

FREDERIC M. UMANE
PRESIDENT

JULIE DENT
SECRETARY

JOSE MIGUEL ARAUJO
JUAN CARLOS "J.C." POLANCO
JAMES J. SAMPEL
NANCY MOTTOLA-SCHACHER
NAOMI C. SILIE
J.P. SIPP
GREGORY C. SOUMAS
JUDITH D. STUPP
COMMISSIONERS

MARCUS CEDERQVIST
EXECUTIVE DIRECTOR

GEORGE GONZALEZ
DEPUTY EXECUTIVE DIRECTOR

PAMELA GREEN PERKINS
ADMINISTRATIVE MANAGER

BOARD OF ELECTIONS

IN
THE CITY OF NEW YORK
EXECUTIVE OFFICE, 32 BROADWAY
NEW YORK, NY 10004-1609
(212) 487-5300
FAX (212) 487-5349
www.vote.nyc.ny.us

AGENDA COMMISSIONERS' MEETING TUESDAY, DECEMBER 29, 2009 AT 5:30 P.M.

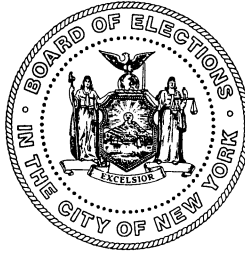
1. Minutes
 - a) 11/17/09
 - b) 11/24/09
 - c) 12/01/09
 - d) 12/08/09
2. Marcus Cederqvist
 - a) HAVA Update
3. Pamela Perkins
 - a) Recommendation of Staff Members to Attend the Winter 2010 Election Commissioners' Association Conference
4. John Ward
 - a) Comparative Expenditures

For Your Information

- New York State Board of Elections On-Site Review of 2009 General Election Pilot Project
- Section 3-212(1) of the NYS Election Law – Election of Board Officers for the Year 2010

News Items of Interest

- New York Law Journal: *Westchester Lawyer Charged with Felony Election Fraud*
- New York Law Journal: *Court Settles Dispute Over Reform Party Trademark*
- The Chief-Leader: *For the Record*



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JOHN J. WARD
FINANCE OFFICER

DATE: December 29, 2009
TO: Commissioners

FROM: John J. Ward
Finance Officer

RE: Comparative Expenditures

FY10	P.S. Projection through 12/25/09 Payroll:	\$ 9,362,000
FY10	P.S. Actual through 12/25/09 Payroll:	<u>\$15,295,626</u>
	Difference	(\$ 5,933,626)

Overtime pays two weeks ending 12/11/09

OVERTIME USAGE

General Office	27,696
Brooklyn	10,479
Queens	11,260
Bronx	590
New York	769
Staten Island	<u>97</u>
Total	\$50.891

Respectfully submitted,

Finance Officer

F.Y.I.

New York State Board of Elections
On-Site Review of
2009 General Election
Pilot Project

November 3, 2009

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INTRODUCTION

The 2009 General Election Pilot Project, utilizing optical scanners in poll sites across New York State, included nineteen (19) counties which opted to do so on a county-wide basis, and twenty-seven (27) counties which conducted the pilot in a limited number of their poll sites. The Election Operation Unit sent out staff teams on General Election Day, to monitor the pilot project in eighteen (18) of the forty-six (46) Pilot Counties. They observed the opening and the closing of poll sites, viewed the election process utilizing the optical scanners and ballot marking devices, BMD. They spent time speaking with voters, poll workers, and county board staff. One staff member also viewed the post election audit in two counties.

On Election Day, the Unit provided help desk support from the opening to the closing of the polls for the County Boards. The Unit also had a list of technical support staff and project managers for both ES&S and Dominion. This allowed the Unit to have direct vendor contact and provide extra support if needed, to individual Counties.

In addition to the creation and distribution of procedures for poll site use of scanners, conducting the 3% Audit, and a myriad of other procedures, the State Board created a report on "Pens, Seals, Locks, and Tips" and provided it to counties with a "Voter Flow Averages" source document for County Boards. The "Pens and Seals" report was created as a resource for the Counties, as they prepared for the General Election and was the result of information gathered from the Primary Day pilot project. The "Voter Flow Averages" document was intended as a tool for inspectors to track activity so that counties can make better choices about the number of privacy booths and summaries needed to conduct elections.

As the State moves forward with the optical scanner system, we continue to encourage more hands-on training for all who are involved with conducting elections. The State Board of Elections will continue to be a helpful and an informative resource to every County Board as we continue our transition to this voting technology.

The following report gives a summary of what the unit teams observed during their travel on Election Day 2009 and provides observations of the audit process.

General Election Pilot Project Summary

As was reported to the Commissioners of the State Board of Elections at their meeting on November 10, 2009, the General Election Pilot Project was an overwhelming success. While not without a few incidents, perfection was not expected, as the Election Day optical scan technology was new to voters across New York, and to County Boards of Elections. We are grateful to the County Boards of Elections which opted to participate in the Pilot Project, and in particular to those Boards which opted for a county-wide pilot deployment.

As is evident in the comments and photos contained in this report, there is still room for improvement, however it is important to note that Boards which fully embraced the challenge of this pilot and the use of this technology, experienced a greater level of success in the conduct and administration of the election as well as in the ease of use and positive feedback of their voters. It is key that voters, candidates, advocates, stakeholders and others understand that the optical scanners which were used in this pilot project, and which will be used in all future elections, offer a level of security that has never been possible with lever machines – regardless of any number of election day scenarios, Boards of Elections will *always* have the ballots which voters marked, thus ensuring that elections are recoverable and every vote will be accurately cast and counted.

In addition to the staff observations contained in this report, two scenarios merit explanation. For Dominion systems, the pre-election testing conducted by the Franklin County Board of Elections revealed an anomaly in the system's software, which manifested itself when certain potential voting patterns appeared in certain multiple vote-for candidate voting positions. In these instances, the system 'froze', making it impossible to scan subsequent ballots. The vendor was contacted, and it was determined that the issue was related to the memory required to store images of scanned ballots. Prior to Election Day, the vendor reviewed all ballot styles for all of its customers, made a file change to eliminate this problem in the pilot project, and corrected the software submission they had delivered for New York's voting system certification effort.

Unfortunately, in that the review of ballot styles to pinpoint where the problem might manifest itself was a human review, some of the ballots styles were mistakenly tagged as acceptable. The problem did occur on Election Day, and in those instances, voters proceeded to vote on emergency ballots, which were ultimately either scanned in an alternate, replacement scanner, or were hand-counted.

For ES&S systems, a programming issue made by the Erie County Board of Elections was not discovered until Election Day, which resulted in certain candidates in a multiple vote-for contest not aggregating all of their results. On Election Day, in the affected districts, voting continued on emergency ballots which were scanned on the day after the election, using corrected ballot configurations. It was determined that the problem was evident in the pre-election test results,

however as humans were reviewing the test results, the anomaly of votes not being aggregated correctly was missed in the review and validation of pre-election test results.

The lessons learned from this Pilot Project are valuable ones, and are listed below. As the use of these systems becomes more prevalent, the ease with which Election Day workers and voters use them will increase. Frequency of use will nurture confidence and expertise. The State Board will review outstanding issues with each specific Board of Elections, and will take steps to ensure that all procedures and corresponding forms are reviewed, with an eye towards reflecting real-world usage suggestions collected by Election Operations staff.

1. Boards must review each poll site, and **draw floor plans for the optimum placement of scanners and privacy booths**, to better ensure as much privacy as possible for the marking and scanning of ballots. Drawings and/or photos showing inspectors the proper placement of all Election Day work stations should be reviewed in training sessions, and provided to inspectors with their Election Day supplies. If current poll sites cannot accommodate new equipment in a manner that affords voters privacy, comfort and safety, alternate poll sites should be identified.
2. As is evidenced by the photos and comments contained in this report, Boards and inspectors need to **make consistent use of privacy hoods** vendors make available for affixing to the scanner itself. Further, election inspectors must offer **privacy sleeves** to each voter with their respective ballot, thus allowing the voter the option of using the sleeve when accessing the scanner to cast their ballot.
3. The **conduct of pre-election testing is critically important, as is the validation of the results of that testing**. The State's testing requirements are extensive, and the preparation for and conduct of the testing does take a fair amount of time, but the issues it can uncover will help ensure that County Boards can recover from situations in a timely and more responsible manner, and do so before Election Day.
4. County Boards of Elections are urged to review the number of spare scanners they have purchased to date, and **consider acquiring additional units**, in a number sufficient to ensure that Boards can put such units into poll sites on Election Day, to better serve voters and poll sites when problems arise, or a particular election season's higher turnout warrants the deployment of more units.
5. **Hands-on training for all Election Day workers is essential**, so that a full array of voter services is available throughout Election Day. Boards can certainly train some election day staff as specialists in the delivery of various tasks related to services, however each person working in a poll site should be able to provide assistance to voters at every juncture of the voting experience.

6. **The return of voted ballots and memory cards to Boards of Elections after the close of polls is a critical security requirement that cannot be diminished.** Boards should explore every option available to them for the return of these key items, including centralized pick-up of security bags; the assistance of law enforcement officials, voting equipment technicians, custodians and other voting system facility staff in collecting and delivering security bags; reconsidering and re-prioritizing close-of-polls tasks, so that inspectors can complete essential tasks and return security bags as quickly as possible.
7. County Boards of Elections must **be more diligent in the creation of informational notices sent to candidates and others**, as required by statute. Samples of these notices have been provided in the past, and will be reviewed again, so that the best of them can become models for all Boards to adopt. This concept is consistent with our inclusion of 'Best Practices' in the procedures we have delivered to Boards thus far, and those yet to come.
8. Boards must arrange for extensive **training in their respective vendor's Election Management System**, so that Board staff members charged with this responsibility can become much more adept at building ballots, and where possible, increasing font size, to better address voter concerns for the legibility of ballot information. The State Board can serve as a resource in this area, and stands ready to assist, once Boards have completed their vendor's EMS training program.
9. County Boards must consider and reflect how these new systems fit in with the routine tasks related to certifying election results. While there is room for conversation on this topic, **implementing a new technology need not disrupt what has heretofore been a relatively cohesive canvass process.**
10. County Boards of Elections must take all steps available to them, to ensure **voting system storage facilities and service centers are accessible; have adequate space, security, power and lights; provide safe and comfortable work spaces for staff, candidates, watchers and others, and are ultimately true service centers and not just warehouses.** Not only do these valuable county assets need to be protected, but these systems through which voters make their voices heard need to be secured from attempts to compromise them. These facilities must have room not just for storage but must accommodate all of the tasks involved in the use and regular maintenance of these systems.

Northern New York

Franklin County

St. Lawrence County

Lewis County

Herkimer County

Oneida County

**Report by:
John Ferri
Charles Smith**

Pre-Election Testing

Franklin County Board of Elections

The entry at the CBOE was locked and as the time was 5:45 AM, we continued to the poll site for the opening of the polls.

St Lawrence County Board of Elections

Arrived 8:15 AM.

We met with both commissioners, Jennie Morrill and Deborah Pahler. They stated that they have 75 BMDs and 30 scanners in use throughout the county.

- Indicated no issues with pre-election testing or ballot definitions.
- County coded their own election consisting of 41 ballot styles for 100 districts. They commented that the process was fairly straight forward.
- Voter outreach consisted of a pamphlet mailed to voters describing how to vote with the ImageCast system. Public demonstrations were also held to make the process available for those who wished to try the system.

Lewis County Board of Elections

Arrived 12:30 PM.

We met with both commissioners, Elaine McLearn and Ann Nortz.

- No issues were indicated during pre-election testing.
- Voter outreach consisted of a pamphlet mailed to voters describing how to vote with the ImageCast System.

Herkimer County Board of Elections

Arrived 3:00 PM.

We met with both commissioners, Marty Smith and Shelly Pazzanese.

- Issue reported with one machine where the monitor cable was frayed and came into contact with chassis, causing sparks. It was later revealed that this was due to twisting the monitor on its pivot arm to the point that the cable was strained and sliced at the point where it fed through the metal box to the monitor. This machine will be examined by a Dominion Technician and was not used for the General Election.
- Voter outreach consisted of a mailed notice describing the process of voting using the optical scanner and listing a date and location for a public demonstration.

Oneida County Board of Elections

Arrived 7:30 PM.

We met with both commissioners, Kathleen Perez and Pamela Mandryck.

- No issues were indicated during pre-election testing
- Voter outreach consisted of the county board having an open house and demonstration on the voting machines.

Storage Facility

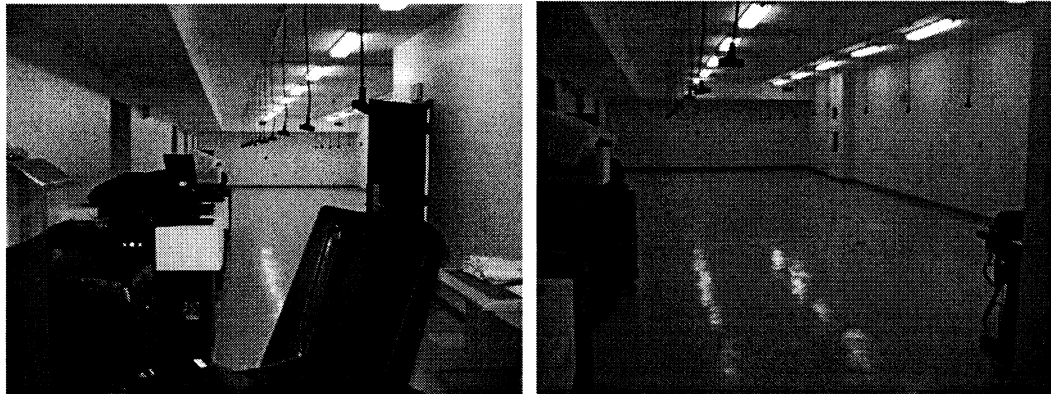
Franklin County

Did not have the opportunity to review their service center.

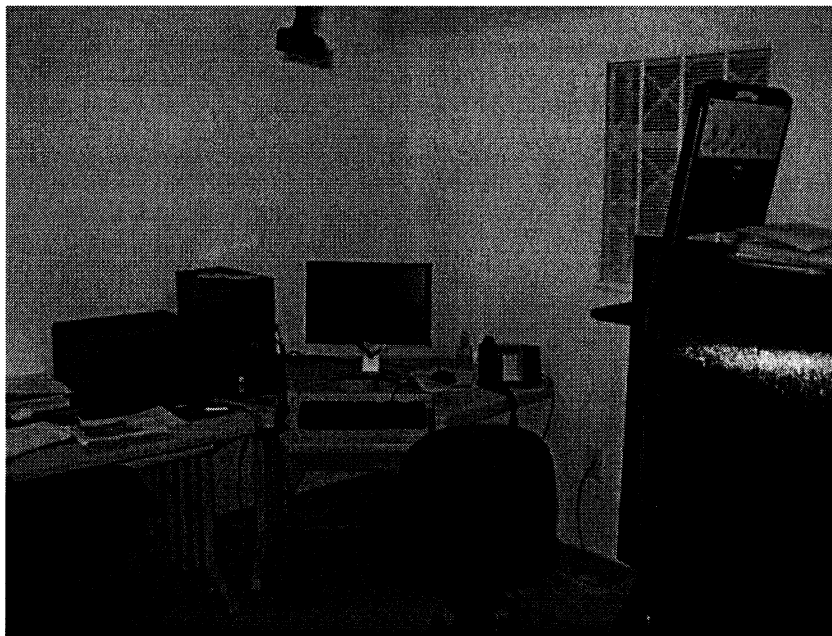
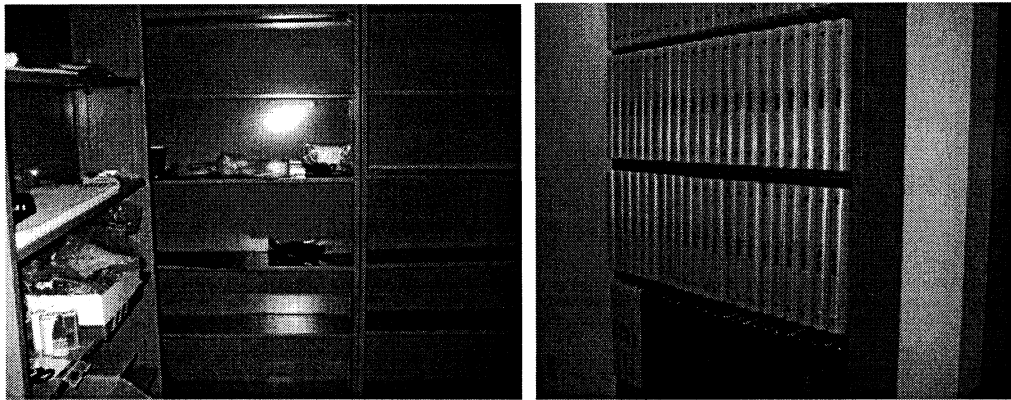
St Lawrence County

Jailhouse adjacent to the CBOE

- Excellent access for transporting machines. Loading dock allows room for U-Haul trucks to back in. Ramp built from the dock to allow easy movement of scanners and ballot marking devices.
- Excellent security. Main entry locked with security pad that requires a bi-partisan code in order to gain entry.
- Extremely spacious and well equipped area to perform tasks with machines. Excellent power accessibility as power cord extensions hang from the ceiling allowing for multiple and simultaneous machine use without power cords cluttering up the floor.
- Space is well lit and utilizes radiant heating in the floor substrate.

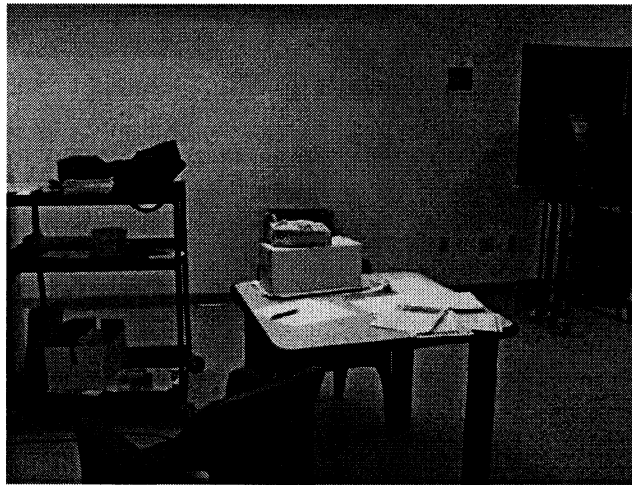
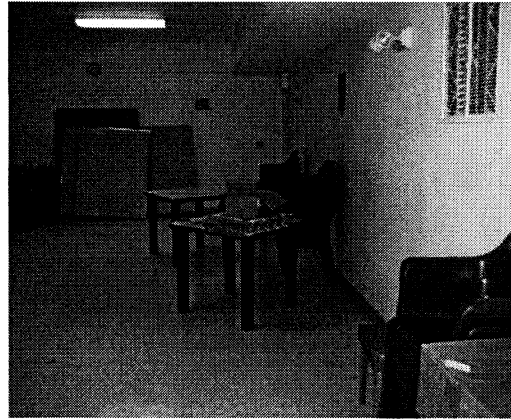
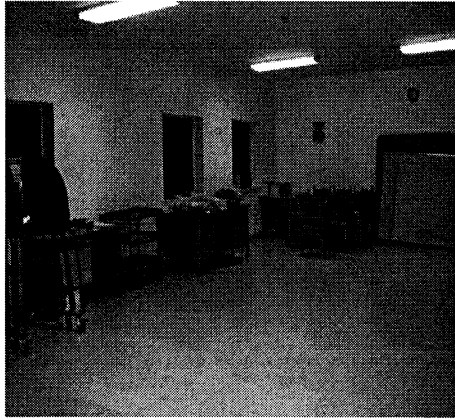


- Area is well organized with storage bins for the ballots and racks full of binders containing all the machine records and maintenance material.



