

Peter Kosinski: Welcome everybody to the meeting of the State Board of Elections here on September 15th. I'm Peter Kosinski, Commissioner. To my right is Doug Kellner my Co-Commissioner. To my left Greg Peterson and to my far right Andy Spano.

Today we have some business. I'll begin with the minutes of the meeting of August 5th, 2016. Is there a motion to accept the minutes?

Douglas Kellner: So moved.

Peter Kosinski: Can I get a second on that?

Gregory Peterson: Second.

Peter Kosinski: Okay.

Douglas Kellner: And that includes the executive minutes?

Peter Kosinski: No I'm going to do those separately.

Douglas Kellner: Oh, that's fine. Okay.

Peter Kosinski: I like them separate. So we'll do the public minutes first. So there was a motion and a second. All in favor?

[Chorus of ayes]. Opposed? They're adopted. Then the minutes of the Executive Session from the same date. Is there a motion?

Andy Spano: So moved.

Peter Kosinski: Second?

Gregory Peterson: Second.

Peter Kosinski: All in favor?

[Chorus of ayes]. Opposed? Those are also adopted.

We're going to take something out of order today, we have petition hearing rulings that were provided to us by the staff. These are independent petitions that were filed here at the Board in August and there are several rulings that have been presented to the commissioners for adoption. I have them here, I would take them as a unit unless there is a move to take them separately. So let's take them as a unit. Is there anyone here who would like to speak on any of the proposed rulings by the staff? Seeing none I would entertain a motion to adopt the rulings as submitted by the staff.

Douglas Kellner: So moved.

Peter Kosinski: Second?

Gregory Peterson: Second.

Peter Kosinski: All in favor?

[Chorus of ayes]. Opposed? So they're all adopted and the staff is directed to send out the appropriate paperwork to the affected candidates.

Okay, we'll start with unit updates today. First we have the Executive, Todd Valentine and Bob Brehm.

Todd Valentine: Well Tuesday was Primary Day which by the reports that we have so far, or at least the lack of, things went smoothly for a Primary Day. You know, there were a number of contested primaries so as far as what we heard up here right now it was no major issues or anything like that that we're aware of.

And what the counties are going to their post canvas procedures at this point so they're in the middle of that which is where our Deputy for Operations is out. This is one of his first elections so he is taking advantage of this to be at that scenario so he can see the post-election procedures.

We're continuing to, but a lot of our time was spent preparing the report that you just adopted as far as the few hearings that we held. And the Counsel's office is going to go into the litigation report which did take a significant amount of time for some of the challenges, even up to yesterday.

And what I wanted to do before we get too further was and he'll speak later is to introduce to you our new Chief Information Officer, Bill Cross, he's here on the end.

William Cross: Hi.

Peter Kosinski: Welcome.

William Cross: Thank you.

Todd Valentine: This is his first meeting, he's been here two weeks, two and a half.

William Cross: Little over, yes.

Greg Peterson: Where's his helmet? He's going to need one.

Greg Peterson: A hard hat.

Todd Valentine: He has hit the ground running and it has been a trial by fire. So, and I don't want to interrupt because we have a lot of other discussion items that are on there that we can talk about as far as the preparations for cyber security that we've dealt with, and the other work that was done. So I don't know if Bob you want to add anything?

Bob Brehm: Well I think most important is since we have an audience out in the counties and the public this is, the election's coming quick, today's 54 days before the general. The actions you took a few moments ago will help us to certify today the federal ballot for President, United States Senate, and House of Representatives, which we will complete before the end of today.

And the military ballots and the federal ballots need to be transmitted by the county boards by not later than a week from Saturday. So we are going to be busy complying with those requirements.

On Primary Day I was out in the field too so I wanted to, I told them I'd give them a shout out to our commissioners in Rockland County. They did a really nice job - Lou Babcock and Kristin Zebrowski Stavisky. I went there this time because they had seven political parties contesting the Primary. So it was an awful lot of issues to keep track of to make sure that you got the people to the right place, to the right table, and having two highly competitive primaries within the same polling place as in multiple different parties, so it really mattered to get a plan in place to get voters the right ballot because different assembly districts were in the same polling place. And they really did a great job in pulling that off, so I was impressed with their organization and my observation it was working.

Certainly the cyber security. So much has happened in the last several days on what we need to do and the heightened awareness because of conversations about the threats. Certainly we've met repeatedly with our own staff with representatives from the FBI office here in Albany. Conversations that our staff participated in, conference calls that were organized by the National Association of Secretaries of State with the Department of Homeland Security.

Here at the state level, Peter Bloniarz who is the Executive Director and Senior Policy Advisor for the New York State Cyber Security Advisory Board, met with us as well as the cluster organization that we are now in, and one of the senior members of the state ITS, all from a point of view of what resources are available and what can we all do to ensure that we are prepared for any eventuality and are looking at all of the options.

We've communicated to the county boards the FBI alert that came out and as of late yesterday we have some additional information of resources that the Department of Homeland Security is making available to help the state as well as the counties. So we have to get that out of here today when this meeting is over because a number of counties had asked us if there were some additional resources that might be available to help them or were we all kind of on our own? I have to say I was happy to learn that the Department of Homeland Security did have those resources. And we've also reached out to the state information technology if they had resources available to help the county. So we're trying to dissect all that and get the information to the counties.

I think the most important message that I heard driving in today was a higher level, and we've heard it everywhere, the higher level of understanding that the voting system itself is harder to attack and has a higher chance of detection if something is going on. I think the biggest concern are the voter registration systems to make sure that we are not attacked in a way that would interfere with our ability to run an election day or communicate effectively with people. So those are the steps we're taking and I know, we say William is, I like to say he's thrown in the deep end for his first two weeks here and unfortunately the deep end of the pool looks like the Olympic diving pool right now. So hopefully that will clear up a little bit for him and he can do some of the other things. But really we've spent two weeks of his first two weeks working on all of these items.

I think the only other thing that I wanted to point out publicly is the certification will, nobody understands how we elect presidents other than they listen to all of the media, but certainly they are electors. And to the county boards and I know we're going to communicate to them when we certify. But to the item that the people see as elector's pledge to support the candidate for president and vice president is what the ballot says. But the 29 names of the people that are behind that ballot all need to be the same under our fusion voting system in order to aggregate the votes.

So in many instances that has taken place except in one the Libertarian Party and the Independence Party both are supporting the same candidate for President and Vice President but their electors are totally different. So it's not a push vote, it's not a vote for the same person, they're two separate items so that clearly when they do the election management system and set up the ballot it will be different. When a voter colors in Gary Johnson and William Weld, if they do that for the same people, they will get an over vote report and that's the appropriate thing to happen. And that's going to add a little bit more confusion because nobody really understands how we elect President in the first place to know that. But that's the underlying item that's a little bit different. I don't know if that's happened, it must have happened before somewhere. But it's more particular to us because we do fusion voting in New York so that's the only other item I think is a little bit different than I wanted to point out to make sure people understood it. Other than that I don't have anything else.

Peter Kosinski: Any questions? No? Alright then we'll move on to the next unit which is the Counsel/Compliance. I see Kim isn't here so Brian I assume you're going to handle that.

Brian Quail: Absolutely Commissioner, thank you. It has been a very, very busy period since the last meeting. With the ballot access issues in terms of the board managing, the process of objections and the ensuing court proceedings. And presently we have pending open ten matters in various courts. And we have during the course of the period since the last meeting we have resolved three cases and the board has entered into an agreement with one of the parties to settle a preliminary injunction application. So it has been a lot of activity in that regard.

Douglas Kellner: Which case?

Brian Quail: That is in regard to the Eason Case and the Federation of the Blind wherein the board has agreed to make various improvements to the accessibility of its website.

Douglas Kellner: So in Eason we've settled the preliminary injunction but the case is still proceeding because we haven't agreed on a final order?

Brian Quail: Technically yes, I mean to the extent that there's anything left in the case, we'll have to see what the plaintiffs think about where we're at. The preliminary, the agreement that we had required the board to take certain accessibility steps by the end of August which we have done. And then there's an additional step in terms of promulgating a hybrid form which is an HTML form that creates a PDF form by I believe the 19th.

Tom Connolly: Yes.

Brian Quail: The 19th, and that's the remaining step that we need to take there. So we're on track to have accomplished that.

In the other realms, we have continued to work on preparing for the implementation of the new IE Law. And the information about that has been placed on the board's website and the Compliance Unit is in the final processes of providing the appropriate forms to effectuate those changes.

And we, just to give a little bit of insight in terms of the size of the regulated community with respect for IE's, the staff has advised that there are 66 of those entities that currently exist so the good news, I think, is that we're going to be able to provide very specific outreach to a community that's small enough that we're going to be able to really help people know precisely what they need to do in the obviously very tight timeframe that's created in the middle of an election cycle.

Another law we haven't really talked so much about but it's Chapter 139 of 216 authorized the electronic submission of campaign materials. Right now while you provide electronic filing of your Campaign Finance Disclosure Statements your campaign materials which are required to be filed are filed in hard copy. Chapter 139 gives the option of filing them electronically. And I'm advised that within a matter of days we will be prepared to have the infrastructure necessary and the appropriate instructions on the website for entities to do that. And it's something that becomes relevant at the filing that happens post an election. Because those materials are due by the filing that first occurs after the election. And so we will have that in place in time for folks to file their post primary materials.

Very big milestone, the Compliance Unit reviewed over 50,000 reviews. We hit that milestone since the last meeting. Many members of the Compliance staff assisted on the petition reviews which allowed that process to occur in a timely and very, very fast manner. And the Compliance Unit provided a referral of non-filers for the 32-day preprimary election and also, roughly speaking, 180 deficiencies to the Enforcement Unit. And I think that is a good thumbnail summary of the activities since the last meeting.

Peter Kosinski: Any questions of Brian? No. Okay, thank you, Brian. And we'll move on then to Election Operations, Anna Svizzero.

Anna Svizzero: Thank you, Commissioner. Brendan Lovullo, our Deputy Operations Director, is on the road visiting counties in the middle of the state that were involved in significant primaries yesterday. They've all welcomed him with open arms, so that's nice to hear. Our county boards are always very cooperative when we want to go out and visit and review operations. He visited some poll sites as well as visiting the boards and then seeing their close of polls activities.

I will highlight for you just some of the items that we have in our monthly report that's in your board packet. We have processed over 3,000 transactions related to documents that were filed here with us. Petitions that are filed at the County Board, over which we have jurisdiction for certification, etcetera, and those are being compiled into the federal certification that will go out later today. And then in preparation for the certification of the complete ballot that would reflect the state offices as well. So that is ongoing.

We have prepared party roll calls for state committees and for JD conventions. Where the state parties have provided us a list of conveners we overnight the official roll calls to those conveners. Where the party doesn't tell us where those persons are we send all of the roll calls to the state party and let them distribute as they see fit.

We completed work on the ES&S upgrade which is in your packet today for your determination as to certification. We are in the process of providing a sample ballot template that will go out with the certification. And our team is reaching out to the county boards to provide whatever assistance they can when the counties start building their ballots. And I don't have anything else to add unless you have questions.

Peter Kosinski: No? I guess we don't have any questions.

Anna Svizzero: Thank you.

Peter Kosinski: Thank you, Anna. And we'll move on then to NVRAPPIO, John.

John Conklin: Thank you, Commissioner. The Public Information Office has been extremely busy. As Todd mentioned the state and local primary was Tuesday. We've been fielding a lot of calls. In addition to the primary issues around state independent nominating period.

The ongoing court action of the 3rd Congressional District, voter registration deadlines, campaign finance filings, and the vacancy recently created in 133rd Assembly District. We've also filled 74 FOIL requests in August. Tom and I participated in several calls with the ongoing action of the 3rd Congressional District including the waiver application to FAP and how to deal with the UOCAVA absentee ballots. Tom did instructions for the counties and insisted on drafting the

waiver. He's also done work on the Move Act surveys for the September Primary, I'll let him talk about that.

We've also participated in meetings discussing, as Brian mentioned, the electronic filing campaign materials in preparation for the primary. We've had several election night reporting meetings for the results that were posted on the website Tuesday night. We had 93 primaries around the state to track. It went well for the most part, there are still a couple glitches we have to work out but they should be taken care of before the general election.

As Bob mentioned we've also participated in calls with the Department of Homeland Security, the National Association of Secretaries of State, the National Association of State Election Directors concerning cyber security concerns plus OITS and the State Cyber Security Advisory Panel.

And yesterday we were asked to host a delegation of public officials from Israel by the International Center of the Capitol District, which we did. So they came in and we talked about what our agency does and how elections are conducted in New York State. And we had a voting machine, we demonstrated that for them. So I believe that that went very well. They acknowledged that this morning and thanked us very much for doing that.

With regard to the website we posted the unofficial election nights for Tuesday's primary. We've posted the filings for independent nominations for state offices. We had a political calendar up for the 3rd Congressional District but what with the court decision the other day that's going to come down. We posted minutes for the July 12th meeting and the transcripts for the August 5th meeting. Greg and Patrick did a NYSVoter visit to Nassau County.

And last but not least I got the last part of the Annual Report this morning. So I just have to fix the pagination for the Table of Contents and then circulate for a last proof read to the agency. And then I'll be happy to give it to you guys.

Douglas Kellner: I'll anticipate it.

Peter Kosinski: Okay, any questions of John? Okay thank you, John, no questions. And now we move on to William Cross. Now let me just ask, do you like William, Bill?

William Cross: Bill is preferable but I'll answer to just about anything.

Peter Kosinski: Okay, first of all, welcome to the agency.

William Cross: Thank you very much.

Peter Kosinski: And whatever reports you can give we'd welcome.

