

DEPARTMENT OF JUSTICE

CIVIL RIGHTS DIVISION

Voting

UNITED STATES v. LOUISIANA

Selected Papers

Transcript of Proceedings - March 4, 1963

- A. Opinion
- B. Judge West's Dissent

144-
For Deane House

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
BATON ROUGE DIVISION

UNITED STATES of AMERICA	:	
	:	
vs.	:	Number
	:	
State of Louisiana et als	:	Civil Action
	:	
.....	:	

Transcript of Proceedings on March 4,
1963.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
BATON ROUGE DIVISION

UNITED STATES OF AMERICA :
 : Number 2548
versus :
 : Civil Action
STATE OF LOUISIANA, et als. :
 :
.....

Transcript of Proceedings in the above entitled
and numbered cause heard in Open Court at the United
States District Courtroom, New Orleans, Louisiana,
on March 4, 1963, before the Honorables John Minor
Wisdom, United States Circuit Judge, Herbert W.
Christenberry, and E. Gordon West, United States
District Judges, presiding.

APPEARANCES:

John Doar, Esq.
David Norman, Esq.
Frank N. Dunbaugh, Esq.
United States Department of
Justice, Attorneys for Plaintiff

Harry Kron, Esq.
Assistant Attorney General
State of Louisiana
Attorney for Defendants.

Reported by
Felix L. Olivier, Official Court Reporter.

1 THE COURT (Judge Wisdom):

2 Gentlemen, we have the case of United States of
3 America against State of Louisiana et al. Are coun-
4 sel here representing the United States?

5 MR. DOAR:

6 Yes sir, your Honor.

7 THE COURT (Judge Wisdom):

8 Will you state your name for the record?

9 MR. DOAR:

10 Your Honor, my name is John Doar, and also ap-
11 pearing as counsel for the Government are Mr. David
12 Norman and Mr. Frank N. Dunbaugh.

13 MR. KRON:

14 I am Harry Kron, representing the State of Louis-
15 iana, Assistant Attorney General.

16 THE COURT (Judge Wisdom):

17 Do you have any witnesses, Mr. Doar?

18 MR. DOAR:

19 Your Honor, we have no witnesses. As a result
20 of very extensive pre-trial procedures in this case,
21 we have -- the parties have stipulated to use the
22 depositions in lieu of oral testimony and we have also
23 stipulated as to the authenticity of a great number
24 of documents and, therefore, we do not contemplate
25 calling any witnesses as part of the Government's

1 case.

2 MR. KRON:

3 By the same token, due to the same pre-trial
4 agreements, we have certain verbal stipulations to
5 make in addition to those that Mr. Doar has referred
6 to. We have one or two verbal stipulations to make
7 here this morning. We will not, therefore, need any
8 witnesses to be called or testify.

9 THE COURT (Judge Wisdom):

10 Mr. Doar, would you care to dictate into the
11 record the oral stipulation between you and Mr. Kron?

12 MR. DOAR:

13 Yes, your Honor.

14 The first stipulation deals with the record in
15 the case of United States versus Fox, Eastern Dis-
16 trict of Louisiana. I do not, right at this time,
17 have the number of the case, but the parties stipu-
18 late that the entire record in that case, including
19 the pleadings, testimony, exhibits and depositions
20 which were used in that case, may be made -- and the
21 memorandum opinion and judgment -- may be made part
22 of the record in this case.

23 THE COURT (Judge Christenberry):

24 Is that the Plaquemines case?
25

1 MR. DOAR:

2 That is the Plaquemines case.

3 THE COURT (Judge Wisdom):

4 Do you have any other oral stipulations?

5 MR. DOAR:

6 The other stipulation is one which Mr. Kron has.

7 MR. KRON:

8 You have one more, with respect to the testimony,
9 if they should be called, the Registrars of New Orleans
10 and soforth.

11 MR. DOAR:

12 The parties further stipulate that the Registrars
13 and former Registrars of Orleans Parish, East Baton
14 Rouge Parish, and Jefferson Parish, if called to the
15 stand, would testify that in those parishes the "Con-
16 stitutional Interpretation Test" has not been used.

17 THE COURT: (Judge Wisdom):

18 Is that correct, Mr. Kron? Do you have anything
19 to add?

20 MR. KRON:

21 It is correct only with respect to the Registrars.
22 I have no authority nor information about the former
23 Registrars, but I think that our agreement was in all
24 of those cases as to the Registrar in East Baton
25 Rouge, who, incidentally, has been there a long time,

1 Mr. Gallinghouse in New Orleans, and his Executive
2 Assistant, who has been in office a number of years,
3 and the Registrar in Jefferson Parish have not, dur-
4 ing their incumbency, used -- applied or used the
5 Interpretation Test.

6 MR. DOAR:

7 That is correct, your Honor, and we will furnish
8 to the Court, as a written stipulation, the dates
9 that these four gentlemen were in office, so that
10 the Court will be clear as to what period of time
11 we are speaking about.

12 THE COURT (Judge Wisdom):

13 Does that complete your tender of oral stipula-
14 tions?

15 MR. DOAR:

16 It does, your Honor.

17 MR. KRON:

18 With respect to the State, on behalf of the
19 State, it is agreed by counsel that Mr. Hugh Cutrer,
20 ex officio member and Secretary of the Board of Re-
21 gistration, if called, would testify that since
22 October of 1962 and continually from that time up to
23 and including now, the Constitutional Interpretation
24 Test, which is the subject matter of this controversy,
25 has not been and is not being administered by any

1 Registrar of Voters in the State of Louisiana, and
2 that he would so testify.

3 THE COURT (JUDGE WISDOM):

4 Does that complete the stipulations?

5 MR. DOAR:

6 Yes sir.

7 THE COURT (Judge Wisdom):

8 The Court is very appreciative of the fine spi-
9 rit of cooperation that enabled you to get together
10 on these stipulations, and I will assure you that you
11 have saved an enormous amount of the Court's time
12 and of your time.

