

# Legal Memorandum

Executive Summary

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## Absentee Ballot Fraud: A Stolen Election in Greene County, Alabama

*Hans A. von Spakovsky*

In the 1990s in Greene County, Alabama, citizens, local political candidates, federal and state prosecutors, and a local newspaper joined together to fight absentee ballot fraud in the county, one of the poorest in Alabama. Unfortunately, liberal groups like the NAACP and the Southern Christian Leadership Conference worked equally hard to undermine the effort.

Even as the investigation uncovered massive wrongdoing, so-called civil rights groups objected at every turn, alleging a plot to disenfranchise poor and minority voters. But in the end, justice prevailed with the convictions of 11 conspirators who had fixed local elections for years. The Greene County case is proof that absentee ballot fraud is real and not a cover story for an imagined voter-disenfranchisement conspiracy.

The most important lesson of Greene County is that absentee ballots are extremely vulnerable to voter fraud. The case shows how absentee ballot fraud really works, and it is a reality very different from the claims of partisans and advocacy groups. More broadly, the case shows how voter fraud threatens the right to free and fair elections and how those most often harmed are poor and minorities. This directly rebuts the usual partisan conspiracy theories about voter fraud.

According to some “civil rights” groups, practically every effort to legislate against or prosecute voter fraud is intended to keep minorities and the poor from voting at all. Concern over voter fraud,

say some partisans, is simply Republicans’ cover to intimidate voters and raise obstacles to minority voting. Indeed, groups like the NAACP argue that racism and intimidation are the motivation for voter fraud prosecutions, and some prominent Democrats dismiss voter fraud as virtually nonexistent. As a result, many prosecutors ignore serious evidence of vote fraud for fear of the political consequences, and elections continue to be stolen.

Greene County shows that these groups have it backwards. Voter fraud prosecutions do not intimidate voters; what does intimidate them is the knowledge that voter fraud is routine and goes unpunished. Too often, not only is no one willing to take action against it, but the organizations that victims expect to help them instead take the side of the vote thieves. In contrast to the views of such organizations, an overwhelming majority of citizens support such common-sense and nonpartisan reforms as requiring voter identification when an individual votes.

Further, the Greene County case demonstrates that voter fraud need not be partisan in nature. Partisan conspiracy theories about election reform just

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do not apply to intra-party voter fraud in primary elections in heavily Democratic or Republican jurisdictions where primary results determine who wins in the general election. The perpetrators of voter fraud, particularly in small rural counties, are often political incumbents whose control of local government is threatened by challengers of the same political party. In Greene County, almost all of the candidates, incumbents and challengers alike, were both Democrats and African-Americans.

Although some partisans will cling to their debunked conspiracy theories, those who honestly seek to protect voters' rights must study the methods and means of voter fraud in order to combat it. The movement toward absentee voting and all-mail elections threatens electoral integrity. Absentee ballots make it much easier for corrupt campaign organizations and candidates (like those in Greene County) to manipulate the vote. They are able to engage in tactics such as requesting absentee ballots in the names of registered voters, particularly poor residents and senior citizens, and either intimidating them into casting votes or fraudulently completing their ballots for them. With the growth of no-fault absentee voting and all-mail elections, there is the real risk that fraud will affect more election results and wipe out voting rights hard won by the civil rights movement.

The solutions are straightforward. First, absentee ballots should be reserved for individuals who cannot vote in person on Election Day or at early voting sites prior to the election. They should not be available just for convenience's sake, because the risk of fraud is too high. Second, individuals submitting absentee ballots should be required to provide a copy of an identification document containing a photograph (e.g., a driver's license) with their absentee ballots. Third, to deter the forgery of

voter signatures, the signatures on absentee ballots should be either notarized or witnessed by at least two other individuals who provide their addresses and telephone numbers, and the number of voter signatures that any single individual is allowed to witness should be limited. Finally, to avoid deterring prosecutions and damaging public confidence, civil rights organizations and others should refrain from leaping to the conclusion that voter fraud investigations are politically or racially motivated.

There is reason to fear that certain features of the vote-fraud conspiracy may play out again in the 2008 elections. Already this year, strong allegations of absentee ballot fraud, executed just as in Greene County, have been levied in several Alabama counties, with local officials (some of whom are suspects) claiming once again that the "inquiries are motivated by racism and partisanship."

The Greene County case demonstrates the ease with which fraudulent absentee ballots can be used to steal elections, the tactics used to steal those votes, the complete failure of many liberal advocacy groups to protect the interests of vulnerable voters who have been disenfranchised by fraud, and the value of vigorous law enforcement to protect legitimate voters' rights. It also points the way toward common-sense solutions to make voting more secure and increase public confidence in the electoral process.

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Voter fraud is about keeping poor people poor. It does not give them the opportunity to get an education, to get a job, to have a place to raise your family.

—Mississippi Secretary of State  
Delbert Hosemann<sup>1</sup>

In the 1990s in Greene County, Alabama, citizens, local political candidates, federal and state prosecutors, and a local newspaper joined together to fight absentee ballot fraud in the county, one of the poorest in Alabama. Unfortunately, liberal groups like the NAACP and the Southern Christian Leadership Conference worked equally hard to undermine the effort.

Even as the investigation uncovered massive wrongdoing, so-called civil rights groups objected at every turn, alleging a plot to disenfranchise poor and minority voters. But in the end, justice prevailed with the convictions of 11 conspirators who had fixed local elections for years. The Greene County case is proof that absentee ballot fraud is real and not a cover story for an imagined voter-disenfranchisement conspiracy.

The most important lesson of Greene County is that absentee ballots are extremely vulnerable to voter fraud. The case shows how absentee ballot fraud really works, and it is a reality very different from the claims of partisans and advocacy groups. More broadly, the case shows how voter fraud threatens the right to free and fair elections and how those most often harmed are poor and minorities. This directly rebuts the usual partisan conspiracy theories about voter fraud.

