



HOW FLORIDA CONTRACTED FOR LIST MAINTENANCE

(excerpted from “Chapter 5. The Realities of List Maintenance,” *Voting Irregularities in Florida During the 2000 Presidential Election*, US Civil Rights Commission.)

Editor’s Note: Subsequent investigations revealed that as many as 8,000 Florida voters were wrongly identified as ineligible by the DBT (ChoicePoint) list compiled for the Florida Department of State, under Gov. Jeb Bush, prior to the 2000 presidential election. Those slated to be dropped from the voter rolls were disproportionately minorities and registered Democrats according to expert testimony. George W. Bush—the Governor’s brother—won the election, and the presidency—by a mere 537 votes.

The statutory requirement to hire a private agency to assist in purging the voter files was enacted after the incidents of voter fraud in the 1997 Miami mayoral election that included votes cast in the names of deceased persons. [19] At the Commission hearing in Tallahassee, L. Clayton Roberts, director of the Division of Elections, described the history of chapter 98.0975 of the Florida statutes:

This section of the statute was passed in response to a 1997 Miami mayoral election where it was challenged in court and went up through the court system in the state of Florida. The gentleman who originally won that mayor s race was turned out of office. There was a grand jury investigation. There was a Senate select committee appointed to investigate that election. There was [an] allegation and it was eventually proven that a large number of people who were deceased cast ballots well, someone cast ballots in the name of some people who were deceased in that election. People who were convicted felons who had lost their right to vote under the Florida Constitution cast ballots in that election, and people who were also registered in another municipality or another county within that area cast ballots in the city of Miami mayor's race.[20]

George Bruder, a vice president for DBT Online, a ChoicePoint Company, provided sworn testimony to the Commission about key elements of Florida's list maintenance activities and responsibilities prior to the 2000 presidential election. Mr. Bruder represented the private firm that was awarded a contract to perform state-sponsored list maintenance tasks before the election. His testimony offered a snapshot of the reality of list maintenance activities in Florida, including a description of the process that led to the Division of Elections awarding the contract to his company.[21]

According to Mr. Bruder, the Division of Elections initially solicited private entities to bid for its list maintenance contract through requests for proposals. The first request resulted in an award to a private firm named Professional Analytical Systems & Services. Following its award of a contract to Professional Analytical Systems & Services, the Division of Elections, for reasons not evident in the record, submitted a second request for proposal.[22] Next, the Division of Elections extended an invitation to negotiate to a Florida company then known as Database Technologies, Inc., and to Computer Business Services, a Georgia company.[23]

In response to the Division of Elections second request for proposal, Database Technologies bid around \$3.1 million, an amount nearly 100 times higher than its first bid. DBT structured its bid, this time, in three different price levels based on the advice of a little bird. [24] The company asserts that this substantial increase reflects the change in scope of work requiring additional data processing expertise. [25] Mr. Bruder said:

What we brought to the table is the ability to . . . [take] different types of data from different types of platforms and being able to draw answers out of them that are useful.[26]

At the time Database Technologies was ultimately awarded the contract, the company also had a contract with the Florida Department of Law Enforcement.[27] The contract provided the Florida Department of Law Enforcement access to databases held by Database Technologies.[28]

DBT Online, A ChoicePoint Company

After Database Technologies was awarded the Division of Elections list maintenance contract, it merged with ChoicePoint, Inc., and changed its name to DBT Online, a ChoicePoint Company. ChoicePoint and DBT Online issued a February 14, 2000, press release announcing the merger of the two companies.[29] Most of DBT Online's efforts for the list maintenance contract were completed at the time the press release was issued. On May 16, 2000, ChoicePoint and DBT Online shareholders agreed to approve the merger of the two companies.[30] As a result, several DBT board members were appointed to ChoicePoint's board of directors.[31]

CONTRACTUAL PROVISIONS

The Division of Elections instructed DBT Online on the information it was to use in the data processing/data matching procedure.[32] George Bruder maintained that the color blind search criteria used to create a list of voters with a potential problem included name, date of birth, and social security number.[33] He claimed that neither race nor party affiliation was used to create the list.[34] But when Mr. Bruder was questioned regarding a June 9, 2000, letter, in which he informed the supervisors of elections that race and gender *had been* used as matching criteria, he testified that he had misinformed the supervisors of elections.[35] Mr. Bruder testified that he did not understand the contract to dictate that race, gender, and social security numbers were to be used as matching criteria for the felons list.[36] The Division of Elections gave DBT Online a Requirements Document that prescribed last name, first name, and date of birth as matching criteria for the felons list.[37]

To date, there has been no evidence that DBT Online made any further efforts to advise county or state officials that the information in the June 9, 2000, letter was erroneous. Mr. Bruder asserted that:

DBT Online would have had to fully investigate where the letter went. I believe this was transmitted to the Division of Elections, and I don't know if it was communicated out to the supervisors; however, I have not had that discussion with the people at the division because this would have been sent to Bucky Mitchell.[38]

Mr. Bruder was referring to Emmett Bucky Mitchell, former assistant general counsel for the Division of Elections. Mr. Mitchell is no longer employed with the Division of Elections.

Although Mr. Bruder did not address the supervisors of elections regarding the content of his June 9, 2000, letter, he offered his views on the letter's content to the Commission. In a letter dated March 16, 2001, Mr. Bruder admits that the sentence regarding the use of race and gender was inartfully drafted and may have confused the supervisors of elections.[39] Mr. Bruder wrote:

What I was trying to convey was that, while race and gender were a part of the database that we received and returned to the Division of Elections, neither were used as matching criteria. As I reiterated at the hearing, DBT's function was simply to provide the data. We had neither the statutory nor the contractual right to remove a single voter from the registration lists. That was the function of the county supervisors of elections.[40]

Contract Scope and Databases

Persons adjudicated mentally incapacitated with respect to voting must be excluded from the voter lists according to Florida election law.[41] George Bruder stated, however, that the contract did not require DBT Online to include such data in its list.[42] The Division of Elections provided DBT Online with the following databases in order to create the exclusion list: the central voter file, the Florida Department of Law Enforcement file, the Bureau of Vital Statistics deceased persons file, and the Executive Board of Clemency file.[43] As dictated by the terms of the contract and the Division of Elections, DBT Online was expected to take the files that [the Division of Elections] gave us, take the process that they specified to us, develop a list, an exceptions list completely separate from the central voter file, provide that back to the Division of Elections, who would then take that list, disseminate it to the supervisors of elections, who would then take their individual list and do the verification process of the names on it.[44]

Some of the data provided by the Division of Elections to DBT Online were copied from the Florida Department of Highway Safety and Motor Vehicles (DHSMV) database.[45] Once the data have been copied from the DHSMV database, DBT Online no longer has any control over the integrity of the data contained therein.[46] Thus, DBT Online does not have the access to manipulate the live DHSMV database. Under the name of ChoicePoint's predecessor, Equifax, the DHSMV entered into the agreement to provide access to its database on February 10, 1993.[47] On August 1, 1997, the contract was assigned to ChoicePoint and remains in effect.[48]

On November 5, 1993, DBT Online contracted for interactive access to the driver's license database for its corporate/professional licensed clients. [49] Randolph A. Esser, information systems director for the DHSMV, defined interactive access as rapid two-way communications between an end user and a computer program. In this context, the end user will submit a driver's license number(s) to the Department's computer system and receive the information corresponding to that driver's license number within a few seconds. [50] Then, DBT Online determines which clients will have interactive access to the driver's license database with no input from, or explanation to the DHSMV.[51] Each company with access authority has its own password and other identification. All requests to enter the driver's license database are automatically logged by the computer system for later billing purposes.[52]

The driver's license database contains the following personal identifiers: driver's license number, full name, address, gender, race, and birth date.[53]

Simplified Verification of Accuracy

George Bruder explained that DBT Online hired a statistician to build a model that “would tell us how many records we would need to manually verify to give us a level of accuracy on the process . . . that was developed per the direction of the Division of Elections.”[54] DBT Online conducted its own assessment of the percentage by which, if any, its methodology failed to identify voters who had duplicate registrations, were convicted as felons without civil rights restoration, or were deceased. In a letter to Emmett Mitchell, former Division of Elections assistant general counsel, dated March 22, 1999, DBT Online reported that its statistician found that the margin of error was less than 0.4 percent.[55] DBT Online randomly selected 6,760 records to be manually verified to determine its percentage of errors. Because this method found five errors, the statistician reported the confidence level at 99.9 percent.[56] DBT attributed the errors to its previous failure to increase the character count to capture hyphenated last names and the multiple first name formatting errors created in the merging of the county information into the central voter file.[57] Mr. Bruder claimed that he was unaware of any other efforts having been made to verify data on the list.[58]

Accuracy of the Felon Exclusion List

Clay Roberts, director of the Division of Elections, testified that a list of 3,993 possible felons was compiled by DBT Online and sent to the 67 supervisors of elections.[59] Janet Modrow, technical assistant for the Division of Elections, clarified the number provided by Mr. Roberts. Ultimately, DBT Online provided a list of 3,993 possible felons from its own databases and 38,329 possible felons based on the databases provided by the state of Florida.[60] Mr. Bruder stated the list created was not inaccurate, but rather it contained false positives. He explained:

A false positive is an industry term that means some but not all the data elements match the data provided. The fact that there were names on the list that were not ultimately verified as deceased, registered in more than one place, or convicted felons does not mean the list was inaccurate, but reflects the nature of the search parameters established by the Division of Elections.[61]

DBT Online advised the Division of Elections of the likelihood that a significant number of false positives existed and made recommendations to reduce those numbers, according to Mr. Bruder.[62] He further asserted that DBT Online specifically suggested to state officials that narrow criteria be used in creating the lists, which would lower the false-positive rate, and therefore, minimize errors in the number of names matched.[63] Mr. Bruder testified that the company recommended, for example, that it develop criteria requiring an exact match on the first and middle names. Thus, a Floridian named Deborah Ann would not match with the name Ann Deborah.[64] But the Division of Elections favored more inclusive criteria and chose to make it go both ways, as Mr. Bruder recalls it.[65] In addition, he pointed out that state officials set parameters that required a 90 percent match in the last name, rather than an exact match.[66] Mr. Bruder insisted that the state dictated to us that they wanted to go broader, and we did it in the fashion that they requested. [67]

