

**Peter Kosinski:** Welcome to the Board of Elections. Here on August 5, 2016. I'm Peter Kosinski, Commissioner, to my right is Doug Kellner to my far right is Andy Spano and to my left is Greg Peterson, the other Commissioners. We'll start the meeting with the minutes of July 12, 2016. Is there a motion to adopt?

**Doug Kellner:** So moved.

**Andy Spano:** second.

**Peter Kosinski:** All those in favor?

[Chorus of ayes]. Opposed? They're adopted.

We're going to take something out of order on our agenda today. We're going to take the new business which is the Petition Rulings first so that we can have the staff send out the appropriate documents to all the candidates that are affected. So we have a report from the staff on the 2016 Designated Petition Filing from July. We have a list of matters that were ruled on from the staff or recommendations for rulings from the staff. It's a document that I have, and I think all the Commissioners have in front of them and, I would just ask if there's any comments or questions on any of the individual items? I think we take these as a group unless there's a motion to take them individually or if there are questions on individual rulings, I think we should entertain those as well. Or, if the staff would like to give an explanation of what's on here in any way. But I've seen this.

**Douglas Kellner:** I think that's fine and the list is very clear. Is there anyone in attendance who wants to be heard to challenge any of the rulings? Well in that case...

**Peter Kosinski:** Okay then I'll entertain a motion to adopt the rulings as provided on this document.

**Andy Spano:** So moved.

**Gregory Peterson:** Second.

**Peter Kosinski:** It's been moved and seconded, all in favor?

[Chorus of ayes]. Opposed. Alright so that is adopted. And I guess the appropriate documents can be sent out.

Alright then let's move on to the unit updates. And our first unit is the Executive Unit which is Todd Valentine and Bob Brehm.

**Todd Valentine:** Well, what you just did has been the sum and substance of our work for the past several weeks and continuing into the next phase because we just completed a congressional

independent petition period and are having some objections filed already to at least one petition so far. There are more due today but they should arrive by Monday at the latest.

**Peter Kosinski:** Are you done?

**Todd Valentine:** Well that, I'll touch on the IT report because we have selected a candidate as a new ITU head, he starts in 2 weeks, Bill Cross is his name. And we're looking forward to working with him.

**Peter Kosinski:** Where does he come from?

**Todd Valentine:** He comes from the Department of State. That's where he is now but he's been working in day, he's actually been in the ITS Agency but he's in the Department of State. He's been in the Department of State for quite a while. At least 20 years. And he was looking to come to a smaller agency because a lot of the agencies that we found have migrated the staff to the ITS, they lost a lot of that smaller agency action that you see and wearing a lot of hats and lot of IT guys like that and he falls into that category. So we're really looking forward to working with him.

**Peter Kosinski:** And the ITS is?

**Todd Valentine:** It's the Office for Information Technology Services. They're the centralized department that oversees technology for the state and as part of the move for centralization 2 years ago what they were doing was a number of agencies, their staff left their agency and became part of the ITS, but often they were left sitting where they were but being directed by somebody else outside on different projects. It's not something we participated in, only to the extent of our enterprise wide projects that we fielded back to the agency or were mandatory that we have participated in. Examples have been the consolidation of the data center. We have a hosted location. They run that data center but we have a co-location site so we're able to maintain our security and control but yet utilize their power, their back up resources, whatever makes sense for the agency. But we're independent of ITS. Our employees and our projects are directed in our control and that's one of the factors of him coming to our agency.

**Peter Kosinski:** Good. Well we look forward to meeting him in our next meeting I presume.

**Todd Valentine:** You should yes.

**Peter Kosinski:** Good.

**Douglas Kellner:** Todd I had one ITU issues I wanted to mention and report on and that is that in the last 2 weeks in connection with some of the national groups that I've been working with and you may have been involved through NASED, of having the Department of Homeland Security include Election Operations as a designated part of critical infrastructure which is a technical definition in the Patriot Act that would provide additional responsibility to the federal government in advising and assisting entities that are involved in critical infrastructure to protect

their computer operations from security issues such as hacking and viruses and things like that. And I know that with our own election system, we actually rate pretty high in terms of the security because we require that all of the programming be done separately and not through the Internet. But, one of the things that I hope that our staff when our new ITU chief comes in that he can go through the check list of security issues for our voter registration and campaign finance databases to make sure that we're doing everything that we can to provide for the security of those databases. And then I guess we should continue to remind the county boards on how important it is to maintain proper security procedures for their computer databases.

**Todd Valentine:** Well, I'm aware of through the media reports that they were making that designation. I mean, without getting into too many details, we have to be constantly vigilant for cyber issues that come out, I wouldn't necessarily call them attacks but they might be considered attacks under certain definitions and we are, I don't know the biggest target because by in large the information we have is public but that's not the point. The point is that it doesn't corrupt the system. That people see accurate information. It's the accuracy, its not just getting the information. We just FOIL most information and can get it. That's not stealing anything. But it's the corruptibility that we are very concerned about that and certainly our Chief Security Officer, Bill Ryan, he's the one that's the interim and he's the head of security, he is aware of it and he has had some pre-meetings with the new head to try to lay out some of the issues in addition to what we laid out when we hired him.

**Douglas Kellner:** I'm glad to hear that.

**Peter Kosinski:** Bob do you have anything else?

**Bob Brehm:** Well I think it's easy to say the petitions consumed so much of the last month of us since the Board meeting and your actions we wanted to deal with, where there were problems with petitions being filed or problems that were raised and objections. I think more important is how much additional work the two new parties have been even though they're small parties, there's no economy in scale when you're handling those pages of petition. They have to go through the process and it took a lot of energy from everybody in the building. So I want to thank everybody on staff, they did a great job. We know petitions tend to get filed at 10 of 5 everyday, nothing comes in at 10 after 9. So there's a lot of stuff to get processed, approved, entered into the computer, scanned, filed away properly and every letter that needed to go out went out on the day it needed to go. So that was a lot of work. And then the next round we had people volunteer extra hours or that they came in early or stayed late, plus keeping up with their additional, their regular work routine to do all the proofing and petition checking so we could hold hearings. And we finished 3 hearings today just to make sure that we made the deadline for your meeting and to be able to certify on Monday. And the way the calendar works, we still could get some additional specs in so we have to hold open the potential we may have to have a phone meeting to deal with those but it's a lot of work and a lot of people and that doesn't necessarily get into the 30 or so court cases that also needed to be juggled. So an awful lot of things happened, I think more to say that some people didn't make it to the ballot and they're not going to be happy, but by in large, the vast majority of the people did it right. The paperwork was all in order and it looked to me a lot cleaner than it has in the past. So thankfully it was in

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good shape when it got delivered to us so it was able to get done for today. We did move forward with the IT staffing because it was such an important issue and we're very fortunate to have made that selection and Mr. Cross agreed to come work for us. He had a very strong and positive reference from the Department of State where he basically served as a Deputy IT Director until he went to OITS he probably would have been the Director had they not gone to OITS. So we're looking forward to that, put in place that key unit. And we're moving forward, we just had approval for the temporary workers we had mentioned at our last meeting, if we didn't get those approved soon, we could see some project slippage within Candidate Management and the Campaign Finance System. We just received word this week that those 6 temporary workers were approved. Now the process is to actually get them in place. So, there still could be slippage until they're sitting here but, at least, we've made the biggest hurdle.

**Peter Kosinski:** How many workers?

**Bob Brehm:** There's 6. They are paid for out of the budget which is the money was put in the OITS budget to pay for them. So they, similar to the two we currently have now, they're almost up so we're getting nervous that if we don't have the replacements and our ability to keep them and they leave because they're temporary under that program. One we'll lose a great resource people who know where we're at in the project and we have to start fresh with someone new so we're really hoping that doesn't happen. So it's good that it happened and we're moving forward with that. And I think just one other thing, since we are live and sometimes people pay attention outside of this building, this week is the week that cards are delivered to voters throughout the state reminding them of the status of their voter registration. I got mine at home yesterday. So if you don't get your card this week and you think you're registered to vote, this is the time to look for those notices from the County Board of Elections. Read those cards. If there's something wrong with them; there 4 voters at my house, we got 4 cards so I'm happy to know that everybody's covered. But this is the week to do it and if something's not right you have plenty of time to fix it in time for the November general election. So I just remind people don't start looking for these things 2 weeks out.

**Peter Kosinski:** Fair enough. Anything else? Any other questions for Bob or Todd? No. Okay then our next unit update is from Council and Compliance, Kim and Brian.

**Kim Galvin:** Thank you. Well ditto what everybody said about the specs. In addition to the 8 relatively major litigation pieces that we have pending of which the Attorney General is representing us on most, we had approximately, this is approximate because validators and invalidators and OTBs are sometimes combined, 25 ballot access changes so far. Court cases, Bill was actually in court this morning on another one. So, they seem to be winding down and the decisions are falling in line with our staff work which is good. We had a new set of specs arrive today, probably challenging 2000 signatures or some ridiculous challenging more challenging 7000 signatures I think so they're being parsed out to the staff as we speak. Apparently there's more judges in Albany County than there are lawyers in this building so we doubled up our cases since everything was returnable on either Monday at 9:30 or Monday at 1:00 and we managed to do a good job though. Everything was covered, no problems.

We took some time to review the Independent Expenditure Legislation that was passed by the Legislature and talked about it briefly in the event that it gets signed and sent to the Governor, or gets sent to the Governor and signed, sorry. It will require some changes with our Compliance Staff and that has a fairly quick effect, 90 days, 30 days?

**Bill McCann:** The major part is 30.

**Kim Galvin:** 30 days before it takes effect so we have to prepare for that coming at any time in the middle of the cycle.

**Douglas Kellner:** Can you summarize what the key changes are?

**Kim Galvin:** Bill could summarize what the few changes are.

**Bill McCann:** Well, it's rather comprehensive so I'll do the truncated version. Essentially, the major issue goes to factors that relate to coordination. As the Commissioners are aware, the Board staff had been working for some time to try to come up with some consensus on what factors might indicate coordination and how to apply that. Legislature did a fairly comprehensive job in outlining what those factors were. As it relates to those factors, the big key, depending on when it gets signed is their look back period so the safe harbors that would have to be applied and so I'm sure there will be some discussions as to what that might mean.

**Douglas Kellner:** How does that affect the reporting?

**Bill McCann:** Well, the reporting had some benefits. For instance, for Independent Expenditure reporting in addition to the normal reports that are filed, Independent Expenditure reporting have what are called weekly filings and then they have what are called the 24-hour filings for contributions and expenditures that are specifically related to Independent Expenditure Committees that file. In the past those weekly filings for instance, were due on a Friday and they created some administrative issues for not only the filer but for the Board. So now for instance one of the features of the new bill is that it places that on a Monday. So administratively when those get filed on a Monday, it just allows for the staff and the follow up to occur more contemporaneously with the filing.

**Douglas Kellner:** Kim mentioned that there would be some changes that would be required with the Compliance Unit.

**Bill McCann:** Oh, okay. Well certainly what that entails is that specific to Independent Expenditures the legislature has added some additional definitions to the law and then set into place certain activities that before, for instance, you may recall that the Commissioners had opined that for instance PACs could engage in Independent Expenditure activity. Prior to this legislation, PACs for instance was not specifically defined in statute. We've all historically said that PACs are communities that have just taken money via contributions and then make contributions to other candidates and political committees subject to their limits. They don't engage in direct expenditures and support or opposition of candidates and political parties for

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instance. And that was based upon some extrapolation of provisions of the Election Law. This bill specifically defines a PAC and this goes further to say that PACs cannot engage in Independent Expenditure activity. So for instance where the Board had worked previously leading up to this legislation to create a vehicle by which PACs could engage in Independent Expenditure activity and register and file forms indicating that status, for instance relative to their authorization, in this case not being authorized and being independent, this legislation would turn that in 180 degree opposite direction. So, for instance, right now we had created and implemented a process by which PACs could engage in Independent Expenditures and register and indicate such with the Board. Under the new legislation it says PACs could not engage in Independent Expenditure activity, obviously we'll we have to change all of our instructions and our forms to incorporate that. additionally, as it relates to PACs and also as it relates to Independent Expenditure Committees, this legislation requires additional disclosure as to the individuals or entities that are behind, in the case of a PAC who controls the PAC, meaning the leadership in essence or the people behind it literally, or if its an organization that has created the PAC, and as it relates to independent expenditures, the issue of who's creating that Independent Expenditure organization and identify for public disclosure who those individuals are or, who the entities are that are in essence behind the spending that coming out of the Independent Expenditure Committee. Having said that, those additional required information require the Board to identify whether we can make modification to the form structure that we have now. We have a series of registration forms that we use and historically they've been in place and have served certain purposes. Initial staff discussions because of these additional informations that are required on the registration documents has us leaning more towards saying, "We should really perhaps create specific forms for specific filers that identify that specific information so that there's no cross pollination or confusion as to which form you use in what circumstance". We also don't want to necessarily drive people to take on functions, because a lot of times when people review their registration forms, they necessarily say, "Oh that's me" and so we don't want people to just say oh that's me because they're not clear. We really want to make sure that if you're a PAC this is what you have to provide under these circumstances. If you're an Independent Expenditure Committee this is the additional information, this is the form you should use. I'd say it's more of a federal model if we go in that direction. So, towards the implementation we will clearly have to not only modify, or first off change our other forms to incorporate what they'll apply to but more specifically create new forms for these specific entities and also make sure that our instructions are clear, but then make the necessary modifications as it relates to our handbook of instructions, and then also any necessary regulations that we'd have to change. For instance, the Board, previously this year, made modifications implementing the last changes to the Independent Expenditure Law 2015. Certainly, when this gets passed we will have to make the requisite changes to the regulation to make it consistent with the new law. So there's any number of things. The staff has done some analysis already. We've had some general discussions. Certainly, we don't have an indication yet of when it would be signed. I, from my own personal point of view, I think the implementation effective dates are kind of strange and that's certain, for instance as it relates to there's a requirement in the statute that requires in order for a political party or constituted committee to have a housekeeping activity, it has to have a separate bank account, if you will. It doesn't require several registered committee but it requires a separate bank account in order to segregate the funds within the organization. That goes into effect immediately. The bulk of the

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bill that relates to Independent Expenditure, the coordination factors, the definition of a PAC and a IE Committee and those types of things, that goes into effect 30 days from signing. There are other administrative things that we have to incorporate, the bill for instance, address the issue of where you have a deceased candidate or office holder of a political committee. So only in the case of authorized political committees. So it doesn't apply to PACs, it doesn't apply to party constituted committees etc. but in the case where an office holder or a candidate's authorized committee where the candidate dies, depending on when that death occurred, there's a timeframe implemented in the bill as to when the funds must be disgorged from the committee. So it depends on whether, and that's based upon a 2 year period from the death of the candidate but it also goes into effect based upon the effective date which is the 2017. So if you die altogether, so it's really like if-then proposition.

