

9/20/2007 NYS Board of Elections Transcript

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>>: Good afternoon, everyone.

My name is Douglas Kellner, cochair of the State Board.

Next to me is Neil Kelleher, the other cochair.

>>: Evelyn Aquilla, Commissioner.

>>: Eleanor Donohue.

>>: I ask our staff to introduce themselves.

>>: Peter Kazynski.

>>: Allison Carr.

>>: Paul Collins.

>>: Anna Svizzero.

>>: Pat Tracy.

>>: Lee Daghlian.

>>: Bob Brehm.

>>: George Stanton.

>> ELIZABETH HOGAN: Liz Hogan.

>>: Stanly Zalen.

>>: Will our guests introduce themselves?

(Off microphone.)

>>: Jim canyon, channel three out of Syracuse.

>>: Susan Cohen, New York State independent living counsel.

>>: (Off microphone.)

>>: Hudson valley.

>>: New Yorker for verified voting.

>>: Bob, ice beck.

>>: Budget.

>>: Ann office of general services.

>>: (Off microphone.) office of general services.

>>: John Morse representing the New York State Election commission association.

>>: Thank you, all.

We appreciate your attendance at the meeting on the printed agenda we have rearranged the order of new business so that the first item will be approval of the amendments to part 6210 of our regulations.

The second item will be discussion of the 2008-2009 budget.

The third item will be discussion of the State board's response to the Department of Justice. The fourth will be the report on county compliance with poll site accessibility regulations and fifth will be discussion of open source voting and the request from OVS for certification fee waiver.

Picking up the agenda, the first item of the agenda is approval of the minutes of August 16.

Are there any comments regarding the minutes?

Those in favor say aye?

(All members responded "aye.")

>> DOUGLAS KELLNER: Minutes are adopt the.

We'll move to the reports of our communities.

We will start with Todd Valentine with the legal unit.

>> TODD VALENTINE: One thing I wanted to report, we have a new deputy today.

Paul Collins started today.

This is his first board meeting and his first day.

So we wish him the best of luck

(Chuckles.)

>> TODD VALENTINE: Tough day to start.

>>: He needs lots of luck.

(Chuckles.)

>> TODD VALENTINE: And, well, the big discussion is the response to the Department of Justice is due next Friday.

And obviously we have been working on that.

So that pretty much has taken up all of our time.

>> DOUGLAS KELLNER: Is there anything else?

Any other litigation matters that have come up in the last month?

>> TODD VALENTINE: No other litigation matters but we do have one other item which

should be added to the agenda.

Anna and I both apologize for not having made the board packet was a petition matter that was --

I know that I briefed you on this.

It was a late, deck declination was filed late for independent --

>> DOUGLAS KELLNER: You want to do that right now or during new business?

>> TODD VALENTINE: We can do it right now.

I have the original document itself.

The person who filed the declination wrote that he conceded he filed it late but explained he was on vacation and away and unable to get it here in a timely fashion.

>> DOUGLAS KELLNER: Has he claimed he didn't know he was getting the nomination?

Because there's a court case that says that if the person was completely unaware that they were getting the nomination, they still have the right to decline.

>> TODD VALENTINE: He says he learned on August 14, which would have been just

before it was filed that he wasn't --

He said he did not provide consent for the party to use his name on the petition.

>> COMMISSIONER AQUILA: What is your advice?

I think I know the issue.

>> DOUGLAS KELLNER: We had this issue come up at the city board.

We learned especially in judicial races that parties would nominate the judges without the judges' consent.

The judge would never even know he was on the ballot.

Then the issue is, does he have a constitutional right to decline and there was a federal court ruling that said that they had

a constitutional right to decline if they didn't have notice.

Now, does our board send out notice when the petitions are filed?

>> TODD VALENTINE: Yes, yes, they do.

>> DOUGLAS KELLNER: So we sent him the notice?

>> TODD VALENTINE: Unfortunately, he said he was away at the time.

He had asked them not to file the petition.

He went away.

They filed it anyway.

By the time he got back from his period away, the time had expired.

>> DOUGLAS KELLNER: All right.

We have our deadline rule and we have this other issue.

>> TODD VALENTINE: Kind of caught between the two.

>> COMMISSIONER AQUILA: He's kind of saying he didn't know?

>> TODD VALENTINE: Well, he knew, but not in the time he needed to know.

Obviously.

>> COMMISSIONER AQUILA: That's what I mean, he didn't know --

>> TODD VALENTINE: He asked before they filed it not to do it.

But --

>> DOUGLAS KELLNER: I wish I had notice of this so that we could have talked about it.

>> COMMISSIONER AQUILA: Reasonably, if he doesn't want to run Doug doping can I read the letter?

>> DOUGLAS KELLNER: I'm sorry I'm slowing this down but nobody mentioned it to me, showed it to me.

>> COMMISSIONER AQUILA: Do you have any advice for us?

What is your advice?

>> TODD VALENTINE: Our standard procedure is a harsh rule.

Deadlines are deadlines.

You know?

>> COMMISSIONER AQUILA: I just wanted to know.

>> TODD VALENTINE: That has been our past practice.

If he wants to go to get off the ballot, the burden is for him to go to court.

Not that we would really oppose that.

To be honest, that has happened in the past where we have been taken to court for these things.

We don't have resources, we are not going to fight to keep him on the ballot.

As an administrative agency we are forced to apply a strict rule.

>> COMMISSIONER AQUILA: He's probably trying to get out of that.

>> TODD VALENTINE: He is and he makes the case.

>> DOUGLAS KELLNER: No, he doesn't make the case as I read his letter.

So I'm prepared to --

Is there anything else you want to look at?

I'm prepared to vote to --

>> TODD VALENTINE: The ball is in his court.

>> COMMISSIONER AQUILA: Deadline is a deadline.

>> DOUGLAS KELLNER: To me, the letter doesn't have the formulaic stuff in there to show that he had no way of declining.

There's a sentence in there where he says he had a discussion,

he was told he had to file a declination, but he didn't have time to file the declination but he was leaving for vacation.

That's what decided that for me.

So the motion is to reject the declination as filed late.

>> TODD VALENTINE: That's correct.

>> DOUGLAS KELLNER: Those in favor?

(All members responded "aye.")

>> DOUGLAS KELLNER: It's approved.

>> MAN: If I can ask you, we are a mere ministerial agency.

In New York State New York City if they were satisfied there were exejent

circumstances they wouldn't make the person go to court to accept the declination?

>> DOUGLAS KELLNER: In New York City, the practice is if the Court said it's unconstitutional to do

something, than we apply the constitution above the statute.

So that if something is unconstitutional, we don't do it.

And there's a ruling that it's unconstitutional to put somebody's name on the ballot without their consent and without their knowledge and then to --

So if they come in with an affidavit in a reliable way that shows that they fall within the four corners of that constitutional limitation,

I don't, you know, I'm

comfortable that you apply the constitution.

>> : And the city board would accept those late declinations with those late kind of --

>> DOUGLAS KELLNER: We have done it where it was properly documented that the candidate had zero knowledge that he was on the ballot.

And because of that, we changed the city procedures to make sure the candidates actually got notice.

So that as soon as the petition comes in, a letter goes out to the candidate saying you have been nominated for this office by this party.

>> : We do the same thing.

>> DOUGLAS KELLNER: So the candidate can't come back and say I didn't know.

If the notice was ineffective, then the Court has ruled that the candidate still has the right to decline.

>> TODD VALENTINE: That's all I have.

>> DOUGLAS KELLNER: Sorry for --

I did a C.L.E. class on election law last night.

Now I'm being professor --

Let's move on.

The next item --

Todd, are you finished?

>> TODD VALENTINE: I am.

>> **DOUGLAS KELLNER: Next item, election operations.**

Anna Svizzero?

>> ANNA SVIZZERO: As Todd indicated, all of the units have been busy working on compliance issue the response to the Department of Justice the various items related to that response.

By way of operations, Tuesday was primary day.

The day was relatively normal one by way of phone activity.

The last couple of days, the phone has been ringing a lot of tie votes and the boards that never been in that circumstance.

We have been guiding them through those waters.

As far as the voting equipment, we have been wrapping up some procedures with NYSTECH

We have a room storage procedure that will be in your the next packet.

The county boards have seen one draft of that.

This is the one we think for the time being is final.

We will provide it to the board and send it to the county boards again after the next board meeting.

We have acceptance test dry run events, if you will, the first week of October with

three of our vendors to review our critique and our implementation of our there procedures to have conversation about those

face-to-face and to also have them work with us to

review the checking procedures which are part of the security processes that NYS tech has helped us with and our regulations require.

We will be doing those with three vendors the first week of October.

We are working on setting up demonstrations for four products.

We've had a couple of appointments and we are hoping to get these either in the end of this month or the first part of October.

Those would be for open voting solutions for precise voting systems, for dominion voting system and also Avante has a new product, an optical scan system that we will have demoed here so we can see what it is they intend to proceed with,

once certification ramps up again.

Other than that, working with the ITA, that process is in motion.

And I think that's it for us.

Allison, anything else for you?

>> DOUGLAS KELLNER: I want to thank you.

I know that your unit has been working 18-hour days in the last two weeks.

I want to acknowledge that and thank you for the effort.

>> WOMAN: I do, too.

>> **DOUGLAS KELLNER: Next is campaign finance. Elizabeth Hogan.**

>> ELIZABETH HOGAN: Well, we have a number of ongoing projects in campaign finance that I can update you on.

First is the scanning project that we talked about at the last meeting.

The company that we're speaking with has come and taken a representative box of files and we have a meeting with them on next Monday, the 24th,

where they are going to come in and show us the files in electronic format.

And we will make a determination as to whether those files work for us in the format that they presented it.

If they don't, then we can adjust them and so I would anticipate that at the next

board meeting we will have a pretty good idea of proceeding on that and we will be coming to the board for approval on actually going forward with the funding for that.

The next thing that we were working on is the process server RFP.

We are working with OGS.

Both sides are actually in the process of gathering information that we need in order to craft the language of the RFP and we will be having a follow-up meeting with them in the near future.

The campaign --

Actually, the campaign finance unit is looking at areas of service and costs of service in order to enable the proper language in the RFP.

The lawsuits for the July noncompliant filers, the return date for that was on the 13th.

That was last Thursday.

And the papers are now in the judge's office awaiting his signature. We're waiting on that.

We are expecting in the next week or so we'll get that signed.

We've recently created a dedicated e-mail account for campaign finance to enable filers to more directly --

Perhaps more easily in the, in line with our projected goal of making it easier for people to find out what they have to do and actually comply,

and we are looking at

this in the context of a direct line that we will provide and perhaps if we see a

trend in questions or a trend in problems that people are having,

we can develop facts to put on our Web site that will enable people to get the information that

they need in order to do what they have to do and do it on time.

And that's just a couple of weeks old.

The, and as I said, kind of looked at that in conjunction with the new phone system that we established in the unit in July.

That has worked out very, very well in terms of enabling people to get very prompt and efficient information.

I think it's working out really well.

The HAVA complaint procedure is probably in the final stages of developing the flow chart with NYS tech.

We have one section to finish and that's alternative dispute resolution.

They just sent us back the corrected versions from our last meeting and they are looking pretty good.

We need to meet with them to do the last section.

Then we need to write the procedures and create the forms that will enable us to process those types of complaints and there will be a component at the very end of education of the counties because in formal complaints can begin there.

There is an issue of training our own staff in how to deal with the procedures.

So we will be working on the next step of that.

The '05 corporate contribution report that we discussed at the last board meeting actually,

I hoped that I would have a final memo on that to present to the Commissioners today.

But when I got the report, the actual format of the report was less than I had hoped and I really felt that it needed further work.

So there were corporations named on that who, while technically it appeared that there was an over contribution,

there were actually issues surrounding those corporations that,

they were actually the parent company and there were other corporations with similar names and they were misreport understand and filed on the wrong schedules

I really feel there is an argument to be made for the educational component of dealing with an over-contribution issue.

It's senseless to come in here and provide you names and make a determination that they are willfully noncompliant.

What I'm trying to do here is, I looked at all the files, made a list of questions and the staff was helpful in terms of getting those questions answered.

And the next step is going to be the education of the corporations because it certainly is in their interests to get this straightened out.

It is also in the interest of the committees to report these things correctly.

It's in the interests of the board, of course, to have this flow correctly so that everyone is in compliance.

So I think that three-pronged approach will work.

That's the next step in that.

I feel it's on worth the extra time for our staff to work on that.

The '06 over contribution, the corporate report has been printed and there is an initial review of that underway.

The election cycle '06 overcontribution is in the process.

The parameters have been set.

