in my opinion.

The CHAIRMAN. Okay. Let me just conclude again by being very clear in terms of the rationale for you determining that there was extraordinary pressure brought to bear.

Is there any other manifestation of that pressure that you personally observed, other than the two interactions between Mr. Hoyer and the Parliamentarians, that you can think of now?

Mr. PIERSON. Not specifically on the tape.

And I didn't mention this, but after being here for 30 years, many of it in Minority, if we had been in the Minority the whole time, I wouldn't have any idea how you close the vote, basically. But since we were in the Majority for 12 years, I know how we closed votes; and it was from the Whip to somebody in the Speaker's Office to the Chair. And there were many times when they wanted to close the vote.

And so with that in mind and knowing how that operates, and then seeing Hoyer, that was my deduction. At no other times do I remember, I wasn't there, I didn't hear him telling McNulty.

The CHAIRMAN. It was those two instances, those two interactions that led you to that conclusion?

Mr. PIERSON. Yes.

The CHAIRMAN. Well, again, I want to thank all of you for your participation. Thank you for your service.

Now I will yield to Mr. Pence.

Mr. PENCE. Thank you, Mr. Chairman. I am informed that we have a vote on, and it is one vote, and I would like to recommend to the Chair that we recess and vote and return. We will have a 1-hour break, and I am confident we will be able to complete our work in the time following the vote. If we could ask your indulgence, we would be pleased to do that.

The CHAIRMAN. Do any of you have any responsibilities?

Mr. DAVIS. I would note we have 10 minutes left on the vote and 10 minutes left to question. We could conclude right now.

Mr. PENCE. I am happy to respond to that.

I know the gentleman is very concerned about the money we are spending, but I think the Chair has made it very clear that we don't just have 10 minutes left of discussion, that he is going to continue to be very generous about the time that we require to answer the questions that we have.

The CHAIRMAN. Let me just interject here, we will recess and return upon the conclusion of the vote.

[Recess.]

The CHAIRMAN. The Select Committee will come to order; and before yielding to my friend, the ranking member, I have two house-keeping issues I would like to address.

First, this is a unanimous consent request, that the staff be allowed to make technical and conforming changes to documents that were submitted for the record, which includes allowing witnesses to review and edit their previous testimony which was inserted in the hearing record.

Mr. LATOURETTE. Reserving the right to object, Mr. Chairman, does that include changing vote tallies?

The CHAIRMAN. Please, Mr. LaTourette, I don't want to be on record again as having you prompt me into laughter.

Hearing no serious objection, so ordered.

Since during yesterday's hearing there was a reference to the CAO, Chief Administrative Office, I would like to insert into the record a letter that we received from Dan Beard, the Chief Administrative Officer of the House, after Mr. Pence and I interviewed him. In my opinion, the CAO's office acted in a manner consistent with H. Res. 611 as it related to the role that the CAO plays in regard to the administration of a vote.

Mr. LATOURETTE. Again reserving the right to object, because I wasn't involved—and this will be serious, I promise—it is my understanding, at least as a member of the Minority—and maybe Mr. Pence can tell me to stop—but that what Mr. Pence was referring to was the fact that that resolution required all officers of the House to preserve documents. And the reason we don't have e-mails, for instance, from Mr. Hartz, isn't because of anything Mr. Hartz did, it is because the CAO didn't do what the resolution instructed him.

So I guess if the CAO is now saying that he did something that complied with the resolution, I would like the opportunity to at least question that. Because, otherwise, we would have Mr. Hartz's e-mails.

So I would yield to you on my reservation and just ask—

The CHAIRMAN. When inquired of, the CAO indicated that it was his opinion that he conformed in good faith; and we simply have

a letter here articulating that. And the unanimous request is to make that letter, which is dated April 9th, 2008—it is directed to myself and to Mr. Pence—a matter of the record.

Mr. LATOURETTE. Continuing in my reservation, it is my understanding that the CAO has indicated to you and the ranking member that he didn't find the resolution sufficiently clear enough to have required him to segregate the e-mails of the people that were identified. And I just—as one Member, I don't—I do not find the resolution to be unclear in that regard. And I am willing to, as I think we have evidenced, that he made a mistake, that he didn't know. But to say that the resolution wasn't clear and he didn't preserve e-mails from people who the resolution instructed him to save e-mails and all other documents, I don't think I can agree with that observation. I am challenged.

And I yield to the gentleman.

The CHAIRMAN. Well, again, I respect the challenge and, obviously, your opinion. The letter I would suggest simply speaks for itself.

Mr. LATOURETTE. And continuing on my reservation, I don't disagree with you, but what you are asking unanimous consent for is to include a letter from the CAO. And I assume, not having seen the letter, but from what he told you and Mr. Pence, that the letter says that I complied with House Resolution—I don't think he did. And I am willing to have him appear and be interviewed by people. We don't have to have another public hearing but to appear. And I don't believe that to be true.