13 Mr. Doar, are you ready to proceed with the
14 case?

15 MR. DOAR:

16 Yes sir, I am, your Honor.

17 Depending upon the wishes of the Court, I am
18 prepared to outline for the Court this morning the
19 gist of what this record contains, more as an aid to
20 the Court, in connection with the trial brief which
21 we submitted to the Court, and I am also prepared to
22 argue our theory of the case and to call the Court's
23 attention to those pertinent cases that we think
24 bear upon the issues which the Court, we feel, is
25 called upon to decide in this case.

1 THE COURT (Judge Wisdom):

2 That is agreeable to the Court. It is agreeable
3 with the Court that you proceed on that basis.

4 MR. KRON:

5 May I -- ? I have something to say at this
6 point for the purpose of clearing the record so we
7 all will have a thorough understanding of the proce-
8 dure herein.

9 This case has been relatively unusual in that we
10 have actually pre-tried this lawsuit. As I under-
11 stand it, most of this information here are excerpts
12 and portions and quotations from the bulk of the pre-
13 trial information and factual data, depositions, and
14 whatnot in this record for the purpose of pointing
15 up strong points and argumentative situations in the
16 Plaintiff's brief. In addition, however, there are
17 other matters to be introduced here this morning,
18 which are not now presently in the record to which,
19 as we have said before, we have agreed to their in-
20 troduction insofar to agreeing to their authenticity,
21 but I would like here to register objection to the
22 admissibility of all of this material insofar as any
23 rights that we may have to object.

24 Now, at this point --
25

1 THE COURT (Judge Wisdom):

2 We will take the case with the full understanding
3 that you reserve your rights to object to the admis-
4 sibility as to any and all of those.

5 MR. KRON:

6 That's correct.

7 As a coincidence of this thing, all of this
8 material in its present form actually only came to
9 our attention this past Wednesday. As the Court can
10 well see, it is a very comprehensive thing and, there-
11 fore, we would like to say that we are not prepared
12 specifically, this morning, to object to each and
13 every detail concerning this thing. By the same to-
14 ken, if the Court please, there may be in our rebut-
15 tal to this brief and these exhibits -- there may be
16 other phases and portions of the original record that
17 we would like also to point up by specific introduc-
18 tion.

19 It may be just as well that we cover this point
20 at this time. As far as the State is concerned, we
21 have no objection to proceeding as Mr. Doar has pointed
22 out and as the Court has already agreed. So far as
23 we are concerned, we would like the Court's permission
24 to either have an opportunity to come back at some
25 future time to make our full argument or we certainly

1 would like the Court to give us and grant us time to
2 file our brief.

3 THE COURT: (Judge Wisdom):

4 How much time would you want, Mr. Kron?

5 MR. KRON:

6 I think we can do the job in about thirty days,
7 everything being now in, but, as I am trying to make
8 clear to the Courts, this is the first time -- within
9 the last few days -- that we have got the case in its
10 final form.

11 THE COURT (JUDGE WISDOM):

12 You have a massive amount of material there.

13 MR. KRON:

14 Yes sir.

15 THE COURT (Judge Wisdom):

16 I think thirty days would be agreeable. I would
17 be agreeable to thirty days if my colleagues are.

18 MR. KRON:

19 We would simply like to leave with the Court
20 this idea: To allow the Government to present its
21 substantive argument this morning but to give us
22 leave to first file a brief in rebuttal thereof and,
23 secondly, at a proper time and upon proper request
24 to properly come back in and make our verbal argument.
25

1 THE COURT (Judge Wisdom):

2 I would suggest that you make your argument and
3 answer to Mr. Doar's argument today; that you be given
4 en thirty days in which to file your brief and that
5 should we think it necessary at that time, that there
6 be further argument, we will ask you and we will give
7 you the opportunity to argue it, but that probably
8 will be unnecessary after we hear the argument this
9 morning and also receive your brief.

10 MR. KRON:

11 That will be perfectly all right.

12 THE COURT((Judge Christenberry):

13 I would like to suggest, with respect to the
14 objections that you are making to this material, I
15 think we should have the benefit of the grounds of
16 your objection.

17 MR. KRON:

18 One of the particular grounds we are going to
19 contend that a great portion of this material is
20 irrelevant, that the material has nothing to do with
21 the issues in the case. That is one thing that I
22 can see, just by a cursory examination of all of
23 those exhibits. There may be others which we will
24 comprehensively argue in our brief itself and I think,
25 if the Court will permit us to take this procedure

1 we will argue our whole case in our brief and in our
2 rebuttal of this argument.

3 THE COURT (Judge Wisdom):

4 We will see that your rights are fully protected
5 there, but you should spell out the basis for your
6 objections in your brief.

7 MR. KRON:

8 Yes sir, we shall do that.

9 THE COURT (Judge Wisdom):

10 Is that agreeable with you?

11 THE COURT (Judge Christenberry):

12 Yes .

13 THE COURT (Judge Wisdom):

14 Now, before you start, Mr. Doar, and also Mr.
15 Kron, you should understand that all of the members
16 of this Court have read the Government's brief, so
17 that we are familiar with it. To the extent that
18 the argument is laid out in the brief, we are fami-
19 liar with the issues.

20 MR. DOAR:

21 May it please the Court, the record in this case
22 can be divided into two parts: The first part is
23 evidence based on stipulations entered into between
24 the parties and the second part is the documentary
25 evidence which has been stipulated to by the parties.

1 Now, we have marked each one of the exhibits,
2 including the depositions, with an exhibit number,
3 and we have described generally the content of that
4 exhibit. I would like to hand to the Court an ori-
5 ginal and two copies of that description of the exhi-
6 bit list.

7 THE COURT (Judge Wisdom):

8 I assume you have given a copy to Mr. Kron?

9 MR. DOAR:

10 Yes sir, although in fairness, your Honor, I am
11 sure that he has not had a fair opportunity to go
12 through it all because of the typing job. We were
13 not able to give it to him until this morning. How-
14 ever, the description corresponds with the oral out-
15 line of what the exhibits would contain, which we
16 had with Mr. Kron at an informal conference last Fri-
17 day. Now, briefly, the evidence is based upon the
18 stipulations and consists of three things:

19 First, depositions; second, transcript of cases
20 filed by the United States against local registrars
21 under 1971 A and C; and third, admissions by the
22 registrars through Federal Bureau of Investigation
23 agents when they were interviewed with respect to
24 certain events that took place in the local regis-
25 trar's office in 1956.