I think it's ready to be printed, but that has not actually, there's not been a review of that started.

That's forthcoming.

We should be starting that I think in the next week or so.

The local filers project, we had fair compliance with our request for information about local candidates from the primary list.

It wasn't to the level that we had hoped, but we feel that we are going to kind of step back and wait to see the general lists and

see what candidates are identified and how we can proceed and

hopefully the compliance will be at a somewhat higher rate.

But whatever we do get will be very helpful to us in going forward.

The last thing that I would like to talk to you about is, if I can, is the hiring issue.

A couple of meetings ago the board approved those six positions.

It was our understanding that those positions were going to be presented to the civil service board on the 12th or 13th of September when the board met.

For whatever reason, our administrative officer told us that those positions were not on the agenda, the civil service board's agenda for that day.

I don't really know exactly why, but I think it had something to do with timeliness of getting responses to the posting of that being on the agenda,

but whatever was the reason it wasn't there, the next civil service board meeting is on the 16th of October.

So definitely we are looking to get those positions on that agenda.

And we are waiting for the division of the budget also to sign off on those positions.

They have not done so yet.

We are looking for those highers as soon as we possibly can because the ramped up activity in campaign finance is really significant.

We are in this election season.

We are up to approximately 8700 filers.

That's up from 1700 in '05.

So there's this huge amount of, just a huge volume of work. We are very anxious to get those people here.

In this the context of that, Peter and Stanley have

Discussed with myself and Bill Mccan the next step of our hiring process.

There's a number of other positions to supplement the ones we've already presented to you and that you've approved that will enable really an effective process of the work in this unit.

So what we're doing now, as I said, we've discussed it with Stanley and Peter initially and what we are doing now is writing up job descriptions of the positions that we've identified.

I mean, what we did was identify our need and then what positions would we need to support those things.

So we're identifying the positions, writing qualifications, and we will make a presentation to the board on that.

That's about it.

>> DOUGLAS KELLNER: I have one question.

>> ELIZABETH HOGAN: Yes.

>> DOUGLAS KELLNER: Are we doing anything about either a regulation or some kind of notice to the county boards and to the public that would eliminate the local filing requirement?

Or to say that the filing with the State board constitutes compliance with the county filing requirement?

>> ELIZABETH HOGAN: We have not affirmatively started any action on that.

It has been discussed, but we have not proceeded in that manner at this point.

>> DOUGLAS KELLNER: Well, you know, I would ask that you put that on your agenda and discuss that with the people in the agency as to what is the optimal approach, but now that it's October and we still don't have an agreed campaign finance reform bill, even though this particular issue was never an issue in the legislation,

I believe that both the Senate and the Assembly and the governor all agreed that there was no reason to keep the current law with the duplicative filing requirements.

That we should now turn to what we can do by regulation in order to ameliorate that situation.

So while our workload has quintupled from 1700 to 8500, the savings at the counties have

not been realized because the counties also have to take in all this paper and process it.

I think we should do what we can to eliminate the county filing as soon as possible and get the word out to, you know,

once we actually make it legal, then get the word out to campaigns that they no longer have to comply with the local filer.

Does that make sense?

>> ELIZABETH HOGAN: Absolutely.

>> DOUGLAS KELLNER: All right then.

Any other questions for Ms. Hogan?

No

(There is no response.)

>> DOUGLAS KELLNER: We will turn to George Stanton for the ITU report.

Oh, I'm sorry, I'm sorry. We'll do Lee first.

It was an oversight, Lee.

>> LEE DAGHLIAN: I thought I was off the agenda.

>> **DOUGLAS KELLNER: Lee Daghlian for public information.**

>> LEE DAGHLIAN: OK, I won't mention what we do for every day at NVRA, PIO, just the projects we are working on or have been completed.

First the State fair project, which is a small one, but one we do every year.

It was a great success, I felt, and I want to thank again all the volunteers from this board as well as the county boards, and in particular Onandaga County who save us just about every year with filling in to man the booth.

I can't be sure exactly how many people we either registered to vote or had a change of address or other such functions,

but we had a couple of cases of rates forms up there there and there were none left.

Last year we were between three and 4,000 such transactions.

Mostly from the surrounding counties, but some from as far as the western part of the State.

So from that point of view I thought it was a very successful fair and again very busy.

Also we have started another round of NVRA training.

Broken up into a couple of weeks.

We've have had a couple already.

Next week they will start in the western part of the state and those are being done by Greg and Dierdre.

There are about five such days of that for each of them.

That's also an annual affair.

Sometimes semiannually.

We also are still waiting for approval of the contract for the poll worker training program.

My understanding is that still the office of the comptroller hasn't approved yet.

Awaiting information from OFT, I believe.

To the best of my knowledge they have everything they've asked for and just hasn't given the word to OGS yet.

Also the county funds program which is our major project at the moment, there is a report in your packet.

I notice it's on the agenda later if you would like to ask any questions about that, we would be happy to answer them at that time or now, if you like.

And that's all I have.

>> DOUGLAS KELLNER: All right, thanks, Lee.

We will come back to you later.

>> LEE DAGHLIAN: Okay.

>> COMMISSIONER AQUILA: Mr. Chairman, we should thank Eleanor, she went to the State fair and I think that was very good of her.

>> COMMISSIONER DONOHUE: Thank you.

You know, the one thing that we probably got the most questions on and the one thing that I really appreciate at the fair is that they come almost as families.

You'll have two and sometimes three generations of people that are registering to vote.

The one question is one that we have had for a long time is: Does the independents party mean I'm independent?

Or do I go back down to the bottom one that says I do not wish to enroll in a party?

I think that when we get into the education process a little more,

I think maybe that would be something in training for our election commissions throughout the state to really dwell upon.

It's a very confusing issue.

It never should have been allowed.

>> COMMISSIONER AQUILA: I agree with you, yeah.

>> DOUGLAS KELLNER: For the people watching, you want to repeat what the rule is?

I know you know.

We know.

>> COMMISSIONER DONOHUE: Well, one of the questions that's asked is: Do you wish to enroll in --

And it states the names of the parties.

One being the independents.....

And most of the people that were there would get to that line and if they wished not to enroll in a party, that's where they would put the X.

I found that I asked as many as I could: Do you understand what that X means?

Most of them said I don't want to be involved in a political party.

>> DOUGLAS KELLNER: They don't realize they are actually registering in a political

party called the independent party.

>> COMMISSIONER AQUILA: Maybe we should something that says do you want to be enrolled in a

political party.

>> DOUGLAS KELLNER: Instead of the first one.

>> COMMISSIONER DONOHUE It's Is on the list.

That's one thing.

It instruct me last year as well.

Very confusing.

>> WOMAN: Yes.

>> DOUGLAS KELLNER: Thank you again for going, Helen.

All right, George, now you're on. ITU.

>> GEORGE STANTON: Like Lee, I won't bother you with the mundane stuff that we do as a

daily chore in IT, but I am pleased to announce that the statewide database is fully functional.

We have all 62 counties' data in it.

All 62 counties are using it at least to some extent.

New York City started coming on last week.

They are not using it in great high volume yet, but we are getting data from all five boroughs.

But it is being used, as far as sending data back and forth.

I guess they have some question about using the file maintenance part of the statewide database until they get what they are calling the second letter they are expecting from us.

But as far as sending us data on the database, it looks like they had some, they had a couple of false starts.

They had things they had to fix technically and got them resolved.

They seem to think everything is working well now.

On our end things are progressing very well and I'm quite happy with it.

>> DOUGLAS KELLNER: Before you move on, George, could you just cryptically mentioned the second letter?

You're talking about this letter that the staff had drafted to tell New York City that their procedure with respect to, what is it, rule 6217.5?

That we accept their procedure with respect to that at least on an interim basis. Is that what you're talking about?

>> GEORGE STANTON: Yeah, It goes back and forth, but it was the second part of the letter they

had written.

>> DOUGLAS KELLNER: I my understanding the staff signed off on that draft so it's ready to go now?

>> BOB BREHM: That was the version we brought to the table at the last meeting that you wanted the more truncated letter to go out.

Maybe this kind of a message would go out after they actually connected.

We sent out the truncated letter.

They did connect. They worked out these issues.

So it was the same letter that was in the packet last week.

If you want us to send it out now --

We liked the letter at the last meeting.

>> DOUGLAS KELLNER: I thought you wanted to send it out.

>> BOB BREHM: Yes.

>> TODD VALENTINE To echo what Bob said, to refresh everybody recollection, the agreement with New York City was that they would come on board and

then we would send them the second letter, first things first.

Now that they have concluded that action we are proird r prepared to --

We initially told them that informally.

We wanted first things first, comply with the requirement.

Now that they've done that, we are prepared to --

Now we're ready.

>> DOUGLAS KELLNER: So we are just confirming that it will go out soon, then?

>> TODD Yeah.

>> DOUGLAS KELLNER: Who is going to sign it?

Is it Peter and Stanley?

Is it you, Todd?

Or is it going to be --

Stanley signed the last one.

>> TODD VALENTINE: Peter and Stanley.

>> DOUGLAS KELLNER: That makes sense.

That's under control, George, and people will know what we're talking about.

>> GEORGE STANTON: They are going to begin, they have to do an audit yet of their voters to

make sure that everything is in sync with the State.

They are going to start with one of the counties tonight, I believe.

We are going to monitor that.

If things go well, they'll kick off audits on the other four counties.

ES and S.

They are working on getting --

They did a smart thing because they came on board so late, they just audited the voters that were going to be voting in the primaries in the counties so they can

print the poll books and now they are going back to audit the rest of the voters before the election.

They are also finishing uploading signatures from some of the large counties the Nassau

is just a slow process pulling the signatures out and sending them up to the state database once the full county signatures are on,

the signatures on a daily basis won't be that much of an issue, they say.

The, as far as contracts go with these vendors, they have all been approved with the exception of the ESS contract, which the last i knew Stanley and Peter have gone back --

They will be going to the comptroller for approval.

The hammers were just approved and we submitted their invoices.

MTS's was approved.

Invoices submitted.

The contracts for the counties that we are giving the grant to replace the system were finalized by OGS and the comp troller signed off on the language.

We sent them out to the five counties, if you call New York City a county, for them to fill out the contracts, send them back so we can get those processed through the controller's office and they can be reimbursed.

As far as the statewide database now, we are in the process of saber is monitoring every day,

and we are monitoring with them.

My staff is learning how to take over monitoring the system once saber goes away.

It's a complicated system and there's a lot to learn.

Saber is also working on the enhancements that we approved for the web, the public

web access to voter lookup and polling place.

We are also going over again and reviewing all of the documentation on the system to make sure it's all up to date.

We are happy with all of it.

Saber is making some changes that we've requested and giving us some additional information that they may not even be obligated to,

but they are very good about giving us pretty much anything we ask for as far as documenting the system.

I am now able to print or to start fill in foil requests as of today, from the new statewide voter system.

The other thing I wanted to mention was I got a call yesterday.

I sent out an e-mail to unit heads and Peter and Stanley.

I got a call from the State CIO's office yesterday telling me that they want everything to, that is technology-related

There's --

Related.

There's two processes I have been doing for anything that my unit buys.

One is the annual technology plan which the State budget and OFT uses to control technology spending throughout the State.

So you give a plan like I just did one for 2008-2009 budget.

And the other one is the intent to purchase, which basically OFT signs off on and budget signs off on.

Anything software related over \$20,000, hardware related over \$50,000.

But I have to redo my ATP for this year because they want me to include everything that the agency buys that's technology-related, not just my unit.

Basically that refers to almost everything we do now, they're talking about the independent testing

authority, the scanning projects, the NYS tech contracts, anything technology related is supposed to go under one umbrella and the ITPs have to go through me, too, OFT

don't shoot the messenger.

>> DOUGLAS KELLNER: George I hope you included on the radar screen my long standing

request to update the campaign finance computer system so that it can be accessed from computers that don't use Windows.

>> GEORGE: We are actually working on a proof of concept, one of my programs is working on an application that we'll, that will run on a MacIntosh.

>> DOUGLAS KELLNER: That's great.

I'm not just talking aboutmatics.

The idea is to get it platform neutral.

>> GEORGE: Well, it is.

>> DOUGLAS KELLNER: Well, thank you.

I turn to my fellow Commissioners.

And I know that Don ward has come representing the county Commissioners with his extensive report.

And I think we should hear from him.

The question is, should we do it now or wait until we get to the agenda item on DOJ?

Or do you care?

>>: Don, what is your schedule?

>> DOUGLAS KELLNER: Ready to go or you want five minutes warning before we call on you?

>> DON: I'm ready whenever you are

>> DOUGLAS KELLNER: From wherever you want to address us it will be fine.

