BOOK 1

VOTING

1961 Commission on Civil Rights Report

Members of the Commission

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Letter of Transmittal

THE UNITED STATES COMMISSION ON CIVIL RIGHTS,
Washington, D.C., September 9, 1961.

THE PRESIDENT
THE PRESIDENT OF THE SENATE
THE SPEAKER OF THE HOUSE OF REPRESENTATIVES

SIRS:

The Commission on Civil Rights submits to you its report pursuant to Public Law 85–315, as amended by the 86th Congress.

This five-volume document constitutes a comprehensive report of the Commission's activities during the past 2 years, together with the findings and recommendations that we developed from the mass of information gathered in the course of our work.

Much of the report is based on testimony and information received in a number of hearings and conferences conducted by the Commission in many areas of our Nation. You have received copies of the transcripts of these proceedings, as well as a copy of the Commission's interim report entitled "Equal Protection of the Laws in Public Higher Education—1960."

That material, together with this report, provides much information that should be of value and interest to the legislative and executive branches of the Government, as well as to the Nation as a whole. Furthermore, we are convinced that our findings and recommendations in the several fields of Commission study deserve the careful attention of the branches of Government to which they are directed.

Respectfully yours,

JOHN A. HANNAH, *Chairman.*
ROBERT G. STOREY, *Vice Chairman.*
ERWIN N. GRISWOLD.
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Acknowledgments

It would be impossible to acknowledge individually the contribution made by many hundreds of citizens to this report that is the culmination of 2 years' activity.

In partial recognition of these contributions, the Commission wishes to thank President John F. Kennedy and the many officials of this administration who have lent enthusiastic support to our work and to the production of this document. Similarly, the Commission acknowledges its debt to former President Dwight D. Eisenhower and the officials of his administration without whose cooperation and endorsement many of our fact-gathering activities could not have been undertaken.

At other levels of Government we are indebted to many Governors, mayors, and other State and local officials for their support, and for much of the statistical data and information contained in this report. At the national level as well as in the States and localities, we wish to thank both the public and private civil rights, human relations, and similarly oriented organizations as well as the many religious, civic, and welfare groups that have aided us in numerous and sundry ways during the course of our work.

Mention should be made of the cooperation of private citizens, corporations, educational institutions, and organizations, who at Commission request aided us in our fact-gathering activities by completing questionnaires or otherwise furnishing important information and data pertinent to our studies.

The press and the other media of communication have consistently cooperated in our efforts and fairly reported our activities. We are grateful for this courtesy and consideration.

There are two categories of individuals who must receive special recognition for their contribution to the report. They are the members of our State Advisory Committees constituted by the Commission in each of the 50 States, and the many witnesses who upon invitation of the Commission voluntarily testified or gave information at Commission hearings and conferences.

Without an able and devoted staff this task would have been impossible of accomplishment. To Berl I. Bernhard, Staff Director, we

are particularly indebted. He has been an intelligent, energetic, and resourceful administrator. Our staffwork reflects his dedicated leadership. The numerous experts and consultants called upon for extended or intermittent service have provided us with perspective and insight. We extend our thanks to Gordon M. Tiffany, who served as Staff Director until his resignation on January 1, 1961, under whose supervision many of the activities reported on in this document were undertaken.

While it is not possible to acknowledge individually the particular contribution of numerous staff members, it is appropriate to express our appreciation to David B. Isbell, head of our Division of Laws, Plans and Research, and to Wallace Mendelson who obtained a leave of absence from his regular teaching duties to give us the benefit of his special writing and editorial skills.

A list of regular staff members and of experts and consultants employed in the course of our work on this report may be found at the end of Book 5.

Foreword

The United States Commission on Civil Rights was created by the Civil Rights Act of 1957 as a bipartisan agency to study civil rights problems and report to the President and Congress. Originally created for a 2-year term, it issued its first comprehensive report on September 8, 1959.

On September 14, 1959, Congress extended the Commission's life for another 2 years. This is the first of five volumes of the Commission's second statutory report.

Briefly stated, the Commission's function is to advise the President and Congress on conditions that may deprive American citizens of equal treatment under the law because of their color, race, religion, or national origin. The Commission has no power to enforce laws or correct any individual wrong. Basically, its task is to collect, study, and appraise information relating to civil rights throughout the country, and to make appropriate recommendations to the President and Congress for corrective action. The Supreme Court has described the Commission's statutory duties in this way:

> . . . its function is purely investigative and factfinding. It does not adjudicate. It does not hold trials or determine anyone's civil or criminal liability. It does not issue orders. Nor does it indict, punish, or impose any legal sanctions. It does not make determinations depriving anyone of his life, liberty, or property. In short, the Commission does not and cannot take any affirmative action which will affect an individual's legal rights. The only purpose of its existence is to find facts which may subsequently be used as the basis for legislative or executive action.

Specifically, the Civil Rights Act of 1957, as amended, directs the Commission to:

- Investigate formal allegations that citizens are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin;
- Study and collect information concerning legal developments which constitute a denial of equal protection of the laws under the Constitution;

- Appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution;
- Prepare and submit interim reports to the President and the Congress and a final and comprehensive report of its activities, findings and recommendations by September 9, 1961.

The Commission's *1959 Report* included 14 specific recommendations for executive or legislative action in the field of civil rights. On January 13, 1961, an interim report, *Equal Protection of the Laws in Public Higher Education,* containing three additional recommendations for executive or legislative action, was presented for the consideration of the new President and Congress. This was a broad study of the problems of segregation in higher education.

The material on which the Commission's reports are based has been obtained in various ways. In addition to its own hearings, conferences, investigations, surveys and related research, the Commission has had the cooperation of numerous Federal, State, and local agencies. Private organizations have also been of immeasurable assistance. Another source of information has been the State Advisory Committees which, under the Civil Rights Act of 1957, the Commission has established in all 50 States. In creating these committees, the Commission recognized the great value of local opinion and advice. About 360 citizens are now serving as committee members without compensation.

The *first statutory duty* of the Commission indicates its major field of study—discrimination with regard to voting. Pursuant to its statutory obligations, the Commission has undertaken field investigations of formal allegations of discrimination at the polls. In addition, the Commission held public hearings on this subject in New Orleans on September 27 and 28, 1960, and May 5 and 6, 1961.

The Commission's *second statutory duty* is to "study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution." This takes in studies of Federal, State, and local action or inaction which the courts may be expected to treat as denials of equal protection. Since the constitutional right to equal protection is not limited to groups identified by color, race, religion, or national origin, the jurisdiction of the Commission is not strictly limited to discrimination on these four grounds. However, the overriding concern of Congress with such discrimination (expressed in congressional debates and in the first subsection of the statute) has underscored the need for concentrated study in this area.

Cases of action or inaction discussed in this report constitute "legal developments" as well as denials of equal protection. Such cases may have been evidenced by statutes, ordinances, regulations, judicial decisions, acts of administrative bodies, or of officials acting under color of law. They may also have been expressed in the discriminatory application of nondiscriminatory statutes, ordinances or regulations. Inaction of government officials having a duty to act may have been indicated, for example, by the failure of an officer to comply with a court order or the regulation of a governmental body authorized to direct his activities.

In discharging its *third statutory duty* to "appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution," the Commission evaluates the effectiveness of measures which by their terms or in their application either aid or hinder "equal protection" by Federal, State, or local government. Absence of Federal laws and policies that might prevent discrimination where it exists falls in this area. In appraising laws and policies, the Commission has considered the reasons for their adoption as well as their effectiveness in providing or denying equal protection.

The *1959 Report* embraced discrimination in public education and housing as well as at the polls. When the Commission's term was extended in 1959, it continued its studies in these areas and added two major fields of inquiry: Government-connected employment and the administration of justice. A preliminary study looked into the civil rights problems of Indians.

In the public education field, the problems of transition from segregation to desegregation continued to command attention. To collect facts and opinion in this area, the Commission's Second Annual Conference on Problems of Schools in Transition was held March 21 and 22, 1960, at Gatlinburg, Tenn. A third annual conference on the same subject was held February 25 and 26, 1961, at Williamsburg, Va.

To supplement its information on housing, education, employment, and administration of justice the Commission conducted public hearings covering all of these subjects in California and Michigan. On January 25 and 26, 1960, such a hearing was held at Los Angeles; and on January 27 and 28, 1960, in San Francisco. A Detroit hearing took place on December 14 and 15, 1960.

Commission membership

Upon the extension of the Commission's life in 1959, and at the request of President Eisenhower, five of the Commissioners consented to remain in office: John A. Hannah, Chairman, president of Michigan State University; Robert G. Storey, Vice Chairman, head of Southwestern Legal Center and former dean of Southern Methodist University Law School; Doyle E. Carlton, former Governor of Florida; Rev. Theodore M. Hesburgh, C.S.C., president of the University of Notre Dame; and George M. Johnson, professor of law and former dean of Howard University School of Law.

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John S. Battle, former Governor of Virginia, resigned. To replace him the President nominated Robert S. Rankin, chairman of the Department of Political Science, Duke University. This nomination was confirmed by the Senate on July 2, 1960.

On March 16, 1961, President Kennedy accepted the resignations of Doyle E. Carlton and George M. Johnson. A few weeks later he nominated Erwin N. Griswold, dean of Harvard University Law School and Spottswood W. Robinson, III, dean of the Howard University School of Law, to fill the two vacancies. The Senate confirmed these nominations on July 27, 1961.

Gordon M. Tiffany, Staff Director for the Commission from its inception, resigned on January 1, 1961. To replace him, President Eisenhower appointed Berl I. Bernhard to be Acting Staff Director on January 7, 1961. He had been Deputy Staff Director since September 25, 1959. On March 15, 1961, President Kennedy nominated him as Staff Director. The Senate confirmed his nomination on July 27, 1961.

Part I. Civil Rights, 1961

In war and peace the American people have met challenge after challenge with vigor and resourcefulness. Perhaps the most persistent challenge is the one to which this Commission addresses itself in this report—the challenge of civil rights.

The Republic began with an obvious inconsistency between its precepts of liberty and the fact of slavery. The words of the Declaration of Independence were clear:

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are Life, Liberty, and the Pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.

Equally clear was the fact that Negroes were not free. The great American experiment in self-government began for white people only.

The inconsistency between the Nation's principles and its practices has diminished over the years. Constitutional amendments, court decisions, acts of Congress, Executive orders, administrative rulings, State and local legislation, the work of private agencies, efforts by Negroes and other minority groups—all these have helped remove many of the barriers to full citizenship for all.

The gains have been considerable. As the second term of this Commission draws to a close, it can report that more persons than ever before are exercising more fully their rights as citizens of the United States. The American people are increasingly aware that professions of belief in the dignity of man have meaning only if they are realized by all people in all aspects of life. The gap between the promise of liberty and its fulfillment is narrower today than it has ever been.

Yet a gap remains. In the changing world of 1961 it seems wide and deep, and the demand to close it is more urgent than ever. Perhaps this is because the closer we come to the achievement of our ideals, the more obvious and galling is the remaining disparity. Partly, too, events in a rapidly changing world have put a new focus on the way in

which the United States puts it principles into practice. The emergence of new nonwhite nations in Africa and Asia does not make an inequity any more unjust. It may, however, make remedial action more urgent.

The report that follows attempts to measure the remaining gap between the American promise and its fulfillment; to tell of progress that has been made, and to suggest approaches for what remains to be done.

This report principally concerns the civil rights problems of Negroes. Mexican-Americans, Puerto Ricans, Indians, and other minorities to some extent still suffer inequalities and deprivation. But Negroes are our largest minority group, and their rights are denied more often in more respects and in more places than are those of any other group. Of all minorities, Negroes seem most closely bound to the history and conscience of America. Their struggle has become symbolic. By measuring the extent to which they enjoy civil rights, we may measure our respect for freedom. To the extent that this Nation can successfully resolve its racial problems, it lends hope to afflicted minorities and troubled majorities everywhere. For this Nation is concerned not just with the civil rights of a particular minority. It is concerned with human rights for all men everywhere.

PROGRESS DURING THE LAST TWO YEARS

The 2 years since the Commission submitted its first report have brought dynamic changes in civil rights at all levels of government. These are some of the milestones of progress on the national level:

- In 1960 Congress passed the second Civil Rights Act since 1875, strengthening the measures available to the Federal Government for dealing with such matters as discriminatory denials of the right to vote, obstruction of Federal court orders, and bombing or other desecration of schools and churches.[1]

- Through the courts the Federal Government acted energetically to secure the constitutional rights of its citizens against invasion by the States: it brought suits to protect the right of Negroes to vote without discrimination or coercion on account of race in 15 counties in Alabama, Louisiana, Georgia, Mississippi, and Tennessee; [2] in New Orleans it intervened in a school desegregation suit to protect its courts and its citizens against State defiance of the law of the land; [3] in Montgomery, Ala., it sued to protect the right of Americans to travel freely among the States, without distinction or obstruction because of their race; [4] again in New Orleans, and in Montgomery, it sued to end segregation in airport facilities built in part with Federal funds; [5] in Jackson, Miss., it intervened in a suit to restrain arrests of persons seeking unsegregated service in bus terminals; [6] in Biloxi, Miss., it brought suit to assure that a public beach constructed with funds from the National Government would be available to all the public without racial discrimination.[7]

- With the creation of the President's Committee on Equal Employment Opportunity in 1961, the executive branch of the Federal Government took a major step to achieve the national policy that there shall be no discrimination on grounds of race, color, creed, or national origin, either in employment by the Government itself, or in employment created by funds dispensed from the National Treasury.[8]

- The President of the United States publicly affirmed his support of the Supreme Court's decision that segregated public schools were forbidden by the Constitution.[9]

- The Supreme Court, followed by the lower Federal courts, has firmly upheld constitutional and statutory commands against discrimination in this period:

It held in 1961 that a State could not redraw municipal boundary lines on racial grounds.[10]

In 1961 it held that the operation of a private restaurant in space leased from a public agency was State action within the meaning of the 14th amendment; and that the facility, therefore, could not be operated on a discriminatory basis.[11]

In 1960 it held that Congress had forbidden racial segregation in services provided for interstate travelers even if the services are not provided directly by an interstate carrier itself.[12]

Also in 1960 it upheld the 1957 Civil Rights Act against constitutional attack.[13]

- State and local governments also took important steps:

Twenty-three State laws aimed at preventing racial or religious discrimination in such areas as housing, employment, and public accommodations were enacted or strengthened—not only in Northern and Western States but in border States such as Kentucky, West Virginia, Delaware, Missouri, and Kansas.[14]

In the deeper South, Georgia followed the example of Virginia in abandoning massive resistance to the requirements of the Constitution regarding public education.[15] The first public educational institution in Georgia—the University of Georgia—was successfully desegregated with only temporary difficulty, and preparations were made for the orderly advent of desegregation in the Atlanta public schools.[16] Thus, all but three States (Alabama, Mississippi, and South Carolina)

had made at least some progress toward the constitutional operation of public schools and colleges.[17] A handful of school districts in the South passed quietly and without difficulty from segregation into a program of compliance with the Constitution.[18]

With or without lawsuits, public libraries, parks, and recreation facilities were successfully desegregated in a number of southern cities.

• Perhaps the most important events of the period, however, were brought about by private citizens:

On February 1, 1960, four freshmen students from the North Carolina Agricultural & Technical College entered a variety store in Greensboro, made several purchases, then sat down at the lunch counter and ordered coffee. They were refused service because they were Negroes, but they remained in their seats until the store closed.[19] Thus began the sit-in movement, a movement of protest mainly by Negro youth. It spread rapidly through the South and even to some places in the North, manifesting itself as well in other forms of peaceful protest—kneel-ins, stand-ins, wade-ins, and more recently and spectacularly in the "Freedom Rides." [20] This protest movement has aroused widespread interest and strong feelings. Although doubts of its wisdom and concern as to its methods are genuinely felt by many, there can be no question that its moral impetus is strong, that it expresses a profound and widespread demand for faster realization of equal opportunity for Negroes, or that it will continue until the issues raised by its demands have been resolved.

Partly as a result of the sit-ins, there has been a marked change, for the most part unpublicized and without drama, in many southern cities. Racial barriers have been removed not only in areas where the law of the land supported the claim for equal treatment—as in publicly operated facilities and interstate transportation terminals—but also in many areas of private concern where no legal compulsion has been held to exist. By the close of 1960, for instance, variety store chains had opened lunch counters in 112 southern and border cities to Negro patrons.[21]

Equally important has been the growing awareness among thoughtful southern white leaders of the dimensions of civil rights problems. James J. Kilpatrick, a Virginian, editor of the Richmond News-Leader, and one of the earliest proponents of massive resistance to school desegregation, spoke for many when he said: [22]

> What I am groping to say is that many a southerner is seeing now, and hearing now. Aspects of segregation that once were his nonconcern now trouble his spirit uncomfortably: Sit-ins. Segregated libraries. Certain job discrimination. Genuinely unequal schools in some areas. The Negro as citizen, as a political being possessed of equal rights, never had existed in the white southerner's past as he begins to exist now. The familiar black faces, seen through new glasses, are startlingly unfamiliar. A sense of the Negro point of view, totally unrecognized before, stir uneasily in the conscious mind. . . .

That Mr. Kilpatrick spoke for many responsible white southerners is confirmed by their effective efforts in such vital spots as Little Rock, Atlanta, and New Orleans to keep public schools open, even if it meant desegregation.[23] A number of church and other organizations throughout the South have decried the immorality of all forms of racial discrimination.

In the North and West as well, private groups have become increasingly active in expressing by action as well as words a belief in equal treatment regardless of race, creed, or ancestry.[24]

PROBLEMS STILL UNSOLVED

Despite this progress, however, the Nation still faces substantial and urgent problems in civil rights. It is with these that the Commission, by virtue of its statutory directive, has been principally concerned. Among the major civil rights problems discussed in the report that follows are these:

In some 100 counties in eight Southern States there is reason to believe that Negro citizens are prevented—by outright discrimination or by fear of physical violence or economic reprisal—from exercising the right to vote.[25]

There are many places throughout the country where, though citizens may vote freely, their votes are seriously diluted by unequal electoral districting, or malapportionment.[26]

There are many counties in the South where a substantial Negro population not only has no voice in government, but suffers extensive deprivation—legal, economic, educational, and social.[27]

There are still some places in the Nation where the fear of racial violence clouds the atmosphere.[28] There is reason to hope that the worst form of such violence—lynching—has disappeared; no incidents have occurred during the last 2 years. Still, mob violence has erupted several times in response to the campaign for recognition of Negro rights—in Jacksonville, Fla., and New Orleans, La.; in Anniston, Montgomery, and Birmingham, Ala.; in Chicago, Ill.[29]

Unlawful violence by the police remains in 1961 not a regional but a national shame.[30]

In public education there still are three States—Alabama, Mississippi, and South Carolina—where not one public school or college conforms with the constitutional requirements enumerated by the Supreme Court 7 years ago. In May 1961, 2,062 of the 2,837 biracial school districts in the 17 Southern and border States remained totally segregated.[31]

Perhaps even more serious is the threat posed by a new southern strategy of avoiding the full impact of constitutional commands by withdrawing the State from public education.[32]

One Southern State, Louisiana, not only set itself in defiance of constitutional requirements in public education, but attempted to "interpose" its authority against the Federal Constitution, and obstruct the processes of the National Government. Its legislature passed no fewer than 56 laws for these purposes—25 of which were struck down quickly by the Federal courts.[33] Other Louisiana laws, all part of a "segregation package" were intended to diminish Negro voting; to inhibit protest demonstrations; to deprive thousands of children, mainly Negro, of welfare assistance.[34]

A Federal court decision in 1961 brought to the Nation's attention the fact that unconstitutional inequality in public education is not confined to Southern States.[35] Such inequalities in public educational systems seem to exist in many cities throughout the Nation.[36]

Unemployment in the recent recession, hitting Negroes more than twice as hard as others,[37] underlined the fact that they are by and large confined to the least skilled, worst paid, most insecure occupations; that they are most vulnerable to cyclical and structural unemployment and least prepared to share in, or contribute to, the economic progress of the Nation.[38]

Although racial segregation in the Armed Forces of the United States officially ended 6 years ago, it continues in some parts of the Reserves and the National Guard.[39]

Much of the housing market remains closed in 1961 to millions of Americans because of their race, their religion, or their ancestry; and partly in consequence millions are confined to substandard housing in slums.[40]

In spite of repeated commitments to the principle that benefits created by the funds of all the people shall be available to all without regard to race, religion, or national ancestry, the Federal Government continues in some programs to give indirect support to discriminatory practices in higher education,[41] in training programs,[42] in employment agencies and opportunities,[43] in public facilities such as libraries,[44] and in housing.[45]

NATURE OF THE PROBLEMS

These are the principal civil rights problems the Commission has found in the areas it has undertaken to study—voting, education, employment, housing, and administration of justice. In dealing with these subjects, however, the Commission has attempted to define and measure civil rights deprivations, and to put them in proper context.

First of all there are the commands of the Nation's Constitution, based on principles which go to the roots of a free society. Even where the writ of the Constitution itself does not run, goals and policies of equal opportunity have often been set by the people through their National Government. While the principle behind the constitutional, statutory, and executive directives is clear—recognition of the worth of every human being—their application is sometimes difficult; for civil rights issues are often closely related to other serious national problems. One of these is the problem of bringing into the mainstream of American life large groups of people suffering from serious deprivations. Also contributing to the complexity of civil rights problems is the fact that while they occur throughout the Nation, and not in any one region alone, they take somewhat different forms in the South and the North, and in rural and urban areas. Finally, civil rights difficulties are complicated by the division of private and governmental responsibilities within our Federal system. Preliminary discussion of these complex interrelated issues may provide perspective for the report that follows.

The command of nondiscrimination

The 15th amendment to the Constitution commands that neither the Federal Government nor the States may deny or abridge the right to vote on account of race or color.[46] More broadly, the 14th amendment forbids any State or its agents to "deny to any person the equal protection of the laws." [47] This principle, applicable also to the Federal Government,[48] forbids discrimination against any person on grounds of race, color, religion, or national origin.[49] It does not reach the conduct of persons acting in a purely private capacity.[50] Still, a State may not enforce private agreements to discriminate; [51] and in some circumstances private persons may act under the authority of the State and bring themselves within the constitutional prohibition.[52] How much aid, direction, or control by a State is required to invoke the constitutional ban against discrimination is still largely undefined.[53]

It is now clear that the discrimination forbidden by the Constitution includes not only tangibly unequal treatment but, in many if not all

fields, the intangible inequality of enforced segregation. The doctrine of "separate but equal" has been struck down not only in public education [54] but in public transportation,[55] and public recreational facilities such as parks,[56] golf courses,[57] and swimming pools.[58]

Although the Constitution forbids Government to discriminate, or to enforce private discrimination, it has not authoritatively been held to forbid either Federal or State Government indirectly to *assist* others in discriminating.[59] In fact the Federal Government gives many kinds of financial or other assistance to private persons and groups, and even State agencies, which discriminate on racial, religious, or ethnic grounds.[60] If this does not necessarily raise constitutional problems, it raises serious questions of national policy.

While the Commission has not systematically studied all Federal programs in which these questions arise, several of the studies reported below do pose the problem: Should the Federal Government allow its funds and benefits to be used in such a way that some people are denied enjoyment thereof solely on grounds of race or creed? In several cases the answer has already been given in declarations either by Congress or by the President that the policy of the Nation is one of equality of opportunity for all.[61] One of the Commission's major concerns has been to measure the consistency and effectiveness of such laws and policies of the Federal Government.

Problems of cumulative deprivation

Civil rights problems do not arise in the abstract. The Commission is aware that those who are denied their constitutional rights are usually also the victims of poverty and inadequate formal education. Particularly since World War I the underprivileged have been moving into our great urban centers—in search of opportunity. The problems that they meet there are not entirely new. The history of the United States after all provides a magnificent record of absorption of vast migrations of oppressed people; the Nation has given richly to them and been richly rewarded. Today's minorities—the Negro moving from sharecropping to the city, the Puerto Rican, the Mexican-American, and the American Indian leaving the reservation—are in a sense modern immigrants seeking their places in the mainstream of American life.

Like earlier immigrants from overseas, many of today's largely native-born minorities have been forced into urban slums, restricted to the poorest schools, and employed in the lowest paid occupations. Inevitably in their adjustment to city life under such handicaps, they have required a disproportionate share of health, welfare, police, and other services, and have been more vulnerable to personal and social maladjustment.[62] As with earlier groups, these deprivations have led to discrimination, which in turn reinforces the deprivations.

While many of these problems are similar to those of other minorities, there are important differences. The Negro is no stranger to this country: he is an American by birth and by long ancestry. But he is set apart by the color of his skin. Moreover, many of his hardships are the bitter fruit of past denials of civil rights in this country. And the cumulative effect of these denials has produced a new deprivation—debilitation of hope and ambition—so that even opportunities that are available sometimes go unused. In contrast to the conviction of earlier immigrants that they—or their children—could work their way up from poverty and slums, "the outstanding characteristics of youth in the Negro slum is an almost complete lack of conviction that life can be better." [63] Similarly, an educator described the hopelessness that breeds in the Los Angeles Mexican-American ghetto: "Joe is going to pick fruit anyway; why should he go to high school?" [64]

Frustration of ambition and lack of hope tend to erupt in delinquency and crime. They also threaten continued mounting costs in public services for an increasing minority that is not permitted to move upward into self-sufficiency. These are essentially "social" problems, yet they are closely, and often inextricably, linked with civil rights. They present serious obstacles to the solution of civil rights issues.

There is no precise way to measure the extent of the deprivations suffered by minority groups. Census data, however, are indicative:

Education: In 1959, 23.5 percent of nonwhites 25 years of age or over were deemed functionally illiterate (completed less than 5 years of school), compared to 6.4 percent of whites.[65] The median number of school years completed by nonwhites 25 years old and over was 8.1, compared to 11.4 for whites.[66] Only 20 percent of nonwhites compared to 45.3 percent of whites had high school or better education; 49.5 percent of nonwhites compared to 80.8 percent of whites had elementary school or better education.[67]

Incomes: In 1959 the median income for male nonwhite workers was $2,844, compared to $4,902 for white male workers.[68] Median family income was $5,643 for whites, and $2,917 for nonwhites.[69] The median income of families in relation to the formal education of the head of the family in 1958 is shown below: [70]

	Elementary school graduates	*High school graduates*	*College* [1]
White	$4,487	$5,742	$7,373
Nonwhite	3,316	3,929	5,654

[1] College figures include graduates and those attending for 1–3 years; no separate figures are available for nonwhite graduates.

Occupations: In 1960, 55 percent of nonwhites worked in service and laboring occupations, compared to 18 percent of whites; less than 7 percent of nonwhite males were in professional and managerial jobs, compared to almost 26 percent of whites.[71] The 1950 census (later figures are not yet available) showed that 22.3 percent of nonwhite *college graduates* were working in laboring or service jobs, compared to 1.4 percent of whites.[72]

Unemployment: Nonwhites have consistently experienced unemployment rates at least double those of whites: [73]

Percent of male labor force unemployed

Year	*Nonwhite*	*White*
1957	8.4	3.7
1958	13.7	6.1
1959	11.5	4.6
1960	10.7	4.8

Housing: In 1937 President Roosevelt decried the fact that "one-third of the nation is . . . ill-housed." [74] By 1960, housing conditions had improved considerably, but not equally for all. Fifty-seven percent of all nonwhite-occupied dwelling units were classified by the 1960 census as "dilapidated," "deteriorating," or "lacking some or all plumbing facilities"—and hence substandard—compared to 24 percent of white-occupied units in this condition.[75]

These bleak statistics give some quantitative measure of deprivation. They do, however, suggest that denial of equal opportunity is at least partly responsible for such manifestly unequal conditions, and that these conditions necessarily raise serious obstacles to the achievement of equal opportunity.

Achieving national goals

Mass denials of civil rights are more than a distressing problem for the affected group—they can be obstacles to the progress of the entire Nation. The goal of equal opportunity is intertwined with national goals in such areas as education, economic development, housing, and the health of our cities.

Education and a skilled populace: Democracy depends on an educated populace. It demands that every individual have the opportunity to realize his full potential through education. President Kennedy put it briefly, "Our progress as a nation can be no swifter than our progress in education." [76] Yet there are citizens of the Nation who suffer inferior schooling for no reason apart from race.

Related to the goal of an educated citizenry is the need for a highly trained work force with the technical skills required by a rapidly changing economy. Yet manpower specialists, studying ways to utilize American resources more effectively for vital economic and defense needs, have stated that "the single most underdeveloped human resource in the country is the Negro." [77] The causes are manifold—discrimination, early school dropouts because of financial need or lack of motivation, inferior educational facilities—but they are all in one way or another related to unequal opportunity.

Housing and the revitalization of our cities: In 1949 Congress recognized the achievement of "a decent home and a suitable living environment for every American family" as a major national goal.[78] In 1961 President Kennedy told Congress that "we must still redeem this pledge." [79] But the objective cannot be realized while racial barriers keep some from obtaining decent housing.

Achievement of the national housing goal is now part of a much greater problem in which civil rights is also involved—the future of our cities. A tremendous shift in population has brought increasing numbers of people to live in the cities and their burgeoning suburbs. Whereas less than a third of the U.S. population lived in "urban" areas in 1900, almost 70 percent lived in such areas in 1960,[80] and experts forecast the figure will reach 80 to 85 percent within the next 15 years.[81]

Most of the Nation's great cities are suffering serious common problems of decay, slum growth, loss of middle and higher income residents to the suburbs, loss of industry and retail business, insufficient low-cost housing, inadequate educational and other services, jammed transportation systems, and declining tax revenue. At the same time the rapid increase of population in the urban areas surrounding these cities puts added pressure on their facilities without contributing much to their budgets.

Meanwhile, many cities have also experienced an explosive increase in their minority populations. While 73 percent of the Nation's Negroes lived in rural areas in 1910, more than 73 percent were urban dwellers in 1960.[82] In the North more than 90 percent were in urban centers.[83] The proportion of Negroes in the population of Chicago, Cleveland, New York, and Philadelphia more than doubled between 1940 and 1960; in Cleveland, Detroit, and Los Angeles it tripled; in San Francisco, it increased more than twelvefold.[84] There is every indication that the minority proportion of most cities' population will continue to increase because of further migration,[85] the relatively higher birth rate among nonwhites,[86] and a continued exodus of whites to the suburbs.[87] If present trends continue, even those cities which now have small Negro populations will have a sizable proportion within 10 or 20 years.[88]

To a considerable degree, restrictions of opportunity for these minorities concentrating in the Nation's cities have further intensified fundamental urban problems. Denials of equal opportunity in housing, and to a lesser degree in education and employment, have accelerated the growth of new slums, retarded clearance of old ones, and endangered the success of programs for urban renewal—while requiring costly additional services and providing inadequate tax revenue to pay for them.

Differing contexts

The civil rights problems involved in the growing urbanization of America are not always comparable to those found in rural areas. Restrictions on the right to vote, for instance, appear almost exclusively in the rural South. Restrictions in employment, education, housing, and administration of justice, on the other hand, occur in rural and urban settings throughout the country—though they often reveal different characteristics in the different areas.

The differing nature of civil rights problems in North and South must also be recognized. In the South race restrictions have been strongly supported by law, tradition, and popular attitudes. In the North, where Negroes until recently have been a small proportion of the total population, restrictions are not the result of law, official policy, or acknowledged tradition—indeed many cities and States have laws prohibiting discrimination. Yet discrimination persists.

The vast migration of Negroes from rural to urban areas largely has been also a migration from South to North. Today, almost half of the Nation's Negroes live outside the 11 States of the Confederacy; 50 years ago more than 80 percent lived in these 11 States.[89] In 1960 a Northern State—New York—for the first time had a larger Negro population than any Southern State, and five northern cities had larger Negro populations than any southern city.[90]

The rural to urban, and South to North movements suggest that the major new frontier for civil rights today is in the cities and their surrounding metropolitan areas, particularly in the urban areas of the North.

The Federal problem

One final consideration affecting action to assure equal protection of the laws is the allocation of responsibility between private and governmental action, and between levels of Government within our Federal system. Essentially, the enjoyment of equal rights and the provision of

equal treatment involve individuals. If each citizen of our democracy has opportunity for "life, liberty, and the pursuit of happiness" and acknowledges no less for all others, democracy will thrive. Safeguarding these principles is the responsibility of each of us. Yet, "to secure these rights, governments were instituted among men," and today, the ability to live, eat, work, go to school, and enjoy the benefits of freedom is protected and regulated by a network of local, State, and Federal laws.

Most measures affecting the citizen in his daily life originate in the town, city, county, or State. But the Constitution clearly imposes Federal responsibility to equal protection of the law. Moreover, the Federal Government is extensively and intimately involved in the fields of education, employment, housing, and urban affairs; and the laws and policies applicable to its programs in these fields necessarily affect equality of opportunity.

This Commission is convinced that the major effort to assure civil rights must be made by private individuals and groups, and by local and State government; but the Federal Government has a heavy obligation as well. The Commission, moreover, is under specific obligation to study Federal laws and policies, and to report its findings and recommendations to the President and Congress. In this report, therefore, it has focused chiefly on the Federal responsibility for assuring equal protection of the laws.

A CHALLENGE TO AMERICANS

The inequities discussed in this report should not be taken as an indictment but as a challenge. This Nation has always responded to any threat to our freedom from abroad, yet for more than a century we have been divided over issues of racial equality and freedom of opportunity at home. The time has now come to answer the challenge within—the denial of civil rights to Americans by other Americans.

Part II. The Right to Vote

1. Introduction

An essential feature of our form of government is the right of the citizen to participate in the governmental process. The political philosophy of the Declaration of Independence is that governments derive their just powers from the consent of the governed; and the right to a voice in the selection of officers of government on the part of all citizens is important, not only as a means of insuring that government shall have the strength of popular support, but also as a means of securing to the individual citizen proper consideration of his rights by those in power.[1]

The freedom of a democratic system is not that its people are free of law, but that they are free to make and enforce their own law through elected representatives. It follows that freedom to vote is the cornerstone of democracy.

One of the glories of America has been the constant expansion of the suffrage. As the Commission pointed out in its *1959 Report,* this evolutionary experience marks an effort to achieve something very close to government by all the people.[2] Yet, the Commission also pointed out in 1959 that "many Americans . . . are denied the franchise because of race. . . . There exists here a striking gap between our principles and our every day practices." [3] Today, 2 years later, this gap has not been closed.

Virtually no one publicly defends racial discrimination at the polls. The Supreme Court has held it unconstitutional. Congress has outlawed it. Yet it persists. In some States there is an effort to restrict Negro suffrage.[4]

If "the disfranchised can never speak with the same force as those who are able to vote," [5] it follows that they are apt to suffer in other ways. The Commission's studies indicate that this is in fact the case;

deprivations of the right to vote tend to go hand in hand with other deprivations.[6] Indeed this is tacitly recognized by many organizations that oppose the Supreme Court's school desegregation decisions—for an important thrust of their effort has been to restrict Negro suffrage.[7] It may not necessarily follow that freedom to vote automatically assures full enjoyment of all other rights, but it is clearly a helpful tool for securing them. As a Negro witness put it at the Commission's Louisiana hearing: "So, you see, we have nobody to represent us, on the jury, school board office, the State legislature, nowhere. All the laws are being passed we have no voice in, whether it is for us or against us, and I don't think you can find many that is for us." [8]

NATURE OF THE RIGHT

In the election of candidates for State and local offices the suffrage may be conferred or withheld by each State according to its own standards,[9] but even in such elections, States are not wholly unrestricted. Two provisions of the Constitution, the 15th and 19th amendments, explicitly apply to the States as well as to the Federal Government—to say nothing of the 14th amendment which forbids discrimination by the States. Therefore, in the making and administration of suffrage qualifications for State and local, as well as Federal elections, no State may discriminate upon grounds of race, color, or previous condition of servitude, nor upon grounds of sex.[10] Thus it is sometimes said, that, if otherwise qualified, one has a right not to be discriminated against by reason of race or sex.

With respect to the election of candidates for the Congress—both the House of Representatives and the Senate—the Constitution leaves to the States the decision as to who may vote, but no State may prescribe qualifications for electors of Members of Congress different from those it prescribes for electors of the most numerous branch of its own legislature.[11] Of course, neither the States nor the Federal Government can discriminate against Negroes who are otherwise qualified to vote for Members of Congress.[12] Furthermore, although the basic power to fix qualifications for the electors of Senators and Congressmen is left to the States (as is the actual conduct of elections), the Constitution gives the Congress a paramount power to regulate "the times, places, and manner of holding elections for Senators and Representatives." [13]

The significance of the distinction between the vote in State and local elections and the vote in congressional elections lies not in whether the voter is subject to racial discrimination—the 15th amendment prohibits such discrimination in all elections—but in the scope of Federal protective power. The provisions of the 15th amendment, pursuant to which the Congress may legislate and courts may intervene to prevent

exclusions from State and local elections on racial grounds, are cast in the form of limitations upon governmental action. The purely private acts of individuals therefore are beyond the reach of this amendment and legislation enacted pursuant thereto.[14] On the other hand, private individuals (as well as persons clothed with governmental authority) who act to deprive *anyone* of the right to vote for Members of the Congress, are amenable to Federal legislative authority by virtue of the "times, places, and manner" and "necessary and proper" clauses of the Constitution.[15]

In the election of candidates for the offices of President and Vice President, still another situation prevails. First, although popular election of the Executives has long been the practice in every State, no election at all is required. For the Constitution provides that: "Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors . . . ," [16] and the term "appoint" here is used as "conveying the broadest power of determination." [17] Hence, although such a course at the present time seems politically improbable, popular election of Executives could be eliminated by State legislation. As a matter of history, electors for the Executives have at one time or another been chosen by State legislatures without popular votes in at least 16 States.[18] But, although popular elections of the Executive could be wholly eliminated by State legislation, it seems clear that however electors are "appointed," all Federal constitutional and legislative safeguards apply. Thus, assuming popular elections, the vote for Federal Executive officers may not be denied or abridged on grounds of race, color, or sex by action of either private persons or persons clothed with governmental authority.[19]

If, then, the Federal law grants no absolute right to vote, it does give an immunity, or freedom, from voting restraints based on race. And this immunity is applicable to the whole electoral process including primaries,[20] with respect to all public officials whether local, State, or national.

Such, then, is the nature of the "right" to vote with which the Commission is here concerned. Its importance cannot be overemphasized. Its impairment is inconsistent with our democratic system. Its protection by legislative, executive, and judicial action at all levels of government must be a matter of prime concern to every American.

THE COMMISSION'S STUDIES

The first duty of the Commission is to investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin.[21]

In the 4 years of its existence the Commission has received and investigated 382 sworn complaints. The findings of the Commission in this regard, which are discussed in the following chapter, indicate that discriminatory denials of the right to vote are a limited phenomenon, confined principally to rural areas in the South. Significantly, all but three of the formal complaints received by the Commission have alleged discrimination against Negroes. The exception concerned Puerto Ricans in New York State and was discussed in the *1959 Report.*[22] It raised a complex and difficult legal problem, but one not strictly within the scope of the Commission's authority.[23]

Inquiries into these matters have not been limited to studies in the field by staff investigators and attorneys. Pursuant to its statutory authority,[24] the Commission has held two formal hearings where testimony under oath was obtained by subpoena.

The Commission's earlier report dealt with the 1958 and 1959 hearing in Montgomery, Ala. As that report indicated, a second hearing, scheduled to be held in Louisiana, was delayed by an injunction issued at the instance of Louisiana officials who challenged the validity of the Commission's rules of procedure.[25] On appeal the U.S. Supreme Court in the case of *Hannah* v. *Larche* held that the Commission's rules of procedure were both authorized by statute and consistent with constitutional requirements.[26] In the course of its opinion, the Court observed that: [27]

> [The Commission's] function is purely investigative and factfinding. It does not adjudicate. It does not hold trials or determine anyone's civil or criminal liability. It does not issue orders. Nor does it indict, punish, or impose any legal sanctions. It does not make determinations depriving anyone of his life, liberty, or property. In short, the Commission does not and cannot take any affirmative action which will affect an individual's legal rights. The only purpose of its existence is to find facts which may subsequently be used as the basis for legislative or executive action.

After the Supreme Court's decision the Commission rescheduled the Louisiana hearing. It was held in two sessions in September 1960 and May 1961. A complete account of the hearings, which revealed both discriminatory practices by certain local officials who have denied the suffrage to Negro citizens, and a general pattern of efforts by the Louisiana Legislature, State officials, and private organizations to restrict the franchise of Negroes, appears below.[28]

The Commission's second statutory obligation is to study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution.[29]

While the Commission's studies of denials of equal protection have been directed principally to areas other than voting, suffrage discrimination on grounds of race, color, religion, or national origin may violate the 14th as well as the 15th amendment.[30] The Commission's studies of voting have not, therefore, been limited to the investigation of sworn complaints. The Commission has collected statistics showing voter registration by race. The importance of this information in determining the extent and nature of denials of the right to vote is indicated in the pages that follow. Finally under this section of the 1957 Civil Rights Act the Commission undertook a broad-gage study of civil rights in relation to the right to vote in 21 southern counties where Negroes constitute a majority of the population. This study of "Black Belt" counties is described in Part III of this report.

The *1959 Report* discussed the gerrymander of Tuskegee, Ala., where the city limits were changed by the State legislature from a square shape containing over 400 Negro voters to an odd 28-sided figure containing less than 10 Negro voters.[31] The Supreme Court has since held for the first time that if carried out for the purpose of discriminating against a particular group on the grounds of race, such a redrawing of political boundaries violates the 15th amendment.[32] A Federal District Court has found that the Tuskegee gerrymander was in fact performed for this purpose and therefore void.[33]

The significance of this development goes beyond the problem of the potential use of gerrymandering to render the Negro vote ineffectual. It also lies in the field of malapportionment, i.e., allocation of greater weight to some votes than to others. In the wake of the *Tuskegee* decision, two cases challenging this phenomenon as a denial of equal protection were brought to the Supreme Court.[34] As this report appears neither has been decided, but one case awaits reargument.[35] Since the question whether malapportionment is indeed a denial of equal protection of the laws has not yet been settled, the Commission has not undertaken any systematic study in that area. It has, however, taken note of the dimension of this area of possible denials of equal protection. It has, moreover, noted the relationship between the urban-rural imbalance of political representation, which often results from malapportionment, and the effect this may have on civil rights in general. These preliminary observations upon the subject opened by the *Tuskegee* case are set out herein.[36]

The Commission's third statutory responsibility is to appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution.[37]

The *1959 Report* appraised Federal laws protecting the right to vote and found them inadequate. It made three recommendations for improvement, all of which were adopted in modified form in the Civil Rights Act of 1960.[38] (Two other recommendations by the Commission have not been adopted.) [39]

The Commission has again looked into these matters—including the 1960 legislation and all relevant decisions of the last 2 years. The results are reported herein.[40]

2. Status of the Right to Vote

Nine years ago the Department of Justice prepared a brief history of protection of constitutional rights of individuals during the preceding 20 years.[1] On the right to vote, this report stated: "In 1932, the question as to the right of Negroes to vote involved 12 Southern States—Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia." [2] Apparently, even at that time, Negroes had no difficulty in registering and voting in the majority of our States.

The accuracy of this conclusion is borne out by the experience of the Commission on Civil Rights in the brief span of its operations. Although the Commission has received 382 sworn complaints from persons alleging that they had been denied the right to vote or to have their vote counted by reason of race, color, religion, or national origin, with the exception of three complaints from New York, all such complaints originated from Southern States mentioned in the Department of Justice's report.[3] (The complaints from New York involved Puerto Rican American citizens who, although literate in Spanish, could not satisfy the English literacy test of that State.) [4] Nor has other evidence of racial discrimination in voting in any of the other 37 States come to the Commission's attention.

In 1960, Negroes constituted 10.5 percent of the total U.S. population—18,871,831 out of 179,323,175 persons.[5] Negro population throughout the 50 States and the District of Columbia varied from a low of one-tenth of 1 percent in both North Dakota and Vermont to a high of 53.9 percent in the District of Columbia, with a majority (53 percent) living in the 12 Southern States mentioned above. Thus in 1960, 47 percent of all Negro American citizens resided in 38 States which had no recent history of discriminatory denials of the right to vote.

In 1932, "In these [12 Southern] States, Negroes were so effectively disfranchised, regardless of the 14th and 15th amendments to the Constitution, that considerably fewer than a hundred thousand were able to vote in general election[s] and virtually none was permitted to vote in the primary election[s]." [6] However this situation had drastically altered by 1952.

The most important change, accomplished through private lawsuits, was the virtual elimination of "white primaries" in 1944.[7] A second

significant change was voluntary State action abolishing the poll tax as a prerequisite for voting: Louisiana in 1934, Florida in 1937, Georgia in 1945, South Carolina in 1951, and Tennessee in 1953.[8] Today, only five Southern States—Alabama, Mississippi, Arkansas, Texas, and Virginia—still require payment of poll tax as a prerequisite for voting.[9]

By 1947, when the number of voting-age Negroes in the 12 Southern States was 5,069,805, the number of registered Negroes had risen from 100,000 in 1932 to 645,000;[10] by 1952, this number exceeded 1 million.[11] Today, there are 5,131,042 nonwhites of voting age in these 12 States,[12] of whom a total of 1,361,944 are registered to vote.[13]

The Commission's investigations and studies since 1957 indicate that discriminatory disfranchisement no longer exists in all of the 12 Southern States. The Commission used four principal criteria to determine the presence of discriminatory disfranchisement: (1) sworn complaints to the Commission; (2) actions instituted by the Department of Justice pursuant to the new civil remedies of the Civil Rights Acts of 1957 and 1960; (3) private-party litigation to secure the right to vote; and (4) the lack of any registered Negroes, or minimal Negro registration, in counties where there is a substantial Negro population. The absence of complaints to the Commission, actions by the Department of Justice, private litigation, or other indications of discrimination, have led the Commission to conclude that, with the possible exception of a deterrent effect of the poll tax—which does not appear generally to be discriminatory upon the basis of race or color—Negroes now appear to encounter no significant racially motivated impediments to voting in 4 of the 12 Southern States: Arkansas, Oklahoma, Texas, and Virginia.

In 1961, then, the problem of denials of the right to vote because of race appears to occur in only eight Southern States—Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee—in which less than 40 percent of the total Negro population resides. Even in these 8 States, however, with a total of 3,737,242 nonwhites of voting age, some 1,014,454 nonwhites are registered to vote.[14] Moreover, discrimination against Negro suffrage does not appear to prevail in every county in any of these States. The Commission has found that in Florida, North Carolina, and Tennessee, it is limited to only a few isolated counties. Although arbitrary denial of the right to vote is more widespread in the remaining five States, there too it exists on something like a "local option" basis.

This is not to say that exclusion of Negroes from the suffrage, however local, is not a matter of national concern. Toleration of even a single instance of such practice constitutes a partial repudiation of our faith in the democratic system. Nevertheless, it seems worthwhile to point out that the majority of Negro American citizens do not now suffer discriminatory denial of their right to vote.

While the Commission's studies do not allow a definitive statement as to the number of counties where discrimination is present—or the number where it is absent—they do indicate that there are about 100 counties in the 8 Southern States mentioned in which there is reason to believe that substantial discriminatory disfranchisement of Negroes still exists. The problems involved in each of these States will be considered below. The Louisiana story will be considered separately, because of the extensive nature of the Commission's investigations and hearing within that State.[15]

The Commission's prime source of information is the formal public hearing where all interested parties can be subpenaed and heard under oath. While this is the most accurate fact-gathering device directly available, the Commission, for various reasons,[16] has been able to hold only two hearings on the subject of voting; one in Montgomery, Ala., in 1958 and 1959, [17] and the second in Louisiana in 1960 and 1961.[18]

An equally fruitful source of information is the study of lawsuits initiated either by private individuals or the Department of Justice. The Commission has studied all such litigation arising in the past 2 years. Cases of this nature have occurred, during this period, in six of the eight States involved in the following report.[19]

Other sources utilized have been Commission staff investigations of particular complaints, general field studies conducted by the Commission (such as its depth study of the black belt counties),[20] information from the Department of Justice, and voting statistics.[21] With regard to the latter (as is observed in ch. 6),[22] statistics do not in themselves conclusively prove (or disprove) discrimination, but they may give rise to strong inferences. At least one court has held that the lack of *any* registered Negroes in a county where they were in a majority, without more, indicated discrimination.[23] Even where some Negroes are registered, if the number is very low compared to the total Negro population, an inference of discrimination is difficult to escape. While no definite ratio can be set as an invariably reliable indication of discrimination, both in this chapter and in the black belt study,[24] the Commission has used 3 percent of the voting-age population as a reasonable threshold of suspicion.

ALABAMA

"The Alabama story is not ended," concluded the Commission's *1959 Report*[25] after an extended discussion of Negro disfranchisement in that State. That report was principally concerned with 6 counties,

but continuing appraisals indicate that the denial of Negro suffrage has recently occurred in at least 10 of the State's 67 counties. The Commission has received a total of 165 sworn complaints alleging denials of the right to vote in Alabama. This number represents 43.2 percent of all such complaints received by the Commission in its 4-year existence. Alabama is a poll tax State.

The Commission held its first voting hearing in Montgomery, Ala., in December of 1958, and January of 1959, and heard testimony about the denial of the right to vote in five Alabama counties.[26]

Macon County

In 1960 the nonwhite population of Macon County, in east-central Alabama, was 83.5 percent of the total population, yet only 8.4 percent of the nonwhite voting age population was registered.[27] Since 1957, the Commission has received 45 sworn voting complaints from this county. As indicated in the *1959 Report*,[28] 29 of the 50 witnesses at the Montgomery hearing were from Macon County. Shortly after the hearing's conclusion the Department of Justice filed suit under the Civil Rights Act of 1957 to compel registration of qualified Negroes in Macon County, including many of those who had testified at the Montgomery hearing. An appeal to the Supreme Court was necessary before the case could come to trial.[29] On March 17, 1961, over 25 months after the suit was filed, the district court ordered the Macon County Board of Registrars to place 64 (later reduced to 57) named Negroes on the voting rolls forthwith; to register any Negro applicant who is as qualified as the least qualified white applicant who has been adjudged to have passed the registration requirements; and to stop using literacy tests in a discriminatory manner.[30]

Among the facts brought out by this litigation were the following. The board of registrars did not function for extended periods of time from 1946 to 1961. When in operation, delaying tactics were used to prevent Negroes from registering. The Court noted, "For example, on June 20, 1960, seven white persons were given the first seven numbers on the 'priority sheet.' Most of these applicants arrived later than Negroes who were waiting. . . . Such conduct . . . had the effect of precluding any Negro from applying for registration at the courthouse . . . until almost 2 months after the board assumed office." [31]

During a 7-month period in 1960, the board allowed but 50 applicants to complete the registration process. All 32 white applicants were accepted, but only 10 of the 18 Negroes. In contrast, in 1 day in 1958 the board received 40 applications—31 were white and accepted; 9 were Negro, 4 were accepted.[32]

The Court also found that assistance was given to whites but not to Negroes; that often Negroes were not notified of either acceptance or rejection; and that more stringent writing tests were administered to Negroes than to whites.[33]

In a letter of July 16 to Alabama Governor John Patterson, protesting the dilatory, evasive, and discriminatory practices of the "new" board, William P. Mitchell of the Tuskegee Civic Association wrote: [34]

> If the present policy of taking application from one Negro citizen per registration day continues, only thirty Negroes will be able to make application per year. Now, assuming that all of these will be registered, if our losses continue at sixty-four per year [64 Negroes were removed from the registration lists during 1959 by reason of deaths or outmigration], there will be no Negro voter in this county by A.D. 2017.

Negroes in Macon County not only encountered formidable barriers to registration, but when registered, were denied the right to have their votes counted in important municipal elections. As mentioned in the *1959 Report*,[35] the Alabama Legislature passed an act in 1957 gerrymandering all but 4 or 5 of Tuskegee's 400 Negro voters out of city boundaries. No qualified white municipal voters were so excluded. Twelve of the affected Negro citizens sought to invalidate their exclusion. In November 1960, the Supreme Court, in *Gomillion* v. *Lightfoot*,[36] said that "When a legislature thus singles out a readily isolated segment of a racial minority for special discriminatory treatment, it violates the 15th amendment" [37]—and ruled that the plaintiffs were entitled to an opportunity to prove that the gerrymander had a discriminatory purpose. Such proof was made at the subsequent hearing, and on February 17, 1961, the Federal District Court for the Middle District of Alabama held the 1957 gerrymander unconstitutional and void.[38]

At least two plans are reportedly under consideration to nullify the potential Negro vote in Macon County. The first would abolish Macon County and divide its territory among adjacent counties. The Alabama Constitution was amended in December 1957 to authorize just such an elimination of the county.[39] The second would simply abolish Tuskegee's municipal government and turn the city over to boards or commissions appointed by the Alabama Legislature.[40]

Bullock County

In 1960 although voting-age Negroes outnumbered whites by 2 to 1—4,450 to 2,387—only 5 Negroes were registered in Bullock, as compared to 2,200 white persons.[41] The Department of Justice, in a suit filed January 1961, alleged in its complaint that board members "refuse to permit a registered voter to act as a supporting witness for more than two applicants during any one calendar year." [42] At the trial "the

testimony of seven Negroes show[ed] that they made repeated unsuccessful efforts to persuade white voters to vouch for them. The evidence fails to show a single instance in which a white person has vouched for a Negro." [43]

In March the Federal district court held the board's rule limiting the number of times a person could vouch to be "patently unconstitutional." [44]

Montgomery County

Of the 165 sworn voting complaints received from Alabama, 73 were from Montgomery County, seat of the State Capital. Commission investigations before the Montgomery hearing disclosed indications that Negroes would be registered on a nondiscriminatory basis. For these reasons the Commission decided against hearing complainants from this county at its Montgomery hearing. However, developments since the conclusion of the Commission's hearing indicate that the change to a nondiscriminatory policy was more apparent than real. Only 2,995 of the 33,056 voting-age Negroes are registered.[45] Since the Commission's hearing in Alabama, it has received an additional 53 sworn complaints from this county. These allege a continued pattern of discriminatory conduct by the county's voting officials: telling Negro applicants they would be notified by mail and then failing to issue certificates of registration.

Lowndes and Wilcox Counties

These are both "cipher" counties—that is, they have no Negroes registered to vote.

In Lowndes County, Negroes comprise 80.7 percent of the total population and 5,122 of them are of voting age.[46] According to the best available figures 2,240 whites, out of a total white population of 2,978, are registered.[47] The Commission has received no sworn complaints from this county, nor has it conducted field studies there, but the figures appear to speak for themselves.

In Wilcox, according to 1960 census figures, there are 14,598 Negro residents, making up 77.9 percent of the total population, and 6,085 are of voting age. While no Negroes are registered there, 2,950 of the 4,141 total white population are said to be registered.[48] The Commission has received two sworn voting complaints from this county, alleging refusal by officials to process their applications, and to inform applicants when the board would meet.

Dallas County

Testimony at the Commission's Alabama hearing covered economic pressures and registrars' discriminatory practices which prevented Negroes from voting in this county.[49] (Only 0.9 percent of the 15,115 voting age Negroes were registered in 1960.) [50] In April 1961 the Department of Justice filed suit to enjoin such practices.[51] The suit has not yet come to trial.

Jefferson County

Birmingham is located in Jefferson County, where Negroes comprise 31.2 percent of the voting-age population, but only 8.7 percent of the registered voters.[52] The Commission has received 27 sworn complaints from Birmingham alleging long delays in registering, purges for minor reasons, and denial of registration for "bad writing," not remembering birth dates of children, "bad character," etc.

Barbour County

In Barbour County only 6.9 percent of the voting-age Negroes are registered.[53] The Commission has received one sworn complaint from Barbour County, alleging that the registrar refused to give the complainant an application blank. Testimony at the Alabama hearing corroborated this complaint.[54]

Greene and Monroe Counties

The Commission conducted an extensive field survey in Greene and Monroe as part of its depth study of selected black belt counties.[55] In 1958 there were 174 Negroes registered in Greene County; in 1960 the number was 166. In Monroe County 160 Negroes were registered in 1958; by 1960 this number had increased to 200. In 1960 there were 5,001 Negroes of voting age in Greene County, and 4,894 such eligible Negroes in Monroe County.

Indifference and illiteracy appear to explain in part the low registration in both counties. In Greene County a Negro informant claimed that pressure is brought to keep Negroes from registering; white informants disagreed. However, in Monroe County, where the Ku Klux Klan has been active, both whites and Negroes agreed that Negroes are threatened with loss of jobs and with physical violence, if they seek to register.

As of the time this report was prepared, the Department of Justice had inspected the voting records in the following counties which voluntarily complied with the Department's demand: Autauga, Lowndes,

Greene, and Pickens. Suits to inspect records have been filed in Montgomery, Sumter, and Wilcox. No suits to protect the right to vote had yet followed the inspection of records.[56]

FLORIDA

The Commission's *1959 Report* revealed five counties in northern Florida with fewer than 3 percent of the voting-age Negroes registered.[57] Three of these were "cipher" counties. Negroes had no difficulty in southern Florida, nor in fact in most other counties throughout the State.

Gadsden County

All of the nine sworn voting complaints received from Florida since 1957 have come from Gadsden County. As the *1959 Report* indicated, physical and economic reprisals—and threats of such reprisals—have in years past prevented Negroes from registering.[58] Field investigations in this county, in conjunction with the Commission's black belt survey, revealed that although there have been no untoward incidents recently, fear lingers as a deterrent to Negro registration. Negro informants say that these fears are kept alive by "friendly" advice from prominent white citizens, although this is denied by whites. However, the situation in Gadsden County appears to be improving. In 1960 there were 12,261 voting-age Negroes in Gadsden County; in 1958, 7 were registered; 2 years later, 355 were registered.[59] Gadsden is one of the two Florida counties where Negroes are in the majority.

Lafayette, Liberty, and Union Counties

In 1959 the Commission reported these three as "cipher" counties. As of October 8, 1960, Lafayette and Liberty Counties (152 and 240 voting age Negroes, respectively) still had none registered. Union County had 6 registered Negroes out of its voting age Negro population of 1,082.[60]

Only as to Liberty County has the Commission received explicit information supporting the inference of discrimination arising from these statistics. According to information from the Department of Justice, some Negroes registered in 1956, but thereafter they were subjected to harassment. Crosses were burned and fire bombs hurled upon their property, and abusive and threatening telephone calls

were made late at night. Two white men advised one of the registrants that if the Negroes would remove their names from the books all the trouble would stop. All but one did remove their names, and their troubles ended; the one who did not was forced to leave the county. The Governor called for an investigation, which was concluded with the sheriff's report that the Negroes had voluntarily removed their names from the registration rolls.

The Department of Justice has inspected the voting records of Union County, but at the time this report was prepared had filed no suit regarding voter registration there.[61]

Flagler County

Flagler was another county which, in 1959, had registration figures so low as to give rise to a suspicion of discrimination. The situation seems to have improved slightly. In 1958, Flagler had 2.2 percent of its voting age Negroes registered. By 1960, this percentage had increased to 5.9, with 50 registered.[62]

GEORGIA

The Negro's voting status in Georgia varies from holding the balance of political power, as in Fulton County (Atlanta), to total exclusion from the suffrage in some rural counties. While the Commission has yet to receive a sworn voting complaint from Georgia, this cannot, unfortunately, be taken to show a lack of racial discrimination in the State.

Terrell County

Terrell County, scene of the first court action brought under the Civil Rights Act of 1957, is situated in southwest Georgia. A suit filed by the Department of Justice in September of 1958 went to trial in 1960 after a ruling unfavorable to the Government had been reversed by the Supreme Court.[63] After trial, the U.S. district court found that although six Negro applicants (two held master's degrees, two bachelor's degrees, and one had had 1 year of college training) "read intelligibly, the board of registrars determined that [five] read unintelligibly and denied their applications"; that although the sixth "was both willing and able to write any section of the Constitution of the State of Georgia or of the United States legibly upon dictation . . . defendant Raines

dictated at such speed as to make it impossible [for him] . . . to correctly write all that defendant Raines dictated." Upon this "pretended basis of failure," the Board denied his application.[64] The district court, on September 13, 1960, found that 30 named Negroes had been subjected to "distinctions in the registration process on the basis of their race and color"; it ordered the names of 4 Negroes put on the rolls, and issued an injunction against further discriminatory conduct.[65]

Lee County

This county, adjacent to Terrell, was surveyed as part of the Commission's black belt study.[66] In 1958, 29 Negroes were registered; in 1960, although there were 1,795 Negroes of voting age, all persons interviewed by the Commission agreed that the number registered was less than 29.[67] The Negro informants attributed this to fear of economic reprisals—loss of jobs, and refusal to gin cotton, or purchase other crops—and threat of physical violence. The whites interviewed denied that this was true and both white and Negro interviewees blamed Negro illiteracy and indifference. One white informant said that only 15 to 20 Negroes in the entire county were educationally qualified to register. This same informant, however, stated that many unqualified white people were registered.

