IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

UNITED STATES OF AMERICA, Plaintiff,	
vs.	CIVIL ACTION
STATE OF LOUISIANA: JIMMIE H. DAVIS, C. C. AYCOCK, J. THOMAS JEWEL, AS MEMBERS OF THE BOARD OF REGISTRATION OF THE STATE OF LOUISIANA, and HUGH E. CUTRER, JR., DIRECTOR AND EX OFFICIO SECRETARY OF THE BOARD OF REGISTRATION OF THE STATE OF LOUISIANA, Defendants.	NO. 2548

#9416

12-32-66

Attorneys for Plaintiff:

Robert F. Kennedy,
Burke Marshall,
Louis Lacour,
John Doar.

Attorneys for Defendants:

Jack P. F. Gremillion,
Carroll Buck,
Harry J. Kron,
Henry Roberts,
Weldon Cousins,
John Jackson,
Thomas W. McFerrin.

Before WISDOM, Circuit Judge, and CHRISTENBERRY and WEST, District Judges.

WISDOM, Circuit Judge:

There is a wall between registered voters and unregistered, eligible Negro voters in Louisiana. The wall is the State constitutional requirement that an applicant for registration "understand and give a reasonable interpretation of any section" of the Constitutions of Louisiana and of the United States. It is not the only wall, but since the Supreme Court's demolishment of the white primary, the interpretation test has been the highest, best-guarded, most effective barrier to Negro voting in Louisiana.[1]

When a Louisiana citizen seeks to register, the Parish Registrar of Voters may ask the applicant to interpret the provision, "The Supreme Court and the Court of Appeal, and each of the judges . . . may also in aid of their respective jurisdictions, original, appellate, or supervisory, issue writs of mandamus, certiorari, prohibition, quo warranto, and all other needful writs". Or, the registrar may ask the applicant to interpret a less technical but more difficult provision, constitutionally, such as, "Every person has the natural right to worship God according to the dictates of his own conscience."[2] In giving this test, the registrar selects the constitutional section and he must be satisfied with the explanation. In many parishes, the registrar is not easily satisfied with constitutional interpretations from Negro applicants.

We hold, this wall dividing a single electorate must come down. The understanding clause or interpretation test is not a literacy requirement. It has no rational relation to measuring the ability of an elector to read and write. It is a test of an elector's ability to interpret the Louisiana and United States Constitutions. Considering this law in its historical setting and considering too the actual operation and inescapable effect of the law, it is evident that the test is a sophisticated scheme to disfranchise Negroes. The test is unconstitutional as written and as administered.

I.

United States brings this action against the State of Louisiana and the directors and members of the Louisiana Board of Registration. When an official of the State or of a subdivision of the State is found to have discriminated against United States citizens in violation of 42 U.S.C.A. 1971(a), "the act or practice shall be deemed to have been that of the State

and the State may be joined as a party defendant". 42 U.S.C.A. 1971(e). See United States v. Dogan, 5 Cir. 1963, 314 F.2d 766, 771; Kennedy v. Lynd, 5 Cir. 1962, 306 F.2d 222, 228, cert. den'd 1963, 371 U. S. 952.

The State and its agent, the Board of Registration, have the power and duty to prescribe rules and regulations governing the administration of voter qualification laws in Louisiana.[3] The Board has the power to remove at will any Parish Registrar of Voters.[4]

The court has jurisdiction under 42 U.S.C.A. 1971, 28 U.S.C.A. 1345, and 28 U.S.C.A. 2281. Since the suit challenges the validity of provisions of the State Constitution and certain statutes and presents substantial constitutional questions, it is a proper case to be heard by a three-judge court. 28 U.S.C.A. 2281.

II.

Under the Constitution of Louisiana, registration, which is a prerequisite to voting in any election, La. Const. Art. 8, § 1(b), is conducted in each parish by a registrar of voters. Except in Orleans Parish, the registrar is appointed by the police jury or other governing body of the parish. La. Const., Art. 8, § 18; L.S.A.-R.S. 18:1.[5] Permanent registration is mandatory for parishes containing a municipal corporation of more than 100,000 population, and optional for other parishes. L.S.A.-R.S. 18:231, 249.

The Constitution of Louisiana, Article VIII, Section 1(d), as amended in 1960, provides, in part:[6]

> He [a voter] shall be a person of good character and reputation, attached to the principles of the Constitution of the United States and of the State of Louisiana, and shall be able to understand and give a reasonable interpretation of any section of either Constitution when

> read to him by the registrar, and he must be well disposed to the good order and the happiness of the State of Louisiana and of the United States and must understand the duties and obligations of citizenship under a republican form of government. (Emphasis added.)

Title 18, Section 35 of the Louisiana Revised Statutes provides, in part:

> Applicants for registration shall also be able to read any clause in the constitution of Louisiana or of the United States and give a reasonable interpretation thereof.

The United States attacks the understanding and interpretation requirement as violative of 42 U.S.C.A. 1971, the Civil Rights Act, and of the Fourteenth and Fifteenth Amendments to the Constitution of the United States.

III.

A. There is no license for the loose statement that under our constitutional system the qualification of voters is "exclusively" committed to the States. More accurately, the States, under Article 1, Section 2 of the Constitution and the Seventeenth Amendment, are free to establish voting qualifications -- but only if the qualifications do not transgress the United States Constitution. Ex parte Clarke, 1879, 100 U. S. 399, 25 L. Ed. 715; Lassiter v. Northampton County Bd. of Elections, 1959, 360 U. S. 45, 79 S. Ct. 985, 3 L. Ed. 2d 1072. The books are filled with examples of state election laws and practices found to transgress constitutional guaranties. Guinn v. United States, 1915, 238 U. S. 347, 35 S. Ct. 926, 59 L. Ed. 1340; Lane v. Wilson, 1938, 307 U. S. 268, 59 S. Ct. 872, 85 L. Ed. 1281; United States v. Classic, 1941, 313 U. S. 299, 61 S. Ct. 1031, 85 L. Ed. 1368; Davis v. Schnell, 1949, S.D. Ala., 81 F. Supp. 872, aff'd 336 U. S. 933, 69 S. Ct. 749, 93 L. Ed. 1093. In United States v. Classic, a Louisiana case, the Supreme Court, in sustaining federal indictments against

state election officials for falsely certifying returns in a congressional election, said:

> "While, in a loose sense, the right to vote for representatives in Congress is sometimes spoken of as a right derived from the states, /citations omitted/ this statement is true only in the sense that the states are authorized by the Constitution, to legislate on the subject as provided by § 2 of Art. I, to the extent that Congress has not restricted state action by the exercise of its powers to regulate elections under § 4 and its more general power under Article I, § 8, clause 18 of the Constitution 'to make all laws which shall be necessary and proper for carrying into execution the foregoing powers.' See Ex parte Siebold, 100 U. S. 37; Ex parte Yarbrough, supra, 663, 664 . . ."

In ex parte Yarbrough, 1884, 110 U. S. 651, 663, 4 S. Ct. 152, 28 L. Ed. 274, cited in Classic, the court stated: "/I/t is not true . . . that electors for members of Congress owe their right to vote to the State law in any sense which makes the exercise of the right to depend exclusively on the law of the State."

B. Three provisions of the United States Constitution deny plenary and exclusive power to the States to determine what are reasonable voting requirements and give special protection to a citizen against discrimination in the electoral process. Two are mandates expressly prohibiting discriminatory state action and the third is an affirmative grant of power to the United States. The first and most important is the Fifteenth Amendment. It is clearly and simply expressed: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude". Uncomplicated by phrases freighted with history back to Magna Carta, the Fifteenth Amendment imposes on courts the unshirkable duty of inquiring into legislative purpose and striking down a fair-seeming law that, "on account of race", is in fact a discriminatory device

to deprive Negroes of their vote. "The Fifteenth Amendment . . . clearly shows that the right of suffrage was considered to be of supreme importance to the National Government, and was not intended to be left within the exclusive control of the States." Ex parte Yarbrough, 1884, 110 U. S. 651, 4 S. Ct. 152, 28 L. Ed. 274.

Second, the Fourteenth Amendment prohibits discriminatory voting qualifications under the "equal protection" clause. Nixon v. Herndon, 1924, 273 U. S. 536, 47 S. Ct. 446, 71 L. Ed. 759. As the Supreme Court stated in another context: This is "a more explicit safeguard of prohibited unfairness than 'due process of law' . . . But . . . discrimination may be so unjustifiable as to be violative of due process. . . . Liberty under law extends to the full range of conduct which the individual is free to pursue, and it cannot be restricted except for a proper governmental objective." Bolling v. Sharpe, 1954, 347 U. S. 497, 74 S. Ct. 693, 98 L. Ed. 884.