Take a few minutes.

We are pleased that the county Commissioners have put such an effort into this project and I think we've all spent quite awhile looking at this report already, even though we only got it yesterday.

>>: Don is the chairman of the executive committee. correct

I want to make sure you get the proper title.

>> DON: Norm green the president of the cork, we were hoping he would be here today, but due to other commitments he is not able to be here.

I certainly thank the Commissioners and the State board staff for allowing me this opportunity.

I guess i'd just like to say that the letter report you have before you represents responses to a questionnaire the election Commissioners Association sent to every county board late last Friday afternoon during a very busy time preparing for a primary election. 32 counties and the New York City board, close to 60 percent responded to the questionnaire and more responses are anticipated.

The purpose of this letter and report is to put before you the problems, pitfalls and expenses from the county's perspective if 1BNB is required in every poll site for the 2008 primary and general elections

Additionally it addresses measures that the counties could undertake to enhance the 2006 program for the 2008 elections.

The letter represents without exception the position of every New York state county board and at the request of the election commission association I would ask for the opportunity to read this letter into the record with your permission.

>> DOUGLAS KELLNER: I don't think you have to actually read it.

He will he will you can put it in the record.

>> DON: I'm glad to do that.

The report that is attached to that, I would just like to say that the left-hand, there were four basic questions with subquestions under each major tile.

The left-hand column of that reflects the questions that were sent to the county boards.

What would be the cost of systems, what would be the cost of clerical work and what could you do to enhance the program.

So the left-hand column sort of indicates what the questions were that went to each of the counties in the questionnaire itself.

And I've also given Allison a copy of the actual questionnaire that was mailed out so that she could distribute that if anybody desires a copy.

I would be happy to leave a copy for the record and ask that it be entered into the record.

>> DOUGLAS KELLNER: Thanks very much, Commissioner.

When we do take up this subject in our discussion, I certainly invite you to participate in the discussion.

>> DON: Thank you.

>>: I speak for myself always, but Evelyn and I have dealt with this together for a lot of years.

We always appreciated and listened to the input from you guys that are on the front lines, so to speak.

So I think that it's a very valuable report for us and for Todd going into the Department of Justice.

So we thank you.

>> DON: Thank you for your time.

>> ELLEN: Thank you, Don.

>> DOUGLAS KELLNER: You can stay there if you want.

All right.

We have no old business on the agenda.

So we'll move to the first item on new business,

which is approval of the amendments to part 6210 of the regulations for formal publication.-- Todd?

>> TODD VALENTINE: Actually, I was going to have Bob follow up on that.

>> DOUGLAS KELLNER: Okay.

(Chuckles.)

>> TODD VALENTINE: He can go into the details, but essentially this represents some changes that the program people in election operations had asked for.

This would be published for public comment at the next available state register as soon as it gets to --

I don't know, Bob and I worked on this.

I don't know if he has anything else he wants to say.

>> BOB BREHM: Two general kind of changes that are in here.

Some are more stylistic that the governor's office of regulatory reform when they met with us to review the paperwork necessary to post these wanted, you know, citations to specific standards as appear on, say, page 4, the NIST standard to --

This is the recommendation on how to cite it.

Todd went and found the actual way to do it.

Then, you know, to make sure that we used consistent language. There's several of them throughout that are not, you know, altering what we did earlier.

Just putting them in a language that was consistent.

At the same time we were doing that work with the representatives of GOR, Anna and

Allison had, one of the newer employees, Shawn Neil, reviewed the regulations in order to update some of the policies and procedures that they're working on and Shawn,

being that he's from a technology background anyway, identified a few questions.

We met on September 5 and tried to, you know, make it a little bit clearer, you

know, who's doing what and what we meant by these regulations.

You know, to make it easier for people to be able to follow them.

And some of those are just a matter of, you know, and it's a simple one, but on the first page

or page 3, you know, who is actually going to conduct the testing?

In the little things like that, you know, when people are familiar with these regulations look at them time and time again, we look right past that.

Shawn was a fresh set of eyes that came to look at it and asked questions like that and they were, you know, there weren't a lot of substantive issues.

So we need to get them approved by the board in order to go --

>> DOUGLAS KELLNER: Bob, I think there's no question we want to publish these.

I have just one question that I hope will not throw a monkey wrench in it, but we already published section 19 of part 6210, which is the number of voters for each voting system that we're authorizing.

And of course, I think that 90 days has already expired.

So some people were worried, has the comment period closed on that?

My thought is that we should adopt all of part 6210 at the same time including section 19.

If GOR is willing to do it without requiring, without any further delay, I would suggest that we propose that the publication include the whole part 6210, including section 19.

Even though it would be a republication of section 19, so people would have the whole thing together in one place and it would be clear also that the time for comment is still open.

Is that crazy?

Todd, is that going to create a problem?

Because if it is, I would withdraw the suggestion.

>> TODD VALENTINE: I mean, we can certainly make it available. I don't know if they'll publish it in the State register that way only because --

Nobody really reads that, though.

>> DOUGLAS KELLNER: My goal is to get it published in the State register. That's the important thing.

Maybe on the web page we can put the whole thing together instead of separating them out.

>> TODD VALENTINE: That's where people see this information and the copies that we distribute because they really are --

Because the 6210.19, you're correct, the public comment period, the 45 day period ended on Monday.

That doesn't mean we can't extend it if we want.

At that point the board can move to do a final publication.

You can wait and finally publish the two together if you wanted to.

In the end they would come out together.

>> DOUGLAS KELLNER: Is there any descent on the idea of voting on them as a package?

I don't see any reason to vote on 19 today, although --

>>: My feeling is we have a number of comments on 19.

I think extending the time --

I don't see any harm in extending the time to give people more opportunity to comment on it.

I don't think there's any immediate need to approve those.

I don't see a problem with extending it.

>> DOUGLAS KELLNER: So I would just ask the Commissioners then if we're agreed

that, to the --

That we'll extend the time for 6210, section 19, to the same time as the rest of 6210 and take them up as a package.

All right.

That's just an understanding.

I don't know that we need to vote on that.

But we do need to vote on authorizing the publication of 6210, sections one through 18. So that's the motion on the table now.

Those in favor say aye?

(All members responded "aye.")

>> DOUGLAS KELLNER: All right.

Maybe I'll just frame a motion that we extend the time for comment for section 19 of part 6210 so that it will be the same as the rest of part 6210.

Those in favor?

(All members responded "aye.")

>> DOUGLAS KELLNER: All right.

the second item is discussion of the 2008-2009 budget

>> DOUGLAS KELLNER: Pat Tracy?

>> PAT TRACEY: I would like to request your approval to submit the 2008-2009 that was in your board packet

DOUGLAS KELLNER: do the executive directors endorse that proposal or

Should we be discussing it?

>>my only concern comissioner, is that

Let me ask that and you'll be next.

>>: My only concern, I want to be sure the Commissioners feel that they have a good understanding of the budget.

I know it's in your packet, but if you have questions about anything that's in there, I think Pat is here to answer those.

If they are technical.

If they are more policy related --

>> DOUGLAS KELLNER: Stanley, have you reviewed and approved it?

>> STANLEY ZALEN: I have.

I'm in approval of what has been submitted to you.

I have real concerns about something that is contained in a side letter so it's not ripe yet for your review.

That's a parent requirement by the division of budget that we have to show 5 percent part-time personnel and 10 percent cuts on non-personnel items when we are in a situation coming into this year when if anything we need those as increases.

It's impossible for us to cut those.

That's not part of this.

>> DOUGLAS KELLNER: Right.

I think that goes --

>> WOMAN: I guess that's what I wanted to discuss.

I looked at the budget.

I'm certainly not an expert in this area.

Pat was very kind to go over some of my questions with me.

I'm concerned that, about the 5 percent cut and the 10 percent cut.

I don't think we can meet it.

And I think we have to be honest about that.

This agency is growing.

And we're going to another floor.

We have all the requirements that are for upstairs when we go there.

We had the additional personnel and I think we have to make a very --

I would hope a strong unified stand on that.

That there's no way we can reach that I'm concerned even about what we have in there that we have to meet, you know, that it looks like it could be some concern concerning how far our budget will go.

That's really my concern, as I say, the five and 10 percent.

We have to let them know we are a growing agency, not a shrinking one.

>> DOUGLAS KELLNER: Anything else?

All right.

I certainly endorse what Commissioner Aquila said, because of all the new mandates and the projects we had to take on.

My question is, are you comfortable there's enough in the budget to cover acceptance testing and also contingencies on the certification process?

>>: My understanding, that's something addressed as part of the side letter but which attached to our budget.

That's an additional item.

We are having discussions about what that amount should be.

I share your concern that we need to have sufficient resources to do that, but we are discussing the staff coming up with those numbers.

We have, you know, not as part of this, but it will be part of that.

>> DOUGLAS KELLNER: Of course in the budget negotiations with the legislature in the springtime we did get that,

was it \$5 million appropriation to cover potential certification costs that we thought should not be passed on to vendors.

And I think from a public policy point of view that that's something that we should remind the governor about again and, you know,

we will probably talk about it again at the end of the meeting when we take up the open source voting issue.

All right.

Is there anyone else who wants to say anything on the budget issue?

All right.

Those in favor of approving the propose he will as submitted?

Say eye.

(All members responded "aye.")

>> DOUGLAS KELLNER: Opposed?

No

(There is no response.)

>> DOUGLAS KELLNER: It's approved.

Thank you very much, Pat.

So the next issue is discussion of the State board's response to the Department of Justice, or I guess the proposal to the Department of Justice that we need to make.

You want to start, Todd?

Don, you're welcome back up to the table as i said you can participate in this

>> WOMAN: We may need him.

>> TODD: If I may i guess i can start

>> DOUGLAS KELLNER: I'm willing to start, if you want.

(Laughter.)

>> TODD VALENTINE: The deadline is the 28th.

That's the proposal to the justice department.

It's not necessarily the end of it it's not -- to the Court but we'll share that.

The debate has been about what is our, what is going to be the plan for next year.

There's no draft to share with you today because the program people still haven't come to some consensus as to what our recommendation will be.

And I guess that's where we are at now.

I mean, there's a number of mechanisms that have to go in place.

I mean, there are things we are doing, of course.

The ITA solicitation to have the testing vendor is moving forward.

That's progressing on its own schedule.

Obviously the database has come into being and is running.

I mean, we are --

Those are not really issues at this point.

The issue is what, you know, there's two issues.

One is what are you going to do in 2008 which is probably our most pressing need and what is our plan beyond that?

So the plan really needs to address both of those aspects.

And I think we've really been focusing on our immediate needs for 2008.

>> WOMAN: You're saying we have nothing to give them next week?

(Laughter.)

>> DOUGLAS KELLNER: No, we have a plan.

>> TODD VALENTINE: I don't have anything here to share with you.

I don't have a draft for that, but the elements have been discussed.

It's just at this point there's been no consensus for me to actually write something to share for the board to review, vote upon and get ready to submit.

>> WOMAN: What did the Department of Justice, what are they expecting, you know?

I understood that their last telephone call they were not so sympathetic to our situation.

In fact, they were very harsh, which I don't blame them, but what did they, what do you think they will accept from us?

>> TODD VALENTINE: Well, their posture in these phone calls has increased.

I think the posture that they're taking now is that they are looking for the plan for full compliance which in the minds of the Justice Department is the replacement

of the lever voting machines.

Obviously that meets the disability requirements.

That's the position they're coming from.

I don't know, I think they are sincere when they say they believe we can do that in 2008, but we are also sincere in saying yes,

but we've asked our counties and as we said in prior times these are the steps that are necessary.

You know, obviously they are willing to meet with the counties, but they met with the counties.

They understand the issues the counties have to face

Their focus now is upon us, the State board.

because We have a role to play before it gets to the counties.

That still hasn't been completed yet.

They understand the delays.

They don't like them, obviously, but to some extent some of those were out of our control.

We ran into roadblocks and, you know, obviously we have explained that to the judge.

Not in formal motion papers at this point but certainly in court conferences.

So I would suspect that if the plan does not address how full compliance is met, and gives a time frame for it,

they may disagree with the time frame or agree with it, that that would not meet their definition of the plan.

so it really has to address both of those scenarios and if there is something in the interim

which is 2008 if we don't have full compliance by then, they will be looking --

They haven't telegraphed what they would like, but, you know, as we've said in prior discussions and as this board has floated to the, certainly to the county

boards in the response that came in, we talked about today, was expanding the current use of the accessible devices and is there a mechanism in place to improve the

device, by procuring a better device?