- Side training room, excellent space and well equipped.

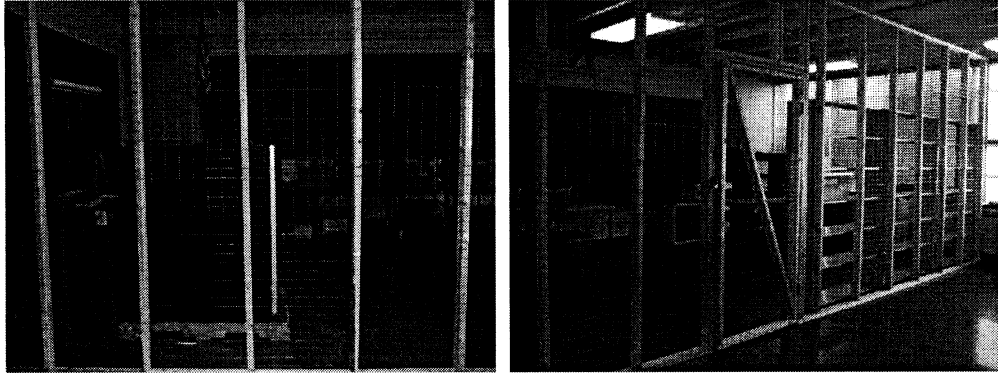
St Lawrence County



On site at the CBOE – Reconditioned school rooms

- Class rooms utilized as designated work areas and offices. Some did not appear to be well lit.
- Storage areas above lockers for the county boards' day to day forms.
- Good security – area for server and storage fenced off and locked. Cameras throughout on a closed circuit that is viewable from the main office.

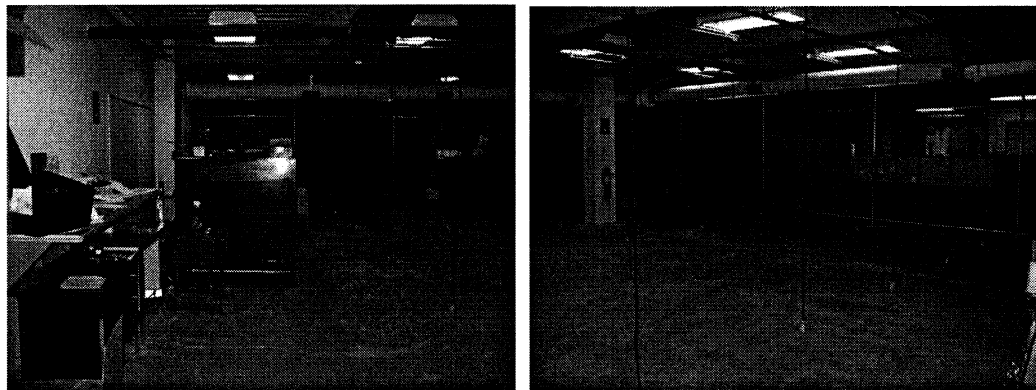
Lewis County



Herkimer County

On site at the CBOE – Basement level storage area

- Excellent Security – Entering the building requires passage through a metal detector and a uniformed police officer then escorts visitors to their destination. Work and storage area for the machines are located in a locked cage in the basement.
- Good Area – The space provides adequate area to work and includes extension cords from the ceiling to provide power to multiple machines. Loading area available with an overhead door adjacent to the storage area.





Basement level storage area



Oneida County

Did not have the opportunity to review their service center.

Poll Site Opening

Franklin County

Holy Family School
12 Homestead Park
Malone, NY 12953-1637

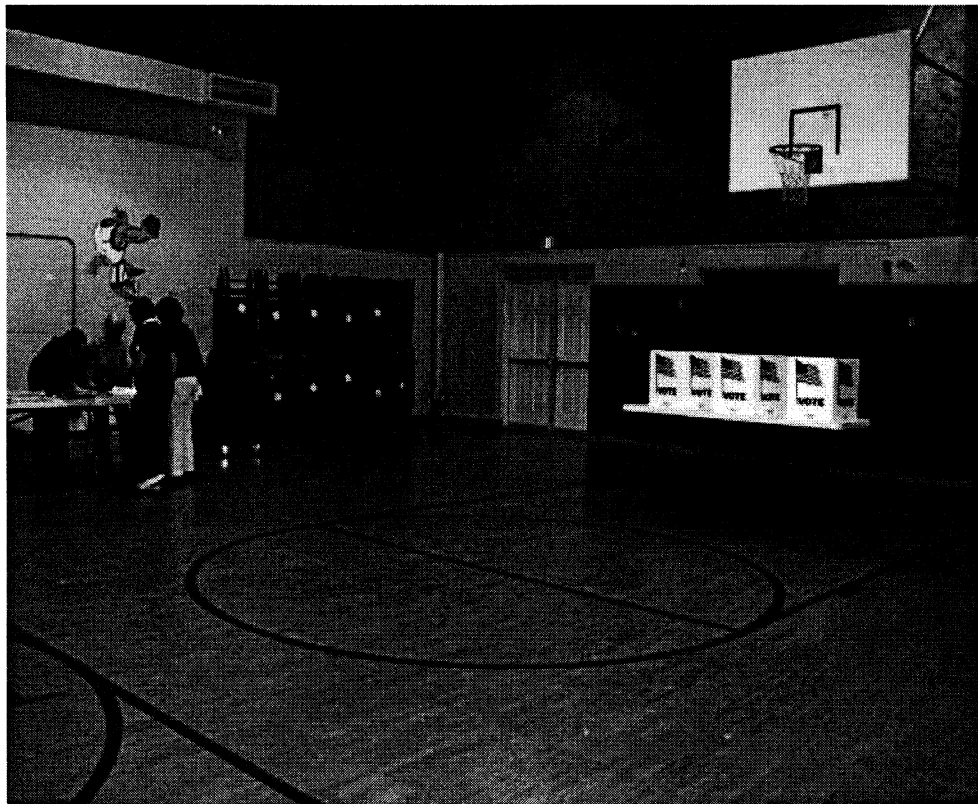
5:50 AM - Arrived

- Polls opened at 6:00 AM with minimal difficulty.
- Limited sign usage indicating area as a polling site.
- No difficulty utilizing forms and seals were correctly placed.
- Message of “AVS not connected” on the scanner only models appeared and was questioned. This error occurred due to the incorrect Device Configuration File being used in a scanner only unit. The resolution was that the voting session continued normally, as the error did not affect the voting process



Scanner Machines

- School gymnasium provided excellent space.



- Area was well lit and accommodating for both privacy and voter flow.



- Voting screens were lined against the wall, facing away from waiting voters.

St Lawrence County

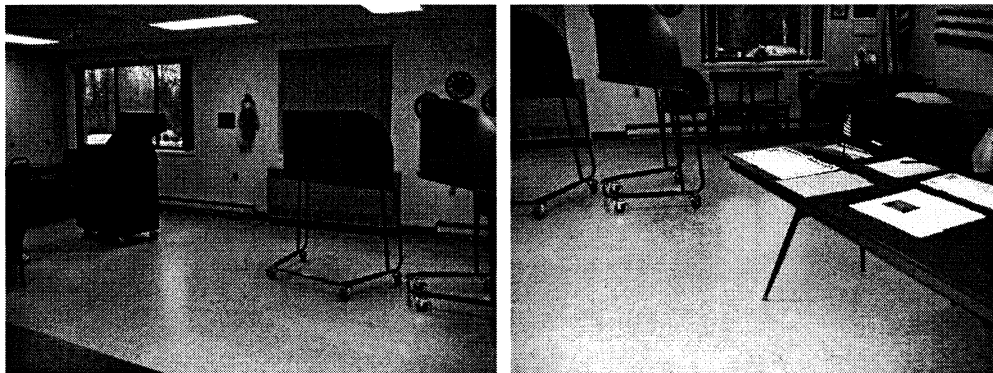
Grasse River Apartments
35 Riverside Dr. Building 2 Canton NY

9:00 AM - Arrived

- Polls opened on time with no reported problems.
- No difficulty utilizing forms and seals were correctly placed.



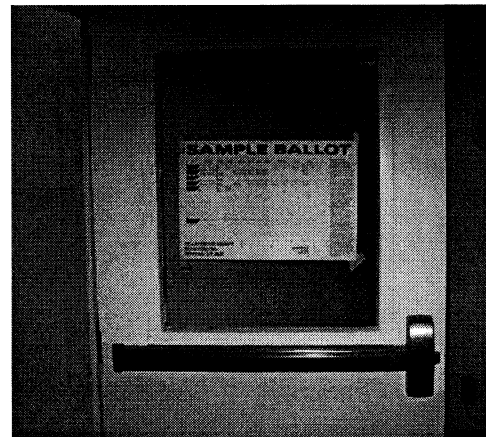
- Area seemed small and somewhat cramped.



- Limited sign usage indicating area as a polling site.



- 2 metal privacy booths of varying heights and widths were utilized to accommodate voters in wheelchairs. Voting instruction poster placed inside privacy booth to demonstrate to voters how to make their selections.

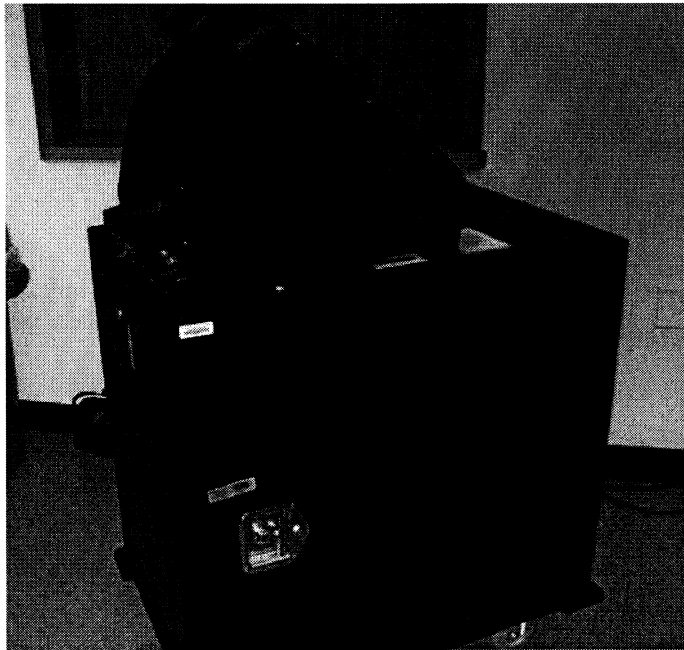


- Use of a sample ballot to display the ballot format.

Canton Fire & Rescue
77 Riverside Dr. Canton NY 13617-1022

9:30 AM - Arrived

- Polls opened on time with no reported problems.
- No difficulty utilizing forms and seals were correctly placed.



- Area well lit and accommodating for proper flow.
- Limited sign usage indicating area as a polling site.
- Privacy booths lined far wall from entrance and positioned well.

Lewis County

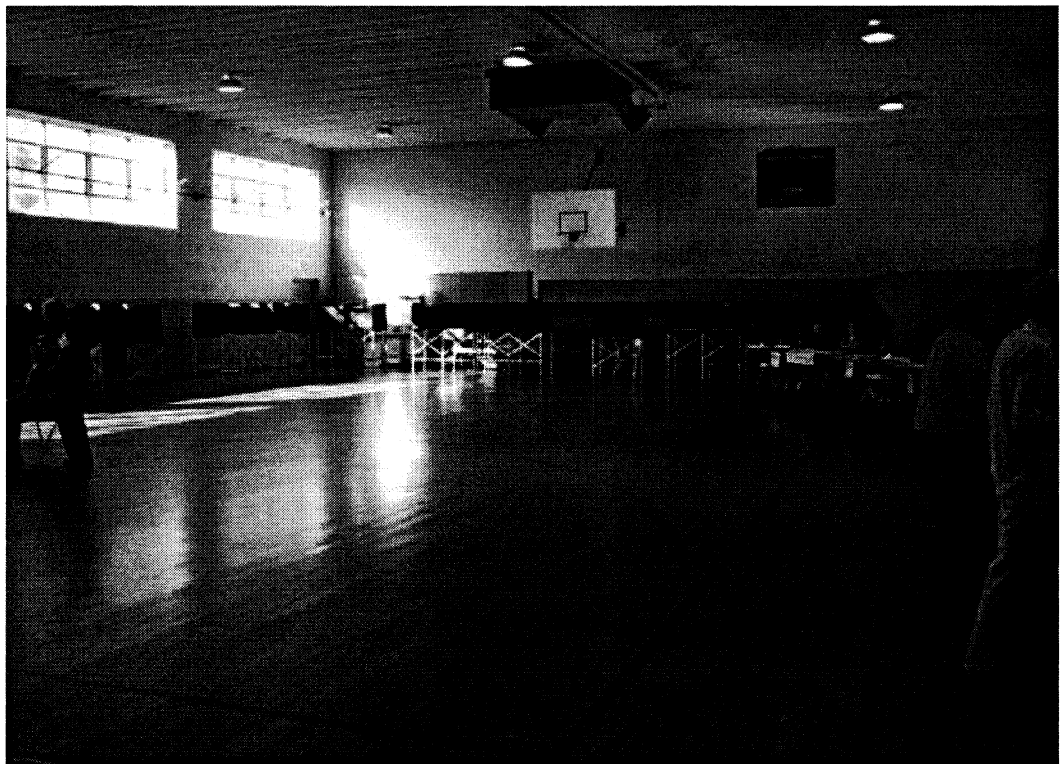
St Peter's Catholic School
5439 Shady Ave Lowville NY 13367-1697

12:35 PM - Arrived

- Polls opened on time with no reported problems.
- No difficulty utilizing forms and seals were correctly placed.



- Privacy booths lined wall opposite the entrance and positioned well.



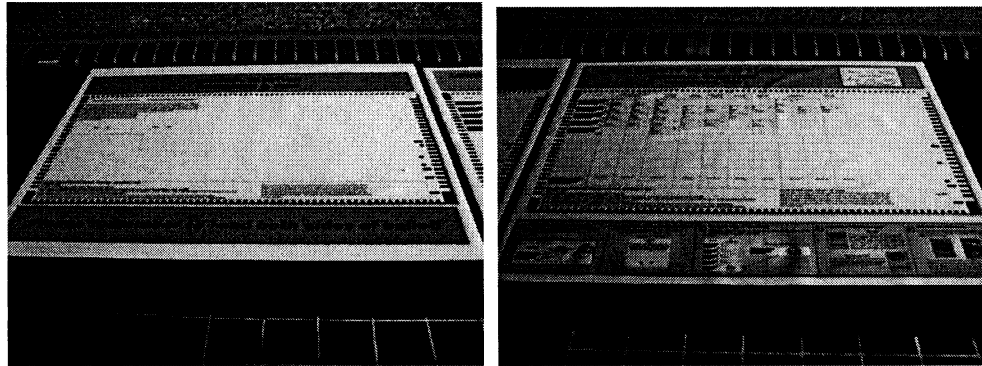
- Area well lit and accommodating for voters.



- Machines properly spaced to allow appropriate voter flow



- Excellent sign usage indicating area as a polling site



- Utilized sample ballot example poster upon entering poll location.

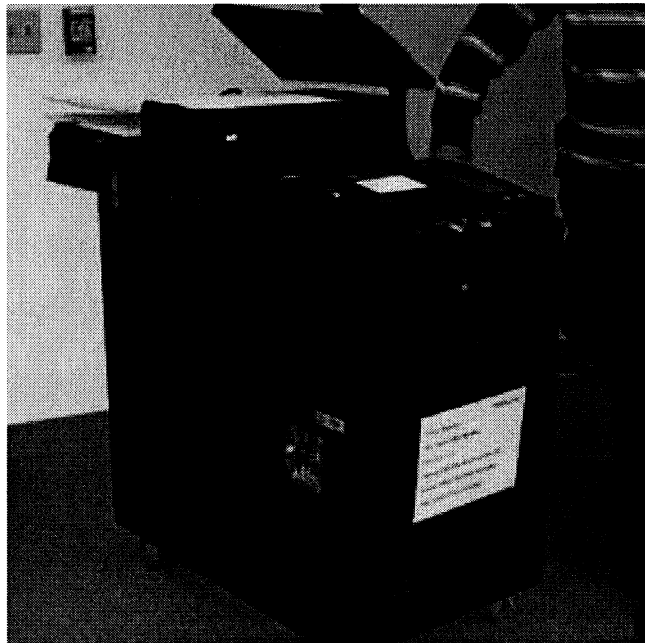
Herkimer County

Schuyler Town Hall

Court 2090 Route 5. Utica, NY 13502

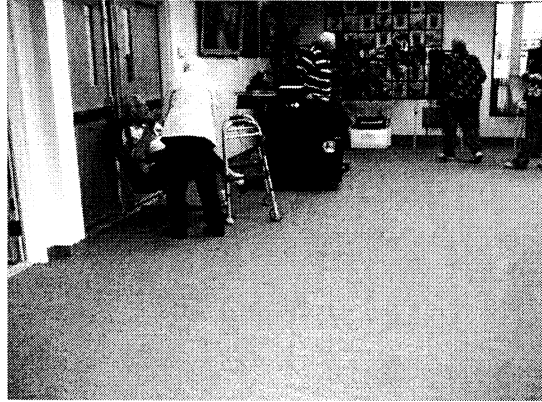
4:00 PM – Arrived

- Polls opened on time with no reported problems
- No difficulty utilizing forms and seals were correctly placed.

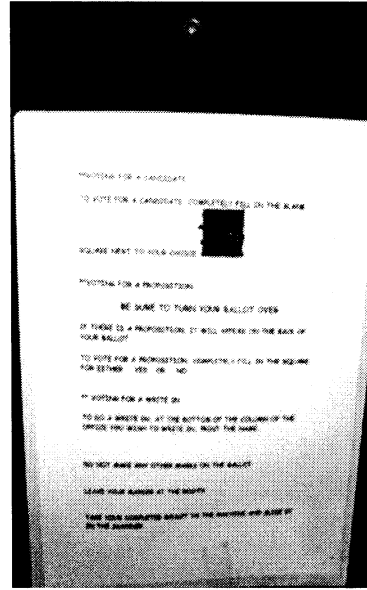
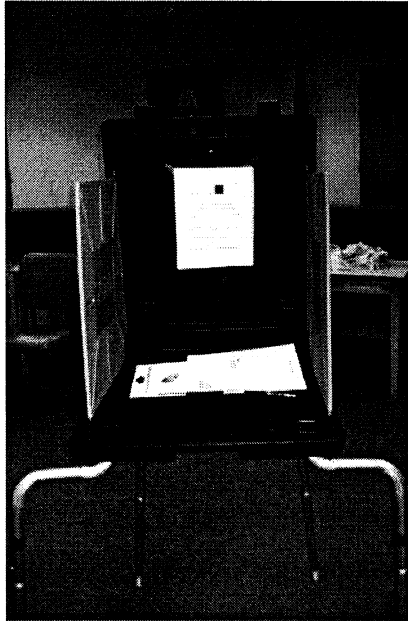


- Good amount of space and well lit. Very conducive to voter flow.

