

CR1.43

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE  
SOUTHERN DISTRICT OF ALABAMA  
NORTHERN DIVISION

UNITED STATES OF AMERICA,  
PLAINTIFF,

versus

CIVIL ACTION NO. 2584

VICTOR B. ATKINS, AUBREY C. ALLEN,  
and JOSEPH BIBB, REGISTRARS OF  
VOTERS OF DALLAS COUNTY, ALABAMA:  
and STATE OF ALABAMA,

DEFENDANTS.

BRIEF IN SUPPORT OF  
PLAINTIFF'S MOTION  
FOR SUPPLEMENTAL RELIEF.

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IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF ALABAMA

NORTHERN DIVISION

UNITED STATES OF AMERICA, )	)	
Plaintiff, )	)	
v. )	)	CIVIL ACTION
VICTOR B. ATKINS, et al. )	)	NO. 2584
Defendants. )	)	
_____ )	)	

BRIEF IN SUPPORT OF  
PLAINTIFF'S MOTION FOR  
SUPPLEMENTAL RELIEF

I

INTRODUCTION

A. History of the Case

The complaint was filed in April 1961 pursuant to the Civil Rights Act of 1957. The initial trial of the case came on for three days in May 1962. On November 15, 1962 the District Court denied the requested relief, although it did issue an injunction whereby the Board was directed to allow rejected applicants to re-apply for registration after 60 days from the date of their rejection. (United States v. Atkins, S.D. Ala. 1962, 210 F. Supp. 441.)

On September 30, 1962, the judgment of the District Court was reversed and the cause was remanded for proceedings not inconsistent with the court's opinion. United States v. Atkins, 5th Cir., 1963, 323 F. 2d 733.

The District Court was directed to issue a specific mandatory injunction. The Court of Appeals, speaking to the District Court, said that the terms of the mandatory injunction were designed to improve the Board's procedures in testing applicants for registration so that (1) in the future the bona fides of the registrars would be a matter of clear public record and (2) if the registrars have not been acting in good faith, the injunction would serve to bring out into the open any discrimination practiced, so that appropriate steps may be taken to correct it. United States v. Atkins, 5th Cir. supra 745.

At the trial on the merits and on the appeal the United States strenuously urged the court to apply the freezing principle in issuing its decree. The District Court flatly refused to do this saying that:

"The Department of Justice should recognize the work of the present Board and not insist on litigating over past inequities. To hold that inequities once committed cannot later be legally corrected is not sound. . . . The Department of Justice was quite correct in instituting this suit, for as I have said, the previous Board did not carry out its obligations impartially. In fact, its members did not carry out their obligations as registrars according to law. Let the Department of Justice

continue to correct the inequities that, I am sure, exist in many quarters. But let it not only be satisfied, but in fact let it and the whole country be proud of the job now being done by the present Board of Registrars of Dallas County.

\* \* \* \* \*

. . . When this suit was originally filed there was cause to believe that the Board as then constituted engaged in acts or practices contrary to the provisions of that Act. But in the process of enforcing the provisions of the Act, the primary purpose for which it was designed is not best served by an overzealous endeavor to bring the present Board before a court of equity for infractions of the law perpetrated by its predecessors, or for acts of judgment over which honest minds may differ."

On appeal the Court of Appeals also refused to grant freezing relief although it recognized the freezing principle and indicated that in an appropriate factual case, if the freezing effect was so great as to amount to an injustice, it should be applied.<sup>1/</sup> The District Court was told to make that determination when the specific facts and figures were before it. United States v. Atkins, 5th Cir. supra 745.

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<sup>1/</sup> Since the decision of the Court of Appeals in the Atkins case, the same court has without hesitation granted freezing relief. United States v. Duke, 332 F.2 759. In effect, the Atkins case has been limited to the specific facts which were before the court, i.e. a new Board operating whom the District Court had found to be exceedingly praiseworthy had registered 92% of 480 white applicants and 62% of 114 Negro applicants.

On October 29, 1963, the United States applied to the District Court for an order requiring the defendants to show cause why they should not speed up registration so that all citizens of Dallas County who desired to apply to register would have an opportunity to do so. This application was based on the affidavit of John Doar which stated that during the fall registration period 2/ following the Court of Appeals opinion, the Board was processing applicants at a much slower rate than had been their practice in the past. The affidavit stated that on February 5, 1962 the current Board received 83 applications and processed 102 applications which had previously been filed;3/ that large numbers of Negroes had been there to apply on the registration days between October 15 and October 28 but had not been able to do so because of the Board's practice of only permitting a maximum of

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2/ In the fall of odd numbered years Boards of Registrars in Alabama hold 30 special registration days between October and December. The Dallas County Board had scheduled registration days during the week of October 7 and from October 13 through November 4.

3/ The applications from which these statistics were obtained are all part of the record in the initial case and the court has indicated that it will take judicial notice of all of this evidence.



60 people to receive priority numbers and processing an average of 30 to 33 applicants per day. The court declined to act on this application but on November 1, 1963 it did issue the following injunction which was personally served on each of the defendant registrars on November 2, 1963.

"... The defendants, Victor B. Atkins, Aubrey C. Allen and Joseph Bibb, Registrars of Voters of Dallas County, Alabama, their agents, employees, successors, and all persons acting in concert with them be, and each is hereby enjoined from:

1. Engaging in any act or practice intended to result or the probable effect of which would be to result in racial discrimination in the registration for voting in Dallas County;

2. Rejecting applicants for errors or omissions in the questionnaire when other answers or information reveal that the applicant is qualified;

3. Using the questionnaire as an examination or test, unless the Registrars present to the court and propose to use a definite set of standards for the grading of questionnaires, which said standards shall meet with the approval of the court as complying with state and federal law;

4. Asking applicants oral questions, unless the questions comply with state and federal law, and unless the defendant Registrars and their successors in office keep records of the exact questions asked of and answers given by each applicant;

5. Rejecting applicants for lack of good character, not evidenced by convictions for crime specified in the Constitution or laws of Alabama, without giving the applicant notice and an opportunity for a hearing.

It is further ORDERED that the defendant Registrars and their successors make and preserve records of the exact reasons for the rejection of any applicant and to reveal these reasons to any applicant who inquires as to specific reasons for his rejection."

Following the service of the Injunction, the Board discussed its contents as well as the contents of the opinion of the Court of Appeals, among themselves, with its attorneys and with the attorney from the Attorney General's Office in the State of Alabama.

On November 19, 1963 the plaintiff filed a motion under Rule 34 for inspection and photographing of the registration records. This motion was granted on November 26, 1963 and the records were photographed on November 27 and 29, 1963.

On February 4, 1964 the United States filed a motion pursuant to Rule 34 for an additional order authorizing inspection and photographing of the registration records. On March 6, 1964, prior to the time that this Rule 34 motion came on for hearing, the United States filed a notice of motion and motion for an order requiring the defendants to observe specific requirements for registration; to register certain applicants; and for a finding of a pattern or practice of discrimination. This motion was set for hearing on March 30, 1964. This

motion was based upon the affidavit of John Doar which stated that based upon the analysis of the records photographed in November 1963:

(a) The percentage of rejections by the defendants of applications for registration has more than doubled since the trial in U. S. v. Atkins which was concluded on May 4, 1962. Up to the time of trial, the defendants had rejected 39% of all applications filed by Negroes and 9% of all applications filed by white persons. From the time of the trial to November 18, 1963, the defendants have rejected 89% of all applications filed by Negroes and 24.0% of all applications filed by white persons. Total registration in Dallas County is now about 300 Negroes and about 9,200 white persons. Appendix I, which is attached hereto and incorporated herein, shows these statistics in more detail.

(b) Of the 445 rejected applications filed by Negroes during the period May 4, 1962 through November 18, 1963, 175 were applications of Negroes with twelve or more years of education, including twenty-one with sixteen years of education and one with a Master's Degree. This includes eleven Negro school teachers and at least twenty-two Negro typists and file clerks.

(c) 45.8% of the rejected applications of Negroes were rejected for failure to answer to the satisfaction of the defendants oral questions regarding government.

(d) In October 1963, after the decision of the United States Court of Appeals in U. S. v. Atkins and after Negroes commenced a voter registration drive in Dallas County, the defendants began requiring applicants to read and explain the Ninth Amendment to the Constitution of the United States. This test was as follows:

Read Article IX - Reserved rights of people -- The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people. Explain or give the meaning of this in your own words.

(e) The defendants have been rejecting applicants for registration, even though they are literate and loyal, on account of the applicants' having made errors or omissions in answering questions on the form relating to loyalty.

(f) On eleven of the fourteen registration days in October 1963, sixty or more persons waited in line to register, but the average number of persons allowed to fill out forms was thirty-six. In previous years up to 148 applications had been processed in a single day.

Applications are filled out in a room which at most can accommodate six applicants. I know of no effort by the defendants to arrange for facilities adequate to accommodate the large number of prospective applicants. Some applicants have had to wait in line on two or three days before they could fill out application forms. On October 7, 1963, over 200 persons waited in line to register, of whom at least 170 were Negroes. The registration records photographed by the United States indicate that seven white persons and one Negro were registered that day; thirteen white persons and thirty-three Negroes were rejected. About 140 persons did not get an opportunity to fill out application forms.

(g) The notice which the defendants send to the rejected applicants normally states that the applicant "failed to answer correctly one or more pertinent questions". Applicants are not notified which questions or which tests they missed.

The affidavit also stated that in February 1964 the defendants had begun to use a new application form which included a test of the applicants' knowledge of government, an oral reading test, and a test of writing from dictation; that the Board was using this test although it had not filed with the court any document containing a set of standards that the defendants planned

to use in grading the questionnaires or tests. On March 18 the District Court granted in part the February 4 motion for inspection and photographing but limited the order to "copying or photographing."

On March 23 the hearing of the plaintiff's March 6 motion was continued at the request of the United States. On September 2, 1964, the District Court set the case down for trial commencing on October 5. On September 16, 1964, the court granted a third motion of the plaintiff under Rule 34 for inspection and copying but limited the order to those applications which had been pending before the Board more than 30 days. When the case came on for hearing the initial witness who was called was the Chairman of the Board, Victor B. Atkins. During the initial questioning of Mr. Atkins, there was considerable discussion as to the scope of the hearing. Following a short recess this exchange occurred:

Mr. Madison: Would your Honor let the record show we are trying not only the matters that are incorporated within Civil Action designated 2584 but also the contempt proceedings which are separate and distinct from this.

The Court: Which arise out of that same case?

Mr. Madison: Yes, sir.

The Court: Yes sir, I think that is all right.

B. History of Registration from 1952 to April 16, 1962

Between 1952 and the date of the first trial in the Atkins case, the Board of Registrars of Dallas County used a four-page registration application form and questionnaire which is authorized by the Alabama statute. The form of the specific questions was prescribed by the Supreme Court of Alabama and its purpose was to aid the registrars in determining whether the applicant possessed the requisite qualifications. Although the Alabama Constitution and statutes which authorize the use of the questionnaire provide that the questionnaire shall be answered in writing by the applicant without assistance, they do not provide that the applicant must answer every question or that every question must be answered in a certain way or that the applicant must answer thirty per cent, fifty per cent, or seventy-five per cent of the questions before he can become a registered voter. On the contrary, they provide that the questionnaire "shall be so worded that the answers thereto will place before the registrars information necessary or proper to aid them to pass upon the qualifications of each applicant." §31, Title XVII. Neither has the Supreme Court of Alabama issued any written instructions with respect to that questionnaire which would suggest that it must be filled out fully and completely; that some questions were more important than others; that each or any of the questions relate to substantive qualifications; or that any specific number or percentage of the questions must be answered .

correctly or perfectly. The application and questionnaire contains no instructions as to the manner in which it is to be filled out; as to which questions are more important than others; or that the applicant will be denied registration if he does not answer some or all of these questions correctly.

Under this system, between January 1952 and December 1960 the various registrars of Dallas County registered 4,420 white applicants and only 88 Negroes. From June 1954 until December 1960, only 14 Negroes were registered. The record is replete with instances of educated and obviously qualified Negroes who were rejected by earlier boards. The Negro witnesses about whom proof was allowed,<sup>4/</sup> who applied during the period 1952 to 1960, filed a total of 67 applications. Of these witnesses, two were doctors, six were college graduates, two had some college education, two

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<sup>4/</sup> After the Government had called a number of witnesses to demonstrate the practices of the earlier boards, Judge Thomas said he "saw no necessity for the Government putting on further cumulative testimony as to the acts of the old boards," and he agreed with Government counsel that the plaintiff had "established a prima facie case of a pattern of discrimination of the old board. The Government stated that it had a number of additional Negro witnesses it would call to testify to their experiences under the earlier boards.

were high school graduates and one had a sixth grade education.

By way of contrast to the blanket rejection of the Negroes, white applicants were registered without being required to meet any standard. One such white applicant was a painter with a third grade education who testified that, "I don't read. I just sign my own name," and who admitted that the only writing on his application form that was in his own hand was his signature in various places on the form (T. 128-129). Oliver Nichols, Sr., white, who has a fourth grade education, testified that "I can write pretty good, but I cannot read too good" (T. 99-101), and further testimony revealed that some of the words he wrote on the application form (G. Ex. A-3104) were spelled out for him and that he could not read Question 20 on the form. He was registered. Another white applicant who was registered, Sadie Lois Levi, a waitress with a fifth grade education (T. 113), testified that she filled out what she knew on the form and that Mr. Majors, a former registrar, filled out what she did not know in his own handwriting (T. 112). Asked to read the question which asks, "Will you support and defend the Constitution of the United States and the Constitution of the State of Alabama," she said "I do not know how to pronounce them words." (T. 114). And Lois Dye, who was registered in 1959, and who had completed approximately the ninth grade (T. 103), testified that she asked someone in the Registration



office to fill out her form (G.Ex. A-1115) (T. 103-104), that the lady "didn't seem to want to fill it out," but, as it happened, "she [the lady] filled it out" (T. 104), asking Mrs. Dye the questions and transcribing the answers on the form. Finally, Herman McKee, another white applicant, applied for registration in 1957 before Mr. Howard Crandall, a registrar (T. 90). Mr. McKee testified that Mr. Crandall filled out the application form (G.Ex. A-2650) for him (T. 91-92), and that the only handwriting of Mr. McKee's on the form was his signature and the phrase "Dallas County." (T. 91 - 92).

The undisputed evidence shows that of 1,051 applications surveyed, 493 (or 47%) were filled out in whole or in part by someone other than the person signing as the applicant. Mr. Crandall, who filled out Mr. McKee's application, above, wrote in, as the answer to the question concerning the duties and obligations of citizenship, the following: "obedience to the laws and support of the Constitution." This same answer in precisely the same language appears on 1160 other accepted applications of white persons. Even when white applicants filled out application forms in their own hand, the registrars disregarded errors and omissions therein.

Upon assuming office in June of 1961, after this suit was filed, the present board of registrars adopted new requirements which must be satisfied by each applicant.

Two of these requirements are pertinent here. First, the new board used the application form as a test or examination which it graded. The consequences of failure to comply with this requirement, however, were by no means standardized. Second, the board asked applicants to answer oral questions about the meaning of the Constitution of the United States and the Constitution of Alabama. In addition, the board occasionally required applicants to define certain terms appearing on the application form, such as "secular", though the board could not clearly explain how it determined whether to ask such questions to any given applicant.

C. The Decision of the Court of Appeals

After the Court of Appeals had reviewed the history of registration in Dallas County, Alabama, from 1952 to April 16, 1962, the Court ruled on the case. Some of the statements that it made are extremely important to a fair consideration of the matters now before the Court. Briefly, the opinion contained the following principles and criteria:

1. In General

- a. The right to vote is one of the most important and powerful privileges which our democratic form of government has to offer. Although state governments may regulate this right, they are subject to close judicial scrutiny when doing so and are limited by the Fourteenth Amendment.
- b. The practices of the Board warrant close inspection of the future activities of the registrars.

2. Content of Questions and Tests

- a. The statutory limitation of reasonableness goes far to bring a proper use of the questionnaire into compliance with the United States Constitution.
- b. The Board may ask oral questions if they relate to the qualifications of the applicant and if they are reasonable.
- c. The Board cannot continue asking oral questions unless it decides on a specific set of questions which meet the requirements of uniformity, objectivity, and standardization.

3. Standards for Grading

- a. Most important are those practices of the present Board which make it difficult, if not impossible, to determine whether the Board is discriminating. These practices include the grading of the questionnaire as a test and the lack of any standard whatever for grading the questionnaire.
- b. The Board has no standards by which it may determine what is a correct answer.
- c. A system which is fair and without discrimination must be devised for grading the answer.

4. Protection Against Future Arbitrary and Discriminatory Practices

- a. The Board has no set questions nor any method of determining which questions a particular applicant is asked.
- b. The Board keeps no record of the questions asked or the answers given.
- c. The practices of the Board warrant close inspection of the future activities of the registrars.

- d. A system for selecting the questions asked of any particular applicant must be devised. It must be a system which is fair and without discrimination.
- e. Records should be kept of the exact questions asked and the answers thereto.
- f. The improvements in procedure suggested in this opinion are designed to make in the future the bona fides of registrars of clear public record.

D. History of Registration Since May 5, 1962

As to the contents of the registration tests, after the first trial the board did not change its practice of using the questionnaire as an examination, nor did it change its practice of testing applicants' knowledge by asking them oral questions about government. Exactly what questions were asked at any particular time or how many questions were asked any particular applicant is impossible to determine. The records of the board contain self-serving data purporting to reflect that standard questions were asked each applicant during particular periods. Assuming, but not conceding this to be the fact, these questions were as follows:

<u>Period Used</u>	<u>Questions Used</u>
Prior to May 1962 trial and continuing through June 1963	"What is the Constitution of the United States?" "What is the Constitution of Alabama?" <u>5/</u>

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5/ Notation by the Board - "These questions are not technical in any sense. Just your opinions expressed in a few simple words of the man in the street, so to speak. We ask everyone coming before the Board these questions. Now take your time and think it over for a moment or two."

July, 1962	"What are the Branches of the Government as authorized by the United States Constitution?" "By the Alabama Constitution?" <u>6</u> /
August, 1962	"Define in not more than one sentence what is a citizen of the United States as covered by the Federal Constitution?" "In only one sentence what is a citizen of Alabama?" <u>7</u> /
September, 1962	
October, 1962	
November, 1962	
December, 1962	
January, 1963	
February, 1963	"What is the Constitution of the United States?"
March, 1963	"Under the Federal Constitution, what are the principle divisions of Government and the functions of each?" <u>8</u> /
April, 1963	
May, 1963	"1. Define in the words of the man in the street, nothing technical - Bona Fide. "2. Define in the words of the man in the street, nothing technical, 'secular'. "3. What form of government do you prefer?"
June, 1963	

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6/ Note by the Board - "Note be sure to ask the same questions to all applicants." These questions were supposedly adopted on July 9, 1962 and may not have been used at the July 2, 1962 meeting.

7/ Note by the Board - "The following questions have been adopted for the month of August. . . .(questions as above) The Board expressly decided in September and October to continue using the same questions. There is nothing in its minutes of November to indicate that it changed the questions. In December the Board decided to "continue using the same questions used the preceding month." In its first meeting in January it "decided that the questions remain the same for this period."

8/ Note by the Board - "The question to be used in March is the same with different wording as the one used on July 9, 1962.

There is an indication that the Board changed its question during April.

- July, 1963
- August, 1963
- September, 1963  
October, 1963 until  
October 28, 1963
- "4. How are Federal laws made?"
- "5. What constitutes Congress?" 9/
- "1. Who is in charge of the executive division of the Fed. Govt."
- "2. Name not less than three of his duties."
- "1. Who is in charge of the executive division of the Fed. Govt."
- "2. Name not less than three of his duties."
- (3?) Who is the Vice President?  
How is he elected?  
Name the duties of the Vice President.
4. What powers do the (sic) Constitution reserve to the State of Alabama or its people?" 10/
- "1. Who or what makes the law of the land?"
- "2. Who represents you in the Federal House of Representatives?"
- "3. Name at least two duties of a Federal Senator."

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9/ Probably the first two questions, defining "Bonafide" and "secular," were used for the May 6, 1963 meeting. Certainly the last three questions were adopted for the first time at the May 20, 1963 meeting for use at that meeting, and all five questions were then used.

