IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	
	)	
v.	)	**CIVIL ACTION NO. 4:05-cv-33 (TSL/LRA)**
	)	
	)	
IKE BROWN, et al.,	)	
	)	
Defendants.	)	

IKE BROWN AND NOXUBEE COUNTY DEMOCRATIC EXECUTIVE COMMITTEE'S POST-TRIAL MEMORANDUM

I. INTRODUCTION

A. PRIOR PROCEEDINGS

This action commenced on February 17, 2005, when the United States of America filed its original complaint in The United States District Court for the Southern District of Mississippi (Eastern Division) against defendants Ike Brown, individually and in his official capacity as Chairman of the Noxubee County Democratic Executive Committee; Noxubee County Democratic Executive Committee; Carl Mickens, individually and in his official capacity as Circuit Clerk of Noxubee County; Noxubee County Election Commission; Noxubee County, Mississippi; and those acting in concert. The Complaint sought injunctive and declaratory relief against the Defendants for

violations of Section 2 of the Voting Rights Act of 1965. It further alleged that Defendant Carl Mickens had violated Section 11(b) of the Voting Rights Act.[1]

The United States of America filed on August 16, 2005 an Amended Complaint that additionally alleged Ike Brown and the Noxubee County Democratic Executive Committee had also violated Section 11(b) of the Voting Rights Act by engaging in coercion, threats, and intimidation of voters.

This trial was conducted from January 16, 2007 to January 31, 2007.

B. NOXUBEE COUNTY GENERALLY

According to the 2000 census[2], Noxubee County encompasses a geographical area of approximately 700 square miles and includes the municipalities of Macon (county seat), Brooksville, Shuqualak, Mashualaville, and Prairie.

The total population of Noxubee County was 12, 548, of which approximately 70% are black and 30% white.[3] The socio-economic disparity between the races is stark. The median household income for black families was $16,690; for white families $35,543.[4] Of residents aged 25 and older, only 51.4% of the black population had a high school diploma, compared to 71% of the white population.[5] Blacks aged 25 years and older only comprised 36.6% of the total population with a Bachelor's Degree, as compared to white,s who comprised 63%.[6] The percentage of black families

[1] On the same day, February 17, 2005, this Court approved a Consent Decree signed by Defendants Carl Mickens and Noxubee County, Mississippi with Plaintiff, The United States of America, leaving only Ike Brown, the Noxubee County Democratic Executive Committee, and Noxubee County Election Commission as active Defendants in the case.
[2] U.S. Census Bureau, Census 2000 Summary File 1
[3] Id.
[4] U.S. Census Bureau, Summary File 2 (SF 2) and Summary File 4 (SF 4)
[5] Id.
[6] Id.

below the poverty level was 89%, while for white families it was 9%.[7] The percentages of blacks in the labor force over the age of 16 years old was 6.4% as compared to 35.7% of the whites.[8]

Noxubee County is governed by a County Board of Supervisors composed of five members, elected by the voters from five districts. Elections are held every four years. The county wide officials that are voted at large by county residents are Sheriff, Circuit Clerk, Chancery Clerk, Tax Assessor/Collector, Coroner, County Prosecutor and Superintendent of Education.

The United States does not contest, and the Court stated that it did not need evidence to show, the long history of discrimination against blacks in Mississippi. Defendants presented a truncated version of the racially discriminatory treatment of African-Americans with particular emphasis on Noxubee County for this case, which deserves a brief review in this Memorandum.

Before the passage of the Voting Rights Act, there was no measurable number of black voters in Noxubee County. In 1968, the first federal registers appeared to register blacks at the Macon Post Office, a federal facility. It was not until 1971 that black candidates appeared on the local ballot, and then only one black won a Supervisor's race. No additional blacks would be elected until 1979, when the first black was elected to county-wide office. Reecy Dickson's milestone election as Superintendent of Education came 14 years after the passage of the Voting Rights Act, and was the first major crack in the wall of white dominance in county elective offices. With her election, of the seven county-wide offices, only one was held by an African-American, a mere 14%, in a county with a 70% black majority.

There was no evidence of any white political leaders in Noxubee County saying or doing anything to help the black majority gain any political positions during the 1970s and 1980s.

[7] Id.
[8] Id.

Incrementally, year by year, the number of black elected officials increased, until 1993 when, for the first time, blacks held a majority on the Board of Supervisors, the budgetary and management authority for the County. In the 1995 election, with all officers taking office in January, 1996, the black majority gained unquestioned control of the elected offices in Noxubee County. A review of the Board of Supervisors gives a clear view of the absence of any under-representation of whites:

Term	**No. of Whites**	**No. of White Percentage**
1968-1972	5	100%
1972-1976	4	80%
1976-1980	4	80%
1980-1984	4	80%
1984-1988	3	60%
1988-1992	3	60%
1992-1993	3	60%
1993-1996[9]	2	40%
1996-2000	1	20%
2000-2004	2	40%
2004-2008	1	20%

If one looks back to those elections after the Voting Rights Act of 1965 was passed, the representation of whites on the Board of Supervisors has been grossly disproportionately high in relationship to their presence in the population. Even if one just compares the period over the last 20 years, 1988 through 2008, in six of those years whites held 60% of the seats on the Board (30% higher than their presence in the population); in seven of those years the whites held two of the seats, a representation of 40% (ten percent higher than they represent of the entire population); and in an eight year period one seat, a representation of 20% (ten percent less than their representation within the population). On average, the whites held 40% of the seats on the Board over the last 20 years. White representation on the Board exceeded their presence within the entire population.

[9]Death in term of white incumbent.

Similarly, in county-wide offices whites have enjoyed an over-representation:

Term	No. of Whites	No. of White Percentage
1968-1972	7	100%
1972-1976	7	100%
1976-1980	7	100%
1980-1984	6	86%
1984-1988	6	86%
1988-1992	3	42%
1992-1996	2	28%
1996-2000	1	14%
2000-2004	1	14%
2004-2008	1	14%

The Government's expert, Dr. Theodore S. Arrington, concluded; "overall, the white preferred candidate was defeated 66% of the time" in the elections that he reviewed. Conversely, that means that the white preferred candidate was elected in 34% of the elections he reviewed, which lead to the unavoidable conclusion that white preferred candidates were elected in a higher ratio than whites represent of the Noxubee population. *(Gov. Ex-1, para. 62)*

On some issues, the Defendants agree with the United States, specifically:

1. Elections in Noxubee County are racially polarized and white voters are politically cohesive.
2. White preferred candidates are usually defeated, because blacks are a majority and it would be illogical for a minority preferred candidate to win at a higher percentage than the majority.
3. There is a long history of racial polarization that results in block voting by whites and blacks.

The Government appears to suggest that Ike Brown, and people with whom he associates, are the cause of this unfortunate situation. The view of the Defendants is that a sorrowful 100 year history of discrimination by whites, a shameful three decades, from 1965 to 1995, of resistence to majority rule by the blacks by the white political establishment, abandonment of the public school system by the entire white population in 1970, and an unwillingness by the white political leadership for 30 years to work in concert with blacks who were entering the political system, is the true cause of this racial polarization. The Government's position is a classic example of the victim being blamed for fighting back against those who are committing a crime against them.

Ultimately, the final act of isolation by the white population in Noxubee County, comparable to their abandonment of the public school system, was the abandonment of the Democratic Party when it became integrated, and a total exodus to the Republican Party.

While there is no statistical evidence, the preponderance of the evidence clearly shows that the white population is Republican and the black population is Democrat. No witness could offer any evidence of whites being interested in serving on the Democratic Executive Committee in Democratic Party political affairs, or supporting the national or state Democratic Party, since Charles Perkins was not elected chairman in 1992, the last white to hold the position. In testimony, white witnesses expressed no desire themselves, nor did they know of other whites who had the desire, to be on the Executive Committee or serve as a poll worker in the Democratic Party Primary that were denied that opportunity. Similarly, there was no evidence that any black sought to be involved in the Republican Party or to work as its poll workers. The only evidence of any interest in the Democratic Party by whites was that a number qualified to run for office as Democrats.

Mr. John Bankhead, a member of the Democratic Executive Committee from 1992-2000 and the Election Commission since 2000, testified that Republicans consistently receive 1,300-1,500 votes in the General Election, while less than 50 people vote in the Republican Primary. Evidence offered by the Government's witness shows that 95% of the blacks vote for the Democratic candidate. *(Tr 1940, l. 10-12)* This was of concern to Mr. Bankhead and he concluded that the 1,300-1,500 votes cast for Republican candidates in the General Election were for all practical purposes 100% white. The polarization of voting along racial lines has political lines as well; he stated "the Democratic vote" is tantamount to saying the black vote and "the Republican vote" is equivalent to saying the white vote in Noxubee County. *(Tr. 2704, l. 18-21)*

These divisions preceded Ike Brown.

C. IKE BROWN

Ike Brown was elected to the Noxubee County, Mississippi, Democratic Executive Committee, and selected its chairman, during the Party caucuses in 2000. The validity of these caucuses and his election was not disputed. *(Gov. Ex-3)*

Mr. Brown first came to Noxubee County in 1977 to help William Danzler run for office. He returned in 1979 to work for Reecy Dickson in her campaign for Superintendent of Education. *(Tr. 1186, l. 15-24)* From 1979 onward, Noxubee County has been his home and he has become a political fixture, as a representative to the Mississippi Democratic Executive Committee for many years *(Tr. 1188, l. 15)*, political campaign consultant *(Tr. 1190, l. 4-6)*, officer of Noxubee County Voter League *(Tr. 1191, l. 23-24)*, and vice-president of the NAACP *(Tr. 1189, l. 13-24, Tr. 1190, L.3, 14)*. Without dispute, he has been the most vocal, opinionated and controversial political figure in the County *(see Oliver, Tr. 2083-4)*.

II. FACTUAL ISSUES - PRE-ELECTION 2003

A. EICHELBERGER V. WALKER

When Mr. Brown became chairman there was pending in court an election contest arising from the 1999 election for Sheriff of Noxubee County. *(Gov. Ex-122)*

Scott Boyd, editor of the local paper, recalled the election for sheriff in 1999, where Mr. Ernest Eichelberger ran against incumbent Albert Walker. At the initial count it appeared that Mr. Eichelberger had won. Sheriff Walker requested a recount. Ike Brown appeared to be there representing the sheriff and upon completing the recount the sheriff won by approximately five votes. *(Tr. 138, line 1-25, page 139, line 1)*

Mr. Ernest Eichelberger contested the election and a chancellor conducted a hearing in Macon and subsequently ruled that "the true will of the voters couldn't be determined and a new election should be held." *(Tr. 141, line 1-4)*

Judge Patricia D. Wise entered an order on September 13, 2000, invalidating 52 votes and ordering a new Democratic Primary between Mr. Walker and Mr. Eichelberger, both African-American. *(Gov. Ex-137, p.30)*

The Macon Beacon reported the situation as follows on July 19, 2001:

> The ruling was vague and offered no specifics about a special Democratic Primary. The Noxubee County Board of Supervisors have failed in their attempts to get a clarification on the ruling.
>
> "It's not up to the Board of Supervisors," said Brown. "It's up to me as Chairman of the Democratic Executive Committee."
>
> Brown said someone will have to file a lawsuit and win a favorable ruling to force a new Democratic Primary.

> Eichelberger now works for the Mississippi Highway Safety Patrol and is still recuperating from a serious automobile accident last year that left him with leg and ankle injuries. "I'm doing a lot better now," said Eichelberger, who returned to work at the Starkville office of the MHP several months ago.
>
> Eichelberger said he and his attorneys are studying their options.

(*Gov. Ex-123)*

Mr. Eichelberger and his attorney never took any action. Mr. Boyd testified that Mr. Eichelberger, who had a new job with the Mississippi Highway Patrol and was recovering from a serious accident, told him it would not be " worth the effort." *(Tr. 761, l. 16*) Notwithstanding that by statute Eichelberger was required to petition the Court to set a date for an election, the docket of the Court showed that no action was taken after the order of Chancellor Wise was filed on September 15, 2000. *(Brown Ex. 6)*

The Government made the overreaching argument, without citing any authority, that Mr. Brown should have taken on Mr. Eichelberger's cause, including hiring an attorney, petitioning the Court, and obtaining pre-clearance for a special election. In effect, to do for Mr. Eichelberger what he would not do for himself, and what the County Board of Supervisors had been unsuccessful in obtaining a clarification regarding. Circuit Clerk Carl Mickens, who has had considerable experience with election contests, said unambiguously that the judge had to set election dates. *(Tr. 2240, l. 2-23)*

B. <u>2000-2002 PERIOD</u>

There were no issues about Mr. Brown's operations of the Party, or discrimination against whites, during the three years of 2000, 2001, and 2002, except for an incident in the general election of 2002 that did not involve race.

Sue Sautermeister was a poll watcher for Congressman Chip Pickering at Noxubee Title One Box. *(Tr. 1963, l. 18-25)* His opponent was a white Democrat, Ronnie Shows. According to her, Mr. Brown came in while she was trying to challenge absentee ballots and informed the poll workers to count the absentee ballots as long as there was a signature across the flap and to "ignore every thing else." *(Tr. 1967, l. 6-8)* Ms. Sautermeister admitted that Election Commissioner Essie Brooks came in shortly thereafter, a person with authority, and she told the poll workers to "do it as you were trained."

Ms. Sautermeister, who had severed as an Election Commissioner for several decades *(Tr. 1964, l. 10-24)*, took the position that each representative of each candidate had a right "to look at them and examine them (absentee ballots and applications)." *(Tr. 1985, l. 2-11, Tr. 1986, l. 1-3)* Yet, she could not identify legal authority for that purported right. *(Tr. 1987, l. 2-25, Tr. 1988, l. 5-11)*

Her view about discarding absentee ballots was in variance with the law, which provides for discarding ballots only if there is a "clear departure from the statute" and not for mere "technicalities." *Shanon v. Hensey*, 499 So.2d 758 (Miss. 1986). She testified:

> Q. Are there any defects in the absentee ballot, as a trainer and a trained person, you believe are excusable?
> A. No.
> Q. In your view, they should have to be perfect or discarded.
> A. That's what we train.

(Tr. 2004, l. 2-6)

Not surprisingly, she found the process in Noxubee County undesirable. She approached the process with the view that she had unlimited rights to inspect and challenge, and that the law was

that absentee ballots had to be perfect or discarded. Clearly, those were not the practices in Noxubee County, nor the law of Mississippi.

C. 2003 PRE-ELECTION ISSUES

1. Candidate Loyalty

On January 2, 2003, with the massive state-wide elections coming up, Ike Brown wrote an open letter to Democratic voters:

> *An open letter to Democratic voters from Ike Brown, the chairman of the Noxubee County Democratic Executive Committee:*
>
> *As a result of the recent switch of Amy Tuck to the Republican Party after years of masquerading as a Democrat, and also due to a recent Supreme Court ruling, we will root out disloyal Democratic elected officials and voters. To paraphrase a cousin of mine, you won't be able to run with the hares and back with the hounds. The following actions are going to be taken this year:*
>
> *1 - Republican-supporting officials will not be certified to run as Democrats. This includes two members of the Board of Supervisors and one county-wide official. They may wish to run as a Republican or Independent but will not be allowed as Democrats.*
>
> *2 - Those voters who are Republican will be challenged if they attempt to vote in the Democratic primary. (We have fount out who they are).*
>
> *A Democratic program for action will be presented to the Board of Supervisors for their action. This will include paved roads for all citizens, recreational opportunities for all youths, senior citizen programs for all senior citizens, assistance in paying your utility bills, jobs for all Noxubee Countians, lower garbage bills, plus better housing for all citizens.*
>
> *If you support these goals, please call me at home - 726-4028, cellular 361-0207.*

In closing, may God bless you all.

