

TABLE OF CONTENTS

	<u>Page</u>
I. NATURE OF THE ACTION. . . . .	1
II. THE PARTIES . . . . .	3
III. PERTINENT PROVISIONS OF LOUISIANA LAW . . . . .	4
IV. THE REQUIREMENT OF A PERFECT APPLICATION FORM . . . . .	8
A. State Court Interpretations Of The Application Form As A Test .	8
B. The Interpretations Of The State Attorney General . . . . .	10
C. The Registrars' Understanding Of The Application Form Test . . .	14
V. HISTORY AND SETTING OF THE APPLICATION FORM TEST . . . . .	19
A. The Constitutional Convention Of 1898 . . . . .	19
B. Registration Form 1898 To 1921. .	27
C. The 1921 Constitution . . . . .	29
D. The Activation of Voter Qualification Tests . . . . .	31
VI. THE APPLICATION FORM TEST IS DESIGNED TO INDUCE TECHNICAL ERRORS OR OMISSIONS FOR WHICH REGISTRARS MAY ARBITRARILY REJECT APPLICANTS FOR REGISTRATION	38
A. Introduction . . . . .	38
B. The Application Form Is Designed To Mislead The Applicant . . . .	40
C. The Registrars, In Administering The Application Form Test, Possess And Exercise An Arbitrary Power To Accept Or Reject Whom They Choose . . . . .	55
1. The rejection of reasonable answers . . . . .	56

	<u>Page</u>
a. Place of Birth . . . . .	56
b. Date of Birth . . . . .	60
c. The Householder . . . . .	62
d. Age Computation . . . . .	67
e. "Have - Have Not" Statements . . . . .	76
f. My Color is <u>          </u> . . . . .	84
g. The "except" blank . . . . .	85
2. The rejection of inadvertent or reasonable omissions	88
3. Registrars resort to extrinsic sources for inconsistent information to reject errorless applications . . . . .	93
4. Registrars' can and do assist applicants with the application form test . . . . .	99
5. The defendant State Board of Registration insists on strict administration of the application form test and condones its discriminatory use . . . . .	103c
 VII. THE APPLICATION FORM TEST HAS BEEN USED TO DISCRIMINATE AGAINST NEGROES . . . . .	104
• Bienville Parish . . . . .	108
• Caddo Parish . . . . .	112
• East Feliciana Parish . . . . .	116
• Jackson Parish . . . . .	121
• Madison Parish . . . . .	125
• Orleans Parish . . . . .	128
1. The unreasonable and strict standards . . . . .	130
2. Strict grading requirements are applied to Negroes but not white persons . . . . .	133

	<u>Page</u>
(a) The accuracy of residence statement requirement was applied unreasonably to Negro applicants	133
(b) Discriminatory application of the requirement of an accurate statement of residence	136
(c) The discriminatory requirements for the "color" blank . . . .	136
3. White persons are assisted in filling out their application cards . . . . .	138
Ouachita Parish . . . . .	141
The registrar discriminated against Negroes in 1959 for age miscomputations . . . . .	143
The discriminatory use of the application card test . . . . .	145
(a) Experiences of Negroes	145
(b) Experiences of White persons . . . . .	148
Red River Parish . . . . .	153
St. Helena Parish . . . . .	156
Tangipahoa Parish . . . . .	160
Webster Parish . . . . .	165
VIII. THE INEVITABLE EFFECT OF THE APPLICATION FORM TEST IS TO DISCRIMINATE AGAINST NEGROES BECAUSE OF THE INFERIOR EDUCATIONAL OPPORTUNITIES AFFORDED THEM BY THE STATE OF LOUISIANA. . . . .	169
A. The Value Of Public Schools . . . . .	170
B. Expenditure Per Student . . . . .	171
C. Enrollment And Attendance . . . . .	171
D. Length Of School Terms . . . . .	172
E. Salaries Of Teachers . . . . .	172

	<u>Page</u>
F. Pupil-Teacher Ratio . . . . .	173
G. The Education And Qualifications Of Teachers . . . . .	173
H. One-Room Schools Versus Consoli- dation . . . . .	174
I. State Policy Fostered Inferior Education For Negroes . . . . .	175
IX. THE LOUISIANA APPLICATION FORM TEST IS UNCONSTITUTIONAL . . . . .	180
A. Introduction . . . . .	180
B. History And Setting . . . . .	180
C. Discriminatory Use . . . . .	181
D. Threat Of Unconstitutional Effect	183
E. Statute Is Arbitrary And Unrelated To Any Legitimate Interest Of The State . . . . .	186
F. Unconstitutional Effect Of Discri- mination In Education . . . . .	189
G. Effect Of Title I Of The Civil Rights Act Of 1964 . . . . .	191
X. THE RELIEF . . . . .	194

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF LOUISIANA  
BATON ROUGE DIVISION

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. ) CIVIL ACTION NO. 2866  
 )  
 BOARD OF REGISTRATION OF )  
 LOUISIANA, ET AL., ) PLAINTIFF'S TRIAL BRIEF  
 )  
 Defendants. )  
 \_\_\_\_\_ )

I.

NATURE OF THE ACTION

This case is brought by the Attorney General of the United States pursuant to the provisions of 42 U.S.C. 1971. The Complaint seeks a judgment declaring the invalidity and enjoining the enforcement of the Louisiana voter qualification requirement which conditions registration for voting upon the applicant's completion without assistance of the prescribed application form to the satisfaction of the registrar of voters.

Since the suit involves the constitutional validity of provisions of the State Constitution and statutes, it is a proper cause to be heard by a Federal District Court of three judges, 28 U.S.C. 2281. This Court has jurisdiction under 42 U.S.C. 1971(d) and 28 U.S.C. 1345.

The plaintiff's position is that the purpose and effect of the adoption and use of the application form test was and is to discriminate against Negro citizens on account of their race or color. The provisions of Louisiana law which prescribe and require the use of the application form test are attacked as being in violation of 42 U.S.C. 1971, and the Fourteenth and Fifteenth Amendments of the Constitution of the United States.

More specifically, plaintiff contends that the nature and design of the application form test renders it incapable of fair administration and that its use in Louisiana inevitably results in discrimination; that the State has no legitimate interest in requiring as a voter qualification that voters be able to complete without any error, however technical, an intentionally obscure application form; that the application form test is a wholly improper and irrational device when used as a means of testing literacy or any other voter qualification a state is entitled to measure; and, to the extent the performance of applicants in taking this test bears a relationship to educational achievements, the test in-

evitably discriminates against Negroes because of the inferior education afforded them by the State of Louisiana compared to the education afforded white persons.

## II

### THE PARTIES

The plaintiff is the United States of America. Its standing to bring this suit is established by 42 U.S.C. 1971(a) and (c), which provide in substance that whenever there are reasonable grounds to believe that any person has engaged in any act or practice which would deprive others of the right to vote without distinction of race, the Attorney General may institute an action for preventive relief including an injunction or other order.

The defendants are the State Board of Registration of Louisiana, the members and director of the State Board, and the State of Louisiana. These parties are properly made defendants by virtue of their power and duty to enforce, and to regulate the administration of, the voter qualification laws in Louisiana, and by reason of the Board's power to remove at will the registrars of voters.<sup>1/</sup>

The State of Louisiana is made a defendant pursuant to 42 U.S.C. 1971(c).

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<sup>1/</sup> Article VIII, Section 18, La. Constitution, as amended in 1962 (Act 62), and LSA-R.S. 18:191. U.S. v. Louisiana, et al., 225 F. Supp. 353 (E.D. La. 1963).

III

PERTINENT PROVISIONS OF LOUISIANA LAW

The Constitution of Louisiana, Article VIII, Section

1(c), as amended in 1960, provides in pertinent part:

He [a voter] shall be able to read and write in the English language or his mother tongue, and shall demonstrate his ability to do so when he applies for registration by the reading and the writing from dictation given by the registrar, or an interpreter duly sworn, any portion of the preamble to the Constitution of the United States of America, and by making, under oath administered by the registration officer or his deputy, written application for registration, in the English language, or his mother tongue, which application shall contain the essential facts necessary to show that he is entitled to register and vote, and shall be entirely written, dated and signed by him, except that he may date, fill out, and sign the blank application for registration hereinafter provided for, and, in either case, in the presence of the registration officer or his deputy, without assistance or supervision from any person or any memorandum whatever, other than the form of application hereinafter set forth; . . .

Until and unless otherwise provided by law, the application for registration above provided for, shall be a copy of the following form, with the proper names, dates and numbers substituted for the blanks appearing therein, to wit:

I am a citizen of the State of Louisiana. My name is Mr. \_\_\_\_\_, Mrs. \_\_\_\_\_, Miss \_\_\_\_\_, I was born in the State (or country) of \_\_\_\_\_, Parish (or county) of \_\_\_\_\_, on the \_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_. I am now \_\_\_\_\_ years, \_\_\_\_ months and \_\_\_\_\_ days of



age. I have resided in this State since \_\_\_\_\_, in this parish since \_\_\_\_\_, and in Precinct No. \_\_\_\_\_, in Ward No. \_\_\_\_\_, of this parish continuously since \_\_\_\_\_, and I am not disfranchised by any provision of the Constitution of this State.

The application for registration form above provided for shall be filled out by the applicant and sworn and subscribed to before the registrar of voters or deputy registrar of voters.

Title 18, Section 31(3) of the Louisiana Revised Statutes imposes the application form test with the following language:

Unless the applicant qualifies under the provisions of R.S. 18:36, [providing for the registration of illiterates], he shall be able to read and write, and shall demonstrate his ability to do so when he applies for registration by making, under oath administered by the registrar or his deputy, written application thereof in the English language or in his mother tongue. This application shall contain the essential facts necessary to show that he is entitled to register, and shall be entirely written, dated and signed by him, except that he may date, fill out and sign the blank application for registration in the presence of the registrar or his deputy, without assistance or suggestions from any person or any memorandum whatever, other than the form of the application itself.

Section 32 of Title 18 sets out a more elaborate version of the required application form, as follows:

The form to be used for application for registration shall contain the following:

I am a citizen of the United States and of the State of Louisiana. My name is Mr. \_\_\_\_\_, Mrs. \_\_\_\_\_, Miss \_\_\_\_\_ . I was born in the state (or country) of \_\_\_\_\_, Parish (or county) of \_\_\_\_\_, on the \_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_ . I am now \_\_\_\_ years, \_\_\_\_ months, and \_\_\_\_ days of age. I have resided in this state since \_\_\_\_\_, in this parish since \_\_\_\_\_, and in Precinct No. \_\_\_\_\_, in Ward No. \_\_\_\_ of this Parish continuously since \_\_\_\_ . I am not disfranchised by any provisions of the Constitution of this state. The name of the householder at my present address is \_\_\_\_ . My occupation is \_\_\_\_ . My color is \_\_\_\_ . My sex is \_\_\_\_ . I am not now registered as a voter in any other ward or precinct of this state, except \_\_\_\_ . My last registration was in Ward \_\_\_\_\_, Precinct \_\_\_\_\_, Parish of \_\_\_\_ . I am now affiliated with the \_\_\_\_\_ Party.

In each of the following items the applicant shall mark through the word 'have' or the words 'have not' so that each item will show a true statement about the applicant.

I have (have not) been convicted of a felony without receiving a full pardon and restoration of franchise.

I have (have not) been convicted of more than one misdemeanor and sentenced to a term of ninety (90) days or more in jail for each such conviction other than traffic and/or game law violations, within five years before the date of making this application for registration as an elector.

I have (have not) been convicted of any misdemeanor and sentenced to a term of six (6) months or more in jail, other than traffic and/or game law violations, within one year before the date of making this application for registration as an elector.

I have (have not) lived with another in 'common law' marriage within five years before the date of making this application for registration for an elector.

I have (have not) given birth to an illegitimate child within five years before the date of making this application for registration as an elector (the provisions hereof shall not apply to the birth of an illegitimate child conceived as a consequence of rape or forced carnal knowledge.

I have (have not) acknowledged myself to be the father of an illegitimate child within five years before the date of making this application for registration as an elector.

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Signature

Sworn to and subscribed before me:

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(Deputy) Registrar

The Board of Registration may change or rearrange the order of the questions and registrars may alter said rearranged applications so long as they contain the information herein provided for.

The application form shall also be provided with an additional space in a form convenient for the notation thereon of:

- (1) Changes of address of the applicant within the Parish.
- (2) Changes of name of the applicant, and
- (3) Remarks. As amended Acts 1960, No. 305, §1; Acts 1962, No. 63, §1.

#### IV

##### THE REQUIREMENT OF A PERFECT APPLICATION FORM

Under the Louisiana laws setting forth the application form test [Art. VIII, Sec. 1(c) and LSA-R.S. 18:31], performance on the application form is taken as a measure of the applicant's ability to read and write. The judicial and administrative interpretation of this provision in Louisiana is that an applicant for registration must complete a perfect application form--that is, he must not make any "mistake," "error," or "omission" which renders the application card something less than precisely correct in the view of the individual registrar. State courts have established that incorrectly filled out cards must be rejected. The State Attorney General, who is the officially designated legal adviser for all registrars (LSA-R.S. 18:12.1), takes the view that there is no distinction between "minor" mistakes and "major" mistakes on the application form; either variety requires rejection of the application. And the parish registrars of voters believe that state law requires them to deny registration to applicants who make "errors" on their applications, however technical and inconsequential those "errors" may be.

##### A. State Court Interpretations of the Application Form as a Test

The earliest judicial interpretation of the application form requirement came in Bishop v. Sherburne 122 La. 429, 47 So. 759 (1908). A rejected applicant sought

via mandamus to be placed upon the voter rolls in Iber-ville Parish. He was rejected after three attempts to complete the application form, having on each attempt omitted one or more blanks. The Supreme Court of Louisiana held these omissions to be fatal:

The Constitutional test was not intended as an idle form, but was the result of the most serious and protracted deliberation in the convention by which the Constitution was framed, and was intended by that body to be literally complied with, as is evident from the language and particular requirements of the article in which it is incorporated. The applicant shall demonstrate his ability to read and write, not by reading or writing anything that he may choose, but by reading and filling the blanks in a form prescribed, ipsisssimus verbis, by the Constitution itself, the doing of which requires, not only the ability to read and write, but likewise intelligence sufficient to enable the applicant to compute, at least, the number of years, months and days of his life. (122 La. at 432.)

On rehearing in Bishop, the Court added that the applicant's failure to date and sign the application by itself justified rejection. In a companion case to Bishop, Lorio v. Sherburne, 122 La. 434, 47 So. 760 (1908), the court held to be properly rejected an application form which failed to give the number of days of age and was undated, adding: "The registrar is absolutely without discretion in the matter, and, relator not having complied with the test prescribed by law, was without authority to register him." 122 La. at 435. Three

years later in Smith v. Dardenne, 129 La. 835, 56 So. 905 (1911) the Court followed the Bishop and Lorio cases and held that a registrant must be removed from the rolls upon a showing that the registrar computed the months and days of age for him, although the applicant completed the form in his own writing. The Court added, "This may be a hard law. With that we have naught to do." 129 La. at 838.

More recently, a state district court, in Thomas v. McElveen, (Civil Docket No. 18, 751, 22nd Judicial District; opinion dated April 6, 1959) applied the "hard law" in ruling that challenges to the registration of 156 Negroes, based on errors on their application forms, had to be acted upon by the registrar.<sup>2/</sup> The court rebuked the registrar for balking at removing the challenged voters from the rolls and for failing to appreciate that "this blank was devised as a test of the applicant's intelligence and literacy."

#### B. The Interpretations of the State Attorney General

The opinions of the Louisiana Attorney General have interpreted the law to require rejection or removal from the rolls, irrespective of the applicant's ability to read and write, if the form is not filled out correctly.

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<sup>2/</sup> It is not apparent from the opinion that the challenged voters were all Negroes. That fact, however, provided the basis for relief in the Government's suit to gain the reinstatement of the purged voters. U.S. v. McElveen, 180 F. Supp. 10 (E.D. La. 1960) affirmed sub nom. U.S. v. Thomas, 362 U.S. 58 (1960).

Persons who registered on forms which did not contain blanks for the occupation, sex, color, and the name of the householder were held to be improperly registered, although none of the omitted information could otherwise form the basis for disqualification under Louisiana law. Op. Atty. Gen. 1920-22, p. 619. An applicant who put the name of his employer in the party affiliation blank was not "properly registered," but was held to be entitled to return and correct his "error." Op. Atty. Gen. 1926-28 p. 108. In a later ruling involving party affiliation, the Attorney General held that while a registrar could not reject a person who improperly states his party affiliation, neither can the registrar return the application card to the applicant and point out the error. That would be giving assistance to the applicant in violation of the law. Op. Atty. Gen. 1944-46, p. 202.

The present Attorney General, who is the officially designated legal adviser to all registrars (LSA-R.S. 18:12.1), made it clear in his brief to the Supreme Court of the United States in the Washington Parish case, U.S. v. McElveen, 180 F. Supp. 10 (E.D. La. 1960), affirmed sub nom. U.S. v. Thomas, 362 U.S. 58 (1960), that in his view Louisiana law requires the completion of the application form absolutely without error. In that case the United States challenged as illegal the removal of approximately 1300 Negro voters from the voting rolls in Wash-

ington Parish. The removals were based on such deficiencies in the application forms of the challenged voters as misspellings, deviations from printed instructions, failure to compute age with exact precision, and illegible handwriting. U.S. v. McElveen, 180 F. Supp. at 12-13. The Attorney General of Louisiana justified the removals on the ground that the registrants had failed to meet the registration requirements of state law. His brief states:

It can, therefore, be said that the ability of any individual to complete the application for registration complete and without error or his ability to show that he is unable to read or write are the final steps and the very necessary steps to becoming what the State of Louisiana calls a 'qualified registered voter.' Louisiana Revised Statutes, Title 18, Section 31, 32; Louisiana State Constitution, 1921, Article 8, Section 1(b) and (c)." Appellant's Brief, U.S. v. Thomas 362 U.S. 58 (1960), pp. 28-29.

\* \* \* \*

The application for registration is not a document which is to be taken lightly as to its significance in Louisiana law. Id. at 30.

\* \* \* \*

However [the Government's] conclusion that the mistakes made were minor, implies that the literacy test set up by the Constitution of this state for every individual is of no avail. This argument by the Government is of no moment under the present jurisprudence. Id. at 36.



Had there been NO MISTAKES on the application for registration, it could easily be argued that these people were disqualified simply because of the fact that they were of a particular color. However, these are not the facts in this case (readily admitted by the Government) when the Government admits in their allegation that they (sic) were in truth and in fact defects but that these defects were of a minor nature. The Federal Court has set itself up to determine that if you forget to cross a 't' it is a minor mistake; but if you let the 't' out it may be a major mistake.  
Id. at 41-42 (emphasis in the original).

On the face of the evidence introduced by the Government the petitioners concerned and people in a like situation did in truth, and in fact, and in law, have a mistake upon their application for registration.  
Id. at 44.

But they take the position that the defects or deficiencies are minor. HOWEVER, THAT IS NOT THE QUESTION BEFORE THIS COURT. This Court cannot tell the State of Louisiana, in qualification as to voters, what is or what is not a minor mistake. The important thing here is that the Louisiana law does in truth and in fact give a right to call to the attention of the proper authorities the fact that a person is illegally registered upon the rolls.  
Id. at 46. (Emphasis in the original).

It is plain from the above-quoted statements that the registrars' legal adviser, as one most concerned with the meaning and enforcement of the application form test, believes it to require an absolutely perfect performance before an applicant may be legally registered.<sup>3/</sup>

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<sup>3/</sup> A three-judge federal court, faced with the question of the constitutionality of Louisiana's oral interpretation test, refused to decide the question because the persons who raised it had made errors in filling out their application forms at the time of their rejections, although there apparently was no doubt as to their literacy. Williams v. McCulley, 128 F. Supp. 897 (W.D. La. 1955; Judges Holmes, Dawkins, and Hunter).

C. The Registrars' Understanding of the Application Form Test

The thousands of rejected application forms in evidence in this case are the best evidence of what the registrars understand State law to require. Pl. Ex. B. But in addition, several registrars have testified that specific highly technical rejections were required by State law.

Mildred Bankston, Deputy Registrar of East Baton Rouge Parish, testified that when an applicant leaves the householder blank unanswered on the application card,<sup>4/</sup> State law requires that the applicant be rejected, because "all the blanks" must be filled in and filled in "properly." Dep. of Bankston, A-33 at 12. At a meeting with his deputies on July 5, 1962, the registrar of Orleans Parish, who is also a lawyer, announced this rule:

Where are we going to draw the line to determine if one application is correct when it has one, two, or how many errors? If you want to be in strict compliance with the law, one error disqualifies any applicant. This is as it should be. (Dep. of Gallinghouse, Pl. Ex. A-71, D-4, attached thereto.)

The registrar of Tangipahoa Parish, who rejected a Negro applicant after orally learning from him that the householder at his present address was not the person whose name he put in the householder blank, did so

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<sup>4/</sup> "The name of the householder at my present address is \_\_\_\_\_."

because the registrar believes state law requires such a rejection. (Dep. of Navarra, Pl. Ex. A-105 at 31.) The registrar of East Feliciana Parish believes that State law requires him to reject an applicant who puts a cross over the "haves" in the "have-have not" statements but then unnecessarily circles the "have nots". (Deposition of Palmer, Pl. Ex. A-37 at 23.) The registrar of Washington Parish understands State law to require the rejection of an applicant who leaves open the "Residence" blank at the top of the card, even though the applicant's residence appears in the applicant's own handwriting on the back of the card. (Dep. of Thomas, Pl. Ex. A-117 at 18.) The registrar of Winn Parish states that the law requires him to reject applicants who do not fill in the "householder" blank on the application form. (Dep. of Crane, Pl. Ex. A-127 at 4) And the registrar of DeSoto Parish believes that State law requires him to reject applicants who circle the "have-nots" instead of striking out the "haves" in the character statements. (Dep. of Platt, Pl. Ex. A-31 at 23,)

The registrar of Madison Parish rejected a Negro applicant for writing the number "11" for the month of birth instead of using the word "November." It was brought out by counsel for the defendants (and Assistant Attorney General) that the registrar requires applications

"to be absolutely correct," and that the registrar applies the law "as it is written, specifically, meticulously." (Dep. of Ward, p. 12.)<sup>5/</sup>

A corollary to the requirement of a perfect application form is that the perfect form be completed "without assistance or supervision from any person or any memorandum whatever." [La. Const., Article VIII, Sec. 1(c).] To many registrars this means that they must not tell rejected applicants why they were rejected. The registrar of Avoyelles Parish, for example, does not tell an applicant who fails the application form test what was wrong with his application card. (Dep. of Thevenot, Pl. Ex. A-9 at 18.) As the registrar put it, "That would be giving assistance." (Ibid.) The registrar of East Carroll Parish stated that he does not tell applicants why they failed because "we are instructed not to aid, and that would be aiding." (Dep. of Manning, Pl. Ex. A-35 at 5.)<sup>6/</sup>

Jodie Snith, Registrar of East Baton Rouge Parish, explained why the law forbids him from telling applicants the reason for their rejection. He testified as follows (Dep. of Smith, Pl. Ex. A-33 at 11-12):

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<sup>5/</sup> Defense counsel referred also to the injunction issued in U.S. v. Ward, 222 F. Supp. 617 (W.D. La. 1963). However, that decree says nothing specifically about the use of the application form as such, or of the requirements of State law in the use of the form.

<sup>6/</sup> Other registrars are of the same view, including the registrars of East Feliciana Parish (Dep. of Palmer, Pl. Ex. A-37 at 5), East Baton Rouge Parish (Dep. of Smith, Pl. Ex. A-33 at 11), and Orleans Parish (Dep. of Deputy Hartman, Pl. Ex. A-71 at 40; Dep. of Deputy Monteverde, Pl. Ex. A-71 at 18).

Q. Do you consider that the law of the State of Louisiana forbids you to tell a person who has failed why he has failed?

A. It does.

Q. Have you read the law yourself to determine that?

A. Yes, I have. It says--the law says that the applicant must fill out these applications without any help whatsoever.

Q. And you conclude from that that it is help to tell a person why he failed once he failed?

A. I beg your pardon. I didn't

Q. Do you consider it giving a person help to explain to him why he failed?

A. Oh, yes, I would.

Q. Even though he has already failed, he's out, it's help at that point to tell him why?

A. He is out for that particular time, but he could come back within ten days and complete the application from what information I had given him.

Ruby Moreau, Registrar of St. Landry Parish, has the same understanding of State law. She testified that the State Board has instructed her not to tell rejected applicants the reason for their rejections. (Dep. of Moreau, Pl. Ex. A-97 at 27-28.) Upon cross-examination by counsel for the State, she explained her position:

BY MR. KRON:

Q. Mrs. Moreau, on this last question that Mr. Dunbaugh asked you, you would understand that telling a person the errors that they made on their cards would be giving them assistance in a sense?

A. That's right.

Q. In your instructions from the state board included among which are on this printed form that's in the office, you are instructed not to give assistance, is that correct?

A. That's right.

Q. So that your understanding of that assistance would be that to tell them after they have failed what they had made a mistake on would be giving assistance, is that correct?

A. Yes, because when he came back next time, he would probably feel that "I will do everything the same way I did before, but this time I will do this correctly" and in a sense that is giving assistance. 7/

It is therefore clear that the distorted "no assistance" rule, as developed by the State Board and understpod by the registrars, stems directly from the statute under attack in this case, and serves to heighten the obscurity and arbitrariness that enshrouds the application form test.

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7/ In a similar vein, the registrar of East Feliciana Parish testified that the "Director of Registration in Baton Rouge" has ruled that to tell an applicant why he failed is the same as helping him. (Dep. of Palmer, Pl. Ex. A-37 at 5.)

V.

HISTORY AND SETTING  
OF THE APPLICATION FORM TEST\*

A. The Constitutional Convention of 1898.

From 1898 until 1921, Louisiana provided three alternative means of qualifying as a voter: (1) an educational qualification;<sup>1/</sup> (2) a property qualification;<sup>2/</sup> and (3) an ancestral ["grandfather clause"] qualification.<sup>3/</sup>

The voter registration requirements adopted in 1898 effectively eliminated the Negro from participation in the government of the State. The system was one that permitted whites to register because they were white and subjected Negroes to requirements not imposed on white persons. Its exclusive purpose was to disfranchise Negroes. United States v. Louisiana, 225 F. Supp. 353, 371-374.

The delegates to the 1898 convention carefully considered the number and race of the potential voters

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\* In this section material that merely duplicates what can be found in the opinion of the court in United States v. Louisiana will not be cited except by reference to that opinion. The entire printed record on appeal in United States v. Louisiana is offered in evidence in this case as Pl. Ex. M.

<sup>1/</sup> Article 197, Section 3, Louisiana Constitution of 1898.

<sup>2/</sup> Article 197, Section 4, Louisiana Constitution of 1898.

<sup>3/</sup> See next page.

of the State who could qualify under each method. Mr. Dawkins of Union Parish said that he estimated that all white persons registered at the time of the convention [about 164,088<sup>4/</sup>] would be able to register under the new constitution, but that only

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3/ Article 197, Section 5, Louisiana Constitution of 1898.

No male person who was on January 1st, 1867, or at any date prior thereto, entitled to vote under the Constitution or statutes of any State of the United States, wherein he then resided, and no son or grandson of any such person not less than twenty-one years of age at the date of the adoption of this Constitution, and no male person of foreign birth, who was naturalized prior to the first day of January, 1898, shall be denied the right to register and vote in this State by reason of his failure to possess the educational or property qualifications prescribed by this Constitution; provided, he shall have resided in this State for five years next preceding the date at which he shall apply for registration, and shall have registered in accordance with the terms of this article prior to September 1, 1898, and no person shall be entitled to register under this section after said date.

4/ Number of registered white males January 1, 1897. See Table B, Appendix A.



about eight or nine thousand of the approximately 128,000 Negroes then registered could be expected to survive the new system.<sup>5/</sup> Mr. Dawkins' calculations

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<sup>5/</sup> Daily Picayune of March 16, 1898 (p. 11). Speech of Mr. Dawkins of Union Parish: "The committee (suffrage committee) understand that this convention had received its mandate from the people, and that that mandate had been passed on by this convention to the committee, to adopt such a plan of suffrage as would not only disfranchise as many negroes as could constitutionally be disfranchised, but also as few white men as possible; and, acting upon this guiding principle, the committee has prepared this ordinance.... If a vote had been taken in this convention when that committee was first organized, upon instructions to be given; and, if the question had been put, 'Is it the sense of the convention that any white man in Louisiana today enjoying the franchise shall be deprived of it, 'I would say that I believe this convention would have answered with a unanimous 'No', and it is in that belief that this committee has prepared that ordinance....The educational qualification erects a bar which the Negroes cannot pass, or at least not in sufficient number to imperil our civilization and our institutions. That educational test has not been attacked in the convention, nor has it been attacked in the press. It is, at least impliedly, considered to be as perfect as can be expected. It is simple; it is definite; it is fair; it is subject to judicial review, and no man, when he is denied the right to vote by the registrar, will be denied the opportunity to have his right to vote investigated by the courts of his country, and all that will be necessary for him to do before the judge is what the law requires him to do before the registrar. It is admitted to be a good educational test, and that was one of the most difficult tasks of the committee. What is the effect of that test? ...The registration roll showed that in round numbers 95,000 blacks made their mark to the registration roll, while 33,000 signed their names. Of course as to the 95,000 who made their marks the educational qualification is an absolute bar. As to the 33,000 who signed their names, it is safe to say there are not more than one-half who can actually write, and of the half who can really write...at least one-half of those who signed their names would fail to pass the test that is provided by the ordinance. That would leave between eight and nine thousand negroes admitted under this test..." (Pl. Ex. D at 46).

were based on the number of persons registered under the then existing registration.

His argument was based on mathematics and the obvious lack of Negro education. Under the existing registration at the time of the convention, he said that about 95,000 of the Negroes had registered by making their mark; of the remainder who signed their names, about half could really write; and of those approximately 18,000 who "can really write", only half would be able to pass the educational test.<sup>6/</sup>

The educational test set out in the 1898 constitution was the application form requirement under attack in this case. The form itself was prescribed as follows:<sup>7/</sup>

I am a citizen of the State of Louisiana. My name is \_\_\_\_\_. I was born in the State (or country) of \_\_\_\_\_, parish (or county) of \_\_\_\_\_ on the \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_. I am now \_\_\_\_ years \_\_\_\_ months and \_\_\_\_ days of age. I have resided in this State since \_\_\_\_\_ in this parish \_\_\_\_\_ and I am not disfranchised by any provision of the Constitution of this State.

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<sup>6/</sup> Ibid.

<sup>7/</sup> Article 197, Section 3, Louisiana Constitution of 1898.

The application form test was not designed for white persons. If the grandfather clause was "the white man's qualification", the educational clause was to be the Negro's disqualification.<sup>8/</sup> The educational qualification was not a grant of the franchise, it was to be a means for disqualifying Negroes.

The educational test as described by Mr. Sanders was not a test of ability to write. It was intended to cause the rejection of those Negroes who could write as well as those who could not. Mr. Burke of Iberia Parish, who expressed this sentiment, was paraphrased by the Daily Picayune as saying that "...under a simple educational qualification [Negroes] would be able to vote."<sup>9/</sup> This was not the wish of the convention.

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<sup>8/</sup> Daily Picayune, March 16, 1898, p. 11:  
Speech of J. T. Sanders of St. Mary Parish: "What is the plan before this convention? We are here to write in the organic law of Louisiana that white men shall always rule this state.(Applause).

There are but three clauses I propose to discuss - educational, the property, and what I shall call the white man's qualification. Under the educational we have laid down a line so high that it will be possible for very few negroes to reach it. In the parish whence I came the negro is as well educated as anywhere. His advantage since the war has been great, comparatively, and yet I tell you that at the last election there was not a negro in the parish who could make out his ticket correctly and get it counted. (laughter)

Section 5 lets in every solitary white man in the state of Louisiana. I am willing to go back to my people and tell them I favored that." (Pl. Ex. D at 46)

<sup>9/</sup> Daily Picayune, March 10, 1898, p. 11 (Pl. Ex. D at 39)

Members of the convention had some doubt whether the educational test was hard enough to remove as many Negroes they hoped. One member thought the applicant should be required to write out the required information without the benefit of a form so that no one could memorize the form.<sup>10/</sup> Another member, also worried about the Negro's ability to memorize, suggested that the registrar be permitted to question applicants to see if they had been coached.<sup>11/</sup> One member thought that about 20,000 Negroes would be

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<sup>10/</sup>Times Democrat, March 9, 1898, p. 9:

"Mr. Boatner also criticised that portion of the ordinance which prescribes the form of blank which a voter is required to make out in his application for registration. He held that the incorporation of this blank form would defeat the object intended, as ignorant voters could be taught, like a parrot, to fill in the blank spaces when applying for registration. He thought it would have been better to leave out this blank and stated in more general terms that the voter should cover certain essential points in his application." (Pl. Ex. D at 38)

<sup>11/</sup>Times Democrat, March 8, 1898, p. 10:

"Mr. Moore said Lieut. Gov. Snyder, who was not in the city, had suggested a change which might materially affect those Negroes who could learn just enough at training schools to write out the blank form of registration which is provided for in Section 3. At present the blank spaces required to be filled, such as residence, age, etc., are specific and refer to that part. Mr. Snyder desired that registrars should be permitted to ask questions that would demonstrate that Negroes or others applying for registration had not been 'coached' in the preparation of the application for registration; for instance, that they be required to say how old they would be at some given time in the future.

The committee decided that it would not do to further complicate that portion of the ordinance." (Pl. Ex. D at 36)

able to qualify under the test.<sup>12/</sup> Mr. Wilkinson, who arrived at this figure, pointed out that "[u]nder these circumstances, many of the parishes would be absolutely at the mercy of the Negroes."<sup>13/</sup>

The voter qualification that aroused the greatest interest and caused the most discussion at the 1898 convention was the 'Mississippi understanding clause'. See United States v. Louisiana, 225 F. Supp. 353, 371-372. After considerable debate, however, and persuaded that the understanding clause was based on fraud, the Convention turned to the 'grandfather' clause and its concomitant, the application form test. Ibid.

The powers granted the registrars under the application form test were never openly debated. The convention's awareness of the probable unconstitutionality of the "understanding" test accounts for the

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<sup>12/</sup> Daily Picayune, March 16, 1898, p. 11:  
Speech of Mr. Wilkinson of Red River: -"According to Statistics there were 33,000 negroes who could read and write, and 20,000 at least could fill out the blanks provided. Under these circumstances, many of the parishes would be absolutely at the mercy of the negroes. Would this convention be doing its duty if it said that in most instances they had given a white electorate, but in a few they would be unable to do it? The plan would turn over to the colored vote a number of parishes." (Pl. Ex. D at 46)

<sup>13/</sup> Ibid.

members' reticence on the subject of how the test they actually adopted was to be administered. Remarks made in another connection reveal the sense of the delegates that they were empowering the registrars to accept or reject on the basis of personal choice. In the debate over whether registrars should be appointed by the Governor or elected, delegate Favrot, in opposing the appointment of registrars by the Governor, said that "Registrars were made appointive because of fear of negro domination" and argued that the threat of such domination no longer existed. "If it does," he said, "the suffrage ordinance [grandfather clause and the application form test] is a delusion and a fraud."<sup>14/</sup> Delegate Stringfellow urged the delegates to place the power of appointment in the Governor. He noted that Governors of the immediate past proved themselves trustworthy, and then argued:

~~No~~ do you propose to say we cannot trust our Governors of the future? If I were the Governor of Louisiana I would say to the registrars whom I appointed: No Negro shall be allowed to vote; this is a white man's government. <sup>15/</sup>

The proponents of appointment by the Governor prevailed. The Constitution of 1898 made no provision

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<sup>14/</sup> Times Democrat, April 28, 1898, p. 14 (Pl. Ex. D at 58).

