

Douglas Kellner: My name is Douglas Kellner, co-chair of the State Board.

Peter Kosinski: I'm Peter Kosinski

Gregory Peterson: Gregory Peterson

Andy Spano: Andy Spano

Douglas Kellner: So, we will start out as the Meeting of the Board of Canvassers to certify the election results from the May 23rd Special Election where Brian Benjamin was elected to the State Senate. We all agree with the canvass as submitted, we need to sign it. And then we also have the certification of Christine Pellegrino elected to the Assembly.

So, there's no other business for the Board of Canvassers so now we'll turn to the meeting of the Commissioners of the State Board of Elections.

The first item on our agenda is approval of the minutes of the meeting of June 1st. We have both regular minutes and Executive Minutes. All those in favor say Aye. (Chorus of ayes; 4-0)
Opposed? So, the minutes are adopted.

We'll proceed to the unit reports; we'll start with the Co-Executive Directors Robert Brehm and Todd Valentine.

Bob Brehm: I think our first thing I wanted to raise is we were going to the summer conference June 20th. Governor Cuomo had issued an Executive Order for his New York State Cyber Security Advisory Board to review and assess cyber security threats to the election infrastructure and to make recommendations on how to address those threats within 90 days. So, on that day Todd and I both heard from Peter Bloniarz who is the Executive Director of the Advisory Board and we were going up to the conference so we did a brief conversation but when we got back we met with Peter and he had laid out at least from his point of view, what their goals were. It is in developing their report. We had been working with Peter Bloniarz since almost a year ago when the first FBI alert came out identifying threats to the election process last year. Peter helped to... he had been participating in our weekly phone calls. He's usually in person or on the phone. So, we were familiar with him. We had been working with him also on getting some assistance from the State Homeland Security, the state infrastructure people, the State Police, a number of state actors who had experience in reviewing some of these cyber threats and also coordinating with our partners at the federal level. So as part of the effort that they are doing, they had a tabletop workshop on Monday that we participated in. There were about 50 representatives from the area of elections that was the State Board of Elections, the New York City Board of Elections, Suffolk County Board and Schoharie County Board and tried to look at a mix of large, small homegrown kind of settings as to what some of the risks were. They also had representatives of the National Homeland Security, the FBI, City Police, Secret Service, Military, National Guard, a whole host of people who serve in some disaster preparedness or cyber security protection. So, it was very worthwhile on Monday and it's not to look at everything but what are the risks and what are the recommendations that basically they can report to the Governor. So, I thought it

was very worthwhile on Monday. There is a follow up meeting of the Advisory panel itself next week. Mr. Bloniarz indicated that he wanted the State Board participation in that but they're still developing the parameters of the meeting so once we learn more we can best decide how to participate in it. But one of the issues we think we need to be addressed so that the Governor's recommendations are I think mostly standards and resources to implement those would probably be big in that list. That effort is a recent effort since the Executive Order. We had been working before the election and after the election with our own team of people and others to look at the list of items that we had addressed before the election that needed fixing. Some we could do before the election, some were a bigger issue that you couldn't really touch that close to the election as post election. So, we continue to work on those, meet on those. We're doing a risk assessment of the county boards of elections and had issued a survey to all the counties and we had full participation with the least amount of follow up work. So, one, we thank the counties for all of their efforts leading up to their petition cut off dates where they get really busy to get that work done. We were analyzing the answers they gave us to the survey. Some of the answers are generating some follow up questions to make sure that we think they understood the question right to give us the right answer. And then look at some of the issues that may need some follow up that we can ourselves put on a to-do list. It's too early to come up with conclusions yet but I think it's safe to say in terms of counties on their to-do lists when they're preparing their county budgets is at least raise the awareness to their local administrators that we think more will need to be done and as we get more information they can plug that in. But at least make them aware of that. In addition to our cyber security, the state has appointed a new IT Chief Information Officer, Bob Sampson. We met with him on June 19th. He's been making the rounds of agencies so he came here. The last time they invited all the agencies to meet when Maggie Miller became the new CIO. He's taken a different approach, instead of everybody come to him he's going to all the agencies and meeting with them. So, I thought that was at least refreshing. We're kind of a high grid in the way we get support from the State IT because our staff is here we're only one of two agencies that their staff is not all ITS Staff. So probably is getting use to activity.

On July 24th, the Governor issued an executive order in relation to distribution of Voter Registration applications. They have had 2 follow up phone calls, as they describe it to operationalize the Executive Order. We're still in the learning phase of what that means and they have another follow up either a meeting or something next week so we're not 100% sure what other than more forms will be coming.

Gregory Peterson: They're already rolling this out, aren't they?

Bob Brehm: They issued the Order to the agencies the phone calls are looking at a to-do list kind of approach.

Gregory Peterson: What I'm saying though is that forms have been distributed through various agencies already and with people that haven't been trained pursuant to the NVRA which we are subject to. I'm not criticizing the Governor's purpose because I think it's appropriate on the one hand, on the other hand you really have to do this with a right amount of preparedness

beforehand. And that means training the people so that they would act in our stead in various agencies and not just willy-nilly hand stuff out or give wrong information which is dangerous.

Bob Brehm: We are not a member of the taskforce; we are in the Executive Order the State Board of Elections is in their view to be consultant as I said. You know Todd and I have talked on the phone to remind them that they haven't asked us anything yet. So, if they consult us what is it that they would like us to help? We have a training manual for NVRA. We do that so certainly if they needed a starting place, that would be a good place to look. What is the existing training we give people in NVRA?

Gregory Peterson: That should be made clear to the powers that you know this would be an appropriate approach and it's been done before so we can do it again. We'll make ourselves available, we always have. But to just go off without us and then try to rectify the stakes later on I think would be a huge mistake.

Bob Brehm: Well yesterday was the second call and we did reiterate with them following the call that they needed to do more work to reach out to us. You know, how do you want us? I mean it's hard for us to react when we don't know what they want us to do but they're still learning what questions they want to ask.

Peter Kosinski: Yeah, I think its unfortunate we're not on the task force frankly. I think that if it's a task force in charge of voter registration it would be appropriate for the State Board of Elections to be on it. Have you asked about whether we can actually be on the task force so we're more intimately involved in what's going on?

Bob Brehm: They said they'll consult and engage us for the task force. So certainly, being a member of the task force, I have no problem with either of those. I can follow up with them with that suggestion. I did suggest that they reach out to the Board as a group and meet with us and ask us or at least tell us whatever it is.

Peter Kosinski: To Commissioner Peterson's point, we already have a program we have our NVRA program which does I think its goal is to make sure it's a nonpartisan effort that's going on out there for voter registration purposes and I think utilizing that would make a lot of sense with these new agencies. And I guess I'm a little concerned that they're already rolling this out and those training programs have not yet been engaged.

Bob Brehm: Well, on the call yesterday the training is an issue to deal with but there also is looking at how many site locations do they have? What kinds of programs do they want to do? How many forms do they think the need?

Kim Galvin: But they did say that OGS already started, that the bands up at the Plaza and Ag and Markets is at the State Fair and going to the other fairs so, yeah. I think that's just what they're talking about.

Gregory Peterson: I'm not saying this is in an obstructionist way. What I'm saying though is that we have the expertise here and to frankly be second banana so to speak in this bunch I don't think is appropriate. There's a lot to be learned from this Board and I think we should have full participation in it. If it's done right I think it's a tremendous program.

Douglas Kellner: So, you'll pass that on?

Bob Brehm: I'll pass that information along. I think we're all trying to make it work for the distribution of forms and a nonpartisan...

Peter Kosinski: Well I think from my perspective, I just would want to urge just for me that the Governor look at the task force and include us on there because it just makes sense. And I would ask you guys to forward that but I would think that in this forum that we're in today I would like to put that out there. I don't know how the other 2 Commissioners feel, but I think that's an important principle that voter registration has always been done on a bipartisan basis in this state which is an important principle to ensure the integrity of the voting and the registration system. So, I think we should make it our effort to try to be included.

Andy Spano: I think at this particular point some of the agencies have started it. This has so many different aspects to it. There's no harm in giving out forms. The other option is to hold back forms and there are many...

Peter Kosinski: Commissioner there is a harm in giving out forms if there is misinformation. And our goal when we do training of sites is that we make sure the workers are given the right information.

