productions and to work in the theater. In 1999 he was in a production of John Ford's *'Tis Pity She's a Whore* at London's Young Vic, where he is active in fund-raising, and in 2002 he starred in the company's staging of Christopher Marlowe's *Doctor Faustus.*

When Minghella cast Law in *Cold Mountain,* he was prepared to find the actor jaded by success. "And, lo and behold, an equally eager, apparently untouched, and similarly innocent man showed up," says Minghella. "You know, filming has a very similar characteristic to alcohol: it's not very long before people's guards drop and their personalities reveal themselves. The thing about Jude is, if you had been with me on the last day of the shoot, you would have seen the same person you saw on the first day, with the same willingness to try, the same determination to improve, the same energy and commitment. That's a remarkable experience for a director. I would love to do movie after movie after movie with him."

For his next project—a new adaptation of *All the King's Men,* Robert Penn Warren's classic 1946 novel about political corruption in Louisiana—Law will act alongside Sean Penn, one of Hollywood's most politically outspoken actors. "These are very important times," Law says. "It's a time when everyone has to ask, 'What am I about? What do I want to happen in the world, and what do I want for my children? How do I want my children to grow up, not just economically but spiritually?' Timely for a film like *Huckabees.* Timely for a film like *All the King's Men* too."

There is no other actor quite like Jude Law out there today. He can do period and modern, drama and comedy. He has looks, intelligence, and passion. His talent is not in dispute. And yet doubts remain about whether Law really is a *movie star,* which Hollywood narrowly defines as someone whose name alone can ensure a $25-million-plus opening weekend. Is he too pretty to play the Tom Hanks Everyman? Does he lack the earthiness of a Russell Crowe? American audiences have always embraced the renegade quality of tough Australian actors such as Mel Gibson, but British actors tend to get categorized as charming rogues (Hugh Grant) or eccentric geniuses (Daniel Day-Lewis). Many British actors resort to playing villains in American movies because their classical training allows them to handle the dialogue and bring dimensions to their characters that can't be found in the script.

Law, however, defies all the categories.

No other modern English actor, with the possible exception of Ralph Fiennes, has been able to accomplish so much in such a short time. "What he's achieved for his age is kind of monumental," says Naomi Watts. But while Law certainly loves acting—the process, the collaboration, the challenge—maintaining a Tom Cruise–like brand does not seem to motivate him. When he walks into a room, he doesn't require everyone's attention. He prefers to observe people before engaging them. He is often described as loyal, and he counts only a few people as close friends. He is not shy, exactly, but polite and friendly. He'll use his charm to make people feel secure because he knows his looks are intimidating. He is so unassuming and comfortable in his skin that he immediately puts others at ease, but his true nature remains elusive. He's not self-consciously *star*-like.

Before the year is out, Law will be seen as Errol Flynn in Martin Scorsese's *The Aviator,* provide the title character's voice in Brad Silberling's animated feature *Lemony Snicket's A Series of Unfortunate Events,* and appear alongside Julia Roberts, Natalie Portman, and Clive Owen in Mike Nichols's film version of Patrick Marber's play *Closer.* If he's ever going to break through to the next level, this would appear to be the moment. "I'm absolutely certain that he is going to become a single-name actor if he wants to, and I think he does want it," says Minghella. "He has all of the talents. It's unfair, in a way, that he has so many—that he looks the way he does, that he's got the range that he's got, that he's got the inner life that he projects on-screen—because many actors who look the way he does can't summon inner life very easily."

Fortunately for Law, however, he's *not* American—or Australian, for that matter. He doesn't have to worry about keeping up with Brad and Russell and the two Toms. He can enjoy being Jude, which, after all, isn't bad. "The aim is not 'I want to be famous next year and I want to be earning $10 million,'" he says. "There is no rush. The joy comes from savoring each moment and each choice—the journey, rather than the end product." □

The Path to Florida

CONTINUED FROM PAGE 322 his dissent. What he wrote—that "counting every legally cast vote cannot constitute irreparable harm"—so provoked Scalia that, as eager as he was to halt the recount, he delayed things by dashing off an angry rejoinder, largely reiterating what he'd told the justices the previous night. "Count first, and rule upon legality afterwards, is not a recipe for producing election results that have the public acceptance democratic stability requires," he argued, forecasting that a majority of the Court would ultimately rule in Bush's favor on the merits.

Even some of the justices voting with Scalia squirmed at how publicly he'd acknowledged the divisions within the Court. To the liberal clerks, what he had written was at least refreshing in its candor. "The Court had worked hard to claim a moral high ground, but at that moment he pissed it away," one recalls. "And there was a certain amount of glee. He'd made our case for us to the public about how crassly partisan the whole thing was." Scalia's opinion held up release of the order for an hour. Finally, shortly before three o'clock, the Court granted the stay. No more votes would be counted. Oral arguments were set for the following Monday, December 11.

Gore and his team were crushed, but neither he nor his lawyers had given up. Even at this late date, Gore naïvely defended the good faith of the justices. "Please be sure that no one trashes the Court," he instructed his minions. His lawyers still hoped that Kennedy or O'Connor or both could be won over; perhaps they could be peeled away from the conservative bloc as they had been several years earlier to preserve *Roe* v. *Wade.* At a meeting that Saturday, Gore decreed that David Boies, and not Tribe, would argue the case on Monday, partly for fear that the more publicly liberal Tribe might antagonize those two swing justices, partly because Boies, the famed New York litigator who was the government's chief lawyer during the Microsoft anti-trust case, had been representing Gore in Florida and was, therefore, better able to assure O'Connor of the fundamental fairness of what was happening there.

But to the liberal clerks it was all over. They placed their dwindling hopes not on anything that would happen in the Court on Monday, but on the press. The brother of a Ginsburg clerk, who covered legal affairs for *The Wall Street Journal,* had learned that the paper would soon report how, at a party on Election Night, O'Connor was overheard expressing her dismay over Gore's apparent victory. Once that information became public, the liberal clerks felt, O'Connor would have to step aside. When, on the night before the Court convened, she sent out a sealed memo to each of her colleagues, those clerks hoped this had actually come to pass. In fact, she was merely stating that she, too, felt the Florida Supreme Court had improperly usurped the state legislature's power. Gore's lawyers, who also knew about O'Connor's election-night outburst, toyed briefly with asking her to step aside. But they demurred, hoping in-

stead that she would now lean toward them to prove her fairness. Things were that bleak.

When Gore's lawyers came to the Supreme Court for oral arguments on the morning of December 11, they felt that the Bush team's jurisdictional argument, that the Florida Supreme Court had overstepped its bounds, was a loser because it emasculated one appellate court more than any other appellate court would ever want to condone. And, though they didn't know it, Justice Kennedy agreed with them. In a memo circulated shortly before he took the bench, he endorsed what O'Connor had written the night before, but declared that it would not be enough: to carry the day, he argued, the conservative justices needed to assert that evaluating ballots under different standards in the various counties violated the equal-protection clause.

Up to now, this argument had received scant attention from the clerks, the litigants, or even the justices—and understandably so. Even in the best of circumstances, voting procedures were riddled with inconsistencies, beginning with the use of systems of wildly varying reliability, such as punch cards and optiscan machines, in different jurisdictions. Voters, often poor or black, in counties with older machines were far less likely to have their votes counted than those in wealthier jurisdictions, and nobody ever heard a peep from the Supreme Court about unconstitutionality. Moreover, the Rehnquist Court had always stingily construed the equal-protection clause of the 14th Amendment, enacted after the Civil War to protect freed slaves, applying it only when discrimination was systematic, blatant, intentional, incontrovertible. It was not surprising, then, that the Court had originally declined to hear arguments on the point, or that, when they returned to the Court, Bush's lawyers had given those arguments only 5 pages in a 50-page brief.

But here was Kennedy dusting it off. And not as some academic exercise, but as the very basis of the Court's decision. "We read the memo and thought, Oh, we've lost Kennedy," one liberal clerk recalls. In the star-studded audience awaiting the arguments that morning, someone spotted Al Gore's daughter Karenna—praying, he thought. It wouldn't help. The Court already had its majority. Now it had its rationale.

As the lawyers prepared to argue, the clerks pondered Kennedy's motives. Perhaps, they speculated, he found an appeal to fairness, even when it was inapt or unpersuasive, more winning than a hypertechnical argument about jurisdiction; perhaps it offered him a chance to sound moderate and wax eloquent. The oral arguments began, with a question to Theodore Olson from . . . Justice Kennedy. "Where is the federal question here?" he asked, sounding almost baffled, as if still genuinely wondering why the Court was hearing the case at all. In the corner of the courtroom where the liberal clerks sat, there were snickers, rolled eyeballs, nudges in the ribs. "What a joke," one said to another. Kennedy went on to denigrate the argument about the Florida court's jurisdiction, then cued Olson to what really mattered. "I thought your point was that the process is being conducted in violation of the equal-protection clause, and it is standardless," he told Olson. Olson, a keen student of the Court and canny reader of its moods, naturally agreed.

O'Connor railed against what she suggested was the stupidity of Florida's voters, who were too dumb or too clumsy to puncture their ballots properly. "Well, why isn't the standard the one that voters are instructed to follow, for goodness' sake?" she asked. "I mean, it couldn't be clearer." Boies tried to explain that for more than 80 years Florida's courts had in fact focused on the intent of the voter rather than the condition of his ballot, but this was one instance for the Rehnquist Court in which deference to the states, and precedent, didn't matter.

Breyer and Souter saw Kennedy's new focus on equal protection as an opportunity, suggesting during oral argument that if there were problems with the fairness of the recount the solution was simple: send the case back once more to the Florida Supreme Court and ask it to set a uniform standard. Breyer, whose chambers were next door to Kennedy's, went to work on him personally. An affable and engaging man, Breyer has long been the moderates' most effective emissary to the Court's right wing. But the politicking went both ways; at one point, Kennedy stopped by Breyer's chambers and said he hoped Breyer would join his opinion. "We just kind of looked at him like he was crazy—'We don't know what you're smoking, but leave us alone'—and he went away," a clerk recalls.

The encounters between the two men must have been extraordinary: with the presidency of the United States hanging in the balance, two ambitious jurists—each surely fancying himself a future chief justice—working on each other. And for a brief moment Breyer appeared to have succeeded. At the conference following the oral argument, Kennedy joined the dissenters and, at least temporarily, turned them into the majority. The case would be sent back to the Florida court for fixing; the recount would continue. But the liberal clerks never believed that Kennedy had really switched, and predicted that, having created the desired image of agonizing, he would quickly switch back. "He probably wanted to think of himself as having wavered," one clerk speculates. And, sure enough, within a half-hour or so, he did switch back.

Who or what sent him back isn't clear, but during that time, Kennedy conferred both with Scalia and with his own clerks. "We assumed that his clerks were coordinating with Scalia's clerks and trying to push him to stay with the majority," one liberal clerk says. "I think his clerks were horrified, and the idea that he would even blink for a moment here scared them," says another. "They knew the presidency would be decided in their chambers," a third clerk—working for one of the majority justices—recalls. "They would have fought tooth and nail—they would have put chains across the door—to keep him from changing his vote." Another clerk for another conservative justice puts it a bit differently. "Kennedy would not have voted the other way," this clerk says, "but had he been tempted, the clerks could have dissuaded him." Breyer lamented that he had Kennedy convinced, only to have his clerks work him over and pull him back in the other direction.