As the county boards indicated in their letter, it's not the device itself but expanding the outreach notion so that more people get to use the device in the current location, is one option.

I still think and we are moving along the track of the, as this board has said, the plan A machine, the plan A contract.

And as the memo that Anna circulated that we worked on yesterday, to be honest,

we feel that that procurement is very close to being put out on the street and could be out at the end of this month.

Now, that's, the long-term goal.

You still have the interim, the issue that has to be dealt with.

>> DOUGLAS KELLNER: All right.

I here today - -

I came here today with the expectation we were going to work on a proposal.

Especially since others asked that it be added to the agenda for our Commissioners.

In our August meeting we spent some time discussing this.

I believe we came to a consensus which was reported that we were going to submit a proposal to the Department of Justice that provided for one ballot marking device at every poll site as required by Section 3 01A3 of the help America vote act.

I still remain personally committed to including that in the plan and as far as I'm concerned, that's the minimum starting point for where the State board's plan has to be.

Now, also coupled with that, it's critically importance that in my view --

And maybe the date January 15 is arbitrary, but that January 15th be the date by which the State board has to finish its functions to move the plan into the next step where it then is up to the counties to present their plans for compliance.

And that means the two main functions that the State board has are to work with the office of general services to have a contract in place so that on January 15 the State boards will be able to actually sign up and order equipment.

And the second thing that the State board has to do is have some form of certification or authorization of the specific machines that the counties can purchase.

Now, each of those has a lot of technical components in it.

And I know that there's been lots of discussion of this and I want to encourage the staff to continue that discussion and then particularly I'm grateful to Anna for working so hard to stick to our schedule to make it possible to have the State have its job done by January 15.

Now, the office of general services in my view has not yet gotten the message that after a relatively lax period when nobody has been pressing deadlines, that this is

now an urgent matter that they have to rearrange their priorities to get this done.

But I'm also saying that the last schedule that I was given from the office of general services has only a few days in it that I think that they're taking more

time than they need and that I would urge Anna and her, and Allison to finish having the specifications and the form of a contract ready regardless of whether OGS is

going to work with us or not so that at least we have the board's proposal for a contract in final form and say this is what we want.

I understand that we are only days away from having that done.

So that's the contracting aspect of it.

And I would also indicate that with communications we have had with the state controller's office that they have agreed for purposes of the plan that we would submit to the Court that they would only take 30 days and not the full 90 days and so with that, if we can just get OGS to be a little bit more corptive and then to stick to the plan, we can make that January 15 date.

Now, on the certification side, there are three legal alternatives that I see in the statute on what we can do.

One is to do an experimental authorization under seven-200, which is what we did two years ago.

The other is to do full certification under 7-202 and the third is to do an interim certification under 7-202 which would not necessarily involve testing every single standard in the statute or completing the testing for every single standard in the statute, but something less than that with a commitment from the vendor that if there were any defects they would still have to correct them.

I believe that's worked into the text of the current draft of the specs.

So I understand that there's lots of discussion at the staff level on those three alternatives and I would encourage that discussion to continue and to look at more creative ways of getting the testing process for the B M.D.s started as soon as possible and I guess we don't need to go into the details of that, but to do that.

Now, a lot of people have been asking me,, what about what the counties are saying?

that even if we have all this stuff done by January 15 they can't do it

And I think that it's been extraordinarily constructive for the counties to do what they've done.

That's why Don, the report that you brought is a good positive step because what are the counties actually doing by putting this report together?

They are planning.

They are working through the steps and saying here are the things that we have to do and here's how much time it takes and this is why we can't get it done and I think that it's appropriate to submit that time line by the counties to the Court.

For the Court's own judgment.

I may have some comments on what the counties have said.

I don't know that we should go through them this afternoon, but we could.

I personally think that it is doable if the counties are starting their planning process now knowing that they are going to have to make a purchasing decision at the end of

January and gearing up to put in place the training program that is vitally necessary.

And I also recognize that as hard as it is for the State board to meet that January

15 deadline, that it is a gargantuan task that the counties are undertaking and

much more work falls to the counties than it does to the State.

But I believe that this is not, that having the ballot marking devices at the poll

sites in 2008 does not necessarily have to be an interim or temporary solution.

That it's actually part and parcel with the long-term HABBA compliance.

For that reason, I remind the counties that at least for my part the thinking is that the ballot marking device would have to meet the standards of 7-202.

Whether we are able to test for every single standard right now, that's not so clear.

But that, for example, the --

We already in effect decertified or deauthorized the popu Lex device.

we said that For 2007, the counties can use it if they've already purchased it, but they can't purchase any new populex machines and the reason for that is that the ballot that it generated was in code and could not be verified through ordinary means by the voter.

The Avante machine that is currently authorized does not print out a full face ballot in compliance with the statute and, therefore, would not comply in my view as a permanent solution for a ballot marking device under 7-202.

So it was only authorized for temporary purposes.

Of the machine that is we authorized so far, the only one that does appear to comply with 7-202 is the automark and I would remind everybody that there are 35,000 automarks in use throughout the United States.

That is the system that virtually every jurisdiction that does ballot scanning has in place.

And so without prejudging what we set up for our testing, in my mind the default mode is at the very least we can buy automarks.

I believe that although I personally haven't had any communications with the vendor, that they can produce 8,000 machines in time for delivery to the counties in the springtime.

They have 3,000 machines in inventory I'm told already.

And if it should turn out that no vendor is actually able to manufacture the machines, again it's not because the State board hasn't done what it's supposed to do or even that the counties haven't done what they should be doing.

So I'm still full speed ahead on trying to get this done.

The federal law says what it says and we all know that that is what the law is and if it's possible to do this, we should do it.

If it's not possible or if it's really going to compromise the ability to run a proper election, then that needs to be brought to the attention of the department of justice and judge sharp and then I think --

I think it's unconstitutional that would actually compromise the integrity of the election.

>>: If I were to ask you for a translation of what you just said it doesn't seem to respond to what our response to the Department of Justice is.

My suggestion would be, I know that you want to issue the words to the counties that they must have a ballot marking device --

>> DOUGLAS KELLNER: No.

You see, it's not me.

We have a federal law that says that the counties --

The federal law says that there must be one ballot marking device at every poll site. That's what the federal law says.

So if you are asking me, am I going to go into judge sharp and tell him that that's impossible?

The answer is no, it's not impossible.

It's doable.

Buy 8,000 auto marks.

Buy them tomorrow and put them in every poll site.

It's possible.

So it's not Doug Kellner saying to the counties that you have to do this.

What I am saying that's absolutely critical is to our own agency and to our own staff, and to our fellow agencies that we have to work with in the state government,

you've got to do what you have to do to get these deadlines done.

It's not easy.

OGS, it's been very frustrating dealing with OGS because they don't get it.

in my view, and I will allow them to speak for themselves if they want.

They do not have sufficient expertise in election administration even after a year

and a half of working this, that they still send e-mails with comments in them that make no sense to an election administrator and that show that they still don't

understand the basic policy objectives that we're talking about within the agency.

We have to concentrate our effort in communicating to OGS how this needs to be done.

We need to get the message to Commissioner Egan that he has to allocate sufficient

staff who will work extra to meet what now are becoming shorter and shorter deadlines because the work hasn't been done over the last year.

I'm sorry, Helen, I'll let you come back on this.

>> HELENA MOSES DONOHUE: I would like to finish issue.

I think that what we are trying to get to the Department of Justice is a realistic approach to what they feel we should be doing.

Now, I think that the report that we got from the county Commissioners should be an integral part of our response to the Department of Justice.

I think that the comments that we got from the community of the disabled should be part of this report because it gives us views from people that are actually in there.

I mean, we can sit there and tell them to do whatever we want to, whatever we think the statute is.

If it's unrealistic and they are the ones on the front lines and they know what

they've got to work with, I think it's got to be presented to the Department of Justice that yes, we're doing everything we can; yes, we're very close to passing

the regulations for the first part of it, the A part of it.

But they've got to take into consideration what everyone's putting up with, the

feelings of the disabled community and the feelings of the county Commissioners have to be right up front.

>> WOMAN: May I respond?

I understand what you're saying and I think if I were the Department of Justice or

judge sharp I would say if this was a year ago, that would be okay, but we are now the only state in the United States that is out of compliance.

And I think we have to --

I mean, some states bought machines and they failed.

Therefore, they've got to look for breathing space, too.

We have not been in compliance at all.

It hasn't been our fault.

We have been trying to reach and make that compliance, but I do think we have to give them something they can put their teeth into.

I think it's for us to say that we need, that we need plan B machine in every polling place and it's up to the election Commissioners to say why they can't meet that objective if that's case.

If we all tighten our belts we can meet that objective.

I think OGS has to be our partner.

I don't want to fight with OGD

They have to be our partner.

So does the comp troller who seems to understand that they are our partner and are helping us and that we have to tighten our belts and do what is difficult, but we can get something done.

Plan B machines is only one quarter of what HAVA is asking us.

They want brand new machines everywhere.

They don't want --

We are not supposed to have any more lever machines.

I think we have to present something worthwhile or I'm afraid, you know, the harsh results could be that we are told that we have a --

Coming here.

We are told to put every machine up that I call it federal certification.

It's not.

What do they call that certification that they have for the other states?

>> DOUGLAS KELLNER: NYSED.

>> WOMAN: That they have NYSED certification and they have to be bought and they have to be in place for '08

That will be far worse and everyone will turn around and say we have a master and we have something telling us to do all this and why didn't the State board do something?

I think this would be a small step towards getting something done so we don't wind up with something much worse.

I think we can do this

I think, I really think that the election Commissioners did a very thoughtful paper.

If tightening our belts we can all get something done and the plan B machine seems to be the right way to go at this time.

And that's the reason I support that position and I do support that we work together with OGS.

They are not our enemy.

They are another state agency, but they have to understand that they are as much under the gun by the federal law as we are.

They are part of the time component and they have to be our partner there and they have to

shorten some of these times that they feel they need in between getting things, you know, contracts done.

>> HELENA MOSES DONOHUE: Well, good luck getting that message to them.

>> DOUGLAS KELLNER: Could I add one thing that Eleanor, I do agree that the county Commissioners' report should be an integral part of the proposal.

Even though I may not agree with their conclusion that it's impossible to do this, I think that I think their report should be given to the judge.

If they have any additional information that they want to furnish the judge and the Department of Justice, they should furnish it.

But the key thing is that this agency and the rest of the state government do what they have to do to make it possible and then it's up to the counties.

We can't make the counties do anything, it's not realistic that we can make the counties do anything and I'm not telling the counties what they

have to do.

What I am committing to is that if we can't get this done so that we have contracts in place by January 15 with machines, with a list of machines that the counties can purchase by that date, then I give up.

I throw in the towel.

In my view it's not realistic to expect the counties to move forward with compliance.

All right.

Well, that's where I'm coming from.

And I mean, the high level plan for me is that the State finished those two projects by January 15.

We have more detailed time lines that OGS has furnished and I understand NYSTEC is working on a timeline on different options on how to accomplish some forms of testing prior to the end of the year for the ballot marking devices.

But I'll say again, I'm sorry if I keep repeating myself, the ballot marking device is not the same as a voting machine.

That all the ballot marking device does is generate a ballot and yes, we should be buying equipment that is going to last a long time and that is quality equipment.

We shouldn't be buying substandard equipment, but I view this purchase now, the \$40 million purchase as a permanent acquisition and if there's nothing else available,

I'm even willing to go, to say now let's just buy 8,000 automarks.

Because you have a machine that has been widely used throughout the country.

We have lots of other jurisdictions with their reports on them.

Yes, there have been defect reports, as I think you would find for any machine that's used that widely and recent issues.

>> WOMAN: I don't want to tell counties what machine to buy.

I leave that to them.

>> DOUGLAS KELLNER: I'm saying this is a default mechanism by which we could be in compliance sooner rather than later.

If all else fails, then it's a way of complying with the federal law.

To me, the first objective is to comply with the federal law.

I will take on this issue.

I do not agree, I believe if we provide a ballot marking device in every poll site we will be in

full compliance with the help America vote acts provisions that are now in place.

I understand that the Department of Justice does not agree with some of my interpretations of the help America vote act regarding lever voting machines.

I believe that the help America vote act did not ban lever voter machines.

That lever voting machines do comply under the help America vote act.

The very first section of Section 3 01 speaks about continuing use of lever voting machines after enactment of the help America vote act in discussing with members of Congress the recent amendment to HR 811 that our Congressional delegation so ably

negotiated, it is clear from counsel to the speaker's office in Washington that they believe that the use of lever voting machines continues to remain legal.

