Douglas Kellner: My name is Doug Kellner, co-chair I'll call the meeting to order and introduce the other Commissioners.

Peter Kosinski: Peter Kosinski.

Gregory Peterson: Gregory Peterson

Andy Spano: Andy Spano.

Douglas Kellner: So the first order of business is to meet at the Board of Canvassers to certify the election results for Senate Districts 5 and 8.

Bob Brehm: So we're certifying Senator Marcellino in Senate District 5 and Senator Brooks in Senate District 8. Those are the ones that are part of litigation at our last certification. Co-Executive Directors had provided the preliminary numbers to the Senate and now they are certified. So we need your signature on the top certificate and the packet is the updated numbers, last page.

Douglas Kellner: Can someone explain the issue about the certification of the Presidential numbers?

Bob Brehm: I don't have them as Brendan does. When we did the certification there was a differential in their numbers that we have since updated into this report and I don't know that I have.

Douglas Kellner: Into the report that we just signed.

Bob Brehm: The one that you just signed with the supplemental changes. So it increased the total number of voters so we're at 7.8 million now for those statewide race for President. And of course, it changed the number for the candidates themselves. It didn't change the result but it did change the number.

Douglas Kellner: Are the numbers that are now posted on the State Board's website the same as what we just certified?

Bob Brehm: I think we were waiting for you to do this so we could then update the record with these numbers.

Tom Connolly: So I though you guys generated that document this morning? Yeah so once we receive that document…

Peter Kosinski: How big a difference was it?

Bob Brehm: Do you remember? I think it was in the 60,000 range. There were a certain number that changed because the court situation in the 2 Senate Districts was a couple of thousand and Ulster County…

Peter Kosinski: I'm sorry I meant the New York City.

Bob Brehm: New York City, do you remember how many? I don't remember exactly but we could get the number for you.

Douglas Kellner: And as part of this process you routinely send this off to the National Archives?

Bob Brehm: We do to get them the update. The last time we had to do this in 2012 it was because of Hurricane Sandy, the National Archive said, thank you but they will not update their numbers unless the state files an amended certificate of ascertainment from the Governor. So I sent that message to the Governor's office to get a certificate and we never received one. But we do send it to the National Archive and we will send the numbers to the Governor if he wishes to show an amended certificate.

Douglas Kellner: Okay I'd like to at least get copied on the communication to the Governor so that we have paperwork that shows that we formally asked the Governor to issue the amended certificate if everyone agrees.

Peter Kosinski: That's fine.

Douglas Kellner: Alright is there any other business for the Board of Canvassers? Then we will proceed with the agenda for the regular meeting of the Commissioners. The first item on the agenda is approval of minutes. So we start with the, there are 2 minutes that were distributed that I'm prepared to vote on now. The confidential minutes for the December 8th Executive Session, and the confidential minutes for September 15, 2016.

Peter Kosinski: You're prepared to vote on those but not the others?

Douglas Kellner: Yes, not the others, I'll explain.

Peter Kosinski: I had something I wanted to bring up on this. Just a …

Douglas Kellner: Sure that's fine.

Peter Kosinski: Well there was a change made in the September one down in that…it's right here that says, "The poll would not be filed but provided to the" and then you took out, but it says hearing officer purposes. It just seems very awkward to me. It doesn't read…

Douglas Kellner: The poll would not be filed but provided to the hearing officer…

Peter Kosinski: "Purposes" does not make sense. Something is missing or.

Douglas Kellner: Yes, correct.

Peter Kosinski: For "purposes", I'm not sure what it should say. Or just take out the word "purposes".

Douglas Kellner: The poll would not be filed but provided to the hearing officer…

Peter Kosinski: Why don't we just take the word purposes out?

Douglas Kellner: Yeah, who would review it, who would review it consistent with the 1984. Good I'm glad you picked that up. Alright so with that additional revision, are we prepared to approve the September 15th minutes?

Peter Kosinski: Yes.

Douglas Kellner: Okay those in favor say aye.

[Chorus of ayes]. Opposed. Alright and then the December 8th minutes are very short.

Peter Kosinski: I'm move those.

Douglas Kellner: Those in favor say aye.

[Chorus of ayes]. And then

Peter Kosinski: We have many other minutes.

Douglas Kellner: With October 4, I started marking these up again but should we just put them over again?

Peter Kosinski: Yeah, I don't think we should really go over them right here. If we have changes, why don't we submit them and try to get the out for the next meeting.

Douglas Kellner: Alright then we'll move to the unit updates. We'll start with the co-executive directors Bob Brehm and Todd Valentine.

Bob Brehm: It's been a busy time since our meeting in December. We immediately worked after you certified the results to obtain the documents to poll the Electoral College.

Peter Kosinski: Can I just raise something before we start. I noticed we're not being recorded today. I guess I just sort of wanted an explanation so we can all understand why.

Bob Brehm: We received word once the State of the States were scheduled that the agency that normally does our live broadcast was unable to do that because they're all at the State of the State locations doing that. It's a high priority on their list. So John received that information I think last Thursday and so we're using our tape recorder to do the best we can though we don't have a substitute in that short period of time.

Peter Kosinski: So this will not be videotaped for purposes of even future…

Douglas Kellner: It won't be a transcript of the meeting.

Tom Connolly: We will post the audio today, as we always look at video and then we'll submit the audio to our provider that we normally get transcripts from and they'll do a transcript of this audio.

Peter Kosinski: Okay I'm sorry, go ahead Bob.

Bob Brehm: So we did that. We did have a couple of volunteers in the office that helped us get the certificate of ascertainment was signed in New York City so in order to do that we sent a few of our volunteers and it was quite an effort. Mr. Quail this year succeeded in filing the document at the FedEx office and last time I had to do it, it was within 1 minute before the deadline. He got there 8 minutes earlier so we made a great improvement in 4 years. So we did our work to get the certificates done. A number of state work employees did go over to the Electoral College both democrats and republicans. It's a government function not necessarily partisan functions so we had a nice reception. Everybody got to take pictures around the tree and those who wished to have a picture with President Clinton also got a chance to meet with him. He was in a very social mood that day. So that was a fun thing to get to do. If you haven't participated in Electoral College they're kind of weird, strange, nobody understands them but its still fun and that was that. Also, we had a number of follow up meetings and phone calls with regard to cyber security. We participated last Thursday on a call with the Federal Office of Homeland Security Director, wanted to further confer with the states. So I thought it was originally just going to be a broadcast where they spoke to us but it turned into a Q&A also and it was a follow up of an earlier one we held. They reiterated to us, the department their feeling, the report that they were working on with regard to cyber security, but the most important part of the call was to gauge our opinion on whether or not the critical election infrastructure or before the election infrastructure should be determined under it's criteria critical. They originally had agreed to have a working group and a meeting session to try and have feedback. Todd is the President of the National Association of the State Election still, that meeting is in February where some of that conversation is going to coalesce with the National Association of Secretaries of State. But it seemed like it from the phone call that things were moving a little quicker. On Friday they did issue a finding that it was critical, that the election infrastructure was critical. It's uncertain to us what that change is per se because the Director informed us that if a state or municipality within a state needed its services it would provide them services on how to monitor, how to probe, how to set up procedures and internal controls to try and combat or at least continue to check and look for issues, which are all steps that we are undertaking anyway so we weren't sure from the call point of view originally were they going to give us more detail so we can use it to know what