Now, I believe he could say he made a mistake. He didn't understand it. But there is nothing unclear about the resolution in my mind, nor is there anything unclear about his responsibilities. And he didn't discharge them, for which he may have a valid excuse. But just to say he complied with it, I disagree, and I guess I would object, if that's where we find ourselves.

The CHAIRMAN. Hearing an objection, we will now proceed to the time for the Minority. Mr. Pence.

Mr. PENCE. Thank you, Mr. Chairman.

Before I ask my final question and yield to my colleagues, I do have a statement.

You know, with all due respect, we have listened patiently to Members on the other side of this Committee who suggest that essentially the so-called “stolen vote” really didn't matter. Didn't matter because the substance of the motion to recommit may have duplicated existing law. Didn't matter because Democrats graciously offered to do a do-over. Really didn't matter because, although Mr. McNulty misreported the final tally by failing for the only time in the past 40 years to read an official tally slip, didn't matter because there is no black letter rule in the House rules to require such a slip.

With all due respect, I would submit, Mr. Chairman, that the integrity of the voting process of the House does matter. In fact, I believe it is all that matters in the House. The integrity of the House of Representatives is completely tied up in the integrity of the administration of the vote. As Mr. McNulty testified yesterday, each and every vote cast on the House represents 600,000 Americans



who cannot be on the floor and therefore are represented by an individual.

There has been some talk about—members of the panel—about a half a million dollars spent, and there have been press accounts of a half a million dollars spent on this Committee. I ask, what is the reputation of the House of Representatives worth? A Federal Government that provides for the common defense, promotes the general welfare, spends nearly \$2 trillion on an annual basis, spending half a million dollars to ensure that every American is properly represented on the floor is a proper and appropriate expenditure.

Now, I understand Members on your side, some, Mr. Chairman, certainly not you, would wish this whole thing would go away, just as we might if the shoe were on the other foot. But the six of us don't have that luxury. As members of the House Ethics Committee, Congressmen LaTourette and Hulshof didn't have that ability when they had to sit in judgment of their own Majority Leader, Tom DeLay. They didn't have that luxury then, and Members of the Majority don't have that luxury today.

With that, I have one more question for our witness, Catlin O'Neill; and I want to thank the panel again for their patience and cooperation.

I will forego, Ms. O'Neill, replaying chapter 7, but I think we all understand the moment, about a 20-second segment, where you are having, to use the Chairman's phrase, an apparent interaction with the Majority Leader. You appear to turn, speak to Mr. McNulty. Mr. McNulty in that 20-second span grabs the gavel and attempts to close the vote.

Let me ask you, were you surprised—you have indicated that no signal was given at that time by Mr. Hoyer or by you to Mr. McNulty. Were you surprised when Mr. McNulty gaveled the vote immediately after you spoke to him on that fourth time that we have reviewed?

Ms. O'NEILL. Yes.

Mr. PENCE. Thank you.

Mr. LaTourette.

Mr. LATOURETTE. Thank you very much; and, hopefully, I will just take a minute and give the rest of our time to Mr. Hulshof.

I just wanted—the chairman began this hearing with a very eloquent opening statement that said that the culprit was going to be revealed, and it is 2(a). After hearing some remarks in the last series, round of questions, I now understand I think fully why Republicans have trouble with 2(a) and maybe the Democrats are less troubled. And that is the Democrats appear to be clairvoyant and can read the minds of not only the occupant of the Chair but also members of this Committee as to why they ask questions over the last 40-some minutes.

And I would never call an argument made by another member ridiculous, but the argument because we can't see Steny Hoyer in the frame sort of like a WWF wrestler taking McNulty down to the ground that therefore he had no participation in either the first call or the second call is a little bit like saying when there is a bank robbery we can never convict the wheelman who is waiting outside for the guy with the mask and the cash and the gun. It is a little

bit like saying if I hire Mike Pence as a hit man to go murder somebody I can never be convicted of murder.

So there have been excellent questions, excellent arguments made. I just don't find some of the observations made during the last little bit to fall into that category. And be happy to yield to my friend from Missouri.

Mr. HULSHOF. I appreciate that.

Mr. PIERSON, very quickly, there has been some reference to the podium and I think a mental picture that somehow it is cluttered with documents. Can you clarify as the Parliamentarian hands prompt cards to the Speaker pro tem how is that actually done, sir?

Mr. PIERSON. Well, I thought there was some comments made by one person on the panel that left a misimpression that the rostrum is just full of papers all over the place and you have got to shuffle them and find out what you need.

Basically, the Parliamentarians hand the Speaker a card. It is read. It is taken back. They are ready for another one. It is not like there is a stack of papers up there.