Mr. Roberts also testified that the Division of Elections contacted the Florida State Association of Supervisors of Elections regarding the contract. He stated:

[The Association of Supervisors of Elections] established a committee on this issue. We got the committee together with people from [the Florida Department of Law Enforcement], with people from the Board of Executive Clemency, with DBT. We got together to come up with a framework and a methodology that the supervisors could go through in verifying this

information, to go through in a methodical way to verify before anyone's name was removed from the voter rolls.[68]

Mr. Bruder disagrees with the above characterization of the meeting. At a deposition taken of Mr. Bruder, he recalled a meeting with the Division of Elections and the Executive Board of the Florida State Association of Supervisors of Elections in early 1999.[69] At the meeting, the executive board members of the Florida State Association of Supervisors of Elections gave DBT Online its input as far as what they wanted and our being able to tell them what we could and could not do in response to that. [70] Mr. Bruder recalled that the supervisors of elections present at that meeting wanted:

... to be as exacting as possible on the matches. If I condense it down to a major concern, that was what they were looking for. And being that the Division of Elections was the entity that I was contracting with, they would be the ones that would be giving us the specifications. So they [Division of Elections] were there, they heard what the supervisors [of elections] wanted. They had technical representation there also to then give us advice as far as how they wanted us to construct the matching logic.[71]

Instead of providing an exclusion list with exact matches, the state decided to proceed with requiring the matching logic to go both ways, according to Mr. Bruder, who insisted that DBT Online continued processing at the direction of the Division of Elections. [72] DBT Online made no recommendations or instructions on how the supervisors of elections should implement their verification processes.[73] Emmett Mitchell reiterated to DBT Online the desire of the Division of Elections to cast a wide net for the exclusion lists. Mr. Mitchell said:

Obviously, we want to capture more names that possibly aren't matches and let the supervisors make a final determination rather than exclude certain matches altogether.[74]

Mr. Bruder also testified he did not believe all the supervisors of elections understood the matching logic used by DBT Online at the direction of the Division of Elections.[75] Mr. Bruder believed the supervisors of elections had a lack of understanding of the methodologies used to derive the list. [76] In June 1999, DBT Online attended a meeting with the Division of Elections and all 67 supervisors of elections or their representatives. [77] During that meeting, Mr. Bruder addressed questions regarding specific incidents posed by the supervisors of elections.[78] As a result of the June 1999 meeting, Mr. Bruder recalled that he advised that the supervisors of elections receive individual training on the matching logic.[79] Mr. Bruder elaborated:

Subsequent to that meeting. . . immediately thereafter I walked out of that meeting with Emmett Mitchell and told him that my suggestion to the Division of Elections was that we begin an immediate training program, to go to each and every supervisor to explain to them the logic that was used and why and to help them with whatever issues they had in doing their part of the verification.

Subsequent to that discussion we did five regional trainings that DBT orchestrated with the Division of Elections and the Florida Department of Law Enforcement in which we invited all counties to bring whoever their representatives were, either the supervisor or their designee, multiple people, and we built training materials for them. We sat with them and answered their questions.[80]

Mr. Bruder testified he also made a similar suggestion earlier in the data matching process: I originally expressed to the Division of Elections early on in the process before we started doing any data processing that there would probably be a need for training the eventual users of this data because it was a complex data processing job, and allow us to do that because we had trainers that understood that. I again suggested it after that [June 1999] meeting and DBT did that and we did it at no additional expense to the state.[81]

Division of Elections Payment and Contract Status

The amount paid to DBT Online for its performance of the contract with the Division of Elections was \$3,221,800. [82] DBT representatives offered vague testimony about the actual costs of the services rendered under the contract, insisting that the payment encompassed hours of work, in addition to its intellectual property, existing databases, and experience. [83] The Division of Elections, in addition to paying over \$3 million to DBT Online, compensated the Florida Department of Law Enforcement for its role in the removal of felons from the voter rolls. In addition to its own toll-free hotline for voters who wished to confirm their eligibility status, [84] the Florida Department of Law Enforcement (FDLE) performed record checks on a listing of 13,190 alleged felons in December 1999.[85] At a cost of \$8 per record, the Division of Elections received an invoice for \$105,520 from the Florida Department of Law Enforcement.[86] The FDLE responded to approximately 5,000 voters whose names appeared on the felon exclusion list.[87] Of those voters who contacted the FDLE to appeal the notice from a local supervisor of elections that they were ineligible to vote, approximately 50 percent were found to be convicted of felonies in Florida and 50 percent were determined to not have Florida felony convictions.[88] The list maintenance contract between DBT Online and the Division of Elections has expired and it will not be renewed.[89]

CONVICTED FELONS AND CLEMENCY STATUS

The list maintenance contract originally stated that only Florida felony convictions would be used to create an exceptions list.[90] Subsequently, George Bruder understood that the convicted felon and clemency status parameters were expanded to include other states when the Division of Elections discovered that “[DBT Online] had databases of other felony convictions and they asked us to include some of those states in the first year in the processing.” [91] Based on a review of the documents submitted to the Commission, DBT Online used its access to felony conviction data from the following states for its contract with the Division of Elections: Florida, Texas, Ohio, Wisconsin, South Carolina, Kentucky, New Jersey, Virginia, Washington, Connecticut, and Illinois.[92] Following the instructions DBT Online received from the Division of Elections, felons convicted in the following states, which have automatic restoration of civil rights, must apply for clemency through the Florida Executive Board of Clemency: Texas, Connecticut, South Carolina, Illinois, and Wisconsin.[93] The following states, which do not have automatic civil rights restoration for felons, required the foregoing verification process described by Mr. Bruder: New Jersey, Virginia, Washington, and Ohio.[94] The states that were reciprocal for clemency were Kentucky, New Jersey, Virginia, and Washington.[95]

Mr. Bruder asserts that DBT Online did, however, make a recommendation as to which states should be added to the felon and clemency exclusion lists. He explained:

Clemency from those states that had a similar clemency process as the state of Florida, we identified that and we provided that information to the Division [of Elections]. And those states that did not have a similar clemency process, we identified that and provided that information to the state.[96]

The clemency status of those listed as convicted felons was matched against the Florida Executive Board of Clemency file and similar boards of clemency in other states.[97]

Automatic Restoration of Civil Rights

DBT Online performed the following procedures when dealing with felons from states providing automatic restoration of civil rights:

- Verified information with the executive board of clemency in the state where the felon was convicted, if one existed.
- If no Executive Board of Clemency existed in the other state, then DBT Online ran [conviction information] solely against the Florida Executive Board of Clemency file.
- If the state where the felon was convicted had an executive board of clemency and a repository type of agreement [existed] between that state and Florida to reinstate those civil rights, we checked with those boards of clemency to verify that [the] individual had been granted that right. [98]

Emmett Mitchell, former assistant general counsel for the Division of Elections, instructed DBT Online that felons from states with no executive board of clemency must apply for clemency in Florida to have their voting rights reinstated.[99] This interpretation of the executive clemency laws further compounds the disenfranchisement of African American voters. Further, it does not assess the interpretation of comparable statutes that require Florida's acceptance of a sister state's restoration of civil rights conferred upon a convicted felon. Although the issue of voting rights was not specifically addressed, two Florida courts of appeal have ruled that if an individual enters Florida with his or her civil rights, then through the full faith and credit clause[100] of the U.S. Constitution, he or she need not apply for clemency upon arriving in Florida.[101]

Mr. Bruder testified that DBT Online relied upon the information that was given to us by the Division of Elections, who was giving us the criteria in which to use to do the data processing. [102] His testimony was corroborated by e-mails from the Division of Elections assistant general counsel.[103] These e-mails were produced pursuant to a Commission subpoena.

Executive Clemency in Florida

Florida's Constitution empowers the governor to restore civil rights to those convicted of crimes, other than treason, with the approval of three members of the governor's cabinet.[104] Members of the governor's cabinet consist of the following: the secretary of state, attorney general, comptroller, treasurer, commissioner of agriculture, and commissioner of education.[105] Although the cabinet meets twice a month for 11 months each year,[106] it only meets as a clemency board on a quarterly basis.[107] During the months of May, June, and July 2000, the cabinet met six times, but only met once as the clemency board.[108]

The Department of Corrections is obligated to not only inform inmates and offenders under community supervision about civil rights restoration, but also to assist them in completing the clemency application.[109] The information that may be required to be filed with the clemency application includes the following: certified copy of the applicant's indictment or information, judgment adjudicating the applicant as guilty, and the sentence (if imposed).[110] Applicants for clemency in the state of Florida must also send a copy of their application to the current chief judge and current prosecuting attorney of the court in which they were convicted.[111] The clemency

application, excluding the required attachments, is one page and requires the applicant to state a reason for consideration.

The clemency process also requires applicants who were found guilty of a felony outside the state of Florida to complete the same application as those adjudicated in Florida.[112]

Seven days after the Commission hearing in Miami, where the policy of requiring out-of-state felons with restored civil rights to apply for Florida clemency was called into question, the Office of Executive Clemency sent a letter addressing the issue. In a letter to Ed Kast, assistant director of the Division of Elections, Janet H. Keels, coordinator for the Office of Executive Clemency, writes in pertinent part:

If a former felon's civil rights were restored in another state, or if a person's civil rights were never lost after being convicted of a felony in another state, the individual possessed his or her civil rights in Florida and need not apply for restoration of civil rights in Florida. If a former felon attempting to register to vote in Florida claims that his or her civil rights were restored in another state or that his or her civil rights were not lost in another state, but the individual cannot produce supporting documentation, please refer that individual to my office.

