

The Case of the Butterfly Ballot

Robert S. Montjoy & Christa Daryl Slaton
Public Integrity, 2002

Presented by Craig T. Fifer

PUAD 502 – Prof. Burroughs
Dec. 1, 2005



Waldo on Ethics

- Morality in office is not “a simple matter of obeying the law, being honest, and telling the truth.”
- Publicly moral acts can be privately immoral
- Natural law vs. State vs. Individual
- Decay of moral codes; more moral relativism
- Morality is about more than sex
- Tolerance of moral ambiguity is essential
- Moral complexity increases with memberships
- Gray area between public and private
- Moral exploration is unpopular

The Aftermath...

- “I think it's fair to say Theresa LePore's mistake resulted in the wrong man becoming President.”
— U.S. Rep. Rob Wexler
- “My attorney has to keep reminding me that it’s a federal offense to threaten a congressman.”
— Theresa LePore
- “Not many people can say they changed the history of the world, but Theresa LePore can say that.”
— Former Florida House Democratic Leader Lois Frankel

Waldo's Ethical Map

- **Obligation to Humanity or the World**

The Aftermath...

- “Palm Beach County is a Pat Buchanan stronghold and that's why Pat Buchanan received 3,407 votes there.”
– Bush spokesman Ari Fleischer
- “That’s nonsense.”
– Buchanan’s Florida coordinator, Jim McConnell
- “When I took one look at that ballot on Election Night ... it's very easy for me to see how someone could have voted for me in the belief they voted for Al Gore.”
– Pat Buchanan

The Aftermath...

- “I’ve got the blood of over 500 men and women on my hands, because the war’s my fault. Nine-eleven was my fault.”
 - Theresa LePore (paraphrasing what people have said)
- “I keep thinking it’s a nightmare, and I’ll wake up one day and it will be gone.”
 - Theresa LePore

The Major Player



Former President,
Vice President, and
Secretary of Florida
State Association of
Supervisors of
Election

- Teresa A. LePore
 - 1971 Began work in Palm Beach County elections office as 16 year-old high school student.
 - 1973 Registered to vote, as a Republican.
 - 1978 Became chief deputy of elections.
 - 1996 Elected supervisor of elections, as a Democrat.
 - 2000 Reelected without opposition, changed registration to independent.

Waldo's Ethical Map

- Obligation to Humanity or the World
- **Obligation to Profession and Professionalism**
- **Obligation to Self**

Other Players

- Design Experts
- Election Organizations and Reform Commissions
- IBM (manufacturer of VotoMatic machines)
- Interest Groups
- National Candidates (20)
- National Media
- Palm Beach County Commission
- Palm Beach County poll workers (4,000)
- Palm Beach County voters (432,286 of ~655,000)
- Political Campaigns and Parties
- State of Florida (Executive, Legislative, Judicial)
- United States (Legislative, Judicial)

Election Timeline

- Nov. 7 & 8, 2000 (Eastern Time)
 - 7:00 a.m. Polls open in Palm Beach County.
 - 7:08 a.m. Two elderly voters report that they may have mistakenly voted for Buchanan instead of Gore.
 - 7:00 p.m. Polls close in most of Florida.
 - 7:50 p.m. The Associated Press calls Florida for Gore.
 - 8:00 p.m. Polls close in the Florida panhandle.
 - 10:00 p.m. Networks retract projections of Gore as winner.
 - 2:16 a.m. Networks calls Florida for Bush.
 - 2:30 a.m. Gore calls Bush to concede.
 - 3:30 a.m. Gore calls Bush back to retract concession.
 - 3:57 a.m. Networks retract projection of Bush as winner.
 - Final statewide margin reported as Bush leading Gore by 1,784.
 - An automatic statewide recount begins.

Election Timeline

- Nov. 9, 2000
 - After 64 of 67 counties recount, Bush leads Gore by 362.
 - Gore requests manual recounts in Broward, Miami-Dade, Palm Beach, and Volusia counties.
- Nov. 11, 2000
 - Bush seeks injunction to stop manual recounts.
- Nov. 12, 2000
 - Palm Beach County begins manual recounts.



Election Timeline

- Nov. 13, 2000
 - Secretary of State Katherine Harris announces she will not extend Nov. 14 statutory deadline for vote certification, despite manual recounts.
 - Volusia County sues Harris to extend deadline.
 - U.S. District Court denies Bush injunction.
- Nov. 14, 2000
 - Circuit judge hears butterfly ballot lawsuit after five other judges recused themselves.
 - Circuit judge upholds certification deadline, Harris announces that Bush leads Gore by 300 votes.