Andy Spano: He has already had a discussion and maybe Todd has been involved in it, I don't know. He has said we are available. We want to do anything we can to assist you and that was very recent that that conversation took place. So, let's see what happens. But I agree with you wholeheartedly but I don't think there's anything wrong in the interim more people handing our registration forms. I've done it myself.

Peter Kosinski: Well I think it's more than handing out.

Kim Galvin: it's more to assist.

Peter Kosinski: My reading of the Order was that the agency personnel will assist in that which is fine but again we want to make sure the people that are assisting are properly informed on how to fill out a voter registration form and our concern is if they're not properly trained they may be giving out misinformation to the public and that would be unfortunate.

Andy Spano: Well all I'm saying is that this happens everyday with candidates and everybody else who gives these forms out. And the responsibility here is to get as many people registered as possible. So, if while we're preparing for the kinds of things you want done, what we want

done, we hand out more forms, I don't think there's anything wrong with that. If you give the wrong information we'll simply send it back.

Todd Valentine: Well I think there's a difference between a private voter registration drive or a private organization engages in that vs. the government activity that is engaged in that. I think that's a distinction that we're trying to draw here is that we have a standard we apply when we advise state agencies on how to register people and that's what we need to insert into this program. While the Executive Order may have laid out some of those steps, what hasn't happened yet, and this is a critical time to get added to is you know put the cart before the horse. Its fine to have the concept but what we need to do is say, "Hey look the training is not hard or difficult to do but you just need to step back and take it with consistency with the Executive Order and that's where we're at a point where we need to insert more into that.

Andy Spano: I'm not disagreeing with that. I'm wholehearted with that. All I'm saying is that some eager people handing them out beforehand is not such a big deal. That's all.

Douglas Kellner: Alright so Todd and Bob will follow up to move that we because I think we're all in agreement that training is a positive thing and that the program is a positive thing and so we want to do what we can to make it as effective as possible. Do you have anything else?

Bob Brehm: I have one other item. I'd just say that we're getting close. It's that time of year, session has ended, we don't have a uniform primary for next year and we have to prepare the calendar to give to Judge Sharpe so he can set the Federal Calendar for next year. So, Todd and I talked briefly. We just pulled out what we did last even year election there are some changes that happen in a Governor's year that don't happen in a Presidential so we have to combine a little bit from 4 years ago. Mostly there is a statewide candidate for the United States Senate so we have to bifurcate the State Conventions to nominate statewide candidates to the Federal Calendar. So just a little bit, we're working on a draft. We hope for the next meeting to have a firmer recommendation to you so then if you accept it we can submit it.

Douglas Kellner: We'll we're talking about the next meeting at the end of September so you really should have a final version by then so that we can approve it and you can get it so ordered by the court.

Bob Brehm: Yeah, we just looked at the dates and the issues and we shared a handwritten version just to make sure, just to let you know we're working on it.

Douglas Kellner: Because I think that's about the right time that you want to publicly set the calendar.

Bob Brehm: I think Judge Sharpe signed it in October last time so it's about, we're on the same trajectory. So, I just wanted to share that information.

Douglas Kellner: Good. Anything else Todd?

Todd Valentine: Well I just want to follow up on the cyber issues and one of the things we want to push for or we'll probably need to put into the budgets, our own budget we alluded to the counties they need to be aware that this is an issue that they're going to have to face going forward but we also had to look at it from our own budget perspective whether or not we have sufficient resources to make sure that our own security is in place. That is one of the outgrowth, we hope of this work is that there's a recognition that both the county and the state boards are going to need resources in some fashion in order to meet the standards that we believe should be met. We have identified a good number of the issues but it didn't necessarily give us the answers for how it all gets done and trying to get it done as we explained to the large group were working with, we need to do this at the same time that we're still trying to run the election. So, we can't just stop and focus on this, everything else has to continue going on so that's going to be a challenge as we go forward.

Douglas Kellner: That's good and I know you prepared a special request last year for additional resources both for cyber security and for our hardware infrastructure and I certainly support doing that again to make it clearly known on the record what our resource needs are and then its up to the Governor and the Legislature to respond. Alright then next is Counsels, Kim Galvin and Brian Quail.

Brian Quail: Thank you very much. It has been a very busy period with the designating and independent nominating filing periods having fallen between now and the last meeting. And while it is not a busy time for the receipt of filings for the State Board of Elections, it's an incredibly busy time for the County Boards of Elections because pretty much all of the town and the vast majority of local elections are in odd years. So, we have, as a Unit, fielded a very large volume of calls from county boards and others with respect to the petitioning process. Also, on the litigation front, there have been some significant developments in a number of the active cases that we have been involved in and I think, in particular to note, we filed jointly the Board an appellate brief in the Lauder case in June dealing with the applicability of §16-142 to provide a vehicle for voters to bring proceedings with respect to violations of the Election Law. We entered into a settlement which was essentially between the DMV and the DOJ but also involved us in our capability under NVRA on June 20th which prevented litigation, which is always a good thing. And provided for compliance as well and the Department of Justice lauded both the DMV and the Board of Elections for our cooperation in moving through that process to ensure that people who register to vote at the DMV have every opportunity to do so as the law provides. We also discontinued the case in Parish v. Kosinski dealing with the constitutionality of the village nominating petitions and there would be a fee application from the plaintiff's yet to be resolved in that matter but otherwise it is concluded.

On the Compliance side, we provided 138 additional referrals in deficiencies in June to the Enforcement Counsel. The current status of deficiencies is 837 unresolved, 277 that we have sent over have become compliant and a very large number have been reclassified. I'm very pleased to report that we have a tentative grouping of deficiencies to move over to Enforcement that represents this current quarter, and as of now there are about 25 on it. The smallest number that we've ever moved over. The number will, no doubt, go up because several committees have just formed and are filing for the first time in local elections for the July filing but there's a good

trajectory in terms of the level of people who are working with us getting it right when they make filings, which is very good.

Peter Kosinski: Which filing are you referring to there?

Brian Quail: With respect to the deficiencies?

Peter Kosinski: The 25 deficiencies.

Brian Quail: The deficiencies would have spread potentially across multiple filings.

Peter Kosinski: Oh, so it's not one filing period, you're talking about multiple filings?

Brian Quail: It's those deficiencies that have aged out and the process of getting them to comply has ended within the timeframe. It doesn't necessarily relate to a particular filing. We can provide that but I don't, as I say there are no...

Kim Galvin: Sometimes it takes more time but as long as they're actively working and answering we allow them to continue to try to fix their filings. So, at a certain point when they just stop, it could be a variety of filings, as he said.

Brian Quail: A couple of important staff changes recently; Jessica Norgrove has joined us in the Supervising Investigative Audit position. That position was vacated by Marie Woodward when she took the Compliance Specialist position that was previously held by Cheryl Couser. So, we welcome Jessica onboard. She's only been with us for a few weeks at this point and is off to a great start.

Another thing that I would offer a note on is that we have been, as a Unit, grappling with the issue of Special Federal voters where there are instances where a voter is entitled to a ballot, a Special Federal ballot under federal law but they also meet the definition under Article 5 of the Election Law as being entitled to a state ballot and dealing with that process which we'll have to deal with by next year of how we can provide them the federal portion of their ballot within the transmittal timeframe of 45 days and also by the mechanism of transmission that is required under federal law. This used to not be an issue prior to the Move Act because no one was concerned when the state essentially decided to give certain voters more of a ballot. Their concern was only that Special Federal voters, whether they fall into any category the federal law had identified get a ballot. So, when the means of transmittal and the timeframes diverged between those two groups, when there happens to be someone who meets the definition of both, we don't have a ready mechanism in the special federal zone, although we absolutely do something very similar in the military zone for military voters to accommodate that. So, we have been working on that issue. It's something that really should be resolved by next year. It could theoretically be solved legislatively but we think there is an administrative option and we hope to be coming to you soon with a recommendation on that.

Kim Galvin: And just to note that the urging and the discussions of the Unit was prodded by the Department of Justice, it's not like we were just sitting around one day and decided to investigate it.

Douglas Kellner: No, I understand. They're prodding us over the state ballot?

Kim Galvin: Well they're prodding us over the Special Federal voters that get in their federal ballot within the 45-day timeframe. They don't really care about the state portion.

Peter Kosinski: So right now, who gets the federal ballot pursuant to the Move Act?

Brian Quail: Well, military.

Kim Galvin: Military and Special Federal voters.

Peter Kosinski: And who are these then that we're talking about? These are overseas, these are people who are temporarily overseas.