Ike Brown
Macon

4A-

(D-12)

A week later, *The Macon Beacon* carried a story headlined "Dem Chairman Says Some Candidates Won't Qualify," where Mr. Brown is quoted at a meeting of the Board of Supervisors saying that his committee would not certify candidates who had not been faithful Democrats. The paper said among the unfaithful were two members of the Board of Supervisors and one County-wide official.

"We encourage any candidate who thinks they might be in trouble to qualify as an Independent or a Republican and take their chances in the General Election," *The Beacon* quoted Brown. *(Gov. Ex-125)*

Sometime in January or maybe February, Samuel "Little Tiny" Heard, who had qualified for Sheriff, ran into Ike Brown. Mr. Heard testified that in the open foyer he said, "You know I'm not going to let you run as a Democrat because you know what you are." *(Tr. 954, l. 6-12)* Mr. Heard's father, "Big Tiny," had been one of the founders of the Republican Party in Noxubee County and his brother had run for congress as a Republican. *(Tr. 1027-1028)*

On February 17, 2003, the Noxubee County Democratic Executive Committee (NCDEC) met and passed a motion as to the "steps to take" for the candidate interview committee: (1) residence of candidate, (2) felony conviction, (3) "If they held office as a Republile" (Republican).

The minutes state: "we have three questions to ask (2) of the three are important (1) not so importance." *(Gov. Ex-8)*

While unskillfully written, the minutes clearly suggest that the Committee, though asking about party affiliation, did not give it high priority.

The final evidence that the Party issue would not be pressed was the decision to certify all candidates for the Democratic Primary. Other than criticism of William Oliver and Larry Tate, black Democratic Supervisors and Eddie Coleman, a white Supervisor, Mr. Brown took no action against wayward Democrats. *(Tr. 247, l. 9-25)*

2. *Ricky Walker v. Winston Thompson*

There would be one challenge that had nothing to do with party loyalty.

Roderick Walker had been County Prosecuting Attorney for Noxubee County since 1983, and was seeking re-election in 2003. *(Tr. 56, l. 2-25)* He had never had any opposition in the past, but he was told by someone in the courthouse that Winston James Thompson, III, had qualified for the office. *(Tr. 57-58, Gov. Ex-142)*

Mr. Walker and Mr. Brown have never been supporters of each other. *(Tate Tr. 24, l. 4-6)* Mr. Walker does not recall supporting a black candidate against a white candidate by putting up posters, giving money, attending rallies, displaying a yard sign or anything else that would be considered publicly supporting a black candidate against a white candidate. *(Tr. 93, line 5-11)* Although he had lived in Noxubee County all of his life, he never spoke up against discrimination against blacks during the 1970s and '80s. *(Tr. 93, line 20-25 to page 94, line 1-5)* At no time did he ever speak about the fact that there were no blacks elected in countywide office, nor did he do anything to help any blacks get elected to office, nor did he say anything to white colleagues about discrimination in Noxubee County and that it needed to end. *(Tr. 94)*

From Mr. Brown's perspective, there was no reason to support a person who was complicit in the discrimination against blacks in the county.

While Mr. Walker was convinced that Mr. Brown recruited Mr. Thompson to run against him, the evidence showed that Mr. Brown's only act was to ask Robert Crespino if he had an empty apartment, which Mr. Thompson later rented. *(Tr. 2016, l. 15-18, Tr. 2018, l. 4-16)*

Mr. Walker complained that Mr. Brown refused to give him the list of the members of the NCDEC *(Tr. 71, l. 6)*, and a copy of the bylaws of the Democratic Party. *(Tr. 72, l. 6-9)* Ultimately, he had to obtain it from the State Democratic Party office. *(Tr. 73, l. 1-11)* Mr. Brown saw the situation differently. Because Mr. Walker had never shown any support for the party, he felt no obligation to provide him assistance, and certainly was not going to give him the names of Committee Members since it was improper, in Mr. Brown's view, to tamper with the Committee before the hearing. *(Tr. 1465, l. 19-25)* Also, Mr. Brown said he had previously left Mr. Walker a copy of the Party Constitution as he did with all other elected officials, and Mr. Walker had not been interested "until something come up affecting him, and I had already given them out." *(Tr. 1467, l. 2-10)*

Mr. Walker wanted the list so he could talk with members prior to the hearing. He admitted that in order to challenge the qualifications of a candidate he was required to file a petition and that the law did not require him to "talk to the chairman" or "go try to get it fixed on the side" or "get a copy to the executive committee" or "go do *ex parte* communications with the members of the committee." *(Tr. 100, line 17-25 to page 101, line 1-7)* Mr. Walker admitted that the petition stated as grounds for the challenge: "That due to certain irregularities, Winston James Thompson III is not qualified to run for county attorney in Noxubee County, Mississippi. I am submitting this formal

protest to Winston James Thompson III being qualified by the Democratic Executive Committee for the office of county attorney." He conceded that he did not mention and claim that Mr. Thompson was not a resident of Noxubee County, or specify any other disqualifying facts. *(Tr. 102, line 3-18)*

On March 14, 2003, Mr. Brown delivered a note to Mr. Walker advising him of a hearing on his petition for March 17, 2003, at 6:00 p.m. *(Tr. 25, l. 10-11)*

There was testimony critical of holding the hearing at Mr. Brown's home *(Tr. 76, l. 19-25)* and his decision to bar three members (one black, two white) of NCDEC from participation because they had missed too many meetings. *(Tr. 80, l. 20-21; Tr. 81, l. 1-11; Tr. 81, l. 22-25)* However, the substance of what happened is not in dispute.

Mr. Walker filed a petition that read as follows:

> THE PARTIES
>
> 1. That the Contestor is Roderick D. Walker. An adult resident citizen of Noxubee County, Mississippi, whose address is 805 El Drive, Macon, Mississippi 39341.
>
> 2. That the Contestee is Winston James Thompson, III. An adult resident of __________ County, Mississippi, whose address is ________________________.
>
> JURISDICTION
>
> 3. That this Committee has jurisdiction under *Section 23-15-961* of the *Mississippi Code Annotated of 1972 as Amended*.
>
> FACTS
>
> 4. That Winston James Thompson, III, improperly filed to run for County Attorney as Democratic candidate in Noxubee County, Mississippi.
>
> 5. That due to certain irregularities, Winston James Thompson, III's, is not qualified to run for County Attorney in

> Noxubee County, Mississippi. I am submitting this formal protest to Winston James Thompson, III being qualified by the Democratic Executive Committee for the office of County Attorney.
>
> WHEREFORE, PREMISES CONSIDERED, Contestor, Roderick D. Walker, prays that his ...

It was wholly inadequate as a matter of law. The statute required that a petition "specifically set forth the grounds." Sec. 23-15-96.

Mr. Walker attempted to justify the improper pleadings by saying he "verbally" told Mr. Brown his grounds against Mr. Thompson. *(Tr. 102, l. 21-25, Tr. 103, l. 9-11)*

At the hearing, Mr. Walker had a presentation he sought to make to the Committee and he had a handout to state basically why he thought Mr. Thompson was not qualified. *(Tr. 79, line 21-24)* Walker said that Mr. Brown stated that "we weren't having a meeting. He said that my petition was inadequate and that we were not going to -- not going to hear it <u>at that point in time</u>." *(Tr. 80, line 14-18)*

Mr. Walker admitted that the charges of "certain irregularities" in the petition was not sufficient. *(Tr. 103, line 9-11)* After Mr. Walker was not allowed to make a presentation and the inadequate petition, he went back to his office, called in his wife and amended his petition to provide more details. He took it to the house of Mr. Brown. *(Tr. 86, line 14-23)* Mr. Brown received the petition that same night at 7:03 p.m., about an hour after Mr. Walker left. A couple of Committee members were still present and Mr. Walker asked one to go with him to be a witness to the delivery. *(Tr. 87, line 1-7)*

On March 20, 2003, a mere three days later, without giving the NCDEC time to act, Mr. Walker filed his petition in Circuit Court. His petition confirmed that the NCDEC did not deny his petition on the merits:

> 5. At a meeting at the Chairman of the Noxubee County Democratic Executive Committee's home on March 17, 2003, the Committee refused to rule on the petition filed by Roderick D. Walker, stating said petition was not definite enough in its allegations. Plaintiff/Petitioner filed an Amended Petition at 7:00 o'clock p.m. on the same night of March 17, 2003, with the Chairman of the Committee, but has not heard from him since that time.

(D-20, Tr. 2)

With his more specific pleading in Circuit Court and additional evidence, Mr. Walker was successful in his challenge. Mr. Thompson was disqualified and Mr. Walker re-elected unopposed. *(Gov. Ex-138)*

3. Challenge to Republican Voters

On June 12, 2003, *The Beacon* received a press release with 174 names of voters Mr. Brown was quoted as saying:

> "They have either removed themselves from their precinct or are in violation of Section 23-15-575."
>
> That Code Section says voters who participate in primary elections must support the party nominees in the general election.

(Gov. Ex-128)

Two of the people listed were the current and past Chairwomen of the Noxubee County Republican Party. *(Tr. 1338, l. 16 to Tr. 1339, l. 19)* Some had voted in Republican Primaries or made reported contribution to Republican candidates. Others were among the over 2,000 people Mr. Brown was of the opinion should not be on the rolls because they had moved. *(Tr. 1337, l. 1-14)*

Indeed, the Government supports Mr. Brown on the position that the rolls needed purging to eliminate ineligible voters.

Mr. Brown believed he was advancing a position supported by the state party:

> Prior to all this coming up about the names, I had a conversation with Chairman Cole because I didn't know what 23-15-575 said. He said, "Well you really need a test case. We need a test case." I said, "OK." So we go out and publish the names, and its kind of like the infantry out there waiting on the calvary. And Mr. Cole never showed up.

Ricky Cole, Mississippi Democratic Party Chairman, testified that Ike Brown "has been among the most vigorous Democratic activists talking about" the issue of party loyalty. *(Tr. 1923, l. 5-13)*

The Beacon editor, Mr. Scott Boyd, knew all the people on the list to be white. However, Mr. Brown made no reference to race in his press release. *(Tr. 151)* What happened next was a surprise even to Brown:

> Q. So after -- what happened after you wrote your letter and the list was published? Did national statewide stories break out?
>
> A. Yes. It was a firestorm, the statewide story contact from the Justice Department, contact from the attorney general's office, you know. I contacted Cole and said, "You know, all this is coming down. What we going to do?" He said he's done checked with the attorney general, and which wasn't my understanding of what we were supposed to do at first. After he didn't do anything, then I talked to the Justice Department, you know, that -- I said, "Has this statute been precleared?" And he told me it had. I said, "Well, then, why can't I enforce it?" He said, "Well, it's a state matter," and this, that, and the other. And then when I got the letter from Ms. --
>
> A. Well, I feel like that, you know, he (Cole) had double-crossed me,

(Tr. 1518, l. 5-25)

Mr. Cole requested an opinion from the Attorney General on the enforcement of the loyalty requirement of Section 23-15-575, which resulted in a July 21, 2003, opinion which stated, in pertinent part, the following:

> With the above in mind and in response to your first question, we find nothing that would allow a poll worker, poll watcher or another voter to ask a voter if he or she intends to support the nominees of the party once the voter presents himself or herself to vote. Challenges may be made pursuant to Section 23-15-579 only for the reasons listed in Section 23-15-571 and for the reason that the voter does not intend to support the nominees of the party per Section 23-15-575.
>
> If a challenge of a voter is properly initiated in strict accordance with Section 23-15-579 and the voter then openly declares that he or she does not intend to support the nominees of the party, the poll workers could find the challenge to be well taken and mark the ballot "challenged" or "rejected" consistent with the provisions of said statute. On the other hand, if the voter openly declares his or her intent to support the nominees, then a challenge is not proper under Section 23-15-575.
>
> In response to your third question, we have previously opined that absent an obvious factual situation such as an independent candidate attempting to vote in a party's primary, the stated intent of the voter is controlling. MS AG Op. Hemphill, (January 16, 2003). No past action by a voter can form the basis of a valid challenge under Section 23-15-571(3)(g) and Section 23-15-575.
>
> The U.S. Department of Justice has informed us that challenging a person's right to vote based on his or her alleged lack of support of party nominees pursuant to Section 23-15-575 would be viewed as a change in practice that requires pre-clearance pursuant to Section 5 of the Voting Rights Act. We urge you to contact the U.S. Department of Justice prior to making such challenges.

Mr. Brown testifies that he decided to abandon challenges to voters, and the record indicates that no voters were challenged on Primary Day. *(Tr. 1530, l. 15-25)* However, as late as August 5, 2003, there were articles about Republicans voting in the Democratic Primary. *(See Gov. Ex-129)*

Circuit Clerk Carl Mickens said that he received only three or four calls about the list that appeared in *The Beacon* of voters who might be challenged. *(Tr. 2236, l. 1-4)*

The Government only produced two witnesses who said they were affected in any way by being on the potential challenged voters list. Sherry Ann Eaves, the daughter of a former Justice Court Judge opposed by Brown in her unsuccessful 1999 re-election, said that she remembered being "very angry" that her name was on the list. *(Tr. 898, l. 14-23)* She had a grievance against Ike Brown going back to the 1999 ad Mr. Brown had written critical of her mother, which she considered "dirty politics." *(Tr. 910, l. 1-14)* While she did not get challenged at the poll, she said she felt "watchful" and took her husband with her. *(Tr. 901, l. 13-21)*

Kari Lynn Hardy said that her husband told her she was on the potential challenge list and she did not go vote. *(Tr. 913, l. 3-25)* However, she could not clearly identify any time she had voted; she vaguely recalls that she voted before 2003 and after the 2003 Primary. *(Tr. 914, l. 15-20; Tr. 916, l. 3-7)* Most important, the Government produced no evidence that there was any reduction in the number of whites who voted in the Democratic Primary.

4. Poll Manager Racial Composition

Noxubee County has 28 precinct boxes located at 13 poll sites. *(Tr. 2700, l. 3-5)* On Primary Day, 2003, there were 112 Democratic poll workers *(Tr. 1723, l. 1-11)* and 56 Republican *(Tr. 2703, l. 1822)*. Eight of the Democrats were white (7%) and none of the Republicans were

black. Overall, the combined poll worker work force was 38% white, representing a higher percentage than the 29% whites constitute of the entire population.

Critically, there was no evidence advanced that any white person was turned down as a Democratic poll worker. To the contrary, it appears that the Democrats were short of workers. Velma Jenkins was an alternate poll worker in Shuqualak and had to be called in on the morning of the Primary. Annie Earl Johnson worked at the poll for the first time in 2003. *(Tr. 2332, l. 8-11)* She heard there were openings and simply "went down there on my own to see did they really need anybody." *(Tr. 2339, l. 5-11)* This was the first Primary where the Democrats had to truly compete with the Republicans for poll workers, since there had been no Republican Primary contests for over a decade.

Whether you worked at the Republican or Democratic tables, workers were paid the same, and with less than 50 votes cast in the Republican Primary, the exclusively white Republican poll workers had an easier job with shorter hours for the same pay.