Third, Article 1, Section 4 of the Constitution empowers Congress to "make or alter" the "times, places and manner of holding elections for Senators and Representatives . . . prescribed in each State by the legislature thereof."[7] Such Congressional authority extends to registration, a phase of the electoral process unknown to the Founding Fathers but today a critical, inseparable part of the electoral process which is of special interest to the United States, since registration to vote covers voting in national as well as in local elections.[8] In Ex parte Siebold, 1880, 100 U. S. 371, 25 L. Ed. 715 the Supreme Court relied on Article 1, Section 4, in sustaining a statute providing, among other things, for federal registrars, supervisors, in registration offices. See also In re

Supervisors of Election, C.C.D.Ohio 1878, 23 Fed. Cas. 430 (No. 13628). In United States v. Manning, W.D.La. 1963, 215 F. Supp. 272, 277, this Court upheld the registration provisions of the Civil Rights Act of 1960: "/N/othing in the language or history of the Tenth Amendment gives the State exclusive sovereignty over the electoral processes against the Federal government's otherwise constitutional exercise of a power." See McCulloch v. Maryland, 1819, 4 Wheat. 316, 4 L. Ed. 579 and United States v. Darby, 1941, 312 U. S. 100, 124, 61 S. Ct. 451, 85 L. Ed. 609.

The "necessary and proper" clause, Article 1, Section 8, Clause 18, gives Congress full authority to legislate under Article 1, Section 4 (or any other constitutional grant of power); the Fourteenth Amendment, Section 5, specifically grants power to Congress to pass "appropriate legislation" to prevent the denial of equal protection of the laws; the Fifteenth Amendment, Section 2, specifically grants power to Congress to pass "appropriate legislation" to guarantee that the right to vote shall not be abridged on account of race. Ex parte Virginia, 1879, 100 U. S. 339, 25 L. Ed. 676, makes it clear that the "appropriate legislation" clause of the Fourteenth and Fifteenth Amendments is as broad as the "necessary and proper clause", as construed in McCulloch v. Maryland, 1899, 17 U. S. (Wheat.) 316. The Supremacy Clause, Article VI, subordinates any conflicting state legislation to congressional legislation. The totality of implied powers these sections grant to Congress are full authority for Congress to enact the Civil Rights Act or other appropriate legislation to regulate elections (including registration) under Article 1, Section 4, and to protect the integrity of the electoral process under the Fourteenth and Fifteenth Amendments. United States v. Classic,

19.1, 313 U.S. 299, 61 S. Ct. 1031, 85 L. Ed. 1368; Burroughs v. United States, 1934, 290 U. S. 534, 54 S. Ct. 287, 78 L. Ed. 484; Ex parte Yarbrough, 1884, 110 U.S. 651, 663, 4 S.Ct.152, 28 L. Ed. 274.

C. "It has been said [more often in the past than in recent years, we interpolate] that when the meaning of language is plain we are not to resort to evidence to raise doubts. This is rather an axiom of experience than a rule of law and does not preclude consideration of persuasive evidence if it exists". Boston Sand and Gravel Co. v. United States, 1928, 278 U.S. 41, 48, 49 S. Ct. 52, 73 L. Ed. 171 (Holmes, J.) "Of course one begins with the words of a statute to ascertain its meaning, but one does not end with them". Massachusetts Bonding & Ins. Co. v. United States, 1956, 352 U. S. 128, 138, 77 S. Ct. 186, 1 L. Ed. 2d 169 (Frankfurter, J. dissenting).

In going beyond the verbal surface of the Louisiana interpretation test, we have sought to eschew inquiry into motive. A federal court's proper respect for the State and the judiciary's due regard for the legislative process, among other reasons, compel this restraint. Conder compels the admission however that in this case the line between the motive of the lawmakers and the purpose of law is blurred. Blur or not, the court cannot carry out its judicial function of giving effect to the legislative intent, or, on the other hand, of invalidating the law for reasons fair to the framers, without first determining the purpose of the law. In this sense, purpose carries the meaning of Coke's "true reason" for the law in the light of the situation at which it is aimed. "[L]aws are not abstract propositions. They are expressions of policy arising out of specific situations and addressed to the attainment of particular ends. . . . And

so the bottom problem is: What is below the surface of the words and yet fairly a part of them?" Frankfurter, Some Reflections on the Reading of Statutes, 47 Col. L. Rev. 527, 533 (1947). Purpose then, that is, the "true reason" for the law, determined as objectively as possible, is an essential part of the context within which a law must be read, if the Court is to appraise fairly the validity of the law. Llewellyn stated this well:

> "If a statute is to make sense, it must be read in the light of some assumed purpose. A statute merely declaring a rule, with no purpose or objective, is nonsense. . . . [When there are] ideas consciously before the draftsmen, the committee, the legislature, . . . talk of 'intent' is reasonably realistic; committee reports, legislative debate, historical knowledge of contemporary thinking or campaigning which points up the evil or the goal can have significance." Llewellyn, The Common Law Tradition 375 (1960).

To Louisianians, most of whom cannot have the slightest doubt as to the true reason for the understanding or interpretation test, it must seem an exercise in futility for the Court

to prove the purpose of the law. However, two decisions by three-judge courts in this circuit put a high premium on the Court's ascertaining the purpose of this test. The court, in Davis v. Schnell, S.D. Ala. 1949, 81 F. Supp. 872, aff'd mem. 1949, 336 U. S. 933, in holding the Alabama understanding clause unconstitutional, based its decision, in good part, of the discriminatory purpose of the law as evidenced by its history. The Court, in Darby v. Daniel, S.D. Miss. 1958, 187 F. Supp. 170, held the Mississippi understanding clause constitutional and distinguished Davis v. Schnell, in part because the plaintiff had failed to show that Mississippi's understanding clause was intended to discriminate against Negroes.

D. It is not unusual for courts to look beyond the face of a statute and find that it is discriminatorily administered or that it has an unlawful legislative purpose. "Though the law itself be fair on its face and impartial in appearance, yet if it is applied and administered by public authority with an evil eye and unequal hand, so as practically to make unjust and illegal discriminations between persons of similar circumstances, material to their rights, the denial of equal protection is still within the prohibition of the Constitution." Yick Wo v. Hopkins, 1886, 118 U. S. 356, 6 S. Ct. 1064, 30 L. Ed. 220.

Wholly apart from the administration of a statute, its legislative purpose may be decisive in determining unconstitutionality. In Gomillion v. Lightfoot, 1960, 364 U. S. 339, 81 S. Ct. 125, 5 L. Ed. 2d 110, the Supreme Court had before it an Alabama statute which changed the shape of Tuskeegee "from a square to an uncouth twenty-eight-sided figure." No one has ever doubted that a state legislature had the power to determine municipal boundaries, and a long line of cases, going back to Luther v. Borden, 1849, 7 How. 1, 12 L. Ed. 581, and continuing

through Colegrove v. Green, 1946, 328 U. S. 549, 66 S. Ct. 1198, 90 L. Ed. 1432, strongly argued for the conclusion that gerrymandering of election districts was a "political" problem. In holding the law unconstitutional under the Fifteenth Amendment, the Supreme Court based the decision on the statutory objective of removing from Tuskeegee all save four or five of its 400 Negro voters:

> "When a State exercises power wholly within the domain of state interest, it is insulated from federal judicial reviews. But such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right. This principle has had many applications. It has long been recognized in cases which have prohibited a State from exploiting a power acknowledged to be absolute in an isolated context to justify the imposition of an 'unconstitutional condition.' What the Court has said in those cases is equally applicable here, viz., that 'Acts generally lawful may become unlawful when done to accomplish an unlawful end, United States v. Reading Co., 226 U. S. 324, 357, 33 S. Ct. 90, 57 L. Ed. 243, and a constitutional power cannot be used by way of condition to attain an unconstitutional result.' Western Union Tel. Co., 247 U. S. 105, 114, 38 S. Ct. 438, 62 L. Ed. 1006, 1 ALR 1278." 364 U. S. at 347-48.

In Grosjean v. American Press Co., 1936, 297 U. S. 233, 56 S. Ct. 444, 80 L. Ed. 660, a Louisiana law appeared to be simply a graduated tax on newspaper and theatre advertising. Underneath the surface was the legislative purpose to punish New Orleans newspapers for criticism of Governor Huey Long. With very little in the record to show the object of the tax, how it was generated, and how it worked, the Supreme Court went beyond appearances and struck down the tax as in effect an abridgment of First Amendment freedom of the press in violation of the due process clause of the Fourteenth Amendment. Cases too numerous to cite sustain taxation of newspapers. As the Court stated:

> "[The tax] is bad because, <u>in the light of its history and of its present setting</u>, it is seen to be a deliberate and calculated device in the guise of a tax to limit the circulation of information to which the public is entitled in virtue of the constitutional guarantees." 297 U. S. at 250.