Kim Galvin: Temporarily overseas that continue to maintain the residence in the State of New York.

Peter Kosinski: So, they're not a Special Federal voter but they're in a similar situation as a Special Federal voter. So, we have to treat them the same way.

Kim Galvin: Ordinarily we would send them the full ballot at the deadline...

Peter Kosinski: Right, but later.

Kim Galvin: 32 days out. So, they're saying no.

Peter Kosinski: We should treat them the same way we treat the military.

Kim Galvin: Essentially getting them the federal portion within the 45 days.

Peter Kosinski: And the hesitancy here is that you feel that the state law...

Kim Galvin: We really don't have a hesitancy.

Peter Kosinski: Oh, you don't. So, we're inclined to do what the feds are telling us to do that we should provide them with the same ballot we provide the Special Federal voter?

Kim Galvin: Well from my opinion we looked at the issue and some wording was a bit problematic but we believe administratively we can effectuate the change without the requirement of a legislative change and the Department of Justice is always happier when we

don't need to go to the legislature for change. But I think we can effectively do it through regulation and administrative remedy here.

Brian Quail: It really is about providing people with the state ballot. Because under the federal definition there are 3 categories of individuals who the federal law requires receive a special federal ballot. And the category that is concerning is where someone says, "I am a citizen residing outside of the United States and I intend to return" so within that subgrouping you can have someone who for example is working in Germany for 2 years and is a bone fide resident of that place but is also very much still a resident of the property that they maintain in New York. And so back in the day it didn't create much of an issue. The Board of Elections would see somebody in category A and they'd say, hey just send them the whole ballot and we're all done. The problem now is that half of the ballot, the federal piece has to be transmitted 45 days before and the electronic transmittal options need to be available for that portion. So, the federal voting assistance program sent a letter to New York and Wisconsin and informed us that we were the only 2 states that have interpreted category A to simply mean that you are treated as a regular absentee voter. They want to make sure that with respect to the federal portion of the ballot that those orders are treated as a federal voter. The upshot is that with the administrative change that we would recommend, there would not be any new category of person getting anymore ballot than they were getting before, but the federal piece of what they were getting before would go 45 days and...

Peter Kosinski: So, they'll get 2 ballots just like the military. They'll be getting a federal ballot and a state ballot. So, it's really incorporating these people into the process the county boards are currently using for these other voters.

Brian Quail: So, we researched the issue and provided a memorandum previously that outlines the basis for that.

Douglas Kellner: Can you give us a report on the litigation with respect to New York City Voter Registration and the settlement negotiations and why it isn't settled yet?

Brian Quail: I can offer just a little bit of report on it because I don't know it but I actually did speak with someone in the Attorney General's Office this morning and actually, pursuant to your question Commissioner, and was informed that they believe that it's likely the settlement will be somewhat imminent and that the process has been amicable and positive. And I believe from New York City's point of view it's similar as well. So.

Douglas Kellner: Do you know why it hasn't settled yet?

Brian Quail: I did not know specifically why it hasn't settled yet other than there are a lot of parties and so, purely conjecture on my part, and that the issues raised are substantial and complicated. But I don't know specifically why it hasn't. But the Attorney General has...

Douglas Kellner: What are the substantial issues?

Brian Quail: The issues that were outlined in the Attorney General's letter in terms of the issues that they saw occurring in New York City as a result of what happened after the purge with the voters and their concern about the overall process. So, the subject matter is highly operational and very specific. I don't have any other information other than what was in the complaint originally and what was in the Attorney General's letter to intervene.

Douglas Kellner: Alright. So, then we'll go to Election Operations. Brendan.

Brendan: Thank you Commissioner. This was also a very busy time for our unit as well. We had all the designated petitions. We have 77 petitions that we had 236 delegates, 211 alternates. We did have a declination, substitutions, two general objections and 2 specifics which are on the front page of a report that will come up later. Unit also worked to prepare the certification documents for the special elections for the Senate and Assembly districts. We had another recent retirement in the Supreme Court in the First JD that was sent out. We also had 2 de minimis changes that doesn't have to be voted on but we have to notify the Board; one of them is a scanner for Dominion and the other one is the auto tactile interface which are the, Bob has those. It's an end-of-life issue.

Bob: It doesn't affect the user, they look identical, it's the internal components.

Brendan: Pursuant to the regulations just let the Board know about that. Also, we have for the next meeting which could be voted on would be the functional testing that we had on the Dominion Statement of Vote Cast record that are in your packets for review. So, if there's any questions about that we can discuss that. We also had a ballot draw for the Conservative Judicial Delegates in the 9th JD, 98th Assembly District and I think that's about it. If there are any questions?

Douglas Kellner: Thank you. Public Information, John Conklin.

John Conklin: Thank you Commissioner. The Public Information Office has been busy since our last meeting. We've had many, many calls as Brian said. It's a local year there's been many questions about petitions and things to do with local petitions. Also, the July filing, the periodic filing is always a topic of major interest for the press and we had a lot of calls regarding that. Tom and I participated in the monthly Election Commissioner's Association calls in June and July. The Annual Report is completed and you should each have a copy of that for 2016. Tom and I also participated in all the meetings that were mentioned about the cyber security issues. The Unit completed 72 FOILS in June and 103 in July. For the website, we posted the draft language for the third statewide ballot proposal that was passed at the end of the session with regard to the Adirondack Land Bank. We also posted filings for the petitions that were filed for the judicial delegates and alternates for the 2017 primary election. For NVRA we visited the Otsego, Cortland, Chenango, Sullivan, Fulton, Schoharie, Hamilton and Onondaga Boards for NYSVoter Reviews since the June 1st meeting. And all those boards were found to be compliant. Tom do you have anything to add?

Tom Connolly: The only two things I would add is that obviously we reminded boards about the deadline on August 11th for sending out their ballots for the primary to their military voters and I've also reached out to the counties about updating their poll site information with us because at this time they consolidate their poll sites for primaries so if voters are coming to our site to look up their record and see where they go to vote, we want to make sure they have up-to-date information, so that's in process.

Douglas Kellner: Thank you. Information Technology, Bill Cross.

Bill Cross: Good afternoon Commissioners. I'll start off with projects particularly CAPAS-FIDAS. Our main issue continues to be resources. The project remains in need of 2 development staff. I'm happy to report we've identified 2 individuals finally for these contracted positions, both are scheduled to start later this month. We did however lose one state employee, BOE programming to another agency and we've started the process to refill that position so, at least in this case its 2 steps ahead and 1 back.

Andy Spano: Can I ask a question? When we lose an employee to another agency is it a higher job or better pay or what?

Bill Cross: It could be either. In this case it was a lateral. They wanted to pursue a different type of development than they were currently working on. In this case it was lateral but it could be either; it could be promotional or lateral.

Andy Spano: Is it generally trouble to hire IT people when you're competing with private enterprises?

Bill Cross: Yes and no. The state has issues in terms of their process for hiring IT. The two legs of it is one is continuous improvement or basically entry level that civil service has laid out and its relatively low pay, low grade items. The promotional opportunities once you're in and there's a mechanism for those promotions but to bring in new talent at a higher level or specialized skill which, like many professions these days it's become all about specialization, that mechanism is extremely difficult to navigate. You really have to get someone you feel some promise in entry level and mentor them and bring them up through. So, it's very difficult to bring them in at a specialized level. For that generally our only mechanism is to rely on contractors. And of course, for that we pay a hefty price, sometimes double what we would pay for a state employee. So, it is difficult that way. In this case, this particular position is an entry level position and so we can go out, we'll have a larger range of candidates to pick from. But we did also advertise for a lateral, people in other agencies doing similar work to give them the opportunity to transfer over to us as well and sell ourselves a little bit. But yes, that is a problem.

For recent progress, we continue to develop use cases for the multiple processes related to candidate management as well as EFS and we're making good progress there and we also continue development on the EFS screens that most of you have seen. We also continue to investigate some technologies that hopefully enable us to reduce the custom development effort I've talked about before and pull in the timeframes a bit. We're looking at several items there

that would hopefully assist there. We're also planning for stakeholder outreach for both the treasurer and county board of election working groups. It's been some time since they were engaged. We're currently working on schedules and agendas for those. For EFS we'll be providing a demonstration of the system in its current form similar to what we provided you and be looking at soliciting their feedback. For counties, we'll be looking to discuss various data collection processes and how that data will flow between their current systems and ours and the process and timeframes in which that will occur. Those meetings we're targeting the end of August for the treasurer working group and the end of September for the county board group. For NYSVoter we continue to work extensively with the vendors for...