Election Timeline

- Nov. 15, 2000
 - Harris requests injunction against manual recounts.
 - Florida Supreme Court denies Harris' injunction.
- Nov. 16, 2000
 - Bush appeals injunction request to federal appeals court.
 - Gore sues to overturn the Nov. 14 state certification.
- Nov. 17, 2000
 - Florida Supreme Court blocks certification.
 - Federal appeals court denies Bush appeal.



Election Timeline

- Nov. 18, 2000
 - With overseas ballots in, Bush leads Gore by 930.
- Nov. 20, 2000
 - Circuit judge denies re-vote due to butterfly ballot.
- Nov. 21, 2000
 - Florida Supreme Court rules that manual recounts must be included in state certification.
- Nov. 22, 2000
 - Bush appeals to U.S. Supreme Court



Election Timeline

- Nov. 26, 2000
 - Florida Elections Canvassing Commission certifies Bush win, by 537 votes.

“Finally, I wish to point out that our American democracy has triumphed once again, and this is a victory in which we can all take a great deal of pride and comfort. The true winner in the election is the rule of law. Thank you and may God bless America.”

– Florida Secretary of State Katherine Harris



Waldo's Ethical Map

- Obligation to Humanity or the World
- Obligation to Profession and Professionalism
- Obligation to Self
- **Obligation to Religion, or to God**

Election Timeline

- Nov. 27, 2000
 - Gore files first formal presidential contest in U.S. history
 - Butterfly ballot case appealed to Florida Supreme Court.
- Dec. 1, 2000
 - Florida Supreme Court denies butterfly ballot appeal.
- Dec. 4, 2000
 - U.S. Supreme Court sends case back to Florida.
 - Circuit judge rules that PBC recount is not warranted, Gore appeals to Florida Supreme Court.

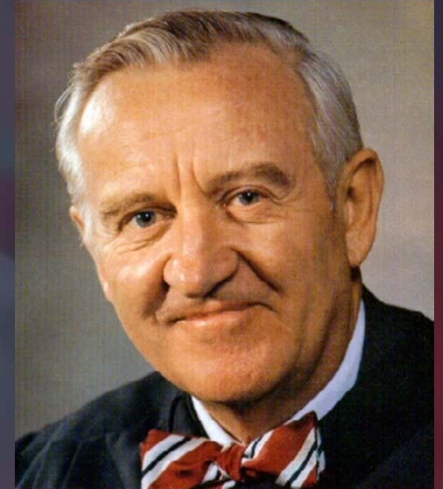
Election Timeline

- Dec. 8, 2000
 - Florida Supreme Court orders statewide manual recounts, Bush seeks stays from Florida Supreme Court, federal appeals court, and U.S. Supreme Court.
- Dec. 9, 2000
 - Florida Supreme Court denies Bush; recounts begin.
 - U.S. Supreme Court halts recounts.
- Dec. 12, 2000
 - Florida House certifies electors for Bush.
 - U.S. Supreme Court rules 7-2 that manual recounts must be consistent statewide and rules 5-4 to require new recounts.

Bush v. Gore

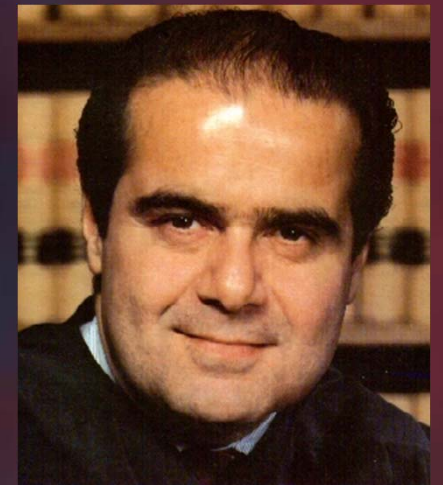
- “Although we may never know with complete certainty the identity of the winner of this year's presidential election, the identity of the loser is perfectly clear. It is the nation's confidence in the judge as an impartial guardian of the rule of law.”

- Justice John Paul Stevens, 2000



- “What did you expect us to do? Turn the case down because it wasn't important enough? Or give the Florida Supreme Court another couple of weeks in which the United States could look ridiculous?”