**Kim Galvin:** So if you die altogether, only part of you is dead (laughing)

**Bill McCann:** Well you're dead but it depends on how much time went by. And that goes to that.

**Peter Kosinski:** I have a question then about that. So you're saying that and I'm focused specifically on the coordination issue, I guess. So if the bill is signed, say today, would that go into effect in 30 days those rules?

**Bill McCall:** Correct.

**Peter Kosinski:** So if I'm a committee today or I've been around for this year doing what I think is independent activity, and then this bill gets signed and it turns out what I was doing was coordination, I just maybe didn't know it because I didn't know what the rules were, how does that impact me going forward for this cycle.

**Bill McCann:** Well that is a concern. Well the good news is, as far as liability or enforcement is concerned, the standards that apply in the statute go to basically knowing and willful. So, certainly if you were acting, in my own opinion, if you were acting in a capacity that prior to this legislation was okay and didn't create that in essence, violation, certainly you couldn't be knowing and willful if the statute then changed it. I can't speculate on whether or not there may be court cases that are ultimately brought depending on what enforcement occurs as to the implementation of that look back. Certainly, if the bill said, this was a prospective in going forward because of these look back periods, you wouldn't necessarily have that issue. The legislation is not clear. It doesn't get into that specific issue. So, certainly for implementation purposes that's a concern I think that the bar and certainly the regulated community would have. But that's part of the ongoing discussions that staff will have and I'm sure the practitioners in the area will have some feedback on that as well. But, that's certainly a critical issue as to the look back periods. If I had had my druthers, the bill would go into effect for the next election cycle, so for the State Legislature for instance it would apply to the next election cycle which would happen after November and then you would only have to concern yourself with the look back period as it relates to the 4 year election cycle for statewide that next election in 2018. But the legislation doesn't really get into the weeds on that. So certainly, that's going to be a concern

that we'll have to look at as to the implementation and how that look back will affect current filers.

**Peter Kosinski:** Are you suggesting that there is something this agency can do or should do to address that specific concern?

**Bill McCann:** Well, I don't know what we could do. I mean the legislation says what it says. I don't know that we can create the regulation for instance, something that would change the implementation of whatever those legal requirements are. My sense is that that really goes towards the legality of the application of a look back in the legislation itself. So, again I don't know. I don't know the answer to that. I'd be curious as to what the Commissioner's thoughts might be on that but...

**Brian Quail:** I think one point to make is that what we have now is coordination also not being legal but we have the statute being more specific about what coordination is. So it may very well be that what the statute spoke to were broader generalities before is just more specifically flushed out now so that the guidance is clearer.

**Bill McCann:** If I could add one thing and this is of critical import. It's not that coordination is illegal, the issue is if its coordinated activity becomes subject to a contribution limit and then you have to apply the contribution limit to determine whether or not you have a violation for exceeding it. Certainly, if you engage in coordinated activity that is subject to the contribution limit and doesn't go over it, that's perfectly permissible. You would have the necessary disclosures. There are some ancillary issues related to that but, so coordination is not illegal, it's a question of if you're claiming independence but you're not certainly that goes to that factor, but its really the critical aspect that goes to limit.

**Douglas Kellner:** Is there anything we should write to the Governor when they ask the Board's position on the bill? I guess typically we...

**Peter Kosinski:** Well, I think it's a legitimate concern. I can see that since we're so far into the election cycle it being August that there's a potential that certain actors have or are doing things that may have been considered non-coordination or proper and now, I mean I haven't read the bill that closely to see exactly what the criteria are now but that may happen, that's all. I'm just trying to understand what the impact is and how that's going to be handled.

**Bill McCann:** I mean, I've had general discussions with practitioners on the bill just in general and they've raised this as a concern. Certainly that's one of the things that stands out is how will this look back work? So that's something that is a known issue. So again.

**Douglas Kellner:** So is the problem solved if the Governor doesn't sign the bill before September?

**Bill McCann:** Well, it will be solved; well the effective date was 30 days. So I think if you got past this election date, it would certainly resolve the issue as it relates to the state legislature.



You would still have the same issues that relates to the 4 year election cycle for the statewide office holders like Governor, etc. that would certainly still apply. I mean that same look back concern would be there.

**Peter Kosinski:** I'll just ask Risa, as the Independent Enforcement Council, do you have any thoughts on that particular topic?

**Risa Sugarman:** Well, Commissioner I think that when you look at the intent and willfulness that's necessary, I think that would be the guideline that any prosecutor would look at when you're determining what the conduct was before or after the bill goes into affect. That's the important gage that you would look at and I think that would be anything that needs to be evaluated when you're evaluating conduct when the bill goes into effect. If its conduct before the effective date as opposed to conduct after the effective date. And that would be the determining factor any that the prosecutor or any investigative agency would look at. So I think that that is what you start with when you're looking at it. So, I'm not sure that would be a concern and I think that if the bill is signed after this election cycle, I don't think its going to be a concern for the statewide elections in 2017 because it will be certainly a significant amount of time before that election cycle starts. The question is...

**Douglas Kellner:** The 2018 election cycle for statewide offices has already started. No I just wanted to...

**Risa Sugarman:** I understand that but those are the Governor, the Comptroller and the Attorney General I think are all well versed in their election requirements that they will be sufficiently versed in what they have to do.

**Peter Kosinski:** But understanding that said, what we're talking about is not the Governor or the Comptroller, we're talking about actors who are not connected to these people and they're independent. So it's people that may or may not be aware what's going on here. So I don't know.

**Kim Galvin:** I also think there's some tricky, Bill can elaborate because he probably knows what I'm about to say, there is also some tricky provisions about prior staffing, if you worked for the legislature and now you work for a consultant, there's a 2 year look back. So I don't know, I certainly don't know whose gone where in the interim. But what happens if I leave now and then it becomes effective and I'm within my 2 year window of employment, do I have to get fired? I don't know. I think there's a lot of tricky things. That's an unfortunately could be circumstance of this being inserted into the middle of the cycle.

**Douglas Kellner:** As Brian said that that could already be implied under the current law but now it's explicit where before it was...

**Kim Galvin:** You know but is there a Chinese wall vs. a strict prohibition? I don't know how those things are going to work out.

**Douglas Kellner:** Well I think Risa has answered the question at least with respect to everybody else which is that unless they knowingly and willfully violate the law with respect to the remainder of the current election cycle...

**Risa Sugarman:** And I think that's why it was the language that was put it, for past and for future conduct. I think that was purposeful.

**Peter Kosinski:** But let's take this example then, so I'm I don't know the exact provision here but I'm working for the State Legislature right now and I decide to open up an independent committee tomorrow so I do that and I go out and create one.

**Kim Galvin:** Or I do work for a firm that does.

**Peter Kosinski:** Right. So how I'm doing that and the law hasn't been passed so that looks okay to me and everybody says that's fine. So now I do that and then the law gets signed and now it says if I did that within the past 2 years, that's coordination and I would be prohibited from engaging in independent activity. But I've done that so where am I? Am I grandfathered in because I left before the law was signed or because I'm in the 2 years now, do I have to quit my job?

**Douglas Kellner:** Well the flaw in your question was that you assume that it's currently legal to do that and...

**Risa Sugarman:** That's right. You work for legislature so that don't you have...

**Peter Kosinski:** Well has someone said prior to this that it's illegal? I'm not aware of someone telling anybody, I'm not aware of this agency ever saying...

**Douglas Kellner:** Well not in an official way but a lot of us have been saying that that type of activity is coordination that violates the law.

**Peter Kosinski:** But I don't know that we've ever taken an official stance that someone has relied on to say, "Oh I can't do that because someone has officially told me this is not legal" now you're being officially told by the State Legislature this is not proper. So what's my status? Am I grandfathered in because I left before so the willful is out because I didn't do it willfully because I didn't know about it, but now I'm willfully doing it because now the law's been signed and I know that I have left within the last 2 years, am I now on notice? Am I now subject to penalty if I don't leave the independent committee? I'm just trying to understand what the impact would be then to these kinds of activity.

**Bill McCann:** Well I think there's a couple of factors that need to be looked at; 1) I would say you have to look at the scope of the activity of the committee itself meaning what specific offices and districts and candidates are engaged in activity for because a lot of these committees may be for one specific office or district but there may be committees that are for a multitude of a slate of candidates for a particular party or not. The other thing is again, the secondary question

would then become, again, this is just a fact that it goes to coordination, so then you have to look at, in my estimation, what amounts of money are we talking? Because the issue is once you get coordination it triggers the limit, now you have to apply the limit. You would presume that an Independent Expenditure Committee is going to spend such large amounts that by implication it would be larger than a limit but, I don't know that you can necessarily assume that depend on how much money this IE committee might have or where it's getting its funds, etc.

**Peter Kosinski:** Bill, you're not answering the question. What you're talking about are things that take it outside.

**Bill McCann:** No, you said does a guy have to leave? I said to me it would depend.

**Peter Kosinski:** Well let's say they were, because by definition, I mean I think most independent committees form so they can spend more than the limit is, so let's say they're doing that because that's probably why they created themselves, I mean let's assume that for a minute. What's the answer?

**Bill McCann:** I don't know.

**Peter Kosinski:** Okay fair enough.

**Kim Galvin:** Well let's say they come out of the Senate and the Independent Expenditure Committee or they come out of the Executive Branch, the Independent Expenditure Committee is only dealing with assembly races. It gets very tricky as to does the legislature mean the legislature, is the assembly the assembly? I think it's a very difficult question and especially if you, what if you left 15 months ago before this legislation was even introduced or you knew it had the potential of coming? Now you're stuck.

**Douglas Kellner:** It was coordination 15 months ago.

**Kim Galvin:** What if they build a wall as to the races? What if you're a low level central staffer?

**Douglas Kellner:** Alright, well these are all issues when you get into willful, it's always a tricky analysis.

**Risa Sugarman:** Perhaps you could just let us be involved in those meetings if you would.

**Peter Kosinski:** So you're going to be changing the forms regardless, I mean I assume that's going on right now because you know you're going to have to do that.

**Bill McCann:** Yes, we have started that discussion yes.

**Peter Kosinski:** Okay.

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**Kim Galvin:** The only other thing I have to add on my report is since we last met, we met with the Department of Justice, they had 3 lawyers come here regarding the New York City NYSVoter AVID interaction with the purge of the voters in Brooklyn, I hope, and since then, they were here. It was a nice meeting 3 hours long, since then we've had document exchanges and follow up phone calls and we're still investigating that issue down there and we're being fully cooperative. They've tried to kick all the lawyers out of the room and just deal with Tom and the IT people but we've been trying to figure out what's going on. And let me see, what else have we been doing. Also, since the last meeting, I know that the Commissioners asked for the compliance staff to put together some statistics on deficiency reporting and failure to file percentages that we did and provided to you for review.

**Brian Quail:** And if the Commissioners would entertain going over that for a few minutes. So one of the things that we do want to look at as a metric of just the current status of where we're at...

**Douglas Kellner:** Could somebody make sure Risa has a copy of that too?

**Kim Galvin:** Here I think I have an extra one. I don't know if I do or not. Yes, I do.

**Brian Quail:** And these numbers are not particularly difficult to follow which is good. The baseline that we wanted to do is take a look at the history of what happens when somebody doesn't file. Looking back from the January and July periodics in 2015 and even coming into 2016 doing that same, saying, "Look in January of 2015 for the periodic, there were 769 reports that weren't filed as of March 31" and that's when we referred them to Enforcement. So what we did is we ran the report again on July 28<sup>th</sup> of this year for that January periodic of 2015 and 548 filers had still not filed. So that means that percentage wise 71% of those filers had not come into compliance. Very similar percentage was observed for the July periodic of 2015 also, it was 75%. The total that were referred was 1,154 and as of again, just a few days ago 860 of those July periodic filers for 2015...

**Peter Kosinski:** Brian I just want to stop you for a minute. I want to clarify what these percentages are. So this 71% is not 71% of people who haven't filed, this is 71% of the ones who hadn't filed timely still hadn't filed months later?

**Brian Quail:** That is correct. That is exactly correct.

**Peter Kosinski:** But the vast majority of the filers have filed?

**Brian Quail:** Yes, absolutely, yes.

**Peter Kosinski:** I just didn't want that to be misunderstood.

**Brian Quail:** This analysis is of those individuals that had not filed in the first instance when we made a referral to take a look and see where we're at with those folks today. And today for purposes of this really means July 28<sup>th</sup> when the reports were run. For the January period of

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2016, 1,682 were sent over in February and as of again, July 28<sup>th</sup>, 79% of those which is 1,337 hadn't filed. And obviously, we just sent on August 1, 2,075 nonfilers for the July periodic, and we have not statistics on the nonfiling rate for those folks as of 2 days before that. So that remains out. So if we look at just the ones that were sent over on the periodics from 2015 and January of 2016 and aggregate 3,605 were referred and 2,745 which is 76% of those that were referred still have not filed. So that's category one which is the Failure to File universe. And since the inception of the Compliance Unit by statute, the unit is required to provide deficiency notices to the filers that are noncompliant and/or provide them with a training letter. And what we do is we work very hard to get those folks into compliance. So if we pull back a little bit to sort of the global view, since the unit was formed, we have reviewed 55,769 individual reports which would include amended reports. Actually I apologize that's incorrect, we have received 55,769 reports, we've reviewed 46,930 of which at some point 12,438 of those reports were deficient and in the first instance, 30,669 of the 46,000 reviewed were totally compliant and the remainder, a relatively small number 3,823 received training letters for errors and omissions that are not serious. So what we wanted to do is take a look and see of the deficiencies that we have referred, what is the current status of those deficiencies in terms of what I mean by status, have they been cured or addressed? In totality for example, in the June referral in 2015, the Compliance Unit sent 203 deficiencies to enforcement and again, as of July 2016, 178 which is 88% were not remedied.