### Talking Points

- In 1994, several incumbent commissioners and other Greene County, Alabama, officials stole an election by taking advantage of lax oversight of absentee ballot voting. As many as one-third of the ballots cast were fraudulent.
- State and federal officials moved quickly to investigate the fraud and prosecute its perpetrators, but national civil rights groups tarred the law-enforcement efforts as partisan and racist and intended to suppress the black vote even though nearly all of the candidates and nearly all of the voters disenfranchised by the fraud were African-Americans and Democrats.
- The Greene County case shows how easily crooked politicians can abuse absentee ballots to disenfranchise voters. Because the risk of fraud is so high, absentee ballots should be available only to those who truly need them. Additional common-sense steps like signature matching and ID requirements also reduce the risk of stolen elections.

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According to the self-appointed liberal guardians of the poor, practically every effort to legislate against or prosecute voter fraud is intended to keep minorities and the poor from voting at all. Concern over voter fraud, say some partisans, is simply Republicans' cover to intimidate voters and raise obstacles to minority voting. Indeed, groups like the NAACP argue that racism and intimidation are the motivation for voter fraud prosecutions, and some prominent Democrats dismiss voter fraud as virtually nonexistent. As a result, prosecutors are intimidated from fighting vote fraud for fear of the political consequences, and elections continue to be stolen.

Greene County shows that these groups have it backwards. Voter fraud prosecutions do not intimidate voters; what does intimidate them is the knowledge that voter fraud is routine and goes unpunished. Too often, not only is no one willing to take action against it, but the organizations that victims expect to help them instead take the side of the vote thieves. In contrast to the views of such organizations, an overwhelming majority of citizens support such common-sense and nonpartisan reforms as requiring voter identification when an individual votes.

Further, the Greene County case demonstrates that voter fraud need not be partisan in nature. Partisan conspiracy theories about election reform just do not apply to intra-party voter fraud in primary elections in heavily Democratic or Republican jurisdictions where primary results determine who wins in the general election. The perpetrators of voter fraud, particularly in small rural counties, are often political incumbents whose control of local government is threatened by challengers from the same political party. In Greene County, almost all of

the candidates, incumbents and challengers alike, were both Democrats and African-Americans.

Although some partisans will cling to their debunked conspiracy theories, those who honestly seek to protect voters' rights must study the methods and means of voter fraud in order to combat it. Absentee ballot fraud in particular is difficult to control. It is "the 'tool of choice' for those who are engaging in election fraud,"<sup>2</sup> as the Florida Department of Law Enforcement concluded in its investigation of the 1997 Miami mayoral election. The results of that election were thrown out because of massive fraud involving over 5,000 absentee ballots.<sup>3</sup> With the growth of no-fault absentee voting and all-mail elections, there is the real risk that fraud will affect more election results and even wipe out voting rights hard won by the Civil Rights movement.

The Greene County case is important, then, because it demonstrates the ease with which fraudulent absentee ballots can be used to steal elections, the tactics used to steal those votes, the complete failure of liberal advocacy groups to protect the interests of vulnerable voters who have been disenfranchised by fraud, and the value of vigorous law enforcement to protect legitimate voters' rights. It also points the way toward common-sense solutions to make voting more secure and increase public confidence in the electoral process.

## The Setting

Greene County is located in the west-central portion of Alabama between the Tombigbee and Black Warrior Rivers in a region known as the Black Belt for its dark, rich soil.<sup>4</sup> Eutaw is the county seat. It was the first Alabama county in which political power shifted entirely to blacks

1. Emily Wagster Pettus, *Miss. Secretary of State Says Voter Fraud Hurts Poor People*, Assoc. Press, Apr. 7, 2008.
2. FLA. DEPT. OF LAW ENFORCEMENT, *FLORIDA VOTER FRAUD ISSUES: REPORT AND OBSERVATIONS* 7 (1998).
3. The Miami Herald won a Pulitzer Prize in 1999 for its investigation of the voter fraud in the Miami mayoral election and in doing so used innovative computer technology from SAS to assist its reporters in tracking down illegal votes through software comparisons of voter rolls with property records, city personnel files, absentee witness lists, death certificates, and felony conviction records. This is a lesson for election officials on how they should be using technology and software to maintain clean voter rolls, deter fraud, and check the validity and authenticity of voter registration applications. See *Miami Herald Wins Pulitzer Prize*, <http://www.sas.com/news/success/miamiherald.html> (last visited Sept. 2, 2008).
4. Black Belt (Alabama), Microsoft Encarta Online Encyclopedia, [http://encarta.msn.com/text\\_761564430\\_\\_0/Black\\_Belt\\_\(Alabama\).html](http://encarta.msn.com/text_761564430__0/Black_Belt_(Alabama).html) (last visited Sept. 2, 2008).



after passage of the Voting Rights Act in 1965.<sup>5</sup> By all measures, Greene County is an extremely poor, rural county. In 2006, its population was just 9,374, making it the least populated county in Alabama, and its citizenry is 80 percent black. Slightly more than 10 percent of residents have a college degree, and the median household income is just \$22,439, a hair above the U.S. poverty line.<sup>6</sup>

The county is governed by a powerful five-member board of commissioners. The commissioners are responsible for dispensing much of the \$83,876,000 in federal funds—\$8,606 per person—that flows to the county.<sup>7</sup> Indeed, the county government is the leading source of employment, contracts, and grants.

This kind of spoils system tempts politicians to misbehave. In 1996, Greene County declared bankruptcy because a bloated county payroll, extensive debt, and “improper and illegal spending” had exhausted county revenue. The commission’s financial management was so bad “that state auditors said they couldn’t even audit the county’s finances.”<sup>8</sup>

The promise of spoils also led to stiff competition for seats on the commission and to voter fraud. The Birmingham Office of the U.S. Attorney and the Alabama Attorney General conducted an extensive joint investigation of absentee ballot fraud allegations in the November 8, 1994, election.<sup>9</sup> By the end of the investigation, nine defendants had pled guilty to voter fraud, and two were found guilty by a jury. The defendants included Greene County commissioners, officials, and employees; a racing commissioner; a member of the board of education; a Eutaw city councilman; and other community leaders.

All of these defendants were part of a conspiracy to manipulate the outcome of elections for local offices in Greene County and the town of Eutaw to protect incumbents and their allies from challengers. Notably, almost all of the candidates involved, on both sides, were African-American Democrats—so the usual partisan conspiracy theories do not hold any water. The case is worth studying for that reason and because the methods the conspirators used were typical of absentee ballot fraud.

