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THE WHITE HOUSE

WASHINGTON

March 25, 1986

TO: DEBBIE OWEN
MARK SULLIVAN

FROM: NANCY KENNEDY 

SUBJECT: Jefferson Sessions

I attended a meeting in Senator Denton's office yesterday. Beside the Senator's staff, also present were representatives from Justice and the Majority Leader's office.

Denton's staff is also preparing a synopsis of the first day's hearing. We went through the synopsis step by step, and as you will read, the press reported about 3%, all negative.

Denton's staff plans to prepare a two page charge - countercharge paper for distribution after the recess.

There was also talk of exploring the possibility of Sessions appearing once more - no other witnesses - to rebut all of these charges leveled by hostile witnesses.

Not being an attorney, I must say it appears to me that he is getting a raw deal.

SESSIONS CONFIRMATION HEARING
SYNOPSIS OF WITNESS TESTIMONY

19 March 1986

John D. Keeney
Deputy Assistant Attorney General
Criminal Division
Department of Justice
Washington, D. C.

Keeney, a career Justice Department official under seven Presidents, reaffirmed that the prosecution of the Perry County case was well-founded and directly approved by the Justice Department. He stated, in fact, that Justice Department attorneys played the major role in preparing the indictment. He noted that all complainants, all candidates and all defendants were black, that Justice Department believed that voters whose ballots were changed had been "in effect disenfranchised," and that the case was not racially motivated.

When asked about his dealing with Sessions, Keeney said: "They have been first-rate. He is a good lawyer and every dealing I have had with him has been fine. I know nothing derogatory about Mr. Sessions except obviously I read the papers in the last few days."

(This testimony, as to the racial motivation question, has been challenged by defendants' attorneys and representatives of certain civil rights organizations.)

James D. Liebman, Associate Professor
Columbia Law School
New York, New York

Liebman claimed that the Perry County case violated departmental guidelines, that there was selective prosecution of defendants, and that a U. S. Magistrate had "concluded" that there was evidence that the case was "activated by constitutionally impermissible motives such as racial...discrimination." Liebman was unable to produce names of others suspected of vote fraud.

(Justice Department officials all testified to the contrary, and a reading of the Magistrate's Order indicates no such finding or conclusion.)

Paul F. Hancock
Assistant for Litigation, Voting Section
Civil Rights Division
Department of Justice
Washington, D. C.

Mr. Hancock, a sixteen year veteran of Civil Rights Division at Justice, testified that his earlier deposition, given on short notice to Committee staff members, about Sessions obstructing an investigation in Conecuh County, Alabama, was incorrect. He stated that he had the wrong county and the wrong U.S. Attorney; having reviewed extensive documentation he discovered that the county was Clarke County and that it was Sessions' predecessor, William Kimbrough, who was in office at the time.

earlier testimony critical is wrong

When questioned, Hancock had no explanation for not correcting the same statement provided to the American Bar Association, months earlier and under no time pressure, except that that statement was private and confidential.

(J. Gerald Hebert, attorney with Civil Rights Division, Department of Justice, submitted written testimony recanting his previous testimony, both to Committee staff and in the first day's hearing, on the subject of the "Conecuh County obstruction." He likewise acknowledged that his previous testimony on that subject was incorrect. He did state that this correction "does not affect in any way my other testimony" given in the first day's hearing.)

Hebert

(Senator Denton made the observation, that if Hebert's recollection on the Conecuh County case was incorrect, perhaps some other recollections might also be incorrect.)

Barry Kowalski
Deputy Chief, Criminal Section
Civil Rights Division
Department of Justice
Washington, D. C.

Kowalski, a career civil rights attorney from Justice, testified to personal knowledge and working relationship with Mr. Sessions. He regarded him as highly competent, very aggressive and most cooperative in civil rights cases, especially the Michael Donald case (young black lynched by KKK).

Kowalski testified that Sessions' comment about the Klan being "okay, but now they're smoking pot," was clearly intended as a joke, and that no one who heard him say it could have taken it otherwise. He testified that, to the best of his recollection, that he (Kowalski) told Figures the joke. He testified that Figures sent him a cartoon of a Klansman (Exhibit A) to which Figures had annotated "good choice if he doesn't use drugs - don't ya think?"

Klan remark was a joke

(Figures has acknowledged annotating and sending the cartoon, but said that it was meant as a "serious" reflection.)

Kowalski also testified that he would have absolutely no concerns, if he were a private attorney, about taking a black client before Sessions as a judge. He stated that there was nothing that he knew about Sessions personally or professionally that would disqualify him for appointment as a judge.

Albert Glenn
Criminal Section
Civil Rights Division
Department of Justice
Washington, D. C.

Glenn, also a career civil rights attorney at Justice, testified about working with Sessions, Kowalski, and Figures on the Donald case. He also testified that he believed the Klan comment to be a joke, and that to his knowledge no one was offended. Glenn also testified that the Klan comment was made not contemporaneously with the lynching and murder (as has been suggested), but two years later, during the Federal investigation.

Glenn testified as to Sessions' high degree of racial sensitivity, aggressive pursuit of and cooperation with civil rights cases, and competence. He likewise indicated that he would have no concerns, as a private attorney, bringing a black client before Sessions as a judge.

Daniel Bell
Deputy Chief, Criminal Section
Civil Rights Division
Department of Justice
Washington, D. C.