Now one of the things I will sort of get down to the weeds here, one of the problems potentially is that sometimes and particularly in that timeframe before the Board implemented new protocols, some of the deficiency letters may not have actually reached the filers due to problems with addresses. So what we did is, we did a secondary analysis where we backed out from the analysis those reports that may not have made it to their intended recipients and so when we reanalyzed with that criteria, we removed 39 from the universe, so that was 164 that we referred in June of 2015 and 85% of those 139 are still deficient today. We made a very large referral in March of 2016, 900 deficiencies were sent and as of July in the aggregate, 92% of them 825 remain deficient and again, backing out those that may not have received our notice because of address failures, we sent 681 and 606 of those remain deficient which is a percentage of 89%.

More recently, we sent a June referral which was smaller than the prior one 463 deficiencies and of July 95% of those remain deficient. One of the things that we're happy about with respect to that report is that we have, because of a change in protocol in how we handle instances where we receive notice that someone's address is incorrect, only 1% of those 463 were actually marked, return to sender, we have good addresses and we resolved address issues. So the analysis is essentially identical between those that we initially sent out in the aggregate and those that once we subtract out the return to senders. So it warrants sort of a complete aggregate statement that of the 1,566 deficiencies that were referred to Enforcement, 1,432 of them remain deficient. And, of course, if we remove the universe of 261 return to senders of the 305, 1,182 also 91% remain deficient. So we just wanted to provide that point. And Commissioner, I would certainly like to at the end of that statement just come back to what you observed, which is the overwhelming majority of the interactions that the Compliance Unit has with filers results in compliance and it has been a very productive exercise. The relationships that are forming between the auditors and the committees that they're assigned to by keeping that consistent has

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resulted in better and more accurate information available to the filing community. And in terms of those that are filing, they're doing very good work in the main, at providing the disclosures that are required by law.

**Peter Kosinski:** Thank you.

**Douglas Kellner:** And Brian just to work out the numbers, on your last point, you said that they reviewed 46,000 reports and there have been roughly 5,000 reports or 5,700 reports that haven't been filed that should have been filed which means that the total number of reports that should have been filed would be 52,000 and by that arithmetic then I get a nonfiling rate of just a smidgen over 5%. And I get a deficiency rate of just under 3% which I think you know is not bad but that's what it is. It's that roughly 5% of people who should file are not filing and roughly 3% of the deficiencies are remaining unaddressed after the letters that are required by the law to go out. Is that the right way to do the arithmetic?

**Brian Quail:** I would have to I cannot disagree with doing that arithmetic in that matter. I would go back and look at it and see if that works out. Because that isn't math that I had done prior to coming in the room but I don't take exception to those calculations.

**Douglas Kellner:** Alright well I thank you for finally getting this spelled out in a concrete way. You can talk to Risa about the next steps.

**Peter Kosinski:** Let me just go back a minute, I don't know who answers this but you talked about the failures to file so back in January of '15 let's say, let's take that example. You had 769 not filed and then by July you had like a little over 200 of those apparently file. Because you're nonfilers went down to 548. So what happened between March of '15 and July 28 of '15 to bring those 200 in? Did they just on their own decide to bring in their filings or was something done here to prompt them to do that?

**Brian Quail:** And to answer that question by answering a slightly different question first then I'll come directly to that one is there obviously is activity prior to the referral in order to get people to have complied. There can be residual impacts from that after the magic date including sending a postcard actually, even prior to when the filing is supposed to be made reminding people to file. There are phone calls that the staff follows to inform people who are interacting with us potentially for other reasons that they have not yet filed. And but from a compliance standpoint that work is ongoing but largely passive once the referral is made. In other words, if you're interacting with us for something, we're certainly going to be informing you that you have a filing that you owe us.

**Andy Spano:** You have no way of quantifying the number that relates to that?

**Brian Quail:** The reason why, no. We do know that between March 31 when the 769 were sent for example from that January period of 2015, that that number whittled down to 548 by July 28<sup>th</sup> but that number today could actually be say 1 or 2 less than that and why or how those particular people filed at this time I would...

**Peter Kosinski:** But you automatically send a notice to a nonfiler?

**Risa Sugarman:** No, I send notices to nonfilers.

**Peter Kosinski:** Oh, I'm sorry okay. So, if I have a filing due July 15<sup>th</sup> and I don't make that filing by a certain date you sent out a notice?

**Risa Sugarman:** We have done periodic notices to nonfilers. We did a letter in I believe January of 2016 for filers for January and July of 2015. Nonfilers for January and July of 2015.

**Peter Kosinski:** So nothing was done until then. I mean something didn't happen immediately?

**Risa Sugarman:** We combined the January and July nonfilers of 2015 and sent out a mass filing.

**Peter Kosinski:** Okay so let's ask this, this year let's look at the filing. We just had a filing come in July 15<sup>th</sup> right. So I'm assuming there were, I don't know is that on here? There were a number that didn't file.

**Risa Sugarman:** Yes, there were over 2000 on the list.

**Peter Kosinski:** Okay so is something done like now to prompt those 2000, gee we have nothing from you, you should get your filing in? Or is there...

**Risa Sugarman:** Well what I want to do Commissioner is obtain a data points of e-mail addresses for treasurers and candidates so that instead of sending out letters we can send out mass blast e-mails to treasurers and candidates and notifying them that they need to get their filings in. and other uses of a blast e-mail. I have not been given permission to get that data information. See when I have to get information I need permission from both Todd and Bob to get that information and I have gotten permission from Bob and I have not gotten permission from Todd.

**Peter Kosinski:** So you're saying, at this point nothing has gone out to those 2000 filers.

**Risa Sugarman:** Correct. Now I have to tell you, that the 2000 filers and the last thing that I asked for was an excel spreadsheet for the last 3 years of nonfilers as well as an excel spreadsheet comparing those filers to those who have judgments because if you look at the filings and I did that...

**Kim Galvin:** Was that yesterday's request?

**Risa Sugarman:** Yes. And I didn't expect to get it right now because I know that you're busy. But when I look at those nonfiler lists I got the PDF and I've gotten them before, the names on

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the list date back sometimes to 1994 and they've been committees that are defunct, that are not filing anymore because the candidate might be deceased, that the treasurer might be deceased. So the ability to try to clean up these lists is something that needs to be done so that you're not sending out letters and communications or even e-mails to committees that are no longer functioning. Or, the committees that have tried to terminate with the Board and have not been successful. Or, committees that are trying to get their committees terminated are now working with the Board. To get the committees that are actually working and functioning and should be filing to get them into compliance not just to send out a letter that has no reason to go out. But one of the things that would make it easy for me to do that and to bring people into compliance and to get that information out to the committees, is to get that e-mail data available to me.

**Peter Kosinski:** So, your belief is that a lot of the filers that we're not seeing file are no longer functioning, that they are committees that no longer really exist. That the candidate is deceased...

**Risa Sugarman:** Pedro Espada's name is on that list. He's in jail. Been in jail for 30 years. Well I understand that he has committees and some of them his treasurer has paid their fines but there are committees there that are not functioning and will never function. Something should be done to close those committees.

**Douglas Kellner:** So we've been talking about doing that for a long time, where do we stand on actually getting a policy statement on how to close those committees?

**Risa Sugarman:** I would take up that responsibility to do that if you would want me to.

**Peter Kosinski:** Well I think what we'd like Risa is if you have concerns about that type of information not being valid or there being circumstances where it is not warranted that this agency continue to pursue these people, I guess we need to know that. If you have certain criteria that you would like to implement to say, "If this happens, we will drop you off the failure to file list because of this occurrence" fine, you should share that with us and we would be happy to adopt a policy that says, "If X happens, they get dropped off" but to not pursue anyone because there may be some that should be dropped off is my concern.

**Risa Sugarman:** I understand that and I'm not saying that I'm not pursuing that, what I'm saying is if you see a drop of the number that you raised of what 200 or 500 whatever it was, we contact committees that I look at. If they're a member of the assembly, a member of the senate. If they're working for a specific agency. If they're a county executive, if they're a sitting district attorney, if they should be, if they're a member of a local town council I look over these failure to file lists every time I get them and I give them to my lawyers and my auditors and my investigator to say, "Get in touch with these committees". But, until I can do something that is within the 21<sup>st</sup> century to me and get those data, that e-mail data that will be easy for me to contact these committees and get an immediate answer for them or, even to send out a blast e-mail, "It's time for you to file". Whatever it is for me to be able to easily contact committees and candidates who have provided e-mail addresses to the Board for their filings that will make it



easier for me to do compliance, to bring people into compliance and if they don't come into compliance to move forward with hearing officer cases, and then perhaps for litigation.

**Bob Brehm:** Commissioner, with regard to whatever century we'd like to be in presently, the statute requires the notice to go out in writing. So if we were to do something other than what the statute advised and then attempt an enforcement, certainly in someone else's realm, I'm just curious, how do we get past the statute which says that communication, says when it's supposed to go out and it says in writing. I guess in writing by e-mail?

**Risa Sugarman:** I know what the statute says.

**Bob Brehm:** But certainly doing something in addition to what the statute says is, there's nothing in the statute that tells us to send a postcard ahead of time.

**Andy Spano:** Why don't we just interpret the statute for me in writing in e-mail.

**Bob McCann:** I think it says certified mail specifically.

**Risa Sugarman:** Certified mail if you're going for willfulness.

**Bob Brehm:** Oh sorry yes.

**Risa Sugarman:** It says certified mail if you're going for willfulness.

**Bob Brehm:** 14 108 section so it's not in the enforcement it's in the what should happen when people don't file and they get a notice within a certain number of days in writing in this manner to let them know that they have not filed. So that's what the statute says. I don't know if there's a way to send an e-mail certified in the world we live. So, certainly we've discussed, this is the first I've heard the reason for the e-mail is to do this component of it, certainly I'm not going to, Risa I think has articulated her request for the e-mail.

**Kim Galvin:** Well even if you look up each committee you could see if there was an e-mail there.

**Risa Sugarman:** Really is that what I have to do look up each individual e-mail so that I can send an e-mail to 2500 committees, really, is that the answer that I need to have to do my job in Enforcement that I cannot get?

**Kim Galvin:** Actually the main reason I think for the e-mail hold up and correct me if I'm wrong is the first time they did a mass mailing, in our opinion, there was a significant error in it which caused a great deal of confusion. So it's my understanding that we just simply wanted to see what was being mass e-mailed to prepare our staff for the calls that might be coming and we were told, it's my understanding we were told no. That the transmission wasn't going to be shared with you, so.

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**Risa Sugarman:** The letter was sent out I think I had been here 2 months, 4 months, I've been in office 2 years come September and I don't believe that I have to say in order to get data that's not the staff's data, I believe its data that's available to the board.

**Kim Galvin:** Well e-mail is not required so many committees don't have one.

**Andy Spano:** Let me just say something. I'm listening to all this for the first time. And this isn't brain surgery. We've got a law here that says something and maybe a little out dated, maybe I don't know. We've got a concern by the Enforcement Council where she wants to do her job and maybe she's resisting certain things too. We have people resisting it, why the hell can't we just get together and work this out very simply? I think this is a simple thing to do I really do. And I'm just listening to it and you have what I feel about it.

**Peter Kosinski:** I appreciate that. I don't know if other Commissioners have other thoughts. I think we all are interested in having the failures to file pursued. I mean this agency has always pursued them so I think there's always been an interest at the Commissioner level unless I'm over speaking to having us continue to pursue those who fail to file. I mean, certainly from my perspective, the most egregious people who violate the Campaign Finance Laws in this state are those who fail to file anything. I mean its one thing to file something that's incomplete or even wrong, but the ones that file nothing, to me are the most egregious violators of the law.

**Andy Spano:** We agree Peter.

**Peter Kosinski:** So I do think there's an interest in having those pursued. Now I hear that there's some concerns about legitimate pursuance. There may be some of these committees who are defunct, no longer legitimate do not deserve to be pursued. I'm open to that as well although I'd like to know what the criteria is going to be to determine when a committee has reached that status because we may and probably will disagree exactly what those criteria should be, but I think we have a right to know that before a determination is made and the Commissioners should be involved in making that decision.

**Douglas Kellner:** But Peter if I'm correct, so far there have only been 8 or 9 hearing officer proceedings started. There have got to be literally hundreds if not thousands of nonfilers who have not been addressed yes. So the question is what's going to happen, and I'm not talking about even if some of them are very old nonfilers, old committees that haven't filed for many years and there are those in the reports. And I've been talking over the years of trying to get a procedure together so that those get dropped so I'd like to see that happen. But what about the active committees that are still not filing? And what's happening to them? And is it a fact that if you file 6 months late after getting notices that nothing happens to you? Because that wasn't the old Board policy. The old Board policy was once the order to show cause was started you got a very small fine and the fine got larger as the proceeding ended. But there was at least some penalty for filing 6 months late. And by the way if that becomes the standard, that there's no fine if you file 6 months late, well then why would anybody file on time?

**Peter Kosinski:** Well I think that's our concern. It's always been our concern is there needs to be an incentive for people to file and file timely because it's not just the filing it's the timeliness that's so critical because the public has a right to know. I mean these timeframes were set out so the public knows prior to an election what the campaign finance arm of a candidate is doing. And if you thwart that that's a problem no question.

**Andy Spano:** What I'm saying, I'm not disagreeing with any of that. With all the brilliance that I see in this organization, I feel that this is a simple issue that can be sat down and worked out. And what's happening now we're hampering the whole process and we're letting people who don't file get away with it and not only that what we're doing is we're creating an atmosphere where other people feel it and may not file because there's no penalty. Now I don't know whose fault that is but it seems that the elements here that are preventing it, all of it from what Risa is saying, what we're saying from what Council is saying, those all can be worked out and they should be worked out soon so we don't pile up thousands of these.