Baker and Webster Counties

In 1958, although Negroes constituted a majority of the population in both Baker and Webster, none was registered. As of the 1960 presidential elections, there were still none registered.[68]

Bleckley, Chattahoochie, Fayette, Lincoln, Marion, Miller, Seminole, and Treutlen Counties

In 1959 the Commission reported that fewer than 3 percent of the voting-age Negroes in each of these counties were registered, although all had substantial Negro populations.[69] Unfortunately, no current figures are available for any of these counties except Fayette, where, as of June 20, 1960, there were 26 Negroes (2.2 percent of the voting-age population) reported as registered.[70]

At the time this report was prepared, the Department of Justice had inspected the voting records in four Georgia counties: Fayette, Webster, (mentioned above) Gwinnett, and Early.[71] No suits to protect the right to vote had yet been filed in these counties.

Late in June of 1961, a group of Negroes filed suit in a Federal district court to enjoin the maintenance of segregated voting lists and polling places in Dougherty County, Ga.[72]

MISSISSIPPI

Mississippi and Alabama are the only States among the eight under consideration that retain a poll tax. Mississippi election laws provide for permanent registration, and require that an applicant "be able to read any section of the Constitution . . . [and] give a reasonable interpretation thereof." [73]

In 1954, according to a survey made by the then Attorney General James P. Coleman, there were 500,000 voting-age Negroes, but only 22,000 (or 4.4 percent) were registered.[74]

On November 2, 1954, section 244 of the Mississippi Constitution of 1890 was amended to impose more stringent registration qualifications. Among other things, the applicant was required to "demonstrate to the county registrar a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government." [75] However, this was "not required of any person who was a duly registered and qualified elector . . . prior to January 1, 1954." [76] The effect of the new registration requirements is similar to the unconstitutional "grandfather clauses" [77]—to retain white voters but discourage new Negro voters.

The language of the amended constitution, requiring citizens to "demonstrate to the county registrar a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government," together with the requirement of a "reasonable interpretation" of the constitution, give the registrars a significant range of discretionary power, which was expanded by another constitutional amendment in 1960, requiring that voters be of "good character." [78] (The Commission found similar discretionary powers used for discriminatory purposes in Louisiana.) [79]

Mississippi ranks third (after Alabama and Louisiana) as a source of sworn complaints received by the Commission, with 43. The complainants lived in 10 counties: Bolivar, Claiborne, Clarke, Forrest, Hinds, Jefferson Davis, Leflore, Sunflower, Tallahatchie, and Walthall. The Commission has investigated these complaints, and as part of its black belt study, it conducted an intensive survey of five additional counties—Carroll, De Soto, Issaquena, Quitman, and Tate—as well as Leflore, already mentioned.[80] These investigations strongly indicate that disfranchisement of Negroes occurs to some degree in all of these Mississippi counties except Quitman. In form it ranges from economic or physical reprisals, or threats of such reprisals, through arbitrary application of the literacy and constitutional interpretation requirements.

The latest and most reliable figures available indicate there are at least nine Mississippi counties (including Issaquena, Tallahatchie, Tate,

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and Walthall, mentioned above), where no Negroes are registered, although Negroes constitute a substantial proportion of the population in each of them.[81] In addition there appear to be at least 26 others with substantial Negro populations (including 10 of those already mentioned) where 3 percent or less of the voting-age Negroes are registered.[82]

There are then, about 35 counties in Mississippi where the evidence, or inference, of racial discrimination in the suffrage is strong.

At the time this report was prepared, the Department of Justice had inspected the voting records in Leflore County, and had suits to compel record inspection pending in Bolivar and Forrest.[83] By August 1, 1961, the Justice Department had filed subsection (a) suits in Forrest, Clarke, Walthall, and Jefferson Davis Counties.[84]

NORTH CAROLINA

As its *1959 Report* was being drafted the Commission received the first sworn voting complaint from a Negro citizen of North Carolina. Others followed until a total of 40 had been received from 5 North Carolina counties: Bertie, Greene, Halifax, Northampton, and Franklin. Most were processed through the Commission's North Carolina State Advisory Committee as well as by the Commission.

The Advisory Committee undertook a study of the denial of the right to vote in North Carolina. It procured information from all of the 100 counties and held 10 hearings throughout the State. The Advisory Committee's 1961 report to the Commission denounced what it called the haphazard administration of literacy tests, but said discrimination against potential Negro voters was largely a thing of the past.[85]

Each of North Carolina's 100 counties has its own board of elections, which is under the statutory control of the State board of elections. And on the county level many of the boards act only in an advisory capacity for the individual precinct registrars. The latter wield the real power affecting suffrage. The county board does not inquire into the registration activities of the precinct registrar in the absence of an appeal.

Franklin County

Ten Negroes complained to the Commission of discrimination by the precinct registrar in Franklinton, Franklin County, during April and May 1960. Seven had made two unsuccessful attempts to register.

All of the complainants were required to read designated passages from the United States, or the North Carolina Constitutions. Five alleged denials were for reading deficiencies: "missed words, mispronounced words," and "just didn't read well enough." One complainant said the precinct registrar who refused to register him registered a white applicant without requiring any reading test and another told of an illiterate white woman who was registered. On six occasions Negro applicants alleged that they were rejected because they did not answer questions to the registrar's satisfaction, among them: "What does 'create' mean?" "Who was the Creator?" "Do you know how you were born?" "Are all people born alike?" "Was I born like Queen Elizabeth?" "When God made you and Eisenhower, did He make both of you the same?" Such questions are not sanctioned by North Carolina law. Four other rejections were allegedly predicated upon applicants' purported inability to explain the meaning of "habeas corpus." Yet, one complainant observed a white applicant being registered without being interrogated at all.

Greene County

The four Greene County Negroes who filed complaints were from the same precinct. One had made three unsuccessful attempts to register. He alleged that he was denied registration in 1952 because he mispronounced "democrat," but was subsequently registered in 1960. His wife was denied registration in 1958 because she could not spell a word in the North Carolina Constitution. In 1960, when another registrar was in office, two of the complainants told of extended and fruitless waiting: one observed that one Negro was registered and three rejected during the 4 hours she waited for an opportunity to register.

Halifax and Northampton Counties

Reliable Negro informants said that Halifax and Northampton precinct registrars followed no uniform practice. At times they would and did register some Negro applicants, including some who were not tested according to requirements of State law. On the other hand, from time to time, registration was denied to other Negro applicants, including some ostensibly well qualified. Twelve complaints were filed in Halifax and six in Northampton. Of these, only one complainant has since been registered.

Complaints in Halifax County involved two precincts and covered unsuccessful attempts by Negroes to register from 1955 through 1958. Five of the complainants explained they had been denied registration for alleged writing defects. One of these said he missed some words

because the dictation was so rapid. Four others said their denials were based on alleged defects in completion of the blank form: one applicant did not know the proper identification of the voting precinct; another was refused a second blank form after she discovered she had written her name in the wrong blank space. Four others, including one who made three unsuccessful attempts, indicated no reason at all was given for their rejection.

The one Negro complainant from Northampton County who eventually was registered (in May 1960) was Mrs. Louise Lassiter. In 1956 she failed at registration because she mispronounced three words in reading a constitutional provision. When she again sought to register in 1957, she refused to submit to a reading test, and brought suit in the Federal district court to challenge its validity. Relief was denied and she appealed to the Supreme Court of the United States.[86]

By her refusal to submit to any part of the literacy test, Mrs. Lassiter defined the constitutional question: ". . . whether a State may consistently with the 14th and 17th amendments apply a literacy test to all voters irrespective of race or color." [87] The Supreme Court concluded that, so limited, it was ". . . one fair way of determining whether a person is literate . . . [and] . . . we cannot condemn it on its face as a device unrelated to the desire of North Carolina to raise the standards for people of all races who cast the ballot." [88] The Court conceded, however, that ". . . a literacy test, fair on its face, may be employed to perpetuate that discrimination which the 15th amendment was designed to uproot . . . [but] . . . No such influence is charged here." [89]

Bertie County

In May 1960 seven Negroes filed sworn complaints that registrars in Bertie County denied them the right to register because of their race. One took the matter to the North Carolina Supreme Court, which held that he was entitled to another chance to register: [90]

> . . . Excessive reading and writing may not be required. Writing from dictation is not a requirement. The test may not be administered so as to discriminate between citizens. . . .
>
> We do not intimate or suggest that the registrar of Woodville Township precinct or the Bertie County Board of Elections have in any way acted in bad faith. But it is our opinion that the literacy test as administered by them is unreasonable and beyond the intent of the statute.

Graham County

This county is the only one in the State where no Negroes are registered. The number of voting-age Negroes in the county is, however, small—125, out of a total voting-age population of 3,580.[91]

Hertford County

Hertford was one of the 21 black belt counties studied in depth by the Commission.[92] On the basis of the latest population figures then available, it appeared that only 2.9 percent of the voting-age Negroes in the county were registered in 1958. Since then, however, this figure has risen to 8.8 percent (537 Negroes registered); and the Commission's investigations uncovered no discriminatory practices, intimidation, or fear of reprisal.[93]

As of the time this report was prepared, no litigation, nor any demands for inspection of voting records, had been instituted by the Department of Justice in North Carolina.

SOUTH CAROLINA

The Commission has never received any sworn complaints from South Carolina. Unfortunately, this lack of complaints cannot, any more than in the case of Georgia, be taken as conclusive proof that there is no discrimination in the voting process there.

McCormick County

In its *1959 Report* the Commission stated that in McCormick County, where Negroes comprised 62.6 percent of the total population, there was not a single Negro registered.[94] The first Negro had in fact registered in August 1959, however, and three others registered in early May 1960. Then the U.S. Attorney General announced that the voting records of McCormick were to be inspected, and starting on the day a formal demand for inspection was delivered by FBI agents, 45 more Negroes registered. Some of these Negroes lost their jobs because they had registered, however, and as a consequence only 1 of the 49 registered appears to have voted in the June primary of 1960 and none in the November 1960 election. Fear of reprisals was the principal reason why Negroes had not registered until May 1960, and the same fear has deterred any further registration or voting.

Calhoun and Williamsburg Counties

These two counties, also included in the Commission's black belt study, are similar to McCormick in that in both, fear of reprisals keeps Negroes away from the polls. In 1958 some Negroes were registered in both counties and some still are—about 26 (0.8 percent) in Calhoun and something less than 234 (2.2 percent) in Williamsburg.[95] In Williamsburg, Negro registration appears to be kept down not only by threat of reprisals but by use of a separate room and waiting line for Negroes.

At the time this report was prepared, the Department of Justice had inspected voting records in Clarendon and Hampton Counties, as well as McCormick.[96] No suits had yet been brought in South Carolina to protect the right to vote.

TENNESSEE

The Commission reported in 1959 that there were only two Tennessee counties where there were denials of the right to vote because of race or color.[97] The seven sworn voting complaints received by the Commission from Tennessee have emanated from these two. These are the only counties in the State where Negroes are in a majority. They are side by side in the southwestern part of the State.

Fayette County

In May of 1959 Commission investigators counted 58 Negroes on the voting registration rolls of Fayette County. Shortly thereafter a local drive to encourage Negro registration began and the Department of Justice filed suit to enjoin white primaries in the county.[98] As a result Negro registration eventually reached 1,500, about one-fifth of the Negroes of voting age.

This brought serious economic retaliation. Many Negroes lost their jobs. A list of the "culprits" was circulated. White merchants quit trading with them. Pressure was brought to prevent suppliers in Memphis from selling to them. Their credit was stopped; their loans called; their mortgages foreclosed. They could not buy necessities of life. One white banker was quoted as saying "My secretary's got the names of the 325 who registered. I tell them, anybody on that list, no need coming into this bank. He'll get no crop loans here. Every store has got that list." [99]

In December 1960 a second Department of Justice suit was filed to restrain these retaliatory actions. A number of Negro tenant farmers had been notified that their leases would not be renewed, and eviction actions were pending. The Government alleged that the evictions were in retaliation for registering to vote. It obtained a court order stopping some of the evictions until the case could be fully heard on its merits.[100] On June 14, 1961, President Kennedy authorized the Secretary of Agriculture to send surplus food to the Negro victims of the economic pressure.[101]

There is some evidence that conditions in Fayette have improved, thanks to Government intervention. The economic boycott appears to have been partially lifted. Credit purchasing, however, even to highly qualified borrowers, is practically nonexistent.

Haywood County

Until the spring of 1960 no Negro citizens of Haywood County were registered. In May of 1959 a Negro organization was established to encourage registration, but there was no functioning election commission or registrar of voters. In April of 1960 an election commission declared its books open and Negroes started to register. By September 1960, about 300 of the 7,921 Negroes of voting age were registered.

As in Fayette, this registration brought economic reprisals, which resulted in a suit by the Department of Justice in September 1960, charging that 29 defendants (a subsequent suit brought it to 75), including two banks, had "threatened, intimidated, coerced, and attempted to threaten, intimidate, and coerce Negroes of Haywood County who have registered to vote during the period from May 16, 1960, up to the time of the filing of this complaint." [102] A temporary injunction was issued, pending trial. Meanwhile, Negro registration continues to grow despite efforts to register Negroes as slowly as possible. Current estimates indicate that the Negro registration now stands in excess of 1,000.

3. The Louisiana Story

Since November 10, 1958, the Commission has received 115 sworn voting complaints from Negro citizens of 14 of Louisiana's 64 parishes.[1] All were investigated and staff investigators interviewed most of the complainants at least twice.

From the outset the Commission sought the cooperation of Louisiana officials, but the State's unwillingness to permit the Commission to examine voting and registration records became apparent from the start.[2] The staff nevertheless prepared a comprehensive set of interrogatories to the voting registrars which it submitted to the State attorney general; he advised the registrars not to answer any of them.[3] At this point the Commission decided to hold a hearing. The hearing was first scheduled for July 13, 1959, with 39 Negro witnesses and 18 registrars of voters subpenaed to attend. On July 10 the Attorney General of Louisiana, acting as counsel for the registrars,[4] filed suit to enjoin the hearing. The Federal District Court for the Western District of Louisiana ruled that Commission Rules of Procedure were not lawful and issued the injunction on July 12;[5] this action was sustained by a three-judge court,[6] but reversed by the Supreme Court on June 20, 1960.[7]

The hearing was rescheduled for September 27–28, 1960, and the Attorney General of Louisiana, Jack P. F. Gremillion, was notified of the new time and place on August 24, 1960. He replied 3 weeks later, urging postponement to avoid the "extreme likelihood of interfering" with preparations for the November elections (in which the registrars were involved). The Commission, continuing its efforts at cooperation, decided not to require registrars or other State officials to appear, and only those witnesses who were not represented by Mr. Gremillion testified. Witnesses were heard from 11 Louisiana parishes: Bossier, Caddo, Claiborne, East Carroll, Jackson, Madison, Ouachita, Plaquemines, Red River, St. Helena, and Webster. No witnesses were summoned from the other three parishes from which complaints were received—Bienville, Washington, and De Soto—because of litigation in the first two, and the fact that field investigations showed no current discrimination in De Soto.

On the closing day a number of State officials made pleas to be heard. The Commission immediately assured the attorney general that they

would be heard if he could get them to New Orleans on that day, but he replied that he could not. He expressed the desire to read a statement to the Commission, but declined to testify as a witness, and he failed to indicate when he would be able to produce the other State witnesses. Consequently, the hearing was recessed.

The second session was initially scheduled for March 22, 1961, and later postponed, because of difficulties in securing a quorum, to May 5 and 6. The attorney general was notified, but declined to attend because of prior commitments. He requested a further postponement, but the Commission was unable to comply and so notified him.

The officials who had asked to be heard in September were invited to testify or submit statements, and the same invitation was extended to certain others who were mentioned in testimony at the September session. Each person in the latter category was supplied with a copy of the testimony pertaining to him. Frank Voelker, Chairman of the Louisiana State Sovereignty Commission, and other members of that body had previously indicated an interest in the Commission's undertakings. All were invited to submit statements or appear.

In response to these invitations, sworn statements were received from Attorney General Gremillion and others. These were incorporated in the record. In addition, several persons so invited submitted statements and indicated a desire to testify. Others made no response.

The registrars of each of the parishes represented by witnesses in the September session were subpenaed for the second session. The registrars of Plaquemines, Webster, and Bossier were originally also required to bring certain official records with them, but satisfactory arrangements were made for the staff to inspect and copy these records in the registrars' offices.

In accordance with the Commission's Rules of Procedure, each witness was permitted to have counsel accompany him. Examination was conducted only by Commissioners and designated members of the staff. Each witness was permitted to read a prepared statement if filed 24 hours in advance of the hearing. Each had the right to inspect the record of his testimony and to purchase a transcript at a nominal price.[8]

NEGRO SUFFRAGE BEFORE 1954

To understand the significance of evidence developed at the Louisiana hearing, some history may prove helpful. When Reconstruction ended in Louisiana in 1877, there were substantially more Negroes than whites registered to vote. The elections in 1878 and 1884 were marked by

rioting and violence,[9] and in 1879 Negro members of a police jury in East Carroll Parish were forced to resign at gunpoint.[10] By 1888 the Negro majority had lessened (official figures: colored, 127,923; white, 126,884),[11] and 9 years later the whites were in the majority (55.7 percent—164,088—of the 294,432 registered).[12] The situation then changed radically, and 1 year later on January 1, 1898, there were only 87,240 registered voters in the State of Louisiana: whites 74,133 (85 percent), and 12,902 colored (14.8 percent).[13] In 1898 the State constitution was changed; within 2 years, the Negro proportion of voters declined to 4.1 percent,[14] and from 1910 through 1944, the number of Negroes registered never exceeded 1 percent of those potentially qualified to vote.[15]

The 1898 constitutional convention is interesting in that it represented a closing of ranks by white factions bitterly at odds with each other, but united in the goal of excluding the Negro from voting.[16] It provided the framework for current efforts toward this same goal.[17] Thomas J. Kerman, Esq., a delegate to the convention, discussed its purposes and accomplishments:[18]

> The convention interpreted its mandate from the people to be, to disfranchise as many Negroes and as few whites as possible, without violating the prohibition of the Fifteenth Amendment to the Federal Constitution, and to do this in such a way that elections hereafter could be made perfectly free and fair.
>
> It being conceded that an educational or property test in the alternative was a necessity, many questions touching its character had to be considered and disposed of. In the first place, it had to be fixed sufficiently high to bar the Negro effectively. . . . The educational test embodied in section 3 of art. 197 seems to fulfill these requirements. It is a much higher test than . . . required by any other State in the Union. To comply with it a man must not only be able to read and write, but must have knowledge of the essential facts entitling him to vote, and be able to reckon time and remember dates and places. Careful estimates concur in the conclusion that probably not more than 10 percent of the Negroes of voting age, certainly not more than 20,000 in the entire State, will be able to comply with this test. The alternative property qualification . . . will preserve the franchise to 5,000 or 6,000 illiterate whites and about 1,000 Negroes.
>
> Thorough consideration of the best obtainable statistics showed that the plain alternative test, without modification, would exclude from the electorate a large body of white voters, variously estimated at from 20,000 to 40,000, and which could, perhaps, be safely fixed midway between these two extremes, at 30,000. These white men were in the enjoyment of the franchise, and considered

it theirs by right of birth and manhood. Among them, illiterate but not ignorant, were numbered many good and patriotic citizens, who had contributed much in peace and war to the up-building of our common country. The convention thought their disfranchisement too dear a price to pay, even for the disfranchisement of more than 100,000 Negroes.

The only plan left for the convention to adopt was that of the now famous sec. 5, which maintains in the exercise of the franchise practically every white man entitled to vote at the date of the adoption of the Constitution. By virtue of its provisions no man who was a voter on January 1, 1867, or prior thereto, nor his son, nor his grandson, nor any foreigner naturalized prior to January 1, 1898, provided he has resided in Louisiana five years next preceding his application to register, can be denied the right to vote by reason of his failure to possess the educational or property qualifications prescribed by the Constitution. The worst that its worst enemies can say of this section is that it establishes practically universal white manhood suffrage in Louisiana. The convention interpreted its mandate from the people to do this precise thing, and acted accordingly.

Toward the close of World War II, Negro registration began to increase. By 1948 the number had increased from 1,672 to 28,177, and 6 years later the proportion of the voting-age Negro population registered had risen from 5 to 27 percent.[19] A number of factors appears to have contributed to this increase. One may have been the Supreme Court decisions outlawing the "white primary." [20] Also significant were the many Negro servicemen who returned from their travels and war experiences with a new determination to exercise their rights: [21]

> Coming back to Louisiana, Plaquemines Parish, United States, I began to find the place that I left and called home, making the supreme sacrifice of relatives, property, and self, to defend the principles of our great United States and the Constitution and what they stand for, I became somewhat disgusted, sick, and whatnot, with the condition that existed in Plaquemines Parish, not against any individuals in particular, but against a system that more or less discriminated basically against Negroes. I thought then and there that I should put forth the necessary effort to try to get Negroes to become electors, so they would be heard or could express themselves in community government.

A third important factor may have been the growing Negro literacy rate, which rose from 33 percent in 1898 to 82 percent in 1960.[22]

But this situation was short lived, for starting in 1954 a concerted campaign was organized to reverse the trend. The remainder of this chapter is devoted to the story of this campaign, its successes to date, and its methods.

CONCERTED ACTION

The Commission's study of voting practices in the State of Louisiana consists largely of testimony about discriminatory practices on the part of registrars of voters. The practices of particular registration officials, however, do not alone account for the widespread denial of the right to vote. Nor are their practices always dictated by policies of their own making. It is more accurate to view their conduct in the light of the greatly intensified State effort after the *School Segregation Cases* [23] to fortify segregation. Documentary evidence and testimony received by the Commission in its New Orleans hearing indicates that agencies of the State government, including the legislature, cooperated with organizations such as the citizens' councils in a campaign to minimize registration and voting of Negroes.

The Joint Legislative Committee

In July 1954, 2 months after the Supreme Court's opinion in the *School Segregation Cases,* the Louisiana Legislature established the Joint Legislative Committee "to provide ways and means whereby our existing social order shall be preserved and our institutions and ways of life . . . maintained." [24] This was to be accomplished by a program "to maintain segregation of the races in all phases of our life in accordance with the customs, traditions, and laws of our State," and the committee was empowered to investigate all matters relevant thereto.[25]

Between December 1958 and February 1959, the committee sponsored a series of conferences jointly with the State Board of Registration.[26] A conference was held in each of the congressional districts of Louisiana with such persons as the registrars of voters, district attorneys,[27] sheriffs, police jury presidents, and various private citizens invited to attend. The Attorney General of Louisiana participated in several of the conferences.

The announced purpose was to discuss the "uniform enforcement of Louisiana voter qualification laws," [28] but it is clear that "uniform enforcement" was to be aimed at reducing Negro registration.

A booklet entitled "Voter Qualification Laws in Louisiana," [29] for example, was urged upon the registrars as a guide and was used as the basis for discussions of the registration laws at all of the conferences. This booklet is published by the Association of Citizens Councils of Louisiana and describes itself on the cover as "A Manual of Procedure for Registrars of Voters, Police Juries, Citizen's Councils." It is subtitled: "The Key to Victory in the Segregation Struggle." It is by no means an objective document, but rather is inflammatory in tone [30] and contains misleading statements of the law in several instances.[31]

Some of the statements of participants at the conferences are also indicative of their purpose. Attorney General Gremillion, for instance, was quoted as saying:[32]

> The offices of the registrars have been more or less overlooked in the past, but the question of voting has been emphasized by the Federal Government to the extent that we are forced to fix our attention upon this vital matter at this time.

W. M. Shaw, counsel for the committee, was quoted as follows in his review of the laws requiring identification of applicants:[33]

> The registrar may require that the person have two registered voters of the person's precinct appear to identify him if the registrar is not satisfied with the person's own identification. *This procedure is particularly applicable to Negroes, since it is difficult for most registrars, who are white, to differentiate between persons of the Negro race, determine age, etc.*

Chairman of the committee was W. M. Rainach, whose statements were perhaps even more descriptive of basic purposes:[34]

> The entire emphasis in the integration struggle is shifting to the field of voter qualification enforcement, and the program we are beginning here today will prove the solution to our problems not only in this section of our country, but for the entire United States.
>
> * * *
>
> We used voter qualification laws before, in 1898, to clean up our registration rolls when we faced this same problem, and we are here today laying plans to use them again for the same purpose.

Chairman Rainach concluded the Sixth Congressional District conference with remarks on the historical development of voter qualification law enforcement: [35]

> 3. The fight for school integration in the South has shifted from the courts to the political arena, from legal moves to a fight for the votes of Negro masses who must be fully registered before their full political power can be brought to bear. . . .
>
> 5. During the Reconstruction Period in 1868, Negroes were voted into State and local offices through the power of Negro ballots, and integrated schools were established in Louisiana under a Reconstructed Constitution adopted by the Negro vote. . . .
>
> 7. In 1897, our fore-fathers in Louisiana started a program of voter qualification law enforcement, knowing that such a program would provide the solution to their problems.
>
> 8. Louisiana is now operating under the Constitution of 1921, and the voter qualification laws contained in our present Constitution, which were handed down to it from the Constitution of 1898, are adequate to solve our present problems, if they are uniformly enforced without distinctions as to persons.

The citizens' councils

Closely related to the purposes and activities of the joint legislative committee have been those of the citizens' councils.

The citizens' council movement began in Mississippi in 1954, shortly after the *School Segregation Cases* and spread quickly into State and local associations throughout the South. Many local councils had been organized in Louisiana before a State association, the Association of Citizens Councils of Louisiana (ACCL), was chartered in early 1956.[36]

The first purpose listed in the ACCL charter is, not unexpectedly, very much like the avowed aim of the Joint Legislative Committee: "To protect and preserve by all legal means our historical Southern Social Institutions in all their aspects. . . ." [37] The ACCL has suggested means for accomplishing this:[38]

> For example, it may come to the attention of a Council that the registrar of voters in that Parish is not complying with the law and is registering unqualified persons as voters. This jeopardizes the entire structure of parish government. The Councils in the parish should be informed and should by proper resolutions and delegations call the matter to the attention of the Registrar. If no satisfaction is obtained from the Registrar, the Police Jury and State Board of Registration can be contacted. With sufficient evidence, the Registrar could then be disciplined or removed.

A letter written on ACCL stationery clarifies this suggestion and suggests the relationship between the Joint Legislative Committee and the citizens' councils: [39]

> But the thing that can stop the integration movement dead in its tracks and prevent a new reconstruction is a thorough-going clean-up of our registration rolls. Under the leadership of the Joint Legislative Committee, the State Government is doing its part to do this. The rest must be done by the people, under the leadership of the Citizens' Councils.

The extent of the relationship is emphasized by a comparison of the participants in the two groups. W. M. Rainach was the chairman of the Joint Legislative Committee; he was also a charter member of the ACCL and served on its first board of directors. He later became president of the Citizens Council of America.[40] Counsel for the Joint Legislative Committee was W. M. Shaw; he was also counsel for several local citizens' council groups in court actions resulting from their efforts to purge Negroes from registration lists, and was a charter member of the ACCL.[41] In addition, Messrs. Shaw and Rainach were coauthors of the ACCL booklet, "Voter Qualification Laws in Louisiana," which was so widely cited as authority by the Joint Legislative Committee.

The citizens councils' interest in voting was expressed not merely in pamphlets but in affirmative action to remove Negro voters from the rolls. In September 1956, for instance, the citizens councils conducted a purge of the registration rolls in Bienville Parish.[42] A Federal court found the councils' actions in Bienville Parish to be actions by the State for 14th and 15th amendment purposes: [43]

> The individual defendants and the Citizens Councils contend that the Fourteenth and Fifteenth Amendments are limited to state action, as distinguished from individual private action, and that, therefore, Title VI of the 1960 Civil Rights Act is unconstitutional in its attempted application as to them. . . . We are compelled to hold that the alleged action taken by the individual defendants and Citizens Councils constituted State action within the meaning of that term as held in the decided cases.

Similar purges were widespread in 1956 and 1957.[44]

In the spring of 1959 a citizens' council group in Washington Parish undertook a similar inspection of the registration rolls to challenge "illegally registered" voters, and the registrar brought suit in State court to stop them. The State judge appeared to acknowledge a connection between this activity and those of the Joint Legislative Committee, already discussed: [45]

> Shortly after the first of the year, the Legislature, the Chief Executive, and the Attorney General of Louisiana embarked upon an educational program to bring about *uniform enforcement of voter qualification laws in this State*. . . . This program was extensively reported by the press, and knowledge thereof is so common that this court may well take judicial notice of it.
>
> That such a program was necessary became readily apparent immediately after its commencement. It aroused a great deal of interest among public officials and even ordinary citizens. *It is, no doubt, the causa causans of defendants' search for illegal registrations in Washington Parish.*

(E. R. McElveen, the principal defendant, had attended the Joint Legislative Committee meeting in the Sixth Congressional District.) [46]

The State court held for the council group, clearing the way for full use of the challenge laws to clear the rolls of all who were found improperly registered. However, the United States later brought suit in Federal court under the Civil Rights Act of 1957 to enjoin the purge. The court described the activities of the defendants as follows: [47]

> In the spring of 1959 the Citizens Council, professing a purpose to purge the registration rolls of Washington Parish, Louisiana, of all persons illegally registered, succeeded in disfranching 85% of the Negro voters of the parish and .07% of the white. The United States in this action charges that this profession of high purpose was a fraud designed to deny Negro citizens the right to vote.

The court agreed; it found as a fact that—[48]

> In examining the Washington Parish registration records for the purpose of filing the said Affidavits of Challenge, the individual defendants limited their examination almost exclusively to the registration records of Negro voters while making only token examination of the records of white voters.

Stating that "[a] court need not, and should not, shut its mind to what all others can see and understand," [49] the court ordered restoration to the rolls of those who had been purged.

The Joint Legislative Committee's efforts on behalf of the Louisiana Legislature's "fight to maintain segregation of the races" thus resulted, through the assistance of the Citizens Councils, in what a State court called an "educational program" designed to bring about "uniform enforcement" of voter qualifcation laws. Uniform enforcement was, however, found by a Federal court to be outright discrimination against the Negro voter.

It is significant that the Louisiana Legislature in its 1960 session took further steps to encourage such activities. Among the "segregation law package" passed by the legislature were several laws directed at the registrars. They were subjected to criminal penalties for failure to enforce the registration laws.[50] Another new law placed the burden of court costs on any person who unsuccessfully sued a State official, but persons suing registrars to compel them to enforce the laws strictly were expressly exempted.[51]

DISCRIMINATORY PRACTICES

It is in this climate of statewide resistance that Negroes must attempt to register and that registrars in each parish must perform their duties. Evidence received at the Commission's Louisiana hearing showed that the campaign to disfranchise Negroes has had some success in at least 11 parishes—Bossier, Caddo, Claiborne, East Carroll, Jackson, Madison, Ouachita, Plaquemines, Red River, St. Helena, and Webster. In addition to these, there have been purges in Washington Parish where the Justice Department has been successful in restoring purge victims to the rolls,[52] and in Bienville Parish, where a suit is pending.[53]

The testimony at the Commission's hearing, however, had to do principally with discrimination in initial registration, which poses a much more complex problem. The testimony indicated that each Negro applicant must run an obstacle course when he attempts to register. To understand that obstacle course, some preliminary examination of voter registration laws of Louisiana is necessary. These laws were amended in 1960 to make them even more stringent; some of the major changes are separately discussed below.[54] Most of the testimony, however, concerned the administration of the laws before this change occurred, or of requirements that have not been changed in pertinent respects.

Voting requirements

Until November 1960, applicants for registration in Louisiana had to be 21 years of age and residents of the State for 2 years (now 1 year), of the parish for a year (now 4 months), and of the particular precinct for 3 months.[55] Then and now they must be of "good character" and "understand the duties and the obligations of citizenship under a republican form of government."[56]

The Constitution of Louisiana requires that an applicant, unless illiterate, write out his application form "without assistance or suggestion from any person or any memorandum whatever."[57] A law sets out an application form (known as form LR–1) upon which application for registration is made.[58] The form requires the applicant to put down his exact age in years, months, and days, and his color, sex, address, occupation, and previous place of registration.[59] The constitution also has consistently required that applicants "be able to read any clause in this Constitution, or the Constitution of the United States, and give a reasonable interpretation thereof."[60] Until 1960, however, the law made provision for the registration of illiterate persons, who need not read (though they still had to interpret) the constitution, and who were permitted to dictate the information required by the application form.[61]

Another provision of the constitution states that the applicant "must in all cases be able to establish that he is the identical person whom he represents himself to be when applying for registration."[62] The statute implementing this provision adds: "If the registrar has good reason to believe the he is not the same person, he may require the applicant to produce two credible registered voters of his precinct to make oath to that effect."[63]

Within the framework of these laws, a number of arbitrary and discriminatory practices occur.

Finding the registrar

Witnesses from Plaquemines and East Carroll Parishes testified that they had difficulty getting in touch with the registrars. Only after Negroes filed suit in a Federal court was a permanent office for registration located in Plaquemines Parish. One of the witnesses stated that before suit was filed, finding the registrar "was something like a game of hide and seek. We would go to the Court House and go over to the Clerk of the Court's office. They said they did not know where the registrar was or that he could not be contacted."[64] A witness from East Carroll Parish explained how, after being told by the registrar to go to the next door, he returned to find that the door to the registrar's office had been locked.[65]

In Madison Parish, where no Negroes were registered to vote, a witness explained how he and several other Negroes went to see the registrar of voters in July 1960. Instead of giving them applications the registrar told them to see the sheriff.[66] One of the witnesses made two subsequent attempts to see the registrar, but on both occasions found the office closed.[67]

Slowdowns

Even when they were able to find a registrar, Negroes in some parishes were confronted with other delays. In Ouachita Parish, for example, notices of challenges were sent to over 5,000 Negro voters. To contest the challenges and prevent removal of their names from the registration rolls, these Negroes had to appear before the registrar within 10 days. They went to the courthouse in large numbers and found a line "completely down the corridor, completely down two flights of stairs, onto the lawn." [68] Only a few succeeded in seeing the registrar within the time required by law. The clerks in the registrar's office deliberately wasted time. "Sometimes people would stop and drink a coke or go over to the window and look out, in order to—in my mind, in order to waste a lot of time." [69]

In Plaquemines Parish, Negroes traveled long distances only to be required to wait in line for hours; white persons were waited on as soon as they arrived.[70] Negroes from Webster Parish experienced the same difficulty.[71] In several of the parishes (Webster and Plaquemines), the registrar permitted only one person at a time to make application.[72]

The identification muddle

Rev. John Henry Scott is a lifelong resident of East Carroll Parish, on the Mississippi River in northeast Louisiana, where no Negro in the memory of the living has ever been registered to vote. Reverend Scott is pastor of the church organized by his great-grandfather.[73] Neither he nor other Negroes ever had any difficulty being identified for any purpose other than registering to vote: "We are all very well known. . . . When you walk down the street, everybody knows everybody." [74] Nevertheless, on each of the seven occasions when he presented himself for registration, he was told that he had to secure two registered voters from his precinct to identify him.[75] Since only white people are registered, this proved virtually impossible: "I had a white friend . . . on the police jury at that time, and he told me that it wouldn't be any use because it was strictly made up not to register any Negroes." [76]

Reverend Scott's efforts to secure the right of the suffrage for himself and other Negroes of East Carroll cover more than a decade of disappointment. In 1950 one of their number secured a single white "voucher," but his supporting statement was not accepted.[77] Another received assurance from a white voter, but later was told, "I can't fool with that." [78] An optimistic Negro once told Reverend Scott, "I have some white friends, and we are all Christians." His answer was prophetic: "But Christians and this registration business is different. Nobody's a Christian when it comes down to identifying you." [79]

Francis Joseph Atlas, a 55-year-old farmer, is a member of Reverend Scott's congregation. With the exception of his school years at Tuskegee Institute, he has lived all of his life in East Carroll Parish.[80] His efforts to secure the right to vote began "when the primary case was broken in Texas . . . [giving] Negroes the right to participate in white primaries." [81] On one occasion, when he had correctly filled out his application form, the registrar "told me to get three electors to identify me." [82] But there are no Negro electors and he could get no white persons to do so.[83]

Reverend Scott "noticed the streets where they vote; they were fixed; . . . I noticed the people that vote, the officers of the law respected them and treated them different from the people that didn't vote. . . ." [84]

Miss Katherine Ward has been registrar of voters of adjacent Madison Parish since 1955, when she succeeded her mother who had been registrar for 31 years. She, like the registrar of East Carroll, attended a meeting sponsored by the Joint Legislative Committee in Monroe on January 8, 1959.[85] No Negroes are registered in Madison [86] and the records indicate that none ever have been registered.[87] Miss Ward testified that she has never rejected an applicant and has no cards of rejected applicants.[88] She has never had a Negro present himself for registration, and couldn't forecast her conduct in such a situation.[89] She didn't know if there was any common opinion in the community as to why Negroes don't apply for registration, and didn't "discuss business matters away from the office." [90] She denied that she knew Reverend Neal,[91] a Negro who testified concerning his unsuccessful efforts to register in Madison Parish in July 1960.

However, she did remember an incident in 1954 when eight Negroes sought to register. "It seems to me," she testified, "there was one man who had been appointed as a spokesman for the group and he told my mother they wanted to register. My mother did not know any of them, and told them so, and told them that they would have to bring in two qualified electors to identify them. . . ." [92] Miss Ward explained: "Well, naturally, if you have two qualified electors, they would have to be white, and that's all we have. We don't have any colored people registered." [93]

Miss Ward's mother's resignation as registrar in 1955 coincided with a suit by Negroes of Madison Parish.[94] James Sharp, the attorney for the Negroes, testified that he had called upon Mrs. Ward in 1954: [95]

> Mrs. Ward told me she had been registrar of voters for Madison Parish at that time for 31 years; that there had been no Negroes on her books registered to vote during those 30 years; and that there were no Negroes registered to vote in Tensas, Madison, and East Carroll Parishes. She stated to me that she operated under

orders from the sheriff and other public officials there, and that she had not seen fit at that time to permit any Negroes to register and vote. . . .

Four Negro witnesses testified about their unsuccessful attempts to register in Claiborne Parish. Frederic Lewis first tried to register in 1956 shortly after repeal of the poll tax requirement [96] and was told that he had to be identified by two registered voters of his ward and precinct. He returned, accompanied by a man and a woman who were registered. Mr. Lewis testified that after the man had identified him, the registrar asked the lady "how many times had she been in there, and she said, one time. The registrar said, 'You can't come in here but one time.' So I stepped across the hall to get the tax assessor to identify me, but he said he couldn't do it." [97]

This local refinement of the constitutional provision for identification of applicants—a limitation upon the number of times a voter may "vouch for" an applicant—appears to be flexible. When Lewis tried to register in May 1959, he was accompanied by a man: [98]

> She asked him how many times he had been in there. He said two times. And she says, "Well, you can't come in here but two times." . . . I said, "Well, lady, you told the lady that she couldn't come in but one time. Now you are telling this man that he can't come in but two times." I says, "I didn't think the constitution of this State varied like that." She says, "Well, it is different in the Constitution and the registration rules."

Mr. Lewis had tried to register on other occasions. Once he asked the registrar if she would accept his driver's license as identification, but she refused.[99]

Otho T. Lewis, Frederic's brother, and their cousin, Mrs. Presley, testified about similar experiences.[100] Otho Lewis once took his Army discharge record with him, "and I asked her if that would answer for one person. She said, 'No, it takes two registered voters.'" [101] Mrs. Lannie Linton has been the registrar of voters for Claiborne Parish since September 15, 1940.[102] She was called to testify before the Commission, and answered a few introductory questions. Then, claiming her privilege under the 5th amendment, she refused to testify to all questions about registration on the ground that her testimony might tend to incriminate her.[103]

Identification difficulties also came to light in Ouachita Parish. Rev. Philip Brown, formerly a registered voter in the City of New Orleans, testified about his unsuccessful experiences when he sought to register in Ouachita Parish after satisfying the residence requirement. In July 1960 the registrar refused to accept his driver's license and other identification papers, and told him he would have to bring in two registered voters of his ward and precinct to identify him. In seeking out voters for this purpose, Reverend Brown learned that there was a rule limiting a voter to one "vouch" in any 12-month period. He was unable to find two voters eligible to vouch, and returned with but one supporting witness in August 1960. Upon examination by the registrar, it was disclosed that the witness had vouched for another applicant only 11 months earlier; he was not permitted to vouch for Reverend Brown.[104]

After inquiring as to his period of residence within the parish, however, the registrar told Reverend Brown, "Well, if you will bring in three documents or bills or receipts of letters showing your name and address at this address, then you will be able to register." [105] Armed with three documents, he returned to the registrar's office in September 1960. These documents were (1) a letter from the U.S. Treasury Department dated April 30, 1959, showing a change of address to an address in Ouachita Parish; (2) a charge account book from Sears, Roebuck showing a credit purchase made in the parish on June 23, 1959; and (3) a letter from the Secretary of State of Louisiana dated July 1, 1959, addressed to Reverend Brown in the parish. When he presented them to Mrs. Morin, the deputy registrar, she refused to accept them on the ground that she was not the same person who waited on him before, and she insisted that he obtain two registered voters as witnesses to his identity.[106]

Both Mrs. Lucky, the registrar, and Mrs. Morin had attended a meeting sponsored by the Joint Legislative Committee.[107] They were subpenaed as witnesses for the Commission hearing, but because the Department of Justice had entered Ouachita Parish, they were excused.[108] Mrs. Lucky filed a statement with the Commission, however, explaining that she was under the impression, from Reverend Brown's attitude and statements in her office, that he was attempting to produce a controversy rather than actually attempting to register.[109] Reverend Brown's version, however, finds corroboration in other testimony from Ouachita Parish.[110]

Caddo Parish has also used the "identification" device. Dr. Simpkins, a registered voter of Caddo Parish and leader of a nonpartisan civic organization, has been active in encouraging Negroes to register and vote.[111] He testified concerning the predecessor of the present registrar: [112]

> In other words, any identification that you would carry down, it might not be what she would accept. In some cases she would accept one thing . . . for one person, and turn it down from another person . . . we have had people go down with rent receipts dating back three and four years, Federal tax-withholding statements, bills where they made purchases, bank entries where

they made deposits . . . and withdrawals . . . in a lot of cases [were] turned down. . . .

The current practice in Caddo Parish was described in the testimony of Miss Dorothy Jackson. She and the woman in the registration line ahead of her were prepared to try to satisfy the identification-and-residence requirement with a letter from a reputable local business establishment. As Miss Jackson was about to enter the office, the woman came out and told her that the registrar said he had accepted a similar letter from a prior applicant and couldn't accept more than one. Hence, instead of using her letter, Miss Jackson presented her beautician's licenses for the years 1957 and 1960. She was told the 1957 license was too old and the 1960 license wasn't old enough. She returned the following day with her 1959 license. This seemed satisfactory, and she was given an application card. She listed her occupation as "machine operator," her regular, full-time employment, and the clerk asked why she gave this as her occupation if she was a licensed beautician. Miss Jackson explained she was only a part-time beautician. Miss Jackson testified that her identification did not satisfy the registrar, and she was rejected.[113] Charles Mitchell, the present registrar in Caddo Parish, filed a statement in which he asserted Miss Jackson was permitted to fill out two cards. He said that one, dated July 26, 1960, was rejected because of "one error, one omission, and one statement which appeared to be false." The second, dated March 13, 1961, was rejected because of "six omissions and one statement which appeared to be false." [114] In neither case was the "statement which appeared to be false" identified, nor was the basis on which he determined its falsity.

A little mistake

A young Negro veteran was in the Jackson Parish registrar's office. It was his first effort to register to vote. He completed his application card (form LR–1) and handed it to the registrar. She examined the card, and exclaimed: "No, no, no; I see one mistake." She returned the card for him to examine. He checked it, then double checked it. He could not see anything wrong. He told the registrar he saw no mistake, and returned the card to her. "Oh, yes," she said, "but there is one."

As he got up to leave, he inquired, "Ma'am, would you do one thing for me?"

"What is that?"

"Will you tell me the mistake I made?"

"Oh, sure; you underlined 'Mr.' when you should have circled it."

This is the testimony of Jewell Wade, an unsuccessful applicant for

registration.[115] To be sure, his testimony was contradicted by Mrs. Wilder, the registrar. He had, she said, been rejected for errors in completion of his application form. But she said he had two mistakes, not one. He had misspelled the words "October" and "Democratic." Mrs. Wilder testified he had spelled the first "O-c-t-o-m-b-e-r." She did not explain how he had spelled the other word, and declined the opportunity given her to offer his card as evidence.[116] Mrs. Wilder testified that she rejected registration of applicants for any misspelling at all.[117]

Reproduced below is a facsimile of the LR–1 form now in use.

STOCK FORM LR-1-60 R-2 (Revised 1960) M. L. Bath Co., Ltd., Shreveport, La., Lake Charles, La.

APPLICATION FOR REGISTRATION FORM — Ward No._____

OFFICE OF REGISTRAR OF VOTERS — Prect. No._____

Parish of_____ State of Louisiana — Cert. 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 (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_____. 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 as an elector.

TURN CARD OVER

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.

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._____

CHANGE OF NAME

I am now Mr.–Mrs.–Miss_____ Date of change_____

Nature of change_____

REMARKS

_____

_____

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

Parish of_____, State of Louisiana. Date_____, 19____

Address_____ Color of eyes_____

Mother's first or maiden name_____ Name of employer_____

Property owner_____ Tenant_____ Boarder_____

Several Negro witnesses told of particular difficulties they and others had had in completing these cards correctly. Several registrars also mentioned specific errors and omissions, any one of which would result in rejection. These are discussed below.

Errors in computation of exact age: The Louisiana Constitution, like many others, provides that a voter must be over 21 years of age.[118] It also provides that the age of a registrant must be given in years, months, and days; [119] this a unique requirement.

The computation is made by subtracting the year, month number, and date of applicant's birth from the year, month number, and date of application. Thus, an applicant born on January 10, 1930, who applied on September 15, 1960, would make the following computation:

1960	9	15
−1930	1	10
30	8	5

He would state his age to be 30 years 8 months and 5 days.

But this simple example does not illustrate the complexity often involved in this computation. Consider the situation of an applicant born on September 15, 1930, who applied for registration on January 10, 1960. His computation would read as follows:

1960	1	10
−1930	9	15

To subtract, it is necessary to "borrow" days from the months, and months from the years. Applying the computation rule that every month has 30 days, 30 days would be taken from the 1 month, and 12 months would be borrowed from the 1960 years in the following manner:

1959	12	40
−1930	9	15
29	3	25

His age would be 29 years 3 months and 25 days.

There is disagreement among registrars as to the way in which this requirement is applied: some would exclude, others include, the day on which the application is filed; and there was no unanimity as to whether an error of only 1 day was fatal. All agreed, however, that an "error" (as each would define "error") in the computation of age would require denial of registration.[120]

It was, therefore, significant that a registrar who was called on to give a step-by-step demonstration of the proper way to complete LR–1, erred in her age computation by almost a month. This was Miss Mary Ethel Fox, registrar of voters of Plaquemines Parish and an employee of the police jury of the parish. She testified that she was born on the 29th day of September 1923 and that she was including the present date in her computation: This is the correct computation:

1960	16	36
−1923	9	29
37	7	7

She stated her age as 37 years 8 months and 2 days.[121]

"Errors" where the correct information is supplied: The registrar of Caddo Parish testified that transposition of certain items of information warranted denial of registration, even though all the information required appeared correctly somewhere on the form: for instance, putting the county name in the space asking the State, and the State in the county slot; or similarly transposing day and month.[122] Similarly, the registrar of Red River Parish said the figure "104" written in the blank for the year of an applicant's birth was an "error," even though the correct figure "1904" was written in the next three blanks.[123]

The "life" errors: Most of the Negroes who complained to the Commission and testified at the hearing had lived all their lives in their respective parishes. When asked their length of residence, their normal response was, "all my life." This answer, according to the Caddo Parish registrar, is permissible in the blank for commencement of residence in the State, but it is an "error" in the blanks for commencement of residence in the parish or in the ward and precinct.[124]

Omissions: The failure to fill in every blank on the LR–1, except those pertaining to previous registration, warrants a rejection according to the registrars of Bossier, Caddo, and Plaquemines Parishes.[125] The last step required of an applicant, assuming he has demonstrated his qualifications to the satisfaction of the registrar, is to sign the "permanent registration voting certificate in duplicate." The registrar of Caddo indicated that this last step is an additional trap for the unwary. He said, "A few colored people failed or refused to sign both copies of the precinct register (disqualifying themselves)—No white people did that." [126]

Failure to notify

In some parishes persons who fail to qualify are advised what their errors were; [127] in others, the applicants are not told this.[128] Indeed, in at least one parish it appears that Negro applicants, at least, are not even told when they have failed to qualify. A statutory right of appeal from a registrar's action in denying registration is provided for in Louisiana,[129] but under these circumstances it is not available.

The experiences of Hester Williams and Eugene Williams may serve to illustrate this practice. Both are Negro residents of Bossier Parish, and both live on farms about 35 miles from the parish seat. Each

attempt to register required a 70-mile trip.[130] Hester Williams, a 46-year-old mother of seven children, had made five such attempts before the hearing.[131] Each time she was allowed to complete an LR–1 form, and it was accepted without comment by the registrar. On no occasion did she ever hear anything further.[132] Eugene Williams, 54, is a farmer; he had made seven attempts to register. On each of the first six his experience was the same as that of Mrs. Williams. On the seventh try, he asked if his card was correct. "She said, 'Yes; it's all right.' So she laid it back, and I went on and never did hear from it. So I called her, and she said, 'No; it wasn't right' . . . she never did tell me why." [133]

Test of interpretation

Louisiana law requires that applicants for registration be able to give a reasonable interpretation of any clause of the Louisiana Constitution or of the Constitution of the United States. Administration of this provision varies from parish to parish. That it is ideally suited to discriminatory practices is evident from the following statement by W. M. Shaw at one of the Joint Legislative Committee conferences: [134]

> The Key to the solution of our whole problem lies in interpretation of the constitution—our best test of intelligence.
>
> The applicant must give a reasonable interpretation of the specific clause of the constitution—not a legal interpretation in which the citation of court cases, etc., would be required. The registrar uses his own discretion in determining whether or not the applicant meets the constitutional test.
>
> Constitutional tests are a test of native intelligence and not "book learning." Experience teaches that most of our white people have this native intelligence, while most Negroes do not.

Not all registrars administer the test even though it is expressly required by law. The registrar of Caddo Parish does not give the test because, ". . . the Constitution has become a rather controversial document in many respects, and I feel it is more or less setting up the blockade to persons who might otherwise be eligible to register and vote who could not interpret the Constitution." [135] Neither does Mrs. Bryce, registrar of Bossier Parish: "I didn't think it was necessary." [136]

In parishes where the test is given, there seems to be very little uniformity. A directive of the State Board of Registration says, "applicant shall be able to understand and give a reasonable interpretation of any section of either Constitution when read to him by the Registrar," [137] but the uniform practice has been to require the applicant to read the provision himself. There all uniformity ceases. Most registrars call for oral interpretation, but at least one requires it in writing. In some cases the test is given after the LR–1 form has been completed; in others the applicant cannot even fill out his form until he has taken and passed the test.

Each of the Negro witnesses from Red River Parish had been a registered voter prior to the end of the periodic registration term in 1956. When they attempted to reregister, they completed LR–1 forms and were then given excerpts from the Constitution to interpret.[138] Tom Turner testified: "Then he asked me questions I believe in the Constitution about habeas corpus. I tell him I thought it was speedy trial, you know, been in jail and you want to get a hearing, he asked for speedy trial. He said, well, that wasn't quite it, so I left that time." When Turner returned to try again, he was "put off" without even being given an LR–1 form.[139] Mr. Crawford, Red River's registrar, denied that he rejected Tom Turner on the basis of the constitutional test. He said it was based on "errors" in the LR–1 form: failure to put in his mother's maiden name, and writing "104" instead of "1904" in one of the spaces.[140]

Elmo Williams testified to similar experiences with registrar Crawford. On two occasions he had completed his LR–1 cards, read and interpreted selected constitutional provisions, and had been told "that wasn't it." [141]

> Well, I returned on the next day and went back down there, and he asked me, he said, "Wasn't you in here yesterday?" I told him I was, and he says, "Well, these cards cost about a dime apiece. There is no need in wasting them up." Well, I stood there for a few minutes; I said, "Well, you are not going to let me try?" He said, "These cost about a dime apiece, and there is no use in wasting them up."

Mrs. Mariah Turner had also made two attempts to reregister. She completed her application form and the registrar informed her that it was right. After she had read and interpreted a provision of the Constitution, however, she was rejected on the ground that her application form was not correct.[142]

However, on Saturday, April 29, 1961—1 week before the second session of the Commission hearing—both Mrs. Turner and Williams were permitted to register.[143]

Henry Kimp is a Negro ex-serviceman of Jackson Parish. When he sought to register in July 1960, he was asked to interpret an article entitled "Treason Against the United States." Treason against the United States is defined in the Constitution: it "shall consist only in levying war against them, or, in adhering to their enemies, giving them aid

and comfort." [144] He testified that he defined treason as "abetting and aiding the enemies in the time of war with information that concerns the United States and its Government." He was rejected; the registrar, Mrs. Wilder, said, "I don't think you understand what you read." [145]

Mrs. Wilder testified that she had no training in law or political science, nor had she ever consulted an attorney on the subject of constitutional interpretation—except for one occasion when she had asked her district attorney about the interpretation of treason, and thought his explanation supported her previous understanding.[146] None of the other registrars who administered constitutional interpretation tests seemed especially qualified in law or political science either.[147]

In Claiborne and Webster Parishes oral examinations are administered before the applicant is permitted to complete his LR–1 card. Henry Wafer is a Negro resident of Claiborne Parish who had lived for many years in California and Michigan. He testified that he had voted regularly in both of these States, but has never been registered to vote in Louisiana. When he sought to register in Claiborne Parish, he was "identified" by one white voucher and one Negro voucher. The registrar did not provide him with an LR–1 form, but ". . . asked me to read an article in the Constitution. After reading the article, she asked me to give my interpretation of it." Mr. Wafer felt the registrar was very nice, ". . . because she can say what she did say without bringing about any ill feeling. She said, 'You didn't quite understand it . . .' " [148]

> Vice Chairman STOREY. Did you have any difficulty in reading this particular section of the Constitution?
> Mr. WAFER. Oh, no, sir; I didn't have any difficulty.
> Vice Chairman STOREY. But when she asked you to interpret it, what it meant, you had some difficulty.
> Mr. WAFER. Well, I didn't have any difficulty.
> Vice Chairman STOREY. You thought you understood it?
> Mr. WAFER. I thought I understood it.

Mrs. Clement is the registrar of voters of Webster Parish, a position she has held since September 15, 1940. Late in 1956 or early in 1957 an effort was made to oust her from her job as registrar for alleged laxity in enforcement of voter qualification laws. She mentioned past pressures from unidentified public officials to have certain people put on the registration rolls and counterpressures from other people to limit the registration through stricter enforcement of voter qualification laws. After this threat to her position she enforced the laws more strictly and changed her procedures for dealing with applicants for registration.[149] Prior to 1957 each applicant would get a blank LR–1 when he came in; after he filled it out she would test him on his understanding of some provision

of the Constitution. Since early in 1957 she has administered the constitutional test first, and only if the applicant satisfies her on this is he given an LR–1 form.

Mrs. Clement testified she has made this change because she "just didn't want to keep all the cards." [150]

Asked if it was her uniform practice to require every applicant for registration to interpret a provision of the Constitution, Mrs. Clement replied: "No; not every time. I don't give the constitutional test to all the white people, nor all the Negroes." [151] She testified further: [152]

> Mr. ISBELL. How do you decide who you are going to give it to?
> Mrs. CLEMENT. I don't know.
>
> * * *
>
> Mr. ISBELL. I am interested in finding out why you give the constitutional test to some people and not to other people.
> Mrs. CLEMENT. Well, I just don't because it just consumes so much time, and I was real strict in 1957, right after they did everything but shoot me, and after that—they would come in the office, and if they had been registering for years——
> Mr. ISBELL. In other words, if you know them——
> Mrs. CLEMENT. Yes.
> Mr. ISBELL. You are more likely to dispense with the constitutional test?
> Mrs. CLEMENT. Yes.
> Mr. ISBELL. You say you know a larger proportion of the white people than the colored people——
> Mrs. CLEMENT. Yes.
> Mr. ISBELL. Who come in to register?
> Mrs. CLEMENT. That's right.

Edward Morgan, a Negro registered voter of Webster Parish since 1945, was a witness at the September 1960 session of the Commission's hearing. Testifying about his activities in a local organization which aids and assists Negroes in their efforts to register, he said: [153]

> Those that don't get by, they come back and report to us in our meetings that the lady give them a constitutional paragraph to interpret, and when they read it and interpret, to the best of their knowledge, she tell them that "It is not satisfactory to me." . . . Nobody knows whether it is going to be satisfactory to her.

Morgan appeared again as a witness at the May session of the hearing. By this time he was no longer a registered voter. He testified he had gone to reregister on January 2, 1961. After learning his name and purpose, he said, the registrar handed him a page out of the

Louisiana Constitution to read and interpret. It concerned the power of the legislature to tax. He read it, "and the first word I said—I was told that was wrong, to read it again. So, I read it the second time. . . . I was told again that I was wrong. . . . the third time . . . I was told I was wrong. . . ." [154]

Mrs. Clement heard Morgan's testimony. Asked if she remembered him and the January 2 incident, she testified: "I don't remember even asking any one that, but, of course, I remember only one of those four that testified. . . . As I say, I know so few Negroes in Webster Parish, and I do not remember." [155] Morgan, like every other Negro of Webster Parish denied registration since early 1957, was not given an LR–1 to complete, and there is no written record of either his attempt to register or the reason for his rejection.

Mrs. Clement has gone beyond constitutional provisions in examining applicants. Joe Kirk had been registered in Webster Parish in each period from 1944 to 1957; but four attempts to register since that time have foundered; three on the constitutional interpretation requirement. On his fourth attempt, in July of 1960, he said that he was asked whether he had any illegitimate children; when he replied in the negative, the registrar accused him of lying: [156]

> The first question she asked, did I have any illegitimate children. I said, "Not as I knows of. If I has, I hasn't been accused of."
>
> She says, "You are a damned liar."
>
> Vice Chairman STOREY. Said what?
>
> Mr. KIRK. "You are a damned liar." I just smiled; I could still give the smile. Then she said, "I know you were going to tell a lie at the first place." Then she asked the question, "What were disfranchise mean." I said, "Just like I am now, this is disfranchise from voting."
>
> She said, "That doesn't suit me."
>
> I said, "Well, just like a bus company, any other company, has a franchise—a franchise—is disfranchised, it can't operate." And she said, "Well, study your dictionary. That doesn't suit me." So that is it. . . . That is the last time.

The time of this experience, "July 22 or 26 of 1960," [157] is important. Although speakers at the Joint Legislative Committee meetings had repeatedly urged that parentage of illegitimates was ground for disqualification under existing law, [158] a constitutional amendment explicitly adopting this view had not yet gone into effect. In fact, it did not become operative until December 19, 1960, several months after the incident related by Kirk. [159] Richard Bell, another witness present at the time,

corroborated Kirk's account of the incident. [160] When Mrs. Clement testified, she was questioned concerning her accusation: [161]

> Commissioner RANKIN. Another one said this: You asked him about: "How many illegitimate children do you have?" And he replied: "None." And the answer to that was: "That's a damn lie."
>
> Mrs. CLEMENT. I don't remember that.
>
> Commissioner RANKIN. That is the testimony.
>
> Mrs. CLEMENT. But I could have said it. I could have said it to someone.