Bell, also a career civil rights attorney at Justice, testified about working with Sessions, Kowalski, and Figures on the Donald case. Bell mentioned another case going back to 1977-78, in which a Mobile County Sheriff was indicted in a very controversial and sensitive civil rights case, in which Sessions, as an Assistant U. S. Attorney, was very cooperative. Bell testified as to Sessions' high degree of racial sensitivity, aggressive pursuit of and cooperation with civil rights cases, and competence. He likewise indicated that he would have no concerns, as a private attorney, bringing a black client before Sessions as a judge.

Arthur Fleming
President/Chairman

Citizens Commission on Civil Rights
Washington, D. C.

Fleming opened with the qualification that his testimony had been prepared exclusively on what he had "read" in the press, and that it should be considered in that light. His testimony was to the effect that he had serious concerns about the nominee if he had, in fact, made the statements attributed to him. He stated that he did not know Sessions and had never had any conversations or dealings with him.

Robert Turner, Attorney
Chestnut, Sanders, Sanders, Turner & Williams
Marion, Alabama

Turner was an attorney for defendants in the Perry County case, and brother of defendant Albert Turner. The essence of his testimony was that the Justice Department, FBI, and Sessions had handled the investigation and prosecution in a heavy-handed manner; that witnesses were intimidated, fingerprinted, photographed and handwriting samples taken. He also stated, in prepared testimony, that a majority of witnesses taken on a bus to Mobile were over 70 years of age, and one had a heart attack and another had a stroke while on the bus trip.

When questioned, Turner changed his statement and said he heard "that one person had gotten sick on the trip" and "later" had a stroke. He also could not name anyone, other than defendants, who were fingerprinted or photographed.

He also raised the issue of "selective prosecution" of the Perry County defendants. He also called the opposition black faction "a pro-white group." Senator Denton remarked at that point that such a comment might be considered "racist."

(Each point of his testimony was subsequently refuted by LaVon Phillips, a 26 year old black legal assistant to Perry County DA.)

Dr. Robert Gilliard, President
NAACP
Mobile, Alabama, branch

Based on allegations against Sessions, Gilliard testified that opinion in the black community was that Sessions could not be fair and impartial on the question of race. He mentioned an instance when he requested Sessions' help in connection with a matter involving his vote on the Mobile County School Board, and Sessions did not assist.

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allegations

(This testimony was later partially contradicted by the testimony of George Horn.)

Honorable Ferrill D. McRae
Presiding Judge, Thirteenth Judicial Circuit
Mobile, Alabama

McRae, a Democrat, Presiding Judge of Alabama's 13th Judicial Circuit, testified as to Sessions' competence, professional qualifications and opinion in the legal community. He testified about his aggressiveness and courage in "clean(ing) up the mess" of political corruption in the Mobile area. He also testified about Sessions' involvement in the Michael Donald case, saying that "the State's conviction...would not have been possible without Jeff Sessions' assistance."

He noted the "inconsistencies, half-truths...loose with the truth" statements made about Sessions. He has known Sessions since he started practice and said that he is not a racist, and believes he would be fair and impartial, regardless of race. He stated that he believes Sessions possesses judicial temperament and integrity.

McRae, when asked if he represented the other judges of the Circuit bench, read a telegram (Exhibit B) signed by nine judges including McRae (including a black judge, Cain Kennedy).

He also read a statement adopted by the Mobile Bar Association which expressed the Bar's conviction that Sessions is not racially prejudiced (Exhibit C).

McRae testified that, in his opinion, because of the publicity of this confirmation hearing, a message was being sent out that U. S. Attorneys should not prosecute cases (like the Perry County case).

LaVon Phillips
Legal and Administrative Assistant
Perry County DA's office
Marion, Alabama

Phillips, 26 year old black legal assistant to Perry County DA, testified as to the inaccuracies of allegations concerning the Perry County case. He specifically refuted allegations and testimony concerning the genesis and handling of the Perry County voter fraud case.

He reviewed the 1982 allegations and recommendations, by a predominantly black grand jury, that DOJ and other U.S. agencies investigate the situation.

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He gave specific testimony of how black voters' ballots in the 1984 election were obviously changed against their desires, and how black candidates had brought the election contest.

He denied the charges of heavy-handedness by the FBI and prosecutors, and charges of selective prosecution.

He also denied specific allegations of harassment and intimidation of witnesses. He gave extensive, detailed testimony about the witnesses' bus trip to Mobile (which he was on); that witnesses were not forced to go (in fact, subpoenaed witnesses who failed to appear were not brought to task); that the trip was uneventful and witnesses were well-cared for; that no one got sick, or had a heart attack or stroke; that witnesses were not photographed, fingerprinted or required to give writing samples.

Phillips likewise denied allegations that the area around the bus at departure was like an "armed camp" with numerous law enforcement officials around the bus and on other street corners with guns drawn or ready to be drawn.

He noted the black factions in Perry County and the divisiveness between them, calling this a "black on black" situation. He referred to abusive language and physical threats he had received as a result of his cooperation with other law enforcement officials in the voter fraud investigation and prosecution.

During the course of extensive contact with Sessions, he said he had gotten to know him well, had never heard him say anything that would indicate racial insensitivity, and believed that Sessions would make a fair and impartial judge.

(Phillips' testimony about the Perry County case contradicts testimony by Robert Turner, Hank Sanders and Rev. O. C. Dobyne.)

Larry Thompson
Attorney
King & Spaulding
Atlanta, Georgia

Thompson, a black, a former U. S. Attorney from Atlanta and a partner in King & Spaulding law firm, testified as to an extensive personal and professional relationship with Sessions, "as a man and a friend."