**Risa Sugarman:** Commissioner I've been trying to get the e-mail data since February.

**Douglas Kellner:** What's that got to do with...

**Risa Sugarman:** Because it...

**Douglas Kellner:** That's a ridiculous excuse.

**Risa Sugarman:** It's preventing me from contacting...

**Douglas Kellner:** Send them a letter.

**Risa Sugarman:** It would be better to send them and be able to communicate with them through e-mail.

**Douglas Kellner:** What a ridiculous excuse.

**Risa Sugarman:** What a ridiculous excuse from keeping me from getting the information. That's a ridiculous excuse.

**Douglas Kellner:** I think Kim has said that she would give you the information if you would simply provide a draft...

**Risa Sugarman:** Why do I need to. This is the whole...

**Douglas Kellner:** So we can all work together.

**Risa Sugarman:** The whole problem here is the effort from this Board to intrude on my work.

**Douglas Kellner:** It's not an intrusion, you're part of this agency. You're saying you want nothing to do...

**Risa Sugarman:** It's an intrusion on my work for me to...

**Douglas Kellner:** So you won't do the work because they won't give you any e-mail address.

**Risa Sugarman:** To agree beforehand to give over a letter in order to receive data that's in this agency's computer system.

**Douglas Kellner:** Alright well you already know that I've supported giving you the data. But I think you're dead wrong in refusing to circulate your draft message before it goes out.

**Kim Galvin:** And I would want to tell the compliance unit what types of calls they may be getting.

**Risa Sugarman:** And I agreed that I would tell the staff when I was sending out a blast e-mail and the type of communication it was whether it was about failure to file. Whether it was about this and whether it was about that. But I will not provide the specific letter that I'm going to send out.

**Douglas Kellner:** Alright and that's dead wrong. It's dead wrong because you're basically saying you won't coordinate. You want them to coordinate with you but you won't coordinate with them.

**Risa Sugarman:** No, I want the Board to give me access to data that's in the Board of Elections computer system. You don't own that data.

**Gregory Peterson:** What is so difficult seriously what is so difficult about giving the staff a letter that says, please cooperate, we haven't received anything yet? What's the big secret there?

**Risa Sugarman:** It's not a secret, it's a first step of a slippery slope.

**Gregory Peterson:** It's not a slippery slope.

**Risa Sugarman:** Well I disagree.

**Gregory Peterson:** In Cool Hand Luke I'll never forget the trailer was, "What we have here is a failure to communicate" and that's what we have here. I mean you're arguing about how many angels can dance on the head of a pin. It's ridiculous. It's a small thing.

**Risa Sugarman:** It's an intrusion on my independence.

**Douglas Kellner:** And you're using it as an excuse for not doing the job.

**Risa Sugarman:** No, I believe that my efforts in the failure to file in who I communicate with and how I get committees into compliance is not a failure to do the job. I don't do it like you would do it. I don't do it like you did do it but I do the compliance as I see that I should.

**Douglas Kellner:** Right. We've brought 8 cases against 5000 nonfilers.

**Andy Spano:** I want to stick on this. Showing us what you sent me now. I can't possibly think what would be except that it's a concern over power. This is my power and it's just a simple...

**Risa Sugarman:** It's not power it's the independence of my unit.

**Douglas Kellner:** You're not independent. You're a part of this agency.

**Risa Sugarman:** Excuse me?

**Douglas Kellner:** You're not, you're part of this agency.

**Bob Brehm:** So the concern that was articulated and if I thought something was wrong I'd say it but so far what Risa said with regard to the request for the data, today was the first time I ever heard that the data was needed to comply with what the statute says the data can't be used for. Whatever else she said I agree and I had articulated that my Commissioners have said in this room, what we have is available. It's available on every desktop for everybody in the building who has the login rights to it in the first place which includes everybody in Enforcement. But we simply asked for the courtesy of the communication within the agency for a number of reasons whose calls go everywhere when...so that we could put staff on notice that its going to happen and if you get something like this, they really are calls to Enforcement and you should refer them there or whatever. Because intake and processing they don't necessarily get the access to the Compliance records because they don't need them. So it was just mostly to coordinate if people were going to be off and we all know the political calendar, that July periodic report when the failure to file happens and the notices by statute have to go off, it's at the same time all the petitions are here. So we are stretched for resources tremendously in that July period. And forget the October period. So we just simply said from a purpose of scheduling, directing, getting information to people so that we can appropriately tell the people who are going to get the call on the 1-800 line what to do if you get it because, yes, Enforcement is taking some action and this is something in this regard should get funneled in that direction. And I think Risa articulated her responses to where they are with that.

**Risa Sugarman:** And I agreed to do that. To tell you when I was going to send it out and that I would tell you the general type of letter that was going out.

**Andy Spano:** Risa, this is a blast so that it's the same letter, everyone gets the same letter?

**Risa Sugarman:** Well I don't know what it would be every time but in generally I assume that the failures to file would be like that if it was a blast e-mail.

**Gregory Peterson:** So once those letters go out and they are received, 2 days later somebody a recipient reads something that you won't let the staff read 2 days prior to that.

**Kim Galvin:** And what they do is they call us up and send us a copy of that letter so then we know what's in it.

**Gregory Peterson:** We're going to be a part of this so it's just a matter of cooperation. It's as simple as that. Nobody's trying to invade your territory. It's just a matter, hey come on we've got to coordinate this. A coordination of effort and I don't see anything wrong with that. It's not an invasion of what you do or it's not an invasion of looking at how you do it, FYI, this is what I'm sending out, boom. It goes out the next day, 2 days later somebody has one. Why shouldn't the staff have it 2 days before? It doesn't make any sense. It's not logical.

**Risa Sugarman:** They're asking me to give copies of letters in order to get the data.

**Bob Brehm:** No, I think the concept as I understand it is once you get the data you have the data. It is understanding in the future but when you're getting ready to launch the data so that we can schedule...

**Risa Sugarman:** No I believe Todd's e-mail to see if there were conflicts and I could pull out the e-mail. To me that determines that I want to change this.

**Kim Galvin:** Well you could be wrong.

**Risa Sugarman:** Maybe so,

**Kim Galvin:** Would you like us to let you know that we think it might be...

**Risa Sugarman:** Yeah, just like we wanted you to review our papers on Abato when you said, no, when we asked Bill to do that.

**Kim Galvin:** Well you sat with Carla didn't you?

**Bill McCann:** I don't know what case you're talking about.

**Peter Kosinski:** Well I don't know if that's relevant here. I think the issue Risa is that the staff here would like to see a blast e-mail you're sending to filers because there's a very good chance those filers are going to call the staff and have questions about that e-mail. So it seems perfectly legitimate that they would want to see it before it goes out.

**Risa Sugarman:** I understand that they want to see it but to deny me the availability of the data...

**Peter Kosinski:** Risa let's push that aside for a minute.

**Risa Sugarman:** But that's what they're saying, no, I can't have it because...

**Peter Kosinski:** Risa lets just push that aside, let's say the data wasn't an issue at all and we just said, you know, "Before you send a blast e-mail to filers with this agency, we'd like to see it" so first of all whatever like legal issues you may raise we agree our legit and then secondly so we know when they call in we are prepared to respond to them.

**Risa Sugarman:** Well maybe if it had been put that way Commissioner I would have said, maybe that's a good idea let me think about it and I'll get back. But not to say to me you can't have the data...

**Peter Kosinski:** Alright Risa let's take that off the table for a minute.

**Risa Sugarman:** But you can't because that was the proposition to me Commissioner.

**Peter Kosinski:** Risa I'm now asking you, what is the problem with you sharing this blast e-mail with the staff for those 2 purposes I identified which they identified I believe. They need to know what's in there because they're going to get calls on it. And secondly, there are chances and we've seen this here to be honest where you've raised legal issues that we've disagreed with and we may want to have a conversation with you before that e-mail goes out because we may say, "Gee when they call in we say oh we don't agree with that" well that's not good. That's not helpful to you or us.

**Risa Sugarman:** I don't think there's anything wrong with that.

**Peter Kosinski:** That's not helpful to anybody so can we agree that you before you send a blast e-mail to these individuals will share it for those purposes?

**Risa Sugarman:** In exchange for the data?

**Peter Kosinski:** We're not exchanging right now. We're just having a general discussion.

**Risa Sugarman:** You can't say that to me.

**Andy Spano:** Listen, the President is going through this right now right. The plane landed with \$400 million and they let the hostages free. Could we do something like that today?

**Peter Kosinski:** I'm not really concerned about the data Risa.

**Risa Sugarman:** But I am.

**Peter Kosinski:** I got that but I'm really not because I agree with some of these people who say this probably should be done in a letter but let's take that off the table because that's not really my concern whether its done by e-mail, letter, phone call, whatever, my concern is that when you send out...

**Risa Sugarman:** I understand your concern.

**Peter Kosinski:** When you or we send out a blast e-mail to filers, everybody around here should know what's in it.

**Risa Sugarman:** I agree with that. Can I just, when you talk about being we're all in one agency, and we're doing this, I got this just now, the statistics.

**Peter Kosinski:** Okay no I know.

**Douglas Kellner:** I got it just now too Risa.

**Risa Sugarman:** I asked for it before.

**Douglas Kellner:** I asked for it 6 months ago. It took me 6 months to get this. And I've asked you for stuff that I haven't got.

**Risa Sugarman:** We're having a conversation about you had meetings here, the staff had meetings about the new Independent Expenditure legislation. I wasn't invited to those meetings to voice the opinions that we might have. Now I might not render those opinions although I did today at a public meeting, but I wasn't told about those meetings or invited to...

**Kim Galvin:** Someone reviewed the document and prepared a memo and we had one brief conversation.

**Bill McCann:** Yeah we didn't have a meeting. We talked like in peoples offices. They were conversations.

**Peter Kosinski:** I don't think we have a problem with you meeting with our staff about topics that relate to your area of work, certainly just like we would expect.

**Risa Sugarman:** Well I wouldn't think that you would but...

**Peter Kosinski:** Fair enough but those should be addressed too Risa. I'm not saying it all works one way but it does work both ways. So I think if we need to do more outreach we should do that. But I think if you need to do more outreach you need to do that too that's all. So if you have issues with not being included into meetings, you needed to raise that with the staff or with the Commissioners if you have to. Fair enough but if we have issues with you not sharing we're going to raise them with you too for the same reason, that there's no benefit to the public at large



to having you at logger heads with us or us at logger heads with you. We need to coordinate some activities because that's the way the statute works. You're an independent actor Risa but there are areas that the law clearly anticipates you must work with us.

**Risa Sugarman:** I agree.

**Peter Kosinski:** We make referrals to you that's how they get to you. These deficiencies get to your through us. These failures to file get to you through us. Do we have some need to know then what's happening with them? Yes, they started with us. So you're not totally independent in the sense that a lot of this stuff comes through us to you. That's how it get there. You, on the other hand have to come to us for certain things like subpoenas. Like referrals. That's the way the statute works. You're independent to a point, then there's a point where you must work with us and we must work with you. So you can't take the tact I'm independent, I have no responsibility nor should I work with you. That's not the case. The statute clearly anticipated you to work with us. So that just has to be the way it is.

**Risa Sugarman:** I agree but that and I know that you want to take part of it off the table but when I'm presented with that choice that's a problem.

**Peter Kosinski:** Okay well that's form over substance to me and I'm not terribly concerned about that because the data to me is public data, how you get it isn't that relevant to me. But for you to share your blast e-mail with us is important to me because I think there's a very big need we have for that.

**Risa Sugarman:** I understand that.

**Bob Brehm:** I think there's a big need for that especially in this context because if they start from a compliance point of view for the deficiencies, sending something out and telling people to deliver to us amended reports that are clearly not something we expect to be receiving because its so outside of what is our understanding of what they should be, then we're going to immediately be reaching out to the treasurer and have one wing of the building saying file X

**Peter Kosinski:** I think you've convinced us of this and you know what, I've learned one thing, when you've won an argument you should just stop talking. I am hopeful that we resolved this here, that's my hope on this discrete issue that we can share information you need and you'll share information we need and we can get past this. That's my hope after this meeting. I don't have anything else on this right now.

**Douglas Kellner:** Now there is a related topic on what's happened to the over contribution list? The 2014 cycle over contribution list? The referrals that were made in April?

**Risa Sugarman:** You got me, I'm confused.

**Douglas Kellner:** These are every election cycle the Board of Elections puts together a list of the legislative committees that have unresolved over contributions.

**Risa Sugarman:** I think I just got that.

**Douglas Kellner:** In April it went to you.

**Risa Sugarman:** Okay we have 3 committees are in the process of sending out refunds. We contacted them, they're sending out refunds. I think there were 9 on the list, we're going to assign 9 I think.

**Douglas Kellner:** Yeah, I have the list we have 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12.

**Risa Sugarman:** I think 3 of the Committees it was determined that it was our view that there were transfers between the committees so that it wasn't an over contribution.

**Douglas Kellner:** Which committees were those?

**Risa Sugarman:** Commissioner I would have to look. I left them in my office.

**Douglas Kellner:** So for the next meeting can you report back to us on what's happening with the over contributions?

**Risa Sugarman:** Sure and I think the other will be assigned for hearing officers, and one I think was \$42 dollars so I'm not sure we're going to do anything with that. One was already in my unit.

**Douglas Kellner:** I agree if its de minimus it's not worth.

**Risa Sugarman:** There was \$42 over contribution.

**Douglas Kellner:** I guess a little bit of, okay

**Risa Sugarman:** So I think 3 have been resolved by contacting the committees and they're already either issued returns but I'll have...

**Douglas Kellner:** I guess part of my issue again is that the Compliance Unit already goes through a pretty vigorous process of contacting people and getting it whittled down so that by the time it gets to you these are the people who've been obstinate and should nothing happen to them for being 2 years of ignoring what the Compliance Unit does. Well we can talk about it when we have the report and we can go over the specifics or is the Compliance Unit, should there be some feedback to the Compliance Unit that for example if there was a \$43 over contribution then that was, maybe that shouldn't have been referred to begin with and we need to, because I think we had set a \$500 de minimus threshold.