1 The depositions, your Honor, are first of state
2 officials, second of local registrars, and third of
3 white and negro witnesses in East Feliciana Parish,
4 fourth of negro witnesses in Ouachita and Webster
5 Parishes. That comprises the depositions.

6 Now, for the benefit of the Court, we digested,
7 as fairly and as accurately as we could in our digest,
8 certain of the depositions and, referring to the
9 first page of the appendices, I would like to just
10 call the Court's attention to --

11 Judge Christenberry, would you like an extra
12 copy?

13 THE COURT: (Judge Christenberry):

14 I have a copy. I have read that.

15 MR. DOAR:

16 Anyway, Appendix B is the deposition of the
17 Registrars. That is arranged alphabetically.

18 THE COURT (Judge Wisdom):

19 Appendix B is the deposition of the Registrars?

20 MR. DOAR:

21 That is one of the four sets of depositions that
22 have been received. Now, if you look back to B-0,
23 you will see that there was the deposition of, I
24 think, twenty-five registrars or deputy registrars
25 and they are arranged alphabetically by name, by last

1 name. That is on B-0.

2 Their depositions in Appendix B are digested in
3 a uniform fashion. We subdivided the Registrars'
4 depositions into various sub-headings and we tried
5 to follow the same outline in each deposition so that
6 the Court would have an easier time in following those
7 depositions.

8 As I say, this is a digest. We have attempted
9 to be as fair as is humanly possible. Where the ques-
10 tion appears on cross examination in the deposition,
11 the record citation is C-R, rather than just to the
12 page number.

13 Going back, then, your Honors, to Appendix C.
14 That includes the deposition of approximately ten
15 state officials. Mr. Cutrer, Mr. Fowler, Mr. Rainach,
16 Mr. Shaw, Mr. Garrett and one Citizen's Council Of-
17 ficial, Mr. Billy L. Adams, among others. Again
18 the same procedure is followed. These depositions
19 are digested.

20 Appendix D is the deposition of rejected negroes
21 in Webster Parish, I think there are four of them.
22 Appendix E is in connection with rejected negroes in
23 Ouachita Parish. F and G are depositions of white
24 and negro witnesses in East Feliciana Parish. Ap-
25 pendix H is a summary of the testimony in one of the

1 1971-A cases that are referred to in Appendix A, a
2 summary of testimony in the second 1971-A case. We
3 have not digested the Plaquemines Parish case because
4 those exhibits, those depositions and that testimony
5 is already digested as a part of that record and we
6 did not repeat that work.

7 THE COURT (Judge Wisdom):

8 Where are those stipulations?

9 MR. DOAR:

10 They have all been filed as part of the record,
11 your Honor, as one of the stipulations, and likewise
12 the depositions, these admissions or statements, have
13 been given a number.

14 Now, the other part of the case, your Honor, is
15 the documentary evidence in the case. Now, briefly,
16 the documentary evidence is broken down into several
17 categories, four in fact.

18 The first category, and I won't refer to each
19 exhibit because I think it is easier for the Court
20 if I break it down into broad summaries -- the first
21 is statistical data, and that deals with census figures,
22 voting age population by race and by parish; regis-
23 tration statistics by race and by parish in Louisiana.
24 Now, as the Court knows, Louisiana has a very compre-
25 hensive system of keeping accurate track of persons

1 registered by race, by parish and this system has
2 been in effect since around 1890, I believe, and we
3 have for the Court's benefit all of the registration
4 statistics from 1890 up to the present time. And,
5 of course, in our brief we have only excerpted those
6 parts that we think the Court would be particularly
7 interested in.

8 The second part of the documentary evidence,
9 your Honors, is the record in the case. Now, all of
10 the records have been given an exhibit number. These
11 are the records. There is also in the record a stipu-
12 lation between the parties which is marked "Stipula-
13 tion 1", and that is described. We have offered the
14 microfilms.

15 Now, then, these are the registration voting
16 records which, for example, were photographed by the
17 Federal Bureau of Investigation under Title 3 of the
18 1960 Act, this one happening to be one of the films
19 in Ouachita Parish. Each one of those is identified
20 clearly in the stipulation and the stipulation has
21 been made a part of the record.

22 Now, briefly with respect to those records, I
23 would like to tell the Court what these records con-
24 tain. First of all, the records contain a standard
25 application form of all applicants, which is required

1 to register. This application form contains questions
2 which are designed to determine, under the constitu-
3 tion, whether the applicant is literate, is also de-
4 signed to give the registrar certain basic information
5 that is necessary to run an ordinarily comprehensive
6 system of applications.

7 THE COURT (Judge Wisdom):

8 That is the original application form in the re-
9 gistration rolls?

10 MR. DOAR:

11 The application form, yes sir. The second --

12 THE COURT (Judge Wisdom):

13 That is standard, of course, throughout the whole
14 State?

15 MR. DOAR:

16 It is standard throughout the whole State, yes
17 sir.

18 The second part of the record are the test cards
19 which we found in some of the parishes where we photo-
20 graphed records. These test cards are cards that cer-
21 tain registrars used, your Honors, to administer the
22 Constitution Interpretation Test. Now, we have for
23 the benefit of the Court, because we thought this ma-
24 terial was particularly relevant and important -- we
25 have made a set of one exhibit, Exhibit 11, which

1 contains the test cards -- we have made three Exhibits
2 11, one for each member of the Court -- and these ex-
3 hibits contain test cards used throughout Louisiana
4 in administering the Constitutional Interpretation
5 Test.

6 THE COURT (Judge Christenberry):

7 Where you were able to find them?

8 MR. DOAR:

9 Yes sir, where we were able. I think we found
10 six or seven different types of tests.

11 Now, the third information that you get from the
12 record is that in certain parishes the registrars in-
13 dicate on the application card or by preserving a
14 copy of the test card, or by administering the tests
15 in writing, indicate which section of the constitu-
16 tion was used for which applicant when he applied to
17 register, and where we have been able to obtain that
18 information, we have gotten it from these records.

