1 justification for the Court not to make a finding
2 that there had been a violation of the law; that the
3 finding was required that there had been a violation
4 of the law and that the issuance of injunctive relief
5 was another matter, but they differentiated between
6 the finding of the violation and the granting of an
7 injunction.

8 Now, the second question or proposition is whe-
9 ther or not an injunction should issue in this case.
10 Now, I think -- I attack that proposition from two
11 bases:

12 One, that this is an important case and the func-
13 tion, the true function of the Court of Equity is to
14 do justice in the case between the parties and the
15 Court must consider a number of factors in this
16 case. It must consider the effect of an injunction
17 on the federal-state relations, and that is a factor
18 to be considered, but it must also consider the ef-
19 fect of not issuing an injunction on the situation
20 in Louisiana as it has been applied, as the regis-
21 tration laws have been applied to negroes.

22 Now, this Court, or the District Court, or a
23 District Court in Louisiana just last Saturday, a
24 week ago Saturday, issued an opinion. Two of the
25 judges on this panel today participated in the

1 decision.

2 Judge West, I don't know whether you are familiar
3 with that case or not, but it is the case arising in
4 the Western District, called United States versus
5 Manning and in that case Judge Hunter, Judge Chris-
6 tenberry, and Judge Wisdom said the following:

7 "The discrimination by Registrars is especially
8 harmful because it is the most effective method of
9 denying the right to vote. It denies the right to
10 vote before an individual has the chance to exercise
11 it and it bars not only the individual concerned from
12 all elections, but it inhibits other qualified voters
13 from running the gauntlet of discrimination and humi-
14 liation practiced by a registrar."

15 Now, it seems to me that in this case it is a
16 proper argument to suggest to the Court that, in view
17 of the way this test has been used for four or five
18 years in Louisiana, that the United States, as pro-
19 tector of the public interest to see that all quali-
20 fied citizens have the right to register and vote,
21 are entitled to urge that this Court should issue an
22 injunction enjoining the Registrars from using this
23 test, that is to enjoin the State from using this
24 test.

25 There is another reason, your Honors, and that

1 because of the challenging statutes. Although the
2 State has abandoned the test, they have not done any-
3 thing with respect to the challenging provisions.
4 They have not issued any instructions to the Regis-
5 trars that they are not supposed to honor challenges
6 based upon not interpreting the constitution. It is
7 doubtful whether, if a Registrar wanted to honor the
8 challenge, he could not make a plausible argument
9 that he was obligated under Louisiana law to honor
10 the challenge anyway and we are apt to get into a
11 situation, in a hotly contested election where, shortly
12 before the election, events occur as they occurred in
13 1956, where challenges are used to take off a great
14 number of otherwise qualified negro citizens from the
15 rolls, and this Court, under the mechanics of litiga-
16 tion, would not be able to cope with the situation.
17 Now, I think that that factor is something that
18 this Court can weigh in deciding whether or not an
19 injunction should issue invalidating the Constitutional
20 Interpretation Test.
21 Now, there is a third part of the relief which
22 we ask, your Honors, and this will conclude my argu-
23 ment -- and that is that in our prayer for relief,
24 we asked that the defendants be enjoined from engaging
25 in any act which would deprive any citizens in the

1 state of the right to register and the right to vote,
2 without distinction of race and color or to engage in
3 any act which would delay or hinder or discourage ne-
4 gro citizens, on account of race or color, from apply-
5 ing for registration and becoming registered voters
6 in the State of Louisiana.

7 Now, in connection with that injunction, with
8 that prayer, it is our position that we are entitled
9 to that type of injunction against the Registrar,
10 against the State, particularly with respect to those
11 parishes where the Constitutional Interpretation Test
12 has been used.

13 Now, the Court of Appeal, in the case of United
14 States versus Alabama, laid down the test for deter-
15 mining what relief should be issued in a case of this
16 kind and the case decided that under the 1957 Civil
17 Rights Act that the Court has the power to issue
18 broad relief and the question of whether or not this
19 broad relief should be issued should be based upon
20 two factors:

21 (1) Whether or not there had been a gross
22 abuse in the past. We say there has been a gross
23 abuse in the past as a result of the purges and in-
24 terpretation tests, literally thousands of negroes
25 have been kept off the rolls, in northern Louisiana

1 principally, for the last four or five years.