10/ A note in the minutes of the August 5, 1963 meeting says: "a new question added:" and goes on to list the 3 questions about the Vice President. Question No. 4 is not mentioned in the minutes of August 5 or August 19 meetings but is recorded in the back of the minute book. Probably the last question was added for the August 19 meeting.

October 28, 1963 to  
November 3, 1963

"Read - Article 9 -  
"Reserved rights of people - The  
enumeration in the Constitution,  
of certain rights, shall not be  
construed to deny or disparage  
others retained by the people.  
Explain or give the meaning of  
this in their (sic) own  
words."11/

Following service of the District Court's injunction on the board, the only change in practice which the board adopted was to reduce the oral question about Article IX of the Constitution to writing and the requirement that the answers be in writing. This practice continued through the end of 1963.

In January 1964 the applicants were still required to meet the questionnaire test and to answer correctly a question requiring knowledge of how many representatives were accredited to Alabama and why. In February 1964 the defendants, without consulting the Court, began to use Insert Part III, a new form they had received from the Secretary of State's office of the State of Alabama. On January 14, 1964 the Supreme Court of Alabama prescribed a new and different application form to be used by the Boards of Registrars throughout the State. This new application form included a page labeled "Insert Part III", which contained a test to be used as part of the questionnaire. This test contained four questions testing the applicant's knowledge of government and four

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11/ There was no notation in the meetings of October 1963 until the October 28 meeting that the Board had changed their question. There was no notation in November 1963 or December 1963 to indicate that the Board changed after December 1963.

exerpts from the Constitution, one or more of which are to be read by the applicant to the registrar, and a space for the applicant to write from the dictation of a registrar several words from the Constitution. The Supreme Court's order provided for twelve of these inserts -- a different one to be used each month. A total of twenty-four different questions on government and nineteen provisions of the Constitution appeared on the twelve Part III Inserts.

The Board used this test with some modifications through August 1964. In administering the dictation test the Board used the following words to test the applicant's ability to spell and to understand.

<u>Period Used</u>	<u>Words Used</u>
February 17, 1964	1. capitation 2. eminent 3. emolument 4. tribunals 5. writ

The forms indicate that the above words were given to all applicants.

March 2 - 18, 1964	1. authorized 2. enumeration 3. incompatible 4. inhabitant 5. legislature
--------------------	---

The forms indicate that the above words were given to all applicants.

April 6, 1964	1. citizen 2. establish 3. posterity 4. tranquility 5. qualification
---------------	--

The forms indicate that the above words were given to all applicants.



Period Used

Words Used

April 20, 1964

1. affirmation
2. impeachment
3. expiration
4. citizen
5. establish
6. posterity
7. tranquility
8. qualification

On April 20, five words were given to each applicant from a list of 8 words (see Minute Book, April 4, 1964). The forms indicate that all 22 Negro applicants were given "tranquility", while none of the 3 whites (all accepted) were given "tranquility."

May 6 - 18, 1964

1. constitution
  2. representatives
  3. composition
  4. apportionment
  5. vacancies
  6. manner
  7. election
  8. equally
- 
9. appellate
  10. counterfeiting

The Minute Book for May 6, 1964 lists the above 10 words from which five spelling words were to be chosen for each applicant, presumably for the month of May. On May 6 there were 6 applicants, all white. The forms indicate that all of the words 1 through 8 were given at least once on May 6. But neither "appellate" or "counterfeiting" appear on any of the 6 forms. On May 18 there were 12 Negro and 4 white applicants. The forms indicate that 9 of the 12 Negroes were given both "appellate" and "counterfeiting" and that 1 Negro was given "appellate" but not "counterfeiting". Also, the words "appellate" and "counterfeiting" appear at the bottom of the list of 10 words and appear to be written in a different handwriting from that in which the first 8 words are written. Or at least a different pen was used.

June 3 - 15, 1964

1. consuls
2. misdemeanor
3. occasion
4. disciplining
5. inferior
6. privileged
7. concurrence
8. behavior

The forms don't reveal any major deviation from a random selection of 4 words from the above list for each applicant. They indicate, however:

- (1) That the word "misdemeanor" was given to at least 8 of the 14 Negro applicants; and was given to 1 of 7 whites;
- (2) That the word "disciplining" was given to at least 7 of the 14 Negroes, but to only 2 of the 7 whites.

July 6 - 10, 1964

1. infringed
2. impartial
3. seizures
4. ratification
5. deriving
6. intoxicating
7. prohibited
8. despotism

The forms do not reveal any major deviation from the above list for each applicant.

August 12, 1964

1. succession
2. insurrection
3. rebellion
4. affirmation
5. seized
6. militia

The forms do not reveal any major deviation from a random selection of 5 words from the above list for each applicant.

In May of 1964 the defendants, without instruction from the State of Alabama, added to these tests the requirement that the applicant must give a satisfactory interpretation of one of the excerpts of the Constitution printed on Insert No. III.

On August 26, 1964 the Supreme Court of Alabama ordered the Boards of Registrars throughout the state to use a revised form of Insert Part III. According to the order, this revised form was necessary because of the passage of the 1964 Civil Rights Act. This new Insert Part III is a different test from that which had been previously used. The test consists of eight questions, four testing the applicant's knowledge of government and four testing the applicant's comprehension and reasoning ability based on written excerpts from the United States Constitution; and a dictation test administered by the registrar from one or more of the excerpts of the United States Constitution. There are 100 different forms of this test. A total of 399 different questions and 139 different excerpts from substantially all of the Constitution are used in making up the test. The 399 questions on the test are phrased so that some require a "True" or "False" answer; some give the applicant a multiple choice; and some require a fact answer, with no alternatives being suggested. The

questions testing the applicant's knowledge of government include questions about the federal and state Constitutions; the structure of the federal and state governments; the identity of federal and state officers; the requirements for holding federal and state offices; the length of the terms of the federal and state offices; the duties of federal and state officers; voter registration requirements; and the geographical location of centers of government. Sixty selected questions from this test illustrate the type of questions used. These illustrations are:

- Revised Insert 1      1. A proposed change in the state constitution is called a proposed\_\_\_\_\_.
- Revised Insert 2      1. Is it lawful for the state of Alabama to borrow money?
- Revised Insert 3      1. To what county official are poll taxes paid?\_\_\_\_\_
- Revised Insert 3      3. What words are required by law to be on all coins and paper currency of the United States?\_\_\_\_\_
- Revised Insert 6      4. By a majority vote of the members of the congress, the congress can change provisions of the Constitution of the United States (True or False)\_\_\_\_\_
- Revised Insert 7      3. Name one of the grounds on which a person who is otherwise qualified to vote cannot be denied the right to vote.
- Revised Insert 11     1. In what document or writing is the "Bill of Rights" found?\_\_\_\_\_
- Revised Insert 13     2. Of which branch of state government is the court of appeals a part?
- \_\_\_\_\_ executive  
\_\_\_\_\_ judicial  
\_\_\_\_\_ legislative
- Revised Insert 15     3. Give the date on which Independence Day is celebrated in the United States of America.\_\_\_\_\_

- Revised Insert 16      2. Check the offenses below which, if you are convicted of them, disqualify you from voting?
- murder  
 manufacturing whiskey  
 issuing worthless checks  
 petit larceny
- Revised Insert 16      3. The congress decides in what manner states elect presidential electors. (True or False) \_\_\_\_\_
- Revised Insert 18      2. Approval by vote of the people of an amendment to the state constitution is called:
- rejection  
 convention  
 ratification  
 prosecution
- Revised Insert 19      3. Name the president of the United States. \_\_\_\_\_
- Revised Insert 20      2. The powers of state government are in three branches. One is executive. One is legislative. Check below the third branch of state government:
- criminal  
 judicial  
 public safety  
 municipal
- Revised Insert 21      1. Which of the following taxes help support schools?
- property  
 gasoline  
 sales
- Revised Insert 25      1. Can you simply purchase a license to drive a motor vehicle in Alabama or is it necessary to take a test? \_\_\_\_\_

- Revised Insert 26      3. What city is the capital of the United States? \_\_\_\_\_
- Revised Insert 27      4. Any proposed amendment to the state constitution must be approved by vote of the qualified electors of the state. (True or false)
- Revised Insert 30      2. Elections held by political parties to nominate candidates are called:  
       \_\_\_\_conventions  
       \_\_\_\_primaries  
       \_\_\_\_general elections
- Revised Insert 31      1. In what house of Congress must revenue bills originate? \_\_\_\_\_
- Revised Insert 31      3. What is the name of the probate judge of this county? \_\_\_\_\_
- Revised Insert 36      1. How often must a United States population census be taken? \_\_\_\_\_
- Revised Insert 38      4. Women may now serve on juries in Alabama state courts (True or False)  
       \_\_\_\_\_
- Revised Insert 42      3. Name one person by name or title who is part of the legislative branch of government in Alabama. \_\_\_\_\_
- Revised Insert 44      4. An indigent person charged with a crime has the right to have an attorney assigned by the court to defend him. (True or False) \_\_\_\_\_
- Revised Insert 45      1. Name one month in the year when you can assess and pay property taxes in Alabama without penalty for delinquent assessments.
- Revised Insert 47      1. If you are called for jury service in Alabama, name one reason why you should be lawfully excused.

- Revised Insert 48      2. Mark with an "X" the basis for representation in the United States House of Representatives:
- population
  - state legislation
  - provision of two per state
  - constitutional amendment passed in 1960
- Revised Insert 49      2. Which definition applies to "domestic tranquility"?
- transportation laws
  - court decisions
  - peace at home
- Revised Insert 49      3. An area within a state which a member of the United States House of Representatives represents is called a \_\_\_\_\_ district.
- Revised Insert 52      2. Check the applicable definition for "duty of citizenship":
- something owed to our government
  - tax paid for becoming a citizen
  - treason
- Revised Insert 54      3. Name the official who is allowed to give you a permit to carry a pistol.
- \_\_\_\_\_
- Revised Insert 58      1. Can a person be fined for leaving the scene of an automobile accident? \_\_\_\_\_
- Revised Insert 61      1. A member of the Legislature of Alabama is elected for a term of how many years? \_\_\_\_\_



- Revised Insert 65      1. Elections held in May or June of even-numbered years are called \_\_\_\_\_ elections.
- Revised Insert 65      3. Name one elected state official, besides the governor, who cannot succeed himself in office.  
\_\_\_\_\_
- Revised Insert 67      2. Subjecting a person to trial more than once for the same offense is unlawful and is called:  
\_\_\_\_ indictment  
\_\_\_\_ illegal counsel  
\_\_\_\_ double jeopardy  
\_\_\_\_ civil rights violation
- Revised Insert 67      3. Of what branch of state government is the superintendent of education a member: legislative, executive or judicial?  
\_\_\_\_\_
- Revised Insert 71      1. Is sale of intoxicating beverages legal in this county? \_\_\_\_\_
- Revised Insert 71      4. Bills for raising revenue deal with voting rights. (True or False) \_\_\_\_\_
- Revised Insert 73      2. When does reapportionment of congressional representation take place?  
\_\_\_\_ each 2 years  
\_\_\_\_ each 6 years  
\_\_\_\_ after each presidential election  
\_\_\_\_ after each decennial census
- Revised Insert 73      3. Name the Commander-in-Chief of the United States Army and Navy. \_\_\_\_\_

- Revised Insert 76      3. State or local ad valorem taxes on property can be increased beyond the constitutional limit in Alabama only by\_\_\_\_\_
- Revised Insert 79      2. In Alabama, a supreme court justice cannot be:  
       \_\_\_elected  
       \_\_\_appointed  
       \_\_\_named for life
- Revised Insert 80      1. Over which house of Congress does the vice president preside?\_\_\_\_\_
- Revised Insert 80      3. The laws of libel place a limitation on freedom of \_\_\_\_\_ in so far as what may be said about an individual without liability for damages is concerned.
- Revised Insert 80      4. Democracy is a political party. (True or False)  
       \_\_\_\_\_
- Revised Insert 82      1. In the precinct in which you live are paper ballots or voting machines used?  
       \_\_\_\_\_
- Revised Insert 82      3. States have a right to organize and arm groups known as state\_\_\_\_\_.
- Revised Insert 85      4. The senate has power to impeach the chief justice of the Supreme Court. (True or False)\_\_\_\_\_
- Revised Insert 86      3. Public education and an individual's rights or opportunities to it \_\_\_\_\_ (are or are not) mentioned in the United States Constitution.

- Revised Insert 91      3. The official count of persons in the United States is made by the Bureau of \_\_\_\_\_.
- Revised Insert 92      3. The courts make up the \_\_\_\_\_ branch of \_\_\_\_\_ government.
- Revised Insert 93      1. Is the secretary of state of Alabama elected or appointed? \_\_\_\_\_
- Revised Insert 94      3. Name one state official who is a member of the state board which appoints persons to serve on boards of registrars \_\_\_\_\_
- Revised Insert 96      4. Congress cannot pass a bill over the president's veto. (True or False)  
\_\_\_\_\_
- Revised Insert 97      2. The owner of an automobile must assess it each year for:  
       \_\_\_ sales tax  
       \_\_\_ license  
       \_\_\_ ad valorem taxes  
       \_\_\_ transfer of ownership
- Revised Insert 99      2. The circuit solicitor for each state judicial circuit shall prosecute:  
       \_\_\_ criminal cases  
       \_\_\_ civil cases  
       \_\_\_ civil rights complaints
- Revised Insert 99      3. The main representative of the United States to a foreign country is called an \_\_\_\_\_.
- Revised Insert 100     3. Is a person appointed or elected to the State Supreme Court? \_\_\_\_\_

With respect to the excerpts, the applicant is not told that the questions about the Constitution are taken from one or more of the excerpts of the Constitution. As with the questions testing knowledge of government, many words in the excerpts and questions are long, difficult, and unfamiliar in common usage. Following are four examples of the excerpts and the questions based on the excerpts:

"The executive power shall be vested in a president of the United States of America. He shall hold his office during a term of four years, and, together with the vice-president, chosen for the same term, be elected as follows:"

Questions:

- |                   |    |   |
|-------------------|----|---|
| Revised Insert 14 | 2. | The executive power of the United States is vested in_____.                           |
| Revised Insert 30 | 1. | A vice president is elected for how many years?_____                                  |
| Revised Insert 47 | 1. | The vice president of the United States is elected for a term of how many years?_____ |

"The Congress shall have power: To constitute tribunals inferior to the Supreme Court:"

Questions:

- |                   |    |   |
|-------------------|----|---|
| Revised Insert 76 | 2. | Who creates federal courts inferior to the Supreme Court?_____                |
| Revised Insert 61 | 1. | Federal courts, in addition to the supreme court, may be established by_____. |
| Revised Insert 40 | 4. | Tribunals are_____.   |

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances:"

Questions:

- Revised Insert 42    2. List three "freedoms" concerning which Congress may make no laws.
- Revised Insert 29    3. The right of the people to assemble is limited by the requirement that such an assembly must be\_\_\_\_\_.
- Revised Insert 65    4. If persons feel that a government is not treating them fairly, what method of protest is provided by Part 3,\* above, of the United States Constitution?
- 

"The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this constitution; but no religious tests shall ever be required as a qualification to any office or public trust under the United States:"

Questions:

- Revised Insert 100    1. The Constitution of the United States requires that all executive and judicial officers of the several states shall be bound by oath or affirmation to support\_\_\_\_\_.
- 

\*Often the number of the excerpt referred to is given in the question.

\*Revised Insert 57 3. Which of the following cannot legally affect the right of a person to hold public office in the United States?

- place of birth
- religious beliefs
- conviction of crime

Revised Insert 2 4. Persons opposed to swearing to an oath may say, instead: "I solemnly \_\_\_\_\_."

With respect to the administration of the test, the applicant is to open at random a notebook containing the 100 different test forms. The form appearing where the applicant opens the book is to be used by the applicant. The State of Alabama has recommended that 75% be a passing grade.

E. Registration Statistics Since May 5, 1962

Date	Applied		Accepted		Rejected		Percent Rejected	
	W	N	W	N	W	N	W	N
May-Nov. 14 1962	60	16	59	7	1	9	1.7	56.2
Nov. 15, 1962 -Sept. 30, '63	339	237	244	32	95	205	28.03	86.5
Oct. 1 - Nov. 1 1963	326	216	243	11	83	205	24.5	95.13
Nov. 2, 1963 -Feb. 16, 1964	388	137	300	22	88	115	25.52	84.0
Feb. 17 - May 17 1964	61	53	52	6	9	47	14.76	89.0
May 18 - Aug. 17, 1964	53	136	47	15	11	121	19.0	89.0
TOTALS	1,232	795	945	93	287	702	23.30	88.30

\*Also on this insert is the Constitutional section setting forth the requirement that all persons, in order to qualify as President, must have been born in the United States.

STATISTICS BY MONTH

<u>Date</u>		<u>Applied</u>		<u>Accepted</u>		<u>Rejected</u>		<u>Percent Rejected</u>	
		W	N	W	N	W	N	W	N
<u>1962</u>									
May	W	6		6		0		0	
	N		2		1		1		50.0
June	W	3		3		0		0	
	N		2		1		1		50.0
July	W	9		9		0		0	
	N		10		5		5		50.0
Aug.	W	11		11		0		0	
	N		2		0		2		100.0
Sept.	W	9		8		1		11.1	
	N		0		0		0		0
Oct.	W	16		16		0		0	
	N		0		0		0		0
Nov.	W	14		13		1		7.1	
	N		3		2		1		33.3
Dec.	W	5		3		2		40	
	N		2		0		2		100
<u>1963</u>									
Jan.	W	73		59		14		19.2	
	N		3		1		2		66.7
Feb.	W	21		12		9		42.8	
	N		14		7		7		50.0
Mar.	W	9		7		2		22.2	
	N		17		0		17		100.0
April	W	5		2		3		60.0	
	N		17		0		17		100.0
May	W	29		16		13		44.8	
	N		31		1		30		96.8
June	W	45		31		14		31.1	
	N		41		6		35		85.4
July	W	69		52		17		24.6	
	N		38		7		31		81.6

		<u>Applied</u>		<u>Accepted</u>		<u>Rejected</u>		<u>Percent Rejected</u>	
		W	N	W	N	W	N	W	N
<u>1963 (cont.)</u>									
Aug.	W	33		21		12		36.7	
	N		64		7		57		89.0
Sept.	W	42		34		8		19.0	
	N		7		1		6		85.7
Oct.	W	296		219		77		26.0	
	N		215		11		204		94.9
Nov.	W	115		78 <sup>*/</sup>		37		32.2	
	N		55		4		51		92.7
Dec.	W	46		42		4		8.7	
	N		20		3		17		85.0
<u>1964</u>									
Jan. <sup>**/</sup>	W	246		197		49		19.9	
	N		54		15		39		72.2
Feb.	W	22		16		6		27.3	
	N		27		1		26		96.3
Mar.	W	31		26		5		16.1	
	N		12		2		10		83.3
April	W	13		11		2		15.4	
	N		23		3		20		86.9
May	W	10		8		2		20.0	
	N		12		4		8		66.7
June	W	7		7		0		0	
	N		14		2		12		85.7
July	W	22		15		7		31.8	
	N		98		6		92		93.9
Aug.	W	25		23		2		8.0	
	N		12		3		9		75.0

<sup>\*/</sup>Three of the white persons accepted in November and December 1963 appear in the Minute Book, but their forms were not among those photographed by the plaintiff and are not in evidence.

<sup>\*\*/</sup>Eight rejected (six Negro and two white) applications for January 1964 are reflected in the Minute Book but were not among the forms photographed by the plaintiff and are not in evidence. The same is true of one white accepted application.



II. THE DEFENDANTS HAVE VIOLATED THE COURT'S INJUNCTION BY FAILING TO FOLLOW A FAIR AND REASONABLE SYSTEM FOR TESTING THE QUALIFICATIONS OF APPLICANTS FOR REGISTRATION TO VOTE.

A. The Defendants Have Used The Questionnaire As A Test Without Court Approved Grading Standards.

The Court of Appeals, in ordering the issuance of an injunction in this case, stated:<sup>12/</sup>

The Board, if it wishes to continue "grading" application forms as a test, must adopt uniform objective standards. These standards must be such as to furnish a rejected applicant a definite basis upon which to seek proper judicial review of the Board's action, and must furnish reviewing courts something definite to act upon in ascertaining whether he had been arbitrarily or unjustly denied the right of suffrage.

