



**NAACP Legal Defense and Educational Fund, Inc.  
Report in Opposition to the Nomination of  
Jefferson Beauregard Sessions III to be  
Attorney General of the United States**

**January 9, 2017**

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## I. INTRODUCTION

The Attorney General is the chief law enforcement officer of the United States. Since the passage of the Civil Rights Act of 1957, which created the Civil Rights Division of the Department of Justice (DOJ or the Department), the Attorney General has also had principal responsibility for enforcing the nation's civil rights laws. The responsibility of the Attorney General in this regard may include challenging practices that violate the constitutional requirement of "equal protection under the laws," and violations of federal statutes such as the Voting Rights Act of 1965, Title VI of the Civil Rights Act of 1964, The Fair Housing Act of 1968, the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, or the Violence Against Women Act, among others.

Because of this responsibility, the Attorney General must be a lawyer of distinction who is fully prepared to vigorously enforce our country's civil rights laws. The public should have confidence that the Attorney General is unequivocally committed to principles of racial, ethnic, gender, religious, and sexual orientation equality, will protect the rights of disabled people, and will unreservedly and vigorously litigate cases in accordance with the equality provisions of the United States Constitution and our civil rights laws.

Senator Jefferson Beauregard Sessions III (R-AL) has been a lawyer for 44 years. Although he began in the private practice of law, the bulk of his career has been spent in public life. For nearly 40 years, Sessions has served as a United States Attorney, the Attorney General of Alabama, and a United States Senator representing the state of Alabama. During this period, he has amassed a voluminous record. That record, particularly given his public life in a state with a long and troubled history of racial discrimination, should reveal a clear commitment to the principles of racial equality and justice and support for the civil rights laws which, as Attorney General, he would be charged with upholding.

But rather than demonstrate his fitness to become the chief enforcer of our nation's civil rights laws, Sessions' record reveals precisely the opposite. From his actions as U.S. Attorney for the Southern District of Alabama in the 1980s, to his actions as Attorney General of Alabama in the 1990s, to his twenty-year career as a United States Senator, Sessions' record demonstrates hostility to principles of equality and justice, and to the core civil rights statutes and legal principles that as Attorney General he would be charged with enforcing.

For this reason, the NAACP Legal Defense & Educational Fund, Inc. (LDF) strongly opposes the confirmation of Senator Jeff Sessions to serve as the 84<sup>th</sup> Attorney General of the United States. This report sets out the aspects of Senator Sessions'

record with respect to civil rights and racial justice that we find most troubling and that we believe demonstrate his unfitness to serve as Attorney General.

We do not reach this conclusion lightly. We feel compelled to present an accurate record of Sessions' engagement with issues of racial justice and equality. Clarifying the record is particularly important because those who support Sessions' confirmation have suggested that he has been a civil rights advocate. This is no doubt an attempt to rehabilitate Sessions from his failed judicial nomination in 1986, when a Republican-controlled Judiciary Committee rejected Sessions for a federal judgeship because of his anti-civil rights record as a prosecutor and because of racist statements and other racially insensitive and derogatory remarks that he made to colleagues.<sup>1</sup>

Suggesting now that Sessions is a champion of civil rights is a shockingly cynical and false manipulation of Sessions' 40-year record. It disrespects the courage and difficult journey of the late Spencer Hogue, the late Albert Turner and his wife (still living) Evelyn Turner—known as the “Marion Three”—who Sessions unsuccessfully prosecuted in 1985, and the Black elderly voters throughout rural Perry County, Alabama who were intimidated and harassed by the FBI investigation and prosecution of Black voters there. It diminishes the work of LDF and other civil rights lawyers, including those at the Civil Rights Division of the Department of Justice,<sup>2</sup> who *actually* litigated voting rights and desegregation cases that Sessions lists on his Senate Judiciary Committee questionnaire as among the “most significant” cases that *he* “personally handled.”<sup>3</sup>

To leave unchallenged the narrative that Sessions is a civil rights advocate would require us to ignore that credible charges of selective prosecution based on race were lodged against him as a prosecutor.<sup>4</sup> We would have to ignore his explicit and extreme denigration of civil rights organizations and lawyers who work for civil

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<sup>1</sup> See NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., OVERVIEW OF THE CIVIL RIGHTS RECORD OF REPORTED ATTORNEY GENERAL NOMINEE JEFF SESSIONS (Nov. 18, 2016), <http://www.naacpldf.org/files/about-us/LDFSessionsCivilRightsOverview.pdf>.

<sup>2</sup> See Declaration of Theodore B. Shaw (Jan. 9, 2017) (attached as APPENDIX A).

<sup>3</sup> J. Gerald Hebert, Joseph D. Rich, & William Yeomans, *Jeff Sessions says he handled these civil rights cases. He barely touched them*, THE WASHINGTON POST (Jan. 3, 2017), [https://www.washingtonpost.com/opinions/jeff-sessions-says-he-handled-these-civil-rights-cases-he-barely-touched-them/2017/01/03/4ddfffa6-d0fa-11e6-a783-cd3fa950f2fd\\_story.html?utm\\_term=.f377ef124cc4](https://www.washingtonpost.com/opinions/jeff-sessions-says-he-handled-these-civil-rights-cases-he-barely-touched-them/2017/01/03/4ddfffa6-d0fa-11e6-a783-cd3fa950f2fd_story.html?utm_term=.f377ef124cc4); S. Comm. on the Judiciary, Questionnaire for Non-Judicial Nominees, Jefferson B. Sessions, 14-29, <https://www.judiciary.senate.gov/imo/media/doc/Sessions%20SJC%20Questionnaire%20F.pdf>.

<sup>4</sup> *Nomination of Jefferson B. Sessions III to be U.S. District Judge for the Southern District of Alabama: Hearings before the S. Comm. on the Judiciary*, 99th Cong. at 196-203 (1986) (statement of James Liebman, Assistant Professor of Law, Columbia University School of Law).

rights organizations when they have faced confirmation before the Senate.<sup>5</sup> We cannot ignore these aspects of Sessions' record. Nor can we ignore that Sessions has had numerous opportunities in his decades in public life to speak and act unequivocally in support of racial justice and civil rights in Alabama and in the United States Senate. The record shows that Sessions has not availed himself of these opportunities. To note two recent examples: amid controversy over the Confederate flag placed on public grounds, Sessions said calls to remove the flag were examples of "the left" trying to "delegitimize the fabulous accomplishments of our country."<sup>6</sup> And despite clear public evidence of voting discrimination in Alabama, including two decisions by federal courts in 2011 and 2015,<sup>7</sup> Sessions has insisted that such discrimination does not exist.<sup>8</sup>

Since last February, Sessions has been a vocal supporter of President-elect Donald Trump. This is, of course, not in and of itself disqualifying. But when then-candidate Trump made disparaging remarks about racial minorities, mocked a disabled reporter, was caught on tape bragging about sexual assault, and stated that a federal judge of Mexican descent could not be impartial in presiding over a case in which Trump was a party, Sessions neither denounced nor distanced himself from these statements. For this reason alone, the public cannot have confidence that Sessions would vindicate the rights of racial minorities, women, the disabled, and others as Attorney General, or that he would exercise judgment independent of the President-elect when necessary.

In sum, any fair and objective assessment of Sessions' record demonstrates that he is neither qualified nor prepared to vigorously enforce the nation's civil rights laws.

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<sup>5</sup> See Kyle Barry, *Sessions Unchanged*, MEDIUM (Dec. 21, 2016), [https://medium.com/@NAACP\\_LDF/sessions-unchanged-the-same-hostility-toward-civil-rights-advocacy-that-cost-jeff-sessions-a-148e60821a15#.f3bs1svxn](https://medium.com/@NAACP_LDF/sessions-unchanged-the-same-hostility-toward-civil-rights-advocacy-that-cost-jeff-sessions-a-148e60821a15#.f3bs1svxn).

<sup>6</sup> Lee Fang, *Senator: Confederate Flag Removal an Attempt to 'Delegitimize Fabulous Accomplishments'*, THE INTERCEPT (June 9, 2015), <https://theintercept.com/2015/06/29/push-remove-confederate-flag/>.

<sup>7</sup> *Alabama Legislative Black Caucus v. Alabama*, 135 S.Ct. 1257, 1267 (2015) (remanding the case to the district court and holding that Alabama's express use of a "policy of prioritizing mechanical racial targets" provided "evidence that race motivated the drawing of particular lines in multiple districts in the State"); *US v. McGregor*, 824 F. Supp. 2d 1339 (M.D. Ala. 2011) (holding that the Alabama Legislature had engaged in a deliberate strategy that was designed to "suppress black votes by manipulating what issues appeared on the 2010 ballot" and that, in recorded conversations, Senators had singled out Black voters for "mockery and racist abuse," including calling Black voters "Aborigines," "Indians," and "illiterate").

<sup>8</sup> David Weigel, *Southern Republican Senators Happy That Supreme Court Designated Their States Not-Racist*, SLATE (June 25, 2013), [http://www.slate.com/blogs/weigel/2013/06/25/southern\\_republican\\_senators\\_happy\\_that\\_supreme\\_court\\_designated\\_their\\_states.html](http://www.slate.com/blogs/weigel/2013/06/25/southern_republican_senators_happy_that_supreme_court_designated_their_states.html).

## II. THE INTEREST OF THE NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC.

The NAACP Legal Defense & Educational Fund, Inc. (LDF) was founded in 1940 by Thurgood Marshall. It has been an entirely separate organization from the NAACP since 1957. Marshall, who later became the first African-American U.S. Solicitor General and then the first African-American Supreme Court Justice, was a pioneering civil rights lawyer for thirty years. His earliest cases challenged segregation in state universities and the exclusion of African Americans from participation in state elections. One of Marshall's earliest civil rights wins was his successful challenge to the exclusion of African Americans from the Democratic Primary elections in Texas in the 1944 case *Smith v. Allwright*.<sup>9</sup> Marshall called it his "most important case" because he regarded the ability of African Americans to vote and participate equally in the political process to lie at the core of the quest for equal citizenship.

### A. LDF and Voting Rights

LDF has continued challenging discriminatory voting practices since Marshall's win in *Smith v. Allwright*. LDF represented Dr. Martin Luther King and members of the Southern Christian Leadership Conference and other marchers who were beaten on the Edmund Pettus Bridge during the Bloody Sunday March in Selma, Alabama—Sessions' hometown. LDF submitted the plan that was ultimately approved by Judge Frank Johnson for the complete march from Selma to Montgomery, Alabama in April 1965.