**Peter Kosinski:** So you shouldn't be seeing things that are under the threshold that's how it works.

**Risa Sugarman:** And 2 or 3 of them they determined were transfers between committees so it wasn't an over contribution. I think that...

**Douglas Kellner:** Okay. Well I would appreciate feedback on that.

**Peter Kosinski:** So you'll bring something to us at our next meeting?

**Risa Sugarman:** Sure.

**Peter Kosinski:** Is there anything else as it relates to this report that Brian and I think Kim brought to us that we want to talk about? Are you guys done with your report then? Are you done? Alright then we'll move on to our next unit head and that is Election Operations, Anna Svizzero.

**Anna Svizzero:** Obviously everybody's been busy with petitions. We have statistics for you 1,194 candidates are reflected in all of the filings that we received. In addition to those...

**Peter Kosinski:** Now is that candidates Anna or is that lines? If a candidate has 2 lines did you count them once or twice?

**Anna Svizzero:** Twice because it would be....

**Peter Kosinski:** Okay gotcha.

**Anna Svizzero:** I can get you a candidate number if you want it. I guess we try to show that to show how many get done correctly. I was just doing some math with Brendan here and we have 152 sets of objections that were filed. Only 44 of those got perfected. There's almost \$4000 of mail that went out to 152 people just because they want to object to a petition without any hope of ever having perfected it. So it's always interesting to point out that the process really does work. We only had we think 12 cover sheet cures, pagination cures out of all of these filings so the process is not as burdensome or problematic as some people would claim. But in any event, those filings all got corresponding letters. All of these documents have been scanned which certainly makes the process of responding to FOIL requests for them a lot easier to meet. We're not generating any revenue but certainly the revenue that was generated in photocopies didn't even cover what it took staff time to do and the amount of bookkeeping involved in reporting those funds. So the scanning and emailing or burning to disk of the documents were large, has made the people who request those copies much happier. And they get a quicker turnaround as well.

We have received federal filings for US Senate and Congress. That filing window is closed. Today is the deadline for acceptances for those independent filers. We have continued with the rest of the work in the unit. We're working on the ES&S upgrade. We have done dry run and test case reviews, etc. We're hoping to begin Run for Record in about a week on that ES&S upgrade. We have...

**Peter Kosinski:** Is that going to be put out for this election, the upgrade or you don't know yet?

**Anna Svizzero:** Well I think New York City wants to and in my professional opinion, if I'm allowed to express that, I don't think it's wise to roll out an upgrade to an EMS system weeks before a presidential election. I mean it to me is just an opportunity for something to go wrong. That process of rolling out upgrades we had...

**Douglas Kellner:** Anna but the converse side of that is that their upgrades will make their own election administration easier and they've also done their training to the upgrade so that not implementing the upgrade will be a hardship to them. But I don't disagree that you still have to go through the certification process, and the vendor, was it 5 months...

**Anna Svizzero:** That is what I was going to share next.

**Douglas Kellner:** and they can't take that out of our hide nor should they want us to do anything that would compromise the integrity of this certification process.

**Peter Kosinski:** Well is there a drop-dead date that if it doesn't get certified by a certain date they simply are not able to implement it for this fall?

**Douglas Kellner:** I'm sure there is but I can't tell you what it is.

**Bob Brehm:** New York City sent us a letter that Todd and I just responded to. So the letter was a week or two ago and we just responded this week and they had articulated a date and if I pick it off the top of my head it was around the second week of September. They were hoping to have had it already to test it in the primary and use it in the general. But, for the purpose of testing it they thought they could use it on the Central Count Absentee System to allow the header and the end cards, etc. So our response to them was, until we get a firm run through record and a date and finish this testing, we won't be able to calculate a date. We did highly recommend that they have a contingency plan in place should it not finish testing in time and that we work with Brenda, Brendan, sorry Brendan and Anna just to make sure that we are doing everything...

**Peter Kosinski:** Well, what's your anticipation for it to be certified then?

**Anna Svizzero:** Bob just explained they already have. They don't need this for their Central Count System. They needed this for the delivery date of absentee ballots to military voters because that's where ballot styles begin to change. But this is an EMS upgrade, it's a broad based upgrade. We had in our policies advised vendors that upgrade should be submitted early in the year, they would be tested all year long, and they would be rolled out after general election so they don't impact anything even inadvertently. And that's why we have the opinion that we have that it should not get rolled out on the off chance that something that we can't anticipate might happen. Why would we want to do that in a general election or in a presidential election?

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**Douglas Kellner:** You're not listening to the other side of that. The City wants this for a reason Anna and its not, listen I'm with you on the integrity of the certification process. I'm with you on the risks that are involved when you implement new software. The City knows that too okay but what I'm not hearing from you is that the City wants this for a reason that you are dismissing. You are ignoring the reasons they're asking you to expedite this and to get the upgrade. And you just need to reflect that you understand that there is a reason why they want you to do this.

**Anna Svizzero:** We understand that but we won't expedite the certification process that we have because we don't want to be responsible for making errors or putting something out there...

**Douglas Kellner:** Expedite again, you use the wrong language Anna which is unacceptable to me. You said we won't expedite it. What you mean to say is we won't compromise the integrity of the certification process. That's perfectly acceptable. Expediting it I urge you to expedite it. Okay but without compromising the integrity of the certification process. And if it's too late to do that then we should tell them it's too late.

**Peter Kosinski:** Well we should tell them it's too late as soon as we can that's all I'm saying. I don't want to wait until the last minute either and say, "Oh it's too late now" if they've been training for this and expecting it, it seems to me if we're thinking this isn't going to happen that we should tell them as soon as we can so they are able to adjust as they need to for this election. So that's my concern too. So I think there's risks on both ends. There's risks doing it and risks not doing it but I think the sooner you make a decision as to whether we're going to allow this to go forward this fall, the better. That's my feeling. I don't know how soon you can do that but I see you don't like, you don't really think we should right now I think, but I don't know that everyone agrees with that. So, I think at some point we need to have advice we give to the City, "Hey guys this isn't coming" or "Hey guys, its coming be ready".

**Bob Brehm:** Well again, the City has asked us in conversations whether it be on the phone, e-mail, letter they asked where do we stand with this and we routinely give them where we know we are at and we are all at, waiting for the vendor to give us a copy that was without issues and then where there are issue, usually the City knows almost simultaneously when we know there are issues. So we've been there together. I think our only concern now is they finally firmed up, since we still don't have a Run for Record there's nothing more we can do other than I think our people have done just about everything we can think of ahead of time to get ready for it. If we needed to do overtime for the person running the task, we would do whatever we need to do to move it along as quickly as we can knowing it has to pass. That's our firmer date to know well now what do you need it for this year and do we need it all, do we need parts of it? I mean it's only for the Central Count Absentee System, can we isolate it to allow that part to work for them? Because no voter sees that component. But that's a lot what it is. But it's hard for us to sit down with the City and have that conversation not knowing when the vendor...

**Peter Kosinski:** Fair enough, understand you may not be able to do it right now but okay, do you have anything else on that?

**Douglas Kellner:** No. And I know that this is what Anna's intention was all along but I just want the language to be consistent that...

**Anna Svizzero:** It is very frustrating. I mean when you're 5 months behind the eight ball through no fault of our own, then this kind of conversation should have been had by them if this was such an urgent need with the vendor in February, March, April, May, June you know and not in August with us saying, "We've reiterated to you that this is important to us". We get it it's important to us too and maybe to other counties we get that New York City may be driving the bus on some of these issues but there are other ES&S customers who might want to take advantage of this.

**Peter Kosinski:** Big customers.

**Anna Svizzero:** Big customers yes absolutely.

**Peter Kosinski:** They have big counties so they're impacting a lot of voters and a lot of elections so I agree with you.

**Douglas Kellner:** And we have a process.

**Anna Svizzero:** Yes.

**Peter Kosinski:** I totally agree.

**Anna Svizzero:** And it's a process that we've been commended for and copied on so it's something that we do get to blow our own horn about from time to time and we would never want to step away from it.

**Peter Kosinski:** Well I was just urging, I guess if there's any upgrades don't necessarily wait until the next Board meeting to let us know what the status is or if there's a change in status or if there's something new...

**Anna Svizzero:** Well we, as I said, the Run for Record is ready to begin. We've completed dry runs. NYSTEC is reviewing the results of those dry run tests so we can see if anything has to get tweaked in the Run for Record. We have to schedule the public test but would the Board entertain a video board meeting for the purposes of approving this upgrade if it occurs in between...

**Peter Kosinski:** I think we would.

**Douglas Kellner:** If it's necessary in order to expedite the schedule and to meet New York City's needs, absolutely.

**Anna Svizzero:** So as we see where this goes we can give you a window of when that meeting might have to happen.

**Douglas Kellner:** This is why I want to emphasize that we're perfectly willing to expedite the process.

**Peter Kosinski:** We can do a discrete meeting on this one topic measure.

**Douglas Kellner:** But what we're not willing to do is compromise the integrity of the process.

**Peter Kosinski:** Agreed.

**Anna Svizzero:** The only other thing that we have to mention to you is we had some engineering change orders for both Dominion and ES&S. Those did not require testing. They were submitted to the testing labs but their de minimus nature they are end of life issues. The little light bulb switches, casters on the voting machine. The little rails that the ballot box rides on. Things like that are de minimus. In some cases they've even been already tested by the EAC and been approved by them. So our procedure says we advise you of those and that's what we're doing by this.

**Douglas Kellner:** If they upgrade part or change a part.

**Anna Svizzero:** End of life kind of issues with internal components.

**Peter Kosinski:** Their end of life issues and I didn't realize we were dealing with end of life issues here at the State Board of Elections.

**Anna Svizzero:** It's partially dead.

**Peter Kosinski:** Those are weighty issues we're dealing with here.

**Douglas Kellner:** Some of these machines are now 7 years old so they're going to get to the point where we have to.

**Anna Svizzero:** Brendan do you have anything else? I complete lost my train of thought. I think we're good.

**Peter Kosinski:** Brendan I'm talking to you. Anything or you all good? Okay. Then we're good. Then we're going to move onto NVRA/PIO John Conklin.

**John Conklin:** Thank you Commissioner. Public Information Office has been very busy. We've been fielding calls and inquiries on the same thing that everybody else has been dealing with the more than 450 petitions that have come in, specs, hearings, is this petition valid or not, are those kind of things which you've voted on. The Federal Congressional Primary Voter Registration deadlines, the July 15<sup>th</sup> periodic report for campaign finance. So we've been dealing with a lot of different things from the press and the public.

**Peter Kosinski:** John did we get the turnout for the Congressional Primaries? Do we have turnout numbers?

**John Conklin:** I didn't sit and calculate turnout numbers. We haven't posted results yet.

**Peter Kosinski:** Will we get those at some point?

**John Conklin:** We can do that. We don't generally calculate official turnout number because the parts are there for the general public to do that but we can certainly do one for you. It's difficult for congressional primary because its individual districts rather than a statewide number but, we could certainly do that.

**Peter Kosinski:** But you don't do that as a normal course.

**John Conklin:** Not as a normal course of business no. We had 101 FOIL requests in May, 78 in June and 65 in July. Tom and I participated in a video conference for the election commissioner summer conference this week. Tom did a presentation on the federal write-in absentee ballot application. We collected Move Act surveys for the June primary and sent out a reminder for the upcoming September primary. Tom and I were integral in the interview process for the CIO position that was mentioned earlier. We also were participating in the process for the Project Manager for the CAPAS-FIDAS project and we were part of the DOJ meeting that Kim mentioned earlier as well.

For the website we've posted the petition filings that have been mentioned earlier both for the state and local primary and for now independent nominations for federal offices for the general election. We posted the approved minutes for the April 5<sup>th</sup> and May 4<sup>th</sup> meetings and the transcripts for the May 4<sup>th</sup> and July 12<sup>th</sup> meetings. For NVRA, Greg and Patrick visited Suffolk, Cayuga and the Seneca Boards. We also did training sessions with the Schenectady WICS office and the Department of Labor. Do you have anything to add Tom?

**Tom Connolly:** Just with regard and you mentioned most of this stuff, the Move Act the deadline is actually next Friday for the state primary so that's for military voters only since there are no federal races in the September primary. So I do know that some counties do not have primaries or are not anticipating them so we already received the first survey which is basically just to make sure that counties aren't expecting any sort of problem in being able to meet the deadline and then we'll be following up with them next week to make sure we're on target to meet the deadline by the end of the week. I would just ask the two Commissioners that were at the conference, I mean obviously I worked with the ECA to get our electronic system set up and we weren't entirely sure but I heard feedback that it worked out fairly well as far as...

**Douglas Kellner:** Much better than January. The sound was good. I wouldn't call it very good or excellent but it was good and the visual was fine. No delays or outages in the signal. So but big improvement over January.



**Andy Spano:** In your presentation everything was clear but I sort of thought I was looking at a 1940 movie. In terms of the technology that's available, I mean this is

**Peter Kosinski:** We're long way from a hologram.

**Douglas Kellner:** Are you finished?

**Tom Connolly:** I think the only other thing yeah as John said there are a few things that we've been working with council on with regard to a number of different cases.

**Douglas Kellner:** Alright, where are you with the annual report?

**John Conklin:** It's largely completed there's still 2 units outstanding.

**Douglas Kellner:** And what are those 2 units?

**Anna Svizzero:** Mine.

**Kim Galvin:** Mine.

**Douglas Kellner:** The two largest units. Look you guys its August 1<sup>st</sup> and the blame, see now is the busiest time of the year. I know it's the busiest time of the year but it's unacceptable that you let it go until August and then now that its 8 months overdue, I'm giving you a hard time because it's the busiest time of the year.

**Kim Galvin:** We'll get it in.

**Anna Svizzero:** You'll have it by Monday. I have parts I just haven't put the...

**Douglas Kellner:** Okay but I warned you a month ago that this was coming. Alright next is Interstate Cross Check. What's happening with our pilot project?

