

Peter Kosinski: Okay, I'd like to welcome everybody to the meeting of the State Board of Elections. I am Peter Kosinski. To my right is Douglas Kellner, to my left is Greg Peterson and my right is Andrew Spano. The four Commissioners. I will open the meeting with the minutes from our meeting of August 2nd. If there is a motion to approve?

Douglas Kellner: So moved.

Gregory Peterson: Second.

Peter Kosinski: Moved and seconded, all in favor? (Chorus of ayes; 4-0) opposed? Alright those are approved. We will now move onto the unit updates. Our first unit is the Executive, Bob Brehm and Todd Valentine.

Todd Valentine: Well we had a primary election on Tuesday. From our perspective it was quiet because it was all local offices there were no state offices involved so. Recently, we didn't need to run the election night reporting's so that went smoothly and the phones were quiet. We are dealing with the usual post election questions about tie votes and close races today. And then we move forward to certifying the primary results given the JD roll calls have been sent out to the conveners so the JD conventions will be coming up in the next 2 weeks and obviously any party organization on the state level of the Republican party reorganizes this next Tuesday. So, they have to get their committee list. There were a couple of primaries involved there. So, it will be certified to them as soon as we hear from the counties on that. One thing that's been in the news but it's been quiet is we contacted the Voter's Registration Taskforce but we really haven't heard back from them. We've been working on getting our contract in place with voter registration forms but we really haven't heard much from them so. We called, they said they would call us and we just haven't heard back from them.

Peter Kosinski: So, they haven't reached out for any training or anything from the staff?

Bob Brehm: After our last meeting, we spoke, Todd and I were both on the phone, we spoke briefly with the Governor's Counsel, Alfonso David. We met the new assistant to the Deputy Secretary, Shabrena Isabel, is our new person because we had gone down to one of the meetings on the Cyber Security Taskforce in New York City at the Governor's Office and that's where Shabrema was located so we at least used the opportunity to meet her in person. We reinforced with her the concern of the Commissioners and we did get a call back from our contact in the Governor's Office Giancarlo that they were going to reach out and set up the time with Todd and I to talk about it but Giancarlo has since left the Chamber so I haven't heard from anybody since then. We do training as you all know for NVRA so we sent the NVRA training to them, the document that Greg uses to do training for the agency for the NVRA people. So, we at least sent that to them as a, here's what we do now, if that serves any purpose for the conversation of what you want us to do. But other than that, we haven't heard back.

Peter Kosinski: I think that's unfortunate. I'm hoping they'll use that as a template for how to train.

Todd Valentine: That's what we're hoping. There may have to be some minor modifications to it obviously, we're not doing a full NVRA program but.

Bob Brehm: The only other I think, we have spent a great deal of time on our own efforts, the Cyber Security Risk Assessment that we're doing; it's two parts; the county party is up front, the state effort is next because we're updating the NYSVoter System in the next couple of months also, so we purposely put the counties first so that the risk assessment isn't to the system we're replacing but to the new system we're putting in place when they get to us. We expect that will be done somewhere by the end of the year. But we've also had a number of workshops that a number of people on staff have attended with the Governor's Cyber Security Advisory Board. We've met with representatives in two meetings in New York City in workshops on what New York's posture should be with regard to ensuring the election systems in general are protected. We're expecting a report of that panel to the Governor. I expect some portion may be public. Our conversation so far, I think just reinforcement we're seeing on our own risk assessment is the Voter Registration System is a component of county computer systems and they're only as protected as the weakest link in the county computer system and that's going to take an awful lot of work to protect the Voter Registration System because of the way they're nestled in there, but there's a number of recommendations we can all look at. I think it's going to cost money and take more of our time, but I think it's kind of the area that we are in and I think a good example of that is one of our counties, Schuyler County called us in mid-August, towards the end of August just before the 30th of August, their entire computer system had gone down. So, we heard from the Commissioner Fazzary that the system isn't working, I don't know what's wrong but I think the entire county is down. We talked with the county IT director who had not yet alerted any of the contacts we had been sending out to them to reach out for help to the FBI, to the State Incident Response Team. We gave them those contacts, he did reach out that day and by the end of that day the FBI, the State Police the State IT department had come in to give them immediate assistance on the phone and had a team of people in there the next day. It was a system that affected the entire county so you know, jail, 9-1-1 every computer system. They had 30 servers that needed to be replaced, 300 workstations including the Board of Elections. But, clearly, the team of people that New York has that's been working on this really stepped up to help them. There seemed to be a reluctance to make those calls, these people are really here to help you. But we did convince, it didn't take a lot of convincing, the IT Director probably was in a panic mode of what do we do? It shows we need a more coordinated incident response plan when the county computer system goes down. But the Voter Registration vendor helped the county to run the Republican primary on Tuesday. We offered whatever assistance we needed if there was any. I was told that they were back up and running either Wednesday or Thursday of this week.

Douglas Kellner: Excuse me Bob. You said the vendor helped them run the Republic primary Tuesday and I can't let that remark stay on the record uncorrected.

Bob Brehm: The Voter Registration made sure that they had at least lists and reports. Because they're an NTS county, NTS prints their poll books for them. They had already offed the updated file just before the computer attack so that they could get their poll books, but they talked to each other to make sure, was there any interim help they could give them through look-

up etc. We offered the same assistance if they needed it. Because if they needed us to do the statewide...

Douglas Kellner: So the vendor helped them get their poll books printed, the vendor did not run the election?

Bob Brehm: Correct.

Douglas Kellner: Okay.

Bob Brehm: So, I think at our level, Todd still is active in his role at the National Association of State Election Directors. We are looking at what all the other states are doing. But there's still really only two, New York, and I'm not sure of the other state, New Jersey, that have actually tried to pull a team together like we did between Federal Homeland Security, the Federal Election Assistance Commission, the Association, local government, State Homeland Security Information Technology to put a team of people together that at least assesses the risks and come up with a plan to address it. There are a lot of resources out there that can be pulled together as what are the best practices? What is the model to follow? The task that is before us I believe is big and that is how to make a complete inventory of all the issues. What are the highest priority risks, and then take the resources that we have to try and mitigate that group of risks. And the risks to the system are as significant as the weakest link and as we saw in Schuyler County the weakest link is not necessarily an election office link but it still can interfere dramatically with the ability to deliver services, had it been more widespread. So, we continue to work on it. I think we will give you more information as our report comes. But I think we, as a State Board, will have to do much more than we're doing now. We are the partner for the county boards, especially the small counties that just don't have IT departments or staff in order to come up with that list of best practices. I think we will be coming to you with some recommendations to strengthen or provide more guidance by way of regulation because our regulations are small regarding the security requirements for the list. They may need a little tweaking regarding voting machines. But that's where the majority of the effort was in 2009 when we rolled out the new machines. But I think we're learning that we need to do more with the list itself.

Gregory Peterson: Is that what caused the breakdown on that one?

Bob Brehm: It was not election-related, it was the county infrastructure where some, most likely it was cyber hygiene. Somebody probably... and there's no conclusion, yet. They took their servers and they're analyzing them but it looks like somebody probably clicked an e-mail and something got downloaded. And it was there undetected and started to look within the computer system for administrative pass rights. Once that administrative pass code, it attacked.

William Cross: I wouldn't....

Bob Brehm: And the administrative pass code it found was a vendor maintenance contract that the county had for something. That doesn't mean there weren't other weak ones in there but that

was the first weak one it found and once it broke that administrative pass code, it got into the entire county system.

Todd Valentine: It wasn't... from our concern what we're trying to raise is that it wasn't in the elections board, that wasn't the problem, but they were impacted by a weakness in the county system. So, when we're looking to secure the registration system, that's always host of a part of the county system. So, we're seeing that there's a bigger problem here because its like, well we're not siloed off, we can't just isolate ourselves. Maybe we can, maybe that's the decision we'll finally reach but either way there's resources and money involved in order to either protect all the county systems or, I don't think people are going to just protect the elections board and leave everything else unprotected. I don't think that's going to be manageable, but there is a big challenge ahead.

Peter Kosinski: I believe Bill Cross had something to offer.

Bill Cross: I was just going to say to your question, I believe they have identified a root cause, they're not sharing specific details for obvious reasons but they have done a lot of forensics on what happened. It's not an unknown.

Andy Spano: What happens when the statewide elections, say for Governor and this county doesn't vote? You don't have all these safeguards and now you can recreate the books, what happens? You have no results from one small county in the State of New York. And the numbers work out so it might be significant?

Brian Quail: I can comment on that. That scenario is sort of a doomsday scenario of election administration and it's our reason to exist obviously to make sure that never happens. But I think that as this state has shown on other occasions for example in the wake of the attacks on 9/11 the election community has been very resilient at rising to whatever challenges they meet. And I think that's the key. While Election Administration as Commissioner Kellner often said, has to be predictable and transparent, it also has to be robustly able to meet unique challenges.

Andy Spano: That wasn't my question.

Brian Quail: I'm sorry what happens as a result...

Andy Spano: In case, I predicted before 9/11 that 19 guys with plastic knives were going to burn the World Trade Center, bring it down, and you would have said that was a stupid question, right?

Brian Quail: I'm sorry I don't understand.

Andy Spano: You would have said that was a stupid question to ask. If I asked you on September 10th?

Brian Quail: Exactly.

Andy Spano: So, I'm asking a question what happens if our human system fails in one small county in a Gubernatorial race?

Brian Quail: So, in that scenario, the Board's obligation as administrator is to count the results that we actually have. So, to the extent that we try to make sure we never get to a place where we don't have results, our job is to tally the numbers. And so, we tally the numbers and we have the numbers and declare the result and then obviously there can be legal proceedings if there's a belief that those results or the lack thereof impacts who actually won. To the extent that can be determined, it can be determined in a court proceeding. If who holds the title to the office is, based on the ministerial results that the Board reports, is in question then under the Executive Law the Attorney General has the authority to bring an action of *quo warranto* in order to remove the wrong person being seated. So, for example, let's say it's an extremely close election and a certain amount of results are missing, and the wrong person theoretically has been seated. The Attorney General has authority to bring an action in that instance. So, the courts have jurisdiction over the canvass and the Attorney General has jurisdiction to bring an action to determine who holds the office.

Todd Valentine: But just to jump in there and stay with his 9/11 example, one thing you must remember is the answer is extraordinary measures would have to occur. So, either through legal proceedings or more likely, if it was known, there would be a legislative fix in which 9/11 is an example of that, where the election was cancelled, it was mixed, there was an Executive Order which cancelled the election, there was also court actions that occurred which stopped the elections statewide because remember, the impact of 9/11 was really only in one area. After that, once that was stopped, it came to the Legislature to come in and start the process over again with the combination between the Legislature and the Governor to reschedule the election and recognize the statute and that extraordinary measures would have to occur, probably a mix of legislative, gubernatorial and judicial if that occurs. And as Brian said, our point is we recognize that is the doomsday scenario so that's why we have the redundancy that's built in.

