

Well, the fact is, Mr. Chairman, that District Attorney Roy Johnson repeatedly publicly stated—and Mr. Sessions' assistant essentially admitted at the selective prosecution hearing in court—that this investigation and this case was conducted as a "joint effort" between District Attorney Johnson and Mr. Sessions' office.

For example, every witness who was interviewed by the FBI was also simultaneously interviewed by someone from the local DA's office. Employees in the local DA's office were the people who rode in the bus with all of the witnesses from Selma to Mobile, to the grand jury, and in fact the local DA's office hired the bus.

When I went to interview witnesses, an agent of the local DA's office in the DA's official car followed me around and reported, as I was later informed by the FBI, on my actions to the FBI while I was conducting my investigation as an attorney in the case. And, finally, there were DA officials in the interview room at the courthouse all the time during trial helping the Government to prepare witnesses.

So, the fact is that Mr. Sessions' involvement in the case did not remove the potentially biasing and nonobjective influence of the district attorney but, rather, just added to the district attorney's resources by adding the FBI, the grand jury and——

Senator DENTON. Excuse me, Mr. Liebman. How much longer is your statement? I know your students are important, but these four gentlemen have things to do and we have many other witnesses who have traveled half the country to testify for 5 minutes and you are sort of retrying the Perry County thing and we are going to have witnesses refute what you are saying and countermand your own testimony, so we would appreciate it if you would sort of sum up quickly, please.

Mr. LIEBMAN. OK. Senator Denton, I will just stop right there with the conclusion simply that there are a number of statements that Mr. Sessions made in explaining why he brought this prosecution which I simply wanted to straighten out for the record, and there are a couple others which I will submit in writing.

Thank you very much.

[The prepared statement of Mr. Liebman follows:]

TESTIMONY OF
JAMES S. LIEBMAN

Assistant Professor of Law
Columbia University School of Law

My name is James S. Liebman. Since January 1986 I have been Assistant Professor of Law, Columbia University School of Law. From November 1979 to December 1985 I was Assistant Counsel, NAACP Legal Defense and Educational Fund, Inc. (LDF). In that capacity I was one of the attorneys who represented Spencer Hogue, Jr. Prior to my tenure at LDF, I was law clerk to the Honorable John Paul Stevens, Associate Justice, United States Supreme Court.

In January 1985, Jefferson Beauregard Sessions III, United States Attorney for the Southern District of Alabama, brought a voter-fraud indictment against three black civil rights leaders in Perry County, Alabama -- Spencer Hogue, Jr., Evelyn Turner and Albert Turner. As set out in the first two counts of the indictment itself, the actions which Mr. Sessions characterized as "fraud" grew out of the three accused citizens' longstanding efforts to enfranchise blacks in Perry County, including through the use of absentee ballots by the county's large population of elderly, bed-ridden, and often nearly illiterate black citizens.

As you know, Mr. Chairman, after the court itself had dismissed many of the counts in the indictment, a jury of black and white Alabama citizens acquitted the three defendants of all remaining charges. Nonetheless, the indictment of these three people was a serious and disruptive matter not only to the wrongly accused citizens, but also to the entire Perry County Community, and particularly the black members of that community, among whom the names Turner and Hogue were synonymous with the recent advent of their right -- and ability -- to vote.

Mr. Sessions' prosecution of the Turners and Mr. Hogue was more than simply ill-founded and disruptive. It was also unique in the annals of federal voter-fraud prosecutions: Justice Department documents reveal that Mr. Session's prosecution of the Turners and Hogue marked the first time a United States prosecu-

tor had ever applied a federal voter-fraud statute to an alleged absentee-ballot conspiracy that did not involve corrupt public officials, virtually the first time a federal prosecutor had done so in a situation in which the allegedly affected electoral contests all involved strictly local offices, the first time a federal prosecutor had done so when so few allegedly illegal votes (less than 30) were cast, and the first time the candidates supposedly benefitting from the fraud alleged by the Government had lost the election. [These facts are based on the Justice Department Voter Fraud Prosecution Manual, Exhibit Q to the Selective Prosecution Motion, and the Justice Department press releases, Exhibit R.] Indeed, for these reasons, Mr. Session's prosecution appears to violate the Justice Department's own guidelines for when federal prosecutors may bring this type of indictment,¹ and the manner in which Mr. Session's office conducted the investigation leading to the indictment clearly² violated the Department's guidelines in a number of respects.

Why, then, did Mr. Sessions pursue this ill-founded, unprecedented, and regulation-violating indictment? After investigating that perplexing question, defense counsel for the Turners and Hogue were compelled to file a 75-page Motion to Dismiss the Indictment as the Product of An Invidiously Selective Prosecution, supported by several hundred pages of exhibits. Copies of the entire file of documents relating to the Selective Prosecution Motion have been provided to the Committee, including numerous sworn affidavits of Perry County citizens. The Motion and supporting documents detail two things: first, the innocent -- indeed, constitutionally protected -- voter assistance activities on behalf of elderly black citizens which were the focus of Mr. Sessions' investigation; and, second and more

¹ [The various ways in which Turner/Hogue indictment violates Justice Department Guidelines are described in the original Selection Prosecution Motion at pp. 26-29, discussing the very low priority given fraud such as that alleged in the Turner/Hogue indictment by the Department's Federal Prosecution of Election Offenses Manual (Exhibit Q).]

² [The various ways in which the Turner/Hogue investigation violated Justice Department guidelines, set forth in its prosecution Manual (Exhibit Q) are set out in the original Selection Prosecution Motion at pp. 19-21.]

important here, a series of well-documented irregularities in absentee voting procedures committed by and on behalf of certain white and white-supported Perry County candidates, which -- while known to Mr. Sessions -- were never investigated by him, nor, of course, did they result in any indictments.

Selective Prosecution charges are, of course, not made lightly. Particularly in cases involving prosecutions by United States Attorneys, such charges are rare, both because of the integrity typically maintained by U.S. Attorneys and because of the high legal hurdles which must be cleared before the courts will even consider such charges. Thus, in order to secure judicial consideration of selective-prosecution charges, a defendant must produce credible evidence, not only that the prosecutor was selective -- that is, he prosecuted some defendants but not others similarly situated -- but also that the prosecutor was motivated by some intentionally invidious or discriminatory purpose in singling out the defendants for prosecution. Few defendants, as I said, even make such charges against federal prosecutors, and fewer still have such charges taken seriously by the courts.

In this respect, as well, Mr. Sessions' ill-fated prosecution of the Turners and Hogue verges on the unique. After considering the selective-prosecution papers filed by the defendants in this case, and conducting a day long hearing on the matter, the United States Magistrate for the Southern District of Alabama concluded that defendants had satisfied the first prong of their burden to get a hearing on selective prosecution, by producing credible evidence in this record that, in bringing the Turner/Hogue indictment, "the Government [-- Mr. Sessions' office --] was activated by constitutionally impermissible motives such as racial ... discrimination." Second, the Magistrate found that "[t]here is credible evidence adduced by the Defendants that a number of absentee ballots cast in Perry County in September, 1984, contained irregularities related to candidates marking, witnessing, attestation, and mailing; ... that the preparation of some of these ballots likely was connected with voter assistance

activity carried out by groups in Perry County which are led by whites; and ... that these ballot irregularities have not been investigated, nor the individuals apparently connected with the ballots prosecuted." [May 24, 1985, Recommendation, at 3; see also id. at 6, 8.]

Although the Magistrate, and the United States District Judge to whom the Magistrate reported, did not take the drastic step of dismissing the indictment, both judicial officers did take the extraordinary precaution of admonishing Mr. Sessions to keep his charges and proof at trial confined within the bounds of the law, and particularly the Constitution; and when he failed to do so, the District Judge dismissed more than half of the counts in the indictment in the middle of trial as lacking in any evidentiary support. Subsequently, of course, the jury acquitted the three defendants of all remaining charges.

I, of course, do not have the time here to describe all the evidence of voter fraud on behalf of white, and white supported, candidates which Mr. Sessions failed to investigate, while pursuing his ill-conceived indictment of Albert and Evelyn Turner and Spencer Hogue. A few examples will have to speak for the many others detailed in the Motion and supporting papers:

First, although Mr. Sessions repeatedly represented to the Court and to the public that his office investigated the circumstances of each and every absentee ballot voted in the September 1984 election which reflected a change from one candidate to another, and that he did not, as charged, confine his investigation to absentee-ballot changes from white or white-supported candidates to black candidates, the facts, pure and simply, are otherwise.

N S , for example, an elderly black resident of Uniontown, Alabama distinctly remembers voting for Setzer Howard, a political ally of the Turners and Hogue, for the position of County Commissioner. In all other respects, Ms. S voted for the slate officially supported by the county's white voter groups. Ms. S then turned over her ballot to Uniontown Mayor Andrew Hayden, for mailing. Mr. Hayden has long been politically

opposed to the Turners and Hogue and supported by the white voter groups in the area. When Ms. S 's ballot was opened on election day, the "x" for Setzer Howard had been "whited out" -- Ms. S has never had "white out" or "liquid paper" in the rural home where she spends most of her time because of ill-health -- and a new "x", in a different color ink, had been placed beside Reese Billingslea's name. Billingslea, I should add was the candidate the white groups successfully supported against Setzer Howard.

When questioned by a defense investigator, Ms. S adamantly insisted that she voted for Howard and never authorized anyone to change that vote to Billingslea. Ms. S also indicated that she previously informed the FBI of these facts, but that Mr. Sessions did not follow up on the on-its-face highly suspicious, and (as it turns out) fraudulent-in-fact change on her ballot. Nor did Mr. Sessions require Ms. S to testify before the grand jury about this change from a black-supported to a white-supported candidate. [See Exhibits TT, WW.]

Similarly, the ballot of E. M. , a white Perry County citizen, reveals a vote for Setzer Howard which was erased and replaced with a new, different-colored "x" for Reese Billingslea -- once again conforming the ballot to the straight slate of white and white-supported candidates officially endorsed by the white voter groups in the area. When asked about her vote by a defense investigator, Ms. M , like Ms. S , said she'd voted for Howard, not Billingslea, and that she had neither made nor consented to any changes in the ballot. More to the point here, Ms. M ' obviously altered ballot was apparently not investigated by Mr. Session's office.

Third, although the absentee ballots of many patrons of a senior citizens center in Uniontown, Alabama were voted and signed in the same color felt-tip pen with what appears on its face -- and expert handwriting analysis confirmed -- was the same handwriting, that of Andrew Hayden, who also witnessed each of those ballots, and although all those ballots were identically voted for the same white-supported slate and simultaneously

mailed to the Perry County Clerk, Mary Auburtin, from Montgomery, Alabama, scores of miles away, none of the patrons of the center were ever questioned by Mr. Sessions' investigators. When some of the alleged voters were questioned by defense investigators, their answers clearly demonstrated that some had no idea for whom they had voted, and none had any recollection of signing the form necessary to apply to vote absentee. [Exhibit TT, pp. 2-4; esp. M. E.].

Even more curious, at least three of the ballots witnessed by Mr. Hayden and his employees and voted for the white slate showed on their faces that they were "witnessed" two days after they were supposedly voted and mailed in by the voters, and, indeed, a day after they were marked "received" by the office of county clerk, Mary Auburtin -- thus, notwithstanding the requirement that the ballot be witnessed simultaneously with the voter's marking and signing the ballot. [Exhibits OO-RR.] Not only did Ms. Auburtin's office officially count these facially fraudulent votes for the white slate, but Mr. Sessions thereafter failed to inquire of any of the 3 alleged voters about how Mr. Hayden and his employees came to witness the ballots days after they were supposedly voted.

Fifth, Mr. Session's office, although repeatedly informed of the matter, made no investigative inquiry whatsoever into the fact that Ms. Auburtin, in direct violation of her own procedures, state law, and, apparently, federal voter-fraud provisions, took it upon herself to mail out campaign literature favoring white-supported candidate Reese Billingslea simultaneously with, and sometimes in the same official envelopes as, the absentee ballots themselves. [Exhibit U.] As a result, large numbers of black absentee voters, many of whom were voting for the first time and have trouble reading, immediately filled out their ballots for Billingslea, notwithstanding their support for the alternative slate of candidates which included Billingslea's opponent Setzer Howard. Indeed, almost all the ballot changes for which the three defendants were indicted turned out at trial to be the voter's own or consented-to changes

from Billingslea to Howard prompted by the voter's discovery that they were not obliged to vote for Billingslea notwithstanding that his literature accompanied their ballots.

Sixth, Ms. Auburtin's office received and counted the absentee votes of white former residents of the County (including, for example, the long time superintendent of the local school system), whom it was well known -- as was apparent, from the addresses on the ballots themselves -- were no longer residents of the county and hadn't been for years. [6/3/85 Affidavit of Robert Turner, with attachments]. Again, these ballots were facially suspect, given the voter's oath of residency in the County, yet, again, Mr. Sessions made no attempt at all to investigate these patent voter irregularities favoring the white slate.

I could go on, Mr. Chairman, but I fear I've taken too much of the Committee's time already. What I hope has become clear is that even while pursuing a baseless indictment against black civil right workers who assisted elderly black voters to exercise their hard-won right to vote in favor of black candidates, Mr. Sessions had before him, but failed to investigate, substantial evidence of white voter fraud -- fraud which affected the same absentee balloting process with which, Mr. Sessions was so concerned when it allegedly favored losing black candidates, but which he utterly ignored when it actually propelled white and white-supported candidates into office.

Mr. Chairman, this pattern of racially selective enforcement of the laws of this land by Mr. Sessions was distressing enough, once it came to light. What was even more distressing about the conduct of this case, however, is the fact that Mr. Sessions -- an officer of the United States Government as well as of the courts, and now a nominee for lifetime tenure as a federal judge -- in my opinion, misrepresented the facts of this investigation in documents filed by him in court. Thus, notwithstanding his failure to investigate, for example, the highly visible pattern-voting and apparently fraudulent witnessing of pro-white ballots by Uniontown Mayor Andrew Hayden, the counting of obviously improper out-of-county and improperly witnessed pro-white ballots

by court clerk Auburtin, the erasure and change of E M ' vote from Setzer Howard to white-backed Reese Billingslea, and the even more obvious and suspicious "white out" of N S 's vote for Howard and substitution for it of a vote for Billingslea, Mr. Sessions made the following unqualified and incorrect representations to the court: First, Mr. Sessions represented that "every ballot" -- here, Mr. Sessions himself has underscored the word every -- "every ballot, whether it had been mailed by the defendants or not, was examined to see if it had been altered in any way." Mr. Sessions represented to the Court, second, that "[a]ll" those voters whose ballots had suspicious markings on them "were interviewed"; and, third, and most distressing, Mr. Sessions represented to the court that all "votes that had been altered without the permission of the voters involved a change to a Black candidate supported by the defendants...." [Government's June 14, 1985 Response to Objection to Sequestration and Request for Protective Action].

It is one thing -- a very bad thing -- Mr. Chairman, to stretch the laws of this country to indict civil rights workers for nothing more nor less than assisting elderly blacks to exercise their franchise. There, however, such behavior is, at least, checked -- as it was in this case -- by the good sense of American jurors, who ultimately pass on the validity of such indictments. It is quite another thing, however, to exercise that prosecutive power selectively, apparently on the basis of race, and then, when called to account for it to misstate the facts to a court. In matters such as this -- as in all matters affecting the integrity of our judicial system and its judges -- the system simply cannot function if the people involved do not hold themselves to a higher standard of conduct than Mr. Sessions has evidenced here.

Senator DENTON. Thank you, Mr. Liebman. Please remain for questions.

For your information, Senator Kennedy informed me yesterday that he has no problem with the fact that Mr. Sessions brought that case to trial and he has reviewed it extensively. That is just a piece of information.

Regarding the absentee votes, in 1982 in Perry County—these are rough figures—out of something like 5,000 or 6,000 votes cast, there were 1,000 absentee votes. In Jefferson County, the largest county in Alabama, which includes the city of Birmingham, in the 1982 election, to give you some comparability in the primary, there were about 250,000 votes cast, with 250 absentee ballots, 1 in 1,000 as compared to 1 in 6.

Mr. Siegelman, who was going to run against me and has since retired, was secretary of state for the State of Alabama. His main thing is trying to clean up voter fraud. He is a Democrat in the State of Alabama.

A State senator, one of the most prominent Republicans in the State legislature, his principal thing is to clean up voter fraud in Alabama. I am not saying it is black. I am not saying it is white. I am saying that both Democrats and Republicans realize there is voter fraud in Alabama and are making an effort bipartisanly to clean it up, and I dispute what you have in your prepared testimony.

Fact one, you said that the U.S. magistrate for the Southern District of Alabama concluded, in reference to the Turner-Hogue indictment, that "The government"—meaning Mr. Sessions' office—"was activated by constitutionally unpermissible motives such as racial discrimination."

I have the copy of the magistrate's ruling and nowhere in it does that kind of finding that you have cited appear. There is zero reference to anything like that, so I question the premises from which you are coming.

Mr. LIEBMAN. If I may respond, Mr. Chairman. You were correct that a thousand people did vote in that 1982 primary election by absentee ballot. Of course, of those, approximately one-third were white absentee voters and these are from the figures of the county clerk.

I would just point out that that number dropped from 1982 when, of course, no investigation was conducted, to just over 775 absentee ballots in 1984, so—

Senator DENTON. Compared to 250 out of 250,000.

Mr. LIEBMAN. All I am pointing out is that the number did drop, so there was not—

Senator DENTON. I realize that they dropped but the percentage is still ridiculously high and that is true with a liberal or a conservative.

Mr. LIEBMAN. Well, high or low, the fact is that many, a large number, of those voters are white absentee voters, and those people were not investigated. The percentage of absentee votes between white and black is approximately the same as the percentage of the people in the population of the county, that is there are about as high a percentage of white absentee ballots voted as there are white people living in that county.

There is a lot of testimony, included in a Lani Guinier's statement here, which indicates why a large number of blacks in that area have to vote absentee, which goes to the fact that a very high percentage of the blacks in that area are now very elderly. It is just a demographic fact. There is no public transportation; they live in rural areas; many of them work outside of the county and they have to vote absentee. There are demographic differences, that is, between Jefferson County and Perry County.

Now, getting to the——

Senator DENTON. You can come on again, but I just have to get to these other witnesses. You have used Mrs. Green as an example of someone who just wanted to vote like you all. Mrs. Green did not say that in her affidavit. Mrs. Green said that her vote was changed and that she was angry about it.

Mr. LIEBMAN. She said that under oath, Your Honor, at the trial. Those affidavits were taken by FBI agents and we have put in a lot of testimony that indicates that the FBI agent went up to the voter and said, "Ms. Green, your ballot has been tampered with," leading a scared witness to give cautious statements to the FBI.

Senator DENTON. OK. We are going to have a lot of witnesses who were there in Perry County with the FBI, with the voters, who are going to testify later. We do not need a man from Columbia University to testify about hearsay. You said you are going to tell your people about hearsay. Go ahead and tell them, because that is what you are using right now.

Mr. LIEBMAN. If I could just respond very briefly, Mr. Chairman. All of what I am basing this on are the statements of——

Senator DENTON. Would you respond to the accusation about the magistrate and your prepared thing?

Mr. LIEBMAN. I was just getting to that when you asked me the next question, Mr. Chairman. I would just turn your attention to page 2 of that recommendation which you have stated that you have before you. It states that the second element of a selective prosecution case requires a showing "that the Government was activated by constitutionally impermissible motive such as racial or religious discrimination." You have got to prove that as well as selectivity in order to get a hearing on selective prosecution.

The magistrate then said at pages 6 and 7 that he would give a hearing to the defendants who brought this case because he found that all of the requirements for selective prosecution charge were met, including this one that he lists as invidiousness—"a showing that the government was activated by constitutionally impermissible motives such as racial or religious discrimination." We had to meet that burden in order for him to find that there was a right to a hearing and he found on pages 6 and 7 that there was a right to a hearing if the government was going to proceed with certain kinds of alleged fraud, for example having to do with notarization, having to do with voter——

Senator DENTON. Mr. Liebman, you are not addressing the question. We said that in your prepared testimony you were quoted as alleging that the U.S. magistrate concluded things that he did not conclude, and what you are addressing now has nothing to do with what you said he concluded, that the Government was activated by

constitutionally impermissible motives such as racial discrimination.

Mr. LIEBMAN. That is a quotation, Mr. Chairman, from page 2 of the recommendations. Those are not my words. Those are of the magistrate.

Senator DENTON. But page 2 refers to burden of proof, not a finding.

Mr. LIEBMAN. And then at pages 6 and 7 he said we met that burden of proof; we had to prove that and he found that we did prove it. If you put those two together, Mr. Chairman, what that means is that we established the invidiousness requirement, that is that the Government "was activated by constitutional impermissible motives such as racial or religious"—

Senator DENTON. I am advised that you represented a burden of proof as a finding and if you want to come back after the others testify, unless Senator Heflin wants to question you, you are welcome, but I cannot hold up everybody else for further debate.

Senator.

Senator HEFLIN. I have one question. The relevancy of your testimony is based on the fact that you were one of the trial attorneys and you were an attorney representing Mr. Spencer Hogue, is that correct?

Mr. LIEBMAN. Yes; Senator Heflin, I want to make that clear.

Senator HEFLIN. If you can find time to come back, I think it would be desirable.

Mr. LIEBMAN. OK. Thank you very much.

Senator DENTON. Thank you very much, Professor Liebman.

Mr. Keeney is no longer here to introduce you all in order, but does someone wish to assume that, introduce the others?

Mr. KOWALSKI. Mr. Chairman, I am Barry Kowalski, from the Department of Justice, Civil Rights Division. I am the Deputy Chief of the Criminal Section.

With us also today are Mr. Albert Glenn, who is an attorney in the Criminal Section, and Mr. Daniel Bell, who is another Deputy Chief in the Criminal Section. Also here from the Civil Rights Division Voting Section is Mr. Hancock.

Senator DENTON. Does anyone have a statement to make?

Mr. HANCOCK. Senator Denton and Senator Heflin, I am Paul Hancock and I do not have a prepared statement but I would like to make a statement in light of the opening statement that you made, Senator Denton.

I want the committee to be aware of why I am here today. I have not volunteered to offer testimony either in favor of Jeff Sessions' nomination or in opposition to Mr. Sessions' nomination. My job responsibility in the Civil Rights Division is to enforce the Voting Rights Act of 1965.

I have been employed by the division for almost 16 years and for the past 10 years I have been enforcing the Voting Rights Act. We have a fairly significant amount of litigation in the southern district of Alabama and we also have nonlitigative assignments in the southern district in connection with the use of Federal observers and Federal examiners, so I have had a good bit of experience in the southern district of Alabama.

The cases that we have brought in the southern district of Alabama have been cases that in some instances have lingered for a long time, they have been tough ones to resolve. I know you all are aware of Mobile litigation that dragged on for a number of years. We also have been litigating similar cases against Marengo County, AL, in Dallas County, AL, that we initially filed in 1978 and do not have a final resolution yet.

So I will say that I have had a substantial amount of experience in litigating cases in the southern district of Alabama. However, I have emphasized to your staff that I have a limited knowledge of Mr. Sessions himself.

I had received a call from the staff of this committee earlier this month and I was asked to talk to the staff about Mr. Sessions' qualifications to be a Federal district court judge, and I refused to do so. I refused to do so in part in conformity with the longstanding tradition that attorneys in the Department of Justice do not get involved in these matters; and second, I told the staff that I thought that I had very little information that would be relevant to this committee's considerations.

On March 12 I received a call from an official of the Department of Justice notifying me that the staff of the committee wished to talk to me on an informal basis regarding the qualifications of Jeff Sessions to be U.S. attorney. I again emphasized that I thought that I had little to add, but that if the department wanted me to appear before the staff on that basis to share with them any information that I might have, I would agree to do it.

My instructions were that the session was to be informal, that I was to answer questions to the best of my recollection, that I was just to give the best shot I could at answering the questions that the staff had.

When I received that notice, I was told that the interview would take place in approximately 1 hour and that I was to be prepared to leave within a half hour after receiving the phone call.

When I appeared before the staff of the committee, there was a representative of Senator Biden's staff and Senator Thurmond's staff, and the testimony was not to be—the discussion was not to be informal but, rather, was to be sworn testimony in the form of a deposition.

I was asked questions about my experience in the Southern District of Alabama, in particular the matter at issue was an investigation that the Civil Rights Division had requested be done by the Federal Bureau of Investigation, which later was canceled at the direction of the U.S. attorney.

I have said throughout that deposition that my recollection of the incident was very vague, although—and I was not even able to say what investigation it was. My recollection at the time was that the investigation occurred in Conecuh County, AL, and that it occurred at the time that Mr. Sessions was the U.S. attorney.

At the time that I offered that statement to the staff, those statements were true to the best of my recollection at the time. Again, it was my understanding that this was to be a discussion between me and the staff. I later learned, however, that the information that I presented at that time was presented to this committee and I wanted to make sure that all of the information presented was ac-

curate, and again I emphasize to you that I made no secret of the fact at the time of my testimony that I did not have clear recollection of all of the event in its entirety.

I do say, however, that it was my recollection at the time that it occurred while Mr. Sessions was the U.S. attorney.

Following that testimony, I initiated an investigation within the Department of Justice to determine whether the testimony was in all respects accurate. I requested that the Federal Bureau of Investigation do a review of all of its files of investigations in the southern district of Alabama for a period from 1979 to 1982, because I was confident that this event did in fact occur and I was confident that it did occur within that 4-year period.

I also requested the staff of the Voting Section to search each file that we maintain about a jurisdiction in the southern district of Alabama, and I emphasize to you that that search is fairly substantial, although there are only 13 counties in the southern district of Alabama, the enforcement of the Voting Rights Act has been going on for 20-some years and we have a voluminous amount of records about the southern district of Alabama.

Late Friday evening I was told that the results of that search showed that we had in fact requested an investigation that had been stopped at the direction of the U.S. attorney, but that the investigation occurred in Clarke County, AL, and that the investigation occurred in May 1980, which was prior to the time that Mr. Sessions became U.S. attorney.

After learning that my recollection that I presented to you last week was wrong, I immediately over the weekend reviewed all of the records that were available to me and drafted a declaration which a member of my staff came in the office on Sunday to type for me and I had it available to present to you the first thing Monday morning.

I also called Mr. Sessions to tell him personally on Monday morning that my prior recollection was in error, and I tell you now that it was in error and I have previously apologized to Mr. Sessions for that mistake and I apologize to this committee.

I do emphasize to you, however, that when I presented the testimony before the staff last week, particularly under the conditions with which I was required to testify, it was true to the best of my recollection.

I would request that the declaration that I presented to you yesterday be made a part of this record and I can state with confidence that that declaration is right and Mr. Sessions was in no way involved with the matter about which I testified last week.

Senator DENTON. Your declaration will be put in the record, without objection.

[The declaration referred to follows:]



U.S. Department of Justice
Civil Rights Division

Washington, D.C. 20530

March 17, 1986

Honorable Strom Thurmond
Honorable Joseph R. Biden, Jr.
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Nomination of Jefferson B. Sessions III for
the position of United States District Judge

Dear Senators Thurmond and Biden:

On March 12, 1986, I provided information to the staff of the Judiciary Committee concerning a voting investigation conducted in the Southern District of Alabama. I stated my belief that Mr. Sessions was the United States Attorney at the time that the investigation was conducted. A subsequent records search conducted at my request has revealed that Mr. Sessions was not the United States Attorney at the time of the investigation, and thus I am submitting the enclosed Declaration to correct my prior testimony. I request that if my prior testimony is to be considered by the Committee, such testimony be supplemented by the information set forth in the Declaration.

Departmental attorney J. Gerald Hebert also addressed this voting investigation in his testimony before the Committee on March 13, 1986. Mr. Hebert's recollection has been refreshed by the results of our records search and, at his request, I am forwarding his declaration to correct his testimony.

We apologize for any inconvenience caused to Mr. Sessions or this Committee by the prior inaccurate testimony. I am willing to provide additional testimony if it would be helpful in further clarifying this matter.

Sincerely,

A handwritten signature in cursive script, reading "Paul F. Hancock", is written over a horizontal line.

Paul F. Hancock
Assistant for Litigation
Voting Section

DECLARATION OF PAUL F. HANCOCK

1. My name is Paul F. Hancock. I have been employed by the Civil Rights Division of the Department of Justice since 1970 and have occupied the position of Assistant for Litigation in the Division's Voting Section since 1976. I make this Declaration for submission to the Senate Committee on the Judiciary in connection with the nomination of Jefferson B. Sessions III for the position of United States District Judge for the Southern District of Alabama. In particular, this Declaration is submitted to correct and clarify information that I presented to the staff of the Committee on March 12, 1986.

2. On March 12, 1986, at approximately 1:15 p.m., I was advised by an official of the Department of Justice that a member of the Judiciary Committee had requested that the Department permit the staff of the Committee to discuss with me, on an informal basis, certain factual information believed to be relevant to the nomination of Jefferson B. Sessions III. I further was advised that the Department had determined to permit the interview and that a meeting had been scheduled for 2:15 p.m. on that same day.

3. When I arrived for the scheduled meeting, I learned that the discussion was not informal but that the staff desired to examine me under oath and that a transcript of such testimony might be presented to the Committee on the Judiciary to consider in connection with the pending confirmation proceedings.

4. The primary topic of my testimony concerned an investigation, conducted by the Federal Bureau of Investigation, of alleged voting irregularities in a county located within the Southern District of Alabama. I testified that the investigation had been requested by the Civil Rights Division and that the United States Attorney for the Southern District of Alabama subsequently directed the Federal Bureau of Investigation, without prior approval from the Civil Rights Division, not to conduct the requested investigation. Although I emphasized that my recollection of the details of this matter were unclear, I stated that the United States Attorney involved was Mr. Sessions and that, to the best of my recollection, the investigation at issue was one to be conducted in Conecuh County, Alabama. At the time I presented this testimony, it was true to the best of my knowledge, recollection and belief.

- 2 -

5. Inasmuch as the subject FBI investigation may be an issue of relevance to these confirmation proceedings, and since my recollection of the issue was unclear, I subsequently determined to conduct a thorough review of Departmental records to determine if any records regarding the issue were in existence. Our files of matters in Conecuh County, Alabama revealed no information regarding an FBI investigation cancelled by the United States Attorney and, thus, I requested a staff member to review the Voting Section files for each county in the Southern District of Alabama. The review encompassed the period from 1979 through 1982 since I was confident that the investigation at issue occurred during that time period. The Civil Rights Division also requested that the FBI conduct a similar review of its records of voting investigations in the Southern District of Alabama.

6. The search of the Voting Section records confirmed that an FBI voting rights investigation requested by the Civil Rights Division had been cancelled, without proper authority, by the United States Attorney for the Southern District of Alabama; but the search revealed two errors in my prior testimony. First and most importantly, the incumbent United States Attorney for the Southern District of Alabama who cancelled the investigation was not Jefferson Sessions, but a predecessor in the position, William A. Kimbrough, Jr. Second, the investigation was to be conducted in Clarke County, Alabama, not Conecuh County.

7. Appended to this Declaration as Attachment A is a memorandum dated May 12, 1980, from the Director of the FBI to the Assistant Attorney General for the Civil Rights Division enclosing a report dated May 8, 1980. The report states that "William A. Kimbrough, Jr., U. S. Attorney, Southern District of Alabama . . . instructed the Mobile Division of the Federal Bureau of Investigation to discontinue its current investigation." Appended to this Declaration as Attachment B is a memorandum that I forwarded to the Chief of the Voting Section on May 22, 1980, concerning Mr. Kimbrough's effort to cancel our investigation.

8. Following my May 22, 1980, telephone conversation with Mr. Kimbrough, the FBI investigation of voting matters in Clarke County was resumed. On June 9, 1980, the Director of the FBI submitted a report of the investigation. On September 20, 1980, the United States instituted legal proceedings against Clarke County pursuant to Sections 2 and 5 of the Voting Rights Act, 42 U.S.C. 1973, 1973c. United States v. Clarke County Commission, Civ. Action No. 80-0547-P (S.D. Ala.). The Section 5 claim was resolved by an order of the

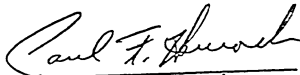
- 3 -

three-judge court entered on October 24, 1980. The Section 2 claim was resolved by an order entered on April 17, 1981. The United States prevailed on both claims.

9. The record review has refreshed my recollection and I now am able to state with certainty that the issue concerning the United States Attorney's attempt to cancel an FBI investigation (the issue about which I testified on March 12, 1986) arose in Clarke County, Alabama, not Conecuh. I also am able to state with certainty that Jefferson B. Sessions III had no involvement in this matter. The 1980 Clarke County investigation was the only time that I have experienced a United States Attorney attempting to cancel an FBI investigation requested by the Civil Rights Division. In other words, I have no knowledge of Mr. Sessions attempting to cancel, or in any way interfere, with a Civil Rights Division investigation of voting matters in the Southern District of Alabama.

10. I apologize for any inconvenience caused Mr. Sessions or this Committee by my prior testimony. If necessary to further clarify this matter, I am available to answer any questions that this Committee or its staff might have.

Pursuant to the provisions of 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.



Paul F. Hancock

Executed on March 16, 1986.

ATTACHMENT A

0-70 (Rev. 8-3-76)

UNITED STATES GOVERNMENT

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION**Memorandum**TO : Assistant Attorney General
CIVIL RIGHTS DIVISION

DATE: 5/12/80

FROM : Director, FBI

ATTN: SHIELA DELANEY
VOTING SECTION

SUBJECT:

CLARKE COUNTY COMMISSION, GROVE
HILL, ALABAMA; UNKNOWN VICTIMS
CIVIL RIGHTS--ELECTION LAWSReference is made to YOUR memorandum dated 3/10/80
(your file DL 166-3-47).

DSD: SED: ec

There is enclosed one copy of the report of Special Agent LHM
dated 5/8/80 at MOBILE.A. ☐ This covers the preliminary investigation and no further action concerning a full investigation will be taken by this Bureau unless the Department so directs.B. ☐ The investigation is continuing and you will be furnished copies of reports as they are received.C. ☒ The investigation requested by you has now been completed. Unless advised to the contrary no further inquiries will be made by this Bureau.D. ☐ Pursuant to instructions issued by the Department, no investigation will be conducted in this matter unless specifically directed by the Department.E. ☐ Please advise whether you desire any further investigation.F. ☐ This is submitted for your information and you will be advised of further developments.G. ☐ This is submitted for your information and no further investigation will be conducted unless specifically requested by the Department.H. ☐ This covers the receipt of a complaint and no further action will be taken by this Bureau unless the Department so directs.

Enc. (1)

MAY 20 1980

166-3-47	
DEPARTMENT OF JUSTICE	
7	MAY 15 1980
FBI	
CIV. RIGHTS DIV.	

FBI/DOJ



UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

*In Reply, Please Refer to
File No.*

Mobile, Alabama
May 8, 1980

CLARKE COUNTY COMMISSION
GROVE HILL, ALABAMA;
UNKNOWN VICTIMS
CIVIL RIGHTS - ELECTION LAWS

On May 1, 1980, William A. Kimbrough, Jr., U. S. Attorney, Southern District of Alabama, Mobile, advised he has discussed this matter with Departmental attorneys, Civil Rights Division, U. S. Department of Justice, Washington, D. C. and in view of the recent Supreme Court decision concerning city and county governments, instructed the Mobile Division of the Federal Bureau of Investigation to discontinue its current investigation.

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

Memorandum

ATTACHMENT B



Subject Clarke County, Alabama
FBI Investigation

Date **22 MAY 1980**

To Gerald W. Jones
Chief, Voting Section

From *PH* Paul F. Hancock
Assistant for Litigation
Voting Section

I telephoned United States Attorney Kimbrough on May 22, 1980, to determine if he had instructed the Bureau not to conduct the investigation we had requested and, if so, why he gave such instructions. Mr. Kimbrough said that he did instruct the Bureau not to conduct the investigation. He said he had not discussed the matter with anyone from our Section but thought that the investigation should not be conducted for the following reasons:

- A. Miriam Eisenstein told him that we are re-evaluating our voting litigation in light of Mobile.
- B. The School Board has already given us a lot of information.
- C. We should not ask the Bureau to get information from a party to a lawsuit, or a party to a potential lawsuit.

I explained that the investigation concerns a Section 5 matter and is unaffected by Mobile; that we have no lawsuit against Clarke County; that we need the information to enforce Section 5; and that although the county has given us information, we need to clear up unanswered questions. At one point Mr. Kimbrough said: "Well Paul, you and I don't always see eye-to-eye on how to get things done." - (An obvious reference to Marengo)

I asked Mr. Kimbrough to approach us if he has any problems with investigations we request but not to cancel the investigation without our concurrence. He agreed to do so, and apologized for cancelling this investigation. He said he would call the FBI agent responsible for the investigation and tell him to conduct the investigation.

I telephoned Gene Hatfield of the Bureau's Civil Rights Unit and requested that the investigation be completed.

I believe that it was clearly improper for Mr. Kimbrough to cancel the investigation without our concurrence. However, I believe that the matter has been resolved and that it is not necessary to take any other action at this time.

*OK. Put in
file for future
reference if
needed. *Smj* 5/22/80*

DECLARATION OF J. GERALD HEBERT

1. My name is J. Gerald Hebert and I am a senior trial attorney in the Voting Section, Civil Rights Division, United States Department of Justice. I have been a trial attorney in the Civil Rights Division of the Department of Justice since 1973. I make this Declaration for submission to the Senate Committee on the Judiciary in connection with the nomination of Jefferson B. Sessions III for appointment to the position of United States District Judge for the Southern District of Alabama. In particular, this Declaration is submitted to correct and clarify information I provided to the Committee at the hearing held on March 13, 1986.

2. In my March 13th testimony, the statement of my colleague, Mr. Paul F. Hancock, was brought to my attention. Mr. Hancock's referenced testimony concerned a voting investigation in the Southern District of Alabama. I was asked if I agreed with Mr. Hancock's testimony. I answered that my own recollection of that matter was consistent with Mr. Hancock's. When I rendered that testimony, it was true to the best of my knowledge, recollection and belief.

3. Subsequent to my testimony, I have reviewed the documents attached to the Declaration of Paul F. Hancock. Those documents show that Mr. Jefferson Sessions was not the United States Attorney involved in blocking the voting investigation conducted in the Southern District of Alabama and that, in fact, it was his predecessor in office. Those documents also show that the county involved was Clarke County and not Conecuh County. My testimony before the Senate Judiciary Committee ratifying that of Mr. Hancock's, therefore, was in error. My recollection on this matter has now been refreshed. I have no knowledge that Mr. Sessions ever interfered with any voting investigations in the Southern District of Alabama.

4. This revelation concerning the non-involvement of Mr. Jefferson Sessions in interfering in any voting investigations in the Southern District of Alabama does not affect in any way my other testimony rendered before the Senate Judiciary Committee on March 13, 1986.

5. I apologize for any inconvenience caused Mr. Sessions or this Committee by my prior testimony. If necessary to further clarify this matter, I am available to answer any questions that this Committee or its staff might have.

Pursuant to the provisions of 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.


J. Gerald Hebert

Executed on March 16, 1986.

Senator DENTON. Are you finished?

Mr. HANCOCK. I have nothing else to say.

Senator DENTON. Mr. Hancock, it was not at my initiative that you were questioned before this hearing and by the staff. I had no knowledge that that had been initiated. Indeed, the shuffling of witnesses which has occurred on the first hearing and the one that occurred today has made it virtually impossible for me to know who the players are going to be until just before I go home at night after trying to figure out all day. They were working here most of the night trying to figure this out, hence my mistake when I was consulting with my staff member, I did not even know that Professor Liebman, although he said he was—I did not hear him say it—had no opportunity to read until I got here this morning because the stuff was still being prepared because of the shifts in witnesses, anything but some very basic things about what was going to go on today. In other words, I defer to Senator Heflin in having reminded me that Professor Liebman was indeed involved in that case and I missed the point and said we have people who were who will testify and so on. I was dead wrong on that.

I do not have any malice against you for what happened to you. I have nothing but sympathy for your coming and being forced and pressured into giving your best recollection to something which, in my reading, you were very tentative about saying. My chagrin arises from what was made out of your statement and Mr. Hebert's regarding Mr. Sessions.

Now, I have no reservations about your conduct or the fact that you had to give things to the best of your memory, and I believe you did so. Are you satisfied with my—

Mr. HANCOCK. I am satisfied, Senator, except I do not agree with your characterization of the testimony that you said at the beginning of the hearing that I was here to recant my testimony. I emphasize to you that that testimony was true and accurate to the best of my recollection at the time I gave it, that I have since done the investigation that should have been done initially if I would have had the time to do it, and I am now presenting the correct facts to this committee.

Senator DENTON. Well, your version of it is acceptable and I will not want to apply the word "recant" which was written for me, but I understand that you are not properly—there is no other way but to write it for me. They are still working on it 2 minutes before this thing began.

Mr. HANCOCK. I understand, Senator.

Senator DENTON. I understand that you did not recant, but what was said about what you said was not accurate in that you were not saying that Mr. Sessions for sure—in fact, you now know that he was not the person involved with the *Conecuh County* case.

Mr. HANCOCK. He was involved with the *Conecuh County* case. He was not involved with the *Clarke County* case, which was the case in which the FBI investigation had been canceled.

Senator DENTON. Are you saying still that he interfered with the *Conecuh County* case?

Mr. HANCOCK. No, sir. No, sir. I am saying that—

Senator DENTON. That is the only point I want to make, because that point was used against Mr. Sessions.

Go ahead, Senator Heflin.

Senator HEFLIN. Mr. Kowalski, in your testimony that you gave us yesterday—

Mr. HANCOCK. Mr. Hancock, Senator.

Senator HEFLIN. Pardon me. All right, Mr. Hancock, were you involved in the Perry County case in any degree?

Mr. HANCOCK. I am not involved in any degree in the criminal prosecutions in Perry County, Senator Heflin. We have had activity under the Voting Rights Act, under the civil provisions of the Voting Rights Act in Perry County, but if you are referring to the criminal prosecutions I have no involvement in that matter.

Senator HEFLIN. I don't believe I have any further questions.

Senator DENTON. I would like to recognize Senator Specter and let him know that Mr. Hebert and Mr. Hancock, who just spoke, refreshed their recollections and found that previous testimony indicating that Mr. Sessions had interfered in the *Conecuh County* case is not correct. If he wants to say that is not recanting, that is all right with me. I will not apply the participle, but they changed their testimony that is why he is here today.

Senator SPECTER. Mr. Chairman, just a question or two for Mr. Hancock. I regret that I have other commitments that prevent my being here to hear your testimony as you have presented it up to this point. This may cover some old ground, but what specifically was it that you were able to review by way of records which corrected your recollection?

Mr. HANCOCK. I had requested, Senator Specter, that the Federal Bureau of Investigation conduct a review of its records for the period from 1979 to 1982 of any voting investigations conducted in the southern district of Alabama.

My experience over the years has taught me that the Bureau does not cancel an investigation without making a record of it, so I thought that if the investigation had in fact been canceled there would be a record.

I also requested the staff employed in the Civil Rights Division, in the Division's Voting Section, I requested a member of our staff to review all of the files that we maintain regarding jurisdictions in the southern district of Alabama for that same 4-year period. That review revealed to me, brought forth to me records that showed that in fact there was a situation that arose a number of years ago in which we had requested an investigation of an alleged voting rights violation in the southern district of Alabama and the U.S. attorney had in fact directed the Bureau, without our consent, not to conduct that investigation. The records that were presented to me were a memo that I wrote memorializing my conversations with the U.S. attorney and noting my disagreement with what had been done.

I also was able to locate the memo from the Bureau stating that the investigation had been cancelled at the direction of the U.S. attorney. What I learned refreshed my recollection, that that was the event to which my memory had taken me back. However, it involved Clarke County, AL, not Conecuh County, AL, and it arose prior to the time that Mr. Sessions was U.S. attorney.

Senator SPECTER. So you had the wrong county?

Mr. HANCOCK. Yes, sir.

Senator SPECTER. And the wrong U.S. attorney.

Mr. HANCOCK. And the wrong time, yes, sir, and the wrong U.S. attorney. And I have prepared a declaration which I delivered yesterday morning to the committee and I set forth those events in more detail in the declaration and I have also provided copies of the memo that I wrote and a copy of the FBI's memo noting that the U.S. attorney had canceled.

Senator SPECTER. What was it which initially led you to be concerned that your initial testimony was incorrect?

Mr. HANCOCK. I said before your arrival, Senator Specter, that I was asked to appear before the committee on very short notice, less than an hour's notice, I was told that the discussion was not testimony but, rather, was to be an informal discussion and that I was to answer questions to the best of my recollection.

I later learned that—of course I learned when I got here that it was to be a deposition and I later learned that the results of the deposition were presented to this committee.

I refer you to my deposition, Senator Specter. I said many times in the deposition that I had a very vague recollection of what actually happened in that incident, although I was very convinced that the incident did occur and I was fairly confident that it occurred when Mr. Sessions was U.S. attorney.

However, because of the fact that it was something that was at issue that was being presented to the committee, it was not just background for the committee staff, and because of the fact that my recollection was very vague on it, I requested the investigation and review of the files. It was not done by any superiors in the Civil Rights Division or the Department of Justice.

Senator SPECTER. So your answer is you just did it on your own because of concern for the vagueness of your own recollection?

Mr. HANCOCK. Sure.

Senator SPECTER. There was no other specific triggering factor?

Mr. HANCOCK. There was none. In my opinion, my conclusion was that Mr. Sessions is entitled to have true and accurate facts before this committee and if I was in a position to gather them it was my duty to conduct the review and—

Senator SPECTER. That is obviously true, but you are an experienced lawyer, how long have you been at the bar?

Mr. HANCOCK. I have been a member of the bar since 1970.

Senator SPECTER. Well, that is 16 years. You are a litigator?