<sup>15/</sup> Ibid.

for the appointment of registrars. The legislature, however, immediately vested the power of appointment in the Governor by assigning the duties of registrar to each parish tax assessor, an officer appointed and subject to removal by the Governor. La. Acts 1898, No. 199, Secs. 32-33; La. Acts 1898, No. 170, Sec. 2.<sup>16/</sup>

B. Registration From 1898 To 1921.

"With the adoption of the Constitution of 1898, Louisiana became in fact and practice a white man's State as far as its politics went."<sup>17/</sup>

Registration rolls before and after adoption of the Constitution show the prompt effect the grandfather clause and the application form test had on Negro voters.<sup>18/</sup>

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

<sup>16/</sup> In 1906, the legislature established the separate office of registrar of voters for each parish and placed the power of appointment in a board consisting of the Governor, Secretary of State, and Attorney General. La. Acts 1906, No. 141. The Constitution of 1921 provided that each registrar be appointed by the parish police jury with power of removal in the present Board of Registration. La. Constitution, Article VIII, §18.

<sup>17/</sup> 1 Chambers, History of Louisiana 699 (1925), quoted in United States v. Louisiana, 225 F. Supp. at 374-375.

<sup>18/</sup> Table B, Appendix A.

The drop in Negro registration continued, so that by 1910 only 730 or less than 0.5 per cent of the adult male Negroes were registered. In the sixty parishes then in existence, there were no Negroes registered in twenty-seven parishes and only one Negro registered in each of another nine parishes. Only ten parishes had more than ten Negro registered voters each. By 1918, when there were sixty-four parishes, thirty-seven parishes had no Negroes registered.<sup>19/</sup>

The Louisiana Supreme Court cases requiring strict administration of the application form test irrespective of literacy<sup>20/</sup> were decided in 1908 and 1911. They indicate that even in its infancy the test was used to arbitrarily deny registration to persons subject to it.

When the United States Supreme Court in 1915 invalidated the Oklahoma "grandfather" clause as a technique for denying Negroes the right to vote, it voided the literacy requirement that accompanied it as well, on the ground that the one was not intended to stand without the other. Guinn v. United States, 238 US 347 (1915). Louisiana was back where it had

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<sup>19/</sup> United States v. Louisiana, supra. at 374.

<sup>20/</sup> See pp. 8-10, supra.



started prior to 1898. This was remedied by the adoption of the present Louisiana Constitution in 1921.

C. The 1921 Constitution

The Constitution of 1921 changed the specific design of Louisiana's voter requirements but not their overall purpose. The entire focus of the Suffrage and Elections Committee of the 1921 Convention was on developing a means of disfranchising Negroes. United States v. Louisiana, 225 F. Supp. at 375-6. Thus the Committee retained and the Convention adopted the application form test verbatim from the 1898 Constitution. In addition, the "grandfather" clause was removed and in its stead was adopted the test thought to be a "fraud" by many of the 1898 Convention delegates - the interpretation test. Id. at 372.

The interpretation test has been found by this Court to be a device designed to disfranchise Negroes, and to have been used exclusively for that purpose. United States v. Louisiana, supra. Its original purpose was at the same time more specific. Because the grandfather clause was gone, a means had to be found to permit the registration of illiterate whites while literate Negroes were being excluded. The

application form could achieve the latter, but that test posed an insurmountable barrier to illiterate whites. Thus the interpretation test was adopted with a special provision for the qualification of illiterates under it.<sup>21/</sup>

The 1921 Constitution prescribed a short version of the application form and authorized the legislature to change it.<sup>22/</sup> The legislature of 1921 adopted the following application form: <sup>23/</sup>

I am a citizen of the State of Louisiana. My name is Mr..... Mrs..... Miss..... I was born in the State (or country) of ....., Parish (or county) of....., on the....day of....., in the year..... I am now .... years,....months, and .... days of age. I have resided in this State since....., in this Parish since....., and in Precinct No... in Ward No... of this Parish continuously since....., and I am not disfranchised by any provision of the constitution of this State. The name of the householder at my present residence is.... My occupation is.... My color is.... My sex is.... I am affiliated with the..... Party.

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<sup>21/</sup>Louisiana Constitution, Art. VIII, Section 1(d). This section was amended in 1960 to delete the provision allowing illiterates to qualify by taking the interpretation test. Under LRS 18:36, however, illiterates still are eligible to register, although the common understanding among registrars is that illiterates are now ineligible for registration.

<sup>22/</sup>Art. VIII, Section 1(c), Louisiana Constitution of 1921.

<sup>23/</sup>Article No. 122, Section 22, Louisiana Acts, Extra Session 1921.

The application form was not changed by statute again until 1940, at which time the statement "I am not now registered as a voter in any other Ward or Precinct of this State, except....." was added to the form. Louisiana Acts 1940, No. 45, Section 2.

D. The Activation Of Voter Qualification Tests

After the white primary was voided by the Supreme Court in 1944,<sup>24/</sup> Negro registration grew from 857 in 1942 to 7,561 in 1946.<sup>25/</sup> By 1956 there were 161,410 Negroes registered to vote; they made up 15% of the registered voters in the state.<sup>26/</sup>

Immediately following the School Segregation cases,<sup>27/</sup> two organizations dedicated to maintaining segregation were established. They were the Joint Legislative Committee on Segregation and the Association of Citizens Councils of Louisiana.<sup>28/</sup> These two organizations, with official blessing, publicized and promoted the purpose and function of Louisiana's voter qualification laws and how best to use them in order to prevent Negro participation in the electoral process.<sup>29/</sup> The same two men led both organizations - State Senator William Rainach and segregation committee counsel William M. Shaw, both of Claiborne Parish.<sup>30/</sup>

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<sup>24/</sup> Smith v. Allwright, 321 U.S. 649 (1944).

<sup>25/</sup> Table B, Appendix A.

<sup>26/</sup> Ibid.

<sup>27/</sup> Brown v. Bd. of Education; 347 U.S. 483 (1954)

<sup>28/</sup> U. S. v. Louisiana, 225 F. Supp. at 378.

<sup>29/</sup> Ibid.

<sup>30/</sup> Ibid.

The Rainach-Shaw program was two-fold: a purge of Negroes from the voting rolls, sometimes accomplished by a complete re-registration of all voters, followed by strict and discriminatory enforcement of the voter qualification laws, including the interpretation test.<sup>31/</sup> The voter purges<sup>32/</sup> constitute the earliest recorded evidence of the nature of the application form test, which, in the context of the purges, was applied retroactively. This Court in United States v. Louisiana made the following formal finding with respect to the purges:

8.3 . . . Citizens Council Members challenged the registration of large numbers of Negro voters on the ground that they had not satisfied all the requirements of the Louisiana voter qualification laws at the time they registered in that they failed to take the interpretation test or had failed to complete the application form without errors or omissions. In fact, the challenged Negroes had satisfied all the requirements imposed by the registrar at the time they registered. White voters were not purged although their registrations suffered from the same alleged deficiencies as did those of the Negroes who were purged. In the parishes where this occurred Negro registration during a four-year period declined by about 10,000 while the white registration increased by about 2,350.

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<sup>31/</sup> Ibid.

<sup>32/</sup> Table E, Appendix A, shows the effect of the purges on total registration in parishes where purges or an automatic clearing of the rolls occurred.

Separate findings have been made by other courts with respect to the purges, all showing that the focus of each purge was on highly technical "errors" on the application forms. Common to all the purge cases was the fact that the cards of most white persons not purged contained the very same "errors" for which Negroes were removed from the rolls.

In the Washington Parish case, the District Court made these findings:<sup>33/</sup>

The Affidavits of Challenge filed by the individual defendants purported to be based on defects or deficiencies in the registration cards such as misspellings, deviations from printed instructions, failure to compute age with exact precision, and illegible handwriting.

The same defects and deficiencies are to be found in at least half of the registration cards of the white citizens of Washington Parish currently on the registration rolls. Analysis of a random sampling of 200 cards, 198 of which were of white persons, revealed that over 60% had such defects and inconsistencies, and the defendant Registrar, who has worked with all registration cards since 1949, testified that at least 50% had such errors and omissions.

In the Bienville Parish case, Judge Dawkins of the Western District of Louisiana made this finding:<sup>34/</sup>

On the evenings of September 26, 27 and 28, 1956, the Registrar opened her office, after regular hours, to the individual defendants and

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<sup>33/</sup> United States v. McElveen, 180 F. Supp. 10, 12-13 (E.D. La. 1960), affirmed sub. nom. United States v. Thomas, 362 U.S. 58 (1960).

<sup>34/</sup> United States v. Assn. of Citizens Councils, 196 F. Supp. 908, 910 (W.D. La. 1961)

assisted them in conducting the "purge". As the result of their efforts, the registrations of some 570 Negroes were challenged, constituting approximately 95% of all Negroes registered. Only 35 white registrations, being less than 1% of the total, were challenged, although an examination of the white registration cards in evidence discloses that about 80% contain the same, or similar, errors for which Negro registrations were challenged. Of the white registrations actually challenged, approximately one-half of these persons had moved away from the Parish. All of this was well known to the Registrar, who actively participated in this concerted discrimination by the Councils and individual defendants, on account of the race or color of the Negro registrants.

In the Jackson Parish case, similar findings were made:<sup>35/</sup>

In October 1956, the Citizens' Council of Jackson Parish and the individual defendants challenged the registration status of 953 of the 1,122 Negro voters and 13 of the 5,450 white voters. The defendant registrar thereafter removed the names of all these challenged voters from the voter rolls of Jackson Parish. The challenges were based on alleged errors, omissions, and handwriting differences on the original application cards of the voters. These alleged deficiencies were not deficiencies under the standards applied by the registrar at the time these voters registered and the application cards of approximately 75 percent of the white voters who were not challenged contained similar deficiencies.

And in the Red River Parish case, Judge Dawkins again made substantially the same finding:<sup>36/</sup>

In October 1956, the Citizens Council challenged the registration status of 1,146 of the 1,362 Negro voters and 27 of the 3,585 white

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<sup>35/</sup> United States v. Wilder, 222 F. Supp. 749 (W.D. La. 1963)

<sup>36/</sup> United States v. Crawford, 229 F. Supp. 898, 900 (W.D. La. 1964)

voters. The challenges were based on alleged errors and omissions on the application cards of the challenged voters. These alleged deficiencies were not deficiencies under the standards applied by the Registrar at the time these voters registered and the application cards of many of the white voters who were not challenged contained similar deficiencies.

It was in these circumstances that the application form test came into modern use. Prior to the purges, as the findings with respect to the voters not challenged plainly demonstrate, there was no such thing as an application form test in practice. In the wake of the purges, however, registrars adopted the strict standard on the card used by the Citizens Council in purging Negro voters.<sup>37/</sup> Registrars in parishes where purges did not take place attended the congressional district meetings conducted by Rainach and Shaw and thus became acquainted with the discriminatory purpose of the state's voter qualification laws. United States v. Louisiana, 225 F. Supp. at 379-380.<sup>38/</sup>

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<sup>37/</sup> Testimony of Culpepper (Bienville Parish), Pl. Ex. I-13 at 203-204, 400-418; Testimony of Wilder (Jackson Parish), Pl. Ex. I-49 at 209-210, 220; Testimony of Lucky (Ouachita Parish), Pl. Ex. I-73 at 730.

<sup>38/</sup> At the district meetings, the registrars heard William Shaw, segregation committee counsel, review his pamphlet "Voter Qualification Laws In Louisiana - The Key To Victory In The Segregation Struggle". (The pamphlet appears as Attachment E filed with the complaint in this case and is set out in the Record on Appeal in U.S. v. Louisiana, Pl. Ex. M at 195) The pamphlet states with respect to the application form "Where the applicant does not comply strictly with this requirement his registration is illegal and cannot be cured by filing a new application properly filled out." Pl. Ex. M at 197-198. At the district meetings Shaw emphasized the criminal penalties applicable to registrars who fail to enforce the voter qualification statutes. Pl. Ex. M at 784.

The legislature followed up the voter purges with a revision of the application form in 1960 which added the "have-have not" statements. Louisiana Acts 1960, No. 305. In 1962 another statutory revision of the form placed in the Board of Registration express authority to jumble up the arrangement of the statements on the card and gave the individual registrars the authority to alternate the different versions of the form. Louisiana Acts 1962, No. 63.

The 1960 changes were part of a package of measures designed to "assure the preservation of segregation."<sup>39/</sup> With respect to voting, the legislature, significantly, fastened on the same device that had attracted the Citizens Council purgers - the application form test. The 1960 package also repealed the provision allowing for the registration of illiterates, and specifically defined bad moral character to include the offenses set out in the "have-have not" statements. Louisiana Acts 1960, No. 613. According to the Times-Picayune, these changes were made in the expectation

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<sup>39/</sup> State-Times, June 3, 1960, p. 1 (Pl. Ex. D at 65)



that they would result in the disfranchisement of a large number of Negroes.<sup>40/</sup>

In 1962 the legislature accompanied the change in the LR-1 card with the adoption of the multiple-choice "citizenship" test. Louisiana Acts 1962, No. 62. When the use of that test was enjoined in 21 parishes by this Court in United States v. Louisiana, the defendant Board of Registration in the Registrars' Communique of November, 1963 (sent to all registrars in the State advised the registrars as follows:

In the 21 parishes which are affected, you should use the LR-1 form as the law says to use it. Use it without discrimination but be as strict with it as the law permits. [Dep. of Cutrer, Pl. Ex. C-2, Ex. G-7 attached thereto.]

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<sup>40/</sup> Times-Picayune, June 20, 1960, p. 3 (Pl. Ex. D at 69): "Proponents of the bill made it clear that they believed that the literacy and morality qualifications for voting will result in the disfranchisement of a large number of Negroes .... Proponents of the bill bore down heavily on the segregation argument.... 'Let your conscience be your guide and decide whether this is an important segregation measure', [Rep. T.T.] Fields [of Union Parish] told the House.....[Rep. John S. Garrett of Claiborne Parish] charged that opponents of the bill, 'are worrying about that Negro bloc vote back home.....'"

## VI.

### THE APPLICATION FORM TEST IS DESIGNED TO INDUCE TECHNICAL ERRORS OR OMISSIONS FOR WHICH REGISTRARS MAY ARBITRARILY REJECT APPLICANTS FOR REGISTRATION

#### A. Introduction

The application form test permits registrars of voters to arbitrarily reject qualified applicants who are plainly literate but who do not complete the form precisely in the manner required by the registrars. The voter registration records in evidence in this case show that the vast majority of persons denied registration for failing the application form test were sufficiently literate to understand the form and to provide substantially all the information called for by it. They were either arbitrarily rejected for making technical "errors" that in no way reflected on their literacy or intelligence, or were purposely rejected because it was the registrar's choice not to provide whatever assistance or explanation was necessary to enable the applicant to complete the form perfectly.

The application form is replete with "traps for the unwary".<sup>1/</sup> Every blank and sentence on the application form offers the registrar an opportunity to find

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<sup>1/</sup> United States v. Louisiana, 225 F. Supp. 353, 373, Fn. 48 (E.D. La. 1963).

something wrong with the applicant's performance sufficient to reject him. The very design of the form -- its deceptive appearance as an application rather than as a test, its small size and print, the omission of key words and punctuation marks, the misleading placement of blank spaces, the jumbling of the information out of regular sequence, the obscure phrasing -- invites misinterpretation on the part of the applicant which the registrar may treat as rejectable error.

The vice inherent in the application form test lies not only in the invitation to slight error it offers the applicant, but also in the ease with which a registrar may, without detection, assist applicants to avoid such errors. The registrars are thus provided with the power to accept or reject applicants on the basis of personal choice. At best, the system results in the arbitrary rejection of applicants for reasons unrelated to any rational state interest in an intelligent, informed electorate; at worst, the system is an open invitation to racial discrimination.

No one has expressed the point more accurately than Louis F. Niklaus, the present Chief Deputy Registrar of Voters of Orleans Parish, who testified:<sup>2/</sup>

You know the LR-1 card [the application form] is like a lottery ticket, there's various ways that people answer a card and you have to determine from their answers just whether or not they're right or wrong.

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<sup>2/</sup> Dep. of Niklaus, Pl. Ex. A-71 at 4.

B. The Application Form Is Designed To Mislead The Applicant.

The application form itself (commonly referred to as the LR-1 card) has been designed to make completion of it difficult. The card announces itself as a "Form of Application for Registration" and not as a test. It is 5"x8" in size. The printing on the card is 1/16" high, or approximately the size of the print in a typical desk-type dictionary. The space between each line of print is 1/8". It is therefore relatively easy for an applicant to skip a line or overlook several phrases.

At the time of the adoption of the multiple-choice "citizenship" test in August 1962 and the deactivation of the oral interpretation test, the defendant Board of Registration redesigned the application form.<sup>3/</sup> Five versions of the LR-1 card were prescribed, each containing the same language and blanks but in different order.<sup>4/</sup> The "have-have not" statements were jumbled so that on four of the five forms the applicant could not complete the statements correctly merely by striking out the first "have" in each of the six statements. This jumbling has no discernible purpose other than to enhance

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<sup>3/</sup> Deposition of Niklaus, Pl. Ex. A-71 at 12.

<sup>4/</sup> Id. at 12-13.

the possibility of inadvertent error that may be seized upon by the registrar as a reason for rejection.<sup>5/</sup> Copies of the five forms are set out on the following pages. Although the State Board prescribes the form to be used, the registrars must secure their own supply through their own printers. See Deposition of Navarra (Tangipahoa Parish), Pl. Ex. A-105 at 28-29. Thus, the size of type, placement of punctuation, etc., vary slightly from parish to parish.

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<sup>5/</sup> Under Louisiana law the Board of Registration is expressly authorized to jumble the application form. LRS 18:31 (as amended, 1962). However, the present Board Director, who has been serving since 1960, said he knew nothing about the decision to jumble the cards. (Deposition of Cutrer, Pl. Ex. C-2, at 21-26) Mr. Gallinghouse, the Orleans Parish Registrar who served on the Governor's Committee which drafted the multiple-choice test in 1962, also said he knew nothing of the origin of the jumbled cards. (Dep. of Gallinghouse, Pl. Ex. A-71, Part II, 32-33.) The only explanation by any state official of the use of the jumbled card was given by Louis Niklaus, Deputy Registrar of Orleans Parish and former State Board field representative. He said the purpose was to handicap persons who would otherwise complete the form by "memorizing" it. (Deposition of Niklaus, Pl. Ex. A-71, at 13.)

*Official Cards - Correct*

*Center 6*

FORM OF APPLICATION FOR REGISTRATION

Ward No. \_\_\_\_\_

OFFICE OF REGISTRAR OF VOTERS

Precinct No. \_\_\_\_\_

Parish of Orleans, State of Louisiana

Cert. No. \_\_\_\_\_

RESIDENCE NO. \_\_\_\_\_

I am a citizen of the United States and of the State of Louisiana.

My name is Mr.—Mrs.—Miss \_\_\_\_\_ I was born on the \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_. I am now \_\_\_\_\_ years, \_\_\_\_\_ months and \_\_\_\_\_ days of age. I was born in the State (or Country) of \_\_\_\_\_, Parish (or County) of \_\_\_\_\_

I have resided in this State since \_\_\_\_\_, in this Parish since \_\_\_\_\_, and in precinct No. \_\_\_\_\_, in Ward No. \_\_\_\_\_ of this Parish continuously since \_\_\_\_\_. I am not disfranchised by any provisions of the Constitution of this State. The name of the householder at my present address is \_\_\_\_\_

My occupation is \_\_\_\_\_. My color is \_\_\_\_\_. My sex is \_\_\_\_\_. I am not now registered as a voter in any other Ward or Precinct of this State, except \_\_\_\_\_. My last registration was in Ward \_\_\_\_\_ Precinct \_\_\_\_\_ Parish \_\_\_\_\_. I am now affiliated with the \_\_\_\_\_ Party.

In each of the following items the applicant shall mark through the word "have" or the words "have not" so that each item will show a true statement about the applicant.

- I have not (have) been convicted of a felony without receiving a full pardon and restoration of franchise.
- I have not (have) been convicted of more than one misdemeanor and sentenced to a term of ninety (90) days or more in jail for each such conviction, other than traffic and/or game law violations, within five years before the date of making this application for registration as an elector.
- I have not (have) been convicted of any misdemeanor and sentenced to a term of six (6) months or more in jail, other than traffic and/or game law violations, within one year before the date of making this application for registration as an elector.

TURN CARD OVER

*Center 6*

- I have not (have) lived with another in "common law" marriage within five years before the date of making this application for registration as an elector.
- I have not (have) given birth to an illegitimate child within five years before the date of making this application for registration as an elector. (The provisions hereof shall not apply to the birth of any illegitimate child conceived as a consequence of rape or forced carnal knowledge.)
- I have not (have) acknowledged myself to be the father of an illegitimate child within five years before the date of making this application for registration as an elector. I do hereby solemnly swear or affirm that I will faithfully and fully abide by all the laws of the State of Louisiana, so help me God.

Signature \_\_\_\_\_

Sworn to and subscribed before me: \_\_\_\_\_ (Deputy) Registrar

CHANGE OF ADDRESS

Date \_\_\_\_\_ Address \_\_\_\_\_ Ward No. \_\_\_\_\_ Precinct No. \_\_\_\_\_ Cert. No. \_\_\_\_\_

Date \_\_\_\_\_ Address \_\_\_\_\_ Ward No. \_\_\_\_\_ Precinct No. \_\_\_\_\_ Cert. No. \_\_\_\_\_

Date \_\_\_\_\_ Address \_\_\_\_\_ Ward No. \_\_\_\_\_ Precinct No. \_\_\_\_\_ Cert. No. \_\_\_\_\_

CHANGE OF NAME

I am now Mr.—Mrs.—Miss \_\_\_\_\_ Date of change \_\_\_\_\_

Nature of change \_\_\_\_\_

REMARKS

Mother's first or maiden name \_\_\_\_\_ Name of employer \_\_\_\_\_

Property owner \_\_\_\_\_ Tenant \_\_\_\_\_ Boarder \_\_\_\_\_ Color of eyes \_\_\_\_\_

Citizens 6

4

FORM OF APPLICATION FOR REGISTRATION

Ward No. \_\_\_\_\_

OFFICE OF REGISTRAR OF VOTERS

Prec. No. \_\_\_\_\_

Parish of Orleans, State of Louisiana

Cert. No. \_\_\_\_\_

RESIDENCE NO. \_\_\_\_\_

I am a citizen of the United States and of the State of Louisiana.

My name is Mr.—Mrs.—Miss \_\_\_\_\_ I was born on the \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_. I am now \_\_\_\_\_ years \_\_\_\_\_ months and \_\_\_\_\_ days of age. I was born in the State (or Country) of \_\_\_\_\_, Parish (or County) of \_\_\_\_\_. I have resided in this State since \_\_\_\_\_, in this Parish since \_\_\_\_\_, and in Precinct No. \_\_\_\_\_ in Ward No. \_\_\_\_\_ of this Parish continuously since \_\_\_\_\_. I am not disfranchised by any provisions of the Constitution of this State. The name of the householder at my present address is \_\_\_\_\_. I am not now registered as a voter in any other Ward or Precinct of this State, except \_\_\_\_\_. My last registration was in Ward \_\_\_\_\_ Precinct \_\_\_\_\_ Parish \_\_\_\_\_. My occupation is \_\_\_\_\_. My color is \_\_\_\_\_. My sex is \_\_\_\_\_. I am now affiliated with the \_\_\_\_\_ Party.

In each of the following items the applicant shall mark through the word "have" or the words "have not" so that each item will show a true statement about the applicant.

I have (have not) been convicted of a felony without receiving a full pardon and restoration of franchise.

I have not (have) been convicted of more than one misdemeanor and sentenced to a term of ninety (90) days or more in jail for each such conviction, other than traffic and/or game law violations, within five years before the date of making this application for registration as an elector.

I have (have not) been convicted of any misdemeanor and sentenced to a term of six (6) months or more in jail, other than traffic and/or game law violations, within one year before the date of making this application for registration as an elector.

TURN CARD OVER

Citizens 6

4

I have not (have) lived with another in "common law" marriage within five years before the date of making this application for registration as an elector.

I have (have not) given birth to an illegitimate child within five years before the date of making this application for registration as an elector. (The provisions hereof shall not apply to the birth of any illegitimate child conceived as a consequence of rape or forced carnal knowledge.)

I have (have not) acknowledged myself to be the father of an illegitimate child within five years before the date of making this application for registration as an elector. I do hereby solemnly swear or affirm that I will faithfully and fully abide by all the laws of the State of Louisiana, so help me God.

Signature \_\_\_\_\_

Sworn to and subscribed before me: \_\_\_\_\_ (Deputy) Registrar

CHANGE OF ADDRESS

Date \_\_\_\_\_ Address \_\_\_\_\_ Ward No. \_\_\_\_\_ Prec. No. \_\_\_\_\_ Cert. No. \_\_\_\_\_  
Date \_\_\_\_\_ Address \_\_\_\_\_ Ward No. \_\_\_\_\_ Prec. No. \_\_\_\_\_ Cert. No. \_\_\_\_\_  
Date \_\_\_\_\_ Address \_\_\_\_\_ Ward No. \_\_\_\_\_ Prec. No. \_\_\_\_\_ Cert. No. \_\_\_\_\_

CHANGE OF NAME

I am now Mr.—Mrs.—Miss \_\_\_\_\_ Date of change \_\_\_\_\_  
Nature of change \_\_\_\_\_

REMARKS

\_\_\_\_\_

Mother's first or maiden name \_\_\_\_\_ Name of employer \_\_\_\_\_

Property owner \_\_\_\_\_ Tenant \_\_\_\_\_ Boarder \_\_\_\_\_ Color of eyes \_\_\_\_\_

*Cutler* 7

FORM OF APPLICATION FOR REGISTRATION

Ward No. \_\_\_\_\_

OFFICE OF REGISTRAR OF VOTERS

Prect. No. \_\_\_\_\_

Parish of Orleans, State of Louisiana

Cert. No. \_\_\_\_\_

RESIDENCE NO. \_\_\_\_\_

I am a citizen of the United States and of the State of Louisiana.

My name is Mr.—Mrs.—Miss \_\_\_\_\_ I was born in the State (Country) of \_\_\_\_\_, Parish (or county) of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_. I am now \_\_\_\_\_ years, \_\_\_\_\_ months and \_\_\_\_\_ days of age. I have resided in Precinct No. \_\_\_\_\_ in Ward No. \_\_\_\_\_ of this Parish continuously since \_\_\_\_\_, in this State since \_\_\_\_\_, and in this Parish since \_\_\_\_\_. I am not disfranchised by any provisions of the Constitution of this State. The name of the householder at my present address is \_\_\_\_\_ My occupation is \_\_\_\_\_. My color is \_\_\_\_\_. My sex is \_\_\_\_\_. I am not now registered as a voter in any other Ward or Precinct of this State, except \_\_\_\_\_. My last registration was in Ward \_\_\_\_\_ Precinct \_\_\_\_\_ Parish \_\_\_\_\_. I am now affiliated with the \_\_\_\_\_ Party.

In each of the following items the applicant shall mark through the word "have" or the words "have not" so that each item will show a true statement about the applicant.

I have (have not) been convicted of a felony without receiving a full pardon and restoration of franchise.

I have (have not) been convicted of more than one misdemeanor and sentenced to a term of ninety (90) days or more in jail for each such conviction, other than traffic and/or game law violations, within five years before the date of making this application for registration as an elector.

I have (have not) been convicted of any misdemeanor and sentenced to a term of six (6) months or more in jail, other than traffic and/or game law violations, within one year before the date of making this application for registration as an elector.

TURN CARD OVER

*Cutler* 8

I have (have not) lived with another in "common law" marriage within five years before the date of making this application for registration as an elector.

I have (have not) given birth to an illegitimate child within five years before the date of making this application for registration as an elector. (The provisions hereof shall not apply to the birth of any illegitimate child conceived as a consequence of rape or forced carnal knowledge.)

I have (have not) acknowledged myself to be the father of an illegitimate child within five years before the date of making this application for registration as an elector. I do hereby solemnly swear or affirm that I will faithfully and fully abide by all the laws of the State of Louisiana, so help me God.

Signature \_\_\_\_\_

Sworn to and subscribed before me: \_\_\_\_\_ (Deputy) Registrar

CHANGE OF ADDRESS

Date \_\_\_\_\_ Address \_\_\_\_\_ Ward No. \_\_\_\_\_ Prect. No. \_\_\_\_\_ Cert. No. \_\_\_\_\_  
 Date \_\_\_\_\_ Address \_\_\_\_\_ Ward No. \_\_\_\_\_ Prect. No. \_\_\_\_\_ Cert. No. \_\_\_\_\_  
 Date \_\_\_\_\_ Address \_\_\_\_\_ Ward No. \_\_\_\_\_ Prect. No. \_\_\_\_\_ Cert. No. \_\_\_\_\_

CHANGE OF NAME

I am now Mr.—Mrs.—Miss \_\_\_\_\_ Date of change \_\_\_\_\_  
Nature of change \_\_\_\_\_

REMARKS

\_\_\_\_\_  
 Mother's first or maiden name \_\_\_\_\_ Name of employer \_\_\_\_\_  
 Property owner \_\_\_\_\_ Tenant \_\_\_\_\_ Boarder \_\_\_\_\_ Color of eyes \_\_\_\_\_



FORM OF APPLICATION FOR REGISTRATION

Ward No. \_\_\_\_\_

OFFICE OF REGISTRAR OF VOTERS

Prec. No. \_\_\_\_\_

Parish of Orleans, State of Louisiana

Cert. No. \_\_\_\_\_

RESIDENCE NO. \_\_\_\_\_

I am a citizen of the United States and of the State of Louisiana.

My name is Mr.—Mrs.—Miss \_\_\_\_\_ I was born in the State (Country) of \_\_\_\_\_ Parish (or county) of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_. I am now \_\_\_\_\_ years, \_\_\_\_\_ months and \_\_\_\_\_ day of age. I have resided in this state since \_\_\_\_\_, in this Parish since \_\_\_\_\_, and in Precinct No. \_\_\_\_\_, in Ward No. \_\_\_\_\_ of this Parish continuously since \_\_\_\_\_. I am not disfranchised by any provisions of the Constitution of this State. The name of the householder at my present address is \_\_\_\_\_ I am not now registered as a voter in any other Ward or Precinct of this State, except \_\_\_\_\_. My last registration was in Ward \_\_\_\_\_ Precinct \_\_\_\_\_ Parish \_\_\_\_\_. My occupation is \_\_\_\_\_ My color is \_\_\_\_\_ My sex is \_\_\_\_\_. I am now affiliated with the \_\_\_\_\_ Party.

In each of the following items the applicant shall mark through the word "have" or the words "have not" so that each item will show a true statement about the applicant.

I have (have not) been convicted of a felony without receiving a full pardon and restoration of franchise.

I have (have not) been convicted of more than one misdemeanor and sentenced to a term of ninety (90) days or more in jail for each such conviction, other than traffic and/or game law violations, within five years before the date of making this application for registration as an elector.

I have not (have) been convicted of any misdemeanor and sentenced to a term of six (6) months or more in jail, other than traffic and/or game law violations, within one year before the date of making this application for registration as an elector.

TURN CARD OVER

I have not (have) lived with another in "common law" marriage within five years before the date of making this application for registration as an elector.

I have (have not) given birth to an illegitimate child within five years before the date of making this application for registration as an elector. (The provisions hereof shall not apply to the birth of any illegitimate child conceived as a consequence of rape or forced carnal knowledge.)

I have (have not) acknowledged myself to be the father of an illegitimate child within five years before the date of making this application for registration as an elector. I do hereby solemnly swear or affirm that I will faithfully and fully abide by all the laws of the State of Louisiana, so help me God.

Signature \_\_\_\_\_

Sworn to and subscribed before me: \_\_\_\_\_ (Deputy) Registrar

CHANGE OF ADDRESS

Date \_\_\_\_\_ Address \_\_\_\_\_ Ward No. \_\_\_\_\_ Prec. No. \_\_\_\_\_ Cert. No. \_\_\_\_\_  
 Date \_\_\_\_\_ Address \_\_\_\_\_ Ward No. \_\_\_\_\_ Prec. No. \_\_\_\_\_ Cert. No. \_\_\_\_\_  
 Date \_\_\_\_\_ Address \_\_\_\_\_ Ward No. \_\_\_\_\_ Prec. No. \_\_\_\_\_ Cert. No. \_\_\_\_\_

CHANGE OF NAME

I am now Mr.—Mrs.—Miss \_\_\_\_\_ Date of change \_\_\_\_\_  
Nature of change \_\_\_\_\_

REMARKS

\_\_\_\_\_  
 Mother's first or maiden name \_\_\_\_\_ Name of employer \_\_\_\_\_  
 Property owner \_\_\_\_\_ Tenant \_\_\_\_\_ Boarder \_\_\_\_\_ Color of eyes \_\_\_\_\_

FORM OF APPLICATION FOR REGISTRATION

Ward No.

OFFICE OF REGISTRAR OF VOTERS

Precinct No.

Parish of Orleans, State of Louisiana

Cert. No.

RESIDENCE NO.

I am a citizen of the United States and of the State of Louisiana.

My name is Mr.—Mrs.—Miss ... I am not now registered as a voter in any other Ward or Precinct of this State except ... My last registration was in Ward ... Precinct ... Parish ... I was born in the State (country) of ... Parish (or county) of ... on the ... day of ... in the year ... I am now ... years, ... months and ... days of age. I have resided in this state since ... in this Parish since ... and in Precinct No. ... in Ward No. ... of this Parish continuously since ... I am not disfranchised by any provisions of the Constitution of this State. The name of the householder at my present address is ... My occupation is ... My color is ... My sex is ... I am now affiliated with the ... Party.

In each of the following items the applicant shall mark through the word "have" or the words "have not" so that each item will show a true statement about the applicant.

- I have not (have) been convicted of a felony without receiving a full pardon and restoration of franchise.
I have not (have) been convicted of more than one misdemeanor and sentenced to a term of ninety (90) days or more in jail for each such conviction, other than traffic and/or game law violations, within five years before the date of making this application for registration as an elector.
I have (have not) been convicted of any misdemeanor and sentenced to a term of six (6) months or more in jail, other than traffic and/or game law violations, within one year before the date of making this application for registration as an elector.