5. Absentee Ballots Solicitation

The United States incorrectly suggested that the Court should draw an inference of voter fraud against Mr. Brown because of the large percentage of absentee ballots in Noxubee County. In the 2003 election, the only major state election conducted by Mr. Brown, 1,226 absentee ballots were cast. Candidate Heard contested the election, asking the court to review over 400 absentee ballots, and the Court concluded that only 33 ballots should not have been counted, a mere 2.7% of the total. Both Carl Mickens, the experienced Circuit Clerk, and John Bankhead, who had served as past NCDEC chairman for seven years in the 1990s and Election Commissioner for seven years

subsequently, testified that this was an unusually low defective ballot rate. *(Tr. 2243, l. 18-19)* The poll workers themselves had disqualified 15 of these ballots. *(Tr. 2707, l. 12-20)*

Nan Ainsworth, an employee of the Secretary of State, testified that RMB Enterprises, a business controlled by Ike Brown, paid the $25 fee for at least 95 notary applications over a seven year period running from 1999 to 2006, and if all of those people completed the entire process, including bond and seal, the total cost would be around $5,400. *(Tr. 1701, l. 4-8; 1705, l. 2-25; 706, l. 6-7, 20-22)* That would constitute a cost of a mere $771 a year.

Fifty-one, over one-half, of those applications paid for by RBM were purchased during 2002 *(Tr. 1699, l. 12-14)*, which was the year of the congressional race between two incumbents, Chip Pickering and Ronnie Shows, incumbent congressmen pitted against each other as a result of redistricting.

The mere fact that RBM paid the application fee and had the Commission sent to Macon, Mississippi, does not necessarily mean that the person lived and notarized in Noxubee County, *(Tr. 1702, l. 15-25; Tr. 1704, l. 12-25)* State Party Chairman Ricky Cole recalled Mr. Brown attempting to get the Party to pay notary fees in 2002 for the Pickering/Shows race. *(Tr. 1900, l. 13-20, Tr. 1901, l. 15-24)*

Gwendolyn Spann testified that Carl Mickens paid for and ordered her notary kit. *(Tr. 1644, 1645)* She considered herself working for Mr. Mickens *(Tr. 1645, l. 13-15)*, Ike Brown *(Tr. 1642, l. 18-20)*, Larry Tate and Kevin Jones. *(Tr. 1655, l. 18-20)* She testified that she received only about $125 from Mr. Brown. *(Tr. 1654, l. 22-24)* She was never asked how much others paid her.

Although she worked a month on absentee ballots, she only recalled helping a few mark ballots and never used unlawful tactics:

Q. How many people did you think -- do you think you gave assistance to?
A. Anywhere -- about three.
Q. Okay. And most of the time when people needed assistance, who gave them assistance?
A. A relative.
Q. A relative in the house.
A. Yes.
Q. Did Mr. Brown ever give you any instructions to do anything that you thought was wrong?
A. No.
Q. Did he ever give you any instructions to kind of push yourself on the people and cast their ballots for them?
A. No.
Q. Did he ever give you a list of people, he said, "Make sure they vote for these people"?
A. No.

(Tr. 1656, l. 5-21)

Every person who testified in the trial who had run for public office admitted that they had people soliciting absentee ballots on their behalf and had reimbursed them for "travel and expenses," except for John Bankhead, who is currently an elected member of the NCEC and its chairman, and Ricky Walker, who had no opposition. Mr. Bankhead was highly critical of this absentee ballot process and said that the only thing that would reduce the problem would be for "a law where people could not pay anybody to go out and solicit absentee ballots for them. That would solve the problem." *(Tr. 2700, l. 9-14)*

He had served seven years on the NCDEC and seven years on the NCEC, and in those 14 years, he had observed many elections. *(Tr. 2639, l. 16-17)* From his observations, it was the candidates who were paying people to go out soliciting absentee ballots. The Democratic party had no money to hire people, he said. *(Tr. 2700, l. 20-24; Tr. 2701, l. 1-9)* He said that the candidates

get around the law that prohibits paying people to solicit ballots by calling the payments reimbursements for "gas money and food money." *(Tr. 2102, l. 19-22)*

This process created enormous tension in the community, according to Mr. Bankhead, since one person might drop off an application and someone else come over and notarize the signing of the ballot. "And that's the reason that there's tension among the citizens of Noxubee County and not – not just to serve the citizen but the people who's trying to solicit voters." *(Tr. 2655, l. 18-20)* White as well as black candidates have people going around soliciting absentee ballots for them. *(Tr. 2643, l. 16-20)*

Carl Mickens testified that he believed that Sheriff Walker, his opponent Tiny Heard, Chancery Clerk Mary Shelton, Supervisor Eddie Coleman, and himself were the people who obtained the largest number of absentee ballots during the 2003 election. *(Tr. 2248, l. 25, Tr. 2249, l. 3-8)*

Government witness Johnny Kemp, a white candidate for Supervisor in the 2003 race, acknowledged that he had hired and paid a Rebecca Wells, a Peter Wells, and a Barbara Cotton "gas and food money" for helping in his campaign. All of this was paid in cash and not included in the campaign financial reports. *(Tr. 865-867)*

Government witness Samuel Heard, Jr., 2003 white candidate for Sheriff, testified that he employed a Peggy Brown and that he gave her money for "gas and stuff like that" that totaled about $200 or $250. *(Tr. 1042, l. 14-16)* Again, she was only paid in cash or allowed to charge things to Mr. Heard's account. None of this expense was reported on state financial reports.

Peggy Brown testified that she worked for Samuel "Little Tiny" Heard, Jr., Dorothy Stewart, George Robinson, and Ernest Harmon coming up to the August 5, 2003, Primary. *(Tr. 1855, l. 4-22)*

Ms. Peggy Brown, no relation to Ike Brown, said that she knew that Donna Grisham and Debbie Rice were also working for Mr. Heard. *(Tr. 1867, l. 10-16)* Ms. Brown could not state how many absentee ballots she had gotten for Mr. Heard, but stated that he did not pay her over $200. *(Tr. 1868, l. 12)* By state law, any payment over $200 would have to be reported to the Secretary of State on financial disclosure forms, and quite conveniently, Mr. Kemp and Mr. Heard claimed never to have gone over that amount.

William Oliver, President of the Board of Supervisors, was seeking re-election in 2003 and he testified that:

> Q. And in 2003 there were a lot of people out there getting absentee ballots?
> A. It was -- to my knowledge, it was a lot of folks out there getting absentee ballots.
> Q. Virtually every candidate had them.
> A. That's right.
> Q. And some people were trying to help you.
> A. That's right.
> Q. And some people were trying to help Mr. Jones.
> A. That's right.
> Q. And if someone was helping Mr. Jones and helping you, you didn't mind, did you?
> A. No, sir.
> Q. And if they were helping you and helping Mr. Jones' opponent, you didn't mind that either.

(Tr. 2077, l. 11-25)

Candidate Bruce Brooks hired Carrie Kate Windham to help him during the run-off for Supervisor between he and Johnny Kemp. *(Tr. 2132, l. 4-11)* He also had a Reverend Shields driving and assisting Ms. Windham. *(Tr. 2135, l. 1-6)* Additionally, he had a Juanita Harris assisting with absentee ballots. *(Tr. 2136, l. 23-25)*

Scant evidence was produced of anything being wrong with these 1,226 absentee ballots.

Carolyn Pugh, an Election Commissioner from 1980 until 2000 *(Tr. 1554, l. 19-21)*, an active Republican *(Tr. 1570, l. 2-6)*, said that Lucille Bland and her daughter, Geraldine Gilkey, improperly voted absentee during the August 5, 2003, Democratic Primary. *(Tr. 1561, l. 19-21)* She testified that she knew that both lived on Mason Drive, Columbus, Mississippi, because she had talked with them on the telephone at that location. *(Tr. 1559, l. 23-24, 1560, l. 1-3, 13-16)*

Since Mrs. Pugh had only talked with Mrs. Bland via the telephone *(Tr. 1567, l. 19-23)*, she did not know whether she was registered to vote in Lowndes County, Mississippi, where Columbus is located. *(Tr. 1565, l. 8-10)* Mrs. Bland still owned property in Noxubee County and goes to church there. *(Tr. 1569, l. 4)* Mrs. Pugh never asked Mrs. Bland if she considered Brooksville (Noxubee County) to still be her home. *(Tr. 1568, l. 25, Tr. 1569, l. 2)* Mrs. Pugh's information was inadequate and she did not make sufficient inquiry of either lady to determine whether or not they were eligible to vote in Noxubee County. To be away from your home because of illness, or otherwise, does not necessarily terminate one's eligibility to vote.

Susie Marie Wood testified that Carrie Kate Windham, her neighbor and friend, helped her cast absentee ballots each election. *(Tr. 1798, l. 14-19)* She was eligible to vote absentee and Mrs. Windham did as she instructed her when marking the ballots. When Mrs. Wood was not certain about a candidate, she acknowledged that she would "have Carrie Kate Windham to pick out the best one for me." *(Tr. 1788, l. 3-4)* Mrs. Windham assisted others in the household of Mrs. Woods, including her daughter *(Tr. 1788, l. 20-25)*, a Mr. Shelton *(Tr. 1790, l. 2-6)*, Otis Shanklin *(Tr. 1796, l. 1-9)*. Mrs. Wood testified that Mrs. Windham was "like family" and trusted. *(Tr. 1796, l. 10-24)* Mrs. Windham's assistance appeared to be absolutely appropriate:

> Q. Now, when it would arrive, how would she know that it would

arrive? Would you let her know?
A. Yes, sir.
Q. And you would let her know because you depended on her to assist you, didn't you?
A. Right.
Q. And when she would assist you, would she mark the people you would tell her to mark?
A. She would -- yes, sir, she would.
Q. All right. And if there was some offices you didn't know about, you would tell her to just pick out the best person for you.
A. Right.

(Tr. 1799, l. 10-22)

Q. Well, why did you have her do it?
A. Because I thought she knows folks more better than I did.
Q. Okay. Now -- and so you wanted her help.
A. Right.
Q. Did she ever force herself on you if you --
A. No, sir.
Q. Now, when you marked the ballot, did she put it in the envelope?
A. Yes, sir.
Q. And did you sign that envelope?
A. Yes, sir.
Q. And so when it left you, it was a sealed envelope. Isn't that true?
A. I don't know if it was sealed or not.

(Tr. 1800, l. 4-17)

Nikki Halbert testified that Mrs. Windham recruited her to cast an absentee ballot in the 2003 Democratic Primary *(Tr. 1152, l. 17-25)*, along with her mother. *(Tr. 1153, l. 8)*

Mrs. Halbert said that the ballot came in the mail, but she did not sign the absentee ballot envelope *(Tr. 1154, l. 4-5, 14-17)*, nor did she sign the application for absentee ballot which had not her name, but that of her mother, listed as the voter. *(Tr. 1155, l. 5-7, 16-20)* Mrs. Halbert says that

she marked the ballot herself and gave the unsigned envelope and ballot to Mrs. Windham. *(Tr. 1161, l. 4-6)*

Mrs. Halbert's version of the events were contradicted by Catherine L. Johnson, who was with Mrs. Windham when the absentee ballot was executed:

> A. We went in and she spoke to me. She recognized that she went to school with my son André. And she asked me about him and where was he stationed. And I said André is in the military now and he's out of the country right now. And she said, "Well, I haven't seen him, you know, since we've been out of school. When you talk to André, tell him I asked about him." And I said, "Okay. But who do I need to tell?" And she said, "Nikki. I went to school with him." I said, "Okay."
>
> * * *
>
> Q. And the reason -- so you remember her well because that was the first time you met her?
> A. Yes.
>
> * * *
>
> A. Then Nikki signed where she signed at. And Nikki signed her name on her absentee ballot. And she had already did her voting. I believe she had already voted her ballot. I'm not for sure. But she put it in the envelope and she sealed it and Carrie Kate notarized it.
> Q. Okay. And Mrs. Nikki Nicole Halbert, she signed both the application --
> A. Right.
> Q. -- and the ballot.
> A. Yes.

(Tr. 2533, l. 7-23; Tr. 2534, l. 6-16)

Through Mrs. Johnson, Mrs. Halbert's signature on her marriage license was introduced as Exhibit D-21, and the comparison of that with the signature on the absentee ballot envelope and the

application showed that they were the same, except Mrs. Halbert used a small "n" in one and a capital "N" in the other. All other letters are identical. *(Compare D-21 with Gov. Ex-68)*

Mable Jamison testified that in the 2003 elections she worked as a notary for various candidates and would pick up absentee ballots from voters. She said that Ike Brown called her and asked her not to pick up any more absentee ballots that his people had done the legwork on. *(Tr. 918, l. 19-25, Tr. 919, l. 1-3)*

Ms. Jamison admitted that Mr. Brown did not tell her not to help voters or not to participate in the absentee voting process as a volunteer, but rather his issue with her was that she was picking up ballots that other notaries were already working on:

> A. All I remember him telling
> me that I was getting ballots that I didn't do the initial leg
> work on.
> Q. Okay.
> A. And he didn't think that was right.
>
> * * *
>
> Q. He didn't say anything about black or white, did he?
> A. I can't remember him saying that.

(Tr. 927, l. 1-13)

There was nothing inappropriate about Mr. Brown contacting Ms. Jamison about her conduct as a notary if she was either helping voters fill out absentee applications and not going back to pick up their completed ballots or if she was going around picking up the completed ballots of voters that other notaries had initially helped and made plans to return and pick up the ballots. Like Mr. Bankhead stated, *supra*, this tended to create frustration, conflict, duplication of effort, and wasting time of the notaries who were already planning on working with the voters for which they had done

the legwork. Moreover, there was nothing about Mr. Brown's communications with Ms. Jamison and her absentee ballot work that is remotely related to any issue of race, improper absentee ballot solicitation, or any issue covered by the Voting Rights Act.

6. Absentee Ballot Fraud

Perhaps the most incredulous testimony presented by the Government concerning absentee ballot fraud involving Ike Brown came from Dorothy Ann Taylor. She testified that in 1999 she was a poll watcher at the Circuit Clerk's office and she saw absentee ballots being given out to George Robinson and Ike Brown by the handfuls and she would then see them bringing the absentee ballots back and put on the deputy circuit clerk's desk. *(Tr. 1769, l. 18-20, Tr. 1771, l. 18-25, Tr. 1772, l. 1-14)*

However, under further questioning Ms. Taylor stated that the "absentee ballots" she was referring to was being stored in a box in a closet and she could not recall any different colors of the ballots, the envelopes, or writing on the ballots. *(Tr. 1776, l. 10-23)* Ms. Taylor clearly testified that the ballots were the size of "long legal sheets of paper" and there were paper ballots. *(Tr. 1778, l. 2-7)*

Ms. Taylor testified she reported this "illegal activity" to Mary Allsup and Carolyn Pugh, two former Election Commissioners. However, they apparently gave no credence because they took no action. They didn't report it to the Noxubee County Election Commission, the Circuit Clerk, the NCDEC, or even law enforcement.