William Cross: Sure, so I'll go a little bit out of order since the cyber security incident has been first and foremost since my arrival. From the IT unit our focus over the past, primarily, two

weeks has been working with the state and various other bodies to review the security posture for the Board of Elections. Identify any potential improvements that can be made, both long term and short term. We received specific recommendations from the FBI in their bulletin and the state's security office and we are going through specifics of each of those to address. And there are several things in the works for short term improvements that can be made prior to election day and that period, and there are several pieces of longer term projects that will address and then improve that posture even further. So those talks have been very productive, we're making a lot of progress on those fronts.

In terms of other projects, the case management portion of CAPAS FIDAS is being prepared for quality assurance testing. And that's a significant milestone to get that out and actually start getting some feedback on that. We feel it's pretty ready, after quality assurance testing it will go to user acceptance testing for that module. Otherwise the CAPAS FIDAS, we continue with the database migration. We spent, there's a significant amount of data to go through, there was errors received anytime you do a data conversion from an old legacy system to a new system. you deal with data quality issues and such. They originally had approximately 1,800 issues to deal with. We are now down to between ten and 20. NYSVoter.

Douglas Kellner: Before you finish with CAPAS FIDAS.

William Cross: Sure.

Douglas Kellner: So as Commissioner Kosinski asked at the last meeting, what is the current timetable? Particularly from the perspective of the public in terms of what they will see.

William Cross: The initial project schedule has not yet officially been adjusted. However, there are some factors that need to be considered and that needs to be reassessed to what that timeline is, particularly some supplemental staffing, consultants and some delays encountered for there. And quite frankly that would have been my first action in the past two weeks coming in to get a sense of the projects and where they are at and to look at those and it's been that we've really been focused on security. So that will be going forward.

Douglas Kellner: So what is your best estimate now of when filers, campaign treasurers will see a new system or whether some of them who are doing beta testing will see a new system.

William Cross: Well it's obviously in, we're implementing in certain modules. I don't have those timeframes right now. I will get them. I will find them out for you.

Bob Brehm: I think the other thing that's changed since you asked that question, one of the biggest unknowns is the work we're doing to get, as we call them, HBITS, which I forget what that actually stands for.

Thomas Connolly: Hourly Based.

Bob Brehm: Hourly?

Thomas Connolly: Based Information Technology Services.

Bob Brehm: So that's the way we get the temporary people and we have a request in, we've had a request in for some time. And when we weren't doing cyber security one of the other items we've covered with the state is everything we can possibly do to expedite getting those temporary people hired. Until those bodies are here, one, there's one round, we have two of them that need to be extended. If that doesn't happen and we lose them that would be a bigger hole in the calendar because they have a lot of knowledge. So we're really working aggressively to keep them and to get the other people to supplement them to finish the project. So until we get those.

I have to say we've made a lot of progress since our last meeting with the Deputy Secretary to request every amount of help we can get and that has generated a lot of results. OITS is really stepping up to expedite this to get them filled. It's taken a lot longer than any of us wanted but until we actually get the people here, which I think we're at the end of the entirely long process, then I think we can adjust the calendar and give you a better analysis.

Douglas Kellner: My recollection is that the January filing, January 2017 filing, will be done on a beta testing basis.

William Cross: No.

Douglas Kellner: Is that no longer the case?

Bill McCann: No I don't think the January was never going to be the beta test. The goal originally was to have.

Douglas Kellner: Bill, just tell us what the current best estimate is on how it will effect filers and the public. I don't need to go into all the details.

Bill McCann: The beta would be sometime in the early spring, March.

Todd Valentine: 2017.

Bill McCann: Of 2017, that was the goal with a implementation for the July. That has always been the case.

Douglas Kellner: And is that still feasible?

Bill McCann: Well subject to their modifications that I'm not aware of, but assuming that that's the case it could be, certainly. That's my understanding. But again I don't know what these adjustments will be.

Douglas Kellner: So if Treasurers are asking they'll probably be looking at a new system for the July filing?

Bill McCann: That was our anticipation because all along we wanted to do it in the off year which was 2017 in anticipation of 18 being a far more active year for obvious reasons, so.

Douglas Kellner: Unless you're in New York City, right?

Bill McCann: Well.

Bob Brehm: I'm not sure we have less active year anymore.

Peter Kosinski: So, Bill, I think you can see this is an area of interest.

William Cross: Absolutely, absolutely.

Peter Kosinski: So maybe at the next meeting, after you have a little more time to look at this, you can give us your best estimate as to a timeframe. Because I think we're all interested in that and if you have time between now and then that would be helpful.

William Cross: Yeah absolutely. Some of the key points to this, as Bob indicated, has been the on loading of the staff. We've has daily contact with ITS and OGS to move these things forward, even in the past week, and we've seen significant progress. Once we have dates for them being established and in house it will allow us to reassess the schedule and see if adjustments need to be made.

Peter Kosinski: Fair enough, okay.

Bill McCann: I can also add that the regular staff that's here now they've been continuing to do great work. I mean most every day we get a call from Hope or Maureen saying we have this quirk, particularly in the data migration because there's some records that have quirks in them, and so are we going to carry it over or was it an old test data? There are any number of issues that come up and so they're constantly working with Compliance to adjust those. So I know that they're working on it.

Peter Kosinski: Okay, let me also say this, just in conjunction with that, which we've brought up before and you haven't heard it. I'm interested and I think the other commissioners in seeing what this is actually going to look like before it goes out. Because I think we have some definitive ideas, I know I do, on how I think it should work and should look. Because just for your knowledge we've had issues with our FIDAS System and how it's integrated with CAPAS, but also how it's been presented to the public. And the search ability of our database, we don't think it's as robust as it should be, we think that needs some. And I'm anticipating this new system will address those issues but I think I would like to see what this is going to look like before you get down the road and before it's done and there's no going back.

William Cross: Oh absolutely.

Peter Kosinski: So whenever that's available I would definitely be interested and I think the other commissioners as well.

Douglas Kellner: Yes.

William Cross: Okay, I'm sure we can arrange a demonstration for proof of concept.

Peter Kosinski: That would be great.

William Cross: I know there are significant improvements in user interface, is probably what you're referring to, its customer experience in terms of searchability and making it look more like people are used to searches looking like these days.

Peter Kosinski: Right.

William Cross: So we can definitely arrange that.

Peter Kosinski: Yeah, okay. Okay great.

Douglas Kellner: And he was getting on to NYSVoter.

Peter Kosinski: Go ahead.

William Cross: To the extent possible. So NYSVoter, the actual application of the legacy is for all intents and purposes on hold pending the completion of a refresh project and completing the infrastructure upgrades that were started by a previous vendor. We have gone out to what the state refers to as a PBITS which is a deliverable based bid as opposed to hourly and defines very key deliverables for a vendor to come in and assess the current environment, the as is, what the environment should look like, identify the gaps, and layout a plan to get that there and finish that up. There is so much pending on that new architecture that was started and hopefully the vendor will come in and finally pick up these pieces and get that together so we have a good solid modern infrastructure to build forward on that.

We did receive one bid which we're currently going through and reviewing now. It's looking promising but we've got to go through that review process to know. Hopefully because of the timing we are trying to expedite this to the extent possible. I don't know how much previous meetings has covered difficulties with other vendors, but.

Electronic filing of campaign materials we've been working with PIO. Counsel's office and Compliance for the date coming up to start accepting those and what needs to be done from an IT perspective to allow that.

I can skip around a little bit here, I mentioned PBITS. From a security perspective I mentioned at the top. We did have three separate ransomware infections within the agency. IT staff were able to retrieve most data that was affected by those. There was two previously and one additional. They have all been resolved.

Peter Kosinski: Bill, I'm sorry. What's a ransomware?

William Cross: Ransomware? Okay. Ransomware is like a virus or infection, computer virus of infection, instead of just doing damage to a system, or trying to obtain data from a system, what happens in a ransomware situation is they for all intents and purposes lock up your system or take it hostage. So you're unable to access it with the goal of you paying some unknown entity to free it up and have access to your system again. In this case we were able to not go down that path and actually recover data.

Peter Kosinski: So the ransomware refers to whoever is doing this is now looking for you to pay them in order for them to allow you to access the information?

William Cross: Pay them. Correct.

Peter Kosinski: That's the term, ransomware.

William Cross: And that's a very common means of computer viruses these days where hackers are trying to monetize their efforts instead of just being malicious.

Douglas Kellner: Where were they directed within our agency?

William Cross: Excuse me?

Douglas Kellner: You said that there were attacks that you averted?

William Cross: Well we had three, two were in Enforcement and one was in ITU, my group.

Douglas Kellner: And you said in Enforcement, not in Compliance?

William Cross: No I believe they were both Enforcement.

Risa Sugarman: Yeah there were two in enforcement and they were, we knew that they'd happened pretty quickly so the computers, the individual laptop machines were turned off and they only affected certain amounts of.

Douglas Kellner: Is this from downloading viruses on the internet, is that the source?

Tom Connolly: Well I mean there's different ways to get infected by a virus or ransomware. They can either be by downloading or opening some malicious file or sometimes there could even be exploits within certain websites that if you're using a certain browser, there's a hole in

your browser and they can kind of get to you that way. Most of the time the stuff that we have in place as far as our antivirus usually kind of recognizes that.

Douglas Kellner: So these were outside of the board records.

Tom Connolly: Correct.

Risa Sugarman: And the State Police was very helpful in determining, I guess what, it didn't make sense to me but they examined the hard drives of our two computers in looking at them.

Douglas Kellner: I was just curious. It's not on the level of some of the attacks that have received wider publicity. They had access to the database.

Risa Sugarman: And the fact that the data is backed up every night, you know that's what's so fortunate, that you can go back to the day before and just back up your data so that you don't lose the information.

Tom Connolly: It's really more a compromise of a workstation and not necessarily the information.

Bob Brehm: But it could. So that's why when we learned of the occurrence at the agency level. I mean generally speaking most of the staff we limit what they can go out and look at if it's not related to their job. So some of the avenues of attack we just don't go there in the first place. But I don't know the nature of whatever they're looking at in Enforcement. But sometimes it's just we don't let the staff go there.

But also we have to look in the long term if things like this are occurring more often it's one of the issues we look at, how often do we backup, how often do we off source, and what ability if a ransomware does come in can it get to things that really matter. Because it can even if, God forbid, it gets into the Voter Reg System or it just stops our ability to use it at certain times of the year, even if I had to go back and restore yesterday is going to take a lot of effort. And there may be things that are lost in the process. Luckily for us that information comes from the counties to us so we could replicate it but just the time it would take if that were at a critical juncture is important. So we are looking at do we off source faster because our plan needs to be reviewed.

William Cross: See generally with.

Bob Brehm: Off line back up.

William Cross: With what they call malware on computers. You have two phases, you have detection and you have prevention. Right now in place we have good detection, so as we indicated, we knew right away to take immediate action. We do have a certain amount of protections in place that would prevent it and we are actually taking steps to improve that and add an additional layer to that to prevent future ones.

Gregory Peterson: From what I understand though a lot of this comes in from emails that you would normally trust. You see a name and say okay fine this is from Kellner, so oh boom, hit it right away and all of a sudden you get infected. But I know that it certainly behooves us, I think, to have certain amount of training involved if anybody that receives email to understand that they have to double check and really look at whatever comes in because all of a sudden you have an infection and it blows the whole computer at the very least.

William Cross: Correct.

Gregory Peterson: Including time then wasted and so forth to cure the thing.

William Cross: Correct, there's multiple avenues in. Email's one of them, visiting malicious sites is another. However, there's been very legitimate websites that have compromises just because they contract out their ads and their banners to third parties and they get compromised. So you can get something like this even from a very legitimate site. And unfortunately the ransomware is a more recent.

Tom Connolly: Approach.

William Cross: Approach to this because they're trying to monetary their maliciousness as opposed to just being evil. But we are putting in place additional protections of what we already have and you're correct, education's a part of that.

Tom Connolly: And I also just wanted to take the opportunity to point out that this topic was also a part of the discussion that we were having internally with the electronic filing of campaign materials. Because obviously we're now creating an avenue for outside filers to send files to us that have to be sometimes looked at and reviewed so we'll be opening up these documents. So we just need to make sure that the proper security measures are in place so that it doesn't possibly compromise any of the systems.

William Cross: I will add though because we mentioned about the infection had taken a step further than the PC to affect certain systems. We do have a good amount of segregation between these. Users on their PCs have very low rights compared to what they would need to effect data on the system, they're not administrators, things like that. So there's layers of protection in place there. Physically isolate users from key systems and the rights that specific users are provided in general for credentials to prevent that.

Administratively we continue to work with the state ITS for areas of economy of scale and where it's beneficial. Coming from that side of the equation I'm aware of several services available by the state that could probably be utilized in a more effective or affordable way. So we will evaluate these on a case by case basis of what the benefit it is to the board versus any impact in performance or reliability or expeditious addressing of issues, things along those lines.

Anna Svizzero: Will union heads be able to chime in on that?

William Cross: Sure.

Anna Svizzero: Great. Thank you.

William Cross: A new contract of Microsoft Premier Support has been renewed for another year. And on the back there's references to analytics for the website usage comparing last month to this month. Overall we had approximately 2,000 more people hit the site than we did last month, although it does look like they viewed less pages. So more volume but less pages.

What is interesting, I did include the analytics from September 13th primary night. The page views for that one night represent approximately half of what we received all of last month. And including the election night reporting website where we had approximately 70,000 views on that on primary night with no performance issues or anything along those lines.

Douglas Kellner: Wait until the first week in November.

William Cross: This will look minute by that, right? Thank you very much.

Peter Kosinski: Okay thank you, Bill. Any questions? Okay then we will move on to Enforcement, Risa Sugarman.

Risa Sugarman: Good morning, Commissioners. The division continues to do its work. I have two new staff members that started this week. One is one of the Excelsior Fellows Imran Dar, he just graduated from Law School, has taken the bar and is awaiting those results. And a new attorney Bruce, oh my god.

William Cross: He's that new?

Tom Connolly: I hope he's not watching.

Risa Sugarman: He probably is. I'm sorry. And they both started this week so that will be helpful to the work of the division, and I'm looking forward to having them on board.