Andy Spano: No, I understand that.

Todd Valentine: That's why we go through these efforts to avoid...

Andy Spano: ...and they work 99.9% of the time

Bob Brehm: And that's I think from our perspective. I think Commissioner is I think we've all identified a list of issues that we need to do to make sure that we have redundancy, we have backups. So, if something happens for whatever reason, at least we have a better chance of still conducting that election to the maximum extent that we can follow the majority of the statute and hopefully all of it because we have backups, we have some redundancy built in. We're noticing, and we have more now than we had, because when it was only at the county level, voter registration, we didn't have a list... With the statewide database at least, we have most of the information, not as much as the counties have but as far as who are the qualified list of voters, their names, their election districts, their signatures. So, we have some if we needed to be the one that helped the county, we could at least provide them with something in an emergency that

we could at least have a higher level of confidence we could still conduct that election. But there are a lot of moving parts and the whole list goes from voter registration, ballots, machines, poll sites, workers. It's a big list.

Andy Spano: I got my answer. I just want to say that in today's process with everything going digital, the vulnerabilities are greater and on the other side there are people trying to attack the vulnerabilities and there are more and more.

Bob Brehm: We need to stay one step ahead of them. Hopefully two steps.

Andy Spano: Well you can try there's still a lot of problem, especially with money.

Bob Brehm: One last thing I forgot to mention I wanted to mention for those of you I'd like to introduce my new Director of Election Operations, Tom Connolly was on-boarded since your last board meeting.

Gregory Peterson: It looks like the same guy wait a minute (laughing).

Bob Brehm: Once you become familiar with him I'm sure you'll agree that he was a good choice to fill in that position.

Andy Spano: One more observation. I didn't get an absentee ballot because I didn't expect to be away on primary day so I drove down, took me a couple of hours but I got there and it was about 6:00 at night, 6:30 at night and I was the 17th voter. I looked around there was 6 districts there and there were more people manning the districts than there were voting in the election at that particular point. I'm not talking about the people, I'm talking about the fact that with these digital machines we could set up a lot better system than we have now.

Douglas Kellner: One size does not fit all which is the issue I keep repeating over and over again and I even have it on my notes to raise it again about New York City.

Andy Spano: There's your entrée.

Douglas Kellner: Why don't we do it when we get to Operations.

Peter Kosinski: Are there any other comments or questions? Alright then we'll move on to the Counsel's Office, Kim is not here so Brian.

Brian Quail: Sure, the Counsel's office has been very busy since the last Board Meeting. Quite a bit of activity in several of the cases that we're actively managing and, I would note for the Board that we have 2 new cases and it would be helpful to have an Executive Session to discuss those.

Peter Kosinski: We'll plan on that Brian.

Brian Quail: And, also with respect to the Counsel's office, we've been particularly busy with phone calls from the counties on election administration matters related to the Primary leading up to the Primary. It was a significant call volume because while it's not necessarily a state year, the actual number of candidates and offices that are up in an odd year and obviously with New York City elections, it's a very significant call for the county commissioners. And I think we've done a good job for being a backstop for them on any number of issues. We followed up on the regulations or are in the process of doing so that the Board approved or were put back out for comment at the last meeting. It was the regulatory filings that are required and the paperwork that needs to be prepared for that. Also, in terms of the Compliance Unit the total number of filings that have been received for this year 14,450 reviews on 10,792 of those have been completed. Of the initial review of those filings 970 were deficient, 2,046 were training issues and 7,776 were compliant. And since the last meeting, we have sent over the second quarter deficiencies and there were 25 filings that were on that transmittal. And the unit is continuing with a number of its initiatives. One thing I would like to...

Douglas Kellner: Excuse me, on the numbers, what about non-filers?

Brian Quail: The non-filing update, the July Periodic number of non-filers for 2017 stands at 1,879. The present number on the January Periodic is 1,454. I would also just like to point that the Training Unit, actually in-person training had its highest number of attendees at its conferences since the first year that we switched over to local filers using the electronic system. This year I think roughly 900 in-person attendees at their training sessions received training. The Intake and Processing Unit and the reviewers had a tremendous amount of interaction with the new treasurers because of the local election year and helping them get established and be able to follow the rules. And I'm very proud of their efforts.

Peter Kosinski: How many training sessions did you have Brian?

Brian Quail: I don't recall the exact number and I apologize. I meant to actually print that out. I can actually e-mail that Commissioner. We have a detailed accounting of each session how many people attended. But off the top of my head I can't remember. Bill do you remember?

Bill McCann: Close to 20.

Peter Kosinski: If you could just send it to me.

Brian Quail: Absolutely. And that pretty much wraps it up. If there are any questions I'd certainly be happy to take them.

Peter Kosinski: Any question? I guess we'll have some discussion in Executive Session.

Douglas Kellner: The federal calendar? You circulated that. Are we ready now to authorize you to file that with the court?

Brian Quail: I believe that we, at a staff level, do not have any outstanding issues with the calendar.

Peter Kosinski: It was sent to me in my packet and I do have it. Do you want to discuss it?

Douglas Kellner: Well or just authorize them to send it out unless some change needs to be made. I mean, are you waiting for comments from the political community?

Brian Quail: I don't think so.

Peter Kosinski: Have you put it out at all?

Douglas Kellner: I think the next step is to send it out and publish it as a draft, and sent it out to the Department of Justice at the same time so we wouldn't be submitting it to the court yet for many weeks but that would give the political community time to get in touch with us before it would become final.

Brian Quail: The unit just in the last few days had translated the staff working version of the calendar into the language of the proposed order to prepare it for that process. That process has been advancing.

Peter Kosinski: I think our goal was October 1st. Is that still on as far as getting it to the court?

Douglas Kellner: Or at least getting it to DOJ.

Todd Valentine: I think we had it in October.

Peter Kosinski: I think we should file it sooner rather than later.

Douglas Kellner: Okay let's send it out.

Peter Kosinski: Because people need to know what the calendar is so I think we should get it to the court but if we get like 2 weeks for comment and then plan to get it to court by the first of October. That's acceptable.

Brian Quail: Okay. I think that's very doable.

Peter Kosinski: Was there anything else then for Counsel's office?

Brian Quail: No sir.

Peter Kosinski: Then we'll move on to Election Operations. I believe that's that Tom Connolly who we referred to earlier and Brendan.

Tom Connolly: Thank you Commissioner. It's been a transition for me into my new role and I appreciate everyone for their assistance and Brendan has been great to work with. Obviously, we've been working on the Primary election. We received a lot of information from local boards regarding the JD delegate and the alternate delegate and we also had some state committee positions, a total of just over 4,000 local candidate records were entered by our staff into our CAPAS system to produce some of the roll calls. As Todd mentioned, we've been working on the roll calls and we received a list of JD conveners from parties and those roll calls have been prepared and being sent out as we have them ready. Obviously, we've been assisting county boards in any of their requests for assistance in the lead up to their primaries. Most of the counties did have primaries, only 4 did not. Brendan and Charles Smith from our unit did go down to New York City on Primary Day and I know that he did see Commissioner Kellner and there will be some conversation about that. I will echo the fact that the Primary was by in large pretty quiet in our end. We were out of here before midnight which is early. And we only received a few phone calls from counties throughout the day. We have been working with the PIO Unit and just kind of carrying some stuff over regarding translations of the ballot propositions to get those ready for publishing but also to provide for the county boards and to then have audio recordings done for the ballot marking devices in the different languages. We have also been working on getting information out and answering any questions on any of the bills that have recently been signed that will impact the county boards. Some of it is going to be a couple of forms, some of it is going to be getting some information. One of the things that I think will be helpful to county boards going forward is the ability to have split shifts for their poll workers. So, we'll continue to answer any questions on that and get information out to the county boards.

Regarding the automated audit regulations, obviously, we've been working with Counsel's office and other staff to review feedback that we've been getting. We did receive a number of comments the other day or one set of comments that we've been reviewing and we'll be looking to figure out how to implement them into the final Regs and then looking to bring that back before the Board probably at the next meeting.

We've been working with IT. We've continued working with the IT Department regarding the Candidate Management System or CAPAS as I referred to it before. We have scheduled a county meeting to occur later this month on September 26th which will be bringing in some staff from county boards, some commissioners. We've got to talk about data and the data flow between both, from the county boards to the state board but also from the state board back down and how we can kind of better improve that transmission of information.

We continue to participate in also any of the meetings on Cyber Security projects and the risk assessment. We had our staff follow up with some of the county boards on some of the answers they gave us in their risk assessment survey. Anything that may have seemed somewhat either contradictory to other answers or just things that they didn't necessarily give us information on and we wanted to get some clarification on to kind of give us a better idea of what's going on in their end.

Beyond that, I think it's a lot of the standard stuff. We've been working with some SHOEBOX reimbursements, some assets, any questions of machines. I did attend 2 meetings in D.C. at the end of last month; one of them was sponsored by the National Association of Secretary's of State and that was one of their Tech Talks. That was about Cyber Security which I thought was very helpful to get together with other states to see what they're working on. Some of them are doing similar things like risk assessments; some of them have been using different systems or artificial intelligence to look at some of the logs to kind of protect against unauthorized activity. And then the other one I attended was about modeling of election processes across the country. So that was a little bit more wonky but still enjoyable. I was also invited to present a symposium at Auburn University next month the Election Center event and that topic is the collection and aggregation of data between local boards and the state and federal jurisdictions.

And lastly, with the staffing issue, we have been holding interview for a vacant position as an administrative aide. We did do a number of interviews and we did find some candidates and we offered the position to one of the candidates who accepted, and she will be starting this coming Thursday. So, we look forward to getting her on board as that position has been vacant for some time. And I know there's been some discussion about mentioning it but I figure I'll just go ahead and say it anyway, since she didn't tell me outright no, unfortunately the Election Operations Unit is going to be suffering a second loss, so shortly after losing Anna and I think Lisa Shaw who has been with the State Board for 38 years and who is we're going to be losing a lot of institutional knowledge and she has been amazing to work with in the short time I've been the Director of Election Operations and so we're hopeful that we're going to do whatever we can to cram as much of her knowledge into our new staff's head once she gets here. So, we're going to try to make that transition as best as we can. Brendan, I don't know if you have anything else to add or if you want to talk about New York City?