Plaquemines Parish has a third way of administering the constitutional law examination. It requires that the interpretation be in writing. Miss Fox, present registrar for Plaquemines Parish, explained that her office was equipped with a set of 25 cards, each carrying 3 different clauses of the Federal or Louisiana Constitution. [162] When an applicant has signed the separate oath required under the new law and completed his LR–1 he must select a card and write his interpretation of the three constitutional clauses. She said that the cards were fanned out before the applicant, and "he is allowed to select 1 of the 25 cards. He doesn't know which one he is selecting." [163]

Miss Fox checks the applicant's interpretation against an official set of answers drawn up by Leander Perez, former district attorney for Plaquemines Parish. To qualify, the applicant's LR–1 must be free of "errors," and he must have satisfactorily interpreted two out of the three consitutional clauses printed upon the test card. [164]

These are official answers drafted by Mr. Perez for a constitutional test card:

> Nor shall any state deprive any person of life, liberty, or property, without due process of law (U.S. Const. 14th Amendment)
>
> No person shall be sentenced or imprisoned, or executed for crime, nor shall his property be taken for public purposes, except after legal proceedings.
>
> Any person may speak, write and publish his sentiments on all subjects, being responsible for the abuse of that liberty (Art. 1, Sec. 3, La. Const.)
>
> Freedom of speech and of the press guaranteed.
>
> No person shall be compelled to give evidence against himself in a criminal case (Art 1, Sec. 11 La. Const.)
>
> No one shall be required to give evidence against himself, nor shall

he be required to testify in any case in which he is being prosecuted. The fact that he does not testify shall not be used against him.

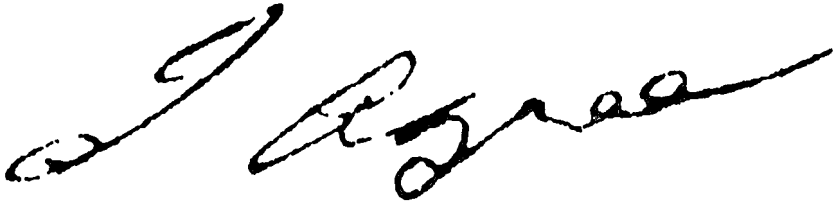
Miss Fox said she administered the registration requirements in the same manner to all people, and that she allowed Negroes as much time as they needed, even though, in some instances, they took what seemed to her an unreasonably long time. While she immediately informs each applicant whether or not he qualified for registration, it is her policy not to disclose her reasons for rejection.[165]

But the Commission's findings cast serious doubt on the fairness of her administration. Her office records show that only 47 Negroes are registered—less than 1 percent of the Negro population over 21, as compared to 95 percent of the white population over 21—and only 7 of these Negroes had been registered since the installation of the constitutional test card system.[166] The constitutional clauses on the cards received by Negroes were much more difficult than those received by white persons.[167] And the manner in which certain cards turned up, or failed to turn up, suggests that the whole system was rigged.

A total of 2,384 test cards were examined in Plaquemines Parish by Commission staff members. The sample, covering 11 out of the 15 precincts, consisted of 33.06 percent of the 7,212 persons registered to vote in the parish. Actually, the 2,384 cards examined represent more than 33.06 percent of those registering under the card system, since many persons registered before the adoption of that system.[168] This examination showed that 2 of the 25 test cards—Nos. 2 and 8—were administered to 86 percent of the registered voters in the sample—all of them whites.[169] None of the seven Negroes registered since the card system was installed had filed either card No. 2 or No. 8, and only 2 of 52 rejected Negro applicants had received either of these cards. Moreover, two of the three questions on card 2 were duplicated on card 8 (clauses concerning freedom of speech and freedom of religion); and a random sample of seven cards No. 2 filed by whites showed almost identical answers.[170]

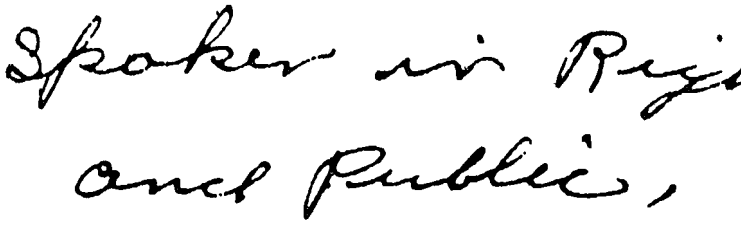
One white applicant, who was accepted, interpreted the statement below from card No. 8 as follows:

> No law shall be passed to curtail or restrain the liberty of speech or of the press (Art. 1, No. 3 La. Const.).



Leander Perez took the stand and tried to account for the phenomenal incidence of cards Nos. 2 and 8. He suggested that a successful applicant for registration, upon leaving the office, might pass on the card number and a satisfactory interpretation to the next applicant who, upon entering, would select the same card by number and complete the blanks with the interpretation.[171] However, Mrs. Elizabeth Taylor, an unsuccessful Negro applicant for registration in Plaquemines Parish, testified that when she made her selection, all she could see was the printed matter on the backs of the test cards; there was nothing wrong with her vision, as she demonstrated at the hearing, but she could not see the numbers because they are printed only on the face of the test cards.[172] Miss Fox, the registrar, had previously testified that an applicant "doesn't know which one he is selecting."[173]

A staff member also testified concerning the kinds of constitutional interpretations accepted from white applicants,[174] of which the following is an extreme example: Any person may speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that liberty (Art. 1, Sec. 3, La. Const.).



Perez explained how the police jury of Plaquemines Parish had authorized implementation of the card system:[175]

> We in Plaquemines adopted the card system . . . back in 1954 at the time we adopted permanent registration in our parish. This was soon after the Supreme Court's "Black Monday" decision. You will note on the back of the card there is a suggested resolution proposed for use by police jurors, calling upon the registrars to use these cards. The police jury in your parish is the appointive authority and the Governor commissions. Our police jury felt it had authority to require our registrar to comply with its request to use the cards.

However, the Attorney General of Louisiana does not agree with Perez as to the power of the police jury to require use of test cards:[176]

We find nothing in the constitution or laws of this State which authorizes or empowers the Police Jury to pass any resolution or adopt any rules or regulations requiring the Registrar of Voters to perform their official duties in any particular or specified manner. The suggested resolution [requiring the use of such a series of cards], if adopted, would have no legal efficacy.

Treatment of white applicants

The foregoing registration practices in various Louisiana parishes amply illustrate the latitude of discretion exercised—in some cases pursuant to State law, in others seemingly in disregard of it—by Louisiana registrars. Both the absurdity of some of the practices and the wide variations between different parishes (and within the same parishes) underline the arbitrary way in which some registrars exercise their functions. In some instances it appeared, at least from the registrars' testimony, that they were arbitrary with both white and Negro applicants.[177] In most cases, however, it appears that arbitrary practices are largely, or even exclusively, directed against Negroes.

The "voucher" requirement, as has been indicated, is particularly restrictive for Negroes in parishes like East Carroll and Madison, where no Negroes registered, and whites are not likely to vouch for Negroes.[178] In Ouachita Parish, Reverend Brown, who was unable to establish his identity to the satisfaction of the registrars, testified that he observed white persons welcomed as new residents of the parish and registered without vouchers.[179] In Claiborne Parish, Frederic Lewis testified he observed that the registrar assisted and registered white persons although they had no vouchers.[180]

There was testimony, too, that white applicants are not subjected to the same delays as Negroes. Mrs. Turner testified that on one occasion the registrar of Red River told her it was too late to take her application, although he was still serving white people; [181] on another occasion, when he told her to come back later because there was no election contest in her ward, he took white people into his office to serve them.[182] And Leo Taylor of Plaquemines testified that white people were served promptly while Negroes had to wait interminably.[183]

Nor are the LR–1 applications filed by white applicants always held up to the same strict standards applied to Negroes. For example, a member of the Commission staff testified that an examination of records in Webster Parish revealed that Negroes had been disqualified for errors similar to those which appeared on the cards of white registrants who were accepted.[184]

Finally, the constitutional interpretation test given to Negroes is not always required of whites. The registrar of Webster Parish testified that she did not always require a constitutional interpretation of people she knew, and that she knew more white people than Negroes.[185] And, as previously noted, it appears that in Plaquemines a standard test is generally given to whites while a variety of tests are required of Negroes.[186]

Mrs. Wilder, registrar for Jackson Parish, seems to have reflected the attitude of some registrars toward administration of the constitutional test: [187]

> Usually, I find that the white people are more intelligent along those lines and I very seldom ask them; but some of the colored people—I can determine by the way they fill out their card that they are not as intelligent in those repects.

Intimidation

In a few parishes, there was evidence of intimidation of would-be Negro voters.

Negroes from St. Helena Parish testified that in 1951 a Negro was sent around to warn them that there would be bloodshed if they went to the polls on the following day.[188] One of the Negroes testified that while he was standing in line waiting to vote in 1952, a white man showed a gun and said, "Negroes are not going to vote in St. Helena Parish." The white man told him to leave.[189] An FBI investigation remedied the threats, however, and Negroes managed to register.[190]

As mentioned above, Negroes who went to register in Madison Parish in July 1960 were referred to the sheriff [191]—a not-too-subtle form of intimidation.

Shortly after Joseph Atlas, a Negro farmer from East Carroll Parish, testified before the Commission in September 1960, economic reprisals were levied against him. Atlas found he could not get his cotton ginned or his soybeans marketed, or fuel oil for his home. As indicated in chapter 5, the Justice Department, acting under the Civil Rights Act of 1957, filed a suit against the firms and individuals involved. The case was settled and Atlas has been able to resume his business.[192]

A witness from East Carroll Parish, where no Negroes are registered to vote although they outnumber whites, testified that several years ago when Negroes planned a meeting with a representative of the NAACP about registration, the sheriff picked up the witness and questioned him about the purpose of the meeting. The sheriff warned him to tell the representative not to say anything about voting. After the meeting was over, the sheriff again picked up the witness and questioned him about what had taken place at the meeting.[193]

Segregated voting machines

In St. Helena Parish, the brunt of the testimony regarding discrimination that was received by the Commission had to do with the racially

segregated use, in that parish, of voting machines.[194] This practice, which would appear to be a denial of equal protection of the laws (as a distinction on racial grounds without rational justification),[195] has led sometimes to delay in the voting process for Negroes.[196] It apparently also provides a way of checking on the way the Negroes actually vote in any election. At least until January 1961, however, Negroes had no difficulty in registering in St. Helena, and at the time of the September 1960 hearing, 57 percent of the parish's voting-age Negroes were registered.[197] St. Helena is a periodic registration parish. The voter rolls were expunged at the end of 1960, and all would-be voters had to register anew.[198]

Evidence received in the May 1961 session of the hearing indicated a substantial change in the picture in St. Helena Parish, after the new registration period began. Quitman Crouch, who had become registrar of voters in June 1959, testified that he took office after "the former registrar of voters was forced to more or less resign due to his doctor's advice, and the White Citizens' Council was 'putting pressure on him to challenge the colored voters.' " [199] Crouch indicated that he himself had been under such pressure from the citizens' councils.[200] He testified that two changes had occurred in the registration process. First, under a new State law, illiterates could no longer register.[201] And second, Crouch commenced to apply the constitutional interpretation test, which the previous registrar had not used.[202] There was some conflict of testimony as to whether he applied the test uniformly to whites and Negroes,[203] but it was clear that only a small proportion of formerly registered Negroes had successfully reregistered: Crouch testified that some 1,400 whites had successfully registered, and about 100 had failed in their attempt to register [204] (previous white registration was 2,400); [205] but that only about 100 Negroes had successfully registered, and about 56 or 57 had failed to qualify [206] (previous Negro registration was around 1,200).[207]

LEGISLATIVE DISCRIMINATION

The Louisiana Legislature has contributed to discrimination against the Negro voter not only through the activities of the Joint Legislative Committee, already discussed,[208] but through a series of measures widely known as the "segregation law package," passed by the legislature in its regular 1960 session.

Part of the so-called "package" was an amendment to the Louisiana Constitution, approved by the voters in November 1960, which made

substantial changes in Louisiana's voter qualification laws.[209] Before amendment the Louisiana Constitution required that an applicant for registration be of "good character," but Louisiana law had not defined that phrase. The amendment now defines it in part by specifying certain conduct as showing "bad character." Conviction for misdemeanors (other than for traffic and game law violations), participation in a common law marriage, and parentage of illegitimate children are declared to show "bad character" and thus constitute disqualifications from voting.[210]

Disqualification based on conviction of misdemeanors differs only in degree from the very common basis for disqualification used in other States—conviction of a felony. Taken by itself the new law, applying as it does to all citizens alike, does not appear invalid. Contemporaneously with the constitutional amendment, however, the Louisiana Legislature passed a number of laws defining some new misdemeanors and redefining others. These laws affect voting indirectly in that those who are convicted thereunder lose their right to vote by reason of the amendment. That these laws are aimed at Negroes is apparent from their content and from their widespread characterization in Louisiana as "segregation laws."

One of the new criminal statutes, Act No. 69, redefines disturbing the peace to include refusal to leave the premises when ordered to do so by the owner or employee of any "hotel, motel, store, restaurant, lunch counter, cafeteria, sandwich shop, motion picture theater, drive-in, beauty parlor, swimming pool area, or any sports or recreational area or place, or any other place of business engaged in selling or serving members of the public. . . ." [211] The penalty for conviction may be sufficient to label the violator as having "bad character" within the meaning of the amendment to the voter qualification laws. In other words, participation in a sit-in demonstration may bar a person from registering to vote. Similar in nature are Act No. 77, which redefines "criminal mischief";[212] Act No. 78, which makes it a misdemeanor to enter and remain upon premises after being forbidden to do so;[213] Act No. 79, making it a misdemeanor to aid and abet others to enter and remain on premises when forbidden to do so;[214] and Act No. 80, which makes it a crime to obstruct public passages.[215] Convictions under these misdemeanor statutes may also entail disfranchisement.

The validity of common law marriage, recognized in Louisiana from earliest times, ended abruptly in 1960 when the Louisiana Legislature made it a felony.[216] Another law made it a misdemeanor to have two or more illegitimate children, both mother and father being made punishable.[217] These new laws do not directly add to voter disqualifications for, as indicated above, the new constitutional amendment provided that participation in common law marriage and the parentage of illegitimate children, even without a criminal conviction therefor, are

evidence of "bad character" and hence themselves entail disqualification. Still, the criminal penalties may well be a deterrent to a person's attempting to register lest he expose himself to prosecution. While the criminal sanction of these statutes cannot apply ex post facto, the amendment's marriage and illegitimacy provisions have a 5-year retroactive effect in disqualifying voters.

Legislation directed against common law marriage and the begetting of illegitimate children would appear to affect more Negroes than whites in Louisiana; laws which deny the franchise on these bases should have a similar result. This may be illustrated by Act No. 251, part of the same package, which denied welfare assistance to any child living with a mother who, after receipt of a welfare check, had an illegitimate child.[218] This law (which has been ruled inconsistent with Federal grant-in-aid legislation)[219] had the effect of disqualifying 23,000 children from welfare assistance rolls—an estimated 85 to 90 percent of them Negroes.[220]

The constitutional amendment goes beyond "character" disqualifications. Perhaps its most far-reaching change (the only one that led to a floor fight in the Louisiana Legislature) disqualifies illiterates, except those already registered.[221] (Under previous law, illiterates could register under special provisions permitting them to dictate their applications to the registrar.)[222] Official registration statistics show that in October 1960, before passage of the amendment, there were 25,498 illiterate whites and 16,743 illiterate Negroes registered to vote in Louisiana.[223]

The amendment also requires any future applicant for registration to demonstrate that he is "well disposed to the good order and happiness of the State of Louisiana by executing an affidavit affirming that he will faithfully and fully abide by all of the laws of the State of Louisiana." [224] The affidavit, which is in the form of a prospective oath, may well deter persons who have taken any action to oppose segregation. Is the oath violated by one who files a suit attacking the constitutionality of a Louisiana law? One of the witnesses in the Louisiana hearing testified that because he was a plaintiff in a school desegregation suit in St. Helena Parish, his attorney had been concerned that if he registered he might expose himself to a perjury prosecution for signing the oath.[225]

Finally, while the amendment has made substantial changes in the voter qualification laws in Louisiana, it has also carefully preserved a large measure of discretion in the registrars of voters, for the acts denoting bad character "shall not be deemed exclusive . . . but said bad character may be established by any competent evidence." [226] This serves to point the way to—if it does not invite—further abuses of discretion on the part of registrars.

SUMMARY

There are 64 parishes in Louisiana. The Commission received sworn testimony regarding discrimination from witnesses from the following parishes: Bossier, Caddo, Claiborne, East Carroll, Jackson, Madison, Ouachita, Plaquemines, Red River, St. Helena, and Webster. Outside of these 11 parishes there are 4 others where, by the criteria used in chapter 2 above, there are indications of discrimination. In Bienville Parish, only 26 out of a Negro voting-age population of 4,077 (0.6 percent) were registered for the November 1960 election.[227] (The Department of Justice has filed suit regarding a purge and discriminatory registration practices there.) [228] In Tensas and West Feliciana Parishes, Negroes constitute a majority of the population, yet none are registered in either parish.[229] In East Feliciana, also, Negroes are in the majority, yet only 82 of the 6,081 of voting age (1.3 percent) were registered in October 1960.[230]

Among the 11 parishes involved in the Commission's hearing, also, there are additional indications of discrimination. The Department of Justice has filed suits to restrain discriminatory practices in East Carroll and Ouachita Parishes.[231] In East Carroll, Madison, and Tensas, Negroes constitute a majority of the voting-age population, but not a single Negro is registered to vote.[232] In Claiborne, Red River, Plaquemines, and Webster, fewer then 3 percent of the voting-age Negroes are registered.[233]

Evidence associating these 11 Louisiana parishes with racial discrimination in the suffrage does not, however, rest upon inference from statistics or the institution of litigation. The sworn testimony and documentary evidence of the Commission's Louisiana hearing are matters of public record.

Negroes in most of these parishes must attempt to register and vote in the face of serious and sometimes insurmountable obstacles. Chief among these is the administration of Louisiana voter qualification laws, which leave registrars a wide latitude of discretion. There is no uniformity in Louisiana registration procedure—each registrar who testified described his own system for administering the same laws. Some registrars have built a fortress against Negro registration with such procedural impediments as interpretation of the Constitution, identification, calculation of age, and filling in the application blanks. Apart from obstacles formed by the qualification laws and their administration, Negroes in some parishes also run into other discouraging devices such as closed doors, long lines, slowdowns, insults, and preferential treatment of white persons.

Private associations of white persons, the citizens' councils, constitute another serious obstacle to Negroes wishing to vote in some of these

parishes. The citizens' councils have on several occasions openly purged Negro registrants from the rolls. Admitting that their purpose is to preserve segregation and the "Southern way of life," the citizens' councils have made a major effort to restrict Negro suffrage in Louisiana.

The State legislature of Louisiana has itself done much to encourage such efforts through such agencies as the Joint Legislative Committee. Worse still, the legislature has enacted a series of laws—(the "segregation law package")—whose design seems clear: to put still further obstacles in the way of Negro voting, as part of a general plan of keeping Negro citizens in an inferior status. Many Negro citizens of Louisiana are thus denied the franchise in violation of the 15th amendment.

4. Federal Legislation

On March 30, 1870, the 15th amendment was officially declared in effect. It provides:

> The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Shortly thereafter Congress passed a law embodying that amendment's command: [1]

> All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding.

While the Supreme Court has long since struck down much Reconstruction legislation as unconstitutional, this provision survives as section 1971(a) of title 42 of the United States Code, a cornerstone of Federal legislation to protect the right to vote.

But this section merely declared a right. It provided no legal remedy. And other relevant Reconstruction legislation has proved difficult to apply, or depends on private initiative. Until the passage of the Civil Rights Act of 1957, therefore, the Federal Government could do little to combat discriminatory denials of the right to vote. The 1957 act, and its successor act in 1960, opened the way to more direct and effective Federal action to protect the fundamental right of participation in government.

For 70 years, the Federal Government relied almost solely on two sections of the U.S. Criminal Code to prevent discrimination in voting. Both were Reconstruction measures.

Section 241 of the U.S. Criminal Code penalizes conspiracies to "injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right . . . secured . . . by the Constitution or laws of the United States. . . . " [2] This provision applies to actions by either State officials or private persons that interfere with voting in Federal elections,[3] and apparently to discrimination by State officials in State and local elections as well.[4] The other criminal provision, now section 242 of the United States Code, prohibits action "under color of law"—i.e., by State officials or persons acting in concert with them which interferes with "rights . . . secured or protected by the Constitution or laws of the United States," including the right not to be discriminated against on grounds of race or color.[5]

Section 241 was involved in the 1884 case of *Ex parte Yarbrough*,[6] where the Supreme Court declared that the right to vote in Federal elections arose from the Federal Constitution, and was therefore subject to protection by Federal legislation. This was true, said the Court, despite the fact that State laws prescribe the qualifications of electors. Both sections were involved in *United States* v. *Classic*,[7] in 1941, where the Supreme Court first held that the guarantees of the Constitution cover primary as well as general elections.

In 1939 Congress enacted, as part of the Hatch Act, another criminal provision, protecting the right to vote: This provision sets penalties for whoever intimidates, threatens, coerces, or attempts to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote.[8] This provision [new section 594 of the Criminal Code] is clearly broad enough to include discrimination on grounds of race, but by its terms is applicable only to Federal elections. It does not appear to have been used.[9]

Before 1957, in addition to these criminal remedies, three provisions of Federal law laid a basis for civil suits for injunction or damages regarding discriminatory denials of the right to vote. One (now sec. 1971(a) of title 42), quoted above,[10] condemned racial discrimination in both State and Federal elections. While this did not in itself provide for civil actions, two other sections did—sections 1983 and 1985 of title 42 of the United States Code.[11] Section 1983 (much like sec. 242 of the Criminal Code) [12] allows suits against persons acting "under color of any statute, ordinance, regulation, custom or usage," to deprive citizens of rights secured by the Constitution and laws of the United States. The injured party can sue for injunctive relief or damages. This section, together with section 1971(a), which declared the right to be free of discrimination, was involved in a number of landmark cases—among others, *Nixon* v. *Herndon*,[13] *Smith* v. *Allwright*,[14] and *Rice* v. *Elmore*,[15] which defined the right to be free of racial discrimination in primary, as well as general elections.[16] The other pertinent provision of the Federal statutes, section 1985, authorizes actions for damages (but not injunctions) against private persons (as well as those acting under color of law) who conspire to prevent another from voting in a Federal election. Section 1985, which, unlike section 1983, does not apply to State elections,[17] has been little used.

These provisions set the framework for a series of important cases expanding and defining the Federal right to vote—but they were weak. Most of these cases were civil, not criminal. The Federal Government was empowered only to bring criminal cases, and the criminal statutes were unwieldy and difficult to apply.[18] Civil cases, with their flexible remedies and relative ease of proof,[19] could be brought only by private persons, who are not always able to bear the expense and difficulty involved in long and complicated litigation.

THE CIVIL RIGHTS ACT OF 1957

By the Civil Rights Act of 1957, Congress wrought a major change. It authorized the Federal Government to bring civil actions for injunctive relief where discrimination denied or threatened the right to vote. This was done by adding a new subsection (c) to section 1971 (quoted above),[20] giving the Attorney General power to institute civil suits when the rights declared in that section were in jeopardy. The 1957 act added another provision, subsection (b) to the statute, forbidding intimidation, threats, and coercion for the purpose of interfering with the right to vote in Federal elections.[21] Subsection (b) is similar to the criminal provision of the Hatch Act,[22] except that it explicitly mentions primary, as well as general elections, and provides a basis for civil suits by both private persons [23] and the Attorney General to seek civil relief.

Other provisions of the 1957 act gave the Federal district courts jurisdiction of such civil proceedings without a requirement that State administrative or other remedies first be exhausted; [24] provided for contempt proceedings in the event of disobedience of court orders under the section; [25] and, by authorizing the appointment of an additional Assistant Attorney General, led to raising the Department of Justice's Civil Rights Section to the status of a full division.[26] The 1957 act also created this Commission.

Two years after the passage of the 1957 Civil Rights Act, when this Commission issued its first report in September of 1959, the results of the act in the field of voting seemed disappointing. The Commission noted that discriminatory denials of the vote were serious and widespread.[27] The Civil Rights Division had instituted only three actions under the new section 1971(c), and none had yet been successful.[28] In one case, because the registrars against whom the suit was brought had previously resigned from office, a court had held that there was

no one the Federal Government could sue.[29] In another case the district court had held the 1957 act unconstitutional, and the Supreme Court had not yet settled this question.[30]

As a result the Commission made several recommendations for strengthening the Federal laws intended to deal with discrimination in the electoral process: that Federal law should place an affirmative duty on registrars to perform their duties; [31] that a Federal law require that State registration and voting records be preserved for a period of 5 years and that these records be subject to public inspection [32]—this recommendation was based on the Commission's finding that "lack of uniform provision for the preservation and public inspection of all records pertaining to registration and voting hampers and impedes investigation of alleged denials of the right to vote. . . ."; [33] and that provisions be made for the appointment of Federal officers to replace State and local registration officials when the latter were shown to be acting in a discriminatory fashion.[34]

The Civil Rights Act of 1960 [35] reflected in part all three of these recommendations as well as the Commission's findings which supported them.

THE CIVIL RIGHTS ACT OF 1960

The 1960 act took care of the problem of resigning registrars which had hampered the application of the 1957 act.[36] This was done not by imposing an affirmative duty on the registrars, as the Commission had recommended, but by amending the 1957 law to provide that in suits brought under section 1971 (a) and (c), "the act or practice shall also be deemed that of the State and the State may be joined as a party defendant and, if, prior to the institution of such proceeding, such official has resigned or has been relieved of his office and no successor has assumed such office, the proceeding may be instituted against the State." [37]

Another provision of the 1960 act, title III, declared voting records public and required their preservation for a period of 22 months following any general or special election.[38] (The Commission had recommended a 5-year preservation period.)[39] The most significant feature of this "records-demand" law is that the Attorney General may secure such records upon request for "inspection, reproduction and copying. . . ." Unlike ordinary judicial discovery procedures, title III gives the Attorney General access to records before a suit has been filed. Thus it may help him to decide which cases warrant prosecution, and also to gather evidence for suits that are ultimately filed.

The most significant provision of the 1960 act, however, appears to lie in title VI, providing for Federal voting referees.[40] Like the Commission's registrar proposal, the voting referee provision of the 1960 act was designed to relieve all citizens in the area affected from discriminatory denials of the right to vote. To this end, both of the remedies called for temporary replacement of local registration officials by Federal officers whose duty it would be to place registration and voting upon a nondiscriminatory basis in the area where such discrimination had been common practice. The Commission recommended that such officers be appointed by the executive; the Administration preferred a judicial rather than an administrative approach. The latter view prevailed.

Title VI is a significant legislative breakthrough, but it is a long way from providing equal access to the ballot. The machinery for appointing a Federal referee is formidable. It consists of four steps:

First, the Government has to file a suit under section 1971 (a) and (c) and obtain a court finding that a "person has been deprived on account of race or color" of the right to vote.

Second, the court must find that "such deprivation was or is pursuant to a pattern or practice."

Third, for at least a year after such a finding, any person in the area of the race found to be discriminated against may apply for an order declaring him qualified to vote. To get such an order he must prove: "(1) he is qualified under State law to vote, and (2) he has since such finding by the court been (*a*) deprived of or denied under color of law the opportunity to register to vote or otherwise to qualify to vote, or (*b*) found not qualified to vote by any person acting under color of law."

Fourth, the court may hear the applicants itself, or it may, at its discretion, appoint referees from among qualified voters in the district to rule on the applications. Such referees have "all the powers conferred upon a master by rule 53(c) of the Federal Rules of Civil Procedure." [41]

At the hearing (which must be held within 10 days of application) the referee or the court accepts the applicant's statement under oath as to age, residence, and prior efforts to register. If State law requires a literacy test, the referee or court administers it. The referee, if one is appointed, then reports his determination to the court and the court requires the U.S. Attorney General to send a copy of his report to the State attorney general and any other party to the suit. Since the referee (or the court, if no referee has been appointed) has been in effect applying the State's voter qualification laws, this allows the State the opportunity to show that the applicant is in fact not qualified.

If the State does file an exception to the order, it must support its objection with public records or sworn documents, or memoranda of law. This provision militates against willful delay. The exceptions

may be determined by the court, or "if the due and speedy administration of justice requires, they may be referred to the voting referee to determine in accordance with procedure prescribed by the court." After the issues thus raised have been resolved (or 10 days after the State was notified of the referee's report, if no exceptions were filed), the court issues an order declaring, if appropriate, that certain named persons are qualified and entitled to vote. This order is transmitted to "the appropriate election officers," who are thus drawn within the court's power to punish for contempt if they disregard the order. Also, "the court, or at its discretion the voting referee, shall issue to each applicant so declared qualified a certificate identifying the holder thereof as a person so qualified."

Title VI also allows for provisional voting where applications for orders are not determined by election day, but if an application is filed less than 20 days before an election, the court has discretion to grant or deny provisional voting.

Title VI, then, does not become a weapon against discriminatory denials of the vote until a suit filed in the "affected area" has resulted in a finding that such discrimination has actually occurred, and a further finding that such discrimination "was or is pursuant to a pattern or practice." After a finding of a pattern or practice has been entered, the court may itself receive applications for orders to qualify voters or it may appoint a referee to do so. The court also retains, however, the discretion to employ whatever additional remedy lies within its power as a court of equity. "This subsection shall in no way be construed as a limitation upon the existing powers of the court."

These are the principal tools now available to the Federal Government in protecting the right to vote against discrimination on grounds of race: Section 1971(a), prohibiting discrimination in all elections; 1971(b), prohibiting threats, intimidation, and coercion in connection with Federal elections; 1971(c), authorizing suits by the United States in connection with (a) or (b), and providing as well the voting referee machinery; and title III of the 1960 act, requiring the preservation of voting records and allowing the Attorney General to inspect them. The next chapter will examine how these provisions have so far been applied.

5. Federal Litigation

> Plaintiff, the United States of America, has an interest and obligation broader than that of any other individual litigant, which should be taken into account in giving effect to the broad remedial purposes of the Civil Rights Act of 1957.[1]

In the fall of 1959, when this Commission submitted its first report, litigation instituted by the Federal Government under the Civil Rights Act of 1957 was in a discouraging posture. Three cases had been filed and two had been decided, both unfavorably. The Federal District Court for the Middle District of Georgia had held the act unconstitutional in the *Raines* case,[2] and the Federal District Court for the Middle District of Alabama had dismissed a case [3] because the registrars who had committed the alleged discrimination had resigned. The court held that the State of Alabama could not be added as the defendant. The Commission could only note that the provisions of the act had not been fully tested.

In the succeeding 2-year period, Federal litigation to protect the right to vote has been more decisive. Doubts as to various constitutional issues have been resolved in favor of the 1957 act; litigation under the act has been successful in eliminating some discrimination and discouraging economic reprisals against those exercising their voting rights; and portions of the 1960 Civil Rights Act have been effectively utilized.

Passage of the latter was an event of major importance. As indicated in the preceding chapter,[4] its voting referee provision permits the appointment of a Federal voting referee, after a court has found a "pattern or practice" of racial discrimination, to secure the registration of all qualified persons within the group and area affected. It also allows the State to be made a defendant—particularly useful in cases where the registrar resigns. And title III of the new act further assists enforcement of voting rights by requiring registration records to be preserved for at least 22 months and to be made available to the Attorney General upon request for inspection, reproduction, and copying.

Cases brought by the Civil Rights Division during the 2 years since the Commission's last report fall into three categories: (1) suits filed under subsection (a) and (c) of 42 U.S.C. section 1971,[5] to enjoin conduct

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which deprives persons of the right to vote because of race or color. (This category includes procedures for the appointment of Federal voting referees, pursuant to title VI of the 1960 act.)[6] (2) Suits filed under subsection (b) of 42 U.S.C. 1971 to enjoin threats, intimidation, and coercion of persons exercising their right to vote in elections of Federal officers.[7] (3) Suits filed pursuant to section 305 of the 1960 act to enforce demands of the Attorney General for Federal election records.[8]

THE COURTS DISAGREE

Soon after the first suits were filed under the Civil Rights Act of 1957, a sharp difference of opinion arose between Federal district courts on whether the 15th amendment authorized the act.

The first suit was *United States* v. *Raines,* filed on September 4, 1958, in the U.S. District Court for the Middle District of Georgia.[9] Seven months after it was brought, Chief Judge Davis dismissed the suit saying that the 1957 act was not appropriate legislation to enforce the 15th amendment.[10] He concluded that Congress had acted beyond its jurisdiction when it authorized the Attorney General to institute a civil action for preventive relief when "*any person* has engaged or there are reasonable grounds to believe that *any person* is about to engage in any act or practice which would deprive any other person of any right or privilege secured by subsections (a) or (b) [of this section]." [11]

Judge Davis ruled that the act's language applied to private citizens, "and is not limited to State action." [12] Because the 15th amendment does not empower Congress to control the actions of private citizens, the act, he reasoned, must be unconstitutional. Judge Davis dismissed the Government's contention that State officials could not raise the question of the act's application to private persons. He said, ". . . it is not for this court to decide whether this particular fish is properly within the net, but whether the net is so large as to catch many fish not properly within it." [13]

From April 1959, when the *Raines* case was dismissed, until the U.S. Supreme Court reversed the decision in February 1960, the constitutionality of the 1957 act was in doubt. A hopeful sign came in the case of *United States* v. *McElveen,*[14] the third suit filed under the 1957 act.[15] The defendants in this case were the registrar of voters for Washington Parish, La., and members of the Citizens' Council of Washington Parish.

Like the registrars in *Raines,* the defendants in *McElveen* moved to dismiss the complaint on the ground that the act of 1957 was unconstitutional in scope, covering private individuals as well as public officials and persons acting under color of law. On October 7, 1959, Judge J. Skelly Wright denied the motion to dismiss and upheld the constitutionality of the statute. At the outset of his opinion, he stated: [16]

> The defendants' contention is so obviously without merit that this court would merely deny the motion to dismiss without more were it not for the fact that a District Court has upheld a similar contention and declared Section 1971(c) unconstitutional. In so doing, that Court ignored the most elementary principles of statutory construction, as repeatedly announced by the Supreme Court, and relied on an old case interpreting a criminal statute.

Construing section 1971 (a), (b), and (c) together, Judge Wright had no difficulty finding a congressional intention to limit the statute to the confines of the 15th amendment: [17]

> No court is authorized to assume that Congress, in enacting this legislation, was ignorant of the uniform jurisprudence of the Supreme Court on the subject. In fact, it is a cardinal rule of statutory construction that such jurisprudence may serve as a guide to interpretation.

Finally, Judge Wright noted that the defendants in the *McElveen* case were admittedly acting under color of law and consequently were not proper parties to raise a question of the act's application to strictly private actions.[18]

The reasoning of *McElveen* prevailed. In February of 1960, when the *Raines* case reached the Supreme Court, the Court sustained the constitutionality of the 1957 act: [19]

> The District Court seems to us to have recognized that the complaint clearly charged a violation of the Fifteenth Amendment and of the statute, and that the statute, if applicable only to this class of cases, would unquestionably be valid legislation under that amendment. We think that under the rules we have stated, that court should then have gone no further and should have upheld the Act as applied in the present action, and that its dismissal of the complaint was error.

The second suit brought under the 1957 act was *United States* v. *State of Alabama,*[20] where the defendant-registrars of Macon County, Ala., charged with racial discrimination, had resigned their office before suit was filed. The United States amended its original complaint to join the State of Alabama as a defendant. The registrars and the State both

challenged the right of the United States to bring suit against them, and on March 6, 1959, Judge Johnson of the U.S. District Court for the Middle District of Alabama dismissed the suit.[21] He said that the individual defendants, having resigned their office as registrars of Macon County, could not under Alabama law be sued as registrars. He also held that the board of registrars itself was not a suable entity. As for the attempt to add the State of Alabama as a defendant, the court concluded that the State was not a "person" within the intendment of the act: [22]

> A reading of the legislative history of this Act impresses this court with the fact that if it had then been mentioned that this Act authorized the United States to sue a State for preventive relief, the Act would not yet be passed.

The district court's decision was affirmed by the Court of Appeals for the Fifth Circuit.[23] The Supreme Court heard argument on the case on May 2, 1960. Four days later the Civil Rights Act of 1960 became law. In view of its provision expressly authorizing the Attorney General to make the State a defendant, the Supreme Court vacated the judgments of the court of appeals and the district court and remanded the case with instructions to reinstate the State of Alabama as a party defendant.[24]

While the *Raines* and *Alabama* cases awaited disposition on appeal, the *McElveen* case, involving Washington Parish, La., came to a final determination by the Federal district court. Louisiana registration laws provided that any two registered voters may officially challenge another voter's registration, and the law requires the registrar upon request to issue a citation. It then becomes the duty of the person challenged to prove the correctness of his registration; [25] if he does not respond within the prescribed time, the registrar must erase his name from the rolls.[26] Members of the Citizens Council had started to make a wholesale examination of the registration records of Washington Parish in the spring of 1959, and the registrar had sued in a State court to enjoin them from doing so. The State court upheld the right of the defendants (most of whom were also defendants in the subsequent Federal suit) to examine the rolls.[26]

Shortly thereafter, the U.S. Attorney General filed suit under section 1971 (a) and (c) to enjoin the purge, which was directed against Negro voters (they accounted for 99 percent of those challenged). On January 11, 1960, the court granted a temporary injunction and found, among other things, that: [27]—

> In examining the Washington Parish registration records for the purpose of filing the said Affidavits of Challenge, the individual defendants limited their examination almost exclusively to the registration records of Negro voters. . . . The individual defendants made no examination of the registration records pertaining to those wards in which no Negroes were registered and they challenged no voters in those wards.

The court also found that "Unless restored to the registration rolls of Washington Parish, the approximately 1,377 Negroes previously registered to vote will be unable to vote in the general election to be held April 19, 1960." [28]

The court enjoined both the registrar and the Citizens Council members (who, the court held, were acting under color of law)[29] from continuing the discriminatory purge, and directed restoration of all who had been purged from the registration rolls. The judgment was affirmed by the Supreme Court [30] on the same day it handed down its opinion in the *Raines* case.[31] The result: restoration of 1,377 Negroes to the registration rolls.

If one may judge from this single case, the 1957 act provides an effective remedy for discriminatory purges, such as gave rise to the *McElveen* case, in allowing wholesale restoration to the rolls.

Far more common than the purging of registered Negroes from the rolls are devices for preventing their registration in the first place. Cases to enjoin discriminatory practices of this kind have accounted for most of the litigation under the 1957 act.

Such cases present greater difficulties of proof than purge cases. A purge aimed at Negro voters, if successful, ordinarily leaves visible traces in the rolls; where registration is denied to Negroes, the evidence of discrimination may be more difficult to detect. Moreover, the remedy for a purge—restoration to the rolls en masse—is simple and complete. The remedy for discrimination in the registration process presents more difficult problems, as Congress recognized in passing the 1960 act.[32]

THE RAINES CASE

The *Raines* case,[33] which provided the first test of the 1957 act's constitutionality, was also the first test of the remedies provided in both the 1957 and 1960 acts for discriminatory registration practices.

Raines concerned refusals to register Negroes as voters in Terrell County, Ga., a black belt county where there are more Negroes than whites. In 1958 only 48 Negroes were registered as against 2,810 whites; by 1960 the number of registered Negroes had increased by 5, while registration of whites had risen to 3,000. The 1960 act became

law soon after the Supreme Court remanded the *Raines* case for trial (in February 1960). The Attorney General promptly invoked the act by requesting a finding of pattern or practice of discrimination, the basis for appointing voting referees. The case was then tried to the court without a jury for 5 days ending on July 1, 1960. On September 13, 1960, the court issued its decree enjoining the defendants' discriminatory practices, but actually directing the registration of only four named Negroes. Later it issued an order denying the request of the Attorney General for a finding of pattern or practice.[34]

The district court's opinion accompanying the decree of September 13, 1960, states in finding No. 41 that members of the board of registrars and the deputy registrar of Terrell County, Ga., subjected 30 named Negroes to "distinctions in the registration process on the basis of their race and color and have thereby deprived them of their right to vote at elections in Terrell County without distinction of race or color." This conclusion is supported by seven specified violations of section 1971(a): [35]

a. The use of differently colored registration application forms for white and Negro voters;

b. The keeping of separate registration and voting records for whites and Negroes according to race;

c. Delaying action upon applications for registration by Negroes while not delaying such action with respect to applications by whites;

d. In administering literacy tests, requiring Negroes to read and write a more lengthy and difficult paragraph of the Constitution of Georgia or of the United States than whites are required to read and write;

e. In administering literacy tests, requiring Negroes to read aloud and to write from dictation while not so requiring white applicants, but, instead, requiring white applicants only to write by copying;

f. Administering literacy tests to Negro applicants singly and apart from white applicants while administering such tests to white applicants in groups; and

g. Requiring a higher standard of literacy of Negroes than of white applicants in passing upon the results of the literacy test.

The court also found as a matter of law that the phrase "otherwise qualified by law to vote at any election," of section 1971(a), meant those qualifications "applied by the Board of Registrars and the Deputy Registrar to Terrell County to other citizens." [36]

Despite these findings and conclusions, the court actually ordered registration of only 4 of the 30 Negroes named in finding No. 41 and

acknowledged the qualifications of 7 others who had either already become registered or had moved from the jurisdiction.

The other 19 listed in finding No. 41 had to meet standards or follow procedures required by Georgia law, but not applied by the Board to white persons in comparable circumstances.[37] They might, therefore, also have been granted affirmative relief, but the court did not order their registration. It did, however, enjoin further discriminatory practices of the kind previously applied.

The Government first asked the *Raines* court for a finding of pattern or practice on August 1, 1960, but the court postponed consideration of the request until after its decision of the case. On January 24, 1961, the court denied the request. The court's reasoning was as follows: (1) that subsection (e) of section 1971, which says "the court *shall* upon request of the Attorney General . . . make a finding whether such deprivation was or is pursuant to a pattern or practice," was intended by Congress to be permissive, not mandatory, so that subsection (e) did not impose a duty to make such a finding, but left it to the discretion of the court; (2) that an appropriate injunction had been issued, and the presumption was that it would be obeyed; (3) that so long as it was obeyed "it will never become necessary to make findings as to pattern or practice as requested by the plaintiff"; and (4) that if and when it was violated, that would be the proper time to consider the matter.[38] "In order to preserve a healthy federalism," the court concluded, "no more findings and decrees should be made in this area of conflict between Federal law and state action than are necessary." [39] However, the court retained jurisdiction of the case and of the request for a finding of a discriminatory pattern or practice, for the purpose of making "any and all additional findings and conclusions, and of entering all additional orders as may become necessary or appropriate for the enforcement, modification or implementation of said decree. . . ." [40]

THE ALABAMA CASE

The first finding of a pattern or practice under the Civil Rights Act of 1960 came in the case of *United States* v. *State of Alabama,* on March 17, 1961.[41] Like the *Raines* case before it, the *Alabama* case involved a massive factual presentation. Over 70 witnesses testified and there were approximately 250 exhibits.

The court pointed out that Macon County has a total population of approximately 26,700 persons, of whom 22,300 are Negroes and 4,400

are white. The county is divided into 10 voting districts or beats. The largest of these, beat 1, contains about 60 percent of the county's population; 75 percent of the population of beat 1 is Negro. The City of Tuskegee is located in beat 1. Less than 10 percent of the Negroes of voting age were registered; virtually all of the voting-age white persons in the county were registered.

The court prefaced its account of the kinds and character of discriminatory acts and practices with the following statement about the conclusive nature of the evidence presented by the Government: [42]

> The evidence in this case is overwhelming to the effect that the State of Alabama, acting through its agents, including former members of the Board of Registrars of Macon County, *has deliberately engaged in acts and practices designed to discriminate against qualified Negroes in their efforts to register to vote.*

These "acts and practices," stated the court, included everything from the total absence of a functioning board to use of a "double standard" in the registration of white persons and Negroes. "Such acts and practices reached a peak by the Board's 'slowdown' tactics during 1960." [43] The court pointed to different phases of the registration process where use was made of a double standard.

Despite the fact that Negro applicants arrived first, the 1960 board "invariably made certain" that white applicants got priority. Because of the time-consuming nature of the qualification tests, Negro applicants were not reached.[44] Assistance was given to white but not to Negro applicants. Negroes were invariably required to copy out a provision of the Constitution and "more often than not" were required to copy in full article II of the United States Constitution. On the other hand, white applicants either took no writing test or were permitted to copy shorter provisions of the Constitution. No white applicants were rejected for errors in their application forms, but Negro applicants were rejected because of "formal, technical, and inconsequential errors" despite the fact that white application forms showed the same errors.[45]

The board failed to mail registration certificates to successful Negro applicants or to notify Negroes of their rejection. "The failure to notify the applicant leaves applicant with no information upon which to appeal, no evidence that he can vote, and without knowledge as to whether he should go and 'sign up' again." [46] On appeal, at least one Negro discovered that the board had had his registration certificates for some time and that he was in fact a registered voter.[47]

The court noted that the majority of the Negroes in Macon County live and work in the Tuskegee beat, which is the site of Tuskegee Institute and the Veterans' Administration hospital,[48] and that a majority of the many Negroes associated with these institutions have college or high school educations. "The discrimination against these Negroes has been so effective that many have been unable to qualify as voters, while many white persons who have not finished grammar school have been registered." [49]

Knowing that over a period of several years these practices led to a backlog of applicants, particularly in beat 1, the board "deliberately devoted to rural precincts (where defendants knew the demand for Negro registration was slight) two-thirds of the time allotted to receive applications." [50]

Turning to the "slowdown," the court added that in the face of this backlog of applications, the Board had not accelerated its processes. "The registrars tender in explanation puny excuses such as lack of facilities, too much 'paper work,' and the handling of 'transfers.' In one day the 1958 Board received 40 applications, but the largest number received in one day by the 1960 Board was only 5." [51]

The court also pointed out that defendants refused its invitation to put board members on the witness stand as their witnesses. "The Court, in an effort to understand fully the attitude of the present members of the Board of Registrars in Macon County, called Johnson and Dyson as witnesses of the Court. Their lack of concern and their failure to take any action toward changing the pattern and practice of racial discrimination was fully evident from their testimony." [52]

Concluding its opinion, the court found that such acts and practices of the defendants amounted to "a continuing pattern and practice of racial discrimination practiced by the defendant State and the defendant registrars and their predecessors." [53] Further: [54]

> The evidence in this case is so abundantly clear in portraying the discriminatory acts and practices, which acts and practices clearly violate the Constitution and laws of the United States, that this court is of the firm opinion that this case warrants not only a prohibitory decree but a decree mandatory in nature.

The impact created by the Government's evidence is abundantly clear. The court thus laid a substantial factual predicate for its finding of pattern and practice.

In the balance of its opinion, the court, having found a pattern or practice, explains why it nevertheless exercised its discretion not to appoint a referee under the provisions of the 1960 act. Anticipating its decree, the court, in the last portion of its opinion, stated: [55]

> . . . Complete relief, in accordance with the intent of the Congress of the United States (as evidenced by the Civil Rights Act of 1957, as amended in 1960, and the congressional history of each of said acts) requires that the decree in this case be framed so as (1) to

correct the effect of the Board's past discriminatory practices by placing certain Negroes on the voting rolls immediately, (2) to forbid the continuation of such discriminatory practices, (3) to insure the expeditious and nondiscriminatory taking and processing of applications by the Board of Registrars, and (4) *to provide for supervision and possible expeditious enforcement of this Court's decree.*

The court then explained its reasons for not appointing voting referees:[56]

> This Court, for the time being, declines the request of the United States that it appoint voting referees for Macon County, Alabama. Such a declination is made with the idea that the defendants can act fairly if the directions spelled out in this Court's decree are followed in good faith. If the defendants so act, they will have regained for Macon County and for the State of Alabama the integrity that the evidence in this case makes abundantly clear has been lost in this field of voting rights.

The decree actually issued by the court did not entirely dissappoint the Government's expectations, however. In one sense it gave the Government more than it asked. The Government proposed a decree to accomplish the first three purposes listed by the court and quoted above. The court added to these the fourth, which is emphasized above.[57]

The court's decree for the most part followed that proposed by the Government. Briefly, it—[58]

> Enjoined the State of Alabama and the registrars and their successors in office from engaging in any discriminatory acts and practices;
>
> Ordered the registrars to place 64 (later reduced to 57) named Negroes on the registration rolls and mail them registration certificates;
>
> Ordered them to report their compliance within 15 days;
>
> Ordered them to meet at least 2 full days each month in Beat 1 and to receive applications "from any and all applicants in the county;"
>
> Ordered them to follow specified procedures as to the assignment of priority to applicants, posting notices of the order of applicants to be received, administering the writing test, receiving supporting witnesses, notifying applicants within 20 days of the Board's action, and arranging for priority for Beat 1 applicants;
>
> Ordered them to submit a detailed monthly progress report to the clerk of the court;
>
> Enjoined the defendants from specified acts and practices.

For "complete effectuation of this decree," the court went beyond the Government's proposed decree, and ordered the plaintiff [the United States]—

> To report to the court each month on applications received and persons registered or rejected by the defendant registrars;
>
> To furnish information for the purpose of assisting the court to determine whether the decree was being complied with, whether contempt proceedings were necessary, whether the injunction "should be extended to any other county officials when and if Macon County is abolished in part or the area making up said county is absorbed by other adjoining counties," whether any vacancies occurring on the Macon County Board of Registrars can be filled by the State-appointing authority within a reasonable time, and whether any attempted resignation by any member of the Board of Registrars is made in good faith; and
>
> To submit the names and addresses of at least three qualified persons "to be considered by the Court for appointment as voting referees in the event this Court at some later date considers such appointments necessary and appropriate."

The Government did not urge the appointment of a voting referee. In its brief in support of its proposed decree, it states, "adoption of this decree will not have the effect of substituting Federal administration of the registration process for that of the State"; and the court makes a similar observation in its opinion.[59]

Clearly, the Government was satisfied with the remedy afforded by the court's equity power. If enforced, the court's decree in the *Alabama* case can hardly be less effective than that afforded by the referee provisions of the 1960 act. The availability of that remedy, however, may have been a deciding factor in the issuance of such a sweeping decree. Moreover, the court remains free to appoint voting referees in the *Alabama* case, a possibility which may well influence defendants to cooperate fully with the court in carrying out the provisions of the present decree.

OTHER REGISTRATION CASES

The *Raines, Alabama,* and *McElveen* cases, because they were the first and leading cases brought by the Government under section 1971(a), have been discussed in detail. The remaining subsection (a) cases need

be discussed only insofar as they provide additional information about the voting remedies under study.

The Government has filed an increased number of subsection (a) suits. Aside from those already mentioned, the Government brought voting suits in Fayette County, Tenn.; Bullock, Dallas, and Montgomery Counties, Ala.; Bienville, East Carroll, and Ouachita Parishes, La.; and Clarke, Forrest, Walthall, and Jefferson Davis Counties, Miss. The voting suit in Fayette County, Tenn., ended in a consent decree and will be discussed with the subsection (b) suits later filed in that State.[60] With the exception of the voting suits in Bienville Parish, La., and Bullock County, Ala., however, these suits have not yet been tried.

United States v. *Association of Citizens Councils of Louisiana*,[61] the *Bienville Parish* case, concerns the purge of voters conducted by the registrar and defendant citizens council in October 1956. At the time of the purge, Bienville was a "periodic" registration parish where, according to law, all voters must reregister every 4 years. A 4-year period ended on December 31, 1956. Prior to the time for reregistration, according to the Government, the defendants utilized the challenge procedures of Louisiana law [61] to remove approximately 95 percent of the registered Negroes from the rolls. After the purge the defendants urged adoption of permanent registration for Bienville Parish. This was accomplished by a parish ordinance effective January 1, 1957. The change served to perpetuate the discrimination accomplished by the purge. The *Bienville Parish* case is in this respect, therefore, similar to *McElveen*.

According to the Government, there were 5,282 white persons and only 35 Negroes registered to vote in Bienville Parish as of December 31, 1956. As of October 8, 1960, white registered voters numbered 5,184, but Negro registration was 26. The defendant registrar thereafter resorted to discriminatory acts and practices to keep Negro registration at a low level. These acts and practices in the registration process make this phase of the *Bienville Parish* case like the *Raines* and *Alabama* cases earlier considered.

In the *Bienville Parish* case the Government's complaint asks for an injunction to prevent further purge activity, and to have the court order the registrar to restore the purged voters to the rolls. The complaint also asks the court to appoint a voting referee. In its proposed decree, however, the Government does not specifically request appointment of voting referees, but simply asks for a finding of pattern or practice, which lays the foundation for such an appointment. As in the *Alabama* case, the court is invited to exercise its equity powers for immediate relief.

The *Bullock County* case [62] was tried in March 1961. The court reserved ruling on all points except one relating to a regulation adopted by the board of registrars to the effect that during any one year no voter be allowed to act as a supporting witness for more than two different applicants for registration. The court declared this regulation unconstitutional and enjoined its further enforcement.[63]

In reserving judgment on other aspects of the case, the court indicated that it was impressed with both the registrars' sworn statement that they were ready and willing "to the point of eagerness" to register all qualified Negro citizens in Bullock County, and the fact that there had been but a single Negro applicant for registration since March 1960. "There is no explanation in the record that I can find, or in the testimony of any of the witnesses, even by inference, as to why there has only been one Negro applicant to this Board of Registrars since March of 1960." [64] Some 200 Negroes have since applied for registration.

One of the most important issues raised by the Government in the *Bullock County* case involves adoption by the board of registrars of a policy which requires all applicants (Negroes and white persons alike) to complete their applications with technical precision. At the time it began applying strict standards, according to the Government, the board realized that approximately 95 percent of the white persons of voting age and only one-tenth of 1 percent of the Negroes of voting age were permanently registered to vote in the county. In view of the fact that almost all white persons of voting age in the county are registered to vote, they will not be affected by the adoption of stricter standards. Virtually all Negroes of voting age, however, will be affected.

The Government argues that adoption of stricter standards under these circumstances is violative of rights secured by subsection (a). Use of stricter standards here achieves the same kind of discriminatory effect produced by the "grandfather clause," long ago struck down by the Supreme Court.

To offset the imbalance of registration of Negroes and white persons in Bullock County, the Government has asked the court either to enjoin use of a stricter standard than that under which white persons have been registered in the county, or to order the board of registrars to elect to remove all present registrants from the rolls and thereafter conduct impartial and objective registration of all applicants.

VOTER INTIMIDATION

In November 1959 the Government filed a section 1971(a) suit in Tennessee against the Fayette County Democratic Executive Committee and its officers, alleging that the defendants refused to permit Negroes to vote in a primary election in Fayette County on August 1, 1959; and that prior to the primary, the defendants adopted a resolution limiting

the vote to "white Democrats." [65] The resolution stated in part as follows: [66]

> BE IT FURTHER RESOLVED That all known white Democrats who have duly registered as required by law and who will pledge themselves to abide by the results of said primary election and to support the nominees thereof and who shall be allowed to vote in the general election in August 1960, and no other shall be allowed to vote in said primary election.

This was the first case involving a white primary to be brought under the act of 1957. It ended in a consent decree entered into by the parties on April 25, 1960, which, among other things, provided: [67]

> The defendants are enjoined and restrained from preventing citizens of the United States, on account of their race or color, who are qualified to vote in Fayette County from effectively participating in any election.

Thus within a period of months the Government, acting under the 1957 act, was able to put an end to the white primary in Fayette County, Tenn. But this by no means solved all of the problems of the would-be Negro voter in southwestern Tennessee. By 1960 the Government found it necessary to file suits in Fayette and Haywood Counties to enjoin economic reprisals.

Fayette County and adjacent Haywood County, both are black belt counties, the only such counties in the State. According to the Government at the time of suit, only 1,500 of the 7,800 voting-age Negroes in Fayette were registered, whereas approximately 3,959 of the 4,450 eligible whites were. In Haywood less than 300 of the 7,921 eligible Negroes were registered, while all of the 6,500 eligible whites were reported registered.

In the spring of 1959 Negroes in Fayette County made concerted efforts to register and vote. As indicated above, the attempt to keep Negroes from participating in the August 1959 primary resulted in a judgment prohibiting the further exclusion of Negroes from voting. Following this, some 1,500 Negroes registered. In May of 1959, alleged the Government, Negroes in adjoining Haywood County organized the Haywood County Civic & Welfare League to encourage Negro citizens to register and vote. Eventually 300 Negroes registered here.

The Government charged that these efforts resulted in wholesale retaliation. The white community levied economic sanctions against the Negroes involved in the league movement. In Haywood County white persons conducted meetings whose only known purpose was to devise means to thwart Negro registration efforts. Copies of the Negro Civic & Welfare League charter, together with the names of charter members, were circulated. Negroes whose names appeared on the list were denied credit by certain merchants, and landowners "were pressured to evict tenants who were League members, however satisfactory the sharecropper-landlord relationship had been." [68] In April 1960, when for the first time since the summer of 1958 the election commission declared that the books would be opened for registration, the league informed its members of the times and places for registration. At the same time landlords began mailing eviction notices. "Many of the sharecroppers had farmed for their respective landowners as long as 20, 30, even 40 years." [69] When one of the Negro sharecroppers sought an explanation, his landlord is alleged to have stated: [70]

> Well, you registered. You are going to have to go. I don't think you will be able to get a home any place in Haywood County. I hate to see you go. You are one of my best hands. I would recommend you to anybody. I wish you lots of success this year and in the years ahead.

According to the Government, 300 Negroes comprising 48 families had been told to move by January 1, 1961.

After thorough investigation of these events, the Government filed suit on September 13, 1960, against 29 defendants, including 2 banks. By amendment on November 18, 1960, the Government joined 36 more defendants. This suit was soon followed by a suit regarding Fayette, filed December 14, 1960. Rather than seek a further amendment, the Government filed a second suit concerning Haywood on December 1, 1960, against 10 more defendants, bringing to 75 the number of persons named as defendants in the Haywood suits. All of the suits were filed pursuant to subsection (b) of section 1971, which provides: [71]

> No person, whether acting under color of law or otherwise, shall intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives, Delegates or Commissioners from the territories or possessions, at any general, special, or primary election held solely or in part for the purpose of selecting or electing any such candidate.

The Government in both suits sought preliminary and permanent injunctions against the following acts and practices:

(1) The termination of sharecropping and tenant farming relationships with some of such Negroes;

(2) Termination of employment of some of such Negroes;

(3) Refusals to sell necessaries and other goods and services, even for cash, to certain of such Negroes;

(4) Refusals to sell necessaries and other goods and services on credit to such Negroes, although said Negroes were economically and otherwise entitled to credit purchases and were formerly afforded such credit;

(5) Refusals to lend money to some of such Negroes, although such Negroes were otherwise qualified for and entitled to such loans, and many of such Negroes had formerly been granted such loans;

(6) Refusals to deal with merchants and others accused of or suspected of selling goods to such Negroes;

(7) By means of the circulation of lists of the names of Negroes who were leaders in Negro registration and voting activity and other persons, and by other means, inducing, encouraging, and assisting merchants, landowners, and others to penalize economically such Negroes and other persons who failed to cooperate with the defendants or who were believed by the defendants to be sympathetic to registration and voting by Negroes;

(8) Inducing suppliers of merchants described above in subsection "(6)" not to deal with such mechants;

(9) Inducing merchants, landowners, and others to penalize economically such Negroes;

(10) Inducing wholesale suppliers of Negro merchants not to deal with such Negro merchants and others in the Negro community believed by the defendants to be sympathetic to registration and voting by Negroes.

According to the Government, the eviction notices sent to sharecroppers and tenant farmers were to take effect after January 1, 1961; accordingly on December 2, 1960, the Government applied for a temporary restraining order in the *Haywood* cases to block evictions. The court denied the request, but set an early date for hearing the motion for a preliminary injunction. At the hearing, which lasted 3 days, the Government called 12 of the defendants to the stand; 11 of them claimed their privilege against self-incrimination under the fifth amendment. The court refused to interfere with the action being taken by landlord-defendants to evict their tenants: [72]

> The Congress, it is plain to see, did, in passing this Civil Rights Act, intend to protect the voting right but it did not, as the Court reads the Statute, vest the Courts with authority to adjudge contracts and property rights, and this is the main problem inherent in this very broad application by the Government.

The Government then made a series of requests which the court denied: to preserve the status quo of the tenant-sharecroppers, pending appeal; to obtain a temporary restraining order; and to certify under the Interlocutory Appeals Act [73] that the court's denial involved a question of law on which there existed a substantial difference of opinion and resolution of which would materially advance termination of the case.