I worked with Brian and with Bill, as did some of my attorneys, on the meeting on the Independent Expenditure Regulations and the political clubs. And we did get, and I would like to thank Bob and Todd, a data disk on the email addresses, and we looked at those and compared them to the names on the failure to file lists of the last two years. And working with those lists and the failure to file, about six percent, I think about 140 of the committees and candidates on those two years' worth of failure to files do not have email addresses. So we were able to take the list and those that didn't have, the committees or treasurers that didn't have an email we looked at the candidate files and we were able to find email addresses for all but about 138 of those committees and candidates. So what we'll be trying to do is to look at those committees and after sending the letters that we intend to send to Bob and Todd and to counsel to send out emails asking them to provide filings. And what I'd like to do is to look at the list of filings and

to, as we discussed last time, to take out the lists of perhaps the William Boylan who has always been on the list and whose Treasurer has 28 judgments against him already and is still on the list and start looking at how we can better compile a list of failures to file. And then send out letters to those failure to files and get them in compliance.

So we did work on it and I think that having the email lists will be helpful. What we're going to ask IT is to give us a Do Not Reply email so that we can send the letters from an email that doesn't have a reply so that we don't get inundated with either there's no this isn't a valid email or just a reply. So we're going to be working on that in the next couple of weeks. We just got the deficiency disk yesterday so I'll be looking at that. Looking at the deficiencies. And that's all I have to report.

Douglas Kellner: So at the last meeting I asked about the number of pending investigations. And I think we came to the conclusion that there were probably more than 300 investigations opened since you've started but that only a dozen or so had been closed or and then another dozen or so were referred for prosecution. So the question is, are you reporting on the closed investigations to the commissioners?

Risa Sugarman: I have. And? I'm sorry.

Douglas Kellner: No that's the question.

Risa Sugarman: I have a group of matters that have been opened that committees have been contacted and come into compliance. Those again, a couple meetings ago I told you those are in a file for me to review and close. They're not closed. They have come into; committees have come into compliance. What I've asked my attorneys to do is to keep them open until we get a, either a year or six months or a year of filing so that we know that they're continuing to be in compliance. But there are cases that committees that there have been complaints made, files opened, the committees have come into compliance and those files have been closed, or that they're waiting to be closed in the files.

Douglas Kellner: Alright so.

Risa Sugarman: So those would be I guess what my intention would be to report those numbers in an annual report.

Peter Kosinski: But my understanding of the law is that when you close something you are to bring it to the commissioners for closure.

Risa Sugarman: Well the statute says if there's no finding of a violation of the law that I notice the complainant, send a letter to the complainant and notice the board. There are cases that are in the stage of being written up that there has been no violation found that the complainants will be notified and I will notice the board. Those are in preparation. The cases that I'm talking about is that there have been violations. The committees are not in compliance, they've been contacted and they've come into compliance. So that there was a violation but they've come into

compliance and the matter has been closed. I have no objection to giving you those reports either but those are not.

Douglas Kellner: What I would like to do, which requires Compliance and Enforcement to work together, is to have a definitive list of the outstanding non-filers and a definitive list of the outstanding deficient filers for each of the reports that have been due. So starting with July of 2014. And that there should be agreement on what's outstanding so that we can pinpoint where we stand with each of these filers. Now I think, Brian, you and the Compliance people had worked up a list that they gave me prior to the last meeting, which we gave to Risa, and I'd like to still work off that list so that we can begin to say, okay this group has been outstanding since July of 2014. What's happening with this group?

Risa Sugarman: The issue with that, and I don't know that it's a problem to you, the issue to that is that at the beginning of, when the Compliance Unit first began the people that were deemed not in compliance would have had perhaps one address that was missing and that they were deemed to be deficient. Now if you want to see those lists that fine, I mean obviously you're entitled to see those lists, but to me I would not bring a deficiency or a hearing officer matter or a litigation against a committee that has a deficiency because they're missing one address in a filing or one check number.

Douglas Kellner: See, I would like to hear that report.

Risa Sugarman: Okay.

Douglas Kellner: And I keep asking for it and I'm frustrated because I had the impression there are something like 2,000 non-filers that had been referred to Enforcement and there've only been roughly 20 proceedings brought.

Risa Sugarman: Well there's a difference between the non-filers and the deficiencies. Those are two different things.

Douglas Kellner: Well there's none, no proceedings have been brought for deficiencies yet is my understanding. Not a single one. Am I correct?

Risa Sugarman: I'm not sure that that's accurate but I would have to look and see what the deficiencies. And when we talk about deficiencies if you're talking about someone who's missing a building number or an address.

Douglas Kellner: I get it but then all I'd like is to sort of take the list and I realize this means Compliance has to give you a list, you have to review the list and mark it up to say well this is why I haven't done anything on this one, this is why we haven't done anything on this one. Because right now that information really isn't available to the commissioners. And if Compliance is giving you defective referrals than we need to know that.

Risa Sugarman: I don't think that they're defective, I just think that.

Douglas Kellner: If you're deciding that it's de minimis that's fine but the public ought to know what you regard as de minimis because the statute was amended in 2014 to require this review and deficiency process and I think the intention at the time was that people would get fined if they didn't cure deficiencies. The fines wouldn't be big but you know I get the impression you disagree with that process of doing mass filings to collect small fines.

Risa Sugarman: I do.

Douglas Kellner: And I think that's the equivalent of a mayor announcing we're no longer going to give out parking tickets because the fines are too small and we're misusing law enforcement resources by giving out parking tickets.

Risa Sugarman: I don't think the term would be misusing law enforcement. I think that everyone has to decide what their priorities are with the resources that they're given. And that's what every law enforcement agency decides, and what every law enforcement agency plans, and what every law enforcement agency does. And every agency here, you do, the Board of Elections does that, and I do that. And I don't think that it's an equivalent of saying I'm not going to give out a parking ticket because of this, it's the equivalent of saying I need to place my resources and to decide whether it's better to bring someone into compliance and to get a committee to understand what they need to do and how they do it and not impose a small fine. And I think that that's what the impression that I got when I was going through my confirmation hearings from the members of legislature who spoke with me and I think that that's what I believe that I need to do when I divide my resources, my limited resources.

Douglas Kellner: Well, and I want to sort of define.

Risa Sugarman: I understand.

Douglas Kellner: First of all I don't agree with that prioritization and indeed I think the good government groups insisted on adding the deficiency provisions into the bill because of the decision that the board had made in allocating resources of saying that we wouldn't go after deficiencies. And they got the legislature to say well you have to go after deficiencies. So, but the important thing is to define it so that the legislature and the good government groups know exactly what the situation is. Because they can allocate resources.

Risa Sugarman: Which we have done when we met and discussed what would be de minimis and would go to a level that should be treated more seriously. The de minimis violations would be sent training letters by Compliance and those that were more serious would be treated as a deficiency.

Douglas Kellner: I understand but a very substantial number of deficiencies have been referred from Compliance to your unit and.

Risa Sugarman: Well but the first in 2014 letters a group of 900 were before we met and decided what the deficiencies.

Douglas Kellner: And I'm not counting them and Brian's [inaudible].

Bob Brehm: Well not all of those were simply failure to have a date or something.

Douglas Kellner: Right. Yeah but.

Risa Sugarman: A lot of them were.

Bob Brehm: But several were. I mean the difference is Compliance started in June and Enforcement started in September so it wasn't until after September that we had anybody to talk to about doing it differently.

Risa Sugarman: But we didn't mean for.

Douglas Kellner: But that's 2014. But the list that was given to me last month still had, having removed all those de minimis ones.

Risa Sugarman: No they did not.

Douglas Kellner: Well that's what we need to go over. If that list that they gave me is wrong.

Risa Sugarman: Okay, I understand what you're saying, Commissioner.

Bob Brehm: That we met and discussed what the policies should be and that's what we're living under. And it helps to have a policy and a plan. But it's not that, our understanding is not that. I mean we started because the statute says if there's a deficiency in the filing so we treated it in the beginning with everything. We had nobody to talk to. Eventually we understood, not everything, but we had a meeting, what would be an acceptable level. Because it's not for us to decide what is an acceptable level to enforce and Enforcement communicated that. But it's still not zero. So if you fail to give me a date, say, our understanding is it's a percentage, if it's a percentage of something. So certainly some of those late ones are within that percentage if it's a significant number or if it goes over say ten percent. So it's not zero are reported as deficiencies if it's something minor like that. But if that's the standard we can revisit it, and talk about it, and adjust it.

But I just want to be clear, our understanding of the standard is that certain items that if they are missing are important and they're not a deficiency. There are other items if it happens in a certain percentage of the filing it's still reported and we treat it as deficiency. So just say some of those minor deficiencies are in there, yes, but it's only because that's our understanding of what the agreement was.

Douglas Kellner: Alright well, I'm asking Compliance once again to compile a list of what Compliance regards as outstanding referrals for non-filing, indicating each of the non-filing reports, and outstanding referrals for deficiencies, and to give that promptly to Enforcement, and copy me on it and the other commissioners too. And then at the next meeting I would like to go over that list to discuss. And if the decision of Enforcement is that Enforcement is not going to do anything with these referrals because of allocation of priorities or whatever I'd like to know that and make it clear to the legislature and the good government groups that's what's going on.

But certainly the public ought to know there hasn't been a single proceeding brought for a deficient filing that's been referred by Compliance. And my understanding is that it's, that there've been, we're up to ten hearing officer proceedings now, and we've had about a dozen criminal referrals, out of the roughly 1,500 or 2,000 non-filers.

Peter Kosinski: Yeah, I mean I will say for my purposes, and we've had this discussion, but my biggest concern continues to be the non-filers. I mean as much as we can look at the issue of people not filing a complete filing, I feel the Compliance Unit has gone a long way at this agency towards bringing these filers up to a higher standard. And I think they've done a very good job of having those who do file with us file complete filings, accurate filings, and the Compliance Unit has been very active in that area. And that was the goal of that. I think it's done a very good job in getting those filers at a higher level.

My concern continues to be mainly focused on those who filed nothing. And those failures to file not having any ramifications attached to that. So while Compliance's referrals of deficiencies are important and we should do that, I am really from a priority standpoint more concerned about our failure to pursue those committees, those candidates who file nothing at this agency. And I really think we need to pursue them, do what we've always done to get those people to file with us to begin with. So from my standpoint that's my priority.

Gregory Peterson: What's important I think for us as commissioners to know, I don't want to call it a report card, but it is kind of a report card as to where we're at. Boom, boom. Where are we at this point? Where are we at this point? You can't do that by osmosis. So we need facts and figures and we need lists. I think it's very important that each of us get that. Divide it however you want, but I'd like to see it.

Andy Spano: I don't know why you can't put these in categories and just do a category, some sort of indication, some sort of symbol of the category, and let us know what they are, that's all. I mean something simple as that. I'm mostly concerned about, Risa, what happens when we make a recommendation to a DA, to an Attorney General, etcetera, to a prosecutor. What happens to our follow up? Do they come back and forth with us? What happens?

Risa Sugarman: I follow up with them to see what they're doing about the case.

Andy Spano: So you initiate the call?

Risa Sugarman: Yes, I do.

Douglas Kellner: Alright, well I have no other questions. In the Executive Session I'm going to discuss about my proposal or request that we make public two of the referrals.

Peter Kosinski: Okay. Alright, anything else then for the Enforcement Unit?

Risa Sugarman: No.

Peter Kosinski: No, okay. So we'll move on now to old business. We have several items here that I know have been on prior agendas, prior meetings, we've talked about them. I don't know if there's a resolution to them but first we'll do the political clubs. We've talked about this is the past trying to get some sort of a document together that will advise political clubs on how to proceed and I'm not sure who's going to speak to this. Where are we on that?

Brian Quail: If you don't, I'll speak to it. We had by way of just a very quick reprise there had been a couple memoranda that had been produced by staff on what we believe the legal construct is, who should be required to follow under various different circumstances. It was kind of a substantial document that, both documents, that were very legalistic and very, very detailed. We also went into the field and conducted some training that was geared toward political clubs, two trainings one on Long Island, one in the City of New York. And through that process we talked but we also learned and then we've been moving through the process and trying to provide a guidance document that is much simpler and more applicable. And of course it's hard to be simple in an area where small changes and facts can actually change the results. So ironically saying less is sometimes harder than saying more but obviously saying less is much more meaningful. So we had an advancement of this ongoing cause with the last document that we created which currently fits on one page that is entitled "Does my political club need to register and file with the Board of Elections?" That draft had been circulated and we had a meeting where this document, in addition to various other topics, were discussed with Enforcement and it appears that there is one item on the list that Enforcement has raised some concerns about. With respect to an opinion of the Board issued 2013. So to summarize, on the list of activity not triggering registration and disclosure requirements we currently have a listing of simply posting endorsements on club website. The board issued an opinion in 2013 in relation to a 501(c)(3) not for profit that was engaging in interviews and ultimately publishing a voter guild and also posting on their website endorsements and listing next to candidates who they endorse or who they prefer depending on whether it was a primary. And the board did a Buckley v. Valeo analysis of whether or not you are engaging in expressed advocacy and what was really happening. And basically they came to the determination that expenditures in that process of making endorsements were something, and publishing them, whether on the website or in a booklet, was something that had to be, that did in fact trigger the entity having become a political committee and therefore having to the extent that there was an expenditure an obligation to report those expenditures and so the Enforcement Counsel and staff raised the issue of that opinion potentially being inconsistent with our item number three that simply posting endorsements on the club website doesn't trigger an obligation to file. And I think that, my opinion anyway, is that the issue is that the simply posting as a non-monetized event. So if you're maintaining a website and you simply are placing information on your website on a

rolling basis it's the ultra-modern way of standing on the street corner with a bullhorn and announcing to the world who you like and who you support. And so I think as a matter of policy I think the question is, do the commissioners have any particular thoughts on this avenue of exploration that they would like us to follow next? I think that in terms of policy, and certainly Risa should speak to it, I think is the one remaining outstanding point where Compliance and Enforcement may not be hand in hand on this particular issue.