Mr. HANCOCK. Yes, sir.

Senator SPECTER. Do you question witnesses with frequency?

Mr. HANCOCK. With some frequency.

Senator SPECTER. Do you question witnesses where the oath is administered?

Mr. HANCOCK. I do.

Senator SPECTER. Well, I am sure you have learned a good lesson.

Mr. HANCOCK. I have.

Senator SPECTER. Thank you, Mr. Chairman.

Senator DENTON. I hope my colleague from Pennsylvania is aware, and I did not mean to insinuate otherwise, that from this Senator's point of view—and I am sure that I can state from anyone else's who is not opposing Mr. Sessions, there was no call

from us to remind him or Mr. Hebert of some misrecollection they had. You did not mean to question it?

Senator SPECTER. Not at all, Mr. Chairman. I will testify under oath about your integrity and character and will not change it, whether you call it recanting or whatever. I just think it is an unusual case, if not an extraordinary case to have a man of Mr. Hancock's experience testify under the circumstances without having a firmer recollection on a matter of this sort, and I think it is appropriate to ask a question as to whether there is any triggering factor.

Mr. HANCOCK. Senator Specter, again, you were not here for everything I said before, but I had no intention of offering testimony to this committee. I had received a call from the committee and declined to talk to the committee in part because I did not think that I had anything to offer and, as you know, it is normal practice that lawyers in the department do not get involved in these proceedings.

Senator SPECTER. Well, Mr. Hancock, I would say that in a circumstance of this sort a man would be well advised to say nothing. You are not under any compulsion to speak without having an opportunity to prepare, to review your documents. It is one thing if you are a candidate for office and on election eve they put a television camera in your face, you have to make a statement, for the absence of one is very problemsome. But in your situation you would be well within protocol and your rights to say I need to reflect on it, I need to review some records before I give evidence.

Senator DENTON. If my colleague will yield for just a moment—

Senator HEFLIN. We have a vote on right now and I have a question or two I want to ask.

Senator DENTON. Yes; we will hold on. Mr. Hebert also was called under the same conditions of very little notice and much pressure and it was not this side but Senator Biden who requested this unusual opportunity, and both of the gentlemen were under considerable disadvantage and—

Senator SPECTER. Senator, everyone is entitled to an opportunity to prepare, to notice. That is one of the fundamentals of due process.

Senator DENTON. The point I want to make is Mr. Hebert gave these memories of what had occurred in conversations also has recanted, if that word is acceptable, what he said about that county and Mr. Sessions. He was wrong, and it raises questions in this Senator's belief as to the accuracy of the memory, considering what Mr. Sessions has said about other things which Mr. Hebert accounted to him.

We will have to stand in recess for the vote for 7 minutes, and it will be Senator Hefflin's turn to question when we come back.

[Short recess.]

Senator DENTON. The committee will come to order.

It is Senator Hefflin's turn to question. I just want to clarify one point. You have been, Mr. Hancock, emphasizing the rush with which you had to respond to Senator Biden's request that you testify and the contribution that might have made to the failure of your memory. I think it must be asked if you gave the same infor-

mation to the American Bar Association, with time to meditate and without the urgency necessitated by your testifying to the minority on this?

Mr. HANCOCK. I received a call on a——

Senator DENTON. Can you give me a yes or no on that? I will be happy to hear the qualifications, but did you say the same thing about Conecuh County and Mr. Sessions to the American Bar Association which caused a minority of them to say he was not qualified?

Mr. HANCOCK. Yes, if I can explain.

Senator DENTON. Yes; you may explain.

Mr. HANCOCK. I received a call from a representative of the American Bar Association in regards to Mr. Sessions. I was asked certain questions about Mr. Sessions. I was told that the questions and the answers would be held in confidence, they were not to be revealed, that they were merely information they were requesting from a number of attorneys who had practiced in the southern district of Alabama.

Senator DENTON. Well, why are you emphasizing in confidence, why would that have anything to do with the veracity of your statements?

Mr. HANCOCK. I am not suggesting——

Senator DENTON. I am just trying to save time.

Mr. HANCOCK. I am not suggesting that it has anything to do with the veracity of my statements. The statements were not the kind of statements that were intended to be presented before the Senate Judiciary Committee. I answered questions on the phone without checking records. My recollection is that I was asked if I recalled an incident in Conecuh County involving an FBI investigation, and I said yes, I did, and I confirmed—again, I am not able to say verbatim what they asked me and what I said to them, but it was discussed and, yes, I did say in effect the same thing that I said before.

Senator DENTON. Mr. Sessions has been convicted in the press for not being able to recollect much less important questions and answers than the ones that you are able to recollect now, and I hope the press in all honesty will note that. These were private conversations with Mr. Sessions in offhand conversations that he in all honesty has said he did not remember in every case. This is not an offhand thing we are asking you about, and I just want to emphasize that.

Did you correct it with the American Bar Association as you have with this committee?

Mr. HANCOCK. I would be happy to.

Senator DENTON. Senator Hefflin.

Senator HEFLIN. First, let me say that the way the question is phrased that the Senator had that your testimony caused the American Bar Association——

Senator DENTON. Contributed to it, I would have to say, sir.

Senator HEFLIN [continuing]. Do you mean to include within that that your testimony was that important to the American Bar Association?

Mr. HANCOCK. I am not in any——

Senator HEFLIN. Can you evaluate what the American Bar Association decided?

Mr. HANCOCK. Excuse me. I am not in any position to evaluate what the American Bar Association considered to be important.

Senator HEFLIN. How long prior to the giving of the deposition in which you stated your recollections was the American Bar instance in which you discussed it?

Mr. HANCOCK. It was quite a few months ago, Senator. I do not recall the date that I got the phone call.

Senator HEFLIN. Did you do any investigation after you had the telephone call from the American Bar Association inquiring as to whether or not the statement that you had given them was correct or not?

Mr. HANCOCK. I looked in our files for Conecuh County to see whether I could—whether there was any record of the incident. I also discussed it with members of my staff. We did not find any records, but it was the recollection of the people that I talked to that the incident did in fact occur and, based on those conversations, I thought that what I had said was correct.

Senator HEFLIN. That is all.

Senator DENTON. Senator Biden.

Senator BIDEN. I apologize for not being here at the hearing earlier. I thank you, Mr. Hancock, for coming up and correcting the record, and I am ready to hear the rest of the witnesses.

Senator DENTON. You are aware, Senator Biden, that Mr. Hebert also corrected his testimony on this?

Senator BIDEN. On what?

Senator DENTON. On this statement that Mr. Sessions interfered with Conecuh County. It turns out that that recollection was incorrect. Mr. Hebert has said so, as has Mr. Hancock. It was the wrong county and the wrong man.

Senator BIDEN. Well, I think that is obviously useful testimony. Obviously, Mr. Sessions was equally as confused when I asked him about that. He said he did not recall, if you recall, so apparently no one recalls. We are all in the same boat, no one has a good recollection about it. I have plenty of questions for other witnesses. I do not know, quite frankly, I guess instead of just having witnesses here we are suppose to characterize, I guess that is what is happening, at what stage of this proceeding we are at. I am not prepared to characterize at all. All I know is what Mr. Sessions said in the first series of hearings and the admissions and comments he has made about things he recalls having said and not said and, quite bluntly, that is enough for me. But I am prepared to hear all the witnesses and listen to everything said, and I thank you all for being here.

Senator DENTON. Well, I would earnestly implore my colleague whom I respect in these terms: Were I you, and I had read sworn affidavits to the effect of those which you read, I am not sure I would not have handled the previous hearing exactly the way you did.

Senator BIDEN. What does that mean, Jerry?

Senator DENTON. It means that I am now going to ask you to consider what you missed the other day, what you missed earlier today—

Senator BIDEN. I missed nothing the other day. Now——

Senator DENTON. You stayed for the 9 hours, the whole thing?

Senator BIDEN. I was here with you, Jerry.

Senator DENTON. OK. Today we are going to hear much more and all I ask is that you stay for today and I wish you had not missed what occurred before now.

Senator BIDEN. I will read the record. I will not be missing what was said today. I had an opportunity to speak with Mr. Sessions at great length and hear him under oath and Mr. Sessions say thing on his own testimony having nothing to do with what anybody else said, just what Mr. Sessions said all by himself.

Senator DENTON. You said that you were convinced from what he said and what the others said that you concluded that you were convinced that he did interfere in the *Conecuh County* case.

Senator BIDEN. Jerry, I am not the witness——

Senator DENTON. OK.

Senator BIDEN [continuing]. They are the witnesses.

Senator DENTON. I am just trying to get at the truth, that is all.

Senator BIDEN. We will get the truth. I am always good at getting the truth, Jerry. Hang on, the hearing is not over. All I am saying to you is that Mr. Sessions has made some interesting statements to me and to the record under oath and there were comments made by others. I am prepared to listen to everyone and those who I do not listen to I will read the record. Let us conduct the hearing. OK?

Thank you, gentlemen. I have no questions unless the Senator wants to make some solilocuy he wishes to engage in. I do not.

Senator DENTON. I cannot compete with you in soliloquies.

Senator BIDEN. I think you are probably right, Senator, so why do we not move on? [Laughter.]

Senator DENTON. You are famous for them.

Mr. Kowalski, do you have a statement of any kind?

Mr. HANCOCK. May I be excused, Mr. Chairman?

Senator DENTON. Yes; you may, Mr. Hancock. Thank you.

Mr. KOWALSKI. Mr. Chairman, I am deputy chief of the Criminal Section of the Civil Rights Division and was asked——

Senator DENTON. Would you put the mike directly in front of your mouth, please?

Mr. KOWALSKI. Yes, Mr. Chairman. I will be happy to put the mike anywhere the Senators want me to.

Senator BIDEN. That is a dangerous commitment to make.

Mr. KOWALSKI. I was asked yesterday to come to the committee staff and to answer questions regarding my contacts with Mr. Sessions throughout an investigation that I was involved in as a trial lawyer from the Department of Justice, Criminal Section, Civil Rights Division, and that was the Michael Donald investigation, a young man, a black man who was found hung in Mobile, AL, in 1981. I answered questions yesterday for the staff regarding my involvement in that investigation as well as Mr. Sessions' involvement and my working with Mr. Sessions. I am prepared to answer any questions about that matter that the committee may have.

Senator DENTON. Is that the—in what capacity have you worked with Mr. Sessions and over what period of time?

Mr. KOWALSKI. Well, sir, I joined the Department of Justice in 1980 as a trial attorney with the criminal section. We investigate criminal civil rights violations in conjunction with the U.S. attorneys office.

In 1981, a young black man named Michael Donald was found hanging from a tree in Mobile, AL. Approximately 2 years later, after a Federal Bureau of Investigation investigation was conducted, I began to work on the case in an investigative grand jury with Mr. Albert Glenn who is seated to my left. We worked in conjunction with Mr. Sessions' U.S. attorneys office and during that approximately 4-month period of the investigation when I was in Mobile, AL, working on the case, I had frequent contact with Mr. Sessions in regard to that case.

Senator DENTON. Was it your perception during that time that Mr. Sessions was cooperative or uncooperative?

Mr. KOWALSKI. He was very supportive of our efforts to determine which individuals were responsible for the killing of Michael Donald and entirely supportive of our efforts to prosecute those individuals once we identified them.

Senator DENTON. Mr. Kowalski, is it true you were involved with the decision to go forward with the grand jury investigation in the Donald case?

Mr. KOWALSKI. Yes, sir; I was to this extent: I had been talking for several months with one of the assistant U.S. attorneys working for Mr. Sessions about what we should do with that case. He and I concluded that a grand jury was the most appropriate step to take.

I discussed the matter with my boss, the chief of the section, Daniel Rinzel, who made the decision for the Department whether to go forward in the grand jury, and it is my understanding that Mr. Figures discussed the matter with Mr. Sessions, and our bosses respectively ultimately made the decision on the grand jury.

Senator DENTON. Did Mr. Figures ever intimate to you that Mr. Sessions was in any way reluctant to proceed with the investigation of the Michael Donald lynching?

Mr. KOWALSKI. No, not expressly, Mr. Chairman. Mr. Figures and I discussed the need for both of us to talk with our respective bosses to convince them that a grand jury was necessary. He did not say anything to me which I recollect that indicated he was going to have any difficulty convincing Mr. Sessions of the need for a grand jury investigation. I subsequently learned from Mr. Dan Rinzel, my boss, that when he contacted Mr. Sessions on the telephone to discuss whether or not a grand jury was appropriate, that Mr. Sessions voluntarily stated to Mr. Rinzel that he thought a grand jury would be a good idea. I was not privy to that conversation, however I heard this from Mr. Rinzel.

Senator DENTON. If the State prosecution of the *Michael Donald* case had not resulted in a conviction, from your knowledge was Mr. Sessions prepared to go forward with the Federal prosecution of Henry Hayes?

Mr. KOWALSKI. Yes; Senator, I believe we were prepared to do that. We were hopeful, of course, that the State prosecution would be successful. They had the better statute under the factual situation than we had, but I believe all of us working on the case, including Mr. Sessions, recognized the possibility that the Federal

Government might have to try the case as a Federal violation and we are prepared to do so.

Senator DENTON. Sir, the gravity of this issue pretty much rests on the kind of answer to the next question. Have you reached any conclusion with regard to Mr. Sessions' overall attitude and competence toward civil rights cases in general?

Mr. KOWALSKI. I would state that my view is based upon my contact with him exclusively in this particular case, and during the course of this case I became convinced that he was dedicated to this criminal civil rights prosecution, that he was eager to see that justice was done in the area of criminal civil rights prosecutions, and I have no reservations at all whatsoever about his dedication to that proposition based on my experience with him.

Senator DENTON. Have you ever heard him make a racial comment which offended you or which you believe suggested that he was insensitive on matters of race?

Mr. KOWALSKI. No, sir; not something that offended me. However, I did hear a comment which others have been offended by, and I would describe that now, if the Senator wants me to.

During the course of the investigation, Mr. Sessions and I were discussing some of the problems in the evidence, and my recollection is that I mentioned to him that we were having difficulty learning exactly what happened at the house where a number of Klansmen were, two of whom were later proven to be involved in the murder, and I mentioned to him that one of the problems was that some of the Klansmen had been smoking marijuana that night and they were having difficulty with their recollection of events.

Mr. Sessions replied to that, something to the effect of, "I didn't know that Klansmen used marijuana now," and I replied that they did in this case. To that, he responded, as I recollect, that he used to have respect for that organization but now he no longer does, knowing that they use drugs. In the context I considered it to be a joke that he was making at the time.

When working on a case such as this one, a brutal murder and a hanging, those that work on it sometimes do resort to operating room humor and that is what I considered it to be at the time.

Senator DENTON. Sort of like gallows humor?

Mr. KOWALSKI. I would not use that term in this case, Mr. Chairman.

Senator DENTON. In your view, is there anything that you know about Mr. Sessions personally or professionally that would disqualify him for appointment as a judge for the U.S. District Court of the Southern District of Alabama?

Mr. KOWALSKI. There is nothing that I am aware of in that regard, sir.

Senator DENTON. I guess I should go in seniority now. Senator Biden.

Senator BIDEN. No questions.

Senator DENTON. Senator Heflin.

Senator HEFLIN. Mr. Kowalski, you have made a statement here on the issue of the Klan—and, as I gather, it is a two-part statement. If you would recite that again to me, so that I clearly understand it. What brought on the issue of saying that he used to think

that the Klan was a good organization until he learned that they smoked pot or smoked marijuana, some words to that effect? The way you have recited it is a little bit different from what we have heard previously, and I want to make sure the record is clear—how do you recall it?

Mr. KOWALSKI. Senator, one thing I have learned out of this experience after years of being a prosecutor is it is a lot harder to remember things than I thought it was.

My recollection is that in a conversation in which I was discussing the evidence in the case with Mr. Sessions, I related to him that we are having difficulty with some of the Klan witnesses because they had been smoking marijuana that night, to which he responded that he used to have respect for that organization but did not any longer, knowing that they smoked pot.

Senator HEFLIN. Now, was Mr. Thomas Figures present at the time that this was stated?

Mr. KOWALSKI. I am not sure whether he was or was not.

Senator HEFLIN. It has been characterized here that to make a statement like that in the presence of a black man indicated an insensitivity to the gravity of the circumstances. I ask you again, do you know whether Mr. Figures was present?

Mr. KOWALSKI. My best recollection is that Mr. Figures was not present. However, I have heard from others that others recollect him being present. I am not certain whether he was present or not.

Senator HEFLIN. Did you repeat this statement to people?

Mr. KOWALSKI. I recollect talking about this statement of Mr. Sessions both to Mr. Figures and to Mr. Glenn and possibly to others, but specifically those two.

Senator HEFLIN. How many different conversations totally did you have about it?

Mr. KOWALSKI. I really do not remember, Senator.

Senator HEFLIN. Would it have been more than three or four?

Mr. KOWALSKI. It could have been. Again, my perception of the statement was that it was made in a humorous vein and when I related it, I related it as a story in a humorous vein as well. I am not certain how many times I may have related it to others.

Senator HEFLIN. That is all.

Senator DENTON. Mr. Kowalski, was Mr. Figures offended by the remark, to your belief?

Mr. KOWALSKI. Well, it is difficult for me to know for certain how someone feels about something. I do have a recollection that Mr. Figures gave some body language, that he may have been offended when we discussed that remark. Again, I do not remember him being present when the remark was said, however, I do remember talking about the remark with him, and I am not sure whether he was offended or not.

Senator DENTON. Well, I am told—and you will have to affirm or not—that Mr. Figures gave you a cartoon under which he wrote some words, and I do not know whether this is true. Mr. Figures is here and will be able to testify and you will be able to testify also. I will describe the cartoon and then let the cameras and the people see it, and we have some to pass out.

The cartoon shows sort of a shack-like house, it looks like one room, and in the doorway is standing a Klansman, and out in front

of the porch, which is very rickety, is standing another klansman, and there is a sign in front of the building which says "HGQ"—which I presume is "headquarters"—then there is a sign under that which looks like it might be some kind of a Klan sign, and under that the words "First Battalion," and there is a tattered Confederate flag flying over the portico and a little dog wagging his tail on the front of the porch, and the klansman standing on the ground is saying to the klansman in the doorway, "But I ain't lying, Rufus, President Reagan appointed me to the Civil Rights Commission," and under that cartoon I am told that Mr. Figures wrote, "Good choice if he doesn't use drugs, don't you think?" And this is a cartoon from the Anniston Star, Wednesday, June 1, 1983, and I will hold it up. Here it is.

Is what I said true?

Mr. KOWALSKI. Well, Senator, I received in the mail a copy of that cartoon with the words you just quoted written underneath it. I did not save the envelope. I am not certain if the envelope had a return address on it, at this time I just do not recollect it. My recollection is at the time I assumed that this cartoon came from Thomas Figures because he and I were working closely together on the case and I did not know of anyone else who knew of Mr. Sessions' comment outside of Washington, so I cannot say for certain that Mr. Figures sent this to me, but I assumed he did at the time.

Senator DENTON. Well, it seems that there are those who would try to continue to make something out of this in the way of a condemnation of Mr. Sessions. I have heard and read a number of papers opposed to Mr. Sessions who agree that he said that in irony and that they do not hold it against him. I can say that from rather grim circumstances in one of my most difficult experiences over a number of years that there were all kinds of gallows-type jokes made under some very real, deadly, and agonizing circumstances involving both blacks and whites on any subject, and about the only way we could keep our sense of humor and so on, but I just wonder if we are to continue to regard what I believe Mr. Figures made a joke of as something impermissible in irony on the part of Mr. Sessions.

I think he has been said to have been eager to prosecute and I do not see how one can assign to him any sincerity with respect to what you and others took to be a joke.

Mr. KOWALSKI. I agree with you, Mr. Chairman. My perception of all the surrounding circumstances of how those words were said was that it clearly was intended as humor.

Senator DENTON. Go ahead, Senator Heflin.

Senator HEFLIN. You mentioned about this envelope you received it in and you mentioned conversations in which you had repeated this incident, but you did not remember the number of occasions. You mentioned a Mr. Glenn. Was Mr. Glenn in Mobile or was he in Washington?

Mr. KOWALSKI. Mr. Glenn is here today in Washington. He was the other attorney from the criminal section that was working with me on the case. He is stationed in Washington but we were working together in Mobile, Senator.

Senator HEFLIN. Thank you.

Senator DENTON. All right, I have no further questions for you, sir. I will ask Mr. Glenn in what capacity you have worked with Mr. Sessions. I thank you, Mr. Kowalski.

Mr. GLENN. Mr. Chairman, I also, as did Mr. Kowalski, worked with Mr. Sessions in the investigation of the circumstances surrounding the death of Michael Donald. This investigation began in May—I was assigned to it in March 1983. The investigation itself began in May 1983.

We conducted investigative sessions in Mobile in May, in late May and June, July and August 1983, and January and April 1984. I was in Mobile not for investigation but for related matters in December 1983 and April 1985 and again in February of this year. All during this period of time, whenever I was in Mobile on this investigation, of course, Mr. Sessions was consulted and we worked with him closely throughout the investigation.

Senator DENTON. In the course of that investigation, did you become aware of that joke or comment about the Klu Klux Klan? That would have been about 2 years ago. And if so, what was your impression of the remark by Mr. Sessions?

Mr. GLENN. Mr. Chairman, I am not entirely sure that I was present for that remark. I think I was. I cannot be sure that I heard it or that I heard it told to me by Mr. Kowalski. I do have this vision of being in Mr. Sessions' office, of him reading a report or something in the report of some comment with respect to that report having to do with drugs involved with the Klan, and something was said about the drugs and Mr. Sessions made some comment about, "I used to have some respect for those guys." I took it wholly as a joke and humor. It never occurred to me that there was any seriousness to it. There was no question in my mind at the time that it was meant humorously.

Senator DENTON. Do you remember whether Mr. Figures was present or not?

Mr. GLENN. I do not know for sure. I believe he was, but I really do not know for sure.

Senator DENTON. If your memory is hazy, then you probably could not answer what his reaction appeared to be to you.

Mr. GLENN. No, sir.

Senator DENTON. Did you have any memory of anyone being offended by the joke at the time you heard it?

Mr. GLENN. No, sir.

Senator DENTON. Have you had any discussions with anyone else about this joke apart from committee investigators, the statement about the Klan by Mr. Sessions?

Mr. GLENN. Other than Mr. Kowalski, no, sir.

Senator DENTON. How would you characterize Mr. Sessions' cooperation in the Michael Donald lynching case as to being fully cooperative or less than cooperative?

Mr. GLENN. In all my contacts with him during the entire course of the investigation he has provided unqualified support and cooperation to us and independently as an individual who absolutely wanted to see that crime solved and prosecuted.

Senator DENTON. Did you observe any dissatisfaction expressed or evidence on Mr. Figures' part on the way that the Donald investigation progressed or was resolved?

Mr. GLENN. With respect to any particular part of it?

Senator DENTON. Mr. Figures, did he show you any dissatisfaction with the way the Donald investigation progressed or was resolved?

Mr. GLENN. I do not recall explicit comments as to any specific point. I know that during the course of the investigation, after the two principal co-conspirators had pleaded guilty or had been convicted, we continued to investigate other individuals to see if they had any Federal culpability, and Mr. Figures was always concerned that we were very careful to look at those individuals. However, I never heard him specifically cite any individual as obstructing, or being dissatisfied with the decisions of any individual with respect to the investigation.

Senator DENTON. In your opinion, did Mr. Sessions manifest an egotistical effort to improperly claim credit for the Donald case?

Mr. GLENN. No, I have no knowledge of that, Mr. Chairman. He is a person who is easy to approach, easy to discuss matters with, to raise ideas with, and it is particularly easy to discuss these matters with him. He is not a person who is inclined to have an egotistical approach to matters in my experience with him.

Senator DENTON. Thank you, Mr. Glenn.

Senator HEFLIN.

Senator HEFLIN. You basically testify you do not know whether you heard Mr. Sessions make this remark or whether or not it was a parroting situation in which someone was telling you that Mr. Sessions had made the remark about the Klan and the pot? Is that your testimony?

Mr. GLENN. That is correct, I am not absolutely sure that I was there or whether I heard it.

Senator HEFLIN. And you are not sure whether Mr. Figures was there or not?

Mr. GLENN. If in fact I was present, the circumstances would have been one in which he was present as well. It would have been a gathering in Mr. Sessions' office to discuss the day's course of the investigation.

Senator HEFLIN. How long would it have been after the man had been found hanging from the tree that this was brought to your attention?

Mr. GLENN. Our investigation began approximately—

Senator HEFLIN. I mean the remark.

Mr. GLENN. I understand, sir. Our investigation began approximately 2 years after the incident itself, which was in March 1981. I do not know precisely at what point during the May to July period—and I imagine it was during that period that the remark happened—I do not know exactly what part of that period it was, but it would have been approximately a little over 2 years after the incident.

Senator HEFLIN. Have you repeated the remark to some other people?

Mr. GLENN. I do not believe so, sir.

Senator HEFLIN. Your interpretation of it was that it was a joke?

Mr. GLENN. Yes, sir.

Senator HEFLIN. It was told to you by someone else, rather than Mr. Sessions. I suppose it would depend upon the method of presentation as to whether it was a joke or was not.

Mr. GLENN. It would be my interpretation of what they told me, that is correct.

Senator HEFLIN. Thank you.

Senator DENTON. Thank you, Mr. Glenn.

Mr. Bell, do you have any statement to make?

Mr. BELL. No; Mr. Chairman, I do not.

Senator DENTON. Are you a colleague of Barry Kowalski's in the Civil Rights Division?

Mr. BELL. Yes, sir; I am also one of the Deputy Chiefs in the Criminal Section.

Senator DENTON. How long have you known Jeff Sessions?

Mr. BELL. I have known Mr. Sessions since about 1978, when I was first assigned to work on a criminal civil rights prosecution in Mobile.

Senator DENTON. And would you describe the manner and time-frame over which you had contact with him?

Mr. BELL. Yes, sir. Another attorney from the Criminal Section and I were both assigned to the prosecution of the case in Mobile. It was a case involving the alleged murder of a black inmate in the county jail by the sheriffs department. As you can imagine, it was a very controversial and very sensitive case, having racial overtones. It was a case that was not very popular at all in Mobile.

When we got to Mobile, we got a great deal of support from the U.S. attorney at the time, Mr. Whitespunner, and then from his successor, Mr. Kimbrough. It was also necessary for us to consult with assistant U.S. attorneys who, even though they were not assigned to the case, would be able to help us with tactical problems, with knowledge of the local rules and mores and so on. In that connection, we both felt free to consult Mr. Sessions frequently and that is how I first came to know him.

Mr. Sessions was very cooperative with us. Although this case was no direct concern of his, he manifested the desire to have justice done and in general we found him extremely cooperative in that situation. Since then I have had a number of dealings with him on the telephone concerning other investigations that have been handled by our office and I have always found him to be very cooperative, very interested in getting investigations done properly, and indeed he has that reputation, I believe it is fair to say, among the attorneys in our office.

Senator DENTON. Would you say that again, please, sir, the last part? There was a lot of conversation and I could not hear what you said.

Mr. BELL. Yes, sir. I was saying that I have had occasion to deal with Mr. Sessions myself on the telephone concerning many investigations, criminal civil rights investigations, and he has always expressed a desire to have those investigations done properly and done thoroughly. He has always been very cooperative with our office. And I also said that it is my belief that his reputation among the attorneys in our office for being cooperative and professional in his approach to criminal civil rights matters is very high.

Senator DENTON. Is it true—and if you cannot speak for the others, then I ask them to speak for themselves and for the absent attorneys—is it true that you gentlemen are not political appointees, you are career Justice Department attorneys?

Mr. BELL. I think it is fair to say, Mr. Chairman, that all three of us are career attorneys.

Senator DENTON. How long have you been serving, for example—how long did Mr. Keeney serve, does anyone know?

Mr. BELL. I do not, Mr. Chairman.

Senator DENTON. All right. My staff director, Mr. Lister, informs me that he is aware that he has served since the Eisenhower administration.

Mr. Bell, have you ever observed Mr. Sessions to be racially insensitive by word or by deed?

Mr. BELL. No; I have not. As a matter of fact, Mr. Sessions has always impressed me as being a very moral kind of person.

Senator DENTON. I note the arrival of first my colleague from Illinois and my colleague from Massachusetts. I will recognize—I guess I should say to Senator Kennedy and Senator Simon that this morning so far we have heard—this panel consisted of Mr. Hancock, who changed the testimony he had written and given to the American Bar Association and to the minority staff person asking him questions regarding the involvement or complicity and conspiracy of Mr. Sessions to interrupt the *Conecuh County* case. It turns out it was Clarke County and another attorney that was involved, another U.S. attorney.

We have been hearing from a panel of career Justice attorneys who have, without exception, having dealt with Mr. Sessions in civil rights cases, accredited him with good performance and attitude and so on. Prior to that, we had an attorney who was involved in Perry County, a professor who had to go, Professor Liebman, who said that Mr. Sessions had in his opinion not handled himself well in the *Perry County* case and gave what he considered to be evidence to support that, and that is about where we are.

I think Senator Simon having arrived first, should have the first chance.

Senator SIMON. I yield to my colleague.

Senator KENNEDY. I thank Senator Simon and the Chair. I want to explain my absence. We had the markup of the higher education bill in the Human Resources Committee, where I am the ranking member, and the Home Services for Children Act, both of which we passed out of the Human Resources Committee about 2 minutes ago, so I was necessarily absent.

I just want to make a very brief comment and then I will look forward to having an opportunity to read the record. I understand while I was attending the full committee markup at Labor and Human Resources this morning, that you, Senator Denton, twice stated publicly and on the record that I have no problems with the Jefferson County prosecution.

Let me state for the record, as I stated at the hearing last week, that I find the Perry County prosecution very, very troublesome. All three of the defendants in the *Perry County* case, well known and highly respected civil rights leaders, were acquitted of all

charges. Some of the elderly black voters involved in the investigation avowed never to vote again, and that is tragic.

Yesterday Senator Denton asked me what bothered me most about Mr. Sessions and I responded that, although I am troubled by the Perry County prosecution, I am most concerned about the racist remark which Mr. Sessions acknowledged he made. I felt compelled to make that statement.

Senator DENTON. I feel that I should respond, Senator Kennedy. I certainly did not mean to misquote you. I do not have the same memory. My memory is that you said that—and I do not think this is contradiction, it is a matter of—

Senator KENNEDY. Well, I can tell you what I think, Mr. Chairman.

Senator DENTON. May I please state what I said? I did not say what you said I did. I said that you said that you did not have a problem with his having brought the thing to trial, and that was what I understood you to have said in the cloak room, and I thought I was doing you a justice, a favor.

Senator KENNEDY. I would go with my comments and statements, Mr. Chairman, of what I said at the start of the hearing and what I said right now. It is an accurate portrayal of my position.

Senator DENTON. Well, if I had known you were going to contradict me or that I had said it wrong, I certainly would not have. My memory, as I say, is different from yours.

Senator Simon.

Senator SIMON. Thank you, Mr. Chairman. I was with Senator Kennedy in the Labor and Human Resources markup, so I also got in on the tail-end of your testimony and I apologize. You have heard the testimony concerning Session's references to the NAACP and the American Civil Liberties Union as un-American, pinko, communistic. Do these comments, in your opinion, represent the thoughts of someone who is racially sensitive?

Mr. BELL. Senator, I would have to agree that statements that are made to be taken seriously of that nature would tend to reflect racial insensitivity. I have never myself heard Mr. Sessions make any such remarks. As a matter of fact, my experience with him is that he does not make racial jokes or insensitive jokes. And if I were to judge other remarks that he may have made, I would want to know exactly what they were and what context they were in. Certainly, they could be racist, but I do not know that I am in a position to judge that.

Senator SIMON. Are there any comments from the other two witnesses?

Mr. KOWALSKI. I would agree with Mr. Bell, Senator, that in my experience with Mr. Sessions, he demonstrated unequivocal commitment to the prosecution of criminal civil rights cases and showed sensitivity to those kinds of cases. The Michael Donald case, which we discussed before the Senator arrived, was a particularly brutal murder that required a great deal of his attention and his commitment to bring a prosecution when the local government had failed to bring a prosecution, and he unequivocally supported that prosecutive effort and demonstrated to both myself and Mr.

Glenn, who also worked on the case, his commitment to criminal civil rights prosecutions.

Senator SIMON. Thank you.

Mr. GLENN. I would concur with Mr. Kowalski. In my experiences with Mr. Sessions, nothing I have ever heard him say leads me to believe that he has any racial insensitivity. I did hear his responses to those allegations here last Thursday and I take his responses and, hearing those, in light of the remarks as I understood him to explain them, there is no racial insensitivity there either, in my opinion.

Senator SIMON. I have no further questions, Mr. Chairman.

Senator DENTON. Senator Simon, besides Senator Heflin, you are the only Democrat here to hear that. I must say that Senator Biden said he would remain for the rest of this. I hope that his staff and Senator Kennedy's will relay on such information as Senator Kennedy seems to need. He says he now has problems and had problems with the bringing of the trial and I hope you are quoting to him the 600 absentee ballots out of 6,800—what was the exact figure—700 absentee ballots, about a tenth, as opposed to in that election in 1984. In 1982 there were a thousand absentee ballots as compared to 250 out of 250,000 in Jefferson County.

I am perfectly willing to join battle and keep the battle going until we find out, ascertain at least to the efficacy of all the members who are not going to hear any of this, so we are left to rely on whether the press chooses to comment on this testimony being given today, rather than the testimony that was given at the last hearing or the inferences drawn from it, and I just hope that we do get justice out of this.

I thank the panel and—

Senato HEFLIN. I would like to ask Mr. Kowalski a couple more questions on this remark about the Klan and the fact that they were smoking pot. Now, as I understand it, to get it back into the proper setting of the remark to you, you were telling him you were having some difficulty with witnesses or with Klansmen I suppose who had talked, as to those Klansmen recalling what went on at a house because they had been smoking marijuana.

Now, at the time that you told Mr. Sessions that, had he been previously informed of this or was this new information to him?

Mr. KOWALSKI. My best recollection is that I was telling him that information for the first time. The context in which I raised it, as I recollect now in my mind, was I also thought it was humorous that Klansmen had now begun to use drugs, and I mentioned it as a part of the discussion of the case as a whole in that fashion, and my recollection, to answer your question, was that Mr. Sessions heard it for the first time from me.

Senator HEFLIN. Now, I suppose you had investigators, the FBI supposedly, who had been interviewing the various members of the Klan, including members of the Klan who probably were not involved in the actual murder, and trying to reconstruct what went on and the circumstances, and you were expressing to Mr. Sessions for the first time that you were having difficulty getting all of the factual situation of what occurred in the house relative to conversations because some of the Klansmen had been smoking marijuana, and his response, as has been given, followed that information.

Mr. KOWALSKI. Yes, sir; it did. I would amplify one thing just for the Senator's information. I believe on other occasions I had told Mr. Sessions about difficulties getting evidence from these particular individuals. In fact, they initially had lied to the FBI when interviewed, so there was other circumstances beyond the smoking of marijuana that contributed to the difficulty of getting complete and truthful answers from the people we were investigating and interviewing.

Senator HEFLIN. Do you consider Mr. Sessions a joke teller?

Mr. KOWALSKI. No, sir, not particularly. On the other hand, I believe he does have a sense of humor. I do not think he utilizes it an inordinate amount of time, but he does joke on occasion.

Senator HEFLIN. That is all.

Senator DENTON. Before we thank and dismiss the panel, Mr. Glenn, you said something a moment ago which I agree with but it is terribly important. You said that you were here for the other hearing, you heard what was said back and forth about the racial remarks attributed to Jeff Sessions and that you did not in reaction to the entirety of those testimonies find his remarks to have been racial or worthy of being considered that. Is that correct?

Mr. GLENN. I was responding particularly to Senator Simon's question concerning remarks regarding organizations to be un-American or otherwise and, after hearing Mr. Sessions' explanation last Thursday, I believe Mr. Sessions and I understood what I thought he was saying and I do not consider that to be a racist comment.

Senator DENTON. I totally agree and that is the most frustrating part of this hearing, second to my regret that I am not a lawyer. I am doing my best, but the newspaper accounts, television accounts showing the allegations being made, as if final, and not tempered by what Mr. Sessions' testimony and testimony of others was has shocked a large number of very well-meaning Americans in that they have assumed that all he did was criticize as un-American, anti-American, Communist-inspired the ACLU and the NAACP. It is simply not true, and the reason I am bringing this up is we have in the next panel which will be testifying principally against Mr. Sessions a very distinguished protagonist of civil rights, a distinguished American by any standards, the Honorable Arthur Flemming, who was the president and chairman of the Citizens Commission on Civil Rights, in Washington, DC, under the Eisenhower administration.

He is shocked by what he has read because he was not at this hearing and he is going to testify that way and in other ways that I am not aware of. But I ask that he take note that Mr. Glenn has said that, at least for what it is worth that is also my belief and I think it is the belief of many Alabamians from the many telegrams we have received from black and white persons about that, as well as if you will stay for the subsequent panel, and I hope you have been here a while, sir.

What testimonies you receive about Mr. Sessions from many others who were involved, black and white, in the *Perry County* case.

I thank the panel. Senator Simon.

Senator SIMON. If I could just follow up with one question, Mr. Glenn. You will recall that Mr. Hebert was brought up as a witness and Senator Biden asked Mr. Hebert, if he were an attorney who had a client that happened to be black, would he want to have Judge Sessions as the presiding judge. Mr. Hebert said he would not. You are an attorney, I assume, Mr. Glenn?

Mr. GLENN. I am.

Senator SIMON. I ask you the same question. If you had a client who was black and you had a choice of courts you would you want to appear before Judge Sessions?

Mr. GLENN. Knowing what I know about Mr. Sessions and having worked with him, I would not hesitate to go before Judge Sessions.

Senator SIMON. Thank you, Mr. Chairman.

Senator DENTON. I thank you, Senator Simon, because I have been criticized for having Mr. Hebert sit there and testify and knowing that he was going to say some of the things he did. I did so because I thought we should get at the truth. That was Mr. Hebert's opinion, which is not quite the same as Mr. Glenn. We have had a total of six attorneys from the Department of Justice. Only one was chosen. He has recanted part of his testimony. I think in all fairness we should ask the other two who are sitting here, since Senator Simon was kind enough to ask that question, which I think is a very fair one, whether the other two would care to respond to that question.

Mr. BELL. Well, Senator, if I may first, I would be happy to appear in Judge Sessions' court under any circumstances I can conceive.

Senator DENTON. He asked if you were black, would you feel that—if your client were black, would you feel that he was under a disadvantage?

Mr. BELL. As I say, I would be happy to appear in his court.

Senator DENTON. Sir?

Mr. KOWALSKI. I would begin by stating that before working for the Department of Justice I was an attorney and professor with the Antioch School of Law where I represented many black indigent clients. I would have no reservation about appearing with a black client or any other client before Judge Sessions, were he sitting on the District Court.

Senator DENTON. Any other questions?

[No response.]

Senator DENTON. I thank the panel.

Mr. BELL. Mr. Chairman, may we be excused?

Senator DENTON. You are excused.

Panel No. 2, as I call their names, I request that they come forward and remain standing to be sworn: The Honorable Clarence Mitchell, Maryland State senator, for the National Black Caucus of State Legislators, Washington, DC; the Honorable Arthur Flemming, chairman, Citizens Commission on Civil Rights, Washington, DC; and Robert Turner, attorney, Chestnut, Sanders, Sanders, Turner & Williams, of Marion, AL; Dr. Robert Gilliard, president, National Association for the Advancement of Colored People, Mobile, AL, branch.

We have had many surprises about who was coming and who was not. There were a lot of cancellations and a lot of additions. There are only two of the four I—oh, I am sorry, three of the four I called. Apparently State Senator Mitchell is the one that is absent.

If you gentlemen, please, would raise your right hands. Dr. Gilliard, excuse me, would you raise your right hand, sir? Do you swear that the testimony you will give before this hearing today will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. FLEMMING. I do.

Mr. TURNER. I do.

Mr. GILLIARD. I do.

Senator DENTON. Please be seated.

I had Mitchell, Flemming, Turner, and Gilliard in that order. I do not know why, but I will accede to the way it was presented to me, so Mr. Flemming will be the first, Hon. Arthur Flemming, chairman, Citizens Commission on Civil Rights, Washington, DC. Welcome.

TESTIMONY OF ARTHUR FLEMMING, CHAIRMAN, CITIZENS COMMISSION ON CIVIL RIGHTS; ROBERT TURNER, ESQ., CHESTNUT, SANDERS, SANDERS, TURNER & WILLIAMS, MARION, AL; AND ROBERT W. GILLIARD, PRESIDENT, MOBILE, AL, BRANCH, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE; ACCOMPANIED BY ALTHEA T.L. SIMMONS, DIRECTOR, WASHINGTON BUREAU, NAACP

Mr. FLEMMING. Senator Denton and members of the committee, first of all I appreciate very much having the opportunity of once again appearing before this committee.

In order that you will understand where I am coming from as far as my testimony is concerned, I will state that I have had the opportunity of serving in the Federal Government—

Senator DENTON. Sir, could you put the mike a little closer to your mouth? Thank you.

Mr. FLEMMING. I have had the opportunity of serving in the Federal Government as a member of the U.S. Civil Service Commission over a period of 9 years. In President Eisenhower's first term, I served in his Cabinet as Director of Defense Mobilization and in that capacity also served as a member of the National Security Council. In the second term, I served as Secretary of Health, Education, and Welfare.

Since then I have had the opportunity of serving as U.S. Commissioner on Aging, and from 1974 to 1982 as Chairman of the U.S. Commission on Civil Rights.

I think I should address myself first of all to the comments that you have made, Mr. Chairman. I appreciate your comments relative to my concern for issues in the field of civil rights. You are correct in your assumption that I did read about the testimony that was presented to this committee and I was shocked.

I understood that earlier in the hearing today you expressed the point of view that you expressed just a few minutes ago, and I have listened to some of your colleagues react to that comment. So I un-

derstand that the question of whether or not the comments were made is an issue before the committee.

Senator DENTON. In the context in which they were originally printed.

Mr. FLEMMING. That becomes an issue and you are now in the process of taking testimony on both sides of that issue. You and some other members of the committee have reached tentative conclusions on the basis of the evidence that has been presented up to the present time.

My testimony will proceed on the assumption that the statements were made and were made in the context reported. That is the only way in which I can be of help. I recognize the process that the committee is now going through. I cannot help as far as that particular process is concerned.

As a result of the experiences that it has been my privilege to have in the executive branch of the Federal Government, I have developed great respect for our system of government. I have great respect for our system of checks and balances. I am seeing it operate right now. The President has nominated and this committee of the Senate is now giving consideration to a nomination made by the President of the United States. I have developed tremendous respect for the role of the judiciary under our system of government.

Our people, it seems to me, must believe that Federal judges will decide cases in an unbiased manner, and I am sure we all agree on that. As I had the opportunity of serving in President Eisenhower's administration, I was very much impressed with the way in which he went about the selection of persons to serve on the Federal bench. He was assisted, of course, in the first term by Herbert Brownell, the Attorney General, and then later in his second term by William Rogers who followed Mr. Brownell as Attorney General.

I watched particularly the process that Attorney General Brownell followed, the process that had the complete backing of President Eisenhower. President Eisenhower operated in such a way that the Cabinet was a collegial body, we did as a body discuss issues of this kind and we were aware of what was going on, not just in our own departments but what was going on in other departments.

I feel that one of the finest contributions made by President Eisenhower was the type of persons that he nominated for service in our Federal judiciary. I am a hero worshiper, really, for example, of one person coming from your State, Mr. Chairman, namely Judge Frank Johnson who was selected for a Federal judgeship at that particular time.

I feel that President Eisenhower, aided and assisted by Attorney General Brownell and also Attorney General Rogers, kept before him at all times the absolute importance of nominating to the Senate persons who would have the confidence of the people of this Nation from the standpoint of their commitment to dealing with the cases that would come before them in an unbiased manner.

Now, that is why I was shocked by the comments by Mr. Sessions that were presented to this committee in the first hearing that this

committee held on his nomination for a U.S. District Court judgeship.

I personally believe that if a person who has reached the conclusions attributed to Mr. Sessions, should become a Federal judge—here again, I am assuming the accuracy of the testimony that was presented—many of our people would assume that he would have a biased point of view in any cases involving these organizations, members of these organizations, or issues with which these organizations deal, namely issues relating oftentimes to the first amendment or to the thirteenth, fourteenth and fifteenth amendments.

I recognize that I have not identified the organizations, but you did identify them in your comments, namely the NAACP, the ACLU, the National Council of Churches, the Southern Leadership Christian Conference, and PUSH.

The statements, it seems to me, are so extreme that this assumption is bias that I talked about would persist, and that the situation that would confront the Senate as a result of these statements by the nominee would have to be looked upon as irretrievable.

Now, I appreciate the fact that people go through an evolution in terms of views on some matters. Our society gives them a chance to operate in accordance with their change in views. I do not think however, that in the area of racial bias we should give them the opportunity of having a lifetime appointment on the Federal judiciary.

I called attention to the fact that I was a member of the U.S. Civil Service Commission from 1939 to 1948. You recognize that I was serving during the World War II and the post-World War II period, including my service in the Eisenhower administration.

We saw during that period what can happen in our Nation if we start to question the loyalty of the people who disagree with us. It stifles the vital debate that is at the core of the Democratic process. Unchecked, it seems to me, it can breed unwarranted fears and hatred and an atmosphere in which innocent individuals are deemed guilty solely because of the groups to which they belong. Guilt by association was rampant during the war period and the postwar period and on into the fifties. No one should serve as a Federal judge who has shown a willingness to embrace this approach.