Pursuant to the judgment of the Court of Appeals, this Court, on November 1, 1964, enjoined the Dallas County Board of Registrars from, among other practices:

"Using the questionnaire as an examination or test, unless the Registrars present to the court and propose to use a definite set of standards for the grading of the questionnaires, which said standards shall meet with the approval of the court as complying with state and federal law."

The defendants have disregarded this order. The Order was intended to provide a basis for review of the Board's actions, so that it could be determined whether applicants "had been arbitrarily or unjustly denied the right of suffrage."

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<sup>12/</sup> U. S. v. Atkins, 323 F. 2d 733 (C. A. 5, 1963)

Although the Board had notice of the injunction and was advised by the Alabama Attorney General not to use the questionnaire as an examination or test (Pl. Ex. 9), it continued to grade applications, as evidenced by its marking of questions answered incorrectly (see, e.g., Pl. Ex. B406 and Pl. Ex. D679A)<sup>13/</sup>; it instituted new tests and rejected applicants for failure to answer the tests to its satisfaction (see section IIC, *infra*); the Board's use of the form as a test is further reflected by the standard notice of rejection, which tells the applicant that he "failed to answer correctly one or more pertinent questions." See section IIB of this Brief.

Although the Board used the questionnaire as an examination or test, it did not, until the hearing in this case in October, 1964, take any steps to submit for this

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<sup>13/</sup> While Col. Bibb testified at the November 12, 1964 continuation of the hearing in this case that the marks by questions on the form indicated the need for "further study" of the forms, the rejected forms with marks are evidence of the common result of this further study.

Court's approval proposed standards as required by this Court's Order. <sup>14/</sup>

Not only does the Board have no court-approved standards for grading the questionnaire; it has no ascertainable standards whatsoever.

Colonel Bibb, himself, gave a clear picture of the Board's total lack of standards:

Q. I mean, did you have any form that said, "This is the correct answer"?

A. Oh, no, we didn't write down anything like that.

Q. Now --

A. I might add, because we don't feel that is possible. Answers to questions vary, and in the opinion of the Board there are some questions that can be answered a hundred percent correctly, some can be answered a hundred percent incorrectly, and some can be answered half and half, and some are confusing.

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<sup>14/</sup> Colonel Bibb testified that "we consider everything that comes in front of us, anything that appears before the Board as such is part of a test . . ." (UT82). He also admitted, later in his testimony, that the "standards" introduced in evidence at the October, 1964 hearing were the first standards the Board had ever given this Court (UT 107-08). His testimony shows that as the day of the hearing in this case grew nearer the Board, in a change of heart, decided to send "standards" to the Court:

A. I'll say we are constantly checking to see if we are following the law. We have these meetings and we read and check, and re-check, and check and re-check, trying to follow the law. And then it occurred to us one day we may have slipped there, there may be something wrong, perhaps we should have sent it to Judge Thomas, and we did it. However, that is what we have been doing all the time, and that is the standard by which we have measured, but we did not send it to Judge Thomas until a month or so ago -- whatever time it was. (UT108)

Q. Well, what was the last word you used?

Some are what?

A. Some answers can be confusing, as to value,

Q. Did you have any criteria as to which questions had to be answered correctly or incorrectly -- or some that could be answered half and half?

A. No, but I can explain how we arrive at that, if that is what you are driving at.

Q. That is what I want to know.

A. We take the answers, place them before the entire Board and try our best to understand and give the applicant, of course, the benefit of every doubt we can, and eventually we exercise our judicial opinion, which we feel is authorized by the constitution of the State. We then decide to what degree, if at all, the question is answered -- and that is our judicial opinion as to the value of the answer. (UT83-84)

Colonel Bibb's testimony as to the spelling test similarly reveals a total absence of ascertainable grading standards (UT85, 87); all that one can tell is that if the Board were to dictate a simple word such as "cat" (which it has not done) and if an applicant were to spell it XBPK (which has not occurred) that applicant would have been deemed by the Board to have made an error (UT 88). As to the four questions on the top of Insert Part III, Colonel Bibb was asked how many of the questions the applicant had to answer correctly in order to pass:

A. There you go, again. I don't think you

ask fair questions, and I think I have a right not to sit here and be trapped into tricky questions.

That question can't be answered. I might ask you if you have stopped beating your wife yet, and you wouldn't like that.

THE COURT: Did you have any set number they had to answer or not?

THE WITNESS: No, sir (UT 95).

Again, with reference to the requirement that applicants interpret excerpts from the Constitution, Colonel Bibb stated:

Our guiding principles in seeking judgment as to answers was common sense, interpretation of the law, and after considering anything and everything touching on that particular question -- or anything else -- exercising judicial judgment, as we interpreted that the State of Alabama wanted us to (UT 98).

Colonel Bibb next purported to finally describe the Board's grading standards. He was obviously referring to the "standards" which were prepared just prior to the contempt hearing:

- A. All right. I can say this: Now in general, we shoot for a passing mark of 75 percent. We accept that that is usually accepted by most schools, institutions, et cetera, and we try to be logical, practical, fair and reasonable.

Now, in arriving at that 75 percent, I have to go back and repeat myself, as to the value of the different questions. We may give a person full value for an answer, no value for an answer, and partial value for an answer, and we do that primarily of our judicial discretion, for which we are paid to exercise. (UT 100)

Rivaling the above attempts at self-serving testimony in vagueness and subjectivity are the written standards that the Board entered in the Minute Book in September of 1964. Part of this Minute Book entry reads:

1. 75% is accepted as a passing grade, but, after consideration of the following:
  - (a) Answers vary in value.
  - (b) Answers vary in degree of correctness.
  - (c) Board members are under State laws  
Judicial officers.

Therefore, careful and impartial consideration of all available evidence dictates acceptance or rejections to the judgment of the Board (Pl. Ex. 10).

These "standards" have no meaning at all. They do not say what the 75% is based on, what questions must be answered correctly, what answers are acceptable or what score is to be assigned to each question. The resort by the defendant registrars to calling themselves judicial officers suggests erroneously that judicial officers may act wholly without standards.

The Board uses the questionnaire as a test. Until the hearing in this case it had filed no standards. While the "standards" submitted by the Board have not been approved, the Board openly purports to use them and to have always used them ---- in clear violation of this Court's injunction against using the questionnaire as a test without court-approved standards. And, finally, the "standards" submitted could not be approved since they present nothing definite, ascertainable, or reviewable.

B. Defendants Have Failed to Record and  
Reveal to the Applicants the Exact  
Reasons for Rejection.

This Court ordered the defendants to make and preserve records of the exact reasons for the rejection of any applicant <sup>and</sup> to reveal those reasons to any applicant who inquires <sub>^</sub> as to specific reasons for his rejection. The defendants have not complied with this order.

The defendants themselves do not seem to know, or at least they do not disclose the specific reasons for the rejection of applicants. They have no ascertainable grading standard -- different questions on the application form and questionnaire are given different degrees of weight but the defendants do not know, or will not say, what weight is given to what questions.

It may be for these reasons that the defendants do not make a record of the exact reasons for rejection or notify applicants of the specific reasons.

The only records made which are remotely related to the reasons for rejection are the marks and notations on the rejected application forms and the notices of rejection sent to rejected applicants. Neither source gives any specific reasons. Marking the application form is of no help even to the Court since the registrars do not know, or will not say, how much weight is to be given to those marks.

Col. Bibb testified:

- Q. Can you look at any application form and say the exact reasons for the rejection or the acceptance of the applicant?
- A. By these -- well, my guess would be in some cases, "yes" and in others "no". (UT 108-109)

The notices of rejection are of no help to the applicant or to the Court since they are worded in the most general terms:

"You omitted one or more pertinent questions."

"You failed to answer correctly one or more pertinent questions." 15/

The lack of specificity of these "reasons" is conclusively pointed up by the survival of the same language in the notices of rejection through the widely differing changes in the questions and tests required of applicants. See Section III. G. of this Brief.

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15/ An example of the Board's notice of rejection follows this page.



BOARD OF REGISTRARS  
DALLAS COUNTY  
SELMA, ALABAMA

This is to notify you George C. Williams  
your application for registration has been rejected for the reasons  
below:

Police record \_\_\_\_\_

Bad moral character \_\_\_\_\_

You omitted one or more pertinent questions \_\_\_\_\_

You failed to answer correctly one or more pertinent questions ✓

Other reasons \_\_\_\_\_

This, the 30 day of April 1964

W. B. Adams  
Board Member, Chairman

J. R. Bell  
Board member

W. M. [Signature]  
Board member

These practices are in direct violation of the Court's order. The Court of Appeals, in its opinion in this case, listed as one of the improper practices of the Board:

If confronted with particular application forms which they had rejected, they could not be sure which of the answers formed the basis of their rejection. This is precisely the sort of practice condemned in Davis v. Schnell, supra....The Board should keep a record of exactly which answers or omissions contributed to rejection of any applicant....

That the Board's failure to record specific reasons for rejection is willful is demonstrated also by the Board's practice of refusing to give specific reasons to applicants who make inquiry. Seborn Powell, a Negro, testified that with respect to his application of November 4, 1963, he asked the registrar what questions he missed and why he did not pass. The registrar merely looked over his old application and said "I missed some things of importance, and I said, 'what was this?' and he said some questions I should have answered." (UT 515)

The Board's records themselves admit this practice. On the Board's copy of the rejection notice sent on January 20, 1964, to Rosa J. Brown, a Negro, there is written: "Rosa J. Brown appeared before the board on February 3, 1964 and asked why she failed. She was shown a marked record and told, 'No one thing disqualified you. It was the general summation of available evidence which dictated to the

judgment of the Board that you be rejected as a voter. JRB" (Pl. Ex. B-470) Brown's application form contains only one possible "error" for which she could have been rejected -- she did not say why Alabama had eight representatives in the House of Representatives.

C. The Defendants Have Required Applicants to Answer Questions That Do Not Comply With State and Federal Law

This Court, in its Order of November 1, 1963, enjoined the defendants from:

Asking applicants oral questions, unless the questions comply with state and federal law, and unless the defendant Registrars and their successors in office keep records of the exact questions asked of and answers given by each applicant.

1. The defendants have asked oral questions which do not comply with State and Federal law.

Since the injunction the Board has persisted in testing orally qualifications of applicants, and these tests do not comply with state and federal law.

The Court of Appeals in this case construed both state and federal law as requiring reasonableness in the testing of the qualifications of applicants.<sup>16/</sup> The oral testing by the Board falls outside the limits of reasonableness. Further, federal law, through the Civil Rights Act of 1964, expressly prohibits the use of any literacy test as a qualification for voting in federal elections unless such test is conducted wholly in writing.

Beginning in February 1964 the Board began to use the first Insert Part III tests. Two of the three tests in Insert Part III were administered orally -- applicants were required to read aloud excerpts of the

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<sup>16/</sup> United States v. Atkins, supra

Constitution; applicants were required to write from dictation of the registrars words from the Constitution. Beginning in September 1964 the Board began to use the new Insert Part III tests. One of the three tests of the new Insert requires applicants to write from the dictation of the registrars excerpts of the Constitution.

These forms of testing applicants amount to asking oral questions within the meaning of the injunction and are literacy tests not wholly in writing within the meaning of the Civil Rights Act of 1964. Both the dictation test and the reading test call for responses from the applicant on the basis of which his application may be accepted or denied. In the one case the applicant responds orally to written questions; in the other, he responds in writing to oral statements. Both tests are inherently susceptible to the abuses of arbitrariness, vagueness, and non-reviewability--the very abuses which the injunction and the Civil Rights Act seek to correct.

Nor do these oral tests comply with the requirements of reasonableness of state and federal law. They are unreasonable both in content and in the manner of administration and grading.

In the dictation tests used between February and August of 1964, the Board required applicants to write

five unrelated difficult words. The choice of words to be dictated was utterly arbitrary. They included:<sup>17/</sup>

capitation	tranquility	counterfeiting
emolument	affirmation	consuls
writ	impeachment	misdemeanor
enumeration	expiration	concurrence
incompatible	composition	ratification
inhabitant	apportionment	despotism
posterity	appellate	insurrection

Col. Bibb, one of the registrars who selected these words and who administered the dictation tests, explained the selection of these words:

We have, before the Board meets--we pick out eight relatively simple and reasonable words from the Constitution of the United States. We pick words that we think the average, or normal, person should know, understand, and be familiar with.  
(UT 85)

\* \* \*

Yes, they are in the Constitution. Shouldn't a citizen be familiar with the American Constitution and the words in the American Constitution? If he doesn't know the words in the Constitution, how can he understand the Constitution, and if he can't understand the Constitution, how can he vote correctly?  
(UT 88-89)

The markings by the registrars on the completed application forms of applicants strongly suggest that

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<sup>17/</sup> See Pl. Ex. 4.

the dictation test is primarily a spelling test.<sup>18/</sup>  
Col. Bibb<sup>19/</sup> and Mr. Allen,<sup>20/</sup> however, took the position  
at the hearing that it is a spelling test to some  
extent, but mainly an understanding test. As a spell-  
ing test the unreasonable selection of words for  
dictation and for spelling is self-evident. Col. Bibb  
himself testified when asked how to spell "tranquility"  
(which Col. Bibb spelled first with one "l" and later  
with two; UT 89, 90) that:

I'll say this: I look in the dictionary  
before I write anything, to be sure,  
before I write anything down. I look  
in the dictionary. I don't trust my  
spelling any more than you do."  
(UT 90)

As an understanding test, again its unreasonable  
character is illustrated by Col. Bibb's own testimony.

- Q. Would you say the word 'despotism' is  
a common word?
- A. To me, it is inconceivable for one that  
reads the newspapers and hears govern-  
ment discussed and politics discussed --  
I don't see how any normal person could  
help but know the meaning of words of  
that kind.

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<sup>18/</sup>The Board normally marks spelling errors by printing  
the correct spelling above or below the misspelled  
word. In addition, the registrars sometimes wrote  
comments such as "no attempt to spell" (Pl. Ex. 6-  
B604 A) or "Applicant said he could not spell  
POSTERITY. Said he had never heard the word"  
(Pl. Ex. 6-B570).

<sup>19/</sup>UT 86.

<sup>20/</sup>See Mr. Allen's testimony at the November 12, 1964,  
hearing.

Now, they don't have to have a scientific precision, and we don't split hairs and call for scientific precision, but no, my opinion is that it is inconceivable to me that a normal person wouldn't know something about a word like that.

Q. What would you require him to know about a word like that?

A. Just to indicate he has some idea what it means. (UT 87-88)

\* \* \*

Q. The next word you used was 'emolument'. That is a word that you say anyone should know the meaning of?

A. They ought to know the rough meaning.

Q. The next word was 'tribunals'.

A. You know, Mr. Doar, precise definitions are very difficult for anyone. We don't hold people to scientific, technical definitions of words. If they show a general understanding of a word, we accept it -- that's what we're after.

Q. How do you test their general understanding of a word?

A. Under the laws of the State of Alabama, we are judicial officers. We feel that it is our duty and our judgment to consider very carefully, fairly, and impartially and then to arrive at a conclusion or decision.

That is our interpretation of our duties. (UT 92-93)

Col. Bibb apparently requires applicants for registration to understand words that he himself does not understand:

Q. The first day you started to use these words, you selected these five words -- 'capitation' -- what does that mean?



- A. To make sure, I look that word up in the dictionary.
- Q. You look it up?
- A. I did look it up, to be sure.
- Q. You didn't know that word before you looked it up?
- A. I wasn't sure, and that is one word that could perhaps be a little difficult for people -- out of eight words -- that word, 'capitation' is perhaps a word that not too many people would be familiar with. But that is my opinion.
- Q. Well, I know, but what does it mean?
- A. I knew at the time. Let me count my term and think -- you tell me what it means and I'll tell you whether you are right or not.
- Q. That's not the question. I am asking you whether you can tell me what it means.
- A. I would hesitate to give a refined definition of it right now. (UT 91)

The same considerations hold true in the new test initiated in September whereby applicants are required to write from dictation entire excerpts of the Constitution.

The first Insert in the series of 100 has as its first excerpt:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory benefit for obtaining witnesses in his favor; and to have the assistance of counsel for his defense.

The applicant who receives this excerpt must write from the dictation of the registrar these eighty-one words, many of which are uncommon to all but those who are highly learned:

criminal	district	accusation	benefit
prosecutions	committed	confronted	obtaining
accused	previously	witnesses	assistance
impartial	ascertained	compulsory	counsel

This excerpt contains at least six separate concepts: (1) the right to a trial by jury; (2) venue; (3) notice; (4) confrontation; (5) subpoena; and (6) the right to counsel.

The instructions to the Part III Insert tell the registrars that the applicant is to write from dictation "one or more" of these excerpts. He is not allowed to read the excerpts before he writes them from dictation.

The arbitrariness of this test is not only in the complexity of the subject matter, which can hardly be said to be reasonably related to any legitimate interest the state has in setting qualifications to vote. The arbitrariness is evident also in the lack of any standards for the administration of the tests. The utter unreasonableness of it need not be left to speculation, for Col. Bibb testified:

Q. When you dictate the material that you wish the applicant to write, do you dictate it in sentence or phrases, or in words?

A. Again, we make an extreme effort to be reasonable, and if a person appears to be extremely bright and so forth, you probably would take it a little faster, but the guiding principle is never dictate more than a phrase. We assume any normal person could carry a little phrase in his mind; so the guiding principle is never to dictate more than one phrase, and then pause, and then watch him and let him write and write and write, and when he looks up and says he is through, well, we slowly dictate another phrase -- not a sentence.

Q. Well, just for example, one of the excerpts the applicants are asked to write, or could be asked to write is the right of the 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 or previous condition of servitude.

Now, how much of that would you dictate or would you require the applicant to take in a whole body?

A. If he were a Negro, I would go very much slower.

Q. Would you take it word by word?

A. I would try not to exceed his mental ability to keep up.

Q. Did you take it word by word, Col. Bibb? Do you do that?

A. No.

Q. Two words by two words?

A. No, not necessarily. I tell you our guiding principles are phrases. We will usually take a phrase.

Q. Well, suppose that once the applicant starts to write and he wrote half of the phrase and says 'I lost you', what do you do then?

A. Just exactly -- we have that all the time.

Q. Well, what do you do?

A. Sometimes -- well, we say to them before they start, 'Now listen carefully. Ask me to repeat, take your time, make sure you understand.'

THE COURT: Colonel, if he said 'Will you please repeat it', would you repeat it?

A. I do -- a number -- no, sir, not in the middle, Your Honor; that's what I am trying to say. I will make it shorter. We tell him, 'After you once start writing, I will not repeat it to you. I will not repeat it after you once start writing', and then we feed to him no more than a reasonable man could take.

Q. In accordance with your judgment?

A. In my judgment. We do not repeat after he starts writing. (UT 101-03)

In summary, the defendant registrars have violated this Court's order by requiring applicants to take oral tests which do not comply with state or federal law. They do not comply with the requirements of Title I of the Civil Rights Act of 1964 (42 U.S.C. 1971(a)(2)(C)).<sup>21/</sup> They are wholly unreasonable and therefore are not "within the zone of permissible interpretation of Alabama law," and are inconsistent with the federal law.

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<sup>21/</sup> They also violate additional subsections of the Civil Rights Act for separate reasons set forth in Section 7, infra.

2. The defendants have attempted to evade this Court's injunction by substituting for the oral questions written questions that do not comply with state and federal law.

This Court's injunction was designed to strike at a myriad of evils, of which oral testing was but one. Prime among these was the use of questions that could not be graded objectively. Another evil was the use of unreasonable questions and questions unrelated to the qualifications of the applicant. Almost immediately after the Court of Appeals decided this case the Board instituted an oral test embodying these two evils; upon the issuance of this Court's Order, the test was retained but changed to a written one.

Between October 28 and November 3, 1963, applicants were required to interpret orally the Ninth Amendment to the Constitution (See Pl. Ex. 4-E116). From November 4, 1963 through December 16, 1963, applicants for registration were required to "record in writing your understanding of" the Ninth Amendment to the Constitution.<sup>22/</sup> This kind of interpretation test is precisely what was held unconstitutional in Davis v. Schnell, 81 F. Supp. 872 (S.D. Ala.), aff'd per curiam, 336 U.S. 933 (1949).<sup>23/</sup>

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<sup>22/</sup>

See Pl. Ex. A53-59; B398-469; C552-639; D179-212.

<sup>23/</sup>

The interpretation test also clearly violates state law, since following the decision in Davis v. Schnell, supra, Alabama amended its Constitution to exclude the requirement of understanding and explaining any article of the Constitution. Ala. Const. Amendment XCI.