Since passage of the Voting Rights Act of 1965, LDF has been involved in nearly all of the precedent-setting cases regarding minority political representation and voting rights before federal and state courts. These cases include: *Shelby County, Ala. v. Holder*, 133 S. Ct. 2612 (2013); *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193 (2009); *League of United Latin Am. Citizens (LULAC) v. Perry*, 548 U.S. 399 (2006); *Georgia v. Ashcroft*, 539 U.S. 461 (2003); *Easley v. Cromartie*, 532 U.S. 234 (2001); *Bush v. Vera*, 517 U.S. 952 (1996); *Shaw v. Hunt*, 517 U.S. 899 (1996); *United States v. Hays*, 515 U.S. 737 (1995); *Chisom v. Roemer*, 501 U.S. 380 (1991); *Thornburg v. Gingles*, 478 U.S. 30 (1986); *Beer v. United States*, 425 U.S. 130 (1976); and *White v. Regester*, 422 U.S. 935 (1975) (per curiam).

LDF was counsel of record and argued for Black voters in *Shelby County, Ala. v. Holder*,<sup>10</sup> the 2013 case in which the Supreme Court struck down a core provision of the Voting Rights Act. Since that decision, LDF has documented the proliferation of

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<sup>9</sup> *Smith v. Allwright*, 321 U.S. 649 (1944).

<sup>10</sup> *Shelby County, Alabama v. Holder*, 133 S. Ct. 2612 (2013).



voter suppression efforts aimed at Black and Latino voters around the country.<sup>11</sup> Currently, LDF is counsel of record in the challenge to Texas' voter identification law, which was struck down by the Fifth Circuit Court of Appeals in 2016.<sup>12</sup> LDF has also challenged Alabama's voter ID law. Under that new law, enforced after the Supreme Court's *Shelby* decision, LDF estimates that at least 250,000 Alabamans—the majority African American and Latino—lack the identification required to vote.<sup>13</sup>

## **B. LDF and Challenges to Segregation**

Both LDF and Thurgood Marshall are best known for successfully litigating the landmark case *Brown v. Board of Education*,<sup>14</sup> in which the Supreme Court struck down as unconstitutional racial segregation in public education. The *Brown* decision is widely recognized as laying the foundation for the end of legal apartheid in the United States. Under the leadership of Marshall, followed by Director-Counsel Jack Greenberg and subsequent Director-Counsels, LDF has systematically challenged the refusal of southern school districts to follow the mandate of *Brown* and desegregate their schools. Dozens of these cases were filed in the state of Alabama. The DOJ's Civil Rights Division has also litigated and intervened in desegregation cases in Alabama. Many of those cases are subject to ongoing consent decrees that obligate school districts to take steps to ameliorate segregation. Other desegregation cases are still being actively litigated, as Black parents and school children challenge new school practices that promote segregation. LDF and the Department of Justice represent Black parents and school children challenging segregation in scores of such cases.

## **C. The Civil Rights Moment in this Country**

Without question, this is a critical civil rights moment in our country. In the past year alone, three federal courts have struck down laws requiring onerous identification rules for voters.<sup>15</sup> Another federal court recently found that a city in Texas intentionally diluted the votes of Latinos.<sup>16</sup> The DOJ itself is a party in litigation challenging voter suppressions laws in North Carolina and Texas.

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<sup>11</sup> LDF, *Democracy Diminished: State and Local Threats to Voting Post-Shelby County, Alabama v. Holder*, <http://www.naacpldf.org/press-release/democracy-diminished-ldf-releases-report-state-and-local-threats-voting-rights>.

<sup>12</sup> *Veasey v. Abbott*, 830 F.3d 216, 264-65 (5th Cir. 2016) (en banc).

<sup>13</sup> LDF, *Democracy Diminished*, *supra* n.11 at 6.

<sup>14</sup> *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).

<sup>15</sup> *North Carolina State Conf. of the NAACP v. McCrory*, No. 16-1468, 2016 WL 4053033 (4th Cir. July 29, 2016); *Veasey v. Abbott*, 830 F.3d 216, 264-65 (5th Cir. 2016) (en banc); *One Wisconsin Institute, Inc. v. Thomsen*, No. 15-cv-324-jdp, 2016 WL 4059222 (W.D. Wis. July 29, 2016).

<sup>16</sup> MALDEF, *FEDERAL COURT RULES PASADENA, TEXAS VIOLATED VOTING RIGHTS ACT* (Jan. 6, 2016), [http://maldef.org/news/releases/2017\\_1\\_6\\_Federal\\_Court\\_Rules\\_Pasadena\\_TX\\_Violated\\_Voting\\_Rig](http://maldef.org/news/releases/2017_1_6_Federal_Court_Rules_Pasadena_TX_Violated_Voting_Rig)

The killing of unarmed African Americans by police officers and discriminatory practices in law enforcement have shaken this nation in cities and towns across the country. The Department of Justice has played a critically important role, using its power under 42 U.S.C. § 14141 to investigate a “pattern or practice” of discrimination in policing<sup>17</sup> to restore confidence in the rule of law. The Department of Justice report on law enforcement practices in Ferguson, Missouri, laid bare a system of criminal justice that preys on the poor and violates nearly every norm of legitimacy.<sup>18</sup> The City of Ferguson is now reforming its justice system pursuant to a consent decree negotiated between the DOJ and the city. Last summer, the DOJ released long-awaited findings about the Baltimore City Police Department,<sup>19</sup> a year after that city was rocked by unrest after the death of a young, unarmed Black man in police custody. The report set out a shocking pattern of conduct that reveals the rampant use of excessive force by city police and racial discrimination in policing. The Department is currently in negotiation with the City to reform police practices. The Department’s report on policing in Chicago is pending.

LDF has intimate knowledge of the concerns of African Americans in these communities. We filed requests with the DOJ on behalf of the residents in Ferguson and Baltimore, as well as in North Charleston, South Carolina and New York City, requesting DOJ investigations of police-involved killings of unarmed African Americans. We have assisted communities in holding community meetings and town halls to become educated about the process of “pattern or practice” investigations. We have seen first-hand the deep divisions in communities around the country, and the wavering confidence of average Americans in the effectiveness and legitimacy of our justice system.

This moment in our nation requires the leadership of an Attorney General whose dedication and commitment to justice and equality are unassailable. We need an Attorney General who can promote confidence in the legitimacy of our justice system for every American. The person confirmed as the nation’s chief law enforcement officer at this moment must demonstrate unequivocal commitment to the vigorous defense of our Constitution and our civil rights laws. The record amassed by Senator Jeff Sessions after decades in public life does not support that he can fulfill this important role.

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*hts Act/; Patino v. City of Pasadena*, No. 4:14-cv-03241 (S.D.T.X. Jan. 6, 2017) (Doc. 151), [http://www.maldef.org/assets/pdf/Patino\\_V\\_Pasadena\\_Memorandum\\_010617.pdf](http://www.maldef.org/assets/pdf/Patino_V_Pasadena_Memorandum_010617.pdf).

<sup>17</sup> <https://www.justice.gov/crt/law-enforcement-misconduct-statute-42-usc-14141>.

<sup>18</sup> CIVIL RIGHTS DIVISION, U.S. DEPARTMENT OF JUSTICE, INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 4 (March 4, 2015), [https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson\\_police\\_department\\_report.pdf](https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf).

<sup>19</sup> CIVIL RIGHTS DIVISION, U.S. DEPARTMENT OF JUSTICE, INVESTIGATION OF THE BALTIMORE CITY POLICE DEPARTMENT 7 (Aug. 10, 2016), <https://www.justice.gov/opa/file/883366/download>.



### III. SENATOR SESSIONS' RECORD ON CIVIL RIGHTS & RACIAL JUSTICE

An unrelenting hostility toward civil rights and racial justice has been the defining feature of Jeff Sessions' professional life. At each step of his legal and political career, and across a variety of issues—whether voting, criminal justice, diversity in higher education and employment, education equality, immigration, or LGBTQ rights—Sessions has stood opposite the civil rights community and the principles of fairness and equality.

At times, Sessions has claimed to be a supporter of civil rights. Indeed, portraying himself as a civil rights champion has been an explicit part of his strategy to be confirmed as Attorney General.<sup>20</sup> But the truth is that Sessions' record in Congress, prosecutorial history, and public statements reveal that Sessions is both extremely hostile to basic principles of equality and lacks any conception of modern civil rights norms and protections. Moreover, nothing in Sessions' record suggests that he understands how the vestiges of this country's long and sordid history of racism—from slavery to “separate but equal” to Jim Crow—impacts contemporary American life.

In Sessions' view, our nation's civil rights work is essentially complete. Yes, he has praised civil rights victories of the 1960s and the work of Dr. Martin Luther King.<sup>21</sup> But he has done so in service of delegitimizing contemporary civil rights work as unnecessary and out of bounds, even “un-American.”<sup>22</sup> Thirty years ago, Sessions told the Senate Judiciary Committee that “the fundamental legal barriers to minorities had been knocked down,” and civil rights advocates were therefore “asking for things beyond what they are justified in asking[.]”<sup>23</sup> In 2013, he said that “people aren't being denied the right to vote because of the color of their skin.”<sup>24</sup> He has also stated that it would “cheapen the civil rights movement” to

<sup>20</sup> See Sherrilyn Ifill, *How Democrats Must Fight the Confirmation of Jeff Sessions*, THE NEW REPUBLIC (DEC. 8, 2016), <https://newrepublic.com/article/139220/democrats-must-fight-confirmation-jeff-sessions>.

<sup>21</sup> Sharon LaFraniere & Matt Apuzzo, *Jeff Sessions, a Lifelong Outsider, Finds the Inside Track*, THE NEW YORK TIMES (Jan. 8, 2017), [http://www.nytimes.com/2017/01/08/us/politics/jeff-sessions-attorney-general.html?\\_r=0](http://www.nytimes.com/2017/01/08/us/politics/jeff-sessions-attorney-general.html?_r=0).

<sup>22</sup> See Philip Shenon, *Senator urges withdrawal of judicial nomination*, THE NEW YORK TIMES (March 20, 1986), <http://www.nytimes.com/1986/03/20/us/senator-urges-withdrawal-of-judicial-nomination.html>.

<sup>23</sup> *Nomination of Jefferson B. Sessions III to be U.S. District Judge for the Southern District of Alabama: Hearings before the S. Comm. on the Judiciary*, 99th Cong. at 48 (1986) (testimony of Jefferson B. Sessions).

<sup>24</sup> David Weigel, *Southern Republican Senators Happy That Supreme Court Designated Their States Not-Racist*, SLATE (June 25, 2013), [http://www.slate.com/blogs/weigel/2013/06/25/southern\\_republican\\_senators\\_happy\\_that\\_supreme\\_court\\_designated\\_their\\_states.html](http://www.slate.com/blogs/weigel/2013/06/25/southern_republican_senators_happy_that_supreme_court_designated_their_states.html).

protect hate crime victims targeted for their sexual orientation, gender identity, or disability.<sup>25</sup> Innumerable national tragedies and acts of intentional discrimination and other civil rights violations found by courts across the country, as well as the DOJ, have proved Sessions patently wrong in these assessments.