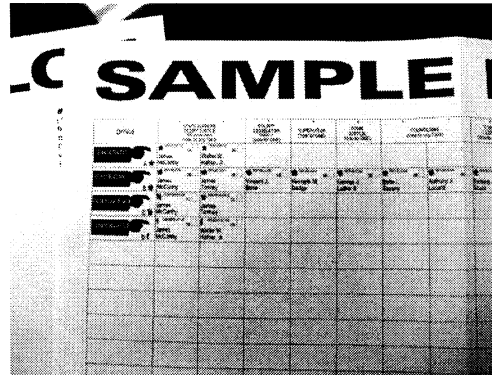
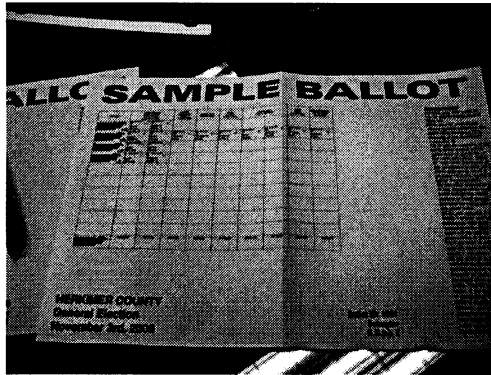
- Privacy booths lined the wall opposite the entry way and contained voting instructions, but should be better positioned to provide maximum privacy.



- Limited sign usage indicating area as a polling site.



- Voting instructions placed inside voting booth for voter.



- Use of a sample ballot to display the ballot format

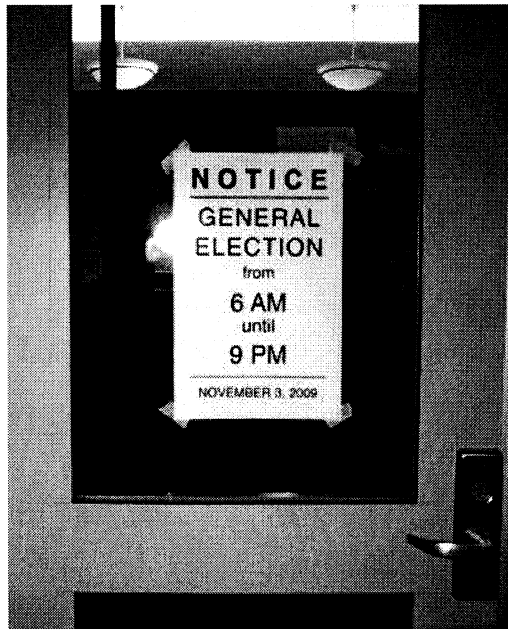
Oneida County

Marcy Town Hall

8801 Paul Becker Rd Marcy, NY 13403-3038

8:40 PM Arrived

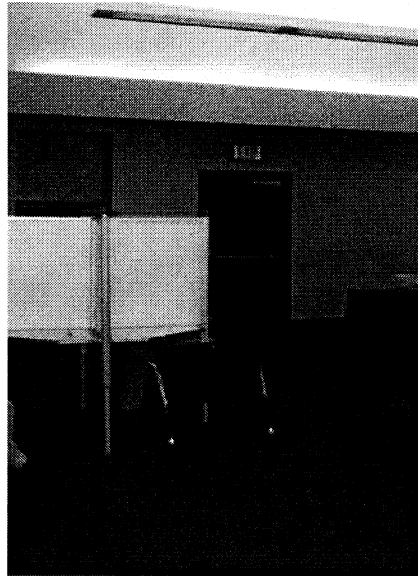
- Polls opened on time with no reported problems.



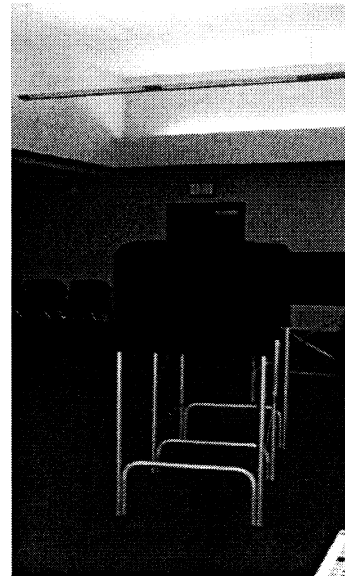
- Limited sign usage indicating area as a polling site.



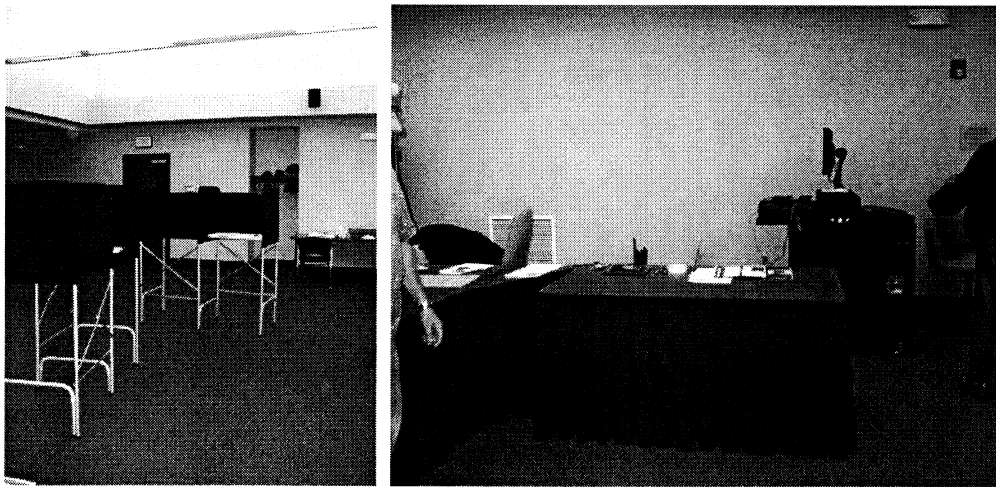
- No difficulty utilizing forms and seals were correctly placed
- Adequate space provided. Two types of privacy booths were utilized: a free standing circular booth and a metal frame booth covered with cloth. The circular booth was placed in the middle of the area, which could compromise privacy.



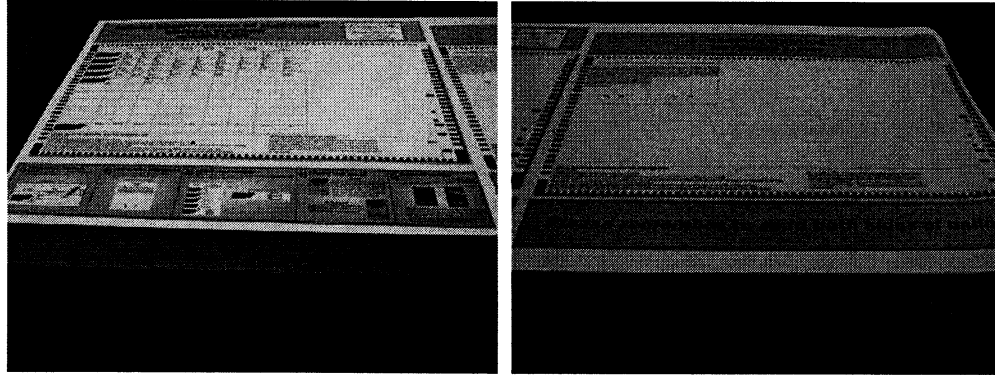
Circular Booth



Metal Frame Booth



- Set-up of voting space provide sufficient room for voters



- Utilized sample ballot example upon entering poll location

Election Day

Franklin County

Holy Family School
12 Homestead Park
Malone, NY 12953-1637

5:50 AM - Arrived

- No difficulty utilizing forms and seals were correctly placed.
- No lines at either the privacy booths or scanner.
- Some voters were observed asking for instruction on how to insert the ballot into the scanner.
- Poll workers did state that with the multiple districts and the fact that the tape printed two copies of the report, tapes were extremely long. This was remedied by the county having extra thermal printer paper on hand.

St Lawrence County

Grasse River Apartments
35 Riverside Dr. Building 2 Canton NY

9:00 AM - Arrived

- No difficulty utilizing forms and seals were correctly placed
- Poll workers did indicate that the ballots did not tear easily or properly from the book. This resulted in the scanner rejecting ballots that were ripped.
- No lines at either the privacy booths or scanner.
- One inspector indicated possible concerns with the privacy booths, stating that they had to continually check the booths after every voter to avoid possible

electioneering. The concern was that someone could write on the shield, trying to advocate for a particular candidate.

- Secrecy of the ballot was compromised as some of the inspectors took the ballot from privacy sleeves when instructing voter how to place it in the scanner.

Canton Fire & Rescue
77 Riverside Dr. Canton NY 13617-1022

9:30 AM - Arrived

- No difficulty utilizing forms and seals were correctly placed
- No lines at either the privacy booths or scanner.

Lewis County

St Peter's Catholic School
5439 Shady Ave Lowville NY 13367-1697

12:35 PM - Arrived

- No difficulty utilizing forms and seals were correctly placed
- Some lines at the scanner as visit was during a peak voting time.
- Technical issues throughout the day prior to our visit were minimal.
The only issue that occurred was the "AVS not connected" error on scanner-only unit. The error did not affect voting session.

Herkimer County

Schuyler Town Hall
Court 2090 Route 5. Utica, NY 13502

4:00 PM – Arrived

- No difficulty utilizing forms and seals were correctly placed
- Poll workers indicated the ballots were difficult to read due to the type sizes and the boxes were too small to see and could affect making proper marks.
- Minimal lines at scanner were observed. There was an issue with the marking pens chosen, as the ink wouldn't dry completely resulting in the scanner only allowing a specific orientation for the ballot.

Oneida County

Marcy Town Hall

8801 Paul Becker Rd Marcy, NY 13403-3038

8:40 PM Arrived

- No difficulty utilizing forms and seals were correctly placed
- Poll workers indicated the ballots were difficult to read due to the type and the boxes were too small to see and could affect making proper marks.
- No lines at either the privacy booths or scanner.
- Custodian stated that the seals used on the compact flash doors tend to break when the machines are packed up.
- Custodian also stated that the wheel locks on the scanner/BMD units are extremely difficult to work with.



- On closing of polls, poll workers replaced seals unnecessarily. Certain seals that should have remained intact were replaced with blue seals even if they were not compromised.

Voter Comments

Franklin County

- There were no apparent issues with waiting or complaints about lines
- One voter stated that he felt that the process was regressive: the use of paper ballots seemed to be a step backwards.

St Lawrence County

- It was noted by the inspectors and poll workers that there were complaints in reading the ballot due to the type size and the marking box was too small to see.

Lewis County

- One voter commented that he thought the “method of voting is archaic, something you would see in a third world country”.
- It was noted by the inspectors and poll workers that there were complaints in reading the ballot due to the type size and the marking box was too small to see.

Herkimer County

- It was noted by the inspectors and poll workers that there were complaints in reading the ballot due to the type size and the marking box was too small to see. This also caused problems and voters with disabilities and elderly voters could not make their marks within the bounds of the box. Voters were offered the use of a BMD but they opted not to because they wanted the same voting experience as everyone else.

Oneida County

- It was noted by the inspectors and poll workers that there were complaints in reading the ballot due to the type size and the marking box was too small to see.

Observations and Conclusions

Franklin County

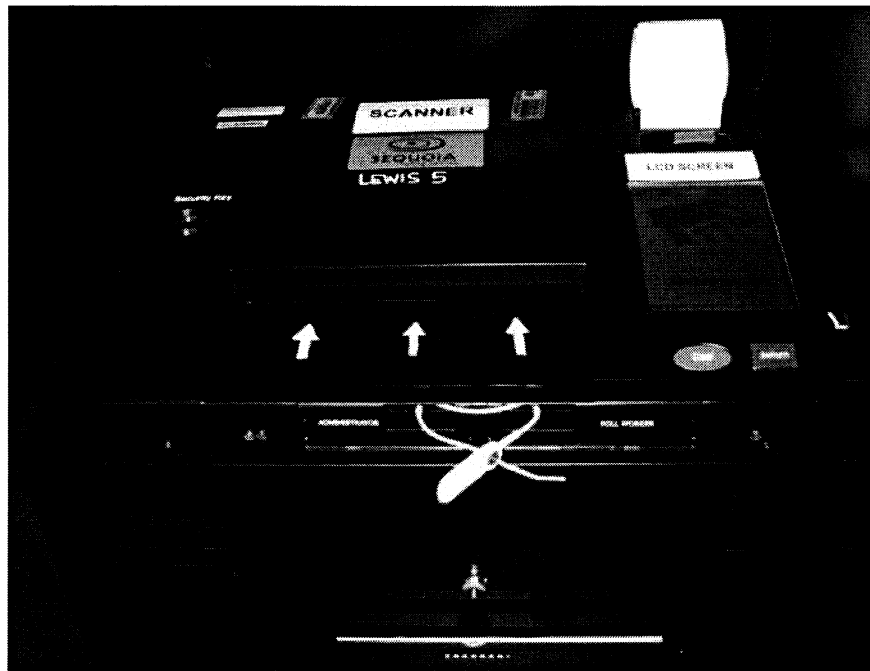
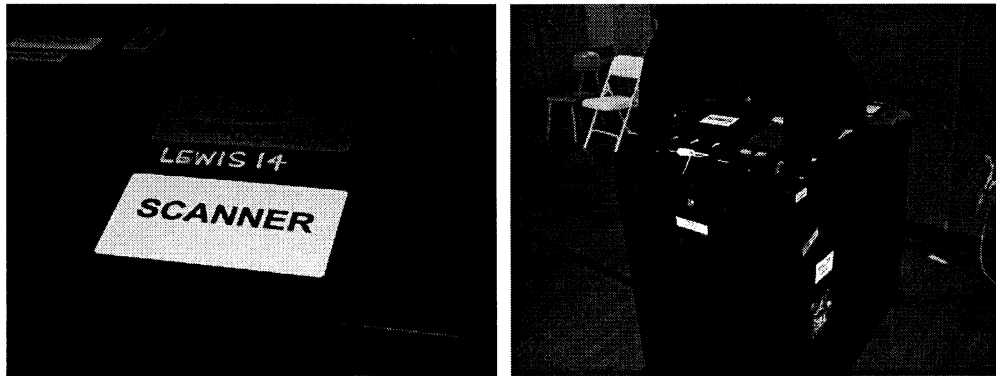
- Minimal use of signs for the polling place that we visited.
- Custodian present displayed good leadership and organization skills but did comment that the compensation was low for the amount of work required and the minimal amount of support staff.

St Lawrence County

- Minimal use of signs for the polling places that we visited.
- Excellent security at Canton Firehouse. Poll site coordinator asked to verify our identities before allowing us to proceed.

Lewis County

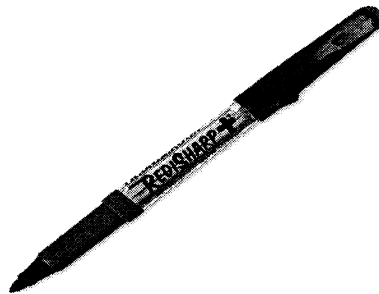
- Adequate use of signs for the polling place that we visited
- The board painted arrows on the scanners (see photo) to assist the voter where to place the ballot. Voters were sometimes finding it difficult to discern where to insert their ballot.



- Board painted arrows on scanner

Herkimer County

- Minimal use of signs for the polling place that we visited.
- Observed the ballots and the difficulty to tear from booklet and the issues regarding font sizes. Recorded the issue and advised that the size and font issue should be addressed with the county board when creating the election.
- Observed the inadequate marking pens. The brand is: Ticonderoga RediSharp Permanent with Microban Fine Point 98200 Series.



Oneida County

- Minimal use of signs for the polling place that we visited.
- Good use of space and examples to assist voters.
- Custodian for the county was more than pleased with the performance of these machines. The custodian stated he had logged 230 miles on Election Day for lever machine issues however none for the electronic machines and mentioned that he could not wait to get rid of the levers.
- Reviewed the ballots and the difficulty to tear from booklet, and the issues regarding font sizes and readability.
- Observed the seals indicated to be inadequate when machine being packed.

Overall

There should be more visible sign usage to make the polling areas more visible. A recurring problem was the issue with the size of the ballot type. The ballots should be adjusted to make it easier to read and mark, probably by increasing font size. In addition, it was also noted that at the present size, the symbol for the Independent Party looked like a potential mark and confused some voters. Standardization of ballot marking implements and seals is strongly encouraged, using the State Boards "Pens and Seals" report as a guide to recommended Election Day supplies.

