HEARING ON E-CONGRESS—USING TECHNOLOGY TO CONDUCT CONGRESSIONAL OPERATIONS IN EMERGENCY SITUATIONS

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BEFORE THE

COMMITTEE ON HOUSE ADMINISTRATION

HOUSE OF REPRESENTATIVES

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Hearing Held in Washington, DC, May 1, 2002

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E-CONGRESS—USING TECHNOLOGY TO CONDUCT CONGRESSIONAL OPERATIONS IN EMERGENCY SITUATIONS

WEDNESDAY, MAY 1, 2002

HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOUSE ADMINISTRATION,
Washington, DC.

The committee met, pursuant to call, at 10:05 a.m., in Room 1310, Longworth House Office Building, Hon. Robert W. Ney [chairman of the committee] presiding.

Present: Representatives Ney, Linder, Doolittle, Hoyer, and Fattah.

Staff Present: Paul Vinovich, Counsel; Jeff Janas, Professional Staff Member; Reynold Schweickhardt, Technical Director; Channing Nuss, Deputy Staff Director; Melissa McKay, Clerk; Greg Orlando, Legislative Assistant to Mr. Doolittle; Bill McBride, Chief of Staff to Mr. Ehlers; Kim Herb, Legislative Assistant to Mr. Linder; Bill Cable, Minority Staff Director; Matt Pinkus, Minority Professional Staff Member; and Sterling Spriggs, Minority Professional Staff Member.

The CHAIRMAN. The committee will come to order. I want to welcome the chairman of the Rules Committee Mr. Dreier, and also Congressman Langevin is now also arriving.

Today the Committee on House Administration is holding a hearing on the concept of e-Congress and how the technology can be used to conduct congressional operations during emergency situations. You also have to bear with us. You are going to hear some maybe squeaks and different things in the microphone system. We have a guest we will be introducing on one of the panels who is in Prague right now, and we will be getting to him on the next panel.

I just want to say a couple brief statements. I want to thank the members of the committee for coming today. The terrorist attacks of last fall forced our country and this institution to reexamine and reconsider long-held assumptions about how we are going to live, work, and conduct business here on the Hill. Unfortunately today all you have to do is say September the 11th, and a whole series of emotions and thoughts come to our minds. The horrific attack and the anthrax attacks that were directed at this Congress made it clear the necessity for developing plans for the Congress to operate in the event of a catastrophic situation that either destroyed or made uninhabitable the buildings we use to conduct our business.

We know Congress has been and will continue to be a target for terrorist threats and actions. Today we are, as many Americans have been, thinking about the need to do business potentially differently as a result of those tragic events.

I look forward to hearing from our House colleagues today and the experts on the second panel to get their thoughts and insights. We do have to take care to make certain that whatever actions we take in response to our new realities do not compromise the integrity of this institution or the fundamental principles that have made our country the longest-surviving democracy in the world.

Today we are here to talk about how technology can help the Congress operate in the event of an emergency. This committee is charged with ensuring that the essential infrastructure of Congress continues under any circumstances. This sounds simple, and when everything is going well, it largely goes unnoticed, but it involves tremendous effort, planning, coordination, staff, computers, phones, communications, voting procedures, physical space, security, access to external/internal information, services, and the list goes on and on. This committee learned this well when we moved thousands of the police off site as our Capitol was attacked with a biological weapon.

The recent discussion of the congressional session in New York will, if it becomes a reality, pose new but in some cases similar logistical problems. Under normal circumstances the task of keeping this Congress functional is a heavy burden. Under emergency circumstances the task can seem almost insurmountable. But with proper effort, resources and planning, the solutions are almost always close at hand.

As we convene this hearing, I do want to make something clear: This institution has a history extending over 200 years that is based on face-to-face deliberation. That should be preserved. But I also believe the purpose of this hearing is to discuss options that could happen in unusual situations.

Without objection, I have other statements for the record.]

[The information follows:]

While this hearing will focus on the feasibility and ramifications of using technology to conduct our operations, we are today only considering proposals that will be implemented under extreme emergencies not utilized, for day to day operations.

In the aftermath of September the eleventh and the anthrax attack, this committee focused its attention on taking immediate steps to ensure the safety of Members and staff, improved our communication capabilities, and took steps to ensure that House operations can continue under any circumstances. Many of the procedures that have been put in place since last fall are of a sensitive nature and cannot be discussed in a forum like this, but many are widely known and can be recounted. We have distributed Blackberries to members and staff, almost 1800 in the House today. We have secured our computer network, and are working to establish redundant capabilities that will function if our existing system is destroyed or inaccessible. We have off site office space for Members to relocate in the event of a limited problem. We have planned for the possibility of having Congress meet elsewhere, if the Capitol becomes unavailable. We have enhanced our emergency communications capabilities. We have taken simple, but important tasks like making certain the alarm systems are operable and each office has an evacuation plan. Just this morning, Mr. Hoyer and I announced the distribution of emergency communication phone cards to members. Members of this committee, their staffs, and employees of the House have done an outstanding job in implementing these changes.

Today, we need to begin contemplating additional changes in a very thoughtful manner. We are fortunate to have two distinguished members Mr. Drier, Chairman of the Committee on Rules, and Mr. Langevin who introduced legislation to direct

the National Science Foundation to study the feasibility of convening an E-Congress, with us to testify. These two gentlemen will serve as our first panel.

Our second panel we have four distinguished experts from a variety of disciplines that will help us understand the issues we need to contemplate. I will introduce them before they begin but for now I will yield to others Members of the Committee who wish to make an opening statement.

The CHAIRMAN. I also want to thank the Members for coming to the hearing.

Mr. Hoyer.

Mr. HOYER. Thank you very much, Mr. Chairman. I want to thank you for convening this very, very important hearing. A year ago today the vast majority of Americans, including many of us on this dais, would have regarded the creation of virtual or electronic Congress in the event of a national emergency as an interesting, perhaps academic, discussion, a story line produced by an overactive Hollywood imagination, perhaps, but not something that was seriously of concern to us. Most of us, I believe, regard doomsday scenarios with a certain level of detachment or denial, but we all know that in the wake of the unconscionable terrorist attacks on September 11th and the subsequent anthrax attacks on this Capitol complex, we cannot afford to live in comfortable complacency.

Let me note that just yesterday I visited Ground Zero. Representative Istook and I went up to congratulate those in the Secret Service and in Customs who played such an extraordinary role on that day. Seeing it on television—and most Members of Congress have visited Ground Zero—it has now gone from having been a rubble pile of seven stories high to a hole six stories deep. But it is a humbling experience to stand there, and it is also an experience that gives you the responsibility, I think, and the concept of the responsibility we have to not only preclude as much as we can the risk of that happening again, but also to be prepared for the contingency. It convinces me that our duty and common sense dictate that we be prepared for the unthinkable.

I know I don't need to remind those of you here that the heroism and courage of many strangers in the skies above the Pennsylvania countryside on September 11th, we ourselves might be meeting in a very different circumstance. Thus I know we will approach the matter with the seriousness it deserves.

I want to compliment my colleagues and good friends from Rhode Island and from California, particularly the gentleman from Rhode Island for his thoughtful contribution to this debate, and specifically for his introduction of H.R. 3481, the Ensuring Congressional Security and Continuity Act. This legislation would require the National Institute of Standards and Technology to investigate and report to Congress on the feasibility and cost of two issues; first, implementing a secure system for remote voting and communication for Members of the Congress if circumstances require the Congress to convene without being in a single location. Again, prior to that day in September, probably that would have been perceived as a scenario not worth spending a lot of time on, and that is not now the case.

Secondly, it would establish a system to ensure business continuity in circumstances where Members of Congress and their staff cannot access their offices in Washington, D.C. Again, prior to September 11th I think there would have been few, if any, would

have thought that that was a reasonable possibility. On the morning of September 11th as we left our offices, and as most of us could not contact either our offices or our dispersed staff, cell phones weren't working—we now have Blackberries, which are in response to that—but we had found that this becomes a very real possibility and something that we need to plan for.

It is noteworthy that this legislation does not use the phrase "national emergency," but I think that is the clear implication, Mr. Langevin, of your bill.

I am particularly interested in hearing the views of our witnesses on the technical and financial feasibility of this and other proposals. I am mindful of the constitutional questions provoked by your bill, Congressman Langevin, and other proposals that have been made and specifically look forward to hearing our witnesses' views on how this legislation and other proposals might affect the institution's ability to assemble, act together and deliberate.

I again want to welcome the chairman of the Rules Committee, Mr. Dreier, who has been through the years in the Minority and in the Majority a very thoughtful contributor to how this organization, the House of Representatives, the People's House, can be more effective and more efficient both in good times and in bad.

And so we thank them both for their presence.

I thank you again, Mr. Chairman, for holding this hearing.

The CHAIRMAN. Thank you, Mr. Hoyer.

Mr. Linder.

Mr. LINDER. I, too, am grateful for your holding these hearings. I am a member of the Rules Committee, and the issues that come out of this hearing and changes that we might make will wind up before the Rules Committee in terms of technology. Let me just say that the Great Seal of the United States contains a motto, E Pluribus Unum: Out of Many, One. The House of Representatives embodies this motto. Members representing many States and even more interests come together in these buildings and halls to share their unique interests and insights. The resulting exchange of ideas undoubtedly impacts legislative decisions as we must combine our unique individual views to declare a single policy in the best interest of our Nation.

The floor of the House is not solely a place to cast votes. As we stand in that Chamber flanked by the relief portraits of the great lawgivers, we educate, we cajole, we convince, we listen. These are necessary components of our legislative duties. They are firmly rooted in the Founding Fathers' intent when establishing a legislative body elected by and representative of the people of this Nation. I fear that by instituting provisions allowing Congress to forego these responsibilities, we will do an injustice to the legislative process and thus to the American people.

I will say honestly I am familiar with proposals to explore or institute remote voting procedures. In fact, the Rules Committee has held hearings on this very issue in the past. Our findings on this issue have never been very favorable as we have found that the convenience offered by modern technology hardly offsets the loss in the quality of the deliberative process. However, the events of September 11th and the subsequent anthrax attacks are forcing us to reexamine this issue.

While I believe that 200-plus years of history and precedent cannot be forsaken in the name of convenience or efficiency, I recognize that it may be worth exploring how, in the event of emergency, technology can facilitate the continuation of the work of the people.

Alexander Hamilton said in Federalist Number 22, "In those emergencies of a Nation in which the goodness or badness, weakness or strength, of its government is of greatest importance, there is commonly a necessity for action. The public business must in some way or other go forward.".

Nonetheless, I continue to believe that the role of technology should continue to be one of facilitation, namely in communication and the exchange of information, rather than one of substitution. Our work collectively as elected representatives of the people necessarily entails dialogue and interaction between Members. In the worst of crises, I believe we will relish the opportunity to reach out to our colleagues and fellow citizens to share our thoughts and experience, and technology may play a role in that. However, I believe that we must also convey that a legislative assembly should not be deterred from assembling. I believe it is our responsibility to ensure that this message is heard. Thank you.

The CHAIRMAN. Thank you.

Mr. Fattah.

Mr. FATTAH. Mr. Chairman, let me share in the remarks of my colleagues who have already spoken. I think it represents the range of views and twists and turns in this subject matter. I look forward to the testimony. I do have a conflict to which I have to run out, but I will be back, and I will read each of the testimonies when I return. Thank you.

The CHAIRMAN. Appreciate it. Thank you.

Mr. Doolittle.

Mr. DOOLITTLE. I have no statement, Mr. Chairman.

The CHAIRMAN. With that we will begin. Appreciate both of our colleagues.

Mr. Dreier.

Mr. DREIER. Thank you, Mr. Chairman, and Mr. Hoyer, and Mr. Fattah, and Mr. Linder, Mr. Doolittle. Thank you very much for holding this hearing. I would like to begin by also associating myself with the very fine remarks that all of you have made on this issue recounting what we experienced on September 11th and the aftermath and the great responsibility that we have in the wake of that tragedy.

I want to compliment Mr. Langevin for the legislation that he has introduced, and I appreciate the fact that he is spending time thinking about this issue and trying to put together a way in which we can respond to the possibility of another tragedy.

I want to say that I was very proud 7 years ago to be the first person to preside over a fully interoperative committee hearing of the Congress. We had a Rules subcommittee hearing where we had questions coming in of our witnesses from e-mail, along with having one of our panel members, one of our committee members by teleconference. We had, of course, C–SPAN covering it. So we had the wide range of technological advantages 7 years ago utilized for that hearing.

I am also very proud to have worked with a lot of our colleagues, as Mr. Hoyer mentioned, in the past to make sure that we bring the United States Congress into the 21st century technologically. And I think that that is something we need to do to make sure that this institution is able—and we deal in the marketplace today—to be out there and to be able to provide information to the people whom we are honored to represent and to others who have an interest in what goes on here.

And so it is with that as a background that I say that I believe that what Mr. Hoyer said about duty and common sense is very important for us to pursue, and that is why I believe that as you look at this legislation, it is very important to not only pursue the technical side of this, the technological changes and all that are so important, but I think in many ways more important, and based on, with Steny having just yesterday been at Ground Zero, and most of the rest of us have had the opportunity to be there, I mean, standing there clearly underscores for all of us the grave responsibility that we have.

And so that is why as you look at this legislation and we think of that inspired document that James Madison put together, the U.S. Constitution, with the separation of powers, it seems to me that we need to look at this issue by focusing on both the institutional and the constitutional framework of this. And that is why, I guess, my one message would be think about what it is that the Framers had in mind.

Now, you, Mr. Chairman, mentioned the fact that we have face to face interaction here. That happens to be one of the most important aspects of this institution. We are the People's House; 435 Members, all of whom have been elected. We are the only—Federal officials who have to attain office through election. We all know that. And so as Members of the People's House, I believe that it is important for us to make sure that we do meet and spend time thinking about these issues and anguish over them and do it together.

And so, yes, there are logistical challenges that we face. If the U.S. Capitol had been blown up on September 11th, we obviously would have dealt with the question of how we meet. But if the transportation system in this country had still been in existence, we could put into place a structure, and you and I discussed this the other day, Mr. Chairman, where Members of Congress could, in fact, meet at a separate site.

So I think that what we need to do is to realize that that is the greatest deliberative body known to man, and it is very, very important that we utilize that in the best way possible as envisioned by the Framers. And so I guess that, again, that that message is one of go slow. Think long and hard before we make any kinds of changes in the way we do business around here when it comes to in any way undermining our deliberative opportunities and responsibilities.

It is going to be a challenge. I look forward to working with all of you on this. As Mr. Linder said, he serves on the Rules Committee, we will clearly be working with this issue there. And again, I appreciate Mr. Langevin's work.

I have an absolutely brilliant statement that has been prepared that I would like that you submit for the record, and I sort of stumbled through a few of the points that have been in it. And I hope very much, Mr. Chairman, that you will excuse me because I have to take off for another meeting. So thank you very much again for your fine work, and I hope very much you will heed my message.

The CHAIRMAN. Certainly appreciate your testimony. Thank you.

STATEMENT OF HON. DAVID DREIER

Thank you, Mr. Chairman, for inviting me to testify on the legislation introduced by our colleague, Jim Langevin, calling for a study of the feasibility of implementing a secure computer system for remote voting and communication for the Congress.

Since 1996, the Rules Committee has been studying the impact of technology on the legislative process, and we have worked closely with you and your committee to bring about a number of changes in the rules of the House to facilitate the use of technology without undermining the deliberative nature of the institution.* The Rules Committee has actually had several hearings and meetings over the past six years which examined the feasibility of remote voting in varying circumstances and, I must admit, the discussions were not favorable.

The events of September 11 and the following anthrax scare made it clear that we as a country are no longer beyond the reach of those who mean us harm, and forced upon us the recognition that fears heretofore unknown must now be acknowledged. Agencies from the federal government down to the local level are now faced with developing contingency plans on matters ranging from airline security to postal service operations.

