

NOMINATION OF JEFFERSON B. SESSIONS III, TO
BE U.S. DISTRICT JUDGE FOR THE SOUTHERN
DISTRICT OF ALABAMA

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HEARINGS
BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
NINETY-NINTH CONGRESS

SECOND SESSION

ON

THE NOMINATION OF JEFFERSON B. SESSIONS III, OF ALABAMA, TO BE
U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF ALABAMA

—————
MARCH 13, 19, 20, AND MAY 6, 1986
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**NOMINATION OF JEFFERSON B. SESSIONS III,
TO BE U.S. DISTRICT JUDGE FOR THE SOUTH-
ERN DISTRICT OF ALABAMA**

THURSDAY, MARCH 13, 1986

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 2:08 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Strom Thurmond (chairman of the committee) and Hon. Jeremiah Denton presiding.

Also present: Senators Biden, Kennedy, Simon, Heflin, Specter, DeConcini, McConnell, and Metzenbaum.

Staff present: Duke Short, chief investigator; Frank Klonoski, investigator; and Cindy LeBow, minority chief counsel.

OPENING STATEMENT OF SENATOR JEREMIAH DENTON

Senator DENTON. This hearing will come to order. Chairman Thurmond has been delayed, he will be here shortly.

Today's hearing is on the nomination of Jefferson B. Sessions III, of Alabama, to be U.S. district judge for the Southern District of Alabama.

If you will remain standing, Mr. Sessions, I will ask for you to be sworn in.

Do you swear that the testimony you give in this hearing will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. SESSIONS. I do.

Senator DENTON. Please be seated.

I will not have an opening statement. I have introduced Jeff Sessions on a previous occasion, November 22, 1985. I will not repeat the opinions and statements I made at that time about Mr. Sessions' qualifications and fitness for office, but I do still believe in all of those wholeheartedly.

I defer to my colleagues for their opening statements, if they care to make one. Senator Biden.

Senator BIDEN. Mr. Chairman, I have no opening statement. I have a number of questions. I will defer to Senator Kennedy, if he has a statement.

Senator KENNEDY. Thank you.

Senator DENTON. Senator Kennedy.

Senator BIDEN. I have one inquiry, though, before we begin. I have been on this committee, I guess, 12 years or so, and I under-

stand the first camera there is from the Justice Department. Is that Mr. Meese operating the camera, or who is that?

I am just curious. I just want the record to note that I do not ever recall the Justice Department having a television training session that went on, but if they have that as a program, I just want to say hello to Mr. Meese and whoever else is there and move on. [Laughter.]

Do you have any objection to Mr. Meese? Are you sliding closer to me or further away? [Laughter.]

Senator KENNEDY. I do not know whether the Chair knows about it.

Senator DENTON. I have recognized Senator Kennedy, but I would ask that we consider that this is a hearing in the U.S. Senate and we are supposed to be objective about this hearing. I intend to be.

I am going to require order. I am not going to supervise a circus. I recognize Senator Kennedy.

Senator BIDEN. Excuse me. If the Senator will yield, the reason I dealt with it humorously is because I can find no reason why the Justice Department would be filming this, so I dealt with it humorously.

Now, if the Senator wants me to be real serious about it, I would like to ask the Justice Department before we begin as to why, for the first time, to the best of my knowledge, they are here televising or taping a session. I would be just curious to know.

Senator DENTON. Well, Mr. Bolton, the Assistant Attorney General for Legislative Affairs, I am just informed, is here. Perhaps he would care to answer that.

Mr. BOLTON. Thank you, Mr. Chairman.

Senator Biden, the reason that we are doing this is because we have a number of nominees who will come before the committee who have never appeared before a Senate committee before; are unfamiliar with the procedures.

We felt that in order to give them some knowledge of what happens in a confirmation hearing that this sort of thing would be helpful, and that is the sole reason.

Senator BIDEN. Thank you.

Senator DENTON. Thank you, Mr. Bolton.

Senator Kennedy.

OPENING STATEMENT OF SENATOR EDWARD M. KENNEDY

Senator KENNEDY. Thank you.

The confirmation of nominees for lifetime appointments to the Federal judiciary is one of the most important responsibilities of the Senate mandated by the U.S. Constitution, and the examination by the Senate of a nominee's fitness to serve as a Federal judge is the last opportunity to determine whether the candidate possesses the education, experience, skills, integrity, and, most importantly, the commitment to equal justice under law, which are essential attributes of a Federal judge.

Once confirmed, a Federal judge literally has life and death authority over citizens that appear before him, with limited review of his decisions. Our Federal judiciary is the guardian of the rights

and liberties guaranteed to all of us by the U.S. Constitution, and the decisions of Federal judges are constantly shaping and reshaping those rights and liberties.

This committee has a duty to our citizens to carefully examine the qualifications of nominees for the Federal bench and to give our approval only to those who have demonstrated a personal commitment to the principle of equality for all Americans and a sensitivity to the long history of inequality which we are still struggling to overcome.

Mr. Sessions, as the U.S. attorney for the Southern District of Alabama, comes to this committee with a record which, regrettably, includes presiding over the now infamous so-called Perry County voting fraud prosecutions.

In the *Perry County* case, the Government indicted three well-known and highly respected black civil rights activists on charges of voter fraud in assisting elderly black voters to vote by absentee ballot.

But for the efforts of the defendants 20 years ago, these black citizens would not have been allowed to vote. All three of the defendants were acquitted of all charges in the indictments, and some of the elderly blacks have responded to their experiences during the prosecution by vowing never to vote again. Mr. Sessions' role in that case alone should bar him from serving on the Federal bench.

But there is more, much more. We just received a sworn statement from a Justice Department attorney I know, which will be the subject of a good deal of questioning during the course of this hearing, who has worked on civil rights cases with Mr. Sessions over the period Sessions had been U.S. attorney.

Mr. Hebert has stated to the committee investigators that Mr. Sessions on more than one occasion has characterized the NAACP and the ACLU as un-American, Communist-inspired organizations.

Mr. Hebert reports that Mr. Sessions said these organizations did more harm than good when they were trying to force civil rights down the throats of people who were trying to put problems behind them.

Mr. Hebert has also stated that Mr. Sessions suggested that a prominent white civil rights lawyer who litigated voting rights cases was a disgrace to his race for doing it.

Mr. Sessions is a throwback to a shameful era which I know both black and white Americans thought was in our past. It is inconceivable to me that a person of this attitude is qualified to be a U.S. attorney, let alone a U.S. Federal judge.

He is, I believe, a disgrace to the Justice Department and he should withdraw his nomination and resign his position.

The CHAIRMAN. The distinguished Senator from Alabama, Mr. Heflin.

OPENING STATEMENT OF SENATOR HOWELL HEFLIN

Senator HEFLIN. Mr. Chairman, as Senator Denton previously stated, he had made a lot of words of introduction at a previous time when Mr. Sessions was here. I, likewise, made introductory remarks of Mr. Sessions at that time.

But Mr. Sessions is a native Alabamian; he is from my State. He graduated from Huntingdon College in Montgomery and received his juris doctorate degree from the University of Alabama School of Law.

After graduating from law school, he practiced law with the law firm of Guin, Bouldin & Porch in Russellville, AL. Mr. J. Foy Guin, Jr. is now a U.S. district judge in Birmingham.

And from 1975 to 1977, Mr. Sessions served as an assistant U.S. attorney in the Southern District of Alabama, a position which he held until 1977 to return to the private practice of law.

Mr. Sessions became an associate with the law firm of Stockman & Bedsole, and later became a full partner with that firm. Since 1981, Mr. Sessions has been the U.S. attorney for the Southern District of Alabama.

I approach these confirmation hearings with the theory and the general presumption that the President is entitled to have his nominees confirmed unless the nominee is unqualified or unfit or his service would be detrimental to the best interests of all of the people of the United States.

I am here to listen to the confirmation hearings and to participate in these hearings with an open mind.

Mr. Sessions, I congratulate you on your nomination and I wish you the best of luck throughout the confirmation process.

The CHAIRMAN. The distinguished Senator from Alabama, Mr. Denton.

Senator DENTON. Yes, sir, Mr. Chairman. I previously indicated, having introduced Mr. Sessions on a previous occasion, I would have no opening statement. But in view of my friend from Massachusetts' opening statement, and since it is my turn in line now, having acted temporarily as chairman, I would like to make a few comments at the outset of this hearing.

The main point I would like to make to my colleagues is that there is much more than will meet the eye or ear today to this hearing. For example, there is a document that some of my colleagues have seen. I had hoped that they would not take it at its face value, but from the statement by my distinguished colleague from Massachusetts, at least he has chosen to do that.

This document has been circulated for an unknown length of time. It came into my hands last night. I must say that in all my time in the Senate, I have never seen a document like this. I have never seen a document with as many lies in it as this one, and I am extremely disappointed that after a very diligent effort on my part in a previous hearing in which I had doubts, but did honest research on a nominee and then at the end decided that I could not oppose that nominee, that we are going into this hearing with an unprecedented blast based on intemperate and untrue allegations in what I would call a rag.

Senator KENNEDY. Would the Senator just yield on the point, since there has been reference to my statement?

Senator DENTON. Yes, sir.

Senator KENNEDY. I was referring to the sworn depositions which were taken by committee staffers yesterday. That was the reference.

Senator DENTON. Yes, sir; but the quotations made are entirely out of context, as the questions will show, so I could not let them stand as if they are not.

Senator KENNEDY. Fine. Everyone, obviously, is going to put what interpretation that they want. But I want the record to be clear that my references in my opening statement were referring to the sworn testimony that was taken yesterday in deposition by staffers of the Judiciary Committee and not some other document. I just wanted that to be clear for the record.

Senator DENTON. Surely. Each one of those allegations will be the subject of much discussion today, and I hope my friend from Massachusetts is satisfied at the end that he has heard enough to make a judgment about each one of the allegations, and that is what I understand we are here for today.

I do think all of my colleagues are entitled to know that this hearing has been prefaced by a great deal of journalistic reporting, marches, appearances in the State by individuals from outside the State, and that certain individuals from outside my home State of Alabama have suggested that the current administration and its leader, President Reagan, with the Justice Department and Attorney General Meese, the FBI, presumably led by the ominous Judge Webster, and this Senator are engaged in a conspiracy to deprive black voters in my State of their right to vote; to intimidate them into not voting, particularly into not voting in my election in 1986.

We have voluminous examples of that journalism which we will make available today and for the record. That accusation is part of a whole network of activities which has been ongoing to discredit me and to turn me out of office—activities that try to establish pure lie as truth by trying to turn me into a bigot, a racist, to portray me as the opposite of what I am and what every black man, woman, or child in Alabama who knows me, knows who I am.

I know that my Democratic colleagues on this committee—I know them and I like them and I respect each of them. I am certain that none of them would participate deliberately in any kind of cheap, gutter politics. Oppose me, yes; deliberately lie about me, no.

In none of my experiences has any of them made me feel that any of them has done anything dishonorable or engaged in anything dishonorable. Political, yes; sensational, yes; opposition politics, yes. But I have nothing that I can hold against any of them to this point in the sense of getting into the gutter, and I do not think any of them can hold it against me for opposing Mr. Sporkin because I think I did so, in their eyes, at least in an honorable fashion. If they disagreed with my doubts, I do not think they disagreed with the tactics.

But that accusation to which I referred that the State of Alabama, the Justice Department, the President, and so on, have characteristics that want to block out black voters is the whole context in which this so-called hearing about a judge's nomination is being held, and you are entitled to know that.

I have provided my colleagues with copies of certain news reports from media in my State. I will also put those articles and others into the official record of those proceedings.

I will refer first to an article that appeared in the Birmingham Post Herald, dated June 25, 1985. That article in your handout is article No. 1, if you care to follow along.

There is a quotation from a State senator from Maryland. The Birmingham Post Herald is one of the largest in the State of Alabama. There is a quotation there in this article of Clarence Mitchell, a State senator from Maryland, who says, "The administration is conducting this investigation as a political tool for Senator Jeremiah Denton," and that is in reference to the Perry County hearings which you will be hearing so much about today.

Mr. Mitchell said that the FBI used intimidation tactics to discourage blacks from voting in future elections.

In article No. 2, the Mobile Press, probably the second or third biggest newspaper in Alabama, dated June 25, 1985, the same gentleman, Clarence Mitchell, State senator from Maryland, says, "We think war has been declared by the Justice Department in Alabama and we are prepared to go to war."

In that same article, District of Columbia Representative Walter Fauntroy says:

We have probably entered a period of Government lawlessness in stifling black participation in key counties across the South. Present now is an assault by prosecutors on behalf of the Government on those who have been successfully stimulating black voters' participation in counties across the South.

Similar comments were made, as stated in the Mobile Press article of November 19, 1985, No. 3, quoting Rev. Jesse Jackson, who I think is here today. I have to say that the charges made characterize me as being behind some sort of a conspiracy.

All I can say is that I believe that no one in this room really believes that. Certainly, no one in Alabama really believes that. I never knew the Perry County thing was going on until I read about it in the newspapers.

From what I know about it right now and what I think will be discussed today, I have no sense of shame. I rather think that Mr. Sessions would not have been doing his duty had he not taken this case under his jurisdiction.

We will examine all that during the trial—I mean during the hearing. [Laughter.]

That is what it is; that is what it is. It is a trial of me and Reagan, as was introduced by questioning the use of the camera here. I am not suggesting that any of my colleagues are going to play dirty politics: quite the contrary, I have already expressed.

But I believe they are going to see through the nonsense here, and I hope so because otherwise a disservice will be done to Mr. Sessions. I am not worrying about myself because I think whatever goes on here today will not adversely affect my chances for reelection.

I am not certain what testimony will be presented in opposition to Mr. Sessions, but looking at the list of prospective witnesses, you get a pretty good idea. If it is the intent of those who will testify in opposition to retry the so-called *Perry County* case, I would welcome that opportunity.

I think my colleagues will be enlightened to hear from black voters and officeholders in Perry County who gave testimony that

their votes were stolen or altered, which was the reason the investigation was begun.

Let us not lose sight, I ask my Democratic colleagues, of one overriding consideration, Mr. Chairman. The key complainants in the *Perry County* case were black. I would have had a problem with Mr. Sessions' nomination myself if he had not gone forward with that case, based on what I have since heard and read about the case.

But conspiracy in voter intimidation—I am sure that today's hearings will eliminate that, along with any further witnesses that might need to be called.

Please hear this: There have been several vote fraud investigations and trials in Alabama during the term of the present administration, and I am now defending the administration against the charge that has been leveled so repeatedly about wanting to intimidate black voters and concentrating on counties which are predominantly black in looking at voter registration or voting procedures.

Here are some examples of those trials. In fact, I think this is an exclusive list, including all that I know of at this point.

A 1981 case in Randolph County involved the indictment of 11 people, 1 of whom was black. Three people, all white, were convicted, including the incumbent sheriff.

In 1983, in Bullock County, a black city councilman was indicted and pled guilty to a voting rights violation. In Marshall County in 1984, one person, white, was indicted and convicted of charges similar to the *Perry County* case.

I do not know why that was not brought out in the allegations. I cannot believe there were short memories or inaccurate records, but those are the kinds of cases that have taken place in Alabama.

Have blacks been intimidated in Alabama as a result of these cases? In the *Mobile Press* article of November 19, 1985, No. 3 in your list, the Greene County tax assessor, John Kinard, who happens to be black, said that the government investigation showed that "everybody is treated equal, black and white."

He went on to say that in recent cases, "black people conspired to steal an election. They got caught doing it and began blaming Ronald Reagan and Edwin Meese. When they got caught, they started the whole thing of hollering racism and intimidation."

It is the black people of Alabama who are going to be the most indignant about this farce. I have no propensity to engage in a black-versus-white thing. I am very happy, and have made speeches over and over again throughout my State, that the reason for the rise of the South economically, the Sun Belt, is that the blacks have finally been permitted, after a needed kick to the whites on the part of the Federal Government—have finally been permitted access to education opportunities and business opportunities that they did not have before.

That use of our natural resource, the most precious one we have, manpower, humanpower, has been brought to bear, not just suffocated. I have said that over and over. In all of my campaign speeches, when I was introduced as a big hero I would say I am not a hero. If you want to look for a hero, look for the black corporal who walked point in the jungle at night in Vietnam.

I had white men walk up to me and say I agree with that, but if you are going to keep saying that in Alabama, you had better take along a body guard. I found that not to be true. Every time I have ever made that analogy, the white people have stood up and applauded.

There is none of this foolishness on any scale. There may be some individuals on both sides. I believe there is still not freedom of opportunity existing for the blacks. I believe some of the social opportunities are not there which are connected with business.

But I will not be portrayed as a racist; I will not have my President portrayed as one, or betrayed by the allegation that he is one.

Two Birmingham newspaper reporters wrote an article which appeared in the Mobile Press of October 14, 1985; that is No. 4. I will not go through all the quotes, but the article is a series of interviews with voters in the black belt of Alabama asking them about intimidation.

Not one black voter, Mr. Chairman, not one, gave any indication whatsoever of intimidation. The prime point to be kept in mind as you listen to a prepicked cast of opposition witnesses, which list I learned about only yesterday, and some of whom I learned about 2 minutes before coming in this room—the point is that these cases, Perry and Greene Counties, involve allegations by blacks about votes being stolen from blacks.

Now, I ask you, gentlemen, please keep that in mind because that point has been ignored in the allegations which are politically oriented, and I do not think you are at the level of that kind of political fighting.

Mr. Chairman, we were not expecting such a circus as appears to be ready to unfold here. The facts are clear, and we believe and hope they will be clear to all members of this committee before this day or subsequent days are out.

We do not have a long list of witnesses today. We first did not think it was necessary; then it was not possible. But we will parade as many witnesses as necessary to bring forth the truth after what we hear today.

There are a number of people ready and eager to come to testify on behalf of Jeff Sessions and about the *Perry County* case and about these general allegations, if necessary.

At the request of my colleagues on the other side, we agreed to put this nomination over for 3 months now. A very thorough investigation has apparently been conducted, and I understand that minority counsel has been quoted in the press as saying that Mr. Sessions was very helpful and most cooperative in that investigation.

So if there are some substantive objections to Jeff Sessions' qualifications or if you want to dig into these allegations which I have said are not fair, help yourselves. Let us hear them, but let us be fair with one another, honest with one another. I think I have tried to be that in my service here and I only ask for that today.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

The distinguished Senator from Arizona, Mr. DeConcini.

Senator DECONCINI. Mr. Chairman, I have no statement. I am here to listen to this. I think this is a very important hearing and I have not yet made up my mind as to how I am going to vote on

this nomination. I want to assure the Senator from Alabama that I only know the little bit I have read in the paper and I never believe all of that. I look forward, Mr. Sessions, to hear the testimony from you and your supporters and from those who are opposed to this nomination.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

The distinguished Senator from Illinois, Mr. Simon.

OPENING STATEMENT OF SENATOR PAUL SIMON

Senator SIMON. Mr. Chairman, I share some of the concerns of my colleague from Massachusetts. This morning, I heard on National Public Radio a reference to an organization I have belonged to since I was a teenager: the NAACP. You reportedly called it a pinko outfit.

I am concerned that Federal judges are fair to all citizens, and I have to tell you candidly on the basis of what I have seen here that you have an uphill fight getting my vote.

I have made no commitments to anyone, but I want to be convinced. I think that is where some of my other colleagues are, too.

Thank you, Mr. Chairman.

The CHAIRMAN. The distinguished Senator from Kentucky, Mr. McConnell.

Senator McCONNELL. Thank you, Mr. Chairman. I do not have a statement. I just came over to listen, and so I will defer to whoever is next.

The CHAIRMAN. Mr. Sessions, I believe you have been sworn.

TESTIMONY OF JEFFERSON B. SESSIONS III, OF ALABAMA, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF ALABAMA

The CHAIRMAN. Mr. Sessions, would you summarize for the committee your background and legal experience?

Mr. SESSIONS. Mr. Chairman, I graduated from the University of Alabama Law School and began the practice of law in the small town of Russellville, AL, with the firm of Guin, Bouldin & Porch, a very fine smalltown law firm. We had one of the best law libraries in the State.

The senior partner of the firm, when I joined it, was Mr. J. Foy Guin, Jr., who was appointed as a Federal judge in Birmingham, the Northern District of Alabama. I practiced there for about 2 years, primarily in civil litigation.

Judge Heflin, I participated in a case in the supreme court that involved a car race accident with a guy from Freedom Hills. I believe you participated on the panel, and it was argued at the University of Alabama. I participated in writing the brief, but not in arguing the case.

I did a lot of civil litigation at that time. Then I joined the U.S. attorney's office in Mobile and handled primarily criminal litigation, but also civil litigation. I defended a wrongful death case and a number of other civil cases, but primarily my 2½ years there involved criminal litigation of a very heavy nature. I tried cases before a jury on a regular basis.

After that, I left the U.S. attorney's office and joined the firm of Stockman & Bedsole, a very fine AV-rated law firm in Mobile. It was the firm from which the U.S. attorney who had been appointed by President Carter, William A. Kimbrow, had left.

I stayed there for 4 years, practicing primarily civil litigation. I defended a number of criminal cases, but primarily my work was civil litigation with that firm. After that, I was fortunate to be given the opportunity to serve as U.S. attorney, and as U.S. attorney I have probably carried as heavy, or I would think almost certainly the heaviest trial load of any U.S. attorney in the country.

Since I have been U.S. attorney, I have tried 17 cases to judgment. One lasted 7 weeks; it was against two judges, a lawyer, and a bail bondsman. Another one was 4 weeks against a bank president, a lawyer, and a State senator.

The judge's case that lasted 7 weeks—the jury convicted all defendants, of every count named in the indictment against each defendant. We got a hung jury on one of the defendants in the other case that lasted 4 weeks. I have tried cases that lasted 2 weeks, and so forth.

During that time, I have supervised the civil litigation in our office, although I have not tried any civil cases. What I do in my office—the civil attorneys will come and discuss strategy, and so forth, in civil cases.

I think I have a good background to be a judge. I have practiced in small State courts; I have practiced in criminal court in the State system. I have represented clients that come to me without money. I have represented many of them; I have given them advice.

My door was always open; I would talk to any client that wanted advice without any charge. That is basically, Mr. Chairman, my experience.

The CHAIRMAN. Would you tell the committee what you feel have been the major accomplishments of the U.S. attorneys under your leadership?

Mr. SESSIONS. Mr. Chairman, within a year after I became U.S. attorney, our caseload in the office had increased over 50 percent with the same staff that was there when I came.

We prosecuted some of the most significant cases ever to be prosecuted in Mobile. I am very proud of that. This past year, the 1985 statistics show that our office was third in the Nation in increase in overall caseload.

We try a lot of cases in addition to that. We do not just file cases to accept pleas on cases. We have—in a four-State region of Alabama, Georgia, Tennessee, and Mississippi, my office, the smallest one in that region, has had more favorable rulings in the Court of Appeals for the Eleventh Circuit than any other district except Atlanta.

We have 8 lawyers; Atlanta has 38. Every other district—one district in the region has 24 lawyers, and we handled more favorable appeals in the court of appeals. That indicates, I think, that we are trying quality cases. They are important cases because those are the ones that are appealed. I am very proud of that.

Our civil caseload has increased dramatically. I think the most painful thing that has ever been said to me at any time, public or

private, was when Senator Kennedy said that I was a disgrace to the office. That is the most painful thing I have ever had said to me. I am proud of that office; I am proud of the work that I have done, and it breaks my heart to hear that said.

The CHAIRMAN. Mr. Sessions, there have been concerns regarding your role in prosecuting voter fraud cases in Perry County, AL. Would you tell the committee how these cases developed and the facts surrounding the resulting prosecutions?

Mr. SESSIONS. Mr. Chairman, that case first came to my attention when I learned of a problem in Perry County in 1982. The district attorney there called our office. He had written the Civil Rights Division of the Department of Justice and written other people. It was suggested to him that he contact our office if fraud was involved in the voting process. He did.

I talked with him on occasion, but took no action. At that time, the Department of Justice was made aware that we had complaints. After the election in 1982—that is, the Democratic primary in 1982, I believe—Mr. Johnson, the district attorney, conducted a grand jury investigation in Perry County.

He sought indictments, I believe, against two individuals and the grand jury at that time declined to return an indictment, but they issued a report. In that report, which I have a copy of, the grand jury of Perry County, which I am informed had a black foreman and a majority black composition on this grand jury—Perry County is a fairly substantially black county—the grand jury said this:

This grand jury has extensively and exhaustively investigated the voting situation in Perry County. Our greatest concern is to assure a fair election for all parties and all people.

At this point, we are convinced that such an election is being denied the citizens of Perry County, both black and white. The primary problem appears to be the tampering of the right to vote of black citizens in this county.

The problems are intimidation at the polls and abuse and interference with the absentee balloting process. These problem areas lie within gray and uncertain areas of the law and are generally confined to those segments of our society which are aged, infirmed or disabled. We encourage vigorous prosecution of all voting laws, and especially would request the presence and assistance of an outside agency, preferably federal, to monitor our elections and ensure fairness and impartiality for all.

That was signed by the foreman of that grand jury.

After we were made aware of that and after Mr. Johnson had conducted his investigation after the election, we reviewed the situation. Some materials were sent to me. My assistant, E.T. Rolison, Jr., actually reviewed the materials; I did not.

And it was the conclusion of our office that probably this investigation that he had conducted would stop the problem in Perry County; there would not be any more fraud, and we did not see any need at that point to conduct any significant investigation, and it would have been a significant one to undertake.

And we just decided not to do anything about it, and advised him of such. I had no more conversations about the case. We had no idea at all that we might conduct another investigation in Perry County until a few days before the September 4 primary in 1984.

Senator BIDEN. How long after the grand jury was that?

Mr. SESSIONS. Well, the grand jury report, Senator, was in 1983; I believe March 1983. So during that period, I had really forgotten about the county.

Mr. Johnson called and he told me at that time that he had in his presence a Mr. Reese Billingslea, a black county commissioner in Perry County. Mr. Billingslea was running for his third term, was one of the first blacks to be elected in Perry County.

He said that Mr. Billingslea and other black candidates were very concerned about the election. Mr. Billingslea has told me that he contacted the Department of Justice Civil Rights Division to ask for help in this election because he was seeing a massive absentee campaign and he believed and was certain and had information that fraudulent activities were going on.

He was advised by, I believe he told me, a Mr. Quan in the Civil Rights Division to contact me, and since Mr. Johnson knew me, that is how the call came about. They discussed at that time various things.

It was suggested that we might consider a search warrant of this house where ballots were being collected and brought, and I quickly advised them that would not be proper. It would interfere with the election and was against the policy of the Department of Justice, and besides I did not think there was a basis for that.

I was advised by Mr. Johnson that a contest was being filed; that a number of candidates—three of them were black, one white—were filing an election contest because they were afraid, in fact, that the election was going to be stolen from them and they wanted and were going to ask that the absentee ballots be numbered so that the envelope that comes out—you have an envelope and it has the name and address of the voter, but the ballot that is in it has no name or number on it.

And once they are separated and put into the two boxes when they are opened and counted, they are forever separated and nobody could ever tell if someone changed a person's ballot.

I was told that that had been done in 1982 and that this was going to be asked for again, and that a private attorney, who I—I am not sure who the private attorney was—the private attorney was going to file this lawsuit, and that is, in fact, what happened.

Senator BIDEN. If I may interrupt, if they had put the number on the ballot and the envelope, then you would know who voted which way, right?

Mr. SESSIONS. That is correct.

Senator BIDEN. OK.

Mr. SESSIONS. The circuit judge in Perry County issued such an order, as had been done, I think, by a different circuit judge before, 2 years before, and the ballots were collected and counted.

Mr. Billingslea won, despite a heavy loss in the absentee box, and the other candidates who filed the election contest also won, despite the absentee box.

Let me say this parenthetically: The number of absentee ballots cast in Perry County were really extraordinary; 729 absentee ballots were cast out of about 4,000 total votes. It turned out—another point, Mr. Chairman; we were told when Mr. Johnson called me that Albert Turner and others were supposed to be collecting these ballots and that they would all be mailed the night before the election at the post office in Marion. That is what the information was.

So I suggested that we observe the post office, or we discussed it with my assistant, and that was communicated to Mr. Johnson

with my approval. And we also decided to conduct a mail cover of the post office, which simply would be that the postman would be authorized to write down the return address on the outside of the envelope of each letter that is mailed.

And sure enough, that night, the night before the election, the defendant, Albert Turner, deposited, I believe, 347 ballots, along with his wife, and the defendant, Spencer Hogue, deposited 170-some-odd absentee ballots that night.

At the time the absentee ballots were opened on election day and counted—and we had specifically instructed our people to do nothing that would call any attention to this election publicly or to do anything that would affect the outcome of it, and we had been in regular contact with the Public Integrity Section of the Department of Justice to make sure our procedures were correct on this.

And when those ballots were opened, there was a substantial number of them that had candidates' names crossed out. There would be an *x* by one candidate and both the name and the *x* would be crossed out and an *x* placed beside another candidate's name.

So that is where the investigation began. I believe that was your question, how it began.

The CHAIRMAN. Mr. Sessions, it is my understanding that Federal intervention into voter fraud cases requires the U.S. attorney's office to receive approval from the Department of Justice Public Integrity Section. This action is required prior to commencing any full-scale investigation using a grand jury to subpoena witnesses or initiating criminal proceedings.

Mr. Sessions, is that a correct description of the process, and did your office follow the appropriate procedures in requesting approval to investigate the allegation of voter fraud in Perry County and the subsequent referral to the grand jury?

Mr. SESSIONS. Mr. Chairman, we did. That is a correct description and we followed it.

The CHAIRMAN. I would like to offer for the record a copy of a letter from Gerald E. McDowell, Chief, Public Integrity Section, Criminal Division, to Mr. Sessions, dated September 24, 1984, which states, in part:

DEAR MR. SESSIONS: This will confirm our previous conversations concerning possible Federal voter fraud violations that may have taken place in Perry County in connection with the Alabama primary election which occurred on September 4, 1984.

Federal candidates for Congress and for the U.S. Senate were voted upon at that time. We understand that prior to this election, information came to your attention from a source you considered reliable to the effect that Albert Turner, a local political activist in Perry County, and several associates of Turner's, intended to manipulate absentee ballots that they had been responsible for soliciting from Perry County residents.

This manipulation was apparently to take place in Turner's residence, at which time Turner and his associates had physical custody of the ballots involved. Thereafter, Turner and his associates were to mail the ballots involved at the post office in Marion, AL, for transmission to the county registrar for tabulation.

Armed with this information, you requested surveillance of the Marion Post Office during the period that Turner was supposed to mail the subject ballots. This surveillance disclosed that Turner and an associate arrived at the post office when expected with literally hundreds of absentee ballots, and that these two individuals proceeded to place these ballots in the mails.

Thereafter, visual inspection of the ballots thus deposited was conducted by the Postal Inspection Service, which in turn disclosed that over 540 absentee ballots were involved and that several of them contained indicia that they had been opened.

Based on this information, the district attorney for the judicial district encompassing Perry County obtained a protective order from an Alabama State probate judge requiring that the ballots involved here be numbered in such a way that they may subsequently be paired up with their respective ballot envelopes.

Since these ballot envelopes contained the signature and the oath of the voters who in each instance cast the ballots enclosed, this protective order will permit the ballots delivered by Mr. Turner to be specifically identified by voter.

This evidence is sufficient, in our view, to constitute the predicate for an investigation by the Bureau, should the Perry County district attorney specifically request federal intervention in the matter.

The principal statutory basis for this investigation would be mail fraud law which, as you know, has been interpreted to apply to schemes to fraudulently manipulate and cast absentee ballots.

As you know, the feature of this matter that makes it unique is the protective order which the State obtained allowing specific suspicious ballots to be linked to identified voters. As such, your investigation of this matter would probably best begin with a canvass of at least a sampling of the voters involved to ascertain whether the ballot attributed to each such voter, in fact, reflected the votes that the voter involved intended to cast, and to determine the circumstances under which the voter involved was induced to vote absentee and to entrust his or her ballot to the custody of Mr. Turner and his associates.

However, since this unique investigative technique will require that the confidentiality of the ballots in question be violated, we strongly urge you to have the appropriate State authority approve the pairing up of the ballots with their numbered ballot envelopes before the investigation suggested above is attempted.

Pursuant to 9 USAM 2.133(h) and 2.133(o), you are authorized to conduct a Federal criminal investigation of this matter along the lines suggested above. In that this investigation is unique, we would appreciate your keeping us currently advised concerning its progress. We also trust that you will not hesitate to let us know how we can help you further in this matter.

I am going to ask the investigator to hold up a ballot here to show the changes that were made in them. These are actual ballots; if you will, hand these down to the witness.

[Aforementioned letter follows:]



GEMcD:CCD:csM

Washington, D.C. 20530

SEP 24 1984

Mr. Jeff Sessions
United States Attorney
P.O. Drawer E
Mobile, Alabama 36601

Re: Perry County Voting Matter.

Dear Mr. Sessions:

This will confirm our previous conversations concerning possible federal vote fraud violations that may have taken place in Perry County in connection with the Alabama Primary Election which occurred on September 4, 1984. Federal candidates for Congress and for United States Senate were voted upon at that time.

We understand that prior to this election information came to your attention from a source you considered reliable to the effect that Albert Turner, a local political activist in Perry County, and several associates of Turner's, intended to manipulate absentee ballots that they had been responsible for soliciting from Perry County residents. This manipulation was apparently to take place in Turner's residence, at which time Turner and his associates had physical custody of the ballots involved. Thereafter, Turner and his associates were to mail the ballots involved at the post office in Marion, Alabama, for transmission to the county registrar for tabulation.

Armed with this information, you requested surveillance of the Marion post office during the period that Turner was supposed to mail the subject ballots. This surveillance disclosed that Turner and an associate arrived at the post office when expected with "literally hundreds" of absentee ballots; and that these two individuals proceeded to place these ballots in the mails. Thereafter, visual inspection of the ballots thus deposited was conducted by the Postal Inspection Service, which in turn disclosed that over 540 absentee ballots were involved, and that several of them contained indicia that they had been opened.

Based on this information, the District Attorney for the judicial district encompassing Perry County obtained a protective order from an Alabama State Probate Judge, requiring that the ballots involved here be numbered in such a way that they may subsequently be paired-up with their respective ballot envelopes. Since these ballot envelopes contain the signature and the oath of the voters who in each instance cast the ballots enclosed, this protective order will permit the ballots delivered by Mr. Turner to be specifically identified by voter.

This evidence is sufficient in our view to constitute the predicate for an investigation by the Bureau, should the Perry County District Attorney specifically request federal intervention in the matter. The principal statutory basis for this investigation would be the mail fraud law, which as you know has been interpreted to apply to schemes to fraudulently manipulate and cast absentee ballots. See e.g. United States v. Clapps, 632 F.2d 1148 (3rd Cir. 1984); United States v. Odom, 736 F.2d 104 (4th Cir. 1984); accord: United States v. Curry, 681 F.2d 407 (5th Cir. 1982); United States v. McNeeley, 660 F.2d 496 (5th Cir. 1981 - summary order).

In that connection, to constitute a criminally actionable fraud it will be necessary for your investigation to confirm either that Turner and his associates fraudulently and improperly opened and edited the ballots entrusted to their custody for mailing; or that Turner and his associates destroyed ballots entrusted to their custody; or that Turner and his associates obtained ballots from voters without the active participation of the voters involved; or that Turner and his associates obtained blank absentee ballots from the voters involved; or that Turner and his associates bribed the voters involved to vote absentee. It will also be helpful, although not in our judgment critical to such an investigation, to demonstrate that the voters involved in the transactions linked to Turner and his associates were not entitled under Alabama law to cast absentee ballots in the 1984 Alabama Primary Election. In the event that you can prove factually that fraudulent absentee ballots were cast for candidates running in either or both the federal contests that were on the ballot in this election, prosecution under 18 U.S.C. §§241/242 is also a possibility.

As you know, the feature of this matter that makes it unique is the protective order which the State obtained allowing specific suspicious ballots to be linked to identified voters. As such, your investigation of this matter would probably best begin with a canvass of at least a sampling of the voters involved, to ascertain whether the ballot attributed to each such voter in fact reflected the vote(s) that the voter involved

intended to cast, and to determine the circumstances under which the voter involved was induced to vote absentee and to entrust his or her ballot to the custody of Mr. Turner and his associates. However, since this unique investigative technique will require that the confidentiality of the ballots in question be violated, we strongly urge you to have the appropriate state authority approve the pairing-up of the ballots with their numbered ballot envelopes before the investigation suggested above is attempted.

Pursuant to 9 U.S.A.M. 2.133(h) and 2.133(o), you are authorized to conduct a federal criminal investigation of this matter along the lines suggested above. In that this investigation is unique, we would appreciate your keeping us currently advised concerning its progress. We also trust that you will not hesitate to let us know how we can help you further in this matter.

Sincerely,

Gerald E. McDowell, Chief
Public Integrity Section
Criminal Division

By:

Craig C. Donsanto, Director
Election Crimes Branch
Public Integrity Section

cc: Cairi Matthews
Associate Deputy Attorney General

William J. Clancy
Public Corruption Unit
Federal Bureau of Investigation

Barry Weinberg
Voting Rights Section
Civil Right Division (FYI)

Senator KENNEDY. Can I ask, Is this one of the absentee ballots that was collected by the defendant?

Mr. SHORT. This is one ballot, Senator.

Senator KENNEDY. Of all of the absentee ballots?

Mr. SHORT. Of all; that is correct, sir.

Senator KENNEDY. And the defendants—how many did they file, so that we have a point of information of what is being held up here?

Mr. SESSIONS. That is 1 of the 504, Senator, that were filed.

Senator KENNEDY. It is 1 of 504.

Senator BIDEN. All of which were mailed by the defendants?

Mr. SESSIONS. 300-and-something by Turner and 170-something by—

The CHAIRMAN. Speak louder; we cannot hear you.

Mr. SESSIONS. 300 by defendant Turner—340, I believe—and 170-some-odd by the defendant Hogue, within a couple of hours of each other the night before the primary.

The CHAIRMAN. Were the ballots all changed in a similar manner?

Mr. SESSIONS. All the Turner ballots were changed in the same manner. Each one of those that traced back to Albert Turner, he crossed out both the *x* and the name, as you can see in that ballot.

The Hogue ballots—each one of them were changed by erasing the *x* that had been placed and placing a new *x* by a different candidate's name. In each instance, the changes were from non-Turner-supported candidates to Turner-supported candidates.

Senator KENNEDY. Could I, just for the point of the record—are these the defendants that were found not guilty that we are referring to?

Mr. SESSIONS. Yes, sir; but, Senator—

Senator KENNEDY. I thank you. I do not have any other questions.

Mr. SESSIONS. I understand that, but I would ask you to—

The CHAIRMAN. Go ahead and answer; you have a right to answer. You can explain it.

Mr. SESSIONS. Please evaluate me on my decisionmaking process and whether or not the indictments should be brought. Cases do fail and you do lose cases, but the question is, Is the integrity of your decisionmaking process good?

The CHAIRMAN. Do not drop your voice; speak out so we can all hear you.

Mr. SESSIONS. All right, sir.

Is that the top ballot, Mary Shelton's ballot there?

Mr. SHORT. That is correct.

Mr. SESSIONS. I have here a copy of a statement that Mary Shelton gave, and we had this statement and her grand jury testimony, which is still not available for production. But she was 31 years of age and she stated—she was shown that ballot by an agent of the FBI, I believe—yes, by an agent of the FBI, and she stated that she voted it by herself and no one was present when she filled out the absentee ballot.

She said she did not observe Albert Turner or Evelyn Turner, who I believe are listed as witnesses to her signature on the ballot.

She did not—they were not present. She stated that she did not make any changes on the ballot.

She stated she personally sealed the ballot. She did not observe Albert or Evelyn Turner witness it. She stated that Albert Turner picked up the ballot during an unannounced visit when he came by.

She was shown that ballot and she said she did not make any changes, and specifically she said she voted for Reese Billingslea and not for Setzer Howard, the Turner slate candidate.

The CHAIRMAN. Now, you are speaking about the ballot here that you are referring to?

Mr. SESSIONS. That very ballot right there. She said there were no—

The CHAIRMAN. And this is the person who voted that ballot?

Mr. SESSIONS. That is correct, Mr. Chairman, and she said that her vote for Reese Billingslea had been crossed out, and Reese Billingslea is running for his third term as a black incumbent politician in the county and these voters were all black who were being interviewed.

She said she voted for Eddie Perry and not John Ward. Ward was a slate candidate of Albert Turner. She said she voted for Warren Kinard and not for Wilbert Turner. All of these candidates that I have mentioned are black candidates she voted for, and the ballots were changed from black candidates to slate black candidates.

She said she voted for Ann Nichols and not for Tululah Nelson, and all of those had been changed, Mr. Chairman.

Senator DENTON. Mr. Chairman, may I ask that that statement he just read by Ms. Shelton be included in the record?

The CHAIRMAN. Without objection, so ordered.

[Aforementioned material follows:]

FEDERAL BUREAU OF INVESTIGATION

1

Date of transcription 10/4/84

31. MARY DeLOIS SHELTON, Route 6, Box 391, Selma, Alabama 36701, having been advised of the official identity of the interviewing agent and the nature of the interview, there-
after provided the following information:

SHELTON stated she was born August 31, 1953.

SHELTON advised she is employed by Selma Apparel, 107 Selma Bypass, Selma, Alabama, Telephone No. 205/872-7441.

SHELTON stated she has no other income.

SHELTON stated the reason for voting absentee was due to work and that she was unable to get to the polls in Perry County, Alabama, after leaving her employment in Selma.

SHELTON stated no one suggested to her to use absentee voting.

SHELTON stated she was not out of town at the time of the last election in September. SHELTON stated she received her absentee ballot in the mail. SHELTON stated she was not solicited by any candidate nor did any candidate provide information or assess to absentee balloting.

SHELTON stated she voted by herself, and no one else was present when she filled out the absentee ballot. SHELTON stated no person influenced her vote. SHELTON stated no person intimidated her in any way in connection with voting.

SHELTON stated she did not observe ALBERT TURNER nor EVELYN TURNER witness her signature on her affidavit of absentee voter. SHELTON stated that she did not make any changes on the voting ballot.

SHELTON stated she personally sealed her ballot but did not observe ALBERT TURNER nor EVELYN TURNER witness it. SHELTON stated her ballot was returned by ALBERT TURNER of Marion, Alabama. SHELTON stated TURNER picked up the ballot at her house, in person, during an unannounced visit by TURNER.

SHELTON did not recall how she obtained the application

Investigation on	<u>9/26/84</u>	at	<u>Selma, Alabama</u>	File #	<u>Mobile 56C-215</u>
by	<u>SA ANDREW T. DUANE</u>		<u>ATD/slm</u>	Date dictated	<u>9/28/84</u>

35

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MO 56C-215

MARY DeLOIS SHELTON

Continuation of interview of _____, Page 2

for the absentee ballot.