Douglas Kellner: On CAPAS-FIDAS what is the current schedule? When do you think that we'll actually have the beta program out?

Bill Cross: The full schedule including testing rollout and everything as I believe the last time is still April of '19. We will obviously have pieces available before that including betas and such.

Douglas Kellner: April 2019?

Bill Cross: April of 19.

Douglas Kellner: A year and a half from now?

Bill Cross: It is a year and a half from now yes, that's given also current resources so we're hopeful of bringing on these additional resources and eliminating a lot of custom development that is currently in the plan that we can pull that in, so that's what I'm striving for. But that's end to end. That includes testing, and training and rollout. We will have beta testing at some point before that.

Douglas Kellner: Okay I just wanted to know. I note that that's 4 years beyond the initial date that was promised us. Long before you were here.

Bill Cross: But it's certainly a priority for me so I'm trying. Okay NYSVoter we're continuing to work with the vendor. We finished up plans for the new infrastructure, networking, servers, etc. And all the acquisitions for the required hardware and software now in progress for that. We've also started implementation of that for several areas that don't require acquisitions such as locally here reconfiguration of networks, things along those lines particularly for disaster recovery and communications between our main site and our DR site for redundancy. We are also working on developing an in-house application to replace the move application and that development is going well and on check.

Security is also a very large component of our activities. One of the benefits of going last is a lot of it has been covered already. Bob covered our activities with NYSTEC and the risk assessment as well as the Governor's Cyber Security Review and the participation there. We also continue to work on some of the longer-term aspects of what we identified pre-election which includes enhanced monitoring of our systems, scanning and some intrusion detection;

pieces that we were unable to do in the short timeframe before Election Day. We're currently investigating some options there and engaging some vendors and researching information there. Bob also mentioned our meeting with the new State CIO, Bob Sampson. One of the things that was also discussed in that meeting that came out of it is the state is moving now to their permanent data center, still at the same facility but a different building. They were looking to us to move as well, however their timeframe put it smack dab in the middle of essentially our busiest season, election season. We really see some pressure to move any ways. That meeting was very productive and him recognizing that and willing to, allowing us the time we needed to do proper planning and address at least after the beginning of the calendar year. So, we've got that commitment from him.

The website is pretty much experiencing normal levels of activity for this year. We have seen an uptake of approximately 25% on key pages related to, of course, campaign finance such as in the courts for July. That's about it.

Douglas Kellner: Any questions? Next is Enforcement, Risa Sugarman.

Risa Sugarman: Good afternoon Commissioners I thought that I would ask that you, I know you have questions for me so I figured that I would start with your questions for me instead of starting with my statements. I know that you have questions, so we could start with that. No?

Peter Kosinski: You don't have a report then?

Risa Sugarman: I usually start and then you have questions so I figured we would start with the questions. I know that you have some.

Douglas Kellner: The usual contents of a report Ms. Sugarman would be to report on the cases that have been referred to you by the Compliance Unit and what you have done with respect to those cases, how many proceedings have been initiated and what's pending. Then, next part is with respect to the complaints to report on the complaints received and the disposition of the complaints received and particularly the requirement in the statute that you notify the Commissioners when complaints have been closed. Third, is the receipt of judgments and collections. And I'm sorry if I'm be pedantic but I understand that with all 3 of those that you're not particularly interested in reporting to the Commissioners and I think the assumption on the part of the Commissioners is that there is nothing to report and therefore...alright I've said enough.

Risa Sugarman: Well I believe that in my Annual Report that I gave to you the judgments that were collected. I don't have a copy of the report with me but that the judgments that were collected both on the Enforcement and on the judgments that had been obtained by the prior Unit and had been collected by the Division during the last annual, during the last calendar year. So that that is contained in the Annual Report. I do not have the amount that were collected between January and July of 2017. I continue to view the nonfiler lists that are submitted or that we in the Division obtain from the IT and review those with an eye to determine what, if anything that I will do with those. I did that for the January Periodic. You asked me at the June

meeting to meet with Brian and Kim to determine whether there was anything we could do with that list. We had that meeting. The discussion was...

Kim Galvin: Unproductive.

Risa Sugarman: Thank you. I think the reason it was perhaps, I am sure that Brian or Kim will correct me if I'm wrong. Brian considers the list accurate and valid and Kim was willing to discuss it, I think is more what we got out of that meeting.

Kim Galvin: I think that Brian's point was not necessarily the list was infallible but even though there are some things on there that were old and people were in jail that the vast majority of the list was still valid.

Risa Sugarman: No, I think that he actually said that he thought that the list was a good list.

Douglas Kellner: Why don't you get to the point.

Risa Sugarman: Well I think that when we sit down and ask for a conversation about the list when you have that kind of disagreement it's hard to go from there. When I look at a list of nonfilers and I try to determine how to deal with a list like that, it's very difficult to organize a strategy because in my opinion the list is filled with committees that should be terminated. It's filled with and I'll give you an example why I say that. Right before the July Periodic was due, I know that the Compliance Unit sends out a postcard reminding people that the July Periodic was due. And that the last time I sent out a blast e-mail to active committees, it created a firestorm because of the determination of who was required to file. So, one of the things that I wanted to do at a meeting was to cull the list with Compliance to see if we could come up with a list that was agreeable among all of us. And Brian's position was, and I believe is, is that pre-filing is in his words a quintessentially Compliance function. So, what I did was I sent the e-mail to candidates for local committees and we sent it to about 900, let me just make sure, we sent it to 946 e-mails to candidates who had a committee that they had authorized to file and were on a failure-to-file list. And had failed to file the January Periodic. And we told them that they were associated with a committee that had failed to file the January Periodic and that their treasurer was so and so and that this targeted e-mail was to notify them that the July Periodic was due July 2017 and that in some cases that you, as the candidate are unaware that your committee hasn't filed your January Periodic and if you have a question, please notify our investigator. And from that e-mail we received 262 phone calls or e-mails. From that e-mail, approximately 200 committees filed their January periodic. And we're working with those approximately 260 committees to get them into compliance. The vast majority of those committees thought that their committees had been closed because there were various explanations, some of them had run in a primary, had lost the primary and closed their accounts and just stopped filing. Now under the law are they required to file until they terminate? Yes. Some had run and lost in the general election. Closed their campaign accounts and thought that they were done. And this is 2 or 3 years before. Now when the legislature changed the process and added a hearing officer process the hearing officer report that we file and I know that you don't think that we filed enough Commissioner, the hearing officer reports that we file are approximately 30 pages long. They

include the history of the committee and they include the requirements that we have to prove that it's not a de minimis violation because one of the things that the hearing officer has to find if she, because I can say that because the hearing officers that we have left are all women, she has to find if she's not going to dismiss the matter is that the violation is not de minimis. So, to have a hearing officer complaint report filed and then a decision made and then our Supreme Court documents are generally over 80 pages. So, it's not the same kind of litigation that was conducted where hundreds of treasurers were named on a petition that was filed before. So to expect when you get hundreds of calls and a majority of which the candidates felt that their committees were closed because they ran in a primary 3 years ago and they thought that after getting a welcome letter that's 6 pages long and at the end or middle 3 lines in italics says that you have to file until you terminate, it's been my judgment, and the legislature has said that it's the Chief Enforcement Counsel's authority and judgment to file the litigation, that I cannot rely on a database that includes those kinds of committees. So, I will not rely on pushing a button and obtaining a list that includes those kinds of committees to determine the litigation strategy that I will adopt. And I've told you that over and over again. And to bring this up to me every time for the last 2 ½ years I don't think is something that I find helpful nor will I...

Douglas Kellner: Are you finished?

Risa Sugarman: Well I guess since...the only other thing that I would yes, I guess I am since it really doesn't matter what I seem to say. The only thing that I would include is that I also in addition to the e-mails that were sent out by Compliance on the July Periodic, I sent also a list to the County Commissioners about the local filings of the July Periodic and I received e-mails back from Commissioners that also sent to me, except I asked them to help me determine which committees they believed were not active. And an example that I can give you is a county that had 7 committees on that list and the response that I got from the Commissioner was, 6 of those committees have been closed for more than 2 years. So even the county Commissioners, in spite of the fact that that list was created by the fact that those committees were not terminated...