Northwestern New York

Jefferson County

Oswego County

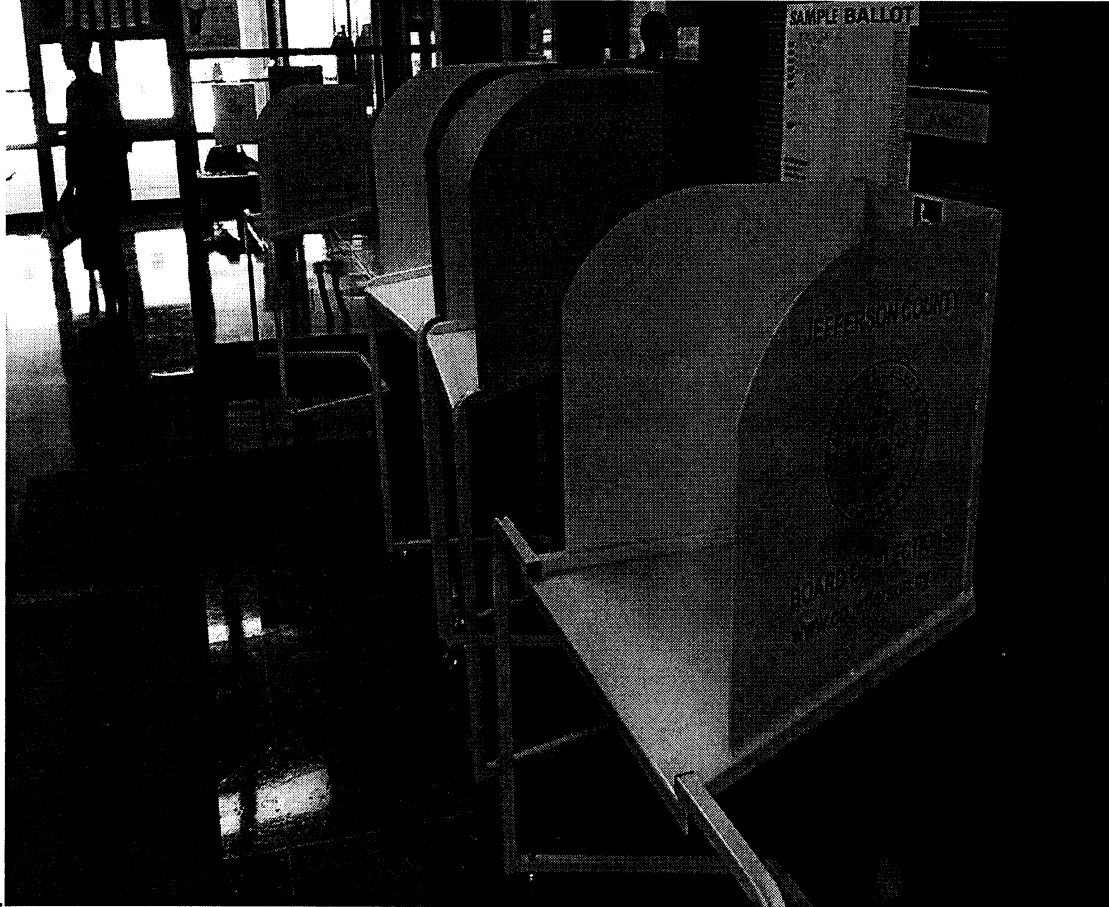
Madison County

Report by: Joseph Burns

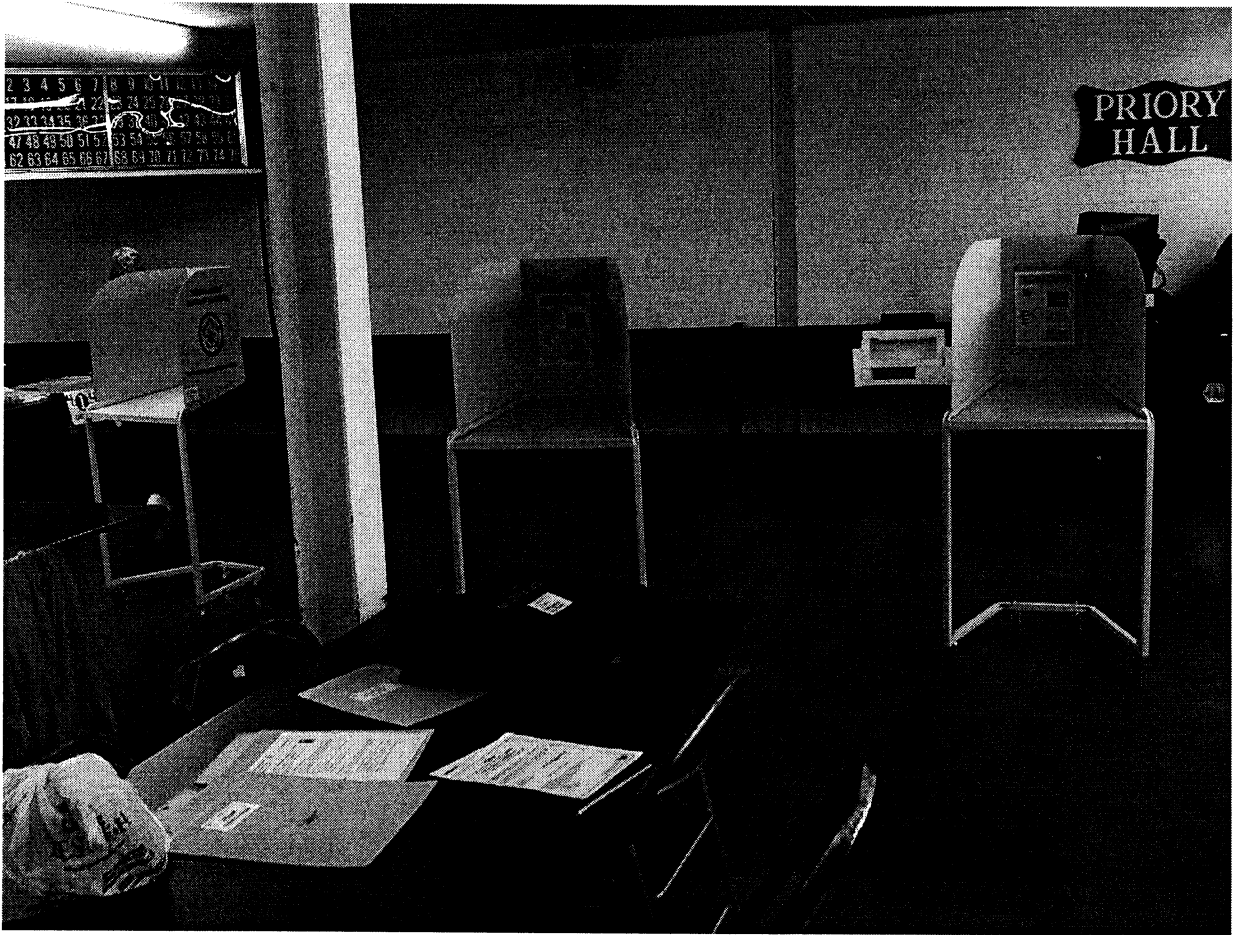
**Election Day 2009 Observations
Oswego, Jefferson & Madison Counties
Joe Burns**

I observed the open of polls at the Crisafulli Ice Rink in Oswego, New York. This was the same poll site I observed for the open of polls on Primary Day. After Primary Day I reported that the inspectors needed more than a half hour before voting begins to set up the machines. I have not changed my opinion of that. While the ImageCast is still a new and unfamiliar machine, inspectors should probably arrive forty-five minutes or even an hour before voting begins, to set up the poll site.

The Election Day setup/layout of the poll sites I observed was not significantly different than the setups/layouts I observed on Primary Day. A lack of privacy for voters, marking ballots in the privacy booth and inserting their ballots into the ImageCast remains a problem. At virtually all of the poll sites I visited, voters marking their ballots in the privacy booths faced a wall or walls and had their backs toward an area where voters, inspectors and/or poll watchers could congregate. This has been determined by the New York State Board of Elections to be a less than ideal poll site setup/layout. Photos of this issue appear below, as do others documenting my observations.



Watertown Municipal Building



St. Paul's Church, Oswego, New York

At the Lutheran Church poll site in Oswego, New York, crowding was a problem. The entire poll site was located in a narrow hallway of the Lutheran Church. It would be best if the Oswego County Board of Elections did not use this part of the Lutheran Church in the future as a poll site. When I brought this problem up with Oswego County BOE officials, they agreed that this poll site was a major problem.



Lutheran Church, Oswego, New York



Lutheran Church, Oswego, New York



Lutheran Church, Oswego, New York



Lutheran Church, Oswego, New York

Like Primary Day, the number one comment I heard from voters was that the ImageCast scanners were much easier to use than expected. The biggest voting problem I observed occurred shortly after 6:00AM when a stub had been ripped out of the book along with the ballot. Neither the voter nor the inspector realized this problem occurred, and the voter attempted to feed this ballot into the ImageCast. The ImageCast, of course, would not accept this ballot. Other than this one incident, I can't say that I actually observed any other voting problems at any poll sites I visited.

In addition to these machine-related issues, I was informed by inspectors and County BOE officials that electioneering was an unusually large problem on Election Day. Jefferson and Oswego County BOE officials had to contact law enforcement to stop zealous volunteers from electioneering. Electioneering, of course, occurs regardless of the voting machine used in an election.

Eastern New York

Schenectady County

Albany County

Montgomery County

Otsego County

Greene County

Report by: Tarry Breads

Rebecca Jones

Phil Jorczak

Tom Woods-NYSTEC

Schenectady County General Election Poll Site Observations

Conducted by-Tarry Breads

Poll Site Visited:

Schenectady High School
1445 The Plaza
Schenectady, NY 12308

Schenectady County

One of three local Pilot sites was visited in Schenectady County on the evening of Election Day. The purpose of the visit was to observe the last hour of activity before poll closing and to observe activities surrounding the post-poll closing.

Inspectors – Poll site opening

The poll opened on time. The technicians and other staff were able to get the machines running and the rooms set up before the voters arrived.

The poll site was organized and well-laid out, ensuring adequate space to accommodate voters and poll workers. County Board staff and poll workers stated that volume had been much higher earlier in the day, but no lines seemed to form and the layout worked well. The County Board assigned one of their own staff to the site all day, to function as a coordinator. She indicated that early in the day it appeared the privacy booths were not far enough apart to ensure full privacy. She rearranged them, anticipating potential issues that may have arisen.

I did not hear any voter concerns in this regard, and conclude that this correctly addressed possible issues in this regard.

Inspectors – Election Day

Poll worker staff was not only friendly and eager to assist voters, they were explicitly instructed to solicit and log both feedback and suggestions from all voters concerning their experience on Election Day. One or more poll workers were stationed near each machine. Everyone on-site, regardless of their role, exuded an air of helpfulness, and seemed sincerely interested in providing assistance to voters and to their team members.

No lines were observed at any point in the process, including the information table, inspector tables, privacy booths, voting systems, and site supervisor's tables.

Summary

During my visit, I note there was more than adequate space, sufficient staffing level and enough equipment to easily accommodate voters. The approach for staffing, which included separate roles for Information Clerks, Inspectors, On-Site Supervisors, Voting Machine Technicians, as well as assigning a staff member from the County Board, was well-thought out.

Voter Comments as Reported by Poll Workers

Comments on system & ballots

- The oval on the ballot was an ongoing concern raised to poll workers by voters throughout the day. It was “too light,” “too faint,” “not dark enough,” “too small” and seemed to generate a particular issue for elderly and visually impaired voters.
- The new technology “saves time,” is “easier” to use than lever machines.

Poll Workers reported a span of reaction from voters, from “ridiculous” to “marvelous,” with the majority of comments being positive. The two poll site supervisors stated that there were some voters who were very vocal, and who seemed to be resistant to change in general. However, of the total number of voters that day, most “didn’t say anything,” proceeding to vote and then leaving without offering any comment.

Did voters have to wait for privacy booths or scanner?

No waiting was observed at this location, and Inspectors stated that there had been no lines earlier in the day, despite a higher volume of turnout than anticipated. In this regard, one Inspector remarked that “It went very well, no real problems.”

Problems marking ballots correctly

One site supervisor stated that there had only been a few instances of ballot marking problems, such as the voter deliberately marking outside the oval and then asking the supervisor if this would be a problem for the scanner. The voter was told that it might be an issue, and offered to provide a new ballot for the voter to complete.

Were voters comfortable and confident with new system?

Inspectors indicated that they observed voters relief as generally they were able to successfully and quickly vote their ballots without incident. This view was confirmed during my visit, as voters seemed to move smoothly through the process, receiving a minor assist now and then from poll workers. I did not personally hear any negative comments from voters.

Did privacy booths give adequate space and privacy?

Privacy booths appeared to be situated in a manner that allowed sufficient space and privacy to voters.

While completing choices... how long did it take?

Several of the Inspectors believed that the new process allowed voters to take more time, to think carefully through their selections when they needed to do so. The pressure voters used to feel about holding up a line while using the lever machines was mentioned. Thus, whatever the actual amount of time taken by a voter may be, the new process was highlighted as an added benefit, particularly given the presence of propositions in this election. The voter who needed more opportunity to reflect, had the option of doing so. Those who did not require such time could move promptly from receiving the ballot, to marking it and scanning it.

Any problems putting completed ballot into scanner?

The on-site supervisors indicated two instances of a problem getting ballots to scan. In both cases, the ballots themselves had a tear near the timing marks. It was not clear if this was something that happened accidentally while the voter had the ballot or if the ballots had small tears in them to begin with that went unnoticed by staff. In one instance, the on-site supervisor instructed the voter to re-try putting the completed ballot into the scanner a few times, and it eventually worked. In the other instance, the on-site supervisor ultimately had to spoil the ballot and provide a new one to the voter. This seemed to be an anomaly, as one on-site supervisor stated that he was “Amazed!” at how few errors and problems had been encountered with the scanners.

Observations and Issues

Signs

Signage was adequate, and it was easy to locate the poll site, despite my unfamiliarity with the area.

Privacy

Privacy was addressed through the layout of the poll site setup and the availability of privacy sleeves, and appeared to be sufficient.

Additional Feedback

Print Size on Ballots

Both poll workers and voters expressed frustration concerning the print size on ballots, including the size of the oval itself. I encouraged the inspectors to report this feedback to the County Board.

Training

Poll workers appeared to be adequately trained and proceeded in their tasks without undue hesitation. The only exception to this came at the point of poll closing, when some of the inspectors were less sure of what their next steps were. However, with teamwork and support by the coordinator from the County Board, this hesitation by some was overcome. In addition to the newness of the task and the lateness of the hour, the fact that several of the inspectors were working their very first election and had no frame of reference to draw upon should be noted here.

Additionally, in terms of training, one inspector stressed that she felt the County Board had done an excellent job of educating the populace, referring specifically to a mailing by the County Board. She believed that this made all the difference in preparing voters to use the new equipment and making the day less intimidating for them.

Other:

One inspector reported that she had received several complaints from voters concerning the ballot layout/format:

- Too much whitespace – text was compressed too much when there was room to stretch it out and make it easier to read.
- Print on the ballot was too small – larger font size is needed.
- The poll workers that I talked with seemed in agreement that the day overall was a success and had gone very smoothly. Some indicated that they personally liked the new equipment, and that they did not have as much work to do as with the lever machines. There was a feeling that voters could be—and often were – much more self-sufficient. The more experienced poll workers also expressed surprise at how few ballots had to be spoiled.
- A number of Inspectors received comments and queries from voters about the rationale behind moving away from lever machines. Their collective responses were succinct and accurate, and it was clear that this had been covered through training provided to them.
- Several of the Inspectors and the On-Site Supervisors showed a good sense of the dynamics of change, peppering their feedback with perspectives that conveyed an understanding of the safety of the known vs. the discomfort of a new process.
- The poll site itself was inside a gymnasium where the floor had recently been re-done. To prevent damage as a result of the volume of traffic and moving around of equipment, the floor had been covered with canvas. This created a trip hazard condition, as wires had to be taped down, the canvas bubbled up in places, etc. While the purpose in covering the floor is understandable, and was outside the control of the County Board, it was a concern for elderly and voters with disabilities.

**General Election-Albany County
Rebecca Jones-Voting Session**

Polling Place:

A.C.E.S., Orange St. Incubator

255 Orange St

*Not part of County Pilot Project

Arrival:

I went to vote around 11:30 am and I asked to vote on the AutoMark. The poll worker said I was unable to vote on the AutoMark at this time, because the only trained poll worker on the ES&S/AutoMark just left for lunch. I told them I would return later in the day.

Return:

I returned at 4:45pm and the AutoMark Inspector was there to help me. She informed me that at this point in the day I was the only person who had “asked” to vote using the AutoMark.

Set Up of AutoMark:

The ES&S/AutoMark was set up in a location where one would have a lot of privacy. There were no cords on the ground that would not allow a person with a disability to safely and easily move around. The Privacy Sleeve was attached to the machine and was ready for a voting session.

Voting Session:

I was given my ballot and proceeded to feed it into the ES&S/AutoMark. The ES&S/AutoMark would not take my ballot. I tried it in several orientations and the same message would display: “Ballot has not been recognized, please notify a poll worker.” I notified the Inspector and she tried several times as well. After all of our attempts, she called the County Board of Elections, and after a short conversation I had two choices:

A. Mark a Paper Ballot

B. Use a Lever Machine.

I chose to mark a Paper Ballot, placed it into a sealed envelope and my voting session was complete.

Summary:

I voted on Primary Day at this site and since that time it was obvious that the inspector had become more comfortable and had gained more knowledge with the ES&S/AutoMark. There was definitely a sense of more familiarity and understanding of the machine. She knew exactly who to call and what questions to ask. The county board must train more people on this new technology so that no voter is turned away because there is no one to assist them. Everyone at the poll site was very helpful and several poll workers thanked me for coming back and being understanding.

**Poll Site Visits for General Election
Phil Jorczak and Tom Wood**

November 3, 2009

The following counties were visited on General Election day: Albany, Montgomery, Otsego and Greene. We stopped by various Pilot program poll sites to observe and gather information.

The following is a summary of our trip.

Poll site opening

- What time did you arrive to open polls?
 - Albany
 - McKownville Fire House – 5:20am
 - Christ Lutheran Church – 5:30am
 - Montgomery
 - Town Office Building, Fultonville – 5:00am
 - Town Office Building, Fonda – 4:45am
 - Otsego
 - Fire House, Schenevus – 5:20am
 - Town Building, Worcester – 5:30am
 - Fire House, Worcester – 5:25am
 - Fire House, East Worcester – 5:25am
 - Greene
 - Leeds Fire House – 5:30am
 - Catskill Fire Company – 5:15am
- Did your polls open on time?
 - Albany
 - McKownville Fire House – Yes; AutoMark was booted up at 6:15am
 - Christ Lutheran Church – Yes
 - Montgomery
 - Town Office Building, Fultonville – Yes
 - Town Office Building, Fonda – Yes
 - Otsego
 - Fire House, Schenevus – Yes
 - Town Building, Worcester – Yes
 - Fire House, Worcester – Yes
 - Fire House, East Worcester – Yes
 - Greene
 - Leeds Fire House – Yes
 - Catskill Fire Company – Yes
- Time required for system boot-up and open polls tasks.
 - Albany
 - McKownville Fire House – 15 minutes

- Christ Lutheran Church – 10 minutes
 - Montgomery
 - Town Office Building, Fultonville – 1 hour
 - Town Office Building, Fonda – 35 minutes
 - Otsego
 - Fire House, Schenevus – 20 minutes
 - Town Building, Worcester – 12 minutes
 - Fire House, Worcester – 15 minutes
 - Fire House, East Worcester – 10 minutes
 - Greene
 - Leeds Fire House – 20 minutes
 - Catskill Fire Company – 15 minutes
- All of the poll sites we visited seemed to have enough space for the scanning system, privacy booths inspectors, voter traffic, etc., except for one. That poll site is the fire house in East Worcester. The area is very cramped and would not be conducive for a bigger election.