Brendan Lovullo: No, I just want to say thank you to Lisa for all her years of service. She really is one of the backbones of the unit that keeps everything running on time, but I know that Commissioner Kellner probably wanted to dive into New York City.

Douglas Kellner: Actually, that's my second issue to raise with you folks. My priority concern is ballot design and Commissioners will recall that about 2 years ago we agreed as a consensus matter that there should be experts on ballot design within our Operations Unit and that we should be working on that. I raised it briefly at the last meeting where it may have even been earlier after the fiasco with one of the Albany county school board ballots that I'm still very concerned that we are not giving enough emphasis and priority on the importance of ballot design. So, for example, in New York City, just because that's where I spent time, I saw a lot of different ballots. They had primary ballots laid out with candidates for judicial delegate laid out in the two lists of the competing candidates and then immediately below that was the male district leader, two candidates while on the left side was the box for Mayor and the boxes did not have lines to highlight the differences so that one would not even notice that there was this district leader contest at the bottom of the judicial delegate list. To me, that's a fundamental breach of the design guidelines that we circulate and that the professionals recommend. And I believe that our guidelines are modest to begin with. And that better design is critically important. And I would just renew the request that we have personnel within the Operations

Unit who are trained on ballot design. I don't like the feeling, I'm uncomfortable with the feeling that I think I'm the biggest expert around on ballot design because I don't regard my own skills as substantial enough that that should be the person in the state who has this professional skill behind them. And so, I would ask for a report at the next meeting on what we're doing with ballot design. I think it's particularly appropriate before this coming General Election that I would hope that you would collect ballots from counties of different examples. Again, to critique them in a constructive way as to what can be done to make the ballot more user friendly? And then another related issue to that is that this year we will have the 3 questions on the ballot and again, I think it's very important that the ballot be designed in a way that the voters be alerted to the need to vote on both sides of the ballot. And I don't regard one side is the front and the other side is the back, each side should have a graphic arrow as the experts propose that directs the voter's attention that after they've voted the contests or questions on one side of the ballot that that arrow direct their attention to the need to turn it over and vote on the other side of the paper. All the design reports that I've seen recommend that that be done both in text and with a graphic, with an arrow. And I think it's our job to have a professional with ballot design capability on our staff and providing that expertise to the counties. And again, I would hope that we would circulate to the counties and to the vendors who print ballots for the counties, the design specifications and remind them once again of the importance of good ballot design, good ballot layout. And one of the little secrets that may have left with Anna is that from time to time the vendor would call Anna to point out some of the egregiously bad ballot designs coming from the counties and hopefully Brendan and Tom can...

Brendan: They can certainly call one of us too.

Douglas Kellner: Well its not can, its that you need to gain their confidence that it can be handled diplomatically so that there are not going to be negative reverberations for the vendor for "ratting out a county" that it all be done in a constructive dialogue so that we get the best ballots. But I would hope that you not just say, they can call me, is that you affirmatively reach out to the counties and to the vendors so that we get good ballot design as a matter of course.

Brendan: Well, I know that we have been doing that based on some of the primaries, especially with the OTBs and write-ins just from this past election as to moves to go forward including the ballot usability tips that we have and updating them, especially a lot of the new commissioners in some of the counties that this may have been their first election as well. So, making sure that they are aware of exactly what you're speaking to.

Peter Kosinski: Let me ask because I think good ballot design is everyone's goal. Is this a topic that's ever been discussed at a conference?

Bob Brehm: We were in Rockland County it kind of came up after the first year, I think it was the winter of 2010. We had just done the pilot program, volunteer counties in 2009 and then 2010 it was either the winter of 2010 or winter 2011, it was right after I think the pilot and we kind of shared.

Peter Kosinski: So, it was a while ago.

Bob Brehm: I mean that was when there was a major discussion about ballot usability and other groups that were reaching out. I'd have to go back and look if there were other, we can't go to the even-year Summer Conference so it could have happened and we weren't there.

Peter Kosinski: Well if we aren't there, that's a problem because I agree with Commissioner Kellner I think there should be a goal for us to try to help the counties, particularly the smaller ones that I'm sure don't have an expertise in this area - maybe even the bigger ones don't either - to assist them in this and I think the Conference, you know, is an obvious place to do it. You have everybody together. It seems to me it would warrant a significant amount of time because I can't imagine you could do something like this in half an hour. I think it would take a lot of time and I think you'd have to bring in examples of different ballots that people agree are bad and different ballots people agree are good and describe why. You might even seek an outside expert who could come in and discuss the theories that people use as to what's good, what's bad, why it's good, why it's bad, so the boards can be educated in this area. Because I suspect they're not. It's not an area that necessarily an election's commission has as a qualification when they're appointed to the office. So, I would think pursuing it in the next conference, which is in January, might be a route we can pursue, targeting next year's election but I mean it's an ongoing issue. This is not news, this has been an issue ever since we bought the new machines and ballot design became a much bigger issue because with the old level machines, ballot design was pretty much preordained by the machine itself. Now you have a lot more leeway into how you design your ballot because of the new machines. So, it's been a big issue since '10 when the machines came into use but I'm sure its still new to people and they need to have assistance and we should be providing that. I totally agree. Maybe there are counties that have people who could be helpful in this area. I honestly don't know. There may be some counties that have employed people who have some expertise and background in this who could be helpful to the other counties. But I want to encourage you to talk to the counties see if that can't be an agenda item and then see how we can maybe use that forum to discuss this and get it out there.

Douglas Kellner: Well thank you, I appreciate that. And I just want to confirm that we all agree that the counties and the vendors should be reminded that there should be ballot design instructions to turn over the ballot.

Peter Kosinski: I know I mean listen, I know we have a court case pending right now on that issue. I know Evan Davis brought a case on the Constitutional Convention question. I know he's concerned about people not seeing it. I think we should be doing whatever we can to make sure the voters do see the full ballot absolutely and if the particular county puts it on the back, there needs to be an effort to make sure the voters are informed that there is, I mean you say there is not a front and a back but I think most people have that portion with the candidates as front.

Bob Brehm: There's two different faces to the ballot.

Peter Kosinski: Fair enough.

Douglas Kellner: I'm suggesting that the counties be reminded that if they use a 2-sided ballot that each side of the ballot should have an arrow saying look at the other side.

Bob Brehm: I think for our point, we'll take that as a sample, I think it helps us to tell what one looks like so if there's uniformity in that instruction, I think we can give them because we have 2 voting systems. Actually show...

Douglas Kellner: I circulated yesterday just one example.

Tom Connolly: I know this an example from the American Institute of Graphic Artists.

Douglas Kellner: Why don't you just show it. Please pass it down...

Tom Connolly: Which shows in a way that it is good usability. I did confirm with Bob Warren that both machines can integrate a graphic into the instructions. There may be some discrepancies between the two systems as far as placement of the two systems.

Douglas Kellner: All I'm talking about is a graphic and this because of the way the ballot was put together, there was limited space, we may be able to make it bigger, but the point is that there would be a graphic.

Peter Kosinski: Sure.

Bob Brehm: We've seen examples in the ballots we already have where some counties do that already. If it's your...in order to help counties that might not be as, between the ES&S Counties the Dominion I think its helpful for staff to perhaps give them an actual how-to-do-it in their system so that they at least understand if that's what we're doing.

Todd Valentine: The statute requires that they're supposed to indicate where ballot proposals are wherever they are on the ballot they're supposed to indicate that. So, the statute supports that. But as Bob points out, its not just giving them the sample, it's also, because this may not be something that they're, they must just use the text indication, how that would be.

Bob Brehm: I think we should show them if you're an ES&S county here's how you do and here's where we recommend.

Todd Valentine: Right, you have to treat them all the same.

Douglas Kellner: And I think one of the examples I sent you yesterday had a much bigger arrow with a bend in it. But you know you look at the graphics and part of it depends on how much space there is. But I guess, as I say, I just wanted to confirm for the record that we are recommending this to the counties and perhaps the people who are litigating with us will recognize that we're doing that, that we would do that as a matter of course. Alright.

Brian Quail: May I offer one thing very quickly on this, is that one of the things that we indicated to the court is the absolute necessity that given the number of questions, that they have to appear on the back of the ballot with respect to Dominion...

Douglas Kellner: On the other side of the ballot?

Brian Quail: Excuse me, and you've been very consistent in saying that, and I'm glad you corrected me because that is indeed that there be a face of the ballot where the candidates appear and there be a face of the ballot where the ballot proposals appear and what we indicated to the court is that the Dominion system in terms of its design absolutely requires that. So, there's no option in the Dominion system even if it were feasible to find a space for it to put a ballot question on the front, excuse me on the candidate side of the ballot, will not allow candidates and ballot proposals to be on the same side of the ballot. And then with respect to the ES&S system the practicalities of the grid in which the candidates fit does not leave space for a reasonable ballot design that would accommodate putting a question on the front and it would certainly also cause there to be a differential between counties if it were to happen. That some counties have it one place and other counties have it in another and since we've put statewide questions on the ballot, since we went to the new optical scan system they have been on the reverse, excuse me on the other side.

Douglas Kellner: No, that's fine. Alright.

Peter Kosinski: I didn't know that. Just to follow up a minute. So, if a school uses the Dominion machine and they have a school board vote and a budget vote at the same time they can't put them both on the same side?

Brian Quail: That's my understanding yes, whereas the ES&S system can.

Peter Kosinski: Even though there'd be room, they still wouldn't be able to do it?

Bob Brehm: Sometimes they go to a smaller sheet depending on the school election instead of using the 19-inch ballot there are other sizes they could use. Our counties mostly use a 22-inch piece of paper which ends up with a 19-inch ballot especially in local election where you have all those local contests that they get down to. But in a school election where there's usually only a couple of things certainly the ES&S machine is much more flexible where you design things but Dominion is mostly template driven and templates don't allow that.