TURN CARD OVER

I have (have not) lived with another in "common law" marriage within five years before the date of making this application for registration as an elector.
I have not (have) given birth to an illegitimate child within five years before the date of making this application for registration as an elector. (The provisions hereof shall not apply to the birth of any illegitimate child conceived as a consequence of rape or forced carnal knowledge.)
I have not (have) acknowledged myself to be the father of an illegitimate child within five years before the date of making this application for registration as an elector. I do hereby solemnly swear or affirm that I will faithfully and fully abide by all the laws of the State of Louisiana, so help me God.

Signature

Sworn to and subscribed before me:

(Deputy) Registrar

CHANGE OF ADDRESS

Date ... Address ... Ward No. ... Precinct No. ... Cert. No. ...
Date ... Address ... Ward No. ... Precinct No. ... Cert. No. ...
Date ... Address ... Ward No. ... Precinct No. ... Cert. No. ...

CHANGE OF NAME

I am now Mr.—Mrs.—Miss ... Date of change ...
Nature of change ...

REMARKS

Mother's first or maiden name ... Name of employer ...
Property owner ... Tenant ... Boarder ... Color of eyes ...

The first sentence on each form reads: "My name is Mr.-Mrs.-Miss \_\_\_\_\_." The form does not specifically ask for the full name of the applicant. Nevertheless, such an omission may cause rejection.<sup>6/</sup>

The applicant shows his place of birth by completing some variant of the statement "I was born in the State (or country) of \_\_\_\_\_, Parish (or county) of \_\_\_\_\_." Although the applicant may conclude from the disjunctive "or" that he has a choice of stating the country of his birth rather than the state, he will be rejected in most parishes for doing so.<sup>7/</sup> Moreover, the word "or" does not appear in the parentheses with the word "country" in some of the forms. See pp. 41D & E, supra. This confronts the applicant with a perplexing choice -- "I was born in the state (country) of \_\_\_\_\_" -- that he may not resolve by inserting the country of his birth. Some of the forms go even further in inviting the rejectable error of country instead of state. These forms have one line ending with the word "state" and the next line beginning with "(country) of \_\_\_\_\_." See p. 41D, supra.

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<sup>6/</sup> Deposition of Peres (Deputy, Orleans Parish), Pl. Ex. A-71, at 20).

<sup>7/</sup> See, e.g., Deposition of Navarra (Tangipahoa Parish), Pl. Ex. A-105, at 26.

The most unfair "misprint" in connection with the place of birth statement has appeared in East Baton Rouge Parish. Here one of the forms, shown below, drops out both the word "of" following "state" and the comma which ordinarily follows the blank line on which the state of birth is to be placed.<sup>8/</sup> Thus the statement appears as "I was born in the state (or country) \_\_\_\_\_ Parish (or county) of \_\_\_\_\_."

If the applicant associates the first blank with the word parish, he will be rejected.<sup>9/</sup> The line on the form for the state of birth is drawn right up to the word "parish", again inviting the rejectable error shown in the following example.

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<sup>8/</sup> Deposition of Bankston, Pl. Ex. A-33, Ex. G-9 attached hereto.

<sup>9/</sup> Id. at 28-29.

Form LR-1

FORM OF APPLICATION FOR REGISTRATION

OFFICE OF REGISTRAR OF VOTERS

Parish of East Baton Rouge, State of Louisiana

Word No. 1

Prct. No. 2

RESIDENCE NO. 161 Van Guren St.

I am a citizen of the United States and of the State of Louisiana.

My name is Mr.-Mrs.-Miss Miss Lucille M. Eason I was born in the State (or Country) East Baton Rouge Parish (or county) of Louisiana

on the 20th day of December in the year 1941 I am now 21

years, 1 months and 16 days of age. I have resided in Precinct No. 2 in Ward No. 1

of this Parish continuously since Birth in the State since Birth

and in this Parish since Birth. I am not disfranchised by any provisions of the Constitution

of this State. The name of the householder at my present address is Mr. George W. Eason

My occupation is Nursing Aide My color is Negro My sex is Female

I am not now registered as a voter in any other Ward or Precinct of this State, except \_\_\_\_\_

My last registration was in Ward \_\_\_\_\_ Precinct \_\_\_\_\_ Parish \_\_\_\_\_

I am now affiliated with the Democratic Party.

In each of the following items the applicant shall mark through the word "have" or the words "have not" so that each item will show a true statement about the applicant.

2-463

TURN CARD OVER

I have not (have) been convicted of a felony without receiving a full pardon and restoration of franchise.

I have (have not) been convicted of more than one misdemeanor and sentenced to a term of ninety (90) days or more in jail for each such conviction, other than traffic and/or game law violations, within five years before the date of making this application for registration as an elector.

I have (have not) been convicted of any misdemeanor and sentenced to a term of six (6) months or more in jail, other than traffic and/or game law violations, within one year before the date of making this application for registration as an elector.

I have not (have) lived with another in "common law" marriage within five years before the date of making this application for registration as an elector.

I have not (have) given birth to an illegitimate child within five years before the date of making this application for registration as an elector. (The provisions hereof shall not apply to the birth of any illegitimate child conceived as a consequence of rape or forced carnal knowledge.)

I have (have not) acknowledged myself to be the father of an illegitimate child within five years before the date of making this application as an elector.

I do hereby solemnly swear or affirm that I will faithfully and fully abide by all of the laws of the State of Louisiana, so help me God.

Signature Lucille M. Eason

Sworn to and subscribed before me this 4 day of February 1963

George W. Eason  
(Deputy) Registrar

The following information forms no part of the application but is for use of the registration records:

Mother's first or maiden name Turpin Name of employer Public Safety Dept.

Property owner George W. Eason Tenant \_\_\_\_\_ Boarder \_\_\_\_\_ Color of Black

REMARKS

Especially devious is the use of the split line in connection with the place of birth requirement. One line on this form ends "I was born in the state (country) of \_\_\_\_\_" while the next line begins with a continuation of the blank and concludes the statement as follows: "\_\_\_\_\_, Parish (or county) of \_\_\_\_\_." See p. 41E, supra. The applicant is thus openly invited to start the second line with the name of his parish. This too is a rejectable error.<sup>10/</sup> Another variation is the form in use in Orleans Parish which drops off one of the parentheses, leaving the phrase to read "State (country of \_\_\_\_\_."<sup>11/</sup>

The applicant must narratively state his date of birth by completing the statement "I was born on the \_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_," and then must express his present age down to the exact day: "I am now \_\_\_ years, \_\_\_ months, and \_\_\_ days of age." The arithmetic precision with which the age computation must be completed is treated in the following section of this brief; it is enough to note here that at least in one parish, where the word "days" appears on the form in the singular "day", the State was unable to be as precise as it required the rejected Negro applicant to be.<sup>12/</sup>

<sup>10/</sup> See, e.g., Dep. of Palmer (East Feliciana Parish), Pl. Ex. A-37, at 28.

<sup>11/</sup> Deposition of Gallinghouse, Pl. Ex. A-71, Ex. G-3 attached thereto.

<sup>12/</sup> Deposition of Ward (Madison Parish), Pl. Ex. A-65, Ex. G-1 attached thereto.

The Supreme Court of Louisiana has held that completion of the age computation requirement is an essential prerequisite to registration. Lorio v. Sherburne, 122 La. 434, 47 So. 760 (1908).

The form calls for the completion of a statement of the applicant's length of residence, as follows:  
"I have resided in this State since \_\_\_\_\_,  
in this parish since \_\_\_\_\_, and in  
Precinct no. \_\_\_ in Ward no. \_\_\_ of this parish contin-  
uously since \_\_\_\_\_." One of the  
scrambled forms rearranges this statement to read:  
"I have resided in Precinct No. \_\_\_, in Ward No. \_\_\_  
of this parish continuously since \_\_\_\_\_, in  
this state since \_\_\_\_\_, and in this parish since  
\_\_\_\_\_." Supra, p. 41C. This statement  
requires the applicant to know his ward and precinct  
numbers, information the registrar is not obliged to  
provide.<sup>13/</sup> Even when the information is supplied by  
the registrar and inserted at the top right-hand  
corner of the form, the applicant must reverse the  
order of the numbers, and in the body of the card put  
the precinct number first. A failure to do so is by  
itself a rejectable error.<sup>14/</sup>

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<sup>13/</sup> Deposition of Harvey (West Feliciana Parish), Pl.  
Ex. A-125, at 11. Most registrars, however, stated  
that they do provide this information.

<sup>14/</sup> Deposition of Palmer (East Feliciana Parish), Pl.  
Ex. A-37, at 22-23.

The residence blanks present the applicant with a further ambiguity. He must state that he has resided in his present ward and precinct "continuously since" a given date, but with respect to the date of his residence in the state and parish only "since" a given date. This suggests a distinction between the types of residences he must show. The distinction is misleading; if the date of residence shown in the state and parish blanks is not the date of "continuous" residence, the card is incorrect and the applicant may be rejected.<sup>15/</sup>

The applicant must complete the following statement regarding his householder: "The name of the householder at my present address is \_\_\_\_\_." On each of the five versions of the LR-1 card, the householder statement is preceded by a sentence which reads: "I am not disfranchised by any provisions of the Constitution of this State." Should the applicant too hurriedly read through the first statement and proceed to the next blank he may only see the phrase "my present address is \_\_\_\_\_." If he

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<sup>15/</sup> Deposition of Manning (East Carroll Parish), Pl. Ex. A-35, at 17-19.



thereupon states his address in this blank rather than the name of the householder, he may be rejected.<sup>16/</sup> The possibility of this happening is greatly heightened by the small size of both the card and the print on it. The Registrar of Bienville Parish testified that this blank "is very confusing and most people read the last of it 'my present addresses is'." (Pl. Ex. I-13 at 406.) The ease with which this error may be committed is partially demonstrated by the large number of forms of plainly literate applicants in evidence in this case which were rejected for this error alone. To add to the possibility of confusion on the part of the applicant, the printed form in a number of parishes shows the word "householder" misspelled as "househoder".<sup>17/</sup>

The applicant must state the facts of his prior registration by completing the following two statements:

"I am not now registered as a voter in any other ward or precinct of this state, except \_\_\_\_\_. My last registration was in ward \_\_\_\_\_ precinct \_\_\_\_\_ parish \_\_\_\_\_."

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<sup>16/</sup> See, e.g., Dep. of Stockman (Catahoula Parish), Pl. Ex. A-25 at 11; Dep. of Platt (DeSoto Parish), Pl. Ex. A-31 at 14; Dep. of Bankston (East Baton Rouge Parish), Pl. Ex. A-33 at 20-21; Dep. of Olinde (Pointe Coupee Parish), Pl. Ex. A-77 at 19; Pl. Ex. B-71 (Orleans Parish rejected applications).

<sup>17/</sup> Dep. of Ward (Madison Parish), Pl. Ex. A-65 at 21-22; Dep. of Navarra (Tangipahoa Parish), Pl. Ex. A-105 at 27; Dep. of Bull (Orleans Parish - Deputy), Pl. Ex. A-71 at 11.

These statements are rife with ambiguities. The most obvious difficulty confronts the applicant who is registering for the first time in Louisiana. Neither statement applies to such a person, yet most registrars require that something be put in those blanks to satisfy the requirement that all blanks be filled.<sup>18/</sup> Each applicant, whatever his prior status, is left to his own devices to determine whether the answer to the first of these statements should be his ward, his precinct, his ward and precinct, his town, his parish, his state, or some other response indicating the statement is not applicable to him.

If the applicant wishes to participate in the primary election of one of the major parties, he must state the name of that party in completing the statement "I am now affiliated with the \_\_\_\_\_ party." Louisiana law specifically declares that "[T]he applicant need not fill the blank space in the form required in R.S. 18:32 relating to party affiliation in order to be registered." LRS 18:33. However, the syntactical contrast between the party affiliation statement and the "not now registered" statement seems contrived to confuse applicants. A person

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<sup>18/</sup> See, e.g., Dep. of Gallinghouse (Orleans Parish), Pl. Ex. A-71 at 106; Dep. of Bushnell (Rapides Parish), Pl. Ex. A-79 at 11-13; Dep. of Moreau (St. Landry Parish), Pl. Ex. A-97 at 15-16. In East Baton Rouge and Caddo Parishes these blanks may be left open if the applicant never registered before. Dep. of Bankston, A-33 at 36-37; Dep. of Mitchell, A-17 at 10.

becomes affiliated with a party when he completes the statement that he is "now affiliated" with it.<sup>19/</sup> With respect to the "not now registered" blank, however, it would be incorrect (in most parishes) for the applicant to consider the ward and precinct in which he is now registering as one in which he is "now registered," and therefore an exception to be inserted in the blank following the word "except".<sup>20/</sup>

The applicant must complete six statements at the bottom and on the back of the application form which pertain to disqualifying crimes and other acts defined by the state to be conclusive evidence that the applicant does not possess the requisite good character. Louisiana Constitution, Article VIII, §1(c) (as amended, 1960). In both arrangement and verbal content, these statements are deceptive, unclear, and a further invitation to inadvertent error.

In order to complete the statements honestly and correctly, the applicant must know the meaning of the following words and terms: "restoration of franchise", "felony", "misdemeanor", "common law marriage", "forced

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<sup>19/</sup> Dep. of Gallinghouse (Orleans Parish), Pl. Ex. A-71 at 110.

<sup>20/</sup> Dep. of Gallinghouse (Orleans Parish), Pl. Ex. A-71 at 100; Dep. of Ward (Madison Parish), Pl. Ex. A-65 at 25.

carnal knowledge", "acknowledged". Besides understanding these terms, he must also discern the meaning of lengthy statements printed in dictionary-size type in which the terms are found.

The first three statements deal with disqualifying crimes. If the applicant has not been guilty of any of them, he must strike through the word "have" in each statement, leaving each to read "I have not been convicted ...." The first, dealing with felonies, is simple enough. The next two, however, defy rational analysis. They read:

I have (have not) been convicted of more than one misdemeanor and sentenced to a term of ninety (90) days or more in jail for each such conviction, other than traffic and/or game law violations, within five years before the date of making this application for registration as an elector.

I have (have not) been convicted of any misdemeanor and sentenced to a term of six (6) months or more in jail, other than traffic and/or game law violations, within one year before the date of making this application for registration as an elector.

The applicant who has been convicted of something must decide (a) whether the crime or crimes for which he has been convicted are misdemeanors; (b) whether if he has three or more convictions one of which led to less than a ninety day sentence, he is therefore not disqualified under the first of these two statements; (c) whether if his crime or crimes are misdemeanors,

they are not disqualifying by reason of the "traffic and/or game law violations" exception; (d) whether a conviction is disqualifying if he was sentenced to a term that would disqualify him, but the sentence was suspended; (e) whether the one year and five year periods he must consider started to run with the applicable conviction, the date of sentencing, the date the sentence ran out, or the date he was actually released from custody; and (f) whether, if he served less than the disqualifying time, but counting parole went over the disqualifying time, he is therefore disqualified. It is doubtful that any applicant ever asked himself these questions, although each focuses on a patent ambiguity in one of the two misdemeanor statements. This is because no applicant could be expected to read through them, comprehend them, and then indicate his answer.<sup>21/</sup> More probable is that each applicant reads enough to know that his answer should be in the negative, and then attempts to express that negative answer. It is in unsuccessfully making

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<sup>21/</sup> The Caddo Parish registrar, who for many years had been a Deputy Clerk of Court for a state criminal court, did not know the difference between the two misdemeanor statements, and added: "It is not up to me to make the distinction." Dep. of Mitchell, Pl. Ex. A-17 at 2, 20.

this effort, although the actual fact is well known to both applicant and registrar, that thousands of applicants have been rejected.<sup>22/</sup>

The key to the state's purpose in including the "have-have not" statements on the form lies in the varied arrangements of the terms "have" and "have not". These phrases are jumbled within each set of six statements so the applicant may not, except on one of the cards, simply strike out the first "have" he sees

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Other less convoluted ambiguities are present in these six statements. For instance, the applicant must determine whether a relationship he may have had in the past five years, but perhaps no longer has, comes within the "common law" marriage disqualification. A male applicant must state whether he has "acknowledged" himself to be the father of an illegitimate child. Acknowledged to whom? And what act constitutes an acknowledgment? The actual fathering of an illegitimate child is not itself a disqualification.

The "have-have nots" were added to the application form (Acts 1960, No. 305, §1) just two weeks after the legislature made "common law" marriage and giving birth to a second illegitimate child statutory crimes. (Acts 1960, Nos. 73 and 75) Thus three of the six statements, if applicable, oblige the applicant to make a sworn admission or a partial admission of a crime. The statements on that ground alone are of dubious constitutionality. See Communist Party v. United States, 331 F.2d 807 (D.C. Cir. 1963); cert. denied 377 U.S. 968 (1964). It is doubtful whether the right to vote may be conditioned upon the automatic waiver of the privilege against self-incrimination.

and all those immediately under it. The five cards contain the following arrangements of these terms:

1

I have (have not)  
I have (have not)  
I have (have not)  
I have (have not)  
I have (have not)  
I have (have not)

2

I have (have not)  
I have (have not)  
I have not (have)  
I have not (have)  
I have (have not)  
I have (have not)

3

I have (have not)  
I have not (have)  
I have (have not)  
I have not (have)  
I have (have not)  
I have (have not)

4

I have not (have)  
I have not (have)  
I have not (have)  
I have not (have)  
I have not (have)  
I have not (have)

5

I have not (have)  
I have not (have)  
I have (have not)  
I have (have not)  
I have not (have)  
I have not (have)

The gaming aspect of these arrangements demonstrates that the statements are on the form solely to induce the applicant into inadvertent error. Any registrar interested in the actual facts may easily find them out, as several have testified it is their practice to do.<sup>23/</sup>

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<sup>23/</sup> See, e.g., Dep. of Riess (St. Bernard Parish), Pl. Ex. A-87 at 14-15; Dep. of Moreau (St. Landry Parish), Pl. Ex. A-97 at 10-11; Dep. of Montou (Allen Parish), Pl. Ex. A-3 at 12.

C. The Registrars, In Administering The Application Form Test, Possess and Exercise An Arbitrary Power To Accept Or Reject Whom They Choose.

The application form itself, as shown in the preceding section of this brief, is designed to induce inadvertent error and to confuse the applicant with its ambiguities. Registrars wishing to register persons fairly assist applicants through these hurdles. Some registrars do this but they do so in violation of state law; reasonableness and fairness are unlawful.

There follows an analysis of the extent to which the registrars in Louisiana seize upon the obscurities and ambiguities inherent in the application form, and also the common variety of mistake or omission typically present in the completion of any form, to exercise an arbitrary power to accept or reject applicants for registration. This analysis shows that the registrars can and do reject applicants for reasonable answers reasonably expressed. Applicants also are rejected for committing oversights or for reasonably omitting statements that do not appear to apply to them. It is the added practice of some registrars orally to question applicants about information on their cards which otherwise appear correct, and then to reject them if the inquiry uncovers information inconsistent with what is on the card. And many registrars refuse to provide reasonable assistance to applicants to aid them in avoiding the technical errors or omissions that will cause their rejection.



An examination into the reasonableness of the application form test must proceed with all of Louisiana's registration requirements in mind. The applicant first establishes his literacy by reading and writing a portion of the Preamble to the United States Constitution. Louisiana Constitution, Art. VIII, Sec. 1(c)(7). He then completes the multiple-choice test on history and government. LRS 18:191 (as amended, 1962).<sup>24/</sup> By direction of the State Board of Registration, each registrar is to administer the Preamble test and the multiple-choice test prior to giving the applicant the LR-1 card. Dep. of Cutrer, Pl. Ex. C-2, Ex. 3 attached thereto. Thus before the applicant even begins the application form test, he has established his literacy.<sup>25/</sup>

I. The rejection of reasonable answers

a. Place of Birth

The applicant must state his place of birth by completing the statement "I was born in the state (or country) of \_\_\_\_\_, Parish (or County) of \_\_\_\_\_."

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<sup>24/</sup> The use of this test was partially enjoined in twenty-one parishes in U. S. v. Louisiana, 225 F. Supp. 353 (E.D. La. 1963).

<sup>25/</sup> According to the registrar of Iberville Parish, the purpose of the preamble test is "to prove that [the applicant] can read and to prove that he can write." Dep. of Billings, Pl. Ex. A-47 at 5-6.

The typographical contrivances that invite the applicant to put the name of his parish in the blank for the state were discussed at p. 42, supra. If the applicant does just that, and then puts his state of birth in the parish blank, he has committed a rejectable error.<sup>26/</sup>

The simple inversion of state and parish is just one of many variations growing out of this statement that cause rejection. We have noted that some cards do not contain the word "or" in parentheses with the word "country". If the applicant with such a card chooses to insert "U.S.A." rather than the state of birth, he has committed a rejectable error.<sup>27/</sup> The registrar of Tangipahoa Parish rejected a Negro applicant for putting "U.S.A." in that blank because

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<sup>26/</sup> See, e.g., Dep. of Zeringue (St. Charles Parish), Pl. Ex. A-89 at 17; Dep. of Gibson (Lincoln Parish), Pl. Ex. A-61 at 8; Dep. of Moreau (St. Landry Parish), Pl. Ex. A-97 at 6; Dep. of Allen (LaSalle Parish), Pl. Ex. A-59 at 5; Dep. of Hartman (Deputy, Orleans Parish), Pl. Ex. A-71 at 48; Dep. of Manning (East Carroll Parish), Pl. Ex. A-35 at 28; Dep. of Callais (Lafourche Parish), Pl. Ex. A-57 at 18; Dep. of Bankston (East Baton Rouge Parish), Pl. Ex. A-33 at 29; Dep. of Billings (Iberville Parish), Pl. Ex. A-47 at 9-10.

<sup>27/</sup> Dep. of Dupree (Deputy, Orleans Parish), Pl. Ex. A-71 at 72-73.

the registrar "interprets" the form to call for the country of birth only if it is a country other than the United States. Dep. of Navarra, Pl. Ex. A-105 at 26-27. However, he does not inform applicants who make that error of his "interpretation"; he just rejects them. Ibid.

Also noted in the previous section is the split line form, where a new line begins with a continuation from the end of the preceding line of the blank space for the state, as "\_\_\_\_\_, Parish of \_\_\_\_\_." If the applicant completes the whole statement to read, for example, "I was born in the state (or country) of Louisiana East Feliciana, Parish (or county) of Clinton" (Clinton being the parish seat), he will be rejected. Dep. of Palmer (East Feliciana Parish), Pl. Ex. A-37 at 20; Dep. of Thomas (Washington Parish), Pl. Ex. A-117 at 22-23. With reference to this particular error on the card of a Negro applicant, the East Feliciana Registrar testified as follows:

- Q. Mr. Palmer, looking at the form, do you know where the person was born?
- A. No, sir, I don't know where he was born.
- Q. You do not? You can't tell by looking at it where he was born?
- A. No, sir, he said he was born in Clinton Parish. I don't even know where Clinton Parish is.
- Q. Is that all he says?
- A. He says he was born in the State of Louisiana, East Feliciana.

Q. And, therefore, you do not know where the applicant was born, is that correct?

A. No, sir, I don't personally know where he was born.

Q. And you cannot tell from the card where he was born?

A. No, sir, I cannot personally tell from the card where he was born.

MR. KRON: In any event the card is not correctly filled out.

A. It is not correct. (Dep. of Palmer, Pl. Ex. A-37 at 20). 28/

To align the blank for the state with the word "parish" and then follow through and place the name of the parish in the parish blank as well -- e.g., "State of West Feliciana Parish of West Feliciana" -- is also a rejectable error.29/

A common error in the place of birth statement for which applicants are rejected is the insertion of the town of birth in either the state or parish blank. Thus the Caddo Parish Registrar rejected a Negro applicant who said he was born in the "State of Shreveport Parish of Caddo" because, as the Registrar put it, whether the applicant was talking about the State of

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28/ See also Dep. of Billings (Iberville Parish), Pl. Ex. A-47 at 15-17; Dep. of Cameron (West Carroll Parish), A-123 at 7.

29/ Dep. of Harvey (West Feliciana Parish), A-125 at 16; Dep. of Bushnell (Rapides Parish), A-79 at 13-14; Dep. of Adams (Natchitoches Parish), A-69 at 10.

Louisiana "is not for me to judge." Dep. of Mitchell, Pl. Ex. A-17 at 29.<sup>30/</sup> Similarly, the Catahoula Parish Registrar rejects if the applicant states his place of birth as "State of Louisiana Parish of Harrisonburg." Although Harrisonburg is the parish seat, the applicant is rejected because "there is no such parish as Harrisonburg." The Registrar observed, in speaking of the town of Harrisonburg, that "most of them are born in a hospital anyway, and we don't have one here." Dep. of Stockman, Pl. Ex. A-25 at 12. Other registrars who reject for the same error are more candid and admit that although they know exactly what place the applicant is talking about, they still must reject. Dep. of Thomas (Washington Parish), Pl. Ex. 117 at 15-16; Dep. of Olinde (Pointe Coupee Parish), Pl. Ex. A-77 at 13; Dep. of Navarra (Tangipahoa Parish), Pl. Ex. A-105 at 24-25. According to the Tangipahoa Parish Registrar, State law specifically requires such rejection. A-105 at 25.

b. Date of Birth

The applicant must state his date of birth by completing the statement "I was born on the \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_." So arranged, the

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<sup>30/</sup> For identical testimony, see Dep. of Larche (Morehouse Parish), Pl. Ex. A-67 at 11; Dep. of Manning (East Carroll Parish), A-35 at 12.

simple matter of stating one's birth date may cause rejection. In Orleans Parish, it is a rejectable error to put "33" for 1933 in the blank for the year of birth. Dep. of Peres (Deputy, Orleans Parish), A-71 at 21. It is also an error in Orleans Parish to state "I was born on the October 30 day of October 30." (Ibid; see also application form reproduced at page 9 of Attachment D appended to the Complaint in this case.) The Caddo Parish Registrar rejected a Negro applicant who stated his date of birth as the "September day of 28 in the year 35" because he "wouldn't know" if the applicant meant she was born on September 28. Dep. of Mitchell (Caddo Parish), Pl. Ex. A-17 at 31.

Another kind of "error" in the date of birth is rejectable in Madison Parish. A Negro applicant was denied registration for using the number "11" instead of writing "November" in the blank showing the month of birth. Dep. of Ward, Pl. Ex. A-65 at 13-14. The registrar did not tell the applicant what her error was; ten days later the applicant returned, made the same mistake, and was rejected again. Ibid. The answer "11 mo" is circled as an error on the form of a Negro applicant in Orleans Parish as well. (Dep. of Gallinghouse, Pl. Ex. A-71, Ex. G-2 attached thereto).

c. The Householder

The applicant must complete a statement which reads "The name of the householder at my present address is \_\_\_\_\_." No registrar in any parish was able to explain the purpose of having this statement on the form. Several, however, admitted that the information is useless. Katherine Ward, the Registrar of Madison Parish, testified:

"As far as my knowing who the householder is, it's none of my business and I couldn't care less; all I know is that if they don't put it on that card, it's a mistake." (Dep. of Ward, Pl. Ex. A-65 at 19.)

In a similar vein, the Registrar of Caddo Parish testified with respect to the householder blank as follows:

- Q. Do you use that information for anything once they fill it in? If she had filled it in, would you use it for anything?
- A. It is part of the application.
- Q. I know, do you use that for anything in the registration or voting process?
- A. No, it is simply part of the application.
- Q. So that you don't have any reason to want to know aside from it being on the application?
- A. Personally, I don't care. (Dep. of Mitchell, Pl. Ex. A-17 at 33.)

The Registrar of Natchitoches Parish testified to the same effect:

Q. ...when in the course of your duties do you use that information?

A. I consider it part of the person's intelligence to be able to answer simple questions.

Q. Is that the extent of it?

A. I would say so. (Dep. of Adams, Pl. Ex. A-69, 16-17.)

It is against this background that the absence of any consensus among the registrars as to the meaning of the term "householder" must be considered. Some believe it means the head of the house<sup>31/</sup> and others say it is the one who owns the house.<sup>32/</sup> Some say it is the landlord,<sup>33/</sup> while others say it is not the landlord.<sup>34/</sup> Other variations include the husband's name<sup>35/</sup> and "the boss of the house".<sup>36/</sup>

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<sup>31/</sup> Dep. of Cameron (West Carroll Parish), Pl. Ex. A-123 at 14; Dep. of Bryce (Bossier Parish), Pl. Ex. A-15 at 10; Dep. of Dupre (Deputy, Orleans Parish), Pl. Ex. A-71 at 6.

<sup>32/</sup> Dep. of Allen (LaSalle Parish), Pl. Ex. A-59 at 3; Dep. of Riviere (Jefferson Parish), Pl. Ex. A-51 at 12; Dep. of Landry (Lafayette Parish), Pl. Ex. A-55 at 18; Dep. of Larche (Morehouse Parish), Pl. Ex. A-67 at 6.

<sup>33/</sup> Dep. of Montou (Allen Parish), Pl. Ex. A-3 at 19; Dep. of Judice (Acadia Parish), Pl. Ex. A-1 at 9.

<sup>34/</sup> Dep. of Reynolds (St. James Parish), Pl. Ex. A-93 at 6; Dep. of Harvey (West Feliciana Parish), Pl. Ex. 125 at 26.

<sup>35/</sup> Dep. of Iles (Beauregard Parish), Pl. Ex. A-11 at 6; Dep. of LaBaue (West Baton Rouge Parish), Pl. Ex. A-121 at 20-21.

<sup>36/</sup> Dep. of Stockman (Catahoula Parish), Pl. Ex. A-25 at 11.



The registrars are in solid agreement that the applicant's address is not an acceptable answer in the householder blank,<sup>37/</sup> although, as the Bienville Parish Registrar has noted, this line is "very confusing and most people read the last of it 'my present address is'." Pl. Ex. I-13 at 406.<sup>38/</sup> The Acadia Parish Registrar also stated that this blank "kind of confuses some people". Dep. of Judice, Pl. Ex. A-1 at 9. There are other possible errors besides the address. The Registrar of Rapides Parish will not accept the entry "mother" for householder because "mother" is not a name. Dep. of Bushnell, Pl. Ex. A-79 at 15. In Orleans Parish, it is a rejectable error to state only the last name of the householder, even where the name is the same as that of the applicant. Dep. of Raicevich (Deputy, Orleans Parish), Pl. Ex. A-71 at 25-26. This is because the householder could be the applicant's father or her

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<sup>37/</sup> See, e.g., Dep. of Cameron (West Carroll Parish), Pl. Ex. A-123 at 5; Dep. of Stockman (Catahoula Parish), Pl. Ex. A-25 at 11; Dep. of Ward (Madison Parish), Pl. Ex. A-65 at 18; Dep. of Manning (East Carroll Parish), Pl. Ex. A-35 at 16; Dep. of Harvey (West Feliciana Parish), Pl. Ex. A-125 at 25; Dep. of Platt (DeSoto Parish), Pl. Ex. A-31 at 14; Dep. of Adams (Natchitoches Parish), Pl. Ex. A-69 at 14; Dep. of Thomas (Washington Parish), Pl. Ex. A-117 at 24; Dep. of Olinde (Pointe Coupee Parish), Pl. Ex. A-77 at 9; Dep. of Bankston (East Baton Rouge Parish), A-33 at 20-21.

<sup>38/</sup> See also Dep. of Potier (St. Martin Parish), Pl. Ex. A-99 at 5.

brother or anyone by the same name who lives in the same block. Ibid. This "error" is rejectable even where it is the only "error" on the card. Id. at 28.

Marcel Brunet, former Administrative Assistant -- i.e., second in command -- to the Registrar of Orleans Parish,<sup>39/</sup> elaborated on why some applicants don't "catch it" and realize that the landlord is not the householder:

Definitely you and I as well as anybody else know some people have nervousness problems, because a lot of these people misunderstand the meaning of a word and some college professors have done that same thing, sir. People who are very smart have messed up their cards, because they just don't give enough time to absorb the meaning of the orders, but they usually catch them themselves. The only thing we can do is ask them to read the question over again.

If he puts the name of the landlord down, I don't think that is the right answer and if I turn them down, the registrar would back me up. (Dep. of Brunet, A-71 at 20-21).

Nervousness must have overcome State Representative John S. Garrett (Claiborne Parish) when he stated during a legislative debate last June that the proper answer to the householder blank is the owner of the house.<sup>40/</sup>

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<sup>39/</sup> Dep. of Brunet, A-71 at 3-4. The Orleans Parish Registrar described Mr. Brunet as one who is "as well versed in registration procedures as anyone I know." Dep. of Gallinghouse, Pl. Ex. A-71 at 6.

<sup>40/</sup> A news article reporting this legislative debate appeared in the New Orleans Times-Picayune on June 19, 1964. The author of the article has properly authenticated it, and a copy of the article is attached to his deposition. Dep. of Gillis, Pl. Ex. O, Ex. G-1 attached thereto.

Representative Garrett, however, speaks with authority; he was one of five men appointed by Governor Davis in 1962 to serve on the Advisory Voter Registration Committee "to examine into all phases of voter registration in all of the parishes of the State of Louisiana...." Executive Order No. 29, July 26, 1962.<sup>41/</sup> He is also Chairman of the Joint Legislative Committee on Segregation.<sup>42/</sup>

The following colloquy which took place during the taking of the deposition of George Bull, Deputy Registrar of Orleans Parish, is relevant to Representative Garrett's interpretation (and that of many others) of the householder blank:

Q. Do the applicants ever think householder means the person who owns the house?

MR. KRON: If they do, it shows a lack of intelligence.

THE WITNESS: I couldn't determine what the applicant is thinking.

BY MR. ROSS:

Q. If they put their landlord down, does that indicate to you they think that means the person who owns the house?

A. The only thing it indicates to me is that it is incorrect.

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<sup>41/</sup> A copy of this Executive Order is attached as G-38 to the deposition of Mr. Gallinghouse, Pl. Ex. A-71.

<sup>42/</sup> Dep. of Gillis, Pl. Ex. O, Ex. G-1 attached thereto.

MR. KRON: Just for the purpose of the record, if a person doesn't know who his own householder is, I sometimes wonder if he should be able to vote as to who the President of the United States should be. (Dep. of Bull, Pl. Ex. A-71 at 88-89.) 43/

d. Age Computation

The applicant must complete a statement which reads: "I am now \_\_\_ years, \_\_\_ months and \_\_\_ days of age." It is not uncommon for people to make arithmetic errors. The age computation requirement on the LR-1 card serves no purpose other than to provide the applicant with an opportunity to make such an error, thus causing his rejection. Since the card also provides blanks for the applicant's date of birth, the age computation is unrelated to the state's voting age requirement.

The complexities inherent in the age computation test are best revealed in a bulletin prepared on June 2, 1964, by Louis Niklaus, Chief Deputy Registrar of Orleans Parish, for the guidance of all Orleans Parish deputies. The bulletin reads in part:

Because of the amount of errors appearing on applications being checked by me, I wish to clarify the correct procedure for figuring the age of an applicant. You should use a notebook or scratch pad to figure the age on each application rather than trying to check the figures in your head.

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43/ Mr. Kron also stated, with respect to instructions received by the deputy to the effect that the landlord is the wrong answer, that "any other instructions would be utterly ridiculous." Dep. of Bull, Pl. Ex. A-71 at 88.