Election Day

- None of the Inspectors at any polling place had suggestions regarding how to improve the new forms provided by SBOE. They all thought the forms were very good.
- Some of the Inspectors stated that voters were accidentally marking the wrong area on the ballot, either the party symbol or the entire candidate box, in some cases. I heard many Inspectors ask that the box be made bigger. Also, some Inspectors said that there were complaints that the instructions section of the ballot was too small. They also had to constantly remind voters to turn the ballot over to vote for the propositions.
- No long lines were reported at any of the poll sites. Much longer lines are expected during future elections where state-wide and federal offices are on the ballot. More scanners and sufficient privacy booths will be needed in each poll site to accommodate the anticipated voter turnout.
- Overall, voters needed minimal assistance in using the scanner. Most people walked up to it and fed in their ballots with no assistance. Some voters needed help in feeding the ballot in.
- There were minimal complaints received by the Election Inspectors regarding the scanners. These voters, generally, just do not like change and want the lever machines back.
- The Inspectors did receive some positive comments from voters. Many voters claimed, "This is easy!", and, "That's it?" thinking that there was more to do to cast their ballot.
- Most Inspectors found the procedures for setting up the optical scan machine very easy to understand and follow. Some claimed it was somewhat easy, and a few said that it was somewhat difficult. We found that the Inspectors who found it not so easy happened to miss some of the training, or in some cases, the training classes were so large and crowded that they found it hard to learn the procedures. In general, if the

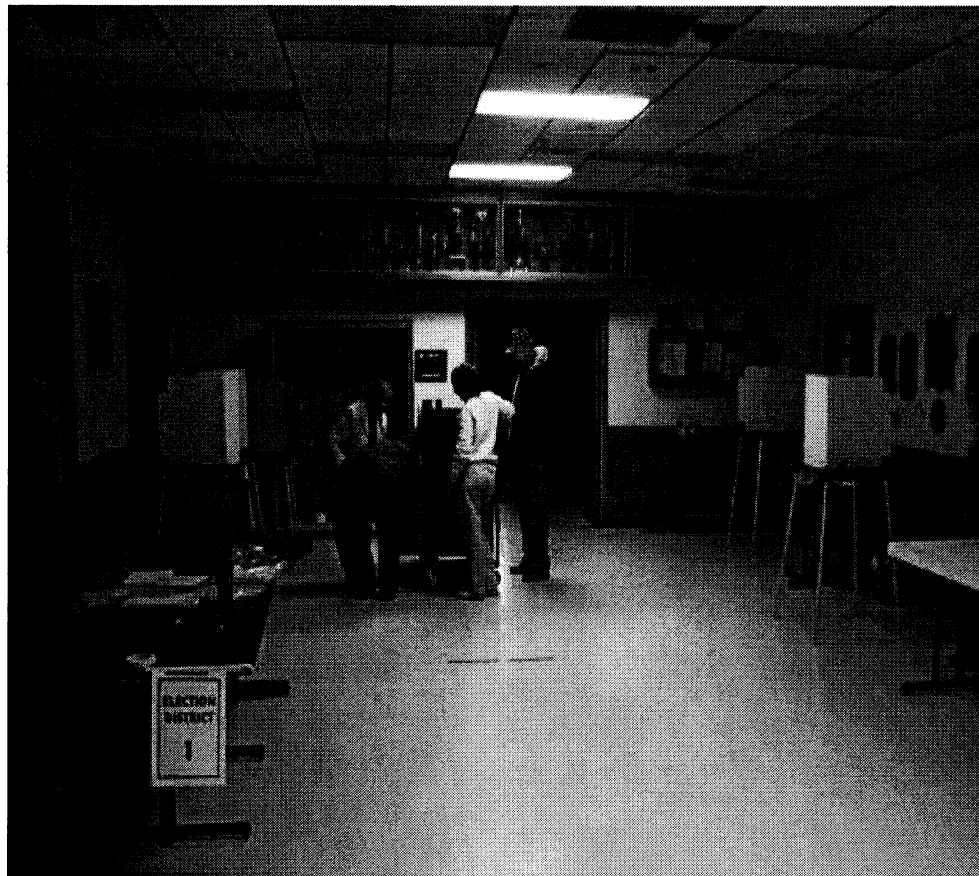
Inspectors attended the training sessions and received hands-on training then they had an easier time with the procedures.

- Many poll workers had issues with detaching the perforated ballots. They ended up tearing some ballot edges, which, in some cases, would lead to the scanner not accepting the ballot. More training is needed for proper technique.
- The Inspectors reported a few technical problems. At the Christ Lutheran Church poll site, a ballot jam occurred because the scanner was not correctly seated into the metal ballot box. The Inspectors called the Albany CBOE and followed their instructions to fix the problem. At the Fire House in East Worcester, there was a printer error during boot-up. The error was resolved by re-booting the scanner.
- Almost all of the Inspectors said that they believe the privacy booths allowed voters adequate room and privacy to complete their ballots. A few said that the booths seem a little cramped, and one said that if a very tall person was in a booth they could see over the top of the divider and look at their neighbor's ballot. Some voters commented that the privacy booths are not well lit.
- All of the Election Inspectors thought that the training provided by the CBOE adequately prepared them to be an Inspector at a poll site that uses optical scan machines. Many of them said that their CBOE did a very good job considering the lack of time to get it all done. A majority said that more hands-on training would be helpful and keep class size down so training would be more productive.
- When asked what effect using the optical scanner would have on future voter turnout, most Inspectors thought that it would have no effect. They claim that most voters would go out to vote no matter what kind of voting system is being used. A few suggested that using the scanners would increase voter turnout. They feel that curiosity about the new scanners would bring more people out, and once they experience how easy it is to use they will keep coming back.
- Additional comments given by Election Inspectors:
 - Buying all these new voting systems is a waste of money since the vast majority of the disabled voters will vote by absentee ballot.
 - Grammar is incorrect on the ballot. For example, the ballot currently states, "Vote for any Four" and this person thinks it should state, "Vote for no more than four".
 - Regarding the Dominion BMD, a Voting Machine Tech. was wondering why the BMD marked the boxes using different shapes (check marks, X's, etc.). He offered concern that a voter who uses the BMD to mark their ballot would be distinguishable from a voter who marks their ballot by hand. This is because when the ballot is marked by hand, the voter is to completely fill in the voting target (square).
 - The CBOE should have more public demonstrations to better instruct voters on how to vote with the new voting systems.

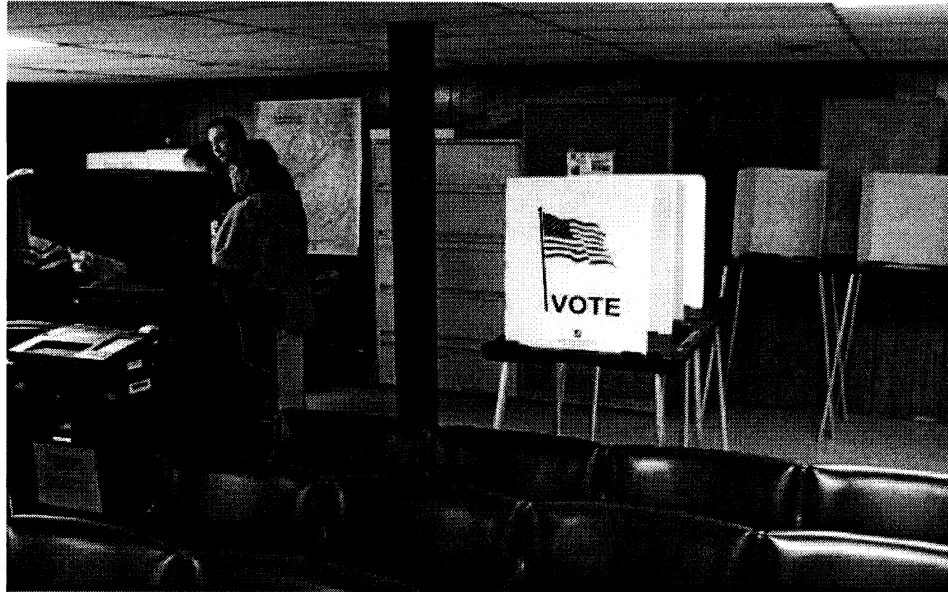
Voter Survey

- Did the privacy booth give you adequate space and privacy?

- Every voter I surveyed answered Yes. Some commented that the booth should be bigger and provide more elbow room to mark the ballot.
- Were the instructions on how to complete the ballot easy to understand?
 - Everyone answered Yes.
- How long did it take you to complete your ballot?
 - Everyone answered Less than 5 Minutes.
- Did you have any problems putting your completed ballot into the scanner?
 - Most of the respondents answered No. Those who answered Yes had to re-feed the ballot a couple of times before the scanner accepted it, or they had to get a new ballot because their original ballot was torn.
- Does the use of the optical scan voting machine make you: more likely, less likely, or, have no effect on you voting in the next election?
 - All said No effect, except one, who answered “more likely”. The voter answered “more likely” because he thinks that voting by use of the scanner takes less time than the lever machine.



McKownville Fire House, Guilderland



Town Building, Worcester

How to Vote
Using the New Voting Machine in Otsego County

Sign in at the Inspector Table. If more than one district is voting at the pollsite, an Election Coordinator will help you find your district.

Sample Polling Site Layout

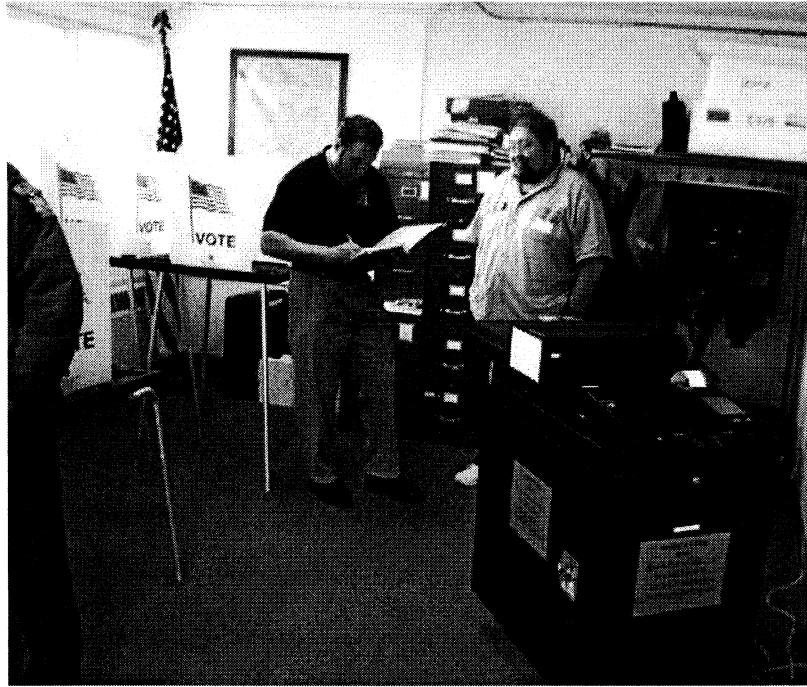
Election Inspector Table

2. The inspector will give you a ballot and direct you to a voting booth, where you may mark your candidate choices. If desired, you may be given a privacy sleeve to shield your selections. There is also a magnifying sheet available if needed.

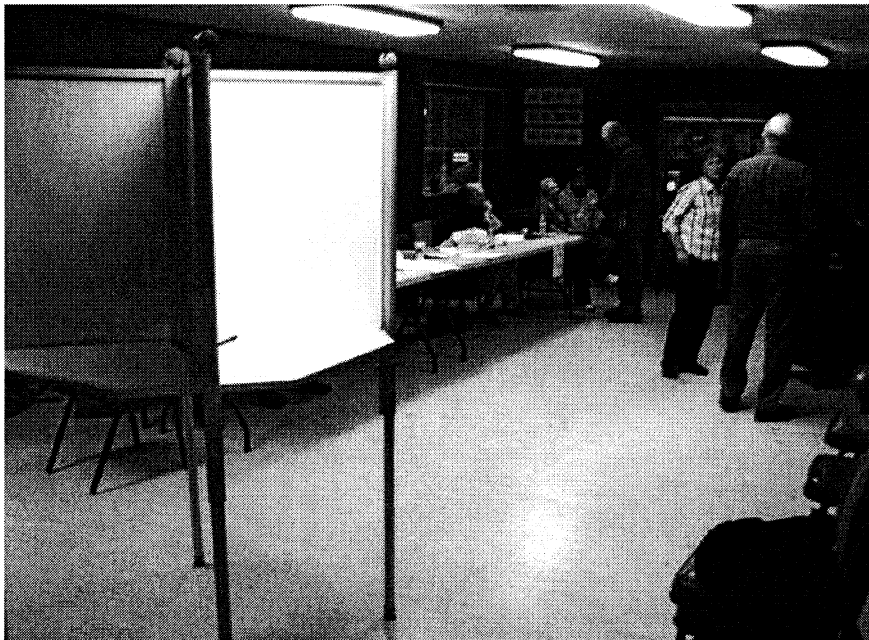
3A. You will then fill in the square to the right of the candidate name you are selecting. Only use the marking pens provided, and fill in the square completely. For a write-in candidate, fill in the box at the bottom of the office column, and write in the name. *Note: If you make a mistake on the ballot, do not try to erase the mark. You must return the ballot to the Election Inspectors, mark the "mistake" and then get a new one.

Voting Booth

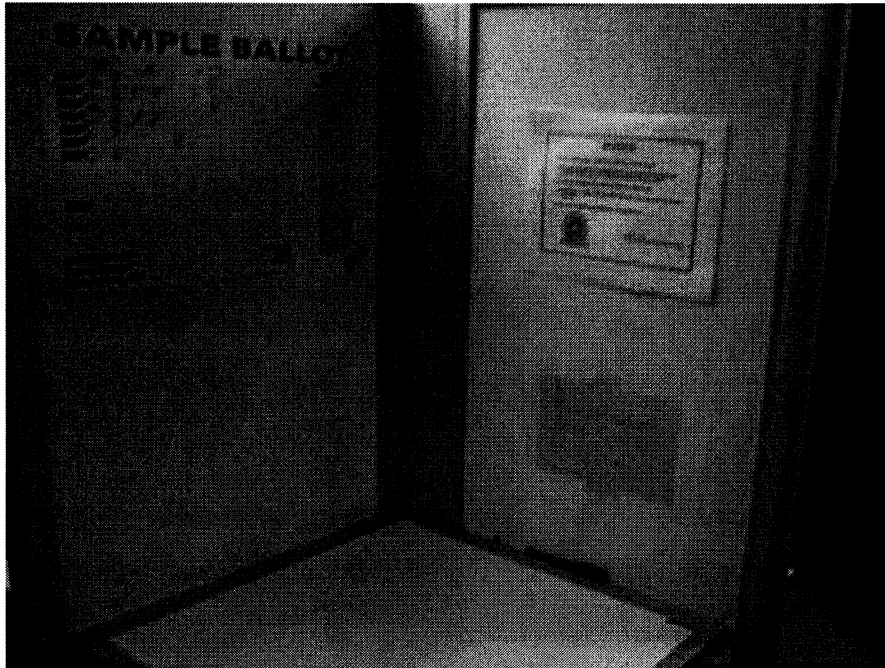
Otsego County – “How to Vote”



