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>> DOUGLAS KELLNER: Good afternoon.

My name is Douglas Kellner, Co-chair of the State board.

Board of Canvassers Meeting:

I am going to call to order the meeting of canvassers.

The Commissioners introduce themselves.

>> JIM WALSH: Jim Walsh.

>> GREG PETERSON: Greg Peterson.

>> EVELYN AQUILA: Evelyn Aquila.

>> DOUGLAS KELLNER: Start with the amendment to the certification for the general election of 2008 to reflect all the amended certifications we have received from the counties.

All those approving?

Say aye.

(All members responded "aye.")

>> DOUGLAS KELLNER: Opposed?

(There is no response.)

>> DOUGLAS KELLNER: Next, special election for the 20th Congressional district, held on March 31, 2009.

Those in favor say aye?

(All members responded "aye.")

>> DOUGLAS KELLNER: Opposed?

(There is no response.)

>> DOUGLAS KELLNER: Now we will pause for a moment for the Commissioners to do all the paperwork.

>> STANLEY ZALEN: To this, all four of you.

This, just to the two of you.

>> EVELYN AQUILA: Which one is this?

>> STANLEY ZALEN: Here.

This is the amended certification for everything.

The entire state.

>> EVELYN AQUILA: Oh, okay, okay.

>> DOUGLAS KELLNER: We are doing one each.

>> STANLEY ZALEN: Todd and I have six to do.

>> EVELYN AQUILA: I don't think I have to, yes.

>> STANLEY ZALEN: Budget times are tough.

I will be collecting back your pens, folks.

Chase you down.

>> DOUGLAS KELLNER: Thanks, Commissioner.

Board of Commissioners Meeting:

Now we will proceed to the regular meeting of the Board of Elections.

I would ask the staff to begin by introducing themselves.

>>: Stanley Zalen, co Executive Director.

>> TODD VALENTINE: Todd Valentine, Co-Executive Director.

>> ELIZABETH HOGAN: Liz Hogan, Enforcement Counsel.

>> GEORGE STANTON: George Stanton, IT director.

>>: (Off microphone.)

>>: (Off microphone.)

>>: Allison

Operations.

>>: Paul Collins.

>>: Kimberly Galvin.

>>: Tarry Breads, Election Operations

>>: Robert Warren, Election Operations.

>>: Greg Jones, quality of ... (Off microphone.)

>>: Amy Allaud, League of Women Voters.

>>: (Off microphone.)

>>: Ben Carbalito, Elections Systems & Software.

>>: Kathleen O'Keefe, New York state Assembly.

>>: Bob Groncziak, NYSTEC.

>>: (Off microphone.)

>>: Tim Stewart ... (Off microphone.)

>> DOUGLAS KELLNER: Well, thank you.

And welcome to our guests.

The first item of business is the approval of the minutes of the last meeting.

I noted that there was one typographical error.

>> EVELYN AQUILA: There is a typo.

>> DOUGLAS KELLNER: On the dates of the prior minutes.

Who is going to track these and correct them?

Bob? You see where the typo is?

Third paragraph, minutes of March 10.

We are looking at the minutes for April 7.

>>BOB BREHM: I'm with you.

>> DOUGLAS KELLNER: You see the typo?

>>BOB BREHM: Yes.

>> DOUGLAS KELLNER: That's all I found.

Anybody have other corrections?

>> EVELYN AQUILA: I had just the one.

>> DOUGLAS KELLNER: So vote to approve the minutes?

Those in favor say aye?

(All members responded "aye.")

>> DOUGLAS KELLNER: Oppose the?

(There is no response.)

>> DOUGLAS KELLNER: Minutes are adopted.

Move to the reports.

Unit Updates:

Co-Executive Director Update:

Start with co Executive Directors, Todd Valentine and Stanley Zalen.

>> STANLEY ZALEN: Thank you, Commissioner.

The division of the budget accepted our internal controls report and there is no sign on when the controller will do a follow up audit, but we are okay.

A 60 day plan that was required to be submitted to the EAC for the extension of the lever replacement. Funds were submitted in a timely fashion.

We have also sent the copy of the 60 day plan as well to Congressman Serrano and the Congressional House of Representatives Appropriations Committee.

We started working on our response to executive order 17.

That requires a review of all our existing regulations for their impact on local government.

That was just handed down and it's due December 1.

We were ahead of the curve on executive order 18, which barred state agencies from buying bottled water.

We have stopped already.

And the staff is paying for its water.

We have also stopped as of today getting newspapers and that will save us some amount that budget wants us to save.

>>EVELYN AQUILA: May I ask a question? How do information offices operate under that?

>>STANLEY ZALEN: In a vacuum.

>> EVELYN AQUILA: I mean. . I assume they're the exception. All newspapers aren't cut out.

>> STANLEY ZALEN: All newspapers.

>> TODD VALENTINE: Electronically….you still have them electronically.

>> STANLEY ZALEN: We are going to have to look at the computer to read news stories.

>> EVELYN AQUILA: Pretty soon we won't have any newspapers.

>> TODD VALENTINE: Lucky for us we have high speed Internet.

It works good here.

Things work quickly.

For viewing the news stuff, it's available.

>> EVELYN AQUILA: Anyone who read a newspaper, give it to them when they're finished.

>> TODD VALENTINE: We started the process of what is called the single federal audit.

It's a State audit of all the federal funds that the states receive.

Our spending on the BMDs triggered a threshold for us to join that group which is good, because it will give us an opportunity to go through...

They are auditing the Title II HAVA funds which will give us the opportunity before auditing by the EAC to put together figures.

They have done this before.

We can review what other states have already submitted their single federal audit for this program.

There will be several other states that have already gone through it.

It will give us the opportunity to make sure that we've done what we think we've already done.

It's a question of this is a new area for our auditors.

It is also fairly new for the EAC to audit in this fashion.

That is in process.

That's scheduled to be done and submitted to the federal government by the end of the year, December 31 is their deadline.

But we have a summer's worth of work to do for us to pull the documents together and for the auditor, our own auditors to review them.

Part of that triggers us to again review our continuity of operation plan as related to the internal controls.

You know, we had a fire drill the other week.

It kind of reminds us, it was a reminder to the staff.

What if we couldn't get back in the building?

What would we do?

In most instances it's a question of updating what we've done.

Probably the biggest area that's going to need the most focus is campaign finance because over the years we have been shifting more and more to electronic means.

So we do, of course, with backup files.

But as they go more and more to electronic with the scanning project, that now has to be incorporated.

It hasn't been incorporated in the prior plan.

We did submit our work force plan to the division of budget as well.

They have not shown an approval for that yet.

So we are still going to operate under…you know, we still have the hiring freeze to deal with.

We are still limited in our ability to fill particularly campaign financing positions, where our vacancies are.

As well as the vacancies in Election Operations for the machines; the three machine people that we talked about at the last meeting, right, Anna?

That was last meeting, right?

They have not approved that yet.

The initial indication from the governor's office was that they would.

It just hasn't happened yet.

It's kind of hard to get that going.

But we are also analyzing…Anna can talk about this later, but analyzing the needs as we go through the process for the summer, what to deal with.

Related to that, there is another budget bulletin.

It will be a summer of reports, audits, and a dash of voting machines.

We have to be analyze another report that is due in June is the personal service contracts that every agency issues for consultants.

Another report we have to produce which we've got a couple of those.

So we have to add value…which is fairly straightforward because we did that when we did the procurements.

>> DOUGLAS KELLNER: Which do we have?

NYSTEC, Saber?

They are still doing Saber?

>> TODD VALENTINE: For the personal service contracts.

We have a section on there where they do the services to us as well as the transfer.

We will probably still have them there.

We are analyzing it not having them full time but for time and materials.

In the event we have to make changes, we have them as a resource, but don't have to exercise the contract until it's needed. A good example that might come up, a bill working its way through the legislature about amending the voter registration form to pre populate county address information on the Web site.

We hadn't built a system for that.

So that's something we may have to, you know, depending on how we consider our options of meeting that obligation, it might require some changes to our database on the Web interface.

>> EVELYN AQUILA: Todd, may I ask something?

With us trying to certify the machines and having all of these reports to get out, is it possible with the staff that has not been really increased to the number that is we need?

I mean is it better to say to the State: We need additional time because of our particular and unique situation?

>> TODD VALENTINE: Well, when we needed time to meet our obligations and certainly the internal controls is a good example where we had a lot of work we had to do to make up…

>> EVELYN AQUILA: Of course.

>> TODD VALENTINE: Certainly it's something Stanley and I had not been a part of but we had to work with it.

And we were able to say to the controllers' office, we are not ready to do this now.

We need to get it together.

They certainly have given us time and haven't scheduled the audit for that.

The single federal audit is different.

We are coming into something that is in existence.

Getting more time is not an option.

Instead, what we have to do, other agencies will have to shoulder more work.

Will's take up more time of our own auditors, training us to do what we need to do.

This is a new program for them to audit.

They are not sure what to look for.

It's obviously a new requirement for us.

The other staff issues, well, what we do as far as organization is concerned, obviously we are divided into units, but we have never…

We are such a small agency where people do have to wear multiple hats.

>> EVELYN AQUILA: Right.

>> TODD VALENTINE: So you have your regular job..

>> EVELYN AQUILA: I know that.

>> TODD VALENTINE: And you have side projects.

>> EVELYN AQUILA: That's why I'm saying that, bringing this up.

>> TODD VALENTINE: Well, we certainly utilize a lot more electronic sharing than has gone on in the past.

We don't actually have meetings.

We share around versions of the documents, make comments through Microsoft Word, for example, with track changes.

You can insert comment as well as make changes and you can see who made the changes and what the comments are by the individual.

>> EVELYN AQUILA: I thought it might be better accepted to say before we begin with all of this, there may be delays due to the volume of our work this year.

We are under a federal mandate, we are trying to get things done on a very strict time schedule and so they would understand should at the end of say a time period you come to them and say we need another 60 days.

You've already alerted them to that fact. That's all I'm saying.

Sometimes when you alert ahead of time, it's better.

And meet the deadline.

It's better than coming to the dead line and suddenly say I need another 60 days.

That's my only…

You know, you and Stanley know better.

I mean, I'm just putting that on the table as something to think about.

>> TODD VALENTINE: That's an example.

The agencies looking for these reports primarily fall into…

It's actually almost all of the Division of Budget either through the auditor for the single federal audit or themselves, which is really this latest executive order on the personal service contracts.

We have a team of budget analysts that are actually assigned to our agency.

They know us quite well.

Two of them attended our conference last week.

We've had multiple meetings with them as well as their supervisors so they know our schedule.

They are very familiar with our workload and the number of people we have or don't have.

So to the extent that we're working with people who know us, you know, they know we don't quite make the deadline, they know why.

>> EVELYN AQUILA: I understand the point you're making, yes.

>> TODD VALENTINE: The last thing is, I did attend the Senate elections committee has been having a series of hearings.

This was the second.

They don't have the exact number that they are doing.

This is here in Albany.

I was there.

John Conklin was there.

They were looking at basically soliciting public comments as the committee said, to reform poll site accessibility, absentee ballot laws and poll site vehicles.

Another hearing is scheduled for the 14th in Syracuse.