With his restrictive view of civil rights, it is unsurprising that Sessions has consistently criticized the work of civil rights organizations and the lawyers who work for them—especially when they appear before the Judiciary Committee as nominees for judgeships or other government positions.<sup>26</sup> Throughout his Senate career, Sessions has exhibited a reflexive assumption that civil rights experience renders one unfit for government service, often referring pejoratively to nominees with the “ACLU gene” or the “ACLU chromosome.”<sup>27</sup> Conversely, he supported William Pryor’s nomination to the Eleventh Circuit Court of Appeals after Pryor called the landmark *Miranda v. Arizona* decision one of “the worst examples of judicial activism.”<sup>28</sup> That sort of animosity toward civil rights and the role of civil rights lawyers in preserving the rule of law in our democracy is disqualifying for the position of Attorney General.

As Sessions has opposed the judicial nominations of civil rights lawyers, he has also inhibited diversity on the federal bench in Alabama. Senators play a leading role in appointing federal judges to judicial vacancies in their home states, including the initial selection and vetting of candidates, signing off on nominations, and moving nominees through the confirmation process. In Sessions’ twenty-year Senate career, only one African American has been confirmed to a federal judgeship in Alabama.<sup>29</sup>

In fact, Sessions has affirmatively stood in the way of desegregating the Southern District of Alabama and placing Alabama’s first African-American judge on the Eleventh Circuit Court of Appeals. Sessions kept a Southern District trial court vacancy open for President Clinton’s entire second term rather than agree to one of

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<sup>25</sup> *Sessions Expresses Concern About the Hate Crimes Act* (July 20, 2009), <http://www.sessions.senate.gov/public/index.cfm/2009/7/sessions-expresses-concern-about-the-hate-crimes-act>.

<sup>26</sup> See Kyle Barry, *Sessions Unchanged*, MEDIUM (Dec. 21, 2016), [https://medium.com/@NAACP\\_LDF/sessions-unchanged-the-same-hostility-toward-civil-rights-advocacy-that-cost-jeff-sessions-a-148e60821a15#.f3bs1svxn](https://medium.com/@NAACP_LDF/sessions-unchanged-the-same-hostility-toward-civil-rights-advocacy-that-cost-jeff-sessions-a-148e60821a15#.f3bs1svxn).

<sup>27</sup> See *id.*; see also Kyle Barry, ‘A deficit in our courts’: Senator Jeff Sessions and the Lack of Judicial Professional Diversity, THE HUFFINGTON POST (July 28, 2015), [http://www.huffingtonpost.com/nanaron/a-deficit-in-our-courts-s\\_b\\_7886746.html](http://www.huffingtonpost.com/nanaron/a-deficit-in-our-courts-s_b_7886746.html).

<sup>28</sup> ALLIANCE FOR JUSTICE, THE JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT (Feb. 20, 2014), <http://www.afj.org/wp-content/uploads/2014/02/Eleventh-Circuit-Judges-Report.pdf>; see also *Executive Business Meeting of the S. Comm. on the Judiciary* (May 12, 2005) (Statement of Sen. Jeff Sessions, Member, S. Comm. on the Judiciary).

<sup>29</sup> Letter from Alabama State Senator Hank Sanders to Senators Charles Grassley and Dianne Feinstein (Jan. 6, 2017), <http://www.naacpldf.org/files/about-us/Hank%20Sanders%20Ltr%20in%20oppositon%20to%20Jeff%20Sessions%20as%20US%20AG.pdf>.

five qualified African-American candidates recommended for the position.<sup>30</sup> To this day that court has never had a Black district judge. Last year, President Obama nominated Judge Abdul Kallon to an Alabama seat on the Eleventh Circuit Court of Appeals, but Sessions used his prerogative as home-state Senator to block Judge Kallon's confirmation. Judge Kallon, who was unanimously confirmed to a trial court seat and would have been the first African-American Alabaman ever to serve on the Eleventh Circuit, never even received a confirmation hearing.<sup>31</sup>

Sessions' opposition to civil rights and equal justice is also reflected in his substantive record on key areas of racial justice and DOJ enforcement; that record is detailed below.

### **A. Voting Rights**

The next Attorney General will oversee the Voting Section of the Civil Rights Division at a pivotal time for voting rights in America. With a weakened Voting Rights Act and a sustained onslaught of threats to the franchise across the country, the Attorney General must aggressively enforce federal voting protections.

The 2016 presidential election was the first held in over 50 years without the full protections of the Voting Rights Act. In the 2013 *Shelby County* decision,<sup>32</sup> the Supreme Court effectively suspended Section 5 of the Act, which had required certain jurisdictions with a history of chronic, entrenched racial discrimination in voting to preclear all proposed voting changes with the DOJ or a federal court *before* implementation. This "preclearance" process ensured that any discriminatory harm would not take root. Section 5 blocked thousands of voting changes at the state and local level, protecting millions of Black, Latino, Native American, Asian, and other minority voters.

In the wake of *Shelby County*, many states and local jurisdictions, including some formerly covered by Section 5, swiftly enacted measures that operated to suppress the voting strength of African American voters. Indeed, at the time of the 2016 presidential election, 14 states had new voting restrictions in place for the first time.<sup>33</sup> LDF chronicled the threats to equal electoral participation posed without Section 5 protection in our publication *Democracy Diminished: State and Local*

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<sup>30</sup> John Archibald, *Did Jeff Sessions block integration of south Alabama federal courts?*, AL.COM (Jan. 6, 2017), [http://www.al.com/opinion/index.ssf/2017/01/did\\_jeff\\_sessions\\_block\\_integr.html](http://www.al.com/opinion/index.ssf/2017/01/did_jeff_sessions_block_integr.html).

<sup>31</sup> Kent Faulk, *Obama nominates judge Abdul Kallon for the 11th Circuit Court of Appeals*, AL.COM (Feb. 11, 2016), [http://www.al.com/news/birmingham/index.ssf/2016/02/obama\\_nominates\\_judge\\_abdul\\_ka.html](http://www.al.com/news/birmingham/index.ssf/2016/02/obama_nominates_judge_abdul_ka.html).

<sup>32</sup> *Shelby County, Alabama v. Holder*, 133 S. Ct. 2612 (2013).

<sup>33</sup> See Ari Berman, *The GOP's Attack on Voting Rights Was the Most Under-Covered Story of 2016*, THE NATION (Nov. 9, 2016), <https://www.thenation.com/article/the-gops-attack-on-voting-rights-was-the-most-under-covered-story-of-2016/?print=1>.

*Threats to Voting Post-Shelby County, Alabama v. Holder*, and continues to track emerging threats and voting rights violations.<sup>34</sup>

These attacks on voting rights underscore the need for an Attorney General who will vigorously enforce federal voter protections on behalf of all Americans, especially those, like African Americans and other people of color, who have historically struggled to obtain equal voting rights and face a disproportionate threat to the equal exercise of that fundamental right. Yet far from being a voting rights advocate, Sessions remains an ardent opponent of efforts to protect and expand ballot access. Despite overwhelming evidence to the contrary—including the detailed findings of the DOJ<sup>35</sup> and federal courts across the country<sup>36</sup>—Sessions denies that race discrimination in voting exists.<sup>37</sup> He has also perpetuated the myth that voter fraud is a pervasive problem that justifies barriers to voting,<sup>38</sup> and has supported President-elect Trump’s claims of a “rigged” election, which has been used to justify voter suppression tactics.<sup>39</sup>

Such positions are consistent with the hostility to voting rights that Sessions has shown throughout his career. As Senator, he celebrated the Supreme Court’s *Shelby*

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<sup>34</sup> See LDF, *Democracy Diminished: State and Local Threats to Voting Post-Shelby County, Alabama v. Holder*, <http://www.naacpldf.org/press-release/democracy-diminished-ldf-releases-report-state-and-local-threats-voting-rights>.

<sup>35</sup> U.S. Department of Justice, *Section 5 Objection Letters*, <https://www.justice.gov/crt/section-5-objection-letters> (last visited Jan. 9, 2017).

<sup>36</sup> *N.C. State Conf. of NAACP v. McCrory*, 831 F.3d 204, 219-20 (4th Cir. 2016) (state legislature acted with intentional discrimination in passing restrictions on voter ID, registration, and early voting); *One Wisconsin Inst., Inc. v. Thomsen*, No. 15-CV-324-JDP, 2016 WL 4059222 (W.D. Wis. July 29, 2016) (state legislature’s reduction in early voting was motivated by intentional discrimination against black voters); *Allen v. City of Evergreen, Ala.*, No. CIV.A. 13-107-CG-M, 2013 WL 1163886, at \*1 (S.D. Ala. Mar. 20, 2013) (plaintiffs presented undisputed evidence of intentional racial discrimination); *United States v. McGregor*, 824 F. Supp. 2d 1339, 1345 (M.D. Ala. 2011) (finding that “while racist sentiments may have been relegated to private discourse . . . , it is still clear that such sentiments remain regrettably entrenched in the high echelons of state government”).

<sup>37</sup> David Weigel, *Southern Republican Senators Happy That Supreme Court Designated Their States Not-Racist*, SLATE (June 25, 2013), [http://www.slate.com/blogs/weigel/2013/06/25/southern\\_republican\\_senators\\_happy\\_that\\_supreme\\_court\\_designated\\_their\\_states.html](http://www.slate.com/blogs/weigel/2013/06/25/southern_republican_senators_happy_that_supreme_court_designated_their_states.html). See also

<sup>38</sup> Tierney Sneed, *Why Jeff Sessions as Attorney General Horrifies Voting Rights Advocates*, TALKING POINTS MEMO (Nov. 18, 2016), <http://talkingpointsmemo.com/dc/why-trump-s-choice-of-jeff-sessions-as-ag-is-alarmed-voting-rights-advocates>. The myth of voter fraud has been documented in several recent court decisions. See *Veasey v. Abbott*, 830 F.3d 216, 227 n.8 (5th Cir. 2016) (en banc) (“Ballot integrity is undoubtedly a worthy goal. But the evidence before the Legislature was that in-person voting, the only concern addressed by SB 14, yielded only two convictions for in-person voter impersonation fraud out of 20 million votes cast in the decade leading up to SB 14’s passage”); *N.C. NAACP v. McCrory*, 831 F.3d 204, 235 (4th Cir. 2016) (“the State has failed to identify even a single individual who has ever been charged with committing in-person voter fraud in North Carolina.”).

<sup>39</sup> Rebecca Morin, *Trump, Sessions Draw Heat for “Rigged” Election Claim*, POLITICO (Oct. 15, 2016), <http://www.politico.com/story/2016/10/republicans-react-to-trumps-rigged-election-229845>.