Given the approaching deadline, Rehnquist decreed after oral arguments that any decision to send the case back to Florida had to be handed down immediately; were the Court to reverse, time would cease to matter, and the decision could wait a day. Stevens banged out a one-paragraph opinion, remanding the case to Florida, and sent it around. "It seemed like a Hail Mary to me," recalls a clerk in one of the conservative chambers. There were no takers. The Court was going to reverse, and throughout Monday evening and into Tuesday morning the two sides drafted and circulated their proposed opinions. Rehnquist was writing what he thought would be the majority opinion, reversing the Florida court on both the jurisdictional and equal-protection grounds. Stevens was drafting the principal dissent; it would reiterate what he'd written in the unused dissent from the first round, but shorn of all legalese, in order to be easily understood by ordinary people. It chastised the Court for holding the justices of the Florida Supreme Court up to ridicule. "Although we may never know with complete certainty the identity of the winner of this year's Presidential election, the identity of the loser is perfectly clear," it stated. "It is the Nation's confidence in the judge as an impartial guardian of the rule of law."

The other dissenters would join Stevens, but had their own points to make. Because they, too, believed the case would hinge primarily on the autonomy of the Florida legislature, they dealt only secondarily, and peripherally, with the equal-protection argument. Stevens and Ginsburg denied that it

applied at all. For better or worse, Ginsburg wrote, disparities were a part of all elections; if there were any equal-protection concerns at all, she wrote, they surely applied more to black voters, noting a *New York Times* report that a disproportionate number of blacks had encountered problems voting. Though racial questions already hung over the Florida vote, hers was to be the only reference to race in any of the opinions, and it was relegated to a footnote. But to the liberal clerks, these issues needed to be acknowledged, and a footnote was better than nothing at all.

Neither Breyer nor Souter had suggested initially that the recount had triggered any equal-protection questions. But each of their draft opinions voiced such concerns; whether they'd come to believe that judging ballots under different criteria was really unconstitutional, or were still chasing after Kennedy, was never clear. Ultimately, Breyer conceded that the lack of a uniform standard "implicate[d] principles of fundamental fairness," while Souter wrote something a bit stronger—that they raised "a meritorious argument for relief." But for both the remedy was clear: send the case back to Florida. It was not to stop the recount altogether.

Late Tuesday morning, it became apparent that Kennedy and O'Connor would not join Rehnquist's opinion on jurisdiction, and would decide the case strictly on equal-protection grounds. Nowhere did O'Connor explain why she had abandoned what she had written on the jurisdictional matter in her memo the night before. To clerks on both sides of the case, what appealed both to her and to Kennedy about invoking equal protection was that it looked fair. "It was kind of a 'Keep it simple, stupid' kind of thing," one liberal clerk theorizes. Or, as a conservative clerk puts it, "they thought it looked better to invoke these grand principles rather than Article II, perhaps because it makes them look better in the press and makes them look like heroes." Their opinion, written by Kennedy, was joined by the other three conservative justices. And it would go largely uncontradicted: with time running out and the dissents nearly complete, the losers had no chance to explain, in any coherent way, why equal-protection concerns should not be allowed to stop the recount.

As the drafts began circulating, tempers began to fray. In an unusual sealed memo—an unsuccessful attempt to avoid the clerks' prying eyes—Scalia complained about the tone of some of the dissents. He was, he confessed, the last person to criticize hard-hitting language, but never had he, as the dissenters were now doing, urged the majority to change its decision based on its impact on the Supreme Court's credibility. He charged that his opponents in the case were inflicting the very wounds to the Court that they had supposedly decried. As Jeffrey Toobin first reported, he objected in particular to what he called the "Al Sharpton footnote" in Ginsburg's dissent: her comment on Florida's disenfranchised black voters. Whether out of timidity, collegiality, or affection—Scalia was her closest friend on the Court—Ginsburg promptly took it out. "It was the most classic example of what kind of bully Scalia is," says one clerk, who called Scalia's complaint "an attempt to stifle legitimate discourse worthy of Joe McCarthy." As for Ginsburg, this clerk says her response "showed a lack of courage."

BUSH LEAGUE
Katherine Harris, elections officials, and attorneys look over precinct returns at five A.M., November 8, 2000, in Tallahassee.

MARK FOLEY

Kennedy, too, sent around a memo, accusing the dissenters of "trashing the Court." Eager to suggest to the outside world that the Court was less divided than it appeared, he charged that the dissenters agreed with the equal-protection argument more than they were willing to admit. Shortly before his opinion went to the printers, he inserted a new line making substantially the same point. "Eight Justices of the Court agree that there are constitutional problems with the recount ordered by the Florida Supreme Court that demand a remedy," he wrote. Souter and Breyer had said so explicitly, he reasoned, while Stevens had done so implicitly by signing on to Breyer's opinion.

Stevens's clerks, who stumbled over the new phrase, reacted apoplectically. Shouting over the telephone, they told Kennedy's clerks that they had deliberately misrepresented Stevens's position and demanded that they change the language. When the Kennedy clerks refused, Stevens promptly uncoupled himself from that portion of Breyer's opinion, and Kennedy no longer had a choice: "eight Justices" became "seven." Later, as they handed in their respective decisions, Eduardo Penalver, the Stevens clerk, ran into a Kennedy clerk named Grant Dixton and told him that what the Kennedy chambers had done was disgusting and unprofessional.

In the Breyer chambers, too, there was unhappiness over Kennedy's addendum. But it was too late to take issue with it. Thus, Kennedy's point stood uncontradicted and would be picked up in the next day's press, including *The New York Times,* which printed a graphic illustrating how the justices had voted. On the equal-protection claim, it had seven voting for, and only two against. Breyer, a member of the Gore team later lamented, had been "naïve"; in his efforts to win over Kennedy, he'd "been taken to the cleaners."

Despite their loyalty to their justices—a striking, filial-like phenomenon among most clerks—several concede that the dissenters in *Bush* v. *Gore* were simply outmaneuvered. Never did the four of them have the votes to prevail. But first by endorsing a decision suggesting that the Florida Supreme Court had overstepped its bounds, then by appearing to buttress the majority's equal-protection

claims, the dissenters had aided and abetted the enemy. "They gave just enough cover to the five justices and their defenders in the press and academia so that it was impossible to rile up the American people about these five conservative ideologues stealing the election," one clerk complains. The tone and multiplicity of the dissents didn't help. While Stevens's rhetoric was impassioned, even enraged, the other dissents were pallid.

The Court's opinions were issued at roughly 10 o'clock that night. The only one that mattered, the short majority opinion, was unsigned, but it bore Kennedy's distinctive stamp. There was the usual ringing rhetoric, like the "equal dignity owed to each voter," even though, as a practical matter, the ruling meant that the ballots of 60,000 of them would not even be examined. The varying standards of the recount, Kennedy wrote, did not satisfy even the rudimentary requirements of equal protection. Although six more days would pass before the electors met in their states, he insisted there was too little time for the Florida courts to fix things.

There were two more extraordinary passages: first, that the ruling applied to Bush and Bush alone, lest anyone think the Court was expanding the reach of the equal-protection clause; and, second, that the Court had taken the case only very reluctantly and out of necessity. "That infuriated us," one liberal clerk recalls. "It was typical Kennedy bullshit, aggrandizing the power of the Court while ostensibly wringing his hands about it."

Rehnquist, along with Scalia and Thomas, joined in the decision, but Scalia, for one, was unimpressed. Whether or not one agrees with him, Scalia is a rigorous thinker; while the claim that the Florida Supreme Court overstepped its bounds had some superficial heft to it, the opinion on equal-protection was mediocre and flaccid. "Like we used to say in Brooklyn," he is said to have told a colleague, "it's a piece of shit." (Scalia denies disparaging the majority opinion; the other justices would not comment for this article.)

Sharing little but a common sense of exhaustion and Thai takeout, the clerks came together briefly to watch the news. As reporters fumbled with the opinions—the final line of Kennedy's opinion, sending the case back to Florida even though there was really nothing more the Florida court could do, confused many of them—the clerks shouted imprecations at the screen. The liberal ones slumped in their chairs; some left the room, overcome by their own irrelevance. "We had a desire to get out already and see if journalists and politicians could stop what we couldn't stop," says one. They contemplated a variety of options—holding a press conference, perhaps, or leaking incriminating documents. There was just one problem: there were none. "If there'd been a memo saying, 'I know this is total garbage but I want Bush to be president,' I think it would have found its way into the public domain," one clerk recalls.

Gore's lawyers read him the ruling. At last he concluded that the Court had never really given him a shot, and he congratulated his legal team for making it so hard for the Court to justify its decision. Kevin Martin, the Scalia clerk who'd tangled earlier with Stevens's clerks, informed his colleagues by e-mail that Gore was about to concede. To some, it seemed like gloating; Eduardo Penalver asked him to stop. "Life sucks," Martin replied. "Life may suck now," Penalver responded, "but life is long."

There were reports that for some time afterward Souter was depressed over the decision. According to David Kaplan of *Newsweek,* Breyer told a group of Russian judges that the decision was "the most outrageous, indefensible thing" the Court had ever done, while Souter complained to some prep-school students that had he had "one more day—one more day," he could have won over Kennedy. But such comments were quickly disavowed, were out of character for each man, and appeared inconsistent with the facts. The clerks, for instance, believed Souter had spent most of the last few crucial days in his chambers brooding over the case rather than working any back channels.

Fearful, perhaps, of the appearance of a quid pro quo, neither of the two justices most frequently rumored to be leaving, Rehnquist and O'Connor, has in fact left during Bush's presidency—perhaps, some theorize, because of how it would look to let the man they anointed select their replacements. "The justices who ruled for President Bush gave themselves, in effect, a four-year sentence," said Ron Klain.

O'Connor confessed surprise at the anger that greeted the decision, but that seemed to reflect naïveté more than any sober second thoughts. On her 71st birthday, in March 2001, she was sitting in the Kennedy Center when Arthur Miller, the playwright, denounced what the Court had done. Around Washington, a few people stopped shaking her hand, and Justice Scalia's too; the consensus has since grown that because of *Bush* v. *Gore,* he can never be named chief justice.

The experience left scars on those who lived through it. "I went through a lawyer's existential crisis," one of the clerks recalls. "People afterwards said, 'It must have been very exciting,'" says another. "It was not that exciting. What I felt was beyond anger. It was really a profound sense of loss." But a conservative clerk insists that when the records are opened and the histories written, the architects of *Bush* v. *Gore* will be vindicated. "When everybody's dead and they read it all, it won't be embarrassing," he predicts.

Ultimately, only the five justices in the majority know how and why they decided the case as they did and whether they did it in good or bad faith. Perhaps even they don't know the answer. An insider was asked if the five would pass a lie-detector test on the subject. "I honestly don't know," this insider replies. "People are amazing self-kidders."