we're probing for. But that didn't seem to be the nature of the call. So they did issue, it is critical infrastructure and that's been in a lot of the newspapers. They have not changed their finding that they told us. They said election in general was probed, certain areas were penetrated but they still have no change that did the election infrastructure itself from the voting machines and the tabulation, there's still no finding that that has been compromised yet. But they still recommend that we do the penetration program to be sure. We did receive an update a week earlier from the FBI of a series of other IP addresses that they recommended that we review as potential bad actors, our IT Department received that and they have been looking into it to make sure that is not something that's happening here and we have a presentation on Wednesday at the Election Commissioner conference where we will go over where we stand in the cyber security with the County Boards of Election and make recommendations to them and work together to make sure that they're up to date on where we're at in the cyber posture. It's certain issues that we have to do more going forward and how best to coordinate between us and the counties is something that is part of our ongoing dialogue. Other than that, I think it's the traditional end of season with some people gone because of the holidays unfortunately, many of us have been gone before of the flu. So we have experienced that but also we've been working to get ready for the conference that's going to start this afternoon with the Election Commissioner's Association. It's our day to make the presentations is Wednesday so we are not attending the State of the State because it's at the same time we're making presentations. Certainly, as soon as we get a copy of the budget and the actual words in the State of the State we'll share them with you but I haven't sent down a copy yet.

Todd Valentine: Right and we're expecting the budget to come out on the 17th. But we're expecting a no work budget but again we've asked for things before like I said a security initiative we can but wait and see. We haven't heard one way or the other.

Douglas Kellner: Okay anything else? Thank you so we'll have the report from Counsel on Compliance, Kim Galvin and Brian Quail.

Brian Quail: Thank you very much. Since the last meeting a number of things have occurred one of which is that the Commissioners had an opportunity to look at current status with respect to the proof of concept with respect to the filing software. The staff subsequently met to discuss the Commissioner's feedback and how to implement those things. There is actually a component of the project that was actually rolled on in December which is just essentially a tool for the compliance unit to be able to log deficiency work to make that process more seamless and we've been working through that system and providing feedback to the IT unit as to how that's working. Since the last meeting, the Compliance Unit has identified and referred 217 nonfilers for the 32 day pre-report, 257 nonfilers for the 11 day pre-election report, and 297 nonfilers for the 27 day post report. The Compliance Unit staff and Counsel held a meeting with Enforcement regarding some of the processes associated with deficiencies and that meeting was very productive in my view and continuing to make the process of community between the units and the provision of information happen in a way that meets the needs of both the common counsel side of things. Counsel staff has continued to work on the approximately 10 cases that require attention for the agency. We have received one new lawsuit related to somewhat difficult to understand what's actually alleged in this lawsuit, it's somewhat frivolous but related to the

allocation of electors to the State of New York and California. And the Counsel staff has done work on the legislative agenda. There were 19 items on the legislative agenda last year. These are proposals the State Board makes to the legislature. Six of them were enacted so there are 13 legacy proposals and we're continuing to work on other concepts to recommend to the Commissioners for addition. We have received 7 HAVA administrative complaints and have worked in accordance with the regulation to process those. I believe 4 of them require meeting with a hearing officer process in pursuant to the rules of the Board. The hearing officer is either, there are two hearing officers for each matter; one Commissioner on each side or senior staff designated by the Commissioners. So for the purposes of making those designations I think we recommended the Commissioners may want to adopt a resolution authorizing the co-executive directors to do that perhaps during new business or take up that issue. A great deal of work in those and in particular spending a lot of time on this as well as other staff members updating training manuals and CLE documents to reflect rather substantial changes that occurred in 2016. And the IE emergency regulation that was adopted at the last meeting and in the beginning of the adoption process was effectuated by finalizing the necessary paperwork with the Department of State. In a nutshell. Bill do you have any?

Douglas Kellner: Any questions? Okay then we'll go to Election Operations Brendan Lovullo.

Brendan Lovullo: Since the last meeting all the candidate notifications and votes were distributed. The year end survey went out to all the Boards. There's been in preparation for the Commissioner's Conference this week, a workshop is set up for new commissioners and scanner, BMD, EMS consultations set up with the staff as well. We've also worked on all the year end tasks documents storage and archiving everything as well on top of getting some new updated results from as Bob mentioned, the different counties that have sent stuff in since our last certification also. I think that's it.

Douglas Kellner: Okay. One of the issues that came up last week is that the New York City Commissioners have mentioned again that they are considering using the lever voting machines for the run-off election and has Election Operations prepared the protocols for how the scanners can be used and tested appropriately?

Brendan Lovullo: I didn't know anything about that so maybe Anna would.

Douglas Kellner: Pardon?

Brenden Lovullo: Maybe Anna does I've never heard anything about that.

Douglas Kellner: Alright so that's something that needs to be addressed this week during the conference. I did send an e-mail last week about it that our staff has consistently argued that there's no reason to use the lever machines. That there is sufficient time to do the testing if they properly set up protocols in advance.

Brendan Lovullo: Can you resend that?

Douglas Kellner: I will.

Bob Brehm: I think the e-mail came over the weekend and you had mentioned just before this meeting so I had a chance to walk down and talk to Anna quickly but not Brendan yet since he wasn't in his cubby when I went by. But it's only like in the last several hours that I saw that it came up Tuesday is the New York City meeting when you sent that e-mail. So we did, as an agency, respond 4 years ago when they wanted to use the lever machines to review with the City Board what it would take to turn those machines around between primary and run-off if they use the certified equipment we currently have. And certainly we can update that and make sure that we're all on the same page. So its 4 years ago and reshare it with everybody. But it's only come up recently.

Douglas Kellner: Okay I would appreciate that.

Peter Kosinski: They had this problem 4 years ago?

Douglas Kellner: Yes.

Peter Kosinski: And nothing's changed is that correct?

Douglas Kellner: Nothing's changed. They argued 4 years ago contrary to our staff that it was impossible for them to comply with the regulations and got the legislature to enact this special bill authorizing them…

Peter Kosinski: Is that what they're asking for again this year is legislation to exempt them?

Douglas Kellner: Apparently. But the legislature has taken a tougher stand more recently about jurisdictions trying to continue to use the lever machines and it's certainly our responsibility to make sure that the procedures are available so we can show that it is feasible to use the scanners.