19 Now, the fourth thing that the records show, as
20 relevant, -- that is, relevant to this case -- is
21 the test answers, and there are not many times in
22 Louisiana -- Plaquemines Parish happens to be one --
23 where the Registrar preserved the applicants' answers--
24 there is no requirement under the constitution or
25 statute that they be preserved and most of the

1 registrars have been administering the test orally.

2 If this was a 1971-A case involving discrimina-
3 tory application of qualification tests for registra-
4 tion, the card and the test answers would be the thing
5 that we would look at to determine whether or not
6 there was any discrimination in either selection,
7 assistance or grading of the tests. The 1971-A cases
8 break down into selection, assistance and rating. I
9 just mention that in passing and tell the Court that
10 there are not too many of the records preserved in
11 Louisiana on this subject, but the ones that have been
12 preserved have been organized and catalogued for the
13 convenience of the Court.

14 THE COURT (Judge Christenberry):

15 You mentioned in your brief that in one instance
16 you found that an applicant had inadvertently signed
17 the answers that had been furnished him by the Regis-
18 trar. Do you remember that?

19 MR. DOAR:

20 I believe that the card was a Plaquemines Parish
21 card.

22 THE COURT: (Judge Christenberry):

23 Is that in this exhibit?

24 MR. DOAR:

25 Yes sir.

1 THE COURT (Judge Christenberry):

2 The Registrar furnished the applicant with the
3 answers and the applicant never signed the card that
4 he filled out but signed the sample?

5 MR. DOAR:

6 That's correct.

7 Now, of course, that would be relevant evidence
8 on a question of assistance if we were trying a
9 1971-A case.

10 Now, the next document, your Honors, concerns
11 documents that were in the possession of the defen-
12 dants, the State Board of Registrars, state agencies,
13 or local registrars. Now, some of this evidence is
14 extremely significant. I only want to pause at this
15 time to direct the Court's attention to Plaintiff's
16 Exhibits 101 through 152 which contain --

17 THE COURT (Judge Wisdom):

18 What are those numbers?

19 MR. DOAR:

20 101 through 152, which contain the minutes,
21 among other things, of the number of meetings held
22 throughout the State of Louisiana in late in 1958
23 and early 1959 under the auspices of the State Board
24 of Registrars and the Joint Legislative Committee.
25 We also cite these minutes of meetings -- there are

1 various reports that we think are relevant, made by
2 one or more of the committees concerned with regis-
3 tration, and finally there is a small amount of cor-
4 respondence which we thought we thought was relevant
5 and which we have offered in evidence.

6 Now, finally, if the Court please, with respect
7 to the documentary evidence, we have here certain
8 news articles back in 1921 with respect to the con-
9 stitutional convention which adopted the interpreta-
10 tion tests in Louisiana.

11 Now, my research, if the Court please, has satis-
12 fied me that this particular material is admissible
13 but that judges fluctuate widely as to the weight
14 which should be given to newspaper testimony and that
15 there is a different type. If we had a newspaper
16 report, as was found in the case involving the fire
17 in Dallas, where it was a direct report of what hap-
18 pened, that would be given considerably more weight
19 than a newspaper report as to what the purpose was
20 of a particular meeting or of a particular convention.

21 THE COURT (Judge Wisdom):

22 In the Snell case, I don't know whether that was
23 cited in this connection or not, but the Court in
24 the Snell case paid particular attention to newspaper
25 reports.

1 MR. DOAR:

2 As I recall, they did, your Honor, but I will
3 have to say in fairness that those newspaper reports
4 were much more direct than the editorial reporting
5 which we find here. However, this is the best we
6 could get back in 1921 and I think that it does shed
7 some light in weighing it along with other evidence,
8 as to what was the purpose of the constitutional con-
9 vention in adopting this particular constitutional
10 section. Even, for example, in the case of Darby ver-
11 sus Daniel which was decided in 1957 in the State of
12 Mississippi, there were three Mississippi judges who
13 sat on this case, and they, in that case, your Honors,
14 admitted some newspaper stories as to the convention
15 of 1954 in Mississippi, concerning their constitutional
16 interpretation tests. They held that it was not con-
17 vincing. They held that it was not entitled to much
18 weight, but they did not quarrel with its admissi-
19 bility.

20 THE COURT (Judge Wisdom):

21 There was an article last week in the newspaper
22 about the 1921 convention. I don't know whether you
23 saw it.

24 MR. DOAR:

25 We did, but unfortunately it discussed a part

1 of the convention that we were not concerned with.

2 Now, that summarizes in brief, if the Court please,
3 what the evidence is in this case.

4 Now, this case involves the Louisiana interpre-
5 tation tests and the question before the Court is
6 whether the interpretation test in Louisiana is a legi-
7 timate method of testing qualifications for voting or
8 a matter which is constitutional and which is left to
9 the State, or whether it is illegal and unconstitutional
10 because it is contrary to the prohibitions of the
11 Fifteenth and Fourteenth Amendments.

12 It seems to us, your Honors, that before the Court
13 can determine this question it must know the facts,
14 and the facts begin in 1890, thirty-one years before
15 the first enactment of an interpretation test as part
16 of the Louisiana Constitution.

17 Briefly, in 1890, in Louisiana, approximately
18 the same number of negroes were registered to vote as
19 white people. I think there were about 120,000 each.
20 In addition, over eighty per cent of the eligible ne-
21 groes were registered in this State.

22 In 1898, we had a convention in Louisiana and a
23 constitutional provision was enacted, incorporating
24 the so-called grandfather clause. The grandfather
25 clause, provided that certain individuals who voted

1 before 1866 were exempt from meeting other more rigid
2 qualification requirements. Following that, the sta-
3 tistics show that the negro registration in Louisiana
4 dropped to one-half of one per cent. One-half of one
5 per cent of the voting age negroes were registered,
6 and that the total negro registration exceeded four
7 per cent of the total number of voters in the State.

8 In 1915 the Supreme Court of the United States
9 outlawed the grandfather clause and in 1921 it is our
10 contention that the evidence shows that the interpre-
11 tation tests replaced the grandfather clause.