Kim Galvin: Do you really believe the County Commissioners know if a committee has been terminated better than us and our staff?

Risa Sugarman: If you had let me finish, even though the list was generated and the committee was not terminated because they're still on the state board list, the committee is not active anymore. The committee is closed and not functioning. So again, is there a committee that is spending money?

Kim Galvin: Commissioner, at the beginning of that meeting we asked her what we could do to clean up the list? And she said, with her hands raised, "How am I supposed to know"? So, then it devolved into a little bit of this...

Douglas Kellner: I don't know that this is productive. We've gone through this over and over again.

Kim Galvin: I just want to make one point.

Douglas Kellner: Ms. Sugarman has no intention of prosecuting these and so you shouldn't waste your time on it. Just do your job.

Kim Galvin: I just want to make one point, everything that she described is quintessentially a Compliance function. Reaching out before the filings, letting people know to file before the filing is due, working with them, that's our job.

Douglas Kellner: Agreed and once you send it to her her job is to file an enforcement proceeding which she doesn't do.

Kim Galvin: Correct.

Bob Brehm: Both sides seem to be doing compliance.

Kim Galvin: That's right.

Douglas Kellner: Alright. As I say I don't think there's anything productive on this.

Risa Sugarman: And I agree I don't know why you raise it over and over.

Douglas Kellner: I didn't raise it you did. You asked what should be in your report and I told you.

Risa Sugarman: No, I didn't ask what should be, Commissioner I didn't ask what should be in my report.

Douglas Kellner: Your report should include 3 parts each month. It should tell us what you received from Compliance, what you've done with what you received from Compliance. Part 2 is what complaints you've received and what you've done to prosecute on those complaints. And part 3 should be the financial aspects of the judgments collected and fines obtained.

Risa Sugarman: And I respectfully disagree. I don't think that its my function to report to you as that. My question to you was, you ...

Douglas Kellner: You said do we have any questions? And I said,

Risa Sugarman: And the reason that I did that is when I report to you of what I have done over the last period you ask me what I do on the nonfilers. So, I figured that I would just start with that so that's why I did it. I hope that you will not now continue to ask me what I do with the nonfilers.

Peter Kosinski: Well I can't promise I'm not going to ask again. Let me just say that I think this meeting that you're talking about was partially prompted by some comments that I made at the last meeting.

Risa Sugarman: And Commissioner Peterson.

Peter Kosinski: Fair enough, but I understand and my hope was that we could find a common ground to identify those committees that we all agree are active and are not filing which I think is vastly more than the small number of committees you have pursued. So, if you can't do it, I guess you can't do it. I can't make you do something. But that was my hope and if that's not happening I think...

Risa Sugarman: Well, I would like to be able to do that but I can't see the reason for litigating against a committee that was created in 2005 and has been filing a no activity report for 12 years and has tried to terminate but can't because there's a negative balance since 2006.

Peter Kosinski: I think we generally agree that there maybe committees that currently exist that aren't filing who maybe shouldn't. Maybe they are terminated, they just don't know it. But I still believe there is a large number of committees who are, I think anyone would consider active, who are not filing and we're not pursuing and that's been my concern and continues to be my concern. I can't say I won't bring it up again. But I do want to bring up something while we're talking about this. You alluded to your Annual Report that you submitted this year and I do notice in there, in fact I have it, you said you don't, I have a copy of it here and you do make reference to the \$51,000 that you collected in fees. But I noticed that the amount of information you're providing in that Annual Report is diminishing. It seems over the last 2 years since you've been here you provided more statistics and this year for some reason you choose not to provide almost really any statistics about what's going on in your Unit. I think that's unfortunate. I mean for example, I'll note that in 2014 you made reference to 8 closed cases. And as we all know under the statute you are obligated to bring closed cases to this Board once they're closed and to notify this Board. Since that time, according to your statistics in '15 there were none and in '16 there's no reference to it at all. So, I'm taking from that that you have not closed any cases since 2014?

Risa Sugarman: I have not closed any cases and there is a minimal amount of investigations that are at a status that are ready to be closed and what I'm struggling with under the statute. The statute says that if I find that there is not credible evidence or that I find no violation, notify the complainant and I notice the Board. And in the 2014 Report I provided the Board with the letter to the complainant and the report. What I'm struggling with now is the requirements of the statute and the ethical obligations that I am under in terms of the Board's document policy. And I'm struggling with how I'm going to notice the Board and the Board's policy in terms of making that notice public. So, I haven't figured that out yet and that's what the hold up is.

Peter Kosinski: You just stopped providing for example, information on number of complaints received, so there's no information now in the Annual Report on how many complaints you actually received last year which there was in '14 and '15. There's no report on how many were open. There's no report on how many were referred. There's no statistics really whatsoever in your Annual Report anymore regarding activities in your Unit. And I'm wondering what

happened? You've been reporting that for the last 2 years now suddenly you've stopped reporting it.

Risa Sugarman: Yeah, it was difficult for me to do the counting. One of the numbers that I counted was how many contacts I got through e-mails and what I referred to the Board. When I...there was a time during 2016 when...my process was to initially when a complainant or a member of the public e-mailed me and the contact was more appropriate for the Board. What I did was I e-mailed the member of the public saying that I would refer their e-mail to co-executive directors. And I would forward the e-mail to Todd and Bob. At some point, Bob because of my disclaimer on the bottom that some of the, that this e-mail may contain confidential information, it was his opinion that he could not refer that e-mail to any of his staff because it may be confidential under the policy, the documents policy or the temporary policy. So, what I started to do was to refer the complainants or the public directly to Todd and Bob. It became difficult for me to count then and I didn't know whether they then in fact contacted the Board. So, it became hard for me to count. That's why that number...

Peter Kosinski: So, you don't have a number in your own Unit about how many complaints you received?

Risa Sugarman: I do and I didn't report it. It was difficult for me. I didn't want, I have that number. I can bring it to you next time. I just didn't put it in the Report because I wanted to get it out and it was hard for me to count that. I have a statistic in my we have amicus of how many cases we open and I should have included that and I did not. I can give that to you at the next meeting.

Peter Kosinski: Okay, well.

Andy Spano: I have a question. You said you sent 900 e-mails out.

Risa Sugarman: 900 and change.

Andy Spano: 200 respondents...

Risa Sugarman: by e-mail 260 something.

Andy Spano: What happened to the others?

Risa Sugarman: I don't know.

Douglas Kellner: Nothing, that's the point, nothing.

Risa Sugarman: Well I don't know that nothing happened. Maybe they contacted their Commissioners.

Douglas Kellner: I understand you've decided that parking tickets are a waste of resources and therefore you're not going to enforce the parking laws. And unless somebody's actually doing something that's going to get your Unit into the newspapers, you're not interested in bringing the proceeding. I get it.

Risa Sugarman: This is the second time that you've said that Commissioner.

Douglas Kellner: Well I've said it many more than 2 times.

Risa Sugarman: But I don't know where you get that. I don't issue press, I don't know why you say that. I don't issue press releases.

Douglas Kellner: The only cases that you pursue wind up in the newspapers. But none of the routine ordinary enforcement work that I believe the statute intended that you should do gets done.

Risa Sugarman: You know it's interesting that you say that. I think that when the legislature changed the process and added a layer, made it more...not difficult, but they made it more...

Douglas Kellner: They thought there's be 1000 cases a year. They did and that's why we went in and had 10 full time hearing officers in the original proposal.

Risa Sugarman: Excuse me. If they had wanted they could have instituted an automatic penalty system that if you miss the January periodic, you get a \$100 fine, a \$500 fine. No, they could have, but they didn't.

Douglas Kellner: They wanted it to go to the hearing officers.

Risa Sugarman: And then go to the Supreme Court.

Douglas Kellner: To enforce the hearing officer's determination.

Risa Sugarman: But the determination in a hearing officer doesn't require, like and these are your words not mine, this is how you described the litigation as the auto pilot litigation system to push a button and draw up an order-to-show-cause in a petition. That's not what the hearing officer process is. A hearing officer process, as I told you, was a 30-page report that takes an enormous amount of work. So, it's not 1000 reports to file for each periodic that's missed, it's a lot of work. And all of those cases that you think can be filed that might be just de minimis because yes, the candidate who ran in a primary and lost. No, Michele Adolfe ran and ran and ran and ran and ran and she pled guilty and was fined.

Kim Galvin: She got arrested. She didn't go to a hearing officer.