Bob Brehm: The legislation 4 years ago instead of 2 weeks made it 3 weeks which does itself an issue with political calendar but it also required the city to prepare a report and determination and I asked twice at the Commissioner's urging for a copy of the report and I haven't received it if there is one. I would certainly be interested in reading it if they're resurrecting the proposal again. I do remind anybody who asks me the question that the State of New Jersey, slightly different, ran a statewide race for United States Senate, 3 weeks later a statewide race for Governor and they turned around their equipment. They have different equipment and they don't have the same testing protocol but I believe we had recommended a method that would allow machines to be tested for the various options and the only thing you had to do is print whatever option was obvious on election night as you got closer. But certainly programming all the options and testing all the options ahead of time was possible.

Douglas Kellner: Alright, well thank you. I just wanted to call that to everybody's attention. So we'll move onto Public Information John Conklin.

John Conklin: Thank you Commissioner. The Public Information Office has quieted down considerably since the last Board meeting. Most of the calls have been around the election results that were posted on the website, the operation of the Electoral College, and then the last campaign finance filings for the State Legislature. We completed 46 FOIL requests in December, Tom and I continue to participate in discussions concerning cyber security and the general election. We had sort of a postmortem conversation after the election, but we've also had a couple of brief meetings to discuss a presentation for the winter conference for the Election Commissioner's Association. We both had a similar meeting to discuss a DMV presentation at the Election Commissioner's Conference concerning some changes in how they prepare their documents. On the website we've taken a few things off the home page and moved them to other parts of the site. The General Election Candidate list has been moved to the 2016 Election Results page, the same with the State and Local Primary Results. We had an amended certification for the general election and the state and local certification for the general election, those have been moved to the Election Results page. And the multiple political calendars that we had on there for 2016 have been moved to the Political Calendar page that are not on the main homepage anymore. That's about all I have.

Douglas Kellner: Thank you I appreciate that it looks much better.

John Conklin: Tom do you have anything?

Tom Connolly: I don't.

Douglas Kellner: Okay then we'll turn to Information Technology, William Cross.

William Cross: Thank you Commissioner. I'll apologize for my voice in advance it's just coming back. CAPAS FIDAS as I mentioned in the previous meetings, we're continuing to try to resource that project. We've gone through and made significant progress in the past month. We've interviewed over 30 candidates for a Project Manager position, Tester position and a Specialist. From those interviews, we've made offers to the top 3 for each of those positions and I'm happy to say they've accepted. We are working right now to just determine start dates but 2 of which will anticipate to be this month and one early in February. We're still working on trying to fill 2 key programmer positions for that project through HBITS. The order has been prepared. We are currently just waiting on state approvals for those. And we're continuing to try to fill one state based programming position for that. But we've made significant progress in filling the 3 that we have, particularly the project manager. We've started to reassess the work plan, break it down into the modules and now we're starting to get more of a picture of what these resources would be like and can start projecting out much better than we could previously. We provided a demonstration to the Board last month and we very much appreciate the feedback. As Brian indicated we're working to incorporate your comments into the design, particularly the scrolling and some of the sorting features. We're also working to prepare, you inquired about seeing some of the public facing reports and we're putting together a demonstration for that.

Peter Kosinski: Do you have any sense of timing on that?

William Cross: Not exactly but not that far out. Much of that work has been done previously but had not been updated to the same standard we are currently using for the user interface so there's some disconnection there. We're kind of aligning it with the design that we have used more recently. So we're almost done we'll be reaching out in the next week maybe 2 weeks to schedule something. Also, I think was mentioned previously, the case management for compliance and put into production a significant piece of the CAPAS FIDAS project module we had a few initial defects. I think they've been resolved. We've identified a couple enhancements already to that which we're currently looking at analyzing

For NYSVoter we've been extensively working with the vendors for NYSVoter Refresh contract. I say extensively, hands-on every day practically. We're doing a full assessment of our infrastructure here; network, servers, everything that the current systems are built on not just limited to NYSVoter but our entire environment. They've completed their initial assessments. We have draft assessment reports that we're currently reviewing and we're in pretty good shape with. The next steps will be to consider the recommendations and put them into a new design and implementation plan. That project is currently scheduled to run in mid summer and we're presently on track for that. Cyber security has been mentioned a few times, I won't repeat a lot of that. It remains a focus. We did receive a joint analysis report from Homeland Security FBI I think that Bob mentioned containing over 900 addresses of bad actors and things to look for indicators of compromise, a significant amount of work to go through all logs and all systems to look for those but we're making good progress on that. We've also incorporated all those into our current protections to block, they've been black listed going forward.

Peter Kosinski: Let me ask, so if the bad actors are trying to access our system, do we know if they're trying to access county systems as well?

Bob Brehm: We share the same information which this is going to be part of the conversations with the counties, we have been sharing all of the information with the counties with the recommendation leading up to election that the county work with their IT Departments to do their own scanning to see if they have any of the bad actors that have attempted to scan them or to penetrate them. We had reported that earlier to you. We did get some assistance from the State Office of Homeland Security and the State IT office for those counties that asked for help, we need your help to do this. So they offered them some help to answer their questions how to do it and some of the resources. So leading up to election day all the counties had completed their scanning and their surveys and there were a couple of issues that were reported in Schoharie County and I don't remember if down in Columbia County and New York City with regard to people attempting to scan them. but every time we had our meeting with IT people and they tried to explain their world to us, they tell us everybody somebody tries to scan so the question is yes, they tried to scan but also were any – so any of those areas where we've identified scanning we've taken the information and given it back to the FBI so at least they could see. We've heard nothing more from anyone whether or not it was anything more than scanning so far. We're continuing to do the efforts that we need to do beyond the scanning and the penetration.

Peter Kosinski: Sorry Bob you used the word scanning.

Bob Brehm: Well it's just scanning to see if they're on any of the logs we can identify.

Todd Valentine: You do it in 2 fashions; you look to see if anybody is actually looking at your own website, then when you go through the logs, you look to see if anybody had access already in some fashion that's been compromised in some nature. Obviously, we have IP address, Internet addresses that have, we know if they're bad actors we certainly pass those along to the counties, advise them that they should see if they've tried to breach their system in some fashion but the county system, we've identified as a known vulnerability for us in a sense that we're not in control of the county systems. So we're trying to work with the counties to at least get them to buy. Because not every county board controls their own IT system so that's been the hard part for us so that's where we've been trying to contact the County Executive, through the County Executive or through the County IT Association that this is a bigger problem for the county its not just, they're not attacking the county election system, they're attacking the county if they are. So I mean right now we don't keep a statistic on whether or not they're reporting any of that. We told them for purposes of expediency and enforcement that if they had issues that they need to report that directly to the FBI. They have a hotline or something, I forget what it's called that they can report those issues to. But we haven't heard anybody having any breaches at this point and that's true on a national level, at least the National report that just recently came out. Other than the isolated incidences in Arizona and Illinois with their Voter Registration System. There's been no breaches of the election system itself. The electoral administration system, the election itself that's somebody else's issue, and the politics of the election but this is going to be going forward we see this as a bigger issue which is why we in response to that we did tighten up the one portal that we have directly to the counties which is they send us voter registration information and election night numbers. So we've tightened that up so we're only going to get the correct information from those. I don't know the details on what you call that but…

William Cross: My next item.