Douglas Kellner: The other issue I wanted to raise is New York City lines and the Presidential General Election. I should start by saying New York City did many, many things to improve procedures for the last General Election. The Presidential General Election is much more difficult to run because twice as many people vote in the Presidential General Election as would vote in the Gubernatorial General Election or the Mayoral General Election and it's almost 10 times as many people as that vote in a typical primary election such as this week. So, one size does not fit all and the problem is getting New York City to focus on November 2020 to come into compliance with the 30-minute rule and right now I don't see anything on their agenda that

would change the status quo from the last Presidential General Election to indicate that they're going to be able to come into compliance in 2020. So, I would propose that we draft a letter to send them asking them to provide us with a formal plan on what they're going to do differently to come into compliance. It's not an easy issue for them. The biggest problem that they face is that because of litigation over poll site accessibility, the number of poll sites has been dramatically reduced. I think that litigation has been counter-productive even for people in the disability community because, for example, the court-appointed moderator found that a senior citizen residence was not compliant with the accessibility regulations and that they could no longer vote in the senior citizen residence where the overwhelming majority of disabled population resided in that election district making it significantly more difficult for people with disabilities to vote because they would now have the added difficulty of having to travel some distance to a fully compliant accessible site. And I think that that kind of approach is horrible. But that is the law and New York City is required to comply with it. But it is not acceptable to me that they point that as an excuse for not scaling up the space requirements needed to run the Presidential General Election in a manner that complies with our regulations. So, while they can hold a primary election and I know Brendan went to several sites that were just beautiful poll sites in newly rehabilitated schools and they'll put them in a gymnasium or a cafeteria that has plenty of space for a Primary Election, its not enough space to run a General Election in a way that the voters are not going to back up with long lines. So, we're going to have to get involved to get New York City the resources necessary to comply with that regulation.

Peter Kosinski: Is it a resource problem?

Douglas Kellner: Well, in the sense of they have to go out and take their existing poll sites and say, what do we need to change for this poll site for a Presidential General Election? So, while using the gymnasium may be sufficient for the other elections in the four-year cycle, the gymnasium alone is not enough for the Presidential because its not big enough to scale up the number of tables and inspectors that they need to handle the crowd that votes in a Presidential General Election. But the school is closed on Presidential Election Day and so there's no reason they can't expand into other facilities within the school and they just have to evaluate that on a site by site basis on how they're going to handle the Presidential Election and not think in the box that the Presidential Election is the same as a Mayoral Primary.

Todd Valentine: We did send a letter; the Board did send a letter prior to the last Presidential Election. They did respond with a compliance plan.

Douglas Kellner: And a lot of those things were very good and have permanently reduced waiting time for all elections.

Todd Valentine: Nobody's ever perfect and you don't ever get it right, it's an ongoing thing so is this really more a question of not so much another plan because they have a plan in place and...

Douglas Kellner: No, their plan was not sufficient to handle the Presidential General Election. Their plan has worked great for the other elections and I believe that there's not going to be any significant problem with the General Election this November or next November. But the

fundamental problem in my view, and I believe their own experts have identified this to them, is that they do not have enough space to scale up. Last year, they only went to 2 poll books per election district. So regardless of how many people were anticipated to vote at that election district, there were only 2 poll books and the poll books were divided alphabetically. I might add not in half, which is to me a mistake but maybe the experts think differently, but they took the letters of the alphabet and divided them in half forgetting that many more people fall in the first half of the alphabet than the second half of the alphabet. So, in some poll sites the lines were much shorter in the M through Z line than in the A through L.

Todd Valentine: I'm "V" that's not usually a problem for me.

Douglas Kellner: Alright. I'm getting into the nitty-gritty.

Todd Valentine: No, I'm trying to understand the sense of urgency you have...

Douglas Kellner: The biggest issue is that the need more than 2 poll books for a Presidential General Election but to get to a third or fourth poll book and in my view, they need as many as five according to the reports that I've seen, they don't have the space to add the table space to go from 2 books to 5 books, there's just not physically the space.

Peter Kosinski: Do you need more poll workers as well to manage those?

Douglas Kellner: Of course, they do...

Bob Brehm: I remember when we talked with them before in some of those buildings I mean literally they'll have, I've been in poll sites in Manhattan and the Bronx this size with 6 election districts in it. By the time you put 6 tables A through L M to Z if that's their example, the privacy booths, the voting machines and then the path of travel in there and now 6 election districts is probably about easily could be as many as 7,000 eligible voters, some sites in that size are 12,000 eligible voters. There's too many EDs and eligible voters in that room because that's the room they have. But that could work for them with turnout in certain times of year but in the Presidential by the time you've got 8:00 in the morning, the line is already down the street and there is no way you can overcome that delay for the rest of the day because there's just no way you can have enough resources in that room. But in order to put 2 more tables x 6 EDs they just literally need more either that building needs to give them another room to use and some EDs will be here and some will be there or they need to go find another building. So, part of it is the space within the building, they need to not only have the gym but maybe the cafeteria or something else.

Douglas Kellner: So, I'm suggesting that they give us a new plan for 2020 to tell us what they're going to do differently from 2016 in order to come into compliance.

Peter Kosinski: Are they able to identify from the 2016 election which poll sites had those long wait lines? Is there any documentation from that last Presidential showing that these are the poll sites where we had problems with long lines? Does that exist?

Bob Brehm: Well, ever since 2009 when we started this system we've asked counties to keep track of how many people per hour turned out and that generally would fit into the queueing theory of how many people you can accommodate but they had not been keeping that data in a manual way.

Douglas Kellner: But it doesn't show the macro...

Bob Brehm: They were looking for some other electronic way to record that data. Many other counties kind of did that so you can kind of figure out in some suburban areas of New York City or the more I guess suburban, Manhattan, Staten Island, there's a little difference as to the voter patterns. If your community has most of the people showing up within the morning then you should staff for the peak hours of the day, not for can I accommodate them by the end of the day?

Peter Kosinski: Bob these are just sort of commonsensical things you're saying to me, so its hard for me to believe that the New York City Board isn't aware of what you're saying to me. That you staff up for the peak hours, different areas have different peak hours. I mean its true upstate as well as down, its just generally true. But its hard for me to believe the City board isn't aware of that sort of...

Douglas Kellner: They certainly are aware.

Peter Kosinski: So, I'm just trying to understand that there's a, if we can get a handle on, these are the poll sites where the problem exists so we can zero in on those poll sites and say okay there's 10 polls or whatever the number is and here they are. Here's where you've had problems. You need to deal with these specific poll sites because that's where your problems are rather than this sort of generic you have a problem, figure out a solution because this has been going on forever. This has been a problem in New York City for a long, long time and yet I've never seen a list of poll sites where this is...where the problem... these are the list of polls where this problem is.

Douglas Kellner: Even requiring them to put that list together in 2020 will be a start for getting them into compliance by 2024.

Peter Kosinski: Yes, I do think that's a start for anything.

Douglas Kellner: We do have Charles Stewart's data which I think is the best data that's out there so far. He does a national survey on waiting time and one of the staff people got the New York City portion of that data from him which certainly documents that there's a problem in New York City but it does not identify it by particular poll site. And you're correct that its not every poll site that has this problem, its roughly 1/4 of the poll sites.

Peter Kosinski: Is it that high? You think its 25% of the poll sites have waiting lines...

Douglas Kellner: My own view based on Stewart's data and on my own surveys is that roughly 40% of the people who voted in New York City had to wait more than 1/2 an hour in November 2016. So that's roughly 40%. Some people think it might be as low as 20% but even 20% is way too much because outside of New York City the number is close to zero. So, what is that Nassau and Westchester do differently from New York City that they don't have any lines and you go 3 blocks across the border and it takes a voter an hour to vote? And the answer is because they staff up for the Presidential Election and New York City with the Presidential election feels that they're limited because of the space constraints.

Peter Kosinski: Well I will say my experience in New York City is they do tend to cram quite a few EDs into a particular poll site. As an upstate voter I don't see that in the upstate regions where you have 10, 12 EDs in one poll site. So, I think my experience New York is kind of unique. I mean maybe Westchester has some of that.

Andy Spano: Five or six.

Peter Kosinski: Yeah, maybe that...so, I don't know that there's another area of the state where you see those large numbers. To me that's always been an issue because when you've jammed that may as Bob was alluding to 7,000 to 10,000 people into one room even if it's a big room, it creates logistical issues so why they don't break them out more I guess part of it is lack of available sites which is kind of ironic to me in the sense that here's New York City with building after building after building as opposed to upstate where you have large swaths of land where people drive 10 miles to go to their poll site. New York City has this problem you would think with all the buildings and available space down there they would be able to find more space for their poll sites. But, apparently, they haven't been able to.

Douglas Kellner: I want to provide the nudge from us to get them to focus on this. So why don't we see if we can come up with a draft.

Bob Brehm: You had mentioned Mr. Stewart who is the MIT professor who has worked with a number of panels, etc., but he also has offered several tools that people can use to try and figure out what a proper staffing should be based on the anticipated number of voters. So, you could use some of that...

Douglas Kellner: And the City does, in fact, professor Stewart's associate was the expert witness for the City at the recent trial in the Silberberg case. So, I know the City is aware of this. And I think Mike Ryan, the executive director there, is doing a great job but he needs our help to nudge them to address this issue. Because he needs the resources and he needs to be able to go and say the State Board is requiring us to do this.

Peter Kosinski: Okay, are there any more questions for Elections Operations? Do you have anything else to add or?

Tom Connolly: We're done.

Peter Kosinski: You're all done, thank you. Then we'll move on to NVRA/PIO John Conklin. I would just note; I had a brief conversation with John earlier that I was concerned because I believe at the Primary Election this past Tuesday there was some misinformation that was out there in the media particularly about people's eligibility to vote in certain primaries in this state. And I just, maybe you should address that, or could address that. I think there was some talk about closed primaries that isn't quite accurate as to what the state of the law is in New York. And I didn't know if we were taking efforts to try to make sure that the correct information got out there.

John Conklin: That was number two on my report. We did have some misinformation that was sent out. It appeared to be from the Attorney General's press release during the day discussing that only people who were registered in the party could vote during the primary. And some people, in an effort to correct that, said no that's wrong, everybody can vote in the Reform Party's Primary and that sort of compounded the initial error. When then the truth is that only voters who are not registered in a party, unaffiliated, colloquially we call them blanks, they are eligible to vote in the Reform Party Primary.

Risa Sugarman: And Reform Party members.

John Conklin: Yes, and Reform Party members, yeah. So, we did correct that in multiple media outlets.

Peter Kosinski: And the Independence Party has a different rule as well.

John Conklin: The Independence Party has a rule that allows, again, the same unaffiliated voters, they're eligible to vote in Independence Party Primaries for statewide offices. And if a county has adopted a local rule that allows them to vote in their primaries locally. So, I'm not specifically aware of any county, in the Independence Party, that has adopted that rule but we continue to monitor that to make sure.

Peter Kosinski: That would still be a party rule, correct?

John Conklin: Yes, yes both are party rules.

Peter Kosinski: When you say county, it's the county committee or the county party?

John Conklin: Correct, correct so, it's not driven by statute it's driven by the party rules that they adopt that defines who's eligible to vote in their primaries.

Peter Kosinski: These are pursuant to court cases that have been brought by these parties to really overcome the state law which does say only members of a party can vote in a primary. They've had court decisions that have allowed them by party rule to have their own rules regarding eligible to vote in the primaries.