Congressman Langevin's legislation, H.R. 3481, proposes to deal with one of the most critical contingency plans we might face—the continuity of Congress in case of a crippling attack on its facilities or the nation's transportation network.

Various futurists and even some of our tech savvy colleagues have long supported the idea of a "virtual Congress" where Members could attend committee hearings, even vote, without being physically present in Washington, D.C. In the recent past, we have closed the door on even limited trials of such applications, such as requests to allow for remote committee attendance during family illness or emergency for the simple reason that this would invariably lead to pressures to widen the circumstances under which such requests are accepted.

Following 9/11 and the shutdown of congressional office buildings during the anthrax contamination, the clamoring for the adoption of virtual Congress technologies has been heard more regularly, and given more credence than ever before.

H.R. 3481, for example, seeks to address these concerns by calling for a study into the possibility of "implementing a secure computer system for remote voting and communication for the Congress and establishing a system to ensure business continuity for congressional operations." A study, limited and tailored to very narrow circumstances, and left at that, is probably worthwhile. However, the study proposed by H.R. 3481 is not limited, and we must be extremely wary of considering any recommendations that arise from a study due to the increasing pressures it will bring, both internally and externally, to apply them to regular House activities.

Congress is an inherently human institution. As such, the study of any disaster-related contingency planning must go beyond the purely technical and include an institutional and constitutional framework as its basis. Therefore, I would recommend having the Library of Congress do the study instead of the National Institute of Standards and Technology.

Over the recent past, Congress has been unrivaled as an institution in applying technology to provide the public with access to Members and real-time legislative information such as committee hearings, floor activities, and roll call votes. At the same time, however, we have been purposefully hesitant to apply new technologies to the primary legislative and deliberative responsibilities of the institution for fear of undermining or even destroying the key component upon which Congress is based and functions—the personal, face-to-face interactions between and among its Members as they seek to deliberate, debate and reach consensus on any number of issues.

No technology, no matter the clarity of the speakerphone or the resolution of the video display, can provide for the essential human atmosphere required to develop the interpersonal, collegial relationships that are at the heart of the institution.

As Claremont McKenna College professor Joseph Bessette noted in *The Mild Voice of Reason*, the "deliberative process involves three essential elements: informa-

tion, argument, and persuasion." Thanks to the vision and commitment of this committee, we have successfully, and aptly, applied technology to enhance the sharing of information for both internal and external purposes. Technology has even been used at the basic level as a tool for argument and persuasion. However, no technology exists that can fully reproduce the engagement and emotion that occurs during the face-to-face, in-person bargaining, and the sharing of ideas and passions.

Failure to take this into consideration when looking to apply various technologies to the operation of Congress as a deliberative body can have a serious, even fatal, impact on its ability to function as conceived by our Founding Fathers. Put simply, the increasing substitute of an electronic environment for that of the Congress as we have long known it would inevitably lead, step by step, to the questioning of the very relevance of the institution.

The fact that technology can be used for various applications certainly does not mean that it should. That corporate boards may permit meetings or voting via video conference or that college students may take classes over the Internet does not mean that these same technologies can be successfully adopted for use by Congress. The structure of Congress varies widely from the more interpersonal military or corporate world where action below is taken based on orders from on high and where technology is easily applied as an effective method of communication, information sharing, and command and control.

Considering the desirability or feasibility of remote voting, communications and other technologies in any but the most extreme, narrowly-defined, instances would lead to increased pressure to establish and then build such a system. Even the physical destruction of the Capitol, as horrible as that would be, would not be a justification for remote voting because, absent the simultaneous disruption of the nation's transportation system, the Members who make up the Congress could still meet in one location.

Congress has refined from applying various technologies to its inherently deliberative functions not for reasons of technophobia or nostalgia, but in consideration and acknowledgment of the human foundation of the institution. We must be extremely cautious and wary of taking any steps that may open the door to forces that, no matter their intentions, lead to a path that runs counter to the carefully conceived plans and purposes of our Founding Fathers when they designed Congress.

The CHAIRMAN. We will move on now to Mr. Langevin.

STATEMENT OF HON. JAMES R. LANGEVIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF RHODE ISLAND

Mr. LANGEVIN. Morning, Mr. Chairman and Ranking Member Hoyer, members of the committee. I would like to thank you, first of all, for allowing me to testify here today. Before I begin my formal statement, I just wanted to say how appreciative I have been, Mr. Chairman, of your guidance and your leadership on this issue from day one. It has taken no convincing on your part to realize how important this issue is. You have shown, as the Ranking Member Hoyer and this committee have shown, strong leadership in responding quickly to the new demands of post-September 11th.

Mr. HOYER. Mr. Chairman, if I might, before Mr. Langevin gives us his formal testimony, I want to really thank him. I mentioned him, obviously, in my opening statement, but Mr. Langevin, as all of us know, was a member of the State legislature, then elected statewide in Rhode Island as the secretary of state, so he brings a wealth of experience in dealing with these issues. He has been extraordinarily helpful, Mr. Chairman, to us on election reform, bringing the knowledge he had from his secretary of state's position in Rhode Island, but also on this issue he has obviously given a lot of thought to government and its structure and its operation.

And, Jim, we really do appreciate all the work you have done on this and look forward to your testimony.

Mr. LANGEVIN. Thank you, Mr. Hoyer. I appreciate your comments.

I also would like to mention how much I have appreciated consulting with both you, Chairman, and Mr. Hoyer on this issue as well as Representative Cox and Representative Baird, who also are supportive of this proposal.

But again, thank you, Chairman Ney and Ranking Member Hoyer, for holding today's hearing on E-Congress. It is no secret that I have been promoting this idea for months now. My bill, the Ensuring Congressional Security and Continuity Act, H.R. 3481, is just a first step. Today's hearing takes the next step by examining the numerous issues involved in planning for the unthinkable. I commend you again for your efforts.

First let me be very clear that my E-Congress idea in this entire discussion today is about preparing for an emergency situation in which Congress could not meet in the Capitol or any of these building due to some future attack or natural disaster. I do not want this to substitute for the traditional face-to-face interactions that are vital to our day-to-day work.

September 11th and the subsequent anthrax attacks on our congressional offices exposed just how vulnerable we are, particularly because we are centrally located. In fact, had the Pennsylvania flight taken off on time and headed straight for the Capitol, and had the Capitol not been already evacuated, we would have been casting our Journal vote at the very same time.

I am not alone in any concerns for the unthinkable. Four years ago Speaker Gingrich and President Clinton made an historic commitment to analyze our current terrorism threat both here and abroad, to develop concrete recommendations to stem the tide of American hatred that has swept over specific regions of the world, and to ensure this country remain not only safe, but that our freedom and democracy would not be shackled by fear or danger.

The Hart-Rudman report was the result of this visionary pledge. This report concluded that America will become increasingly vulnerable to hostile attack on our homeland, and our military superiority will not always protect us. States and individuals will likely acquire weapons of mass destruction, and Americans will likely die on American soil. We can no longer ignore these warnings.

E-Congress is a powerful option to ensure we are prepared for terrorism or any disaster, but it is not the only option. I note that some Members would not want to vote electronically or may not be familiar with the Internet. However, today's hearing and my mantra over the past several months is about much more than this one aspect of congressional continuity.

What I would like to see is first a concrete plan of action developed, approved and understood by all Members of Congress by the end of this year; second, a plan that includes an Internet-based and satellite-based communications system where a Member can log on with secure biometrics from anywhere in the world to acknowledge that he or she is alive and not incapacitated and give his or her physical location. This system also allows the Member to get directions from the House leadership on the number of Members who have may have been killed or incapacitated, or what immediate governmental activities must occur in response to the attack or disaster, and a time line for when, where and how Congress will reconvene.

Third, the plan could also include alternative meeting locations, a means of deliberating, a format for following parliamentary procedure, a way for the public to follow congressional activities and ensure Congress upholds the democratic process, along with many other details for effective constitutional continuity in congressional operations.

The most important thing is for this plan to establish a two-way backup communications system that is both reliable and secure. Moreover, this as I have stated repeatedly, this plan would only be executed in an emergency.

Thank you, Mr. Chairman and Mr. Hoyer, for starting this much-needed dialogue on an issue few want to discuss. I believe it is our duty as Members of Congress to lead this country, to prepare the legislative branch for any kind of disaster, and to ensure that freedom and democracy always prevail. Again, my thanks for your leadership on this issue.

The CHAIRMAN. Thank you.

[The statement of Mr. Langevin follows:]

STATEMENT OF CONGRESSMAN JIM LANGEVIN

I would like to thank Chairman Ney and Ranking Member Hoyer for holding this hearing today on E-Congress.

It is no secret that I have been promoting this idea for months now. My bill, the Ensuring Congressional Security and Continuity Act (H.R. 3481), is just a first step. Today's hearing takes the next step by examining the numerous issues involved in planning for the unthinkable.

Mr. Chairman, you have been extremely supportive of my interest in pursuing a means to ensure that Congress can continue to communicate and function regardless of future attacks in whatever form—be it weapons-based, anthrax or even a cyber attack—or a natural disaster like the tornado that severely immobilized many of our Maryland neighbors. I appreciate your leadership in this endeavor, but I fear that many of our colleagues do not understand just how necessary it is.

Just this week, CIA Deputy Director for Operations James Pavitt said, "Despite the best efforts of so much of the world, [as far as] the next terrorist attack—it's not a question of if, it's a question of when."

September 11th and the subsequent anthrax attack on our congressional offices exposed just how vulnerable we are, particularly because we are centrally located. In fact, had the Pennsylvania flight taken off on time and headed straight for the Capitol, we would have been casting our journal vote at the very same time.

I am not alone in my concerns for the unthinkable. Four years ago Speaker Gingrich and President Clinton made a historic commitment:

To analyze our current terrorism threat both here and abroad,

To develop concrete recommendations to stem the tide of American hatred that had swept over specific regions of the world, and

To ensure this country remained not only safe, but that our freedom and democracy would be unshackled by fear or danger.

The Hart-Rudman Report was the result of this visionary pledge. This Report concluded that "America will become increasingly vulnerable to hostile attack on our homeland, and our military superiority will not entirely protect us. . . . States, terrorists, and other disaffected groups will acquire weapons of mass destruction and mass disruption, and some will use them. Americans will likely die on American soil."

We cannot ignore what so many leaders and experts in international terrorism have been telling us over the past several years. The time is ripe for Congress to take responsible, appropriate steps to ensure that we can continue to function smoothly if the Capitol Hill buildings are destroyed or Members of Congress cannot deliberate in Washington, DC.

E-Congress is a powerful option, but it is not the only option. I know that some Members would not want to vote electronically or may not be familiar with the Internet. However, today's hearing and my mantra over the past months is about much more than this one aspect of congressional continuity. What I would like to see is:

First, a concrete plan of action developed, approved and understood by all Members of Congress by the end of this year.

Second, a plan that includes an Internet-based and satellite-based communications system where a Member can log on with secure, biometrics technology from anywhere in the world to acknowledge that he is alive and not incapacitated and give his physical location. This system also allows the Member to get directions from the House leadership on the number of Members who have been killed or incapacitated, what immediate governmental activities must occur in response to the attack or disaster, and a timeline for when, where and how Congress will reconvene.

Third, the plan could also include alternative meeting locations, a means of deliberating, a format for following parliamentary procedure, a way for the public to follow congressional activities and ensure Congress upholds the democratic process, along with many other details for effective, constitutional continuity in congressional operations.

The most important thing is for this plan to establish a two-way backup communications system that is both reliable and secure. Moreover, this plan would only be executed in an emergency. The traditional personal, face-to-face interactions that we all enjoy would not be jeopardized. The E-Congress idea is simply a means to facilitate an organized system for congressional continuity if, and only if, an attack or disaster strikes again.

Thank you Mr. Chairman and Mr. Hoyer for starting this much-needed dialogue on an issue few want to discuss. I understand this reluctance. Who wants to face such grim prospects? But we must. It is our duty as Members of Congress to lead this country, to prepare the legislative branch for any kind of disaster, and to ensure freedom and democracy always prevail.

The CHAIRMAN. I have just one brief question; also, I guess, you know, a comment, too. If you had—some of the argument against the theories of what you and many Members are promoting is that we don't have the face to face. We should take alternative means. You know, that attack on Washington, of course, happened while we were in session. If something happens while we were all back home in the districts, or some Members, you know, would be traveling, and some type of attack happens on a massive scale—or let me throw something else out there, because we all talk about the situation we had, but what about a smallpox or quarantine? That hasn't been discussed yet.

So I guess if we had preparations and had two or three sites across the country and were able to logistically, because of a lot of panic that would occur if this was a nationwide event of great proportion, then, you know, traffic would be stopped, you couldn't get to airplanes, you couldn't get to automobiles. You literally would almost have to account for a huge military operation that would pick people up, and, you know, helicopters and 435 Members and find out where they are at in the first place with the systems working. And that is what leads me to really think about this. Even if you had three other prepared sites, the logistics of trying to get people there could take quite a long time. So I think this is, you know, one of the reasons it should be looked at.

Now, there are also people that talk about the slippery slope; while we have this in operation, we will just start using this as a regular routine. I think that is a great concern a lot of people have. What are your ideas to have safeguards in there that if this were instituted, it would be a rare, rare occurrence of use?

Mr. LANGEVIN. Well, on that score I would agree with you. Also I share the concern of my colleague Mr. Dreier that we approach this issue from different perspectives, and we may not completely agree on this. The one thing we do agree on is in an ideal world we meet here at the Capitol, that we continue operations as normal with normal day-to-day interactions, face-to-face communications.

But as you know, Mr. Chairman, it is not enough to wish anymore that that will always be the case.

What I would say is that we make it clear from the very beginning that that is for emergency purposes only. We shouldn't get in the habit of using it on a routine basis. It should be clear in a mission statement that it was intended for an emergency backup situation to give us a chip, in a sense, in our back pocket, as it were, that we could pull out if we needed to exercise this option of secure electronic communications if the need arose.

I think that it makes us more secure if those who would wish us harm out there know that we have other options, other than just meeting at the Capitol. I think it is a more of a deterrent than anything else perhaps we could think of that would ensure our security in the long run. It would force them perhaps to look elsewhere if they were to think of an attack because they know that we have other options and not just meeting at the Capitol as our only option.

The other thing—and you raise it very directly, Mr. Chairman—the other thing we haven't talked about is the issue of it is not only about a disaster that would destroy Washington or a central meeting location for the Members of Congress, but in the event of a smallpox attack or some other bio or chemical attack, we may not be able to come in contact with one another. It may be dangerous to have normal interaction for a time. Again, that gives us—E-Congress gives us the option of being able to step back and assess when it would be safe to meet again in a safe location.

The CHAIRMAN. There are other questions to be asked, but I want to make one comment for further discussions and longer discussions. But some people also noted in the event we couldn't have contact with each other, there is the President and executive ability of Executive Orders, and we have leaders on both sides of the aisle.

But, you know, Congress is elected, and that is the other thing that keeps popping in my mind, you do need a Congress, and things could only go on so long with 8 or 10 people involved. You need an entire body involved, whether it is person to person or electronically somehow. So I just think that is a whole other issue, but it is something that is out there. I agree Members need to be part of it.

Mr. Hoyer.

Mr. HOYER. Abraham Lincoln said almost a century and a half ago that as our problems are new, we must think and act anew. I think really that is the context of Congressman Langevin's legislation, Congressman Baird's legislation and others in terms of what do we do if we lose a significant number of the Congress, how do we replace them. Former Speaker Gingrich and former Speaker Foley have made proposals. So I think this is a time when we really do need to think about contingencies.

I think all of us agree with Congressman Dreier that we ought to be cautious. We ought to proceed thoughtfully and not have a knee-jerk reaction. On the other hand, the scenario of that plane from Pennsylvania not being heroically stopped in its tracks by those courageous citizens who were on the plane, it could have hit, could have hit while, as was suggested, we were voting on the

Journal, and had that occurred, we may well have lost a significant
number of Members.