Todd Valentine: Sorry. But we still see the counties as an issue and that's why we wanted to brief them specifically on Wednesday about what had happened in the past because I don't think a lot of people really put the pieces together and we've had phone calls with them. We've had statewide calls, bring them up to speed during the election cycles but we still need to go forward. We still think we have work that has to be done long-term to ensure that actors don't, they haven't gotten in; we want to make sure they don't get in again. Now that we know this is a potential issue. And the problem going forward is that we know the attacks they're bringing now to try to manipulate data, we don't know what they're going to do in the future so we can only speculate as to how we need to harden our own systems so that's going to be a challenge. We thought we had done pretty well and I think overall we did do good. I think the conference and the vote system is not undermined by that but that doesn't mean we don't continue to be vigilant about it. The short answer is no, we don't really have a list of actors.

William Cross: So what we do when we see a list like this obviously anything that's a known bad actor we block it forward, we blacklist it so there is no hitting us and is total rejected. The second part of that is we take this list and look at all of our other logs to make sure that we have

not, to see what traffic has been from those sites or the other indicators. All websites ours included are scanned constantly, constantly trying to being broke into and compromised. It's a daily occurrence for any website. We have since these are known bad actors, we specifically take a look at these to make sure that even if we have seen traffic we do record it but also make sure that those attempts were unsuccessful. That's part of the picture. So these are known issues. So what Todd had mentioned is we did much of this is probably in a third round in doing that with this type of list since just prior to election day. And also prior to election day we put some short-term mitigation pieces in place to enhance logging, to provide work with ITS to provide some tools to have great insight as to what this kind of traffic looked like. Longer term though is these are known lists. What we need to do longer term is to be a little more predictive in what attacks may look like, what's coming forward, not just wait for a list to be put out saying these are bad. There is equipment and platforms to do that so we're now looking at some longer-term mitigation pieces that we weren't able to do prior to Election Day. For instance doing our own logging platform internally instead of using ITS's. And most likely contracting with a third party logging service that analyzed those logs for us and let us know what's actionable and what's not. Kind of akin to having ADT for your alarm system that they will monitor logs for you, compare them with known lists and provide you with feedback of what's actionable and what's not. We are currently setting up a current platform and are looking for vendors to provide that monitoring service going forward for longer-term protection. We're also looking at other things that were part of the FBI's original recommendations; services to, we can submit certain applications of our system to code or programming code associated with them. You can run those codes to analyze to determine possible deficiencies there. It's an extra step and an extra layer we're looking to do moving forward.

Bob Brehm: There still are several services that we will work with State IT and federal Homeland Security where they are like a redundant check to make sure we didn't miss anything and there is a strong collaboration in the IT component of that where they share more than they tell us clearly but now that, I mean the only one issue that came out of the call last Thursday was if we asked certain questions under federal rules they felt that the answers could be public answers. So some states might not have asked them because our rules might keep it confidential but their rules at the time make keep them potluck so clearly as a critical infrastructure their answers would still be confidential. So we're not giving away the key pathways that people could attack us. But there still are more information that we need to get out of them so it has, we continue to keep the calls they aren't as daily or twice a week as they were leading up to election day but they're still every couple of weeks with those actors it might increase, but there's still much more work to do which is pretty much what we will be saying on Wednesday. There's more work we need to do to protect the county and coming to us that was our budget submission in October, there is a cyber security component in the State of the State and the budget from the press release on Friday but I haven't seen the details yet to know what but I think we've all realized that it's a whole area that we have to do much more and we've done a lot but we have a lot more to do.

William Cross: We also continue to utilize Homeland Security for scanning in addition to the state some of it is repetitive but there is different information on different ones so security really consists of layers and we try to increase as many layers as we can for protection. I believe that's

all I have. Website analytics is pretty much back to normal levels for December now that's we're past election I can share the statistics with you. That's all I have.

Douglas Kellner: Thanks very much Bill. We'll hear from Enforcement, Risa Sugarman.

Risa Sugarman: Thank you Commissioners. As Brian said, we've met with Compliance. We had a good success with our letters that we sent to the elected officials in terms of the deficiency letters that we sent out. Certain issues came up as to how we were going to handle the deficiencies as they came back and as my auditors had conversations with the treasurers and the candidates on filing and dealing with the deficiencies and filing their amendments. So I met with Brian and with Kim last week to work out the procedures to deal with the advice given to the treasurers as to how to remedy the deficiencies and then what would happen when the Committees would file their amendments and go through the process of the compliance procedure again and I think that we'll be able to work out that protocol. The sending out of the letters was a very successful process with the elected officials. Those that did not respond to the letters will be getting calls from my staff and if those calls are not successful then hearing officer complaints will be filed in those particular cases. I'm continuing to work on our own investigations and will be continuing those investigations.

Douglas Kellner: And do I understand that basically what you've done is selected a group of the deficiency referrals for these follow ups?

Risa Sugarman: For the first round yes and those were elected officials. And I'm going to do the same thing with the failures to file. Today as I discussed last meeting, we were preparing to send out the e-mails on the failures to file, the nonfilers, today we sent out the e-mails to the 2016 primary nonfilers, the state primary nonfilers, the next e-mails will go out to the state 2016 general election nonfilers later this week and then the 2015 and 2016 periodic nonfilers state and local filers next week. That should catch us up so that we should be able to do 2017 January periodic on the 27th the 10 days after that report is due. So sending out those e-mails and today the end of this week and then later next week for the 2 follow ups should bring us up to date on the 2016 nonfilers so that by the 10 days after the January periodic we should be caught up and able to send out the e-mails on those. After that, or while we're doing that we're going to send out a targeted mailing first to judiciary candidates and judges that are in office that are nonfilers. They're going to be our first targeted mailings and then we're going to send out mailers to party committees who are nonfilers. So in addition to the e-mails that we're sending out to all, we're going to do targeted mailings as well.

Peter Kosinski: So, you're saying you're sending e-mails to everybody?

Risa Sugarman: Correct.

Peter Kosinski: And then are you going to give those emails a chance to be responded to and if they don't respond you're going to send a letter, like a hard letter to certain groups like judges and party committees? Is that the strategy?

Risa Sugarman: I think obviously if they are complying that will take them off the list but.

Peter Kosinski: So you give them a timeframe in the e-mail to get us the report. If they don't do that you then send them a…

Risa Sugarman: Then we're going to do a targeted mailing.

Peter Kosinski: It will be a mail mail, not an e-mail.

Risa Sugarman: A snail mail.

