

Peter Kosinski: I am Peter Kosinski. To my right is Douglas Kellner, to my left is Greg Peterson and my far right is Andrew Spano. These are the four Commissioners.

Andy Spano: How come he's not far left?

Peter Kosinski: You should switch places. So, we'll start the meeting off with the minutes of April 24, 2017 which I believe all the Commissioners have received. Is there a motion to accept?

Douglas Kellner: So moved.

Gregory Peterson: Second.

Peter Kosinski: Moved and seconded, all in favor?

(Chorus of ayes) opposed? Okay so the minutes are adopted. And now we'll move into the unit updates and we'll start with the Executives, Robert Brehm and Todd Valentine.

Todd Valentine: Yeah, there's 2 main things I wanted to point out to you. We've been meeting in response to last Fall's election and looking forward with the Homeland Security Designation of elections and critical infrastructure, what we've been doing is analyze our own self and compare it in working with a vendor NYSTEC about our security matters to help us develop a risk assessment for the county boards, its something that we raised with them. We plan on sending out a survey to try to identify how we're at risk and they're at risk in how the 2 go together so we're planning on sending that out June this month now and then have a follow up with the counties and get their responses back. And then we'll do our own assessment later on in the year to figure out beyond what we've already done to figure out what further resources we need that we don't already have that we have to ask for in the next budget year that we don't already have in this budget. So that's, and its all in preparation to try and do as much as we can between elections so that we're ready for the next election so what we can learn from past vulnerabilities that we've had or incidences that have occurred and it also relates to we are sending out a number of staff are going to the County Board Election Summer Conference in Lake Placid at the end of June and we're on the agenda for a couple of events, a couple of sections so we're going to start planning to have those presentations ready probably starting next week that we haven't already thought of. Bob do you have anything to add?

Bob Brehm: A couple of items besides the Cyber security one NYSTEC is in the room, they're sitting in the back behind IT Director Cross. Also joining us on that Risk Assessment to make sure that we at least cover important topics, we continue to have the assistance of Peter Bloniarz who is the Executive Director and Senior Policy Advisor for the New York State Cyber Security Advisory Board. Long title but he's been very helpful to us. It's tough because it's a broad topic. We could get very far into the weeds but I think we have a limited budget and we want to at least try and do as much as we can with the resource to at least start with the risk assessment and see if we can lay out a path going forward. If we try and do too much, we might not be able to provide any kind of guidance. So we're really starting with a risk assessment. It will cover

survey questions to the county and most likely those will lead to follow up questions to the county. We hope to finish getting that survey ready in time for the June conference so we will use the new conferencing equipment to reach out to counties before the conference and also to the presentation at the conference. So we're putting the counties at the front of that cue because we know that this is the local election year and they're going to get very busy as we get closer to October, November and then we're going to put the State IT risk assessment in that second phase. So while they're busy running the election because this is their busier season that it is for us, we will then spend our resources during that busy time for them doing the state portion of that. So it's a two phase. We hope that somewhere around January 1 or end of this December to have that first recommendation or report ready, best practice advisories. The other item we did receive May 22nd from the New York State Attorney General the required advice for the two propositions or proposal that appear on this year's ballot in the form that the Attorney General gave the advice to us. We posted that to the website and put a link for people if they were interested in getting us comments. We have received several comments so far either before we got the advice from the groups associated with the lawsuits that we've had from Evan Davis.

Peter Kosinski: Now Bob when you use the word advice you're talking about the form that it's going to appear?

Bob Brehm: Under the statute the Attorney General opines on the form of the question and the abstract that is to in plain language describe what it is being accomplished. That's what we received. With constitutional convention it's a little easier since the constitution says the form of the question but for the, so the two is the Constitutional Convention the second is the Public Pension Ballot Proposal. So that language is here and it's posted. We'll get comments at some point for the deadline which is 3 months before the election before we will need to approve by majority vote a set of words that we can then get to the county boards and translate. So that's working. I think we've had the cooperation of the Attorney General. Todd and I have reached out since January and February when the words were known to us to try and get the advice of the AG. This is the first time we got it this early so that's helpful to us because it takes a long time for all the parts to come to be so that we can translate it, have a version that you're comfortable with adopting, then translating it and then getting the legal notices published which we should do before the election. All of those steps surprisingly take a lot of time and the AG's office was very amenable to trying to get us the advice early. So we appreciate that.

We had the special election May 23rd, it went very smooth. We had our staff for the support, I don't think we had many calls that day but certainly the evening to post the election results, the unofficial election results to the website worked very well in AD9 and SD 30, we received one certification already, I think from Nassau County we're waiting on the other two. It is the wind down of the legislative session but just one little report of the 22 bills that are in our annual packet 15 at least have a sponsor in one house or the other or both which is pretty good for us. We keep working on the other couple of bills, we haven't quite gotten a lot of excitement yet. Two bills have passed both houses so far, split shifts for election workers; give them a little bit more flexibility instead of requiring half day shifts, it allows split shift so of any portion during the day and a proposal that you championed Commissioner Spano a candidate contact information on a website as passed by both house so our proposal 89 had passed. Three others

have passed the assembly and still being considered; the ED size to go to 2000, alternate poll site organization, and streamlining to deal with the poll watcher, before every election we've got a lot of calls that all ends in the building about what does that section mean. It just makes it clearer what we've always interpreted it to mean so that hopefully that guidance will go out to people and we would get fewer calls. But that's passed one house so far. One bill has passed the senate and that would reform legal notice, it would still require the legal notice but that notice that is required to be published 6 days before the election would no longer have to have the candidate address. It's not really useful information that late in the season. Nobody's really making a decision on voting for or against anyone because of their candidate address. That would be more helpful information around July when they're filling their petition maybe. But that's passed the senate, hopefully it will move elsewhere. So that I thought was a good sign.

We had our monthly call with the Election Commissioner's Association last week, one topic that came up was quite an interesting discussion was certainly the rules by the reform party that are being litigated but we wanted to at least raise the issue with the county that the reform party, a reform party rule that's filed with us has a requirement that allows non-enrolled voters to vote in any primary for public office in the reform party. So at least to let them know as they prepare for the September primary that that's a possibility. And we did explain to them that there's ongoing litigation in regard to that but at least they should be prepared. It does raise a number of policy issues especially since the independence party also allows non-enrolled members so how to administer that will be a big topic.

Andy Spano: But there's a big difference. One is for certain offices and one is for all offices.

Bob Brehm: Correct but they both allow county committees to go beyond that. So the Independence Party is for certain statewide offices, and the Reform Party is for any public office but the Independence Party will allow a sub county committee to go further to offer local offices.

Peter Kosinski: So you're saying the Independence Party allows nonaffiliated voters to vote in their party primaries?

Bob Brehm: Certain.

Peter Kosinski: And the Reform party also is allowing that. So if I'm a nonaffiliated voter can I vote in both primaries?

Bob Brehm: That's a good question and we have discussed that. We're working on an answer to that question and I know our state colleagues in the Counsel's office will have a lot more to say on that but.

Andy Spano: ...Party when you have an open primary correct? So suppose the Democrats and Republicans decide to do that can you vote in 4 primaries?

Bob Brehm: Still a good question. Also a good question is the contrary, if they can't how do we organize which one you pick? It's easy for in person voting. It's harder for the permels who

already have an application with statutes to send them whatever ballot they're entitled to. How do they pick which one to send them? Same way with absentee voters, our current application doesn't really have a select one to send me. So, do we send them all and tell them to pick and only send us one back? There's a lot of policy questions we have to get our head around real soon so just like we told the counties they should work to prepare this, so should we. I wish we had more answers for you but we've been thinking about this since last ...

Andy Spano: Whether this extends itself out to Democrats and Republicans and every other party, is not the question here. The question is if everyone starts doing things like this in piecemeal it raises all kinds of complications and maybe we should take the lead in developing something that we suggest to the legislature to take care of this before it gets out of hand. Because you have one party that said, "Okay we're going to do these offices but if you're a locality and you want to do what in those offices its okay." You got another party saying, "These are all the offices." You've got a potential of other party's saying a variation of those, it wrecks havoc on the whole system.

Peter Kosinski: Well as I understand it there's limits as to what the State can do to regulate what a party chooses to do. I believe some of these rules have emanated from court decisions which have said parties have the right despite state law to allow non-party members to vote in their primary. So the way the parties configure themselves is largely determined by the parties themselves and I think there's a limit as to what the state can actually impose upon them as rules and regulations.

Andy Spano: Ah but we have a Constitutional Convention near year I mean the year after.

Peter Kosinski: Well it's a different avenue, I don't know if it can be addressed there or not. But there are constitutional issues here because I think it's a First Amendment right to associate what the parties have used to give themselves this authority. So I think there's some powers that the parties have that allows them to self determine.

Andy Spano: I mean if they have those powers fine. Then you have to put some order into the chaos by developing another way of handling that.

Peter Kosinski: But, until the parties actually tell you what they're doing its hard to develop rules because apparently the Independence Party has a different set of rules than the Reform Party even though it's on the same topic. So it's hard I think for us to develop rules when we don't know exactly what the party rules are going to allow.

Andy Spano: Okay I don't know whether constitutionality extends to the point where you can vote in anybody's election if everyone has this system of open primaries that you can address.

Peter Kosinski: I don't know, I don't know if you can. Maybe you can but I mean we'd have to look at that but whether we could tell the Reform Party if people vote in your primary they can't vote in the Independence Party. I'm not sure we can. If the Independence Party says, "We don't

care, we want them voting in our primary even if they voted in another party's primary" I'm not sure the state can say no.