Enforcement of the first amendment, for example, requires a crystal-clear understanding that those who advance progressive, conservative, or even what some people at some points may regard as eccentric positions are not for that reason un-American. No person, it seems to me, should serve as a judge or I feel in any other Federal position who confuses disagreement with his personal political views with disloyalty to the U.S. Government.

Mr. Chairman, I appreciate very much having the opportunity of presenting my views to you and to the other members of the committee. I hope that as you weigh the evidence that you will weigh these views along with others that will be presented to you.

Senator DENTON. We will, sir. I cannot say that I disagree with one word that you said. I think perhaps you would agree if the mere allegation printed without contextual reference to the testimony should justifiably wreck a man's reputation or hurt his career. When I saw the prepared material which I referred to as a

rag in the opening hearing, after I looked into it as to what Jeff Sessions himself had to say about those remarks and then saw the way I think some journalists simply did not stay for the whole hearing, reported the thing, it was I knew going to become a tragedy in that the same assumptions would be drawn by others who read the articles. I am hoping that there will be some correction to the context.

If I hear things in this hearing which are convincing to me, I have not made up my mind. A hearing is a hearing. The only thing I am against is drawing inferences from incorrect allegations which I know to be incorrect. I just think that is tragically wrong. I do not think anybody in here wants that to happen, and I just hope it does not happen by a prejudgment based on insufficient information.

I thank you. Do you personally know Mr. Sessions, sir?

Mr. FLEMMING. No; I do not.

Senator DENTON. Have you ever spoken with or dealt with him on a professional matter or had any dealings with him whatsoever?

Mr. FLEMMING. No.

Senator DENTON. Senator Heflin.

Senator HEFLIN. I do not believe I have any questions.

Senator DENTON. Thank you, sir. I will excuse you then. I am sure on behalf of everyone here we have deep respect for the development of the civil rights movement, the contribution which President Eisenhower gave I believe for our national conscience, an overly delayed beginning whenever one might identify it having begun. It was too late. I would honor you for your part in the progress in that matter.

Mr. FLEMMING. Thank you, Mr. Chairman. I have here a statement that I have been requested to ask the committee to accept. It is a statement to the committee by Dr. Benjamin Chavis, who is the executive director of the Commission for Racial Justice of the United Church of Christ. If you have no objection, I would like to offer it so it can follow my testimony.

Senator DENTON. It will be included in the record, without objection. Thank you very much, and you are excused. Thank you, sir.

[The statement referred to follows:]

STATEMENT TO
UNITED STATES SENATE JUDICIARY COMMITTEE

BY

REVEREND DR. BENJAMIN F. CHAVIS, JR.

EXECUTIVE DIRECTOR

I am speaking on behalf of the Commission for Racial Justice of the 1.7 million member United Church of Christ regarding the nomination of Jefferson B. Sessions III for U.S. District Court Judge in the Southern District of Alabama. We are unequivocally opposed to the nomination of Mr. Sessions for a federal judgeship.

Our opposition to this nomination is based on moral, ethical, judicial and theological grounds. For Mr. Sessions to be even considered for a lifetime position of such high public trust is a blatant affront to all justice-loving peoples and especially to the citizens of the Alabama Black Belt who have been victimized by his attack on their basic constitutional right, i.e., the right to vote.

The United Church of Christ Commission for Racial Justice has been actively working in the Alabama Black Belt for several years. Our involvement in Alabama predates the initiation of the investigation and intimidation of Black leaders for alleged absentee ballot fraud in Perry, Greene, Sumter, Lowndes and Wilcox counties.

We have closely followed the course of the subsequent prosecutions. We also have direct knowledge of the level of fear and intimidation experienced by many Black voters as a result of the unjust prosecutions of Albert Turner, Evelyn Turner, Spencer Hogue and others. Albert Turner, as many of you may know, was a personal advisor to Dr. Martin Luther King and a key organizer of the Selma to Montgomery March which led to the passage of the historic Voting Rights Act of 1965.

Mr. Sessions went far beyond his statutory responsibilities as U.S. Attorney by the manner in which he directed the prosecution of these three defendants. Clearly, the courts and the office of U.S. Attorney should not be used to prosecute

citizens for political and racial reasons. While Mr. and Mrs. Turner and Spencer Hogue were acquitted of these unfounded allegations, the investigation and trial have had a chilling and dampening effect on the community.

Mr. Sessions' many vicious and derogatory comments regarding Blacks, the National Council of Churches, the Southern Christian Leadership Conference, the American Civil Liberties Union and others is a matter of public record. This committee has received numerous depositions attesting to this fact, and Mr. Sessions has himself admitted making these statements.

Morally and ethically, the response of the Senate Judiciary Committee should not only be to reject Mr. Sessions' nomination but also to conduct a Congressional investigation of the unjust persecution of civil rights workers in Alabama and other places in the nation around the voting rights issue.

It is no mere coincidence that the Reagan Administration wishes to reward the repressive actions of Mr. Sessions. In the recent past, Black voters in the Alabama Black Belt have turned out in record numbers, but not for Mr. Reagan and his supporters. It is also no coincidence that Mr. Sessions was recommended by Jeremiah Denton, the Republican Senator from Alabama. Senator Denton faces a crucial election in November and a large Black voter turnout could seriously challenge his reelection.

Theologically, we affirm the equality of all humanity and we take strenuous exception to all manifestations of racism. Mr. Sessions' characterization of the National Council of Churches, of which we are a member denomination, as being "un-American" and "Communist inspired" is but another indication of his moral weakness as both a person and a public servant. We, therefore, call for a resolute rejection of the nomination of Jefferson B. Sessions, III for any consideration as a Federal judge.

Benjamin F. Chavis, Jr.

Senator DENTON. Mr. Turner is the attorney for Chestnut, Sanders, Sanders, Turner & Williams, of Marion, AL, and, Mr. Turner, do you have a statement that you would like to make?

STATEMENT OF ROBERT TURNER

Mr. TURNER. Yes; I do, Mr. Chairman. Mr. Chairman, Senator Heflin, I am Robert Turner, from Marion, AL, and I practice law in Marion. I also defended the defendant, Albert Turner, in the Perry County trial. I am also Albert Turner's brother.

I am not here to retry that case. It has been tried. I am here to voice opposition to the nomination of Mr. Sessions as a judge. I feel that things developed during the trial may be important in assessing Mr. Sessions' qualifications for the judgeship, and I would like to share these with the committee.

In my opinion, a fellow judge should possess a high degree of integrity and he should exhibit at all times impartiality in dealing with the issues and facts as they are presented.

During the course of the trial, things developed that I feel the committee should know about which speaks to the integrity and basic honesty about Mr. Sessions and his ability to deal fairly.

For the most part, Mr. Sessions tried to put on a case by placing witnesses on the stand, knowing at the time that he placed the witness on the stand that he had two and sometimes more than two conflicting statements. He would put the witness on the stand, or the Government would, and then try to use the statement that was most favorable to the defense as impeachment to try to brow-beat the witness into agreeing with what he considered was the most favorable light.

This happened quite often in one case in particular. The witness was on the stand testifying in a manner very favorable to the defense and the Government attorneys gave the judge the impression that the witness was making all of this up, and they knew all the time that this witness had given a statement to the FBI saying exactly what she was saying on the stand. To this, the judge halted the trial and required the FBI to go down and produce the statement which said the very same thing that the witness was testifying to.

I think that goes to the integrity of the man and I think that goes to the fitness of the man to be a judge. This witness' name was Alma Price. Going further, committee members and Mr. Chairman, during the course of the trial one such witness who was not testifying as they had hoped, in spite of knowing that this witness had made other statements who was testifying, this U.S. attorney wrote on a large sheet of white paper with red ink, positioned herself near the jury and on this sheet of paper she had written, "Witness lied." This actually happened in that trial.

Going further, Mr. Sessions has indicated to this committee——
Senator HEFLIN. May I interrupt there?

Mr. TURNER. Yes, sir.

Senator HEFLIN. You say "she did this." Was this an assistant to Mr. Sessions in the trial of the case?

Mr. TURNER. Yes, sir.

Senator HEFLIN. Would you identify who it is and as to what, because I think for it to be relevant you have to tie some sort of connection to Mr. Sessions as opposed to the tactics, and whether or not he was involved. I think as a good lawyer you would agree with that.

Mr. TURNER. Yes, sir. This witness' name was—I mean this U.S. attorney, her name was Gloria Bedwell and she and attorney E.T. Rolison in my opinion were the lead attorneys on the case. I cannot say to this committee that Mr. Sessions was in the building when this occurred. I can say to this committee that I made a motion for a mistrial upon discovering such out of the presence of the jury, that Mr. Sessions did appear and to my knowledge he made no remark or made no comments to Ms. Bedwell about her conduct.

In conjunction with this testimony, I would like to offer the affidavit of Ms. Rose M. Sanders, who was a spectator who was seated some 8 to 10 feet in the audience and she was able to read what was written on this paper. We would like to offer the affidavit of Ms. Sanders into evidence.

Senator DENTON. Is Rose Sanders an attorney in the same law firm with you?

Mr. TURNER. She is.

[The affidavit referred to follows:]

STATE OF ALABAMA
COUNTY OF DALLAS

*
* A P P I D A V I T
*

BEFORE ME, the undersigned authority, a Notary Public, in and for said State and County, personally appeared ROSE M. SANDERS, who being by me duly sworn, says as follows:

"My name is Rose M. Sanders and I reside at 2811-A Highway 14 East, Selma, Alabama 36701. I have practiced law for fourteen (14) years in Selma, Alabama. I am a partner in the law firm of Chestnut, Sanders, Sanders, Turner & Williams, P.C. I attended the trials of United States vs. Albert Turner, et al. in Selma, Alabama as a spectator. The consolidated trials commenced on June 17, 1985 and concluded on July 5, 1985. Toward the latter part of the trial, just before lunch time, Mr. Lawrence Wofford, a citizen attending the trials, brought to my attention Assistant U. S. Attorney Gloria Bedwell. Ms. Bedwell was standing in front of the jury box at the end farthest from the Judge and nearest to the audience. A Black female witness for the government was testifying on redirect. I do not recall her name. Ms. Bedwell's back was partially to the jury. She had a white legal pad in both hands and was holding the pad up in front of the jury as she directed questions to the government's witness. Across the pad were written the words "witness lied" in large red ink. I was sitting behind the bar on the second row of the seats for the audience. I could clearly see the words "witness lied" in red ink. The members of the jury were closer to Ms.

Bedwell than both me and Mr. Wofford. Ms. Bedwell then laid the pad on the banister in front of the jury with the letters clearly visible (See attachments marked Exhibits "A" and "B"). I then passed a note to Mr. Robert Turner, one of the attorneys representing the defendants. The Judge immediately recessed for lunch and Mr. Turner brought the problem to the attention of the Court. Ms. Bedwell did not deny or respond to the charge. I stood in the audience and confirmed to the Judge that Ms. Bedwell did do the foregoing. The Judge admonished her not to do that kind of thing. Mr. Jeff Session left the room before Ms. Bedwell commenced redirect examination. He came back as the Court recessed and was present when the matter was brought to the Court's attention. He did not say anything during the exchange.

Rose M. Sanders
ROSE H. SANDERS

SWORN TO and SUBSCRIBED before me on this the 12th
day of March, 1986.

Charles H. Jones
NOTARY PUBLIC

MY COMMISSION EXPIRES: 3/31/87

Senator DENTON. Are you finished with your—

Mr. TURNER. No, sir.

Senator HEFLIN. Let me inquire on this issue. Where was the location of the piece of paper with the words in red ink "Witness lied" relative to the jury and whether or not the jurors saw it? What was the relationship, as I gather the probative value is the illegal conduct and endeavoring to present a position to the jury that did not allow the defense to object—well, it is certainly an unethical type of activity or a trial tactic. Was it close to the jury? Would you give us information on that?

Mr. TURNER. Well, Ms. Bedwell, upon writing this on the paper, she moved and positioned herself—there is a railing that the jury is behind, just as you are. Ms. Bedwell brought her notepad and placed it on the railing while she sat on the railing within 2 feet of the jurors sitting in the first row, and she was just, what, 3 feet from the jurors sitting in the second row. I was seated directly—

Senator HEFLIN. Is the eyesight of the jury above the railing or what?

Mr. TURNER. Yes, sir, the jury can see over the railing just as you are, and the people who were seated in the second row, that row of benches is elevated so that the second row can see over the first row. I would also like to bring—

Senator DENTON. So we can clarify that, you said it was on a notepad. I am informed that it was on the top of a form FD-302, not on a notepad. It was I guess written by, what, someone in the FBI?

Mr. TURNER. No.

Senator DENTON. One of the assistant U.S. attorneys. I must say that the gist of this seems to be a criticism of Ms. Bedwell. She is not subject to this hearing and I think it would require a burden of proof that Mr. Sessions, who only had marginal participation in this trial, if there was guilt on her part, I do not know that it is possible to impute guilt in him.

Mr. TURNER. Now, I am going to reply to your question as to whether or not it was on the 302 sheet of paper. It was written on 302 at one time and then was on a separate sheet of paper in another case. I saw it written on 302 myself. I was seated behind the U.S. attorneys, but it was also on the sheet of paper I was speaking of.

Senator DENTON. The only information we have is there is evidence it was on that form. If there is another allegation about a notebook, it is new.

Mr. TURNER. OK. I would also like to bring to this committee's attention that Mr. Sessions has testified about the Sheltons ballot and the relative strength of their testimony. I would like to bring to this committee's attention that Mr. Sessions failed to tell you that Edward Shelton, one of the Sheltons that he mentioned, gave a statement to the FBI agent, Andrew Duane, on which Mr. Edward Shelton stated that Mr. Albert Turner was present in his home when his wife marked his ballot. He stated that this occurred when he was sitting in the living room and his wife was seated in the kitchen filling out her ballot in addition to his ballot.

I mention that to indicate that even in front of this committee Mr. Sessions is still engaged in refraining from making a full disclosure of the facts.

Now I would like to speak to Mr. Sessions' impartiality. Mr. Sessions has indicated to you that he is interested in cleaning up voter irregularities and voter fraud across the board. The results show otherwise. The results show that this was an investigation of the Perry County Civic League, of which Mr. Albert Turner is the president.

The results showed that Mr. Sessions said that the ballots that he noticed were scratched through or that he thought were tampered with. He went forward and tried to get indictments. I think it is significant that there were ballots that Albert Turner handled on which there were spark throughs. But in the instances in which these spark throughs were in favor of the prowhite group, there were no indictments and no charges brought.

I mention the ballots of Samuel Hudson and Jonas Belcher as being two examples—ballots handled by Albert, ballots that showed scratch-through but the change was in favor of prowhite and no investigation and no indictment.

I also bring to this committee's attention that there were several ballots handled by Andrew Hayden of Uniontown that showed irregularities—no indictments, no grand jury, no investigation and no trials. The ballots of Evelyn Thomas Owens and Zeke Montgomery are examples. Again, this questions Mr. Sessions' impartiality.

Then he has indicated that he examined ballots which showed alterations or irregularities, but there were ballots that became a part of the indictment on which there were no changes, no alterations and no irregularities. The ballots of Willie Lee, Robert White, Eva Smith, and Maggie Fuller are examples, and then very widespread obvious ballots easily seen that were suspect. There were three ballots handled by the Andrew Hayden prowhite group on which the witness signed August 29, 1984, in Uniontown. The ballots was stamped in the Circuit Clerk's office in Marion, AL, on August 30, 1984, but the ballot was witnessed by the pro-Hayden group on August 31, 1984, which indicates that these voters sent their ballots in and the Circuit Clerk send them back to Uniontown after the voter had parted with the ballot. And these were the ballots of Magnolia Eatman, Adlai Fields, and Agnes Bryant.

The source of my information, committeemen, is the office of Jeff Sessions. I had a conversation with Mr. Sessions and he told me you have accused me of being partial in this case, show me where I have failed to investigate. I just want this committee to know that Mr. Sessions gave me this information that I am giving you. The U.S. attorneys office collected all 700-plus ballots and as a part of discovery they gave me copies. I got this information from the ballots that Mr. Sessions gave me.

I replied to Mr. Sessions, you have the information, I filed some of this information and indicated that we were planning to go forward with a selective prosecution theory, but the information that I gave you came from Mr. Sessions' office.

Ladies and gentlemen, the issue is whether or not a person can anticipate justice. Should Mr. Sessions become a judge, I think that is the issue. Mr. Sessions came into Perry County and there were

two political factions at odds, he took a side and he went after one and he left the other alone. That is what happened.

Not only that, but should Mr. Sessions become judge, he now has the names of all the Albert Turner and Perry County Civic League cohorts because he has the ballots. As a black attorney with a black client—and I am not sure my answer would not be different if I was a white attorney with a black client—but as a black attorney with a black client and the issue being whether or not blacks can anticipate justice in front of Mr. Sessions, the answer is no.

We appreciate this committee reviewing the actions of Mr. Sessions in light of his ability to be impartial and in light of the integrity that he has exhibited through my contacts with him.

Senator DENTON. Thank you, sir.

The defendant in the case was your brother, was that correct?

Mr. TURNER. That is correct.

Senator DENTON. And the witness who testified about the note was an attorney in your law firm?

Mr. TURNER. That is correct. I am also testifying to that.

Senator DENTON. Did you see the note yourself?

Mr. TURNER. Yes, sir.

Senator DENTON. In the courtroom at the time, in the location that the witness says it was in?

Mr. TURNER. Excuse me, please.

Senator DENTON. You saw the note in the location that the witness said it was in and in the circumstances that the witness said it was in, the other attorney in your law firm?

Mr. TURNER. I saw her writing the note, and I also saw her go over and lean on the bench. And I saw her put a sheet of paper down in front of the jury.

Senator DENTON. Alma Price, was that the witness?

Mr. TURNER. Yes; that is the one witness that I mentioned.

Senator DENTON. Without addressing the fact or lack of fact in the allegation about the note, Alma Price's testimony is here. It is my information that the assistant U.S. attorney was trying to keep track of the various witnesses who were being brought there and was using the forms to keep track of those witnesses, and was near the jury because that is whom she was addressing. She had been asked to move away from the witness so she got closer to the jury.

And Alma Price's testimony is here. It is contradictory in each time she gives it. And as a matter of keeping track of the witnesses, it is my understanding that when she got to Alma Price, that was the top of the 5302, and I am under the impression that Mr. Sessions conducted an internal inquiry into that, that he did look into the matter.

Mr. TURNER. Right now, Mr. Chairman, I wonder if you have two matters confused. I am not following you on the Alma Price issue.

Alma Price was—

Senator DENTON. We thought that Alma Price was the one involved with the note on the investigative form.

Mr. TURNER. No; I am not sure that Alma Price was that witness. Alma Price was mentioned in a different setting.

Senator DENTON. OK.

On the bottom of page 3 of your prepared statement, you assert that "Indictments in trials will have a serious impact on the ability of campaign workers to secure absentee ballots in the future."

Are you suggesting that in a case with 700 absentee ballots out of 6,000 of votes cast, registered voters, and the unanimous opinion of the Justice Department that the case should have been brought, that a U.S. attorney should refrain from prosecuting voter fraud with that kind of indication that there should be a prosecution?

Mr. TURNER. I have not testified as to whether or not I thought they should have brought it, prosecution.

I will be glad to answer any questions that you would like me to answer about that. But I did not—as far as I am concerned, the prosecution was brought, it was tried, and the Government failed miserably to prove its case.

Senator DENTON. But I am not addressing that.

You say indictments and trials will have a serious impact on the ability of campaign workers to secure absenteeism ballots in the future, and there were a host of newspaper articles saying that the trial was brought as a conspiracy between "me, Meese and the President." And I did not know about the trial until I read about it. And this ties in with that allegation that to bring such a trial will have a serious impact on elections by affecting the ability of campaign workers. So I have to know that.

Mr. TURNER. You would like to know what I mean about that?

Senator DENTON. Yes; why would there be a serious impact on the ability of campaign workers if you bring an indictment and trial when it is proper that one be brought.

Mr. TURNER. I have not said that this was properly brought. I have said that it was brought, it was tried, and it has been done.

Senator DENTON. The Justice Department has said it was properly brought.

Mr. TURNER. Well, I disagree with the Justice Department. But—

Senator DENTON. Neither does Senator Kennedy.

Mr. TURNER. We tried the case.

Now, what I am saying is bringing to trial people who were engaging in first amendment protected activity, and that is what I take that judgment of proof to mean. People engaged in first amendment activities were brought to trial. And for people to feel that they engaged in first amendment of the Constitution's protected activities and be brought to trial and possibly go to jail, possibly jail terms for most people.

Senator DENTON. Well, if it was wrongdoing, I guess there might be cause.

Mr. TURNER. Nobody has said they were wrong. Nobody has proved they were wrong.

Senator DENTON. But there was evidence that—

Mr. TURNER. The trial has been conducted and there was a jury.

Senator DENTON. The people were acquitted. That does not mean that it was improper to bring the case.

You are the first person whom I have heard say something like the prowhite group and the pro-Hayden group.

Mr. TURNER. No, sir.

Senator DENTON. I mean you are the first person I have heard say that. You have been referring to the prowhite group and the pro-Hayden group; I have never heard that division. Frankly it sounds as if that might be some kind of a racist remark.

But who is Mr. Hayden?

Mr. TURNER. Well, Senator, I am surprised, but he is the mayor of Uniontown, AL.

Senator DENTON. So, in your way of looking at the case, there was a prowhite group and a pro-mayor of Uniontown group?

Mr. TURNER. No, sir.

Senator DENTON. I thought that was the way you characterized it in your testimony.

Mr. TURNER. No, sir; I did not characterize my testimony as such.

Mayor Hayden is a member of the prowhite group. He is a black man. That is a minimum of a prowhite group which consists of some blacks and some whites.

Senator DENTON. Well, I understand what you are getting at.

Mr. J.L. Chestnut, who is your law partner and also a writer for the Selma Times Journal, has an article here, September 22, 1985, headlined "Uncle Tomism to be Dealt With." And he, in that same article, says Senator Denton, Jeremiah Denton, responding to whites such as Cook—I do not even know what he is talking about here—tried desperately to persuade the Justice Department to reject the Perry County redistricting plan.

On my word as a Christian, under oath, I will say I have no idea what in the world the man is talking about. Now he is in your law firm. And I think we are looking at something more than just a trial in Perry County on its merits.

It says, in the last paragraph, one of the major items before the Regional Convention of Black Belt Counties next year will be Uncle Tomism and how to deal with it publicly and effectively. And I think it is presumptuous for one group to assume that another group is prowhite per se, and that they are Uncle Toms, and that this all be brought into a trial. It seems to me it should be on its merits. And it was involved, but the question was with 700 absentee voters out of 6,000 registered, that was not for something funny there that needed—out of 6,000 voters, was there not something funny that needed looking into.

That is my statement. I am not asking you for a comment. I will ask you to comment on this.

You have made the following charges in your prepared statement and I ask you to respond to these questions, and remind you that you are under oath.

You state that elderly absentee voters were fingerprinted and photographed by the FBI in Mobile in connection with the Perry County investigation.

I would like to know if you can name any person other than the defendants in the case who was fingerprinted or photographed by the FBI in Mobile?

Mr. TURNER. To me the defendants in the case were citizens, who were engaged in—

Senator DENTON. You said elderly absentee voters were fingerprinted and photographed by the FBI.

The defendants were not elderly absentee voters, and it was the defendants in the case that were fingerprinted in Mobile.

Do you know of anyone else that you can name that was?

Mr. TURNER. No; I do not know of anyone else.

Senator DENTON. OK.

Mr. TURNER. Personally I do not know of anyone else.

Senator DENTON. You implied by the fingerprinting they were intimidating witnesses in Mobile, the FBI was.

I challenge you to name under oath the voters who you contend suffered strokes or heart attacks while in Mobile at the grand jury session.

Mr. TURNER. I have talked with the son-in-law of Mr. Henry Jackson, and that is where I got that information from.

Senator DENTON. What did he say?

Mr. TURNER. He said Mr. Jackson became ill and that he later had a stroke.

Senator DENTON. When did he become ill?

Mr. TURNER. His son-in-law, Mr. Elijah Jackson, indicated that he became ill in Mobile.

Senator DENTON. When did he have the stroke or heart attack?

Mr. TURNER. It was manifested subsequent to the grand jury hearings.

Senator DENTON. How long after that?

Mr. TURNER. I do not know exactly, but I can tell you when I was talking to Mr. Jackson.

Senator DENTON. Six months maybe?

You said while in Mobile at the grand jury session in your prepared statement under oath.

Mr. TURNER. Now I am saying that Mr. Jackson indicated that his father-in-law became ill, that he subsequently had a stroke.

Senator DENTON. You have charged in your prepared statement that the FBI was granted a court order to intercept absentee ballots in Perry County.

You know for a fact and the court records confirm the fact that the ballots were opened by county election officials under a court order requested by four local candidates, three of whom were black.

On what basis did you say that the FBI opened the absentee ballots?

Mr. TURNER. The statement reads:

In 1984, the FBI was granted a court order to intercept and open all the absentee ballots in Perry County.

That is a little bit different than what you said.

Senator DENTON. Excuse me. Would you say that again?

Mr. TURNER. The statement reads:

In 1984, the FBI was granted a court order to intercept and open all the absentee ballots in Perry County.

Senator DENTON. I will take them one at a time. This is reading directly from your statement about the heart attack.

In October of 1984, the United States Attorney impaneled a Grand Jury in Mobile. Several groups of elderly black witnesses were herded up, placed on buses, and hauled 160 miles. A large number of these people had never left home before. A majority of them were better than 70 years of age. When they got to Mobile, they were fingerprinted and photographed and handwriting samples were taken. Then

they were questioned concerning how they voted and whom they voted for. One man had a stroke while he was down there, and another suffered a heart attack.

In your oral testimony today, you refer to one man, not two, and you have him having a heart attack after, a long time after this. I will get back to the second one as soon as we find it.

All right. Here is—you stated that “The Justice Department made no effort”—this is in quotes—“no effort to indict people from other political factions even when there were clear violations of the law.”

Can you name any other people who you claimed violated election laws and were not prosecuted?

Mr. TURNER. I can name people who presented the same indices of alterations there represented by the ballots on which the indictments were made. I have already told the committee about the three people in Uniontown who signed their ballots on one date, August 29. The circuit clerk in Marion received the ballots on August 30, and they were notarized August 31 back in Uniontown.

I would also like to introduce the fact that there is a Mr. L.G. Walker, a white, who was a long time superintendent of education in Perry County. And it is common knowledge that he lives in Tuscaloosa, AL. He was allowed to vote in this election with his Tuscaloosa address.

I have also mentioned the ballots of Evelyn Owens and Zeke Montgomery which show the same type alterations, and there were no indictments.

Senator DENTON. Well, I am not satisfied with your response under oath to the statement you made here about the heart attack and stroke in Mobile among the elderly people who were—I have got your term—hailed down there, or whatever it was. It was a Greyhound bus which was for their convenience because they would have had difficulty finding the courthouse. That is why they were in the bus. And we will have people who were in the bus testify later there were young as well as elderly there.

It appears to me that when you say in 1984 the FBI was granted a court order to intercept and open all the absentee ballots in Perry County, this order was not precleared by the Justice Department as mandated by the Voting Rights Act. It appears that if you go on and say the FBI immediately swooped into Perry County and began to show up at the homes of elderly absentee voters, showing them their ballots and asking them if that was the way they voted and whom they voted for. They went up to these people when there was no conceivable wrongdoing at all on their ballot.

Aside from what I think is evident exaggeration in other ways, I think you imply that the FBI did get in there and fool around with opening the absentee ballots. But I will turn the questioning over to Senator Heflin.

Mr. TURNER. Can I reply to that?

Senator DENTON. Sure.

Mr. TURNER. I was making specific reference, Mr. Chairman, to the five people, Willie Lee, William Williams, Robert White, Eva Smith, and Maggie Fuller.

These people, their ballots were made a part of the indictment even though there was not a single mark or alteration or inconsis-

ency on their ballots. OK. And ordered them—the FBI opened them.

Senator DENTON. We are going to have another panel after this, and I defer to Senator Heflin.

Senator HEFLIN. Are we going to adjourn for lunch?

Senator DENTON. Well, we went 7 hours the other day without adjourning for anything. And I suggest, since they came such a long way, that we just go ahead and eat at the table here.

Senator HEFLIN. That is all right.

Senator DENTON. Go ahead.

Senator HEFLIN. Mr. Turner, I'd like to address this matter of the "witness lied" incident and its relationship to Mr. Sessions.

I have read now the affidavit of Rose Sanders, and I believe there is testimony here from Deval Patrick of the NAACP Legal Defense and Educational Fund.

Basically, as I understand it, what happened was that during the trial, Ms. Gloria Bedwell wrote "this witness lied" on a piece of paper or notepad, or wrote it twice, or some way or another, but put it in the view of the members of the jury. And that Rose Sanders brought this to your attention, and you as an attorney objected to it.

Now, Mr. Sessions was not in the courtroom, as I understand it, at the time that this went on. But was present, I suppose, when it was brought to the attention of the court.

Now, was it brought to the attention of the court other than an objection, or was there a motion for mistrial, and the judge went back into his chambers, or what is the scenario of where Mr. Sessions came into this?

Mr. TURNER. He came in at the time that we were arguing—was arguing. I believe, Mr. Heflin, that I was asking for a mistrial.

Senator HEFLIN. Was this in open court, or was there a session outside the presence of the jury on this issue?

Mr. TURNER. Yes, sir.

Senator HEFLIN. Now, is it your testimony, at least from Ms. Sanders, that when—she says he came back as the court recessed and was present when the matter was brought to the court's attention. He did not say anything during the exchange.

Is it your position that the circumstances were such that he should have admonished to Ms. Bedwell, or what is the relationship for Mr. Sessions relative to this?

Mr. TURNER. Mr. Heflin, the relationship is that this U.S. attorney's office throughout the trial was engaging in little matters such as these. The witness lied. Putting the witness on the stand, knowing that the witness had given other statements, trying to make their own witness tell a story that they wanted to hear.

They also brought a count where a witness had told the FBI that she gave her ballot to another person and that this person had told the FBI that they mailed the ballot. They filed this count against Albert Turner. And the witness lied.

There is a series of events which I hoped this committee will get an overall picture of the integrity of Mr. Sessions who was running that office.

Senator HEFLIN. Well, you are saying that the witness lied is one event of several unfair trial tactics.

Mr. TURNER. Yes, sir.

Senator HEFLIN. But other than on this witness lied business, you are just saying that he came before the court, and he remained silent?

Mr. TURNER. Yes; he did.

Senator HEFLIN. Well, was he called upon to say anything?

Mr. TURNER. He was not called upon. We were before the bench arguing, you know, and he did not make a response.

Senator HEFLIN. All right. That is all.

Senator DENTON. All right. Thank you, sir.

Dr. Robert Gilliard is a man whom I respect and know as a member of the school board in Mobile. I do not know whether he still is or not. I know he is here to testify in opposition to Mr. Sessions.

I have read your written statement, sir, and you may go ahead with your prepared statement.

STATEMENT OF ROBERT W. GILLIARD

Dr. GILLIARD. Thank you, Mr. Chairman and members of the committee.

I am Robert Gilliard, president of the Mobile Branch NAACP, National Association for the Advancement of Colored People.

With me is Althea T.L. Simmons, who is director of our Washington Bureau, NAACP.

I appreciate the opportunity to appear before you today. I speak in opposition to the nomination of Mr. Jefferson Sessions III, as U.S. district judge for the southern district of Alabama.

This district includes Mobile and my NAACP branch. I am here to say to the committee that, based on my opinion, and on the reputation of Mr. Sessions in the black community of Mobile, he should not be confirmed as district judge for the southern district of Alabama.

Holding judges to the standard of fairness and impartiality is critical. Mr. Sessions does not have an open mind. He is not fair to blacks or to organizations he deems "un-American."

Many members of the black community believe that Mr. Sessions is biased against blacks and is unwilling to use his office to protect their rights.

It is a well-established criteria that judges must be fair in their actions. Fairness requires a sensitive open ear to listen to the legal concerns of parties before the bench. A judge must be sensitive to the legitimate concerns of every group. Mr. Sessions, in my opinion, would not be fair to members of my race.

He accuses the NAACP, the National Council of Churches, and some other organizations that take stands on foreign policy issues as taking positions against the interest of the United States.

Mr. Chairman, the NAACP believes that a potential Federal District Judge cannot rightfully restrict the legitimate concerns of the NAACP and other organizations to his personal views on what activities the organizations should speak out on.

The interests of the NAACP are not and should not be narrowly limited to domestic civil rights issues. Mr. Sessions ignores the historical work of the association. His narrow view of the NAACP

defies its history. Yet, as a judge, if he is confirmed, he would face the monumental and, possibly for him, the insurmountable task of overcoming his personal bias on what activities the NAACP should or should not be engaged in legitimately.

Mr. Chairman, you should be aware that blacks have difficulty finding anything humorous in racial slurs, and for derogatory statements regarding organizations and/or institutions they rely on to protect their constitutional rights. Too many good old boys' statements has stereotypical remarks which have worked to the detriment of the black community.

No, Mr. Chairman and members of this committee, I do not believe that Mr. Sessions is open about the NAACP.

It is also an established criteria that a judge must be impartial as to the substance of the litigation as well as to the parties before him. A judge must not be biased, prejudiced or hostile to the legal actions or to the parties so as to affect his official actions.

We in the Mobile black community do not believe that Mr. Sessions would be impartial as to our interests and rights.

Permit me to take a few minutes to inform the committee of my personal experience with the prosecutor's office headed by Mr. Sessions.

I was elected to the Mobile Board of School Commissioners in 1978. I was elected over three opponents to a place on the board as a result of the 1976 court order of Federal Judge Virgil Pittman, who abolished the at-large scheme of electing school board members. I must add that the basis of the judge's action was the very act which Mr. Sessions regarded as one of the most intrusive pieces of legislation, the Voting Rights Act.

In my case, the chairman of the school board, Mr. Dan Alexander, challenged my right to be a member of the school board. He refused to recognize me and the other black commissioner, Mr. Norman Cox, for motions and to cast votes in school board meetings on November 4, 1981, June 23, 1982, and July 22, 1982. He based his refusal on my being a member of the plaintiff class in the school desegregation case of Birdie Mae Davis. He alleged that I had a conflict of interest as a plaintiff member, president of the NAACP, and as a member of the school board.

As a member of the school board, I voted against a motion to file legal action questioning the status of the plaintiff's class in the 15-year old desegregation lawsuit.

In a mass meeting called by several State elected officials, a number of persons angered by the propitious rulings of the school board president denying the two black commissioners their right to vote signed a petition calling upon the Department of Justice and the U.S. attorney's office to investigate the matter and take whatever legal action that was appropriate. I was one of those elected officials.

No action was taken by Mr. Sessions' office in response to me and to the black citizens of Mobile. Perhaps now this committee can understand how I and other members of the black community feel that, in our opinion, Mr. Sessions is not likely to take steps or to engage in positive actions to enforce or to uphold the rights of black Americans.

Mr. Chairman and members of this committee, what can be more basic than the right to vote? It is highly likely that the NAACP, my constituents and I will appear before the judge who sits on the bench for the Southern District of Alabama. If that individual is Mr. Sessions, we are of the opinion that he would be unable to judge us fairly and impartially on issues before him.

Mr. Hebert, who knows him professionally and respects him, has stated that if he were representing the NAACP, he would have to raise the question to his client and/or counsel regarding a motion to have Mr. Sessions recuse himself from hearing the case because his personal views would most likely interfere with the outcome of the civil rights litigation.

The information before this committee is sufficient, the NAACP believes, in substance and in quantity to persuade the committee to vote against the confirmation of Jefferson Sessions III, to be a Federal District Judge for the southern district of Alabama.

I would like to thank the committee for this opportunity to present the views of the NAACP.

Senator DENTON. Thank you, Dr. Gilliard.

The only comment, recognizing the controversy that exists characteristically in the Mobile school situation and in many around the country, and already having said that I respect you.

Dr. GILLIARD. Thank you.

Senator DENTON. I would like to mention that although Mr. Hebert made the judgment that you attribute to him there were four others from the Department of Justice who disagreed with Mr. Hebert on that. And Mr. Hebert has retracted, I think is the proper word, one of his testimonies which was rather elaborate involving Mr. Sessions, an accusation against him for interfering in the *Conecuh County* case. And he also said, in concluding his testimony, that he took Mr. Sessions' word on anything, and if he said he would be fair, he believed he would be fair.

So, although he is one who shares your views, at least partially, there were four other attorneys from the DOJ who disagreed. And I will turn over the questioning to Senator Hefflin.

Senator HEFLIN. Dr. Gilliard, let me see if I can get to the point of your comment about Mr. Sessions and see if we can understand it.

You are contending that after the judge had entered the order requiring the at-large election of the Mobile school board, you were elected and another black was elected from districts?

Dr. GILLIARD. That is correct.

Senator HEFLIN. You took office. Mr. Alexander, as chairman of the board, refused to allow your vote to count, raising a conflict of interest, contending that you were a plaintiff as president of the NAACP, and brought that suit and, therefore, after you were elected, you continued as president of the NAACP and that presented a conflict and you could not vote.

Now, what was the vote in which Mr. Alexander said this conflict existed? What was it a vote about?

Dr. GILLIARD. There were three occasions, Senator Hefflin, as I indicated.

The vote on November 21, 1982, had to do with the appointing of a citizens committee to consider the aspects, all of the aspects of

the *Birdie Mae Davis* case, which was a desegregation case. And make recommendations for settlement to the court.

The other aspect of it I think that you are concerned with is the conflict of interest issue.

Mr. Alexander made a public statement that I had a conflict of interest. He sent those allegations to the Alabama Ethics Commission which the Alabama Ethics Commission found to be unfounded.

Subsequent to that, he continued to allege that I had a conflict of interest because I was a plaintiff in the *Birdie Mae Davis*, and that the NAACP financed the suit, neither of which was true. I made that clear to the board chairman at that time and many times since then. But he persisted on two other times of denying me my right to vote.

And that is when the public became highly incensed.

Senator HEFLIN. All right.

Now, after he denied you the right to vote, you in effect were appealing to Mr. Sessions to come to represent you in seeing that the order of the court, which had ordered the redistricting and that—what I am driving at, where did this involve Mr. Sessions and what did he do?

Dr. GILLIARD. In my opinion?

Senator HEFLIN. Yes, sir.

Dr. GILLIARD. One of the duties of the U.S. attorney or in the State district attorney is two things—there are two things.

One is to prosecute criminals and the other is most assuredly to protect the rights of citizens.

I think that, upon appeal, Mr. Sessions refused or declined or ignored my request for protection of my first amendment rights and my rights under the 1965 voting rights bill. It had nothing to do with Judge Pittman's order.

Senator HEFLIN. In other words, it was not related to carrying out the redistricting order?

Dr. GILLIARD. No, sir. No, sir.

Senator HEFLIN. By which the representative of that district—

Dr. GILLIARD. If I had been a member-at-large and the same accusation was made, the same allegation, I would have requested assistance from the U.S. attorney's office to ensure me my rights on that Board.

Senator HEFLIN. All right. That is all.

Senator DENTON. All right.

Thank you, Dr. Gilliard.

Dr. GILLIARD. Thank you, sir.

Senator DENTON. And thank you, Mr. Turner.

You are both excused. Thank you.

One more question, Dr. Gilliard.

Do you know Judge Ferrill McRae?

Dr. GILLIARD. Yes; I know him.

Senator DENTON. What kind of a man do you regard him as being?

Dr. GILLIARD. Senator, I do not know—I know he is a judge. I know that. And I know he handles a lot of criminal cases which I am sure weigh heavily upon him because murder is involved quite frequently. But I am not a social acquaintance of Judge McRae. Therefore I am in no position to judge him on that basis.

Senator DENTON. How about as a judge, how do you regard him?

Dr. GILLIARD. I do not know. I have not had—I have not been put in the position of judging Judge McRae on that basis.

I have seen some cases for which I lauded him for the decisions he reached. I have had many complaints from the community that say he was not fair in his decision. But that is a question aside, in my opinion, from the duties of a U.S. attorney.

Senator DENTON. All right.

Thank you, Dr. Gilliard. You are excused.

Panel 3, will you come forward as I call your names, please?

The Honorable Ferrill D. McRae, judge, 13th judicial circuit, Mobile, AL; Mr. LaVon Phillips, legal assistant and administrative assistant, Perry County district attorney, Marion, AL; Mr. Larry Thompson, attorney, King & Spaulding, Atlanta, GA, a former U.S. attorney in Atlanta, GA; Mr. Eddie Menton, a journalist, Mobile Press Register, Mobile, AL; Mr. William Kimbrough, former U.S. attorney, southern district of Alabama.

Would you please raise your right hands, gentlemen?

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

[Chorus of I do's.]

Senator DENTON. Please be seated.

Judge McRae, if you care to, you can make an opening statement.

TESTIMONY OF PANEL CONSISTING OF FERRILL D. McRAE, PRESIDING JUDGE, 13TH JUDICIAL DISTRICT, MOBILE, AL; LaVON PHILLIPS, LEGAL ASSISTANT AND ADMINISTRATIVE ASSISTANT, PERRY COUNTY DISTRICT ATTORNEY, MARION, AL; LARRY D. THOMPSON, ATTORNEY, KING & SPAULDING, ATLANTA, GA; EDDIE MENTON, CITY EDITOR, MOBILE PRESS REGISTER, MOBILE, AL; AND WILLIAM KIMBROUGH, JR., FORMER U.S. ATTORNEY, SOUTHERN DISTRICT OF ALABAMA

Judge McRAE. Well, I have a prepared statement. I would simply like to give that if that is all right.

Senator DENTON. Yes, sir.

Judge McRAE. I see we only have one member here but—

Senator DENTON. Senator East is on his way in if you care to defer for a moment.

Judge McRAE. All right.

Senator DENTON. Senator East, I am glad you came. I recognize the presence of my colleague from North Carolina, Senator East.

Go ahead. We are now about to hear from a panel consisting of the list which I am sure your staff will provide you. And the first man to testify will be the Honorable Ferrill D. McRae, judge, 13th Judicial Circuit, presiding judge, 13th Judicial Circuit, Mobile, AL.

Your Honor.

Judge McRAE. Mr. Chairman and members of the committee, I thank you for the opportunity to appear before you today. As stated, I am the presiding judge for the 13th Judicial Circuit which, under our State judicial system, is Mobile County. I would also like for you to know, sir, that I am 51 years old, and I am in my 21st

year on the bench. I am proud to say that I am a Democrat and, further, that I hold my office and serve at the will of the public. Suffice it to say, I have devoted my entire adult life to the legal profession.

I understand your duties and obligations under article II, section 2 of our Constitution wherein it plainly mandates and limits the President's appointing authority, when it states that it shall be by and with the consent of the Senate.

In holding these hearings, I also understand that rules of evidence are not followed and that allegations of rank hearsay can be lodged against a nominee as being the gospel, or that inferences can be predicated upon inferences. This is totally foreign to a court of law. Gentlemen, it is very difficult to refute or answer the question "When did you stop beating your mother?" if, in fact, you never did.

The one common goal, whether it be in a court of law or in our daily lives, should be to search for the truth. I have read the statements of many of the people who have appeared before you in these hearings. I have found inconsistencies, half-truths, and a few in their zeal to discredit Mr. Sessions were simply loose with the truth. I mention this because the publicity coming out of these proceedings could have far greater consequences than is apparently being perceived here.

I surely hope that a message is not being sent out to U.S. attorneys throughout this country by this committee that illegal voting cases should not be prosecuted, that is if you ever intend to be confirmed by the U.S. Senate, for I agree totally with Congressman John Conyers who said, and I quote:

I do not suggest here that genuine evidence of illegal activity in voting should not be responded to by those charged with enforcing the law. It should be.

The one common thread running through all or almost all of the testimony thus far against Mr. Sessions is the *Perry County* case. Jeff Sessions is literally being raked over the coals for prosecuting alleged voting irregularities in Perry County. This case, according to some, was politically motivated to discourage blacks from voting, but yet the complaints came from black citizens of this county. I personally find the rationale for such reasoning to be questionable, and this logic escapes me, for the U.S. attorney's office should be open to all men, regardless of race, religion, or station in life.

My knowledge of the facts and merits of the *Perry County* case is limited entirely to what I have read. It is very easy for those who have 20/20 hindsight to say I would not have followed this or that course of action. If it was a mistake in judgment, and I do not know enough to say one way or the other, who among you would not like to take back some decision you made, whether in haste or after studying the options at length. I would submit there is no such mortal among us.

The city of Mobile and Mobile County have, in recent time, been wracked with corruption of public officials. Jeff Sessions has had the courage to tackle these problems without the benefit of taking a survey to see if it were the popular thing to do. No. He had the courage to do his duty. But yet there are a few, some of whom are attorneys in Mobile, who would lead you to believe that these also

were politically motivated. And, furthermore, these few would not hesitate to say Jeff made this or that statement with utter disregard for the truth.

Jeff Sessions and his office prosecuted a city commissioner, one circuit judge, one district judge, an attorney, and a car salesman for public corruption. All were convicted and are presently serving time in the Federal penitentiary. It is no secret that others are under investigation at this time by both the Federal Government and the State of Alabama.

The overwhelming majority of the public in Mobile, including the legal profession, applaud Mr. Sessions' efforts to clean up a mess for they also wish to see their tax dollars spent for the public, and not in the pockets of the greedy. But yet there are a few who would accuse Mr. Sessions of only going after Democrats and having a hit list.

Gentlemen, whether you like it or not, there are not many Republican office holders in Mobile County, but Jeff has shown that he will tackle them also. I can assure you that you will hear this all over the country—attorneys for defendants and their clients blasting the Government and the U.S. attorney's office prior to indictment—as having a vendetta against them. This is simply the technique at this time for those who know they are coming to trial. However, you should give these allegations the credence they are due, and that is simply none.