In this case, too, we must go into the "history" and "present setting" of a fair-seeming law. In doing so, we bear in mind a maxim quoted appropriately in this circuit many times in recent years, a maxim from one of the Supreme Court decisions outlawing the Oklahoma Grandfather clause: "[The Constitution] nullifies sophisticated as well as simple-minded modes of discrimination. It hits onerous procedural requirements which effectively handicap exercise of the franchise by the colored race although the abstract right to vote may remain unrestricted as to race." Lane v. Wilson, 1939, 307 U. S. 268, 275, 59 S. Ct. 872, 83 L. Ed. 872.

IV.

To obtain some necessary pages of history, more valuable than volumes of logic, as Holmes has said, we sacrifice brevity.

The Louisiana interpretation test and its recent variant, the citizenship test, are best understood as the latest, but perhaps not final, members of a long, logically connected series of socio-political events. These are rooted in the State's historic policy and the dominant white citizens' firm determination to maintain white supremacy in state and local government by denying to Negroes the right to vote.

A. There was, of course, no problem in colonial and territorial times; the Codes Noir disfranchised Negroes. Louisiana became a state in 1812. Its first Constitution set the pattern. It limited the franchise to "free white male citizen[s]" who had paid state taxes or purchased land from the United States within six months prior to the election. For thirty-three years this constitutional limitation kept the ballot chiefly in the hands of landowners and merchants, disfranchised two-thirds of the electorate, and favored New Orleans and the southern parishes over the rest of the State. The Constitution of 1845, in many respects

a progressive and broadly democratic document, did away with the tax-paying qualification for voters and established universal suffrage for free white males, regardless of wealth and literacy, but limited the vote to citizens of the United States who had resided in Louisiana for two years, and barred the vote to paupers and men in military service. The next Constitution, adopted in 1852, broadened the suffrage qualifications by lowering the state residential requirement to one year, and introduced registration of voters, a progressive step many years in advance of most states. This Constitution required registration for Orleans Parish and made it optional with the legislature for the other parishes.

From the Code Noir of 1724 until 1864, the organic law of the state ordained that only free white males could vote or hold office. This was in a state where there were thousands of free men of color, many of whom were well educated and owned slaves, and who were, except for suffrage and social equality, recognized as Louisiana citizens on a par with white citizens.[9]

The Constitutional Convention of 1864 was the first convention in Louisiana to consider Negro suffrage. During the federal occupation of New Orleans, General N.P. Banks, the Military Governor, at the direction of President Lincoln, called a constitutional convention. It was attended by delegates from the federally occupied part of the State only (Orleans and eighteen southern parishes containing about half of the population of the State). Negroes could not vote for the delegates and were not represented in the Convention. The Constitution of 1864 abolished slavery and provided for free public schools for all children between six and eighteen years, regardless of race, but retained the previous limitation of suffrage to white males.[10] In the early stages of the convention a strong sentiment existed against

granting suffrage to the Negroes, and the delegates actually adopted a resolution declaring that the legislature should never pass a law authorizing Negroes to vote.[11] Later in the session, the delegates established a voting qualification based on an intelligence test, in the interest of permitting Negro suffrage. The resolution in question authorized the legislature "to pass laws extending suffrage to such other persons, citizens of the United States, as by military service, by taxation to support the Government, or by intellectual fitness, may be deemed entitled thereto." The word "Negro" was not contained in the resolution as proposed in the Convention or in the ordinance as adopted and, at the time, which was before the adoption of the Civil War Amendments, it was generally thought that Negroes were not citizens. Nonetheless, in the debates over the resolution a number of delegates denounced it as a "nigger resolution", and at least one delegate stalked out of the Convention in protest against Negroes being allowed to vote.[12]

The Constitution of 1864 required the registration of all voters in the State. In 1867 the State Board of Registration, making its first report, showed 45,189 white and 84,527 Negro registrants.[13]

Racial relations in Louisiana deteriorated rapidly. In the fall of 1865 the Democrats in Louisiana adopted resolutions "that this is a Government of white people, made and to be perpetuated for the exclusive benefit of the white race", and declared the Constitution of 1864 a creature of fraud.[14] Radical Republicans, refusing to recognize the existing Democratic Government in Louisiana, declared that Louisiana was reduced to the status of a territory and as such was entitled to a territorial delegate to Congress. They met in convention and called an election for November 6 to elect the delegates. Henry Clay Warmoth, later

Governor, generally regarded in Louisiana histories as a carpet-bagger, was elected as the delegate -- without opposition.[15] In that election, such as it was, for the first time in the history of the State, Negroes voted freely.

Ominous events progressively increased the friction between the races in the years between the Constitutions of 1864 and 1868. In 1864, relatively peacefully, the Free State Party attempted to establish a government "responsive to loyal white people; the demobilized Confederates, an administration which would restore Louisiana to its ante-bellum condition, except that peonage would replace slavery".[16] By 1865 Confederate veterans had returned in number and in an orderly election that year defeated the Free Staters and gained control of the legislature, mainly by opposing Negro suffrage.[17] The legislature and police juries promptly enacted new Black Codes which reduced the Negro to a "condition which lay between peonage and serfdom"[18] and intensified the activities of Republicans and Northern radicals for Negro suffrage. July 30, 1866, a bloody riot took place in New Orleans at Mechanics Institute. This "massacre" was provoked, it has been said, by "the attempt of some irresponsible white radicals to transfer the franchise from Confederate veterans to freed men".[19] In 1867 the Louisiana legislature rejected the Fourteenth Amendment. "There followed, as night the day, military reconstruction."[20]

In 1868 General Philip H. Sheridan, Commander of the Fifth Military District of Louisiana and Texas, called a constitutional convention to meet the conditions Congress imposed on the former States of the Confederacy: suffrage regardless of race and ratification of the Fourteenth Amendment. In the election of delegates to the convention, Confederate veterans and Democratic officeholders were barred from the polls. This was the first and

last Louisiana constitutional convention to which Negro delegates were admitted; the president of the convention and forty-nine of the ninety-eight delegates were Negroes. In the 1868 Constitution Negroes finally received the right to vote and to hold office. This Constitution disfranchised all persons who had participated directly or indirectly in the War[21] and, pouring salt on open wounds, required, as a condition to voting, a certificate from Confederate soldiers and Democratic officeholders that "the late rebellion" was "morally and politically wrong".[22] The Constitution of 1868 desegregated the schools, adopted the bill of rights, rejected a literacy test, and prohibited discrimination in public conveyances and places of public accommodation. This was all "that was needed to strengthen the determination of Southern whites to establish white supremacy, at whatever cost. The Constitution of 1868, therefore, instead of closing the breach between whites and blacks, served only to widen it."[23]

As a result of the disfranchisement of many former Confederate soldiers and the enfranchisement of Negroes, the 1868 election resulted in the election of Warmoth as Governor, and of Oscar J. Dunn, a Negro ex-slave, as Lieutenant Governor. Between 1868 and 1896, a number of Negroes held high office in the State: two congressmen, six high state officials, thirty-two state senators, ninety-five state representatives, and one United States Senator, who was not seated;[24] P.B.S. Pinchback served briefly as Governor.

The years from 1864 to 1876 in Louisiana were years of violence and disorder, notwithstanding the presence of federal troops during these years. In 1873 at Colfax, Grant Parish, fifty-nine Negroes and two white persons were killed.[25] After the Colfax riot the number of federal troops were increased at various points

in the State to aid officials in keeping order. Louisiana became an armed camp. In 1874 six white Republican officeholders of Red River Parish were killed, after they had surrendered and had agreed to leave the State.[26] Elections were a farce, since "Governor [Kellogg] appointed the registrars, and through them returned his friends to the legislature"; "politicians bribed legislators for party and parish favors, and business men and corporations bribed the politicians for economic privileges".[27] During most of the years between 1866 and 1877 there were two governors and two legislatures. The Republican governors and their elected associates were maintained in office only by the Returning Board and federal troops. Representative white citizens considered it a civic duty[28] to belong first to The Knights of the White Camellia, a secret organization equivalent to the Ku Klux Klan in other states, and, later, to join the White League, a statewide organization which openly espoused white supremacy in a published platform.[29] September 14, 1874, the Crescent City (New Orleans) White League, which was organized militarily, led by influential citizens, successfully fought a pitched battle in New Orleans with the federal troops, Kellogg's Negro militia, and the Metropolitan Police[30] under General Longstreet. The White League took over complete control of the City, then the Capitol of Louisiana, and established in the Statehouse first Acting Governor Penn and then Governor McEnery. President Grant acted promptly. He sent sufficient troops to support Governor Kellogg's regime, and the White Leaguers returned to their homes without incident. Liberty Place Monument was erected to the memory of the sixteen members of the White League who were killed. September 14 is still officially celebrated annually in New Orleans with public ceremonies as the day the tide turned in Louisiana against

the Negroes, carpetbaggers, and scalawags who had been in control of state and local government.[31]