Deputy Circuit Clerk Freda Phillips testified that she remembered Dorothy Taylor being a poll watcher in the clerk's office in 1999, but in that year all of the ballots cast in the primary and general election were punch-card ballots and not paper ballots. She also said that the ballots in 1999

were the size of an envelope, not a long legal sheet. Not only did Ms. Phillips directly state that neither Ike Brown or George Robinson walked in and out the clerk's office with handfuls of ballots, but that ballots were always kept in the back vault in an area that could not even be seen from inside of the office work area. *(Tr. 1830, l. 1-20, Tr. 1831, l. 1-25)*

Carl Mickens, the Noxubee County Circuit Clerk, testified that in 1999 they were indeed using punch cards, there were no paper ballots, and reiterated that neither Ike Brown nor anyone else walked out of his office with absentee ballots. *(Tr. 2236, l. 21-25, Tr. 2237, l. 1-5)* It is unclear exactly what Ms. Taylor saw being stored in a box in the file cabinet, but it obviously wasn't absentee ballots that Ike Brown and George Robinson were taking by the handfuls out of the Circuit Clerk's office. Perhaps the most telling answer came from Ms. Taylor when she was asked "it's your testimony that they were sitting there doing this illegal activity and they made no attempt at all to hide it from you?," to which she replied, "No, sir". *(Tr. 1781, l. 1-4)*

III. FACTUAL ISSUE - ELECTION DAY 2003

A. YELLOW STICKIES

It is not controverted that during the August 2003 run-off primary between Johnny Kemp and Bruce Brooks, yellow stickies were placed on some absentee ballots. Johnny Kemp testified that he saw the stickies on four ballots *(Tr. 776, l. 1-3)*, and the managers at the polls rejected the ballots for the reasons stated on the stickies. *(Tr. 774, l. 11-18)* The ballots were those of white voters according to Mr. Kemp. *(Tr. 775, l. 3-4)*

Mr. Brown testified that he put the stickies on the absentee ballots to let the workers know that there were obvious violations. *(Tr. 1762, l. 12-14)* The stickies only stated what he observed. *(Tr.1763, l. 4-5)* The decision to accept or reject the ballots was solely up to the managers,

according to Mr. Brown. *(Tr. 1262, l. 12-17)* He put it this way:

> A. It is my testimony that I pointed out to me what looked like obvious discrepancies and they make the decision. And it is also my testimony that I went to the polls that day in Brooksville that evening and reiterated to the managers, "It is your decision. This is just something I have noticed."

(Tr. 1268, l. 5-9)

Mr. Brown said that he put the stickies on some white and some blacks' absentee ballots. *(Tr. 1321, l. 21-23)*

The Government suggested that the "yellow stickies" were improper, but provided no authority that the notes violated any law, regulation or practice. One of the Government's own witnesses, Sue Sautermeister, who had served as an Election Commissioner for two decades and was a poll worker trainer, agreed that challenges to absentee ballots could be made in writing. *(Tr. 1998, l. 15-25, Tr. 1999, l. 1-5)*

B. <u>ASSISTANCE TO VOTERS</u>

Of the 13 polling places in Noxubee County, there were vague reports of voters being involuntarily assisted in three polling places.

Annette Hadaway was the Republican Bailiff at the East Macon Poll, which is located in the courthouse, and the election was conducted with all governmental offices open. *(Tr. 1107-1108)* She testified that she saw "lots of people around assisting people" voting *(Tr. 1101, l. 25)*, but she was never able to determine who they were *(Tr. 1102, l. 4-9)*, never told the Democratic Bailiff she

thought anything was wrong *(Tr. 1107, l. 12-15)*, and she could not identify a single person who received improper assistance, or one who forced assistance on a voter *(Tr. 1107, l. 6-25)*:

> Q. Now, I'm trying to find out is there anybody who was there that you can identify for the court today that was there who should not have been inside the courthouse?
> A. No.
> Q. Now, you talked about people being assisted with voting. How many people did you see assisted with voting?
> A. I would say two out of every three.
> Q. Can you identify the name of any one person?
> A. No.
> Q. Can you give me a good description of one?
> A. No.
> Q. Did you ever report this to the bailiff at the Democratic table?
> A. No, I did not.
> Q. Did you report it to any of the managers at the Democratic table?
> A. No, I did not.
> Q. Did you say anything to anybody?
> A. Just to the people that I was questioning.
> Q. Who are the people who you were questioning?

(Tr. 1109, l. 6-25)

There were federal observers present, and it is incredible that such rampant misconduct could be occurring with federal observers present. *(Tr. 1114, l. 20-25)*

Most revealing of the lack of cooperation between the whites and the blacks at the site was that the all-black Democratic poll worker staff and the all-white Republican poll worker staff never introduced themselves to each other. *(Tr. 1107, l. 1-11)*

In Brooksville, Mary Heard Abrams was an observer for her father, Samuel Heard, Jr., on August 5, 2003, and she testified that she witnessed black poll workers approaching voters and asking if they needed assistance in voting. She said that she complained about this conduct and was

disregarded. *(Tr. 1588, l. 6-14)* Like East Macon, she could not identify a single voter or a single poll worker as a party to any wrongful conduct:

> Q. You said that black voters were treated better than white voters when they came in.
> A. Correct.
> Q. Did you get any names of any of the black voters?
> A. No, I did not.
> Q. Did you get any of the names of the white voters other than the one lady you -- well, you didn't get her name -- the one elderly white woman, the one that you said her ballot was taken [by the voting machine]. Did you get any of the names of any of the white voters who weren't treated well?
> A. I was concerned about the voter's right for me to know who they were.
> Q. Okay. Well, you know, when people come in, they have to sign in.
> A. I know.
> Q. You can easily get someone's name.
> A. I was concerned about their right for me to not know who they were, but I know better now.
> Q. But what I want to do is I want you to identify for me those individuals that you're claiming did something improper.
> A. I've already stated that I cannot name them.
> Q. Okay. Just some poll workers.
> A. Yes.
> Q. Now, were there federal observers there?
> A. I'm not sure.
> Q. How many black voters were approached and asked if they needed help?
> A. A lot.
> Q. Okay. Did you bother to get any of their names?
> A. No.

(Tr. 1607, l. 15-25; Tr. 1608, l. 1-7; Tr. 1609, l. 2-13)

The managers of the Democratic table said that they never observed any improper assistance, nor did they receive any complaints about assistance being forced upon a voter. Since no specifics were offered, they could only testify against the general allegations. James Bridges *(Tr. 2334, l. 23-*

24), Annie E. Johnson *(Tr. 2334, l. 24-25, Tr. 2335, l. 1)*, and Virginia Dooley *(Tr. 2312, l. 18-20)*, all poll workers at Brooksville, testified unambiguously that no such improper assistance occurred.

In Shuqualak, Len Coleman, a relative and poll watcher for Supervisor Eddie Coleman, testified that poll workers involuntarily assisted voters in "most cases." *(Tr. 1129, l. 5-10)* He could identify only one voter who was given assistance and could not recall who assisted him, or whether the voter requested assistance or not. *(Tr. 1141, l. 1-15)*

Dr. Velma Jenkins was a poll manager at Shuqualak and refuted the vague allegations of Len Coleman as she carefully presented specific information:

> Q. Now, did people come in during the day and got help from the managers or someone else?
> A. They got help from whomever they wanted, yes, sir.
> Q. Do you have any recollection yourself of individuals who got help?
> A. I do.
> Q. Would you tell the court about that, please.
> A. Okay. There were white and black. There was no difference made. And I want to preface this with this statement: We know all of the people in Shuqualak. We've worked the polls enough to know who needs help and who doesn't need help. Mrs. -- hold on. I'm going to give you the exact name.
> (WITNESS EXAMINED DOCUMENT)
> A. Which election is this, 2003?
> Q. 2003, yes.
> (WITNESS EXAMINED DOCUMENT)
> A. 2003 a Mrs. Larry Conner and Mr. Conner, Mr. Larry Conner, came to the polls. And they do every time. And he requires help. He's white. And she goes into the booth to help him, and it's not a problem with any of us.
> Mrs. Christine Butler's daughter -- her daughter's name is Shirley Sciple -- she brings her mother to the poll and she helps her mother. It's not a problem with us. Mr. Eddie Coleman's wife -- I believe her name is Glenda -- brings her mother, Sylvia Coker, to the polls and she assists her mother. And she's white.
> Mr. and Mrs. W. L. Hull always vote together. They are

> African Americans. Mrs. Eleanor Hill's daughter, Helen Simpson -- they are African American. This is my aunt -- they always come and she helps her mother.

(Tr. 2470, l. 22-25, Tr. 2471, Tr. 2472, l.1)

Laura Diane Sparks, another poll manager, was equally certain in her refutation of the claims of improper assistance:

> A. Yes, sir.
> Q. -- that night? Can you tell -- can you tell the process of how y'all went through these absentee ballots?
> A. take the absentee ballots out of the can or whatever they're in. We look at the top of the envelope to see is their name across the flap. Then we open the envelope up, look at the application and see what is the -- why they're disabled to come, if they're out of town or whatever. And then we make
>
> sure -- make sure the right information and the signature is the same thing. Then, you know, that's it.
> Q. How long did it take you to do this per ballot do you think?
> A. Take a while because we got to look at everything. We just can't open them up and just put them down. We've got to take our time and look at everything.
> Q. Do you remember seeing him at the polls that day?
> A. He might be there.

(Tr. 2424, l. 10-25, Tr. 2425, 6-7)

The only person to specifically be identified as offering improper assistance to a voter was Peggy Brown, who was working for Mr. Heard at Title One precinct. *(Tr. 2353, l. 5-21)*

The Government did not offer even vague statements of forced voter assistance during the August, 2003, primary for the remaining nine polling places.

Dr. Theodore Arrington, the Government's expert, could not give one example of improper assistance during the 2003 election. *(Tr. 568, l. 13-19)*

The Government developed evidence that during the Macon municipal elections of 2005 there was improper assistance, inferring a connection with Mr. Ike Brown. A John Craig testified that he saw a van and a car, driven by Donald Mitchell and Peggy Roby, respectively, *(Tr. 1624, l. 8 to Tr. 1625, l. 2)*, who were taking voters in one at a time to vote under their supervision. *(Tr. 1627, l. 22 to Tr. 1628, l 12)*

However, Mr. Craig connected the vehicle to particular candidates:

> A. Well, I do know that Bob Boykin and Man Dixon went and got the van before the election.
> Q. Now, Bob Boykin, is he white or black?
> A. He's white.

(Tr. 1638, l. 21-24)

Phillip Owen McGuire, the Chairman of the Macon Election Commission, stood watch at the City Hall, where voter boxes were located. He testified that he had trouble with several people, including Patsy Roby, who was working for a white candidate, with assistance to voters. *(Tr. 2044, l. 14-25)* There was no established connection with Mr. Brown. *(Tr. 2048, l. 13-20)*

C. <u>NUMBER OF POLL WATCHERS</u>

Hours of testimony were devoted to the subject of the number of poll watchers a candidate could have within a poll. Watchers for Samuel Heard demanded the right during the August, 2003, Primary to have three at the Brooksville Precinct. The poll workers called Ike Brown and he insisted that there could be only one poll watcher per candidate per poll. *(Tr. 1613, l. 12-16)* Mary Heard Abrams testified that she called the Secretary of State's office and they were instructed that they could have one per table. Eventually the workers at Brooksville acquiesced and allowed them to have three poll watchers. *(Tr. 1613, l. 19-25)*

When Mr. Eddie Coleman was at the Shuqualak Precinct along with his poll watcher, Len Coleman, they felt it was unfair to order Mr. Eddie Coleman to leave. *(Tr. 1136, l. 1-6)* Again, the issue was whether or not the candidate was restricted to one poll watcher or himself at each polling place.

There was no evidence presented that any candidate, except Mr. Heard, who was white, had more than one poll watcher at a polling place, and that the rule was not uniformly applied that when the candidate was present there could not be a poll watcher present.

There was credible testimony about the inability of one poll watcher to observe multiple tables, a position with which Mr. Brown expressed sympathy. However, state law sets the number of candidate's poll watchers; specifically, Section 23-15-577 states that:

> Each candidate shall have the right, either in person or by a representative ... to be present at the *polling place* ... He or his *representative* shall be allowed to challenge the *qualification* of any person offering to vote ... (Emphasis added)

Circuit Clerk Carl Mickens stated that a candidate could have "himself or just one" person present as a watcher. *(Tr. 2238, l. 7-17)*

Mr. Brown was the target of ridicule and verbal abuse for simply following the statutory requirements.

If there was racial preference, it was in favor of candidate Heard, who was allowed three watchers when all the black candidates were restricted to one.

D. <u>CHALLENGES TO ABSENTEE BALLOTS</u>

Reviewing Section 23-15-577 leads conveniently into a discussion of the issues of challenges to the absentee ballots. The Government witnesses complained about three areas:

1. Counting ballots without regard to defects or challenges.

2. Reviewing the ballots so quickly challenges could not be made.

3. Counting ballots of blacks with defects greater than those of whites that were rejected.

Section 23-15-577 is instructive in that it does not give candidates the right to challenge anything they desire as ballots are being reviewed. Their representative has the right to challenge only on the "qualification" of the voter, and not the sufficiency of the application, or technical compliance with the requirements of absentee ballot process law. The County Elections Handbook, published by the Secretary of State, is more explicit:

For what reasons can a voter be challenged?

A voter can be challenged if:

1. He/she is not a registered voter in the precinct;
2. He/she is not the registered voter under whose name he/she has applied to vote;
3. He/she has already voted in the election;
4. He/she doesn't live in the precinct where he/she is registered;
5. He/she has illegally registered to vote;
6. He/she has taken his/her ballot from the polling place;
7. He/she is otherwise disqualified by law; or
8. He/she has cast an absentee ballot but is ineligible to do so.

Gov. Ex-48, Tr. 36.

There is no suggestion that a poll watcher has a right to assess the sufficiency of absentee ballot application, the ballot envelope, or compare the signatures. The statutory obligation is placed explicitly on the poll workers to perform all of these tasks. Section 23-15-639(b) provides:

At the close of the regular balloting and at the close of the polls, the

> election managers of each voting precinct shall first take the envelopes containing the absentee ballots of such electors from the box, and the name, address and precinct inscribed on each such envelope shall be announced by the election managers. The signature on the application shall then be compared with the signature on the back of the envelope. If it corresponds and the affidavit, if one is required, is sufficient and the election managers find that the applicant is a registered and qualified voter or otherwise qualified to vote, and that he has not appeared in person and voted at such election, the envelope shall then be opened and the ballot removed from the envelope, without its being unfolded, or permitted to be unfolded or examined. (Emphasis added)

Shuqualak

In Shuqualak, Len Coleman's only complaint was that Mr. Brown said count "any absentee ballot ... voted at the courthouse." *(Tr. 1145, l. 4-7, Tr. 1137, l. 1-2)* Mr. Brown was relying on a Supreme Court decision that he interpreted to mean that an error made at the circuit clerk's office could not be held against the voter and that those ballots must be counted.

Mr. Coleman acknowledged that there "were many challenges that night," and that some ballots were rejected. *(Tr. 1133, l. 14-23)* He said the poll workers could have been "slower and more organized," *(Tr. 1148, l. 6)*, but he had the same amount of time as the other poll watchers, most of whom were black. *(Tr. 1144, l. 15-25)*

If anything, the evidence shows that Mr. Len Coleman himself was overbearing:

> A. Mr. Coleman. He was behind us looking over, you know, as we was checking the absentee ballots. Only thing Mr. Naylor told him that he would have to get behind -- come behind us and stand on the side, because he was all over us, over like this (indicating), just looking over our shoulder. Mr. Naylor said you have to get behind the poll workers and stand on the side.
> Q. But Len Coleman wasn't the only poll watcher there.
> A. I don't think so.
> Q. Okay. And was -- just be clear, was Mr. Coleman asked to stand away from the table so that he couldn't see the ballot or

was he just simply asked to move to the side?
A. Just move to the side.