Two of the most racially sensitive cases ever to be prosecuted in Mobile County was that of one Tiger Knowles in Federal court and one Henry Hayes in State court. These cases were the prosecution of two Klansmen for the murder of Michael Donald, a young black man. In March 1981, Michael Donald was abducted, murdered, and hanged by two Klansmen. When the perpetrators were apprehended, one Tiger Knowles pled guilty in Federal court. The other, Henry Hayes, was tried and convicted in our State court. He was given the electric chair in our court, but this was later reduced to life without parole in the appellate court. I do not know firsthand about the prosecution in Federal court, but can assure you that the State's conviction of Henry Hayes would not have been possible without Jeff Sessions' assistance. Although in the statements I have read, he was given little credit for this.

I also read where some even questioned his competence. This is absolutely preposterous and simply leads me to the inescapable conclusion that some wanted to leave nothing out in attempting to discredit him.

Mr. Chairman and members of the committee, if I believed these allegations attributed to Mr. Sessions, that is, that he is a racist, insensitive to blacks, intimidated old black people in Perry County or what have you, I would personally walk to Washington, DC to urge you not to confirm his nomination. However, based on what I know, this is not true.

I have watched this young man since he started practicing law in Mobile. He is honest, hardworking, fair, and compassionate for all of his fellowmen. I know he possesses those qualities necessary to make a positive contribution to the Federal bench, and again for all men, regardless of race, or station in life.

I thank you for your attention and will be happy to answer any questions you may have.

Senator DENTON. Thank you, Judge McRAE.

You recall that Jeff Sessions was responsible for the successful prosecution of a city commissioner, a circuit judge, a district judge—

Judge McRAE. Attorney and a used car salesman.

Senator DENTON. How many of those people were black?

Judge McRAE. Absolutely none. Excuse me, one, the car salesman was black.

Senator DENTON. So the city commissioner was successfully prosecuted—

Judge McRAE. They were all successfully prosecuted.

Senator DENTON. And in my memory I cannot remember in Mobile a city commissioner or a circuit judge being successfully prosecuted. It takes some guts to take someone like that on considering the power structure.

Is that generally correct?

Judge McRAE. I would say that is very correct.

Senator DENTON. I feel that those attached to that city commissioner or the circuit judge or the lawyer, or the car salesman who suffered prosecution successfully—successful prosecution in his hands would probably testify that they did not think it would be in their interests for someone like them to come before him in court. And we have heard some of that today.

Judge McRAE. I would say that would be correct, and I agree with Dr. Gilliard. After 21 years on the bench, I believe you could find an awful lot of people in Mobile County who did not like the decisions I made in this or that case.

I think you could find a number of people who would tell you just about anything you want to know about Judge McRAE after 21 years on the bench, whether it be true or not.

Senator DENTON. You say that attacking the prosecutor is the in technique among defense attorneys today and perhaps among others.

One thing that concerns me about this, I believe it has been established that the Perry County vote fraud case had to be prosecuted in the interest of justice. And then you mentioned the prosecution of a number of rough and significant corruption cases in Mobile, and that perhaps his office is working on more, is it your concern that these attacks on Mr. Sessions could have the effect of causing prosecutors in the future to be timid and not to take on individuals with power and influence who are causing a great deal of harm from their power position?

Judge McRAE. Well, I do not think there is many U.S. attorneys who would not like to be a U.S. Federal district judge. I think that answers your question.

The message is being sent out that these cases should not be prosecuted. Of course, I understand the Justice Department to send in an attorney, prosecute them in the event the U.S. attorney does not.

But I think that the wrong has been done regardless of whether it be voter irregularities or whatever. The U.S. attorney's office should respond to that. And if they are being told by these proceed-

ings that, you know, we do not like these cases, and I am saying that that is the perception I get in reading the newspapers concerning this case. I know absolutely nothing about the case other than what I have read.

Senator DENTON. In your reading, did you say that you had read a number of statements presented before this committee? For example, have you read Mr. Hank Sanders' testimony?

Judge McRAE. Yes, I did.

Senator DENTON. Did you find any inaccuracies, perhaps blatant inaccuracies in that testimony and if so, what were they?

Judge McRAE. The only thing I found that was absolutely totally false was that Mr. Sanders made the statement in his prepared remarks—I do not know whether he has even given them yet—but said that a black could not be elected in a county unless the population—unless that county had a majority of blacks in that county. That is not true.

We have a circuit judge in Mobile who did win a county-wide election. In fact, he had no opposition whatsoever. And was reelected in Mobile County countywide.

Senator DENTON. You mean a black circuit judge?

Judge McRAE. Yes.

Senator DENTON. I believe it is accurate to state, and I hope that the members of the press will hear this if they have not heard it before, that Alabama is second among all States in the absolute number of black elected officials. That is not per capita, but second in gross numbers in the entire United States, and that we have the highest number of black mayors of any State in the United States. This is not to gainsay that there are still problems, but I am trying to get some idea of relativity with respect to my own home State.

You are the presiding judge of the circuit, Judge McRae. Do you represent yourself as speaking for all of the judges of your circuit and, if so, would you offer any evidence of that or proof of that?

Judge McRAE. Well, I make it a practice not to speak for the court unless I have the approval of the members of the court. But, yes, the judges of the 13th Judicial Circuit sent each member of this committee a telegram which is dated March 17.

It says, and I quote:

We have all known Jeff Sessions for many years and are familiar with his reputation, which is excellent. We are confident that he would make an excellent federal district judge and would rule impartially in all matters presented to him. The federal judicial system is fortunate to have someone of Jeff's stature available for this judgeship. We urge you to support this fine candidate and his nomination to the federal bench.

That telegram is signed by me, as the presiding judge, Judge Michael E. Zoghby, Judge Braxton Kittrell, Judge Robert Byrd, Judge Edward McDermott, Judge Robert Kendall, Judge Charles Dodson, Judge Cain Kennedy, and Judge John Butler.

So, yes, sir, I do speak for the entire court.

Senator DENTON. Thank you, sir, and you have stated that Judge Cain Kennedy is black, is that correct?

Judge McRAE. That is correct.

Senator DENTON. And he signed that telegram?

Judge McRAE. That is correct.

Senator DENTON. You say in the prepared statement that the overwhelming majority of the Mobile bar agrees with the position you have taken today. On what do you base that statement?

Judge McRAE. Senator, this morning you read it, I believe, but the Mobile Bar Association adopted a resolution, and I do not know this firsthand, but I am told that it was also sent to all of the members of this committee.

It says:

The Executive Committee of the Mobile Bar Association, Mobile, Alabama, hereby reaffirms 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 any suggestion that Mr. Sessions is racially prejudiced is both unfounded and unfair.

That was, again, I believe, sent to each member of this committee by the Mobile Bar Association.

Senator DENTON. You say you have known Jeff since he started practice in Mobile. Have you ever known Jeff Sessions to make any remark that could truly indicate any racial insensitivity?

Judge McRAE. No, sir; none at all.

Senator DENTON. Is Jeff Sessions a personal or social friend of yours with whom you have developed some kind of—

Judge McRAE. Jeff is approximately 40 and I am 51, so that rules out the—he is a Republican and I am a Democrat. That rules out a whole lot of close companionship. He is not a close personal friend of mine, but I have simply watched the young man since the day he started practicing law in Mobile.

He first went to the U.S. attorney's office as an assistant, I believe I am correct in saying in 1975. So he has been active in that position for 11 years now. He has appeared before me many times in court.

There was approximately a year-and-a-half, I believe, interval in changes in administration that he was not in the U.S. attorney's office either as an assistant or as the U.S. attorney, and he appeared before me many times.

Senator DENTON. In those experiences—you may have answered this adequately, but I have got to ask for the record in a separate question—how would you rate Mr. Sessions as to courage, honesty, and hard work? Do you consider those important characteristics of a judge, and has he displayed proper judicial temperament?

Judge McRAE. In my opinion, he has. Jeff is an extremely hard worker. I do not keep the statistics or the numbers out of his office, but from the cases that I have related to you, they demand a great deal of time.

I do not think anyone in the world could question his honesty and integrity. Again, he has never made any statement in my presence that would indicate in any way any racial insensitivity on his part.

Now, as for judicial temperament, I think that Jeff, yes, has the ability to listen fairly and impartially and to make a decision. The prerequisite for any judge is average, or a little better, sense, the desire to work, and he has shown that he has those qualities.

Senator DENTON. Thank you, Judge McRae.

I will ask, without objection, that the documents to which you referred backing your statement that you spoke for your fellow judges and for the Mobile Bar Association, and other documents to which you referred, if any, be placed in the record.

[Letter follows:]



CIRCUIT COURT
THIRTEENTH JUDICIAL CIRCUIT
FERRILL D. McRAE, JUDGE
MOBILE, ALABAMA
36602

JUDGE'S CHAMBERS

March 17, 1986

Honorable Howell Heflin
United State Senator
For the State of Alabama
Senate Office Building
Washington, D.C. 20510

Dear Senator Heflin:

We have all known Jeff Sessions for many years and are familiar with his reputation which is excellent. We are confident that he would make an excellent Federal District Judge and would rule impartially in all matters presented to him. The Federal Judicial system is fortunate to have someone of Jeff's stature available for this judgeship. We urge you to support this fine candidate in his nomination to the Federal Bench.

Sincerely,

Ferrill D. McRae, Presiding Judge
Thirteenth Judicial Circuit of Alabama

Judge Michael E. Zoghby, Circuit Judge
Judge Braxton L. Kittrell, Jr., Circuit Judge
Judge Robert L. Byrd, Jr., Circuit Judge
Judge Edward B. McDermott, Circuit Judge
Judge Robert G. Kendall, Circuit Judge
Judge Charles H. Dodson, Jr., Circuit Judge
Judge Cain J. Kennedy, Circuit Judge
Judge John F. Butler, Circuit Judge

Judge McRAE. Senator, again, I think these were sent to you, but would you like the copies that I have?

Senator DENTON. We have copies. That is just a routine request; we have to ask for objections to get them permanently in the record.

Now, since Senator Heflin has been here, Senator East, I shall defer to him at this point.

Senator HEFLIN. Judge McRae, you mentioned Judge Cain Kennedy and the fact that he had been elected without opposition in Mobile County. Mobile County, I believe, is about 40-percent black.

Judge McRAE. Approximately 30 percent, but Dr. Gilliard can answer that better than I can.

Senator HEFLIN. To point out the fact that blacks have been elected——

Judge McRAE. He corrected me and said 42.

Senator HEFLIN. A member of the Supreme Court of Alabama is black.

Judge McRAE. That is correct. In fact, I helped—well, let me say I did what I could do to help elect Oscar Adams to the Supreme Court of Alabama.

Senator HEFLIN. He was appointed and then he later ran and was elected in a contested race.

Judge McRAE. That is correct, with white opposition.

Senator HEFLIN. Some might describe the race as having racial overtones. He might have become involved in it, but nevertheless he was elected. I will not ask you to comment on whether there were racial overtones, but there was that indication of some charges made about that.

Judge McRAE. Well, Senator, if I can respond to that, as I recall, the opponent ran his picture and Oscar Adams' picture and said nothing else, indicating he is black, therefore he is not competent or capable.

But the electorate took care of that and Justice Oscar Adams won handily in the State of Alabama.

Senator HEFLIN. And he does a great job according to all that I have heard.

Judge McRAE. He does an excellent job.

Senator HEFLIN. Now, let me ask you about the Mobile County Bar Association. You said that was by the executive committee. Do you know whether there are any blacks on the executive committee?

Judge McRAE. Senator, I really do not know. In fact, I could not tell you how many members are on the executive committee. I do know that there are a number of black members of the Mobile Bar Association because I spoke to them two weeks ago and I know that firsthand.

Whether any blacks are on the executive committee, it would not be fair for me to say because I simply do not know.

Senator HEFLIN. That is all.

Senator DENTON. Senator East.

Senator EAST. I have no questions, Mr. Chairman.

Senator DENTON. Thank you very much, Judge McRae. If you choose, you may stay. Otherwise, you are excused, but you are welcome to stay, and it might be a good idea if you did.

Mr. Lavon Phillips——

Senator HEFLIN. Let me ask one other question.

Do you have any idea how many black lawyers are in Mobile itself?

Judge McRAE. Senator, it would simply be a guess, but it would be in the neighborhood of approximately 30. Mr. Kimbrough maybe can answer that question more correctly, but if I had to guess, I would say it would be 30 or more.

Senator HEFLIN. Do you have any idea of the total number of lawyers in Mobile?

Judge McRAE. Yes, sir.

Senator HEFLIN. What is that?

Judge McRAE. In excess of 800.

Senator HEFLIN. That is all.

Judge McRAE. And I might say that is too many.

[Prepared statement follows:]

TESTIMONY OF
JUDGE FERRILL D. McRAE

Presiding Judge
Thirteenth Judicial Circuit
Mobile, Alabama

Mr. Chairman and members of the Committee:

Thank you for the opportunity to appear before you today. I am the Presiding Judge for the Thirteenth Judicial Circuit which under our State Judicial System is Mobile County. I would also like for you to know that I am 51 years old and that I am in my twenty-first year on the Bench. I am proud to say that I am a Democrat, and further that I hold my office and serve at the will of the public. Suffice it to say, I have devoted my entire adult life to the legal profession.

I understand your duties and obligations under Article II, Sec. 2 of our Constitution wherein it plainly mandates and limits the President's appointing authority, when it states it shall be . . . "by and with the Consent of the Senate." In holding these hearings, I also understand that rules of evidence are not followed and that allegations of rank hearsay can be lodged against a nominee as being the "Gospel," or that inferences can be predicated upon inferences. This is totally foreign to a court of law. Gentlemen, it is very difficult to refute or answer the question -- "When did you stop beating your mother?", if in fact you never did.

The one common goal whether it be in a court of law or in our daily lives should be to search for the truth. I have read the statements of many of the people who have appeared before you in these hearings. I found inconsistencies, half-truths, and a few in their zeal to discredit Mr. Sessions were simply "loose" with the truth. I mention this because the publicity coming out of these proceedings could have far greater consequences than is apparently being perceived here. I surely hope that a message is not being sent out to U.S. Attorneys throughout this country by this Committee that illegal voting cases should not be prosecuted, that is if you ever intend to be confirmed by the Senate, for I agree totally with Congressman John Conyers who said:

"I do not suggest here that genuine evidence of illegal activity in voting should not be responded to by those charged with enforcing the law. It should be."

The one common thread running through all or almost all of the testimony thus far against Mr. Sessions is the Perry County case. Jeff Sessions is literally being raked over the coals for prosecuting alleged voting irregularities in Perry County. This case according to some was politically motivated to discourage blacks from voting, but yet the complaints came from black citizens of this county. I personally find the rationale of such reasoning to be questionable, and this logic escapes me, for the U.S. Attorney's office should be open to all men regardless of race, religion, or station in life. My knowledge of the facts or the merits of the Perry County case is limited to what I have read. It is very easy for those who have 20/20 hindsight to say, I would not have followed this or that course of action. If it was a mistake in judgment, and I do not know enough to say one way or the other, who among you would not like to take back some decision you made whether in haste or after studying the options at length. I would submit there is no such mortal among us.

The City of Mobile and Mobile County have, in recent times, been wracked with corruption of public officials. Jeff Sessions has had the courage to tackle these problems without the benefit of taking a survey to see if it were the "popular" thing to do. No, he had the courage to do his duty, but yet there are a few -- some of whom are attorneys in Mobile who would lead you to believe these also were politically motivated. And furthermore, these few would not hesitate to say Jeff made this or that statement with utter disregard for the truth. Jeff Sessions and his office prosecuted a City Commissioner, one Circuit Judge, one District Judge, an attorney, and a car salesman for public corruption. All were convicted and are presently serving time in the Federal penitentiary. It is no secret that others are under investigation at this time, by both the Federal Government and the State of Alabama.

The overwhelming majority of the public in Mobile, including the legal profession, applaud Mr. Sessions' efforts to clean up a mess for they also wish to see their tax dollar spent for the public, and not in the pockets of the greedy. But yet there are a few who would accuse Mr. Sessions of only going after Democrats and having a "hit list." Gentlemen, there just are not many Republican officeholders in Mobile County, but Jeff has shown he will tackle them also. I can assure you that you will hear this all over the country -- attorneys for defendants and their clients blasting the Government and the U. S. Attorney's office prior to indictment -- as having a vendetta against them. This is the "in" technique at this time for those who know they are coming to trial. However, you should give these allegations the credence they are due, and that is none.

Two of the most racially sensitive cases ever to be prosecuted in Mobile County was that of one Tiger Knowles in Federal Court and one Henry Hayes in State Court. These cases were the prosecution of two Klansmen for the murder of Michael Donald, a young black man. In March of 1981, Michael Donald was abducted, murdered, and hanged by two Klansmen. When the perpetrators were apprehended, one Tiger Knowles plead guilty in Federal Court, and the other Henry Hayes was tried and convicted in our State Court. He was given the electric chair in our Court, but this was later reduced to life without parole in the Appellate Court. I do not know firsthand about the prosecution in Federal Court, but can assure you the State's conviction of Henry Hayes would not have been possible without Jeff Sessions' assistance. Although in the statements I have read he was given little credit for this. I also read where some even questioned his competence. This is absolutely preposterous and simply leads me to the inescapable conclusion some wanted to leave nothing out in attempting to discredit him.

Mr. Chairman and members of the Committee, if I believed

these allegations attributed to Mr. Sessions, that is, that he is a racist, insensitive to blacks, intimidated old black people in Perry County or what have you, I would walk to Washington, D.C. to urge you not to confirm his nomination. However, I know them not to be true. I have watched this young man since he started practicing law in Mobile. He is honest, hard-working, fair, and compassionate for all of his fellow man. I know he possesses those qualities necessary to make a positive contribution to the Federal Bench, and for all men, regardless of race, religion, or station in life.

I thank you for your attention and will be happy to answer any questions you may have.

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.

MOBILE BAR ASSOCIATION
EXECUTIVE COMMITTEE
153 Government Street
Mobile, Alabama 36602

Senator DENTON. If I may go to Mr. LaVon Phillips, legal assistant and administrative assistant, Perry County district attorney, Marion, AL, Mr. Phillips, thank you for coming on short notice.

You are free to make any statement you would care to at this time and then we will ask you questions.

Mr. PHILLIPS. Senator Denton, Senator East, Senator Heflin, my name is LaVon Phillips. I have been living in Marion, AL, approximately now for 5 years. I first came to the State in 1977.

While graduating from undergraduate school and later law school, I was employed by the district attorney in May 1981. I held various positions in the district attorney's office. I started out at the bottom, from a child support investigator to the position I have now.

I worked the 1982, or investigated the 1982 alleged voter fraud situation in Perry County and, subsequent to that, the 1984 voter fraud investigation in Perry County, the primary.

I am here to clear up certain discrepancies on the record basically pertaining to the bus ride from Marion, AL, to Mobile, AL—I think it was on October 23, 1984—and also the subsequent activities that took place in Mobile when the bus arrived in Mobile and the makeup of the Federal grand jury and the county grand jury in 1982, and other entities that were involved in the vote fraud investigation.

Thank you.

Senator DENTON. Thank you, Mr. Phillips. As you know, this is a confirmation hearing looking into Mr. Jefferson B. Sessions' qualifications and suitability for appointment as a judge of the U.S. district court for the southern district of Alabama.

Do you know Mr. Sessions?

Mr. PHILLIPS. Yes; I do.

Senator DENTON. For how long?

Mr. PHILLIPS. I have been knowing Mr. Sessions for approximately 4 years.

Senator DENTON. How did you come to be acquainted with him?

Mr. PHILLIPS. I had met Mr. Sessions—myself and Roy Johnson visited Mr. Sessions in Mobile; I think it was in the spring of 1982 or 1983. Our main purpose in meeting Mr. Sessions was to talk about the voting irregularities in Perry County at that time.

Senator DENTON. Mr. Johnson is the district attorney in Perry County?

Mr. PHILLIPS. Yes, Senator.

Senator DENTON. Would you describe the conditions in Perry County with respect to the procurement of absentee ballots, the problems that have existed in the past in 1982 and 1984, and generally your involvement in the *Perry County* case?

Mr. PHILLIPS. Well, starting in 1982, we received several complaints from incumbent black candidates and black voters that absentee ballot applications were being mailed to citizens' homes without their request; people were going to the polls trying to vote. They were told that they had already voted absentee, which they did not.

There were several other incidents that led up to our investigation. We empaneled a grand jury. The racial makeup of that grand

jury was 11 blacks and 7 whites. Take in mind this is a 1982 grand jury.

We missed the indictment by two votes, which means that either two of the blacks did not vote for the indictment—this is my opinion—or two of the whites did not or one of the blacks and one of the whites did not vote for an indictment. You need 13 for an indictment, out of 18.

Senator DENTON. You calculate, then, that 11 blacks of 13 voted for indictment?

Mr. PHILLIPS. Right, with a black grand jury foreman.

The grand jury report that was initiated subsequent to the vote strongly urged that the district attorney's office and other law enforcement agencies investigate the situation in Perry County because it was becoming very abusive and the black incumbent candidates at the time were rather terrified that they had to fight or had to put up with certain evils in the community or in political atmosphere that they really did not want to deal with.

Take in mind that the political situation in Perry County is not only a white and black power struggle. You have a black-on-black power struggle in Perry County. The voters in Perry County—let me say this: It is my opinion, and there is a lot of other opinions in Perry County, at this particular time that black voters are more sophisticated now. They are voting more of their convictions, their interests, rather than relying on the, per se, black civil rights leadership.

When this happens, your black power base, or your black militant power base, whoever that may be, becomes neutralized. And because of this, this is why we have the present situation in Perry County today and all over this country.

Most—my opinion, again—most black politicians and most white politicians think that all black people think alike. That is not true, when it comes to their political convictions. I have my interests, Larry has his, and so on.

This is what is happening in Perry County. We have a black-on-black power struggle. Now, do not mistake me; there are still some evils in the white community that still exist today that we are trying to eradicate.

But the situation in Perry County is that white and black together want to get together and eradicate these problems, and there is a faction out there that wants to make the community mad, the black community mad, where, hey, they do not want them to associate or be aligned with that white political faction.

I talked to Albert Turner the other day—some time ago, really. It is nice to have control of the courthouse, as you may see it, but political power with no economic power is really no power at all—zero.

What is the use of running the whole courthouse if you are not running anything else around it? We have to work together, and there are some people in Perry County, black and white, who are trying to get a coalition together.

They have criticized the coalition. Sometimes, I criticize the coalition because it has to be a real coalition. But we are trying to find some answers where we can put things in the past and move forward for economic stability and equal voting rights for everybody.

Senator DENTON. How about the absentee situation, as it appeared to you, in Perry County in 1982-84, say? Do you have any recollections of that?

Mr. PHILLIPS. Well, the initial process which started our investigation, I must clear up; the Justice Department lawyer who was on panel 1, who was sitting in Mr. McRae's—Mr. Keeney—

Senator DENTON. That was Mr. Keeney, right.

Mr. PHILLIPS. He stipulated that there was not a court order from a circuit judge in 1982. There was a court order from circuit judge, retired, Ecker Russell. There was an election contest filed by black incumbent candidates to seize the absentee ballots.

Well, the court order stipulated for them to number them as they was coming into the registrar's office when they were counting them. Mr. Turner stated that there were FBI agents opening the ballots. That may be true, but they were not the first.

When the ballots initially was being counted, the board of registrars, or the election officials, at that particular time—I think there are 12 on that body; 6 are black, 6 are white, and they are confronted with each other during the same time these votes are being counted.

So, basically, these people were the ones who opened the ballots first. Once the ballots were numbered and collected, we just concentrated on looking at the affidavit on the back of the absentee envelope.

You have your voter's seal, signature, and that of a witness, which is required by law. We started writing down names, trying to gather potential suspects. And take in mind at this particular time that our state of mind was not—and I repeat was not—to go after Albert Turner or any member of the Perry County Civic League.

We were just doing our duty under law as far as carrying out our duty in the district attorney's office. We had legitimate complaints, and if you are in a district attorney's office, you do not compromise your position. You have to do what you have to do within the confines and the boundaries of the law.

So once we collected these names, we came up with a list of members who are associated with the Perry County Civic League. Not only was it Albert Turner, Evelyn Turner, Spencer Hogue; there were numerous other personalities involved.

We went out to question some of the voters who cast an absentee ballot. Several voters indicated that they did not vote their convictions; that the ballots were picked up. They have their ballots, in confidence, to several members of the Perry County Civic League.

They were, you know, overly disgusted, upset, that their ballot was changed. This is what gave us the reason, more or less, to go down and talk to Jeff Sessions. When we went to Jeff Sessions after the grand jury failed to indict, Jeff Sessions refused—he literally refused to prosecute the case. I was mad at Jeff Sessions myself.

Jeff emphasized, hey, the grand jury, who is by and large the conscience of the community, stated their claim; they did not want to indict. So Jeff thought that that would be un-American, if you will, to go ahead and prosecute the Perry County situation.

He declined. We were upset about it. So 1984 came around. Reese Billingslea, Warren Kynard—Reese was the incumbent candidate for county commission, place one. Warren Kynard was the incumbent candidate for the tax assessor's position.

And they came to us that Thursday before the election, and Warren and Reese told us about the irregularities that was happening with the absentee process in Perry County. And Roy informed Reese and Mr. Kynard to contact Jeff Sessions.

Also, he asked us would we file a lawsuit. Well, see, we cannot do that. Basically, since they are candidates, they would have to file a lawsuit. So they hired Jim Barnes, an attorney in Marion, AL; filed a lawsuit.

Judge McElvey granted the TRO, temporary restraining order. The ballots were numbered in accordance with the envelopes, OK. Then Jeff decided—I am trying to get back to the prerequisites before I start talking about Jeff Sessions, if I can remember.

Then Gary Clem was contacted—Special Agent Gary Clem, who is a special agent in the Selma office—and he came down and spoke with us, and Jeff decided to have the case investigated.

When the witnesses were gathered to go to Mobile, the city of Marion chartered a Greyhound bus to carry all the witnesses to Mobile. I was on that bus. I told the district attorney, Royal Johnson, to carry my clothes to Mobile and I just rode the bus with the witnesses.

Senator DENTON. Excuse me. Would you repeat that last sentence?

Mr. PHILLIPS. I told Roy Johnson—I was about to ride to Mobile with Roy, but I told him that I would ride the bus with the witnesses and he was to carry my clothes to Mobile.

Everything went smoothly as far as the witnesses getting on the bus, getting settled. There was not any turmoil or turbulence as far as gathering the witnesses together. The ones that wanted to go—the ones we subpoenaed and wanted to go, they went.

There were some people that were subpoenaed that did not show up, and not at one time did we try to seek a contempt order to make those people come to Mobile.

Senator DENTON. Why would you not have? Is it not proper that they respond to a subpoena?

Mr. PHILLIPS. It is proper, but we just did not—we did not intimidate people; I will just put it that way.

Senator DENTON. Were you maybe leaning over a little backwards? I wonder if Mr. Sessions, the first time he did not accept that trial, did that because he did not want to be accused of what he is being unjustly accused of now.

Mr. PHILLIPS. I am sorry, sir. Repeat that, please.

Senator DENTON. I say, I wonder if there was any leaning over backwards a little bit to make sure you were not being accused of what you have been accused of.

Mr. PHILLIPS. Absolutely, yes.

Senator DENTON. Absolutely. Thank you. Go ahead.

Mr. PHILLIPS. I am having—well, I am not having problems; I have problems with the testimony of the Reverend O.C. Dobynes. He was also on that bus.

Senator DENTON. He has not testified yet, but he will testify. His statement has been made available. You have looked at it.

Mr. PHILLIPS. Yes, sir.

Senator DENTON. You may go ahead and comment.

Mr. PHILLIPS. He alleged in his statement that there were numerous amounts of police officials; that guns were drawn; that people was forced upon the bus. And I used to have a great deal of respect for Mr. Dobyne not only as a man, but as a member of the clergy.

And after reading those allegations, in which I was involved, I have lost any and all respect. None of those people was inflicted by any undue influence at all—none. When we were on our way to Mobile, Reverend Dobyne took a seat in the back of the bus.

When we were on our way to Mobile, Reverend Dobyne took a seat on the back of the bus. We had traveled maybe 50 miles. I had noticed that Reverend Dobyne was all of a sudden sitting in the middle of that bus.

What he was doing was he was talking, discussing the case with each one of the witnesses. I politely turned to Mr. Dobyne and I told him explicitly not to talk to any of the witnesses concerning their case; that not only that it is not my business; that each witness on that bus' circumstance was different.

Mr Dobyne displayed—his attitude displayed nothing but hysteria. He verbally sought at me for no reason at all, and when we got to Mobile we arrived at the Econo Lounge. All the witnesses got off the bus.

Gary Clem, the special agent, was already there. He went to the Federal building, to the marshal's office, to get expense money for the witnesses. They were given checks to pay for their rooms, to buy their food.

As far as Mr. Dobyne is concerned, he did not even stay in the hotel that night; he left. So how can he have any actual knowledge of what went on concerning the witnesses on that bus? He was not there; he stayed somewhere else. He left the hotel the moment the bus arrived.

The next day when the grand jury was in session, the Federal grand jury, and E.T. Rollison was the questioner on the grand jury, Mr. Dobyne again, in the witness room, was harassing several of the witnesses.

We had received several complaints from several witnesses that they did not want to be associated with Mr. Dobyne anymore. They requested to be put in another room.

This is what happened concerning the bus ride. As far as the health and welfare of each witness on that bus, no one, to my personal knowledge, complained of any illness or any undue influence, as I stated above, was inflicted upon them.

Any questions, please?

Senator DENTON. Did any man have a stroke and another man have a heart attack down there as a result of being hauled down there 160 miles, after being herded up, and so on? Those are the words of a previous witness, Mr. Turner.

Mr. PHILLIPS. Please repeat the question, please.

Senator DENTON. Surely. Did you have knowledge of the kind of treatment that would result in a man having a heart attack or a

stroke—another man, supposedly—according to Mr. Turner, as a result of being herded up, placed on buses and hauled 160 miles?

When they got to Mobile, they were fingerprinted and photographed and handwriting samples taken, questioned concerning how they voted and whom they voted for. You are reporting that, having been on the bus, there was no jostling of the people.

Indeed, you did not even seek contempt citations against those who were not responding to the subpoena. You tried to stop Reverend Dobyns from discussing the case with the people, and then when they arrived, they were given expense money and food money, and apparently spent the night there before they went through any further procedure. Is that—

Mr. PHILLIPS. Yes, sir. Any allegations that were made concerning the fingerprinting or—what were the other allegations, please, Senator?

Senator DENTON. Photographed, and handwriting samples were taken, you know, when they got to Mobile.

Mr. PHILLIPS. That is ludicrous. That did not happen.

Senator DENTON. Ludicrous.

This is with reference to the question of the percentage of the population racially: in 1980, whites, 67.6 percent; blacks, 31.4 percent; other, 1 percent. That is Mobile the city of Mobile.

What do you know about the percentage of absentee ballots? I gave general estimates. Can you be more specific about the absentee ballots in the 1982 and 1984 elections in Perry County?

Mr. PHILLIPS. I will be as specific as I possibly can. In 1982, there were 1,000 cast. From my figures, one out of every five voters in Perry County in 1982 voted absentee.

Senator DENTON. That is compared to 1 in 1,000 in Jefferson County?

Mr. PHILLIPS. Absolutely correct.

In 1984, I think there were 800-some-odd absentee ballots cast.

Senator DENTON. How would you describe the reaction of the witnesses in a little more detail when they found out their ballots had been altered?

Mr. PHILLIPS. Well, a lot of them were devastated. I visited the Sheltons, who were named in the indictment as some of the ballots that were changed, and they were really devastated and they really took it rather bad, you know. They were really upset about it.

And take in mind that some of the Sheltons are not old people. A lot of those people were in their 20's and 30's, OK. See, not all of these people who were a victim of this voter fraud was senior citizens; they were young people.

I mean, I look out my office window in the Perry County courthouse and people were sitting around on the steps voting absentee. That is not what the absentee process—that is not the purpose of the absentee process.

You are only supposed to vote absentee, one, if you are out of the county that day, if you are working; two, you are sick and you are in a nursing home or something. That is the only time you vote absentee.

Senator DENTON. To your knowledge, was any person interviewed, harassed or intimidated by the FBI?

Mr. PHILLIPS. Well, let me say this, Senator: I did not get around to all the interviews which the FBI conducted. The interviews that I participated in—if we went to a person's house and they did not want to cooperate, I strongly urged that FBI agent to let it be, leave it alone.

But there were only a few where people did not cooperate and we never did——

Senator DENTON. Congressman Conyers was to testify here today; he excused himself and I guess he is out there. We have his testimony in writing and it has to do with the appearance of Albert Turner before Congressman Conyers' subcommittee.

Before that subcommittee, Mr. Turner said that the polls were open only from 1 to 5 p.m., and that that is why people needed to vote absentee ballot. Would you respond to that?

Mr. PHILLIPS. Well, Senator, I am an appointed poll inspector in Perry County; I work the polls myself. The polls are open, I believe, from 7 or 8 until 6 in the afternoon.

Senator DENTON. Seven or eight o'clock in the morning until 6 in the afternoon?

Mr. PHILLIPS. Right, until 6 in the afternoon.

Senator DENTON. I will be asking Mr. Conyers if he is aware that Turner's testimony in that respect was erroneous.

Turner also told that subcommittee that the FBI interviewed 1,000 people. My information is that less than 200 were interviewed in this case. Could you comment on that?

Mr. PHILLIPS. That is correct.

Senator DENTON. Turner said before that subcommittee that on a bus trip from Perry County Mobile, one person had a stroke, one had a heart attack. That is sort of beyond the testimony we received from Mr. Turner today.

No one on the bus was ill. Can you attest to that?

Mr. PHILLIPS. No one was ill subsequent—you know, to my personal knowledge, no one was subsequently ill either.

Senator DENTON. We heard from Robert Turner today; that is Albert Turner's brother. This is Albert Turner's testimony before the House subcommittee.

Turner, the one who testified before the subcommittee, the brother of the gentleman here today, said there were three different trips to Mobile, and I believe that you can attest to the fact that there was only one, is that correct?

Mr. PHILLIPS. Yes, sir.

Senator DENTON. Turner said the 1982 grand jury report recommending Federal investigation was inserted later. I am not sure what that means, but maybe you do. It was added to the grand jury report later. Do you know whether that——

Mr. PHILLIPS. That is not true. That grand jury was signed by Jesse Billingsley, a black grand jury foreman, at that particular time.

Senator DENTON. Mr. Turner also testified before that subcommittee that 10 to 15 FBI agents worked for 6 months. I believe that is incorrect; that something like 10 worked maybe 3 or 4 days on a couple of occasions. Is that correct?

Mr. PHILLIPS. Repeat the question, please, again, sir.

Senator DENTON. Yes. Would you tell me about how many FBI agents worked on the case and for about how long, how many days?

Mr. PHILLIPS. Is that the 1984 case?

Senator DENTON. Yes.

Mr. PHILLIPS. Well, there were—I will answer it like this. Gary Clem was in charge—special agent out of Selma—was in charge of that investigation. There were FBI agents in and out who were—mainly, it was Gary Clem; Leslie Soo, who is an Oriental FBI agent; John Kilday—I believe his name is John; Ed Greenwall; a young lady by the name of—one female FBI agent.

I would not say no more than six or seven.

Senator DENTON. For how many days? He said for 6 months there were 10 to 15.

Mr. PHILLIPS. No; I think they came in and I think the investigation was finalized in about 8 to 9 weeks.

Senator DENTON. And about how many days, total, do you think the FBI were actually in presence in Perry County doing work, or is that hard to say?

Mr. PHILLIPS. That is hard to say, but like I said previously, the investigation was consummated in about 8 to 9 weeks.

Senator DENTON. Mr. Phillips, when you became involved in the Perry County vote fraud investigation, did anyone, black or white, attempt to influence or intimidate you with respect to your role in that investigation?

Mr. PHILLIPS. Yes, sir. I was receiving abusive phone calls in my office, at home. It was hard for me to socialize without public abuse from certain members of the community. In 1982, I was harassed and assaulted outside the Perry County Courthouse by Spencer Hogue.

I was leaving the courthouse, going home. He came up behind me and grabbed the back of my sports coat. And I quote, "If you do not leave my people alone, I am going to get you."

Senator DENTON. He was a member of the Perry County Civic League?

Mr. PHILLIPS. Yes; he later apologized, but only at the request of Sheriff Hood. Spencer Hogue was working as a jailer at that particular time and I was not interested in having Mr. Hogue prosecuted, but I did ask for an apology face to face.

But, instead, he calls me at home on the telephone. Someone who insults you like that, you know, there is a better way to apologize to somebody than using the telephone. So I considered it not to be an apology.

Senator DENTON. Are you related in any way to Mr. Albert Turner, the defendant in the *Perry County* case?

Mr. PHILLIPS. Well, not directly related, but Albert Turner's brother, Edward Turner, is married to my father's blood sister.

Senator DENTON. Well, you painted a picture of interesting nature and degree in Perry County, one which you have stated is national in scope, one which has become more and more familiar to me, and I want to make sure I understand it just for my own personal orientation.

The old leaders of the activist civil rights organizations, and you can tell me which ones, but to some degree some of them, are tend-

ing to carry forward an effort to either establish or maintain a control which is manifest through elected officials who are responsive to their leadership.

On the other side, there are some black—and I would like you to give me an idea of the size of that proportion in Perry County—who feel that while insufficient progress has been made in the achievement of equality of opportunity for blacks in areas such as education, social opportunities, perhaps business opportunities, they have noted a great deal of progress and wish to place more emphasis on taking advantage of that progress, working toward economic advance with a deemphasis of the racial and controlled political unity maintained by those who were previously engaged in leading an entirely valid civil rights struggle, or one which, in its purpose and generally in its means, was correct.

If that is not a fair statement, would you please correct it to what you think would be?

Mr. PHILLIPS. I would say that is a fair statement.

Senator DENTON. Do you have an affidavit from a Mr. Reese Billingslea?

Mr. PHILLIPS. Sir, yes; I have an affidavit, but I forwarded it to somebody.

Senator DENTON. All right. We have it in the committee and we just—

Mr PHILLIPS. I do not have a copy of it, no.

Senator DENTON. Without objection, I will put that affidavit by Billingslea in the record.

We will ask you to read it for the record, if you will. This is from Reese Billingslea, a candidate in the election to which you referred, and if you will read and then make any comments you care to make about it.

Mr PHILLIPS. Senator?

Senator DENTON. Yes?

Mr. PHILLIPS. The affidavit of John Anderson was forwarded to me; this is the wrong one.

Senator DENTON. Wrong one.

Senator HEFLIN. Do you have an extra copy of the Billingslea affidavit?

Senator DENTON. I will let you use this one, Senator Heflin—you and Senator East—until I can find a copy.

If you would, would you read it out loud for the record?

Mr. PHILLIPS. Yes, sir. It is an affidavit, State of Alabama, Perry County.

Before me, the undersigned authority, personally appeared Reese Billingslea, who, being duly sworn, deposes and says as follows.

My name is Reese Billingslea and I am 56 years of age. I am a resident of Marion, Perry County, Alabama, and I am employed by Mutual Savings Life Insurance Company. I have been so employed for the past 37 years.

I was elected as County Commissioner in 1976 and have been reelected two times since that time. I was one of the first black candidates elected in Perry County, Alabama. In September of 1984, I was a candidate for reelection in the Democratic primary. I was opposed by Cecil Howard, who is a black man, who was endorsed by the Perry County Civic League.

During the campaign, I was approached by many of my supporters, who informed me that the blatant falsehoods being promoted by my political opposition—I was informed that my opposition had stated publicly that they would do anything to get rid of me.

After consulting with people throughout the county, I became convinced that the concerted, well-organized effort was being made to steal the election from me through the absentee ballot box.

Many of my closest supporters were receiving absentee ballots for which they had not applied, and were being assisted in voting said ballots. They were told to wait until November to vote for Reese,

which was the general election.

I was personally aware of the inordinant number of requests for absentee ballots coming to the office of the absentee election manager,

who happens to be Ms. Mary Auburtin, the circuit clerk of Perry County.

Senator DENTON. That is an aside by you, is that correct?

Mr. PHILLIPS. Pardon, sir?

Senator DENTON. What you just said is not—

Mr. PHILLIPS. Right, exactly.

Senator DENTON. OK.

Mr. PHILLIPS [reading]:

And I obtained copies of the lists of the absentee ballot requests, a public record, by paying 25 cents per copy. I endeavored to politically counter the fraud by mailing literature to every person on that list, which I was fortunately able to do.

Late in the week of August 30th, I contacted the Civil Rights Division, United States Department of Justice, in Washington, D. C., to ask for the assistance and direction in assuring a fair and impartial election.

I specifically requested assistance from the United States Department of Justice because that agency is viewed in Perry County as being highly professional and impartial, and a prior grand jury had also requested their help.

I was referred to United States Attorney's Office, Southern Division, State of Alabama, by the Civil Rights Division, and I thereupon contacted our local district attorney, Roy Johnson, and inquired as to whether he was acquainted with the Honorable Jeff Sessions.

At this point in time, the district attorney telephoned Jeff Sessions and introduced me to him. I spoke with him and requested his assistance. From that point, the investigation commenced which led to the indictment and trial of Albert Turner, Evelyn Turner and Spencer Hogue.

From everything that I was aware, Mr. Sessions and the United States Attorney's Office handled the investigation with the highest professionalism.

This is a true and correct statement, to the best of my knowledge and belief. Signed, Reese Billingslea, the 12th of March, 1986.

Senator DENTON. Mr. Billingslea gave you an affidavit in lieu of his coming here.

Mr. PHILLIPS. Yes.

Senator DENTON. So that is why I thought it appropriate that you read it.

Before turning it over, I will just conclude this questioning round from me with a question of asking what your opinion is respecting Mr. Jefferson B. Sessions' racial sensitivities, fairness, objectivity, qualifications, and suitability for appointment as a judge of the U.S. District Court for the Southern District of Alabama.

Mr. PHILLIPS. Well, dealing with Mr. Sessions from a professional perspective, it is my opinion that he is fit to serve on the Federal bench. Now, as far as these racial slurs about the Klan, the ACLU, NAACP, let me just say this: A person who is an adult and a professional and who is in the company of others, and those others are professionals—a person ought to be able to derive from a certain person's demeanor and the context in which he or she says things whether or not it is a joke or whether or not that that person's state of mind intends for that statement to be malicious, OK.

I make racial jokes, but they are not malicious; they are not wanton. There is a difference. Everybody does. If I was being nominated for Federal district judge and somebody said that about me, I would say the same thing that Jeff said, OK.

You know, you have to look at a person's demeanor, the context in which he says things, and you have to be able to determine—and there were lawyers in his office when that was said, you know; they know what wantonness and maliciousness is. So why be ridiculous about it?

Senator DENTON. Thank you, Mr. Phillips.

Senator HEFLIN.

Senator HEFLIN. Mr. Phillips, you, of course, are State assistant district attorney; Mr. Roy Johnson is the district attorney. How many counties does Mr. Johnson have?

Mr. PHILLIPS. The Fourth Judicial Circuit is the largest geographical circuit in the State of Alabama. He has five counties, 6,000 square miles.

Senator HEFLIN. What is it?

Mr. PHILLIPS. The counties?

Senator HEFLIN. The counties. Dallas, Wilcox, Marion, Hale, Bibb.

Mr. PHILLIPS. Bibb, Hale, Perry, Dallas, and Wilcox counties.

Senator HEFLIN. Now, are you the only assistant district attorney—

Mr. PHILLIPS. I must correct you, sir. I just finished law school and I sat for the bar last month and I am pending results.

Senator HEFLIN. You have just recently become a lawyer?

Mr. PHILLIPS. Yes.

Senator HEFLIN. So in other words, you were not a lawyer when this was—

Mr. PHILLIPS. I was investigator during the voter rights trial.

Senator HEFLIN. Well, I misunderstood; I thought you had been a lawyer.

Were you going to law school at that time?

Mr. PHILLIPS. Exactly. I have since graduated from law school.

Senator HEFLIN. Were you going to Jones or something in Montgomery?

Mr. PHILLIPS. Miles School of Law.

Senator HEFLIN. What?

Mr. PHILLIPS. Miles School of Law in Birmingham.

Senator HEFLIN. Miles?

Mr. PHILLIPS. Yes.

Senator HEFLIN. All right, sir. Are you now an assistant district attorney?

Mr. PHILLIPS. I am assistant to Roy Johnson—legal assistant to Roy Johnson.

Senator HEFLIN. But are you listed as one of his attorneys or as an assistant?

Mr. PHILLIPS. No; the bar results are pending. I took the bar last month.

Senator HEFLIN. In other words, you have not passed yet.

Mr. PHILLIPS. Right, exactly.

Senator DENTON. He said his title was legal assistant to the gentleman.

Senator HEFLIN. All right, sir. I do not know whether you are knowledgeable on this or not. There had been some charge that in regard to this that instead of going to Mobile that the activities pertaining to this trial, some aspect of it, should have been in Selma, which was—how far is Selma from Marion, Perry County?

Mr. PHILLIPS. It is approximately 26 miles, going east.

Senator HEFLIN. Mobile is 160 miles away?

Mr. PHILLIPS. Yes, sir.

Senator HEFLIN. I am not sure whether it is the charge that the jury should have been struck or whether the grand jury should have met in Selma as opposed to Mobile. I suppose maybe grand juries frequently meet in the largest city.

But was there any question about whether the grand jury was to meet in Mobile or Selma?

Mr. PHILLIPS. The answer would be yes. I do not know the logistics of that, but that was being recommended that the grand jury meet in Selma.

Senator HEFLIN. In other words, you do not know the details of the—

Mr. PHILLIPS. I do not know the logistics of that.

Senator HEFLIN. Well, I will inquire of somebody else about that.