And I might also point out that the slip of paper is the only paper that is handed by a standing Tally Clerk at the end of a vote to the Parliamentarians to the Chair. It is not like it is mixed up in that paper, you know, that is on the chair.

And one other misimpression, the worst Chairs—and I think Catlin and Jerry would agree with this. The worst Chairs are the Chairs who don't read the slips. So the impression was left that the really good Chairs can do it without the slips, and I think that is partly a misimpression. I don't know about Mr. McNulty.

Mr. HULSHOF. Ms. O'Neill, is there anything Mr. Pierson just said you disagree with?

Ms. O'NEILL. I would—Jay is correct in saying that oftentimes the Chairs that are problematic don't read—don't read the slips of paper that they are given. However, there are papers. Although it is not a mess of papers on the desk, there are papers. And they are being given to the Chair from both the Parliamentarian and the Clerks on the other side. So there is an impression that it could be confusing, I believe.

Mr. HULSHOF. And, unfortunately, in this instance Mr. Davis alluded to earlier, 42 minutes of questions, and I guess he was expecting something from our side he didn't get, but the testimony before this Committee is that in 40 years one piece of paper that wasn't on the dais that should have been was the tally slip, and we didn't have that.

Let me ask you, Ms. O'Neill, again just to clarify, Mr. Hoyer told this Committee that as he reviewed the videotape he is telling you that we need to shut down the vote when we are prevailing. Do you recall that conversation or do you not recall that conversation? Or did it not even happen? Can you just say flatly it didn't happen?

Ms. O'NEILL. I don't recall the conversation.

Mr. HULSHOF. Can we play, Hugh, can we just play chapter 7? I will let 20 seconds of my time go and ask you all to watch this, please, one last time.

[Tape played.]

Mr. HULSHOF. Okay. Here are my observations, and I put them in the form of a question, Ms. O'Neill, to you and to you, Mr. Hartz.

The motion to recommit involved a controversial subject. Each of you knew that the vote was going to be close, probably because of the difficulty on your side of the aisle among some of your Members who have a difficult time with this vote, with this subject matter. In fact, it has been well documented that there were some angst by leadership that the number of Republican motions to recommit that had been prevailing, that that caused some anxiety among leadership staff. And so here comes another motion to recommit with this very difficult issue about taxpayer benefits to illegal immigrants, and both of you know it is a close vote.

And notwithstanding the fact that 11 previous votes the Speaker chose not to vote, which is her prerogative, on this vote, because of the tightness of the vote, Mr. Hartz, you indicated to her, gestured to her to go vote. The Majority Leader, Ms. O'Neill, says to us that he wanted to prevail and told you as such. And as we just witnessed from the videotape, you then turned from that conversation, from Mr. Hoyer, go to the presiding officer, Mr. McNulty, and even though you don't recall what was said, immediately thereafter he begins to gavel the vote down.

And to be candid—and I mean no personal disrespect—the lack of recollection—I mean, we have thousands of votes. This is the only one in 40 years that we have heard about of this type of mishap occurring; and so this wasn't just a normal, routine vote. And so, quite frankly, I find the lack of recollection breathtaking.

And you have testified before or at least given statements that it was your designated job, Ms. O'Neill, to actually talk to the presiding officer and direct the presiding officer about when to bring the vote to a close. And yet in this particular instance no recollection of that.

Is that—Mr. Hartz, is that how we should leave this record? Because the hearing is about to conclude. Is that how this—is there anything I have said that you wish to amplify or take away from? Is that how you want this record to be considered by the American people about this roll call vote?

Mr. HARTZ. I believe this was an extremely close vote and there are a set of circumstances that were elaborated yesterday about what was in Mr. McNulty's head as he closed the vote. I think what he said speaks for itself.

Mr. HULSHOF. Ms. O'Neill, anything else you wish to amplify or to take away from? Or is the recitation that I have given a fair characterization in your mind about why we are here trying to get to—ascertain what actually occurred on roll call vote 814?

Ms. O'NEILL. I can only tell you what I do know. And what I do know is that I don't recall any conversation with Mr. Hoyer outside of telling him they had 13 Members that still hadn't voted.

I also know that I never told the presiding officer to close the vote and that if I were telling the presiding officer to close the vote, I would also keep the Parliamentarians apprised of that.

Mr. HULSHOF. And at least during this 20-second period of time it seemed that the conversation, albeit short, between yourself and the presiding officer, Mr. McNulty, that you were not talking to the Parliamentarian. At least that was my view of it. The tape speaks for itself. And so I guess we will just have to speculate or infer what the conversation was, given your absence of recollection.

With that, Mr. Chairman, I yield back.

The CHAIRMAN. I want to again thank the panelists. You are excused.

Again, you have made a significant contribution, and we will see you on the floor. And if I walk in late and say one more, remember who is writing the report.