I'm not going to this one.

There is a future one they haven't scheduled a date, they intend to do a meeting on Board of Elections oversight.

When we get the hearing notice to figure that out, we'll have I think, assume hopefully they will plan that here for Albany or at least a location where we can all get to, that we should obviously participate in that more directly.

Right now they are seeking public input. If they are doing Board of Elections oversight, the elections Commissioner's association is aware.

>> EVELYN AQUILA: For the Senate Elections Committee to have oversight over the New York State Board of Elections wouldn't they need legislation?

>> TODD VALENTINE: No. Maybe I misspoke.

They want to examine how the Board of Elections is over seen by probably both the public, the legislature, the governor's office.

There's a series of agencies that all have to interact which oversee how we conduct different aspects of our business on the state level and then on the county level as well.

So it's a question of how is that oversight done?

It's not like…

>> EVELYN AQUILA: Not like official oversight?

How we are perceived by these different groups and how do they communicate with us, I guess, or intervene, I guess?

Understanding more…

>> TODD VALENTINE: It's different.

Let's take, for example, a bar with a liquor license.

There's a single state agency which oversees those functions.

Same thing with state schools and the state education department.

That's not true in elections.

It's an open process so you have a number of people…

On purpose, of course…

That need to oversee what happens at different points in the process.

So it's not…People like to think of us as a monolithic entity and we say things and it happens.

Well, no, there's a lot of input and interaction from different entities.

You know, on the state level and the local level.

I think that's what they are going to examine.

Although it's not clear.

They haven't spelled that out.

It's something we should keep on the radar once the date gets set.

That's all I've got.

>> EVELYN AQUILA: I thought you meant official oversight by the Senate Elections Committee.

That's where I thought we needed legislation for that.

>> TODD VALENTINE: Oh, yes, if they did that, they would need legislation, yes.

>> DOUGLAS KELLNER: All right.

Any other questions for the Executive Directors?

Legal Unit Update:

We will move to Kimberly Galvin for the counsel's report.

>> KIM GALVIN: Thank you.

Aside from the routine business of the unit answering a variety of legal questions or emails or calls or whatever it will be from the public, internally and the counties, we have spent a considerable amount of time finalizing and following through with the Office of General Services on some of the contractual situations surrounding the machines and the deployment thereof.

And monitoring the other long standing cases that the board has been involved in such as Ciber and a variety of others.

But what we have spend the enormity of the time or the vast amount of time is communicating with all of those entities that need to be talked with and discussed and several levels of detail with the counties, Department of Justice, the Attorney General, internally, machine vendors and the testing lab and our consultants regarding the proposed pilot program for the electronic voting systems for this fall's elections which I believe is going to be taken up in detail later in the agenda.

It will be…We have spent a great deal of time on those particular items.

Is there anything else that you think?

>>PAUL COLLINS: We spent a lot of time with the Department of Justice, coming to a pilot plan proposal that we think is workable and more to the point acceptable to the Department of Justice.

And we have great hope that Judge Sharpe will bless same and extend the time deadlines contained in his remedial order of last January.

>> KIM GALVIN: But I believe...

>>PAUL COLLINS: It has been a team effort all the way around.

>> KIM GALVIN: I believe that is later in the details of that will be discussed in later detail, unless anyone has questions now.

I notice that it's under the resolution at the end there.

New business.

>> DOUGLAS KELLNER: All right.

Anything else?

Election Operations Unit Update:

We will move to election operations Anna Svizzero.

>> ANNA SVIZZERO: Thank you.

With regard to the 20th Congressional District we stopped being pests to the ten counties involved.

Gathered up the data and all of it has been signed off by you, the board of canvassers.

We will be shipping all of that information to Washington to the archivists and others who are the custodians of those results including the results that you've now signed.

We issued a proclamation for a special he election in New York City in the 87th seats, those special elections will be held on June 2.

Testing with NYSTEC today.

Hopefully, today is the restart of our certification testing.

SysTest is a couple of hours behind us. We have not heard that there are issues precluding that today and moving forward.

The vendors have clear direction from us that whoever is ready will move forward and the resources at both sys tech and NYSTEC will be dedicated to whatever system can move forward.

Whichever lags, lags.

We continue to work with council's office here and others in the agency on the pilot roll out on the documents for the Department of Justice.

I agree with Paul and Kim that it really was a team effort and there was a lot of input.

We completed the details on the letter that Stanley and Todd told you about.

That was sent to the EAC.

Concerning the lever replace money, we continue to conduct EMS training classes.

We have one in the building today with people from Genesee and St. Lawrence Counties.

27 counties participated in that program today, 95 county board staff members have received certificates.

These sessions we feel have been very well received.

They put a lot of the county board issues to rest with the, especially the smaller boards.

And a couple of boards have shared their opinions in writing and we provided those to the board in your correspondence packets.

We continue to work on draft procedures.

So that we can get those to some level that we are comfortable sharing with the county boards of elections.

We have plans for presenting several of them at the upcoming June conference sponsored by the Commissioners' Association.

We did provide the Power Point presentations made at our own conference to the county board of Commissioners.

We are sending packets to all the deputies and Commissioners who weren't in attendance so they get the best practices, forth folios and the presentations by NYSTEC, the grants

program that Greg did was very helpful in identifying funds and bringing the county board's attention to the fact that some of those funds may be disappearing.

We will be providing those to all people who were not in attendance.

We've prepared for our next HAVA TV meeting which will be convened here tomorrow.

We have begun to gather documents related to the audit that was mentioned by Todd and Stanley.

We have not had a lot of luck gathering information from the city board with regard to the special election they conducted on Staten Island that was all conducted on paper ballots.

We were advised that interviews with the inspectors and others to find out what happened in that election have not yet happened. We were unable to find any findings or review of the election at the conference as you directed.

We are working with the city board to get the results of their post election reconciliation and hopefully we can get a report to you when they make that information available to us.

We have also begun to put together a directory, if you will, of all the forms required in statute to be prepared by the State board provided by, promulgated by or approved by the board so that we can have a library of forms.

We can define those terms and figure out which forms we have to generate and which forms can be produced at the county level and approved by the State board so that there is usefulness at every level of the county regardless of size.

We started work on a grant program for expenses we fondly have been calling shoebox expenses. We directed county boards to create store and for all funds they spent on what they perceive to be HAVA purposes.

Once the HAVA obligations have been met, the counties can submit requests for reimburse.

We are crafting a grant program that is similar to the polling place access grants that were run in the public information unit.

So that the process isn't going to be foreign to the county boards.

We are working on revising those forms as well so that the forms they see will be hopefully seamless.

Joe Burns is reviewing the existing contracts so that any amendments can be made to those and list Shaw is reviewing decisions and frequently asked questions and on the

EAC Web site so we can put together a list of items that EAC has taken a position on as being acceptable for reimburse.

We have initially begun work on ramping up again for acceptance testing here in Albany.

That is going to begin the not too distant future for at least one of the directors.

We have a contract that is available to us for carrying the services of Kelly temp staff to staff that site and get that back up and running as we had last summer.

We also have a couple of post office issues that we are monitoring.

They came to the attention of Todd Valentine at a conference and Joe has been following up on some of those to see if they have, or what impact they will have on our county boards of election.

If anything arises out of those, we will be meeting with the business center here in Albany to find out what we can do to mitigate those issues.

Other than that, the daily routine of Ops staff continues and continues.

>> DOUGLAS KELLNER: Any questions for Anna?

(There is no response.)

Public Information/NVRA Unit Update:

>> DOUGLAS KELLNER: Public information, John Conklin.

>> JOHN CONKLIN: Good afternoon, Commissioners.

As you know we have a result from the 20th Congressional district.

We are posting the result that you certified on the Web site right now so it's there for the press and public.

The calls to the public information office have fallen off precipitously since the result became clear.

I think having taken such a central role in disseminating information during the Congressional race, I don't know if we've raised expectations among the press and the public for the future, whatever comes next in the election cycle, But I think it will be difficult for us to play a central role again when the entire State delegation is up for election in 2010.

We did provide a valuable service to the public and all the unit acquitted the agency well during that process.

The bulk of the inquiries have returned to campaign finance filings and voter registration information.

The other 800 pound gorilla in the room for the public information office was of course the conference, as already has been mentioned.

Everybody here was at the conference. . .hosted by the State board in Albany.

We had a tremendous turn out by the county Commissioners.

I think it went very well.

In my limited experience, seems to be the most well attended conference we have had since the first year of HAVA.

In addition we had about 20 vendors show up, a number which we believe by consensus to be the most we have ever had at our state conference.

We have already sent out an evaluation form to the local Commissioners asking for their input on what they liked, what they didn't like, what they want more of, what they want less of, what they would like to see changed.

Those are trickling in.

We may be able to report the results of the survey at the next board meeting.

The organization of the conference represents a tremendous amount of work by everyone in the public information office and much of that was done before I arrived here.

I would just like to take a moment to thank a few people.

Patrick Campion and mark Pop were responsible for helping to move the conference to Albany after the need to reduce expenses was made clear to us by the executive.

They researched and found what was available among the local hotels.

We were lucky to get a local facility that had the capacity and features that we needed.

I would also like to thank Lisa Shaw, Robbyann Mitola, Kate Orsino, Tarry Breads and Colleen Koch for helping out at the check in tables and providing a warm welcome for all the Commissioners as they arrived.

Greg Fiozzo, Maria Stamoulis and Patrick Campion made presentations during the conference which were very informative and well received by the audience.

I also need to thank Bob Brehm who offered insight at numerous stages along the way.

Lastly, Donna Mullahey who stepped in and took me by the hand and made sure I didn't stumble too badly at my first conference.

She organized the reservations for all the Commissioners, dealt with the hotel on a daily basis plus meals and vendors.

This could not have been done without her.

Not to steal another unit's thunder, but we started sending out the press releases announcing the beginning of campaign finance seminar season.

The complete schedule is on the Web site for all to see on the left hand side…on the right hand side under campaign finance news.

Bob and I were invited to give a little talk for the state League of Women Voters for their students inside Albany program back on April 22 we discussed registering to vote, voting, the 20th Congressional district, the new voting machines and any other topic the students asked about.

The federal voter assistance program asked us to update the New York section of their Web site which Anna and I worked on together.

Unfortunately that coincided with the special election and the annual conference.

We are a little past their deadline, but that will go out this week.

Lastly, the changes to the voter registration form for the organ done or information is finally moving along again after fits and starts with the Department of Health.

We agreed upon language for the form.

It was sent to a usability expert this week and we received comments back late yesterday.

We will be evaluating that this week.

We are seeing light at the end of the tunnel.

We may have something at the next board meeting for you.

Other than that, it's routine operations of the voter registration unit, nice voter.

Anything to add, Bob?

>> BOB BREHM: No, that's wonderful.

>> JOHN CONKLIN: Any questions?

>> JIM WALSH: I would like to make a comment, two comments.

The conference was very well done.

Myself, I find it very educational and informational.

I think all the other Commissioners throughout the areas that come to attend those find the same.

You can tell with the conversation, the questions going back and forth that it's a great experience for all.

Secondly, the, the 20th Congressional district is in our boundaries around here.

I would compliment you and the board here with the work done with the media.