Fire House, East Worcester



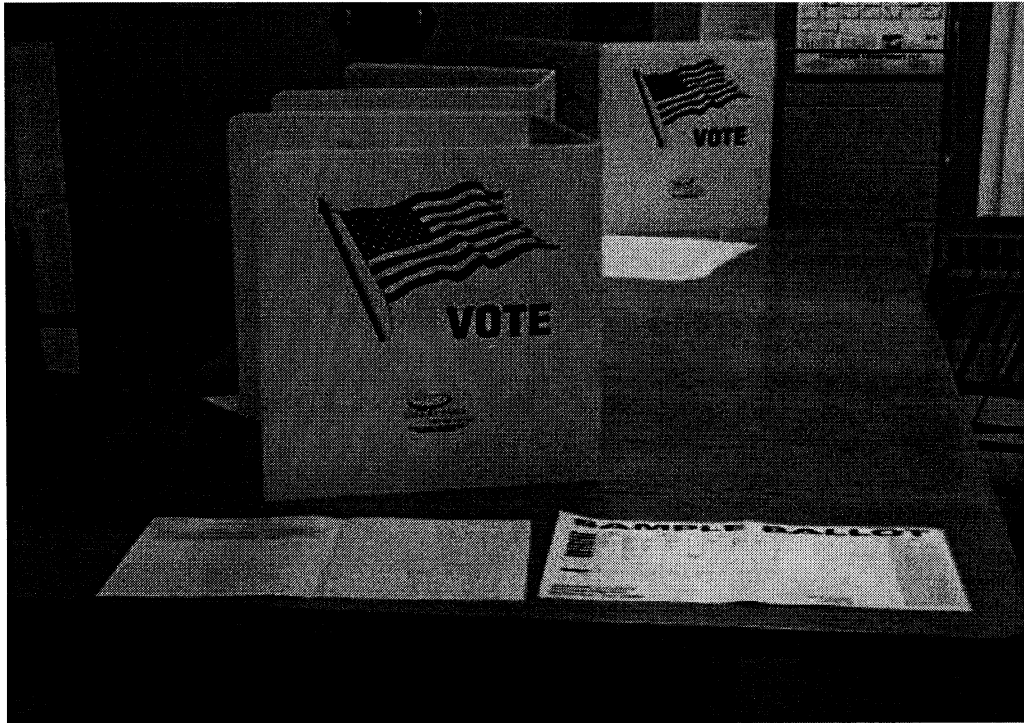
Leeds Fire House



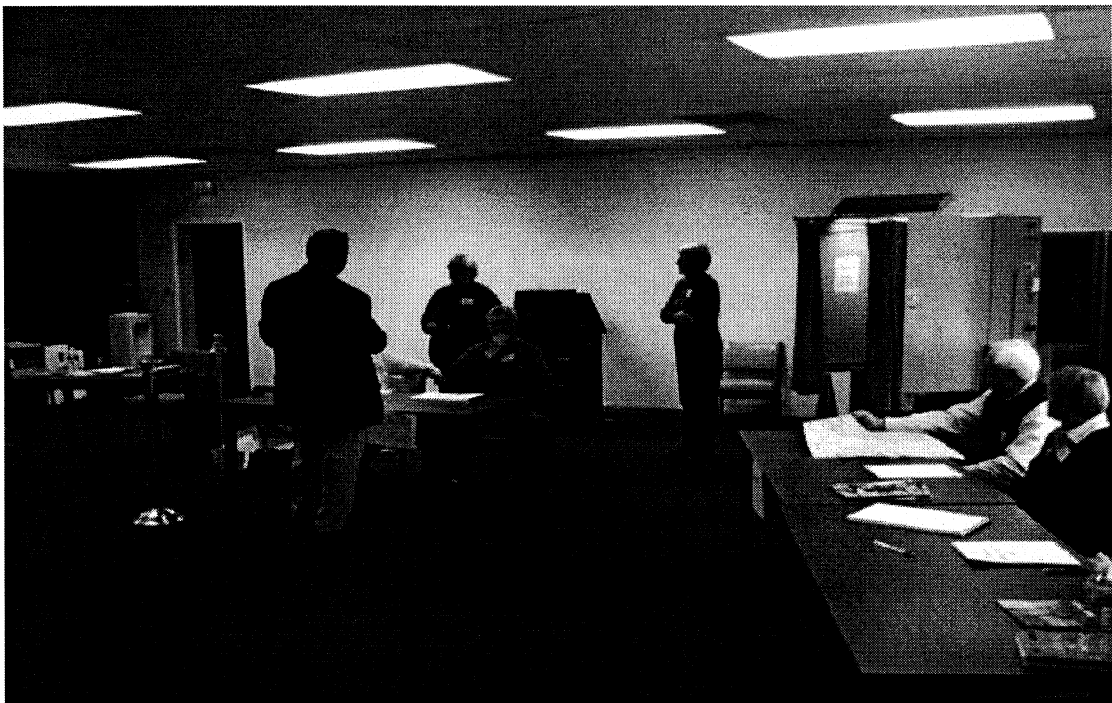
Leeds Fire House – Privacy Booth



Catskill Fire Company



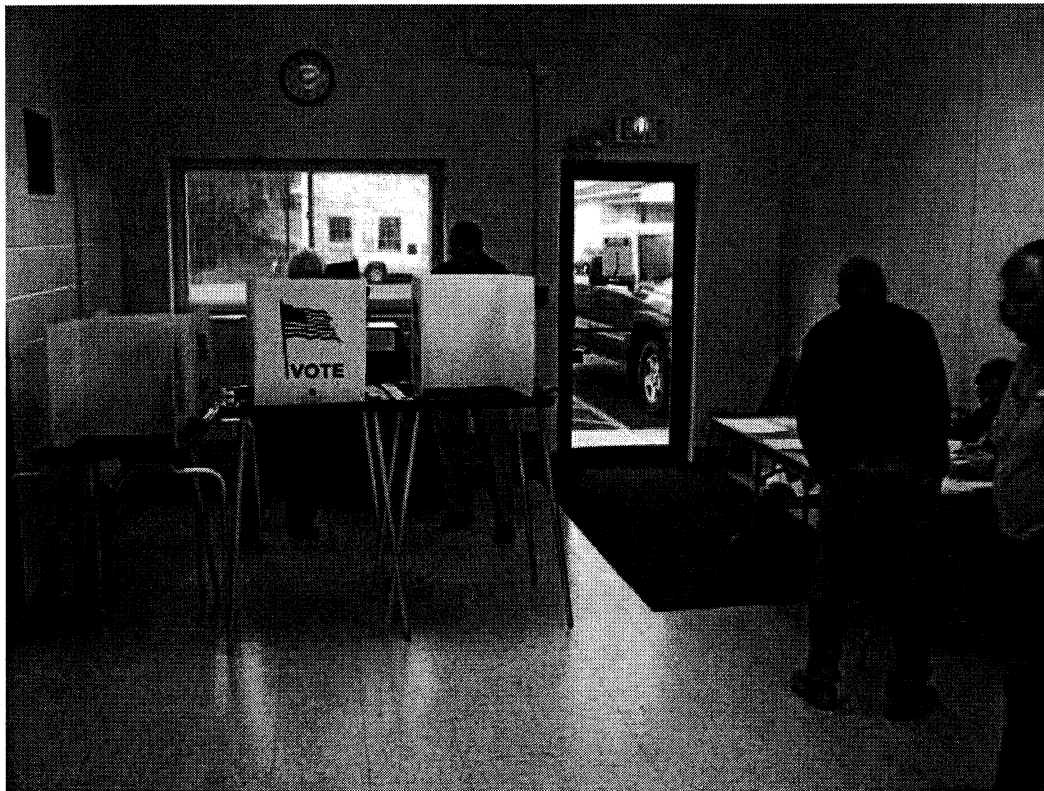
Catskill Fire Company



Town of Mohawk Office Building



Leeds Fire House



Otsego Firehouse

Southern New York

Orange County

Putnam County

Sullivan County

Delaware County

Schoharie County

**Report By:
Kevin Doyle
Sean Nealon**

General Election 2009, Southern Counties
Conducted by: Kevin Doyle and Sean Nealon

We visited 5 counties for the purpose of observing the general election using the new ballots and optical scanners. The five counties participating in the NYS Voting Systems Pilot Program 2009: Orange, Putnam, Sullivan, Delaware and Schoharie.

All poll sites opened at 6:00 am. We were there for the opening and for the first votes cast in Orange County (6:00 am). All polls closed at 9:00 PM. We were there for the final votes and closing of polls in Schoharie.

Orange County



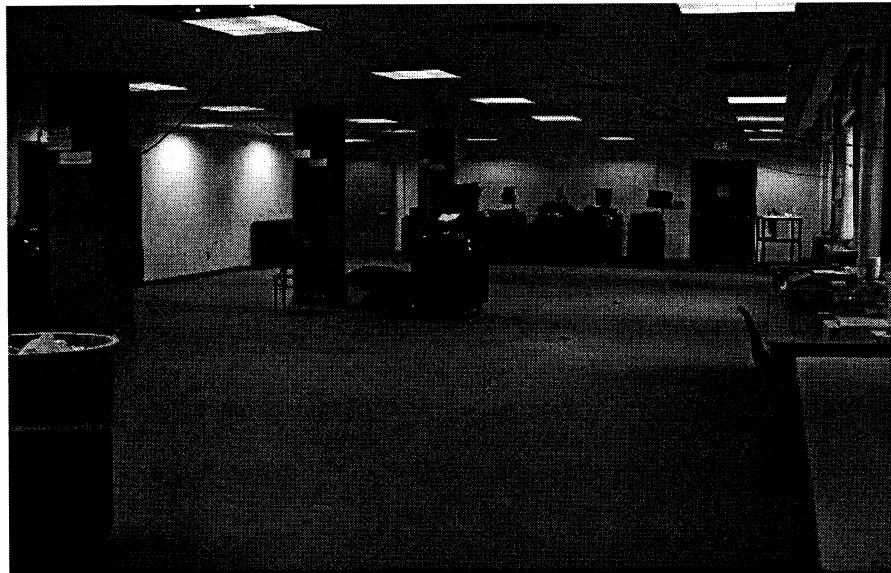
Orange County Voting Systems Warehouse Facility



For our visit to this facility, we were escorted by Susan Bahren and David Green, the Commissioners for Orange County Board of Elections.

Space

Although these rooms and hallways are normally full to capacity with voting machines, almost all the machines were presently deployed to individual poll sites for the 2009 General Election. Comments were conveyed by the commissioners concerning the very tight space and we concluded there was an inadequate capacity for storage of their machines, and the space needed to work on them.





Orange County Storage Space



With all available room and hallway storage space very nearly at maximum capacity, the addition of any additional scanners will make this an important issue that needs to be addressed in the very near future.



Static storage space is one issue and working space conditions is another. When they conducted maintenance, and pre-election testing, etc., it was logistically very difficult and time consuming to do so properly. Active/open space is determined to be insufficient especially with the addition of any new machines into this current space. Without proper space to work, the successful completion of their required election tasks could be at risk.

Testing Issue

The Commissioners mentioned that they are running into difficulties trying to fulfill the requirement to test all styles on the BMD (164). They state that they have neither the time nor the resources to do so. In fact, they have been losing inspectors when the inspectors realize the complexity of the task.

Other Facility Option

The Election Commissioners called our attention to the availability of another county building (old hospital) nearby which is currently vacant and affords the Board more room.

Security

We note that security of their facility space was also an issue. Being a dedicated voting machine warehouse facility for the county, every external doorway into this space should have a master lock and/or electronic access panel for the sole use and control of the county board of elections. Any other access should be cleared, escorted or granted access by the county board of elections in such a manner as to ensure security and chain of custody for the stored machines.

Direct external accesses were identified:



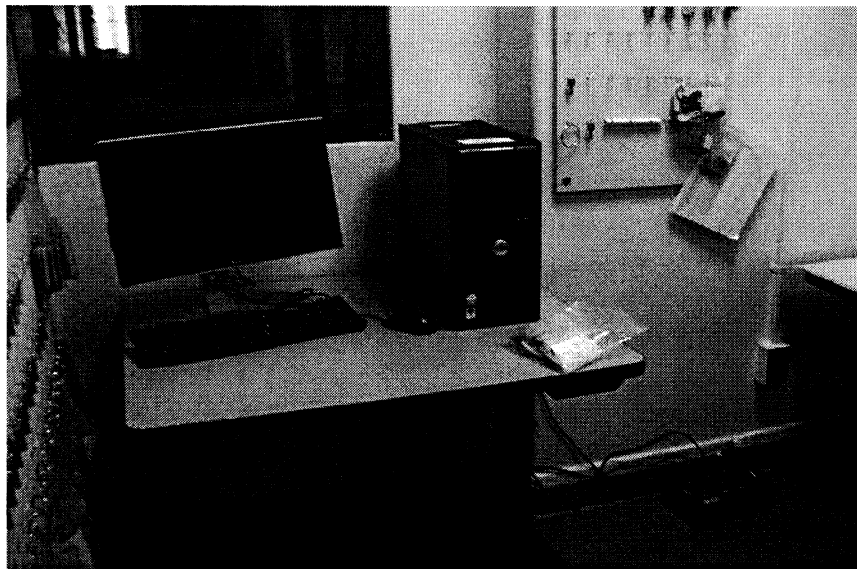
Sole key lock...



... and one electronic access pad.



The County Commissioners explained that all the entryways currently allow for multiple unaccompanied accesses from the outside by non-election personnel (principally building maintenance and custodial employees). They have been unsuccessful in obtaining electronic swipe card scan devices for all doors. They have also been unable to institute satisfactory entry protocol for all entryways such that admission could be monitored and supervised. This issue of unrestricted security access inherently induces a confidence and competency risk for the county's successful completion of required tasks for elections. In addition, there is always the matter of simply protecting valuable assets.



It is recommended that Orange County be encouraged to promptly resolve all these issues, with their current space or in a new more adequate and better secured voting system facility.

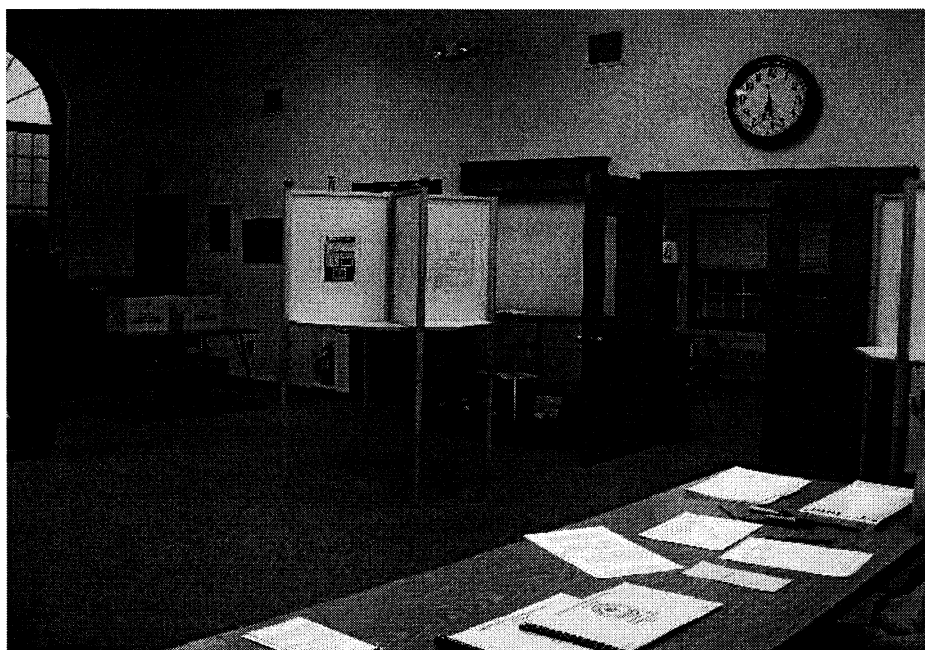
Orange County Voting Site

Hampton Burgh Town Hall, 18 Bull Rd, Campbell Hall, NY 10916

We were at the poll site at 6:00am to observe the poll opening.

Signs were visible in front of building indicating that this was a voting site.

For privacy, the poll site was making use of quads (standing station) privacy booths and tables with two side-by-side privacy screens



Traffic was light at this hour and there was no wait for the scanner.

The room was large enough for additional tables and privacy screens if needed for a larger election. The poll site coordinator was concerned that there needed to be a Zero Report for each voting district using the scanner (in this case 3 districts). They would like to have one Zero report and just the summary with serial # for the rest. When asked, it seemed that the concern was about waste.

Sullivan County Voting Site

Neversink Town Hall, 273 Main St, Grahamsville, NY 12740

There were no poll signs out front. One sign in window on a side entrance was imprinted "Vote Here". The voting room was quite a small space. There were several tables for the poll workers and several quads for ballot marking. Perhaps large enough for this election, but poll

workers expressed concern about the size of the room and how the next big election would handle more voters and would need an extra scanner.



This was the first time this polling place was using the new scanners. The poll workers were not familiar with the handling of under-votes. They expected the ballots to be rejected by the machine so that the voter could be alerted of a missed contest. Some of the voters had missed the propositions on the back of the ballots. They said they were not aware of the amendment to the regulation that allows the scanners to accept under-voted ballots. They had called the county board concerning under-votes, but said the county officials were unfamiliar with the issue. Inspectors also were experiencing a number of rejected ballots for “ambiguous marking”. Some of the voters were not filling in the candidate marking areas correctly. There was no problem scanning the ballot when they took their ballots back and marked in the voting areas more carefully.

Poll workers confirmed that privacy sleeves were not being requested or used.

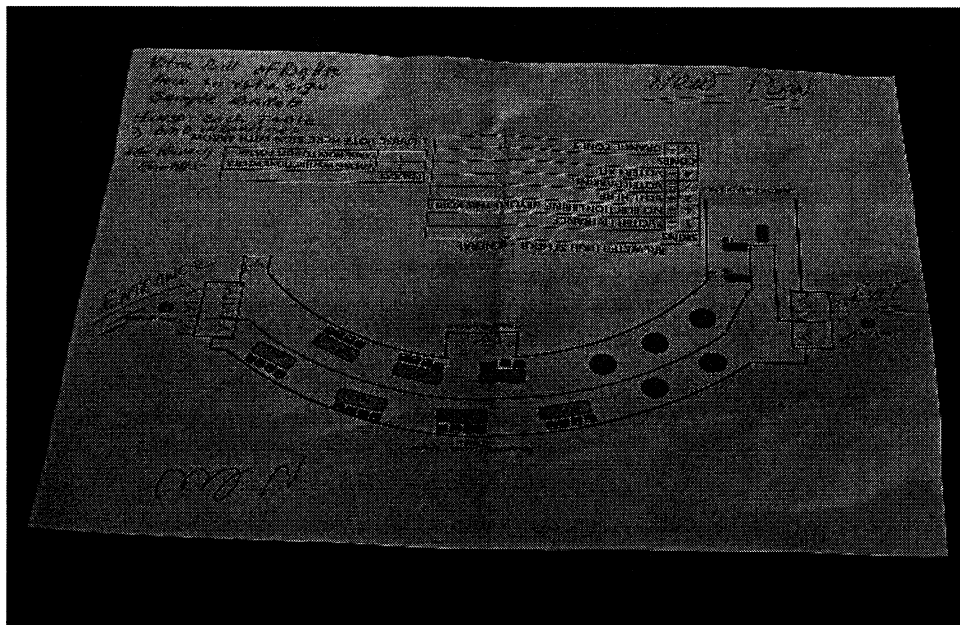
There was a comment made that there was no difference in the machine total tapes for the two voting districts; “no way to tell them apart”. We suggested they discuss it with their county board of elections supervisors, to insure that each voting district would have a naming distinction on the tape.

Putnam County Voting Site

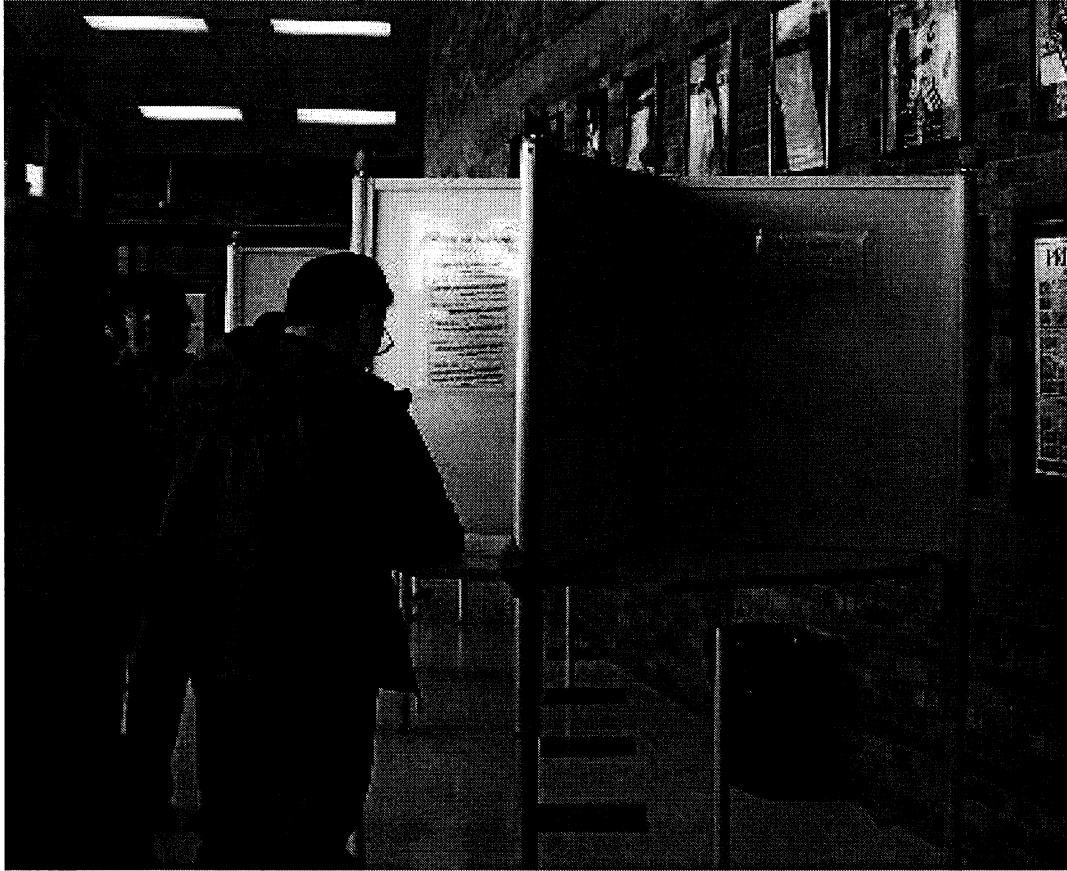
Brewster High School, 50 Foggintown Rd, Brewster, NY 10509

We arrived at this poll site at 11:30am and the parking lot was full of cars. The only signs on the street were Health Clinic signs as flu shots were being given in the same building. We parked in one of the full lots and walked to the nearest set of doors. We soon realized that these were Exit doors. Paper "Exit" signs were taped on the inside doors for people already inside the building. Entrance doors were on another side of the building and we saw a few Election signs near that door. While we were there, a number of voters tried to enter through the exit.

Inside the building, the poll workers and voters had to deal with a somewhat challenging traffic flow situation. They had 6 voting districts to accommodate. The entrance was a fairly wide passageway with election tables for the various districts lining both sides. Past the tables, there were five quad privacy booths voting tables and around the corner were 3 scanners. Nevertheless, the board did a good job of mapping their setup and flow for inspectors to follow. However, there were many voters and crowded activity in the site with people constantly passing near where voters were marking their ballots at the quads. The placement of privacy booths needs to be reconsidered by the board, to ensure adequate privacy.