John Conklin: That's my understanding. The lawyers here can correct me if that's wrong but that's my understanding.

Douglas Kellner: That's correct.

Peter Kosinski: So, I mean my point is, somebody should look beyond the statutes...

John Conklin: Yes.

Peter Kosinski: In order to realize that this is the rule and just unfortunately it got out there and I thought we should try to make sure that's corrected.

John Conklin: Absolutely, absolutely. So, generally since the August meeting Public Information has been busy. We've been receiving a lot of calls; there was campaign finance filings, certainly questions about the Primary, lots of questions about the statewide ballot props, particularly the possibility of a Constitutional Convention among other things.

The Primary Election Day itself was fairly quiet. We had a lot of the usual questions about where do I vote, am I registered, etcetera, those kinds of things, but we had very few complaints, overall it was a fairly quiet day.

So, the Unit participated in the monthly ECA call in August. We've also been part of the meetings, as Tom mentioned, the cyber security stuff regarding our internal review and the governor's task force. The Unit responded to 87 FOILS in August. We also have noted that the Governor just signed a new law to require the State Board to publish campaign websites for the office of Governor, Lieutenant Governor, Attorney General, Comptroller, State Senate, and State Assembly. So, that goes into effect December 1st and we have six months to draft regulations so our Unit, Counsel's Unit, and Election Operations will work together to set that up.

Peter Kosinski: I'm sorry, I don't understand that. What's that new law?

Bob Brehm: That was our program bill. The three bills the governor signed; one on the 12th, two on the 13th, were our legislative packet. That was one of them recommended by Commissioner Spano that we at least if a source where campaign websites we would put the listing there. So, the statute says that a candidate can notify us in writing either on the cover page of their petition or in some other writing, for those offices, and we will post that information on our website to say that they gave it to us or they didn't so.

Douglas Kellner: We have to put on our website the links...

Bob Brehm: To their...

Douglas Kellner: To candidate's campaign websites.

Peter Kosinski: That's a hot button issue, campaign websites?

Bob Brehm: Right.

Peter Kosinski: Statewides?

Bob Brehm: Well that's our security guru...

John Conklin: Statewides, plus the Senate...

(Can't hear, talking at once)

Peter Kosinski: Oh, oh okay. That was Commissioner Spano?

Andy Spano: Well I made a number of notes, something I wrote and somehow, they got picked up.

Bob Brehm: It was in there somewhere.

Andy Spano: It had nothing to do with...

Bob Brehm: The other one that I think is even more valuable is it's our proposal to remove the requirement to publish a candidate's residence address in the notices that appear within six days of an election. You still have to publish the office, the candidate, and the party but the residence address is kind of what are you going to do with it within six days of an election? It seems to be more of an appropriate thing to know when they're filing it, perhaps, if you wanted to challenge it.

Douglas Kellner: Judges in particular pushed very hard.

Peter Kosinski: Sure.

Bob Brehm: Well, it's an expense issue too, was counties having to put that, everybody's concerned about privacy, security, what's needed.

Peter Kosinski: Yeah.

Bob Brehm: The Governor signed, it took a number of years to get that done. The governor signed that bill and the third one was the split shifts. The statute had said half day shifts and now it says split shifts. So, if you're a community that you really have a need either at opening or close or at a particular time of day you can now appoint people for parts of days as opposed to half days.

Todd Valentine: The county Association has been supporting that as well.

Andy Spano: Just to explain that to you. What I have written in something that there are people with less money. There are people who are looking for answers. And if they're going on they'll

go on our site and see who's running. And maybe the candidate doesn't have a lot of money but maybe he has a website or she has a website. This is just another way for people to get information.

Peter Kosinski: Fair enough, we're back on the first bill now.

Andy Spano: Yeah.

Peter Kosinski: Fair enough, it's fine. I just didn't for some reason it didn't register with me that we were...

Andy Spano: Well he gives me credit for it. I don't know if it came from there.

Peter Kosinski: Well apparently it did (laughter).

Bob Brehm: That's why we advanced it.

Peter Kosinski: Good for you. You'll get a little certificate (laughter).

Douglas Kellner: Does he get a pen? (Laughter).

Peter Kosinski: You can hang it on your wall. Okay. Sorry, John

John Conklin: So, the other item is we're working on the legal notices for the three ballot props. They have to be published the week before the election around the state. One in every, in at least one newspaper in every county in the state. So, we're working with a vendor on that.

Peter Kosinski: John, can you just quickly go over what those? The one's the Constitutional Convention.

John Conklin: One is the Constitutional Convention, one is pension reform or pension forfeiture reform, as you want to characterize it.

Peter Kosinski: Okay.

John Conklin: And the last one is the creation of an Adirondack land bank.

Andy Spano: That's a swap isn't it, a swap of some sort?

Todd Valentine: It sets aside land for utility development in core utility rights-of-way along highways in the Adirondack Park.

Peter Kosinski: It's an Adirondack parks thing.

Bob Brehm: Forest preserves, Catskills included.

Peter Kosinski: So, those are the three statewide and then there may be some local ones as add-ons.

John Conklin: Correct.

Peter Kosinski: Okay.

John Conklin: So, we have a quote on the English language papers. We're still working on the quote for the minority language papers which would be primarily in New York City, Westchester, and Long Island. So, that's moving ahead.

With regard to the website, we have posted the certification for the primary ballot since the last meeting. We posted the certified language for the three statewide ballot props. We posted the webcast and the transcript for the August 2nd Board meeting.

We did not do election night results for the primary. There were no state level offices on the primary ballot. They were all local offices so we did not have anything posted for election night results on Tuesday.

Lastly, for NVRA we are doing a training session today in Otsego County with the County Social Services Department.

So, Tom still has a couple of things that he might be working on. So, I'll just ask him if he has anything to add.

Tom Connolly: At this point, no. I think I covered some of the things in Election Ops. The only other thing that I know John mentioned to me before was the Move Act. It's not a federal year so it's going to be the deadline for the transmittal of ballots for the general election will be October 6th. So obviously we'll be working with the counties to make sure after the certification of the primary results to make sure they get all their ballots uploaded for the military voters.

John Conklin: And lastly, I would just add that since they brought Lisa Shaw up, Lisa Shaw is not just an asset for that unit she's an asset for the entire agency. Because dealing with FOIL requests that go through Election Ops is an absolute dream. She can put her hands on any document in a matter of minutes. So, she is a treasure to work with.

Peter Kosinski: Well, I would like to just weigh in. I had the pleasure of working with Lisa as well for years she's a terrific employee. I'm sure we'll miss her very, very much. I, of course, wish her well but I agree with you on what you both said about her value to this agency. Or all three of you, I think, said. And she will definitely be missed so, I agree. But that day comes, when people retire. It's actually...this happens (laughter). It's a good thing. And we should wish Lisa well in her retirement.

And so, are we?

John Conklin: We're done.

Peter Kosinski: Okay, then William Cross, ITU.

William Cross: Good afternoon, Commissioners. As has been mentioned a few times already, and Bob spoke to at length, we've been involved in cyber security issues both with NYSTEC for the risk assessment for the County Boards. We've also begun to work to assemble some information for our own assessment. Although, as Bob indicated, the full risk assessment will begin with our new infrastructure, but some of the same questions that we asked the counties would be applicable for now in terms of policies, procedures, things like that. So, we've started to work on some of that.

We've also worked with and participated in the meeting that were mentioned with the Governor's Cyber Security Advisory Board and reviewed some of the documents leading up to the report. And we've provided our input where applicable.

As an aside, as Bob indicated, many of the expected recommendations on that will have resource requirements to implement. However, a lot of the discussions that have come out of the working meetings have been useful in terms of suggestions of things that we can do today just procedurally or changes to systems that don't require a lot of resources. So, we're looking into a few of those things aside from what the main recommendations are expected to be. So, that has been useful, that process has been useful outside of the review. And cyber security has been a big portion of our time this month.

In terms of projects; CAPAS-FIDAS resources, as always, continues to be an issue. However, we have indicated last report that we had made offers for two additional contractors for programmer and analyst. They have both now started, one just started this past week, and they are both getting up to speed. So, it will be some time before they are fully going but all indications are that they are good choices.

We still remain trying to fill one of our state BOE programmer positions. That one's a little more difficult because we're doing a civil service and some of the qualifications there. But we're plugging away, hopefully we'll have some better progress to report next month.

Also, we've been trying to organize, and I think as Tom mentioned, outreach for stakeholders for both in terms of treasurers and county boards. We have sessions scheduled Tuesday this month for the treasurers and the end of the month for the county boards to engage these groups. The treasurers will be giving a demo similar to what we provided you before for the filing system and that interface and soliciting their feedback. For the counties, it'd be more of a working session to gather requirements in terms of their processes, what we can gain from them in terms of data exchange, what we can provide to them. And really to have a good working session and to develop further requirements for the CAPAS side of the application.

For NYSVoter, we've made significant progress this month in terms of the infrastructure. We've gotten out of the planning stages and we've actually started implementation of replacing a lot of our network and server equipment. And upgrading where it's really needed.

We've focused initially on the disaster recovery site and here at 40 North Pearl due to operation requirements for the primary and some of the filing periods. However, we're starting next week on our actual main data center in Albany. This work is expected to continue to the end of the calendar year but it's going well. We've made some very good progress just since the last report.

Peter Kosinski: Bill are you fully staffed up?

William Cross: Compared to full potential or as needed?

Peter Kosinski: Do you have all of your employees, or your slots filled? Or are you still?

William Cross: Of the slots I have, I have one opening for the programmer for CAPAS-FIDAS we're trying to fill. I think we've identified through the process, particularly in cyber security review, that there's a big need. We've identified a lot of things that need to be done and quite frankly the resources aren't there to do them all. There's a definite need for additional resources there that we don't have slots for. Not only internally to do things that we need to bolster the security position for the state Board but also, I think our role in terms of interaction with the counties on cyber security issues and partnering with them has certainly increased of late.

Peter Kosinski: As it should. Is this something we're talking to the Governor's office about? About, you know, for more capabilities in his office considering the cyber security concerns that are out there that I think need to be addressed and that we should be the lead on. If we don't have the resources to be doing even our own stuff how can we possibly have resources to be assisting those counties and doing what they should be doing. Are we looking at possibly adding cyber security type people here?

Todd Valentine: Oh, yes. We actually started raising that last year as part of last year's budget.

Peter Kosinski: I don't mean in the budget. I mean in the cyber security discussion you're having with the Governor's office?

Todd Valentine: Oh, yes.

Bob Brehm: It comes up...