Bob Brehm: I think the only issue we would look at, I don't disagree with anything you said, but from the policy point of view do you give them deadlines? Right now we have certain deadlines in the statute that if you're going to make a decision like that you at least have to let us all know to prepare in time before the election. It's hard to put that in place now for this fall already but if they intended for people to only vote, not allowing people to only vote in their primary cause that's the group, that's not what the rule says, it says any. So I don't know if that's what they mean, maybe they'll lament that. I don't know.

Andy Spano: Any you mean unregistered?

Bob Brehm: Non-enrolled. Nobody has a not registered. So anyway we shared that with the counties and there were certainly a lot of interesting questions. So that's what we have.

Douglas Kellner: So Commissioner Spano and I want to report that we have reappointed Bob Brehm for an additional 4-year term. And I just wanted to make a note that with respect to the website posting of the Attorney General's proposed text that I raised a comment after it had initially been posted where one said question 1 and the other said proposition 1. Well they've left it blank. I'm still not happy with how it appears. That 7-110 of the Election Law says that, has a form of how valid proposals appear on the ballot and everyone starts with proposal and then they're numbered consecutively and its very important that they be numbered consecutively and that the counties and municipalities understand that if they have additional proposals that they don't start the numbering from 1 again, but they start with the next number after what the State has provided. So we haven't determined yet what the ballot order will be but both of these items that are on the website, in my view, should start with proposal blank as provided by 7-110. We will get into the actual details when we vote on the language and I understand that people didn't want to do that today. But I just wanted to call that to everybody's attention again that 7-110 says that everything starts with the word proposal. And indeed, well...

Bob Brehm: Well I know when I said we did receive comments, yours was one of them. What we had hoped to do was to take, advise the laws that we needed to receive and put it out unblemished, you know put it out there...

Douglas Kellner: But Bob it isn't even in the form that the Attorney General sent it. You tweaked what the Attorney General sent in terms of the headings that the Attorney General used. So it's not even defensible on the ground that you just did what the AG did.

Bob Brehm: We'll check them again.

Douglas Kellner: Okay.

Bob Brehm: It was our goal to put it out as we received it so that I people liked it or didn't like it they could share that so we would have the benefit of all the comments in time of presenting a consensus to you. So certainly we'll continue to look at that.

Andy Spano: When legally does the 1 or 2 go on this?

Douglas Kellner: What is the deadline?

Andy Spano: No, I mean when you put a number on it.

Douglas Kellner: No but it should start with the word proposal.

Andy Spano: Oh proposal blank.

Douglas Kellner: Yeah.

Bob Brehm: And the research that Nick shared with us too is apparently every 20 years things are done a little differently none of which seems to follow that, not that we shouldn't start but...

Douglas Kellner: But the statute was amended in 1982 in order to...

Bob Brehm: 77 I believe is the last time.

Douglas Kellner: Yeah but it wasn't done right then and then you had.

Bob Brehm: I'm not defending that we shouldn't do it right I agree with you. I'm just saying we tried to put it out as quickly as we could that we received it so people could comment and then whatever was good or bad about it we would have the benefit of those comments to give you a proposal.

Douglas Kellner: Okay.

Peter Kosinski: Okay anything else on that? Anything else to report from the Executive? No, okay then we'll move onto the Counsel's Office, Kim and Brian.

Kim Galvin: Thank you. The current litigation has taken up a lot of time in the unit. I'll give you the specifics on some of those in a minute. We've met with Enforcement to try to finalize the process, the dormant committees and we have sent over the January referral for non-filers. The unit continues to do obviously the reviews and the deficiencies, we're finalizing the deficiency referrals to be made probably early next week. We've exchanged drafts on advisory opinion at the Board. We have met with DEMOS and DRNY to advocate groups regarding various issues that they have, one with the DMV process primarily and another one with our HAVA complaint process regs. The training unit has conducted 13 training seminars to date, 3 of which have been CLE's; the most recent one was yesterday and the day before. We have finalized the legal update and we have exchanged drafts and participated in calls with the

Department of Justice on the Department of Motor Vehicle issues. We have a meeting with them most probably Monday, this coming Monday. Again, they're coming in person. They flock here. There is a question from the DMV attorney whether or not a meeting is ripe yet but I presume they will come on Monday to talk about any outstanding issues but I think we're close on that. With regard to the cases that I just, obviously, we've assisted the other units PIO tremendous amount of FOILS. There's been some participation with Brian on regs that we're going to talk about later in the agenda. With the 3 regs that we put out for comment last meeting, they were published in the register on May 24th, the comment period end July 8th. With regard to the cases, since we last met there was 2 decisions from the Second Circuit Court of Appeals affirming the lower Circuit Court's dismissal and that was Davis v. Kosinski and that's the gentleman that also wrote the letter on the Ballot prop that Bob referenced earlier and Sloan v. Michele, Mr. Sloan has made a motion for a rehearing but we can't respond to that.

Peter Kosinski: Kim maybe you could just tell us briefly what the subject of these litigations were.

Kim Galvin: Well Davis was he wanted to be an independent delegate for the Constitutional Convention not affiliated with a party or anything like that and Mr. Sloan well he had a variety of issues. He challenged the compositions of the Board in New York City and here and he said that we disallowed him on the ballot on purpose. He's representing himself. In any event...

Peter Kosinski: So it was a ballot access issue?

Kim Galvin: Well and the composition of the Board that we shouldn't be made up the way we are in a bipartisan fashion. And I believe there are a couple of cases that we may continue our conversation on in Executive Session. One being Parish v. Kosinski which is the witness residency for village petitions and the other being Water v. Pellegrino which was a relatively recent case but it is going on up appeal independent expenditure case. And I think that's all that I have. Do you have anything Brian?

Brian Quail: I do not have anything to add to that. The Water v. Pellegrino case I think is the only one that actually began and has ended in its first phase in the interim since the last meeting. All the others are just continuing in progress.

Douglas Kellner: Alright, I did want to talk about one aspect of Lauder v. Pellegrino publically and then we can talk about tactics in Executive Session later that I'm very concerned about the court's ruling in Lauder v. Pellegrino because it repeats what think was an erroneous decision a couple of months earlier in the McGrath case coming out of Nassau County. So, now we have 2 Supreme Court decisions that have held that voters and candidates do not have standing to challenge failures to comply with the independent expenditure rules or other provision of Article 14 of the Election Law. And I think the decisions are patently erroneous and are based on old cases that rulings were made before the statute was amended to put in place the prohibitions on expenditures that are now contained particularly with the adoption of the Independent Expenditure rules. The court seemed to put together language in 16-114 §3 that ignores the provision of 16-114 §4 that envisions proceedings other than proceedings to compel filings.

Because 16-114 §4 explicitly says a requirement that a bond be posted in proceedings except a proceeding to compel the filing of the statement. So obviously, the standing is not just to proceedings to compel the filings of the statement but for any other violations of Article 14 of the Election Law. If there were only that type of proceeding that was authorized there'd be no need for the undertaking language. And in my view the court is also incorrect that the only remedies available are civil penalties in 14-107A or 14-107. While those sections include civil penalties that apply exclusively to those sections, there are other potential penalties that are envisioned by the text but not just in 14-107 and 14-107A. Specifically in 14-126 there is a provision for penalties for excess contributions that would include so-called Independent Expenditures that are coordinated and also include possible criminal penalties both for misdemeanors and felonies depending on the mens rea of the violation of the Independent Expenditure rules. And the new §8 in section 14-107 cross references the mens rea in 14-126 which further supports the harmonizing of all the penalties that can be imposed. As caseload develops, I envision a claim by a candidate or 5 voters who use 14-114 to prove coordination and convince a court to require a refund of the contribution pursuant to 14-126 §2 that that is a remedy that I believe the legislatures specifically anticipated in addition to the two other remedies which are proceeding by Enforcement Counsel who can seek a civil penalty or by a prosecutor who can bring criminal proceedings for the violations. And so I think that it is essential that we as the Commissioner's of the Board of Elections go on record to support this interpretation of the Election Law that a candidate or 5 voters does have the right to go into court to challenge violations of Article 14 of the Election Law and not just adhere to the holdings in the McGrath and Lauder cases that the only time voters or candidates can challenge under Article 14 is a failure to file. So we can discuss the tactics of how to do this in Executive Session but I hope the Commissioners will agree with me that this is an important issue that we should go on record on our interpretation of the statute.

Peter Kosinski: Okay so we'll talk about that more in Executive Session. I think we've already been in court on this is that fair to say with the position from the agency's standpoint?

Kim Galvin: Yes.

Peter Kosinski: So I think we've already set out our position. I mean, beyond the statutory references that you made I think there's a broader public policy issue at play here as well as far as the ability of someone a candidate or citizen a voter having the right to go in to challenge someone's activities during an election which would include an Independent Expenditure Committee. So I think there's a broader public policy question at play that should allow voters to go in because it's impacting potentially the election that a voter is participating in. So I think we've already been on record on this but we will certainly talk about it more in Executive Session.

Douglas Kellner: I appreciate that. And I guess I should just also add that I don't necessarily agree with the substantive claim being made in Lauder but the court didn't rule on the substantive issue, they simply said they don't have standing and that's my problem with the case. I probably would have ruled against the petition as a failure to state a cause of action but that's not the issue here that the court ruled on. They ruled that they don't have standing and I think

that's very problematic that we should not restrict the ability of candidates and voters to go into court to enforce compliance with Article 14.