Peter Kosinski: Well it seems to me, Brian, that in your analysis, you're saying that if the placement of the endorsement on the website does not cost the club any money it wouldn't trigger a Political Committee filing?

Brian Quail: Yes.

Peter Kosinski: I mean my understanding is that analysis would hold for anything someone does. So if I do something that supports a candidate but it doesn't cost any money there's no triggering of a financial report having to come to the State Board of Elections. So I don't see I mean it seems to me that analysis would apply to any activity by any entity. Unless there is a monetary component to something I do there's no trigger of financial report coming due. So it seems to me that's a broader issue. It doesn't really have anything to do with the placement of something on a website, it has to do with was there a monetary component to whatever activity I just undertook. If there's not, then no you don't have to file because there was no financial triggering at all going on here so there would be no obligation to file. If there is a financial component, then yes you have to file. But it seems to me that's broader than what you're suggesting here which is that would only apply to web based activities like placing an endorsement on there.

Andy Spano: What if you had a particular skill and you did something for the campaign as a volunteer? And that's going to be something that had a monetary value if I wasn't a volunteer or anything like that.

Peter Kosinski: Well, it can be.

Bill McCann: Any kind of contribution.

Douglas Kellner: But there's an exemption for personal service.

Peter Kosinski: If you volunteer on a campaign there's an exemption in the law that you do, it is not a contribution, so it would not trigger a...

Douglas Kellner: If you are an accountant and you do the accounting.

Andy Spano: Right.

Bill McCann: Well I understand a couple things more specifically to the conversation. First off just for clarification, it was a 501(c)(4) because in that opinion 501(c)(3)s would be prohibited from engaging in that activity.

Brian Quail: Sorry.

Bill McCann: No that's okay. It's just I don't want someone saying they told us it was a 501(c)(3).

Bob Brehm: Three fingers in the catcher's mitt.

Bill McCann: Well I think the discussion was a little more to the weeds.

Risa Sugarman: Right.

Bill McCann: It was more towards okay the simple act of putting the endorsement on the website but what under laid the activity. Meaning did you have expenses or costs that were associated, relative to compiling that graphic or other things that you would put on your website. You know, what activities were there relevant to the campaign.

Douglas Kellner: But a Political Club is going to have a website.

Bill McCann: Correct.

Douglas Kellner: Well many of them have websites and if they put their list of endorsements on the websites the marginal costs of that is zero, assuming the marginal cost is zero, then I think Peter's comment and I agree that political clubs are not different than other entities in terms of their requirement to file under the statute. There's not a distinction.

Risa Sugarman: I think the discussion was what by putting just the statement that simply posting endorsements on a club website doesn't, might lead people to think that if there is a cost associated with the process of the endorsements of bringing people in, interviewing, conducting those interviews, going out and doing the process of the obtaining the candidates and deciding on the endorsements that that's what might trigger. And I don't know. But that's what might trigger the requirement to register and file so that.

Douglas Kellner: I think that we should affirmatively say that that list that you just gave does not trigger.

Risa Sugarman: Well but that's what when you look at something simply posting, somebody might say well we do this and this and this but okay we posted it but we don't have to file when we do our endorsements. I'm just concerned I don't want people to be lulled into the sense that the process of the endorsement also is included by this statement of simply posting. That was part of our discussion because it just leads.

Douglas Kellner: I think we need to actually get text so we can see [inaudible].

Bob Brehm: But I think if you look at, I mean certainly the 2013 opinion that we worked on and put that level of detail into, I think very clearly identify if there were no costs associated with, and that was a request we received from citizen union to make that opinion, but they laid out a certain set of facts which went straight down what Risa said, there were underlying things they did that cost money, and that's why we, but my understanding of that opinion and I haven't read it in a little while but we clearly said if there were no costs associated with that underlying than it would be no but the facts that you've given us you said there were so therefore you would need to register as a committee. You would need to identify those sums of money that were part of, because we regulate activity not clubs, so that regulated activity needs to be, you know you need to register and report it to us. The other activities of that group that were unrelated to the regulated activity they didn't need to tell us the money they raised and spent to run their group.

Bill McCann: Yeah but I think it simply came down to a concern on the part of Risa which was on the one hand you want to provide guidance to people.

Risa Sugarman: Right.

Bill McCann: On the other hand you don't want to make it so simplistic they can say well this says I don't have to so I'm not a committee because, and there might be other factors that apply and that opinion goes into far more detail.

Peter Kosinski: Well I thought the broader issue was what Brian raised which was if there is no cost associated with what you're doing then there's not trigger of a financial disclosure.

Brian Quail: That is absolutely true.

Peter Kosinski: So if that's the case why don't we state it that way? Why are we limiting ourselves to just saying if you post something on a website we assume that's free or there's no cost so you don't have to file? Why aren't we saying something more generic which is if you do not incur any costs related to your activities than there is no trigger to the Campaign Finance Law.

Douglas Kellner: But if you have a website there is some cost to the website. Right? You have to pay for a domain name?

Peter Kosinski: Yeah but that you're incurring anyway.

Douglas Kellner: There's no marginal cost.

Peter Kosinski: There's no marginal, that's fine if you want to put that, but I'm just saying.

Douglas Kellner: I like your language, Peter, I like your language.

Peter Kosinski: It seems to me that's the issue not, the issue isn't whether you can do an endorsement on your website, the issue is was there a cost related to that activity.

Risa Sugarman: Because then you're not giving a specific guideline that could get people into trouble by doing.

Bill McCann: So what you're saying is a predicate this expense.

Brian Quail: And one of the disadvantages, I'm sorry.

Douglas Kellner: Well what Peter said is the way to do it.

Brian Quail: Yes, and I fully agree and one of the things we didn't do is re-provide a copy of the draft. But the way it is set up it says at the beginning that you don't have an obligation unless you're expending money in relation or connection to the election and it tries to give it examples of things where activities clubs that we've seen are likely to be involved in and that clearly do involve spending something and another list of things that aren't. But we could make it clearer because you're absolutely, in my view, spot on with what the issue is.

Peter Kosinski: Okay, you would agree I assume with that then.

Risa Sugarman: Yeah, I do. I just don't want people to rely on this and.

Peter Kosinski: Well fair enough, fair enough.

Brian Quail: And so we'll advance the cause of the draft and we'll circulate.

Peter Kosinski: Okay. Alright, then let's move on to the next one which is the Documents Policy and I think this refers to the issue that arose in the context of the IG's report and trying to come to a final policy that the Board will follow regarding documents provided by the Enforcement Unit. You know, currently we are working under a temporary policy that we put in place at the last meeting but I think we are anticipating that they'll be a more full and long term policy that we can put into place. So.

Douglas Kellner: You are.

Peter Kosinski: I'm anticipating that?

Douglas Kellner: Nobody's asked me about that and I've already made my views and my views are I guess the minority view among the commissioners.

Peter Kosinski: No I'm not saying, I'm saying that.

Douglas Kellner: So as far as I'm concerned I'm finished. I've laid out what I want to do and.

Peter Kosinski: But I think we need a consensus; I think our goal is to get a consensus here at the Board to come up with a policy for the Board and I don't think we've reached that yet. I think we have.

Douglas Kellner: Well I think we're pretty far from it because I believe in transparency and the mainstream seems to feel that transparency works against whatever enforcement that we do have going on here.

Peter Kosinski: I don't think, Doug, that we're against transparency, I think we feel there needs to be a balance between transparency and the effectiveness of the Enforcement Unit. And we want to balance those two issues so I don't think.

Douglas Kellner: Well I haven't heard any movement towards any transparency at all.

Peter Kosinski: No I don't think we're against transparency I think we are trying to balance those things. I understand your position; I understand Risa's position. I think you guys are far apart. I don't disagree with that. But I think we need to make an effort here to try to resolve this for a long-term solution. We have a temporary solution which I don't think any of us feel is sufficient for long-term policy. So my interest is trying to find a common ground that we can all agree on. And I think we need to try and do that because we do have some diverse opinions around here on exactly how this should proceed. So I'm hoping that the staff is discussing this to try and bring us something that we can look at with the commissioner's input which I think we had a lot of at the last meeting considered as part of that. I don't know if there's been any progress, I can sense there hasn't been any progress since our last meeting to get to a long-term solution. I think I'm interested in seeing if there is a way, a pathway that we can get this resolved, notwithstanding I think we do have a pretty wide gap.

Gregory Peterson: Just to clarify it then, if everybody were to agree it would be that no matter what comes up it's out in the public at any time?

Douglas Kellner: Well that wasn't what my proposal was.

Gregory Peterson: I'm taking it to the extreme, let's back up from that.

Douglas Kellner: Okay. Alright so obviously I've agreed there are certain things that should be confidential. But for example when we make a referral for prosecution I think that we should consider making them, that the rules should be that those referrals are public unless we decide that they should be confidential, that there's a reason why the fact that we made the referral to the prosecutor should be confidential. And the prosecutor should articulate why that's the case. What is going to happen between the investigation that's already happened and the filing of a prosecution instrument if the prosecutor's going to take the case?

Peter Kosinski: So let me understand. Are you suggesting that if we are going to refer, say a matter to the Attorney General, that before we would release any information we would consult

with the Attorney General on whether it's appropriate to release any information regarding the referral?

Douglas Kellner: Yeah, and.

Peter Kosinski: And the Attorney General will have to then sign off on that.

Douglas Kellner: Well, and I would suggest that we would then consider what the prosecutor says but we will make the decision on whether to make public our referral.

Peter Kosinski: Okay.

Douglas Kellner: So that's one.

Gregory Peterson: So excuse me that would be after the discussion with whatever law enforcement agency we're talking about, right?

Douglas Kellner: I would accept that, yes.

Peter Kosinski: Okay.

Gregory Peterson: We're not that far apart. What's the next part?

Douglas Kellner: Yeah but Risa is...

Gregory Peterson: No, at this point I'm more worried about that the commissioners think and then we can discuss whatever Risa said.

Douglas Kellner: Right.

Gregory Peterson: We're the ones that set the policy so.

Douglas Kellner: Right. Well I think that was the principle comment that, I don't have that draft in front of me with my comments on it. If you have that Brian.

Brian Quail: I don't have it but here's the actual draft anyway.

Douglas Kellner: I'd have to dig out my draft.

Gregory Peterson: My main concern with transparency is I don't want it to be utilized as a tool during an election period or for an election purposes when somebody throws anything against the wall and hope it sticks. That's unfair, and for us to play a part in that unfairness I think would be wrong so and that's why transparency can sometimes really hurt people. At that juncture ii say no it's within our purview and our discretion to say no we're not going to do that. And I think that's appropriate.

Douglas Kellner: I confess that I don't have my draft of my comments on this but it sounds like maybe we could work up...

Gregory Peterson: We're not that far apart I don't think.

Peter Kosinski: Yeah, I don't know that we are either.

Douglas Kellner: Okay, so we should try to for the next one.

Peter Kosinski: I think we need to talk about it and see if we are. Now obviously I would like to hear Risa's input, I don't know if she wants to do it here, but I think we need you have your input on what we're talking about and I think it's important that we reach an agreement that we all can abide by because it's still documents that your office is going to be providing to us, information you're going to be providing to us, which by law you have to in order to refer cases and obtain subpoenas so it does affect your work product. But I agree that it is something that the Commissioners would agree upon as our policy at the state board. And I don't know that we have a final agreement, I don't think we do, but I think we can work towards one. I think we have some general principles we're willing to go forward on. I don't know if you have any thoughts right now regarding this but.

Risa Sugarman: No.

Peter Kosinski: Alright. Well I think we need to proceed on this, I'm willing, I'm available if need be to talk about this more, and I'm sure the other Commissioners are as well, I don't think we can hash it out here today. But I hope over the next couple of weeks before the next Board meeting we'll have opportunities to talk about this more specifically and to come up with some resolution.

Bob Brehm: I know at our level Todd and I met with Risa about two weeks ago and one tried to talk about what we were going to do to prepare for this meeting, which I think we accomplished that part since there's cases here, but also how do we get to the next step. And certainly getting your guidance is very important to the next step if we're going to try and draft something that puts words on paper that we can share with each other. I know that some desire to sit in a room especially and I speak for Brian in that room because he's usually the drafter for me, so there are certain nuances that I think it would help to put us in a room with Risa and her people just to talk so we can figure out how do we do certain things.

Peter Kosinski: Now we have some obligations under the Freedom of Information Law in my view regarding anything that goes on here at this agency as a state agency. I don't know if it's useful to consult with them regarding our obligations as an agency vis-à-vis these work products or anything else that goes on and our obligations under the law to make certain things public. And whether we make that decision or whether there's a provision and statute that mandates it as well. It may be beneficial to consult with those who operate FOIL to get their input.

Douglas Kellner: If you have something in particular in mind we could address it. The lists that Compliance makes of referrals to Enforcement are public by statute. So that's already public. I'd like to get those lists better defined so that and to maintain them so that if Compliance says there's something wrong in the list and they come off the list so that those lists can be used more effectively by the public. And we've talked about his lists of referral for prosecutions, then there's the issue of.

Andy Spano: There's the issue also of recommendation for issues to go to prosecution that we disagree with and we don't send to prosecution. I think she's entitled to some sort of forum, confidential forum before we can say we can hand it out.

Peter Kosinski: Okay, well that should all be I think fleshed out in this policy that we adopt. I think there are a number of issues that need to be fleshed out.

Gregory Peterson: We certainly don't want to do anything to hamper Enforcement's ability to conduct what they were legislated to conduct and that is certain prosecutions, investigations. I think as a Board we certainly don't want to interfere with that on the one hand, on the other hand somewhere down the line as you said Doug, these things do get to be public. And that, by the way, that alone sometimes is noteworthy. Because if somebody is out there for instance not having reported in two years, well you know what they should take a political hit for that. And that should be out in the public. That should be up to the opponent to be able to say look at this, they didn't do this. How do you expect them to do such and such? Those things are all important on the one end, one the other hand as I said there are certain things that hey wait a second we should stop it here before it gets any further because there's somebody just utilizing us and it's wrong.