*County* decision—calling it “good news . . . for the South”<sup>40</sup>—and has opposed legislative efforts to restore the full protections of the Voting Rights Act. As Alabama’s Attorney General, Sessions opposed efforts to ensure that Black voters could select the candidates of their choice in judicial elections. And as a federal prosecutor, Sessions tried to criminalize the lawful work of Black civil rights advocates who assisted African-American voters—many of them elderly and uneducated—to cast absentee ballots in rural Alabama.

*i. The Perry County and “Black Belt” Voting Prosecutions*

From Sessions’ time as a federal prosecutor, two events in particular warrant further discussion: (1) Sessions’ selective prosecution of Black civil rights activists for legitimate voter assistance; and (2) the impact that failed prosecution has had on the political participation of racial minorities.

Sessions’ failed prosecution of three voting rights activists from Marion in Perry County, Alabama (the “Marion Three”) has been well-documented. Indeed, the matter was exhaustively covered during Sessions’ failed confirmation hearing before the Senate Judiciary Committee in 1986. Now, as then, Sessions’ decision to pursue that prosecution—to use federal law and the resources of the federal government to *prevent* African Americans from voting—disqualifies him from Senate confirmation.

The three defendants—Albert Turner, Evelyn Turner, and Spencer Hogue—were active in the Perry County Civic League, an organization they formed to help Blacks obtain and exercise the right to vote. Albert Turner and Hogue, whom LDF defended during the prosecution, were officers of the Civic League. Turner also was an aide to Dr. Martin Luther King, and led the wagon that carried Dr. King’s body at his funeral. In 1965, Turner was one of the architects of the march from Selma to Montgomery that led to the passage of the Voting Rights Act.

Through their work with the Civic League, the defendants provided essential assistance to Black voters who required help casting a ballot—particularly elderly voters, voters who were uneducated or illiterate, and voters who worked out of town and could not get to the polls on election day. In some cases, when requested, the defendants filled out absentee ballots on voters’ behalf. Sessions indicted the Marion Three on the specious theory that such assistance is a crime, when, as both the Magistrate Judge and the District Court Judge in the case recognized, such assistance is permitted and protected by the Voting Rights Act and the U.S. Constitution.

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<sup>40</sup> Marcia Coyle, *The Quotable Jeff Sessions: Supreme Court Edition*, THE NATIONAL LAW JOURNAL (Nov. 18, 2016), <http://www.nationallawjournal.com/home/id=1202772765872/The-Quotable-Jeff-Sessions-Supreme-Court-Edition?mcode=1202615432600&curindex=2&slreturn=20170006120012>.



Worse, while Sessions attempted to criminalize the protected voting activity of Black citizens, he declined to investigate specific allegations of unlawful electoral conduct, including irregularities in absentee voting, committed by and on behalf of white Perry County candidates.<sup>41</sup> Based on this disparity, the defendants filed a lengthy (and rare) motion to dismiss for selective prosecution, and successfully met the high evidentiary burden to receive a full hearing on the motion. In allowing a hearing, the Magistrate Judge found, first, that the defendants had produced credible evidence that, in bringing the indictment, Sessions’ office “was activated by constitutionally impermissible motives such as racial . . . discrimination.”<sup>42</sup> With respect to allegations against whites that Sessions and federal prosecutors ignored, the Magistrate Judge found “credible evidence . . . 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.”<sup>43</sup>

During the trial, many of the prosecution’s own witnesses—the voters allegedly defrauded by the defendants—refused to provide inculpatory testimony, and the trial judge dismissed more than half of the counts in the indictment as lacking any evidentiary support. In less than four hours of deliberation, a jury of seven Blacks and five whites acquitted the defendants of all remaining charges.

In this case, a trial judge and twelve jurors were able to halt Sessions’ abuse of prosecutorial discretion, and spared the defendants from the possibility of more than 100 years in prison. But the harmful effects of the prosecution extended beyond the three individuals on trial. As Lani Guinier, one of Spencer Hogue’s LDF defense lawyers, reported to the Senate Judiciary Committee in 1986, “[t]he awful legacy of this ill-conceived prosecution is its frightening effect primarily on elderly black voters, many of whom left the witness stand saying, ‘This is just too much. I won’t ever vote again.’”<sup>44</sup> Moreover, the “targeting of the investigation only against black civil rights workers showed insensitivity to the role they were playing” to

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<sup>41</sup> *Nomination of Jefferson B. Sessions III to be U.S. District Judge for the Southern District of Alabama: Hearings before the S. Comm. on the Judiciary*, 99th Cong. at 196-203 (1986) (statement of James Liebman, Assistant Professor of Law, Columbia University School of Law); Letter from Senator Hank Sanders, *supra* n.2929, <http://www.naacpldf.org/files/about-us/Hank%20Sanders%20Ltr%20in%20oppositon%20to%20Jeff%20Sessions%20as%20US%20AG.pdf>.

<sup>42</sup> Statement of Prof. James Liebman, *supra* n.41 at 198-99.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 186 (statement of Lani Guinier, Esquire, NAACP Legal Defense Fund).



expand the franchise in the Black community, and had a “chilling effect” on the willingness of Blacks to vote and to organize other African-American voters.<sup>45</sup>

More broadly, the Marion Three prosecution was not an isolated incident, but rather was part of a systemic effort to curtail Black political participation in Alabama. After the Perry County acquittals, Sessions was named in a class action alleging that the Department of Justice, including the U.S. Attorneys in each of Alabama’s three federal districts, had a discriminatory policy of targeting African-American voters and civil rights leaders for prosecution.<sup>46</sup> The suit alleged that the DOJ focused its voting prosecutions against political leaders and activists in Alabama’s western “Black Belt” counties where Blacks had made historic electoral gains.<sup>47</sup> In these areas, because of the protections of the Voting Rights Act and the work of organizers like Albert Turner and Spencer Hogue, Black voter turnout increased by tens of thousands between 1965 and the 1980s, enabling Blacks to attain a political foothold where historically only whites had held elected office.<sup>48</sup> DOJ responded with aggressive investigations and unfounded prosecutions against African Americans, while ignoring specific allegations of voter fraud and other unlawful conduct committed by whites.<sup>49</sup>

In one of the prosecutions that led to the lawsuit, LDF defended civil rights activist Spiver Whitney Gordon against a mail fraud charge in the Northern District of Alabama. On appeal, the Eleventh Circuit found that Gordon had established a *prima facie* case of selective prosecutions against Black activists based in part on evidence of discriminatory intent—to wit, a DOJ spokesperson’s alleged statement that the prosecutions were part of a policy “brought on by the arrogance on the part of blacks in these counties.”<sup>50</sup> The class action settled when the defendants agreed to terminate further prosecutions against Black Belt political leaders.<sup>51</sup>

Were Sessions to wield his power as Attorney General like he did as U.S. Attorney for the Southern District of Alabama, the chilling effect on Black voters and voting rights advocates would be magnified on a nationwide scale. This is no idle concern. With a President-elect who has claimed, without any supporting evidence, that he

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<sup>45</sup> *Id.* at 185; see also LANI GUINIER, *LIFT EVERY VOICE*, 183-219 (1995) (attached as APPENDIX B); Letter and Statement from Coretta Scott King to Sen. Strom Thurmond re: Nomination of Jefferson B. Sessions (March 19, 2017) (attached as APPENDIX C).

<sup>46</sup> See *Smith v. Meese*, 821 F.2d 1484 (11th Cir. 1987).

<sup>47</sup> In particular, Greene, Lowndes, Perry, Sumter, and Wilcox counties.

<sup>48</sup> *Civil Rights Implications of Federal Voting Fraud Prosecutions: Hearing Before the Subcomm. on Civil and Constitutional Rights of the H. Comm. on the Judiciary*, 99th Cong. at 13 (1985) (statement of Rep. John Conyers), <https://babel.hathitrust.org/cgi/pt?id=pst.000011973607;view=1up;seq=17>.

<sup>49</sup> *Smith v. Meese*, 617 F. Supp. 658 (M.D. Ala. 1985).

<sup>50</sup> *United States v. Gordon*, 817 F.2d 1538, 1540 (11th Cir. 1987).

<sup>51</sup> See THE AMERICAN CIVIL LIBERTIES UNION, *THE CASE FOR EXTENDING AND AMENDING THE VOTING RIGHTS ACT*, 40-45 (March 2006), [https://www.aclu.org/files/votingrights/2005\\_report.pdf](https://www.aclu.org/files/votingrights/2005_report.pdf).

lost *millions* of votes because of voter fraud, we need an independent Attorney General who will defend voting rights and the rule of law. Instead, Sessions, who has already recklessly rubber-stamped the President-elect's unfounded allegations, also shares with the President-elect a history of intimidating voters and selectively exaggerating claims of voter fraud.

ii. *Opposition to Equal Voting Rights as Alabama Attorney General (1995-1997)*

Undeterred by his failed prosecution of the Marion Three or the failed judicial nomination that it led to, Sessions continued to stymie the voting power of Black Alabamans as the state's Attorney General. In three years as Alabama's top law enforcement official, Sessions opposed two suits brought by Black voters under the Voting Rights Act that challenged Alabama's electoral system for selecting state court judges.<sup>52</sup> In one of those cases, he successfully challenged a settlement that voters and the State had reached before Sessions was elected attorney general, undoing a consent decree designed to ensure diversity on Alabama's appellate courts and protect Black voters' ability to elect the judicial candidates of their choice.<sup>53</sup>

In 1994, in *White v. Alabama*, a class of Black voters argued that the at-large election scheme Alabama used to elect appellate court judges diluted the voting strength of African Americans in violation of the Voting Rights Act. Alabama's then-attorney general quickly settled the case, and both DOJ and federal District Court Judge Myron Thompson approved the settlement. The settlement allowed Alabama to retain its at-large system of electing appellate court judges, but called for additional judgeships and the creation of a judicial nominating commission tasked with selecting diverse candidates for the new judicial vacancies.<sup>54</sup>

The claim made in *White* is the sort of vote dilution claim—where minority voters seek equal voting strength by challenging at-large elections in favor of single-member districts—about which Sessions expressed skepticism during his previous confirmation hearing. At that time, he conceded that he “questioned a number of the [civil rights division] lawyers who would come down and seek my signature on the documents to file [vote dilution cases], and the wisdom of it. . . . It is a serious thing,” he said, “for the Federal Government to come in and to sue a county and say

<sup>52</sup> *SCLC v. Sessions*, 56 F.3d 1281 (11th Cir. 1995); *White v. Alabama*, 74 F.3d 1058 (11th Cir. 1996).

<sup>53</sup> *White*, 74 F.3d 1058; see also Stan Bailey, *Black judges case goes to federal court GOP will have chance to oppose plans for appeals appointments*, BIRMINGHAM NEWS (July 29, 1994).