I'm sure you were contacted many, many, many times by many areas of the media looking for information.

It was handled, in my opinion, very well.

The public is starving for information.

It was there.

It was accurate.

It was up to date and it was orderly.

There became I'm sure you caused this to happen, there became a kind of tempo that you knew you were going to get the information at a certain time during the day.

It was there and it was within a vote.

Very, very very good.

I'm sure you have set expectations now that will be very difficult to meet this November.

Nice job, thank you.

>> JOHN CONKLIN: Thank you.

>> DOUGLAS KELLNER: Thank you, Commissioner.

>> GREG PETERSON: I would like to add my two cents, too.

The conference was my first one.

I was extremely impressed with the way it was handled and I think literally every member of the staff in this room I know worked; and beyond this room worked very, very hard on it.

I thought it was pulled together well.

I said this before and I'll say it again that as Commissioners, especially me as the newest Commissioner, very delighted and pleased to be working with a really great group of professionals.

You handle yourselves well professionally.

I thought the members of the Board of Elections throughout the State were also duly impressed and it was nice to see us working with them.

I think they got the feeling, the general feeling that was throughout the three days was that we are not there to bang anybody over the head but really to help and to serve.

You can't ask for anything more from a public servant.

I add my thanks to the great job you guys did.

>> EVELYN AQUILA: May I add one thing?

Just one thing.

I thought the turnout was great.

It was really an excellent turn out.

I was pleased with that and it was excellent as always.

>> DOUGLAS KELLNER: John, I would like to ask about the report that New York City sent to the State board a list of issues concerning the Department of Motor Vehicles and processing voter registrations.

Can you tell us what's happened in terms of reviewing that and responding to the city and the Department of motor vehicles?

>> JOHN CONKLIN: The two Executive Directors sent the letter right back saying we are in the process of reviewing that.

That's ongoing.

I can't really give you a lot of information beyond that at this point.

But I know we are in the process of addressing that.

>> DOUGLAS KELLNER: Well, you know, I would just like to emphasize that I've sent a couple of e mails asking for reports and I haven't really gotten a response yet to indicate that that is being addressed.

And I think that's an important part of your unit's function and that I'm looking forward to receiving some reports to show that in fact we are addressing those concerns.

>> JOHN CONKLIN: Absolutely.

>> DOUGLAS KELLNER: Thank you. All right.

Any other questions for public information?

(There is no response.)

>> DOUGLAS KELLNER: Then we will turn to campaign finance, Elizabeth Hogan.

Campaign Finance Unit Update:

>> ELIZABETH HOGAN: Thank you, Commissioner.

I would like to start by referencing the conference as well.

If I could just initially say that even though this was John's first conference, he certainly made an impression in opening the conference with his hat.

(Chuckles.)

>> ELIZABETH HOGAN: I think we should make that an annual event.

>> JOHN CONKLIN: Very easily done.

>> ELIZABETH HOGAN: That's what I was afraid of.

Actually, though, referencing the conference and the campaign finance perspective, we had a table at this conference.

And we had staff from our educational and training unit and from our audit unit there available to talk to the Commissioners and other members of the local boards who were there.

And I was very, very happy with the turnout and the effect of having that table there.

We had our 2009 version of our handbook available. And as well, we had a handout that describes the potential reg change that is in the works.

Basically we provided that specifically to remind them of certain things that this reg would not do relative to the local boards and local filers.

I think having the staff there worked out very well.

I had a lot of Commissioners speak to me at the conference relative to things they had discussed with the staff and also had a number of follow up telephone calls since the conference with a lot of the local Commissioners about their interaction.

That worked out very nicely.

The HAVA complaint process, part of that process is should the State board not resolve any HAVA complaints, an administrative remedy, an arbitration, alternative dispute arbitration is available to the complainant.

That's in statute.

Later on in the meeting, there was a resolution before you regarding funds to pay for this arbitration, alternative dispute resolution involvement.

But relative to the provision of the services of the arbitrators on the 21st of April, Bill and I presented a training seminar to the group of arbitrators who are part of the available panel of arbitrators should a complaint come to that point where it is referred to this arbitration group.

The training session I thought went very well.

We provided the part relative to the HAVA and the processes within the office and the referral to the dispute resolution group.

The other part of the training seminar was the alternative dispute resolution agency provided training for their arbitrators who are part of their group relative to the running of the arbitration itself.

It was a very good training session.

You know, we've taken care of that aspect and I think it went very well.

I think they are more than prepared to assume any complaints should it get to that level of referral.

John referred to having posted notices regarding the seminar schedules and he did a great job with those.

The registration is available on our Web site as well as calling us to register to come to any of those campaign finance seminars.

The seminars started yesterday in Rensselaer County.

There was a nice turn out.

Today they are in Duchess, I believe. That's where Bill is today and why he is not here.

But we've got this, I think the next six weeks of seminar presentations.

So again I think I did this at the last meeting for anyone who is watching this webcast of this meeting, registration for the seminars is available on our Web site.

And I anticipate them going very smoothly.

The call volume in our call center is up, has been spiking lately significantly.

That's due to I think, having had discussion with campaign finance people dealing with the phones, the local elections and local election issues and the creation, registration and filings for new committees relative to local elections.

We do have a spike there.

The regulation change for 6200.1 that we have been addressing, I had a telephone call with the Governor's Office of Regulatory Reform (GORR) this morning to find out exactly where that rule is.

And it's my understanding that a week ago it had been sent apparently to the governor's office a month ago, I heard.

It had not found its way to the correct person.

A week ago when we followed up, we discovered GORR then immediately turned around and redirected the draft to the proper people at the governor's office. That's where that is.

We are waiting, either that is going to be returned to GORR and they will immediately send us an acknowledgment that we are going to proceed or if the governor's office has any issues of language or whatever, we'll hear through Gore about that.

We are working on a number of audits and frankly I had discussed, I think, the 2006 and 2007 finalization of the over contribution regarding corporations with you at the last meeting and frankly, the only reason those aren't on is that I did not have the time to do those, to get those to review those audits with Bill and write a report.

We just could not get to it with everything else we have had going on.

The 2008 corporate audit has begun.

Marie Woodward, I spoke to her just yesterday, the day before and I think it was Friday.

And she's in the process of

She has created this way of building the basic file at the beginning using Excel and then because there are all kinds of relational issues, she created a way where she backs out all the information.

I couldn't do it, I'm sure, if I had to.

This is what she does and that's underway.

We have a meeting set up.

We are in the midst of the 2006 statewide.

We have a meeting internally on Friday to discuss the next stage of that.

We are on schedule and on track.

I also participated with the rest of the staff on the HAVA task force, which is meeting tomorrow and reviewing drafts of the plan and I think as Anna said, I think I'll reiterate, the daily routine of campaign finance goes on and on and on.

Those are the highlights.

>> DOUGLAS KELLNER: Thank you, Liz.

>> ELIZABETH HOGAN: Sure.

>> DOUGLAS KELLNER: George Stanton?

IT Unit Update:

>> GEORGE STANTON: Thank you, Commissioner.

As usual I'll just hit the highlights of what we do in IT because we have a lot of routine stuff that is too boring to mention, although it takes a lot of time.

One thing I realized as everybody was going around the table, though, my staff does need to, I do need to give credit to my staff because every time somebody mentions something that is available on the Web site, it's mainly Hope Hardwick in my stave and Maureen Cahill that take care of that work.

They need to get recognition for that.

The highlights are we have installed, completed, I believe it's complete installing the software that campaign finance will be using to store and access the image, the scanned documents that they are scanning.

My staff worked with the staff from the software company.

I guess they had a few issues but it's all worked out now.

I believe that IT staff can actually access the data now.

I'm not sure where the scanning part of it is at.

NCOA processing has been completed over the last couple of weeks.

We will be sending the files back to the counties either today and/or tomorrow, depending on how long it takes.

So they can complete their processing.

We are in the middle of another round of firm ware and security ware updates for the NYS voter equipment.

We tested it.

Dennis Gerard has been down at the DR site, doing the DR site yesterday and today.

We will be doing the main site here in Albany.

This is because we need to get everything in

We need to get everything prepared for a system health check that our storage area network people do for us every year as part of their maintenance contract and they will be coming in, I believe, on the 18th of May to do that.

The steering committee has Patrick and Vikki have been running the reports and doing the auditing and monitoring of NYSVoter.

We are looking at our Saber support contract to see what we need to do for next year; the current contract runs out in September.

We are beginning to look at how we want to handle that for next year.

We are also considering doing a fire drill, quote unquote fire drill

Not one where you have to go out and stand in the hallway

To test the cut over to the disaster recovery site while we still have saber on site here to help us out with that just to verify.

We tested it during development and it worked and we just want to test it one time while we have staff to help us out with it here if there are issues.

I did get a call from the State of California.

They have awarded a contract out there.

They want to do an interview with me to talk about support and maintenance of the contract.

Or maintenance of the system.

The kind of things that we are seeing.

Patrick is going to sit in on that with me today at 3:00 o'clock.

The only other thing is I know you are going to ask me this, is about New York City.

We still have not gotten a response from them.

I did check with Steve Ferguson at the conference.

He said he had written a draft response to the questions that the steering committee asked and sent it to the executives.

He at that time hadn't gone to the board yet.

He wasn't aware of what the status was.

>> EVELYN AQUILA: There has been no movement on New York City?

>> GEORGE STANTON: I have to hand it to Steve Ferguson.

I tried.

Steve Ferguson has tried, but I don't know

There has been no official response from them.

>> EVELYN AQUILA: He hasn't gotten on the agenda with the city board?

>> GEORGE STANTON: He hadn't the last I knew.

And I haven't heard from Steve.

I inquired last week to see if there was any movement, but I haven't heard back.

He could be on vacation.

>> EVELYN AQUILA: Okay.

>> DOUGLAS KELLNER: Well, on that happy note

(Chuckles.)

>> DOUGLAS KELLNER: I don't think there's any old business on the agenda.

Old Business: None

New Business:

So we'll take the first item of new business, which is the resolution to expend HAVA funds for the N-Y-S-D-R-A.

What are those initials again?

>>ELIZABETH HOGAN: The N-Y-S-D-R-A is the New York State Dispute Resolution Agency.

That's the agency with which we contract pursuant to the statute and our regs to address the alternative dispute resolution aspects of HAVA complaints.

This is resolution to ...

>> DOUGLAS KELLNER: Maximum of $15,000?

>> ELIZABETH HOGAN: It is a $10,000 contract retainer and another $5,000 to cover expenses of training.

>> DOUGLAS KELLNER: We have to vote on this because the appropriation says the expenditures of HAVA funds have to be voted on by the Commissioners.

Those in favor say aye?

(All members responded "aye.")

>> DOUGLAS KELLNER: Opposed?

(There is no response.)

>> DOUGLAS KELLNER: Okay.

Next is the resolution approving for use in the 2009 pilot program the Sequoia Dominion ImageCast and the ES&S DS200 plus Automark voting system.

Does somebody want to start?

I'm willing to start.

I have a long list of questions and comments on this one.

I guess my first concern is that under the statute we are supposed to be consulting with the Citizens Election Modernization Advisory Committee on certification decisions.