**Tom Connolly:** So we had received the script file from the Crosscheck at the end of April. At that point I've been discussing with John and the Election Operation as well as far as how we're going to roll out the information to the counties. The issue at times is that there is a lot of data which may be false positives because what they start off with is just name and date of birth. And so the total number of matches that we matched up against the different states that participate was 392,356. So there were almost 400,000 matches of our voters with voters of the same name, date of birth in at least one other state. What we're going to do is we're going to be breaking it out, we have broken it down to the different counties. The internal discussions decided that it was probably best to give them all of the data and then provide them with guidance to what we thought they should you know maybe focus on. I think the key subset of the data that we should really focus on is situations where you have a social security number or the last 4 in both jurisdictions and they match, and where they're an active voter in New York and their registration date in New York was prior to that in the new jurisdiction. Because there are a

number of people in this list who were inactive already. So perhaps that process has already played out, they've received some sort of mail back. So, of the 392,356 that we start with, there ends up being 29,653 that match social security numbers, have an earlier registration date in New York and are currently active. So we would be providing guidance to the counties as we give out information this month to maybe focus on those to try to see if those voters are going to be moving from active to inactive but we didn't want to prevent them from having access to all the data for them to decide what to do with it.

**Douglas Kellner:** So it's moving.

**Tom Connolly:** Yes.

**John Conklin:** And parallel to that other counties, other states that have received their version of the crosscheck list they've been asking us for additional information. We've gotten multiple requests for full voter file for matches that they found in the system so that would be everything that we can give them including voter history, but it also has a signature. And so there is a lot of matches that are coming from those because the first name, last name, date of birth and you're seeing a signature that is very close or a match. So then we're giving that information to those other states and they're making a determination, "Okay this is a match for me" and then they're sending us a cancellation notice or keeping it or cancelling it in their jurisdiction and...

**Douglas Kellner:** Or giving us a notice to send a cancellation notice. Well great, I'm glad to hear the project is moving. Now does your unit have anything to do with following up on the report with New York City? I guess Kim said that the federal investigators wanted to meet with you to go over our voter registration database.

**Kim Galvin:** We provided them with, they wanted a lot of our manuals and reports and we've given them all, it took a while, the e-mails didn't seem to be going through especially for me, but Tom reworked them and got them through and then they had a call on specifically how avid interactive Shaikh and you...

**Tom Connolly:** Shaikh and I had a call this past Tuesday morning or Monday morning...

**Kim Galvin:** And I don't think we heard from them again.

**Tom Connolly:** We are going to be providing them with a couple of items that they were looking for. Some clarification that we couldn't answer at the time. We had provided them basically with the NYSVoter Manual that we use to help guide what we use internally for monitoring NYSVoter. Samples of the different reports that we can run, any kind of documentation that we as a state board have given county boards for list maintenance procedures. We provided all of that to them and a lot of their questions this past week revolved around just getting more clarification as to how the process works. They were looking at a list of maintenance procedures, duplicate management. How does the transaction work between NYSVoter and the local systems. What are the numbers of some of the...

**Douglas Kellner:** Alright let's just take that last issue which was the one that's most concerning to me because what seems to be coming out of the little tidbits of reports that I've been picking up is that it is not necessarily true that the New York City Voter Registration Database System is exactly, that if you take the list of active and inactive voters on the New York City list, it does not necessarily match voter for voter to the state list, to NYSVoter.

**Tom Connolly:** So that was obviously a concern because we had noticed that over the last few months...

**Douglas Kellner:** And it's a concern because the Help America Vote Act requires as a matter of federal law that the New York State System is the official system which means that the poll books that go out from New York City have to be based on the data that's in the New York State System. But of course the poll books are printed from the data in the New York City System.

**Kim Galvin:** But I think we've remedied that.

**Douglas Kellner:** Okay and that's what I want to hear about and I want to hear the real dirt on what New York City was doing wrong which was the reason why they weren't matched. And if I have to wait for the final report, I'll wait.

**Tom Connolly:** Okay but as for right now just to give you an idea of why we say its being remedied now because we are instituting a more manually initiated auto audit records on a weekly basis. Ideally what's going to happen.

**Douglas Kellner:** Alright now I know what that sentence meant but everybody else whose listening doesn't know because of the jargon in it. So when you say a manually initiated audit...

**Kim Galvin:** We're syncing the systems.

**Douglas Kellner:** Right and why is it necessary to sync the systems how come the systems aren't in sync already?

**Bob Brehm:** First of all, the issue that created the awareness of the problem was learning that they weren't synced. The biggest issue that New York City that we had understood in our conversations with the city was their old process that they had used even their internal when we were trying to bring them into automating which was basically 2007 to 2010 where they were using

**Kim Galvin:** Batch 66.

**Bob Brehm:** This Info 66 system which was manually driven and when they automated in 2010 to do the list maintenance and the things we had been looking at since then clearly showed that that was working. We didn't realize that Info 66 was still being used. We learned that after the April Primary.

**Kim Galvin:** And it hadn't been being used often.

**Bob Brehm:** But it was used in a big way in this instance. So this process in Brooklyn where they manually instituted a great number of changes was reversed. The City Board had told us that they had stopped Info 66. More importantly they also told the Justice Department who told us that New York City told them that Info 66 was stopped. What we had discussed with the City Board and us, Todd and I and John and Tom had gone down to meet with the City Board in person to talk a little bit about the technology but also about process and procedures was we all have to come up with metrics in the long run that we can trust will identify if something like Info 66 happened again that we can have it all happen clearly. But in the interim we put in place the weekly manual sync until we can think of some other metrics...

**Douglas Kellner:** Now what do you mean by a manual sync? You can't mean that people are...

**Kim Galvin:** One by one.

**Bob Brehm:** No we hit a button and it tells the system to sync. We do have that over the weekend.

**Kim Galvin:** We don't do it the machine does.

**Douglas Kellner:** The computer is doing an individual sync. Not by hand.

**Bob Brehm:** And every time a change to a record takes place, it's supposed to automatically sync. And what we are looking for is we manually, so that should be happening now.

**Douglas Kellner:** And when you say supposed to, it's legally required that it automatically syncs.

**Bob Brehm:** This rule that we had put in place that you have adopted the statute says, they shall follow.

**Douglas Kellner:** And it's in regulations too.

**Kim Galvin:** There was another thing I think with the merging of the records.

**Tom Connolly:** So one of the things that we discovered and there was one voter in general that became the topic of discussion because it was a good example was there are times where in New York City and I'm sure it happens in other counties, where they may accidentally register a voter twice. They were not aware that a voter was already registered and then a new form comes in and they treat it as a brand new registration. At some point, since counties are responsible for their own dups within the county, they have a process on the New York City side where they merge records. Now obviously that's supposed to, we don't merge records in NYSVoter. We keep a record of every instance. So if all of a sudden there are 2 voters who are the same person

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and there's a determination that one of them is a duplicate, well one is supposed to be purged and the other one is supposed to remain active. What happens is...

**Douglas Kellner:** Purged or cancelled?

**Tom Connolly:** Well cancelled, yes. The status code would be purged. Yes, we cancel that voter. They don't ever get removed from the database but their status is called purged. So what happens is there are still at least 2 records. What New York State does is they merge records on their end to have one. Now there's reference to the secondary ID but the problem that we saw with their merge process was that their software does something on their end and according to our business rules that's all well and good but you still need to tell NYSVoter a certain set of instructions based on the actions that you took. And so it was not generating all the transactions that it should have generated. So all the changes that were being done on their end were not propagating up to NYSVoter.

**Douglas Kellner:** Alright so that's a violation of our regulations. What's being done to correct that?

**Tom Connolly:** Well I think what we're looking at is we provide them, New York City, with information on a weekly basis as a result of this kind of manual resyncing that's taking place outside of what's supposed to happen on an every instance basis. I don't have the most recent numbers from this week in front of me but the idea is that those audit numbers should be basically zero.

**Kim Galvin:** Haven't they modified their...

**Tom Connolly:** They have been making continuous software changes that their vendor is making to their system. And I think that its more of a matter of us getting back together with both the IT people and the leadership at both ends to kind of discuss where they're at now and you know if there's more for them to do what they have to do and by when?

**Bob Brehm:** So the inquire with regard to the potential duplicate, we receive those calls, I think everybody receives those calls and the research showed us that when they merge the record and they took the two Bob Brehm and put them into one, New York City was telling us, "I've made a change to the one merge record" they were forgetting to tell us they cancelled the other one. So we were keeping the wrong information in addition to the good. They realized that, they fixed their software to tell us what they did to both of them and they gave us the correction as to what to do with the other one. And that created a great deal of confusion.

**Douglas Kellner:** Now is the correction of those already cancelled or the merged files that have not been cancelled in our record but were merged in the New York City records, is that included in the number of the 120,000 or so that Brooklyn cancelled or is that...

**Bob Brehm:** ... there was a record of the correct one next to the record of the wrong one and if you wanted to vote in the primary, you picked which one worked for you.

**Douglas Kellner:** Now what are we doing to make sure that the other 57 Boards don't have issues that are comparable?

**Tom Connolly:** I think that obviously we as a result of the whole New York City issue we've been having discussions with both the NVRA unit, well our unit that monitors NYSVoter and also the IT staff to try to figure out how we can have better business intelligence to kind of determine when things are outside of what we expect so we can identify those kind of problems when they pop up. As far as we are able to generate reports on how many voters are failing audit, which means basically to the layman that how many records are out of sync between us and the counties and we do monitor that on an ongoing basis. One of the reasons why that reporting didn't catch New York City was because we were looking at information that was matched. And so but what they were seeing, what the local boroughs were seeing on their end was not what we were seeing on our end because of the way that the system is set up where there's not 5 separate systems, we direct with one system New York City. But they have 5 separate implementations of their interface to that system. So there was some discrepancy with the data they were seeing. So if somebody were to call New York City and say, "What's my party" they might say I'm a democrat but if they were looking on our system or call us up we'd look them up and say you're a blank. And if we try to make them force an audit on that one voter that should not be the case if we had to force some of the audits which eventually freed up the...

**Douglas Kellner:** I'll talk to you after the meeting but its very important part of the process that we do have a process in place where we're checking that all 58 boards are doing this and that we learn from the New York City experience to change our own monitoring system to make sure that we are catching if a board is not properly synced with us.

**Peter Kosinski:** Well New York City has its own Voter Registration System.

**Douglas Kellner:** But many counties have their own system.

**Peter Kosinski:** Yeah, and I'm thinking those are the ones that are more at risk to me because some are using vendors which are more standardized, at least my...

**Tom Connolly:** So there are 50 counties that use one vendor, there are 3 counties that have a sort of home-grown system and New York City has, it's not actually a home-grown but is the only vendor that serves the 5 boroughs and ES&S I think has 3 or 4 counties.

**Peter Kosinski:** So we're not dealing necessarily with 50 or 62 different...

**Kim Galvin:** No but what would happen is...

**Douglas Kellner:** But it's not so clear to me that just because NTS is the vendor that the systems are identical because they are the vendor but they put their software on a counties system.

**Kim Galvin:** The only positive with NTS is if they discover something, they will reapply it to all of their customers so they won't have the same issue pop up somewhere else.

**Douglas Kellner:** The question is, somebody from the state actually doing a proper audit to determine that the systems are actually synced and learning from the mistakes of New York City where the prior audits were not discovering that the New York City System was not actually in sync with the statewide Voter Registration...

**Bob Brehm:** And that is our discussion, what is a new metric to add to the existing work we're doing? We agreed that...

**Tom Connolly:** Because one of the things we also have is when we run right now one of the reports that was in place before hand and we wanted to run a report on how many voter records may have failed an audit, we have basic statistics and you know they're usually very minimal. On some of the information that we're generating now that we weren't generating before we can see how many voters have failed an audit, have never been audited or have failed multiple audits so that we know if there's a trend, there was some discussion about whether or not special characters were causing issues with processing of the hash that's created to kind of sync them up so that if someone with an umlaut was throwing a wrench in the works, that additional data we're now generating is going to allow us to kind of see when issues arise and really drill down and figure out what's the problem and how do we fix that right away.

**Douglas Kellner:** Good. I will ask again and look forward to a report.

**Peter Kosinski:** Is there a report that's going to be issued on the New York City problem and how it's been resolved? Is Justice doing something?

**Kim Galvin:** Multiple investigations into them.

**Bob Brehm:** City Comptroller, the Attorney General.

**Kim Galvin:** The DOI, the DOJ. There will be plenty...

**Douglas Kellner:** Maybe us but at least be prepared to comment on the other.

**Bob Brehm:** We did receive their policies and procedures that the city, there's kind of two issues, the technology that we've all talked about and also the policies to make sure that everybody is on a clear path. They gave us that information and we just have to, at our last meeting I don't remember the date, and it was not more than about 3 or 4 weeks ago. So we need to follow up with the City and go back once we've had a chance to read those and meet with them to go over any recommendations on the policy and procedures, and their internal controls are part of that review. We want to make sure we have clearly an understanding for the technology and the words.

**Todd Valentine:** From what I understand the priority was to make sure that the systems are synchronized. Because obviously that is the critical element as we had right into election. Let's do that first and that's why we put in what we needed to do right away. We didn't wait for anything. We'll look at the policies and procedures but getting those synchronized to make sure we have a system so we can monitor them is what we did first.

**Peter Kosinski:** Okay, any other issues to be raised in the context of NVRA PIO? Which is I believe where we are. Are we done? Okay then that concludes that. We'll move onto ITU which is Bob and Todd. I don't know if we covered that. Do you feel that you covered that then we can move on from what and then Risa do you have anything more that you want to add?

**Risa Sugarman:** No, just working, continuing to work.

**Peter Kosinski:** I think we've also had our discussion with you.

**Douglas Kellner:** I had a couple of questions. But I appreciate your annual report. I think that was very helpful to get that.

**Risa Sugarman:** We actually made a change on just the number on the judgments. I gave it to John yesterday.

**Douglas Kellner:** That was actually my next question was it would be very helpful if we could get a breakdown on the judgments between what new judgments have been issued and what old judgments have been paid off? And what dates you want to use for that...