- Justice Antonin Scalia, 2005
(not necessarily responding to Stevens)



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- Obligation to Religion, or to God
- **Obligation to the Constitution**
- **Obligation to Law**
- **Obligation to Nation or Country**
- **Obligation to Democracy**

Election Timeline

- Dec. 13, 2000
 - Gore concedes to Bush.
- Dec. 18, 2000
 - Electoral College elects Bush 271-266-1.
- Jan. 6, 2001
 - U.S. Congress certifies Electoral College vote after Democrats fail to find a single senator to object.
- Jan. 20, 2001
 - Bush inaugurated as 43rd President of the United States.

How Did This Happen?

- “One of the first things I learned in flying was that airplanes don’t just fall out of the sky.”
 - Human interface design expert Bruce Tognazzini, “The Butterfly Ballot: Anatomy of a Disaster”

How Did This Happen?

- “One of the first things I learned in flying was that airplanes don’t just fall out of the sky.”
 - Human interface design expert Bruce Tognazzini, “The Butterfly Ballot: Anatomy of a Disaster”
- “I call it my perfect storm – without George Clooney.”
 - Theresa LePore



Ballot Design

- Elections equipment is selected by county commission, not supervisor of elections
- A 1998 constitutional amendment liberalized ballot access, requiring 20 names for president and vice president.
- Facing-page (“butterfly”) ballot had been used in 1996 (with 14,000 miscast votes for Dole) & 1998.
- Party of governor determines order candidates are listed on presidential ballot.

LePore's Trilemma

- **Reduce font size**
 - **Pro**: Entire ballot fits on one page
 - **Con**: Difficult for elderly voters to read
- **Use two pages**
 - **Pro**: Uses large font
 - **Con**: Voters may vote on both pages
- **Use facing pages (butterfly design)**
 - **Pro**: Uses large font on one spread
 - **Con**: Voter confusion

Waldo's Ethical Map

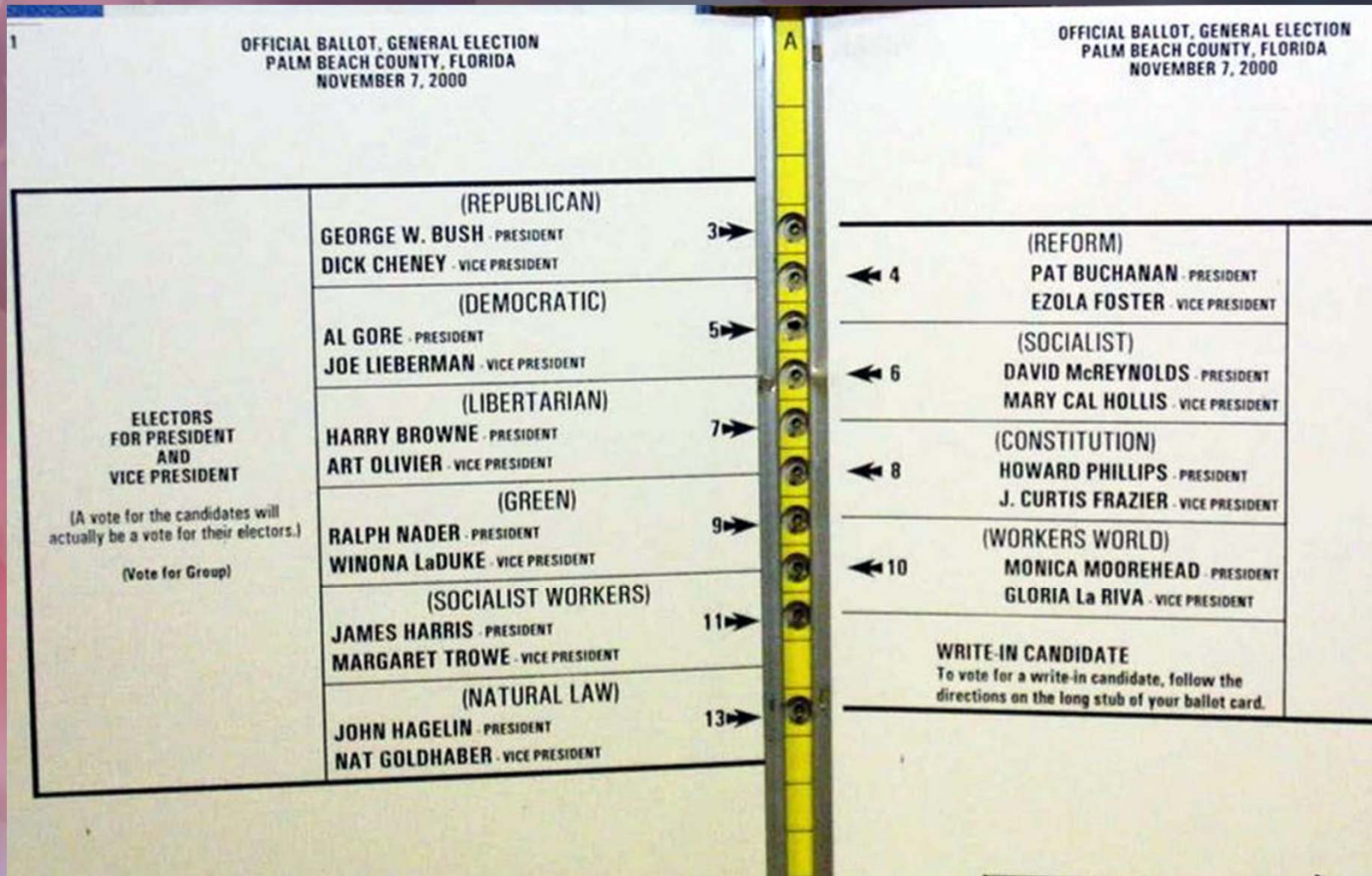
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- **Obligation to Public Interest or General Welfare**