Since this qualifies as a certification decision, we should at least be calling a meeting of the committee and having them come and

Comment on the details of the proposal.

So that's my first and greatest concern.

The second is that

Certainly it has been an issue that got a lot of attention from some of the voting integrity groups once the draft of the proposal became public.

Is the section on post election verification which

What I had been proposing virtually as a mantra every time I talked about doing a pilot project was that we would add additional safeguards to the counting process similar to what was done in California and Ohio when the Secretaries of State there determined there were deficiencies in the voting systems that they were using.

How, you know, the specifications of that I said I could be flexible on, but what we have done here and the way this is drafted is first of all it basically ignores the provisions of 9-211 or perhaps the second bullet point was intended to reflect 9 211 without saying it which are the statutorily mandated audit procedures.

The second is, as I say I had proposed a 100 percent hand count of wherever we were using uncertified machines.

And now this has been changed to having a 100 percent hand count only where there's a margin of 1 percent or less between the candidates.

I would suggest that we discuss some other formula for how to rewrite that section.

Then going through the report, I have a number of little Nitpicks on the drafting.

And the…

All right.

Why don't I run through these Nitpicks?

In the penultimate whereas clause, it says whereas a copy of the documents constituting the pilot project are attached here to.

So specifically, what are the documents constituting the pilot project?

Is it just a memo that starts with introduction and then the timeline?

>>KIM GALVIN: I suggest it would be the narrative consisting of five pages.

The timeline that has been merged to incorporate the new provisions to the SysTest timeline on page 8.

And the current participation list of the counties, which is the last page.

>> DOUGLAS KELLNER: All right.

Why would the current participation list be part of the authorization?

Especially if we…is this list final? Or is it still fluid?

>> KIM GALVIN: Well, the Department of Justice has, I think it's fair to say

>> DOUGLAS KELLNER: It's really a yes or no question.

Is it final or is it fluid?

>>PAUL COLLINS: For the purposes of this litigation and the purposes of the direction of the Court to have a plan filed, it is final.

>> DOUGLAS KELLNER: Okay.

So every jurisdiction that is listed here is required to do this and any other jurisdiction…

And therefore…pardon?

I see Kim shaking her head.

>> KIM GALVIN: That's why I think that the answer…

I agree that for purposes of this it would be final, but we have told the counties repeatedly that any increased participation or increased participation in the general after the primary would be considered by the board and…

>> DOUGLAS KELLNER: So it would have to be voted on separately.

So our authorization by this resolution, is it limited just to the jurisdictions that are listed on the list?

Or is it for any jurisdiction that is subsequently elects to use it?

It doesn't say in the resolution.

I'm trying to go through the text of it and what it is we are actually voting on.

>>PAUL COLLINS: At the risk, Commissioner of disagreeing with my esteemed colleague, at this juncture the resolution asks the board to approve this participation.

If subsequently another county might seek to participate, or any of the counties herein might seek to expand their participation, we would have to obtain further court approval, and presumably that court approval would come after this board had approved such additional participation.

The Department of Justice wanted to know what the participation was as of the date that they are passing upon our pilot project.

1 That's why we're listing each and every county.
2
3 The Department of Justice had some fear and trepidation that counties might seek to back
4 out.
5
6 That's why we are listing chapter and verse of those who have indicated they would
7 participate.
8
9 >> DOUGLAS KELLNER: One of the issues I have, is the way the resolution is written,
10 it's pursuant to section 7-201(4) that would authorize the use of equipment on an
11 experimental basis prior to certification.
12
13 Which is fine because I have been advocating the pilot project for a long time.
14
15 So, I think that that's fine.
16
17 But it sounds like what you are really trying to do is that there's a different purpose.
18
19 That it's really to authorize a submission to the Department of Justice for approval of the
20 modification to the consent order.
21
22 >> PAUL COLLINS: Commissioner, one might view that they are concomitant purposes.
23
24 >> DOUGLAS KELLNER: Except that skipping the Citizens Election...
25
26 (Overlapping speakers.)
27
28 >> PAUL COLLINS: We cannot, representing this board, we cannot in the absence of
29 authority from our client, make a submission to the Court.
30
31 And the Department of Justice knows that and that's why they wanted a resolution of this
32 board.
33
34 Additionally, to the extent practicable and feasible, we have attempted to preserve as
35 much of New York State Election Law as is possible which constitutes the reference to 7-
36 201.
37
38 >> DOUGLAS KELLNER: Well, I am raising the question of whether it would work
39 more efficiently if we passed a resolution to submit a proposal to the Court for a
40 modification of the consent order based on pursuing the pilot project while we resolved
41 some of the little details of the pilot project itself.
42
43 >> PAUL COLLINS: The difficulty with that approach while intellectually probably
44 accurate is practically we are out of time and the Court wants a proposal.
45

We have worked to develop a proposal that we hope perhaps the Department of Justice will accept the proposal, but what they wanted is a piece of paper upon which chapter and verse were laid out.

Because as you know, Commissioners, the devil is often in the details.

>> EVELYN AQUILA: I know when I spoke to you; you made that very clear to me.

>> PAUL COLLINS: Yes, Commissioner.

>> EVELYN AQUILA: That it has to be, they wanted this piece of paper so they could meet and take a look at it.

>> DOUGLAS KELLNER: If the devil is in the details, I have a lot of questions about the details that are just being presented to us.

>> PAUL COLLINS: Fine, I'll...

>> DOUGLAS KELLNER: Including skirting the Citizens' Election Modernization Advisory Committee which the legislature set up to formalize the certification process and giving us advice before certifying equipment.

Anna?

>> ANNA SVIZZERO: I was going to say, I don't think that was a deliberate slight on anyone's part except I would only point out that the systems that were certified, the CEMAC has already seen, there isn't anything new in these devices although perhaps their focus was in the use as a BMD, but we can provide them with whatever we can in writing.

>> DOUGLAS KELLNER: I think that the real issue is, I'm aware of, you know, reviewing the certification test reports that were done so far with the initial reports of many thousands of discrepancies from the standards.

Many of which have already been resolved and that we're down to a relatively small number of discrepancies that are almost all in the area of documentation and of source code protocol which I think is an important transparency issue but neither of those issues actually address the functionality or security of the machine in the short run.

On the other hand, I don't know that the Citizens Election Modernization Advisory Committee has really been given access to that or an opportunity to evaluate the specific remedial proposals that we are making as part of the pilot project.

In other words, the fact that we are using uncertified equipment, we have been talking about the need to have additional remedial proposals for the use of the uncertified equipment.

1
2 And it is that area that I
3
4 EVELYN AQUILA: May I say, Doug? Pilot project doesn't mean the same to me as the
5 final project.
6
7 In this pilot project we hope to learn a lot.
8
9 And what we learn will make a difference to what is our final vote and what is our final
10 certification.
11
12 I think that's where, if we look at this as the end, then it's not the same thing.
13
14 This is a pilot project.
15
16 The Citizens Committee will meet after the pilot project, I believe, after the pilot project
17 has developed and we can bring to them this information which may be negative or
18 positive.
19
20 But I don't think; I don't want to deal with this as if it's our final project because it isn't.
21
22 I think that's what we take in here.
23
24 I think the legislature is talking about our final certification.
25
26 This certainly is not that.
27
28 That's why I viewed this... I didn't have a problem with this.
29
30 I viewed this as a pilot project.
31
32 As someone who has been in school life her whole life, pilot projects were not the final
33 project that is we gave to high schools or students.
34
35 They were for testing, to learn from.
36
37 I think that's where we might, you know, have a difference of opinion about the Citizens
38 Committee.
39
40 I mean, I want the Citizens Committee.
41
42 I want them involved, but I think this is what the federal court has
43
44 We have said to the federal court we will do, and the federal court said okay, we will let
45 you do this and this is a pilot project, this is not the final project.
46

They said okay, spell it out for us.

That's all this is.

If we take this to be our final action, then it's different.

I mean, I just see it different.

>> GREGORY PETERSON: I would agree with you, Commissioner.

I might ask a question, has any of this been run by DOJ?

Or worked in conjunction with… so as a practical matter, they are on board with this resolution?

>> PAUL COLLINS: I don't think we can say that. Kim and…

>>GREGORY PETERSON: Let's say that they have a certain comfort level with this at this juncture?

>> PAUL COLLINS: They have not as yet signed off because it hasn't gone all the way up the food chain.

>> GREG PETERSON: Understood.

>> PAUL COLLINS: The price of playing poker with them at this juncture is they want a resolution from this board.

(Overlapping speakers.)

>>KIM GALVIN: To be honest, we've worked hand-in-glove with them...with all of them, we had several revisions, several changes to the documents.

As Anna said, without slighting the Citizens' Advisory Commission, through all the time we have talked about pilots, with Erie or Ulster, no one has ever raised the participation to me.

I viewed it as a parallel track to do the pilot, learn from it, issue the reports, have the meetings, and decide what we are going to do moving into the final certification stretch as a result of the things we learn here.

I believe there are very valuable things that everyone can learn.

>> PAUL COLLINS: This...

>> GREG PETERSON: This doesn't affect our vote down the line on certification?

>> KIM: No effect whatsoever.

>> GREG PETERSON: This adds to our experience factor down the line assuming things go well and the machines are certified, fine.

If not, we have a king sized headache.

>>KIM GALVIN: That's right.

>> JIM WALSH: As long as we are all giving our opinion, I agree with Commissioner Aquila and Peterson.

The purpose is to find out how it is going to work.

Above all, we appreciate the cooperation given to us by the counties in this project.

This is an educational boon for everyone, for the state of New York and all the voters in this state.

We will learn.

I was bringing up some small problems you can run into at the voting place when I was at the conference, just what happens to the human being when they find out that the ballot lot they put in has been rejected.

Where does the human being go in this structure of moving people if you have 50 or 60 voters? There are things that will be learned here that never came to the deep analysis and strategies that have been thought about for many months and years here.

This is going to be a great opportunity.

There will be a lot of learning here and nothing but to the benefit of everybody.

>> EVELYN AQUILA: Inspectors, voters

>> DOUGLAS KELLNER: I certainly agree with that.

I think we should…Let's just work through the details and see if we

>> GREG PETERSON: This winds up being a huge pilot.

I thought pilot, ten, 15 percent.

But if you go down the line here of the counties that are doing this, a lot of them are 50 percent, 90 percent, 100 percent, right down the line, other than the dozen or so counties that said they can't be.

I assume because

(Overlapping speakers.)

>> EVELYN AQUILA: Very thankful to the counties.

>> DOUGLAS KELLNER: In the paragraph where it says resolved, now, is there someone who has a clean copy who can keep track of the actual changes as we go through this?

>> EVELYN AQUILA: I have one.

>> DOUGLAS KELLNER: Well, I'm talking about so we get a final version to vote on if in fact amendments are approved, but in the third line you have what I think is a typo.

You have New York in as italics where it should be regular case?

>> JIM WALSH: New York.

>> KIM GALVIN: Correct.

>> EVELYN AQUILA: Which New York?

First or second one?

>> GREG PETERSON: Third line.

>> DOUGLAS KELLNER: Right there.

Then in the fifth line, the, I think the grammar is off on here.