## The Conspiracy

It became clear early in the campaign that the 1994 general election for seats on the Greene County Commission would be a close one. An incumbent commissioner, Nathan Roberson, had lost to challenger William Johnson by just 16 votes in the primary run-off election. After losing in the primary, Roberson requalified as a member of the “Patriot Party” to oppose Johnson in the general election.<sup>10</sup> Absentee ballots had been the key to victory in several of the Democratic primary races.

But even before Election Day 1994, there were signs that something was awry in the absentee ballot process. The local county newspaper, the *Greene County Independent*, reported on November 3, five days before the election, that as the county was “embroiled in one of the most hotly contested political races in many years,” the number of absentee ballots being sent out by the local clerk was so high that they “could very well determine who the next county commissioners” would be. Oddly, many of the absentee ballots were not going to the registered addresses of the voters. Some 60 of the ballots in one district alone were sent to the

5. Roger Thurow, *Southern Cross: A Place Much Revered in Civil-Rights Lore Is Still Much Divided*, WALL ST. J., July 20, 1998.

6. U.S. Census Bureau, Greene County MapStats, <http://www.fedstats.gov/qf/states/01/01063.html> (last visited Sept. 2, 2008). See Magistrate Judge’s Report and Recommendation, *U.S. v. Smith*, No. CR-97-S-45-W, at 1, 2 (N.D. Ala. 1997) (stating that Greene county had “a 92% African-American population”) [hereinafter Magistrate’s Report].

7. U.S. Census Bureau, Greene County MapStats, *supra* note 6.

8. Robert DeWitt, *Greene County Out of Bankruptcy*, TUSCALOOSA NEWS, Oct. 22, 2006.

9. The Assistant U.S. Attorney assigned to the case was Pat Meadows, a career prosecutor with over 25 years of experience as a federal prosecutor and a local Assistant District Attorney; Alabama Assistant Attorney General Gregory Biggs was designated as a Special Assistant U.S. Attorney to assist with the case. The primary FBI agent leading the investigation was Marshall Ridlehoover. See Magistrate’s Report, *supra* note 6, at 9.

10. Leewanna Parker, *Absentee Ballot the Trump Card*, GREENE COUNTY INDEP., Nov. 3, 1994.

same post office box.<sup>11</sup> Ballots were also sent to candidates' wives, the Greene County Democratic Executive Committee, and the Greene County Sewer and Water Authority.<sup>12</sup>

Absentee ballot fraud was not new to the area. In 1985, Spiver Gordon, who would emerge as a key player in the 1994 fraud, was convicted by a jury of absentee ballot fraud. Although the Eleventh Circuit Court of Appeals found "that there was sufficient evidence to support Spiver Whitney Gordon's convictions for mail fraud arising from the mailing of fraudulently marked absentee ballots," his convictions were reversed after the U.S. Supreme Court ruled that the federal mail fraud statute under which he had been convicted could be used only for schemes involving the deprivation of money or property, not elections.<sup>13</sup>

In 1994, the numbers alone were enough to raise suspicions. Greene County had 7,736 registered voters. Turnout for the November 8 election was heavy at 62 percent, or over 4,800.<sup>14</sup> On the night of the election, over 1,400 absentee ballots flooded in—more than one-third of the total ballots cast.<sup>15</sup> More than 1,000 of the absentee ballots were mailed by just five people "who brought in

suitcases of ballots to the Eutaw Post Office the day of election in 1994."<sup>16</sup> Thus, over one-third of all votes were cast with absentee ballots—far above the state average, which is normally in the single digits, and a red flag for possible voter fraud.

Absentee ballots tipped several races. Garria Spencer, chairman of the Greene County Commission, had won the Democratic primary with absentee ballots. His opponent, Toice Goodson, was "ahead by about 50 votes until the absentee ballots were tallied and Spencer was declared the victor by two dozen votes."<sup>17</sup> Absentee ballots cast in the general election helped Frank "Pinto" Smith win the election to be a county commissioner,<sup>18</sup> while William Johnson, who had challenged incumbent Nathan Roberson, lost due to absentee ballots. Johnson received 409 votes at the polls to Roberson's 376, but just 65 absentee ballots to Robertson's 182.<sup>19</sup>

Tax Assessor John Kennard was the first to sound the alarm that the elections had been stolen. He called for state and federal officials, as well as civil rights leaders, to come to Greene County and ensure a fair election.<sup>20</sup> State and federal prosecutors answered that call and moved quickly to arrange interviews with absentee voters.

11. *Id.*

12. Leewanna Parker, *Questions Remain About Election*, GREENE COUNTY INDEP., Nov. 10, 1994; Leewanna Parker, *Federal, State Absentee Ballot Probe May Continue Many Months*, GREENE COUNTY INDEP., Apr. 3, 1996. County Tax Assessor John Kennard actually called the FBI in September of 1994 to complain that "a significant number of absentee ballots had been mailed to addresses that were not the voters' addresses." Magistrate's Report, *supra* note 6, at 7, 8.

13. *See* U.S. v. Gordon, 836 F.2d 1312 (11 Cir. 1988), *cert. denied*, 487 U.S. 1265 (1988); McNally v. U.S., 483 U.S. 350 (1987) (holding that 18 U.S.C. § 1341 does not proscribe a scheme or artifice to defraud the citizenry of the intangible right to honest government). In 1988, Congress enacted 18 U.S.C. § 1346 in response to the McNally decision to prohibit schemes meant to deprive citizens of the "intangible right of honest services." *See* U.S. DEPT OF JUST., CRIM. DIV., PUB. INTEGRITY SEC., FEDERAL PROSECUTION OF ELECTION OFFENSES 74 (2007). Having gotten away with absentee ballot fraud in 1985 on technical grounds, Gordon was clearly not deterred from engaging in fraud once again in the 1994 election.

14. Leewanna Parker, *Election 1994: Hot Local Races Decided at Polls, Absentee Boxes*, GREENE COUNTY INDEP., Nov. 10, 1994.

15. Exactly 1,429 absentee ballots were cast, representing 37 percent of all votes cast in the county. Fewer than 40 absentee ballots were cast by white voters. Magistrate's Report, *supra* note 6, at 3–4.