2 As the Court recognized in Manning, this inevit-
3 ably had an inhibiting effect on other qualified ne-
4 gro voters who were not willing to run the gauntlet
5 of the humiliation and discriminatory practices. If
6 there was ever any case where there was gross abuse,
7 this is the case.

8 The next question comes down to whether or not
9 the State has done anything to remedy the discrimi-
10 nation. Now, I think the Court would concede that
11 the State of Louisiana could not stop using the con-
12 stitutional interpretation tests and then take and
13 adopt a test that would provide that all whites should
14 register and no negroes should register. The test
15 is not really whether or not they stopped using the
16 test but the test, as laid down in United States ver-
17 sus Alabama, was whether or not the evidence showed
18 there was a plan or a purpose for the Board or the
19 State to undertake voter registration without con-
20 scious racial discrimination.

21 Now, the State has offered, in these particular
22 parishes, this new objective, on their face, standard
23 written multiple choice test, sixty-six and two-
24 thirds per cent passing grade test and I want to sug-
25 gest to this Court, which I think is the critical

1 question in this case -- I want to suggest in this
2 case, that in the parishes which have used this test,
3 have used the Constitutional Interpretation Test that,
4 under the doctrine as enunciated, this test cannot be
5 used because it is not a device to end discrimination
6 but rather it is a device to perpetuate discrimination,
7 because statistically all of the whites are on the
8 rolls and very few of the negroes are on the rolls,
9 and the only people required, in many of those parishes,
10 to take the test, the new tests, or the new objective
11 tests, are the negroes.
12 Now, this principle of freezing the rolls by
13 elevating the standards is an issue that has not
14 been passed upon directly by any court but I say that
15 the principles are clear from the Guinn, the Lane
16 and the Lassiter cases and I want to just not go back
17 to the Guinn and Lane cases, but I do want to go --
18 THE COURT (Judge Wisdom):
19 Those are the Oklahoma cases?
20 MR. DOAR:
21 That's right, they were both Oklahoma cases.
22 THE COURT (Judge Wisdom):
23 Guinn, Lane, -- what was the other?
24 MR. DOAR:
25 The Lassiter, the last case is the Lassiter.

1 Now, in Lassiter, the Court said that a literacy
2 test, fair on its face, may be employed to perpetuate
3 that discrimination which the Fifteenth Amendment was
4 designed to up-root and earlier in the opinion the
5 Court said, and here is a very interesting part of
6 the opinion which has not been cited in the brief,
7 at pages 49 and 50 in the Lassiter case, where the
8 facts of that case was a negro citizen who just re-
9 fused to take the test, started the action in federal
10 court and claimed he was not required to take the
11 literacy test. The federal court maintained the
12 jurisdiction and instructed the negro to go to the
13 State Court for a determination of that part of the
14 statute; that the grandfather clause would be declared
15 unconstitutional. She did that and it went to the
16 Supreme Court and the Supreme Court held that the
17 literacy test was proper; however, this is what the
18 Supreme Court said: That the negro plaintiff argued
19 "that that is not the end of the problem presented
20 by the grandfather clause. There is a provision in
21 the general statutes for permanent registration in
22 some counties. Appellant points out that although
23 the cut-off date in the grandfather clause was
24 December 1, 1908, those who registered before then
25 might still be voting." And he said, " If they were

1 allowed to vote without taking a literacy test and if
2 appellant were denied the right to vote unless she
3 passed it, members of the white race would receive
4 preferential privileges of the ballot, contrary to
5 the command of the Fifteenth Amendment. That would
6 be analagous to the Yick Wo versus Hopkins." But the
7 Court said, "But this issue of discrimination has
8 not been confined to the issues presented for the
9 State court litigation ..... so we do not reach it.
10 But we mention it in passing so that it may be clear
11 that nothing we say or do here will prejudice appel-
12 lant in tendering that issue in the Federal proceed-
13 ings."
14 I say the State of Louisiana, by offering Exhibit
15 18, saying "This is the test we use," showing there
16 has not been complete registration, I say we are ten-
17 dering this issue to the Court for decision on the
18 provisions of 2284 that indicates that when a three-
19 judge court is duly constituted, to pass on consti-
20 tutional issues, it has the right, power and authori-
21 ty to pass on all issues presented to it.
22 Finally, there are two other cases that I want
23 to call the Court's attention to. And the first one
24 is the case of Ross versus Dyer, which was decided
25 on December 28th before Judge Tuttle, Judge Hutchinson