Peter Kosinski: And what's the reception? Are there any...is there a favorable reception? Is it a possibility? What do you think?

Bob Brehm: There's a number of people we meet with and the Division of Budget's not one of them. But certainly, we have the Assistant Deputy Secretary and the Deputy Secretary to the

Governor with regard to the category of Security. I don't remember the exact title. Our Deputy Secretary which is Civil Rights. We've raised it repeatedly in our conversations. They're either in the meetings or represented at all the meetings that we've had with the Task Force and any of the workshops that they've been doing. And it kind of goes around to what we've, I mean we've done a number of things to help explain that the risk is really at the county level and in order for the county, in order for us to all succeed knowing it's in a more secure posture that the risks have been mitigated I think we need to do that. Or somebody at the state level needs to do that. And there need to be resources. And most of that conversation seems to be we need to do it.

Todd Valentine: But I think they have been receptive to the concept. Whether that ultimately ends up in the budget or not I don't know.

Peter Kosinski: And that's what's called "receptive to the concept" by the way. It's if additional resources are given.

Bob Brehm: I know internally we've talked as the risk level at our meetings with, certainly, with the Governor's panel then we were invited to meet with them in New York City. We raised all those issues. We have had discussions since they've met as their report is being finalized to the people writing the report, which is Peter Bloniarz, he's the Executive Director. He's been great to work with as far as what are they recommending but realizing that we need the resources to do more at the state level before we do the outreach to the counties. And I just think it's our responsibility to put those forward in our budget this year.

Peter Kosinski: But we seem to do that on a regular basis.

Bob Brehm: I think *in* our budget as opposed to in a side letter.

Peter Kosinski: Oh, I see.

Bob Brehm: You see what I'm saying.

Todd Valentine: We might change our tactics.

Peter Kosinski: Well, I don't know if tactic is going to help. I mean I think either they're going to fund it or they're not. But it seems to me in this atmosphere there's a very strong argument that more resources to this makes sense.

Bob Brehm: Well they have identified what do you need. I think if we give them a specific list of what we need in the budget I think it would be better than just a side letter. But certainly... (can't hear).

Peter Kosinski: Fine, I don't care what form it takes I'm just trying to understand if we're seeing any new urgency on their behalf considering all the attention that's being paid to this, not just in New York but nationally, to make sure the election systems are secure.

Todd Valentine: Oh, I think they got the sense of urgency, first of all, by doing...the Governor has a Cyber Security Advisory Board which we have met with directly, not just the Executive Director. They did assemble what was an exercise that, was quite honestly unprecedented in scope as far as examining the issues with regards to the election that involved not just Homeland Security but the FBI, State Police, National Guard, the Army's Cyber Security Unit, the Air Force's Cyber Security Unit. So, I think we got their attention. And as Bob says, we've been working with representatives of the Chamber I'll call them. They have been receptive to the concept and hopefully that's what can be reflective in a report that comes out. But again, since it's touching security, how much of that gets released publicly is going to have to be limited, obviously. But a part of it's a wait and see. We've certainly, I think we got their attention because I felt that they recognized it's not just us. We've got to deal with the counties, you have to put resources in, we can't just say, hey, do this because over half of the counties are small counties. They just don't physically have the people to do it so, I'm hopeful but we'll see what shows up.

Andy Spano: Bill, your staff, do they have to take exams for those positions?

William Cross: For the Civil Service positions they do, there's...

Andy Spano: All of your staff?

William Cross: The state has changed their entry requirements in recent years. It used to be a very, what you would consider, a pretty standard exam; question, answer, multiple choice. Of recent years it's more of an evaluation of experience and they're scored on that and that's an exam score. But there is still an exam per say.

Andy Spano: Yeah, but it's not a written exam?

William Cross: Correct, currently for entry level. The issue is with Civil Service, is you can't come in at every level. You can come in at that level and then you can, there's exams to promote from there.

Andy Spano: No, I know. In some counties, they have eliminated the need for the pencil and paper exam.

William Cross: Right.

Andy Spano: They identify experience which gives you more flexibility in terms of who you hire.

William Cross: It certainly opens the pool up but identifying, you still have the "rule of three". So, you still have to, of that pool, you have to identify the skill set you need.

Andy Spano: (Can't hear) putting numbers on the experience.

William Cross: Yes, yes.

Andy Spano: Well, that's a pain.

William Cross: So, it expands part of the eligible pool but you still need to narrow it down to the skill that you need because it's still very generic. And that's just entry level.

Andy Spano: Given the ability, if you had the ability to restructure in your entire department given the resources that you have now and then adding, is that something you would want to do?

William Cross: Absolutely. I think we're certainly, we're utilizing contractors much more than we should for what we're doing. We're paying double, in some cases double, for them than we would for positions because it's easier to obtain a commodity than it is a position. And that's unfortunate. I think particularly since they're temporary. They do their work and we still have to maintain systems and work they're doing here after they leave.

Andy Spano: Do you find that your contractors when you give them a contract have to go out and hire people to do the contract?

William Cross: Well the state contracting process does that for us. We pick from...

Andy Spano: I understand, I understand. Now your opinion, do you think it would be better than going for a security person to go in with a restructure of the department?

William Cross: No, I think, I don't know if restructure is necessarily the case. I think an assessment of the need is.

Andy Spano: Well I'm saying you've got restructuring of the department just like we talked about. Spending X amount of dollars now to do X number of work, and you're doing it this way. Now if I did it with the same amount of money and I did it this way I could do my job and it would cost the same amount or it would cost less and I would get a lot more done.

William Cross: I don't know if restructuring is definitely the answer.

Bob Brehm: We have about 12 permanent positions in that department and I don't know if restructuring that, what you're suggesting, we still have that work to do. And we, and even that work would benefit by having more employees in order to keep our website fully functioning, etc. The normal to do list to keep the lights on in the building and to do normal updates to that. But for any of these other projects when we have asked for money for help or a position for help the state response has been what's called HBITs which is Hourly-Based Information Technology. So, it's a contract that allows us to hire temporary work.

We used to have what were called "project positions" and they would allow us to go out and create a project position and pay somebody for 18 months and maybe renew it for another 18

months. But under that HBITs program to get an IT level worker it's almost double if I could just hire the IT worker.

Andy Spano: I understand.

Bob Brehm: But they don't let us hire the IT worker at say \$80,000.00, I'm paying close to \$150,000.00 to get the temporary worker and then they're gone. So, it would be better if could though.

Andy Spano: The Board of Elections has the ability, and I don't want to do this publicly but, has the ability to hire its own people.

Bob Brehm: Well, that's a...

Andy Spano: Isn't that the law?

Bob Brehm: It's within the parameters...

Peter Kosinski: Not at the State Board level, no. It's not the same rule in the state as it is in the county.

Douglas Kellner: The counties don't have civil service, we do.

Peter Kosinski: Right, we do, we do.

Andy Spano: No, I'm talking about the State Board has the right to say we want, within the scope of the budget, we want this person. We want that person. We want someone to go on with. We have the power that other agencies don't have.

Peter Kosinski: No, not quite, no I don't believe that's true.

Bob Brehm: It's still within the, I mean any vacancy that comes up, it's still within the parameter of approval within the budget for position. So, our argument has been if we could take the money that was given to the State Board for the technology projects and hire IT people it would have been cheaper to do that. But that was not a part of the approval.

Andy Spano: My point is, you have a pot of money that you spend consistently on those whatever you called them.

Bob Brehm: Hourly based.

Andy Spano: Yeah, hourly based people and so on that you can show on an annualized basis, correct?

So, you can say to somebody hey look, we're spending this money anyhow. It's not saving you any money. It's costing us money. Okay? I have always found that it is much better than saying I want more people, to say this is how we get them. Because you're already spending the money and it's not going to cost you anything for us to do that.

Bob Brehm: Well, but the temporary project and the hourly people are easier for them to just not put the money there in the future and therefore it goes away. As opposed to employees.

Andy Spano: I didn't say I didn't know what the political end is (laughter).

I'm just saying that the amount of money here that we're spending isn't getting us value.

Bob Brehm: Correct.

Andy Spano: According to the man in charge.

Bob Brehm: As much value. Other than the people we have are good people.

Andy Spano: As much value as we have. So, what we're saying is we want value. We don't want you to be spending more tax payer money on what we're doing.

Bob Brehm: So, I can assure you that I have communicated, maybe not in that exact set of words, to anybody who will listen to me that same set of, that concept. And I have not succeeded yet.

Andy Spano: I think you should just put it together and hand it in, don't talk to anybody (laughter).

Bob Brehm: Todd and I will do that.

Todd Valentine: We have certainly communicated that concept. Bob did in a very direct way, I can assure you of that.

Andy Spano: You're playing within the game. You got to be gamed, that's all. Alright I said my piece.

Bob Brehm: I have no problem trying it your way.

William Cross: So, I appreciate your support (laughter).

Andy Spano: That's why we have discussions, that's why.

William Cross: Otherwise we're also working on the MOVE project to bring that in house and replace a currently outsourced application. That's ongoing.

Todd Valentine: That's the Military and Voter Oversees Empowerment for those not familiar with the acronym.

William Cross: Sorry. Otherwise I think we have normal volume for the website. There's a bit of an uptick for voter lookup which is probably to be expected this time of year, about a 20% increase. That's all I have pretty much. Any questions?

Douglas Kellner: What's the timeline for CAPAS-FIDAS now?

William Cross: The timeline we have not changed, it's still the April 2019.

Douglas Kellner: Thank you.

Peter Kosinski: Any other questions, comments? No. Thank you, Bill. We'll move on them to enforcement Risa Sugarman.

Risa Sugarman: Good afternoon, Commissioners. As with last month I'd like to start with questions that you may have before I start.

Peter Kosinski: Are there questions?

Douglas Kellner: Well we could start with the same questions I had last week. How many cases have been opened and closed since the last report?

Risa Sugarman: Commissioner, I don't view that that's my role to give you the reports that you consider the reports that the former enforcement Counsel gave to you. I told you that I would give you some statistics that I have for 2016.

Peter Kosinski: Do you have those by the way? Because I know we talked about that. Do you have those?

Risa Sugarman: Yes, sure. In...

Peter Kosinski: Did you bring it with you or do you want to just?

Risa Sugarman: No, I have them.

Peter Kosinski: Okay.

Risa Sugarman: I didn't put them in a report but I have them with me.

Peter Kosinski: Oh, okay.