16. Leewanna Parker, *Six to Face Voter Fraud Charges in Federal Court*, GREENE COUNTY INDEP., Feb. 18, 1998.

17. Parker, *Absentee Ballot the Trump Card*, *supra* note 10.

18. Magistrate's Report, *supra* note 6, at 6.

19. Parker, *Election 1994: Hot Local Races Decided at Polls, Absentee Boxes*, *supra* note 14. Johnson filed suit to contest the results of the election. Leewanna Parker, *Bill Johnson Files Election Contest Against Roberson*, GREENE COUNTY INDEP., Dec. 1, 1994.

20. Parker, *Questions Remain About Election*, *supra* note 12. In 1978, Kennard was the first black elected to be the Tax Assessor. Thurow, *supra* note 5.

The backlash—that federal and state investigators were trying to intimidate African-American voters—was immediate. County Commission Chairman Spencer, who later pled guilty to voter fraud, said he was receiving complaints that the agents were trying to frighten voters, who were “tired of being questioned.”<sup>21</sup> The chorus of criticism would only rise as the investigation began to uncover evidence of fraud.

But those charges rang false within the county. Neither the local probate judge, who was African-American, nor the circuit court clerk received any complaints. Local voters interviewed by the newspaper said that the agents were “very nice” and “polite” and made clear that they did not feel “intimidated, threatened, or targeted.”<sup>22</sup>

Indeed, most of the complaints to state and federal agencies that had sparked the investigation had come from African-American citizens in Greene County—not surprising in a county that was 80 percent black—and a local multiracial good-government group called Citizens for a Better Greene County, which had been started to elect fiscally responsible officials.<sup>23</sup> On Election Day, the group challenged the validity of hundreds of absentee ballots that turned out to have been fraudulently cast.<sup>24</sup> With absentee ballots being stolen from people’s mail-boxes and voters being threatened with the loss of public assistance, Pam Montgomery, one of the group’s leaders, thought that “[t]hey ought to send [envoys] here” rather than to Haiti.<sup>25</sup>

Investigators went about their task diligently. They created a computer database and sorted all of the absentee ballots cast according to the names of

the individuals who had witnessed the signatures. They quickly found that many of the absentee ballots “contained the same few witnesses’ signatures over and over again” and that some had been cast by voters who were actually dead or no longer lived in the county.<sup>26</sup> A decision was made to limit the investigation “to only those ballots on which appeared any witness who had witnessed more than 15 absentee ballots.”<sup>27</sup> This resulted in 800 voters who needed to be interviewed, and the investigators employed a standard interview format to determine the circumstances under which the absentee ballot had been applied for and voted. That information was reviewed, as was handwriting analysis of the absentee ballot materials. The investigative procedures did not involve the race or political affiliations of voters or the candidates in any way.

Still, the race-baiting continued. A group called the Alabama Blackbelt Defense Committee was organized to raise money for legal services for all of the defendants charged with voter fraud. Its leaders, including Commission Chairman Spencer, claimed that the investigation was intended to “discourage black voters in Greene County and other blackbelt counties.”<sup>28</sup> The prosecutions were simply an attempt by federal and state officials to “frame” local black leaders.

The National Association for the Advancement of Colored People (NAACP) and the Southern Christian Leadership Conference (SCLC)—liberal civil rights groups that had not responded to initial concerns about voter fraud—joined in these efforts, helping to defend the individuals who stood

21. Leewanna Parker, *Spencer Says He’s Fielding Complaints from Worried Voters*, GREENE COUNTY INDEP., Mar. 13, 1996.

22. *Id.* See also Leewanna Parker, *Voters Calling Agents ‘Polite’*, GREENE COUNTY INDEP., Mar. 13, 1996.

23. Citizens for a Better Greene County had about 600 members, and its bylaws mandated that its Board of Directors be composed of four individuals: a black man and woman and a white man and woman. Magistrate’s Report, *supra* note 6, at 5; DeWitt, *supra* note 8.

24. Leewanna Parker, *More Indictments to Come, Locals Say*, GREENE COUNTY INDEP., Feb. 1, 1997. The Greene County case demonstrates the importance of state challenge laws, which have been attacked (unsuccessfully) in litigation in Ohio as supposedly “unconstitutional.”

25. Rich Lowry, *Early and Often—Absentee Voting Fraud*, NAT’L REV., June 17, 1996.

26. Parker, *Federal, State Absentee Ballot Probe May Continue Many Months*, *supra* note 12.

27. Magistrate’s Report, *supra* note 6, at 11.

28. Leewanna Parker, *Probe Reactivates Black Belt Committee*, GREENE COUNTY INDEP., Mar. 20, 1996.

accused of stealing the election and leaning on the Justice Department to drop its investigation altogether. According to Spiver Gordon, a Eutaw city councilman and SCLC vice president, “This current case is an extension of the harassment and intimidation carried out by the FBI and state authorities.... It’s an attempt to keep Black people from exercising their constitutional rights and voting rights.”<sup>29</sup> Gordon later pled guilty to voter fraud.<sup>30</sup>

Despite all the racially charged rhetoric, it was clear from the start that the defense effort, like the vote fraud, had a political genesis. According to Tax Assessor Kennard, Spencer was part of a local political machine, as was Greene County Director of Planning and Development Booker Cooke, Jr., who also eventually pled guilty to voter fraud. In fact, in 1996, Cooke, as chairman of one of the local Democratic Party’s committees, tried to remove Kennard from the ballot as “disloyal” to the Democratic Party, in addition to three other candidates who were not part of the machine.<sup>31</sup> One local resident said that the members of the machine were very arrogant and believed they could get away with anything.<sup>32</sup>

The indictments issued in January of 1997 charging Commissioner Smith and Connie Tyree, a county employee and Smith supporter, with 13 counts of ballot fraud illustrate how absentee ballots were stolen and used to cast fraudulent votes

in the 1994 election.<sup>33</sup> In the two months before the election, Smith and Tyree used registered voters’ names to apply for absentee ballots, used false addresses so that the ballots would be sent directly to them, convinced some voters to sign absentee ballot affidavits without actually filling out the ballots, and forged voters’ signatures on other affidavits.<sup>34</sup> The investigation revealed that Smith and others involved in the voter fraud conspiracy actually set up an “assembly line process” at the Eutaw Activity Center the night before the election to fill out and prepare the fraudulent absentee ballots before they were placed in the mail the next day.<sup>35</sup>