He testified specifically about work with Sessions on the Drug Task Force, including attendance at meetings and conferences, where he had roomed with Sessions on two different occasions.

He testified pointedly that the allegations and "statements and testimony in opposition" to Sessions "... pain me. But, they do not comport with what I know about Jeff." He went on to say

Black
Former
Atlanta
US
Att'y
AP
Sessions

that Sessions "will serve our nation well as a United States District Court Judge" and "he will do so in a completely fair and impartial manner." He called Sessions "a good and honest man, untainted by any form of prejudice."

Thompson noted that he is a member of the National Bar Association, and has "worked very hard over the years for the Atlanta NAACP."

Eddie Menton
Mobile Press Register
Mobile, Alabama

Menton testified, as a long time journalist and business and city editor of the Mobile Press Register, and a personal friend of Sessions, that Sessions' reputation in the community was very high, that he was not racially prejudiced and possessed racial sensitivity.

William Kimbrough
Former U. S. Attorney
Southern District of Alabama

Kimbrough, Sessions' predecessor under President Carter, a self-styled "yellow-dog Democrat," said "Jeff Sessions will serve well on the bench. He will treat people fairly." Sessions served as an assistant under Kimbrough for two years.

Kimbrough testified that he did not win a number of civil rights cases, as U. S. Attorney, but "(t)hat is not to say they should not be brought."

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20 March 1986

Thomas Figures, Attorney
Figures, Ludgood & Figures
Mobile, Alabama

Figures, the principal source of the allegations, testified that he heard Sessions make the "Klan" comment and took the comment as "a serious statement; Mr. Kowalski on the other hand apparently did not take the comment as serious as I did." He explained his annotation of the Klan cartoon (Exhibit A) as a "serious" reference on his part to the earlier Sessions' comment.

Figures was questioned about his allegation that Sessions believed that the "NAACP, the Southern Christian Leadership Conference, Operation Push, and the National Council of Churches were all un-American organizations teaching anti-American values." He answered that he (Figures) initiated the conversation, when Sessions came into his office one day while Figures was reading an article about some action of the NAACP, with the comment from Figures: "Well, there goes that subversive NAACP again." He said Sessions then went on to make the statement above.

Senator Denton commented that he found it "bizarre and somewhat convenient" that Figures could joke about the NAACP being "subversive" but could not understand that Sessions' comment about the Klan could have been a joke.

(Sessions has denied making the statement attributed to him. For the text of his sworn testimony, see Exhibit D)

Figures testified that Sessions had made the statement that Sessions wished he could "decline all civil rights criminal prosecutions."

(Sessions has previously denied the statement and such a statement is at substantial variance with testimony of all Justice Department civil rights attorneys.)

Figures testified that Sessions had also cautioned at one time to be "careful" what you say to white folks."

(Sessions has denied the comment, stating that he said for Figures to be "careful what you say to folks.")

Figures also testified that Sessions encouraged Figures to drop the Michael Donald case.

(That testimony is at substantial variance with testimony by several Justice Department attorneys working on the Donald case, and the Mobile County DA's Chief Investigator, Robert Eddy.)

Gray
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For the first time in any of his statements or testimony (including two prepared statements and an extensive investigation), Figures alleged that Sessions and others in the U. S. Attorney's office (Vulevich and Favre) had "regularly called (me) 'boy,'" and that such remarks were were overhead by Assistants Ginny Granade and E. T. Rolison.

(Though Sessions has been unable to testify since this testimony, he has publicly denied ever making that reference to Figures. Affidavits from Granade and Rolison, denying hearing such remarks, are being sent to the Committee. Vulevich testified, emphatically denying any such accusation.)

Senator Denton commented that it was "remarkable", given the seriousness of a charge of such derogatory nature, that Figures had not complained about the comments earlier. Denton said "I find that so incredible that it makes me wonder that others can find it credible."

(Figures mentioned that he believed he had said something about them to the ABA representative and the National Bar representative, but nothing appears in reports.)

Hank Sanders
Alabama State Senator
Montgomery, Alabama

Sanders, a Democratic State Senator, and law partner of one of the Perry County defendants and two defense lawyers, testified to the excessive use of law enforcement in the Perry County case, particularly in connection with the bus trip.

He also testified to the heavy-handedness and selectivity of the prosecution.

(This testimony was refuted by Justice Department attorneys and LaVon Phillips.)

O. C. Dobyne
Perry County, Alabama

Dobyne, a black preacher and candidate in the 1984 Perry County primary and called as a witness for the grand jury in Mobile, testified particularly as to the bus trip.

He called the area around the bus departure site an "armed camp," and stated in prepared testimony that the bus was "surrounded by six Alabama State troopers, three or four Marion City Policemen, about nine FBI agents and four state game wardens... The street around the courthouse was blocked off and

have
been
read

about eight officers stood on different corners with their guns drawn."

Dobynes changed his oral testimony to say that the prepared statement should have said "guns ready to be drawn."

(A sworn affidavit from the Marion Police Chief (Exhibit E) and testimony by LaVon Phillips categorically contradicts Dobynes testimony.)

Deval L. Patrick, Assistant Counsel
Legal Defense Fund
New York, New York

Patrick testified that Sessions "conducted the prosecution in (the Perry County) case." He also testified about the heavy-handedness of the prosecution.

(The record is clear that Sessions did not conduct the trial of the Perry County case. His other testimony was refuted by Justice attorneys and LaVon Phillips).

Edward Vulevich
Assistant U. S. Attorney
Southern District of Alabama

Vulevich, a 16 year career Assistant U. S. Attorney, testified that he came to Washington to express his concerns over the distortions and false allegations being reported on Sessions nomination.