The district judge denied the last of these motions. On December 30, the U.S. Court of Appeals for the Sixth Circuit granted the Government's motion for a stay pending appeal and enjoined the landowners "from evicting or removing said sharecropper tenants or refusing to extend or renew their leases for the purpose of such intimidation or coercion, or to punish them on account of the exercise of their rights to so register or vote at said elections." [74]

On April 6, 1961, the same court concluded that the statute did proscribe threats, intimidation, and coercion of the type involved: [75]

> If sharecropper-tenants in possession of real estate under contracts are threatened, intimidated or coerced by their landlords for the purpose of interfering with their rights of franchise, certainly the fact that the coercion relates to land or contracts would furnish no excuse or defense to the landowners for violating the law.

The Government had asked the court to restrain the eviction, or the alteration of the existing lease, of any Haywood County Negro of voting age unless the defendant first filed a sworn statement of the reasons for the eviction or alteration of the lease. But the court of appeals refused on the ground that such an injunction would place upon the defendant the burden of proving that his act was not in violation of law. The court did, however, find an abuse of discretion in the district court's failure to grant a preliminary injunction to prevent the landlords from evicting their Negro tenants *"for the purpose of* interfering with the right of such Negro sharecroppers, or other persons, to become registered or to vote . . . or for punishment for having previously registered or voted." [76] The court of appeals explained that such an injunction would "empower and require" the district court to hold hearings in any situation where a landowner-defendant appeared to interfere with a tenant's right to vote by evicting, or threatening to evict, him.[77] In this fashion the court of appeals placed the burden of proof on the Government to show a connection between the act of the landowner and the exercise

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by the tenant of his right to vote without interference in Federal elections. If the connection were proven, the landlord-defendant would be in contempt of court.

The district court afterward granted a temporary restraining order against the landlord defendants in the *Fayette County* suit, and this order has been understood by the parties to be effective pending outcome of the cases in Haywood County. No date has yet been set for trial of the *Haywood* cases.

In at least one respect these suits are the most important cases that have arisen under the 1957 act. Considering the large number of counties in the South where Negroes are almost completely dependent upon white persons for employment,[78] economic sanctions could prove to be a serious obstacle to enforcement of the 15th amendment. Assuming a favorable result in the *Haywood* and *Fayette* cases, the Government will have established an important precedent against the use of economic retaliation to deter Negroes from efforts to register and vote. How long and effectively the remedy in such cases can provide protection for a large group of Negroes so dependent economically on the whites is another question.[79]

At the time this report was prepared, only one other section 1971(b) suit had been brought. *United States* v. *Deal*,[80] filed in January 1961, concerned Joseph Atlas, a Negro farmer of East Carroll Parish, La., who testified before this Commission in New Orleans in September 1960, and thereafter was unable to have his cotton ginned or to conduct ordinary business transactions with other persons in the parish.

Like Fayette and Haywood, East Carroll Parish is a black belt county where Negroes outnumber whites. Yet in October 1960, not a single Negro was registered, while 2,845 of the 2,990 eligible whites were. The Government's suit, therefore, concerned the intimidation and coercion of one who was not a registered voter. The Government asked for a preliminary and permanent injunction to prohibit the defendants from refusing to gin Atlas' cotton and from refusing to sell him goods and services.

On February 3, 1961, the attorneys stipulated that the defendants would arrange for the prompt ginning of Atlas' 1960 cotton crop; the purchase, at fair market value, of his 1960 soybean crop; and a supplier of liquefied petroleum gas.[81] The defendants further agreed in the language of section 1971(b), not to "intimidate, threaten, or coerce" Atlas for the purpose of interfering with his right to vote in Federal elections. Finally the parties agreed that the stipulation was entered into as a "compromise" and was not to be considered an admission by any of the defendants of the matters contained in the Government's complaint or in Atlas' affidavit which was attached to the complaint. In the meantime the case has been indefinitely postponed pending good-faith performance by the defendants of their agreement.

Since the *Deal* case was not actually tried, it did not provide a full test of the new provision, although the Government was able to obtain relief for the aggrieved Negro. The *Tennessee* cases have not yet been tried or otherwise concluded either. Accordingly, it cannot yet be said with certainty just how effective the present law may be against future economic reprisals. It has been established, however, that one who exerts economic pressure in reprisal for an attempt to vote acts to "intimidate, threaten, coerce" within the meaning of section 1971(b).

THE QUEST FOR EVIDENCE

Since the 1960 Civil Rights Act was passed the Attorney General, as of July 28, 1961, has made demands for the inspection of records under title III of the act in 26 counties and parishes: 8 in Louisiana,[82] 7 in Alabama,[83] 1 in Florida,[84] 4 in Georgia,[85] 3 in Mississippi,[86] and 3 in South Carolina.[87] Out of the total of 26 demands for records, the Attorney General obtained voluntary compliance in 18 counties in Florida, Georgia, Mississippi, South Carolina, Alabama and Louisiana, with the result that court action for enforcement was unnecessary. In the 8 remaining counties and parishes, the Attorney General has been forced to resort to court action for enforcement. In many instances voluntary compliance came only after title III litigation in other counties or States had resulted in the issuance of enforcement orders. This was true, for example, in Alabama, Louisiana, and Mississippi.

Despite the apparent simplicity of its legal provisions, title III has produced complex litigation, particularly following demands for records in Alabama [88] and Louisiana.[89]

Most of the relevant title III issues were raised in the first proceeding to enforce a demand for records, *In re Crum Dinkens*.[90] On May 19, 1960, less than 2 weeks after the 1960 act became effective, the Attorney General requested by letter that the registration records of Montgomery County, Ala., be made available for inspection. When the board of registrar's failed to supply them, the Attorney General sought an order for enforcement from the Federal District Court for the Middle District of Alabama.

On August 11, 1960, the court ruled for the Government. It said the defendants' claim that title III was not "appropriate" legislation within the meaning of the 15th amendment "is clearly wrong." [91] Much of the argument in this regard centered around the meaning of the Supreme Court's opinion in *Hannah* v. *Larche*,[92] defendants taking the position that records may not be required to be produced when the

agency seeking production has the power to use such records in its prosecutive function. But the court disagreed: [93]

> In the opinion of this Court, that portion of the majority opinion in *Hannah* v. *Larche* was for the purpose of distinguishing not between agencies having prosecutive functions and those not having such functions, but rather between *investigations* and *adjudications,* regardless of the agency involved.

The court also dismissed the claim that the letter of demand was indefinite. The defendants had claimed that the Attorney General had failed to "specify what records and papers in the possession of the Board of Registrars . . . he or his agents wish to be made available for inspection, reproduction and copying." [94] In fact, the demand had followed the statute in wording. Perhaps the most important part of the court's opinion was the construction of section 301 of title III requiring preservation of records for a period of 22 months "from the date of any . . . election." The Court held: [95]

> Regardless of when these records came into the possession of the election official, under Section 301 they must be retained and preserved for a period of twenty-two months from the date of any general, special, or primary election . . . if they relate to acts requisite to voting in such election.

Many registrars have taken the position that they must preserve the records only for the 22 months following the last Federal election immediately following the date of the records in question. The Government contended that this view violated the intent of Congress, which was to overcome the difficulties experienced by the Department of Justice in trying to enforce the voting provisions of the 1957 Civil Rights Act. Thus, the Government argued that where there is permament registration, records must be retained *permanently,* since the original registration papers would be records "requisite to voting" in any future Federal election. In other words, so long as such records relate to acts which are "requisite to voting" in Federal elections, they must be kept. The court in *Dinkens* agreed, holding that permanent records must be permanently retained.[96]

The court also dismissed defendants' contention that title III was an ex post facto law within the prohibition of the United States Constitution.[97] The court held that the first section of title III, which designates the records required to be preserved, acts prospectively; that the section making destruction of such records a crime does not apply to acts done before May 6, 1960, the effective date of the new law; and that the prohibition against ex post facto laws does not apply to civil proceedings.[98] The court observed that "the other several miscellaneous 'defenses' asserted by the state officials appear to be in the nature of 'bootstrap' defenses and do not merit discussion." [99]

The opinion of the district court was affirmed by the U.S. Court of Appeals for the Fifth Circuit "on the basis of the well reasoned opinion by the Trial court." [100] The Supreme Court declined to review the decision.[101]

The outcome of title III litigation has been very favorable to the Government. Of the eight suits for enforcement of records demands that had been filed by June 1961, five had been concluded; each has resulted in an order enforcing the demand. While litigation has often delayed enforcement, it has also served to strengthen the remedy with favorable legal precedent.

Title III, then, has been frequently and effectively employed. Since title III is primarily an investigative tool and not, strictly speaking, a voting rights remedy, it is not possible to assess the law's possible effect upon discriminatory denials of the right to vote. Of the total of 23 demands that had been complied with, either voluntarily or under court order, by the time this report was prepared, only two had led to suits for the enforcement of voting rights under section 1971(a).[102] More suits are likely to follow, however.

APPRAISAL

Two years ago the Commission found that enforcement of Federal legislation to protect the right to vote had been limited, the laws themselves untested and under challenge in the courts. Today the picture is a far more encouraging one. There has been more vigorous enforcement on the part of the Civil Rights Division of the Department of Justice. The laws have not only been augmented but successfully tested. Litigation during the period not only allayed constitutional objections to the 1957 act, but also resulted in the issuance of the first injunctions obtained by the Government against various forms of discrimination in the voting process.

Subsection (a) suits have been subject to some delays occasioned by appeals on constitutional questions, but none has yet been lost, and all those finally determined have resulted in what appear to be effective decrees. In the single case involving a discriminatory purge of voters, the law has been used to restore en masse all of the persons who had been removed from the registration rolls. In subsection (a) suits directed against discriminatory practices in the registration process, the yield has been less dramatic but nevertheless significant, because far-reaching

decrees have served to place future registration on a nondiscriminatory basis. In these areas the passage of time should see a narrowing in the present disparity between the number of Negroes eligible and the number actually registered.

While no court has appointed a voting referee under that provision of the act of 1960, one court has made the requisite finding of a "pattern or practice." Another court has refused to make the finding for the time being. On the other hand, the decrees the Government has obtained in these suits are impressively detailed and far-reaching exercises of the courts' equity powers. These decrees, assuming continuing court surveillance over defendants to insure compliance, may well be as effective as the appointment of voting referees. Indeed, where the registrars in office are under injunction not to discriminate, there may be no need to invoke the referee remedy. There is, however, reason to think that the availability of the voting referee remedy has led to the issuance of broader decrees than might otherwise have been obtained. If this is so, then title VI has been useful in a way not foreseen by the legislators.

Under subsection (b), the Government has obtained a ruling that threats, intimidation, and coercion may include economic reprisals against persons exercising their right to register and vote. While none of the cases involving this provision has been finally disposed of, it is significant that in the *Fayette* and *Haywood* cases, preliminary injunctions were issued forbidding economic reprisals; and that the provision sufficed in the *Atlas* case to bring a settlement between the parties.

Title III, the records provision of the 1960 act, has proved to be a very effective law, and useful for investigative purposes. It may be expected eventually to bear substantial fruit in the form of suits to enjoin discriminatory practices.

These successes, however, do not indicate that current legislation, even with continued vigorous enforcement, affords a prompt solution to the existence of discriminatory denials of the right to vote on account of race or color. The Government, under present laws, must still proceed slowly—suit by suit, county by county. Each suit, moreover, is expensive and time consuming; and although the Civil Rights Division has been repeatedly increased in size and budget,[103] and has concentrated its efforts in the voting field, it has not been able to prepare and file all the suits that appear warranted. While it can be truly said that present laws have proved to be effective tools to deal with discrimination in voting, the tools are limited in scope. There is no widespread remedy to meet what is still widespread discrimination.

6. Statistics of Nonvoting

Low voter registration figures do not necessarily reflect discrimination. Other factors may be involved: for example, poll taxes, a one party political system, inadequate schools, or low economic status. All of these and other things as well may contribute to voter "apathy." Nonetheless, in some circumstances low registration figures suggest discrimination:

1. Where Negroes comprise a large percentage of an area's population, and yet very few or none at all are registered. (For example, there are two counties in Alabama where Negroes are in a majority of the population yet none are registered; four in Louisiana; five in Mississippi; two in Georgia.) [1]

2. Where there has been a sudden and drastic drop in the number of registered Negro voters. (For example, Washington, Bienville, and Ouachita parishes in Louisiana.) [2]

3. Where there are two counties, located near each other, and similar in all visible respects, except that registration figures are much lower in one than in the other. (For example, St. James and St. Helena parishes in Louisiana.) [3]

4. Where there is an active and effective Negro organization attempting to improve conditions, but registration for nonwhites is relatively low. (For example, Macon County, Alabama, where the Tuskegee Civic Association actively encourages registration of Negroes, but nonwhite registration is still very low.) [4]

In such cases statistics on numbers of registered voters by race provide a useful starting point for inquiry into the existence of discrimination. Indeed the Commission's survey of 21 Black Belt counties, discussed in Part III below, was undertaken on the basis of voter registration statistics. Moreover at least one court has indicated that where a majority of the population in a county is Negro, the fact that not one Negro is registered must lead to an inference of discrimination.[5] Finally the kind of comparative analysis which such statistics permit may yield clues as to factors other than discrimination which tend to impede or diminish the exercise of the franchise.

For all of these reasons, it is desirable that accurate statistics on registration and voting by race be maintained; and for these reasons, the

Commission has again attempted, as it did in its *1959 Report,* to collect and publish the most complete and reliable registration statistics possible.

Unfortunately, voting figures by race are seldom available. Figures showing registration, or the numbers legally qualified to vote, are more readily obtainable. These, of course, do not give a complete picture, for not all registered voters actually cast their ballots, and among the reasons they do not, may be discrimination.[6] Yet registration figures do define the outer limits of possible voting, and if no (or hardly any) Negroes are registered, then necessarily no (or hardly any) Negroes vote. The Commission's efforts, then, have been directed toward the compilation of registration, not actual voting, statistics. But even in this area the effort has yielded only limited success, for in many States racial figures either are not kept, not collected, or not released.

Racial breakdowns of registration figures are not generally available for two principal reasons. One is that, not recognizing any difference between white and Negro voters, some States do not keep figures by race. On the other hand, several States record racial information in connection with voter registration but apparently want to conceal what such statistics show.[7] (But not all States that discriminate are secretive; Louisiana, for instance, regularly publishes complete official voting statistics by race.)

The Commission sought racial registration figures for the 18 States whose laws in 1954 permitted or required racially segregated public school systems: Alabama, Arkansas, Delaware, Florida, Georgia, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia.

Four of the States—Kansas, Kentucky, Missouri, and Oklahoma—do not appear to keep registration records by race. Since the Commission has not received any complaints or other indications from these States that anyone has been denied his right to vote because of his race, color, creed, or national origin, it seems fair to infer that the lack of racial records betokens no desire for concealment, and that any racial problems that may exist in the States have not spilled over perceptively into the voter registration process. In all of the remaining 14 States registration records of some sort are kept by race, although there are substantial differences in the way they are kept, in the governmental level on which they are compiled, and in official attitudes toward making the data public.

In three States—Louisiana (where there is substantial discrimination), Florida (where there is some), and Virginia (where there appears to be none)—official statistics are compiled on the State level by county and by race. (Virginia's figures are estimates sent in by the local officials to the State Board of Elections.)

In Maryland, where there have been no complaints, and in North Carolina and Tennessee, where there have been a few, local officials keep racially identified voter registration records, but these are not compiled or published on either the State or the county level. These figures can, however, generally be obtained from the local officials. The Commission's Advisory Committee in North Carolinia obtained complete figures for that State; in Maryland, with the assistance of the Advisory Committee, the Commission also obtained complete figures; and in Tennessee in the same manner, a fair proportion of the figures were obtained.

In Arkansas and Texas (the Commission has received no voting complaints from either), registration figures can be obtained from poll tax receipt records. Arkansas compiles these on the State level, and the State Auditor publishes them. In Texas these figures are kept by the County Tax Assessor-Collectors, but they are neither compiled nor published. However, by questionnaire the Commission has been able to obtain the figures for most Texas counties.

Alabama, Georgia, Mississippi, and South Carolina compile no official records by race, although, since the registration process requires racial identification, these figures are available to the local officials having charge of the voter registration. Georgia and South Carolina do compile total registration by county and these figures are published—but they do not show race. In 1958 South Carolina abolished its State Board of Registration, which until then had compiled registration statistics by race and by county. In these two States, therefore, the statistics the Commission was able to gather are limited to a few counties where field studies were conducted. In Alabama the Commission was able to obtain complete, but unofficial, statistics, published in a newspaper. Mississippi does not compile any registration statistics at the State level; and has amended the law making voting records public records.[8] Undoubtedly these records are kept on a local basis, but they are not published. The Commission tried unsuccessfully through a number of sources including a request to the Governor, to get this information. Through its Mississippi Advisory Committee it did obtain unofficial estimates of Negro registration for 65 of the 82 counties, and field studies provided the figures for four others. Mississippi does not compile or publish such statistics. The Attorney General of Mississippi, Mr. Joe T. Patterson is reported to have said:[9]

> I wish to advise the Circuit Clerks of Mississippi that they are under no obligation to make such reports [Negro registration figures] to the Mississippi Advisory Committee, or to the Commission on Civil Rights . . . This information is sought by the Advisory Committee to the Civil Rights Commission for the deliberate purpose of gaining information upon which to predicate lawsuits directed

against Circuit Clerks in the various counties and if I were a Circuit Clerk, I would decline to comply with this request or any other similar request that might come to them.

Because of the difficulties it encountered in collecting voter registration information, and the even greater difficulty of obtaining actual voting figures, the Commission made the following recommendation in 1959.[10]

> . . . that the Bureau of the Census be authorized and directed to undertake, in connection with (the next decennial census), or at the earliest possible time after that date, a nationwide and territorial compilation of registration and voting statistics which shall include a count of individuals by race, color, and national origin who are registered, and a determination of the extent to which such individuals have voted since the prior decennial census.

Clearly, the need for this recommendation is undiminished.

The complete voter registration statistics compiled by the Commission may be found in the Appendix.[11] Some of the salient figures are summarized below.

ANALYSIS OF REGISTRATION STATISTICS

Alabama

In Alabama [12] whites comprise 73.8 percent of the population 21 years old or over; nonwhites 26.2 percent. Whites account, however, for 92.9 percent of the total number registered to vote; nonwhites for only 7.1 percent.

In two Alabama counties no Negroes are registered to vote, although Negroes represent 80.7 percent of the total population in one of them, and 77.9 percent in the other.

In 22 counties less than 10 percent of the voting age Negroes are registered. In these counties the Negro population of voting age ranges between 2.3 percent and 80.8 percent of the total voting age population. In the two median counties Negroes constitute 42.5 and 43.4 percent of the voting age population.

In 22 counties between 10 percent and 24 percent of the voting age Negroes are registered. The Negro population of voting age ranges between 1.8 percent and 38.0 percent of the voting age population in these counties; in the two median counties the figures are 18.1 percent and 24.6 percent.

In 17 counties between 25 and 49 percent of the voting age Negroes are registered. The Negro population of voting age ranges between 2.6 percent and 31.9 percent of the voting age population in these counties; and the median figure is 13.5 percent.

In four counties 50 percent or more of the Negroes of voting age are registered. The Negro voting age population ranges between 1.1 percent and 20.5 percent of the total voting age population in these counties; the two median figures are 4.9 percent and 12.0 percent.

Arkansas

In Arkansas [13] whites comprise 81.5 percent of the population 21 years old or over; nonwhites 18.5 percent. Whites account, however, for 87.7 percent of the total number registered to vote and nonwhites for only 12.3 percent.

In 14 Arkansas counties no Negroes are qualified to vote (by virtue of having paid poll taxes). However, one of them has no Negroes of voting age at all, and there are only 64 Negroes 21 years and over in the other 13 counties.

One county has less than 10 percent of the voting age Negroes qualified. In that county Negroes constitute 0.9 percent of the total voting age population.

In eight counties between 10 and 24 percent of the voting age Negroes are qualified. The voting age Negro population ranges between 0.3 percent and 56.7 percent of the total voting age population in these counties. The two median figures are 2.9 percent and 9.0 percent.

In 39 counties between 25 and 49 percent of the voting age Negroes are qualified. They range between 0.07 percent and 53.9 percent of the total voting age population in these counties; the median figure is 21.0 percent.

In 13 counties 50 percent or more of the Negroes are qualified. The Negro voting age population ranges between 0.06 percent and 29.7 percent of the total voting age population in these counties; the median figure is 9.6 percent.

Delaware

In Delaware [14] whites comprise 87.3 percent of the population 21 years old or over; nonwhites 12.7 percent. Whites account for a slightly larger share, 91.8 percent, of the total number registered to vote, and nonwhites for 8.2 percent.

In all three counties in Delaware there are substantial numbers of Negroes registered to vote. In one where Negroes represent 11.1 percent of the voting age population, 43.1 percent of them are registered. In another where Negroes account for 14.3 percent of the voting age popu-

lation, 63.5 percent of the voting age Negroes are registered. In the third county, where 18.4 percent of the total voting age population are Negroes, 80.8 percent of them are registered.

Florida

In Florida [15] whites comprise 84.8 percent of the population 21 years old or over; nonwhites 15.2 percent. Whites account, however, for 90.9 percent of the total number registered to vote and nonwhites for 9.1 percent.

In two Florida counties no Negroes are registered to vote although they represent 15.2 percent and 11.9 percent respectively of the population.

In four counties less than 10 percent of the voting age Negroes are registered. The Negro voting age population ranges between 24 percent and 51.1 percent of the total voting age population in these counties. In the two median counties Negroes constitute 27.3 percent and 32.1 percent of the voting age population.

In seven counties from 10 to 24 percent of the voting age Negroes are registered. The Negro voting age population ranges between 7.7 percent and 52.2 percent of the total voting age population in these counties; the median figure is 17.4 percent.

In 27 counties between 25 and 49 percent of the voting age Negroes are registered. The Negro voting age population ranges between 6.4 percent and 41.2 percent of the total voting age population in these counties; the median figure is 16.5 percent.

In 27 counties 50 percent or more of the voting age Negroes are registered. The Negro voting age population ranges between 3.9 percent and 27.8 percent of the total voting age population in these counties; the median figure is 16 percent.

Georgia

In Georgia [16] whites comprise 74.6 percent of the population 18 years old or over; nonwhites 25.4 percent. The Commission was able to obtain registration figures for only 13 out of the total of 159 counties in Georgia. In these counties as a whole Negroes represent 30.4 percent of the total voting age population, and account for 28.4 percent of those registered to vote.

In 6 of the 13 counties there are no Negroes registered to vote. Negroes represent 0.03, 0.03, 0.05, 0.05, 53, and 55.7 percent, respectively, of the total population of these counties.

In 3 counties of the 13 less than 10 percent of the voting age Negroes are registered. The Negro voting age population is 24.9, 45, and 55.7 percent, respectively, of the total voting age population in these counties.

In 2 of the 13 counties between 25 and 49 percent of the voting age Negroes are registered. The Negro voting age population constitutes 32.1 and 67.4 percent, respectively, of the total voting age population in these counties.

In 2 of the 13 counties 50 percent or more of the voting age Negroes are registered. The Negro voting age population is 7 percent and 37.4 percent, respectively, of the total voting age population in these counties.

Louisiana

In Louisiana [17] whites comprise 71.5 percent of the population 21 years old or over; nonwhites 28.5 percent. Whites account, however, for 86.2 percent of the registered vote and nonwhites for only 13.8 percent.

In four Louisiana parishes, no Negroes are registered to vote. Negroes represent 61.2, 64.9, 65.0, and 66.1 percent, respectively, of the total population in these parishes.

In 15 parishes less than 10 percent of the voting age Negroes are registered. The voting age Negro population ranges between 18.4 percent and 50.8 percent of the total voting age population in these parishes; the median figure is 37.7 percent.

In seven parishes between 10 and 24 percent of the voting age Negroes are registered. Negroes account for between 27.7 percent and 39.7 percent of the voting age population in these parishes; the median figure is 31.8 percent.

In 13 parishes between 25 and 49 percent of the voting age Negroes are registered. The Negro voting age population ranges between 11.1 and 46.8 percent of the total voting age population in these parishes; the median figure is 28.9 percent.

In 25 parishes 50 percent or more of the voting age Negroes are registered. In these parishes the Negro voting age population ranges between 6.2 and 46.8 percent of the total voting age population; the median figure is 21.1 percent.

Maryland

In Maryland [18] whites comprise 84.6 percent of the population 21 years or over; nonwhites 15.4 percent. Whites account for 87.2 percent of the total number registered to vote and nonwhites for only 12.8 percent.

In one Maryland county no Negroes are registered to vote, but no Negroes 21 and over live in this county. There are no counties where less than 25 percent of the voting age Negroes are registered.

In six counties between 25 and 49 percent of the voting age Negroes are registered. In these counties the Negro voting age population ranges between 3.7 and 28.5 percent of the total voting age population, and the two median figures are 6.3 and 14.4 percent.

In the remaining 17 counties 50 percent or more of the voting age Negroes are registered. The Negro voting age population ranges between 1.2 and 33.8 percent of the total voting age population in these counties; the median figure is 17.8 percent.

Mississippi

In Mississippi [19] whites comprise 63.9 percent of the population 21 years old or over; nonwhites 36.1 percent. Figures on voter registration are available only for Negroes, and only for 69 out of the 82 counties in the State. In these counties, where Negroes constitute 37.7 percent of the voting age population, only 6.2 percent of the voting age Negroes are registered to vote.

In 13 Mississippi counties no Negroes are registered. Negroes represent 9.9, 14.2, 19.7, 25.3, 30.3, 32.3, 33, 35.4, 49, 56, 62.8, 63.3, and 68 percent, respectively, of the total voting age population in these counties.

In 42 counties less than 10 percent of the voting age Negroes are registered. In these counties the Negro voting age population ranges between 4.3 and 74.3 percent of the total voting age population. In the two median counties Negroes account for 40.8 and 42.7 percent of the voting age population.

In 12 counties between 10 and 24 percent of the voting age Negroes are registered. In these counties the Negro voting age population ranges between 5.2 and 62.6 percent of the total voting age population; the two median figures are 30 and 30.7 percent.

In two counties between 25 and 49 percent of the voting age Negroes are registered. Here the Negro voting age population is 17.3 percent and 27.6 percent, respectively, of the total voting age population.

In none of the 69 counties for which information is available are 50 percent or more of the voting age Negroes registered.

North Carolina

In North Carolina [20] whites comprise 78.5 percent of the population 21 years old or over; nonwhites 21.5 percent. Whites account, however, for 89.8 percent of the total number registered to vote and nonwhites for only 10.2 percent.

In one North Carolina county, no Negroes are registered to vote. There are 125 Negroes 21 and over, 3.6 percent of the total voting age population in this county.

In two counties less than 10 percent of the voting age Negroes are registered. The Negro population 21 and over is 23.5 and 52.1 percent, respectively, of the total voting age population in these counties.

In 29 counties from 10 to 24 percent of the Negroes of voting age are registered. The Negro population of voting age in these counties ranges between 13.3 percent and 55.3 percent of the total voting age population; the median figure in this group is 37.5 percent.

In 32 counties from 25 to 49 percent of the voting age Negroes are registered. The Negro population of voting age ranges between 0.4 and 40.9 percent of the voting age population in these counties, and the figure in both of the median counties is 20.4 percent.

In 36 counties 50 percent or more of the voting age Negroes are registered. The Negro voting population ranges between 0.8 and 50.7 percent of the total voting age population in these counties; the median figures are 8.9 and 9.4 percent.

Tennessee

In Tennessee [21] whites comprise 85 percent of the population 21 years old or over; nonwhites 15 percent. The Commission was able to obtain registration figures by questionnaire from only 63 of the 95 counties in this State. In these counties whites account for 82.6 percent of the voting age population and 86 percent of the total number registered to vote; nonwhites account for 17.4 percent of the voting age population and 14 percent of those actually registered.

In six Tennessee counties no Negroes are registered to vote. There are only 24 Negroes of voting age in these 6 counties, however.

In two counties less than 10 percent of the voting age Negroes are registered. The Negro voting age population is 3.7 percent and 53.4 percent of the total voting age population in these counties.

In two counties between 10 and 24 percent of the voting age Negroes are registered. Negroes account for 0.08 and 61.9 percent, respectively, of the voting age population.

In eight counties between 25 and 49 percent of the voting age Negroes are registered. The Negro voting age population ranges between 1.8 and 32 percent of the total voting age population in these counties; the two median figures are 13 and 13.7 percent.

In 45 counties 50 percent or more of the voting age Negroes are registered. The Negro voting age population ranges between 0.5 and 33.9 percent of the total voting age population in these counties; the median figure is 4.6 percent.

Texas

In Texas [22] whites comprise 88.3 percent of the population 21 years old or over; nonwhites 11.7 percent. Registration figures (based on poll tax receipts) were obtained from only 213 of the 254 counties in this State.[23] In these counties, whites comprise 88.2 percent of the voting

age population and 91.9 percent of the total number actually eligible to vote; and nonwhites who are 11.8 percent of the voting age population are 8.1 percent of those eligible to vote.

In 25 Texas counties no Negroes are registered to vote. There are no voting age Negroes in 4 of these, and the total Negro voting age population in the other 21 counties is only 200.

In 21 counties less than 10 percent of the voting age Negroes are registered. The Negro voting age population ranges between 0.5 and 25 percent of the voting age population in these counties; the median figure is 5.7 percent.

In 55 counties between 10 and 24 percent of the voting age Negroes are registered. The Negro voting age population ranges between 0.3 and 39.1 percent of the total voting age population in these counties; the median figure is 4.7 percent.

In 71 counties between 25 and 49 percent of the voting age Negroes are registered. The Negro voting age population ranges between 0.1 and 47.4 percent of the total voting age population in these counties; the median figure is 5.2 percent.

In 51 counties 50 percent or more of the voting age Negroes are registered. The Negro voting age population ranges between 0.2 and 47.2 percent of the total voting age population in these counties; the median figure is 4.8 percent.

Virginia

In Virginia [24] whites comprise 81.1 percent of the population 21 years old or over; nonwhites 18.9 percent. Registration figures were obtained from official sources from the 32 independent cities and 95 of the 98 counties in the State.[25] Among these, whites account for 89.6 percent of the registered voters, and nonwhites for only 10.4 percent.

In four counties (or independent cities) in Virginia no Negroes are registered to vote. The total Negro voting age population for these four units is 221.

In eight counties (or independent cities) less than 10 percent of the voting age Negroes are registered. The Negro voting age population ranges between 4 and 47.3 percent of the total voting age population; the two median figures are 27.4 and 33.1 percent.

In 57 counties (or independent cities) between 10 and 24 percent of the voting age Negroes are registered. The Negro voting age population ranges between 1.8 and 62.2 percent of the total voting age population; the median figure in this group is 22.9 percent.

In 51 counties (or independent cities) between 25 and 49 percent of the voting age Negroes are registered. The voting age Negro population ranges between 0.3 and 78.5 percent of the total voting age population; the median figure is 16.6 percent.

In seven counties (or independent cities) 50 percent or more of the voting age Negroes are registered. The Negro voting age population ranges between 0.6 and 17.2 percent of the total voting age population; the median figure is 3.7 percent.

West Virginia

In West Virginia [26] registration figures were available for only 54 of the 55 counties.[27] In these 54 counties whites comprise 95.4 percent of the population 21 years old or over; nonwhites 4.6 percent. Whites account for 95.3 percent of the total number registered to vote, and nonwhites for 4.7 percent. In the aggregate there is no meaningful difference in the registration rate for whites and for nonwhites.

In four West Virginia counties, no Negroes are registered to vote. In 1 of these counties there are no Negroes of voting age, however, and the total Negro voting age population of the remaining 3 counties is 22. There are no other counties where less than 10 percent of the voting age Negroes are registered.

In five counties, between 10 and 24 percent of the voting age Negroes are registered. The Negro voting age population ranges between 0.1 and 3.4 percent of the total voting age population in these counties. The median figure in this group is 1.2 percent.

In four counties from 25 to 49 percent of the voting age Negroes are registered. The Negro voting age population ranges between 0.04 and 2.2 percent of the voting age population; the figures for the two median counties are 0.6 and 1.3 percent.

In 41 counties 50 percent or more of the voting age Negroes are registered. The Negro voting age population ranges between 0.02 and 21.4 percent of the total voting age population in these counties; the median figure is 2.2 percent.

SUMMARY

The foregoing analysis shows that in at least 129 counties in 10 States, where Negroes constitute a substantial proportion of the population (more than 5 percent of the population 21 and over), less than 10 percent of those ostensibly eligible are in fact registered to vote. In 23 of these counties in 5 States, indeed, none at all are registered. Since similarly populated counties in each of the same States have large Negro registration, the inference is unavoidable that some affirmative deterrent is at work in those counties where none are registered. While not con-

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clusive, this inference is sufficiently strong to warrant further specific inquiry in those "cipher" counties.

Another pattern that emerges is an inverse correlation between Negro concentration and Negro registration. Only in the border States of Delaware, Maryland, and West Virginia does this fail to appear. In the more Southern States, both on a statewide basis and in terms of counties, a greater concentration of Negroes generally means a smaller proportion of Negroes registered. Perhaps the reasons for this relationship is that the white community sees a high concentration of Negroes as a political threat and therefore feels impelled to prevent Negroes from voting. Certainly events in Macon County, Alabama,[28] and Fayette and Haywood Counties, Tennessee,[29] where the whites reacted vigorously to an apparent threat of Negro political inundation, suggests such a pattern. But other forces may also be at work: that is, a greater concentration of Negroes may often go hand-in-hand with a political, social, or economic structure in which factors other than discrimination tend to inhibit Negro voting. The Commission's study of civil rights in certain Black Belt counties, discussed in Part III of this report, sheds some light on this.

7. Gerrymandering and Malapportionment

> . . . In a democratic country nothing is worse than disfranchisement. And there is no such thing as being just a little bit disfranchised. A free man's right to vote is a full right to vote or it is no right to vote.[1]

In most States, voting districts for Federal and State legislators are so far from equal in population as to cause gross disproportion in representation.[2] This dilution of the votes of some citizens as compared to others is not commonly defended on the merits.[3] Rather, the controversy has centered upon the feasibility and appropriateness of particular methods of rectifying a condition that is admittedly contrary to democratic ideals.

This chapter will examine the controversy and the two separate but related problems which give rise to it: "malapportionment," which is political districting in which one group of voters has disproportionate strength as against other groups of voters in the same election; and "gerrymandering," which is political districting in which, although voting strength may be proportionate, district lines are drawn in such a way as to put particular groups of voters into, or out of, particular districts for the purpose of limiting the effectiveness of their votes. Each of these problems has ramifications in terms of racial discrimination, and each may be a denial of equal protection of the laws.[4]

The most famous example of gerrymandering with a racially discriminatory purpose involved Tuskegee, Ala. As indicated above,[5] the Alabama Legislature in 1957 changed the boundaries of this city in such a way that all but 4 or 5 of about 400 Negroes formerly voting in municipal elections were beyond the city limits. A suit to challenge the gerrymander, *Gomillion* v. *Lightfoot*,[6] was first dismissed by a U.S. district court. The Supreme Court, however, in November 1960 ruled that "When a legislature thus singles out a readily isolated segment of a racial minority for special discriminatory treatment, it violates the 15th amendment."[7] On remand, the plaintiffs proved that the gerrymander had indeed been conducted for a racially discriminatory purpose, and on February 17, 1961, the district court held the statute to be unconstitutional and void.[8]

At least two forms of malapportionment have racial aspects. One occurs when, by reason of malapportionment, the political weight of an area where many of the voters are Negroes (or members of other minority groups) is less proportionally than that of comparable areas where there are few or no Negro voters. Another occurs when discrimination, by preventing Negroes from voting, in itself produces or exaggerates malapportionment.

The significance of the racial aspect of malapportionment has been stressed by V. O. Key (a southerner, and professor of government at Harvard University), who observed in 1950 that "by the overrepresentation of rural counties in State legislatures, the whites of the black belts gain an extremely disproportionate strength in State lawmaking." [9] This gives excessive weight "to those areas in general the most conservative and in particular the most irreconcilable on the Negro issue." [10] More recently, C. Vann Woodward (a southerner and Sterling professor of history at Yale University) has pointed to malapportionment as a major factor in placing political control "in the hands of a small and often reactionary oligarchy," thereby "killing . . . needed social legislation" and fostering "interference with local public schools and their peaceful adjustment to Federal law." [11]

In analyzing malapportionment, the relationship between different voting districts can be expressed in different ways: in terms of total populations, or of numbers of registered voters, or of numbers of qualified voters (i.e., registered voters plus those eligible but unregistered). The first is commonly used and appears on the surface to be satisfactory. One would expect the ratio of total population to qualified voters to be about the same from one district to another within the same political unit; insofar as the ratio of total population to registered voters might vary from one district to another, the need (assuming equally populated districts) would seem to be one of education in civics rather than of reapportionment. Using total population as the criterion for malapportionment is seriously defective, however, whenever the difference between qualified voters and registered voters results not from apathy but from disfranchisement.[12]

THE LOUISIANA EXAMPLE

These conclusions are readily illustrated by voting statistics from Louisiana, where on the basis of extensive investigations and hearings, the Commission has found widespread racial discrimination in the voter registration process.[13] In the parishes presented in table 1,[14] at least three important points seem evident: first, serious malapportionment in

TABLE 1.—*Proportionate representation in selected Louisiana parishes* [1]

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Parish and character [2]		*Population*	*Number of representatives*	*Proportionate representation*	*Voting age whites registered*	*Voting age nonwhites registered*	*Nonwhite population*	*Adjusted* [3] *proportionate representation*
Rural					*Percent*	*Percent*		
Acadia		49, 931	2	1/25, 000	89. 0	82. 9	9, 827	1/25, 000
Madison		16, 444	1	1/16, 000	81. 4	0	10, 677	1/6, 000
Red River		9, 978	1	1/10, 000	104. 4	1. 2	4, 746	1/5, 000
St. Helena		9, 162	1	1/9, 000	104. 9	59. 7	5, 086	1/9, 000
Urban								
Calcasieu		145, 475	2	1/73, 000	69. 1	49. 3	39, 375	1/73, 000
Jefferson		208, 769	4	1/52, 000	79. 4	57. 2	31, 924	1/52, 000

[1] As of November 1960. La. Const. Art. III, sec. 5.
[2] The characterization "urban" or "rural" depends upon the presence in the parish of a city of over 100,000 population.
[3] Adjusted by subtracting nonwhites (col. 8) from total population where insignificant registration of nonwhites (col. 7) implies racial disfranchisement.
Source of population and voting data: See app. II, table 6.

terms of total population ratios [15] (col. 5); second, apparent disfranchisement of nonwhites in the rural, northern parishes of Madison and Red River (col. 7); and third, intensified disproportion created by apparent racial disfranchisement (col. 9).

Madison Parish, for example, has one representative for 16,444 citizens, while Calcasieu has two representatives for 145,475 citizens. This means that the influence of a voter in Madison is potentially about 4½ times greater than that of a Calcasieu voter. Since not one of the 10,677 nonwhites is registered, because nonwhites are excluded from the franchise in that parish,[16] it is apparent that only the remaining 5,767 whites in Madison enjoy representation there. The true extent of malapportionment as between Madison and Calcasieu, therefore, is not 4½ to 1 (col. 5) but potentially more than 12 to 1 (col. 9). Similarly, the true malapportionment between Red River (where there is also discrimination against Negroes) [17] and Calcasieu is not 7 to 1 (col. 5), but almost 15 to 1 (col. 9); between Madison and Jefferson, not 3 to 1, but over 8½ to 1; and between Red River and Jefferson, not 5 to 1, but more than 10 to 1. Even as between the two rural parishes of Red River (northwest) and St. Helena (southeast) which have virtually the same number of people, the effect of nonwhite disfranchisement in the former parish is to give its white voters a 2 to 1 advantage in representation over voters in the latter.[18]

Table 2, showing the representation of Louisiana's urban parishes, suggests that malapportionment in Louisiana (as in virtually all other States) favors rural over urban communities. The 1,648,700 citizens in urban parishes have 40 representatives; for the State as a whole, total population is 3,257,022 and the total number of representatives is 105. This means that the predominantly urban centers have slightly over 50 percent of the State's population, but only 38 percent of its voting strength. Conversely, the predominantly rural areas have just under 50 percent of the population, but 62 percent of its voting strength.

A similar demonstration can be made regarding disproportionate representation in Federal elections. For example, the First Congressional District of Louisiana, which is in the southeast and includes Orleans Parish, has a population of 682,256, while the adjacent Second District has a population of only 266,796. The Fourth District (in the northwest) and the Seventh District (in the southwest) appear in terms of population to be approximately equal: 391,541 in the former, and 384,330 in the latter. But in the Fourth District, where discrimination is frequent, only 8.2 percent of the nonwhites of voting age are registered, while in the Seventh District the comparable figure is 67 percent. Thus, racial disfranchisement in the Fourth District [19] gives the whites in that district disproportionate voting power over citizens in other congressional districts of the same State who do not deprive nonwhites of their voting rights.

TABLE 2.—*Representation in urban Louisiana parishes* [1]

(1) *Parishes*	(2) *Location*	(3) *Population*	(4) *Number of representatives*	(5) *Voting age, nonwhite registered*	(6) *Voting age, nonwhite registered, northern and southern parishes*
				Percent	*Percent*
Caddo	Northwest	223, 859	4	11. 2	
Ouachita	North central	101, 663	2	4. 5	11. 1
Rapides	....do	111, 351	3	16. 7	
Calcasieu	Southwest	145, 475	2	49. 3	
East Baton Rouge	Southeast	230, 058	4	28. 7	
Jefferson	....do	208, 769	4	57. 2	32. 6
Orleans	....do	627, 525	20	28. 9	
Total		1, 648, 700	39		

[1] Parishes with a city of over 100,000 population.

Source of population and voting data: See app. II, table 6.

Neither the Federal Government nor the States are without remedial powers regarding malapportionment and gerrymandering. These powers, however, are infrequently used.

Executive remedies

Section 2 of the 14th amendment provides that Representatives in Congress "shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State. . . ." The basic constitutional standard of representation, therefore, is in terms of total population. However, in recognition of the possibility of disfranchisement, section 2 further provides that when the right to vote is "denied . . . or in any way abridged" in any State or Federal election in any State, the basis of congressional representation in such State "shall be reduced in the proportion which the number of such . . . [disfranchised] citizens shall bear to the whole number of . . . citizens 21 years of age in such State." Apart from the qualification respecting age, the only grounds recognized in section 2 for limiting a citizen's right to vote are nonresidence and "participation in rebellion, or other crime."

Congress has provided that [20]—

> On the first day, or within one week thereafter, of the first regular session of the Eighty-second Congress and of each fifth Congress thereafter, the President shall transmit to the Congress a statement showing the whole number of persons in each State . . . as ascertained under the seventeenth and each subsequent decennial census of the population, and the number of Representatives to which each State would be entitled under an apportionment of the then existing number of Representatives by the method known as the method of equal proportions, no State to receive less than one member.

Pursuant to section 2 of the 14th amendment Congress has provided further that the number of Representatives thus determined "shall be reduced in the proportion which the number of . . . [disfranchised] citizens shall have to the whole number of . . . citizens 21 years of age in such State." [21] Therefore, apart from the President's independent duty to support the Constitution, Congress has required him to act in compliance with the 14th amendment in his decennial apportionment statement.

After such a statement has been transmitted to the Congress, "It shall be the duty of the Clerk of the House of Representatives," within 15 days, "to send to the executive of each State a certificate of the number of Representatives to which such State is entitled. . . ." [22] This function of the clerk appears to be mandatory and purely ministerial, and thus

perhaps subject to a judicial order of mandamus should he fail to act in accordance with the President's apportionment statement.[23]

There are, however, both potential and existing restrictions on the President's power in this regard. The principal potential impediment is that Congress can repeal the law requiring reduction of representation in accordance with the President's statement, or withdraw his statutory authority to make it. (The President can, of course, send messages to Congress at any time, but ordinary messages do not carry automatic consequences as do those prescribed in this statute.) Further the President is authorized to act only every 10th year, starting with the 1st session of the 82d Congress. This means that the most recent opportunity was January 1961, and that the next one will not be until January 1971.

Finally, there are very real difficulties in determining what proportion of the eligible electorate has had its vote "denied . . . or in any way abridged." These difficulties concern determining both what constitutes denial or abridgment within the meaning of the amendment,[24] and the numbers of persons who have suffered such denial or abridgement. The Commission's studies show the difficulty of making definitive measurements in this field.[25]

It has been suggested that norms of voting "apathy" be calculated on a State or National basis, and extrapolations made therefrom to determine disfranchisement.[26] For example, if 60 percent of all eligible Negroes throughout the country register to vote, a State in which only 30 percent of the eligible Negroes register would be found to have abridged the right to vote of 50 percent of the total number of its eligible Negro population. While this would provide a relatively simple standard, it is, of course, premised on an assumption of uniform National or State voting "norms." This assumption presents some hazards, for voting "apathy" probably relates to many variables, including education, custom, the importance of local issues in particular elections, and other incalculable factors.[27]

Apart from racial disfranchisement, substantial dilution of the effectiveness of some votes through malapportionment would also seem to fall within the phrase "in any way abridged"—i.e., "diminished," or "curtailed." [28] If so, section 2 of the 14th amendment is applicable.

Through the decennial apportionment statement, therefore, the President has some remedial power regarding racial disfranchisement specifically, and malapportionment generally. The most severe limitation on this power is that under existing legislation (assuming it remains law), such action could not be taken for 10 years. However, it should be observed that this time factor at least provides opportunity for an appropriate agency to make findings in a thorough way; and that just as Congress can eliminate the presidential statement altogether, it could

also provide for such a statement to be made, for example, at the commencement of the 88th Congress, 2 years hence.

There appears to be no other pertinent Executive power to protect the right to vote. Although of course the Department of Justice can bring suit against intimidation, coercion, or threats, or deprivations on account of race,[29] in the absence of further legislation it has no explicit statutory authority to initiate civil proceedings against State officials to enjoin elections from being conducted under malapportioned electoral districts. It has nonetheless intervened as *amicus curiae* in the Supreme Court in one such suit brought by private persons.[30]

Legislative remedies

Congress has power under a variety of constitutional provisions to provide remedies for malapportionment.[31] Similarly, State legislatures, through article I, section 4, of the Federal Constitution,[32] and through various State constitutional provisions, have broad authority to promote equality in voting power.

Various proposals dealing with this problem are pending before Congress. In the last session Senator Clark of Pennsylvania proposed a constitutional amendment [33] to require contiguous, compact, and substantially equal legislative districts to insure proportionate representation in State legislatures. This amendment would be offered for ratification in the States by delegates elected at large [34] rather than by the State legislatures. Senator Clark has further proposed legislation,[35] to follow this amendment, requiring that no State election district "exceed by more than 50 per centum the legislative representation of any other such district in that State in the house." [36] This bill, by its terms, could not become effective before the next decennial census in 1970. If any State should fail to act (presumably through its legislature) within 2 years thereafter, its Governor would be required to establish a reapportionment board to make findings on the basis of which the Governor would be required to reapportion by Executive order. If neither the legislature nor the Governor acted within 3 years after the effective date of the act, the highest court of the State "shall by writ of mandamus or other appropriate order" direct the Governor to reapportion.

The primary virtue of the Clark proposals is that currently vested political interests would be so remotely affected, that opposition might not be as strenuous as it might be if reapportionment were to be effected in the reasonably near future. However, even assuming that the constitutional amendment and the bill were adopted before 1970, reapportionment could be delayed until 1973 before judicial action could even be commenced to enforce them.

Apart from the delays embodied in the Clark proposals, there is serious question whether constitutional amendment is necessary to permit Congress to act regarding State election districts. It would appear that a person whose franchise has been diluted to an impotent fraction of his neighbor's has been denied equal protection of the laws within the meaning of the 14th amendment; and Congress has power, under section 5 of that amendment, to enact legislation to enforce it. In addition, article IV, section 4, provides that "the United States shall guarantee to every State . . . a republican form of government . . . ." Although the Supreme Court has held that the question of what constitutes a republican form of government is political, and therefore nonjusticiable,[37] the Court has also made it clear that Congress may act under this clause.[38] "What . . . are the distinctive characters of the republican form?" This question is posed and answered by James Madison in the Federalist, No. 39: [39]

> . . . We may define a republic to be . . . a government which derives all its powers directly or indirectly from the great body of the people. . . . It is *essential* to such a government that it be derived from the great body of society, *not from an inconsiderable portion, or a favored class of it.* . . .

In No. 10 of the Federalist, Mr. Madison refers to "the republican principle," which "by regular vote" precludes minority control. Remedial legislation, based on a legislative determination that a malapportioned State legislature violates the guarantee of a republican form of government, would therefore appear to be appropriate and able to withstand any attack in court.

Two bills in the House take a more direct approach than Senator Clark's measures, but relate only to congressional districts. The Multer bill [40] would require each State to establish contiguous and compact districts, "and the number of inhabitants contained within any districts so established shall not vary more than 10 per centum from the number obtained by dividing the total populations of such States, as established in the last decennial census, by the number of Representatives apportioned to such State. . . ." The sanction provided is that any Representative elected from a district that does not conform to the bill's requirements "shall be denied his seat in the House of Representatives and the Clerk of the House shall refuse his credentials."

The Celler bill [41] is similar, except that the permitted variance in apportionment is 20 percent, and the sanction is a grant of jurisdiction to the Federal district courts to review the future establishment of congressional districts. The bill does not specify, however, what relief shall be granted by the courts; it is therefore subject to the possibility of judicial refusal to exercise jurisdiction on grounds of equitable abstention.[42]

A more basic concern regarding these proposals, however, is the serious doubt that they will be adopted. The animals who were "more equal"

than their fellows in George Orwell's *Animal Farm* were not prone to effect true equality, and the legislature that is the creature of malapportioned districts is not the most likely prospect for corrective action.[43]

> That Congress can effectively enforce equitable districting . . . is flatly negated by history and by political horse sense. Twice in the House, in 1901 and 1910, seating of a member has been challenged on the ground that his district did not meet standards of equality. Both challenges were rejected. . . .
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> * * *
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> . . . Members of Congress are no more likely to vote themselves out of office than are state legislators. The real alternatives would seem to be intervention by the federal courts or continued inaction.

Similar observations would seem to be true of congressional legislation affecting malapportionment in the States, which would upset the legislatures back home.

Judicial remedies

If the powers of the Executive are limited and those of the legislature remain substantially unexercised, what of the judiciary? The answer begins with three opinions in the Supreme Court in 1946 in *Colegrove* v. *Green,*[44] which serve more to raise the issues than to resolve them. There three qualified Illinois voters, who resided in Federal congressional districts adversely affected by malapportionment, sought in effect to restrain the Illinois Primary Certifying Board from proceeding under the Illinois election law that gave rise to the malapportionment. Only seven Justices heard the case; they split 3–1–3.

The controlling opinion was written by Mr. Justice Frankfurter, who said [45] that the Court "could" dispose of the case on the authority of *Wood* v. *Broom,*[46] which held that the applicable Federal Reapportionment Act [47] imposed no requirement of population equality in congressional districts. However, Mr. Justice Frankfurter went on to express agreement [48] with the four concurring Justices in *Wood* (Justices Brandeis, Stone, Roberts, and Cardozo), who were of the opinion that the petition in that case should have been dismissed "for want of equity."

It is important to note that these two grounds of decision are quite different. If the party complaining of malapportionment must fail because Congress has not required equality of population in voting districts, the implication is that the Court has no power to act in the absence of express legislation (or that the Court will not act when Congress by implication approves unequal districts). Indeed, Mr. Justice Frankfurter seems to say just this in *Colegrove:* Article I, section 4 of the Constitution, which provides that the States shall prescribe regulations regarding the times, places, and manner of holding congressional elections, also provides that the Congress "may" make or alter such regulations; Congress, therefore, has "exclusive" authority within the Federal Government to deal with malapportionment, and this aspect of government "*cannot* be entered" by the Federal courts.[49]

On the other hand, the doctrine of "want of equity" (or "equitable abstention") implies existence of judicial power, but a judicial determination to withhold action for particular reasons of policy. With respect to malapportionment cases, this policy relates to the "peculiarly political nature" of the issue, which is "not meet for judicial determination." [50] Courts "*ought not* to enter this political thicket." [51]

Mr. Justice Frankfurter's deepest concern may have been the feasibility of the remedy: [52]

> Of course no court can affirmatively remap the Illinois districts so as to bring them more in conformity with the standards of fairness for a representative system. At best we could only declare the existing electoral system invalid. The result would be to leave Illinois undistricted and to bring into operation, if the Illinois legislature should choose not to act, the choice of members for the House of Representatives on a statewide ticket.

This latter remedy "may be worse than the first," because it "may defeat the vital political principle" of representation by districts.[53]

The difference between what the Court "cannot" do and what it "ought not" do was important to Mr. Justice Rutledge, whose separate concurrence made Mr. Justice Frankfurter's the prevailing opinion. Mr. Justice Rutledge expressed the view that the Constitution, article I, section 4 (referred to above), and article I, section 5 (which makes each house "the Judge of the Elections, Returns, and Qualifications of its own Members"), would seem to support Mr. Justice Frankfurter's first ground. However, Mr. Justice Rutledge found that *Smiley* v. *Holm* [54] "rules squarely to the contrary, save only in the matter of degree." [55]

In *Smiley* the Supreme Court construed article I, section 4 (giving the States and Congress power to prescribe times, places, and manner of holding elections), in order to determine whether a Minnesota redistricting act was valid.[56] Finding that it was not, the Court held that "unless and until new districts are created; all representatives allotted to the State must be elected by the State at large" [57]—the remedy that Mr. Justice Frankfurter, in the *Colegrove* setting, considered to be contrary to sound policy. Thus, a suit brought in the name of a "citizen, elector, and taxpayer" to enjoin the Minnesota Secretary of State from acting under invalid State apportionment legislation was not referred to Congress as exclusive arbiter, but was held to lie within the Court's power.

Mr. Justice Rutledge concluded in *Colegrove,* therefore, that "this Court has power to afford relief in a case of this type as against the objection that the issues are not justiciable." [58]

While disagreeing with Mr. Justice Frankfurter on the question of the Court's power, Mr. Justice Rutledge concurred that *Colegrove* should be dismissed for want of equity. In reaching this conclusion, Mr. Justice Rutledge emphasized not only the "delicate . . . character" of the controversy,[59] but also the particular facts of *Colegrove*: equity will not issue an ineffectual decree, and Mr. Justice Rutledge observed that in *Colegrove* "the shortness of the time remaining [before the election] makes it doubtful whether action could, or would, be taken in time to secure for petitioners the effective relief they seek." [60]

Mr. Justice Black, joined by Justices Douglas and Murphy, dissented. Yet on the question of whether the Court has power to act on malapportionment (as distinguished from whether the power should have been exercised on the facts in *Colegrove*), the dissenters plus Mr. Justice Rutledge made a majority in favor of the Court's inherent power. According to Mr. Justice Black: [61]

> The policy with respect to federal elections laid down by the Constitution, while it does not mean that the Courts can or should prescribe the precise methods to be followed by state legislatures and invalidation of all Acts that do not embody those precise methods, does mean that the state legislatures must make real efforts to bring about approximately equal representation in Congress.

Because of the discriminatory effect of malapportionment in *Colegrove,* Mr. Justice Black considered the legislation to be "exactly the kind that the equal protection clause [of the 14th amendment] was intended to prohibit," [62] and, therefore, that "it is the Court's duty to invalidate the state law." [63]

Regarding Mr. Justice Frankfurter's concern with the feasibility of the remedy, Mr. Justice Black stated: [64]

> Nor is there any more difficulty in enforcing a decree in this case than there was in the *Smiley* case. It is true that declaration of invalidity of the State Act and the enjoining of State officials would result in prohibiting the State from electing Congressmen under the system of the old Congressional districts. But it would leave the State free to elect them from the State at large, which, as we held in the *Smiley* case, is a manner authorized by the Constitution.

Although this manner of election may be "inconvenient," continued Mr. Justice Black, "it has an element of virtue that the more convenient method does not have—namely, it does not discriminate against some groups to favor others, it gives all the people an equally effective voice in electing their representatives as is essential under a free government, and it is Constitutional." [65]

Thus, while the prevailing opinion in *Colegrove* suggested that the courts have no power to consider questions of political districting, at least in congressional elections, four of the seven participating Justices took the position that there was such power. The real thrust of the decision, therefore, lies in the view of a coalition of four Justices that this was a case where the Court ought not to exercise its power—principally because to do so would mean requiring elections to be held at large.

These questions next came before the Court in *South* v. *Peters,*[66] which involved a challenge on equal protection grounds against use of the Georgia county unit system in primary elections for the Federal Congress.[67] Here seven of the Justices, in a *per curiam* opinion, again declined on equitable grounds to enter a "political thicket," but acknowledged the Court's power to do so: [68]

> Federal courts consistently *refuse to exercise their equity powers* in cases posing political issues arising from a state's geographical distribution of electoral strength among its political subdivisions.

There again an election at large would have been the likely remedy if the Court had exercised jurisdiction; and Justices Black and Douglas again argued in dissent that abstention was not justified.[69]

While the judicial power aspect of *Colegrove* thus appears to have been settled, the issue of equitable abstention has arisen again in recent and current cases before the Supreme Court.

The Tuskegee case

Until 1957 Tuskegee, Ala., was a square-shaped city with about 400 Negro voters. By State legislation in that year, it became an irregular, 28-sided gerrymander from which all but 4 or 5 Negro (but no white) voters had been excluded. Former Negro voters sought, in *Gomillion* v. *Lightfoot* (the *Tuskegee* case),[70] to enjoin enforcement of the statute as violative of the 14th and 15th amendments. Against allegations of purposeful racial discrimination, the defendant city officials suggested no municipal function served by redrawing the city bounds. Was this case in the "political thicket" that the courts either cannot or ought not enter, or was judicial intervention appropriate?

The opinions of the three judges who decided the case in the Court of Appeals for the Fifth Circuit [71] are instructive. The prevailing opinion, by Judge Jones, held that legislation affecting municipal boundaries is a "political function," and that *"in the absence of any racial or class discrimination appearing on the face of the statute,"* the courts will not inquire into the motives of the legislature to invalidate legislation.[72]

Judge Brown dissented. Acknowledging that voting regulations "are primarily for the states" [73] he went on to note that this cannot mean "that the Constitution imposes *no* limitation upon the actions of the states in these areas" [74] (indeed, as has been seen, even Judge Jones recognized that the legislation would be unconstitutional if the discriminatory purpose were explicit in the statute). Judge Brown responded that [75]—

> It is of little significance that the . . . redistricting act . . . does not, as this Court so greatly emphasizes, demonstrate on its face that it is directed at the Negro citizens. . . . If the act is discriminatory in purpose and effect, "whether accomplished ingeniously or ingenuously [it] cannot stand."

As for *Colegrove,* Judge Brown said, that case "involved no consideration of racial issues. The conflict was between rural and urban Illinois, or political parties, not races." [76] Judge Brown would therefore have held the statute violative of the 15th amendment.

The third judge, Judge Wisdom, concurred with Judge Jones, and added to the latter's formal reasoning a "pragmatic approach" [77] regarding proper exercise of equitable power. In addition to his concern that equitable relief "would put Federal courts in the position of interfering with the internal governmental structure of a state," thus "putting a new kind of strain on federal-state relations already severely strained," [78] Judge Wisdom asserted that "any decree in this case purporting to give relief would be a sham: the relief sought will give no relief." [79]

To his own conclusion, the judge acknowledged "an obvious reply": [80]

> . . . In a democratic country nothing is worse than disfranchisement. And there is no such thing as being just a little bit disfranchised. A free man's right to vote is a full right to vote or it is no right to vote.

"Perhaps so," Judge Wisdom rejoined, but in *Colegrove* v. *Green* and *South* v. *Peters,* "the United States Supreme Court has made no such reply." [81] *Colegrove* and *South* "may be distinguishable at the periphery. At the center these cases and the instant case are the same." [82]

> I can see no difference between partially disfranchising [N]egroes and partially disfranchising Republicans, Democrats, Italians, Poles, Mexican-Americans Catholics, blue-stocking voters, industrial workers, urban citizens, or other groups who are euchred out of their full suffrage because their bloc voting is predictable and their propensity for propinquity or their residence in certain areas, as a result of social and economic pressures, suggests the technique of partial disfranchisement by gerrymander or malapportionment.

The force of Judge Wisdom's logic is of particular significance in view of the fact that the Supreme Court unanimously reversed the Court of Appeals.

Would the requested remedy in the *Tuskegee* case be any more "a sham" than that in *Colegrove*? Are these cases "at the center . . . the same"? The Supreme Court did not appear to think so.