While the Supreme Court was pondering the case, a calm settled over the canvassing boards around Florida, as the manual recount continued. Judge Terry Lewis, assigned by the Florida Supreme Court to put its order into action, had called on the counties not to announce any results until the work was done. In the meantime, Bush's lead had diminished to 154 votes.

In midafternoon on Saturday, December 9, one of the few still-partisan observers in Pat Hollarn's Okaloosa warehouse of vote counters got a call on his cell phone. "He slams it down and says, 'Stop! Stop!'" Hollarn recalls. "And I said, 'Excuse me, what's your problem?' He said, 'I just found out that the United States Supreme Court says you're supposed to stop.' I said, 'We'll have to have something more definitive than your phone call.'"

After several hard hours of sorting, Hollarn's staffers had nearly finished separating the undervotes from the rest of the ballots and were about to start counting them. Now Hollarn's own phone rang. On the line was Clay Roberts, Katherine Harris's director of elections. "He says, 'I'm calling to tell you that you have to stop your process right now.'" Minutes later, a fax from Roberts's office confirmed the news. So much time had been put into counting by what seemed a fair method at last. And now, with stunning suddenness, it was stopped.

"Everybody was hugging each other and taking each other's phone numbers and addresses," Hollarn recalls. "They helped me clean up all the stuff. We put everything away and everybody went home and that was the end of it."

A year after the election, a consortium of newspapers examined the ballots and reported that had the Supreme Court not intervened in the recount, Bush still would have won the election by the slimmest of margins, a headline that gave comfort to Democrats and Republicans alike. There was only one problem. The newspapers had looked at only the undervotes, which the Florida Supreme Court had ordered to be examined

for the recount. But there were also more than 113,000 overvotes. Later examination by the same papers of the overvotes—which Judge Lewis says he would have been inclined to consider—determined that Gore would have edged out Bush had they been considered.

III.

Amid the media frenzy after the election, one story went untold—the one in the footnote that Scalia had asked Ginsburg to delete from her dissent. In fact, thousands of African-Americans in Florida *had* been stripped of their right to vote.

Adora Obi Nweze, the president of the Florida State Conference of the N.A.A.C.P., went to her polling place and was told she couldn't vote because she had voted absentee—even though she hadn't. Cathy Jackson of Broward, who'd been a registered voter since 1996, showed up at the polls and was told she was not on the rolls. After seeing a white woman casting an affidavit ballot, she asked if she could do the same. She was turned down. Donnise DeSouza of Miami was also told that she wasn't on the rolls. She was moved to the "problem line"; soon thereafter, the polls closed, and she was sent home. Lavonna Lewis was on the rolls. But after waiting in line for hours, the polls closed. She was told to leave, while a white man was allowed to get in line, she says.

U.S. congresswoman Corrine Brown, who was followed into her polling place by a local television crew, was told her ballot had been sent to Washington, D.C., and so she couldn't vote in Florida. Only after two and a half hours was she allowed to cast her ballot. Brown had registered thousands of students from 10 Florida colleges in the months prior to the election. "We put them on buses," she says, "took them down to the supervisor's office. Had them register. When it came time to vote, they were not on the rolls!" Wallace McDonald of Hillsborough County went to the polls and was told he couldn't vote because he was a felon—even though he wasn't. The phone lines at the N.A.A.C.P. offices were ringing off the hook with stories like these. "What happened that day—I can't even put it in words anymore," says Donna Brazile, Gore's campaign manager, whose sister was asked for three forms of identification in Seminole County before she was allowed to vote. "It was the most painful, dehumanizing, demoralizing thing I've ever experienced in my years of organizing."

For African-Americans it was the latest outrage perpetrated by Jeb Bush's government. During his unsuccessful bid for governor in '94, Jeb was asked what he would do for the African-American community. "Probably nothing," he answered. In November 1999, he announced his One Florida Initiative, in which, with the stroke of a pen, he ended mandatory affirmative-action quotas by cutting off preferential treatment in the awarding of state contracts, university admissions, and government hiring. Tom Hill, then a state representative, and U.S. congressman Kendrick Meek, then a 33-year-old state senator, staged a 25-hour sit-in outside Jeb's office. "[The initiative was done] without any consultation from the legislators, students, teachers, the people who were going to be affected," says Meek. Jeb wasn't moved by their presence. "Kick their asses out," he told an aide. (He later claimed to be referring to reporters stationed near the sit-in.) Energized, African-Americans marched through Tallahassee and Fort Lauderdale. They also registered to vote. By Election Day 2000, 934,261 blacks were registered, up by nearly 100,000 since 1996.

Election Day itself felt like payback. Jesse Jackson immediately took up the cause in the streets of Florida, but at that point the facts were simply too sketchy, too anecdotal, too mixed up with simple bureaucratic ineptness to prove any kind of conspiracy. Anyone wanting to get Gore into the White House believed that hitching the cause to Jackson was madness; they wanted the middle, not the lefty fringe. Through a request from Brazile, Gore asked Jackson to get out of the way.

ROCK THE VOTE
Demonstrators protest the butterfly ballot outside the Palm Beach County supervisor of elections' office.

LANCE ROTHSTEIN

In retrospect, the claims of disenfranchisement were hardly phony. In January and February 2001, the U.S. Commission on Civil Rights, the highly divided, highly partisan government-appointed group formed in 1957, heard more than 30 hours of damning testimony from more than 100 witnesses. The report, which came out in June of that year, made a strong case that the election violated the Voting Rights Act of 1965. The commissioners duly passed their report up to newly installed attorney general Ashcroft. Little was done.

Strong as the report from the Commission was, it did not yet have the full story. The disenfranchisement of African-Americans in Florida was embedded in many facets of the election—from the equipment used to the actions of key local election officials, to the politically motivated manipulation of arcane Florida law, to the knowing passivity of Jeb Bush himself. Nowhere was that more obvious than in Gadsden County.

Twenty minutes west of Tallahassee, Gadsden is one of Florida's poorest counties. African-Americans make up 57 percent of the population, the largest percentage of any county in the state. Even so, the 2000 election was run by a white conservative supervisor, in this case the late Denny Hutchinson.

"He thought things were 'fine as they were,'" says the extra-large and jolly Ed Dixon, Gadsden County commissioner, strolling down the town's nearly empty main drag in an enormous basketball jersey. "He never advocated for anything." Hutchinson's un-

cle had been supervisor before him. Denny, though he was a Democrat—a virtual prerequisite for election in Gadsden—spoke openly about giving money to George Bush, according to a source. When the commissioners wanted to put in more polling places to accommodate the increase in registration, Hutchinson wouldn't budge. "He never advocated for any increased precincts, even though some of our people had to drive 30 miles to get to a poll," says Dixon. "In the only county that's a majority African-American," he adds, "you want a decreased turnout."

In November 2000, Shirley Green Knight, Hutchinson's deputy, a soft-spoken African-American, had recently defeated him for the office of elections supervisor, though she had yet to assume the office. After the votes had been tallied, she noticed something strange: more than 2,000 ballots, out of 14,727 cast, had not been included in the registered count.

How had this happened? Because of a very technical but profoundly important detail. The central optiscan machine used in Gadsden had a sorting switch which when put in the "on" position would cause the machine to record overvotes or undervotes in a separate category for possible review. After the election, Knight says, she learned that Hutchinson had demanded that the switch be kept off. "I have no idea why he would do that," says Knight. Seeing how many ballots never got counted, she urged him to run them through the machine again—this time with the sorting switch on—but he resisted. Hutchinson was finally overruled by the Gadsden canvassing board. They looked at the rejected ballots. Sure enough, they were overvotes—and for good reason.

Gadsden had used a variant of the caterpillar ballot, in which the candidates' names appeared in two columns. One column listed Bush, Gore, and six others. The next column listed two more candidates—Monica Moorehead and Howard Phillips—as well as a line that said, "Write-In Candidate." Thinking they were voting in different races, hundreds of voters had filled in a circle for one candidate in each column, thereby voting twice for president. Others filled in the circle for Gore and then, wanting to be extra clear, wrote "Gore" in the write-in space. All these votes were tossed.

In some optiscan counties, such overvotes would have been spit right back at the voter, giving him a chance to correct his mistake on the spot. But Gadsden, like many other poor counties, used a cheaper system, in which overvotes would only register at the central optical-scanner machine, denying the voter a chance to correct his mistake. Roberts and Harris should have been aware of this crucial discrepancy. Neighboring Leon County used the more expensive machinery, and technicians there had warned the Division of Elections well before Election Day of the disparate impact these two different systems would have. They had even set up a demonstration of the superior machines across the street from the division offices in Tallahassee.

Some of the faulty ballots in Gadsden were counted in those first days after the election as part of the county's "automatic recount," giving Gore a net gain of 153. Those votes, at least, were included in the certified state count. Three hours east in Duval County, however, voters weren't as lucky.

Here, in a county that includes Jacksonville, which is 29 percent black, 21,000 votes were thrown out for being overvotes, and here, an overvote was even more likely than in Gadsden. Prior to the election, the elections supervisor, John Stafford, had placed a sample-ballot insert in the local papers instructing citizens to vote every page. Any voter who followed this instruction invalidated his or her ballot in the process.

During the critical 72-hour period in which manual recounts could be requested, Mike Langton, chairman of the northeast Florida region for the Gore campaign, spent hours with Stafford, a white Republican. "I asked John Stafford how many under- and overvotes there were, and he said, 'Oh, just a few,'" recalls Langton. Then, shortly after the deadline to ask for a recount had passed, Stafford revealed that the number of overvotes was actually 21,000. Nearly half of those were from four black precincts that normally vote over 90 percent Democratic.

Today, Stafford remains silent about what happened four years ago. His assistant, Dick Carlberg, will speak, but only in the presence of his attorney. He claims he sent an e-mail to the state's Division of Elections two days after the election—before the deadline to ask for a manual recount—informing the Division of Elections of the thousands of overvotes. "I was told, 'O.K.,' and that was about it," Carlberg says.

If the Gadsden and Duval stories might be characterized as a kind of disenfranchisement by conscious neglect, a much more sinister story began to emerge in the months following the election. Throughout Florida, people—many of them black men, such as Willie Steen, a decorated Gulf War veteran—went to the polls and were informed that they couldn't vote, because they were convicted felons—even though they weren't.

"The poll worker looked at the computer and said that there was something about me being a felon," says Steen, who showed up at his polling place in Hillsborough County, young son in tow. Florida is one of just seven states that deny former felons the right to vote, but Steen wasn't a felon.

"I've never been arrested before in my life," Steen told the woman. A neighbor on line behind him heard the whole exchange. Steen tried to hide his embarrassment and quietly pleaded with the poll worker, *How could I have ended up on the list?* She couldn't give him an answer. As the line lengthened, she grew impatient. "She brushed me off and said, 'Hey, get to the side,'" recalls Steen. The alleged felony, Steen later learned, took place between 1991 and 1993—when he was stationed in the Persian Gulf.