12 It is our contention that the newspaper reports,
13 plus the great secrecy that surrounded the passage of
14 this amendment to the Constitution, is evidence that
15 the purpose of the interpretation tests was to discri-
16 minate against negroes. We think that this inference
17 grows stronger as you review the facts as they have
18 taken place since 1921.

19 Now, what has been the history of the use of the
20 interpretation tests? They were not used until 1946
21 and between 1921 and 1948, as a result primarily of
22 the white primaries, never over two-tenths of one
23 per cent of the negroes who were of voting age in
24 Louisiana ever registered to vote. Beginning in 1948,
25 when the white primary was outlawed, the negro

1 registration began to increase and increased substan-
2 tially between 1948 and 1956. In this case it went
3 up to almost fifteen per cent of the total vote and
4 during that period of time, as clearly evident, the
5 effort of the negro community to participate in the
6 electoral processes is reflected in the number and
7 extent of litigation involving voting rights in this
8 State.

9 In 1954, the Supreme Court decided the School
10 Desegregation Case and shortly after that the Consti-
11 tutional Interpretation Tests were first used in Pla-
12 quemines Parish. It was first used there in late
13 1954 and it was used only on a local basis, in one
14 parish in the State.

15 In 1955, there was the creation of the Joint
16 Legislative Committee which became important later in
17 the history and the purpose of that committee was to
18 maintain school segregation. In 1955, we also had
19 the formation of a great number of Citizens' Council
20 Organizations in this state and part of the program
21 to achieve their purposes, which was to maintain se-
22 segregated facilities -- public facilities and schools
23 and otherwise -- was to conduct a campaign directed
24 at voter qualification laws and to insist, if the
25 Court please, that voter qualification laws be enforced

1 strictly throughout the State of Louisiana.

2 The voter qualification law was called by the
3 white Citizens' Council the key to victory in their
4 struggle with respect to carrying their ideas to vic-
5 tory in the State of Louisiana.

6 And now the next part of the history deals with
7 the efforts of the people in Louisiana to put the
8 tests into operation. We first see that officials of
9 the Citizens' Councils were given jobs as Repre-
10 sentatives of the State. Mr. Shaw, who was one of
11 the attorneys for the Citizens' Councils was made
12 Advisor to the Attorney General's Office. He traveled
13 around the State, urging Registrars to use the Con-
14 stitution Interpretation Tests.

15 Congressional District Conferences were held in
16 1957 and 1958. Now, these conferences are very valua-
17 ble, it seems to me when you look at the people who
18 attended these conferences in the Congressional Dis-
19 tricts. The Joint Legislative Committee, the Direc-
20 tor of the State Board of Registration, all district
21 attorneys were involved. All of the chairmen of the
22 local police juries were invited, and many of those
23 attended. All of the Registrars of Voters were in-
24 vited; the Attorney General also had representatives
25 there. The Citizens' Council had representatives

1 there, and, in many instances, the newspapers had
2 representatives there.

3 Now, I have just briefly indicated a number of
4 instances, as contained in here, which reflect what
5 the purpose of those meetings was and, if the Court
6 will excuse me just a minute -- I have mislaid that --
7 Here it is right here:

8 For example, these meetings were designed to in-
9 dicate to the Registrars that they must strictly use
10 the Constitutional Interpretation Tests. At the se-
11 cond meeting in early 1959 at Monroe, the Attorney
12 General, Mr. Gremillion, told the people there, as
13 this is reported in the minutes, that the Office of
14 Registrar is an extremely important adjunct in the
15 battle to maintain segregated facilities, and that
16 the time may come when the Registrar should be elected
17 by the parishes themselves. This may be the answer,
18 and he went on to tell them that he wanted them to
19 know that the legal, legislative and executive branches
20 are agreed on seeing that the voter qualification
21 laws are enforced.

22 At the third meeting, Mr. Rainach asked the news-
23 papers to publish nothing about the various meetings.

24 At the fourth meeting, Mr. Rainach said he would
25 outline the part of the program for maintaining the

1 State's separate school system and indicated that the
2 entire emphasis on the segregation struggle is shifting
3 to the field of voter qualifications and at the time
4 Mr. Rainach distributed a number of registration sta-
5 tistics by race, showing how the registration of ne-
6 groes had increased from two-tenths of one per cent
7 to fifteen per cent of the total vote.

8 At the fifth meeting, the report of Mr. Rainach
9 dealt specifically with this particular question.
10 There was discussion on the floor with respect to how
11 the older people of the State would react to requiring
12 them to take this difficult interpretation test and
13 he indicated "... that the old people were the most
14 loyal age group of all to our racially separated in-
15 stitutions; that many of those fine old people vividly
16 remember the voter clean-up drive of 1890 and now
17 the scandalous condition that made the clean-up drive
18 so necessary. They realized," he said, "that similar
19 conditions were making another such drive necessary,
20 and for that reason they supported the Committee's
21 program more solidly than any other group in the
22 State."

23 Mr. Perez, at another meeting, indicated how
24 they had adopted this card system. That was shortly
25 after the Supreme Court decision in the school case.

1 Now, I don't want to burden the Court with a com-
2 plete history of this. As I say, it is all set forth
3 in here but it reflects clearly that here was a great
4 part of the official arm of the State of Louisiana
5 directing that program, purportedly to increase the
6 level of the electorate in Louisiana but, day after
7 day, time after time, the emphasis was on race and
8 we finally come to 1960, when the State's Sovereignty
9 Commission was created and, in December 1960, there
10 is a very interesting report of the State Sovereignty
11 Commission which I would like to call the Court's
12 attention to particularly. It is found in this exhi-
13 bit, as Exhibit Number 121, your Honors, and it is
14 not referred to very extensively in our brief as a
15 result of oversight on my part, but this report traces
16 the history of registration in Louisiana and it relates
17 back and runs the statistics and shows, as I have out-
18 lined, just exactly what took place from 1890 until
19 1956 and then says that, as a result, or seems to say,
20 certainly, the inference is clear, that as a result
21 of " ... our efforts in the last four years, the
22 trend has been reversed; only thirteen per cent of
23 the total vote is negro and we seem to be able to
24 maintain this relationship of the total negro vote to
25 the total white vote in Louisiana."