Smith and Tyree claimed on appeal that they were victims of “selective prosecution” because they were black and Democrats, but the Eleventh Circuit Court of Appeals, based in Atlanta, rejected that argument.<sup>36</sup>

In 1998, six more individuals were indicted on 31 counts of voter fraud for their role in the 1994 elections. Among them were Booker Cooke, Jr., county employee Flephus Hardy, Commissioner Spencer, Althenia Spencer, Racing Commissioner Lester “Bop” Brown, and Spiver Gordon. The charges were similar to those brought against Smith and Tyree, including furnishing false information to election officials, voting more than once, and providing false information on absentee ballot affida-

29. Susan Lamont, *Black Voting Rights Activists in Alabama Fight Frame-Up by Federal, State Officials*, THE MILITANT, June 8, 1998, available at [http://www.themilitant.com/1998/6222/6222\\_29.html](http://www.themilitant.com/1998/6222/6222_29.html).

30. *Civil Rights Leader Gets Jail Term for Voter Fraud*, N.Y. TIMES, June 6, 1999.

31. Leewanna Parker, *Democrats Appeal to State Party Chairman for Relief*, GREENE COUNTY INDEP., May 1, 1996. One of the candidates had opposed Commission Chairman Garria Spencer in the 1994 election. The Alabama Democratic Party overruled the local Greene County Democratic Party and reinstated the candidates on the ballot. Leewanna Parker, *Ruling Spurs Reordering of Ballots*, GREENE COUNTY INDEP., May 22, 1996.

32. Interview with Pam Montgomery, July 28, 2008. When Commission Chairman Garria Spencer was first indicted, Montgomery overheard Spencer tell a federal prosecutor during court proceedings that “you ain’t going to get us—we are untouchable.” *Id.*

33. Smith was a deputy registrar as well as the mother of one of Smith’s children. Government’s Sentencing Memorandum, *U.S. v. Smith*, No. CR-97-S-0045-W, at 1, 12, 14 (N.D. Ala. 1997).

34. Tyree’s signature appeared as a witness on 166 absentee ballots—more than any other person. Magistrate’s Report at 6. See Indictment, *U.S. v. Smith*, No. CR-97-S-0045-W, at 3–5 (N.D. Ala. 1997); Parker, *More Indictments to Come, Locals Say*, *supra* note 24.

35. Government’s Sentencing Memorandum, *U.S. v. Smith*, No. CR-97-S-0045-W, at 11 (N.D. Ala. 1997). County Commission Chairman Garria Spencer and Eutaw City Councilman Spiver Gordon were among the persons present. Transcript of Trial, *U.S. v. Smith*, No. CR-97-S-0045-W, at 1200 (N.D. Ala. 1997).

36. *U.S. v. Smith*, 231 F.3d 800 (11 Cir. 2000), *cert. denied*, 532 U.S. 1019 (2001).



vits.<sup>37</sup> Despite their protestations of innocence and claims that the prosecutions were “politically motivated...to silence those who exercise their political right to elect political office holders of their choice,” all six eventually pled guilty.<sup>38</sup>

By the end of the investigation, three more were indicted and pled guilty, including a member of the local board of education, for a total of 11 convictions and no acquittals. After the convictions, local black leaders such as Probate Judge Earlean Isaac (the county’s chief election official) and John Kennard expressed their relief. Isaac said that she hoped this meant that in the future, they would only “see clean elections.” Kennard proclaimed it “a victory for the people...because now one vote counts. The era of stolen elections is over for Greene County.”<sup>39</sup>

### Making Race an Issue

The Greene County case illustrates the complete dichotomy between the views of liberal civil rights organizations and those of ordinary citizens, including African-Americans, on voter fraud issues. A spokesman for the SCLC, Randel Osburn, said in 1998 that the absentee ballot investigation and prosecutions in Greene County amounted to “Gestapo tactics” and were a conspiracy to weaken the black vote that was having a “chilling effect” on voters.<sup>40</sup> Osburn said that the prosecutions “must be seen in the context of a many-pronged attack on voting rights and fair representation in this state.”

But Greene County citizens and candidates, most of them African-American, sharply disagreed. John Kennard held a press conference at which he said that national and state SCLC leaders were mis-

informed: “There were Gestapo tactics used, but it was blacks terrorizing blacks in 1994. Let me show you one of the victims of Gestapo tactics in 1994.” Kennard then introduced Bill Johnson, the candidate whose office was stolen in the 1994 election. As Kennard said, “Johnson did everything right. He won the election in 1994—but there were those people who decided Bill Johnson was not the black candidate they wanted for commissioner.”<sup>41</sup>

Kennard also introduced Toice Goodson, another black candidate who lost in the 1994 primary election because, as Kennard said, Goodson was not the choice of the political machine running the county.<sup>42</sup> Kennard disputes the charge that the prosecutions were an attack on voting rights. “Justice was perverted here in Greene County” in 1994, he said, by the theft of hundreds of votes using absentee balloting.<sup>43</sup> For taking this stand against voter fraud, Kennard was labeled “Chief Uncle Tom” in anonymous leaflets distributed in Eutaw.<sup>44</sup>

Organizations like the NAACP and the SCLC routinely claim that voter fraud investigations and prosecutions intimidate black voters and deter them from the polls, but Greene County citizens and officials also disagree on this point. Commenting on the 1998 election, Judge Earlean Isaac could not understand the view of the SCLC: “What are we saying if we hold up corruption? We can have a fair and clean election in Greene County. [This year] voters are not intimidated, they are not afraid to vote and they are not afraid to vote by absentee ballot.”<sup>45</sup> She had not heard of a single voter in the county who was fearful of voting because of the federal and state investigation.

37. Parker, *Election 1994*, *supra* note 19.

38. *Id.* See also Press Release, G. Douglas Jones, U.S. Att’y, Northern District of Ala., 6 Greene County Residents Plead Guilty to Federal Voter Fraud (Feb. 26, 1999); Leewanna Parker, *Six Admit Guilt in '94 Vote Fraud Conspiracy*, GREENE COUNTY INDEP., Mar. 3, 1999.