ASPA Code of Ethics

ASPA members are committed to:

- I.1. “Exercise discretionary authority to promote the public interest.”
- I.8. “Be prepared to make decisions that may not be popular.”
- III.5. “Take responsibility for their own errors.”

The Butterfly Ballot



This is a photograph of the actual voting machine used on Election Day.

Sample Ballot

ELECTORS FOR PRESIDENT AND VICE PRESIDENT (A vote for the candidates will actually be a vote for their electors.) (Vote for Group)	(REPUBLICAN) GEORGE W. BUSH - PRESIDENT DICK CHENEY - VICE PRESIDENT	3 ➤
	(DEMOCRATIC) AL GORE - PRESIDENT JOE LIEBERMAN - VICE PRESIDENT	5 ➤
	(LIBERTARIAN) HARRY BROWNE - PRESIDENT ART OLIVIER - VICE PRESIDENT	7 ➤
	(GREEN) RALPH NADER - PRESIDENT WINONA LaDUKE - VICE PRESIDENT	9 ➤
	(SOCIALIST WORKERS) JAMES HARRIS - PRESIDENT MARGARET TROWE - VICE PRESIDENT	11 ➤
	(NATURAL LAW) JOHN HAGELIN - PRESIDENT NAT GOLDHABER - VICE PRESIDENT	13 ➤
	(REFORM) PAT BUCHANAN - PRESIDENT EZOLA FOSTER - VICE PRESIDENT	4 ←
	(SOCIALIST) DAVID McREYNOLDS - PRESIDENT MARY CAL HOLLIS - VICE PRESIDENT	6 ←
	(CONSTITUTION) HOWARD PHILLIPS - PRESIDENT J. CURTIS FRAZIER - VICE PRESIDENT	8 ←
	(WORKERS WORLD) MONICA MOOREHEAD - PRESIDENT GLORIA La RIVA - VICE PRESIDENT	10 ←
	WRITE-IN CANDIDATE To vote for a write-in candidate, follow the directions on the long stub of your ballot card.	

This is a photograph of one of the 655,000 sample ballots mailed to PBC voters and political parties. The elections office received no complaints. The paper booklet did not include a representation of the punch holes.

A Voter's-Eye View



What Some People Saw...

Official Florida Presidential Ballot

Follow the arrow and Punch the appropriate dot.