My office will attempt to confirm the individual's claim by contacting the state that assertedly restored the individual's civil rights. If possession of civil rights is confirmed, the individual does not need to apply for restoration of civil rights in Florida.[113]

Ms. Keels, in the above-referenced letter, then requested that the Division of Elections accept a letter from her office confirming the individual's possession of civil rights as sufficient proof to allow the former felon to vote.[114] The director of the Division of Elections and all supervisors of elections were copied on the letter.[115]

Although Ms. Keels insists that her letter merely reiterated the Office of Executive Clemency policy, other mandates suggest that the letter actually changed it. Rule 9 states that felons convicted in a court other than a Florida court must be a legal Florida resident before requesting civil rights restoration.[116] Rule 9D states that persons convicted in out-of-state or federal courts *must* apply for civil rights restoration.[117]

State Senator Daryl Jones, a member of the Governor's Select Task Force on Election Procedures, Standards and Technology,[118] noted that the clemency process is extremely difficult in Florida:

[I]n order to have any chance of getting through it, and it does require today a full-blown hearing in front of the full cabinet, with not only you but your employer, your family, your pastor, and all kinds of people. This is about a \$10,000 effort for the average person. And what that means is that for the largest number, by far, of people who are former felons in Florida and probably in the country are poor people. And so this . . . is not an option. It has essentially barred the process from those people.[119]

Number of Felons and Out-of-State Clemency Verification

The first list DBT Online provided to the Division of Elections in April 2000 contained the names of 181,157 possible duplicate registrants, deceased persons, and felons without civil rights

restoration.[120] Approximately 65,776 of those included on the first list were identified as felons.[121] In May 2000, DBT discovered that approximately 8,000 names were erroneously placed on the exclusion list.[122] Later in the month, DBT Online provided a revised list to the Division of Elections containing a total of 173,127 possible duplicate registrants, deceased persons, and felons without civil rights restoration.[123] Of those included on the corrected list, 57,746 were identified as felons.[124]

The documents received by the Commission from DBT Online indicate that the process for clemency verification for purported felons convicted in a court other than a Florida state court consisted of faxing a list of possible felons to the appropriate state agency. For example, the following state agencies responded to DBT Online's clemency inquiries:

- State of Washington Department of Corrections;[125]
- Kentucky Secretary of State's Office;[126]
- New Jersey Extradition Secretary, Office of the Governor;[127] and
- Virginia Secretary of State's Office.[128]

DATA VERIFICATION

Although Florida election law required that the supervisors of elections, who received the exclusion lists compiled by Professional Analytical Systems & Services and DBT Online, attempt to verify the accuracy of those lists,[129] it appears that this procedure was not followed with any degree of uniformity. The first exclusion list was provided by Professional Analytical Systems & Services in 1998, and DBT Online provided exclusion lists in 1999 and 2000.[130]

At least one election official predicted and planned provisions for voters who arrived at the polls and discovered their names were removed from the voter rolls. Then director of the Division of Elections, Ethel Baxter, issued the first of a series of memos on August 11, 1998, regarding the list maintenance activities performed by the supervisors of elections. At that time, Ms. Baxter described the central voter file as the division's first experience with a statewide database and said that it cannot be a 100 percent accurate list. [131] Ms. Baxter made particular note of the concerns with the felony information in the central voter file because of the potential use of aliases. As a result, Ms. Baxter recommended that the supervisors of elections exercise caution when deciding to remove someone who shows up as a convicted felon on the [central voter file]. [132] Ms. Baxter also advised the supervisors of elections of the following:

If you have doubts as to whether or not the felony information is accurate or are unable to verify the accuracy of the information, we recommend that affected persons execute the affidavit prescribed in section 101.49.[133]

In a memorandum dated August 14, 1998, Ms. Baxter forwarded the first exclusion list to the supervisors of elections. Ms. Baxter again advised supervisors to allow alleged felons to vote by affidavit, as provided in section 101.49 of the Florida statutes, if the supervisor of elections is unable to verify the accuracy of the information.[134] The use of affidavit voting under these circumstances provides a reasonable opportunity within the law for eligible persons to participate in the electoral process when election officials are unable to resolve routine conflicts generated by the government's inefficiency or error. Ms. Baxter specifically advised:

It is your responsibility to attempt to verify the accuracy of the information on the list, and remove, prior to the next election, any person who is deceased, convicted of a felony, or mentally incapacitated with respect to voting. If you have doubts as to whether or not the felony information is accurate or are unable to verify the accuracy of the information, we recommend that affected persons execute the affidavit prescribed in section 101.49, Florida statutes. In short, if there is reasonable doubt as to the accuracy of the information, you should allow a person to vote.[135]

In a follow-up memorandum dated August 18, 1998, Ms. Baxter recommended that the supervisors of elections proceed with caution while verifying the information on the exclusion list she forwarded just days prior.[136] Ms. Baxter advised the supervisors of elections as follows:

When notifying voters of potential problems with their registration you should refrain from being accusatory keeping in mind that the information in the list may contain some inaccuracies and is not completely foolproof.[137]

Ms. Baxter also suggested the supervisors contact the Office of Executive Clemency to identify persons who appear on the exclusion list but had their civil rights restored.[138]

Two days later, Ms. Baxter issued another memorandum to the supervisors of elections regarding their list maintenance activities. This August 20, 1998, memorandum states in pertinent part:

As a follow up to our August 11, August 14 and August 18 memorandums regarding the central voter file, we again want to emphasize the importance of verification of the names of the voters on the list provided for your county, who are . . . convicted felons. . . . As we cautioned in our previous memos, we are again recommending that you confirm this information prior to removing any names from the registration rolls.[139]

In this memorandum, Ms. Baxter, for a third time, advised the supervisors of elections to allow alleged felons to vote by affidavit, if he or she had doubts as to whether or not the felon information is accurate, or [the supervisors of elections were] unable to verify the accuracy of this information. . . . [140]

It appears that Ms. Baxter, through her memoranda, attempted to urge the supervisors of elections to exercise great caution in performing their list maintenance responsibilities. She specifically attempted to alert election officials of the possibility of eligible Floridians being wrongfully denied the right to vote if these officials failed to confirm the information compiled by DBT Online. In contrast, state officials apparently failed to issue similar warnings concerning the probable risk of the state mistakenly denying a legitimate voter the opportunity to participate in the November 2000 election. The complaints from the supervisors of elections and from Floridians in the aftermath of the election illustrate that indifferent attitudes and careless practices prevailed over the more cautious approach for the protection of voting rights advocated by Ms. Baxter.

Supervisors of Elections Exclusion List Verification Methods

In his testimony before the Governor's Select Task Force on Election Procedures, Standards and Technology, Clay Roberts explained there was no clear statutory guideline on the manner in which the supervisors of elections were expected to verify the information supplied by DBT Online; as a result, each county supervisor established his or her own policy.[141] The lack of uniformity among the counties regarding felon list verification processes is evidenced in letters drafted by Miami-Dade

Supervisor of Elections David Leahy and Leon County Supervisor of Elections Ion Sancho.[142] Mr. Leahy's form letter to alleged felons states in pertinent part:

According to information received from the Florida Department of Law Enforcement, you have a felony conviction and have not had your civil rights restored. Therefore, your name will be removed from the voter registration rolls thirty (30) days from the date of this letter unless information is received that you have not been convicted of a felony or have had your civil rights restored.[143]

The Miami-Dade letter further instructs the alleged felon to complete a form and provides three addresses to which he or she may forward the information.[144] If an alleged felon had, in fact, been convicted of a felony and did not have his or her civil rights restored, the letter instructs him or her to obtain a clemency application form from the Office of Executive Clemency and to contact the office of the supervisor of elections to obtain voter registration information once restoration has been granted.[145] While Mr. Leahy's letter appears to place confidence in the veracity of the DBT Online felon list, the Leon County form letter to alleged felons demonstrates an understanding of the lists inclusion of false positives. Mr. Sancho's form letter provides in pertinent part:

Your name has been submitted to our office by the Florida Division of Elections on a list of voters who have allegedly been convicted of a felony, but not had their right to vote restored. We do not know if this list is accurate. Our office is required to remove you from the voter rolls if you have been convicted of a felony and your right to vote has not been restored.

If you have never been convicted of a felony, we want to help you clear this up.[146] The letter instructs the alleged felon to fill out a form and return it to the supervisor of elections office within 30 days or be removed from the voter list.[147] The form requests the alleged felon to self-identify as one of the following: never convicted of a felony; convicted of a felony, but civil rights have been restored and eligible to vote; or convicted of a felony, but civil rights have not been restored.[148]

Mr. Sancho's letter suggests a partnership between his office and the alleged felon to clear up any confusion regarding his or her voting status; whereas Mr. Leahy's letter requires the alleged felon prove his or her eligibility status. The simplicity of Mr. Sancho's letter may have even been preferred by DBT Online. When asked about the language used in Mr. Leahy's letter, Mr. Bruder responded:

Are you asking me should he have drafted this letter to say you possibly have a felon conviction and we're trying to verify that ? I would have wrote it that way.[149]

Patricia M. Hollarn, the 1998 president of the Florida State Association of Supervisors of Elections and then supervisor of elections for Okaloosa County, drafted a letter to alleged felons that read in pertinent part:

We have received a list of convicted felons on which your name appears. This list was sent to us by the state and we have been informed it may contain errors. We are asking our voters whose names appear on the list to please assist us with verification so that we don't incorrectly remove any names from our rolls.[150]