There were two opinions in the Supreme Court's decision in the *Tuskegee* case, one by Mr. Justice Whittaker, resting upon the 14th amendment (also involved in *Colegrove*) and the other by Mr. Justice Frankfurter on behalf of the other eight Justices.[83] Mr. Justice Whittaker's concurring opinion reasoned that the plaintiffs had not been deprived of a right to vote, but only of a vote in a particular locality in which they no longer resided. The unconstitutionality of the legislation therefore derived not from deprivation of the vote on grounds of race under the 15th amendment, but from "fencing Negro citizens out of" Tuskegee and thereby segregating the races in violation of the equal protection clause of the 14th amendment.[84] Mr. Justice Whittaker's view of the applicability of the equal protection clause was a very limited one, for in the absence of legislation excluding Negroes from moving into the new city limits,[85] it is apparent that the Negroes had been "fenced out" only in a figurative sense. A clearer and more substantial denial of equal protection might also have been found in the purpose and consequence of the statute—the arbitrary exclusion of Negroes as a class from a group of voters to which they formerly belonged.

As for *Colegrove,* Mr. Justice Whittaker expressed the view that invalidation of the gerrymander under the 14th amendment "clearly would not involve . . . the Colegrove problem" [86]—any more than did the *School Segregation Cases* [87] or *Cooper* v. *Aaron.*[88] But those cases did not, like *Colegrove* and *Tuskegee,* involve districting affecting exercise of the franchise. Mr. Justice Whittaker's opinion did not, therefore, make clear why, if the Court could and ought to act in this case, it should not do so in a case like *Colegrove,* in which ascertainable groups are arbitrarily deprived of full suffrage.

This question was not fully answered by Mr. Justice Frankfurter, writing for himself and seven other members of the Court. [89] He rested the invalidation of the State law on the 15th amendment (deprivation of the vote on grounds of race). Apparently because only State elections were involved, there was no problem, as in *Colegrove,* of "exclusive" congressional power.[90] Indeed, Mr. Justice Frankfurter appeared to treat *Colegrove* as a decision on equitable, not jurisdictional grounds: the subject there, he said, was "not meet for adjudication." [91] Explaining why *Tuskegee* differed from *Colegrove* in this respect, he suggested three grounds of distinction: (1) "The appellants in *Colegrove* complained only of a dilution of the strength of their votes . . .";

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(2) the malapportionment resulted from "legislative inaction over a course of many years," as distinguished from "affirmative legislation action"; and (3) the *Colegrove* decision did not "sanction a differentiation on racial lines." [92]

The first of these grounds suggests that being "just a little bit disfranchised" is beyond judicial remedy—though "just a little bit disfranchised" in *Colegrove* meant in some instances being deprived of eight-ninths of one's vote. The line between no vote and one-ninth of a vote seems thin indeed. This reasoning implies that there is a significant difference between total disfranchisement and dilution of some voters' franchise to an impotent fraction.[93]

It may be, although the Court did not say so, that the crux of the problem is the remedy, not the rights involved. Where the complaint is "dilution" of votes, as in *Colegrove,* the only judicial remedy may be an election at large. In *Tuskegee* invalidation of the challenged statute did not entail an election at large, nor redistricting, but simply restoration of the preexisting city boundaries. In *Smiley* v. *Holm,* however, the Court ordered an election at large.

The Court's second possible ground of distinction is also a difficult one. It is well established that "a statute valid when enacted may become invalid by change in the conditions to which it is applied." [94] Beyond this, the Court has often expressed the deference it owes to affirmative legislative action,[95] which, one would expect, is entitled to more rather than less weight than legislative inaction. It would appear that the problem of Federal-State or judicial-legislative friction is considerably less acute when the legislature has not acted affirmatively for many years. Again, however, the Court may have had in mind (although it did not mention) the question of remedies: where an affirmative districting act is struck down, the effect may be to restore a previous districting law, rather than require elections at large, as would likely be the case where the legislature has simply failed to act. However, an older districting statute, because of population changes, may be less satisfactory than the challenged one; and, as observed earlier, *Smiley* v. *Holm* involved affirmative legislation and the Court ordered an election at large.

This leaves the possible distinction that *Colegrove* did not involve racial discrimination. If this refers to the fact that the 15th amendment was involved in *Tuskegee,* and the 14th amendment in *Colegrove,* it is not fully illuminating, for it is not apparent why the courts can or will act under the 15th amendment and not under the 14th, which also forbids racial discrimination. It may be, rather, that the thrust of this point is that where a racial element is present, the constitutional prohibition against discrimination is narrower and more manageable; where the discrimination is on other grounds, a more difficult and broader constitutional judgment is required. If this was the reasoning, it may explain why the Court rested the decision in *Tuskegee* on the 15th amendment, which deals only with race, rather than on the 14th amendment, which prohibits discrimination on other grounds as well.

This line of reasoning would suggest that, contrary to Judge Wisdom, the Court might see a difference between partially disfranchising Negroes and partially disfranchising any "other groups who are euchred out of their full suffrage": [96] the difference may be that a clearly forbidden and limited factor—race—is involved, and so the constitutional determination is more readily arrived at. If this is a basis of the *Tuskegee* decision, one might expect to find judicial abstention in any case in which neither a racial factor nor a complete denial of the right to vote of a given group of people is involved.

The Tennessee case

These issues have been placed before the Court again in *Baker* v. *Carr,*[97] an action brought in a Federal district court in Tennessee by qualified State voters on their own behalf, on behalf of all qualified voters in their own districts, and on behalf of all other Tennessee voters similarly situated. Defendants are the Tennessee secretary of state, attorney general, coordinator of elections, and members of the board of elections. The complaint alleged failure of the legislature to reapportion since 1901,[98] despite drastic changes since that time in distribution of population among districts. As a result, it was alleged, a minority of approximately 37 percent of the voting population of the State now controls 20 of the 33 seats in the State senate, and a minority of 40 percent of the voting population of the State now controls 63 of the 99 seats of the house of representatives. The case was argued before the Supreme Court (where the United States intervened as *amicus curiae*) in April 1961.

In *Baker,* unlike *Colegrove,* only State, not Federal, elections are involved.[99] For this reason the Court need not abstain on equitable grounds to avoid "cut[ting] very deep into the very being of Congress." [100] Equitable abstention, however, might still be invoked because of (*a*) reluctance by the Court to enter "the political thicket" of districting; (*b*) reluctance to interfere unnecessarily in an area in which the States have a primary responsibility; (*c*) a desire to avoid a delicate constitutional determination, since neither racial discrimination nor total disfranchisement is involved; or (*d*) concern about the remedy.

As indicated above, the Court *has* entered the political thicket, at least in *Smiley* v. *Holm* (involving Federal elections) and the *Tuskegee* case (involving local elections).[101] The second point, however, does

involve a problem that has not yet been explored in this chapter; that is, the desirability in a Federal system of leaving with the State governments maximum opportunity to exercise responsibility for protecting the rights of their citizens.

Unfortunately, the extent of malapportionment, and the obvious self-interest of State legislators in maintaining their own power, makes it vain to expect State legislatures to establish satisfactory apportionment.[102] Moreover, the very concept of responsible State government is subverted by the fact of malapportionment and the inordinate power it may give to sectors in the community that tend to be irresponsible in matters affecting civil rights.[103]

In some States, of course, remedial action can be taken by the people through referendum or similar popular action. This is not true in Tennessee, however, where the *Baker* case arose. Moreover, even where such procedures are available, they may be ineffective. One authority [104] has reported on the 1956 initiative in Washington, which was the first reapportionment in that State since an initiative in 1930. Neither party supported the measure, but it passed—only to be amended beyond recognition by a legislature newly elected from the old districts. The State supreme court, splitting 5–4, refused to issue an order requiring use of the unamended initiative reapportionment.[105]

Judicial action has been invoked successfully, however, in a number of State cases.[106] Perhaps the most dramatic of these is *Asbury Park Press, Inc.* v. *Wolley*.[107] There the court held simply that it had jurisdiction to act in malapportionment cases, but declined to do so under the presumption that the legislature would comply with its duty to reapportion in accordance with the 1960 census. The court did, however, retain jurisdiction of the case. When the legislature subsequently failed to act, the court gave it until 5 p.m. on February 1, 1961, to reapportion, stating that if the legislature failed to do so, the court would take appropriate action itself. In special session, the legislature passed a reapportionment act on February 1, 1961, at 3:13 p.m.[108]

Apart from underscoring the point already made in *Smiley* and the *Tuskegee* case, that judicial action is possible, the State cases do raise the question of whether the Federal courts should not defer to the State courts and thereby avoid unnecessary strains on our Federal system.[109] In connection with this question, two observations should be made.

First, with respect to *Baker* itself, an attempt to obtain judicial redress was unavailing in Tennessee.[110] Second, and going beyond the limits of the *Baker* case, the Supreme Court, in a 6–2 decision (written by Mr. Justice Frankfurter), has held that in a claim of deprivation of voting rights on grounds of race, the Federal courts need not defer to prior State adjudication:[111]

> To vindicate his present grievance, the plaintiff did not have to pursue whatever remedy may have been open to him in the state courts. . . . Barring only exceptional circumstances . . . or explicit statutory requirements . . . resort to a federal court may be had without first exhausting the judicial remedies of state courts.

This case has been cited for the proposition that the doctrine of equitable abstention "has no application where the plaintiffs complain that they are being deprived of constitutional civil rights," for the protection of which "the Federal courts have a responsibility as heavy as that which rests with the State courts." [112] The fact that the *Tuskegee* case originated in the Federal courts and was not referred back to the Alabama courts lends further support to the conclusion that abstention will not always be invoked on the ground of deference to possible State judicial proceedings.

Another point on which a future malapportionment decision might turn is the fact that the disfranchisement is not, as in the *Tuskegee* case, on racial lines. The difference is one between the 15th amendment (racial disfranchisement) and the 14th amendment (denial of equal protection of the laws). Does the former indeed require judicial intervention more than the latter? Perhaps, as suggested in the *Tuskegee* case, the Court is more willing to remedy racial disfranchisement. Yet, as has been indicated earlier in this chapter, malapportionment is often aggravated by racial disfranchisement, and the State legislatures created by such systems are the least tractable in acting with any speed, deliberate or otherwise, to eliminate racial discrimination in voting or elsewhere.[113] Moreover, in either case, the disfranchised voter is helpless to protect himself with his ballot.

Finally, there is the question of remedy. In the argument before the Supreme Court, several remedies were suggested, including (*a*) simply remanding the case to the three-judge court (implicitly, at least, an assertion of the existence of Federal jurisdiction); (*b*) issuing a declaratory judgment that the State Apportionment Act of 1901 is invalid; (*c*) ordering an election at large; (*d*) ordering the State election officials to conduct elections in accordance with the relatively simple mathematical requirements of the State constitution; [114] or (*e*) appointing a master to conduct elections according to the State constitutional formula. Interestingly, at one point in his oral argument the Solicitor General of the United States requested only an assertion of Federal power and a remand to the three-judge court, without more.[115] The State, of course, requested dismissal, either for lack of Federal jurisdiction, or on grounds of equitable abstention.

With the broad range of discretion of an equity court to fashion an appropriate remedy to fit the case, the Court could have accorded any

of these remedies, any of its own devising, or none. The course actually taken by the Court, whether intentionally or not, in practical effect fell just between the Solicitor General's request and the State's; that is, the Court did not quite avow nor disavow Federal court jurisdiction or willingness to exercise it. The Court simply ordered the case reargued on October 9, 1961, the first day of argument in the coming term. The order for reargument may have the effect of giving the Tennessee Legislature an opportunity to act and thereby make decision by the Court unnecessary.[116] Thus, not unlike the New Jersey court in *Asbury Park Press,* but without actually entering the thicket at all, the Court may succeed in flushing out its grouse. If it does so succeed, resolution of the multifarious malapportionment issues will have to await some later case.[117] If not, the unavailability of State remedial action will be manifest, and the Court presumably will have to decide in the coming term.

APPRAISAL

The foregoing discussion, although it cannot provide conclusive answers to the malapportionment problem, at least suggests that the prevailing opinion in *Colegrove* is not the final word from the Supreme Court. The idea that the Federal courts lack power was adopted by only three of the seven Justices in *Colegrove,* and appears to have been disavowed by subsequent decisions.[118]

With regard to the doctrine of equitable abstention, Justice Rutledge's concurrence in *Colegrove* might well have been different were it not for the fact that "the shortness of the time remaining" made it "doubtful whether action could or would be taken in time to secure for the petitioners the relief" they sought.[119] Moreover, *Smiley* v. *Holm,* the *Tuskegee* case, and several State court decisions suggest that a judicial remedy is practicable in some situations.

Finally, the close relationship in some States between malapportionment and racial discrimination including disfranchisement, makes the need for Federal court action even more apparent.

Congress could take appropriate action to compel the States to apportion fairly. The political nature of the issue, however, which has been used to justify judicial abstention, may make such legislative action unlikely. Judicial action may therefore be the only alternative, to protect vast numbers of our citizens from virtual disfranchisement. Surely "legislation which restricts those political processes which can ordinarily be expected to bring about repeal of undesirable legislation, is to be subjected to more exacting judicial scrutiny . . . than are most other types of legislation." [120] Only thus can "the indispensable conditions of a free society" [121] have meaning and vitality.

8. Conclusions

The right to vote without distinctions of race or color—the promise of the 15th amendment—continues to suffer abridgment. Investigations, hearings, and studies conducted by the Commission since its *1959 Report* indicate, however, that discriminatory disfranchisement is confined to certain parts of the country—indeed that it does not exist in 42 States. But in about 100 counties in Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee, there has been evidence, in varying degree, of discriminatory disfranchisement.

Efforts to deny the right to vote take many forms: economic reprisals as in Fayette and Haywood Counties, Tenn.; discriminatory purges of Negroes from the registration rolls as in Washington, Ouachita, and Bienville Parishes, La.; and restrictive voter qualification laws as in Mississippi and Louisiana. The most prevalent form of discrimination, however, occurs in arbitrary registration procedures. On this the Commission's Louisiana hearing produced detailed testimony and documentation.

The hearing showed that Negroes in 11 Louisiana parishes have encountered a variety of procedural obstacles to registration: a requirement, not equally applied to whites, that they fill out their application forms with unusual precision; that they secure registered voters to vouch for their identity (a difficult requirement in parishes where few or no Negroes are registered to vote); that they give a "reasonable" interpretation of a provision of the Constitution; that they defer to white persons who want to register ahead of them; that they submit to exasperating delays. It can be said, in general, that Negroes exercise their right to vote at the discretion of registrars.

Commission studies indicate that many other pressures have been brought to bear against Negro electors in Louisiana—by citizens councils and by the State legislature itself. The latter, acting through agencies like the Joint Legislative Committee, has actively encouraged registration officials to discriminate against Negro applicants. More directly it has sponsored an amendment to the State constitution and enacted a number of statutes—a "segregation law package"—plainly designed to encourage further discriminatory disfranchisement.

Despite this, certain trends are encouraging. It should not be forgotten that systematic disfranchisement is a problem in only 8 of 50

States; and that after 70 years of no civil rights legislation, Congress passed the Civil Rights Act of 1957 and 1960. Before these acts the only possibility of Federal court remedy was under Reconstruction legislation, which was clear as to rights, but inadequate as to remedies.

The Civil Rights Act of 1957, which elevated the Civil Rights Section in the Department of Justice to a Division, and created this Commission, gave the Federal Government power to bring civil actions for injunctive relief where discrimination denied or threatened the right to vote. After extended litigation concerning the constitutionality of the Civil Rights Act of 1957, the Federal Government has secured injunctions against discriminatory registration practices in Terrell County, Ga., and Macon County, Ala. It obtained a court order restoring 1,377 Negroes to the registration rolls in Washington Parish, La. In addition, it has tried suits in Bienville Parish, La., and Bullock County, Ala.; these are awaiting decision. Other voting suits have been filed in East Carroll and Ouachita Parishes, La.; Dallas and Montgomery Counties, Ala.; and Forrest, Clarke, Walthall, and Jefferson Davis Counties, Miss.

Under provisions of the 1957 act prohibiting threats, intimidation, and coercion of voters in Federal elections, the Government brought suits to end economic boycotts against Negro voters in Fayette and Haywood Counties, Tenn., and East Carroll Parish, La. It obtained temporary injunctions in the Tennessee suits and stipulated an agreement in the East Carroll suit.

The Civil Rights Act of 1960 strengthened the 1957 act. It provided that States, as well as registrars, may be sued for discriminatory voting practices. Under title III, the 1960 act required the preservation of voting records, and empowered the U.S. Attorney General to inspect them. Also, title VI of this act introduced for the first time the possibility of Federal voting referees to see that persons who have been improperly disfranchised are in fact registered, where a court finds a "pattern or practice" of discrimination. In fact, only one court has found such a "pattern or practice," and in that case chose not to appoint referees. But ever since the enactment of the referee provision, the Government has succeeded in obtaining broad and detailed decrees—decrees which, assuming continuing court surveillance over compliance, may well be as effective as the voting referees themselves. Under the records-inspection provision of the 1960 act the Federal Government has made demand for the inspection and copying of registration records in 26 southern counties. Suits necessitated by refusals ended in favor of the Government, and since their disposition it has obtained voluntary compliance with demands for records in 18 of the 26 counties involved.

Thus the new Federal laws concerned with discriminatory denials of the right to vote have been vigorously and effectively invoked. But litigation is necessarily a long, hard, and expensive process, affecting

one county at a time; and much remains to be done before the right to vote is secure against discrimination in every part of the Nation.

Statistics showing registration and voting by race are valuable adjuncts of any study of discrimination in the suffrage. Unfortunately, they are not available for every State and county. Such data as are available show significant variations in Negro registration. In at least 119 counties in 10 Southern States where Negroes constitute more than 3 percent of the voting-age population, less than 10 percent of those presensibly eligible are in fact registered. In 23 counties in 5 of these States, no Negroes are registered, although similarly populated counties in each of these same States have large Negro registration. Statistics also show that in all but the border States of Delaware, Maryland, and West Virginia, there appears to be an inverse correlation between concentration of Negro population and Negro registration. Such figures often suggest racial discrimination, though they are only a starting, not a concluding point in any study of deprivations of the right to vote. (The succeeding part of this report analyzes in depth the status of civil rights in a group of counties where statistics suggest discrimination in the franchise.)

Connected with racial discrimination, but also raising constitutional questions of their own, are the related problems of gerrymander and malapportionment. Efforts by the State of Alabama to gerrymander Negro voters out of Tuskegee, Ala., were struck down by the Supreme Court as violating the 15th amendment. Malapportionment, or unequal distribution of voters among electoral districts, is nationwide, diluting the votes of millions of citizens. Disfranchisement on racial grounds in some areas exaggerates the inequalities produced by malapportionment, and each inequity makes the other more difficult of solution.

So in 1961 the franchise is denied entirely to some because of race and diluted for many others. The promise of the Constitution is not yet fulfilled.

FINDINGS

General

1. There are reasonable grounds to believe that substantial numbers of Negro citizens are, or recently have been, denied the right to vote on grounds of race or color in about 100 counties in 8 Southern States: Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee. Some denials of the right to vote occur by reason of discriminatory application of laws setting qualifica-

tions for voters. Other denials result from arbitrary and discriminatory procedures for the registration of voters; still others occur by reason of threats and intimidation, or the fear of retaliation.

2. Some States have given encouragement to such discriminatory denials of the right to vote. The Legislature of Louisiana, for instance, has fostered discrimination against Negro voters by the enactment of restrictive voter qualification laws and by the activities of its Joint Legislative Committee working in cooperation with the Association of Citizens Councils of Louisiana. Mississippi has amended its voter qualification laws in such fashion as to permit, if not encourage, discrimination against the would-be Negro voter. The Alabama Legislature has tried unsuccessfully to eliminate Negro voters from the city of Tuskegee.

3. The U.S. Department of Justice has acted with vigor to apply the Civil Rights Acts of 1957 and 1960 to prevent racial discrimination in the franchise. As of August 4, 1961, it had brought suits to protect the right to vote in 15 counties in 5 States. Three of the cases had been successfully concluded, one case had been partially determined, and a fifth had been tried but was awaiting decision. The remainder were awaiting trial. In addition, as of August 1, 1961, the Department of Justice had made demands for the inspection of records under title III of the 1960 Civil Rights Act in 26 counties in 6 States.

4. On the basis of one suit which has been finally determined, it appears that the 1957 act provides an effective remedy in cases involving discriminatory purges of voters from the registration rolls. Decrees have also been obtained in suits involving discriminatory registration procedures.

5. The voting-referee provision of title VI of the 1960 Civil Rights Act has not yet been used as a remedy; but it appears that the mere availability of the remedy may have contributed to the effectiveness of the decrees actually entered by the courts in at least two cases.

6. Subsection (b) of 42 U.S.C. section 1971 (part of the 1957 Civil Rights Act) has not yet been fully tested. However, it appears to provide an effective means for dealing with economic reprisals to interfere with the efforts of Negroes to register and vote.

7. Title III of the 1960 act, the records-inspection provision, appears to be an extremely important investigative device for gathering information regarding some kinds of discriminatory denials of the right to vote.

8. Although the provisions of the 1957 and 1960 Civil Rights Acts are useful, however, they are necessarily limited means for removing racial discrimination from the franchise. Suits must proceed a single county at a time, and they are time consuming, expensive, and difficult. Broader measures are required if denials of constitutional rights in this area are to be quickly eliminated.

Qualification of voters

9. A common technique of discriminating against would-be voters on racial grounds involves the discriminatory application of legal qualifications for voters. Among the qualifications used in this fashion are requirements that the voter be able to read and write, that he be able to give a satisfactory interpretation of the Constitution, that he be able to calculate his age to the day, and that he be of "good character."

10. The U.S. Constitution leaves to the States the power to set the qualifications for voters in Federal, as well as State, elections. This power is not, however, unlimited. The 15th amendment prohibits the States from denying the right to vote to any citizen on grounds of race or color, and empowers the Congress to enforce this prohibition by appropriate legislation. Therefore, if Congress found that particular voter qualifications were applied by States in a manner that denied the right to vote on grounds of race, it would appear to have the power under the 15th amendment to enact legislation prohibiting the use of such qualifications. Section 5 of the 14th amendment similarly empowers Congress to enact appropriate legislation to enforce the provisions of that amendment. One of these provisions is section 2 of the 14th amendment, which authorizes Congress to reduce the congressional representation of any State in proportion as citizens of that State are denied the right to vote on any grounds other than age or conviction of a crime. The effect of these provisions of the 14th amendment may be to empower Congress to prohibit the use of any voter qualification other than those specified.

Arbitrary interference with the right to vote

11. The right to vote is denied in some places not only by the discriminatory application of legal qualifications for voters (see finding 9), but in addition by the arbitrary or discriminatory application of various registration procedures, such as the following:

(*a*) The requirement of a specified number of registered voters as "vouchers" to identify would-be voters. This practice is particularly effective in disfranchising Negroes when there are no Negroes already registered, and no whites will "vouch" for Negroes; or where a rule is enforced limiting the number of times a given voter may "vouch" for another.

(*b*) The imposition of other unduly technical requirements for identification of would-be voters.

(*c*) The rejection of applicants for registration, or the removal of voters from the rolls, on grounds of minor technical errors in the completion of required forms.

(*d*) Refusing or failing to notify registrants whether or not they have been registered.

(*e*) Imposing various forms of delay in the registration process.

(*f*) Applying any or all of the above to some would-be voters but not to others, or applying them differently to different persons.

(*g*) Providing assistance to some would-be voters but declining to provide it for others.

12. Practices of these sorts, used for the purpose of denying the right to vote on grounds of race, violate the 15th amendment and specific Federal law, and can be reached by suits brought by the U.S. Department of Justice. For such suits to be successful, however, it must be proven that the practices involve discrimination on racial grounds, and the very nature of the practices may sometimes make this proof difficult. Whether or not they are clearly racially discriminatory, such practices are arbitrary, and unjustifiably prevent some citizens from exercising the right to vote.

13. Similarly arbitrary practices, which may or may not be beyond the reach of existing legislation, may occur in places with permanent voter registration where, as a result of lawsuits or changes in policy, overtly discriminatory practices are abandoned, but extremely strict registration standards and procedures are applied to all new registrants. Even though there is no racial discrimination in the prospective application of such stringent standards, the effect of such a change in practice may be to perpetuate discrimination which has previously occurred: for if virtually all the eligible whites have already been registered, but Negroes have been discriminatorily kept from registering, then Negroes will bear the brunt of the difficulties imposed by the new and stringent registration requirements.

14. As regards Federal elections, Congress has the power to prohibit arbitrary as well as racially discriminatory practices which prevent citizens from exercising the right to vote.

Dilution of the right to vote

15. The malapportioned condition of State and congressional voting districts throughout the United States dilutes the right to vote of many citizens; in some States malapportionment of voting districts is compounded by the effect of discriminatory denials of the right to vote. Malapportionment, especially where it is exaggerated by racial disfranchisement, afflicts the very democratic process through which a reform of these conditions may be attained.

16. Although the courts in many cases are the only effective resort for remedying such malapportionment, Federal courts have expressed, on equitable grounds, extreme reluctance to provide a remedy.

17. Congress has in the past required that electoral districts for congressional elections be substantially equal in population. Insofar as inequalities in such districts deny equal protection of the laws under the 14th amendment, Congress could impose a similar requirement as to State elections.

Statistical information

18. Statistics showing registration and voting by race are of considerable value, not only in studying the electoral process in general, but as a starting point in examining problems of discrimination. In some cases these statistics may simply provide grounds for further investigation; in others, they may themselves be strong evidence of discrimination. This is the case, for instance, where Negroes constitute a majority of the population and yet none at all are registered to vote.

19. Registration statistics by race indicate that in 13 counties where Negroes are the majority of the population, none of them are registered to vote: Alabama (2 counties), Georgia (2 counties), Louisiana (4 counties), and Mississippi (5 counties).

20. Registration statistics by race are incomplete, unofficial, or unavailable for many States.

RECOMMENDATIONS

Qualification of voters

Recommendation 1.—That Congress, acting under section 2 of the 15th amendment and sections 2 and 5 of the 14th amendment, (*a*) declare that voter qualifications other than age, residence, confinement, and conviction of a crime are susceptible of use, and have been used, to deny the right to vote on grounds of race and color; and (*b*) enact legislation providing that all citizens of the United States shall have a right to vote in Federal or State elections which shall not be denied or in any way abridged or interfered with by the United States or by any State for any cause except for inability to meet reasonable age or length-of-residence requirements uniformly applied to all persons within a State, legal confinement at the time of registration or election, or conviction of a felony; such right to vote to include the right to register or otherwise qualify to vote, and to have one's vote counted.

Dissent to recommendation 1 by Vice Chairman Storey

As pointed out in the 1959 report of this Commission, I strongly believe in the right of every qualified citizen of the United States, irrespective of his color, race, religion, or national origin, to register, vote, and have

his vote counted. Full protection of these rights of suffrage by both State and Federal Governments is necessary and proper. However, I cannot join in so sweeping a recommendation as this.

Proposals to alter longstanding Federal-State relationships such as that incorporated in the Federal Constitution, declaring that the qualifications of electors shall be left to the several States, should not be made unless there is no alternative method to correct an existing evil. Such is not the case today.

The Federal Government has sufficient authority under the Constitution and the existing framework of laws to enable it effectively to deal with denials of the right to vote by reason of race, color, religion, and national origin.

The Civil Rights Act of 1957 authorized the Attorney General to institute civil suit in the Federal courts to prevent the denial of voting rights. The Civil Rights Act of 1960 provides that if in any such suit the court makes a finding that the denial of voting rights is "pursuant to a pattern or practice," the court may appoint voting referees to register qualified persons denied this right by local election officials. The further denial of the right to vote to these persons so registered by the court-appointed voting referees constitutes contempt of court and is punishable accordingly. The vigor with which these Civil Rights Acts are applied will significantly affect the extent to which voting denial practices will be discontinued.

Many States have voting requirements more extensive than age or length of residence, incarceration, or felony convictions. These qualifications, having nothing to do with race, religion, or national origin, are an important element in preserving the sanctity of the ballot. They are specific disqualifications which are felt justifiable for the good of the State. Disqualifications of persons whose mental condition makes it impossible for them competently to exercise the discrimination necessary in voting has long been accepted. Many States disqualify paupers supported by municipal or county officials on the theory that these people are too easily exploitable by such officials for their own purposes. The security and purity of the ballot can be destroyed by permitting illiterates to vote. And as the English language is still the official language of the United States, there is good justification for States requiring that voters have at least a rudimentary knowledge of this language.

Dissent to Recommendation 1 by Commissioner Rankin

I join in the dissenting statement of Vice Chairman Storey, but would add the following personal comment.

The 15th amendment has been a part of our Constitution for almost a century, and Congress has never interpreted it as a mandate to usurp the power of each State to determine the qualifications of electors.

In 1957 and again in 1960, Congress did enact legislation to provide protection of the right to register and vote without discrimination on grounds of race, color, or previous condition of servitude. It may be that further legislation will be required to reinforce the guarantees of the 15th amendment and of the 1957 and 1960 laws. But such measures should be kept within the well-recognized bounds of our Constitution and laws.

Our object must be compliance with the Constitution, not punishment, and for that reason I do not deem it wise to upset the balance of our Federal system to reach a result which can be achieved through less drastic means.

Recommendation 2.—That Congress enact legislation providing that in all elections in which, under State law, a "literacy" test, an "understanding" or "interpretation" test, or an "educational" test is administered to determine the qualifications of electors, it shall be sufficient for qualification that the elector have completed at least six grades of formal education.

Interference with the right to vote

Recommendation 3.—That Congress amend subsection (b) of 42 U.S.C. 1971 to prohibit any arbitrary action or (where there is a duty to act) arbitrary inaction, which deprives or threatens to deprive any person of the right to register, vote, and have that vote counted in any Federal election.

Dilution of the right to vote

Recommendation 4.—That Congress consider the advisability of enacting legislation (*a*) requiring that where voting districts are established within a State, for either Federal elections or State elections to any house of a State legislature which is elected on the basis of population, they shall be substantially equal in population; and (*b*) specifically granting the Federal courts jurisdiction of suits to enforce the requirements of the Constitution and of Federal law with regard to such electoral districts; but explicitly providing that such jurisdiction should not be deemed to preclude the jurisdiction of State courts to enforce rights provided under State law regarding such districts.

Statistical information

Recommendation 5.—That Congress direct the Bureau of the Census promptly to initiate a nationwide compilation of registration and voting statistics, to include a count of persons of voting age in every State and territory by race, color, and national origin, who are registered to vote, and a determination of the extent to which such persons have voted since

January 1, 1960; and requiring that the Bureau of the Census compile such information in each next succeeding decennial census, and at such other time or times as the Congress may direct.

Part III.

Civil Rights in Black Belt Counties

1. Introduction

This is the Black Belt. Extending from Tidewater Virginia down the Coast of the Carolinas, and westward across Central Georgia and Alabama to the Mississippi Delta, the Black Belt stretches up through Mississippi and Louisiana into Tennessee and Arkansas. It also touches Florida and Texas.

This unique concentration is not fortuitous. It is traceable to the old plantation system and its primary crop: cotton. Vestiges of the old way of life continue to mark the land and its people. Descendants of the Negro slaves who worked the fields and served the white landholder continue to constitute a substantial portion of the population. Cotton and other agricultural products are still cultivated within a plantation structure now characterized by large land holdings subdivided into small units for operation by tenant farmers and by sharecroppers. Historically cotton and the Negro went together in the Black Belt. This is still the case, though in diminishing degree. Not all cotton counties may now be denominated black belt, and not all black belt counties are cotton counties—yet; it is still true that few cotton counties have a small proportion of Negroes and only a scattering of others have a large one.

The Commission's attention first turned to the Black Belt in 1959 when its voting studies revealed that 16 (now 13) counties with a majority of Negroes had no Negroes registered to vote; and that in 35 other such counties 3 percent or less of the Negroes of voting age were registered. In 1950 there were 158 Negro-majority counties located in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia.[1] According to the Commission's 1959 Report, in addition to the 51 with 3 percent or less Negro registration, 41 others had fewer than 10 percent of their adult Negro population on the rolls; only 11 had more than 30 percent Negro registration and the remainder had between 10 and 30 percent.[2]

These statistics raise serious questions. Why does such a large, identifiable segment of the population refrain from registering and voting? What is the status of civil rights in a community where a white minority makes (and enforces) the laws for a silent Negro majority?

To answer these questions (and pursuant to its jurisdiction to "study and collect information concerning legal developments constituting

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a denial of equal protection of the laws under the Constitution" [3] the Commission has investigated a number of black belt counties where percent or less of the Negro adults are registered to vote.

At the time these counties were selected for study there were 51 (in 8 States) that met the 2 criteria mentioned.[4] This number, however, proved too unwieldy for the time, budget, and personnel available. Hence 17 counties were chosen at random: 1 in North Carolina, 2 in Alabama, 1 in Georgia, 6 in Mississippi, 2 in Louisiana. Three in South Carolina, already surveyed in a preliminary study, were included, and since the random selection omitted Tennessee and Florida, one was added from each of these States in order to include every State having a county that met the criteria (there were no such counties in Arkansas, Virginia, and Texas).[5] The counties thus selected are listed in table 1, which shows the concentration of Negro population and the proportion of Negroes of voting age registered to vote in each, according to the figures available to the Commission at the time of selection. (Since that time more current figures showing significant changes in some counties have become available.)[6]

TABLE 1.—*"Nonvoting" black belt counties chosen for Commission study*

State and county	*Nonwhite population 1950* [1] *Percent*	*Nonwhites of Voting Age registered* [2] *Percent*
Alabama:		
Greene	83.0	2.6
Monroe	51.1	2.7
Florida:		
Gadsden	56.1	.6
Georgia:		
Lee	71.3	1.1
Louisiana:		
Claiborne	51.7	.2
Tensas	64.8	0
Mississippi:		
Carroll	57.0	0
DeSoto	67.2	.01
Issaquena	67.4	0
Leflore	68.2	1.6
Quitman	60.7	3.0
Tate	57.6	0
North Carolina:		
Hertford	60.0	2.9
South Carolina:		
Calhoun	70.8	1.7
McCormick	62.6	0
Williamsburg	67.6	1.9
Tennessee:		
Fayette	70.6	.....

[1] Source: 1950 Decennial Census.
[2] Source: See *1959 Report* at 587–589. 1959: Louisiana; 1958: Alabama, Florida, Georgia, North Carolina, South Carolina, Tennessee; 1955: Mississippi.

In order to gage the significance of low Negro voter registration in these 17 counties, 4 contrasting counties with Negro majorities but substantial numbers of Negroes registered to vote, were also studied. Their large numbers of registered Negroes suggested that there was no denial of the right to vote because of race or color. The four "voting" counties selected are shown in table 2 along with Negro population and registration figures.

In short, a high Negro population ratio is the "constant," and the registration data the "variable," for this study: i.e., all 21 counties chosen have Negro majorities, but in each of the 17 "nonvoting" counties 3 percent or less of the Negro majority were registered, while in the 4 "voting" counties a substantial proportion of the Negro population was on the voter rolls.

TABLE 2.—*"Voting" black belt counties chosen for Commission study*

State and county	*Nonwhite population, 1950* [1] *Percent*	*Nonwhites of voting age registered* [2] *Percent*
Louisiana:		
St. James	50.3	58.4
Georgia:		
Liberty	61.2	87.6
Hancock	72.8	42.4
Virginia:		
Charles City	81.0	36.5

[1] Source: 1950 Decennial Census.
[2] Source: See *1959 Report* at 587–588. 1959: Louisiana; 1958: Georgia, Virginia.

Every effort was made to assure accuracy and uniformity in the collection of information on all counties. Data was collected with respect to public accommodations, military installations, Armed Forces Reserves, and the National Guard. Each of the Commission's study sections—on voting, education, employment, housing and administration of justice—drew up a list of information to be obtained for assessment of discrimination in its subject area. Two experienced investigators, both attorneys, devoted full time for several months to the study of the 21 counties. They spent an average of one week on each, collecting official data, observing conditions, and interviewing—the latter being the principal source of information for the study.

Obviously the selection of the interviewees was crucial. They had to be both willing to discuss local conditions, and competent to do so. All of those selected had lived in their respective counties for at least 10 years. The Negroes interviewed included ministers, teachers, principals, other professional persons (only 1 of the 21 counties had a Negro attorney in residence), storeowners and large landholders. Among the white persons interviewed were bankers, merchants, plantation owners, a mayor, judges and other professional people. All

were responsible, and most were leading citizens in their communities. Well-informed, objective, and willing interviewees were not in all cases easy to find. The Commission's representatives did, however, interview at least two whites and two Negroes who met these standards in each county—usually more. The interviews were designed to elicit fact rather than opinion.[7]

Where there was disagreement, whether between whites and Negroes, or between those of the same race, the investigators attempted to resolve the issue through direct observation, or further inquiry directed to responsible officials. If the disputed matter remained unresolved, it was labeled accordingly and not considered in the analysis. Information obtained in the field was checked against, and put in the framework of, material obtained from the U.S. Bureau of the Census and official publications of local governments and administrative agencies.

The next chapter concentrates on economic and other statistical data regarding the 21 black belt counties selected for study. The succeeding chapter examines the problems of why Negroes vote in the 4 counties and not in the 17. The fourth chapter describes the status of rights other than the right to vote in the two groups of counties. The final chapter summarizes the partial answers suggested by this study to the questions posed above: why do so many Negroes fail to exercise the basic right of self-government, and what is the state of civil rights for the voiceless majority. It also considers the effect on other civil rights when Negroes do in fact exercise the franchise freely. The study ends with a brief look toward the future, and suggests some lines of attack on the problems that have been raised.

2. The Setting

The economic structure and living conditions in the black belt counties provide an illuminating background for assessing the status of civil rights. The decennial Census of Population and of Housing, and the Census of Agriculture, the latter conducted at 5-year intervals, are rich sources of data for understanding this background.

THE ECONOMY

Historically cotton has been the dominant crop in the black belt. Its significance is found in its partnership with the old plantation system, and the prevailing use of Negro labor in a one-crop economy.[1] When slavery was abolished, the large plantation was often subdivided into small operating units worked by tenants and croppers who had very limited rights in the lands. The plantation structure was thus often retained, though modified in its legal form—the sharecropper-tenant system which replaced it retaining many of its features.[2]

Where cotton is the dominant crop the economic life of both large landholder and small tenant and sharecropper has peculiar characteristics. Since cotton is a money crop, the use of land for other purposes, such as raising food for home consumption, tends to be discouraged.[3] Consequently, the farmer often must rely heavily on credit for even his necessities. Reliance on the harvest of a single crop and a fluctuating market often results in debt-burdened landowners as well as debt-burdened tenants and sharecroppers.[4]

Until the cotton is picked, ginned, and baled, both cropper and tenant must rely on the landlord or local merchant for the necessities of life. The tenant may own his own tools and even a mule or two. He may buy his own fertilizer and seed, and then pay the landowner a certain percentage of the crop or a specified cash sum for the use of the land and tenant house. The sharecropper is not so well endowed. He is dependent on the landowner for all supplies required for planting, sowing, and reaping. For the use of these he pays dearly. When the

process is completed, however, tenant and sharecropper are apt to be in debt, for the profits seldom cancel out the indebtedness.

> Cotton is only one among several crops and among many labors; and all these other crops and labors mean life itself. Cotton means nothing of the sort. It demands more work of a tenant family and yields less reward than all the rest. . . . It is the one crop and labor which is in no possible way useful as it stands to the tenant's living; it is among all these the one in which the landowner is most interested; and it is among all these the one of which the tenant can hope for least, and can be surest that he is being cheated, and is always to be cheated.[6]

Nonvoting counties

In 1930, the major crop in 15 of the 17 nonvoting counties was cotton.[6] Indeed, it was virtually the sole crop in all but two.[7] These (Lee, Ga., and Williamsburg, S.C.) produced field crops in conjunction with cotton within a dual or a multiple crop system.[8] In 1959 the same group of 13 continued to plant cotton as their major crop, while the other 2 raised other field products in sufficient proportion to be no longer considered predominantly cotton counties.[9] Nonetheless the tenant-sharecropper system survives in these two counties as well as in the others; [10] indebtedness and dependence on landlord or merchant are the rule in all 15.

In these 15 counties, the Negroes caught up in the one-crop economic system greatly outnumber the whites. In 1959, there were 9,685 white and 15,257 nonwhite farm operators in these counties.[11] About two-thirds of the Negro group (10,728) were classified as tenant farmers (this number includes sharecroppers); only one-fifth (2,215) of the whites were in this category.[12] (The number of sharecroppers was not available at the time of this report, but in 1954 there were 12,189 nonwhites and 1,784 whites in this class.[13] Although these figures have decreased since 1954, undoubtedly a considerable number remain.)[14]

In 1959 few Negroes owned their own farms in these counties—only 2,912 (19.1 percent) of the 15,257. In contrast, 4,996 (51.6 percent) of white farm operators owned their own farms.[15] Thus, while there were far fewer white than Negro farmers, twice as many whites were farmowners.

The dissimilarities between the economic positions of white and Negro are further illustrated by the size of the farm units. In 1959, 9,685 white farmers farmed a total of 3,000,013 acres—or an average of 309.8 acres per operator. In sharp contrast, 15,257 Negroes farmed 644,986—an average of 42.3 acres.[16]

In these prevailingly rural areas there is little or no industry; nonfarm employment for Negroes is limited to some teaching positions, janitorial, and other traditionally "Negro" jobs discussed in chapter 4.[17] But this economic pattern is showing some signs of change.

The severity of life, the introduction of cottonpicking machines, and in some places changes in land use and farm consolidations, have resulted in a steady population decline in the 15 counties during the last decade.[18] One sign of the change is the fact that the number of both white and Negro farm operators declined sharply between 1954 and 1959.[19] In some cases, mechanization has replaced thousands of hands once irreplaceable in the cotton fields. Machines cannot pick the cotton boll from its bur with the precision of a pair of skilled hands, but they are faster and more economical. Machines are expensive, however, and the transition, with its marked change from the old way of life, has not been rapid. Crop diversification is also slowly changing the demand for labor. Where cotton once flourished, cattle are grazing and trees are planted for a future lumber market.[20]

Two of the nonvoting counties—Gadsden, Fla., and Hertford, N.C.—were not cotton counties in 1930, and continued to differ from the other 15 in 1959 as well. Unlike all the other nonvoting counties, which were mainly rural, Gadsden as early as 1930 was a smalltown, industrial county.[21] Its crops were corn and peanuts. The Agricultural Census shows similar crop diversity in 1959, with hay and tobacco grown in quantity as well.[22] Hertford was rural and nonindustrial like the other nonvoting counties in 1930, but its crops were diverse—peanuts, hay, and cotton.[23] Along with corn and tobacco, these continued to be major farm products in Hertford in 1959.[24] The one-crop economy was not present in Gadsden or Hertford as far back as 1930 nor as recently as 1959.

The pattern of Negro farm ownership and tenancy in Hertford, however, is like that in the 15 nonvoting counties described above. Five hundred of the 761 Negro farm operators are tenants and croppers; only 15.1 percent own their farms.[25] There is a difference with respect to white farm ownership, however; only 29.8 percent of the white farm operators own their farms—substantially less than the 51.6 percent figure for the group of 15.[26] Anoher variation (which also appears in lesser degree among some of the 15), relates to farm size: the average white farm in the 15 counties was 309.8 acres in 1959; in Hertford it was only 124.4 acres (average Negro farm was 59.6 acres).[27] Thus on the average the gap between whites and Negroes in farmownership and farm size is significantly smaller in this county than in the 15. In addition, a Commission field survey found that much of the valuable land is Negro owned.[28]

Gadsden County, on the other hand, has fewer farm operators of both races than either Hertford or the 15, and most of them own their own farms. Of the 480 white farm operators, 64.7 percent are owners; and of the 189 Negro farmers, 56.1 percent are owners.[29] Relative farm sizes were like those of most nonvoting counties: 311.2 acres for the average white farm and 44.2 for the Negro farm.[30]

Among the 17 nonvoting counties, only in Gadsden and Hertford has the population increased substantially in the last decade; in all but one of the others it has dropped (it rose slightly in Tate, Mississippi).[31] But in Gadsden and Hertford as well as in the other 15 there has been a sharp drop in the number of farm operators, farm units, and farm acreage.[32] The increase in population may indicate that employment opportunities other than farming were available in these two counties.[33]

Voting counties

Three of the four counties where Negroes vote in substantial numbers (Liberty, Ga., St. James, La., and Charles City, Va.) are not now,[34] nor were they in 1930, cotton counties.[35] Their farming tradition is one of diversity of crops. Agriculture is not the dominant source of income, and its importance is declining. The Agricultural Census of 1959 shows a decrease in the number of those engaged in agricultural pursuits. In Liberty, there were only 120 white and 82 nonwhite farm operators; in St. James, 176 white and 32 nonwhite; in Charles City County, 94 white and 77 nonwhite.[36]

In addition, the nature of the farmers' ties to the land differs markedly from that in the 15 nonvoting counties. Farmownership is more prevalent among both races. In Charles City, Va., in 1959, 61 percent of the Negro farm operators owned their own farms; 62.7 percent of the white. In Liberty, Ga., 93.9 percent of the Negro operators were owners; 80 percent of the white. The percentages are smaller in St. James, La., but there were only 32 Negro farm operators there in 1959, 21.8 percent of them owners—of the white operators, 40.9 percent were owners.[37] In the 15 nonvoting counties 19.1 percent of the Negro operators and 51.6 percent of the white operators were full owners of the land they worked.

Coinciding with the large proportion of farm ownership in three of the voting counties is the comparative absence of tenant farmers and sharecroppers. These numbered thousands in the 15 nonvoting counties. St. James in 1959 had only 32 white and 10 Negro tenants. In Charles City and Liberty there were even fewer: eight white and six Negro tenants in the first, and three white and two Negro tenants in the second.[38] In fact, all told, there are more white tenant farmers than Negro in these three counties.

The 1950 census showed that the bulk of the employed population of both races in Liberty County and Charles City County, were engaged in manufacturing related to wood and lumber products. Slightly more than a fifth of the total employment force of 1399 in Charles City was engaged in farming;[39] the proportion was even smaller in Liberty.[40] Almost twice as many in each county were in manufacturing. And while St. James, La., was somewhat more agricultural when evaluated in this manner, still only 1,564 of its 4,025 employed residents were engaged in farming;[41] a good portion of the remainder was also engaged in wood and lumber product manufacturing. A large portion of Liberty County is occupied by a Federal military installation, Fort Stewart, which offers a considerable amount of employment to county residents. New industry has been introduced into St. James since 1950, and many residents of Charles City are employed outside the county.[42]

These three counties, in sum, can rely not only on the advantages of diversified agriculture but also on industry. Negroes, sharing these advantages to some degree, are not constrained within the traditions of the old plantation; there are not only proportionately more Negro farmowners and less Negro tenants and sharecroppers, but there are more Negroes employed in manufacturing than in farming.

In the last decade, the population has grown in all three of these voting counties. That of Liberty, Ga., almost doubled and the ratio of white to Negro altered considerably. Negroes constituted 61.2 percent of the total population in 1950; this figure is now down to 42.4 percent. In Charles City and St. James, the population also increased substantially, but the proportion of Negroes remained relatively stable—within 2.5 percentage points of the 1950 figure.[43] These population changes suggest that new people are finding employment and settling in these communities. A population decrease, on the other hand, suggests a perpetuation of the old order.[44]

Hancock, Ga., the fourth voting county, was categorized as a cotton county in 1930[45] and was still so in 1959.[46] A high rate of white farmownership (66.2 percent) contrasts with a much lower Negro rate (28 percent).[47] In 1959 the average farm size varied greatly between the races (374.3 acres per white operator; 92.9 acres per Negro operator).[48] Most of the population in Hancock derives its living from the land. The population has declined,[49] as have the number of farm units[50] and land acres in farming.[51] Agriculturally, Hancock looks like a nonvoting county.

Contrasts

In 15 of the 17 counties where Negroes do not vote, they are subservient to the land and its major crop, most often cotton with its echoes of the old plantation system. In three of the counties where Negroes vote,

most of them are employed elsewhere than in agriculture. Those few who do farm hold their lands, even if only a few acres, free of white control. In the 15 (except for a slight increase in 1 county)[52] the population has declined in the last 10 years. In contrast, population in the three voting counties has increased.

It is apparent that there is greater economic independence and variety of income source for the Negro in 3 of the voting counties than in 15 of the nonvoting counties.

Three of the counties studied, however, do not fit these patterns. Two nonvoting counties, Gadsden and Hertford, resemble the voting counties in respect to rising population and agricultural diversification (in Hertford, most of the Negro farmers are tenants, but there are also large Negro landowners). And the fourth voting county, Hancock, closely resembles the 15 nonvoting counties, for it is a cotton county where economic change has been slow and the population is declining.

INCOME LEVELS

At the time this report was prepared the 1960 census data on income by race were not available. The 1950 data showing differences between white and nonwhite income provides the most recent available information.[53]

Nonvoting counties

In not one of the 17 nonvoting counties did the 1950 median family income for both races together equal the median income for the State as a whole.[54] (The median, as defined by the Bureau of Census, is "the value which divides the distribution into two equal parts—one-half of the cases falling below this value and one-half of the cases exceeding this value." The greatest differentials appear in the above-mentioned 15 nonvoting counties, and in Hancock, Ga., a voting county. Eleven of the 15 fell well below the States' median figures.[55] For example, while the median family income for the State of Alabama was $1,580 (the national figure was $2,619), the figure for Greene County was $444. And while Mississippi's median family income was $1,028—the lowest among the 9 States—the medians in 5 of the 6 Mississippi counties studied ranged from $531 to $659, among the lowest in the 21 counties. (The median in Leflore, Miss., was $918.)

In every one of the 15 counties, the white median income was well above that of the county as a whole, and of course, even further above the Negro median. Indeed, in 4 of the 15 counties white median income was higher than the white median for the State as a whole.[56] (Even in the others it was above the State figure for the whole population.)

The 1950 statewide Negro median income was low in all the States in which the 15 counties are located (Florida and North Carolina are not in this group); and in none of the 15 counties did the Negro median income even match that of the State's Negro population. Half of the Negro families in 11 counties earned less than $600. The highest Negro median in all 15 was only $855, and this was well below the lowest median income for white families in any of the counties.[57]

It is evident that the bulk of the population in these 15 counties was far from prosperous. Equally clear is the large income gap between the whites and the nonwhites.[58]

The other two nonvoting counties—Gadsden, Fla., and Hertford, N.C.—are situated in the States that in 1950 had the highest median income levels of the States involved in this study, both for the State as a whole and for the nonwhite population.[59] White income patterns in these two counties were similar to those of the other nonvoting counties. The white median figures in each case ($2,161 in Gadsden, and $1,995 in Hertford) exceeded both those for the county and for the State as a whole, but fell short of the white median for the State. On the other hand, the Negro median income in Hertford was $1,013, almost as high as the Negro figure for all of North Carolina ($1,056), and much greater than the median income of the Negro population in the 15 counties. In Gadsden the Negro median ($879) was above that in many of the 15, though not as high as in Hertford, nor equal to the figure for Negroes in the entire State of Florida. As compared to the other 15 nonvoting counties, in sum, these 2 counties showed a better income level for Negroes and less of a gap between the races.

Voting counties

Three of the voting counties in 1950 had countywide median incomes over $1,100. Both white and Negro median incomes closely approximated the comparable figures for the State. In Charles City County, the Negro median was above the Negro median for the State. (Virginia's Negro population showed the highest median income of all the States in this survey.)

But the fourth voting county, Hancock, Ga., must again be grouped with the 15 nonvoting counties. The countywide and Negro median incomes in 1950 were among the lowest in the whole group of black belt counties ($701 and $503, respectively), while the white figure was $317 higher than the Negro.[60]

Contrasts

In all of the black belt counties studied, the median family incomes for Negroes in 1950 were well below those of the whites, and with one exception (Charles City, Va., a voting county) were below the median Negro income figure for the States. There was a difference, however, between the 15 nonvoting counties, on the one hand, and the three voting counties, on the other—the latter showing a higher median income level both on a total population and a Negro basis. Once again, the voting county of Hancock, Ga., resembles the group of 15 nonvoting counties, while Hertford, N.C., and Gadsden, Fla., resemble the 3 voting counties.

EDUCATIONAL LEVELS

Only 1950 census figures showing the median years of school completed for persons 25 years of age or over were available at the time this report was prepared.[61]

Nonvoting counties

Only one of the 17 nonvoting counties, Claiborne, La., showed a county-wide median figure equal to or above that for the State in which it was located. However, in nine of them the median figure for whites was above the figure for whites in the State as a whole; and in most of the others, the white figure came within half a year of the statewide figure.[62]

As this suggests, the median figure for Negroes was well below that of the whites—the gap ranged from 3.1 years in Hertford to 6.7 in Lee and Greene. Only in Hertford, N.C., and Carroll, Miss., did the Negro median exceed the State Negro median. In all but 2 of the 17, the gap between the races was greater than that in the State as a whole.[63]

The lowest median number of school years completed for Negroes was found in Lee County, Ga.—3.2 years (half the whites in this county had incomparably more schooling—9.9 years or more). In all but 3 of the 17 nonvoting counties, the Negro median figure for years of schooling completed was 5 years or less;[64] the figures for whites ranged from 8.6 to 11.9 school years completed.

Voting counties

There was in 1950 an equivalent gap in educational levels between the races in the four voting counties. In Charles City County, Va., the median for Negroes was 2.8 years less than that for whites; in the other three, the difference was larger. The white median figures ranged from 7.6 in St. James, La., to 9.5 in Hancock, Ga.; and the Negro median levels spread from 3.4 in St. James to 5.8 in Charles City County.[65]

HOUSING CONDITIONS

The 1960 Census of Housing provides a substantial amount of information showing the living conditions in the counties under study, and permits comparisons between the situation of the Negro majority and that of the white minority.[66] These data cover not only the condition of the dwellings occupied by the two races, but the degree of overcrowding as well. The Housing Census also shows the incidence of homeownership, a rough index to economic status.

Nonvoting counties

Housing available in the 17 nonvoting counties appears to be inadequate in both quality and quantity for both races, but the Negro population occupies the overcrowded and unsound dwellings in disproportionate share.

Sound dwellings with all plumbing facilities[67] do not abound in the 17 nonvoting counties.[68] In 15 of them, less than 40 percent (and in the other 2 less than 50 percent)[69] of all accommodations, occupied and vacant, were tallied by the census as "sound with all plumbing facilities"—or what may be called "livable" housing. In Greene County, Ala., only 17.4 percent meet this standard of livability.

The Negroes' share of this limited supply of decent housing is, moreover, disproportionately small. In 11 counties, Negroes occupy less than 10 percent of the "livable" housing available; in the other 6, between 10.8 and 21.4 percent.[70] In Carroll County, Miss., for example, there are 525 units which meet the standard mentioned.[71] Only 12 of these, or 2.3 percent, are occupied by Negroes, who comprise 58.2 percent of the population. (Of all the Negro-occupied housing in the county, only 0.9 percent was classified as sound with all plumbing.)[72] The largest proportion of Negroes enjoying decent accommodations is in Leflore County, Miss., where their share is 21.4 percent of all "livable" dwellings. At least 78.3 percent of the "livable" dwellings is occupied by whites who represent only 35.4 percent of the population.[73] Furthermore, 82.8 percent of the Negro-occupied housing in Leflore is substandard.

In every nonvoting county, then, the Negro share of the "livable" housing—sound dwellings equipped with plumbing facilities—is extremely small, while the white members of the community occupy a share far in excess of their proportion to the total population.[74]

Another measure of housing conditions is overcrowding. One index of overcrowding—percent of occupied dwellings with more than 1 person per room—shows that in all the 17 nonvoting counties, the difference between white and nonwhite figures is enormous. The percentage for whites runs from a low of 6.5 in Calhoun, S.C., to a high of 20.9 in Quitman, Miss., while for nonwhites the smallest percentage is 30 in Claiborne, La., the largest 54.4 in Fayette, Tenn.[75]

As might be anticipated from the large number of Negro tenant farmers and sharecroppers in these agricultural counties, the rate of Negro homeownership is much lower than that for the whites in all 17 nonvoting counties.[76] The percentage of Negro dwellings that are owner-occupied is lowest in Leflore County, Miss., with 13.4 percent. Fayette County, Tenn., is next lowest with 16.9 percent. The highest is Gadsden, Fla., where 47.6 percent of the Negro dwellings are owner-occupied.

The rate of white ownership in all the 17 counties is markedly higher than the rate of Negro ownership. The highest Negro figure, found in Gadsden, does not match the lowest white figure—53.7 percent in Quitman County, Miss. (The highest rate of white ownership is 79.6 percent, in Calhoun, S.C.)

Voting counties

In the three voting counties other than Hancock, only Charles City County, Va., differs markedly from the nonvoting counties. Negroes occupy 32.2 percent of the total supply of "livable" houses—the highest proportion in all 21 of the black belt counties studied. Of course, they also constitute 83.3 percent of the population. The other two counties are not essentially different from the better nonvoting counties.

One interesting situation related to overcrowding is found in Liberty County, Ga., which has undergone a dramatic shift in population in the last decade. In 1950, Negroes constituted 61.2 percent of the population and occupied 60.2 percent of the county's occupied dwellings. Today, they are 42.4 percent of the population and occupy 60.3 percent of the units.[77] Moreover, the proportion of Negro-occupied dwellings with more than 1 person per room is much lower than in any of the other 21 counties. This is unique, however, for the other two counties resemble the nonvoting ones in these respects.[78]

The most significant housing fact in these three counties relates to homeownership. Not only is the percentage of Negroes who own their homes higher in the 3 voting counties than in any of the nonvoting ones, but in Liberty and Charles City it is higher than the figure for whites in these counties—and, indeed, for whites in 15 of the 17 nonvoting counties.

Once again Hancock, Ga., is comparable to the worst of the nonvoting counties. Only 2.5 percent of the Negro-occupied dwellings in this locality are sound and include plumbing facilities. This is a mere 7.5 percent of the total number of such houses in the county, indicating that white residents have a disproportionate share equivalent to that in the nonvoting counties. The same is true of overcrowding.[79] The rate of Negro homeownership falls far short of that for the other voting counties, whereas the white rate exceeds two of the three.[80]

Contrasts

It is apparent that Negroes throughout the 21 counties occupy overcrowded and substandard housing to a far greater degree than does the white population. Except in Liberty County, Ga., whites occupy a disproportionately large share of available housing units; in all the counties they occupy most of the "livable" housing available.[81]

In each of the 21 counties there is proportionately less owner-occupied housing and sound housing with all plumbing facilities than for the State as a whole.[82] The percentage of Negroes occupying "livable" dwellings in 20 of the counties,[83] falls well below the relevant State Negro figures, while the white occupancy of such housing approximates or exceeds the State levels. The only deviation from this pattern is in the area of homeownership, where in three voting counties substantial proportions of the Negroes own their homes.

SUMMARY

The economic status of Negroes differs sharply from that of whites in the nonvoting counties. Primarily agricultural, 16 of the 17 have a large class of Negro croppers or tenant farmers; many more whites than Negroes are farm owners. In addition, the average acreage per white farm unit far exceeds the average per Negro farm. One of the 17 nonvoting counties, Gadsden, Fla., does not fit well into the general pattern. Its economic structure is more like that in the voting counties. So, to a lesser degree, is that of Hertford, N.C.

Three of the voting counties are not predominantly agricultural and seem to have relatively fewer vestiges of the plantation system. More

Negroes who do farm are owner-operators than tenants or sharecroppers, and the remaining Negro population has other sources of income. Hence there is more economic independence among Negroes in these three counties. This is not true of the fourth, Hancock, Ga., which in economic structure is similar to the nonvoting counties.

Median family income data for 1950 appears to reflect this difference in economic structure. While there were no marked income contrasts between the nonvoting and voting counties, several points of difference exist. The median income figures for whites and nonwhites were higher in 3 of the voting counties than in 15 of the nonvoting counties. The smallest gaps between white and nonwhite median incomes are also found in the 3, and in them the nonwhite medians either approximate or exceed the highest nonwhite medians in the 15. Again 2 nonvoting counties resembled the 3, while Hancock, Ga., was like the 15.

Housing conditions in the two groups of counties present little contrast. Negroes in all of the 21 counties are ill-housed and overcrowded—and, by and large, far worse off than the whites as a group. The only significant difference between voting and nonvoting counties in respect to housing appears in homeownership—for in three of the voting counties a substantial proportion of the Negroes own their residences.