Peter Kosinski: Okay any other comments for the Counsel's Office report? No? Then we'll move on to Election Operations, Anna Svizzero.

Anna Svizzero: Thank you Commissioner. We have a monthly report in your packets but I will summarize it for you. We've received party calls from 5 parties, those were sent onto the county boards. Party calls identify for the public, the interested public and the boards how many persons can be elected to judicial delegate and alternate delegate positions and also state committee seats, if indeed there are any. The party calls identified that information for the boards. As the others come in we'll certainly send them on to the boards so that they'll have all the information that they need for the petition, the ballot access season and that's a month away. We have our Diminimus decisions from SLI. Dominion is replacing because they're not longer available off-the-shelf laptops and hand-held accessibility pads for the ballot marking devices. We're doing functional testing on those but there's no vote of the Board required. We're required by regulations to just inform you of that but we are doing functional testing and we will be in touch with Boards that are purchasing any new equipment to make sure that they are on board with the latest off-the-shelf versions.

We have been working with IT on the CAPAS upgrade. We continue to do that. We also participated in the monthly phone calls as has everyone around the table with our county boards. We collected absentee ballot information and results from the special election that was held on the 23rd. Monday is the last day for military ballots to arrive at those boards so even though they have preliminarily sent certifications to us they are going to notify us on Monday if those need to be amended or not. So, at some point you'll have a Board of Canvassers meeting the next time you meet because they can take, the senate and the assembly can take those results that have been provided by the counties involved and seat the winners of those 2 contests. The two contests were the 9th assembly district and the 30th senate district.

We are working on, we work on a lot of things every day. We have a lot of points of focus. Trying to get ready for the conference to see what they actually want from us or what they don't want from us. We have some new Commissioners that may be coming to Albany for Commissioner Orientation.

Brendan Lovullo: We've been involved in the cyber security stuff as well.

Anna Svizzero: Brenden and Bob Warren have been participating in those meetings helping to identify county board risks and the kinds of questions that boards should answer and be posed in a way that boards can answer them without reaching for a dictionary and 2 IT directors. Some of the questions are for the county board IT departments because that is obviously where boards might be vulnerable but some of the bigger boards do have their own IT operations in-house. So we're contributing to that discussion with NYSTEC and Bill Cross and others. And we have nothing new to report. We did amend our Supreme Court vacancy list. There was an additional

resignation on the 7th so that was amended and sent out to the boards in that judicial district. And I believe that's it. Brenden do you have anything you want to add?

Brenden: I do not.

Douglas Kellner: Anna are you going to make a presentation about the Albany School Board ballot issues?

Anna Svizzero: I can do that now or under new business whatever the Board's pleasure is.

Douglas Kellner: Yeah, I think we were going to do it now as part of your report.

Anna Svizzero: Okay. We do have copies of a ballot that for some reason was problematic in the school board election in the county of Albany in the town of Bethlehem at the election that was about a week, week and a half ago. We are efforting getting additional sample ballots from Albany County. There was some discussion that the ballot layout contributed to the problem. In our discussions, Brenden and I spoke to the County Board of elections to the Commissioners there and the ballot in this particular school district was repeated throughout the county. There were no other school districts that had the same problem. So we are looking at their ballot composition. We are also getting sample ballots from those other school districts in Albany County. We're also going to get sample ballots from other counties so that we can come up with some advice, best practices if you will, on how school boards ought to build ballots that lend the same kind of consistency we aim for in our own ballots in municipal elections to those school board elections. They run their own elections, run their own show, they have their own formats that they want to follow but we'd at least like to be able to identify for them some areas that are problematic. This particular ballot in Bethlehem school district, we are also going to get the ballot images for the ballots that were cast. We understand there may have been people who were handing out sample ballots that were mismarked. We understand there was a lot of discussion about the candidates. There was a lot of bullet voting that went on. There was a lot of write in voting that went on. There could have been some debris on the read heads of the scanner that made ballots be determined to have write-ins on them but when the board actually looked at the write in ballots, there weren't. So we're going to try to get those ballot images. We're reaching out to the school district because the county board doesn't run the election but ballot images our school board elections. So we just want to make sure the school board understands why we would be looking for those so that they have the right permission to grant access to those.

Gregory Peterson: The school board does their own thing I understand that and they, in this situation didn't they go to the county for final approval and then frankly just went ahead with what they wanted to do?

Anna Svizzero: Our understanding from the Commissioners in Albany County is that the school district sent the ballot, sent the format they wanted. The county configured the ballot and then the school district does take it to its own printer. The Albany County Board provides them with information concerning the printers that are available. Obviously the two that most of our

counties use, some of the local county boards print their own ballots and they have also printed for other counties. So we're going to determine who actually printed these ballots in case that might be a conversation we need to have or want to have.

Try to narrow down exactly what the issues are here. For example, we're uncertain why all of these sections on this ballot are called propositions? Why proposition 1 and 2 are school district ballots, 3 and 4 are library elections and then 5 is another school district issue. They're just, it's hard to read. The issue with all the write in boxes is one that all of our boards have and we have this conversation every time a primary election is set up. You can vote for 3 but yet there are all of these write in boxes. Our county boards have had a lot of arguments with, maybe not argument is the right word but discussions with candidates when there is a field this large and the write in boxes only appear under the first 3 names. Why are you encouraging people to write in against me? or they'll put boxes at the end for the last 3 and those 3 people are complaining to the county board about the positioning of those write ins so a lot of county boards do have write in boxes all across the contest title. It does create issues. It creates a lot of discussion. They have to have those fights locally. And I think they look for the path of least resistance. That's not always what we recommend but they're the ones that are dealing with these people on a face-to-face basis so we need to look at that whole write in issue. But in any event, we're freshly into this. We understand that there are issues. How school districts build their ballots. Maybe they wanted them to still look like level machine ballots or whatever their issues are but we think we need to provide them with some direction so that the direction they give the county board is a little more consistent with what we understand and optical scan ballot to be. It better reflects some of the usability issues that have been identified by good government groups as to how our ballot should be changed. For example, this particular ballot the usability instructions that we provide our county boards is if the names are flush left the statute says they're all capital letters but we tell boards to use upper and lower even though the statute doesn't necessarily support that position. But we have tried to incorporate those kinds of tips to our boards when they're building ballots. We send out a sheet of instructions to boards. A copy of it is with your packet. We look at the ballot when we certify it. We look at issues that we need to clarify with boards. For example, that numbering of the propositions. We always let them know these are ours and yours have to start with this numbering system. You can't renumber everything on your own that kind of thing. So we're looking for best practices for the school boards and that information, when we collect it and present it to you, somehow needs to find its way to the school boards and I think telling our boards how to build a school district ballot is preaching to the wrong choir. I think the school districts need to know what these usability issues are. What ballot layout issues are and what better constitutes a more consistent ballot for their voters. I think that's a problem we have whenever people other than us run elections and until the day we run them all, which I would hope is soon, it's always going to be a problem. But that's what we're efforting; getting sample ballots from the rest of Albany County's districts, getting them from neighboring county boards for their school district elections, reviewing everything that we get. Phil Jorczak is here he's with Joe Burns our two usability staff members to review ballots when they get filed with us. County boards do send us their ballots prior to the election. We review those for really egregious errors. We review their instructions. Sometimes boards put absentee ballot instructions on the Election Day ballot you know, that kind of thing. Brendan is going to be picking up where Joe left off but last year was a tough year to get him into a new field of

expertise so we're hoping to do that this year with a couple of workshops that are coming up with the usability, good government groups and they can attend those and pick up some first hand information and bring it back and we'll apply it as best we can to the tips that we get from boards and present them to you if you want to go further with them by way of a regulation or a Board opinion, a formal opinion or a decree of some sort that would trigger more compliance with the kinds of issues that we continue to raise and have not been successful across the entire state in applying them. We did provide you a copy of the newspaper article?

Douglas Kellner: I want to thank Anna for that report. I think that this is a very important issue in terms of training and professionalism of our election community that we need to emphasize the importance of usability and to be focusing on usability principles. And as the election professionals we need to have the training ourselves so that we can identify potential problems in formulating ballots and then we need to provide assistance and services to the counties and in term to the school board community to help them implement those principles. There are half a dozen things that are obviously wrong with this ballot in my view that can be a teaching experience for people who design ballots. For example, to me one of the strongest things that's wrong with this ballot is that there are 5 sections to the ballot for the propositions but the heavy lines are not uniformly separating the sections and indeed you have the same heavy line bisecting the two propositions that are voting blocks for candidates so that the 5 blocks themselves are not separated and the idea of putting the heavy line between the candidate name and the write in box misleads the eye in terms of how the sections are. And then Anna has already talked about some of the other issues with fonts, with having more write in boxes than the number of write ins that are allowed, and the layout in general. But I think it's very important that we have Brendan and Phil get as much training as they can on how to identify usability issues and to beef up our own presentation for the benefit of those who are designing ballots so that we can have the most user-friendly ballot possible.

Peter Kosinski: Well I don't think we disagreed that having a user friend ballot is our goal. I'm not sure myself exactly what happened here. I read the article, I'm the local guy so I was familiar with this because I read the articles locally when this all came out. Anna you're sort of alluding to the potential that there were sample ballots out there that were not helpful that might have actually been confusing to people is that what you think part of the problem was?

Anna Svizzero: The Commissioners in Albany County thought that that might not be the only problem, not be the problem but certainly contributed to it that perhaps someone had mismarked a sample ballot and distributed it 100 feet away from the polling place but handed it out to people and colored in the oval that appears on the write in line rather than the one that appears above the candidate.