If an applicant is born on the 15th day of December in year 1922 and visits the office on June 1, 1964, this is the proper procedure:

3	17	31
1964	<del>8</del>	<del>7</del>
1922	12	15
<hr style="width: 100%; border: 0; border-top: 1px solid black;"/>		
41 yrs.	5 mths.	16 days

If an applicant is born on the 15th day of December in the year 1922 and visits the office on May 1, 1964, this is the proper procedure:

3	16	31
1964	<del>8</del>	<del>7</del>
1922	12	15
<hr style="width: 100%; border: 0; border-top: 1px solid black;"/>		
41 yrs.	4 mths.	16 days

If an applicant is born on the 1st day of May in the year 1922 and visits the office on June 1, 1964, this is the proper procedure:

1964	6	1
1922	5	1
<hr style="width: 100%; border: 0; border-top: 1px solid black;"/>		
42 yrs.	1 mth.	0 days

In borrowing from a 30 day month you can use only 30 days.

In borrowing from a 31 day month you can use 30 or 31 days and still be correct.

In borrowing from the month of February you can use either 28, 29 or 30 days and still be correct.

[Dep. of Gallinghouse, Pl. Ex. A-71, Ex. G-30 attached thereto.]

Thus, it is the rule in Orleans Parish that if the preceding month had only 30 days, the applicant cannot "borrow" 31 days to do his computation. Taking the second example in the memorandum, where the hypothetical applicant applies on May 1, the applicant would be rejected if he counted the full months since his

birthday on December 15 - i.e., January, February, March, April (4) - and then added to it the sixteen days in December (December 15 through December 31) and the one day in May for an answer of 4 months and 17 days. The same applicant would also be rejected if he counted four months from December 15 to April 15 and then counted 15 days instead of 16 because he chose not to count the day on which he registered. And in either example in the bulletin, if the applicant counted both his birthday and the day on which he registered, he would be rejected.

To speak of these picayune variations as grounds for rejection is not fanciful. One-day errors in age computation have caused many rejections in numerous parishes. Mr. Gallinghouse, the Orleans Parish Registrar, stated that a one-day error in the age computation is by itself a reason for rejection. Dep. of Gallinghouse, Pl. Ex. A-71 at 45 (Part I). Marcel Brunet, former Administrative Assistant to Mr. Gallinghouse, also said that a one-day error is rejectable. Dep. of Brunet, A-71 at 12. Allen J. Dupre, a Deputy Registrar in Orleans Parish, was asked why he rejected a Negro applicant who was born on November 14, 1927, and who, when she applied on December 7, 1961, correctly stated her age as 34 years, 0 months, and 23 days. Mr. Dupre, plainly in

error himself, explained: "The glaring error again, which nobody can be placed on the eligible rolls that she has her days wrong." Dep. of Dupre, Pl. Ex. A-71 at 16.<sup>44/</sup>

The Registrar of Terrebonne Parish rejected a Negro applicant who made what he considered an error in age computation because "the law says he shall fill out that card without one mistake in the card." Dep. of Millet, Pl. Ex. A-109 at 15. The applicant, who was born February 7, 1925, and applied on October 30, 1963, stated his age as 38 years, 8 months, and 24 days. (Dep. of Millet, Ex. G-2 attached thereto.) At most, it is a one-day error, and is not an error at all if October 7 is counted as the first day in the computation of days.

The Registrar of Lafourche Parish considered rejectable the age computation of a Negro applicant who was born on May 12, 1932, applied on July 3, 1963, and stated his age as 31 years, 1 month and 20 days. Dep. of Callais, Pl. Ex. A-57 at 15-16 and Ex. G-1 attached thereto. The Registrar's rule is to reject two-day errors but to accept one-day errors. Id. at 13. The Registrar said he would have accepted

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<sup>44/</sup>The applicant's card also bears this notation by the registrar: "Admitted that she has been married." Mr. Dupre explained that if a woman has ever been married, even if she is presently divorced, she will be rejected if she calls herself "Miss" on the application form. Dep. of Dupre, Pl. Ex. A-71 at 16-17.

this card if the error had only been by one day. Yet when the computation is checked, it may be seen that the Registrar's conclusion of a two-day error is possible only if the month of June is treated as a 31-day month. Thus, the applicant's computation was at least within one day of being correct, and if it were acceptable to exclude the date of application, he was absolutely correct. This is true in spite of the comment of defense counsel that "as a matter of cold arithmetic it's off two days". Dep. of Millet, Pl. Ex. A-57 at 17.

Mildred Bankston, Deputy Registrar of East Baton Rouge Parish, had considerable difficulty checking the age computation of a rejected Negro applicant although she has been working in the registrar's office for sixteen years. Dep. of Bankston, Pl. Ex. A-33 at 3. The applicant's date of birth was March 29, 1938, she applied on June 28, 1963, and her stated age computation was 25 years, 3 months, and 1 day. Pl. Ex. A-33, Ex. G-1 attached thereto. At first Mrs. Bankston said the card contained no errors. Id. at 7. She was asked to recheck the card, and, after using pencil and paper for three or four minutes, she said the age computation should have been 25 years, 2 months, and 29 days. Id. at 8-9. Mrs. Bankston considered this an error of one month and



28 days rather than a mere two-day error. Ibid.  
At this point defense counsel submitted for the record that the correct answer should be 26 years, 2 months and 29 days, and that the card is "actually off eleven months". Id. at 10. Mrs. Bankston stuck to her original answer and said that if the form had been completed with the age computed as submitted by defense counsel, it would have been rejected. Ibid. It took Mrs. Bankston eight or nine minutes to assure herself that her answer was correct. Id. at 11.

The form with which Mrs. Bankston struggled is a good example of how difficult the age computation can be, and how that part of the "test" can vary significantly from applicant to applicant. There the date of birth was on the 29th of the month, and the date of application was the 28th of another month, thus presenting a more difficult problem than confronts an applicant born, say, on the first of a month and who registers on the second. Moreover, the answer given by Mrs. Bankston is itself not necessarily correct. From March 29 to June 28, one may reasonably count 2 months (March 29 - May 29) and two days in May (May 30 - 31) plus 28 days in June (June 1 through June 28) for a total of 2 months and 30 days.

The Registrar of East Feliciana Parish had similar difficulties. He used pencil and paper in order to determine that the period from April 16 to August 16 is 4 months and 0 days. Dep. of Palmer, Pl. Ex. A-37 at 8. The applicant, a Negro, showed her computation as 3 months and 28 days. Id. at 8. The applicant was rejected for this reason alone. Id. at 9.

Looking at another card of a rejected Negro applicant, Mr. Palmer said after computing the age with pencil and paper that the only error on the card was in the age. Id. at 10. He said it should have been 9 months and 12 days. Id. at 11. In fact, the applicant, who had put 8 months and 12 days, was correct and had been improperly rejected. Dep. of Palmer, EX. G-2 attached thereto. On still another card, Mr. Palmer stated that the applicant, a Negro, was rejected for stating the age computation as no months and 22 days when it should have been 11 months and 22 days. Id. at 16. Only after he was asked to check it over again carefully did he see that the applicant had computed it correctly. Ibid.

The Registrar of Tangipahoa Parish, when asked to explain why a particular Negro applicant was rejected, said the rejection was based upon an error in the age computation. Dep. of Navarra, Pl. Ex. A-105 at 12-13.

When he checked it and saw that the computation was actually correct, he attributed the wrongful rejection to the "human error" of his deputy who handled the applicant. Id. at 13.<sup>45/</sup> Another Negro applicant in Tangipahoa Parish was rejected for stating his age as "23 years, \_\_\_\_\_ months and 16 days of age." Dep. of Navarra, Pl. Ex. A-105, Ex. G-2 attached thereto. The applicant was born on August 27 and applied on September 13. The Registrar said his answer should have been 17 days because August is a 31-day month. Id. at 16. When asked if an applicant can be rejected simply for using a 30-day month instead of a 31-day month, the Registrar stated, "We have done it, yes, sir." Id. at 17. State law, in his view, requires such a rejection. Ibid. The same registrar also rejected a Negro applicant who stated her age as "21 years, 5 months, and 30 days" when it should have been "21 years, 6 months, and 0 days." Id. at 19. When asked if that is a reason to reject a person, the Registrar said: "We did, whether that was a reason or not." Ibid.

The Registrar of East Carroll Parish was asked to explain the age computation error of a Negro

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<sup>45/</sup> Mr. Navarra related a change in his age computation standard to the time when "[A]ll of this CORE mess started." Dep. of Navarra, Pl. Ex. A-105 at 14. This was the time, according to Mr. Navarra, when "they sent these -- I guess they're supposed to be mangle white people -- in here." Ibid.

applicant, born on February 14, 1922, who applied on April 10, 1963, and stated his age as "41 years, 1 month and 26 days." Dep. of Manning, Pl. Ex. A-35, Ex. G-3 attached thereto. The Registrar first said it should have been 25 days, then checked it and said it should have been 27 days. Id. at 14. The answer is absolutely correct if the applicant is allowed to use a 30-day month for the month preceding the month of application, or if he is allowed to exclude the date of application.

The Registrar of Caddo Parish rejected a Negro applicant solely for a one-month error in age computation, although 20 days previously on a prior attempt, the applicant completed the age computation correctly. The age error was the only one on the card. Dep. of Mitchell, Pl. Ex. A-17 at 21-22; Ex. P-5 attached thereto.

Some registrars will permit a two or three-day leeway.<sup>46/</sup> The Registrar of Madison Parish "won't quibble about a few days." Dep. of Ward, Pl. Ex. A-65 at 17-18. The most liberal view is that taken by the Registrar of Webster Parish. She will compute the months and days for the applicants if they put in the years because "it takes ten minutes figuring

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<sup>46/</sup> See, e.g., Dep. of Platt (DeSoto Parish), Pl. Ex. A-31 at 14, Dep. of Stockman (Catahoula Parish), Pl. Ex. A-25 at 11; Dep. of Riess (St. Bernard Parish), Pl. Ex. A-87 at 11.

their age; and they ask me, and I tell them." Dep. of Clement, Pl. Ex. I-119 at 21. The Registrar of Pointe Coupee Parish does not check the age computation at all. He said he has made so many "glaring errors" himself, even as much as by one year, that he does not believe it would be fair to reject applicants for making those errors. Dep. of Olinde, Pl. Ex. A-77 at 27.

The age computation test, as a practical matter, is what the registrar chooses to make of it. However, the strict and arbitrary administration discussed previously enjoys the sanction of state law.

e. "Have-Have Not" Statements

The applicant must show he is not disqualified under any one of six 'moral character' requirements by completing six statements that deal with those disqualifications. The manner in which these statements are presented to the applicant, and the State's jumbling of the phrases "have" and "have not", were discussed at pp. 53 - 54, supra. Registrars seize upon the "errors" induced by the form itself and reject applicants totally without regard to whether the applicants actually committed any of the disqualifying acts.

The "have-have not" section is the only portion of the application form that has been the subject of a ruling disseminated by the State Board to all registrars regarding what are right and wrong answers. Those standards, as they appeared in the Registrar's Communique sent by the Board to all registrars in April 1963, are set out on the following page.

"HAVE" OR "HAVE NOT"

Mr. "Tim" Gallinghouse has forwarded to the Board of Registration office the following information concerning the HAVE and HAVE NOT portion of the LR-1 cards. He states, "At the school of instructions it was requested that we have copies of the proper procedures concerning what answers would be acceptable and unacceptable answers on the morality questions on the LR-1 Form, and that a copy of these be mailed to each registrar." The Communique is using this means to comply with Mr. Gallinghouse's request, so please note carefully the diagram below:

SUGGESTED PROCEDURE ON THE HANDLING OF THE MORALITY QUESTIONS ON THE LR-1 FORM:

CORRECT OR ACCEPTABLE ANSWERS

1. ~~HAVE~~ (HAVE NOT)
2. ~~HAVE~~ (HAVE NOT)
3. ~~HAVE~~ (HAVE NOT)
- \* 4. ~~HAVE~~ (HAVE NOT)  
have not

\* APPLICANT MUST CORRECT ERROR BEFORE BEING SWORN AND MUST WRITE IN REMARKS "I HAVE CORRECTED MY OWN ERROR" AND INITIAL.

INCORRECT OR UNACCEPTABLE ANSWERS

1. HAVE (~~HAVE NOT~~)
2. HAVE (~~HAVE~~ NOT)
3. HAVE (HAVE NOT)
4. HAVE (HAVE NOT)
5. ~~HAVE~~ NOT (HAVE)
6. HAVE (HAVE NOT)
7. HAVE (HAVE NOT)

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Dep. of Cutrer, Pl. Ex. C-2, Ex. G-1, attached thereto.

Of the examples in the Communique labelled incorrect, only two (Nos. 1 and 7) could by any reasonable standard be read as indicating the applicant had committed the disqualifying act. And considering the small type on the card and the jumbled arrangement of the "haves" and "have nots", any rejection not based on an actual substantive disqualification is wholly arbitrary.

The present Director of the State Board of Registration, when asked whether the "suggested procedure" in the Communique represented Board policy, stated that "[T]he Board policy is the registrar have the applicant complete the LR-1 card. That's the only policy we have." Dep. of Cutrer, Pl. Ex. C-2 at 15. The rejected application forms in evidence in this case and the registrars' testimony, however, make it clear that the "suggested procedure" in the Communique prevails for the most part throughout the state.

No aspect of the entire application form test betrays its arbitrariness and therefore its potential for discriminatory use more plainly than does the rejection of applicants who cross out the wrong "have". These are the applicants who, following the instructions on the form to "mark through the word 'have' or the words 'have not' so that each item will show a true statement about the applicant", mark their

cards to read: "I have (have not) been convicted...."

These applicants are rejected because they did not "follow instructions",<sup>47/</sup> although they have done everything the card instructs them to do. Mildred Bankston, Deputy Registrar of East Baton Rouge Parish, was asked to explain why a Negro applicant who marked his card in this way was rejected. She testified as follows:

Q. Can you tell us why this applicant was rejected?

A. Because the instructions weren't followed and carried out.

Q. In what respect?

A. -- properly filled out on the back.

Q. In what respect, Mrs. Bankston?

A. They have -- instead of marking the "have" they have marked a portion the "have" in the "have not" all the way through.

Q. What do the instructions say?

A. "The applicant shall mark through the word 'have' or the words 'have not' so that each item will show a true statement about the applicant.

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<sup>47/</sup> Dep. of Callais (Lafourche Parish), Pl. Ex. A-57 at 15-16; Dep. of Palmer (East Feliciana Parish), Pl. Ex. A-37 at 26; Dep. of Bankston (East Baton Rouge Parish), Pl. Ex. A-33 at 17; Dep. of Cameron (West Carroll Parish), Pl. Ex. A-123 at 14; Dep. of Brunet (Deputy, Orleans Parish), Pl. Ex. A-71 at 46; Dep. of Gallinghouse, Part I, (Orleans Parish) Pl. Ex. A-71 at 126-127; Dep. of Hartman (Deputy, Orleans Parish), Pl. Ex. A-71 at 10; Testimony of Lucky (Ouachita Parish), Pl. Ex. I-73 at 754.



- Q. What did the applicant do?
- A. He marked through "have" in the "have not".
- Q. He marked through the word "have" did he not?
- A. Yes.
- Q. How does the sentence read; how do those sentences read?
- A. They read "I have not," but that's not the instructions.
- Q. The instructions direct him to mark through the "have"?
- A. Or the "have not," uh huh.
- Q. And he marked through the word "have". Can you tell from reading the card whether or not the person has been convicted of any of the disqualifying crimes?
- A. No.
- Q. Read the card -- read the first sentence at the top of the back of the card.
- A. On the back here?
- Q. Yes.
- A. "I have not been convicted of a felony without receiving a full pardon and restoration of franchise."
- Q. And you cannot tell whether or not he has been convicted?
- A. No.
- Q. O.K.

[Dep. of Bankston, A-33 at 17-18.]

Mr. Gallinghouse in Orleans Parish goes one step further. He will reject an applicant who first strikes out "have not" and then writes in the word "not" so the statement appears:

not  
"I have (have ~~net~~) . . . ."

This answer is rejected because the "have" which is supposed to be stricken out is left untouched. Dep. of Gallinghouse, Part I (Orleans Parish), Pl. Ex. A-71 at 152.

An even more common "error" in this connection is to strike out the first "have" in those statements that appear in the sequence "I have not (have) . . . .", thus leaving "I have not (have) . . . ." The registrars almost unanimously consider this an error.<sup>48/</sup> They are equally in agreement that to circle or underline

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<sup>48/</sup> Dep. of Bankston (East Baton Rouge Parish), Pl. Ex. A-33 at 25; Dep. of Navarra (Tangipahoa Parish), Pl. Ex. A-105 at 20; Dep. of Bushnell (Rapides Parish), Pl. Ex. A-79 at 16-18; Dep. of Callais (Lafourche Parish), Pl. Ex. A-57 at 12; Dep. of Landry (Lafayette Parish), Pl. Ex. A-55 at 14; Dep. of Adams (Natchitoches Parish), Pl. Ex. A-69 at 14; Dep. of Zeringue (St. Charles Parish), Pl. Ex. A-89 at 18; Dep. of LaBauve (West Baton Rouge Parish), Pl. Ex. A-121 at 17; Dep. of Rodrigue (Assumption Parish), Pl. Ex. A-7 at 14; Dep. of Cameron (West Carroll Parish), Pl. Ex. A-123 at 13; Dep. of Stockman (Catahoula Parish), Pl. Ex. A-25 at 19.

the "have nots" rather than strike through the "have" is a rejectable error.<sup>49/</sup> The Registrar of East Feliciana Parish rejected a Negro applicant who circled the "have nots" and placed an "X" through each of the "haves". The Registrar testified that the law "says nothing about circling or crossing through . . . . That is my understanding of the State law. In fact, I have a directive on it." Dep. of Palmer, Pl. Ex. A-37 at 23-24.

There is no distinction under the strict administration of the "have-have nots" between an "error" on one of the statements and "errors" on all six. Just one mistake is as rejectable as six.<sup>50/</sup>

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<sup>49/</sup> Dep. of Cameron (West Carroll Parish), Pl. Ex. A-123 at 10; Dep. of Bankston (East Baton Rouge Parish), Pl. Ex. A-33 at 21-22; Dep. of Zeringue (St. Charles Parish), Pl. Ex. A-89 at 13; Dep. of Mitchell (Caddo Parish), Pl. Ex. A-17 at 14; Dep. of Montou (Allen Parish), Pl. Ex. A-3 at 10; Dep. of Moreau (St. Landry Parish), Pl. Ex. A-97 at 13; Dep. of Bushnell (Rapides Parish), Pl. Ex. A-79 at 18-19; Dep. of Thevenot (Avoyelles Parish), Pl. Ex. A-9 at 8; Dep. of Callais (Lafourche Parish), Pl. Ex. A-57 at 12; Dep. of Landry (Lafayette Parish), Pl. Ex. A-55 at 12; Testimony of Lucky (Ouachita Parish), I-73 at 752; Dep. of Platt (DeSoto Parish), Pl. Ex. A-31 at 22; Dep. of LaBauve (West Baton Rouge), Pl. Ex. A-14 at 20; Dep. of Olinde (Pointe Coupee Parish), Pl. Ex. A-77 at 16; Dep. of Thomas (Washington Parish), Pl. Ex. A-117 at 26.

<sup>50/</sup> Dep. of Palmer (East Feliciana Parish), Pl. Ex. A-37 at 26; Dep. of Adams (Natchitoches Parish), Pl. Ex. A-69 at 12-13; Dep. of Olinde (Pointe Coupee Parish), Pl. Ex. A-77 at 17-18; Dep. of Billings (Iberville Parish), Pl. Ex. A-47 at 19; Dep. of Harvey (West Feliciana Parish), Pl. Ex. A-125 at 22; Dep. of Hartman (Deputy, Orleans Parish), Pl. Ex. A-71 at 31.

The overriding concern of each registrar is not whether the applicant has committed any of the disqualifying acts, but only whether the applicant "correctly" marks the statements. Several registrars explicitly testified that this is the case.<sup>51/</sup> Thus the "moral character" requirements, which substantively disfranchise only a small percentage of the potential electorate, actually threaten every applicant with possible rejection.

Not all registrars arbitrarily reject applicants for inconsequential errors on these statements. Some of them recognize, as does the Registrar of Richland Parish, that the statements create difficulty "for almost all" of the applicants. Dep. of Cheek, Pl. Ex. A-83 at 4. The Registrar of Union Parish commented: "We have a lot of pondering over those statements there . . . ." Dep. of Farrar, Pl. Ex. A-111 at 10. The Registrar of St. Martin Parish stated that even "very well educated people" get mixed up on that portion of the card. Dep. of Potier (St. Martin Parish), Pl. Ex. A-99 at 7. The Registrar of Jefferson Davis Parish said of the "have-have nots" that applicants "get confused a lot of times on those". Dep. of Clement, Pl. Ex. A-53 at 5. It is

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<sup>51/</sup> Dep. of Cameron (West Carroll Parish), Pl. Ex. A-123 at 11; Dep. of Platt (DeSoto Parish), Pl. Ex. A-31 at 22; Dep. of Ward (Madison Parish), Pl. Ex. A-65 at 8; Dep. of Billings (Iberville Parish), Pl. Ex. A-47 at 14; Dep. of Manning (East Carroll Parish), Pl. Ex. A-35 at 29.

the judgment of the Avoyelles Parish Registrar that "99 out of 100" will omit them altogether. As he put it, "They don't even read it to see if that's part of it." Dep. of Thevenot, Pl. Ex. A-9 at 4.

It follows, then, that not all applicants who make "errors" on the "have-have not" statements are rejected. Some registrars will ask the applicant if he has actually committed any of the disqualifying acts, and if not, the registrar will instruct him to fix the card.<sup>52/</sup> For example, the Registrar of Calcasieu Parish said she never rejected anyone for marking the "have-have nots" wrong, if they had not actually committed the disqualifying acts. Dep. of Cutrer, Pl. Ex. A-19 at 20. There can be no doubt, however, that these registrars are acting in violation of state law.

f. "My Color is \_\_\_\_\_"

There is no evidence that any responsive answer given by a white person in completing the statement "My color is \_\_\_\_\_" would be considered an error. The only answers considered rejectable are "brown",<sup>53/</sup>

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<sup>52/</sup> See, e.g., Dep. of Roberson (Tensas Parish), Pl. Ex. A-107 at 12; Dep. of Tregre (Ascension Parish), Pl. Ex. A-5 at 26-27; Dep. of Iles (Beauregard Parish), Pl. Ex. A-11 at 12; Dep. of Gibson (Lincoln Parish), Pl. Ex. A-61 at 6; Dep. of Cutrer (Calcasieu Parish), Pl. Ex. A-19 at 20.

<sup>53/</sup> Dep. of Riess (St. Bernard Parish), Pl. Ex. A-87 at 23; Dep. of Billings (Iberville Parish), Pl. Ex. A-47 at 11; Dep. of Brunet (Deputy, Orleans Parish), Pl. Ex. A-71 at 34.

"color",<sup>54/</sup> "black",<sup>55/</sup> and "Negro".<sup>56/</sup>

Obviously all of the "wrong" answers are not "wrong" in all of the parishes. "Brown" is wrong in St. Bernard Parish because, said the Registrar, "For the Negro race, to me, they all look black, call the Negro race black". Dep. of Riess, Pl. Ex. A-87 at 21-22. "Negro" is wrong in Bienville Parish because "The card says 'color'. 'Negro' is not a color. That's race". Testimony of Culpepper, Pl. Ex. I-13 at 408. We learn from a former Orleans Parish deputy, however, that "brown is one of the five major races of the world and the Negro is not a member of the brown race". Pl. Ex. A-71 at 34.

For those registrars who choose to use it, then, the "color" blank is exclusively a device to deny registration to Negroes.

g. The "except" blank.

The applicant must fill in a statement which reads "I am not now registered in any other Ward or Precinct of this state, except \_\_\_\_\_". A reasonable man may ask, "Except what?" The Registrar of West Carroll Parish agreed that "maybe that question there, it is a little bit confusing". Dep. of Cameron, Pl. Ex. A-123 at 12.

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<sup>54/</sup> Dep. of Ward (Madison Parish), Pl. Ex. A-65 at 20.

<sup>55/</sup> Dep. of Peres (Deputy, Orleans Parish), Pl. Ex. A-71 at 50.

<sup>56/</sup> Testimony of Culpepper (Bienville Parish), Pl. Ex. I-13 at 408.

It seems to confuse the registrars as much as anyone else. In Madison Parish, for example, it is an error to state your present ward and precinct after "except",<sup>57/</sup> while the Registrar in Ouachita Parish considers the applicant's present ward and precinct the preferable answer.<sup>58/</sup> In Washington Parish (and many others) it is wrong not to fill in the "except" blank,<sup>59/</sup> while in Calcasieu Parish the applicant may leave it open.<sup>60/</sup> If an applicant is presently registered elsewhere, he should put "none" as his answer in East Feliciana Parish,<sup>61/</sup> but he should state the other ward and precinct if registering in Tensas Parish.<sup>62/</sup>

In East Carroll it is wrong to put "except Louisiana" because "Louisiana is not a ward or precinct, it is a State", but it is all right to put

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<sup>57/</sup> Dep. of Ward (Madison Parish), Pl. Ex. A-65 at 25.

<sup>58/</sup> Testimony of Lucky (Ouachita Parish), Pl. Ex. I-73 at 751.

<sup>59/</sup> Dep. of Thomas (Washington Parish), Pl. Ex. A-117 at 12. See also Dep. of Millet (Terrebonne Parish), Pl. Ex. A-109 at 16-17; Dep. of Hartman (Deputy, Orleans Parish), Pl. Ex. A-71 at 12.

<sup>60/</sup> Dep. of Cutrer (Calcasieu Parish), Pl. Ex. A-19 at 16.

<sup>61/</sup> Dep. of Palmer (East Feliciana Parish), Pl. Ex. A-37 at 15.

<sup>62/</sup> Dep. of Roberson (Tensas Parish), Pl. Ex. A-107 at 11.

"except East Carroll", although East Carroll is also not a ward or precinct. Dep. of Manning, Pl. Ex. A-35 at 9, 24. Other registrars also reject for "except Louisiana"<sup>63/</sup> while still others will accept whatever the applicant puts down.<sup>64/</sup> The name of the Parish, although correct in East Carroll, is incorrect in Tangipahoa. Dep. of Navarra, Pl. Ex. A-105 at 18-19.

In the view of the Registrar of Calcasieu Parish, the "except" statement means the same thing as the statement following it, which reads: "My last registration was in Ward \_\_\_\_ Precinct \_\_\_\_ Parish \_\_\_\_\_." Dep. of Cutrer, Pl. Ex. A-19 at 15. However superfluous the statement may seem to the Calcasieu Parish Registrar, it caused the removal from the rolls of persons challenged in Rapides Parish on the ground that their cards showed dashes in the "except" blank when in the view of the challengers a dash was an incorrect response. Dep. of Bushnell, Pl. Ex. A-79 at 11-13. Thereafter the Registrar has required applicants to write in the word "none" to avoid future purges, although the

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<sup>63/</sup> Dep. of Palmer (East Feliciana Parish), Pl. Ex. A-37 at 15; Dep. of Billings (Iberville Parish), Pl. Ex. A-47 at 17.

<sup>64/</sup> Dep. of Allen (LaSalle Parish), Pl. Ex. A-59 at 4; Dep. of Olinde (Pointe Coupee Parish), Pl. Ex. A-77 at 10.



Registrar both before and after the purge believed the dash to be an acceptable response. Id. at 11-13, 33. The Registrar testified that even if he disagrees with the asserted basis for challenge and removal, he is obliged under state law to issue the challenges anyway. Id. at 32-33.

2. The rejection of inadvertent or reasonable omissions

It is not uncommon for an applicant to inadvertently skip a blank or line on the application form, or to conclude that a particular statement does not apply to him and intentionally omit it. In either case, he has committed a rejectable error.

The statutory basis for the "no omission" rule is found in LRS 18:31 which says that the application form "shall be entirely written, dated and signed" by the applicant. (emphasis added) Mildred Bankston, deputy registrar of East Baton Rouge Parish, in referring to the form of a rejected Negro applicant on which the householder statement was not filled in, explained how the "no omission" rule operates (Dep. of Bankston, Pl. Ex. A-33 at 12):

- A. There is a blank here that is not filled in.
- Q. What blank is that?
- A. The name of the householder.
- Q. Is that a reason for rejection?

A. Well, actually the law says that they all shall be filled in and they shall be correct.

Q. Therefore, if the householder is left blank, the person is to be rejected?

A. That is right.

Q. That is your understanding of the law.

A. That is right.

Q. You understand that you are required by the law of Louisiana to reject someone for that reason?

A. By all the blanks not being filled in and not being filled in properly. 65/

Mrs. Bankston was unable to state of what use the householder information is to her in measuring an applicant's qualifications. Id. at 12-16. It is nonetheless a common rule among registrars that the householder blank must be completed or the card is incorrect. 66/

The Registrar of Tangipahoa Parish applied the same rule to a Negro applicant who omitted her precinct number in the body of the form. Dep. of Navarra, Pl. Ex. A-105 at 22, Ex. G-5 attached thereto. The registrar,

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65/ The form in question also contained an age computation error. Pl. Ex. A-33, Ex. G-2 attached thereto. The applicant had "7 months 10 days" instead of "8 months 0 days". Mrs. Bankston was asked what the computation should have been, and she answered: "It should be six months - wait just a minute, let me see here, this was November - no, 7 months - this is confusing." Pl. Ex. A-33 at 12. She did not come up with the correct answer.

66/ See, e.g., Dep. of Rodrigue (Assumption Parish), Pl. Ex. A-7 at 14; Dep. of Platt (DeSoto Parish), Pl. Ex. A-31 at 12; Dep. of Crane (Winn Parish), Pl. Ex. A-127 at 4; Dep. of Olinde (Pointe Coupee Parish), Pl. Ex. A-77 at 13; Dep. of Billings (Iberville Parish), Pl. Ex. A-47 at 18.

however, knew the precinct number and in fact had inserted the number himself at the top right-hand corner of the card prior to giving it to the applicant. Ibid.

The Registrar of Iberville Parish rejects applicants who fail to complete the biographical section on the back of the card below the signature, even though there appears over that section a note stating "[T]he following information forms no part of the application but is for use of the registration records." Dep. of Billings, Pl. Ex. A-47 at 12. Mrs. Billings explained that the note "means that they should fill it out, it's for - I need it for my records." Ibid. Even if a card is otherwise absolutely correct, she rejects for this omission. Id. at 13.

It may be expected that many applicants will entirely overlook the "have-have not" statements, for, as the Registrar of Avoyelles Parish put it, "99 out of 100 .... will omit that, they don't even read it to see if that's a part of it." Dep. of Thevenot, Pl. Ex. A-9 at 4. The omission, however, is a rejectable error.<sup>67/</sup> The Registrar of Pointe Coupee

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<sup>67/</sup> Dep. of Harvey (West Feliciana Parish), Pl. Ex. A-125 at 17; Dep. of Palmer (East Feliciana Parish), Pl. Ex. A-37 at 31; Dep. of Olinde (Pointe Coupee Parish), Pl. Ex. A-77 at 13.

rejected the otherwise perfect form of a Negro applicant because he omitted just the three "have-have not" statements on the back of the card. Dep. of Olinde, Pl. Ex. A-71 at 13.

The most arbitrary rejections based upon omissions have occurred in Orleans Parish in connection with the age computation blanks. Mr. Gallinghouse, the Registrar, was asked to explain the rejection in July, 1963 of a Negro applicant whose age was correctly computed but who left the space for the months open instead of writing in "0". Mr. Gallinghouse's initials appeared at the top of the form, indicating that he personally checked it and approved the deputy's action. Dep. of Gallinghouse, Part I, Pl. Ex. A-71 at 47-48. He said the rejection does not represent his present "policy", and offered this explanation:

I can't tell you what my state of mind was at that time, but I have to emphasize this, because you keep asking the question, that whenever I feel that reasonableness was to be achieved, I felt that any deputy might have the wrong idea about any of these forms, and if that would indicate that he was being too unreasonable, we usually discuss these things. I always strive to make the necessary changes, and, again, you are going to have to allow in a few cards like that, room for human error. [Id. at 48]

The deputy who rejected the very card about which Mr. Gallinghouse spoke, was asked about it when she gave her deposition on June 3, 1964, one month after

Mr. Gallinghouse testified that the rejection no longer represented office policy. The deputy, Violet Raicevich, had not yet received the message. The omission of the "0" was the only reason for rejection, she said, and it is still a reason for rejection. Dep. of Raicevich, Pl. Ex. A-71 at 15-17.<sup>68/</sup>

The "no omission" rule poses a special hardship for applicants who, having never registered before, must complete the statement "My last registration was in Ward \_\_\_\_\_ Precinct \_\_\_\_\_ Parish \_\_\_\_\_". In Iberville Parish it is an error to leave these spaces open, even if the applicant never registered before and the registrar knows he never registered before. Dep. of Billings, Pl. Ex. A-47 at 21. The applicant must decide for himself that the word "none" goes in each blank.<sup>69/</sup> The East Carroll Parish Registrar rejected a Negro applicant who left those blanks open because the registrar could not tell from the card whether she was registered elsewhere. Dep. of Manning, A-35 at 8. The card, however, showed that the

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<sup>68/</sup> The card appears as Ex. G-8 attached to the deposition of Mr. Gallinghouse, Part I. Another Orleans Parish deputy said that if an applicant applies on his birthday, he may leave the months and days spaces unfilled. Dep. of Hartman, Pl. Ex. A-71 at 51. Mrs. Raicevich was also aware of that exception to the "no omission" rule. Dep. of Raicevich, Pl. Ex. A-71 at 16.

<sup>69/</sup> If the applicant had put his present ward, precinct, and parish in those blanks, he also would have been rejected because the registrar knew it was his first registration. Dep. of Billings, Pl. Ex. A-47 at 21.

applicant resided in East Carroll Parish since birth. Pl. Ex. A-35, Ex. G-1 attached thereto. Other registrars apply the same rule with respect to the statement of last registration;<sup>70/</sup> however, still others said that first-time applicants could leave the statement open.<sup>71/</sup>

The "no omission" rule exists to be applied by registrars when and to whom they choose. It is simply impossible to determine the extent to which registrars assist applicants in avoiding this pitfall. The pointing of a finger, the leading question, the facial expression, the most casual word of warning - any number of subtle suggestions are available for this purpose. Indeed, it is highly improbable that the persons upon whom this favor is bestowed are ever aware that they received "assistance" as that term is used in Louisiana law.

3. Registrars resort to extrinsic sources for inconsistent information to reject errorless applications.

When a completed application form is less than perfect, the registrars reject it without inquiring into or being concerned with the truth about the applicant. When, however, the completed application form

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<sup>70/</sup> Dep. of Platt (DeSoto Parish), Pl. Ex. A-31 at 9; Dep. of Navarra (Tangipahoa Parish), Pl. Ex. A-105 at 39; Dep. of Cameron (West Carroll Parish), Pl. Ex. A-123 at 15.