You, of course, have stated about Mr. Dobynes' statement and his affidavit that, in pertinent part, to put it in proper perspective to ask the questions—and to do it, I will read it.

When I arrived at the Marion departure site in early October, I saw a bus surrounded by six Alabama State troopers, three or four Marion city policemen, and about nine FBI agents and four State game wardens. It looked like an armed camp.

Now, is that correct or incorrect, or how is it incorrect?

Mr. PHILLIPS. I would like to read the—that is incorrect; I was there. But I would like to read the statement of Chief John Anderson, who is the chief of police of the city of Marion, AL.

"On October 22, 1984, my"—I am on the fourth paragraph on the first page.

Senator DENTON. Without objection, we will enter into the record this statement and the previous affidavit.

[Affidavits follow:]

Affidavit of O.C. DOBYNES
on the Nomination of
Jefferson Beauregard Sessions, III
for Appointment to the
United States District Court
for the Southern District of Alabama

I, O.C. DOBYNES, being duly sworn, depose and say as follows:

1. I am a resident of Perry County, Alabama. I am a retired school teacher and a pastor for two small churches in rural West Alabama. I have lived in Perry County all my life and have been deeply involved in county affairs for over 30 years.

2. I ran for a seat on the Perry County Commission on September 4, 1984. I lost the election; my opponent, Reverend Ward, was elected to the Commission.

3. A few days after the election, a former student of mine, Mary Pryor, told me that the FBI had brought her absentee ballot to her house and that it had been changed. She told me that my name had been crossed out and Mr. Ward's name had an "X" by it. She said she had voted for me and asked who I had given her ballot to. I told her I mailed it at the U.S. Post Office in Marion to the Circuit Clerk's Office and didn't know the ballot got changed.

4. Later that month, LaVonne Phillips, investigator with the District Attorney's office and an FBI agent came to my home to question me about the absentee balloting. I told them I would only talk in a court of law, and the FBI agent said he would have me subpoenaed.

5. When the subpoena arrived, an attached instruction sheet announced that all the witnesses from Marion would be transported to the federal courthouse in Mobile by chartered bus. I was also instructed to bring personal items for an overnight stay.

6. When I arrived at the Marion departure site in early October, I saw a bus surrounded by six Alabama State Troopers, three or four Marion city policemen, about nine FBI agents, and four state game wardens. It looked like an armed camp. The

street around the courthouse was blocked off and about eight officers stood on different corners with their guns drawn. I learned that law enforcement officers surrounded the city while the buses were being loaded with witnesses. It was one of the most imposing and chaotic scenes I have ever witnessed. Approximately 25 people - many of them in their seventies, eighties, and even nineties, most ailing and all frightened - were loaded onto a bus under the watchful eye of more than 20 armed police officers. Two marked police cars escorted the bus on its nearly five hour journey to Mobile.

7. During the trip I questioned the need for armed guards. The response of the authorities (LaVonne Phillips of the D.A.'s office) aboard the bus was to accuse me of coaching the witnesses.

8. The bus trip took its toll on some of the more feeble witnesses. Ninety-three-year-old Red Jackson had a stroke soon after his return to Marion. Another elderly witness suffered a heart attack.

9. The morning after our arrival, District Attorney Johnson and FBI Agent Garry Clem asked me to ride over to the courthouse with them. After getting in the car Agent Clem informed me that Mary Pryor told him she had given me her absentee ballot. I replied that it was true that I had mailed it at the Marion post office. Agent Clem said that he personally saw Albert Turner put Mrs. Pryor's ballot in the mail the night before the election. When I said that was impossible, Agent Clem replied that if I was going to say that to the grand jury I may as well go home. He then changed the subject and said he had heard I was coaching the witnesses on the bus to Mobile and said that he "would not tolerate that."

10. I was the last witness to be called that afternoon. The federal attorney asked me what I knew about the "voting fraud" and Mary Pryor's absentee ballot? Could I explain how Mrs. Pryor's ballot had been changed? Had I given the ballot to Albert Turner? I told them that I mailed Mrs. Pryor's ballot, that she had told me she had voted for him, and that I believed

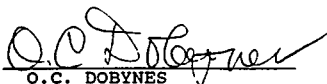
her. The way it appeared to me was that Johnson and Clem definitely didn't want me to testify after they found out what my testimony was going to be.

11. After the bus trip back to Perry County, on at least three occasions the FBI came to my home accompanied by LaVonne Phillips and tried to get me to change my testimony. I told them I would not change my grand jury testimony because it was the truth.

12. In the 1984 Democratic primary, Reese Billingsley ran against Setzer Howard for a seat on the Perry County Commission. Mr. Billingsley was not supported by the Perry County Civic League. I was present when Ms. Emma Sims received her absentee ballot in the mail from the Circuit Clerk, Mary Auburtin. Ms. Auburtin is white. She is responsible for supervising the entire absentee balloting process in Perry County. When Ms. Sims opened the envelope it contained, in addition to her absentee ballot, the campaign literature of Reese Billingsley, the opponent of the candidate supported by the Civic League.

13. I have personally been told by Mrs. Pryor that she would never vote again as a result of the federal investigation. I have also heard a number of other black people say they would not go to the polls anymore because of what they have seen of the way the witnesses in this case were treated.

Under penalty of perjury,


O.C. DOBYNES

Sworn to and subscribed before
me this 19 day of March, 1986.


NOTARY PUBLIC

My commission expires March 31, 1989

STATE OF ALABAMA)
)
 PERRY COUNTY)

A F F I D A V I T

Before me, Sabrah H. Agee, the undersigned Authority, came the Affiant, John Anderson, Chief of Police, City of Marion, Perry County, Alabama, and deposes and says as follows:


My name is John Anderson. I am thirty-nine years of age, and a life-time resident of Marion, Perry County, Alabama. I have served the City of Marion as its Police Chief for the past fifteen years, and was serving in this capacity during the Vote Fraud Investigation in 1984.

On October 21, 1984, Special Agent Leslie Sue of the Federal Bureau of Investigation contacted my office and informed me that he had received information that there was going to be an attempt to prevent the Federal Grand Jury witnesses from going to Mobile to testify before the Grand Jury concerning the Perry County Vote Fraud Investigation. When I received this information, it was decided that the police department would provide whatever security necessary to protect these witnesses from harrassment.

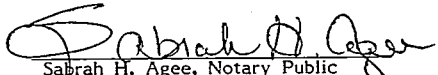
On October 22, 1984, my department supplied two officers, Lt. Don Caver, and Patrolman Gabriel Jones, as security while the witnesses were boarding the bus bound for Mobile. Also on the scene was Conservation Officer Mike Nichols, who was assigned to Perry County at that time, and who worked out of the Marion Police Department. Three F. B. I. Agents were also present at the loading site. One was the aforementioned Special Agent Leslie Sue, and two were agents from Montgomery. I do not know the names of the Montgomery Agents. Capt. George Jones, of the Alabama State Troopers Office, came to Marion, but waited inside the Marion Police Department, along with three other Troopers. The bus loading zone was in a public parking lot, next to the U. S. Post Office, and it was directly across the street from the Perry County Courthouse. After all

The Grand Jury witnesses were loaded onto the bus, the Alabama State Troopers drove over to the loading site and waited for the bus to leave for Mobile. To the best of my knowledge, there were no other Law Enforcement Officers assigned to the aforementioned detail, and there were no other Law Enforcement Officers present at the loading site. The only uniformed Law Enforcement personnel in the immediate vicinity of the bus were Lt. Caver, and Officer Jones, of the Marion Police Department. There were no streets blocked, and at no time were any weapons displayed other than the pistols belonging to the uniformed officers at the site, and these pistols were in the officer's holsters at all times.

The above statement is true and correct to the best of my knowledge and belief.


John Anderson, Chief of Police
Marion, Alabama

Sworn and subscribed before me on this the 17th day of March, 1986.


Sabrah H. Agee, Notary Public
State of Alabama at Large

Senator DENTON. Go ahead, please.

Mr. PHILLIPS [reading]:

On October 22, 1984, my department supplied two officers, Lt. Don Caver, who is white, and Patrolman Gabriel Jones, who is black, as security while the witnesses were boarding the bus bound for Mobile.

Also on the scene was conservation officer Mike Nichols, who was assigned to Perry County at that time and who worked out of the Marion Police Department. Three FBI agents were also present at the loading site.

One of the aforementioned special agents, Leslie Soo—

and the two were agents from the city of Montgomery. Also, Captain Jones was there, Alabama State troopers, and one person who was deleted, who was not mentioned in this statement, was a black State trooper by the name of Billy Smith was there, and that was all.

Senator HEFLIN. How many is that?

Mr. PHILLIPS. I did not count, sir; I just read the statement.

Senator HEFLIN. I count from you say there would be nine.

Mr. PHILLIPS. OK, nine.

Senator DENTON. If my colleague will defer, it does note that some of them waited inside the Marion Police Department. In fact—

Mr. PHILLIPS. Captain Jones did.

Senator DENTON. And three other troopers, and I believe they were an escort for the bus.

Senator HEFLIN. Well, how many were there altogether, about 12 police officers there at the time?

Mr. PHILLIPS. I do not think it was 12, sir. Well, let us count them.

Senator HEFLIN. Well, I understand from Senator Denton they were in addition to the nine that I counted.

Mr. PHILLIPS. Well, there were some police officers that were inside the Marion Police Department that were not on the scene when the bus was loaded with the witnesses.

Senator HEFLIN. All right, sir. Well, are you saying that it did not look like an armed camp?

Mr. PHILLIPS. No.

Senator HEFLIN. Now, he says the street across from the courthouse was blocked off and about eight officers stood on different corners with their guns drawn. Was there any of that that went on?

Mr. PHILLIPS. That is ridiculous. No.

Senator HEFLIN [reading]:

I learned that law enforcement officers surrounded the city while the buses were being loaded with witnesses. It was one of the most imposing and chaotic scenes I have ever witnessed.

Approximately 25 people, many of them in their seventies, eighties, or even nineties, almost all ailing and all frightened, were loaded into a bus under the watchful eye of more than 20 armed police officers. Two marked police cars escorted the bus on this nearly 5-hour journey to Mobile.

Mr. PHILLIPS. That is incorrect, sir.

Senator HEFLIN [reading]:

During the trip, I questioned the need for the armed guards. The response of the authorities, Mr. Lamon Phillips,

meaning you,

of the D.A.'s office, aboard the bus was to accuse me of coaching the witnesses. You have explained that previously.

The bus trip took its toll on some of the more feeble witnesses. Ninety-three-year-old Red Jackson had a stroke soon after his return to Marion, and another elderly witness suffered a heart attack.

Is that correct or incorrect?

Mr. PHILLIPS. Sir, there is no—I have no personal knowledge of that. All I know is that on the way going down, Mr. Jackson—and who was the other person, sir?

Senator HEFLIN. It says, "Ninety-three-year-old Red Jackson had a stroke soon after his return to Marion, and another elderly witness"—it does not name him—"suffered a heart attack."

Mr. PHILLIPS. That is not true.

Senator HEFLIN. It does not say when.

Mr. PHILLIPS. That is not true.

Senator HEFLIN. All right, sir. Now, you were talking about the absentee ballots and the various things about them. About nursing homes, is it legal or illegal to use absentee ballots for people who are confined to nursing homes?

Mr. PHILLIPS. It is legal.

Senator HEFLIN. Legal.

Mr. PHILLIPS. I mean, what I was saying, Senator Heflin, that people that were sitting around the courthouse—young people, younger than I am; I am 26 years old—was voted absentee. You know, that is hard to explain. You know, they do not have any basis to vote absentee. The polls are just around the corner.

Senator HEFLIN. The purpose of an absentee ballot is either you cannot get to the polls or you are absent from the State, as I understand it, or your county.

Mr. PHILLIPS. Also, let me mention one thing that I forgot to mention. When I was an investigator in 1982, Mr. Turner, who was picking up some of these ballots—there were not any charges in 1982; I am not charging Mr. Turner with any guilt, but Mr. Turner was a candidate in 1982.

Section 17, Alabama Criminal Code, sternly spells out that no candidate is to solicit, pick up, or even—you are not supposed to even touch an absentee ballot if you are a candidate. It is illegal.

Do you want to look at some of this I have, some of these ballots I have here?

Senator HEFLIN. Well, they have been made a part of the record, and I see there was not any alteration in my name. [Laughter.]

That is all I have.

Senator DENTON. Senator East.

Senator EAST. For the sake of time, Mr. Chairman, I will let you continue. Thank you.

Senator DENTON. Well, I do not know which media representatives are here or not. I know that there were many reports the first day of the unmitigated allegations. I believe that many in the media have had a great deal to do with favorable development of civil rights in this country, and I will particularly cite what I have seen in the Washington Post in the way of the fairness with respect to distributions of photographs, considering the racial makeup of the population in the area.

But I have to say as a Senator that I am disappointed that in spite of reassurances made that "I will hang in there with you all day today, Jerry, like I did before," that there is not a crowd here to hear the extenuation, the development, the truth, of this matter.

And I only have some hope that there will be some revelation through the press of what happened. I know there are some staffers here, but I have got to recount what happened the last time I had a security and terrorism hearing, which was very typical.

I chaired a hearing on Libya's support of terrorism and the activities of the radical entente. I am proud of that hearing. It, like other hearings, has been published all over the world. It is in universities and colleges all over the world.

And yet, though the hearing lasted many hours, the only mention in the *Washington Post* was about Senator Specter having been here and making an opening statement, and Senator Leahy having been here and making an opening statement; no mention of anything in the hearing whatever, and none of my colleagues are going to take the trouble to read the transcript of that hearing.

I find myself in a difficult bind here in respect to trying to develop knowledge in this body about terrorism, and I challenge anyone to say that I have approached it in anything but a moderate, balanced search for truth with respect to terrorism.

I just hope that the liberal media will follow the real meaning of the term liberal in presenting what has happened here today, because I do not know any other way that we are going to get the awareness among the Senators on the floor of what happened here today.

I want to thank LaVon Phillips for showing the courage to come and testify, and ask him if he is still receiving any threats regarding his testimony or his activities in the trial.

Mr. PHILLIPS. Well, no, sir, not at this particular time, but like I once mentioned, if you work in a law enforcement capacity, and especially a district attorney's office, if that evidence is *prima facie*, you are going to have to put aside your political convictions.

And once a professional, whether he is in the legal profession, medicine, whatever it may be, starts compromising his position, all of a sudden you wake up one morning and you are corrupt. You may not even know it, but you are, you know, and that is just the way I look at it now.

You know, it does not bother me, but I guess that is life.

Senator DENTON. Thank you again, Mr. Phillips. You may remain where you are or excuse yourself.

Mr. Larry D. Thompson, of Atlanta, GA, regarding this hearing. Sir, do you have an opening statement?

STATEMENT OF LARRY D. THOMPSON

Mr. THOMPSON. Yes; I do, Senator.

Mr. Chairman and members of the committee, I appreciate the opportunity to appear before you today. I am presently a member of the Atlanta, GA, law firm of King & Spaulding. I became a member of the firm in February of this year. Prior to that time, I served, since September 1982, as U.S. attorney for the northern district of Georgia, with headquarters in Atlanta, GA.

I was nominated by President Reagan for the position of U.S. attorney in August 1982, and was confirmed by the Senate the same month.

I am here, Mr. Chairman, because my friend, Jeff Sessions, asked me to appear on his behalf, and I do so without hesitation or reservation. I have known Jeff since October 1982.

I clearly remember our first meeting, which occurred in a crowded motel room in Biloxi, MS, with 10 other U.S. attorneys from throughout the Southeast. The occasion of our meeting was the formation of the Southeastern Organized Crime Drug Enforcement Task Force.

President Reagan then had recently announced the formation of 12 regional drug task forces to combat drug smuggling and drug trafficking. Atlanta was designated as the headquarters of the Southeastern task force and I was given the responsibility of establishing the task force and coordinating its activities in the States of Alabama, Georgia, North Carolina, South Carolina, and Tennessee.

The task force consisted of Federal prosecutors from the various U.S. attorneys' office, as well as agents from the FBI, DEA, IRS, Customs Service, and the Bureau of Alcohol, Tobacco and Firearms.

For a new U.S. attorney, the establishment of the task force clearly represented a challenge. I asked for, and received, the support of all U.S. attorneys in the region in this endeavor, and, Senator East, including the three U.S. attorneys in North Carolina; I received great support from them.

However, the support I received from Jeff was enthusiastic and complete. At my request, and sometimes on rather short notice, Jeff would travel outside his district to attend a meeting or a conference dealing with the task force, dealing with task force operations or cases. He was one of the first U.S. attorneys to have the task force fully operational in his district.

And throughout the usual difficulties incurred in complex, sensitive multiagency and multidistrict investigations, Jeff was completely supportive of my leadership of the task force. He was a loyal colleague.

However, my relationship with Jeff goes beyond that of a professional one. During my tenure as U.S. attorney, Jeff and I attended several meetings and conferences together. We have had many conversations. On two occasions, we roomed together while on travel status in order to cut our expenses.

I believe I got to know Jeff Sessions as a man, and state to you in my place today that Jeff is a good man and an honest man, untainted by any form of prejudice.

I have read some of the statements and testimony in opposition to Jeff's nomination. I do not dismiss them lightly. They pain me, but they do not comport with what I know about Jeff.

I am a member of the National Bar Association. While I do not agree with all the views of the NBA, I respect the organization and acknowledge the important role NBA members have played in nurturing my professional career.

I have worked very hard over the years for the Atlanta NAACP in connection with its educational program for minority youth, and

I understand the essential role the NAACP has played in making it possible for me to function professionally the way I do today.

I take my appearance before you gentlemen seriously. I was born to a poor family in Hannibal, MO. My father was a railroad laborer. Unfortunately, I have experienced racism in my life.

Yet, I know Jeff Sessions not as a symbol, not just as a colleague, but as a man and a friend, and I admire him, for he has revealed to me some of the unfortunate circumstances in his early years that he has had to overcome in order to function in our pluralistic society.

I have lived in Missouri, Michigan, and Georgia, and in the process I have met many people, including many lawyers. There are many I could not support for a position as important as that of a U.S. district court judge. I could not support someone who I believed was deficient in ability or defective in character.

What better way is there to judge someone than to know him? I know Jeff. He will serve our nation well as a U.S. district court judge. And most importantly for your consideration today, he will do so in a completely fair and impartial manner.

Thank you for your attention, and I will be happy to answer any questions you may have.

Senator DENTON. Thank you, Mr. Thompson. I must note that Mr. Hebert did not know that well, was not that close with him, and yet he recounted some conversations which seemed to have suffered from the same kind of flawed memory that required him to withdraw what he previously said about the Conecuh County situation.

And I think your testimony—a man who knows him, who has roomed with him—is very important in trying to place in perspective his qualifications for the bench.

I saw some members of the media flinch when I made my previous remarks. I have got to say I do not mean that all media are liberal, and liberal is not a bad word. I just mean that it is very difficult for Senators to get to know what happens if the only thing they hear are the allegations being printed on the first day and then no follow-up and no Senators. It is very difficult.

I appreciate the fact that most of them over there now are from the State of Alabama, but I cannot help mentioning that the article I referred to in the Washington Post was an AP dispatch, from which they chopped off the first part and just left the second part, which left me and the substance of the hearing out.

That has been going on for 5½ years up here, and the Post is what these gentlemen read out there on the floor every morning. So it is a problem. It is a problem with freedom, it is a problem with justice. When you cannot get a letter to the editor of that paper published, which I have tried to do ever since the first day, you have got to wonder what freedom of the press really means. Freedom for whom?

Mr. Thompson, you and Mr. Sessions were close and often discussed your offices and how they operated. How did you feel about his ability to personally try so many cases?

Mr. THOMPSON. My impression with Jeff—and that is based on many discussions with him regarding all kinds of matters, particularly in connection with our involvement in the Southeastern Orga-

nized Drug Task Force, and these were cases in which we had common defendants or commonalities involved in the investigation—is that he is an exceptional prosecutor.

He is hard-working, he is diligent, and I had the utmost faith in him in dealing with him on some of the very sensitive and complex drug cases that we discussed.

Senator DENTON. Are there many other U.S. attorneys in the country who have tried 17 cases before a jury, including 1 that lasted 7 weeks, 1 over 4 weeks, and 2 lasting 2 weeks?

Mr. THOMPSON. It is very difficult for a U.S. attorney who has to administer an office, and make many different policy decisions, and administrative decisions, and investigative decisions to try cases.

I have only been able to try two cases during my tenure as U.S. attorney, and I admire Jeff for being able to try as many cases as he did, especially the complex public official corruption one that I understand he tried in Mobile.

Senator DENTON. I am not a lawyer and it is hard for me to relate. So it is particularly unusual that he would try the vast majority of these 17 cases alone—that is, without a cocounsel?

Mr. THOMPSON. That is admirable.

Senator DENTON. Have you reached an opinion as to Mr. Sessions' ideals with respect to his suitability for office? Is he committed to being a good public servant and has he displayed judicial temperament suitable to his nomination?

Mr. THOMPSON. Senator, in my opinion, based on some very frank and candid conversations that Jeff and I have had, Jeff was an exceptional public servant as U.S. attorney and he would be an exceptional public servant as a U.S. district court judge.

We have had several—I do not want to repeat myself, but we have had several candid and frank conversations about our backgrounds and I think that Jeff is the kind of person that would serve as a judge—he would be impartial, completely impartial, and fair, and I do not think that his character is tainted by any prejudice against anyone.

Senator DENTON. Thank you, Mr. Thompson.

Senator HEFLIN.

Senator HEFLIN. Mr. Thompson, I think you shed some light on the issue of Mr. Sessions. You are a black man and you all roomed together.

Mr. THOMPSON. We did, on two occasions.

Senator HEFLIN. Have you noticed any racial prejudice coming from him toward you or any other black man?

Mr. THOMPSON. Absolutely not, Senator Hefflin, and I think the thing that has impressed me about Jeff was that I was a new U.S. attorney in 1982. Jeff and my other colleagues throughout the southeastern region had served longer than I and I was recently appointed.

The President announced the formation of this drug task force, which covered five Southeastern States, and I had to step in, sort of an interloper, would be the best way to describe it, and try to not only get that task force organized in our region, but to take control over it.

And it was a tough job, and Jeff was—long before he was nominated for the judgeship, Jeff was one of my strong supporters

among the U.S. attorneys in our region. He stood behind me, he did everything I asked him to do, and I greatly appreciate that.

As I said in my prepared statement, he was a loyal colleague.

Senator HEFLIN. You were appointed U.S. attorney in 1982?

Mr. THOMPSON. Yes, sir.

Senator HEFLIN. Are you a Republican?

Mr. THOMPSON. Yes, sir.

Senator HEFLIN. That is all.

Senator DENTON. Do you have any questions, Senator East?

Senator EAST. No.

Senator DENTON. Mr. Eddie Menton, of the Mobile Press Register; would you care to make an opening statement, Mr. Menton?

STATEMENT OF EDDIE MENTON

Mr. MENTON. Mr. Chairman and members of the committee, I would just make a brief statement. When you asked me if I would testify here today, I think you wanted me to tell this committee whether or not there had been a perception in Mobile, based on my experience in the newspaper business as city editor of the newspaper and supervising reporters.

I think you were asking, had we heard this or had we gotten the feeling that there was this perception in Mobile, and I would say that I have never heard lawyers or judges or anybody make these statements about Jeff Sessions that have been made up here.

I have been a friend of Jeff Sessions for about 14 years, so I have not only a professional relationship, but also a friendship with Mr. Sessions, and I have never heard him make a racial slur or any of that sort of thing.

Senator DENTON. Could you give us an idea of the general opinion of Jeff Sessions in the Mobile community? Any reason to believe that he is prejudiced or that he has a reputation for racial insensitivity?

Mr. MENTON. No, sir. I would say that he does not have that reputation at all. The prosecutors in Mobile, both the State prosecutor and the Federal prosecutors, have enjoyed a rather unique situation, in that they have been prosecuting some very serious white-collar crimes.

And I think that the people of Mobile feel very good about the prosecutors in Mobile on both sides, and particularly in the U.S. attorney's office, where they took on the case-fixing trial and put two judges in prison for fixing cases, and a city commissioner.

Senator DENTON. What is your area of reporting responsibility, your personal area?

Mr. MENTON. I supervise the city reporters, which includes the court systems and the investigating agencies.

Senator DENTON. How about in the past? What have you been writing about? I am trying to find out if you can establish the degree of contact you have with government officials, members of the business community and the general public in Mobile.

Mr. MENTON. Yes, sir. I was in sports for about 10 years at the newspaper. I was business editor for 3 years and I have been city editor for nearly 3 years now.

Senator DENTON. What is the relationship of yours to Bill Menton?

Mr. MENTON. That is my father.

Senator DENTON. What offices has he held and does he now hold?

Mr. MENTON. He is a State senator in the State of Alabama.

Senator DENTON. Was he not a sheriff, too, before that?

Mr. MENTON. He was a police chief.

Senator DENTON. Police chief?

Mr. MENTON. Yes.

Senator DENTON. What is his party?

Mr. MENTON. Pardon me?

Senator DENTON. What party is he, Democrat or Republican?

Mr. MENTON. He is a Democrat.

Senator DENTON. Senator Heflin.

Senator HEFLIN. I might say that he is a mighty fine Democrat, too. [Laughter.]

Mr. MENTON. Thank you, Senator. I will tell him you said that.

Senator HEFLIN. And I must say that your newspaper has certain Republican leanings. [Laughter.]

Would you say that that is an accurate depiction?

Mr. MENTON. Senator, I have nothing to do with the editorial page, but I think I would agree with that.

Senator HEFLIN. Mr. Menton, we are delighted to see you and we appreciate your coming. I have no questions.

Mr. MENTON. Thank you, Senator.

Senator DENTON. In spite of the paper's leaning, your dad was elected to both offices, and I admire him very much.

Senator HEFLIN. They support a Democrat now and then. They supported Bill and me. [Laughter.]

Senator DENTON. Yes, sir.

Senator East, do you have any questions?

Senator EAST. No questions.

Senator DENTON. William Kimbrough, former U.S. attorney, southern district of Alabama.

STATEMENT OF WILLIAM KIMBROUGH, JR.

Do you have an opening statement, Mr. Kimbrough?

Mr. KIMBROUGH. Mr. Chairman and members of the committee, my name is W.A. Kimbrough, Jr. I appear here in behalf of the confirmation of Jeff Sessions as U.S. district court judge.

I am a lawyer; I practice in Mobile and Chatom, AL. I practice with the firm of Turner, Underdunk & Kimbrough. By way of information, I am a Democrat and have served as an assistant U.S. attorney from 1962 to 1965 in Mobile, and as the U.S. attorney from 1977 to 1981 during the Carter administration.

I appear here specifically for the purpose of responding to the suggestion that Jeff Sessions is a racist or does not have the temperament to deal with people fairly that come before the court because of their race, creed, or any other reason.

I have known Jeff professionally since 1975. When I became the U.S. attorney, he remained in that office as an assistant U.S. attorney for about 2 years. I do not know him socially to any particular degree. He is not a good friend of mine in the sense that we pal around.

I am concerned that the charge of racism has been leveled at him based on a recent case involving the voting situation in a rural

county where the issue of control of that county is up for grabs, where there are strong political feelings on both sides.

The people who have come here have testified that they feel that they were mistreated, and I am sure they do feel that way. But in any voting situation in any case involving a man's ballot or an election, there are always strong feelings, just as there are always strong feelings in a boundary line dispute.

The question is whether or not the decision to prosecute was motivated by some improper motive. The Justice Department, the Civil Rights Division, has the overall responsibility to oversee civil rights prosecutions, and particularly those involved in the voting rights area.

I told Jeff earlier that if he had called me, I would have told him to stay out of that bed of trouble, and I think I was right. There are a number of reasons for it. Jeff did not feel that way. Jeff felt that that was a case that he should try and that the office should proceed with, and they did so. They did not win the case.

Quite often, in the South you do not win civil rights cases. That is not to say they should not be brought. I personally tried a number of civil rights cases involving police brutality or alleged police brutality and I do not believe I won one of them.

I do not apologize to anyone for having brought the case. There was probable cause to believe that somebody's rights had been abused and that they had been abused by somebody in authority.

You bring the case because the case needs to be brought because somebody needs to understand that the United States is looking at the situation. The Justice Department, in this particular situation in Perry County, obviously had a great deal of information. They have their own sources of information in all counties, including Perry County.

You know, I do not remember any election that ever came up while I was in office either as an assistant or subsequently as the U.S. attorney when I did not receive some complaint from Perry County.

Perry County is a politically active county where people politic hard, and you cannot take politics out of politics. Now, the question is whether or not that case, which has been relitigated in this spectrum for the last 2 days, and random comments which any of us can make, buttress the allegation that he is a racist.

I told somebody from the staff on this committee that the basic problem that I have with Jeff is that he is a Republican conservative. But I thought when you had a Republican conservative President, he had a right to submit to the Senate those persons who he felt represented his interests to serve as U.S. attorney and on the Federal bench.

Jeff Sessions will serve well on the bench; he will treat people fairly. And I speak simply in protest to conclusions that suggest that you can second-guess or look with hindsight at a particular litigation and draw the inference that this was done for racial purposes. I do not believe it was.

I might disagree with Mr. Sessions on whether to have done it or not. I was not there. The question is, when you consider the overall picture and the oversight function of the civil rights division in Washington, whether or not you may say that he was racially mo-

tivated in bringing that litigation, and I do not believe that he was. I would urge his confirmation.

Senator DENTON. Thank you, Mr. Kimbrough.

Mr. Kimbrough, I do not mean to be cute with this question, but have you ever in your life ever voted for a Republican for any office, and I say that with great admiration for the kind of statement you just made?

Mr. KIMBROUGH. I have abstained, but I have accepted the lesser of the evils. [Laughter.]

Senator DENTON. Is that sort of the definition of a yellow dog Democrat?

Mr. KIMBROUGH. Yes, sir. I am a yellow dog Democrat.

Senator DENTON. Thank you.

Would you say from your experience in the U.S. attorney's office and your association with Mr. Figures that he might have some difficulty in maintaining his cool, maybe, about racial cases that come up?

I have been told that there were times when there was an adverse Supreme Court decision from his point of view, and I do not disagree with what he did, nor do I have any criticism of the NAACP.

As he said, you cannot take politics out of politics. If they think that is the way to go and Dr. Gilliard is wrong, they have a right to go that way; it is a free country. But would you say that Mr. Figures has had a rather tough time keeping his cool occasionally or relating to people when that issue is up and might tend to be overly suspicious, considering the earnestness of his own drive, and so on?

Mr. KIMBROUGH. Senator, I hired Thomas Figures as an assistant U.S. attorney. I think he is an outstanding lawyer. He did an outstanding job as an assistant in my office.

I think Thomas became disaffected when the Republicans came into office and probably would have been better served to leave, as I did. I would not wish to serve in a Republican administration. I do not have anything against you; I just do not want to work for you. [Laughter.]

And I believe in all honesty that he may have had some difficulty there.

Senator DENTON. Well, how would you define that? In other words, he might find—and I am not trying to discredit him because were I he, I might be precisely the same way if I were in his exact position.

He might, on occasion, find sinister motive in a perfectly innocent statement or action, particularly of the type you know I am referring to?

Mr. KIMBROUGH. He might, just as I might.

Senator DENTON. Have you ever seen anything or heard anything critical of Mr. Sessions' civil rights record until the *Perry County* case?

Mr. KIMBROUGH. No, sir.

Senator DENTON. I think you have answered three or four questions here that I have just gone through in what you have said.

If Mr. Sessions was correct in prosecuting the *Perry County* case, do you have any impression as to what effect this rigorous attack

on him might have on other prosecutors? Could it be a form of intimidation and an effort to stop similar prosecutions?

And I am going to ask you as a yellow dog Democrat, considering the fact that there is a Republican President, a Republican Senator for the first time from that State—and obviously, Mr. Meese is the Republican-appointed Attorney General—with charges against them, if Jeff were not to stay there and he would appoint another U.S. attorney, do you think he would be a little bit goosey about getting into a civil rights case like this, maybe beyond the point of prudence, or rather the point of the interest of justice, because he does not want to get an unfair allegation against him and a bad reputation?

Mr. KIMBROUGH. I do not know. I do not have any opinion on that, Senator; I really do not. It would not bother me.

Senator DENTON. In summary, you do believe Mr. Sessions is qualified and has a judicial temperament that does not disqualify him?

Mr. KIMBROUGH. Yes; I do.

Senator DENTON. Thank you, Mr. Kimbrough.

Senator Heflin.

Senator HEFLIN. I have no questions.

Senator DENTON. Senator East.

Senator EAST. No questions.

Senator HEFLIN. We have got to be out of here at 4?

Senator DENTON. Yes, sir; we are supposed to have been out of here at 4, and I want to thank this panel. Senator Thurmond, our chairman and the President pro tempore of the Senate, has asked that we adjourn today in time to permit this room to be organized for another function. I announced that this morning.

I agreed to finish the day no later than 4, 4:10, and that time is here. We have two panels from which we have yet to hear and I would ask—

Senator HEFLIN. I have just been told that Senator Biden was on his way over here. I suppose they would like us to wait until he gets here.

Senator DENTON. I wish to defer to Senator Biden. We were supposed to adjourn at 4, as previously announced. I am doing this at the order of the chairman of the committee, not at my own choice. We can bring anyone back.

The staff person reports that he wants to know what the chairman wishes to propound as the future time for the hearing, and we certainly need to defer to him on that as the senior minority ranking member.

Maybe we can get the information on the phone. Are any of his staffers still left? I can give the proposal on the telephone to him.

Mr. KIMBROUGH. May we be excused?

Senator DENTON. Yes; the panel may be excused, and thank you very much.

[Pause.]

Senator DENTON. In order that people may relax, we will just take a recess. Hopefully, he will arrive within 5 minutes, but the intention of the chairman is that the hearing will resume with the remaining 10 witnesses tomorrow at 2 p.m.

It was our understanding and the understanding of the staff of Senator Thurmond that that had already been agreed to by Senator Biden, but we will defer ourselves and wait. Those who are waiting to testify, I am sure would like know if that is definite or not, so I would suggest that they wait around.

Otherwise, the hearing is in recess until we hear from Senator Biden.

[A brief recess was taken.]

Senator DENTON. If I can have your attention for just a moment, Senator Biden is reported to be on the way. If I did not announce it previously, the intention is to adjourn until 2 p.m., Thursday, March 20, and I have just heard from his staffer that he intends to concur with that because he did not want it held over until next week.

But that is an opinion and I am still waiting for him, and it is tomorrow at 2 p.m. that we intend to reconvene.

We will stand in recess until he gets here.

[A brief recess was taken.]

Senator DENTON. The hearing will resume for the following announcement. The ranking minority member, my distinguished colleague from Delaware, Senator Joseph Biden, concurs that we will adjourn the hearing now and resume the hearing at 2 p.m., Thursday, March 20.

Senator BIDEN. That is tomorrow.

Senator DENTON. That is tomorrow, in this room.

We stand adjourned.

[Whereupon, at 4:30 p.m., the committee was adjourned.]

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

THURSDAY, MARCH 20, 1986

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

The committee met, pursuant to recess, at 2:14 p.m., in room 226, Dirksen Senate Office Building, Hon. Jeremiah Denton (acting chairman) presiding.

Others present: Senators McConnell, Kennedy, Heflin, Simon, DeConcini, and East.

Staff present: Duke Short, chief investigator; Frank Klonoski, investigator, and Ruth Lucas, investigative clerk.

OPENING STATEMENT OF SENATOR JEREMIAH DENTON

Senator DENTON. Good afternoon. This hearing will come to order.

We had planned to have two panels today. We also just learned that Congressman Conyers and State senator Mitchell from Michigan and Maryland, respectively, who could not appear yesterday, will appear today.

I just learned that they are voting at the moment on the contra issue and will be permitted to interrupt, as is the custom, to give their testimony when they arrive.

In the meantime, we will call the first panel—and I will ask them to remain standing as they approach the table: The Honorable Hank Sanders, Alabama State senator, Montgomery, AL; Rev. O.C. Dobynes, Perry County, AL; Deval L. Patrick, assistant counsel, Legal Defense Fund, New York, NY; and Thomas Figures, attorney, Figures, Ludgood & Figures, Mobile, AL.

Gentlemen, if you will raise your right hands. Do you swear that the testimony you will give today before this committee will be the truth, the whole truth, and nothing but the truth, so help you God?

[Witnesses answer in the affirmative.]

Please be seated.

Mr. Sanders, you were the first one in order on this list, so I will ask Alabama State senator, the Honorable Hank Sanders, if he has an opening statement.

STATEMENTS OF A PANEL CONSISTING OF HON. HANK SANDERS, ALABAMA STATE SENATOR, MONTGOMERY, AL; REV. O.C. DOBYNES, PERRY COUNTY, AL; DEVAL L. PATRICK, ASSISTANT COUNSEL, LEGAL DEFENSE FUND, NEW YORK, NY; THOMAS FIGURES, ATTORNEY, FIGURES, LUDGOOD & FIGURES, MOBILE, AL

Mr. SANDERS. Mr. Chairman, if you would permit, I would like to yield to Mr. Figures to go first—with your permission.

Senator DENTON. I have no objection to that. We will call on Attorney Thomas Figures of Figures, Ludgood & Figures, Mobile, AL.

Mr. FIGURES. Mr. Chairman, members of the committee, I appreciate this opportunity to testify before this committee regarding the nomination of Jefferson B. Sessions for the position of U.S. district judge for the southern district of Alabama.

Mr. Chairman, I would like to preface my testimony about this nomination with a brief statement about a related matter. Since the possibility first arose that Mr. Sessions might be nominated for judgeship, I felt that whatever I might have to say on this matter should be said to this committee and not to the press.

As a former prosecutor, I am well aware of the potentially unfair impact of premature publicity. Over the past 9 months, I have repeatedly declined to discuss my testimony with the press. I have not issued press releases; I have declined invitations to be interviewed by reporters from Washington and Alabama; and I have made it clear to other individuals who oppose this nomination that I did not want to talk with the press.

During the past 10 days, I have supplied the committee with two prepared statements. One was provided prior to last week's hearing. A supplemental statement, which was typed yesterday morning, was given to the committee staff midday yesterday. And 1 or 2 hours later, at the suggestion of the staff, copies were placed on the press table.

Because the committee recessed yesterday before I was able to testify, portions of my supplemental statement appeared in today's newspapers, even though the committee had not had a chance to question me about that statement.

That was a development which I, nor the committee, intended, but one which yesterday's necessary adjournment apparently made inevitable.

Now, with respect to my statement that was furnished yesterday, in the interests of time I will not read the entire statement. But there are some matters addressed in the statement which I would like to read into the record.

I served as an Assistant U.S. Attorney in the district—that is the southern district of Alabama—from September 1978 to July 1985.

During the last 4 years that I held that position, Mr. Sessions was the U.S. attorney. During those years Mr. Sessions and I had frequent discussions regarding matters in the office, and we tried or worked together on a number of cases.

I would like to address the first portion of my testimony to a number of statements that Mr. Sessions made regarding civil rights or racial issues.

At the hearing last week, Mr. Sessions offered a number of accounts and explanations of several of these statements. In order to provide a background against which to evaluate that testimony, I would like to describe the events which I saw and heard in the U.S. Attorney's Office itself.

First, I was not present when Mr. Sessions made to Mr. Hebert the remarks described last week regarding the NAACP, the ACLU, and the National Council of Churches. However, Mr. Sessions made a very similar remark to me on a separate occasion.

On the day in question, Mr. Sessions came into my office just as I was reading a newspaper account of some then-recent action of the NAACP. I casually mentioned that development to Mr. Sessions. Mr. Sessions, in response, stated that he believed the NAACP, the Southern Christian Leadership Conference, Operation Push, and the National Council of Churches were all un-American organizations teaching anti-American values.

This statement clearly was not intended as a joke. Mr. Sessions was extremely grave as he spoke, and he raised his voice. Mr. Sessions did not refer to foreign policy or any other specific action. But he spoke as a man gravely concerned by the threat which he believed these organizations posed to American values.

He chose his words carefully, distinguishing, quote, un-American, unquote, activities from, quote, subversive, close quote, activities; and making clear that he regarded the groups as un-American but not subversive.

At no time in this exchange did Mr. Sessions refer to the opinions of third parties regarding the NAACP, SCLC, Push, or the Council of Churches.

He was without question describing his personal and manifestly deeply felt position.

Second, I was present when Mr. Sessions made the remark described last week regarding the Ku Klux Klan, stating that he thought its members were OK until he learned that they smoked marijuana.

Whatever Mr. Sessions view of the Klan may be today, the remark that he made during the *Donald* case, indicating that he only objected to the Klan because of drug use by its members, was not made in a joking manner. I certainly took it as a serious matter. Mr. Kowalski on the other hand apparently did not take this remark as seriously as I did.

The cartoon which the committee circulated yesterday reflected my view that Mr. Sessions' remark was serious as well as my feeling that his remark was entirely inappropriate. The original cartoon was a criticism of President Reagan's attitude toward the Civil Rights Commission. I added a new caption to change the cartoon into a criticism of Mr. Sessions' remark about the Klan.

The fact that I, like the original author of the cartoon, expressed that criticism in the form of a cartoon, does not mean that either of us did not regard the problem at issue as a serious or important one.

As a result of a disagreement between Mr. Sessions and myself regarding the handling of a particular case, Mr. Sessions said, referring to me, quote, he must think this is New York; this is Alabama; close quote.

In his testimony last week, Mr. Sessions acknowledged having made this remark. Mr. Sessions testified that he thought he had made the remark in connection with the *Sammy Murray* case. That was a false claim indictment which the Government ultimately dismissed because of the appearance that Mr. Murray's supervisors had sought the indictment as part of a vendetta against Mr. Murray.

Prior to the dismissal of that indictment Mr. Sessions and I had a number of discussions during which I urged that it would be a serious injustice to continue the case, while Mr. Sessions initially resisted dismissing the matter.

My own best recollection is that Mr. Sessions made the remark about New York and Alabama not regarding the *Murray* case, but during the course of a discussion about whether to pursue a criminal civil rights investigation.

The exact context in which this remark was made, however, is not critical. I thought this remark inappropriate when I heard it, as I do today, because it appears to rest on the assumption that the standards of conduct and justice appropriate for a U.S. attorney in New York and elsewhere in this country somehow do not apply in Alabama.

Reasonable attorneys can and will disagree about the handling of particular cases within the Justice Department, but the laws and constitutional guarantees Government attorneys enforce should be enforced in an evenhanded manner throughout the Nation.

Federal laws and constitutional provisions that would protect a Sammy Murray or anyone else in New York are just as applicable and should be implemented with equal vigor in Alabama and any other State in the Union.

I have focused my testimony on civil rights cases and activities because this is the area about which the committee is particularly concerned.

In all fairness to Mr. Sessions, however, I should make clear that the problems which existed in the area of civil rights were not present in other aspects of my case assignments.

Except in criminal civil rights cases, Mr. Sessions deferred to my recommendations regarding whether to pursue cases, and never withdrew a case assignment because he disagreed with my recommendation.

During the period that Mr. Sessions has served as U.S. attorney, his office has made substantial progress in rooting out political corruption in the city of Mobile. The *Hogan* and *Sullivan* case, in which Mr. Sessions was personally involved, was a major step toward reducing bribes and case-fixing in the State court system.

Let me say in conclusion, Mr. Chairman, that I take no satisfaction in testifying on this matter. This nomination has prompted often bitter disagreement among lawyers and others in southern Alabama, and any sensible person might prefer to stay out of that controversy.

As you heard yesterday, several of the State judges before whom I practice, and a number of the lawyers with whom I have to work, feel very strongly about Mr. Sessions and differ with my opinion.

But I, like the witnesses who have supported Mr. Sessions, have an obligation to bring before the committee material evidence that bears on whether or not the nominee should be confirmed.

I believe my obligation to do so is particularly clear. Over the last 4 years I have dealt with Mr. Sessions day in and day out regarding not just one or two prosecutions, but scores of cases. I have had discussions with Mr. Sessions at which others simply were not present, if I failed to testify about such discussions, the committee would have no other way of obtaining that information.

In passing on Mr. Sessions' nomination, the committee should of course consider his entire record, the good as well as the bad.

Based on my own experience with and knowledge regarding Mr. Sessions, however, I am convinced that the committee should disapprove his nomination.

The statements that he has made fall far short of the high standards that should be required of a Federal judge and are inconsistent with the sense of fairness shared by most Alabamians, white as well as black, laymen as well as lawyers.

Thank you. I would like to submit the rest of my statement for the record.

[The following was received for the record:]

Statement of
Thomas H. Figures, Esquire
Figures, Ludgood & Figures
of Mobile, Alabama
on the Nomination of
Jefferson Beauregard Sessions, III

Mr. Chairman and Members of the Committee:

I appreciate this opportunity to testify before the Committee today regarding the nomination of Jefferson B. Sessions, III for a federal district judgeship in the Southern District of Alabama.

I am presently an attorney with the Mobile firm of Figures, Ludgood and Figures. Prior to the middle of 1975 I worked as an assistant U.S. Attorney in the office of the U.S. Attorney in Mobile, Alabama. I was originally appointed to that position during the Carter Administration period. Both before and after Mr. Sessions became U.S. Attorney. I handled a wide variety of cases in that office. During the years that Mr. Sessions was U.S. Attorney, I had extensive contact with him regarding these cases, as well as concerning other matters in the office.

During the course of my work with Mr. Sessions, he expressed with frankness his views regarding both civil rights and private organizations which work to promote enforcement of federal civil rights laws. Mr. Sessions made clear that he regarded with considerable disfavor the civil rights organizations that have for years played a vital role in winning enactment of federal civil rights laws, and that are renowned for their successful efforts to enforce those laws.