1 THE COURT: (Judge Wisdom):

2 Is that the report of the Sovereignty Commission?

3 MR. DOAR:

4 Yes, your Honor, it is.

5 THE COURT (Judge Wisdom):

6 In the exhibits that you have made up, you only
7 have one set of this exhibit?

8 MR. DOAR:

9 But I was going to ask leave of Court to permit
10 me to withdraw it and make three sets of this parti-
11 cular exhibit. I respectfully feel that it is proba-
12 bly one exhibit that the Court will be happy to have
13 extra copies of -- this entire document -- and we can
14 do that when the proceedings are through.

15 THE COURT (Judge Wisdom):

16 Suppose you do that, then.

17 MR. DOAR:

18 All right.

19 At the end of this report the Sovereignty Com-
20 mission says this: --

21 THE COURT (Judge Wisdom):

22 I think, too, that you should have the right,
23 Mr. Kron, too, to withdraw any of the exhibits in
24 order to make additional copies for the Court.
25

1 MR. KRON:

2 All right, your Honor.

3 MR. DOAR:

4 In the conclusions, the recommendations, it is
5 suggested that it would be well to approach the use
6 of this Constitutional Interpretation Test with rea-
7 sonableness.

8 At that time, of course, the Civil Rights Com-
9 mission had held hearings in Louisiana. We had the
10 1957 Civil Rights Act and then we had the 1960 Civil
11 Rights Act.

12 We have the case, United States versus McElveen
13 in which Judge Skelly Wright directly held that the
14 purge of Washington Parish was unconstitutional and
15 ordered the reinstatement on the rolls of some eleven
16 hundred negroes.

17 We have a suit filed in the Western District of
18 Louisiana, United States versus Culpepper, I think
19 that was in the Bienville Parish suit, in which the
20 testimony before Judge Dawkins, as is reflected in
21 the record, indicated quite clearly that in that par-
22 ticular parish the Registrar was using the Constitu-
23 tional Interpretation Test solely to discriminate
24 against negroes. The test questions used to deny
25 registration there involved some of the most

1 complicated sections of the Louisiana Constitution.

2 And so I say that in 1960 the Sovereignty Com-
3 mission began to say, "Let us not push this too far
4 or utter chaos will result, to take it easy. The
5 situation is stable and we seem to be holding the
6 line. Let's relax a little bit." However, in 1961,
7 -- we finally come to the conclusion in this history
8 of events -- In March of 1961 there was a resolution
9 by the Board of Registrars to enforce the test strictly
10 and in October of 1961 there was the first indication
11 of a switch from the interpretation tests to the ob-
12 jective six-question test, and that is reflected, I
13 think, in Exhibit E or F in this set of test cards.
14 That was never put into use. The United States, in
15 December of that year, under 1791-A and C, commenced
16 this action to declare the Louisiana statute uncon-
17 stitutional and to enjoin Registrars from discrimi-
18 nating on the basis of race in the registration pro-
19 cess.

20 THE COURT (Judge Wisdom):

21 I didn't follow that.

22 Do you have that?

23 MR. DOAR:

24 Well, your Honor, Plaintiff Exhibit E, as I
25 handed it up to the Court --

1 THE COURT (Judge Wisdom):

2 I don't have E up here.

3 MR. DOAR:

4 Plaintiff 11-E contains a set of cards.

5 THE COURT (Judge Wisdom):

6 11-B. I don't see 11-E.

7 MR. DOAR:

8 11-E is right there.

9 THE COURT (Judge wisdom):

10 Oh, I see it, right there.

11 MR. DOAR:

12 There is 11-E.

13 Judge West, do you have an 11-E?

14 THE COURT (Judge West):

15 No. This is 11-F and G. I have two copies of
16 11-F and G.

17 MR. DOAR:

18 Somehow we got them mixed up.

19 Judge Wisdom, I think you have two copies before
20 you there. I think you have two copies of the same
21 exhibits.

22 THE COURT (Judge Wisdom):

23 Two copies of these.

24 MR. DOAR:

25 At any rate, if you look at 11-E -- I wonder,

1 Judge West, do you have 11-E?

2 THE COURT (Judge West):

3 No, I have A, B, F and G.

4 MR. DOAR:

5 If you will get this --

6 THE COURT: (Judge Wisdom):

7 I will not ask you to repeat this whole thing.

8 MR. DOAR:

9 I think I have one of them on the table, here.

10 Here is one, right here.

11 At any rate, those test cards there were never
12 used, never circulated, but were a part of a resolu-
13 tion providing for their use which was made in Octo-
14 ber of 1961.

15 As the Court notices, there were five objective
16 questions and the sixth question was an interpreta-
17 tion test. The questions were very simple sections
18 of the Constitutional Interpretation, but it is a
19 transition card.

20 THE COURT (Judge Wisdom):

21 Now, those objective test cards were not circu-
22 lated to the registrars?

23 MR. DOAR:

24 Not at that time, no. They were not.

25 They were not circulated 'til after the

1 Legislature met in the spring of 1962 and enacted
2 some additional legislation that authorized the Board
3 of Registration to have additional authority with re-
4 spect to providing for tests and in the fall of 1962
5 the Board circulated throughout the State those test
6 cards and the current tests are Plaintiff Exhibit 18.

7 Do we also have three copies of this?

8 MR. DUNBAUGH:

9 No, we don't.

10 MR. DOAR:

11 At any rate, this is the new test that was cir-
12 culated -- really it was in September of 1962 that
13 the new test went into effect. The new test is con-
14 tained as part of this exhibit.

15 Now, it happens, your Honors, that on your exhi-
16 bit list that Exhibit 18 is not referred to, it was
17 not described in here, and I think it would be help-
18 ful if the Court could mark their exhibit lists be-
19 cause this is one document that Mr. Kron was parti-
20 cularly concerned got into the record.

21 If the Court will permit, we will make three
22 copies of this, too, as Plaintiff Exhibit 18.

23 We will furnish the Court a little addendum to
24 this exhibit list so as to be sure it is complete.
25

1 THE COURT (Judge Wisdom):

2 Please do that.

3 MR. DOAR:

4 But, in the meantime, I think if the Court could
5 mark their exhibit lists Plaintiff Exhibit 18 is the
6 new test. And it indicates the new test was circu-
7 lated on September 7 and it resulted from a Resolu-
8 tion of the State Board on August 3, 1962.