Risa Sugarman: She was sued what 10 times by your prior by the prior system. Please don't compare Michele Adolfe. She went through your system of being sued over and over and over again. If anyone should have been through the criminal justice system it was Michele Adolfe.

Peter Kosinski: Are these hearing officer reports public?

Bob Brehm: Yes.

Risa Sugarman: Yes.

Douglas Kellner: I have a complete collection.

Peter Kosinski: You have a complete collection?

Risa Sugarman: They should be on the...

Douglas Kellner: It's a thin collection.

Bob Brehm: I think if you look at the, we have 14 now we had one since our last meeting, right?

Douglas Kellner: That's 14 in three years.

Bob Brehm: So we had 2 this year.

Risa Sugarman: They should be on the website.

Bob Brehm: Certainly, you can review them yourself, 130 pages are repeat, rules and policies and then probably about 10 pages of analysis and that may be generalizing some. But that is the standard, here are the Rules and Regs.... But the majority of the 14 are simply failure-to-file and the majority of the 14 failed to respond.

Douglas Kellner: They're all defaults.

Bob Brehm: They don't have to respond. Not all of them, there's a certain number probably, some of them settled.

Risa Sugarman: Some of them settled.

Bob Brehm: So, I assume like 3 or 4 out of the 14 were.

Risa Sugarman: But that doesn't mean that they don't have to be researched.

Bob Brehm: You can look at the report yourself and see what they are.

Douglas Kellner: Okay, any other questions? So, we'll turn to new business. The first item on the petition is on the designated petitions it's a relatively short calendar, just the 3 items that are on our report.

Bob Brehm: The 99th Assembly District Working Family, we had 2 sets of petitions; one was a single page, one was a full set and they weren't tied together. So, the single page petition was on its face de minimis and the number of required signatures but they still have a valid one on file. We're recommending that you vote the one invalid for insufficient. And the 107th Assembly District Judicial Delegate Working Family they had a specific objection that they needed 35, they only found 33, raised some other issues but it was invalid on its face for specific objection. In the 108th Assembly District Working Family Judicial Delegate they required 31 they only got 18. And there were no hearings in those 2 because they were just failure bring in enough at the start.

Peter Kosinski: I'll move to accept the report.

Douglas Kellner: Alright. Those in favor say Aye. (Chorus of Ayes; 4-0) alright. So, the report is adopted and those petitions have been ruled invalid.

Next is the certification of the Statewide ballot proposals. We received the report from the Attorney General on the staff, then the Commissioners have circulated drafts and suggestions and we have the final version that I think is a consensus version that the staff has done that has, it's essentially the Attorney General's recommendation with a couple of plain language simplifications.

Bob Brehm: There was one grouping that I shared with Todd because it came while I was sitting at the table. On page 9 where the highlighted issue appears in the Abstract, but on page 9 we missed one of the specified highways. It's in the Abstract but we missed it in the Form of the Question.

Douglas Kellner: Okay.

Bob Brehm: You did recommend that?

Douglas Kellner: Yes, that was something the AG had asked us to do.

Bob Brehm: A number of people had asked us to do it and Todd had raised it in the comments also because highways, all counties but certain towns.

Douglas Kellner: Alright and then the other thing is we've numbered the Con Con Question as #1, the Pension Forfeiture is #2 and the State Forest Preserved is #3. Alright. So, I move that we adopt that report with that one typo modification.

Gregory Peterson: I'll move it.

Douglas Kellner: Alright those in favor say Aye. (Chorus of Ayes; 4-0) opposed? So that is adopted. Next is the Resolution on the Regulation. Is there a reason the Commissioners need to do anything?

Bob Brehm: No.

Douglas Kellner: Okay. Alright so we're on Regulation 6200.7, Designation of Treasurer Removal Committee. The Resolution was distributed in our packets. Does anybody have any discussion on the Resolution? Alright I'll move the adoption.

Peter Kosinski: I'll move it.

Douglas Kellner: Alright those in favor say aye. (Chorus of Ayes; 4-0) opposed? Alright that Resolution is adopted.

John Conklin: That was 1709?

Bob Brehm: Correct.

Douglas Kellner: And then the others aren't actually numbered John. So, the next one is 6201.2 and 3 relating to the amendment to the Fair Campaign Code.

Andy Spano: I'll move that.

Douglas Kellner: Is there a second?

Peter Kosinski: I'll second.

Douglas Kellner: Alright those in favor say Aye. (Chorus of Ayes; 4-0) opposed? Alright that's adopted. And then the third is the amendment to the Regulation governing the procedures for administrative complaint proceedings 6216.2 and that has been distributed and circulated. Is there a motion to approve that?

Gregory Peterson: So, moved.

Douglas Kellner: Alright those in favor say Aye. (Chorus of ayes; 4-0) opposed? Alright then there is the Opinion of the Commissioners regarding the interpretation of Election Law Section 14-130 with respect to lobbying expenses. So, the Opinion has been circulated and I think that staff did exchange some comments and this is a consensus draft correct? Alright. So, is there a motion to adopt the Opinion? Who's the one who wants to present it or explain it? Go ahead Nick.

Nick: Essentially, we got an e-mail from a Trade Association or not an e-mail a letter, I apologize, asking for a Formal Opinion of whether its permissible under Election Law Section 14-130 to pay for a retainer of a lobbying fee for the Trade Association by using their PAC's

funds to pay for those fees. So, we looked at 14-130 and as noted in our letter there's a 2-prong test that we use. The first prong is whether the political committee, well the first prong is to question whether it's a lawful expense or not. And the second prong essentially is that whether the funds are used to be converted for a personal use which include, and personal use is defined in Section 14-130 which includes salary, payments or other compensation provided to any person for services where such services are not solely for campaign purposes. So, then we analyzed whether lobbying fees are a campaign purpose and we concluded it is not a campaign purpose. Hence, we concluded that a trade group cannot use its PAC to pay for a lobbying retainer fee.

Peter Kosinski: I would just note, based on your explanation that the statute says it shall not be, its not that it can't be for personal use. It says that it can't be for personal use that's unrelated to a political campaign or holding of office. Is that your understanding as well? Because you just said it couldn't be of personal use.

Nick: Right.

Peter Kosinski: But it can be of personal use it just has to be related to one of those activities. Is that correct?

Douglas Kellner: That's my understanding.

Nick: That's my understanding as well.

Douglas Kellner: Alright.

Andy Spano: I'll move it.

Douglas Kellner: Is there a second?

Gregory Peterson: Second.

Douglas Kellner: Those in favor say Aye. (Chorus of Ayes; 4-0). The...

Bob Brehm: We have a personnel matter. Do you want to do it in Executive Session or not?

Douglas Kellner: The motion which I am pleased to make publicly to promote Thomas Connolly to the position of Director of Operations. So, I'll make that motion. Is there a second?

Andy Spano: I have to think this over (laughing). I'll second.

John Conklin: He is from Long Island.

Douglas Kellner: Alright those in favor say Aye. (Chorus of Ayes; 4-0) Opposed?
Congratulations Tom we look forward to it.

Alright and I think the only thing remaining is the date for our next meeting.

Peter Kosinski: I wanted to bring something up. Two things I guess, first of all I just wanted to note that I think we have an agreement to send out the FOIL requests to the Presidential Commission on Voter Integrity that they would get the public information that's available to everybody. So, I'm pleased about that.