Mr. Sessions also indicated that he strongly preferred that his office not become involved in prosecuting criminal or civil actions to enforce federal civil rights laws. On a number of occasions he sought to discourage or impede the investigation, filing or prosecution of such actions, and did so under circumstances that made clear his opposition was based on his attitude towards the civil rights laws themselves, and not on the merits of the particular cases involved.

STATEMENT OF THOMAS FIGURES
BEFORE THE SENATE JUDICIARY COMMITTEE
CONCERNING THE NOMINATION OF
JEFFERSON B. SESSIONS

I appreciate this opportunity to testify before this Committee regarding the nomination of Jefferson B. Sessions for the position of United States District Judge for the Southern District of Alabama.

I served as an Assistant United States Attorney in that District from September 1978 to July 1985. During the last four years that I held that position Mr. Sessions was the U.S. Attorney. During those years Mr. Sessions and I had frequent discussions regarding matters in the office, and we tried or worked together on a number of cases.

I would like to address the first portion of my testimony to a number of statements that Mr. Sessions made regarding civil rights or racial issues. At the hearing last week Mr. Sessions offered a number of accounts and explanations of several of these statements.

In order to provide a background against which to evaluate that testimony, I would like to describe the events which I saw and heard in the U.S. Attorney's office itself.

First, I was not present when Mr. Sessions made to Mr. Hebert the remarks described last week regarding the NAACP, the ACLU, and the National Council of Churches. However, Mr. Sessions made a very similar remark to me on a separate occasion. On the day in question Mr. Sessions came into my office just as I was reading a newspaper account of some then recent action of the NAACP. I casually mentioned that development to Mr. Sessions. Mr. Sessions, in response, stated that he believed the NAACP, the Southern Christian Leadership Conference, Operation PUSH and the National Council of Churches were all un-American organizations teaching Anti-American values.

This statement clearly was not intended as a joke. Mr. Sessions was extremely grave as he spoke, and he raised his voice. Mr. Sessions did not refer to foreign policy or any other specific action, but he spoke as a man gravely concerned

by the threat which he believed these organizations posed to American values. He chose his words carefully, distinguishing "un-American" activities from "subversive" activities, and making clear that he regarded the groups as un-American but not subversive. At no time in this exchange did Mr. Sessions refer to the opinions of third parties regarding the NAACP, SCLC, PUSH or the Council of Churches; he was without question describing his personal, and manifestly deeply felt, position.

Second, I was present when Mr. Sessions made the remark described last week regarding the Ku Klux Klan, stating that he thought its members were OK until he learned that they smoked marijuana. Whatever Mr. Sessions' view of the Klan may be today, the remark that he made during the Donald case, indicating that he only objected to the Klan because of drug use by its members, was not made in a joking matter. I certainly took it as a serious statement; Mr. Kowalski, on the other hand apparently did not take this remark as seriously as I did.

Third, as a result of a disagreement between Mr. Sessions and myself regarding the handling of a particular case, Mr. Sessions said, referring to me, "He must think he is in New York; this is Alabama." In his testimony last week Mr. Sessions acknowledged having made this remark. Mr. Sessions testified he thought he had made the remark in connection with the Sammy Murry case. That was a false claim indictment which the government ultimately dismissed because the government concluded Mr. Murry's supervisors had sought the indictment as part of a vendetta against Mr. Murry. Prior to the dismissal of that indictment Mr. Sessions and I had a number of discussions, during which I urged that it would be a serious injustice to continue the case, while Mr. Sessions initially resisted dismissing the matter. My own best recollection is that Mr. Sessions made the remark about New York and Alabama, not regarding the Murry case, but during the course of a discussion about whether to pursue a criminal civil rights violation.

The exact context in which this remark was made, however,

is not critical. I thought this remark inappropriate when I heard it, as I do today, because it appears to rest on the assumption that the standards of conduct and justice appropriate for a United States Attorney in New York or elsewhere in the country somehow do not apply in Alabama. Reasonable attorneys can and will disagree about the handling of particular cases within the Justice Department, but the laws and constitutional guarantees government attorneys enforce should be enforced in an even-handed manner throughout the nation. The federal laws and constitutional provisions that would protect a Sammy Murry or anyone else in New York are just as applicable, and should be implemented with equal vigor, in Alabama or any other state in the Union.

Fourth, the Committee asked Mr. Sessions last week if there had been an incident in which Mr. Sessions had admonished me to be careful what I said to "white folks." As Mr. Sessions noted, the incident in question occurred following a discussion that took place between myself and one of the white secretaries in the office. The secretary made a personal remark to me that I regarded as in extremely poor taste, and I made clear by my response that I thought her remark was offensive. Subsequently Mr. Sessions called me into his office and indicated he felt I had been unduly harsh with the secretary. If Mr. Sessions believed I had been too harsh with the secretary, he certainly acted appropriately in raising the matter with me. While I thought then that I had acted properly, I can understand that Mr. Sessions might in good faith have concluded otherwise.

But regardless of whether or not I had reprimanded the secretary too sharply, the language which Mr. Sessions used was entirely inappropriate. Mr. Sessions admonished me to "be careful what you say to white folks." Had Mr. Sessions merely urged me to be careful what I said to "folks," that admonition would have been quite reasonable. But that was not the language

that he used. I realize, on the other hand, that Mr. Sessions' remark may not have been premeditated. There was a period in our own lifetimes when blacks were regularly admonished to be particularly polite or deferential, and a remark of that sort may just have slipped out inadvertently.

The Committee asked a number of questions last week regarding Mr. Sessions' role in the handling of criminal civil rights cases. In evaluating the testimony on this issue it is important to bear in mind the context in which a U.S. Attorney acts. The U.S. Attorney does not have unlimited discretion, or even final authority, to decide whether to pursue a criminal civil rights case. These cases involve three different participants, the Assistant U.S. Attorney who supervises and evaluates the investigation, the U.S. Attorney who supervises that Assistant, and the Criminal Section of the Civil Rights Division in Washington, which makes the final decision whether to pursue or close a particular case. Although a U.S. Attorney has the authority to disagree with the recommendations of the Assistant responsible for a case, final decisions are in any event made in Washington. On a day-to-day basis the most important impact a U.S. Attorney has on whether a case is pursued or closed is a result, first, of his choice as to the Assistant to be given responsibility for the case and, second, of informal suggestions the U.S. Attorney gives to the Assistant regarding the handling of a case.

Mr. Sessions noted in his testimony that, although the handling of criminal civil rights cases was delegated to me, there were a number of instances in which pending investigations were referred to other Aassistants instead. I can confirm that there were indeed such departures from the established rule regarding the assignment of these cases. I have, however, no personal knowledge of why that occurred. In response to a question regarding how he dealt with criminal civil rights cases that had been initially assigned to other Assistants, Mr. Sessions stated that he brought the files to me and told me I could make the final decision regarding the office's recommendation.

That is an accurate description of one of the discussions

I had with Mr. Sessions regarding these cases. But in a number of these cases there were in fact two discussions. In those instances Mr. Sessions first brought to me the file prior to the time that these cases had been submitted to Washington, described the nature of the investigation that had occurred, and suggested that I recommend to Washington that the investigation be closed and that the government decline to pursue the case. When I indicated I favored further investigation, Mr. Sessions took back the file: each case was ultimately forwarded to Washington with the recommendation of another Assistant urging that the investigation be closed. Whether that Assistant had made that recommendation before or after my initial discussion with Mr. Sessions I do not know; so far as I am aware the Justice Department refused to close a number of these cases, and sent them back to our office with a request for an additional investigation. It was at this point that Mr. Sessions brought the cases to me and, for the first time, offered to give me full responsibility for the cases.

Senator Heflin asked Mr. Sessions whether he had actively obstructed the investigation of the murder of Michael Donald, and Mr. Sessions said he had not. Mr. Sessions' statement was literally correct; Mr. Sessions never issued an order forbidding me to pursue the case, or attempted to override the traditional authority which I exercised in the day-to-day handling of this case. On the other hand, in the early stages of the case, Mr. Sessions did attempt to persuade me to discontinue pursuit of the case. On various occasions he remarked, with regard to the investigation, that the case was a waste of time, that it wasn't going anywhere, that I should spend more time on other things, and that, if the perpetrators were found, I would not be assigned to try the case. All of these statements were well calculated to induce me to drop the case; on the other hand, none of them amounted to a direct order that I do so. After the case went to the grand jury, however, and it became increasingly apparent that we were going to break the case, Mr. Sessions' attitude changed. He stopped suggesting that the investigation be closed, and he increasingly expressed interest in and ultimately support for the prosecution.

Finally, in connection with the Hodge case, Mr. Sessions voiced a more general objection to the prosecution of cases of this sort. The Hodge case had originally been assigned to Gloria Bedwell. After the case was returned to us by the Justice Department for further investigation, Mr. Sessions brought the case to me. We had a very spirited discussion regarding how the Hodge case should then be handled; in the course of that argument, Mr. Sessions threw the file on a table, and remarked, "I wish I could decline on all of them." It was clear to me at that time that that remark was made in anger, triggered by the serious differences in our views about the case. Mr. Sessions did not make such a remark to me on any other occasion, and he did not direct me then, or at any other time, to in fact systematically decline all civil rights cases.

I have focused my testimony on civil rights cases and activities because this is the area about which the Committee is particularly concerned. In all fairness to Mr. Sessions, however, I should make clear that the problems that existed in the area of civil rights were not present in other aspects of my case assignments. Except in criminal civil rights cases, Mr. Sessions deferred to my recommendations regarding whether to pursue cases, and never withdrew a case assignment because he disagreed with my recommendation. During the period that Mr. Sessions has served as United States Attorney, his office has made substantial progress in rooting out political corruption in the City of Mobile. The Hogan and Sullivan cases, in which Mr. Sessions was personally involved, was a major step towards reducing bribes and case fixing in the state court system.

Senator SIMON. Mr. Chairman, if I could have your consent, I am going to have to leave for another meeting.

I would like to ask just one more question of the witness, if there is no objection?

Senator DENTON. Without objection.

Senator SIMON. Would it be fair to characterize Mr. Sessions as an able, decent person but simply not sensitive in the area of race?

Mr. FIGURES. Senator Simon, I believe that the statements and actions of Mr. Sessions regarding race, and regarding civil rights, impact tremendously on whether he is decent. And for that reason I could not conclude, based on those statements and those actions, that he has the sufficient perspective and integrity to serve as a Federal judge.

Senator SIMON. I thank you, Mr. Chairman.

Senator DENTON. Now, Mr. Figures, you mentioned when you began that it was inevitable that your testimony would be used.

It is interesting that it was used before you testified. I say that as no reflection upon you or the committee. I don't think anybody intended that that be done.

I bring it up because in the CBS News, which was selected to reflect what happened at yesterday's hearing, it was my information that they went back to two incidents which occurred last Thursday at the hearing in which most of the people in the Senate had to read that set of incidents rather than what happened yesterday; and they only used one from yesterday's hearing.

Is it true that shortly after Mr. Sessions became U.S. attorney he told you that he wanted you to continue to handle civil rights cases?

Mr. FIGURES. Yes, sir.

Senator DENTON. Further, that he specifically told you that he encouraged you to come to him to discuss any problems that you saw in the civil rights area because he wanted to ensure that those cases were properly handled?

Mr. FIGURES. Yes, sir, he said that. And that course of action took place up to a certain point in time.

Senator DENTON. Is it true that Mr. Sessions had an open-door policy for anyone in the office who wished to discuss a case or matter with him?

Mr. FIGURES. He had an open-door policy with respect to discussion of cases.

Insofar as matters are concerned, I recall early in Mr. Sessions' tenure going in to discuss with him a couple of matters that arose from situations where I felt that I had been offended or not treated in accord with my professionalism, which I tried to maintain. And on those occasions Mr. Sessions, for some reason, tried to convince me that I was the one who caused the situation in the first place, and that there was nothing that he was going to do about it.

After talking with him with respect to those situations I thereafter declined to discuss anything with him other than matters pertaining to cases, because my judgment was that I was not going to obtain a fair shake with respect to criticism of acts directed toward me which I thought unprofessional and riddled with prejudice.

Senator DENTON. Mr. Figures, have you ever asked Mr. Sessions—ever asked Mr. Sessions—to prosecute any civil rights case or any other case, for that matter, and been refused?

Mr. FIGURES. Have I ever asked him to prosecute one?

Senator, insofar as the *Michael Donald* case, which is addressed in my statement, Mr. Sessions never gave me a direct order to stop working on that case.

But early in the investigation, he made suggestions which had the effect of impressing me that he did not want that particular case around. He would say things like, why are you wasting time on the case? Why do you not find something better to do?

And on one occasion I overheard him tell another assistant that even if the culprits were identified in that case, that I would never try it.

I accepted those remarks——

Senator DENTON. Who was the assistant who overheard that?

Mr. FIGURES. I overheard——

Senator DENTON. Oh, you overheard him telling an assistant.

Would you tell us who that assistant was?

Mr. FIGURES. Virginia Granade.

I took those statements in cumulative as a very strong suggestion that, one, he did not want the case there; and two, he did not want me working on it.

Senator DENTON. He would certainly be putting himself in great jeopardy, I would think, knowingly, if he did that.

Mr. FIGURES, how long have you known Mr. Sessions?

Mr. FIGURES. I did not know him prior to his becoming U.S. attorney.

Senator DENTON. Have you had dealings with him on matters other than those occurring in the working environment?

Mr. FIGURES. I think that I may have gone to a couple of forums where Mr. Sessions spoke.

Senator DENTON. In other words, did you have a social relationship with Mr. Sessions?

Mr. FIGURES. No, sir, I had no social relationship with him.

Senator DENTON. Did you have a social relationship with anyone in the office?

Mr. FIGURES. I believe that early I had lunch and occasionally drinks with people in the office. But I would not describe it as a very close personal relationship.

Senator DENTON. During the Carter administration, how would you describe your relationship with Mr. Kimbrough, the predecessor of Mr. Sessions?

Mr. FIGURES. I felt closer than my relationship with Mr. Sessions.

Senator DENTON. And Mr. Kimbrough, did he meet your standards for racial sensitivity?

Mr. FIGURES. Senator, I felt that there were a couple of occasions when Mr. Kimbrough indicated some problems in that area. But overall, I thought his position on matters in that area was better than that of Mr. Sessions.

Senator DENTON. Yesterday Mr. Hancock and Mr. Hebert, two of several Department of Justice witnesses who testified in this confirmation hearing, corrected an earlier testimony and deposition in

which they accused Mr. Sessions of blocking a civil rights investigation. They said that they had faulty recall, and that it was Mr. Kimbrough, not Mr. Sessions, who terminated the FBI investigation in a particular county.

Knowing that—and Mr. Sessions was falsely accused in this case—do you believe that your recollection on the events which you have described in your statement, particularly the one in which you said that was your best recollection. Do you believe that your recollection on the events you have described is absolutely accurate?

Mr. FIGURES. Well, Senator Denton, my statement does not address the Conecuh or Dallas County matters at all because I have no question—

Senator DENTON. I mean the other events to which you did testify?

Mr. FIGURES. Oh, I stand by the contents of my statement with respect to everything that is in it, Senator.

Senator DENTON. You do not believe there is any possibility you might be confused or even wrong in some of your recollections and descriptions?

Mr. FIGURES. The statement represents my best recollection. I have reviewed it several times. And I do not think there is anything in it, Senator, that I am not willing to stand by.

Senator DENTON. I ask, Mr. Figures, because this committee has received several gratuitous and not wholly objective reports on the Sessions nomination from groups with a clear interest in the outcome of the Sessions nomination. And in analyzing these reports, it is clear that you have been a major source of information for these groups.

Will you tell committee how you came to be involved in this confirmation process, beginning with your first contact on the Sessions nomination?

Senator DeCONCINI. Mr. Chairman, if I may? Can the chairman identify the groups he is making reference to? Maybe they have already been identified before I came. If so, I can look at the record. But just so I can follow the testimony.

Senator DENTON. One was the anonymous report which I was privileged to see only the night before the first hearing was scheduled, which contained a great deal of information, the source of which was alleged to be Mr. Figures. The second was the National Bar Association report.

Senator DeCONCINI. We are talking about one anonymous report and another by the National Bar Association report that attribute the information to Mr. Figures?

Senator DENTON. Yes.

Senator DeConcini. Thank you, Mr. Chairman. That is all.

Senator DENTON. And by name, it was not attributed to him. It is only by inference, by virtue of the type of information—

Senator DeCONCINI. Thank you, Mr. Chairman.

Senator DENTON. Thank you, Senator DeConcini.

Mr. FIGURES. If I recall the question correctly, my best recollection is, subsequent to my resignation from the U.S. attorney's office, I—

Senator DENTON. When was that again, Mr. Figures? I have forgotten.

Mr. FIGURES. My resignation was effective July 3, 1985.

Senator DENTON. July 3, 1985?

Mr. FIGURES. Yes, sir.

I received a telephone call while recuperating from some surgery that I had performed from Fred Gray, who is the president of the National Bar Association. If I am not mistaken, Mr. Gray indicated to me the National Bar Association was seriously concerned about Mr. Sessions nomination. He inquired as to whether, by virtue of my working in that office, I could provide any input to an investigation that they were contemplating conducting.

I told him that I would be happy to provide whatever information I had. And he gave me the names and telephone numbers of other individuals connected with the National Bar Association whom he suggested that I contact, or would contact me. I have forgotten.

Senator DENTON. Is there any other incident in which you had contacts giving information relative to Mr. Sessions' nomination?

Mr. FIGURES. I attempted to give information to Roland Nachman.

Senator DENTON. To who?

Mr. FIGURES. Mr. Roland Nachman, who conducted the American Bar Association investigation. For some reason, I found my attempts to provide that information to Mr. Nachman on several occasions met with resistance insofar as those things that apparently Mr. Nachman did not believe or desire to hear.

So I believe that the next major contact source that I had, subsequent to the one with Mr. Gray, was the one with—no, I am mistaken. Mr. Nachman contacted me before I left the U.S. attorney's office.

So I think those are the two major contact sources.

Senator DENTON. Did you ever write Mr. Nachman a letter?

Mr. FIGURES. I do not recall having written Mr. Nachman a letter, Senator.

Senator DENTON. Mr. Figures, in your second prepared statement, you describe at the bottom of the page—or bottom of page 1, a very specific recollection of a comment that you attribute to Mr. Sessions regarding the NAACP, SCLC, Operation Push, the National Council of Churches.

You begin by saying, quote, on the day in question, Mr. Sessions came into my office just as I was reading a newspaper account of some then recent action of the NAACP, unquote.

To the best of your recollection, when did that happen, Mr. Figures?

Mr. FIGURES. It happened in October 1982.

Senator DENTON. Any idea of the time of day?

Mr. FIGURES. Early in the day, shortly after I came in.

Senator DENTON. And what was the news story to which you are referring regarding the NAACP?

Mr. FIGURES. I am not completely certain about that, Senator.

My best recollection is that it was a story pertaining to the NAACP challenging some position pertaining to the President's stand on affirmative action, I believe.

That is my best recollection, but I am not completely sure about it.

Senator DENTON. Did you call Mr. Sessions into your office to tell him about this event, or did he just walk in there?

Mr. FIGURES. He walked in.

Senator DENTON. Did you know at the time—did you expect his reaction—

Mr. FIGURES. No, sir.

Senator DENTON [continuing]. To be emphatic?

Mr. FIGURES. I did not at that time.

Senator DENTON. Do you recall what you said to elicit such an emphatic response from him?

Mr. FIGURES. Yes, sir. He came in and he may have asked me what I was reading about or I may have told him what I was reading about. And I think I said, really in jest, well, there goes that subversive NAACP again. Because that was early in my relationship with Mr. Sessions, and had I known that he held these positions, I would not have even joked about it. So I said, well, there goes that subversive NAACP again. And when I said that, his demeanor changed. He assumed a very serious look on his face. His face blushed. He became very stoic. And he said, very harshly and very clearly: Well, I don't think they are subversive, but I think organizations like the National Council of Churches, NAACP, SCLC, and Push, and my best recollection is he said the rest of them, are un-American organizations with antitraditional American values.

Senator DENTON. Mr. Figures, a major factor in this case has been the interpretation of what Mr. Sessions said in jest and what he said seriously and whether it was racially divided or not.

You have just announced that you said, there goes that subversive NAACP again. And you maintain that you made that in jest. I can believe that. I can believe that some other black people whom I have heard testify might use an unflattering word with respect to the activities of the NAACP in Alabama political. We heard one yesterday. We heard one yesterday who I think characterized Perry County as a very hot political spot which agreed with Mr. Kimbrough's opinion, and Mobile is not dissimilar to that.

And for you to raise that in jest would subject you later to questioning were you to have kept your job and been nominated for something which required a hearing.

So you said, there goes that subversive NAACP again, and he responded immediately by getting somewhat hot. And you stated what he said.

Would you state again, as closely as you can recall, what his words were, with your having introduced the word subversive?

Mr. FIGURES. He said that organizations like the National Council of Churches, NAACP, SCLC, and Push, and I believe he said, the rest of them, but I am not sure about that so I am not going to attribute that to him, are un-American organizations with antitraditional American values.

Senator DENTON. Anti-American what? Excuse me, I just didn't get the last part.

Mr. FIGURES. With antitraditional American values.

Senator DENTON. Antitraditional American values.

Well, that is different from anti-American, is it not?

Mr. FIGURES. It is a matter of interpretation, Senator.

Senator DENTON. Well, I would admit that these statements that he made are a matter of interpretation; a critically important matter of interpretation.

Senator DECONCINI. Mr. Chairman?

Senator DENTON. I will not interrupt your questions—go ahead.

Senator DECONCINI. No, I misunderstood. I only want for the record to be clear: Did he say that they are anti-American, or did he say they are anti-American and antitraditional American values?

Mr. FIGURES. He said that they were un-American organizations with antitraditional American values.

Senator DECONCINI. I did not mean to interrupt you. I just did not understand.

Thank you.

Senator DENTON. Now, I will recall that Mr. Sessions did not agree with that version of what he said.

Did Mr. Sessions—had Mr. Sessions ever grouped such diverse organizations as these together before in any comment that he had made to you? Had he ever made a flatout unsolicited statement to you condemning such organizations and grouping them together as being un-American?

Mr. FIGURES. No.

Senator DENTON. Do you think it is possible that by virtue of having made a challenging and perhaps irritating provocative remark to him, that you may have elicited a remark that was in a similar vein?

Mr. FIGURES. Senator, I did not consider it a challenging remark. It was early in our relationship.

Senator DENTON. But the whole pattern has been how others regard your words.

Mr. FIGURES. Well, had I known that Mr. Sessions held these views regarding such organizations, I would not have said it.

Frankly—

Senator DENTON. So working with him for all those years, you did not know that he held those views?

Mr. FIGURES. No, this was relatively early in our professional relationship.

Senator DENTON. But after that remark—

Mr. FIGURES. I made sure that I said nothing else that would provoke anything like that.

Senator DENTON. For 3 years after you heard that remark, you remained on the job with him without any apparent serious reservation. Mr. Kimbrough said that he retired or resigned and urged you to because he was a yellow dog Democrat and he did not see how he could objectively work for a Republican, so he just quit and he advised you to do the same.

But you hung in there, even after that remark?

Mr. FIGURES. Well, Mr. Kimbrough's remark obviously came prior to Mr. Sessions' remark pertaining to these matters.

At the time that the administrations changed, Senator, Attorney General William French Smith continued a policy that had been implemented during the Carter administration, saying that there

would not be wholesale removal of assistants solely because of political reasons.

I took that at face value. There were two assistants who came in under Carter. And I felt that if the other assistant could stay, without any pressure to leave, then I felt that I could stay without any pressure to leave.

Additionally, there was a much more overriding purpose. At the time that Mr. Sessions came in, there were two cases to which I was assigned that I wanted to see through to some type of meaningful conclusion. One was the Michael Donald matter. I made a commitment to myself to stay there until such time as I saw Tiger Knowles [phonetic] sentenced. Tiger Knowles was one of the major participants in the crime.

The second professional objective that I had was to try to bring a civil case that I was working on, a class action civil case which challenged FHA loan servicing regulations in Alabama, to some type of settlement fashion. The case had been around for a long time, and those were my two professional objectives for staying.

Senator KENNEDY. Mr. Chairman, could we get some idea of how we are going to deal with the time of the other witnesses on this?

Senator DENTON. Yes, sir. They put him first, and he is the key guy.

The chairman, when he was questioning the first time, went on for quite some time before he continued. And in view of the selectivity with which I have seen this portrayed, and the lack of exposure to the Senators on this side except for Mr. Heffin and Mr. DeConcini for a short time, yesterday, I am very anxious about the impression to my colleagues being accurate.

So I hope you will indulge me to go through at least one rationale here, which is about the comments on which, in some people's minds, Mr. Sessions has already been convicted, before we add to the subjectivity of that.

Senator KENNEDY. I am just interested in finding out how we are going to proceed.

Usually, after the committees get started on a particular occasion, there is discretion obviously of the Chair on a particular occasion. But I did not know it was going to apply for every single hearing that we are going to hold.

I have interests in inquiring of the witness as well in these matters. And it just seemed to me—and there are other Senators here—who would just like to know. Now it is 3 o'clock. This witness has been on for about 1 hour. And to the best of my knowledge, you have had about a half hour of questioning. And I just wanted to find out.

Senator DENTON. I think we started about twenty after. And since this hearing has been very much occupied with previous considerations of and use of Mr. Figures' information by those opposed to the nomination, I think in the interests of fairness there should be a proportionate time by which he is questioned. And it is about time that he be questioned, I think, considering the importance of what he said.

For him, I want him to know that I respect him as a lawyer. I respect him as a man. I think that you are—have been propound-

ing things which, were I you, and perhaps even if I were in your position, I would be propounding also.

I might question whether in your zeal you might have gotten very heated at times and might have felt so strongly about this that there might be some lack of objectivity at times in conversations you might have held, and even in the memories that you might hold.

Senator KENNEDY. Mr. Chairman, I object to that kind—the witness is not on trial here. There has been absolutely nothing that has been suggested as to that kind of conduct. We are not here to browbeat these witnesses. We are here to hear their testimony.

Senator DENTON. Compared to your interrogation of Mr. Sessions, I think my questioning of Mr. Figures has been very polite.

Senator KENNEDY. You are trying to characterize the nominee's conduct at some time that is not a matter of public policy. You are talking about some conduct that we can absolutely see no vindication of. You're trying, evidently, to impinge the credibility of the information he is giving.

I think there is no basis for that, that I have seen.

Senator DENTON. I am trying to ascertain the objectivity of the statements that, when Mr. Sessions says something, he is not jesting, no matter what he says, and when the witness who accuses him of that says that he is making a statement in jest, we have to agree with it.

Senator KENNEDY. Well, what is the answer to the question about when others are going to be permitted to ask questions?

Senator DENTON. Well, after this line of questioning, it will be 10 minutes apiece, Senator Kennedy.

How can you be so certain that, as you say, quote, he was without question describing his personal and manifestly deeply felt position?

I ask that because I know men with whom I have gotten into a heated argument like that, and I have said things that I did not mean, and so have they.

Mr. FIGURES. Senator, the only thing that I have to base it on is the manner in which the statement was delivered; the obviously serious look on his face when he said it; the pitch of his voice; the rapidity with which words followed another. There just was no doubt in my mind, Senator, that he meant what he was saying, and he wanted me to get the message. And I got it.

Senator DENTON. Did you say anything in response to him?

Mr. FIGURES. My recollection is, I was somewhat speechless. I was speechless; not somewhat speechless. I could not think of anything to say.

Senator DENTON. So the conversation ended about there and you did not make any efforts to persuade him to the contrary?

Mr. FIGURES. No, sir. I think I said, thank you. And he turned around and walked out.

Senator DENTON. But there was, in other words, some anger felt by you, and resentment?

Mr. FIGURES. Oh, I was not—I was not angry. I was just somewhat shocked.

It was just unconscionable to me that someone would say that during this day and time. I did not know how to respond. I did not want to say anything else that would provoke him any further.

Senator DENTON. Your portion of the statement referring to the Klan pot smoking remark is at substantial variance with testimony received yesterday. Mr. Barry Kowalski told the committee that his recollection of the incident is that you were not present, and that it was he, Kowalski, who informed you of the humorous comment.

He, Mr. Kowalski, also said it was an obvious joke, and you have called it a serious statement with a serious face. I refer again to the cartoon which you participated in making some kind of jest, and your own admission, or your own assertion, that you referred to that subversive NAACP.

So it strikes me as bizarre and somewhat convenient for your purposes, and those who oppose Mr. Sessions, that on the one hand there is offense at Mr. Sessions' comments and no offense from yours.

You have said---

Senator HEFLIN. Mr. Chairman---

Senator DENTON. Yes, sir.

Senator HEFLIN [continuing]. I would like to state that my recollection of Mr. Kowalski's statement, and the reading of his deposition—in his deposition that he gave, he made the statement that it was to the best of his recollection that Mr. Figures was not present. Then on the testimony here in this committee he testified that he was not positive and that he did not know.

I think the characterization of your question, that Mr. Kowalski says that Mr. Figures was not present, is incorrect in relationship to Mr. Kowalski's testimony. The sum total, as I gather it from the latest expression of Mr. Kowalski was, that he was not certain; he did not know.

Senator DENTON. I accept that. We do not have a transcript, and it is my recollection that the general feeling expressed by all of them was that he was joking, and I thought it was accurately reported that way.

Senator KENNEDY. If you could yield just on this point? As I understand from the testimony, Mr. Sessions said that the 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 Tom Figures was the lead person in our office. I, in that work, was reading the report and saw that the client had left the meeting and gone out and smoked pot, and I thought it was really kind of, I do not know, bizarre.

Senator DENTON. I do not think it says that Mr. Figures was there, Senator Kennedy.

Sir, I do not believe that that says that Mr. Figures was there, in Mr. Kowalski's view, unless I am hearing it wrong.

Mr. Figures, you have said that you annotated the Klan cartoon with a comment that was intended to show just how serious you thought Mr. Sessions' remark was.

Did you know that Mr. Kowalski thought that the comment was a joke, and that he has so testified?

Mr. FIGURES. I was here, yesterday. I heard Mr. Kowalski's testimony.

Senator DENTON. So you knew it then?

Mr. FIGURES. Sir.

Senator DENTON. You knew that he thought it was a joke; Mr. Kowalski?

Mr. FIGURES. Now, at the time that the statement was made—

Senator DENTON. No, I mean that Kowalski thought it was a joke. You knew that he thought it was a joke.

Mr. FIGURES. That is what he testified.

Senator DENTON. On the original comment.

Mr. FIGURES. Well, his testimony yesterday, I believe, was that he thought it was a joke. But at the time that the statement was made, frankly, it was unclear to me what Mr. Kowalski's true thoughts about it were.

Senator DENTON. How did you give the cartoon to Mr. Kowalski?

Mr. FIGURES. Senator, my best recollection is that just as a matter of coincidence, I suppose during the course of the Donald investigation, and shortly after Mr. Sessions made that statement—which, by the way, I heard because I was there; with all due respect to Mr. Kowalski's recollection—I received in the mail that cartoon. A friend of mine sent it to me who lived at the time up toward Anniston. I think it had appeared in an Anniston, AL, newspaper.

I thought it, at that time, very appropriate, an appropriate vehicle for me to use to express my criticism of Mr. Sessions' position regarding the Klan.

I wrote that notation on it; made two copies; I gave Mr. Sessions one and I gave Mr. Kowalski one.

Senator DENTON. All right. Looking at the cartoon again, do you not believe that Mr. Kowalski could take that cartoon as humorous?

Mr. FIGURES. I am sorry, I did not clearly understand the first part of the question, Senator?

Senator DENTON. I am asking that with what you wrote on there and the content of the cartoon, would you not believe that Mr. Kowalski would consider the thing humorous; not vicious?

Mr. FIGURES. Sir, I am not trying to be evasive. I am not inside Mr. Kowalski's head. I do not know what his thought processes are. I know that I did not consider it a joke. I did not consider it humorous. I did not at that time, and I still do not, Senator.

Senator DENTON. In just a minute, then, I am turning it over to Senator Kennedy.

Moreover, Mr. Figures, is it not true that another assistant U.S. attorney in the office, Mr. E.T. Rolison, while working a totally unrelated case, received information that Benny Jack Hayes, the highest ranking Klan official in the Mobile area, had committed arson in an insurance mail fraud scheme, and that Mr. Rolison authorized an undercover investigation which led to the indictment and conviction of Mr. Hayes and his wife?

Mr. FIGURES. I know that that case was assigned to Mr. Rolison. With respect to what Mr. Rolison did in investigating the case, I am not competent to testify to that because I just do not know.

Senator DENTON. So Mr. Rolison was the assistant to Mr. Sessions, and he prosecuted that case to the end. And is it not also true that the U.S. attorney's office recommended maximum sen-

tencing for Mr. Hayes, who is now incarcerated in a Federal penitentiary?

Mr. FIGURES. I do not know what we recommended in that case, Senator. Other than the fact that it was assigned to Mr. Rolison, and I believe Mr. Rolison tried it, I do not think it went out on a plea; beyond that, I do not know.

Senator DENTON. Well, I just cannot believe that you thought that Mr. Sessions really had any liking for the Klan, in common-sense or in the context of your working with him and his assistants in that office.

Mr. FIGURES. Senator, that statement, if taken in isolation, might support your conclusion.

But there were other statements and actions, during the entire 4 years that I was there, which aided in forming my conclusion with respect to his position on the Klan.

Senator DENTON. Well, I respectfully submit, had I known a U.S. attorney for whom I was working had a liking for the Klan, I would not only retire, but I would blow the whistle on him right away.

Senator Kennedy.

Senator KENNEDY. Mr. Kimbrough was referred to earlier. Was he the U.S. attorney, was it?

Mr. FIGURES. Yes, sir.

Senator KENNEDY. And I expect that after the change of the administrations, he was replaced; am I correct?

Mr. FIGURES. Yes, sir.

Senator KENNEDY. And that is generally the procedure. So around the country, very few are retained, some for brief periods, who are involved in major cases; but by and large the practice has been to replace them.

You in your testimony describe also comments regarding the Ku Klux Klan remark which Mr. Sessions made during the Donald case.

Now, in response to Senator Denton's question, you indicated that there were other actions or statements that were made during the period that you were in the U.S. Attorney's office that led you to draw this conclusion.

Were those statements the statements that were made with regards to the Ku Klux Klan, and also about, he must think he's in New York and this is Alabama, and the other testimony, which I guess was in your statement but you have not commented upon, and that is about, be careful what you say to white folks?

Mr. FIGURES. Yes, sir; those type of statements.

Senator KENNEDY. Were there other statements as well?

Mr. FIGURES. Yes, sir, Senator; there were others. You know, I was regularly called boy. And if you grow up in the South, perhaps in the border States, you know what that means.

Senator KENNEDY. When were you called boy? When you were involved in being assistant U.S. attorney?

Mr. FIGURES. Yes, sir.

Senator KENNEDY. And who called you boy?

Mr. FIGURES. Mr. Sessions did; one or two of the other assistants.

Senator KENNEDY. And what did you say when they called you—used that term? Did you ever say anything to them? Did you ever say, knock it off, or quit it?

Mr. FIGURES. Senator, I felt that if I had said anything or reacted in a manner in which I though appropriate, I thought I would be fired.

I always felt that my position was very tentative around Mr. Sessions.

I had developed these two case goals. And I said I was going to finish that. Private practice was always in the back of my mind. And I said when those got into a position where I could leave, I would leave.

There were also financial considerations. I was not sure that I could make the financial transition.

Senator KENNEDY. To your knowledge, did he ever refer to any other assistant U.S. attorney or any other person as boy in your presence?

Mr. FIGURES. Not in my presence.

Senator KENNEDY. What did you think Mr. Sessions meant by the remark, referring to you, he must think he's in New York, and this is Alabama?

Mr. FIGURES. My best recollection is that I had declined to accept his recommendation that a particular civil rights case not be further investigated. And my interpretation was that he obviously thought that there were different standards of justice. Some applied in New York and elsewhere; others applied in Alabama; that I had better take the Alabama interpretation.

Senator KENNEDY. Were there any other assistant U.S. attorneys who were black who were in the—at the time you were there?

Mr. FIGURES. No, sir.

Senator KENNEDY. You were the only black assistant U.S. attorney?

Mr. FIGURES. Yes, sir.

Senator KENNEDY. In your testimony you have some comments about, be careful what you say to white folks.

Were you surprised that Mr. Sessions would make such a statement?

Mr. FIGURES. At the time that he made it, no.

Senator KENNEDY. Why not?

Mr. FIGURES. Because other statements had preceded that, which suggested that he was capable of saying such.

Senator KENNEDY. Did you hear that—I believe, to the best of my knowledge—when he was asked about the use of the words, that phrase, he said, I believe, that he just used the word “folks,” not “white folks.”

Mr. FIGURES. That is not true, Senator. He said, white folks.

Senator KENNEDY. And you remember that occasion?

Mr. FIGURES. Yes, sir.

Senator KENNEDY. While you were an assistant U.S. attorney working for Mr. Sessions, did you ever receive a performance evaluation from Mr. Sessions?

Mr. FIGURES. Yes, sir, I received annual performance evaluations.

Senator KENNEDY. Do you know what the rating was?

Mr. FIGURES. The last two ratings were excellent, but that standing alone bespeaks some other things.

The 1984 rating, as I recall, Mr. Sessions wanted to rate me in a manner that I did not think was fair; and I resisted. And he changed it such that the overall rating was excellent.

The last rating that I received, he wanted to rate me the same way, in that particular category.

Senator KENNEDY. What category is that again?

Mr. FIGURES. He had some kind of problem with relationship with clients and others. My conclusion is that if you ever become considered for a U.S. attorney or something like that, you know, people would look at that category, relationship of clients and others. For some reason he wanted to rate me in that category in a manner that I thought unfair.

The last time that he chose to do it, I just resisted, and I told him that I would appeal. There is an appeal procedure to the executive office for U.S. attorneys with regard to ratings. You have 10 days within which to appeal. On the 10th day, he called me at home, and he said that he would change it because I might tell the U.S. attorneys—executive office of the U.S. attorney's office something else. Or you might have some other things you want to tell them too. And I do not want to fight about it. So he changed it.

Senator KENNEDY. What did you understand those other things to be, that you think he was most concerned about?

Mr. FIGURES. The type of things that I have described in my statement. And—well, basically, those types of things.

Senator KENNEDY. I have no further questions.

Senator DENTON. Senator Heflin.

Senator HEFLIN. Just for a point a clarification, since the record is a little confused on Mr. Kowalski as to whether Mr. Figures was present during the statement, my staff has pointed out to me on page 81, and then on page 56 of the record, that Mr. Sessions says that Mr. Figures was present, along with Mr. Kowalski at that time. So just to clarify that.

Mr. Figures, this statement about New York and Alabama, and in your statement—

Senator DENTON. Excuse me, Senator, can you give us the page numbers? Are you referring to the first day's testimony by Mr. Sessions, or are you referring to Mr. Kowalski's own testimony?

Senator HEFLIN. Page 81, which includes Mr. Sessions, and 56, which I assume is the same thing.

Senator DENTON. Is that the first day's testimony, sir?

Senator HEFLIN. Is that what it is? I am so informed.

Senator DENTON. There was other testimony yesterday—

Senator HEFLIN. It is hearsay to me, but that is what staff said.

Mr. Figures, on your statement on page 3 in which you read, I believe verbatim, that is the result of a disagreement between Mr. Sessions and myself regarding the handling of a particular case. Mr. Sessions said, referring to me, he must think he is in New York. This is Alabama.

That language would indicate to me that that was not said to you directly; it was said to someone else.

To whom was it said?

Mr. FIGURES. Linda Nelson.

Senator HEFLIN. Linda Nelson? Who is Linda Nelson?

Mr. FIGURES. Secretary to the U.S. attorney.

Senator HEFLIN. Secretary. Were you—did you hear it?

Mr. FIGURES. Yes, sir.

Senator HEFLIN. You heard it?

Were there any specific circumstances? I mean, did Mr. Sessions know that you were present? Or later you referred to something in regards to what you had overheard. Would you give us a little more of the details of the factual situation in regards to that statement?

Mr. FIGURES. Judge Heflin, I had been in Mr. Sessions office, discussing, as best as I can recall, a criminal civil rights matter. I cannot remember the name, or anything like that. And he had suggested that he thought the case ought to be declined on before it went up to Washington.

I recall disagreeing with that. And told him that if he felt that way, I preferred not to handle it.

The conversation ended on somewhat of a, I think it is fair to say, heated level. And he opened his door for me to walk out.

Linda Nelson's office adjoins his office. And by the time I got to the door of Linda Nelson's office, he was walking behind me. And he was standing in Linda Nelson's office. And he said, he must think this is New York; this is Alabama.

Senator HEFLIN. Now, I believe Mr. Sessions testified that he thought that remark was in connection with the *Sammy Murray* case. But you say that it was not; it was another case.

Mr. FIGURES. It was not—I do not recall it being made in connection with the *Sammy Murray* case, Judge.

Senator HEFLIN. All right. So now—

Senator DENTON. Excuse me, Senator Heflin. If you will defer on a question which has been raised so many times.

I have read page 56 and page 81 to which you referred, and I do not find, as yet, any verification that anyone said that Figures was in the room. But I just wanted to get it straight in my own mind.

Senator HEFLIN [continuing]. Indicate that you mentioned to Barry Kowalski, Civil Rights Division attorney from Washington, who spearheaded the prosecution of the klansmen hanging of a black man, the report of the klansman smoking marijuana which you think you read in the presence of, I understand, at the moment you made the statement, that was referenced before Mr. Kowalski and your assistant, Mr. Figures, was also in the room.

Senator DENTON. Period.

Senator HEFLIN. Period.

Mr. Figures is a black man, is he not?

Senator DENTON. Question mark.

Senator HEFLIN. Yes.

Senator DENTON. Answer, yes, he is a black man.

Senator HEFLIN. Well, I—

Senator DENTON. He did not answer any question about Figures being in the room.

Senator HEFLIN. I do not see any qualification following the yes?

Senator DENTON. All I ask is that you read it. I understand that at that moment when you made the statement that was referenced before, Mr. Kowalski and your assistant, Mr. Figures, was also in

the room, period. Mr. Figures is a black man, is he not? Mr. Sessions: Yes. He is answering the question of whether or not Mr. Figures is a black man.

Senator HEFLIN. Well, that depends on whether a man would be motivated to—well anyway, I think that should be cleared up. Sort of a scholarly, detailed approach on it. But it is, as I pointed out, here—I believe on page 56 also that it is also stated that—

Senator DENTON. There's another period there, Senator Heflin.

Senator HEFLIN. Well, further on the page—

Senator DENTON. It goes on there and says, and my assistant—excuse me; I did not mean to interrupt you, sir. Go ahead.

Senator HEFLIN. Well, further on that page Senator Biden comes along.

Senator DENTON. Ah, but that is Senator Biden coming along.

Senator HEFLIN. And right below that, Senator Biden, "yes, and the statement that you allege to have made was, those bastards, I used to think that 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 you do 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 that was insensitive with a black man sitting there to say that?"

Senator DENTON. What page are you on now, Senator?

Senator HEFLIN. Eighty-one, just following through on what you were quoting.

Mr. Sessions replied: "Senator, my impression of the situation was it was so ludicrous that anyone could think that it was supporting the Klan that he would not be offended by it."

Now I believe any reasonable interpretation would say to this whole line of questioning, if there is any question in Mr. Sessions' mind as to whether Mr. Figures was present, he would have brought forth the fact that Mr. Figures was not present.

Senator DENTON. All right, would you cite the paragraph or page you are talking about there? I do not—

Senator HEFLIN. It is 81, the same page that you were reading from just a few minutes ago.

Senator DENTON. Yes, sir; and what part of the page, please?

Senator HEFLIN. Well, the "yes" is in the middle of the page. I started reading right below the "yes."

Senator DENTON. The "yes" is in the answer to the question, Mr. Figures is a black, is he not, question mark. Mr. Sessions: Yes.

Now what else do you have?

Senator HEFLIN. I will read it again, following the "yes."

Senator DENTON. Well, why—you keep referring to that "yes." I do not understand it.

And then Mr. Biden says "yes" as if it means that the guy was there, and he asserts that he was in there. But I do not see Mr. Sessions saying he was there.

Senator HEFLIN. Well, I do not want to belabor it. But if you will read all of the content of page 81, and tell me their questions are not directed to the fact that Mr. Figures was there. And the question of the insensitivity of saying the statement before a black man, and then show me anywhere, with all of that arisen, and on that one page, at least four instances—I believe four—of where

there are statements that Mr. Figures was present or that he was a black man, and he was there, and the question of insensitivity to black men, and show me any statement that denied that he was there or that says, "I don't remember," or anything else, I think it is rather clear what that states.

Senator DENTON. Well, I do not agree with you. But I do not see that there is any positive statement saying he was not there.

Senator KENNEDY. Would the Senator yield for a question?

Senator HEFLIN. Yes.

Senator KENNEDY. Kowalski is white; is that right?

Senator DENTON. Yes, sir.

Senator KENNEDY. So the references to somebody black in the room would be a black man?

Senator DENTON. That is Mr. Biden, Senator Biden's reference.

Senator HEFLIN. I do not know. I am trying to be fair about this thing. I want to give Mr. Sessions a fair hearing. Though he is not my nominee, he is from my State. I want to be fair to him. I want to be fair to everybody else.

But I think when we phrase questions, we ought to be fair as to how we phrase it. And that is the only thing I want to say about it.

Senator DENTON. Senator East.

Senator EAST. I have no questions, Mr. Chairman.

Senator DENTON. Mr. Figures, before you left the U.S. attorney's office, in 1985, had you threatened to resign before?

Mr. FIGURES. Yes, sir.