1 and Judge Brown, and the school case out in Dallas,
2 your Honor, that involves whether or not a District
3 Court had the power to provide for a school desegre-
4 gation plan which contemplated the brother-sister rule. We
5 think that the argument was "Well, each person with
6 a brother or a sister is treated the same now, and there-
7 fore, the fact that the brother-sister rule is in effect
8 cannot be held to be discriminatory and contrary to the Four-
9 teenth amendment." But that has the effect of sending
10 back and resegregating children, if, say, a younger
11 child went to school, that had the effect of perpe-
12 tuating the segregated system despite the purpose of
13 the plan to ameliorate it.
14 The purpose of the decree is to eradicate that
15 unconstitutional deprivation of equal protection, not
16 to perpetuate it.
17 Now, in this case where you have a hundred per
18 cent of the white people on the rolls in Bienville
19 Parish, for example, and none of the negroes, regard-
20 less of what the test is, you are perpetuating that
21 preferential treatment to the white folk.
22 The final case that I want to cite to the Court's
23 attention is the decision by Judge Bootle of the Mid-
24 dle District of Georgia, sitting as a member of the
25 panel on the Fifth Circuit in a case which came up

1 from Mississippi which this court again -- this is
2 the Dogan case which was decided on January 26th,
3 in which the Court again recognized the theory of
4 the Guinn and Lane Cases in that statutes and tests
5 are unconstitutional if the result is to recreate
6 or perpetuate the very conditions which the Amend-
7 ment was intended to destroy. Now, in this case,
8 this was the simple proposition that negroes went
9 to pay the poll tax and whoever paid for the first
10 time the poll tax must see the sheriff. Not a very
11 difficult provision for paying the poll tax, only on-
12 erus, but it was not any more onerous than this test,
13 and yet the court held that they could not make that
14 provision in state law. This was not an undue burden
15 on Federal-State relations. They did not make them
16 start over, everybody do it. They made the first-
17 time poll tax payers do it. The first time poll tax
18 payers, because of the prior discrimination, were all
19 negroes.
20 And so I suggest to the Court that this is the
21 question and one of the really significant important
22 questions that this Court has to decide here is
23 whether or not in those twenty-one counties where
24 the interpretation test was used to discriminate,
25 whether or not where most of the white people were

1 on the roll now and few of negroes, whether or not
2 this test is, instead of being a good faith effort
3 by the State to eliminate, and not undertake, as the
4 Court in United States versus Alabama, that voter
5 registration case, without conscious racial discri-
6 mination, or whether or not it was a scheme to per-
7 petuate that discrimination which has taken place in
8 the past.

9 THE COURT (Judge Wisdom):

10 Is it your idea that the injunction would be
11 applicable only to those parishes?

12 MR. DOAR:

13 Yes sir, I think it would.

14 I would like to ask leave, in connection with
15 Mr. Kron's brief, to submit to the Court prepared
16 findings and conclusions and a proposed decree if
17 that would be permissible to do so. I would like to
18 do it sufficiently in advance of Mr. Kron's deadline,
19 so that he would have an opportunity to reply to it.
20 Perhaps we could do that in, say, fifteen days and
21 then he will have an opportunity to comment on them,
22 too.

23 THE COURT: (Judge Wisdon):

24 That will be agreeable with the Court.

25

1 MR. DOAR:

2 Thank you, your Honor.

3 THE COURT (Judge Wisdom):

4 We realize that you have a great burden because
5 of the mass of material that has been produced here
6 today and which you have not really had a chance to
7 absorb and analyze, so I hope you will understand
8 that we do realize what your problem is and if you
9 find, after going into this, that you need oral argu-
10 ment later, we will consider that. We hope we will
11 not have to come back here again.

12 MR. KRON:

13 It may or may not be, if your Honors please,
14 that we would like to make any more argument at a
15 later time, however, I can see already, the compre-
16 hensive nature, and actually an enlargement of the
17 request for the type of judgment that has been ren-
18 dered or to be rendered, that it is almost impossible
19 as of now to make a concise, detailed intelligent
20 approach to an argument in this case.