An absentee ballot with four (4) names crossed out was displayed to SHELTON who stated she did not make any changes on her ballot. Specifically, SHELTON stated she voted for REESE BILLINGSLEA and not SETZER HOWARD. SHELTON stated she voted for EDDIE PERRY, and not JOHN WARD. SHELTON stated she voted for WARREN KYNARD, and not WILBERT TURNER. SHELTON stated she voted for ANN NICHOLS, and not TALLULAH NELSON.

Mr. SESSIONS. I have that——

The CHAIRMAN. Now, that is what she told the FBI and she testified to at the trial?

Mr. SESSIONS. And she testified at the trial, Mr. Chairman, and let me point out what she testified to at trial. She was called; she said that is her ballot, but "she did not mark anything out."

Going down the ballot, she said she voted for Reese Billingslea, but it had been scratched out and she did not put an x for Sentzer Howard. She said she voted for Eddie Perry, and she went to school with him, and it was scratched out and voted for another one. Eddie Perry was a friend and was known by most of the Sheltons.

She said she voted for Warren Kinard, and it had been scratched out and voted for another one. She said Albert Turner had picked up her ballot.

Mr. Chairman, I think a proper review of this situation and questions raised by this committee should deal with the evidence that we had in this case. I do not know a lot of things about the law, but I am pretty good at evaluating a case as a prosecutor. I believe I can do a fairly good job at that.

And let me tell you what the evidence we had just with regard to the Sheltons was, if it is appropriate at this time.

The CHAIRMAN. Go ahead.

Mr. SESSIONS. All right, sir.

The CHAIRMAN. Are they black or white?

Mr. SESSIONS. They are all black.

We just talked about Mary D. Shelton. Loretta Shelton—their stories never changed, Mr. Chairman. They said——

The CHAIRMAN. Let me ask you a question before we pick those ballots up and show them to the Senators.

Mr. SESSIONS. All right.

The CHAIRMAN. Are those ballots by voters who said they did not vote the way that the ballots turned in indicated?

Mr. SESSIONS. I have not examined each and every one. They were ballots introduced at trial by the Government, so I assume almost each and every one of them went to the individual counts in the indictment. I believe they all do, but maybe—there could have been a ballot introduced for another reason, but I do not think so.

The CHAIRMAN. Go ahead. You can hand those ballots up and pass them around and let the Senators on the committee see them.

Mr. SESSIONS. Loretta Shelton—and I will hold this up; it has one, two, three, four mark outs. It actually looks identical to the ballot there that is behind you, I believe.

Loretta Shelton is age 27. She said that she filled out her absentee ballots in the presence of her husband; was not influenced to vote by any other person. She said she signed the envelope containing her ballot, but did not observe the two witnesses, and the witnesses are Albert and Evelyn Turner.

She observed her ballot; it was shown to her. She said she did not cross out any individual's name and did not make any of the changes on the ballot. At trial, Loretta Shelton said that she worked at the Dallas Uniform Co. "I did not mark those out." Those were her direct quotes when she was shown the ballot.

She said she voted for Eddie Perry. "He is my cousin," she said, and it was marked through. She voted for Kinard, and it was

marked through. "Somebody changed it." And she said Albert Turner was the one that picked up the ballot.

Edward Shelton—four changes on his ballot, almost identical to that ballot behind you, Mr. Chairman. Shelton advised that his wife, Loretta Shelton, had marked the ballot and placed it in the envelope. Albert Turner was present when Loretta Shelton marked the ballot.

Shelton stated he did not recall any of the individuals he voted for, except for Eddie Perry. When the ballot was displayed to him, he said he did not observe it when it was being marked and he could not say which name—whether any of the individual's names had been crossed out, with the exception that he and his wife agreed they would vote for Eddie Perry and not John Ward. He said it was not sealed or signed in his presence.

Fannie Shelton, age 36; there were four different changes on her ballot. She said that she marked the ballot, placed it into the ballot envelope, sealed the ballot, and signed her name on the back.

She said she did not observe Albert Turner or Evelyn Turner witness her signature, and they signed as witnesses on both of these ballots. She stated that Turner came by and picked up the ballots.

Upon being displayed her ballot, Shelton stated she did not cross out any of the individuals' names and did not vote for the individuals as shown on this ballot, which is marked out in a similar fashion as the others.

She said she voted for Don Harrison and not H.W. McMillan. She said she voted for Reese Billingslea and not Sentzer Howard. She said she voted for Eddie Perry and not John Ward. She stated she voted for Warren Kinard and not Wilbert Lee Turner. She said she voted for Ann Nichols and not Tululah Nelson.

Senator KENNEDY. Mr. Chairman, I just opened at random 10 dozen of these and I have Harrison, McMillan, Harrison, McMillan, just on four of them, some of them crossed out. Some of them voted for Harrison, some for McMillan, and they are not tampered with as others that have been tampered with.

I hope we are going to have a chance to hear the other attorneys in response to this some time early in the course of this hearing, if we are going to get into retrying a case that took, evidently, 3 hours for the jury to find not guilty.

Mr. SESSIONS. Senator, that is correct, but—

The CHAIRMAN. Well, as I understand it, it has been charged here that he is not fit to be a judge because of the way he handled this case. I think he has a right to show that what he did was to carry out his duty, whether the jury convicted them or not, and that is what you are trying to show here, as I understand it.

Senator KENNEDY. Well, the only point is he is talking about Harrison and McMillan, and some of these vote for Harrison, some for McMillan. So if we are going to get into the details of submitting certain evidence, I think that we ought to be very precise.

I have, as I say, 10 here; some are for Harrison, some for McMillan. Some are altered and some are not, and I do not know quite what we are trying to show with this line of inquiry. But I am glad to spend some more time listening to it.

The CHAIRMAN. Tell him what you are trying to show.

Mr. SESSIONS. I just want to point out that they had a slate as to almost everybody on the ballot, but as to the court of criminal appeals, it had a McMillan and Harrison on it. They were really not that much concerned about those ballots and those races, and sometimes that race was changed and sometimes not.

The pattern was the Billingslea-Kinard race were the ones the Turner people, or Albert Turner and Hogue, seemed to be most committed—

The CHAIRMAN. And did you find a pattern of voting in those races?

Mr. SESSIONS. Oh, yes, sir.

The CHAIRMAN. In other words, they were all voting that way where the ballots were changed?

Mr. SESSIONS. That is correct.

Senator KENNEDY. Let the record show they all voted for Howell Heflin, too, and we are delighted with that.

The CHAIRMAN. Well, he is a wonderful man, but that has got nothing to do with it here.

Mr. SESSIONS. He got about 90 percent of the vote.

The CHAIRMAN. Go ahead.

Mr. SESSIONS. Everybody, I think, was voting for Senator Heflin.

Senator KENNEDY. That is right.

Senator HEFLIN. Just keep it up. [Laughter.]

Senator BIDEN. I might add, with no changes. [Laughter.]

Mr. SESSIONS. I do not believe there is any change on his.

Mims Shelton, who is 43—

The CHAIRMAN. After this, we will move on to something else. Go ahead and finish that and we will move on.

Mr. SESSIONS. All right, sir.

He advised he did not observe either Albert Turner or Earl Ford witness his ballot, whose signatures as witnesses are on there. He said he observed his ballot and stated he did not recall making any changes.

And there is one name marked out—I believe it is Harrison—and voted for McMillan in that case. Otherwise, he already voted for the slate candidates. He had already voted for Sentzer Howard, John Ward, Wilbert Turner, and Tululah Nelson, rather than Kinard, Billingslea, and so forth.

Cleophus Shelton testified; he is age 38. In his statement to the FBI, he stated he marked his ballot and sealed it in the envelope. Shelton stated that the ballot was returned to Perry County by Albert Turner.

And he observed his ballot, and I believe he is talking about Mims or—this is Cleophus Shelton. He observed the ballot; it had one name crossed out. It had Eddie Perry's name crossed out.

He said he did not scratch out or cross out any of the names on the ballot, but he did not recall for who he voted for, except he was positive he did not make any changes on the ballot.

The CHAIRMAN. I do not think we need to go into any more.

Let me ask you this now: Are those typical of the matters that caused you to prosecute this case?

Mr. SESSIONS. Yes, Mr. Chairman.

The CHAIRMAN. And those had been investigated by the FBI?

Mr. SESSIONS. Yes.

The CHAIRMAN. And the evidence was brought to you?

Mr. SESSIONS. That is correct.

The CHAIRMAN. And as district attorney, was it your obligation, then, when the FBI found this fraud to go forward and prosecute?

Mr. SESSIONS. It certainly was. It was something we had been requested to do by an official grand jury in that county, too, 2 years before.

The CHAIRMAN. The official grand jury in the county?

Mr. SESSIONS. Yes, sir.

The CHAIRMAN. Now, Mr. Sessions—

Senator BIDEN. Mr. Chairman, before you go on, and I promise I will not interrupt you again, but so my colleagues can plan, I in no way wish to suggest that the chairman curtail his questions.

But after the chairman finishes his questioning, could we then revert to a 10-minute rule so that my colleagues and yours who—

The CHAIRMAN. I think we can do that.

Senator BIDEN. But you go ahead with yours. You are the chairman.

The CHAIRMAN. Well, I have another appointment, a matter coming up on the floor. I have got to leave and if you do not mind, I thought I would get through and then turn it over to the 10-minute rule.

Senator BIDEN. Take your time, but after that, if we could go to a 10-minute rule.

The CHAIRMAN. Thank you.

Mr. Sessions, the original information and the evidence you received regarding voter fraud in Perry County came to your office from the district attorney whose jurisdiction included Perry County.

Would you tell the committee when the district attorney contacted you and exactly what transpired at that time?

Mr. SESSIONS. Essentially, he contacted me on the Friday—I believe it was the Thursday prior to the election, and advised me about the problems. We contacted the Department of Justice and authorized a minimal investigation, a preliminary investigation, involving really just an observance of the post office would be conducted.

I am not sure, in fact, that that preliminary investigation would even require Department of Justice approval because it is a preliminary step. At any rate, we did. The courthouse was observed. The ballots were listed so that you were able to determine which defendant mailed which ballot.

Senator BIDEN. Mr. Chairman, on that point so it does not get lost, in a letter sent to Mr. Sessions it was suggested by counsel for the committee that—on this point, I just want to make sure I am not misrepresenting you.

You said thereafter you and Craig DeSanto, Chief of the Election Fraud Branch of the Department of Justice, discussed actions to be taken by your office to assist in an investigation of the absentee ballot fraud.

You suggested, and DeSanto agreed, that your office would apply to the Inspector General's Office of the Postal Service for a mail cover to mark absentee ballots which Turner had mailed.

Are we talking about the same thing now here?

Mr. SESSIONS. Yes. Subsequent to that, I have talked with Mr. DeSanto. He says he knows we talked about the mail cover. He does not recollect whether I told him in advance that we wanted to do that, but he approves it and it was within my authority as a U.S. attorney and it is just a matter of how the investigation would be conducted.

Senator BIDEN. Well, just for the record, in a memo, subject, Albert Turner, to Gerald E. McDowell, Chief of the Public Integrity Section, from DeSanto, he says, and I quote:

These things were done by Mr. Sessions on his own and without consultation with the Public Integrity Section.

Is that a different issue?

Mr. SESSIONS. Which things?

Senator BIDEN. These things which are—

Advised during 24 hours he had received information, evidence from reliable sources, to the effect that Albert Turner and an associate named Hogue had collected several hundred ballots which they had either fraudulently opened or reviewed or which they had actually completed themselves.

Based on this information, Sessions requested and obtained visual surveillance of the Bureau of the Post Office in Marion, AL, where these ballots were supposed to be mailed for transmission to the county registrar.

This surveillance revealed that both Hogue and Turner appeared as predicted and that they deposited between them literally hundreds of absentee ballot envelopes. Apparently, the Bureau took surveillance photographs of the activities of these two men while they were in the post office.

The envelopes were visually examined by the postal inspector, but were not opened. They were sent forward to the Elections Board for tabulation. These things were done by Mr. Sessions on his own and without consultation with the Public Integrity Section.

Mr. SESSIONS. Well, that is a surprise to me. I was not that certain about it myself as to what we had done. My assistant told me that everything was done after talking to Mr. DeSanto.

And Mr. DeSanto, in my last conversation, indicated that he was aware of the surveillance of the post office but he did say he did not think he was aware of the mail cover.

Senator BIDEN. Well, what I would like to do is submit for the record—

Mr. SESSIONS. I do not have that firm a recollection as to whether or not—I do not believe I personally talked to him, but my assistant was in charge of that.

Senator BIDEN. Well, when my turn comes, we can talk about the subpoena, too. I will submit these for the record when it is an appropriate time.

Thank you, Mr. Chairman. I just wanted to make sure we were talking about the same thing.

The CHAIRMAN. Thank you.

Now, I offer for inclusion in the record a letter from District Attorney Johnson to U.S. Attorney Sessions, dated September 28, 1984, which states:

DEAR MR. SESSIONS: This letter is to confirm our telephone conversation of August 31, 1984.

As I told you in that conversation, my office has received several complaints of irregularities in regard to the upcoming election on Tuesday, September 4, 1984. These complaints range from improper casting of absentee ballots to possible fraud and reidentification.

The most serious allegations concern interference with absentee balloting, including fraudulent receipt and marking of ballots. The large number of absentee ballots

requested by voters in this county—in excess of 600, with 7,857 registered voters—creates the possibility that fraudulent absentee ballots may make a significant difference in the results of the election.

My staff has looked into the allegations and their reports indicate a need for an extensive investigation into the voting process in Perry County. My office does not have anywhere near the manpower to conduct such a large-scale probe.

Additionally, I feel it would be best that an independent agency from outside the county conduct the probe so as to avoid any possible hint of favoritism or partiality. Therefore, please consider this letter to be an official, urgent request for all possible assistance in conducting this investigation.

I cannot overemphasize the importance and the urgency of this request, for without the help of your agency, my office cannot actually investigate all the allegations and possible ramifications without a thorough investigation, however. The results of this election will continue to be showered in accusations and acrimony.

My office staff has prepared a report specifying the evidence uncovered so far and these reports will be made available upon request to aid your evaluation of the seriousness of this situation.

Please contact me with all possible dispatch regarding this case, as time is of the essence.

Now, that was from District Attorney Johnson to you?

Mr. SESSIONS. That is correct.

The CHAIRMAN. Now, Mr. Sessions, there has been an allegation that the prosecution of the *Perry County* case was a selective prosecution and that during your tenure as U.S. attorney, you have failed to prosecute other cases of voter fraud.

How do you respond to this allegation?

Mr. SESSIONS. Mr. Chairman, that is not correct. I believe I said once that we had no other complaints of any significance while I was U.S. attorney. In fact, I have checked with the FBI and found that we had one case in a county which involved eight people, an allegation of vote-buying, and eight people were interviewed by the FBI several years ago and they were not able to develop it into a case.

Those people were white, I understand, almost all of them, if not all of them. This is the only other thing that came up. During this trial, the defendants were publicly attacking us all over for not conducting investigations, but Mr. Hank Sanders, who was a partner in the law firm that tried the case, testified before the House committee that also heard testimony on this case.

Mr. Sanders said "we have never asked for a criminal investigation," and his State legislative district includes Perry County, but his law firm is involved in campaigns throughout that area.

The CHAIRMAN. Mr. Sessions, did your investigation into the voter fraud allegations at any time interfere with the voters' right to vote or any other aspect of the election process?

Mr. SESSIONS. No, sir. All of this took place after the election, so that it would not have affected the election, except for the surveillance at the post office the day before.

The CHAIRMAN. Mr. Sessions, there has been an allegation that you showed—

Mr. SESSIONS. Mr. Chairman, I will say I understand that an FBI agent did go by a campaign headquarters the day before the election and observed the vehicles that were there.

This is a building, not Mr. Turner's house, as I recall. This was the building where the ballots were supposed to have been collected.

The CHAIRMAN. Mr. Sessions, there has been an allegation that you showed insensitivity to elderly voters by busing them to grand jury proceedings 180 miles away. How do you respond to that allegation?

Mr. SESSIONS. Mr. Chairman, that is shocking to me. We had subpoenaed, I believe, 20-some-odd witnesses to come to Mobile. Some of those witnesses were elderly. The Sheltons, as I read their names—they were young, but a number of the other witnesses were elderly.

They are really not familiar with Mobile. They live closer to Montgomery and Birmingham. Probably, a lot of them have never been to Mobile. And my assistant was concerned about how—how they could find their way to the Federal courthouse, which you cannot find easily.

And he discussed with a number of people what to do, so it was decided that a bus would be chartered, or somebody suggested that. A bus was chartered and it was set up at the Marion town square and the people were told they could come to Marion and get on the bus and would be brought to Mobile, and that is what was done purely for their convenience.

The CHAIRMAN. Mr. Sessions, it has come to the attention of the committee that certain comments have been attributed to you. Mr. Sessions, would you tell the committee if any of the following comments were made by you, are they accurate, and in what context were they made?

“The National Council of Churches, the NAACP, SCLC, and PUSH are un-American organizations with antitraditional American values.”

Mr. SESSIONS. Mr. Chairman, the best I recall, that took place like this. My former assistant, Thomas Figures, who is black—his office was right across the hall from mine for 4 years.

I went over and I chatted in his office and philosophized, I called it, a number of times, and I was over there regaling about the National Council of Churches. I am a United Methodist and we fund them and my money goes to them, but I have complained about them.

And I was making this point, as I recall this conversation, and I said, you know, when an organization like the National Council of Churches gets involved in political activities and international relations that people consider to be un-American, they lose their moral authority and ability to function, or to speak with authority to the public because people see them as political.

And I also barreled on and said that that is true; the NAACP and other civil rights organizations, when they leave the basic discriminatory questions and start getting into matters such as foreign policy and things of that nature and other political issues—and that is probably something I should not have said, but I really did not mean any harm by it.

I certainly do not think of the National Council of Churches, and certainly not the NAACP, as being an un-American organization. The National Association for the Advancement of Colored People—that organization has, without question, done more than probably any other organization to promote racial progress in the South.

I have seen it; I have seen how far we have gone in a little over 20 years, and it has been remarkable.

The CHAIRMAN. And you attribute that largely to the NAACP, the progress made?

Mr. SESSIONS. Well, they were obviously one of the major organizations in it, and I respect that organization without—

The CHAIRMAN. Now, here is another: "I thought those guys," referring to the Klan, "were OK until I learned they smoked pot." [Laughter.]

Mr. SESSIONS. That was a silly comment, I guess you might say, that I made. What happened was we were investigating the hanging and death of a young black man named Michael Donald.

Michael Donald had done nothing more than go to the 7-Eleven store down the street and was walking home, and two klansmen, Henry Hayes and Tiger Knowles, stopped him, threw him in the car, drove him across Mobile Bay and out in the woods, brutally murdered him, hit him, murdered him, cut his throat, brutalized him.

He fought and wrestled and tried to get away. They brought the body back and hung it in a tree in Mobile. That was the very night that a jury had been hung and failed to return a verdict of guilty in a case charging that a black man had killed a white policeman, and the Klan was offended, apparently, that there was not a conviction of the black man.

So that statement was made, I know, in the presence of Barry Kowalski, who came down from the Department of Justice Civil Rights Division to prosecute the case. And my assistant, Thomas Figures, was the lead person in our office, but I did work on it and was reading the report and saw that the Klan had left the meeting and gone out and smoked pot, and I thought that was really kind of, I do not know, bizarre.

Maybe the joke—I was trying to think of how to analogize it. Maybe I was saying I do not like Pol Pot because he wears alligator shoes. All of us understood that the Klan is a force for hatred and bigotry and it just could not have meant anything else than that under those circumstances.

That is the very thing we were doing at that time was prosecuting that case. I insisted that the case that eventually developed against one of the klansmen be sent to the State court and tried there, despite our desire to be involved in it, because Alabama had the death penalty or life without parole.

It was a horrible thing, and it really pains me to think that that comment—and I understand that Mr. Kowalski was very upset that it would be used to suggest I favored the Klan in some way.

The CHAIRMAN. Another statement that is alleged: "Black people are the children of white people."

Mr. SESSIONS. Mr. Chairman, I just—that is not correct. I have not said anything like that.

The CHAIRMAN. You deny that.

Next is—

Senator HEFLIN. What was that statement? I did not understand that.

The CHAIRMAN. "Black people are the children of white people," and your answer was what?

Mr. SESSIONS. I do not know what that means or how it could have been said. It appeared to me to be some sort of racial slur, but I do not know—I did not say that.

The CHAIRMAN. Another is, speaking to a black attorney, "You ought to be careful as to what you say to white folks."

Mr. SESSIONS. That is not correct, Mr. Chairman. I was in the office with Mr. Figures and we were chatting and a secretary came in. Some passing comments were made and Mr. Figures made a cutting comment to her.

I thought that his comment was in bad taste. Mr. Figures—and he and I talked to this and he has told me this himself. He said, you know, one of the things I get in trouble about is I will make a joke and people take it seriously, and we had discussed that before.

And I told him at that time, I said, you ought to watch what you say to folks; that hurt her feelings. And that is the way that went down.

The CHAIRMAN. "You know the NAACP hates white people; they are out to get them. That is why they bring these lawsuits, and they are a commie group and a pinko organization as well."

Mr. SESSIONS. Mr. Chairman, I do not recall saying anything like that. I will admit that I am pretty—in my office, in talking to people that I am associated with, I am loose with my tongue on occasion, and I may have said something similar to that or could be interpreted to that.

I do not believe I have ever specifically—it would be inconceivable that I ever specifically referred to the NAACP as an un-American or commie organization, even kidding. I mean, I may have referred to my church, the Methodist Church, as probably a bunch of pinkos, maybe. But that is an awful thing to say, and it is not true.

The CHAIRMAN. I want to ask you this question.

Mr. SESSIONS. All right.

The CHAIRMAN. People are people, and all people have equal rights. Have you intentionally made any slurring remarks about black people to indicate that they are inferior or anything of the kind?

Mr. SESSIONS. No, sir. I do not tell racial jokes. I do not do that kind of thing. I do not use racially derogatory terms; I do not believe in that.

The CHAIRMAN. Mr. Sessions, it has also been alleged—

Mr. SESSIONS. Mr. Chairman, you know, as I said, these comments that you could say about commie organization or something—I may have said something like that in a general way that probably was wrong.

But as to specifically saying these kind of things, I do not believe anybody would say I said that.

The CHAIRMAN. Mr. Sessions, it has also been alleged that you have referred to the Voting Rights Act as an intrusive piece of legislation, and that blacks and whites could have solved their own problems.

Would you explain to the committee what you meant by those remarks, if you made them at all?

Mr. SESSIONS. Well, I do believe that the Voting Rights Act is an intrusive piece of legislation, but I do not believe—and I have seen, and I am absolutely certain of this, that racial progress could not

have been made in the South without the power of the Federal courts and the Federal Government.

They would not have worked their problems out by themselves; there is no question about that. And the judges, and so forth, took a great deal of abuse, and maybe sometimes they can be criticized legally for exceeding jurisdiction.

But I believe that the Federal courts, I believe that the Federal Government, forced progress—

The CHAIRMAN. The effect of what you are saying, then, is it may be intrusive, but it got good results. You feel it got good results?

Mr. SESSIONS. Yes; that is correct.

The CHAIRMAN. Mr. Sessions, it has been suggested that you have found fault with requests to institute civil rights actions against candidates for vote dilution. How do you respond to this allegation?

Mr. SESSIONS. Mr. Chairman, I became U.S. attorney almost the day, or within a few weeks of a big lawsuit being filed against the city of Mobile challenging its large form of government and they were fighting over vote dilution, vote dilution being the situation in which you have an at-large election, primarily, and blacks are unable to win a spot on a council; say, a city or county council.

And the blacks may have 45, 48, 49 percent of the vote, but they cannot get enough to elect even one of the three, four, or five members of the governing board. And the Department of Justice was intervening, and intervened in a number of those cases and would file lawsuits suing whole counties and naming all the public officials, and that kind of thing.

And I questioned a number of the lawyers who would come down and seek my signature on the documents to file them, and the wisdom of it. But, in truth, as I have seen more of those cases—I signed one a few weeks ago in a county, in a city in my district, in the northern part of the district. The black people had 49 percent of the vote in that city. They had never elected a councilman or a mayor.

They had college graduates running against people with no degrees. They have just absolutely been shut out of the form of government. I was provided a good memorandum of law and I looked at it and it appeared to me to be justified, and I was pleased to sign that.

It is a serious thing, however, for the Federal Government to come in and to sue a county and say we are going to change the form of government that you have been living with for 20 years.

And under the rules of civil procedure, a person who signs his name to a pleading best be sure that he is in conformity with it and believes in it or he is not authorized to sign it.

The CHAIRMAN. Mr. Sessions, during your tenure as U.S. attorney, it is alleged that you took voting cases away, as well as civil rights cases, from Mr. Thomas Figures, an assistant U.S. attorney in your office, because he was black.

Would you please explain to the committee the circumstances surrounding this allegation?

Mr. SESSIONS. Mr. Chairman, when I became U.S. attorney, Mr. Figures was handling all, or at least most of the civil rights cases. I remember distinctly, and I do not think he would dispute it, that I

talked to him; called him into my office and told him, Thomas, I want you to continue to handle civil rights, and these are almost my exact words to him.

I told him that I did not want there to be any change in the enforcement of civil rights law. I said I do not know much about those laws; I never handled them when I was an assistant. I want you to do that; I want you to keep me posted on anything that we might do in the area of civil rights that is wrong or shortsighted. Let me know so I can discuss it and correct it.

I told him I might not agree with him, but I wanted him to let me know. I wanted him to handle those cases and to work them and to be my eyes and ears in that area. My full intent was that he would handle every one of those cases.

I have found a file of those cases, and for the last 3 years about 90 of those cases were presented to my office and only 10 of those did not go to Mr. Figures. However, I joke about it; the FBI assigns cases sometimes in our office.

Every case that came to my office that I received, I referred to Mr. Figures. There were about 10 that did not go to him. That upset him, and I saw why it did, and he talked to me about it.

I went to the FBI agent who handles primarily civil rights cases, and to his supervisor, and told them that every civil rights case was to go to Mr. Figures. Now, basically, what happens is when a report of a civil rights case is prepared, the agent goes out to investigate.

He will get a complaint; we may not even know about it. He will get the complaint and he will go out and conduct an investigation. He, not being a lawyer, wants to know if he has done enough, so he will come in and talk to one of our assistants.

And almost invariably until, I guess, 1984, they were going to Mr. Figures, and he would tell them no further investigation required. And then the file would be sent to the Department of Justice Civil Rights Division, and every report is sent there.

We do not have the power to decline a civil rights case; that has to be done in the Department of Justice. But I guess the point I am making is that, on occasions, if Mr. Figures was not there, or for any other reason, an agent might go to another attorney in my office and talk to them about the case, and they would say no further investigation required.

The CHAIRMAN. I think the essence of it is did you deprive him because he was black from handling civil rights cases?

Mr. SESSIONS. No. As a matter of fact, I assigned them to him. When the report would then come down, it would name the assistant U.S. attorney who had originally commented on the case, and if it was someone other than Mr. Figures, and it said no further investigation required—invariably, in every case, if that happened, I would still refer the report to Mr. Figures and tell him that he was the one to read the final report and to review it.

The CHAIRMAN. Mr. Sessions, there have been allegations that your office failed to properly investigate two suicides which occurred at local jails and a shooting into a house which had been recently viewed by a prospective buyer who was black because there was not sufficient evidence to request an investigation.

How do you respond to these allegations?

Mr. SESSIONS. Mr. Chairman, that is not correct. There was a case involving a suicide of a white man in a jail north of Mobile. It was mentioned in the newspaper, and Dr. Gilliard, who is a dentist and prominent member of the school board in Mobile, and head of the local NAACP—he contacted, I believe, the FBI or maybe Mr. Figures and asked for an investigation.

A complete investigation, I believe, was done.

Senator BIDEN. Excuse me, Mr. Chairman. Would you let us know who is making these allegations? I have not heard these allegations before. Who are the ones that are making these allegations, the last couple—

The CHAIRMAN. They were sent to the committee by various people.

Senator BIDEN. I see.

The CHAIRMAN. And I felt we should inquire.

Senator BIDEN. No, no; I am not suggesting you should not. I am not making those allegations. I do not know who—

The CHAIRMAN. I felt we should inquire about it, since the complaint was made.

Senator BIDEN. Yes, good. I just wondered who was doing it.

Mr. SESSIONS. In that case—and this was where we had a problem, Mr. Figures and I did. He was not happy that the agents were talking to other people before they talked to him. He felt it was unfair for him to have to read a report that another assistant had already commented on.

At any rate, we had that discussion, I believe, about that case and I agreed to handle it. We had evidence, and the report indicated that this white man who hung himself, that he had called his girlfriend that day and indicated he was going to end it all. There was no basis for further investigation.

The other case involved a hanging in Baldwin County. A black man hung himself. A fireman who was in the jail at that time heard it; ran back there, heard a noise, and went back there and saw him and tried to get him out, but it was too late.

That case was the same situation. Mr. Figures and I talked about it and I reviewed that and talked with the Department of Justice about it, the Civil Rights Division. They reviewed it. Further investigation was required, which I concurred in, and that case was eventually declined.

The CHAIRMAN. Now, what about the shooting into a house which had been recently viewed by a prospective black purchaser?

Mr. SESSIONS. That was an interesting case, and I thought that case was aggravated, in a way—not in a way; I thought that was a serious case, a shooting in a house. What happened was in the town of Evergreen, a black policeman had been shown a house in a white neighborhood by a white real estate agent.

That was observed, apparently, by the neighbors and the next night, or shortly thereafter, buckshot was fired through the doors and through the windows, and substantially damaged the house. And the real estate agent got a threatening call about saying you do not show blacks houses in this neighborhood.

The FBI did a real fine investigation of that case, and brought the results in and the agent presented it to a fairly new assistant

in my office at that time, Gloria Bedwell, and she thought that it did not merit further prosecution.

That was before an official report was prepared. The report came in, oh, maybe 2 or 3 weeks later, or whenever. And it came across my desk and I read it and I thought that I could discern from the report who I believed it was that fired the shots.

I also, as a professional, realized there was very little hope that you could prove it, but I was concerned about it. I sent it to Mr. Figures, as I recall, and we may have even talked about it.

But I ended up talking with the agent personally, and I have talked with the lawyers in the Department of Justice about it personally. I believe it has been declined now, but I expressed my concerns about it because I think that was a particularly aggravated crime.

I believe a person has the right to live where he wants to live, and I do not care what color he is. And that is a realistic problem in a community like this town. There is a heavy minority of blacks in that town, and if that kind of thing is allowed to go on uninvestigated, it could deny people the right to live where they desire.

Senator BIDEN. Did you say that at the time?

Mr. SESSIONS. Yes.

Senator BIDEN. So you recommended pursuing the case?

Mr. SESSIONS. We discussed it seriously. I talked with the agent who handled it. What else could be done? I volunteered to the lawyer at the Department of Justice to subpoena everybody in the neighborhood. Normally, they come down and conduct the grand jury in a civil rights case and they have to make difficult decisions on whether we really have a chance of making this case. Is it worth a week in Alabama on this case when I can make a more important one over here?

I said, well, I will conduct it, if you want me to. But we agreed that there was very little likelihood that anything could shake out of it.

Senator BIDEN. I am trying to get to the bottom line. When it was all done, before you closed the folder did you say we should pursue this case or we should not pursue this case?

Mr. SESSIONS. I agreed with Mr. LeFevre in the Department of Justice—I believe it was Mr. LeFevre—that the case should not go forward.

The CHAIRMAN. You did not have enough evidence to go forward?

Mr. SESSIONS. There was no evidence. Everybody said they did not see it. There was somebody there that I had a gut feeling might have done it. It would have been an awful long shot to call in all these neighbors who had denied it in their statements already to try to see if they would change their testimony just because they were under oath, and I doubt that they saw it. It was done in the middle of the night, I think, and probably nobody saw it.

The CHAIRMAN. Mr. Sessions, there have been some concerns regarding the hiring practices of your office. Would you tell the committee what procedures and criteria you use in determining who will be hired by your office?

Mr. SESSIONS. Well, our office is a very high quality law office and we need as good people as the best law firms in town, and so

that is what we seek. As far as clerical employees go, we hire from the Federal Register only. We are required to hire in that fashion.

And as far as attorneys, I hire those on an individual basis, and hire the best people, I think, available for the job.

The CHAIRMAN. You follow the Federal Register for the clerical people and use your judgment to hire competent attorneys.

Mr. SESSIONS. Yes, sir.

The CHAIRMAN. Is that the answer?

Mr. SESSIONS. That is correct.

The CHAIRMAN. Mr. Sessions, there has been an allegation that you stated that a prominent civil rights attorney was a disgrace to his race. How do you respond to this allegation?

Mr. SESSIONS. I understand that that statement has been made, and I recall a conversation in which that was mentioned and I may have—I believe the statement was I had said maybe he is, and that is really disturbing to me.

I suppose—I do not know why I would have said that, and I certainly do not believe that. The lawyer in question is one of the finest lawyers in the country. I have defended him.

I have heard people say he has gotten some fees, hundreds-of-thousands-of-dollar fees, or maybe even nearly \$1 million in one, for prolonged litigation that he and his firm had been involved in, and they won and they get this money.

And I have defended him. I said he was representing those cases at a time when he did not get paid anything. And he is a fine—one of the best lawyers in the country, and it really pains me to think that people would—that I would be quoted as saying that and I do not know how I could have said it.

The CHAIRMAN. You did not say it?

Mr. SESSIONS. I will not say that. The person who said that I said, "well, maybe he is," is a person I respect and—

The CHAIRMAN. Well, did you mean a serious charge against him to that effect or a spirit of levity, or what was it?

Mr. SESSIONS. I cannot recall. As I recall it, I was in the library. He came in and mentioned something like that and it was brief and—

The CHAIRMAN. Well, did you say that against him, if you did say it, because he was a civil rights lawyer, or somebody made the remark and you chimed in and you would have made it anyway whether he was a civil rights lawyer or not?

Mr. SESSIONS. I did not initiate it. According to what he says, he mentioned it and I made some comment like, maybe it is—maybe he is. And I do not know why I would say that.

The CHAIRMAN. Were you trying to please him, whoever it was?

Mr. SESSIONS. No. I think he was a lawyer that would be very impressed with this lawyer, and I certainly would not have done that.

The CHAIRMAN. Mr. Sessions, it has been alleged that the FBI, under your supervision, developed a hit list of prominent Democratic politicians and businessmen in an effort to develop evidence against these individuals for receiving illegal payoffs.

Would you tell the committee if there was such a hit list, and what are the circumstances surrounding the FBI investigation that would lead to such an allegation?

Mr. SESSIONS. Mr. Chairman, that arose from what is now an ongoing criminal investigation. It was one of the most amazing things I have ever seen in my practice of law—

The CHAIRMAN. You need not disclose any ongoing information of any cases.

Mr. SESSIONS. All right, sir. This was all public. About, oh, less than a month ago, I guess—about a month ago, we had conducted an investigation and an individual and his lawyer called a press conference and his client stated himself that he had participated in the extortion of a Mobile businessman.

They attacked me; they attacked the Mobile County district attorney, who is a Democrat. They stated that the money that he had extorted from this businessman, who was cooperating first with the district attorney, and later the FBI got into it—that the money that was extorted from him by this man was supposed to go to a black county commissioner, and that the reason I wanted to indict this man who called the press conference was because I was afraid to indict the black county commissioner because they would accuse me of racism and I would be embarrassed when I came up here to the committee. It was a tremendous shock.

That investigation, by the way, is under the supervision of one of the finest assistant U.S. attorneys in the country, who clerked for the chief judge of the Eleventh Circuit Court of Appeals, Judge John Godbold; is the granddaughter of a judge on the old fifth circuit.

And I was aware of this investigation; she was supervising it. And I have—after this came out—gone to the agents and I asked them, did you all say anything like that, in just about that tone of voice. And they have flatly denied that, and I know each one of those agents, or two FBI's and one State investigator who had 28 years with the FBI.

The State investigator has sent up an affidavit flatly denying that, and they said only one name—

The CHAIRMAN. Do you want to read that from the State investigator?

Mr. SESSIONS. All right, sir. In pertinent part, he said they went to Mr. Owens' residence. As Mr. Owens stated in his press conference, he had been tape recorded.

They went to his residence, played him the tape recording and said, OK, we want you now to approach these people and wear a recorder like this businessman did and talk to them, the people—let me read you what Mr. McFadden said.

He says:

I went to Gurney Owens' residence to solicit his cooperation and obtain corroborating evidence against the county commissioner for whom he claimed to have demanded and accepted payments. At no time did we ask him to approach any person other than the county commissioner, nor did we suggest or request that he do anything improper.

No names were mentioned to him other than the name of the county commissioner in question.

He says, "I am thoroughly familiar with this ongoing joint political corruption investigation," and it was started by, as I say, the Democratic district attorney in Mobile and the FBI merely joined in it.

He says there were no hit lists or political targets.

The CHAIRMAN. Now, I have a letter here, and I am about through. This letter is addressed to me from Kenneth P. Bergquist, Department of Justice, Office of Legislative and Intergovernmental Affairs.

DEAR MR. CHAIRMAN: At the request of your staff, I have undertaken an inquiry into an allegation made by a Mr. Gurney Owens that he was presented with a list of 20 individuals by a Federal Bureau of Investigation agent in Mobile, Alabama, and coerced into entrapping such individuals.

This allegation is utterly without foundation and it is an affront to the integrity of the FBI and its agents in Mobile, Alabama. I have been in touch with Mr. Joseph Mahoney, II, the supervisory special agent of the FBI field office in Mobile, Alabama. Mr. Mahoney has supervisory responsibility for the Gurney Owens case, and informs me that the allegations made against the FBI are baseless.

Mr. Mahoney also informs me that the special agent in charge of the Mobile office, Mr. Carroll Touchey, has publicly denied Mr. Gurney Owens' allegations.

Now, Mr. Sessions, I think that completes my inquiry. I have had our investigators here, headed by Mr. Duke Short, to investigate this matter carefully. Regardless of which party I belong to, it is my duty to try to get the facts and the truth in a case.

We have investigated thoroughly and gone into this matter from every angle, and the investigators have concluded that you are well qualified for this position. I think the record shows that you are.

You have practiced law; you have been assistant district attorney; you have been district attorney. You have made a good record, and the investigation reveals that you did nothing in connection with this investigation or fraud except what you should have done.

It was your duty as district attorney to investigate fraud—fraud against whites, fraud against blacks. The law does not acknowledge any color. The only reason for having the courthouse is to do justice, and if it does injustice to blacks or whites or anybody else, then there is no use to have a courthouse.

That investigation was made and they feel that you did your duty in investigating these fraud cases. You admit you made some statements here, maybe, that probably were lacking in wisdom. But on the other hand, I do not consider those sufficient to disqualify you to be a Federal judge.

So from our investigation and what I found out, I expect to support your nomination.

I have another matter now I have got to get to the floor on, and I wish to apologize to these other members here for not stopping sooner, but I felt it my duty, since we have gone into this matter thoroughly and I wanted every facet examined, to present this to the committee.

Now I will ask Admiral Denton if he will take the chair and call on the able and distinguished ranking member, Senator Biden.

Senator BIDEN. Before you leave, Mr. Chairman, so we can set the rule here, I feel that since you have been here over 30 years and are chairman of the committee, if you want to take 1½ hours and us to take 10 minutes, that is fair, but let us set a 10-minute rule now before you leave.

The CHAIRMAN. Well, I just said we will take 10 minutes apiece from now on.

Senator BIDEN. Good, OK, great. That is all I need. Thank you, Mr. Chairman.

The CHAIRMAN. There is only one on this side and there are four over here, so you will get four times the time.

Senator BIDEN. We might catch up then. [Laughter.]

Mr. Chairman—

The CHAIRMAN. I am not sure you will. [Laughter.]

Senator BIDEN. Mr. Sessions, let me state to you and to my colleagues the context in which I view this hearing. A, it is a hearing, not a trial. B, the person whose competency is being decided upon is not the State of Alabama; it is not the Senator from Alabama; it is not the President of the United States. It is you.

I find, as a person who lives in a border State, that there is as much prejudice in the North as I have found in the South. I do not think the State of Alabama is on trial here, as has been at least potentially suggested.

Clearly, not in this hearing room, the State of Alabama—it may be on trial in some newspapers in Alabama, but it is not on trial here, or the question of the hearing. My distinguished colleague from the State of Alabama, Senator Denton, is clearly, as it relates to this committee, not—this has nothing to do with Admiral Denton, as far as this committee is concerned.

And lastly, it clearly has nothing to do with the President of the United States of America, other than it goes to the question of whether or not his judgment was sound and he made a sound recommendation. You are the recommendation; you are here, and I would like to begin my questioning.

There is a lot of territory to cover and I will be back at this on several occasions because, like the chairman, I have at least 1½ to 2 hours' worth of questions, but I will—I do not want to hold my colleagues up—give everybody a chance and we can keep rotating this.

But let me suggest to you that you made a comment at one point when the chairman asked you a question on whether or not you had made a particular statement. You said, that is disturbing to me.

I hope you understand why some of the assertions that have been made under oath by Justice Department employees are also disturbing to us, at least disturbing to this Senator.

Mr. SESSIONS. I understand.

Senator BIDEN. What I would like to start with is not, to try to put this in focus at least for me—one more comment. It is true that part of the investigative team of this body, of this committee, has reached the conclusion that, in fact, you are well qualified.

It is a very qualified man who did the investigation, Mr. Duke Short, and other majority staff members. But there was another investigation, a simultaneous investigation hand in hand, that has not reached that conclusion. It has not reached a final conclusion until your testimony is finished whether or not you are qualified, but it has clearly not reached the conclusion that you are qualified to be on the bench, and that was the investigation done by the chief minority counsel investigator, Reggie Govan, whom you have spoken to a number of times.

So, again, for the record, I do not want people to think that there is one investigative team that has a uniform point of view on this subject. Part of the investigative team of this committee apparently

has reached a judgment. The other part—the jury is still out, as they say in our business.

Now, let me get to my questions in the 7 or 8 minutes that I have left, and I would like to go through the questions about these comments which, to some in the audience, may be—we may be nit-picking as to whether or not you used a phrase which will come up here and again; you used the word “nigger,” or whether or not you used the word—suggested that the NAACP was less than reputable, or any of these questions that have been raised or will be raised again.

Keep in mind that what we are, in fact, required to look at is not merely whether or not you meant what you said, but whether or not you said them. We have a long history in this country and in the recent past, just to emphasize the point, of Mr. Earl Butz and Mr. James Watt who, at least in part, felt they should resign because of inappropriate comments, whether they meant them or not.

The jokes that Mr. Watt made about people or the jokes that Mr. Butz made, assuming they made them—and I believe they did, based on their own assertions—do not go merely to whether or not they meant them, whether or not they believed it, but whether or not it was appropriate.