Senator DENTON. Do you recall a conversation with Mr. Sessions several years ago in which you were going to quit, and Mr. Sessions asked you to stay on to think about it over the weekend? And do you recall him telling you that he thought you had a significant contribution to make?

Mr. FIGURES. Senator, my recollection of that conversation is that he did not ask me to stay on. He did ask me to think about it over the weekend. But he did not ask me to stay on.

My best recollection is that he did not ask me to stay on.

Senator DENTON. Senator Hefflin.

Senator HEFLIN. The procedure relative to the position of the assistant U.S. attorney and the U.S. attorney and the Department of Justice, what is the normal procedure pertaining to this if a—say that you are assigned a case, and you have certain feelings about it. You make those known to the U.S. attorney.

What relationship does the assistant have to the U.S. attorney? What relationship then does the U.S. attorney have to the Department of Justice? Who vetoes who, or is it necessary that all be in agreement if the assistant or attorney general takes a position contrary to the U.S. attorney?

If you would go into that procedure, including the procedure where the U.S. attorney might take a different position from the Department of Justice? All of this, as to how this works, and who has the final say-so?

Mr. FIGURES. Judge Hefflin, it depends on the nature of the case. In civil rights cases, voting cases, criminal civil rights case, pursuant to the U.S. attorney's manual, and I suspect other authoritative sources, the U.S. Department of Justice has ultimate decision-making authority with respect to whether a case is brought.

There are some other cases, type cases, where the U.S. Department of Justice has ultimate authority.

The U.S. attorney's manual pretty much sets out what the U.S. attorney can decide on his own without consultation or approval from the U.S. Department of Justice, and what he can not. It really just depends on the case, the type of case that it is.

Senator HEFLIN. Now, where the U.S. attorney and the assistant U.S. attorney differ, does the assistant U.S. attorney's opinion go to Washington as well as the U.S. attorney's?

Mr. FIGURES. In the criminal civil rights area, the opinion of the assistant U.S. attorney who reviews the matter is generally noted on the report that is sent to Washington; yes, sir.

Senator HEFLIN. Now, what happens when something that is assigned to one assistant and then the U.S. attorney may take it away from him and put it and give it to another?

Mr. FIGURES. If it is a criminal civil rights matter, ordinarily the opinion of the first assistant would not be included on the report. It would be the opinion of the second assistant who gives the official opinion.

Senator HEFLIN. There would be no requirement that it be there, the first one? Or would there be a requirement that they both be there?

Mr. FIGURES. I have not ever seen a report where there are opinions from two assistant U.S. attorneys, Judge.

Senator HEFLIN. There has been some—in your statement or previously it has been asked about declining criminal cases of a civil rights nature. And some statement to the effect that you are quoted as having said, maybe in your statement, you quote Mr. Sessions as saying, I wish I could decline all of them.

I do not believe you went into that in your oral statement.

Mr. FIGURES. Judge Hefflin, that statement was made in connection with a discussion of the *Hodges* case. The *Hodges* case was a criminal civil rights matter, in Evergreen, or Greensboro, or something, I believe, that had a green in the name of the city or town, where an individual or a couple had moved into an all-white neighborhood, if I recall. And the home had been shot into.

Mr. Sessions assigned that matter to an assistant—another assistant U.S.—an assistant U.S. attorney other than myself. Apparently, that assistant—well, I know that that assistant U.S. attorney declined prosecution on the case.

The case went up to the Department. The Department sent back down an investigative request containing several items that the Department felt should be explored before a final decision was rendered with respect to the case.

Thereupon, Mr. Sessions called me into his office and told me that he had given the case to this assistant; additionally stated that it was clear to him who had performed the act. But that the Department wanted some additional investigation, and he wanted me to take it over.

I indicated to Mr. Sessions that I preferred not to because I had not reviewed it initially. I had not worked with the FBI agent who was investigating the case; that I would be going over the tracks of someone else; that I just felt it inappropriate for me to take it up after it had been worked between an assistant and an FBI agent,

and the assistant that had—you know, I had not benefited from telephone conversations with the FBI agent. I know that in working criminal civil rights matters that oftentimes impressions are not included in the report; oftentimes certain witnesses are not interviewed, or if they are interviewed, oftentimes from a strategic trial strategy—well, a trial strategy point of view, you leave certain things out of the report. There is a relationship that engenders, when you work one of these kinds of cases, between you and the FBI agent. And I had not benefited from all of that.

So I told Mr. Sessions that I preferred not to take it up. He became upset. And my recollection is that he took the *Hodges* case file and he threw it on the desk, and he said: Damn it, I wish I could decline on all of them.

Senator HEFLIN. Decline on what?

Mr. FIGURES. Decline on all of them, referring to criminal civil rights cases.

Senator DENTON. Would you mind if I asked if he thinks that that was because he was so racist or because Mr. Kimbrough advised him not to take on the other case; it would just get him into trouble?

Mr. FIGURES. Sir, taking the statement in the manner in which it was delivered, the impression on his face, the manner in which his face blushed, I believe that it represented a hostility to investigating and pursuing those types of matters.

Senator DENTON. I must say that all the Department of Justice witnesses who have testified have said that he was aggressive, and even Mr. Hebert said that he was more cooperative than his predecessor, and took on tremendous workloads by the testimony of a black attorney who knew him very well.

And I just wanted to make that observation, Senator Hefflin.

Senator HEFLIN. I have no further questions.

Senator DENTON. Senator East.

Senator EAST. I have no questions, Mr. Chairman.

Senator DENTON. Mr. Figures, you have made reference to being called boy. Would you tell us who else was present when Mr. Sessions called you boy?

Mr. FIGURES. The first time he did it, he was standing in the doorway of the office to either Ginny Granade—I believe it was Ginny Granade's doorway, in Ginny's office, where Ginny—and I believe that E.T. may have been in there, I am not sure. But my recollection is that E.T. and Ginny were in there.

Senator DENTON. So the first time Ginny Granade and others might have overheard him—E.T. Rolison—you mentioned, did you not, that there were many times that he called?

Other people called you boy. Who were they?

Mr. FIGURES. Well, the first time it was done, Senator, it was Ruddy Favre.

Senator DENTON. Is he dead?

Mr. FIGURES. Yes, sir.

And then subsequently, Ed Vulevich.

Senator DENTON. It seems remarkable to me that since you had responded earlier on to the National Bar Association with adverse testimony regarding Mr. Sessions conduct, remarkable that you would not have mentioned someone calling you boy.

I find it, you know, a caricature of reality in Mobile, AL, for one attorney, white, to call a black attorney boy. I find that incredible that it makes me wonder that others can find it credible, that you would not have objected, unless he was teasing in some way that would have been appreciated by you.

But you had this persecution of being called boy in the office by Mr. Sessions on a regular basis?

Mr. FIGURES. Senator, as I have have—no, I did not testify, I believe, that he called boy on a regular basis. Senator Kennedy asked me if there were other comments that were made.

Senator DENTON. I am just trying to get it in context in fairness.

Mr. FIGURES. Yes. I felt very tentative around Mr. Sessions. I had to guard my reaction to things, Senator, because I needed a job at the time. And I wanted to finish the matters that I have alluded to. So I took a lot of things; I just kept it inside.

Senator DENTON. But why, if you gave adverse testimony regarding comportment you considered unfavorable to him, would you not have mentioned that before now, because—

Mr. FIGURES. I have. I have, Senator. I told Roland Nachman that.

Senator DENTON. Not the National Bar Association or—

Mr. FIGURES. My recollection is, I told the National Bar Association also. But you know I have no control over what they put or do not put in their report.

Senator DENTON. OK.

You have a brother who is an elected official; is that correct?

Mr. FIGURES. That is correct.

Senator DENTON. And do you also practice law with him?

Mr. FIGURES. That is correct.

Senator DENTON. Would you tell us what party Senator Michael Figures is?

Mr. FIGURES. He is a Democrat.

Senator DENTON. Do you consider yourself a Democrat?

Mr. FIGURES. I have voted for Republicans in my life, Senator.

Senator DENTON. Sir?

Mr. FIGURES. There are Republicans that I have voted for, but I consider myself a Democrat.

Senator DENTON. Do you now, or have you ever, held an official position in the Democratic Party?

Mr. FIGURES. The State Democratic party? The county Democratic—

Senator DENTON. Any official position in the Democratic Party at any level?

Mr. FIGURES. I was vice chairman of the Mobile County Democratic Conference, upon returning to Mobile.

Senator DENTON. Are you aware of the many articles in which it has been alleged that Mr. Sessions appointment of President Reagan was involved in a conspiracy in which I was involved to render black voters intimidated so they would not vote in my election in 1986? If not, I can provide you numerous copies of such newspaper articles?

Mr. FIGURES. I have read those articles, Senator, or articles of that type; yes, sir.

Senator DENTON. Are you aware that Democratic and Republican polls over the past months have shown that this Republican Senator has 40 percent support from the black voters in Alabama?

Mr. FIGURES. I am not aware of that, Senator.

Senator DENTON. Well, for the record, that is the result of the polls.

I am sure that that is the effort here, to change them, as you said, Reverend. And that is the effort behind this smear campaign on Mr. Sessions; I think the newspaper articles would indicate that.

That is why I am asking about the party affiliation, because as the predecessor to Mr. Sessions' Mr. Kimbrough, allowed, politics is pretty tough down there and we have had some red-hot issues in Alabama politically and racially, of course. We have had the school prayer case with the—very uncharacteristic of blacks, the Muslim gentleman said that there was a violation of separation of church and state; he brought the charge. There's been an affirmative action dispute, which you have referred to yourself. The school board was full of such controversy. And then the change in form of city government in Mobile was going on all at this time. As Mr. Kimbrough said, it is very difficult for anyone to believe that politics can be separated from anything else.

Are you aware that your brother, Senator Michael Figures, has referred to himself as a rascist?

Mr. FIGURES. I am not aware of that, Senator.

Senator DENTON. Senator Heflin.

Senator HEFLIN. I have no questions.

Senator DENTON. Senator East.

You may stay if you wish, Mr. Figures. You are excused, but would you stay around? Because we might be recalling you.

OK., the Honorable Hank Sanders, Alabama State senator, Montgomery, AL.

Mr. SANDERS. Senator Denton, Judge Heflin, Senator East, my name is Hank Sanders, and I want to thank the committee for the opportunity of appearing before it to testify on this very critical issue.

I have practiced law in Selma, AL, and am a member of the law firm of Chestnut, Sanders, Sanders, Turner, & Williams.

I am also a member of the State senate. And I have been a member of the State senate for a little over 2 years and 4 months.

I represent a senator district composed of eight counties, either all or part of eight counties, that stretch across what is known as the west Alabama Black Belt. Among those counties are Perry and Greene, Lowndes and Sumter.

Before I get into the substance of my testimony, I would like to offer two—copies of two letters that were sent out. One of them is titled a petition, and it is from some elected and appointed officials in Green County who are opposed to the nomination of Mr. Sessions.

And I would to have those offered.

Senator DENTON. You want these included in the record?

Mr. SANDERS. Yes, sir.

Senator DENTON. Without objection.

Mr. SANDERS. And the second one is a letter that is signed by 17 of the Alabama legislators who are black, and who are also opposed

to the nomination of Mr. Sessions. And I would like to offer it to be a part of the record, also.

Senator DENTON. Without objection, it is so ordered.

[The following was received for the record:]

Statement of Henry Sanders
State Senator for the 23rd District of Alabama

Mr. Chairman and members of the Committee, my name is Hank Sanders. I am the State Senator for Alabama's 23rd District, which includes much of the area known as the Black Belt. I want to thank you for the opportunity to appear before you today to voice my strong opposition to the nomination of Jefferson Sessions, III for a federal district judgeship for the Southern District of Alabama.

For the past five years, Mr. Sessions has served as U.S. Attorney for the district in which many of my constituents reside. Based on his conduct in that office, I believe Mr. Sessions lacks the competence, judgment, and fairness required of a federal judge. His failure to enforce federal civil rights laws and his politically-motivated prosecution of local Black civil rights leaders for voting fraud are just some of the examples which indicate he does not possess the necessary qualifications to be appointed to the federal bench.

I believe I have a unique perspective on the impact Mr. Sessions' appointment would have on the Southern District of Alabama. I have lived in that area for 14 years and have been involved in election contests there since 1972. I represent all the counties involved in the recent absentee ballot investigations. Participating as both an elected official and a defense attorney in these investigations, I visited with many persons directly and indirectly affected by the absentee voting investigations and prosecutions.

To fully understand the impact of the voting fraud investigations in my area, it is important to look at the political landscape. The Black Belt is composed of 12 counties ranging from 42% to 78.2% Black. Eight of the counties have a Black majority. Although the Voting Rights Act was enacted in 1965, the electoral progress for blacks has been slow and difficult. Black officials still do not come close to representing these areas proportionately. Of the 193 elected

officials in the Black Belt, only 76 of them are black. Even this number is misleading since few of the elected black officials hold higher offices. For example, only one of the twelve probate judges is black and only three of the twelve district judges are black. There are no Black county-wide elected officials in any county that does not have a Black majority.

The electoral battles have been intense and bitter. While Blacks outnumber Whites, Whites retain economic and political control over the region. Absentee voting has played a crucial role in elections for both Whites and Blacks. The average margin of victory in a seriously contested election between a White candidate and a Black candidate is less than 200 votes.

Historically, Blacks were harmed by the absentee process since Blacks would win at the polls only to be defeated when the absentee ballots came in. In fact, today, Whites still vote absentee more frequently than Blacks. When Blacks realized the power of the absentee vote, they learned the laws of the absentee process under the leadership of such persons as Albert Turner, and began to use the process to their benefit. The absentee process is particularly critical for Blacks since the counties are poor, many elderly persons are unable to go to the polls for health reasons and a high percentage of blacks work out of the county.

This newly discovered political power of Blacks has not come without injury. In 1982, Blacks relied heavily on the absentee process and secured control of the County Commissions and Boards of Education in five counties. The victory was bittersweet, however. Local criminal investigations into the winners' use of the absentee process were soon initiated but not a single indictments arose from the investigations. The political motivation for the investigation is especially apparent from the fact that in each county, the targets of the investigations have been long-time Black civil rights leaders, persons who have successfully used the absentee process to strengthen Black political representation and power.

In 1984, in Perry County which is one of the five counties with a strong Black political presence, Jefferson Sessions as U.S. Attorney prosecuted three black civil rights leaders who have been active in promoting voter participation. Most of the charges involved alleged violations of the absentee ballot process based on efforts to assist illiterate, elderly voters.

The prosecution of these activists was disturbing for several reasons. First, Mr. Sessions engaged in selective prosecution. He failed to investigate allegations of white voter fraud in the same election despite the fact that the defendants and the witnesses before the grand jury expressly called to his attention serious incidents of election fraud in Perry County. Indeed, the number of absentee ballots of White voters dropped 50% in the last Perry County election indicating that Whites were advised of the pending investigation.

Second, the prosecution's treatment of its witnesses in the case, many of whom were frail, elderly voters, warrants grave consideration. The witnesses were interviewed by FBI agents in a way calculated to intimidate them, and to pressure them into saying what the government wanted to hear. Mr. Sessions acknowledges direct involvement in supervising the FBI agents who were sent out to ask voters who they voted for.

The manner in which the witnesses were called before the grand jury also served to intimidate the witnesses, and indeed, deterred them and other elderly blacks from voting again. Although the trial was ultimately held in Selma, which is close to Perry County, the government convened the grand jury in Mobile, several hours away. The witnesses were taken by bus to Mobile. While boarding the bus in Selma, the witnesses were surrounded by police with guns, and the bus was escorted to Mobile with an armed police escort. The bus trip proved harmful for many of the elderly, infirm witnesses. One witness suffered a stroke upon return from the grand jury and another suffered a heart attack.

Other aspects of the Perry County trial indicate that the prosecution was ill-advised and evidenced a lack of competence on

the part of the prosecutors. Although the prosecution obtained over 25 counts for each defendant in the indictments, the prosecution never actually presented any evidence to support a number of these counts. The trial judge summarily dismissed a number of these counts at the close of the prosecution's case. Similarly, I believe that the indictment and theories of prosecution were so broad as to include virtually anyone who participated in the absentee voting process.

Mr. Sessions' use of the power of his office for such political purposes is deeply troubling to me. His unwarranted actions have effectively deterred the participation of Blacks in the electoral process in this District. His tactics in no way represent a willingness to preserve the rights of individuals, which is the role of a federal judge. Instead, his conduct is reminiscent of actions taken by Whites during the Post Reconstruction period. During that time, the right to vote of Blacks which had been recently established was effectively denied to countless Black voters through accusations of fraud by Black voters, replacement of Black elected officials with White officials by appointment, and a hostile or indifferent attitude by the government.

Mr. Sessions' appointment to the federal bench would have a devastating effect on the people of my Senatorial District. I urge you to deny his confirmation.

March 16, 1986

Senator Strom Thurmond, Chairman
Committee on the Judiciary
United States Senate
Washington, D.C.

PETITION

As elected and appointed officials in Greene County, Alabama,
we oppose the nomination of U.S. Attorney Jefferson B. Sessions to
become a Federal District Judge because of the following:

1. His unjust prosecution of the "Perry County Three" for voter fraud.
2. His racist attitude and comments directed toward black people and organizations.
3. His general lack of judgement, maturity and wisdom necessary to be a Federal Judge.

NAME	POSITION	ADDRESS
Carol Thomas Tipton	Member Greene Co. Board of Ed.	P.O. Box 32, Eutaw, AL.
James W. Horder	Member Greene County Improvement Society, Eutaw, AL	
Harry C. Evans	Trans. Super	Greene Co. Eutaw
John E. Frederick	D. Daniels Credit Union Board Member	
John Eppert	Chairperson	Greene Co. Hospital and Nursing Home, Eutaw, AL.
Charence C. (Denton)	Chairman	Box 565 Eutaw, AL
Booker T. Cooke Jr.	Greene Co. Democratic Committee	P.O. Box 751 Eutaw, AL 35462
Meris Hardy	Greene Co. water & sewer	P.O. Box 771 Eutaw, AL
Will Little	Chairman	Greene Co. Improving Association Eutaw, AL 35462
Billy Simpson	Greene Co. Hosp.	Box 1, Box 8, B. Fairbank, AL 35462
Richard L. Osborne	Greene County District Judge	P.O. Box 310, Eutaw, AL 35462
James Fleminger		P.O. Box 557 Eutaw, AL
Garnie Dean	County Commissioner	P.O. Box 814 Eutaw, AL
James Calvin	Mayor - Union	P.O. Box 782 Eutaw, AL
Patricia Braun	City Counselor	P.O. 814 Eutaw, AL 35462
Gary Brown	Hospital Bldg. Maint. Society, Eutaw, AL	
William M. Branch	Prodat Judge	Greene Co. AL

March 17, 1986

Senator Strom Thurmond, Chairman
 SENATE JUDICIARY COMMITTEE
 224 Dirksen Senate Office Building
 Washington, D. C. 20510

Dear Senator Thurmond:

We, the undersigned members of the Alabama Legislature, strongly protest the appointment of Jefferson Beauregard Sessions, III to the position of United States District Judge for the Southern District of Alabama. As you know, the appointment of a federal judge is for life and therefore requires integrity, competence and fairness. Mr. Sessions does not meet those requirements.

A person should not be considered for a federal judge who would make anything close to just one of the following statements:

"I used to think the Klan was alright until I found out they smoked pot".

"Jim Flackshear, a white attorney, is a traitor to his race for bringing civil rights cases on behalf of black persons".

"The NAACP, National Council of Churches and the A.C.L.U. are Communist, pinko, unamerican organizations".

"The Voting Rights Act is an intrusive piece of legislation and black and white people could work out any problems without having civil rights forced down their throats".

We understand that Mr. Sessions said not one but all the above statements. The Senate Judiciary Committee must not place a pox on Alabama and America by reporting such a nominee to the U. S. Senate.

Your cooperation is appreciated.

Respectfully submitted,

NAME

State Rep. Lucius Blackmon
 A. [Signature]
 Sen. [Signature]
 Hank [Signature]
 Carl F. [Signature]
 [Signature]
 Rep. [Signature]
 [Signature]
 John L. [Signature]

NAME

Charles D. [Signature]
 [Signature]
 James E. [Signature]
 Alvin [Signature]
 [Signature]
 Lewis S. [Signature]
 Rep. William [Signature]
 [Signature]

Mr. SANDERS. One other preliminary matter that I would like to speak to before I go further—

Senator DENTON. Excuse me, would you identify that last one? Did you say that it is from 17 Alabama legislators who are all black?

Mr. SANDERS. Yes.

Senator DENTON. You mean in the State government?

Mr. SANDERS. State legislators.

Senator DENTON. OK.

Mr. SANDERS. Yesterday, Judge McRae said that one of my statements, I believe he characterized it as an outright lie. And I was concerned about that, and I wanted to set the record straight on that. And I believe the question was in response from a committee member concerning things that were not true that were in my statement.

And Judge McRae indicated that my statement indicated that there was no county that had a black minority that had a black elected official. And I want to specifically put that portion of my statement in the record.

And I said—just to read it briefly, it is on page 3—to fully understand the impact of the voting fraud investigations in my area, it is important to look at the political landscape. The Black Belt is composed of 12 counties ranging from 42 to 78.2 percent. Eight of the counties have a black majority.

Although the Voting Rights Act was enacted in 1965, electoral processes for blacks have been slow and difficult. Black officials still do not come close to representing these areas proportionately. Of the 193 officials in the black belt, only 76 of them are black. Even this number if misleading, since few of the elected black officials hold higher office.

For example, only 1 of the 12 probate judges is black, and only 3 of the 12 district judges are black. There are no black countywide elected officials in any county that does not have a black majority.

And I wanted to put that in there because I was specifically, in that statement, referring to those 12 counties in the black belt, and I stand by that statement as being a correct statement of what the situation is there.

Now, there is—the question of the significance of the large number of absentee ballots in Perry County—

Senator DENTON. Excuse me, sir. On the point that you raised so emphatically about no elected black official where there is not a black majority, that question came up yesterday; I presume you know that, or you would not have been so emphatic in saying that you persist in that statement.

I refer to Judge King and Kennedy in Mobile?

Mr. SANDERS. Senator Heflin—I mean, Senator Denton, what I did, in that statement, I said that we had to talk about the political landscape in our area. And I specifically referred to 12 counties. I specifically talked about all of the elected officials in that area.

Senator DENTON. Well, you are only referring to those 12 counties; attacking that situation?

Mr. SANDERS. Yes. And I think the statement clearly indicates that that was the only—

Senator DENTON. I did not mean to imply that it was. I simply did not catch that.

Mr. SANDERS. OK. I am sorry, Senator Denton, yesterday when he said that that was an outright lie. I thought that that was a rather strong statement under the circumstance.

Senator DENTON. It was not noticed that you said only 12 counties. You know, they are making up representative government in many parts of Alabama in which that situation is being corrected.

Very briefly, the issue of the number of absentee ballots as triggering the investigation has been raised on a number of occasions. And I think it is important that we understand a little bit about Perry County, because that is critical.

Perry County is a county that is roughly 60 percent black, and roughly, 40 percent white. It is a county where the elections are just traditionally very, very close; and elections are intensely fought. In fact, I think that if you will check the records, you will find that Perry County has the highest voter turnout in the State of Alabama. And that is due to the intenseness with which the elections are pursued.

And as a part of that—

Senator DENTON. That represents the hottest absentee ballot turnout in the State.

Mr. SANDERS. Yes. I believe it may be the highest. Green may have a little bit higher, I am not sure.

But in any event, very briefly, because of that over the years absentee ballots have been a critical part of that election. In fact, over the years, basically, initially whites were the only ones who used the absentee ballot to any extent. But then blacks began to also use absentee ballots. And this came about specifically because that question was raised some years ago with the Justice Department. And the Justice Department said that there is nothing—we cannot say that that is illegal. And if you intend to win any elections, then you need to learn that process also.

So it was the U.S. Justice Department, a member of that, who suggested that particular process.

And black then began to use the absentee process also. And the fact that there were a large number is no indication that anything was wrong by virtue of that. There are many sick people. There are many elderly people. And there is some information to indicate that nearly a third of those people who work in the county work out of the county. I mean, people who work and live in the county, work out of the county, because it is a very poor county.

And I suppose in most other counties, if one made an attempt to get absentee ballots, then you would also have a large number.

And I wanted to touch upon that very briefly, because that is an explanation for the large number of absentee ballots.

Senator DENTON. Again, sir, you may correct me, I am just trying to get this cleared up.

Testimony yesterday said there were a lot of young men standing around who had submitted absentee ballots, and all the Justice Department officials and every politically experienced person I have talked with thinks that roughly one-sixth of absentee ballots, as compared to one in a thousand in Jefferson County, is abnormal,

and not to be normalized in the manner in which you are now doing here.

I may be wrong. If you want to explain that?

Mr. SANDERS. Well, I would be glad to respond to that. Because it is abnormal—and that is abnormal; we are not talking about whether it is normal or not—whether that is an indication that something illegal is taking place. And that is no indication that something illegal is taking place.

In fact, with the U.S. Government tagging all of these absentee ballots and going through them one after one, there is nothing in that report that I am familiar with that indicated that people were voting illegally who were not entitled to. And that was out of 700-and-some absentee ballots.

So I simply state that there is a legitimate reason for the high number. And that is because it is a very competitive race; that is because it is a rural area; and that is because, also, that there are many sick and infirm people, and some who work out of the county.

Let me, for fear I run out of time, let me rush on to one other thing about Perry County, and that is, that Perry County is a county ever since 1972, I do not know of a single year that there has not been a squabble after the election, since 1972. And that is because the races are generally—the critical races are often close, and the competition between the parties is very intense.

Did you want to ask me something, Senator?

Senator DENTON. No, sir.

Mr. SANDERS. OK.

And that is the background from which we start.

Now, there are two groups in Perry County, two major groups, one is the group that has been in power over the years; the other one is a group that has recently come to power in Perry County.

One of those groups is predominantly black; another one is predominantly white. Because of the closeness of the election, a couple of hundred votes shifted either way can mean victory or defeat. And that is the background with which we start.

It just so happens that Roy Johnson, who is the district attorney there, is an intricate part of one of those groups; and so is Mr. Phillips. They both involved with one of those groups.

It is that background with which we were dealing with the *Perry County* case.

Now I want to talk briefly about what the impact has been, and why that impact has been the case.

No. 1, there are four areas that I can see where there has been a major impact. One of them is on voter registration. In fact, one lady, when a lady named Siola Miller, who was trying to get her to register, approached her, and said to her that she ought to register to vote, and what she said to her was, child, I do not want to get you in trouble. And she asked her about that. And she was explaining that she may end up going to jail for simply trying to register her. And that is one indication.

Another problem has to do with people who vote at the polls. I was at a church over in Marion several months ago when a little lady came up to me and said, Reverend, is it all right to vote next time? And I said, of course, it is all right to vote next time. And in

response, she said something else, and I asked her why she thought that, and she said that a number of people said that it was getting dangerous to vote, and she was concerned about it, and so she wanted to ask me.

And the fact that she called me reverend was not unusually, because a good number of people think I look like a minister and act like a minister and call me reverend. But she was talking to me.

Senator HEFLIN. Are you a reverend?

Mr. SANDERS. No, sir. I prayed about it, Judge. But I did not quite get there.

Another impact is on absentee voters. Now several absentee voters testified during trial that they would not vote again. And I think that that is understandable. Simply from the point of view that you have to ask yourself is it worth voting if you may be visited by the FBI? And I think that that is critical.

And in this instance, a number of people, several hundred people, were visited by the FBI and interrogated, in homes and on the jobs, at one point or another.

The last category is one of community organizer; and it is most critical. Because the community organizers are the key group that get absentee ballots. Few people simply vote absentee ballots on their own. It is because somebody knows that they are sick. Somebody knows that they are out of county; and encourages them to vote absentee. It is not a process that somebody says, well, I am going to be out of town. Many people will simply forgo voting if someone does not encourage them to vote either at the polls or by absentee.

And this group is the group that has been most affected. That group has been most affected because the people who were indicted were community organizers, and community workers, Albert Turner, Evelyn Turner, and Spencer Hogue. This case went beyond Perry County, because the publicity was so great.

But those are the people who have the great reluctance about helping to assist people in voting. There are a few factors why that is true.

One of them is because the whole matter was so widely publicized.

A second one is, the way the investigation took place in a number of things. No. 1, there was preelection surveillance, which was highly unusual.

In fact one of the meetings that people were having the night before, there was an FBI agent out there watching them with some detection devices for listening to them. It just so happened that somebody came up and saw them out there.

That concerns people that cannot even have a meeting without being under surveillance.

The second thing, and I think perhaps the most devastating thing, was the tagging of absentee ballots. In Alabama your ballot is secret, because your first ballot is in an—I mean, the ballot has no markings on it except those which you put on it. It is in an envelope that has no markings on it. The outside ballot does have, where you sign it and put various information.

Since they were able to tag each of those absentee ballots, so the ballot had a number, the inside envelope had a number and the

outside envelope had a number, it became very, very critical, because the FBI then went to a number of people and spoke to those people about who they had voted for.

Now, in a city that might not make much difference. But in a rural area, where many of those people only voted because they were assured that nobody would know how they were voting, that becomes very critical.

In a rural area—in a city, you may not see the powerful people ever. But in a rural area you see them almost every time you go to town, or they live down the road from you.

So it becomes very critical that those ballots were tagged, and that the FBI took those ballots and said, is this how you are voting?

Many people are afraid to vote, still, even after all these years. Many of them are on welfare. Many of them are on food stamps. Many are on other kinds of way, and it is just a serious problem.

Another problem that had to do with it was the extent of the investigation. Now, I believe Mr. Sessions testified that they simply took the 75 ballots that had markings on it, and those were the ones they investigated. But there were some ballots, of course, that were investigated that were not among those 75. And if I am correct, I believe that I raised this question with Mr. E.T. Rolison, and he told me that in addition to those ballots, they took a group of ballots, at random sample. And I asked him about that, this random sample. And he said, well, there wasn't any problem in the white community. The problem was in the black community.

And they took those—I believe he told me it was 75 ballots at random sample; and went to each of those people to talk to them. And these were ballots that had no markings on them whatsoever.

In addition to the extent of the investigation, the trip to Mobile had a very powerful impact upon people. And I think—one of the trips—I mean, the grand jury one time met in Selma. And this is where some of the people who were targeted, who were young, who could get around, were able to go to Selma, which is roughly 30 miles away.

But on the other hand, when the elderly people and some other people were taken, they were taken to Mobile overnight, which is 168 miles away. And at the particular time they were taken, they were taken on a bus; they were indicated that they must ride the bus; and they got on the bus and got there and found that a number of law enforcement officers were standing around.

And I think the irony of this is that the bus was parked almost at the point where Jimmy Lee Jackson got shot. And Jimmy Lee Jackson was a young black man in 1965 who had been involved in a demonstration trying to get the right to vote. And in the process what he did, after the march did not take place, a number of State troopers had ended up beating people at random. His 84-year-old grandfather had been hit on the head. And he went and tried to take him to the doctor. And the State trooper said he could not take him. They stood in the door and stopped him.

And the reason this is important, and I tell that, is because every year they hold a Jimmy Lee Jackson celebration in Marion, where they talk about this and raise this issue.

But in any event, what happened on that occasion was, Jimmy Lee Jackson, when he was told a second time that he could not take his grandfather to the doctor, two of the law enforcement officers began to beat him. He was down on the floor. And as they beat him, his mother came up. And one of them turned around and hit her and knocked her off and she was trying to pull them off.

Then, after they beat him awhile on a floor, they stood him up in the corner, and one of them put a gun in his side and shot him one time. And they were holding him there. And then they shot him a second time.

Senator DENTON. What incident is this, in what connection?

Mr. SANDERS. It is in connection with Perry County.

Senator DENTON. I understand that. But you have been making the case that the whole situation was one in which the Government has been heavyhanded, and unjustified in coming in there. Now where are we getting this man shot in the side?

Mr. SANDERS. Well, the point I was making was that the bus that took the people to Mobile, with the law enforcement officers standing around, was in close proximity to the spot that Jimmy Lee Jackson was shot in 1965 in an attempt—

Senator DENTON. I really do not think that is relevant. You have been talking for almost 15 minutes. I do not mean to be—

Mr. SANDERS. I will be glad to leave it off. But, for people who relive that every year, and have a meeting on that, that was of some significance. But I will be glad to leave it alone and go to the next point and close out, if I have your permission?

Senator DENTON. Sure.

Mr. SANDERS. I just simply want to close out with two small points.

One of them is, election workers, people who go out and solicit absentee ballots, are also concerned because the nature of the indictment that came down in this case; in that indictment it simply—some of things that it laid out there is that these people did approach citizens of Perry County and encourage them to vote absentee ballots. It did assist citizens to execute and submit absentee ballots. Did visit voters in their home.

All of these are normal activities that were set out in that indictment as part of the conspiracy in this particular case. So election workers, people who go out, look at that indictment, and it was sent out to a number of people, and have some serious concern.

The last thing, of course, is the number of counts in the indictment. It was spread across the newspapers. It was spread across television. Everything. That there were 82 counts. And at the moment, when they finally went to the jury, there was far less counts. Some 50 counts were no longer there. But of course that was not spread across the newspapers.

All of that had a very profound impact, and I simply say that because it has a tremendous effect. I go to meetings almost every day. And I know it had a tremendous impact.

Senator DENTON. Are you finished?

Mr. SANDERS. I am through.

Senator DENTON. Well, you referred to things being spread in the newspapers. Mr. J.L. Chestnut, Jr., writing in the Selma Times Journal, is he a law partner of yours?

Mr. SANDERS. Yes, he is.

Senator DENTON. Was he one of the defense attorneys in the *Perry County* case?

Mr. SANDERS. Yes, he was.

Senator DENTON. September 22, 1985, under a headline, Uncle Tomism to be dealt with, by J.L. Chestnut, Jr. His article begins, certain blacks can be so sickening they make it difficult to contain oneself. Perry County Commissioner Reese Billingslea and Tax Assessor Warren Kynard continue to spout the nonsense that the one-sided, racist Federal vote fraud investigation and prosecution in Perry County were justified and somehow fair. Neither the Feds, Billingslea, nor Kynard had voiced a single criticism of white political skulduggery in Perry County.

Do you believe that was said here, that the Reagan administration—Senator Jeremiah Denton, responding to whites such as Cook, tried desperately to persuade the Justice Department to reject the Perry County redistricting plan.

I can bring a lawsuit against Mr. Chestnut in that paper for that. Because there is a pattern—I intend to, OK? There is a pattern in that newspaper and by Mr. Chestnut to make allegations against me from malice which are absolutely untrue.

Do you believe that Jeremiah Denton had something to do, anything to do, with persuading the Justice Department to reject the Perry County redistricting plan? I do not know anything about the Perry County redistricting plan. I did not know about the *Perry County* case until I read about it in the newspaper?

Do you actually believe otherwise?

Mr. SANDERS. Senator Denton, let me say first that I certainly do not want to be sued, either. And I do not know whether you had a role or not. And I have never said that you had a role. But I do not know whether you had a role or not.

Senator DENTON. You are under immunity. Nothing you say here can be held against you in the sense of a suit.

Mr. SANDERS. Well, I do not know whether you had a role or not, Senator Denton. I do not know. And in fact, I have never made that statement.

Senator DENTON. Well, can you answer why I would be interested in intimidating black voters against voting for me when all of the polls show that more blacks would support me than any Republican in history, I would not need 40 percent of the black vote to get as big a landslide as Senator Heflin, in fact maybe more. Because my opponent did not have that many.

And why would I want to intimidate black voters from voting? The testimony was given yesterday that it was the side from which you were coming that was trying to intimidate voters. All of the Justice Department which has testified here have said the same thing.

So if you think you are going to turn, as someone in the audience said, not representative of that 40 percent, that you are going to turn the votes around, I think you are wrong.

I think that as Mr. LaVon Phillips testified yesterday, there are more and more blacks becoming sick and tired of being intimidated into voting one way or the other. And I do not want to be elected to the Senate or to any other office with intimidated votes. That is

the place where I 78 was in prison 7 years, 7 months; not the United States of America.

I can understand vote cheating and vote fraud. That has taken place in various parts of the United States. It still is, to some degree, and I am hoping we will get rid of it. But intimidation is another thing. And I do not like it. And I want that on the record.

Senator DENTON. I would ask, did you tell Albert Turner that prior to his trial—let me rephrase the question.

Is it true that Albert Turner was your campaign manager when you ran for the office you now hold?

Mr. SANDERS. Albert Turner was a person who worked very closely with me, and in Perry County, he certainly served in that role.

Senator DENTON. So do you believe you can be impartial as far as his case is concerned?

Mr. SANDERS. Senator Denton, I never felt that I should be impartial as far as Mr. Turner's case is concerned. And the reason for that is that I had known Mr. Turner over the years. And I had known him to be a very dedicated and hard-working person who believed very firmly in the right to vote. And that he worked very hard to see that all kinds of people would be able to vote. I did not feel that I needed to be impartial.

I was representing him, and I do not think you need to be impartial when you are representing somebody.

Senator DENTON. The immunity I told you about a little while ago, as you know better than I since I am not a lawyer, is only with respect to suing for slander; that sort of thing. This question is not in that category.

Did you ever warn Albert Turner that if he did not watch his handling of absentee ballots, he was going to get into serious trouble?

Mr. SANDERS. No, what we did——

Senator DENTON. Excuse me; the answer was no?

Mr. SANDERS. Did I ever warn him?

Senator DENTON. Did you ever warn Albert Turner that if he did not watch his handling of absentee ballots, he was going to get into serious trouble?

Mr. SANDERS. No; what I did—I would be glad to tell you, Senator, what I did.

The people in Perry County, I have met with them to discuss with them the legalities and illegalities of handling absentee ballots. And we went over that in detail.

And in going over that in detail, I encouraged them to avoid even any appearances of impropriety; and I believe they did that.

Senator DENTON. Let me ask you if you ever—you have alleged in your prepared statement that Mr. Sessions failed to investigate allegations of white voter fraud in the 1984 elections.

Can you name specific instances of such offenses which Mr. Sessions failed to prosecute?

Mr. SANDERS. Yes, sir; in fact, Mr. Turner, whenever he testified, on yesterday, raised a series of those. And one of those, of course, involved Mayor Andrew Hayden.

Senator DENTON. No; Mr. Kimbrough testified yesterday that he advised Mr. Sessions not to take on this voter-fraud case in Perry County because he would simply get himself in trouble.

Mr. Kimbrough did not have any doubt that he expressed, in disagreement with the Justice Department, that it should be prosecuted, but only that he would be smeared and get into trouble if he did not.

Also, Mr. Sessions has been cited as having a remarkably heavy caseload, which he put unusually, extraordinary heavy work in. So the fact that he did come out there and investigate one seems to have turned you against him. You are rather selective about the ones you want him to investigate.

You criticized the fact that the grand jury in the Perry County investigation first convened in Mobile rather than in Selma. As a lawyer, are you aware that at that time no grand jury had ever been convened outside Mobile in that Federal district?

Mr. SANDERS. No; but I am also aware that the grand jury did meet in Selma, and did take testimony. And they took that testimony from young, capable people who were able to go back and forth. On this very case.

Senator DENTON. Did J.L. Chestnut ever warn Albert Turner that if he did not watch his handling of absentee ballots he was going to get into serious trouble?

Mr. SANDERS. I am not familiar with that at all, Senator Denton.

Senator DENTON. Well, for your information, I do have a sworn affidavit from E.T. Rolison, Jr., assistant U.S. attorney, swearing that he did.

Mr. SANDERS. The idea—I did not do anything such.

Senator DENTON. Here is what the affidavit says, in part: "Prior to the trial of Albert Turner, Jr., I had a conversation with Hank Sanders, Jr., about Albert Turner, Jr., and the 1982 election. I told Hank Sanders, Jr., that I had received information that J.L. Chestnut had publicly warned Albert Turner that if he did not watch his handling of the absentee ballots, he was going to get into serious trouble."

Hank Sanders told me that I had received inaccurate information in that it was not J.L. Chestnut that had given Albert Turner, Jr., the warning, but it was he who had given the warning. And it is signed E.T. Rolison, Jr.

Mr. SANDERS. No—yes, I have a comment. I have never told him that I gave Albert Turner a warning, that if he did not, he was going to get into serious trouble.

Senator DENTON. Do you know Jeff Sessions personally?

Mr. SANDERS. I have met him a number of times.

Senator DENTON. Were you present when Mr. Larry Thompson testified yesterday, a man who knew Mr. Sessions personally?

Mr. SANDERS. Yes; I was present when he testified.

Senator DENTON. What did you think about his testimony?

Mr. SANDERS. I thought that Mr. Thompson's knowledge of Mr. Sessions was very limited; that he worked with him in one situation dealing with one project, as I understood it; I thought that someone who had been in his office, who had seen him on a day-to-day basis, who had had a range of interaction, would have a far greater appreciation for what his problems were, and what his

strengths were, and what his abilities were than someone who had worked with him in a very limited situation.

And I could understand Mr. Thompson doing that.

Senator DENTON. Well he did work in the same line of work with him. He knew him over a period of a number of years. As a black man, I suppose he would have had some sensitivity about the task of civil rights.

But you, being of an opposite party, and involved in many articles here of an extremely political nature, I will not try to characterize with any adjectives what I think of that kind of politics, but I would say that his objectivity would certainly stand closer scrutiny than the likelihood of yours.

Senator Heflin.

Senator HEFLIN. I would like to have the affidavit made a part of the record.

Senator DENTON. Without objection, it shall be in. It was an omission on my part.

[The following was received for the record:]

STATE OF ALABAMA:

COUNTY OF MOBILE:

A F F I D A V I T

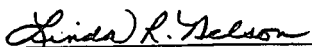
Before me, the undersigned authority, personally appeared E. T. Rolison, Jr., Assistant United States Attorney, Southern District of Alabama, and upon being duly sworn, deposes and says as follows:

That prior to the trial of Albert Turner, Jr., I had a conversation with Hank Sanders, Jr., about Albert Turner, Jr., and the 1982 election. I told Hank Sanders, Jr., that I had received information that J. L. Chestnut had publicly warned Albert Turner that if he did not watch his handling of the absentee ballots, he was going to get into serious trouble. Hank Sanders told me that I had received inaccurate information in that it was not J. L. Chestnut that had given Albert Turner, Jr., the warning but it was he who had given the warning.



E. T. ROLISON, JR.
ASSISTANT UNITED STATES ATTORNEY

Sworn to and subscribed before me
this 10th day of March, 1986.



Linda R. Nelson
Notary Public
State of Alabama at Large

MY COMMISSION EXPIRES 11/2/88

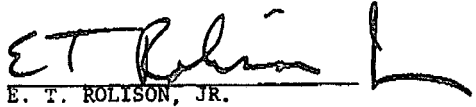
MAR 20 '86 15:21 US ATTY MOBILE

PAGE.01

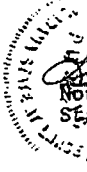
STATE OF ALABAMA:

COUNTY OF MOBILE:

My name is E. T. Rolison, Jr. I have been with the U. S. Attorney's Office in the Southern District of Alabama since 1975. I understand that Thomas Figures has today testified before the Senate Judiciary Committee hearing that I on occasion had referred to him in a derogatory manner as a "boy". That statement is a flat out lie and I have never referred to him by anything other than his given name.


E. T. ROLISON, JR.

Sworn to and subscribed before me
this 20th day of March, 1986.


Linda R. Nelson
Notary Public
State of Alabama at Large
MY COMMISSION EXPIRES 11/2/88

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MAR 20 1986 15:22 US ATTY MOBILE

PAGE.02

STATE OF ALABAMA:

COUNTY OF MOBILE:

My name is Ginny S. Granade. I have been an Assistant United States Attorney since 1977 in the Southern District of Alabama. It is my understanding that during the confirmation hearing Mr. Thomas Figures stated that on one occasion, in my presence, Mr. Sessions referred to Mr. Figures as "boy". I have never heard Mr. Sessions refer to Mr. Figures as "boy" or to call him by anything other than his given name.

Ginny S. Granade
GINNY S. GRANADE

Sworn to and subscribed before me
this 20th day of March, 1986.

L. B. Nelson
Notary Public
State of Alabama at Large

MY COMMISSION EXPIRES 11/2/88

Senator DENTON. You do have questions, do you not, Senator?

Senator HEFLIN. Yes; I was just reading.

Senator DENTON. Yes, sir.

Senator HEFLIN. This—maybe it would save time just to read it aloud again.

E.T. Rolison said that: "prior to the trial of Albert Turner, Jr., I had a conversation with Hank Sanders, Jr., about Albert Turner, Jr., and the 1982 election. I told Hank Sanders, Jr., that I had received information that J.L. Chestnut had publicly warned Albert Turner that if he did not watch his handling of the absentee ballots, he was going to get into serious trouble. Hank Sanders told me that I had received inaccurate information in that it was not J.L. Chestnut that had given Albert Turner, Jr., the warning but it was he who had given the warning."

Do you recall having that conversation with Mr. E.T. Rolison?

Mr. SANDERS. No; in fact, there are several things. Albert Turner, Jr., is the son of the Albert Turner who was involved in this case. But I assume that they are talking about Albert Turner. And second thing, I am not a junior; I am not a junior at all.

But I did not have—I never told Mr. Rolison that I warned Albert Turner, or that Chest did not warn—J.L. Chestnut—

Senator HEFLIN. Do you recall any conversation with Mr. Rolison about the 1982 elections in which there was some discussion of absentee balloting, and Albert Turner, who was a defendant in the case?

Mr. SANDERS. Yes; on one occasion I did. In fact what I told Mr. Rolison on that occasion was that I knew that nothing had been done wrong, because I was the person who had met with them after 1982. And I said, "Let us sit down. Bring your workers in."

And I went over in the Marion courthouse—I mean in the Perry County courthouse in Marion and held a session on what can be done and what cannot be done in that situation.