Putnam County- Brewster High School



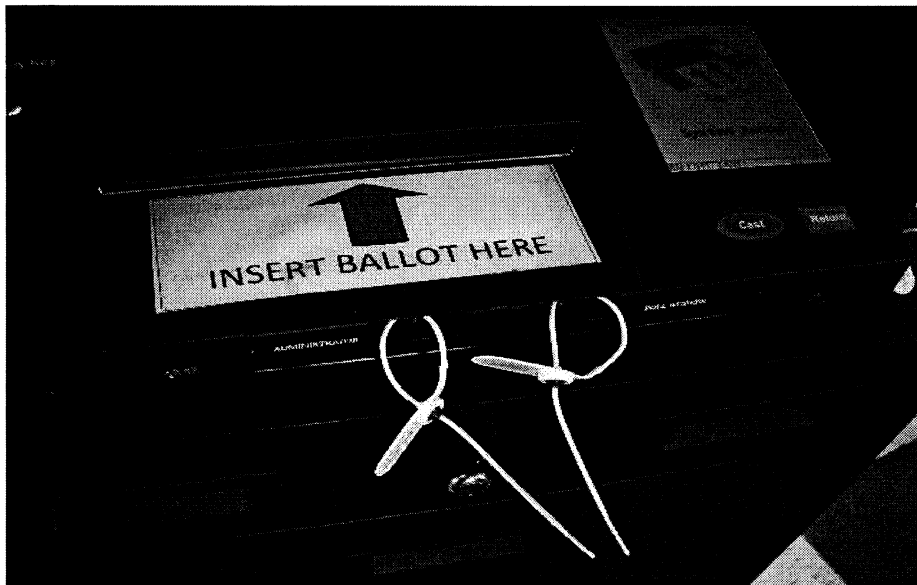
Putnam County-Brewster High School

While we were at this poll site, a voter came up to the supervisor with concerns about her privacy while filling in a ballot. At one of the quads she was concerned about the flow of traffic passing nearby as she entered her votes, and also concerned about the possibility of someone looking through the window right next to her quad.

Past the voting quads, the building hallway turned to the left, where they had placed 3 scanning machines; with about 10 feet spaced between them. The first machine was getting the brunt of ballots.



Each scanner had a piece of paper with a large red arrow attached near the machine ballot slot, so it was easy for the poll workers to direct the voters where to cast their ballots.



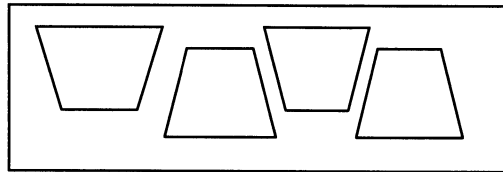
The inspectors assigned to the scanners were doing a good job of explaining how to use the machine without getting near the front of the scanner where the ballot might be viewed. Their particular challenge was to keep the aisles from getting congested and to keep the voters moving to make room for the arriving voters. The Board might consider a larger space, to accommodate larger elections.

Delaware County Voting Site

Public Safety Building, 280 Phoebe Lane, Delhi, NY 13753

This was an uncontested election so there was a very light turnout...less than 10 voters per hour. Inspectors mentioned that a number of voters who did show up commented that they came simply out of curiosity about the new machines.

For privacy in marking the ballots inspectors placed portable 3-sided privacy screens on long folding tables. This Delaware poll site alternated the screens; one facing one side of the table next to a placement facing the opposite side of the table, effectively creating a visual buffer between each seated voter.



This allowed fewer placements at each table, but it afforded greater distance between each voter and therefore greater privacy. This seemed to solve the privacy screen issue, but still requires attention to the pathway behind the seating. It must be wide enough to prevent viewing by people passing behind the seated voter.



There were several comments about how hard it was for older voters to read the ballots due to the small font size. We advised inspectors to make this known to the county election

commissioners. The poll site had plastic magnifiers available, but the glare of the florescent lighting made that solution a bit less than effective.

The site was using simple ink pens for marking and a number of ballots were rejected for indistinct marking. Those ballots had to be remarked by voters. The County Board is encouraged to utilize the markers recommended by the Election Operations Unit.

Schoharie County Voting Site

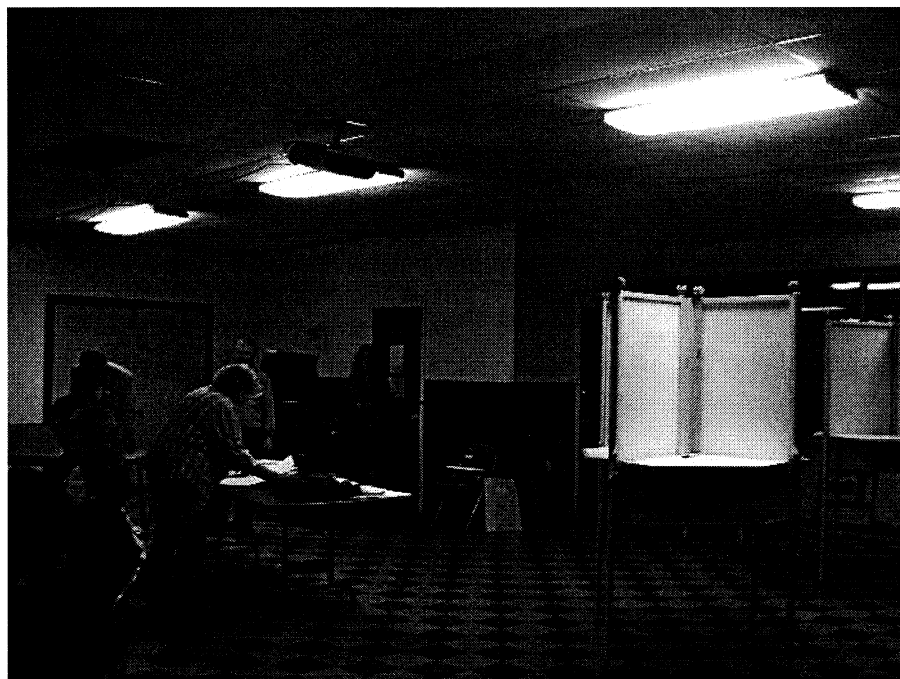
Niagara Hose Co. BLDG, 133 Grand St., Schoharie, NY 12157

We were at this site to observe election process related to the poll closing at 9:00 pm.

Voters were using regular ink pens instead of marking pens, which we encourage the board to exchange for recommended markers.

The site had processed nearly one thousand voters by the end of the night and it was a very active site through to 9:00pm.

The room setup contained two quad privacy booths and a folding table with privacy booths for ballot marking, affording seating for voters while they marked their ballots.



One poll worker suggested that blue tape be put on the floor to create a line of separation behind the scanner and the next voter in line so that the next person didn't get too close to the voter inserting their ballot.

This was a very efficient and cooperative polling place. When the poll closed, everyone moved immediately to their closing task. Everyone easily assumed a role and stayed on task (opening and counting absentee ballots, closing out the scanner, etc). Approximately eight candidates quietly walked in and waited patiently for the count. There were also 2 interns from the high school who had a role in the recording of results for their own class assignment.

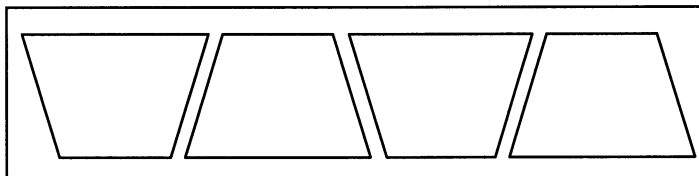
General Summary

Confidentiality

Privacy 'Booths'

The most frequent dissenting comment was "I prefer the old lever machines. The poll workers were always quick to say that these comments came primarily from older voters. The first impression is that some people were simply resistive to change, but there may be more to it. The old lever machines also have an outside curtain. Some people tend to take more time or may have more difficulty reading, locating and filling in the voting positions. They may be more self conscious and wish to take their time without feeling the pressure of having eyes of others on them. In one of the polling places, inspectors mentioned that curtains were an available option for the quads. If in fact curtains could be available on at least a few of the quads, it might relieve the privacy anxiety.

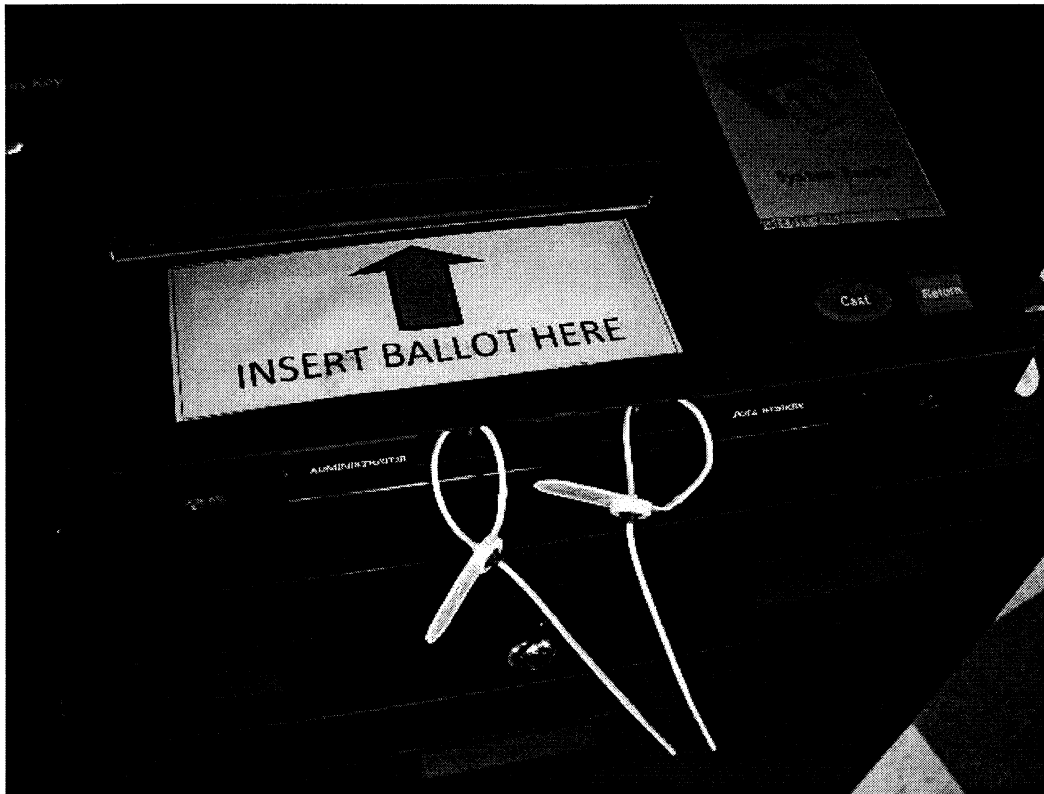
Other privacy vulnerabilities: some counties were using the 3-sided privacy screens set up on 8' tables. When these screens are set up side by side they are vulnerable to viewing by the person sitting in the seat adjacent or from someone walking close behind. One of the counties alternated the screens facing one side of the table next to a placement facing the opposite side of the table, effectively creating a visual buffer between each seated voter.



That seemed to solve the seated neighbor privacy issue, but still required a wide-enough pathway behind the seating.

Scanners

The scanners were being managed with different degrees of confidentiality. Some inspectors were stationing themselves behind the scanner such that they had no view of the scanner opening. They coached the voter as to how to insert the ballot without benefit of seeing what the voter was doing. Others stood near the front and pointed out the insertion point with some opportunity to view the ballot markings. We watched one inspector actually take the ballot from several voters who were having difficulty getting the ballot into the scanner.



One of the good ideas we saw was a sheet of paper with a large red arrow and the words “Insert Ballot Here” (see above) taped in front of the scanner insertion point. The poll workers simply advised the voter to insert the ballot in the slot to which the red arrow was pointing.

Privacy Sleeves

None of the five counties we visited made overly popular use of the privacy sleeves, nor were they requested by voters.

Traffic Flow

A few of the voting sites had space problems and had voters walking close behind voters who were marking ballots. In a busy general election with crowded polling places, the table placements and traffic flow will play an even greater part in privacy considerations.



Putman County

Privacy Conclusion

Confidentiality is not a scanner or privacy screen issue so much as a procedural issue. The scanners are adequate in protecting privacy as long as the poll sites are set up properly and the poll workers are trained to manage the shielding of the ballots during the vote marking and scanning processes

General Observations

Poll Place Signage

None of the poll sites had very good street signage. Some had a small signs in the entry windows, while others had signs near the door way. In both cases you had to be within feet of the entrance before they were actually visible. Granted, most voters are familiar with poll sites, but it would be helpful for a new voter to know they had arrived at the right building before getting out of their car. Better signage would also be useful to remind voters driving or walking by that there was an election going on.



Sullivan County

Readability

At every poll site we heard complaints about how hard it was to read the ballots. We asked the poll workers to pass on that information to their Board of Elections Supervisors. Font size can be adjusted. Most of the sites we visited did have plastic magnifiers available for those who might need them, and we noticed that some of the voters brought their own magnifiers.



Orange County

Marking Pens

Some counties used markers and others used simple ink pens. The ballots being rejected for “ambiguous marking” had been marked using the ink pens. We noted that one county removed the marker caps so that voters didn’t absentmindedly walk off with them. This is a helpful tip, to ensure that more markers make it back to the election offices, for use in future elections.

Observations on 3% Audit

Reported by: Tarry Breads

Observations on 3% Audits of 2009 General Election by Montgomery & Fulton County Boards

Audits Monitored by Tarry A. Breads

I visited the Montgomery and Fulton County Boards on November 13 & 16, respectively. The purpose of the visits was to observe their conduct of the 3% audit required by the NYS Election Law Section 9-211 and proposed regulations in Part 6210.18, as well as to obtain feedback concerning the procedures and best practices disseminated by SBOE for this process. Generally, both of the Boards approached the audit positively, and performed it well, given that they were applying procedures which are still somewhat new to them. Following are highlights of these visits.

Montgomery County Board - Background

The Montgomery County Board had made all necessary preparations for performing a 3% audit (including preliminary organizational work, preparing ballots for auditing, selecting audit inspector teams, organizing the audit site, and determining the units to be audited) and were ready to initiate the manual count and tally process when I arrived.

- The target area for the audit was Mohawk, District #3
- A total of 119 ballots were audited and compared to the tape printout
- The audit team consisted of both Commissioners and both Deputies
- The press was present; no members of the public were in attendance
- The method of selecting the audit target was to chose the bigger of the two pilot areas, so that there would be a larger sample to audit

Fulton County Board – Background

The Fulton County Board had completed most of the necessary preparations for performing a 3% audit (including preliminary organizational work, preparing ballots for auditing, selecting audit inspector teams, organizing the audit site, and determining the units to be audited) when I arrived. They had experienced some difficulty in customizing the SBOE “Individual Tally Sheet” so that it provided sufficient space to permit the number of races that would need to be tallied, and they were just finishing changes to it when I arrived. (See “Specific Feedback Offered to SBOE” below for details)

- The target area for the audit was the Town of Bleeker, ED #1
- A total of 183 ballots were audited and compared to tape printout
- The audit team consisted of one Commissioner and both Deputies
- The press was not present, nor were members of the public
- The method of selecting the audit target was via an on-line randomizer

General Observations

Overall, both the Montgomery and Fulton County Boards noted that the required 3% audit was time-consuming and labor-intensive, even though this particular session occurred in an off-year cycle with fewer races than a presidential year, for example. In both cases, Boards were drawing on limited staffing resources in order to accomplish a mandatory task which could potentially draw significant scrutiny from a variety of sources. It was suggested that the 3% audit focus on major races only, which might provide the same level of reconciliation, with less effort.

Both of the Boards experienced some level of concern in reconciling how a scanner may count votes versus how a human might perform such a count. Issues included odd marks, partial completion of the voting box on the ballot, use of check marks, etc., as compared to the historical emphasis on discerning voter intent.

It was apparent that something as minor as ensuring that hash marks are very carefully made and placed in uniform rows is essential to this process. This prevents confusion and the potential for a miscount during the tally and reconciliation steps.

Clearly, both Boards made a good-faith effort to fully comply with instructions, although they expressed some hesitancy as the procedures are not yet as familiar as others which have been in existence for many years. They visibly struggled to integrate some of the best practices within their own milieu. However, the consistent intent was to adapt SBOE guidance into their unique circumstances at the local level.

Specific Feedback Offered to SBOE

Each of the County Boards was encouraged to offer their input concerning the procedure and supporting documents distributed by SBOE. Below is a summary of their ideas and recommended changes.

Montgomery County Feedback & Suggestions:

- The “Re-Canvass Statement” and results tape from the scanner do not align in a maximally productive way, thus slowing the overall process and increasing the opportunity for human error as numbers are recorded. The Board has engaged in follow-up with Phoenix Graphics. *Note: documents were provided to all Boards in MS Word format, so that alterations and customizing would be possible in order to incorporate local needs.*
- The “Poll Site Ballot Transmittal/Reconciliation Form” should be modified under the “POLLS OPEN” section, where information is required for “In booklet #1, ballots are numbered from #X to #X.” This Board states that there may be more than 2 booklets used, although there is only space to record information for 2 booklets.

They suggest that additional spaces be added, or that the entire reference to such booklets should be deleted altogether.

- They modified the form provided, to include “Number of Blank Ballots,” as this information was not required by the SBOE form.
- In the same section indicated above, there is a request for further language to be added and instructions provided concerning the “Inspectors Agree YES or NO” category.
- The “Sequoia/Dominion ImageCast Security Seals/Tags” form requires information to be entered regarding the “Ballot Box Shield Gap” (#5A and 5B), although Dominion now distributes the ImageCast with a rubber seal across the area referenced, seemingly making a security seal unnecessary on newer models.
- The “Statement of Canvass” form requests duplicative information on page 1, “Open Polls – Certificate #1” under “Provide Seal Number Here.” This information is required on the Security Seal Tag Report already. Additionally, there is only space for one number, when multiple security seals are used on each machine.
- The same comment applies to page 2, “Close Polls – Certificate #2,” which requires this information.
- Concern was expressed regarding the entering of information for “Number of emergency ballots issued.” One of the Deputies noted that, for example, if problems with a voting machine were ultimately resolved on Election Day and it could be used, they would feed ballots into it. This would make the reconciliation of numbers difficult later, as an emergency ballot may be issued, but then scanned at a subsequent point.
- At the bottom of this form, there is no place to enter the absentee count.
- The Board requested that SBOE revisit the number of ballots that must be printed, citing the issue of historical turn-out, versus the formula for the required number of ballots, versus printing cost.
- Concerns were expressed regarding “human” versus “machine” count, and how the inherent differences might impact the audit. Years of fostering a spirit of discerning voter intent are difficult to disregard, although a voting machine is not able to provide this same function when registering votes. Efforts to reconcile even a single vote difference between these two totals has the potential to inadvertently create

an endless loop of re-examining ballots and re-counting in an effort to identify a reason for achieving differing numbers.