**Risa Sugarman:** Okay Brian asked me that. I didn't know that you wanted, I asked him if you wanted that for today. I have an excel but it's not finalized. I can send that to you but I do have numbers for you. In 2015 the recovery on old judgments was \$75,155.05 which includes the \$4,178.76 from my 4 months in 2014. So, so far from January 1<sup>st</sup> to July 31<sup>st</sup> of 2016 its \$38,685.93 on old judgments. For the division in the Patterson case which was the litigation that was settled on the LLCs that was a \$10,000 forfeiture that went to the general fund. We had a litigation vs. against Patricia Abeto and 2 of her co-candidates. The judgment against Patricia Abeto was \$32,000. We have to deal with that, we're trying to figure out how we're going to go forward in collecting that. Her co-candidates each settled, one for \$1,000 which has already been paid, the other was for \$2,000 of which \$1,000 has been paid. As to the hearing officer's cases, Montgomery-Delaney has settled for \$3,000 on a payment schedule and has paid \$1,000 already and Nanny Dela Santo has agreed to settle for \$350 and we are awaiting payment on that. Today we got the notice of entry on the decision on Norma Gonsalvez and that judgment against the committee was \$14,000. And I have copies of the decision for you if you would like to see that.

**Douglas Kellner:** That would be helpful if you could e-mail them around.

**Peter Kosinski:** Yeah, if you could send that around that'd be nice. I mean whenever.



**Risa Sugarman:** I'll get it to you at the end.

**Peter Kosinski:** That's fine.

**Douglas Kellner:** And then so Gonsalvez was one of the pending cases...

**Risa Sugarman:** Was our first hearing officer case we went to a decision, we filed a Supreme Court case and we got the decision and just got the notice of entry.

**Douglas Kellner:** Are there any other pending Supreme Court cases?

**Risa Sugarman:** No we have several matters where the timing for answers have passed so we're submitting to the hearing officers our suggested findings of fact and conclusions of law.

**Douglas Kellner:** And then I've seen at least in 2 of the hearing officer proceedings they denied the cumulative cycle, the \$10,000 penalty for not filing with the cycle.

**Risa Sugarman:** I'm sorry t who denied.

**Douglas Kellner:** Two of the hearing officers denied the request for the \$10,000 penalties on the cycles. I'm saying that we didn't properly plead the definition of the filing cycle. And I'm just wondering if you think that there's anything that we should do to clarify that by rule or opinion?

**Risa Sugarman:** I'll have to check Commissioner I'm not sure of those decisions. I know we've gotten certain decisions but I don't remember hearing that. But...

**Douglas Kellner:** Yeah, there are at least 2 of them that were denied the application for the \$10,000 by the hearing officer saying that we didn't properly plead the cycle. And it may be that we just need to change a paragraph in the form.

**Risa Sugarman:** I don't know it maybe I'll have to check, I'll check...

**Douglas Kellner:** Or, that we should do a better definition in the rule. Do you know what I'm talking about Kim?

**Kim Galvin:** Me? No.

**Bob Brehm:** I think the case was a party committee vs. a candidate. So the candidate you know the cycle. What is the cycle for a party committee? So if a party committee fails to file what is the 3 in a cycle is my understanding what that issue is. What is their cycle? And I think that might be...

**Bill McCann:** Well I think the provisions of the 3 strikes if you will talks specifically in terms of candidate failing to file during a cycle and the party committee is we don't have an election cycle. So that's certainly an issue.

**Peter Kosinski:** So it's discrete to party committees you think?

**Douglas Kellner:** Is it a problem with the statute where you're saying that enforcement shouldn't be seeking the \$10,000 fine with respect to those committees or is it a problem with pleading or do we need to adopt a rule or something so that Enforcement can recover those fines?

**Bill McCann:** Well my personal opinion on the statute is that based upon the specific language of the provision, I think that and again, the legislative intent aside, because I'm sure the bill memos might speak to that, but the language itself talks about the candidates and through an election cycle neither of which in that application would apply to a party or constituted committees so. That's just my personal opinion.

**Risa Sugarman:** I don't know I have to check for you Commissioner. I'll check that for you.

**Douglas Kellner:** Yeah we can...

**Peter Kosinski:** Do you have anything else? Alright then we're done with the Unit updates, we'll move onto old business and our first topic under old business is a discussion of political clubs. I know we had discussed this at prior meetings. I know there have been efforts to create an advisory document for political clubs and...

**Bill McCann:** We have a meeting scheduled for next Wednesday tentatively just work out the details on that but it's just something that we need to follow up on.

**Peter Kosinski:** So you're still working on it is that what you're saying.

**Brian Quail:** We had hoped to get this done and then this period of time between the last meeting and this meeting has ended up being very, very busy. So we just need to finish this project.

**Bill McCann:** And Risa raised a question the other day on the question of application for one of the categories for which we have to evaluate and have a conversation about. So it's just an ongoing battle and hopefully we'll get some conclusion on that.

**Peter Kosinski:** Do you have anything on this one?

**Douglas Kellner:** No.

**Peter Kosinski:** Okay then we will look forward to something at the next meeting maybe? Well it will be on the agenda for the next meeting one-way or the other how's that. So next is a

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discussion of a document's policy. This is not terribly definitive here but I think this relates to the whole issue of release of documents on Risa's stuff which I believe relates to the memo that you sent to us which I got and I think we all got. The 50-page memo on your position on release of documents from your unit. Did you want to address that? Commissioners want to ask questions? I don't know how you exactly want to...

**Douglas Kellner:** Well, I could start off by saying I have many disagreements with a lot of the contents of the memo especially what I regard are complete misunderstanding of the legislative history with legislative interpretation of the unit. Some of these things we talked about earlier before that the Enforcement Council is part of the Board of Elections and it's not intended to be separate or walled off and we really need to endeavor to work together rather than to keep it separate. But there are four key functions of the Division of Enforcement; one function is to see that people comply with their campaign finance disclosure obligations. And it's the equivalent of giving out parking tickets for noncompliance. Giving out parking tickets is a very essential function because if there is no sanction for not complying with the filing requirements, then people will gradually figure that out and will not comply. And so alright that's one function is to make sure that there is some sanction for noncompliance. In addition, the legislature added at the time that they created the independent Enforcement Council, they added a new requirement that required the Board of Elections to audit each and every filing and to notify filers of deficiencies and to provide funding for that function. Which they did. Similarly when people ignore the Compliance Unit in failing to correct the deficiencies in a timely manner, then it's essential that there'd be some sanction. It doesn't have to be a significant sanction but there has to be some sanction and that is what the legislature intended and as far as I can tell, there has not been a single proceeding from the independent Enforcement Council yet to sanction somebody who has ignored a deficiency filing notice. And I'm not suggesting that they should be significant sanctions but there should be the equivalent of a parking ticket and a fine for not complying and I believe that was the legislature's intension when the unit was set up.

Alright, the second function of the unit is judgment collections and we've talked about that. It was certainly a function that prior to the creation of the Enforcement Unit was problematic because there was very few resources that we as an agency assigned to collecting judgments.

The third function is dealing with the complaints that come in and this was an area of constant contention between me and the prior Enforcement Councils because I felt that they were not doing enough to address the complaints in a timely manner. I think on average we're getting about between 150 and 250 complaints a year and I was insisting that that backlog be brought down and constantly getting the Commissioners to, getting the staff to address those complaints in a timely manner including as necessary to just triage off the complaints that were relatively small and could not be dealt with in a timely manner. Now what I see happening in the Enforcement Unit now, and I appreciate the statistics that were in the report that Ms. Sugarman gave us yesterday that there were 294 complaints filed in 2015, 113 of them were referred to other parts of the Board of Elections, I guess because they related to operations or some other aspect of the Board of Elections and then 113 resulted in open investigations. I'm not sure, that leaves another 60 or so that aren't accounted for in terms of the numbers. One of the things that was very important about the old process was that eventually the Commissioners would review

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all of the complaints and so we would see issues that come up and not infrequently they would result in public reprimands or other advice that would apply universally. I wanted to do more opinions of the Board but sometimes we would agree at least to generically issue a reprimand so that everybody would know what the policy was even if we thought it was insignificant. But right now, the Commissioners get very little feedback on what complaints are out there especially what might be de minimus but still regards where there ought to be policy recommendations coming out of the agency and giving feedback to the community at large. So, I think we need to discuss and we can save it for the future on how to deal with complaints.

And then the last issue is where matters should be referred for criminal prosecution and from what I can tell, the level of investigation is much more thorough and much higher now than it used to be but the actual end product is about the same. While there are fewer referrals for prosecution of the generic type that we used to make, but the specific referrals for prosecution are about running at the same level that were made before and from what I can tell, relatively the same results which is that relatively few of them are actually being prosecuted by DA's but maybe that's not the case. So I think it's very important that those 4 functions be identified separately.

I regard the Division of Election Law Enforcement as a part of the agency and its function is not just law enforcement, its function, its principal function has got to be Election Administration. It's the Enforcement arm of Election Administration. And there are 4 key principles that guide me in values as well as principles that guide me in terms of how to do Election Administration right. The first is uniformity that all people in similar situations should be treated in the same way. The second is accuracy. Obviously, election officials need to keep accurate lists and they need to do accurate jobs when counting votes and declaring winners. And accuracy has a lot to do as well in Campaign Finance disclosure. The third is verifiability. That the actions with respect to election administration should be verifiable. I always say that the word trust should be banished from the vocabulary of Election Administrators. We shouldn't be trusting anything, we should verify what we do. And a last overriding principle is that Election Administration should be transparent, that the public should be aware of what's going on and that transparency ultimately builds the credibility of an election administration agency. When the public can see everything that's going on, can verify that the actions taken are accurate and are uniform. And those principles I think are very important for Campaign Finance disclosure and the enforcement of the Campaign Finance Disclosure System. The State Board of Elections was established in 1973, at the same time the Campaign Finance Disclosure System was set up. It was established by removing the operational functions from the Department of State and by removing the Enforcement functions from the Attorney General and giving it to the bipartisan agency. And it was done to make sure that both Enforcement and Operations were done in a bipartisan manner. Operating in a bipartisan manner can be difficult because it does require people to come together and to work together and build consensus but in terms of bringing about those 4 key principles, values of Election Administration I think it's very helpful. The legislature set up the Independent Enforcement Council in order to break ties, that was the key thing that motivated the setting up the Enforcement Council and it was not to remove the function entirely from the Board of Elections but to set it up in a way that the Enforcement portions of the agency operations would be done independently in a way that could not be compromised by the need to

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have bipartisan agreement on carrying out those functions. But that does not convert it into an arm of the District Attorney or the US Attorney and I had been disappointed at the lack of transparency and lack of uniformity that has happened in the time that we've had so far. And perhaps I'm wrong on the lack of uniformity but that comes from a lack of transparency. If we had better data and knew what was going on in a better way that we might be less concerned about the basis for going after the very few people who have been the result of enforcement activity out of the thousands of matters that have been referred. So at this point, I had issues that I raised with respect to the initial draft of the Commissioners. Risa has gone in the opposite direction in a way that I will never support that would allow for a complete lack of accountability by the Independent Enforcement Council in a way that just runs contrary to my value system of how Election Administration should be conducted. So that's a long speech, I appreciate everybody for listening to me but I very much want to see greater transparency from the Enforcement Council so that everybody knows what's going on and everybody can determine for themselves whether its being done uniformly and accurately.

**Peter Kosinski:** Risa did you want to address that? I would agree that the memo you gave us goes in a different direction from what I think Commissioner Kellner is identifying and I'm curious to hear your response.

**Risa Sugarman:** I think that my memo sets out my position. I know that his e-mail set out his position that was given in response to your proposal. I think that is contrary to the law that I set out and I don't think that he's right on what your responsibilities are and my responsibilities are. I very completely set out what my view of the law and what it should be in terms of how I should be able to function and within my division and the agency.

**Peter Kosinski:** Well I'll just for myself, I think that your proposal as you put forward in your 50-page memo to us goes too far in characterizing the function of your unit vis-à-vis this agency. I think to suggest that we have no role in what you do over states. I think it's clear from the statute that the legislature anticipated we would be involved. It anticipates or requires that you come to us for certain activities that you want to undertake, subpoenas.

**Risa Sugarman:** I know it says that.

**Peter Kosinski:** You make very light of that though. You put it in a footnote, barely recognize it and pretty much act like that doesn't mean anything. I think it means a lot. I think the fact that they put you here, as the Commissioner identified also indicated that you were to work with us. So the tone of your memo which was, you have no role in what I do. You have no right to really know what I do, I think way over states the way the statute created you and created the system that works now for your coming to us or us making referrals to you. You know, that said, I think we need to find a common ground that we can work with because we need to work together and you need to work with us and we need to work with you. But I don't think right now, today we have a common ground. I think that we have or at least some of us have our own opinions on the role that we play here which I think does not comport with which you've identified in your memo. So, I think we need to work towards coming to some solution because I think for you to do your job, you need to be able to come to us, which you haven't done in the last couple of

months for subpoenas or for referrals, as the law anticipates. So we need to reach a resolution to this so that we can continue to function in that capacity. I don't think we're there frankly today because of some of the issues that the Commissioner raised and the memo that I'm reading from you.

**Risa Sugarman:** I think the memo Commissioner sets out the responsibilities that the law places on the Commissioners and staff when you receive documents from the Division. I think the memo clearly states that the statute acknowledges or that the statute sets out there are two places in the statute where the division, where I come to you to request subpoena authority or referrals.

**Peter Kosinski:** I'm sorry there's one more case I think we failed to identify, I don't know if we've seen them yet, when you close a case you have to come to this Board as well.

**Risa Sugarman:** Correct.

**Peter Kosinski:** I don't know that we've seen any of those frankly although...

**Douglas Kellner:** We've seen 6 of them.

**Peter Kosinski:** As the Commissioner raised, there are some discrepancies in the statistics that you've given us in the sense that there were 280 complaints to you...

**Risa Sugarman:** I believe a couple of months ago I said that I had memos that I was reviewing to bring and things have just not gotten to the point...