And I think every Member remembers essentially the chaos and
concern—concern understates it—that Members had about feeling
disconnected, and nothing physically happened in Washington. Ob-
viously a crash happened at the Pentagon, but in the Capitol com-
plex nothing physically happened. But we know that there was a
great disconnect of the Congress for a significant period of time
when we reconvened—a significant number of Members—at the
Capitol Police station, as you remember, you and I were there Mr.
Chairman—the angst that Members felt about being disconnected
and how they could get back together as a Congress to be able to
respond were very serious. And I think that is what Congressman
Langevin is appropriately focused on.

I look forward to hearing the testimony of all of our witnesses,
all of whom are very thoughtful observers of government them-
selves and will have some thoughts on this. I thank you for think-
ing anew, if you will, and trying to figure out how we respond to
a contingency that up to this point in time has essentially been one
that none of us has really felt was a real one because we thought
our homeland was secure, and indeed many felt it was invulner-
able.

We found that out to be not the case. Not only do we need to con-
template, obviously, terrorists or states that might visit harm on
us, but in my own district just a few days ago we saw that nature
visits on us events which disrupt. We had an F–5 tornado, as you
know, that devastated a town in my district. We could have a nat-
ural phenomenon here that could perhaps not do what was done
in La Plata, but nevertheless have an effect where we need a con-
tingency plan in place; i.e., Mr. Chairman, you pointed out dis-
persed Members unable to get back for whatever reasons because
the air traffic control system goes down for whatever reason,
through terrorist or some other phenomenon.

So I thank you, Congressman. I don't have a question. I think
I will have a lot of questions after we hear all our witnesses. And
we look forward to sitting down with you and trying to come up
with proposals that are both cautious and common-sense proposals
that will provide for contingencies that we would prefer not to
think about, which we must.

Mr. LANGEVIN. Thank you.

The CHAIRMAN. Mr. Linder.

Mr. Doolittle.

With that we appreciate your time here today and your testi-
mony and the issue you brought to the committee.

Mr. LANGEVIN. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much. We will move on to the
second panel.

I want to thank the panel for being here today. Let me just run
through the names of the members of the panel today. We first
have Don Wolfensberger. Most people on Capitol Hill know Don,
former staff director for Jerry Solomon in the Rules Committee.

And the second witness will be Dr. Frantzich, and he is a pro-
fessor at the U.S. Naval Academy who has a Ph.D., who is on a
Fulbright scholarship in Prague, and we can see him. You should

be able to view him in back there, it is working, and he will be video conferencing with us. So we are happy to have him such a long distance.

The third witness will be Dr. Norman Ornstein, resident scholar to American Enterprise Institute for Public Policy Research.

And the fourth is Robert Thibadeau. Dr. Thibadeau is on leave from Carnegie Mellon computer science department.

We want to welcome all of you, and we will start with the Mr. Wolfensberger.

STATEMENTS OF DONALD R. WOLFENSBERGER, DIRECTOR OF THE CONGRESS PROJECT, WOODROW WILSON INTERNATIONAL CENTER FOR SCHOLARS; STEPHEN FRANTZICH, PROFESSOR, UNITED STATES NAVAL ACADEMY; NORMAN J. ORNSTEIN, Ph.D., RESIDENT SCHOLAR, AMERICAN ENTERPRISE INSTITUTE FOR PUBLIC POLICY RESEARCH; AND ROBERT THIBADEAU, Ph.D., DIRECTOR OF SECURITY ARCHITECTURES, SEAGATE TECHNOLOGIES

STATEMENT OF DONALD R. WOLFENSBERGER

Mr. WOLFENSBERGER. Thank you, Mr. Chairman and members of the committee. Good to see you all again. It is nice to know there are members of the Rules Committee and the Appropriations and this committee itself all of which are a bulwark of this institution. I appreciate this opportunity to testify today on how best to resume the work of the Congress if a catastrophic occurrence results in large loss of lives of Members and Congress is preventing from meeting here in the Nation's Capital.

Specifically, you are interested in whether some form of e-government might substitute for or complement our traditional two-century-old practice of Congress sitting together in a single place deliberating together about the people's business in the sunlight of public scrutiny and accountability. As I indicate in my testimony, I purposely loaded up that last sentence to tip my hand as to where I am coming from, and that is on the side of retaining our system of collective deliberation.

Congress, as you know, literally means a coming together. It seems to me if you lose that, you lose the very essence of our representative and deliberative democracy. If you start at the wrong end of the equation of how to go about reassembling the Congress, that is, in terms of what is the most convenient, safe and secure for individual Members instead of what is in the best interest of the Congress and the people it serves, it seems to me you will be making a terrible mistake.

In that regard, providing for a computerized system whereby Members may vote on legislation from their districts, I think, would be contrary to the best interests of this institution and of the American people because it would destroy the very nature and strength of our system, which is based on collective deliberation. It would produce what I have called a reverse Field of Dreams scenario. You might remember that in the movie the Field of Dreams the Kevin Costner character was told by this voice about his dream of a baseball stadium, build it and they will come. Well, I am suggesting that if you build this computerized voting system, it will

have the opposite effect on Congress as we know it. Build it, and they will stay away.

The American Express card, as you know, has the motto, don't leave home without it. I fear that if you give a Member a remote voting card, it will have the motto, don't leave if you have it. I think you might as well rename the House of Representatives the Houses of Representatives because I think Members will be inclined to stay at home and vote from the comfort of their homes.

It seems to me that this might well be a very much family-friendly type of system, but I don't think it is people-friendly in the sense of we, the people, ordain this constitutional system to form a more perfect Union.

I have indicated in my testimony some examples of how here in the Congress by our rules and practices we have, I think, too much encouraged the idea that legislating only means voting. And so it is little wonder then that Members might well jump at the chance of being able to legislate from their homes if all you have to do is vote. But it seems to me that that misses the whole point of coming together to deliberate, compromise, build a consensus on public policy matters that will have an acceptance, understanding, legitimacy in the eyes of the people.

Yes, I think a remote voting system is doable, but that is not the real question. The real question should be is it desirable. I submit it is not desirable. It is highly undesirable if you wish to retain a deliberative system as opposed to moving towards a more plebiscitary system where you are simply reacting to the public polls and moods and whims instead of coming together to really think through and talk together about how to solve our problems.

Moreover, I suggest that remote voting could well be unconstitutional. I am not a constitutional lawyer or scholar, but just looking at the Constitution you see that Congress must assemble at least once every year; that to conduct business there must be an actual majority present. A quorum is a majority of Members coming together. So in my written statement instead of suggesting ways in which to amend the Constitution or whatever, I am suggesting some ways in which to reconstitute the Congress in a constitutional manner, and without elaborating on those items, I will simply list them for you in concluding my statement.

First I think this committee should exercise its jurisdiction to consider an amendment to the election law now by requiring that Governors call for expedited special elections to fill these vacancies within 60 days if more than half the membership of Congress is lost in some catastrophic event.

Second, I think House rules should be amended so that you can deal with the quorum problems that will occur if you have a large number of incapacitated Members. I think there is a way you can do this.

Third, I suggest that there be an Office of Deputy Clerk created located away from the seat of government, preferably close to the shadow Cabinet, preferably close to some counterpart staff from the Senate so that that Deputy Clerk can help to reconvene the Congress as soon as possible after Washington has been vacated.

After that—I missed a page here. Further, the current law that permits the President to convene Congress away from the Capitol

in the event of contagious sickness or extraordinary circumstance should be amended to allow the officers of the House and Senate to do so as well.

Fifth, appropriate rules, statutory changes and plans should be adopted to allow for Congress to meet in two places at once using teleconferencing in the event that the Capitol is quarantined with large number of Members both inside Washington and outside Washington.

Sixth, the leadership of both parties in both Houses should designate a number of Members to be outside the Capitol during any joint session of Congress such as the State of Union Address, such as the President now designates a Cabinet member to be away.

Seventh, steps should be taken to ensure full access to current computerized congressional databases and information as well as for broadcast coverage of the proceedings of Congress should Congress have to convene elsewhere, and this means public access.

And eighth, every House and Senate committee and support officer should devise contingency plans now for carrying on its functions elsewhere even if all the staff of that committee or that office are killed in a catastrophic event.

These contingency plans, I think, will go a very long way to helping flesh out how best to spend the emergency monies that Speaker Hastert has asked for to ensure the continuity of Congress elsewhere in emergency situations.

In conclusion, Mr. Chairman, I commend you and your committee on thinking about and planning for the unthinkable. You did an outstanding job post-9/11 and in the ensuing anthrax crisis the following month in equipping Members and key staff with electronic devices necessary to communicate, to coordinate, and eventually for Congress to come together and to resume its business. That, it seems to me, is the most important and vital function for these information and communications technologies, that they can provide in a time of crisis this type of coming together, but they cannot serve as a substitute for deliberative lawmaking.

Thank you for your consideration of my testimony and my recommendations, and I will be happy to answer any questions when the other witnesses have finished, if that is the way you would like to proceed.

[The statement of Mr. Wolfensberger follows:]

STATEMENT OF DONALD R. WOLFENSBERGER

Mr. Chairman and Members of the Committee.

I appreciate this opportunity to testify before you today on the prospects, problems, and alternatives for carrying on the work of Congress in the event our Capital is the subject of a catastrophic event that leaves large numbers of Members of Congress dead or incapacitated and renders Washington, D.C. unsafe as the seat of government. Specifically, you are asking whether some form of e-Congress might be a viable alternative to our two-centuries-old tradition of assembling as a single body, in a single location, to deliberate and vote on the people's business in the sunlight of public scrutiny and accountability.

If it seems to you that my previous sentence is loaded with value-laden terms and phrases, you are absolutely correct: I believe in tipping my hand early—especially if my time is limited. And in this instance, I want to weigh-in heavily on the side of reconstituting Congress in a constitutional manner. To me that means reconvening Congress as soon as possible, at a new site, with elected representatives of the people, assembled in a collective manner to deliberate. And by deliberation I mean a reasoning together about the nature of a problem and alternative solutions,

and, out of that process, the arriving at a mutually agreed upon policy consensus. If there were still any doubts as to where I am coming from, I could recommend reading my book, Congress and the People: Deliberative Democracy on Trial—but that might sound too much like a plug.

We should keep in mind, first and foremost, that Congress literally means "a coming together," and if you lose that you will lose the very essence of our representative and deliberative democracy. The worst mistake you could make is to start at the wrong end of the reassembly process and work back, that is, to begin with what may be the most convenient, safe, and secure arrangement for individual Members of Congress, such as permitting their committee and floor votes to be cast from remote computer stations in their districts. Instead, you must begin with what is in the best interests of the institution of Congress and the American people which it serves and represents.

To me, the very phrase, "convening an e-congress" is an oxymoron because you cannot have coming together of what the Framers intended to be a deliberative body of Members if they are sitting at 435 voting stations scattered across the country. The idea of building a computer system on which Members could not only access floor or committee debates, but actually vote on pending questions, will lead to what I would call "a reverse Field of Dreams scenario." You will recall in the movie, Field of Dreams, the Kevin Kostner character was advised by a voice about how to proceed on his dream of a baseball stadium. "Build it, and they will come," the voice intoned. A remote voting system will have the opposite effect for the actual Congress: "Build it, and they will stay away." We've already had an experience with that when we had proxy voting in House committees: it tended to encourage absenteeism.

American Express can say of its card, "Don't leave home without it." Give Members a remote voting card, and its motto soon will be, "Don't leave home if you have it." We might as well rename this body the "Houses of Representatives."

In a way the current rules and practices of the House are responsible for this mentality that legislating only means voting. Every Monday and Tuesday you roll and cluster votes on suspension bills which now account for 75 percent of all laws enacted. You postpone and cluster votes on floor amendments, in the rare instances in which amendments are allowed. You can only force a quorum call when a vote is pending. It's little wonder that some Members continue to pressure for a rule change that will allow them to do the same thing in committee, that is, show up at the end of the day to vote on all the amendments offered in markup during the course of the day.

The more that legislating in committee and on the floor is reduced in the minds of members to voting, the more you will become a plebiscitary rather than a deliberative body. If that happens, it wont' be long before the people decide they can cut-out the middle man, you, and cast votes themselves on pending Federal legislation.

Before I proceed further, however, I want to commend this committee on the extraordinary work it and its staff did under very difficult circumstances in the immediate aftermath of September 11th as well as in the subsequent anthrax crisis the following month. Had it not been for the speed and flexibility of your decisions and actions in equipping Members and key staff with adequate electronic equipment to enable them to communicate and coordinate with their office staff, their party leaders, and their committees, Congress would have been hopelessly adrift for weeks rather than days. But ultimately, those electronic devices were used to facilitate a coming together to do the business of the Congress.

That is how I view the utility of our information age technologies—as a tool for accessing information and communicating with others. These wonderful new technologies, however, should not be viewed, in my opinion, as a substitute for the face-to-face deliberative process. Your cannot have a genuine exchange of opinions and arguments in a cyberspace chat room; and your cannot develop compromises and consensus by spamming your colleagues via e-mail, no matter how persuasive you may think your arguments are.

The question to me is not whether an e-Congress is doable. The techies will tell you it is, and I suspect they will eventually be able to devise a secure way to make it so. The question, rather, is whether it is desirable. To me, obviously, it is highly undesirable, for it is contrary to everything our constitutional system is about. In that regard, I would suggest that, if the committee should consider providing for an e-Congress in the sense discussed above, it would require a constitutional amendment. Article I, section 4 (as modified by the 20th Amendment) requires each House to assemble at least once a year, and section 5 requires a majority of each House to constitute a quorum to do business. It is counterintuitive to think that a majority of members in a disassembled House, voting remotely from their districts, could count as a quorum for doing business.

In the time remaining, let me offer some suggestions on what does need to be done if, in extraordinary circumstances, the Congress needs to be reconstituted in a constitutional way as expeditiously as possible.

First, this Committee has jurisdiction over Federal election laws which should be amended to provide for expedited special elections. I have proposed that, in the event that over half the membership of the House are lost, the Governors of the states should be required by Federal law to schedule final elections to fill vacancies not later than sixty days after such determination is made.

Second, I would propose that House Rules be changed to provide special procedures in such circumstances, including a two-thirds vote to declare vacancies for those seats in which the House determines members are incapacitated beyond likely recovery during that Congress; and second, a rule that would not count for quorum purposes those Members granted leave of absence for reason of temporary incapacity. (A summary and text of the first two proposals are appended to this statement)

Third, I would propose that the House adopt a rule to create the Office of Deputy Clerk of the House to be elected at the beginning of each Congress, and that the deputy be located outside of the Nation's Capital, preferably in proximity to the "shadow cabinet." In the event that the Speaker and Clerk are killed in an attack, and Congress cannot reassemble in Washington to elect a new Speaker, the Deputy Clerk would be responsible for calling the survivors together in a new location, and provide for and preside over the convening of the House until a new Speaker is elected. Obviously, the Senate should adopt a parallel rule providing for a Deputy Secretary, who would work together with the Deputy House Clerk and the "shadow cabinet" to ensure an orderly reconvening of Congress in a new location, and close coordination between the branches.

Fourth, the law that now allows the President to convene Congress in a location other than the seat of government due to "the prevalence of contagious sickness, or the existence of other circumstances" (2 U.S.C. 27), should be amended to allow for the Speaker and President Pro Tempore of the Senate, or, in the event of their death, the Clerk of the House, the Secretary of the Senate (or, if either have died, their deputies) to call for the convening of Congress in another location. Congress should not depend on a presidential proclamation to meet at another place in such extraordinary circumstances.

Fifth, in a related contingency, appropriate rules, laws and plans should be adopted so that, in the event that the Capital is subject to a bio-terrorist attack requiring a quarantine of the city, and large numbers of members are both in the Capital and outside the Capital, Congress be permitted to conduct committee and floor sessions from two locations using teleconferencing.