Just how unreasonable the Board's use of the interpretation test is shown by its treatment of Mary Peeples, a Negro high school graduate employed as a clerk. Her application form contains no errors for which the Board has rejected applicants. Her interpretation of Article IX states:

That the number of the rights shall not be denied or taken from people because they may not appear in the Constitution. (Pl. Ex. 6-B465)

The first three words are underlined and a question mark appears above "number". Apparently Peeples was rejected on the basis of this grading, although her answer reflects an understanding of the Ninth Amendment. At least thirteen other Negroes who applied between November 4 and December 16, 1963 appear to have been rejected solely for their failure to interpret the Ninth Amendment to the Board's satisfaction.<sup>24/</sup>

In January of 1964 the Board began using a new, ambiguous question also of its own design. Applicants were required to answer the question:

How many members of the Federal House of Representatives are currently accredited to the State of Alabama? Why? (See, e.g., Pl. Ex. 6-B484.)

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<sup>24/</sup> Pl. Ex. 6-B400, B401, B407, B410, B416, B417, B421, B445, B446, B448, B467, B468, B474.

Aside from the unnecessarily complex wording of the question (such as the use of the word "accredited"), the "why" part of the question is ambiguous. It is not altogether clear whether it means "why does Alabama have representatives" or "why does Alabama have X number of representatives." Thus, this question is also unreasonably vague and therefore violates federal law as enunciated by Davis v. Schnell, supra. In addition, the question is unrelated to the applicant's qualifications. It concerns the general knowledge of the applicant, not his ability to read and write articles of the Constitution. Such questions are not even authorized by Alabama law. The Court of Appeals, in discussing the oral questions, stated that they must "relate to the qualifications of the applicant." Surely the same reasoning applies to written questions.

When the use of the new form began on February 17, 1964, the Board apparently placed a moratorium on the interpretation requirement until May 18, 1964. Between May 18 and August 17, 1964 (after which a new and more difficult insert came into use) the Board required applicants to write their understanding of one of the excerpts

from the Constitution appearing on Part III of the application form.<sup>25/</sup> Pl. Ex. A81-A95, B574-B679A, C896-C948, D274-D283.

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<sup>25/</sup> Col. Bibb, in the November 12, 1964 hearing, gave an impossible explanation of how the Board chose to use the understanding test. He said that he went back to the order and other legal papers under which he thought the Board was supposed to operate and that he concluded from a study of these papers and of the dictionary that, while the Board could not require applicants to explain parts of the Constitution it could require them to give their understanding of parts of the Constitution. We know from Bibb's October, 1964 testimony that he read carefully the Court of Appeals decision in this case. UT 110. That decision plainly stated that "the words 'understand' and 'explain' did not provide a reasonable standard...". Nowhere in the "legal papers" in this case is a distinction drawn between "explain" and "understand" unless it be in the Davis case, where the Court said:

"Understand" is a word of many meanings and "a verb of very extensive signification." Understanding may be based upon learning or knowledge or upon rumor or hearsay. It may mean to apprehend, or to comprehend, partially or fully. It may deal with meaning, import, intention or motive. It may mean to appreciate the force or value of a thing or proposition. It may mean that a person is informed or that he had merely received notice or heard of something. To understand may mean to imply, infer or assume, or it may contemplate knowing the meaning or the supposed meaning. It may mean to interpret.

"Explain" is also a word of indefinite meaning; it may mean to make plain, manifest or intelligible; to clear of obscurity; to expound, to illustrate by discourse or by notes.



The Board continued to mark as in error interpretations that showed the applicant understood the excerpt. Nettie Williams, a Negro teacher with sixteen years of education whose form otherwise meets the Board's high standards, was required to interpret the second paragraph of Article II, Section 1 of the Constitution. She wrote:

I understand that to mean each state shall appoint its own electors ~~and these electors cannot be persons who have jobs that derive profit from the~~ in the manner as prescribed by legislature of that particular state.

Her interpretation was marked wrong and her application was rejected. Pl. Ex. B679A.

The Board has thus engaged in continuing violations of this Court's injunction by the use of the arbitrary, subjective interpretation tests outlawed in Davis v. Schnell, supra.

The good faith of the defendants is questionable when, after reading and discussing the opinion of the Court of Appeals which explained the reach of the Davis case, they adopted a similar interpretation test which differs only in form (it is in writing) and not in substance.  
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25/Mr. Allen testified at the November 12, 1964 hearing in this case that the interpretation test was given in writing in order to comply with this Court's injunction.

### III.

THE DEFENDANTS HAVE ENGAGED IN A PATTERN AND PRACTICE OF DISCRIMINATION WHICH, SINCE NOVEMBER 4, 1963, HAS VIOLATED THE COURT'S INJUNCTION.

#### A. Statistical Proof

We begin with the registration statistics for Dallas County which disclose that since the trial in May 1962 the defendants have engaged in a pattern and practice of discrimination.<sup>27/</sup>

	<u>RATE OF REJECTION</u> <sup>28/</sup> <u>May 1962 - August 1964</u>			
	<u>Applied</u>	<u>Accepted</u>	<u>Rejected</u>	<u>Percent Rejected</u>
Whites	1232	945	287	23.3
Negroes	795	93	702	88.3

This extreme disparity in the treatment of Negro and white applicants is shown graphically and chronologically on the chart<sup>29/</sup> following this page.

Judge Dawkins, in similar circumstances in a case in Louisiana, concluded as a matter of law:<sup>30/</sup>

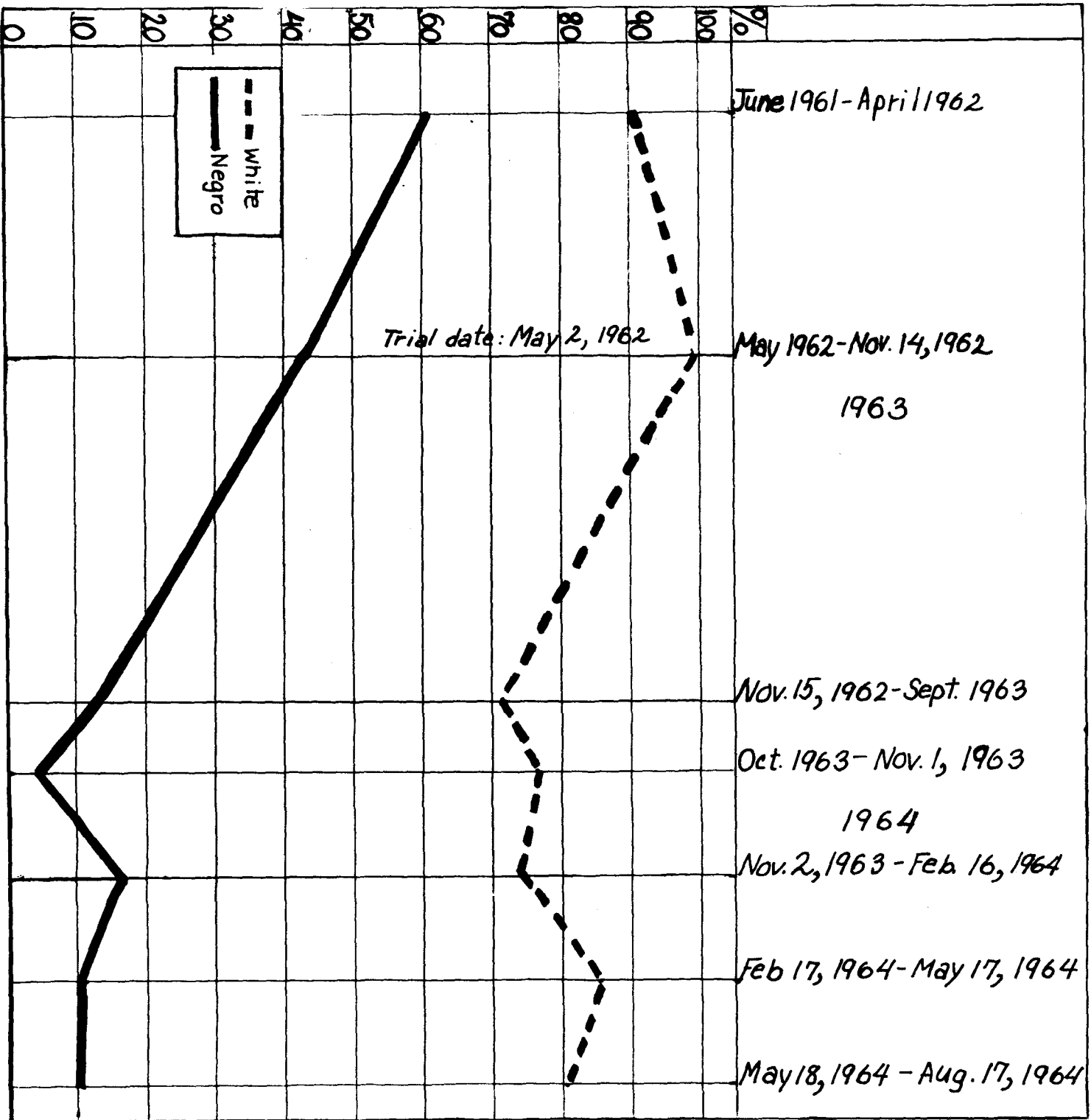
<sup>27/</sup>"In the problem of racial discrimination, statistics often tell much, and Courts listen." Alabama v. United States, 304 F. 2d 583 (C.C.A. 5, 1962).

<sup>28/</sup> For further breakdowns of these figures see Appendix B, Table I, showing the statistics by significant periods and also by month.

<sup>29/</sup> This chart is based upon the statistics reflected in Appendix B, Table I and upon the statistics in United States v. Atkins, 323 F. 2d 733.

<sup>30/</sup> U.S. v. Wilder, 222 F. Supp. 749 (W.D. La. 1963). See also, United States v. Crawford, 229 F. Supp. 898 (W.D. La. 1964).

Percentage of White and Negro Applicants Accepted by Periods  
 June 1961 - August 17, 1964



The fact that the defendant Registrar has over a six-year period rejected 64% of the applications of Negroes and has accepted 98% of the applications of white persons creates the presumption that Negro citizens have been deprived of the right to vote without distinction of race or color; and in the absence of proof by the defendants that the rejected Negroes were not qualified under the standards and requirements applied to the accepted white persons, discrimination must be found.

This principle of law is controlling here. We have here a much stronger statistical base than was before the 31/ Court of Appeals when this case was on appeal.

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31/ That court was unable to say that the finding of the district court of no discrimination was clearly erroneous where it had before it only 480 applications of white persons and 114 of Negroes, and where 62% of the Negro applicants had been accepted. United States v. Atkins, 323 F. 2d. 733.

B. Qualified Negroes have been denied registration.

Proof of discrimination is even more sharply shown by relating the rate of rejection of applications to the education of the applicants. Since the trial of May 1962, the Dallas County Board of Registrars has rejected over 65% of the applications filed by Negro applicants who have more than a high school education. Less than 7% of the applications of white applicants with the same amount of education have been rejected.<sup>32/</sup>

32/ Whether the Board rejected any of these white persons in good faith is doubtful. One of the registrars, Col. Bibb, boasted of having rejected a white person. He testified (UT 692): "As a matter of fact, I remember very distinctly, one of these young men is the son of a very prominent, influential family and, nevertheless, we flunked him." Col. Bibb's own testimony proved this rejection "very distinctly," he was unable to give the Court any reason for rejection after studying at length (45 minutes or more) the rejected application form (UT 695). In truth this form contained no rejectable errors (Pl. Ex. 6 D212).

REJECTION RATE BY RACE, BY EDUCATION<sup>33/</sup>

May 1962 - August 1964

<u>Education</u> <u>Level</u> <sup>34/</sup>	<u>Whites</u>			<u>Negroes</u>		
	<u>Acc.</u>	<u>Rej.</u>	<u>%Rej.</u>	<u>Acc.</u>	<u>Rej.</u>	<u>%Rej.</u>
16 years and over	154	9	5.5	45	40	47.0
Attended College	286	23	7.5	20	86	81.1
High School Graduate	260	54	17.2	15	152	91.0
Attended High School	186	100	35.0	6	162	96.5
6 - 8 years	41	57	58.2	4	142	97.2
1 - 5 years	2	5	71.4	0	21	100.0

At least 290 Negroes who have applied for registration in Dallas County since May 1962, and whose applications show them to be qualified, have not been registered.<sup>35/</sup> Since May 1962 the Board has denied registration to Negro applicants whose occupation require skill in reading and writing.

<sup>33/</sup> Additional tables relating to education appear in Appendix B, Table III. The explanation of categories given there apply also to this table. Appendix B, Table III also contains lists identifying the applications counted in each category.

<sup>34/</sup> 49 applications of white applicants and 102 applications of Negroes do not reflect the education of the applicant. See Appendix B, Table III.

<sup>35/</sup> These applications are listed in Appendix C.

For example the Board has rejected at least 23 applications <sup>36/</sup> of Negro teachers since the trial. They have also rejected at least 69 applications <sup>37/</sup> filed by Negroes with clerical jobs, such as typists and file clerks. In addition, other Negro applicants whose occupations require literacy have been denied registration to vote in Dallas County, including several nurses, <sup>38/</sup> a cashier (Pl. Ex. 6-B470), a book-keeper (Pl. Ex. 6-B119), a substitute mail carrier (Pl. Ex. 6-B160, 633), and three men in military service (Pl. Ex. 6-B188, 288, 569). Many of these people testified at the hearing. The evidence showing the qualifications of these witnesses is summarized in Appendix A. The defendants have rejected 591 applications filed by Negroes with six or more years of education, <sup>39/</sup> all of whom are presumptively literate under 42 U.S.C. §1971(c).

36/ Pl. Ex. 6B: 1D, 1F2, 69, 84, 85, 109, 111, 118, 135, 150, 169, 170, 198, 235, 416, 463, 612, 613, 665, 673A, 674A, 676A, 679A.

37/ Pl. Ex. 6B: 5, 6A, 7, 8, 20, 21, 23, 24, 32, 33, 34, 35, 43, 44, 46, 55, 58, 59, 60, 76, 90, 91, 94, 95, 96, 99, 141, 143, 144, 148, 152, 153, 155, 172, 173, 177, 178, 179, 180, 184, 185, 200, 201, 206, 208, 210, 211, 335, 357, 400, 444, 445, 446, 447, 448, 455, 458, 464, 465, 468, 556, 556A, 561, 562, 562A, 563, 565, 577, 629.

38/ Pl. Ex. 6B: ~~insert~~ 68, 75, 116, 120, 151, 156, 171, 220,

39/ See Appendix B, Table III  
 237, 259, 262, 270, 271,  
 273, 276, 286, 310, 332,  
 360, 430, 467, 550, 605

C. Discrimination in the Selection of Questions

The Court of Appeals, in its opinion in this case, said that "a system for selecting the questions asked of any particular applicant... must be devised; it must be a system which is fair and without discrimination." But the Board's records themselves reveal that it has engaged in two sorts of discrimination in selecting its questions.

First, the Board's selection of words to be written from dictation was discriminatory. On April 20, 1964 the Board listed in the Minute Book eight words, of which any five were to be dictated to each applicant. All twenty-two Negro applicants that day (of whom twenty were rejected) were required to write from dictation the word "tranquility."<sup>40/</sup> Of the three white applicants that day (all of whom were accepted) none was required to write "tranquility."<sup>41/</sup> The same type of practice occurred again in May 1964. May 6 was a Wednesday and not a regularly scheduled registration day. Six white persons and no Negroes applied for registration. May 18 was a regularly scheduled registration day and twelve of the sixteen applicants were Negro. Eleven (nine Negro and two white) of the sixteen applicants

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<sup>40/</sup> Pl.Ex. 6-A79, A80, B500, B555, B557, B558, B561, B562, B562A, B563, B564, B565, B566, B567, B568, B569, B570, B571, B572, B554, B556, B556A

<sup>41/</sup> C887, C888, C889



on May 18 were required to write the words "appellate" and "counterfeiting".<sup>42/</sup> None of the six applicants (all white) on May 6 was required to write these words.<sup>43/</sup>

The Minute Book for May 6, 1964 lists ten words of which five were to be dictated to each applicant. It appears that the words "appellate" and "counterfeiting", which appear at the end of the list, were probably added on May 18 when a dozen Negroes attempted to register. These two words are written in a different handwriting and with a different pen than are the first eight words. The Minute Book entries immediately preceding and following the May entries each list eight words to be dictated. No entry of words during the entire period of oral dictation of the words other than the entry of May 6, 1964 lists more than eight words. Col. Bibb testified that the Board picks eight words from which to choose the five to dictate to each applicant. (UT85). The explanation is clear--the words "appellate" and "counterfeiting" were not among the words made available for selection for the white people who registered on the off day, May 6; these words were tacked<sup>44/</sup> on for the regular registration day when twelve of the sixteen applicants were Negro.

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<sup>42/</sup> Pl. Ex. 6-A82, A83, A84, B574, B575, B576, B577, B578, B80, C896, D273.

<sup>43/</sup> Pl. Ex. 6-C890, C891, C893, C894, C895.

<sup>44/</sup> That the Board was not above tampering with its books in order to hide discrimination is also shown in section F, infra.

The discriminatory selection of spelling words continued in June of 1964. There were eight words listed in the Minute Book entry for June 3, 1964, of which four were to be dictated to each applicant. Of the fourteen Negro applicants that month, eight were required to write from dictation "misdemeanor"<sup>45/</sup> and seven were required to write "disciplining."<sup>46/</sup> Of the seven white applicants in June 1964 only one was required to write "misdemeanor"<sup>47/</sup> and only two were required to write "disciplining."<sup>48/</sup>

The Board had no uniform or standardized system for fairly allocating the spelling words. While the Board could have, for instance, listed only five words for each month and given all five to all applicants for the month, it chose to list more words than were dictated to each applicant. Having thus laid the groundwork for discriminatory selection, it exempted white applicants from spelling the more difficult and less common words while requiring Negroes to spell these words.

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<sup>45/</sup> Pl.Ex. 6-A85, B582, B584, B586, B587, B591, B592, B581.

<sup>46/</sup> Pl.Ex. 6-A85, B581, B583, B584, B586, B587, B592.

<sup>47/</sup> The following forms of white applicants do not contain "misdemeanor": Pl. Ex. 6-C899, C900, C901, C902, C903, C904.

<sup>48/</sup> The following forms of white applicants do not contain "disciplining": Pl.Ex. 6- C899, C900, C901, C903, C904.

The second manner in which the Board discriminatorily selected questions is pointed up by the correlation between the volume of Negro applications on the one hand and the frequency of change and the difficulty of the questions on government on the other hand. Thus, from May 1962 until October of 1963 the Board asked questions of definition and fact. (Def.Ex. 1). But when the Negro community began an intensive voter registration drive in October of 1963 (UT 139), the Board for the first time required applicants to interpret an article of the Constitution. After discontinuing the interpretation test in February of 1964, the Board began again requiring applicants to interpret sections of the Constitution on May 18, 1964-- just as the next Negro registration drive was commencing (UT 140). In the nine months that followed the original trial in this case the Board changed questions only three times (Def. Ex.1); during these nine months only 24 Negroes applied for registration. During the next nine months, when 444 Negroes applied, the Board changed its oral questions on government seven times (Def.Ex. 1).

D. The Board Has Assisted White Applicants But Has Not Assisted Negro Applicants.

In addition to discriminating against Negroes in grading the performance of applicants on the registration tests, the defendants have assisted white applicants and withheld assistance from Negroes. The aid and assistance given to white persons has taken at least three forms. Board members have drawn to the attention of white applicants errors on their forms and permitted them to make corrections; Board members have asked white applicants to supply omitted answers after the applicant has turned in an incomplete form; and Board members have told white applicants the answers to the supplemental questions.

An example of the first type of assistance is provided by the testimony of Mary Claire Smith, a white school teacher who applied for registration on August 19, 1963. She misunderstood the question concerning whether she regards the duties and obligations of citizenship as having priority over the duties and obligations owed to any other secular organization and answered "no". This error was called to her attention by the registrar and she changed her answer from "no" to "yes". She described to the Court how she discovered and corrected her error (UT 119):

- A. Well, he simply repeated the question, and I believe he asked me, "Did you mean to put 'no' to this?", and then I told him I had misunderstood the question, apparently, and so he read the question to me again, and he said, "Did you mean to

put 'no'?" and he said I misunderstood the question, and I said my answer should actually be "yes".