Steen wasn't the only upstanding black citizen named Willie on the list. So was Willie Dixon, a Tampa youth leader and pastor, and Willie Whiting, a pastor in Tallahassee. In Jacksonville, Roosevelt Cobbs learned through the mail that he, too, was a felon, though he wasn't. The same thing happened to Roosevelt Lawrence. Throughout the state, scores of innocent people found themselves on the purge list.

The story got little attention at the time. Only Greg Palast, a fringe, old-school investigator, complete with fedora, was on its trail. With a background in racketeering investigation for the government, Palast broke part of the story while the recount was still going on, but he did it in England, in *The Observer.* None of the mainstream media in the U.S. would touch it. "Stories of black people losing rights is passé, it's not discussed, no one cares," says Palast, whose reporting on the subject appears in his 2002 book, *The Best Democracy Money Can Buy.* "A black person accused of being a felon is always guilty."

How the state ended up with the "felon list" in the first place has its roots in one of the uglier chapters in American history. In 1868, Florida, as a way of keeping former slaves away from the polls, put in its constitution that prisoners would permanently be denied the right to vote unless they were granted clemency by the governor. In those days, and for nearly a hundred years after, a black man looking at a white woman was cause for arrest. The felony clause was just one of many measures taken to keep blacks off the rolls, including literacy tests, poll taxes, and "grandfather clauses," by which a man could vote only if his grandfather had. All these other methods were effectively ended. But the constitutional provision about former felons remained.

In Florida, there are an estimated 700,000 ex-felons, and 1 in 4 is a black male. Six years ago, Florida state representative Chris Smith, of Fort Lauderdale, sat outside a local Winn-Dixie grocery store trying to get people to register. "A lot of black men that looked like me, around my age, would just walk past me

and say, 'Felony,' 'Felony,' and not even attempt to register to vote," Smith recalls. Why so many? In the past few years the majority-Republican legislature has upgraded certain misdemeanors to felonies and also created dozens of new felonies that disproportionately affect the urban poor. Intercepting police communications with a ham radio is a felony. So is the cashing of two unemployment checks after the recipient has gotten a new job. State senator Frederica Wilson, like other black lawmakers in Florida, believes these felonies are "aimed at African-American people."

Meanwhile, black lawmakers have tried in vain to legislate rights restoration to some offenders who have served their sentences. Wilson recalls one such proposal that was smacked down by Republican state senator Anna Cowin, head of the Ethics and Elections Committee. "I literally begged her, 'Please just agenda it,'" says Wilson. "She would not agenda it."

"I philosophically did not believe that felons should automatically get their rights restored," says Cowin, "and neither did the governor nor the leadership." She adds, "It makes elections very expensive too, because you have all these thousands and thousands of people—I mean tens of thousands of people—to send literature to.... The people don't come to vote, anyway. So I think people need to go through a hoop."

James Klinakis, who, like many ex-felons in Florida, is a recovering drug addict, has had some experience with what Cowin calls "a hoop." For the past five years, Klinakis, the operations director for a drug-rehab program called Better Way of Miami, has been invited by Governor Bush to the annual drug summit, where he advises Bush on drug issues. For 10 years he has been applying to have his voting rights restored, a process that has included everything from a one-page form to a college-application-size package, complete with references, letters, and soul-searching essays. Like thousands of others, Klinakis has seen no movement on his case whatsoever. While some governors, such as Reubin Askew and Bob Graham, restored the rights of tens of thousands of felons who'd served their time, Jeb Bush allowed the backlog of applicants to grow to as many as 62,000 in 2002.

The law that disenfranchises felons took on a new life after the 1997 Miami mayoral race, in which a number of dead people "voted," as did 105 felons. Seventy-one percent of those felons found on voter rolls were registered Democrats. Weeks later, the state legislature went to work on a sweeping anti-fraud bill. It called for stricter enforcement of the constitutional provision and stated that "the division shall annually contract with a private entity" to maintain a list of deceased individuals still on the rolls, those adjudicated "mentally incompetent" to vote, and, most important, felons. The appropriations committee allocated $4 million to the project; no money was appropriated from the state for voter education in 1998, 1999, or 2000.

When the state started soliciting bids for the high-tech felon hunt, at least three companies stepped up. One was Computer Business Services; another, Professional Analytical Systems & Software, bid under $10,000. After three rounds of bidding, Database Technologies, a Boca Raton company (since merged with ChoicePoint), emerged the winner. In its proposal, DBT estimated the cost at $4 million, knowing somehow that this was the exact amount the state had provided for the job. "There has been four million dollars allocated by the state for this project," DBT senior vice president of operations George Bruder wrote to his boss, C.E.O. Chuck Lieppe, in an e-mail. "The bid we are constructing will have three different levels for price (a little bird told me this will help)." The little bird was correct.

Exactly what kind of company was hired to clean up Florida's rolls of felons, or "dirtbags," as one DBT employee referred to them? DBT supported—and was highly praised by—a now defunct conservative advocacy group called the Voting Integrity Project (V.I.P.). Touting "voting rights," V.I.P. sprang into action in 1996 in response to the national "motor voter" law, which passed in 1993. The law had increased voter registration nationwide by an estimated seven million, with minorities constituting a disproportionate number of those new voters.

While some members of the Division of Elections were appalled by the price tag, Secretary of State Sandra Mortham, according to a source formerly inside the division, nursed the felon list along as her pet project. Ethel Baxter, the director of the division under Mortham and a civil servant for 30 years, working under both Republicans and Democrats, was reportedly skeptical of the idea. But Mortham, according to this source, instructed her to sign on to it. (Mortham says that she had no investment in the project, and that, regardless of how Baxter felt, they were obligated to fulfill a legislative action.)

From the start, there were questions about the felon list. "We were sent this purge list in August of 1998," says Leon County elections supervisor Ion Sancho, moving feverishly through his cluttered office. "We started sending letters and contacting voters, [saying] that we had evidence that they were potential felons and that they contact us or they were going to be removed from the rolls. Boy, did that cause a firestorm." One of those letters was sent to Sancho's friend Rick Johnson, a civil-rights attorney, who was no felon. "Very few felons," Sancho points out, "are members of the Florida bar."

Sancho decided to get to the bottom of it. Early in 2000 he sat down with Emmett "Bucky" Mitchell, the Division of Elections' assistant general counsel, and demanded to know why the list contained so many names of innocent people. "Bucky told me face-to-face that the Division of Elections was working on the problem," recalls Sancho, "that it was the vendor's [DBT's] problem, and that they were telling the vendor to correct it."

James Lee, chief marketing officer of ChoicePoint, the company that acquired DBT in the spring of 2000, says that the state did just the opposite. "Between the 1998 run and the 1999 run, the office of elections relaxed the criteria from 80 percent to 70 percent name match," says Lee. "Because after the first year they weren't getting enough names."

And so, equipped with a database of felons supplied by the Florida Department of Law Enforcement (F.D.L.E.), DBT programmers crouched at their computers and started scooping up names, many of which were only partial matches, from the Florida voter rolls and various other databases. Middle initials didn't need to be the same; suffixes, such as Jr. and Sr., were ignored. Willie D. Whiting Jr., pastor, was caught because Willie J. Whiting was a felon. First and middle names could be switched around: Deborah Ann, Ann Deborah—same thing. Nicknames were fine—Robert, Bob, Bobby. The spelling of the last name didn't have to be exact, either. The only thing Willie Steen was guilty of was having a name similar to that of a felon named Willie O'Steen.

DBT project manager Marlene Thorogood expressed concern in a March 1999 e-mail to the Division of Elections that the new parameters might result in "false positives" (i.e., wrongly included people). Bucky Mitchell wrote back, explaining the state's position: "Obviously, we want to capture more names that possibly aren't matches and let the [elections] supervisors make a final determination rather than exclude certain matches altogether." Guilty until proved innocent, in other words.

In May 2000, supervisors got a new list, for the upcoming election, and discovered that it included 8,000 names from Texas. But the Texans, now living in Florida, weren't guilty of felonies, only misdemeanors. DBT took the blame, claiming a computer glitch, and hastily corrected the problem. How, though, had Texans gotten on the list in the first place? Texas was a state that automatically restored the rights of felons who had served their time.

According to two separate Florida court rulings rendered before the 2000 election, prisoners who'd had their rights restored in other states retained them when they moved across state lines to Florida. Instead, the Di-

vision of Elections was advised by the Office of Executive Clemency to have DBT include out-of-state ex-felons residing in Florida, even those from so-called automatic-restoration states. In order to vote, these ex-felons would have to show written proof of clemency from their former state, or re-apply for it in Florida. Janet Modrow, the state's liaison with DBT, wrote to Mitchell, "On the good side, we can add all the [states] that do have automatic restoration because they will have to get Florida Clemency. On the bad side, you will still have to check with those [states] that formally give clemency for each hit as before."

Not that the clemency data was complete. Some of the clemency information had not been computerized, and existed only on three-by-five note cards in what looked like shoeboxes, says Sancho. This included the thousands of Florida ex-felons who'd had their rights automatically restored under Governor Askew, between 1975 and 1978.

Information from the F.D.L.E.—the starting point for DBT's "data mining"—was even less reliable. This was a database of arrests, not convictions. Thousands were designated as "adjudication withheld"—meaning no conviction. Others were only misdemeanors. In sum, says Sancho, "they pulled up the entire universe of all potential felons that they found in everybody's database."

When the "corrected" list went out to all 67 supervisors in late May 2000, many were stunned. Linda Howell, elections supervisor of Madison County, found her own name on it. In Monroe County, the supervisor, Harry Sawyer, found his dad on the list, as well as one of his seven employees and the husband of another; none of them were felons. As a result of the mistakes, a couple of counties, including Broward and Palm Beach, decided not to use the list. Sancho, whose list had 697 names on it, went through them one by one, scrupulously checking. "We went for a five-for-five match," says Sancho. "Those were criteria such as name, birth date, race, sex, Social Security number. When we applied that to this list of 697 that we got in 2000, I could verify only 33."

Other elections supervisors did no such investigation. In Bay County, where the list contained approximately 1,000 names, elections officials essentially took it at face value. Once he got the list, says Larry Roxby, deputy elections supervisor, "it was pretty much a done deal." In Miami-Dade, whose lists contained about 7,000 people, Supervisor David Leahy sent out letters, informing people of their felony status and advising that they could come in for a hearing if they wanted to appeal. If he didn't hear back from them, these names were simply struck. Throughout the state, many of these letters came back "undeliverable." Small wonder: the addresses provided by DBT were often out-of-date.

A few of the more dutiful supervisors found themselves taking on the extra role of citizens' advocates. In Hillsborough County, Supervisor of Elections Pam Iorio, now the mayor of Tampa, sent out letters to all 3,258 people on her list. If they appealed, she worked with them to try to keep them on the rolls. Roosevelt Lawrence was one such person. "We were going back to the state and saying, 'This gentleman has the following facts: here are the facts, this is what he is saying,'" Iorio recalls. "'He lived a lawful life for over 40 years and he's been employed here and done this.' Twice they said, 'No, that's incorrect.' In writing. . . . And he never voted in the 2000 election." Lawrence continued to protest; finally, the F.D.L.E. realized its record on Roosevelt was wrong.