Bush



Buchanan



Gore



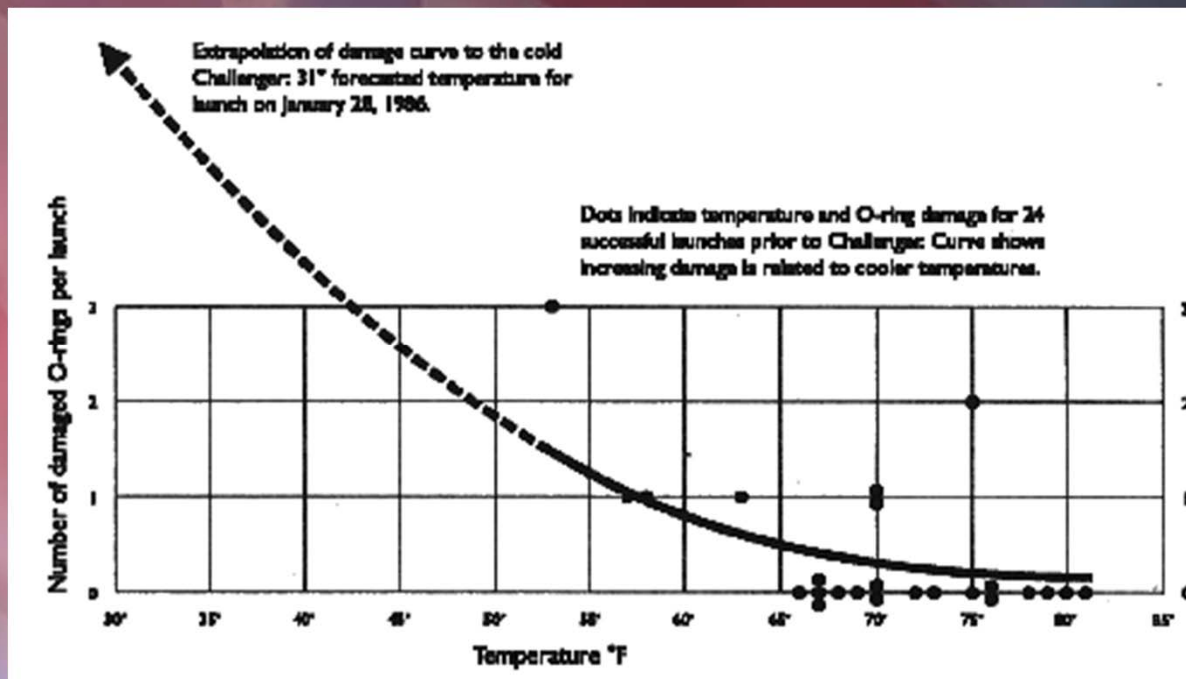
Nader



(c) 2000 Mike Collins, Taterbrains.com

The Effects of Poor Design

- “Poorly constructed overhead slides don’t normally kill people, but they do often leave people in the dark.” - Design expert Bruce Tognazzini



Same data, reformatted by design expert Edmund Tufte.

The curve “shows increasing damage is related to cooler temperatures.”

A Better Design?