Fulton County Feedback & Suggestions:

- The “Individual Audit Tally Worksheet” does not allow sufficient space for the hash marks that must be used in this process. However, both of the Boards visited had manipulated the document in order to make it useable for their audit, as intended by the distribution in MS Word format.
- The Fulton County Board also expressed concern regarding the formula for the number of ballots that must be printed as compared to printing cost, as well as the need to retain blank ballots when storage capacity is limited.
- The timing of the required 3% audit is difficult following a primary.

Appendix A

Voter Outreach Documents

St. Lawrence Outreach Pamphlet (Front)

- The Ballot marking Device (BMD) portion of the ImageCast is available to assist the voter in marking the ballot privately and independently.
- Instructions are available at your polling place.

Checking Your Work

- Check your ballot over before you leave the privacy booth.
- Make sure you have marked your choices clearly and have not made any other marks on the ballot.
- If there are any questions regarding the ballot and how it should be filled in, please ask an Election Inspector for assistance.

IMPORTANT DATES

- FALL PRIMARY ELECTION
- SEPTEMBER 15, 2009
- ONLY APPLICABLE TO THOSE REGISTERED TO AFFILIATED PARTIES INVOLVED IN A PRIMARY.
- ONLY APPLICABLE TO THOSE IN TOWNSHIPS IN PRIMARYS.
- GENERAL ELECTION
- NOVEMBER 3, 2009

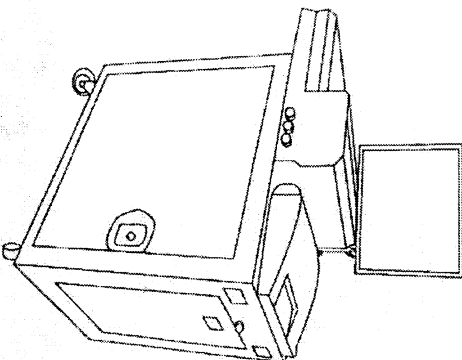
REGISTRATION DATES

- PRIMARY DATES
- AUG. 21 - Last day for PRIMARY registration/enrollment
- AUG. 26 - Last day for "Change of Address"
- SEPT. 8 - Last day to apply by mail for absentee
- GENERAL ELECTION
- OCT. 9 - Application for new registration by mail due
- OCT. 14 - Last day for "Change of Address"
- OCT. 24 - Last day to apply by mail for absentee ballot



How to Vote

With Sequoia
ImageCast



St. Lawrence County Board
of Elections

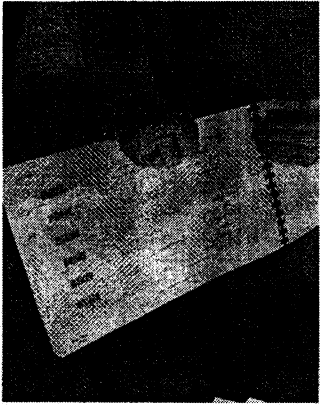


48 Court St. Canton NY, 13617
Phone: 315-379-2202

St. Lawrence Outreach Pamphlet (Back)

SIGNING IN AND RECEIVING THE BALLOT

- Sign in at the Inspector table.
- The Election Inspectors will provide you with the correct ballot for your district.
- The Election Inspector will direct you to a privacy booth so you may mark your ballot.



Marking Your Ballot

- Mark your ballot by filling the voting square next to the candidate's name you are selecting.
- Please use only the marking pens provided.
- For a write-in vote, locate the "Write-in" box at the bottom of the office column.
- Then write-in the name.

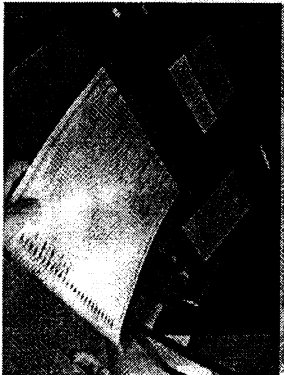


Mistake?

- If you make a mistake on the ballot do not try to erase the mark.
- Please return the ballot to the Election Inspectors and ask for a new one.

ImageCast Optical Scanner

- When you are finished filling out your paper ballot, take the ballot to the scanner.
- Place the ballot into the scanner.
- The LCD display will alert you that your ballot has been cast.
- Your ballot will be safely deposited in the secure ballot box.



Lewis Outreach Pamphlet (Front)

Checking Your Work

- ✓ Check your ballot over before you leave the voting booth.
- ✓ Make sure you have your choices marked clearly and have not made any other marks on the ballot
- ✓ If you have any questions please feel free to ask an Election Inspector.

The Ballot Marking Device (BMD) portion of the ImageCast is available to assist the voter in marking the ballot privately and independently

Instructions are available at your polling place.

	PARTY NAME	
Joe A. Somebody	EXAMPLE	

Important Dates

Fall Primary Election

September 15, 2009

Only applicable to those registered to affiliated parties involved in a primary

General Election

November 3, 2009

Registration

Primary Dates:

August 21 – Last day for registration/enrollment.

August 26 – Last day for "Change of Address"

September 8 – Last day to apply for absentee by mail.

General Election Dates:

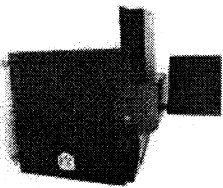
October 9 – New registration by mail due

October 14 – Last day for "Change of Address"

October 24 – Last day to apply for absentee by mail.

HOW TO VOTE

WITH SEQUOIA IMAGECAST



Lewis County Board of Elections



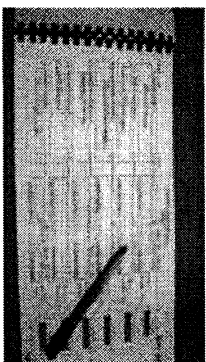
5439 Shady Ave. Lowville N.Y., 13367
(315) 376-5329

Lewis Outreach Pamphlet (Back)

WHERE TO START

SIGN IN & RECEIVE YOUR BALLOT

- Sign in at the Inspector table.
- The Election Inspector will then hand you a ballot.
- You will be directed to an area where you are able to mark your ballot.



MARKING YOUR BALLOT

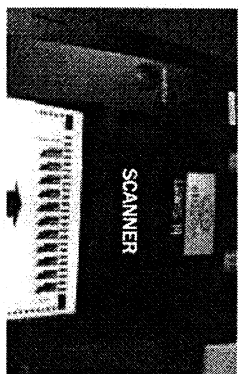
- Mark your ballot by filling in the square next to the candidate of your choice.
- Use only the provided marking pens.
- For a write-in vote, fill in the square under the "Write-In" box at the bottom of the ballot.
- Then proceed to write in your choice.

- If you made a mistake on your ballot. Do not try to cross it out.
- Simply give the spoiled ballot to an inspector and obtain another ballot.

FOUND WHO YOU WERE LOOKING FOR?

When you are finished marking the contest of your choice...

- Take the ballot to the scanner.
- Place either end of the ballot into the scanner slot.
- If the scanner beeps, you have over voted. You may cast as is (Green Button) or get a new ballot (Red Button).
- If your ballot is marked correctly, the scanner will automatically cast the ballot.



Herkimer Outreach Mailer

HERKIMER COUNTY BOARD OF ELECTIONS
109 MARY STREET, STE 1306
HERKIMER, NY 13350

Marty L. Smith
Republican Commissioner
315-867-1104

Shelly Pazzanese
Democratic Commissioner
315-867-1103

October 19, 2009

**TO THE VOTERS ELIGIBLE FOR THE GENERAL ELECTION ON NOVEMBER 3, 2009 IN
THE TOWNS OF DANUBE AND SCHUYLER**

Per NYS Election Law, we will not be using the lever voting machine on which you are used to voting.

We will be using an optical scan tabulating machine.

Basically you are handed your printed ballot when you sign the poll book at the polling place. You then go to a privacy booth and mark your ballot with a black marker. You then slide your voted ballot into the optical scan machine.

IF YOU WISH TO SEE HOW THIS MACHINE WORKS AND TRY IT OUT, WE WILL HAVE A DEMONSTRATION MACHINE AVAILABLE ON SATURDAY, OCTOBER 31, 2009 AT YOUR REGULAR POLLING PLACE,

DANUBE - THE TOWN OFFICE BLDG, 438 Creek Rd.

SCHUYLER - THE TOWN OFFICE BLDG, 2090 STATE RTE 5

THE HOURS WILL BE FROM NOON - 4 PM

If you have any questions, please feel free to call either Commissioner at any time.

Oneida County Outreach

COUNTY ELECTION BOARD TO HOST NEW VOTING MACHINE OPEN HOUSE

UTICA -- Oneida County Election Commissioners Kathleen M. Perez and Pamela N. Mandryck today announced that the Oneida County Board of Elections will host an Open House Wednesday evening, September 9, 2009, from 6:30 PM to 8:30 PM at the Oneida County Board of Elections for voters in the Town of Marcy to view the new electronic voting machines that will be used by voters in that town in the September 15, 2009 Primary Election and in the November 3, 2009 General Election. The Open House will be held in the Oneida County Board of Elections offices on the 3rd Floor of Union Station, 321 Main St. in Utica.

On Primary Day, there will be county-wide Republican, Independence and Conservative primaries for the Office of Oneida County Surrogate Court Judge. Registered voters in those three parties will have the opportunity to vote in those primary races. The three Surrogate Court Judge races will be the only races on the ballot in the Town of Marcy.

The Town's four polling locations will serve as test sites for a new system that all voters will begin using next year. Marcy voters will use paper ballots and scanning machines instead of the traditional lever-style machines for the primary and general elections. The town is among many jurisdictions around the state participating in the pilot program. The current lever action units will be replaced next year in all election districts with the new voting systems in compliance with the Help Americans Vote Act of 2002.

According to the two commissioners the Town of Marcy was selected to be part of the state-wide pilot because it has a self-contained legislative district, and it is reasonably close to the Board of Election offices at Union Station in Utica if questions arise.

Voting with the new electronic machines will be relatively simple. Voters will mark a ballot in a privacy booth and then feed it into the scanner so the results can be tabulated and recorded. The ballots are then stored in a secure portion of the voting machine to ensure they can be accessed at a later time in the event a second verification is needed.

The ballots look like the bubble tests taken in schools and marking the ballot will be no more difficult than marking a choice on a lottery ticket. There will be no way to link the "paper trail" of ballots to any individual voter. The scanners will give voters the option of accepting the choices it recorded from the ballot or voiding the original ballot and marking a replacement ballot. All ballots must be accounted for at the close of polls.

Anyone wishing to attend the open house may do so. Anyone who has a question or would like further information can contact the Oneida County Board of Elections at 798-5761 or 798-5763.

Appendix B

Voting Instruction Poster

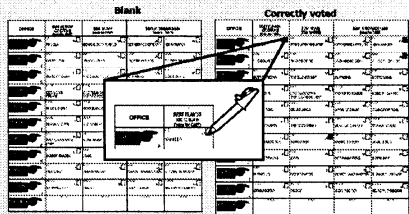
St. Lawrence Voting Instruction Poster

Voting Instructions

1.

Voting For A Candidate

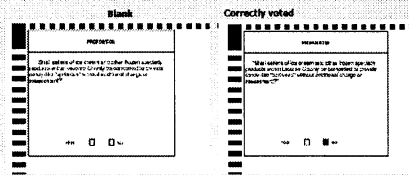
To vote for a candidate, fill in the black square completely in the box with your candidate choice.



2.

Voting For A Proposition

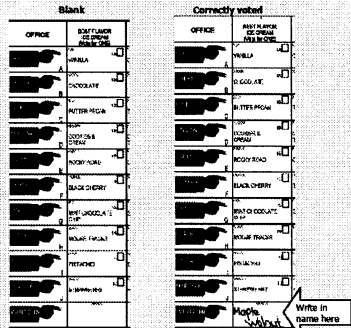
To vote on a proposition, fill in the square completely for either YES or NO.



3.

Voting For A Write-In

To do a write in, at the bottom of the column of the race you wish to write in, simply print the candidates name.



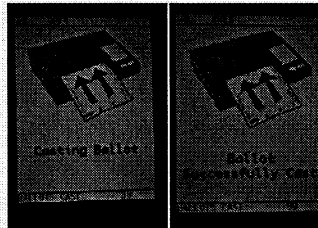
DO NOT MAKE ANY MARKS IN THE NEXT WRITE IN BOX.

4.

Review and Scan

After you have finished marking your ballot, please review to make sure it is voted the way you want. After you have reviewed it, the inspector will show you to the voting machine where you will scan your ballot.

If you have filled out your ballot with no errors, the voting machine will cast your ballot after it has scanned it. You will see these two screens:



5.

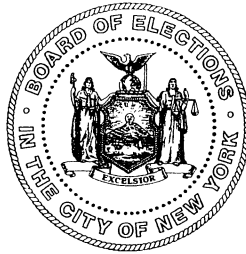
Overvote Warning

If you have made an error of an overvote, meaning you have voted for more than allowed in a contest, this warning will come up on the screen:



You can press the cast button if you wish to cast your ballot as it is and a void will be cast only for the office you overvoted, or you can press the return button to get your ballot back. You will need to go to the Inspectors for a new ballot to mark and the ballot with the error on it will be void.

F.Y.I.



FREDERIC M. UMANE
PRESIDENT

JULIE DENT
SECRETARY

JOSE MIGUEL ARAUJO
JUAN CARLOS "J.C." POLANCO
JAMES J. SAMPEL
NANCY MOTTOLA-SCHACHER
NAOMI C. SILIE
J.P. SIPP
GREGORY C. SOUMAS
JUDITH D. STUPP
COMMISSIONERS

BOARD OF ELECTIONS

IN
THE CITY OF NEW YORK
EXECUTIVE OFFICE, 32 BROADWAY
NEW YORK, NY 10004-1609
(212) 487-5300
www.vote.nyc.ny.us

MARCUS CEDERQVIST
EXECUTIVE DIRECTOR

GEORGE GONZALEZ
DEPUTY EXECUTIVE DIRECTOR

PAMELA GREEN PERKINS
ADMINISTRATIVE MANAGER

STEVEN H. RICHMAN
GENERAL COUNSEL
Tel: (212) 487-5338
Fax: (212) 487-5342
E-Mail:
srichman@boe.nyc.ny.us

December 29, 2009

TO: ✓ The Commissioners of Elections in the City of New York

FROM: Steven H. Richman, General Counsel *SHR*

COPIES: Marcus Cederqvist, George Gonzalez, Pamela Perkins,
John Owens, Charles Webb & Steven Denkberg

RE: SECTION 3-212(1) OF THE NYS ELECTION LAW –
ELECTION OF BOARD OFFICERS FOR THE YEAR 2010

Section 3-212(1) of the New York State Election Law provides that:

“ The election commissioners, **at their first meeting after the first day of January of each year**, shall organize as a board, **electing one of their number as president and one as secretary**, and if there is a deadlock, the members shall draw lots for such places. The president and the secretary shall not belong to the same party.” (emphasis added.)

Therefore pursuant to law, you must **elect the Board’s President and Secretary for calendar year 2010** at your meeting which is scheduled for **TUESDAY, JANUARY 5, 2010.**

Thank you for your cooperation and understanding in this matter.

County

FYI

Westchester Lawyer Charged With Felony Election Fraud

A Yonkers attorney has been arraigned on election fraud charges, Westchester District Attorney Janet DiFlora announced yesterday. In September, Wilson Soto, 43, allegedly gave a false home address when he voted in the Democratic primary for Westchester's 17th Legislative District at the Renee Burke Senior Housing Center. The attorney, a former Yonkers city councilman, allegedly lied so he could cast his ballot for Westchester County Legislator Jose Alvarado in a hotly contested election, according to the Web site of the Westchester-Rockland Journal News. The site reported

that Mr. Soto was Mr. Alvarado's lawyer.

Mr. Soto who is scheduled to return to court on Feb. 17, is charged with offering a false instrument for filing and illegal voting, both Class E felonies that carry a maximum penalty of four years in prison. Andrew A. Rubin of Mancuso, Rubin & Fufidio, who represents Mr. Soto, said that as a procedural matter his client could not plead in City Court. However, he said, Mr. Soto "looks forward" to being heard on the matter.

—Noeleen G. Walder

Court Settles Dispute Over Reform Party Trademark

A federal judge has put a seeming end to a lengthy dispute between warring factions over the use of the name and logo of the Reform Party. In 2005, two rival slates of officers were elected at separate party conventions in Florida and Arizona, spawning litigation over which election was valid. In 2008, a Texas state court ruled the Arizona convention was invalid and enjoined the party

officers it elected from holding themselves out as Reform representatives. A subsequent suit by the Arizona faction over the use of the name and party logo, which features an eagle and the American flag, was filed in the Eastern District. In dismissing the case, Judge Joseph F. Bianco ruled the plaintiffs had a "full and fair opportunity" to litigate their claims in Texas state court, but chose not to appear, resulting in a default judgment. The appropriate challenge was a "direct appeal to the Texas appellate courts (which plaintiffs chose not to do) and not a collateral attack in New York," Judge Bianco ruled. *MacKay v. Crews*, 09-cv-2218, appears on page 44.

—Vestalin Mitev

County
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THE CHIEF LEADER, FRIDAY, DECEMBER 25, 2009

FOR THE
RECORD

The war between the Bloomberg administration and the judicial branch of government has found a second front.

After Mayor Bloomberg himself launched a dubious assault on the integrity of Manhattan District Attorney Robert Morgenthau earlier this month, his Corporation Counsel, Michael Cardozo took aim at the judiciary while receiving an award from the Fund for Modern Courts Dec. 4.

He used what is normally a convivial occasion to complain about delays in cases being resolved and said a change in court culture was required to "improve judicial accountability and, with it, judicial performance."

Saying he was speaking for the Mayor as well, Mr. Cardozo accused some judges of either ducking tough decisions, not managing their calendars well, or putting off rulings as a tactic "to coerce a settlement" between the city and its opponent in a case.

In the Dec. 17 edition of the New York Law Journal, 18 appellate judges who are assigned to the First Department, including Presiding Justice Luis A. Gonzalez, fired back in a letter castigating Mr. Cardozo for "his misguided assertions, his misplaced blame and his attacks on the state trial judges."

The letter said that most of the corrective actions he recommended had "already been implemented by the Office of Court Administration."

"We do not dispute that the court system continues to experience excessive delays in litigation," the judges continued. "However, we strongly reject the premise that such delays arise from any systemic judicial inefficiency."

In fact, they stated, the Corp. Counsel's Office "plays a significant role in causing those undue delays" by not assigning enough staff to deal with cases. They also suggested further delay was caused by the city's balking at handing over evidentiary material to opposing attorneys, writing, "The city's almost routine failure to timely and fully cooperate with its discovery obligations, even in the face of repeated court orders, is regularly confronted by city part judges attempting to solve the city's intransigence."

Mr. Cardozo denied malevolent intent, telling us that Law Department Tort Chief Fay Leoussis has struggled mightily and reduced a backlog of 3,000 cases a decade ago to just 440 today. That backlog, and understaffing, accounted for the city having "been in default of many of its discovery obligations."