The Battle at Liberty Place had an important effect on the election of 1876 when the "Redeemers", the White Democrats under Francis T. Nichols, defeated the Negro Republican candidate, S.B. Packard. Throughout the State, and especially in New Orleans, armed members of the White League policed the election. Governor Nichols, who ran as the White League's choice but who had also promised Negroes the continued enjoyment of their constitutional privileges, managed to attract enough Negro ballots to win by a substantial, if contested, vote. Governor Kellogg's Returning Board and, later, the Republican Legislature, declared S.B.Packard elected. Nichols and Packard were each inaugurated. January 9, 1877, the White League, numbering 6000, marched on the Cabildo in New Orleans, where Packard's troops were stationed. They surrendered. President Grant, unwilling to take sides because of the pending Hayes-Tilden controversy, ordered the status quo preserved. For four months armed White Leaguers patrolled the streets of New Orleans.[32]

Louisiana was the last of the Southern States to be freed from carpetbag government. In April 1877 President Hayes, as part of the Hayes-Tilden compromise, removed federal troops from Louisiana and recognized the Nichols administration as the legal government of the state.[33] These events foreshadowed the "lily white" primary, marked the emergence of the Democratic party in the south as "the institutionalized incarnation of the will to White Supremacy,"[34] and led inexorably to the "grandfather" clause and the interpretation test as techniques to avoid another Reconstruction.

In 1879, with the State firmly in the control of the White League, another Constitution was adopted. "Its chief objectives apparently, were to put 'white supremacy' back on a firm foundation and bring to an end the oppressive taxation, excessive public spending, and corrupt administration that had plagued the people for a decade."[35] This was before the understanding clause was invented. The solution for the Negro problem devised by the Convention was to transfer powers to the Governor from the legislature and the police juries (County Commissioners).[36] The public accommodations section and most of the provisions in the 1868 Constitution favorable to Negroes were eliminated, but the Constitution of 1879 did not restrict the Negro's right to vote. This may have been because of fear of another federal intervention or because the Negro-White unification movement under General Geauregard had collapsed.[37] Article 188 of that Constitution provided, "No qualification of any kind of suffrage or office, nor any restraint upon the same, on account of race, color or previous condition shall be made by law."

In the eighties and until 1898 Negroes in Louisiana continued to vote and to have their vote solicited by all parties. This is not surprising. In 1888 there were 127,923 Negro voters and 126,884 white voters on the registration rolls in Louisiana;[38] the population of the state was about fifty per cent Negro.

In the election of 1892, the Louisiana Lottery issue split both the parties. Murphy J. Foster, a Democrat, was the successful candidate for governor, but the Negro vote was a decisive factor in Governor Foster's favor in many parishes, a disquieting circumstance necessarily regarded as a mixed blessing. In a four-man race, the Democrats polled only 79,388 votes against a total of 98,647 cast for the Republicans and the newly organized

people's Populist party. The next election, in 1896, was the turning point that led directly to the disfranchisement of the Negro in Louisiana. In that election, Governor Foster, running for reelection, defeated John N. Pharr the choice of a fusion of Republicans, Populists, and sugar-growers disatisfied with low tariffs of 1894.[39] It was a bitterly fought election.[40] "The main issue . . . was the problem of Negro suffrage."[41] Again the Negro vote was decisive in many parishes. Again, Foster, who ran on a "white supremacy" platform, had his heaviest majority in parishes where the Negro registration was the heaviest.[42] At this point, in Louisiana, as in other deep-south states such as Mississippi and Alabama, the handwriting on the wall could be clearly read: the Negroes, even where not in the majority, had the balance of power, and scalawag white southerners could split the Democratic party wide open.

Promptly after the important election of 1896, Governor Foster called for a new Constitution. Judge Thomas J. Semmes, Chairman of the Judiciary Committee and, later, a president of the American Bar Association, said of the Convention: "We met here [in New Orleans in February 1928] to establish the supremacy of the white race, and the white race constitutes the Democratic party of this State."[43] The Convention of 1898 "interpreted its mandate from the 'people' to be, to disfranchise as many Negroes and as few whites as possible."[44] The understanding clause, invented by Mississippi a few years before as an alternative to a literacy test,[45] was strongly advocated by many of the delegates. After considerable debate, however, "persuaded that the understanding clause was 'based on fraud', the Louisiana Convention invented the 'grandfather clause'".[46]

Under Article 197 of the 1898 Constitution,[47] in order to register, an applicant had to meet educational and property

qualifications -- unless exempted by the "grandfather" clause. The educational test required the applicant to be able to read and write and demonstrate the ability to do so by filling out the application form without assistance. The property test required the applicant to own property assessed at $300 and to have paid the taxes due, the property.[48] The grandfather clause exempted persons entitled to vote on or before January 1, 1867, or the son or grandson of such person.[49] A similar provision exempted immigrants who came to this country after January 1, 1867. At the time, forty per cent of the registered voters in Louisiana were illiterate and most of the Negroes could not meet the property requirement. The result was disfranchisement of almost all of the Negro voters and of some twenty to thirty thousand white voters.[50] Alcée Fortier, one of Louisiana's most respected historians, writing in 1904, succinctly stated the legislative purpose of the grandfather clause:

> "The purpose of this section, known as the 'Grandfather Clause' was to allow many honorable and intelligent but illiterate white men to retain the right of suffrage, and the purpose of the educational or property qualification was to disfranchise the ignorant negroes who had been a menace to the civilization of the State since the adoption of the Fifteenth Amendment to the Constitution of the United States." 4 Fortier, History of Louisiana 235.

On accepting the chair as President of the Convention, Ernest B. Kruttschnitt, who had presided over the Convention of 1879, stated plainly: "We have here no political antagonism and I am called upon to preside over what is little more than a family meeting of the Democratic Party of the State of Louisiana. . . . We are all aware that this Convention has been called . . . principally to deal with one question . . . to eliminate from the electorate the mass of corrupt and illiterate voters who have during the last quarter century degraded our politics."[51] The

Convention voted that no ordinance should be considered until the report of the Committee on Suffrage and Election was made and finally acted upon by the Convention. Near the end of the Convention, President Kruttschnitt announced:

> "We have not been free; we have not drafted the exact Constitution we should like to have drafted; otherwise we should have inscribed in it, if I know the popular sentiment of the State, Universal White Manhood Suffrage, and the exclusion from the suffrage of every man with a trace of African blood in his veins. . . . What care I whether it be more or less ridiculous or not? Doesn't it meet the case? Doesn't it let the white man vote, and doesn't it stop the negro from voting, and isn't that what we came here for?" [52]

In his message to the legislature, Governor Foster was able to say:

> "The white supremacy for which we have so long struggled at the cost of so much precious blood and treasure, is now crystallized into the Constitution as a fundamental part and parcel of that organic instrument, and that, too, by no subterfuge or other evasions. With this great principle thus firmly imbedded in the Constitution, and honestly enforced, there need be no longer any fear as to the honesty and purity of our future elections."[53]

The Louisiana Constitution of 1998, like the Mississippi Constitution of 1890, was not submitted to the people.[54]

To make the disfranchisement effective, the legislature directed a complete new registration of all voters. Registration rolls before and after adoption of the Constitution show the prompt effect the grandfather clause had on Negro voters.

	January 1, 1897	March 17,1900
Number of Negro Voters	130,344	5,320
Number of White Voters	164,088	125,437

The drop in Negro registration continued, so that by 1910 only 730 or less than 0.5 per cent of the adult male Negroes were registered. In the sixty parishes then in existence, there were no Negroes registered in twenty-seven of them and only one Negro registered in each of another nine parishes. Only ten

parishes had more than ten Negro registered voters each. By 1918, when there were sixty-four parishes, thirty-seven parishes had no Negroes registered. Eight other parishes had only a single Negro on the voter registration rolls.[55] "With the adoption of the Constitution of 1898, Louisiana became in fact and practice a white man's state as far as its politics went."[56]

The 1913 Constitution did not change the suffrage provisions of the 1898 Constitution.