Before I adjourn—please, you are all excused—just some house-keeping matters. I do want to thank the Republican members. You have been good to work with, and I still have some hope that we are going to reach a consensus. There might be some disagreements, but I do think that this has been a good process, and I think it is a process that, as I said yesterday, hopefully will achieve a result more than just simply—hopefully an improvement in terms of our voting procedures here but also enhance the mood and the climate on the floor.

And with that—

Mr. PENCE. Mr. Chairman.

The CHAIRMAN. Mr. Pence.

Mr. PENCE. Let me take the opportunity to, on behalf of Members of the Minority, to thank you for the cooperative and collegial way you have approached this inquiry. It has been a pleasure to work with you and Mr. Davis and Ms. Herseth Sandlin. And while I leave these public hearings less optimistic that we will agree on what happened that night, I leave more optimistic that we will be able to embrace reforms and ensure it never happens again.

I commend you for the way that you have taken this challenge on seriously, however reluctantly, and wish to express our appreciation and our ongoing commitment as we go forward with our report to find those matters upon which we can agree and hopefully leave the institution better off than the way we found it.

The CHAIRMAN. Well, thank you, Mike. And I think the fact that we had these public hearings and that we have acted in a collegial fashion and that we have strived for, and I believe, transparency, so that those that are interested, those that observe these proceedings and review our report will have their questions answered in a way that is unfiltered, that they will be able to review the record, look at the statements that have been made, the documents that are present, reach their own conclusions as to the facts.

But, again, I think that we even—and maybe I am woefully naive, but I am not going to surrender to pessimism here. I think that we can achieve a final report that is not just simply a good product but improves considerably the climate that is in the House now. Because I think that is what the American people, they clearly deserve that, and I think they are going to demand that of all of us.

Mr. HULSHOF. Mr. Chairman.

The CHAIRMAN. Kenny.

Mr. HULSHOF. As a point of indulgence to you, Mr. Chairman, this is the second opportunity that I have had the chance to work with you personally. On the previous occasion, I wielded the gavel; and we worked very diligently behind closed doors in a more confidential setting, as was required by the rules of the House and our Ethics Committee.

This has been a more public—even though there has been a lot of work behind the scenes, I think we should commend the staff for the diligence with which they brought to this. But I think all of us, if we start from a point of agreement, and your glass being half full over there, Mr. Chairman, I think all six of us believe that the integrity of the House must always remain inviolate. That is we must hold up and provide confidence to the people that we represent, that the integrity of the House is the most important thing. And so I think whatever the final—

The CHAIRMAN. If the gentleman would yield for a moment.

Mr. HULSHOF. Yes.

Mr. CHAIRMAN. I want to say this about the gentleman from Missouri, that he is correct, we worked together at another moment in the history of this particular institution that was unpleasant. And the gentleman on that occasion did wield the gavel. To me, he demonstrated political courage, integrity, and professionalism. And if he wants my endorsement in that Republican primary, I would be happy to render it.

Mr. HULSHOF. Wow.

Mr. CHAIRMAN. But he is an exceptional Member that continues to make a great contribution to this institution. And much of what he has done has not been noted publicly, but I know what he did during a very controversial time when the so-called Medicare vote, allegations surrounding that, ended and required action by the Ethics Committee. He and I served together on that subpanel. I know it was difficult, and I want to say publicly that you have my great admiration and respect. I think that was a significant contribution in and of itself.

I know Steve LaTourette served on the full Ethics Committee at the time. Our report—and there were four of us on that panel, including John Shadegg of Arizona and Mike Doyle of Pennsylvania—I think reflected so well on the institution. But I think, ironically, Ken, that our attempt to reform was probably in response to that particular issue. And I think that—and this is unknown I am sure to even Stephanie and Mike and Steve—but that you and I had discussed the need for a maximum amount of time in terms of when a vote could remain open, and maybe if our advice had been accepted we wouldn't be here today.

Mr. HULSHOF. Well, I appreciate your kind thoughts. And as we close the books down on the testimony and as we now move into the next segment of this Committee's work, I hope, and I certainly applaud the gentleman from Massachusetts, the integrity of the institution is the most important thing. I mean, people from sea to shining sea must have confidence in the openness of this body. And so I hope let's begin then from this point forward from that point of agreement; and then if there are areas upon which we disagree, I am sure we will state those as well. But thank you.

Mr. CHAIRMAN. And we can do those in a respectful and civil manner.

And again, you, Mike and yourself, observed that we have been very fortunate to have an outstanding staff. Every single member of our staff and those whom we sought, outside help—and I am looking at Judy here—they have been superb. I think that as Members we can be proud of the service that we have received from the

staff that is sitting behind us. I know I said yesterday I would be adrift without their assistance and without their input. It shows what people can do when they work together in a way that is respectful of each other.

And with that, we will now adjourn.

[Whereupon, at 12:22 p.m., the Committee was adjourned.]