Risa Sugarman: In terms of the emails that we did that I reported in last year's Annual Report I did not include the months of April because of the Primary. The numbers of emails that we got

for the Presidential Primary, I would say we got over 500 emails in terms of the issues of who is registered to vote. Whether people who were registered as blanks were eligible to vote in the Democratic Primary or the Republican Primary. It threw off numbers that would normally have, that we would get normally in the numbers that I had reported in years before. In the 2016 Presidential Election and the September Primary as well. So, when I did the numbers that I'm going to present to you I tried to look at the numbers that would report to you what was the regular type of emails that I have received before because the numbers about the registration about who was the blank and whether or not they could vote and it was an outrage that blanks couldn't...

Peter Kosinski: I think the three pieces of information that we're missing from your annual report that you had provided in previous years was complaints received, complaints opened, complaints closed.

Risa Sugarman: Right but I also indicated the number of emails that I had received on the enforcement email and those that were referred to the Board and the reason that I wanted to explain the numbers is because I didn't include those that were emails that were complaints about anybody who couldn't vote because they were not registered either in the Democratic or Republican party. Because those numbers just skewed the numbers of complaints that came in or issues that came into Enforcement or that were referred to the Board. I just wanted to take, because the numbers would have just been different than the prior. They would have increased at an exponential rate. So, that's just so you know that.

In 2016, we received in the Enforcement emails 394 emails of which 106 were referred to the Board of Elections that I viewed were within their jurisdiction. Files that were opened were 80. Of those files, now those are not investigations but files that were opened. We brought 27 of those files into compliance. Of those, 18 of those files would have been hearing officer cases but they were brought into compliance so we did not have to file those hearing officer cases. 11 of those cases were closed and they were closed for a variety of reasons. Either the candidate plead guilty in another jurisdiction, the case was handled by another jurisdiction, either a district attorney's office or a US attorney's office. The violations that were reported were de minimis or that the matters were settled. And that leaves those numbers totaled to 48 and that leaves 32 open cases of the 2016 files opened.

And I must say, I want to say that for the first two, 2 ½ years we've been collecting statistics in one manner. I'm looking at those statistics the way that we're collecting them to see whether there's an easier way to collect the statistics. So, I'm reviewing the manner in which those statistics are collected.

Peter Kosinski: So, just a little follow-up then. So, what you just said, if I'm correct, is you received 394 emails that were not in that category that you described earlier of just emails about the Presidential Primary.

Risa Sugarman: Right.

Peter Kosinski: I can't vote, or something you didn't feel was appropriate for your unit to handle.

Risa Sugarman: No, no, no. I just that I didn't want to report to you because in 2015 I reported in my Annual Report I reported that the division got 294 emails. So, if I reported to you that in 2016 I got 1200 emails.

Peter Kosinski: I got you.

Risa Sugarman: It's not that we didn't handle them. We reported to or explained to those who emailed us that if you're not registered in a party, if you're a blank, if you're not enrolled, then you don't vote in a primary for a particular party. The complainant was, the person who emailed, was given an answer.

Peter Kosinski: Okay.

Risa Sugarman: But it's not something that was a folder, a file that was open.

Peter Kosinski: Okay so, you had 394 emails.

Risa Sugarman: Right.

Peter Kosinski: And you took 106 of those and referred those to compliance or some other.

Risa Sugarman: Well, to Bob and Todd. Or after September 20th I asked those persons, because Bob wouldn't refer them to his staff, to email Bob and Todd directly.

Peter Kosinski: Okay so, that leaves 285 emails then.

Risa Sugarman: Okay.

Peter Kosinski: That were left with your unit and you said you opened 80 files based on that.

Risa Sugarman: Correct.

Peter Kosinski: So, that leaves 205 of those basically unaccounted for.

Risa Sugarman: Well, either that I answered immediately by saying that, certain of those emails would be about a fire district, or a school board election. So, those emails I respond immediately and say my Division does not have jurisdiction over those kinds of elections.

Peter Kosinski: But you don't consider those closed then? You consider those...

Risa Sugarman: No, because we didn't open...

Peter Kosinski: Never opened.

Risa Sugarman: Correct.

Peter Kosinski: That's how you're deeming those.

Risa Sugarman: Correct.

Peter Kosinski: Alright, so then you had 80 open files.

Risa Sugarman: Correct.

Peter Kosinski: New open files.

Risa Sugarman: New open files.

Peter Kosinski: For '16 adding to whatever you had remaining from the prior years. And you said you closed, I'm sorry, you mentioned a number you closed.

Risa Sugarman: Well, we brought 27 of those files into compliance.

Peter Kosinski: Okay.

Risa Sugarman: So, those were closed. 11 others were closed for other reasons; either that the violations were de minimis or that...

Peter Kosinski: Okay.

Risa Sugarman: The other reasons that I gave to you.

Peter Kosinski: So, you did close some cases.

Risa Sugarman: Correct.

Peter Kosinski: Now, when you close a case it's my understanding that those should be brought to this Board for that purpose.

Risa Sugarman: Well, my reading of the statute says that if they're closed because there's not sufficient evidence or that, I don't remember the other language of the statute, that there's no violation of the law. That's when I bring them to you so that when a complainant...when a case is referred to another jurisdiction for an investigation because there are violations when someone who is a target pleads guilty in another jurisdiction. When those cases are settled, I don't view that that's part of that statute.

Peter Kosinski: Okay, so when you use the term closed you mean closed for your unit's purposes but they may be open somewhere else in the state. Some other entity may be...

Risa Sugarman: Or when there's a violation that in my discretion I didn't go forward.

Peter Kosinski: That does not constitute a closed case in your opinion?

Risa Sugarman: Yes, it is closed. But there are violations that...

Peter Kosinski: It needs to be brought to this Board for...

Risa Sugarman: No, because there are violations of the law.

Peter Kosinski: Okay, so when you deem there was a violation of the law but you deem it, what, de minimis or you closed it.

Risa Sugarman: Or in my discretion...

Peter Kosinski: Your discretion, for whatever reason you deem it not worthy to pursue and you close it, you don't feel that that is a case that needs to be brought to this Board for resolution.

Risa Sugarman: Correct. Well, resolution, you don't have any authority to, in my view, when you say resolution I don't know what that means.

Peter Kosinski: What that means is the statute contemplates that when you close a case this Board is to be informed at that time.

Risa Sugarman: When there is insufficient evidence or no violation of the law.

Peter Kosinski: Those are the two cases you would bring to us and everything else you would not?

Risa Sugarman: Correct.

Peter Kosinski: So, there were none of those.

Risa Sugarman: Well, I didn't say that. The last...

Douglas Kellner: And indeed, the statute presumes, of course erroneously in the case of the incumbent, that the Chief Enforcement Counsel will proceed to enforce all of those other cases where there is a violation. And that's what to me is the plain intent of the statute. The Chief Enforcement Counsel is going to proceed. And where there is no violation of law the Chief Enforcement Counsel is going to inform the Commissioners so if the Commissioners view that it is a violation they can speak on it.

Peter Kosinski: We can have that discussion.

Douglas Kellner: That's the legislative history on it.

Risa Sugarman: The statute says that hearing officers shall be done at my discretion so I don't agree with Commissioner Kellner. But I told, informed the Commissioners last meeting that there were cases that I was at the point of, under the statute at the stage of that section of the law, but because of the...

Peter Kosinski: I'm sorry, which section?

Risa Sugarman: Bringing it to the complainant and noticing the Board, under the statute that's what the statute says.

Peter Kosinski: Of a closure?

Risa Sugarman: Noticing the Board...

Peter Kosinski: Of a closure?

Risa Sugarman: Yes.

Peter Kosinski: Okay.

Risa Sugarman: Noticing the Board but the documents policy in my view, under my ethical obligations, I had concerns about whether or not those closures would be confidential. And I still have not resolved those issues.

Bob Brehm: Of no violation?

Risa Sugarman: Yes. Under the statute.

Bob Brehm: I mean if my understanding of that section is when you determine there's no credible evidence that a crime has occurred.

Risa Sugarman: That a violation has occurred. It doesn't necessarily...

Peter Kosinski: Okay so you're saying you...

Bob Brehm: What would be the confidential item there then?

Risa Sugarman: Well, the ethical responsibilities do not turn on whether there's a violation of the law. The ethical violations of whether an investigation should be public or not does not determine on whether or not a violation has occurred. Investigations are supposed to be kept confidential even though no violation has been determined.

Peter Kosinski: Okay, fair enough. So, you're saying that you've got a certain body of complaints that are being held in abeyance?

Risa Sugarman: Yes.

Peter Kosinski: Until you resolve those...

Risa Sugarman: That I can resolve that issue.

Peter Kosinski: The issue of whether you feel you can bring them to this Board.

Risa Sugarman: Correct.

Peter Kosinski: So, they're currently still open?

Risa Sugarman: Correct.

Peter Kosinski: And are awaiting final resolution?

Risa Sugarman: Yes, sir.

Peter Kosinski: Okay. And is there a number there or you're not willing to disclose that number.

Risa Sugarman: I'm not willing to disclose that at this time.

Bob Brehm: Previously when it was all under one unit or one division when we had met with Bob Freeman as to what was covered under FOIL or what was exempt under FOIL. And at that time the policy we had in place was still the notice would be to the Commissioners that there was no, excuse me. No matter what category when it was closed and there was no referral or allegation that something went wrong is the redacting of information on the targets so that there would be, just because that itself would be an issue.

So, there was a redacting issue as to what part would be made public. Under that time and that's what we had followed from Bob Freeman ever since then up until the new arrangement. So, it wasn't, and then the same decision was yours as Commissioners if you made a referral as to whether or not it was in the public domain or not and whether it would be confidential in the previous world. But even if we recommend or you found to close it without making a referral or a finding of any violation we would then redact out whatever information in the document whenever it was provided as a FOIL; the target, the objector. You know, in order to protect their integrity.

Peter Kosinski: Well listen, Bob, listen I'm not conceding that Risa has a legitimate concern here. Let me just say that. I mean we did adopt a policy several months ago. We knew at the

time you didn't agree with it. I think the four of us were very, very comfortable with it. We feel it's the right way to go. I think we still do.

Douglas Kellner: Three of you were comfortable with it (laughter).

I'm uncomfortable with it because it provided for too much confidentiality.

Peter Kosinski: But you wanted to go even further than we went.

Douglas Kellner: Correct.

Peter Kosinski: Okay, fair enough. But so, your concerns are not our concerns.

Risa Sugarman: I understand that. And with all due...

Peter Kosinski: So just, Bob, I'm not conceding that Risa's articulation of this concern is legit. It's her concern, I don't share it. I don't think any of the four Commissioners share it. I think we certainly will act responsibly. We will act with due consideration of all concerned parties and interests including the public's interest in determining how to handle the release of any information from her unit. But you're chosen to go your own path and I can't do anything about that. I can't force you to disclose what I think you should be disclosing to us. I think it's unfortunate that you're doing it but I can't make you. But I am trying to get a handle on exactly what the body of work here is because I think that's a legitimate question.