(Tr. 2425, l. 17-24, Tr. 2427, l. 1-4)

Poll manager Laura Sparks testified that Mr. Ike Brown did not give them any instructions on how to rule on absentee ballots. *(Tr. 2428, l. 5-7)* When asked pointedly on these issues, she had no doubt:

Q. Has Ike Brown ever asked you to do anything regarding your work at the polls that's different than what you were trained to do?
A. No, sir.
Q. If he -- if you were asked by him, would you do something of that sort?
A. No, sir.
Q. What about if you were asked by somebody else from the executive committee?
A. No, sir.
Q. Ms. Sparks, as we've been saying all day, there's been witnesses in this case that testified that they weren't allowed to make challenges because poll managers were going through the ballots too quickly; they weren't able to see signatures, et cetera. What's your response to that?
A. Not true.
Q. Were all poll watchers getting the same amount of time to look at challenges when you were reviewing ballots?
A. Yes, they did.

(Tr. 2432, l. 2-20)

Brooksville

Mary Heard Abrams said that initially the absentee ballots were being opened quickly and she did not have time to "compare the signatures on the applications to the signatures on the envelopes," but eventually it slowed "somewhat." *(Tr. 1600, l. 11-22)* She made challenges but was unhappy they were not accepted by the managers. *(Tr. 1601, l. 1-3)* Further, she thought that

one white person's ballot rejected for not having the signature across the flap should not have been rejected. *(Tr. 1606)* Ms. Abrams admitted that she was treated like the other observers, who were all black. *(Tr. 1617, l. 18)*

There is no contention that Mr. Ike Brown instructed the workers to count all the ballots, or otherwise interfered with the process in Brooksville.

West Macon

Peggy Ann Brown was a poll watcher for Samuel Heard the evening of August 5, 2003, at the West Macon poll. *(Tr. 1856, l. 18-21)* A heated dispute developed between her and poll managers Octavia Stowers and Samuel Gilkey over a challenge she was making to an absentee ballot. *(Tr. 1861, l. 11-25)* Ms. Brown claimed that Ms. Stowers called Ike Brown and he told her to count all the ballots. *(Tr. 1862, l. 9-21)* She remembered Ike Brown coming to the poll later, but does not remember anything that he did or said. *(Tr. 1871-1872)*

Ms. Stowers said that Mr. Ike Brown only told them to do as they were trained. *(Tr. 2354, l. 25 to Tr. 2355, l. 3)* The problem in truth was the disruptive conduct of Mrs Peggy Brown. Ms. Stowers testified:

> A. We were going through the ballots. And Peggy Brown was standing at the table, and I think also Mr. George Robinson was at the table. And there was a concern from them about a name not being written all the way across the flap, but it was. We listened to them; but, you know, at the end we decided whether we should count it or not.
> A. Ms. Brown she got real rude and loud and she was cursing and stuff like that, and so I called Mr. Brown.
> Q. And she was poll watching for Mr. Heard. Is that correct?
> A. Correct.
> Q. And for Mr. Robinson.

(Tr. 2355, l. 3-8, 13-14, 22-24)

Mr. Sam Gilkey said Peggy Brown had become loud and used foul language. *(Tr. 2371, l. 9-10, Tr. 2372, l. 6-14)* He confirmed that Mr. Ike Brown came and told them to do as they were trained. *(Tr. 2373, l. 5-6)* At no time did Mr. Ike Brown give the poll workers any instructions on how to rule on absentee ballots. *(Tr. 2373, l. 5-7, 10-12, Tr. 2375, l. 2-4, 20-22)* There was no issue about the speed with which those managers reviewed the absentee ballots.

This incident was merely a poll watcher getting angry and out of control, not any deficiency on the part of the poll managers. Ms. Stowers testified:

> A. We were going through the ballots. And Peggy Brown was standing at the table, and I think also Mr. George Robinson was at the table. And there was a concern from them about a name not being written all the way across the flap, but it was. We listened to them; but, you know, at the end we decided whether we should count it or not.
> A. Ms. Brown she got real rude and loud and she was cursing and stuff like that, and so I called Mr. Brown.
>
> Q. Now, did an issue come up about Mr. George Robinson touching some ballots?
> A. He did.
> Q. Now, was that at your table?
> A. Yes, sir.
> Q. And tell the judge what happened about Mr. Robinson touching the ballots.
> A. Well, I told him and also the other managers at the table with me that he can't touch the ballots. And he said okay, but he still had it in his hand.
> Q. Okay. And you demanded that he put it down?
> A. Right. He did eventually, but not when I said right then.
> Q. Okay.
> A. But he did eventually.
> Q. So when you called Mr. Brown, you had two concerns: Peggy and Mr. Robinson handling the ballots.
> A. Correct.
> Q. So what happened when Mr. Brown arrived?
> A. He just said that "You all at the table are in charge. The decision is made by you, not me, nor not them." And he just –

> I mean, he was real nice and polite about -- when he came around; but, you know, the -- she was still rude and loud and
>
> A. Like I said, when Mr. Brown came around, I mean, he was nice. He wasn't rude or anything, but Peggy disrespected him and also Mr. Robinson.

(Tr. 2355, l. 3-8, 13-14, Tr. 2357, l. 4-25, Tr. 2359, l. 21-23)

All of the poll watchers for the white candidate were being watchers for the first time and had only one evening of training by Jeppie Barbour of the state Republican Party.

E. DISPARATE TREATMENT OF WHITE ABSENTEE BALLOTS

Johnny Kemp, an unsuccessful candidate, was the Government's primary witness to support a claim that the absentee ballots of whites were rejected for error when the ballots of blacks were accepted with even more serious errors. He claimed that an absentee ballot of Judith H. Bolin (Gov. 62), Emily Michelle Cade (Gov. 62), and Robert Adam Cade (Gov. 66), all whites, were rejected at the Brooksville poll. It appears that if these ballots were rejected it was proper. If you are a student or teacher who will be away on Election Day, you are required to cast the ballot at the Circuit Clerk's office. These ballots were cast witnessed in Noxubee County by a Notary Public. If they had been from an out-of-county location, say Oktibbeha County, where Mississippi State University is located, then the absentee ballot would have been valid.

Mr. Kemp then drew an invalid comparison with voters who were illiterate, aged, or disabled and cast their absentee ballots (Gov. 92, 94, 95, 96-110) with an assortment of unskillful styles, from sprawling "X", to names that run past the line for signature, or under the line, or both, or run down into the printed text or appear to be unreadable. Mr. Kemp said that he believed that many of these ballots should have been rejected because Mr. Brown has said that the law was going to be strictly applied. Yet, he could not identify a law that the ballots he questions violated. It was his

understanding of what Mr. Brown stated that he submitted that the ballots in question violated. The Government did not offer any experienced poll worker, voting official, or expert to state that the ballots had "material" departures from the absentee ballot procedures.

Like so much of the Government's case, this issue seems to be driven by a material misunderstanding of election law by white candidates and their workers that leads them to conclude that they are being mistreated because of their race, when in fact it is that failure to understand the intricate absentee election law that was the culprit in the problem they encountered at the polls.

IV. UNSURPRISING RESULTS

The Primary Election of 2003 without doubt produced controversy. Mr. Ike Brown had questioned the loyalty of three Supervisors, had written a letter to the editor critical of the four incumbent Supervisors seeking re-election *(D-4)*, had given arch-adversary Eddie Coleman special attention with an ad in *The Beacon* on May 8, 2003, saying he was neglecting the roads of the black residents living in his district *(Gov. Ex- 42)*, and has openly supported for the open seat on the Board of Supervisors a Mr. Craig Nicholson *(Tr. 2148, l. 16-22)*.

In the end, all incumbents in the County were re-elected, including the Supervisors Mr. Brown opposed. In the one open seat on the Board, Mr. Brown supported a candidate who did not even make the run-off. Even Mr. Brown's number one target, Eddie Coleman, won re-election, easily carrying two-thirds of the vote. *(Tr. 302, l. 3-13)*

Samuel Heard, Jr., filed suit to overturn the election for Sheriff and the Court reviewed the absentee ballots. *(See Gov. Ex-170)* The Court found that there were "no specific allegations of fraud or intentional wrongdoing." The order reviewed in excess of 400 of the 1,226 *(see Tr. 573, l. 3-7)* absentee ballots cast and found only 33 had a "material departure" from the applicable law,

a mere 2.7%.

Carl Mickens, the Circuit Clerk, testified that 33 defective absentee ballots in an election was a very low number (in 1995, 150 had been misplaced). There were no surprises in the results, and in the end the election was uneventful and not particularly successful for Mr. Brown. *(Tr. 2243, l. 17-19)*

V. 2004 PARTY CAUCUSES

When the Democratic caucuses came around in February, 2004, there were elected officials and voters determined to oust Ike Brown from the chairmanship of the NCDEC. Among them were Supervisor Larry Tate, who was upset that Ike Brown had supported other candidates against him. However, he acknowledged that Mr. Brown was upset with him, also, for his support of Republican candidates. *(Tr. 236, l. 1-6)* It was not clear who was organizing the opposition, but it was apparent that both groups were composed of blacks *(Tr. 254, l. 11 to Tr. 255, l. 4)* and the anti-Brown faction was being led by Betty Robinson and John Gibson. *(Tr. 1407, l. 3)*

Mr. Scott Boyd testified that he ran an article the week before the caucuses scheduled on the last Saturday in February. *(Tr. 153, l. 1-17)* The text of the article read as follows:

> Noxubee County Democrats are scheduled to join others from around the state Feb 21 to participate in precinct caucuses. At 10 a.m. Saturday, at voting precincts around the state, Democrats are to meet at their county voting precincts to begin the process of electing party leaders and delegates to the Democratic conventions.
>
> "We encourage every supporter of the Democratic Party to attend these vitally important neighborhood meetings and we ask that each precinct caucus have a frank discussion about the future and direction of our party," said Rickey Cole, chairman of the Miss. Democratic Party.

> The County Democratic Convention is planned for Saturday, March 13, at 10 a.m. where precinct delegates and alternates will convene to elect the county Democratic executive committee leaders and members.
>
> For more information about the Democratic precinct caucus, or the county convention, contact Executive Committee Chairman Ike Brown at 726-4028.

(Gov. Ex-130)

Chairman Ike Brown set the precinct caucuses for Brooksville, Shuqualak and Noxubee High School at private residences, including his home for the High School precinct. Mr. Brown relied upon Section 3(a)(1)(B) of the Delegate Selection Plan for the Democratic Party, which provided, in pertinent part:

> Precinct meetings shall be held at 10:00 a.m., February 21, 2004, at sites *designated by the Chairman* of each county's Executive Committee. The regular polling places shall be used whenever possible. (Emphasis added)

Samuel Heard, Johnny Kemp and Phillip McGuire testified that they missed their caucuses because they did not know that they had been moved to private residences in their precincts. Mr. Heard did not seek a position within the Democratic Party, but was attending at the request of Mr. Johnny Gibson and Larry Tate to help defeat Mr. Ike Brown. *(Tr. 1018, l. 3-4)* Johnny Kemp said that he was attending to help the opposition as well, not gain a position in the party himself. *(Tr. 843, l. 4-20)* Similarly, Phillip McGuire was there because there was "a movement to get new leadership on the county level." *(Tr. 2028, l. 16-24)* The Government suggested that because these three whites were misdirected as to the precinct caucuses that this is a violation of the Voting Rights Act. The more logical interpretation is that they were the victims of the hardball politics of Ike Brown, which was directed at his black competitors, not whites. The fact that one faction of blacks

has the support of whites in a clearly political competition does not give the combined group any protected status under the Voting Rights Act.

Employing these tactics, Mr. Brown attempted to gain strategic advantage at the precinct level. Yet, the true test of his strength, and that of his competitors, would come at the county convention.

There are two versions of what happened at the county convention.

Larry Tate testified that the anti-Brown faction, notwithstanding some precinct caucuses being held in homes, had a majority. There was a vote to elect a temporary chairman and Mr. Brown lost. Mr. Brown refused to step down, but instead attempted to adjourn the meeting. *(Tr. 242, l. 2-4)* When he left, the anti-Brown faction conducted their own convention and elected delegates to the state Democratic convention.

Mr. Brown contends that the Shuqualak delegation showed up to the county convention with 22 people, when they only had six seats. *(Tr. 1421, l. 1-10)* It is his position that the vote for chairman of the county convention was improper and that he was properly elected Chairman. *(Tr. 1418, l. 25)* He recalls it this way:

> When they went back there, different ones in different part of the room and did the caucuses, because I went back to District 1 and Mr. Stewart told me, said, "We handling this." So when he got finished, I said, "Well, give me your list." So each district gave me their list with these state delegates on there and the one addition. We had six state delegates, six alternates, and 30 executive committee members. Then I said, "Well, we're finished because we have chosen the delegates as the state asked to us to do. We chose the executive committee member that the state asked to us to do." I said, "There's no other business before the convention." And, of course, they disagreed. I said, "Well" -- Mr. Naylor made a motion to adjourn. And as you know, the motion to adjourn when yeas and

> nays gives the chairman discretion, you know, who he think has got the majority. As far as I'm concerned, the convention was adjourned. We had the minutes. We had the delegates. We had the executive committee members. And I left.

(Tr. 1421, l. 19 to Tr. 1422, l. 10)

In all the turmoil it is without dispute that the anti-Brown faction failed to elect a Democratic Executive Committee for the County. Yet they claim to have ousted him. *(Tr. 245, l. 14-23)*

Whatever the truth about what happened at the county convention, the two competitive factions sent delegations to the state Democratic Convention. *(Tr. 213, l. 22-25)* According to Mr. Tate, the party never ruled on the dispute. *(Tr. 244, l. 11-12)* Mr. Brown maintained that he remained Chairman until the dispute was resolved. *(Tr. 1409, l. 1-5)*

Rickey Cole, then state party chairman, received a number of complaints about the Noxubee County caucuses, which he referred to the credentials committee. *(Tr. 1911, l. 16-21)* It was his recollection that an accommodation was reached between the two factions:

> A. There was -- there were a series of discussions that took place from that day all the way through up and to the state convention. There was a series of compromise discussions that were negotiated that I wasn't privy to, but I can remember Mr. Brown telling me at Pearl on that day that they were going to work it out to where everybody would be reasonably satisfied and they would share positions, share power between himself, his, quote, faction and Mr. Gibson's faction.

(Tr. 1915, l. 3-10)

Party precinct caucuses are a fluid process, flexible and allowing of a great deal of discretion by county Chairmen. State Chairman Cole acknowledged that in Tupelo (Lee County), the County Chair held all the caucuses at the courthouse *(Tr. 1932, p. 5-13)*, and in more than ten counties no caucuses at all were held, and a County Executive Committee was put together after the fact. *(Tr.*

1936)

Rather than having maintained his position as Chairman through prevarication and deceit as suggested by Dr. Arrington, in fact Mr. Brown continues to serve as Chairman of the Noxubee County Democratic Executive Committee because of his persistence and willingness to compromise. He remains recognized by the state Democratic Party as the Chairman, and they alone have the authority to make that decision.