Peter Kosinski: Snail mail and that will be just to judicial and…

Risa Sugarman: Well the first targeted mailing like we did to the state electeds for the deficiency.

Peter Kosinski: I'm sorry I missed that

Douglas Kellner: I think its hysterically ineffective so that the bottom line will be that there will be hundreds of filers who have ignored the e-mail, have ignored the snail mail and so far after 2 years we have I don't have the exact number in front of me but its over several thousand nonfiling referrals without prosecutions and that there have been roughly a dozen out of 2000 referrals that have resulted in prosecutions. It's the Emperor has not clothes.

Risa Sugarman: And I would just call your attention to the Moreland Commission report about how the former process, which you referred to as your auto pilot litigation process did not work.

Douglas Kellner: So we've made it worse.

Risa Sugarman: Well I don't think that we've made it worse. In the 2 years there have been 2 criminal prosecutions for failures to file, both of those defendants have taken pleas. I've gotten several hearing officer settlements where the respondents have actually paid their judgments because of the litigation. So Commissioner I disagree with you. We have a fundamental disagreement about how to handle these and going forward I guess we're going to continue to have this disagreement. And I take a general disagreement with you continuing to make the statement that its better to not file in this state now than it used to be to file on a piece of toilet paper.

Douglas Kellner: I have never said that. I have never used those words and that is inaccurate.

Risa Sugarman: This is the process that I'm beginning. If it doesn't work we'll try something else.

Douglas Kellner: Okay did you have any other questions Commissioner Kosinski?

Peter Kosinski: Well I guess I'm still trying to understand the process. So the e-mail goes out to everybody, then after a period of time, you put a certain time period in your e-mail I presume, can I ask what that was?

Risa Sugarman: I believe its 10 days. I don't remember what it was.

Peter Kosinski: So 10 days pass and nothing comes in let's say and then I'm a judicial candidate, I get a hard copy letter which gives me what another opportunity to comply in that letter?

Risa Sugarman: Well I believe the letter will say that you're subject to either criminal prosecution, litigation or a referral to the judicial ethics commission.

Peter Kosinski: And is there a timeframe in there or…

Risa Sugarman: I'm sure there will be.

Peter Kosinski: Okay so if you don't comply now within another 10 days you're going to then forward their file to another entity?

Risa Sugarman: Well we'll file a hearing officer or refer to the District Attorney and then refer it to the judicial ethics commission.

Peter Kosinski: Okay are you exercising your ability to say bring civil litigation?

Risa Sugarman: Yeah, that would be the hearing officer proceeding.

Peter Kosinski: And would that happen automatically to these entities as well as having them referred to the appropriate DA and/or…

Risa Sugarman: I think if the District Attorney a criminal referral would supersede the civil litigation.

Gregory Peterson: I'm sorry I don't mean to interrupt the train of thought but as an attorney this astounds me that there are actually judges out there that wouldn't file.

Risa Sugarman: There are I think 130, 130 judicial committees, more than half of which the judges are sitting judges.

Gregory Peterson: You say sitting judges…

Risa Sugarman: Supreme, county, local.

Gregory Peterson: Well how about telling them you're going to send a letter to the Office of Court Administration?

Risa Sugarman: Well that's the judicial…

Gregory Peterson: Well I realize that.

Risa Sugarman: Well you would hope that they don't know it's their treasurer that's done it so give them the opportunity.

Gregory Peterson: So this is going directly to…

Risa Sugarman: Both. It will go to the treasure and the judge.

Gregory Peterson: Unbelievable.

Peter Kosinski: And so if they fail to file you would then pursue a civil hearing here regarding their failure to file and that hearing officer would then have the authority to impose penalties?

Risa Sugarman: Well the hearing officer would recommend, would issue a report and then it would go to the Supreme Court that's the process; hearing officer then to Supreme Court.

Peter Kosinski: So this process you're anticipating playing out with this group of failures to file before you would proceed with any other group?

Risa Sugarman: No, we would do it one after the other. We wouldn't wait to finish with the judges.

Peter Kosinski: You identified 2 groups.

Risa Sugarman: That's right.

Peter Kosinski: But you're not anticipating pursuing any other group?

Risa Sugarman: Well we're just going to start with those and then we'll proceed afterwards. We'll take one after, we're not going to wait to finish with one before we got targeted after the others.

Peter Kosinski: So you're starting with these 2 but you're anticipating pursuing everyone else?

Risa Sugarman: Well the e-mails will also generate litigation as well as referrals but this will be…

Peter Kosinski: I'm sorry I missed something, what litigation would be prompted by the e-mail?

Risa Sugarman: Well it would be the same procedure. Those who don't reply or don't file will also depending on their history would be subject to hearing officers or referrals to District Attorneys.

Peter Kosinski: Are you going to send them a hard copy letter before you would take that option?

Risa Sugarman: Probably or maybe even a phone call.

Peter Kosinski: I know there's been some discussion, can you proceed with an enforcement action without a hard copy letter?

Risa Sugarman: Yes. The only thing the hard copy letter establishes is willfulness.

Peter Kosinski: Okay so the civil procedure can occur without the hard copy letter but a criminal procedure cannot.

Risa Sugarman: Well willfulness you would need more for intentional conduct than the willfulness letter. So I don't believe we would need a hard copy letter to go to the District Attorney.

Peter Kosinski: You don't?

Risa Sugarman: No.

Peter Kosinski: So you could do it based on your e-mail you're thinking?

Risa Sugarman: Well, I think that we would need more information. It depends on what we would need in terms of building an investigation. I might have to come to you for a subpoena it depends. The District Attorneys are not going to just file a criminal case without investigatory information. So that would determine what we would need, what the history is. That would be determined by the history of the particular candidate, treasurer and committee. To determine whether you're going to do a hearing officer case or a criminal referral is based on what the history of the candidate, committee and treasurer are.

Peter Kosinski: The history being how many times they failed to file?

Risa Sugarman: Right if there are judgments against them.

Peter Kosinski: So an investigation that you would undertake would be to uncover what? How many times, I mean I'm trying to understand what the scope of an investigation would be then. We know they failed to file. You know you sent them a letter or an e-mail saying you need to file and you haven't. What would an investigation uncover beyond that?

Risa Sugarman: Well it depends on what contact was made just like when you require certain information from me in terms of subpoenas the District Attorney is not going to file a criminal case just based on a failure to file and a letter. They would want to know what the status of, how many letters, what they're filing is, what's the background of the committee? Is there an intentional conduct on the part of the committee and that might be contact with compliance, contact with my office. Is there a filing that has been done before? Are there records that should be obtained through subpoenas? There's a lot more Commissioner than a strict liability in the Election Law that someone needs to file a report in order to file a criminal case. And in order for a District Attorney to accept the failure to file.

Peter Kosinski: Okay fair enough. Let's take it out of the criminal element for a minute. Let's switch over to civil element. So in order to instigate a hearing officer process what triggers that?