**Peter Kosinski:** Fair enough I'm just reminding you that there is another...

**Risa Sugarman:** I understand yes, definitely when we don't find the violation of the Election Law I notice the complainant I sent a letter to the complainant and noticed the Board. But getting back to what I was saying the memo acknowledges that and I acknowledge that I come to you for authority for a subpoena, and authority to refer a case to a prosecutorial agency. The memo is designed to explain what our, my staff and my position is as to the responsibility to keep those documents that we present to you confidential and privileged. That's the goal of the memo not to minimize the responsibilities of the Chief Enforcement Council whether it's me or anyone else to come to the Board for that authority. Not to minimize the role of the Commissioners in granting or denying that authority, but to explain to the Board what our view of the law is and your responsibility contrary to what Commissioner Kellner says or believes, that those documents and those discussions in Executive Session or that any conversation about those referrals or requests for subpoenas can be done in public, should be done in public, or any of the documents can or should be released to the public or to any political entity. And I think that that's what the memo sets out that for the purposes of FOIL and the public interest, the privilege and for all the reasons set forth in that memo, that there are significant reasons and those reasons were stated by the Inspector General in her report that those documents and those discussions about the referrals and request for subpoenas need to be privileged and confidential.

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And that's what the memo was designed to do and that's what my response to your proposal was designed to do and that's what my suggestion that the regulations as to FOIL and investigations be amended is designed to do. That the documents and the discussions about my investigations and my documents be kept privileged and confidential. And I understand Commissioner Kellner mentioned that last time it's his belief that those should be public, that they can be discussed in public and I adamantly disagree with him.

**Douglas Kellner:** Well maybe. I think for example the public has benefitted from the discussion that ensued after the disclosure of the January referral.

**Risa Sugarman:** I disagree with that.

**Douglas Kellner:** It's a learning experience.

**Risa Sugarman:** I absolutely disagree with that.

**Douglas Kellner:** And why?

**Risa Sugarman:** Well I think that it damaged the ability of the Division to conduct investigations. That people might feel that...

**Douglas Kellner:** How did it damage it?

**Risa Sugarman:** Because people who come forward and want to know that they can discuss cases and information confidentially with my division feel that they can't do that now.

**Douglas Kellner:** But there were lots of press reports already. I mean there were already all those rumors going around so everybody in politics who had, who would have been a potential informant...

**Risa Sugarman:** I'm not talking about a particular case that we're discussing

**Douglas Kellner:** I'm talking about that particular case that I think that while it definitely had an adverse political impact on the parties involved, it became a very significant learning experience for campaign treasurers and others involved in the campaign finance enforcement so that it was a learning experience and it has had at least a beneficial effect of alerting the political community that what had been basically acceptable behavior before was now going to at least be subject to investigation even if everyone in the legal community didn't agree with the basis for the investigation.

**Risa Sugarman:** And unfortunately someone is presumed innocent until they're in court and found guilty and people who are subject of confidential charges shouldn't have those charges in the press. I mean that document in my opinion is still confidential and shouldn't be discussed at a meeting like this but to have that document released and discussed in the press is not a benefit of the criminal justice system. Is not a benefit of anyone who may be or may not be subject of an

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investigation. If an investigation is leaked and it comes out that that investigation is brought to a conclusion and there are no charges brought, that is not beneficial to anybody whether its in the criminal justice system, whether its in an investigatory system that is not a beneficial to anybody who conducts investigations who has to prosecute cases, who has to go into court who may be subject of an investigation. It just is not the benefit of anybody who has ever been in the criminal justice system who has to think about, "Well is this going to be leaked and am I going to have a problem with this"? "If I come forward on this..."

**Douglas Kellner:** You say leaked. If there's a policy that the thing should be public to begin with it's not leaked.

**Risa Sugarman:** But if an investigation is not public.

**Douglas Kellner:** And I don't agree that leaking is a good idea. What I am saying is that the criteria for investigations ought to be publicly known so that people know what they can do. The IRS for example has made it very clear over the years of what cases it prosecutes and it issues press releases at the time it prosecutes not waiting for convictions.

**Risa Sugarman:** But I'm not a prosecutor. I am an investigative agency.

**Douglas Kellner:** No, you are an Election Administrator.

**Risa Sugarman:** No, sir I am an Investigative Agency that's responsible for conducting an investigation then bringing the matter to you...

**Douglas Kellner:** Then why are you part of the Board of Elections? Why is your agency part of the Board of Elections?

**Risa Sugarman:** My direction is to conduct an investigation and if I find that there's reasonable cause that a crime was committed it bring it to you to ask for referral. Then it goes to a prosecutor.

**Douglas Kellner:** Right and I think at that point it should be public. And that is what we used to do. We used to make them public. And there was nothing in the Moreland Commission that criticized the fact that we made those public.

**Risa Sugarman:** I really don't think that...

**Douglas Kellner:** Well how are we going to resolve this? How are we going to get from where we are now to a resolution? I mean you've heard my view, I'm just going to vote no.

**Peter Kosinski:** Well I don't think voting, listen, I don't think voting no is necessarily productive. But I'm not saying I'm as far as Commissioner Kellner is as far as the way your documents should be handled, but I will say that your characterizations of your role around here I think are misplaced because I think you are over stating your, as you call independence from



this agency. You are still part of the agency. You still report to the agency, you still have a direct role with this agency and to insinuate that you have no obligation related to that I just think is over stating what the legislature did when they created your unit. That's my problem and I think your 50-page memo goes too far in characterizing it that way and isolating yourself from this agency and imposing frankly your will onto the agency. We are the Board of Elections and as far as who comes to Executive Sessions, or who the FOIL officer is, those are our calls.

**Risa Sugarman:** Well I understand that and those were my suggestions.

**Peter Kosinski:** Well it appeared to me those were more than suggestions so I'm just telling you that we have a role here as well and we take it very seriously and we intend to act upon that. So we do need to work something out here but I don't think taking a hard and fast position that its my way or no way is going to be helpful around here and I got the impression from the memo that you were taking this, you're going to do it my way or its not going to happen. And I think that is counter productive to us trying to work this out. Which I think we have to work out.

**Risa Sugarman:** I mean the memo was a memo of law.

**Peter Kosinski:** It was more than a memo of law Risa. It was a memo of law in the first part and then a series of recommendations to what this agency should do which I think went beyond in the way they were characterized...

**Risa Sugarman:** In response to your proposal was my opinion as to how you or the staff responded to or should be or how the issue should be dealt with. The memo or law is the law as we presented to you as to your ethical and legal responsibilities. The proposal is a different thing. That was my response to how you presented what the policy should be. That was my response to your policy.

**Peter Kosinski:** Fair enough. I mean I'm hopeful that...

**Risa Sugarman:** And a suggestion that it should be an amendment to the regulations and policies written in response to the regulations. Now I suggested that there should be, you smile like I smile when you speak, that there be 2 FOIL officers and that certain things should happen in terms of the Executive Session. And what should happen about FOIL. Those were my suggestions. I didn't say, now in terms of the policy I said to you it was unacceptable to me. That's what I said, policy was unacceptable and that it should be in regulations.

**Peter Kosinski:** Well I think that's form over substance whether its in a regulation or not, I think we need to agree on what avenue we can create that will allow you to bring to us those requests that you need to bring to us and allow us to function in the way we feel is appropriate for us.

**Risa Sugarman:** Well a regulation would allow penalties where I don't think the policy that you presented would allow penalties for a violation. That's the difference between a regulation and a

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policy. Policy should my suggestion would be that policy would implement the regulation. It's not form over substance.

**Peter Kosinski:** Okay, I'm not sure I agree with that. I haven't thought it through enough to really have an opinion but I'm not convinced we need a regulation but I do agree we need a policy that the Commissioners can agree to and that hopefully you will agree to as well so we can continue functioning. So that's our goal.

**Andy Spano:** I think this discussion is very helpful. I agree with you that there are a lot of things that have to be worked out in the relationship. It's a new relationship even though its 2 years old, it's a new relationship and that will be worked out. From my experience with levels of confidentiality and things being leaked, etc. in over 20 years of being in elected office, I get concerned when things are out there that may or may not be true. And in the area of politics they have significant effects on the politics and the way people function and ultimately sometimes in their regular lives. And things that are ultimately not true, last forever as part of your name and your life. So we've got to be careful on how we decide this.

**Gregory Peterson:** Politics unfortunately is a game of perception and not fact and that's a reality of anybody that's involved in politics. And people in this room are well aware from one side of the fence to the other side of the fence doesn't matter with some of the vagaries that we have to encounter on a day to day basis. And Risa I read your memo, long as it was and I went through it, a lot of which I disagreed with but at least you gave us your input and I think that was important and I don't think any of us take it lightly. I certainly don't and I know none of the other Commissioners do as well. But that's something we have to digest and also, I think it's the function, not I think, I know it's the function of the 4 Commissioners to run this organization. Now obviously we delegate that responsibility to various people that we trust and that work for the benefit of the entire organization. You are a Division of the New York State Board of Elections. The way I'm looking at it and I told you this before, I respect what Commissioner Kellner has said as he put it forward that his viewpoint is a lot different. He has perhaps a much more open or transparency so to speak especially in the day of transparency where everything should be disclosed. My background being in political office is somewhat similar to Commissioner Spano as well that we've seen things happen when they're not true and things that get leaked and so forth which are harmful to various candidates and things can be thrown out there by an opponent which are frankly a lot of crap but they wind up being put in the paper and its utilized in a way that it shouldn't be. So I am more of the thinking that a lot of this stuff that you have put forward, want to put forward as confidential should probably remain confidential. I have no interest in knowing how you operate your organization or how your investigators work or who they talk to or what law enforcement type of mentality they have as they go in to investigate something and I don't care. But I think as a Commissioner sitting on this Board what I do want to know if when something comes before us that hey if it's confidential fine but that's no, we're not stupid. These 4 gentlemen here who are going to sit down and say, "Okay fine" which we have. We agree with you on practically most of the stuff you've brought before us when you've asked for subpoenas but every once in a while there comes an occasion, you know what, no, the answer is no. And yet it's not taken lightly.

**Risa Sugarman:** I never said I did.

**Gregory Peterson:** But to think that something is going to be confidential today and tomorrow and odd infinitum I think is not correct. Somewhere along the line this stuff gets put out and somewhere along the line there has to be closure. Again, I think that that's probably within the purview of this Board to look at those things and say, "Yu know what some maybe should remain that way. Maybe it was a lot of garbage to start off" and remains garage end of story. There's something else perhaps that should be put out there. So the confidentiality while you're doing an investigation I don't have a problem with that because I think that's important. How do we get to a final solution here, I think you've heard now from each of us, we have heard from you. We've certainly read your memo. You've read what our staff has put together which frankly I thought covered a lot of the stuff below. There may be a little wrinkle here and there that we have to straighten out but I think that its after we've heard everything, discussed everything, its going to be the decision of the 4 Commissioners here to put this altogether, come out with a policy and very frankly that will be the policy. I don't think we have to go beyond that. I think that once we make those decisions, we can put that forward as far as what we want to do and we'll carry out our duties as the statute is set forth. In the interim, what we may want to do however to give you a degree of comfort, we have investigations going on now, I suggest that we keep whatever you have stamped confidential as confidential.

**Risa Sugarman:** I do have one I would like to bring next meeting.

**Gregory Peterson:** That's fine and you know what if you have it as confidential, privileged and confidential it should remain privileged and confidential. It should go no farther than the Commissioners, Council and the co-directors and I think we can come up with a policy right now at least in the interim period of time before we actually come down and say this is what we're going to do to cover you for anything that you want to do. That's agreeable.

**Andy Spano:** Yeah, that's a good idea.

**Peter Kosinski:** Yeah, I think we don't want to stop whatever you're undertaking so we'd like to have the ability for you to bring us stuff but you realize coming up with a final policy is going to take a little time so.

**Risa Sugarman:** You asked me to get in less than 4 weeks so I tried to do that.

**Peter Kosinski:** Yeah, that's fair. You did. So I think in the interim if the commissioners are agreeable we would agree that the requests you bring us would be treated confidentially.

**Gregory Peterson:** Put in the form of, if you want to make a motion we could make it a motion or otherwise it's a policy of the Board that should be understood by everybody. That Pending adoption of a more detailed policy, the Board will keep confidential all documents labeled as confidential by the Enforcement Division forwarded for action in a sense that they will not be released pursuant to FOIL or otherwise. The Board will also limit access to such documents

labeled confidential to the co-executive directors and council. And I think that's set forth we can certainly move on from there until we come up with a policy.

**Risa Sugarman:** Thank you that would be good.

**Peter Kosinski:** But we need to continue working towards a final...

**Douglas Kellner:** And I want to make it clear, I think that's fine on the basis because it continues the status quo but I don't agree that that should be the permanent policy especially to the extent that it may suggest that we don't at least have the right to decide whether any...

**Peter Kosinski:** Well it's our policy so we have the right to change it.

**Andy Spano:** It's a way of going through and getting it done. Get it done right.

**Peter Kosinski:** Is there anything more to be said on this topic right now?

**Gregory Peterson:** No just to adjourn.

**Douglas Kellner:** No, no, no, I move that we go into Executive Session to discuss litigation matters. I can try to be quick. The Council should stay nobody else need to stay. The Council's and Executive Directors. Actually you know Connolly and Conklin need to be here too. Spano gives us no option but September 15<sup>th</sup>.

**Peter Kosinski:** Is that right?

**Andy Spano:** Yeah.

**Douglas Kellner:** No, he's not available Thursday the 14<sup>th</sup>.

**Peter Kosinski:** Thursday is the 15<sup>th</sup>. We're doing the 15<sup>th</sup>?

**Douglas Kellner:** He's coming back from Italy on the 14<sup>th</sup>. So the 15<sup>th</sup> is the only day that he can...

**Peter Kosinski:** Alright the 15<sup>th</sup>.

**Bob Brehm:** And we may need a phone call next week.

**Peter Kosinski:** Alright Bob.

**Douglas Kellner:** We're going to talk about the disability access litigation.

**Risa Sugarman:** I'm sorry I didn't hear the date of the...

**Peter Kosinski:** 15<sup>th</sup>. September 15<sup>th</sup>. And listen Risa we would like to discuss this again on that date so if you have more and I'm hoping there'll be discussions around here on it as well but I think we need to be talking about this to get a resolution.

**Risa Sugarman:** Okey Dokey.