He emphatically denied Figures accusation that he had called Figures "boy."

He testified that Figures was highly sensitive about racial matters and "wore his feelings on his sleeve," and that he tended to be secretive, suspicious and in his view had a persecution complex.

Vulevich described Figures as "a good lawyer with a bad attitude."

Honorable Braxton Kittrell
Judge, Thirteenth Judicial Circuit
Mobile, Alabama

Kittrell, a Democrat, Circuit Judge, who sentenced one of the Klan defendants in the Michael Donald case, testified as to Sessions' professional competence, high opinion in the legal community, racial sensitivity and judicial temperament.

Robert Eddy, Chief Investigator
District Attorney's Office
Mobile, Alabama

Eddy, a Democrat, veteran investigator, credited with solving the 1963 bombing of the 16th Street Baptist Church, in which several black children were killed, testified as to Sessions' total cooperation in and commitment to the successful prosecution of all persons involved in Michael Donald case.

*persecution
on
Figures*

Eddy stated that he was convinced that Sessions would have gone forward with the Federal case against one defendant if the state prosecution had not been successful.

He testified as to Sessions courage and success in prosecuting white-collar crime, and as to his racial sensitivity and judicial temperament.

George Horn
Mobile County Republican Executive Committee
Mobile, Alabama

Horn, an elderly black man, member of the Mobile County and Alabama State Republican Executive Committees, testified as to his friendship with Sessions, to his racial sensitivity, and to the opinion of those in the black community "who know" Sessions as to fairness and impartiality.

Rev. Ben Sawada
Ashland Place United Methodist Church
Mobile, Alabama

Rev. Sawada, a Japanese-American and Sessions' pastor, testified as to his close relationship with Sessions, his work and reputation in the church; particularly the fact that Sessions had held many positions in the church and was currently "Lay Leader," the highest lay position. He said Sessions was free from racial bias.

Honorable Clarence Mitchell
Maryland State Senator
National Black Caucus of State Legislators
Washington, D. C.

Mitchell testified as to the "chilling" effect that unjust or heavy-handed voter fraud investigations or prosecutions could have on black voters. He did not know Sessions and had no knowledge of his professional competency or judicial temperament.

Horn
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STATEMENT BY LAVON PHILLIPS, OF PERRY COUNTY, ALABAMA
BEFORE THE SENATE JUDICIARY COMMITTEE

20 March 1986

My name is LaVon Phillips. I am a 26 year old black man from Perry County, Alabama. I am presently employed as a legal and administrative assistant to the District Attorney, Roy Lockhart Johnson. I am a graduate of Alabama State University, and Miles School of Law.

I am here before the Senate Judiciary Committee to testify on behalf of Jefferson B. Sessions, III, for the confirmation to the Federal bench for the Southern District of Alabama. I also will be testifying as to the extreme high standard of professionalism evidenced during the voter fraud investigation in Perry County, Alabama. My testimony will reflect that the allegations stipulated by several people in opposition to Mr. Sessions are unfounded and both ludicrous as well as unconscionable.

First of all, I would like to have the Committee focus its attention on the 1982 voter fraud investigation conducted by the Perry County District Attorney's Office. The investigation was commenced for several reasons. Our office received complaints from elderly black voters that they were receiving absentee ballot applications without making a request; this one fact established our probable cause to pursue the matter. Subsequent to the return of the absentee applications to the Perry County Election Manager, our office came to a precise conclusion that the people soliciting these applications were members of the Perry County Civic League, including Albert Turner, Evelyn Turner, and Spencer Hogue. After arriving at this conclusion, our office interviewed several voters concerning whether or not these voters requested an absentee ballot. There were about 75

to 100 voters who said that they did not request an absentee ballot. The above evidence constitutes the 1982 primary election in Perry County.

In the 1982 Perry County general election this same practice was used by the Perry County Civic League, but it was more extensive. There were over a thousand absentee ballots cast which would mean that one out of every five voters voted absentee in the 1982 general election. After receiving numerous complaints from black voters, as well as black incumbent elected officials seeking re-election, a circuit judge in Perry County ordered the Election Manager to number the absentee ballot envelopes in accordance with the ballots. This was done in conjunction while the ballots were being counted. Subsequent to the General Election, our office interviewed several voters who voted absentee in which these ballots were changed. Several voters with changed ballots said that they did not vote their convictions. Our investigation concluded that Albert Turner, Evelyn Turner, Spencer Hogue, and other members of the Perry County Civic League were collecting and changing these ballots. Also, I would like to point out that at that time, Albert Turner was a candidate for Perry County Probate Judge; therefore he is prohibited under Alabama law, section 17-10-17, Code of Alabama, 1975 from handling or soliciting absentee ballots. Lamar Miller, a handwriting analyst expert from Auburn, Alabama, examined the changed ballots. It was Lamar Miller's expert opinion that Albert Turner wrote his name in on several absentee ballots for the Probate Judge position. Even with this write-in effort, he lost in the general election to the incumbent Probate Judge.

After the District Attorney's investigation was consummated, the investigation results were presented to the Perry County Grand Jury. The Grand Jury fell short by two votes to indict Albert Turner, Evelyn Turner, and Spencer Hogue. The racial make-up of the Grand Jury was eleven blacks and seven whites; the Grand Jury foreman was black.

