

Response to Questions from Subcommittee Ranking Member Mike Johnson by Peyton McCrary

1. Did you initially refuse to participate in that case?
2. Were you ever threatened with any form of discipline by anyone at the Department of Justice regarding your involvement or lack of involvement in that case?

Response to Question 1:

To put this question in context, the Department of Justice uses the term “investigation” to refer to work on a matter preceding the filing of a lawsuit. I did not refuse to work on the initial investigation that preceded the filing of *U.S. v. Ike Brown* (the case regarding Noxubee County, Mississippi, which your question addresses). I did, in fact, work on the lawsuit once it was filed.

I discussed this question in sworn testimony during an investigation conducted by the Office of the Inspector General, reported in *A Review of the Operations of the Voting Section of the Civil Rights Division* (March 2013), at p. 39 (Note 28). There the Inspector General’s report quotes the allegation by Christopher Coates that a Voting Section social scientist “flatly refused to participate in the investigation” of Noxubee County. The report notes that: “The social scientist told the OIG that he told Coates he did not want to participate in the investigation phase of the matter because he had other things he was working on at the time.” The report adds: “Coates agreed with this account of the conversation but told us that [in his view] the social scientist had other reasons because this was the first time in their 20-year history of working together that the social scientist declined to work with Coates.”

I have a clear recollection of my conversation with my old friend Chris Coates about the Noxubee County investigation. I specifically recall telling him that since coming to work in the Voting Section in 1990: “I have never refused to work on an investigation, and I am not doing so now.” In his testimony to the United States Commission on Civil Rights Chris claimed that I had told him that “the Department should not investigate cases with White victims.” I am confident that I never said that. In fact, I had in my files an earlier memo by veteran Department attorney David Marblestone – which I gave to the investigator interviewing me – explaining that in his legislative history research there was no indication that the Congress had ever intended that the Voting Rights Act should not apply where white citizens were a racial minority, as was true in Noxubee County.

At the time of this initial conversation, I was working evenings and weekends on my own time – in addition to my assignments in the Voting Section – on a co-authored law review article later made part of the record before Congress in the 2006 act reauthorizing Section 5 of the Voting Rights Act. Peyton McCrary, Christopher Seaman, and Richard Valelley, “The End of Preclearance as We Knew It: How the Supreme Court Transformed Section 5 of the Voting Rights Act,” *Michigan Journal of Race & Law*, 11 (No. 2, Spring 2006), 275-323. See the pre-publication version of this article in *Voting Rights Act: Section 5 Preclearance and Standards: Hearing Before the Subcomm. On the Constitution of the H. Comm. On the Judiciary*, 109th Cong. 96-181 (2005) (Serial No. 109-69).

Once the Department filed the Section 2 case in Noxubee County, I readily agreed to help the trial team headed by Chris Coates. As the inspector general's report explained in the same footnote (at p.38): "we found that the social scientist later participated in the litigation of the Noxubee case by hiring and managing the government's expert witness during the trial, and that in 2006 Coates signed a performance assessment of the social scientist rating him as 'outstanding' in all categories and describing, among other things, his assistance in working with the Section's expert witness in the Noxubee case." The report adds in the same footnote that: "Coates did not acknowledge the social scientist's work on the Noxubee case in his testimony to the Commission."

Response to Question 2:

In my 26 years as a social science analyst in the Voting Section, I was never threatened with any form of discipline regarding any of my work – including the case involving Noxubee County, Mississippi. In 2011 I was honored by the Civil Rights Division of the Department of Justice with the Maceo W. Hubbard Award "for sustained commitment to the furtherance of civil rights, in the tradition of Maceo W. Hubbard."