Sixth, I would propose that, just as the President designates a cabinet member to be away from the Capital during a joint session of Congress such as the State of the Union Address, House and Senate leaders should designate a small group of members from each House, reflecting party ratios in their respective houses, to be away from the Capital as well during such occasions.

Seventh, provision should be made for a Congress that is convened away from the Capital to have access by computers to all of the information now available to it through THOMAS, CRS, CBO, the House and Senate web sites, GPO, and other sites containing information vital to the continuity and vitality of the lawmaking process. If Congress is relocated to another location in the U.S., it should not have to be dependent on servers located in Washington which may have been disabled due to a massive attack on the Capital.

Moreover, every effort should be made for the public to have access to the same congressional web sites it now does. And, arrangements should be made with C-SPAN or an alternative broadcast facility in the new location to cover House and Senate floor proceedings for public viewing. It is more important than ever during such a crisis that the people can see what their government is doing and that Congress can perform its informing function through the Internet and broadcast media to ensure that public knowledge of and confidence in government is sustained.

And, eighth, every committee of the House and Senate and every support office which is vital to the functioning of Congress should adopt a contingency plan for the resumption of their responsibilities away from the Capital, even if current employees do not survive an attack. This should not only include making information on the role and functioning of their offices available at the alternative location, but also identifying capable and experienced individuals now living away from Washington, who could be called upon to assist in resuming the functions of those offices.

In conclusion, Mr. Chairman, I again commend you and your committee on beginning to think about and plan for the unthinkable. I likewise commend Speaker Hastert on calling for a contingency fund to allow such plans to go forward imme-

diately. Obviously, he will need the assistance of committees like yours, the appropriators, and the various congressional support offices to flesh out how best this money should be spent. The contingency plans called for in my final recommendation could go a long way in helping to make that determination. I firmly believe that the Framers of our Constitution got it right from the start when they designed this amazingly resilient and dynamic system. It is now up to you and others to keep it right from the re-start in the event that Congress is substantially destroyed in a catastrophic occurrence.

Thank you for your consideration of my testimony and suggestions. I will be happy to answer any questions.

[Donald R. Wolfensberger is Director of the Congress Project at the Woodrow Wilson International Center for Scholars under the direction of former Representative Lee H. Hamilton (D-Ind.). He is a 28-year staff veteran of the House of Representatives, culminating as chief-of-staff of the House Rules Committee in the 104th Congress. He retired from the House in February, 1997. He is author of Congress and the People: Deliberative Democracy on Trial (Johns Hopkins University Press, 2000); "Can Congress Cope With IT? Deliberation and the Internet," in Congress and the Internet. James A. Thurber and Colton C. Campbell, editors (Prentice Hall, 2002, forthcoming); and, "Congress and the Internet: Democracy's Uncertain Link," in Democracy and the Internet, Leslie David Simon, editor (Woodrow Wilson Center Press, 2002, forthcoming). The views expressed in this statement are those of the author alone and do not necessarily reflect the views of the Wilson Center's staff, fellows, trustees, advisory groups or organizations that provide financial support to the Center. The Woodrow Wilson Center is a nonprofit, nonpartisan organization supported by both public and private funds, and does not take positions on public policy issues.]

SUMMARY OF PROVISIONS OF STATUTORY ALTERNATIVE FOR FILLING HOUSE VACANCIES UNDER EXTRAORDINARY CIRCUMSTANCES (AMENDING 2 U.S.C., CH. 1, SEC. 8)

• Existing language in the law which leaves it to the states and territories to prescribe the time for holding special elections to fill vacancies in the House under ordinary circumstances is left unchanged.

• Under the extraordinary circumstances in which vacancies in House exceed half the authorized membership, the executive authority of each affected state affected shall issue a writ of election to fill the vacancy not later than 60 days after the vacancy is declared, unless a regular election occurs during the period or within 30 days thereafter.

• A vacancy by death or resignation can be declared either by the governor of the state or by the House (by adoption of a resolution), and, if both the House and governor declare a vacancy, the 60 day time frame for the election to take place begins with the date on which the earlier such declaration is made.

• The House may, by two-thirds vote, declare a vacancy by incapacity based on the request of the incapacitated member or on its own determination, based on competent medical authority that the member is unlikely to be able to carry out the trust and duties of office for the remainder of that term.

• If the House finds that a member is temporarily incapacitated and likely at some future point during that term to be able to resume the trust and duties of office, the House shall adopt a resolution declaring temporary incapacity and authorizing a leave of absence (with compensation and benefits). During the period of absence the Representative shall not be counted as a Member of the House for purposes of a quorum.

• A person declared temporarily incapacitated who resumes the duties of office shall be counted for the purposes of determining a quorum.

• Any Representative named in a resolution declaring a vacancy or temporary incapacity shall not be counted for purposes of determining a quorum during consideration of that resolution.

• The provisions affecting internal proceedings of the House, are enacted as part of its rule making authority; are considered rules of the House as they apply to the procedures to be followed during extraordinary circumstances; supersede other House rules only to the extent changes its rule at any time.

A STATUTORY APPROACH TO FILLING HOUSE VACANCIES UNDER EXTRAORDINARY CIRCUMSTANCES

Title 2 U.S. Code ("The Congress"), Chapter 1 ("Election of Senators and Representatives"), section 8 ("Vacancies") is amended to read as follows (with new language printed in italic):

SEC. 8. VACANCIES

(*a*) The time for holding election in any State, District, or Territory for a Representative or Delegate to fill a vacancy, whether such vacancy is caused by a failure to elect at the time prescribed by law, or by the death, resignation, or incapacity of a person elected, may be prescribed by the laws of the several States and Territories respectively.

(b)(1) Notwithstanding subsection (a), under extraordinary circumstances (as defined in paragraph 2(A)), the executive authority of any state in which a vacancy exits shall issue a writ of election to fill any such vacancy, with the election to take place not later than 60 days after the vacancy is declared unless a regularly scheduled election for the office is to be held during such 60 day period or within 30 days thereafter.

(2) For the purposes of this subsection only—

(A) "extraordinary circumstances" shall be those in which vacancies in the representation of the states in the House of Representatives exceed half of the authorized membership of the House;

(B) a vacancy caused by death or resignation may be declared by the executive authority of a state or by resolution of the House, but the 60 day period in which an election shall take place shall begin with the earliest such declaration made; and

(C) a vacancy caused by incapacity may only be declared with the concurrence of two thirds of the House either upon a written request signed by the incapacitated Representative or upon a determination by the House, based on competent medical opinion, that the Representative is unlikely to regain the ability to carry out the trust and duties of office during that term.

(3)(A) If a Representative is found to be temporarily incapacitated and likely at some future point during that term to regain the ability to carry out the trust and duties of office, the House may declare by resolution that the Representative is temporarily incapacitated and is granted a leave of absence with full compensation and benefits.

(B) A Representative granted a leave of absence by reason of temporary incapacity under extraordinary circumstance shall not be counted for purposes of determining a quorum during such absence.

(C) If a Representative who has been declared temporarily incapacitated resumes the trust and duties of office, the leave of absence shall be vacated and the Representative shall be counted for the purposes of determining a quorum.

(D) Any declaration by the House of Representative's temporary incapacity shall not extend beyond the current term of the Representative.

(4) A Representative named in any resolution considered pursuant to paragraphs (2) and (3) shall not be counted for purposes of determining a quorum during consideration of that resolution.

(5) The provisions of paragraphs (2), (3), and (4), insofar as they affect the internal proceedings of the House, are enacted—

(A) as an exercise of the rule-making power of the House and as such are deemed a part of the rules of the House, but applicable only to the procedures to be followed by the House under extraordinary circumstances;

(B) supersede other rules only to the extent they are inconsistent therewith; and,

(C) with full recognition of the constitutional right of the House to change its rules at any time, in the same manner, and to the same extent as in the case of any other rule of the House.

The CHAIRMAN. Before we go on, I want to note there is a group in the hearing room from Illinois, from Close Up. So we welcome you to the Capital.

Mr. WOLFENSBERGER. My home State.

The CHAIRMAN. His home State. Welcome.

We will move on to Dr. Frantzich, who is joining us from Prague.

STATEMENT OF STEPHEN FRANTZICH

Mr. FRANTZICH. Thank you very much.

To paraphrase Lincoln, the world will little note nor long remember what I say here, but they may remember what I do here this morning, because this is a real world test of one of the technologies that may be necessary if we go to an E-Congress. I am not really

here to advocate or denigrate an E-Congress idea, but I would like to take a few steps to analyze it from a science perspective.

As we heard a couple of times this morning, just because you can do something, there is no one that says you have to do it. There is a great deal of pressure when technology comes along to use it. The law of the instrument: Give a child a hammer, and the whole world becomes a nail. The kind of corollary to that is the law of the least appropriate target: You give a child a hammer, they will likely hit the vase rather than hit the piece of wood.

So I think we have to be very careful in terms of how we apply these technologies, but after the events of September 11th, we need some sort of a contingency plan if Congress is indispensable even for a short period of time and Members are dispersed to two or more places, perhaps some of these geographically superceding technologies that will allow it to operate.

So let me begin with the assumption that we can solve the access problem, Members can get to places where the technology is there; that we can solve the security problem, that we know who these Members are and they are legitimate participants; and third, we want a deliberative Congress. So these are my assumptions.

Let me raise four quick ideas, one about who can participate; second, what is the impact on deliberations; third, how do we maintain the official record; and fourth, choosing a technology.

First of all, in terms of who can participate, on one level today Members of Congress can choose whether they are going to go to a committee hearing, choose whether they are going to vote on the floor. We know that no technology is going to be 100 percent possible. We are going to have breakdowns. So if we are going to have Members of Congress either deliberating or voting, we are going to have to change the rules in such a way that allows for verification that their words got into the Record and their votes were correctly listed. That may mean we have to have a longer voting period. But then that has implications for strategy. What about Members who hold out their votes knowing there will be a delay? In my written testimony I try to point out some other scenarios where there may be problems of verifying votes even if we have a very redundant kind of system that guarantees access.

Secondly, collectives of Members. We have been talking so far about what I call front-channel communication, Members of Congress communicating with each other. But there has to be back-channel communication in the Congress. Party offices have to communicate with each other. Special interest caucuses have to communicate. We have to make sure those are maintained if we have a remote Congress.

Third, staff. It doesn't do much good to send Members of Congress remotely without their staff or some way to communicate securely with their staff. Staff is extremely important to Congress. We have to maintain that provision.

And then finally the public. This is where I get a little more scared. Technology is a malleable tool. I can see two ends of a continuum. On one end we can have a very secure kind of system as Members hunker down in their voting terminals, whether they are individual terminals or four our five remote sites, very secure, very efficient, very accessible to the public. That might sound kind of

appealing to be insulated in that way, but it doesn't do a great deal for representative democracy.

On the other hand, I can see Members of Congress out there among their constituents kind of with their mobile phone picking up information and then voting on the basis of that. Very representative, but not very efficient.

The kind of magic of Congress, the tradition of Congress is having Members of Congress serve as a filter for ideas. If we move to an E-Congress, we have to find a way to maintain that filter; that there is enough representation, but there also is enough efficiency.

We also have to worry about who has access to the Members of Congress. If we allow some members of the public input in E-Congress, we have to make sure we allow most of the public, most of realm of the public. We have to worry about who has access in technology and who doesn't.

Secondly, very quickly, I have some concern about deliberative content. There are at least three kinds of vehicles which we may want to talk about later on. We can do video conferencing, like we are doing this morning. We could do some sort of chat rooms which are interactive. We could do some sort of bulletin boards. Each have their advantages and disadvantages, but they raise important procedural questions: Who is going to have the right to control those chat rooms, control who speaks and how they speak? And as someone mentioned before, there is the question of face-to-face communication and deliberation. We know in research and other realms that people are willing to say things and do things on e-mail that they would never do in face-to-face conversations. The U.S. Congress has been very concerned in recent years about levels of conflict, when they have increased levels of conflict, if the technology allows people to do things that they wouldn't otherwise do.

Thirdly, we have to worry about the official record. The legal official record of the Congress is the Congressional Record. We allow people to revise and extend their remarks. So it is a written record. What happens when we have E-Record, which is a much more robust record? It may have visuals, it may have audio and all sorts of other things. How do we develop that record? How do we distribute it? Who will have access? When will they have access?

Finally, I hope this committee as it looks at the these possibilities doesn't link their ideas to one particular technology. Today we think of the Internet. Ten years from now the Internet is going to be passe. There is going to be something else out there. There is going to be a new technology, maybe a combination of current technologies. So I think what the committee has to think about is what are the functionalities that we want to worry about? Do we want to have different functionalities of technology as opposed to specific technology?

Finally, technologies don't impact on institutions like two rudderless ships that collide at night. They are affected by the traditions of those institutions, and they are affected by the decisions of those institutions. I see this hearing as a way to strengthen the rudder of Congress as it looks at these new technologies, understand what lies ahead, and hopefully provide a much smoother trip into the world of new technology solving problems. Thank you.

The CHAIRMAN. Thank you, Dr. Frantzich.

[The statement of Mr. Frantzich follows:]

STATEMENT OF STEPHEN FRANTZICH, PROFESSOR, U.S. NAVAL ACADEMY

The application of new technology is often a conflict between what is possible and what is desirable. Just because something can be done technologically does not mean it should be done. The "Law of the instrument" (often paraphrased as "give a childe a hammer, and the whole world becomes a nail.") creates tremendous pressure to apply new technologies simply because they exist. The "Law of the least appropriate target (paraphrased as "give a child a hammer and he will hit the glass vase rather than the nail") suggests the common tendency to apply new technologies to the wrong situations.

Prudent proponents of technological change need to recognize that the best applications of new technologies are demand driven. They must meet an evident need rather than simply represent the application of a new tool. The events of September 11th raise a real question as to whether the geographic concentration of the nation's top legislative leadership represents a real danger to the functioning of government and suggests considering ways to neutralize that danger and provide a contingency plan should face-to-face deliberation be impossible.

A key characteristic of existing and emerging technologies is their ability to supercede geography. The telegraph, telephone, television, and fax machine all in their day provided similar advantages for particular formats. The advantage of the Internet is that it provides the potential for transmitting information in a variety of formats (audio, video, textual) simultaneously and with the potential for interactivity.

A. Should Congress Take Advantage of Geography Superceding Technologies for Its Most Basic Collective Functions?

The initial question is not one of technology, but one of philosophy and politics. Before exploring particular technologies we must face up to the question: "Should Congress be allowed to meet remotely?" If we assume the worst case scenario that Congress can not meet face-to-face anywhere, the question revolves around the consideration of what absolutely necessary functions of government must be maintained and can they be provided without congressional input? Clearly specific constitutional requirements and the desire for checks and balances suggest the danger of operating for significant periods of time without a functioning Congress.

If Congress is indispensable, even for a short time, then an alternative must be found. It is assumed that any movement toward an e-Congress would be a temporary solution to handle a very limited set of functions such as passing a budget, declaring war, or passing legislation to ameliorate the situation which brought on the crisis. If that question of whether we should consider an e-Congress is answered with at least a tentative "possibly," the following considerations should guide the final decision and the potential real technological applications.

B. Some Concerns About an E-Congress

We will begin with the assumption that basic access and security issues can be satisfactorily solved to assure that all Members have the equipment and technological skill to participate and the validity of the legitimate participants can be assured.

(1) Who Is Allowed To Participate?

Individual Members: Not every Member of Congress participates in every committee meeting in which they are a legitimate member or in every floor debate. When Congress and its committees meet in their traditional ways, it is the individual Member who chooses whether to participate or not (and who must justify their decision to others). A danger of virtual meetings lies in the fact that accessibility to the necessary technology, equipment malfunctions, and user skills (or lack thereof) could deny some Members the right to participate even if they wished to. The danger expands in a terrorism scenario when the technology is likely to be disrupted. No technology will work 100% even under the best of conditions. For on-line deliberation, procedures would have to be determined for allowing Members to insert comments which technology malfunctions blocked. Much of this could be handled by minor changes in the "revise and extend" rules. More difficult would be how to handle the assertion "that if only I had been able to make my point the result would be different." It is impossible to "unring the bell" (or more precisely insert the ringing bell in a completed sequence.) Redundancy should in all but the most dire situations (a complete disruption of all telecommunications) provide enough alternative ways to assure participation.