You are before this committee for the single most sacred job that could be entrusted to anyone in this Republic, and that is to be a U.S. Federal judge. And so not only whether you meant something, but the appearance and the propriety, your judgment, your maturity, and your temperament, all are at work here. That is why these comments are of consequence.

Now, when you indicated that you mentioned to Barry Kowalski, a Civil Rights Division attorney from Washington who spearheaded the prosecution of the klansman hanging of a black man, the report of the klansman smoking marijuana, which you said you read in the presence of—I understand at that moment when you made the statement that was referenced before, Mr. Kowalski and your assistant, Mr. Figures, was also in the room. Mr. Figures is a black man, is he not?

Mr. SESSIONS. Yes.

Senator BIDEN. Yes; and the statement that you were allegedly to have said was “those bastards; I used to think they were OK, but they are pot smokers.” Now, I could see how someone could say that humorously.

That does not mean you are defending the Klan, but do you not think it was insensitive to say that in front of a black man, after a black man had just been brutally beaten and hung? Do you not think that was insensitive, with a black man sitting there, to say that?

Mr. SESSIONS. Senator, my impression of the situation was that it was so ludicrous that anybody would think that it was supporting the Klan that he would not be offended by it.

Senator BIDEN. Well, let me put it another way. How about if we were sitting at a cocktail party, you being a loyal son of Alabama, and I sat there and said, you know, all those—you know, someone said something and I said, gee, I used to think they were all right; I did not realize all those southerners were such bigots.

Would you sit there and go ha, ha, ha, that is a funny thing? Are you not tired of hearing that?

Mr. SESSIONS. Yes; but I am not sure I would vote against you if you were nominated for a Federal judge based on that. [Laughter.]

Senator BIDEN. Would you be offended?

Mr. SESSIONS. Oh, I probably would say, well, you yankees are all the same.

Senator BIDEN. OK.

Mr. SESSIONS. It was something in a familial relationship that could have led—I would not have been offended if he had said, why are you making such a stupid statement, but he did not.

Senator BIDEN. Well, you know, it seems to me that there is kind of an emerging pattern of those kind of statements. If that was the only thing you said, I would not vote against you.

Let us move on to the next one.

Mr. SESSIONS. I understand everything that I have said is—I may not—go ahead.

Senator BIDEN. Let us move on to the next one. In November 1981, a guy named Dan Wiley, a former Democratic Mobile County commissioner who defeated Colonel Carter by eight votes—a man whose campaign you had run—you got into a challenge of the election in the State and Federal courts on the basis of absentee ballot fraud, not as a U.S. attorney but as counsel for the defeated candidate.

It is suggested that you stated to Mr. Wiley at the conclusion of a particularly contentious hearing back in 1981, “Do not worry,” or “do not be too happy”—he could not remember the precise phrase—“John,” meaning Archer, “will be watching you and the nigger,” referring to the only black commissioner in Mobile.

Did you make a statement like that or that precise statement?

Mr. SESSIONS. Senator, I did not. That is an absolute false statement.

Senator BIDEN. All right, let us move on to the next one.

Mr. SESSIONS. Mr. Wiley—are you going to talk about—he attacked me publicly at that time and said that I had met at Mr. Archer’s house and had conspired to get him after I became U.S. attorney.

Senator BIDEN. Well, I mean, you can talk about that if you want. I am just asking the questions, like the chairman raised them.

Mr. SESSIONS. I understand.

Senator BIDEN. They are statements made to us, and you are denying—

Mr. SESSIONS. I want to point out that it is not true, and that was not true. I had never been to Mr. Archer’s house.

Senator BIDEN. This has nothing to do with the house, but at any rate, yesterday I asked counsel to—

Mr. SESSIONS. You know, Senator Biden, this is the first I ever heard that, I think; I am sure it is. That would be curious because I do not believe at that time—that I would get the nigger? Is that the statement?

Senator BIDEN. That is the quote.

Mr. SESSIONS. Presumably—

Senator BIDEN. I accept your statement. I mean, you know, you said no.

Mr. SESSIONS. My point is there was not a black county commissioner at that time. The black was only elected later. I do not know what that statement—where it came from.

Senator BIDEN. OK. My time is up. Let me just end by suggesting to you that I want to come back to a number of the statements made, and then move on to the voting fraud questions, and then on to the hiring practices.

But to keep with my own request for the 10-minute rule, I will cease at this moment.

Senator DENTON [presiding]. It would be my turn, but in deference to the fact that the chairman did take a long amount of time and trying to even that up, I would defer to Senator Metzenbaum.

Senator METZENBAUM. Thank you, Mr. Chairman.

Mr. SESSIONS, when did you know you were first a candidate to be a judicial nominee?

Mr. SESSIONS. I would say it would be in the spring of 1985.

Senator METZENBAUM. Spring of 1985?

Mr. SESSIONS. It was a pretty long time before it ever got to the point of a nomination and—

Senator METZENBAUM. Between August of—

Mr. SESSIONS. Or at least the nomination came fairly quickly.

Senator METZENBAUM. When did you become U.S. attorney?

Mr. SESSIONS. August 1981.

Senator METZENBAUM. Between that date and the time that you knew you were going to be nominated, how many people did you hire while you were U.S. attorney, and how many of them were black?

Mr. SESSIONS. I believe the answer to that is none.

Senator METZENBAUM. None?

Mr. SESSIONS. And how many I hired, I am not real sure; maybe 12, 15.

Senator METZENBAUM. You hired 12 to 15 people, no blacks?

Mr. SESSIONS. Well, it would not have been 12—about 12, yes.

Senator METZENBAUM. Did you interview some blacks for attorney positions or for nonattorney positions?

Mr. SESSIONS. Yes; we interviewed blacks for nonattorney positions, and I have interviewed a black for an attorney position.

Senator METZENBAUM. And you did not hire him?

Mr. SESSIONS. Did not hire him.

Senator METZENBAUM. Pardon?

Mr. SESSIONS. Did not hire him. You are talking now before the spring, before I was mentioned for the judgeship position?

Senator METZENBAUM. Yes.

Mr. SESSIONS. Yes.

Senator METZENBAUM. Did you hire some after you knew you were going to be a nominee?

Mr. SESSIONS. We hired two black clerical people after that.

Senator METZENBAUM. Was there some causal relationship? Did it occur to you that that might be a question that would come up at this hearing?

Mr. SESSIONS. I have for some time felt that we needed to do a better job about hiring blacks, Senator Metzenbaum. It looked bad

to me. Let us take the two areas, and they are real distinct—the clerical people and the lawyers.

I feel like that I probably have been—I can plead guilty to not being enough affirmatively oriented with the attorneys. But let us talk about the clerical people. Our clerical people are hired from a list from the Office of Personnel Management, and they send the names down.

The people are tested, and they were interviewed and selections were made at that time. We have never passed over a black on a list for a white candidate below a black, and I do not really recall having a black on the list that qualified.

We have to hire from the top three names sent from OPM; they come out of Birmingham. I specifically called OPM myself a couple of years ago and asked why we were not getting qualified blacks on the list.

My administrative officer has talked about it, too.

Senator METZENBAUM. As a matter of fact, you did not hire any blacks until June 1985 and September 1985. Is that not when you—

Mr. SESSIONS. I would not say the month, but that is about right. The first black that we hired, Senator, had applied as a career employee. She was with the IRS and she applied as a career transfer, and we heard good things about her and we hired her. And I am not even sure we saw a list at that time.

Senator METZENBAUM. Let me ask you a question.

Mr. SESSIONS. Yes, sir.

Senator METZENBAUM. You seem to be an honest man. You do not hire any blacks until you knew you are going to be a nominee. You refer to the NAACP and the ACLU, which are bringing the civil rights cases in your area, as being pinko or un-American, or words to that effect.

You bring some cases; you prosecute some blacks for vote fraud; you lose.

You are a black person. Would you like to submit a case to Judge Sessions in the U.S. district court, if you are confirmed, or would you not feel that you could not get justice from that judge?

Mr. SESSIONS. Well, they certainly can, Senator, and they would get justice.

Senator METZENBAUM. That is not my question; that is not my question. I am not saying to you whether you think they can. I am asking you now about the litigant, about that person who is in the courtroom.

Knowing your background, knowing what you have said about—what did you say about a white lawyer who brought a case? “I had mentioned to him that I had, in fact, heard that one of the judges had referred to one of the white lawyers for the plaintiffs as being a disgrace to his race for doing it. I said I did not know whether it was true, but, you know, I had heard that that was said.”

“And what was Mr. Sessions’ response?” He said, “well, maybe he is.”

Now, my question to you is not whether you are a racist or not whether you feel that strongly about the NAACP or the ACLU that has brought civil rights cases. My question to you is, Could

any black person come into your court and feel that they had a chance of getting justice before you?

Mr. SESSIONS. You make them feel they are going to get justice by treating them with respect.

Senator METZENEBAUM. You can treat somebody with all the respect in the world and be polite. We have got some people that I have seen around Washington who are extremely polite, but that does not mean that I would want to submit a case to them having to do with a black person or any other member of a minority group, and that is the issue.

The issue before us is not whether you will mete out justice fairly; it is whether those people who come before you have a right to believe that they are going to be able to get justice.

Based upon your record, I tell you frankly I have difficulty. I do not know you; I have never met you. I have never known much about you at all except what I read about you.

I know that black people are here very much concerned about your confirmation and indicating their opposition. So I ask you, as a fair-minded person, would you not, as a black person, be concerned about appearing before Judge Sessions?

Mr. SESSIONS. The thing that disturbs me about your question is what if—and I think the record will bear this out, I handled the hiring of employees like you would have handled the hiring of employees, and was bound by the list send out by OPM.

And I hope that this committee could bring that out so black people would not feel it was a deliberate thing. The second employee that was hired came out on the list, too, in the top three, and was actually No. 1 and we hired her. There was never another instance in which that situation happened.

Senator METZENEBAUM. Now, you are saying to us that between August 1981 and June 1985, no black appeared on the list. You get advised—when did you tell me, some time in 1985? When was it? When did you learn you were—

Mr. SESSIONS. I just would—

Senator METZENEBAUM. When would you have learned—

Mr. SESSIONS. I would think it was in the spring of 1985.

Senator METZENEBAUM. Spring of 1985. All of a sudden, 2 months later, a black shows up on the list and you hire them, and then 3 months after that another black shows up. What concerns me is what happened earlier. Why did you not get blacks on the list? Why did you not ask about it?

Mr. SESSIONS. Senator, I really want you to know that I do not know how the list is prepared in Birmingham. It is prepared off a computer list. I do not know the people there. They send the list down and we are required to hire off that list, and it is pure chance that they showed, I assume.

Senator METZENEBAUM. But as the U.S. attorney, you could name your own assistant U.S. attorneys, could you not?

Mr. SESSIONS. Yes.

Senator METZENEBAUM. And you did not name one black, did you?

Mr. SESSIONS. I did not; I did not hire a black as assistant U.S. attorney—now, I can talk about how I made those decisions on the attorneys one by one.

Senator METZENBAUM. How did you make the decision not to hire any blacks? Were there not any capable black young attorneys around or older attorneys that you could have asked to join your staff?

Mr. SESSIONS. I am not sure that there are—I believed I hired the best people for those positions.

Senator METZENBAUM. That is not my question.

Mr. SESSIONS. I understand that

Senator METZENBAUM. Were there not any—

Mr. SESSIONS. I do not know of any that have made application to my office that would meet the qualifications of the people I hired.

Senator METZENBAUM. Did you have some black attorneys who made application to your office?

Mr. SESSIONS. The only—there is one that I interviewed; he had moved to Mobile from Birmingham. At that time, we were not hiring and I did not, of course, hire him then. I contacted him, I believe, after Mr. Figures resigned and called him back for a further, indepth interview.

I have a stack of résumés like this that come out of law schools from all over the country, from, you know, the fine law schools. I was asked did any of those—were any of those blacks.

They invariably do not say their race, but occasionally you would see something like an Afro-American organization that they were a member of and you could suppose that. I do not believe any of those were anything other than law school graduates, and I have not hired a law school graduate.

In our area, the U.S. attorney salaries are good and the lawyers—you can hire somebody who has proven themself in the field, in the practice. I like them young and enthusiastic, but we have never hired anybody that did not have some experience.

And I do not recall a black attorney applying from our area who had any experience; there were none that did that.

Senator METZENBAUM. My time is expired, Mr. Chairman.

Senator DENTON. Thank you, Senator Metzenbaum.

Senator HEFLIN.

Senator HEFLIN. When you took over as U.S. attorney, which would have been, when, 1981?

Mr. SESSIONS. August 1981.

Senator HEFLIN. In the first year of the Reagan administration after President Carter had left office, Mr. Thomas Figures was an assistant U.S. attorney, a Carter appointee to the U.S. attorney's position, I assume?

Mr. SESSIONS. Yes, sir; Mr. Kimbrough.

Senator HEFLIN. And I gather you kept him?

Mr. SESSIONS. Yes, sir. All the people that were there were kept.

Senator HEFLIN. How many other blacks were there that were part of that U.S. attorney's office when you took over?

Mr. SESSIONS. Well, Mr. Figures was a part of the attorney staff; that is 20 percent of our five attorneys which was all we had. And there were no black clerical employees.

Senator HEFLIN. There had not been any black clerical employees from the Kimbrough appointment?

Mr. SESSIONS. No; Senator Hefflin.

Senator HEFLIN. So during your administration you have made five assistant U.S. attorney appointments?

Mr. SESSIONS. I guess we have made that many over the time.

Senator HEFLIN. And how long did Mr. Figures stay with you?

Mr. SESSIONS. He stayed with me for almost 4 years, within 1 month of 4 years. Senator, I would say parenthetically he one time talked to me; he was in a depressed mood and he talked about quitting. And I asked him not to quit, that I wanted him to remain on the staff.

I told him that he was contributing a lot to his community and asked him to think about it over the weekend, and he came back in and did decide to stay.

Senator HEFLIN. Now, I want to ask you about this instance wherein someone has made a reference to one of the judges who referred to one of the white lawyers for the plaintiffs in a case as being a disgrace to his race for representing, I suppose, blacks from what I have ascertained so far.

What was the context of this statement? Would you give me more of the details of this?

Mr. SESSIONS. I have wrestled with that to try to recall that instance because I respect the lawyer referred to a great deal.

Senator HEFLIN. Well, as I understand it, the lawyer who has been referred to is Mr. James Blacksher.

Mr. SESSIONS. Yes, sir; I know members of his firm, and that kind of thing, but I was sitting, as I recall, in our small library. And I cannot swear to this, but I was sitting in there reading a book and the attorney came in and—

Senator HEFLIN. Who is the attorney?

Mr. SESSIONS. Mr. Hebert from the Department of Justice.

Senator HEFLIN. Hebron?

Mr. SESSIONS. Hebert.

Senator HEFLIN. All right, Hebert.

Mr. SESSIONS. Not quite Hubert, where I am from.

And Jerry came in and—

Senator HEFLIN. Jerry is Mr. Hebert?

Mr. SESSIONS. Jerry Hebert; excuse me.

And he came in and mentioned something about Jim Blacksher and that he was a great lawyer, and I think I agreed. I said, you better watch out; he will clean your clock. I did not know whether they were litigating against each other or not.

And he mentioned something about disgrace to his race. I recall that, and I believe I was sitting there with a book here and he came in and sat at the end of the table. And I made some comment like—actually, well, I guess I would have said that or he would not have, you know, said it.

I guess I will not disagree with him, and I do not know why—I cannot imagine why I would make that comment.

Senator HEFLIN. Well, according to the testimony in the deposition I have, Mr. Hebert supposedly is saying that he heard that one of the judges had referred to one of the white lawyers for the plaintiff as being a disgrace to his race for representing a black plaintiff.

Now, did he say who the judge was?

Mr. SESSIONS. I do not recall. The thing that really I do not recall was saying that a judge said that. I recall the phrase "disgrace to your race" being referred to Jim Blacksher; I recall that.

Senator HEFLIN. Well, the statement, as it has been related to us, was that one of the judges—I suppose he is mentioning it in Mobile—had referred to Mr. Blacksher as being a disgrace to his race because he represented black plaintiffs.

Lawyers represent all kinds of people; they are supposed to represent the people. Now, maybe some lawyers have specialities in certain fields.

But you do not recall that he mentioned a judge and a judge's name?

Mr. SESSIONS. No, sir; I do not recall that. I do not think he did; at least he certainly did not mention a name. I think I would have followed up if—it may have been—he may have thought it was implicit or something in the conversation.

Senator HEFLIN. Mr. Hebert has you replying—he said, "well, maybe he is," meaning maybe he is a disgrace to his race. Now, I want to be fair to you and fair to everybody concerned here.

Is it your best recollection that you made that statement, or what did you say? Obviously, in advance of testifying here today, you have not been told what Mr. Hebert has testified to. And I am sure you have not had a lot of time to reflect on it.

Mr. SESSIONS. Right.

Senator HEFLIN. What, do you recall, was your answer to Mr. Hebert when he made such a statement?

Mr. SESSIONS. Well, I heard it because somebody who had been interviewed in Mobile told me they had been asked if I had said that, so I heard it some time ago. My first reaction was that I did not say it.

Then I began to think about it and, Senator Heflin, this was the way I recalled. I was busy. Jerry came in and said some real good things about Jim and I said, you better watch out; he will take you to the cleaners, and if you enter into a consent agreement with him, you better be prepared to adhere to it because he knows what the meaning of the words are.

And he says, well, he is a great guy, and that kind of thing, and he is well respected. But it so vague I do not want to say—if Jerry said that the judge said that, then surely he would remember that.

But as I recall, trying to recollect on it, the best I could recall was that I said, well, he is not that popular around town; I have heard him referred to as a disgrace to his race.

He handled the *City of Mobile* case and many other things, and I do not—I cannot remember. It would have been a passing comment like that, and the context of it was such that I do not know.

But I will tell you this: I am just being as honest with you, Senator Heflin, as I can possibly be, and I have such respect for Jim Blacksher that having that raised—and suggesting that I believe something like that is really painful to me.

Senator HEFLIN. My time is up.

Senator DENTON. All right. I will yield to you, Senator Simon.

I will ask, in pursuit of Senator Heflin's questioning, which I know to be entirely sincere—I am just curious; I do not want to lose the gist of what was going on.

When he walked in, you say you were reading a book and he diverted you from that, and your original reference, and, as I understand it, the context in which you keep talking to him about Mr. Blacksher, was in a favorable context.

In other words, you said, in terms of his ability, you better watch out; he will clean your clock and, yes, he is very good in the civil rights kind of case, and so forth. Is that true or false?

Mr. SESSIONS. Yes, sir; that is true, and there are people that oppose him. You know, my recollection was that I thought he was asking about him as a reference, what kind of lawyer.

But if he says it the other way, I remember—the only thing I remember is that the phrase was used in that conversation.

Senator DENTON. Well, in the book which I have just received—I am sure my assistants have been looking at it; I think it is the one from which Senator Heflin is quoting. When Mr. Hebert was asked by Mr. Govan, his questioner, did you understand Mr. Sessions to be joking, Mr. Hebert said, I could not tell; to be honest with you, I could not tell.

Senator Simon.

Senator SIMON. Mr. Sessions, I think Senator Metzenbaum summarized the concerns that some of us have. We believe—at least some of us on this committee believe that the Justice Department, including the Attorney General, simply are not as sensitive in the area of minority rights as they ought to be.

We are concerned with some of the nominees that they are sending to us, and in this area of sensitivity, let me just read this one statement. This is Mr. Govan of our staff in an interview here with Mr. Hebert:

So your conclusion that Mr. Sessions is reluctant in his support for some of the civil rights initiatives of the Department of Justice is based upon comments that he made to you that he did not think it was appropriate to be filing the challenge to the Mobile at-large electoral seat?

Mr. HEBERT. I do not know if it was just Mobile. I think, you know, just on conversations I have had with him over a 4- or 5-year period that is the impression I get.

Then I will skip a few lines, but I do not think I am taking anything out of context.

Mr. Hebert says, "The general impression I get when we talk about racial questions is that he is not a very sensitive person when it comes to race relations." That is the area, frankly, that does concern some of us.

If I can ask more specifically—and let me just add Mr. Hebert does say that in some areas you have been good. For example, Mr. Hebert said, "I have gotten the impression that he thinks that gerrymandering for racially discriminatory reasons is a definite way that you can harm black voters."

But here is another part of this interrogatory here: "We were talking about the NAACP and the ACLU"; this is Mr. Hebert talking.

Then Mr. Govan: "Were they involved in either of these cases?" Mr. Hebert: "I believe that the Mobile voting cases that Mr. Blacksher handled were, in part, financed by the NAACP Legal Defense Fund, although I am not certain what arrangements they had. It was in the context of my talking to Jeff about the NAACP that he made some comments about the NAACP and the ACLU."

“What were those comments?” “He said he thought they were un-American.” “Did he give any reason for his belief?” “He said that he thought they did more harm than good; they were trying to force civil rights down the throats of people who were trying to put problems behind them.”

Then I am going to skip a little here, but again I do not think I am taking anything out of context. “He thought they were un-American. I remember him using that word. I remember him saying that they were either Communist-inspired—again, he has made that comment to me two or three times, so I do not know that it was during that conversation that he used that word or whether he used, like, ‘un-American’ at that point or maybe at a later conversation said they were.”

Now, have you used that description of the NAACP and the ACLU? I guess that is the first question.

Mr. SESSIONS. All right, let me talk about that. First, I briefly scanned the document and I did see the part about the previous question you asked me. I do not feel that I can say I concur in these statements of Mr. Hebert.

I will say this: we—

Senator KENNEDY. Was that a no or a yes? Did you ever make such—

Mr. SESSIONS. Some of that, I do not believe I said in the context that he stated, as he stated it right there.

I want to answer your question—

Senator SIMON. Maybe not in that context, but have you used that description of either being un-American or Communist about either the NAACP or the ACLU?

Mr. SESSIONS. The one time that I recall using the word “un-American” was the conversation I previously mentioned to Mr. Figures about—was with Mr. Figures in his office, and I do not recall saying that in any conversation with Mr. Hebert.

Now, I do think the issue—I like to discuss things. I am open; I like to discuss with liberals better than I do with conservatives. You get a—I mean, I just enjoy the free flow of ideas.

I think one time Jerry and I had a conversation where we talked about the civil rights situation and how it stood today, and I made the comment that the fundamental legal barriers to minorities had been knocked down, and that in many areas blacks dominate the political area, and that when the civil rights organizations or the ACLU participate in asking for things beyond what they are justified in asking, they do more harm than good. We discussed that situation.

Senator KENNEDY. Would the Senator yield?

Senator SIMON. Yes.

Senator KENNEDY. What is that? What action are they exceeding that justifies—what sort of actions are you talking about that would warrant the labeling of un-American or Communist?

Mr. SESSIONS. I do not think they are warranted in being labeled that. They did, for example, enter the vote fraud case that I did not think was a racial case. They had at least four lawyers, I believe, involved in that, and—some really significantly bad statements were made about that case that were not true.

And I think that was not a legitimate civil rights issue. It was made into a good political issue, but it was not a legitimate civil rights issue.

Senator SIMON. But I guess we are concerned with the whole question of sensitivity of attitude when the phrase "force civil rights down the throats of people," which he says you used—do you recall using a phrase like that?

Mr. SESSIONS. I do not. I do not recall it, unless it was in the context of them demanding things that were not justified beyond the traditional understanding of law. But I do not have a specific instance in mind

Senator SIMON. Now, this Mr. Hebert—

Mr. SESSIONS. I think we all can agree that the NAACP can, on occasions, take positions that are not justified.

Senator SIMON. Mr. Hebert says you used—

Mr. SESSIONS. They are advocates, and we all push for our point of view.

Senator SIMON. Is Mr. Hebert a responsible person?

Mr. SESSIONS. I believe so; I thought so. I liked Mr. Hebert, and I do like him, and—

Senator SIMON. Can you tell us who Mr. Hebert is?

Mr. SESSIONS. He is a career attorney with the Department of Justice Civil Rights Division, and his area of expertise is in these voting cases and he has been involved in a number of them.

The *City of Mobile* case that I had talked with him about and argued with him a little—of course, I did not really know the law and I was just egging him on a little. But that case was reversed by the U.S. Supreme Court.

Senator SIMON. But when he says that two or three times he heard you use the phrase "un-American" or "Communist" or something like that about the NAACP and the ACLU, it sounds like he is not just doing this off the top of his head; that he is a responsible person.

Mr. SESSIONS. Well, I do not believe that he would say that I made direct references to the NAACP as a Communist organization.

Senator SIMON. What about the ACLU?

Mr. SESSIONS. Not that one either. I know—

Senator SIMON. He has told us this under oath.

Let me shift to another, because I know my 10 minutes will be—

Mr. SESSIONS. I really do not know how that could come about, or the context of the conversation.

Senator SIMON. During the questioning by Senator Metzenbaum you testified that you did not hire any black attorneys. What percentage of your district that you serve as U.S. attorney is black in population terms?

Mr. SESSIONS. I believe it is 67 percent white.

Senator SIMON. Fifty-seven percent?

Mr. SESSIONS. Sixty-seven.

Senator SIMON. Sixty-seven percent.

Senator KENNEDY. White.

Senator BIDEN. White or black?

Mr. SESSIONS. White. I had somewhere a paper on that. I believe that is—

Senator SIMON. But just roughly, is that 67 percent white or black?

Mr. SESSIONS. White.

Senator SIMON. Sixty-seven percent, so that 33 percent of the people in that area—did it bother you at all that you did not have any representation on your staff of that 33 percent?

Mr. SESSIONS. Well, the whole time I was U.S. attorney, we did. Mr. Figures was there the entire time. That was one out of—when I came, for 2 years we continued with just five lawyers, and so 20 percent of our staff, legal staff—

Senator SIMON. But those you hired—

Mr. SESSIONS. Of those I hired, I did not; that is correct.

Senator SIMON. I thank you, Mr. Chairman. My time is up. Thank you.

Mr. SESSIONS. Although the lawyer population would be much less. There would be—you know, percentagewise, there are a great deal more white lawyers than they are proportionate in population.

Senator DENTON. Gentlemen, we have been through a round. He has been there 2 hours and 20 minutes. I have not asked a round of questions. I would like to take 10 minutes. With your permission, can we take a 10-minute break?

Senator KENNEDY. I would like to, with all respect—I have been here most of that time.

Senator DENTON. You have not had a round yet, Senator Kennedy?

Senator KENNEDY. I have not had a round of questions.

Senator DENTON. Go ahead.

Senator KENNEDY. Thank you.

Just coming back to the affidavit, you are familiar with the affidavit or the sworn testimony?

Mr. SESSIONS. It came out; somebody showed it to me within an hour of the hearing.

Senator KENNEDY. Well, it was just taken yesterday.

Mr. SESSIONS. I understand that.

Senator KENNEDY. But you are familiar with these particular areas that are being referred to now by Senator Simon?

Mr. SESSIONS. Well, this thing about me saying it three times or something to that effect, I was not—

Senator KENNEDY. Well, have you ever said it? Let us go back, then. In this sworn testimony, Mr. Hebert said, in referring to the NAACP and the—"he said he thought that they were un-American."

Have you ever, in your recollection, used the word "un-American" with regard to the ACLU or the NAACP?

Mr. SESSIONS. As I believe I stated, yes, before you came, which was I said when they involved themselves in promoting un-American positions or positions—my words were considered un-American, and particularly foreign policy issues and that sort of thing. They lose support, yes.

But I have not, I do not believe—

Senator KENNEDY. Wait a minute. What foreign policy matters are you talking about?

Mr. SESSIONS. Oh, the sanctuary movement and Sandinistas, you know. I give that kind of stuff—

Senator KENNEDY. You call them un-American. What particular matters do you remember that so offended you that you called the organizations un-American?

Mr. SESSIONS. First, there would not be a specific—I do not believe that—it will be stated that I have said I consider the NAACP un-American. I do not believe anyone has stated that.

Senator KENNEDY. Did you use the word “un-American” in describing the activities of the NAACP and ACLU?

Mr. SESSIONS. Yes; as I stated—

Senator KENNEDY. The answer is yes, you have, as I understand it, and you used it in reference to their foreign policy positions. That is what I gather from your statement, or am I wrong?

Mr. SESSIONS. It really came out—as I stated before, we were talking about the National Council of Churches and their involvement in organizations. I am a member of the Methodist Church and Mr. Figures is a churchman. We were raising—

Senator KENNEDY. That is not my question about which church you belong to.

Mr. SESSIONS. Would you let me—I do not know, Senator. I do not want to take your time up, but I do not think you understand the context and I would need to answer it again.

What happened was that I said the National Council of Churches hurts itself when it gets involved in issues that people consider un-American because it is outside its realm of religious responsibility.

And as I said, I blundered on and said that the NAACP does some of the same stuff when it gets outside of legitimate civil rights issues and involved in political issues not related to civil rights.

Senator KENNEDY. Well, what are the positions taken by the National Council of Churches that you feel are un-American?

Mr. SESSIONS. I really do not feel that you would say that it is un-American to support the Sandinistas, say. I do not—

Senator KENNEDY. Did they take that position?

Mr. SESSIONS. No. They are generally supporting Third World revolutionary theology, I understand. But I do not have any problem with that. It is just a figure of speech to say that—

Senator KENNEDY. That they are un-American is a figure of speech?

Mr. SESSIONS. I do not believe that that is un-American, Senator. I said it was considered un-American by people.

Senator KENNEDY. And what does the ACLU—

Mr. SESSIONS. It does hurt their credibility to raise funds and that kind thing if they are involved in—

Senator KENNEDY. Well, I would like to be more specific. You know, you have got a pretty broad brush there when you talk about foreign policy. You know, some people think that the activities of Corazon Aquino 4 weeks ago were revolutionary.

Mr. SESSIONS. Right.

Senator KENNEDY. Some people would say that, and today she is legitimately the ruler of the Philippines. Now, we do not hear—labels used as un-American and Communist activities are not used lightly, I think, in our society; not used lightly, and there must

have been something of the ACLU or the NAACP that warranted, at least, your making that statement or allegation. Otherwise, you say I never made it.

You can have it either way, but you have got to have it, and what I am interested in is trying to find out whether the activities which you describe—what were the activities of the ACLU or the NAACP, both organizations, evidently, in terms of this sworn testimony, that you felt warranted the words of being un-American and Communist-inspired.

Mr. SESSIONS. I have not said that they were un-American. I explained that I said that they take positions that are considered un-American. They hurt themselves; they lose credibility.

And many people do think that some of the positions they take are against the national interests of the United States.

Senator KENNEDY. OK.

Mr. SESSIONS. Now, I agree that is debatable, and I agree that people with good conscience can support Aquino and the Sandinistas.

Senator KENNEDY. Mr. Hebert said, "He said that he thought they did more harm than"—he said, referring to you, "that he thought they did more harm than good when they were trying to force civil rights down the throats of people." That is Hebert's sworn testimony.

That is the context that he understood that you were using—it was in that context that you used the word "un-American," when the NAACP and the ACLU were, in the words of Hebert—that you said they were trying to force civil rights down the throats of people who were trying to put problems behind them.

Mr. SESSIONS. And I have stated earlier on that question—I had a conversation with Mr. Hebert and we discussed the general civil rights situation in our country and in our area, and I enjoyed very much talking with him in a very relaxed manner.

And I recall saying that civil rights organizations, when they demand more than is legitimate, it hurts their position. I do not feel like that—I think, as I said earlier, the civil rights organizations, the Department of Justice and the Federal courts had to force integration down the throats of those who resisted it because it would not have happened any other way. Federal intervention was essential in the South.

Mr. Chestnut and I disagree on a lot of things, but one of his themes is that prejudice still exists and it does; not legal as much, maybe; there may be some.

Senator KENNEDY. Well, Mr. Hebert, evidently, in referring to this conversation, said, "In the context of talking about it at that conversation we had, he mentioned," meaning you, "he thought they were un-American," just quote, unquote, about the organizations.

Mr. SESSIONS. That was a conclusion he made. I do not think that, and I do not believe I ever said that. He must have concluded that from that conversation.

Senator KENNEDY. Well, he said, "I remember him using that word and I remember him saying that they were either communist-inspired—he made that comment to me two or three times."

Mr. SESSIONS. I do not recall that. I do not believe I said that, not in any specific manner; no, sir.

Senator KENNEDY. Well, in any specific reference, I do not quite know—your comment and your testimony is that you did not say it?

Mr. SESSIONS. I may have said it in the context that I said about the National Council of Churches. In a legitimate context, I may have used that word and Mr. Hebert may have believed that I believed those organizations are that way, but it is not true.

And I do not think that he would testify that I ever specifically said that the National Council of Churches or the ACLU is Communist, because I do not believe that and would not say it.

Senator KENNEDY. Communist-inspired—it is just why he would come to that conclusion, a career attorney, in the labeling of the NAACP and the ACLU.

Senator BIDEN. If the Senator would yield for just a second?

Senator KENNEDY. Yes.

Senator BIDEN. On that point, on page 38 of the testimony Mr. Hebert said, "He said he thought they were un-American." So he obviously—maybe you do not, but rather than characterize it, he clearly said you said that.

Mr. SESSIONS. I would deny that.

Senator BIDEN. That is all.

Senator KENNEDY. And your response is that you did not?

Mr. SESSIONS. That is correct.

Senator KENNEDY. Did you ever make any comments with regard to the Voting Rights Act?

Mr. SESSIONS. As brought out earlier, I said it was an intrusive piece of statutory authority.

Senator KENNEDY. I just want to—

Mr. SESSIONS. I concede that I have said that, but I believe, as I said earlier, that without it—Senator, there were counties in Alabama when that bill was passed that no blacks voted in.

Something had to be done. It is an intrusive piece of legislation. In the South, every change in government, no matter how small, has to be cleared. But it was a necessary piece of litigation; I support it.

Senator KENNEDY. My time is up.

Senator DENTON. All right. Well, let me have my 10 minutes, then, since that will round it out, and then let us take a break.

I do not know everything about Mr. Sessions. I could learn something at this trial—I mean at this hearing, trial, that makes me think he is not qualified. But I understood the basic elements of the charges against him, and they are charges, that he was wrong in joining the *Perry County* case and bringing that to trial, and that he is at fault because, having brought it to trial, he lost.

I will go into that in subsequent questioning, but I do want to ask, Mr. Sessions, do you believe that the prosecution in that case could have been better handled?

Mr. SESSIONS. Yes, sir, I believe it could have. One of the things I think I failed in doing—we only have eight lawyers in the office. I only had 2 lawyers assigned to the case, and at one time there were 11 lawyers filing motions on behalf of the three defendants.

At trial, there was at all times three fine lawyers for each defendant doing a superb job, and I feel like that I left my assistants outgunned and I wish that I had participated personally in the trial of the case or gotten another—at least one more lawyer to help them.

Senator DENTON. So in a word, you were not that personally deeply involved in the prosecution of that trial?

Mr. SESSIONS. No, sir. The case was assigned to Assistant U.S. Attorney E.T. Rolison. It is his responsibility to prepare the case and handle it. We brought in another assistant, Gloria Bedwell, to assist.

The case—the first week it was tried in Selma; I did not go to Selma. I talked to them over the weekend and they were having problems. The defense, I could tell, was doing an excellent job.

And after the initial real good testimony the first 2 or 3 days, they had some bad witnesses, and so I went up to try to help them, try to get the FBI to coordinate things, and I generally was there.

I sat in during closing arguments because I thought that our office was being challenged and I would be there with my assistants when that was—

Senator DENTON. Well, for what it is worth, I do believe that you should have, beyond a reasonable doubt, consented to prosecute that case. I believe that you were not that personally involved; that your staff was outgunned because there was national contribution to that situation.

The rest of the case against you here today seems to rest on offensive statements that you made. I would hate to be judged on statements that I made, not necessarily of the nature being ascribed to you, and I would hate to have my colleagues judged on statements I have heard them make under such private conditions as those being attributed to you.

But I will say that I should quote here from this paper. This is an affidavit which talks about the kind of intimidation that might have existed on the other side, and I have got a lot of testimony and evidence to offer in that respect.

Senator BIDEN. Excuse me, Mr. Chairman.

Senator DENTON. Yes.

Senator BIDEN. Affidavits from whom about what?

Senator DENTON. I was just asking from whom.

Do you know what this is, Mr. Sessions—the origin of this which starts talking about “on other occasions, Mr. Chestnut has referred to witnesses in this case as Uncle Toms,” and so on? Do you know what that is from?

There are quotations here from the Selma Times Journal. Where does this affidavit come from, or what is it?

Mr. SESSIONS. You may have there a portion of a motion that was filed in court by our office on the issue of whether the jury should be sequestered in Selma.

Senator DENTON. I do not want to delay on that. I will ascertain—

Senator BIDEN. I am just curious about what you are reading from.

Senator DENTON. Sure. I will ascertain for Senator Biden—the quotation from the Selma Times Journal of February 18, 1985,

stands on its own, though, and that is attributable. This is attorney J.L. Chestnut, who was on the other side from the prosecution, is that correct?

Mr. SESSIONS. A black attorney, and a very powerful attorney.

Senator DENTON. Right. Talk about offensive statements—if we are going to judge on that, this is his statement in quotes, “Every nigger that said anything to the FBI is going to be put on the stand,” Chestnut said. “They are going to have to say it out in the open where you can hear them and you can see them,” he said. “We are not trying to crucify anybody; we are just going to hang out all the dirty linen.” That is Chestnut, who is a black attorney, talking.

Now, there is a lot of offensive language there, and there was a lot of offensive language and articles written about this thing. So to imply that this is not something that is beyond this young gentleman here is simply not in accordance with the facts.

I will quote one other statement that Senator Biden, if he does not mind, would not mind my quoting, since they might be opponents in the primary. But this is the kind of thing that we are talking about here.

Here is Governor Cuomo; this is a letter to the editor in the Birmingham News recently. “New York Governor Mario Cuomo’s remarks at a recent breakfast to the effect that ‘in Alabama, they think nuclear freeze is a dessert,’ were uncalled for and beneath the dignity of the highest official of one of our 50 great States.” So a lot of that talk goes back and forth.

Now, I believe this young man, by his conduct in his personal life, by his conduct as a U.S. attorney, has done me credit and I am happy to have chosen him as a U.S. attorney. I believe that to the degree that this hearing has dealt with that, he comes off well.

I am still open. I do not know everything about this young man, but I knew enough about him to think he was the best man I could find to nominate for the U.S. attorney job in Mobile. And from what I have heard from him today, I have heard nothing to make me disbelieve that.

I would happen to agree with him. I think that in some cases—after all I have said about the black corporal and the need for the whites to get the kick, and so on, I do believe that in some of the cases there are activists who proceed beyond that which is in their own best interest, which is exactly the way I heard him say it, to get something that is unreasonable.

Do I blame them for that? No; because if they are going to go short of the mark, then they are not doing their job. Sometimes they have got to go past the mark, but when they go past that mark, do they antagonize? Yes. Do they hurt their own cause? I believe so, and I believe that was the context in which Mr. Sessions made his remark, as well as I can understand it.

We stand for 12 minutes—let us come back at 10 minutes after 5. [A brief recess was taken.]

Senator DENTON. The hearing will come to order.

Mr. Jerry Hebert, the subject of the last few rounds, quoting an affidavit he submitted, of the Justice Department is in the audience.

Would you come forward, Mr. Hebert? I would like to swear you in. Would you raise your right hand?

Will you swear that the testimony you will give before this committee is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. HEBERT. I do.

Senator DENTON. Please sit down.

What is your name?

**TESTIMONY OF J. GERALD HEBERT, SENIOR TRIAL ATTORNEY,
CIVIL RIGHTS DIVISION, U.S. DEPARTMENT OF JUSTICE**

Mr. HEBERT. J. Gerald Hebert.

Senator DENTON. What is your position in the Department of Justice and how long have you been so employed?

Mr. HEBERT. I am presently senior trial attorney in the Civil Rights Division of the Department of Justice, assigned to the voting section, and I have been an attorney with the Department of Justice since 1973.

Senator DENTON. Have you had an opportunity in your position to come into contact with the nominee, and if so, would you explain the circumstances and tell over what period of time that contact took place?

Mr. HEBERT. I have had an opportunity to come into contact with Mr. Sessions, and it has extended back, I believe, about the last 5 years during his tenure as U.S. attorney for the southern district of Alabama.

I have served as the lead trial attorney for the Justice Department in a number of voting rights cases that have been brought in his judicial district, and I have had occasion in connection with prosecuting those cases to come into contact with Mr. Sessions.

Senator DENTON. From that comprehensive contact, would you believe that Mr. Sessions would fairly consider any case brought before him by, say the ACLU or the NAACP?

Mr. HEBERT. I have, Senator, very mixed feelings about my testimony today, and I would like to answer your question, but first explain the reasons for that.

I have—in conversations over the last couple of years, many of which, I understand, have been read into the record in these proceedings, Mr. Sessions and I have engaged in a number of conversations on subjects that touched racial issues and civil rights issues.

At the same time—and those comments are now a matter of public record here, and I stand by those as having been made. But by the same token, I have prosecuted cases that are highly sensitive and very controversial and, quite frankly, unpopular in the southern district.

And yet I have needed Mr. Sessions' help in those cases and he has provided that help every step of the way. In fact, I would say that my experience with Mr. Sessions has led me to believe that I have received more cooperation from him, more active involvement from him, because I have called upon him.

I consider him a friend of mine, more than just a U.S. attorney in the southern district. I call him when I go into Mobile even if I

am not there necessarily on departmental business, and he has occasion to call me when he has been in Washington.

I believe that when Jeff Sessions says he is going to do something, he is a man of his word and he will do it. And so if his testimony before the committee is that he would follow the law faithfully, I personally would believe him.

Senator DENTON. Do you think Mr. Sessions enjoys philosophical debate and, as he indicated, is stimulated thereby and sometimes adopts a controversial position in order to stimulate debate?

Mr. HEBERT. I believe yesterday when I testified in the deposition that the word I used to describe him was "engaging," and I think that word accurately describes the way that he—

Senator DENTON. Engaging?

Mr. HEBERT. Engaging.

Senator DENTON. Meaning he likes to engage?

Mr. HEBERT. Exactly. He enjoyed conversation with me. I do not know whether he baits me, but he—when we would have conversations in his office, we would engage in what I would call spirited debate and he would oftentimes take time out of a very busy schedule to spend time talking with me about civil rights cases.

And he occasionally—I think, you know, I described yesterday as well the fact that he has a tendency sometimes to just say something, and I believe these comments were along that vein.

Senator DENTON. In other words, perhaps he enjoys being a devil's advocate sometimes in a discussion?

Mr. HEBERT. I am sure he is no different than many of the rest of us in that respect.

Senator DENTON. Last question: Did you indicate that among the U.S. attorneys that you have to deal with in the South on civil rights cases, you consider him relatively good in that respect?