9
10 THE COURT: (Judge Wisdom):

11 Is it the State's contention that this card, in
12 effect, rendered the case moot? These new tests?

13 MR. DOAR:

14 I think the State's contention is that the case
15 is not moot, but there is no necessity -- that these
16 tests make it appear or prove that the Court should
17 not issue any kind of injunction in this case. I
18 don't want to speak for the State with respect to
19 whether the new tests are relevant under the question
20 of declaratory judgment as to constitutionality, so
21 I will leave that to Mr. Kron.

22 Now, finally, with respect to --

23 THE COURT: (Judge Wisdom):

24 Tell me, before you do that, what is the dif-
25 ference between the new tests and the old tests?

1 Is it their objectivity?

2 MR. DOAR:

3 Their objectivity plus the fact they are much
4 easier. They are multiple choice, such questions as
5 "The church you attend is chosen by the National
6 Government, by yourself, by congress, or that the
7 President must be at least 25, 30 or 35 years old."

8 I think that is a quite hard one for the layman
9 but it is unfair to read that section alone because
10 there are some questions that are not that hard at
11 all. Also, I want to say to the Court that the stan-
12 dard is not one hundred per cent. The standard is
13 sixty-six and two-thirds, two out of three -- four
14 out of six is the passing grade, four out of six.

15 Now, I have some summarized for the Court every-
16 thing that is in the record except the evidence on
17 how the test has been used. We have summarized that
18 in our brief in considerable detail.

19 I do want to go back over that to summarize what
20 I consider are the highlights.

21 The first thing is that the test was used in
22 twenty-one parishes, or in about one-third of the
23 State, that is what the proof shows in this case.
24 And secondly, it shows there have been various types
25 of test cards used and the test cards vary in

1 difficulty considerably. That is within a set of
2 test cards, one set can be very easy whereas another
3 set can be very difficult.

4 THE COURT (Judge Wisdom):

5 You are talking about the old test cards?

6 MR. DOAR:

7 The old test cards I am speaking of now.

8 The gross statistics are quite remarkable. Now,
9 I have prepared, and one of the things that in our
10 brief isn't clear -- is the statistical effect of the
11 use of the test in these particular parishes. I
12 would like to offer as an aid to the Court, after the
13 hearing is over, a statistical summary of the gross
14 statistics of those twenty-one counties. We believe
15 what they show is that in those counties where the
16 tests have been used there were approximately twenty-
17 five thousand, or maybe twenty per cent, of the ne-
18 groes of voting age who were registered at that time
19 that these tests were begun to be used -- I think
20 it's about twenty-five thousand -- and after four
21 years, after four years of using the test the number
22 of negroes in those parishes that were registered
23 have been reduced to eight thousand. What has hap-
24 pened with respect to the white registration? The
25 white registration has gained in those parishes and

1 so that now instead of being about twenty per cent of
2 the total vote in those parishes, the negro vote in
3 those particular parishes just may be five or six per
4 cent of the negroes of voting age are registered.

5 Now, the application cards, as I say, are dif-
6 ferent from the test cards. We have prepared for the
7 Court's benefit what we had called display exhibits,
8 showing a number of application cards of white per-
9 sons who were registered in parishes that use the
10 interpretation tests. Now, we don't have in their
11 case the questions, we don't have in most instances
12 the test answers.

13 In some of these the card with respect to the
14 negro witnesses, the card reflects that they were re-
15 jected for failure to pass the Constitutional Inter-
16 pretation Test, but it is our position that these
17 cards, these application cards, compel the inference
18 that the interpretation test has not been used as a
19 barrier or as a means of eliminating any white per-
20 son who desires to register in Louisiana. Now, why
21 do we say that compels the inference? We say that
22 because the writing, the spelling and the answers on
23 the application cards reflect that these particular
24 applicants -- and there are quite a number of them --
25 just would not be able to intelligently answer, without

1 assistance, any of the questions that have been given
2 to negro applicants in those parishes. These are the
3 cards. There is a great number of them, they have to
4 be looked at, but at any rate this deals with white
5 persons registered under the Interpretation Test.

6 Finally, we have negro citizens who were denied
7 registration under the registration tests and we say
8 here, and I would like to just pass this up to the
9 Court, we say that a study of those application forms
10 of negroes who were rejected because of the tests,
11 compel the inference that the Constitutional Interpretation
12 Test as used in Louisiana was not a test to
13 determine a person's literacy but rather a calculated
14 scheme to lay springs for the negro citizen. Now,
15 the words "calculated scheme to lay springs for the
16 negro citizen" are not mine. They were the words of
17 the United States Supreme Court in the Lassiter case
18 in which they discussed literacy tests and the Court
19 says that the question the Court must determine has
20 to be whether it is a fair way of determining whether
21 the person is literate or whether it is a calculated
22 scheme to lay springs for the citizen. Now, obviously
23 the citizen they are talking about is the negro citizen.
24 Now that is the question that the Court is going
25 to have to decide in this case, and we submit that

1 the evidence here compels that inference.

2 Now, we have also cited in our brief a number of
3 specific examples of cards of particular negroes who
4 were particularly qualified by education, application
5 cards of qualified negroes being rejected because
6 they were not ^{able to} answer to the satisfaction of the Regis-
7 trar this test, as well as a number of white appli-
8 cants with very low qualifications who were either
9 not given the test or obviously, from their testimony,
10 were not able to make satisfactory answers.

11 THE COURT (Judge Wisdom):

12 Let me ask you something. How do you know that
13 these applicants were rejected for failure to pass
14 the interpretation tests?

15 MR. DOAR:

16 That is reflected on the application card.

17 MR. DUNBAUGH:

18 It is reflected on the application card.

19 THE COURT (Judge Wisdom):

20 I just noted some of them say it but some of
21 them don't.

22 MR. DUNBAUGH:

23 Those from Ouachita Parish, and the answers to
24 the interrogatories in that suit, says in all but one
25 of those applications, all but one of those

1 applications is mentioned in those answers as having
2 failed the interpretation test. That is the reason
3 she gave.