During the course of the 1982 investigation, I received numerous threats. I received several threatening phone calls and was subject to abusive social treatment. I was also assaulted by Spencer Hogue as I was leaving the Perry County Courthouse one afternoon in 1982. Mr. Hogue said to me, "If you don't leave my people alone, I'm going to hurt you."

After the Perry County Grand Jury failed to render indictments our office asked U.S. Attorney Jefferson B. Sessions to investigate the Perry County voter fraud case. He declined!! Jeff Sessions' decision not to investigate the 1982 voter fraud case caused our office to be highly upset. But later I learned that Jeff's decision not to prosecute at that time was a competent one. Mr. Session's reason for not prosecuting the case was based on the fact that the Perry County Grand Jury is the conscious of the the community and therefore any action by his office would have been highly unprofessional.

Let us turn our attention to the 1984 Primary Election. We received complaints from Col. Warran Kynard, Reese Billingslea, and Ann Nichols concerning irregularities in the Perry County absentee voting process. Mr. Kynard, who is black, as well as Reese Bellingslea (black), complained of Albert Turner, his wife Evelyn and

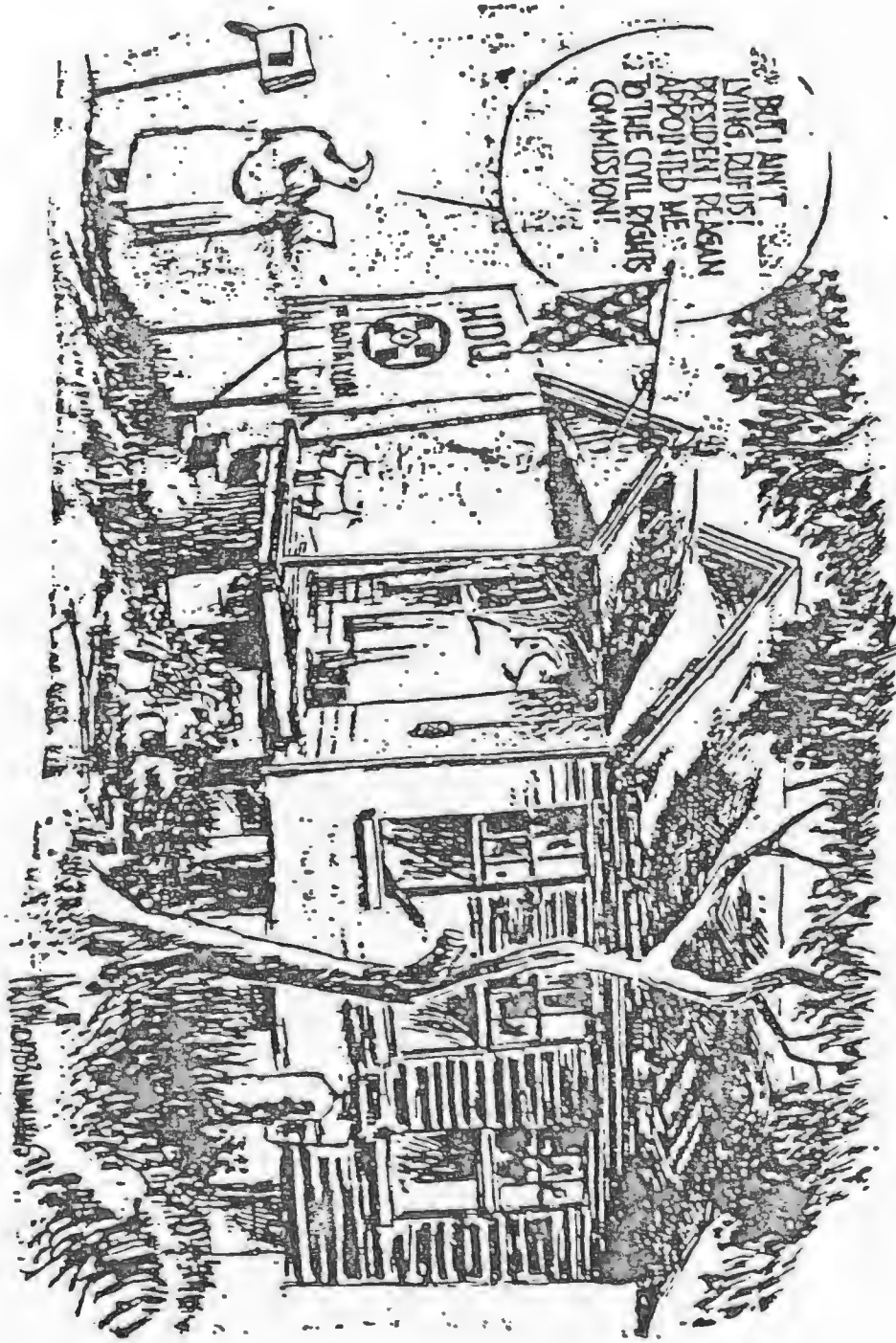
Spencer Hogue, trying to steal the election on behalf of the Perry County Civic League candidates. Subsequent to these complaints, Circuit Judge Ann Ferrell McKelvy issued a court order ordering the Perry County Election Manager to repeat the same procedure as was done in 1982. The District Attorney's Office reviewed some of the ballots and found that there were over 200 changed. We again went to Jeff Sessions and he decided that the situation in Perry County needed to be dealt with. The FBI investigation proved that Albert Turner, Evelyn Turner, and Spencer Hogue mailed over 800 absentee ballots at the U.S. Post Office depository the day before the election. Several voters were interviewed by the FBI in my presenece. Several voters whose ballots were changed, stated that they gave their ballot to either the Turners or Mr. Hogue.