Q. And then you initialed that change?

A. Yes.

On the same application (Pl. Ex. 6-C274) she gave "1963" instead of "1936" as the year of her birth. She also testified as to how this error was called to her attention (UT 117):

A. Mr. Allen looked over my shoulder, and he looked at it and he laughed. So I looked at it again to see what I had done, and I had interchanged the numbers - the 36 and 63.

Q. So then you changed it?

A. Yes, sir.

Q. Did he tell you to put your initial by the change.

A. Yes, sir. He asked me to initial any change.

She answered "Yes" to question 17, "Have you previously applied for and been denied registration as a voter". She explains in answer to 17(a) "Previously registered in State of Miss. in 1958-60". Her entire answer is stricken out and the word "No" inserted followed by her initials. She explained in Court how she came to make this change (UT 118):

A. Well, they simply asked me the question -- I guess natural curiosity -- why I had been denied the registration, so I explained -- and actually, what I had done, I had come to the court house to pay my poll tax, and I asked since I had lived in Selma all my life, but had been out of the State for two years, was it necessary that I observe the two-year residence rule. And they said "yes", so -- I believe -- I don't remember for sure it was Colonel Bibb, but he said actually that was not a denial of the right to register to vote.

Q. So then you changed that answer when you were in the back office with Colonel Bibb?

A. Yes, sir.

Q. And you then put your initial around that change too?

A. Yes, sir.

A similar experience was had by Kathleen Sheehan, a white housewife, who applied for registration at Orrville, Alabama, on October 1, 1963. When she filled out the form she put the names of five men in the space for "the name or names by which you have been known during the last five years". She testified (UT 301):

A. I asked him [the registrar] about those names.

Q. What did he say?

A. Well, he explained it to me, you know; he didn't help me with it.

Q. He just explained those names shouldn't have been in there?

A. No, just my name.

Q. Just your name, and he told you to scratch them out?

A. Yes, and put in my own.

On her application (Pl. Ex. 6-C327), the answer to question 4 has been scratched out and changed. The question is: "Will you support and defend the Constitution of the United States and the Constitution of the State of Alabama: \_\_\_\_\_." She explained the change in court (UT 302):

A. Yes, I first put "no", and then he re-read the question and I put "yes".

- Q. Did the Registrar say anything to you about that?
- A. Well, he said I should initial, so anybody that would see it would know I done it.

During the period from the trial of this case until the inserts came into use in February 1964 the defendants used supplemental tests involving the applicant's knowledge of government or his ability to interpret constitutional provisions. The plaintiff contends (See Section III G and Section IV) that these supplemental tests should not have been used even if they were fairly administered. But the evidence in this case shows that these tests were discriminatorily applied. In addition to the discriminatory grading discussed in Section III the defendants discriminated by providing answers to white applicants while rejecting Negro applicants for their inability to answer these questions correctly.

For example, Bessie Lee Carswell, a white sewing machine operator who went to the sixth grade in school, testified that a registrar told her one of the answers when she applied for registration on January 1, 1964. After filling out her form (Pl. Ex. 5-C302) she went to the back room (UT 293) where she was given the following questions to answer:

How many members of the Federal House of Representatives are currently accredited to the State of Alabama?

Why?

However, in the front room she had been told by one of the registrars the answer to: "How many there was". She was told that there were eight (UT 294). The answers given on the question sheet attached to her form are correct and she became registered February 17, 1964, (Pl. Ex. 6-C202).

Further evidence that white registrants were given aid and assistance on these questions by members of the Board of Registrars is found in the testimony of white witnesses who were unable to read or to demonstrate an understanding of the questions when presented with them in the courtroom.



A study of the original applications in evidence (Pl. Ex. A) demonstrates that these were not isolated instances. For example, in the applications of Murrell Dukes (10/22/63), Charlene Higgs (9/16/63), and Ruth E. Reid (10/18/63), all white applicants who were registered, the answer is changed from "No" to "Yes" in the question regarding the priority of the duties and obligations of citizenship. In each case the change is initialed as it was in the case of Mrs. Smith.

In addition Charlene Higgs changed her answer to question 6 ("If you are self-employed, state the nature of your business: \_\_\_\_\_") from "No to "house wife." Both of the changes on this form were made with a pen different from that originally used to fill out the form.

In her application of March 3, 1963, Lou C. Staggers originally stated (question 13) that she would not bear arms for her country if called upon by it to do so. She then gave reasons, such as her age (she was born July 7, 1896) and that she is a woman. Her original answer is changed from "No" to "Yes" and the reasons are struck out.

The experiences of white applicants, such as Mrs. Smith and Mrs. Sheehan, that is, having errors pointed out for correction by Board members, contrast sharply with that of qualified Negro applicants who were rejected for registration on the basis of technical errors on their application papers. Georgia Henley (See Appendix A-20), a Negro clerk-typist who is a high school graduate, testified that registrar Bibb looked over her application form carefully, but he did not call to her attention any errors or omissions (UT 176,185). Another Negro witness, Sally Smith Jefferson (See Appendix A-24), a registered nurse, also testified that the registrar did not say anything to her about errors on her application form after he had looked it over (UT 423-424)<sup>49/</sup>

Negro witness, Vernice T. Pope (See Appendix A-34), was rejected for registration on July 5, 1963. She is a college graduate who has taught school for 15 years.

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<sup>49/</sup> Other rejected Negro witnesses who testified that they received no assistance from the registrars were Beulah Collins (UT 159), Evelyn Etheridge (UT 190) and Amelia Mitchell (UT 255).

On cross examination, defense counsel brought out that she had failed to complete the supplemental application or to sign the supplemental oath (UT 221-222). He also established that she omitted answering question 8 in the questionnaire (UT 222-223).<sup>50/</sup>

Completion and signing of the supplemental application and oath is not required in Dallas County (Pl. Ex. 6C).

Question 8 is a misleading question<sup>S/</sup> which deals with the applicant's employment. Although Mrs. Pope gave her occupation elsewhere on the form (Pl. Ex. 6B 118), she overlooked answering question 8 (UT 223). She did not refuse to answer it (UT 223), and the registrars did not point out this omission to her (UT 223).

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50/ In so doing, defense counsel also established that she could read and understand the question (UT 222-223).

51/ Question 8 is worded conditionally, as follows: "If you are self-employed, state the nature of your business: \_\_\_\_\_." Mrs. Pope did not put anything in this blank, because she is not self employed (UT 222). The second part of the question, which does not apply to Mrs. Pope and which she also left blank, is numbered "(a)" and is indented which gives the impression that only people who are to answer "8" should go on to "(a)". The question starts on page 1 but the end of question 8(a) and the space for the response are on page 2 of the form.

On the other hand, Frannie Lee Duncan, a white woman, with a sixth grade education, who applied for registration on October 24, 1963 (UT 398) testified that the first registrar handed the application form back to her for completion. According to her testimony (UT 399):

He said "All questions must be answered" and I had not answered all of them.

She could not remember exactly which questions she had not filled out. "It was some of the last ones, but I didn't think they were important". (UT 399). On her application form (Pl. Ex. C 470) there is a circle marking question 21(b): "When did you become a bona fide resident of \_\_\_\_\_ Ward or precinct \_\_\_\_\_" The first blank is completed with the word "Dallas". The second response has been changed from "30th to "23"<sup>52/</sup>.

The other examples of the defendants permitting white applicants to complete their forms after having turned them in with answers omitted can be found in the original forms found in Pl. Ex. A. Murrell Duke's application dated October 22, 1963, has four red circles on the first page (Questions 8, 9, 10, and 10(a)). The circles are Xed out and "OK" is written in blue ink by three of the circles. Since the only thing written in

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<sup>52/</sup> Although there is testimony about a "little check mark" next to question 16(a), a reexamination of the form shows that it was not on the original application and apparently was inadvertently added to the copy placed in evidence.

response to questions 8 and 9 are "yes" and "no" which are correct answers, it appears that the questions were left blank when the circles were made and that they were filled out subsequent to the circles being made.

The application of Alma R. Sanders is another good example. This application was made on April 16, 1962, and was still pending at the time of the trial in May 1962. An examination of this form reveals that it was originally filled out with a thin pointed pen containing light blue ink. The responses to about one-half of the questions have been changed or added to, using a darker ink in a pen with a thicker point. For instance, in question 1, the original pen was used to give the place and date of birth and the second pen was used to supply the applicant's name and present address. Questions 2 and 3 are answered with the first pen, but the response in question 4 -- "throu 11 Grade" -- is made with the second pen. The 5th, 6th, 7th, 9th, 10th, 11th, 13th, 14th, 16th, 17th, and 19th blanks are completed with the original pen. The other pen was used for questions 8, 15, 20, 20(a) and 21, and to change the answers in questions 12, 18(a) and 18(b).

A similar situation is found in examining the application of Sara P. Trippe (10/21/63). In this case the bulk of the form is filled out with the darker ink, but the responses in questions 5, 6(a), 11 and 11(a) are in the lighter ink.

Robert Eugene Radford, white "Mechanic" (Pl. Ex. 6 C555) who "went to the ninth grade" in school (UT 499), applied and was accepted for registration on November 4, 1963. Included in his application form is the sheet of paper upon which he was to write his interpretation of the Ninth Amendment. The Ninth Amendment provides:

"RESERVED RIGHTS OF PEOPLE: The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

The interpretation which is written on the paper is:

The rights in Constitution that are Listed Do Not Prevent other rights.

Although he read the provision in Court with substantial accuracy, Radford's testimony shows that he does not understand the key words in the Ninth Amendment and could not have interpreted this provision without assistance. He testified (UT 501-502):

Q Do you know what enumeration means?

A It goes back like I told you, Captain, you have my -- on the paper. I have wrote it down.

Q I want to know --

A I mean it is on the copies there.

Q Do you know what enumeration means?

A That is all I have to say.

MR. MICELL: He is cross-examining his own witness.

THE COURT: Same ruling.

Q Can you tell me the meaning of disparage?

A It goes back like I told you, Captain, you have what--

THE COURT: You don't know what the word  
"disparage" means?

THE WITNESS: I didn't say that.

THE COURT: Well, do you know or not? If  
you do, what is it, please,  
sir?

THE WITNESS: It is on my --

THE COURT: I will have to ask you to answer  
the question, Mr. Radford.

MR. MIZELL: We respectfully ask that he be  
allowed to refresh his recollect-  
ion as to what answer he gave by  
looking at his written answer.

THE WITNESS: Captain, you have my application  
there, and it's on the application,  
and I have filled out one of them.  
Do I have to answer?

THE COURT: If you would please answer the  
question, we would be through in  
just a few minutes.

THE WITNESS: I couldn't answer it.

Q Do you know what the word "construed" means?

A Just like I told you, I couldn't answer it.

Q You couldn't answer it?

A No, sir.

Q And "enumeration?"

THE COURT: He has answered that.

His wife, Alice Gertrude Radford, who has a tenth grade education, registered the same day. Her interpretation of the Ninth Amendment is:

"The listed in Constitution of certain rights, shall not be interpitated to deny or doubt others retained by the people.

In Court she was asked (UT 506):

Q Do you know the meaning of enumeration, what that means?

A Am I supposed to answer that?

Q Yes.

THE COURT: Do you know what the meaning of the word "enumeration" is?

A Well, I know in my own words -- I mean what I think it is.

THE COURT: Well, will you please tell me, in your own words?

THE WITNESS: Uh-huh. Well, in other words, if the laws are made, they cannot be denied or disparaged by other people.

From this testimony it can be seen that Mrs. Radford does not understand the meaning of the Ninth Amendment. Her testimony and that of her husband show that neither of them knew the meaning of the word "enumeration". Yet, it appears in both of their written interpretations as "listed". The fact that the word "listed"



appears in the interpretation of five out of six white applicants who became registered on November 4, the first day this test was given compels the inference that the registrar provided that definition.

Another white voter who could not have interpreted the Ninth Amendment without assistance was Audrey Annie Hooks. She went to the ninth grade and works at the U & B Sewing Machine Company. When she was asked about some of the words in the Ninth Amendment she testified (UT 576):

Q What does enumeration mean?

A Or the count.

Q The count?

A The count.

Q And "disparage"?

A I don't remember.

Q You don't remember, or you don't know?

A I don't remember.

Q You think you knew then?

A I believe.

Q Did you study up on that section?

A No, I did not.

Q Did you have any idea that section would be asked you when you went in?

A No, I did not.

Although, at the trial she defined "enumeration" to mean count, she too used the word "listed" in the interpretation she wrote at the registrar's office (Pl. Ex. 6C 565). On her application the interpretation is given as:

Listed rights in the constitution does not means you cant have other rights.<sup>53/</sup>

53/ Annie Mae Johnson, another accepted white witness, was unable to read the Ninth Amendment. In her testimony on November 12, 1964, she read "constitution" as "consideration" "disparage" as "disparge" and could not read "enumeration" at all.

On the standard application form (See Appendix D 1) the most difficult question is 20(a) which is:

"Do you regard these duties and obligations [of citizenship] as having priority over the duties and obligations you owe to any other secular organization when they are in conflict."

The fact that white applicants answer the question correctly although they were unable to read it or to understand some of the words which it contains demonstrates that they have received assistance in completing their application forms.

For example, Charlie Frank Horton,<sup>54/</sup> whose education is "8th grade", was unable to read this question (UT 555-556). When given a second opportunity to read it on the cross-examination he testified (UT 557):

A. Do you regard these obligations and -- do you regard these duties and obligations as having priority over the duties and obligations -- and the seek-over--

Q. What is this word?

A. And.

Q. What? This word?

A. Seek-over--ask-over--

Q. Do you know the word?

A. Let's see--

Q. S-e-c-u-l-a-r -- do you know it?

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<sup>54/</sup> This applicant couldn't spell his own name. He was specifically asked whether his middle name was Frank and he answered that it was (UT 552). On his application (Pl. Ex. 6 C386) he spelled it Farnk three times.

A. (No response)

Q. What? You don't know it. Do you know the next word?

A. Obligations where there are in --

Q. Well, C-o-n-f-l-i-c-t. Do you know that word?

A. No.

Q. Did you receive assistance in making out your answers in any way?

A. No, sir.

Another white witness, Earl Weaver Jr., who gave his education and business experience as "5th grade. My Traid Staple Jack" (Pl. Ex. 6 C92) read this question for the Court (UT 572) as follows:

A. Do you regard those duties and -- obligations as having -- as having priety over the duties and obligations to any other circular organization when they are not in conflict.

Q. Do you know the meaning of the word, "secular"?

A. Well, no, I don't think I do.

Q. You don't think you do?

A. No.

Bernice Davis, a white woman with a 9th grade education, (UT 594) became registered to vote on October 17, 1963 (Pl. Ex. 6 C380). She also was unable to read question 20(a) correctly for the Court (UT 596):

Q. Would you take this application form -- do you see this question right here -- will you read it?

A. Do you regard these duties in obligations as having -- over the duties and obligations you owe to any other -- I don't know that word -- organization when they are in conference.

Q. Do you know what that means?

A. No -- yes, sir.

Q. What does it mean?

A. It means, regards other things for --

Q. I see. Thank you, Mrs. Davis.

In addition white witness Luther G. Wallace (UT 341), who took two hours to fill out the application form, Frannie Lee Duncan (UT 401) and Louise Hamm (UT 600) testified that they did not know the meaning of the word "secular."

The practice of giving aid and assistance to white applicants, but not to Negroes explains how it happens that 80 percent of the white applicants, including many with very little education, have managed to pass the tests which have brought about the rejection of so many qualified Negro applicants.

~~80~~  
87

next page is 87

E. Discrimination In Grading Test Performances.

Discriminatory grading of test performances, while a crude and elemental form of discrimination, still continues in Dallas County. Such discrimination is shown in the Board's grading of the written questionnaires and tests and in its grading of the oral questions and oral reading tests. In some cases the Board rejected Negroes for non-existent errors while grading white applicants fairly. In others the Board closed its eyes to Negro qualifications and to white errors.

1. Grading of written answers.

Jean Pritchett, a Negro and J. W. Summerlin, a white person, are high school graduates who attempted to register in 1963. The application of each is filled out in good handwriting and each application contains at least one minor error or omission.<sup>55/</sup> On each application form is a notation indicating the oral question was answered

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<sup>55/</sup> On Pritchett's form her business experience is omitted from question 8(11). Pl. Ex. 6-B8. The omission in question 11 could not have been a basis for rejection since many applications containing such omission were accepted. See Appendix B, Table IV. Errors and omissions on accepted applications. On Summerlin's form his references' post office addresses are omitted from question 15(21), his wife's name is omitted from question 4a(2a), and his date of residence in his precinct is omitted from question 19b(5b). Pl. Ex. 6-C307.

correctly. Pritchett, in question 17(20) said the duties and obligations of citizenship were:

Truth, Honesty, and religion.

Summerlin's answer to the same question 14(20) was:

Truthfulness, Patroitic [sic] &  
Honestly [sic]

Question 17(20) is marked wrong on Pritchett's form, and she was rejected by the Board; it is unmarked on Summerlin's form, and he was accepted by the Board. Copies of the first three pages of each of these two forms follow this page.

Jean Pritchett met with no more success when she applied again in November 1963. Although she filled out a form on which the only error was her omission of business experience in question 21(11),<sup>56/</sup> her application was rejected. Doris Green, a white person, applied two weeks before Pritchett. She also omitted her business experience from question 8(11). Her application was accepted. (Pl. Ex. 6-C559). Pritchett and Green were each required to interpret the Ninth Amendment to the Constitution:

I think this statement means that there are certain rights in the Constitution of the United States that give the people certain rights that shouldn't be denied. [Pritchett; denied.]

They are certain rights in the Constitution to go by, but also dosnot difier<sup>57/</sup>others rights. [Green; accepted.<sup>58/</sup>

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<sup>56/</sup> Pl. Ex. 6-B445. The only other possible error is in question 15b(5b), where the registrar has written and circled the number 36; but Pritchett also wrote in a "36."

<sup>57/</sup> Below this word the registrar has printed the correct word, "DENY."

<sup>58/</sup> For other such comparisons see, e.g., Pl. Ex. 6-B1D and C278, B679A and C924.

NO

**APPLICATION FOR REGISTRATION, QUESTIONNAIRE AND OATH**

I, Juan Ethel Grubbs do hereby apply to the Board of Registrars of DALLAS County, State of Alabama, to register as an elector under the Constitution and laws of the State of Alabama, and do herewith submit answers to the interrogatories propounded to me by said Board.

Juan Ethel Grubbs  
Name of Applicant

**QUESTIONNAIRE**

1. State your name, the date and place of your birth, and your present address: Juan Ethel Grubbs  
Jan 11, 1939 Dallas County, TX 513 Winter St.
2. If you claim that you are a bona fide resident of the State of Alabama, give the date on which you claim to have become such bona fide resident: 1939 (a) When did you become a bona fide resident of DALLAS County: 1939 (b) When did you become a bona fide resident of 36 Ward or precinct Nov 16, 1960
3. If you intend to change your place of residence prior to the next general election, state the facts: \_\_\_\_\_
4. Have you previously applied for and been denied registration as a voter: No (a) If so, give the facts: \_\_\_\_\_
5. Has your name been previously stricken from the list of persons registered: No
6. Are you now or have you ever been a dope addict or an habitual drunkard: No (a) If you are or have been a dope addict or an habitual drunkard, explain as fully as you can: \_\_\_\_\_
7. Have you ever been legally declared insane: No (a) If so, give details: \_\_\_\_\_
8. Give a brief statement of the extent of your education and business experience:  
High School Education.
9. Have you ever been charged with or convicted of a felony or crime or offense involving moral turpitude: No (a) If so, give the facts: \_\_\_\_\_
10. Have you ever served in the Armed Forces of the United States Government: No (a) If so, state when and for approximately how long: \_\_\_\_\_
11. Have you ever been expelled or dishonorably discharged from any school or college or from any branch of the Armed Forces of the United States, or of any other country: No (a) If so, state the facts: \_\_\_\_\_
12. Will you support and defend the Constitution of the United States and the Constitution of the State of Alabama: Yes

13. Are you now or have you ever been affiliated with any group or organization which advocated the overthrow of the United States Government or the government of any State of the United States by unlawful means: No (a) If so, state the facts:

14. Will you bear arms for your country when called upon by it to do so: Yes (a) If you answer no, give reasons:

15. Do you believe in free elections and rule by the majority: Yes

16. Will you give aid and comfort to the enemies of the United States Government or the government of the State of Alabama:

No.