<sup>71/</sup> See, e.g., Dep. of Hatton (Franklin Parish), Pl. Ex. A-41 at 11; Dep. of Judice (Acadia Parish), Pl. Ex. A-1 at 8; Dep. of Bryce (Bossier Parish), Pl. Ex. A-15 at 9.

is errorless and therefore cannot be rejected on its face, registrars will often resort to extrinsic sources to determine the exactness of the statements on it with a view to rejecting those applications which are apparently inconsistent with the true facts.

The key is how far the registrar wants to go.

The Registrar of Tangipahoa Parish testified that two Negro applicants were rejected because upon oral inquiry he learned that the person named in the householder blank was not actually the householder. Dep. of Navarra, Pl. Ex. A-105 at 31-33. He was asked to explain under what circumstances he undertakes such an oral inquiry:

Q. ...[I]s it your practice in the administration of your office to ask that question?

A. I'll say we have asked some of those questions, yes, we have asked some of those questions.

Q. On what occasions do you ask those questions; why do you do it sometimes but not other times?

A. Well, now, I can't answer that. I mean I -

Q. You just do?

A. That's right. (Id. at 33-34)

The deputy registrar of East Baton Rouge Parish said she "might" question a young applicant who put his own

name as householder, and if it turns out that he is a student living with his parents, he will be rejected. Dep. of Bankston, Pl. Ex. A-33 at 16.

The Registrar of East Carroll Parish rejected a Negro applicant who stated on his form that he lived in the parish since 1940, but for identification purposes used a recent California driver's license. Dep. of Manning, Pl. Ex. A-35 at 17-19. The Registrar "reasoned" that the applicant could not have obtained the California license if he had been living in the parish since 1940.<sup>72/</sup> Ibid. Curiously, the Registrar added that "I've known this negro from a long time ago." Ibid.

The theory of the inconsistent answer caused the rejection of a Negro school teacher in East Feliciana Parish who stated on her form that she had lived in the parish since her birth, but had given to the Registrar for cancellation a registration certificate from another parish. Dep. of Palmer, Pl. Ex. A-37 at 11-12. The Registrar apparently thought that she could not have registered in the other parish if she really had been living in East Feliciana Parish since birth. He therefore rejected her, although "that was the only mistake she made."

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<sup>72/</sup> As a matter of California law, Mr. Manning was incorrect. Residence in the State is not a requirement for obtaining a California license. Cal. Code, Vehicles, §12500 et. seq.



Id, at 12. Mr. Palmer explained the alternatives available to him in such a situation as follows:

- Q. . . . [I]f you know of information that disqualifies the applicant or indicates that the card is not correct, you will then reject the person?
- A. I can either do that or file false swearing against them and it's a whole lot easier to reject them. [Id. at 12]

Mr. Palmer also rejected a Negro applicant whose card showed he was born in Orleans Parish and that he had lived in East Feliciana Parish since his date of birth. Id. at 13. Mr. Palmer said this could not possibly have been the case. His testimony reveals the essence of the "inconsistency" rule (Id. at 14):

- Q. Well, suppose he was born in a hospital in Orleans and brought right up there. Let me ask you this. Did you ask him about it?
- A. I didn't ask him anything. It's not my duty to ask him anything.
- Q. Yes. And you concluded from the card that it was a practical impossibility -
- A. An impossibility.
- Q. For that information to be correct?
- A. That's right.

The statement which reads "My last registration was in Ward \_\_\_\_\_ Precinct \_\_\_\_\_ Parish \_\_\_\_\_" elicits a common "inconsistency" that results in rejection in several parishes. If an applicant who has never registered before fills these blanks in, he will

be rejected for making "false statements."<sup>73/</sup> The Caddo Parish registrar testified in this connection: "I ask them if they have been registered before and they say no, I have never been registered before, and there is three false statements." Dep. of Mitchell. Pl. Ex. A-17 at 25. In Iberville Parish, it is error for the applicant to fill in these blanks with his present ward and precinct if he never registered before, but it is also error for him to leave them open. Dep. of Billings, Pl. Ex. A-47 at 12, 18.

The most aggressive inquiries to uncover "inconsistencies" have occurred in Orleans Parish in connection with the length of residence blanks. The deputies may learn of an inaccurate length of residence statement from conversation with the applicant during the time he is filling out the card or after he has finished;<sup>74/</sup> by reference to an earlier rejected application;<sup>75/</sup> or by reference to a card filled out by a relative of the applicant.<sup>76/</sup> These rejections

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<sup>73/</sup> Dep. of Mitchell (Caddo Parish) Pl. Ex. A-17 at 25; Dep. of Billings (Iberville Parish), Pl. Ex. A-47 at 18; Dep. of Ward (Madison Parish), Pl. Ex. A-65 at 14-15.

<sup>74/</sup> Dep. of Bull, Pl. Ex. A-71 at 45-46.

<sup>75/</sup> Dep. of Hartman, Pl. Ex. A-71 at 32.

<sup>76/</sup> Dep. of Gallinghouse, Pl. Ex. 71 at 58.

are unrelated to the state's legal residence requirements. Thus, a Negro applicant was rejected in 1961 because her card stated she had lived in her precinct since 1956, while her father said he had lived there since 1946 and her mother said she had lived there since 1955. Dep. of Gallinghouse, Pl. Ex. A-71 at 58, Ex. G-11 attached thereto.<sup>77/</sup>

The applicant must bear whatever burden the registrar chooses to impose. The registrar has the right to "satisfy" himself through oral inquiry that the information given is correct. Dep. of Gallinghouse, Pl. Ex. A-71 at 50, 55, 56, 57.

Every applicant whose rejection has been discussed in this section passed the multiple-choice test, if given, passed the preamble test, if given, and completed an ostensibly perfect application form.<sup>78/</sup> Moreover, each applicant actually possessed all the substantive qualifications required by state law for registration, and, most important, the registrar in each case knew the applicant possessed those qualifications. Yet, each was rejected.

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<sup>77/</sup> The rejected card does not reveal the source of the information about the parents. They may have been present, or it may have been taken from their forms. Dep. of Gallinghouse, Pl. Ex. A-71 at 58.

<sup>78/</sup> In this connection, it should be noted that each applicant whose card was shown to a registrar in the course of taking depositions in this case passed both the preamble test and the multiple-choice test, if those tests were administered at the time the applicant applied.

4. Registrars' Can And Do Assist Applicants With The Application Form Test

That registrars who want to can and do assist applicants in completing the application form test is plain from the registrars own testimony. The tenor of their testimony in this respect, however, varies in direct relation to the percentage of adult Negroes in each parish who are registered. For example, the registrar of Caddo Parish, where only 11 percent of the Negroes but 68 percent of the whites of voting age are registered,<sup>79/</sup> denies giving assistance to applicants, <sup>80/</sup> while the registrar of Calcasieu Parish, where 55 percent of the Negroes and 75 percent of the whites of voting age are registered,<sup>81/</sup> admits giving assistance to applicants.<sup>82/</sup> Similar comparisons can be made among other parishes, all showing that the "no assistance" rule affects Negro registration but not white registration.

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<sup>79/</sup> Tables A and B, Appendix A.

<sup>80/</sup> Dep. of Mitchell, Pl. Ex. A-17, passim. Between 1959 and 1963, 20,061 white persons successfully registered while 41 failed the application form test. In the same period, 772 Negroes registered and 992 failed the application form test. *Appendix A, Table C.*

<sup>81/</sup> Tables A and B, Appendix A.

<sup>82/</sup> Dep. of Cutrer, Pl. Ex. A-19, passim.

There are four registrars who have never rejected anyone on the basis of errors or omissions on the application form.<sup>83/</sup> In varying degrees of candor, these registrars admit that they give applicants whatever help they need to complete the form correctly.

Some of the other registrars have provided a detailed insight into the extent to which help is given and the way in which it is given. State law and Board policy<sup>84/</sup> prohibit the help they describe, but they give it nonetheless, and under oath in this case, have admitted it. They could do little else; for the most part their records show few rejections of anyone based upon the application form test.

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<sup>83/</sup> Dep. of House (Concordia Parish), Pl. Ex. A-29 at 6; Dep. of Gaspard (Vermillion Parish), Pl. Ex. A-113 at 7-8; Dep. of Sibley (Livingston Parish), Pl. Ex. A-63 at 3; Dep. of Roberson (Tensas Parish), Pl. Ex. A-107 at 8-9.

<sup>84/</sup> Attached as Ex. D-3 to Pl. Ex. A-69 (the deposition of J. S. Adams, Registrar of Natchitoches Parish) is a cardboard sign approximately 8-1/2"x 11". The registrar keeps the sign posted on the entrance to his office. It was sent to him by the State Board of Registration (Id. at 28) and it reads:

#### NOTICE

The Registrar of Voters or Deputies CANNOT give assistance in filling out Registration Applications. The law provides that the APPLICANT must date, fill out and sign his application.

"..., without assistance or supervision from any person or memorandum whatever,...."

Art. 8, Sec. 1(7)  
Constitution of Louisiana

STATE BOARD OF REGISTRATION

Thus the registrar of St. Landry Parish will explain a blank if the applicant says he does not understand it (Dep. of Moreau, Pl. Ex. A-97 at 24); the registrar of Calcasieu Parish is "glad" to explain the questions on the form if they are not clear to the applicant (Dep. of Cutrer, Pl. Ex. A-19 at 3); the registrar of Jefferson Davis Parish will "rephrase the question to where he will understand it better" (Dep. of Clement, Pl. Ex. A-53 at 18); the registrar of St. Bernard Parish will "give them a little hint" (Dep. of Riess, Pl. Ex. A-87 at 11); the registrar of Winn Parish will tell the applicant what to put in the "not now registered, except" blank (Dep. of Crane, Pl. Ex. A-127 at 6); the registrar of Allen Parish will tell applicants how to do the "have-have not" statements, if they ask (Dep. of Montou, Pl. Ex. A-3 at 7); the registrar of Assumption Parish will tell the applicant to turn the card over and complete it if he inadvertently fails to do so (Dep. of Rodrigue, Pl. Ex. A-7 at 8); the registrar of St. Martin Parish will tell an applicant who makes an error what his error is and will direct him to fix it (Dep. of Potier, Pl. Ex. A-99 at 5-6); the registrar of Acadia Parish will ask the applicant to complete the "have-have not" statements if he omits them (Dep. of Judice, Pl. Ex. A-1 at 6); and

The registrar of St. James Parish will point out blanks left open by the applicant and allow him to fill them in (Dep. of Reynolds, Pl. Ex. A-93 at 6).

Given the design of the LR-1 card and the nature of the statements on it, it is difficult to believe that it is administered in any parish without some degree of the kind of assistance described above. Many of the registrars, however, staunchly defend the propriety of not giving "assistance" because "assistance" is forbidden by State law.<sup>85/</sup>

Not surprisingly, the registrars tend to back off the "no assistance" rule when they are asked to explain their practices with respect to many of the ambiguities and opportunities for inadvertent error presented by the form. For example, the registrar of Webster Parish unquestionably used the application form as a test for Negroes only, a fact formally found by the court in U.S. v. Clement, 231 F. Supp. 913 (W.D. La. 1964). If the experiences of Negroes in Webster Parish were the only evidence of the use of the form there, it would appear that an extraordinarily high standard prevailed.<sup>86/</sup>

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<sup>85/</sup> See, e.g., Dep. of Gallinghouse, Part I, (Orleans Parish), Pl. Ex. A-71 at 13; Dep. of Smith (East Baton Rouge Parish), Pl. Ex. A-33 at 11; Dep. of Millet (Terrebonne Parish), Pl. Ex. A-109 at 7.

<sup>86/</sup> See discussion of Webster Parish in Part VII, *infra*, and testimony of Negro applicants Willie B. Carter (Pl. Ex. I-119 at 295); Atherlean Harris (Pl. Ex. I-119 at 224); Willie Mae Mayfield (Pl. Ex. I-119 at 186); and Ruby Taylor (Pl. Ex. I-119 at 214).

But when the registrar was asked on deposition about her practices, her answers were consistent with her records, which showed that between September 1962 and July 1963 she accepted 527 white persons and rejected only one on the basis of the application form.<sup>87/</sup> With respect to specific parts of the application form Mrs. Clement testified as follows (Dep. of Clement, I-119):

Have - Have Not Statements

If the applicant ignores the statements that must be completed by striking out "have" or "have not," she returns the card to him and tells him to read it line by line. (Id. at 18-19)

Householder

It makes no difference whether the blank "The name of the householder at my present address is \_\_\_\_\_" bears the name of a person or the applicant's address. (Id. at 20)

"Except" Blank

The sentence reading "I am not now registered in any other ward or precinct of this state except \_\_\_\_\_" may be left open entirely and she will accept the card. (Id. at 20-21)

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87/ Pl. Ex. B-119



### Last Registration

She will tell the applicant to place check marks in the sentence reading "My last registration was in Ward \_\_\_\_\_, Precinct \_\_\_\_\_, Parish \_\_\_\_\_." if overlooked by an applicant who had not previously registered. (Id. at 21)

### Age Computation

She does not reject persons for incorrectly computing their ages down to the month and day. Furthermore she computes it for them if they ask her to do so. (Ibid.)

### Party Affiliation

If they fail to state a party affiliation, she returns the card to them and asks them if they would like to state a party. (Id. at 22)

### Date and Place of Birth

If the date or place of birth is incorrectly stated, she will call that error to the attention of the applicant and ask him to correct it. (Id. at 25) If the applicant reverses the order of the county and state of birth, she will call his attention to it and permit him to change it. (Id. at 25-26)

### Misspellings

She will spell words for the applicant if necessary. (Id. at 17)

The registrar of Tangipahoa Parish who between 1959 and 1963 rejected 49.7 percent of the Negro applicants and 1.3 percent of the white applicants on the application form test,<sup>88/</sup> said that "in some cases" he will ask applicants to check over an incorrect age computation;<sup>89/</sup> that "in some cases" he will ask an applicant who erroneously marks the "have-have nots" if he really committed the stated acts;<sup>90/</sup> that he orally asks "some" applicants who their householder really is;<sup>91/</sup> that "sometimes" he will point out an error in the "have-have not" statements to the applicant and permit him to correct it;<sup>92/</sup> and that with respect to applicants

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<sup>88/</sup> Pl. Ex. B-105, summarized in Table C, Appendix A.

<sup>89/</sup> Dep. of Navarra, Pl. Ex. A-105 at 15-16.

<sup>90/</sup> Id. at 20-21.

<sup>91/</sup> Id. at 33-34.

<sup>92/</sup> Id. at 37.

who ask what their errors were, "[w]e have told some and some we haven't."<sup>93/</sup>

In Orleans Parish a very high standard on the test prevails. But Marcel Brunet, former Administrative Assistant in Orleans Parish, who is fully conversant with the whole gamut of technical "errors" that cause rejections there, said that a registrar "cannot be a robot" and that he may ask a question to straighten out an applicant--not assisting, but doing everything we can within the framework of the law and not telling the man what is going there." Dep. of Brunet, Pl. Ex. A-71 at 21-22. Another Orleans deputy said that "we are allowed to answer questions if it's within the framework of the law, so to speak." Dep. of Hartman, Pl. Ex. A-71 at 6. Still another Orleans deputy explained, "[w]e can answer questions up to a point that we won't be helping them in filling out the cards." Dep. of Bull, Pl. Ex. A-71 at 51.

The "point" at which answering questions "within the framework of the law" becomes "assistance" beyond the framework of the law" is an amorphous one. No registrar can define it or articulate how the principle was applied in an individual case. It is something between the individual applicant and the registrar, mak-

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<sup>93/</sup> Id. at 40.

ing relevant to this case the Court's following remarks  
in United States v. Louisiana:

Without help from Senator Rainach or Mr. Shaw--the customs of generations, the mores of the community, the exposure of the individual to segregation from the cradle make it difficult, if not impossible, for a registrar to evaluate objectively what is necessarily a subjective test. We are sensible of the registrar's difficulties--he must live with his friends--but we must recognize that his predilections weight the scales against Negroes and hinder fair administration of an interpretation test or a citizenship test. When neither the Constitution nor the statutes prescribe any standards for the administration of the test, the net result is full latitude for calculated, purposeful discrimination and even for unthinking, purposeless discrimination.  
[225 F. Supp. at 387.]

5. The Defendant State Board of Registration Insists on Strict Administration of the Application Form Test and Condone Its Discriminatory Use.

There is a wide gap between the policies of the Board respecting the use of the application form test and its practice. Its policy is to encourage the strict application of the law including the use of the application form test. This is evident from the fact that the State Board of Registration was co-sponsor with the Joint Legislative Committee on Segregation of the congressional district meetings in 1958 and 1959. See United States v. Louisiana, supra, at 379. These meetings were held for the purpose and with the effect of urging the registrars of voters in Louisiana to apply the law strictly so as to disfranchise Negroes. Id. at 379-380.

The former director of the Board, Mr. Douglas Fowler, testified that he told registrars that the application card was a test of literacy and that it was necessary for applicants to fill out every blank (Dep. of Fowler, Pl. Ex. C-6, p. 10-12).

The practice of the Board as distinguished from its policy is to leave registrars free to apply or not to apply the law as they see fit. The Board has long been the recipient of monthly reports from all registrars showing the progress of registration in every parish in Louisiana (Dep. of Cutrer, Pl. Ex. C-2, at 6) and from these reports the Board could not be unaware of the great disparity between Negro and white registration from

parish to parish. The Board knew that some parishes were applying the law strictly and some were not. The Director knew that Negroes and not white persons were purged from the rolls in several parishes for having filled out allegedly incorrect and incomplete application cards; he knew that those left on the rolls had the same errors as those who were purged, yet he recommended no action and took no steps to get the purged voters back on the rolls. (Dep. of Fowler at 2-5.) Thus the Board knew or should have known that discrimination was resulting in some parishes from the use of the application form test. Yet it did nothing about it.

This purpose of the Board explains what would otherwise appear to be an anomaly. The Board in January 1961 sent a letter to each of the registrars setting forth procedures to be followed in registering voters (Dep. of Cutrer, Pl. Ex. C-2 at 16). The standards to be followed in requiring applicants to identify themselves to the satisfaction of the registrar were specifically spelled out in detail -- there were 13 different types of identification which would be acceptable (Id., attachment "Cutrer - 2"). Nothing was said then and nothing has been said since about what answers on the application form test are acceptable.<sup>94/</sup>

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<sup>94/</sup> Mr. Cutrer, who is the present director of the Board and a defendant here, stated that he has never had occasion to advise registrars about the use of the application form. (Dep. of Cutrer, Pl. Ex. C-2, p. 11.)

## VII.

### THE APPLICATION FORM TEST HAS BEEN USED TO DISCRIMINATE AGAINST NEGROES

The combination of strict standards on the application form, the variety of possible acceptable and unacceptable answers, and the innumerable degrees of assistance which can be rendered by the registrars, has made it easy to discriminate against Negroes in the use of the application form test. Such discrimination has been the result in many Louisiana parishes. Such discrimination is almost inevitable in an environment in which the races are segregated in every aspect of life and where white registrars are called upon to judge the qualifications of Negroes.

This section explores the evidence of discrimination in specific parishes. There are variations, but the theme is the same -- the application form test is used, as it was intended to be used, as a device to disfranchise Negroes. This is proved by the statistics themselves, by the arbitrary rejection of qualified Negroes, and by the incredible statements of registrars searching for a reed, however slender, on which to lean in order to justify their rejections.

the following table shows the number of application cards of Negro and white applicants which have been accepted and rejected in seventeen parishes during the years indicated. It also shows the percent rejected under the application form test.<sup>1/</sup>

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<sup>1/</sup>This table includes seventeen parishes in which the use of the application form test is most obviously discriminatory. These seventeen parishes contain 55% of the adult Negro population of the State. Appendix A, Table A. The statistics for other parishes in which the application form has been used as a test are included in Appendix A, Tables C and D. Table D shows the number of white and Negro applicants who have been rejected in thirty-nine parishes. With the exceptions noted below, the accepted application cards in these parishes were not photographed by the Plaintiff, and there is thus no way to ascertain the percentage of applicants who have been denied registration under the application form test. In five of these thirty-nine parishes, Beauregard, Caldwell, Cameron, Livingston and Tensas, there have been no rejections on the card. In other parishes such as Assumption, Terrebonne and West Baton Rouge, the records show that the test has recently been instituted, but the absence of a count of the accepted cards makes it impossible to measure the extent of the use of the test.

The accepted applications were photographed in four parishes that are listed in Table D; Bossier, Claiborne, Franklin and Richland. Only 5.8% of the 20,920 adult Negroes in these four parishes are registered to vote. Three of them, Claiborne, Franklin and Richland are among the twenty-one parishes found to have used the oral interpretation test by this Court in United States v. Louisiana, 225 F. Supp. 353 (E.D. La. 1963). The statistics relating to these four parishes were not included in Table C (which shows the ratio of rejected to accepted cards) because the records photographed do not show whether the low percentage of Negro voters is due to the application card test, the oral interpretation test or some other unknown cause.



OPERATION OF THE CARD TEST <sup>2/</sup>  
IN SELECTED PARISHES

<u>Name of Parish</u>		<u>Accepted</u>		<u>Rejected On Card Test</u>		<u>% Rejected <sup>3/</sup> On Card Test</u>	
		<u>W</u>	<u>N</u>	<u>W</u>	<u>N</u>	<u>W</u>	<u>N</u>
Bienville (1961-1963)	W N	744	111	22	81	2.8	42.2
Caddo (1959-1963)	W N	20,061	772	41	972	0.2	55.7
DeSoto (1958-1963)	W N	1,778	359	9	185	0.5	34.0
East Baton Rouge (1961-1963)	W N	11,398	1,539	301	775	2.6	33.5
East Carroll (1962*-1963) *September through December	W N	728	113	74	72	9.2	38.9
East Feliciana (1958-1963)	W N	2,560	126	482	396	15.8	75.9
Iberville (1961-1963*) *January through May	W N	456	334	12	142	2.6	29.8

<sup>2/</sup> Appendix A, Table C, sets out these figures by year and also shows how many persons were rejected on the interpretation test and the citizenship test (after August 1962). The figures listed in the table in the text and those in Appendix A, Table C, include all applications filed from January of the year in which the first rejection occurred in each parish through December 1963, except where otherwise indicated. In the parish summaries, pp. 108-167, *infra*, the statistics date from the month of the first rejection. The totals in each column are derived from a count of the microfilm copies in Pl. Ex. B. An index to the microfilm is found in Appendix F.

<sup>3/</sup> The figures for "percent rejected on card test" do not include persons rejected for reasons other than failing the application form test.

<u>Name of Parish</u>		<u>Accepted</u>		<u>Rejected On Card Test</u>		<u>% Rejected On Card Test</u>	
		<u>W</u>	<u>N</u>	<u>W</u>	<u>N</u>	<u>W</u>	<u>N</u>
Jackson (1956-1963)	W	2,665		68		2.5	
	N		624		828		57.0
Madison (1962*-1963) *December	W	717		20		2.7	
	N		259		86		24.9
Orleans (1959*-1963*) *September through December	W	46,897		6,431		12.0	
	N		8,713		15,755		64.4
Ouachita (1956*-1963) *April through December	W	16,998		456		2.6	
	N		1,508		776		33.9
Red River (1957-1963)	W	3,563		4		0.11	
	N		78		122		61.0
Tangipahoa (1959-1963)	W	6,046		79		1.3	
	N		525		519		49.7
Union (1957-1963)	W	7,002		37		0.5	
	N		836		487		36.8
Webster (1962*-1963) *September through December	W	2,555		8		0.3	
	N		317		77		19.5
West Carroll (1961-1963)	W	4,065		233		5.4	
	N		53		41		43.6
West Feliciana (1961-1963)	W	1,380		106		7.1	
	N		13		16		55.2

These statistics alone prove a prima facie case, but the following summaries of specific parishes show in detail how the use of the application form test produced this discriminatory result.

BIENVILLE PARISH 4/

	<u>White</u>	<u>Negro</u>
Voting Age Population	5,617	4,077
Voters (6-30-64)	5,032	567 <sup>5/</sup>
Percent Registered	89%	14%

Registration January 1961 Through December 1963

	<u>Accepted</u>	<u>Rejected</u>	<u>Rejected On Card</u>	<u>% Rejected<sup>6/</sup> On Card</u>
W	744	44	22	3%
N	111	124	81	42%

In United States v. Association of Citizens Councils, 196F. Supp. 908 (W.D. La. 1961), the Court found that the Registrar, along with the Citizens Council, had discriminatorily challenged and purged from the rolls 570 (or 95%) of the Negroes registered to vote in Bienville Parish in October 1956 and that the records showed that 80% of the cards of registered white persons contained the same, or similar errors for which Negroes' cards were challenged.

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<sup>4/</sup> Population statistics: 1960 Bureau of the Census Report. Registration Statistics: Monthly Reports of the Louisiana State Board of Registration. Accepted and rejected statistics are derived from a count of microfilm copies of application cards, Pl. Ex. B-13. See Appendix A, Table C. Summary of the testimony of the Registrar is contained in Appendix C.

<sup>5/</sup> The total number of Negroes increased from 25 to 404 in November 1961 after the Court in United States v. Association of Citizens Councils, 196 F. Supp. 908 (W.D. La. 1961) ordered that those Negroes who had been purged in 1956 be restored to the rolls (p.911).

<sup>6/</sup> These figures do not include cards rejected for reasons other than failing the application card test.

The Court also found that the Registrar had discriminated against Negroes up until the time of the trial in November 1960.<sup>7/</sup>

at the trial the Government presented a veritable parade of Bienville Parish Negroes, holding bachelor's and master's degrees, who, since 1956, on one technicality or another, have been denied the right to register or re-register. <sup>8/</sup>

At the trial of this case, Registrar Culpepper testified to extremely strict standards in grading the application card. For example, she testified that she rejects applications for any of the following "errors":

Any misspelling.<sup>9/</sup>

"I have resided in the State since birth."  
[The year is required.] <sup>10/</sup>

"My color is Negro." [ "Black" or "Brown" is required. ] <sup>11/</sup>

An abbreviation of the applicant's party affiliation. <sup>12/</sup>

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<sup>7/</sup> United States v. Association of Citizens Councils, 196 F. Supp. 908, 910-11 (W.D. La. 1961).

<sup>8/</sup> Id. at 911. See footnote 12.

<sup>9/</sup> Testimony of Culpepper, Pl. Ex. I-13, p. 418.

<sup>10/</sup> Id. at 403.

<sup>11/</sup> Id. at 407-08.

<sup>12/</sup> Id. at 417. At the time of the trial, the registrar could only testify hypothetically to her standards on the card, at least with respect to Negroes. Between the purge in 1956 and the trial in 1960, no Negro was permitted to fill out a form.

In respect to her rejection of Negroes for writing, "My color is Negro," the Registrar answered questions put to her by the Court as follows:

THE COURT: Prior to 1957, did you do that?

THE WITNESS: We accepted them with "negro," Judge, because I know a negro was either black or brown.

THE COURT: Why have you changed since?

THE WITNESS: Well, my rolls were purged once on the cards where the "negro" was checked.

THE COURT: Do you think that makes sense?

THE WITNESS: What do you mean?

THE COURT: That "negro" is not a proper answer to that question?

THE WITNESS: I don't know.

THE COURT: Who gave you instructions to change it?

THE WITNESS: The card says, "color." "Negro" is not a color. That is race.

THE COURT: That is true, technically, but as a matter of common sense, and an order of every day logic; did somebody tell you to change?

THE WITNESS: The governing body of the parish asked me to strictly comply with the registration laws.

THE COURT: Did they strictly ask you to comply with that particular phrase?

THE WITNESS: No, sir, but the card reads, "My color is."

THE COURT: Technically, that is correct, but no one could mistake where a person answers "negro" in response to this question what the truth is, could they?

THE WITNESS: Well, I know a negro is black.

THE COURT: You have seen some negroes who  
are as white as you are?

THE WITNESS: Yes, sir.

THE COURT: You changed it because the Police  
Jury got on your neck?

THE WITNESS: Yes, sir.

(Testimony of Culpepper, Pl. Ex. I-13, pp. 408-409)

The records show that since this trial, the Registrar has  
used the application form as a test for Negroes only: 81 of 192  
applications filled out by Negroes have been rejected for technical  
"errors" and "omissions," while only 22 of 766 cards filled out by  
white persons have been rejected on these grounds.<sup>13/</sup>

Among the qualified Negroes who have been denied registration  
was a housewife who had a perfect score on the citizenship test but  
was rejected for the following "error":

. . . I was born in the State of Bienville  
Louisiana, Parish of Louisiana . . . .<sup>14/</sup>

Another Negro housewife was rejected solely because she wrote  
"my color is Negro."<sup>15/</sup>

The deposition of Registrar Culpepper was not taken in this case  
because she stated in an affidavit that she would claim her privilege  
under the Fifth Amendment to decline to testify against herself.<sup>16/</sup>

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<sup>13/</sup> Pl. Ex. B-13, roll 6.

<sup>14/</sup> Rejected card (dated April 4, 1963) of Naomi D. Tobin, Pl. Ex.  
B-13, roll 6. The blank spaces are set out here in the order  
they actually appear on the application card. Note that there  
is an "extra" line.

<sup>15/</sup> Rejected Card (dated April 30, 1962) of Amy W. Smith.  
Pl. Ex. B-13, roll 6.

<sup>16/</sup> Pl. Ex. O-13.

CADDO PARISH <sup>17/</sup>

	<u>White</u>	<u>Negro</u>
Voting Age Population	87,774	41,749
Voters (6-30-64)	59,652	4,637
Percent Registered	68%	11%

Registration June 1960 Through December 1963

	<u>Accepted</u>	<u>Rejected</u> <sup>18/</sup>	<u>Rejected On Card</u>	<u>% Rejected</u> <sup>19/</sup> <u>On Card</u>
W	13,491	82	41	0.3%
N	472	1,086	947	66%

In Caddo Parish the application form is used as a test for Negroes but not for white applicants. Between June 1960 and the end of 1963 the Registrar rejected over 66% of the 1,419 application cards filled out by Negroes for alleged "errors" and "omissions." Only a token 0.3% of the 13,532 applications of white persons were rejected on these grounds.<sup>20/</sup>

These statistics alone prove discrimination against Negroes in the use of the application form as a test.

<sup>17/</sup> Population statistics: 1960 Bureau of the Census Report. Registration Statistics: Monthly Reports of the Louisiana State Board of Registration. Accepted and rejected statistics are derived from a count of microfilm copies of application cards, Pl. Ex. B-17. See Appendix A, Table C. A summary of the Deposition of the Registrar is contained in Appendix B.

<sup>18/</sup> Not included are 55 rejected cards dated before June 1960. All were filled out by Negroes.

<sup>19/</sup> These figures do not include cards rejected for reasons other than the application card test. See Appendix A, Table C.

<sup>20/</sup> See Appendix A, Table C, in which the figures given start at the beginning of 1959.

If any further proof were needed it is supplied by examples of the treatment of specific qualified Negro applicants who have been denied registration on account of technical and inconsequential errors and omissions.

Mrs. Edwina K. Atkins, a Negro, answered the six multiple choice questions perfectly, but was rejected for the following error on her LR-1 card:<sup>21/</sup>

....I was born in the State (country) of Powhattan Louisiana, Parish (or county) of Natchitoches ....

Mrs. Atkins only "error" was to put superfluous information on the extra line. The Registrar testified that the information supplied by the applicant was "not in correct sequence." <sup>22/</sup>

Another Negro applicant was rejected on her application of October 4, 1963, for the following "error": <sup>23/</sup>

I was born in the State (or Country) Shreveport, Parish (or County) of Caddo.

The Registrar whose office is in Shreveport in Caddo Parish, Louisiana, testified as to this rejection: <sup>24/</sup>

- A. The Parish is correct. The State is incorrect.
- Q. Did you have any doubt in your mind that she was talking about Louisiana?
- A. That is not for me to judge. I take the application as it is filled out.

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<sup>21/</sup> Deposition of Mitchell, Pl. Ex. A-17, p.31. Rejected card of Mrs. Edwina K. Atkins, attached to the deposition and marked "P-12."

<sup>22/</sup> Deposition of Mitchell, Pl. Ex. A-17, p. 31.

<sup>23/</sup> Deposition of Mitchell, Pl. Ex. A-17, p.29. Rejected card of Janet Gipson Bagley, attached to the deposition and marked "P-11."

<sup>24/</sup> Deposition of Mitchell, Pl. Ex. A-17, pp. 29-30.



A Negro teacher was rejected for underlining the words "have not" in the character statement on the grounds that it was not marked according to printed instructions.<sup>25/</sup>

The Registrar testified that he discussed the "last registration" blanks with applicants:

In fact, that is one portion of the card where I will freely discuss it with anybody. If he asked the question, I will say "well, if you haven't been registered in any Parish just leave it blank." (Deposition of Mitchell, Pl. Ex. A-17, p. 10)

Nevertheless, the Registrar rejected a Negro for filling in these blanks, on the grounds that since he had never been registered before this amounted to "three false statements."<sup>26/</sup>

Another Negro was rejected for transposing her day and month of birth.<sup>27/</sup> The Registrar testified, "I wouldn't really know what she means 'September day of 28'." (Deposition of Mitchell, Pl. Ex. A-17, p. 32)

A Negro college student, who had a perfect score on the multiple-choice test, was rejected because he put dashes in the two blanks calling for the applicant's present ward and precinct numbers. (the two blanks preceding the words "... of this Parish continuously ...." <sup>28/</sup>When questioned about his grading standards

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<sup>25/</sup> Deposition of Mitchell, Pl. Ex. A-17, p.15. Rejected card of Nancy Marie Anderson (July 3, 1964), attached to the deposition and marked "P-2."

<sup>26/</sup> Id. at 25. Rejected application of Henry P. Francis, Jr., attached to the deposition and marked "P-8."

<sup>27/</sup> Id. Rejected application of Thelma C. Ellis (October 31, 1963) attached to the deposition and marked "P-13."

<sup>28/</sup> Pl. Ex. B-17, roll 7, Rejected application of Wilbert Garner (September 11, 1963).

regarding these two blanks, Mr. Mitchell testified that he has changed his policy and now fills in these blanks for each applicant.<sup>29/</sup> He did not, however, review the application cards of those applicants rejected under the old policy and register those entitled to registration.<sup>30/</sup>

The effect of discriminatory use of the application card test in Caddo Parish has been to freeze Negro registration at the level it was when the test was started. Since June 1960, Negro registration has decreased by seventy two. During this time the total number of white voters continued to climb as it had before the test came into use, with the State Board of Registration figures showing an increase of 3,541 white voters during this period.<sup>31/</sup>

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<sup>29/</sup> Deposition of Mitchell, Pl. Ex. A-17, pp. 26, 32.

<sup>30/</sup> This is apparent from the fact that cards rejected for this reason remain in the reject file; e.g. rejected cards of Wilbert Garner, Lee A. Coleman and Mrs. Berdie M. Jackson. Pl. Ex. B-17, roll 7.

<sup>31/</sup> Reports of the State Board of Registration, which show that there were 56,840 white persons and 4,703 Negroes registered at the end of May 1960, and that there were 60,381 white persons and 4,631 Negroes registered as of December 11, 1963.