In 1915, the Supreme Court declared unconstitutional a grandfather clause similar to that of Louisiana's in Guinn v. United States. Chief Justice Douglass S. White of Louisiana, who fought with "Louisiana's Own" at the Battle of Liberty Place and was the campaign manager for Governor Nichols in 1888, wrote the opinion.[57]

Against this background, a constitutional convention was called in 1921. Although there were several good reasons for Louisiana to revise its constitution, it was well understood, as reported in the Times-Picayune: "Revision of the suffrage provision [was] necessary because the United States Supreme Court [had] declared the famous 'grandfather clause' invalid. . . . Already several substitutes have been proposed, among them the 'understanding clause' from Mississippi . . . and the plan of Ex-Governor R. G. Pleasant to confine the right of suffrage to those who inhabited the earth North of the twentieth degree of North latitude prior to October 12, 1492, when Columbus discovered America. The purpose of his plan is to shut out the Negro."[58]

We are handicapped in studying the legislative history of the Constitution of 1921 because, at the request of Ruffin G. Pleasant, then former Governor, who was Chairman of the Committee on Suffrage and Elections, the Committee met in secrecy and no

minutes were kept of any discussion or debate. The newspaper accounts of the proceedings, the next best evidence,[59] quote Governor Pleasant as saying that this was because "there might be one subject coming up for discussion which we would not care to have preserved. . . ."[60] Suffrage was "a delicate question" and the members preferred "not to debate it in the open."[61] No one failed to hear and heed the thunder of the silence.

The Committee first considered and rejected Governor Pleasant's "Christopher Columbus" proposal.[62] The plan finally agreed upon was the plan rejected in 1898 because of its "immorality" -- Mississippi's understanding clause, the interpretation test. In reporting the proposal, newspapers of the period consistently referred to it as the Mississippi "understanding" clause, quoting Hardin of Vernon Parish and Judge Phillip S. Pugh of Arcadia Parish,[63] and described it as a "substitute" or "replacement"[64] for the illegal grandfather clause. For example, a news report of the Times-Picayune characterized the plan as, "An ordinance designed to plug the hole shot through the suffrage provision when the United States Supreme Court declared the famous 'grandfather' clause invalid". The Negro community had no trouble recognizing the purpose of the test. A large delegation of Negro leaders from New Orleans, Shreveport and the parishes appeared before the committee to plead in vain for the franchise, and for more educational facilities.[65] "The Convention placed the power to remove any registrar in the State in the hands of an ex officio board of registration composed of the governor, lieutenant governor, and speaker, a majority of whom were more likely to be white men. Should any registrar show a tendency to administer the new registration tests too liberally, or otherwise to conduct his office in a manner displeasing to the adminis-

tration, the state board could remove him at will."[66]

When the Committee on Suffrage and Elections finally agreed on the interpretation test, the Baton Rouge Times accurately reported:

> "The grandfather clause is eliminated and there is substituted an understanding and good character clause. . . ."[67]

As Professor Powell said in his study of Louisiana constitutions for the Louisiana Law Institute, "In justice to the Convention, it must be said that even its bitterest critics could not deny that the Negroes were almost completely disfranchised."[68]

B. As an historical fact, and as appears from the evidence, the interpretation test was rarely, if ever, applied until the early fifties. It was not needed. The Democratic white primary made registration futile for Negroes.[69] The Democratic State Central Committee, acting under authority granted to it by the State, restricted all candidates and voters in the Democratic Party primary elections for state officers to white persons.[70] "[D]ebarment from the nominating process is in effect disfranchisement. Denial of the privilege of participating in primaries also means, essentially, ineligibility to party membership in general and excludes the negro from all party proceedings such as mass meetings, conventions, or caucuses of voters in the precinct and from delegate conventions in larger areas, to say nothing of party offices and candidacies in the party primaries." Weeks, The White Primary, 8 Miss. L. J. 135, 136 (1935).

The white primary not only effectively kept Negroes from voting in the only election that had any significance in the Louisiana electoral process but it also correspondingly depressed Negro registration to insignificantly low numbers. During the period from 1921 to 1946 Negro registration was never in excess of one per cent of the total registered voters, although the Negro

population of the state then constituted about one-third of the potential voters. In 1942 only 957 Negroes were registered to vote in Louisiana and no Negroes were registered in fifty-one of the sixty-four parishes of Louisiana.

In 1944 white primaries, even those conducted by a political party and not by the State pursuant to statute, were declared unconstitutional. Smith v. Allwright, 1944, 321 U. S. 649, 64 S. Ct. 757, 88 L. Ed. 987.[71] After the demise of the white primary, Negro registration in Louisiana rapidly increased, rising from 1,029 in 1944 to 7,561 in 1946, to 22,576 in 1948, and to 120,000 in 1952.[72] In 1956 there were 161,410 Negro voters, 15 per cent of the total registered vote in Louisiana, the highest percentage of Negro voters in any state in the south-eastern region of the country.

The decline and fall of the white primary, the return of Negro soldiers from World War II, the intensified tempo of activity in Negro organizations after the School Segregation Cases in 1954, and the civil rights explosion all worked toward increasing Negro interest in voting. These and correlated factors made it imperative for parish registrars in Louisiana to utilize the interpretation test, if the State intended to maintain its policy of segregation, historically indissolubly bound with disfranchisement of Negroes.

C. Immediately following the School Segregation Cases, two strong organizations dedicated to maintaining segregation in Louisiana were established, one by the legislature and one by private persons with official blessing. These two organizations have an important place in the history of the interpretation test. In our study, we see these organizations crossing and recrossing,

publicizing and promoting the purpose and function of the test and how best to use it in order to prevent Negro participation in the electoral process. First, in 1954, the Louisiana legislature created a Joint Legislative Committee "to provide ways and means whereby our existing social order shall be preserved and our institutions and ways of life . . . maintained." This was to be accomplished by a program "to maintain segregation of the races in all phases of our life in accordance with the customs, traditions, and laws of our State."[73] This Committee became known as the "Segregation Committee". Its chairman was William M. Rainach, State Senator from Claiborne Parish where there are more Negroes than white persons.[74] Its counsel was William M. Shaw, also from Claiborne Parish. Second, at about the same time or before, Senator Rainach and Mr. Shaw and others organized and incorporated the Association of Citizens Councils of Louisiana to "protect and preserve by all legal means, our historical Southern Social Institutions in all of their aspects."[75] Senator Rainach was the first president of the Citizens Councils and Mr. Shaw its first secretary. Senator Rainach and Mr. Shaw organized local councils and spearheaded the operations of the Segregation Committee.

In 1956, the Association of Citizens' Councils published a pamphlet, prepared by Mr. Shaw and Senator Rainach, entitled, "Voter Qualification Laws in Louisiana -- The Key to Victory in the Segregation Struggle." The pamphlet advocated a two-step program. First, the registration rolls should be purged of "the great numbers of unqualified voters who have been illegally registered", and who "invariably vote in block and constitute a menace to the community." Second, registrars

should strictly enforce the interpretation test. The pamphlet concludes, "The whole purpose of our registration laws is to prevent the registration of ignorant, 'bloc' voters . . ." The foreword of the pamphlet makes clear who is referred to by the term "bloc" voter:

> The Communists and the NAACP plan to register and vote every colored person of age in the South . . . They are not concerned with whether or not the colored bloc is registered in accordance with law.

No stress, no strain:

> If our laws are intelligently and fairly administered, they will accomplish our purpose automatically.

The "Key to Victory" is subtitled, "A Manual of Procedure for Registrars of Voters, Police Jurors and Citizens Councils." The booklet was the principal topic of discussion at State-sponsored meetings on voter registration attended by registrars and other public officials and was distributed to all persons attending such meetings. The State of Louisiana distributed it to parish registrars, with instructions to follow closely its purpose and intent. Senator Rainach and Mr. Shaw in their dual role as legislative and Citizens' Council leaders were clothed with State authority as they traveled about the State urging and even demanding that the registrars adopt their program.

Carrying out the first phase of the program, local Citizens Councils and their members conducted extensive purges, 76 principally in 1956-58 in eight parishes throughout the state, under the provisions of the challenge statute, Louisiana R.S. 18:133 (1950). The evidence shows that primarily Negroes were removed from the rolls, although a few whites were also purged, apparently in a token effort to maintain an air of nondiscrimina-

tory treatment. Most registrars cooperated fully with Citizens Council members in conducting the purges when requested to do so. Innumerable white persons whom registration cards showed deficiencies similar to those of the Negroes were not purged. One registrar said in her deposition that in her parish the Citizen Council members conducting the purges corrected the errors they made on their own registration applications, while at the same time challenging Negroes for similar mistakes. Many purges were for failure to take the interpretation test, even though that test had not been administered at the time of the registrant's application. When contested in federal court, these purges were found to be illegal deprivations of the Negroes' constitutional rights. United States v. McElveen, 1960, E.D.La., 180 F. Supp. 10, modified sub nom. United States v. Thomas, 1960, 362 U. S. 58, 80 S. Ct. 612, 4 L. Ed. 2d 535.