Ms. Hollarn's letter then asks the recipient to identify him or herself in one of three categories. The first category is that the individual was convicted of a felony with his or her civil rights restored. The recipient is informed that his or her civil rights restoration status will be confirmed with the Office of Executive Clemency.[151] If the recipient self-identifies in the second category as a convicted felon without civil rights restoration, then Ms. Hollarn's office promises to assist in the paperwork. The third category is that the individual has never been convicted of a felony. Ms. Hollarn offers an apology to this recipient. Ms. Hollarn's letter enclosed a prepaid self-addressed envelope with each letter.[152] In a letter transmitted by facsimile to the Division of Elections from the Florida Department of Law Enforcement on August 14, 1998, the instruction on voter eligibility verification through fingerprints was clarified. A form provided by the Florida Department of Law Enforcement required that both the supervisor of elections and the voter complete separate sections of the form requesting the voter's complete name, date of birth, gender, and social security number.[153] The voter must also authorize that the information be used to confirm or deny a felony conviction and be fingerprinted in the space provided on the form.[154]

The supervisors of elections were not required to report to the Division of Elections if they removed someone based on the possible felon list.[155] Once an individual was identified as a possible felon by DBT Online, the supervisors of elections sent a letter to the voter at his or her registration address.[156] Some supervisors sent their letters by certified mail, while others did not.[157] If the voter did not respond to the letter, some supervisors may have attempted to contact the voter again, while others did not.[158]

Clay Roberts also acknowledged that miscommunication led to approximately 8,000 persons who committed misdemeanors in Texas being incorrectly identified as felons in Florida; consequently, many of these voters were erroneously notified of their removal by county supervisors.[159] Mr. Roberts stated he believed the problem was addressed and no person was removed from the voter rolls based on that erroneous information. [160]

County supervisors and other local officials noted their frustration with the election problems that resulted from the false positives on the felon list. Linda Howell, Madison County supervisor of elections, testified that she found the disenfranchisement of felons most distressing. [161] Yet, elected African American officials asserted that by the time the error was caught, it was too late for the counties to correct it and that the first time any of these voters realized they had been removed from the voter rolls was on Election Day.[162] Ms. Howell testified:

There needs to be something done with the law with regard to a person being able to get their civil rights restored. It's a very different thing in Florida to have that done. Some people it's been 20 years and they still haven't gotten their civil rights. Sometimes that is because they don't even know they are supposed to do something. You have to apply to have your civil rights restored. If I applied today, it would take me from six months to a year to get them restored. So that is an area that has been very distressful for us in our county.[163]

Ms. Howell stated that the first list her office received from the Division of Elections was in 1998 and had no indication of the origin of the information.[164] Floridians who had been convicted of a misdemeanor with an adjudication withheld or people who had received clemency or were pardoned were included in the first Madison County list.[165]

Ms. Howell recalled that one person on the list received a pardon in 1967. “The first list was so inaccurate that you were almost afraid to do anything with it,” she said.[166]

Ms. Howell attempted to verify the names on the list by requesting felony conviction confirmation with the Madison County clerk's office and sending letters to the alleged felons on the list.[167] The letters sent to the alleged felons included a voter verification form that is sent to the Florida Department of Law Enforcement.[168] The FDLE would then verify the felon status of the voter and send the alleged felon a letter including its determination. A fingerprint card to determine whether he or she was the same person listed as a felon was sent along with the letter when appropriate.[169] The alleged felons to whom Ms. Howell sent letters had 30 days to respond.[170] Ms. Howell stated she removed some names of people who appeared on that first list from the Madison County voter file. Ms. Howell received a second list in June 2000, which had only two names, but she chose not to use that list.[171]

Even Ms. Howell, who is not a convicted felon, erroneously received a form letter referencing a prior felony conviction from the Florida Department of Law Enforcement.[172] The letter, dated March 27, 2000, states in pertinent part:

The Florida Department of Law Enforcement (FDLE) received your Voter Registration Appeal Form. After reviewing your Florida criminal history, we have determined that you have a Florida felony conviction in our repository. FDLE will notify your supervisor of elections that we have data indicating that you meet the criteria of a convicted felon.[173]

The form letter informs the recipient that he or she may obtain and review a copy of his or her personal criminal history at no charge.[174] If the recipient obtained a Certificate of Restoration of Civil Rights, the letter instructs the individual to forward a copy of the certificate to the county supervisor of elections and the FDLE.[175]

At the Commission hearing in Tallahassee, Ms. Howell recalled her response to receiving the letter:

I had sent the letter to one of my voters and he sent in the verification form. Instead of picking up his name, they picked up my name and sent me the information. Now the thing that really upset me was that . . . they were not taking their job seriously. The law said that they had to verify this, but they were not taking it seriously. And that could destroy a person's life. You get that on your record, how do you get it off?[176]

Ms. Howell later learned she was never on the felon list provided by the Division of Elections or the Florida Department of Law Enforcement.[177] The FDLE explained to the Commission that Ms. Howell's receipt of the letter was due to a clerical error in its haste to provide a quick response to a voter and to the Madison County Supervisor of Elections. [178] The FDLE asserted that anyone who received such a letter in error could contact the department through the toll-free number and have the issue resolved as one caused by clerical error.[179] Ms. Howell described the position of supervisors of elections with the felon list as precarious and testified:

We have a law that says that a felon cannot be on your rolls, and if I remove that person, you know, from information that I've received and I've done it improperly, then I'm violating a person's right to vote. So where is the middle ground here?[180]

Ms. Howell recommended there be a link between the Florida Department of Law Enforcement, the Florida Executive Board of Clemency, and the Florida Department of Corrections to improve the accuracy of the lists.[181]

Ion Sancho, Leon County supervisor of elections, recalled the process in his county:

[T]he workers at the polling place are given a precinct register, a countywide register, and in Leon County you have special numbers set aside that the public doesn't have access to so that we can communicate telephonically with the Election Day workers. An individual . . . would come in and present themselves to the precinct, they wouldn't be on the rolls. They would be sent to see the clerk, who is basically the CEO of the operation. That individual then would look in their countywide register to see if that individual is eligible anywhere to vote in Leon County. Failing to find your name there and if you have been dropped as a felon, your name wouldn't be there then that clerk would then call be instructed this is the way the procedure is supposed to work. They call the elections office and present the facts to a troubleshooter that we have in our office, who then would try to research the records in our office. And that's where this would have to be resolved because the list would be there.[182]

If the Leon County troubleshooter was unable to make a determination, then his or her supervisor, the assistant supervisor of elections, would make the decision.[183] Mr. Sancho explained:

If the troubleshooter can't make a determination, then they would have to ask permission of their supervisor, who in our jurisdiction is the assistant supervisor of elections who is in charge of Election Day problems of all the Election Day problem workers, and it may differ in other counties.

And again, the person may have not been able to resolve the problem but then presented it to their direct supervisor, who made the decision to tell the person that they're given authorization to vote. Then the clerk would then write down on the precinct register that they were instructed by and write down the name of the individual in our office that gave them the authorization to allow the person to vote and then the person would be required to just fill out a form, what we call the rule pages, which are any sort of trouble or problem and then fill those out and then vote.[184]

Former Broward County Supervisor of Elections Jane Carroll testified that she also found the felon exclusion list to be inaccurate. As a result, Ms. Carroll chose not to use the felon exclusion list provided to her office. An excerpt from the Miami hearing transcript follows:

Commissioner Edley: Did you have responsibility for verifying the correctness of the felony exclusion list?

Ms. Carroll: Had we chosen to use that list that you're discussing, we would have attempted to verify it. We did with the previous list that came out, the first time that list came out, which was two years ago prior to the 98 elections. We wrote to everyone who was on the list and we didn't use the word felon in the letter for fear it would fall into someone else's hands and might be embarrassing. We said, Your voting status

has come under question from information we've received from the secretary of state and would you please call us to discuss this.

Most of them did call. We cleared it up. Either it was not accurate information or it was. If they didn't call we did not remove them.

When the list came the next time there was a great deal of discussion among the supervisors as to the validity of the list. So we chose not to use it. So actually in Broward County no one was removed due to that second and third list. If you remember, there was a second list that was corrected later, according to testimony that I heard earlier.

But when I attended the supervisors meeting in June in Key West, there was much discussion of the inaccuracies of the list. So we opted not to remove anybody that was on that list.[185]

Ms. Carroll also testified that she attempted to work with the Executive Board of Clemency to verify the felon list but found that it was very understaffed and without all the technical equipment to check all of these things. Ms. Carroll exercised her discretion to not remove names from the voter rolls based on the felon exclusion list.[186]

Miami-Dade County Supervisor of Elections David Leahy found the statutory language that ultimately places the burden on alleged felons to prove their innocence to be a reversed process. Mr. Leahy explained:

Under Florida law when I'm provided with a list of individuals who the state maintains are convicted felons who have not had their rights restored, it is my responsibility to verify that information to the best of my ability, and if I do not have any information that they are not convicted or that they haven't had their rights restored, then I'm required to remove them from the rolls.

[But you're correct, in essence,] the way it works in reality, the persons on that list who I send notices out to are responsible for giving me information that they are not convicted. So it's kind of a reverse process. They have to prove that they're not convicted felons in order to remain on the list.[187]

In addition to sending notices in the mail, Miami-Dade County also held administrative hearings where alleged felons could present their evidence. Mr. Leahy explained:

We don't remove these individuals that do not send us information back as convicted felons, because I don't know that for a fact. We go through what is called an administrative hearing process, which is set out in state law, where if people who are provided proper notice that there may be a problem with their registration do not contact us, either in writing or by phone or at an administrative hearing, then they are removed from the rolls.

So we remove many of these individuals because they did not contact us. As part of the administrative hearing process we don't remove them as felons unless we have

specific information that they are indeed felons who have not had their rights restored.[188]

Supervisors of elections are required to submit their voter registration files to the Division of Elections upon request. Their voter registration files are compiled into the central voter file, which was used by DBT to provide the felon list.[189]

Mr. Leahy admitted that even the administrative hearing process does not provide complete protection for those wrongfully placed on the felon list. He recalled that some alleged felons proved their innocence through the submission of fingerprints to the Florida Department of Law Enforcement.[190] Mr. Leahy explained:

I'm concerned mainly with the process, in that so many of these people don't respond, and I don't know whether it's because they don't get notice or they're confused or what the problem is. But we're removing a lot of people from the rolls when I know for a fact based on the appeal forms that I get back that this is not a truly accurate list. It's drawn off the Florida Department of Law's database and that database was never intended for this purpose, but it's being used for this purpose.