It says an amendment of the timeline for full lot one implementation. ...

So the question is; is there such a document that has been formally identified as timeline for full lot one implementation?

Or is this jargon that we are now throwing into the resolution?

>> KIM GALVIN: I would suggest it is the timeline that is attached.

>> TODD VALENTINE: That was the original.

>> DOUGLAS KELLNER: Right, but I'm trying to get the text of our resolution cleaned up and devoid of jargon.

If in fact the remedial order…

Does the remedial order use the words "timeline for lot one full implementation?"

>>PAUL COLLINS: The remedial order incorporates by reference our timeline.

Okay?

>> DOUGLAS KELLNER: Yeah.

I just don't like the words "timeline for full lot one implementation."

>> PAUL COLLINS: It may be within the context

>> DOUGLAS KELLNER: Later on in the context of the plan you use "lot one" here.

In the narrative you use "Plan A."

It's just…

I mean, I think I know what you mean because I'm familiar with the jargon, but I don't think it's appropriate for our resolution.

I'm suggesting.

>>GREGORY PETERSON: You have the amendment of the timeline contained in the January 16th supplemental

>> DOUGLAS KELLNER: Correct.

I would use schedule rather than timeline.

>>PAUL COLLINS: Mr. Peterson, would you say that again?

>> GREG PETERSON: After you say an amendment of the timeline, you knock out for full lot implementation goes out.

Timeline contained in January 16 supplemental order.

>> PAUL COLLINS: Okay.

>> DOUGLAS KELLNER: I suggest that you change "timeline" to "schedule."

>> EVELYN AQUILA: I agree with schedule, too.

>> DOUGLAS KELLNER: All right.

The next one is two lines further down.

And here by grants interim authorization to the.

>>PAUL COLLINS: For?

>> DOUGLAS KELLNER: Thank you.

Now Sequoia Dominion Image Cast.

Which model of the Sequoia Dominion Image Cast are we authorizing the use of?

(Overlapping speakers.)

>> ANNA SVIZZERO: It doesn't have a model number.

>> DOUGLAS KELLNER: Are you sure?

>> ANNA SVIZZERO: I checked with Bob Warren.

>>BOB WARREN: The software version

>> ANNA SVIZZERO: We have a software version number.

>> DOUGLAS KELLNER: Which software version number?

>> ANNA SVIZZERO: They are building that software right now.

We can insert that, if you like.

>> DOUGLAS KELLNER: I'm sorry.

The question is; what are we authorizing?

And it needs to be specific and particular and not generic because we are not just generically saying you can use any Sequoia Image Cast.

We are saying you can use the Sequoia Image Cast, you know, with the particular model configuration that has been submitted for certification in the particular software that we are approving for use at this time.

>>KIM GALVIN: We do in the narrative say that all of the machines obviously have to have the same version of software on it.

Because the last drop…

>> DOUGLAS KELLNER: I'm not prepared to give a blanket…I mean, I think the authorization should be specific as to the software that we are approving.

>> KIM GALVIN: Anna, do we know the version number from the final drop they made at SysTest?

>> ANNA SVIZZERO: We can get it. I don't have it at my fingertips.

>> KIM GALVIN: We could reference it.

>> GREG PETERSON: We could.

(Overlapping speakers.)

>> EVELYN AQUILA: You'll insert the software?

>> DOUGLAS KELLNER: ES&S DS200?

>> KIM GALVIN: It will be the same.

We will get the version numbers.

>> DOUGLAS KELLNER: We need the version number; the actual model for New York because the New York model is slightly different from the model in Florida and Ohio.

And I know the software is.

>>PAUL COLLINS: Commissioner Kellner, would it be feasible to insert words of limitation such as "as submitted to SysTest for testing?"

And that solves the issue?

>> DOUGLAS KELLNER: As long as it's defined, that's all.

>> PAUL COLLINS: Use that. It solves the issue, it seems.

>> DOUGLAS KELLNER: We are not authorizing them to go down to Florida and take that Miami machine…

(Overlapping speakers.)

>> PAUL COLLINS: Your point is well taken. If we put in as submitted to SysTest we're covered largely.

>> DOUGLAS KELLNER: Automark?

It's the Automark M200?

Am I right?

Or are we at the M300 here?

>> EVELYN AQUILA: It's 200 plus Automark.

>>BEN CARBALITO: It's A200A300.

>> DOUGLAS KELLNER: It's both?

>>BEN CARBALITO: Yes, there were some that were…

>> DOUGLAS KELLNER: From the newer model?

>>BEN CARBALITO: They were one time the Premier machine that converted.

>>KIM GALVIN: Same machine.

>> DOUGLAS KELLNER: No, they are not the same machine.

>>KIM GALVIN: That's what they told us.

>> DOUGLAS KELLNER: They are not the same machine.

They are similar.

>> KIM GALVIN: The software is loaded, it's identical.

>> DOUGLAS KELLNER: The software is identical.

All right.

I mean, there are differences between them…minor differences, but

>> PAUL COLLINS: Again, the point you make is well taken.

If we simply add anyplace we have the ES&S D200 we can also add and 300, and again add the

Pardon me, Bob?

>>BOB BREHM: It's under Automark, A200, A300.

Automark is the word you want to add the number two.

>>ANNA SVIZZERO: My point is, if we continue to say as submitted to sys test

>> DOUGLAS KELLNER: But the Automarks have numbers to them.

It should say.

>> PAUL COLLINS: It covers a multitude of sins.

(Overlapping speakers.)

>>BEN CARBALITO: If I can offer? DS 200 for the scanner and then for the Automark it's the A300A200.

That's the hardware model.

>> DOUGLAS KELLNER: Good.

>>BEN CARBALITO: Then there are, of course, firm ware versions for those as well.

>> DOUGLAS KELLNER: All right. So the firm ware versions as submitted as of May 11, right?

So if they are submitting new firm ware versions they have to come back and get a new vote by the Commissioners, right?

All right.

Now if we can turn to the narrative on…

So is everybody okay with these changes so far?

>> EVELYN AQUILA: Absolutely.

>> DOUGLAS KELLNER: All right.

The introduction, third line, it says "will be up to."

I would suggest that be changed to "in full compliance with."

Is that all right?

>> EVELYN AQUILA: That's okay.

>> DOUGLAS KELLNER: Then at the end of the second paragraph you've got a hanging clause.

It says "that take place in this state"

It is critical that elections that take place in this state utilize….

>> KIM GALVIN: "Utilize."

>> DOUGLAS KELLNER: "Security and accurate voting equipment."

Changing utilizing to utilize and going to add a period.

Third paragraph, I have a question, it says, "After a great deal of internal discussion and consultation with other jurisdictions."

What were the jurisdictions that were consulted?

>> KIM GALVIN: I was talking about the counties.

I don't know with all the reviewers that we have in the room what they were thinking, but I was speaking of

>> DOUGLAS KELLNER: Should it say "in consultation with county boards of elections?"

>>KIM GALVIN: That's more reflective of

>> EVELYN AQUILA: We haven't talked to other jurisdictions.

>> DOUGLAS KELLNER: All right.

Then in Proposed Plan 2009 lot one pilot program.

>> EVELYN AQUILA: Where are you?

>> DOUGLAS KELLNER: This is the heading.

I would suggest that we just delete the word "lot one" and just say "pilot program."

>> KIM GALVIN: Okay.

>> DOUGLAS KELLNER: Then the second line, it says "roll out of plan A voting systems."

Can we come up with some better language than "roll out Plan A.?"

>> KIM GALVIN: Implementation?

Dispatch?

Utilization?

Dough employment?

>> DOUGLAS KELLNER: How about "deployment of precinct based optical scan voting systems?" How's that?

And then unless somebody could explain where the word "opscan" comes from, wherever the use of the word "opscan" comes, I would suggest that we take that out and either use "precinct based optical scanning systems" or we just use the words "Sequoia Dominion Image Cast and ES&S DS 200."

>> PAUL COLLINS: Would you be adverse, Commissioner, after the first reference to the deployment of precinct based optical scanning systems to a parenthetical, opscan, close quotes and close parens and that covers it, sir?

>> EVELYN AQUILA: Yes.

>> DOUGLAS KELLNER: I don't really like it.

>> EVELYN AQUILA: Well, it works.

(Overlapping speakers.)

>> DOUGLAS KELLNER: All right, I can live with it.

>> PAUL COLLINS: Thank you.

>> DOUGLAS KELLNER: The next paragraph, in addition, this document clarifies, you have the words "the time frames committed to for."

I would suggest that we change that to, "the schedule for."

>> KIM GALVIN: Okay.

>>: I'm sorry, Commissioner, where are you?

Oh, thank you.

>> DOUGLAS KELLNER: Second paragraph of the proposed plan.

Now

>>EVELYN AQUILA: Schedule? What do you change there?

>> DOUGLAS KELLNER: In addition, this document changes the "full machine deployment for 2010."

>>EVELYN AQUILA: Time frame is…?

>> DOUGLAS KELLNER: I suggest that the next sentence be inverted to say "the SBOE will immediately notify the Department of Justice of any deviation from any part of this proposal."

>> EVELYN AQUILA: Better way to say it, absolutely.

>> DOUGLAS KELLNER: It's that old Latin training.

I can tell with the apple to absolute there. Cicero. (Chuckles.)

>> DOUGLAS KELLNER: The next one.

"The State board will conduct functional testing…"

I would suggest "of" rather than "on"

>> EVELYN AQUILA: Okay.

>> DOUGLAS KELLNER: "Prior to their deployment."

>> EVELYN AQUILA: Yes.

>> DOUGLAS KELLNER: Put period and strike the words "in the counties."

>> EVELYN AQUILA: Right.

>> DOUGLAS KELLNER: Now.

>> EVELYN AQUILA: You would make a great English teacher.

>> DOUGLAS KELLNER: Now, the last two lines of that paragraph, "functional testing procedures are being developed and will be conducted by the SBOE staff in consultation with NYSTEC."

1
2 That sentence isn't grammatically correct because…
3
4 >> KIM GALVIN: You don't develop and conduct?
5
6 >> EVELYN AQUILA: Are in development?
7
8 >> DOUGLAS KELLNER: It says the functional testing requirements have been
9 finalized.
10
11 So I take it there's a distinction between testing requirements and testing procedures?
12
13 Anna, this I think addresses your part.
14
15 >> ANNA SVIZZERO: I think we have identified what we intend to accomplish.
16
17 I guess that was what we were meaning by saying that we've finalized that.
18
19 We are just working through exactly how we are going to do that, developing those
20 procedures.
21
22 We expect to have it all done
23
24 >> DOUGLAS KELLNER: Is anything lost by deleting these two sentences?
25
26 Which seem to me to contain jargon and don't add anything to the report?
27
28 >> ANNA SVIZZERO: No. We are trying to prove to DOJ that we are working.
29
30 >> DOUGLAS KELLNER: In addition, "the State Board will acceptance test…"
31
32 Now, come on guys…
33
34 "Will perform acceptance testing on all new voting equipment…prior to its use?"
35
36 Or something like that?
37
38 All right.
39
40 Now, I don't have anything else until page, the middle of page two.
41
42 Thank you for bearing with me on this.
43
44 In the middle of this there's a sentence that says "the details surrounding this upgrade
45 process will be finalized by the vendors and SBOE staff no later than May 15, 2009."
46

>>KIM GALVIN: So that's logistics.