In late 1958 and early 1959 the Segregation Committee and the State Board of Registration jointly sponsored meetings in each congressional district. Registrars were required to attend; sheriffs, police jurors, and other parochial officials, and officers of citizens councils also attended the meetings. At these meetings the Citizens Council's "Key to Victory" was officially distributed to the registrars. Senator Rainach, at that time still Chairman of the Segregation Committee and President of the Association of Citizens Council, was the chairman at these meetings. Mr. Shaw, at that time was still counsel for the Segregation Committee and still counsel for the Association. They led these meetings, vigorously emphasizing the importance of maintaining segregation.

Senator Rainach would tell the registrars, "The fight for school integration in the South has shifted . . . to a fight

for the voters of the Negro masses . . ." He pointed out to the registrars that during the Reconstruction Period, when Negroes were permitted to vote, the public schools of Louisiana were integrated, and that, with the Negroes representing 32 per cent of the population of the state, the Negroes could easily do again what they did during the Reconstruction Era, if they should become registered to vote.

According to Senator Rainach, "In 1897, our forefathers in Louisiana started a program of voter qualification law enforcement, knowing that such a program would provide the solution to their problems." The present voter qualification laws "are adequate to solve our present problems . . ." Senator Rainach stressed that "registrars have become critically important officials . . . they have become the focal point of the solution to our problems."

Mr. Shaw would explain the registrar's part. The "key to the solution of our whole problem lies in the interpretation of the Constitution," Mr. Shaw told the registrars. He urged the registrars to require applicants to interpret the constitution and provided them with 25 test cards to be used for this purpose. Mr. Shaw instructed the registrars:

> [T]he constitutional test and their ability to understand the duties and responsibilities under a republican form of government, which is another one of the tests, is basically a test of a person's understanding, which is native intelligence in that you can educate a fool,but you'd still have nothing but an educated fool when you get through, and he wouldn't be able to qualify. And therefore, if they were correctly and fairly administered - that's the key to the whole thing - directed fairly - then it will amount to a test of ability, of a person's understanding, which is native ability. It is not education. Education can merely refine native understanding. If you have no native understanding to start out with, it can't be refined. (Emphasis added.)

Mrs. Mary C. Flournoy, former Registrar of Winn Parish, gives us some indication of the meaning of "correctly and fairly administer[ing]" the test. She stated that Senator Rainach, while he was Chairman of the Segregation Committee, told her to discriminate on account of race in processing applications:

> Rainach told me if . . . I can't fail them [Negro applicants] any other way, I could pull those Constitution reading cards on them.
> . . . Rainach wanted me to pull those hard cards on colored people.

D. The Louisiana Codes Noir of colonial times and the Black Codes of the eighteen sixties; the bald denial of the vote, in the pre-Civil War constitutions, to Negroes, including wealthy and educated free men of color; the ebb and flow of Negro rights in the Constitutions of 1864 and 1868; the 1879 transfer of political power from police juries and the legislature to the Governor; the close election of 1892 and the 1896 victory for white supremacy; the grandfather clause and the complicated registration application form in the Constitution of 1898; the constitutional invalidity of the grandfather clause and the consequent resort to Mississippi's understanding and interpretation clause; the effectiveness of the white primary as a means of disfranchising Negroes; the constitutional invalidity of the white primary and the consequent need to revive enforcement of the interpretation test; the White League and the Citizens' Councils; the Union Leagues and the N.A.A.C.P.; the Battle of Liberty Place in 1874 and the Ouachita voting purges of 1956: these are all related members of a series, all reactions to the same dynamics that produced the interpretation test and speak eloquently of its purpose.

In sum, the interpretation test is another grandfather clause. Its purpose is rooted in the same history. It has the

same objective the delegates to the Constitutional Convention of 1898 envisaged for the grandfather clause. It is capable of producing the same effective disfranchisement of Negroes today that the grandfather clause produced sixty-five years ago. It is a gimmick to make discrimination easy.

V.

Having determined the purpose of the interpretation test in its historical setting, we turn from why to how the test is used as a discriminatory device. We consider also the inescapable effect of such a test. We find massive evidence that the registrars discriminated against Negroes not as isolated or accidental or unpredictable acts of unfairness by particular individuals, but as a matter of state policy in a pattern based on the regular, consistent, predictable unequal application of the test.

The United States introduced a great mass of evidence in the record, but with commendable diligence made it digestible by well-prepared indices and well-organized summaries. The evidence of discriminatory application of the interpretation test is especially well documented and supported by testimony with respect to the following parishes: Plaquemines, East Feliciana, Webster, Bienville, Red River, Jackson, and Ouachita.

A. First of all, a Louisiana registrar has the power to use or not to use the interpretation test. The parties to this case stipulated that the test had never been used in the four largest parishes of the state, Caddo, Jefferson, East Baton Rouge, and Orleans. These parishes have almost forty per cent of the total number of registered voters in the State. The United States introduced evidence that the interpretation test

was used in twenty-one parishes. No mention was made of the other thirty-nine parishes in the state. The evidence shows that the test was seldom, if ever, applied anywhere in Louisiana before 1954 because, as previously pointed out, until the white primary was invalidated there was no need for the test. This means that the majority of Louisiana voters now registered under the permanent registration law have never taken the test.

In the twenty-one parishes where it has been shown that the interpretation test has been used, as of December 31, 1962, only 8.6 per cent of the adult Negroes were registered as against 66.1 per cent of the adult white persons registered. Before the interpretation test was put into use, a total of 28,504 Negroes were registered in the twenty-one parishes using the test. By August 31, 1962, total Negro registration in these parishes was 10,351. During the same period, white registration was not discernibly affected.

B. The decision to enforce the interpretation test more than thirty years after its adoption was accompanied, in almost every parish where the test has been used, by a wholesale purge of Negro voters or by periodic registration so that Negro voters were required to re-register after the test came into use. Citizens Council members challenged the registration of large numbers of Negro voters on the ground that they had not satisfied all of the requirements of the Louisiana voter qualification laws at the time they registered. Actually, the challenged Negroes had satisfied all the requirements imposed by the registrar at the time they registered. White voters had registered under the same standards and procedures as the Negroes and their registrations suffered from the same alleged deficiencies as the

Negroes who were purged. In at least two parishes, Ouachita and East Feliciana, one ground for challenging Negroes was that they had not interpreted or were not able to interpret a constitutional section, even though the test had not been used in either parish before the purge.

In most parishes where there was a purge, since the Negroes were unable to gain reinstatement in the manner prescribed by Louisiana law, they were required to re-register. And to do so they had to pass the interpretation test. The white voters, not having been challenged, in effect were exempted from the test. The discrimination brought about by the purge and the use of the interpretation test was frozen into the system in parishes such as Bienville, DeSoto, Jackson, Ouachita and Rapides, which have permanent registration. In parishes using periodic registration the purges had a deterrent effect on Negro registration which is still felt.[79]

C. The registrar's whim alone determines which applicants will be tested. The Constitution merely states that applicants "shall be able to understand and give a reasonable interpretation" of a section of a constitution. Some registrars, for example, those in LaSalle, Lincoln, and Webster parishes, have interpreted this to mean that the applicant need not actually interpret the constitution, only that he have the ability to do so. The State Board of Registration maintained at one time that the correct interpretation was that the applicant must demonstrate his ability in all cases. It has, however, changed its understanding or interpretation of this very section of the Constitution. After the institution of this suit, the Board prescribed another test, instructing

registrars to cease requiring an interpretation. The change in the interpretation given the interpretation-test provision of the Constitution by the State agency charged with enforcing it and the wide variety of interpretations adopted by the registrars reaffirm the impossibility of achieving objective standards for an interpretation of the Constitution acceptable to the State. Pity the applicant asked to interpret the interpretation test!

D. The Louisiana Constitution contains 443 sections, as against 56 sections in the United States Constitution, and is the longest and the most detailed of all state constitutions. The printed copy published by the State, unannotated, contains 600 pages, not counting an index of 140 pages. The evidence clearly demonstrates great abuses in the selection of sections of the constitutions to be interpreted. Some registrars have favorite sections which they apparently use regardless of an applicant's race. Some open a volume containing the United States and Louisiana Constitutions and, like soothsayers seeking divine help from the random flight of birds, require an applicant to interpret the section on the page where the book opens. The Segregation Committee distributed to registrars sets of twenty-four cards, each containing three sections of the Constitution with instructions that they be used in administering the interpretation test. The Registrar of Ouachita Parish used a set of test cards containing sections chosen by the Citizens' Council. The Registrar of Plaquemines used cards and answers prepared by Mr. Leander Perez, District Attorney for the Parish.