And the one section that the Department of Justice relies on most heavily, which is Section 3 01.A4 which requires that all voting systems comply with the accuracy

standards of, that were set by NSAID in 2002, there isn't a voting system on the market that complies with those standards literally.

So if the Justice Department is going to apply that standard to our lever voting machines, then they better also apply it to the ballot scanning machines in use throughout the country.

I will take on anyone who wants to argue, I believe that the lever voting machine is more accurate than most ballots, then the ballot scanning systems in use in the country today.

If the Justice Department wants to litigate that issue, I say let's litigate it.

But I believe that we can submit a plan that we will be in full compliance in 2008.

All right.

>> NEIL KELLEHER: Mr. Chairman, just to get on the record, I think more than one of us up here have indicated our, I guess it would be congratulations to the state association of Commissioners for putting this letter and the enclosures together, in such a short period of time.

I have to tell you, I still sit here impressed that I need not drag the federal government into it or the state legislature.

I only need to go as far as number one, what effort they put into this and the result of it.

On page 5 and 6, there are 25 items highlighted by Don as to what the state association feels they would need to do.

Among other things, in order to comply.

And I am sure that's becoming part of the permanent record and I hope that perhaps copies of that part of their submission might be made available to people who are here observing and anyone else that may quite possibly see this.

It seems to me

The Commissioners have kicked it around more than a little bit.

We try or we discuss here coming up with the following way to solve the problem.

Tell them to do it or else.

I'm not afraid of what justice is going to do.

I don't think any of us here are going to go to jail. Maybe justice will look at this thing and decide maybe they did tell us not to move quickly.

>> DOUGLAS KELLNER: Neil, you're not on the papers.

Peter and I are.

>> WOMAN: You're not going to jail.

>> NEIL KELLEHER: Don't make any plans for summer vacation.

(Laughter.)

>> NEIL KELLEHER: Seriously, I'm very impressed by it.

I think that the way not to do it is to tell the local Commissioners get this done and get it done by such-and-such a date.

I would be more apt to find out what justice would plan to do if we take that position and I can't commit myself to anything more than making sure I visit you once every two months.

>> DOUGLAS KELLNER: Thank you very much.

>> NEIL KELLEHER: Thank you, Commissioner.

>> DOUGLAS KELLNER: Thank you, Neil.

As I say, just so it's clear on my position, I'm committing that the State board get this done by January 15th and present the county Commissioners proposal or plan,

whatever you want to call it, to the Department of Justice.

It really then is for the county Commissioners to show the Department of Justice that their plan is sound.

It is my belief that if you take those 25 pieces --

That's why I think this is so productive because the counties are already planning now and dealing with this issue and spelling out each of those complicated things that they have to do,

which I don't want to underestimate that they are difficult to do.

But eventually they have to get done and at least they're making a plan.

So that's a very positive start.

The other side of it, though, is that we have to get done what we can do.

All right.

Peter, you want to say anything?

>> PETER KOSINSKI: Well, if I could, I think you touch on an important issue as it relates to this Court suit which is that the Department of Justice is taking the position it's the replacement of the levers that will put New York State in compliance with HAVA.

I sense as we go through this process with the Department of Justice in attempting to settle or

litigate the case that anything short of the state of New York fully replacing their levers is not going to be satisfactory to the Justice Department.

My sense is that, you know, not that I necessarily disagree with your position but I think that as we go through this we should understand that if we're trying to craft some sort of solution here to the DOJ lawsuit, that is their position.

It continues to be their poing.

I don't see them backing off that position.

If we're attempting to make that kind of offer to them that we'll, that will actually satisfy their requirements, anything short of that is not going to be sufficient.

That said, the issue of the ballot marking devices, I think, does go a lot to the counties.

I agree with the concept that we have to be very sensitive to what the counties are saying as far as their ability to comply with ballot marking devices for next year.

If that is the offer that we make and if the Justice Department accepted and if the Court accepted it,

you know, I'm not sure that the counties are saying that would be very difficult.

I do agree that has to be considered, but you know, in the up front issue as far as

this agency's role, I agree that we have a very critical role here and we've certainly, I think, taken that role very, very seriously,

and I think rightfully so and that role is certifying voting systems.

My concern is that we don't put ourselves in the position of rushing through that process in a way that compromises the ability of this agency to ensure to our counties and to our voters that these systems,

that we are allowing them or authorizing or certifying to them to buy are actually systems that we can rely on and that the voters can rely on.

You know, we've taken the last two, three years and beyond in a very careful,

measured way to make sure that we have, you know, the proper testing procedures in place to make sure we have the proper testing methods in place,

to make sure we have the proper testing units in place.

And as you know, part of that is securing a, an ITA which we are in the process of doing right now which will be our testing component.

My concern is that we don't rush through this so that we cannot anymore as an agency

ensure that the systems we are putting out to the community are sufficient - accurate, reliable, are something that the counties and voters can rely on.

I feel as though we are going in another direction from the direction we have been in.

I am very comfortable with the direction we have been in which is to make sure that New York does it right.

I think we all agreed that that's the position the State is in.

We've have had that position with the Justice Department and the Courts.

We feel that the way the States should proceeding to do this right, not to do it fast.

I'm concerned about this agency adopting a procedure that will now, you know, trade that in.

Compromise that by saying no, we are now going to do it fast.

Even if it does compromise our ability to ensure that these machines are properly tested and are actually of a nature that we can rely on.

So I mean, I understand what you're saying about the January 15th date, but that is, you know, very soon - it's September now.

I mean, it's September now and to get all of the testing conducted by January 15, I don't people to think it's something that is easy to do.

It's not.

We are still, as you know, as a staff we've talked extensively about what standards should be in place.

I personally agree that there should be a certification process.

I think if we are going to ask our counties to purchase voting systems in any quantities certainly and ask our voters to vote on them, we have to assure through a certification process that they are reliable machines.

I think we all know that the machines that we put out there had some problems with them.

I'm sure that Don can speak to that as well as anybody, that we didn't do a

certification process last time and it did result in some of these machines not properly working.

I personally am reluctant can't, I guess, to do that again so that we put out ion more of these machines potentially have the same sort of problems that we have seen in the past.

So I understand that the Justice Department wants us to do this quickly.

We all know that.

They have wanted us to do this quickly since 2006.

They pressured us then.

Do it fast, do it now.

We said no, we are not going to do that.

We are go to take our time and do it right.

I don't want --

I'm reluctant to put the agency in a position of saying well now we are going to abandon that policy that I think we had adopted of doing this the right way just to do it fast.

>> COMMISSIONER AQUILLA: Peter, we are going to give them a statement in a few days that is going to say nothing.

>> PETER: No, I don't believe that, Evelyn.

I don't believe that's the option.

I believe there is an option here and I think a responsibility of this agency to put a plan together.

I totally agree with that.

Don't get me wrong.

I fully, I think Todd has that responsibility as our attorney to present to the Court and to present to DOJ a plan and we have that obligation.

The question is, what is that plan going to be?

Is that plan something that we are comfortable with?

I hope so.

I mean, I think that's what we need to do, not just necessarily something that justice wants to hear or somebody wants to hear.

I think we have a responsibility to put a plan out that we are comfortable with and I support the idea that the counties are comfortable with because I think, you know, the counties and us, we are in this together, you know.

We can put a plan together.

But unless the counties are on board, I don't think it's going to happen.

So I think it's critical that the counties be brought in and made part of that.

I don't think it's not a question of do we do a plan or don't we do a plan.

It's a question of we have been planning the last three years and that plan has been to do this the right way, to make sure that our testing was appropriate, to make sure that the machines are of a caliber that we are all comfortable with.

As I said, I'm just reluctant to compromise that approach which I think has been the right approach.

I think the federal government has in some ways acknowledged it was a right approach.

I think they acknowledged that in 2006 when they didn't force us to do something in 2006 that we all would have been sorry for, including them. We would have been forced to do a program that was not of a nature that we all felt was going to make sure that our voting was proper.

>> COMMISSIONER AQUILLA: Peter you said --

>> PETER: I don't think it's a question, Evelyn, as I said of whether we do a plan. We have to do a plan.

>> COMMISSIONER AQUILLA: I think we have to do a plan and that plan has to have teeth in it. It can't be, well we're going to do this this date and then we change all those dates around when something goes wrong. And they're going to say this is the same bologna.

We have to put our teeth into something.

You said some of the plan B machines had a bad outcome.

The majority of them had an excellent outcome.

I would say 90 percent of the plan B machines worked fine.

Probably a higher percentage than that.

Not to say that we are willing --

We will work with our counties on it.

We have never abandoned our counties.

We will work with them on it.

We are in it with them, they are in it with us.

We have to show some kind of compliance. Or You may not think, Neil, that the judge is

going to get tired of it or heaven man will get tired of it. You may not think that Hefferman is going to get tired of it.

I think they are at the end of their hopes and we have to bite the bullet and do something tough.

And doing something tough is moving the plan B machines, which puts us into a great deal of compliance.

I think it would be a good effort by this agency --

Not a poor effort.

Yes, we are moving forward probably more thoughtfully and tougher than any other state in the union, but we still are completely out of compliance.

I think we have to at least give them something that says we believe that we can make this effort and be in compliance and if outside, if the counties can go to the Court and have the Court believe, tell them that we're wrong, they'll do take.

But I think they can do it, too.

It's not going to be easy for us and it's not going to be easy for them, but you know, the sand is running out of the hourglass.

It's time that we have to act.

>> HELENA MOSES DONOHUE: I would like to ask an administrative question because I

think that's what we need.

How long will it take you guys, the staff, to put together a plan that we could agree on before going into court?

>> PETER KOSINSKI: I can't answer that.

I think we can put together plans.

Is it something we all can agree on?

I don't know that.

I don't know that.

>> HELENA MOSES DONOHUE: Can we do this in like say a week or --

>> PETER KOSINSKI: Well, the fact is, I believe, like I said, we have to put a plan before the

Justice Department --

Todd, correct me if I'm wrong. The Justice Department, we have been ordered by the Court to put a plan together by September 28.

>> HELENA MOSES DONOHUE: Uh-huh.

>> PETER KOSINSKI: I don't think we have an option here.

I don't think this is, do we want to do it or can we do it.

I agree, we have to do it.

If not, I'm not sure what happens, to be honest, but I certainly feel we have that obligation and we should comply with that.

It's just, to me it's a question of what does it look like.

>> HELENA MOSES DONOHUE: Tell you why I asked on the timing is.

I'm speaking only from my own personal problem with this.

I have a business that I run.

I get home at 6:30 time at night and that's when I got my packet last night.

I can't intelligently put together a plan today for the Court when I had not read Don's report to us.

I had not seen until this morning the disabled comments.

These are extremely important for the realistic approach to a plan.

>> EVELYN AQUILA: Absolutely.

>> HELENA MOSES DONOHUE: What I would like to put forward If we can be in communication and we can put together a plan that they have next Wednesday, and we have Thursday when Todd goes into court to put it in a proper form.

Do you have a problem with that?

>> EVELYN AQUILA: I don't know if we have to vote. Do we have to vote on the plan?

We never did before.

(Overlapping speakers) >> PETER KOSINSKI: we would like to have something everybody agrees

on before Todd goes in.

>> DOUGLAS KELLNER: I think we can try to discuss that.

>> EVELYN AQUILA: We can have a conference call.

>> PETER KOSINSKI: I don't care if you vote on it, but I don't want to put a plan into the judge that you guys aren't --

>> DOUGLAS KELLNER: Since it is a matter for litigation, we could do this by a telephone conference because, you know, we can vote now to hold an executive session to discuss the plan by telephone conference.

>> EVELYN AQUILA: By Wednesday?

>> DOUGLAS KELLNER: Because it's a matter for litigation.

It's one of the exemptions from the public meetings law.

>> EVELYN AQUILA: Litigation can be in private..

>> DOUGLAS KELLNER: Doug we can have a telephone conference to at least discuss this.

I sense, however, that the staff will be able to do most of this without the Commissioners.

I think you had lots of input from the Commissioners so you know where we're coming from.

The question is now is to craft a compromise that meets everyone's minimal needs.

>> EVELYN AQUILA: You two sign off on it?

You two have to answer?

>> PETER KOSINSKI: Legally.

>> EVELYN AQUILA: I'm speaking --

>> DOUGLAS KELLNER: You know, the bottom line is, if we were really going to be cynical, we can say that this is the Attorney General's problem and he has to put the plan in.

(Laughter.)

>> DOUGLAS KELLNER: Ultimately they are the people who have to sign off on what

goes in, right?

He's representing multiple parties.

He's representing the two Executive Directors.

He's representing the agency.

>>TODD VALENTINE: No, they are not actually.