<sup>54</sup> See *White*, 74 F.3d at 1063-67.

we are going to change the form of government that you have been living with for 20 years.”<sup>55</sup>

Once Sessions took office as Alabama’s Attorney General, he challenged the *White* settlement on appeal and convinced the Eleventh Circuit to reject Judge Thompson’s detailed findings and invalidate the consent decree.<sup>56</sup> In large part due to Sessions reversing the state’s position and the Circuit’s decision, there have been no African-American judges on either the Alabama Supreme Court or the state’s two lower appellate courts since 2001, and no African-American has won election to any of these three courts in 21 years.<sup>57</sup>

*iii. Senator Sessions’ Opposition to Equal Voting Rights (1998-2016)*

Sessions’ Senate record on voting rights is no better. It is true that he voted to reauthorize the Voting Rights Act in 2006—every senator did, it passed 98-0. But he also referred to the landmark civil rights law as “intrusive,”<sup>58</sup> and questioned whether the law was constitutional. In a floor speech, he stated his belief that “extending [S]ection 5’s preclearance requirement for another 25 years . . . does little to acknowledge the tremendous progress made over the past 40 years in Alabama and other covered jurisdictions,” and expressed “concern[] that reauthorizing [S]ection 5’s preclearance requirement for 25 years . . . will not pass constitutional muster in the litigation that is certain to follow its enactment.”<sup>59</sup> Sessions also joined other Judiciary Committee Republicans in filing a Committee Report that undermined the law’s constitutionality, setting the stage for the Supreme Court’s *Shelby County* decision suspending Section 5 preclearance seven years later.<sup>60</sup>

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<sup>55</sup> *Nomination of Jefferson B. Sessions III to be U.S. District Judge for the Southern District of Alabama: Hearings before the S. Comm. on the Judiciary*, 99th Cong. at 31 (1986) (testimony of Jefferson B. Sessions).

<sup>56</sup> *White v. Alabama*, 74 F.3d 1058 (11th Cir. 1996); see also Stan Bailey, *Race focus means judicial plan should be junked*, *Sessions says*, BIRMINGHAM NEWS (Nov. 1, 1995).

<sup>57</sup> See Samantha Cowan, *The Problem with Having All-White State Supreme Courts*, TakePart (Sept. 16, 2016), <http://www.takepart.com/article/2016/09/16/alabama-judges>; *Alabama State Conference of the NAACP, et. al. v. Alabama*, 2:16-cv-731 (M.D. Ala. 2016) (Compl.), <https://lawyerscommittee.org/wp-content/uploads/2016/09/NAACP-v.-ALABAMA.pdf>.

<sup>58</sup> *Nomination of Jefferson B. Sessions III to be U.S. District Judge for the Southern District of Alabama: Hearings before the S. Comm. on the Judiciary*, 99th Cong. at 80 (1986) (testimony of Jefferson B. Sessions).

<sup>59</sup> Jeff Sessions U.S. Senator for Ala., *Voting Rights Act* (Sessions Floor Statements) (July 20, 2006), <http://www.sessions.senate.gov/public/index.cfm/floor-statements?ID=d59ca513-7e9c-9af9-7606-a9d4fc36da64>.

<sup>60</sup> See Nathaniel Persily, *The Promise and Pitfalls of the New Voting Rights Act*, 117 YALE L.J. 174, 185-91 (2007); Rick Hasen, *My One Personal Interaction with Sen. Sessions Does Not Give Me Confidence About Strong Voting Rights Enforcement with Him as AG*, ELECTION LAW BLOG (Nov. 18, 2016), <http://electionlawblog.org/?p=89363>.

After the Court decided *Shelby County*, halting the preclearance requirement for jurisdictions with a history of racial discrimination in voting, Sessions praised the ruling and declared, “now if you go to Alabama, Georgia, North Carolina, people aren’t being denied the vote because of the color of their skin.”<sup>61</sup> But, after that ruling, each of those states imposed voting restrictions—including strict voter ID laws—that disproportionately burdened people of color.<sup>62</sup>

Indeed, just one day after the *Shelby County* decision, Alabama announced that it would enforce its voter photo ID law for the 2014 election cycle—a law that Alabama had not before implemented because of Section 5. Two months later, North Carolina enacted an omnibus anti-voter law that included a strict photo ID requirement, along with the elimination of same-day voter registration and cuts to early voting. The Fourth Circuit Court of Appeals found that North Carolina passed its law with the purpose of discriminating against Black voters, and that “the new provisions target African Americans with almost surgical precision,” and “constitute inapt remedies for the problems assertedly justifying them and, in fact, impose cures for problems that did not exist.”<sup>63</sup> In Georgia, state lawmakers proposed cuts to early voting, with one legislator saying that he opposed new Sunday voting hours, popular among African Americans, because he “prefer[s] more educated voters than a greater increase in the number of voters.”<sup>64</sup>

Sessions has also voted to limit equal exercise of the franchise in other areas. In 2007, he voted in support of an amendment to require photo ID in federal elections, which, like state voter ID laws, would have disproportionately disenfranchised eligible voters of color.<sup>65</sup> In 2013, Sessions co-sponsored legislation to amend the National Voter Registration Act to permit states to require documentary proof of citizenship for registration to vote in federal elections.<sup>66</sup> Such requirements make it

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<sup>61</sup> David Weigel, *Southern Republican Senators Happy That Supreme Court Designated Their States Not-Racist*, SLATE (June 25, 2013), [http://www.slate.com/blogs/weigel/2013/06/25/southern\\_republican\\_senators\\_happy\\_that\\_supreme\\_court\\_designated\\_their\\_states.html](http://www.slate.com/blogs/weigel/2013/06/25/southern_republican_senators_happy_that_supreme_court_designated_their_states.html).

<sup>62</sup> See LDF, *Democracy Diminished: State and Local Threats to Voting Post-Shelby County*, *Alabama v. Holder*, <http://www.naacpldf.org/press-release/democracy-diminished-ldf-releases-report-state-and-local-threats-voting-rights>.

<sup>63</sup> *North Carolina State Conference of the NAACP v. McCrory*, 831 F.3d 204, 214 (4th Cir. 2016).

<sup>64</sup> Zachary Roth, *GOPer opposes early voting because it will boost black turnout*, MSNBC (Sept. 10, 2014), <http://www.msnbc.com/msnbc/goper-fran-millar-opposes-early-voting-because-it-will-boost-black-turnout>; see also LDF, *Democracy Diminished*, *supra* n.34, 16-20 (detailing various local-level voting restrictions enacted across Georgia after *Shelby County*), <http://www.naacpldf.org/press-release/democracy-diminished-ldf-releases-report-state-and-local-threats-voting-rights>.

<sup>65</sup> S. Amdt. 2350, 110th Cong. to S. Amdt. 2327, 110th Cong. (2007), <https://www.congress.gov/amendment/110th-congress/senate-amendment/2350/actions>.

<sup>66</sup> S. 1336, 113th Cong. (2013), <https://www.congress.gov/bill/113th-congress/senate-bill/1336/cosponsors>.

harder for eligible voters to register, and, like photo ID laws, disproportionately burden people of color and the poor.<sup>67</sup> Yet, as the D.C. Circuit Court of Appeals found in 2016, there is “little evidence of fraudulent registration by non-citizens.”<sup>68</sup> Sessions’ ongoing opposition to restoring key provisions of the Voting Rights Act, along with his recent efforts to limit voting rights by imposing new barriers to participation that would keep millions of Americans from the polls, are a clear signal that, as Attorney General, Sessions would not protect one the fundamental pillars of our democracy—the equal right to vote for all Americans.

Indeed, what the Judiciary Committee learned in 1986 about Senator Sessions’ voting rights record has been reaffirmed, time and again, over the last 30 years. Rather than use his positions of power to expand access to voting and protect the hard-fought voting rights of African Americans, Sessions has done the opposite. No federal prosecutor who has used the law to punish and intimidate Black voters and civil rights workers should be promoted to the top law enforcement position in the United States. That is especially true of someone, like Sessions, who has spent the years since advocating for further voting restrictions that serve to disenfranchise African Americans.

## **B. Criminal Justice & Policing**

Sessions’ thirteen-year record as United States Attorney, the Alabama Attorney General, and United States Senator reveals a consistent and entrenched hostility towards equity in crime and punishment policy. In particular, Sessions has proven himself an opponent of equal justice and due process rights, especially in relation to Blacks and Latinos. Many of his policy positions on criminal justice are refuted by data and evidence on effective crime policy. He has opposed his own party’s efforts on criminal justice reform, is a fierce supporter of now-discredited mandatory minimum sentencing policies, and still believes that mass incarceration is the solution to crime. Despite the national policing crisis and a spate of Black Americans who have died at the hands of excessively aggressive law enforcement personnel, Sessions has also demonstrated substantial hostility towards policing reform and the protection of Black lives. His record on the criminal justice system and protecting the lives and liberties of people of color in that system is cause for grave concern.

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<sup>67</sup> See Adam Liptak, *Justices Block Law Requiring Voters to Prove Citizenship*, THE NEW YORK TIMES (June 17, 2013), <http://www.nytimes.com/2013/06/18/us/justices-reject-arizona-voting-law-requiring-proof-of-citizenship.html>; Spencer S. Hsu, *Appeals court strikes down proof-of-citizenship voting requirement in 3 states*, THE WASHINGTON POST (Sept. 9, 2016), [https://www.washingtonpost.com/local/public-safety/us-appeals-court-orders-removal-of-proof-of-citizenship-voting-requirement-in-3-states/2016/09/09/bc8b0314-76f1-11e6-b786-19d0cb1ed06c\\_story.html?utm\\_term=.203cc089d044](https://www.washingtonpost.com/local/public-safety/us-appeals-court-orders-removal-of-proof-of-citizenship-voting-requirement-in-3-states/2016/09/09/bc8b0314-76f1-11e6-b786-19d0cb1ed06c_story.html?utm_term=.203cc089d044).

<sup>68</sup> *League of Women Voters v. Newby*, 838 F.3d 1, 13-14 (D.C. Cir. 2016).



*i. Sentencing*

The United States imprisons more of its citizens than any other country by far: we incarcerate five times as many people as most countries in the world<sup>69</sup> and house a quarter of the world's prison population.<sup>70</sup> The impact of this mass incarceration on communities of color is staggering. Despite making up just 40 percent of America's population, people of color comprise more than 60 percent of its prisoners.<sup>71</sup> The racial disparities are especially stark for African Americans and Latinos: 40 percent of America's prisoners are Black, while African Americans make up just 13 percent of the U.S. population.<sup>72</sup> Among Black males born in 2001, one in three will go to prison at some point in their lifetimes, while one in six Latino males will be incarcerated.<sup>73</sup> Despite these sobering numbers, Sessions thinks we do not lock up enough of our citizens. He believes—falsely—that prison population is an indicator of effective crime policy.