After the FBI completed their investigation, 30 absentee voters were bused to Mobile, Alabama, to appear before a Federal Grand Jury. I was on that bus trip. The witnesses had no complaints about the trip, nor did anyone become ill. There was one witness on that bus who I would consider a hostile witness on behalf of Albert Turner, Evelyn Turner and Spencer Hogue. The witness I'm speaking of is Rev. O. C. Dobyne. Rev. Dobyne was harrassing the witnesses on the bus or questioning them concerning their testimony. Due to Rev. Dobyne's behavior, I have lost respect for him as a person, but also as a member of the clergy.

This is the nexus of the whole Perry County case in a nutshell. Because of this, the Perry County Civic League will seek any means

necessary whether it is fair or unfair, legal or illegal, and any other gutter political tactic, to win control.

x "A"



Good choice if he doesn't use
drugs - don't ya think?



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

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

Sessions

Testimony Excerpts

did Graude & Polson efforts come in
to refute that Sessions called figures
boy

of Sessions transcript. testimony
Figures

Specter pulled figures re: testimony on "boy"
which came up for first time during testimony

Sessions may be called back for testimony
to refute negative testimony.

Specter & Hefflin are w/ Admin (maybe)
Mathias lost.
sufficient votes to get Sessions out of Comm.

where is Gerald Herbert statement

OFFICE OF THE ATTORNEY GENERAL
WASHINGTON

April 10, 1986

MEMORANDUM FOR PETER J. WALLISON

FROM: ALAN CHARLES RAUL *ACR*

SUBJECT: Proposed Draft Memorandum on the Judicial
Nomination of Jefferson B. Sessions, III

As we discussed, attached for your review and signature is a draft memorandum to the President regarding the nomination of Jefferson B. Sessions, III.

Attachment

PJW:ACR:pjr 4/10/86

cc: PJWallison
ACRaul
Chron.

THE WHITE HOUSE

WASHINGTON

April 10, 1986

MEMORANDUM FOR THE PRESIDENT

FROM: PETER J. WALLISON

SUBJECT: Judicial Nomination of Jefferson B. Sessions, III

The nomination of Jefferson B. Sessions, III to the Southern District of Alabama has produced heated controversy in the Senate Judiciary Committee and the media. Two conflicting images of Mr. Sessions have emerged in the press accounts of the nominee's character, on the one hand, and the testimony of his colleagues in the Department of Justice and his friends, on the other. One view is that he is racially insensitive and might find it hard to be fully impartial on the bench, while the other view is that he is a conscientious, fair minded professional who would be able to judge race-related issues free from prejudice. My office has attempted to resolve the conflict by assessing the full transcript of the proceedings before the Judiciary Committee. We have compared that record with the newspaper reports and editorials in order to evaluate which image is closer to reality.

The allegations against Mr. Sessions are essentially twofold: He is accused of making racially insensitive remarks or jokes and also of exercising his prosecutorial role as U.S. Attorney in a prejudiced manner. In this memorandum, I will summarize our review of these allegations and provide a brief discussion weighing both the favorable and critical statements about Mr. Sessions.

CONCLUSION

Although Mr. Sessions has admitted to making a number of racially insensitive comments or jokes, there is a substantial record before the Senate Judiciary Committee suggesting that he is dedicated to enforcing the laws impartially, including the civil rights statutes, and that racial prejudice has not tainted his professional performance or his personal relations. Testimony from career lawyers in the Civil Rights Division of the Department of Justice and from Mr. Sessions' black and white colleagues and friends portrays the nominee as an honorable man who has been especially cooperative on civil rights matters.

The accusations against Mr. Sessions come almost exclusively from one man, a former Assistant U.S. Attorney under Mr. Sessions, and a number of private civil rights lawyers who defended against a prosecution brought by Mr. Sessions' office.

It is possible to speculate about the motivation of these individuals, but their allegations are nonetheless very serious. On balance, however, we believe the weight of the available evidence does not require changing the original decision that Mr. Sessions was a worthy judicial candidate who will be able to apply the laws faithfully.

DISCUSSION

The testimony against the nominee before the Senate Judiciary Committee was led by Thomas Figures, a former Assistant U.S. Attorney who worked as one of five Assistants under Mr. Sessions. Mr. Figures, who is black, avers that Mr. Sessions is a racist and would not be impartial on civil rights matters or cases involving blacks. This view was complemented by testimony from lawyers who successfully represented defendants in a voting fraud case prosecuted by Mr. Sessions' office. Other negative testimony came primarily from individuals who were not personally familiar with the nominee or his work, but challenged the nominee based on the allegations they heard about him or read in the press.

The testimony in favor of Mr. Sessions was largely ignored by the media and did not figure at all, for example, in the New York Times' editorial advising the Senate to reject Mr. Sessions' nomination. Given the strong recommendations of numerous career civil rights lawyers in the Justice Department, together with the compelling testimony of a black former U.S. Attorney for Atlanta, a black lawyer working for a local District Attorney and many other black and white colleagues and friends of Mr. Sessions, the media's reaction to the nomination is one-sided. Also distorting the public reaction may be the fact that the Senators most opposed to the nomination were absent for that portion of the Judiciary Committee's hearings when the favorable testimony was received.