Why was the state prepared to pay $4 million for such shoddy work? A class-action suit brought by the N.A.A.C.P. and a number of African-American voters in 2001 accused DBT, Harris, and several individual supervisors of disenfranchising black voters. Beyond the unreliable matching criteria the state had demanded, beyond the flawed data it had provided from the Office of Executive Clemency and the F.D.L.E., evidence and testimony from the suit suggests that the state had failed to properly monitor whether DBT was fulfilling its contract. For example, the 1998 contract stipulated "manual verification using telephone calls and statistical sampling." But DBT vice president George Bruder testified, "I am not aware of any telephone calls that were made."

The suit ended in settlement agreements, in September 2002, that appeared to rectify the problem for the future. The state agreed to restore to its rolls the out-of-state felons from "automatic restoration" states. DBT agreed to run the names from the 1999 and 2000 purge lists using stricter criteria, and to provide to Florida's elections supervisors the names of people who most likely shouldn't have been on the list. The list of potentially wrongly targeted voters came to 20,000—more than a third of DBT's May 2000 list. The supervisors, in turn, were supposed to restore these names to their voting rolls, had they been wrongly purged.

More than two years later, with the election of 2004 looming, Jeb Bush's government has utterly failed to uphold its end of the bargain. Virtually none of the 20,000 people erroneously purged from Florida's rolls have been reinstated in any formalized way. In September 2003, DBT and the state did manage to finish vetting the list and to send out a so-called filtered list to the elections supervisors to "re-evaluate." No deadline was imposed for restoring the innocents, and little direction on the subject came from the state. If supervisors wanted to restore the names, they could; if they wanted to ignore the task, they could do that too.

Some supervisors have worked with the filtered list to restore names. But others have put it aside; as of June, more than a few had no recollection of ever receiving it. (After prodding from advocacy groups, the state re-sent the list.) In Miami-Dade, the filtered list had more than 17,000 names. Of those, to date, only 14 voters wrongly identified as felons have been restored to the voting rolls.

These are just the snarls of the old ex-felon list. But in Florida, it seems, there's always another angle. Last May the Division of Elections attempted a new purge, with a brand-new felon list. This list came to 48,000 names. Accompanying it was a memo to the supervisors from Ed Kast, director of the Division of Elections, informing them to start the purging process. For Ion Sancho it started another firestorm. "I asked my staff, 'Look through [the list] and do a cursory exam. Nothing detailed. What can you tell me?' They identified a dozen people who they recognized right off the bat weren't felons," Sancho says, storming about his office.

At least the list hadn't been generated by DBT. But, incredibly, despite a mandate from the embarrassed legislature that no private company should ever again undertake such work for the state, the new list had been prepared with the help of Accenture. Formerly known as Andersen Consulting, once the consulting arm of Andersen Worldwide, the former parent company of Arthur Andersen, Accenture has contributed $25,000 to Republicans in Florida. The company is currently the subject of a Department of Justice investigation for possible violation of the Foreign Corrupt Practices Act, which bans bribing foreign officials. Its address in Bermuda has prompted some members of Congress to question if the company is dodging taxes. (An Accenture spokesman says that the company pays taxes in the U.S.)

In 2001, in the wake of the DBT debacle, the legislature, with the support of elections supervisors, passed a law making the association of court clerks responsible for the database used for any and all felon information. After all, the clerks of the courts were independent officers and the only source with actual conviction data. But the state ended up ignoring the law, claiming their services were too expensive. According to the *Sarasota Herald-Tribune,* a recently uncovered e-mail showed that, in fact, the clerks of the courts had agreed to meet the price the state wanted. "The Division

of Elections wanted control," concludes Sancho. So it farmed out work to Accenture—for at least $1.6 million. Jenny Nash, spokeswoman for Secretary of State Glenda Hood, defends the state's action in hiring Accenture. "Accenture was brought in to help develop the database," she says. "They do not operate it, own it, or maintain it."

This time, Sancho wasn't the only elections supervisor fed up. "Why did we wait until the presidential year for this?" Linda Howell, of Madison County, asks. "I don't think it's our place to have to clean up the state's problem," says Bob Sweat, of Manatee County. And so, in mid-June, the supervisors, many of them grandmothers with colorful pantsuits and orangey hairdos, gathered in the Key West Hilton hotel for the twice-yearly supervisors' conference to give Ed Kast a piece of their collective mind. Beverly Hill, of Alachua County, stood up to announce she had found a half-dozen people on the new list who had erroneously appeared in 2000. "They're back on the list!" Kay Clem, of Indian River County, reported that among the first 20 names examined "one has no record! The other has a pending disposition!" As if the supervisors weren't already alarmed enough, they had just been advised by Cathy Lannon, of the attorney general's office, not to speak to any of the potential felons on the telephone, in order to avoid off-the-record interactions.

Kast seemed to let the chaos wash right over him. What did he care? He had resigned as head of the Division of Elections 24 hours earlier to "pursue other interests."

For weeks, liberal advocacy groups such as the A.C.L.U. and People for the American Way urged the supervisors to let them see the list so they could help vet it for accuracy, and avoid a repeat of the debacle of 2000. On May 12, in one of Kast's last moves in his post, he sent a memo to the supervisors, detailing how to thwart the request, citing statutes about the privacy of voter-registration information and the will of the legislature—even though nothing in the law prevents the same information from going to political candidates to further their campaigns. "This is the closest thing I've ever seen to an intimidation letter to come out of the Division of Elections," says Sancho. (Kast could not be reached for comment.)

As with many things concerning the Florida government, it would take a lawsuit to get any traction. In late May, CNN, with the support of Senator Bill Nelson, filed suit against the state for access to the list. Judge Nikki Clark ordered it released to the public.

It took *The Miami Herald* just a day to discover that the list, which the state had tried hard to keep under wraps, contained the names of at least 2,119 ex-felons who had been granted clemency in Florida, and thus had had their voting rights restored. Like the 2000 list, the new one turned out to be disproportionately Democrat.

Then, on July 7, an investigation by the *Sarasota Herald-Tribune* revealed a startling, new twist. Of the 48,000 names on the list, only 61 were Hispanics—that's one-tenth of 1 percent. In Florida, Hispanics make up 11 percent of the prison population, 17 percent of the population at large, and mostly vote Republican. Why were so few Hispanics on the felon list? Because the voter-registration application identified Hispanics as such; the F.D.L.E. database did not, so when the two failed to match, the Hispanic ex-felons were excluded from the purge list. Given the snowballing problems, the state understood it couldn't possibly get away with using the list. On July 10, it was scrapped.

The Department of State spokeswoman, Nicole de Lara, has claimed that the glitch was "unforeseen" and "unintentional." But according to Jeff Long, a veteran F.D.L.E. official, starting in 1999 with the preparation of the 2000 purge list, his office informed the secretary of state's office how the F.D.L.E. matched for race. "We provided an extract of what's in our criminal databases, which included the categories for race," says Long. "The extract listed five categories for race. Those codes do not include an 'H' [for "Hispanic"]." Asked who was in receipt of this information, he cites Janet Modrow and voting-systems chief Paul Craft, both of whom are still working in the secretary of state's office. James Lee of ChoicePoint told *Vanity Fair* that DBT and state elections officials had actually discussed the glitch. He, too, cites Modrow as well as Bucky Mitchell. (Modrow, Craft, and Mitchell could not be reached for comment.) The matching flaw was discussed yet again, in 2001, at state voter-file meetings, according to Chuck Smith, elections-supervisor employee in Hillsborough County, who attended them. As for Accenture, whatever flaws emerged were not their problem, claims Meg McLaughlin, president of Accenture's "eDemocracy Services." "Accenture's contract in no way says that we are to validate the data," McLaughlin said at a recent hearing before the U.S. Commission on Civil Rights. "The only thing Accenture was asked and contracted to do was to build the tool."

In spite of the scrapping of the list, the state has informed the elections supervisors that it is still their legal obligation to bar ex-felons from voting in November.

No one is more frustrated than the ex-felons seeking a restoration of their voting and other civil rights. About 15 percent of the thousands of clemency applicants in the backlog can have their rights restored without a hearing. The majority must wait to stand before Governor Bush and his cabinet, and plead with him to exercise his "Executive Grace." These clemency hearings take place just four times a year, and the governor invites between 60 and 130 applicants each time.

On a steamy June day in Tallahassee, one of the lucky few invited to plead her case at the courthouse is Beverly Brown, a black Miamian, who has been applying for seven years.

"Thank you, Governor and Cabinet," she says, her voice trembling as she looks up at Jeb Bush, in a beige suit, and three of his cabinet members, seated above her on the dais. "I'm a graduate patient-care technician, and there's nothing more I'd like to do than to utilize my skills to help others." She has been lucky enough to have had some private health-care jobs; recently she cared for a young quadriplegic. But what she'd really like is to get a state license—something she can't do unless her civil rights are restored. Her convictions, all drug-related and nonviolent, date back almost 20 years, except for a more recent conviction for having been caught with pot.

"Since when have you been drug- and alcohol-free?" Jeb asks flatly, looking up from her file.

"About nine years," says Brown.

"O.K., in 2001 there—you were convicted of marijuana possession?"

"I had—yes, it was in my possession, but it didn't belong to me. Someone left it in my car."

"I have another question," Chief Financial Officer Tom Gallagher later asks, looking at her file. "What is 'wailing rock cocaine'?"

Brown shifts nervously. "O.K., sir, that is not my charge."

"I just want to know what is 'wailing rock cocaine'?" he asks.

Brown's face flushes with panic and confusion. "I haven't the slightest idea."

Bush gives her file another once-over and delivers his verdict. "I'd like to take this case under advisement." It's not a no, but it's not a yes either. Over the next couple of weeks, Brown will try to find out why the case has been on hold, but she'll get no answers; Bush is not required to give any.

Nonetheless, to prove his magnanimousness, Bush announces that same day that since June 2003, when the backlog was 38,606 ex-felons, the clemency office has gone through more than 30,000 names and restored the rights of 20,861. Why the sudden progress? Could it be that he has recently been overcome by the idea of redemption?

The figure, civil-rights advocates believe, is deceptive. Bush failed to say that the backlog contained an additional 124,000 names. According to a legal challenge led by the Florida Caucus of Black State Legislators,

between 1992 and 2001, 124,000 people had been denied their rights-restoration paperwork and assistance upon leaving prison. Ordered by a judge, finally, to take a look at these cases, the Executive Clemency Board restored the rights of 22,000 of them. The figure is similar to the 20,861 Bush claimed he restored from the "backlog." When pressed, his press secretary, Alia Faraj, admits, "Some of those may cross over. Absolutely."

Meanwhile, people like James Klinakis, who have paid their debt to society, who have gone on to serve in society, but who have no say in society, have feelings that go far beyond *Bush* v. *Gore* and what happened in 2000 and what might happen in November. "I believe the president of the United States would have been different, some years ago, if some people were allowed to vote. I don't know—that's only an opinion," says Klinakis. "But I do know this, that I would like the opportunity to be able to vote—for county commissioners, for mayors, and the governor and the presidency. Whether it's going to change something or not, I don't know, but, at least, I know I had the opportunity to do it."