In his 2015 column, “The Incredible Shrinking Prison Population,” Sessions cherry picks statistical data from the FBI's Uniform Crime Reporting Program to falsely claim that the United States is suffering from a precipitous increase in crime caused by a shrinking prison population.<sup>74</sup> Yet it is uncontroverted that crime rates have fallen steeply over the past decade despite no significant change in the national prison population.<sup>75</sup> A closer look at the same data proves this. Sessions compared

<sup>69</sup> Peter Wagner & Alison Walsh, *STATES OF INCARCERATION: THE GLOBAL CONTEXT*, PRISON POLICY INITIATIVE (June 16, 2016), <https://www.prisonpolicy.org/global/2016.html>.

<sup>70</sup> Michelle Ye Hee Lee, *Yes, U.S. locks people up at a higher rate than any other country*, WASHINGTON POST (July 7, 2016), [https://www.washingtonpost.com/news/fact-checker/wp/2015/07/07/yes-u-s-locks-people-up-at-a-higher-rate-than-any-other-country/?utm\\_term=.19464104bade](https://www.washingtonpost.com/news/fact-checker/wp/2015/07/07/yes-u-s-locks-people-up-at-a-higher-rate-than-any-other-country/?utm_term=.19464104bade).

<sup>71</sup> THE SENTENCING PROJECT, FACT SHEET: TRENDS IN U.S. CORRECTIONS (Jan. 2016), <http://sentencingproject.org/wp-content/uploads/2016/01/Trends-in-US-Corrections.pdf>; PRISON POLICY INITIATIVE, UNITED STATES INCARCERATION RATES BY RACE/ETHNICITY (2010), <https://www.prisonpolicy.org/profiles/US.html#disparities>.

<sup>72</sup> *See id.*

<sup>73</sup> Christopher Hartney & Linh Vuong, *CREATED EQUAL, RACIAL AND ETHNIC DISPARITIES IN THE U.S. CRIMINAL JUSTICE SYSTEM*, NATIONAL COUNCIL ON CRIME AND DELINQUENCY (March 2009), [http://www.nccdglobal.org/sites/default/files/publication\\_pdf/created-equal.pdf](http://www.nccdglobal.org/sites/default/files/publication_pdf/created-equal.pdf).

<sup>74</sup> Jeff Sessions, *The Incredible Shrinking Prison Population*, MEDIUM (Feb. 9, 2016), <https://medium.com/@SenatorSessions/the-current-sentencing-reform-and-corrections-act-is-dangerous-for-america-aa31e8c75083#.gbmp19gdg>.

<sup>75</sup> *See* FEDERAL BUREAU OF INVESTIGATION, *CRIME IN THE UNITED STATES BY VOLUME AND RATE PER 100,000 INHABITANTS, 1996-2015*, [https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/tables/table-1/table\\_1\\_crime\\_in\\_the\\_united\\_states\\_by\\_volume\\_and\\_rate\\_per\\_100000\\_inhabitants\\_1996-2015.xls](https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/tables/table-1/table_1_crime_in_the_united_states_by_volume_and_rate_per_100000_inhabitants_1996-2015.xls) (last visited Jan 9, 2017); *see also* Mark Holden & Ronal Serpas, *Don't buy the hype: The U.S. is not experiencing a terrible new crime wave*, WASHINGTON POST (Aug. 11, 2016), [https://www.washingtonpost.com/opinions/dont-buy-the-hype-the-us-is-not-experiencing-a-terrible-new-crime-wave/2016/08/11/940cda08-5e5e-11e6-9d2f-b1a3564181a1\\_story.html?utm\\_term=.7e4baa03cd39](https://www.washingtonpost.com/opinions/dont-buy-the-hype-the-us-is-not-experiencing-a-terrible-new-crime-wave/2016/08/11/940cda08-5e5e-11e6-9d2f-b1a3564181a1_story.html?utm_term=.7e4baa03cd39).



only the first half of 2015 to the same time period in 2014 to conclude that 2015 saw “an overall rise in violent crime” correlated to a decline in federal and state prison populations.<sup>76</sup> But that narrow focus obscures a longer trend of decreasing violent crime—specifically, a drop of 0.7 percent below the 2011 level and 16.5 percent below the 2006 levels.<sup>77</sup> Over this same time period, the total number of people incarcerated in federal and state prisons has remained relatively constant,<sup>78</sup> and in fact the annual rate of prison population growth has shrunk.<sup>79</sup>

In the Senate, Sessions most recently worked against members of both parties to obstruct commonsense, bipartisan reform to federal sentencing. The Sentencing Reform and Corrections Act (“SRCA”) is a bipartisan proposal that was introduced in 2015 and reforms federal sentencing rules and mandatory minimum sentences.<sup>80</sup> SRCA is co-sponsored by senior Republican lawmakers and closely tracks the recommendations made by the bipartisan U.S. Sentencing Commission, which found that federal mandatory minimum laws are overly broad, excessively severe, and discriminatory in application to Blacks and Latinos.<sup>81</sup>

Despite strong bipartisan support, Sessions and a small group of lawmakers on the extreme right have led efforts to defeat the SRCA.<sup>82</sup> Sessions’ opposition to data-driven sentencing reform is at odds with a broad cross-section of law enforcement and sentencing experts who agree that mandatory minimums sentences are ineffective at reducing crime and have greatly contributed to mass incarceration.<sup>83</sup>

Sessions’ opposition to the SRCA is consistent with his abysmal record on criminal justice. Sessions is a long-time champion of extreme sentencing laws. He continues to support the so-called “war on drugs,” which has been roundly discredited as both

<sup>76</sup> See FEDERAL BUREAU OF INVESTIGATION, PRELIMINARY SEMIANNUAL UNIFORM CRIME REPORT, JANUARY—JUNE, 2015, <https://ucr.fbi.gov/crime-in-the-u.s/2015/preliminary-semiannual-uniform-crime-report-januaryjune-2015>.

<sup>77</sup> FEDERAL BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES, 2015, VIOLENT CRIME, <https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/offenses-known-to-law-enforcement/violent-crime>.

<sup>78</sup> E. Ann Carson, Ph.D. & Elizabeth Anderson, *PRISONERS IN 2015*, U.S. Dep’t of Justice, BUREAU OF JUSTICE STATISTICS 3 (Dec. 2016), <https://www.bjs.gov/content/pub/pdf/p15.pdf>.

<sup>79</sup> *Id.*

<sup>80</sup> S. 2123, 114th Cong. (2015).

<sup>81</sup> S. 2123, *Sentencing Reform and Corrections Act of 2015: Hearing Before the S. Comm. on the Judiciary*, 114th Cong. (2015) (statement of Judge Patti B. Saris, Chair, U.S. Sentencing Comm’n), [http://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/testimony/20151021\\_Saris\\_Testimony.pdf](http://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/testimony/20151021_Saris_Testimony.pdf) [hereinafter Saris statement].

<sup>82</sup> See e.g., Jeff Sessions, *The Current Sentencing Reform and Corrections Act is Dangerous for America*, MEDIUM (Feb. 9, 2016), <https://medium.com/@SenatorSessions/the-current-sentencing-reform-and-corrections-act-is-dangerous-for-america-aa31e8c75083#.nwt6bcule>.

<sup>83</sup> See Saris statement, *supra* n.81; Ronal Serpas, *Reduce Incarceration, Increase Law and Order*, NATIONAL REVIEW (Aug. 18, 2016), <http://www.nationalreview.com/article/439108/law-order-sentencing-reform-not-locking-everyone-reduces-crime>.

ineffective and racially discriminatory.<sup>84</sup> Sessions' record on drug policy reflects views that are out of step even with his own party<sup>85</sup> and with contemporary data and science.<sup>86</sup> Even in the context of low-level and nonviolent drug offenses, where racially disproportionate drug enforcement has had extraordinarily harmful consequences for people of color,<sup>87</sup> Sessions has demonstrated indifference.

To mitigate his history of advocating harsh sentencing policies, Sessions takes credit for the Fair Sentencing Act, which reduced the federal sentencing disparities between crack cocaine and powder cocaine. A close look at his record on this issue, however, shows that his contributions have been minimal. Despite the severe racial disparities between crack and powder cocaine sentencing, Sessions supported reducing, not eliminating, the 100:1 sentencing ratio between crack and powder cocaine. In 2010, when Senator Durbin (D-IL) introduced the Fair Sentencing Act, he and other Democrats called for a complete elimination of the disparity and a 1:1 sentencing ratio.<sup>88</sup> Sessions did not agree to this nor did he agree to the modest 10:1 ratio supported by other Republicans on the Senate Judiciary Committee.<sup>89</sup> As the Ranking Republican on the Committee, Sessions would only support a reduction to an 18:1 sentencing disparity ratio, continuing the disproportionate and unequal sentencing visited upon Black and Latino defendants for cocaine offenses.

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<sup>84</sup> See e.g., MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 95-136 (2010); Todd Jermstad German Lopez, *How Obama quietly reshaped America's war on drugs*, VOX (Dec. 19, 2016), <http://www.vox.com/identities/2016/12/19/13903532/obama-war-on-drugs-legacy>; Tana Kaneva, *Jeff Sessions' ridiculous anti-drug crusade*, WASHINGTON POST (Nov. 21, 2016), [https://www.washingtonpost.com/news/the-watch/wp/2016/11/21/jeff-sessionss-ridiculous-anti-drug-crusade/?utm\\_term=.ed727aaf931c](https://www.washingtonpost.com/news/the-watch/wp/2016/11/21/jeff-sessionss-ridiculous-anti-drug-crusade/?utm_term=.ed727aaf931c); Michael K. Williams, *The war on drugs is a war on people*, CNN (Sept. 22, 2016), <http://www.cnn.com/2016/09/22/opinions/war-on-drugs-michael-k-williams/>.

<sup>85</sup> See Seung Min Kim, *Senators plan to revive sentencing reform push*, POLITICO (Jan. 4, 2017), <http://www.politico.com/story/2017/01/senate-criminal-justice-sentencing-reform-233071>; James Arkin, *Criminal Justice Reform: There's Bipartisan Hope*, REALCLEARPOLITICS (May 6, 2016), [http://www.realclearpolitics.com/articles/2016/05/06/criminal\\_justice\\_reform\\_theres\\_bipartisan\\_hope\\_130482.html](http://www.realclearpolitics.com/articles/2016/05/06/criminal_justice_reform_theres_bipartisan_hope_130482.html).

<sup>86</sup> See Saris statement, *supra*; U.S. SENTENCING COMM'N, 2011 REPORT TO THE CONGRESS: MANDATORY MINIMUM PENALTIES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM (2011), <http://www.ussc.gov/research/congressional-reports/2011-report-congress-mandatory-minimum-penalties-federal-criminal-justice-system>.