1

OFFICIAL BALLOT, GENERAL ELECTION
PALM BEACH COUNTY, FLORIDA
NOVEMBER 7, 2000

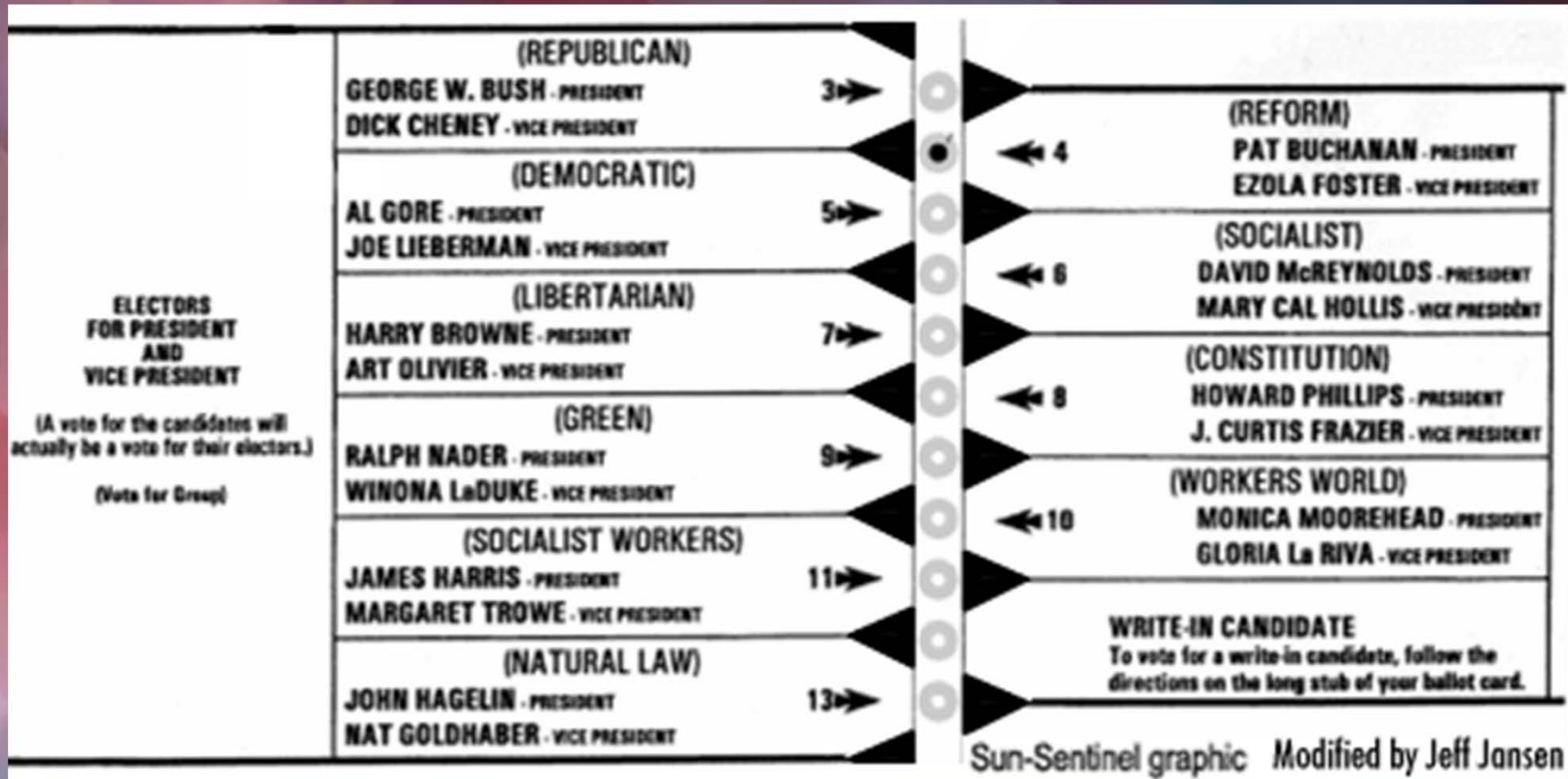
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A

OFFICIAL BALLOT, GENERAL ELECTION
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← 4	(REFORM) PAT BUCHANAN - PRESIDENT EZOLA FOSTER - VICE PRESIDENT
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A Better Design?



Usability Testing

- “The Buchanan Problem”
 - 3,407 voters chose Buchanan in PBC, but only 600 on average across Florida. This leaves 2,807 potentially erroneous Buchanan votes out of 269,951 “actual and potential” Gore votes.
 - It would have taken 289 subjects to find 95% of problems, or 423 subjects to find 99% of problems, affecting 1% of voters.

Usability Testing

- “The Multiple Votes Problem”
 - 432,286 total ballots cast in PBC
 - 19,020 invalidated due to overvoting
 - It would have taken 65 subjects to find 95% of problems, or 94 subjects to find 99% of problems, affecting 4.4% of voters.

Usability Testing

- “The Dimpled Ballot Problem”
 - 432,286 total ballots cast in PBC
 - 3,300 not clearly punched for a candidate
 - It would have taken 115 subjects to find 95% of problems, or 166 subjects to find 99% of problems, affecting 0.8% of voters.

Usability Testing

- Would have cost about \$20,000
- Not standard for ballot design
- Will not necessarily spot trouble
- Often relegated to journal research
- How do you calculate return on investment?
- Presidential campaign cost nearly \$1 billion.

On Forms...

“I hope this mistake doesn't cheat the American people of their democratic choice. But if it does, perhaps people will finally learn to test forms properly before unleashing them on the public.”