Risa Sugarman: I understand.

Peter Kosinski: I did come up at the last meeting and I appreciate your at least sharing those statistics with us. Although I agree with Commissioner Kellner, I'd like a more regular type of disclosure than once a year of what your body of work is because I think that's something we should know, the public should know, and is rightfully in the public domain. Statistics at a minimum. But again, you don't want to share that either. So, again, we can't make you do anything.

Risa Sugarman: I just would like to say that with all due respect to Mr. Freeman I disagree with his evaluation.

Peter Kosinski: Fair enough, I've disagreed with Mr. Freeman myself several times, so I'm not. But that said...

Bob Brehm: It has been helpful when we ourselves wanted at least to establish a policy, get his views, I agree sometimes we've.... But certainly we at least considered his views when we adopted the policy and then we adopted a policy and followed it so that we didn't wrong.... I know in the general parameter, I'm not a lawyer but the concept is one I understand, you're innocent until proven guilty. Except some people you're guilty until proven innocent and proving innocence is hard. So, just the mere allegation that something was wrong against

somebody and when there's a finding that nothing was wrong, and then you get that investigation out you may have harmed the person. So, I understand the reason why there's a concern. It's just what is the, certainly ethics versus statute, those are important issues.

Peter Kosinski: That's fine.

Bob Brehm: You know, which one trumps the other? I just wonder if there's a help, if we have any questions to reach out to Mr. Freeman again to get any views should that be necessary.

Peter Kosinski: I don't think we're quite to that stage. Do you have a report that you want to give?

John Conklin: Could I just ask a clarifying question...

Peter Kosinski: If I can just...

John Conklin: With regard to...

Peter Kosinski: A clarifying question, sure.

John Conklin: Okay. So, 394 emails. Any phone calls or letters?

Risa Sugarman: Phone calls we don't keep a log of. Letters we get and I don't have that number.

John Conklin: Okay so.

Peter Kosinski: So, there may be more than the 394 that came in?

Risa Sugarman: Letters generally are subsumed within the files but I can't say that.

Peter Kosinski: Okay. So, you have nothing else you want to report to us? I don't know if there's any questions that any of the Commissioners have. Anything else?

There is one matter I thought we could bring up in Executive Session. So, when we go into executive session we could just maybe do that. But other than that, I have nothing else. Anybody else have anything?

Okay, then we can move on to Old Business. And that is resolution to certify vote cast enhancements. This is a report from, I believe, Tom and Brendan.

Brendan: Yes.

Peter Kosinski: You want to give this report as well?

Brendan: If you don't mind?

Tom Connolly: You go ahead.

Brendan: Okay, Anna never let me speak (laughter).

We started this process where we've notified the Board, I believe it was last September, we've been working through it with our independent testing lab, with NYSTEC, we have our own report in here. And basically, what this does is it's a change to the vote cast that is voluntary to the system, that the counties don't need to use it, but it enhances the votes cast report and enables wards to report for that. So, that's what this is. This is the resolution. There's also our functional testing document and NYSTEC's review of it as well.

Douglas Kellner: Okay, I move the resolution but I do have a question. That I want to confirm that we're all agreed that the current regulations satisfy this last sentence on the first page of the NYSTEC report where they recommend that there be a hash check file validation check by the county prior to installation of this update to the EMS to confirm that the update is the same as what was tested by SLI and presumably what is escrowed at the State Board of Elections. Are you able to confirm that that is our understanding?

Tom Connolly: Yes.

Brendan: Yes, that's our understanding.

Douglas Kellner: Okay, great.

Peter Kosinski: You're comfortable with the report?

Douglas Kellner: Now I am comfortable with the report and with the resolution.

Peter Kosinski: And you've made a motion to adopt. Seconded by Commissioner Spano. All in favor? (Chorus of ayes; 4-0). And opposed? That is adopted. That was our Old Business for today. New Business - we have the automated audit tool. I believe that was already addressed.

Brendan: Correct, that was in the report, yes.

Peter Kosinski: You have comments that have come in?

Brendan: Yes, and we're going to be working with...

Peter Kosinski: That you feel will materially change the proposed regulation? Were they of that nature that they would have material impact on it?

Brendan: Yes, we're going to be working with Counsel's Office.

Peter Kosinski: Okay, alright. So, we should hold this up until you're able to incorporate any changes you deem appropriate. Would we anticipate seeing this by the next meeting?

Bob Brehm: Well, we don't know when that is yet but yes, we anticipate that (laughter).

With that caveat.

Peter Kosinski: It won't be tomorrow.

Bob Brehm: Right.

Peter Kosinski: If that gives you any comfort. Yes, I mean I hope we can get this, I'd like to get this done so if we could....

Bob Brehm: With the four of us I know and our new team in Operations fully assembled and Todd and I, we all thought that there are helpful...

Peter Kosinski: Okay.

Bob Brehm: ...things in here that would require it to go back out for public comment.

Peter Kosinski: So, they're material changes...

Bob Brehm: Yes.

Peter Kosinski: ...that require a new comment period.

Brendan: Yes.

Peter Kosinski: Okay. Alright, so we'll put that off until hopefully the next meeting under Old Business at that point. And now we go on to the special federal voters. This is, I believe, that change that the Feds were asking us to make as to how we treat voters who are currently residents of New York but are temporarily located overseas. We will now be treating them like Special Federal voters, is that correct?

Brian McCann: That is correct. I went over it at the last meeting, I think, a little bit the meeting before in terms of background. But it ensures that someone who meets the criteria as a Special Federal voter and also meets the criteria under Article 5 to be a regular voter in this state can obtain the ballot by the Federal transmission methods and deadlines and also receive the state portion that they're entitled to. So, it causes us to interpret the Federal law with the State law so that both effects are accomplished.

Peter Kosinski: So, these voters will be getting a Federal ballot and later a State ballot?

Brian Quail: Yes.

Peter Kosinski: They currently only get state?

Douglas Kellner: Actually this reg...

Tom Connolly: This would make them treated more like a military voter than a Special Federal voter.

Brian McCann: Yes.

Tom Connolly: They would get the Federal ballot and the State level ballot whereas before they were getting both sets of races but they were not allowed to get the Federal portion of it...

Peter Kosinski: Early.

Tom Connolly: Yes, correct. Or by the additional transmission methods.

Peter Kosinski: Right, right okay.

Douglas Kellner: So moved.

Peter Kosinski: Okay, I have a motion.

Gregory Peterson: Second.

Peter Kosinski: Second. All in favor? (Chorus of ayes; 4-0). Opposed? Alright, we have also adopted that. Our last item is a Fair Campaign Code compliant that came in, it's rather extensive.

Douglas Kellner: I just move the adoption of the draft, the Counsel's draft.

Peter Kosinski: Okay, so there's a motion to adopt the recommendation of the Counsel on this.

Gregory Peterson: Second.

Peter Kosinski: There's a second. All in favor? (Chorus of ayes; 4-0). Opposed? Alright. That completes the public portion of today's meeting. We have two items left. One is there is an executive session so I would ask the attorneys to stay. There's also another Board meeting.

Douglas Kellner: Well, could we, we should talk about the date for the Board meeting.

Peter Kosinski: Right.

Douglas Kellner: And I want to formally move to go into Executive Session on litigation matters.

Peter Kosinski: Okay.

Douglas Kellner: On a personnel matter.

Peter Kosinski: Okay.

Douglas Kellner: And on a campaign finance enforcement matter.

Peter Kosinski: Well it's really a litigation matter.

Douglas Kellner: Alright, that's fine. So, litigation and personnel. I have one personnel issue I want to discuss.

Peter Kosinski: Okay. So, litigation. Well, let's do the next meeting first.

Gregory Peterson: Then we'll go into Executive Session.

Peter Kosinski: So, let's look at our calendar and today is the 15th of September. And I'm thinking the last week of October. Does anybody care? The week of the 23rd?

Douglas Kellner: What do Todd and Bob want to do?

Peter Kosinski: How about the week of the 23rd?

Bob Brehm: We need your availability, perhaps, for a web meeting on the 2nd of October.

Peter Kosinski: I understand that. I will not be available, I should just let you know that, but I know the other three Commissioners will. And that would be for the limited purpose of ruling on a potential challenge to a judicial race that may come in?

Bob Brehm: Because that's the day we have to certify the ballot.

Peter Kosinski: I would just ask that you restrict it to that and we can hold anything over to the next meeting unless it has to be done because I can't do it. But is the week of October 23rd something people are interested in?

Douglas Kellner: I think that's the time to do it.

Peter Kosinski: Okay.

Douglas Kellner: On that Tuesday or Wednesday.

Peter Kosinski: Yeah, Wednesday's bad for me. Could we do Tuesday?

Douglas Kellner: So let's do Tuesday.

Peter Kosinski: How about, how's the 24th for everybody? Commissioner, is that bad? It looks bad, your face looks bad.

Gregory Peterson: That's fine.

Peter Kosinski: Are you sure?

Gregory Peterson: Is Thursday any good?

Peter Kosinski: I can do Thursday as well, I can do the 26th.

Gregory Peterson: That's better for me.

Douglas Kellner: Oh, I have a trial that day.

Peter Kosinski: He's got a trial.

Gregory Peterson: Not the 26th then. That's alright, I'll change my appointment.

Peter Kosinski: Are you sure?

Gregory Peterson: Yeah.

Peter Kosinski: Commissioner Spano? We're talking the 24th right now.

Andy Spano: I'm okay the 24th.

Peter Kosinski: Okay. Are you sure?

Andy Spano: What about the 23rd, that's no good?

Peter Kosinski: 23rd?

Douglas Kellner: That's fine too.

Gregory Peterson: The 23rd I'm okay.

Peter Kosinski: Oh the 23rd's good, Monday. Sure, okay. Good suggestion. Let's do the 23rd, the Monday the 23rd of October.

Douglas Kellner: And if there's a problem.

Peter Kosinski: Yeah, we can adjust. But let's, it seems to work for everybody.

Bob Brehm: Sounds good.

Peter Kosinski: So, we'll plan on the 23rd and that completes today's meeting. I would entertain a motion to go into Executive Session for purposes of litigation and personnel.

Douglas Kellner: So moved.

Peter Kosinski: Motion.

Gregory Peterson: Second.

Peter Kosinski: Second. All in favor? (Chorus of ayes; 4-0). Opposed? We are adjourned. We will not be coming back into Public Session. I would just ask, I think, the attorneys to stay.