Secondly, I wanted to bring up an issue that I think needs to be, that I brought up before but I think needs to be revisited and that is the process that at least 2 of our boards are using in this state which I think are contrary to both State Law and our Regulations regarding the audit procedures. We have 2 counties, one is New York City and Columbia County, I'll just name them, that are currently undertaking a process for doing hand counts of ballots outside the parameters of the process that's anticipated by the Election Law and also §9-211 and also our Regulations 6210. They as I understand it, New York City they allow for a full hand recount when an election is within ½ a percent any office is that close and Columbia County I believe has a process where they have a full hand count under all circumstances for all races. I think that our statute only allows a hand count when the audit procedure mandates one and the audit is 3% of the election machines are audited. If there are discrepancies that cannot be explained under those audits then it is, under our Regulation ratcheted up, there is an acceleration of the audits which could ultimately result in a full hand count, but may not. The Regulation I think allows for an acceleration when you have a discrepancy that cannot be resolved, then the Board is authorized to go ahead and accelerate their hand counts. But I believe that the processes undertaken by these two or the policy that has been adopted by these two entities either the statute which has the 3% audit procedure or the Regulation which allows for the acceleration when there's a discrepancy of ballots between the hand count and the vote on the machine and does not allow just the indiscriminate decision that if a race is close, we're just going to do hand counts whether or not there are discrepancies shown in the 3% audit, or, again in a case of one of the counties, we're just going to do a hand count for every election regardless of the closeness of the race because we're rather do hand counts. I think that's outside the statutory and regulatory provisions. I think it's something this Board should take on. I think uniformity of ballot counting in this state is a very important principle. I think it's something we should protect. I think it's important that the voters know that their ballots are being treated the same across the State of New York. I think this process that's going on right now is contrary to that because we have these 2 entities that have decided they will do hand counts in situations where other counties will not. And I think there should be a uniform, and I think the statute anticipates a uniform practice. That the 3% audit is a mandated procedure and if the discrepancies occur, you do an acceleration but only under those circumstances. And I think to allow some of our entities to do it a different way first of all treats the voters in their jurisdictions differently and I think opens up process where counties then could potentially start enacting local regulations about their ballots, their voting process that would be contrary to state law and would, I think, undercut uniformity that I think is very important for the voting process in this state. So, it's something I think we should, I believe that they're proceeding under the Regulation which I think they believe gives them this authority which is 6210.18 of our Rules & Regulations. I don't believe it does. I believe if you read 6210.18 it clearly sets out that if a Board determines that certain discrepancies have occurred, they have the authority to increase the number of hand counts. But

from my understanding these boards are not relying on a discrepancy at all. One of them is just saying we're going to open up all the ballots regardless, and the other one is saying we're going to open up when the vote is, there's a certain difference between the two candidates. And I don't believe either one of those situations is authorized by either the statute or the regulation.

Douglas Kellner: I'm so disappointed to hear you say that Peter because I think that the goal should be the accuracy and verifiability and transparency of the election process and New York City and Columbia County should be commended for going beyond the minimal requirements of our statute and regulations. And I might add that you've omitted Ulster County where the Ulster County legislature has passed a county statute that requires that county Board to do a hand count in close elections involving the Ulster County Board of Elections. The goal here is to have accurate and transparent election process and these boards have recognized that while in New York City and Ulster in particular that where there are very close contests that the machines are not designed to accurately count every ballot and we now have historically in New York 2 election contests where hand counts actually changed the outcome of the election; the first that happened was in Erie County with the close election for Town Council where the hand count changed two votes and it actually changed the outcome of the election. And the second happened in the Bronx several years ago in an Assembly primary election where the hand count changed I believe it was 7 votes out of about 15,000 cast and the correct winner was actually able to be certified as a consequence. Why does this happen? There are two deficiencies in our voting system that are not recognized by the machine. When the voter marks a mark, an identifying mark on the ballot outside of the voting target area, the machine will not see that mark even though that that mark invalidates the ballot and that ballot should not be counted. Conversely, if a voter misses the actual voting mark, if the voter's mark misses the target but is close to the target where there is no ambiguity with respect to what the voter's choice was, our own Regulations say that that is a vote that should be counted even though the machine didn't see it because the mark was not dark enough in the voting box. Anecdotally, we know that between 1 in 500 and 1 in 3000, somewhere around that, ballots are not observed by the voting machines. So, in close contests, it makes good sense that there be a hand count to determine the correct winner. And I only lament that we don't have a uniform rule statewide that would mandate that escalation for everybody in close contests. And indeed, on a national trend now we have the state of Colorado which has just adopted risk limiting audits and it will be very interesting to see how that is implemented on a statewide basis. We've had a number of jurisdictions that have attempted to do risk limiting audits on an experimental basis in a number of small elections, Colorado will be the first to do it on a statewide basis. But the concept of a risk limiting audit is you don't need to look at all of the ballots, you only need to look at a small number of ballots to ensure that the machine has accurately counted the ballots and you escalate the ballots, you escalate the scope of the audit in very close elections which are relatively rare in our system. And as far as the statute goes Peter, I just think you're plain out wrong that New York City, Ulster County and Columbia County have the right to go beyond our statute to make sure that their count is accurate and verifiable.

Peter Kosinski: Okay, well I guess in response to that, a couple of things. One is I think uniformity is important and I think allowing counties to do it differently around the state sets up the circumstance, for example, I could be let's say the State Assemblyman, State Senator, a

Congress candidate who is running, Columbia County is in my district, they'll open all my ballots, Albany county for example will not even though that's also part of my district. So, the voters within my municipality or within my seat, within my district are being treated differently depending on where they live. I think that on principle is an unfortunate and bad principle.

Douglas Kellner: But isn't accuracy the goal?

Peter Kosinski: Accuracy is always the goal and that's clearly what the goal was when the state legislature adopted the 3% audit which I think was very valuable.

Douglas Kellner: Going beyond that only improves the accuracy.

Peter Kosinski: But I think then Commissioner you're presupposing that hand counts are more accurate than a machine count and I do not accept that principle. I think by the mere fact for example that we've now adopted a new practice where audits can be conducted by machines, I fully endorse because I think having the machines audit each other is a better way to do it than having humans do it because humans are always susceptible to error. And to suggest to me that a human count is more accurate than a machine count I think belies experience. I think anyone who sat through the 2000 Presidential election and watched those Commissioners in Florida sit and do hand counts with those ballots would be appalled to think that that's the way we count ballots in this country and that's why we've adopted machines. That's why machines have become the way to count ballots. Because I think there's been a general consensus that machine counts are more accurate than human counts because humans are invariably subject to error. So, to suggest to me that human counts are going to be more accurate than machine counts to me, experience is not that. So, I think expanding the hand counts without any provocation, without any evidence that there's a problem with machine counts is not a good way to go. But that's not even my overall point as much as the State Legislature set up a process which was adopted for all counties to follow. We've now had a couple, and now you're telling me 3 counties that have decided to go another route. I just think that's unfortunate. I think its against...

Douglas Kellner: They decided to do more than what's required.

Peter Kosinski: But I think the decision, more not more different. More is not the right answer. The answer is they're doing it differently. They're saying...

Douglas Kellner: No, they have to do everything that the statute and Regulation requires and they are doing more.

Peter Kosinski: Mm-mmm. That's the wrong way to put it. They're doing it differently. They decided to substitute human intervention...

Douglas Kellner: What you want to do is prevent these jurisdictions from having a more accurate count in close contests.

Peter Kosinski: No, that's absolutely the wrong way to put it.

Douglas Kellner: But that is what you're doing. That's exactly what you're doing.

Peter Kosinski: No, Commissioner that's wrong to say that that's more accurate is to assume that human intervention is more accurate than a machine count.

Douglas Kellner: In the close contest where you have all these lawyers around the room watching every single ballot that's being counted, I have never heard a single lawyer object that the hand count was inaccurate in the close contests where the hand count was conducted in New York City and that's because you've got a room full of lawyers and partisans looking at every...

Peter Kosinski: That's because those counts have been done under the auspices of a court case where the court took jurisdiction and this would still be allowed under our statute, this does not prevent full hand counts, the only mandate if you want a hand count under those circumstances, go to court, have a judge oversee it rather than just willy-nilly doing it every time you have a close election. The situation that you're outlining. Well you can dismiss me Commissioner

Douglas Kellner: No because you're wrong. You're factually wrong.

Peter Kosinski: No I'm not.

Douglas Kellner: So for example in the Pichardo Assembly primary case, which is just one of the examples where the hand count actually changed the outcome, the court case came after the hand count, okay? But nobody argued that the hand count was inaccurate.

Peter Kosinski: I'm just telling you that I think if you want to have that kind of thing...

Douglas Kellner: And I don't know if you've actually gone to look at these counties doing hand counts.

Peter Kosinski: Well that's not fair Commissioner I've been there when counties have done hand counts and you know that and I've seen how they act. So, I don't think that's fair at all. But at any rate I believe this is an issue that should be addressed. I think its wrong. I think to have counties out there doing it on their own without any basis in law is wrong and I think its dangerous for us to open this up like this. What's to say a county couldn't start doing other things that we may not think comport with state law but they decide is a good idea?

Douglas Kellner: They're doing more than what's required by the statute.

Peter Kosinski: No, that's not correct, they're doing it differently. And more is not the right answer.

Gregory Peterson: What were the circumstances, it was Ulster County, you said it was a local race and decided by 2 votes?