Finally, median education figures for 1950, the latest available, showed no significant variation between the nonvoting counties, on the one hand, and voting counties on the other. The Negro educational level in all counties was markedly below that of the whites, and in all but one, below the Negro level of the State as well.

3. Negro Voting

The foregoing chapter described the economic setting in 17 black belt counties in each of which a white minority to a large extent determines and distributes benefits and burdens to a nonvoting Negro majority. It also described the setting in those four black belt counties where a significant proportion of Negroes do vote. These comparisons, it is hoped, will help answer the crucial question to which this chapter is addressed—why do Negroes vote in some counties and not in others?

NONVOTING COUNTIES

In each of the 17 black belt counties studied by the Commission which have been termed "nonvoting" counties, 97 percent or more of the Negroes who attained voting age were not registered to vote in 1958.[1] Since that time, nine of the counties have shown an increase in Negro registration. Two of the nine are Fayette and McCormick, in each of which Negro registration increased partly as the result of Federal intervention.[2] In a third and fourth—De Soto, Miss., and Claiborne, La.—Negro registration rose only slightly: in the former from 1 to 3, in the latter from 15 to 28. A fifth, Carroll County, Miss., "recruited" three Negroes in 1960 (there were none registered through 1959) in order to provide an "integrated" jury panel. (The recruiting was brought on by a decision of a U.S. Court of Appeals which had recently reversed the criminal conviction of a Negro on the ground that Negroes were systematically excluded from Carroll County juries.) [3]

The four remaining counties with increases in Negro registration are Gadsden, Fla., Hertford, N.C., Quitman, Miss., and Monroe, Ala. In Gadsden, 348 Negroes registered after county officials, early in 1960, indicated that any qualified Negro could register and vote. As a result Negro registration jumped from 7 to 355. Hertford experienced an increase of about 350.[4] Quitman County raised its figure from 234 to 435, and in Monroe, Ala., Negro registration is reported to have increased from 160 to 200.

Not all the counties have moved forward, however. In three—Tensas, La., and Tate and Issaquena, Miss.—there were no Negroes registered in 1958 and there are none now. The other five show a decline.[5] (Three of these counties show a percentage increase, although the number of registrants has dropped. This is due to population change.)

While some gains have been made, then, the voting picture in the 17 nonvoting counties has not changed markedly save in Fayette. (See table 3 below.) In the last 2 years Negro registration has numerically declined or remained at zero in eight counties. In only six (two partially as the result of Federal intervention) was there a sizable increase, and in only four of these did the increase raise the proportion of Negroes registered above 3 percent. Three hundred and fifty additional Negro registrants raised Hertford's proportion from 2.9 percent to 8.8 percent; 40 raised Monroe's from 2.7 percent to 4.1 percent. (Fayette has gone to 20.8 percent.)[6] This paucity of registration is part of a larger political picture in the nonvoting counties which at almost every point demonstrates the passive role assigned to the Negro.

TABLE 3.—*Current population and registration proportions*

State and county	*Nonwhite population, 1960* [1] *Percent*	*Change from 1950* [2]	*Nonwhites of voting age registered 1960* [3] *Percent*	*Change from 1959* [2]
	"Nonvoting" counties			
Alabama:				
Greene	81.3	−1.7	3.3	+0.7
Monroe	50.7	−.4	4.1	+1.4
Florida: Gadsden	59.4	+3.3	2.9	+2.3
Georgia: Lee	62.7	−8.6	1.6	+.5
Louisiana:				
Claiborne	50.3	−1.4	.6	+.4
Tensas	65.0	+.2	0	(4)
Mississippi:				
Carroll	58.2	+1.2	.2	+.2
De Soto	61.3	−5.9	.05	+.04
Issaquena	67.1	−.3	0	(4)
Leflore	64.6	−3.6	.9	−.7
Quitman	63.3	+2.6	5.6	+2.6
Tate	57.6	(4)	0	(4)
North Carolina: Hertford	59.0	−1.0	8.8	+5.9
South Carolina:				
Calhoun	66.9	−3.9	.8	−.9
McCormick	61.6	−1.0	2.2	+2.2
Williamsburg	66.5	−1.1	2.2	+.3
Tennessee: Fayette	68.9	−1.7	20.8	+20.2
	"Voting" counties			
Georgia:				
Hancock	74.8	+2.0	39.3	−3.1
Liberty	42.4	−18.8	63.4	−24.2
Louisiana: St. James	49.3	−1.0	63.8	+5.4
Virginia: Charles City	83.3	+2.3	31.7	−4.8

[1] Source: 1960 Decennial Census.
[2] Compare tables 1 and 2 at 144 and 145, *supra*.
[3] See app. III, table 1.
[4] No change.

Just as the election of a candidate is almost exclusively the prerogative of whites, so too is the process of determining who shall run. Each county has at least one white organization controlling the local political picture; Negroes cannot belong to it, although the few Negroes who are registered presumably may vote in the primaries.[7] In only two counties have Negroes formed their own partisan political organizations,[8] while in four others Negro nonpartisan groups exist to stimulate interest in the voting process.[9]

Except in Hertford County, N.C., candidates for office are always white. Moreover, with the exception of Hertford, political candidates totally disregard the Negro either as a registered or a potential voter. They neither address Negro groups nor seek Negro votes. Campaign issues do not acknowledge the interests of the nonwhite majority. When the Negro is the subject of campaign oratory, he is usually its butt. Since those running for office ignore them, the few Negroes who do vote have only a limited basis on which to do so. They are excluded from the usual political techniques of personal contact and persuasion, a particularly restrictive condition in these rural areas where the handshake and the church picnic talk often provide the political forum for candidates. Excluded from every significant stage in the political process, the Negro citizen has little or no political existence except in the role of the "governed."[10] His isolation is profound.

That governing is the reserved bailiwick of whites is demonstrated everywhere in the 17 counties. The elected officials are white, the registrars are white, the judges are white, the juries are predominantly if not exclusively white, the policemen are generally white, the firemen are white—almost all official positions, excepting only menial ones, are held by whites. In instances where Negroes hold responsible positions—as policemen, teachers, agricultural extension agents, and the like—their duties are carefully limited and they deal only with other Negroes. Within the stable order of things there appears little need to remind the Negro of his place. He is already in it.

The United States has one of the lowest election participation records in the free world. Many reasons are advanced for this, and some of them no doubt apply to the 17 nonvoting counties. But they do not explain the extremes found in these counties.

A reason frequently advanced by white informants for minimal Negro registration in these counties was the low level of Negro education. While the level is low,[11] and may well keep many Negroes from being interested or qualified to register, there are nonetheless numbers of Negroes with sufficient schooling to meet registration requirements. For example, in Tensas Parish, La., 110 Negroes were listed in the 1950 census as having completed 8 years of elementary school; 165 more had from 1 to 3 years of high school; and 50 had finished

high school. Twenty-five additional Tensas Negroes had had from 1 to 3 years of college, and 5 had completed college.[12] Since efforts have been made to improve the Negro schools in this parish, it may perhaps be assumed that these numbers have increased in the past decade. Moreover, 69 Negro elementary and high school teachers in Tensas have been qualified to teach by the State.[13] Yet not one Negro in Tensas Parish is registered to vote.

The situation is similar in Tate County, Miss., where the number of Negroes at these educational levels in the 1950 census was slightly larger than that in Tensas and where there are now 92 Negro teachers and principals. No Negroes are registered in Tate County.[14] Similarly, 380 colored persons in Carroll County, Miss., had completed 8 years of schooling in 1950 (this is larger than the number of whites who attained that level), yet as of 1958 there were no Negroes registered there.

Lack of education therefore does not by itself explain low Negro registration. The numbers of whites and Negroes registered are clearly not proportional to the formal educational qualifications of the two groups.[16]

More tangible reasons for the failure of Negroes to register were found in 12 of the counties. In seven, all informants agreed that Negroes are prevented from registering through discriminatory use of legal devices: vouchers are required to verify an applicant's identity,[17] or applicants are required to interpret provisions of the Constitution.[18] In an eighth county, applicants may be exempted from literacy requirements by producing a tax receipt; exemption is granted freely to white registrants but rarely to the Negroes.[19]

A striking situation exists in one of the eight counties, Issaquena, Miss., where no Negroes are registered to vote. A wealthy Negro landowner and merchant pays more than $2,000 taxes annually to his county, and when bond issues are approved by the white electorate he carries a large share of the financial burden. Yet, he says, as consistently as he proffers his $2 poll tax along with his other taxes, it is refused by the collector.[20]

In one county the supervisor of registration is a former chain gang boss who on occasion walks up and down among Negroes waiting to register, holding a sawed-off pool cue stick and mumbling "I can't see why you-all come here to register when you know you're not ready." More subtle means are also used in four counties to dissuade Negroes from registering and voting: registration and polling facilities are sometimes located in white schools, sheriff's offices, and white newspaper editor's offices; places that are unfamiliar and usually forbidden ground to Negroes.[21] In all, such discriminatory measures were found in 10 of the 17 counties.[22] Even more common as an explanation for failure of Negroes to register, however, was fear of reprisals by the white community.

According to the Commission's informants, fear of physical violence prevails in eight of the counties,[23] and in 13 there is a conviction that economic reprisals will follow any attempt at registration.[24] In Fayette County, Tenn. (and its neighboring county, Haywood), fears of economic reprisal proved to be well founded. During the spring of 1959 Negroes made concerted efforts to register, but in the August primary those who had registered were not permitted to vote. The Justice Department quickly filed suit to enjoin local authorities from excluding Negroes from voting in primary elections; the suit ended in a consent decree in April 1960.[25] By November 1960, some 1,500 Negroes registered (out of a total of about 7,800 of voting age). After the registration drive got under way, Negro leaders, registrants, sympathizers, and their families were subjected to a barrage of intense economic reprisals, including termination of the contracts of some 300 Negro sharecropper-tenant farmers. (The white landlords contended the termination was brought on by farm mechanization.)

The Justice Department again filed suit in December 1960, this time to enjoin the reprisals.[26] In its complaint concerning Fayette County, the Justice Department accused white landlords, merchants, bankers, suppliers, insurance companies, and others of the following acts of reprisal:

- Termination of sharecropping and tenancy relationships.
- Termination of employment.
- Refusal to sell other goods and necessaries and services (even for cash).
- Refusal to sell on credit to Negroes who had previously obtained it.
- Refusal to make loans to qualified Negro borrowers, many of whom had formerly been granted loans.
- Cancellations of (or refusals to renew) various types of insurance.
- Refusal to supply goods to merchants and others suspected of selling to Negroes.
- Circulation of lists of Negro registration leaders, and the "inducing, encouraging, and assisting merchants, landowners, and others to penalize economically" such persons.
- Inducing wholesale suppliers not to deal with Negro merchants suspected of being sympathetic to Negro registration.

Similar economic reprisals occurred in neighboring Haywood County, and a similar suit was filed by the Government.[27]

The final chapter in the Fayette and Haywood story had not been written when this report was prepared. The suit to end the economic boycott had not come to final decision, but preliminary legal moves have dulled the edge of the boycott and halted the wholesale evictions of Negro

tenants.[28] Moreover, President Kennedy has directed the Secretary of Agriculture to distribute surplus agricultural products to the destitute Negroes in the two counties.[29]

Another example of well-founded fear involves McCormick County, S.C. Here in 1959 only one Negro was registered; early in 1960 there were three more. The reported reason for meager registration [30] was fear of physical violence and economic reprisal. In June 1960, shortly after it was announced that the FBI would enter the county to inspect the registration books,[31] 46 Negroes registered. Informants reported that a Negro maid was fired the day she registered; a Negro craftsman was forced to vacate his shop 1 week after he registered, and a part-time Negro county employee who was among the 50, lost his job shortly thereafter. When the primary election day arrived, only 1 of the 50 registered Negroes cast his ballot.

A significant aspect of economic retaliation involves Negro teachers—who not only should be qualified to vote, but might be expected to be a source of leadership for the Negro community in general.

In several of the 17 nonvoting counties teachers are prevented from providing such leadership. For they depend, even more directly than do other Negroes, upon the white power structure for their jobs. In six of the counties, white school officials were said to have warned Negro teachers not to try to register or to "agitate" for their own rights or those of others on pain of losing their jobs. In Mississippi, teachers are required by law to list all organizations to which they belong, including the NAACP.[32]

There have also been cases of harassment of teachers believed to be too aggressive. In one county where teachers must sign a statement that they are not now, have not been, and will not become members of the NAACP, one teacher, commended by the district school superintendent as the finest Negro teacher in the county, was denied renewal of his contract after signing a statement saying only that he was "not presently" a member of the NAACP. A Negro teacher in another county with a B.S. degree in chemistry and mathematics, who taught science and math at a Negro high school for 3 years, was informed after he had registered to vote that his teaching contract was not to be renewed. In that same county Negro teachers were warned not to trade with a Negro merchant who was actively attempting to get Negroes registered.

Such fear of retaliation, physical or economic, may prove to be unfounded. In Gadsden, Fla., for example, where it still exists because of violence in past years, local officials announced in 1960 that Negroes would be permitted to register thenceforth;[33] 348 have, and there has been no trouble. A similar pattern appears in Quitman, Miss., where officials let it be known that Negroes could register and 201 did, without reprisal. In Fayette and McCormick, the dread of reprisal was clearly well founded.

Fear, or discriminatory practices, or both, were found in all of the nonvoting counties but Hertford, N.C. In the absence of any such restraint, the low Negro registration figures in this county (now 8.8 percent) were said by all informants to be the result of indifference, or "apathy," on the part of the bulk of the Negroes. "Apathy" or indifference was also listed by all informants as one of the reasons for low Negro registration in 11 of the other counties, where discrimination or fear of retaliation, or both, seemed to be present.[34] (In one other county, indifference was reported to exist but not to any significant degree.[35] In the remaining five, whites and Negroes disagreed—the whites contending indifference was a factor, Negroes that it was not.)[36]

Even when the Negro overcomes his fear of reprisal, the rigor of discriminatory legal devices, and his own indifference, the restrictions on his political participation do not always end. In one county several polling places have separate ballot boxes for Negroes;[37] in one, separate voting machines.[38] The two Alabama counties record the voter's identification number under a sticker on the ballot. Negro interviewees in two other counties stated that the polltaker frequently marked Negro ballots with a pencil.[39] These practices, if in fact they prevail, would appear to be unconstitutional,[40] but the extent of their practical significance is not so clear. There were no verified reports of actual tampering with Negro votes.

VOTING COUNTIES

Of the four counties with substantial Negro registration, Charles City County, Va., is the outstanding example (by comparison) of political freedom and participation by Negroes. Their proportion of the small population is steadily increasing, standing today at 83.3 percent, and the estimated number registered to vote is 780, or 36.6 percent of the Negroes of voting age.[41]

Charles City has a Negro registrar (a woman), Negro clerks and, at voting time, Negro election judges. In 1952 a Negro won the race for county supervisor, and when he died in office in 1959 he was succeeded by another Negro. Four of the county Democratic Committee's 12 members are Negroes, and an active nonpartisan Negro organization, the Charles City County Civic Club, works to encourage Negroes to pay their poll taxes, register, and vote. White candidates place their records and platforms in person before Negro groups—further evidence that Charles City Negroes are considered politically important. (It must be noted, however, that Negroes elected to office in Charles City must still

face the difficulty of dealing with white State officials whose attitudes toward Negroes are not as "enlightened" as that of Charles City residents.)

The political climate in the remaining three voting counties is not so free. Of the three, St. James is most like Charles City County. There have been no Negro candidates there, but white candidates seek Negro votes and appear before Negro groups at campaign time. The number of registered Negroes has increased steadily (63.8 percent of the voting age Negroes were registered in 1960).[42] And while Negroes do not participate in party organizations, they do have a nonpartisan Independent Voters' League.[43]

As has been mentioned, Liberty County, Ga., experienced a 71.6 percent increase in population from 1950 to 1960, and a decline in the proportion of Negroes to the total population from 61.2 percent to 42.4 percent. The Negro population actually increased slightly in this period, but the number of Negroes on the registration rolls has been steadily declining since 1956. (Notwithstanding this, 63.4 percent of the Negroes 18 or over are currently registered.)[44] In the primary election for county commissioner of May 1960, Liberty County for the first time required separate lines and ballot boxes for Negroes in six of the seven polling places.

Negroes in Liberty County attribute their high registration to a former sheriff who courted Negro votes in order to win his office in 1946. He was succeeded at his death by the present sheriff who is said to be under pressure to avoid the practice of his predecessor—a pressure increased by the advent in recent years of Negro candidates for county commissioner and justice of the peace.

The Negro community in Liberty is nonetheless politically active. Negroes have entered political contests (and lost), and white candidates do court votes by speaking before Negro groups. Moreover, Negroes have organized their own Liberty County Democratic club (the white Democratic county organization does not admit them to membership). The county chairman of the Republican organization is a Negro and the group is described as biracial.

Hancock, the only cotton county among the four, is also the only one whose population has declined since 1950 (9.7 percent).[45] The number of Negroes has likewise decreased, as have the number and proportion of Negroes registered (which now stands at 39.3 percent).[46] The proportion of Negroes to total population, however, has increased slightly—to 74.8 percent in 1960. Registration facilities are the same for both races in this county, but in 2 of the 12 polling places there are separate lines, booths, and ballot boxes for Negroes. (One of these two polling places accounts for the largest Negro vote in the county.) The only explanation advanced for the separation is that it "expedites" the voting process.

Negroes have no political organization of their own in Hancock, nor do they belong to the county Democratic organization, although white informants contend that Negroes would be admitted to the organization's meetings, which are publicly announced, if they so desired. There is no Negro nonpartisan organization such as exists in the other three counties to educate Negroes politically or to get out their vote.[47]

There is no indication of any official measures to prevent Negro voting in the four voting counties, although means are available in two of them to ascertain how the Negroes in fact cast their votes. Commission field investigations found no allegations of fear of economic or physical reprisal in these areas, and the registration figures themselves suggest its absence. It is significant that Negro teachers in the four counties appear to vote and otherwise participate in political activities without substantial restriction.

CONTRASTS

Official discrimination and fear of physical or economic retaliation help to explain the very significant difference between the two groups of counties in terms of Negro registration. They do not appear to explain the difference completely, however, for, as was pointed out, in one of the 17 counties (Hertford, N.C.) neither fear nor discriminatory practices were alleged to exist. Why should there be fear of reprisal in most of the nonvoting counties, and an alleged "apathy" in almost all of them, when neither of these factors appears significantly in the four voting counties?

One key to both of these questions may well be economic. In three of the four voting counties—Charles City, Va., Liberty, Ga., and, to a lesser extent, St. James, La.—Negroes appear to be economically independent—that is, not subject to the economic control of local whites. As has been noted in chapter 2, none of the three are cotton counties, nor were they so listed as far back as 1930. Tenant farming is not the rule. Agriculture is not the dominant source of income. Whatever farming there is, is diverse, and the incidence of Negro farm ownership (the farms are usually small) is high. A good part of the population of all three counties makes its living in industry.

On the other hand, 15 of the 17 nonvoting counties are, or were until recently, cotton counties. Income is derived principally from agriculture, and the relationship that Negro tenants and croppers bear to local white landlords and others is highly dependent and personal. The potential

effect of that dependence was dramatically demonstrated in Fayette and Haywood Counties, when Negroes, who succeeded in registering, were subjected to intense economic reprisals by local whites. Moreover, the counties in which Negro registration declined or remained at zero all fall into the category of present or recent cotton counties. Those where registration increased significantly (apart from Fayette and McCormick, where the Federal Government intervened, and Quitman, Miss., where a voluntary change in local policies apparently occurred) fall into the noncotton category. Gadsden, Fla., and Hertford, N.C.—both of which are noncotton—had Negro registration increases. Moreover, in Hertford, where Negroes are more economically independent—some are comparatively wealthy—race relations have been relatively good over the years. The only Negro candidate to seek office in any of the 17 nonvoting counties did so in Hertford.

There appears, then, to be some correlation between economic structure and Negro voting when 3 of the voting counties are compared with 15 of the nonvoting counties (and to a lesser extent with the other 2 nonvoting counties). To at least some degree this relationship appears to be a directly causal one: that is, the economic dependence of the Negroes on local whites may give rise to a fear of economic retaliation if they assert their rights.

While the relative economic independence and prosperity of the Negroes may help explain their voting in three of the voting counties, it does not explain it in the fourth—Hancock, Ga. Hancock was a cotton county in 1930 and it still is. Its Negroes are as economically dependent on local whites as are those in most of the 17 nonvoting counties. The major difference appears to be, however—and it is not a difference to be lightly taken—that local Hancock whites do not threaten to take advantage of their economically controlling position. Indeed, the Commission's investigators were informed that the comparatively "good" relations between the races stems from the post-Civil War attitude of the Confederacy's Vice President Alexander H. Stephens. At the war's end, Stephens returned to a neighboring county and is said to have been active in helping Negroes of the area—including those in Hancock—get a fresh start. While this connection is remote, the attitude of many present-day local whites does seem to be, for whatever reason, in the Stephens tradition. The county superintendent of schools, for example, is credited with a serious concern for improving Negro schools and obtaining more qualified Negro teachers. Moreover, while Negro teacher membership in the NAACP is a controversial issue in most other counties, it does not appear to be so in Hancock. Some Negro teachers were known to be members of the NAACP, but no objection was made because they "were doing a fine job in the schools." (While race relations have been "good" in Hancock, however, they also appear to have been paternal. Since the Supreme Court's decision in the *School Segregation Cases,* moreover, the relations between the races have become somewhat strained.)

Neither discriminatory practices nor economic factors, then, completely explain the degree of Negro participation in the franchise. Other, less definable elements are involved, one of which is certainly the attitude of the white persons, individually and collectively, who control the power structure. Thus Hancock, which from outward appearances could be expected to be as ante-bellum in relations between the races as any black belt "cipher" county, displays a more enlightened attitude perhaps by reason of a quirk of history. Thus also a change in attitudes in Gadsden may be changing voting patterns there. A single officeseeker in Liberty County, Ga., some years ago appears to have established a new pattern there.

Finally, there is the question of "apathy," which is clearly a factor in most of the 17 counties. Do Negroes have more reasons to be "apathetic" than the whites in these counties—or, indeed, than the electorate of the Nation as a whole? No doubt Negroes in the South have reasons for "apathy" which their compatriots of other races and regions do not share—memories of lynchings for example. But even these do not explain why Negroes are more "apathetic" in the 17 counties than in the 4. The Commission study does not permit definitive answers to these questions, but again some tentative suggestions may be made.

One is that the economic structure of the county may play a role here as well; that is, the Negro's depressed and dependent economic condition continually operates to reinforce his subordinate political and social position, and may contribute to lack of motivation to participate in political matters. Another partial explanation may lie in the very fact that Negroes have for so long been excluded from any participation in the governmental process. Thus both habit and the lack of any visible rewards to be gained by casting a vote in an election where they have no say in the selection of candidates, and the candidates make no effort to seek their vote or even to bring the issues before them, may lead to Negro "apathy" in many of the nonvoting counties; and this "apathy," in turn, may tend to perpetuate their exclusion from the political process. In the voting counties, on the other hand, the fact that Negroes can make their weight felt, at least to some degree, and can see some fruits of their participation in the franchise, may also be not only the effect of that participation, but a cause of it. Finally, the absence of a viable two-party system, with its vigorous competition (including registration drives) for uncommitted votes, may contribute to political passivity.

4. Rights and the Negro Majority

What now remains—the second purpose of this study—is an analysis of the civil rights status of the Negro in these 21 counties, and a comparison of that status in the 17 nonvoting counties with that in the 4 voting counties. The Commission's studies permit specific comparisons to be made in the fields of education, public library facilities, housing, administration of justice, employment, public accommodations, and military establishments. Some of the material gathered is of a general, descriptive sort not specifically dealing with civil rights; but in each of these areas discriminatory governmental action was the principal focus of concern. These comparisons, it is hoped, will shed some light on the extent to which the free exercise of the right to vote, or its lack, is reflected in the enjoyment of other rights.

EDUCATION

In the *School Segregation Cases,*[1] the Supreme Court ruled that compulsorily segregated schools are inherently unequal. By this standard no Negro in the 21 black belt counties has equal educational opportunity, for all schools are still firmly segregated. But Negroes suffer "tangible" as well as "intangible" inequality. The Commission's study did not cover two vital criteria for assessing the quality of schools—curriculum and teacher competence—but a comparison of pupil-teacher ratios, condition of physical plant, and quality of library and laboratory facilities shows that most Negro schools in the black belt counties studied are markedly inferior to their white counterparts. The disparity in median levels of educational achievement for the two races in these counties in 1950, discussed in chapter 2,[2] was perhaps in some degree a reflection of such inequalities in educational facilities.

Nonvoting counties

There are, from the latest available information, 1- or 2-teacher schools in at least 8 of the 17 nonvoting counties—the great bulk of them for

Negro children. In 4 of the Mississippi counties studied, for example, there were 68 Negro elementary schools, 41 of them 1- or 2-teacher schools as of 1958–59.[8] Only 2 of the 15 white elementary schools in these counties were of this kind. In Quitman County, Miss., 13 of the 20 Negro elementary schools were 1- or 2-teacher schools in 1958–59; neither of the 2 white schools was in this category. A 1955 study of Quitman schools noted: [4]

> Most of the schools for Negroes in Quitman County are located in churches. In these churches one or more teachers conduct classes in all grades from 1 through 8, as needed. . . . In only Lambert . . . and in Marks . . . are there enough teachers so that a teacher may have only one grade to teach. Obviously, the Negro schools in the county school system need reorganizing so as to provide larger attendance centers. . . . These [private] buildings, usually churches, are poorly adapted to instructional purposes, do not lend themselves to the type of curriculum which is considered satisfactory in a modern educational program.

Later in the report, it was noted that "Quitman County's need for building is mainly for the Negro schools." [5]

Nor is the one- or two-teacher Negro school limited to Mississippi. In Greene County, Ala., 9 of 12 Negro grade schools are of this variety; there is only 1 white elementary school and it is not a 1- or 2-teacher institution.[6] In Fayette County, Tenn., there are twenty-one 1-teacher schools for Negroes, and twenty 2-teacher Negro schools (out of 56); 8 of the 14 white schools are in this category.[7] In McCormick, S.C., however, none of the three Negro elementary schools is in the one- or two-teacher class, whereas one of three white schools is. In Williamsburg, two of four Negro, and two of three white, elementary schools have only one or two teachers.[8]

Another gage for measuring the quality of educational institutions is the ratio of teacher to students. For all schools in the 17 counties, elementary and secondary, for which figures could be obtained, the ratio of teacher to pupils was less favorable for Negroes than for whites.[9] For example, in Quitman, Miss., the ratio is 1 teacher per 23 students against 1 teacher per 30 Negro students (the Negro figure included many small 1- or 2-teacher schools.) In Claiborne, La., it is 1: 19 for whites, 1 : 26 for Negroes; in Hertford, N.C., it is 1 : 29 for whites, and 1: 35 for Negroes.

Both the States and regional bodies such as the Southern Association of Secondary Schools and Colleges [10] and the North Central Association of Colleges and Secondary Schools, have established criteria for measuring school quality. Approval by such bodies is predicated upon a school having met certain minimum requirements. A comparison of the numbers of Negro and white schools receiving such approval should shed light on their comparative quality.[11]

There are 42 Negro secondary schools throughout the 17 counties; of these, 1 has met regional association standards. On the other hand, 22 of the 49 white high schools have been approved by one or another regional association. Thirteen of the Negro schools, in fact, do not even meet the minimum requirements for State approval. In contrast, only two white high schools lack State accreditation.

There are 16 white and 16 Negro high schools in Mississippi counties studied.[12] All 16 white schools are State approved, and 7 of them have attained regional association standards. Not one of the Negro schools has reached the latter level; six of them have not been approved by the State.[13] Similarly, Greene County, Ala., has one white high school, three for Negroes. The white school has been approved by both the State and a regional association. None of the Negro schools is regionally approved; two do not even meet State standards.[14] Claiborne Parish, La., is perhaps an extreme example. None of the five Negro schools meet regional standards; all of its six white schools do.[15]

Advances have nonetheless been made in Negro education in many of the 17 counties—most strikingly in new school construction, which has mushroomed since the Supreme Court's decision in the *School Segregation Cases*. (Some white informants frankly admitted that the new schools were designed to avoid school desegregation.) Some of the new Negro schools are said to have better physical plants than the white schools in the same area.

New Negro schools have appeared in all three South Carolina counties [16] and five of the six Mississippi counties [17] (the other has no Negro secondary schools).[18] One has also been built in Lee, Ga.; [19] another in Tensas, La.; and another in Monroe, Ala. Improvements have been made in existing structures in Gadsden, Fla., Hertford, N.C., and Claiborne, La. In 14 counties, in short, at least some of the Negro schools are new or have been recently improved.

In four counties, two of which have some new facilities, Negro schools were reported to be generally inferior.[20] One of these is Fayette County, Tenn., where Commission investigators found that Negro school buildings were generally older than those for whites, and that many are dilapidated, located on unpaved roads, and overcrowded. Recreation facilities are scarce, sometimes nonexistent. Laboratories are inadequate. Libraries have few books and even these are often outdated. Heat is provided unevenly by coal and wood-burning stoves, and in some schools there are no sanitary facilities other than outdoor toilets.

Even where new schools have been built, they often lack adequate facilities. In 6 of the 11 counties where there are new Negro schools,

they lack adequate library, recreation, or laboratory facilities.[21] Books available to Negro students compared favorably with those for whites in only 4 of the 17 counties; [22] and only 3 have comparable laboratory equipment.[23]

Schoolbuses for white and Negro students in the 17 counties were by and large on a par. The complaint was frequently made, however, that Negro buses were more crowded. In Quitman, Miss., for example, 37 buses transport 2,700 Negro pupils; 36 buses carry 1,400 white students.[24]

The Commission was unable to gather sufficient information for a county-by-county comparison of the curriculum in Negro and white schools,[25] but the report for Quitman, Miss., mentioned above, noted that "The types of curriculum which exist in the white schools of the county and of the separate district are much more intelligently planned and more intelligently taught than those in the Negro schools." [26] And in speaking of all schools, the report said: [27]

> It is especially noticed that there are some areas missing from all of the high schools. One might call attention here to the fact that no modern foreign language is offered in any high school; that art does not exist in the curriculum of any school; that an industrial arts program is also lacking. Vocational instruction is limited almost entirely to commerce and agriculture.

As of 1960, Quitman schools still did not offer courses in modern foreign language, art, or industrial arts.[28] Speaking of Negro schools:[29]

> It may be expected that when the program and the curriculum of the schools are designed for meeting the needs of the boys and girls, the holding power of the schools will be strengthened, and the community will receive the advantages that come from an educated people.

At least as important as curriculum is the teacher. The Commission could undertake no specific inquiry into the comparative qualifications of white and Negro teachers in this study. However, it noted generally in its Report on Higher Education,[30] and, indeed, Negro educators have themselves recognized that: [31]

> The overall effect of segregation in public education, at both the college and the public school levels, has been to give a substantial portion of the population the opportunity to obtain only an inferior education. Moreover, the effects of such deprivations are self-perpetuating; that is, students from inferior schools can attend only inferior colleges, where they are often trained as inferior teachers, and from which they return to teach in the same inferior schools.

Moreover, the Negro teacher, molder of young minds and spirits, often "knows his place." As pointed out above, in several of the 17 counties, Negro teachers are under special pressures that restrict their participation in political affairs.[32] When these teachers instruct students in such subjects as history, government, and civics, their effectiveness must be limited.

Not one petition, application, or request has been made by a Negro parent to enroll his child in a white school in any of the 17 counties.

Voting counties

Negro education in the 4 voting counties is essentially similar to, but avoids some of the low levels found in, the 17 nonvoting counties. The 1950 figure for median level of school years completed by Negroes 25 and over was no higher in the 4 than in the 17—although the gap between the races was generally smaller.[33] There are, however, very few 1- or 2-teacher Negro elementary schools in the voting counties and there are none of this type for whites.

Whereas in 17 nonvoting counties, 13 out of 42 Negro high schools were not even State accredited, 4 of the 5 Negro high schools in the voting counties are State approved.[34] Only one meets regional association standards, however; while five of the six white schools do.[35]

Teacher-pupil ratios were available for only three of the counties (not Hancock). In two of these there is little variation from the nonvoting county figures, but in Liberty, Ga., the ratio was reportedly lower for Negroes (1:27) than for whites (1:30).[36]

New Negro school construction is making a belated appearance here also. Charles City, St. James, and Hancock have new and in some instances superior physical facilities for Negro students (although in both Charles City and Hancock, school library facilities in the new schools were reported to be inferior, and in St. James, there was disagreement as to the relative merits of the libraries). A new Negro consolidated high school has been constructed in Liberty, Ga., with Federal assistance.[37] (Because children from Fort Stewart, a permanent Army installation, attend Liberty schools, the county receives Federal funds for construction, maintenance, and operation of its schools.)[38] The white schools in Liberty are generally newer and in better condition than the Negro schools.[39]

Throughout the four counties recreational facilities for Negro students are noticeably lacking, and laboratories were reported to be inade-

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quate. Negro school buses in the four counties, though newer, are also said to be more crowded than those for white students.

In only 1 of the 21 black belt counties—Liberty, Ga.—has any move been made to desegregate public schools. A petition presented to the county school board in 1955 requested the admission of Negro students to white schools. It was never acted upon. Two Negro teachers whose names were among the petitioners withdrew their support, reportedly at the suggestion of school board members.

It has been noted in the previous chapter, but is significant here too, that Negro teachers in the four counties appear to be free to vote and otherwise participate in the political process.

PUBLIC LIBRARIES

Nonvoting counties

Three of the 17 counties have no public library facilities of their own for either race. Of these three, however, Lee County, Ga., operates two bookmobiles (one for each race) in cooperation with adjoining counties; and in Gadsden, Fla., there is one semiprivate library from which some books are made available to Negroes, although they may not read or refer to them on the premises. Issaquena, Miss., has no libraries at all.[40]

The most striking fact, however, is that 10 of the 17 counties utilize public funds to support libraries for whites, but none at all for Negroes. Not one of the Mississippi black belt counties studied operates a Negro library. (Two, Tate and Quitman, each have two libraries, both for whites.)

In the four counties where libraries are available for Negro use,[41] they are separate from, and in every case inferior to, those for whites. Fewer books are available to Negroes. For example, in Calhoun, S.C., 14,000 books are available to Negroes. For example, in Calhoun, S.C., 14,000 books are for white, and only 8,000 for nonwhite, use. In Hertford, N.C., there are 14,857 books for whites, and less than half that number (7,033) for Negroes.[42] In addition, the libraries generally are less accessible to Negroes than they are to whites. In Tensas Parish, La., for example, books are shifted between the white and the Negro libraries, but the white library has several employees and is open 35 to 40 hours per week; the Negro library, with one part-time attendant, is open only 18 to 20 hours per week. (There is also one bookmobile for whites only.) The white library in Calhoun, S.C., is open 27 hours a week; the Negro library, 9½ hours.

Voting counties

These counties present little contrast. There is no public library in either St. James Parish or Charles City County. Hancock has a white library, and shares 2 regional bookmobiles (1 for each race), using 41,000 books in common with 3 other counties. The one library in Liberty is for whites only. It was reported that the Liberty library circulated books to Negro schools through 1953, but the service was discontinued after the 1954 *School Segregation Cases* decision.

HOUSING

Nonvoting counties

There are distinct Negro residential areas in almost all of the county seats and major towns of the 17 nonvoting counties. Streets are usually unpaved, street lighting is poor or nonexistent, sewage disposal is inadequate, and garbage is collected infrequently if at all. In most of the counties comparable white neighborhoods have these facilities and services. In Somerville, the county seat of Fayette County, Tenn., virtually all the services mentioned above are absent in the Negro residential area, and in addition there is no town water (there is for virtually all whites). In Winfrey Bottom, also in Somerville, Negro living conditions were so bad that the white landlord was finally compelled by town officials to build a community toilet for the 35 Negro families living there. In only a few towns, such as Eutaw in Greene County, Ala., are most services provided for Negro neighborhoods, but even in Eutaw the streets are unpaved.[43] They are paved in white neighborhoods.

Despite the poor housing conditions in all 17 counties, more fully described in chapter 2, only four have undertaken construction of federally supported public housing. (There are no purely State or local projects.) In three, the number of units for Negro occupancy exceeds the number for whites, reflecting the greater need of the Negroes and the fact that they are in the majority. McCormick, S.C., has 14 Negro and 12 white units of equal quality. In Greene, Ala., at Eutaw 44 Negro and 6 white units equal in quality are under construction. Construction is also in progress in Gadsden, Fla. (14 Negro units), and Lee, Ga. (16 Negro units and 30 white units).[44] In one of the two towns in the latter county, the Negro public housing units are located in an open field at the dead end of an unpaved street, while the white

units are situated on a surfaced road conveniently across from an elementary school.

There are no urban renewal projects in any of the 17 counties.[46] Very few homes have been built with the aid of FHA insurance or VA guarantees. (One informant stated that restrictive covenants are written into all deeds in his county and consequently the Federal Government will not insure the loans.) [46] But very few private homes have recently been built at all, and those few are generally what are called "shell" homes—that is the owner must finish the interior himself.

Several reports indicated that Negroes, otherwise able and wanting to build, encountered difficulties in getting financing from banks. When financing is available, however, the terms and conditions are generally the same as those for white mortgagors (although in one county [47] it was alleged that mortgages made to Negroes were on a shorter term basis, and, in another,[48] that the interest for Negroes' loans was higher).

Open land available for construction is labeled white or Negro in 14 of the 17 nonvoting counties.[49] In three of these counties [50] all reports agreed that Negroes, if able to build, were restricted to less attractive ground than that available to whites. In four other counties [51] whites and Negroes disagreed as to the comparative quality. In another,[52] land available for Negro building is located on the outskirts of town; the consensus in Hertford, N.C., was that "open land" for Negroes was as good as "open land" for whites. In Fayette County, Tenn., on the other hand, some land designated for Negro use is located on unpaved back roads; gullies run through it and electricity often is not available.[53]

Voting counties

Housing conditions are equally poor in the four voting counties. There are separate Negro neighborhoods, most of which are lacking in some or all of the public services extended to white sections. In Charles City, Va., for example, there are two Negro villages, both without paved streets, sewage, trash collection, or water connections. In Hancock, Ga., a new sewage extension in Sparta was not run to the Negro part of town.

Hancock, Ga., is the only one of the four voting counties with a public housing project. Now in construction, it will have 16 units for Negro and 8 for white occupancy—all of equal quality.

By all other measures, housing is the same in the 4 as in the 17. There are no urban renewal projects, little private building, and only minor FHA and VA mortgage activity. Open land in these counties is also designated white or Negro, and lending institutions, while not accused of refusing to make real property loans to Negroes, appear to have had little occasion to do so.

ADMINISTRATION OF JUSTICE

Nonvoting counties

No Negro holds a position of authority as clerk, bailiff, or prosecutor in any of the courts of the 17 counties. No Negro judge presides in any court, whether local, State, or Federal. Throughout all the 17 counties, there is only 1 local Negro attorney—in Hertford, N.C. The only service rendered by Negroes in the courts of justice is janitorial.

In 11 of the 17 counties, according to investigators' reports, no Negro had ever served on either a trial or grand jury. Neither of the Alabama counties had ever had a Negro juror, and only in Quitman of the six Mississippi counties and Calhoun of the three in South Carolina had a Negro ever been a juror. Nor had Negroes ever served on juries in Lee, Ga., or Gadsden, Fla. In Fayette, Tenn., one Negro served on a jury in 1949 during the trial of a Negro charged with killing a local white sheriff; none has served since. Only in Hertford, N.C., and in Tensas Parish, La. (where ironically, no Negroes are registered to vote), do Negroes serve on juries with anything approaching regularity.

In three States, prospective jurors are selected from the rosters of registered voters.[54] Thus, if no Negroes are registered, none can serve. According to Commission informants, this was the situation in Carroll County, Miss., when a U.S. Court of Appeals invalidated the conviction of a Negro by a Carroll County court because of the systematic exclusion of Negroes from its juries.[55] Three Negroes, it is said, were "asked" to register so they could serve as jurors. They were also "asked" not to vote.

In four other counties where jurors are chosen from voters' lists, Negroes are registered, yet none has been called for jury service.[56] Figures for 1958 showed 234 Negroes on the voter rolls in Williamsburg County, S.C., for example, but none has served on juries.[57] In Lee County, Ga., jurors are selected from property holders' lists, and although there are Negro property owners in Lee, none has been called.

There are other reminders in the courthouse that Negroes have a special status. Courtroom seating is segregated in all the 17 counties, and where restrooms, waiting rooms, and water fountains are provided for both races, they are separate.[58] In Williamsburg, S.C., Negroes are provided with outhouses—wooden, row structures located at the rear of the courthouse grounds. In six counties there are no restrooms for Negroes at all, although there are for whites.[59] An equal number provide drinking fountains for whites only.[60]

In 14 of the 17 counties all law enforcement officials are white. In the three where Negroes do serve as policemen, their authority is limited. The two Negroes on the 14-man force of Quincy, in Gadsden County, Fla., patrol only Negro areas. The two Negro policemen in Tensas Parish, La., are actually night watchmen. Two of the six policemen in the town of Ahoskie, Hertford County, N.C., are Negroes, but they have authority to arrest only Negroes.

There was substantial disagreement between the whites and Negroes interviewed on the subject of police practices. In eight counties Negroes claimed that searching Negro homes without warrants was a common practice,[61] and in five that police commonly arrest Negroes without probable cause.[62] White informants in these counties did not, however, corroborate these statements. In two counties (Fayette, Tenn., and De Soto, Miss.), however, there was agreement among the persons interviewed by the Commission that police commonly search Negro homes without warrants, and in Fayette that police commonly arrest Negroes without probable cause. There was further agreement that Fayette police occasionally use force against, or otherwise mistreat, Negroes in their custody.

Specific incidents of police brutality against Negroes were recounted in 5 of the 17 counties.[63] In four counties reports were received of incidents involving violence against Negroes in which police (apparently deliberately) refused to take action.[64] No complaints or suits were filed against the officers in question. The reasons given for failure to do so included fear of reprisal and the difficulty of obtaining counsel. (As previously noted, there is only 1 practicing Negro attorney in all of the 17 counties.) In one county, both white and Negro informants stated that local white attorneys would not handle such cases, and that local juries had invariably ruled against Negro attorneys from out of the county representing plaintiffs in similar cases.

The eating, recreational and, where provided, hospital facilities in the jails of all 17 counties are segregated. The Commission received only two reports of inferior Negro quarters, however.[65] The major difference in the treatment accorded Negro prisoners is in the labor they must perform. In four counties Negroes do manual labor at the jail, on the roads and (in two counties) on chain gangs, whereas whites do not.[66] In the remaining counties, there was consistent disagreement between white and Negro informants concerning jail-labor practices.

The Commission also gathered information as to the existence of racially oriented organizations in the counties studied. Both white and Negro informants were in agreement that white citizens councils were organized and active in 9 of the 17 counties.[67] In two of these (Fayette, Tenn., and Monroe, Ala.), the Ku Klux Klan is also active. In only four counties did all informants agree that there were no active white extremist organizations, and in the remaining four,[68] Negro claims that white citizens councils were organized were not corroborated.

Where white citizens councils do exist, they are generally active in opposing any and all forms of desegregation. Membership usually consists of farmers, merchants, and businessmen, and in one county the leaders reportedly include a newspaper editor, a postmaster, teachers, lawyers, and merchants. The white citizens council of this county was said to have tried to intimidate Negroes by use of economic pressure and threats of loss of jobs. The council in another county was said to have warned Negroes that they would be driven off their farms and their credit cut off if they tried to register. It also allegedly made threatening phone calls to Negro leaders.

Negro organizations are active in 6 of the 17 counties. NAACP chapters or groups were said to be organized in four of them.[69] In Quitman, Miss., there is a Negro chamber of commerce, and in Monroe, Ala., a Negro civic league. (Two of the four with NAACP groups have other Negro organizations as well.)[70]

Voting counties

Charles City County, Va., is far ahead of the other 21 counties in according Negroes equal treatment in the area of administration of justice. There are two Negro justices of the peace, and neither courtroom seating nor drinking fountains are segregated (although restrooms are). Substantial numbers of Negroes serve on both trial and grand juries in civil and criminal cases alike, and there were no reports of illegal police practices, maltreatment of prisoners, or mob violence.

St. James Parish, La., has never had a Negro judge or justice of the peace, but Negroes have served on juries for many years. Courtroom seating is not segregated (restrooms are), and there are at least three Negroes who serve on the sheriff's staff, receiving the same rate of pay as white deputies. Their authority is limited to arresting Negroes, however. Jail facilities are segregated in St. James, but there were no complaints of illegal police practices, maltreatment of prisoners, or mob violence.

In Liberty, Ga., names of Negroes have consistently appeared on lists from which juries are selected. Only two are reported to have served, however, one on a trial jury in 1956 and another on a grand jury in 1959. (There are no Negroes on the jury commission.) Courtroom facilities—seating, restrooms, and drinking fountains—are segregated, as are jail facilities. Three of the eight men on the sheriff's staff are Negroes. These are considered political appointees; they work part time, and are empowered to arrest Negroes only. In the May 1960 primary election, a white candidate for sheriff proposed in his platform the

appointment of a full-time Negro deputy sheriff with the same pay and authority as white deputies. There were no reports of illegal police practices in Liberty, nor was there any evidence of police brutality or mob violence.

In Hancock, Ga., Negroes have been on trial and grand jury panels, but none has ever served. All courtroom facilities, except waiting rooms, are separate (though of equal quality). There were no reported instances of illegal police practices, maltreatment, or mob violence.

The almost total absence of white extremist groups in the voting counties is noteworthy. In three of the four, all agreed that no white citizens councils or Klans were organized or active. In the fourth—Liberty, Ga.—Negroes claimed, and whites denied, the existence of a white citizens council. NAACP groups were found to exist in three of the four counties—Liberty, St. James, and Charles City.

EMPLOYMENT

Nonvoting counties

Except for those positions specifically designated for Negroes (teachers, extension and home demonstration agents, and the like), public employment, particularly State and local, offers little opportunity for most Negroes in the 17 nonvoting counties.

The largest source of Federal employment in these counties generally is the post office. The post offices in four counties [71] employ no Negroes in any capacity. In the remaining counties, six Negroes are employed as bulk mail carriers [72] and four as letter carriers [73] (two of them are restricted to delivering mail to Negro neighborhoods).[74] The largest number in any one job, 10, is employed as janitors.[75]

State and local governments are equally restrictive, limiting Negro employees for the most part to menial jobs. Negroes perform janitorial duties in the courthouses and city halls in 12 counties.[76] Of all the 17 counties, only Hertford, in North Carolina, employs a Negro fireman.

The State employment services, which are subsidized by Federal funds,[77] are available only on a part-time basis in most counties. According to both white and Negro informants, in 13 of the 17 counties most Negro applicants are offered only unskilled positions,[78] and according to Negro interviewees in one county, are not offered any jobs at all.[79] In the remaining counties there was disagreement as to the kinds of positions offered to Negroes. In three counties the State employment offices maintain separate facilities and services for each race.[80]

Job opportunities in private industry—what little of it there is—are only slightly better. Negroes are generally employed only in unskilled positions, if at all. The two counties offering most employment opportunity to Negroes are Hertford, N.C., and Gadsden, Fla. Most of the employees (including foremen) of a basket factory in Hertford are Negroes (this, incidentally, was the only unionized [AFL–CIO] industry found in the 17 counties). In Gadsden, tobacco warehouses, a furniture factory, and a packinghouse all employ some Negroes—a few in semiskilled capacities. But the wire factory in Gadsden employs only one Negro, a janitor; and Hertford's aluminum plant and garment factory employ none.

In the remaining counties opportunity is more scarce. A few Negroes are employed in semiskilled capacities in the cotton gins of Tensas Parish, La., and a plastics plant in Tate County, Miss. There are some pulpwood mills and a garment factory in Calhoun County, S.C., which together have about 100 employees. Of this number only three or four are Negroes, all janitors and laborers. Williamsburg County, in the same State, has two textile mills. One employs 5 Negroes (and 400 to 500 whites); the other publicly states it hires no Negroes. There are three factories in Fayette County, Tenn., manufacturing bicycle seats, tables, and garments (the latter was financed through a publicly voted bond issue). The table factory employs 5 to 6 Negroes out of a total of about 60; the other 2 employ no Negroes at all.

Thus, only very limited chances for employment are open to those few Negroes who do not work the land, and even when jobs are available, they are usually of a menial nature. Local whites control virtually all nonfarm employment, public and private, so there is little relief from the pattern of economic dependence found in agriculture.

Voting counties

Except in Charles City County, Va. (where a Negro woman holds the position of postmistress), the availability to Negroes of Federal, State, and county employment seems just as limited in these 4 counties as in the 17. The post offices in Hancock, Ga., and St. James, La., employ Negroes only as janitors. (None is employed in any capacity in Liberty, Ga.) And, except as teachers and home demonstration agents, Negroes hold very few, if any, State or local jobs.

Three of the four counties provide State employment services on a periodic basis. In two, Hancock and Liberty, Ga., Negroes are reportedly offered both skilled and unskilled jobs when these are available. In St. James, they are offered unskilled jobs only.

In two of the four, there is substantial private employment available to Negroes either within the county or nearby. A large number of Charles City's Negroes work in the shipyards at Newport News and Norfolk, and in nearby defense factories. St. James Parish has an aluminum plant which is unionized, (AFL–CIO), a sugar refinery also unionized (AFL–CIO), and three small sugar mills, all of which employ nonwhite help. Some Negroes hold union offices in the sugar refinery. The minimum wage at the aluminum plant is $2.20 per hour, and some of the plant's chemists are Negroes, who earn as much as $1,000 per month.

In Liberty, Negroes find some employment at Fort Stewart, a fairly large Army installation; one sawmill there employs about 200 Negroes out of a total of about 300 workers.

Private employment for Negroes is not as extensive in Hancock as in the other three. A clothing factory employs whites only, and a furniture concern has about 40 Negro workers (half of whom are skilled) out of about 150.

Thus, in 3 of the 4 voting counties, nonfarm employment opportunities appear to be substantially more extensive and subject to less control by local whites than in the 17. Greater prevalence of farmownership by Negroes in the four (except in Hancock) and the comparative absence of farm-tenancy-sharecropper relationships (again except in Hancock) combine with available nonfarm employment to give Negroes a more significant measure of economic independence.

PUBLIC ACCOMMODATIONS

Nonvoting counties

Few public accommodations of any kind are available in the 17 counties, as might be expected in rural communities. Those few that are provided are almost invariably for whites only or segregated.

There are no public parks (roadside or other) in 4 of the 17 counties,[81] but in 2 of the 4, there are Federal dams or lakes, with fishing, boating, and, sometimes, swimming facilities. One of these, Arkbulta Dam in Tate County, is open to whites only; the other, Lake Marion in Calhoun County, is accessible to both races. There are Federal dams and lakes in two other counties—Gadsden, Fla. (which is not segregated) and McCormick, S.C. (which is). In the 13 counties with State or local parks, 4 maintain roadside "rests" which are not segregated; [82] 3 have facilities for white picnickers only,[83] and the remainder have separate accommodations for each race.

There are hospitals in nine of the counties, all of them segregated. Two of these (in Greene, Ala., and Hertford, N.C.) were built with Federal funds.[84]

Eight counties have public beaches and municipal pools; five are strictly white facilities [85] and three are segregated.[86] Recreation facilities are at a premium in all 17 counties. No golf courses can be found in any of them, only one has a bowling alley (for whites),[87] and only three have skating rinks (also for whites only).[88] There are theaters in only 14 counties, and all of them are segregated.[89] All restaurants, hotels, and motels are segregated.

With respect to transportation, six counties have railroad terminals, all with segregated accommodations.[90] (One—Fayette, Tenn.—provides restrooms for white persons, but not for Negroes.) There are bus terminals in seven counties.[91] All have segregated waiting rooms, and three provide restrooms for whites, but not for Negroes.[92] The only airport is in Leflore County, Miss.; its restaurant, restrooms, and waiting rooms are all segregated.

Voting counties

Public facilities and accommodations are scarce in the 4 voting counties as in the 17. Charles City County, Va. (with a population of 5,492), has no parks, transportation, restaurants, or theaters. The few facilities in the remaining three counties are all operated on a segregated basis.

In Liberty, Ga., a segregated county hospital is now being built with Federal funds with a separate wing for Negroes. The local hospital in St. James, also built with Federal funds, is at least partially segregated. A white informant noted that the Catholic church in St. James has conducted integrated worship for more than 40 years.

The major difference between these counties and the nonvoting ones is that virtually every facility provided for whites is also provided for Negroes. The only exception is Liberty County, Ga., where Negroes are not admitted to the skating rink.

THE MILITARY

Nonvoting counties

There are no Federal military installations in any of the 17 counties. Nine have Armed Forces Reserve units—in each case for whites only.[93] In one of the nine (Williamsburg, S.C.) Negro reservists reportedly

have to travel 78 miles round trip to Florence for drills at their own expense. Thirteen counties have National Guard components, with membership also limited to whites.[94]

Voting counties

Liberty, Ga., is the only county with both Armed Forces Reserve and National Guard units (both are for whites only). Fort Stewart, a permanent Army base, is also located there. The National Guard unit in Hancock, Ga., is also closed to Negroes. There are no military installations or units in St. James Parish, La., and Charles City County, Va.

SUMMARY

This chapter has described the civil rights status of the Negro in the 17 nonvoting and the 4 voting counties. The picture that emerges from this description is not a bright one. There are severe civil rights deprivations in all 21 counties—nonvoting and voting alike. Yet, there are also some differences.

Negro education in all 21 counties is rarely on a par with white education. New school buildings for Negroes are making a belated appearance, yet in many instances the new Negro schools are reported to have inferior laboratory and library facilities. The schools in all 21 counties are still firmly segregated. The 1950 median levels of education for Negroes 25 years and over were about the same in the 17 as in the 4, although the gap between the races is generally less in the latter. In 3 of the 4 voting counties, the teacher-pupil ratio is less favorable for Negroes than for whites, a condition that also obtains in the 17.

Differences in Negro education do appear among the 21 counties with respect to 3 of the criteria used to measure their comparative quality. In at least five of the nonvoting counties, there were many one- and two-teacher schools, some of them in poor condition. In only one of the voting counties was this so. All but one of the Negro secondary schools in the voting four are approved by the State in which the county is located; one by a regional association as well. Although 1 Negro high school in the 17 is also approved by a regional group, 13 of the 42 in these counties lack State accreditation. The third difference is more difficult to measure, though it is nonetheless important. In several of the 17 nonvoting counties, Negro teachers were afraid that registration

or other political activity would jeopardize their jobs; this did not appear in any of the voting counties.

While none of the 21 counties is without discrimination of one sort or another in the administration of justice, significant differences again appear in this area. In 11 of the 17 nonvoting counties, Negroes have not served on either trial or grand juries; only in 2 do they serve with any regularity. In the remaining four (in one of which three Negroes were recruited to provide an integrated jury panel), Negroes only occasionally appear on panels and even less occasionally serve. On the other hand, Negroes regularly serve on trial and grand juries in two of the voting counties and frequently appear on the panels in the others, though they often are not selected for actual service. Moreover, in one of the four, there are Negro justices of the peace. In not one of the voting counties were there any allegations of police brutality, mob violence, or illegal police practices, while (though white informants almost always disagreed) Negro informants reported these practices do exist in 10 of the nonvoting counties. Another difference, related to the administration of justice, is the prevalence of white extremists in 9 of the 17 nonvoting counties. These groups were absent in most of the remaining counties, including the voting counties (although in one of these, whites and Negroes disagreed as to their existence).

In the other areas studied—housing, employment, public libraries, public accommodations, and military establishments—deprivations were found in all 21 counties, with little difference between the 17 nonvoting, and the 4 voting counties. Negro housing in all counties was found invariably inferior to white housing, and always segregated, with Negro quarters often lacking the public services—paved streets, street lighting, sewage disposal, and garbage collection—that white neighborhoods were accorded. What little public housing there is, is segregated; however, accommodations are usually about the same for both races. FHA and VA activity is almost totally absent in all 21 counties, and there is very little new private housing available.

Public employment—Federal, State, and local—is severely limited for Negroes in all the counties studied. There are, however, some private employment opportunities for Negroes in the four voting counties and several of the nonvoting ones, though this is generally restricted to unskilled and semiskilled labor.

Perhaps the most glaring deprivation that exists (alike in the 17 as in the 4) is in the availability of public libraries. In 10 of the 17 nonvoting and 2 of the 4 voting counties, libraries are maintained with public funds for whites only. (Three nonvoting and two voting counties do not maintain any public libraries at all.) Even where there are separate libraries for Negroes, they are invariably inferior. There are fewer books available, the number of employees is less, and so is the number of hours the libraries are open.

Public accommodations—those that do exist—are almost always segregated in all 21 counties. This includes a Federal facility, Arkbutla Dam, in Tate County, Miss. It also includes transportation facilities where such are available. In some cases, these facilities are for whites only and in others they are segregated. As for the military, where Armed Forces Reserves and National Guard units do exist in the 21 counties, they are for whites only.

The overall picture of civil rights other than voting in all 21 of the black belt counties is, then, one of general deprivation with only relatively minor variations. The principal differences between the two groups of counties occur in the administration of justice and education. In both of these areas the voting counties show less marked deprivations than most but not all of the nonvoting counties; and once again Hertford (and to a lesser degree Gadsden) resembles the voting counties in pertinent respects.

5. Conclusions

Seventeen counties where few or no Negroes vote though they are in the majority formed the basis of this study. Two questions were posed: why do so many Negroes refrain from exercising one of the most basic of all rights, and what is the status of other civil rights in communities where white minorities rule and Negro majorities are politically silent. Since the vote is commonly said to be the key that may unlock the door to other civil rights, four counties with Negro majorities where Negroes register and vote in substantial numbers were chosen for comparison. Why, it was asked, do Negroes in these counties vote, and what effect, if any, has their voting had on civil rights?

Obviously these are crucial questions. This study does not presume to be conclusive as to all questions raised. Some things cannot be measured. Others can be measured but not explained. In the rural South, as elsewhere, not everyone or everything is culturally, politically, or economically determined. Nonetheless, people living under similar conditions in areas with similar histories *do* seem to conform to community patterns of behavior more often than not. Some firm observations and conclusions can be drawn.

The economic setting

Negroes are leaving the rural South in increasing numbers for urban centers South and North. Part of this migration is from southern rural counties like those studied here. It appears to reflect both the severity of life and changes in the agricultural economy. In 14 of the 17 nonvoting counties, population has declined in the past decade; in another it has only slightly increased. Fifteen have had, and 13 still have, one-crop cotton economies. The number of farm operators in all 15 has sharply declined in the past 5 years as has the number of farm units. Farm consolidation apparently is increasing, as in other parts of the country. The introduction of farm machinery has reduced the need for farm laborers.

In contrast, population rose in 2 nonvoting, and 3 voting, counties—all 5 of which had economies which varied significantly from the 15. In these five whatever farming is done is diverse; in four of them, agriculture is of declining importance. None of the five has, or recently had, a one-crop cotton economy. Tenant farmers are in the minority. Light

histories of race relations, in varying degrees, leave something to be desired. Local politics is usually tied to State politics. Moreover, even where Negroes vote, the local and State power structure is almost exclusively controlled by whites. And since there is no viable two-party system in most Southern States, there is seldom any effective competition for Negro votes. It is therefore perhaps unrealistic to expect dramatic changes in rural voting counties when changes have not occurred in the States in which these counties are located. Negroes vote in southern urban centers—in some cases in large numbers—and, in most of them, segregation in schools, housing, and public facilities still persists. And even in the urban North where the political climate is more favorable and laws exist to protect Negroes and other minority groups against discrimination, de facto segregation and outright discrimination are often present to a significant degree.

Nonetheless one would expect that where large numbers of Negroes vote, the conditions under which they live would be somewhat different from what they are where Negroes are restrained from voting. The analyses in chapter 4 show that the general status of civil rights in the voting counties is, in some respects, better than it is in most of the nonvoting ones but not by much.