39. *Id.* Additional unindicted conspirators aided and abetted the voter fraud, including Cora Stewart, Jennifer Watkins, and Burnette Hutton. See Government’s Sentencing Memorandum, U.S. v. Smith, No. CR-97-S-0045-W, at 3–7 (N.D. Ala. 1997).

40. Leewanna Parker, *Gestapo Was Vote Thieves*, GREENE COUNTY INDEP., June 3, 1998.

41. *Id.*

42. *Id.*

43. *Id.*

44. Thurow, *Southern Cross*, *supra* note 5.

45. Parker, *Gestapo Was Vote Thieves*, *supra* note 40.

Nat Winn, a former member of the school board, said that the only people who were feeling threatened were “the ones that can’t get out there and steal ballots.”<sup>46</sup> Many black voters shared that sentiment, with one telling the local paper that only “[t]he ones who committed the crimes are afraid.”<sup>47</sup> According to sources within the investigation, one of the FBI agents was approached during the investigation by an elderly black woman who took the agent’s hand in hers, prayed with him for the investigation to be successful, and thanked him for what he was doing.

Voting in the 1998 election certainly showed that the citizens of Greene County were not deterred from voting. Turnout in the primary election was estimated at 57 percent, compared to turnout of 25 percent to 30 percent elsewhere in the state.<sup>48</sup> A total of 3,996 voted in the 1998 primary, compared to 3,861 in the 1994 primary.

The difference was in absentee ballots: 147 in 1998 versus 1,143 in 1994.<sup>49</sup> In 1998, absentee ballots accounted for only 4 percent of the total votes cast, which was more in keeping with levels of absentee voting throughout Alabama. In the general election, turnout was more than 70 percent, considerably higher than in 1994. And this gain came despite a massive drop in absentee ballots: Only around 200 were filed in 1998, more than 1,000 fewer than in 1994. Local election officials said that the turnout proved that the voter fraud prosecutions did not deter voters from the polls.<sup>50</sup>

Remarkable in the Greene County case was the NAACP’s defense of the defendants who committed

voter fraud.<sup>51</sup> John Kennard, a member of the NAACP, was outraged over the NAACP’s intercession on behalf of the voter fraud conspirators instead of on behalf of the black candidates whose offices had been stolen. He wrote a letter to Julian Bond, then Chairman of the NAACP, complaining that NAACP funds were going towards “defending people who knowingly and willingly participated in an organized...effort to steal the 1994 election from other Black candidates in Greene County.”<sup>52</sup> Kennard was very frank:

Personally, I feel that if the NAACP sides with these six people who stole election after election from the people of this county[,] it is tantamount to the organization defending policemen that used the fire hoses and dogs, and Eugene “Bull” Conner in Birmingham, in the early 1960s.<sup>53</sup>

Probate Judge Earlean Isaac, the county’s chief election official, complained that Bond never contacted her before the NAACP launched its protest. She said that she did not “think they want to find out what the facts are.... If they did they would have looked at the records, or at least contacted the person in charge of the elections. No one has requested a meeting with me.” Kennard said that the indicted commissioners and county employees were hiding behind the racial issue because they “knew that they had a fail-safe way out, when all else fails...cry racism, intimidation and pretend they are the victims when they were the perpetrators of this crime.”<sup>54</sup>

46. *Id.*

47. *Id.*

48. Leewanna Parker, *Voters Showed No Hesitation in Casting Ballots*, GREENE COUNTY INDEP., June 10, 1998. Some officials said the 57 percent figure was too low because they believed the voter registration list had between 600 and 1,000 listed voters who were not eligible to vote in Greene County. *Id.*

49. Gita M. Smith, *Alabama County Votes for Change: Fund Misuse, Fraud Targeted in Election*, ATLANTA J. CONST., June 6, 1998, at C3.

50. Leewanna Parker, *Voter Fraud Trial Begins Mar. 1*, GREENE COUNTY INDEP., Feb. 24, 1999.

51. Frank Smith and Connie Tyree were defended by the NAACP Legal Defense Fund, the NAACP Legal Defense & Educational Fund, and Pamela Karlan of Stanford Law School. *Smith*, 231 F3d at 804. NAACP officials and other civil rights leaders also met with Attorney General Janet Reno protesting the vote fraud investigation. *See* Thurow, *Southern Cross*, *supra* note 5.

52. Leewanna Parker, *NAACP to Hear Another Side of County’s Voter Fraud Story*, GREENE COUNTY INDEP., July 29, 1998.

53. *Id.*

54. *Id.*

Despite the investigation and outreach efforts by local black officials, the NAACP did not change its stance. In fact, Bond responded with a letter to Kennard “basically telling him to mind his own business.”<sup>55</sup> Bond said that “sinister forces” were behind the prosecutions and were “part and parcel of an ongoing attempt to stifle black voting strength.” He dismissed Kennard’s claim that the prosecutions were a legitimate effort to uncover a criminal conspiracy directed at thwarting black voters’ rights to elect candidates of their own choosing. Bond said that the accused were “friends and old colleagues” and that he had to “stand by them in their hour of need.” Kennard wondered whether Bond and the NAACP were more interested in defending their friends than in finding out the truth of the crimes that their friends had committed.<sup>56</sup>

The seeming tolerance of some liberal civil rights organizations for voter fraud committed against black candidates and black voters is disappointing. Spiver Gordon, who lost his seat as a Eutaw city councilman after he pled guilty to felony voter fraud, was, according to the U.S. Attorney and his own plea agreement, one of the “leaders and organizers of voter fraud” in Greene County.<sup>57</sup> Yet Gordon remains an officer of the SCLC, serving as treasurer of its national board.<sup>58</sup>

Unlike the SCLC, Greene County came out ahead from the vote-fraud investigation and prosecutions. One former resident of Greene County told me that “there was so much corruption in the county government and votes had been stolen in elections for so long that there was general lack of confidence that anything would be done about it or that anyone would actually be prosecuted,” something that was extremely discouraging to county residents.<sup>59</sup> This corruption led directly to the

bankruptcy of the county government, damaging the economy of the county and the welfare of its residents. Pam Montgomery of Citizens for a Better Greene County says that the voter fraud convictions were absolutely essential to cleaning up the county government and setting Greene County on the road to financial recovery.<sup>60</sup>

### Lessons from Greene County

One of the most important lessons of the Greene County prosecutions is how vulnerable absentee ballots are to voter fraud. They are voted in unmonitored settings where there is no election official or independent observer present to ensure that the registered voter is actually the person voting and that there is no illegal coercion.