<sup>87</sup> See DRUG POLICY ALLIANCE, *THE DRUG WAR, MASS INCARCERATION, AND RACE* (Feb. 2016), [http://www.drugpolicy.org/sites/default/files/DPA%20Fact%20Sheet\\_Drug%20War%20Mass%20Incarceration%20and%20Race\\_%28Feb.%202016%29.pdf](http://www.drugpolicy.org/sites/default/files/DPA%20Fact%20Sheet_Drug%20War%20Mass%20Incarceration%20and%20Race_%28Feb.%202016%29.pdf); ACLU, *THE WAR ON MARIJUANA IN BLACK AND WHITE* 17-20 (June 2013), <https://www.aclu.org/files/assets/aclu-thewaronmarijuana-rel2.pdf>.

<sup>88</sup> Christopher Kang, *Sen. Sessions' Record on Crack-Powder Cocaine Disparity Leaves a Lot to be Desired*, ACSBLOG (Dec. 29, 2016), <http://www.acslaw.org/acsblog/sen-sessions%E2%80%99s-record-on-crack-powder-cocaine-disparity-leaves-a-lot-to-be-desired>.

<sup>89</sup> *Id.*

Since then, Sessions has also opposed bipartisan legislation to apply the Fair Sentencing Act retroactively, including as part of the SRCA in 2015, leaving thousands of people incarcerated based on a sentencing scheme that Congress repudiated in 2010.<sup>90</sup>

It is true that Sessions has worked on the crack-powder disparity for some time. Sessions introduced the Drug Sentencing Reform Act back in 2001, but that would have reduced the crack-powder cocaine sentencing disparity only to 20:1.<sup>91</sup> He also made clear then that his interest in reducing sentencing disparities was not motivated by the injustice of harsher sentences for Black Americans, but by the fact that harsher sentencing for crack cocaine was ineffective at deterring drug sales.<sup>92</sup> Sessions also clarified that he continued to believe in lawmakers' initial justification for instituting the sentencing disparity—that crack was a more dangerous, crime-inducing drug.<sup>93</sup>

Further back, as the U.S. Attorney for the Southern District of Alabama, Sessions prosecuted more crack cases than any other district except for the District of Columbia between 1992 and 1993.<sup>94</sup> He zealously prosecuted minor drug offenses, sending people to federal court to face mandatory sentencing rules.<sup>95</sup> As a harbinger that should give Members of Senate pause, he defended his record on drug prosecutions in 1997 by saying that if he were ever to serve as U.S. Attorney General, he would aim to increase drug prosecutions by 50 percent.<sup>96</sup>

Finally, with respect to the death penalty, Sessions has taken extreme positions that flout the rule of law. He has resisted policies that would increase due process rights in capital cases and criticized lawyers who represent capital defendants and prisoners on death row. He has shown himself to be uninterested in racial disparities in the administration of the death penalty and indifferent to the prospect of executing innocent people or people with intellectual disabilities.

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<sup>90</sup> *Id.*

<sup>91</sup> S.1874, 107th Cong. (2001). The bill tried to resolve the disparity by decreasing the amount of powder cocaine and increasing the amount of crack cocaine necessary to trigger the mandatory minimum penalties.

<sup>92</sup> See 147 Cong. Rec. S13,962-63; see also Statement of Sen. Jeff Sessions (Dec. 20, 2001), <http://www.sessions.senate.gov/public/index.cfm/news-releases?ID=a3632221-7e9c-9af9-7045-4d96fec0dc34>.

<sup>93</sup> *Id.*

<sup>94</sup> Mary Troyan, *AG nominee Jeff Sessions reversed course on harsh drug sentence policy*, USA TODAY (Dec. 22, 2016), <http://www.usatoday.com/story/news/politics/2016/12/22/attorney-general-nominee-jeff-sessions-reversed-course-drug-sentences/95478038/>.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

In 2004, for example, Sessions said that legal organizations that represent capital defendants are “entities with agendas” who “abuse the legal system.”<sup>97</sup> In 2016, Sessions argued that a 1989 Donald Trump ad calling for the execution of the “Central Park Five” showed Trump’s commitment to “law and order.”<sup>98</sup> The Five, a group of Black and Latino teenagers between the ages of 14 and 16 accused of rape, had already been fully exonerated after spending years in prison when Sessions made this statement. In 2002, Sessions rebuked the Supreme Court for its landmark decision in *Atkins v. Virginia*,<sup>99</sup> which held that it is unconstitutional to execute people with intellectual disabilities. On the Senate floor, Sessions criticized the Court for saying “that they had divined, somehow, that the American people had evolved in their thinking and, therefore, the laws their legislatures had passed were not valid anymore; that they could not execute people who were retarded.”<sup>100</sup>

In 2002, Sessions opposed the Innocence Protection Act, a bipartisan bill that would give federal convicts facing the death penalty access to DNA testing and would establish new standards for attorneys representing capital defendants. The bill, introduced amid a series of exonerations of death row inmates, also required States that receive federal anti-crime funding to adopt the new standards. Sessions warned bill proponents against “micromanaging” states’ death penalty processes. He voted against the bill in committee,<sup>101</sup> though it was ultimately included as part of the bipartisan Justice for All Act of 2004 which was signed into law.<sup>102</sup>

## ii. *Juvenile Justice*

In addition to archaic stances on sentencing policy, Sessions holds views on juvenile justice that are extreme if not inhumane. And as with his support for mandatory minimum sentences, mass incarceration, and the war on drugs, Sessions’ archaic views on juvenile justice have been discredited and rejected by policymakers of both parties.

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<sup>97</sup> *Executive Business Meeting of the S. Comm. on the Judiciary* (Sept. 21, 2004) (Statement of Sen. Jeff Sessions, Member, S. Comm. on the Judiciary).

<sup>98</sup> Gregory Krieg, *Sessions: Case of Central Park 5, later exonerated, shows Trump's dedication to 'law and order'* (Nov. 18, 2016), <http://www.cnn.com/2016/08/18/politics/jeff-sessions-donald-trump-central-park-five-death-penalty/>.

<sup>99</sup> 536 U.S. 304.

<sup>100</sup> Cristian Farias, *Jeff Sessions Didn't Like How the Supreme Court Spared 'Retarded' People from Execution*, THE HUFFINGTON POST (Dec. 1, 2016), [http://www.huffingtonpost.com/entry/jeff-sessions-supreme-court-retarded\\_us\\_58409bb5e4b09e21702dbe5f](http://www.huffingtonpost.com/entry/jeff-sessions-supreme-court-retarded_us_58409bb5e4b09e21702dbe5f).

<sup>101</sup> S. Rept. 107-315, at 7 (2002).

<sup>102</sup> Pub. L. No. 108-405, 18 Stat. 2260.

It is now well-known that African-American youth are significantly overrepresented among incarcerated juveniles.<sup>103</sup> Yet, as the past Chairman of the Judiciary Subcommittee on Youth Violence, Sessions helped advance legislation enhancing punishments for juveniles as an original co-sponsor the Violent and Repeat Juvenile Offender Accountability and Rehabilitation Act of 1999.<sup>104</sup> The thrust of this bill was largely punitive: it would have allowed federal prosecutors to charge children as young as 14 years old as adults, applied federal sentencing guidelines to those children, and granted states and localities the authority to house juveniles in the same prison facilities as adult offenders.<sup>105</sup> Sessions has also called for the expansion of boot camp programs and other restrictive, institutional settings that remove youths involved with the criminal justice system from their communities.<sup>106</sup>

### *iii. Chain Gangs in Alabama*

Consistent with his indifference to the racial discrimination inherent in mandatory minimums and mass incarceration, Sessions has endorsed prison practices borne from the darkest moments in American history. In 1995, Alabama had recently reinstated the practice of chaining inmates to one another in “work squads”—i.e., chain gangs—and was the only state at that time to use the practice.<sup>107</sup> As State Attorney General, Sessions publicly supported the use of chain gangs and issued at least one legal opinion authorizing their use.<sup>108</sup>

When Alabama resumed using chain gangs, Sessions planned to “aggressively defend any legal challenge against” the practice, which he believed was “constitutional and proper.”<sup>109</sup> Sessions demonstrated extraordinary racial insensitivity by ignoring how chain gangs degraded prisoners and evoked Alabama’s history of slavery and “leased convicts” who toiled for the profit of white landowners.<sup>110</sup> Sessions said the chain gangs did not “hurt the state’s image at all,”<sup>111</sup> and that the greater embarrassment to Alabama was its failure to enact tort reform: “People say the chain gangs are going to embarrass the state,” he said, “I

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<sup>103</sup> See HOLLY A. THOMAS, NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., NO CHANCE TO MAKE IT RIGHT: LIFE WITHOUT PAROLE FOR JUVENILE OFFENDERS IN MISSISSIPPI 5 (May 2008), [http://www.naacpldf.org/files/publications/No\\_Chance\\_to\\_Make\\_it\\_Right.pdf](http://www.naacpldf.org/files/publications/No_Chance_to_Make_it_Right.pdf).

<sup>104</sup> S.254, 106th Cong. (1999).

<sup>105</sup> *Id.*

<sup>106</sup> 145 Cong. Rec. 9022 (1999); 145 Cong. Rec. 9242 (1999).

<sup>107</sup> *Hope v. Pelzer*, 536 U.S. 730, 733 (2002).

<sup>108</sup> 245 Ala. Op. Atty. Gen 41, 1996 WL 106897 (1996).

<sup>109</sup> Robert Dunnavant, *Sessions Says He Sympathizes with Hunt but Ouster was for Best*, BIRMINGHAM NEWS, 1995 WLNR 4989732 (Sept. 16, 1995).

<sup>110</sup> See DAVID OSHINSKY, WORSE THAN SLAVERY: PARCHMAN FARM AND THE ORDEAL OF JIM CROW JUSTICE, 35-36 (1996).