Peter Kosinski: Well here's the problem at least as I read it from the newspaper was limited to the candidates and the write in's is that correct? I mean there weren't problems as I understood it that referenced the other parts of the ballot. The problem seemed to center on those school board candidates and the write in's and people were filling in bubbles for write in and not filling in any names.

Anna Svizzero: The number of write in's I think was overwhelming that's what triggered some scrutiny there.

Peter Kosinski: So why that is I don't know.

Douglas Kellner: And the heavy line you know may have been part of the problem but I'm not necessarily faulting that particular contest, what I'm trying to do is to use it as a teaching moment where we ourselves look again at the need to focus on usability issues and ballot design issues and share that knowledge with other people who design ballots whether it be the county boards or whether it be school boards and the education department just to alert them to how to do the best design.

Anna Svizzero: We do a report card on our own ballots when the samples come in, they're reviewed by our staff and we have a check off list that resembles the TIPS document that we shared with you so that we're looking at every ballot to see if they've applied rules. If they've done something terribly wrong we call them right away but we do review our own ballots that are submitted to us and come up with that report card so that we can reach out to boards when we do our on-site visits and talk to them about those issues and see if we can't get them to see the light a little bit brighter than they're currently seeing it.

Peter Kosinski: Alright thank you. Okay is that all? Is there anything else from your unit?

Anna Svizzero: We have nothing else.

Peter Kosinski: Okay then we'll move onto NVRA PIO, John Conklin.

John Conklin: Thank you Commissioner. The Public Information Office has been very busy since the last Commissioner's meeting, lots of calls, everybody is always interested in campaign finance filings, and the special election on the 23rd was very busy. In addition to that, Kim alluded to it, we had 77 FOIL requests in April and 108 in May. Tom and I participated in the monthly ECA calls in April and May as well. We've also been attending the Cyber Security Assessment Meetings that a lot of other people are involved in as well. I will discuss this. I promised this at the last Board Meeting. I want to show you that there is a copy ready.

Peter Kosinski: I'm sorry, what is that John?

John Conklin: This is the Annual report. It is completed but for one unit.

Risa Sugarman: It's in editing. It should be done. I tried to have it done for today but the editing isn't finished. But it will be done.

John Conklin: I know we discussed that at a couple of meetings now so I wanted to make sure that you are aware of the status of it. For the website, as we already discussed we posted draft language for the ballot proposals. Just to add to that, I understood all the parts that were discussed there, this is what's potential on the ballot so far, the legislature is still in session, there

could be additional ballot proposals that come out of the legislature. I think there's at least 1 potential other one that could be passed that's already had a previous passage through the legislature regarding a land bank for forest preserves and there was some discussion about a water bond act, I think that is not going to happen but there was a discussion on the legislature and it was reported in the newspaper. So, just the 2 that are out just so far so there could be more until the legislature is adjourned. We've posted results for the special election in the 30th Senate District and 9th Assembly District on the website. That went very well. The PIO staff and a couple of members of IT stayed late to make sure all those results came in. We've also posted the webcast and the transcript for the April 25th meeting. Since the last Board meeting, Greg and Patrick visited the Westchester Board, the Ulster Board, and the Washington County Boards for NYSVoter Reviews. That's all I have. Do you have anything to add Tom?

Tom Connolly: The only thing I would add is at the beginning of May we kind of worked with the IT department to do the national change of address scrub that we do every year where we run it against the NCOA database and provide the results back to the counties for processing. We timed it so that they can benefit from the CAS certification that gives them discounts on postage when they do their August mailings, it's a 90-day window so we try to do it as early in May as possible so that 90 days from that date will still give them until the last day they're allowed to do the mailing for the statute. On top of that we worked with a handful of counties to get their military ballots up for the village elections using our system and lastly, I visited Fort Drum last week to attend, the installation of Voting Assistance Office was giving a presentation to the unit Voting Assistance Officer, different soldiers in all the units who are responsible for helping soldiers from their respective states get access to the ballots. I was happy to attend that. The Commissioners from Jefferson County also attended that. We had the opportunity to speak with some of the soldiers who are taking on those duties to thank them for their service and to offer our services of resource.

Peter Kosinski: Good. Anything else? Any questions? Okay thank you. Then the next unit is ITU, William Cross.

William Cross: Good afternoon Commissioners. I'll start with projects; in terms of CAPAS-FIDAS we've made some good recent progress. We're developing election and political party configuration functions and developing use cases for petition filing, and candidate maintenance. We've also completed test cases for the election function and working on test cases for the political party functionality. Project still remains in need of 2 additional development staff. We mentioned last month that condition for obtaining those staff was that we submit a private plan and budget to ITS for the approval to suballocate funds from them to us to pay for these positions. We did that and ultimately have received that approval for at least a portion of those funds so we are moving ahead finally with the ordering process to get those additionally hourly consultant development resources. That said, that process still takes some time as well but we are anxious to finally move ahead with that, its been stalled for quite some time. The NYSVoter we continue to work with the vendors for the Refresh project. We're nearing completion of the planning and design for a whole new infrastructure in networking and servers, disaster recovery between here and our DR site, redundancy. We've started some acquisitions in that regard and we are actually starting to roll out some of the pieces of that new design where acquisitions

aren't required; for instance on-site here. Moving, I think I reported last month as well we've started development of in-house application to replace the currently outsourced military and overseas voters' application. Security has been a hot topic this month. There is a lot in the news about the ransomware and wintacy infection that caused multiple corporate entities the State has taken a large effort to ensure that everything is protected including Microsoft issued, actually patches for some older servers and older environments that they don't normally issue anymore. So my group did try to make sure that everything we have is up to date and we are covered and we had no incidents because of that. I mentioned a couple of times we're working with NYSTEC and New York State License Risk Assessment, current activities focusing on this questionnaire for the counties. I think in many ways we stress the results of this initial questionnaire will really allow us to define and prioritize what we look at next in terms of areas that need further attention for election securing. There is a New York State Cyber Security Conference being held next week, the end of next week June 7th and 8th in Albany. BOE will be participating in a panel discussion along with others from SUNY, Homeland Security and NYSTEC. We have our annual Microsoft support renewal is up in July. We have a resolution to the Board for the portion of that to fund a portion of that this month. You probably noticed behind you we have a new addition. Can't miss it. So the media capabilities for the Board Room and the Law Library have been upgraded. The project is still a little bit of work in progress. We're still working on some pieces of it. But in short, it replaces the old projector and screen that we had, provides white board capability that you can save your white boarding form, e-mail it and print it after, along with full audio and video conferencing capabilities, that's the portion we're still working on. It's our hope to not only make meetings more productive but also help increase outreach to counties in using for our interactive training, possibly limiting some travel as well in the process. Website stats are pretty much normal. Everything leveled back out after the general election. There is nothing significant really to report for now.

Peter Kosinski: Any questions? Bill, I have a question. Any update on the timeline. I know that keeps coming up but I wanted to bring it up. Anything new on that as far as you're concerned?

William Cross: Well I didn't wear my cavalier so.

Peter Kosinski: I'm just asking. I don't mean to be...

William Cross: A new project manager has come on and we have tried to pull together the pieces of where we're at in a lot of these pieces. It still has remained difficult because we don't have all the resources we need to do it. But based on resources that we do have, we have projected it out. In total between testing and rollout and follow up to be April of '19. We're hoping with the resources that we still have outstanding to significantly pull that back in. There are also some pieces that were defined in the original project that were to be custom built. I feel that they don't need to be. I think that's a waste of effort. We can concentrate on others so some lines of communication with Microsoft and a couple of other vendors to use some hand functionality software where we can get commercial off-the-shelf top solutions where we tend to supplement that and not be able to take that off our plates in terms of development.

Peter Kosinski: So you're talking April of '19 if nothing changes.

William Cross: The complete end date.

Peter Kosinski: But you're hoping to move it up is that what I heard?

William Cross: We can move it up with the resources we've got these now we can start obviously hoping they would start last year and pushed out this long, we finally got approval but even after the order process typically take a couple of months before we get somebody in the chair to do that. I've been trying to fill these resources since I arrived in August and this is still ongoing.

Anna Svizzero: How long it took to fill yours.

William Cross: Well if I don't do it you may be filling mine.

Peter Kosinski: Any other questions? Okay thank you. Than Enforcement Risa Sugarman.

Risa Sugarman: Good afternoon Commissioners, I did submit the conversation the discussions we had last meeting about the proposed regulations on the Fair Campaign Code and the removal of the treasurers. I submitted to both Counsel and the Commissioners some suggestive language that I thought would be advantageous so I sent that to all the Commissioners and to Counsel. And as to the Lauder litigation I think that you all know it was mentioned in the decision. It is my position that that decision by Judge McKay was correct and I do not believe that there is a private right of action and it is my intent to file with the court a motion for permission to file an amicus brief. I told Brian that yesterday. He said that he was going to inform you of that. So I guess I won't be at that Executive Session where you discuss your positions and how you plan to proceed. But it is my position that Judge McKay and Judge Palmiere were in the McGrath case were correct in their decisions. So we plan to go forward, if the court grants us permission to file an amicus brief.

Peter Kosinski: Anything else?

Risa Sugarman: Nope.

Gregory Peterson: When you say grants us, who is us?

Risa Sugarman: The Enforcement Division. We have to file permission since the Board is the necessary party so we would have to seek permission from the third department to file a brief.