21 After all, our fundamental argument is that the
22 constitutionality of this provision is presumed and
23 it is, therefore, up to the plaintiff to show other-
24 wise and then resolves itself in the main to a ques-
25 tion of the development of a record based on the

1 facts which existed prior to the adoption of the con-
2 stitutional provision, which is to be declared invalid
3 on its face and, secondly, the facts as are presented
4 today as to its use over the years in a discriminatory
5 manner. The result, then, if I might refer your
6 Honors to the end statement in Plaintiff's brief, that
7 the validity of the interpretation test can be measured
8 not by the pleadings, but by the detailed evidence of
9 the discriminatory setting.
10 With that in mind, I would like, if the Court
11 please to beg to be excused from any further argument
12 at this time so that we can thoroughly study the
13 situation. We can study the issue presented by these
14 facts and intelligently come back with our complete
15 argument in one concise package.
16 Again I say that if we can find that our written
17 brief in our opinion will satisfactorily cover it, of
18 course, we will desist from asking for oral argument.
19 I might point out to this Court, however, that
20 the very issue that Mr. Doar raised in the final mo-
21 ments of his argument have been raised in two sepa-
22 rate lawsuits recently filed in Red River Parish, a
23 permanent registration parish, and Webster, a periodic
24 registration parish. The very issue as to whether or
25 not this new test under the provisions of the '62 Act

1 should be applied because of that discriminatory situa-
2 tion that he raised; so that, to me, becomes extremely
3 important to the matter of the controversy in this case
4 and, at the moment, I am not prepared legally to dis-
5 cuss it.

6 THE COURT (Judge Wisdom):

7 Isn't it a fact that two other suits have been
8 filed?

9 MR. KRON:

10 I don't know about the fact that suits have been
11 filed, Judge, but what I am saying, that this is the
12 first time this issue has been raised in this matter.
13 As Mr. Doar pointed out, it is a new issue. Now, we
14 are researching the question now, preparatory to filing
15 answer in those two suits.

16 THE COURT (Judge Christenberry):

17 You filed no brief?

18 MR. KRON:

19 No sir, I had prepared a brief but then on Wednes-
20 day and again on Friday, after conferring with these
21 men, with counsel, and also you are involved in the
22 trial of those cases, so we visited with Judge Wisdom.
23 I missed Judge West. He and I were between Baton Rouge
24 and New Orleans conversely.

25 We decided, after talking it over, that we would

1 like, if possible, to withhold what brief we had and
2 file our brief in one complete document. If I can
3 get that permission and the time, I would like to do
4 it that way.

5 THE COURT (Judge Wisdom):

6 Mr. Kron, I have consulted with the other members
7 of the Court and the Court will accede to your sugges-
8 tion. You are to get your brief in within thirty
9 days.

10 MR. KRON:

11 Yes sir.

12 THE COURT: (Judge Wisdom):

13 While there is this great mass of material, I am
14 sure that you are very familiar with the basic prin-
15 ciples involved and with most of the facts as you
16 have been in so many of these cases.

17 Mr. Doar, you will sketch the proposed findings
18 of fact.

19 MR. DOAR:

20 We will get that in to your Honors.

21 THE COURT (Judge Wisdom):

22 Is there anything further? Do you have anything
23 further to state to the Court, either Mr. Doar or
24 Mr. Kron?

25

1 MR. DOAR:

2 I would like leave of Court, if they would, to

3 leave these displays on the Bench and we can pick

4 them up and cross reference them and deliver them to

5 the judges personally.

6 THE COURT (Judge Wisdom):

7 You don't have to reference the briefs?

8 MR. DOAR:

9 No sir, not on the briefs.

10 THE COURT (Judge Wisdom):

11 Will you see that it includes the exhibit list?

12 MR. DOAR:

13 Yes, your Honor.

14 THE COURT (Judge Wisdom):

15 The Court will stand at recess.

16

17 THE undersigned in his capacity of Official Court Reporter

18 for the United States DistrictCourt, Eastern District of

19 Louisiana hereby certifies the foregoing sixty three (63)

20 pages to be the transcript of the proceedings in the above

21 entitled and numbered cause heard in Open Court on Monday,

22 March 4, 1963, at the time and place first hereinabove

23 stated.

24 Baton Rouge, Louisiana, March 15, 1963

25 Official Court Reporter.