“No-fault” absentee ballot laws—that is, laws that allow any registered voter to use an absentee ballot for any or no reason—and the growing movement toward all-mail elections threaten electoral integrity. Absentee ballots make it much easier for corrupt campaign organizations and candidates (like those in Greene County) to manipulate the vote. They are able to engage in tactics such as requesting absentee ballots in the names of registered voters, particularly poor residents and senior citizens, and either intimidating them into casting votes or fraudulently completing their ballots for them. In addition to the Greene County prosecutions, these practices have been documented in other cases, such as the 2003 Democratic mayoral primary election in East Chicago, Indiana, that was overturned by the Indiana Supreme Court due to absentee ballot fraud.<sup>61</sup>

The typical absentee ballot fraud follows this methodology:

- The fraud begins with the vote-fraud conspirator filing an application requesting an absentee

55. Leewanna Parker, *Bond Reaffirms Alignment to Local Voter Fraud Defendants*, GREENE COUNTY INDEP., Aug. 19, 1998.

56. *Id.*

57. Press Release, G. Douglas Jones, *supra* note 38, at 4.

58. Southern Christian Leadership Conference, National Board of Directors, <http://www.sclcnational.org/net/content/page.aspx?s=3065.0.12.2607> (last visited Sept. 2, 2008).

59. Interview with Elizabeth George, July 19, 2008.

60. Interview with Pam Montgomery, July 28, 2008.

61. *Pabey v. Pastrick*, 816 N.E.2d 1138 (Ind. 2004).

ballot for a voter either by forging the voter's signature on the application or obtaining the voter's signature through coercion, trickery, or bribery. Applications are freely distributed to anyone who asks for them, so this gives offenders easy and ready access to the forms needed to obtain ballots.

- Upon receipt of the application, the election official mails the absentee ballot and the voter affidavit to the mailing address listed on the application, which is either the true voter's address or an address controlled by the conspirator.
- Since election officials usually post the names of registered voters who have been sent absentee ballots (and the date on which the ballots were sent), the conspirator knows when the mailed ballots will arrive and can intercept them; in other cases, the absentee ballots are sent to addresses directly controlled by the conspirator.
- The absentee ballot is completed by the conspirator and the voter's signature forged, or the voter signs and completes the ballot as directed, or some combination thereof.
- The ballot is then either mailed or hand-delivered by the conspirator to the election official.

Greene County illustrates one of the key indicators of absentee ballot fraud for election and law enforcement officials: turnout (particularly by absentee ballots) that is dramatically in excess of other jurisdictions. It is true that historical election data show that different states and regions of the country have differing levels of turnout, and certainly local races of interest may spur turnout in, for example, one particular county when compared to other counties in the same state or area. However, an absentee ballot rate in a town or county several times higher than the average rate for the state is an early sign of possible fraud in the absentee balloting process that should be investigated. Another indication of fraud is multiple ballots witnessed by the same person (such as Connie Tyree in Greene County).

The Greene County case also shows how vital it is that prosecutors vigorously investigate the claims

of absentee ballot fraud not only to ensure a secure and fair election process, but also to maintain public confidence and root out corruption in local government. According to an experienced federal prosecutor, voter fraud by incumbents is a sure sign that the local government is engaging in corrupt practices.<sup>62</sup>

## Ensuring the Integrity of Elections

These lessons about the means of absentee ballot fraud suggest a number of common-sense measures to ensure the integrity of elections.

- **To reverse the trends of “no-fault” absentee voting and all-mail elections**, absentee ballots should be reserved for individuals who cannot vote in person at their assigned polling place on Election Day or at early voting sites prior to the election. Absentee ballots are appropriate for individuals who are too ill or disabled to vote in person, as well as voters who have legitimate reasons why they cannot vote in person, such as soldiers stationed overseas, but they should not be available just for convenience's sake, because the risk of fraud is too high. As an alternative, many states have early voting statutes that allow in-person voting at government-run polling places for a certain amount of time prior to Election Day. From an election integrity standpoint, early voting is a much safer alternative to expanded absentee balloting.
- **To increase the difficulty of fraudulent voting with absentee ballots**, individuals submitting absentee ballots should be required to provide a copy of an identification document containing a photograph (e.g., a driver's license) with their absentee ballots. While it is relatively easy to forge a voter's signature on an absentee ballot, it is more difficult for a vote-fraud conspirator to provide a photocopy of the voter's identification. In fact, William Johnson, who narrowly missed out on a seat on the Greene County Commission in 1994 due to fraudulent absentee ballots but won in 1998, threw his support behind a voter-identification bill in the Alabama legislature.<sup>63</sup>

62. This prosecutor requested not to be identified because he is a current government employee.



- **To deter the forgery of voter signatures**, the signatures on absentee ballots should be either notarized or witnessed by at least two other individuals who provide their addresses and telephone numbers, and the number of voter signatures that any single individual is allowed to witness should be limited. For most jurisdictions, though, signature verification will be a last resort because it is too difficult for untrained clerks to perform. In Greene County, for example, FBI handwriting experts were needed to detect the forged signatures.<sup>64</sup> In many jurisdictions, election officials—overwhelmed by the sheer number of absentee ballots—do not even attempt signature verification. Nonetheless, these steps would make forgery both more difficult and easier to detect in any post-election law-enforcement investigations.
- **To help detect fraud**, states that have “no-fault” or relaxed absentee ballot rules should require voters wishing to cast mail-in ballots to provide a sample of their signatures at least every five years. This would ensure that election officials had an up-to-date specimen of the voter’s signature that could be compared with an absentee ballot affidavit signature.
- **To prevent intimidation and fraud**, unrelated third parties, including campaign workers and candidates, should be prohibited from delivering absentee ballots. The appearance of vote brokers at the Eutaw post office with 1,000 fraudulent absentee ballots illustrates why state laws should allow only voters, their immediate family members, or their caregivers to deliver absentee ballots either to the post office or directly to election officials.
- **To avoid deterring prosecutions and damaging public confidence**, civil rights organizations and others should refrain from leaping to the conclusion that voter fraud investigations are politically

or racially motivated. The evidence from Greene County demonstrates that voter fraud prosecutions do not deter citizens from voting; in fact, the result was quite the opposite as citizens gained trust in their electoral system.