VI. DR. THEODORE ARRINGTON: A FOREST WITH NO TREES

Dr. Theodore Arrington, Chair of the Department of Political Science at the University of North Carolina at Charlotte and Professor of Political Science, was employed as the Government's voting rights expert. A Republican activist since 1959, he had run for public office as a Republican and served as vice-chairman of the Mecklenberg Republican Party. *(Tr. 334, l. 8, 17-19, Tr. 337, l. 6-13)* In an amazing admission, he acknowledged in effect that he had a conclusion for which he sought support, rather than being an unbiased expert assessing all possible causes and results, and reaching a scientific conclusion. He put his bias out front by stating:

> Q. So part of the defendant's theory of this case is that it's a better explanation and fits better along partisan lines than racial lines, and you didn't consider the election, say, Kirk Fordice elections, general elections, which is within your range from 1990 to 2004. Right?
> A. Well, I think all can I say there is if that's your theory, then you should have hired an expert to do that analysis and then your theory could have been confirmed.
> Q. Okay. So we have '91, '95, '99 and '03 gubernatorial election where you have got a Republican against a Democrat and you didn't tell us -- you didn't analyze it.
> A. No, I did not.

(Tr. 451, l. 18-25, 452, l. 15-18)

He was not a scientist in search of the truth, but rather an advocate with a theory in search of support.

Although Dr. Arrington conceded that polarized election results were a product of party and race *(Tr. 455, l. 24-25)* and that all Republican candidates had been white, in doing his regression studies he avoided analysis where race could be kept neutral and the party differences could be measured. This admission in his analysis was made notwithstanding the fact that he knew that since 1991 white voters had been trending Republican in their voting patterns. *(Tr. 41, l. 18-22)*

From the very beginning he took steps to undermine the reliability of his analysis. Rather than interview a cross-section of observers, he selected 21, 16 whites and 5 blacks, all of whom were political opponents of Democratic Party Chairman Ike Brown. *(Tr. 558, l. 7-11)* Eight of the whites were Republicans and two were prior chairs of the county Republican Party. Six were candidates or their family members who contended that Ike Brown opposed them or their relative. *(Tr. 560, l. 12-14, Gov. Ex-1, Tr. 177)* In a county that was 70% black, the interviewees were 85% white. Of the 112 poll workers/managers in the only election supervised by Mr. Brown during the 2003 Democratic Primary, he did not interview a single one. *(Tr. 691, l. 18-21, Tr. 693, l. 4-5)*

A. UNDER-REPRESENTATION OF WHITES

Any fair observers would have to conclude that until the mid-1990s – particularly until the shift of the 1995 election – whites held a preferred political position in Noxubee County, having a representation greatly in excess of their ratio in the population. Thereafter, the greatest number of whites to run for office has been as Republicans, as Republicans fielded a full slate of candidates in 1999 for county-wide and legislative offices. For many offices, whites fielded no candidates, including the five Board of Education positions and five Election Commission positions, for over

a decade. With this reduction in candidates came an exodus from the Democratic Party, a phenomenon not unique to Noxubee County – rather prevalent throughout the South.

Nevertheless, Dr. Arrington's own analysis shows that white's preferred candidates won 34% of the elections he analyzed, a percentage greater than they represent in the population. *(Tr. 382, l. 21-22)*

> A. We can look at Table 1 if you like.
> Q. That the white-preferred candidate, you say they were defeated 66 percent of the time, but it means that they won 34 percent of the time.
> A. That's correct.

(Tr. 543, l. 6-10)

Dr. Arrington reached the outrageous conclusion that Ike Brown had perpetuated his position as Chair of the NDEC by fraud, prevarication and manipulation of the Democratic Party rules. *(Tr. 435, l. 15-17)* This conclusion showed that he was not privy to the totality of facts because of his inadequate investigation and interviews. The evidence at trial showed that two delegations went to the state convention and that the dispute was presented to the Credentials Committee. According to Rickey Cole, he was of the conclusion that a compromise had been reached between the two factions. Mr. Brown pointed out that the Gibson faction had not elected an executive committee at the county convention, and that they had committed numerous errors in the process. Even Dr. Arrington concluded that none of the parties conducted the convention with much precision. Whatever the actual facts, the Gibson faction and the Brown faction reached an accommodation that allowed Brown to continue as Chair. The Government has offered no evidence to contradict this conclusion.

Most whites in Noxubee County, according to Dr. Arrington, vote Republican in the General

Election. *(Tr. 556, l. 3-8)* All of the Republican candidates he looked at had been white, so by showing preference for Republican candidates, white voters were similarly showing preference to whites. He agreed that if a white Republican ran as a Republican that he was going to lose in Noxubee County, so that it was "rational" for a Republican white candidate to run as an Independent or as a Democrat. *(Tr. 470, l. 11-22)* A good example of that was Victor Allsup, husband of Mary Allsup, the Chairman of the Republican Party, who ran as a Independent candidate and obtained 100% of the white vote. *(Tr. 471, l. 13-23)* Even a black moderate, an anti-Brown official who had protested to the Democratic Party Mr. Brown's tactic in obtaining the chairmanship in 2004, could not garner any white votes. When she ran for election in 1995, Mary Shelton lost 100% of the white vote to the Independent white candidate. *(Tr. 465, l. 18-20, Gov. Ex-1, table 34)*

B. <u>THREATENING WHITE VOTERS</u>

Dr. Arrington distorted the meaning of the 174 people listed in the newspaper that "might" be challenged at the poll for being Republicans or ineligible to vote. First, Ike Brown never identified those voters as white; it was the newspaper editor, Scott Boyd, who in his commentary about the press release stated that they were white. Second, Ike Brown never stated that they would be challenged, he merely stated that they "might" be challenged; the use of the word "would" came from Scott Boyd, not Ike Brown. Since there are no identifiable black Republicans in Noxubee County, it is unavoidable that a challenge to Republicans would be a challenge to whites. Dr. Arrington dismisses as rhetoric the contention that Section 23-15-575 forms a basis for *a bonafide* challenge to a voter. *(Tr. 486, l. 19 to Tr. 487, l. 8)* At the core of Dr. Arrington's analysis was Mr. Brown's statement that he intended to force the law was a threat against whites, an absurd

proposition.

Dr. Arrington made the assertion that some of the strongest evidence of fraud by Mr. Brown comes from the election contest results of the past decade. We have discussed the *Heard v. Walker* contest, where Mr. Heard lost and there were only 33 materially deficient absentee ballots. Further, we have discussed the Rod Walker contest in substantial detail, as well as the Ernest Eichelberger challenge, which involved a difference of five votes. He pointed to the *Mary Allsup v. Election Commission* case that was decided in January, 1993, and involved two votes, and *Spencer v. Sanders*, which was decided in 1976 and which involved a seven vote difference.

In the *Allsup* case, the only allegations made involved notary publics Thelma Ann Cooper and Carrie Kate Windham. While Carrie Kate Windham was mentioned in the preceding, she did not witness any of the two absentee ballots in dispute. Although there were statements by the lawyers that they believed that these two notaries were working for Ike Brown, there was no evidence placed in the record that they had any relationship with Ike Brown. Statements by legal counsel and newspaper reports are not evidence of the actions that Mr. Brown was involved in these matters. *(Gov. Ex-136, transcript of proceedings, Mary Allsup v. Election Commission*)

In *Spencer v. Sanders*, the government presented no evidence that Ike Brown was involved in any way in the issue associated with that election contest. The Government puts in no evidence on her contest, except that she was successful.

There have been so many election contests in Noxubee County because there have been so many close elections, not because of fraud.

As further evidence of Mr. Brown's discrimination against whites, Dr. Arrington points out that he refused to allow Mr. Eddie Coleman and Richard Heard to have more than one poll watcher

per poll. He did not determine that black candidates were allowed more than one poll watcher per poll. And he mistakenly believed that the state statute allowed each candidate to have one watcher per table. *(Tr. 518, l. 11-18)* As we have previously shown, the statute specifically states that the candidate can have one poll watcher per polling place.

Dr. Arrington testified that his testimony has to do with the way elections are conducted in Noxubee County, Mississippi, by Ike Brown. *(Tr. 548, l. 21-22)* Yet, he conceded that in the five election challenges since 1993, the challengers had prevailed, except in the one election where Ike Brown was the Chairman of the Party and in charge of conducting the election, which was *Heard v. Walker* in 2003-2004.

> A. Mr. Heard lost.
> Q. So of the six election contests in Noxubee County in the 1990s and 2000s, five of them were overturned. Only one of them was upheld as being a correct election, and that election was conducted by Ike Brown. Isn't that true?
> A. That's true.

(Tr. 567, l. 12-17)

C. <u>THREATENING BLACK VOTERS</u>

Another example of Dr. Arrington's misrepresentation of the facts was his statement that he interviewed Deborah (Annie) Rice and that Ike Brown "called on her at her house and told her that she should not support 'white candidates' ". *(Gov. Ex-1, Para. 79, pg. 29)* Dr. Arrington used this as an example of Ike Brown threatening black voters who preferred white candidates. Arrington stated in this report that Brown used racial slurs and overt racial appeals as a bullying tactic to enforce political control and violates Senate Factor six. *(Gov. Ex-1, Para 64, Pg 24)*

However in Annie Rice's Deposition, admitted in the trial, she stated that Ike Brown only

told her to "vote for the right person for the job" and race was not even mentioned. *(Gov, Ex-169, Pg 6, l. 13-18)* There was no racial slur or overt racial appeal by Ike Brown in any stretch of the imagination. In fact, there was no evidence presented that Ike Brown knew if Annie Rice was a registered voter, if she had voted, or if he had any knowledge of who she may have voted for or supported.

D. IMPROPER ASSISTANCE

Dr. Arrington stated in his report that Ike Brown was behind providing improper assistance to voters. The only evidence of improper assistance involved the Macon City election where a white and a black candidate had hired and orchestrated the delivery of voters to the poll. There was no evidence presented that Ike Brown was involved in this process during the City election in 2005. As for the 2003 election, again the evidence by Dr. Arrington was non-existent:

> Q. Can you give me one example in 2003 of a person being given assistance at a poll in voting that did not properly request it?
> A. No. The interviewees that I talked to indicated that that happened.
> Q. But they don't give any specifics?
> A. They do not.

(Tr. 568, l. 13-19)

E. REJECTION OF WHITE ABSENTEE BALLOTS

From the tally reports from the precincts, *(Gov. Ex-73-86)* and the testimony of the witnesses, only 15 absentee ballots were rejected, two of which involved whites. The Government could present no reliable testimony contradicting this conclusion.

F. ABSENTEE BALLOTS

The gravamen of the complaint against Mr. Brown goes to absentee ballots, which Dr.

Arrington alleges were fraudulently obtained. He reaches this conclusion because of the more than 50 notary fees that Ike Brown had paid for in 2002, and the high number of absentee ballots in the county:

> But what we're seeing in Noxubee County is 20 percent, 21 percent, extraordinary, 23 percent at least in the Macon primary in '05, at least in some cases ten times or more like eight or nine times more than would be expected. Now, this is testimony on that.
>
> * * *
>
> you're getting elsewhere in the state. That doesn't happen except when you're generating absentee ballots on a fraudulent basis.

(Tr. 411, l. 19-22, Tr. 412, l. 17-19)

Dr. Arrington omitted the fact that the seven candidates who testified, three of whom were white, all had blacks out doing absentee ballots for them, each of whom paid the person for "gas and expenses." The testimony of both Circuit Clerk Carl Mickens, John Bankhead and Freda Phillips, the Deputy Clerk, was to the effect that all candidates had workers out getting absentee ballots, and considering the long list of candidates on the four year state election, it would not be the least bit surprising if 100 workers were out getting absentee ballots. There were over 30 candidates on the ballot. If only 200 had two workers each out getting the 1,226 ballots, that would constitute only 30 per worker.

The only poll absentee ballot worker Dr. Arrington could connect with Ike Brown in 2003 was Geraldine Spann, who testified that he paid her $25.00 notary fee, that Carl Mickens and Virgil Jones paid for her notary kit, and that she solicited absentee ballots for Mickens, Jones, and Judge Stewart. *(Tr. 1645, l. 15-25)* Dr. Arrington had no specifics to support his position:

> Q. Tell me one fraudulently cast absentee ballot.

A. We don't have that information.
Q. You don't know of a single one?
A. I don't.

(Tr. 574, l. 22-25)

Dr. Arrington made much ado about the fact that he believed that Mrs. Spann was being paid. Much of his conclusions are based upon a misunderstanding of Mississippi law. Under the law, the Secretary of State Handbook provides for a $2.00 fee for notarizing the application for absentee ballot and $2.00 for notarizing the ballot itself. So it would be perfectly legal for the Democratic party to pay a fee of $4.00 to a notary for performing those services. In addition, any reasonable travel expense would be appropriate for the notary to go to the voter.

G. POLL WORKERS

Again, Dr. Arrington sought to draw every possible inference against Mr. Brown. He pointed out the low number of white poll workers in the Democratic Party as evidence of discrimination. Yet he conceded that having 63 poll workers, when you combine the Democratic and Republican poll workers, gave the whites adequate representation at the polls. *(Tr. 581, l. 10-13)* While he reaches the broad conclusion, he doesn't provide any of the most basic information:

Q. Okay. Now I'm going to get to that. Tell me in 2003 a single white person who wanted to work at the polls in 2003 when Ike Brown was chairman who did not get to work.
A. I can't.

* * *

Q. Can you tell me which of the 200 -- the 1226 absentee ballots cast that he, Ike Brown, or people alleged to have worked with him notarized and solicited?
A. No.
Q. Do you have -- know of a single absentee ballot that has Ike Brown as the person who notarized it in 2003?

A. No.

(Tr. 583, l. 22-25, Tr. 596, l. 20-25, Tr. 597, l. 1)

H. BEHIND THE FRAUD

In the end, Dr. Arrington relied upon "common knowledge that Ike Brown is the organizer of most of the election fraud in Noxubee County" as the pseud- scientific basis for his conclusion. *(Gov. Ex-80, Gov. Ex-1, paragraph 88)* When challenged on this pseud- science, all Dr. Arrington could say was:

Q. Is common knowledge something that scientists rely upon?
A. Not unless it's based -- not unless it's backed up by other evidence.

(Tr. 605, l. 15-17)

I. RICKY WALKER/EICHELBERGER

Continuing his pattern of drawing every possible inference against Mr. Brown, Dr. Arrington argued that it is evidence of his bias that he did not accept Ricky Walker's obviously insufficient petition to challenge Winston Thompson's credentials. He claimed that Brown "suddenly" became "very formal" in dealing with Walker and did not want to overlook the "minor point" that he didn't expressly state that he was challenging Winston Thompson on his "residency." *(Tr. 116, l. 1-4)* Yet the evidence shows that when a black candidate, Mr. Jerome Miller, running against Ike Brown's arch opponent, Eddie Coleman, submitted a petition challenging that election later that year, Mr. Brown dismissed that petition summarily as insufficient. *(Tr. 633, l. 17-25)* More importantly, Mr.

Walker did not give the NCDEC an opportunity to address his amended petition before filing in court.

Again Dr. Arrington's analysis is flawed on the *Eichelberger* matter; he concludes that it is the duty of Mr. Brown to call the election. *(Tr. 636, l. 25 to Tr. 637, l. 1)* He ignored the responsibility of Mr. Eichelberger, or Mr. Eichelbergers' attorney, and the Noxubee County Board of Supervisors, to pursue the matter if an election was truly sought. Mr. Eichelberger, to Dr. Arrington's knowledge, never even contacted Mr. Brown about having a special election:

> Q. Did Mr. -- do you know if Mr. Eichelberger ever contacted, by letter or otherwise, Ike Brown to request that something be done about a special election?
> A. No.
> Q. Did you ever investigate to determine whether or not a letter went to the board of supervisors about the special election?
> A. No.
> Q. Did you determine whether or not Mr. Eichelberger had new employment?
> A. I understand he had employment with the state highway patrol.
> Q. And did you ever determine whether or not in order for Mr. Eichelberger to run for sheriff he would have to quit his job at the highway patrol?
> A. No.
> Q. If you learned that in order to run for sheriff he would have to quit his job, would that inform your opinion in any way?
> A. It would be an interesting piece of information.
> Q. Would that inform your opinion as to why he didn't request an election?
> A. It might.
> Q. And would it also inform your opinion that since -- if he was getting paid as much as highway patrolman as he was being sheriff, would that inform your opinion?
> A. Any new information informs my opinion. It doesn't necessarily change it.
> Q. You didn't bother to gather that information?