DOUGLAS KELLNER: That's Friday?

They couldn't have been done today?

Now, what are we talking about here?

And the question is, do we delete this or do we

Just what does it mean here?

>> KIM GALVIN: We are talking about the logistics, when the machines will start to be delivered to the warehouse.

>> EVELYN AQUILA: This is a daily report.

>> KIM GALVIN: It's on the schedule.

>> EVELYN AQUILA: You report to the judge that day.

>> KIM GALVIN: Yeah.

>> DOUGLAS KELLNER: Then you

>> KIM GALVIN: That's the last section, bottom of the page.

>> DOUGLAS KELLNER: Two places on page two.

You have it in the middle and you have it at the bottom of the page.

>> KIM GALVIN: Referring to each vendor.

Take it out both places.

>> DOUGLAS KELLNER: All right. Now, maybe I should finish and we'll come back…this is going to be the hard part.

Page 4, the projection for full machine deployment.

Second line.

"Conclusion of our certification project includes the finalization of testing by SysTest."

I think the sentence needs to be rewritten a little bit.

>> GREG PETERSON: Maybe the meeting will be no later than...

That makes the sentence.

That's what you are trying to do.

>> DOUGLAS KELLNER: All right.

"The conclusion of our certification process includes the completion of testing?"

What does "finalization of testing" mean?

>> KIM GALVIN: The SysTest lab is running a battery of tests for us, going over them, and ultimately the board will be making a vote.

>> DOUGLAS KELLNER: Includes finishing testing by SysTest?

>> KIM GALVIN: "At the conclusion of" or "completion of."

>> EVELYN AQUILA: Kim, you know, this worried me.

Not on a grammatical thing but on that date being so firm.

>> KIM GALVIN: It's statutorily required.

>> EVELYN AQUILA: No matter what, we have to meet it that day?

>>: Yeah.

>> DOUGLAS KELLNER: All right, so we are going to change "finalization" to "completion?"

>> KIM GALVIN: Yes.

>>PAUL COLLINS: Commissioner?

Would you accept another change?

Grammatical in nature?

Where it references all our certification?

We, it ought to be SBOE's because it has been third party all the way through.

>> DOUGLAS KELLNER: Good.

Right.

It says the "development of testing reports."

And that's, that elections operations issuing a final test report?

>> ANNA SVIZZERO: Yes, but there are test reporting that we are still talking to SysTest about grading the nature of discrepancies they identify, the mitigation that surrounds them, the

>> DOUGLAS KELLNER: I want to know what the word development means here.

It doesn't seem…

>> KIM GALVIN: Issuance work?

>> ANNA SVIZZERO: I think we were trying to indicate there was work to be done in how the reports are prepared.

We were also talking to them about getting the reports incrementally rather than saving them all for the end.

>> PAUL COLLINS: We could use Kim's phrase, "issuance," because that's what DOJ is going to be looking for.

>> DOUGLAS KELLNER: Instead of "the development", it will be "issuance of testing reports?"

>> PAUL COLLINS: Yes.

>> DOUGLAS KELLNER: All right.

On the third line of the new paragraph, "we are projecting any new machines that need"

I think you have to insert the word "to, to be ordered."

>> PAUL COLLINS: Can we change that to "SBOE is projecting" so we are in the third person all the way through?

>> DOUGLAS KELLNER: How about to say "SBOE projects?"

>> PAUL COLLINS: Yup.

>> DOUGLAS KELLNER: "That any new machines, that orders for new machines will be completed by May 30, 2009."

Orders for…

Well, why are we projecting?

Especially since it's only two weeks away.

>> KIM GALVIN: Because we believe after the pilot is done they may actually modify that final order so it can be a final date.

I think

>> DOUGLAS KELLNER: This says May 30, 2009.

Is that correct?

>> KIM GALVIN: The counties have already issued whatever requisitions they feel they are going to need.

However, we didn't want to make that limiting by making a firm date.

We allow them, should they see based on a line or something else that they need another scanner, they would be able to modify and make slight adjustment to that number with OGS.

>> DOUGLAS KELLNER: All right. I don't think that the sentence says that, Kim.

Right now it says "we are projecting that any new machines to be ordered by the counties will be done by May 30, 2009."

Is that…

>> EVELYN AQUILA: You can put a period there and stop.

>> KIM GALVIN: "We are projecting for the vast majority of new machines to be ordered by the counties will be done by May 30, 2009," period.

>> EVELYN AQUILA: I think so.

For the most part they have already provided requisitions for…

>> DOUGLAS KELLNER: You are striking that based upon the fact clause?

>>KIM GALVIN: I would.

>> EVELYN AQUILA: I would, too.

>> DOUGLAS KELLNER: OK, on to the substance…First of all, where do we stand in having the regs approved required by 9-211?

That's 6210.18?

>>BOB BREHM: We are in a similar place that Liz mentioned, with 6201.

We did the work that GORR asked us to.

Then GORR submits them to the governor's office.

We are waiting for approval from GORR.

Once we get that approval, it can go to the Department of State.

But we can't get to that; we are waiting for that approval from the second floor.

>> STANLEY ZALEN: I spoke to the Governor's office, Jeff Pearlman about a week ago. I thought he would move it pretty quickly.

>> DOUGLAS KELLNER: This is...I thought we split off 18 from the rest of the regs.

>>BOB BREHM: All of 6210 are completed. 6210, including 621019 which are the numbers are done. This is 18, which is the amendment for the audit provisions.

We needed to get it a date on to the calendar to start the hearing process to amend it.

GORR asked us to do other things to those regs from when they were on the list in October.

We completed all of that documentation. They gave us a number.

But their process, we have to wait for them to give us the approval to send it to the Department of state for final publication.

We have not received that.

>> DOUGLAS KELLNER: Pardon?

>> KIM GALVIN: Talking about the audit procedures?

>>BOB BREHM: Yes.

>> DOUGLAS KELLNER: The audit procedures are an essential part of this.

That's what generated all of the public concern that came out in the last couple of days.

We are under a statutory mandate. I don't think there's any dispute that will we comply with 9-211 for this election?

>> KIM GALVIN: For which election?

>> GREG PETERSON: 2009.

>> DOUGLAS KELLNER: For 2009. That everybody has to comply. It's already in the statute. It's already in the law.

And we should make a provision for having, if the regulations are formally approved that the regulations…maybe we should vote to approve them on an emergency basis.

>> EVELYN AQUILA: Can we without hearing from the governor's office?

>>TODD VALENTINE: You don't have that authority.

>> DOUGLAS KELLNER: We sure do have that authority.

The Governor's office has no authority to stop us from promulgating regulations as an independent agency if we've given them the reasonable following of the procedures.

>> STANLEY ZALEN: I think that

>> DOUGLAS KELLNER: The Governor's office does not have veto power over our regulations.

>> STANLEY ZALEN: I have the impression that they would…

>>EVELYN AQUILA: Speak up a bit, Stanley.

>> STANLEY ZALEN: I'm sorry.

I did get an affirmative opinion from Jeff that he is going to move quickly on it last week and I don't think it is going to take much longer.

>> DOUGLAS KELLNER: All right.

Well

Pardon?

>> EVELYN AQUILA: Can we talk about that in our private session?

>> DOUGLAS KELLNER: Well, I want to propose an amendment to this section that will require that all jurisdictions comply with Election Law 9-211 and with the regulations to be promulgated there under.

And then I was hoping that would be noncontroversial.

The more controversial part is that I would like to suggest changing the threshold for 100 percent hand counts.

My proposal would be that any candidate who wants 100 percent hand count can request it.

I'm prepared to discuss with the other Commissioners what you want to do on this?

If the answer is nothing, I'll save you time.

>> GREG PETERSON: What we have to do for the more populated counties.

>>STANLEY ZALEN: You're right, it's dead.

>>JAMES WALSH: What would be the effect on that?

>> EVELYN AQUILA: They might feel...all of a sudden they now figure they would in all likelihood they would have to go to a hand count and now will be forced to on all elections.

>> TODD VALENTINE: You're saying it's not mandatory, but at their option, the candidates can suggest that and the counties; it's not automatic?

>> DOUGLAS KELLNER: No. I'm proposing if the candidate wants 100 percent hand count, they can ask for it.

>> TODD VALENTINE: Well, yes.

>> EVELYN AQUILA: They can go to court and ask for it.

>> TODD VALENTINE: We have it automatically without the candidates asking. What you are suggesting it's not automatic unless asked for by the candidate in this circumstance.

>> DOUGLAS KELLNER: I can't imagine a candidate losing by 1 percent would not want a 100% recount.

I can imagine a candidate losing by 3 percent or 5 percent might want a hand count.

>> EVELYN AQUILA: Don't they have recourse, though?

>> DOUGLAS KELLNER: Since this is a pilot project and we are using uncertified equipment, it's not an inappropriate request.

Under the statute right now under 16-113 they can go to court and ask for a court order.

>> EVELYN AQUILA: Yes.

>> DOUGLAS KELLNER: I don't think we should make them have to go get a court order to do that.

We should just allow it.

>> EVELYN AQUILA: May I say this?

>> DOUGLAS KELLNER: And hope that people will be reasonable and not abuse it.

>> EVELYN AQUILA: I feel like our counties might feel we are putting an extra burden on them. Since they have been so good to volunteer, you know, 70 of them. That's my only… I think what you are saying is absolutely right.

It's the decent thing to do.

But should we under...Are these the circumstances in which we should enforce that?

Or should we argue for that?

To be a resolution in the future?

That's my only feedback.

>> GREG PETERSON: Will that cause someone to pull out of this?

>>KIM GALVIN: Yes, yes, yes.

>> TODD VALENTINE: We have been circulating this for some time now among the staff here and to the Commissioners

Evidence what he says is the decent thing to do

>> EVELYN AQUILA: This is the decent thing to do today.

>> GREG PETERSON: Is this the rules of the game?

>> TODD VALENTINE: That's the way staff understood it and that's the way it was circulated to the counties.

This is a brand new concept today that has not been discussed at all.

>> EVELYN AQUILA: I can't ask the counties suddenly to do this now. It's too late.

If we had promulgated this in the beginning with them and said we are going to ask for up to 5 percent difference.

>>GREGORY PETERSON: If you had done this, you wouldn't have nearly the number of counties involved you have now.

I can understand Commissioner Kellner's point and I agree with it.

However, if something, if the candidate certainly feels, whatever the percentage is, that it was egregious as far as he or she is concerned, they can certainly go to court and it's not a heavy lift to get that court order.

So I think we're covered in spite of the fact that look, I'm a big advocate, as far as I'm concerned, using machines that are not certified.

However, I think all the precautions that we could have possibly had built in have been built in.

Although I certainly understand what Commissioner Kellner is saying, it will be a little bit too much of a burden on the counties….

>> EVELYN AQUILA: That's the only reason I don't go along with it.

I think we have to think about the counties that signed on to this and not make anything a surprise.

Suddenly, guess what?

You know?

>> JIM WALSH: I agree, Commissioner Kellner. Your point is well made.