A. Racially Insensitive Remarks

Mr. Sessions has admitted to using the term "un-American" in connection with the National Council of Churches, and perhaps the National Association for the Advancement of Colored People. Though he does not claim that these remarks were jocular, he explains that he was not referring to their religious or civil rights activities, but rather to their political stands, principally in the area of foreign policy (such as on the refugee-sanctuary or "Contra" issues). Speaking of the NAACP, Mr. Sessions affirmed before the Judiciary Committee that he does not believe it is "un-American." On the contrary, he testified: "that organization has, without question, done more than probably any other organization to promote racial progress in the South . . . I respect that organization."

Justice Department lawyers familiar with the nominee's opinions understood the "un-American" remarks more in the nature of

intellectual or philosophical debate than as bigoted statements demonstrating a closed mind. (Significantly, the one Justice Department lawyer who did feel that Mr. Sessions was not particularly sensitive on racial issues testified that he did not believe the nominee was a racist. In fact, that lawyer was personally troubled that his earlier testimony was being used to depict Mr. Sessions that way.)

Mr. Sessions also admits to having made a joke that the Ku Klux Klan was not so bad until they started smoking pot. In contrast to Mr. Figures, the Justice Department Civil Rights Division lawyers who heard that comment insisted adamantly that it was obviously intended as a joke, or, in the words of one of the career attorneys, a brand of "operating room" humor. Even though Mr. Figures now says he took the comment seriously, he reacted facetiously himself, at the time, by passing around a cartoon about the Klan.

Some of the other alleged comments by Mr. Sessions are also disturbing: Mr. Figures claimed at one point before the Judiciary Committee that he was regularly called "boy" by the nominee and that he was told to watch what he said to "white folks." In addition, Mr. Sessions supposedly acquiesced in someone else's remark that a particular civil rights lawyer, a white man, was a "disgrace to his race."

The first two of these alleged statements are categorically denied by Mr. Sessions. Mr. Sessions is supported on this by another Assistant U.S. Attorney who was allegedly present when Mr. Figures was called "boy"; this Assistant submitted a letter to the Committee denying Mr. Sessions ever used that epithet. Following some tough questioning at the hearings, Mr. Figures backed away from his charge that Mr. Sessions "regularly" called him "boy."

The alleged "white folks" comment is also uncorroborated. Mr. Sessions testified that he told Mr. Figures, who had just hurt a secretary's feelings, to watch out what he said to "folks," and that there was no racial overtone.

Finally, Mr. Sessions does not recall making the "disgrace to his race" comment but will not dispute the Justice Department lawyer who recalls it. However, he testified that his true feelings regarding the lawyer in question are extremely positive and respectful. Mr. Sessions says he cannot imagine why he ever would have made that statement, if in fact he did. In any event, the Justice Department lawyer who remembers the incident testified that Mr. Sessions smiled and was not serious when he made the remark.

B. Substantive Views and Actions

Mr. Sessions was criticized by Senator Kennedy, among others, for bringing a voting fraud case against a number of black defendants who allegedly tampered with absentee ballots to affect the results of a local election. Mr. Sessions defends this prosecutorial decision as an instance of his applying the law fairly to all parties, regardless of race. He testified that the complainants and victims of the fraud were themselves black. After reviewing the available record, we do not feel the evidence suggests that this prosecution was unwarranted or demonstrates racial animus on the part of Mr. Sessions.

Mr. Sessions was also severely criticized for allegedly interfering with an FBI investigation ordered by the Civil Rights Division. During the hearings, however, the Justice Department lawyer who originally made that claim withdrew the allegation entirely. The attorney stated under penalty of perjury that he had been mistaken: It was a different U.S. Attorney, in fact Mr. Sessions' predecessor, who tried to stop the investigation. (The lawyer's correction of his earlier testimony was substantiated by recently retrieved records of the Justice Department.)

Mr. Figures has also alleged that the nominee confided to him that he would like to decline prosecuting all criminal civil rights cases. Mr. Sessions denies the charge and is supported by the unequivocal testimony of career Justice Department Civil Rights Division lawyers. They directly refute Mr. Figures' contention. The Justice Department lawyers declared that Mr. Sessions was, in their experience, an especially cooperative and helpful U.S. Attorney "committed to the prosecution of criminal civil rights cases." It should be added that these witnesses asked to appear before the Committee because they felt Mr. Sessions was being unfairly judged on the basis of errant remarks taken out of context. For example, Barry F. Kowalski, who has been with the Criminal Section of the Civil Rights Division since 1980, testified as follows:

I believe I had a fairly good opportunity to work with Mr. Sessions on a complex, sensitive, highly controversial civil rights case, and in the course of working with him, I became convinced that he was dedicated to making sure that that case was prosecuted, if it could be, and he gave my office all the support conceivable to help make that prosecution occur and he gained my respect in the process.

This view was echoed by other Justice Department lawyers, the former U.S. Attorney for Atlanta, who is black, a young black lawyer working for the local District Attorney, many local

judges (including a black), and an elderly black man who has been Mr. Sessions' friend since 1977 and who served with him as a fellow member of the Mobile County Republican Executive Committee. These individuals, and others, testified that Mr. Sessions was not racially insensitive. The black former U.S. Attorney, who stated he had experienced racism in his own life, went so far as to testify under oath that Mr. Sessions was "untainted by any form of prejudice."

Finally, Mr. Sessions' admitted characterization of the Voting Rights Act as an "intrusive" piece of legislation is mitigated by his full views on the subject. The nominee has testified plainly that he believes the law was necessary for racial progress in the South, and has led to good results.