And I told him that that was why I knew that they had not done anything wrong in that case.

Now, that is the only conversation I have had with him about that.

Senator HEFLIN. That is all.

Senator DENTON. Senator East.

Senator EAST. I have no questions, Mr. Chairman.

Senator DENTON. I have no further questions, Senator Sanders. Hold on just a moment, please.

We would ask that you please remain available for further questions.

Rev. O.C. Dobynes.

Reverend DOBYNES. Mr. Chairman, Senator Heflin, members, I am O.C. Dobynes. I am being duly sworn and disposed to say the following. However, due to some errors, I would like for you to go with me to paragraph 5—I am sorry, paragraph 6:

When I arrived in Maryland for the departure site early in October I saw a bus surrounded by about six Alabama State troopers, Maryland city policemen, about nine FBI agents, and game wardens. It looked like an armed camp. The streets around the courthouse, and about eight officers stood on different corners, some with their guns ready to be drawn.

It should have been really far drawn—not drawn——

Senator DENTON. Excuse me, sir. Where are you? I could not get it fast enough.

Reverend DOBYNES. Paragraph 6.

Senator DENTON. OK. On page 2?

If we have the same copy. Yeah, that is paragraph 7 on 9.

Reverend DOBYNES. Well——

Senator DENTON. It is OK. I just want to get——

Reverend DOBYNES [continuing]. All right. I want this straightened out.

Senator DENTON. Where are you there, sir, then exactly? I still have not found it?

I have—their guns drawn, I have that.

Reverend DOBYNES. Ready to be drawn.

Senator DENTON. All right. Should be ready to be drawn.

Reverend DOBYNES. Yes.

Senator DENTON. With their guns ready to be drawn.

Reverend DOBYNES. One more error that I should find—or did I lose a sheet some where?

Senator DENTON. While you are looking, Reverend Dobynes, if you do not mind, since the television cameras have rolled up their tents and gone away, having heard from Mr. Figures, but Senator Heflin, as he faithfully has, is still here; and has been. I must mention that we do have—we have just received affidavits by telephone with the notary public, have made sworn statements, and they refer to the charge by Mr. Figures that he was referred to as a boy.

We will have to wait for the final copy of the affidavit. So go ahead, Reverend Dobynes.

Reverend DOBYNES. The latter part of paragraph 6, two more police cars escorted a bus nearly 20 minutes out of the city limit of Marion.

Senator DENTON. Out of the city limits?

Reverend DOBYNES. Out of the city limit of Marion; not from Marion to Mobile.

Mr. Chairman.

Senator DENTON. Yes, sir.

Reverend DOBYNES. Can I go on with my statement?

Senator DENTON. Sure.

Reverend DOBYNES. I am a resident of Perry County, AL.

Can I submit my affidavits?

Senator DENTON. Is that what you just——

Reverend DOBYNES. No, no, no; with the correction that I have asked for, can I submit this as a part of the record?

Senator DENTON. Since there is a delay, I will read this now—final form from Diana Waterman, general counsel, Senate Judiciary Committee, who processed this affidavit from Ginny S. Granade. Which says:

“My name is Ginny S. Granade. I have been an Assistant U.S. Attorney since 1977 in the Southern District of Alabama. It is my understanding that during the confirmation hearing Mr. Thomas Figures stated that on one occasion, in my presence, Mr. Sessions referred to Mr. Figures as “boy.”

I have never heard Mr. Sessions refer to Mr. Figures as “boy” or to call him by anything other than his given name.

Signed by Ginny S. Granade.

And I hope that some of the staffers will notify Senator Kennedy of this.

The other affidavit is from Mr. E.T. Rolison, Jr.

My name is E.T. Rolison, Jr. I have been with the U.S. Attorney's office in the Southern District of Alabama since 1975. I understand that Thomas Figures has today testified before the Senate Judiciary Committee hearing that I, on occasion, had referred to him in a derogatory manner as a "boy."

That statement is a flat-out lie, and I never referred to him by anything other than his given name. Signed, E.T. Rolison, Jr.

We have received the telefax, notarized versions of those statements, which are being reproduced now.

I am sorry to have interrupted you, Reverend Dobynes. But it is 4:30, and Senator Kennedy and the television cameras left. I do not have any doubt about how that will be covered in the newspapers—or rather, on television tomorrow—but for what it is worth, I desperately offer it at this point.

Go ahead, Reverend.

Senator HEFLIN. Well, now, I may be too judicial and technical in this instance. And since there is going to be time involved in this, if you have a telefax, but an affidavit out to have a signature of the affiant affixed to it.

Senator DENTON. We have them.

Senator HEFLIN. It may well be. I have not seen that, and it may well satisfy the technical requirements. But I think that, due to the fact that you will have time for a record being prepared and other things, that a proper affidavit ought to be submitted to verify any type of thing, and it ought to appear in some manner by which it can be properly verified to meet the technical requirements for submission to the committee.

And I am sure that there is time later for that to be done.

Senator DENTON. Yes, sir; I made that announcement at the risk that that would not be done. It is done now. But I thought the timeliness of it was important.

Copies of it are being distributed now, with signatures, and a notary public seal, and signature.

Mr. Figures should be given a copy.

I am sorry, Reverend Dobynes, but that is an important item. We have newspeople that leave, and have to leave. And this man is being tried—that is, Mr. Sessions—in the media, because the Senators do not come here, except for some. And they are not going to be aware—they have no idea of what is going on here except what they read.

The majority leader asks me about that every day. So we are at the mercy of what is printed. And I am not terribly disappointed about yesterday.

Have you finished making your technical corrections, Reverend Dobynes?

Reverend DOBYNES. So I did while you were talking and I asked that with the proper corrections, they would enter it into the record. Then Senator Heflin said they would.

Senator DENTON. All right, it will be entered without objection. [Statement follows:]

Testimony of
Reverend O.C. Dobynes
of Perry County, Alabama

My name is O.C. Dobynes. I appreciate this opportunity to testify before the Senate Judiciary Committee today about my experience as a witness in the prosecution of Albert and Evelyn Turner and Spencer Hogue by Jeff Sessions.

I am a retired school teacher and a pastor for a couple of small churches in rural West Alabama. I have lived in Perry County all my life and have been deeply involved in county affairs for over 30 years.

I ran for a seat on the Perry County Commission on September 4, 1984. This election later provided the basis for the Turner and Hogue prosecutions. My opponent, Reverend Ward, was elected to the Commission.

I first learned of the absentee ballot investigation through the news media, which was reporting all sorts of allegations against Albert Turner. A few days after the election I saw Mary Pryor, a former student of mine, who said, "Mr. Dobynes, the FBI brought my absentee ballot by my house and it had been changed. Your name was crossed out and Mr. Ward's name had an 'X' by it." She said she had voted for me and asked who I had given her ballot to. I told her I mailed it at the U.S. Post Office in Marion to the Circuit Clerk's Office and didn't know how the ballot got changed.

Later that month Roy Johnson, District Attorney of Perry County, and an FBI agent came to my home to question me about the absentee balloting. I said I would only talk in a court of law, and the FBI agent said he would have me subpoenaed.

When the subpoena arrived, an attached instruction sheet announced that all the witnesses from Marion would be transported to the federal courthouse in Mobile by chartered bus. I was also instructed to bring personal items for an overnight stay.

When I arrived at the Marion departure site in early October, I saw a bus surrounded by six Alabama State Troopers,

three or four Marion city policemen, about nine FBI agents, and four state game wardens. It looked like an armed camp. The street around the courthouse was blocked off and about eight officers stood on different corners with their guns drawn. I learned that law enforcement officers surrounded the city while the buses were being loaded with witnesses. It was one of the most unusual and confusing scenes I have ever witnessed. Approximately 25 people - many of them old and enfeebled and most of them frightened to the core - were loaded onto a bus under the watchful eye of more than 20 armed police officers. Two marked police cars escorted the bus on its nearly five hour journey to Mobile.

I kept asking myself what all these police officers were doing here? Surely Jeff Sessions was not worried that anyone would attack the bus. And witnesses aboard the bus, like 93 - year - old Red Jackson who can barely see or hear and 84 - year - old Pearl Brown were certainly not dangerous.

This atmosphere of fear and intimidations continued throughout the trip. When we arrived in Mobile, we were taken to a different hotel than the one we were told we'd be staying at. The FBI agents said they would conduct interviews with us later in our rooms. I, however, was not interviewed. The next morning after breakfast I was told by District Attorney Johnson and a man he introduced as Federal Marshall Gary Clem that I was not interviewed or given my expense money the night before as promised because I wasn't in my room when they came by. The statement disturbed me because I hadn't left my room all night.

They then asked me to ride over to the courthouse with them. After getting in the car Agent Clem informed me that Mary Pryor told him she had given me her absentee ballot. I replied that it was true that I had mailed it at the Marion post office. Agent Clem said that he personally saw Albert Turner put Mrs. Pryor's ballot in the mail the night before the election. When I said that that was impossible, Agent Clem changed the subject and said he had heard I was coaching the witnesses on the bus to Mobile and said that he "would not tolerate that."

I was the last witness to be called that afternoon. The federal attorney asked me what I knew about the "voting fraud" and Mary Pryor's absentee ballot? Could I explain how Mrs. Pryor's ballot had been changed? And had I had given the ballot to Albert Turner? The long hours, the difficult travel and the intense pressure the witnesses were placed under took a toll on the elderly witnesses. Red Jackson had a stroke and another elderly woman suffered a heart attack.

Mr. Turner was later indicted. Based upon grand jury testimony I was subpoenaed as a witness for the defense. The FBI wasn't through with me, however. Three times agents came to my home accompanied by Lavon Phillips, the Assistant D.A., and tried to get me to change my testimony. I told them I would not alter my grand jury testimony because it was the truth.

I can understand Mr. Session's interest in determining if the defendants were guilty of voting fraud. However, I could not then and cannot now understand how justice was served or protected by surrounding witnesses with armed police, threatening witnesses and pressuring them to change their testimony. I hope this Committee carefully considers this issue before it votes on the confirmation of Jeff Sessions.

Paragraph 2: When I arrived in Marion for the departure site early in October 1984, I saw a bus surrounded by about 6 Alabama State Troopers, Marion City policemen, about 9 F.B.I. agents and about 3 or 4 game wardens. It looked like an armed camp. The street on the side of the court house was filled with an excessive amount of uniformed officers on two corners, some with their gun ready to be drawn.

Paragraph 6: Uniformed officers escorted the bus about 20 miles out of the City of Marion.

Senator DENTON. Did you want to read your statement or are you changing previously sworn testimony? Why did you not change it before it was presented as sworn testimony to the committee?

Reverend DOBYNES. This was typed for me and I do not know how some of it got like this. Maybe my handwriting is not that good. These changes were made.

Senator DENTON. Well, it will be entered in the record as in the context, which you have made the corrections. I do not know the technicalities, Senator Heflin, with respect to having received testimony to which was referred yesterday, and then the change made when the gentleman comes here. But before, as he is actually testifying, perhaps you can clarify that.

Senator HEFLIN. Well, I do not claim to know all of the answers to all of this right now, but I assume that any question about it, questions can be raised as to the sequence of events and the earlier statement and the corrected statements, and his explanation and inferences drawn therefrom as they are drawn from different documents, and different testimony, and different people interpret them in different ways.

Senator DENTON. Thank you, Senator Heflin. You are a very valuable man to have here.

Reverend Dobynes, regarding the boarding of grand jury witnesses on the bus, in Marion, AL, were you aware that the FBI had learned of threats to prevent the witnesses, some witnesses from boarding the bus?

Reverend DOBYNES. I did not quite understand your question.

Senator DENTON. Did you know that the FBI had learned of threats to prevent witnesses from boarding the bus, just as threats were made against Mr. LaVon Williams and by affidavit, by others, to others?

Reverend DOBYNES. No. I had heard some hearsay talk that I could not believe by no means those threats were given by M. Albert Turner. I heard from some outside source talking. But I certainly believe those threats were untrue and I do not see how they could have been no way founded because I have never known M. Albert Turner to give those kinds of threats.

Senator DENTON. Well, if you believed as the FBI did, that those threats were true, would you not expect there to be some kind of police protection?

Reverend DOBYNES. No, I do not know. You asked the question, do you think they needed some kind of protection?

Senator DENTON. And do you think the protection afforded was excessive? I will ask you that question. Do you think the protection afforded was excessive—

Reverend DOBYNES. Certainly.

Senator DENTON [continuing]. In the light of—you will have to just assume that the threats were made, because the FBI was persuaded they were—and under that assumption, do you think that the protection afforded was excessive?

Reverend DOBYNES. I do think it was; more than needed, sir.

Senator DENTON. All right, the chief of police has submitted an affidavit which reads as follows, Senator Heflin, and Senator East. "I am John Anderson, Chief of Police, Marion County, sworn and

subscribed before Sabrah H. Agee, notary public, State of Alabama, at-large on the 17th day of March, 1986."

Senator HEFLIN. Is this the same affidavit referred to—I believe that you read from Anderson—is this a different one?

Senator DENTON. It is the same affidavit. We did not ever read it in completion.

Senator HEFLIN. There was some reference made to it?

Senator DENTON. Yes, sir, it is the same one.

Senator HEFLIN. I think I have got a copy of it.

Senator DENTON. I will read in part:

On October 21, 1984, Special Agent Leslie Sue of the Federal Bureau of Investigation contacted my office and informed me that he had received information that was going to be an attempt to prevent the Federal Grand Jury witnesses from going to Mobile to testify before the Grand Jury concerning the Perry County vote fraud investigation.

When I received this information, it was decided that the police department would provide whatever security was necessary to protect these witnesses from harassment.

On October 22, 1984, my department supplied two officers, Lt. Don Caver, and Patrolman Gabriel Jones as security, while the witnesses were boarding the bus bound for Mobile. Also on the scene was conservation officer Mike Nichols who was assigned to Perry County at that time and who worked out of the Marion police department.

Three FBI agents were also present at the loading site, one was the aforementioned special agent, Leslie Sue, and two were agents from Montgomery. I do not know the names of the Montgomery agents. Captain George Jones of the Alabama State Troopers came to Marion but waited inside the Marion police department along with three other troopers. The bus loading zone was at a public parking next to the U.S. Post Office, directly across the street from the Perry County Courthouse, and after all, the Grand Jury witnesses were loaded on the bus, the Alabama state troopers drove over to the loading site and waited for the bus to leave for Mobile.

In other words, they were the escort for the bus on motorcycles apparently.

The only uniformed law enforcement personnel in the immediate vicinity of the bus, were Lt. Caber, and Officer Jones of the Marion Police Department.

That is what this affidavit essentially says.

And therefore, I question the excessiveness of the security provided.

Reverend DOBYNES. Standing by the door of the bus, yes, you will find, I believe, Mr. Jones, but on the corner, across the street from the bus, on the—just across the street from where we loaded between the Post Office and the Church, there were some officers, more than these officers that are in this statement, sir.

Senator DENTON. Were they somehow involved in the loading operation, or were they passing by?

Reverend DOBYNES. Standing by on the corner.

Senator DENTON. Well, I would be glad to receive any information specific about further people that were there. All I have is that affidavit and your corrected testimony.

We have LaVon Phillips' testimony from yesterday.

Senator Hefflin.

Senator HEFLIN. I do not believe that I have any questions.

Senator DENTON. Senator East.

Senator EAST. No, I have nothing.

Senator DENTON. Reverend Dobynes, you are excused sir, thank you.

[The witness was excused.]

Senator DENTON. The last gentleman on this panel is Deval L. Patrick, assistant counsel, Legal Defense Fund, New York, NY.

Mr. PATRICK. Thank you, Mr. Chairman.

My name is Deval Patrick and I am assistant counsel at the NAACP Legal Defense Fund. Together with two of my colleagues, I defended Spencer Hogue, in what has been referred to over the last several days of these proceedings as the *Perry County* case.

As a preliminary matter, Mr. Chairman and members of the committee, I would like to formally introduce as a part of the record, several materials which I understand have been circulated to the committee already.

First, the statement and affidavit of Morton Stavis, who is co-founder and president of the Center for Constitutional Rights, and who could not be here today because of other responsibilities on behalf of his new client, President Aquino of the Philippines, in New York.

I would ask that those two items be made formally a part of the record at this time.

Senator DENTON. Without objection, they shall be made a part of the record.

[Statement follows:]

Statement of Morton Stavis
on behalf of
The Center for Constitutional Rights

Mr. Chairman and Members of the Committee:

My name is Morton Stavis. I am a co-founder of and staff attorney at the Center for Constitutional Rights in New York City.

Throughout several months of pretrial proceedings and several weeks of trial, I represented Ms. Evelyn Turner against charges of conspiracy, mail fraud and voting-more-than-once in the United States District Court for the Southern District of Alabama. The United States Attorney for the Southern District, Jeff B. Sessions, III, conducted the prosecution in that case.

In connection with the Committee's consideration of Mr. Sessions for appointment to the federal bench, I wish to bring six issues to the Committee's attention:

First, the investigation of the case was characterized by fear and intimidation of the witnesses, most of whom were poor, elderly and illiterate, many of whom were ailing, all of whom were black. Nevertheless, the FBI questioned them in a way calculated to produce the answers they wanted, often revisiting witnesses as many as four or five times until they got the answers they wanted. Mr. Sessions conducted that investigation.

Second, during the selection of the jury, the prosecution used its peremptory challenges against black potential jurors, offering a hollow explanation when challenged. The prosecution also attempted to have the case tried in Mobile -- nearly 200 miles from the place where the facts occurred and patently inconvenient to all the witnesses -- for the sole discernible reason that the concentration of blacks in the Mobile jury pool was considerably less than it was in Selma, the more appropriate venue.

Third, just before trial, after the court announced that the jury would be sequestered, the prosecution filed an unnecessary motion for sequestration which included a strongly worded

personal attack on the defense attorneys. It was filed on the Friday before trial, receiving substantial press coverage throughout the weekend, for the sole apparent purpose of inciting adverse pretrial publicity and evading the gag order then in effect.

Fourth, before the trial began, the prosecution repeatedly obstructed the defense lawyers in our attempts to examine the government's evidence. Moreover, notwithstanding its obligation to do so, the government failed to produce before trial FBI notes of a witness that were clearly exculpatory. This was discovered only through examination of an FBI agent during trial.

Fifth, contrary to the instructions of the federal magistrate as well as its own representations on the record, the prosecution introduced evidence solely to show that some ballots may have been improperly notarized. This was significant because, as the magistrate acknowledged, Mr. Sessions' office has never followed up on any complaints that voter activists supported by whites have improperly notarized absentee ballots.

Sixth, in the course of trial, one of my colleagues was summarily held in contempt of court. After the defendants were acquitted, I represented my colleague in appeal of the contempt order. Mr. Sessions' office filed a brief in which the argument on the merits consisted of ten conclusory sentences. The brief was entirely unprofessional.

These are but some of the issues with which I am familiar as a result of that trial, and that cause me to question whether Mr. Sessions has the temperament, judgment and fairness appropriate to a federal judge.

Mr. PATRICK. Second, the statement already submitted and the affidavit of Lani Guinier, who is a colleague of mine at the Legal Defense Fund, and was my cocounsel in the trial last summer of the *Perry County* case. These materials have also been made available to the committee.

Senator DENTON. Without objection, it shall be made a part of the record.

[The information follows:]

ORIGINAL

IN THE UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

In the Matter of the Nomination of
JEFFERSON BEAUREGARD SESSIONS, III
for Appointment to the United States District
Court for the Southern District of Alabama

AFFIDAVIT OF MORTON STAVIS

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, MORTON STAVIS, being duly sworn, depose and say as follows:

1. I am co-founder of and an attorney at the Center for Constitutional Rights in New York City, where my practice over the past 20 years has involved a wide variety of civil rights and constitutional issues. Before joining the Center, I was in private practice in New Jersey, though nonetheless active and interested in matters similar to my work at the Center. I have been a member of the Bar for 50 years.

2. I defended Evelyn Turner in a trial in June of 1985 in the Southern District of Alabama. The charges against Mrs. Turner were conspiracy, mail fraud and voting-more-than-once, arising out of her and her husband's extensive voter registration and absentee voting assistance in Perry County, Alabama, the community in which she lives. The government was

represented by Jeff B. Sessions, III, the United States Attorney. Mr. Sessions' supervision of the case was extremely poor.

3. Early in the proceedings, the judge imposed a "gag" order on the lawyers for the prosecution and the defense. (See Appendix B.) The week before trial, the judge announced, over defense objections, that he intended to sequester the jury. Several days after that ruling, Mr. Sessions' office filed a motion for sequestration (termed a "Response to Objections to Sequestration and Request for Protective Action") which included a strongly worded personal attack on the integrity and conduct of defense counsel. (See Appendix C.) That motion was filed on the Friday before trial and received substantial press coverage over the weekend. That motion was unnecessary and compromised the government's obligations under the court's gag order. In my opinion, the sole purpose was to incite the wave of adverse pretrial publicity that it in fact produced.

4. Mr. Sessions supervised an FBI investigation characterized by fear and intimidation. Most of the witnesses were poor, black, elderly, illiterate and often ailing. Our own interviews of the witnesses indicated that the FBI had questioned these witnesses in a way calculated to produce the answers the government wanted. None of the agents had experience in interviewing 80-year-old black women. (See, e.g., Testimony of Agent Bodman.) Some of the witnesses were asked over the telephone to explain changes on a ballot they could not see (see, e.g., Testimony of Murphy Reed and James Sanders);

some were asked to examine their ballots without their glasses on (see, e.g., Testimony of Maggie Fuller); some were paid as many as four or five visits until they gave the desired answer (see, e.g., Testimony of Mattie Perry). It is not difficult to understand, as a result, why some witnesses (including several interviewed by Sessions himself) gave testimony on the stand that appeared to the government to contradict earlier statements.

5. Mr. Sessions' office displayed similar disregard for the witnesses in his manner of bringing them before the Grand Jury. Though the Grand Jury meets in both Selma, which is close to Perry County, and Mobile, which is distant, Mr. Sessions called these witnesses to testify when the Grand Jury convened in Mobile. The witnesses were taken en masse by bus to Mobile. The bus was surrounded by police in Marion, and had an armed police escort from Marion to Mobile. (See Appendix C.) The bus trip, under the circumstances, had the predictable effect of intimidating the witnesses, resulting in confusion and unreliable testimony before the grand jury, and contributing, I believe, to the reluctance of the witnesses and other elderly blacks in their community ever to vote again.

The fact that many of the witnesses were required to travel to Mobile despite poor health effected the willingness of blacks to vote in the future. Mr. Sessions was largely insensitive to the health of the witnesses. Although he stationed a nurse on the bus to Mobile and provided a nurse at trial (even

for witnesses who did not need one), Mr. Sessions opposed efforts to try the case in Selma rather than Mobile -- even though all of the witnesses resided within a half hour of Selma. (See Appendix D at 43-47.)

6. During the selection of the jury, the prosecution used its peremptory challenges to exclude blacks from the jury. We objected on the ground that the prosecution's challenges were racially motivated and therefore improper. The explanations offered by the prosecution were simply not credible; for example, although the government explained that it excluded certain black persons because they lived near Perry County and might have been influenced by pre-trial publicity, no whites who lived in neighboring counties were excluded.

7. During the trial, one of Mr. Sessions' assistants wrote "WITNESS LIED" or "LYING" in large red letters on a piece of paper, and placed the sheet on the edge of the jury box in such a way that it could be seen by the jury. Eventually, a spectator called this to the attention of the court and defense counsel, and the judge directed the prosecution to stop. As far as I know, Mr. Sessions never reprimanded his assistant.

8. Mr. Sessions' office made it nearly impossible for the defense to examine the ballots which were the subject of the indictment. For example, the defense asked the government to make available the ballots for our inspection during the week of May 21, 1985, when we would be in Mobile. Mr. Sessions'

office refused, stating that the ballots were in Selma and moving them would cause "chain of custody" problems. Less than two weeks later, in an attempt to arrange to see the ballots in Selma, the defense was advised that the ballots had been moved to Mobile. (See Appendix E at 7.) Moreover, even though the court ordered Mr. Sessions' office to make the ballots available to the defense (see Appendix F), his chief FBI agent would only permit us to examine one ballot at a time, and then only if we could identify both the name of the voter and the number of the ballot in advance. We were never able to examine most of the several hundred ballots, though at one point the government attempted to offer all of them into evidence at trial.

9. It is standard pretrial practice for prosecutors to turn over to the defense FBI notes of interviews with witnesses. These notes are called "302's." If such notes are at all exculpatory, the prosecution must turn them over. In the case of the witness Alma Price, the FBI conducted three interviews. In the first, on September 25, 1984, Ms. Price told the FBI that she voted for a candidate named Reese Billingslea and did not make any change on her ballot. (See Appendix G.) (Her ballot reflected a change beside the name of Reese Billingslea.) According to the notes of the second interview, on October 5, 1984, Ms. Price explained that, though she did not make the change, she directed Albert Turner, one of the defendants, to do so and that he did so in her presence. (See Appendix H.) On December 13, 1984, the FBI conducted a third interview, this

time to get the witness to confirm the content of the first interview. (See Appendix I.) Mr. Sessions' office produced the FBI 302's of the September 25 and December 13 interviews, but not that of the October 5 interview -- the one that was plainly exculpatory. The existence of that 302 was not disclosed even after the witness was put on the stand by the U. S. Attorney and adopted the exculpatory version she had previously given. It was only during subsequent cross-examination of an FBI agent that defense counsel discovered the missing 302. Thus, despite two requests by the defense, one of which specifically requested prior to trial the 302's of Alma Price by name, and the prosecution's constitutional duty to honor those requests, Mr. Sessions failed to produce material tending to show a defendant's complete innocence of one of the counts in the Indictment. (See also, Appendices J, K, L.)

10. In pretrial discovery, the defendants asked whether the FBI had identified any absentee ballots solicited by the defendants which contained alterations that the voters themselves acknowledged making or authorizing. Mr. Sessions' office did not indicate that any such exculpatory ballots existed. I understand that at a hearing before the House Judiciary Committee, the Justice Department admitted that some 20 exculpatory ballots did in fact exist.

11. On June 18, 1985, the magistrate instructed the prosecution not to introduce evidence of improper notarization because the defense had shown that evidence of such activities

by voter activists supported by whites had never been proceeded upon by Mr. Sessions' office. The prosecution acquiesced and stated that it contemplated calling no such witnesses. Nevertheless, at trial, the government put on three such witnesses -- Mary Burnett, William Wimes and Willie Lee -- whose ballots reflected no changes and who were questioned primarily about the circumstances under which the ballot was notarized.

12. The government produced no evidence on 12 of the 26 counts of mail fraud alleged against Mrs. Turner. They were dismissed outright at the close of the government's case.

13. In the course of trial, my co-counsel, Howard Moore, Jr., was summarily held in contempt of court, purportedly because he was attempting to probe the issue of selective prosecution in his cross-examination of a key witness, despite the court's order setting that subject off bounds. In my opinion, Mr. Moore was attempting only to expose the witness' bias, a subject always suitable for cross-examination under the Federal Rules, and I have made that argument at length on appeal to the Eleventh Circuit. I have also argued that the district judge's action was constitutionally flawed. In response, Mr. Sessions' office filed a brief consisting of 10 sentences of "argument"; it was devoid of any analysis of the record or caselaw, responded to none of our arguments, and was in all ways unhelpful and unprofessional.

14. In my opinion, Mr. Sessions has demonstrated himself to be at best lackluster, and at times unethical, as United

States Attorney. I see no reason to expect more of him as a federal judge. He is simply unequipped for the task. I urge this Committee not to recommend his confirmation.

Under penalty of perjury,


MORTON STAVIS

Sworn to and subscribed before
me this 12th day of March, 1986.


NOTARY PUBLIC

My commission expires on _____.

FRANKLIN S. [unclear]
NOTARY PUBLIC - STATE OF NEW YORK -
No. 24-8988026
Qualified in Kings County
Commission Expires March 30, 1986

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA,)	
)	
vs.)	CRIMINAL CASE NO. 85-00014
)	
ALBERT TURNER, SPENCER HOGUE,)	
JR. and EVELYN TURNER.)	

ORDER RELATIVE TO PUBLICITY

This case is one which has received and will probably continue to receive substantial publicity.

The court is of the opinion that at this time it should take steps to protect the integrity of the proceedings in this case by supervising the actions of counsel. The court will use as a basis for its order DR 7-107 of the Code of Professional Responsibility of the Alabama State Bar, which should have governed the actions of counsel to this point.

It is ORDERED that:

1. From the date of this order until commencement of the trial or disposition of this case without trial, a lawyer or law firm associated with the prosecution or defense shall not make or participate in making any extrajudicial statement which a reasonable person would expect to be disseminated by public communication, and that relates to:

(a) The character, reputation, or prior criminal record (including arrests, indictments, or other charges of crimes), of the accused.

(b) The possibility of a plea of guilty to the offense charged or to a lesser offense.

(c) The existence or contents of any confession, admission, or statement given by the accused, or his refusal or failure to make any statement.

(d) The performance of any examinations or tests or the refusal or failure of the accused to submit to examinations or tests.

(e) The identity, testimony, or credibility of a prospective witness.

(f) Any opinion as to the guilt or innocence of the accused, the evidence, or the merits of the case.

The foregoing shall not be construed to preclude the lawyers or law firms, during this period, from announcing:

(a) The name, age, residence, occupation, and family status of the accused.

(b) A request for assistance in obtaining evidence.

(c) The fact, time, and place of arrest.

(d) The identity of investigating and arresting officers or agencies and the length of the investigation.

(e) At the time of seizure, a description of the physical evidence seized, other than a confession, admission, or statement.

(f) The nature, substance, or text of the charge.

(g) Quotations from or references to public records of the court in the case.

(h) The scheduling or result of any step in the judicial proceedings.

(i) That the accused denies the charges made against him.

2. During the jury trial of this case, including the period of selection of the jury, a lawyer or law firm associated with

the prosecution or defense shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication that (a) relates to the trial, parties, or issues in the trial and (b) is reasonably likely to interfere with a fair trial, except that a lawyer or law firm may quote from or refer without comment to public records of the court in the case.

DONE this 17th day of April, 1985.


UNITED STATES DISTRICT JUDGE

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

UNITED STATES OF AMERICA,	*	
	*	
Plaintiff,	*	
	*	
vs.	*	
	*	CRIMINAL NO.
ALBERT TURNER, et al.	*	
	*	85-00014
Defendants.	*	

RESPONSE TO OBJECTION TO SEQUESTRATION
AND REQUEST FOR PROTECTIVE ACTION

Comes now the United States and files this Response to the objections raised to the sequestration of the jury in this case. Sequestration is necessary and essential in this case if we are to insure that the verdict rendered will be based on the facts of the case as they develop at trial rather than perhaps being based on false and misleading information that may come to the jury from the news media. In support of the sequestration, the United States shows unto the Court as follows:

1. It is obvious that a concerted effort has been made by parties, counsel and those acting on their behalf, by legal pleadings and public statements, to create the impression that this investigation is unfounded or racially motivated. These

representations are false and can only be construed as a part of an effort to poison the jury pool and to attempt to cause witnesses to be reluctant to testify.

The facts are that in April of 1983 the Grand Jury of Perry County, Alabama issued an important report. The majority of that Grand Jury was Black and it had a Black foreperson. In it they reported that they had "extensively and exhaustively investigated the voting situation in Perry County." A copy of that report is attached to this motion. In that report they stated that they were convinced that a fair election "is being denied the citizens of Perry County, both Black and White." They went on to state "we encourage vigorous prosecutions of all violations of voting laws and especially would request the presence and assistance of an outside agency, preferably federal, to monitor our elections and insure fairness and impartiality for all."

The existence of this report is well known to counsel for the defendants, but they have neglected to mention it in their speeches and attacks upon the government.

The election that the Perry County Grand Jury was investigating was the 1982 election. Because that Grand Jury had already conducted an investigation and returned no indictments and because it was expected that these problems would not continue after the actions of the Perry County Grand Jury, this office declined to conduct an investigation at that

time. After that decision, no additional action was contemplated by the United States Attorney's Office relating to Perry County voting matters until late in the week prior to the 1984 primary election, which is the basis for this prosecution. Late in that week The United States Attorney's Office received a call from the District Attorney of Perry County who stated that two Black officials were with him and they were very concerned that a concerted effort was being made to deny a fair election. They asserted that a massive effort was being made to collect absentee ballots and that fraud was being committed in the process.

The only action that the United States took at that time was to observe the Marion County Post Office on the next Monday night, the Monday night before the Tuesday election. At that time the three defendants on separate occasions deposited into the mail box approximately 504 absentee ballots.

By Order of the Circuit Court of Perry County, those ballots were marked and every ballot, whether it had been mailed by the defendants or not, was examined to see if it had been altered in any way. Some 75 ballots were identified as having erasures or other alterations on them. All 75 of those voters were interviewed. Many of these voters will be witnesses in this case and are expected to testify that these ballots were changed without their permission and that they had given them to one of the defendants for mailing.

The United States Attorney's Office did not coordinate this investigation with the Department of Justice as part of a national program of prosecutions nor did it coordinate it with any other United States Attorney. The investigation came about solely because of the phone call by the Perry County District Attorney shortly before the election in 1984 relating to complaints that he had received and no such investigation had been planned prior to that time.

The votes that had been altered without the permission of the voters involved a change to a Black candidate supported by the Defendants from another Black candidate. The alleged fraud is, without contradiction, Black on Black.

2. With full knowledge of this situation, some counsel for the defendants have regularly made inflammatory statements in the newspapers charging racial bias and prejudice and making threats and demeaning statements about those who would testify on behalf of the government. Attached hereto are a number of news clippings, news releases and "fact sheets" which indicate the extensive publicity this case has generated and which also indicates the irresponsibility of the defense counsel and some of their supporters. Based on the statements contained in these articles, it is clear that we may expect that similar comments and misinformation will be given to the media during the trial which could affect the jury.

Below are listed some of the inflammatory quotes from the defendants or their supporters which are taken from the attached articles:

"The three Blacks were 'on political death row' as part of a widespread campaign to nullify voting rights and gains made in Selma 20 years ago," One speaker according to the newspaper "blasted anybody who may testify against the trio 'without cause'. Those Black folks who have decided to let themselves be used ought to be repudiated by everybody across the country."

Defense attorney Rose Sanders participated in the promotion of a "Unity Day" in Selma for the "Mariqn Three".

Albert Turner was quoted in the Montgomery Advertiser as saying "the whole thing was contrived from Washington, D.C. on down the local level," Turner said. "They want Blacks out and Whites back in." Defense attorney Hank Sanders was quoted as comparing the current investigation to an updated form of Reconstruction-Era intimidation.

Another article said "it's clearly a racist attempt to disenfranchise Black voters in the Black Belt." Defense Attorney Hank Sanders, also a State Senator, said that the investigation could keep Blacks from getting elected and went so far as to say that "Black office holders could become rare in the Black Belt." The investigation has been referred to as a "bogus investiation." Defense Attorney J. L. Chestnut told a crowd at a memorial service that "the evidence for these three

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 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

SECRETARY

[Signature]
[Signature: Richard L. Burt]

*Filed in open court
 April 29, 1983
 Mary Robinson, Clerk*

APPENDIX D

CHARLES A. HOWARD AND ASSOCIATES
P. O. BOX 1971
MOBILE, ALABAMA

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT
OF ALABAMA
NORTHERN DIVISION

* * * * *

UNITED STATES OF AMERICA, *

vs. *

ALBERT TURNER, et al., *

Defendants. *

* * * * *

CRIMINAL NUMBER

85-00014

This cause coming on to be heard on
defendant's motion to transfer case
for trial before the Honorable Emmett
R. Cox, United States District Judge
for the Southern District of Alabama,
Northern Division, on the 8th day of
May, 1985, commencing at approximately
9:00 a.m.

CHARLES A. HOWARD AND ASSOCIATES
P. O. BOX 1971
MOBILE, ALABAMA

2

PROCEEDINGS

THE CLERK: Case set for hearing on the
defendant's motion to transfer case for trial,
criminal 85-14, U.S. versus Albert Turner and others.
What says the Government?

MR. ROLISON: The Government is ready.

MS. CAREY: Defendants are ready. It is my
understanding that counsel for Spencer Hogue, that
they are unable to appear today.

THE COURT: And the defendant, Evelyn Turner?

MS. CAREY: Ready.

THE COURT: Is Mr. Hogue here?

MR. TURNER: Mr. Hogue is here, Your Honor.

THE COURT: Mr. Hogue?

MR. HOGUE: Yes, sir.

THE COURT: It is my understanding that
John Carroll is no longer acting as local counsel for
you; is that correct?

(LONG PAUSE.)

THE COURT: Mr. Hogue, would you step up
here a moment, please, sir? I have received information
that John Carroll is no longer acting as local counsel
for you; is that correct?

CHARLES A. HOWARD AND ASSOCIATES
P. O. BOX 1971
MOBILE, ALABAMA

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1 MR. HOGUE: Well, I haven't received a
2 notice. That is why I couldn't respond.

3 THE COURT: Well, do you know why he is not
4 here?

5 MR. HOGUE: I don't know why. He hasn't
6 called me or nothing.

7 THE COURT: Well, have you seen John Carroll
8 in connection with this case?

9 MR. HOGUE: Once.

10 THE COURT: Once?

11 MR. HOGUE: Yes, sir.

12 THE COURT: He never appeared in court in
13 connection with this case, has he?

14 MR. HOGUE: No.

15 THE COURT: Well, you need to be in touch
16 with him and either have an understanding that he is
17 going to act as local counsel for you or you need to
18 get other local counsel in this case.

19 MR. HOGUE: Yes, sir.

20 THE COURT: One reason we require local
21 counsel is so we will always have somebody available.

22 MR. HOGUE: All right.

23 THE COURT: We are in a position here today

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1 where we have nobody available and I don't believe you
2 have any local counsel. I haven't seen John Carroll in
3 this case.

4 So, you either need to have an understanding
5 that he is going to be your local counsel and be present
6 or you need to get somebody else to serve as local
7 counsel for you and if you can't afford to hire local
8 counsel, you need to file a motion asking the court
9 to appoint local counsel for you, because you have to
10 have a local counsel in this case.

11 MR. HOGUE: Okay.

12 THE COURT: All right, sir. Let me make a
13 couple of preliminary observations.

14 I am going to consider all materials on file
15 in considering these motions. It is not necessary for
16 anybody to present any testimony or evidence relative
17 to matters that are already covered by affidavits on
18 file.

19 It is my understanding, so that we don't
20 have to hear a lot of evidence on this question, it is
21 my understanding that all of the defendants reside
22 within the Northern Division and that, at least, the
23 great majority of the witnesses reside in the Northern

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1 Division. Is there any question about that?

2 MR. ROLISON: No, sir.

3 MS. CAREY: No, Your Honor.

4 THE COURT: Mr. Rolison?

5 MR. ROLISON: No, sir.

6 THE COURT: So, I am not interested in
7 hearing any testimony relative to that. That is
8 agreed.

9 Okay. I will hear from the Government.

10 MR. ROLISON: Judge, we understood they
11 had the burden in this case and you are taking every-
12 thing -- do they have anything else they wish to offer?

13 THE COURT: Let me see if they want to
14 present anything. Does the defendant, Evelyn Turner,
15 want to present any testimony in the case?

16 MS. CAREY: Your Honor, we will not present
17 live testimony, at this time. But I would like to
18 file with the court two affidavits, one that is
19 available right now and one that will be coming into
20 the court shortly.

21 THE COURT: Have you furnished the
22 Government a copy?

23 MS. CAREY: Yes, Your Honor.

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1 THE COURT: Well, now, this affidavit has
2 to do with the jury selection process; is that correct?

3 MS. CAREY: Yes. But it also addresses the
4 issue of the disparity of black members of the jury
5 of juries that are impaneled in Mobile rather than
6 Selma.

7 THE COURT: Well, I don't understand that.
8 They both come from the same jury wheel, counsel. What

9 MS. CAREY: I agree, Your Honor, although
10 they are drawn from the same wheel, statistics that
11 have been provided to us by the clerk of the court in
12 Mobile suggests that blacks from the Northern District
13 and other residents of the Northern District do not
14 appear as regularly in the Southern District -- in the
15 Southern Division as they do when the trial is held in
16 Selma.

17 So, the affidavit and attachments are in
18 support of that point.

19 THE COURT: But there is no suggestion that
20 that is for any reason other than a random selection
21 reason, is there?

22 MS. CAREY: No. There is no suggestion that
23 it is in any way intentional, but to the extent that

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1 it has occurred over a period of time since 1980 that
2 it is, in some ways, foreseeable.

3 THE COURT: Well, now, are we talking about
4 jurors summoned or jurors who appear?

5 MS. CAREY: Jurors who actually appear.

6 THE COURT: Well, I will take a look at your
7 affidavit, but I don't really propose to hear any
8 today, any objections to the jury selection process,
9 today. That is going to be heard at a later time.

10 MS. CAREY: Okay. We just wanted the issue
11 considered of the difference, the impact that the
12 difference in appearance that has been noted by the clerk
13 may have on the number of blacks who are available to
14 serve on the jury if it is in Selma rather than Mobile.

15 THE COURT: All right. Is there anything
16 else you want to present on behalf of the defendant,
17 Evelyn Turner?

18 MS. CAREY: We will be presenting an
19 affidavit from the defendant, Evelyn Turner, as I said.
20 It will be available to the Court shortly and I would
21 also like to reserve the right, of course, to present
22 an argument to the Court after the proof is before it.

23 THE COURT: All right.

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1 MR. ROLISON: Judge, we would ask for a
2 showing of what that affidavit is going to say so when
3 we present our evidence we may address that issue and
4 we ask whether or not that is going to be supplied to
5 us since we have received very few documents. They
6 have all been filed under seal.

7 MS. CAREY: Your Honor, once the affidavit
8 is received here in court, a copy, of course, will be
9 made available to counsel for the Government. I would
10 like to introduce to the Court Attorney Victor McTear,
11 who can explain, in detail, the contents of that
12 document.

13 MR. McTEAR: With all due respect, Your
14 Honor, I am a member of the bar of the State of
15 Mississippi and the State of Maryland and the Federal
16 bar of the United States.

17 The affidavit which we prepared on behalf
18 of Mrs. Evelyn Turner directly addresses a number of
19 issues, first of all, the inconvenience question and
20 the difficulty that will be caused by transferring the
21 trial from Selma to Mobile.

22 It states such obvious things as the
23 additional amount of mileage if it is necessary for

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1 the trial to go to Mobile, noting, of course, the
2 place of her location and residence as well as the
3 presence and location of most of her witnesses.

4 It also explains directly that there will
5 be a hardship caused to her and the witnesses who are
6 all persons of limited means financially. As well as
7 counsel that will not have access to legal consultation
8 and secretarial skills available to them here in Selma.

9 The affidavit states the reasons she believes
10 there is a clear-cut hardship and why that will affect
11 her ability to present a defense and have a fair trial.

12 THE COURT: All right. Is there anything
13 which the defendant, Albert Turner, wants to present?

14 MR. TURNER: Nothing, Your Honor. We reserve
15 the right to argue after the Government finishes.

16 THE COURT: All right. Mr. Hogue, since
17 you have no attorney here, I will ask you, is there
18 anything you want to present on this motion?

19 MR. HOGUE: No, Your Honor.

20 THE COURT: All right. Mr. Rolison.

21 MR. ROLISON: Judge, we would call Marshal
22 Mackey Garrett.

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1 MACKEY GARRETT,

2 called as a witness at the instance of the
3 Government, being duly sworn, was examined and
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. ROLISON:

7 Q State your name.

8 A James Garrett.

9 Q Where are you employed?

10 A United States Marshal's Service.

11 Q What is your title with the marshal's service?

12 A Chief deputy United States Marshal of the
13 Southern District of Alabama.

14 Q And that office is in Mobile?

15 A Mobile.

16 Q How many deputy marshals do you have?

17 A Seven, I believe.

18 Q Who is William L. Brookhart?

19 A Mr. Brookhart is the Circuit Court security
20 coordinator for the Eleventh Circuit.

21 Q And he is with the marshal's service?

22 A He is an inspector with the marshal's
23 service, yes.

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1 Q Do you know what his duties are?

2 A He provides advice and setups on problem
3 trials, security for trials, security for judges and
4 things of this nature.

5 Q And has Mr. Brookhart been to Selma with you
6 to inspect the facilities here?

7 A Yes. This past Friday.

8 Q And you conducted that survey with him?

9 A Yes.

10 Q Would you explain to the Court your
11 procedure for rating trials as high risk trials. For
12 you have levels that you refer to trials as being at
13 a certain level.

14 MR. McTEAR: May it please the Court, Your
15 Honor, we object. This witness has not been qualified,
16 himself, to talk about the matters which counsel
17 presented. Counsel has very shrewdly pointed out the
18 fact that there was another person present who was the
19 specialist for the Eleventh Circuit.

20 There is no indication that this witness
21 has those qualifications, at this time, and we object
22 to his testimony.

23 THE COURT: He is the chief deputy marshal

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1 of the district. I will overrule the objection.

2 MR. ROLISON: Okay. Let me ask you this,
3 do your duties include security for courtrooms?

4 A Yes, sir.

5 Q How long have you been with the marshal's
6 service?

7 A Seventeen years.

8 Q As deputy marshal, have you had any occasion
9 to conduct a security or supervise the security of
10 trials?

11 A Yes, I have.

12 Q All right. Tell me about what you found out
13 when you made your survey as far as any problems with
14 security for this particular facility here in Selma,
15 Alabama.

16 A This building has no -- we have no court
17 security officers based at this facility. We don't have
18 an X-ray machine nor a walk-through magnetometer. The
19 back door does not have what we call a crash bar. It
20 has to stay unlocked and there is no way to lock the
21 back door.

22 To move a jury in and out of the courthouse,
23 you would have to bring them through the public. There