If I was a candidate and there was 2 percent difference, I would want the count.

There are ways to do that.

I also think the counties that joined in on this pilot project came in with implied set of rules and the rules of the game should not change in the eighth inning.

We are too close to the finish here.

>> ANNA SVIZZERO: I was only going to offer, that's something we encourage our boards to do.

If there's a court order, whatever relief the candidate is seeking from them be reflected in the order.

It helps the counties to get funding.

If this is a good will gesture on the county's part, it's hard to sell.

>> EVELYN AQUILA: More so, then. If they get money, because of the Court order.

>> JIM WALSH: You want to add in 9-211?

>> DOUGLAS KELLNER: I would add as the first bullet, there shall be full compliance with the audit provisions of Election Law section 9-211 and 9NYCRR 6210.18.

>> DOUGLAS KELLNER: 9 NYCRR 6210.18.

>> BOB BREHM: Eighteen says nothing. You may want to be clear which of those two you refer to. The actual adopted one is a place holder. The proposed one is the one that has the detail.

>> DOUGLAS KELLNER: All right.

Why don't we say and proposed regulation.

>> GREG PETERSON: Any regulation proposed there under.

>> TODD VALENTINE: That's a statute

>> DOUGLAS KELLNER: Election law 9-211 and proposed regulation 6210.18.

And I would ask that we put that on the calendar for the next meeting so we can go over the text and do any amendments that we want to then.

>> EVELYN AQUILA: I don't know it off the top of my head, that's for sure.

>> DOUGLAS KELLNER: At least we have the procedure in place for September for the audit procedures.

>> EVELYN AQUILA: Could someone tell me what it stands for right now?

I'm ignorant of it. Give us a quick synopsis of what it means.

>> DOUGLAS KELLNER: The audit regulation?

>> EVELYN AQUILA: I know the audit.

>> DOUGLAS KELLNER: 6210.18 are the detailed procedures for implementing 9-211.

>> EVELYN AQUILA: Implementing an audit?

>> DOUGLAS KELLNER: Right.

>>BOB BREHM: The statute actually puts into place when you have to do the audit and it requires that we adopt regulations for those instances where escalation of the audit beyond the initial 3 percent is required and how it is conducted.

So it's mostly the escalation and also how it, how you get to that point.

>> EVELYN AQUILA: That's really the law already.

>>BOB BREHM: It's why we required the regulation in the first place.

>> DOUGLAS KELLNER: Again, it would say, so we add the first bullet, there shall be full compliance with the audit provisions of election law 9-211 and proposed regulation 6210.18.

>> GREG PETERSON: Somebody want to read that back and make sure we have it correctly.

>>PAUL COLLINS: Commissioner! Perhaps it will read better grammatically instead of, there shall be, if you had full compliance with, because of the other.

(Overlapping speakers.)

>> DOUGLAS KELLNER: Okay.

Just read back the language, Paul.

>> PAUL COLLINS: I believe we would have, it would read, "full compliance with the audit provisions of election law section 9-211 and proposed regulation 6210.18."

All right?

>> EVELYN AQUILA: What does 6210 say?

What does 6210 say?

>> DOUGLAS KELLNER: 6210.18 is like two pages long.

>> EVELYN AQUILA: Oh, okay, I'm sorry, I'm sorry. It tells you how to conduct the audit is what you're saying? Okay.

>> DOUGLAS KELLNER: Right.

>> EVELYN AQUILA: I trust the lawyers here.

>>GREGORY PETERSON: Never trust a lawyer.

>> DOUGLAS KELLNER: So those in favor of adding that bullet say aye.

>>EVELYN AQUILA: I should know better.

(Laughter.)

>> DOUGLAS KELLNER: Those in favor of adding that bullet say aye.

(All members responded "aye.")

>> PAUL COLLINS: That's the first bullet, right?

>> EVELYN AQUILA: First bullet.

>> DOUGLAS KELLNER: I'll formally propose the amendment that any candidate be permitted to ask for 100 percent hand count.

Those in favor say aye?

>> GREG PETERSON: Let's discuss that.

>> EVELYN AQUILA: I am not voting for that.

>> GREG PETERSON: Having been a candidate many times in my life, I was never a pain in the butt.

There are going to be candidates who are going to do this because they are ticked off, angry that they lost and so forth.

If there's something that's reasonable, let them go to court, get an order and that is generally allowed.

Any judge is going to, on a reasonable circumstance, grant that order.

To give them a carte blanche because they are ticked off that they lost the race or didn't like the way it was run or have another agenda, I'm not sure I agree we should put that in at this juncture.

>> EVELYN AQUILA: Not in this because our...99 percent of the time I support whatever you put out there, but on this case I really think that the counties I'm thinking our counties, the Commissioners said they have come along with this, they've seen it already, I don't want to change it at the last minute.

>> DOUGLAS KELLNER: Okay, I know what I'm being

>> GREG PETERSON: It has good things in there.

>> EVELYN AQUILA: Withdraw?

>>ANNA SVIZZERO: Are you withdrawing the resolution or is it 3-1.

>> DOUGLAS KELLNER: Three against.

>> EVELYN AQUILA: Go over the rest of the changes?

>> GREG PETERSON: We have to vote on the whole resolution.

>> DOUGLAS KELLNER: Vote on the resolution as amended.

Those in favor say aye.

(All members responded "aye.")

>> DOUGLAS KELLNER: Opposed?

>> GREG PETERSON: Well done.

>> DOUGLAS KELLNER: I would like to offer an additional motion, though, that we call for a meeting of the Citizens Election Modernization Advisory Committee and ask them to give us a report on their next commissioners meeting of any suggestions or proposals they have concerning the details of the pilot project and we can always go back to the District Court if there are additional recommendations.

And I see two purposes in this.

One is first of all we are following the statute to actually consult with them.

The second thing is that it will help with the transparency of the process if they actually have access to the existing test reports, review those test reports and will share my confidence and I believe the confidence the other Commissioners that this pilot project is well founded.

>> EVELYN AQUILA: Can we get it in writing?

They will give it to us, but I would like a copy.

>> DOUGLAS KELLNER: The third thing is that they may have positive suggestions.

If they have positive suggestions we can consider them.

>> EVELYN AQUILA: Absolutely.

>> DOUGLAS KELLNER: Run them by the counties and also as necessary go to the Department of Justice and the Court.

>> EVELYN AQUILA: Also, while they give it vocally, I would like to have a copy.

>> DOUGLAS KELLNER: Commissioner Peterson said if we have good ideas for the Court, we should bring them to the Court.

We shouldn't be afraid.

So we are going with this plan.

We are prepared to commit to this plan.

If there are better ideas, I don't have any reservation…

>> EVELYN AQUILA: We will evaluate them, of course.

>> DOUGLAS KELLNER: I don't have a problem going to DOJ and say is there a better way to do that.

>> PAUL COLLINS: You have done that by means of the prior motion.

>> DOUGLAS KELLNER: My motion is that we ask for a meeting of the Citizens Election Modernization Advisory Committee meeting and give us a report for our June meeting.

It's easy to ask them for a written report.

The real question comes down to who is going to write it and does it mean a lot of extra work for Anna and her staff who I guess are primarily responsible for assisting them.

>> ANNA SVIZZERO: We will on do our best and rise to the occasion in the example set forth

>> DOUGLAS KELLNER: Those in favor say aye?

(All members responded "aye.")

>> DOUGLAS KELLNER: Enforcement Cases.

There were a few things on this that I thought we could talk about in open session without discussing the names of any parties.

But just to talk on general principles, if that's okay with people.

I made a few notes on these.

The oldest case that we had on that list was 06-17.

>> EVELYN AQUILA: May I make a statement first?

I received the cases yesterday afternoon, just after noon, just after 12:30.

And I have already discussed it with enforcement

They were much too involved for me to read in a day when I was coming up here the next day.

I did go through several of them but I certainly have not reached the total of them.

I discussed it with Liz in saying that I would like to get them before hand.

So I have a few days.

I mean maybe you guys all get it on the Internet, I don't know.

Even if it's only ten and then ten and then ten.

By the time I get here, I have really reviewed every single case.

I'm not doing the cases justice by trying to reach…How many cases do we have there?

50?

Trying to reach 50 cases in a couple of hours I don't think is proper or right.

>> JIM WALSH: Do you get it on e mail?

>> GREG PETERSON: I got it 2:00 o'clock yesterday.

>> ELIZABETH HOGAN: I think Dawn sent them Friday by

>> DOUGLAS KELLNER: I got mine 2:00 o'clock yesterday.

>> EVELYN AQUILA: I got mine 12:30 yesterday.

>> DOUGLAS KELLNER: I never got a hard copy which is ok, I'd rather just get it by email.

>> GREG PETERSON: I got mine Friday.

>> DOUGLAS KELLNER: The Republicans have it together better.

(Overlapping speakers.)

(Laughter.)

>>GREGORY PETERSON: We're being recorded!

>> EVELYN AQUILA: I don't want to vote on any of them in that case.

>> DOUGLAS KELLNER: I didn't get it on Friday.

>> EVELYN AQUILA: I did, but I'm saying is there…Liz said she understands

>> DOUGLAS KELLNER: This is an issue.

>> EVELYN AQUILA: What we see, what we get this time is for next month.

So we have time to really read it.

>> DOUGLAS KELLNER: I'm happy to get them by e mail.

I just think it's a little short to get, I think it was three or 400 pages of material.

>> EVELYN AQUILA: Look, here it is. I want everybody to see what I received.

And as I say, I went through at least the first 20.

>> GREG PETERSON: What would you like to do?

>> DOUGLAS KELLNER: Evelyn, point is taken.

Can we talk about some of these?

Since the idea here is to close all of these files, I don't think there's any harm in putting them over but some of them I'm suggesting that we not close and that we talk about.

So the oldest one was 06-17.

This raised an issue about payment of legal expenses for designating petition challenges.

Liz, do you know what I'm talking about here?

>> ELIZABETH HOGAN: 06-17

>> DOUGLAS KELLNER: And the…

Yeah, I would appreciate if you would look at it because where I'm headed with this is that the defense to this inquiry was that they were interpreting the statute in the same way that there were already Federal Election Commission rulings that say that if the direct payment of legal fees for petition challenges is not a campaign contribution.

Now, it seems to me that that's a legal issue and that we shouldn't just close the file without agreeing on what is the legal principle involved in this.

Especially since we are dealing with an election that took place in 2005.

So there's no question here that we are not interested in prosecuting anybody at this point because the statute of limitations has long since expired.

But I think it's a legitimate legal question that we should resolve, is that, should we follow the federal model and say that payment of legal expenses to get on the ballot is not a campaign contribution that has to be reported?

And is not subject to the expenditure limitations?

>> TODD VALENTINE: Except out of disclosure of professional services in limited circumstances?

>> DOUGLAS KELLNER: The FEC ruled that if a third party wants to pay your legal expenses to get on the ballot, that's okay and it's not a campaign contribution.

And they cited two FEC rulings, 1982-35 and 1979-37.

Now, the city Campaign Finance Board exempts those types of legal expenditures from the expenditure ceilings, but because of the city funds requires disclosure.

Whatever the rule is, I think that we should address it and give an opinion.