Risa Sugarman: Well it's the same kind of inquiry except it's on a lesser degree because we have to prove that the violation is not de minimis that the committee did or did not attempt to remedy this situation. So there has to be some more of an inquiry rather than the strict failure to file because the legislature included within the statute that this is not a de minimis violation.

Peter Kosinski: So I failed to file let's say 3 times over the last year because I had to file for let's take for example a general election which there are 3 filings required. And I'm a case that I didn't file any of them and you know that based on our records here at the Board. There's nothing here. So you send them an e-mail saying we have nothing from you. We know you were a candidate, we have no filings please respond. They ignore you. You now send them a hard copy saying same thing I guess. They still ignore you. Do you need more than that to take it to a hearing officer?

Risa Sugarman: I think that we would need some indication that they spent some money, that they actually campaigned that they did, that they didn't that they actually spent money that would indicate for a hearing officer that this wasn't a de minimis violation.

Peter Kosinski: So you would undertake, you feel you have to undertake an investigation in order to uncover whether or not a specific committee and/or candidate spent money before you send it to a hearing officer?

Risa Sugarman: I would think that there has to be some kind of inquiry or you might call it an investigation, I might call it an inquiry to determine whether or not there's a reason to expend resources to go before a hearing officer to further in litigation on a hearing officer on a failure to file, yes.

Andy Spano: I've known many judges and they're always trying to get rid of their money after the campaign because some ethnical law says they can't…

Risa Sugarman: Their window closes.

Andy Spano: So we're not talking about anything after the closing statements, nothing filed.

Risa Sugarman: Well the statute says if their committee is open they have to file. It might be a not activity which would be another issue is a de minimis or not.

Andy Spano: But how many of those filings occur at that time?

Risa Sugarman: I don't know I can't tell you that.

Andy Spano: Because that would be very different.

Risa Sugarman: That would be an inquiry as to whether or not it should go forward after that. But there are issues as to whether they can close their committees or not.

Andy Spano: I know they try to get rid of that money as fast as possible.

Risa Sugarman: Well, they're not allowed to spend it after their 4 months.

Douglas Kellner: Anything else? Alright so that concludes the reports. We go to old business now. The first item is discussion of the Documents policy. Brian do you want to bring us up to date on this?

Brian Quail: Sure. There had been an original sort of draft policy that I think I drafted and that was shared with our colleagues and there were subsequent set of amendments to that draft. Obviously several discussions over the course of a few months by the Commissioners as this has developed. More recently, I made some additional changes in recommending those changes to the last draft that Kim had shared. Both drafts had been shared widely. The public drafts were provided to the Enforcement Counsel and I think the question is where are the Commissioners at with respect to our current iteration and we'll pick it up from the direction of the Commissioners.

Peter Kosinski: I've seen a draft. Have you seen a draft? Well I know you guys have been working on it and I know that Risa's been involved too to some degree because I think she gave us something a few months ago regarding her position on this. I guess amongst us, I looked at what's here. I think it needs some work in the sense that I don't think it's in a final form and some of it is maybe just cleaning up the language. But I think on principle we need to come to some agreement as to whether or not you know this Board will retain authority over these documents that are being given to us for purposes of dealing with them the way we see fit as opposed to just adopting a blanket policy regarding that. But I think this policy, as I read it would retain the Board's authority on an almost case by case basis to determine when and if a particular document is provided to us is appropriate for public release or whether its deemed confidential and will remain in that context. I think we're trying to wrestle with this as I see it in the context of the Freedom of Information law which I think does have some bearing on our obligations as a public body to ultimately, if not initially turn over documents and information regarding decisions that come to this board and we have to make. I think the policy as drafted recognizes that and tried to deal with that in a reasonable way. That's my belief. But I'm not sure we have

even the consensus at the Board level let alone with the Enforcement Counsel about how these documents should be treated. I don't know if the other commissioners have thoughts.

Douglas Kellner: Well I agree with your overall characterization of our goals. I think that the problem from my point of view is that the policy is not as transparent as it should be. That particularly in the realm of election administration that it is important that the public be aware of how enforcement issues are being handled so they can evaluate whether it's being done in a uniform manner or whether partisan considerations have affected the outcome. But I think that the way you've characterized the principles Commissioner Kosinski are good and productive and I would agree that we should continue to look at it in order to reach that objective.

Andy Spano: I know we've agreed on certain points I think the document that are criminal matters that go to Enforcement officials that they're confidential. If the person who gets it decides they're confidential at that point. But I think we should take them on a case-by-case basis. That's my thinking right now.

Peter **Kosinski**: I know what you're saying. Well for example, there are times and there may be times when a document that's generated in the context of enforcement action could be and should be used as an educational tool to people outside maybe the context of that specific case to help people out there understand how we're interpreting the law and the rules that they have to follow in order to comply with the law. An example to me for example is the independent expenditure area which is new. There's a lot of new legislation in this area and how we deem to enforce it is important so that people out there operating in this area have an idea of what we're looking for to make sure they're in compliance. And I think many times it's the contents of an enforcement action where this will be flushed out and I can certainly see where a document generated by the Enforcement Unit may be useful to people and we should make it public so people can see this is how we analyze the problem, this is how we analyze the situation and this is the conclusion we've reached. So I think those cases are an example to me of where we may want to release it publicly because of that usefulness of it. And there may be other examples like that. So I agree in principle that I think there should be an ability to release when appropriate, documents that are generated in the enforcement context. But I agree it should be case by case and based upon the overall public good. Not to besmirch sometime necessarily but to try to educate people. Because we deal with a lot of enforcement actions that have larger context than just the single entity that we're looking at.

Andy Spano: There was another principle in there I think we all agree on is the person who is being mentioned in the particular action is notified before. If it's something to go to a hearing for.

Gregory Peterson: I think that's currently in the draft that's been provided which I think is important.

Douglas Kellner: So we'll continue to work on this. Alright next is Automated Audit. Brian I think you were the last to communicate on this. Has the draft been circulated or is about to be circulated?

Brian Quail: I think the draft has been circulated to our Republican colleagues and certainly there's been dialogue on the various drafts that have been out there. The latest iteration of the proposal basically attempts to essentially retain the status quo under 6218 in the sense that there are portions of the audit regulation that one side or the other would like to change but on which there is a consensus for change yet we have this legislation permitting the use of tools, automated tools but makes the use of those tools contingent on adopting a regulation so the latest draft was an effort to say, why don't we just tackle the discrete problem in front of us without dealing with the contextual and bigger issues on which there isn't apparently a consensus to address? So that's what the latest draft was designed to do. One of the things that draft does retain in permitting the use of audit tools is it requires that a certain number of ballots be compared to the tabulation results to ensure that the audit was actually working as it is supposed to. It's sort of anytime you use a machine to do something at some point or another you want to calibrate it. And you have a circular saw at home and you made a few cuts and it didn't quite work out right when you brought the board up to the wall, you know how important it is sometimes to calibrate where the line is. So the calibration requirement is left in this proposed draft from our side and just to point out how its not particularly onerous, if by my calculations this draft were to be adopted by the Board, making a few assumptions so these are not certainly hard and fast numbers because a few assumptions had to be made for purposes of modeling but my model would suggest that 42 counties would only have to compare 25 ballots if every county in New York individually used the tool. Nine counties would be required to compare 32, two counties would be required to compare 39, six counties would be required to compare 56, and three counties would be required to compare 66. No county would be required to compare more than 66. Again, this is a calibration measure, its not trying to redo the audit. I also estimate that the total number of ballots that would require auditing in some manner or another I believe was a couple hundred thousand statewide. So of that number, the average comparison would be 28.5 per county with a range between 25 and 66. So that's sort of where it is with staff will obviously follow the policy requirements of the Commissioners.