Mr. HEBERT. Well, I can only speak in terms of my own personal involvement in cases there, but oftentimes we do not receive very much cooperation from the U.S. attorneys' offices and, in fact, we engage oftentimes in some kind of a dispute with a U.S. attorney, an individual U.S. attorney, about a case the Civil Rights Division is intending to bring or is involved in.

In Mr. Sessions' case, that has not been the case. In the two Mobile voting cases that I handled, in the *Dallas County, AL* case and in the *Marengo County, AL* case, I have had occasion numerous times to ask for his assistance and guidance.

I have been able to go to him; he has had an open-door policy and I have taken advantage of that and found him cooperative.

Senator DENTON. Do you think he has prejudice which would harmfully affect those whom he deals with professionally?

Mr. HEBERT. I have had many conversations with him over the last 4 or 5 years, and I really do not know if I am in a position to say one way or the other whether he would or whether he would not.

I am sure he probably feels the same way about, you know, my handling a reverse discrimination case, whether I would feel that a white plaintiff, you know, is entitled to certain relief.

I honestly do not know. I have to stand by the remarks I made yesterday that when he says things—if he says he is going to do something, he is a man of his word.

Senator DENTON. How many civil rights cases have you prosecuted?

Mr. HEBERT. Since I started working at the Department of Justice, I have been involved in over several hundred.

Senator DENTON. Do you consider yourself sensitive on the racial question?

Mr. HEBERT. Yes.

Senator DENTON. Do you consider Mr. Sessions insensitive in the same sense?

Mr. HEBERT. I think that some of the comments he has made and the comments that I testified about yesterday, in my judgment, showed racial insensitivity, and I think I mentioned that to him at the time he made them.

Senator DENTON. In the sense that you believe that he would do what he says, do you believe he could be a fair and impartial Federal judge?

Mr. HEBERT. I would hope he could; I do not know.

Senator DENTON. Do you have anything else you wish to add to your previous statements about Mr. Sessions, any nuances you care to cast on them?

Mr. HEBERT. The statements that I made yesterday—and the question you just asked me is a very difficult one for me to answer because I am not totally objective in this situation.

I am troubled by the fact that there is an image based on statements that I have made that Mr. Sessions is a racist. I do not really know whether he is or he is not. I probably ought to know, but I do not; I really cannot say.

He has made some comments that show racial insensitivity, but by the same token he has not let whatever philosophy he might have or the comments that he has made affect his ability to do the job as U.S. attorney and to help the Civil Rights Division.

So, you know, I would really have to just give you my opinion about whether or not I think he would or whether he would not. I do know, though, that he is somebody who has been there when we have needed him.

Senator DENTON. Well, you seem to have said, and you correct me if I am wrong, that in the South you have encountered antipathy to some of your own thrusts of belief, and so on.

So I do not hear you saying that you consider him different in the worst sense than the others with whom you have dealt with, considering your own philosophical position and the thrust of your own purpose.

Mr. HEBERT. We have had considerable difficulty with several U.S. attorneys in cases we have wanted to bring. We have not experienced that difficulty in the cases that I have handled with Mr. Sessions. In fact, quite the contrary.

Senator DENTON. Thank you.

Senator Biden.

Senator BIDEN. Thank you.

Mr. Hebert, thank you for coming up. I am not being solicitous, but I, quite frankly, cannot think of a more difficult spot to be in.

Mr. HEBERT. Neither can I, Senator Biden.

Senator BIDEN. Pardon me?

Mr. HEBERT. Neither can I, Senator Biden.

Senator BIDEN. And I am not being smart; I mean this seriously. I mean, you know, obviously it is clear to this Senator that you like Jeff Sessions, and it is also clear that you are a man of conscience.

Were this a trial, as some have portrayed it, I would let the defense—the prosecution would rest at this point on your statements. I would just walk away because, at best, in terms of the question relating to whether or not there is racial insensitivity or prejudice, at best it has been damning from faint praise, from this Senator's perspective.

But it is not a trial. This is a search for giving Mr. Sessions and everyone else the benefit of the doubt, so I am going to pursue this a little further.

Mr. Hancock, in his sworn testimony—and by the way, I might say for the record what you have said here is totally consistent with what you said in your statement. I was going to read when my 10 minutes came along page 41 of your statement.

It was asked by Mr. Govan of my staff:

Have you ever experienced difficulty in cooperation with Mr. Sessions' office?

Mr. HEBERT. No, no. In fact, I have been able to call up on the phone and ask Jeff if I could dictate a paper to his secretary that needed to be filed within an hour and he has been willing to help me out. That just happened within the last 2 months.

Throughout here, you do not attempt to characterize in a negative context what Mr. Sessions has said or references he has made, as I read the statement. So I just want, for the record, to say that my full reading of your testimony yesterday is totally consistent with what you have said here today.

But on the issue of whether or not Mr. Sessions is one who has been fully cooperative, Mr. Hebert, a colleague of yours, if I am not mistaken—is that correct?

Mr. HEBERT. Mr. Hancock.

Senator BIDEN. Excuse me. Mr. Hancock, a colleague of yours, has testified that Mr. Sessions has, in fact, not been nearly as cooperative as you have had the benefit of cooperation from Mr. Sessions.

Mr. Hancock, in his sworn statement, said he officially requested an FBI investigation on a voting rights case in—and I yield to my colleagues from Alabama for the correct pronunciation of the county. How do you pronounce that county, Conecuh County?

Mr. HEBERT. Conecuh County.

Senator BIDEN. Conecuh County, Conecuh County.

Some time later, he called the FBI headquarters to inquire about the status of the investigation and he was told the FBI did not investigate because Jeff Sessions told them not to.

During a telephone conversation with Mr. Hancock, Sessions confirmed that he instructed the FBI not to investigate because "he thought it was a bad investigation and did not agree with it."

To the best of my knowledge, in reading the Federal prosecution handbook here, in fact, that is not something that Mr. Sessions would have the authority to do. Is that correct? Does Mr. Sessions have the authority to countermand an order from the Justice Department for the FBI to investigate, to say do not investigate?

Mr. HEBERT. Well, that is a matter of departmental policy. I can tell you how typically that policy is enforced.

Senator BIDEN. It would be helpful if you would.

Mr. HEBERT. We routinely ask the Federal Bureau of Investigation to conduct investigations for us, and we do it in written form from Mr. Reynolds, the Assistant Attorney General, to the Director of the FBI.

A copy of the request goes to the U.S. attorney in whose district the investigation is going to be conducted, so that he is aware of what we are looking into. If the U.S. attorney who receives that request has a problem with the investigation, typically what would happen would be a call would be made to us directly or to Brad Reynolds, in this case, raising whatever concerns there are.

And the incident you are referring to is one that I have personal knowledge of.

Senator BIDEN. And what happened?

Mr. HEBERT. Well, we had sent the—as Mr. Hancock testified, we sent the request to the Director of the FBI and we called because I think, as I recall, we were concerned that we had not gotten our report back from the agents.

And we found out that, in fact, Mr. Sessions had gotten in touch with the agents and had called off the investigation.

Senator BIDEN. What was your reaction to that?

Mr. HEBERT. Well, as I recall, we were rather upset about it.

Senator BIDEN. Has that happened many times before in your experience?

Mr. HEBERT. No; I cannot remember it having happened. It may have happened that I am not aware of, but I have—

Senator BIDEN. Did you draw any conclusions as to why Mr. Sessions had called it off? Was it just that he was new and not particularly seasoned in the job or that he did not have enough inclination to pursue it or he had an animus relating to the parties? Did you draw any conclusions at the time?

Mr. HEBERT. All I can remember is that the conversation, as I recall, took place between Mr. Hancock and Mr. Sessions, and Mr. Sessions just indicated that he did not think the investigation should go forward.

And I do not remember him giving any reasons for that. He probably—

Senator BIDEN. You understand why I ask the question. In light of your statement that you, in fact—and I am not trying to play a game with you, but in light of your statement that he has been so cooperative, when I read that testimony, I found that somewhat—not suggesting other attorneys in the district of Delaware or anywhere else might not do the same thing, but I found it kind of unusual.

It has been a while since I practiced law, but I found that somewhat unusual, and that is why I ask it relative to your statement about the degree of cooperation.

Let me shift to another question. Were you the Justice Department official who had the conversation with Mr. Sessions relating to there is a judge who made reference to a prominent white civil rights lawyer as a traitor to his race?

Mr. HEBERT. Yes.

Senator BIDEN. I am not playing, again, a game. Would you, in your own words, tell us about that conversation, to the best of your recollection?

Mr. HEBERT. Mr. Sessions and I were in his office and we were talking about different judges' handling of cases and their relationships to the attorneys. And in the southern district of Alabama at the time, I was explaining to him the wide difference in the treatment that we had been afforded in two different cases by two different judges.

And in the course of that—the context of that conversation, I mentioned to him that one of the judges had reportedly said, and I still to this day do not know if he said it because I have not had occasion to ask the Federal judge this, but——

Senator BIDEN. Who was the judge?

Mr. HEBERT. Pardon me?

Senator BIDEN. Who was the judge? Did you tell him the judge's name?

Mr. HEBERT. Yes; I mentioned to Mr. Sessions who the judge was that I had—and I told him that I do not know if it was ever said.

And I mentioned to Mr. Sessions that, you know, this had been said that a lawyer who handled civil rights cases in Mobile was either a traitor to his race or a disgrace to his race.

Senator BIDEN. And what is your recollection of Mr. Sessions' response or comment to your statement?

Mr. HEBERT. As I recall, he said, well, he probably is.

Senator BIDEN. Now, did he laugh or did he joke, or did you laugh when he said that? I mean, did you take it as, gosh, he is a witty guy and is this not funny, or did you think, well, gee, I hope you do not mean that, Jeff? What was your response?

Mr. HEBERT. He smiled, Senator; he smiled when he said it. He did not laugh. He did not have a serious look on his face, but he smiled when he said it. And I said, oh, come on. That is my recollection of the conversation.

Senator BIDEN. Now, with regard to judges, you have been asked to testify to at this hearing whether or not—and you have stated it honestly from your opinion—whether or not Mr. Sessions was racially insensitive, and you said yes, you thought he was.

But then you have also said that he is a man of his word and if he says he is going to do something, he will do it. The problem we have is, once we confirm a Federal judge, he or she is there until death do we part. They are there for a long time—hopefully, a long time for whoever gets confirmed.

Now, were you an attorney bringing a case for the NAACP, on behalf of the NAACP, would you discuss with your clients and/or cocounsel whether or not you should have Judge Sessions recused in a case that you were about to bring because of comments he has made?

Mr. HEBERT. If I had drawn a judge in a case that I was prosecuting where I thought there was some basis for doing it, I certainly——

Senator BIDEN. Let me be more specific. It is a tough, tough question to ask you. Based on the comments that Mr. Sessions has made to you, in jest or to challenge or in seriousness, whatever the context or the collection of contexts, if you left the Justice Department and were handling a case for the NAACP, a voting rights case, and it came before Judge Sessions, would you not at least

raise the question with cocounsel and/or your client that you should make a motion to recuse Judge Sessions on that case?

Mr. HEBERT. I would certainly raise the issue, absolutely.

Senator DENTON. Senator Heflin.

Senator HEFLIN. Mr. Hebert—

Senator BIDEN. My time is up; that is the reason I stopped.

Senator HEFLIN. Mr. Hebert, I might say that you are a surprise witness.

Mr. HEBERT. I am a little bit surprised myself, Senator.

Senator HEFLIN. You were surprised that you came at the time that you did, and I want to delve into how you got here. I think you are also surprised as to what your testimony has been.

Would you tell us if you were scheduled to appear as a witness, or after giving the deposition, was it your understanding that there would be no further testimony on your part?

Would you tell us what your understanding was and the Department of Justice's position relative to this understanding; and if you would, then, tell us what has occurred and how you arrived here today at this time?

Mr. HEBERT. I think perhaps Senator Biden put his finger on it to some extent in explaining why I am here. When I was contacted by the ABA—

Senator HEFLIN. That is the American Bar?

Mr. HEBERT. Yes; and asked for my comments about Jeff Sessions, my impression was that they were going to be confidential remarks and that they would go no further than that.

How they got from that point to where we are today is really inconsequential. Later, as things developed and this hearing date approached, I was called by Mr. Govan of Senator Biden's staff last week and asked if I talked to the ABA, and I said I did.

And he asked me what I told the ABA and I told him that I thought that was confidential and that I would not tell him. And I believed at the time and I still believe today that that is departmental policy not to release the details of that kind of communication.

And Mr. Govan indicated he respected that and that he would take it up with Senator Biden and the Department of Justice, if that needed to be done. The next thing that I knew was yesterday I was told about 1:15 that a car would pick me up at 1:45 and that I was to come up to the Senate where I would be questioned about my contact with the ABA.

And I was told to report, which I did, and when I came up, I was sworn and I gave testimony yesterday. And as I said a few minutes ago, I really—I have a very good personal relationship with Jeff Sessions. I have worked side by side with him on some cases in the sense that I have had to go to him for some advice.

And I felt bad about it last night, and I did not do anything about it. I just felt bad about it; that I knew this was not going to help him. But by the same token, I felt that I had done my duty. I had come up to the Hill when I was told to and I told the truth yesterday, as I am telling the truth today.

Today, we had in the Voting Section—apparently, some of our employees were here and they came back this afternoon. And,

frankly, it has sort of been a wrenching day for me; I have really felt bad about it.

I had heard a report on National Public Radio this morning about it. And, again, the comments I made yesterday in my deposition, you know, were reported on national radio this morning, not attributed to me by name, but attributed to me in the sense that I knew, you know, Mr. Sessions would have to answer to those, as he rightfully should.

But I felt bad about that, and I was talking with Mr. Hancock late this afternoon and when we were talking someone came in and said, gee, your name and your testimony from yesterday—they are really asking Jeff a lot of questions about it and it is really—you know, he is being very seriously questioned about it. And I said, well, I knew that and I feel bad about it.

I was sitting in my office, and my office is located about 2½ blocks from here, and I said before any vote is taken by the committee, I want Jeff to know that no matter how it all turns out, whether he wins or whether he is not approved by the committee or the Senate—I want him to know that I simply did not really intend for all this to get to the point where we are today, but things developed and I had a duty to do what I did, and that when it is all said and done, we can walk away from it and hopefully be somewhat like we were before.

So nobody, you know, called me and said, Hebert, you better come up here right away because you have got to straighten this out. I came up on my own, really, just to pull Jeff aside and to say, you know, you and I go back a long way and we have had a lot of conversations over the years, and I just want you to know that I did yesterday—I answered the questions that they asked me.

I thought I gave a fairly balanced view of it yesterday, but I do not know if that was really coming out today.

Senator HEFLIN. Let me ask you this: Have you been dealing in the southern district of Alabama with U.S. attorneys before Mr. Sessions was the attorney?

Mr. HEBERT. I know I had some dealings with a Mr. Kimbrough, who I believe preceded him in that district. And if I am not mistaken, I may have had some dealings with Mr. Whitespunner, who preceded Mr. Kimbrough, and then there was someone who served as an acting U.S. attorney, Mr. Farve, I believe, who is now deceased, and I had some dealings with him as well.

Senator HEFLIN. Well, in dealing with Mr. Kimbrough, who was U.S. attorney—were your dealings with him—was he always cooperative?

Mr. HEBERT. No; he was not always cooperative; neither was Mr. Whitespunner. I had very little dealing with both of those gentlemen, I might add, but to the extent that we in the Civil Rights Division—and at that time, I was not in the Voting Section; I was in the Education Section handling school desegregation cases.

I did not have that many Alabama school desegregation cases. I spent most of my time in Georgia and Mississippi. But we had some encounters with both Mr. Kimbrough and Mr. Whitespunner, and they oftentimes were not very helpful and cooperative.

Senator HEFLIN. Were there remarks made by either predecessors of Mr. Sessions in office that would lead you to believe that they might have racial prejudices?

Mr. HEBERT. I really did not have very many conversations with them that would leave me in a position to answer that, Senator. I really know Mr. Sessions far better and have had far more opportunity to observe him than I did either of those two gentlemen.

Senator HEFLIN. Who was the judge that—well, it is a hearsay situation.

Senator DENTON. Excuse me, Senator Heflin. You can have your time, but we do have five bells. If you wish to—

Senator HEFLIN. Have we got a vote on?

Senator DENTON. Yes, sir.

Senator HEFLIN. Well, that is all right. Since it is hearsay, I will not pursue it.

Senator DENTON. Well, you can continue your questioning.

Senator HEFLIN. No; I will go vote.

Senator DENTON. All right. I will have to go vote. We will stand in recess for 7 minutes.

[A brief recess was taken.]

Senator DENTON. I should announce that the ranking minority member has suggested, and we agreed, that today we will finish, or do all we can to finish, with Mr. Sessions, and then, on Senator Biden's suggestion, reconvene on Wednesday, the 19th, at 10 a.m.

That leaves many witnesses here without having had the opportunity to testify yet. We have witnesses in airplanes on the way up because we did not know that there were going to be so many witnesses here, so there are many inconvenienced.

But there are Senators who have to be other places and there is no other way to do it because there are many who wish to question Mr. Sessions further on the minority side, and that is the way we will do it.

So the witnesses are free to remain, if they wish to, but they will not be testifying today. Wednesday, the 19th, at 10 a.m., is when we are going to reconvene the hearing.

Mr. Hebert, I just have a couple of quick questions for you. You did answer Senator Heflin by stating that you did find Mr. Kimbrough less cooperative, and you have indicated that you are racially sensitive. And you indicated that you thought that you, as an attorney, would use the statements that you have heard from Mr. Sessions as a reason to ask for recusal.

Mr. HEBERT. Excuse me, Senator.

Senator DENTON. Consider asking for a recusal.

Mr. HEBERT. Yes.

Senator DENTON. That is right; I am glad you corrected me on that.

Do you consider that by virtue of your background in the trenches of civil rights that your threshold is lower in a recusal situation? In other words, do you consider your sensitivity to be much greater on civil rights issues than most of the Federal judges now seated in the South?

Mr. HEBERT. Well, we have a lot of fine judges in the South now, and many of them are very sensitive. And I do not really know how that works out relative to my own. I will tell you, though, that

the attorneys in the Civil Rights Division are trained to be sensitive and to have a high threshold for racial sensitivity, and I consider myself to have a high threshold.

Senator DENTON. I am certainly aware of that.

Do you think Mr. Sessions is a racist?

Mr. HEBERT. No; I do not.

Senator DENTON. Do you think Mr. Sessions will judge cases fairly?

Mr. HEBERT. Senator, I have wrestled with that question more over the last 24 hours perhaps than you have, with all due respect, and I can honestly say that I think you very much on this committee sit as judges, weighing the evidence and trying to decide whether a preponderance of it points in one direction or the other.

I have done that in my own mind, but I have a very limited amount of information to deal with and you have a wider variety than I do. I do not know whether he would be prejudiced when he was on the bench or whether he would be impartial.

I might add that that is total speculation on my part and I cannot say whether I would know that about any nominee unless I had the opportunity to sit and listen to each and every word spoken. I would not base my decision or my vote on one person's testimony, as I would in a case, either.

Senator DENTON. All right. Are you aware that I sent five names—this is public information, but it should be repeated here—forward to the Justice Department besides Mr. Sessions, including J. Michael Druhan, Jr., who later withdrew; Gordon B. Kahn, a U.S. bankruptcy judge with primarily Democratic connections, and his name is K-a-h-n; Mr. Patrick Sims, primarily Democratic connections, and he was a U.S. magistrate for the southern district of Alabama; along with Jeff Sessions' name to the Justice Department?

He was selected by the Justice Department, and I just wanted to make that clear at this hearing.

If Mr. Sessions says he will be fair as a judge, would you believe him?

Mr. HEBERT. I guess in the courtroom we would say this question has been asked and answered. He is a man of his word and when he says something, I believe him. And if he says that—and I think I said in response to you, Senator Denton, that if he says he is going to enforce the law, and that he may disagree with the law but he is going to enforce it, I would believe him.

Senator DENTON. Thank you very much, sir. You are dismissed.

Senator BIDEN. Well—

Senator DENTON. Go ahead, Senator Biden.

Senator BIDEN. I do not have any further questions except to say that I am impressed. We have a lot of witnesses that come before this committee. I have been here going on 14 years.

I was not being solicitous when I said earlier that I appreciate the difficulty of your situation. Quite frankly, it is a little like if one of my colleagues for whom I have great affection were appointed to the bench and I had to vote.

There are men who I believe are decent and honest and men of their word, but I believe their views and their prejudices run so

deep, there are some cases I just would not want them being any part of.

That prejudice could be on whether they could fairly handle a rape case, fairly handle a civil rights case. And I suspect before my tenure in the Senate is up, which is in 1990, I am probably going to have to make those judgments on colleagues of mine and I do not look forward to it. I hope I do it with the degree of honesty and grace that you have done it.

Thank you for testifying.

Mr. HEBERT. Thank you, Senator Biden, and your comments indicate that you heard what I said.

Senator DENTON. Thank you, Mr. Hebert.

You are excused.

Senator BIDEN. Mr. Chairman, I would like to ask unanimous consent that the transcript that we have been referring to so much all afternoon be inserted in the record at the appropriate point in its entirety.

Senator DENTON. Without objection, it is so ordered.

[Document follows:]

TRANSCRIPT OF PROCEEDINGS

UNITED STATES SENATE

COMMITTEE ON THE JUDICIARY

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**IN RE: NOMINATION OF)
JEFFERSON SESSIONS, TO BE)
UNITED STATES DISTRICT JUDGE)
FOR THE SOUTHERN DISTRICT OF)
ALABAMA)
)**

**Sworn Testimony of: PAUL F. HANCOCK
J. GERALD HEBERT
ALBERT S. GLENN
DANIEL L. BELL**

**Washington, D.C.
March 12, 1986**

Pages 1 thru 73

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IN RE: NOMINATION OF :
JEFFERSON SESSIONS, TO BE :
UNITED STATES DISTRICT JUDGE :
FOR THE SOUTHERN DISTRICT OF :
ALABAMA :
----- :

Wednesday, March 12, 1986
Room SD-246
Dirksen Senate Office Building
Washington, D. C.

The sworn testimony of Paul F. Hancock, J. Gerald Hebert,
Albert S. Glenn, and Daniel L. Bell, was taken commencing at
2:47 p.m.

Present:

REGINALD C. GOVAN
Minority Counsel/Investigator
Committee on the Judiciary
United States Senate

FRANK KLONOSKI
Investigator
Committee on the Judiciary
United States Senate

KENNETH P. BERGQUIST
Deputy Assistant Attorney General
Office of Legislative and Intergovernmental Affairs
United States Department of Justice

C O N T E N T S

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Testimony of:

Page

Paul F. Hancock

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J. Gerald Hebert

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Albert S. Glenn

51

Daniel L. Bell

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P R O C E E D I N G S

(2:47 p.m.)

1
2
3 Mr. Govan. My name is Reginald Govan and I'm Minority
4 investigator for the Judiciary Committee.

5 Mr. Klonoski. If I can butt in, why don't we establish
6 that we're holding this meeting on request of Senator Biden,
7 who had requested two attorneys from the Department of
8 Justice? Mr. Govan had some questions and that's why we're
9 here.

10 Mr. Govan. My understanding of the groundrules for our
11 session today is, first, as Frank stated, Senator Biden
12 requested the presence of two Justice Department attorneys,
13 Mr. Paul Hancock and Mr. Jerry Hebert, at the confirmation
14 hearings scheduled for tomorrow, Thursday, at 2:00 p.m., on
15 the nomination of Jefferson Sessions to the United States
16 District Court.

17 It is my understanding that this session is designed to,
18 to some extent, answer our need for information. At the same
19 time, we are not giving up any rights to request the presence
20 of the attorneys at the hearing under whatever procedures, if
21 it should be necessary, would be worked out.

22 Mr. Bergquist. Let me at this point make a remark that
23 if you do want these attorneys present at the hearing tomorrow,
24 then I would suggest that you for a subpoena because it is
25 not our policy to provide line attorneys in the hearing process

1 unless there is some extraordinary reason.

2 Mr. Govan. Mr. Hancock, you were --

3 Mr. Bergquist. Before you start, let me make one other
4 point for the record. Since you're obviously going to be
5 questioning two of these witnesses in regard to their comments
6 they made to an ABA investigator as a part of the ABA
7 investigation of Mr. Jeff Sessions, I think it's appropriate
8 to note that these remarks that were given to the investigator
9 were given in confidence; that by bringing them into an open
10 hearing and have them testify on the remarks that they made to
11 an ABA investigator would have, in the words of Senator Biden,
12 a chilling effect on other individuals who may be called upon
13 by the ABA to give confidential statements.

14 So for the record, I just want that warning to be noted.
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1 Whereupon,

2 PAUL F. HANCOCK

3 was called as a witness and, having previously been duly
4 sworn, testified as follows:

5 Mr. Govan. Mr. Hancock, how long have you been employed
6 by the Civil Rights Division of the Justice Department?

7 Mr. Hancock. Since September of 1970.

8 Mr. Govan. And did you go to that job out of law school?

9 Mr. Hancock. Yes.

10 Mr. Govan. What are presently your responsibilities in
11 the Justice Department?

12 Mr. Hancock. I'm assigned to the Voting Section of the
13 Civil Rights Division. My position is assistant for litigation
14 in the Voting Section. I have initial supervisory
15 responsibility over the attorneys in the Voting Section that
16 perform litigation work.

17 Mr. Govan. In the course of your responsibilities with
18 the Justice Department, have you had an opportunity to work
19 with Mr. Jefferson Sessions, who is presently United States
20 Attorney for the Southern District of Alabama?

21 Mr. Hancock. Yes.

22 Mr. Govan. In what capacity did you work with him?

23 Mr. Hancock. We prosecuted a number of civil rights
24 lawsuits in the Southern District of Alabama and Mr. Sessions
25 is United States Attorney, and we always deal through the

1 United States Attorney and the United States Attorney is, to
2 some extent, involved in all litigation in his or her
3 district.

4 Mr. Govan. Have you worked with other United States
5 Attorneys across this country?

6 Mr. Hancock. I've worked with other United States
7 Attorneys in different parts of the country. I obviously
8 haven't worked with all of them, but --

9 Mr. Govan. Approximately how many U.S. Attorneys have
10 you worked with, a rough estimate?

11 Mr. Hancock. I've worked with the United States
12 Attorneys in every district where the United States has had
13 a voting rights lawsuits. Our lawsuits are, to a large
14 extent, in the States that are covered by the Voting Rights
15 Act, which are the States that comprise the old Confederacy.

16 But we're not limited to that region. We've been involved
17 in litigation in New York, Hawaii, Alaska, Chicago,
18 California, Montana, Idaho, and different States outside of
19 the old South.

20 Mr. Govan. You and I had a conversation last week about
21 your having talked with the representative of the American Bar
22 Association who was investigating Mr. Sessions' nomination,
23 is that correct?

24 Mr. Hancock. That's right.

25 Mr. Govan. And during that conversation, I told you that

1 I was calling on behalf of Senator Biden, isn't that right?

2 Mr. Hancock. That's correct.

3 Mr. Govan. And I asked you, had you, in fact, talked
4 with a representative of the ABA, is that right?

5 Mr. Hancock. You did.

6 Mr. Govan. And what was your response to that question?

7 Mr. Hancock. I told you that I had talked to a
8 representative of the ABA; that I was asked questions about
9 Mr. Sessions and his nomination and was told that the answers
10 would be kept in confidence and that this was part of the
11 normal routine of investigating people who had been nominated
12 for the federal judiciary to call people who may have
13 information about them.

14 Mr. Govan. And I asked you were your conversations with
15 the ABA concerning professional experiences that you had with
16 Mr. Sessions, isn't that right?

17 Mr. Hancock. I don't recall one way or the other whether
18 you asked me that. You did ask me about whether I talked to
19 the ABA about Mr. Sessions' qualifications to be a federal
20 judge. I don't recall much else about it.

21 Mr. Govan. Do you recall having told me that the
22 information that you had was a result of litigation that you
23 had been involved in on behalf of the Department of Justice,
24 and therefore you were not willing to discuss with me those
25 matters that you discussed with the American Bar Association?

1 Mr. Hancock. I told you that what I had said to the
2 ABA, I said because I felt as a lawyer and a member of the
3 ABA that I had a responsibility to answer their questions;
4 that I was answering them in confidence and that I thought it
5 was entering another realm by telling you what I had told the
6 ABA.

7 And I think that the circumstances were different, so I
8 didn't tell you what I had told the ABA.

9 Mr. Bergquist. Let me at this point interject. His
10 actions were entirely proper. It is departmental policy that
11 any contact made with a line attorney in the Department of
12 Justice must be made through my office, and he did an entirely
13 proper thing by refusing to reveal any information.

14 So nothing in the record should reflect that he acted
15 improperly or refused to answer your questions.

16 Mr. Govan. I certainly agree with that. I just wanted
17 to establish for the record that Mr. Hancock and I did talk
18 last week and what the substance of that conversation was.

19 Mr. Bergquist. Yes. Now, in regards to future
20 questions that you have here, he may discuss cases that are
21 past litigation. He may not discuss current litigation.

22 Mr. Govan. Well, we'll cross that bridge as we get to
23 it, if it's necessary.

24 Mr. Bergquist. Do not talk about current litigation,
25 matters that are under present litigation, but you may discuss

1 any cases that have already gone through the litigation
2 process.

3 Mr. Govan. Mr. Hancock, would you list for us the cases
4 in which you worked with Mr. Sessions and what interaction you
5 had with him in each of those cases, to the best of your
6 recollection?

7 Mr. Hancock. Okay. I don't know that I can list all the
8 cases. I don't recall the date when Jeff first became U.S.
9 Attorney. We've had a number of voting rights lawsuits in
10 the Southern District of Alabama; those cases are a matter of
11 public record.

12 I've worked -- I've had some contact with Mr. Sessions,
13 I would assume, in each one of those cases. To name a few
14 of them -- I don't know that it's a complete list, but we
15 tried cases involving -- we were a party to Bolden versus the
16 City of Mobile.

17 We have litigated cases styled United States versus
18 Dallas County, Alabama; United States versus Maringo County,
19 Alabama; United States versus Conecuh County, Alabama --
20 C-o-n-e-c-u-h; United States versus Hale County, Alabama.

21 I can't recall others at the moment, but I know that is
22 not a complete list.

23 The rest of your question of what contact I had with Mr.
24 Sessions --

25 Mr. Govan. Yes, right.

1 Mr. Hancock. I'm not able to tell you every time I
2 talked to Mr. Sessions about each one of those cases. The
3 normal procedure within the Department is that as we recommend
4 litigation in a U.S. Attorney's district, that person is
5 afforded an opportunity to provide input into the
6 recommendation process.

7 I generally talk to a United States Attorney at the time
8 we are recommending filing of a lawsuit either before the
9 Assistant Attorney General gives his concurrence or upon
10 concurrence of the Assistant Attorney General to determine
11 whether the United States Attorney has anything that he or
12 she wants to consider in deciding whether to file the
13 litigation, any objection to the lawsuit, or any concurrence
14 to the lawsuit.

15 That would have been, in this situation, the primary
16 conversation that I would have had with Jeff Sessions, would
17 have been the time that we were considering litigation. The
18 decision whether to initiate a lawsuit under the Voting Rights
19 Act in my field is made by the Assistant Attorney for the
20 Civil Rights Division.

21 It's not made by the United States Attorney, although, as
22 I say, the United States Attorney provides input into the
23 process. The litigation, once initiated, is handled by us
24 and our lawyers out of Washington, not by the United States
25 Attorneys' offices.

1 To a significant extent, the United States Attorney is
2 not involved in the litigation once the lawsuit is filed.
3 In some instances, depending on the district and whether the
4 United States Attorney wants involvement, it varies, but our
5 lawyers handle the litigation under the Voting Rights Act.

6 So if I'm answering your question fully, once the law-
7 suits are filed, I don't have very much contact with the
8 United States Attorney, particularly in this situation. Our
9 litigation is done without much participation by the United
10 States Attorney in the Southern District of Alabama.

11 Mr. Govan. I take it, then, that the American Bar
12 Association representative questioned you about one of these
13 five cases?

14 Mr. Hancock. Yes. As I recall -- and, again, at the
15 time I talked to the representative of the ABA, I didn't
16 consider it to be a very significant conversation and my
17 recollection is not -- I don't remember everything that I told
18 the man, but I do recall being asked some -- he apparently
19 had had some information about one of the lawsuits and he
20 asked me about one of the lawsuits.

21 Mr. Govan. Which lawsuit?

22 Mr. Hancock. The Conecuh County lawsuit.

23 Mr. Govan. And what information do you have on Conecuh
24 County concerning Mr. Sessions?

25 Mr. Hancock. The issue that seems to be on the floor was

1 when we had requested an investigation in Conecuh County and
2 had requested the FBI to do an investigation for us in
3 Conecuh County, we had -- the form of requesting those
4 investigations is a memorandum from the Civil Rights Division
5 to the Director of the FBI requesting the investigation.

6 The issue involved was that the -- we later found out
7 that the requested investigation had not been conducted, and
8 when we inquired why we learned that the United States
9 Attorney had told the Bureau not to conduct the investigation.

10 Mr. Govan. If you recall, at what stage was the
11 investigation when the request went to the FBI for
12 investigation?

13 Mr. Hancock. I'm not sure what you mean by "request."
14 The investigation was just beginning because we were requesting
15 the FBI to do a particular investigation.

16 Mr. Govan. Had a lawsuit actually been filed against
17 Conecuh County?

18 Mr. Hancock. I believe at that time -- I'm not sure
19 whether -- we've had -- I have been unable to piece all of
20 this back together, and I've checked my records and I don't
21 have any records on it.

22 It could have been -- we had a lawsuit -- I'm trying to
23 think whether we had two lawsuits -- we did have two lawsuits
24 against Conecuh County, as I recall now. One involves a
25 matter under Section 5 of the Voting Rights Act, which

1 requires pre-clearance of voting changes, and the other
2 matter involved a lawsuit that we filed concerning dis-
3 criminatory treatment that black voters receive when they
4 come to the polls to vote in Conecuh County.

5 I've had some difficulty resurrecting whether the
6 investigation at issue was in the one lawsuit or the other.
7 At times I thought it was one and the other times I thought
8 it was the other.

9 Mr. Govan. Do you recall the purpose of the
10 investigation?

11 Mr. Hancock. No. Because I'm not able to piece it back
12 together, I can't. It was one of two purposes, to the best
13 that I can recall. On the one hand, it may have been
14 gathering information about the treatment that black voters
15 receive when they come to vote in Conecuh County.

16 The other issue that it may have concerned was at one
17 point in the Section 5 lawsuit, the county presented in court
18 a letter that purported to grant Section 5 pre-clearance to
19 voting changes, and the letter was an obvious forgery signed
20 by someone on Department stationery.

21 It was signed with the name of someone who was listed as
22 Assistant Attorney General for Civil Rights, and the person
23 had never been Assistant Attorney General. It was a name we
24 never heard of; it was a William Daley or something like that,
25 or some Daley.

1 But we knew -- we're crack investigators -- that it
2 wasn't a true letter and we asked the FBI to try and determine
3 who may have prepared the letter. So what I'm saying -- it
4 was one of those two matters, but I just don't know which one.

5 Mr. Govan. Did you discuss this matter with Mr.
6 Sessions?

7 Mr. Hancock. I may have. I don't recall whether I
8 discussed it with Mr. Sessions or not; I may have. In fact, I
9 probably did. I know for a fact that I discussed it with my
10 supervisors in the Department of Justice and that someone
11 later discussed it with Mr. Sessions.

12 Mr. Bergquist. I think it's appropriate to note at this
13 point that Mr. Sessions did not have the authority to tell the
14 FBI not to complete an investigation that's ordered by the
15 Department of Justice.

16 Mr. Govan. Pardon?

17 Mr. Bergquist. Mr. Sessions does not have the authority
18 to tell the FBI not to proceed with an investigation that is
19 ordered by the Department of Justice.

20 Mr. Govan. Mr. Hancock, when did you first learn that
21 Mr. Sessions had attempted to intervene in your request for
22 an FBI investigation?

23 Mr. Hancock. My recollection, which is, again, foggy,
24 is that I became concerned that I didn't have the results of
25 the investigation and I checked to see how the Bureau was

1 proceeding with the investigation, and it was at that time
2 that I learned that the investigation was not being conducted.

3 Mr. Govan. Who told you that?

4 Mr. Hancock. I believe it was the FBI told me that, but
5 I'm not positive of that.

6 Mr. Govan. Headquarters or a field office?

7 Mr. Hancock. It would have been the headquarters office
8 here in Washington.

9 Mr. Govan. And what exactly did they tell you?

10 Mr. Hancock. That the investigation was not being
11 conducted; that the U.S. Attorney had, I believe, instructed
12 the local office not to conduct the investigation.

13 Mr. Govan. Do you know what reasons were offered?

14 Mr. Hancock. No, I don't.

15 Mr. Govan. What was your response to that?

16 Mr. Hancock. I contacted my superiors to tell them that
17 I thought that it was an investigation that we needed to
18 conduct and that I didn't think it was proper for the United
19 States Attorney to stop it.

20 Mr. Govan. Who did you contact?

21 Mr. Hancock. I believe it was Mr. James Turner, who
22 was -- again, I can't piece the time schedule together on
23 this, but I most likely talked to Mr. Turner about it. It may
24 have been during the time before William Bradford Reynolds was
25 confirmed as Assistant Attorney General for Civil Rights.

1 And during that time period, Jim Turner was Acting Assistant
2 Attorney General.

3 Mr. Govan. Notwithstanding Mr. Bergquist's
4 representation which I take to be true that Mr. Sessions did
5 not have authority to intervene or attempt to intervene in
6 the FBI investigation requested by the Civil Rights Division
7 in Washington, you are certain that you were told by the FBI
8 that the reason they did not conduct the investigation was
9 because of Mr. Sessions' intervention?

10 Mr. Hancock. I didn't say it was by the FBI there. I
11 think I said by the field office -- by the person in charge
12 of these investigations in Washington. That's the best of my
13 recollection, yes.

14 I mean, I'm fairly confident that the investigation was
15 not conducted at Mr. Sessions' request. I can't say with as
16 much confidence that the FBI told me that or maybe Jeff
17 Sessions told me that. I don't know. I don't think that's
18 a matter in dispute, as far as I know.

19 Mr. Govan. I hate to be repetitious, but did I ask you
20 did you speak about this problem?

21 Mr. Hancock. Yes, and I think I said that I may have
22 spoken to Mr. Sessions about it at some point in the process.
23 In fact, I recall that I spoke to Mr. Sessions about it and
24 he confirmed that he thought it was an investigation we should
25 not conduct and told the Bureau not to conduct it.

1 Mr. Govan. Did he offer any reasons in support of his
- 2 opinion that the investigation should not have been conducted?

3 Mr. Hancock. He didn't agree with, and I don't know that
4 I can give any more details than that. I don't recall
5 precisely what he told me. He didn't think it was an
6 investigation we could conduct.

7 He may have thought that we were -- I don't know what he
8 thought. He may have told me that we were just barking up the
9 wrong tree. Those weren't his words, but I don't know if he
10 had knowledge of the local situation involved.

11 It's very difficult for me because I'm not even sure
12 which investigation it was. This matter was resolved very
13 quickly and it didn't linger. It was a misunderstanding when
14 it arose and it's not unusual to have these kind of mis-
15 understandings, and we resolved it.

16 Mr. Govan. Prior to being told by the FBI that they had
17 not conducted the investigation because of Mr. Sessions'
18 intervention, had you ever heard from Mr. Sessions or anyone
19 in his office, any of his assistant U.S. attorneys, with
20 respect to this investigation?

21 Mr. Hancock. No.

22 Mr. Govan. Would you have expected to have heard from
23 them?

24 Mr. Hancock. I would have no reason to hear from the
- 25 assistant United States attorney about an investigation that

1 we request, no.

2 Mr. Govan. Would you expect to have heard from the
3 United States Attorney?

4 Mr. Hancock. I don't -- the United States Attorney is
5 provided a copy of every investigation that we request. The
6 relationship with the United States Attorneys varies greatly
7 from district to district, and in some instances it's normal
8 that I talk to U.S. Attorneys about every step we take in
9 their district.

10 In other instances, we have no contact with United States
11 Attorneys. I can't give you any rules of what would be
12 expected.

13 Mr. Govan. Other than Mr. James Turner, your superior,
14 did you discuss the situation with any other colleagues in
15 the Division?

16 Mr. Hancock. Oh, I'm sure I did. I'm sure I talked
17 about it within my office. My immediate supervisor is Gerald
18 Jones, who's the Chief of the Voting Section, and I'm sure I
19 discussed it with Mr. Jones before I discussed it with Mr.
20 Turner.

21 I do have more recollection of discussing it with Mr.
22 Turner. I'm not sure why that is, but I'm sure I talked with
23 Mr. Jones about it, also.

24 Mr. Govan. Based upon your experience in the Division
25 handling voting rights cases, was Mr. Sessions' intervention

1 unusual?

2 Mr. Hancock. It's unusual for a U.S. Attorney to tell
3 the Bureau not to do an investigation that we requested, yes.
4 It's not unusual to have disagreements with United States
5 Attorneys over how to proceed in civil rights cases.

6 Mr. Govan. To the best of your recollection, this
7 investigation would have been conducted prior to the initiation
8 of either of the two lawsuits?

9 Mr. Hancock. No, no; not necessarily, no. If it was
10 involving the letter that I mentioned to you -- the letter
11 arose during the trial of the lawsuit, so that would have
12 been requested while the litigation was pending.

13 If it was about our lawsuit that we filed concerning
14 treatment of voters at the polls, it would have been done
15 before the lawsuit was filed.

16 Mr. Govan. You stated that you've attempted to recon-
17 struct the paper record of these events. In that attempt,
18 wouldn't you have been able to locate the written request to
19 the FBI for an investigation, and thereby determine which of
20 the two lawsuits this occurred in?

21 Mr. Hancock. We should be able to. I have had members
22 of my staff check the records in Conecuh County and --

23 Mr. Bergquist. Well, I'm sure both were done; both
24 requests were initiated. But you wouldn't know which one
25 wasn't done.

1 Mr. Hancock. My lingering reservation about this is
2 that I haven't been able to locate an FBI request concerning
3 the treatment at the polls lawsuit. I know that we had the
4 Bureau -- I confirmed that we had the Bureau investigate the
5 letter issue.

6 But, again, I'm not trying to be evasive with you, but
7 my recollection is really not clear. When I started trying to
8 put this back together, I remember the issue, of course,
9 because it was a disagreement that was not pleasant, even
10 though it was resolved quickly.

11 But I thought -- when I first tried to reconstruct it,
12 I thought it was about our suit involving treatment of voters
13 at the polls, but I'm told we never had the Bureau do an
14 investigation about that.

15 So if my staff is right that we never did, then my
16 recollection is wrong.

17 Mr. Govan. You characterized the experience as
18 unpleasant. Why?

19 Mr. Hancock. Well, any disagreement with a United States
20 Attorney is unpleasant. Again, though, I'm not suggesting
21 that this is anything outside my normal duties. I deal with
22 United States Attorneys and work with United States Attorneys
23 on all our lawsuits.