32 /  
EAST FELICIANA PARISH

	<u>White</u>	<u>Negro</u>
Voting Age Population	4,200	4,104
Voters (6-30-64)	2,723	130
Percent Registered	64%	3%

Registration, May 1958 through December 1963

	<u>Accepted</u>	<u>Rejected</u> <sup>33 /</sup>	<u>Rejected On Card</u>	<u>% Rejected On Card</u> <sup>34 /</sup>
W	2,478	647	482	16.3%
N	125	651	396	76.0%

Among the highly qualified Negroes who were denied registration in East Feliciana Parish for alleged "errors" and "omissions" on their application cards were 26 school-teachers.<sup>35 /</sup> None of these teachers were rejected after August 1962 and thus had passed the multiple-choice citizenship test before they were rejected on the card.

Registrar Palmer's testimony shows extremely arbitrary standards in grading the application card test. For example,

<sup>32 /</sup> Population statistics: 1960 Bureau of Census Report. Registration statistics: Monthly Reports of the Louisiana State Board of Registration. Accepted and rejected statistics are derived from a count of microfilm copies of application cards, Pl. Ex. B-37. See Appendix A, Table C. A summary of the deposition of the Registrar is found in Appendix B.

<sup>33 /</sup> The records contain only one rejected card (filled out by a white person) dated before May 1958. Pl. Ex. B-37, roll 14.

<sup>34 /</sup> This figure excludes those persons rejected for all reasons other than failing the application card test.

<sup>35 /</sup> The card calls for the applicant's occupation. Rejected cards contained in Pl. Ex. B-37, rolls 13, 14.

he testified that he rejected a Negro applicant because he stated he was born in Orleans Parish and that he had lived in East Feliciana Parish since birth,<sup>36/</sup> When asked whether he thought it was possible that this person could have been born in a hospital in New Orleans and brought back to East Feliciana Parish by his parents, he answered that it was impossible. He said that he did not ask the applicant anything about the matter because "It's not my duty to ask him anything." (Pl. Ex. A-37, p. 14)

Palmer stated that he rejected another Negro applicant because he put the word "Louisiana" in the blank following the phrase, "I am not now registered as a Voter in any other Ward or Precinct of this state except \_\_\_\_\_".<sup>37/</sup> However, he also testified that he tells "mostly everyone" who comes in to put the word "none" in this blank.<sup>38/</sup>

When asked why he rejected a Negro applicant who had put down her age as 22 years instead of 23, Palmer stated that he knew the person was old enough to register, but since the card is a "literacy test", he rejected the applicant for that "error".<sup>39/</sup>

A Negro teacher was rejected because he wrote the name of the Parish in the "extra" line between the blank for state of birth and the blank for parish of birth:

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<sup>36/</sup> Deposition of Palmer. Pl. Ex. A-37, pp. 13-14.

<sup>37/</sup> Deposition of Palmer. Pl. Ex. A-37, p. 15. Rejected card of Albert Marshall, attached to the deposition and marked "G-5".

<sup>38/</sup> Deposition of Palmer. Pl. Ex. A-37, p. 15.

<sup>39/</sup> Id. at p. 18.

I was born in the State (country) of Louisiana <sup>40/</sup>  
East Feliciana, Parish (or county) of Clinton....

About this rejection, Palmer, whose office is in Clinton, testified:

He was born in the parish of Clinton. We don't have any parishes in our state by that name. He was born in the State of Louisiana, East Feliciana. We don't have any state by that name.... I don't know where he was born. (Deposition of Palmer, Pl. Ex. A-37, pp. 19-20).

Another Negro was rejected for writing:

I was born in the State (country) of Louisiana <sup>41/</sup>  
East Feliciana, Parish (or county) of East Feliciana....

About this, Registrar Palmer stated, "... I can't look at that and tell where she was born, because she says Louisiana East Feliciana." Id. at p. 29.

Another hypertechnical reason for rejection testified to by Registrar Palmer is the "incorrect" method of answering the "have-have not" statements. Palmer said that he rejected the card of a Negro teacher because the applicant circled the words "have not" in addition to crossing through "have" - ("I have not (~~have~~)...."). <sup>42/</sup>

According to Palmer this is a rejectable error because:

The law says that you will scratch through the words, it says nothing about circling or crossing through. He has circled one and crossed through the other one. (Deposition of Palmer, Pl. Ex. A-37, p. 23).

<sup>40/</sup> Deposition of Palmer, Pl. Ex. A-37. Rejected card of James M. Sensley (dated June 29, 1963), attached to the deposition and marked "G-8".

<sup>41/</sup> Rejected card of Christine B. Wright (dated August 17, 1963), attached to the deposition and marked "G-12".

<sup>42/</sup> Deposition of Palmer, Pl. Ex. A-37, p. 23, rejected card of James M. Sensley (dated July 13, 1963,) attached to the deposition and marked "G-9".

A Negro applicant who marked one "have-have not" statement as "I have- not (have)...." was rejected for crossing out the wrong "have".<sup>43/</sup> According to Palmer, "She should have scratched out the "have" in parenthesis, not the "have" in the "have not". (Deposition of Palmer, Pl. Ex. A-37, p. 26).

The latter "error" was apparently caused by the scrambled parentheses in the "have-have not" statements. On three of the five LR-1 cards, the parentheses vary so that one statement may read, "I have (have not)", the next one, "I have not (have)", etc. On the other two cards, the six statements are arranged identically.<sup>44/</sup>

In East Feliciana Parish the distribution of the five different application cards by race shows a deliberate attempt by the Registrar to disfranchise Negroes by giving them the more difficult cards. An examination of these cards shows that 95% of the 347 applications filled out by Negroes since September 1962 contained the scrambled "have not" questions,<sup>45/</sup> whereas only 23% of the 498 white persons who applied during this time received the more difficult cards.<sup>46/</sup> Since random distribution would mean that

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<sup>43/</sup> Deposition of Palmer, Pl. Ex. A-37, pp. 26-27, rejected card of Christine B. Wright (dated August 3, 1963), attached to the deposition and marked "G-11".

<sup>44/</sup> For a more detailed discussion of this aspect of the card see, Part VI, pp. 53-54, supra.

<sup>45/</sup> The "scrambled" cards were introduced at the same time the citizenship test was. Deposition of Niklaus, Pl. Ex. A-71, p. 12.

<sup>46/</sup> These figures are derived from a count of the micro-film copies of accepted and rejected application cards contained in Pl. Ex. B-37, rolls 12-14.

about 60% of all applicants would get the scrambled cards (there being three out of five such cards), the inference is that the Registrar not only deliberately gave Negroes more difficult cards, but also purposefully gave white persons the less difficult cards.

The above evidence of discriminatory treatment of Negro applicants explains the fact that 76% of Negro applicants have been rejected on the application card test as compared to 16.3% of the white applicants.

47/  
JACKSON PARISH

	<u>White</u>	<u>Negro</u>
Voting Age Population	6,607	2,535
Voters (6-30-64)	6,173	1,154 <sup>48/</sup>
Percent Registered	93%	45%

Registration October 1956 Through November 1962

	<u>Accepted</u>	<u>Rejected</u>	<u>Rejected On Card</u>	<u>% Rejected On Card</u>
W	1,833	45	45	2%
N	441	791	770	63.5% <sup>49/</sup>

Registration December 1962 Through December 1963

	<u>Accepted</u>	<u>Rejected</u>	<u>Rejected On Card</u>	<u>% Rejected On Card</u>
W	832	78	23	4%
N	183	110	58	24%

In United States v. Wilder, 222 F. Supp. 749 (W.D. La. 1963), the Court found that Negroes had been discriminatorily challenged and purged by the Citizens Council in 1956 for alleged errors, omissions

<sup>47/</sup> Population statistics: 1960 Bureau of the Census Report. Registration statistics: Monthly Reports of the Louisiana State Board of Registration. Accepted and rejected statistics are derived from a count of microfilm copies of application cards, Pl. Ex. B-49. See Appendix A, Table C. A summary of the testimony of the Registrar is contained in Appendix C.

<sup>48/</sup> The number of registered Negroes increased from 659 to 1119 in January 1964 after the Court in United States v. Wilder, 222 F. Supp. 749 (W.D. La. 1963), ordered the reinstatement of those Negroes who had been purged from the rolls in 1956. There were 476 Negroes registered at the time of trial in this case, December 1962. See Appendix A, Table B.

<sup>49/</sup> These figures represent those applications filed between the trial of this case and December 1963. The microfilm copies of applications filed in 1964 show that the Registrar ceased rejecting applicants for technical "errors" and "omissions." Pl. Ex. B-49, roll 11.



and handwriting differences on their application cards,<sup>50/</sup> that the Registrar had subsequently adopted the standards applied by the Citizens Council in using the application card as a strict examination,<sup>51/</sup> and that the Registrar used the application card as an examination for Negroes but not for white persons.<sup>52/</sup>

Specifically, the Court stated:

In October 1956, the Citizens' Council of Jackson Parish and the individual defendants challenged the registration status of 953 of the 1,122 Negro Voters and 13 of the 5,450 white voters. The defendant registrar thereafter removed the names of all of those challenged voters from the voter rolls of Jackson Parish. The challenges were based on alleged errors, omissions, and handwriting differences on the original application cards of the voters. These alleged deficiencies were not deficiencies under the standards applied by the registrar at the time these voters registered and the application cards of approximately 75 percent of the white voters who were not challenged contained similar deficiencies. The defendant registrar, knowing this fact and that only Negroes were challenged, mailed a copy of the affidavit of challenge together with a notice to erase to each of the challenged voters. She did this on the day the registration books closed in preparation for the November general election. Thereafter, she removed the names of all of these challenged voters from the voter rolls. This purge of voters was racially discriminatory in purpose and effect.

Following the removal of nearly all of the Negro voters from the voter rolls, Jackson Parish adopted the permanent registration system. All persons registered as of January 1, 1957, were automatically given permanent registration status....

Between October 1956 and September 1962 the defendant Registrar rejected about 64% of the applications of Negroes and only about 2 percent of the applications of white persons. This discriminatory result was brought about by the defendant Registrar applying strict tests to Negro applicants but not to white applicants.

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<sup>50/</sup> United States v. Wilder, 222 F. Supp. 749,750 (W. D. La. 1964).

<sup>51/</sup> Id. at p. 751.

<sup>52/</sup> Id. at p. 752.

The defendant Registrar, prior to September 1962, has used the application form as an examination for Negroes but not for white persons. She has rejected Negro applicants because of technical errors and omissions on their application forms but has not rejected white applicants for similar errors and omissions. White applicants have received aid and assistance in filling out their applications but Negro applicants have not received assistance.

The defendant Registrar, prior to September 1962, has subjected Negro applicants to other tests to which she has not subjected white applicants. She has required Negro applicants, but not white applicants, to read the application form aloud, to pronounce words properly, to define words and to recompute their ages. She has rejected otherwise qualified Negro applicants who have failed to perform on these tests to her satisfaction....

The defendant Registrar, prior to September 1962, has rejected 23 Negro school teachers since the purge. She has rejected Negro school teachers for technical errors on their application forms, for failing to interpret the Constitution to her satisfaction, and for misspelling words in the Preamble.

During the same period the defendant Registrar has registered white applicants who are unable <sup>53/</sup> to read and to understand the application form.

Among the qualified Negroes in Jackson Parish who were rejected were those turned down for the following "errors" and "omissions":

A teacher with a Masters Degree from Columbia University was rejected for putting "Jackson, La." in the blank calling for the state of birth and leaving blank the space for the parish of her birth.<sup>54/</sup>

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<sup>53/</sup> Id. at pp. 750-52.

<sup>54/</sup> Pl. Ex. I-49, p. 149; Pl. Ex. B-49, roll 1; rejected card of Pinkie Sherrard.

Two other teachers were rejected because they completed the sentence, "My color is \_\_\_\_\_" with the word "Brown."<sup>55/</sup> Another teacher was turned down for "Light Brown."<sup>55/</sup>

Another school teacher, who attended the University of Minnesota to receive special training with respect to teaching retarded children, was denied registration because she used the numbers of the ward and precinct in which she was registering in the blank after the phrase, "I am not now registered as a Voter in any other Ward or Precinct of this State except \_\_\_\_\_."<sup>57/</sup>

In addition to requiring applicants to fill out a card without making "errors," Registrar Wilder also required some applicants who filled out acceptable cards to read the application form aloud to her.<sup>58/</sup> She testified that on the basis of how well the applicant read the form, she might reject a person with an application form that otherwise met her strict standard of acceptance.<sup>59/</sup> She decided which applicants would be required to read by "their general attitude -- their manner in filling out the applications." (Testimony of Wilder, Pl. Ex. I-49, p.237)

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<sup>55/</sup> Pl. Ex. I-49, pp. 52-53; Pl. Ex. B-49, roll 1; rejected cards of Aleane B. Hayes and Albert James Walter.

<sup>56/</sup> Pl. Ex. I-49, p.54; Pl. Ex. B-49, roll 1; rejected card of Maudie F. Belton.

<sup>57/</sup> Pl. Ex. I-49, pp. 40, 44; Pl. Ex. B-49, roll 1; rejected card of Lomia Lee Jacobs.

<sup>58/</sup> Testimony of Wilder, Pl. Ex. I-49, pp. 237,258.

<sup>59/</sup> Id. at 240.

MADISON PARISH <sup>60/</sup>

	<u>White</u>	<u>Negro</u>
Voting Age Population	3,334	5,181
Voters (6-30-64)	2,373	261
Percent Registered	71%	5%

Registration January 1963 Through December 1963

	<u>Accepted</u>	<u>Rejected</u>	<u>Rejected On Card</u> <sup>61/</sup>	<u>% Rejected On Card</u> <sup>62/</sup>
W	709	46	20	6.1%
N	238	112	86	26%

In United States v. Ward, 222 F. Supp. 617, (W.D. La. 1963) the Court found that before September 1962 there were 1,760 white persons and no Negroes registered to vote in Madison Parish; that the Registrar had discriminatorily denied Negroes the right to vote by use of the voucher requirement, <sup>63/</sup> and that before September 1962, white applicants were "not tested for their literacy, knowledge, intelligence or understanding." <sup>64/</sup>

<sup>60/</sup> Population statistics: 1960 Bureau of the Census Report. Registration statistics: Monthly Reports of the Louisiana State Board of Registration. Accepted and rejected statistics are derived from a count of microfilm copies of application cards, Pl. Ex. B-65. See Appendix A, Table C. A summary of the deposition of the Registrar is contained in Appendix B.

<sup>61/</sup> There were no applications rejected on the card in Madison Parish before 1963. Pl. Ex. B-65, roll 5; Pl. Ex. B-49, roll 8.

<sup>62/</sup> These figures exclude those persons rejected for any reason other than failing the application card test.

<sup>63/</sup> Negroes were denied the opportunity to register by the requirement that they must be identified by the affidavits of 2 registered voters from the ward and precinct of the applicant. Since no Negroes were registered voters, Negroes could not be identified by Negroes. White applicants were allowed to register without identifying themselves. United States v. Ward, 222 F. Supp. 617, 619 (W.D. La. 1963).

<sup>64/</sup> U. S. v. Ward, supra, at 619.

After the trial of Ward, Negroes were allowed to attempt to register to vote. However, the Registrar then began to use the application form as a strict test and has rejected applicants for technical "errors" and "omissions."<sup>65/</sup>

Registrar Ward testified that she marked the card of a Negro applicant for writing "11" in the blank calling for month of birth:<sup>66/</sup>

Q. ...would you tell me what is wrong with that card, Miss Ward?

A. On the 4th day of 11.

Q. In other words, she expressed the month of birth in a number, rather than writing out November?

A. It's possible, but I wouldn't know that, there is no such month as "11."

Q. You wouldn't read "11" to be November?

A. I might figure it out, but in this instance I didn't.

Q. And her failure to do so caused the rejection?

A. It is wrong, it is a mistake, she should have written November; or ever "11th month," I might have accepted that.

The card of this applicant was also marked because she filled in the blank calling for the ward of her last registration although she had not been registered before.<sup>67/</sup>

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<sup>65/</sup> Deposition of Ward, Pl. Ex. A-65, p. 5

<sup>66/</sup> Id. at p. 9.

<sup>67/</sup> Rejected card of Carrie D. Britton (dated March 14, 1963), attached to the deposition and marked "G-1."

The Registrar testified that either of these "errors" would be sufficient reasons to reject the applicant.<sup>68/</sup> She also said that she had no doubt that this applicant could read and write.<sup>69/</sup>

Since more than half of the adult white persons in Madison Parish became registered before any tests were applied to applicants,<sup>70/</sup> and at a time when Negroes were denied the right to attempt to register, the present use of the application card as a strict test is per se a discriminatory denial of the rights of Negroes to register to vote. This is especially true in that the registrar's records show that this test has been applied mostly to Negroes and not white persons.

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<sup>68/</sup> Deposition of Ward, Pl. Ex. A-65, p. 11.

<sup>69/</sup> Id. at 14.

<sup>70/</sup> These persons are permanently registered. The Registrar testified that she was in the process of changing over to permanent registration. Pl. Ex. A-65, p. 5.

ORLEANS PARISH<sup>71/</sup>

	<u>White</u>	<u>Negro</u>
Voting Age Population	257,495	125,752
Voters (6-30-64)	161,571	35,018
Percent Registered	62%	28%

Registration September 1959 through December 1963

	<u>Accepted</u>	<u>Rejected</u>	<u>Rejected On Card</u>	<u>% Rejected On Card</u> <sup>72/</sup>
W	46,897	7,344	6,431	12.1%
N	8,713	17,328	15,755	64.3%

Although some Orleans Deputies testified that they have always rejected applicants for errors on the card,<sup>73/</sup> it appears from the records that no more than a token amount of applicants were rejected before September 1959.<sup>74/</sup> Between this time and September 1962, 65.8% of the 20,385 applications filled out by Negroes were rejected on the

<sup>71/</sup> Population statistics: 1960 Bureau of the Census Report. Registration statistics: Monthly Reports of the Louisiana State Board of Registration. Accepted and rejected statistics are derived from a count of microfilm copies of application cards, Pl. Ex. B-71. See Appendix A, Table C. Summaries of the Depositions of the Registrar, the former Administrative Assistant, the former Assistant Chief Deputy Clerk, the present Administrative Assistant, and 7 Deputy Registrars are contained in Appendix B.

<sup>72/</sup> These figures do not include cards rejected for reasons other than failing the application card test.

<sup>73/</sup> All applications in Orleans Parish are processed by the twenty-two Deputy Registrars under the supervision of the Registrar and his two aids, the Administrative Assistant and the Chief Deputy Clerk. Deposition of Gallinghouse, Pl. Ex. A-71, p. 4.

<sup>74/</sup> There were 32 Negroes and no white persons rejected before September 1959. Pl. Ex. B-71, rolls 14 and 17. The former Administrative Assistant testified that before 1956, the rejected cards of persons who later registered were not saved. Deposition of Brunet, Pl. Ex. A-71, pp. 5-7.

grounds that they contained "errors" or "omissions", whereas only 12.7% of the 39,220 cards of white persons were turned down.<sup>75/</sup>

After the citizenship test was instituted in September 1962, the Orleans Parish Deputy Registrars continued to reject a high percentage of Negroes and relatively few white persons. Excluding those persons who failed the citizenship test, 56% of the 4,083 applications of Negroes and only 10% of the 14,108 applications of white persons were rejected for "errors" and "omissions" between September 1962 and the end of 1963.<sup>76/</sup>

Highly qualified Negroes were denied registration on these grounds. Between 1959 and the end of 1963, over 400 applications filled out by Negro teachers were rejected for technical "errors" or "omissions".<sup>77/</sup> Another indication of the quality of the rejected Negro applicants, aside from excellent penmanship that can be seen on card after card, is that over 1,500 Negroes who passed the multiple-choice citizenship test were rejected on the application card test.<sup>78/</sup>

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<sup>75/</sup> See Appendix A, Table C.

<sup>76/</sup> The overall rejection rate during this time was 69% for Negroes and 16% for white persons. See Appendix A, Table C.

<sup>77/</sup> The applicant's occupation is called for on the card. This figure is derived from a count of the microfilm copies contained in Pl. Ex. B-71, rolls 5, 7, 12-18, 21, 24, 25, and 52-58.

<sup>78/</sup> See Appendix A, Table C.



Due to the varying standards applied by each Deputy, the rejection rates vary: From July 24, 1961 through December 1963 Deputy Monteverde rejected 76% of 538 applications of Negroes and only 7% of 1,948 applications of white persons, but Deputy Gertsner rejected 50% of 405 Negroes and 23% of 1,133 white persons.<sup>79/</sup>

There are three factors which explain the great discrepancy in rejection rates between Negroes and white persons: The first, unreasonable standards in grading, is demonstrated quite clearly by both the rejected cards and the testimony of the Orleans Parish Deputy Registrars and executives. The second, grading Negroes' cards more strictly than those of white persons, is shown by examining the reasons for rejection noted on the cards. The third, assistance to white applicants is shown by the testimony of these officials. These persons did not testify that the applicants they assisted were white persons, but that they were is clear from the following: (a) The standards shown are so arbitrary and strict that few persons, even highly educated persons, could pass without assistance; (b) Some applicants were assisted; (c) white persons usually pass but Negroes do not.

1. The Unreasonable and Strict Standards

Applicants must perform with absolute perfection on the application card test. Not the slightest "error" is allowed. An inadvertant slip may be a reason for rejection:

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<sup>79/</sup> See Appendix A, Table F. The deposition of these deputies are summarized in Appendix B.

Deputy Bull testified that it is an error to cross out the word "I" in marking the character statements.<sup>80/</sup>

The required system of age calculation is so complicated that the Deputies' supervisor was required to circulate a memorandum explaining the system (though it had been in use for over three years) and advising the deputies to check each computation by recalculating it on scratch paper.<sup>81/</sup>

The requirements for marking the character statements are so strict that a person who makes the statement read, "I have not been convicted . . . ." can be rejected on the grounds that he crossed out the wrong "have".<sup>82/</sup>

Another trap on the card is the blank, "The name of the householder at my present address is \_\_\_\_\_."

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<sup>80/</sup> Deposition of Bull, Pl. Ex. A-71, p. 19.

<sup>81/</sup> Deposition of Niklaus, Pl. Ex. A-71, p. 9. The most complicated aspect of the age computation requirement is that an applicant must "borrow" days from the preceding month if he applies on a day that is earlier in the month than the day on which he was born. For example, a Negro teacher, Charles R. Hancock, was rejected on October 3, 1963 solely because he made the following error:

Month and day of application	10-3
<u>Month and day of birth</u>	<u>11-21</u>
Months and days of age	10-13

Since the month from which he had to borrow had 30 days, he should have subtracted 21 from 33 rather than from 34. Pl. Ex. B-71, roll 55.

As one deputy testified, "[I]f the month prior was 31 days, we will accept 30 or 31 days, but if the month prior was 30 days, we will not accept 31 days". Deposition of Bull, Pl. Ex. A-71, p. 29.

<sup>82/</sup> Registrar Callinghouse justifies this requirement on the grounds that in the instructions the word "have" and the words "have not" are enclosed in distinct sets of quotation marks; thus the applicant who crosses out the "have" that is in the "have not" is in error:

"I have (~~have~~ not) . . . ."

Deposition of Callinghouse, Pl. Ex. A-71, pp.119-120,125-127.

Although the applicant's landlord is a proper answer to this blank in several other parishes, this response means rejection for applicants in Orleans Parish.<sup>83/</sup> When an applicant turns in a card and the listed householder has a different last name from his own, the deputy is prompted to ask, "who is this person?" If the applicant answers that he is the landlord, he is rejected.<sup>84/</sup>

The former Administrative Assistant in Orleans Parish, when asked about the correct answer to the blanks following the phrase, "I am not now registered as a Voter in any other Ward or Precinct of this State except \_\_\_\_\_," stated, "we have kicked [it] around the Registration Office" since 1940.<sup>85/</sup>

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<sup>83/</sup> See the testimony of the Registrars of Jefferson Parish (Pl. Ex. A-51, p. 12) Lafayette Parish (Pl. Ex. A-55, p.18) and LaSalle Parish (Pl. Ex. A-59, p.3). The former Administrative Assistant in Orleans Parish testified that the registrar determined "that the landlord was not the proper answer and that information was passed on to all the deputies." Deposition of Brunet, Pl. Ex. A-71, p.21. Deputy Dupre defined the householder as "the person who either pays the bills or maintains the residence or is head of the house...." Deposition of Dupre, Pl. Ex. A-71, p.6.

<sup>84/</sup> Deposition of Monteverde, Pl. Ex. A-71, p.13. Negro applicants have also been rejected for omitting the householder's first name (Deposition of Raicevich, Pl. Ex. A-71, p.25), putting their mother's name, Pl. Ex. B-71, card (dated 10-3-62) of Nedra Ann Grimes, roll 53; and even their own name, Id., card (dated 11-30-61) of Napoleon Carter, roll 12. See also the card (dated 7-26-63) of Mrs. Lauvinia M. Jenkins, on which the applicant put "Brenton Charles Jenkins" as the householder and the deputy wrote, "Lives with parents-Mother is head of house". (Id., roll 55).

<sup>85/</sup> Deposition of Brunet, Pl. Ex. A-71, p.24. See Part VI, supra, for a detailed discussion of the requirements for this blank.

The requirement that applicants be minutely precise in their statements of residence means that an applicant who changed his residence at age two but does not reflect the change on his card will be rejected.<sup>86/</sup>

Finally, the present Chief Deputy Clerk testified, "You know the LR-1 [application card] is like a lottery ticket, there's various ways that people answer a card and you have to determine from their answers just whether or not they're right or wrong." (Deposition of Niklaus, Pl. Ex. A-71, p.4).

2. Strict Grading Requirements are applied to Negroes but not white persons

(a) The accuracy of residence statement requirement was applied unreasonably to Negro applicants.

One of the most exacting requirements of the application card test in Orleans Parish is that the applicant be precisely accurate in his statement of residence in the state, parish and precinct. Under this requirement, an applicant who has in fact satisfied the residence requirements of state law<sup>87/</sup> and whose written residence statements

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<sup>86/</sup> Deputy Hartman testified that she rejected Warren L. Williams, Negro, because he put down on his card that he had lived in Orleans Parish since his birth in 1936, but on a prior card had stated that he was born in West Feliciana Parish and moved to Orleans Parish in 1938. (Deposition of Hartman, Pl. Ex. A-71, p.17). A more detailed discussion of the accurate statement of residence requirement is found in Part VI, supra.

<sup>87/</sup> One year in the state, six months in the parish and three months in the precinct, L.S.A.-R.S. 18:31. Applicants who do not meet these requirements are not given a card to fill out. Deposition of Monteverde, Pl. Ex. A-71, pp.3-4. Registrar Gallinghouse testified that sufficiency of residence is usually determined from the application card. Deposition of Gallinghouse, Pl. Ex. A-71, p.9.

show this, is rejected if the Deputy Registrar, through conversation with the applicant, discovers that his residence was actually longer or shorter (but still sufficient) than stated.<sup>88/</sup> For example, Florence R. Williams, a Negro, who applied in July 1963, was rejected for writing that she had lived in the parish since 1962, because in fact she had lived in the parish since birth.<sup>89/</sup> Another Negro, Leroy Johnson, who applied for registration on November 5, 1963, stated on his card that he had lived in the precinct since birth and was rejected because he had been at his present address for only 12 years.<sup>90/</sup>

Deputy Monteverde testified that he rejected a Negro applicant because "the person quoted to me at the counter before I gave him the card that he was living in the precinct since 1961 . . . . and he put down 1957".<sup>91/</sup>

The most important aspect of the accurate statement of residence requirement is that the alleged "errors" do not appear on the face of the card.<sup>92/</sup> Unless the deputy probes and searches for an oral statement that is inconsistent with the written one, the inaccuracy will go unnoticed.

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<sup>88/</sup> Deputy Raicevich testified that in these cases it is not the length of residence that matters, but rather the accuracy. Deposition of Raicevich, Pl. Ex. A-71, p.12. Most deputies testified that they reject if the actual residence is longer or shorter than the stated residence, but Deputy Dieterich testified that he only rejects if the actual residence is shorter. Deposition of Dieterich, Pl. Ex. A-71, p.167. See also Deposition of Bull, Pl. Ex. A-71, p.73.

<sup>89/</sup> Pl. Ex. B-71, roll 58.

<sup>90/</sup> Id., roll 55.

<sup>91/</sup> Card of Lonnie Lee Wright, dated October 28, 1963, "Monteverde 2A", attached to the deposition. Deposition of Monteverde, Pl. Ex. A-71, p.9.

<sup>92/</sup> With this rare exception: The stated time in the parish is longer than the stated time in the state.

An applicant may put down that he was born in Orleans Parish in 1941 and that he has lived in Orleans Parish since 1943. This may prompt the deputy to ask, "Have you lived in this Parish all your life?" If the applicant answers in the affirmative, he is rejected.<sup>93/</sup> The deputy may discover the inaccuracy by reference to an earlier rejected application,<sup>94/</sup> conversation with the applicant during the time he is filling out the card or after he has finished,<sup>95/</sup> or by reference to a card filled out by a relative of the applicant.<sup>96/</sup>

A common victim of this requirement is an applicant who simply is not sure of the residence dates, for if the deputy's attention is drawn to this doubt, the applicant is rejected.<sup>97/</sup>

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<sup>93/</sup> Deposition of Hartman, Pl. Ex. A-71, p.32.

<sup>94/</sup> Id. at 17.

<sup>95/</sup> Deposition of Bull, Pl. Ex. A-71, pp. 45-46.

<sup>96/</sup> Pl. Ex. B-71, roll 12, rejected card (dated 12-17-61) of a Negro teacher, Mary H. Cheatam, who put down that she had lived in the precinct since 1936. The deputy's note states that her father's registration has 1939 in the precinct. (The applicant was born in 1936). See also the rejected card (dated 6-18-63) of Luther Quinn, a Negro. The note on his card state, "when questioned said time in State and Parish was longer than the time given on application. Wife says it was less." Pl. Ex. B-71, roll 57.

<sup>97/</sup> See the testimony of Deputy Bull concerning an applicant who was not sure when she moved into the precinct. Deposition of Bull, Pl. Ex. A-71, pp. 43-47.

(b) Discriminatory application of the requirement of an accurate statement of residence.

An analysis of all the application cards rejected in Orleans Parish in 1963 shows that the accurate statement of residence requirement has been primarily used to deny registration to Negro applicants. Of the 5,300 applications filled out by Negroes, there were 555 (more than 10%) on which the residence statements were sufficient on their face but were marked as "errors". Only 125 (less than 1%) of the 14,134 cards filled out by white persons were similarly marked.<sup>98/</sup>

(c) The discriminatory requirements for the "color" blank.

The Orleans Parish requirements for the blank, "My color is \_\_\_\_\_" are inherently discriminatory. Although the blank calls for the applicant's "color" rather than "race", the Orleans Deputies treat it as though it called for the latter. The resulting requirements make it virtually impossible for a white person to make an "error" and quite likely for a Negro's answer to be unacceptable.

Marcel Brunet, formerly the Registrar's Administrative Assistant, whose duties included the supervision of the deputies' grading standards, testified that "w", "white" or "Caucasian" are correct answers for white persons, and that "colored", "black" and "Negro" are correct for Negroes.

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<sup>98/</sup> These figures are derived from a count of the microfilm copies of rejected applications contained in Pl. Ex. B-71, rolls 52, 54-58.

"Brown" is unacceptable because:

brown is one of the five major races of the world and the Negro is not a member of the brown race.

If he comes in there as an Indian and he puts down the word brown, we are going to accept him. If he comes in there as a Chinaman or Jap and puts yellow, we are going to accept him, but if he is a Negro and puts brown, we are not going to accept him. (Deposition of Brunet, Pl. Ex. A-71, p. 34)

Thus, of those applicants who give the most responsive answer to the blank as written, their color, only Negroes can be rejected.<sup>99/</sup>

Negroes have also been rejected in Orleans for writing "black" in this blank. There was testimony to the effect that this response had been marked by mistake on some cards or that the office policy had changed.<sup>100/</sup> Anthony Peres, the former Assistant Chief Deputy (who in 1962 accepted one Negro applicant and rejected 95 (Appendix A, Table F), testified that his policy had been that "black" was unacceptable.<sup>101/</sup>

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<sup>99/</sup> Deposition of Brunet, Pl. Ex. A-71, p. 34. Brunet also testified that "C" was unacceptable because it could stand for "Caucasian" or "colored". Note that one deputy testified that she made the notation, "C", on a rejected card on which this blank was unanswered, in order to indicate that the applicant was a Negro. Deposition of Hartman, Pl. Ex. A-71, p. 28.

<sup>100/</sup> Deposition of Peres, Pl. Ex. A-71, p. 50. See the card (dated 11-6-63) of Sarah P. Parker, on which "My color is Black" is the only "error". Pl. Ex. B-71, roll 57.

<sup>101/</sup> Deposition of Peres, Pl. Ex. A-71, pp. 48-49.



3. White Persons are Assisted in Filling  
Out Their Application Cards

Despite the impossibly strict standards shown on the rejected application cards and testified to by the Deputy Registrars and their superiors, 90% of the white applicants managed to pass the application card test.<sup>102/</sup> When asked about assistance to applicants, Orleans deputies and their superiors replied with the stock answer that they were allowed to assist applicants "within the framework of the law".<sup>103/</sup> Deputy Bull explained, "[W]e can answer questions up to a point that we won't be helping them in filling out the cards."<sup>104/</sup> Deputy Hartman testified that whether or not she can answer an applicant's question depends on the question: "We are allowed to answer questions if it's within the framework of the law, so to speak. As far as giving information, pertinent information where they're concerned, we are not allowed to assist in any manner."<sup>105/</sup>

<sup>102/</sup>See Appendix A, Table C. Again, this figure does not include those persons who failed the citizenship test.

<sup>103/</sup>P1. Ex. A-71, Hartman, p. 6; Gallinghouse, p. 13; Brunet, pp. 27-28.

<sup>104/</sup>Deposition of Bull, P1. Ex. A-71, p. 51.

<sup>105/</sup>Deposition of Hartman, P1. Ex. A-71, p.6.

One of the deputies' supervisors, former Administrative Assistant Brunet, testified:

[W]e have to all understand here now that the Deputy Registrar of Voters cannot be a robot. He is not just simply somebody standing up there speechless and unable to talk to the applicant. There are some times when we have to discuss with the applicant certain things he may have on his card with the intent of trying to assist the applicant. If we just sit there as robots and didn't understand what he put down and why he put it down we could merely turn him down and that would be the end of it. (Deposition of Brunet, Pl. Ex. A-71, pp. 21-22).

Mr. Brunet continued, saying that if an applicant listed a householder with a different last name from his own, the deputy might ask the applicant whether that person resides at the applicant's address, "or some words to that effect, not assisting, but doing everything we can within the framework of the law and not telling the man what is going there". <sup>106/</sup>

Thus, by pertinent questions, the deputy can make an applicant realize an inadvertent "error" he has made and give him an opportunity to correct it "within the framework of the law." <sup>107/</sup> "Within the framework of the law"

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<sup>106/</sup> Deposition of Brunet, Pl. Ex. A-71, pp. 21-22.