And so I am concerned that we may be removing people through the administrative hearing process that are truly not convicted felons, and that will cause them a problem when they show up to vote in the next election.[191]

Palm Beach County Supervisor of Elections Theresa LePore also decided not to use the felon exclusion list provided by DBT Online. Ms. LePore testified that she found errors through her own study of the list and thought that a thorough verification process would be tedious. Ms. LePore added:

The last list we got, the infamous list that's been talked about statewide, which was in summer of 2000, statewide had a tremendous amount of problems. One supervisor of elections name even appeared on it and she had nothing more than a traffic ticket. We did some spot checking, found that there were errors, and I felt that I'd rather err on the side of the voter than to take somebody off with the chance that it was an error and to deny someone their right to vote by mistake. It's very time consuming and tedious to try to verify every single name on that list and to if somebody calls on Election Day, they're on the list and they say they're on there in error, to go through the procedure of trying to make sure that they're eligible to vote, I decided to err on the side of the voter.[192]

Although the Commission's record reflects that some supervisors of elections registered general complaints regarding the use of the exclusion lists, the record does not reflect that the Division of Elections was flooded with specific examples of Floridians erroneously identified as felons. For example, Beverly Hill, then Alachua County supervisor of elections, registered her complaints regarding the first exclusion list provided by DBT Online.[193] Ms. Hill was concerned that a person, whose clemency papers were dated prior to 1975, still appeared on the felon list.[194]

Three examples of false positives occurred in Monroe County when a supervisor of elections employee, the spouse of another supervisor of elections, and the father of Harry Sawyer, the supervisor of elections, were all listed as potential felons.[195]

Division of Elections Responsibilities

Among the duties assigned to Clay Roberts, director of the Division of Elections, are the following:

- provide technical assistance to the supervisors of elections on voter education and election personnel training services;
- oversee and approve training courses for continuing education for supervisors of elections; and
- coordinate, on an annual basis, two statewide workshops for the supervisors of elections by reviewing and providing updates on the election laws to ensure uniformity statewide in the interpretation of the election laws.[196]

In the fall of 1999, the Division of Elections held training for the supervisors of elections on the central voter file as refined by DBT Online.[197] In an e-mail to Marlene Thorogood dated April 28, 2000, Janet Modrow, a Division of Elections employee working on the contract, informed DBT that she and then Assistant General Counsel Emmett Mitchell were swamped with work and did not feel that training workshops were really necessary. [198] Consequently, state officials may have missed an important opportunity to reduce the risk of removing eligible voters from the voter rolls.

Responses to Implementation of the List Maintenance Contract

Florida State Senator Daryl Jones and State Representative Chris Smith, both members of the Governor's Select Task Force on Election Procedures, Standards and Technology, noted their opposition to the use of DBT Online's information in Florida's voter list maintenance:

Other voters were disenfranchised because a company hired by the Department of State to match voter rolls against other databases to ensure that felons and the dead could not vote did not properly do so. Database Technologies included in their list the names of more than 8,000 voters who should not have been removed from the voting rolls. However, by the time the error was caught, it was too late for the counties to fix it; in fact, the first time many of these voters realized they had been removed from the voter rolls was on Election Day.

In Leon County, the supervisor of elections was provided a list of nearly 700 names to purge from the voting rolls. Yet the Supervisor could only confirm 34 as actual felons (St. Pete Times, 12/6/00). In fact, Leon County's supervisor of elections always confirms the names by social security number and birth date, two pieces of information not used to match the lists by Database Technologies because he does not trust the information provided to him by this company (St. Pete Times, 12/6/00).[199]

Phyllis Hampton, general counsel of the Florida Elections Commission, testified that her office could investigate the wrongful removal of a Floridian from the voter rolls if there was evidence of a willful violation. Ms. Hampton stated:

If we had a sworn complaint, which on its face was legally sufficient, we would proceed and look into the matter and see. But one of the requirements to find a violation is that there is willfulness. So if you had a person who had accidentally been removed during the purging of the election records, that would not be a willful violation. You would have to have someone who was deliberately removing people when they should not be removed, for there to be an election law violation.[200]

Barry Krischer, state's attorney for Palm Beach County, testified that although his office has a civil rights unit that is in contact with the community, it received no complaints of criminal misconduct, fraud, police presence, limited access, or discrimination at polling places.[201] When asked to what he attributed the lack of complaints received by his office, Mr. Krischer opined that the public does not perceive his office as the appropriate agency to receive these complaints. An excerpt from the Commission hearing transcript follows:

Commissioner Lee: You mentioned that you had not received any complaints from your office regarding ineligible and race violations. How does the public know about getting to your office to file complaints? Is it a common knowledge?

Mr. Krischer: Actually, the public doesn't perceive that the prosecutor's office is the place to go with those complaints. Law enforcement investigates. Then we receive them and we prosecute them. So the public will generally go to the supervisor of elections or call Tallahassee.

Commissioner Lee: So it's safe to say that it's not that no one filed complaints, it's just that it never got to your office?

Mr. Krischer: Correct. They don't perceive our office as the appropriate agency to receive those complaints.[202]

Human Consequences of Felon Exclusion List

The use of the parameters dictated by Florida state officials and the lack of any meaningful verification process left many county supervisors confused. As a result, many Floridians were erroneously removed from the voter lists.[203]

One such Floridian was **Willie D. Whiting, Jr.**, a member of the clergy and registered voter in Tallahassee, who went with his family to vote at his assigned polling place, Precinct 42 in Leon County. When Apostle Whiting presented his driver's license for identification purposes, the poll worker said his name was not on the registration list and called the supervisor of elections for Leon County to verify his registration status. Apostle Whiting asked to speak with a supervisor at that office, and he was told that an individual named Willie J. Whiting, born two days after Apostle Whiting, had been convicted of a felony in the state of Florida. Consequently, Apostle Whiting learned he had been wrongfully removed from the registration list. After Apostle Whiting threatened to contact an attorney, he was allowed to vote.[204]

William J. Snow, Jr., a Miami-Dade resident, testified that he received notice that he would be ineligible to vote in the November 2000 election because of a felony conviction. Receiving the notice caused a great stress upon Mr. Snow's heart because he had never been convicted of a felony. Mr. Snow testified that the problem has been corrected. Mr. Snow has been a Miami-Dade County resident for more than 33 years and voted in the 1996 election without incident.[205]

Marilyn Nelson, a poll worker with 15 years of experience in Precinct 232 in Miami-Dade County, encountered quite a few people whose names did not appear on the rolls at her precinct. When she called the supervisor of elections office, she was told that their rights had been taken away from them due to an alleged felony conviction. She was further instructed by the supervisor's office that she

could not inform those voters of the reason for their removal from the rolls, but she was instructed to tell them to call downtown at a later date. [206]

Professor Darryl Paulson testified that the Hillsborough County supervisor of elections estimated that 15 percent of those purged were purged in error and they were disproportionately African American. According to Professor Paulson, another source estimated that 7,000 voters, mostly African Americans and registered Democrats, were removed from the list.[207]

According to news reports, even those who had received a full pardon for their offenses were listed on DBT's exclusion list.

Reverend Willie Dixon, a Tampa resident, received a full pardon for drug offenses in 1985, and has since become a youth leader, a bible preacher, and a pillar of the Tampa African American community who has voted in every presidential election. [208] But despite his 15 years of voting status, Pam Iorio, the supervisor of elections for Hillsborough County, sent Reverend Dixon a letter informing him that he had been removed from the rolls because of a prior conviction.[209] Eventually, Reverend Dixon was able to verify his status as a registered voter.[210]

Media accounts also captured the impact of list maintenance activities and the frustration they caused for Florida voters.[211]

Wallace McDonald, in 1959, was convicted of a misdemeanor, vagrancy, for falling asleep on a bench in Tampa while he waited for a bus. In 2000, Mr. McDonald received a letter from Ms. Iorio informing him that as an ex-felon, his name had been removed from the rolls. Despite the efforts of his attorney to correct the problem, Mr. Wallace was not allowed to vote.[212] Mr. McDonald stated:

I could not believe it, after voting all these years since the 50s, without a problem . . . I knew something was unfair about that. To be able to vote all your life then to have somebody reach in a bag and take some technicality that you can't vote. Why now? Something's wrong.[213]

CONCLUSION

Historically, individuals convicted of certain types of crimes alleged to be committed more by African Americans are affected by felon disenfranchisement. The practice of felon disenfranchisement has resulted in the greater likelihood of people of color, particularly African Americans, appearing erroneously on the Florida felon exclusion list.

In claiming to address the same types of fraud found during the 1997 Miami mayoral election, the Florida legislature enacted chapter 98.0975 of the Florida statutes, which required the Division of Elections to contract with a private entity to purge its voter file of deceased persons, duplicate registrants, individuals declared mentally incompetent, and convicted felons without civil rights restoration.[214] As a result, DBT Online was eventually retained to assist the Division of Elections in the removal of ineligible voter registrants from the voter file.

DBT Online performed an automated matching process against databases provided by the state of Florida and its own databases. Ultimately 173,127 Floridians were identified as potentially ineligible to vote in the November 2000 election. Of those on the list, 57,746 were identified as convicted felons. Based on DBT Online's statistical verification, the list it provided to the Division of Elections

was 99.9 percent accurate. The Division of Elections distributed the relevant portions of the list to the 67 supervisors of elections.

The Division of Elections instructed DBT Online to verify the clemency status of any alleged convicted felon, even those convicted in states with automatic civil rights restoration, with the Florida Executive Clemency Board. Among those states with their own executive clemency boards, DBT Online was instructed to confirm the alleged felons clemency status with the board. The methodology adopted by DBT Online to verify the clemency status of those alleged felons basically consisted of faxing a list to the appropriate state agency.