24 By the very nature of our lawsuits, they are the kind
25 that raise differing opinions, particularly among local United

1 States Attorneys, and that is one of the reasons that civil
2 rights cases historically have been handled out of Washington
3 rather than in the local United States Attorneys offices.

4 Mr. Govan. The investigation that would have been
5 requested would have been either a fraudulent letter,
6 purportedly coming from the Chief of the Civil Rights Division
7 of Justice or discriminatory treatment of black voters.

8 What was the discriminatory treatment being alleged?

9 Mr. Hancock. We eventually filed a lawsuit against
10 Conecuh County alleging that black voters were subject to
11 discriminatory treatment when they came to vote. Examples
12 were that racially derogatory terms were used by poll
13 officials to the black voters; that older black voters were
14 made to stand in line for long periods of time to vote,
15 whereas older white voters were offered chairs. The lines
16 were long.

17 Those are the kind of treatment -- we also challenged
18 in the same lawsuit discrimination in selecting persons to be
19 poll workers. We were alleging that they discriminated
20 against black persons who desired to work at the polls, and
21 the two were tied together.

22 Mr. Bergquist. What was the resolution of the suit?

23 Mr. Hancock. The suit was settled by a consent decree.

24 Mr. Govan. Did you have any particular response when you
25 found out that the investigation had not occurred because of

1 discussion with Sessions, decided to stop it on its own and
2 then said, we stopped it because we talked with Mr. Sessions.

3 The FBI should also know that Mr. Sessions doesn't have
4 the authority to stop investigations requested by the
5 Department of Justice. So that's something we can nail down
6 very quickly.

7 Mr. Govan. If I could just follow up on Mr. Bergquist's
8 comment, it's my understanding, Mr. Hancock, that you did
9 speak to Mr. Sessions and that Mr. Sessions noted -- during
10 that conversation, he noted his disagreement with the
11 investigation and didn't feel it was a good idea, and this
12 conversation took place after you had learned from the FBI
13 that the investigation had not been done.

14 Mr. Hancock. Yes.

15 Mr. Govan. Have you had any other interactions with Mr.
16 Sessions?

17 Mr. Hancock. Oh, sure, yes. I've dealt with him on all
18 the lawsuits that we've brought in the Southern District of
19 Alabama.

20 Mr. Govan. Have you ever had an experience with Mr.
21 Sessions on those lawsuits similar to this experience?

22 Mr. Hancock. No, no. Mr. Sessions has been very
23 cooperative and has not interfered with our litigation
24 activity. In the Southern District of Alabama, we've
25 probably brought -- I don't know of any judicial district in

1 the country where we've brought more cases.

2 Mr. Bergquist. Would you characterize it more than just
3 not interfered? Has he been cooperative?

4 Mr. Hancock. Yes, and we often had to ask assistance
5 from his office to get pleadings filed at the last minute.

6 Mr. Bergquist. Has he been cooperative in all ventures?

7 Mr. Hancock. Yes, yes. He has made the staff and
8 himself available to sign pleadings when needed. If we have
9 to get something filed or if we have anything that needs to
10 be done, he has regularly been a very good help to us in
11 getting things done.

12 Mr. Bergquist. So you see no resistance on his part to
13 civil rights litigants, in general?

14 Mr. Govan. Ken, I'm going to object to that question,
15 in all candor. I mean, you're really here to observe

16 Mr. Bergquist. No. I'm here to protect the interests
17 of the Department.

18 Mr. Govan. I understand, but Mr. Sessions can be asked
19 that question, and it seems to me --

20 Mr. Bergquist. No, he can't be asked that question. He
21 can be asked that question.

22 Mr. Govan. I think, in all seriousness, I'm going to
23 object. You have a much more limited role.

24 Mr. Bergquist. Well, I won't ask that question, then.

25 Mr. Klonoski. We can ask him at the hearing.

1 Mr. Sessions' intervention with the FBI?

2 Mr. Hancock. I'm not sure what you're getting at. My
3 response was to note my disagreement with what he had done to
4 my superiors, and we resolved it.

5 Mr. Bergquist. How was it resolved?

6 Mr. Hancock. The investigation went ahead. We talked
7 to Mr. Sessions. I talked to Mr. Sessions and others may have
8 talked to him. I don't recall whether Mr. Turner talked to
9 him or someone from the Attorney General's office talked to
10 him; I don't know.

11 But it was agreed that it was our call and that the
12 investigation would go forward.

13 Mr. Govan. Were you angry?

14 Mr. Hancock. I was angry when I learned that the
15 investigation had been stopped, yes. I was pleased when we
16 resolved it quickly.

17 Mr. Govan. Frank, do you have any questions?

18 Mr. Klonoski. The only thing I wanted to ask was was
19 Mr. Sessions aware that he could or could not stop an
20 investigation?

21 Mr. Hancock. I don't know.

22 Mr. Klonoski. That's all I have.

23 Mr. Bergquist. Now, again, we have not established
24 whether Mr. Sessions did or did not stop it. That's what the
25 FBI told him. Now, we don't know whether the FBI, in

1 Mr. Bergquist. No. I mean, ask him. How is Mr.
2 Sessions going to be able to characterize it from someone
3 else? The question was whether he seemed cooperative.

4 Mr. Govan. And he answered the question. He said, yes,
5 he's very cooperative. He signs pleadings, he makes sure that
6 filings are done on time, and he has regularly offered
7 assistance to the Civil Rights Division. The question was
8 answered.

9 Mr. Bergquist. Okay, I'll settle for that.

10 Mr. Govan. I would think so.

11 Have you ever heard Mr. Sessions make remarks that you
12 would consider to be racially insensitive?

13 Mr. Hancock. No, I have not.

14 Mr. Govan. Have you ever heard others speak of Mr.
15 Sessions having made such remarks?

16 Mr. Hancock. Well, I have heard third and fourth-hand
17 that remarks have been made, but it's hearsay upon hearsay
18 upon hearsay, and I don't have any knowledge of my own.
19 I have had, actually, limited dealings with Jeff Sessions.
20 I have talked to him about lawsuits, and that's all.

21 I haven't talked to him about anything where I would form
22 any opinions of my own about his personal feelings, if that's
23 what you're getting at.

24 Mr. Govan. I have nothing else.

25 Mr. Bergquist. Paul, thanks very much.

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Mr. Hancock. Thank you all.

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Mr. Govan. Thanks.

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(Whereupon, the above-entitled testimony was concluded.)

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1 Whereupon,

2 J. GERALD HEBERT

3 was called as a witness and, having previously been duly
4 sworn, testified as follows:

5 Mr. Govan. Good afternoon. My name is Reggie Govan and
6 I work for Senator Biden and the Judiciary Committee. Let me
7 first start off by explaining that Frank and I work for the
8 Committee and we are involved in preparing for the
9 confirmation hearing of Jefferson Sessions to the United
10 District Court in Alabama. That hearing is scheduled for
11 tomorrow.

12 Let me first establish that you and I did have a tele-
13 phone conversation some time last week, is that correct?

14 Mr. Hebert. Yes.

15 Mr. Govan. And during that conversation, you confirmed
16 that you had spoken with a Mr. Fisk, who you identified as
17 the U.S. Attorney for the Southern District of New York -- or
18 former U.S. Attorney for the Southern District of New York?

19 Mr. Hebert. I think that's the name, yes. That's what
20 I remember, Robert Fisk.

21 Mr. Govan. And you also stated that Mr. Fisk asked
22 you several questions concerning your view of Mr. Sessions'
23 fitness to be a judge, issues related largely to temperament
24 as opposed to your professional experience, is that correct?

25 Mr. Hebert. Most of the conversation that I had with

1 Mr. Fisk dealt with judicial temperament and attitudes about
2 race. We started out, as I recall, the conversation with him
3 asking me about cases that we had worked on together.

4 Mr. Govan. And during that conversation, you were
5 unwilling, were you not, to share with me the substance of
6 your experience with Mr. Sessions?

7 Mr. Bergquist. Let me again break in to say that by
8 doing so, he was following departmental policy that any time
9 you are contacted by someone from the Hill, all such contact
10 must be cleared through my office before you are allowed to
11 answer any questions.

12 Mr. Govan. Fair enough.

13 Mr. Hebert. I did indicate that I would think it would
14 be inappropriate for me to reveal the substance of my
15 conversation with the ABA representative that had contacted
16 me.

17 Mr. Govan. And I told you I respected that conclusion,
18 is that correct?

19 Mr. Hebert. You did, right.

20 Mr. Govan. How long have you been associated or employed
21 by the Department of Justice?

22 Mr. Hebert. Since August of 1973.

23 Mr. Govan. Did you come to the Department right when
24 you graduated law school?

25 Mr. Hebert. Yes.

1 Mr. Govan. What are your responsibilities?

2 Mr. Hebert. I'm senior trial attorney in the Civil
3 Rights Division, working within the Voting Section, although
4 I haven't spent my 13 years all in the Voting Section. But
5 I have spent all of my time within the Civil Rights Division.

6 Mr. Govan. Has your interaction with Mr. Sessions
7 occurred since you've been assigned to the Voting Rights
8 Section?

9 Mr. Hebert. Yes.

10 Mr. Govan. And what has been your interaction with
11 Mr. Sessions?

12 Mr. Hebert. I have been the lead trial attorney for the
13 Justice Department in approximately five or six cases in the
14 Southern District of Alabama, cases all of which have arisen
15 under the Voting Rights Act where the United States has been
16 the plaintiff.

17 All of my contact with Jeff Sessions has been in
18 connection with my handling of those cases. I've spent a
19 considerable amount of time in Mobile in 1981, for example.
20 I haven't examined my travel records, but I think they would
21 show I spent the greater part of two months in Mobile trying
22 two cases in the U.S. District Court there.

23 Mr. Govan. How would you characterize your interaction
24 with Mr. Sessions, you know, through the years in which you've
25 been doing cases in the Southern District?

1 Mr. Hebert. Well, when he first took over the U.S.
2 Attorney's office, it was a little different, I guess, than
3 it is now. We, right now, have what I consider to be a
4 pretty good working relationship, and in terms of our
5 personalities, I think we get along fairly well.

6 We have different views on a lot of things, but we're
7 able to put those aside when it comes to doing departmental
8 business. When we started out back in 1981, I remember there
9 being some countering from Jeff, a little opposition to what
10 the Division wanted to do, and having a number of
11 conversations with him in his office in Mobile about his
12 essential unwillingness to go forward with some things -- or
13 reluctance more than unwillingness, I guess.

14 Mr. Govan. How did that reluctance to go along with
15 Department initiatives manifest itself?

16 Mr. Hebert. Well, mostly, it was where we were getting
17 ready to -- as I recall, the case I have in mind was in the
18 Mobile cases, we had intervened in the Mobile voting rights
19 cases.

20 There were two of them, one in the fall of 1980 and the
21 other in the spring of 1981, both of which went to trial in
22 the spring of 1981. And I think Jeff made it pretty clear
23 that he didn't really think that these cases had much merit.

24 But he said he recognized that there were cases the
25 Department had decided as a policy matter it was going to get

1 involved in and that there wasn't very much he could do about
2 it.

3 Mr. Govan. What, to the best of your recollection, did
4 Mr. Sessions say?

5 Mr. Hebert. I don't know if I can recall, you know, what
6 was said. I just remember the gist of what he said was that
7 he didn't think these cases had merit. When I say "these
8 cases," I'm referring to cases brought challenging the at-
9 large election systems, which is what the two cases involved.

10 You may recall -- I just remembered -- you may recall
11 that around that time period -- if you looked into the
12 cases at all, you'll remember that there was a big flare-up
13 between Senator Denton, who criticized the Justice Depart-
14 ment's filing of an amended complaint in the Mobile case
15 because it contained the term "white supremacy," and we were
16 asked to delete that reference in the complaint by Senator
17 Denton, who made, as I understand it, a request to Attorney
18 General Smith.

19 And I think it was in connection with my discussion with
20 Jeff on that that we started talking about the merits of the
21 cases.

22 Mr. Govan. Do you recall Mr. Sessions expressing --
23 making any expression with respect to the dispute raised by
24 Senator Denton about the term "white supremacy" being
25 contained in a Justice Department pleading?

1 Mr. Hebert. I remember we had a conversation about
2 that. I really don't remember what he said, though, but I
3 remember we talked about it. I had spoken with Jeff during
4 1981 on a lot of occasions, and I have since, so it's hard
5 for me to really remember what he said about it.

6 I do remember that I had a conversation with him, though,
7 about Senator Denton's insistence that we change the
8 complaint. In fact, the complaint was changed. I don't even
9 know if Jeff got involved in it at all, but a new complaint
10 was filed deleting references to white supremacy and we went
11 forward with the case and we won it.

12 Mr. Govan. I'm aware that you won the case. Do you
13 recall him expressing any views or opinion about the use of
14 the term "white supremacy" in the brief?

15 Mr. Hebert. No, I don't.

16 Mr. Govan. Have you ever heard Mr. Sessions express any
17 opinion with respect to white supremacy as a concept?

18 Mr. Hebert. No, no. We've talked a lot about blacks
19 and whites and what position they ought to occupy, but never
20 he's never said anything about white supremacy.

21 Mr. Govan. Let's take a break.

22 (Pause.)

23 Mr. Govan. How would you characterize your discussions
24 with Mr. Sessions concerning the positions blacks and whites
25 ought to occupy?

1 Mr. Hebert. We had a number of conversations about
2 voting cases and civil rights cases, and Jeff is a very
3 amiable individual. He's friendly, and he has always been
4 friendly to me, despite the fact that we haven't seen eye to
5 eye on some things.

6 But that has never stopped him from inviting me into his
7 office and talking very frankly about what his opinions were.
8 And we talked about voting cases and civil rights cases
9 generally, busing cases, and the role of public interest
10 groups and, you know, how far you really should go in civil
11 rights cases.

12 And I think he has expressed his opinion to me numerous
13 times about that. He has a tendency to pop off, I guess
14 would be the best way to put it, sometimes about his opinions.
15 He's an opinionated individual.

16 I have to also put it in the context of the fact that he
17 and I get along pretty well.

18 Mr. Govan. Okay.

19 Mr. Hebert. It's not like he's an antagonist.

20 Mr. Govan. Has Mr. Sessions expressed an opinion to you
21 about busing cases?

22 Mr. Hebert. Yes.

23 Mr. Govan. What is his opinion?

24 Mr. Hebert. He things busing cases have gone too far.
25 He told me he thought that we are really making a mistake

1 driving white people out of public education.

2 Mr. Govan. Has he expressed an opinion to you about
3 voting rights cases?

4 Mr. Hebert. Yes, I would say we've talked about voting
5 cases in particular. We've said about how -- I remember
6 having a conversation with him; I'm trying to think if it
7 was -- not Voting Rights Act cases, I wouldn't say, actually,
8 now that I think about it.

9 We were talking about voter fraud cases, not about, you
10 know, Voting Rights Act, but the type of cases I
11 traditionally handle. I don't get involved in voter fraud
12 very much.

13 Mr. Govan. What did Mr. Sessions say to you with
14 respect to voter fraud cases?

15 Mr. Hebert. He thought that the time had come when we
16 needed to make sure that if anybody violated the law that we
17 were going to prosecute them whether they were black or white.
18 It really didn't matter to him.

19 It didn't matter, really, how it had happened in the past
20 either. He said under his administration, he was going to
21 prosecute people for voter fraud.

22 Mr. Govan. Was there anything that he said that you
23 disagreed with?

24 Mr. Hebert. Not on that, no. It was in connection
25 with the Albert Turner case, which was just ready to go to

1 trial at that point, when we talked about voter fraud. One
2 of his assistants was there during that conversation.

3 Mr. Govan. And who was that?

4 Mr. Hebert. I think his name was E. T. Rollison.

5 Mr. Govan. And during that conversation, did Mr.
6 Sessions acknowledge that there had been voter fraud in the
7 past?

8 Mr. Hebert. Well, he didn't say whether there had been
9 or not. I made the point to him that with regard to
10 prosecution of cases like Albert Turner that there was a
11 concern among a lot of blacks that these are the types of
12 things that had been happening before by whites, and that
13 now that blacks were starting to occupy positions of
14 political power in the black belt of Alabama, they suddenly
15 were seeing themselves being prosecuted.

16 And I thought there was a lot of resentment and I asked
17 him about that, and it was at that point he said, well, it
18 really didn't matter to him whether it had happened before
19 or not. If they violated the law, he was the U.S. Attorney
20 and he was going to prosecute them. That's all I remember.

21 Mr. Govan. Has Mr. Sessions -- what comments has Mr.
22 Sessions made about the role of public interest groups?

23 Mr. Hebert. Well, it was about -- I guess we were
24 talking about voting rights cases, in particular. As I
25 recall, we had talked about the Mobile case and he said

1 that -- we were talking about, in fact, the private lawyers
2 who had handled the Mobile case and how they -- I had mentioned
3 to him how difficult I thought it was for people in the
4 private bar to take on a major civil rights case in a city
5 like Mobile because they underwent a lot of treatment by
6 fellow members of the bar that seemed to -- they seemed to be
7 snubbed or looked down on for having done it.

8 I mentioned to him that I had, in fact, heard that one
9 of the judges had referred to one of the white lawyers for
10 the plaintiffs as being a disgrace to his race for doing it.
11 And I said I didn't know whether it was true, but, you know,
12 I had heard that that was said.

13 Mr. Govan. And what was Mr. Sessions' response?

14 Mr. Hebert. He said, well, maybe he is.

15 Mr. Govan. Who was the attorney that they were talking
16 about that was being referred to?

17 Mr. Hebert. Well, he's a lawyer in Mobile.

18 Mr. Govan. What's his name?

19 Mr. Hebert. Could I consult with this gentleman just
20 for a minute?

21 Mr. Govan. Sure.

22 Mr. Hebert. The lawyer's name is James Blackshire.

23 Mr. Govan. And is he white or black?

24 Mr. Hebert. He's white.

25 Mr. Bergquist. Was this a federal judge who said that?

1 Mr. Hebert. Reportedly.

2 Mr. Govan. And Mr. Sessions make any response to you in
3 any other way with respect to that?

4 Mr. Hebert. With respect to Mr. Blackshire?

5 Mr. Govan. Yes.

6 Mr. Hebert. No.

7 Mr. Govan. Did you understand Mr. Sessions to be joking?

8 Mr. Hebert. I couldn't tell, to be honest with you; I
9 couldn't tell.

10 Mr. Govan. Did you laugh?

11 Mr. Hebert. No. I remember reporting it to my co-
12 counsel, who was down the hall in the library at the U.S.
13 Attorney's office.

14 Mr. Govan. Did Mr. Sessions laugh at the comment?

15 Mr. Hebert. He smiled; he didn't laugh.

16 Mr. Govan. And you're certain that the remark that you
17 had heard was that judge "X" considered Mr. Blackshire a
18 disgrace to his race?

19 Mr. Hebert. Yes, that's what I had heard the judge had
20 said about Mr. Blackshire.

21 Mr. Govan. And Mr. Sessions' response, the best you
22 recall, was maybe he is?

23 Mr. Hebert. Yes, that's what he said.

24 Mr. Govan. Has Mr. Sessions made any comments
25 specifically about the role of public interest groups as

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opposed to private civil rights attorneys?

Mr. Hebert. We were talking about the NAACP and the ACLU, in particular.

Mr. Govan. Were they involved in either of these cases?

Mr. Hebert. I believe that the Mobile voting cases that Mr. Blackshire handled were, in part, financed by the NAACP Legal Defense Fund, although I'm not certain what arrangements they had. But it was my understanding the NAACP was involved.

It was in the context of my talking to Jeff about the NAACP that he made some comments about the NAACP and the ACLU.

Mr. Govan. What were the comments?

Mr. Hebert. He said he thought that they were un-American.

Mr. Govan. Did he give a reason for his belief?

Mr. Hebert. He said that he thought they did more harm than good when they were trying to force civil rights down the throats of people who were trying to put problems behind them.

Mr. Govan. Let's take another break, please.

(Pause.)

Mr. Govan. What was your response to those comments?

Mr. Hebert. I don't know that I actually had a response I probably -- I think I followed it up, as I recall, because I remember us talking about it for a good five or six-minute

1 interval.

2 So I don't know whether I said, you know, I know you
3 don't mean that or, you know, what do you mean by that. I
4 remember us continuing to talk about it.

5 Mr. Govan. Is this an example of the type of view that
6 you and Mr. Sessions did not share?

7 Mr. Hebert. Yes. In fact, I think I told him that I
8 was asked to become a member of the NAACP by my local chapter
9 just around that same time period.

10 Mr. Govan. Did he have any response to that?

11 Mr. Hebert. No, he didn't make any response that I can
12 remember.

13 Mr. Govan. Did Mr. Sessions make any remarks about any
14 organizations other than the NAACP or the ACLU that you
15 recall?

16 Mr. Hebert. In the context of talking about it at that
17 conversation we had, he mentioned that, you know, he thought
18 they were un-American; I remember him using that word. I
19 remember him saying that they were either communist-inspired
20 again, he's made that comment to me two or three times, so I
21 don't know that it was during that conversation that he used
22 that word or whether he used like "un-American" at that point
23 and maybe at a later conversation said they were -- I might
24 add that when he made that comment about the NAACP on one of
25 the occasions, he sort of ribbed me about it and followed it

1 up by saying, well, of course, you already know how I feel
2 on that, and he just laughed.

3 I might add, you know, just while we're talking about it
4 that I just talked with Jeff not too long ago and I reminded
5 him that I had talked to the ABA and he said, you know, I
6 know that I've said some things to you, you know, where I
7 spout off; I have a tendency to do that.

8 You know, he's told me, you know, I know that you know
9 the things I've said and I --

10 Mr. Govan. When did you have this conversation with Mr.
11 Sessions?

12 Mr. Hebert. Friday; this past Friday, I had a telephone
13 conversation with him about a matter we were handling in the
14 Southern District.

15 Mr. Govan. Did you call him or did he call you?

16 Mr. Hebert. I think I called him.

17 Mr. Govan. About present litigation?

18 Mr. Hebert. Yes.

19 Mr. Govan. What case?

20 Mr. Hebert. U.S. versus Dallas County Commission. I
21 was asking his opinion about a possible perjury investigation
22 that I thought the Department ought to look into.

23 Mr. Govan. You're absolutely certain that Mr. Sessions
24 did not call you?

25 Mr. Hebert. I'm sure that I called him.

1 Mr. Govan. Was it Friday morning or Friday afternoon?

2 Mr. Hebert. I think it was Friday afternoon. He called
3 me today, also, but I wasn't able to talk with him because I
4 was just about to get in the elevator to come over here. I
5 promised to send him some transcripts of this conflicting
6 testimony from the Dallas County case.

7 Mr. Govan. In the course of your workings with Mr.
8 Sessions, in your opinion has Mr. Sessions' professional
9 conduct ever been affected by these remarks, whether said in
10 jest or whether evidencing any serious belief in this?

11 Mr. Hebert. Well, he hasn't interfered in any of my
12 cases. That would include the Dallas County case and the
13 Maringo County case and the two Mobile cases, the Conecuh
14 County case that I worked on, or the Monroe County case is
15 another one that I got involved in, or Pritchard-Alabama,
16 another case I had in his district.

17 He has never, you know, interfered with me in prosecuting
18 those cases. He hasn't had much to do with them.

19 Mr. Govan. Have you ever experienced difficulty in
20 cooperation with Mr. Sessions' office?

21 Mr. Hebert. No, no. In fact, I've been able to call up
22 on the phone and ask Jeff if I could dictate a paper to his
23 secretary that needed to be filed within the hour and he's
24 been willing to help me out. That just happened within the
25 last two months.

1 Mr. Govan. Do you know whether he's failed to cooperate
2 or has interfered in cases of other assistants in the Justice
3 Department?

4 Mr. Hebert. Well, I only know what happened with our
5 Conecuh County case, but Paul Hancock is in a better position
6 to talk about that than I am.

7 Mr. Govan. Okay, fair enough.

8 Mr. Hebert. Paul and I had talked about it and he and
9 I both have a very fuzzy recollection about Conecuh County.
10 It was Paul's case primarily.

11 Mr. Govan. You talked earlier about your views and
12 Mr. Sessions', and you have different opinions with respect
13 to race and the position that blacks and whites ought to
14 occupy.

15 Is your opinion about that difference based upon the
16 comments that you've related to us today?

17 Mr. Hebert. In part. We've had conversations in which
18 we've talked about whether or not the right to vote includes
19 just the right to register and to cast the ballot or whether
20 it ought to also include the right to have that ballot
21 meaningful.

22 And it was in the context, I think, really of that
23 concept that we have, I think, a pretty different opinion
24 about whether blacks as a group have equal political
25 opportunity within a jurisdiction.

1 Mr. Govan. And I take it you're referring to voter
2 dilution cases that are brought usually under Section 2 of
3 the Voting Rights Act?

4 Mr. Hebert. Right, those are the ones.

5 Mr. Govan. And what has been, or is, Mr. Sessions'
6 opinion with respect to the efficacy of Section 2 cases?

7 Mr. Hebert. Frankly, I don't think he understands what
8 dilution is. Unfortunately, there's also a lot of people on
9 the federal bench who seem to have that same view. They just
10 don't understand how--if you can register and you can go to
11 the polls and vote, why the Voting Rights Act ought to give
12 you anything more than that.

13 Mr. Govan. Has Mr. Sessions ever expressed an opinion
14 that the way in which wards or precinct lines are drawn is
15 irrelevant to the determination of whether people have an
16 effective right to participate?

17 Mr. Hebert. No. I think he's of the view -- at least
18 in conversations with me, I've gotten the impression that he
19 thinks that gerrymandering for racially discriminatory
20 reasons is a definite way that you can harm black voters. I
21 think he understands that.

22 That's a fairly simple concept. It's really the
23 dilution questions that I think are a little tougher for him
24 to understand.

25 Mr. Govan. And by "dilution questions," you mean

1 primarily the Department's challenging of the at-large
2 electoral schemes in some counties in Alabama, in the Southern
3 District of Alabama?

4 Mr. Hebert. Right.

5 Mr. Govan. Has the Department, in fact, won most of
6 those challenges?

7 Mr. Hebert. We have -- do you want me to stop?

8 Mr. Bergquist. No, if you're talking about cases that
9 are already done. You can't talk about ones that are --

10 Mr. Hebert. We've prevailed in the two Mobile cases I
11 mentioned, and we obtained a consent decree in the Conecuh
12 County case, although that was not a dilution case. The two
13 Mobile cases were dilution cases.

14 We obtained just a week ago Friday a ruling from the
15 bench after the trial in Selma in the Dallas County case in
16 our favor, and we obtained a successful judgment against the
17 Maringo County Commission and School Board last September
18 following a trial that I handled in those cases.
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1 Mr. Hebert. Part of the Dallas County case remains
2 pending.

3 Mr. Govan. So your conclusion that Mr. Sessions is
4 reluctant in his support for some of the civil rights
5 initiatives of the Department of Justice is based upon
6 comments that he made to you, that he did not think it was
7 appropriate to be filing the challenge to the Mobile at-
8 large electoral seat?

9 Mr. Hebert. I don't know if it was just Mobile. I
10 think, you know, just on conversations I have had with him
11 over a four- or five-year period, that is the impression I
12 get, that he doesn't think these cases have much merit.

13 Mr. Govan. Are there any other comments that Mr.
14 Sessions has made that you would characterize as racially
15 insensitive?

16 Mr. Hebert. Well, I have already given some.

17 Mr. Govan. Are there any others?

18 Mr. Hebert. I can't recall any specific comments he has
19 made. As I say, the general impression I get when we talk
20 about racial questions is that he is not a very sensitive
21 person when it comes to race relations.

22 Mr. Govan. Do you know Mr. Blackshire?

23 Mr. Hebert. Yes, I do quite well.

24 MR. Govan. Has Mr. Blackshire ever been a participant
25 in discussions or meetings in which you and Mr. Sessions

1 have participated?

2 Mr. Hebert. Not any involving questions about either
3 Mr. Blackshire or race discrimination cases. Mr. Blackshire
4 perhaps came into the U.S. Attorneys office in Mobile when I
5 was there as the department's attorney on the voting cases
6 that came in to me.

7 Mr. Govan. And so you were essentially co-counsel with
8 the NAACP in the Mobile case?

9 Mr. Hebert. We intervened as the plaintiff. They were
10 the original plaintiffs. They had brought that case in 1975.
11 We intervened in 1981.

12 Mr. Govan. Have you ever heard make any remarks about
13 the National Council of Churches?

14 Mr. Hebert. No, I have not.

15 Mr. Govan. Have you ever heard him make remarks about
16 any other group that you consider to be active in behalf of
17 liberal, progressive, civil rights issues, pushing for social
18 change, issues of race or social justice?

19 Mr. Hebert. I haven't heard him say anything about an
20 organization that I can remember.

21 Mr. Govan. Have you ever heard Mr. Sessions make a
22 remark about the Klan?

23 Mr. Hebert. Only perhaps in making a comment to me about
24 how they are going to have a Klan prosecution in his district,
25 something like that.

1 Mr. Govan. Do you recall the context of that having
2 come up?

3 Mr. Hebert. No, I can't, my recollection is very hazy.

4 Mr. Govan. Do you recall him being proud of that
5 prosecution?

6 Mr. Hebert. I really don't remember much about it.
7 I think something may have been said to that effect.

8 Mr. Bergquist. We have got the two Klan experts outside.

9 Mr. Govan. Experts on what? Their experts is based on
10 what? That determines on whether I want to stay or not.

11 Mr. Bergquist. Prosecuting the claims.

12 Mr. Govan. Frank?

13 Mr. Klonoski. I don't have anything.

14 Mr. Bergquist. Let me ask one brief question. Does it
15 seem like Mr. Sessions likes to engage in contentious debate
16 on a friendly basis?

17 Mr. Hebert. I would say that is true. He and I get
18 along very well.

19 Mr. Bergquist. Does he like to throw a couple stingers
20 at you to get you to debate, you know, he just likes to sit
21 down and talk?

22 Mr. Hebert. He enjoys discourse in his office so you
23 can just sort of roll your sleeves up and say let's put aside
24 this fact that, you know, you are down here from Washington,
25 this big official Justice Department, I am the U.S. Attorney,

1 and let's talk one lawyer to another or from one person to
2 the other.

3 Mr. Bergquist. He seems to enjoy that?

4 Mr. Hebert. He does.

5 Mr. Bergquist. Does he --

6 Mr. Hebert. There is a judge down in that district who
7 is very similar: already in doing that with me personally and
8 I would say that Jeff is very similar.

9 Mr. Bergquist. Let me just ask --

10 Mr. Hebert. He is engaging, I guess would be the best
11 way to put it.

12 Mr. Bergquist. Bernie Katz touched on it, but let me
13 ask you specifically. In your dealings with him, has he done
14 anything improper as far as handling cases or anything like
15 that?

16 Mr. Hebert. The only thing that I know about is the
17 Conecuh County case. In terms of handling the Dallas County
18 case or the Maringo County case or the Mobile cases, he has
19 not done anything to interfere with my prosecution of those
20 cases.

21 Mr. Govan. In fact, you consider you and he have a
22 certain camaraderie, a rapport with one another, what you
23 characterize as your obvious differences?

24 Mr. Hebert. I would hope we do. I don't know if he
25 thinks so. I think we do.

1 Mr. Govan. And notwithstanding that camaraderie, Mr.
2 Sessions talked to you this past Friday about remarks that
3 he may have made?

4 Mr. Hebert. Right, and it wasn't in response to my
5 saying, you know, he once called the NAACP this or he once
6 said blacks are that. It was, you know -- I mentioned to him
7 that I received a call from you and he brought up the con-
8 firmation case in a conversation, at the end of our conver-
9 sation about the further questions, and he said I am going
10 to be up in your neighborhood this week and I said I would
11 try to get together with him when he came up.

12 Mr. Bergquist. Mr. Sessions does not know that he is
13 coming and --

14 Mr. Hebert. No problem.

15 Mr. Bergquist. Okay. I am just telling you that he
16 does not know.

17 Mr. Hebert. I appreciate it.

18 Mr. Govan. And how did Mr. Sessions characterize either
19 his remarks or what he perceived to be the implications of
20 his remarks?

21 Mr. Hebert. I don't really know. All I can tell you is
22 what he said to me on the phone, and that was he said, you
23 know, you and I have had a lot of conversations over the
24 years and, you know, I have a tendency to pop off. That is
25 the exact words he used. I said I know, and I said I told

1 you before that I had talked to the ABA about some of those
2 very things.

3 Mr. Govan. You have already discussed with Mr.
4 Sessions --

5 Mr. Hebert. I had already mentioned to him shortly
6 after Mr. Fisk had called.

7 Mr. Govan. During the conversation you had with Mr.
8 Sessions, did he mentioned whether he had spoken with me
9 that Friday?

10 Mr. Hebert. No, he didn't say anything. I think I
11 mentioned your name.

12 Mr. Klonoski. During the conversation, did he ask you
13 not to tell everybody about these comments he had made or --

14 Mr. Hebert. No, no, not at all.

15 Mr. Bergquist. Has anyone asked you not to reveal any
16 of the --

17 Mr. Hebert. No, no. In fact, just the opposite. They
18 told me to tell the truth and tell everything I know, and I
19 have tried to do that.

20 Mr. Govan. How much money do you have in your pocket?

21 (Laughter)

22 Thanks a lot.

23 Mr. Hebert. Okay.

24 (Whereupon, the above-entitled testimony was concluded.)

1 TESTIMONY OF ALBERT S. GLENN

2 Mr. Govan. We have not met or talked before, is that
3 correct?

4 Mr. Glenn. That's correct.

5 Mr. Govan. My name is Reggie Govan and I am Minority
6 Counsel and investigator for the Judiciary Committee and I
7 work for Senator Biden's staff.

8 We are -- the committee is preparing for a confirmation
9 hearing on Mr. Jefferson Sessions' nomination to the Southern
10 District of Alabama. Are you aware of that?

11 Mr. Glenn. I am.

12 Mr. Govan. And have you had an occasion to work with
13 Mr. Sessions?

14 Mr. Glenn. I have.

15 Mr. Govan. In what capacity?

16 Mr. Glenn. As a trial attorney for the U.S. Department
17 of Justice, Criminal Section, pursuing an investigation of
18 the Southern District of Alabama.

19 Mr. Govan. How long have you been employed by the Civil
20 Rights Division or the Department of Justice generally?

21 Mr. Glenn. The answer is the same for both, January 11,
22 1982, is my starting date and I have worked continuously
23 since then.

24 Mr. Bergquist. Let me make one remark. If you are
25 asked about cases that are still under litigation, you must

1 refuse to answer.

2 Mr. Glenn. I understand.

3 Mr. Bergquist. But if the cast has completed litigation,
4 you can discuss them.

5 Mr. Govan. Did you join the department immediately
6 upon graduating from law school?

7 Mr. Glenn. No.

8 Mr. Govan. Where did you work before that?

9 Mr. Glenn. I worked for a Senior United States District
10 Judge for the District of Oregon.

11 Mr. Govan. Is that right? Which Judge, Solomon?

12 Mr. Glenn. William

13 Mr. Govan. Okay. There is a Solomon, isn't there?

14 Mr. Glenn. He is also a senior judge. He is quite a
15 character.

16 Mr. Govan. Off the record, people from Oregon are
17 generally characters.

18 (Laughter)

19 What cases have you worked on with Mr. Sessions?

20 Mr. Glenn. It was the investigation of circumstances
21 surrounding the death of Michael Donald.

22 Mr. Govan. What was your role in the Donald case?

23 Mr. Glenn. I will preface my remarks here by saying
24 I believe this time it is still an open investigation, there
25 are decisions which remain to be made concerning what will

1 happen in this investigation, so I can only --

2 Mr. Bergquist. You may remark -- does this refer to
3 any litigation at all?

4 Mr. Glenn. It is a criminal investigation.

5 Mr. Bergquist. I know, but has it gone to litigation?
6 Has it actually gone to trial, any portion of it?

7 Mr. Glenn. It has not. There is an on-going grand jury
8 investigation.

9 Mr. Govan. There is in fact also a part of the case
10 that was closed?

11 Mr. Glenn. There have been some public matters during
12 this case --

13 Mr. Bergquist. You may discuss those aspects of it.

14 Mr. Glenn. All right.

15 Mr. Govan. What involvement have you had with Mr.
16 Sessions in the Donald case?

17 Mr. Glenn. He is the United States Attorney in the
18 District of Alabama. We, in conjunction with an attorney at
19 his office investigated that case and conducted the grand
20 jury investigation. Mr. Sessions was involved since being
21 continually apprised of the direction of the investigation,
22 what was happening. While not attending all of the parts of
23 the investigation, he was fully on top of it, so it was in
24 that capacity.

25 Mr. Govan. What was your role and responsibility in the

1 Donald case? Whom did you work with and how were the re-
2 sponsibilities divided up, if there was a neat way of doing
3 it?

4 Mr. Glenn. I initially came onto the Donald case in
5 March of 1983 as the second department attorney on the case.
6 The other departmental attorney who worked on the case was
7 Barry Kowalski, K-o-w-a-l-s-k-i. In additiona, an attorney
8 in Mr. Sessions' office, Thomas Figures, was assigned to the
9 case.

10 The three of us worked on the investigation together and
11 investigated parts of it and were divided in no particular
12 way among us. I perhaps more than the others worked on the
13 legal theory side of the federal charge in that matter, but
14 in terms of the actual field work when we were in Mobile,
15 there was no particular division.

16 Mr. Govan. Do you recall when you first began to work
17 with Mr. Sessions on the Donald case?

18 Mr. Glenn. I first --

19 Mr. Govan. The first stage the case was in.

20 Mr. Glenn. I first met Mr. Sessions the first time we
21 went to Mobile, which was the beginning of the grand jury
22 investigation, which was about May 1st or 2nd of 1983.

23 Mr. Govan. Prior to that, had you had any telephone
24 conversations with him?

25 Mr. Glenn. No.

1 Mr. Govan. What was the purpose of the meeting in
2 Mobile in May of '83?

3 Mr. Glenn. In May of '83. Mr. Kowalski and I had
4 traveled to Mobile, along with the U.S. Attorneys office, to
5 conduct the grand jury investigation, so it was the actual
6 beginning of that investigation.

7 Mr. Govan. And when you came to Mobile, the decision
8 had already been made to convene the grand jury investigation?

9 Mr. Glenn. That's correct.

10 Mr. Govan. Do you know anything about the circumstances
11 which led to the decision to convene that grand jury?

12 Mr. Glenn. Not of personal knowledge.

13 Mr. Govan. Do you know what Mr. Kowalski's role was in
14 deciding to convene a grand jury?

15 Mr. Glenn. Mr. Kowalski was the attorney in our criminal
16 section from Justice and he was responsible for overseeing
17 that case from our end of it.

18 Mr. Govan. What was Mr. Figures' role?

19 Mr. Glenn. He was the attorney in the U.S. Attorneys
20 office who was responsible for overseeing the case.

21 Mr. Govan. During the course of your work on the Donald
22 case, have you ever heard Mr. Sessions make any remarks about
23 the Klan?

24 Mr. Glenn. I'm aware of one incident which I know that
25 you are leading to involving some joke about it.

1 Mr. Glenn. If I was leading, Ken would object.

2 Mr. Bergquist. No. This is an informal session, not a
3 formal -- we are not in rules of evidence here, so you may
4 lead the witness if you wish.

5 Mr. Glenn. I know what you are referring to.

6 Mr. Govan. What am I referring to?

7 Mr. Glenn. I think you are probably referring to some
8 comment Mr. Sessions made in his office in response to in-
9 formation that members of the Klan were using drugs, some
10 comment by Mr. Sessions that he used to have some sort of
11 respect for the Klan. I can't recall with certainty whether
12 I was present or not, but I believe I was, but I can't be
13 sure that I'm not recalling someone's telling me about that,
14 although I think I was there.

15 Mr. Bergquist. Was this in a joking reference?

16 Mr. Glenn. Yes. That is my next point, that it never
17 made any impression on me because I thought it was just a
18 joke and that is all it was and that is all I took it to
19 mean, the way he said it.

20 Mr. Govan. So what you are saying you are not sure
21 whether you were there, but if you were there you knew it
22 had to be a joke?

23 Mr. Glenn. I'm pretty sure I was there. My only
24 hesitation is someone else said it, I am not sure I was
25 there and so it has now been some time, a couple of years.

1 Mr. Govan. Who was there?

2 Mr. Glenn. I'm pretty sure --

3 Mr. Govan. If you were there, you would know? You
4 know, who do you think was there?

5 Mr. Glenn. I think Barry Kowalski and Thomas Figures
6 and Jeff Sessions were there. I'm pretty sure I was there.

7 Mr. Glenn. Do you recall when it happened?

8 Mr. Glenn. No. No. It would have --

9 Mr. Govan. How many times have you discussed this com-
10 ment since it occurred?

11 Mr. Glenn. I haven't really discussed it with anyone.
12 I have heard it raised within the last four or five months
13 in the context of Mr. Sessions' nomination, and that is where
14 it came back to me, that from the time it was made, which I
15 suspect was probably late '83 or early 1984, until it came
16 up during the course of this investigation, I had not heard
17 any comment or anything about it at all.

18 Mr. Govan. Had you thought about it since that time?

19 Mr. Glenn. No.

20 Mr. Govan. Who did you hear it from within the last six
21 months that this comment was the subject of some concern or
22 inquiry?

23 Mr. Glenn. Probably from Barry Kowalski.

24 Mr. Govan. What did he tell you?

25 Mr. Glenn. I think only that it had come up in the

1 course of the investigation in Mr. Sessions' nomination,
2 nothing very specific. That is what I recall. Really, it
3 was just a passing remark to me one day in the office.

4 Mr. Govan. At that time did you have a recollection of
5 having been present and heard Mr. Sessions say that?

6 Mr. Glenn. Well, that is when it came back to me and I
7 recognized that, I knew I had heard that before and I think
8 at that time I also thought that I heard it personally.

9 Mr. Govan. Do you have any recollection of there being
10 any discussion the day of the comment or the day after the
11 comment was made about the comment?

12 Mr. Glenn. Not with me.

13 Mr. Govan. Do you think if you had been there and had
14 heard the comment made, that you and others would discuss the
15 comment, at least jokingly a couple times afterwards?

16 Mr. Glenn. Not necessarily.

17 Mr. Govan. Do you know if Mr. Figures heard the comment?

18 Mr. Glenn. I think he did. In fact, I think Mr.
19 Kowalski has told me that Mr. Figures had mentioned it during
20 the courses of this investigation?

21 Mr. Govan. If such a comment was made in Mr. Figures'
22 presence, would Mr. Figures have laughed?

23 Mr. Glenn. Probably, that is likely.

24 Mr. Govan. Mr. Figures would have laughed?

25 Mr. Glenn. Yes.

1 Mr. Govan. Do you have any specific recollection of
2 what the comment was other than expressing some general
3 respect or regard or whatever word you use for the Klan,
4 albeit in jest?