Perhaps the most marked and important difference between the two sets of counties appears in the political process of which voting is just a part. In three of the four voting counties white candidates court Negro votes; Negroes have partisan and nonpartisan political groups (in one, they belong to the local Democratic committee). In two of them, Negroes run for office and in one they sometimes win. In contrast Negroes are almost totally excluded from the political process in the nonvoting counties. They do not run for office (Hertford excepted, where one ran and lost) and white candidates neither acknowledge the existence, nor the needs, of Negro majorities. In short, insofar as a "just" government is one that derives its powers from the consent and participation of the governed, the local governments of the four voting counties are—no matter how good or bad living conditions may be—"just" by that description. (One does not, after all, measure political virtue by prosperity alone.)

As to the status of other civil rights and related economic matters, the picture is depressing in all of the 21 black belt counties studied, although there are some differences in the degree of Negro deprivations. Apart from some of the courtroom facilities in one of the voting counties, segregation is just as much a fact of life where Negroes vote as it is where they do not. The schools of all 21 counties remain separate and almost invariably unequal. No suit has been filed to desegregate any of them. The same is true of public libraries, public transportation facilities, and other public accommodations. And while there is more Negro home

ownership in the voting counties, housing as a rule is equally bad and segregated in all 21. Public employment opportunities are as restricted in the 4 as they are in the 17, although there are significant variations in the opportunities for Negroes in private employment.

The most significant differences that do appear are in the areas of education and administration of justice. The gap in quality between white and Negro schools is generally less in the voting than the nonvoting counties as is the gap between white and Negro median educational levels. Teachers are harassed or intimidated in some nonvoting, but in none of the voting, counties. In one of the latter there are two Negro justices of the peace, and the courtrooms are not segregated. In all the voting counties (and some of the nonvoting counties), Negroes regularly serve on, or at least appear on the panels for, juries. There were no allegations of police brutality, mob violence, or illegal police practices in any of the four voting counties. Yet, although white informants often disagreed, Negroes complained of these practices in many of the others.

There appears then to be some correlation between voting and the enjoyment of other rights, but it is limited and uncertain. On the basis of this study it cannot be concluded that the free exercise of the right to vote in these black belt counties necessarily results in quick, tangible gains in other areas. (Nor can it be said that Negro voting is the direct cause of all the variations between voting counties and most of the nonvoting counties.) It is not so easy, it appears, to rid a rural county of a deep, historic, complicated tradition by the simple mechanism of the franchise. This is not to say that participation in the political process is of no importance. It is an indispensable attribute of full citizenship. As has been noted, the value of democracy is not measured solely in terms of tangible improvements. This study was not calculated to measure the intangible benefits of participation in the franchise—the satisfaction of belonging to the political community and sharing responsibility for its major decisions. Yet the most important results of Negro participation in the political process appear to be intangible just as, perhaps, the most important reasons for voting or nonvoting may be intangible. In the final analysis, the most important difference between the two groups of counties studied is a difference in "atmosphere"—in the voting counties relations between the races are simply better.

State boundaries

The black belt counties chosen for this study were selected to allow, if possible, an assessment of differences that might be attributed to differences between States. Florida was represented only by Gadsden (nonvoting); North Carolina only by Hertford (nonvoting); and Virginia only by Charles City (voting). Hertford and Gadsden, as has been

industry and manufacturing provide varied opportunities for employment. In short the economies of these counties seem to have greater vitality.

The right to vote

As was noted in chapter 3, discrimination inhibits Negro voting in 10 of the nonvoting counties. Some is overt—such as requiring a voucher to verify the identity of an applicant; some is more subtle—such as locating a registration office in a white school. In several counties Negro teachers are warned to refrain from taking too active an interest in political matters upon pain of losing their jobs. An even more widespread inhibiting factor is fear of physical or economic reprisal. Behind all the devices that prevent Negroes from registering is the nature of the power structure that permits and encourages their use. Almost without exception it openly ignores the Negro as a political entity and purposely encourages him to keep his passive place.

Perhaps the crucial conclusion to be drawn from this study is that the facts of economic life have a direct and significant bearing on civil rights generally, and the right to vote in particular. It seems no mere accident that in three of the four counties where Negroes are registered and vote in significant numbers, the economies are active and diverse, and Negroes for the most part are independent of local white economic control. (In these three counties there were in 1959 only 18 tenant farmers or sharecroppers. Interestingly, more whites than Negroes were in this category.)

Apparently in reflection of the vigor of the economies in these counties, their populations have markedly increased. An influx of new families may mean that different attitudes find expression in the community power structure; where the population declines, on the other hand, traditional attitudes may be expected to perpetuate themselves. This does not mean that in every county with a rising population and a relatively viable economy, Negroes will be found to vote in significant numbers. Two of the 17 nonvoting counties with population rises and "healthy" economies have comparatively few Negroes registered. (Both, however, recorded some registration increases in the past 2 years.)

Where Negroes do not vote, they are for the most part subservient to crop, land, and landlord. Agriculture dominates the economies of 15 of the 17 nonvoting counties and the domination is of a special kind. Two-thirds of the 15,257 Negroes who till the soil in the 15 are tenants or croppers; some of the remainder are sharecroppers. Moreover the agricultural changes that are taking place have reduced the need for Negro tenants and farm labor. Hence the possibility of economic reprisal, offered most frequently as a reason why Negroes do not register in significant numbers, becomes more real. It is easier to retaliate against someone for whom there is declining need, and more difficult to prove that the reprisal was in fact racially motivated.

Fayette and Haywood Counties, Tenn., provide dramatic examples of how justified the fear is, and how disastrous its realization can be. Negro tenant farmers and sharecroppers who succeeded in registering were evicted from their farms and subjected to other forms of reprisal, including the cutting off of supplies, refusal of credit, and cancellation of insurance policies. These events underscore the dwindling importance of the tenant farmer in a one-crop economy, his economic dependence, and the power of whites to retaliate against Negroes who attempt to exercise their political rights.

The fear of reprisal, then, is sometimes justified. What happened to Negroes in Fayette and Haywood *could* happen in other counties. That it could, however, does not necessarily mean it will. Negroes of Hancock, Ga., one of the four voting counties, are just as economically dependent as they are in Fayette, and judging by their 1950 median family incomes just as poor—Hancock ($503), Fayette ($499). Yet Negroes in Hancock have been and still are registered in significant numbers. The difference seems to be that the whites on whom Hancock's Negroes depend do not pose the threat of using their superior economic position to discourage Negroes from voting. There are in sum several factors that influence Negro registration and the attitude of local whites is one of them.

Another is indifference, or "apathy." Where it exists side by side with fear, or outright discrimination, as in most of the nonvoting counties, there is no way to measure its role. In Hertford County, N.C., however, where there is neither fear nor discrimination (and where the economy is agriculturally diverse and the population is rising), apathy appears to be a major factor. But even when it is the only apparent reason for low Negro registration, it must be considered in the total context in which it is found. People are creatures of habit. And the history of the Negroes' exclusion from full citizenship may sometimes continue to control their actions even after the acts of exclusion have ceased. Other factors contributing to low Negro registration—through apathy or otherwise—would appear to be the low level of Negro education (a reason advanced in many of these counties for lack of Negro registration)—and, indeed, their low economic status in general.

The vote and its effect

The effect and importance of the vote cannot be measured in precise calibration. Such is not the nature of the democratic process. Nor should it be forgotten that all the 21 counties studied are located in States whose

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seen, differ in significant respects from the other nonvoting counties studied, and Charles City differs in some ways from the other three voting counties. In each case the differences are favorable, that is, they reflect a generally better situation, from the point of view of the civil rights status of the Negro majority. To what extent do these differences reflect State differences?

The study suggests that there is some correlation between State and county patterns. For one thing, with regard to some of the statistically measurable aspects of the Negroes' situation—median income and housing conditions—these three States as a whole present the best picture among the eight involved in this study. For another, these three States also have better overall records as to the "atmosphere" of race relations than the others. But it is apparent that generalizations as to differences between States must be qualified and inconclusive, for this study itself shows substantial variations within States as well as between them.

Remedies

Finally, there arises the question as to what measures can and should be taken respecting the civil rights deprivations revealed by this study. Where there is overt official discrimination to inhibit Negroes from voting, lawsuits by the Federal Government may be quite effective. Where the inhibitory factor is fear of physical or economic retaliation, the remedies available are less dependable. In Fayette and Haywood Counties Federal help has been—almost necessarily—of the stopgap variety. Though the Justice Department secured a temporary restraining order against eviction of Negro tenants, the best it can hope for, presumably, is postponement of the inevitable. Though the temporary injunction has no fixed time limit, it cannot be maintained forever. Contracts between landlords and tenants run for one year. Presumably landlords who in good faith demonstrate that they wish to mechanize their farms, modify land use, or undertake other reasonable changes, can be released from the effect of the order even before it is lifted.

The Federal Government, then, faces something of a dilemma. Its presence—through such instruments as the Justice Department—may encourage Negroes to register. This was the case in Fayette, Tenn., and McCormick, S.C. Yet when Negroes do succeed in registering and reprisals occur, the Federal Government, while not helpless, has limited legal counter techniques. Those currently being used may not be sufficient. It is not a simple matter for the Federal Government to protect rights in States intent on avoiding the impact of Federal law. The snail's pace of school desegregation is ample evidence of this.

Yet it may be that not all possibilities have been used or exhausted. If it is true that where the economies of rural black belt counties are active, diverse, and healthy, Negroes have little difficulty in voting; if it is true that where Negroes do not register and vote, the economies are generally depressed and backward; and if the changes that are taking place in these counties make the dependent position of Negroes even more precarious than it was; then, perhaps, one of the answers to the problem is economic. That answer, of course, is not new. Yet in application it could be both new and rewarding for Negroes and whites alike. Agricultural aid to depressed areas undergoing change, Small Business Administration loans to help diversify the economy, assistance in training and relocating farm families who are displaced—these and other measures can soften the impact of disturbing economic changes, and in doing so promote the kind of economic climate that encourages better race relations.

The vote, of course, is a just and necessary beginning, still overdue in many southern rural communities. In four of the counties studied it has had some desirable effects. If the right to vote were extended to all Negroes in *all* black belt counties, the benefits would surely increase. But it does not follow that the vote of itself—even if extended—will yield the full enjoyment of all civil rights. Action of a direct sort may be required if equal rights in education, in public employment, in the administration of justice, in public libraries and in other public facilities are to be achieved. Moreover, here again economic factors may have a direct bearing. In programs to assist underdeveloped countries, the Federal Government has recognized the inevitable relationship between economics and freedom. Where poverty exists, liberty is always in peril. Recognition of this fact of life is called for in the black belt. Economic and educational poverty inhibit the free, intelligent use of the ballot, and the enjoyment of other rights as well. So does fear.

Any program to secure basic civil rights must take all of these factors into account. This presents an enormous challenge to the Nation and to the South. But if successfully met, it could yield a sweeter fruit than the bitter one currently being produced in the name of segregation.

FINDINGS

Civil rights deprivations

1. There are substantial deprivations of civil rights in the 21 black belt counties studied by the Commission.

2. In 17 of these counties, Negroes, although they constitute a majority of the population, do not vote at all, or do so only in small num-

bers. The reasons for the failure to vote include fear of economic or physical reprisals, official discrimination, blatant or subtle, and lack of education and motivation. Negroes are not members of "white" party organizations, white candidates do not court Negro votes nor do they take account of Negro needs. The result is that the white minority governs an all but voiceless Negro majority.

In the other four counties studied, on the other hand, Negroes register and vote without restriction, participate in political organizations, are addressed by candidates, and even run for office.

3. Public schools are segregated in all 21 counties. No suits have been filed to desegregate any of them. In some counties Negro school buildings are inferior; in some, Negroes (but few whites) have one- or two-teacher schools; and in many, Negro schools have inferior library, laboratory, and recreational facilities. Teacher-pupil ratios are higher in the Negro schools than the white schools in all but one county for which figures are available. In a few counties there have been allegations of harassment of Negro teachers who wished to register, vote, or otherwise take part in the democratic process.

4. Twelve of the counties maintain public libraries servicing whites only. In four other counties Negroes have access to public libraries, but they are separate and inferior to those provided for white use.

5. In 11 of the counties no Negroes have ever served on either a trial or grand jury. In only four counties have Negroes served with any regularity. In three of the eight States in which the counties are located, jurors must be registered voters. This eliminates Negroes from serving in those counties where they are not registered to vote. Courtroom seating and all courthouse facilities are segregated except for one county, where all but the restrooms are shared by both races.

6. In 14 of the counties the State employment services, subsidized by Federal funds, offer only unskilled jobs to Negroes. No public employment services are offered to Negroes in another county, although they are to whites. In three counties separate employment facilities and services are maintained for each race.

7. In five of the counties no Negroes are employed in any capacity by the post offices. In four others there are six Negroes employed as bulk mail carriers, and in three there are four Negro letter carriers, two of whom are restricted to delivering mail in Negro neighborhoods. The greatest number of Negroes in any one job is janitors.

- The Post Office Department, which has been engaged in a reexamination of its personnel policies, could fruitfully look into these instances of apparent discrimination.

8. In all of the counties having transportation terminals, the facilities therein are either segregated or for white travelers only. Six have railroad, and seven bus terminals. One has an airport.

- The Department of Justice and the Interstate Commerce Commission are currently engaged in an examination of such segregation where interstate travel, or (in the case of airports) Federal funds are involved. Actions decided upon as a result of this examination could usefully be taken in the black belt counties.

9. In four of the counties studied there are Federal dams or lakes; in two of these, at the time of the study, only whites were permitted to use the recreational facilities.

- The Department of the Interior in April 1961 adopted a regulation which would appear to forbid such discrimination. It is not known whether the regulation has had effect in these counties.

10. Ten of the counties studied have Armed Forces Reserve units, 15 have National Guard units all for whites only.

11. There are few meaningful differences in the status of Negroes, from the point of view of civil rights, between the 17 nonvoting and the 4 voting counties. Beyond other aspects of the political process itself, however, significant differences noted in the voting counties are a less markedly inferior educational system for Negroes, and a generally less restrictive atmosphere in the administration of justice (reasonably frequent service on juries, absence of complaints of police misconduct).

Economic patterns and civil rights

12. Analysis of the economic structure of the two groups of counties reveals a relationship between the nature of the economy and the civil rights status of the Negro. A dependent economic position appears to be one of the most significant factors that inhibits Negroes from registering and voting. Those counties where Negroes do not vote are primarily agricultural specializing for the most part in one crop, usually cotton. Most Negroes are tenant farmers or sharecroppers who depend on white landlords, merchants, and bankers for land, goods, and credit. There are few other opportunities to make a living. In recent years farm consolidation, the introduction of farm machinery, and changes in land use (all of which reduce the need for farm labor) have made the position of the Negro tenant farmer even more precarious. The population decline in most of these counties appears to reflect these changes. The Negro's fear that economic reprisals will follow assertion of his rights was justified in Fayette and Haywood, Tenn. Given the state of the economy and the dependent position of the Negro, a white power structure intent on doing so can maintain and perpetuate itself.

In contrast, in three of the four counties where Negroes do vote the economies are diverse, populations have increased, and Negroes are relatively independent.

● Federal programs designed to alleviate the *kind of economic deprivation found in most nonvoting* black belt counties are in effect in other parts of the country. If applied to the black belt, these programs could serve to remove conditions which operate to restrict Negroes from registering and voting and from asserting other civil rights. For example, the Agricultural Extension Work program recognizes the existence of agricultural areas disadvantaged because of the concentration of farm families on farms either too small or too unproductive for profitable operation. Assistance to such areas may include: (1) Intensive on-the-farm educational assistance; (2) assistance and counseling to local groups to improve agriculture or to introduce industry designed to supplement farm income; (3) cooperation with other agencies and groups to obtain information as to existing employment opportunities; (4) in cases where it is advisable for a farm family to make a move, provide information, advice, and counsel.

Also pertinent is the Area Redevelopment Act of 1961, whose purpose is to "help areas of substantial persistent unemployment and underemployment to take effective steps in planning and financing their economic development." This assistance should enable such areas to establish "stable and diversified local economies and improved local living conditions."

RECOMMENDATIONS

Civil rights deprivations

This study found widespread deprivations in the black belt in all of the subject areas studied—voting, education, administration of justice, employment, housing, public accommodations, and military establishments. In other parts of this report dealing with each of the above subject areas (excepting public accommodations), similar deprivations have been found and recommendations made pursuant thereto. The findings of this study support a number of such recommendations—and the recommendations in turn would be appropriate for dealing with conditions found in the black belt counties. Among these recommendations are the following:

1. The several recommendations in part II above intended to strengthen Federal laws dealing with denials of the right to vote.
2. The several recommendations in part IV below intended to facilitate school desegregation suits.
3. The recommendation in part IV below regarding Federal aid to rural libraries under the Library Services Act of 1946.
4. The recommendation in part V below regarding the National Guard and the Armed Forces Reserves.
5. The recommendation in part V below regarding services provided by federally subsidized State employment services.
6. The recommendation in part VII below regarding racial exclusion from juries.

Economic patterns and civil rights

The Commission makes the following recommendation, specifically appropriate to the problems found in the counties studied in this part of the report:

Recommendation. That the Federal Government and the respective States take firm and concerted action to reduce economic deprivations like those found to exist in most of the black belt counties studied which support and perpetuate denials of civil rights.

Documentation—Book 1

Part I—CIVIL RIGHTS, 1961

NOTES

1. Civil Rights Act of 1960, 74 Stat. 86, 42 U.S.C. sec. 1974 (Supp. II 1959–60).
2. See pt. II, ch. 5, *infra.*
3. *Bush* v. *Orlean's Parish School Board,* 190 F. Supp. 861 (E.D. La. 1960), *aff'd per curiam,* 29 U.S.L. Week 3333 (U.S. May 8, 1961). See pt. IV, ch. 10, *infra.*
4. N.Y. Times, May 22, 1961, p. 1.
5. Dept. of Justice Releases, June 26, 1961 and July 26, 1961.
6. Washington (D.C.) Post, July 11, 1961, p. 1A.
7. N.Y. Times, May 18, 1960, p. 1.
8. Exec. Order No. 10925, 26 Fed. Reg. 1977 (1961). See pt. V, chs. 3 and 4, *infra.*
9. *Conference in Williamsburg, Va., Before the U.S. Commission on Civil Rights, Education* 5 (1961) (hereinafter cited as *Williamsburg Transcript*).
10. *Gomillion* v. *Lightfoot,* 364 U.S. 339 (1960). See pt. II, ch. 7, *infra.*
11. *Burton* v. *Wilmington Parking Authority,* 365 U.S. 715 (1961).
12. *Boynton* v. *Virginia,* 364 U.S. 454 (1960).
13. *United States* v. *Raines,* 362 U.S. 17 (1960); *Hannah* v. *Larche,* 363 U.S. 420 (1960).
14. The following State laws were enacted since the Commission's *1959 Report.* (For a compilation of all State antidiscrimination laws, see app. I, table 1.)

PUBLIC ACCOMMODATIONS

California: Broadened existing statute which specified certain types of establishments covered to include "all business establishments." Calif. Civil Code, sec. 51 (1959).

Idaho: General public accommodations, and public education. Also covers employment, but provides no administrative machinery for enforcement. Idaho Sess. Laws, 1961, ch. 309.

Indiana: Broadened coverage of previous law to include "any establishment which caters or offers its services or facilities or goods to the general public." Also prohibits discrimination in public housing. Ind. Acts 1961, ch. 256, p. 585.

North Dakota: General public accommodations. N.D. Century Code, sec. 12–22–30 (1961).

New Hampshire: General public accommodations. Also private housing rentals. N.H. Laws 1961, ch. 219.

Oregon: Extended coverage of previous law to "any place offering to the public goods or services." Ore. Acts 1961, ch. 247.

Wyoming: General public accommodations. Wyo. Sess. Laws 1961, ch. 103.

EMPLOYMENT

California: Established Fair Employment Practices Commission with full enforcement powers. 1959 Stat., ch. 121.

Delaware: Laws of Del., ch. 337, vol. 52 (1960).

Idaho: (See under Public Accommodations, *supra.*)

Illinois: Fully enforceable FEPC. S.B. 609 (1961).

Indiana: Created Fair Employment Practice Commission with subpena power, strengthening former law against discrimination in employment. Ind. Acts 1961, ch. 208, p. 500.

Kansas: Gave State antidiscrimination commission power to enforce former employment law. Kans. Sess. Laws 1961, ch. 248.

Missouri: Created enforceable FEPC. S.B. 257 (1961).

Ohio: Created enforceable FEPC. Ohio Rev. Code Ann., sec. 4112.01 (1959).

HOUSING (for more detailed listing and description, see app. VI, table 1).

Connecticut: Amendment to 1959 private housing law gave broader coverage of rental housing, and building lots. (Public Act 472, June 5, 1961.)

Massachusetts: Amended private housing law of 1959 (Mass. Acts 1959, ch. 239) to prohibit discrimination in mortgage loans. Mass. Gen. Laws Ann., ch. 151B, sec. 4(3B) (1960).

Minnesota: Covers private housing. Minn. Laws 1961, ch. 428.

New Hampshire: Covers private rental housing. (See under Public Accommodations, *supra.*)

New York: Covers private housing. N.Y. Laws 1961, ch. 414.

Pennsylvania: Covers private housing. Pa. Laws 1961, ch. 428.

STATE COMMISSIONS

Kentucky: Laws 1960, ch. 76.

Nevada: Nev. Stat. 1961, ch. 364.

West Virginia: H.B. 115 (1961).

OTHER

New Jersey: Strengthened antidiscrimination law, giving administering agency power to initiate complaints in all fields of discrimination. N.J. Laws 1960, ch. 59, p. 489.

15. See pt. IV, ch. 5, *infra.*
16. See pt. IV, ch. 11, *infra.*
17. See pt. IV, ch. 4, *infra.*
18. *Ibid.*
19. N.Y. Times, Mar. 26, 1960, p. 1.
20. See pt. VII, ch. 3, *infra.*
21. The American Jewish Committee, *The People Take the Lead: Record of Progress In Civil Rights* 11 (Supp. 1961).
22. "The South Sees Through New Glasses," 10 *National Review* 141 (1961).
23. See pt. IV, ch. 4, *infra.*
24. There has been particularly great activity in the past 2 years among church and other civic groups in Northern and Western States to combat discrimination in housing. Among such activities have been publication of "open occupancy" covenants signed by thousands of citizens affirming a welcome to neighbors of all faiths, races, and nationalities; establishment of special "listing services" for minorities who cannot obtain housing through normal real estate channels; and "neighborhood stabilization" organizations to prevent panic flight of white residents and promote healthy integrated neighborhoods. Such activities were reported to the Commission hearings in the San Francisco Bay area (*Hearings in Los Angeles and San Francisco Before the U.S. Commission on Civil Rights* 658 (1960) (hereinafter cited as *California Hearings*)) and in Detroit (*Hearings in Detroit Before the U.S. Commission on Civil Rights* 226 (1960) (hereinafter cited as *Detroit Hearings*).) For more detailed reports of these activities in some 35–40 other communities throughout the country, see National Council of the Churches of Christ, Department of Racial and Cultural Relations, *Interracial News Service,* May–June 1961, pp. 2–4. See also National Committee Against Discrimination in Housing, *Trends in Housing,* Jan.–Feb. 1960, Sept.–Oct. 1959, Mar.–Apr. 1959, Jan.–Feb. 1959, Nov. 1958, Aug.–Sept. 1958 and Mar.–Apr. 1958.
25. See pt. II, ch. 2, *infra.*
26. See pt. II, ch. 7, *infra.*

27. See pt. III, *infra.*
28. See pt. VII, ch. 3, *infra.*
29. *Ibid.*
30. See pt. VII, ch. 2, *infra.*
31. See app. IV, table 1.
32. See pt. IV, ch. 6, *infra.*
33. See pt. IV, ch. 5, *infra.*
34. See pt. II, ch. 3, *infra.*
35. *Taylor* v. *Board of Education of New Rochelle, N.Y.,* 191 F. Su... 181 (S.D.N.Y. 1961).
36. See pt. IV, ch. 7, *infra.*
37. U.S. Dept. of Labor, *Special Labor Force Report No. 14* at A... (1961).
38. See pt. V, ch. 1, *infra.*
39. See pt. V, ch. 3, *infra.*
40. See pt. VI, ch. 1, *infra.*
41. See U.S. Commission on Civil Rights, *Equal Protection of the La... in Public Higher Education 1960,* pt. VII (hereinafter cited ... *Higher Education Report*).
42. See pt. V, ch. 5, *infra.*
43. See pt. V, chs. 4, 5, *infra.*
44. See pt. IV, ch. 9, *infra.*
45. See pt. VI, chs. 3, 4, 5, *infra.*
46. U.S. Const., amend. XV, sec. 1.
47. U.S. Const., amend. XIV, sec. 1.
48. See *Bolling* v. *Sharpe,* 347 U.S. 497 (1954); *cf. Hurd* v. *Hodge,* 334 U.S. 24, 35 (1948); *Hirabayashi* v. *United States,* 320 U.S. 81, 100 (1943); *Korematsu* v. *United States,* 323 U.S. 214, 216 (1944).
49. *Everson* v. *Bd. of Education,* 330 U.S. 1 (1947); *Truax* v. *Raich,* 239 U.S. 33 (1915).
50. *Civil Rights Cases* 109 U.S. 3 (1883).
51. *Shelley* v. *Kraemer,* 334 U.S. 1 (1948).
52. *Burton* v. *Wilmington Parking Authority, supra,* note 11.
53. See pt. IV, ch. 6, *infra.*
54. *Brown* v. *Board of Education,* 347 U.S. 483 (1954).
55. *Baldwin* v. *Morgan,* 251 F. 2d 780 (5th Cir. 1958); *Flemming* v. *South Carolina Electric & Gas Co.,* 224 F. 2d 752 (4th Cir. 1955), *app. dism. per curiam,* 351 U.S. 901 (1956); *Browder* v. *Gayle,* 142 F. Supp. 707 (M.D. Ala. 1956), *aff'd per curiam,* 352 U.S. 903 (1956).
56. *Dawson* v. *Mayor of Baltimore,* 350 U.S. 877 (1955).
57. *Holmes* v. *City of Atlanta,* 350 U.S. 879 (1955).

Primus v. *High,* Civ. No. 9545–M, S.D. Fla., Sept. 12, 1960, 5 *Race Rel. L. Rep.* 1150 (1960).
Johnson v. *Levitt and Sons, Inc.,* 131 F. Supp. 114 (E.D. Pa. 1955). *Contra, Ming* v. *Horgan,* No. 97130, Cal. Sup. Ct., Sacramento County, June 23, 1958, 3 *Race Rel. L. Rep.* 693 (1958).
See references in notes 41–45, *supra.*
See pt. VI, ch. 2; pt. V, ch. 2, *infra.*
See generally *Urban Boom and Crisis in the Sixties,* Address by Philip M. Hauser, International Municipal Assembly, May 12, 1960.
For a thorough and detailed comparison of similarities and differences of present and former minority groups, see Handlin, *The Newcomers* (1959).
107 *Cong. Rec.* 8392 (daily ed. May 25, 1961) (President Emeritus James M. Conant of Harvard, reporting on studies prepared for the Carnegie Foundation on American Secondary Education).
California Hearings 84.
U.S. Bureau of the Census, Current Population Reports Series, No. 99, *Literacy and Educational Attainment: March 1959,* table A.
Id., tables 1 and 2.
Ibid.
U.S. Bureau of the Census, Current Population Reports: Consumer Income, *Incomes of Families and Persons in the U.S., 1959,* table 37 (1961).
Id. at 7 (table F).
U.S. Bureau of Census, Current Population Reports: Consumer Income, *Income of Families and Persons in the U.S., 1958,* table 9 (1960).
U.S. Department of Labor, Bureau of Labor Statistics, *Special Labor Force Report No. 14,* A–25, table C–7 (1961).
U.S. Bureau of the Census, 1950 Census of Population, Special Reports, Part 5, ch. B, *Education,* table 11 (1951). Information from this table was compiled by Dubin, in *The World of Work: Industrial Society and Human Relations* 162 (1958). See *Detroit Hearings* 61.
U.S. Department of Labor, *The Economic Situation of Negroes in the U.S.* (1960); also U.S. Department of Labor, *op. cit., supra,* note 71, at A–40.
Lott, *The Inaugural Addresses of the American Presidents,* 239 (1961) (Second Inaugural Address).
U.S. Bureau of the Census Releases CB 61–19, Mar. 23, 1961 and CB 61–13, Mar. 13, 1961.
President's Education Message to Congress. 107 *Cong. Rec.* 2284 (daily ed. Feb. 20, 1961).

77. Ginzberg, *The Negro Potential* 124 (1956). See also Ginzberg, *Human Resources, the Wealth of a Nation* (1958).
78. Housing Act of 1949, 63 Stat. 413 (1949), 42 U.S.C. sec. 1441 (1958).
79. Special Message to Congress on National Housing Program, 107 *Cong. Rec.* 3408 (daily ed. Mar. 9, 1961).
80. U.S. Bureau of the Census Release CB 61–17, Mar. 17, 1961; also Hauser, *op. cit. supra,* note 62, at 3.
81. See *House and Home,* November 1960 at 57. See also address by Robert P. Weaver, in N.Y. Times, Apr. 17, 1961; National Committee Against Discrimination in Housing, *Trends in Housing,* Mar.–Apr. 1961.
82. U.S. Bureau of the Census, *U.S. Census of Population: 1910, General Report and Analysis,* vol. 1, ch. 2, table 42; also *U.S. Census of Population: 1960, General Population Characteristics, U.S. Summary, Final Report PC(1)–1B,* table 51 (1961).
83. *Ibid.*
84. See app. I, table 2.
85. Continued labor needs of industry in urban areas and further technological elimination of southern farm jobs are generally expected to encourage further migration from rural to urban areas, although possibly at a reduced rate. See pt. III, ch. 3, *infra;* Handlin, *op. cit., supra,* note 62, at 54. Also Grier, "The Negro Migration," *National Housing Conference Yearbook* (1960).
86. The national birth rate of nonwhites is higher than that of whites—in 1959 it was 32.7 per thousand for nonwhites, compared to 23 per thousand for whites (data compiled by National Office of Vital Statistics, U.S. Department of Health, Education, and Welfare), but in many cities the disparity is even greater. In Baltimore, in 1960, the nonwhite birth rate was 34.2, the white 19.7. (Information from Baltimore Health Department.) In San Francisco, the 1960 nonwhite birth rate was 31.4, the white 17.3. (Information from San Francisco Department of Public Health.) Nonwhite births in San Francisco were 29 percent of total births, although nonwhites comprised only 18 percent of the population, and Negroes were 10 percent of the population. (U.S. Bureau of the Census Release CB 61–16, Mar. 14, 1961 (table D). "Nonwhite" statistics prepared by Census Bureau for Commission use.) Nonwhite birth rates appear to be higher than the nonwhite proportion of population in cities of most recent Negro inmigration, and closer to the population proportion in cities where Negroes have lived for many years. In Philadelphia and Washington, D.C., for example, where there have been large settlements of Negroes for many years, the ratio of nonwhite births to nonwhite population is much closer

than in San Francisco or other cities of more recent migration. See Grier, *op cit., supra,* note 85; and Grier, *The Impact of Race on Neighborhood in the Metropolitan Setting,* Washington Center for Metropolitan Studies 9–11 (1961).

87. From 1940 to 1950, for example, 6.9 million whites migrated into the suburban rings of the Nation's metropolitan areas. (Hauser, *op. cit., supra,* note 62, at 21.) In the next 10 years suburban population increased by 17 million persons. (Dickson, "Suburban Migration," *2 Editorial Research Reports No. 3* at 526 (1960).) But from 1940 to 1960 the percentage of nonwhites decreased in all but 4 of the metropolitan areas surrounding the Nation's 25 largest cities. (*Trends in Housing,* March–April 1961, p. 5.) Nonwhite percentages in these areas range from less than 1 percent to 6 percent. (*Ibid.* See also app. I, table 2.) Much of this nonwhite "suburban" occupancy, moreover, is located in industrial satellite towns ringing the central cities, rather than in residential suburbs. (Grodzins, *The Metropolitan Area as a Racial Problem 3* (1958).) The racial distortion of population growth in central cities and suburban areas is dramatically illustrated by the experience of Washington, D.C. In 1940, Negroes comprised approximately one-fourth of the population of the metropolitan area. In 1960, this percentage remained almost the same. But within the central city, Negroes increased from 28 to 54 percent in this 20-year period, while their percentage in the surrounding metropolitan area decreased from 14 to 6 percent. (See app. I, table 2. Also "New Census Look at Cities and Race," reprinted from Washington Post, Mar. 26, 1961, in *Southern Regional Council Report No. L–25.*)
88. Grier, *op. cit., supra,* note 86, at 11.
89. U.S. Bureau of the Census Release, CB 61–60, June 9, 1961. See also Christian Science Monitor, Mar. 8, 1961, p. 26 C.
90. U.S. Bureau of the Census Releases, CB 61–16, Mar. 14, 1961, and CB 61–11, Mar. 7, 1961.

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TABLE 1.—*Compilation of State antidiscrimination laws*

State	Public accommodations	Employment	Housing: Public	Housing: Publicly assisted	Housing: Private	Education	Other
Alaska [1]	X	X	....	....	....	....	....
California [2]	X	X	X	X	....	....	....
Colorado [3]	X	X	X	X	X	X [40]	....
Connecticut [4]	X	X	X	X	X	X [39]	....
Delaware [5]	....	X	....	....	....	....	....
District of Columbia [6]	X	....	....	....	....	....	....
Idaho [7]	X	X [35]	....	....	....	X [40]	....
Illinois [8]	X	X	X	X [37]	....	X [39]	....
Indiana [9]	X	X [36]	X	X [37]	....	X [39]	....
Iowa [10]	X	....	....	....	....	....	....
Kansas [11]	X	X	....	....	....	....	....
Kentucky [12]	....	....	....	....	....	....	X
Maine [13]	X	....	....	....	....	....	....
Massachusetts [14]	X	X	X	X	X	X [41]	....
Michigan [15]	X	X	X	....	....	X [39]	....
Minnesota [16]	X	X	X	X	X	X [39]	....
Missouri [17]	....	X	....	....	....	....	....
Montana [18]	X	....	....	X [37]	....	....	....
Nebraska [19]	X	....	....	....	....	....	....
Nevada [20]	....	....	....	....	....	....	X
New Hampshire [21]	X	....	....	....	X [38]	....	....
New Jersey [22]	X	X	X	X	....	X [41]	....
New Mexico [23]	X	X	....	....	....	....	....
New York [24]	X	X	X	X	X	X [41]	....
North Dakota [25]	X	....	....	....	....	....	....
Ohio [26]	X	X	....	....	....	....	....
Oregon [27]	X	X	X	X	X	X [41]	....
Pennsylvania [28]	X	X	X	X	X	X [41]	....
Rhode Island [29]	X	X	X	....	....	X [39]	....
Vermont [30]	X	....	....	....	....	....	....
Washington [31]	X	X	X	X	....	X [41]	....
West Virginia [32]	....	....	....	....	....	....	X
Wisconsin [33]	X	X	X	X	....	X [39]	....
Wyoming [34]	X	....	....	....	....	....	....

[1] Alaska:
Public accommodations—Alaska Comp. Laws Ann., sec. 20–1–3 (Supp. 1958); *Employment*—Alaska Comp. Laws Ann., sec. 43–5–1 (Supp. 1958).

[2] California:
Public accommodations—Cal. Civ. Code, sec. 51; *Employment*—Cal. Lab. Code, sec. 1412; *Public and publicly assisted housing*—Cal. Health and Safety Code, sec. 35700.

[3] Colorado:
Public accommodations—Colo. Rev. Stat. Ann., sec. 25–1–1 (1953); *Employment*—Colo. Rev. Stat. Ann., sec. 80–24–1 (1953); *Public, publicly assisted, and private housing*—Colo. Sess. Laws 1959, ch. 148; *Education*—Colo. Const. art. IX, sec. 8.

[4] Connecticut:
Public accommodations and all *Housing*—Conn. Gen. Stat. Rev., secs. 53–35 (1958); *Employment*—Conn. Gen. Stat. Rev., sec. 31–122 (1958); *Education*—Conn. Gen. Stat. Rev., secs. 10–15 (1958).

TABLE 1.—Continued

[5] Delaware:
Employment—Laws of Del., ch. 337, vol. 52 (1960).

[6] District of Columbia:
Public accommodations—D.C. Code Ann., sec. 47–2901 (1951).

[7] Idaho:
Public accommodations and *Employment*—Idaho Sess. Laws (1961), ch. 309; *Education*—Idaho Const., art. 9, sec. 6.

[8] Illinois:
Public accommodations—Ill. Ann. Stat., ch. 38, sec. 125 (Smith-Hurd 1959); *Employment*—S.B. 609 (1961).
Publicly assisted housing—Ill. Ann. Stat., ch. 67½, sec. 262 (Smith-Hurd 1959); *Education*—Ill. Ann. Stat., ch. 6, sec. 37, and ch. 15, sec. 15 (Smith-Hurd 1959).

[9] Indiana:
Public accommodations—Ind. Ann. Stat., sec. 10–901 (1956); *Employment*—Ind. Ann. Stat., sec. 40–2307 (1956); *Public housing*—Ind. Ann. Stat., sec. 10–901 (1956); *Publicly assisted housing*—Ind. Ann. Stat., sec. 48–8501 (1956).

[10] Iowa:
Public accommodations—Iowa Code Ann., sec. 735.1 (1958).

[11] Kansas:
Employment—Kan. Gen. Stat. Ann., sec. 44–1001 (Supp. 1959); *Public accommodations*—Kan. Gen. Stat. Ann., sec. 21–2424 (1949).

[12] Kentucky:
State Human Relations Commission—Laws of 1960, ch. 76.

[13] Maine:
Public accommodations—Me. Rev. Stat. Ann., ch. 137, sec. 50 (1954).

[14] Massachusetts:
Public accommodations—Mass. Ann. Laws, ch. 272, secs. 92A, 98 (1956); *Employment and Housing*—Mass. Ann. Laws, ch. 151B, secs. 1–10 (1957); *Education*—Mass. Ann. Laws, ch. 151C, secs. 1–5 (1957).

[15] Michigan:
Public accommodations, Public housing, and *Education*—Mich. Stat. Ann., sec. 28.343 (Supp. 1959); *Employment*—Mich. Stat. Ann., sec. 17.458(1) (1960).

[16] Minnesota:
Public accommodations—Minn. Stat. Ann., sec. 327.09 (1947); *Employment*—Minn. Laws 1961, ch. 428; *Public housing*—Minn. Stat. Ann., sec. 462.481 (Supp. 1960); *Publicly assisted housing*—Minn. Laws 1961, ch. 428; *Private housing*—Minn. Laws 1961, ch. 428; *Education*—Minn. Stat. Ann., sec. 127.07 (1960).

[17] Missouri:
Employment—S.B. 257 (1961).

[18] Montana:
Public accommodations—Mont. Rev. Codes Ann., sec. 64–211 (1947); *Publicly assisted housing*—Mont. Rev. Codes Ann., sec. 11–3917 (1947).

[19] Nebraska:
Public accommodations—Neb. Rev. Stat., sec. 20–101 (1954).

[20] Nevada:
Human Relations Commission—Nev. Stat. 1961, ch. 364.

[21] New Hampshire:
Public accommodations and *Private housing* (rental)—N.H. Laws 1961, ch. 219.

[22] New Jersey:
Public accommodations and *Education*—N.J. Stat. Ann., sec. 10: 1–2 (1960); *Employment* and *Housing*—N.J. Stat. Ann., sec. 18: 25–4 (Supp. 1960).

[23] New Mexico:
Public accommodations—N.M. Stat. Ann., sec. 49–8–1 (Supp. 1961); *Employment*—N.M. Stat. Ann., sec. 59–4–1 (Supp. 1961).

[24] New York:
Public accommodations and *Education*—N.Y. Civ. Rights Law, sec. 40; *Employment*—N.Y. Executive Law, sec. 290; *Housing*—N.Y. Executive Law, sec. 291.

[25] North Dakota:
Public accommodations—N.D. Century Code, sec. 12–22–30 (1961).

[26] Ohio:
Public accommodations—Ohio Rev. Code Ann., sec. 2901.35 (p. 1954); *Employment*—Ohio Rev. Code Ann., sec. 4112.01 (Page Supp. 1959).

[27] Oregon:
Public accommodations—Ore. Rev. Stat., secs. 30.670, 659.010 (1959); *Employment* and *Housing*—Ore. Rev. Stat., sec. 659.010 (1959); *Education*—Ore. Rev.

TABLE 1.—Continued

Stat., sec. 345.240 (1959), proscribes discrimination in "vocational, professional or trade schools."

[28] Pennsylvania:
Public accommodations, Employment, Publicly assisted housing, Private housing, and *Education*—Pennsylvania Human Relations Act, Pa. Laws 1961, Act No. 19; *Public housing*—Pa. Stat. Ann., title 35, sec. 1664 (Supp. 1960).

[29] Rhode Island:
Public accommodations—R.I. Gen. Laws Ann., sec. 11–24–1 (1956); *Employment*—R.I. Gen. Laws Ann., sec. 28–5–1 (1956); *Public housing*—R.I. Gen. Laws Ann., sec. 11–24–1 (1956); *Education*—R.I. Gen. Laws Ann., sec. 16–38–1 (1956).

[30] Vermont:
Public accommodations—Vt. Stat. Ann., title 13, secc. 1451 (1958).

[31] Washington:
Public accommodations—Wash. Rev. Code, sec. 9.91.010 (1959); *Employment* and *Housing*—Wash. Rev. Code, sec. 49.60.030 (1959); *Education*—Wash. Rev. Code, sec. 49.60.060 (1959).

[32] West Virginia:
Human Rights Commission—H.B. 115 (1961).

[33] Wisconsin:
Public accommodations—Wis. Stat. Ann., sec. 942.04 (1957); *Employment*—Wis. Stat. Ann., sec. 111.31 (1957); *Public housing*—Wis. Stat. Ann., sec. 66.40 (1957); *Publicly assisted housing*—Wis. Stat. Ann., sec. 66.43 (1957); *Education*—Wis. Stat. Ann., sec. 40.51 (1957).

[34] Wyoming:
Public accommodations—Wyo. Sess. Laws 1961, ch. 103.

[35] No enforcement machinery.

[36] FEPC has subpena power, but no other enforcement powers.

[37] Only covers urban redevelopment housing under publicly assisted category.

[38] Private rental housing only.

[39] Legislation prohibits discrimination in public education.

[40] State constitution prohibits discrimination in public education.

[41] Prohibits discrimination in *all* licensed or supervised educational institutions, with enforcement by administrative agency.

TABLE 2.—*Negro percentage, population of 15 major cities and suburban areas, 1940–60* [1]

	Percent of city population			*Percent of suburban population*		
	1940	*1950*	*1960*	*1940*	*1950*	*1960*
Atlanta	34.6	36.6	38.3	17.6	12.9	8.5
Baltimore	19.3	23.7	34.8	11.8	10.1	6.7
Chicago	8.2	13.6	22.9	2.1	2.8	2.9
Cleveland	9.6	16.2	28.6	.8	.8	.7
Dallas	17.1	13.1	19.0	12.1	13.9	6.5
Detroit	9.2	16.2	28.9	2.9	4.9	3.7
Houston	22.4	20.9	22.9	12.1	11.6	10.3
Los Angeles	4.2	8.7	13.5	.9	2.0	3.1
New Orleans	30.1	31.9	37.2	17.1	15.4	14.1
New York	6.1	9.5	14.0	4.5	4.4	4.8
Philadelphia	13.0	18.2	26.4	6.6	6.5	6.1
Pittsburgh	9.3	12.2	16.7	3.6	3.5	3.4
San Francisco	.8	5.6	10.0	1.2	5.2	4.8
St. Louis	13.3	17.9	28.6	6.6	7.2	6.1
Washington, D.C.	28.2	35.0	53.9	13.7	8.6	6.1

[1] Source: Compiled from U.S. Bureau of the Census, General Characteristics of the Population, 1940, 1950, 1960. 1940 and 1950 data presented according to 1960 definition of standard metropolitan areas, to derive comparable suburban areas.

NOTES: VOTING, Chapter 1

1. *Rice* v. *Elmore,* 165 F. 2d 387, 392 (4th Cir. 1947).
2. *Report of the U.S. Commission on Civil Rights 1959* 19–39 (hereinafter cited as *1959 Report*).
3. *Id.* at 134, 135.
4. See ch. 2, *infra.*
5. *Rice v. Elmore, supra,* note 1, at 392.
6. See, *e.g.,* pt. III, *infra.*
7. See ch. 2, at 27, ch. 3, at 43–48, *infra.*
8. *Hearings in Louisiana Before the U.S. Commission on Civil Rights, Voting* 48 (1961) (hereinafter cited as *Louisiana Hearings*). Of particular significance in this regard is the fact that a larger proportion of local officials are elected, rather than appointed, in the South than in any other region of the country.
9. *Minor* v. *Happersett,* 88 U.S. 162 (1875); *Mason* v. *Missouri,* 179 U.S. 328 (1900); *Breedlove* v. *Suttles,* 302 U.S. 277 (1937).
10. See, *e.g., Neal* v. *Delaware,* 103 U.S. 370 (1881); *Chapman* v. *King,* 154 F. 2d 460 (5th Cir. 1946), *cert. denied,* 327 U.S. 800 (1946); *State* v. *Mittle,* 113 S.E. 335 (S.C. 1922), *error dismissed,* 260 U.S. 705 (1922); *Graves* v. *Eubank,* 87 So. 587 (Ala. 1921); *In re Cavellier,* 287 N.Y.S. 739 (1936). See also note 30, *infra.*
11. U.S. Const. art. I, sec. 2, amend. XVII.
12. *Ex parte Yarbrough,* 110 U.S. 651 (1884); *Wiley* v. *Sinkler,* 179 U.S. 58, 62 (1900); *Swafford* v. *Templeton,* 185 U.S. 487 (1902); *United States* v. *Classic,* 313 U.S. 299 (1941). See also cases cited in note 9, *supra.*
13. U.S. Const. art. I, sec. 4. See *Ex parte Siebold,* 100 U.S. 371 (1880); *Ex parte Clarke,* 100 U.S. 399 (1880); *United States* v. *Gale,* 109 U.S. 65 (1883).
14. *United States* v. *Cruikshank,* 92 U.S. 542 (1876); *James* v. *Bowman,* 190 U.S. 127 (1903); *United States* v. *Amsden,* 6 F. 819 (D. Ind. 1881); and see *United States* v. *Reese,* 92 U.S. 214 (1876).
15. *Ex parte Yarbrough,* 110 U.S. 651 (1884); *Ex parte Coy,* 127 U.S. 731 (1888); *Guinn* v. *United States,* 238 U.S. 347 (1915); *Smith* v. *Allwright,* 321 U.S. 649 (1944); *Rice* v. *Elmore,* 165 F. 2d 387 (4th Cir. 1947), *cert. denied,* 333 U.S. 875 (1948); *Brown* v. *Baskin,* 78 F. Supp. 933 (E.D.S.C. 1948); *Terry* v. *Adams,* 345 U.S. 461 (1953); *United States* v. *McElveen,* 180 F. Supp. 10 (E.D. La. 1960), *aff'd sub. nom., United States* v. *Thomas,* 362 U.S. 903 (1960); *United States* v. *Association of Citizens Councils of Louisiana,* 187 F. Supp. 846 (W.D. La. 1960).
16. U.S. Const. art. 2, sec. 1.

17. *McPherson* v. *Blacker,* 146 U.S. 1, 27 (1892).
18. Colorado, Connecticut, Delaware, Florida, Georgia, Kentucky, Louisiana, Massachusetts, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, and Vermont are mentioned in *McPherson* v. *Blacker, supra,* note 17, at 29–33.
19. *Cf. In re Green,* 134 U.S. 377 (1890); *McPherson* v. *Blacker,* 146 U.S. 1 (1892); *Ray* v. *Blair,* 343 U.S. 214 (1952), and *Burroughs* v. *United States,* 290 U.S. 534 (1934). See also cases cited in note 9, *supra.*
20. *United States* v. *Classic,* 313 U.S. 299 (1941); *Smith* v. *Allwright,* 321 U.S. 649 (1944); *Elmore* v. *Rice,* 72 F. Supp. 516 (E.D.S.C. 1947), *aff'd,* 65 F. 2d 387 (4th Cir. 1947), *cert. denied,* 333 U.S. 875 (1948).
21. Civil Rights Act of 1957, sec. 104(a)(1), 71 Stat. 635, 42 U.S.C. sec. 1975c(a)(1) (1958).
22. *1959 Report* 67–68.
23. The problem here is posed by the fact that some Puerto Rican American citizens who are literate in Spanish cannot satisfy the "English literacy" test of New York. The State law has been upheld as constitutional, *Camacho* v. *Doe,* 194 N.Y.S. 2d 33 (1959). This, however, does not resolve the issue raised by the complaint, which is whether, consistent with the constitution, the New York law may be applied to American citizens whose status and rights are fixed by acts of Congress passed pursuant to a treaty of the United States.
24. Civil Rights Act of 1957, sec. 105(f), 71 Stat. 636, 42 U.S.C. sec. 1975d(f) (1958).
25. *1959 Report* 98–101; *Larche* v. *Hannah,* 176 F. Supp. 791 (W.D. La. 1959), *modified before three-judge court,* 177 F. Supp. 816 (W.D. La. 1959).
26. 363 U.S. 420 (1960).
27. *Id.* at 441.
28. See ch. 3, *infra.*
29. Civil Rights Act of 1957, sec. 104(a)(2), 71 Stat. 635, 42 U.S.C. sec. 1975c(a)(2) (1958).
30. *E.g., Nixon* v. *Herndon,* 273 U.S. 536 (1927); *Nixon* v. *Condon,* 286 U.S. 73 (1932).
31. *1959 Report* 77.
32. *Gomillion* v. *Lightfoot,* 364 U.S. 339 (1960).
33. *Gomillion* v. *Lightfoot,* Civ. No. 462E, M.D. Ala., Feb. 17, 1961.
34. *Baker* v. *Carr,* 175 F. Supp. 649 (M.D. Tenn. 1959), 179 F. Supp. 824 (M.D. Tenn. 1959); argued before Supreme Court Apr. 19–20, 1961, rehearing ordered for Oct. 9, 1961, 366 U.S. 907 (1961); *Schalle* v. *Hare,* 104 N.W. 2d 63 (Mich. 1960), *appeal docked,* 30 *U.S.L. Week* 3001 (U.S. July 4, 1961) (No. 22).

35. *Baker* v. *Carr, supra,* note 34.
36. See ch. 7, *infra.*
37. Civil Rights Act of 1957, sec. 104(a)(3), 71 Stat. 635, 42 U.S.C. sec. 1975 c(a)(3) (1958).
38. Compare the Commission's Recomendation No. 2, *1959 Report* 138 with Civil Rights Act of 1960, sec. 301, 74 Stat. 88, 42 U.S.C. sec. 1974 (Supp. II 1959–60), requiring preservation of election records. Compare the Commission's Recommendation No. 3, *1959 Report* 138 with Civil Rights Act of 1960, sec. 601(6) 74 Stat. 92, 42 U.S.C. sec. 1971(c) (Supp. II 1959–60), authorizing joinder of a State as a party to an action under the Civil Rights Acts of 1957 and 1960. And compare the Commission's Recommendation No. 5, *1959 Report* 141, with Civil Rights Act of 1960, sec. 601(a), 74 Stat. 90, 42 U.S.C. sec. 1971(e) (Supp. II 1959–60), authorizing appointment of voting referees by court order.
39. Commission Recommendation No. 1, advocating taking a racial census of registered voters. *1959 Report* 136. The continued need for such action is discussed in ch. 5, *infra.* The other recommendation, No. 4, had to do with legal representation of the Commission in court actions to compel testimony and evidence of a contumacious witness.
40. See ch. 5, *infra.*

NOTES: VOTING, Chapter 2

1. U.S. Department of Justice, *Protection of the Rights of Individuals* (1952).
2. *Id.* at 4.
3. No sworn complaints have been received from Arkansas, Georgia, South Carolina, Texas, or Virginia, and only one from Oklahoma.
4. The complaint on file with the Commission was executed by Mr. Jose Camacho and other residents of Bronx County, N.Y. Mr. Comacho also was plaintiff in the unsuccessful suit, *Comacho* v. *Doe,* 194 N.Y.S. 2d 33 (1959).

   The gravamen of the complaint was that native-born Puerto Rican American citizens, literate in the Spanish language, living in New York, were denied the right to vote because they were not literate in the English language, as required by art. II, sec. 1, of the constitution of that State. Complainants' rights of citizenship and use of the Spanish language are fixed by the Treaty of Paris of 1898 and acts of the Congress pursuant thereto.

   Pursuant to its duties under sec. 104(a) (1), (2), the Commission took notice of the complaint under authority of *Hernandez* v. *Texas,* 347 U.S. 475, 478 (1954). "When the existence of a distinct class is demonstrated, and it is further shown that the laws, as written or as applied, single out that class for different treatment not based on some reasonable classification, the guarantees of the Constitution have been violated. The 14th amendment is not directed solely against discrimination due to a 'two-class theory'—that is, based upon differences between 'white' and Negro."

   The Commission's statement upon the matter is found at *1959 Report,* 67–68.
5. U.S. Bureau of the Census, *U.S. Census of Populaton: 1960, Advance Reports PC(A2)–1* (1961); U.S. Dept. of Commerce Release CB 61–11 (1961).
6. Dept. of Justice, *supra,* note 1, at 4.
7. *Smith* v. *Allwright,* 321 U.S. 649 (1944); see 1959 *Report* 13, 35, 39, 110, 112, 113.
8. Ogden, *The Poll Tax in the South,* 179, 182, 185, 188, 193 (1958).
9. *1959 Report* 116.
10. Dept. of Justice, *supra,* note 1, at 5.
11. *Ibid.*
12. See *supra,* note 4. See also app. II, tables 1–14.
13. Population data for all these States except Oklahoma may be found in tables in app. II. Nonwhite registration for Alabama, Arkansas, Florida, Louisiana, Mississippi, North Carolina, Ten-

nessee, Texas, and Virginia can be found in app. II. Registration figures for Georgia and South Carolina are from *1959 Report.* Oklahoma population 21 and over is from Bureau of the Census 1960, and registration is unavailable.

14. See notes 12 and 13, *supra.*
15. See ch. 3, *infra.*
16. Ch. 1 at 18 discusses *Hannah* v. *Larche,* 363 U.S. 420 (1960), where the Commission was enjoined from holding further hearings because a lower court ruled its rules were not authorized by Congress and were inconsistent with constitutional requirements. The Commission was also delayed in holding the spring 1961 hearing in Louisiana, because a sufficient number of Commissioners were not available to constitute a quorum.
17. *Hearings in Alabama before the U.S. Commission on Civil Rights* (1958–59) (hereinafter cited as *Alabama Hearings*).
18. *Louisiana Hearings.*
19. Alabama, Georgia, Louisiana, Mississippi, North Carolina, Tennessee. See ch. 5, *infra.*
20. See pt. III, *infra.*
21. See ch. 6, *infra* and app. II for population and voting statistics.
22. See ch. 6 at 10, *infra.*
23. *Byrd* v. *Brice,* 104 F. Supp. 442, 443 (W.D. La. 1952).
24. See pt. III, *infra.*
25. *1959 Report* 97.
26. *Id.* at 69–97.
27. See app. II, table 1.
28. *1959 Report* 69–97.
29. *United States* v. *Alabama,* 171 F. Supp. 720 (M.D. Ala. 1959), *aff'd,* 267 F. 2d 808 (5th Cir. 1959), *vacated,* 362 U.S. 602 (1960); 192 F. Supp. 677 (1961).
30. *United States* v. *Alabama,* 192 F. Supp. 677 (M.D. Ala. 1961). See ch. 5 at 85 *infra,* for a discussion of this case.
31. *Id.* at 679.
32. *Id.* at 681.
33. *Id.* at 679, 680.
34. Letter From William P. Mitchell to Gov. John Patterson, July 16, 1960 (copy in Commission files).
35. *1959 Report* 77.
36. 364 U.S. 339 (1960).
37. *Ibid.*
38. Civil No. 462E, Permanent Injunction Feb. 17, 1961.
39. 3 *Race Rel. L. Rep.* 357, 358 (1958).
40. (Columbia, S.C.) The State, Feb. 20, 1961. See also 4 *Race Rel. L. Rep.* 1064, 1065 (1959).

41. See app. II, table 1.
42. *United States* v. *Alabama* (*Bullock County*) Civ. No. 1677–N, M.D. Ala., Jan. 26, 1961), amended complaint, p. 2.
43. *Id.,* Brief in Support of Plaintiff's Proposed Findings of Fact, Conclusions of Law and Decree.
44. *Id.,* oral statement by court at conclusion of trial on Mar. 30, 1961, p. 2. The court reserved ruling on all other points raised by this case.
45. See app. II, table 1.
46. *Ibid.*
47. *Ibid.*
48. See app. II, table 1.
49. *1959 Report* 79–80.
50. See app. II, table 1.
51. See ch. 5 at 90, *infra.*
52. See app. II, table 1.
53. *Ibid.*
54. *Alabama Hearings* 263.
55. See pt. III, *infra.*
56. See ch. 5, *infra.*
57. *1959 Report* 561–62.
58. *1959 Report* 56.
59. See app. II, table 4.
60. *Ibid.*
61. See ch. 5 at 97, *infra.*
62. See app. II, table 4.
63. *United States* v. *Raines,* 362 U.S. 17 (1960), *reversing,* 172 F. Supp. 552 (M.D. Ga. 1959). See ch. 5 at 83, *infra.*
64. *United States* v. *Raines,* 189 F. Supp. 121, 130 (M.D. Ga. 1960).
65. *Id.* at 132.
66. See pt. III, *infra.*
67. See app. II, table 5.
68. *Ibid.* Current registration by race is apparently collected but not published in Georgia. See ch. 6 at 103, *infra.*
69. *1959 Report* 564–66.
70. See app. II, table 5.
71. See ch. 5 at 97, *infra.*
72. Birmingham News, June 25, 1961, p. 6, and June 21, 1961, p. 9.
73. Miss. Const. of 1890, art. 12, sec. 244; [Literacy] Code, 1942 Ann. sec. 3213, [Permanent Registration] Code, 1954, Supp. sec. 3240.
74. 103 *Cong. Rec.* 8602–8603 '1957'; *Hearings Before Committee No. 5, House Judiciary Subcommittee,* 85th Cong., 1st Sess. 736–59 (1957).

75. Miss. Const. of 1890, art. 12, sec. 244, as amended 1954, Laws 1954, ch. 427, Laws 1955, ch. 133.
76. *Ibid.*
77. See *Guinn* v. *United States,* 238 U.S. 347 (1915).
78. Miss. Const., art. 12, sec. 241–A Proposed bylaws 1960, ch. 550 ratified by electors Nov. 8, 1960, inserted by Proclamation, Sec. of State, Nov. 23, 1960.
79. See generally *Louisiana Hearings* and ch. 3, *infra.*
80. See pt. III, *infra.*
81. See app. II, table 8. Chickasaw, Clarke, Issaquena, Jefferson, Noxubee, Tallahatchie, Tate, Walthall, Wayne.
82. Amite, Attala, Carroll, Clay, Copiah, De Soto, Grenada, Holmes, Humphreys, Jasper, Jefferson Davis, Lowndes, Marshall, Monroe, Montgomery, Oktibbeha, Panola, Pike, Rankin, Sharkey, Sunflower, Tunica, Wilkinson, Winston, Yalobusha, Yazoo.
83. See ch. 5 at 97, *infra.*
84. *Id.* at 90.
85. *The Reports of the State Advisory Committees* 451 (1961).
86. *Lassiter* v. *Taylor,* 152 F. Supp. 295 (E.D.N.C. 1957).
87. *Lassiter* v. *Northampton County Board of Elections,* 360 U.S. 45, 50 (1959).
88. *Id.* at 54.
89. *Id.* at 53.
90. *Brazemore* v. *Bertie County Board of Elections,* 119 S.E. 2d 637, 644 (N.C. 1961). See also note 63, *supra.*
91. See app. II, table 9.
92. See pt. III, *infra.*
93. Commission field notes.
94. *1959 Report* 588.
95. See app. II, table 10. Official registration unavailable for Williamsburg. Field interview revealed fewer than 234 Negroes registered in 1960.
96. See ch. 5 at 97, *infra.*
97. *1959 Report* 62–65.
98. *United States* v. *Fayette County Democratic Executive Committee,* Civ. No. 3835, W.D. Tenn., 1959. A consent decree was entered into by the parties on Nov. 16, 1959. See ch. 5 at 91, *infra.*
99. (Washington, D.C.) Evening Star, June 12, 1960, p. 4C.
100. *United States* v. *Beaty,* 288 F. 2d 653 (6th Cir. 1961). See ch. 5 at 93, *infra.*
101. N.Y. Times, June 15, 1961, p. 43.
102. United States complaint filed in *United States* v. *Beaty,* Civ. No. 4065, W.D. Tenn., Sept. 13, 1960.