A related question is when an e-Congress would meet. While the technology would allow (and perhaps even encourage) a 7/24/365 continuous meeting schedule, personal convenience and the need for time to reflect suggests clear decision rules on meeting times. The concern is exacerbated by the fact that the events that would lead to an e-Congress would be so disturbing that there would be pressure for immediate action. There is a danger that the choice of meeting times would be used even more strategically than today to deal in or deal out certain types of members (based on time zones or conflicting committee meeting schedules). Using the technology to ease the pressure of time by keeping the voting terminals (or the opportunity to enter the debate) open raises another set of questions about pressuring Members to change votes or to "correct" statements.

For voting remotely, the technology would need to provide immediate user feedback on if and how their vote was recorded. Redundancy of input would not be enough. The importance of the vote in congressional procedures is so great that absolute verification would be a minimum requirement. It is a realistic assumption that the system would not work 100% of the time. An acceptable decision rule would have to be established for defining legitimate victory margins for votes and the time allowed to challenge a vote. It makes sense that if the winning margin is less than the number of Members claiming technological difficulties or without access, the vote would have to be redone. This raises the issue of strategically withholding votes (and claiming technological difficulties) and the potential for drawn out wrangles over the legitimacy of decisions. It would also be necessary to formulate rules about changing votes since the current 15 minute rules for vote duration (in the House) would probably not apply to remote voting.

Collectives of Members: It is only individual Members who participate in the deliberation process. Remote deliberation would require the capability of party and special interest caucuses within Congress to meet and in some cases cast formal votes. Party leaders are dependent on "back channel" communications with colleagues before and during votes. The power of persuasion is typically dependent on proximity and the ability to transmit decision-driving information. To the degree that party and interest group leaders lose proximity and the ability to transmit information, they become irrelevant in the congressional process. The technology would have to allow for secure back channel communications between individual Members and between leaders and groups of followers.

Staff: Currently Members of Congress depend heavily on their staffs for information and guidance. An e-Congress would need to develop capabilities for staff input, especially if a Member and his or her staff are physically separated. A secure system for Member input would have to be matched with a secure system for staff to Member (and Member to staff) communications. Sending Members off to secure locations cut off from their staff would to little to improve decision-making.

The Public: Current congressional procedures allow input from a variety of individuals and groups in the form of direct communications with Members and formal testimony. Remote deliberation technology should not isolate Members from such input, nor skew the composition of those with the capability to participate.

Existing technologies invite two alternative images. At one extreme we could guarantee security and efficiency at the cost of public input. At the other extreme we could guarantee responsiveness at the cost of limited security and reduced efficiency.

On the one hand we can imagine fearful Members in their secure electronic voting bunker guiding the nation's future. The image of the Member hunkering down with their remote terminal ready to make key voting decisions while isolated from constituents and organized interest groups may at times sound appealing, but would vitiate Congress role as a representative institution. Such a scenario would encourage individualism and members acting at best as "trustees" for constituents, looking out for their presumed interests, but isolated from their input. Even in times of crisis, the public has a right to participate.

At the other extreme the technology could be used to dispatch Members out into the field to collect and transmit public desires faster and more accurately then when they are filtered by staff and tempered by the passage of time. The image of five hundred and thirty-five "electronic voting booths", each manned by an elected official on a "field telephone" would lead to increased localism and an extreme case of the Member serving as a "tribune," simply recording the public mood and passing it on. Security, efficiency and protection from irresponsible policy would be continuing problems in such a scenario.

While the technology could support either of the extremes, the legacy of two-hundred years with the existing Congress has been its ability to find a balance between the two extremes, allowing public input, but tempering it with judgment. An e-Congress would have to find a way to maintain that balance.

Any scenario allowing some public input, must also guarantee the breadth of public input. To the degree that electronic communications become the coin of the realm in an e-Congress, more options for subsidized options for public input and more sophisticated ways of evaluating such input will be necessary.

(2) Some Concerns About Deliberation Content

It is assumed that the operation of an e-Congress would involve, at a minimum, an interactive chat room (or bulletin board) equivalent of floor debate, managed largely in the same way as current debate by floor leaders. Who would allocate the order of "speaking" and perhaps the length of comments? If the technology were to involve a real-time chat room or video-conferencing, the debate would look much more like current floor debate since only one person could speak at a time and some semblance of argument order would be retained. A bulletin board approach would increase flexibility, but its "threads" would be less coherent and arguments much more easily lost.

Another concern is that it is widely assumed and supported by research that face-to-face communications tend to be more temperate than that which occurs on-line. People say things in e-mails they would never say to someone personally. With the concerns over comity and collegiality in Congress, an e-Congress could exacerbate conflict. New applications of formal rules and new informal norms of behavior would probably be necessary.

(3) How Will Official Records Be Accessed and Maintained?

Collecting, editing and archiving the records of an e-Congress would be a challenge, depending on the technology in use. The existing technologies allow audio, video and text. It is unclear how these would be stored to provide an accurate, integrated record of what went on in the deliberation process. The courts have ruled that legislative intent derives from the written Congressional Record, which is an intentionally edited version of reality reflecting what Members wished they had said. An e-Congress could encourage the retention of a more robust record including material in a variety of formats. While such a record would give a better feel for the decision input, the challenge of maintaining such records (and the equipment necessary to access them) will increase the cost and complexity of archiving.

A related question is who will have access and under what time schedule? Real time access to digitized records would empower technologically sophisticated citizens (and collectives of citizens in interest groups), but could increase the gap between citizens in the know and citizens in the dark about congressional activity. Since congressional records go through a variety of transfigurations (drafts, amended proposals, "revisions and extensions" of remarks, etc.), the record at any one point in time is a snapshot of a moving picture. In an e-Congress with public access materials, the definition of "the" official record would have to be carefully defined and explicated.

(4) Determining the Technology

If a plan is developed for an e-Congress, it is important not to tie legislation, proposed rules, or contingency plans to a particular technology. What we call the Internet today will in ten years seem as outdated as 8-track tapes and video disks. We don't know what the next wave of technology will be called or what its capabilities will be. The rationale for proposed applications should be based on functionalities nor exiting tools. The designers of applications would have to ask, What types of information would need to be transmitted (is audio alone enough? What about video and text?) What are the minimum requirements to allow Congress to perform its most important functions?

C. The E-Congress Journey

None of the above are "killer" concerns making an e-Congress impossible or undesirable to implement. They simply raise questions that need to be faced. Technologies do not impact on social institutions like two rudderless ships colliding at night. Applications are filtered through the traditions and procedures of the existing institutions and can be steered by careful planning. The exciting part of this hearing lies in strengthening Congress' rudder for guiding it through the exciting, but dangerous shoals of designing a viable alternative for dangerous times. If Congress is going to launch itself on the journey toward an e-Congress, it is wise to consider what it is likely to encounter along the way.

NOTES FOR FRANTZICH TESTIMONY

1. Professor Frantzich wrote the first book about Congress's use of new technology (Computers in Congress: The Politics of Information, 1979) as well as numerous

other more recent books, articles, and reports for Congress and various think tanks on the impact of technology on political institutions. This semester he is serving as a senior Fulbright Scholar in the Czech Republic. He can be contacted at frantzic@usna.edu.

2. The debate over whether a remote meeting would meet the constitutional requirement of Congress "convening" are reminiscent of the debates a decade ago over whether the electronic versions of congressional outputs were really "documents." Today it is hard to believe the intensity of the battle and that participants could not (or would not) readily agree that it was content, not format that defined congressional outputs as documents. The idea of "convening" at its heart implies joining together to take action. That function does not require physical proximity.

The CHAIRMAN. Next Dr. Ornstein.

STATEMENT OF NORMAN J. ORNSTEIN

Mr. ORNSTEIN. Thank you, Mr. Chairman, Mr. Hoyer, Mr. Linder and Mr. Doolittle. I appreciate the opportunity to testify. I want to commend you very much for your leadership to ensure the continuity of Congress after some kind of emergency or catastrophe for this hearing as well as your efforts to improve the security of the Capitol, secure alternative meeting sites and develop emergency communications channels. It is all a testament to your seriousness of purpose.

I also want to take the opportunity to commend particularly you and Mr. Hoyer for your constructive bipartisanship on election reform, which has really been a model, I think, to how this institution can and should work, and it is going to be very good for the country as well.

To get back to something you said at the beginning, Mr. Chairman, I think it is impossible to underscore enough the importance to this country after September 11th of having Congress here and operating, not only in making important laws authorizing the use of military force, appropriating money for emergency purposes and so on, but just the symbol, as I have discussed this issue with some of your colleagues, and the need to make sure that under every possible scenario we can have a Congress up and acting quickly, and it is especially important after some kind of a national catastrophe.

Some have reacted by saying, what is the big deal? If we had a period of, in effect, benign martial law for a short period of time with an executive running things, no great disaster. I disagree. I think we have to take every step to make sure that in every worst-case scenario we have a plan in place, and one that will have not just a Congress, not just one that might have three Members of the House which somehow we can manipulate to make into a quorum, but one that has the representative nature that this body represents across the country.

Just a few initial comments. A year or so ago I was down at the Greenbrier, and I made the tourist trip into the bunker. It was quite extraordinary to see the elaborate preparations that we had made in the event of a catastrophe during the Cold War. But it also becomes clear that we made all of these elaborate plans based on a model.

The model was that missiles would be lobbed from Siberia and we would have an hour or an hour and a half to get everybody together and take them 200 miles away. We now face obviously a very, very different kind or series of threats. On September 11,

that morning I was out at Dulles Airport, I got called back from the jetway when they canceled all the flights, and I saw the chaos that we had here.

I then reflected very soon thereafter on the reality that if that flight had taken off on time—now, it was a United flight so admittedly the odds were not great, but if it had taken off on time, those passengers would not have known that they were headed on a suicide mission, and the odds are it would have headed for the greatest symbol of American democracy, which is this Capitol dome. If it had hit and the jet fuel had exploded, as it did at these other sites, we might very well have had half the Members of the House killed and the other half in burn units, possibly for weeks or months—no quorum, no Congress, no ability to function. That, along with other scenarios, underscored for me on September 12 the importance of doing something; and I have been working on this set of issues ever since.

I want to commend my colleague Don Wolfsenberger. I actually convened a working group soon after those events to look at different opportunities, and he has come up with some extraordinarily constructive proposals that involve changes in the rules and, in some instances, changes in law. I don't think that is enough, frankly, given the possible scenarios, including a smallpox attack, quarantine strategies.

So we have got to think about alternatives when we can't convene in one place, when we can't have all the Members together, but also frankly when we might not, under existing rules, be able to convene a quorum even if we accept the Parliamentarian's interpretations that have been in existence since the Civil War that a quorum is not half of all the Members but half of all the living Members.

There are just too many scenarios where we could have large numbers of people either incapacitated or unable to gather together to make other things important. That gets to the jurisdiction of the committee and the subject of today.

Let me also stress that I believe it requires—and I believe reluctantly, because I don't favor any constitutional amendments as a general rule—that we really are going to have to look at the possibility of something to provide for temporary memberships, especially under so many of these scenarios in this terrorist age where incapacitation may be a greater threat than destruction or death of all of the Members. That is true for the House and the Senate.

While we might be able to deal with it in a stopgap way by redefining a quorum to take the incapacitated Members out of it, I just don't want to have a period of time when we might have six or eight or ten Members of the House who might all be Members of one State's delegation, for example, who just happened to be away making these important decisions.

I think we have to find ways to convene the Congress in the most robust fashion.

I commend, obviously, Mr. Langevin and Mr. Baird who seized on these issues right from the beginning. There is one area of Mr. Langevin's bill and testimony that I think is especially important for us to grapple with, and it struck me also on September 11 with

the absurdity at the Pentagon that people from different rescue teams couldn't communicate with one another.

We have clearly a terrible problem: It is a larger spectrum problem with emergency communications. The cell phone system froze, and we have people from different areas and almost any kind of a tragedy certainly, as we know in the Washington area, is going to involve Montgomery County and, very possibly, Prince George's County in Maryland, that will involve Fairfax and other counties in Virginia. If they can't communicate with one another, and they might all end up convening in the Capitol, we have got a terrible problem.

And if Members of Congress are using cell phones or are using BlackBerries, but they are all part of a larger system that simply can't handle the traffic, then we are going to have a crisis. So we have got to find secure and dedicated means of communication, and communication especially, as Mr. Langevin says, to start with, to make sure that we know where Members of Congress are and whether they are alive and able to communicate.

Think of the chaos at the World Trade Center and the Pentagon where we didn't know who was there. We still don't know exactly who was there. We didn't know who was alive or who wasn't alive. If we had rubble around, we could have a situation where we simply wouldn't have any idea. At the same time, even as you think about the notion of convening an E-Congress—and I associate myself strongly with the remarks of Mr. Dreier and of Don Wolfsenberger about the undesirability of doing such things except under the most dire of circumstances, and I want to recount for you a conversation, just something I mentioned to Mr. Linder before we started.

Several years back, my friend and yours, John Kasich, called me up, very excited—though I suppose it is redundant to say "very excited"—and said, "I've got a great idea, Norm. What do you think about it? Now that we've got electronic voting, why don't we just vote from our offices and vote from our districts and we wouldn't have to deal with all of these hassles."

I said, "Please carve out a couple of hours so I come in and persuade you as to why that's an awful idea. But I am afraid many of your colleagues would jump at the notion of having the convenience of being able to do their business from back home, or do their business from somewhere else, or avoid all of the hassles that are involved in coming to Washington, going back and forth to vote and so on."

And this is going to become a bigger problem because, as Steve Frantzich suggests, the technology is moving at a rapid pace. It's probably going to be only a matter of 3 or 4 or 5 years before we have holographic images replacing even the videoconferencing; and the drumbeat from outside and inside to take these technological tools and telecommute, in effect, will be very, very strong. So we have to build in not just a set of regular safeguards, but fire wall upon fire wall upon fire wall to make sure that if, under the most dire of circumstances, you need to have the ability for just a short period of time, perhaps even to declare war, and you are scattered or you are quarantined and you can't convene at any individual place, that it is absolutely limited to that.

That means, among other things, that we have to consider what threshold triggers such an emergency, who decides when that threshold is met; and especially under a set of circumstances where the leaders might not be available, might not be alive or might not be able to communicate with others. This requires a good deal of thought and effort.

All of that, including how you would change the rules to make this possible, whether indeed it is constitutional—and I think, with Don, that this is of dubious constitutionality, if we actually have an E-Congress, throwing out all of the norms and the framers' ideas of what a deliberative body is, to vote and to do the other people's business. But even if we do, we have got to work through all kinds of nuances.

Let me note that very shortly the American Enterprise Institute and the Brookings Institution will put together a blue ribbon commission to deal with the issues of the continuity of governance that includes the Congress, the Supreme Court and presidential succession to try to work through some of these issues. We are available, as I am individually, as Don and Steve and the others are, to assist you in your part of the task.

I hope, as well, that you will all engage more broadly in the larger set of issues beyond the jurisdiction of the committee to deal with all of these scenarios, which we know range from a suitcase nuclear bomb that, with no notice, could take out a good part of official Washington to an anthrax or a smallpox attack that could eliminate a lot of people, create chaos or quarantine large numbers of people, to a kind of attack that could put people in burn units and make them incapacitated for months.

You can't remove them from office, but you want to have a robust membership of the body; and of course, as we have suggested, to a set of circumstances where Members are scattered and may not be able to travel.

Thank you very much.