5 Mr. Glenn. It was said in jest, and the word I recall
6 is respect, I used to respect them or I used to have some
7 respect for them. I also believe he was smiling as he said
8 it and I took it as a joke. I did not take it seriously,
9 that he meant that ever had -- I did not take it that he
10 meant he had any --

11 Mr. Govan. What would have changed the respect that he
12 had for the Klan. Did he express in that remark what occurred
13 that would change his respect for the Klan?

14 Mr. Glenn. He didn't express explicitly. The remark
15 was made in response to some comment made in his office
16 about information we received that someone in the Klan had
17 been using drugs or had drugs.

18 Mr. Govan. Was it a news report?

19 Mr. Glenn. No, I'm sure it was not a news report.

20 Mr. Govan. It was information that had been received --

21 Mr. Bergquist. That is an item under investigation.

22 Mr. Govan. What is?

23 Mr. Bergquist. It is an investigative report and we
24 can't say anything more about it. They were discussing an
25 investigative report.

1 Mr. Govan. Oh, okay. That was my next question. I
2 didn't have far to go.

3 Mr. Bergquist. I'm not supposed to tell you that is
4 what it was, but that is what they were discussing.

5 Mr. Govan. Okay.

6 Have you ever heard Mr. Sessions make any remarks
7 similar to that since that time?

8 Mr. Glenn. No.

9 Mr. Govan. Have you ever heard people discuss alleged
10 remarks similar to that?

11 Mr. Glenn. No.

12 Mr. Govan. Do you have a view as to the level of Mr.
13 Sessions' cooperation in the investigation of the Donald
14 case?

15 Mr. Glenn. Yes.

16 Mr. Govan. What is that?

17 Mr. Glenn. He has been cooperating as fully as I could
18 expect, as fully as is possible. He has been fully coopera-
19 tive with us in all respects in the Donald investigation
20 from start to finish.

21 Mr. Govan. Have you ever heard Mr. Figures expressing
22 dissatisfaction with Mr. Sessions' actions or lack of actions
23 on the Donald case?

24 Mr. Glenn. I can't recall any specific comment that Mr.
25 Figures may have made saying that he was dissatisfied with

1 any particular decision by Mr. Sessions.

2 Mr. Govan. Do you know anything about the interaction
3 of Figures and Sessions concerning the Donald case?

4 Mr. Glenn. Not specifically, no. I know that they
5 would confer from time to time. We would -- I would or --
6 well, I can only speak for myself, I would occasionally call
7 if questions or requests or something or other and I know
8 that Mr. Figures would say he would speak with Mr. Sessions
9 about it and he would and then we would talk afterwards. So
10 I know that they would have interactions during the course
11 of the investigation, and the subject would have been the
12 subject of our investigation.

13 Mr. Govan. Do you know anything about Mr. Figures' and
14 Mr. Sessions' interaction prior to your involvement in the
15 case --

16 Mr. Glenn. No.

17 Mr. Govan. -- which is when the grand jury was convened?

18 Mr. Glenn. No.

19 Mr. Klonoski. Excuse me, did they seem to have a good
20 working relationship as far as this case?

21 Mr. Glenn. That's probably hard from a definitional
22 point of view. When I was in Mobile, we were all able to
23 discuss the case together without any problems.

24 Mr. Klonoski. So things were going pretty well as far
25 as you were concerned?

1 Mr. Glenn. Well, we had full cooperation from the U.S.
2 Attorneys office. There was nothing that I ever observed
3 when I was in Mobile between Mr. Sessions and Mr. Figures
4 which inhibited or interfered with the investigation,

5 Mr. Govan. And Mr. Figures was intimately involved
6 in that case?

7 Mr. Glenn. He was.

8 Mr. Govan. It is a case that Mr. Sessions can justify
9 if he claims the credit for as the prosecutor.

10 Mr. Glenn. Certainly.

11 Bergquist. Hopefully. We haven't finished yet.

12 Is there anything else you want to say about Mr. Sessions,
13 subjectively or his professional competence?

14 Mr. Glenn. Yes, I would like to add that, although my
15 encounter with him was brief, he has been fully cooperative
16 and fully supportive in everything that we have done in this
17 investigation, from the beginning to the end. I have no
18 questions at all about his credibility. He has also been an
19 easy individual to work with. He doesn't have an ego problem,
20 as one way of putting it. He is an easy person to approach,
21 an easy person to bring ideas to, and he will listen to us
22 as well. So in the limited context of working on the criminal
23 investigation, I have had no trouble and am very pleased with
24 his competence, his work and his cooperation.

25 Mr. Govan. Frank, do you have anything?

1 Mr. Klonoski. You said this is the only case you have
2 been involved in with Mr. Sessions? Are there any others?

3 Mr. Glenn. We had one discussion a couple of months
4 ago on another matter which has since been closed, but that
5 was only one phone call. This has been the only case which
6 has come up as a major investigation.

7 Mr. Govan. The matter that you worked with Mr. Sessions
8 on involved a shooting at a house being shown to a black
9 couple?

10 Mr. Glenn. I think that he told me about that, but I
11 really didn't talk to him about it because that wasn't a case
12 assigned to me. I referred him or had another attorney call
13 him because I was not assigned to that case. There was
14 another matter which we closed, because it was a death case.

15 Our practice is that all cases in which death is in-
16 volved, we consult with the U.S. Attorneys office before we
17 close them, and I had a case in which a death was involved
18 and so I consulted with him. It really wasn't a close
19 question and there was no basis for a federal --

20 Mr. Govan. What was the case?

21 Mr. Glenn. It involved basically the death of a black
22 man who was found dead floating in a river somewhere in
23 Alabama, in the Southern District of Alabama. I'm not sure
24 where, so I can't assist and give the name of the place or
25 the geographic location. The black man and some other people

1 had been there for some sort of a party the night before
2 and somebody had come in banking on the door and made a
3 racial remark and the black man had run off, and three days
4 later his body was found. We concluded there was no basis
5 for federal jurisdiction in that case, and it wasn't a close
6 case, but it being a death case we had to talk to Mr.
7 Sessions about it.

8 Mr. Govan. I have nothing further.

9 Mr. Klonoski. I have one more. During your interaction
10 has he done anything improper?

11 Mr. Glenn. Never.

12 (Whereupon, the above-entitled testimony was concluded.)
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1 TESTIMONY OF DANIEL L. BELL

2 Mr. Govan. I am Reggy Govan and I work for the Senate
3 Judiciary Committee, minority counsel and investigator, and
4 I work primarily for Senator Biden. We are preparing for a
5 confirmation hearing in the nomination of Jefferson Sessions
6 to be a Federal District Judge for the Southern District of
7 Alabama.

8 First, let me establish that you and I don't know each
9 other and we haven't spoken before, is that correct?

10 Mr. Bell. As far as I know, yes.

11 Mr. Govan. And how long have you been employed by the
12 Department of Justice?

13 Mr. Bell. Since May 1970.

14 Mr. Govan. Did you come to the department right out of
15 law school?

16 Mr. Bell. No, I taught school for a couple of years and
17 then I went with the department.

18 Mr. Govan. What are your present responsibilities?

19 Mr. Bell. I am Deputy Chief of the Criminal Section of
20 the Civil Rights Division.

21 Mr. Govan. Are you a colleague of Barry Kowalski with
22 respect to where you fit in the hierarchy?

23 Mr. Bell. That's correct.

24 Mr. Govan. Equivalent positions?

25 Mr. Bell. Yes.

1 Mr. Govan. Do you know Mr. Sessions?

2 Mr. Bell. Yes, I do.

3 Mr. Govan. In what capacity do you know him?

4 Mr. Bell. I have known him since about 1977 or '78, at
5 which point I had a civil rights prosecution in the Southern
6 District of Alabama and Mr. Sessions was an Assistant U.S.
7 Attorney at the time and was quite helpful to me in the
8 prosecution of this case, which was an extremely difficult
9 one. I have known him since in his dealings with the Criminal
10 Section on a return basis. I think for a time he was absent
11 from the U.S. Attorneys office, but I am not sure what period.
12 But in any event, I have known him in a professional way
13 during this time.

14 Mr. Bergquist. Let me interject here and caution you.
15 You may discuss cases that have completed litigation; any
16 cases that are still under investigation or pending litigation
17 you may only talk about in general terms.

18 Mr. Bell. Certainly.

19 Mr. Govan. Have you ever heard Mr. Sessions make re-
20 marks that you considered to be racially insensitive?

21 Mr. Bell. Not at all. Not at all. As a matter of
22 fact, my impression of Mr. Sessions is that he is very eager
23 to pursue criminal civil rights cases and he certainly was
24 at the beginning of my acquaintance with him. The particular
25 case I tried, the government had indicted the sheriff of

1 Mobile County and eight of his deputies for deliberately
2 setting up an ambush and murdering a black inmate, an ex-
3 tremely unpopular case in Mobile, and there were a number of
4 people even in the United States Attorneys office who were
5 not too eager to be that friendly to the prosecution,
6 especially a couple of Washington-based lawyers. And Mr.
7 Sessions and the then U.S. Attorney, Charles Whitespunner,
8 and his successor, William Kembrow, were all very helpful to
9 the prosecution.

10 Mr. Govan. What attorneys were not eager to be asso-
11 ciated with this case?

12 Mr. Bell. There were a few assistants who did not seem
13 to be that eager to be associated with us.

14 Mr. Govan. Which assistants?

15 Mr. Bell. I don't recall their names right at the mo-
16 ment.

17 Mr. Govan. On what basis do you form that opinion?

18 Mr. Bell. There was a lot of talk about our chances of
19 winning and a lot of talk about whether or not we should
20 have even indicted the case.

21 Mr. Govan. Reasons going to the merits of the case,
22 the strength, the weakness?

23 Mr. Bell. Well, I would says reasons going more toward
24 the likelihood of obtaining a conviction because of the
25 race of the victim, because of the popularity of the

1 defendants, and those kinds of factors. It was not my im-
2 pression that all of these people were all that well
3 acquainted with the merits of the case. It was a case, as I
4 say, that was prosecuted by the Civil Rights Division pri-
5 marily. We had backup support from, as I say, the two U.S.
6 Attorneys who were in office, one after the other at that
7 time, and I was glad to say that Mr. Sessions was one of the
8 assistants who was -- and I could call upon him for advice,
9 which was frequent because I was out of town. I don't know
10 if you have ever had to prosecute cases in that situation,
11 but you have to rely upon local people for their knowledge
12 of the rules of the court, for their knowledge of the jury,
13 for their knowledge of the personalities involved.

14 Mr. Govan. I understand all of that, having had to try
15 cases, but I would like to focus on what Mr. Sessions'
16 responsibility was and how that differed with the willingness
17 of other assistants in that office to participate in the
18 case.

19 Mr. Bell. Well, you didn't quite ask that question
20 before, but what Mr. Sessions was willing to do was to sit
21 down and discuss with me in great detail tactical questions
22 and other questions concerning the case. Some of the other
23 assistants were not quite that willing. I tended to be put
24 off, brushed aside. I don't mean to imply that all of the
25 assistants were like that, but --

1 Mr. Govan. How many assistants were in the office
2 there?

3 Mr. Bell. As I remember, there were five or six.

4 Mr. Govan. And what assistant was assigned primary
5 responsibility for this case?

6 Mr. Bell. There were no assistants assigned primary
7 responsibility.

8 Mr. Govan. So Mr. Sessions' involvement in the case was
9 in some sense entirely gratuitous?

10 Mr. Bell. No --

11 Mr. Govan. It wasn't a part of his --

12 Mr. Bell. -- it was not gratuitous in the sense that I
13 asked for him.

14 Mr. Govan. But he was not assigned responsibility?

15 Mr. Bell. As far as I know, he was not assigned, no.

16 Mr. Govan. So he was doing something above and beyond
17 the call of duty?

18 Mr. Bell. That's correct.

19 Mr. Govan. What happened in that case? What was the
20 result?

21 Mr. Bell. The result of that case was an acquittal
22 and I suspect to no great surprise.

23 Mr. Bergquist. It was clearly a travesty of justice,
24 everybody in the department acknowledges it.

25 Mr. Govan. A what justice, a travesty?

1 Mr. Bergquist. Yes. It should never have --

2 Mr. Govan. I am just curious about it. I am not even
3 aware of the case. I was just curious what the result was.

4 Mr. Bergquist. The jury --

5 Mr. Bell. Well, in my view the jury should have found
6 the defendants guilty.

7 Mr. Bergquist. Of course, you had a good prosecutor.

8 Mr. Bell. A good prosecutor.

9 Mr. Bergquist. But even people who observed the case,
10 it was a simple case of local jury --

11 Mr. Govan. Have you ever worked with Mr. Figures?

12 Mr. Bell. Yes, not on a case but I have consulted with
13 him about cases.

14 Mr. Govan. Have you ever tried or investigated a case
15 with him in any formal way?

16 Mr. Bell. I have never tried a case or participate in
17 a grand jury with him, but I have discussed on-going investi-
18 gations with him on a number of occasions.

19 Mr. Govan. Do you know anything about Mr. Figures'
20 interaction with Mr. Sessions on cases?

21 Mr. Bell. On cases, very little. I know they must
22 have worked together on a number of cases. It is a small
23 office and I am sure they did, but I don't have any knowledge.

24 Mr. Govan. What was your involvement in the Donald
25 Klan case?

1 Mr. Bell. Only peripheral. That was handled primarily
2 by Bert Glenn and Barry Kowalski.

3 (Short recess)

4 Mr. Govan. Approximately how many cases have you
5 worked on with Mr. Sessions?

6 Mr. Bell. Well, as I say, in this particular one, which
7 is U.S. v. Purvis, I talked with him a lot. I didn't work
8 directly with him on it. I have had occasion to talk with
9 him about maybe ten other matters that we have investigated
10 over the course of years. I have not prosecuted a case with
11 him or been in a grand jury with him.

12 Mr. Govan. Is it Tom Purvis?

13 Mr. Bell. Yes.

14 Mr. Govan. He is the present sheriff?

15 Mr. Bell. He may still be. As a matter of fact, he --
16 when our indictment was handed down, I think he made a
17 campaign ad out of the fact.

18 Mr. Bergquist. He made a campaign ad out of the fact
19 that he had been indicted.

20 Mr. Govan. And he got reelected?

21 Mr. Bell. He got reelected.

22 Mr. Govan. During the time that you interacted with
23 Mr. Sessions, have you ever heard him make a remark that in
24 any way, shape or form you considered to be insensitive on
25 racial matters, even though the remark was said in jest?

1 Mr. Bell. No, absolutely not.

2 Mr. Govan. Did you ever hear him make any remarks in
3 jest that concerned racial issues?

4 Mr. Bell. No, I have not.

5 Mr. Govan. I have nothing else.

6 Mr. Klonoski. During these ten or eleven cases that you
7 called him on or talked with him about, was he cooperative?

8 Mr. Bell. Absolutely. That is where I got my impres-
9 sion that he was interested in pursuing these kinds of cases.

10 Mr. Klonoski. What happened to those ten or eleven
11 cases?

12 Mr. Bell. On one or two of them he suggested some
13 additional investigation which we did. I don't believe that
14 any of those ones that I am thinking of right now, at least
15 I can't think of any that actually came to trial, but I
16 never got the slightest impression that he wanted to do any-
17 thing less than a full investigation of each of the cases.

18 Mr. Klonoski. And in fact he has always supported a
19 full investigation of the cases that you dealt with?

20 Mr. Bell. Yes, at least as far as I dealt with him,
21 yes.

22 Mr. Klonoski. I have nothing else.

23 Mr. Govan. I have nothing else.

24 (Whereupon, at 4:31 p.m., the taking of all testimony
25 was concluded.)

CERTIFICATE OF NOTARY PUBLIC

1

2 I, Stephen B. Miller, the officer before whom the

3 foregoing testimony was taken, do hereby attest that the

4 witnesses whose testimony appears in the foregoing transcript

5 of proceedings were duly sworn by me; that I am not a relative

6 or employee of any attorney or counsel employed by the

7 parties hereto, nor financially or otherwise interested in

8 the outcome of the action.

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Stephen B. Miller
 Notary Public in and for the
 District of Columbia

My commission expires

May 30, 1990

Senator DENTON. We were surprised, Senator Biden, that Mr. Hebert made reference to public radio carrying many of his comments, which he said he thought were going to be confidential, and they were released at 7:40 a.m.

I am not implying that you had anything to do with that, or anyone else, but it is a characteristic of the Hill, it seems, that things like that happen, and I do not think it is entirely fair.

Senator BIDEN. I share your concern in the fact that those comments—for the record, I am as surprised as you—but for the record, the fact that those comments occurred on radio 12 hours before they occurred here, could have done damage. But frankly, it appeared to be the mechanism which triggered Mr. Hebert's willingness or desire to come up here. So maybe for a change, some good came from some bad in the sense of something, although it was not confidential, in that sense that it was classified or anything, but I agree.

I can assure the Chair that this Senator was as surprised as you were, and that to the best of my knowledge, my staff was not a part of this. I did—our colleagues were aware of some of the things that were stated.

At any rate, let us move on.

Senator DENTON. I yield to you, Senator Biden, in questioning Mr. Sessions.

Senator BIDEN. Thank you.

Mr. Sessions, if you will give me a moment here to collect my thoughts.

I want to go back if I can to the case relating to whether or not you stopped an FBI investigation from going forward: (a) Did you; and (b) if you did, can you tell me what kind of case it was and why you concluded that it is best that the investigation not move forward?

Mr. SESSIONS. When I heard that yesterday, I believed there was some sort of mixup in that allegation. I called the FBI in Mobile and talked to them. The agent tells me that he got an Air-Tel—

Senator BIDEN. An Air-Tel—an air telegram?

Mr. SESSIONS [continuing]. I do not know what that is—that's what the FBI calls some sort of communication from Washington—and that it called for an investigation of a fraudulent document that was put in a file on Department of Justice stationery that indicated that a preclearance had been given to a city, I believe, or a county, to do some act—

Senator BIDEN. A preclearance in the voting rights—

Mr. SESSIONS [continuing]. In the Voting Rights Section—when in fact, no preclearance was ever given.

And he was amazed that any such thing as this was said.

Senator BIDEN. I am sorry?

Mr. SESSIONS. That anything had been said that I had interrupted the investigation. He assured me that the Air-Tel told him to complete the investigation within 21 days and that that was done—he interviewed all the public officials in Conecuh County—and that before the investigation, one man had died he could not be interviewed, but all the rest were. They took exemplars of a typewriter to see if it was perhaps written on—all the typewriters in the clerk's office were tested, and that the report indicates no conver-

sation with me and he indicates that he had no conversation with me, and that a copy of the report was immediately sent, according to the file, to the Civil Rights Division.

Senator BIDEN. I am a little confused, then. What do you make of Mr. Hebert's testimony just a moment ago?

Mr. SESSIONS. Right. I have been trying to think that through, and I believe there is just a major misunderstanding on that case.

I believe that the report was done and was sent up, and it must have been lost. And I may have at some point been inquired of as to what my opinion was on it, and I would have given it.

Senator BIDEN. Well—

Mr. SESSIONS. But it does not indicate that from the file at all, and the FBI always puts down the opinion of the U.S. attorney in a case like that.

Senator BIDEN. Well, I—that is confusing. Can you hold it just a second? [Conferring with staff.]

My understanding is from the testimony and from the statement by Mr. Hebert that Mr. Hancock actually talked to you.

You do not remember talking to Mr. Hancock?

Mr. SESSIONS. I remember that case being discussed, because I told Mr. Hebert as we were discussing it, the only thing I can recall about the case is that I discovered later that there was a misunderstanding. I never did contact the Civil Rights Division to apologize to them—

Senator BIDEN. Well, let me try to clear up the misunderstanding. I would like to go to the testimony given by Mr. Hancock.

He says, starting on page 11, his statement is: "The issue that seems to be on the floor was when we had requested an investigation," in the county the name of which I cannot pronounce and dare not do damage to it again, "in C-o-n-e-c-u-h County and had requested the FBI to do an investigation for us in that county, we had—the form of requesting those investigations is a memorandum from the Civil Rights Division to the Director of the FBI requesting the investigation.

The issue involved was that the—we later found out that the requested investigation had not been conducted, and when we inquired why we learned that the United States Attorney had told the Bureau not to conduct the investigation.

Committee Investigator, Mr. GOVAN. If you recall, at what stage was the investigation when the request went to the FBI for investigation?

Mr. HANCOCK. I am not sure what you mean by "request". The investigation was just beginning because we were requesting the FBI to do a particular investigation.

GOVAN. Had a lawsuit actually been filed against the County?

HANCOCK. I believe at that time—I am not sure whether—we have had—I have been unable to piece all of this back together, and I have checked my records and I do not have any records on it.

It could have been—we had a lawsuit—I am trying to think whether we had two lawsuits—we did have two lawsuits against the County, as I recall now. One involves a matter under Section 5 of the Voting Rights Act, which requires pre-clearance * * * and the other matter involved a lawsuit we filed concerning discriminatory treatment that black voters receive when they come to the polls to vote in the County.

I have had some difficulty resurrecting whether the investigation at issue was in the one lawsuit or the other. At times I thought it was one, and the other times I thought it was the other.

GOVAN. Do you recall the purpose of the investigation?

HANCOCK. No. Because I am not able to piece it back together, I cannot. It was one of two purposes, to the best that I recall. On the one hand, it may have been

gathering information about the treatment of black voters receive when they vote in the County.

The other issue that it may have concerned was at one point in the Section 5 lawsuit, the County presented in court a letter that purported to grant Section 5 pre-clearance to voting changes, and the letter was an obvious forgery signed by someone on Department stationery.

It was signed with the name of someone who was listed as Assistant Attorney General for Civil Rights, and the person had never been Assistant Attorney General. It was a name we never heard of; it was a William Daley or something like that, or some Daley.

But we knew—we are crack investigators—that it was not a true letter, and we asked the FBI to try and determine who may have prepared the letter. So what I am saying—it was one of those two matters, but I just do not know which one.

GOVAN. Did you discuss this matter with Mr. Sessions?

HANCOCK. I may have. I do not recall whether I discussed it with Mr. Sessions or not; I may have. In fact, I probably did. I know for a fact that I discussed it with my supervisors in the Department of Justice and that someone later discussed it with Mr. Sessions.

Then, without taking you through the next five pages, down to line 20 on page 16.

Mr. GOVAN. I hate to be repetitious, but did I ask you did you speak about this problem?

Mr. HANCOCK. Yes, and I think I said that I may have spoken to Mr. Sessions about it at some point in the process. In fact, I recall that I spoke to Mr. Sessions about it and that he confirmed that he thought it was an investigation we should not conduct and told the Bureau not to conduct it.

GOVAN. Did he offer any reasons in support of his opinion that the investigation should not have been conducted?

HANCOCK. He did not agree with, and I do not know that I can give any more details than that. I do not recall precisely what he told me. He did not think it was an investigation we should conduct. He may have thought that we were—I do not know what he thought. He may have told me that we were just barking up the wrong tree. Those were not his words, but I do not know if he had knowledge of the local situation involved.

Now, at two points here as he goes through refreshing his recollection, he says for certain that he knows that he spoke to his supervisor, and that for certain someone later discussed it with you. And later he said, "I am sure I did speak with Mr. Sessions."

Does that refresh your recollection at all?

Mr. SESSIONS. Well, it really does not, in the sense that—I think there was a call about it. I do not think that I ordered an investigation not to be done. If I did, it would have been on the basis of an FBI agent coming to me. The agent said it did not happen who conducted it, and he conducted the investigation and he reviewed the report, and the report indicated that. They were reading from it.

It could be that there might have been a real, genuine misunderstanding on that case, and that the Department thought, and Mr. Hancock and they may have really felt that I was intervening in a way that was not proper.

Now, I think he called—I have a recollection that I was not clear when I talked to Mr. Hancock and did not correctly state to him what had happened. I really should have called him back later, when I found out that there was a mixup. That is all I can remember. I never called him back to clarify it.

Senator BIDEN. OK.

Mr. SESSIONS. Maybe the dates in the file would indicate that, when the investigation was commenced.

Senator BIDEN. Let me ask you again, so I am clear here—[conferring with staff]—in the *Perry County* case, can you tell me a

little bit about Mr. Albert Turner? He was one of the defendants, right?

Mr. SESSIONS. Yes.

Senator BIDEN. Is he a well-known man in the community in the area?

Mr. SESSIONS. I had heard of him, but he was much more well-known than I realized. He had never held office.

Albert Turner is a man of great convictions. He is a decent fellow. He fights for what he believes in. He believed in the cause that he was for. And it was my conclusion and belief—the jury acted as they did, and I accept that—that the temptation of collecting those ballots was just too much to turn them in, to vote against his own slate.

He marched across the Selma Bridge with Martin Luther King. There is film that you can see where he was near the front ranks when the troopers moved into the crowd. He was there when very few people in Perry County were allowed to vote prior to the Voting Rights Act; probably less than 10 percent were allowed to vote.

Mr. Chestnut described him best in closing argument, and I thought it was an extremely effective closing argument. He said that Albert Turner had fought for what he believed in; he had not been elected to office; he did not have anything, but he was the kind of man America needed, and that we needed people who will stand up and do what they believe in, and that sort of thing.

It was sort of the gadfly of the State argument that it is necessary to have such people—I thought it was an effective argument; I think it is accurate.

Senator BIDEN. Let me ask you, you went through a number of ballots with us here—not all of them that you had, but a number of them. Was Mr. Turner indicted on each of those counts—were each of those ballots a separate count?

Mr. SESSIONS. Each ballot was a separate count, and the indictment that was filed named Turner in almost every count. Of course, he was involved in more than Hogue; there were fewer counts against Hogue than Turner—but he was charged in the Hogue counts as an aider and abettor, and Hogue was charged in the Turner counts as an aider and abettor.

Senator BIDEN. But there were counts where he was charged as the principal rather than the aider and abettor?

Mr. SESSIONS. Yes.

Senator BIDEN. Now, was he convicted on any of those counts?

Mr. SESSIONS. Oh, no.

Senator BIDEN. How do you explain that, other than the exigencies of the situation that juries make mistakes? I mean, do you have a theory? You must have walked out and said—obviously, from what you said here, you sound like you thought you had a pretty tight case, either—how do you explain it?

Mr. SESSIONS. I think the Government led with its strength, and they led with the Shelton witnesses and a few more.

A number of the witnesses after that were elderly, and some of them contradicted themselves and contradicted prior statements.

Senator BIDEN. Did any of them contradict what they have in that file that you read to us—any of the things you read to us, was any of that contradicted?

Mr. SESSIONS. Oh, no. Those were Shelton witnesses, and they testified at trial absolutely consistent with those statements, I believe—there may have been some, but the thing about it not being changed with their permission, that was true.

One of the things I evaluated, Senator Biden, was the posture of the case. I thought it was real significant that Albert Turner testified that with regard to the Sheltons, that they had a meeting, and his story was he did change the ballots—

Senator BIDEN. I am sorry. Say that again, now.

Mr. SESSIONS. He stated that he did change those ballots.

Senator BIDEN. Who said this?

Mr. SESSIONS. Albert Turner.

Senator BIDEN. Yes.

Mr. SESSIONS. To the grand jury, which was read at trial, and he said there was a meeting in the home of one of the Sheltons, and that all the Sheltons were called there, all six of them; that he was there, Earl Ford, a deputy sheriff who was a real ally of Albert Turner, and Turner's wife was there. And they discussed it, and each one of the Shelton's individually consented to the changes on the ballots and he changed some of them himself, he said. He said he happened to have glue in the car to open the ballots and to reseal them with after.

Every one of the Sheltons contradicted that in their trial testimony. They said they had nothing against Albert Turner, but there was no such meeting; they did not consent to a change in the ballots, and that sort of thing.

As a prosecutor, I think that is a good case right there. It would have probably gone better had it been those counts charged and tried on that, in about 4 days, instead of everything that happened.

Senator BIDEN. Now, there were 700 absentee ballots, as I understand; 540 collected by Turner and Hoag—

Mr. SESSIONS. Yes.

Senator BIDEN [continuing]. Seventy-five of the total 700 were investigated; 27 resulted in indictments, and none in conviction.

Mr. SESSIONS. That is correct.

Senator BIDEN. Now, is this—you testified earlier, and my counsel tells me that he thinks you are right, that in the shotgun case—the house being shot up, the black policemen looking at a house in the neighborhood, and that night it gets shot up, plus the white real estate agent gets threatening calls—to the extent that Mr. Govan—I asked him, “Why didn't they move?” and he said, “Well, I do not think they had enough to move on, probably”—not that it did not happen, but sufficient evidence.

Now, when you were testifying relating to that case in response to a question from the chairman, Senator Thurmond, you pointed out that the Justice Department has to make judgment calls based on the weight and importance of the matter brought before it.

Mr. SESSIONS. That is correct.

Senator BIDEN. Now, is the issue of the allegation of a number of absentee ballots being tampered with and the numbers involved—700, 540, and 75 investigated—is that on its face, does that rise at

the level of the kind of matter that the U.S. attorney's office would prosecute? Obviously, we want to stop all fraud. But I mean, I am just trying to get a sense of when you weight those things, I mean, is that something that would—

Mr. SESSIONS. Yes.

Senator BIDEN. Is that a case of great weight?

Mr. SESSIONS. I have no doubt about that whatsoever. We had, I believe, 25 or so what appeared to be strong counts, strong statements. The grand jury in that District had asked for an outside agency to investigate, because—

Senator BIDEN. Well, let us speak of that a minute. The grand jury report, the grand jury report you referred to, was a grand jury report in the State of Alabama, a State grand jury as opposed to a federally drawn grand jury, correct?

Mr. SESSIONS. Right.

Senator BIDEN. And that grand jury—which I ask unanimous consent that the entire referenced report be put in the record—

Senator SPECTER [presiding]. Without objection, it will be made a part of the record.

Senator BIDEN [continuing]. That that grand jury said, "We, the grand jury of Perry County, AL, in a period of 2 days have investigated 24 cases, returning 13 indictments and questioning 30 witnesses, no-billed 5 cases, and continued 3 cases. We hereby report that the Board Inspection Committee has inspected the bonds of the Perry County officials and have found them to be properly recorded in the office of the judge of probate, the Courthouse Inspection Committee * * *," et cetera.

It goes through, and it gets down and says, "This grand jury has extensively and exhaustively investigated the voting situation in Perry County. Our greatest concern is to assure the fair election of all people." You have read this before, but I want to read it again.

"At this point, we are convinced that such an election is being denied the citizens of Perry County, both black and white. The primary problem appears to be with the tampering of the right to vote of black citizens in this county.

"The problems are"—and I cannot read it; it is a Xerox—"The problems are" something "intimidation"—is it "voter intimidation"? [Conferring with staff.] Anyway, the problem is the Xerox machine. But, "The problems are" something "intimidation at the polls and abuse and interference with the absentee balloting process. These problem areas lie within the grey and uncertain area of the law and are generally confined to those segments of our society which are aged, infirm and disabled.

"We encourage vigorous prosecutions of all violators of the voting laws and especially would request the presence of the assistance of an outside agency, preferably Federal, to monitor our elections and to ensure fairness and impartiality for all.

"At this time, we see no reason to remain in session * * *," et cetera.

[Document follows:]

GRAND JURY REPORT

STATE OF ALABAMA }
COUNTY OF PERRY }

TO: THE HONORABLE EDGAR P. RUSSELL, JR., JUDGE OF THE CIRCUIT COURT
OF PERRY COUNTY, ALABAMA.

We the Grand Jury of Perry County, Alabama, in a period of two days have investigated 24 cases, returned 13 indictments, questioned 30 witnesses, no billed 5 cases and continued 3 cases.

We hereby report that the Bond Inspection Committee has inspected the bonds of the Perry County Officials and have found them to be properly recorded in the Office of the Judge of Probate.

The Courthouse Inspection Committee has made a tour and inspection and find the following:

- 1) The entire building needs a new paint job throughout.
- 2) There is a need for new chairs, desk and carpet in the Tax Collector's Office.
- 3) There is a need for some plaster repair work to be done in the Tax Assessor's Office as well as the same repair work in the Mapping Room.

The Jail Inspection Committee has toured and inspected the Jail and does hereby report that the Jail is in better shape than it has been for a number of years. There are some repairs needed which are as follows:

- 1) There is need for plaster repair.
- 2) There should be replacement for all broken and missing window glass.
- 3) First floor shower and toilet is in need of repair and painting.
- 4) There is need for a light in the laundry room.
- 5) Broken urinals in the cells need to be replaced.
- 6) There is a need for lights in the west hallway.

This Grand Jury has extensively and exhaustively investigated the voting situation in Perry County. Our greatest concern is to assure a fair election for all parties and all people. At this point we are convinced that such an election is being denied the citizens of Perry County, both black and white. The primary problem appears to be with the tampering of the right to vote of the black citizens of this county. The problems are dual: intimidation at the polls and abuse and interference with the absentee

balloting process. These problem areas lie within gray and uncertain areas of the law and are generally confined to those segments of our society which are aged, infirmed, or disabled. We encourage vigorous prosecutions of all violations of the voting laws and especially would request the presence and assistance of an outside agency, preferably federal, to monitor our elections and to ensure fairness and impartiality for all.

At this time we see no reason to remain in session, therefore, we request that we be hereby adjourned.

Respectfully submitted on this the 20th day of April, 1983.

JURY FOREMAN

[Handwritten signature]
[Handwritten signature]

SECRETARY

*Filed in office
April 20, 1983
Mary Robinson, Clerk*

Senator BIDEN. Now, you took this, I assume, as a call to action when, at a later date, alleged improprieties were raised with your office; is that correct?

Mr. SESSIONS. Senator Biden, of course they said it was "grey and uncertain areas of the law," and the people involved in the case that we prosecuted were involved in that 1982 investigation, or at least were certainly called as witnesses and knew about the investigation. So I want to point that out. We did not prosecute on that year.

We never did a thorough investigation—but my feeling was that the problem would not continue; that the people would straighten up, clean up their act. And I saw no reason to prosecute after the county had not prosecuted, and we did not.

It was later when we got a call again that I did not feel that I could ignore this call from this grand jury, a call from the district attorney, and—

Senator BIDEN. Now, did the district attorney ask you?

Mr. SESSIONS. The district attorney called me, because he did know me—although we were not close friends at all at that time—he called me, with Reese Billingslea, a black elected official who was on that ballot, in his presence, and Mr. Billingslea had called the Civil Rights Division, and they had said for him to call me if there was fraud.

Senator BIDEN. OK. What I am trying to deal with is there has been the allegation made that you, with some sense of glee and anticipation, went out and dealt with what is a petty case when in fact it would have ordinarily fallen to the county prosecutor. I am trying to be fair to you to let you make your case as to why didn't you say—I am not saying you should have—I want to know why you did not say to the district attorney, "Hey, look, the grand jury looked at it once, although they said they wanted outside folks to look at it, and they did not find reason to indict at that time. You have got the guy there. Why don't you move forward?"

Mr. SESSIONS. The grand jury provides that answer. There were obviously two factions in Perry County. Some would suggest there is a white and black faction. That is not true. There may be some of that; do not get me wrong—but it is clear that Billingslea and Kinard got at least 50 percent, if not more than 50 percent, of the black vote. They are the ones that are upset because of this other faction.

It is difficult for a local district attorney and a local jury, who knows all the people involved, who may be on one faction or another, to handle a case like that. It is like the civil rights cases in the past where the Federal Government is an objective outside force.

Senator BIDEN. I am not arguing; I just want to make sure. So the last point on this, and I will leave that issue—not the whole Perry County thing, but that particular aspect of it—is that the local district attorney, county district attorney, in addition to calling you to acquaint you with Mr. Billingslea's—was it Billingslea—

Mr. SESSIONS. Billingslea, right.

Senator BIDEN [continuing]. Mr. Billingslea's accusations and concerns, in addition to that, did he say to you, "Mr. Sessions, I

hope you handle this case. We do not want to handle it. You handle it"? I mean, what did he say, beyond—

Mr. SESSIONS. He indicated that the case was such that it needed an outside force to investigate it, yes.

Senator BIDEN. OK. Now, Mr. Johnson is the attorney we are talking about, right?

Mr. SESSIONS. Yes.

Senator BIDEN. And Mr. Johnson sent you a letter on September 2, 1982, and then he sent you a letter on August 31, 1984, and then, September 28, 1984. And I would like to read from one, if I may.

Re voting fraud investigation—

This is from the September 2, 1982—

Re voting fraud investigation, Perry County, AL.

My office has received several complaints of irregularities in regard to the upcoming election on Tuesday, September 7. These complaints range from improper casting of absentee ballots to possible fraud in reidentification.

The most serious allegations concerning interference with absentee balloting include fraudulent receipt and marking of ballots. The large number of absentee ballots requested by voters in this county, in excess of 800, with 7,857 registered voters, creates the possibility that fraudulent absentee ballots may make a significant difference in the results of the election.

My staff has looked into the allegation, and the reports indicate the need for an extensive investigation in the voting process in Perry County. My office does not have anywhere near the manpower to conduct such a largescale probe. Additionally, I feel it would be best that an independent agency from outside the county conduct the probe so as to avoid any possible hint of favoritism or partiality.

Therefore, please consider this letter to be an official, urgent request for all possible assistance in conducting this investigation. I cannot overemphasize the importance and the urgency of this request, for without the help of your agency, my office cannot actually investigate all the allegations and possible ramifications. Without thorough investigation, I think the results of this election will continue to be showered in accusations and acrimony.

My office staff has prepared reports specifying the evidence uncovered so far, and these reports will be made available upon request to aid your evaluation of the seriousness of this situation.

Please contact me with all possible dispatch regarding this case. It is clearly of the essence.

Very truly yours, Roy L. Johnson.

Essentially the same letter was sent in August 1984 and September 1984.

Now again, for the record, why did you—if it was you—although it was sent to the voting fraud investigator—why did you not move in 1982, but then moved in 1984?

Mr. SESSIONS. In 1982, Mr. Johnson, I believe, told me that there were problems involving two ballots, or a few ballots, that were altered that he had proof of, and there were other irregularities. But I did not feel that those irregularities were such that it demanded a Federal investigation. He conducted one, and I respected his investigation. They saw fit not to go forward, and I said fine. I thought also, sincerely, that you would not have that problem in the future after he had investigated and everybody had become acquainted with the rules and the law of voting absentee.

In 1984, we had complaints from black officeholders. There was an election contest filed. Three of the four contestees were black. They were the ones that were complaining. They were afraid that the election was going to be stolen from them. They were very con-

cerned about it. And I do not believe a U.S. attorney could refuse to investigate when the district attorney says his partiality is subject to question, because he has got to run for office in the county, and Albert Turner would be an opponent of his, certainly, if he investigated him, or maybe he already was on the vote.

So it was transparent to me that it was appropriate for the Federal Government to investigate.

Senator BIDEN. Did you seek and/or receive the reports that were referenced in these letters?

Mr. SESSIONS. I do not—

Senator BIDEN. For example, he says that, "My staff has prepared reports specifying evidence uncovered so far, and these reports will be made available upon request to aid your evaluations * * *"

Did you receive those reports?

Mr. SESSIONS. I never evaluated them. I believe we received some records in our office after his grand jury in 1983, a good bit of records. I never evaluated those, and I—

Senator BIDEN. What made you move forward, then?

Mr. SESSIONS. We did not, in 1982.

Senator BIDEN. No; I know. In 1984, though. There were reports then, too.

Mr. SESSIONS. In 1984, what happened was I believe the FBI agent who was in Selma, a few miles from Marion, received those records. I do not believe contemporaneously with that letter, he sent records to Mobile, which is 170 or so miles from there. It is possible.

Senator BIDEN. Back to what the basis of this thing is. In the affidavit that Johnson gets from Mr. Kinard, one of the candidates in the election, the affidavit does not seem to say much. I may be wrong, though. Let me read it, here.

It says:

On August 29, 1984 at about 11 a.m., I was driving south on Clement Street in the city of Marion, AL, canvassing for my campaign.

At 228 Clement Street, I noticed the Perry County Sheriff patrol car assigned to Chief Deputy Earl Ford in the driveway. Leaning over the right front fender was Wilburt L. Turner, a candidate for the election as tax assessor of Perry County. In front of the radiator and also leaning over was Albert Turner, president of the Perry County Civic League. Leaning over the left front fender was Chief Deputy Sheriff Earl Ford. On the hood of the patrol car was a brown cardboard box, about 2 feet by 4 feet by 2 feet, filled and overflowing with mailing envelopes of the type that absentee ballots are made of. They immediately dispersed.

And he says where they dispersed to.

After conferring with my brother, Howard L. Kinard, principal of the West Side High School, on campaign matters for a few minutes, I departed and observed Turner in his pickup truck closely as I got into my car * * *.

You concluded that that is the kind of—here, you have now a grand jury investigation that did not come up with sufficient evidence to indict anybody in 1982. You have now, 2 years later, candidates standing for election giving affidavits to you all about whether or not you should move forward. But the affidavits do not seem to be very compelling. It seems to me the most compelling thing you have here is a district attorney who feels he is in a pinch politically.

I mean, is this the evidence that you moved on—a box sitting on a—

Mr. SESSIONS. No. I did not see—the affidavit that is filed there was not really given to me. That affidavit was not prepared, to my knowledge, by Mr. Johnson. It was prepared by the lawyer for the three black candidates who were filing an election contest.

Senator BIDEN. But Mr. Johnson told you he had these affidavits, didn't he?

Mr. SESSIONS. He told me that they were filing for an election contest. I am not sure he mentioned they were attaching affidavits to it or not. But what he told me on the phone was more than that. He told me there was a systematic campaign to collect ballots and change them, and suggested at one point a search warrant of—

Senator BIDEN. I understand that. What I am trying to get to here is that if a county attorney from any county called you up and said, "We have systematic fraud down here; you really should investigate. And let me tell you what I think the fraud is. It relates to absentee ballots, it relates to this, it relates to that." I just assumed that the U.S. attorney's office would say, "Well, fine. Can you send me up some affidavits, some evidence, something to sustain your assertions that you want me to get into this, as to why you want me to get into this?"

Mr. SESSIONS. Not necessarily, just to commence a very preliminary investigation, No. 1.

Senator BIDEN. OK.

Mr. SESSIONS. No. 2, he is 170 miles away; we are talking just a day or two before the election, and something had to move fast on it.

No. 3, we did not do anything but really very low key. We observed the post office. And let me tell you what really commenced an investigation. If the ballots had been opened, and there appeared to be no irregularities in them, an investigation may have gone no further.

Senator BIDEN. Opened at what point?

Mr. SESSIONS. When the absentee ballot office opened and counted the ballots; there appeared to be some 35 or so that had significant changes as you have seen on this ballot, plain to anyone—

Senator BIDEN. Out of 700?

Mr. SESSIONS. Yes. There were 75 that had some form of changes on them out of the 700.