On the basis of the record partially summarized above, it may be said that the media focused too narrowly on the allegations of one individual, and disregarded the enthusiastic endorsements of many distinguished lawyers, black and white, who have worked with Mr. Sessions and developed a strong respect for him. Unquestionably, Mr. Sessions has made remarks that appear insensitive. But these remarks have been removed from their proper context and given an invidious quality that Mr. Sessions almost certainly did not intend. In fact, his interlocutors almost uniformly understood that the remarks in question were either jocular or "devil's advocacy," and were not a manifestation of any racial prejudice.

U.S. Court Nominee Says He Won't Drop Out

By LENA WILLIAMS

Special to The New York Times

WASHINGTON, April 14 — President Reagan's nominee for a Federal district judgeship in Alabama says he has "no intention" of withdrawing from consideration for the post despite growing evidence that support for him on Capitol Hill may be waning.

"It would be wrong to turn tail and run when you are criticized," said the nominee, Jeffrey B. Sessions 3d, now the United States Attorney in Mobile, Ala.

The Sessions nomination has become entangled in charges and denials of racism. In hearings before the Senate Judiciary Committee last month Mr. Sessions, who is white, was asked sharp questions by Democrats about his stewardship as a Federal prosecutor, in particular his prosecution last year of three blacks in Perry County, Ala., who were acquitted of voting fraud, and racial remarks that witnesses said he had made.

"I feel that not a single substantive allegation was established that we ever conducted any case in an improper fashion," Mr. Sessions said in a telephone interview last week from his office in Mobile. "The remainder of the allegations deal with statements I think I explained adequately."

Not on the Agenda

The nomination was not placed on the Judiciary Committee's agenda for its regularly scheduled meeting last Thursday nor for this Thursday. Senate

aides say it is not expected to be considered before April 24. The omission is viewed by some Congressional insiders and civil rights leaders as an indication that the nomination might be in jeopardy.

Senator Jeremiah Denton, the Alabama Republican who put forth Mr. Sessions's nomination, was said to be considering asking for additional hearings, according to some Senate aides.

Robert Hardy, a press aide to Senator Denton, said there was "strong support" for Mr. Sessions in the committee and in Alabama. Mr. Hardy said there had been no pressure on Mr. Sessions or Senator Denton from the Rea-

gan Administration, the Justice Department or Senate Republicans to withdraw the nomination.

White House and Justice Department officials have repeatedly reaffirmed their support for Mr. Sessions.

"If Sessions is in good shape, why isn't the nomination being put to a vote?" asked one Senate aide who spoke on the condition he not be identified. "Why are they considering holding additional hearings? Even if they have the votes in committee, which is questionable, the nomination still faces a tough battle before the full Senate."

At hearings on his nomination, Mr. Sessions acknowledged having re-

ferred to the National Association for the Advancement of Colored People, the American Civil Liberties Union, the Southern Christian Leadership Conference and the National Council of Churches, as "Communist-inspired" and "un-American organizations with anti-traditional American values."

Apology for K.K.K. Remark

At another point, Mr. Sessions apologized for his statement that he had once thought the Ku Klux Klan "was O.K. until I found out they smoke pot." Mr. Sessions has strenuously denied being bigoted.

"I have consciously and deliberately conducted this office according to the highest standards," he said in the interview. "To have it appear in the national press that I am a closet racist, that I have abused my office, or, as Senator

Kennedy said, was a disgrace to my office, is unfair."

Some Congressional leaders had expected Mr. Sessions to withdraw and spare the Administration and Senate Republicans the embarrassment of another round of bitter debate. Some Senate aides said they believed Mr. Sessions and his supporters were hoping to delay a vote long enough to allow the heat to cool.

At the same time, others have said that a delaying tactic could backfire. They said that with so many Republican Senators up for re-election, the party leaders might not want the Sessions nomination to linger and become a campaign issue for November.

Backlog in the District

In addition, the Alabama court has been without a third Federal judge for

more than a year and has a backlog. Pressure from members of the State Bar Association is mounting for a quick resolution of the issue.

"They've got to dispose of this thing one way or another," said Nan Aron, the chairman of the Judicial Selection Committee, a coalition of lawyers, academics and representatives of civil rights and public interest organizations. "It's not likely the opposition to Mr. Sessions will go away."

Senate Democrats, who have been criticized by some civil rights groups for not blocking the confirmation of a number of disputed judicial nominees, are said by those groups to be eager to show some political vitality by defeating Mr. Sessions. Mr. Reagan has appointed more than 200 Federal judges since he took office.

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THE WHITE HOUSE

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WASHINGTON

July 31, 1986

Dear Mr. Sessions:

When I submitted your nomination to the United States Senate to be District Judge for the Southern District of Alabama I had every confidence in you and was convinced that you would serve your country with distinction from the federal bench. I continue to hold you in that same high regard and am deeply disappointed that the Senate Judiciary Committee transformed the vote on your nomination into a political test. I feel strongly that the Committee did both you and the nation a serious disservice. It is thus with the greatest reluctance that I accept your request that I withdraw your nomination.

The dignity you displayed during the difficult confirmation process is further evidence of the honor and integrity you have exhibited throughout your career and during the almost five years you have been United States Attorney. Your grace under pressure has been a credit to you and my Administration. I know that your character is a fine and upstanding one, worthy of the great office to which I nominated you.

You have my profound gratitude for having agreed to be my nominee for United States District Judge for the Southern District of Alabama. I am pleased that you will continue to serve as United States Attorney for that district and I wish you and your family well.

Comment

Sincerely,

Ronald Reagan

The Honorable Jefferson B. Sessions, III
United States Attorney
Southern District of Alabama
305 United States Courthouse
Mobile, Alabama 36601

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