<sup>107/</sup> Mr. Brunet gave the following example of a question that assists without telling the answer: When an applicant says he has been registered in another parish, but his card says that he had lived in Orleans Parish, the deputy would ask, "Have you ever registered before in this city or this Parish?" Id. at p. 23.

is a guideline vague enough to allow each deputy to decide what is and what is not "assistance." As one deputy put it, "I think we are more or less expected to know what the law provides for us to answer."<sup>108/</sup> The deputies' questions or answers to applicants' questions can tip the delicate balance between acceptance or rejection.

The great discrepancy between the rejection rate of Negroes and that of white persons can only be explained by the fact that white persons are afforded the assistance Mr. Brunet describes, but Negroes are given the "robot" treatment he mentions. Thus a Negro is rejected because he omitted the century in stating his year of birth<sup>109/</sup> ("33" for "1933"), for crossing out the "I" in the character statement,<sup>110/</sup> or for not knowing that when he changed addresses he changed precincts. Thus, Lillian C. Jones, a Negro was rejected because she stated she had lived in the precinct since "February 1960." The deputies note says, "Lived at 4900 Prentiss before moving to 3933 Prentiss - different prct."<sup>111/</sup>

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<sup>108/</sup> Deposition of Hartman, Pl. Ex. A-71, pp. 42-43.

<sup>109/</sup> Deposition of Peres, Pl. Ex. A-71, p. 21.

<sup>110/</sup> See footnote 80 supra.

<sup>111/</sup> Pl. Ex. B-71, roll 16; rejected card (dated 12-19-61).

OUACHITA PARISH<sup>112/</sup>

	<u>White</u>	<u>Negro</u>
Voting Age Population	40,185	16,377
Voters (6-30-64)	28,621	1,511
Percent Registered	71%	9%

Registration, April 1956 through December 1963

	<u>Accepted</u>	<u>Rejected</u>	<u>Rejected On Card</u>	<u>% Rejected On Card</u> <sup>113/</sup>
W	16,998	668	456	3%
N	1,508	1,435	776	34%

As of December 1955, there were 21,274 white voters and 4,518 Negro voters permanently registered to vote in Ouachita Parish.<sup>114/</sup> As of June 30, 1964 there were 28,621 white persons and 1,511 Negroes on the registration rolls.<sup>115/</sup>

Prior to 1956, the Registrar did not grade application cards for errors or omissions. The registrar filled out application cards for applicants and permitted other persons to fill out cards for applicants.<sup>116/</sup>

<sup>112/</sup>Population statistics: 1960 Bureau of the Census Report. Registration statistics: Monthly Reports of the Louisiana State Board of Registration. Accepted and rejected statistics are derived from a count of microfilm copies of application cards, Pl. Ex. B-73. See Appendix A, Table C. A summary of the testimony of the Registrar is contained in Appendix C.

<sup>113/</sup>These figures do not include cards rejected for reasons other than failing the application card test.

<sup>114/</sup>See Appendix A, Table B.

<sup>115/</sup>Ibid.

<sup>116/</sup>Testimony of Lucky, Pl. Ex. I-73, pp. 745-746.

In the spring of 1956 private individuals initiated a purge of the voter registration rolls by challenging the registration status of approximately 4,000 Negro voters and a token number of white voters.<sup>117/</sup> In order to be retained on the rolls challenged voters were required to produce three voters to make affidavits in their behalf.<sup>118/</sup> Only 917 of the challenged Negro voters were able to retain their registration status by filing affidavits.<sup>119/</sup>

During the period June 1956 through August 1957 the registrar conducted a purge of the voter registration rolls of Ouachita Parish.<sup>120/</sup> She examined the application cards of persons then registered to vote and challenged the registration status of voters on the ground that their applications contained alleged omissions and errors.<sup>121/</sup> In selecting the applications for challenge she applied more stringent standards to Negroes than she applied to white persons. Negroes, but not white persons, were challenged for age computation errors and for omissions

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<sup>117/</sup> Lucky's Statement to the F.B.I., Pl. Ex. L-73(1), p.4. The Purged cards are contained in Pl. Ex. B-73, rolls 8, 10 and 11.

<sup>118/</sup> Lucky's Statement to the F.B.I., Pl. Ex. L-73(1), p.4.

<sup>119/</sup> Pl. Ex. I-73, p. 950.

<sup>120/</sup> Id. at 839.

<sup>121/</sup> Ibid.

in the blanks calling for "other" and "last" registration.<sup>122/</sup>

By the time the Registrar had finished her "errors" purge in August 1957, there were 23,190 white persons and only 812 Negroes registered to vote in Ouachita Parish.<sup>123/</sup>

The Registrar Discriminated Against Negroes By Purging Them in 1959 For Age Miscomputations.

In the summer of 1959, Registrar Lucky purged from the rolls 153 (or 19.8%) of the approximately 774 remaining Negro voters.<sup>124/</sup> This purge was based on the ground that the voters had miscomputed their ages when they registered.<sup>125/</sup> Among those purged were persons who made

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<sup>122/</sup> In the registrar's purge in August and September 1956, Negroes were purged for age miscomputations, although white voters whose applications contained age computation errors were not purged. The most common basis for challenging Negroes in this purge was failure to fill in all or part of the "other registration" and "last registration" blanks on the card. Of the 639 Negroes challenged (Pl. Ex. B-73, rolls 12 and 13), these omissions were checked on 498 of their cards, and on 190 of these such omissions were the only basis of challenge indicated. The registrar's records contain 4,356 applications of white persons who became registered prior to the purges and were still registered as of December 1960, which applications contain omissions in the "other registration" and "last registration" blanks. (These figures are derived from a count of the microfilm copies of challenged application cards contained in Pl. Ex. B-73, rolls 12 and 13; and copies of accepted applications contained in Pl. Ex. B-73, rolls 1-7).

<sup>123/</sup> Reports of the State Board of Registration. Report for the month ending August 31, 1957.

<sup>124/</sup> See Appendix A, Table B for registration statistics.

<sup>125/</sup> See the notes attached to these persons' removed applications. Pl. Ex. B-73, rolls 12 and 15.

one-day errors in computation, e.g., Jessie L. Downs, a Negro school teacher, whose computation was as follows:

	<u>Year</u>	<u>Month</u>	<u>Day</u>
Date of Application	56	6	11
<u>Date of Birth</u>	<u>00</u>	<u>2</u>	<u>26</u>
Computation <sup>126/</sup>	56	3	15

White persons were never challenged for age computation errors: At the end of 1958, there were at least 4,700 white persons registered who had made age computation errors of more than three days.<sup>127/</sup> Seven-hundred more white persons registered despite such errors in 1959, the year in which the Negroes were checked and purged, and another 349 white persons registered in 1960 despite miscomputations by more than three days.<sup>128/</sup>

When asked whether she had checked the age computation of white voters, defendant Lucky testified:

"I don't remember. I don't think so."<sup>129/</sup>

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<sup>126/</sup>This computation is correct when borrowing thirty days in order to subtract and one day off when borrowing thirty-one days. See also the card of Alex Horace, challenged at this time, on which the age computation is correct but which was purged because the person checking it miscomputed his age in years. Id., roll 15.

<sup>127/</sup> The figures are derived from a count of the microfilm copies of accepted applications of white persons, Pl. Ex. B-73, rolls 1-7.

<sup>128/</sup> Ibid.

<sup>129/</sup> Testimony of Lucky. Pl. Ex. I-73, pp. 815-816.

The Discriminatory Use  
of the Application Card Test

Also in the spring of 1956, concurrently with the first mass purge of Negro voters,<sup>130/</sup> the registrar commenced using the application form as a strict test for Negroes, but not for white persons: During the eight years, 1956 through 1963, over 34% of the Negro applicants were rejected solely on the ground that their applications contained alleged "errors" or "omissions"; less than 3% of the white applicants were rejected on these grounds.<sup>131/</sup> At least twenty-six Negro school teachers have been denied registration to vote on the grounds that they failed the application card test.<sup>132/</sup>

The following examples are set forth to illustrate the methods used by the Registrar in rejecting the applications of Negroes for technical "errors" and "omissions" while at the same time assisting white persons in filling out their cards:

(a) Experiences of Negroes

Elizabeth Tugwell, a Negro, was rejected for registration in January 1964 on the ground that she failed to sign the application card or fill in the residence blank.<sup>133/</sup> Even though the card is in the form of an oath which the applicant is supposed to sign in the presence of the

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<sup>130/</sup> See Note 117 , supra.

<sup>131/</sup> See Appendix A, Table C.

<sup>132/</sup> The card calls for the applicant's occupation. This figure is derived from a count of the microfilm copies of rejected cards contained in P1. Ex. B-73, rolls 8,12,15 and 22.

<sup>133/</sup> P1. Ex. I-73, pp. 757-759.



registrar, the defendant registrar did not ask applicant Tugwell to sign it.<sup>134/</sup> On the contrary, when the registrar pointed out to the applicant the omissions on her card and the applicant filled it in, the registrar, according to her own testimony, told the applicant, "When we show you your error you are disqualified". (Pl. Ex. I-73, p. 759)

Dorothy Young, another Negro who applied for registration in January 1964, was denied registration on the ground that she had miscalculated her age by one month even though in every other respect her application form met the standards set by the registrar.<sup>135/</sup>

One of the spaces on the application form says: "I am not now registered as a Voter in any other Ward or Precinct of this State, except \_\_\_\_\_." The defendant registrar testified that there is some difference of opinion as to how this blank should be filled out. Her view is that for persons not currently registered the proper answer is the ward and precinct where they reside.<sup>136/</sup>

Carrie J. Hood, a Negro school teacher, applied for registration in January 1964, and was rejected. As to Hood's

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<sup>134/</sup> Pl. Ex. I-73, pp. 759-760. The registrar had available to her all data necessary to determine the qualifications of applicant Tugwell and to register her. Although the space after the word "Residence" was left blank, her address appeared elsewhere on the card. Id. at 759.

<sup>135/</sup> Id. at 763.

<sup>136/</sup> Id. at 751.

application the defendant registrar testified that this omission was an error.<sup>137/</sup>

Another reason given by the defendant registrar for the rejection of Carrie Hood on her January 28, 1964, application was that she struck out "have not" rather than "have" in the character statements. The defendant registrar admitted at the trial that applicants for registration are confused by the "have-have not" statements.<sup>138/</sup>

The experience of Ross Scott, a Negro School-bus driver, shows that the defendant registrar does not use the "have-have not" statements to determine the character of Negro applicants, but uses the statement instead as a technical stumbling block to Negro registration. On Scott's rejected application of October 24, 1963, he struck out "have not" instead of "have" on one of the statements. Instead of inquiring into the facts of his character, the defendant registrar told him that he could re-apply in ten days.<sup>139/</sup> He went back on November 4, 1963, and was registered.<sup>140/</sup> Had the defendant registrar felt that Scott's first form showed him to be of bad character, it would have been pointless to invite him to re-apply and she would not have accepted him for registration ten days later.

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<sup>137/</sup> Id. at 761.

<sup>138/</sup> Id. at 761-62.

<sup>139/</sup> Id. at 417.

<sup>140/</sup> P1. Ex. B-73, roll 22.

Julius A. Griggs, a Negro, applied for registration on January 30, 1964, and was rejected for marking the character statement to read: "I have (~~have~~ not) . . . ." The defendant registrar's testimony shows that Grigg's rejection on these hypertechnical grounds represents the registrar's policy:

Q. If you strike out the wrong "have" and it still reads "I have not," that is still wrong?

A. That's right. The "have not" must be together. The printer fixed it like that and that is the way we are supposed to have it. That is our instructions. (Pl. Ex. I-73, p. 754)

(b) Experiences of White Persons

The registrar expressed her policy for Negroes and not for white applicants in her testimony that, "When we show you your error you are disqualified."<sup>141</sup> The evidence demonstrates that her policy for white applicants was to show them the errors on their application forms and to permit them to make corrections:

Margaret Sikes, a white witness who registered December 9, 1963, filled out her application form and handed it in to the registrar.

She looked at it and told me I had some mistakes in the part where it said, "I have or have not." She told me what to put down.

She said, "Print it just above where you rubbed it out."

And when I did that, she told me to write down on the bottom of my application that I had corrected my own error and to write my name. (Pl. Ex. I-73, pp. 645-646)

<sup>141</sup>/ Pl. Ex. I-73, p. 759.

Another white witness, Jerry Glenn Foster, who registered on November 5, 1963, testified that after he turned in his application, the registrar looked at it and asked him about a question he had marked down.

One of them said, "I have or have not been convicted of a felony charge" and I had marked the wrong word and she asked me about it and I told her I marked the wrong one and she told me to fill out another one ... (Id. at 427)

She asked me, as far as I can remember, she said, "Look at this?"

She said, "Have you made a mistake?" (Id. at 429)

On October 31, 1963, a white witness, Mrs. B. E. Davis, turned in her application without doing the character statements at all because she did not think she had to do them. The registrar looked her card over and, "She told me I didn't have my (sic) complete. I had to fill all this out and when I did that it was all right."<sup>142/</sup>

Another white witness, L. C. Browder, was given an opportunity by the registrar on October 14, 1963, to correct his errors on the "have-have not" part of his application form. He also put his address in the space for the name of the householder and "she said that was wrong" so he wrote his name there.<sup>143/</sup> His application was accepted.<sup>144/</sup>

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<sup>142/</sup> Id. at 432-433.

<sup>143/</sup> Id. at 437.

<sup>144/</sup> P1. Ex. B-73, roll 20.

Palmer Frost, a white witness, is a construction worker who went as far as the fourth grade in school. He applied for registration on November 5, 1963. On the application he put "I was born in the State of Ouachita Parish of \_\_\_\_\_." One of the women in the registrar's office told him it was supposed to be Louisiana. "I had 'Ouachita' where I was supposed to have 'Louisiana' and she just wrote Louisiana down there and handed it to me and I signed it and walked out." On cross-examination, he testified she could have given him the card and told him to write in the word Louisiana instead of her writing it.<sup>145/</sup> His accepted application now reads,

Louisiana  
"I was born in the State of Ouachita Parish of \_\_\_\_."<sup>146/</sup>

Clarence Price, a white person who applied on November 6, 1963, turned in his card without filling in the spaces for the Ward, Precinct and Parish of his last registration.<sup>147/</sup>

I left three blanks blank. She told me all blanks had to be filled. So I went back and filled the blanks and took it back and gave it to her.  
(Pl. Ex. I-73, p. 664)

He was accepted for registration.<sup>148/</sup>

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<sup>145/</sup>Pl. Ex. I-73, pp. 457-458, 461.

<sup>146/</sup>Pl. Ex. B-73, roll 20.

<sup>147/</sup>Pl. Ex. I-73, pp. 664-665.

<sup>148/</sup>Pl. Ex. B-73, roll 20.

Marilyn McFarlin, a white witness, had a similar experience the same day. "I had left a few blanks on it because I thought by leaving it blank it would answer the question." Mrs. Lucky told her to fill in the blanks on her application and she did so. "I remember she said about three times to fill all the blanks."<sup>149/</sup>

On October 29, 1963, John Smith Leist, Jr., a white applicant, turned in his application with dashes in the three spaces for "last registration". When he got up to the desk where the registrar was sitting, "she told me I was to put in 'none' in place of the dash."<sup>150/</sup>

White applicants, Johnny Trichell<sup>151/</sup> and Linda Kay Gentry<sup>152/</sup> who applied in November and December 1963, respectively, were also registered after being given the opportunity to change their answers from dashes to "none".

Assistance to white applicants in completing the "other registration" statement<sup>153/</sup> is demonstrated by comparing the responses of those served by defendant Lucky with the responses of those served by deputy registrar Seal. Of the accepted white applicants who applied for registration between December 15, 1960 and March 31, 1963, whose

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<sup>149/</sup> P1. Ex. I-73, pp. 658-660.

<sup>150/</sup> Id. at 464.

<sup>151/</sup> Id. at 650.

<sup>152/</sup> Id. at 263.

<sup>153/</sup> "I am not now registered as a Voter in any other Ward or Precinct of this State, except \_\_\_\_\_".

cards are signed by Lucky, nearly 60% put their Ward and Precinct numbers in that blank. Defendant Lucky testified that although there is a difference of opinion as to the proper answer for that space, her interpretation is that the Ward and Precinct numbers should be put in.<sup>154/</sup> On the other hand, more than three-quarters of the accepted white applicants whose cards were signed by deputy registrar Seal responded by filling in the word "Ouachita".<sup>155/</sup>

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<sup>154/</sup> Pl. Ex. I-73, p. 751.

<sup>155/</sup> Pl. Ex. B-73. The following table is a summary of the responses by accepted white applicants to the "other registration" blank for the period from December 15, 1960 to March 31, 1963:

<u>Signed by</u>	<u>Ward and Precinct Number</u>	<u>"Ouachita"</u>	<u>"None"</u>	<u>Other</u>
Lucky	58.7%	5.8%	23.8%	10.7%
Seal	10.5%	77.4%	5.0%	7.1%

These figures are derived from a count of the microfilm copies of accepted cards filled out by white persons. Pl. Ex. B-73, rolls 14, 15 and 17.

RED RIVER PARISH <sup>156/</sup>

	<u>White</u>	<u>Negro</u>
Voting Age Population	3,294	2,181
Voters (6-30-64)	3,482	79
Percent Registered	100% <sup>4</sup>	4%

Registration, January 1957 through December 1963

	<u>Accepted</u>	<u>Rejected</u> <sup>157/</sup>	<u>Rejected</u> <sup>158/</sup> <u>On Card</u>	<u>% Rejected</u> <u>On Card</u>
W	3,565	14	4	0.1%
N	78	153	122	61%

In United States v. Crawford, 229, F. Supp. 898 (W.D. La. 1964), the Court found that the Registrar of Red River Parish used the application card test as a device to discriminate against Negroes:

Between January 1, 1957, and June 25, 1963, the defendants used the application card form as a device to discriminate against Negro applicants for registration in Red River Parish. During that period, 99% of all white applicants for registration were accepted and over 70% of all Negro applicants were rejected....

<sup>156/</sup>Population statistics: 1960 Bureau of Census Report.  
<sup>157/</sup>Registration statistics: Monthly Reports of the Louisiana State Board of Registration. Accepted and rejected statistics are derived from a count of microfilm copies of application cards, Pl. Ex. B-81. See Appendix A, Table C. A summary of the testimony of the Registrar is found in Appendix C.

<sup>157/</sup>The Registrar did not preserve all rejected applications. Negroes were rejected for registration an additional 39 times for which no record was maintained. United States v. Crawford, 229 F. Supp. 898, 900 (W.D. La. 1964)

<sup>158/</sup>No white persons were rejected on the application card test until one week before the trial of United States v. Crawford. Id. at 901.



Many of the "errors" checked on the applications of Negroes are of a highly technical nature and do not reflect adversely upon the applicants' qualifications as voters.<sup>159/</sup> The Court in this case also found that the Registrar, in addition to scrutinizing the application cards of Negroes, ignored the "errors" on the accepted applications of white persons, although 1,112 (or 35%) of them contain the same "errors".<sup>160/</sup>

The Court further stated that:

The Registrar used different standards in determining the qualifications of applicants with more stringent requirements for Negroes than for whites. The Registrar sometimes pointed out "errors" and omissions to applicants and permitted them to correct their forms. At other times he did not permit corrections, but simply rejected the application.

The Registrar could not explain satisfactorily how he decides whether to point out "errors" to the applicant or to reject the application.

The Registrar has refused to tell rejected Negro applicants what errors they made and has not permitted them to correct their forms. With a few exceptions, Negroes consistently have been rejected for "errors" on their registration forms.<sup>161/</sup>

<sup>159/</sup> United States v. Crawford, 229 F. Supp. 898, 900 (W.D. La. 1964).

<sup>160/</sup> Ibid.

<sup>161/</sup> Id. at p. 901.

The Registrar's close scrutiny of the applications of Negroes is shown by the following "errors" checked on their rejected cards:

- a. "I was born on the Aug. 20 day of Aug...." 162/
- b. "I have (have not) been convicted...." (Underlined instead of marked through) 163/
- c. Date of the application given as "197" instead of "1957" 164/
- d. "Residence No. Coushatta La." (Route number not given) 165/
- e. A one day error in age computation. 166/

It was from practices like these that the Court found a pattern and practice of discrimination.

162/ Rejected card of Tom Turner, P1. Ex. B-81, roll 4.

163/ Rejected card of Gracie McDuffy, P1. Ex. B-81, roll 5.

164/ Rejected card of Sallie Beavers, P1. Ex. B-81, roll 2.

165/ Rejected card of Dewey Jackson, P1. Ex. B-81, roll 2

166/ Rejected card of Alvin Price, P1. Ex. B-81, roll 2.

<sup>167/</sup>  
ST. HELENA PARISH

	<u>White</u>	<u>Negro</u>
Voting Age Population	2,363	2,082
Voters (6-30-64)	1,988	501
Percent Registered	84%	24%

Registration January 1961 Through December 1963<sup>168/</sup>

	<u>Accepted</u>	<u>Rejected</u>	<u>% Rejected</u>
W	2,036	349	14.6%
N	347	1,157	76.9%

At this writing it is the understanding of the Plaintiff that Registrar Crouch of St. Helena Parish will execute an affidavit to the effect that if asked to testify in this case, he will assert his privilege under the Fifth Amendment and decline to testify.<sup>169/</sup>

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<sup>167/</sup> Population statistics: 1960 Bureau of the Census Report. Registration statistics: Monthly Reports of the Louisiana State Board of Registration. Accepted and rejected statistics are derived from a count of micro-film copies of application cards, Pl. Ex. B-91. See Appendix A, Table C.

<sup>168/</sup> The State Board of Registration Reports show that St. Helena Parish had a complete re-registration in January 1961.

<sup>169/</sup> This Affidavit will be entered in evidence as Pl. Ex. O-91.

Although the reasons for rejection are marked on the rejected application cards, without the Registrar's testimony it is not possible to assign a specific reason for rejection to each card.<sup>170/</sup> However, the applications discussed in this section are ones which were clearly rejected for technical "errors" and "omissions" on the LR-1 (application) card.

The St. Helena Registrar's grading standards on the application card are extremely hypertechnical. For example, Cleveland Torrence, Jr., a Negro farmer who had a perfect score on the multiple-choice citizenship test, was rejected solely for the following "error".<sup>171/</sup>

... I was born in the State (country) of Louisiana  
St. Helena, Parish (or county) of St. Helena ...

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<sup>170/</sup> For example, some of the applications contain marks in blank spaces on the answer card for the multiple-choice test. Also, it appears that until sometime in the middle of 1963, the Registrar rejected applicants who answered 4 out of 5, 4 out of 6, or 5 out of 6 multiple-choice questions correctly, apparently under the requirement that the applicant be perfect, no matter how many questions be answered. P1. Ex. B-91, Rolls 6-8.

<sup>171/</sup> Rejected card dated 9-3-63. P1. Ex. B-91, Roll 8. This extra line was also the sole cause of the rejection of a Negro housewife who wrote:

... I was born in the State (country) of Louisiana  
St. Helena, Parish of Louisiana ...

Rejected card (dated 9-16-63) of Mary Jane W. Brown. Id. roll 7. These blanks are set out here precisely in the manner they appear on the application card.

This extra line, between the blank calling for the State of birth and the one calling for the Parish of birth, appears on one of the five different LR-1 cards used in St. Helena Parish.<sup>172/</sup> Another one of the cards has an extra line after the blank calling for the Parish of birth, and a Negro, who passed the citizenship test with a perfect score, was rejected for writing:

... State (country) of Louisiana, Parish of St. Helena Helena. I have ...<sup>173/</sup>

Also, a retired Negro teacher, who passed the citizenship test, was rejected for leaving the state and parish of birth blanks unanswered, although elsewhere on the card she stated that she had resided in the State, Parish and Precinct since birth.<sup>174/</sup>

One of the scrambled cards also has an extra blank after the householder blank. Clarence Robinson, a Negro farmer, was rejected solely because he wrote:

... householder at my present address is Clarence Robinson  
None My occupation is Farming ... <sup>175/</sup>

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<sup>172/</sup> See the application card copies in P1. Ex. B-91. The use of the five LR-1 card is discussed in Part VI, pp.45-46, supra.

<sup>173/</sup> Rejected card (dated 8-7-63) of Sam H. J. Lathers, P1. Ex. B-91, Roll 7.

<sup>174/</sup> Rejected card (dated August 1, 1963) of Lela W. King. P1. Ex. B-91, Roll 7.

<sup>175/</sup> Rejected card dated July 3, 1963. P1. Ex. B-91, Roll 8.

The "have-have not" statements must be marked in precisely the "right" manner. A Negro housewife was rejected solely because she marked one statement, "I have not (have) been convicted...."<sup>176/</sup>

Underlining the "have not" ["I have not (have) been convicted...."] is also a rejectable error.<sup>177/</sup>

The Registrar's requirement for the age computation blanks are equally strict. A Negro who passed the citizenship test was rejected for a one-day error in the computation of his age.<sup>178/</sup>

From the above examples, it is clear that the Registrar's grading standards are so arbitrary that only the discriminatory use of the test could be responsible for the fact that 76.9% of the 1,504 cards filled out by Negroes and only 14.6% of the 2,385 cards filled out by white persons have been rejected.<sup>179/</sup>

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<sup>176/</sup> Pl. Ex. B-91, roll 8; rejected card of Pearl R. Womack, dated August 14, 1963. This "error" is also the only deficiency on the rejected card (dated September 3, 1963) of a Negro farmer, Tom A. Richard. Ibid.

<sup>177/</sup> Pl. Ex. B-91, roll 6; rejected card (dated March 7, 1963) of Charlie Muse. (This applicant also passed the citizenship test.)

<sup>178/</sup> Ibid. rejected card (dated April 25, 1963) of Theodore McCray. The applicant made the following calculation:

Month and day of application	4-25
<u>Month and day of birth</u>	<u>1-9</u>

Month and days of age	3-17
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<sup>179/</sup> See Appendix A, Table C.

TANGIPAHOA PARISH 180/

	<u>White</u>	<u>Negro</u>
Voting Age Population	22,311	9,401
Voters (6-30-64)	20,312	3,324
Percent Registered	89%	35%

Registration July 1959 Through December 1963

	<u>Accepted</u>	<u>Rejected 181/</u>	<u>Rejected On Card</u>	<u>% Rejected 182/ On Card</u>
W	5,690	123	79	1.4%
N	497	618	513	50.8%

Between the end of June 1959 and December 1963, the Registrar of Voters of Tangipahoa Parish rejected over 50% of the approximately 1,010 application cards filled out by Negroes. They were

180/ Population Statistics: 1960 Bureau of the Census Report.  
Registration statistics: Monthly Reports of the Louisiana State Board of Registration. Accepted and rejected statistics are derived from a count of microfilm copies of application cards, Pl. Ex. B-105. See Appendix A Table C. A summary of the Deposition of the Registrar is contained in Appendix B.

181/ There are six rejected cards, filled out by Negroes, dated prior to July 1959. Pl. Ex. B-105, roll 1.

182/ These figures do not include cards rejected for reasons other than failing the application card test.

rejected on the grounds that they contained "errors" or "omissions."<sup>183/</sup> It is evident that the application card was not used as a test for white persons since only 1.4% of the approximately 5,769 applications of white persons were rejected on these grounds.

Highly qualified Negroes have been denied registration in this Parish for making hypertechnical "errors" or "omissions." Between the time the multiple-choice test was instituted (September 1962) and December 1963, 210 Negroes who passed it were rejected on the application card.<sup>184/</sup> Among these Negro applicants was Minnie R. Hines, whose only "error" was to mark the character statements, "I have (have not)" instead of "I have (have not)."<sup>185/</sup> In other words, she crossed out the wrong "have".

The Registrar testified that marking a statement so it reads, "I have not (have) ...." is a rejectable error.<sup>186/</sup> When asked why this is wrong, he said, "Well, to begin with, the sentence doesn't make any sense" and that he could not understand what the applicant trying to say.<sup>187/</sup> He also testified that he sometimes hands cards back to applicants to check this error. However, in reference to exhibit "G-5," the card of Mrs. Mary Cotton, a Negro, Registrar Navarra stated, "In this case, I just rejected it."<sup>188/</sup>

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<sup>183/</sup>These figures do not include cards rejected for reasons other than failing the application card test. See Appendix A, Table C, in which the figures given start at January 1959 rather than June 1959. Check marks on the cards indicate "errors". Deposition of Navarra, Pl. Ex. A-105, p. 11.

<sup>184/</sup> See Appendix A, Table C.

<sup>185/</sup>Rejected card (dated 8-22-63) of Minnie R. Hines. Pl. Ex. B-105, roll 12.

<sup>186/</sup>Deposition of Navarra, Pl. Ex. A-105, p. 20.

<sup>187/</sup>Id. at 21.

<sup>188/</sup>Ibid.



Tangipahoa is one of the parishes in which the Registrar rejects applicants for spelling errors,<sup>189/</sup> including errors made in spelling the word "Tangipahoa."<sup>190/</sup>

The Registrar's grading standards on age computation have been equally strict. He testified that it is an error to calculate one's age as 5 months and 30 days instead of 6 months and 0 days.<sup>191/</sup>

Mr. Navarra also testified that he rejects applicants who compute their age in days by borrowing 30 days from the preceding month when that month actually contained 31 days.<sup>192/</sup> He testified that he does not give applicants notice of this requirement:

Q. Do you tell the applicant to use a thirty-one day month?

A. I can't recall telling them anything.

Q. If he uses a thirty day month instead of a thirty-one, he can be rejected?

A. We have done it, yes, sir.  
(Deposition of Navarra, Pl. Ex. A-105, p.17)

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<sup>189/</sup>Most registrars testified that they did not reject for spelling as long as they could tell what the applicant had written; e.g., Deposition of Gallinghouse, Pl. Ex. A-71, p. 20.

<sup>190/</sup>Rejected card (dated 9-30-63) of Rosa Lee F. Stewart, on which the spelling, "Tangiphoa" is checked as well as "Febuary" and "Demcrate." Pl. Ex. B-105, roll 12.

<sup>191/</sup>Deposition of Navarra, Pl. Ex. A-105, p. 19.

<sup>192/</sup>Pl. Ex. A-105, pp. 16-17, rejected card (9-13-63) of Oliver Foster, who is a Negro. This applicant computed his age in months and days in the following manner:

Month and day of application	9-13
<u>Month and day of birth</u>	<u>8-27</u>

Months and days of age	0-16
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The Registrar testified that he had made the age computation requirement more strict since "all of this CORE mess /voter registration campaign /started." Deposition of Navarra, Pl. Ex. A-105, p. 14.

On one of the cards used in Tangipahoa the blanks for the applicant's state and parish of birth are placed on the card in such a manner that they induce the applicants to making a technical "error" by putting in an extra word. Tim Watkins, Jr., a Negro, was rejected for the following error:

.... I was born in the State (country) of Louisiana  
Orleans Parish, (or county) of Louisiana ....

According to the Registrar, this applicant was rejected for writing his parish of birth in the wrong blank. <sup>193/</sup>

Willa Mae McKnight, a Negro who had a perfect score on the multiple-choice test, was rejected for the following "error": <sup>194/</sup>

I am not now registered as a Voter in any other Ward or Precinct of this State except 'for trying today'.

The Registrar testified that he rejected another Negro applicant for putting "Tangipahoa" in this blank (on the grounds it was incorrect in that the applicant had not been registered before). <sup>195/</sup>

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<sup>193/</sup> Deposition of Navarra, Pl. Ex. A-105, pp. 24-25. Rejected card attached to the deposition and marked "G-7."

<sup>194/</sup> Pl. Ex. B-105, roll 12, rejected card dated 8-26-63. The Registrar has also rejected Negro applicants solely for leaving this blank unanswered (rejected card of Shirley Mae Larry dated 9-5-63) and for putting "Louisiana" (rejected card of Katheryne Harrison, dated 10-14-64). Ibid.

<sup>195/</sup> See the discussion in Part VI, pp. 85-88 of the complexities of this blank and of the confusion among registrars as to how it should be answered.

From his testimony it is apparent that he helps some applicants and not others: "1if they want something explained, we explain it to them ... if they don't ask, well naturally ... we assume that they... know what they are doing." (Deposition of Navarra, Pl. Ex. A-105, pp. 8-9). Sometimes he points out age computation errors and lets applicants correct them and sometimes he does not. 196/

Since over half of the applications filled out by Negroes have been rejected for technical "errors" and "omissions" and only a token percentage of white persons' applications have been similarly turned down, it is apparent that the Registrar's decision to assist applicants depends on the applicant's race.

Finally, the results of the Registrar's discriminatory use of the application card test is evident from the fact that between June 1959 and June 1964 the total number of Negro voters in Tangipahoa Parish decreased by 163. During these five years the number of white voters increased by 2,452. 197/

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196/ I imagine at various times that -- one time or another -- sometimes we have [pointed out an age computation error] I couldn't say that we did it all times." Deposition of Navarra. Pl. Ex. A-105, p. 15.

197/ Reports of the State Board of Registration; Report for the month ending May 31, 1959 and Report for the month ending June 30, 1964.

198/  
WEBSTER PARISH

	<u>White</u>	<u>Negro</u>
Voting Age Population	15,713	7,045
Voters (6-30-64)	11,501	527
Percent Registered	73%	7%

Registration, September 1962 through December 1963

	<u>Accepted</u>	<u>Rejected</u>	<u>199/</u> <u>Rejected</u> <u>On Card</u>	<u>% Rejected</u> <u>On Card</u>	<u>200/</u>
W	2,555	268	8	0.3%	
N	317	151	77	19%	

In United States v. Clement, 231 F. Supp. 913

(W.D. La. 1964) the Court found as an integral part of a pattern and practice of discrimination:

Between September 13, 1962 and June 25, 1963, the Registrar used the application form as a device to discriminate against Negro applicants for registration to vote in Webster Parish. The application form was used as a test for Negroes but not for white persons. Negro applicants, including school teachers, were rejected for inconsequential errors or omissions without being given an opportunity to correct their application forms. White applicants were given whatever help they needed to complete their forms correctly. 201/

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198/Population statistics: 1960 Bureau of the Census Report. Registration statistics: Monthly Reports of the Louisiana State Board of Registration. Accepted and rejected statistics are derived from a count of microfilm copies of application cards, Pl. Ex. B-119. See Appendix A Table C. A summary of the testimony of the Registrar is contained in Appendix C.

199/The records contain no rejected cards dated before September 1962. Pl. Ex. B-119, rolls 8 and 9.

200/These figures exclude cards rejected for reasons other than failing the application card test.

201/United States v. Clement, 231 F. Supp. 913, 916 (W.D. La. 1964).

Among the Negroes who testified at the trial of this case were four who described the circumstances under which they were denied registration in 1963 for making "errors" on their application forms. Two of the four were school teachers with college degrees,<sup>202/</sup> one was a school cafeteria manager with better than a high school education,<sup>203/</sup> and the other was a motel proprietress.<sup>204/</sup>

One of the teachers, Mrs. Willie Mae Mayfield, has taught in the Webster Parish school system for 17 years and has completed graduate studies at Southern University and Eastern Michigan University.<sup>205/</sup> Yet she was denied registration because of an omission on her application card.<sup>206/</sup>

Mrs. Mayfield left one line of the card blank, the portion which reads "I have resided . . . in Precinct No. \_\_\_ in Ward No. \_\_\_ of this Parish continuously since \_\_\_\_\_,"<sup>207/</sup> The card as it reads establishes that Mrs. Mayfield met the State and Parish residence requirements and therefore on the face of it was qualified to vote at the next state and parish elections, which were not held until nine months after the date of her application.<sup>208/</sup>

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202/P1. Ex. I-119. Testimony of Willie Mae Mayfield (p. 186) and Willie B. Carter (p. 295).