Gregory Peterson: So you're representing one portion of this New York State Board of Elections?

Risa Sugarman: Correct.

Gregory Peterson: Using the resources of the New York State Board of Elections.

Risa Sugarman: Using my budget yes.

Gregory Peterson: Okay.

Risa Sugarman: We appeared both at the conference and at the hearing and it is my position that there is, and I don't think that's a surprise to the Board I think we appeared at McGrath at the conference call on the McGrath case.

Gregory Peterson: Lack of surprise doesn't indicate acquiescence.

Risa Sugarman: Oh I understand. And I have not ever hidden my position or my, that's why I told Brian yesterday that it was my intention to file that motion.

Peter Kosinski: Anything else? I just have a couple of things I want to, kind of old business that I think we had. Failures to file. I'm still interested in that topic. I know that in January I think I had numbers a little over 2,000 failures to file for the January periodic and I'm, wondering what the status of those are? Is your unit taking any action regarding those? I believe the last report we got you were sending e-mails to some filers asking for their filing and then you were going to follow up with a letter.

Risa Sugarman: Yes, the letters I believe the letters have gone out to certain of the committees. My attorneys, I have an attorney now reviewing, I don't now how many there are on the list but the list of those who have several judgments and continue to fail to file. We're reviewing those for preparation to request referrals if the cases are those that we can bring to the Board for referrals to either the District Attorney or to the Attorney general for criminal prosecution.

Peter Kosinski: So these would be committees that have judgments from years back I'm assuming?

Risa Sugarman: Correct.

Peter Kosinski: Because you're not really bringing judgments anymore against committees. So these will be judgments from what 14, 13, 12 back in those...

Risa Sugarman: Yes, and they continue that are committees that are not dormant because among the numbers that are included in those 2,500, I don't know the actual numbers, I think that figure I would not agree but there are committees that are included in that list that have 40 judgments that are not functioning anymore and there's no, there doesn't seem to be when the computer generates that list there doesn't seem to be any ability for the computer to know whether the committee is active or not. It's just that the committee has not filed a report, doesn't indicate whether the committee is still functioning. So we're trying to like...

Peter Kosinski: Well I guess if a committee is not filing it would be difficult to determine if they're still functioning, I guess that's the whole point of making them file is to determine whether they're still functioning or not so.

Risa Sugarman: But if a committee is still on a list and has had 36 perhaps, 36 prior judgments that might indicate to me or might be an indication that there's no one there, that there's no function, there's nobody there that's doing anything and the committee might be dormant. I don't know and I don't think that when a computer, when a button is pushed that...

Peter Kosinski: Well even a dormant committee has an obligation to file to tell us that.

Risa Sugarman: That's true but I don't believe that that committee, that the limited resources that I have would indicate that I should be using my resources to again file a lawsuit on a committee that already has 36 judgments. So that's a problem that I have with a computer-generated list when you can't tell whether the committee is dormant or not and that's why when I meet with Kim and with Brian and Marie and Bob Eckels, Marie Woodward and Bob Eckels when we're trying to determine how do we determine among the list of people and committees that are on that failure to file list which are the dormant committees? How can we determine how we reduce the number of committees that are on this list so that on a failure to file and non-filer list are there actual committees that are functioning, spending money, putting up candidates that we look at and that should be looked at for enforcement action?

Peter Kosinski: Isn't it easy to determine whether a committee that's attached to a candidate is attached to an active candidate, either a candidate who is currently in office or is currently running for office as opposed to say a committee that maybe supported a candidate back in 2012, the candidate lost and the committee may be dormant based on your theory because the candidate lost and is no longer running. Wouldn't it be easy to determine the committees that are attached to active candidates and thus the presumption would be, it's an active committee?

Risa Sugarman: But that's not what's on that number that you're giving the 2,500.

Peter Kosinski: 2,100 actually.

Risa Sugarman: That's not what's on that list. You have people and candidates and committees...

Peter Kosinski: But can't you figure it out from that list Risa that what I'm asking you?

Risa Sugarman: No its not, well it's a method and it's a process to do that. Some of the committees that are on that list are from 1998.

Kim Galvin: In fairness, we've discussed dormant committees and we've been waiting for weeks for the Enforcement Unit to give us parameters to execute the letters and the process we've already outlined.

Douglas Kellner: And you haven't gotten it.

Kim Galvin: And we haven't gotten it.

Peter Kosinski: I mean it just doesn't seem to me it would be that difficult to determine which committees we might agree to being dormant for the reasons I outlined let's say, candidate lost back in 2010. That situation as opposed to the committee that I think we'd all agree is active because there's a candidate attached to that committee that's still active. It just doesn't seem to me that's a difficult sort of marrying of information that this agency holds together. Because we would be the ones who would know which candidates are running, have run in past elections because that's what we do and then we'd also have the list of committees attached to those candidates who didn't file.

Risa Sugarman: I agree with you and quite frankly I'm not sure I would agree that Brian and Kim are waiting for parameters from me but I'm not going to get into that argument at this time. We've had our meetings, I wasn't aware other than one figure about a negative balance that they were waiting for other things from me but I don't want to get into that argument. Yes, that's what should be happening. We should in a 2013 race or a 2015 race when somebody loses a primary that perhaps someone not me, should say to them, okay you've lost the primary please close your committee so that you don't get into trouble by having not filing your next 10 or 15 or 5 or 3 disclosures. Because those people get on the list too. Or if you've lost your campaign, if you've lost your election, please close your committee instead of just putting a notice up on the website, we'll teach you how to close your committee. Some outreach. When I get a referral, my people, my auditors, my investigator, my attorneys reach out to the committees by telephone. I understand that there are a lot of committees that we're dealing with but outreach person to person is important. Candidates don't always know that they have to close their committees. And instead.

Kim Galvin: Because they don't.

Risa Sugarman: Because they don't know?

Kim Galvin: Close their committees.

Risa Sugarman: Well if they're not going to run again.

Kim Galvin: They're going to run next cycle.

Risa Sugarman: Then maybe they should be instructed, okay you can close a committee and open a new committee instead of all...

Kim Galvin: Then they have to disgorge the funds and re-raise that amount of money.

Peter Kosinski: Well what I'm trying to get at I guess I if your theory and your practice is to pursue what you deem to be active committees and not pursue those that you deem to be

dormant, I'm not understanding why its not, why you're not capable of determining which ones are active and which ones are dormant because it seems to me self evidence, if they, as I've said, if a committee is attached to a candidate who's currently in office or currently running or has run very recently, they're attached to an active candidate and that should be an active committee and they should be pursued because of that and I think under anybody's theory they're not dormant and they deserve your attention. And I'm not understanding why they're not getting that attention.

Risa Sugarman: Well I'm not sure they are not getting my attention in those circumstances because my review of the lists that I'm provided is the majority or the numbers of the committees are old committees from the early 2000's, the '90s, people who have multiple judgments and some of the candidates or some of the committees the candidates are in jail. Now yes, they could get out of jail and they could decide okay I'm not going to close my committee because I want to run again.

Kim Galvin: They have and they've won.

Peter Kosinski: Well not only that but committees don't have to necessarily continue with that candidate. Committees can do other things as we know too but that's a different argument. I'm just trying, I mean, as you know, I'm frustrated that the practice this Board always undertook pursuing failures to file is no longer happening.

Risa Sugarman: Yes, I know that.

Peter Kosinski: And I think that's a big failure of this agency now because it's diminished the incentive, I believe of candidates to file. And I think that's a very bad message to be sending out to the community that you no longer have to file here and there's no penalty...

Risa Sugarman: And I disagree with that.

Peter Kosinski: In fact a penalty may occur if you do file here and make a mistake, that's when you may have a penalty.

Risa Sugarman: And I disagree with that argument.

Peter Kosinski: So now we're having the situation where failure to file may be a better option for a candidate than filing something that has a mistake in it and I think that's a bad message to be sending out to the election community that your failure to file is no longer being pursued by this agency and you're basically getting away with filing nothing. The public now knows nothing about your campaign, knows nothing about your financial filings, and knows nothing about what money you're accepting, what money you're spending. I think it's a very bad message and very bad practice.

Risa Sugarman: And I think it's a bad message that you say that because I don't think the community as...

Peter Kosinski: I'm not saying anything that's not true Risa.

Risa Sugarman: I think that when a candidate hears a Commissioner say that, they say, "Okay I'm not going to file."

Peter Kosinski: I disagree. I think when the candidate hears you say that you're not pursuing failures to file...

Risa Sugarman: No, they don't hear that from me Commissioner.

Peter Kosinski: Then that is a bad message to be sent.

Risa Sugarman: They hear that from you.

Peter Kosinski: What they should be hearing from you at this meeting which is a public meeting to tell people what's going on is, "I am pursuing them like we always have to discourage people from not filing."

Risa Sugarman: No, what they're hearing from me is I am not going to pursue candidates who are first time candidates or the same just like the Moreland Commission says and here we go again that the Moreland Commission says that the procedure that the Board used treating first time candidates the same as experienced candidates, the example they used was Pedro Espada was not the way to process and to treat campaign disclosure and investigations. So when that's how I view that I should approach that. I don't treat first time candidates the same as I treat those who flaunt the law. And you can look at me like that and you can laugh and smirk Commissioner Kellner but I don't treat those candidates who continuously refuse to file or file falsely the same as I would treat a first-time candidate who might make a mistake.