IV.

Even if no voters are turned away at the polls in November, will everyone's votes actually be counted? Floridians who use the new, electronic touch-screen voting machines will have good reason to wonder.

How Florida's largest counties have lurched from hanging chads to paperless voting machines after the 2000 election, and what consequences this change will bring, is an extraordinary story of well-meaning government officials—from state legislators to county commissioners—courted by local lobbyists and out-of-state salesmen. It's a story of machines too complex for poll workers to operate reliably, resulting in unrecorded ballots, of touch-screens with no paper trail that stir fears of vote manipulation, of systems far more expensive to purchase and maintain than previous ones. It's a story, most disturbingly, of machines billed as infallible that turned out to be flawed.

The irony is that after the 2000-election mess, Jeb Bush himself had expressed confidence in optiscans as a worthy system to replace punch-card machines. On a plane from Atlanta to Tallahassee, Bush ran into Mark Pritchett, who was about to oversee a blue-ribbon panel for the governor on electoral reforms. "He said those optical scans seem pretty good, and reasonably priced," recalls Pritchett, executive vice president of the nonprofit Collins Center for Public Policy. But a power greater than the governor's own would soon prevail: the power of the marketplace.

On March 1, 2001, Jeb's bipartisan blue-ribbon panel submitted a report with 35 recommendations. Many were adopted in the state's sweeping Election Reform Act that spring. But not all. The reform act, which sailed through Florida's House and Senate, did set clear new rules for recounts. If a margin was one-half of 1 percent or less, an automatic recount would be done; if the resulting margin was one-quarter of 1 percent or less, then a manual recount would be done of the undervotes and overvotes.

Other changes were just as specific. For a would-be voter who could not be found in the register or, say, who was deemed an ex-felon when he said he wasn't, provisional ballots would be provided. If the board found the voter was eligible, that ballot would be counted—assuming the Election Day margin was close enough to make the exercise worthwhile. Absentee voting would be easier: Florida would embrace convenience voting, by which anyone could vote by absentee ballot. For overseas ballots, postmarks would no longer be an issue: any ballots received within 10 days of a general election would be accepted.

Most dramatically, the act prohibited punch-card voting machines. No more hanging chads! Out, too, were "central" optiscans: the ones hooked up to a central county server. So many of the overvotes in 2000 had gone unnoticed because the optiscans in those mostly poor, black precincts failed to spit back an overvote ballot for a voter to revise; instead, the overvotes were silently rejected on the central server. Now the 24 punch-card counties and 15 central-optiscan counties would have a choice: join the bunch that had precinct-based optiscans, or try touch-screens, which had just been certified in the state as an alternative, thanks in part to a huge lobbying push by vendors, and because the large counties never wanted to deal with paper ballots again.

The blue-ribbon panel made clear its own preference. Though touch-screens were said to be reliable, it observed, they had a higher error rate than optiscans. With a nod to the U.S. Supreme Court's equal-protection logic in *Bush* v. *Gore,* the panel suggested Florida voters would not be treated equally if some used a system that had a higher error rate than one used by the rest. Perhaps because touch-screen technology was evolving so quickly, the panel overlooked a more glaring inequity. The fine new standard for manual recounts could be applied to optiscans, because they produced paper ballots that could be inspected for over- and undervotes. But how would it work with touch-screens, which produced no paper receipts?

All of the big counties up for grabs, however, would soon go with touch-screens, and most of those would go with a machine made by an Omaha-based company called Election Systems & Software, or E.S.&S., which had the good political sense to hire Sandra Mortham, former Florida secretary of state and implementer of the ex-felon-purge campaign by DBT, as its chief lobbyist in the state.

Big money was at stake—tens of millions of dollars—and so, tragically, the push for clean elections with new voting machines became a classic exercise in murky politics. Shortly before signing on with E.S.&S., Mortham signed on as a lobbyist for the Florida Association of Counties (FAC). On June 21, 2001, the association formally endorsed E.S.&S.'s iVotronic and began urging the state's undecided counties to buy it.

In return, E.S.&S. promised the association a commission on sales. By year's end, E.S.&S. would win 12 counties, including Miami-Dade and Broward, for overall sales of about $70.6 million. According to the agreement, FAC would earn about $300,000 in commissions. If the association looked bad, Mortham looked worse. She was taking commissions from E.S.&S. while on contract with the association that endorsed E.S.&S. In at least one county—Broward—Mortham received a 1 percent "success fee" of $172,000 for the county's $17.2 million purchase of E.S.&S. touch-screens. If that rate applied across the state, noted the *Sun-Sentinel,* then Mortham would have earned $706,000 in all from E.S.&S.'s total sale of $70.6 million.

That summer of 2001, Mortham set up a network of lobbyists for each county in contention. If she did anything else, the county commissioners of Miami-Dade and Broward, her two biggest prospective customers, are unable to recall what that was. They never saw her. (Mortham declined to elaborate to *Vanity Fair* on her arrangement with E.S.&S.)

Miami-Dade was a key county for E.S.&S. to win: more populous than several states, it had about 912,000 registered voters. Also, a bit disconcertingly, it was a county with 64 languages, 3 of which—Spanish and Creole, in addition to English—are spoken widely enough to require representation on all precinct ballots. The company advised elections commissioners that it was applying for certification of a "minor enhancement" to meet the requirement.

"There was no mention by E.S.&S. [in their presentation] of any delays in boot-up time to accommodate multiple languages," recalls Theodore Lucas, the county's procurement-management director. Or, he might have added, any intimation that disaster lay ahead. On January 29, 2002, the Miami-Dade County Commission voted to

spend $24.5 million on 7,200 E.S.&S. iVotronic touch-screens. A new era had begun.

For E.S.&S., Miami-Dade was a cakewalk. But in neighboring Broward, nearly as large and important a prize, it had a problem: the county's first-ever black elections supervisor, Miriam Oliphant, had come out early on for Sequoia, one of only two other touch-screen vendors certified to sell in Florida at that time. She'd gone to Riverside, California, to see how Sequoia machines worked in a big metropolitan area, and liked what she saw. So E.S.&S. did what it felt it had to do. It hired lobbyists who were very, very close to Broward's commissioners. The head lobbyist had served on the finance committee of one commissioner's last campaign and had held fund-raisers for a number of the other commissioners. Another lobbyist had been finance chairman for another commissioner's campaign.

Not surprisingly, Broward's commissioners went with E.S.&S. Forty-eight hours before doing so, E.S.&S. fulfilled a county goal to steer 10 percent of the $17.2 million contract to minority businesses by bringing in Dorsey Miller, an African-American former school-board administrator who'd started a company, D. C. Miller & Associates, to win minority contracts for distributing custodial supplies—to his own school district.

First, as *The New Times Broward–Palm Beach* reported, Miller tried to steer $908,000 of the $1.7 million earmarked for minority contractors to D. C. Miller & Associates by arranging for it to supply voting booths and voter education. Unfortunately, Miller had no means of manufacturing the booths and no warehouse space to store them. This, as county staffers could see, would make Miller, in the argot of municipal contracts, a "pass-through" for the white business that did the real work. (Miller declined to comment to *Vanity Fair.*)

Instead, Miller steered the business to an Asian-owned company called American Medical Depot, from which he received a monthly stipend, and bonus checks, to help it drum up business. Usually with E.S.&S., the booths were assembled in Kansas and sent directly to E.S.&S., which combined them with its voting machines before sending them on to its clients. This time, the booths would be sent to A.M.D., which would earn its $878,000 by buying, storing, and testing them. A.M.D. won approval for the minority contract, in part by claiming to be an independent entity, not a pass-through, but, as Broward's assistant state attorney John Hanlon later determined, E.S.&S. sent checks regularly to A.M.D. A day or two later, A.M.D. would send a check for exactly the same amount to the Kansas manufacturer of the booths. The maneuver was slippery but not illegal. "We have the money movement," says one person involved with the investigation, "but we didn't have a crime."

If Miller had lost the big prize, his company still managed to receive a reported $175,000 to $225,000 of the E.S.&S. minority-contract money for "voter outreach," which meant staging 93 demonstrations of E.S.&S.'s iVotronic, for, he estimated, 4,000 to 5,000 people in all—which comes to about $35 to $45 per person.

So E.S.&S. had the business, but could it deliver on its promises? Going from two to three languages on its machines, E.S.&S. soon discovered, demanded the addition of a memory chip, which led to a longer boot-up time, about six minutes for each machine. Unfortunately, multiple machines at one polling place couldn't be started at the same time. A special supervisor cartridge had to be placed in each machine for six minutes, then transferred to the next machine. Some polling places had as many as 28 machines.

The disastrous implications of that became all too clear on September 10, 2002. This was the primary in which former attorney general Janet Reno was pitted against fellow Democrat Bill McBride for the privilege of taking on Jeb Bush in his bid for re-election that November. In Miami-Dade that morning, many polling places opened late. Workers were flummoxed by the machines. Some never did get them operating correctly: after a whole day of voters' going in and out, the touch-screens at Precinct 519 recorded no votes cast. Some polling places had no electrical outlets, so workers had to run the machines on their backup batteries, which soon died. At the end of the day, some of the county's iVotronics were shut down incorrectly, leaving their votes uncounted. "It was a perfect storm," rued Miami-Dade's elections supervisor, David Leahy, who had pushed hard for E.S.&S.

In Broward the night before, dozens of poll workers had quit, overwhelmed by the prospect of dealing with the new machines, so Oliphant herself had raced around the county distributing the bags of tools that polling supervisors needed in each precinct. Yet two dozen polling places opened late, one after noon. At least 34 of Broward's polling places turned away voters before the polls were due to close. Results, as in Miami-Dade, were scrambled or lost.

Early results showed that McBride had won by a margin of about 8,000 votes out of more than 1.3 million cast. As reports of irregularities began coming in, Janet Reno called for a statewide recount. Tallahassee told her she was too late. Though final tallies in Miami-Dade and Broward shaved the margin by nearly half, Reno grudgingly conceded.

For that November's election, Miami-Dade and Broward pledged to spend whatever it took to thwart another crisis. This time, the machines were booted up the night before—and guarded all night by police on overtime. More than a thousand county employees were commandeered to help, too, and so in both Miami-Dade and Broward the election came off with hardly a hitch—at a cost, in the two big southern counties, of well over $10 million.

Jeb Bush won re-election by far too large a margin for any talk of voting-machine irregularities. Another winner that day was Katherine Harris, who ran for U.S. Congress in her home district in central-west Florida. From her first day in office as secretary of state, in 1999, Harris had known she would have just one term. A state rule change enacted by the preceding Democratic administration had decreed that Harris would be the last elected secretary of state. Thereafter, the position would be an appointed one.