### Absentee Ballot Fraud Today

The Greene County case is relevant today because there is reason to fear that certain features of the vote-fraud conspiracy may play out again in the 2008 elections. Despite the convictions and guilty pleas in Greene County, neither the NAACP nor the SCLC has ever admitted that its claims that the investigations were racist and politically motivated were wrong and, as should have been apparent at the time, completely specious. This gives rise to concern that similar strategies might be employed in the coming election to discourage the investigation and prosecution of schemes to disenfranchise vulnerable voters.

Already this year, strong allegations of absentee ballot fraud, executed just as in Greene County, have been levied in several Alabama counties, with local officials (some of whom are suspects) claiming once again that the “inquiries are motivated by racism and partisanship.”<sup>65</sup> In the 2008 Perry County primary, for example, a quarter of the county’s citizens voted by absentee ballot, the highest percentage in the state and six times the state average. Turnout exceeded 50 percent, compared to 16 percent in the rest of the state.<sup>66</sup> Witnesses allege that Perry County absentee ballots were exchanged for cash, crack cocaine, and other inducements (including driveway gravel) and that honest voters appeared at the polling place only to be told that absentee ballots had already been cast in their names.<sup>67</sup> Both the Alabama Secretary of State and the Alabama Attorney General are investigating.

There is a special historical resonance to these allegations. Perry County was one of the flash

63. Leewanna Parker, *Locals Among State Voter ID Proponents*, GREENE COUNTY INDEP., Jan. 21, 1998.

64. Oregon has all-mail elections, and officials there claim that signature matching when ballots are received prevents voter fraud. However, signature analysis is a skill that requires extensive training; cannot be taught to the average election worker in the limited time available; and, other than for the most blatant forgeries, cannot be effective in the few seconds that election workers have to compare signatures on each of the hundreds of thousands of ballots they receive.

65. Adam Nossiter, *Officials Investigate 3 Alabama Counties in Voter Fraud Accusations*, N.Y. TIMES, July 10, 2008.

points of the voting rights movement. During the Civil Rights-era struggle to register black voters, a protester in Perry County was fatally shot, inspiring the “Bloody Sunday” march over Selma’s Edmund Pettus Bridge. Today, not only do African-Americans vote there; they run for office—and win. Elected African-American officials have controlled local government in Perry County and neighboring counties of the Black Belt for decades. But now the region’s black voters face a new obstacle to self-determination: the threat of disenfranchisement by vote fraud. “A generation ago, civil rights leaders in West Alabama overcame entrenched power structures,” observed the *Tuscaloosa News*. “What a sad irony it would be if that system were simply replaced by another undemocratic process.”<sup>68</sup>

Already, there have been claims that this investigation is simply a plot by Republicans “to suppress the black vote.”<sup>69</sup> In the same way that honest Greene County officials sought to convince federal law enforcers and liberal civil rights organizations that the investigations of the 1994 election were legitimate and needed, Perry County’s district attorney, Michael W. Jackson, who is a Democrat and the first black to be elected to the post, has called for a federal investigation focusing on absentee ballots because their sheer number was “suspicious” and “we want to make sure candidates and the public have a fair process.”<sup>70</sup>

## Conclusion

In the final analysis, the importance of the Greene County investigations and prosecutions to

the county’s citizens and civil fabric cannot be overstated. Though the distracting noise of partisan wrangling and race-baiting may have drowned out that point on the national stage, it remains clear to those who live in Greene County. The local paper explained it well:

Bankruptcy and the hopelessness of the people, because of the corruption at high levels, can be reversed now that stealing elections is no longer an accepted way of life and justice has prevailed....

This beautiful county, whose promise was overshadowed by corruption and greed at the hands of those who gained public office and power by theft and deception, can finally set some healthy goals and move toward economic growth and a period of prosperity. The next chapter in Greene County’s history will be what honestly elected men and women make it. It will be what the people of this county make it, without the fear that the ballot brokers will be ringing people’s door bells...when another election rolls around.<sup>71</sup>

—Hans A. von Spakovsky served as a member of the Federal Election Commission for two years. Before that, he was Counsel to the Assistant Attorney General for Civil Rights at the U.S. Department of Justice, where he specialized in voting and election issues. He also served as a county election official in Georgia for five years as a member of the Fulton County Board of Registration and Elections.

66. *Id.*; Chris Rizo, *King Laments Voter Fraud in Alabama*, LegalNewsline.com, June 29, 2008. A former Circuit Clerk in Hale County has been indicted for 13 counts of absentee ballot fraud involving the 2004 and 2005 elections of her ex-husband, a state senator. *Former Hale County Circuit Clerk Arrested on Voter Fraud Charges*, Assoc. Press, Mar. 18, 2008. This latest case seems to be a repeat of prior voter fraud in Hale County that occurred at the same time as the Greene County case when Alabama Assistant Attorney General Greg Biggs obtained convictions of the local chief of police on multiple counts of voter fraud, forgery in the second degree, and possession of forged instruments (absentee ballots). Interview with Greg Biggs, Apr. 22, 2008.

67. Kim Chandler, *Big Absentee Numbers in Small Counties Questioned*, BIRMINGHAM NEWS, June 23, 2008; *Secretary of State: Voter Fraud Allegations Flooding In* (WSFA-12 News broadcast Jun. 12, 2008); *Chapman Receives Complaint of Voter Fraud in Perry*, Assoc. Press, July 17, 2008.

68. *Light, Not Heat, in Hale County*, TUSCALOOSA NEWS, Oct. 9, 2007.

69. Nossiter, *supra* note 65.

70. *Id.*

71. Editorial, *Turn the Page*, GREENE COUNTY INDEP., Mar. 3, 1999.