DBT Online was not required to provide a list of exact name matches. Rather, the matching logic only required a 90 percent name match, which produced false positives or partial matches of the data. Moreover, the Division of Elections required that DBT Online perform nickname matches for first names and to make it go both ways. Thus, the name Deborah Ann would also match the name Ann Deborah.

At a meeting in early 1999, the supervisors of elections expressed a preference for exact matches on the list as opposed to a fairly broad and encompassing collection of names. DBT Online advised the Division of Elections that it could produce a list with exact matches. Despite this, the Division of Elections nevertheless opted to cast a wide net for the exclusion lists.

Former director of the Division of Elections, Ethel Baxter, in 1998, recommended to the supervisors of elections that if there was any doubt as to the accuracy of an individual's status, the voter should be allowed to vote by affidavit. Despite knowing the exclusion lists contained many errors, there is no record that the Division of Elections provided similar cautionary advice to the supervisors of elections for the 2000 presidential election. The evidence does show that some election officials decided that it further served the state's interests to capture as many names as possible on these exclusion lists.

The process by which each county verified its exclusion list was as varied and unique as the supervisors of elections themselves. Some supervisors of elections sent letters to the alleged felons and held hearings to allow them to produce evidence of their clemency status or establish they were on the list in error. Other supervisors chose not to use the exclusion list at all.

Although the Commission's record reflects that the Division of Elections is responsible for coordinating two statewide workshops annually for the supervisors of elections to ensure uniformity in the interpretation of Florida election laws, the complaints registered by some supervisors of elections suggest that there was no common understanding of the use of the exclusion lists. The Florida legislature's decision to privatize its list maintenance procedures without establishing effective clear guidance for these private efforts from the highest levels, coupled with the absence of uniform and reliable verification procedures, resulted in countless eligible voters being deprived of their right to vote.

[19] Florida's list maintenance provision was changed by the Florida Election Reform Act of 2001. See Epilogue.

[20] L. Clayton Roberts, Testimony before the U.S. Commission on Civil Rights, Tallahassee, FL, Jan. 12, 2001, Verified Transcript, pp. 254-55. In 1998, Mr. Roberts was employed as the legislative research director of the House Election

Reform Committee. L. Clayton Roberts, DBT Assessment, Aug. 17, 1998. "The biggest problem in the Miami mayoral race was the abuse of absentee ballots, not the voting of convicted felons. State agents uncovered hundreds of fraudulent examples: people who didn't live in the city voting in the election; phony signatures on absentee ballots; and campaign vote brokers acting as witnesses for most of these ballots. The abuses were discovered almost exclusively in the City Commission district of Humberto Hernandez." Jay Weaver, Vote Reform Back to Square One; Justice Department Ruling Means State Legislature Must Draft New Law, *The Sun-Sentinel* (Fort Lauderdale), Aug. 23, 1998, p. 6B. Mr. Hernandez was a city commissioner who was convicted on Aug. 14, 1998, of helping to cover up vote fraud.

[21] George Bruder, the signatory on the Division of Elections list maintenance contract and former vice president of Database Technologies, Inc., is now vice president of the Public Records Group for ChoicePoint, Inc. Mr. Bruder testified under oath at the Commission's Miami hearing and subsequently in a Commission deposition.

[22] George Bruder Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 200. The record does not indicate the basis for the Division of Elections need to submit another request for proposals.

[23] *Ibid.*, pp. 176, 200, 227-28. The record does not indicate whether Computer Business Services eventually submitted a bid.

[24] George Bruder Unverified Deposition, p. 7. See also George Bruder, vice president, DBT Online, Voter Registration, e-mail, Aug. 5, 1998.

[25] Bruder Unverified Deposition, p. 7.

[26] *Ibid.*, pp. 8-9.

[27] George Bruder Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 199. Neither Database Technologies, Inc., nor its successor, DBT Online, a ChoicePoint Company, currently has a contract with the Florida Department of Law Enforcement.

[28] Bruder Unverified Deposition, p. 10.

[29] ChoicePoint, ChoicePoint and DBT Online Unite, Becoming Leading Provider of On-demand Public Records in the U.S., press release, Feb. 14, 2000, <<http://www.ChoicePoint.net>> (accessed Mar. 24, 2001).

[30] DBT Online, Shareholders Approve Merger of ChoicePoint and DBT Online, press release, May 16, 2000.

[31] *Ibid.* Today's meeting also confirmed the appointment of several new members to ChoicePoint's board of directors including Doug Curling, ChoicePoint's chief operating officer, and former DBT board members Charles G. Betty, Frank Borman, Kenneth G. Langone, and Bernard Marcus. Mr. Betty is currently president and CEO of EarthLink Network, Inc., the nation's second largest Internet service provider. Mr. Borman, a former astronaut, has served as chairman and CEO in a number of companies including Eastern Airlines, and is currently on the board of directors for The Home Depot, Inc., and American Semiconductor Corporation. Mr. Langone is one of the co-founders of The Home Depot and a director of the Company since 1978. He also serves as a director of the New York Stock Exchange, Inc., General Electric Company, Unifi, Inc., and Tricon Global Restaurants. Mr. Marcos is a co-founder and chairman of The Home Depot, Inc. He also serves on the boards of National Service Industries, Inc., Westfield America, Inc., and the National Foundation for Disease Control and Prevention. *Ibid.*

[32] George Bruder Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 177.

[33] *Ibid.*

[34] *Ibid.*

[35] *Ibid.*, pp. 204-06.

[36] Bruder Unverified Deposition, p. 46.

[37] *Ibid.*

[38] *Ibid.*

[39] George Bruder, vice president, DBT Online, Testimony Clarification, letter to Mary Frances Berry, chairperson, U.S. Commission on Civil Rights, Mar. 16, 2001.

[40] *Ibid.*

[41] See Fla. Stat. ch. 98.0975(4) (1999).

[42] George Bruder Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 202-03.

[43] *Ibid.*, p. 203.

[44] *Ibid.*, pp. 224-25.

[45] Randolph A. Esser, information systems director, Department of Highway Safety and Motor Vehicles, Response to Commission's Interrogatory 1, Apr. 12, 2001, p. 3. See also Enoch J. Whitney, general counsel, Department of Highway Safety and Motor Vehicles, letter to Edward A. Hailes, Jr., June 5, 2001, p. 2.

[46] Randolph A. Esser, Response to Commission's Interrogatory 1, p. 3.

[47] *Ibid.* See also de Janes Letter, p. 2; Enoch J. Whitney, general counsel, Department of Highway Safety and Motor Vehicles, letter to Edward A. Hailes, Jr., June 5, 2001, p. 2.

[48] Randolph A. Esser, Response to Commission's Interrogatory 1, p. 3. See also Kent E. Mast, general counsel and secretary, Equifax, Inc., letter to Edward A. Hailes, Jr., June 1, 2001.

[49] Randolph A. Esser, information systems director, Department of Highway Safety and Motor Vehicles, Response to Commission's Interrogatory 2, Apr. 12, 2001, p. 4. See also <<http://www.hsmv.state.fl.us/data/internet2.html>> (accessed Mar. 16, 2001).

[50] Randolph A. Esser, Response to Commission's Interrogatory 2, p. 4.

[51] Ibid.

[52] Randolph A. Esser, information systems director, Department of Highway Safety and Motor Vehicles, Response to Commission's Interrogatory 3, Apr. 12, 2001, p. 4.

[53] Randolph A. Esser, information systems director, Department of Highway Safety and Motor Vehicles, Response to Commission's Interrogatory 4, Apr. 12, 2001, p. 4.

[54] George Bruder Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 207. DBT Online paid approximately \$1,641 or \$100 per hour to a Florida Atlantic University mathematics graduate assistant to perform the statistical analysis of its methodology for the Division of Elections contract. Marlene Thorogood, project manager, DBT Online, Check Requests and Invoices, March 1999, April 1999, and May 1999.

[55] Marlene Thorogood, project manager, DBT Online, Statistical Verification and Phase I Concerns, letter to Emmett Mitchell, assistant general counsel, Division of Elections, Mar. 22, 1999.

[56] Ibid.

[57] Ibid.

[58] George Bruder Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 208.

[59] L. Clayton Roberts Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 258.

[60] Interview Report, interview with Janet Modrow, May 15, 2001, p. 1.

[61] George Bruder Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 177-78.

[62] Ibid., p. 178.

[63] Ibid., pp. 218-19.

[64] Ibid., p. 220.

[65] Ibid. At the time the parameter decisions were made, Emmett Mitchell (assistant general counsel for the Division of Elections), Janet Modrow (Division of Elections technical specialist), and Ethel Baxter (director of the Division of Elections) worked with DBT Online. Ibid., p. 221.

[66] Ibid., pp. 220-21.

[67] Ibid., p. 219. At the February 16, 2001, Commission hearing, George Bruder agreed to submit to a deposition for further examination of the role DBT Online played in the removal of purported felons from the Florida voter files. The deposition was held on March 21, 2001, in Miami, Florida.

[68] L. Clayton Roberts Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, pp. 257-58.

[69] Bruder Unverified Deposition, pp. 14, 16.

[70] Ibid., p. 14.

[71] Ibid., pp. 15-16.

[72] Ibid., p. 15.

[73] Ibid., p. 17.

[74] Emmett Mitchell, assistant general counsel, Division of Elections, Your letter, Mar. 23, 1999.

[75] Bruder Unverified Deposition, p. 17.

[76] Ibid.

[77] Ibid., pp. 49-56. Each supervisor of elections was invited to the meeting. It is unconfirmed if all supervisors of elections attended the meeting and/or sent a representative to the June 1999 meeting.

[78] Ibid., p. 55.

[79] Ibid. Former Broward County Supervisor of Elections Jane Carroll also recalled the June meeting with the Division of Elections, DBT Online, and the other supervisors of elections. Ms. Carroll recalled that inaccuracies were discussed at the meeting. Ms. Carroll did not remove anyone from the Broward County voter rolls based on the two exclusion lists DBT Online gave to the Division of Elections. Jane Carroll Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 290.