[The statement of Mr. Ornstein follows:]

TESTIMONY OF NORMAN J. ORNSTEIN, RESIDENT SCHOLAR AMERICAN ENTERPRISE INSTITUTE

Mr. Chairman and Members of the Committee:

I commend you for your leadership in ensuring the continuity of Congress after a catastrophic attack. This hearing, as well as your efforts to improve the security of the Capitol, secure alternative meeting sites, and develop emergency communications channels, area testament to this committee's seriousness of purpose and the urgent task before it. I thank you for the invitation to testify before you today on the possibility of "convening" an e-congress with Members participating from remote locations. While I strongly support the use of technology to facilitate remote communication and to preserve and provide access to information vital for the functioning of Congress, an e-Congress is not a substitute for the real thing. Communications and voting from remote locations will not allow for the face-to-face contact that makes you true "representatives" of the people and that makes Congress the greatest deliberative body in the world.

One can imagine a number of scenarios where it might be difficult to convene Congress in the traditional sense. There is the possibility of a biological attack with many members quarantined and unable to come together for fear of spreading a dangerous infection. Chemical or conventional attacks might leave many members in hospital beds, mentally aware, but unable to meet at a central location. An attack on the Capitol building while members were in their home districts might destroy the meeting place, and leave members scattered across the country, unable to travel to Washington or another central location. After September 11th, all of these sce-

narios seem possible. It is for this reason that I strongly support your efforts to secure alternative meeting places in the Washington area and elsewhere, and to provide members with secure communications equipment so that they might be in touch shortly after an attack.

But I stop short of endorsing an e-Congress, defined as members situated in multiple locations debating, voting, conducting hearings and markups and doing other official business by email, webcast, or telephone. Under such a procedure, you as members would not be acting as representatives in the essential meaning of the term.

Members of Congress must represent the interests of their constituents while simultaneously interacting with other members to reconcile interests from throughout the country—all to fashion policy that promotes the public good. Both sides of this equation are essential to true representation. That is why members lead "double lives," spending significant time both among constituents and in the halls of Congress. No matter how advanced the technology, there is no substitute for the face-to-face conversations and informal interactions between members that can build goodwill across party and region, and that are critical to genuine institutional and individual deliberation. Likewise, relationships among staff and advocacy by interest groups are important for the legislative process and would suffer dramatically if they were conducted remotely rather than face-to-face.

These relationships have the effect of knitting together the Congress and passing legislation that is broadly acceptable to the country as a whole. You are not merely 435 autonomous individuals; you are also important parts of a larger institution. I know of no major piece of legislation that could (or should) have been passed without such personal contact. And I cannot envision a bill of even modest complexity being drafted and voted on by members whose basic contact to the outside world was a phone or email address.

It is critical for Congress to consider every dire circumstance that could result from a catastrophic attack on official Washington. That includes circumstances under which members of Congress are scattered around the country and unable to travel to convene in Washington or elsewhere. I commend especially Representative Langevin for focusing on this problem and grappling with a solution. But I frankly fear a solution that provides an imprimatur to a remotely-driven e-Congress that would too easily slide into use in non-emergencies. Emergency preparations for video conferencing a session of Congress are worth serious consideration and planning. But even to consider that alternative is a risk—it must not be done without ironclad assurances that no such plan could take place except for a very short period of time under a dire emergency. Never forget that the precedent set by an e-Congress might undermine the intrinsic deliberative nature of Congress and its regular workings by encouraging more indirect forms of legislating.

THE CONTINUITY OF CONGRESS

What is most urgent for this body to consider is how to make sure that the Congress has adequate membership to operate after an attack. We must plan for alternative meeting sites and alternative methods of meeting and voting. But it is even more important to ensure that there would be enough members for Congress to operate at all. It is for this reason that I have joined with Rep. Baird and others inside and outside Congress to advocate measures to ensure that Congress can continue to operate as a constitutional body.

There are two basic problems: the constitutional quorum requirement, and the possible incapacity of many members of Congress in a catastrophe. As Don Wolfensberger suggests, it might be possible to change the rules and redefine the quorum to exclude temporarily incapacitated members. But I do not believe that such a change would deal adequately with the problem. If 200 members of the House were killed and an additional 230 incapacitated by an attack, one might manipulate the rules to allow the remaining five members to serve as the House, with three constituting a quorum. Do we really want to have three members of the House acting to authorize the use of military force, appropriate funds for disaster relief or defense, or alter constitutional guarantees of due process to deal with a continuing terrorist threat?

Thus, while I support Congress taking immediate, interim steps through enactment of laws and changes in rules to minimize the threat to governance we now face with contemporary terrorism, I have come reluctantly to the conclusion that a constitutional amendment is also appropriate and necessary. Congress needs to create a mechanism for temporary appointments to ensure its continued functioning in the event of a catastrophic act.

Drafting an appropriate constitutional amendment, however, is not easy. Representative Brian Baird and Senator Arlen Specter have drafted slightly different versions of amendments to address these problems. Both take effect only when a significant fraction of the members of Congress have been killed or incapacitated. When such an event occurs, governors are required to appoint temporary replacements, who can serve until a special election is held.

I favor the general outlines of such an approach, but I have crafted an alternative amendment that differs in several significant ways. My amendment is triggered when a majority of governors determine that a majority of their state's delegation is either dead or incapacitated. In the case of a vacancy caused by death, governors would appoint temporary members to serve until a special election is held. In the case of incapacitated members, governors would appoint a temporary representative who would serve until the member recovers, dies, or until the next general election. In both cases, governors would appoint a replacement from a list of seven potential successors drawn up by each individual member.

There are several advantages to this approach. First, it decentralizes the trigger mechanism and moves it out of Washington, an important consideration if our capital is the target of an attack. Second, because twenty-six governors would have to make a similar determination, it removes the power to trigger temporary appointments from one hand and ensures that no abuse of power for political or other purposes can occur. Third, it makes it clear that any member who is incapacitated and recovers can resume his or her seat immediately. Fourth, it deals with the problem of governors appointing temporary members who are antagonistic to the views of the deceased or incapacitated member by requiring the governor to appoint from a list of successors designated by the individual member. A number of states have emergency procedures to this effect. I have attached a copy of an amendment along these lines.

Fortunately, a growing number of people are focusing attention around the continuity of Congress. In January, I convened a working group of constitutional, congressional and legal scholars, including Don Wolfensberger, to discuss these issues and come up with a menu of alternatives. Not all agreed with my approach of a detailed constitutional amendment, but there was consensus that the question of the continuity of Congress was one of the most serious facing our republic. We have created a webpage that details many of the proposals, articles and opinion pages on the subject: *www.aeipoliticalcorner.org/continuity.htm.*

I am encouraged by the committee's attention to these difficult questions. I hope that the committee will continue to explore ways in which technology might assist the Congress in the aftermath of a terrorist attack, and that it will find answers short of a move to an e-Congress. And I hope that you will also consider measures to ensure the constitutional viability of Congress as an institution. We owe it to the victims of 9/11 and all Americans to keep our institutions strong in the face of those who would seek to destroy our way of life.

The CHAIRMAN. I appreciate your testimony.

I shared Lincoln County in Ohio with John Kasich; he had half the county. We talked about that idea of his, which I didn't support, but I did tell John a special exception, it would have been good to keep him back there and we come out here. You can tell John I said that.

We will go on to the final witness, Dr. Thibadeau.

STATEMENT OF ROBERT THIBADEAU, PH.D., DIRECTOR OF SECURITY ARCHITECTURES, SEAGATE TECHNOLOGIES, INC., PITTSBURGH, PA

Mr. THIBADEAU. Mr. Chairman, members of the committee, thank you for the opportunity to testify before you today.

The last time I was in Washington, I flew in on the same flight, September 11. I spent the afternoon walking—I was giving a talk at the J.W. Marriott. We were locked down the entire morning. I got to walk this whole area with nobody in it. Finally, the J.W. Marriott put me up, and I got to watch the Pentagon burn.

In this statement I will enumerate the principal technical issues that arise in considering a distributed Congress. Any change to the

way Congress functions can have risk, but change, as we know, is also inevitable.

In considering how to conduct congressional operations in emergency situations, we should not look at available technologies first, because this is apt to create an awkward and perhaps unusable patchwork of solutions. The preferred approach is to analyze the deliberative and decision-making processes that we wish to achieve and then identify the necessary and sufficient technical means to achieve these ends.

Can we define in precise terms the model of communications necessary for the Congress to deliberate and decide? The model needs to specify the ebb and flow of human interactions, the rules and timing of meetings and authority structures. It also needs to specify all the modalities of communication needed, including textual, documentary, audio and visual in the context where everyone finds the communication natural and appropriate.

Suppose we resolved these structural issues. What about information security? For any communication we can measure security against six considerations. They are called integrity, privacy, authentication, authorization, audit and availability. For example, if we just consider the security of the communication between two Members of Congress, we can state, is the integrity of the communication preserved and not tampered with? Is the communication hidden from all those who are not authorized to receive it? Are the parties to the communication actually the people they pretend to be? Is this really this particular Member of Congress? Is this party to the communication authorized to be a party to the communication?

This may not seem like much if we are talking about a communication between two Members, but what about authorizing all Republicans to a caucus, or all committee members to a meeting? Is there a record of the communication that can be consulted if a violation of security is suspected? Many of the most damaging attacks against security are covert attacks that are revealed through forensic analysis of logs and audits. Is the timeliness of the communication protected against denial of service attacks or even simply system failures?

We can note that simply creating artificial delays can easily disrupt human communications. Message integrity, privacy, authentication, authorization, audit and availability need to be addressed for any part of the communication system, and the systems needed to achieve a viable user interface. So, for example, during a vote it is necessary to determine that all votes are correct, that they are anonymized or hidden when they need to be, as with voice votes; that they are coming from whom they seem to be coming from; that they are all authorized; that a record is kept in case of suspected security failure; and that the votes can be executed and completed in a timely fashion.

There are other issues that I would term "special issues." I will take a few of these in turn. How do we authenticate a Member of Congress? This turns out to be a very interesting problem. We may have a Congressman log in, we may use voice recognition or an iris scanner to identify that this is truly the Congressman.

But we may need constant authentication. Suppose an attacker knocks the Congressman out after the Congressman logs in; now the attacker can pretend to be the Congressman. Since a Congressman can vote, how do we know when the Congressman is just absent versus when he has been incapacitated in a fashion that allows a secondary authority to vote in his stead? We need to both authenticate his constant presence and authenticate the nature of his absence.

How does the public play a role? Clearly, even the Congress today is concerned about misuses of public access, access that can distort proven deliberative processes. How can the public have input if the Members and staff are at locations where physical access is not possible? This is an issue needing serious study.

Finally, let us bring up perhaps one of the most interesting of the special issues. Compromising negotiation as often as not involves a clear understanding of emotional commitments. How do we carry the fair fight off the Hill and into a distributed framework? This special issue really represents but one of a family of special human issues that greatly facilitate the processes of Congress. It is here, I believe, that we are most likely to find alternate human strategies that are compatible with the technical infrastructure.

There are many ways to signify that one is angry, for example. The ways one may use in daily person-to-person contact may be different from those employed on the Internet.

This brings us in our analysis to the issue of whether we should seek perfect mimicry of congressional process or simply mimicry of the legislative and other results of a distributed Congress. We know that the only people who can judge the efficacy of a geographically distributed emergency system are the participants in it. Even after we think we have the technical issues resolved through such modeling and analysis as I have described, there should be the expectation of practice runs which will refine the process and eliminate the inevitable oversights and errors.

This is my statement. I have tried to provide a simple method for enumerating the issues in developing a geographically distributed Congress that can nevertheless function as a Congress.

I am available to take any questions. Thank you.

[The statement of Mr. Thibadeau follows:]

STATEMENT OF ROBERT THIBADEAU, PH.D., DIRECTOR OF SECURITY ARCHITECTURES, SEAGATE TECHNOLOGIES, INC., PITTSBURG, PA

The House of Representatives or other deliberative lawmaking bodies may find it important to function during times when the voting members and supporting staff are geographically distributed. The purpose of this statement is to try to identify the principal technical issues that need to be effectively addressed in order to enable distributed deliberation and decision by the entire congressional membership.

The best approach to this problem is clearly not to look at available technologies first. If we look at communications technologies first we are apt to create an awkward, and perhaps unusable, patchwork of solutions. The preferred approach is to analyze the deliberative and decision-making processes that we wish to achieve, and then identify the necessary and sufficient technical means to achieve these ends. This brings us to the first issue:

1. Should we attempt to mimic the deliberative and decision-making processes as they exist in the current congressional context, or should we develop a separate set of processes more suited to the circumstances of distributed action?

There is no easy answer to this question. It is almost certainly true that if we make any physical change to the geographical context of congressional processes,

the processes themselves will change. As a matter of practice, it will be impossible to perfectly mimic all forms of human interaction that take place in congress that can influence collective decision making. Trying to mimic may well be the wrong goal. A better goal may be to achieve outcomes that members feel comfortable would be the same outcomes achieved if the membership were meeting in normal congress. The telecommunications and computing tools needed to achieve this effect of natural outcomes may well not at all mimic the ways in which the membership interacts on congressional hill.

However, there are certain basics of what it means to be in congress that allow us to confidently define other issues that will most certainly need to be addressed. So, let's just take the dictionary of congress as a "formal assembly of representatives to discuss problems and legislate." This congress can be characterized scientifically as a dynamic matrix of communications among members, staff, and public. The communication is not constant, but ebbs and flows. A congress naturally incorporates provision for time to study and reflect, and for many kinds of special interactions in groups that precede the full congress assembled.

For those of us who have had many years of daily experience with computers, the technology of chat, as may be found in the original Internet Relay Chat (IRC Chat), or AOL Instant Messenger, provides a natural way to permit members, staff, and public, to both publicly and privately deliberate. The Blackberry mobile email devices in use by many legislators also provides chat-like interactions among members, staff, and public. But, while Chat has many of the correct properties of congressional interactions, it is only for textual input and does not have easy means for audio-visual interactions. Chat may seem appropriate, but this is letting available technology drive our thinking about congressional processes. We can't really evaluate whether we want to change congressional processes until we can enumerate them. So, the second issue that we can identify is this:

2. Can we define, in precise terms, the model of communications necessary for the congress to deliberate and decide?

Clearly, this model of communications needs to describe the ebb and flow of private, semi-public, and public deliberations and decision-making. It needs to specify rules, timing, meeting, and authority. It also needs to specify all modalities of communication needed including textual, documentary, audio, visual, and perhaps others (such as gestural) in a context where everyone finds the communication natural and appropriate.

We know that there will be certain technical limits. For example, it would be impractical to have 435 live talking heads on a screen, first because that many talking heads cannot be put on a screen, second because it would lead to incomprehensible jabber, and third because the bandwidth limitations of our telecommunications infrastructure simply make 435 live talking heads impossible. Of course, it is possible to have all 435 Members on line simultaneously, just not in live video. This brings us to a third issue:

3. Given a desirable model of communications, how do we technically accomplish this with a natural, transparent, user interface?

So, we may, for instance, find that instead of 435 live talking heads, a given member of congress may choose to watch the Speaker's dais and follow one conversation at a time with only a few participants on screen at any given moment in time. Staff may track other events occurring in parallel or certain events may be stored for replay. Priority interrupts may be possible by senior members needing to intervene in the interest of timely decision making.

Supposing that we resolved all these issues to congressional satisfaction, many other issues still remain. Many of these involve information security. There is a fairly well understood technology associated with security. Consider any given security problem, we can measure security against six considerations: integrity, privacy, authentication, authorization, audit, and availability. For example, if we consider the security of the communication between two members of congress, we uncover new issues:

(a) Integrity: Is the integrity of the communication preserved and not tampered with?

(b) Privacy: Is the communication hidden from all those who are not authorized to receive it?

(c) Authentication: Are the parties to the communication actually the people who they pretend to be. Is this really this particular member of congress?

(d) Authorization: Is this party to the communication authorized to be a party to the communication? This may not seem like much of we are just talking about two individual members of congress, but what about authorizing all democrats to a caucus, or all committee members to a meeting?