Douglas Kellner: Well Erie County...in Erie County there had been a court case that went all the way to the Appellate Division, the Appellate Division remanded and the parties just agreed to consensually have the board do a hand count so that's how it happened in Erie County.

Gregory Peterson: I believe you said something about the hand count changed 2 votes because of the marking on the ballot the machine didn't pick up?

Douglas Kellner: Correct.

Gregory Peterson: Now which race was that?

Douglas Kellner: Well, in both the Erie County situation and the Bronx.

Kim Galvin: They were court supervised, the other one wasn't.

Douglas Kellner: No, neither one of them was court supervised.

Kim Galvin: I just think it will be an awful long time...

Douglas Kellner: There was a court case pending but the parties agreed that there should be a hand count just to end the litigation. That was in the Erie County case. In the Bronx case, it was just done pursuant to the standing policy of the New York City Board that there is a hand count in close contests. And the City Board does this, I don't want to say routinely, because the number of close contests where that's triggered are rare; maybe only one or two a year.

Kim Galvin: That's why it's interesting that they used the other counties totals to get to their ½ of 1%.

Douglas Kellner: Who?

Kim Galvin: New York City in their guidelines let's say there's a Nassau-New York City race, they determine their half of 1% by including Nassau's unofficial numbers in order to open all their ballots.

Douglas Kellner: That's makes sense to me in terms of what the City did. But I think the City number could be reduced. The threshold could be reduced if they used a sliding scale based on their number of votes in the contest that the ½% threshold. Well actually they do reduce it through city-wide contest. But I'm in favor of adopting a uniform standard on this if we had a standard for close contests and I think it's a serious mistake that when we know that the machines miss a certain percentage, very small percentage of ballots that in the closest collections that we don't then go look at the ballots...

Peter Kosinski: Commissioner that can easily be done by going to court and telling a judge this is a close election, I think there may be some ballots that have been missed. We should open the ballots and have the court oversee it.

Douglas Kellner: As you know in Martin vs. Johnson, the Court of Appeals, in fact that's what I wanted to do originally and when we originally adopted these regulations we thought that was what the standard was going to be and then in the Martin decision the Court of Appeals ruled just the opposite. So that now you actually have to find the discrepancy under the court order.

Peter Kosinski: Right, because I think the court was agreeing with me that the state law requires a discrepancy to be shown prior to an escalation of the hand count. I think that Court of Appeals case supports exactly what I'm saying which is the only time you should escalate is if you have demonstrated there's some sort of discrepancy here that the audit has uncovered and then you would open up the ballots.

Douglas Kellner: But our audit...exempts...

Peter Kosinski: The fact that people don't like the state law doesn't mean its not the state law. It is what it is. if you don't like the state law what you do is go to the State Legislature and tell them the state law should provide for this, let's provide fine. We can have that discussion. But to say state law doesn't allow for it but I think it's a good idea so the counties can just do it because I like it, that's not the way we run elections. We run elections pursuant to common practices by state law that are statewide applied statewide. Commissioner just because you like it doesn't mean that's what happens. It takes a consensus of people. The State Legislature visited this when these machines were purchased. They adopted a 3% audit. Fine, that's what we decided to do. I know you'd rather have a risk limit audit. I'm open to that if we can convince the State Legislature to change it to a risk limiting audit, fine, let's do it. But to say, I like that why don't we just allow counties to do risk limiting audits now? Because its not provided by state law that's why. Well if you want to provide it have the state adopt it fine. But this idea that a county can just on its own decide we think this is a better way to do it, well that's not your choice. It's a state law that you've following and state regulations and I'm shocked that you're supportive of a nonuniform way of applying a state law.

Douglas Kellner: They are doing more...

Peter Kosinski: No, it's not more, it's different Commissioner.

Douglas Kellner: No, it's not different. They have to do everything that every other county...

Peter Kosinski: Except demonstrate there was a discrepancy before they open state ballots... before they do hand counts. They're not doing everything.

Douglas Kellner: They have agreed in advance to a procedure.

Peter Kosinski: So two Commissioners can decide on their own, I don't care what state law is I'm going to do it my way.

Douglas Kellner: No, I'm going to do more than what the state law requires.

Peter Kosinski: No, they're not doing more, it's different. You're using the wrong term, it's different.

Douglas Kellner: No, you don't like the fact that what my term, but my term is the accurate way to do it.

Peter Kosinski: No, it's not. I disagree.

Douglas Kellner: And I wish you would be so insistent on uniform compliance and enforcement of the statute when it comes to other issues where the county boards deviate from our standards including New York City's failure to comply with the 30-minute voter waiting time deadline and...

Peter Kosinski: Commissioner, I believe we told New York City over and over and over with the full support of this Board that they must comply with the 30 minutes rule. I do support that. I've always supported that and I believe I've gone on record with this Board insisting that the City Board come up with a process to ensure 30-minute rule at their poll sites. So, I don't agree with you at all that I pick and choose. I think you're the one's picking and choosing which one of the laws you want to follow. And we're allowing our counties to do the same and I think that's unfortunate and I don't think it's the way we should administer elections in this state. But I can see we disagree and I don't mean to belabor it. So, I think it's an issue that's out there. I think it's a legitimate issue and I'm troubled by it and I think something should be done. I think if going to the State Legislature with an agreed upon statewide practice, I'm fine with that but we need to come up with that.

Douglas Kellner: Yeah, and I'm fine with it too as long as we have...

Peter Kosinski: In the interim they should be following state law not doing it their own way.

Douglas Kellner: But they are all following state law what you're objecting to is their doing more than what the state law requires.

Gregory Peterson: Commissioner Spano and I have both stood for election and I want to tell you if there's an election where there's 5 vote difference I'm in favor of what Commissioner Kellner has said, hey, boom, have a recount, full recount so we know who won and who lost.

Andy Spano: With my 30 lawyers sitting around.

Peter Kosinski: You would have the right to go to court and have that done.

Andy Spano: Commissioner when he was talking, you know I'm not a lawyer so I just listen, try to get all the facts, and it seems to be that you're both talking about a uniform system which we both appreciate. It seems to me that you're looking at the law one way and he's saying the law is the minimal requirement not a maximum requirement and if the people want to go beyond that,

that's okay, what's wrong with that. If a person says, I have to do 5 things and I do 10, what's wrong with that?

Peter Kosinski: That's not the way the law is written Commissioner. It's not a minimal, it's a standard. It's the standard.

Andy Spano: But that's the way he hears it.

Peter Kosinski: Well he's hearing it that way because he wants to. But I'm telling you what the law says and I think its unfortunate we're not following the law. I think its too bad.

Douglas Kellner: We did that over the disclosure of the other issue where Commissioner Kosinski wants to keep secret the cast vote records and ballot images in elections and where I had said, as well as the Committee on Open Government had said that those ballot images and cast vote records are subject to the Freedom of Information Act and a very conservative Republican judge agreed with our position that transparency is required by the state law and that those ballot images should be subject to FOIL. That case is working its way through the appellate courts now.

Andy Spano: The consistency though is really an issue because in this term people are going, I'd say more than an issue. But the minute you deviate from consistency, or allow others to use that deviation for their purposes and that is an argument and I think we should pursue looking at a system that we think would be better.

Peter Kosinski: Fair enough.

Bob Brehm: Our next meeting set the new date we had proposed so if we could get out our calendars, the 28th.

Peter Kosinski: I can't make the 28th.

Bob Brehm: Does the 27th work?

Peter Kosinski: No, I'd have to do it before that. I'm looking at the week of the 11th.

Douglas Kellner: Primary week.

Gregory Peterson: 13th, 14th or 15th is that possible.

Bob Brehm: Well the 13th, I think the 14th would be better than the 13th, we never know what we're going to wake up to when there's a primary.

Douglas Kellner: Would the 15th be better than the 14th?

Kim Galvin: The 15th would be better.

Peter Kosinski: That's a Friday.

Andy Spano: You've got the longest drive.

Peter Kosinski: I don't care. 14th? 15th.

Bob Brehm: And we need your two signatures to change that one word if we can do that by the Board, or you can sign the last page and trust Todd and I to change that one word.

Peter Kosinski: Okay 15th is the date.

Douglas Kellner: Where do want it signed?

Bob Brehm: Last page.

Douglas Kellner: Alright so our next meeting is September 15th? A motion to adjourn.

Peter Kosinski: I'll move that.

Douglas Kellner: Ayes? (4-0) Alright we stand adjourned.