Douglas Kellner: I don't have any problem with keeping the subpoenas and the request for subpoenas confidential.

Peter Kosinski: Okay.

Douglas Kellner: After the subpoena's been served, however, well but that's you know.

Andy Spano: Sticky too.

Peter Kosinski: Well again, I think that all needs to be addressed.

Douglas Kellner: Right.

Gregory Peterson: That too is within the investigatory process, if you issue subpoenas gets their information and then we take a look at it and go wait a minute you still don't have anything or wow you got something and we ship it off to appropriate prosecutorial body.

Peter Kosinski: Well there's also a difference between how much information you might provide. I think that also needs to be addressed. It's whether you provide information and then

if you're going to provide it, how much you provide, and exactly what information you provide. So I think all that has to be fleshed out. So we first would have to decide what would be disclosable but then how much of that information is disclosable? Specific information.

Gregory Peterson: Alright.

Peter Kosinski: So I think we're expecting that the staff will, and I'm available and I think all the commissioners are, to talk more specifically because I think you can see we all have opinions and thoughts on how this should be structured and I think it's important to get everybody's input so that it's all reflected in this policy.

Andy Spano: I agree with you on some of this but what we should define is just that information that's disclosable. That we all agree on. Everything else should be confidential until it gets here and then we can make a judgment on it. In other words, you talk about things that go to a prosecutor, we understand that, you talk about subpoenas, we understand that, but there will be issues that will come here that will need some further discussion. If we say certain kinds of cases are available to the public before they get here that may not be the case. And then the cat's out of the bag before you do anything here at the meeting. It's a failsafe to do it here at the meeting.

Peter Kosinski: Well I'm not sure exactly what you're referring to, but.

Gregory Peterson: I think I know what you're talking about and I agree with you.

Peter Kosinski: I think the Commissioners expect to see things before they would be released if there's any question. I mean most of the stuff this agency creates is public. There's only a small component in my opinion that would be not public by law. And the vast majority if not all of it would be that that comes out of the Enforcement Unit.

Andy Spano: Yeah but we were talking about, in previous meetings through some conversation, I get something from her office, the Enforcement Office, and I take it and I say well I just show it to somebody else, what difference does it make under what we're talking about here? Where everything is open to the public. So you really have to define what's open to the public and the rest of it can be decided in a discussion.

Peter Kosinski: At a Board meeting?

Andy Spano: At a Board meeting.

Peter Kosinski: Fair enough. Well again.

Andy Spano: Well because there are nuances to all these cases.

Douglas Kellner: Well we got to write it up.

Peter Kosinski: Yeah.

Gregory Peterson: Yeah.

Douglas Kellner: Got to work off text.

Gregory Peterson: So we have something to chew on and basically I think we can all agree. I don't think, as far as the four Commissioners are concerned, I don't think we're far apart at all. And then it might be that Risa may have an objection to something we do or don't do but I think we should do whatever it is on a very solid basis and a very consistent basis and once that's there then people know this is as far as you go and you can't go any further. Okay, next.

Peter Kosinski: Okay. Alright the next issue I think we've discussed the cyber security. Do you have anything else you wanted to add to that? I don't have anything. And then the last is the appointment of a Deputy Counsel.

Bob Brehm: We did a phone call and we just needed to confirm it in a public meeting.

Peter Kosinski: Is there a resolution?

Bob Brehm: The Resolution is for Nick in your packet.

Peter Kosinski: Yep, got it. And it's, is there a move? Is there a motion?

Andy Spano: So moved.

Peter Kosinski: Is there a second?

Gregory Peterson: Second.

Peter Kosinski: All in favor?

[Chorus of ayes]. Opposed? Alright, that's approved. Nicholas will be starting on the 22nd, right?

Bob Brehm: Yes.

Peter Kosinski: Okay. Now we have new business. We've already done the petition rulings so we'll move off that and move on to the automated audit discussion. And this relates to a change in our statute that occurred, when did that occur? Do you remember? It was earlier this year.

Bob Brehm: I think it was the end of last year.

Douglas Kellner: It was last year.

Peter Kosinski: It was last year.

Douglas Kellner: It was the end of last year.

Peter Kosinski: Alright, so this is that old. So it was a change in our statute regarding the audit procedure that county boards follow after the election so under the law there's a requirement that each county board identified three percent of their voting machines and do a manual audit of those to ensure that the votes through the manual audit match the numbers that came off the machine and if those all match up then that's the end of it, if they don't match it's an accelerated five percent, 12%, ultimately potentially leading to a full manual recount if necessary. The legislature changed the law to allow for an automated audit so that the counties could use an automated system to do their three percent recounts instead of the manual process if they so choose but in that statutory change there was a requirement that any audit system be one that's approved by this Board before it be put into operation. So this regulation or this discussion goes to the creation of a regulation that this agency would put out that the county boards could then utilize for purposes of enabling this automated process. Am I capturing that correctly?

Douglas Kellner: Right.

Peter Kosinski: So I've seen, I know there was a draft around, I saw it, in fact I think I may have it, of a proposal to do this, I don't think, it's not on the agenda I don't think it's to that stage yet but I'm certainly interested in talking about it and I know Doug Kellner has some thoughts on it.

Douglas Kellner: Alright. Well I've spent many hours working on this. The first of all I was very much involved in the drafting of the statutory change.

Peter Kosinski: Okay.

Douglas Kellner: And I certainly endorsed it because the system that had been developed, the first vendor to really develop the system, now there are many systems on the market that was Clear Ballot. And the Clear Ballot system provided a method for having independent software review the ballots in a way that would be much more efficient. If you take it to the analogy of a business audit, a financial audit done by accountants, the financial audit done by the accountants can be automated by using software such as QuickBooks or whatever to record transactions and if it's an independent auditing system then that is extremely reliable and shortens that time necessary so that it's not necessary that you review every entry. But you still have to make sure that the software independent system is accurately in fact independent. And you do that through a small random check of the independent system.

Peter Kosinski: I'm sorry Doug, let me understand. How does a manual check of the independent system ensure that it's independent?

Douglas Kellner: Because if the images don't track the manual track then you have a problem.

Peter Kosinski: But isn't the independence determined beforehand? If you had to have two independent systems just to determine.

Douglas Kellner: But how do you know it's independent?

Peter Kosinski: Well don't you determine that ahead of time that I have one system that runs off this software. I have another system that runs off other software. Doesn't that make independent?

Douglas Kellner: Theoretically it's not 100% independent because you have the personnel factor at the Board of Elections. In other words, you're probably going to have the same board personnel who programmed the original system programming the audit system, and that's why you need to at least have a small spot check. Now the numbers that I proposed which are somewhat arbitrary, were very small so that in a typical election you'd literally just be hand checking like five ballots or something like that.

Peter Kosinski: So your concern is that if you have the same person programming both the precinct based system and the three percent audit system that that would compromise the independence of the two systems?

Douglas Kellner: Well they can compromise the automatic audit because how do you know that they haven't just switched the file in the automatic audit to make it come out and match? And you just do that by a very small random check of automated audit.

Gregory Peterson: So it's not duplicative of, it's not.

Douglas Kellner: I'm not saying you do a hand count and the audit that makes no sense at all.

Peter Kosinski: Well but you actually are because you're, I mean you're reducing the hand count but you're still requiring it.

Douglas Kellner: Well to a very tiny factor. I don't, where are my numbers in here?

Bob Brehm: Towards the end.

Douglas Kellner: Pardon?

Bob Brehm: Towards the end.

Douglas Kellner: So.

Peter Kosinski: Yeah 25 ballots if there's 2,500.

Douglas Kellner: So if there's a 100, yeah alright so.

Peter Kosinski: I see the numbers you came up with.

Douglas Kellner: It's a very small number. You know three percent on a statewide race is, what is it five million?

Peter Kosinski: That's a lot.

Douglas Kellner: You know? Yeah three percent of five million is still several hundred thousand and we're talking about here.

Bob Brehm: Your percentages up the numbers audited not the total number of ballots, correct?

Douglas Kellner: Yeah, correct.

Bob Brehm: So we're already at three percent of the five million and then you're in a percentage of the three percent on a county by county basis.

Douglas Kellner: I actually have whole numbers so in a very high turnout statewide race you'd be looking at 3,000.

Gregory Peterson: Statewide.

Douglas Kellner: Statewide, yeah, as the hand count.

Peter Kosinski: And they'd be selected what from every county, one is each county or something?

Douglas Kellner: Yeah it would have to. No, because of the numbers you would do a random system. So what you would do is the audited ballots would be, are electronically labeled, so this is theoretical, so if you're randomly selecting ED's for audit. So let's say that the ED's that have been selected for audit are New York County, 72nd Assembly District, Third Election District, and you'd list out those. Within that audited election district you would have a number of ballots. You would sequentially identify those ballots for the audit from the ballot images one, two, three, four, five, and so on. And electronically you would assemble the full list of the audited ballots of the electronically audited ballots and then you would randomly select from those ballots the ones that you'd have to pull out the ballot to manually check it. And that's the system that's being used in Florida. It's a very simple system. For a typical race the hand check takes between fifteen minutes and half an hour.

Bob Brehm: That would work at the county level under if I understand your hypothetical, I think that because I still see a concern.

Douglas Kellner: But if it's a cross.

Peter Kosinski: I don't understand. I'm not concerned, I don't understand.

Bob Brehm: If in this county we had to whatever the three percent generates 3,000 pieces of paper and you take that and go through the Clear Ballot system or whatever the tool is, you still are taking them out and we keep them in bundles for labeling purposes so that you can compare the report to what you think the number should be. But the Clear Ballot system also would say there are 3,000 sheets of paper, one to three thousand. You could use a random number generator to say give me X percent, do a random number generated from one to 3,000 and it would give you a printout. And if your percentage says that equals five ballots then you just go through the first five and draw a line and because the Clear Ballot tool numbered them on to 3,000 you could randomly just go to that bundle, that number, pull out that 23rd sheet of paper equals, maybe it's number 642 of the ballot, and you could just put your eyeballs on and say do I agree that that's what it's at.

Peter Kosinski: You say they're doing this in Florida?

Douglas Kellner: Yes.

Peter Kosinski: Alright, I'd like to see more information on what Florida's doing. I don't really understand this. I mean I sort of understand your description but I have to admit I don't really understand it. So I would personally like to see something. If it's in use somewhere that'd be great. Is Clear Ballot in use? I didn't think they were anywhere.

Douglas Kellner: Yes.

Peter Kosinski: Are they? Where are they in use?

Douglas Kellner: Florida, Colorado, Oregon, and Washington.

Peter Kosinski: Okay, then maybe I could see something from another state. That would just be helpful for me to understand what you're talking about.

Douglas Kellner: Alright, but there's a separate issue.

Peter Kosinski: And you're saying all these other states that do this do it the way you're suggesting?

Douglas Kellner: No, no one does it exactly this way. This is the model that is used in Florida that they have not defined the number because they do the manual audit.

Brian Quail: They haven't defined the random number.

Douglas Kellner: They haven't defined a procedure for doing the manual check. They just do the manual check and it just says there will be a manual check of the Clear Ballot audit. And it doesn't.

Peter Kosinski: It doesn't lay it out how it's done.

Douglas Kellner: Right, and this is, and I just had to write up something so that it would be a procedure that was defined. There's another separate issue from this. This works out an automated audit tool. There's the issue of a risk-limiting audit which is different from the audit that the New York Legislature provides. A risk-limiting audit is where you don't take an assigned percentage number of ballots to audit. Instead you audit the number of ballots required to reach a given probability that the outcome is correct. Have I lost you yet?

Peter Kosinski: Yes.

Douglas Kellner: Okay. When you do a poll you have the margin of error in the poll is based on the number of persons polled and the size of the poll. The larger the poll the smaller the margin of error. Okay, now take that same concept. First of all, if it's not a close contest than you don't care. The margin of error is not significant. If there's a 20-point gap and your margin of error is four percent than the likelihood that your poll is correctly predicting the winner is very high. So what you do with the statisticians who have recommended risk-limiting audits is that they've said that you, and these are complicated mathematical formulas, but you audit the number of ballots required to give you the defined probability that you have correctly picked the winner in the contest. And so one of the issues in risk limiting audits is what is that number? Is it 90% probability? Is it 95% probability? Is it 99% probability? And this is the probability that the audit accurately generated the winner. Based on the size of the electorate you sample the ballots for audit until you reach that predefined probability that you have correctly counted the contest. So that using a risk-limiting audit for most contests you only have to audit a relatively small number of ballots. But in a very close contest you might have to audit as much as 100% of the ballots if the margin is very close between the two candidates. Several states have adopted risk-limiting audits.

Peter Kosinski: Okay.

Douglas Kellner: It's very complicated though, working through the formulas and in New York it is more difficult because if you're doing it on the basis of election districts without predefined ballots then the number of actual ballots that has to be sampled is greater than if you do it for example what I've done for the audit of the audit is you've defined the sample by ballot. So for example if you have four million ballots the number of ballots that you'd have to audit on a statewide contest to get 90% defined probability that you've correctly defined the winner is in the neighborhood of ten or 20,000 I think is my recollection. But you'd have to have the ballots to find ordinarily, which we don't do because we don't print an identifying mark on the ballot when the ballot is cast or on the ballot image. It can be done with the automated audit but not with the initial audit if you're doing a risk-limiting audit.

Alright, I have proposed a year and a half ago, which we discussed, that in close contests that the number of ballots audited be escalated in a risk limiting fashion so that you would address the issues of the known problem that our electronic scanning system does not count ballots accurately in two situations that are defined. One is where the voter makes a mark outside of the

voting block but within the candidate block which our regulations define as a valid vote for that candidate. And the other situation is where the voter makes an extraneous mark on the ballot which invalidates the ballot but is not picked up by the scanner. And in New York we've had historically two contests where the manual count of the ballots has reversed the outcome because of those types of discrepancies with the machines. And our statute does not address that and our current regulations with the audits don't address that issue which became the issue that the Court of Appeals resolved in the Johnson case four years ago. And that's a separate issue from the automated tool.