(e) Audit: It there a record of the communication that may need to be consulted if a violation of security is suspected but not detected at the time of the violation. We may note that many of the most damaging attacks against security are covert attacks that can only be revealed through forensic analysis of logs and audits.

(f) Availability: Is the timeliness of the communication protected against denial of service attacks or, even, simple system failures. We can note that human communication can be easily disrupted by simply creating artificial delays.

These six issues need to be addressed for any aspect of the security problems that can be identified in the dynamic communications model and the systems needed to achieve a viable user interface. So, for example, during a vote it is necessary to determine that all votes are correct, they are anonymized or hidden (as with voice votes) when they need to be, they are coming from who they seem to be coming from, they are all authorized, a record is kept in case of suspected security failure, and the votes can be executed and completed in a timely fashion.

We can also raise these six issues for any component of any particular process. So, for example, we can simply examine the digital link between two locations and confirm that the integrity of the link is not compromised, that the information is hidden from anyone who does not have a right to see it, that end points of the digital links are indeed the end points that they pretend to be, that the communication along the link is authorized, that it is audited, and that it is available at all times required by the dynamic communications model and the user interfaces.

So, the above six security issues really multiply into quite a number of issues because of all the types of communications necessitated by the dynamic communications model and the user interfaces. There is no reason to enumerate all these types except to raise this enumeration, itself as an issue:

4. Can we enumerate all the security problems associated with the dynamic communications model and the user interfaces?

The answer is that we can probably do this. However, it is not a simple matter. One can take a seemingly simple act, like a single email message, and analyze this down through a very large number of potential security problems. For example, many people don't realize how easy it is to spoof an email server or to sniff email. It is also possible to create a 'man-in-the-middle' that can alter the email message in ways meant to change behavior. The integrity of seemingly instant actions can also be breached by system operators. How do people know that I've unplugged five Members of Congress just before a vote? The practical method to enumerate the security problems is to enumerate or identify only those security problems that are suggested by risk analysis to be worth analyzing. The risk is ultimately to a breakdown of the congressional decision making itself, but minor risks, such as the risk of a brief delay in email delivery, is not worth mentioning.

There are some other issues that I would term "special issues." I will take a few of these in turn:

5. How do we authenticate a member of congress?

This turns out to be a very interesting problem. The simplest notion of authentication is that the member of congress logs in with his username and password. But we know that someone else may guess a password. We may require, then, that the member of congress use a physical, unique token, such as a smart card, along with a password, to authenticate himself as being the actual congressman in question. Finally, we may go beyond what the congressman has and what he knows, to what he is. We may use a fingerprint scanner, voice recognition, or an iris scanner to identify that this is truly the congressman in question.

But there is more to authenticating the congressman that just this. In a deliberative, interactive process we may wish to constantly know that this is really the congressman. For example, suppose an attacker knocks the congressman out after the congressman logs in, and now the attacker can appear to be the congressman. The authentication may need to be continuous. This special issue of authentication can become quite important.

But the special issues of authentication do not end with this. Since a congressman can vote, how do we know when the congressman is 'just absent' versus if he has been incapacitated in a fashion that allows a secondary authority to vote in his stead? We need to both authenticate his presence and authenticate the nature of his absence. This would also be true of staff. Indeed, authenticating absence is at the root of much trust among members and also in establishing rights.

6. How does the public play a role?

The dynamic communications model will need to have a role for public input and public inspection of both process and decisions. Clearly, even the congress assembled on the hill today are concerned about misuses of public access—access that can distort proven deliberative processes. How can the public have input if the Members and staff are at locations where physical access is not possible? What kind of feed-

back is needed? Perhaps all that is needed is that the public can see the summaries of their input so that they know that the congress is taking note of the public debate. This is an issue needing serious study.

It also brings us to still another very interesting special issue:

7. How can we confirm that a congressman has actually reviewed the material we think, or hope, he has reviewed?

If we simply look at the technical communications model, it may not be sufficient that the mail has arrived in the congressman's inbox. We may need to know that he has read the mail. With public input, we may want to know that the congressman has at least looked at the summary statistics. A very effective security attack, which can also be 'socially engineered' by the bad guys, is to create the circumstances under which a decision maker does not review certain documents or material key to his deliberation. On the hill, a quick remark or a glance can confirm that someone has read a document in question. In a geographically distributed system, there may need to be other methods. Ideally these other methods will be well engineered for ease of use and also protect privacy where appropriate.

Finally, let us bring up perhaps one of the most interesting of the special issues. This is the one that revolves around emotion:

8. Compromise and negotiation as often as not involves a clear understanding of emotional commitments. How do we carry 'the fair fight' off the hill, and into a distributed framework?

This special issue really represents but one of a family of 'special human issues' that greatly facilitate the process of congress. It is also here that I believe we are most likely to find alternate human strategies that are compatible with the technical infrastructure. There are many ways to signify that one is mad, for example. The ways one may use in daily person-to-person contact may be different from those employed over the Internet.

This brings us, in our analysis, full circle to the original issue of whether we should seek perfect mimicry of process or simply perfect mimicry of results.

Even though this has not been a discussion of particular technologies, I believe it is important to emphasize that we do know something about the characteristics of the technologies that will go into resolving all these issues. The most important characteristic is that the solutions will involve telecommunications and computing, and that the solutions cannot simply be software solutions. We know, for example, that any purely software solution will need some special component hardware to harden the security and protect member privacy.

We also know that the only people who can actually judge the efficacy of a geographically distributed emergency system are the participants in it. Even after we think we have the issues resolved, there should be the expectation of practice runs, which will refine the process and eliminate oversights and errors.

This, then, is my statement. I have tried to a provide a simple method for enumerating the issues in developing a geographically distributed congress that can nevertheless function as a congress assembled as dictated by our constitution.

The CHAIRMAN. I want to thank you for your testimony. I have questions and other Members will have some questions.

I have a question I guess I will throw out there generically for those who would be very skeptical or opposed to even embarking on an E-Congress in the event of an emergency.

I wonder if you can go through every scenario and create every fire wall, which I agree should be done, and you have two or three other different locations, one in the western part of the United States, one in the Midwest, one in the East. You have actually prepared—we have prepared how Members would be picked up, if they were back home, by helicopter or transporter; or we would have a certain window to get to one of these locations, or—I think maybe Don mentioned this—you would have one Congress possibly, let's say, out in California and the other here in Washington or some other location, they would teleconference the two. I think that was suggested.

Having said that, if you build every fire wall possible, but you have to still take an account of something that is so catastrophic— you can't travel, smallpox or whatever—would you then in the last

case scenario think we should embark on an E-Congress? Or should it just not be considered?

Don.

Mr. WOLFSENBERGER. I think you raise a very interesting and, not a probable but a possible scenario, and that is that if traffic is snarled, airports are shut down, highways are not moving or anything, how do you go about reconvening Congress? And I think either you learn to live with a slight delay until you can reconvene Members together, or you have this fall-back that you are looking at of allowing some type of rudimentary communication to take place, or even formal voting to take place, from individual Members' district offices or homes or whatever.

I am just very leery of that even in that extreme event. I think that it might be worth waiting a week until things sort out a bit.

I don't think, for instance, if we are attacked, that you need a declaration of war to fight back. If you are attacked, you are at war. So I don't think that is a big deal. I don't think that you are going to run out of money in the first week or so.

I understand Norm's concern about having some type of martial law in place until Congress can get back on its feet and start legislating. This is what we had in the Civil War. It broke out in April when Congress was not in session; Lincoln brought them back July 4, I think it was. But in the meantime there was a type of martial law. But Congress then quickly retroactively authorized the things that Lincoln had done because he realized that he had gone beyond constitutional bounds. He asked Congress to authorize the things that he had done and they did so.

So I guess I am not as uptight about those things as maybe I should be. I don't know.

The CHAIRMAN. I had a fascinating conversation with Chairman Dreier last week. We were talking over on the floor and just went through scenarios, and you try to reason out how many would you have to have, other sites for Congress, if you didn't have any Congressmen. We went through just about every scenario that could happen.

I do agree generically that, in my opinion, it would have to be just of the rarest situations; and you would have to look, as all the panelists have raised it, at all the other issues—who convenes it, where is the involvement with the leader and the Speaker. There are a lot of issues.

Technologically, probably for the most part, it is workable unless the satellites go down and then everybody is out of communication. And there is nothing you can do about that once that happens. I do appreciate the comments on that.

Dr. Ornstein.

Mr. ORNSTEIN. I would probably be a little bit more open to it than Don is in the end, in the worst of worse case scenarios. Mr. Thibadeau has raised an issue that I didn't want to bring up, but I think is an important one, and it is one that I have used frequently as I have sort of railed against the great trend towards vote by mail and remote voting more broadly in the electorate, which I think is a terrible, terrible trend that we have embarked on, partly because of the great capacity for corruption which we

have seen play out in many places, that once you lose the sanctity of the voting booth, the zone of privacy, anything can happen.

Here we know we have had at least a couple of examples of people misusing their voting cards even for electronic voting, that having this kind of process where you are voting from remote locations and making sure you really do have those individuals is no easy task.

Having said that, if you do embark down this road—and maybe we need to—it is not just having fire walls. I think it is building in a piece of legislation or a set of rules that create several other triggers, options that have to be explored or ruled out first before this ever happens.

Among them should be having not just one or two, but maybe even five or six or seven sites around the country, if Members are back in their districts where it might much more easily be possible for them to convene someplace 100 miles away. And then you could link them together, so that at least you have a large number of people together and you can see physically who is voting or who is acting. That is a much better possibility.

But before we ever get to that point—and I am worried about martial law and I am worried about the symbol—I want the Congress—immediately or as soon as we can possibly convene it, I want the symbol for America and I want the decisions being made by a large number of Members of Congress. I want to have replacements ready if necessary. I want to take into account all of those contingencies.

But if you are going to do this, it's not just saying it is only used under extreme circumstances, but you exhaust every other possible way of having a face-to-face, deliberative body before this is ever triggered. And then who triggers it? Probably you want to put this in the hands of leaders, if there are leaders, so you have got people who presumptively care about the integrity of the institution and may even want to protect Members from themselves, in this case, from wanting to do it in a convenient way.

The CHAIRMAN. You have raised another issue. Something happens out here and something happens to the leaders, the two main leaders. They can't get to D.C. How do you elect leaders? Do you sit without them? It goes next in line? Those are all, again, issues.

What happened—and Steny makes a great point, angst was beginning with the Members and with what happened on September 11 having gone on longer, I think then the raging debate in this country—and it had gone on several days—was the fact that you didn't have a Congress, and you had one person and/or four or five people running the entire Government. And I think that, in itself, would cause a lot of anxiety in the United States where the citizens are used to a checks-and-balance system.

Mr. ORNSTEIN. Let me just note, if I may, Mr. Chairman, that the shadow government that the President, to use that phrase loosely, has put into place is a commendable idea to make sure that Cabinet offices can be kept running in the event of some real catastrophe hitting Washington, so that you have got somebody in the official line who can provide civilian leadership in the Defense Department, get the Social Security checks out, keep the CDC running and so on.

But we have a problem with Presidential succession now that isn't just solved by having a Cabinet member leave the Capitol when the State of the Union message takes place. All the people in line of succession for the Presidency are Washington-based figures. This is another area that we need to revisit sometime along the way to make sure we have got some plans in place there.

There are plenty of times when all of those people—the Cabinet, the President, the Vice President and the Speaker of the House and the President Pro Tem of the Senate are here in Washington.

Mr. HOYER. The focus of Mr. Langevin's bill and really what we are talking about is the technology of how we do this. What you have spoken to, many of you, is the concern—Don, you particularly, and David Dreier—of whether we ought to do this; and if we do do it, how do we limit it to a very short period of time and the exigency that there is no other way to do it. There are obviously some pretty profound questions here raised by Mr. Baird's bill and by the technology of remote meeting.

Dr. Ornstein, you mentioned the Constitution, whether we will have to amend the Constitution to provide for that. I will ask this question and maybe one of you knows the answer.

You referenced, or somebody made reference to a provision of the United States Code, paragraph 27, where the President can change the place of meeting of Congress if we have a biological attack or a plague or quarantine or something of that nature precluding meeting here, in Washington. Article 1, Section 5, paragraph 4, of the Constitution says, "Neither House, during the session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting."

Has there been any discussion about section 27 as it relates to paragraph 4 of Section 5 of Article I in terms of what does "place" mean? For instance, if we are all around the country accessing perhaps West Virginia, which may be a central location for communication, what are the ramifications of relationship between those two? Are there any? And, therefore, would a constitutional amendment be necessary? I think, Norm, you suggest it might be, to allow even for the contingency of electronic accessing and debate and voting.

Mr. ORNSTEIN. There are some questions, open questions really, about what "place" means, whether it means the physical building of the Capitol, the seat of government in Washington itself.

I think, actually, that section 27, nobody has challenged it, but it could be challenged if somebody had standing in terms of whether in fact it would be constitutional for the President to basically say, you can meet somewhere outside of Washington, even in the event of an emergency, without amending the Constitution.

I do think it may be possible to do something protectively here, and that would be just simply to have the House and Senate each pass resolutions providing for the other body to meet in the event of some emergency, to give them that a priori approval so that you do not have to worry about the constitutionality of it if one body is taken out.

But with all of that—and these are questions that have to be resolved—my conclusion that we need a constitutional amendment is

related to that, but it is not that specifically. It really is that I fear, even if we do as Don suggests and change the rules, so that you can change the meaning of a quorum—and that has its own constitutional issues, but I think it is doable—I just think that if you ended up where decisions might have to be made that included picking a new Vice President, as well as deciding meeting places and so on, that if you had 430 Members of the House out of commission and five Members constituting the body and you defined it so that three could provide a quorum, that is just not adequate. So we need to make sure that we have a quorum in place by any reasonable definition so that we can make these kinds of decisions, including decisions about a meeting place.

That, to me, leads me reluctantly to the conclusion that we need to have a provision in both Houses for some kind of temporary replacement membership in the event of death or, even more particularly, of incapacity.

Mr. WOLFSENBERGER. Mr. Hoyer, 2 U.S.C. 27, I just learned this morning from Roman Buhler on your staff, was enacted initially in 1794; and a little light went on in my head, because yesterday I was reading about the yellow fever epidemic that hit Philadelphia, which was then the capital, in August of 1793. The Congress was not meeting then; the entire government, the executive branch, what there was of it, moved to Germantown until this epidemic passed.

But it would make sense that the Congress would deal with that issue when it did come together, I think in December of 1793, and that was probably the basis of that law. Hamilton almost died of yellow fever in 1793 because he and Jefferson stayed behind in Philadelphia. Jefferson didn't catch it, but it was quite a crisis for the government. About, I think, a tenth of the population of Philadelphia died in that epidemic—4,000 out of 40,000.

Mr. HOYER. Let me ask another question that deals perhaps more broadly with the Baird proposal and how we provide for the contingencies, but also, in terms of communication, ultimately what you are communicating and who the Members are.

In some States if a Member of a party dies in a State legislature, that legislator must be in the interim—if there is a provision for appointment, as there is in our State—that legislator must be from the party of the deceased Member. In the United States Senate, of course, that is not necessary; and obviously governors are free to appoint whomever they want, and we have seen party changes on a relatively frequent basis as a result.

Again, this is related more to the Baird proposal, but it occurs to me, for instance, not an unreasonable hypothetical scenario if the Republican Conference meets in the House Chamber in the Capitol and the Democratic conference meets in the Cannon Building and a disaster occurs. It could occur that one party—because they meet in different places for caucus—one party could be disproportionately eliminated, if you will, so that if that occurred, you would then have a tremendous imbalance.

Has there been any thought to perhaps requiring that that balance be maintained at least in the short term?