203/Id. Testimony of Ruby Taylor (p. 214).

204/Id. Testimony of Clara Anderson (p. 338).

205/Id. Testimony of Willie Mae Mayfield (pp. 186-189).

206/Id. at 194.

207/P1. Ex. B-119, roll 8. Rejected card of Willie Mae Mayfield.

208/P1. Ex. I-119, p. 367.

In February 1964, the Registrar of Voters of Webster Parish was enjoined from using the citizenship test as a prerequisite to voting.<sup>209/</sup> Between that time and the end of June 1964, none of the 193 applications of white persons have been rejected. However, the Registrar has continued to use the application card as a test for Negroes: 49 of the 121 cards filled out by Negroes in this period have been rejected for errors and omissions.<sup>210/</sup>

It is clear that the Registrar's present use of the application card test is racially discriminatory. As a result of this and other discriminatory devices,<sup>211/</sup> only 7% of the adult Negroes in Webster Parish are registered, as compared to 73% of the adult white persons.<sup>212/</sup> Registration is permanent in Webster Parish;<sup>213/</sup> therefore, even if the Registrars were to apply the application card test to all applicants at some future time, the result would be a discriminatory freeze of the registration rolls.<sup>214/</sup>

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<sup>209/</sup>United States v. Louisiana, 225 F. Supp. 353 (Three Judge Court, E.D. La. 1963)

<sup>210/</sup>Reports filed by the Registrar with this Court pursuant to its Decree in United States v. Louisiana. In January 1964, although not yet served with the injunction, the Registrar did not use the citizenship test. In this month the Registrar rejected one of 138 white applicants and 28 of 67 Negro applicants. Pl. Ex. B-119, roll 9.

<sup>211/</sup>United States v. Clement, *supra* at 915-916.

<sup>212/</sup>See Appendix A, Table B.

<sup>213/</sup>United States v. Clement, *supra* at 915.

<sup>214/</sup>United States v. Duke, 332 F. 2d. 759. (5th Cir. 1964).

These examples show that the application form test was never used until the Citizens Councils challenged Negro voters on the ground that their original applications contained "errors" or "omissions." After that, many registrars began to apply "the law" strictly -- at least to Negroes. The result, sanctioned and encouraged by the State Board of Registration, has been the discriminatory denial of the right to vote of thousands of Negro citizens.

## VIII

THE INEVITABLE EFFECT OF THE APPLICATION FORM TEST IS TO DISCRIMINATE AGAINST NEGROES BECAUSE OF THE INFERIOR EDUCATIONAL OPPORTUNITIES AFFORDED THEM BY THE STATE OF LOUISIANA.

Although the application form test bears no relationship to any voter qualification the State may properly require of electors, it is plain that the more education a person has had the more likely it is that he will be able to avoid the technical pitfalls that have resulted in the rejection of thousands of literate applicants. Most of the adult Negroes in Louisiana today who would otherwise be eligible to vote have been afforded by the State of Louisiana educational opportunities vastly inferior to that provided for most of the adult white persons. Thus it becomes plain that the application form test places a far greater burden on Negroes than on white persons.

We have seen in Part V, supra, that this result was actually intended by the officials responsible for the adoption and use of the application form test in Louisiana. We can see from the registration statistics outlined in Part VII that the application form test has had and still has the intended result. This is due, it is true, in large part to the arbitrary nature of the test and to the habit of registrars to use it as a device to disfranchise Negroes. But beyond this, the test, however construed, is bound to result in distinctions of race arising from educational differences brought about purposely by the State itself.



From at least 1900 to the present time, the State of Louisiana has consistently and deliberately provided Negroes with an educational system both segregated from and inferior to that provided for white persons. It is only since 1955 that the two systems have been remotely comparable. In any case, whatever changes have been made since 1955 affect very few of the vast number of Negroes who are of voting age today in Louisiana and are not registered to vote. The Negroes who today are eligible by age to vote were of school age during earlier periods, and for that reason an analysis of the constitutional validity of the application form test must look to the educational opportunities afforded Negroes during the critical school age periods.

Facts derived exclusively from the annual reports of the Louisiana State Superintendent of Schools show that the adult Negro of today who has grown up in Louisiana was given little opportunity to develop intellectual tools to meet stringent voter registration educational requirements on the same basis as the typical adult white person. In every particular, Negro schools have been inferior to white schools.

A. The Value of Public Schools

Prior to 1955, the typical Negro school was worth almost nothing compared to the typical white school. For example, in 1910 the average white school was worth more than 10 times that of the average Negro school.<sup>1/</sup> In the same year the total value of all white schools

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<sup>1/</sup> Table I, Appendix E.

was 23 times that of the value of all Negro schools,<sup>2/</sup> although Negroes constituted 44% of the school-age population.<sup>3/</sup> This disparity persisted so that in 1950, when Negroes constituted 39% of the school-age population,<sup>4/</sup> the total value of all white schools was seven times that of the total value of all Negro schools, and the average white school was worth eleven times that of the average Negro school.<sup>5/</sup>

B. Expenditure Per Student

Another important distinction is in annual expenditures per student. In 1920 Louisiana spent an average of \$33.71 for each white pupil enrolled in school, but only \$7.81 for each Negro pupil enrolled.<sup>6/</sup> In 1940 it spent \$69.37 for each white student and \$16.88 for each Negro student.<sup>7/</sup>

C. Enrollment and Attendance

Lack of funds inevitably resulted in a lower percentage of enrollment and of daily attendance of Negro school-age children compared to the enrollment and daily

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<sup>2/</sup> Ibid.

<sup>3/</sup> Table II, Appendix E.

<sup>4/</sup> Ibid.

<sup>5/</sup> Table I, Appendix E.

<sup>6/</sup> Table III, Appendix E.

<sup>7/</sup> Ibid.

attendance of white school-age children. For example, in 1910 75.9% of the white "educables" were enrolled in schools compared to only 46.3% of the Negro "educables."<sup>8/</sup> The percentage in average daily attendance was 46% of the white pupils but only 24% of the Negro pupils.<sup>9/</sup> By 1940 the difference had been reduced to 78% of the white children enrolled compared to 73.9% of the Negro children enrolled.<sup>10/</sup>

D. Length of School Terms

In 1910 the school term for white students was 153 days, for Negro students only 90 days.<sup>11/</sup> The better enrollment figures for 1940 (see Section C above) are less impressive in light of the continued disparity in length of school terms, which in that year was 180 days for white students and 147 days for Negro students.<sup>12/</sup>

E. Salaries of Teachers

Prior to 1945 Negro teachers received less than one-half of the salaries received by white teachers. In 1920 the average annual salary was \$1198.98 for white teachers (male) and \$374.37 for Negro teachers

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8/ Table IV, Appendix E.

9/ Ibid.

10/ Ibid.

11/ Table V, Appendix E.

12/ Ibid.

(male).<sup>13/</sup> In 1940 the average salaries were \$1,044.89 for white teachers and \$377.06 for Negro teachers.<sup>14/</sup> By 1955 the two pay scales were brought into substantial equality.<sup>15/</sup>

F. Pupil-Teacher Ratio

In 1920 the ratio was 33 white pupils per teacher and 64 Negro pupils per teacher.<sup>16/</sup> By 1940 the white ratio had dropped to 28:1 for the white students and 42:1 for the Negro students.<sup>17/</sup>

G. The Education and Qualifications of Teachers

The scarcity of opportunities for secondary education for Negroes posed a serious educational disadvantage, and made it impossible for the Negro school system to produce a sufficient supply of qualified teachers. In 1925 there were 318 accredited white high schools but not a single accredited Negro high school.<sup>18/</sup> Ten years later there were only six accredited Negro high schools.<sup>19/</sup> As late as 1950, there were 362 accredited white high schools but 98 accredited Negro high schools.<sup>20/</sup>

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<sup>13/</sup> Table VI, Appendix E.

<sup>14/</sup> Ibid.

<sup>15/</sup> Ibid.

<sup>16/</sup> Table VII, Appendix E.

<sup>17/</sup> Ibid.

<sup>18/</sup> Table VIII, Appendix E.

<sup>19/</sup> Ibid.

<sup>20/</sup> Ibid.

As a result, most Negro students were taught by teachers who were not college trained. In 1930, only 17% of the Negro teachers held Bachelor's degrees, compared to 41% of the white teachers.<sup>21/</sup> By 1940, only 38% of the Negro teachers compared to 78% of the white teachers had such degrees.<sup>22/</sup> Between 1930 and 1945 the number of white teachers with Master's degrees was more than ten times the number of Negro teachers with such degrees.<sup>23/</sup>

#### H. One-Room Schools Versus Consolidation

School consolidation in the Negro system in Louisiana lagged far behind that in the white school system. In 1920 State Superintendent of Schools L. H. Harris said that "as an educational institution the one-room school is sadly and fatally weak when compared with the larger type school."<sup>24/</sup> But in 1925 Superintendent Harris felt constrained to state why consolidation was not taking place within the Negro school system:

The reasons accounting for the retention of the one room negro school are quite obvious: first, the negro school is required to meet public demands in a particular community, and, second, public sentiment in Louisiana would not endorse the proposition of providing transportation for negro children at public expense. <sup>25/</sup>

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<sup>21/</sup> Table IX, Appendix E.

<sup>22/</sup> Ibid.

<sup>23/</sup> Ibid.

<sup>24/</sup> Annual Report of State Superintendent of Schools, 1920, p. 86.

<sup>25/</sup> Annual Report, 1925, p. 45.

In 1915 there were 1,251 single-teacher schools for white students and 1,011 for Negro students.<sup>26/</sup> In the next fifteen years, the process of consolidation reduced the number of one-teacher white schools to 339. In the same period, however, the number of one-teacher Negro schools actually increased to 1,042.<sup>27/</sup> By 1950 the one-teacher white school was practically extinct (there were 36 remaining), while 500 one-teacher Negro schools were still operating.<sup>28/</sup>

I. State Policy Fostered Inferior Education for Negroes

Discrimination against Negroes in education was the product of a conscious state policy, a policy explained and justified in 1915 by the State Superintendent of Schools in the following terms:

....we have taken the position that our first duty was to provide good schools for the white race, attacking the problem of negro education after the performance of that first duty. 29/

\* \* \* \* \*

I think our first duty was to provide good schools for the white children before undertaking seriously the education of the negro children. 30/

and again in 1925:

If we should use the foregoing table [Showing Data on Wealth, Expenditures and Population] as a basis of comparison

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26/ Table XI, Appendix E.

27/ Ibid.

28/ Ibid.

29/ 1915 Report, p. 26.

30/ Id. at p. 62.

with any of the progressive states having white populations, we should probably not make the most favorable showing, for the negroes are included with the whites in this discussion. If we should exclude the negroes and confine the figures to the white population, white school children and expenditures on white schools, the evidences of progress would be much more apparent, and in that case we should, I think, take our place in the same class with the half-dozen most progressive states in the country. 31/

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In 1900 the public schools reached only 32% of the negro school population, in 1910 only 36%, in 1920 51%, while last year the public schools enrolled 56% of the Negro educables. The advancement in the development of negro schools has been as rapid perhaps as it should have been, for it has been in keeping with the public sentiment.... 32/

In 1930 Superintendent Harris made a candid admission in discussing Louisiana's high rate of illiteracy:

This heavy percentage of illiteracy was due to the fact that until recently little or nothing was done in negro education, with the result that practically all of the negroes were classed as illiterates  
.... 33/

And in 1935 the Superintendent posed a series of "Questions for School Officials" as a technique for evaluating parish school systems. The questions included the following indication of an acceptable capital investment standard:

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31/ 1925 Report, p. 17.

32/ Id. at p. 39.

33/ 1930 Report, p. 14.

10. Have you invested as much as \$140 per pupil in buildings for whites and as much as \$25 per pupil in buildings for negro schools? If not, you might consider additional expenditures for capital outlay. 34/

By 1945, the Superintendent felt it necessary to make a plea for the upgrading of Negro schools:

....More and better educational facilities for Negroes constitute one of our most serious educational and civic problems. Teachers and children cannot live, teach, and learn in schoolrooms that are overcrowded, uncomfortable, unhealthful, and that are three or more miles from the child's home. Too many Negro children are out of school, or attend schools that fail to meet their educational needs, because a school of suitable grade is not accessible. Our Negro schools need to be recognized so as to provide a school of suitable grade for every Negro child. 35/

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Our Negro schools generally need more administrative and supervisory attention and assistance. Short school terms, limited school facilities, and poorly trained teachers contribute to the need for the best of school supervision. 36/

In 1942 the operations of Negro schools in Louisiana were intensively observed and analyzed by a special staff assembled by the Louisiana Educational Survey Commission. The report of this team of experts, entitled "The Negro Public Schools," was published in Volume IV of the

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34/ 1935 Report, p. 84.

35/ 1945 Report, p. 46.

36/ Id. at 49.



Louisiana Educational Survey.<sup>37/</sup> The report, compiled on the basis of personal observations and interviews conducted by staff members, provides an insight into what actually took place within the typical Negro school in Louisiana twenty years ago. The report tells the story of a grossly inadequate school system, a story which fills in the details suggested by the statistics reviewed above. Appendix E to this brief contains selected excerpts from the report. They demonstrate that as of 1942, and as a result of the State's policy of discrimination in education, Louisiana's Negroes were offered no educational opportunities of any significant value.<sup>38/</sup>

After 1945 some small improvement came to the Negro school system in Louisiana, and as the tables in the Appendix show, substantial gains have been made since the

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<sup>37/</sup> The Louisiana Educational Survey was an exhaustive, ten-volume study of the state's public school system prepared by groups of experts under the direction of the Louisiana Educational Survey Commission, a body established for that purpose by the state legislature. Washburne, Louisiana Educational Survey: A Summary (Baton Rouge, 1942).

<sup>38/</sup> The techniques of personal observation and interviews employed by the survey staff were not designed to yield statistically conclusive findings. The purpose instead was to gain a sufficiently comprehensive first-hand view of the Negro public schools to permit the making of sensible, useful, and detailed recommendations for the improvement of the Negro school system. The survey staff concentrated on Negro schools in the following twenty parishes: Claiborne, East Feliciana, Ouachita, St. Landry, Vernon, Washington, Webster, Avoyelles, Caddo, Concordia, East Carroll, Natchitoches, Richland, Ascension, Iberia, LaFourche, St. Martin, Calcasieu, Jefferson Davis, and St. Charles.

Supreme Court decision in Brown v. Board of Education, 357 U.S. 483 (1954). Nonetheless, 78.6% of Louisiana's non-white voting age population in 1960<sup>39/</sup> had entered or completed school by 1940, and no persons presently of voting age began their educations as late as 1954. Assuming, as we must, that inadequate training in the early years of one's education is a permanent handicap, it becomes clear that no native Louisiana Negro now of voting age has been free from the gross discrimination in education practices as a matter of state policy prior to 1954.

The Fifteenth Amendment in these circumstances forbids the use of the application form test or any other test which bears a relationship to education achievement and which denies the right to vote to those who have been the victims of State-enforced inferior educational opportunities.

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<sup>39/</sup> Computed from 1960 U. S. Census, Louisiana, Vol. I, part 20, pp. 20-29.

## IX

### THE LOUISIANA APPLICATION FORM TEST IS UNCONSTITUTIONAL

#### A. Introduction

The Fifteenth Amendment to the United States Constitution prohibits states from denying persons the right to vote on the basis of race or color. Almost a century after its adoption, however, racial discrimination against Negroes in the voting process in Louisiana remains a working principle, accepted and even taken for granted by state officials and local registrars. The application form test follows in the wake of and bears the same purpose as the "grandfather" clause, the interpretation test, the white primary, and the voter purges. The history and setting of its adoption and its activation in modern times show this to be so; the absurdity of its current use shows this to be so; the materials with which it is applied show this to be so; and the failure of the written law to declare, and the inability of any state or local registration official to articulate, any other purpose for imposing it shows this to be so. It should be declared unconstitutional by this Court in terms both emphatic and final.

#### B. History and Setting

The application form test came to life at the same time, for the same purpose, and as part of the same package as the grandfather clause. Thus, to

paraphrase what this Court said of similar legislation in Bush v. Orleans Parish School Board,<sup>1/</sup> the very circumstance of its birth robs it of innocence. The same is true of the introduction of the test by the Citizens Councils and the Segregation Committee in the 1950's as a modern device to achieve discrimination.

It is wholly proper for this Court to examine into the history and setting of a law to determine whether it was enacted to effect a constitutional purpose. Grosjean v. America Press Co., 297 U.S. 233 (1936); Davis v. Schnell, 81 F. Supp. 872 (S.D. Ala., 1949) affirmed 336 U.S. 933 (1949). "Purposeful discrimination" may not otherwise be uncovered. Snowden v. Hughes, 321 U.S. 1, 8 (1944); see also Gomillion v. Lightfoot, 364 U.S. 339 (1960).

### C. Discriminatory Use

A state statute or a constitutional provision prescribing a qualification for voting which vests broad power in a registrar to accept or reject an applicant without reference to any objective criteria is invalid under 42 U.S.C. 1971 and the Fourteenth and Fifteenth Amendments where actual discrimination in the administration of the provision is shown. Yick Wo v. Hopkins, 118 U.S. 356, 373 (1886); U.S. v. Louisiana 225 F. Supp. 353, 391 (E.D. La., 1963).

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<sup>1/</sup> 191 F. Supp. 871, 874 (E.D. La., 1960), affirmed sub nom., Denny v. Bush, 367 U.S. 908.

In Yick Wo, the Court stated:

In the present cases we are not obliged to reason from the probable to the actual, and pass upon the validity of the ordinances complained of, as tried merely by the opportunities which their terms afford, of unequal and unjust discrimination in their administration. For the cases present the ordinances in actual operation, and the facts shown establish an administration directed so exclusively against a particular class of persons as to warrant and require the conclusion, that, whatever may have been the intent of the ordinances as adopted, they are applied by the public authorities charged with their administration, and thus representing the State itself, with a mind so unequal and oppressive as to amount to a practical denial by the State of that equal protection of the laws which is secured to the petitioners.... [118 U.S. at 373]

Yick Wo thus stands for the proposition that a statute which (1) vests unlimited discretion in an administrative official and (2) has been "applied and administered ... with an evil eye and an unequal hand," contravenes the equal protection clause of the Fourteenth Amendment, and in the context of this case, the Fifteenth Amendment.<sup>2/</sup>

The application form test has been used discriminatorily in parish after parish. See Part

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<sup>2/</sup> See discussions of Yick Wo in Atchison, Topeka and Santa Fe Rd. Co. v. Matthews, 174 U.S. 96, 105 (1899); Home Tel. and Tel. Co. v. Los Angeles, 227 U.S. 278, 291-(1913); Gundling v. Chicago, 177 U.S. 183, 186-7 (1900).

VII, supra; see also U.S. v. Association of Citizens Councils 196 F. Supp. 910 (W.D. La., 1961); U.S. v. Wilder, 222 F. Supp. (W.D. La., 1963); U.S. v. Crawford, 229 F. Supp. 898 (W.D. La., 1964); U.S. v. Clement 231 F. Supp. 913 (W.D. La., 1964); U.S. v. McElveen 180 F. Supp. 10 (E.D. La., 1960), affirmed sub. nom. U.S. v. Thomas, 362 U.S. 58 (1960). But the relevance of the discriminatory use to this case lies in its demonstration of the original purpose for which the test was intended. The discriminatory use shows "a purpose by the organized State to deny Negroes the right to vote by contriving a structure having the appearance of legality, but having known, built-in devices which would, and did, effectually deny or overwhelmingly discourage the Negroes' effort toward full citizenship." U.S. v. State of Mississippi, 229 F. Supp. 925 (S.D. Miss., 1964), dissenting opinion of Judge Brown at 975.

D. Threat of Unconstitutional Effect

The Fifteenth Amendment is no less explicit than the First Amendment and the right protected by it requires the same if not a higher degree of judicial vigilance as that accorded claims of First Amendment deprivations. The issue in First Amendment cases,<sup>3/</sup> and therefore in this case, is not whether

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<sup>3/</sup> We include within the category of First Amendment cases all those which apply the fundamental principles of free speech and free assembly to the States through the due process clause of the Fourteenth Amendment.

the statute under attack may be administered in a manner consistent with the Constitution, but whether there is substantial room under it for an unconstitutional administration, NAACP v. Button, 371 U.S. 415 (1963); Winters v. New York, 333 U.S. 507 (1948), or whether, because of a built-in vagueness, the statute possesses a potential for impinging on constitutionally protected rights. Baggett v. Bullitt, 377 U.S. 360 (1964).

The simplicity of constitutional purpose announced by the Fifteenth Amendment requires courts to combat racial discrimination against prospective voters not only by striking down schemes which are palpably infected with racially antagonistic purposes,<sup>4/</sup> but also by halting the operation of laws which are pregnant with the possibility of discrimination. A law which openly invites a racially discriminatory use may be stricken on that ground alone, so long as the state has available to it other adequate means of achieving the ostensible object of the statute under attack. See NAACP v. Alabama, 357 U.S. 449 (1958); Bates v. Little Rock, 361 U.S. 516 (1960); Gibson v. Florida, 372 U.S. 549 (1963).

In Baggett v. Bullitt, *supra*, the Court invalidated an oath required of teachers at the University of Washington because the requirement was vague enough

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<sup>4/</sup> See, e.g., Gomillion v. Lightfoot, 346 U.S. 339 (1960)

to deter persons subject to it from attempting to engage in constitutionally protected activity. 377 U.S. at 372. The deterrent effect of a vague and arbitrary statute such as the one under attack in the present case is thus another ground for invalidating it, for it not only bars individuals actually rejected, it "inhibits other qualified voters from running the gauntlet of discriminatory and humiliating practices by a registrar and his deputies." U.S. v. Manning, 215 F. Supp. 272, 288 (W.D. La., 1963).



E. Statute is Arbitrary and Unrelated to Any Legitimate Interest of the State

There can be no doubt that the State of Louisiana is empowered under the United States Constitution to require of voters that they meet certain qualifications. Lassiter v. Northampton Board of Elections, 360 U.S. 45 (1959). This power, however, must be exercised as must all others held by the State - "it must be exercised for an end which is in fact public and the means adopted must be reasonably adapted to the accomplishment of that end and must not be arbitrary or oppressive." Treigle v. Acme Homestead Assn., 297 U.S. 189 (1936); see also Railroad Retirement Board v. Alton R. Co., 295 U.S. 330 (1935).

The application form test, although here attacked specifically under the Fifteenth Amendment on the ground of its discriminatory purpose and effect, does not remotely approach the standard of reasonableness and rationality required under the due process clause. It's stated purpose as a literacy test is belied by the thousands of rejections of plainly literate applicants, including school teachers. What the Supreme Court said with respect to the "good moral character" requirement for admission to the bar of New Mexico is applicable here:

A State can require high standards of qualification, such as good moral character or proficiency in its law, before it admits an applicant to the bar, but any qualification must have a rational connection with the applicant's fitness or capacity to practice law. [citations omitted] Obviously an applicant could

not be excluded merely because he was a Republican or a Negro or a member of a particular church. Even in applying permissible standards, officers of a State cannot exclude an applicant when there is no basis for their finding that he fails to meet these standards, or when their action is invidiously discriminatory. [Schwartz v. Bd. of Bar Examiners, 353 U.S. 232, 239 (1957)]

It may be said, then, that the application form test "goes far beyond what might be justified in the exercise of the State's legitimate inquiry into the fitness" <sup>5/</sup> of applicants for voter registration to exercise the electoral franchise. See U.S. v. Louisiana, 225 F. Supp. 353, 386 (E.D. La. 1963).

"[H]istory has seen a continuing expansion of the scope of the right of suffrage in this country.... The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government." Reynolds v. Sims, 377 U.S. 533, 555 (1964). The State therefore has the obligation

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<sup>5/</sup> Shelton v. Tucker, 364 U.S. 479, 480 (1960). In Shelton the Court held unconstitutional an Arkansas Statute which required school teachers to submit affidavits listing the organizations they belonged to and contributed to over the previous five years. The State, the Court held, had other less drastic means available to inquire into the fitness of teachers. 364 U.S. at 487-490. See also Talley v. California, 362 U.S. 60 (1960).

of showing what interest it is legitimately pursuing in denying the right to vote to so many people. It can show no such interest, and on that ground, as well as on the others stated previously, the application form test must fall.

F. Unconstitutional Effect of Discrimination  
In Education

Although administration of the application form test does not pursue a rational state interest, educational achievement may be reflected in the applicant's ability to sense and avoid the traps that will cause his rejection. The test thus takes advantage of the lower educational achievements of Negroes as a class, lower because the State has from the beginning of public school education in Louisiana provided for Negroes schools woefully inferior to the schools for white children. See Part VIII, supra and Appendix E.

The state could not issue tickets to white persons over a period of years but not to Negroes, and then declare that only persons with tickets may register to vote. This, in essence, is Guinn v. U.S. 238 U.S. 347 (1915). In Louisiana, an educational requirement which goes beyond the minimal literacy that a court may suppose is imparted in even the poorest school system is substantially the same as a ticket for whites only.

State classifications which have racial effects, especially on the right to vote, are subject to close judicial scrutiny and do not enjoy the presumption of constitutionality accorded other State legislation. Korenatsu v. U.S., 323 U.S. 214, 216 (1944); Gomillion v. Light Foot, 364 U.S. 339, 345 (1960). Louisiana must therefore show that the nature of the right to vote

is such that high educational attainment as a prerequisite may be sustained in spite of its plainly racial effect. This it surely cannot do, see Reynolds v. Sims, supra, and thus the application form test must fall as a device that achieves an unconstitutional effect.<sup>6/</sup>

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<sup>6/</sup> See Franklin v. Parker, 223 F. Supp. 724 (M.D. Ala. 1963), modified and affirmed, adopting the opinion of the district court, 331 F. 2d 241 (C.A. 5, 1964). The district court held that Auburn University, a State school in Alabama, could not deny a Negro admission to its graduate school on the ground that he was not a graduate of an accredited college so long as the State excluded Negroes from all its accredited colleges. "This is true regardless of the good motives or purposes that Auburn University may have concerning the rule in question." 223 F. Supp. at 726.

G. The Effect of Title I of the  
Civil Rights Act of 1964

Title I of the Civil Rights Act of 1964<sup>7/</sup> amends and supplements 42 U.S.C. 1971, the statute upon which this proceeding is based. Section 101(a) of that Act provides in part:

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 . . . .

Congress thus addressed itself to the very abuses that are the heart of the application form test,<sup>8/</sup> and has taken away from the State this means

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<sup>7/</sup> P.L. 88-352; 78 Stat. 241.

<sup>8/</sup> Louisiana's age computation requirement was specifically discussed during the Congressional debate on Title I, as follows:

Mr. Waggonner. In trying to reach a determination as to what constitutes an error, what are to be the guidelines? If we try to judge theft, is it the theft of \$100 or \$1 million?

Mr. Rogers of Colorado. May I say to the gentleman that each case will stand on its own bottom.

Mr. Waggonner. And who is to judge?

Mr. Rogers of Colorado. Under this the Federal judge of the district in which the case is filed. You are in court and he has the right to make the determination of whether or not this is a material error or whether it is immaterial and purposely done to prohibit the man from voting. (cont. next page)

of qualifying or disqualifying applicants. The test, at least to the extent that it insists on hypertech- nicality, . . . must be declared invalid as in conflict with a supervening federal statute. McDermott v. Wisconsin, 228 U.S. 115 (1913); Savage v. Jones, 225 U.S. 501 (1912).

Although there may be some question in other situations whether specific aspects of a registration form involve a fact that is "material" in determining whether the applicant is qualified under state law, there is no doubt that Congress was making illegal such devices as the householder blank, the age compu- tation, any inadvertent omission, and the "have-have not" conundrum. The Act, however, is prospective only, and does not by its terms invalidate the entire form itself.

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S/(cont.) Mr. Waggoner. In other words, the gentleman is saying that the judge can say, "You have made just a little bit of an error, you are just a little bit unqualified but not unqualified enough."

Mr. Rogers of Colorado. No; I am saying that the judge under this law has a duty and responsibility. If a registrar at an election place is disqualifying people-- let us say he is asking how old the person is and the person said, "Well, I am 40 years and 8 months old," and the registrar says, "I see you were born on such-and- such a date, you are 40 years and 9 months old, hence you are not qualified to vote;" that is what we are driving at.  
[110 Cong. Rec. 1484 (daily ed. Jan. 31, 1964)]

The evidence in this case requires the Court to go beyond Title I, decide the case on constitutional grounds, and enter relief appropriate to the magnitude of the issues presented.



## THE RELIEF

Where, as in this case, the Court is faced with obvious violations of federal law, it is the duty of the Court to grant such relief as will remedy past wrongs and will prevent future violations.

The application form test was designed and is used to defeat the registration of qualified Negroes. It is an unconstitutional device and must be declared so by this Court. Its use must be enjoined.

But simply to enjoin generally the use of the application form as a test is inadequate. The Court has before it an unconstitutional device designed and used to accomplish an unconstitutional end. It is not enough to enjoin the unconstitutional end and leave untouched the unconstitutional means to that end. This application form cannot constitutional be used at all because it seeks obscurely to elicit information from the applicant (a) which he cannot reasonably be expected to know, such as the ward and precinct of his present registration, last registration, and other registrations; and (b) which he cannot reasonably be expected to answer, such as the name of his householder, his days of age, and his "color."

To enjoin the use of the application form as a test and at the same time permit or require registrars to obtain the LR-1 information from applicants orally and with all assistance needed, would be to permit or require registrars to continue in unconstitutional acts. It would be to invite registrars to excuse

their delays under the guise of compliance. It would be to license registrars in their interrogation and confusion of applicants as to the name of the householder, the correct days of age, the proper ward and precinct, and whether "color" really means "race" and whether Negroes are members of the "brown" race.

What is needed is a simple, bona fide, reasonable application form - one which will permit the registrars to record the essential information respecting the substantive qualifications of citizens: What is your name? Are you a citizen of the United States? Are you at least 21 years old? Where do you live? How long have you lived there? Can you read and write? Have you ever been convicted of a serious crime? How far did you go in school?

This Court has the power and duty to declare invalid the present LR-1 application form and to enjoin its use in Louisiana. This will leave Louisiana without an application form until the Legislature provides for a new one. This Court should require the defendants to submit for the Court's approval within 15 days after the date of the judgment a simple, bona fide, reasonable application form along the lines suggested above which will permit registration to go forward while the Legislature has an opportunity to design a standard registration form not inconsistent with this Court's judgment.

A simple form along the lines suggested will not disturb any legitimate interest the State of Louisiana may have in seeking to insure an informed electorate. First, the LR-1 form is not related to any such interest. Second, a majority of the parishes in Louisiana may continue to use the existing citizenship test to the extent it does not have a "freezing" effect. Third, if proof of literacy beyond the applicant's own statement under oath is deemed essential, all applicants may be required to copy a portion of the Preamble of the Constitution of the United States.<sup>1/</sup> Fourth, rejections may well

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<sup>1/</sup> Louisiana law provides in Art. VIII, Section 1(c) of the Constitution that "He [the applicant] shall be able to read and write ... and shall demonstrate his ability to do so ... by the reading and writing from dictation given by the registrar ... any portion of the Preamble to the Constitution of the United States ... ." This is one phase of the literacy requirement; the application form is another. It is clear from the order of the registration procedure that all applicants who have been denied registration under the application form test have passed the Preamble test. Deputy Registrar Hartman of Orleans Parish testified that "We have cases, maybe one or two of them, where a person actually could not write any part of [the Preamble]." She confirmed the fact that everyone that fills out an LR-1 card or takes a citizenship test is someone who has passed the Preamble test. (Dep. of Hartman, Pl. Ex. A-71, p. 4-5). The registrars have not apparently (with a few exceptions) rejected persons on the basis of the Preamble test, relying instead upon the application form test as the weapon for rejection. An order requiring that the Preamble test be administered in conformity with Title I of the Civil Rights Act of 1964 would help to insure that the techniques used with the application form will not now corrupt the use of the Preamble test. In addition, registrars should be enjoined to accept writing that is recognizably a copy of the assigned portion, irrespective of penmanship and spelling.

*S. ee Brasenore v. Brasenore v. Dejeu County Board of Elections, 119 S. E. 2d 637 (N.C. 1961)*

have to be justified to this or another Court, and in any such proceeding, the provision of the Civil Rights Act of 1964 that persons with sixth grade educations be presumed literate would apply. Sec. 101(c), Civil Rights Act of 1964. Fifth, the State of Louisiana cannot impose high educational requirements until such time as a majority of the voting age adults have had equal public educational opportunities.

Thousands of Negro applicants have been denied registration in Louisiana on account of errors or omissions made in completing their application forms - errors and omissions which do not go to their substantive qualifications. The registrars of Louisiana should be required to review each and every rejected application and purged application in their files and within a reasonable time place upon the voter rolls the name of each person who has been denied registration on account of errors or omissions made in completing his application form. In the event any such application (or combined applications of any person who has been denied registration more than once) fails to show that the applicant meets the qualifications of age, citizenship, residence, and non-conviction of serious crimes, the registrars should be required to send notices to each such applicant inviting him to come in and register under standards consistent with this Court's decree. Both forms of relief are well established under the Civil Rights Act. See U.S. v. Penton, 312 F. Supp. 193

(M.D. Ala., 1962); U.S. v. Hines, \_\_\_\_ F. Supp. \_\_\_\_  
(N. D. Ala., September 17, 1964).

The Court should issue specific orders which will harmonize the registration of voters in Louisiana with the Constitution of the United States. The Louisiana philosophy of exclusion of citizens from the electoral process is itself an unconstitutional one. It is inconsistent with the most basic principles fundamental to a republican form of government. It is inconsistent with the right and essential need of citizens to participate in the democratic process. It is inconsistent with due process of law in a civilized society.

Dated: October 5, 1964

Respectfully submitted,

LOUIS LACOUR  
United States Attorney.

BURKE MARSHALL  
Assistant Attorney General

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JOHN DOAR  
DAVID NORMAN  
FRANK DUNDAUGH  
LOUIS KAUDER  
ALEXANDER ROSS  
Attorneys  
Department  
of Justice

CERTIFICATE OF SERVICE

I, LOUIS M. KAUDER, hereby certify that on October 6, 1964 I served on the defendants in the case of U.S. v. Board of Registration of Louisiana (E.D. La., C.A. 2866) the foregoing brief together with three separately bound volumes of Appendices by mailing copies thereof air mail, postage prepaid, to Hon. Jack P. F. Gremillion, Attorney General, State of Louisiana, and Hon. Harry J. Kron, Jr., Assistant Attorney General, State of Louisiana, both at State Capitol, Baton Rouge, Louisiana.

LOUIS M. KAUDER