There is a split in representation and --

>> DOUGLAS KELLNER: Who is it?

>> TODD: I represent the agency then you have to do the plan.

>>: They have a planning element for the State --

>> DOUGLAS KELLNER: You don't have the authority to do a plan without the commissioners.

>> TODD: I need both sides to agree, which is my problem.

I don't have that consensus.

>> PETER KOSINSKI: That's the way it should be.

We shouldn't have a plan that everybody doesn't agree on. That doesn't make sense.

I certainly feel an obligation to craft a plan that everybody agrees to, at least in this room, you know --

>> DOUGLAS KELLNER: I think I made my position clear.

>> PETER KOSINSKI: Yes, you have.

I think I've tried to make mine.

>> DOUGLAS KELLNER: You know, I don't see them as irreconcilable.

>> PETER KOSINSKI: No, I don't either.

>> TODD VALENTINE: No.

>> DOUGLAS KELLNER: As I say, my minimum position is that we submit a plan that shows how we think there could be compliance by putting one ballot marking device in every poll site.

That's sort of one of my bottom lines.

A second bottom line that I have --

When I say bottom line, that doesn't mean it's absolutely inalterable.

But it's very important value system to me that we do that.

I think that we can do it.

The second thing is that there be a concrete timetable for OGS and the State board of Elections to finish its functions by January 15 and as I say, I can't control

OGS, although I can start to become more public and more vocal and start releasing documents that would show the kind of issues that we have going on over there.

And the third thing is that --

I'm sorry, I got distracted.

>> EVELYN AQUILA: I think you did say three things if I'm not mistaken.

>> DOUGLAS KELLNER: It will come back to me.

But I have no problem communicating to the Justice Department the issues that the counties have raised and also making it clear that it's still the counties who are going to make the decision what they do.

And I wouldn't forget --

Well, you know, the importance of the disability community in this in terms of why the law says what it says and why Congress was not willing to change it.

All right.

We should give --

Don, Commissioner ward, would you like to add anything?

I'll call on OGS if they want to say something and call on the disability advocates.

>> DON: I would like to say a few things, Commissioner.

I guess prior to this life I was a plant manager for a corporation in Syracuse which had several plants throughout the United States, Mexico and England.

There was a --

I'm sorry to say this, but one of the feelings I believe the counties are in at this

moment is I feel the same way that I fell back then when somebody said I'm from corporate and I'm here to help you.

(Laughter.)

>> DON: First thing we did was reached for our wallet to make sure they didn't put their hand in it.

I guess that's where I kind of think the counties are today.

We are looking to the State board for some help and some guidance in this.

I believe it is a partnership.

We are not in any different position at the county level today than I think we were in two years ago.

The systems aren't there.

The procedures aren't there.

There's so many things that are identical to two years ago.

And some of the counties, our county wasn't one of them, but some of the counties met with justice and explained their concerns about what was going on and we came to a compromise position at that point in time that developed into plan B for 2006.

We fully understand, I believe, that plan B 2006 would not be acceptable in 2008 and there's going to have to be some movement on our part.

We are willing to do that.

I think I heard the other day when we met here that one of the bigger concerns in 2006 was outreach to the disabled community.

Educating them as to where the machines were, how to use them.

Having time --

One of the gentlemen said there was a very small period of time for the disabled community to use those systems and be able to understand how to use them.

You mentioned you were glad to see the report because it shows the planning aspect of the County.

I think the counties are planning.

Many of the counties have not entered into any kind of spacial requirements for new systems because they are not sure what system it is they are going to ultimately select.

If it happened to be a DRE, the spatial requirements are different than it would be different than from an op scan system.

Now I look at this from the perspective that we're going into a year where we suddenly have to be able to house these new systems in a facility I'm assuming that these issues would be driven around those, the security and environment issues that the vendors are going to want to review.

And some of the counties don't have space at this point in time.

We are doing all of this and this year is a very busy year for local boards because of the local elections for most of us.

Right after we get done with all of that, we are going to be looking at perhaps some additional systems that we entered the system for evaluation and testing.

And we are running a Presidential primary in January and February, which is going to create additional time for us to take care of that issue as opposed to just worrying about new systems.

The time frame, I think all of the counties are thinking about what they have to do, but I don't believe that the counties felt that there would be the bomb shell dropped on them that there would have to be a B M.D. in every poll site in 2008 until a few weeks ago.

That cuts our time almost in half.

If we were in a position where we could move forward with a certified system, then that's one issue.

But you're asking us to run dual systems next year.

And in the case of Oswego county, everything we learned last year goes out the window.

We took the inexpensive way out and bought the popu Lex machines because we thought it would be a one year system and we wouldn't have to spend our money. Now we have to look at systems to go instead of popu Lex at every polling site. That's a whole new learning curve for us.

I guess the report is the report and it says what it says and it tries to convey to you that the county boards are seriously concerned about being able to run dual systems and not disenfranchise the disabled community or anyone else in the elections in 2008.

And I guess we would simply ask to enter into this partnership where we, not say this is what we are going to do without having an opportunity to go to the Justice

Department and say for 2008: This is what we can do.

I don't know where that will go.

I obviously am not at that table.

I understand your positions.

I understand the concerns.

I understand that the law is the law.

However, there is a practical issue here of the counties not being able to run the elections in 2008 satisfactorily and efficiently and effectively and giving everyone the right to vote and I don't think any of us want to see 2008 be a horrendous mistake.

Thank you for listening to me.

>> DOUGLAS KELLNER: Thank you, Commissioner.

And I think we hear your comments.

And they are important.

And I certainly want you at the table with the Department of Justice.

>> DON: Thank you.

>> DOUGLAS KELLNER: Mr. Goglia, do you want to say anything?

>>: Not at this time.

Thank you for opportunity, though.

>> DOUGLAS KELLNER: OGS?

>> WOMAN: just a few brief things.

We are primarily here today to listen.

>> DOUGLAS KELLNER: I hope I gave you an ear full.

(Laughter.)

>>WOMAN: Yes an thank you for that.

I thank you for the opportunity to speak to you.

I would like to assure you that Michelle and I are here today because Commissioner Egan is committed to supporting any contract that the Board of Elections needs to accomplish its mission.

We believe we have been assisting you.

I also want to add we will always defer to you about election policy.

That is your area of expertise and one of the reasons we are here listening so that we

have a greater understanding and we can use that to do a better procurement for you.

I want you to know that staff has, staff and resources have been dedicated to this.

I don't think I've seen a project at OGS in many years that's had this number of people committed to it.

I know Michelle and I spent a great deal of time this week trying to help your staff and your staff help us reach the conclusion that you need to have to satisfy the Department of Justice.

Our expertise is in procurement.

Unfortunately, some of this has lead to --

Led to differences of opinion on how to proceed.

We are looking for ways to get over it, around it and through it so that you can get the systems that you need and under a contract that meets all the State's requirements.

We want to be partners with you and I think we have been partnering with you to reach effective solutions that you need.

If you have questions, I'm happy to answer them.

>> DOUGLAS KELLNER: I have a lot of questions about the time line.

>> WOMAN: Could I ask Michelle to come up?

She's more involved with the time line.

>> DOUGLAS KELLNER: Of course I'm already very concerned about this time line that we're talking about now and I don't know if this is the same, if this is something that --

Bob, did we generate this or did OGS generate this?

>>: It's OGS --

We want to make sure we're looking at the same one.

We have been asked to give you several different time lines.

>> DOUGLAS KELLNER: Mine says time line forbidding of a new plan B solicitation.

It starts with event day one, September 28.

And ends approval by O.S.C. March 17, '08.

>> WOMAN: I wanted to make sure.

>> DOUGLAS KELLNER: Let me start off the dialogue on this by simply saying that we've already gotten the office of the state controller to indicate that they have no objection if we reduce their time from 90 days to 30 days.

>>: That's fine.

This is a conservative time line.

Many of the dates could be shortened and the comptroller's date is one of them.

By law they have 90 days.

That's why it's put in there, so you know that.

>> DOUGLAS KELLNER: See, we're there if we shorten it.

Because you take out the extra 60 days from the comptroller, that brings it down to January 17.

I'm only asking for two more days out of the time line.

>> WOMAN: That would be great.

>> DOUGLAS KELLNER: And I would start with the September 28, that --

Well, the biggest gap that I had in looking at this is, why does --

If in fact you have a fully delivered product from the Board of Elections with the

terms of what we are proposing for the contract and the terms of the

specifications by September 28, which I'm telling my staff they should reduce by a week, but no, that's tomorrow, right?

But we're saying Monday.

Why does it take them until the 7th, until the 14th that it actually gets advertised?

>> WOMAN: Actually it's already advertised as long as there are no changes to the solicitation.

The Plan B ballot marking device did go into the contract on September 10.

>> DOUGLAS KELLNER: Assuming we do what has been in the e-mail that election operations sent to OGS, which means that we are doing this with the contract changes that the counties have proposed?

And that we have endorsed? And --

Which I think some of us here have strong views about the comments that OGS has made with respect to those changes that suggests that perhaps they need to think about how elections

are run and the kinds of problems that election administrators anticipate.

But assuming that that's going to, that we are going to come up with what we think is a final polished document of what we think should be the contract terms and the specifications, does that require rebidding, re-notice of the solicitation?

>>WOMAN: As long as the general, what you're bidding on doesn't change, that would not require readvertisement.

>> DOUGLAS KELLNER: We want people to contract to sell the counties ballot marking devices.

>> WOMAN: The advertisement is for ballot marking devices.

>> DOUGLAS KELLNER: I do think that from the time we published the terms of it, we notify the vendors, whether it's publication or some other less notification, that we need a minimum,

that the vendors will need a minimum of three weeks to put together bid documents.

I would hope -- that the vendors already know this is coming down the pike?

>>WOMAN: If they checked the contract reporter they would have been notified.

Or if owe.

(Overlapping speakers).

>> DOUGLAS KELLNER: Anna, has the community of people who we know have the potential for bidding on this, do they know we are doing this.

>> ANNA SVIZZERO: It came up in our last conference call.

>>WOMAN: It also went this our bidder notification system, which is an e-mail system that we have.

>>: They should be all registered in that system.

>> DOUGLAS KELLNER: So you are having another vendor call Monday?

>>: Yes.

Is it Monday?

It's here.

>>: Yeah.

>> ANNA SVIZZERO: It's usually after the board meeting.

>> DOUGLAS KELLNER: It would be worthwhile to remind them we're talking about three weeks to get the bids in.

That's a tight timetable for them as well.

And you know, I would ask OGS to look to see if they can expedite some of those that maybe we can actually move it up ahead of January 15, but I think we're on target.

Especially if we can take out --

Maybe we can even give the vendors four weeks if we don't have to actually wait until the 12th to notice it.

>> BOB BREHM: The trigger for us to begin the testing is soamdz after the bid they give us the equipment for testing.

The more you move the date to submit the bid, the later we can start testing.

Unless you shrink the period of time they have to give us the machine after they submit the bid.

>> DOUGLAS KELLNER: Those are my comments.

If you want to respond.

>> WOMAN: This time line is predicated on getting the specifications.

It's also predicated on our best judgment as to the terms and conditions, how long it's going to take negotiations.

As we said many times, the more terms and conditions that go in, the more protracted the negotiations could become.

>>: We are telling you that from our procurement experience.

We are not trying to put bumps in the road.

And we certainly had a lot of exceptions on the plan A bid the last plan A bid that added to the time frame.

>> DOUGLAS KELLNER: All right, all right.

I understand that.

That's not unacceptable.

The vendor has a pretty strong incentive, though, to move it because if the vendor doesn't get the contract done in time, then there won't be a 2008 contract at all.

And so there's a lot of negotiating leverage to keep the process moving quickly.

>>: And we will act.

I mean, at the time when we need to negotiate, we will make sure that you get more than 100 percent dedicated staff to take care of that.

>> DOUGLAS KELLNER: That's the key thing, is that people can go back and forth quickly.

>>: But vendors are not always timely in their responses in those situations.

I just want the picture to be accurate.

>> DOUGLAS KELLNER: That's fair.

As I say, if the --

In this particular case, if the vendor isn't moving quickly, they have a lot to lose because if we don't have the contract in place in time to get testing started, they are not going to be able to,

you know, it doesn't matter whether there's a contract.

There won't be any business.

>>: Right, that's one of our concerns, too.

That the testing would have to be accomplished by January 15 as well.

>> DOUGLAS KELLNER: Right.

Agreed.

All right.

Well, I thank you for coming.

And --

>>: Thank you.

>>: I don't know that testing would have --

>> DOUGLAS KELLNER: Bob?