It is evident from the record that frequently the choice of difficult sections has made it impossible for many

Negro applicants to pass. White applicants were more often given easy sections, many of which could be answered by short, stock phrases such as "freedom of speech", "freedom of religion", "States' rights", and so on. Negro applicants, on the other hand, were given parts of the Louisiana Constitution such as Article VII, § 41; Article X § 1, § 16; Article XIV, § 23, § 24.2.[80]

E. As in the selection process, gross abuses of discretion appear in the evaluation of the interpretations. One rejected applicant stated that the registrar "said what I was saying was right, but it wasn't like she wanted me to say it".

Most of the interpretation tests have been administered orally, thus precluding the use of written records as a check on what the registrar accepted as reasonable interpretations. Nevertheless, the record shows that interpretations far less responsive to the constitutional text selected have been accepted from whites than from Negroes. Compounding this with the fact that Negroes were often given more difficult sections to interpret, the bias in favor of the whites becomes readily apparent.

Some parishes administered written examinations and kept records of the questions asked and the responses accepted. In these examinations the registrar usually employed one or more of several sets of cards containing selected sections of the Constitution and a space for the applicant's interpretation of it. Even the most cursory glance at the records in these parishes underscores the heavy burden under which Negro applicants were laboring. In one set of cards, there is great disparity in the difficulty of the questions asked. This enables the registrar to select cards with simple sections for white applicants and difficult cards for Negroes. There is unmistakeable evidence that many white applicants were shown cards with sample answers on

them. Some applicants admitted this, and there is even an instance of an applicant having, by mistake, signed the answer card. Negroes were not allowed to see the acceptable answers, let alone copy them. Similarly, the pattern of the answers indicates that the registrars often told white applicants the currently acceptable answers. The phraseology of almost every answer in one parish changed right along with the registrar's change in the wording of the acceptable answer.

Registrars were easily satisfied with answers from white voters. In one instance "FRDUM FOOF SPETGH" was an acceptable response to the request to interpret Article 1, § 3 of the Louisiana Constitution. In another case, which must represent the all-time all-nation nadir of constitutional interpretation, the answer card was blank except for the applicant's signature and address. This interpretation of the constitution satisfied the registrar.

On the other hand, the record shows that Negroes whose answers indicate that they are highly qualified by literacy standards and have a high degree of intelligence have been turned down although they had given a reasonable interpretation of fairly technical clauses of the constitution. For example the Louisiana Constitution Article X, § 16 provides: "Rolling stock operated in this State, the owners of which have no domicile therein, shall be assessed by the Louisiana Tax Commission and shall be taxed for State purposes only, at a rate not to exceed forty mills on the dollar assessed value." The rejected interpretation was: "My understanding is that it means if the owner of which does not have residence within the State, his rolling stock shall be taxed not to exceed forty mills on the dollar."

In another instance the registrar rejected the following interpretation of the Search and Seizure provision of the Fifth Amendment: "[N]obody can just go into a person's house and take their belongings without a warrant from the law, and it had to specify in this warrant what they were to search and seize." Another rejected interpretation of the same Amendment was: "To search you would have to get an authorized authority to read a warrant." The Louisiana Constitution Article I, § 5 provides: "The people have the right peaceably to assemble." A registrar rejected the following interpretation: "That one may assemble or belong to any group, club, or organization he chooses as long as it is within the law."

Each of these incidents could conceivably be an isolated event, indicating personal dereliction by one registrar, regrettable, but basically trivial in the general administration of the interpretation test. However, the great number of these and other examples, illustrative of a conscious decision, show conclusively that the discriminatory acts were not isolated or accidental or peculiar to the individual registrar but were part of a pervasive pattern and practice of disfranchisement by interpretation.

The State does not deny that unlimited discretion is vested in the registrars by the laws of Louisiana, but argues that officials must act reasonably and that their decisions are subject to review by district courts. In the abstract, this is true, but review by a court can be of little value when no record is made of the reasons for the administrative action to be reviewed. In point of fact, the law of Louisiana provides no effective method whereby arbitrary and capricious action by

registrars of voters may be prevented or redressed; unreviewable discretion was built into the test.

The State Board of Registration recently recognized the arbitrary nature of the test, and, as indicated earlier in this opinion, abandoned its general use after the institution of this suit. However, the Constitution and statutes of Louisiana still require the use of the understanding and interpretation test. And registrars have not entirely abandoned it, despite the institution of the new test. For example, as late as April 1963 the Webster registrar was using the interpretation test because, as she explained, "it's still on the books"; sometimes she gave the citizenship test and sometimes the interpretation test. Voters registering now could be challenged and purged in the future for not taking the interpretation test -- should history repeat itself. This is exactly what happened in the middle and late nineteen-fifties.

F. The statistics demonstrate strikingly the effect of resurrection of the interpretation test. A report of the Louisiana Sovereignty Committee, December 14, 1960, boasts:

> We would like to call your attention to the fact that, during this four year period of time, from 1956 until 1960, 81,214 colored people became of voting age, when the registration figures of colored people actually declined 2,377. Going further during this four year period, we had 114,529 white people who became of voting age and, during this four year period of time, the white registration increased 96,620.

The State of Louisiana accomplished its purpose in the 81 parishes where the constitutional interpretation test was used. In those twenty-one parishes, registration of white persons between 1956 and December 31, 1960, increased from 161,069 to 162,427; registration of Negroes decreased from 25,361 to 10,256.

VI.

We have considered the purpose of the test, how the test was in fact used to accomplish its purpose, and its effect.

No one doubts the broad scope of the State's power to fix reasonable, nondiscriminatory qualifications for voting consistent with the Constitution. Thus, a literacy test bears a reasonable relation to a governmental objective and, if it does not perpetuate past discrimination, is a permissible requirement. "[I]n our society . . . a State might conclude that only those who are literate should exercise the franchise." Lassiter v. Northampton County Bd. of Elections, 1959, 360 U. S. 45,52, 79 S. Ct. 985, 3 L. Ed. 2d 1072. Since Louisiana has the highest illiteracy rate in the nation, the State has even more reason than most states to use a literacy test as a spur to improve the level of the electorate. But the understanding clause, which is an interpretation test of the constitutions, must not be confused with a literacy test or the two treated as peers. Under Louisiana law, any literacy qualification is met by the requirement that the applicant read to the registrar the Preamble of the United States Constitution. In fact, an applicant need write the Preamble only in his mother tongue, through the dictation of an interpreter if he cannot speak, read, or write English. La. Const. Art. VIII, § 1(c). For good measure, ability to fill out an application form is an additional test of literacy. Moreover, under another provision of the State Constitution, all of the time Louisiana has had an interpretat[illegible] test it has also allowed illiterates to vote. (La. R. S. 18:36). In November 1962 the State carried 37,365 illiterates on the registration rolls.

82

We do not have before us an intelligence test or a citizenship test having a rational relation with the proper

government objective of giving the vote only to qualified persons. Despite assurances by state officials at the meetings of the registrars that this test measures "only native intelligence", the truth of the matter is that there is nothing in native intelligence that will enable those untutored in constitutional law to give a reasonable interpretation of a highly technical document containing such legal concepts as, for example, venue, due process, the requisites of a criminal indictment, appellate court jurisdiction, and jurisdictional amount. Whatever name the State elects to give to the test, it is not a test of intelligence or citizenship when it enables a registrar to flunk eight Negro school teachers while passing eight illiterate white persons.[83]

As it is administered and as it was intended to be administered, the Louisiana understanding and interpretation test bears no relation to reasonable voting requirements. If a registrar should require an applicant to interpret Article X of the Louisiana Constitution dealing with the distribution between State and parish of ad valorem severance taxes on sulphur on the one hand and oil and gas on the other hand, we would find it impossible to hold that an interpretation of this provision served a rational governmental interest in withholding the suffrage from unqualified voters. Short of a government of philosopher-kings, -- and no one has ever described Louisiana government in such terms -- there is just no correlation between an ability to interpret any section of the Louisiana Constitution a registrar may thrust at an applicant for registration and a legitimate State interest in an informed electorate.

The ugly truth is, the nexus is with unlawful discrimination. The ineradicable vice vitiating any relation to a

legitimate governmental objective is the raw power vested in the registrar. The unrestricted power which makes the registrars' discriminatory and arbitrary conduct possible comes from the words "understand" and "interpretation." "Understand" and "interpretation" are words without definite meaning in the law. Their very ambiguity is the key to the legislative purpose. "The terms 'read', 'speak' and 'write', unlike the words 'understand' and 'explain' have considerable objective content, and the quantum of administrative decision that could be employed within the framework of such terminology would seem to be negligible. In contrast, . . . in both Louisiana and Mississippi [a would-be] voter is required to give a 'reasonable interpretation' of the Constitution of the United States. The language employed in these tests is similar to that of the Alabama literacy amendment and, because of its vagueness, would appear equally censurable." Note, 49 Col. L. Rev. 1144, 1146 (1949).