Douglas Kellner: You know that would be all well and good if you set forth actual principles and then followed them, but what you have just said is basically a falsehood because there is no principle and there is no enforcement. You have taken the position that is akin to the Mayor in announcing that it is a misuse of police resources to write parking tickets so we're not going to write parking tickets any longer. And that's what you've done. You've basically said there are not going to be any sanctions for failure to file unless yours is the kind of case that's going to hit the newspapers. And I think that's a horrible, horrible way to proceed. There are no standards for what you espouse as principles and in fact what it is, is just a policy of non-enforcement. But you know what, you're the Enforcement Counsel and the way the law is currently written it gives you the complete unfettered discretion to do that and so god bless it.

Peter Kosinski: I think we agree it's unfortunate. I think we're in agreement here that it's unfortunate that that's what's happened to the Enforcement of the Election Law in this state. And it's frustrating to us because I worked here a long time and during those years we always pursued failures to file because it was a principle that that was the most egregious violation that a

candidate can make or a committee can make in the campaign finance arena. It's telling the public nothing about their campaign finance.

Douglas Kellner: It was also totally objective and totally nonpartisan that everyone was treated the same. But now the principle is that no one is prosecuted unless it's such a magnitude that it's going to make the newspapers. But, Commissioner you and I don't have the responsibility for that. There's nothing we can do about it except shed public light on it.

Peter Kosinski: Right.

Andy Spano: I've got to ask a question. I'm fairly new to this Board and I'm listening and saying to myself let's go back to the Espada situation. Let's assume I didn't read the Moreland Commissions comment but let's assume they made that comment. Now they make the comment they're treated the same way but we didn't have an Enforcement Counsel at that time is that correct?

Peter Kosinski: No, we had, we had an internal one.

Andy Spano: With the same powers and the same...

Bob Brehm: Not the same resources.

Peter Kosinski: Not the same resources but we did have an Enforcement Counsel at this agency yes.

Andy Spano: Who could do what she does?

Douglas Kellner: Yeah, but only a fraction of the budget.

Peter Kosinski: A small staff acknowledged.

Andy Spano: So this adds another element of resources that you didn't have at that particular point. Just follow me for a minute. So that if you looked at Espada and you said, we really want to go after that guy, you couldn't go after him the same way she could go after him right now.

Bob Brehm: We didn't have the resources.

Andy Spano: So the comment from the Moreland Commission may have been correct in the terms of the resources that were available at the time. So now we have a situation where you're able to handle everyone in a similar vane and get to a point where all are being handled the same way. But when you had a diversity of situations there where you had someone who was a first-time candidate and someone who was Espada like it was difficult to take it, especially if you had 10 of them beyond that point because you obviously didn't have the resources. Now we have the resources to do both. We have more resources. And I don't know why at this particular point we're not sequencing this in terms of timeliness. Everything before 2005, everything from 2005

to 2010, everything from 2010 to now or whatever, pick any dates that you want and apply a plan to get at it. And I don't know whose responsibility that is but I'm just giving you the way I look at it, I hear it, I see it. I would find, we still have the names of the treasurer; we still have the names of the candidate for each one of these situations. I would see how many of them we can find.

Douglas Kellner: And we have their bank account numbers.

Andy Spano: Right and I would definitely approach that, it could be a letter, it could be whatever but someone's got to find them and get that to them and say, "This is going to happen if X Y and Z." That will quickly get a treasurer to call you or someone if the guy is still alive or the person is still alive and you begin to find out whose dormant and who's not dormant. And you use some judgment in that particular case. I mean it's a guy ran first time, never ran again, everything's dormant you let him off the hook, you let the person off the hook and eventually you start clearing up all these things and going forward shouldn't be a problem.

Risa Sugarman: But I have suggested to Counsel who have administrative subpoena authority that they could subpoena the records of these candidates and their committees to see if the bank accounts are open and functioning on those open committees. I come to you for subpoena authority. The Board has administrative subpoena authority where all of those old committees, administrative subpoenas can be issued to see if their bank accounts are open and functioning. I don't have that authority. If you want to give me that administrative authority I would be glad to.

Bob Brehm: I think, if we look at the history of the chapter laws of 2014, change the structure created in Enforcement Unit that began on September 1 and gave them certain responsibilities, took them away from the agency as a whole, put them in a unit within the agency. What they left with the agency was compliance to review every form that is filed and to attempt to bring them into conformance if they made an error, and those people who didn't come into conformance to turn over to a separate unit within the agency that had resources to do whatever they wanted with those resources. And since that time, the transparent numbers speak for themselves. Our reports show how many cases have been referred to you, how many times a subpoena has been requested and voted on. How many hearing officer cases there have been. I think we're up to 13 since then 1 this year. So if there was a process there would be numbers to show it. There would be numbers on our, we do them in a confidential setting, we still have a legal requirement to report them. They don't know what we're doing, they just know that we've voted on a referral or they know that we voted to authorize a subpoena. So to say that the resources, because we've got zero additional resources to compliance, zero as an agency, yet we've completed, last I knew, over 55,000 compliance reviews. So we've done that. 55,000. When those individuals don't come into compliance according to numerous meetings as to what's an acceptable period of time, they do go over to Enforcement to say that they've got to come back over here so we have to do all this work so that all that money that's over there to do whatever it is they're going to do should be supplemented by us to do subpoenas to find out are they active or not. That authority under Article 3 is in the separate unit in the agency.

Risa Sugarman: I didn't say on the new cases, I said on the old.

Bob Brehm: That authority changed on September 1, 2014 Chapter Law, that's the way it is. To say somebody else should do it, fine if somebody should do it if I couldn't get any done, but we're really 1 this year so its not like, maybe there's a secret plan to get it done and that it is happening, but all the reporting that the law requires to happen is not happening so I can only assume its not being done. But to say we are the reason why it's not being done I think is disingenuous to the hard work the Compliance Unit to have completed a very aggressive approach to do what the law says we are required to do.

Brian Quail: I hesitate to extend this but if I may seek your indulgence for just a brief time. The dormant committee process that we're undertaking certainly is designed to make a more perfect list and to deal with taking committees that have for all intents and purposes have evaporated and are no longer in existence to be appropriately determined.

Andy Spano: Excuse me Brian has the Compliance Unit taken on this responsibility?

Brian Quail: It is and it's something that we're cooperating with Enforcement so that we have agreed upon criteria so we're not messing up any Enforcement potential activity that may be occurring. But my father was fond of the expression that you should not let a little bit of chaff in with the wheat to prevent you from making flour, and many millers in his background. But I think that we're never going to accomplish a perfect list. You're always going to be able to say that for this, that or the other reason I should not pursue this, that or the other one. But if you have a list of 2,100 people who have not filed and you go through the list and you say, now I'm not going to go after this one because that candidate is in jail and I don't think this committee is really there. I'm not going after this one because it's really old. I'm not going after this one because this, that or the other reason. At the end of that process, there must be a residual and its going to be a big residual. I do not believe the condition of the total list is a majority of them are not in existence. But there's going to be a residual and I think it's a very fair question to say is, "What have you done with those?" And I am not hearing the answer to that question so from my piece. To the extent that the Compliance Unit should be seeking a more perfect list, that we have applied standards uniformly and appropriately to have a process where committees that have not necessarily terminated through the appropriate affirmative process we nonetheless recognize that when a certain period of time has passed and they're not really there, we get rid of them, absolutely we should do that. But if the standard of Enforcement is, we're not going to enforce until there is a perfect list, there will never be a perfect list it is a moving target. I think the question is what have you done to examine and categorize who and what is on the list and then what have you done about it? And I have not heard the answer to that question.

Andy Spano: Do we have the power to just take someone off the list?

Brian Quail: There is, that is always an important question that as an administrative agency when you're dealing with the statutory contract that you have to deal with. But just as the courts have acknowledged, the principle of impossibility in certain instances where there's a statutory mandate to do something, when it becomes evident because of the lapse of time and the statute of

limitations and the balance and inability to find anybody associated with the committee, just like with a corporation, we'll at a certain point in time and in a certain factual scenario come a point where you have to just acknowledge the reality of the nonexistence of the entity. And that helps clean the list up over time. The agency hasn't done this in the past. One of the things that we've tried to do is look at the history of this process. I think roughly Bill would know better than me but more than a decade ago a similar process was undertaken. So there is certainly precedent for it but to your point Commissioner I think it is important as an administrative agency when you're doing something like that, that you err on the side of caution because certain the objective of eliminating dormant committees from the pantheon of filers is not to let somebody off but just to have the list reflect the reality of what's in existence. And I will say that as far as the process is concerned, I think the Enforcement Unit for their preservation and I think it's been very productive but I don't think it should be used as a shield to say but for this process enforcement can't occur. Because there has to be a residual.

Andy Spano: So what do you think the residual is?

Brian Quail: I don't know because its not our process to go through and make a determination on whether or not to pursue enforcement, our job is to accurately refer to Enforcement those that have not filed pursuant to our records. And when the judgment call to pursue or not to pursue that's to be made with the Enforcement Counsel. So we have not endeavored to actually do that. What we've endeavored is to actually provide the accurate information about what the records reflect in terms of who's filed and who hasn't and then secondarily because there does come a point where the limitations period has passed and we should work to make a more perfect list for compliance reasons but also for reasons of transparency and people actually seeing what's going on in terms of who's active. Because if we have decades old committees that are still on the list and there's no address that we can reach them at and they're for all intents and purposes disappeared, the limitations period if exhausted to the point where we wouldn't be able to pursue them in any event, we aren't doing anybody a service by suggesting that those entities continue to exist. So there's obviously a process that should happen, probably about once every 10 years or in terms of your suggestion Commissioner, in terms of entities that age out to a certain point, we redo this process. And we are moving forward on actually...