A. Not all of that information. I understood that he was employed by the highway patrol soon after this.

(Tr. 645, l. 4-25; Tr. 646, l. 1-9)

Another example of Dr. Arrington's failure to verify any information was his statement that there were 553 irregular ballots that were unaccounted for in the 2003 election. The evidence conclusively showed that those ballots were located in a box. They had been misplaced, but Mr. Carl Mickens testified that they were subsequently accounted for, *(Tr.2236, l. 5-17)* a continuation of his pattern of accepting the representations of other people without verification and drawing every possible inference against Mr. Brown.

Dr. Arrington seems to have suggested that Ike Brown's actions in going from precinct to precinct to observe the work of the poll workers and giving advice on questions that arose was evidence of his interference with the election and exercise of control. However, Dr. Arrington approved of the actions of the Macon Election Commission Chairman, Mr. McGuire, a white, who stood at the polls and gave advice to poll workers throughout the day. *(Tr. 657, l. 3-15)*

The most bizarre example of the distortions of Dr. Arrington were his statements about Mr. Brown's conduct at the hearings on redistricting after the 2000 census. He characterized Ike Brown as "bullying" Supervisors to change the districts. *(Tr. 664, l. 11-12, 14)* All Mr. Brown did was speak up at a public session; he complained that blacks were being packed into District 1, which he said he would report to the United States Justice Department should the Supervisors not correct the situation. *(Tr. 665, l. 20-24)* This Dr. Arrington called "bullying." It is not disputed that the Supervisors did not accept his suggestion and drew districts based upon a plan submitted by their

consultant. *(Tr. 164, l. 7-10)* Dr. Arrington's distortion of the fact verged on obsession to condemn Ike Brown.

Two final examples should suffice. Dr. Arrington initially stated that he believed (though erroneously) that Ike Brown recruited Winston Thompson to run against Ricky Walker, which was evidence of his racial bias. He also contended that Ike Brown recruited a candidate to run against Essie Spencer, a black. In the end, he had to acknowledge that the evidence showed that if his theory was correct then Ike had recruited a black person to run against a white person and a black person to run against a black person, which was not racist. *(Tr. 666, l. 13-19)*

As co-conspirators to make out his assertion of election fraud, Dr. Arrington includes all the NCDEC notaries paid by RMB and Russell Smart. *(Tr. 668, l. 13-23)* Ike Brown would concede that the NCDEC is a conspiratorial group; they actively conspire to defeat the Republicans in elections. As to the people whose notary fees he paid, the bulk of them were in 2002 when the election between Ronnie Shows and Chip Pickering was underway over their combined congressional districts. How many of those notary publics actively participated in absentee ballot notarization and worked for Ike Brown was not shown or even suggested by any reliable evidence. No actions of members of the NCDEC are even remotely suggested.

This exchange provides insight into Dr. Arrington's report:

> Q. Is common knowledge something that scientists rely upon?
> A. Not unless it's based -- not unless it's backed up by other evidence.
> Q. Okay. So once you hear a rumor of people saying things or you hear conventional wisdom, what you do is you investigate the underlying facts and find the details?
> A. Yes.
> Q. Okay. Because sometimes when you look at -- when you want to look at the forest first, you've got to determine whether or

not there are actual trees there or if it's a mirror image
(Court reporter error, should read: mirage).
Isn't that true?

A. Yes.

(Tr. 605, l. 15-25, Tr. 606, l. 1)

VII. LEGAL ANALYSIS

A. SECTION 2 CLAIM

Application of the facts in this case under Section 2 of the Voting Rights Act of 1965, 42 U.S.C. § 1973[10], does not rest easily within the contours of the leading cases interpreting the Act as amended in 1982. *Thornburg v. Gingles*, 478 U.S. 30 (1986). While the progeny of *Gingles* and the reach of Section 2 has most often been in the area of voter dilution and the creation of single member districts, it is generally accepted that the section prohibits all forms of voting discrimination. *S. Rep.* at 30. In its essential design, it has awkward application to the facts here. "Congress intended that

[10] As amended in 1982, § 2 of the Voting Rights Act of 1965, provides:

> (a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), as provided in subsection (b).
>
> (b) A violation of subsection (a)is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the [jurisdiction] are not equally open to participation by members of a class [protected by Section 2(a)] in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

the Voting Rights Act eradicate inequalities and the political opportunities that exist due to the vestigial effect of past purposeful discrimination. *S. Rep.* at 5: *H.R. Rep.* No. 97-227, Tr. 31 (1981)" *Gingles* at 69.

The purpose of the Act said the Court was not only to correct the past, but to deal with the accumulation of discriminatory effect. (Remark of Sen. Javis) *Gingles* at 44.

The intent was not to impose a proof requirement, but merely eradicate the discriminatory results. "The intent test was repudiated for three principle reasons – it is 'unnecessary devices because it involves charges of racism on the part of individual officials or entire communities,' it places an 'inordinate difficult' burden of proof on the plaintiffs, and it 'asks the wrong question.' ... The 'right' question, as the report emphasizes repeatedly, is whether 'as a result of the challenge, practice, or structure. plaintiffs do not have an equal opportunity to participate in the political process and to elect candidates of their choice.' " *Gingles* at 44.

Here we find that the evidence focused on exactly the type of events that the Act hoped to avoid, and the polarization that comes from accusations of racism. The dissonance grows from the reality that there is in Noxubee County no "practice" responsible for inequality for whites to elect candidates. With no practice to attack, the Government in this case find themselves attacking Democratic Party leadership.

The Section 2 formula envisioned a (1) practice that is not essential to govern and (2) that denies a protected group equality in participation in the political process. "Consequently, we conclude that under the 'results' of Section 2, only the correlation between race of voter and selection of certain candidates, not the cause of the correlation, matter." *Gingles* at 64.

The Government sues for a group of Noxubee whites who (1) have endured no history of official discrimination, but have enjoyed privileged status, (2) have not been under-represented or unable to elect candidates of their choice, (3) have not had to bear the effects of discrimination in education, employment and health, (4) have not been subject to a unresponsive government, and (5) have not been subject to any practice that enhances the opportunity for discrimination against them. Section 2 is being launched as a missile without an enemy.

The most appropriate guidance for this case comes from the District Court decision in *Welch v. McKenzie*, 492 F. Supp. 1549 (S.D. Miss., 1984). In a supervisor's race for Copiah County, Mississippi, where the black candidate lost by 19 votes, the Court found that of 115 absentee ballots solicited by his white opponent "in practically every instance" the absentee ballots were improperly obtained. *Welch* at 1554. Every provision of the absentee ballot law was ignored and the poll workers did not honor ballot challenges and actual fraud was proven. The deviation from the election law and the refusal of the Democratic Executive Committee to remedy the malfeasance was manifest.

In rejecting the Section 2 claim, the Court observed that "because no law is being attacked as having the effect of diluting black voting strength, the question becomes whether the acts of the individuals at issue ... constitute a 'standard, practice or procedure' within the meaning of Section 2." In answering this question, the Court stated that "isolated actions on the part of the individuals and the incumbent ... are simply not the type of 'standard, practice or procedure' which was contemplated as evils at which the Voting Rights Act was aimed." *Welch* at 1552.

The defense would call the Court's attention to the 2000 Presidential Election and ask that the Court take judicial notice to the United States Civil Rights Commission Report "Voting

Irregularities in the 2000 Election." The 2000 Presidential election is arguably one of the more controversial elections in recent history and the irregularities that surfaced in Florida brought national attention to the problems that can occur on Election Day. Because of the confusion and errors that surrounded the election, the results were not known until several months after the balloting was completed. The problems that surfaced in Florida were carefully scrutinized. One reported incident was that some 90,000 ballots were not counted in the official tally, most from predominately black precincts. *United States Civil Rights Commission Report "Voting Irregularities in the 2000 Election."* Another reported incident during the election in Florida was that people were turned away from the polls and not allowed to vote. *Id.* Poll workers in Florida who tried to call and confirm that people should be listed and allowed to vote were unable to get in touch with supervisors. *Id.* Also during the Florida election, some of the polling places either closed too early or were moved at the last moment without proper notification to the voters. *Id.* There were reports that in some places lines were so long that by the time people reached the area to vote they were turned away because the polls had closed.

Given the incidents that occurred in Florida, in using the Government's reasoning, these incidents would give rise to a Section 2 violation of the Voting Rights Act. However, viewing these events in context of the court's decision in *McKenzie,* the incidents in Florida would be taken as the miscues that came from an electoral system run by humans.

Given the most generous interpretation of the facts presented by the Government, and assuming the truth of all the claims advanced, the reasoning of *Welch* would bar a Section 2 claim. Obviously, the defendant in this case believes that there is virtually no evidence of any kind of fraudulent or wrongful conduct, nor a showing that the election officials were acting in violation of

state statute. Properly conceived, the results test protects racial minorities against a stacked deck but does not guarantee that they will be dealt a winning hand. *Whitcomb* – an opinion purportedly codified in the 1982 amendment – illustrates the point. There, the Court discerned no denial of equal opportunity when a minority group's failure to elect its preferred candidates "emerges more as a function of losing elections than of built-in bias" directed by the establishment majority against the minority group. *Whitcomb*, 403 U.S. at 153, 91 S.Ct. At 1874. *Ono v. City of Holyoke*, 72 F. 3d, 973, at 982.

Since the Government has presented its case along the framework of the *Gingles* analysis – though Defendants continue to assert that it is not the proper framework – it is nevertheless helpful in understanding the presentation of facts in this case, and the Defendants Brown and NCDEC will address each of those factors.

The Senate Factors include:

> 1. the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the Democratic process;
>
> 2. the extent to which voting in the elections of the state or political subdivision is racially polarized;
>
> 3. the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;
>
> 4. if there is a candidate slating process, whether the members of the minority group have been denied access to that process;
>
> 5. the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such

> areas as education, employment and health, which hinder their ability to participate effectively in the political process;
>
> 6. whether political campaigns have been characterized by overt or subtle racial appeals;
>
> 7. the extent to which members of the minority group have been elected to public office in the jurisdiction.

Senate Report at 28-29 (footnotes omitted).

The Senate also recognized the following "[a]dditional factors that in some cases have had probative value as part of plaintiffs' evidence to establish a violation":

> • whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group [and]
>
> • whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous.

The initial inquiry must be to identify a practice or structure that results in members of a protected group having materially diminished opportunity.

Virtually all of the cases addressed multi-member electoral districts or dilution of minority votes through drawing of lines that fragment their voting power. *Thorton v. Gingles*, 478 U.S. 30, 106 S. Ct. 2752, 92 2 Ed. 2d 25 (1986), *League of United Latin America Citizens et al. v. Perry*, 126 S. Ct. 2594, *U.S. v. Tibolt*, 72 F. 3d. 965 (C.A. 1 Mass 1995), *Garza v. County of Los Angeles*, 918 F. 2d 763 (9th Circuit Court 1990), *U.S. v. Blanchard McCleod, 385 F. 2d 734 (5th Circuit 1967), Houston, et al v. Lafayette County*, 20 F. Supp. 2d 996 (N.D. Miss. 1998), *Harris v. Graddick*, 593 F. Supp. 128 (M.D. Ala 1984), *Kermit James v. Humphreys County Bd. Of Election Commissioners* 384 F. Supp. 144 (D.C. Miss. 1974), *U.S. District Court v. James G. Clark,* 249 F. Supp. 720 (Ala.

1965). There is no claim in Noxubee County that whites, assuming they are a protected group, could constitute a compact district in which they could elect a representative of their choice.

The gravamen of the complaint appears to be that whites are not adequately represented among poll workers, that NCDEC appoints poll workers are hostile to white voters, candidates and their poll watchers, and that the absentee ballots counting process prevents proper challenges by white candidate.

However, the Government produces no expert on election absentee law, nor does it identify any applicable statute, rule or regulation, which the poll workers appointed by the NCDEC constantly violated. Most important, where the process was too speedy, confused or incomplete, any practice applied equal to black and white candidates' observers.

Unfortunately, the white candidates placed inexperienced poll watchers at polling places during the 2003 election and that lack of experience was the cause of their difficulty, particularly when they are pitted against poll watchers who had participated in the process for many years.

Evidence presented does not support, nor identify, a practice or structure, in rule or as applied, that discriminates against white Noxubee County voters or candidates. Indeed, the criticism was only of three polling places out of 13 and for only one election for these three.

1. History of Official Discrimination Against Whites

Whites in Noxubee County have enjoyed a long history of being free of official racial discrimination. On the other hand, the Government conceded that Noxubee County blacks had endured a long history of official discrimination. No one knows when the official discrimination ended; it seems to have persisted until at least the mid-1980s (testimony of Bankhead and Turner) and clearly ended by 1996, when blacks consolidated majority rule.

Yet, the essential question is when, if ever, did official discrimination begin against whites. Never is the undisputable answer.

It is not essential that discrimination be longstanding; for the Voting Rights Act has been applied for Latino groups of relatively recent concentrations in jurisdictions within the United States.

Until 1996, whites were over-represented in Noxubee County county-wide and Supervisor districts. Subsequently, they have continued to win in election contests in which whites compete. Offices such as Board of Education and Election Commission (ten slots alone) have seen few white candidates in the past two decades.

An excellent example of the inclusion of whites in the political process is the Supervisor seat held by Johnny Heard, District 2, a veteran white office holder. For the 1996-2000 election cycle, Mr. Heard retired and his replacement, a black, was elected in 1995. For the first time the representation of whites on the County Supervisor Board dropped below 40%. Four years later, Mr. Johnny Heard came out of retirement and sought election to the District 2 slot again, which he won easily in 1999, taking office for the 2000-2004 cycle. White representation on the Board of Supervisors rose to 40% again. It was not until he retired, for the second time, in 2004 that a black was elected again.

Noticeably absent for whites has been the application of literacy tests, poll tax, disenfranchisement through distortion of the criminal process, such as afflicted blacks. There was no period in which whites were excluded from primaries based upon race and there has been no equivalent to the physical segregation, establishment of citizens groups, social groups, and the use of the instrument of government, by blacks, to disenfranchise and marginalize whites.

Simply put, the type of discrimination that has served as a basis to satisfy Senate Factor 1 has no commiserate history among whites in Noxubee County, Mississippi. In 1999, there were five whites in the Democratic Primary, three won. In 2003, four whites were in the Democratic Primary, two won.

2. Senate Factor 2 – Racially Polarized Voting

The Plaintiffs and Defendants both agree that there is racially polarized voting in Noxubee County, Mississippi. In this area, Plaintiffs agreed with Dr. Arrington's scientific information.

3. Senate Factor 3 – Other Voting Procedures That Enhance the Opportunity of Voting Discrimination

There is no evidence that NCDEC used multi-member election districts, majority vote requirements, anti-single shot provisions, or any other practice or procedure that may enhance the opportunity of discrimination against whites. The evidence showed that this factor weighs in favor of NCDEC and that Senate Factor 3 was not met by the United States Government. *Senate Report* at 29.