[80] Ibid., pp. 56-57. Mr. Bruder testified that the regional training sessions occurred over a couple of months. Ibid.

[81] Ibid., pp. 57-58.

[82] George Bruder, vice president, DBT Online, Testimony Clarification, letter to Mary Frances Berry, chairperson, U.S. Commission on Civil Rights, Mar. 16, 2001. The contract allowed a total payment of \$4,365,800 for completion of four phases of the contract, including renewal through 2001. Because the Division of Elections did not renew its option with DBT Online through 2001, DBT Online was not paid the full contract price. Exhibit A, Data Processing Services Agreement, Nov. 28, 1998.

[83] Ibid. DBT Online incorporated in 1992 and has been a provider of anti-fraud services to the following Florida agencies: Department of Children and Family Services, Department of Law Enforcement, Department of Corrections, Department of Business and Consumer Affairs, Department of Revenue, Department of State, Department of Insurance, Office of the Attorney General, and Agency for Health Care Administration. DBT Online, DBT a Florida Company, n.d. In October 1998,

DBT Online, then called DBT, submitted the above to the Division of Elections as part of a presentation to the Division of Elections.

DBT Online also is the intellectual property owner of the following products: AutoTrack Plus & Auto Track XP on-line investigative database service; SOS online insurance industry service; PFATS Medicaid anti-fraud service (provider fraud analysis and tracking service); CLAWS arrest warrant tracking service (criminal locator and warrant service); DataCase online public access system for New York Unified Courts; PQS anti-fraud service for private insurance carriers (provider query system). See Products, n.d. In October 1998, DBT Online, then called DBT, submitted the above to the Division of Elections as part of a presentation to the Division of Elections.

DBT Online is either the intellectual property owner of or has access to the following types of national databases containing over four billion records on over 200 million adults: aircraft, boats and vessels, businesses (including American Business Information and Dun & Bradstreet), corporations, criminal histories (including felony convictions and criminal arrests), driver's licenses, individuals, motor vehicles, properties, professional licenses, social security death file, and real-time access to telephone numbers. See National Databases, n.d. In October 1998, DBT Online, then called DBT, submitted the above to the Division of Elections as part of a presentation to the Division of Elections.

DBT Online is either the intellectual property owner of or has access to the following types of Florida databases: arrest warrants, banking licensing, beverage licensing, boat registrations, business ownership, convicted felons, corporations, concealed weapons, driver licenses, divorces, marriages, motor vehicles, professional licenses, real estate ownership, and sexual predators. See Florida Databases, n.d. In October 1998, DBT Online, then called DBT, submitted the above to the Division of Elections as part of a presentation to the Division of Elections.

[84] Michael R. Ramage, general counsel, Florida Department of Law Enforcement, Comments in Response to Draft Report by U.S. Commission on Civil Rights, June 6, 2001, p. 1. The FDLE hotline was available to the public 7 days a week, 12 hours a day, and resulted in written confirmation to voters *and* supervisors of elections, typically in less than 72 hours. Ibid.

[85] Florida Department of State, Division of Elections, Felony Check Invoice, Dec. 1, 1999, Bates Nos. 0015531, 0015532, 0015533.

[86] Ibid.

[87] Michael R. Ramage, general counsel, Florida Department of Law Enforcement, Comments in Response to Draft Report by U.S. Commission on Civil Rights, June 6, 2001, p. 1.

[88] Ibid., p. 2.

[89] Bruder Unverified Deposition, p. 12.

[90] While the term list maintenance is used in this report in relation to DBT Online responsibilities, it is the state and county that have the responsibility to maintain the exclusion list. DBT Online is not required to continually update the list. See de Janes Letter, p. 2.

[91] George Bruder Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 208.

[92] Scarlet Kirner, DBT Online, Statewide criminal histories, e-mail, Apr. 14, 1999. DBT Online had the following information for these states as of the date of the e-mail: Florida predator information, current as of 6/24/98; Department of Corrections (DOC), current as of 2/28/99; Ohio DOC, current as of 3/15/99; South Carolina DOC, current as of 3/9/99; New Jersey active inmates and departures, current as of 6/30/98; Connecticut court convictions, current as of 2/28/99; Texas predator information, current as of 11/14/98, DOC, current as of 3/8/99, parole, current as of 2/28/99; Wisconsin DOC, current as of 11/6/98; Kentucky DOC, current as of 7/14/98; Virginia parole, current as of 2/28/99; Washington's re leases, current as of 12/31/98; Illinois DOC, current as of 12/97. Ms. Kirner's e-mail also states that the current Texas DOC and the Florida DOC as well as predator information were available on-line.

[93] Marlene Thorogood, project manager, DBT Online, DOE Clemency Queries, Mar. 4, 2000.

[94] Ibid. Ms. Thorogood was unsure of Ohio's clemency status at the time she wrote the e-mail. Ohio requires convicted felons to apply for clemency. See Ohio Rev. Code Ann. 2967.07 (2001). See also Marie Smith, state of Washington, Department of Corrections, Information Technology, Fax Information, Mar. 28, 2000.

[95] Marlene Thorogood, project manager, DBT Online, Reciprocal States for Clemency, Aug. 8, 2000.

[96] George Bruder Unverified Deposition, p. 19.

[97] George Bruder Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 209.

[98] Ibid., pp. 210, 211, 217.

[99] Ibid., pp. 211-12.

[100] U.S. Const. art. IV, 1 provides: Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

[101] Both cases involved men who were convicted in other states, had their rights restored, and upon moving to Florida were denied concealed weapon permits. In *Schlenker v. Florida Dept of State*, a Florida resident was convicted of a felony while he lived in Connecticut. 743 So. 2d 536, 537 (1998). Prior to his move to Florida, the state of Connecticut

reinstated his civil rights. Mr. Schlenther applied for and received a concealed weapons permit after moving to Florida. *Id.* at 537. The permit was subsequently revoked when the Florida Licensing Division determined that Mr. Schlenther neither applied for nor received civil rights restoration in Florida. The Second District Court of Appeals ruled that when section 8, article IV, of the Florida Constitution (which grants authority to the governor with the approval of three cabinet members to restore civil rights) was drafted

it was anticipated that the governor would be granting pardons, commuting punishments and remitting fines and forfeitures for Florida offenders, since the Governor of Florida could not do such things for out-of-state offenders. We believe the same analysis applies to the restoration of civil rights. Once another state restores the civil rights of one of its citizens whose rights had been lost because of a conviction in that state, they are restored and the State of Florida has no authority to suspend or restore them at that point. The matter is simply at an end.

We conclude that the restoration of [Schlenther]'s civil rights in Connecticut is entitled to full faith and credit in this State. *Id.* at 537.

In *Doyle v. Florida Dept of State*, a Florida resident was convicted of a misdemeanor in New York that would have been a felony if committed in Florida. *Doyle v. Florida Dept of State*, 748 So. 2d 353, 354 (1999). Because Mr. Doyle was convicted of a misdemeanor, his civil rights were never suspended in the state of New York. *Id.* at 355 56.

Mr. Doyle's application for a concealed weapon permit was denied by the Florida Licensing Division because the crime for which he was convicted in New York carried felonious penalties in Florida. Relying on *Schlenther*, the First District Court of Appeals ruled that once a sister state restores a person's civil rights, then Florida is required to give full faith and credit to the civil rights restoration. *Id.* at 356. Moreover, the Court found that Mr. Doyle could not prove that his civil rights were restored in Florida because they had never been suspended in New York. *Id.* The Court stated: The governor of Florida has neither the power to restore the civil rights of out-of-state offenders which have already been restored by another state, nor the authority to restore the civil rights of those whose rights were never suspended by another jurisdiction. *Id.*

[102] George Bruder Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 212.

[103] See de Janes Letter, p. 2. See also Emmett Mitchell, assistant general counsel, Division of Elections, e-mail to Marlene Thorogood, project manager, DBT Online (Mar. 23, 1999, 3:57 p.m.); Emmett Mitchell, assistant general counsel, Division of Elections, e-mail to Marlene Thorogood, project manager, DBT Online (Dec. 21, 1999, 3:46 p.m.).

[104] Fla. Const. art. IV, 8(a). In 2003, only two members of the cabinet will be required to agree with the governor in order to restore the civil rights of a convicted felon.

[105] Fla. Const. art. IV, 4(a). Effective in 2003, the governor's cabinet will consist of only an attorney general, a chief financial officer, and the commissioner of agriculture.

[106] L. Clayton Roberts, director, Division of Elections, Resign to Run Law (responding to a request for an opinion on Florida law), letter to Katherine Harris, Florida secretary of state, Aug. 22, 2000, Bates No. 0022024.

[107] *Ibid.*

[108] *Ibid.* Fifty-seven cases were heard and acted upon by the Clemency Board in June. *Ibid.*

[109] Fla. Stat. ch. 940.061 (1999).

[110] Fla. Stat. ch. 940.03 (1999).

[111] *Id.* Although the statutory language states that the applicant may be required to send a copy of his or her application to the appropriate judge and prosecutor of the court in which he or she was convicted, the clemency application requires the applicant to certify that he or she has mailed a copy to the judge and prosecutor. The clemency application also requests that the applicant certify that he or she has no pending charges at the time. The application makes no distinction between pending felony, misdemeanor, or infraction charges against the applicant.

[112] A copy of the clemency application was provided by the Florida Office of Executive Clemency.

[113] Janet H. Keels, coordinator, Office of Executive Clemency, letter to Ed Kast, assistant director, Division of Elections, Feb. 23, 2001.

[114] *Ibid.*

[115] *Ibid.*

[116] State of Florida rules of Executive Clemency, Rule 9, pp. 5 6.

[117] *Ibid.*, p. 7.