So Jeb Bush now had the luxury of appointing a secretary of state to oversee the challenge of getting Florida's new touch-screens to work as promised. The governor formed a transition team, which included Miguel De Grandy as chief counsel. De Grandy, a Republican lawyer who had done all he could to block Miami-Dade's recount in 2000, had been recommended by Sandra Mortham to be hired as E.S.&S.'s lawyer-lobbyist in his county. Now this same E.S.&S. lobbyist was chief counsel of the governor's transition team. The next secretary of state and her director of elections would oversee the certification process for all upgrades to E.S.&S. machines. De Grandy sees nothing untoward about the arrangement because, he says, he did not advise the governor personally on whom to choose for secretary of state.

Bush's choice was Glenda Hood, a centrist Republican and then mayor of Orlando. Hood vowed that there would be smooth and fair elections in Florida, and felt fully confident in E.S.&S.'s iVotronic machines to help make that happen.

She would find the electoral waters a bit choppier than expected.

E.S.&S. had promised to shorten the long boot-up time for Miami-Dade's iVotronics created by the trilingual ballot. But when the company submitted a new and improved Version 7.5, the state informed E.S.&S. on May 7, 2003, that it would not be certified, because of numerous "anomalies and deficiencies." E.S.&S. says these were minor, and that the following month, when Version 7.5.1 was certified, it included a fix for the trilingual ballot. No longer would the machines have to be booted up serially. Yet even now, as one Miami-Dade County

insider observes, each machine "takes just as long to boot up."

As E.S.&S. was struggling to resolve those "anomalies and deficiencies," Miami-Dade's inspector general issued a blistering report. After listening to tapes of E.S.&S.'s presentation to the county the previous year, he wrote that E.S.&S. had deceived the commissioners outright. The company had said nothing about the longer boot-up time. The I.G. cautioned the county not to believe E.S.&S.'s promises, and wrote that "if this situation does not improve, the County should consider scrapping the current system." (An E.S.&S. spokesperson says the company did not mislead the county about its products or services.)

At 54, Florida secretary of state Glenda Hood has the handsome, weathered look of a woman who has spent a lot of time in the Florida sun and doesn't mind that at all. In person, she projects an odd mix of authority and detachment, perhaps fitting in a job that puts her in charge of Florida's elections but gives her limited power to affect them.

Hood's message to the out-of-state reporters tramping through her Tallahassee office in ever growing numbers is how much has changed. "Everything has changed," she says. "And everything needed to change." Since the primary calamity of 2002, Hood stresses, scores of local elections have gone off without a hitch. "I think it does a huge disservice to live in the past, to say 'what if?' You could go through these 'what if?' conspiracy theories from now until the end of time."

Much *has* been done, and so Hood's frustration with skeptics is understandable. Still, a series of problems through the spring and early summer have been troubling. In a January runoff among Republicans in Broward and Palm Beach Counties, touch-screens produced 137 blank ballots while recording a 12-vote margin of victory for the winner. As a result, U.S. Congressman Robert Wexler, a Democrat, stepped up his call for the state to require printers for touch-screen voting machines. The printers could generate paper "receipts," much as A.T.M.'s do. When a voter confirmed that the touch-screen had registered his vote as he cast it, he could put the paper receipt in a box; in a close race, the voter-verified paper ballots could be used for manual recounts. In his home county of Palm Beach, Wexler filed two lawsuits—one in state court, one in federal court—declaring, among other things, that touch-screens violated the state's own election laws because they don't allow for manual recounts. The state suit was dismissed on appeal in August. The federal case was due to be heard late that month.

Such lawsuits, Hood says, are so much fearmongering. "I think there are a lot of individuals who are trying to erode voter confidence," she declares. "The fact is that we haven't had malfunctions with any of our equipment." The blank ballots in Broward and Palm Beach's runoff, election officials said, were easily explained. Voters had simply gone into the voting booth and chosen not to vote. As for Wexler's call for a paper trail, Hood says, "not one of [the vendors] have fully developed any type of paper printer. And the reason they haven't . . . is because there are no standards."

To further discourage the paper-ballot movement, Hood turned to Republican senator Anna Cowin, the legislator who had blocked attempts to have ex-felons' rights automatically restored. Hood gave Cowin a bill to file, which would render Wexler's lawsuits moot. "A manual recount may not be conducted of undervotes on touch-screen machines," the bill declared.

The point, Hood explains, was that no recount is needed, because touch-screens don't allow overvotes: if a voter tries to select a second candidate, the second choice replaces the first. Nor do they allow undervotes: if a ballot is left blank, the machines notify a voter two or three times that he has not made a selection. Yet, as activist Sandy Wayland of the Miami-Dade Election Reform Coalition points out, "If you say recounts are illegal with touch-screens, that would make it difficult for any future generation of machine that did have a paper trail to get certified."

When a young, first-time Democratic state senator named Dave Aronberg succeeded in thwarting the bill last Easter, Hood quietly enacted the ban as a new state rule. By the time most legislators learned of this stealth move, a 20-day public comment period had ended, and the rule acquired the force of law. Late last spring, Hood was still grumbling over the calls for a voter-verified paper ballot to accompany touch-screens: "Some of the advocates . . . I'm not sure that they're aware that there actually is a paper audit record that is one of the backup systems."

The audit record is intended to be used only after votes are tallied, as a kind of backup check to see that the machines have worked as intended. But it could be used for manual recounts, Hood suggested, on a statewide basis, if needed. Ed Kast, then the director of Florida's Elections Division, had said more specifically in state hearings of May 2003 that the audit record generated "actual paper records as well as ballot images," thus rendering any other paper trail superfluous.

Unfortunately, as Constance Kaplan was about to learn, the audit-record system was flawed.

Kaplan, 55, the new Miami-Dade elections supervisor, has big blond hair and likes to drape herself in lots of southwestern turquoise jewelry. A 33-year veteran of Chicago's elections system, she came to Miami in July 2003 because she thought the job would be fun.

Shortly before her arrival, Orlando Suarez, a Miami-Dade technology specialist, reported in a memo that when the audit report was downloaded from the various voting machines of a polling place, the serial numbers of the respective machines could be garbled or lost. As a result, the votes taken from machines A, B, and C might all appear on the audit record to have come from an unknown machine D. No votes were lost, Suarez observed, but, as an auditing device, he said, this was unacceptable.

"Initially, E.S.&S. denied that a problem existed," Kaplan wrote to Aldo Tesi, the president and C.E.O. of E.S.&S. Then, as Kaplan explained, the E.S.&S. project manager for Miami-Dade suggested a temporary solution, which proved to be time-consuming and expensive. E.S.&S. assured Kaplan that the company's upcoming, new and improved version would soon be finished and certified, solving that problem and others. But months passed, and no solution appeared. An E.S.&S. spokesperson says the company did come up with a fix by mid-2003, but Florida declined to certify it. A county insider has a different view: "Basically they . . . didn't do a thing about it until their feet were held to the fire and they were being trashed by the media."

In mid-July, at last, E.S.&S. won state certification for a fix of the audit glitch. The company would pay all costs associated with the fix. So the problem, as Hood declared, was solved. The company's new Version 8.0 was still nowhere in sight, but an E.S.&S. spokesperson says its timing "is not relevant" because the fix was done. Yet the fact remained that E.S.&S. had been promising for nearly two years that a cure-all version would be arriving soon.

No sooner had the fix been announced than another embarrassment emerged. Twice in 2003, Miami-Dade's computer system had crashed, apparently destroying the county's electronic records of a number of 2002 and 2003 elections. The loss of some of these voting-machine records was actually a violation of Florida law, which requires counties to keep race returns for set periods of time.

The crash had occurred on county computers, not on iVotronic voting machines. But the county could not find backup records. A frantic search ensued for random copies of the results that might exist on one hard drive or another. Finally, copies were

found. Governor Bush himself professed to be "pleased" at the retrieval. But again the state's Division of Elections was left seeming ham-handed.

Even if no further flaw emerges before November, Florida voters will be left to wonder just how accurate their touch-screens are, thanks to a jarring report in early July from the *South Florida Sun-Sentinel.* Reporters sifted the results from last March's Democratic presidential primary in Florida. They looked only at precincts where the primary was the sole race on the ballot. Here was as pure a sample group as one could hope to find: only Democrats could vote in that primary, and they knew before they walked into the voting booth who the choices were. How many such voters would go into the voting booth and then fail to vote? Yet the *Sun-Sentinel* found that of the 200,836 votes cast on touch-screens in those precincts, 1,648—or about 0.8 percent—were recorded as undervotes. That was about six times as many undervotes as recorded on optiscans in other one-race precincts for that same primary.

"That one line has been repeated, but it's not true," says Hood's press secretary, Jenny Nash, of the six-times-greater rate of undervotes on touch-screens. "On touch-screens, the undervote rate is a slight bit higher because if you don't make a decision in a specific race the touch-screen prompts you two or three times, but eventually you can cast your ballot that way. On an optiscan, if a voter decides to do that, a blank ballot, when it's fed into the tabulator, is spit back out. Because the poll worker can't look at how the voter voted, he would say, 'Go fix it.' That can be intimidating."

Unpersuaded, one of Miami-Dade's commissioners has begun to ask if the county should just admit it erred and get rid of its touch-screens altogether. "The issue is not the paper trail," says Jimmy Morales, a Cuban-American who is running for mayor of Miami-Dade county this fall. "The issue is these machines don't work."

Yes, Morales says, a paper trail would be reassuring. But at what cost, added to all these other costs? "For the cost of redoing the software, adding the printers, not to mention the ongoing supplies—paper, ink, all that stuff—it's more expensive to do that than to scrap them and buy the optiscan system."

Governor Bush, asked recently what's changed from 2000 about his state's demographics, said, "Everything." Overall, the state's population has grown by more than 1 million—to 17 million—since the last presidential election. "We have the largest number of people moving in, the third-highest number of people moving out," said Bush of how his state compares with the other 49. "We have a pretty high birth-rate. We have a lot of young people who are becoming first-time voters. And we have a lot of people going on to see their Creator."

Yet, of the state's 9.4 million voters registered in 2003, the party-line split is still right up the middle: 42 percent Democrats, 39 percent Republicans, with 17 percent claiming no party affiliation and 3 percent members of minor parties. Nick Baldick, who was John Edwards's presidential-campaign manager, says even that small majority of Democrats is deceptive. "Florida has a registration majority of Democrats, but not a presidential voting majority of Democrats. A lot of registered Democrats in the South may vote Democratic for state representative or governor, but may not vote Democratic for Senate or president."

In the crazy quilt of Florida demographic groups, Cuban-Americans have been staunchly—passionately—Republican since John F. Kennedy's bungled Bay of Pigs. This time, believes Florida Democratic Party chairman Scott Maddox, the bloc may not be so monolithic. "George Bush has broken promises," he says. "He promised to end the wet-foot, dry-foot immigration rule—that if you're a Cuban and you're caught in the water, on a raft, they send you back to Cuba, whereas if you get a foot on land, then you stay in America. He has not fulfilled that promise." And Cuban-Americans are dubious, he suggests, about all the American lives spent to remove Saddam Hussein from power when "we have a dictator that has just as bad human-rights violations within 90 miles off our coast."