4 THE COURT (JUDGE WISDOM):

5 I see, because it simply gives at the bottom a
6 section of the Constitution and there is no indica-
7 tion that that was necessarily the reason why the
8 applicant was rejected.

9 MR. DUNBAUGH:

10 And in that particular instance the applicant
11 scratched out something, scratched out -- It says
12 give your age in number of years, months and days,
13 and this particular applicant scratched out "months".

14 MR. DOAR:

15 We have not put in application cards
16 unless there was something in the record to reflect
17 that this person was rejected because of the consti-
18 tutional interpretation, but we can key that in for
19 the Court if you wish.

20 THE COURT (JUDGE WISDOM):

21 I am just curious to know how you knew that these
22 applicants were rejected for failure to pass the Con-
23 stitutional Interpretation Test.

24 MR. DOAR:

25 In each one of those, then, perhaps we can withdraw

1 them and cue that to the particular place in the
2 record where it is demonstrated and then return them
3 to the Court for their use.

4 You see, these are not exhibits, these are just
5 displays for the assistance of the Court, like a draw-
6 ing on the blackboard or the like.

7 THE COURT (Judge Wisdom):

8 I realize that there is one in the microfilm
9 somewhere and while the microfilm is in evidence,
10 this is the only way we will ever really be able to
11 look at them.

12 MR. DOAR:

13 I just want to make the point that since it is
14 not an exhibit there would not be such objection to
15 make an additional notation on it.

16 MR. KRON:

17 I have no objection to cross referencing or what-
18 ever you want to do.

19 THE COURT (Judge Christenberry):

20 Is it not correct that in the purge in Ouachita
21 Parish the basis was the failure of negro applicants
22 to pass the constitutional test although at the time
23 the test was not being given?

24 MR. DOAR:

25 That is true in Ouachita and that is also true

1 in East Feliciana. We have here one of the challenges
2 from East Feliciana, in which the card indicated that
3 the person who made the challenge says that he was not
4 required to give a reasonable interpretation of any
5 provision, yet at the time this particular negro was
6 registered that was not being used.

7 Since it was so close to a very important elec-
8 tion, it was humanly impossible, under our system of
9 litigation, for those particular people to get any
10 effective relief in 1956.

11 THE COURT (Judge Wisdom):

12 I have no doubt that if that had consistently
13 been done with regard to people of standing and pro-
14 minence, someone would have been lynched.

15 MR. DOAR:

16 Well, the fact is that it was not done, the
17 purges were not carried out except against negro citi-
18 zens.

19 Now, I just want to briefly touch upon the law,
20 your Honors, and I think the three leading cases in
21 this field are Davis against Schnell, the Lassiter
22 case and the Gomillion case, and those cases hold,
23 it seems to me, or stand for the proposition that
24 an interpretation test is unconstitutional if the
25 legislative setting at the time it was passed and

1 the time it was put into use put a broad discretion,
2 which is vested in the Registrar, to determine who
3 passes or fails.

4 THE COURT (Judge Wisdom):

5 I can give you a fourth case that to my mind is
6 applicable and that is the Grosjean case. The Gros-
7 jean case involves the newspaper tax.

8 MR. DOAR:

9 I am not familiar with that case.

10 THE COURT: (Judge Wisdom):

11 Well, it is a very important case in which the
12 Court -- there was a newspaper tax and the Court
13 looked behind what was apparently an innocent tax and
14 held that the purpose of it was to penalize newspapers.

15 MR. DOAR:

16 Is that a state case or a federal case?

17 THE COURT (Judge Wisdom):

18 That is United States Supreme Court case. The
19 Court looked behind and said the purpose was to pe-
20 nalize newspapers which had attacked the government.

21 MR. DOAR:

22 Well, at any rate, your Honor, we have set forth
23 these three cases and we have set forth what we think
24 these cases hold. We think these cases compel the
25 Court to find that this statute is unconstitutional.

1 The only cases contrary to that are Williams versus
2 Mississippi, which was an old jury selection case
3 where there was no proof at all whether there was any
4 evil use, it was just a possibility of use. There
5 is a second case of Trudeau versus Barnes which was
6 an action for damages which went to the Fifth Circuit
7 Court of Appeals where the Court held that it did not
8 declare the constitutional interpretation test uncon-
9 stitutional but the basis for the holding was that
10 the plaintiff had not exhausted his administrative
11 remedies. They actually didn't reach Constitutional
12 (interpretation).
THE COURT (Judge Wisdom):

13 These cases are discussed in your brief?

14 MR. DOAR:

15 Yes, they are.

16 And the third case is Darby versus Daniel,
17 which was a three-judge case in Mississippi decided
18 in 1957, in which that court distinguishes Davis
19 against Schnell. It doesn't discuss Lassiter because
20 I don't think Lassiter had been decided. The holding
21 there was there was insufficient showing of either
22 the legislative setting or of the great discretion
23 or that there had been any discriminatory use and
24 held that the statute was not unconstitutional. Now
25 we think that Darby against Daniel is wrong but, in

1 any event, the cases are clearly distinguishable be-
2 cause in that case there was no proof of the discrimi-
3 natory use, just the possibility of discriminatory use.

4 Now, finally, I come to the matter of the relief,
5 the question of the relief in this case. The matter of
6 relief can be broken down into four or five parts.

7 First of all, whether or not we are entitled to
8 a declaratory judgment declaring the statute unconsti-
9 tutional. Now, the question is: Is the United States
10 entitled to that finding? In view of the fact that
11 the evidence is clear that the test is no longer used
12 at this time in Mississippi -- in Louisiana, we say
13 that we are entitled to that finding, and the case that
14 we rely principally upon for that proposition is the
15 case in 365 U.S., which is cited in the brief. Excuse
16 me. It is not that case. It is the case 365 U.S.125,
17 which is United States versus Parke Davis, decided in
18 1961.

19 THE COURT (Judge Wisdom):

20 Will you add that as an addendum to your brief?

21 MR. DOAR:

22 Yes sir, I will.

23 At any rate, the Court held that the fact that
24 the defendant had ceased the conduct which formed the
25 basis for the government's lawsuit, was not any