Andy Spano: You are in that process now?

Risa Sugarman: Yes, we are.

Brian Quail: But I would again, to my point, the issue we are never going to be able to give a list that somebody is going to be able to point to something on it and say this one shouldn't be pursued. But that's a decision that Enforcement has to make with the list.

Andy Spano: You want to get it down so the numbers that you have right now to this residual where you're able to manage it and that's not where it is right now.

Brian Quail: It's manageable from the perspective of its more work if there are entities that are on the list that don't belong. Once you determine that you don't think one should be on the list, you can set it up so that you, even as an enforcement...

Andy Spano: So why don't you do that?

Brian Quail: In terms of removing the dormant committees we are working on that process. In terms of exercising discretion as to whether or not this individual failure to file is worth pursuing or not is a decision that needs to be made by the Enforcement Counsel.

Andy Spano: And what about judgments you already have against people?

Brian Quail: We have provided to the Enforcement Counsel the entire list of historical judgments and as it has changed by her staff making entries into the database is updated.

Andy Spano: So the process you're dealing with this too in your office, right? Is it moving at a rate that you think is appropriate or is it too slow?

Douglas Kellner: It's nonexistent.

Kim Galvin: Well I think from our side I think it's relatively regular. When the filings are due, we do the reviews and referrals from our side.

Andy Spano: I meant looking at that whole process.

Brian Quail: Which process Commissioner? The dormant state process?

Andy Spano: Paring down, getting agreement on what the next step is and moving or that doesn't exist?

Brian Quail: That process not to confuse issues in terms of dormant committees is just about making the list better in reflecting reality. It will never be to a point where the list is without some entity that the Enforcement Counsel or any other reasonable person would decide I'm not going to pursue this. But Commissioner Kosinski absolutely rightly put it that that list is sortable, that list is in a condition that you can make determinations about which things are active and which ones aren't. And as the Enforcement Counsel apply whatever criteria you want to do that so it is not as if the work product that we are producing is not actionable or that it is not easily decipherable.

Kim Galvin: I think you just referenced the next stage is to look at those with multiple judgments against them that Bill McCann got years ago and then coupled with new material we would have no way of knowing if she's going to use the old judgments and new non-filing, put them together to go after certain people. So...

Bill McCann: No that's not even the fundamental question, the statement was we're going to take old judgments, determine if they're active and not go through the administrative process that the legislature set forth in Article 3 but we're going to ask for direct referral for criminal prosecution. So you don't even get the compliance review that the legislature anticipated from your failure to file or not to be in compliance, we're just going to make the determination that you don't get that chance we're just going to send you to the hoosegow. That's what it says.

Douglas Kellner: Yeah it hasn't happened yet.

Peter Kosinski: We're talking 2 different categories here as I understand it. One category is the failure to file which I think is very easy to determine and those are pretty simple to me, you filed or you didn't. The second are the failure to comply and those are more I think gray in a sense that you didn't comply entirely, you didn't fix it, and we're not sending you over. I can see those being more subjective because the level of compliance may determine if I'm going to pursue you.

Kim Galvin: We have worked with them to set criteria...

Peter Kosinski: That's fine but I focus myself on the failures to file because those are the simple ones to me. Those are simple to me; the compliance issues are a little more gray. So I'm really just talking about the failures to file. The ones that haven't filed, have an obligation to file and are not being pursued anymore and I'm sensitive to it because the years I was here we always pursued them, we had a policy of pursuing them uniformly because we felt that it was the fairest way to pursue it. It took the politics out of it. Everybody got pursued the same way. If you wanted to come in and make your case that you shouldn't have been pursued for some reason, make it. You had an opportunity. We gave you a 5-day letter, you could respond to that. We gave you a hearing in court, you could respond to that. So it wasn't like everybody got treated the same, ultimately, they didn't. People would come in and say, "I had a hardship. I'm dormant." Any number of reasons why they didn't file and we would consider that and that would-be part of the resolution. But we weren't up front trying to make those calls because that leads to arbitrary sometimes decisions about who to pursue and who to not. Could be political, could be other types of things enter into it. That's not fair, that's not right. Its must better administered as a uniform policy. And my concern is we're not doing that anymore. I think that's a failure because I think that was a very good practice. I think it was definitely something this agency did well and I always would champion as something this agency did and actively undertook and now we're not doing that. So that's the reason I bring it up. I'm not saying I won't bring it up again because I will but I do think it's something that needs to be addressed. And I think it's unfortunate that we're not making any progress. But pointing fingers from one unit to the other isn't helping us either. It certainly seems to me that this is now in the bailiwick of the Enforcement Unit as it always was, it's just that the Enforcement Unit no longer is a part of the agency like it was before. It's now an independent entity although still under the agency and we're not able to continue with our practice. Risa, you have no other thoughts on this?

Risa Sugarman: No.

Andy Spano: I don't see why this is so hard that we could get both of these done at the same time. It's not a big deal. If it's a difference of opinion I could understand that and if it's a different approach but it seems to me that the frustration on the Board is evident.

Risa Sugarman: I see it.

Andy Spano: And I'm one of those people that believes you know one person could be right everyone else could be wrong. So you have an inch from me. But I don't see why this can't be solved. I just don't understand it. It seems simple. If we didn't have her and we did it now we have her with more staff and we're not doing it, that's what I don't understand.

Peter Kosinski: You know Commissioner you've, that's a great way to put it. You hit on it. But apparently Risa you have no interest in engaging on this or discussing this any further? You have no interest in considering our concerns or addressing them or trying to deal with us or talk to us or make some accommodation here? You're not interested?

Risa Sugarman: I don't think that's fair.

Peter Kosinski: Well I don't hear any response from you. This is an opportunity to talk about this; we'd like to talk about this.

Risa Sugarman: Well I don't think this is the appropriate venue to talk about it.

Peter Kosinski: Okay so what would be the appropriate venue?

Risa Sugarman: Let me think about it.

Gregory Peterson: Might I suggest, number 1, after this meeting is over you need to sit down with your staff and kind of roll this around, and then number 2, sit down with the entire staff and see if we can work it out. It seems to me a lot of bright minds around here. People have been running around this agency for a lot longer than you or me and tap into that resource and see what can be done to resolve this. There's no sense in coming here and looking at what isn't done and trying to justify it. Let's see if we can get something done and move forward as Commissioner Spano said. It's not that difficult. But the lines of communication do have to be open. If that doesn't exist, then we really have a problem here.

Risa Sugarman: I would agree with that.

Andy Spano: Is that a line from Cool Hand Luke?

Peter Kosinski: Well let me say this from my purpose of it, I intend to bring this up at the next meeting. I'm going to tell you right now and I would hope in the interim there's been some discussion and maybe there's been some progress in trying to resolve this within the agency to

come to a resolution we can all live with but I do intend to bring it up and we'll see where we are. Okay are there any other comments, questions? That's all of our unit reports for today.

Gregory Peterson: I have a question. It's been on my mind so I may as well ask it, I just want to establish, this is not directed in negative or positive or anything else, I know that District Attorney Vance kind of blew that DeBlazio case out of the water but in that decision, he also stated something about there being a lack of clarity of the spirit and the intent of the law which kind of throws the thing nowhere or sort of back into our or your jurisdiction. And if you don't want to say it because its confidential I'll understand that but if it isn't confidential, maybe you had made the decision to pursue or not pursue in a civil way, I don't know. I mean its high profile and so forth well are we doing anything? If we're not doing anything by the way that's your decision.

Risa Sugarman: I don't think I should be discussing it in open session. Perhaps we can discuss it on a different day in Executive since you're going to be discussing other things in Executive Session. There are probably time constraints but we can sit down and talk about it. There are issues to discuss.

Gregory Peterson: I understand and just understand where I come from. I have no agenda in asking the question.

Risa Sugarman: I understand. It was an interesting letter.

Gregory Peterson: It's like frustrating to because it's like a hot potato. Thank you.

Peter Kosinski: Anything else? Okay then we'll move on to the next item which is old business and that is the automated audit regulations which have been old business for some time. But I believe we've made some progress on them and I know there was a meeting here where we included I think Bob Warren you were part of it and the NYSTEC and I know they came up with something and I know Commissioner Kellner's been very active on this. And we have before us a proposed regulation for the use of independent automated tools I think they're called, tool is the term they used.

Douglas Kellner: I think this is something like the 15th or the 20th draft. And I have two comments, well first I'll start by saying I think we're there in terms of what I'm willing to put up for public comment. I have two minor comments about the draft. The first is that I think it should be a subsection of 6210.18 rather than its own separate subdivision. That's pretty minor. And then the second thing I have is that down in the draft in C2 the number of machinist ballots to be manually compared. I have no objection to staff converting my sliding scale table into this fixed table but I point out that in the first entry for the less than 2,500, 25 ballots. Okay so that's 1% if they're actually 2,499 but for small contests, 25 is an excessive number of ballots that will essentially require hand counting of the whole contest. So, you may want to consider changing that first line to a percentage or split it into 2 lines so that everything under 1000 would be 1%. I mean I guess what I would say is everything under 200 would be 2% and then you could go to

1% above that. I mean that's an arbitrary number. It's totally arbitrary when you get down to those small numbers but...

Andy Spano: You made that point, I think it's a good point but if we send it out for comment that point will be integrated, lets see if we get the same comments okay?