Ultimately, says Baldick, Kerry will need to win by the same formula Clinton won by in 1996. In the big southern counties—Miami-Dade, Broward, and Palm Beach—he'll have to win big. Then, Baldick explains, he'll have to break even, or come close, in the I-4 corridor: the now fabled mid-state region, the spine of which is Interstate 4, between St. Petersburg and Daytona, whose voters are the state's major swing factor. Clinton did carry the I-4 corridor—just barely, but that was enough. "Then, in North Florida," Baldick observes of the state's most conservative counties, especially in the Panhandle, "a Democrat has to not get blown out of the water."

That's the theory. But more than one new variable this year may yet confound it.

Convenience voting, suggests former Gore lawyer Kendall Coffey, could be a killer for Democrats. "Just as Democrats have historically done better with recounts, Republicans have always been favored by absentees," he says, and convenience voting is simply absentee voting made easy. "The funny thing is that it was packaged in with all the touch-screen voting reforms in 2001, and the Democrats never saw it coming." But Scott Maddox sees an upside there. Convenience voting, he says, "is going to be a major push of the Florida Democratic Party because that is the one place now [where] we can have a paper trail."

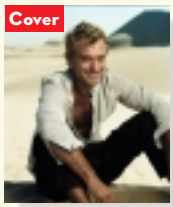
Earlier this year, minority voters in Orlando's mayoral election showed strong interest in absentee ballots—apparently enough for Democrat Buddy Dyer to avoid a runoff. Now the Florida Department of Law Enforcement, which ultimately reports to Jeb Bush, has begun an investigation into those ballots that has, as *New York Times* columnist Bob Herbert put it, "the vile smell of voter suppression." Dressed in plain clothes, gun-toting investigators showed up at the homes of elderly black citizens in Orlando and told them that they're part of an investigation into Mayor Dyer's campaign workers, including Ezzie Thomas, 73, president of the Orange County Voters League. Many of those confronted were members of the mostly volunteer organization which encourages minority voting. Thomas sees the investigation as nothing less than an attempt to intimidate Florida's black voters. "It's because of the presidential election coming down the pike," he told the *Orlando Sentinel.*

Military absentee ballots will be even more of a factor this year than in 2000 because of the obvious: 135,000 American troops in Iraq, not to mention those in Afghanistan. And now that any overseas ballots can be received without a postmark up until 10 days after the election, who can say what schemes might be hatched in that grace period after a close election? Mark Herron, the Gore lawyer whose memo about absentee ballots backfired so badly in 2000, adds that "there's also a provision in here that's probably going to come into play that says that the Elections Canvassing Commission can extend overseas absentee ballot receipts if the armed forces of the United States are engaged. So the 10-day thing may not be 10 days." It may be more than 10 days.

The greatest new variable this year, to be sure, is the voting machines themselves. Will they perform without mishap after all? Will the presidential election in Florida be the anticlimax that members of both parties should fervently hope it will be: a clean election with a winner undisputed by all? In dozens of local elections across the state, there is indeed cause for that hope. In poor, black Gadsden, the county with the highest spoilage of votes (12 percent) in 2000, the error rate in 2002 dropped to less than 1 percent. Shirley Knight, the elections supervisor since 2001, credits new, precinct-based optiscans for that success—along

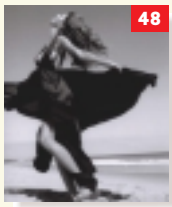
CREDITS

FASHION



Cover: Jude Law's **Marc Jacobs** shirt from Marc Jacobs, Boston and San Francisco; **Burberry London** pants from Burberry stores nationwide, or call 800-284-8480.

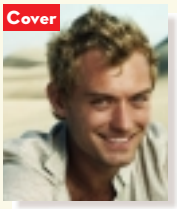
Page 48: Gisele Bündchen's **Calvin Klein Collection** dress from Calvin Klein, N.Y.C. and Dallas.



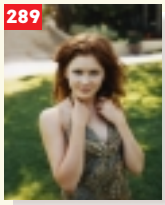
Page 94: See credits for cover.
Page 106: Krista Smith styled by Deda Coben.
Page 158: Michael Sheldon's shirt by **Ermenegildo Zegna,** from Ermenegildo Zegna boutiques nationwide, or go to zegna.com.
Page 222: Tom Hanks's **Dolce & Gabbana** shirt from Dolce & Gabbana boutiques nationwide. **Robert Zemeckis's** **Gucci** shirt from Gucci boutiques nationwide; **Boss Hugo Boss** T-shirt and jeans from Hugo Boss, N.Y.C., or call 800-HUGO-BOSS. Jeanne Yang for cloutieragency.com.
Page 289: Renee Olstead's **Michael Kors** dress from Michael Kors, N.Y.C., and Nordstrom and Marshall Field's stores nationwide; **Beth Orduña** ring from Nyali, L.A.
Pages 302–3: See credits for cover.
Page 309: Jude Law's **Y's for Men Yohji Yamamoto** sweater from Yohji Yamamoto, N.Y.C., and Douglas Fir, L.A., or go to yohjiyamamoto.co.jp; **Polo Ralph Lauren** pants from selected Ralph Lauren stores, or call 888-475-7674, or go to polo.com.
Page 325: Gisele Bündchen's **Ralph Lauren** bikini from selected Ralph Lauren stores.
Page 329: **Burberry** bikini from selected Burberry stores.
Page 342: Colonel Jean-Claude Mulès's sunglasses by **Serengeti,** from Sunglass Hut and Lenscrafters stores nationwide.
Page 370: Barbara Walters styled by Fran Taylor.

BEAUTY AND GROOMING

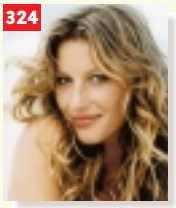
Cover: Jude Law's hair styled with **L'Oréal** Alt.Studio Out of Bed Whipped Gel and Alt.Studio Crystal Wax, from drugstores nationwide; face moisturized with L'Oréal Paris FUTUR-e and toned with HydraFresh Toner, from drugstores nationwide, or go to loreal.com. Johnnie Sapong for Van Michael Salon/Streeters.



Page 94: See credits for cover.
Page 106: Krista Smith's makeup by John Stapleton for MAC Cosmetics.
Page 112: Kathryne Hall's hair and makeup by Barbara Fazio for artistsbytimothypriano.com.
Page 158: Michael Sheldon's grooming by Michiko for R. J. Bennett.
Page 168: Top, **Natalie Massenet's** hair by Adie Hannah for Soho Management; makeup by Michelle Campbell for Untitled. Center, **Clinique's** Pink BCA Lip Palette from selected Clinique counters; **L'Occitane's** Shea Butter from L'Occitane boutiques nationwide, or go to loccitane.com; **Lacoste's** Touch of Pink from selected department stores; **Crème de la Mer** from Bergdorf Goodman, N.Y.C., selected specialty stores, and Neiman Marcus and Saks Fifth Avenue stores nationwide; **Estée Lauder's** Pink Ribbon from fine department stores nationwide; **Kathleen Lewis's** Rose Dream Cream from Blue Mercury, Washington, D.C., or call 800-355-6000.
Page 198: Nicholas Kristof's grooming and **Julie Flint's** hair and makeup by Elaine Madelon for artistsbytimothypriano.com; **Donald M. Payne's** and **John Prendergast's** grooming by Nicci for T.H.E Artist Agency.
Page 222: Jetty Stutzman and Sylvia Viau for cloutieragency.com.
Page 289: Renee Olstead's hair styled with **Paul Mitchell** The Conditioner, from drugstores nationwide, or go to paulmitchell.com; Clyde Haygood for Luxe. Makeup products by **Lancôme,** from major department stores nationwide; on her face, Transparence—Base de Teint in Rose Petale; on her eyes, Colour Focus EyeColour in Prop and Hypnôse Mascara in Black; on her cheeks, Blush Subtil in Cosmopolitan Pink; on her lips, Juicy Rouge LipColour in Sorbet; Debra Ferullo for artistsbytimothypriano.com.



Pages 302–9: See credits for cover.
Pages 324–29: Gisele Bündchen's hair styled with **John Frieda** Sheer Blonde Crystal Clear Shape, Shimmer & Hold Hairspray, and Frizz-Ease Dream Curls, from the John Frieda Salon, N.Y.C. and L.A., or go to drugstore.com. Makeup products by **Dior,** from Dior boutiques and department stores nationwide, or go to sephora.com; on her face, Diorskin Pure Light in Medium Beige; on her eyes, 5-Colour Eyeshadow in Brun Casual, Crayon Eyeliner in Deep Brown, and Ultimeyes Mascara in Black; on her cheeks, Diorblush in Firelight; on her lips, Addict Ultra Shine Sheer Lipcolor in Shiniest Rose. Serge Normant for Serge Normant/John Frieda Salon; Evelyn Waser for the Style Bar.



Page 337: Leslie Marnett for Contact.
Page 370: Barbara Walters's hair by Bryant Renfroe; makeup by Lori Klein.

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with her own emphasis on stringent, relentless voter education.

Yet even if the machines appear to work, who's to say they won't have been hacked? While elections officials in Florida seem to take on faith the security of their E.S.&S. machines, the state of Ohio isn't so sanguine. In 2003, Ohio secretary of state J. Kenneth Blackwell commissioned a Detroit-based computer company to test his state's voting machines. The results were not encouraging. In the E.S.&S. machines, the review discovered one potential high-risk area, three medium-risk, and 13 low-risk areas. Instead of multiple passwords that could be set at each polling place to enhance security, E.S.&S. had made two of its three passwords for each machine "hard-coded," or immutable, so that the same two passwords were used for every machine manufactured. The review also concluded: "There is no use of encryption on the iVotronic or on the data transferred to and from the iVotronic. There is a risk that an unauthorized person could gain access to the data." An E.S.&S. spokesperson says the iVotronic does have its own form of encryption, and adds that the study's programmers were assigned to hack into each system, and proved unable to breach the iVotronic, proof the iVotronic is secure. But Blackwell was unpersuaded. Speaking about all the touch-screen systems tested, he said, "I will not place these voting devices before Ohio's voters until identified risks are corrected and system security is bolstered." (E.S.&S. says it's in the process of enacting design or programmatic changes to comply with Ohio's requests.)

Heeding critics' concern over touch-screens' lack of a paper trail, the G.O.P. issued a glossy flyer in July urging Republicans to shun them in favor of absentee ballots. An embarrassed Governor Bush quickly disavowed the flyer, but the point was made: for all his own secretary of state had done to talk up touch-screens, the problems of the last months had stirred doubts in both parties that Florida's election of 2004 would be any cleaner, or clearer, or more conclusive than the nightmare of 2000.

"Having spent lots of money, passed lots of laws, made lots of speeches, held commission hearings and the like, if anything, we're worse off than we were four years ago," says Gore lawyer Kendall Coffey, "in that [in] some of the key counties that could hold not only the key to Florida but the key to the nation's future you do not have a legitimate recount vehicle. Because they have touch-screens without a paper trail. It's hard to imagine a scenario that makes hanging chads the good old days, but that's the reality of the 2004 elections in Florida." □