Whites have superior financial resources to blacks to campaigns and enjoy a higher degree of education. Their cohesive growth has higher income, which gives them the capacity to raise greater money for campaigns.

4. Senate Factor 4 – Candidate Slating

There was testimony by Mr. Samuel Heard that he saw a young man passing out a sample ballot for the Democratic Primary at the Shuqualak Precinct. That sample ballot appears as Gov. Ex-45. Mr. Heard also testified that he observed Ike Brown's vehicle next to this individual passing out sample ballots for an unusual amount of time. He did not hear any of the conversation and does

not know what relationship, if any, Mr. Brown had with this individual. Mr. Heard himself stopped and got a copy of the ballot, which well could have been Mr. Brown's purpose.

Mr. Brown had a previous relationship with a group called East Mississippi Voters League, but he indicated that he was not active in this group in 2003. *(Tr. 1513, l. 19-20)* His name was not on the sample ballot. Importantly, the ballot itself does not show race slating. It endorses Jim Roberts, a white, for Lieutenant Governor over Barbara Blackmon, a black. It omits endorsements in the Superintendent of Education race between Kevin Jones and Russell Smart, two blacks. A key theory of the Government is that Russell Smart is a political ally of Ike Brown. If this sample ballot was from Ike Brown, would he omit an endorsement of a close political ally? Also another black, Lillie S. Draper, is endorsed over Mary R. Shelton. Other races are omitted as well. In two races, for Sheriff and Supervisor District 4, blacks are endorsed over whites, which seems of little significance since whites are endorsed over blacks in other races. What was apparent was that Brown did not produce this ballot and it could well have been provided by a white candidate.

You must go back to 1999 to find another example of slating. Gov. Ex-36 shows that the Noxubee County Voters League, Ike Brown, Chairman, endorsed nine candidates, of which three were white: Ronnie Musgrove, Gray Farris, and Charles Easley. Another sample ballot for this same period showed a Republican white, William Hawkes, endorsed for Lieutenant Governor, and Ike Brown arch enemy, Mary Taylor Shelton, endorsed for Chancery Clerk. *(Gov. Ex-37)*

There is a 1995 document, which appears to be a letter from Ike Brown, endorsing candidates. At the time he was incarcerated, so certainly he could not have typed this document. It was said to have been posted on the window of the video rental store that he owned. *(Gov. Ex-33)*

But this does not appear to be any type of slating, but merely a statement typed by someone saying who Ike Brown supported for public office.

Weighing all the evidence presented, one can only conclude that the Government has not presented evidence of slating that excluded whites from the slating process.

5. Senate Factor 5 – Socio-Economic Disparities

The next factor is the "extent to which members of the minority group in the state of political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process." *Senate Report* 29. There is no showing of "disproportionate education, employment, income level and living condition arising from past discrimination for whites that depress their level of participation in politics, plaintiffs cannot prove the satisfaction of this factor affecting Noxubee whites."

The Government conceded at trial, and all the census data shows, that in all of these areas whites in Noxubee County enjoy a better standard of living, education, and health care than the black majority. (See *Noxubee County Generally*)

6. Senate Factor 6 – Racial Appeals in Political Process

Ike Brown published articles in the *Macon Beacon* critical of his arch rival Eddie Coleman, charging him in 2003 with showing preference to whites in paving roads, and in 1999, of having drugs on property he owned without being punished, while blacks who were in possession of drugs were being put in prison. He referred to the conduct as discrimination and invoked images of slavery and segregation in support of his assertion that he was receiving and giving preferential treatment to whites. The only other public comment that suggested any reference to race was at an NAACP meeting when the speaker was critical of the fact that whites were attending their events

during the election year, but tended to ignore blacks after the election is over. *(Tr. 1630, l. 17-21)* This last reference appeared not to be an appeal to race, but a suggestion that people should be cautious of politicians who only attend NAACP events during election year. The white candidates who attended testified that they joined NAACP at that time.

There was other testimony of private conversations that do not constitute racial appeals. One witness testified that Mrs. Reecy Dickson told her in her home in 2003, in a private conversation, that “we don’t need a white Sheriff.”

The Government goes back to 1988 to dredge up a statement Mr. Brown purportedly made in Madison County, Mississippi, to the then District Attorney, David Clark, that he would get out black voters to oppose Clark if he did not go easy on his brother who was facing criminal charges. *(Tr. 1713, l. 22-25)* In another private conversation, Mr. Brown is alleged to have remarked that he wanted a “good black candidate” for an office and that he wanted to keep this as “black as possible.” *(Tr. 1740)* Again, in a private conversation he is alleged to have said something “about voting black” to Judith Ann Ewing. *(Tr. 1952)* None of this occurred while he was Chairman of the Party, not publicly made the events were so long ago that the Court should not consider them in these proceedings.

There has been no showing of any significant public appeals on the basis of race regarding voting. Private conversations by individuals are not racial appeals.

So the Defendants submit that the Government has not satisfied Senate Factor 6 and this matter should be weighed in favor of the Defendants in this case.

7. Senate Factor 7 – Election of Whites to Public Office

This factor should be weighed in favor of Defendants for this jurisdiction has tended over the last 20 years to over-represent whites in elected positions as previously shown.

8. Additional Factors Under the Totality of Circumstance Analysis

The Senate Report included two "additional factors that in some cases have had probative value" in establishing a claim. They are specifically:

> 1. whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group and
>
> 2. whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous.

Senate Report at 28.

The Government offered no evidence that the County, or any other entities involved in this litigation, were unresponsive to the white community. There has been no allegations of any neglect of the white community in favor of the black community, or any showing of a failure to appoint whites to boards, or to support groups that focused their activities within the white community.

As to tenuousness, while the Government's expert, Dr. Arrington, claimed that he found tenuousness, he offered no evidence to support such a conclusion. First there must be an identifiable policy and/or structure that is not essential to the operation of the democratic system which is the impediment to the protected group having equal access.

There is no showing that any change would increase the representation or the influence of white voters, should there be any inference that the overprotected group needs any additional protection.

9. An Expert for All Matters

Lacking any real evidence to support a Section 2 claim, the Government attempted to cover its deficiencies with a series of conclusions by the expert witness, Dr. Arrington. Defendants objected to that testimony as not complying with *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 409 U.S. 579 (1993).

The crux of the holdings in *Daubert* is that the method used by the expert must not be a fluke, not some divine inspiration, but rather a sensible, acceptable method that yields consistent, and at some point, predictable results that comport with the facts and with scientific principles. "Conjectures that are probably wrong are of little use ... in the project of reaching a quick, final, and binding legal judgment – often of great consequence – about a particular set of events in the past." *Daubert v. Merrill Dow Pharmaceuticals, Inc.* The conclusion must be detailed and supported by established science. *General Electric Co. v. Joiner*, 522 U.S. 136 (1997).

Daubert identified five factors that could be used to evaluate whether particular testimony was "scientifically valid" and therefore reliable as evidence: Whether the method or technique (1) was falsifiable or testable, (2) had been peer-reviewed, (3) had a known (or potentially knowable) rate of error, (4) was accompanied by established standards controlling the technique's operation and accuracy, and (5) was generally accepted. *Daubert* at 592-96. Ironically, a technique that would have passed muster under *Frye* as "generally accepted" might fail under *Daubert* if a court concluded that an entire discipline was somehow lacking in scientific rigor.

While the Defendants accept Dr. Arrington's report on purely scientific matters, such as the statistically determinable conclusions that voting in Noxubee County was racially polarized, white voters were cohesive and that the black majority usually defeats the black preferred candidate, they

object to his other conclusion as not admissible. Those matters were not suspectful to expert or scientific analysis, but matters of fact to be determined from the evidence by the Court.

Simply put, whether there was election fraud, racial appeals, slating and recruiting of a black candidate to run against whites, prevarication by Brown in getting elected Chairman of the Party in 2004, and distortion of the election process through unlawful coordination, were all factual, not expert questions, exclusively within the purview of the Court.

Dr. Arrington's conclusions from beyond Paragraph 215 (Gov. Ex-1) should be disregarded; specifically paragraphs 216-232. His representation of facts which were not supported by evidence in the record should be given no weight. Not only did Dr. Arrington claim to be an expert, but also a deity, in that he found:

> A. I reached two overall conclusions, Your Honor, that Brown and his associates do not uphold the law and customs that prevent bias and fraud in the administration of the Democratic primary which is tantamount to elections in Noxubee County and cannot be trusted to do so in the future. Indeed he's behind much of that fraud.

(Tr. 378, l. 25 to Tr. 379, l. 5)

Dr. Arrington's conclusions were fallible. He relied upon what enemies of Mr. Brown, mostly Republican, told him, much of which proved to be inaccurate when tested at trial. Findings by Dr. Arrington were so subjective they could not be testing. His non-statistical conclusions were not peer-reviewed techniques and had no reliable error rate. The essential criteria that he establish control for accuracy were missing, as evidenced by the contradiction in his factual assertions and the evidence at trial. Finally, there was nothing that suggested that conclusions such as those he reached were generally accepted in the scientific community, other than his regression analysis.

So deficient was the Government evidence that at one point they offered as evidence of racial appeal, history of discrimination, slating, under-representation of whites and tenuousness, the mere conclusions of Dr. Arrington, unsupported by trial evidence. Indeed, from the Government prospective the opinion of Dr. Arrington, should control the conclusions of the Court.

The Court should follow the evidence to a conclusion and ignore the detours offered by Dr. Arrington's junk science.

B. SECTION 11(b) CLAIM

The government made a claim in its amended complaint, which it restated in opening argument, that it asserted a claim under Section 11(b) which provides as follows:

> SEC. 11. (b) No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote, or intimidate, threaten, or coerce any person for exercising any powers or duties under section 3(a), 6, 8, 9, 10, or 12(e).

Defendants may have to await the government's memorandum to structure a response since the record appears to be devoid of an evidence of intimidation, threats or coercion, if it has not been abandoned by the government.

Voter intimidation was found when a sheriff required voters to enter in only one entrance in the courthouse that was guarded by his deputies and other entrances were guarded by posse men with guns. No black voter was allowed to go in any of the other entrances; therefore, in order for a black voter to vote, he had to pass by armed sheriff's deputies. *U.S. v. Clark*, 249 F.Supp 720, 726 (Ala. 1965). Outside of the courthouse a group of Negros protesting, as well as others in the area,

who the sheriff had arrested. Another case involving voter intimidation was *U.S. v. Holmes County*, 385 F.2d 145, in which the sheriff of Holmes County was refusing to collect poll taxes from black voters, therefore not allowing them to vote, and when they did try to vote arresting them, as well as individuals assisting them in voter registration. *U.S. v. Holmes County*, 385 F.2d at 148. In *U.S. v. McLeod*, 385 F.2d 734, the Fifth Circuit Court of Appeals found that the trial court has erred in " failing to find that the acts of various defendant county officials in arresting and prosecuting various persons,….,intimidated and coerced prospective Negro voters in the county." *U.S. v. McLeod*, 385 F.2d at 741. In essence the crux of section 11(b) is to prevent intimidation at the polls when it is racially motivated.

In *Brooks v. Nacrelli*, 331 F.Supp 1350 (Pa. 1971), the court stated "Purpose of the statute relating to voting rights is to prevent racial discrimination at polls, and statute applies only where voter intimidation is racially motivated." Therefore if the intimidation is not motivated by racial considerations then it is not in violation of section 11(b) of the Voting Rights Act. The court in *Nacrelli v. Brooks*, 473 F.2d 955 (3rd Cir. 1973), concluded that the presence of a city policeman at the polls did not create an atmosphere of intimidation. The court stated that absent some overt act the only testimony was that he "brought prospective voters to the polls, instructed them in the use of ballots, and distributed political campaign materials.

Another key element is that the person violating section 11(b) in the cases cited above has used their authority to stop voting while they were under the authority to do so.

There was testimony that Ike Brown was driven around to some polls on election night by deputies of the sheriff's department and that some considered that "threatening". In Brooksville and Shuqualak on August 3, 2002, Mr. Brown reportedly told Mr. Eddie Coleman and the poll watchers

from Samuel Heard that unless they complied with the one watcher per poll rule that he would call the police and have them arrested, but he admittedly never did. *(Tr. 317, 15-19 and Tr.1614, 1-5)* At one point before the 2002 primary, there was an exchange between Mr. Coleman and Mr. Brown inside the Circuit Clerk's office over whether he was in the wrong spot while a voter was casting a ballot, which was against a policy developed by Mr. Brown and the Circuit Clerk to keep candidates from being close to voters casting absentee ballots in the Clerk's office. As addressed in the fact sections of this brief, two white voters expressed consternation over being listed among the 174 voters who night be challenged at the polls for party loyalty and other grounds. There is no dispute that no such challenges took place, and one testified that she felt "watchful" and therefore went to the poLls with her husband and the other said that she did not vote. Any "threat" felt by either voter was totally subjective.

The government used the word threaten rather loosely. At one point Defense counsel objected to a line of questioning by the government that he believed created additional racial polarization in Noxubee County. In the course of making the objection, counsel said that the government was harassing and badgering black poll workers testifying and defendants had avoided bring up personal questions about whites witnesses about their children being put in private schools because of the resentment it created, an example that the government should follow, because the current approach would make things "worse in Noxubee County." Government Counsel then dropped the T-word, accusing Defense Counsel of threatening violence:

> MR. COATES: That's an absolute threat and this lawyer should be sanctioned for making a threat of that kind in open court that things are going to get worse because implicitly what he is suggesting is violence.

Every thing that one says that offends the government seems to fit

into its definition of "threat." For example, when Samuel Heard testified that Mr. Brown "threatened" not to qualify him as a Democrat, something there is no evidence that Mr. Brown attempted to do. (Tr. 1078, 15-23) At the hearing on Ricky Walker's petition against Winston Thompson, Mr. Brown allegedly "threatened" a Mrs. Gibson that if she tried to participate in the meeting he would call the police. Even a statement by Mr. Brown that he was going to contact the Justice Department to oppose a redistricting plan was called an 11(b) "threat!" " (Tr. 664, 17-25)"

A review of the testimony and exhibits present no threats being made by Ike Brown under color of state law to impede anyone from voting or participating in the electoral process.

VIII. CONCLUSION

The Court should conclude that under the reasoning of *Welch* that there is no violation of Section 2 of the Voting Rights Act. And even if disputes about matters subject to election challenge or state criminal law could rise to the level of a Section 2 claim, the evidence here is so insufficient that a claim cannot be made out.

Further, the Court should conclude that under Section 2 and *Gingle* and its progeny, the Government has failed to prove there exist a procedure or structure that denies equal opportunity to white voters in Noxubee County to participate in the political process. In weighing the Senate Factors, the balance is in favor of the Defendants. Under the "totality" of circumstances standard, judgment should be entered for Defendants Brown and NCDEC.

Respectfully submitted this 9th day of April, 2007.

IKE BROWN and the NOXUBEE COUNTY
DEMOCRATIC EXECUTIVE COMMITTEE

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CERTIFICATE OF SERVICE

I, Edward L. Pleasants III, hereby certify that on April 9, 2007, I electronically filed the foregoing *Ike Brown and Noxubee County Democratic Executive Committee's Post-trial Memorandum* with the Clerk of the Court using the ECF system which sent notification of such filing to all counsel of record.

/s/ Edward L. Pleasants, III
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