Peter Kosinski: Yeah, I'm not sure. What are you suggesting on this risk audit?

Douglas Kellner: Well I think at the point the what the Election Administration statisticians call risk limiting audit should be written into the recanvass provisions of the statute so that the legislature would do it as part of the recanvassing I should say. As far as I had initially proposed it as a way the Commissioners could do it as part of the audit regulations but you had indicated at that time that you weren't interested so I wasn't going to pursue that.

Peter Kosinski: Well it seems to me that there's.

Douglas Kellner: But it's separate from the automated tool.

Peter Kosinski: Yeah, it seems to me that there's two different processes that are available for purposes of auditing our voting systems in this country. And one is, I think the one New York chose which is the three percent of all machines regardless of the outcome, regardless of the contest we're just going to audit every contest, every county in the state. The option to me was you could have gone with what I think you're describing which is if the contest is close then we're going to do an audit because it's so close we need to make sure that the contest was correctly counted by the machine. But if it's a wide margin then we really don't need to do that audit because the chances of it being wrong are so small we're not going to do it. So my understanding, the State of New York chose the three percent audit, those are the two choices faced by virtually every state in this country when these new machines were rolled out and you were interested in doing any audits at all. So New York chose the three percent audit. We're going to take that choice, not be what I guess you're describing, the risk limiting audit. I never heard of it in that term but I understood the concept. So my feeling has always been that's what the state chose, that's what we should be using, and I think we have two outliers right now. I agree with you; we have two outliers as I understand it. We have New York City, and we have Columbia County who do manual audits, not necessarily limited to the three percent rule. They do, as I understand it, Columbia County does a full audit every election, full manual audit of every machine. New York City does it based on I believe a half a percent margin between the winning and losing candidates. So when you're that close New York City will adopt, or has adopted, let's do a full manual audit because the contest was so close we feel the need to do that. I feel that's against state law. That's my own opinion. I think that the state law sets out the audit process for the state that should be followed at every jurisdiction is the state. It should not be different in New York City than it is in Albany, Buffalo, Rochester, wherever. Everybody should be following the same procedure.

Douglas Kellner: Peter, I might agree with you on the uniformity and you know I would certainly be open to try and make it uniform but the statute specifically says that it gives three entities powers to expand the audit. It says that County Commissioners can expand the audit. It says the State Board can expand the audit, in other words if we vote to expand an audit. Or it says a court can expand and audit. So to say that Columbia County or New York City is violating the statute, the statute specifically says the Commissioners can extend.

Peter Kosinski: See I think, that may be, I haven't read the statute lately specifically lately but I will say to you that I think the principle of having uniformity is critical to our elections in the state and in this country.

Douglas Kellner: Well I often raise that with other issues where I'm told just the opposite when I want it to be uniform.

Peter Kosinski: I don't know what you're referring to.

Douglas Kellner: But on this issue I am open to setting a uniform policy if it addresses.

Peter Kosinski: I mean I thought, my feeling was the state set a uniform policy. They've set a three percent audit policy which the counties are mandated to.

Douglas Kellner: But the commissioners can do more if they want.

Peter Kosinski: Well I'm just telling you that the counties must use, they're mandated to do three percent of all their voting machines and that should be the standard around the state. I think it goes against the principles set forth in the Bush v. Gore decision that we have different standards in different jurisdictions.

Douglas Kellner: The decision that says in itself should never be cited.

Peter Kosinski: I think.

Douglas Kellner: It says in the last paragraph not to cite it.

Peter Kosinski: I think when you have different standards for different jurisdictions you are treating civilly situated voters differently. I think, I mean it's troubling to me for example that in New York, and I don't even know the answer really, when you have a statewide contest, if there's a half a percent, let's say it's a close contest and somebody wins by less than a half a percent. As I understand it New York City will now do a manual audit. Nobody else will. New York City will then open up every machine and do a full manual audit.

Douglas Kellner: But, Peter, maybe we should order everybody else to do it if it's close.

Peter Kosinski: Well let me finish. Let me just finish. And they will then do a full manual audit of every ballot that was cast in New York City. And by the way I have my own issues with manual audits because I don't know that human intervention is always the best answer as we saw in Florida as well.

Douglas Kellner: Well that's why the automated tools are a good thing.

Peter Kosinski: When people sat around and looked at Chads and disagreed as to whether or not that constituted a vote or not. So manual intervention to me is not the end all be all to solve our issues with whether or not our voting machines are operating correctly. But that said, I think when you have a situation where I'm a voter in Upstate New York and there's a close statewide contest and they're doing a three percent audit up here but I find out in New York City they've opened up every voting machine in the city and they're now sitting at a table manually counting every vote. That seems there's something inherently wrong with that to me that an Upstate voter is not having that manual audit done but if live in New York City that's happening to my cast, to my votes. And yet you're all casting them for the same office. This isn't a matter where it's a City of New York, the mayor, and I'm Upstate and I don't have anything to say about it, it's a Governor, it's a Comptroller, it's a statewide office and yet in Columbia County they're opening up every machine and looking at every ballot. Next door in Greene County nothing's happening. Three percent audit, Albany County three percent audit. I think there's something inherently wrong that you have different jurisdiction in this state treating voters differently, which is what we have. And so I think uniformity is what we should be trying to achieve here. Now I had felt it had been achieved when the state legislature adopted a three percent audit, and I understand some people may disagree with whether a three percent audit's the way to go or what you're describing as a risk-limiting audit is the way to go. And I think that's a discussion worth having. And if people think no I think the risk-limiting audit is better than a three percent audit, that's their decision and that's fine. But I think legislature decides that and they say, you know the three percent audit isn't meeting our needs let's go with the risk one. Fine, do that but I think as of now the three percent audit is the procedure that should be followed in the state. Now I agree that that does not go to this automated system which I'm interested in talking about and I think we need to reach a resolution on that. But I just wanted to, you know, since you raised that risk limiting audit concept, those are my thoughts.

Douglas Kellner: Well and I raised it to distinguish it. That the automated tool is, I don't want to confuse the issues that.

Gregory Peterson: But basically you're saying put aside the risk.

Douglas Kellner: The language that I proposed for the automated tool does not have risk limited audit provisions in it. I would still support that but I'm not pushing it.

Gregory Peterson: That's not pushing it.

Douglas Kellner: Well only because the two Republican Commissioners have said that they're not interested, so you know. As far as I'm concerned that's still on the table but I have already

said that I would draft an amendment, not to the audit statute, but to the recanvass statute to make it part of the recanvass procedures. So that's, I just wanted to clarify that that's not part of this proposal. All I'm saying with this proposal is that if you're going to use an automated tool you still have to have a very small manual component to it to make sure that the automated tool is actually auditing the correct paper ballots. And it may look complicated but I used a sliding scale because that makes more sense to have a sliding scale then to do a larger number in order to check that you're doing it. But you know I'm very flexible on it.

Gregory Peterson: So you're saying that we should be doing this as the Board mandating it for the state who utilize it.

Douglas Kellner: If they're going to use an automated tool they still have to manually look at a very small number of ballots. Not three percent, just a very small number of ballots in order to make sure that the automated tool is doing that. And it has nothing to do with the issue of an incorrectly marked ballot because you know, our audit regulations are written so that it does not generate a discrepancy if the machine counted the ballot in accordance with the programmed instructions. Okay, so that whole issue of.

Bob Brehm: Unexplained discrepancy is what would trigger further action. If you see a discrepancy but the machine was never designed to count it in the first place, that's not a discrepancy. But they still have to go through the process of at least understanding that's what happened.

Gregory Peterson: What stage is this at right now with that company? I assume it's a company that's.

Douglas Kellner: We've already granted certification to their system to be used as a Central Count Absentee System. New York City wants to use it also for the automated audit tool and.

Bob Brehm: Many other counties too.

Douglas Kellner: And they would not be able to use it until we adopt a regulation.

Peter Kosinski: Why are they interested in using Clear Ballot as opposed to another? Is that the only system that anybody's looking at for purposes of this audit or are there other systems as well?

Douglas Kellner: There are competitors.

Anna Svizzero: No one has approached us. We did, we had a grant from the EAC to study post-election process and we're one of the handful of states that did it.

Peter Kosinski: What about the current Dominion, ES&S that we have in the state?

Anna Svizzero: Well they can't audit their own system.

Peter Kosinski: Well what about the other system? Could an ES&S county audit...

Anna Svizzero: If they wanted to go out and spend the time to invent a way to do that certainly.

Peter Kosinski: They can't do that right now?

Anna Svizzero: Right and Clear Ballot can. And we did test it in the, not the guise but under the.

Douglas Kellner: ES&S has a product on the market now that I believe is similar to Clear Ballot.

Anna Svizzero: We have not seen it or heard from them, so I can only tell you what we know for a fact.

Douglas Kellner: I have looked at the prototype.

Peter Kosinski: Okay.

Anna Svizzero: We did test that Clear Ballot system, we piloted it for the purposes of that grant report in Schenectady and I believe Saratoga and Monroe County and put it through all of its paces and the report was very favorable, it was completely independent of the vendor's software that created the ballot in the first place and the county certainly goes, bigger counties have to count a lot of paper in that three percent audit are very interested in it. The most recent activity has been that the last city board meeting where they directed their staff to go out and begin procurement but you can't procure something you can't yet use. We said, and I believe that statute says and I have a copy of it here, the system has to be authorized by this Board. Since we did such significant work in certifying that very same system as a Central Count System we can't think of another test that you would do that would authorize it beyond the source code review and the functional testing that we've already done. So that product is ready to go. It's the one that our boards have seen at conferences, it's the one that has been seen in the pilot projects that were used of the purposes of that report.

Andy Spano: Do you know of any manual check that's been done similar to what Doug is suggesting?

Anna Svizzero: You mean the risk, the counting some paper. I have heard of it; I don't know where it's necessarily happening. We've been pulling done reports from other states that do audit but they don't go to that degree. But they do recognize that there is that cadre of good government groups advocates or whatever you want to call them that do feel that eyes on paper is still necessary when you're going to audit, even very minimally, just for that additional security factor. And then there is that other risk-limiting network that has a different trigger initially. So Clear Ballot, we're familiar with it because we've used it because we've certified it,

it's the one our county boards have seen. I'm not aware of anybody else that's available to do it if someone wanted to buy it tomorrow but this board still has to authorize.

Gregory Peterson: Right now that's the only one that's been cleared by this Board.

Anna Svizzero: That we've done any work on that would allow you to authorize it, yes because we would use the certification reports to submit it to you for authorization.

Gregory Peterson: For this election it's available for every single county.

Anna Svizzero: It would be if you authorized them.

Gregory Peterson: If we authorize them.

Bob Brehm: You voted to authorize it to use only as a Central Count Absentee System, so if you wanted to you could authorize its use for something else.

Peter Kosinski: But don't think it goes to Clear Ballot I think it goes to this policy we would adopt and what the procedure is for any system to use.

Douglas Kellner: The audit procedure.

Peter Kosinski: And Clear Ballot happens to be the one that I guess is available.

Douglas Kellner: Right.

Peter Kosinski: But this would be a broader policy and it would incorporate, possible incorporate at least, the manual component that Commissioner Kellner is suggesting as well.

Andy Spano: Every time you introduce a new technology there's an interest in having a manual component because that's what people are used to and they don't trust the technology.

Peter Kosinski: No I agree.

Andy Spano: It goes on for a couple of years and then they eliminate the manual system.

Peter Kosinski: No I don't think so. I think our systems been going on for a couple years and people still want to have a manual audit. So I don't think it does go away, you know, for whatever reason. I'm probably not as enamored with the manual audit as some people because I think human intervention has its own risks. I think we've seen evidence of those risks. I think we see where human intervention often creates problems that machines solve. And sometimes when you introduce human intervention you can create more problems than you solve so I'm not as enamored with the human intervention component. I like the automated component because I think there's a very, a bigger, the more manual auditing you're doing the greater the risk of human error. So reducing manual audits, to me, is a legitimate goal because I think you then

reduce the amount of human error that inevitably occurs when you have humans involved. So I like that component for that reason.

Douglas Kellner: I very much agree with that. And that's the whole point in having the automated audit.

Peter Kosinski: I think going in that direction makes a lot of sense, going to the automated.

Douglas Kellner: But you can't eliminate 100% the last check otherwise you've opened up another gap in your audit procedures.

Peter Kosinski: Well I, listen, I'm not prepared to adopt something today. I don't know how the rest of you feel. I'm interested in talking about it. I would like to know what some of these other states are doing that are utilizing this.

Douglas Kellner: Okay.

Gregory Peterson: But there are time constraints.

Bob Brehm: Well there are people asking us to buy it to use as an audit tool and I know Anna has asked my general view and I share it as I'm reluctant to recommend anybody buy something to use it for something we haven't certified or we don't have a regulation that describes how they should use it. Because that's going to let the horse out of the barn and then it's going to be harder to deal with it later.

Gregory Peterson: You might think so, initially since it's going to be utilized in this election for the absentee ballots and that some will have had some history with it, no?

Bob Brehm: I think some people like the concept that if they buy it for Central Count Absentees it could not audit their absentees but it could audit their other system so I think they think they can get a dual use out of it. So it's probably why this seems somewhat interesting to people. Plus, it really, I mean our own examination of it showed that it's much more efficient to get the job done. So there's a lot of interest because we only have seven days or fifteen days after an election to get this work done in the first place. So it really is efficient. Our concern of course is where is there agreement on coming up with language, certainly they have contract issues that we're also dealing with that Counsel's office and ops spend a great deal of time so that counties have a contract to buy off of which is also part of our concern. But I think if we get a sense of where you're at we could take it back and get you more information, talk internally to try to hone down your views here today into a document and at least share it with you get some feedback. Certainly the counties are looking for us to decide this at some point so they can go forward.