Mr. ORNSTEIN. This is something that we have grappled with a lot, and many of your colleagues expressed concern about having

a governor—when a hearing was held in the Judiciary Sub-committee on the Constitution, Mr. Nadler expressed concern that if we had had this awful problem, it would be a governor of the other party picking a Member to replace him.

Senator Specter has introduced a companion measure to Representative Baird's, and it requires that an appointment be of the same party. Mr. Baird didn't put that provision in because the term "political party," of course, is not mentioned anywhere in the Constitution, and he didn't want to be the first one to do so.

I dealt with it another way in a draft amendment that I prepared that—I might note we have a Web site with all of these issues discussed and different proposals, including Mr. Wolfsenberger's and Mr. Baird's and others that are in my testimony. By using an alternative that Delaware adopted during the Cold War—and many States adopted proposals to deal with a catastrophe, or potential catastrophe, during the Cold War—what Delaware has done is, it enables the members of their legislature to designate in advance no fewer than three and no more than seven successors in the event of some catastrophe, and then the governor chooses from that list. To me that is much better way.

First of all, if you—I don't want to introduce party into the Constitution. The term "party" can be a fairly meaningless one. A governor can manipulate that obviously to pick someone who is nominally from a particular party, but it would be far better to have that kind of a plan. That, I think, is also a far better way to go than the proposal that former Speakers Gingrich and Foley have made to just simply have the Members designate successors who then serve without any kind of appointment, which has its own constitutional problems.

Mr. HOYER. Dr. Thibadeau.

Mr. THIBADEAU. There has been sort of an assumption that the technologies would come in here at the right place. I think the main comment I was trying to make was that the actual technology for doing this is not known. We don't know what the technology is, period. There is no question about that.

The right way to approach the technology is to try to build an analytical model, to try to understand what actually has to take place, and in that you will get the questions of what are the Democrats, what are the whole party issues.

But it is a whole; you can't take this out in pieces and hope to solve one little piece and then the rest of it will sort of fall together.

I strongly support—I think it was Langevin's—having NIST, for example, look at this in some detail and then just work it out to see exactly what the thing would look like. Then, after you have looked at what it would really look like in detail, then a lot of these other things sort of start bubbling to the surface and they become clearer.

Mr. HOYER. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Doolittle.

Mr. DOOLITTLE. I have a far more pedestrian question for you gentlemen. Do you think there is any constitutional or legal problem posed by the Houses of Congress deciding to hold a session some other place than in Washington?

Mr. WOLFSENBERGER. I am not a constitutional scholar, but I think you have to look hard at the clause that we have just discussed. I think it can be done with the consent of the Senate. As I say, I am no constitutional expert, but I think you can do it.

When you think about all the logistics involved in running the House of Representatives on a daily basis and whether you transport all that to another place, notwithstanding the important symbolic value of going to New York, which we are talking about here, I just think that you could have—I think it would be much easier to have a ceremonial type of session convene up there than to try to transplant the entire system to New York and do actual business.

Mr. DOOLITTLE. Just following up on that, then do I infer correctly that you see no legal or constitutional problem with them doing so?

Mr. WOLFSENBERGER. I don't, no.

Mr. ORNSTEIN. You can't convene, I think, other than a ceremonial session just at whim. You are going to have to get a resolution from the other House approving it. If you are actually going to meet and do something officially, that has to be done. It doesn't require an additional constitutional amendment.

I think it is absolutely terrific that the Speaker is taking it upon himself to try and pull together some resources to make sure that there are alternative meeting sites that have all the accoutrements necessary to have a full meeting of the House. As we saw with the backlash that developed, even when the anthrax scare occurred, that happened basically because Congress had no other place to go at that point. I think the Speaker and the minority leader made the right call to protect people. But if you had had another place to go, you could have gone and done work and nobody would have criticized you. There was no other place.

You have got to make those plans. In the process of making those plans, you also have to make sure that you pass the resolutions in both Houses in advance so that you have the legal and constitutional authority to conduct those meetings and actually conduct official business. But then it is doable.

Mr. DOOLITTLE. Back to my question, then—and you addressed the first part of your comments to it—if the Houses passed a resolution to go meet in New York or Philadelphia or Kansas, that would be okay?

Mr. ORNSTEIN. Yes.

Mr. DOOLITTLE. Then may I ask the opinion of the other two gentlemen?

Mr. THIBADEAU. I definitely have no opinion.

Mr. DOOLITTLE. Okay.

The CHAIRMAN. Dr. Frantzich.

Mr. DOOLITTLE. Yes, Dr. Frantzich.

Mr. FRANTZICH. As I listened to this debate, I was reminded about a number of years ago when there was a question on whether congressional records were documents when they were in electronic form. And there were numerous hearings on these. The lawyers weighed in; it really got down to a question of whether people of good will could look at a word in the Constitution or in the rules in a different kind of a way.

Again, I am not a constitutional scholar, but, to me, "convening" is a rather wide open kind of a word and doesn't necessarily mean that all people have to be in the same room at the same time.

Mr. DOOLITTLE. Okay. Thank you.

I have read in the comments of some of the Members that the House of Representatives is the greatest deliberative body in the world. I shudder for the world if that is indeed true. Perhaps it may well be true, but I would venture a guess that just about any State legislature on a regular basis is far more deliberative than either the House or the Senate. At least that is my experience.

Mr. WOLFSENBERGER. Could I comment on that?

Mr. DOOLITTLE. Yes.

Mr. WOLFSENBERGER. You recall reading about Speaker Thomas Bracket Reed back in the 1890s, someone asked him once, "Is the House a deliberative body?" and he said, "No, and I thank God it isn't." but I think he was talking about the House assembled as a whole.

And I think the real deliberation, as Woodrow Wilson noted in 1885, goes on in the committee rooms. That is where you really thrash out ideas and alternatives and have your arguments. The House is just sort of a Congress on public exhibition, as Wilson put it; but Congress in committee rooms is Congress at work. The real deliberation, I think, does and should go on in the committees. You have your debates and sort of rehash some of the things that went on in the committees on the floor of the House and the Senate, but that is not as deliberative as the committee system is.

Mr. DOOLITTLE. I just mention that because I think certain things have happened, certain reforms and changes have been made; and the full ramifications of those, it was never contemplated. I enjoy C–SPAN as much as anybody, but I would argue C–SPAN dramatically altered the characteristics of debate in both the House and the Senate, whereas Members now are basically addressing a national audience directly versus addressing each other.

It used to be, I think until the middle 1960s, that committees were not allowed to meet simultaneously while the House was in session. That remains the rule, I know, in the California legislature and I would guess in many of the others. The fact that committees can meet now has basically, fundamentally altered what goes on on the floor of the House. We all just have come to accept this.

If we set some kind of a precedent here, on an emergency basis, of allowing us to remotely conduct the business of Congress, each of us from a different place, I would be very concerned about that. That cure might be worse than the illness we are trying to address.

As others have counseled, my own opinion would be, this should be very carefully considered and we should be very deliberate in what it is that we do before we set in motion something that will have ramifications that we have not contemplated.

Thank you, Mr. Chairman.

The CHAIRMAN. I have one, and I think there are going to be some votes called, but one other question for Dr. Frantzich and anybody else who would like to also answer.

You have raised an interesting issue when you talk about the fact that, if this would progress on, you look at the technology, you

compare what we are doing and we look back and it would be like an 8-track tape.

Are there computer think tanks that are thinking other generations about communication that if we didn't proceed with this, we at least could look at that technological side, the progressive thinkers with computers?

Mr. FRANTZICH. I couldn't hear your question. It was a little garbled in the translation.

The CHAIRMAN. Bottom line, you had mentioned about the 8-track scenario, 8-track tape. What I was wondering is, are there think tanks that we can look at that are looking at other generations of communication, so if we did proceed with this, we would be looking at the top thinkers in the country when it comes to computers and technology, to look at not just maybe establishing an E-Congress through an encrypted phone system, but other things we could look at?

I just wondered if you had suggestions.

Mr. FRANTZICH. I don't have any particular companies, but I think that some of the advances that are being made in electronic classrooms which are trying to simulate human interaction from remote spots, I think those might be some of the places to look.

There are some demonstration-type classrooms. I know the University of Maryland and other places that might give you a feel for what the technology can do.

Mr. ORNSTEIN. Mr. Chairman, I would make a couple of suggestions. There are a couple of foundations that have a strong interest in these issues more broadly, and I think if the committee contacted the Markle Foundation in New York——

The CHAIRMAN. Did you say Markle?

Mr. ORNSTEIN. Markle, M-A-R-K-L-E.

Which is focused around telecommunications issues, but also democracy, and the Pew Charitable Trust in Philadelphia.

Also, there is a telecommunications program at the Aspen Institute here in town where you might find a strong willingness—you would find, I am sure, a strong willingness to perhaps act to convene a group of people to discuss these issues, to perhaps help you along, even as the National Institutes of Standards and Technology perhaps was moving in this direction as well.

Pew, as you know, has funded the civility retreats that the House has conducted in the last few years.

The CHAIRMAN. Are there any further comments?

Yes?

Mr. THIBADEAU. I think that Mr. Ornstein's comments are correct. One of the things that I would like to sort of emphasize here is that there are lots of really advanced technologies and all this other stuff, but there needs to be an analysis of what actually needs to take place that precedes going to look at these technologies.

Rather than going and looking at technologies and letting the technologies drag you, the best thing to do is decide what it is that you need and then go ask the technologies to deliver that.

The CHAIRMAN. Any other questions?

Mr. HOYER. Dr. Thibadeau, you have made that point throughout your presentation. I think it is an excellent point; I would agree with you 100 percent. I would imagine everybody does.

But the other thing that I want to make sure that we all agree on: I agree with David Dreier and with all of you and with others who have said that the coming together is a critical component of democracy. I agree with Dr. Ornstein. I am not a fan of these processes which try to make democracy a remote, either electronic or mail-type participation at arm's length. It is anticommunitarian, and I am a communitarian.

Having said that, however, and having adopted David Dreier's admonition to proceed slowly and with caution, am I correct that we all agree that there may be a contingency where this need for electronic connectivity would be necessary? I certainly agree, and I presume all of you do, that that contingency ought to be pretty clear to activate it and pretty severe, in that context.

In other words, nobody, am I correct, is saying that we ought not to consider this at all because it just wouldn't be the way to go at all? Am I correct?

Don, why don't we start with you?

Mr. WOLFENSBERGER. I probably expressed that, I guess in the dire circumstances Mr. Ney mentioned, where you have got no way to get around and you have got Members stranded in their districts, you have obviously got to have something available, that there can be some type of convening orally or by computer or otherwise to get some work done.

So I think you certainly have to explore that possibility.

Mr. THIBADEAU. Another place to look, which just dawned on me, is the communities on the Internet. I will mention one, just from personal family experience, is called neopets which has 30 million children globally on it. They are able to engage in Congress. They have neo money, they do all the things they have to do. These are very interesting places to look to see how large communities of people are actually interacting and viably, living on it, you can actually see this stuff and it is kind of interesting to watch that.

Mr. ORNSTEIN. I have misgivings about a lot of this stuff. The Supreme Court says virtual pornography is okay. I am not sure that virtual government is something that we really want to aspire to, in a lot of ways.

But, yes, we have to consider this. And I think frankly it was frustrating in October, November and December and January getting many of your colleagues to even pay attention to these issues at all. It is partly human nature. Nobody wants to contemplate the possibility of their own demise.

But I think it is incumbent upon you to move deliberatively, but not all that slowly, and very carefully. But you have to look at every contingency. You have to look at every scenario, which are now not nearly as remote as they were before September 11, in real terms, and develop plans. It is really your responsibility to do so. I would like to find ways to make the body more deliberative, on the floor at least.

Mr. Doolittle, let me bring back a pet idea of mine that I pushed for years, that we tried out just once and then abandoned, and that is to have real debates on the floor of the House, almost Oxford-

style debates. We actually got it going, we did a couple and they were too unwieldy because there were too many Members involved.

But we could actually find ways, I think, to engage this body in the great national issues in a way that would actually bring the public in more. But the deliberative process is not just the debate on the floor, of which we have little in the House, no doubt. It is a lengthy process, as the framers saw it, of bringing people together, interacting face-to-face, informally and formally, seeing the perspectives of people from completely different areas of the country, from completely different backgrounds and beginning to understand them and then slowly building a consensus that develops into policy. That is what we mean by a deliberative process.

We can all agree that the Senate does not fit as the greatest deliberative body, maybe not the State legislatures, may be right there; but the House, in that sense, really is a great deliberative body because we have the greatest range of people in the country together and you can learn from each other. We do less of that than we used to, partly because of this Tuesday-to-Thursday schedule, I think, and the demands of fund-raising and other things have made it harder for people to spend time together, and especially across the aisles. We have got to find better ways to deal with that.

But the larger point is that we can't abandon what the framers wanted, but you have got to prepare for contingencies that nobody ever could have considered in 1789, much less in 1999. That is clear.

The CHAIRMAN. You raise a lot of issues, and we—at least to the process, we really owe a discussion of this thoroughly, of bringing minds together.

This committee—and I commend the Members and the staff—was in a situation after September 11 to receive hundreds of suggestions and ideas, things that we never ever had to think of. We would have been laughed out of this building on some of the things that we talked about that we need to do for the future, in order to keep the people's House going.

But 9/11 caused that. It has changed the way we look at items. I do think that it is important, this debate.

Mr. FRANTZICH. I am not quite sure how to jump in in a teleconference. I have learned that out of sight is kind of out of mind perhaps. But we all buy insurance, hoping we will never have to use it. I think being prepared is maybe one of those pieces of insurance that we might want to buy.

Second, perhaps it would give a terrorist pause to know that he couldn't bring the U.S. Congress to its knees if we had a contingency plan that we could use.

The CHAIRMAN. Good point.

Mr. HOYER. Mr. Chairman, I don't know how many people know. I know all the panelists must know, but obviously had we been hit, the personnel may not have been available. But what happened post-September 11 was, the Congress was fully prepared to act in an alternative site within 6 days.

We could have met, and we could have transmitted what we were saying in real time and in pictures to the American public, so that in a very short period of time post-September 11, by the 16th or 17th at least, we would have been able to convene.

As it happens, it was not necessary that we do so, but the staff did an extraordinary job. This committee was very involved in that. We didn't have a contingency plan at that point in time. It just came together through some very hard work and good thought.

But I agree with the witnesses who have said that if we have a contingency plan, it will give people pause to think that they can accomplish their objectives, although in some respects what their objective was, at least on September 11, I think, was more to damage symbols; and they got a bonus, they damaged substance. For at least a short period of time, air flight, the markets were shut down, although for an incredibly short time given the damage that occurred; so we did come back very, very quickly.

But their effort was symbols. And as Dr. Ornstein pointed out their targets were probably the greatest symbol of democracy in the world. We may not be the greatest deliberative body—although I would differ with my colleague, deliberative bodies look a lot better far away than they do up close—but that is the nature of human interaction, I suppose. There is a song about that, "From a Distance.".

The fact is that I think the preparations that we need to pursue—Doctor, you reiterated, I agree with you, we need to figure out what we want. I think what we want is the ability of the people's Representatives, the Senate and the House, to continue to make decisions notwithstanding the destruction of physical symbols and a significant number of our body, both in the very short term, that is, in days and hours, and in the longer term in this context, weeks and months.

Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. I want to thank all the panelists for joining us.

With that, I would like to ask unanimous consent that staff be authorized to make technical and conforming changes on all matters considered by the committee in today's hearing. Without objection, it is so ordered.

I also ask unanimous consent that Members and witnesses have 7 legislative days in which to submit material for the record, and that those statements and materials be entered in the appropriate place in the record. Without objection, the material will be so entered.

And having completed the business for today and for this hearing on E-Congress——

Mr. HOYER. Mr. Chairman, can we tell Dr. Frantzich, he is not out of sight? We can see him. He is right in front of us on the television.

The CHAIRMAN [continuing]. This hearing is hereby adjourned.

[Whereupon, at 11:55 a.m., the committee was adjourned.]