Peter Kosinski: I got this this morning, is this what we're talking about?

Douglas Kellner: So we'll put this over till March?

Peter Kosinski: Can I just raise something? I have 3 issues I want to raise with this so I just want you to know where I am. The first one is the independent automated audit tool and I know there's an interest in making the tool independent and you've defined it here. I guess I'm trying to understand exactly what this means. I'm presuming this means you can use a currently purchased system that for example a county has. If I have a central count system for my absentees I can't use it as my audit tool for my machines. Is that a fair assumption based on what I'm reading here? That would not quality.

Douglas Kellner: It might if they weren't used in the first instance. So you can't use the same system to audit the ballots that counted as a voting system. So if you use an image cast scanner to count the votes on Election Day, you cannot use the same image cast to audit the votes.

Peter Kosinski: So my machine scanner is counting my votes on the machine.

Douglas Kellner: On Election Day.

Peter Kosinski: On Election Day then I have a separate scanner that's my central count scanner for my absentees.

Douglas Kellner: Right and if it's independent it can be…

Peter Kosinski: Well what does independent mean that's what I'm trying to understand? Is that ever independent from the count that I'm using at the pole site?

Douglas Kellner: Well if it's programmed separately then it would be independent.

Peter Kosinski: So does programmed separately mean somebody programs it separately, a different person at the Board…

Douglas Kellner: Different software.

Peter Kosinski: Does a different person have to do it as well? If I'm a county employee and I'm programming the machines for the central count, I'm a small county, I program the machines at the poling place, I program the machine for central count, now I'm also programming this audit is that independent or does it have to be a different person? That's not really addressed in here.

Douglas Kellner: Correct and that's an important issue to address. Because obviously an audit is not effective if it's not independent.

Peter Kosinski: But is it not independent if I have independent software but not an independent person? Or what if I have not independent software but I do have an independent person?

Douglas Kellner: Right we have to address that.

Peter Kosinski: What if the Board says, "I'm going to use the same software but I've got a different person that I have identified in my Board who will program that one being the audit one from the person who…"

Douglas Kellner: I can't imagine how that instance would be independent.

Peter Kosinski: Okay so that's not independent to you…

Douglas Kellner: It's the same software.

Peter Kosinski: even though it's a different person.

Douglas Kellner: Right because the software is itself not transparent that you can't look at the software and know that it's doing what it's supposed to be doing. It's a black box. So you need to have a system that verifies that what goes on in the black box is accurate, is producing an accurate result.

Brian Quail: One of the things that comes to mind with that conversation with respect to the use of the same person now, it actually points out why its important to have even in the very small number the manual calibration because even if you use the same person and the same person were to make the same errors theoretically not describing mal intent but just an error, you would discover the issue if you have a bipartisan comparison because you are taking what is truly a separate measure between the two machines checking each other, you have a calibration of the human eye saying, gee it's a vote for Trump when the machine said it was Clinton or whatever. And that step helps I think to ameliorate the concern of counties using the same staff. I think it would be highly onerous and difficult for many counties to have complete segregation of staff between the two so I would put that out there as one of the things that calibration helps address.

Peter Kosinski: But if we require segregation personnel and you can't provide it then you can't do this?

Brian Quail: Absolutely.

Douglas Kellner: I don't think anybody's proposing that at this stage.

Peter Kosinski: Proposing what now?

Douglas Kellner: That you can't use the same person.

Peter Kosinski: Oh well that's what I was just talking about. So you would be okay that it's independent even though the same person is doing all the programming?

Douglas Kellner: I would be, yes.

Peter Kosinski: Gotcha.

Brian Quail: And I think because of the calibration check…

Douglas Kellner: That's the key.

Peter Kosinski: I'm sorry what's the calibration check? The manual.

Douglas Kellner: That there be at least some manual component, a small manual component.

Todd Valentine: Wouldn't you want to calibrate, isn't it really, wouldn't it be better to calibrate it before you used it so you know that it is accurate…

Bill McCann: Isn't that one of your test dec already?

Todd Valentine: Isn't it the test dec concept and couldn't we do the testing pre-election as opposed to…

Bob Brehm: Well it requires pre-election testing.

Todd Valentine: But the calibration if you set it right before you use it, if you're using the term as I understand calibration normally is you calibrate it before you use it not after I've used it.

Brian Quail: I would agree with that to some extent but anytime that I've cut a board to put up against the wall I've also measured it after I cut it. I don't think there's anything wrong with calibrating before but it's key to know because you cart it to where you're actually going to use it that it actually works. And it's more effective. We know when it was run for the money when you actually did it that it was accurate. So if there were concerns about for example now intention at any stage in the process, the absolute best place to know that the whole process was free of mal-intention is the last step as opposed to anything that precedes the last step, in my view. I think that clearly is a policy determination for the commissioners.

Andy Spano: I agree with that last statement. I mean we send this out publicly, if you've done it before, it has less impact than if you've done it after, after you talk to the public. They believe everything is perfect. I've been thinking about this just casually I don't know I was on a train or something.

Gregory Peterson: You do your best thinking on a train.

Andy Spano: This whole process of getting someone elected has a couple of elements to it. You have a candidate and a campaign. It's very complicated they've got to send in all kinds of things and we still haven't gotten it completely right, we're still making decisions on how to do that. We've got registration, we've got 50 states all trying to go through whatever and we haven't got that down right you know, but this part of the election process, this balloting part in New York State the paper perfect. I mean try to think of anything else could be confused but the paper, you mark it and put it in a machine that's not connected to any other machine so no one can get in and mess up the election. And the last piece is certifying that result. So this part is really important because from the ballot to the end of the election we'll have it in a way where these people can have that part of the election process and be comfortable with it. And that's why I think we should get this right.