NOTES: VOTING, Chapter 3

1. See app. II, table 15, for a list of these parishes, together with registration figures therefor.
2. *Louisiana Hearings* 462 (exhibit F–1).
3. Correspondence between Attorney General Jack P. F. Gremillion and Commission Staff Director Gordon M. Tiffany, on file at the Commission. See also *Hannah* v. *Larche,* 363 U.S. 420, 424–425 (1960).
4. Act No. 482 (H.B. 951) of Regular Session of 1958 of Louisiana Legislature, approved July 9, 1958, charges the attorney general with the duty to defend registrars in legal actions involving Federal voting rights.
5. *Larche* v. *Hannah,* 176 F. Supp. 791 (W.D. La. 1959).
6. *Larche* v. *Hannah,* 177 F. Supp. 816 (W.D. La. 1959).
7. *Hannah* v. *Larche,* 363 U.S. 420 (1960). See ch. 18 at, *supra.*
8. The foregoing facts and circumstances were discussed in detail by Vice Chairman Robert G. Storey in his opening statement, May 5, 1961. *Louisiana Hearings* 193–99. Correspondence mentioned was introduced into the record as exhibits, and may be found listed in the table of contents of the transcript.
9. *1959 Report* 30.
10. Bontemps, *100 Years of Negro Freedom* 62 (1961).
11. *Louisiana Hearings* 424 (exhibit A–1).
12. *Ibid.*
13. *Ibid.*
14. *Ibid.*
15. *Louisiana Hearings* 11.
16. See *1959 Report* 31–35. Comments of the President of the Louisiana Constitutional Convention merit repetition here:

> We have not drafted the exact constitution that we should like to have drafted; otherwise we should have inscribed in it, if I know the popular sentiment of this State, universal white manhood suffrage, and the exclusion from the suffrage of every man with a trace of African blood in his viens. . . . What care I whether the test we have put be a new one or an old one? What care I whether it be more or less ridiculous or not? Doesn't it meet the case? Doesn't it let the white man vote, and doesn't it stop the Negro from voting, and isn't that what we came here for?

Official Journal of the Constitutional Convention of the State of Louisiana 1898 at 380.

17. See text at note 30, *infra.*

18. *Proceedings of the Louisiana Bar Association* 1898–99 at 57–60.
19. *Louisiana Hearings* 426 (exhibit A–2).
20. See *Nixon* v. *Herndon,* 273 U.S. 536 (1927); *Nixon* v. *Condon,* 286 U.S. 73 (1932); *Smith* v. *Allwright,* 321 U.S. 649 (1944).
21. *Louisiana Hearings* 97. See also *id.* at 133.
22. *Id.* at 11.
23. *Brown* v. *Board of Education,* 347 U.S. 483 (1954).
24. *Louisiana Hearings* 478 (exhibit G–1).
25. *Id.* at 480 (exhibit G–2).
26. The minutes of these meetings were included in the record of the Commission's hearing *Louisiana Hearings* 484–519 (exhibit J). It may be noted that the power and authority of the Commission on Civil Rights was regularly discussed at these meetings.
27. District Attorney Leander H. Perez of Plaquemines Parish spoke at the meeting for the First and Second Congressional Districts, Feb. 12, 1959. He said:

> I am particularly proud of the Joint Legislative Committee, having been a prenatal attendant and a witness of the birth of the committee, and having watched it develop. I am especially proud at this time, when the committee has undertaken such an important and far reaching task—namely, the preservation of the purity of our voting rights in Louisiana. Our registrars' offices are the most important offices in the State.

Louisiana Hearings 488 (exhibit J).

28. *Id.* at 484 (exhibit J).
29. *Id.* at 535–39 (exhibit L–5).
30. The pamphlet begins with the following statement: "The Communists and the NAACP plan to register and vote every colored person of age in the South. While the South has slept, they have made serious progress toward their goal in all the Southern States, including Louisiana." In another paragraph it concludes: "We are in a life and death struggle with the Communists and the NAACP to maintain segregation and to preserve the liberties of our people." *Louisiana Hearings* 535–39 (exhibit L–5).
31. Contrary to para. 2 of the pamphlet, title 18, sec. 37, Louisiana Revised Statutes (1950) (hereinafter cited as La. R.S.), does not require that the applicant be "personally known to the registrar." The Statute merely requires that the registrant be able to identify himself. Nor does La. R.S. 18: 37 state that the registrar "may require that the applicant produce two registered voters" to identify the registrant. The use of witnesses may be required for identity only "If the registrar has good reason to believe that he is not the same person," to quote the statute. This is the holding

of *Byrd* v. *Brice,* 104 F. Supp. 442 (W.D. La. 1952), *aff'd,* 201 F. 2d 664 (5th Cir. 1953). In the explanatory note to the exceptions noted in 6A, 6B, and 6C, the pamphlet states: "In each of the above cases, the applicant shall not be registered unless he brings with him two qualified electors. . . ." This is incorrect, for La. R.S. 18: 31(5), which requires such witnesses, applies only to those unable to fill out their application forms because (1) they have a physical disability, or because (2) they are unable to write English. The latter group does not include illiterates, but only literates in a foreign language. Illiterates were by statute (La. R.S. 18: 36) specially excepted from writing the application form, and they are not covered by the witness requirement of La. R.S. 18: 31(5). Op. Atty. Gen. [La.] 1952–54, p. 86.

32. *Louisiana Hearings* 502 (exhibit J).
33. *Id.* at 493. [Emphasis added.]
34. *Id.* at 496, 497.
35. *Id.* at 509.
36. *Louisiana Hearings* 526–29 (exhibit L–1). Charter members included both the original chairman, W. M. Rainach, and the present chairman, John S. Garrett, of the Joint Legislative Committee, as well as Leander H. Perez. The first citizens' council in Louisiana was organized in Claiborne Parish (Homer), where Messrs. Garrett, Rainach, and Shaw all reside.
37. *Louisiana Hearings* 527 (exhibit L–1).
38. *Id.* at 533 (exhibit L–3).
39. *Id.* at 534 (exhibit L–4).
40. Carter, *The South Strikes Back* 98 (1959).
41. *Louisiana Hearings* 528.
42. *United States* v. *Association of Citizens Councils of Louisiana,* 187 F. Supp. 846 (W.D. La. 1960).
43. *Id.* at 848.
44. The Commission also heard testimony concerning a purge of Negro registrants in Ouachita Parish:

> The year 1956 started in routine fashion for Miss Mae Lucky when on February 15 she mailed challenges of registers duly required by law to 1,038 voters in Ouachita Parish. Of those 1,028 challenges, 511 went to colored and 417 went to white (*sic*). Then on April 15 the white Citizens Council of Ouachita Parish challenged all 5,782 of the officially registered Negro voters, basing its challenges on incorrect methods of taking and filling out the applications, et cetera. Of the 5,782 voters challenged, all but 595 of the original were stricken from the register

roll. Later registration of Negro voters brought the colored total to 956.

Louisiana Hearing 74. See also *id.* at 38, 69–86; the most recent official statistics put Negro registration in Ouachita Parish at only 730. See app. II, table 6. A suit has been filed by the Department of Justice in Ouachita Parish.

A purge in Jackson Parish, see *Louisiana Hearings* 131, was the subject of braggadocio by a candidate for State representative in the Jan. 9, 1960, primary election:

> I will always support segregation in all forms. (The Negro has his rights; the white people need to regain theirs.)
> "I will never be guilty of trying to get voters on rolls that are not qualified as has been done by some of our local candidates so they can be bloc voted. *I personally signed over 1,000 challenges in 1956 and removed them from voting rolls. There are now some 500 Negro voters on the rolls* and I can't be sure I received over one or two of them in the first primary." *Louisiana Hearings* 444–45 (exhibit W–2). [Emphasis added.]

Testimony concerning such activities in Webster Parish was given by a Commission staff member:

> There was late in 1956 or early in 1957 an effort made to oust her from her job as Registrar for asserted laxity of enforcement of voter qualification laws. Both Mr. Padgett [district attorney] and Mrs. Clement mentioned past pressures from unidentified public officials to have certain people put on the registration rolls and counterpressures from other people to limit the registration through a more strict enforcement of voter qualification laws.

Louisiana Hearings 289. This was confirmed by the registrar, Mrs. Clement, who testified, ". . . I was real strict in 1957, right after they did everything but shoot me. . . ." *Id.* at 304.

45. *Thomas* v. *McElveen,* Civil [Docket] No. 18751, Louisiana 22d Judicial Dist. Ct., Washington Parish (1959), *Louisiana Hearings* 458 (exhibit E). [Emphasis added.]
46. *Louisiana Hearings* 502 (exhibit J).
47. *United States* v. *McElveen,* 177 F. Supp. 355, 180 F. Supp. 10, 11 (E. D. La. 1960), *aff'd sub nom, United States* v. *Thomas,* 362 U.S. 58 (1960).
48. 180 F. Supp. at 13.
49. 180 F. Supp. at 14.

50. La. R.S. 18: 12 (1950).
51. La. R.S. 14: 261 (1950).
52. *United States* v. *McElveen,* 180 F. Supp. 10 (E.D. La. 1960). For a discussion of this case, see ch. 5 at 80, *infra.*
53. See ch. 5 at 90, *infra,* for a discussion of *United States* v. *Association of Citizens Councils of Louisiana, supra,* note 42.
54. See p. 68, *infra.*
55. La. Const., art. VIII, sec. 1.
56. *Ibid.*
57. *Ibid.*
58. La. R.S. 18: 32 (1950).
59. La. Const., art. VIII, sec. 1.
60. *Ibid.*
61. *Ibid.;* La. R.S. 18: 36 (1950).
62. La. Const., art VIII, sec. 1.
63. La. R.S. 18: 37 (1950).
64. *Louisiana Hearings* 98.
65. *Id.* at 17.
66. *Id.* at 29.
67. *Id.* at 31.
68. *Id.* at 72.
69. *Id.* at 84.
70. *Id.* at 103.
71. *Id.* at 117.
72. *Id.* at 112, 217.
73. *Id.* at 16.
74. *Id.* at 20.
75. *Id.* at 19–20.
76. *Id.* at 20.
77. *Id.* at 18.
78. *Id.* at 19.
79. *Ibid.*
80. *Id.* at 24.
81. *Id.* at 25.
82. *Id.* at 26.
83. *Ibid.*
84. *Id.* at 21.
85. *Id.* at 498 (exhibit J).
86. *Id.* at 425, 549 (exhibits A–1, R).
87. *Id.* at 394.
88. *Id.* at 391.
89. *Id.* at 395.
90. *Id.* at 399.

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91. *Id.* at 396.
92. *Id.* at 401.
93. *Ibid.*
94. *Id.* at 761 (exhibit W–14).
95. *Id.* at 35.
96. *Id.* at 46.
97. *Id.* at 47.
98. *Ibid.*
99. *Id.* at 47.
100. *Id.* at 49–54, 123–25.
101. *Id.* at 52.
102. *Id.* at 381.
103. *Id.* at 382.
104. *Id.* at 39–44, 69–86.
105. *Id.* at 41.
106. *Ibid.*
107. *Id.* at 498 (exhibit J).
108. *Id.* at 294–95.
109. *Id.* at 748 (exhibit W–8).
110. *Id.* at 39–44.
111. *Id.* at 54–59.
112. *Id.* at 57.
113. *Id.* at 59–62.
114. *Id.* at 849 (exhibit AA–39).
115. *Id.* at 134–35.
116. *Id.* at 346–47.
117. *Id.* at 346.
118. La. Const., art. VIII, sec. 1.
119. *Ibid.*
120. *Louisiana Hearings* 226, 280, 284, 373.
121. *Id.* at 221.
122. *Id.* at 365–66.
123. *Id.* at 409.
124. *Id.* at 370.
125. *Id.* at 226, 280, 361–67.
126. *Id.* at 845 (exhibit AA–35).
127. *Id.* at 305, 406.
128. *Id.* at 225, 283, 361.
129. La. R.S. 18:138 (1950).
130. *Louisiana Hearings* 137, 139.
131. *Id.* at 136.
132. *Ibid.*
133. *Id.* at 138.

134. *Id.* at 494 (exhibit J).
135. *Id.* at 360.
136. *Id.* at 276.
137. *Id.* at 667 (exhibit T).
138. *Id.* at 122, 126, 128.
139. *Id.* at 122.
140. *Id.* at 408.
141. *Id.* at 128–29.
142. *Id.* at 126.
143. *Id.* at 404.
144. U.S. Const., art. III, sec. 3.
145. *Id.* at 92.
146. *Id.* at 347–48.
147. *Id.* at 208 (Mary Ethel Fox—Plaquemines); *Id.* at 235 (Lionel L. Lassus—Plaquemines); *Id.* at 331 (Quitman Crouch—St. Helena); *Id.* at 406 (Joseph W. Crawford—Red River). Registrar from Bossier, Caddo, and Madison Parishes do not administer the constitutional test. Lannie L. Linton, registrar of voters, Claiborne Parish, refused to answer any questions dealing with registration procedures on the grounds that her answers might tend to incriminate her. Registrars from East Carroll and Ouachita Parishes were excused from testifying. Winnie Clements, registrar of voters, Webster Parish, did not testify about her educational background, but it appears that she uses only two provisions of the State constitution most of the time. *Id.* at 307.
148. *Louisiana Hearings* 89.
149. *Id.* at 304.
150. *Louisiana Hearings* 303.
151. *Ibid.*
152. *Id.* at 304.
153. *Id.* at 111.
154. *Id.* at 299.
155. *Id.* at 309.
156. *Id.* at 115–16.
157. *Id.* at 116.
158. *Id.* at 487 (exhibit J).
159. *Id.* at 116.
160. *Id.* at 116–19.
161. *Id.* at 309.
162. *Id.* at 230–31.
163. *Id.* at 217, 230.
164. *Id.* at 216.
165. *Id.* at 225.

Notes: Voting, Chapter 3—Continued

166. *Id.* at 244.
167. *Id.* at 245, 433, 434, 435, 437.
168. *Id.* at 240–242, 558 (exhibit S).
169. *Ibid.*
170. *Id.* at 242–43.
171. *Id.* at 259.
172. *Id.* at 314–16.
173. *Id.* at 217.
174. *Id.* at 248.
175. *Id.* at 488 (exhibit J).
176. *Id.* at 241.
177. See, *e.g.*, quotation in text at note 151, *supra.*
178. See pp. 50–54, *supra.*
179. *Louisiana Hearings* 41–42.
180. *Id.* at 47.
181. *Id.* at 126.
182. *Id.* at 126–127.
183. *Id.* at 106.
184. *Id.* at 297–298.
185. *Id.* at 304.
186. See p. 63, *supra.*
187. *Id.* at 344.
188. *Id.* at 153, 162.
189. *Id.* at 167.
190. *Louisiana Hearings* 168.
191. See p. 49, *supra.*
192. *Louisiana Hearings* 387–90. See also *id.* at 800 (exhibit Z–1). See ch. 5, pp. 96–7, *infra.*
193. *Louisiana Hearings* 26.
194. *Id.* 154–61, 163–72.
195. *Sharp* v. *Lucky,* 252 F. 2d 910 (5th Cir. 1958), *reversing,* 148 F. Supp. 8 (W.D. La., 1957).
196. *Louisiana Hearings* 155, 160, 163, 169.
197. See app. II, table 6.
198. La. R.S. 18: 165 (1950).
199. *Louisiana Hearings* 331.
200. *Id.* 331–32.
201. *Id.* 332.
202. *Ibid.*
203. Fred Higginbotham testified that while he was trying to register, two white persons also there to register were not given a Constitution test (*id.* 327). The registrar testified that all persons were required to pass the constitutional test (*id.* 332).

Notes: Voting, Chapter 3—Continued

204. *Id.* 330, 334.
205. *Id.* 334.
206. *Id.* 330.
207. *Id.* 334. See also app. II, table 6.
208. See pp. 43–45, *supra.*
209. La. Const., art. VIII, sec. 1, as amended by Act No. 613 of the 1960 session.
210. La. Const., art. VIII, sec. 1 (3), (4), (5).
211. La. R.S. 14: 103.1 (1950).
212. La. R.S. 14: 59(6) (1950).
213. La. R.S. 14: 63.3 (1950).
214. La. R.S. 14: 63.4 (1950).
215. La. R.S. 14: 100.1 (1950).
216. La. R.S. 14: 79.1 (1950).
217. La. R.S. 14: 79.2 (1950).
218. La. R.S. 46: 233D (1950).
219. Shreveport Times, Feb. 15, 1961, p. 5A.
220. Baltimore Afro-American, Sept. 10, 1960, p. 1.
221. La. Const., art. VIII, sec. 1 (c), (f).
222. La. R.S. 18: 36 (1950).
223. Official statistics published by the Louisiana Board of Registration.
224. La. Const., art. VIII, sec. 1 (d).
225. *Louisiana Hearings* 319–320.
226. La. Const., art. VIII, sec. 1 (c) (7).
227. See app. II, table 6.
228. See ch. 5 at 90, *infra.*
229. See app. II, table 6.
230. *Ibid.*
231. See ch. 5 at 90, *infra.*
232. See app. II, table 6.
233. *Ibid.*

NOTES: VOTING, Chapter 4

1. Act of May 31, 1870, ch. 114, sec. 1, 16 Stat. 140, 42 U.S.C. sec. 1971(a) (1958).
2. 18 U.S.C. sec. 241 (1958). Sec. 241 is discussed in pt. VII, ch. 4.
3. *Ex Parte Yarbrough,* 110 U.S. 651 (1884).
4. See *United States* v. *Lackey,* 99 F. 952 (D. Ky. 1900), *rev'd on other grounds,* 107 F. 114 (4th Cir. 1901), *cert. denied,* 181 U.S. 621 (1901). See also *Guinn* v. *United States,* 238 U.S. 347 (1915). *But cf. Williams* v. *United States,* 341 U.S. 97, 101 (1951).
5. 18 U.S.C. sec. 242. Sec. 242 is discussed in pt. VII, ch. 4, *infra.*
6. See note 3, *supra.*
7. 313 U.S. 299 (1941).
8. 18 U.S.C. sec. 594 (1958).
9. No cases are reported under this section of the Code.
10. See p. 73, *supra.*
11. Act of Apr. 20, 1871, ch. 22, sec. 1, 17 Stat. 13, 42 U.S.C. sec. 1985 (1958). Acts of July 31, 1861, ch. 33, 12 Stat. 284; Apr. 20, 1871, ch. 22, sec. 2, 17 Stat. 13, 42 U.S.C. sec. 1985 (1958). These sections are discussed in pt. VII, ch. 5, *infra.*
12. See p. 74, *supra.* See also pt. VII, ch. 4, *infra.*
13. 273 U.S. 536 (1927).
14. 321 U.S. 649 (1944).
15. 165 F. 2d 387 (4th Cir. 1957), *cert. denied,* 333 U.S. 875 (1948).
16. *1959 Report* 10–39.
17. Acts of July 31, 1861, ch. 33, 12 Stat. 284; Apr. 20, 1871, ch. 22, sec. 2, 17 Stat. 13. This section is discussed in pt. VII, ch. 5, *infra.*
18. Letter From Joseph M. F. Ryan, Jr., Acting Assistant Attorney General, to the Commission, June 19, 1959, states:

> [T]he Department of Justice over the years has encountered serious difficulties in securing convictions for civil rights violations. Such prosecutive difficulties are compounded in cases of non-violent racial discrimination, common to the voting field.
>
> The legislation to increase the effectiveness of the Department of Justice action in correcting deprivations of the right to vote was, of course, the Civil Rights Act of 1957. It authorized the use of civil remedies in voting cases. . . .
>
> The authorization of the use of civil remedies by the Department of Justice was also recommended by President Truman's Committee on Civil Rights. Report of the President's Committee on Civil Rights, *To Secure These Rights* 152, 160 (1947). See also discussion in pt. VII, ch. 4, *infra.*

Notes: Voting, Chapter 4—Continued

19. See discussion in pt. VII, ch. 5, *infra.*
20. See p. 73, *supra.*
21. Civil Rights Act of 1957, sec. 131(b), 71 Stat. 637, 42 U.S.C. sec. 1971(b) (1958).
22. See note 7, *supra.* This subsection is quoted in ch. 5, *infra.*
23. *Darby* v. *Daniels,* 168 F. Supp. 170 (1958), *dismissed on other grounds.*
24. Civil Rights Act of 1957, sec. 131(d), 71 Stat. 637, 42 U.S.C. sec. 1971(d) (1958).
25. Civil Rights Act of 1957, sec. 131(c), 71 Stat. 638, 42 U.S.C. sec. 1971(f) (1958).
26. Civil Rights Act of 1957, sec. 111, 71 Stat. 637, 5 U.S.C. sec. 295–1 (1958).
27. *1959 Report* 134–36.
28. *Id.* at 131. See ch. 5 at 79, *infra.*
29. *United States* v. *State of Alabama,* 171 F. Supp. 720 (M.D. Ala. 1959), *aff'd,* 267 F. 2d 808 (5th Cir. 1960), *vacated,* 362 U.S. 602 (1960).
30. See *1959 Report* 132.
31. *Id.* at 138–39.
32. *Id.* at 138.
33. *Id.* at 137.
34. *Id.* at 141–42.
35. 74 Stat. 86, 42 U.S.C. sec. 1971 (1958).
36. See note 29, *supra.*
37. Civil Rights Act of 1960, sec. 601(b), 74 Stat. 92, 42 U.S.C. sec. 1971(c) (1958).
38. Civil Rights Act of 1960, sec. 301, 74 Stat. 88, 42 U.S.C. sec. 1974 (1958).
39. *1959 Report* 138.
40. Civil Rights Act of 1960, sec. 601(a), 74 Stat. 90, 42 U.S.C. 1971(e) (1958). All the quotations in the remainder of this chapter are from this same statute.
41. Rule 53(c) provides:

> The order of reference to the master may specify or limit his powers and may direct him to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and may fix the time and place for beginning and closing the hearings and for the filing of the master's report. Subject to the specifications and limitations stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before him and to do all acts and take all measures necessary or proper for the efficient performance of

his duties under the order. He may require the production before him of evidence upon all matters embraced in the reference, including the production of all books, papers, vouchers, documents, and writings applicable thereto. He may rule upon the admissibility of evidence unless otherwise directed by the order of reference and has the authority to put witnesses on oath and may himself examine them and may call the parties to the action and examine them upon oath. When a party so requests, the master shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in rule 43(c) for a court setting without a jury.

NOTES: VOTING, Chapter 5

1. *United States* v. *McElveen,* 180 F. Supp. 10, 14 (E.D. La. 1960).
2. *United States* v. *Raines,* 172 F. Supp. 552 (M.D. Ga. 1959).
3. *United States* v. *State of Alabama,* 171 F. Supp. 720 (M.D. Ala. 1959).
4. See ch. 4 at 76 *supra.*
5. Civil Rights of 1957, sec. 131 (a), (c), 71 Stat. 637, 42 U.S.C. sec. 1971 (a), (c) (1958).
6. Civil Rights Act of 1960, Title VI, 74 Stat. 90, 42 U.S.C. sec. 1971 (e) (Supp. II 1959–60).
7. See note 5, *supra.*
8. See note 6, *supra.*
9. *United States* v. *Raines,* 172 F. Supp. 552 (M.D. Ga. 1959), *rev'd,* 362 U.S. 17 (1960), 189 F. Supp. 121 (M.D. Ga. 1960).
10. Sec. 2 of the 15th amendment provides: "The Congress shall have power to enforce this article by appropriate legislation."
11. See note 5, *supra.*
12. *United States* v. *Raines, supra,* note 2, at 558.
13. *Id.* at 557.
14. 177 F. Supp. 355 (E.D. La. 1959), 180 F. Supp. 10 (E.D. La. 1960), *aff'd, sub nomine United States* v. *Thomas,* 362 U.S. 58 (1960).
15. See note 5, *supra.*
16. *United States* v. *McElveen,* 177 F. Supp. 355, 357 (E.D. La. 1959).
17. *Id.* at 358–59.
18. *Id.* at 359–60.
19. *United States* v. *Raines,* 362 U.S. 17, 26 (1960).
20. 171 F. Supp. 720 (M.D. Ala.), *aff'd,* 267 F. 2d 808 (5th Cir. 1960), *vacated,* 362 U.S. 602 (1960).
21. *United States* v. *State of Alabama, supra,* note 3.
22. *Id.* at 729.
23. *Id.* 267 F. 2d 808 (5th Cir. 1960).
24. *Id.,* 362 U.S. 602 (1960).
25. La. R.S. 18: 132, 133 (1950).
26. *Thomas* v. *McElveen,* Civ. No. 18751, Louisiana 22d Judicial Dist. Ct., Washington Parish (1959).
27. *United States* v. *McElveen,* 180 F. Supp. 10, 13 (E.D. La. 1960).
28. *Ibid.*
29. *Ibid.*
30. *United States* v. *Thomas, supra,* note 14.
31. *United States* v. *McElveen, supra,* note 14.
32. See note 6, *supra.*

33. *United States* v. *Raines, supra,* note 9.
34. *United States* v. *Raines,* Civ. No. 442, M.D. Ga., order of Jan. 24, 1961.
35. *United States* v. *Raines,* 189 F. Supp. 121, 132–133 (1960).
36. *Id.* at 134.
37. The court construed "otherwise qualified by law to vote at any election," the language of sec. 1971(a), as being those qualifications "applied by the board of registrars and the deputy registrar of Terrell County to other citizens." Yet the court upheld the disqualification of 10 Negroes for a qualification not applied to white applicants—Negroes and not white persons were required to appear before the board. The court's own conclusion of law might have led it to consider whether these 10 Negroes would have qualified on the same basis as white persons who were not required to appear before the board. This is what the court did in the case of the 11 Negroes who did appear.

    The court might also have isolated the dates of application of white persons who took no examination and matched them with the dates of application of Negroes who applied during the same period. Certain whites currently registered to vote in Terrell County submitted to no test of their qualifications; Negroes who applied for registration during the same period, however, were disqualified for failure to appear before the board or were forced to run the gamut of a court estimate of their qualifications.

    The Government listed the names and dates of registration of 9 white persons who took no test whatever, and gave the names of 20 Negroes who applied during the same period but who were denied registration, and these allegations were not disputed by the defendants.

    Seven of the Negroes rejected by the court for failure to respond to the board's notice made application for registration during the same period when white applicants were registered and added to the rolls without taking any examination. The court, therefore, did not order the registration of some Negroes even though it might have done so on the basis of its conclusion that their qualification or not depended upon how the board had applied Georgia's voter qualification laws to "other citizens," in this case to certain white citizens.

    The court did not order registration of 3 Negroes who made applications after Apr. 7, 1958, but who had not been notified by the board to appear for examination. Instead it left these applicants to their remedies with the board. Under sec. 1971(d), which provides that the court exercise its jurisdiction under the act "without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided by law," it would appear that the court might also have ordered their registration.
38. *United States* v. *Raines, supra,* note 34.
39. *Ibid.*
40. *Ibid.*
41. *United States* v. *State of Alabama,* 192 F. Supp. 677 (M.D. Ala. 1961).
42. *Id.* at 679. [Emphasis added.]
43. *Ibid.*
44. *Ibid.*
45. *Id.* at 678–79.
46. *Id.* at 680.
47. *Ibid.*
48. *Id.* at 678–79.
49. *Ibid.*
50. *Id.* at 680.
51. *Ibid.*
52. *Id.* at 681.
53. *Id.* at 682.
54. *Ibid.*
55. *Ibid.* [Emphasis added.]
56. *Id.* at 683.
57. See p. 88, *supra.*
58. *United States* v. *State of Alabama, supra,* note 41, at 683.
59. *Ibid.*
60. See discussion at p. 91, *infra.*
61. 187 F. Supp. 846 (W.D. La. 1960) (*pending*).
62. Civil No. 1677–N, M.D. Ala., Mar. 30, 1961.
63. Record, *United States* v. *State of Alabama,* Civ. No. 1677–N, M.D. Ala., Mar. 30, 1961.
64. *Ibid.*
65. *United States* v. *Fayette County Democratic Executive Committee,* Civ. No. 3835, W.D. Tenn., Nov. 16, 1959.
66. *Id.,* Complaint p. 4.
67. *Id.,* Decree.
68. Brief for appellant, p. 7., *United States* v. *Beaty* and *United States* v. *Barcroft,* 288 F. 2d 653 (6th Cir. 1961).
69. *Id.* at 9.
70. *Id.* at 7.
71. Civil Rights Act of 1957, sec. 131(b), 71 Stat. 637, 42 U.S.C. sec. 1971(b) (1958).

72. Appendix for appellant, p. 398a, *United States* v. *Beaty* and *United States* v. *Barcroft, supra,* note 68.
73. 28 U.S.C. sec. 1292(b) (1958).
74. *United States* v. *Beaty,* 288 F. 2d 655–56 (6th Cir. 1961).
75. *Id.* at 656.
76. *Id.* at 657. [Emphasis added.]
77. *Ibid.*
78. See part III, ch. 3, *infra.*
79. *Ibid.*
80. Civ. No. 8132, W.D. La., January 1961.
81. *Ibid.*
82. Ouachita, East Carroll, East Feliciana, Claiborne, Jackson, Red River, St. Helena, and Plaquemines Parishes.
83. Wilcox, Montgomery, Sumter, Autauga, Lowndes, Greene and Pickens Counties, Ala.
84. Union County.
85. Early, Fayette, Gwinnett, and Webster Counties.
86. Bolivar, Forrest, and Leflore Counties.
87. Clarendon, Hampton, and McCormick Counties.
88. The involved nature of litigation under title III may be illustrated by listing in outline form the proceedings in *Alabama ex rel. Gallion* v. *Rogers,* 187 F. Supp. 848 (M.D. Ala. 1960), *aff'd, sub nom., Dinkens* v. *Attorney General,* 285 F. 2d 430, (5th Cir. 1961), *cert. denied,* 81 S. Ct. 1085 (1961).

On May 23, 1960, the Attorney General had served on the Board of Registrars of Montgomery County, Ala., a written demand for voting records within 15 days; on June 6, 1960, the Attorney General of the State of Alabama sought and obtained from the Circuit Court of Montgomery County, Ala., a temporary injunction and restraining order forbidding the Attorney General of the United States to inspect or copy the records and papers in the custody, possession, and control of the boards of registrars of the various counties of Alabama. On June 11, 1960, the Government removed the State court action to the Federal district court, and on July 6, the State of Alabama moved the Federal court to remand the case to the State court; the Government moved to dismiss the action filed in the State court.

At this point in the proceedings, therefore, there were two cases before the Federal Court for the Middle District of Alabama: (1) In re Dinkens, the suit filed by the Government to obtain an order to require production of records (hereafter referred to as the *Dinkens* case), and (2) *Alabama ex rel. Gallion* v. *Rogers,* originally filed in the State court but removed to the Federal

court (hereafter referred to as the *State* case). The two cases were consolidated. See 187 F. Supp. at 851. Before the trial of either of these cases, the following occurred.

On June 30, the State of Alabama made a motion for pretrial conference and resetting of hearing for both cases and, on the same date, also filed a motion to strike the application for order to require production of records. The following points were included in the motion:

1. that the board had not failed and refused to comply;
2. that demand failed to specify what records and papers were requested;
3. that the demand was not limited to records and papers in the custody of the board since passage of the law on May 6, 1960;
4. that demand did not contain a statement of the "basis therefor";
5. that demand did not contain a statement of the "purpose therefor";
6. that demand deprived the board members of their rights under the fifth amendment;
7. that demand deprived the board members of their rights under the 14th amendment;
8. that there had been no notice or services of process;
9. that the State of Alabama was an indispensable party to the *Dinkens* case;
10. that the Civil Rights Act of 1960 was unconstitutional in that it violated the 5th, 6th, and 10th amendments of the Constitution.

On June 30, 1960, the same date as that on which the motion to strike was filed, the board sent interrogatories to the Attorney General requiring the Attorney General to state, among other things, "separately the name or description of every record and paper in the possession of the board. . . ." Enquiry was also made whether complaints had been made to the Government by any resident of Montgomery County that he had been discriminated against by the board, and, if so, "state the name and address of the person making such complaint." Enquiry also was made about any investigation made and requested as well as "an exact copy of every report of investigation made by you or any of your authorized agents."

By order dated July 1, 1960, the court denied the motions for pretrial conference and for continuance. The board then filed

a motion to dismiss the *Dinkens* case, alleging all of the grounds mentioned in its motion to strike as well as the following:

For that sections 301, or 302, or 303, or 304, or 305, or 306 of Title III of the Civil Rights Act of 1960 is unconstitutional and void as being in violation of amendments V, or VI, or X, or article I, section 8 and section 9, clause 3 of the Constitution of the United States, or if not unconstitutional is unenforceable for uncertainty.

Defendants in the *Dinkens* case filed their answer and cross-complaint on July 6, 1960, the pleading being made subject to their prior motion to dismiss. The cross-complaint, which alleged essentially the same matters as the motion to dismiss, asked for a declaratory judgment that title III was unconstitutional and a temporary and permanent injunction against its enforcement. The defendants also requested the court to convene a three-judge court to consider the constitutional issues thus raised.

On July 9, 1960, the Government filed applicant's objections to interrogatories, which included objection to those requesting the names and addresses of complainants and investigation reports. The Government contended that its demand letter was as specific as the statute required it to be. On the same date the Government filed answers to interrogatories in which it answered interrogatories to which it did not object.

Defendant board members, on July 12, 1960, filed a motion to compel answers to interrogatories in which they asked for an order of court compelling the Government to answer fully the interrogatories and for a continuance of the trial setting of July 13, 1960, until after full compliance with the order had been obtained.

The Government on July 13, 1960, filed its motion to strike and to dismiss Cross-complaint. Trial was finally held before the court on July 13, 1960. The court issued an order dated July 14, 1960, overruling the motion of board members with respect to the interrogatories and sustained the Government's objections.

On Aug. 11, 1960, the district court denied the State's motion to remand the *State* case and granted Government's motion to dismiss the suit. 187 F. Supp. at 853. On the same day, the court granted the Government's motion to dismiss the cross-complaint in the *Dinkens* case; it also granted the Government's motion for an order to require production of the records for inspection, reproduction and copying. *Id.* at 855–56.

On Aug. 18, 1960, the district court denied the board members' motion for an order staying the order for production of records pending appeal of the *Dinkens* case. On Aug. 19, the board members appealed to the Court of Appeals for the Fifth Circuit from the order of the district court. On Aug. 24, the court of appeals granted a stay of the district court's order pending consideration of the motion to stay by a three-judge panel of the court, and on Sept. 16, the court of appeals denied any further stay proceedings.

The court of appeals on Jan. 23, 1961, affirmed the district court's judgment in both the *State* and *Dinkens* cases. 285 F. 2d 430. The Supreme Court denied writs of certiorari in these cases on May 1, 1961. 81 S. Ct. 1085 (1961).

89. Three Louisiana registrars of voters were sent demand letters in May 1960, the same time such letters were issued in Alabama. Louisiana registrars first attempted to enjoin the Attorney General in a suit filed in the Federal District Court for the Western District of Louisiana. On June 10, 1960, the Government was granted an order dismissing the suit for lack of jurisdiction. In the meantime, on June 7, the Government had filed a subsec. (a) suit, *United States* v. *Association of Citizens Councils of Louisiana,* 187 F. Supp. 846 (W.D. La. 1960). The registrar of voters for Bienville Parish, one of the defendants, filed a countersuit, in which she made the same allegations of unconstitutionality of the Civil Rights Act of 1960 which had been made by the registrars whose suits had been dismissed. The registrar asked that a three-judge court be convened to consider the constitutional issues she thus raised. At this point, on June 10, the Attorney General of the State of Louisiana moved the court to permit hin. to intervene on behalf of all of the registrars of voters in Louisiana, and on June 15 the court granted the request and permitted intervention.

In this fashion the Attorney General of Louisiana had succeeded in putting himself in the position of again raising the constitutional issues sought to be raised by the three registrars in their independent suit. On June 21, the Court of Appeals for the Fifth Circuit ordered a three-judge court to convene. In an opinion issued on July 27, 1960, the three-judge court held that an issue on the constitutionality of title III was not made because in the subsec. (a) suit the Government had not obtained records through title III but through rule 34 of the Federal Rules of Civil Procedure. *United States* v. *Associations of Citizens Councils of Louisiana, supra,* at 847. It was less than a month later

that the U.S. District Court for the Middle District of Alabama issued its opinion on the validity of title III, and thus Louisiana officials did not get to court on the issue before it was settled.

Orders for the production of records were issued in East Carroll and Ouachita Parishes on Dec. 12, 1960, and in East Feliciana on July 18, 1960.

90. *Alabama ex rel. Gallion* v. *Rogers,* 187 F. Supp. 848 (M.D. Ala. 1960), *aff'd sub. nom. Dinkens* v. *Attorney General,* 285 F. 2d 430 (5th Cir. 1961), *cert. denied sub nom State of Alabama* v. *Kennedy,* 81 S. Ct. 1085 (1961).
91. 187 F. Supp. 848, 853.
92. 363 U.S. 420 (1960).
93. *Alabama ex rel. Gallion* v. *Rogers, supra,* note 90, at 854. [Italics in original.]
94. Record, p. 13, *Dinkens* v. *Attorney General,* 285 F. 2d 430 (5th Cir. 1961).
95. *Alabama ex rel. Gallion* v. *Rogers,* 187 F. Supp. 848, 855 (M.D. Ala. 1960).
96. *Ibid.*
97. U.S. Const., art. I, sec. 9.
98. *Alabama ex rel. Gallion* v. *Rogers, supra,* note 90, at 855.
99. *Ibid.*
100. *Dinkens* v. *Attorney General,* 285 F. 2d 430 (5th Cir. 1961).
101. *Dinkens* v. *Kennedy,* 81 S. Ct. 1085 (1961).
102. Civil Rights Act of 1957, sec. 131, 71 Stat. 637, 42 U.S.C. sec. 1971 (1958).
103. See pt. VII, ch. 4.

NOTES: VOTING, Chapter 6

1. Alabama: Lowndes and Wilcox Counties; Louisiana: East Carroll, Madison, Tensas, and West Feliciana Parishes; Mississippi: Issaquena, Jefferson, Noxubee, Tallahatchie, and Tate Counties; Georgia: Baker and Webster Counties.
2. See Price, *The Negro and the Ballot in the South* 16 (1958). See also ch. 3 *supra;* ch. 5 at 82 *infra.*
3. See pt. III, ch. 3, *infra.* See also app. II, table 6.
4. See ch. 2 at 24 *supra.*
5. Byrd v. Brice, 104 F. Supp. 442, 443 (W.D. La. 1952). See also *United States ex rel. Goldsby* v. *Harpole,* 263 F. 2d 71, 78 (5th Cir. 1959).
6. See, *e.g.,* discussion of McCormick County, S.C., ch. 2 at 35, *supra.*
7. *E.g.,* Mississippi, South Carolina and Georgia. See pp. 103–104, *infra.*
8. Sec. 3209.6 recompiled Mississippi Code of 1942, as amended by Miss. Laws, 1960, ch. 449, sec. 2.
9. (Jackson, Miss.) Clarion-Ledger, Oct. 16, 1960, p. 1.
10. *1959 Report* 136–37.
11. See app. II, tables 1–14. The census population figures upon which these statistics are based are for "nonwhites," which includes other racial groups than Negroes. Except in some instances where there is a large Indian population, however, "nonwhite" may be taken to be equivalent to "Negro," and is so treated for statistical purposes in this report.
12. For complete figures, see app. II, table 1.
13. For complete figures, see app. II, table 2.
14. For complete figures, see app. II, table 3.
15. For complete figures, see app. II, table 4.
16. For complete figures, see app. II, table 5.
17. For complete figures, see app. II, table 6.
18. For complete figures, see app. II, table 7.
19. For complete figures, see app. II, table 8.
20. For complete figures, see app. II, table 9.
21. For complete figures, see app. II, table 11.
22. For complete figures, see app. II, table 12.
23. In addition to these 213 counties, 7 others sent in total registration figures which were not broken down by race and therefore could not be used. Two other counties responded to the Commission's inquiry, but the questionnaire failed to disclose from what county they were sent, so that they could not be used.

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24. For complete figures, see app. II, table 13.
25. Three counties gave total registration figures only, not broken down by race. These counties are Frederick (1.8 percent of the voting age population nonwhite), Campbell (17.5 percent of the voting age population nonwhite) and Lancaster (35.4 percent of the voting age population nonwhite).
26. For complete figures, see app. II, table 14.
27. Only Summers County did not respond to the Commission's inquiry through its State Advisory Committee. In this county, Negroes constitute 7.8 percent of the voting age population.
28. See ch. 2 at 24, *supra.*
29. See ch. 2 at 36, *supra.*

NOTES: VOTING, Chapter 7

1. *Gomillion* v. *Lightfoot,* 270 F. 2d 594, 612 (5th Cir. 1959), *rev'd on other grounds,* 364 U.S. 339 (1960) (Wisdom, J., concurring in denying relief in the *Tuskegee* gerrymander case). See discussion at 125, *infra.*
2. See app. II, tables 1–15 (table of relative representation within the States).
3. An exception may be the case of the bicameral legislature, in which one House, such as the Federal Senate, is intentionally established with disproportionate representation. *Cf.* The Federalist, No. 62, where the disproportionate Federal Senate is defended somewhat apologetically: ". . . Being evidently the result of compromise between the opposite pretensions of the large and the small States, [the disproportion] does not call for much discussion . . ." It resulted from "the peculiarity of our political situation," which required "mutual deference and concession." Thus, the "sacrifice" of accepting "the lesser evil" of malapportionment is urged. In addition senatorial malapportionment represents "a constitutional recognition of the portion of sovereignty remaining in the individual States." These historical reasons relating to the need for compromise to form a Union, and the recognition of State sovereignty, would not seem to be applicable to voting districts for State senates. The other suggested reason, a check on a possibly irresponsible House, seems even less compelling now than in 1788, when the author of Federalist No. 62 conceded that "this complicated check on legislation may in some instances be injurious as well as beneficial."
4. See pp. 125, 129, *infra.*
5. See ch. 2 at 25, *supra,* and further discussion at pp. 125, *infra.*
6. 167 F. Supp. 405 (M.D. Ala. 1958), *aff'd* 270 F. 2d 594 (5th Cir. 1959), *rev'd,* 364 U.S. 339 (1960), Civ. No. 462E, M.D. Ala., Feb. 17, 1961.
7. *Id.,* 364 U.S. at 346.
8. *Id.,* Civ. No. 462E. Racial gerrymandering is more common than isolated litigation would seem to indicate. For example, in Baltimore in 1931, Negro representatives on the city council from the 14th and 17th wards were eliminated by redistricting. Each of these predominantly Negro wards was merged with more populous wards in which whites were overwhelmingly in the majority. Despite steady rises in the Negro population in Baltimore, no Negro was again elected to the city council for 24 years, when the percentage of Negro population had doubled. Commission field notes.

9. Key, *Southern Politics* 666 (1950).
10. *Id.*, at 670.
11. N.Y. Times, June 18, 1961, p. 48.
12. See pt. III, ch. 3, *infra.*
13. See pt. II, ch. 3, *supra.*
14. The figures shown are for representation in the Louisiana House of Representatives as of November 1960. La. Const., art III, sec. 5.
15. This is a clear violation of art. III, sec. 2, of the Louisiana Constitution, which provides that "representation in the House of Representatives shall be equal and uniform, and shall be based upon population. . . ."
16. See ch. 3 at 66, *supra.*
17. See ch. 3 at 39, *supra.* Although the Commission's investigations provide support for this conclusion, racial discrimination can be inferred from the voting statistics alone. For example, in *United States* v. *Alabama,* 267 F. 2d 808, note 3 (5th Cir. 1959), the Court viewed the fact that 97 percent of the 3,100 eligible whites were registered, as against only 8 percent of 14,000 eligible Negroes, to be at least some evidence, if not proof, of discrimination in registration. See *Gomillion* v. *Lightfoot,* 270 F. 2d 594, 608 (5th Cir. 1959) (Judge Brown dissenting), *rev'd,* 364 U.S. 339, (1960). Judge Brown also cites *United States ex rel. Goldsby* v. *Harpole,* 263 F. 2d 71 (5th Cir. 1959); *Norris* v. *Alabama,* 294 U.S. 587 (1935); and *Hernandez* v. *Texas,* 347 U.S. 475 (1954).
18. Anti-Negro activities in St. Helena in 1961 may have eliminated this unfairness to its white voters. If nonwhites were disfranchised in St. Helena, the parish's one representative would represent about 4,000 whites.
19. The Fourth Congressional District includes Caddo, Bossier, Claiborne, Webster, Red River, De Soto, and Bienville Parishes. Of these seven parishes, the first five named have been investigated by the Commission on Civil Rights, and findings regarding racial discrimination are reported in ch. 3, *supra.*
20. Act of June 18, 1929, 46 Stat. 26, as amended, 2 U.S.C. sec. 2a(a) (1958).
21. Act of Feb. 2, 1872, R.S. sec. 22, 2 U.S.C. sec. 6 (1958).
22. Act of June 18, 1929, 46 Stat. 26, as amended, 2 U.S.C. sec. 2a (b) (1958).
23. However, there may be problems relating to standing to sue, and Congress' power over its own clerk, which may be exclusive. *But cf. Kilbourn* v. *Thompson,* 103 U.S. 168 (1881).

24. See pp. 120–22, *infra.*
25. See chs. 2 and 6, *supra,* and pt. III, *infra.*
26. See Bonfield, "The Right To Vote and Judicial Enforcement of Section Two of the Fourteenth Amendment," 46 *Corn. L.Q.* 108 (1960).
27. Cf. pt. III, *infra.* Mr. Bonfield, *op. cit., supra* at 134–135, recognizes this, and would allow a 10-percent variation from the established norm.
28. See *Webster's New International Dictionary* (2 ed., 1959).
29. *Cf.* ch. 4, *supra.*
30. *Baker* v. *Carr,* 179 F. Supp. 824 (M.D. Tenn. 1959), argued before the Supreme Court, Apr. 19–20, 1961, reargument ordered for Oct. 9, 1961, 366 U.S. 907 (1961).
31. These constitutional provisions are discussed at pp. 120–22, *infra.*
32. Under art. I, sec. 4, the States are empowered to regulate the times, manner, and places of holding Federal elections, subject to Congress' power to make or alter such regulations.
33. S.J. Res. 215, 86th Cong., 2d sess. (1960).
34. S. 3781, 86th Cong., 2d sess. (1960).
35. S. 3782, 86th Cong., 2d sess. (1960).
36. This leeway is not as great as it seems, since if any district is 20 percent below the mean figure, no other district could be more than 20 percent above it. Even so, it would permit districting, for example, in which one district has 120,000 people and another 80,000.
37. *Luther* v. *Borden,* 48 U.S. (7 How.) 1, 42 (1849).
38. *Ibid.*
39. [Second emphasis added.]
40. H.R. 841, 87th Cong., 1st sess. (1961).
41. H.R. 4068, 87th Cong., 1st sess. (1961).
42. The doctrine of equitable abstention is discussed at pp. 123–25, *infra. But cf.* the distinguishable case, *United States* v. *United Steel Workers,* 36 U.S. 39 (1959). *But see ibid.* at 63 (Mr. Justice Douglas dissenting), and 271 F. 2d 676, 690 (Judge Hastie dissenting), and *cf. United States* v. *Raines,* 172 F. Supp. 552 (1959), discussed in ch. 5, pp. 83–85, *infra.*

One authority is of the opinion that "Surely the Supreme Court would carry out the function of enforcing equality in congressional districts if Congress so ordered," Lewis, Legislative Apportionment and the Federal Courts, 71 *Harv. L. Rev.* 1057, 1095 (1958), but this begs the question of whether the Celler bill would indeed be mandatory. Mr. Lewis suggests three further

criticisms of the Celler bill: (1) " 'Establishment' of districts might be construed narrowly to cover only new apportionments. [The bill, in fact, refers to "districts hereafter established," and so might not be effective until 1971, at the earliest.] (2) To be sure of adequate standing it might be well to specify that complainants be qualified voters as well as citizens. (3) It would be well to spell out in the legislation the exact relief to be granted when districts are adjudged void—*e.g.*, election at large." *Id.* at 1094–95, note 216.

43. Lewis, *op. cit., supra,* note 43 at 1093–95, 1093–94. At the time of these challenges, 2 U.S.C. sec. 3 required election districts to be "contiguous and compact . . . and containing as nearly as practicable an equal number of inhabitants." This provision of the 1911 act was eliminated by the act of 1929.
44. 328 U.S. 549 (1946).
45. *Id.* at 551.
46. 287 U.S. 1 (1932).
47. Act of 1929, 46 Stat. 26, as amended, 2 U.S.C. sec. 2(a) (1958).
48. *Colegrove* v. *Green, supra,* note 44, at 551.
49. *Id.* at 554. [Emphasis added.]
50. *Id.* at 552.
51. *Id.* at 556. [Emphasis added.]
52. *Id.* at 553.
53. *Ibid.*
54. 285 U.S. 355 (1932).
55. *Colegrove* v. *Green, supra,* note 44, at 564.
56. *Smiley* v. *Holm, supra,* note 54, at 363–73. The Court was concerned with the procedure by which the legislation was passed, and not with its substantive content; this, apparently, is what Mr. Justice Rutledge considered a difference "only in the matter of degree."
57. *Id.* at 374–75. The previous districting act could not be used because the State's representation had since been reduced from 10 to 9.
58. *Colegrove* v. *Green, supra,* note 44, at 565. Force is added to Mr. Justice Rutledge's conclusion by the fact that the opinions in *Smiley* and *Wood* were written in the same year by the same judge, Mr. Justice Hughes. It is therefore difficult to read *Wood* to mean that the Court lacks power to declare an apportionment statute invalid and to order appropriate relief.

It may also be observed that the position of three Justices in *Colegrove,* that Congress' regulatory power over elections precludes the courts from jurisdiction of such matters, is also contrary to the approach taken with regard to other, comparable provisions

of the Constitution. Both the 14th and 15th amendments give Congress enforcement powers, but this has not precluded independent judicial action unsupported by substantive legislation. Even when Congress exercises constitutional powers to legislate, such legislation is ordinarily subject to judicial review. Moreover, in a closely analogous situation, the Court has expressly rejected the view that congressional regulatory power is exclusive. Article I, section 10, provides that all State laws regarding inspection duties on imports and exports "shall be subject to the revision and control of Congress" (not "may" as in art. I, sec. 4). Yet the Court has held:

> The court of appeals of Maryland following the intimation in *Turner* v. *Maryland* [107 U.S. 38 (1883)] declined to pass on the question, upon the ground that a court could not decide whether "a charge or duty under an inspection law is or is not excessive." That suggestion, however, is opposed to the distinct rulings in *Brimmer* v. *Rebman* [138 U.S. 78 (1891)] . . . and other cases . . ., which hold that it is the duty of the courts to pass upon the question, so as to protect the private citizen against the payment of inspection fees larger than those authorized by the Constitution. *D. E. Foote & Co.* v. *Stanley,* 232 U.S. 494, 506–507 (1914).

59. *Colegrove* v. *Green, supra,* note 44, at 565.
60. *Ibid.*
61. *Id.* at 572.
62. *Id.* at 569.
63. *Id.* at 572.
64. *Id.* at 574.
65. *Ibid.*
66. 339 U.S. 276 (1950).
67. See note 69, *infra.*
68. *South* v. *Peters, supra,* note 66, at 277. [Emphasis added.]
69. Justices Black and Douglas dissented, stressing the racial inequality inherent in the county unit system, under which the "nomination does not go to the candidate who gets the majority or plurality of votes" (*id.,* at 278), but is determined by county units. This system "heavily disenfranchises [the] urban Negro population" (*ibid.*) because of malapportionment. The *Tuskegee* case may give added vitality to this dissent. See pp. 125–29, and note 113, *infra.* Between *South* and *Tuskegee,* the Supreme Court dismissed several appeals regarding State legislative districting: *Anderson* v. *Jordan,* 343 U.S. 912 (1952); *Kidd* v. *McCanless,* 352 U.S. 920 (1956); *Radford* v. *Gary,* 352 U.S. 991 (1957).

70. 167 F. Supp. 405 (M.D. Ala. 1958), *aff'd,* 270 F. 2d 594 (5 Cir. 1959), *rev'd,* 364 U.S. 339 (1960).
71. 270 F. 2d 594 (5th Cir. 1959).
72. *Id.* at 598. [Emphasis added.]
73. *Id.* at 601.
74. *Id.* at 602. [All italicized in original.]
75. *Id.* at 607.
76. *Id.* at 605.
77. So characterized by Judge Wisdom, *id.* at 614.
78. *Id.* at 615.
79. *Id.* at 612.
80. *Ibid.*
81. *Ibid.*
82. *Id.* at 612–13.
83. 364 U.S. 339 (1960). Mr. Justice Douglas joined in the opinion but also adhered to the dissents in *Colegrove* and *South.*
84. *Id.* at 349.
85. See *Buchanan* v. *Warley,* 245 U.S. 60 (1917).
86. *Gomillion* v. *Lightfoot, supra,* note 83, at 349.
87. *Brown* v. *Board of Education,* 347 U.S. 483 (1954).
88. 358 U.S. 1 (1958).
89. See note 83, *supra.*
90. See pp. 122–25, *supra.*
91. *Gomillion* v. *Lightfoot, supra,* note 8, at 346. Mr. Justice Frankfurter observed (note at 346) that shortly after *Colegrove* the Illinois Legislature reapportioned the State districts, on urging from Governor Green. However, the Governor, Senator Douglas (102 *Cong. Rec.* 5234 (1956), and George Tagge, political editor, Chicago Tribune, have all expressed the view that the legislature was impelled by the fear that a full Supreme Court in a later case would require an election at large. See Lewis, *op. cit. supra,* note 42, at 1088.
92. *Gomillion* v. *Lightfoot, supra,* note 8, at 346. Significantly, Justice Frankfurter did not rely on the fact that *Colegrove* involved Federal elections, while the *Tuskegee* case affected local elections. Yet insofar as the Court lacked power in the former case because of art. I, sec. 4, of the Constitution (see pp. 122–23, *supra*), the latter case is clearly distinguishable. However, "there was more reason for Federal courts to intervene in Illinois' gerrymandering affecting Federal elections than there would be to intervene in Alabama's gerrymandering that affects only municipal elections." Wisdom, J., concurring in *Gomillion* v. *Lightfoot,* 270 F. 2d 594, 613 (5th cir. 1959). In the arguments before the Supreme Court in the *Tuskegee* case, Justice Frankfurter, in comments

from the bench, seemed to express the view that it would be anomalous to give Federal voters less constitutional protection than State voters. Transcript 22–23.

93. In *United States* v. *Saylor,* 322 U.S. 385 (1944), the Court upheld a criminal prosecution for interfering with voting citizens' "right to have their expressions of choice given full value . . . by not having their votes . . . diluted. . . ." *Id.* at 386. The conspiracy related to stuffing a ballot box—not destroying ballots—*although "the mathematical result [of stuffing the box] may not be the same as would ensue throwing out or frustrating the count of votes lawfully cast."* (*Id.* at 389.) [Emphasis added.] In other words, the Court did not regard the mathematical differences between no vote and a diluted vote to be significant, despite a dissent by three Justices who would have strictly construed the criminal statute (18 U.S.C. sec. 51) to cover only a voter's right to cast a ballot or to have his ballot counted." *Id.* at 392.
94. *Nashville, C. & St. L. Ry.* v. *Walters,* 294 U.S. 405, 415 (1935) (opinion by Mr. Justice Brandeis, citing numerous cases.)
95. See, *e.g., Wolf* v. *Colorado,* 338 U.S. 25, 33 (1949) (opinion by Mr. Justice Frankfurter):

> . . . [T]hough we have interpreted the 4th amendment to forbid the admission of such evidence, a different question would be presented if Congress, under its legislative powers, were to pass a statute [to the contrary]. *We would then be faced with the problem of the respect to be accorded the legislative judgment on an issue as to which, in default of that judgment, we have been forced to depend upon our own.* [Emphasis added.]

96. See note 82, *supra.*
97. 115 F. Supp. 649 (M.D. Tenn., 1959), 179 F. Supp. 824 (M.D. Tenn. 1959), argued before the Supreme Court, Apr. 19–20, 1961, rehearing ordered for Oct. 9, 1961, 366 U.S. 907 (1961).
98. Tenn. Code Ann., secs. 3–101 to 3–109.
99. In addition, Congress has given the Federal courts jurisdiction "to . . . secure equitable or other relief under any act of Congress providing for the protection of civil rights, including the right to vote." Civil Rights Act of 1957, 71 Stat. 637, amending 28 U.S.C. sec. 1343 (1958). Liability in a " . . . suit in equity, or other proper proceeding for redress" on behalf of "any citizen . . ." deprived of "any rights, privileges, or immunities secured by the Constitution . . ." is provided for in 42 U.S.C. 1983, which encompasses rights protected by the 14th amendment. *Monroe* v. *Pape,* 365 U.S. 167 (1961). See pt. VII, ch. 5, *infra.*

100. *Colgrove* v. *Green,* 328 U.S. 549, 556 (1946).
101. See pp. 123–25, *infra.*
102. See p. 122, *supra.*
103. See p. 114, *supra.*
104. Lewis, "Legislative Apportionment and the Federal Courts," 71 *Harv. L. Rev.* 1057, 1092–93 (1958).
105. *State ex rel. O'Connell* v. *Myers,* 319 P. 2d 828 (Wash. 1957).
106. These are discussed in Lewis, *op. cit., supra,* note 104, at 1066–70, 1087–90.
107. 161A. 2d 705 (N.J. 1960).
108. N.Y. Times, Feb. 2, 1961, p. 1.
109. See p. 126, *supra.*
110. *Kidd* v. *McCanless,* 292 S.W. 2d 40 (Tenn. 1956), *app. dismissed,* 352 U.S. 920 (1956). It is interesting that prior to *Colegrove* v. *Green* and *South* v. *Peters* the Tennessee Supreme Court held a county unit primary system invalid under State and Federal law. *Gates* v. *Long,* 113 S.W. 2d 388 (Tenn. 1938).
111. *Lane* v. *Wilson,* 307 U.S. 268, 274 (1939).
112. *Browder* v. *Gayle,* 142 F. Supp. 707, 718 (M.D. Ala. 1956), *aff'd,* 352 U.S. 903 (1956).
113. This is as true in Tennessee as it is in other areas of the South. In *Baker,* plaintiff Baker is from Shelby County, which has 1 representative for each 78,000 citizens, and 1 senator for each 251,000 citizens; plaintiff Smith is from Knox County, which has 1 representative for each 84,000 citizens, and 1 senator for its 250,523 citizens; plaintiff McGauley is from Hamilton County, which has 1 representative for each 79,000 citizens, and 1 senator for its 238,000 citizens. By contrast, Haywood and Fayette Counties, where attempts of Negroes to register and vote have met with severe reprisals (see ch. 2, pp. 36–37, *supra*), each county has 1 representative for approximately 24,000 citizens, and they share 1 senator for their 48,000 citizens. These counties, therefore, where racial discrimination is at the extreme, have more than three times the voting power of either Shelby or Knox Counties in the State house of representatives, and five times the voting power of Knox County in the State senate.
114. Tenn. Const., art. II, secs. 4–6.
115. Transcript at 56.
116. This action is particularly significant in view of an exchange across the bench near the end of oral argument. When counsel for the State suggested that Tennessee can and will solve this problem itself, Justice Harlan asked how the original plaintiffs would react to new legislative apportionment. Counsel for plaintiffs replied that they would accept any reasonable reapportionment. Transcript at 117.
117. Another malapportionment case, *Scholle* v. *Hare,* 104 N.W. 2d 63 (Mich. 1960), is No. 22 on the Supreme Court calendar for the coming term. In another case, in New York, a three-judge court has recently been convened. N.Y. Times, July 11, 1961, p. 24.
118. See also note 99, *supra.*
119. See note 60, *supra.*
120. See *United States* v. *Carolene Products Co.,* 304 U.S. 144, 152, note 4 (1938).
121. Frankfurter, *Mr. Justice Holmes and the Supreme Court* 51 (1938), quoted in Lewis, *op. cit., supra,* note 104, at 1096.