[118] In an executive order issued by Governor Jeb Bush on Dec. 14, 2000, the Select Task Force on Election Procedures, Standards and Technology was created to study and make policy recommendations and/or propose legislation to improve the election procedures, standards and technology employed in each of Florida's 67 counties. The Governor's Select Task Force on Election Procedures, Standards and Technology, *Revitalizing Democracy in Florida*, Mar. 1, 2001, p. 4.

[119] Daryl Jones, Testimony before the Hearing of the Governor's Select Task Force on Election Procedures, Standards and Technology, Tallahassee, FL, Jan. 9, 2001, transcript, p. 307.

[120] Interview Report Addendum, interview with Michael de Janes, May 14, 2001, p. 1 (hereafter cited as de Janes Interview Report Addendum). Derek Smith, ChoicePoint, Inc., chairman, president, and CEO, Letter to all ChoicePoint Associates from Derek Smith, Jan. 12, 2001 (hereafter cited as Smith Letter).

[121] de Janes Interview Report Addendum, p. 1.

[122] Smith Letter.

[123] de Janes Interview Report Addendum, p. 1. Smith Letter.

[124] de Janes Interview Report Addendum, p. 1.

[125] Marie Smith, state of Washington, Department of Corrections, Information Technology, Fax Information, Mar. 28, 2000.

[126] Dottie Swanagan, state of Kentucky, secretary of state's office, Kentucky Clemency information, June 15, 1999. See also Dottie Swanagan, state of Kentucky, secretary of state's office, Restoration of Civil Rights, Mar. 29, 2000.

[127] Marlene Thorogood, project manager, DBT Online, Clemency Verification, Apr. 26, 1999. See also Donna Van Nostrand, administrator for policy analysis and planning, state of New Jersey, Department of Corrections, Per Our Conversation, June 13, 2000.

[128] Marlene Thorogood, project manager, DBT Online, Clemency/Felons, May 11, 1999.

[129] Fla. Stat. ch. 98.0975(4) (1999).

[130] See de Janes Letter, p. 2.

[131] Ethel Baxter, director, Division of Elections, Central Voter File Update and Discussion, memorandum to the supervisors of elections, Aug. 11, 1998.

[132] Ibid.

[133] Ibid. (emphasis deleted).

[134] Ethel Baxter, director, Division of Elections, Central Voter File Update, memorandum to the supervisors of elections, Aug. 14, 1998.

[135] Ibid. (emphasis added).

[136] Ethel Baxter, director, Division of Elections, Central Voter File Update II, memorandum to the supervisors of elections, Aug. 18, 1998.

[137] Ibid.

[138] Ibid.

[139] Ethel Baxter, director, Division of Elections, Central Voter File Update II, memorandum to the supervisors of elections, Aug. 20, 1998.

[140] Ibid.

[141] L. Clayton Roberts, director, Division of Elections, Testimony before the Hearing of the Governor's Select Task Force on Election Procedures, Standards and Technology, Tallahassee, FL, Jan. 9, 2001, transcript, p. 288.

[142] Both letters were included as examples in a Division of Elections-sponsored training course in 1999.

[143] David Leahy, supervisor of elections, Miami-Dade County, letter to alleged felons, n.d. (hereafter cited as Leahy Letter) (emphasis added). In 1999 and 2000, Mr. Leahy deleted the phrase you have a felony conviction ; instead, Mr. Leahy used the following wording: Your name has been submitted to our office by the Florida Division of Elections on a list of voters who have allegedly been convicted of felony, but have not had their civil rights restored. David Leahy, supervisor of elections, Miami-Dade County, letter to Edward A. Hailes, Jr., June 1, 2001, Exhibit E.

[144] Leahy Letter. The alleged felon is instructed to send the completed form to the Florida Department of Law Enforcement Special Desk if he or she believes that his or her name and identifying information are being confused with that of a convicted felon. If the alleged felon was convicted of a felony and had his or her civil rights restored, then he or she is instructed to request proof from the Office of Executive Clemency. Otherwise, the alleged felon is instructed to send the completed form to the Florida Department of Law Enforcement disposition address.

[145] Ibid.

[146] Ion Sancho, supervisor of elections, Leon County, letter to alleged felons, n.d. (emphasis added).

[147] Ibid.

[148] Ibid. The alleged felon must check a block, sign, and date the form.

[149] Bruder Unverified Deposition, p. 53.

[150] Patricia M. Hollarn, supervisor of elections, Okaloosa County, letter to alleged felons, 1998.

[151] Ibid. The letter makes no distinction among those convicted in a Florida court, a federal court, or an out-of-state court.

[152] Ibid.

[153] Florida Department of Law Enforcement, Verification of Voting Status, fax to the Division of Elections, Aug. 14, 1998.

[154] Ibid.

[155] L. Clayton Roberts, director, Division of Elections, Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 258.

[156] Ibid.

[157] Ibid.

[158] Ibid.

[159] Ibid.

[160] Ibid.

[161] Linda Howell Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 26.

[162] See State Senator Daryl Jones and State Representative Chris Smith, Report: Accuracy and Fairness for Florida's Voters Analysis and Recommendations by Democratic Legislators Serving on the Task Force on Election Procedures, Standards and Technology, Jan. 8, 2001 <<http://www.leg.stat.fl.us>> (accessed Mar. 21, 2001).

[163] Linda Howell Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 26.

[164] *Ibid.*, pp. 39, 41. Ms. Howell testified that she received the list compiled by DBT Online from the Division of Elections.

[165] *Ibid.*, p. 40.

[166] *Ibid.*, p. 39.

[167] *Ibid.*

[168] *Ibid.*, p. 43.

[169] *Ibid.*

[170] *Ibid.*, p. 39.

[171] *Ibid.*, p. 40.

[172] *Ibid.*, p. 43.

[173] Martha Wright, chief, User Services Bureau, Florida Department of Law Enforcement, Howell yes-felon.doc, Mar. 27, 2000, Bates No. 0004576.

[174] *Ibid.*

[175] *Ibid.*

[176] Linda Howell Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 44.

[177] *Ibid.*

[178] Michael R. Ramage, general counsel, Florida Department of Law Enforcement, Comments in Response to Draft Report by U.S. Commission on Civil Rights, June 6, 2001, p. 2.

[179] *Ibid.*

[180] Linda Howell Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 41.

[181] *Ibid.*

[182] Ion Sancho Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, pp. 70 71.

[183] *Ibid.*, p. 72. Mr. Sancho explained that this process may work differently in other counties.

[184] *Ibid.*, pp. 72 73.

[185] Jane Carroll Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 289 90.

[186] *Ibid.*, pp. 298 99.

[187] David Leahy Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 315.

[188] *Ibid.*, pp. 315 18.

[189] *Ibid.*, pp. 325 26.

[190] *Ibid.*, pp. 320 26. Mr. Leahy also observed that there are some instances where the response came back that they were a convicted felon according to FDLE and then they submitted fingerprints and it was determined it was actually somebody else who was the convicted felon, that they were not. *Ibid.*

[191] *Ibid.*, pp. 327 28.

[192] Theresa LePore Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 399 400.

[193] Beverly Hill, supervisor of elections, Alachua County, Central Voter File Reports, Mar. 9, 1999.

[194] *Ibid.* Ms. Hill noted that one person who was restored earlier than 1975 (I saw his papers) is still on our list, and one is still on the list from the last time [whose adjudication was withheld], and we informed FDLE. *Ibid.*

[195] Marlene Thorogood, project manager, DBT Online, Felony Information, e-mail, June 17, 1999.

[196] Florida Department of State, Division of Elections, Director's Office; Administrative/Legal, n.d., <<http://election.dos.state.fl.us/about/director.shtml>> (May 9, 2001).

[197] Emmett Mitchell, assistant general counsel, Division of Elections, CVF Training Sessions, letter, Oct. 5, 1999. The letter also credits DBT Online project manager Marlene Thorogood for her participation in the training for which the Division of Elections received very positive feedback from the supervisors and staff who attended. *Ibid.*

[198] Janet Modrow, Division of Elections, Workshops, Apr. 28, 2000.

[199] State Senator Daryl Jones and State Representative Chris Smith, Report: Accuracy and Fairness for Florida's Voters Analysis and Recommendations by Democratic Legislators Serving on the Task Force on Election Procedures, Standards and Technology, Jan. 8, 2001 <<http://www.leg.state.fl.us>> (accessed Mar. 21, 2001). *But see* L. Clayton Roberts, director, Division of Elections, Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 258 (testifying the problem was addressed and that no person was removed from the voter roll based on that erroneous information).

[200] Phyllis Hampton Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, pp. 153 54.

[201] Barry Krischer, state's attorney, Florida's Fifteenth Judicial Circuit, Palm Beach County, Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 191 92, 194 95.

[202] *Ibid.*, pp. 229 30.

[203] See de Janes Letter, p. 2.

[204] Willie D. Whiting Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 32.

[205] William J. Snow, Jr., Miami-Dade County, affidavit submitted to the U.S. Commission on Civil Rights, Mar. 5, 2001. Mr. Snow did not state the extent to which this great stress upon his heart affected his health. Mr. Snow neither explained the process by which the confusion of his voting eligibility was corrected nor when the correction was made. Ibid.

[206] Marilyn Nelson Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 130.

[207] Darryl Paulson Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, pp. 186-89.

[208] Julian Borger, How Florida Played the Race Card, *The Guardian Observer*, Dec. 4, 2000 <<http://www.guardianunlimited.co.uk>> (accessed Dec. 6, 2000).

[209] Ibid.

[210] It is not known whether Reverend Dixon was able to vote in the November 7, 2000, election.

[211] See, e.g., Robert E. Pierre, Botched Name Purge Denied Some the Right to Vote, *The Washington Post*, May 31, 2001, p. A1; Scott Hiaasen, Gary Kane, and Elliot Jaspin, Felon Purge Sacrificed Innocent Voters, *The Palm Beach Post*, May 27, 2001, p. 1A.

[212] Borger, How Florida Played the Race Card.

[213] Ibid.

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