>> BOB BREHM: Testing would have to be accomplished.

>> DOUGLAS KELLNER: Contemporaneous.

>> BOB BREHM: I don't think it's a contract problem.

>>: It's a purchase problem.

(Overlapping speakers).

>>WOMAN: You could have a contract in place, but you couldn't issue a purchase order against it because you wouldn't have the machine --

The machines wouldn't have been validated.

>> DOUGLAS KELLNER: I hope you heard my saying that we have to have certification in place.

I don't disagree with what Peter is saying.

The question is how we can merge the two once we get that accomplished.

>>WOMAN: Just for the record we have been working on several different versions of the bid documents, depending on which approach the Board of Elections finalizes on and

they are all ready to go with the place holders for the information that the Board of Elections needs to give us.

>>: You have the plan B document which was sent over to you last Friday.

Plan A1 should be on my desk now awaiting review.

As soon as that's complete that will come over too.

If you decide to go with the lot one, lot two option.

>> DOUGLAS KELLNER: Anna, Bob, Allison, you know exactly what they are talking about?

>>: Oh, yes, we --

>>PETER KOZINSKI: my understanding, by the way, which we have talked about is that the plan A change contract is ready to go.

>>: Should be sitting on my desk ready for me to look at it.

>>PETER KOZINSKI: We should go with it.

I don't know if there is no reason why we should hold back an not go forward with that plan A contract regardless of what we do with the plan B ballot marking device concept.

>> DOUGLAS KELLNER: You agree with that, Anna?

>> ANNA SVIZZERO: With the changes. Yes.

>> TODD VALENTINE: Whatever changes.

>> DOUGLAS KELLNER: The changes that the counties --

>>PETER KOZINSKI: Absolutely.

>> TODD VALENTINE: You may not have that version, but we have the changes --

(Overlapping speakers).

>>PETER KOZINSKI: We may not have that version changes.

>> DOUGLAS KELLNER: They may not have it.

>> DOUGLAS KELLNER: Of it?

Or you're very close to it?

>>: Yes.

>>WOMAN: The changes, are the pending changes...

>>WOMAN: If there are more, I have seen them.

>> WOMAN: I have all the changes prior to that.

>> TODD VALENTINE: I know.

>> WOMAN: Just so you know, because I'm here I'm reviewing it but the specifications, he just need the voting machines and the ballot marking device specifications.

Those would be the place holders that would come over and the same --

>> ANNA SVIZZERO: This is to bid lot one and two in the single contract?

>> TODD VALENTINE: You could break those out as we testified to yesterday in different contracts.

>> ANNA SVIZZERO: Could they bid them separately at the same time?

>>: You can put them in the same document and award bylot.

>> ANNA SVIZZERO: Could you negotiate the contracts by lot?

>>: Yes, you would negotiate, you could negotiate the interpreters by lot.

>> DOUGLAS KELLNER: Let's make sure that's accurate so we are all --

>>: I might not, if the terms are different I might not necessarily advocate for putting them in the same contract.

>> ANNA SVIZZERO: Contracts are different.

>>: If the contract terms are different from one lot to the other.

>> DOUGLAS KELLNER: We don't have to get into this level of detail now.

>> PETER: I will say this.

I think it's important for us to go forward with the plan A because I do think that's part of the planning process.

As we discussed this whole --

>> DOUGLAS KELLNER: Peter, there's one little glitch I want to add.

I think that we really should have a meeting of the advisory committee.

>> PETER KOSINSKI: Yes, I know.

>> DOUGLAS KELLNER: I thought it was going to be scheduled for the 24th.

>> PETER KOSINSKI: Well, it didn't happen?

Well, I discussed it and our concerns with the Commissioners are in the midst of doing absentees next week.

We are trying to make sure they're available.

They are still doing the absentees after the primaries.

We discussed doing it Thursday which will be after their seven day period.

>> DOUGLAS KELLNER: Thursday is still pretty quick, but the notice hasn't gone out yet.

I think we have to do that.

>> PETER KOSINSKI: No, I know.

>> DOUGLAS KELLNER: That remind me that there are certain actions this board has to take to formally appoint people?

>> PETER KOSINSKI: That's right.

>> DOUGLAS KELLNER: We should probably do that today if we can.

>> DOUGLAS KELLNER: Let me add that at the end.

But the --All right.

Are there any other questions for OGS that we should address at the Commissioner's meeting as opposed to the daily staff conferences and the dozens of e-mails that go back and forth each day?

No

(There is no response.)

>> DOUGLAS KELLNER: All right.

Peter, I think we are agreed we should do that.

If we actually had these terms ready, then we should send them out this afternoon.

>> PETER KOSINSKI: I agree.

>> DOUGLAS KELLNER: To C mack and to the public as a whole, just so we get one last shot at comments before we --

>>: Finalize it this afternoon.

(Overlapping speakers).

>> DOUGLAS KELLNER: Whether we do it today or yesterday --

>> TODD VALENTINE: If those are the same in either contract, that will change your deadline if you --

>> DOUGLAS KELLNER: How does it change the deadline?

>> BOB BREHM: We have to make sure that this meeting is before the deadline.

>> DOUGLAS KELLNER: Well, yes, the CMAC meeting, the advisory council meeting.

It's only by one day.

>> BOB BREHM: If you're moving the meeting to the 27th.

>> DOUGLAS KELLNER: The meeting is a formality.

The key is to get the terms out now so everybody can comment on them so we can finalize it for Friday.

>> BOB BREHM: Okay.

>> DOUGLAS KELLNER: Then we're on schedule.

On that part of it.

That piece is under control.

And I hear what you're saying.

So we'll need to talk a lot when it comes to contract negotiation to make sure that both we and you have the resources ready to move that along quickly.

>>WOMAN: Okay.

We are available.

>> DOUGLAS KELLNER: Thanks very much.

We appreciate it.

Does anyone from among the disability advocates want to say anything?

Sure, you can stand up and tell us your name again, please.

>>: My name is Susan Cohen, project coordinator of the state disability council.

I worked on this for about four years.

We have submitted your -- we have submitted our points to you.

You all received our memo.

There's one thing that has not been mentioned here.

You know, we do appreciate strongly your commitment to getting the 1B M.D. polling place out of the way to comply with HAVA.

>>: The thing that is not being mentioned, as people noted, there was low turn out with the plan B machines last year and that's

because there was little outreach that was done.

Transportation is very difficult and poll workers are not being adequately trained on how to work with the disability community.

Even if we were to get one ballot marking device, unless these other elements that

we put in our letter are really taken seriously and complied to at the state and

county level we don't be accept ability will be increased because we are not doing what is necessary to support it.

I'm bringing that idea to you to take that seriously because it's not, I don't feel like we're going to have our intended outcome.

After all this effort and sacrifice that these counties are going to go through, I'm still not convinced that people with disabilities are going to get the accessibility that they need.

So please take, you know, none of these points that we mentioned in our letter got brought up today and we really want those to be submitted to the judge as well.

Thank you.

>>: Thank you.

>> DOUGLAS KELLNER: Let me add that I was particularly grateful that your letter and proposal had a number of substantive specific text changes to the specifications and that kind of approach,

I think, is an excellent way to deal with it.

Because immediately what we are dealing with is a document,

a contract document and I understand that at the staff level virtually everything you put in was added in.

So I thank you for doing that.

The next --

Should we go ahead on the agenda?

Is there anything else?

The next item on the agenda is the discussion of county compliance with poll site accessibility regulations.

Who is going to lead that report?

>> LEE DAGHLIAN: I will, Commissioner.

The report is in your packet.

It is not as bad as it looks.

We have spoken with or corresponded with numerous times every county board in the State.

Some more frequently than others.

The process of acquiring funds by the counties to pay for improvements made to their polling places, whether they are temporary or permanent, is an arduous one.

It is detailed and takes a lot of work by the counties.

The bigger the county is, the more the work.

It's a two or three-step process.

First they need to survey their polling places in a manner that meets all the required federal and state standards.

Then if they find deficiencies they need to fill out an application for that particular site that outlines what the remedy is and what it costs.

You can imagine what that means in New York City, for example, per burrough.

It's a lot of paper.

It's very time-consuming.

We don't stop being in contact.

While we know they are doing this, even though their work is not complete, we stay in contact.

So there are 29 counties that, I believe the number is 29.

That have completed their application process that may receive or are receiving funds to reimburse their expenses.

We don't have to worry about those 29 counties for poll site access.

The remaining counties are in some form of, I guess you could say non-b compliance.

Because they haven't finished everything they need to do.

Most of them have finished survey work. We have found that some of the survey work they have done is not up to standard and they are going to have to redo that.

We know which counties these are.

We have made site visits both Dierdre and Greg have gone to several counties around the state to sit down with the

Commissioners and/or staff to be very specific about what the problems might be and how to fix them.

For example, we went to across the river-- last week, not only the staff I mentioned but Bob and myself as well because it was close.

We found out what their problems might have been or are and suggested ways to alleviate those problems and to finish their plan.

So to sum it up, we feel that although this has been a very time-consuming and a long-term project and a difficult one for some counties to complete, we are on solid ground here.

We expect that we won't run into problems with almost all counties, for having to worry about the grants that were, the 2003 grants would run out, which is late in 2008.

We feel that everybody being, everybody will be noncompliance by then.

The notion that the county boards can do this quickly, some folks feel is, some of them really can't for the sale reasons they can't do a lot of other things quickly.

They don't gear up specifically maybe to do this project and have people do it like we have.

They have the same concerns about running elections and that they do about plan B machines or plan A machines.

They have to do this when they can.

We put them under a deadline, those that haven't complied, by the end of this month, on the 28th,

to either complete their plans or to give us a letter from both Commissioners telling us why they cannot complete it on time and what they propose to do to make that completion and when.

That's where we stand right now and we monitor this on a daily basis.

There are some counties do this better than others. We are aware of that and

are doing everything we can to work with those counties that haven't complied to get them to finish.

Questions?

>> EVELYN AQUILA: We thank you for the report.

It's a very good report we received, I thought.

>> EVELYN AQUILA: I feel badly that people haven't gotten everything in.

You can see there's a great effort going on to take care of that.

>> DOUGLAS KELLNER: Lee, would you review what the legal basis is for our role?

Is it strictly control over funds?

Do we have, does the State board have obligations beyond just funding issues in terms of monitoring the compliance of the counties?

On disability issues?

>> LEE DAGHLIAN: To the best of my knowledge, we administer the grants and monitor the funds.

I don't think we have a legal obligation unless I'm corrected by an attorney here to make sure that they complete it.

My understanding was that if they don't complete it or they don't want to do it, they don't get the money.

That's where it stops.

Now, that would subject them, of course, to maybe lawsuits from outside interests or the federal government.

I don't know of any specific role we have after that.

>>: Do you happen to know, Anna, the surveys they have done for

years on polling place accessibility, is that based on statute or just our process based on general supervisory oversight?

>> ANNA SVIZZERO: No that's a statutory requirement.

Doesn't hold much water term.

>>: There were different standards at the time.

>> ANNA SVIZZERO: The counties are monitoring themselves.

Doesn't make much sense --

>> TODD VALENTINE: The burden is on the counties and the grant program is what we

are using to, give them the resources to make the compliance.

Money is a great incentive.

So --

>> DOUGLAS KELLNER: Is there a system in place where if disability advocates have identified problems at the counties,

that they have a mechanism for communicating that to us and that we would use our monitoring role,

our overall monitoring role, for example, under the HAVA complaint procedure to follow up with the counties and perhaps direct compliance in a way that would give the board,

the county board some leverage with their county governments to say we've got to get this done?

>> TODD VALENTINE: That's one procedure.

I think we've actually encouraged more local interaction at a first level.

>> DOUGLAS KELLNER: Sure. That's who has to do the work, right.

>> TODD VALENTINE: The advocates are obviously in the locality.

I don't know if anybody has this point risen to a HAVA complaint.

>> DOUGLAS KELLNER: We've never gotten a HAVA complaint.

>> TODD VALENTINE: No,.

>> HELENA MOSES DONOHUE: Not one.

>> LEE DAGHLIAN: We encouraged the counties to contact and vice versa the disability communities who have offered help.

They've offered actually to do surveys.

And some are doing that.

>> DOUGLAS KELLNER: Lee, I would suggest that we sort of propose to the disability advocates or discuss with them a system,

what we think would work best for how they should communicate to us and perhaps let me use the word in a semi-formal way.

>> LEE DAGHLIAN: Okay.

>> DOUGLAS KELLNER: Complaints that they have that they feel that the counties are not adequately addressing.

So I agree with Todd.

It's sort of silly to come to us first because we are just going to send it to the county and say take care of this.