And there seemed to be a pattern in these dramatic changes, from opponents to Turner candidates to Turner candidates, although it was not certain, but it did definitely appear.

So, Mr. DeSanto was involved in that, I know, and everybody discussed it and decided that every ballot that was changed, whether it was a Turner ballot or not, the voter would be interviewed to see if they consented to the change, and 75 interviews were done.

Senator BIDEN. OK. I think anybody who changes a ballot really violates the spirit and the letter of what we are all about in this country.

Mr. SESSIONS. Well, it is horrible to change somebody's vote.

Senator BIDEN. But having said that, keep in mind my confusion here. You started off with this district attorney saying there was widespread, significant corruption.

Mr. SESSIONS. My assistant told me that in 1982, there was some significant evidence of corruption and that we could possibly have proceeded with a case in 1982.

Senator BIDEN. Now, this widespread, significant corruption narrows down to, out of 700 ballots that were cast, 75 had some marking on them, and 39—I think that was the number—39 had more than one marking, and 27, after interviewing 75 people, warranted—in other words, I am trying to get the magnitude of this.

Mr. SESSIONS. I understand that. I do not consider that small at all, to have a person's ballot—one good instance of that is serious. If I come and pick up your ballot, and you voted for one person, and I walk over here and change it and cast it in, that is horrible. That is not just a petty crime. To do that 25 times is a systematic crime of great magnitude. I honestly believe no U.S. attorney under these circumstances could have declined to investigate.

Senator BIDEN. OK. Now, let me get this. How many times since you have been the U.S. attorney has your office been contacted by individuals, whether they are elected officials or just citizens, voters, suggesting that they have been intimidated, or there has been fraud, or there is something wrong in the electoral process?

Mr. SESSIONS. Well, there is hardly an election that goes by that on election day, the calls do not come in. But you can tell whether you have got an indice of some sort of reliability there or not, in most of those cases.

We had one investigation that I frankly did not know about when I talked to Mr. Govan, in which I believe about six or eight people were interviewed, and I am told they were white, in a rural county, and it allegedly involved some buying of votes, but it just could not be established, and it did not go forward.

Senator BIDEN. Why couldn't it be established? Obviously, this could not be established, either, as it turned out.

So rather than whether it could or could not be established, what made you reach the judgment in that case that it could not be established, the vote buying?

Mr. SESSIONS. Senator Biden, I think there are some pretty clear decisions and there are some grey areas. In the case that I am talking about that we had eight interviews of people, it was an anonymous tip, and they went out and interviewed everybody. In that case, I do not believe any U.S. attorney in the country would think it was worthy of prosecuting.

Senator BIDEN. Look, all I am trying to get at here is I want to get a measure of the man here. I want to figure out how you approach these things. And so I would like to—let us stipulate for the sake of this discussion that in fact your efforts in Perry County were totally warranted, that no U.S. attorney, black, white, with little or no experience to years of experience, would have done anything other than what you did. Just for the sake of this, let us stipulate to that.

Give me an example, or give me your rationale, why in the case of these eight voting purchase allegations, that you reached a different conclusion.

Mr. SESSIONS. First of all, in the purchase voting case, it was not proved that there was any purchase. There were allegations of it, but it was never proven.

Senator BIDEN. Well, obviously, it was not in this case, either. I mean, let us not talk about proof because obviously, you did not prove in your case. I am prepared to stipulate you should have brought it, but there was no proof, obviously.

Mr. SESSIONS. There was proof, Senator; it just did not satisfy the jury.

Senator BIDEN. OK.

Mr. SESSIONS. Mr. Stavis argued brilliantly that a jury is a safety valve, that Mr. Turner was a hero, and a jury has a right to forgive. As an attorney and a prosecutor, I know you know that you cannot be certain what is going to happen with a jury, and as a lawyer, I know you know that you can evaluate cases, and there are some cases you would not have any disagreement on. I do not believe any attorney who evaluated, from my point of view, would have disagreed.

Senator BIDEN. I am prepared to stipulate to that. But I think we should act like lawyers and use the terms of art precisely.

Mr. SESSIONS. All right.

Senator BIDEN. I am used to saying when there is proof that that means that under our legal system, the vehicle for determining whether or not there is proof has concurred with my judgment, whether it be a judge or a jury.

How many of these indictments were submitted to the jury—I mean, how many counts were submitted to the jury in the *Perry County* case?

Mr. SESSIONS. I believe eight counts were dismissed.

Senator BIDEN. Eight counts were dismissed.

Mr. SESSIONS. Out of the 29.

Senator BIDEN. So 21 counts—

Mr. SESSIONS. Do not hold me to that, but that is about right.

Senator BIDEN. But let us get back to the case of the—which I know nothing about; I am seriously inquiring—the case of the vote-purchasing allegations. How did you conclude—why did you conclude that there was no proof—that no one said there was purchase?

Mr. SESSIONS. Yes. They went out and interviewed them, and nobody would say they were paid or anything.

Senator BIDEN. That is all I am trying to find out.

Mr. SESSIONS. That is right. I am sorry. The Department of Justice also on the case in 1984, Mr. DeSanto came down at one point, read all the grand jury statements of the witnesses, he drafted the indictment. He told me he thought it was a very strong case, not a close case, a very strong case.

Senator BIDEN. Now, with regard to the issue of whether or not you, the Federal Government, subpoenaed the ballots, and when you subpoenaed the ballots, can you refresh my recollection on that, in the *Perry County* case?

Mr. SESSIONS. Yes. In the *Perry County* case, I cannot recall the date that we issued a subpoena. My assistant was conducting the investigation on a daily basis. Apparently what happened was Mr. Johnson subpoenaed the ballots and then he allowed the agent of the FBI access to those ballots, and they conducted the investigation.

Senator BIDEN. I am sorry. I apologize. I was checking on something, and I did not—would you repeat that?

Mr. SESSIONS. Yes. Apparently Mr. Johnson—

Senator BIDEN. The county attorney.

Mr. SESSIONS [continuing]. The district attorney—I understand that he did issue a subpoena for the ballots. He got them; they conducted an investigation—

Senator BIDEN. On election day.

Mr. SESSIONS. Yes. He got them after they had been counted and—well, it may have been the next day.

Senator BIDEN. Yes, OK.

Mr. SESSIONS. He got them and counted them, or he got them and analyzed them. He made those available to the FBI when they noticed the pattern, and the FBI agent went over from Selma and they examined the ballots, and plans were commenced to do an investigation. At some point, I asked, "Has a subpoena been issued for the ballots?" and they said no, and I thought it was appropriate to issue one on behalf of the United States. And I am the one, I think, who said to my assistant, "I think you ought to issue a subpoena for the ballots."

Senator BIDEN. Do you know why a subpoena—you know, you checked out the courthouse; you watched the ballots being mailed, the 500 or so ballots being mailed; you had reason from that in your testimony to believe that there were improprieties. Why didn't you issue a subpoena that day, or the next day, for the ballots?

Mr. SESSIONS. Well, the matter was under the direction of my assistant, and I will take responsibility for my office. But that was the kind of decision that you expect a 10-year assistant to make. I do not think, in defense of him, that there was any requirement to issue a subpoena at all.

Senator BIDEN. No. What I am trying to get to here is the continuity of reasoning relating to how you got into and pursued the case, so I can set it to rest in my mind at least.

You have made the case that based on 1982 grand jury statements, based on the 1984 call from Mr. Johnson, based on the allegation by the two people standing for election, the two black men who made the allegation, that you believed there was the prospect of a sufficiently serious case here that warranted you making this initial inquiry and the inquiry related to observing the post office the night before the election. You have taken me up that far. And then the next thing it would seem to me that would have been done—I am not arguing it should or should not have been done, it did not have to be done; I am not making that argument; I do not know enough to know, to be honest with you—but I am just curious why. Also in this mix is that Mr. Johnson did not want to handle this thing because of all the reasons you said—he might be standing for election, he might get into the middle of it. But yet, Johnson subpoenas the ballot. Obviously, Turner and everyone else, who were supposedly the reason why Johnson called you—he does not want to have to handle it locally, which I understand, I understand—but yet he goes and issues the subpoena. Now, obviously, to me that is like a great, big red flag saying, "Hey, Turner, I am the guy."

If Turner were going to engage in retribution in the next election, it sure in heck would seem to me, if I were Johnson and I worried about that, that I would not issue the subpoena. I would want to be able to sit back here and say, "Hey, old buddy, you are a great hero, and I hate to see this happen to you, but that is the U.S. attorney's office."

Mr. SESSIONS. It was not so much that he was afraid of Turner knowing he was participating in the investigation. It was that the effectiveness of the prosecution is affected if you are prosecuting somebody who is your political opponent and who is capable of raising votes to defeat you.

Senator BIDEN. Now let me ask you, was Turner a political opponent of Johnson?

Mr. SESSIONS. I assume so, since when he did not like somebody, as Billingslea and Kinard said, there is no question about it. And Mr. Johnson had investigated him in 1982, and my impression was that Mr. Johnson would not have been on Mr. Turner's slate.

Senator BIDEN. OK. Now, as I am reconstructing this, you have a guy named Johnson who investigates a powerful civic leader—I do not use that civic—that sounds—I mean, I want to be dispassionate—investigates a well-known political figure in his county. The investigation comes to naught. That well-known political figure knows the local county attorney, district attorney, has done it. Now there is apparently some—if there was not already—some political animosity, even potentially bad blood.

I mean, if you all are like we are in southern Delaware or any part of my State, it would be likely that there would not be a lot of love lost.

Now, 2 years later or thereabouts, this U.S. attorney says in effect, "I know something is going on down here. I was not able to prove it myself 2 years ago. And the guy that I know that is putting this down is a guy that you know is my political opponent. I have got two of his political opponents sitting here, telling me the he did something bad." And you say, "OK. That is enough to move forward," without asking, "Well, give me some proof; give me some data."

I mean, did you ask yourself when you sat there, is this just the local district attorney trying to nail his opponent, and he wants you to do it?

Mr. SESSIONS. We had examined evidence in 1982, according to my assistant, that indicated serious voter fraud. You have to rely on district attorneys and what they tell you, also. A U.S. attorney who just refuses to respond to the request—I had already refused once to respond—really is not doing his job.

We did tale just a preliminary action, and when the ballots were opened, there were what appeared to be patterns in the alterations. And only the ballots that were changed—the people whose ballots had changes on them—were interviewed. If it were only one or two changes, or three or four changes, and the voter said, "It was not with my permission," and those were elderly voters or something like that, I imagine that investigation would have ended right there.

Senator BIDEN. Well, look, I guess I do not know enough about the case. All I know is that you make a convincing case that there

is reason to go forward. But a jury reached the conclusion that there was not any reason to find anybody guilty for whatever the rationale. And I do not have the opposing attorney here to make the case that your characterization is something less than airtight.

And so I get into thinking to myself, knowing how these things go on in other—maybe it does not happen in the South a lot, but these kinds of things happen in the border States and in the North-eastern States—I mean, I am not far from the Stillman's gym of American politics, Philadelphia. I mean, I understand politics a little bit. And let me read this characterization in the Advertiser, Montgomery, AL, February 11, 1985, by Alvin Benn, B-e-n-n, Advertiser staff writer.

He says, "Johnson, however, said the ballot numbering was done properly, and within the law. He said that several Perry County candidates who had opposed the group led by Turner asked him for 'voting safeguards' before the September 4 Democratic primary." This is Johnson: "They were contesting the election in advance because of violations they believed had been committed in the past, Johnson said. 'They came to my office for help.' "

Now, here you have a man who has a reputation for being one of—for a guy like me—one of the heroes of the civil rights movement. I remember hearing about him being the guy who was there at Martin Luther King's funeral and led the cortege. And he is the guy who went across the bridge and was in the front, et cetera.

And here you have a guy who is obviously, among those of us involved in the civil rights movement, a national figure, not just a local figure. And a political opponent of his who tried once before and failed comes with two other opponents of his, whether they are black or white—in this case, they are black—and says, "This guy is stealing the election from us."

And I have yet to hear, other than that assertion, what element of proof you asked for to sustain why you anticipated in 1984 that this was going to be stolen, or might have been stolen. That is what I am trying to get to.

Mr. SESSIONS. Yes—

Senator BIDEN. But you were not, and you did say, and you are reason this is an issue with you, as it would be—I mean, if you had been on the bridge at Selma—not that you should have been; you probably were not around; you were probably too young to walk then, and I am not being smart when I say that—but if you had been on the bridge at Selma, and you had never said anything in jest or otherwise, like has been brought out here today, then people would probably—you know, you would not be burdened with this.

Mr. SESSIONS. Right.

Senator BIDEN. But you were not, and you did say, and you are burdened with it now. And so what I am trying to get to is the motivation, whether or not you in fact are willing to take less assertion of proof because of a prejudicial view you have, or whether or not you in fact had sufficient proof, regardless of whether or not you may have a prejudicial view.

Do you understand what I am getting at?

Mr. SESSIONS. For example, Senator, we were told in 1982 that they send in a request for an absentee ballot, and the officials send you an absentee ballot by mail. We were told that there were 100

or more applications for ballots, sent on which the names were forged.

We were told, and my understanding was, that there were at least two colorable claims of alterations on ballots that Mr. Johnson sought an indictment on in 1982. In 1984, we were coming up on the same—

Senator BIDEN. Let me stop you there. Mr. Johnson, a political opponent of Mr. Turner, says those things to you, goes to his own grand jury and does not get an indictment.

Now, my problem is you seem to believe a political opponent more than you believe a grand jury.

Mr. SESSIONS. Well, I am told that the grand jury split right down the middle, almost, one vote difference.

Senator BIDEN. On what grounds, what basis?

Mr. SESSIONS. I do not know. I assume that they felt that it was not enough, or they—

Senator BIDEN. No one told you it split down the middle on race? Did anybody ever tell you—

Mr. SESSIONS. I understood that that was part of it; yes. So that grand jury issued that report, though, and called on us to investigate, and we did not, because the situation was not serious enough.

We did have—

Senator BIDEN. It was not serious enough then. So what is it, what proof did you have that made it change to convince you that it was now serious enough, other than the assertion of a white district attorney who is feuding with a black political leader, and two black opponents of that person saying that they expected the election to be stolen?

Mr. SESSIONS. I am getting tired.

Senator BIDEN. I do not blame you. So am I.

Mr. SESSIONS. Let me explain it to you this way, and you need to understand this—

Senator BIDEN. I want to understand.

Mr. SESSIONS. We did not present a case to the grand jury. We did not seek an indictment. All we did was observe the post office to see if anybody did bring the ballots, as they said their information was that night, and if an investigation were to be successful—

Senator BIDEN. Now, you found that an unusual occurrence all by itself, the fact that they bring 500 ballots at one shot and drop them in the—that, all by itself, is unusual enough, is that right?

Mr. SESSIONS. Oh, certainly—not necessarily unusual enough, but you had the prior problems in 1982. You had Mr. Kinard's statement about torn up envelopes that he had seen, and you had allegations by Mr. Billingslea that he had information that ballots were being altered. And so all we did was observe the mail; we noted which ones were mailed by Turner and which ones were mailed by Hogue that night so they could be traced back, and the ballots were observed. Of the 700 ballots, only 75 people were interviewed, and those—

Senator BIDEN. Well, that is only because only 75 ballots were changed, right?

Mr. SESSIONS. Had changes, right. But they were pretty dramatic changes, wouldn't you say, Senator, as is shown on that chart.

Senator BIDEN. You know, I am not arguing that. I am just trying to—

Mr. SESSIONS. And so from then on—so each step sort of led to the other. And I do not believe that you could do otherwise.

Who else can investigate? It is either the district attorney or the FBI. Who is better? The FBI? Who could have the most credibility in the community? Who has the most manpower to handle it?

Senator BIDEN. OK. Let me—and I will yield to my colleague again and come back to my questions—but let me just finish up with a couple things here for now.

The Voting Rights Act, the intrusive piece of legislation. You explained what you meant by intrusive. Do you think it is a good act?

You said “intrusive, but necessary,” I thought.

Mr. SESSIONS. I think it is absolutely necessary.

Senator BIDEN. As it is now, you think it is necessary.

Mr. SESSIONS. So far as I know. I understand there is some dispute about a clause or two in it about—

Senator BIDEN. Preclearance, it is called.

Mr. SESSIONS. Well, no.

Senator BIDEN. That is part of the problem—is it or isn't it?

Mr. SESSIONS. Well, I think everybody pretty well accepts that, although preclearance—there are various degrees of what needs to be cleared, and good people can differ. But the Voting Rights Act clearly enfranchised a disenfranchised substantial minority.

Senator BIDEN. Thanks. I will let my colleague ask some questions and then come back.

Thank you.

Senator HEFLIN. Mr. Sessions, we have mentioned Mr. Thomas Figures, and I indicated that Mr. Figures worked in your office for 4 years. When he left, was there an unpleasant relationship between you and Mr. Figures?

Mr. SESSIONS. Let me explain it this way. Mr. Figures is a fine attorney. He argues a case beautifully. He prepares his cases thoroughly, to a fault, perhaps. And he does a beautiful job of handling those cases. And I respected that. He is meticulous about his work, and he handled a number of different cases in the office.

He is not an easy person to work with, in all honesty. One of the things that came up was these cases that the FBI had been talking to other attorneys about, civil rights cases. And that caused him concern.

I do not think Mr. Figures ever knew that I talked to the FBI agent—I think I told him I had taken care of it. But I specifically talked to the FBI agents who normally handle civil rights cases and told them never in the future to present them to anyone but him. I had promised him that, and I meant to see to that. I went to the FBI supervisor and told him that. But I think that was something there.

He severed all communications with the office after he left. People in the office would try to speak and so forth. But I was surprised when he quit. We were up in Selma, trying the case, when I first heard he was quitting, and it was quite a shock to me.

Senator HEFLIN. Well, as I understand it, there is, in the operation of the U.S. attorney's office, a procedure by which, when a complaint is being investigated it will often be turned over to an

assistant U.S. attorney such as Mr. Figures. And there is a process by which the U.S. attorney's office can make a recommendation to the Justice Department that they decline to pursue a case, and they generally forward that recommendation to the Justice Department for final action.

It has come to my attention that you have remarked to a member of your staff—and I assume this is Mr. Figures, yet I might be wrong—that you wish that you could decline all civil rights criminal cases. Do you recall ever making that statement to Mr. Figures—or to any member of your staff?

Mr. SESSIONS. No, sir. And in fact, while I have disagreed on—really, not that much disagreed—I probed hard and expressed misgivings about some of the vote dilution cases that the Department has filed and asked my signature, and I believe I have signed every one. That is my duty to be sure of the pleading before I sign it.

But as to criminal civil rights, I feel pretty strongly about that. I feel very strongly about that. As a matter of fact, I spoke to a chief of police association that was meeting in Mobile, the State chiefs of police, and I told them in almost these exact words, I said, "We are going to continue our investigations of civil rights. We want to work with police, but do not think there is going to be a change on that." And I called on them, and I pointed out to them—and I remember saying this—it was just 20 years ago that blacks were disenfranchised all over this country down here. They have been abused by police, as you well know. They do not necessarily trust the police to investigate themselves. And they have a right, and it is proper that the FBI will be called on and respond to those investigations, and that will happen and continue to happen.

Senator HEFLIN. As I understand it, there are statements that will probably be brought up by other witnesses, and my purpose is to give you an opportunity to respond to them; at least the testimony lays a predicate for an issue for the committee to consider—that on an occasion when there was a recommendation to pursue a case which you wanted to decline or which you did not want to pursue, you are quoted as having said, "You must think this is New York. This is Alabama."

Did you make such a statement, and if so, do you have any explanation?

Mr. SESSIONS. At first—well, I think that I may have said that in regard to evaluation of a case that Mr. Figures had indicted Sammy Murray, and then he came to me and asked that it be dismissed, and we were discussing the jury appeal of it, and he was concerned about some of the jury appeal. I may have made that. I did not really think anything significant about that comment.

Senator HEFLIN. Who is Sammy Murray?

Mr. SESSIONS. This was an individual with the Corps of Engineers. Mr. Murray had, unbeknownst to Mr. Figures or me—actually, I never knew the case was even in the office; it was brought in by an FBI agent a few days before a grand jury. And Mr. Figures, as he has a right to do and as I encouraged, presented that case a few days later to the grand jury. I signed the indictment with confidence that it was an OK case.

I say it happened that fast. That is my general recollection of it.

After that, it was discovered that Mr. Murray had been in litigation with the Corps of Engineers over his personnel situation. Apparently, he had been ordered to move from near Demopolis to a place in Mississippi with the Corps of Engineers. He moved over there and filed a claim for the moving of all his furniture, \$2,000 or \$3,000, and that claim went in to the Corps of Engineers management. And their inspectors or whatever found that he did not move his furniture, that he never moved, because he had his transfer on appeal, apparently. So that was false claim. It appeared to me on the face of it to be a clear false claim.

So none of us knew that at the time. Later, his lawyer called and said, "This is a vendetta against Mr. Murray." He said that, "At any rate, you ought to dismiss this case," because Mr. Murray was told by someone at the Corps of Engineers that if he did not go on and submit his claim for furniture, he could not file later, if he was going to wait too long. So that is why he was forced into filing that claim.

Mr. Figures said based on that, and the fact that the Merit Systems Protection Board had criticized the corps for their handling of Mr. Murray that he wanted to dismiss the case.

We discussed it. I suggested that Mr. Murray be inquired of as to who at the corps told him to go ahead and file the claim, and if that was true, we would dismiss immediately. But I was not inclined to dismiss because he had been wrongfully transferred.

Senator HEFLIN. I understand that on approximately four occasions you turned over to Mr. Figures records of investigation and urged Mr. Figures to recommend a declination, and when Mr. Figures concluded that the cases warranted reinvestigation, you assigned the cases to another attorney, who then recommended declining the cases; that the files were forwarded by you, Mr. Sessions, to the Justice Department, with a memorandum describing only the conclusion and the recommendation of the second attorney; and that in a number of instances, the Justice Department responded by asking for an additional investigation and alleged that although Justice ultimately accepted the recommendation to decline these cases, it apparently acted without the knowledge of the original recommendation to the contrary, which was made by Mr. Figures.

Should Mr. Figures' recommendation have been forwarded to the Department of Justice, and if so, why wasn't it?

Mr. Sessions. Senator Heflin, that matter really, I think, is completely wrong. First of all, let me say that our office, we have an open door. Agents come in and talk to lawyers all the time. And in the 90 cases that I found that have been handled—and I believe that is all of them in 1973, 1974 and 1975—by Mr. Figures, that every case that came in, I assigned to him. Occasionally an agent would come down and talk to another lawyer in the office about a case. And one of the reasons to talk is he thinks he has done enough investigation at that stage, and he is asking for advice. Most of the reports say, instead of declining, they say, "The assistant U.S. attorney recommends no further investigation at this time," because the report has not come in at that time; the attorney is just talking to the agent.

Then, if the assistant says no further investigation, the agent puts the evidence together in a report; a copy comes to my office, and a copy goes to the Department of Justice, Civil Rights Division, in Washington, who has the final say-so on it.

When that report would come across my desk, I assigned them all to Mr. Figures, except one which involved a nut that I knew, an assistant in the office already knew about. So I just assigned that one to him, and it was not a serious case at all.

The problem we had on those cases is that—Mr. Figures may have read something into it as sinister, but he would be highly mistaken in that. When that report would come in, I would send it to him even though another lawyer in the office had issued a preliminary opinion. And when he questioned me about it, I said, "I want you to evaluate it and give your opinion. You can ask for an additional investigation. You can talk to the Department of Justice."

I do not believe that Mr. Figures would say I ordered any case that he handled to be dismissed or not proceeded with. I have never rejected a request that he return an indictment in a case. I may have said, "I do not know that you need any more investigation in a matter," but I do not believe I really did that.

I told him one time, "Sure, the FBI gets tired, and they do not want you sometimes to call up ask for more and say, 'Look, I have done all this investigation, and now you want me to interview five or six more witnesses.'" I told him, "You make them work. You have them do whatever you want to do."

Senator HEFLIN. I understand, too, that we have heard something about one criminal civil rights case which was successfully prosecuted involving the lynching of a young black man named Michael Donald by a group of Ku Klux Klan members.

This case was handled by Mr. Figures. Mr. Figures, as I understand it, has indicated that Mr. Sessions repeatedly urged Mr. Figures to drop the case, and that you only supported the investigation when Mr. Figures refused to agree to discontinue it. Is this true, or not true?

Mr. SESSIONS. No, sir; that is not true. That case was in the office, and the murder had taken place maybe 5 months before I became U.S. attorney. The State district attorney had indicted the wrong people in the case and had to dismiss his case, and our case at some point came to a point where nobody really knew what to do.

Mr. Figures definitely did not want to see the investigation end. He asked the FBI to go out and reinterview witnesses, and I concurred in that, or I was aware of it, and they were reinterviewed. That came back, and—I remember distinctly saying, "We know who did this murder, and we do not have proof now, but we need to go do something about it."

Mr. Kowalski and Mr. Glenn came down from the Civil Rights Division, and we had a conference and discussed all the alternatives. And I am the one that said, as I recall, "The only other alternative now is to have a grand jury investigation"—subpoena everybody that knows anything about the case, klansmen who were at meetings where it may have been discussed, and go forward with it. I told them, you can have the special grand jury for that purpose, and we will set up any time that can possibly be arranged.

And that is when Mr. Kowalski and Mr. Glenn and Mr. Figures conducted a brilliant investigation. They took a case that I do not think any of us thought we could bring—with any real confidence, to fruition, and turned it into a conviction.

I will say Mr. Figures indicated to me that Mr. Farve, who was an interim U.S. attorney before I became U.S. attorney, had indicated that he thought the case was at a dead standstill and had to be closed out, or something be done about it.

I never told him to close it out.

Senator HEFLIN. There have been some charges that in Conecuh County, the Civil Rights Division of the Department of Justice directed the Mobile office to investigate a complaint that black voters had been harassed in Conecuh County and used internal Justice Department procedures which do not require the concurrence or the consultation with the local U.S. attorney. The FBI acts as an investigative arm of the Civil Rights Division. And it is alleged that when you learned about the proposed investigation, you countermanded the Civil Rights Division's order without notifying that division of your action. It is further alleged that when the Civil Rights Division subsequently realized that no investigation had been conducted and learned of your action, your alleged action being that you had countermanded the investigation, you resisted an initial request that you cease interfering with that investigation until you were advised by a high-ranking Justice Department official that the U.S. attorney could not legally countermand Department orders at that time. Do you care to comment on any aspect of those allegations?

Mr. SESSIONS. Yes, sir. I have given my answer to that previously. The best that I could tell when Mr. Biden read the transcript of the civil rights attorney who said that, it was focused on a matter involving a forged letter on Department of Justice stationery, authorizing a preclearance—

Senator HEFLIN. Well, if you have answered it, I do not want you to repeat. I just missed that. I may have been out of the hearing room when that was asked. I just want to cover all of the issues that have been raised.

Mr. SESSIONS. I would be glad to look into that further, but I am really convinced that when we find what happened—I believe that the Civil Rights Division believed that, but I think that was incorrect, and I think the record will show that. I think they were in good faith in believing that.

Senator HEFLIN. I will turn it back over to you, Senator Biden, since I do not want to duplicate some of the things that you may have already covered.

Senator BIDEN. No. Go ahead. That is the only thing you have covered so far. Keep going.

Senator HEFLIN. There is a Dallas County issue—

Mr. SESSIONS. Judge Heflin, on that question, I think there is a distinction. It is possible that I would have said, "Don't proceed on this case"—I mean, not proceed—that I indicated it did not require further investigation or something, although I am told the report does not indicate I had anything to do with the Conecuh County case. But I do not believe that I would have stopped an investigation. I had only been in a couple of months, and I may not have

known what the policies were. Eventually, the case never developed.

Senator HEFLIN. Well, there is another allegation that the Civil Rights Division filed a civil complaint, that normally the name of the local U.S. attorney appears on the complaint, that the U.S. attorney signs the pleadings along with the attorneys in Washington. The U.S. attorney's role is generally pro forma; and the case is ordinarily initiated, controlled, and litigated by the Division of Civil Rights of the Department of Justice's attorneys. The Division attorneys were sent to Mr. Sessions for routine signature of a complaint to be filed in a case challenging an at-large election scheme as racially discriminatory. It is alleged that Mr. Sessions refused to sign the complaint.

Do you wish to comment on that allegation?

Mr. SESSIONS. Does it cite which county?

Senator HEFLIN. Dallas County.

Mr. SESSIONS. Mr. Hebert and I talked about that. He told me it was his recollection that that case was filed before I became U.S. attorney. Perhaps someone could have seen Mr. Farve's name on it, and after I became U.S. attorney, he was an assistant. But that was what Hebert told me. I do not recall ever refusing to sign any complaint, although as I say, it is scarey sometimes when you sign a complaint, and you are suing everybody in a county government, and you do need to inquire of the lawyer who is asking you to sign it, the basis for the lawsuit.

Senator HEFLIN. On the Perry County issue, one of the allegations against you is that was brought to your attention to voter fraud on the part of whites—and that there was a selected prosecution only against blacks, and that there was no investigation or prosecution of the whites.

Would you care to comment on that?

Mr. SESSIONS. Yes, sir; I would challenge that statement. No evidence was presented to us at that time of fraud by whites, at least, anything credible, and I would further state that at the House hearing, I believe Mr. Hank Sanders, who was a law partner in the firm that defended the case, stated in his testimony that we had never asked for investigations in the black belt. Our office certainly was never given any formal request for such an investigation. And I called the FBI when that statement was made in the paper, and they assured me that they had no indices that show complaints against whites and I do not believe that happened.

Now, during the trial, there was continual drumbeat, and it was very effective in the media, to suggest that this was true, and affidavits were filed under seal that purportedly indicated that fraud had been taking place by other people, I am not sure if they were whites, in Perry County.

And we filed and tried to get the matters from under seal, and those documents have not been produced.

Mr. Chestnut, subsequent to the trial, has stated he has that information. I personally requested the supervisor of the FBI to talk to him about that, and he said he would send the material, but I am told that it has not been received.

If it were so, I think it would be matters that involved technicalities rather than actual fraud, which is the primary focus of this case, the actual changing of a ballot without permission.

Senator BIDEN. Will the Senator yield for a moment?

Senator HEFLIN. Yes. Go ahead.

Senator BIDEN. Mr. Sessions, you have been here a long time. I know I have more questions, and so does my colleague from Alabama. But would you like a cup of coffee or would you like something to drink, or would you like to take a break?

Mr. SESSIONS. A Coke or coffee might pick me up a little bit. I am getting tired.

Senator BIDEN. Or would you like to take a short break?

Mr. SESSIONS. A break would be great.

Senator BIDEN. All right. Let us break for the next 7 minutes or so, until 8.

[Short recess.]

Senator BIDEN. Let us bring the hearing back to order. The hearing will come to order.

We have had a little session there, and Mr. Sessions has been sitting at that table now for almost 6 straight hours. I for one have covered the bulk of the areas that I wish to cover. The Senator from Alabama, similarly so, although to use the Senator from Alabama's phrase, we are just sort of laying a predicate here for the basis upon which to have knowledge of whether we believe or disbelieve the witnesses who will be coming up on Wednesday and their assertions.

I believe we should end for the day and make a judgment after the witnesses whom we had hoped would testify today, when they testify Wednesday, make a judgment after those hearings, in consultation with the chairman of the committee and the majority of the committee as to whether or not we would ask Mr. Sessions to come back again at all before we vote on his nomination.

Do you have anything to add to that, Senator Heflin?

Senator HEFLIN. The only question in my mind now is that since Mr. Hebert testified and came, I believe that the other witnesses who have given depositions should appear in person. I do not know whether that could be arranged. That is Mr. Hancock, Mr. Bell, and Mr. Glenn, and any others who have given depositions. It may be that the evidence is sufficient; I do not know, but—

Senator BIDEN. I do not disagree with that. I think that is a matter—

Senator HEFLIN. Because it may be that you have the issue of the Department of Justice, and there might be questions of subpoenas of the executive branch—however, I do not want to get into—

Senator BIDEN. Who subpoenas whom.

Senator HEFLIN. But if it can be worked out, Duke, since Mr. Hebert came on his own, it may well be that some of the others would want to come up.

Mr. SHORT. Yes, sir; we can check it.

Senator BIDEN. I think that is a matter we can check, and why don't we—this was not designed, Mr. Sessions, to avoid buying you a Coke. I want to make that clear.

Mr. SESSIONS. Somebody did.

Senator BIDEN. You got your Coke, anyway; you have got two Cokes, now. You have one from the minority and one from the majority.

Mr. SESSIONS. Would you like one? You should be tired, too.

Senator BIDEN. No. I guess I should not kid at this point. As you have observed, kidding can get you in trouble.

Let me suggest then that we adjourn for the evening. We will recommence this hearing on Wednesday the 19th, and subsequent to that, we will make a judgment as to whether or not we ask you to come back.

I thank you—is there anything you would like to say before we close? You have sat here this long.

Mr. SESSIONS. I would like to see the transcripts of the Department of Justice statements that have been quoted.

Senator BIDEN. We will make available to you anything and everything that we have, and if there is anything that we have overlooked—I beg your pardon, Senator Denton. I did not know you were here.

Senator HEFLIN. There might be some witnesses who could give relatively short statements. I see Dr. Gilliard, who is a dentist and a member of the board of education in Mobile County, here. I do not know what his testimony may be. And Elaine Jones has indicated that Dr. Gilliard has some problems about returning. I do not mind, if there are some relatively short statements that could be disposed of—

Senator BIDEN. Well, let me suggest—and I would like very much to accommodate the witnesses who have waited so long, particularly those who have difficulty coming back. But to be fair about it—and I know that the Senator from Alabama wishes to be and is not attempting not to be—but I made the representation to my colleagues on both sides that there would not be any witnesses. What I would not like to see happen is a witness testify, for or against—and I assume, although I am being presumptuous, but I assume it is against the nomination that this witness would be testifying—and not have those on the other side of the issue have a chance to cross-examine that witness. And to that extent, that is the reason why I would reluctantly—and it is not my prerogative to do it—but I for one think it would be better not to do it. We will try to figure out a way to maybe help get you back. I understand that the suggestion made by Senator Heflin was a courtesy that I am sure the other Senator from Alabama would like to accommodate, too. But I think we will both get into, as they say on the east side of Wilmington, DE, “We will be in a world of hurt,” if we let that happen without people having a chance to cross-examine.

So I think we should just end it here.

Senator DENTON [presiding]. Well, I believe that my senior colleague from Alabama deserves the information that we previously announced, Senator Heflin, an agreement between the—

Senator HEFLIN. I did not know about that.

Senator DENTON [continuing]. I know you did not, sir; that is why I mention this—that we let witnesses go back home, subject to the announcement previously made, agreed to by our side, on the suggestion of the minority side, that we reconvene on Wednesday at 10 a.m.

But that was not my decision; it was a previously announced decision.

Senator BIDEN. It is really my making, I admit. What I just do not want to do is get into a situation where any of my colleagues are able to say, "Hey, Joe, you brought up a hostile witness, and I did not get a chance to cross-examine that witness."

I think fair is fair, and we should just let it move on to Wednesday.

Senator DENTON. I think my colleagues would agree that this has been a long hearing. Six hours is unprecedented in my time here. I appreciate the objectivity which has been shown, and I think we all feel that Mr. Sessions has shown considerable endurance, perseverance, and patience in this, and I want to express the regret of the entire committee to those witnesses who did come today. There was no plot to deny anyone the opportunity to testify. It is inconvenient to you, and we apologize for that.

So Mr. Sessions, you are prepared to come back—you are finished. OK. You are finished, subject to future discussion and decision, which the chairman of the committee will announce. And the other witnesses will be back at 10 a.m. on Wednesday, in accordance with the previous agreement.

This hearing stands adjourned.

[Whereupon, at 3:08 p.m., the committee was adjourned, to reconvene Wednesday, March 19, 1986, at 10 a.m.]

NOMINATION OF JEFFERSON B. SESSIONS III,
TO BE U.S. DISTRICT JUDGE FOR THE SOUTH-
ERN DISTRICT OF ALABAMA

WEDNESDAY, MARCH 19, 1986

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 10:15 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Jeremiah Denton (acting chairman) presiding.

Also present: Senators Specter, East, Biden, Kennedy, Heflin, and Simon.

Staff present: Duke Short, chief investigator; Frank Klonoski, investigator; Joel Lisker, counsel; and Cindy LeBow, minority chief counsel.

OPENING STATEMENT OF SENATOR JEREMIAH DENTON

Senator DENTON. The hearing will come to order.

We recognize the presence of our distinguished colleague from Alabama, our senior colleague, Senator Heflin. We are hoping that other Senators will appear shortly.

I have an opening statement. If not many Senators show, we are left with what they are going to read in the press or see on television as their sources of information. The transcript they will not read. It will probably not even be ready by the time we have the vote and, with reliance upon the basic honesty of journalism, I submit that this is the first opportunity to present witnesses who were in Perry County, the first opportunity to present a recantation of evidence submitted against Mr. Sessions by two U.S. Department of Justice attorneys, one, Mr. Hebert, one, Mr. Hancock, by deposition.

I believe these recantations are significant. I believe the witnesses from Alabama today, black and white, Democrat and Republican, for and against Mr. Sessions are the key to justice in Mr. Sessions' case.

Some of the sworn testimony we heard on March 13 in this very room from a Justice Department witness was false and he has since issued his recantation.

Second, a deposition which was placed in the record has also been recanted and we will hear from that witness in person, Mr. Paul Hancock, this morning.

The point is that the dialog and deeds attributed to Mr. Jeff Sessions were attested to here in person in sworn testimony by Mr.

Hebert and a sworn deposition by another attorney who will be here today, and it turns out that that to which they attested was not correct. Certainly, what is remaining after these two recantations, namely memories of one of the two about what Mr. Sessions said in off the cuff and private conversations, would fall into doubt and there will be testimony today which will show you just how much doubt should exist with respect to that kind of conversation that was recounted.

We heard the testimony of J. Gerald Hebert, a senior trial attorney of the Department of Justice, Civil Rights Division, here on March 13, 1986. Mr. Hebert had been interviewed on March 12 by investigators of the full committee, and the particular question in point, is a question raised by the minority investigator, Mr. Govan, "Do you know whether he's"—and that is Sessions—"do you know whether he has failed to cooperate or has interfered in cases of other assistants in the Justice Department?" Mr. Hebert replied, "Well, I only know what happened with our *Conecuh County* case, but Paul Hancock is in a better position to talk about that than I am." Mr. Hebert went on to say during this interview that Paul—that is Hancock—"Paul and I had talked about it and he and I both have a very fuzzy recollection about Conecuh County. It was Paul's case primarily."

Now, what we are referring to is their allegation that Mr. Sessions interfered with the *Conecuh County* case, which was part of the record and part of that which has indicted, in some newspapers and in some minds, Mr. Sessions.

Paul Hancock told Mr. Govan, the minority investigator, on March 12, also under oath, "I mean I'm fairly confident that the investigation was not conducted at Mr. Sessions' request. I can't say with as much confidence that the FBI told me that or maybe Jeff Sessions told me that."

He went on to say that, "He may have spoken to Mr. Sessions about it at some point in the process." He goes on, "In fact, I recall that I spoke to Mr. Sessions about it and he confirmed that he thought that it was an investigation we should not conduct and told the Bureau not to conduct it."

He went on to reconstruct a whole dialog with Mr. Sessions. Mr. Hancock went on to reconstruct a whole dialog with Mr. Sessions on what was characterized as Mr. Sessions' blocking of the Conecuh County civil rights investigation.

Ladies and gentlemen, after these depositions were given and used by some of my Democratic colleagues against Mr. Sessions in a very damaging manner, Mr. Hebert testified that Mr. Sessions had interfered with the Conecuh County investigation. He too constructed a conversation with Mr. Sessions on that subject.

The facts are that these conversations never took place at all with Mr. Sessions. On March 17, 1986, Mr. Hancock and Mr. Hebert recanted those portions of their depositions on the alleged interference of the Conecuh County investigation by Mr. Sessions and in fact checked Department of Justice records which unfortunately they did not refer to prior to their depositions. They both say now that the case did not involve Conecuh County but Clarke County, and Jeff Sessions did not attempt to block the FBI investigation but in fact it was his predecessor in office, a Carter adminis-

tration appointee. So they had the wrong county and they had the wrong man. None of that was permitted to emerge during the last hearing. They did not even refer, when they made their allegations against him, to their own records.

Further, Senator Heflin and ladies and gentlemen, a lot of what we heard Jeff Sessions accused of saying last Thursday, Mr. Sessions denied at the time or said he could not recall saying. Every friend of his that I have known, even his enemies say that he is remarkably honest, he will not say that he did not say something unless he is sure he did not say something. And the people who have been accusing him of saying things or saying things he does not remember or things that he absolutely denies having said in the context in which they have reported that he has said them.

But the newspapers by and large on the first burst after the last hearing did not treat Mr. Sessions fairly and simply went on to report the statements that he was accused of having made as if they were fact. But on the second burst, at least in the Washington Post, the editorial and the second article written by the gentleman, who I think was extremely inaccurate in his first reporting, Mr. Howard Kurtz, who might be here today, wrote articles which I thought were much more fair, but by that time Mr. Sessions had fallen in the minds of his colleagues and in the minds of those who do not know anything about him. He has not fallen in the minds of those who know him in the southern district of Alabama, however. In the deluge of telegrams from Republicans and Democrats, blacks and whites, from there and from Perry County, it has been overwhelming.

So please let us try to be fair in dealing with Mr. Sessions. I have chatted with Senator Kennedy. I do not think he would mind if I mention this. He has said that he has made clear that he did not any more have reservations about Mr. Sessions' having called the case to prosecution in Perry County. He said no, he had to do that. But he said, I am still very concerned about the remarks that he made, attributed to him by the civil rights attorneys from the Justice Department.

We have already dealt with one of those long stories. Let us deal with the others. On the NAACP/ACLU being un-American, and which he has been quoted in the papers as having said flatly, I heard him repeatedly say that he did not say it in that context, he said that if a man in the civil rights activist field, when some of them get involved in international affairs, that some people might perceive that what they are doing is counterproductive to them and some of the things they are saying might be un-American.

Now, if you want to take a poll in the United States and find out how many people believe that about certain individuals, it might be that Mr. Sessions is not so wild in that, but he never said he thought that the NAACP or the ACLU were flatly un-American or Communist inspired, yet he has been convicted of it in the media of our land.

As we all know, the human memory is frail and, as we have already seen with the Conecuh County incident, can be severely flawed, when conversations which never took place are reported by two men, they are wrong on the counties and they are wrong on the man.