Peter Kosinski: I totally agree we should get this right and I'm trying to understand exactly what we're doing. I guess my concern to some degree is I don't want to make this more onerous than it needs to be because I think we should be encouraging counties to use this. I like the idea of automated audits, I think they make sense. Automating is better in many cases than manual. Manual has its own inherent flaws and as much as we'd like to think we're perfect, we're not. And once you insert humans into the system inevitably you have errors because humans are not perfect and they make errors. So I think the more you automate the better because I think it

reduces the amount of human error. That said, I understand that there's an unwillingness to completely automate here, that there is an apparently overriding need to have some human intervention here to affirm what the machines are telling us. But even so, I think our goal should be to make it as streamlined as possible and as accessible as possible to the counties. Part of my concern about this independence is that while we may need it I think by requiring them to probably purchase a new machine, possibly requiring them to hire more staff because we need a separate person to program especially on small boards is going to make it so onerous that the counties are going to say, "Well we can't afford it because its just too expensive, we're going to continue what we're doing". So I think it's a balance here.

Andy Spano: I don't think so. I'm a guy that I like machines. I'd rather automate anything and with that comment I always have an acceptance of X number of errors because I know once I do that, once I accept that its not going to work perfectly every time. In this particular system, I'm not as cavalier about it because it deals with people getting elected. It deals with very important situations and the vote of each individual. So I think any process that we put, and we should really think about this, has to have a manual process. That just gives it a more effective and more believable environment and I think it if were afterwards instead of before we do it again. This is an environment that's very different than a lot of others. It's not a machine in a corporation or anything else, this is out there. You saw elements of this with this campaign, election is going to be fraudulent, it's this and it's that, people question it. The less questions people have about how we run these campaigns the better off we are.

Peter Kosinski: Fair enough. Well let me just finish. I don't want to belabor this because I see we're going to have, so my first issue was that you know how do we identify what's independent and then do independent actors have to actually be involved in the creation of the systems. So then number 2 goes down to the numbers that you've given. And the numbers seem a bit arbitrary to me and that's a question to me, where did these numbers come from? Why these numbers? Why 25 when you're under 2500, why 32 how did we arrive at these specific numbers that we're going to impose upon the counties? What's the justification for those? Is there some formula that was used that is common to the industry, this is a way to verify this many ballots. If you have this many ballots involved you need to count this many in order to have a confidence level that this is accurate. Why is it 25? Why is it 32? Why is it 39? Where are those coming from? I don't see anything there and I'd like more about that. And then finally, it's on the implementation procedures. I think that county boards adopt a procedure, I think there's some benefit to having a statewide procedure rather than a county-by-county procedure. This rule seems to anticipate each county creating its own audit procedure. I think we should look at a statewide procedure. If you're going to adopt an automated system we should tell the counties this is how your procedure should work like we do with the audits and everything else. So I think that should be a statewide policy or register whatever.

Douglas Kellner: I would agree with that.

Peter Kosinski: So those are my 3 comments in what you gave me just having seen it this morning but I do…

Bob Brehm: I know when we did like the random audit, how do you randomly select? We gave statewide options and the counties had to pick one of those or get some, we wouldn't not consider something that we didn't think of. We said to them in that case we would have to preapprove it. We gave options to counties.

Douglas Kellner: I interpret Commissioner Kosinski's sanction as saying we'd have a procedure for each type of automated tool but that there would be a uniform procedure. I think that's…

Bob Brehm: I'm suggesting to how did we randomly select there were a couple of options so we told counties you could use A, B or C, tell us which one and if you wanted to come up with a D, well then you'd have to have that preapproved before you could use it if there was something we didn't dream up. I think that's an important procedure. And maybe there are certain instances where that would be a good idea or not but certainly if there's just one way we could propose it, we could make it the procedure.

Peter Kosinski: No, I just think we should have a statewide procedure. And of course that goes to my other issue which I still want to talk about which is the ability of our local counties like we've seen to create a whole different way of auditing beyond our 3% audit which includes, I believe in our current iteration New York City's half percent rule and Columbia County's 100% rule. Which I think are both contrary to state law and I do think should be looked at by this Board as not consistent with the state requirements, policy or statute and that is another issue we should be revisiting in this particular context. And that also goes to the statewide standards and uniformity of our elections process across New York. So I'll just raise that as well. So those are my I guess 4 comments regarding this proposal.

Douglas Kellner: Alright anyone else? So we'll put this over. And then our last item on our agenda is the resolution, actually we're going to add a second resolution right. So the resolution on HAVA funds which has to be approved by the Commissioners. Alright so we're…

Peter Kosinski: What is this for? What does this actually do?

Bob Brehm: We currently have a contract with NYSTEC for 2 items; one is project management and procedures, another is security testing. They are timed to be renewed. The policies and procedures has been a HAVA funded contract. The security is paid for out of vendor funds when they submit a voting machine that needs to be independently tested, we use that contract to do the independent security testing and the vendor's funds pay for that portion of the contract. When we updated, this is a 5-year contract, we've updated the value a little bit in the two contracts so before the contract was $1 million estimate $500,000 for project management, $500,000 for security testing is the estimated value over the 5 years of the contract. We have increased the value for two reasons; one we don't know over the next 5 years if there will be new machines that come in that we need policies and procedures and testing protocols and two, testing. And because of the security with regard to cyber security we wanted to at least cover cyber security issues since NYSTEC has a certain level of expertise that would help us in doing some of the cyber security work that we have to do both to voting systems, voter registration systems so maybe we will use those. So we have looked to extend for 5 years the

project management which is a $600,000 contract and another sum of money to cover the potential that there might be some security related that may and the security related if its covered under the statewide Voter Registration List or the Voting Systems would be HAVA eligible to pay for it. That doesn't mean we will pay for it, it just means that we have the ability to pay for them.

Douglas Kellner: How much money is left in the HAVA account?

Bob Brehm: When we met with the people at the Division of Budget and the people at the Office of General Services in the approximate $6 million range of that some of it has been committed to do the NYSVoter Repair I think, so between the two we would be in the $5 million range once you've approved them, assuming you approve them. You know, 4.5 to 5 million range.

Douglas Kellner: Okay.

Peter Kosinski: I'll move it.

Andy Spano: Second.

Douglas Kellner: Okay those in favor say aye?

[Chorus of ayes] opposed? Alright the next is the resolution to authorize the co-executive directors to designate the senior staff members to add as hearing officers for HAVA administrative complaint hearings. I don't think we need any discussion on this.

Gregory Peterson: I'll move that.

Andy Spano: I'll second.

Douglas Kellner: Those in favor say aye.

[Chorus of ayes] opposed? Alright. And before we go into Executive Session should we talk about the date for our next meeting?

Bob Brehm: We had some proposed, either 14th of 16th of March recommended. I don't know what your calendars are.

Peter Kosinski: I don't have my calendar that far out yet. Can we…

Douglas Kellner: Okay so we'll have to circulate it.

Peter Kosinski: Yeah, can we do that. Right now I don't have a good but we're looking at March is that fair to say?

Douglas Kellner: Alright so then we have a motion to go into Executive Session to discuss enforcement matters. Those in favor say aye.

[Chorus of ayes] opposed?