17. Name some of the duties and obligations of citizenship: Truth, honesty and religion.

(a) Do you regard those duties and obligations as having priority over the duties and obligations you owe to any other secular organization when they are in conflict: Yes

18. Give the names and post office addresses of two persons who have present knowledge of your present bona fide residence at the place as stated by you: Rev. C.C. Brown, 625 Jeff. Evans Ave.

C.C. Brown, 1116 First Ave.

19. Are you married or single: Married. (a) If married, give name, residence and place of birth of your husband or wife, as the case may be: James Holmes Mitchell

513 7th Street

Dallas County

20. Give the names of the places, respectively, where you have lived during the last five years; and the name or names by which you have been known during the last five years: James Jay which I have been known as:

Jean Ethel Mann, Jean Ethel Mitchell, Jean Ethel Smith.

21. If you are self-employed, state the nature of your business:

(a) If you have been employed by another during the last five years state the nature of your employment and the name or names of such employer or employers and his or their addresses: Father of St. Bernard

1428 15th road St.



CONSTITUTION: -OK

OATH

STATE OF ALABAMA DALLAS COUNTY

Before me, Joseph R. Bilb, a registrar in and for said county and state, personally appeared James Ethel Gritchell, an applicant for registration as

an elector, who being by me first duly sworn deposes and says: I do solemnly swear (or affirm) that the foregoing answers to the interrogatories are true and correct to the best of my knowledge, information and belief. I do further solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of Alabama; that I do not believe in nor am I affiliated with, nor have I been in the past affiliated with any group or party which advocated or advocates the overthrow of the government of the United States or of the State of Alabama by unlawful means.

Sworn to and subscribed before me in the presence of the Board of Registrars this the 18 day of July, 1963.

Joseph R. Bilb  
Member of the Board of Registrars for DALLAS County

SUPPLEMENTAL APPLICATION FOR REGISTRATION, AND OATH

STATE OF ALABAMA \_\_\_\_\_ COUNTY

Before the Board of Registrars in and for said State and County, personally appeared

\_\_\_\_\_, an applicant for registration who being by me, \_\_\_\_\_  
(Full name of applicant)

\_\_\_\_\_, a member of said Board, first duly sworn as follows: "I do solemnly swear (or affirm) that in the matter of the application of \_\_\_\_\_ for registration as an elector, I will speak the truth, the whole truth, and nothing but the truth, so help me God," testifies as follows:

My name is \_\_\_\_\_, and I have heretofore executed the "Application for Registration, Questionnaire and Oath" submitted to me by the above-named Board of Registrars.

In addition to the information given on said "Application for Registration, Questionnaire and Oath," I depose and state as follows:

1. I was previously registered in the following State and County in the years named \_\_\_\_\_

(If applicant has never been registered in Alabama or any other state, he should so indicate.)

2. I have never been convicted of any offense disqualifying me from registering.

(Board should call applicant's attention to Section 182, Constitution, and Title 17, Section 13, Code of Alabama 1940. If applicant cannot make foregoing statement, facts shall be ascertained and registration refused, unless fully pardoned and right to vote restored.)

3. My present place of employment is \_\_\_\_\_

4. I know of nothing that would disqualify me from being registered at this time.

REMARKS

(Signed) \_\_\_\_\_ (Name of Applicant)

Sworn to and subscribed before me this the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

(Member of County Board of Registrars)

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APPLICATION FOR REGISTRATION, QUESTIONNAIRE AND OATH

I, J. W. Summellein do hereby apply to the Board of Registrars of WALKER County, State of Alabama, to register as an elector under the Constitution and laws of the State of Alabama, and do herewith submit answers to the interrogatories propounded to me by said Board.

J. W. Summellein  
Name of Applicant

QUESTIONNAIRE

1. State your name, the date and place of your birth, and your present address: J. W. Summellein  
Feb. 17, 1923 Patsburg, Ala. 534 Dixie Dr.  
Helena, Ala.
2. Has your name been previously stricken from the list of persons registered: NO
3. Are you now or have you ever been a dope addict or an habitual drunkard: NO (a) If you are or have been a dope addict or an habitual drunkard, explain as fully as you can: \_\_\_\_\_
4. Have you ever been legally declared insane: NO (a) If so, give details: \_\_\_\_\_
5. Give a brief statement of the extent of your education and business experience:  
High School - presently in wholesale phyg.  
Supply Business in Helena, Ala
6. Have you ever been charged with or convicted of a felony or crime or offense involving moral turpitude: NO (a) If so, give the facts: \_\_\_\_\_
7. Have you ever served in the Armed Forces of the United States Government: NO (a) If so, state when and for approximately how long: \_\_\_\_\_
8. Have you ever been expelled or dishonorably discharged from any school or college or from any branch of the Armed Forces of the United States, or of any other country: NO (a) If so, state the facts: \_\_\_\_\_
9. Will you support and defend the Constitution of the United States and the Constitution of the State of Alabama: yes
10. Are you now or have you ever been affiliated with any group or organization which advocated the overthrow of the United States Government or the government of any State of the United States by unlawful means: NO (a) If so, state the facts: \_\_\_\_\_
11. Will you bear arms for your country when called upon by it to do so: yes (a) If you answer no, give reasons: \_\_\_\_\_
12. Do you believe in free elections and rule by the majority: yes

13. Will you give aid and comfort to the enemies of the United States Government or the government of the State of Alabama:

no

14. Name some of the duties and obligations of citizenship: Truthfulness, Patriotism

& Honesty

(a) Do you regard those duties and obligations as having priority over the duties and obligations you owe to any other secular organization when they are in conflict: yes

15. Give the names and post office addresses of two persons who have present knowledge of your present bona fide residence at the place as stated by you: J. B. Reynolds Jim Clark

16. Are you married or single: married (a) If married, give name, residence and place of birth of your husband or wife, as the case may be: Clanton, Ala.

17. Give the names of the places, respectively, where you have lived during the last five years; and the name or names by which you have been known during the last five years: J. W. Summellin -

Jensenala, Fla. and Selma, Ala

18. If you are self-employed, state the nature of your business: Wholesale Pharmacy

(a) If you have been employed by another during the last five years state the nature of your employment and the name or names of such employer or employers and his or their addresses: Adams Supply Co.

Dallas, Ala. Wholesale Pharmacy

19. If you claim that you are a bona fide resident of the State of Alabama, give the date on which you claim to have become such bona fide resident: Dec. 2, 1960 (a) When did you become a bona fide resident of DALLAS

County: Dec. 2, 1960 (b) When did you become a bona fide resident of 36 Ward or precinct

20. If you intend to change your place of residence prior to the next general election, state the facts:

21. Have you previously applied for and been denied registration as a voter: no (a) If so, give the facts:

QUESTIONS - OK

OATH

STATE OF ALABAMA \_\_\_\_\_ COUNTY

Before me, Joseph R. Bill, a registrar in and for said county and state, personally appeared J. W. Summerlin, an applicant for registration as

an elector, who being by me first duly sworn deposes and says: I do solemnly swear (or affirm) that the foregoing answers to the interrogatories are true and correct to the best of my knowledge, information and belief. I do further solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of Alabama; that I do not believe in nor am I affiliated with, nor have I been in the past affiliated with any group or party which advocated or advocates the overthrow of the government of the United States or of the State of Alabama by unlawful means.

Sworn to and subscribed before me in the presence of the Board of Registrars this the 16 day of Sept, 1963.  
Joseph R. Bill  
Member of the Board of Registrars for DALLAS County

SUPPLEMENTAL APPLICATION FOR REGISTRATION, AND OATH

STATE OF ALABAMA Dallas COUNTY

Before the Board of Registrars in and for said State and County, personally appeared

JAMES WILLARD SUMMERLIN, an applicant for registration who being by me,

W. H. H. H., a member of said Board, first duly sworn as follows: "I do solemnly

swear (or affirm) that in the matter of the application of \_\_\_\_\_ for registration as an elector, I will speak the truth, the whole truth, and nothing but the truth, so help me God," testifies as follows:

My name is \_\_\_\_\_, and I have heretofore executed the "Application for Registration, Questionnaire and Oath" submitted to me by the above-named Board of Registrars.

In addition to the information given on said "Application for Registration, Questionnaire and Oath," I depose and state as follows:

1. I was previously registered in the following State and County in the years named Florida Escambia Co. 1947 til present  
(If applicant has never been registered in Alabama or any other state, he should so indicate.)

2. I have never been convicted of any offense disqualifying me from registering.  
(Board should call applicant's attention to Section 182, Constitution, and Title 17, Section 18, Code of Alabama 1940. If applicant cannot make foregoing statement, facts shall be ascertained and registration refused, unless fully pardoned and right to vote restored.)

3. My present place of employment is Summerlin + Adams class.

4. I know of nothing that would disqualify me from being registered at this time.

REMARKS

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Signed) J. W. Summerlin  
(Name of Applicant)

Sworn to and subscribed before me this the 16 day of Sept, 1963.  
W. H. H. H.  
(Member of County Board of Registrars)

Copies of this test and the first two pages of each of these forms follow this page.

2. Grading of oral answers and reading.

The Board has taken advantage of the opportunity to discriminate that is afforded by the lack of a record of the quality of the applicant's oral answers and reading.

Reverend Horace Echols, a Negro college graduate whose application of October 1963 was rejected, had filled out a form with no errors. Pl. Ex. 6-B. On his form a registrar wrote "Questions OK" and then wrote "No" over the "OK", indicating that Echols had, after some vacillation by the registrar, flunked the oral test. Echols testified:

Q. What questions were asked of you?

A. Well, they wanted to know - he wanted to know who made the law of the land of this country.

Q. What did you say?

A. I told him the Congress of the United States made the laws.

Q. Let me ask you whether or not you were asked who represented you in the Federal Government?

A. That is true, yes.

Q. And do you remember your answer to that?

A. I told him our Congressmen represented us.

Q. Did he ask you to name those Congressmen?

A. He did.

Q. What did you say?

A. I told him Mr. Hill and Mr. Roberts. (UT 358-59)

APPLICATION FOR REGISTRATION, QUESTIONNAIRE AND OATH

3:15  
-#36

1. Jean Ethel Britchett do hereby apply to the Board of Registrars of Dallas County, State of Alabama, to register as an elector under the Constitution and laws of the State of Alabama, and do herewith submit answers to the interrogatories propounded to me by said Board.

Jean Ethel Britchett  
Name of Applicant

QUESTIONNAIRE

1. State your name, the date and place of your birth, and your present address: Jean Ethel Britchett  
Jan. 10, 1939 - Dallas County - 513 Winter Ave. Selma  
Ala.

2. Have you ever been charged with or convicted of a felony or crime or offense involving moral turpitude: no (a) If so, give the facts: ✓

3. Have you ever served in the Armed Forces of the United States Government: no (a) If so, state when and for approximately how long: ✓

4. Have you ever been expelled or dishonorably discharged from any school or college or from any branch of the Armed Forces of the United States, or of any other country: no (a) If so, state the facts: ✓

5. Will you support and defend the Constitution of the United States and the Constitution of the State of Alabama: yes

6. Are you now or have you ever been affiliated with any group or organization which advocated the overthrow of the United States Government or the government of any State of the United States by unlawful means: no (a) If so, state the facts: ✓

7. Will you bear arms for your country when called upon by it to do so: yes (a) If you answer no, give reasons: ✓

8. Do you believe in free elections and rule by the majority: yes

9. Will you give aid and comfort to the enemies of the United States Government or the government of the State of Alabama: No, I will not.

10. Name some of the duties and obligations of citizenship: to vote, freedom of re-  
ligion and freedom of the press.

(a) Do you regard those duties and obligations as having priority over the duties and obligations you owe to any other secular organization when they are in conflict: yes

11. Give the names and post office addresses of two persons who have present knowledge of your present bona fide residence at the place as stated by you: Rev. C.C. Brown - 625 Jeff Davis Ave. Selma, Ala.  
Mr. J. D. Critchett - 523 Minter Ave. Selma, Ala.

12. Are you married or single <sup>married</sup> (a) If married, give name, residence and place of birth of your husband or wife, as the case may be: James Holmes Critchett - 513 Minter Ave. - Dallas County.

13. Give the names of the places, respectively, where you have lived during the last five years; and the name or names by which you have been known during the last five years: Names by which I have been known: Jean Ethel Mann - Jean Ethel Smith - Jean Ethel Critchett - Selma, Ala.

14. If you are self-employed, state the nature of your business: ✓

(a) If you have been employed by another during the last five years state the nature of your employment and the name or names of such employer or employers and his or their addresses: Fill Clerk's Father's of St. Edmund - # 1428 Broad St. - Selma, Alabama

15. If you claim that you are a bona fide resident of the State of Alabama, give the date on which you claim to have become such bona fide resident: Jan. 10, 1939 (a) When did you become a bona fide resident of DALLAS County: Jan. 10, 1939 (b) When did you become a bona fide resident of Ward or precinct 36 Nov. 16, 1938 (31)

16. If you intend to change your place of residence prior to the next general election, state the facts: ✓

17. Have you previously applied for and been denied registration as a voter: yes (a) If so, give the facts: you stated on your letter: I failed to answer one or more questions correctly.

18. Has your name been previously stricken from the list of persons registered: No

19. Are you now or have you ever been a dope addict or an habitual drunkard: No (a) If you are or have been a dope addict or an habitual drunkard, explain as fully as you can: ✓

20. Have you ever been legally declared insane: No (a) If so, give details: ✓

21. Give a brief statement of the extent of your education and business experience: I am a high school graduate.

READ: ARTICLE IX

RESERVED RIGHTS OF PEOPLE: The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

- 1: Please read aloud and then record in writing your understanding of the above.

*I think this statement means that there are certain rights in the Constitution of the United States that gives the people certain rights that shouldn't be denied.*

11/18/63  
Date

Jean Ethel Ricketts  
Signature



APPLICATION FOR REGISTRATION, QUESTIONNAIRE AND OATH

I, the Davis J Green do hereby apply to the Board of Registrars of Dallas County, State of Alabama, to register as an elector under the Constitution and laws of the State of Alabama, and do herewith submit answers to the interrogatories propounded to me by said Board.

Davis J Green  
Name of Applicant

QUESTIONNAIRE

1. State your name, the date and place of your birth, and your present address: Davis J Green  
Chilton County 6/4/33, 38 Mechanics St Selma Ala
2. If you claim that you are a bona fide resident of the State of Alabama, give the date on which you claim to have become such bona fide resident: 6/4/33 (a) When did you become a bona fide resident of Dallas 1950 County: 1950 (b) When did you become a bona fide resident of 1950 Ward or precinct 36
3. If you intend to change your place of residence prior to the next general election, state the facts: \_\_\_\_\_
4. Have you previously applied for and been denied registration as a voter: No (a) If so, give the facts: \_\_\_\_\_
5. Has your name been previously stricken from the list of persons registered: No
6. Are you now or have you ever been a dope addict or an habitual drunkard: No (a) If you are or have been a dope addict or an habitual drunkard, explain as fully as you can: \_\_\_\_\_
7. Have you ever been legally declared insane: No (a) If so, give details: \_\_\_\_\_
8. Give a brief statement of the extent of your education and business experience: 11 years of school
9. Have you ever been charged with or convicted of a felony or crime or offense involving moral turpitude: No (a) If so, give the facts: \_\_\_\_\_
10. Have you ever served in the Armed Forces of the United States Government: No (a) If so, state when and for approximately how long: \_\_\_\_\_
11. Have you ever been expelled or dishonorably discharged from any school or college or from any branch of the Armed Forces of the United States, or of any other country: No (a) If so, state the facts: \_\_\_\_\_
12. Will you support and defend the Constitution of the United States and the Constitution of the State of Alabama: Yes

13. Are you now or have you ever been affiliated with any group or organization which advocated the overthrow of the United States Government or the government of any State of the United States by unlawful means: No (a) If so, state the facts:

14. Will you bear arms for your country when called upon by it to do so: yes (a) If you answer no, give reasons:

15. Do you believe in free elections and rule by the majority: yes

16. Will you give aid and comfort to the enemies of the United States Government or the government of the State of Alabama:

No

17. Name some of the duties and obligations of citizenship: up hold the law to the best of your knowledge, stand up for your country

(a) Do you regard those duties and obligations as having priority over the duties and obligations you owe to any other secular organization when they are in conflict: yes

18. Give the names and post office addresses of two persons who have present knowledge of your present bona fide residence at the place as stated by you: Mr. George Heally, 34 Mechanic St. Selma Ala. Lt. L. S. Lyson 5 Pecan Drive Selma Ala.

19. Are you married or ~~single~~: yes (a) If married, give name, residence and place of birth of your husband or wife, as the case may be: Mr. Thomas L. Green, 38 Mechanic St Selma, Ala Chittlow County

20. Give the names of the places, respectively, where you have lived during the last five years; and the name or names by which you have been known during the last five years: Mrs. Doris Green 38 Mechanic St. Selma Ala

21. If you are self-employed, state the nature of your business:

(a) If you have been employed by another during the last five years state the nature of your employment and the name or names of such employer or employers and his or their addresses: Barton's Dept. Store

READ: ARTICLE IX

RESERVED RIGHTS OF PEOPLE: The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

1: Please read aloud and then record in writing your understanding of the above.

*They are certain rights in the constitution to go by, but also do not deny other rights.*

DENY

11-5-63  
Date

[Signature]  
Signature

ek

Reverend Echols' experience was not unique. Numerous other Negroes who testified that they gave correct answers to the oral questions were graded down for having given "incorrect" answers.<sup>59/</sup>

While Negroes were thus unfairly graded on the oral question, the vast majority of white applicants were passing the oral tests and becoming registered voters. We may never know how many white applicants were accepted without being administered any such test, but the testimony of at least one white witness indicates that the oral questions were apparently dispensed with for some white persons (UT 343). The Board accepted white persons who answered oral questions incorrectly. Thus, Dimple Campbell testified at the November 12, 1964 hearing that when she applied in 1963 her answer to the question "What are the duties of Congress?" ~~was~~ (in substance) "To execute the laws and the ratification of the United States."

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<sup>59/</sup> See, e.g., Crandell Brown, UT 481-85, Pl. Ex. B28; Beulah Collins, UT 160-61, Pl. Ex. B 235; Mary Peeples, UT 346, Pl. Ex. B 7; Myrtle Brown, UT 309, Pl. Ex. B 169; Eva Hines, UT 386, Pl. Ex. B 34; Georgia Henley, UT 178, 79, Pl. Ex. B 177; Vernice Pope, UT 220; Jean Pritchett, UT 239, 40, Pl. Ex. B 8; Ophelia Bady, UT 448, Pl. Ex. B 131; Alice Hines Tucker, UT 455, 57, Pl. Ex. B 33 and B 178; Sally Smith Jefferson, UT 426, Pl. Ex. B 276; Theodore Sherrer, UT 464, Pl. Ex. B 39; James Brayboy, UT 533, 34; Pl. Ex. B 106; Charlie Maxey, UT 559, 60, Pl. Ex. B 183.

3. Grading of the form as a whole.

The Board's policy, in the words of this Court, is that "no particular question has any particular value; it's an over-all proposition" (UT 110). Neither the Board's testimony nor its records reveal what factors are considered in determining the "over-all proposition." Gaddis Maddox, a white person, and George Williams, a Negro, both applied in April of 1964. Williams filled out Parts I and II of his form perfectly, scored 100% correct on the Part III test on government, and spelled correctly all five of the words dictated to him by the registrar; six words are circled in the excerpts from the Constitution, suggesting failure to pronounce those words correctly. He was rejected (Pl. Ex. 6-B 569). Maddox, on the other hand, omitted the addresses of references called for in Question 15, missed one of the four government questions in Part III, and missed two of the spelling words; none of the words in the excerpts from the Constitution are circled. Maddox was accepted. Copies of Part I, II, and III of these two forms follow this page.

In truth, the "over-all proposition" standard for grading means a racial standard.

APPLICATION FOR REGISTRATION, QUESTIONNAIRE AND OATHS

PART I

(This is to be filled in by a member of the Board of Registrars or a duly authorized clerk of the board. If applicant is a married woman, she must state given name by which she is known, maiden surname, and married surname, which shall be recorded as her full name.)