Peter Kosinski: Oh I think we should but definitely, it's the first I've seen it though. I mean I need a little time to digest some of this. I think having other state's experiences here would be

helpful. If I could see where other states are using the real Clear audit system are doing that would be helpful to me. Anna you had something else?

Anna Svizzero: I was just going to ask, in light of the fact that this is a monster election and the bigger counties, including New York City, and the five counties they represent, and looking for it, would the Board entertain a pilot program in the same way that we did the scanners before they were completely certified so that you could have some practical experience in New York and give them as we did with the scanners the regulation they would have to follow if they wanted to participate in a pilot project they would have to follow whatever you came up with. This draft that you have before you with this eyes still on the paper or not that would be your choice. If the board has the ability to do that that might help these counties and help this project move forward in the absence of allowing for pilot projects at the November election would you want us to do the additional functional testing so that we could present it to you for authorization and not waste this time between now and when you decide you want to vote on an amendment to the regulations. Because amending these regs is going to take its own time.

Peter Kosinski: Well my view is this, your testing and approving this system doesn't have anything really to do with these regulations. It seems to me the regulations are going to stand on their own regardless of the system that is utilized to implement them.

Anna Svizzero: Right.

Douglas Kellner: But do you want to give New York City or Clinton County a temporary regulation that would allow them to do a pilot project.

Peter Kosinski: I don't really have one. I mean I see what's been presented. I'm not ready to approve it myself but I'm willing to entertain discussions on it.

Bob Brehm: But a pilot if they called and asked would you entertain a pilot it doesn't presume you would vote for the pilot but still if we, counties have asked us will we allow them to do a pilot.

Peter Kosinski: Well I'm not against a pilot, I don't mean that but I think we have to set out.

Douglas Kellner: We need a procedure.

Peter Kosinski: Yeah, we need a procedure for it, that's all. And I think we need an agreed upon procedure. So I'm fine with the pilot idea if we can get a procedure together that we can agree to that they can follow, I would be okay with the idea but I think we need a procedure and I don't feel comfortable with a specific procedure yet. Although I understand it better now than I did before.

Andy Spano: You don't feel comfortable with just using the machine and not having this addendum of a manual check.

Peter Kosinski: Well I'm okay with the machine it's the manual check that I'm still wrestling with.

Douglas Kellner: Yeah I'm not going to agree to a machine without a manual check. Just like in Pittsburgh you have the new auto drive UBER cars, they're still putting a driver behind the wheel even though it's self-driving.

Peter Kosinski: No I mean apparently we haven't reached the level where people are comfortable enough with these automated systems to let them run on their own. For whatever reason, I don't completely understand it but I guess that's the case.

Douglas Kellner: Well the theoretical reason is, I'll repeat it, is that when you have a Board of Elections with a finite number of people and in small counties one person or perhaps two persons who control the programming of the regular scanning election management system and who will also be responsible for programming the independent audit system, then you cannot rely that the independent audit system is in fact independently auditing it without at least some check on the independent audit system. And that's fundamental. If you're doing bookkeeping you wouldn't want the bookkeeper to do the audit.

Peter Kosinski: You know that's fair enough but maybe there's a different way to address this. Maybe there's a way to structure whatever they do to ensure that the person who programs one machine doesn't program the other machine. I mean maybe there's another way to get there besides continuing to mandate manual audits. Because as you can see I am not enamored with manual audits. I just don't think that is the end all be all, notwithstanding, I know some people insist on them and think they are the answer. I watched what happened in Florida during that 2003 recount and to be the manual component was a huge flaw in the way that system worked. And it's just ironic to me to be perfectly candid, that what came out of that election was the new voting systems and yet it failed to fix the most fundamental problem that was identified in Florida which was when you have two people sitting around a room looking at a ballot the chance of having them disagree is pretty high as to what that voter intended. So I just don't.

Douglas Kellner: That was the case with the.

Gregory Peterson: Just to understand it though if I might. In what you had said Doug the bottom line here is that after you've gotten your machine, having checked everything out, now you're going to have a manual bout but it's only for a handful of ballots.

Douglas Kellner: Ballot images against, right.

Gregory Peterson: So it's a question of did this match up with what the computer says, correct?

Douglas Kellner: Right.

Gregory Peterson: And that's it?

Douglas Kellner: That's it.

Andy Spano: See I don't understand why you can't go with some, let a couple counties do this and see what happens? What's the big deal?

Peter Kosinski: Well we need to have a procedure though, Commissioner, that's all. I mean I think we should try to do so and I'm going to work on it but I just need a little more information before I would endorse this manual component that you've created and frankly there are a couple other issues I have with this. I mean you have in here for example a provision that says if the Commissioners disagree it automatically goes up for escalation. I think that is not the way boards typically function in this state, typically they function on both Commissioners have to agree for action to occur. So I think that's something we need to talk about because the fall needs to be dealt with.

Douglas Kellner: Well we should talk about it but, Peter, when the law was originally drafted you and I talked about it and it is my understanding that everybody on both sides had a common understanding that either Commissioner would escalate the audit and then the Johnson case came along and the court ruled the opposite and said both Commissioners have to agree to escalate the audit. That's the court of appeals so that's the law now. But I think that was contrary to the assumption that everybody had.

Peter Kosinski: I don't think I ever had that assumption. I don't remember having that assumption because I know having worked at the Board I know that decisions of boards need to be agreed upon by both parties.

Douglas Kellner: Yeah and when in doubt you would.

Peter Kosinski: Well I understand. I understand your position but I'm just saying that it's something we need to talk about.

Douglas Kellner: And I'd ask you to really think that through in terms of the consequences of in effect impossible to ever escalate an audit. Because the whole problem is that unless it's written out in advance when you're reviewing in a close contest in a general election than it's a partisan decision. And it makes it very difficult for Commissioners to act.

Peter Kosinski: But it seems to me when you create that's the advantage to me of the automated system is when you take machine A and it counts out the ballots this way and here's the results. You take Machine B which is the audit system and they come out and say wait a minute that has a different result than that one. I don't know how you would dispute that you now have a discrepancy that needs to be escalated. It seems to me that on its face.

Douglas Kellner: That's the whole point.

Peter Kosinski: I know but I think then you have an indisputable discrepancy as opposed to what we have now, which is you have a manual audit and I'm sitting there going well that's an audit we have a discrepancy but I can resolve it.

Douglas Kellner: Peter, I agree with you, the machine is more accurate. Well that's the problem.

Peter Kosinski: That is a problem but that problem goes away when you do the automated audit because there is no discrepancy.

Douglas Kellner: Yeah as long as you know the automated audit is legit.

Peter Kosinski: I understand but what I'm saying is if you make the systems automated the chances of disagreements at the Commissioner level of whether there's a discrepancy or not goes away because I don't know how a Commissioner says there's no discrepancy when you have two machines saying there are. There's a discrepancy here. This machine counted 14 ballots, this one counted 15 ballots. That's a discrepancy. How do you say it's not? And so I think it goes away. I don't think it's as big an issue as far as Commissioners disagreeing if you go the automated route.

Douglas Kellner: Yeah, I think that's right.

Peter Kosinski: And I think that would go a long way towards us avoiding those kind of disagreements at the Commissioner level. Which I think is a goal we should try to achieve as well.

Gregory Peterson: But if we're headed in that direct, I was going to say for clarification.

Anna Svizzero: So what am I taking away here? I have a draft procedure so you want us to do that we will circulate and do you want us to do the functional test that we had in mind in order for you to consider authorizing a system?

Peter Kosinski: Well I think you should do the functional test anyway. I don't know why you wouldn't. Because I think, listen, my view is we're going to approve something it's a matter of how quickly we can do it.

Anna Svizzero: Okay.

Peter Kosinski: I don't think it's a matter of whether we're going to do it.

Anna Svizzero: So we can do that work?

Peter Kosinski: I have no problem with you getting a system in place in the state that would be available for this purpose. I think then it's just whether we can get a regulation together fast enough for use this fall.

Anna Svizzero: Okay. If we can go back and look at what the requirements were that this Board asked of boards that were going to do a pilot using the scanners before they were certified. We had some additional audit requirements, I can't recall what else.

Douglas Kellner: We had a once percent manual audit. I mean no, it was 100%, no there was a very significant manual audit that requirement.

Anna Svizzero: To get through the pilot project because the system hadn't been certified. I can go back and pull that information.

Douglas Kellner: But that's not really the issue here.

Peter Kosinski: No.

Douglas Kellner: The issue here is.

Peter Kosinski: No I was looking for additional accommodations that you would want if you were to allow this to be used in a pilot, absent agreement on the regulation. We can come up with a procedure but the eyes on ballots or not on ballots that you'll have to decide.

Douglas Kellner: Well I think it's going to be very hard for you to convince me that there should not be some system in place for assuring that the automated tool is in fact independent.

Peter Kosinski: Fair enough, I mean I'm not going to dispute the need for independence and verifiability. I just think we need to think about how we get there.

Douglas Kellner: Well.

Anna Svizzero: We've also talked to Clear Ballot in that scenario we talked about in the grant report that Clear Ballot will interpret the PDF's, they use no vendor software to do that. They have the system to do that. In the same manner that the printers now do this bridge work that they get PDF's ready for county boards so that process is comparable and could still happen that means that the staff at the county board of elections would only be signing off on the work that Clear Ballot did to prepare for the audit in the same way that they sign off on the PDF's the printers give them now.

Douglas Kellner: How would that comply with 9-211?

Anna Svizzero: I'm just throwing it out there because these are some of the questions that our county boards have asked us. I don't know. I haven't researched it myself but.

Douglas Kellner: Well that's the answer is that 9-211 has a different system and what I believe Anna is referring to is the system where you don't audit the manual the actual paper ballots you audit the ballot images.

Peter Kosinski: The ballot image.

Douglas Kellner: And it's generated some controversy. There are some states that now have authorized do it by auditing the ballot images rather than look at the ballots. Maryland in particular.

Peter Kosinski: Is there some advantage to.

Anna Svizzero: They would audit the actual ballots but interpreting the PDF's so that their system recognizes the PDF.

Douglas Kellner: Maryland has just done a contract with Clear Ballot where Clear Ballot is going to audit the images not the paper.

Peter Kosinski: What's the advantage of auditing the image opposed to the ballot itself?

Anna Svizzero: You never handle the paper again.

Douglas Kellner: Right.

Peter Kosinski: Okay.

Anna Svizzero: It's all computers talking to that.

Bob Brehm: And from the Maryland system if you consider the ES&S system when it makes a TIFF it's a TIFF you can see almost anything. On the Dominion system they have less memory so they're closer to the images exactly the oval target area to vote in but it's not 100% of clearness or crispness because that would take more memory. So I'm not quite sure you see as clearly an image always under to Dominion system. You see the target area.

Douglas Kellner: Maryland is auditing the ES&S DS200 image.

Bob Brehm: Well that at least you got if you took a piece of paper and run it through the photocopier, it's everything. But the Dominion because of the level of memory it takes to store 7,000 or 2,000 or 1,000 images they targeted the zone so it's not as crisp a picture so I don't know how well that would work for an audit.

Anna Svizzero: I'm not talking about images. I'm talking about the vendor, the Clear Ballot people interpreting the PDF's so that their system can run ballots.

Douglas Kellner: What PDF?

Anna Svizzero: The ballots that the county board generated to use on Election Day.

Bob Brehm: They have the system to be able to work in the first place?

Douglas Kellner: Oh you're talking about; okay you're talking about the election management system.

Anna Svizzero: Right, they interpret the PDF's, they have no interaction with the EMS, they have no interaction with the vendor.

Douglas Kellner: I misunderstood you originally because you didn't define what PDF was.

Anna Svizzero: Right, sorry.

Bob Brehm: But that's how we program it, right? That's how you program the Clear Ballot system.

Anna Svizzero: They interpret the PDF's from the hardcopy PDF's. They have developed.

Douglas Kellner: Who is they?

Anna Svizzero: Clear Ballot. Without any interaction with the vendor ES&S or Dominion's software or Dominion or ES&S folks and at that point not even with county board people.

Todd Valentine: But that's how Clear Ballot, it's a simple way that Clear Ballot can operate with any system because in order to know what to read it just takes the PDF of an existing ballot. They don't need the software, that's why they don't use the software.

Anna Svizzero: That's what makes them independent.

Todd Valentine: That's what they can do.

Anna Svizzero: So they're still counting paper, they're not looking at images unless you had a whole other train of thought later on.

Bob Brehm: I thought that when you said PDF. I interpreted it the way Doug asked the question.

Anna Svizzero: I think Peter and I were on the same wavelength.

Peter Kosinski: Okay.

Anna Svizzero: So we're going to bring you back a draft procedure.

Peter Kosinski: Yes.

Anna Svizzero: We're going to do the functional testing.

Peter Kosinski: Yes.

Anna Svizzero: We'll send you the report from our grant on how Clear Ballot worked. And we'll get you information from the other states.

Peter Kosinski: From other states other states, yeah. If somebody else is doing an audit using Clear Ballot I'm interested in how theirs works, procedurally, not mechanically.

Anna Svizzero: Right.

Peter Kosinski: You know what process they use.

Anna Svizzero: Thank you.

Peter Kosinski: Okay. Are we done? Everybody else okay? Alright. Then we'll move on. Now we're going to upgrade the ES&S voting system. Now this is a proposal that's been in the hopper for a while. It's an upgrade to the ES&S.

Anna Svizzero: EMS, it was an upgrade.

Peter Kosinski: This is their accounting of.

Anna Svizzero: I'll have Bob explain it.

Bob Warren: It's an upgrade to all three components. The EMS, the DS200 and the DS850. However, the EMS system upgrade that's in this proposal will work with the current DS200 firmware that's out in the field so in the case of the county it's already upgraded to 5.6.0.1, they could just upgrade their EMS system for this election, generate their elections, use the functionality that's within this EMS system and still utilize the 5.6.0.1 firmware that's out in the field right now.