Peter Kosinski: I'm in favor of approving this and if we can make changes to make it better we'll do that when we finalize it.

Douglas Kellner: Do you have a view on whether it should be a separate subdivision or whether it should be a subsection of 6210.18?

Peter Kosinski: I have no view on that at all.

Douglas Kellner: I mean I would just change this to make this 6210.18 L which is the next subsection and then you can change the A, B and C to 1, 2, and 3 and so on. But I just think it fits better than to have the audits in 2 different places.

Peter Kosinski: I'm okay with that.

Todd Valentine: What we do is just separate out, there are really two different types of audits in the section.

Douglas Kellner: Except they're not even next to each other.

Todd Valentine: Well that's a function of the way the regulations are but it was posted in this section I believe so that was the next section because that was the next one that was 6210 but we wanted to make it a new section. We wanted to show there were 2 types as opposed to one.

Douglas Kellner: Except there isn't really because almost it says you have to follow, alright well look.

Peter Kosinski: Alright but can we put it out this way and do all these changes if we need to down the road? Is there a motion to put this out?

Andy Spano: So moved.

Peter Kosinski: Is there a second?

Gregory Peterson: Second.

Peter Kosinski: All in favor?

(Chorus of ayes) opposed? Okay so we're going to put it out the way it is but the staff will look at those two issues and then any other issues that come up during the comment period. Because I

think we should try to get this done for this year's election if possible for any counties. Now are we aware of counties that are looking to do this this year, is that correct? So, we can get this done and out. Let's see its June...

Bob Brehm: You have to consider at some point if we make changes we have to go out for another 30-day comment period, would you want to consider adopting it as an emergency?

Peter Kosinski: Yeah, I would consider it, let the counties use it this year yes. But not yet. Okay.

Anna Svizzero: The regulation requires that the Board approve a vendor? Do you want to see some guidelines?

Peter Kosinski: To approve the vendor to have the audit tool?

Anna Svizzero: Right.

Peter Kosinski: I assume we approve it like we approve other voting systems.

Anna Svizzero: Well if you are tested like using Clear Ballot as an example, as a central count system. They've been through source code review. We certified them that is the audit tool so there wouldn't be any additional testing, it would simply be leveraging the previous testing against your decision to approve. But if somebody brand new came in off the street, we'd still like to see source code review and some functional testing. So, we could have NYSTEC, we've already kind of been working on that.

Peter Kosinski: Why are you raising this Anna? Is that not in here? Is this a concern you have that this won't happen or something?

Anna Svizzero: Well that wouldn't be part of the reg it's just a process that the Board would agree to consider for approving a vendor. It's either done voting machine testing because it's a central count system and it's all leveraged for approval or, if it's a brand-new company in off the street...

Peter Kosinski: Well should we make then part of the reg that the new systems will be subject to the same testing proceedings that...

Douglas Kellner: No, you don't want to do that.

Anna Svizzero: No because that could be multi million dollars.

Peter Kosinski: Too much testing. So what level of testing are these audit...

Anna Svizzero: Source code review and functional testing by our staff.

Peter Kosinski: That's it? So, we should memorialize that somewhere though so everybody knows what the rules are.

Anna Svizzero: We have NYSTEC working on a draft procedure, I just wanted to make sure it was something that came back to you.

Peter Kosinski: Is that going to be part of the reg or is that just going to be an internal process?

Anna Svizzero: Internal procedure.

Peter Kosinski: Okay. So, you're going to give us something on that in the future?

Anna Svizzero: Right.

Peter Kosinski: Well, we need that before we approve this so we have a process in place before we approve this so, okay. Anything else on this? Alright that's all the old business unless there's something else somebody has under old business. Alright then we'll move onto new business and this is a resolution for payment and this is a \$35,574 payment to Microsoft is that correct William? Do you want to explain this? Or are you okay?

Douglas Kellner: Yeah, these HAVA appropriations are required Commissioners vote under the statute.

William Cross: It's the HAVA portion of our annual Microsoft support to keep the lights on essentially.

Peter Kosinski: A motion to approve?

Andy Spano: So moved.

Gregory Peterson: Second.

Peter Kosinski: All in favor?

(Chorus of ayes) opposed. That's approved. Alright so that's that and that is the end of the public meeting unless there's something else somebody wants to bring up. If not, I will entertain a motion to...

Douglas Kellner: Our next meeting.

Anna Svizzero: Can you indulge me for a moment? I just want to tell you all that I'm retiring the end of July.

Peter Kosinski: Oh Anna, that's a big deal.

Anna Svizzero: It's been a long time 25 years, 31 doing election administration. Sometimes it's been easy, sometimes it hasn't. I'm not looking at Doug.

Peter Kosinski: Anna I remember when you came here.

Anna Svizzero: Yes, you were the brand new special Counsel. We got hired at the same, you got promoted at the meeting I got hired at. It will be 25 years in July.

Peter Kosinski: Right. Well it's a sad day for the Board of Elections and a good day for you.

Anna Svizzero: I hope, thank you. We've done a lot of good things; Election Ops is a good unit. We've done a lot of hard work starting with NVRA all the way through HAVA and everything else that we've been through but it has been fun. There have been movements but it's been fun. I will miss it.

Kim Galvin: You will be missed.

Peter Kosinski: You will Anna you will be missed by us and all the counties.

Anna Svizzero: I'll still have my law book, you'll have to call me.

Kim Galvin: I really want that book.

Peter Kosinski: End of July, well we'll see you before you retire. Are you not going to be here then is that what you're saying?

Anna Svizzero: I'm going to do petitions with Brenden and I don't have an exact date, I think it will probably end up being like August 1st of 5th or something whenever...

Peter Kosinski: But this may be your last Board meeting is that what you're thinking? I mean if we meet in July will you be there or will you be gone?

Anna Svizzero: No, I'll play it by ear. I don't know if I can get through a last board meeting.

Peter Kosinski: We're going to put you up here so you'll always be here. Well Anna good luck with that. I think that's terrific and you'll enjoy it. I retired and it's fabulous and you'll love it.

Kim Galvin: That's why he's here.

Anna Svizzero: I don't want to come back as a Commissioner but I'd like to still find a way to be involved. You won't be finding me sitting here but you might still be hearing from me.

Gregory Peterson: I can remember, this goes back, pardon me but a couple of decades and I was in office at the time and there was some problem with the Board of Elections in Nassau County and all I heard was, "Well Anna said this" and I said call her up. "Well Anna said that" it went

back and forth, who the hell is this Anna? And I got to learn even then down in Nassau County after several years if anybody had a question or a problem or so forth call Anna or I don't think that will go over if Anna gets a hold of you on this one you're in trouble. And then when I came here and met you, you were absolutely a delight so professional, knowledgeable, hard working, set an example for everybody. Can't say enough. I'm going to miss you.

Anna Svizzero: Thank you. I'm going to miss going to Nassau, I spent a lot of time down there when I started. We talk about all kinds of stuff and these guys weren't even born then so it's very depressing.

Peter Kosinski: Anna that's how you know its time to retire.

Anna Svizzero: That really helped me. You're talking about stuff and they were 2 years old during Watergate or whatever. Nassau had no computers when I started. I spent a lot of time down there working on that. Boards had no fax machines I mean this is what we were up against then. They had no budgets, most of them were part-time Commissioners. I think we've really turned a lot of things around and that's why I think we should run elections. We've done a lot to professionalize the services that our county boards provide, some of them don't like hearing from me, and some of them are probably opening champagne celebrating the fact that they won't have to listen to me anymore. But my only goal was to keep boards out of court, to make them professional, to make them own up to the oath that they took and if sometimes they didn't like how I presented it that was my only goal. This has not been a career or a job for me, its been my life and they can take exception if they want to but I know what we did, what we accomplished and the ones that have benefitted from it that have stayed out of trouble thanks to whatever it is we've done together then that's all that matters.

Gregory Peterson: Good agenda except to get the things done.

Anna Svizzero: I never did, I still don't.

Peter Kosinski: Well Anna, we're going to miss you so best of luck, stay in touch.

Anna Svizzero: I will. Thank you for indulging me.

Peter Kosinski: Well, we do have to schedule another meeting which we haven't done so we have one on August 2nd it's already scheduled. So, it's the in between meeting that we have to have. July we're talking.

Douglas Kellner: What's wrong with August 2nd?

Peter Kosinski: Oh you just want to go with August 2nd? Okay. I mean is there any reason we need to meet between now and August 2nd? Is there anything we need to do as a Board that you guys are aware of? I guess if there is you shall call us and let us know.

Bob Brehm: August 2nd is the date we know we need with regard to any ballot access challenges. It would still be timely for the English version of the 2 ballot props, assuming then that the translations...

Peter Kosinski: So, we would do petition determinations from the designating petition time on August 2nd?

Bob Brehm: Any challenges which is...

Peter Kosinski: And that won't be much right that would be judicial delegates and stuff?

Bob Brehm: Usually prima fascia for this kind of a year.

Peter Kosinski: Okay. Well if you don't see the need I guess we're inclined to go with August 2nd and if something comes up in the interim that needs our attention, you can call us and we'll arrange something or we can do a web, or we can meet here if we have to but we'll deal with that if we have to. So, we would then entertain a motion to adjourn to go into Executive Session to discuss litigation and we will reconvene on August 2nd. And we will not be coming back into public session today. Okay? So, I'll entertain a motion to adjourn.

Douglas Kellner: So moved.

Peter Kosinski: And second? And all in favor?

(Chorus of ayes). We're in Executive Session.