Full Name: Stallions George Carroll  
Last First Middle

Date of Birth: 14 February 1943 Sex Male Race Negro

Residence Address: 134-C Derry Washington Carver Home, Selma, Alabama

Mailing Address: 134-C Derry Washington Carver Home, Selma, Alabama

Voting Place: Precinct 26 Ward \_\_\_\_\_ District \_\_\_\_\_

Length of Residence: In State 21 years County 21 years  
 Precinct, ward or district 21 years

Are you a member of the Armed Forces? Yes

Are you the wife of a member of the Armed Forces? No

Are you a college student? No If so, where \_\_\_\_\_

Have you ever been registered to vote in any other state or in any other county in Alabama? No If so, when and in what state and county and, if in Alabama, at what place did you vote in such county? \_\_\_\_\_

Highest grade, 1 to 12, completed 12 Where R. B. Hudson High School - Selma Ala

Years college completed 1 Where Selma University, Selma, Ala

PART II

(To be filled in by the applicant in the presence of the Board of Registrars without assistance.)

I, George C. Stallions, do hereby apply to the Board of Registrars of Dallas County, State of Alabama, to register as an elector under the Constitution and laws of the State of Alabama and do hereby submit my answers to the interrogatories propounded to me by the board.

George C. Stallions  
(Signature of Applicant)

1. Are you a citizen of the United States? Yes
  2. Where were you born? Selma, Dallas County, Alabama
  3. If you are a naturalized citizen, give number appearing on your naturalization papers and date of issuance No
  4. Have you ever been married? No If so, give the name, residence and place of birth of your husband or wife \_\_\_\_\_
- Are you divorced? No

5. List the places you have lived the past five years, giving town or county and state *134-C George Washington Carver Homes, Selma, Alabama*
6. Have you ever been known by any name other than the one appearing on this application? *No* If so, state what name \_\_\_\_\_
7. Are you employed? *Yes* If so, state by whom. (If you are self-employed, state this.) *United States Air Force*
8. Give the address of your present place of employment *Eglin Air Force Base, Florida*
9. If, in the past five years, you have been employed by an employer other than your present employer, give name of all employers and cities and states in which you worked \_\_\_\_\_
10. Has your name ever been stricken for any reason from any list of persons registered to vote? *No* If so, where, when, and why? \_\_\_\_\_
11. Have you previously applied for and been denied registration as a voter? *No* If so, when and where? \_\_\_\_\_
12. Have you ever served in the Armed Forces? *yes* If so, give dates, branch of service, and serial number  
*23 January 62 - United States Air Force AF14761772*
13. Have you ever been dishonorably discharged from military service? *No*
14. Have you ever been declared legally insane? *No* If so, give details \_\_\_\_\_
15. Give names and addresses of two persons who know you and can verify the statements made above by you relative to your residence in this state, county and precinct, ward or district *Mrs. Rosa Mayey 1611-A Texas Ch, Selma, Alabama Mrs. Armatine Williams 134-C B. H. C. Home Selma Ala*
16. Have you ever seen a copy of this registration application form before receiving this copy today? *No* If so, when and where? \_\_\_\_\_
17. Have you ever been convicted of any offense or paid any fine for violation of the law? *No* (Yes or No) If so, give the following information concerning each fine or conviction: charge, in what court tried, fine imposed, sentence, and, if paroled, state when, and if pardoned, state when. (If fine is for traffic violation only, you need write below only the words "traffic violation only.") \_\_\_\_\_

(Remainder of this form is to be filled out only as directed by an individual member of the Board of Registrars.)

**PART III**

Part III of this questionnaire shall consist of one of the forms which are inserted Part III as herein below set out. The insert shall be fastened to the questionnaire. The questions set out on the insert shall be answered according to the instructions therein set out. Each applicant shall demonstrate ability to read and write as required by the Constitution of Alabama, as amended, and no person shall be considered to have completed this application, nor shall the name of any applicant be entered upon the list of registered voters of any county until after such inserted Part III of the questionnaire has been satisfactorily completed and signed by the applicant.

INSERT PART III (3)

(The following questions shall be answered by the applicant without assistance.)

1. In what town or city is the courthouse located in this county? Selma, Alabama
2. How many stars are there in the United States Flag? 50
3. What is the lawmaking body of Alabama called? The Legislature
4. Those who shall be convicted of any crime punishable by imprisonment in the state penitentiary shall be disqualified from voting in Alabama. (True or false) True

INSTRUCTIONS "A"

The applicant will complete the remainder of this questionnaire before a Board member and at his instructions. The Board member shall have the applicant read any one or more of the following excerpts from the U. S. Constitution using a duplicate form of this Insert Part III. The Board member shall keep in his possession the application with its inserted Part III and shall mark thereon the words missed in reading by the applicant.

EXCERPTS FROM THE CONSTITUTION

1. "The congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state."
2. "The ratification of the conventions of nine states, shall be sufficient for the establishment of this constitution between the states so ratifying the same."
3. "The electors shall meet in their respective states, and vote by ballot for president and vice-president, one of whom, at least, shall not be an inhabitant of the same state with themselves."
4. "The person having the greatest number of votes as vice-president, shall be the vice-president, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the senate shall choose the vice-president; a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice."

INSTRUCTIONS "B"

The Board member shall then have the applicant write several words, or more if necessary to make a judicial determination of his ability to write. The writing shall be placed below so that it becomes a part of the application. If the writing is illegible, the Board member shall write in parentheses beneath the writing the words the applicant was asked to write.

HAVE APPLICANT WRITE HERE, DICTATING WORDS FROM THE CONSTITUTION.

Established, qualifications, posterity, Tranquility, Citizens,  
TRANQUILITY

Signature of Applicant: Serge C. Williams



74

13 14

36

APPLICATION FOR REGISTRATION, QUESTIONNAIRE AND OATHS

PART I

(This is to be filled in by a member of the Board of Registrars or a duly authorized clerk of the board. If applicant is a married woman, she must state given name by which she is known, maiden surname, and married surname, which shall be recorded as her full name.)

Full Name: MADDIX GADDIS P  
Last First Middle

Date of Birth: 2-21-1906 Sex M Race white

Residence Address: 1116 Emory Street

Mailing Address:

Voting Place: Precinct Ward 36 District

Length of Residence: In State 58 YEARS County 20 YEARS  
Precinct, ward or district

Are you a member of the Armed Forces? NO

Are you the wife of a member of the Armed Forces?

Are you a college student? NO If so, where

Have you ever been registered to vote in any other state or in any other county in Alabama? YES If so, when and in what state and county and, if in Alabama, at what place did you vote in such county? COOSA COUNTY ALABAMA - BEAT 7

Highest grade, 1 to 12, completed 12 Where MARBURY-ALABAMA

Years college completed NONE Where

PART II

(To be filled in by the applicant in the presence of the Board of Registrars without assistance)

I, B. P. Maddox, do hereby apply to the Board of Registrars of Dallas County, State of Alabama, to register as an elector under the Constitution and laws of the State of Alabama and do hereby submit my answers to the interrogatories propounded to me by the board.

B. P. Maddox  
(Signature of Applicant)

1. Are you a citizen of the United States? Yes

2. Where were you born? Rockford Ala

3. If you are a naturalized citizen, give number appearing on your naturalization papers and date of issuance

4. Have you ever been married? Yes If so, give the name, residence and place of birth of your husband or wife  
Celia P. Maddox - maddox Calandiana Ala  
5-8-1912

Are you divorced? No

5. List the places you have lived the past five years, giving town or county and state. Selma Ala
6. Have you ever been known by any name other than the one appearing on this application? no If so, state what name
7. Are you employed? yes If so, state by whom. (If you are self-employed, state this.)  
Put Auto Parts Co
8. Give the address of your present place of employment 1122 Laurel St Selma Ala
9. If, in the past five years, you have been employed by an employer other than your present employer, give name of all employers and cities and states in which you worked no
10. Has your name ever been stricken for any reason from any list of persons registered to vote? no If so, where, when, and why?
11. Have you previously applied for and been denied registration as a voter? no If so, when and where?
12. Have you ever served in the Armed Forces? no If so, give dates, branch of service, and serial number
13. Have you ever been dishonorably discharged from military service? no
14. Have you ever been declared legally insane? no If so, give details
15. Give names and addresses of two persons who know you and can verify the statements made above by you relative to your residence in this state, county and precinct, ward or district  
T-B. Strong J-N. Thomas
16. Have you ever seen a copy of this registration application form before receiving this copy today? no If so, when and where?
17. Have you ever been convicted of any offense or paid any fine for violation of the law? no (Yes or No) If so, give the following information concerning each fine or conviction: charge, in what court tried, fine imposed, sentence, and, if paroled, state when, and if pardoned, state when. (If fine is for traffic violation only, you need write below only the words "traffic violation only.")

(Remainder of this form is to be filled out only as directed by an individual member of the Board of Registrars.)

#### PART III

Part III of this questionnaire shall consist of one of the forms which are insert Part III as herein below set out. The insert shall be fastened to the questionnaire. The questions set out on the insert shall be answered according to the instructions therein set out. Each applicant shall demonstrate ability to read and write as required by the Constitution of Alabama, as amended, and no person shall be considered to have completed this application, nor shall the name of any applicant be entered upon the list of registered voters of any county until after such inserted Part III of the questionnaire has been satisfactorily completed and signed by the applicant.

INSERT PART III (3)

(The following questions shall be answered by the applicant without assistance.)

- 1. In what town or city is the courthouse located in this county? Selma
- 2. How many stars are there in the United States Flag? 50
- 3. What is the lawmaking body of Alabama called? Senate
- 4. Those who shall be convicted of any crime punishable by imprisonment in the state penitentiary shall be disqualified from voting in Alabama. (True or false) \_\_\_\_\_

INSTRUCTIONS "A"

The applicant will complete the remainder of this questionnaire before a Board member and at his instructions. The Board member shall have the applicant read any one or more of the following excerpts from the U. S. Constitution using a duplicate form of this Insert Part III. The Board member shall keep in his possession the application with its inserted Part III and shall mark thereon the words missed in reading by the applicant.

EXCERPTS FROM THE CONSTITUTION

- 1. "The congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state."
- 2. "The ratification of the conventions of nine states, shall be sufficient for the establishment of this constitution between the states so ratifying the same."
- 3. "The electors shall meet in their respective states, and vote by ballot for president and vice-president, one of whom, at least, shall not be an inhabitant of the same state with themselves."
- 4. "The person having the greatest number of votes as vice-president, shall be the vice-president, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the senate shall choose the vice-president; a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice."

INSTRUCTIONS "B"

The Board member shall then have the applicant write several words, or more if necessary to make a judicial determination of his ability to write. The writing shall be placed below so that it becomes a part of the application. If the writing is illegible, the Board member shall write in parentheses beneath the writing the words the applicant was asked to write.

HAVE APPLICANT WRITE HERE, DICTATING WORDS FROM THE CONSTITUTION.

Citizen - tranquillity - Justice - POSTERITY  
Establish - Constitution  
QUALIFICATION

Signature of Applicant: [Signature]

F. The Board Has Discriminated by Slowing Down  
The Receipt of Applications for Registration

The Board has inhibited any effective Negro voter registration by slowing the receipt of applications for registration. In Dallas County, where less than 5% of the adult Negroes are registered, slowdown practices have the inevitable effect of freezing out of a voting status a high percentage of qualified Negro applicants and discouraging Negroes from attempting to become registered voters.

1. The Board admits no more than four applicants at a time to the front room, and tests but one applicant at a time in the back room.

The front room of the registrar's office is used by applicants to fill out their applications -- except for the Insert Part III and other tests. (UT 32.) The Board admits no more than four applicants at one time to the front room.<sup>60/</sup> The Board then tests applicants one at a time in the back room. (UT 32, 55, 159, 224, 245.) Each of the rooms in the registrar's office is about 12' x 12'. (UT 62.) In the front room are two tables and four chairs for the applicants' use, and one small desk for Registrar Atkins' use. (UT 62.)

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<sup>60/</sup> Amelia Boynton, who frequently serves as a supporting witness, testified that she has never seen more than three applicants in the registrar's office at one time (UT 142.) Registrar Atkins testified that the Board takes between 3-5 applicants at one time; one of these is admitted alone to the back room (UT 54-55.)

Jean E. Pritchett, Negro, testified that when she applied on November 18, 1963 (UT 245):

[T]hey weren't filling all the seats . . . where they could have taken more than one person, maybe two, where they could have taken more than two, they weren't taking all they could have taken.

Pritchett arrived at the courthouse on November 18, at 8:00 A.M. Except for a lunch break from 12:00 P.M. to 1:00 P.M., she stood in line and did not enter the registrar's office until around 3:00 P.M. (UT 244-45.) Only 22 applications were received the whole day. (Pl. Ex. 5 (N81)).

Before the complaint in this case was filed, the Board received as many as 152 applications in one day.<sup>61/</sup> On that day, assuming it was an eight-hour working day, the Board processed an average of 19 applications each hour. Yet the Board was using the same office space then as it now uses.<sup>62/</sup>

2. Negroes have had to stand in line for long hours waiting to apply to register to vote.

Jean E. Pritchett, whose testimony regarding her registration experience on November 18, 1963 is outlined above, also attempted on October 7, 1963, to apply to register. She testified that on that day (UT 242):

A. I stood in line all day; all day long.

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<sup>61/</sup> This day was October 17, 1960. On February 5, 1962, the Board received as many as 83 applications. No Negroes applied for registration on either of these days. See Pl. Ex. A, B-3, B-4, and B-5 in the May 1962 trial of this case.

<sup>62/</sup> See the testimony of Colonel Bibb in the May 1962 trial of this case.

Q. And did you have any experience with respect to the line that day?

\* \* \*

A. Well, I got out of the line to make a phone call, and I was calling my husband so he could bring my shoes, and I was wearing heels that day, and I went and got back into line, and when my husband brought my shoes, I went out to the car to get them, and he drove up right beside the street, and I went out to the car to get my shoes, and I went back and got in line, and Mr. Clark [Dallas County Sheriff] walked over and told me I would have to leave the line, and I said, "...I just went out to get this package," and then he said, "You will have to get out of line," and I said to him then, "I am standing here in my same place," and he said, "You will have to go and get to the end of the line" and I walked on after that.

Pritchett walked to the back of the line. She was not taken that day for application. (UT 242.) The Negro community held a voter registration drive on this day. (UT 139-40.) During the day, FBI Agent Archibald L. Riley saw 200-300 persons in line to apply for registration -- "There were between 30 and 40 . . . white

persons, and the rest were Negroes." (UT 622.) Crandell

Chestnut Brown, Negro, described the day (UT 485):

That was a hot day that I went down a little before nine o'clock, and I stood out in the sun several hours, and I got a chance to get in that afternoon. I stood in line until they came from lunch, and I wasn't allowed to leave the line. The water was unplugged, and there was Sheriff's deputies standing around, and if you left the line you were to go to the end, which was about two or three blocks away.

The Board received a total of 54 applications of Negro and white applicants on October 7. (Pl. Ex. 5 (N45).)

Horace E. Echols, Negro, stood in line on three days before he could apply to register to vote on October 22, 1963. He testified about his registration experiences (UT 357):

A. There was a long line of us, and we finally had to settle for taking numbers to get in.

Q. How many days did you go down before you got a number?

A. I went down three days.

Q. Did you have to wait all day there for three days, or did you stay there all day?

A. No, I didn't stay all day --- Stayed until I got hungry.

Q. About how long did you stay?

A. Oh, until about three.

Mary Sarah May Seales, Negro, also applied in October, 1963. She testified (UT 369):

Q. When you went down to register, did you get in the first time that you went down?

A. No I didn't.

\* \* \*

Q. When you went down, how many days did you go before you actually got in to register?

A. I was down three days, and I got in the fourth day.

Q. While you were down there on the three days . . . did you stay all day?

A. I did, all but one day. I went to lunch one day.

Q. The other days, you stayed at the courthouse the entire day?

A. That's right.

\* \* \*

Q. Standing in a line?

A. In line, yes.



The effect of the Board's slowdown is most striking during this month, October, 1963. On October 15, Sheriff James Clark instituted a numbering system whereby each applicant received a priority number, <sup>63/</sup> and also began the practice of requiring applicants to sign a

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63/ Sheriff Clark explained the numbering system as follows: (UT 145, 150):

- A. When they signed their name, we gave them a number . . . and if they were standing in line at the end of the day, when they came in the next morning we would take the previous number -- they would turn in the previous number, and could get a new number, starting with number 1. If they showed up after a certain time, they had to take the numbers as they came to them, although they had a number for the previous day.

sign-up sheet. The following chart reflects the number of priority numbers passed out October 15 through October 31, 1963, and the number of applicants who, although they received priority numbers on a particular day, remained unprocessed at the end of the day (UT 623-26, 47):

<u>Date</u>	<u>Numbers Received</u>	<u>Unprocessed</u>
10-15-63	60	Not Obtained
10-16-63	60	23
10-17-63	60	13
10-18-63	60	Not Stated
10-21-63	60	12
10-22-63	60	22
10-23-63	59	20
10-24-63	53	30
10-25-63	49	17
10-28-63	45	Not Stated
10-29-63	At least 40	25
10-30-63	42	15
10-31-63	27 (as of 8:30 a.m.)	15

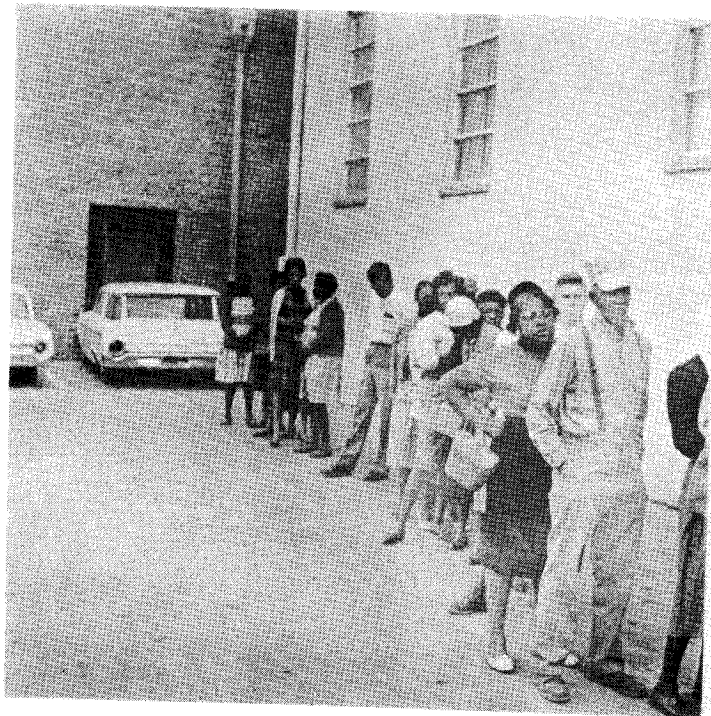
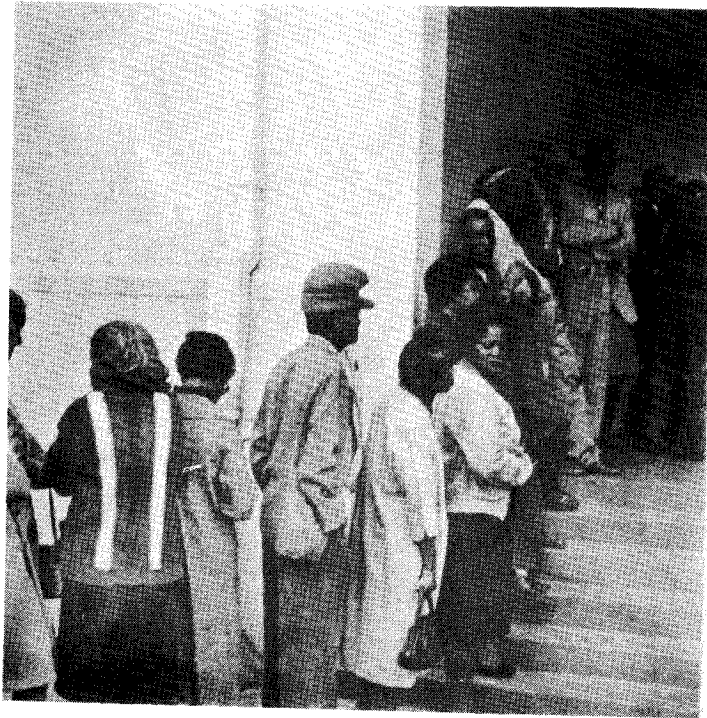
The following photographs represent the registration lines formed on October 15, 16 and 18, 1963. The lines were formed along the side of the Dallas County Courthouse in the alley. (UT 622-23.)