Anna Svizzero: They wouldn't have to upgrade every scanner that they already own.

Bob Warren: They could wait until after the general election and do that upgrade. And then there's also an upgrade for the DS850 but anybody with an 850 would have to apply that upgrade to use those in this upcoming election.

Anna Svizzero: The 850 is their central count system, the DSS200 is the precinct-based system.

Peter Kosinski: So it's September 15th and we're anticipating that this would then be utilized for the November election. Is that a fair expectation for us to have?

Bob Warren: Yes, for utilizing it with just the upgrading your EMS system and your Central Count System, yes.

Peter Kosinski: So we're not running any risks of doing this at this late juncture in the election process?

Bob Warren: No.

Bob Brehm: I think it's still up to the counties if they want to. It's not mandatory that they have to between now and then. Some may choose to do it.

Peter Kosinski: Well these are our big jurisdictions right? These are the New York City...

Bob Brehm: New York City most needs...

Bob Warren: Probably just New York City that would do this upgrade of the EMS and the 850.

Bob Brehm: New York City has expressed as early as today or as late as today that they still want this. They did on a phone call with Todd and I on Thursday. Their expression to us is because its assistance for the central count absentee. It allows them to do what they used to do under the old central count absentee which was headers and footers were allowed but now it allows you to put multiple EDs, fill them in the bin and it will give you the correct report. Right now they have to do one, count it through, put another one in, count it through. So that's what they've expressed to us is the benefit that they want to us the system for. They had expressed that if they could still get it today, they would attempt to use, they said they were going to try to use it as a test on the primary. I don't know if that's still their plan because it still posts to count the absentees. They could have done it on the October 6th as a test if they wanted but now that election is cancelled so, but certainly for the general election where they get I think a large number of paper ballots to count, the absentee.

Peter Kosinski: So they're going to try to use it to count their absentees from last week's election?

Bob Warren: No, the functionality Bob's talking about they already have in the 5.6.0.1. They already have that to use the header cards and all that. That's already out there. So that's what they will use to count the absentees for the primary. The reason they want this upgrade is because this upgrade gives them the ability to make last minute changes in their ballot sets. So if they create a military ballot set 45 days ahead and they send out the military ballots, and then just before the general election at the end of it it's been taken off the ballot because of a court case, well they can lock that military ballot set because that candidate is still on those ballots out in the field. They can then withdraw that candidate from the general election day ballot set and when those military ballots come in, the absentee system will know not to count that candidate on those military ballots. So their counts still come out right because that candidate could be marked on those military ballots. This enables them to create one election database and reading results into one election database. Right now if they have to make changes, they have to create a

separate election database and then they have to combine those results afterwards. So this allows them to create everything within one.

Anna Svizzero: Less opportunity for problems.

Bob Brehm: The letter that the city sent us on July 21 and reiterated today is back to that the DS850 scanners are high speed, high capacity and they're unable to work at the full ability because they can only do a single ballot type at a time even with headers and footers and that the version 2 would allow them to put multiple types in.

Anna Svizzero: Of ballots not header cards or whatever?

Bob Brehm: Of ballots. You can take header but multiple ballots.

Anna Svizzero: You didn't have to hand count a ballot that you had ruled where a decision had been made...

Bob Brehm: Well they have so many different types that their volume was their concern and our last communication, not knowing whether we would even get here today with completed tests was, what is your contingency? And they said they would use it in its current certification if they had to but they have so many in a presidential year it would have certainly allowed them an efficiency to get them counted fast.

Bob Warren: Because currently what they would have to do is they would have to burn a separate election stick for those military ballots, put in the 850, count those separate. Then they would have to turn a separate Election Day stick with that 850 and run those separately. This way they can combine them because the system knows how to count all the ballots.

Peter Kosinski: Okay are there any other questions on this issue?

Douglas Kellner: I have comments about the text.

Peter Kosinski: Okay of the resolution?

Douglas Kellner: Yeah, I only got the resolution today.

Peter Kosinski: Okay, go ahead.

Douglas Kellner: Or yesterday. Where is EVS 5.6.0.2 defined what that is? And is there such a thing by itself EVS 5.6.0.2? Is that one single disk?

Bob Warren: No that is the umbrella of the 3 components. DS850, the DS200 and election management system.

Douglas Kellner: Which was defined on this first page of here?

Bob Warren: Yes.

Douglas Kellner: So, shouldn't the resolution reflect this text? Alright. My problem is from a technical point of view going back and doing the indictment against somebody who has criminally changed the election system in the computer in order to steal an election, our resolution does not read technically complete.

Anna Svizzero: So, you want the column that says New Version inserted in that whereas? Does that resolve it?

Douglas Kellner: No, it's the, therefore be it resolved that's important not the whereases right? So do hereby certify the upgrade to election management system DS200 scanner and 850 scanner and then insert this column just the first 2 columns, Module and New Version. Alright? But then some of the other language is also needs tweaking. Okay alright, the third whereas alright, this is our resolution so it shouldn't be written in the third person. So we either it should say whereas the Board has considered the summary reports of SLI, Inc. and I would the Board has considered, is it more than one report Bob or is it? I only have one report.

Bob Warren: From SLI it's one report.

Douglas Kellner: So it should be a summary report of SLI, now how do can identify the report? What's the precise identification of the report?

Bob Warren: The name that they put on the report.

Douglas Kellner: Yeah where is that?

Bob Warren: It should be right here.

Anna Svizzero: The last 3 pages of that.

Douglas Kellner: Bob, what is the name of the report?

Bob Warren: I don't have the report in front of me.

Douglas Kellner: So it is the report dated April 11, 2016?

Bob Warren: Yes.

Douglas Kellner: Has considered the summary report of SLI, Inc. dated April 11th, 2016. Alright. Next paragraph is okay. Whereas NYSTEC. Alright can someone translate the last whereas for me? Who is the we? Who's making the recommendation?

Anna Svizzero: Our unit.

Douglas Kellner: So it should say, whereas having considered the totality of certification summary reports and the results of functional testing conducted by the Election Operations Unit, the Election Operations Unit has recommended certification of said system as herein defined? Is that okay?

Peter Kosinski: That's fine.

Douglas Kellner: Alright I think we strike that, the EVS but we put in the module and the new. So this is what I have.

Anna Svizzero: So, do you want that module information inserted where it says EVS or you said in the, now therefore be it resolved paragraph?

Douglas Kellner: No, it goes in the be it resolved.

Anna Svizzero: So, that's just going to stay...

Peter Kosinski: You're taking this module here and putting it at the end? Okay.

Douglas Kellner: Now who's going to be doing the minutes? John would you look at this and make sure you understand that you and I, I just want to make sure we're voting on the same thing.

Bob Brehm: Well more important than the minutes, Donna will re or Anna will retype the voting version so.

Peter Kosinski: Yeah, there should be a new version created. It must go somewhere. It must go in a file somewhere. Okay so is there any more discussion on this topic? And I would entertain a motion to adopt the resolution as amended.

Douglas Kellner: So moved.

Peter Kosinski: Second?

Gregory Peterson: Second.

Peter Kosinski: All in favor? (Chorus of ayes). Opposed? Alright is adopted. So just let the city know.

Bob Brehm: I'm sure they're watching

Tom Connolly: They just clicked on "Install" (laughing)

Peter Kosinski: Alright next is the Independent Expenditure Emergency Regulations. This as I understand it, is an outgrowth of a statutory change that was made to the Election Law this past session where there were several changes to the Independent Expenditure Committee obligations as well as the rules that they must follow, most specifically it came in the area of coordination. And so these regulations are being amended to reflect the changes that were made in statute. Someone may want to speak to this. My understanding is there are no substantive differences between these regulations and the statute itself but that in essence what this regulation does is it takes all the independent expenditure statutory provisions and places them in our regulations in one place.

Bill McCann: That is one of the key aspects of the regulation change and also would make the current regulations conform with the statute. If the regulations were left alone they would not be consistent with the statutory structure.

Peter Kosinski: Because there is some, as I understand it like there were changes for example, the violators have to file weekly on Monday instead of on Friday.

Bill McCann: Correct.

Peter Kosinski: So there was a change in the day they have to actually file so the regulations need to reflect that.

Bill McCann: There were significant changes in definitions. For instance, PACS were defined specifically. Independent Expenditure Committees were defined specifically. There are additional required disclosure informations that have to come on registration forms. Coordination was defined. So there was a series of things that were modified in the statute. So we just to make for initial purposes to have the regulation consistent with the statute and to put them all in one place in essence which our regulations have already done. This will accomplish that on an emergency basis. The law does go into effect on September 23rd so we thought it was necessary, because it was signed on August 24th that it left a shortened period. So we fully anticipate subsequent to this, putting out a version of the regulations for public comment and then because there may be things that as the bar specifically applies these, there may be issues that are raised either through request for opinion what have you, as people love to implement the new law for interpretation and that may then be reflected ultimately in modifications to the reg. But as it sits here today, the purpose of this is simply to make the regulation conform to the law so that there's no inconsistency on the application of the law so that the public will know that.

Peter Kosinski: This will go through the normal regulatory process, out for public comment 45 days to comment, comes back to us.

Bill McCann: Well these emergency regs will go into effect once we follow the process of the staff to get them published. The public comment period, and frankly we'll put them up on our website immediately and the public will have an opportunity to comment regardless of official public comment period and I frankly would fully anticipate that to happen because even in the press there's been rather robust discussions about the impact of this law, etc. So, the regular

community has not been bashful in the past and I don't anticipate that they'll be so again here. But having said that, once we have the application of this regulation and the law frankly specifically, I would fully anticipate that as people implement it there may be issues that arise that counsel or staff will bring to the Board to say, this issue has arisen based upon the application and here's a recommendation to address that. I would anticipate any number of those. And certainly any modifications to that would require regulation and public comments through the formal set for process as well.

Brian Quail: I think an important point to underscore is that an emergency regulation sunsets automatically after 90 days and then it can be extended for an additional and short period of time but only if you begin the process of formal adoption. So that to the extent that this is out there to make sure that at the get-go we don't have amid all the potential confusion there would be anyway in transitioning from one set of rules to a new set of rules that at least the regulations are consistent with what the statute says. Beyond that, I think it's a fair assessment to say that the proposed regulation is wholly uninspired. It is because the statute and the regulation now mirror each other; to leave them out of sync or allow them to go out of sync can create confusion. And so it just avoids confusion but it doesn't substantively advance any other purpose other than making sure that the regulating committee knows what they need to know regardless of where they look.

Peter Kosinski: Okay with that explanation are there any other questions?

Douglas Kellner: Risa do you have any comments on it?

Risa Sugarman: No, I was in a meeting with my staff and Brian and Bill and we made certain suggestions that they took and put into the emergency regs.

Peter Kosinski: Okay. Then I would entertain a motion to adopt.

Andy Spano: So moved.

Peter Kosinski: Second?

Gregory Peterson: Second.

Peter Kosinski: All in favor? (Chorus of ayes). Opposed? They're adopted. Last on the new business we have a vote on NYS Voter Storage Resolution. This I understand has something to do with money.

Douglas Kellner: It's just \$20,000 from the HAVA fund which has to be approved by the Commissioners. I move the resolution.

Gregory Peterson: Second.

Peter Kosinski: All in favor? (Chorus of ayes). Opposed? That is also adopted. Alright. Is there any other business to come, I'm sorry, Risa.

Risa Sugarman: No, I just went into my office and I wanted to tell people that my lawyer Bruce Leonard introduced himself to me.

Peter Kosinski: Oh it's Bruce Leonard. Oh that's fantastic.

Risa Sugarman: So, I apologized to him and.

Gregory Peterson: So he was watching.

Risa Sugarman: He was and I've been told he shouted out his name. So I apologized.

Peter Kosinski: Well we extend our welcome to Bruce Leonard.

Risa Sugarman: Thank you.

Douglas Kellner: We have dates for our next meeting?

Peter Kosinski: Oh we have next meeting dates yes. We had I believe October 3rd as a tentative date. Is that still our date? Is that a must do date? I sort of understood there was something we need to do that day.

Bob Brehm: We have to certify the general election ballot that day and the only thing that's left on the table is whatever comes in for the Supreme Court nominations except for the 133 [inaudible]. So to do it any earlier...

Douglas Kellner: We had a lot of business we put over.

Peter Kosinski: Alright then we're going to stick with the 3rd. So October 3rd

Bob Brehm: And it would help us to confirm the December meeting because...

Peter Kosinski: What do you need? What date?

Bob Brehm: Well we're looking at Friday, December 9th. We try to make it as late as possible but is an elector year so we have to meet for the first time not later than Monday the 12th. But the elector...

Peter Kosinski: What happened to November?

Bob Brehm: Well I'm just trying to say the one that we must pick. We have to resolve all the elector issues and the Governor has to get the paperwork to the archivist by the 13th. So it's really impossible to do if we do it the 12th. So we're looking for Friday December 9th.

Peter Kosinski: Do you guys want to commit to that or what? 9th, December 9th. I will put it in, December 9th is the December date and then I think we can talk about a November date in October how about that.

Douglas Kellner: Okay.

Peter Kosinski: We'll just leave that open.

Douglas Kellner: I would recommend the week of the 14th.

Peter Kosinski: Okay well let's look at that week, I'm sure we don't want to interfere with Thanksgiving so let's just work on that okay? But we'll firm that up on the 3rd if that's okay. Alright with those dates set, I would move to adjourn the open session of the Board and go into Executive Session for the purposes of entertaining enforcement actions.

Gregory Peterson: Second.

Peter Kosinski: All in favor? (Chorus of ayes). Okay so we will be adjourned as a public session and go into Executive Session. I do not anticipate coming back into public session.

Douglas Kellner: Alright and we're going to move to the Library for that.

Peter Kosinski: Okay.