And that we shouldn't just close the case and not rule on the issue.

>> TODD VALENTINE: That's a good point. We can certainly research the history on that and find out why we are distinct from the federal rule in that instance.

>> DOUGLAS KELLNER: If on the other hand...

>> TODD VALENTINE: That would be a big change.

>> DOUGLAS KELLNER: If we are saying it is something that has to be reported, we should rule and publicly give an opinion that says that this is covered by the New York statute and that we require disclosure and that it is or is not subject to the expenditure ceiling.

No, there's no expenditure ceiling.

>> TODD VALENTINE: No expenditure, there is a contribution ceiling.

>> DOUGLAS KELLNER: In this particular case, in this particular case they would have exceeded the contribution ceiling by paying the legal fees.

And as I say, I'm not interested in prosecuting this case, but I am interesting in not ignoring the issue.

>> TODD VALENTINE: And providing advice for the petitioners.

>> STANLEY ZALEN: I'm sorry; I stepped out for a few moments.

You're saying that the FEC has two opinions saying that legal fees necessary in order to get on the ballot are exempted from contribution limits?

>> DOUGLAS KELLNER: If paid directly and not go through, and they are not paid by the committee.

>> TODD VALENTINE: Third party pays...

>> STANLEY ZALEN: With or without authorization of the committee...

>> DOUGLAS KELLNERI: I read this on the train at 7:30 this morning so I didn't go into that detail.

I thought it raised sufficient legal issues of interest to the campaign finance community that we shouldn't just close the case. That we should actually answer the legal issues by

>> GREG PETERSON: We'll leave this one open.

>>ELIZABETH HOGAN: The recommends was to close the case, but not the matter.

The matter would be handled internally by campaign finance relative to what the contribution is.

>> DOUGLAS KELLNER: How are you going to handle the matter?

What does that mean?

>> TODD VALENTINE: Table it for opinion of the board.

>> DOUGLAS KELLNER: It's a 2005 election.

When were you going to...I mean, I don't think anybody cares at this point about the disclosure.

>> ELIZABETH HOGAN: No, specifically to this case.

OK, I'll take it off and we'll examine it for the reasons…

>> TODD VALENTINE: It will be tabled for purposes of coming up with the opinion.

>> DOUGLAS KELLNER: What I'm trying to push is the new concept with the amount of time that we close a case; we could do public opinions that would allow the lawyers who practice in the campaign finance area to have a precedent.

>> JIM WALSH: Yeah.

>> ELIZABETH HOGAN: Fine. You want to handle that as a tabled matter?

>> DOUGLAS KELLNER: These are all going to get tabled.

If Commissioner Aquila, if anybody wants to… This one I would suggest that you work on.

In the next month.

The rest of them, you know, other than the ones we talk about right now, you can set aside.

You don't have to work on them.

But we are leaving open the option for Commissioner Aquila or others…

>> EVELYN AQUILA: There are some I saw that I would close, that I looked at.

I'm saying I need, I need…I didn't get through everything.

>> DOUGLAS KELLNER: I have five more I wanted to raise questions on.

>> STANLEY ZALEN: Before you get to the five, certainly Liz and Bill can work on an opinion, but up until now we have had a very consistent attitude about legal expenses relating to a campaign, that it is always part of countable contribution limits.

>> DOUGLAS KELLNER: Fine, just say that.

>>GREGORY PETERSON: We have them going the other way.

We'll look at it and issue our own opinion.

Maybe we will agree and maybe we won't.

>> JIM WALSH: Asking to examine it.

>> DOUGLAS KELLNER: I'm not trying to tilt it one way or another other than to say that we should provide advice to the campaign finance

>> STANLEY ZALEN: I wonder if the key here is if it's an independent expenditure and not…

>> EVELYN AQUILA: What is next?

>> DOUGLAS KELLNER: 07-112.

At least from the file that was presented to us, it looked like, I got the impression that there was a prima facie showing of open-and-shut excess corporate political contributions.

So I was wondering what the theory was foreclosing the file.

>>ELIZABETH HOGAN: I have to look at it. Amount of the contribution was 15,000. You're saying it's corporate?

>> DOUGLAS KELLNER: Yeah. Isn't that the nature of the challenge?

Did I…

>> ELIZABETH HOGAN: No, it's LLC.

>> DOUGLAS KELLNER: But that's the same rule, right?

We say the LLCs are bound…

>> ELIZABETH HOGAN: No, they are not the same as corporate.

>> TODD VALENTINE: Not in New York.

>> DOUGLAS KELLNER: There is no LLC limitation?

>> KIM GALVIN: Well, other limitations, but not that one.

>> DOUGLAS KELLNER: That is the reason for closing it.

>> ELIZABETH HOGAN: It did not exceed any individual...

>> DOUGLAS KELLNER: All the reformers want us to...

>> ELIZABETH HOGAN: It did not exceed the recipient level.

>> DOUGLAS KELLNER: Fine, I understand now. 07-130.

>> ANNA SVIZZERO: While you are doing that, there is one document the Commissioners didn't sign. I'll pass this down for your signatures. That would be helpful.

>>GREGORY PETERSON: Too late!

>> ANNA SVIZZERO: Thank you, I think.

>> DOUGLAS KELLNER: Now, 07-130, the allegation is that there were… It appears there were very substantial cash contributions that weren't enumerated on the disclosure filing.

And, is the theory here that this is too complicated to investigate?

Or that…

>> ELIZABETH HOGAN: No.

If it was a case, the way we approach these was if there was a case that had to do with filing issues – amounts – what Bill and I did when we worked up these complaints is we checked the filing inventories and checked the specific filing.

If the filing matter was adequately addressed in the filing we closed it because it had already been taken care of.

Sometimes somebody finds out there's a complaint against them or whatever they will amend their filings or a complainant makes a wrong assumption about what they see in a filing.

In this particular case, because we made a recommendation that it be closed, and not recommending that there be any follow up by campaign finance, it means we already did the look up and the filing was okay.

>> DOUGLAS KELLNER: All right. That's a good answer. Now, 07-149.

I think that the crux of the allegation here is that the candidate was a poll watcher.

And I just wanted to find out if there was…so, my question here would be do we censure them, you know, in a sense, do a written reprimand because the statute prohibits candidates from being poll watchers?

>> ELIZABETH HOGAN: Yes.

>>TODD VALENTINE: No, it doesn't.

>>BOB BREHM: Poll worker, not poll watcher.

>>TODD VALENTINE: They are not barred from being poll watchers.

>> DOUGLAS KELLNER: I've done it again.

(Overlapping speakers.)

>> EVELYN AQUILA: You can walk in and out of the polls.

>> DOUGLAS KELLNER: That's where I heard it. It's in my head as if it's already law. That's why we are closing it. That's twice now.

>> EVELYN AQUILA: I don't like…

>> ELIZABETH HOGAN: Basically in the past what we would have done is do a specific determination to those facts, but in light of trying to move them.

>> DOUGLAS KELLNER: No, your answer is perfectly correct. If I'm wrong that there's no prohibition on a candidate being a poll watcher, there's nothing wrong with that.

Now, 07-152.

My question here is; are you dropping this because they've actually complied?

In which case I would agree.

>> ELIZABETH HOGAN: If it's an issue… I have to look at it. I don't remember.

>> DOUGLAS KELLNER: A particular group has never filed as a political organization.

>> ELIZABETH HOGAN: If it was a matter of that, we would check the filing, check the registration. If it was resolved, we would close it, which is what we did here. We didn't make specific individual notes relative to each one of those. It was basically the category into which we placed it to close. If it had to do with filing issues or registration issues and all that was fine when we checked it, we closed it.

>> DOUGLAS KELLNER: 07-154 and 07-159 have the same questions. If they actually filed the reports, I don't have a problem closing them.

>> ELIZABETH HOGAN: Just checking.

(Pause.)

>> ELIZABETH HOGAN: 07-154 was closed. However, there was still an article 14 issue outstanding, but what the determination says is… what we have in our unit is a letter to the person being complained of that there is an issue with the filing.

We request them to call us.

We give them a specific person to talk to and when they call us we will address the amending of the filing with them.

We don't close it and it's done with.

So there's a distinction in these generic language determinations.

>> DOUGLAS KELLNER: If they don't follow up with you, you can always reopen it.

>> ELIZABETH HOGAN: Right, if you look at the are determination, it says, counsel was directed to review the responses of the subject that we send this to and if appropriate action has to be taken subsequent to that, we will do so.

We can sue them or come back and reopen the complaint.

Depending on what the underlying facts are.

>> DOUGLAS KELLNER: That's great, Liz. Thank you and Bill. I know it was a huge amount of work for you to get all these out.

>> ELIZABETH HOGAN: I want to look at 07-159 to see if that's the same. I believe it is. Because of the way we categorize. It is. It is the same issue. If you read the determination, the "therefore" paragraph that sets forth our process. We have actually developed a procedure in our office where, you know, we have a mechanism in place that

if these people do not contact us, we do a follow up. If we can't get a response out of them, we go further with it.

>> DOUGLAS KELLNER: So that answers all of these.

I would like to go into executive session to get a report on the pending investigations if that's okay.

Do that quickly.

I don't think there's anything else for executive session.

Paul, do you need to discuss any legal issues?

Kim?

All right.

So it's just to do campaign finance enforcement.

We can talk about our next meeting.

>> ELIZABETH HOGAN: There is a matter to discuss on a complaint issue in executive session.

>> DOUGLAS KELLNER: Okay. Let's talk about our next meeting so we can shut down the tape.

>> JIM WALSH: June 19, I think...

>> GREG PETERSON: That's not a bad thing.

>> DOUGLAS KELLNER: What is June 19?

>> JIM WALSH: Getting married on June 19.

>> DOUGLAS KELLNER: Congratulations!

>> EVELYN AQUILA: Oh, you are? Congratulations!

>> DOUGLAS KELLNER: So maybe…

>> EVELYN AQUILA: I guess you won't be around then for two weeks.

>> GREG PETERSON: You got that right!

(Laughter.)

(Overlapping speakers.)

>> EVELYN AQUILA: Very nice.

>> GREG PETERSON: Perfect.

>> DOUGLAS KELLNER: Tuesday, June 9?

>>TODD VALENTINE: I am not going to be here.

>> DOUGLAS KELLNER: I am tentatively scheduled for a deposition starting June 8, that whole week.

>> JIM WALSH: Want to do another.

>> TODD VALENTINE: I am not here June 9.

>> DOUGLAS KELLNER: How about the 15th?

>> JIM WALSH: Good.

>> DOUGLAS KELLNER: I don't think that deposition is going to happen, though...

>> JIM WALSH: Fifteen is okay.

>> TODD VALENTINE: That's a Monday, if that's a problem.

I'm saying, as far as…

>> DOUGLAS KELLNER: Mondays are okay. All right. June 15.

>> EVELYN AQUILA: That's awfully close to his wedding, though.

>> DOUGLAS KELLNER: Is it a problem?

>> GREG PETERSON: I'm going to be working during the day anyway.

Might as well be up here. Let her do something. Oh, that's recorded, isn't it!

>>EVELYN AQUILA: And webcast.

>> DOUGLAS KELLNER: On that message we will go into executive session.

Thank you all.