Pl. Ex. 17  
October 15, 1963; No. 15



Pl. Ex. 16  
October 16, 1963; No. 7



Pl. Ex. 16  
October 18, 1963; No's 7 (top) and 8 (bottom)

Approximately 60 numbers were passed out each registration day from October 15 through October 31. On none of those days, however, were 60 applications received. Applicants were invariably made to return the next registration day, exchange their old number for a new one, and begin again to wait their turn to apply to register. The numbering system is a subterfuge-- it is used in the name of order but its effect is to limit and delay Negro voter registration. During the month of October, 1963, the Board took applications nineteen days. They processed an average of only 27 applications a day.

With the commencement in February 1964 of the use of the new form the Board began administering the three new tests embodied in the Part III Insert and began to require applicants to produce supporting witnesses to vouch for them. (UT 70 and Pl. Ex. No. 6 A 75, B 517, C 843, and D 264). Because the tests are longer and more complex and are administered to only one applicant at a time, the delays are compounded.

The results of these new procedures are reflected in the statistics for July 1964 when the Negroes conducted another voter registration drive (UT 677). During the five consecutive special registration days in July no more than 21 persons were able to apply for registration on any one day. (Pl. Ex. 6). The following chart shows the number of persons who signed up and received numbers,

but who, at the day's end, remained not processed by the Board.<sup>64/</sup>

During 1963 and 1964 the Board neither used its existing facilities to capacity, nor expanded its facilities to capacity, nor expanded its facilities to accomodate increased voter registration. The Board continuously limited the number of applications it received by accepting no more than four applicants at a time to fill out their application forms.

By contrast, the Board during its precinct registration in October 1963 allowed at least six white applicants to apply and take the test at a time (UT 297-98). No Negroes applied during precinct registration.

The preferred treatment given white applicants is dramatically illustrated by the December 16, 1963 episode. The registrars registered thirteen white applicants on a non-registration day and pre-dated the application forms and the Minute Book to December 16, 1964.

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<sup>64/</sup> This chart is based on a comparison of the Sheriff's sign-up sheets (Pl. Ex. 12) with the Board's Minute Book (Pl. Ex. 4). The sign-up sheet shows those persons who received priority numbers for application register; the minute book shows those persons who applied to register.

<u>Date</u>	<u>Signed Up</u>	<u>Unprocessed</u>
7-6-64	50	28
7-7-64	21	1
7-8-64	20	5
7-9-64	25	11
7-10-64	30	11

Referring to these applicants, Registrar Bibb testified that he definitely remembered no instance in which the Board went outside of its ordinary hours of business to accept applications from anyone (UT 683), and that he could not specifically recall whether these persons were college students who came in on a special registration day Christmas vacation instead of another time (UT 690-91). Registrar Allen, however, gave quite a different story, and admitted (UT 698):

[I]t was not on December 16 that those applications were received, and why I dated them December 16, I don't know, except just to put it back in December business.....

Allen testified that the Board had selected two special registration days near Thanksgiving in order to accommodate the college students, but since the Federal Bureau of Investigation was at those times photographing voter registration records in the registrars office, he (Allen) told the students to return on another specific special registration day during the Christmas vacation (UT 697-98). The notice which the Board was required by law to publish listed no registration days near Thanksgiving or during Christmas vacation of 1963. (Pl. Ex. 18).<sup>65/</sup>

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<sup>65/</sup> The Board's clerk, Mrs. Horne, testified at the November 12, 1964 hearing that the only notice of Thanksgiving registration days consisted of markings on the calendar kept in the Board's office.

However, the white students who came in during Thanksgiving vacation were each asked to return (UT 699):

Q. What method did you use to notify the students?

A. Just word of mouth. I told them when they came in the days before and after Thanksgiving, "If you will come back on such and such a day."

The Board falsified the application forms by pre-dating, to a publicized registration day, the taking of the oath. The Board falsified the Minute Book by pre-dating the entries of the thirteen white applications to that same registration day. These acts could be for no other reason than to conceal the special registration days held for these thirteen applicants.

The Board, in its treatment of applicants under twenty-one years of age, has slowed down Negro registration while placing no such barriers upon white registration. Alice Hines Tucker and Geraldine Huggins, Negroes, applied for registration in April, 1963 (Pl. Ex. 6 B33 and B35). Both were rejected as being ineligible to register because they were not twenty-one years of age or more. Tucker testified (UT-455) that the registrar "looked at my application ... and he noticed I wasn't 21, and the lady, she said, 'That disqualifies her'".



Her application is marked "not considered - no application - not 21." Huggins application bears the notation, "Not eligible -- not 21." Both of these applicants had less than four months before they became twenty-one years old. Neither of these applicants were accepted for registration; their applications were not held pending their coming of age.

By contrast, however, Tommie Jean Peacock, a white applicant for registration on January 22, 1962, was not yet twenty-one years old when she applied for registration, and yet her application was not rejected. On her application form (Pl. Ex. 6 C1), the following notation appears:

"on checking this application it was found that this person was not 21 and therefore not eligible to take this test. After due consideration it was decided to issue her a certificate on May 7, 1962, as she had become 21 years of age. This course was followed in order to void [sic] favoring anyone by permitting this person to repeat this test."

Peacock was not required to take any further tests in order to become a registered voter. She was automatically placed upon the voter rolls when she became of age.

G. Perpetuating Past Discrimination By Progressively Raising Registration Requirements and Standards.

At the original trial and in the subsequent appeal in this case the United States sought relief from standards and requirements being used by the defendants which are more stringent than the standards and requirements applied to white voters during the period 1954-60 when a pattern of discrimination was found.<sup>66/</sup> This relief was denied. The Court of Appeals felt that the freezing principle "should be invoked only where there is a great need for it," and it was confident that "practices of the Registrars beyond the limitations of the Constitution and Alabama law soon will be eliminated pursuant to this opinion." The Court said:<sup>67/</sup>

The only remaining freezing could come as a result of differences of practices allowable within the zone of permissible interpretation of Alabama law. Where in this zone, or how strictly the Board will interpret Alabama law, is yet to be determined. As long as there is the ability to reapply, it is unlikely that within this zone there would be any freezing effect so great as to amount to an injustice. That determination, however, might better be made when the specific facts and figures are before the Court."

The specific facts and figures are now before the Court. They prove that the defendants in their standards, practices and requirements have gone beyond the zone of permissible

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<sup>66/</sup> This Court found that from 1954 through 1960 white applicants were not required to fill out or understand the application forms, were assisted in answering questions on their forms, and were accepted even when their forms contained numerous errors. The records shows that during this period white applicants were not required to take any tests. Pl. Ex. A in the May 1962 hearing.

<sup>67/</sup> United States v. Atkins, 323 F. 2d 733, 745 (5th Cir.1963)

interpretation of Alabama law and the zone of permissible conduct under Federal law.

We now find a 12% rate of acceptance of Negro applicants compared to a 6% rate which existed prior to the original trial. We find the defendants continuing to engage in discriminatory practices despite the clear injunction of this Court. And, despite the numerous admonitions contained in the opinion of the Court of Appeals, the defendants have continued to tighten progressively the registration standards and requirements in Dallas County. The defendants continued to use the application form as a strict test by which applicants were rejected for technical errors or omissions.<sup>68/</sup> They continued questioning applicants regarding their knowledge of the Constitution and government and their understanding of the meaning of difficult words.<sup>69/</sup> The defendants adopted on their own and wholly outside Alabama law an interpretation test requiring applicants to interpret portions of the Constitution to the satisfaction of the registrars.<sup>70/</sup>

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<sup>68/</sup> See Section IIA of this Brief.

<sup>69/</sup> See Section IIC of this Brief.

<sup>70/</sup> Ibid.

As of January 1964, the application form was being used as a test and applicants were required to answer correctly the question requiring knowledge of how many representatives are accredited to Alabama and why. This too was a creation of the defendants. In February, 1964 the defendants, without consulting the Court and in disregard of the injunction, began to use the Insert Part III which added the following tests in addition to the requirement of completing the application form without assistance. Applicants were given four questions testing their knowledge of government; they were required to read aloud from excerpts of the Constitution; they were required to write from dictation words chosen by the defendants from the Constitution.<sup>71/</sup>

In May, 1964 the defendants, without instruction and without authority of law, added to these tests the requirement that the applicant must give a satisfactory interpretation of excerpts of the Constitution.<sup>72/</sup>

In September, 1964 the defendants began to use the revised Inserts Part III which imposes upon applicants the following tests. Applicants are required to write

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<sup>71/</sup> See Section IIC of this Brief.

<sup>72/</sup> Ibid.

from dictation one or more excerpts of the Constitution; they are required to answer four questions on government; they are required to read excerpts from the Constitution and demonstrate their comprehension of those excerpts by answering four questions based thereon.<sup>73/</sup>

That each new series of standards and requirements is progressively more stringent is obvious from looking at them. It is also obvious from the statistics showing the rate of acceptance of Negro applicants;<sup>74/</sup> and in fact showing the rejection of qualified Negroes.<sup>75/</sup> In short, the point has been reached in Dallas County where there is now a solid freeze.

The Court of Appeals for the Fifth Circuit has now given full effect to the freezing principle. U. S. v. Duke, 332 F 2d 75.9 (5th Cir.1964). The Duke case has been followed and full freezing relief has been granted by districts courts in Alabama. U. S. v. Cartwright, 230 F. Supp.873 (M. D. Ala. 1964); and U. S. v. Hines, Civ. Action No. <sup>63-609</sup> (N. D. Ala. Sept.1964).

The prohibition against freezing practices is also now embodied in the Civil Rights Act of 1964.<sup>76/</sup>

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<sup>73/</sup> See Section IIC and Appendix D-III of this Brief.

<sup>74/</sup> See Appendix B, Table I.

<sup>75/</sup> See Section IIIB of this Brief.

<sup>76/</sup> 42 U.S.C. 1971(a)(2). See Section IV of this Brief. Infra.

IV.

THE DEFENDANTS ARE VIOLATING THE  
CIVIL RIGHTS ACT OF 1964

The Civil Rights Act of 1964 embodies the principle that:<sup>77/</sup>

No person acting under color of law shall--(A) in determining whether any individual is qualified under State law or laws to vote in any Federal election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar political subdivision who have been found by State officials to be qualified to vote.

The Insert Part III tests which have been used since the passage of the Civil Rights Act of 1964 and which are now being used are in direct violation of this section. A majority of the individuals in Dallas County who have been found by the registrars to be qualified to vote were not and have not been subjected to these new practices. Applicants now are required to answer questions testing their knowledge of government, to write from dictation excerpts of the Constitution and answer questions based thereon. These applicants clearly are being subjected to standards, practices, and procedures different from those applied in registering voters in the past.

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<sup>77/</sup>  
42 U.S.C. 1971(a)(2)(A)

At the original trial in this case it was shown that about 59.7 percent of the white persons of voting age and only 1.61 percent of Negroes of voting age were registered to vote in Dallas County. During the period from at least 1952 through 1960 only an application form was used as a basis for determining qualifications of applicants. During that same period, about 47 percent of all applications filed by white persons were filled out in whole or in part by persons other than the applicants. Also during the same period Negro applicants were discriminated against pursuant to a pattern and practice of discrimination.<sup>78/</sup> Thus, the use of the new and more stringent tests in Dallas County violates 42 U.S.C. 1971(a)(2)(A).

The procedure by which the literacy of applicants is now tested by requiring them to write from dictation excerpts from the Constitution also violates 42 U.S.C. 1971(a)(2)(C) which provides that:

No person acting under color of law shall--(C) employ any literacy test as a qualification for voting in any Federal election unless (1) such test is administered to each individual and is conducted wholly in writing, and (2) a certified copy of the test and of the answers given by the individual is furnished to him within twenty-five days of the submission of his request . . .

A dictation test is by its very nature not wholly in writing. The State therefore is absolutely barred

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<sup>78/</sup> United States v. Atkins, 323 F.2d 733, 36 (C.A.5, 1963).

by the Civil Rights Act from employing such tests. The applicant is entitled to a "copy of the test and of the answers given", not merely to a copy of his response to oral dictation.

What the Civil Rights Act avoids is the discretion and non-reviewability inherent in any oral testing of qualifications. There is no way to review the speed with which the dictation is given to each applicant. Speed may very well vary with the person giving the dictation. No review is possible as to the clarity or lack of clarity of the pronunciation and enunciation of the person giving the dictation. These are the evils at which the Civil Rights Act strikes.

The practice of requiring applicants to answer questions testing their knowledge of government and to read excerpts of the Constitution and answer questions based thereon, even though wholly in writing, also violates 42 U.S.C. 1971(a)(2)(B). This subsection provides:

No person acting under color of law shall--(B) deny the right of any individual to vote in any Federal election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election.

The only qualification under Alabama law touching upon the literacy of applicants is the requirement that applicants be able to read and write any article of the Constitution of the United States which may



be submitted to them by the registrars.<sup>79/</sup> The tests embodied in the Part III Inserts are not tests of the ability of applicants to read and write articles of the Constitution.<sup>80/</sup> Failing these tests, therefore, by the making of errors or omissions is not material to any qualification under State law.

The knowledge of government test relates to no substantive qualification whatever under State law. It is not sufficient for the registrars or even for the Supreme Court of Alabama, acting administratively, to say that "persons ought to know something about government in order to vote". Applicants, to be sure, must under Alabama law "embrace the duties and obligations of citizenship". But this qualification is unavailing, since one would have to stretch "embrace" to mean "understand" and to hypothesize that understanding the duties and obligations of citizenship requires a thorough knowledge of government and the Constitution. This connection, if it is one, defies all reason. The Alabama requirements of loyalty and good character<sup>81/</sup> were designed to test, and adequately test, whether applicants "embrace" the duties of citizenship.

As to the test that requires applicants to read excerpts from the Constitution and answer in writing four questions based thereon, it is clear from the

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<sup>79/</sup> Code Constitution of Alabama, Title ~~Article~~ 17, Section 32.

<sup>80/</sup> We except, of course, the reading aloud test from the earlier insert and the writing from dictation in the new insert--these two tests are invalid because they are not wholly in writing as previously discussed.

<sup>81/</sup> Code of Ala., Tit. 17, sec. 32.

questions that much more than the mere ability to read and write an article of the Constitution is called for. Correct answers to the questions obviously require a high degree of understanding and comprehension of the excerpts from the Constitution.

Thus, neither of these tests is related to the substantive qualifications for voting laid down by Alabama law. It follows therefore that errors or omissions made by applicants in taking these tests are not material to any qualification for voting under State law, and that the denial of registration for such errors or omissions is prohibited by 42 U.S.C. 1971(a)(2)(B).

The purpose of Title I of the Civil Rights Act of 1964 is to insure that the registration of voters is conducted on a fair and non-discriminatory basis. This purpose is defeated by the adoption and use of stringent standards not previously applied to those who now exercise the franchise; by the denial of the right to vote to those who fail tests which are not material to the substantive qualifications for voting; and by the use of oral, non-reviewable testing procedures.

## THE RELIEF

This Court should make a finding that the defendants have deprived Negro citizens in Dallas County of the right to register to vote without distinction of race and that these deprivations have been pursuant to a pattern and practice of discrimination. This will lay the groundwork for the subsequent appointment of a voting referee for Dallas County in the event recourse to that procedure becomes necessary.

The Court should set forth in its order the specific standards, procedures and requirements which the defendant registrars will be permitted to use in registering voters and which the voting referee, if appointed, must follow in the testing of the qualifications of applicants. It is apparent from the attitudes and actions of the defendant registrars and from the "standards" which they prepared for this Court that the Board does not intend to apply fair standards and that it would be unavailing to rely on them to submit specific registration standards, procedures, and requirements which could be approved by this Court.

It is the duty of a federal court sitting in equity to grant such relief as will fully effectuate the purposes of the Civil Rights Acts. Up to now those purposes have been defeated in Dallas County. Relief in general terms has not been effective. The defendant registrars need specific guidance from this Court.

The standards, procedures and requirements set down by this Court must be those to which white successful applicants were subjected during the long period of discrimination between 1952 and 1960. It is of no moment that requiring the defendant registrars to follow such standards may require them to ignore or to violate State law; since these standards are required by federal law which is supreme.<sup>82/</sup>

White persons who became registered to vote during the period of discrimination were not tested as to their knowledge of the Constitution, laws, or government, their ability to read and/or write any material from the Constitution, or their comprehension of excerpts from the Constitution. For that reason the use of all such tests in Dallas County must be enjoined. If an applicant has at least a sixth grade education he should be presumed literate. If he has less education and is able to answer responsively and legibly questions on the application form relating to his personal background, he should be judged literate.

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<sup>82/</sup> There is no novelty in the practical solution of requiring a waiver of the law for all when some have been illegally exempted. E.g., Iowa - Des Moines National Bank v. Bennett, 204 U.S. 239; Cf. Nashville C. & St. L. Ry. v. Browning, 310 U.S. 362; United States v. Bausch and Lomb Co., 321 U.S. 707; United States v. Gypsum Co., 340 U.S. 76; Ethyl Gasoline Corp. v. United States, 309 U.S. 436, 461.

No time limit should be placed upon the period during which these standards and requirements should be effective. Although a time limit was invoked in two Mississippi counties,<sup>83/</sup> none was invoked in the Cartwright and Hines cases in Alabama.<sup>84/</sup> The reason for the distinction is clear -- in Mississippi the registrars receive applications during regular hours every weekday; in Alabama and particularly in Dallas County the registrars receive applications as a regular matter two days of each month, although there are some statutory exceptions for special registration days.

The defendant registrars are in contempt of this Court's orders and should be required as a condition to purging themselves of that contempt:

- (1) To register forthwith all Negroes who have applied for registration to vote since May 1962 and whose applications show them to possess the qualifications established by the findings and decree to be entered in this case;<sup>85/</sup>

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<sup>83/</sup> Panola County, (U. S. v. Duke, 332 F.2d 759 (C.A. 5, 1964)) and Tallahatchie County, (U. S. v. Cox, (C. A. No. D.C.-53-61, N.D. Miss, June 24, 1964)).

<sup>84/</sup> Elmore County, (U. S. v. Cartwright, 230 F. Supp. 873 (M.D. Ala., 1964)) and Sumter County (U. S. v. Hines, (C.A. No. 63-609, N.D. Ala., Sept. 17, 1964)).

<sup>85/</sup> A list of these applicants appears in Appendix C to this Brief.

- (2) To agree that hereafter applicants regardless of race will be registered in large groups as expeditiously as possible; that arrangements be made for facilities (such as a courtroom) in which large numbers of applicants can be processed simultaneously. If the defendants cannot obtain other facilities, this Court should order them to use the Federal Courtroom in Selma when this Court is not in session there;
- (3) To submit within thirty days for this Court's approval a plan for the expeditious receipt of applications telling what facilities the Board plans to use, how many applicants it plans to process simultaneously, and including a year's schedule of registration days showing on what extra days the Board will be available to receive applications;<sup>86/</sup>
- (4) To abandon the requirement of a supporting witness.

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86/

The Board has shown that it will make special accommodations, even during Christmas vacation, to receive applications of white persons. A good faith plan will expand this type of accommodation to include all prospective applicants who cannot conveniently apply during regular hours on regular registration days.

(5) To design and submit to the Court for its approval within ten days a notice of rejection which will provide for every possible specific reason for rejection.

It is imperative that the relief include a requirement that the defendant registrars report on a monthly basis to the Court the action it has taken in registering and failing to register white and Negro applicants and the specific reason for each rejection. The Court of Appeals said (at page 738) that the "practices of the Board warrant close inspection". Accordingly, the United States Government must be given the right of inspection and copying the records of the defendant registrars at any and all reasonable times.

As the Court of Appeals stated:

The right to vote is one of the most important and powerful privileges which our democratic form of government has to offer. Although state governments may regulate this right, they are subject to close judicial scrutiny when doing so . . . .

Negro citizens of Dallas County have been and are effectively disfranchised. This Court's relief must finally secure to Negroes that "most important and powerful" privilege.

Respectfully submitted,

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C E R T I F I C A T E

I hereby certify that I served the attached brief for the United States in United States v. Atkins, et al., Civil Action No. 2584, upon the persons and at the addresses listed below by mailing to each a copy of said brief by United States mail, postage prepaid, on this the 20th day of November, 1964.

Gordon Madison, Esq.  
Assistant Attorney General  
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