What Mr. Sessions said is that when such groups go outside the area of civil rights issues—I say this again—for racial reform activities and involve themselves in a foreign affairs controversy, there might be a perception by some that the positions they advocate are un-American. He said that. That is a flat fact. He never said that he considered the NAACP un-American. Indeed, in this room to my ears he said they were largely responsible for the civil rights gains made in the South, and he and this Senator—I have said from so many podiums that the biggest thing about the South is that it is now able to draw upon its full most precious human resources, its human resources, namely the black people who were put down, delegated to the backs of buses, unable to get equal education opportunity or job opportunity. That has improved to the point where the South is now producing goods and services with the best work ethic reported by two national surveys. The State of Alabama has the most black mayors of any State in the Union, with the second most, considering its poor population, the second most gross number, that is whole number, of black elected officials. Per capita, Alabama is about 10 times ahead of any other State.

So things have happened down there and I hope that they continue to happen and are not inverted and reverted by what happens as a result of these hearings. I have not heard any of my Democratic colleagues, including Senator Kennedy, say anything that I did not think were coming from sincerity on their part. After all, they looked at allegations sworn to in affidavits by this Justice Department official and others. They assumed those things were true. We are learning they were not true, and when they learn they are not true, if they show up at this hearing, I hope they will change their minds.

On the issue of Jeff Sessions responding to Mr. Hebert's assertion that a judge called Jim Blacksher, a white civil rights attorney, "A traitor or disgrace to his race," it may well be that if the purpose of the conversation was to establish whether the judge had actually made this statement, that Sessions was simply responding to the question of whether it was said. Jeff's response could just as easily have been, "Well, maybe he did." In other words, maybe the judge did say that, because in the final analysis this is what Hebert was trying to ascertain, did the judge say that Jim Blacksher is a traitor or disgrace to his race. So I believe that at best some of the statements attributed to Mr. Sessions have been highly distorted and rendered significant beyond any possible just degree.

Before the hearing proceeds much further, we had better understand what the issue is, because it too has been distorted. The issue is, is Mr. Sessions competent to serve as a judge in the U.S. district court, does he possess the academic and intellectual qualities that would permit him to serve, does he have judicial temperament, is he a man of integrity who will decide cases solely on the base of evidence and the law?

I believe he is, the President believes he is, still believes he is, and I have heard nothing during the course of this hearing to dissuade me from this view, and I hope that you will hear the things today which should remove doubts about him.

The American Bar Association conducted an extensive investigation and examined most, if not all of the same allegations raised at

the hearing on March 13. They found these allegations to be without merit because in the final analysis the ABA rated him qualified.

I have here a statement of endorsement of the Sessions nomination from the Mobile Bar Association, which includes both black and white lawyers, it is dated March 17, 1986. It states:

The Bar Association's firm belief that Mr. Sessions is eminently qualified for the position of U.S. District Judge, that he has been fair with all persons, regardless of race or national origin, and that any suggestions that Mr. Sessions is racially prejudiced is both unfounded and unfair.

I would like, without objection, to place this statement by the Mobile Bar Association executive committee in the record.

[The statement referred to follows:]

STATEMENT ADOPTED BY MOBILE BAR ASSOCIATION EXECUTIVE COMMITTEE ON MARCH 17, 1986

The Executive Committee of the Mobile Bar Association, Mobile, Alabama, hereby re-affirms its endorsement of U.S. Attorney Jefferson B. Sessions, III, for the position of U.S. District Judge for the Southern District of Alabama, and states its firm belief that Mr. Sessions is eminently qualified for the position of U.S. District Judge, that he has been fair with all persons regardless of race or national origin, and that any suggestion Mr. Sessions is racially prejudiced is both unfounded and unfair.

Senator DENTON. I recognize Senator Heflin for an opening statement.

STATEMENT OF SENATOR HOWELL HEFLIN

Senator HEFLIN. I have no opening statement other than I would state that, while other Senators are absent, they do have staff individuals here and I am sure that they will not rely merely on media accounts as to the decisions that they would make. They have staff people and I have staff people who will be here throughout the entire hearing and they will be taking notes and things of this sort. I am sure that many of them would come; unfortunately we in the Senate have been best described as a 100-ring circus, we are due to be at a hundred different places all at the same time and there are a hundred different things going on. Of course, that is an exaggeration, but there are at least a hundred different things going on and we cannot cover all of them and we have to depend on staff. Each of us has a large staff and they have fields that they are able to become expert in and they inform us when we are absent what goes on.

Senator DENTON. Thank you, Senator Heflin. That is very true, if I may support what the Senator said. Their absence does not necessarily mean that they do not care. I am missing a number of subcommittee hearings which my opponents can use in the election of saying I was absent. I have no choice. I chaired from 2 until 9 the other day, except for chairing in the Senate, presiding. I missed a number of subcommittee meetings then and I am missing several today. I expect that we will adjourn today at 4 o'clock, because this room has to be used for something else, so we will be here until 4 or 4:30 so that room could be prepared for its use for another activity.

I will now call panel one, which consists of Paul F. Hancock, Assistant for Litigation, Voting Section, Civil Rights Division, Depart-

ment of Justice, Washington, DC; John C. Keeney, Deputy Assistant Attorney General, Criminal Division, Department of Justice; Barry Kowalski, Deputy Chief, Criminal Section, Civil Rights Division, Department of Justice; Albert Glenn, Criminal Section, Civil Rights Division, Department of Justice; and Daniel Bell, Deputy Chief, Criminal Section, Civil Rights Division, Department of Justice.

If you will all stand, gentlemen, I will swear you in.

Do you solemnly swear that the testimony you shall give before this hearing will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. HANCOCK. I do.

Mr. KEENEY. I do.

Mr. KOWALSKI. I do.

Mr. GLENN. I do.

Mr. BELL. I do.

TESTIMONY OF JOHN C. KEENEY, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION; PAUL F. HANCOCK, ASSISTANT FOR LITIGATION, VOTING SECTION, CIVIL RIGHTS DIVISION; BARRY KOWALSKI, DEPUTY CHIEF, CRIMINAL SECTION, CIVIL RIGHTS DIVISION; ALBERT GLENN, ATTORNEY, CRIMINAL SECTION, CIVIL RIGHTS DIVISION; AND DANIEL BELL, DEPUTY CHIEF, CRIMINAL SECTION, CIVIL RIGHTS DIVISION, DEPARTMENT OF JUSTICE

Senator DENTON. I will recognize Deputy Assistant Attorney General John C. Keeney and I would suggest that he make any statement he cares to and then introduce his colleagues in such order as he chooses to make their statements.

Mr. KEENEY. Mr. Chairman, my colleagues and I are here on different missions. My mission is to discuss the *Perry County* cases, the *Turners* and *Hogue* case.

Senator DENTON. Would you please put the microphone a little closer to your mouth or directly in front?

Mr. KEENEY. Is that better, Mr. Chairman?

Senator DENTON. Yes, sir.

Mr. KEENEY. As I said, my mission is to discuss the *Perry County* cases, and I would like to briefly describe the history of those cases.

First of all, we have to go back. The cases arose out of the 1984 election, primary election, but there is a history that goes back before that. In 1982, there was information developed by the local prosecutor with a local grand jury showing a discrepancy in handwriting on registration forms and absentee applications, and the ballots themselves reflected a number of strikeovers.

Now, one of the difficulties that the local prosecutor and the local grand jury had with the investigation is that they could not identify the strikeover ballots with the individual voter, so they were not able to go back to a—take a particular ballot back to a voter and ask him or her whether or not that was his or her ballot. That is important because this situation changed in 1984.

Because of their inability to further develop the cases, the local prosecutor and the grand jury itself in Perry County asked the Federal Government to take over. They discussed it with Mr. Ses-

sions. Mr. Sessions discussed it with Craig Donsanto of our Public Integrity Section, who is our specialist on election fraud, and they concluded that—I guess primarily Mr. Donsanto took the lead in this—that the likelihood of developing cases on this record is not sufficiently high to warrant the use of the resources at that time, primarily the use of the resources of the FBI, which were then being utilized in two other counties in Alabama on election fraud cases. They were also being utilized very heavily in Chicago and Duval County in Texas, among others.

Now, the pattern that was reflected in that grand jury was a pickup of absentee ballots by a deputy sheriff in his pickup truck and the solicitation of absentee ballots by members of the Perry County Civic League. That is the story insofar as 1982, and it is important as a background to 1984.

The primary in 1984 was scheduled for September 4. On September 3, Mr. Sessions was advised that the same people were conducting the same activities, the solicitation of ballots seen in the pickup truck of the deputy sheriff. The observations were made by two citizens primarily, a man by the name of Billingslea and a Colonel Kinard who was a tax assessor in the local area, and they observed open envelopes, open election ballot envelopes on the truck of the deputy sheriff and they also advised that they had observed a coming together of the activists at the party headquarters, particularly the Turners and Mr. Hogue.

An additional factor was present here that was not present previously. Some of the local citizenry went to the circuit court and they asked for an order that would direct the election officials to pair up the ballots that were cast with the envelope, the second envelope in which those ballots were placed which has the name of the voter on, so that if there were strikeovers or anything on the ballot, that the individuals—that the investigators could go back to the individual voters and ask them whether or not the ballot as it presently existed was the ballot as it was executed by them.

Senator DENTON. Excuse me, sir. If this is something new, would you mind starting that part of it again, something we have not heard?

Mr. KEENEY. Well, I think it is a well-known fact of the area, but what happened was that the citizens in—I believe they were the two individuals I referred to, Mr. Kinard and Mr. Billingslea, went to the circuit court and asked for a court order which would order the election officials in Perry County to authorize the so-called pairing of ballots, absentee ballots.

What that meant simply was there is an original outside envelope, there is an interior envelope with the name of the voter and then there is also a ballot inside the interior envelope. What they got an order for was a direction to the county officials to mark the same number on or mark in a similar fashion numbers I believe, the same number on the ballot with the voter's name, as is on the—the envelope with the voter's name as is on the ballot, so it enabled investigators to go back and take the individual ballots, they knew who cast which ballot, and they were then able to go back to those people and ask whether or not the ballot as filed was the ballot that they had executed.

So there was a pairing up of the ballots by the grand jury after this, and there was one other step, Mr. Chairman. There was a mail cover put on. All of this happened very quickly, rapidly on September 3, the day before the election. The FBI, an FBI agent was observing the party headquarters and noted that the Turners and the Hogue brought in, Turners and Hogue brought in what appeared to be bundles of ballots.

He continued the observation until he saw Mr. Hogue and Mr. Turner deposit those ballots, those bundles of ballots in a mail depository. Prior to that time, a mail cover was obtained which enabled a mail official inside the depository to observe and then advise which ballots had been deposited by Mr. Hogue and which ballots had been deposited by Mr. Turner, and he put a "T" and an "H" on the ballots reflecting which of the individuals had deposited the mail.

That, of course, Mr. Chairman, is important because it brings into play the mail fraud statute. If there are fraudulent ballots, we were able to demonstrate the mails were used in connection with them.

I might just put in perspective, because in the past I have testified on this subject before the Edwards committee in the House, and a question was raised as to why the Government did not hold off on its investigation until after the elections were over.

As I mentioned earlier, we are dealing with a primary election here on September 4. There was a runoff election on the 25th and, as you and Senator Heflin in particular can attest, the critical election insofar as local people are concerned, the local candidates, is the runoff election in the primary. So the investigation, the FBI going on the street, as it were, was held off until after the runoff election was held.

Now, what did the ballots show? They showed that 75 altered ballots out of 709 cast. Of those—we do not usually look at these things from the standpoint of race; as a matter of fact, in the House we were asked for statistics nationwide based upon race and we had to tell Chairman Edwards we do not keep statistics that way, but we did go back and reconstruct nationally and we did some reconstruction here at the request of the committee and I have the figures here.

There were five ballots cast by white persons and when they were interviewed they said it was a mistake, they had made a mistake and the alteration was theirs. There were 70 ballots cast by blacks, some of which had the "T" for Turner or the "H" for Hogue markings on, and 29 of those ballots were changed. The ballots which had—

Senator DENTON. Do you mean changed illegally?

Mr. KEENEY. Changed illegally, yes. Well, they were changed and then we followed through, Mr. Chairman, and took the ballots back to the individual voters and, based upon the interviews with the voters, we concluded that they were changed, yes.

Now, of those 29 involved with an "H" or a "T" on them, those with the "H" an eraser had been used, and those with a "T" a black pen had been used for strikeovers. We had one situation where the person who purportedly had voted never executed the ballot.

Based on that information, the grand jury, which ran from October, November, and December 1984, returned an indictment on the 25th of January 1985, charging conspiracy to violate the mail fraud and the multiple-voting statutes, also charging substantive mail charges and charging substantive violations by Mr. Hogue and Mr. Turner of the multiple-voting statutes.

Mr. Chairman, at every stage of this process the Department of Justice, Criminal Division, Public Integrity Section was involved. We approved the investigation, as we are required to do. We approved the indictment. As a matter of fact, one of our people was down there and worked on the indictment and presentation.

Mr. Chairman, it was handled in all respects in a very regular fashion, following through on the general enforcement program in the election fraud area of the Department of Justice.

Thank you.

Senator DENTON. Thank you, Mr. Keeney. Just so we understand what the Perry County election was all about, was this a Democratic versus Republican election or a Democratic versus Democratic primary?

Mr. KEENEY. It was a Democratic primary.

Senator DENTON. A Democratic primary, with no Republican involved. Was the case apparently whites seeking to perpetrate a fraud against blacks in an election which in newspapers has been alleged prior to this, or was this principally black people saying that their votes had been changed and that they were changed principally by black people?

Mr. KEENEY. The complainants were black people who were active politically. The victims were black people and, of course, the defendants were black.

Senator DENTON. So the victims were Democratic voters and they were black in race?

Mr. KEENEY. Yes, sir.

Senator DENTON. I guess Senator Heflin came first. Senator DeConcini, do you defer?

Senator DECONCINI. I have no questions.

Senator DENTON. Well, I would like to welcome my distinguished colleague from Arizona and he defers to Senator Heflin, my senior colleague from Alabama.

Senator HEFLIN. Mr. Keeney, there was the Perry County prosecution in the southern district of Alabama and there were some prosecutions in the northern district of Alabama. Do you remember what counties were involved in that?

Mr. KEENEY. I do not, Senator.

Senator HEFLIN. Greene County or—

Mr. KEENEY. It was Mr. Bell who prosecuted that.

Senator HEFLIN. He did not—

Mr. KEENEY. I know them by prosecutor rather than by county, Mr. Chairman.

Senator HEFLIN. Well, they had this one in which there was a conviction and then there was another one, maybe it was Greene County. I am trying to remember whether there was any other than just Greene County or Greene and Perry County. Since you do not know the counties, I will have to elicit that information from somebody else.

Was this investigation entirely directed toward the absentee box?
Mr. KEENEY. Absolutely, yes, sir.

Senator HEFLIN. Why was it directed only to the absentees?

Mr. KEENEY. Because my understanding was those were the primary allegations. You see, these were allegations before the actual election, Senator Heflin, and we followed through on them. Whether or not there was any fraud on the election balloting, I really do not know, but I do not know of any significant investigation that we conducted with respect to it.

Senator HEFLIN. Well, there have been charges, whether they are true or not at this stage it is not for me to say, that the Department of Justice was directing in Alabama a vote fraud investigation in a certain section of the State which is predominantly black, and instead of investigating irregularities that might have taken place in the past or either establish some pattern that would take place in this election, it was centered in what is known as the black belt of Alabama as opposed to some other section.

Now, there have been allegations of vote fraud in other sections of the State, one in DeKalb County, in the 1984 election—and which is a predominantly white, and has a very small percentage of blacks, and there have been reports that the local Republicans there wanted an investigation as to the absentee box and absentee voting, but that the Department of Justice declined to go into it.

Now, that does not pertain to Sessions because he is not in that district and he is in the southern district, but this would be toward the Department of Justice, that there have been selective prosecutions and selective counties where you have conducted your vote fraud which have been predominantly black areas.

Mr. KEENEY. Senator—

Senator HEFLIN. As I say, these charges have been made and I will give you an opportunity to respond to them.

Mr. KEENEY. I accept the word "selective" if you will accept my explanation of what we view as selective. We prosecute—we are a reactive organization—we prosecute on the basis of complaints and we prosecute to the extent that we have available resources.

As I indicated, one of the reasons that we did not get into this investigation in 1982 was that the FBI investigative resources were spread very thin throughout the country and additional investigators would have to be brought in in order to fully develop the investigation.

The other reason, of course, is when—which you, as a Chief Justice of Alabama can appreciate—the evidentiary problems were more severe in 1982 than they turned out to be in 1984.

We have a nationwide program, Senator Heflin, and we respond to the complaints wherever they may be and we try to use our resources most effectively to have successful prosecutions that will have a deterrent effect.

Senator HEFLIN. Well, as I said, you asked me if I would accept the word "selective." I just quoted a charge that was made, and it is rather hearsay to me, so I do not know, that is not my word, but I am saying that that is one of the charges that has been made about the Department of Justice that there are other counties and there have been some evaluation of absentee boxes which would

show a very high percentage in certain areas of absentee voting as compared to the total vote.

Alabama is low on absentee voting, it is rather restrictive, and I just—that charge has been made and I wanted to give you an opportunity, since you are the deputy in charge of this, to respond. But your position is that other than in the southern district, the other matters are being handled by someone else?

Mr. KEENEY. The other matters are being handled by someone other than Mr. Sessions. All I was saying, Senator Heflin, was with respect to DeKalb County I am not up on DeKalb County to intelligently discuss it today with you. I would be very glad to get back to you on the subject. I was just trying to explain the general policy.

For instance, in 1982, one of the reasons that we did not proceed, one of the reasons that we decided not to proceed with Perry County was the fact that we were active in, among other things, two other counties in Alabama.

Senator HEFLIN. Well, we are not trying DeKalb County, but that charge has been made against the Department of Justice more than it has against Mr. Sessions and I was curious about it.

Senator DENTON. Would my colleague yield? I have some information I think that might be useful. It was given the other day before you arrived. The best we can obtain on the voting fraud investigations in Alabama during the term of the present administration is as follows: A 1981 case in Randolph County involved the indictment of 11 people, 1 of whom was black. Three people, all white, were convicted, including the incumbent sheriff.

In Bullock County, in 1983, a black city councilman was indicted and pled guilty to a voting rights violation. In Marshall County, in 1984, one person, white, was indicted and convicted of charges similar to the *Perry County* case.

To keep it complete, in DeKalb County, which is principally white, the Republican Party has asked for a voting fraud investigation and thus far there has been none.

Senator HEFLIN. Well, what you are stating, Senator Denton, involves primarily convictions. I was speaking about investigations that have been made.

Mr. KEENEY. Senator Heflin, maybe I could be helpful to you with respect to nationwide policy. As I indicated earlier, I testified before the Edwards committee on this subject and we were asked for statistics on prosecutions, convictions by race, and we told them we did not have them but then we went ahead and got the figures. And in the testimony that I gave before the Edwards committee, I laid out the figures, how many blacks, how many whites, how many Republicans, how many Democrats, how many in the South, how many in the North, and so forth. I would be glad to make that available to you, Senator Heflin.

Senator HEFLIN. Well, I happen to have a copy of this and your testimony I believe is that investigations are presently in progress in Pike, Green, Bullock, Lowndes, whereas in Perry local black political figures have brought specific information to our attention that identified subjects of criminal actionable conduct.

Now, in order to properly put it in perspective, what is the procedure when you start one and the relationship of the U.S. attorney and the Department of Justice? You say you receive complaints.

These could have been received by the U.S. attorney or could be received in Washington.

Mr. KEENEY. Yes, sir.

Senator HEFLIN. What is the procedure that is followed to investigate prior to determining whether or not criminal action should be brought and indictment sought?

Mr. KEENEY. The U.S. attorneys have the authority to conduct a preliminary inquiry which largely consists of interviews of the complainants. Then if they want to conduct a full-scale investigation they have to get the approval of the Criminal Division, our Public Integrity Section. Then they go on with the investigation and if they reach a point where they are going to recommend an indictment, the Criminal Division, Public Integrity Section has to pass on the indictment.

We keep a much tighter control over election fraud cases than we do other type cases, Senator Heflin, for obvious reasons.

Senator HEFLIN. In this case, as you reviewed it, in the event that Mr. Sessions had recommended no prosecution, would the Department of Justice nevertheless have sought an indictment?

Mr. KEENEY. I do not know. Certainly, we would have considered it, whether or not we would, I do not know because we give deference to U.S. attorneys because they are on the scene, they know the witnesses, they know the juries in their district and we give a great deal of deference. So although we might consider it, I could not say that we would necessarily have overruled him and taken over the case, even though the strikeover allegations were significant and in my judgment pretty good evidence.

Senator HEFLIN. Well, he cannot institute action for an indictment without the approval of the Department of Justice?

Mr. KEENEY. That is right.

Senator HEFLIN. In other words, if he desired on his own to do something, under the procedures that you have outline he could not do it unless the Department of Justice put the stamp of approval on it?

Mr. KEENEY. That is right, Senator.

Senator HEFLIN. I may have something else and, since you are going to other staff members, I may want to ask him later on.

Senator DENTON. All right.

Senator DeConcini.

Senator DeCONCINI. I have no questions.

Senator DENTON. All right. Mr. Keeney, just one final question. In your overview of this *Perry County* case and in your overview of civil rights prosecutions, the entire field in Alabama, are you aware of any improper actions on behalf of Mr. Sessions in this case or any other?

Mr. KEENEY. May I just correct. I have nothing to do with civil rights prosecutions. My colleagues do. We are broken down in the Department of Justice in that fashion. In answer to your question, there is no question about my dealings with Mr. Sessions. They have been first rate. He is a good lawyer and every dealing I have had with him has been fine. I know nothing derogatory about Mr. Sessions except obviously I read the papers in the last few days.

Senator DENTON. Mr. Keeney, we have had a request by those opposing the nomination, which I will honor. It seems that Mr. Lieb-

man will have to leave prematurely, considering the pace of this hearing, so if I may I will excuse you and ask the others to remain while we get Professor Liebman's testimony because he has a 12 o'clock plane to catch and there will only be 5 minutes of testimony.

Thank you very much.

Mr. KEENEY. Thank you very much, Mr. Chairman.

Senator DENTON. Dr. Liebman, would you come forward?

Would you raise your right hand. Do you solemnly swear that the testimony you will give today before this hearing is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. LIEBMAN. I do, Mr. Chairman.

Senator DENTON. Please be seated.

TESTIMONY OF JAMES S. LIEBMAN, ASSOCIATE PROFESSOR OF LAW, COLUMBIA UNIVERSITY SCHOOL OF LAW

Senator DENTON. You are assistant professor of law at Columbia University School of Law?

Mr. LIEBMAN. Associate professor.

Senator DENTON. Associate professor. And I understand you have a statement you wish to make?

Mr. LIEBMAN. Yes, sir.

Senator DENTON. Please proceed.

Mr. LIEBMAN. Thank you, Mr. Chairman. First, I would just like to thank you for getting me on early. I have 120 students who are waiting to hear about the hearsay rule for the first time today and I do not want to disappoint them. They will all be appreciative, too, I am sure.

My name is James Liebman, and prior to coming to the law school in January of this year I was a staff attorney for the NAACP Legal Defense Fund for 6 years. In that role, I was counsel to one of the three defendants in the *Perry County* case that has been the subject of some discussion this morning, and that is Spencer Hogue, Jr.

I have prepared a written statement and that statement addresses primarily the selective prosecution issue which has been the subject also of some discussion here and, without going into that or discussing it here, I would simply ask, Mr. Chairman, that a copy of that statement which has previously been submitted to the committee be made a part of the record.

Senator DENTON. Without objection, it shall be.

Mr. LIEBMAN. I would also ask, if I could, that a copy of the statement of my former associate at the Legal Defense Fund, Lani Guinier, with an accompanying affidavit, be made part of the record. She could not be here today.

Senator DENTON. Without objection, that will be entered in the record.

Mr. LIEBMAN. Thank you, Mr. Chairman.

[The statement of Ms. Guinier follows:]

TESTIMONY OF
LANI GUINIER, ESQUIRE
NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

My name is Lani Guinier. I am Assistant Counsel, NAACP Legal Defense and Educational Fund (LDF). LDF is one of the organizations within the Leadership Conference on Civil Rights. I litigate almost exclusively in the voting rights area. I had substantial responsibility for litigating two of the most significant statewide reapportionment cases interpreting Section 2 of the Voting Rights Act, as amended in 1982: Major v. Treen, 574 F. Supp. 325 (E.D. La. 1983) (three judge court) (the "Donald Duck" Congressional gerrymander) and Gingles v. Edmisten, 590 F. Supp. 345 (E.D. N.C. 1984), probable jurisdiction noted, April 29, 1985. I was involved with the Leadership Conference in the successful effort to extend and amend the Voting Rights Act in 1982. This legislation reaffirmed the commitment of Congress to full and meaningful political participation by all Americans. I am co-author, with Drew S. Days, III, of a chapter on enforcement of Section 5 of the Voting Rights Act in the book, Minority Vote Dilution (Howard University Press, 1984). From 1977-1981, I was Special Assistant to Mr. Days when he was Assistant Attorney General for Civil Rights, United States Department of Justice. I submit this testimony on behalf of the Leadership Conference on Civil Rights and the Legal Defense Fund in opposition to the nomination of Jefferson B. Sessions, III, to the United States District Court in the Southern District of Alabama.

I was one of the defense counsel representing Spencer Hogue, Jr., in the federal prosecution, United States v. Albert Turner, Spencer Hogue, Jr. and Evelyn Turner, Cr. No. 85-00014 (S.D. Ala.). The defendants, three voting rights activists from Perry County, Alabama, were prosecuted on charges of conspiracy, mail fraud, and voting more than once by Mr. Sessions as the United States Attorney with two assistants. The 29 count indictment was based, in large part, on the theory of the U.S. Attorney Sessions that it was illegal for the defendants, in assisting elderly and illiterate

voters to vote by absentee ballot, physically to mark or to change, with the voter's permission and at their request, the "x's" next to the names of candidates listed on the absentee ballot. After a three week trial, a jury of seven blacks and five whites acquitted all defendants of all charges, having deliberated for less than four hours.

The defendants were active in the Perry County Civic League, an organization they formed in 1962 to get blacks the right to vote. In 1962, there were less than 200 blacks in Perry County registered to vote. Mayor Andrew Young testified as a defense witness that one of the defendants led the mule train at Dr. Martin Luther King's funeral, and was chiefly responsible for the idea of the march from Selma to Montgomery in 1965 that led to passage of the 1965 Voting Rights Act. Dr. King, who marched with the defendants and others from Perry County in 1965, wrote at the time how impressed he was with the people of Perry County and with their determination to press for the right to vote. Dr. King was particularly struck by the fact that on one day alone almost one half the adult black population of the City of Marion within Perry County was arrested while engaged in a nonviolent protest of the denial of their franchise.¹⁷ As Dr. King predicted in 1965, the people of Perry County, under the banner of the Perry County Civic League, continued even after passage of the 1965 Voting Rights Act to organize blacks in the county to register, vote and run for elected office.

Two of the defendants, Albert Turner and Spencer Hogue, Jr., were officers of the Civic League. In that connection, and in conjunction with other community leaders, they played an important role in the lives of many blacks in the county. Perry County is a rural, poor county and many of its residents are illiterate or barely literate. In the early 60's the defendants helped teach these residents to sign their names in order to attempt to pass the literacy test then in effect. Even today, Mr. Turner and Mr. Hogue minister daily to the needs of elderly and home bound residents. They deliver food, bring medicine, and

¹⁷ "The Right To Vote - the No. 1 Civil Right," The N. Y. Times, Sunday Magazine, March 14, 1965.

carry people to the hospital. They are trusted and depended upon.

Particularly with regard to the exercise of the franchise, they are instrumental in insuring that all eligible voters who wish to vote can. As Steve Suitts, former executive director of the Southern Regional Council, attests in his affidavit accompanying my testimony, "both history and current circumstances make it necessary for private black citizens to assist the black elderly in voting [V]oting assistance ... at the ballot box and with absentee ballots is key in such places." Not just the elderly, but those who are illiterate, who work out of town and who cannot get to the polls on election day (which is not surprising since there is no public transportation and the polling places are not in walking distance) need assistance in voting and often must vote by absentee ballot in order to vote at all.

Many of these people solicit the assistance of community leaders like Mr. Turner and Mr. Hogue. When called as witnesses by the U.S. Attorney, these voters proclaimed loudly that they trusted Mr. Hogue and Mr. Turner, that they asked them to help them vote and that they couldn't have voted without this assistance.

Mr. and Mrs. Turner and Mr. Hogue all cooperated with Mr. Sessions' investigation, voluntarily testifying before the grand jury. In their grand jury testimony, which the U.S. Attorney introduced at trial, Mr. Turner and Mr. Hogue admitted marking the ballots but said they did so only with the voter's permission and in their presence. The testimony at trial and the Government's evidence confirmed the defendants' explanation that the ballots were only marked with permission. The voters, many of whom were uneducated, even illiterate, had tried to guess the candidates supported by defendants. They trusted the defendants, considered them knowledgeable, and relied on their political judgment. When the defendants arrived to pick up the ballot, the voter asked them to check the ballot to see if it was "right" or to fill out the ballot the way "they" (Meaning the Perry County Civic League) were voting. If the voter had guessed wrong, the defendant changed the ballot only after checking whether the voter wanted to support their slate.

Based on the way this case was investigated and prosecuted by Mr. Sessions and two assistants, serious questions arise about the judicial temperament, fitness and competence of Jeff Sessions. Those questions deserve close scrutiny in relation to the following issues in the case:

1. Whether Mr. Sessions bothered to determine what the law was prior to, during or even after the case was presented to the jury. Mr. Sessions persisted in the view that filling out a ballot for someone else is illegal despite § 208 of the Voting Rights Act which makes assistance in voting a right, and despite the ruling of both the magistrate and the judge that the United States Constitution and the Voting Rights Act protect voting assistance.
2. Mr. Sessions failed to investigate similar charges against whites. Voter assistance in filling out absentee ballots is widespread in Perry County and throughout the black belt. The actions Mr. Sessions claimed were illegal when committed by defendants were in fact both legal and pervasive. Yet it was only when civil rights activists assisted voters that their activity was criminalized. The targeting of the investigation only against black civil rights workers showed insensitivity to the role they were playing and has had a chilling effect on other blacks' willingness to vote again. This was not a case of vote buying or official malfeasance. This was simply not a case in which the federal government had any legitimate criminal supervisory responsibility.
3. The FBI was not properly supervised in its investigation of the case. Witnesses were intimidated, confused and disoriented by the manner and frequency of questioning. Witnesses were not asked what happened; they were told what happened. The first statement made to voters by FBI agents paying unannounced visits was, "I am the FBI. I have your ballot. Your ballot has been tampered with." Some

of the witnesses were interviewed by phone about ballots they could not see. Others were questioned about ballots they were shown but could not read. Still others were asked about an election they could not remember. Yet, without properly re-interviewing these witnesses, Mr. Sessions nevertheless presented them as part of the government's case, only to be "surprised" by the unreliability of their testimony.

4. There are standards governing the federal interest in prosecuting election offenses. There was no federal interest in this case which only involved candidates running in local races. There were no complaining witnesses other than defendants' political opponents who were the candidates in the local races. Moreover, as to the government witnesses who did testify the judge admonished Mr. Sessions to stop putting on witnesses simply to impeach them with statements they allegedly gave the FBI. The awful legacy of this ill-conceived prosecution is its frightening effect primarily on elderly black voters, many of whom left the witness stand saying, "This is just too much. I won't ever vote again."

It is not that Mr. Sessions lost this case that is the issue. The issue is that he never had a case in the first place from the indictment to the verdict.

These prosecutions represent an apocryphal attempt affirmatively to use the resources of the federal government to stop blacks from voting. The federal official who prosecutes black civil rights workers for attempting to assist elderly and illiterate blacks to vote by absentee ballot should be excoriated not rewarded with life tenure.

I have here the testimony of James Liebman, one of the trial attorneys who is now a law professor at Columbia University. Mr. Liebman has written a comprehensive statement on Mr. Sessions' conduct of these prosecutions which I urge the Committee to consider. I also request that the Liebman state-

ment be made a part of the record of this hearing. For the reasons set forth in my statement and that of Professor Liebman's as well as the affidavits of Deval Patrick and Morton Stavis, I urge this Committee to reject this nomination.

County of Fulton
State of Georgia

Affidavit of Steve Suitts

I, Steve Suitts, being duly sworn, do hereby depose and state: .

1. My name is Steve Suitts and I am the executive director of the Southern Regional Council of Atlanta;

2. For more than fifteen years I have been involved in research, analysis, and studies concerning voting rights in the South. During the early 1970's I was staff member and director of the Selma Inter-Religious Project which provided non-partisan legal and technical assistance to community leaders in southwest Alabama and southeast Mississippi. For five years in the 1970's, I served as executive director of the Civil Liberties Union of Alabama and was responsible for the general supervision of reports and litigation which often focused on voting rights. Since 1977 I have served as the executive director of the Southern Regional Council, a non-profit, free-standing organization which has carried out research, analysis, and technical assistance on a range of important regional issues, including voting rights, for 41 years.

3. During my tenure with these three organizations, I have been involved consistently in the study of barriers to voter participation by black citizens and of effective means by which racial discrimination can be removed from voting in the South. I have provided general supervision for projects carrying out primary research on voting trends and barriers to full political participation. I have published more than twenty monographs and articles analyzing voting trends, barriers to voting participation and remedies for racial discrimination in voting. I have provided expert testimony or analysis for more than fifty administrative and court proceedings. Also, I have been requested to testify on several occasions as an expert on voting rights by the Committees on the Judiciary of the U.S. Senate and the U.S. House of Representatives.

4. Because of my work and research, I have become very familiar with barriers to political participation in the rural areas of the South and especially the areas known as "the Black Belt." I'm also familiar generally with developments, trends, and conditions in Perry County, Alabama.

5. Both history and current circumstances in the Black Belt of Alabama and Perry County make it necessary for private black citizens to assist the black elderly in voting. In order to assure that political participation is not limited by race or age, voting assistance for citizens by private citizens at the ballot box and with absentee ballots is key in such places. In the Black Belt and Perry County, the level of education for the adult population, and especially the elderly, is very low. By the 1980 census, only forty-three percent of the total population over the age of twenty-five in Perry County had a high school diploma, although fifty-seven percent of all Alabamians of that age had high school diplomas. For the elderly and black, the level of education is much lower. For example, the number of persons twenty-five years or older with four years of high school education in 1950 in Perry County -- those who would be fifty-five years or older today -- was only 110 of 5,780 blacks.

6. The need for voting assistance by private black citizens to the black elderly is also supported by the history of racial exclusion, tension, and violence in Perry County. The right of a black citizen to register to vote in Perry County was not observed generally before 1965. Records of the Southern Regional Council suggest that fewer than 100 black voters were registered in Perry County at that time when more than 6,000 were eligible to register. Blacks who protested this denial of the right to vote in 1965 were met with hostility, arrest, and violence. In February 1965, Jimmie Lee Jackson, a black activist working to increase voting rights of blacks in Perry County, was murdered. Afterwards, when racial violence diminished, white resistance in the county continued. In this majority black populated county, government services and institutions, such as schools, were not desegregated for several years afterwards. The

effects of this history are real and direct upon many elderly blacks. For example, a black woman at the age of 67 today in Perry County has spent almost three-fourths of her life in segregation where blacks could not vote, could not attend white schools, could not use public toilets, and had to have a white person vouch for her in order to obtain loans or government services. Under the circumstances it is important that the black elderly in places such as Perry County have private citizens whom they trust to assist in exercising the right to vote.

7. Limited by a history of racial exclusion and violence and the low levels of education, often the result of government enforced segregated education, the elderly black population in Perry County constitutes a substantial number. In 1980, fifteen percent of the total population was sixty-five years or over although throughout Alabama only eleven percent of the total population was that old.

8. The need for private assistance in voting is not limited today in Perry County to only the black elderly. Due to employment patterns, thirty-one percent of the working population of Perry County commuted to work outside the county in 1980. Since people work outside the county of their residence, absentee balloting is an important means by which the right to vote can be exercised in Perry County. These workers, as well as the elderly, may often require assistance because of their general low level of education. Also in light of the history of racial tension in the county, these blacks may turn to private black citizens for assistance in voting.

9. The right to vote in Perry County and other counties of the South's Black Belt remains impeded by practical barriers. The number of days, the location, and the times at which a citizen can register to vote in Perry County are limited severely in comparison to more urban and suburban locations. Often, citizens rely upon other private citizens to assist them in registering to vote in places like Perry County. Because of low levels of education, high rate of elderly population, and a large

percentage of commuting workers, many citizens in Perry County need assistance with voting. With a history of racial tension and exclusion, black voters often turn to other private black citizens for assistance in voting at the ballot box and with absentee ballots. Black citizens who assist black voters in this way provide an important public service and perform a useful civic duty.

10. Over the last several years, elderly black voters in the Black Belt have come to depend over time upon black citizens, often civil rights advocates, to perform this assistance. From my own research, study, and personal observation I have found that the relationship between the civil rights advocates and elderly blacks is based upon trust, oral communications, and assumptions. The advocate must often interpret the oral instructions of the voter in light of their past relationship and understanding. For instance, I once observed an elderly black voter in the Black Belt say, "I want it done like last time," in stating how she wished to vote. Yet, few people were on the ballot this time who were on the ballot at the last election. Because I was present, the black civil rights advocate asked the woman a question he later told me he already had answered for himself. "You want to vote for the blacks running?" The elderly woman replied rather heatedly, ". . . you know that's it. Don't you make fun of an old woman like me." This exchange merely illustrates the fact that in the Black Belt effective voter assistance by civil rights advocates often requires them to make a good faith interpretation of oral instructions, which may not be plain in meaning to others who do not know the assumptions established over time in their relationship. If civil rights

advocates were to deal differently with many elderly and poorly educated voters; it is my opinion that they would discourage many of these people from exercising their right to vote.

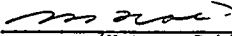
The foregoing is true and accurate to the best of my knowledge, information, and belief.

Executed on this 5th day of April 1985, in Atlanta, Georgia.



Steve Suits

Sworn and subscribed before me on this 5th day of April 1985



(Notary Public)

Notary Public, Georgia, State at Large
My Commission Expires May 20, 1988

Mr. LIEBMAN. What I wanted to talk about briefly here is a matter that I refer to only at the very end of my written statement, and that goes to some matters that go beyond the selective prosecution issue but are related to it. That involves a number of statements that Mr. Sessions made during his testimony here as well as in the Federal district court in Mobile that I would like to discuss because I believe that the facts are different than those that Mr. Sessions put forth in those contexts. I will list a number of those. If I do not have time to reach all of them, I will request leave to submit a supplemental written statement on any I cannot get to.

First, Mr. Sessions represented to the court in Mobile and I believe to this committee as well that before indicting the three defendants in the *Perry County* case he reached two conclusions. First, he says that he concluded that every absentee ballot which had an allegedly unconsented change on it reflected a change from a candidate that was opposed by the three defendants to a candidate that the three defendants supported.

Second, he said he reached the conclusion that every one of those ballots with unconsented alterations on them was mailed or handled by one of the three defendants.

The facts on that, Mr. Chairman, are otherwise. I would like to take as an example—there are others listed in my statement—a ballot of a voter who I will only identify by initials N.S. because I do not want to breach the secrecy of that ballot. FBI Agent Gary Clem testified to the grand jury in Mobile—and either Mr. Sessions or one of his assistants was there at the time—that the absentee ballot of N.S. was “tampered with,” that is, that someone had altered the vote on that and had done so without the permission of that voter who had so informed Agent Clem.

Now, if we look at that ballot, we can ask the question, “how was that ballot altered?” It was altered from a candidate that the three defendants supported to a candidate that the three defendants opposed.

Now, the second conclusion that Mr. Sessions testified to concerned who mailed that ballot. Did the defendants touch that altered, apparently fraudulently altered ballot? Well, if you look at the ballot, it is notarized by and it was mailed not by these three defendants, but by one Andrew Hayden who is the mayor of Uniontown, AL, and enjoys the support of the white voter groups in the area. And as you will see in my statement, there are scores of ballots that Mayor Flayden either notarized, mailed, signed, or otherwise handled which have very suspicious markings on them such as those on this ballot of N.S.

And unlike the candidates that the three defendants supported, the candidates that Mayor Hayden supported won this election perhaps because of those ballots that Mayor Hayden touched with these very suspicious markings on them. Yet, Mr. Sessions never investigated and, of course, never indicted Mayor Hayden. So those two conclusions that Mr. Sessions reached I think are inaccurate to the extent that there were changes from candidates supported by the three defendants to candidates opposed by them that were not consented to that were fraudulent, and those ballots were handled

by people other than the three defendants who were not indicted or investigated further than FBI Agent Clem testified about.

Second, in explaining to the committee why he brought this indictment, I fear that Mr. Sessions may have given the impression that every ballot relied upon in the indictment both had an alteration on it and that that alteration was unconsented to. Again, any such impression would be inaccurate. A significant number of ballots that were relied upon at trial had no alteration whatsoever on them. For example, Robert White's. In fact, there was no claim by anybody that there was an alteration on that ballot.

Moreover, the Government took to the jury a large number of additional ballots—and I will give two examples, Reaner Green and Murphy Reed—on which there was unequivocal, uncontradicted testimony that any change made on those ballots was consented to—was asked for or made by—the voter.

Well, the question came up at trial, what exactly was Mr. Sessions' legal theory that he was proceeding with that would allow him to go forward with ballots that did not have unconsented alterations? And he explained that theory through his assistant at trial.

What happened was that I sought to clarify what the Government's theory was in the transcript at pages 17 to 18, and I asked, "What about a situation where a wife says to her husband or a husband to his wife, 'I don't know how to vote in this case, you tell me how to vote and I will vote that way.'" And I said "the U.S. Attorney's office has indicated," as it had on the phone, "that that type of situation would fall within their idea of illegality under the indictment."

Mr. Sessions' assistant then stood up and answered to the court, to my question, "is that within their theory of voter fraud," by saying yes, "that is one of our theories." In other words, when, for example, illiterate absentee voter Reaner Green told Mr. Hogue—and this is a quote from her testimony—"I want to vote the way y'all are voting," and then he filled out her ballot that way because she was illiterate, Mr. Sessions expressly considered that to be an illegality and proceeded against the defendants on that theory.

I think I need not remind the committee that that very type of voter assistance of illiterate voters is not illegal. In fact, that activity was protected both by the 1982 amendments to the Voting Rights Act and in fact has been held for about 20 years to be constitutionally protected activity.

Third, Mr. Sessions testified here that he brought these charges in part because the number of absentee ballots voted in the September 1984 primary election was "extraordinarily high." In fact, as the Perry County absentee voter clerk testified at trial, the number of absentee ballots voted in that September 1984 primary was actually lower than in any other general election in that county for the past five elections. It was lower by a factor of several hundred than the next previous primary election. So there was not an extraordinarily high number of ballots. In fact, there was a low number of ballots.

Fourth, Mr. Sessions testified that he brought these charges also in part because he wanted to take the prosecution or the case out of the hands of a potentially biased and nonobjective local DA and take it over for himself.