– Chrissie Maher, Director,
Britain's Plain English Commission



Voting Equipment

- Punch card systems produce most errors
- Newer equipment allows more flexibility
- LePore wanted electronic machines, but...
 - Cost was \$14 million and she thought county commission wouldn't approve
 - Old system hadn't caused much trouble
 - New system hadn't been state certified

Waldo's Ethical Map

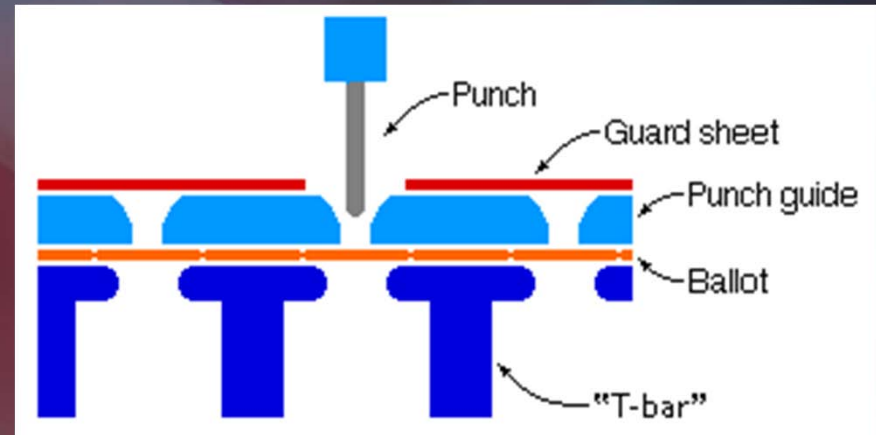
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- **Obligation to Organizational-Bureaucratic Norms**

Punch Card System

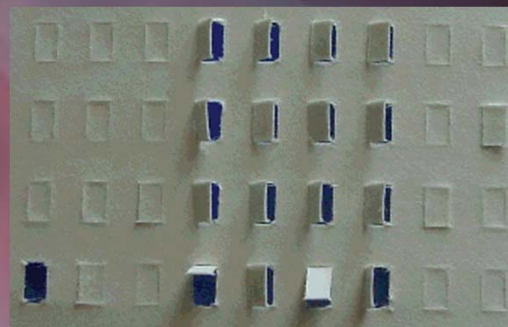
- 1964 Punch card voting first used in presidential election
- 1988 National Institute of Standards and Technology strongly recommends against punch card voting due to problem with hanging chads.

Punch Card System

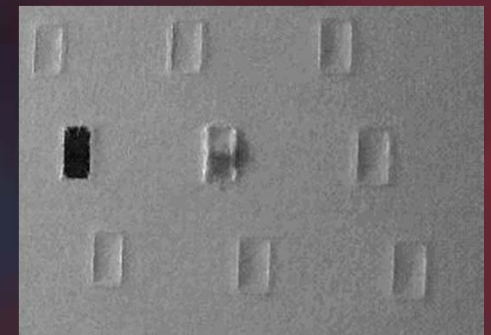
•	•	39	58	•	•	115	•	•	191	•
1	•	20	•	77	96	•	134	153	172	210
•	•	40	59	•	96	116	•	172	192	•
2	•	21	•	78	97	•	135	154	173	211
•	•	41	60	•	97	117	•	173	193	•
3	•	22	•	79	98	•	136	155	174	212
•	•	42	61	•	98	118	•	174	194	•
4	•	23	•	80	99	•	137	156	175	213
•	•	43	•	81	100	•	138	157	176	214
5	•	24	•	82	101	•	139	158	177	215
•	•	44	62	•	101	120	•	177	197	•
6	•	25	•	83	102	•	140	•	198	•
•	•	45	63	•	102	121	•	178	198	216
7	•	26	•	84	103	•	141	160	179	217
•	•	46	64	•	103	122	•	179	199	•
8	•	27	•	85	104	•	142	•	200	•
•	•	47	65	•	104	123	•	180	200	218
9	•	28	•	86	105	•	143	161	180	219
•	•	48	66	•	105	124	•	181	201	•
10	•	29	•	87	106	•	144	162	181	220



Properly Punched VotoMatic Ballot



Hanging Chad



Pregnant Chad

Voting Equipment in Virginia

As of Sept. 1, 2005, according to the Virginia State Board of Elections. Does not include absentee voting equipment.

- Punch Card
 - Virginia Beach
- Mechanical
 - Buckingham, Fluvanna, Franklin County, Hanover, Mathews, Mecklenburg, Petersburg, Russell, Tazewell
- Optical Scan
 - 30 localities, including Loudoun
- Direct Recording Electronic
 - Remaining 94 localities



Polling Place Operations

- Number of polling stations
- Number and quality of poll workers
 - PBC in 2000: about 4,000, paid \$90-\$120 for >15 hours
- Cost of equipment vs. number of units
- Street-level bureaucracy
 - Physical separation
 - Extreme time pressure
 - Frequent demand overloads
- Temporary employees, constraints on training

Voter Information & Responsibility

- Official information
- Unofficial information
- How easy should it be to vote?