But where they have had an ongoing issue with the county, where they feel the county isn't giving them adequate response or adequate attention that they would have a way to communicate that to us.

And then somebody like me who's in the, who has the job of monitoring you would be able to say, okay, you know, we're doing something on this or we're not.

Because one of the things I find that just recently, talking with representatives of the disability community,

is that they have lots of grievances that they are willing to articulate.

And then it's not even clear to me who here should be receiving those grievances.

Should they go to you, Lee?

Should they go to Todd?

Should they go to Dierdre?

If they make a HAVA complaint it goes to Todd, but nobody has ever made a HAVA complaint.

And I'm not suggesting they should necessarily make one.

>> TODD VALENTINE: We often have informal, we actually do have an informal complaint procedure.

It's very informal for any member of the public who has an issue with the Board of Elections.

>> DOUGLAS KELLNER: How does that work, Todd?

>> TODD VALENTINE: Well, they call us.

Depending on what, you know --

We have always been open to members of the public calling us.

And if they have a complaint about the county, do you know, depending upon the nature of the complaint whether it's a legal issue,

obviously it would come to me and Pat and now Paul.

To try to resolve it.

If they had a question about how things work legally.

After that it goes to election operations, but the same concept could --

>> DOUGLAS KELLNER: Suppose they have a disability Complaint.

We have been trying to get, you know, X county to move the poll site or put a ramp at the poll site and they just don't do it.

And now, you know, I guess they had a whole host of remedies, right?

They could go to court.

>> TODD: Sure.

>> DOUGLAS KELLNER: We wouldn't want them to do that.

They could file a formal HAVA complaint with us and nobody has ever done that yet, but the complaint procedure is a fairly simple one.

It would give us a means for following up on it.

They could do something with Lee, but Lee, do you receive those kinds of communications?

>> LEE DAGHLIAN: I have some.

I would make the suggestion in the interests of getting the work done and not litigation or something of that nature or a formal complaint,

that since we are in contact with all these counties on this very subject now and there's money there to fix,

that those complaints or suggestions come to our unit from anybody, including the disability community and that we make the contact with the counties and just try to deal with it.

We can --

>> DOUGLAS KELLNER: Sound good to me.

>> EVELYN AQUILA: Exactly.

>> LEE DAGHLIAN: We are willing to respond to anybody who has that complaint and follow through on it.

>> DOUGLAS KELLNER: Could I suggest that you propose that to the disability advocates?

Some of them are here now and you can talk to them after the meeting and just, how

do we get the message out to the disability community that if they have a problem with the county, they should tell Lee Daghlian?

(Laughter.)

>> LEE DAGHLIAN: I can put it on the Internet, I suppose.

Well, I can set something up and we can discuss that procedure.

>> DOUGLAS KELLNER: The idea is so they feel they can get a little more feedback that we are actually doing something and that we will lean on the county if we think

that the county is wrong or we'll tell the disability advocates, you know, you're not really, you know, we don't agree that this is a problem.

>> LEE DAGHLIAN: Right.

If that's, if that meets your approval, we can set up a system like that easily.

>> DOUGLAS KELLNER: We can have a positive role with the counties.

The counties could feel that they are in between.

I would like to recruit the county to feel like yeah, we want to do it, but it's the county government that doesn't give us the resources to do it and by the State board stepping in,

we can help them prod their county government on what they need to do.

I know in New York City,

now I'm telling stories but back in 2003 that's how the city board was able to get six additional positions.

The city board now has six full-time positions that do nothing but disability access issues and they got that funding by pushing.

You're saying, is that no longer true?

>>: No, I was just commenting --

>> DOUGLAS KELLNER: Go ahead.

I'm interested.

I'm not there anymore, so I don't know.

>>: I don't know New York City but I was just surprised to hear they had six full-time positions.

I didn't know they had that.

>> DOUGLAS KELLNER: They had in the last budget that I was there --

I left December '05. Six full-time positions doing nothing but full-time poll site issues.

>>: That's surprising.

I'm not from New York City - that's interesting.

>> DOUGLAS KELLNER: Staff of six, full-time, no other responsibilities but poll site access.

>>: I'm going to look into that. That's interesting.

I would like to address one thing. We have now a coalition of 24 disability groups throughout the State that we formed in June.

We have five work groups working on these issues.

We would like to work with you closer on these and even join our work groups.

We are working hard on these issues, including poll site access.

We have a network now where we can get the word out to our individuals and we didn't have that before.

>> DOUGLAS KELLNER: I appreciate that.

That's why we put that on the agenda so we actually would have this positive discussion now we've all agreed that Lee is the point person so you know who to call at the agency to follow up on this.

>>: That means a lot.

I can't speak for everybody in the community, but that sounds very positive.

>>: Commissioner, how do you envision that as meshing with the formal HAVA complaint procedure that we are setting up in addressing some of these very issues.

>> DOUGLAS KELLNER: I guess I hope they won't be making formal complaints but they know if it is not meeting passionate, Lee goes to the formal complaint.

But even before you file the formal complaint I say you should write a letter to the Commissioners and

the Executive Directors.

In other words, Lee's boss.

And let us know that you feel Lee isn't getting his job done and which I can't imagine that that would ever happen, but that's another remedy that is available to you that I certainly would follow up if I,

you know, felt that there were something that really needed Commissioner input to do.

What we would all love is that Greg and Dierdre would get these referred from Lee and they will take care of them.

If some of them need a little bit more push, then we are there.

That's what we do.

>>: If I could just say.

>>: We appreciate the commitment and willingness to have that procedure.

>> DOUGLAS KELLNER: Let's see how it works.

>>: The only thing I raise as a concern is that in dealing with complaints from HAVA, we have a short time frame, 90 days to deal with it.

There has to be some mechanism set up where if you're suggesting this is a pre-administrative complaint procedure, that anybody making such a complaint --

I use that in quotes, doesn't believe this, that they are making a formal complaint.

>> DOUGLAS KELLNER: Right, we have to make that clear.

We have to make that clear.

>>: We have issues we have to deal with in terms of going the route you are suggesting.

>> DOUGLAS KELLNER: I hope no one will ever make a HAVA complaint.

That it won't be necessary for people to do that.

Okay, we have.

(Overlapping speakers).

>> : Is it federal years, the administrative complaint is for violations of federal election?

>> TODD VALENTINE: Well, but it's a violation of HAVA.

I think you can have a HAVA complaint at any time.

It's just probably not going to be that relevant because it's not applying to certain things.

>> DOUGLAS KELLNER: That's my impression.

If a poll site is in violation of HAVA because it's not accessible.

>> TODD VALENTINE: You can file that now.

It probably won't change the poll site for 2008.

>> DOUGLAS KELLNER: I'm not looking for --

I prefer what I'm calling this semi formal procedure which is send a letter to Lee saying, you know, we would like you to look into --

Like you to look into what X county is doing and see if you agree they should be doing more.

Then Lee's unit can evaluate that situation and if we think that they are doing more,

then we can give them a prodding from the State board that maybe what the county Commissioners need to get the funding from their own county government to get the job done.

I think that's the biggest problem county Commissioners face.

They have to convince their own government they really have to do it.

Okay.

>>: (Off microphone.)

>> DOUGLAS KELLNER: Let's do that now and then I'm afraid we may have run out of time to reach open source voting. We may have to carry it again.

All right.

Peter and Stanley, do you have a list of people you want to formally nominate to the Commissioners for the advisory committee?

>> EVELYN AQUILA: Stanley gave me --

(Overlapping speakers).

>> DOUGLAS KELLNER: Go ahead, Commissioner Donohue then.

>> HELENA MOSES DONOHUE: We have a vacancy for a Republican Commissioner.

And we would like to request that they would join that committee. Would you mind?

>>: I would be pleased to do so.

>> HELENA MOSES DONOHUE: We'll get back to you with the final one.

>>: Okay.

>> HELENA MOSES DONOHUE: I just have to make a --

>> EVELYN AQUILA: You want to mention who?

We're going to vote?

>> HELENA MOSES DONOHUE: Okay, we'll mention it, Don ward, Peter Quinn, Gregory Jones, Jim Walsh, James Conlin and we have one more to fill in here.

>> DOUGLAS KELLNER: Did you have names?

>> EVELYN AQUILA: William Frucci, Reginald Lafayette, honorable --

Janet Weinberg, Paula --

(Off microphone.) and Stanley Zalen.

>> DOUGLAS KELLNER: The legislative members are not appointed by us. They're appointed by their respective legislative leaders.

We don't appoint Barbara.

>> EVELYN AQUILA: I remove her name.

>>: John Walsh also.

>> EVELYN AQUILA: All in favor?

>> DOUGLAS KELLNER: We don't appoint the Commissioners.

They are appointed by the Executive Directors under the statute. 7-200.

>> EVELYN AQUILA: Okay.

>>: I read it a little differently that we can choose them, but --

>> DOUGLAS KELLNER: Sorry, Stanley.

>> HELENA MOSES DONOHUE: It wouldn't hurt.

>> DOUGLAS KELLNER: Let's do it.

>> EVELYN AQUILA: All in favor?

(All members responded "aye.")

>> DOUGLAS KELLNER: All right.

Let me do one sentence about open source voting just to say that the reason I keep carrying this on the agenda is that this is an issue that I encourage us to be thinking about and discussing.

I realize that there's no consensus yet on any specific action that we should take.

That's why I'm not pressing for a 20-minute discussion on this today.

But that I hope that this stays on everybody's radar screen.

I know I had a very productive discussion with Peter and Stanley a few days ago on this and the idea is just to keep it on the radar screen.

I'm going to, you know, ask that we put it on old business again at the next meeting and do that.

So next is the preliminary determinations.

Is there anything that we need to talk about in executive session on these?

I think there was one change we were going to make that we both had suggestions on.

That we disagreed on.

>> HELENA MOSES DONOHUE: It's wording.

>> DOUGLAS KELLNER: Liz and --

Is Bill here?

Which number was that that we were changing?

>> ELIZABETH HOGAN: We agreed to amend the wording and the determination on CMP 05-88.

>> DOUGLAS KELLNER: That's the same one that I talked to you about with access to the --

>> ELIZABETH HOGAN: It is.

>> DOUGLAS KELLNER: Access to the voter list by poll workers?

>> ELIZABETH HOGAN: It is.

>> DOUGLAS KELLNER: CPM 05-88 we are approving with amendments to the determination and the other one, two, three, four, five, six dockets we are approving as drafted.

>> HELENA MOSES DONOHUE: Exactly.

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

(All members responded "aye.")

>> DOUGLAS KELLNER: Those opposed?

No

(There is no response.)

>> DOUGLAS KELLNER: That's adopted.

Do we want to talk today about our next meeting date?

I prefer if we try to set a meeting date in mid-October right now.

>> BOB BREHM: Excuse me, we have to reflect in the minutes, we know that you adopted them, but we don't know whether you adopted them to open them, close them.

>>: Whatever the recommends are.

>> DOUGLAS KELLNER: Whatever the recommendations are.

Liz, your job is to give Bob an e-mail to tell him what we did on each one.

>> ELIZABETH HOGAN: I will.

>> DOUGLAS KELLNER: Dates?

>> HELENA MOSES DONOHUE: I'm having great difficulty.

The only day that I'm covered right now is Wednesday.

>> EVELYN AQUILA: That's my bad day.

>> HELENA MOSES DONOHUE: I have a real problem with it.

I'm short today three people.

>> DOUGLAS KELLNER: We have to get together and agree on a meeting date.

>> EVELYN AQUILA: Monday, Tuesday, Thursday, Friday, but not Wednesday.

Wednesday is my bad day and it's Helena's bad day.

>> DOUGLAS KELLNER: Does that mean the Commissioners never meet?

(Chuckles.)

>> EVELYN AQUILA: We have to have a compromise here.

I really find Wednesday absolutely impossible.

>> DOUGLAS KELLNER: Well, there's no way you can rearrange it to make it on a Thursday?

>> EVELYN AQUILA: Thursday, Tuesday, Monday --

Monday, Tuesday, Thursday --

>> HELENA MOSES DONOHUE: Probably Tuesday might be easier than Thursday.

Thursday, I have too many people out.

>> EVELYN AQUILA: Tuesday.

>> DOUGLAS KELLNER: Tuesday, October 13?

>> EVELYN AQUILA: Middle of the month?

Okay.

>> DOUGLAS KELLNER: All right.

If we need to meet before then, we'll call and we are going to do that conference call around the time of the 28th.

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>> EVELYN AQUILA: Next Thursday, right, is the conference call?

You'll let us know day and time?

>> DOUGLAS KELLNER: With all that we stand adjourned.

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