The understanding and interpretation of anything is an intimately subjective process. A communication of that understanding is itself subject to the understanding or interpretation of the listener or reader. Even in an atmosphere of mutual cooperation and good will, it is often very difficult for one person to know that the other actually understands what is being said or done. As appears from the evidence, however, in many registration offices in Louisiana the relation between the Registrar and Negro applicants can hardly be described as mutually cooperative. As Senator Rainach and Mr. Shaw, officers of the State of Louisiana, candidly described it, the registration office in Louisiana is "the front line of the battle" to retain a segregated society.

Without help from Senator Rainach or Mr. Shaw, the customs of generations, the mores of the community, the exposure of the individual to segregation from the cradle make it difficult, if not impossible, for a registrar to evaluate objectively what is necessarily a subjective test. We are sensible of the registrar's difficulties -- he must live with his friends -- but we must recognize that his predelictions weight the scales against Negroes and hinder fair administration of an interpretation test or a citizenship test. Where neither the Constitution nor the statutes prescribe standards for any facet of the administration of the test, the net result is full latitude for calculated, purposeful discrimination and even for unthinking, purposeless discrimination.

In Davis v. Schnell, S.D. Ala. 1949, 81 F. Supp. 872, aff'd memo. 1949, 336 U.S. 933, a three-judge court (Circuit Judge McCord and District Judges Mullins and McDuffie) had before it the Boswell Amendment to the Alabama Constitution. This amendment, adopted in 1946, permitted registration only of persons who could "understand and explain" any article of the Federal Constitution. The Court dealt at length with the meaning of the word "understand":

> "As pointed out, 'understand' may mean to interpret. [Louisiana uses both words.] This meaning requires an exceedingly high, if not impossible standard. The distinguished Justices of the Supreme Court of the United States have frequently disagreed in their interpretations of various articles of the Constitution. We learn from history that many of the makers of the Constitution did not understand its provisions; many of them understood and believed that its provisions gave the Supreme Court no power to declare an act of Congress unconstitutional. An understanding or explanation given by the Supreme Court a few years ago as to the meaning of the commerce clause does not apply today. Among our most learned judges there are at least four different understandings and explanations of the Fourteenth Amendment to the Con-

stitution as to whether it made the first eight Amendments applicable to state action. Such a rigorous standard . . . illustrates the completeness with which any individual or group of prospective electors, whether white or Negro, may be deprived of the right of franchise by boards of registrars inclined to apply this one of the innumerable meanings of the phrase. . . ." 81 F. Supp. at 877-78.

Davis v. Schnell was heard shortly after the adoption of the amendment. The Court was concerned therefore with only a few examples of arbitrary action and concentrated its discussion on the inherent potential for discriminatory and arbitrary administration. The Court held that the understanding clause violated the Fourteenth Amendment:

> "To state it more plainly, the board has the right to reject one applicant and accept another, depending solely upon whether it likes or dislikes the understanding and explanation offered. To state it even more plainly, the board, by the use of the words 'understand and explain,' is given the arbitrary power to accept or reject any prospective elector that may apply, or, to use the language of Yick Wo v. Hopkins, 118 U. S. 356, 366, 6 S. Ct. 1064, 1069, 30 L. Ed. 220, these words 'actually do confer, not a discretion to be exercised upon a consideration of the circumstances of each case, but a naked and arbitrary power to give or withhold consent. . . .' Such arbitrary power amounts to a denial of the equal protection of the law within the meaning of the Fourteenth Amendment to the Constitution. . . ." 81 F. Supp. at 878.

The Court also held that both the legislative purpose and the administration of the test violated the Fifteenth Amendment:

> "It, thus, clearly appears that [the Boswell] Amendment was intended to be, and is being used for the purpose of discriminating against applicants for the franchise on the basis of race or color. Therefore, we are necessarily brought to the conclusion that the Amendment to the Constitution of Alabama, both in its object and the manner of its administration, is unconstitutional, because it violates the Fifteenth Amendment. While it is true that there is no mention of race or color in the Boswell Amendment, this does not save it." (Emphasis supplied.)

Referring to Davis v. Schnell in Lassiter v. Northampton Election Board the Supreme Court has said:

"In Davis v. Schnell . . . the test was the citizen's ability to 'understand and explain' an article of the Federal Constitution. The legislative setting of that provision and the great discretion it vested in the registrar made clear that a literacy requirement was merely a device to make racial discrimination easy."

The Fifth Circuit has recently applied the Davis v. Schnell rationale in an action by the United States under 42 U.S.C.A. 1971(c) against the Board of Registrars of Dallas County, Alabama. United States v. Atkins, No. 20325, September 30, 1963. In that case the district court held that the prior Board had discriminated against Negroes, the current Board had not. Section 181 of the Alabama Constitution provides that the boards of registrars, in determining the qualifications of applicants, use a questionaire so worded that the answers would give information necessary or proper to enable the boards to pass upon the qualifications of the applications. The predecessor to Section 181 was "the understand and explain" clause struck down in Davis v. Schnell. There was "no set standard for the 'grading' of questionaires." The Court of Appeals held that "this is precisely the sort of practice condemned in Davis v. Schnell" and granted an injunction against the current Board rejecting applicants for errors or omissions in the questionaire until they presented to the court a "definite set of standards" which would meet the approval of the court.

The State of Louisiana itself, through its authorized legal advisory agenty, the Louisiana Law Institute,[84] has questioned the constitutionality of the interpretation test. Act 52 of the Louisiana legislature of 1946 directed the Louisiana Law Institute to prepare a draft or "projet of a Constitution for the State of Louisiana". In 1954 the work was completed and circulated by the State.[85] After a thorough study of the law, the Institute

concluded that if the provisions of the Louisiana Constitution establishing an understanding and interpretation test were attacked in court, "Certainly if the same charges could be successfully made concerning the Louisiana provisions [as were made in Davis v. Schnell], they would be unconstitutional."[86] The Reporter commented that "although discrimination in administration was found [in Davis v. Schnell], the lower court . . . declared the provision unconstitutional on its face because it furnished no test or standard to control administrative discretion". The Institute summarized its position as follows:

> "1. The Institute in deleting these qualifications was influenced by the following considerations:
>
> a. The doubtful constitutionality of the present provisions;
> b. The arbitrary power they give to registrars of voters, since no objective criteria are provided; and
> c. The authority given the legislature under the Projet to require additional educational qualifications."

In Darby v. Daniel, S.D.Miss. 1958, 168 F. Supp. 170, a three-judge court (Circuit Judge Cameron and District Judges Mize and Clayton) distinguished the Boswell Amendment from a Mississippi provision requiring voters to "understand . . . and give a reasonable interpretation" of "any section of the Constitution" of Mississippi. The Darby Court found that, unlike the Boswell Amendment, the Mississippi understanding test did not grant arbitrary power and that there was no evidence of its having been used arbitrarily. In this Mississippi case, although the Court declared that it could find no legislative purpose to discriminate and no proof showing racial discrimination,[87] both present in the instant case, the actual narrow holding in Darby was only that the plaintiff was not qualified and had not exhausted his state remedies.

With due deference, we cannot see any substantial difference between "understand and explain" (The Boswell Amendment) and "understand . . . and give a reasonable interpretation". As pointed out earlier, the Mississippi understanding clause is the same test the Louisiana delegates to the Constitutional Convention of 1898 could not stomach which was swallowed without gagging by the stronger-stomached delegates to the Convention of 1921.[88] The dicta in Darby v. Daniel must yield to the Supreme Court's holding in Davis v. Schnell.

If it may be said that in Trudeau v. Barnes, 5 Cir. 1933, 65 F. 2d 563, this Court upheld the validity of the Louisiana interpretation test, that decision is no longer the law, in the light of Davis v. Schnell and the more recent cases. The Trudeau court, perhaps because of the poor presentation of the case, was unable to find that the interpretation test was adopted for the purpose of disfranchising the Negro. However, in Trudeau the Court faced a set of circumstances, completely different from the circumstances this Court faces. (1) The case was an action at law against the registrar for damages. (2) The case was decided on a motion to dismiss, so that the Court did not have the benefit of evidence of a discriminatory purpose and proof of the discriminatory effect of the interpretation test. (3) At the time the case was decided, the law required the plaintiff to exhaust his administrative remedy. By express provision in the Civil Rights Act as well as under Lane v. Wilson, it is no longer necessary for a plaintiff to exhaust state remedies.

Each registrar in Louisiana is the sole judge of whether to apply the interpretation test or not to apply it and whether an applicant qualifies. The judgment is made without guidance,