“In a discussion of ethics, it seems reasonable to ask what responsibility the voter has.” – Montjoy & Slaton

Ethics in a Democracy

- Waldo: Rosseau argued that the people can be *mistaken*, but they cannot be *wrong*.
- “Nobody pretends that democracy is perfect or at all wise. Indeed, it has been said that democracy is the worst form of government except all those other forms that have been tried from time to time.”

- Winston Churchill, 1947



The Responsible Administrator

(Terry L. Cooper, 1998)

- Objective Responsibility
 - Responsibility to someone for something
 - Relies on certainty and hierarchy
 - Often unrealistic, especially in elections
- Subjective Responsibility
 - Based in individual feelings and beliefs
 - “A call to look beyond ... one’s job.”
 - Must balance objective responsibilities of job with personal values

Players and Interests

- *Theory of Justice* (John Rawls, 1971)
 - Justice is the result of a fair game, one designed by people who don't know what positions they'll play.
- Election laws are passed by election winners
- In the Florida recounts, the players knew what the outcomes of their rulemaking would be.
- Where are election reform special interests?
- Physical rules vs. “intent of the voter”
- Importance of rulemaking during “calm”

Players and Interests

- Election officials exercise discretion that can affect the outcome...
- ...But election officials do not have unilateral control, and many stakeholders affect the electoral process.
- Solutions need to be implemented well before elections, by the people who aren't responsible for administering them.

Players and Interests

- Role of the election official
 - Shouldn't the officials be vocal reformists?
 - But election officials claim neutrality.
 - There should be neutrality in the conduct of elections, but not in advocacy for sound public policy.
- “Failure to recognize the complexity of the system can lead to unjust and unproductive ethical analysis.” – Montjoy & Slaton

Waldo's Ethical Map

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- Obligation to Public Interest or General Welfare
- Obligation to Organizational-Bureaucratic Norms
- **Obligation to Middle-Range Collectivities**

Getting It Right...

- “If she had been someone who wasn't worried so much about getting it right, and wasn't worried about doing right by the people she represents, none of this would have happened. It's just one of those situations where you make things worse by trying to overthink a problem.”

- Reporter Seth Mnookin

Getting It Right...

- “Ethics does not require omniscience.”
- Montjoy & Slaton
- “I don't feel guilty. I did what I thought was best at the time. ... I can't go back and say if I did things differently, maybe the election would be different, because you don't know. You don't know.”
- Theresa LePore

The Human Factor...

- “When we sit here and see stories from around the country, you never really think what these people are really like, these people out in front. Then when it happens in your community and you know all of the players so well, all of a sudden you know what they're like as people and you think, ‘I've got to pay more attention to the human beings involved in this thing.’”

- West Palm Beach Attorney Richard Lubin

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- Obligation to Organizational-Bureaucratic Norms
- Obligation to Middle-Range Collectivities
- **Obligation to Family and Friends**

Update

- Nov. 5, 2002
 - Palm Beach County holds smooth election on new touch-screen machines, while problems abound in Broward and Miami-Dade.



Lessons Learned?






Unedited excerpt from interview with Theresa LePore, August 26, 2004, regarding the upcoming use of “connect the arrow” absentee ballots.

by Melissa Block, *All Things Considered*, National Public Radio



To vote: Use a #2 pencil to connect the arrow by your choice with one dark single line.

To make a correction: Mark X through your error and re-mark your choice.
Your name or an identifying mark will invalidate this ballot.

City of Bainbridge Island	
Mayor	
4 Year Term	Vote For One
Darlene Kordonowy	NP ← 
Nezam Tooloee	NP ← 
(Write-In)	← 

Update

- Nov. 2, 2004
 - LePore is defeated for reelection 52% to 48%, by Democrat Arthur Anderson. PBC voting machines record 88,048 more votes than voters.
- Jan. 11, 2005
 - PBC Commission recognizes LePore for “her many dedicated years of public service.”
- Nov. 19, 2005
 - Florida Elections Commission fines Anderson \$10,500 for election violations.



“Let me tell you about Florida politicians. I make them. I get their name in the newspaper, I get them some publicity and get them on the ballot. Then after the election we count the votes and if they don't turn out right, we recount them and recount them again until they do.”

- Gangster Johnny Rocco
Key Largo (1948)



Primary Sources

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