<sup>111</sup> *Id.*

don't know about that. But what is going to embarrass our state is our tort problem. It threatens our economic growth.”<sup>112</sup>

Sessions' cavalier, unaware attitude stands in contrast to the sworn personal testimony of prisoners who endured the chain gangs:

People photographed and waved and honked at me and the other inmates. This was humiliating. Looking down at my feet and seeing the chains around them, I felt like a slave. Wearing the chains publicly was still more humiliating.<sup>113</sup>

The chain gang tore me apart mentally. I was chained up in public view. My family, friends and potential employers could all see me in chains—a fact which hurt and embarrassed me deeply.<sup>114</sup>

The chain gangs have caused me extreme mental anguish. Wearing chains made me feel like an animal. Being paraded along the Alabama highways, moreover, made me feel like I was for sale—for public consumption.<sup>115</sup>

My chain gang sentence has caused me extreme mental anguish. Being forced to wear chains was humiliating. The experience also reminded me of the slavery that my ancestors had to endure.<sup>116</sup>

In 1996, a judge on the Sixth Circuit Court of Appeals, having ordered the return from Michigan to Alabama of a long-ago escaped African-American prisoner, expressed concern that the prisoner would “be tossed into a prison system that has adopted the barbaric ‘discipline’ of the chain gang” and is “reminiscent of the ‘Old South.’”<sup>117</sup> Sessions dismissed the judge's comments as “liberal bias.”<sup>118</sup>

Despite international outcry, the Alabama Department of Corrections continued the practice until faced with the pressure of a federal lawsuit in 1998.<sup>119</sup>

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<sup>112</sup> Mick Normington, *Time to Cut Ineffective State Laws, James Says*, 1995 WLNR 4993914, BIRMINGHAM NEWS (Oct. 27, 1995).

<sup>113</sup> *Austin v. Hopper*, 15 F. Supp. 2d 1210, 1220 (M.D. Ala. 1998).

<sup>114</sup> *Id.* at 1221.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *State of Ala. ex rel. Governor and Atty. Gen. v. Engler*, 85 F.3d 1205, 1210 (6th Cir. 1996) (Jones, J., concurring).

<sup>118</sup> Robin DeMonia, *U.S. Judge Attacks State Legal System*, BIRMINGHAM NEWS, 1996 WLNR 5673519 (June 13, 1996).

<sup>119</sup> *See Austin v. Hopper*, 15 F. Supp. 2d 1210, 1216 (M.D. Ala. 1998).



*iv. Policing Reform*

The United States is in the throes of a national policing crisis. The consequences are life-threatening and bring to light the realities of racial bias and outright discrimination in policing. Viral videos and graphic images of lethal force against unarmed Black Americans have undermined confidence in law enforcement, the justice system, and the rule of law, especially among people of color. Today, the combination of racial profiling, “broken windows” policing, “zero tolerance” policies, and the “war on drugs” has perpetuated a racialized and unconstitutional policing culture that is embedded in many law enforcement agencies.

In recent years, federal intervention by the DOJ Civil Rights Division has uncovered systemic abuses in police departments around the country, including those in Ferguson, Baltimore, Los Angeles, New Orleans, Portland, Seattle, and several other jurisdictions. These essential inquiries, known as “pattern or practice investigations,” are conducted pursuant to statutory authority granted under the 1994 crime bill to investigate civil rights violations by police agencies<sup>120</sup> and have led to several court-enforced consent decrees with police departments.<sup>121</sup> In addition, DOJ’s Office of Community Oriented Policing Services (COPS Office) spearheads the Collaborative Reform Initiative, a voluntary program where police agencies around the country request DOJ’s assistance to provide technical assistance and recommendations for reform through data, policy, and operational analysis.

While evidence gathered through graphic video, DOJ investigations and collaborative reform processes, and empirical study have laid bare the ongoing problems of excessive force against communities of color (one study, for example, found that Blacks and Latinos are more than 50 percent more likely to have an interaction with police that involves the use of force),<sup>122</sup> Senator Sessions remains unmoved.

With respect to DOJ consent decrees, Sessions has seen fit to condemn them, writing in a 2008 published paper that, “[c]onsent decrees have a profound effect on our legal system as they constitute an end run around the democratic process.”<sup>123</sup> This comment is especially alarming because it was directed specifically at the use

<sup>120</sup> Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141.

<sup>121</sup> See DEPARTMENT OF JUSTICE, CIVIL RIGHTS DIVISION, THE CIVIL RIGHTS DIVISION’S PATTERN AND PRACTICE POLICE REFORM WORK: 1994-PRESENT 41-48 (Jan. 2017), <https://www.justice.gov/crt/file/922421/download>.

<sup>122</sup> PHIL GOFF ET. AL, MEASURING FAIRNESS IN THE AUSTIN POLICE DEPARTMENT (Oct. 11, 2016), [http://www.urban.org/sites/default/files/publication/85096/the-science-of-policing-equity\\_3.pdf](http://www.urban.org/sites/default/files/publication/85096/the-science-of-policing-equity_3.pdf).

<sup>123</sup> MICHAEL E. DEBOW ET AL., ALABAMA POLICY INSTITUTE, CONSENT DECREES IN INSTITUTIONAL REFORM LITIGATION: STRATEGIES FOR STATE LEGISLATURES (2008), <http://www.alabamapolicy.org/wp-content/uploads/API-Research-Consent-Decrees.pdf>.

of consent-decrees in institutional reform litigation brought against state and local governments, which the next Attorney General must be trusted to pursue.

Sessions' public statements on federal oversight or intervention of police agencies suggest he will roll back important gains achieved in policing reform. During a Senate Judiciary Committee hearing titled "The War on Police: How the Federal Government Undermines State and Local Law Enforcement," Sessions' remarks reflected deep skepticism of DOJ's role in police oversight. He stated, "There is a perception, not altogether unjustified, that this [D]epartment, the Civil Rights Division, goes beyond fair and balanced treatment and has an agenda."<sup>124</sup> Sessions also expressed his view that civil rights investigations into police agencies amounts to a "punitive approach to law enforcement agencies" and criticized Acting Assistant Attorney General Vanita Gupta for working at the ACLU and LDF on criminal justice matters, noting, "I'm just saying you come from a background that indicates an aggressiveness in these cases."<sup>125</sup> He also used the hearing to criticize the Black Lives Matter movement and its advocacy against police brutality.

Sessions has also been one of the most vocal Senate supporters of unconstitutional stop and frisk policing,<sup>126</sup> which not only leads to extraordinary racial disparities<sup>127</sup> but is an ineffective crime fighting tool.<sup>128</sup> In the face of this evidence and court

<sup>124</sup> *The War on Police: How the Federal Government Undermines State and Local Law Enforcement*, 114th Cong. (2015) (statement of Sen. Jeff Sessions, Member, S. Comm. on the Judiciary).

<sup>125</sup> *Id.*

<sup>126</sup> *Floyd v. City of New York*, 959 F. Supp. 2d 540 (S.D.N.Y. 2013).

<sup>127</sup> See e.g., CIVIL RIGHTS DIVISION, U.S. DEPARTMENT OF JUSTICE, INVESTIGATION OF THE BALTIMORE CITY POLICE DEPARTMENT 7 (Aug. 10, 2016), <https://www.justice.gov/opa/file/883366/download> (finding that, citywide, the Baltimore Police Department (BPD) stopped African-American residents three times as often as white residents after controlling for the population of the area in which the stops occurred; in each of BPD's nine police districts, African Americans accounted for a greater share of BPD's stops than the population living in the district; and BPD is far more likely to subject individual African Americans to multiple stops in short periods of time with African Americans accounting for 95 percent of the 410 individuals BPD stopped at least 10 times in the five and a half years of data examined)[hereinafter BALTIMORE REPORT]; CIVIL RIGHTS DIVISION, U.S. DEPARTMENT OF JUSTICE, INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 4 (March 4, 2015) (showing that African Americans are more than twice as likely as white drivers to be searched during vehicle stops even after controlling for non-race based variables such as the reason the vehicle stop was initiated, but are found in possession of contraband 26 percent less often than white drivers)[hereinafter FERGUSON REPORT]. POLICE ACCOUNTABILITY TASKFORCE, RECOMMENDATIONS FOR REFORM: RESTORING TRUST BETWEEN THE CHICAGO POLICE AND THE COMMUNITIES THEY SERVE 10 (Apr. 2016), [https://chicagopatf.org/wp-content/uploads/2016/04/PATF\\_Final\\_Report\\_Executive\\_Summary\\_4\\_13\\_16-1.pdf](https://chicagopatf.org/wp-content/uploads/2016/04/PATF_Final_Report_Executive_Summary_4_13_16-1.pdf); Christopher Ingraham, *White people are more likely to deal drugs, but black people are more likely to get arrested for it* (Sept. 30, 2014), [https://www.washingtonpost.com/news/wonk/wp/2014/09/30/white-people-are-more-likely-to-deal-drugs-but-black-people-are-more-likely-to-get-arrested-for-it/?utm\\_term=.84e58ae83d42](https://www.washingtonpost.com/news/wonk/wp/2014/09/30/white-people-are-more-likely-to-deal-drugs-but-black-people-are-more-likely-to-get-arrested-for-it/?utm_term=.84e58ae83d42).

<sup>128</sup> See e.g., BALTIMORE REPORT, *supra* n.19, at 7 (BPD searched African Americans more frequently during pedestrian and vehicle stops, even though searches of African Americans were less likely to

rulings condemning stop and frisk, Sessions continues to champion the policy as a “tremendous accomplishment in reducing crime” and calling the movement to abandon the policy “ludicrous.”<sup>129</sup>

### C. Education

The Department’s Civil Rights Division was formed soon after the Supreme Court’s landmark decision in *Brown v. Board of Education*. Its courageous and aggressive enforcement of the new civil rights statutes passed in the 1950s and 1960s opened countless doors for African Americans and other minorities. Pursuing equal access to education remains a bedrock mandate of the Division. LDF itself maintains a docket of upwards of one hundred desegregation cases, often alongside DOJ. These cases uphold the rule of law by enforcing and giving real-world effect to the Supreme Court’s holding in *Brown*. Yet Sessions’ record, with respect to both educational equality and his skepticism of consent decrees, suggests that he would be neither willing nor able to assume this responsibility as Attorney General.

Most notably, as Alabama Attorney General, Sessions injected himself into a long-running lawsuit about inequities in state schools, and aggressively pushed to overturn a carefully crafted plan to resolve significant constitutional infirmities. The case grew out of the “massive resistance” to *Brown v. Board of Education*: just two years after the Supreme Court’s landmark decision striking down “separate but equal,”<sup>130</sup> Alabama changed state law to eliminate the right to public education altogether. Unsurprisingly, this change yielded gaping disparities in the funding and quality of public education statewide:

Alabama’s wealthiest school district (and also one of its whitest), Mountain Brook, in suburban Birmingham, spent nearly twice as much per student as the state’s poorest, Roanoke, in a declining manufacturing town about two hours southeast. Poor schools often lacked even rudimentary facilities, including science labs. They struggled to pay teachers, even to repair dilapidated school buses. Half of Alabama’s school buildings lacked air conditioning. Underfunded schools had a particularly hard time meeting the needs of disabled students, whom they were required to support under federal law.<sup>131</sup>

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discover contraband. Indeed, BPD officers found contraband twice as often when searching white individuals compared to African Americans during vehicle stops and 50 percent more often during pedestrian stops); FERGUSON REPORT, *supra* n.18, at 4.

<sup>129</sup> Joseph D. Lyons, *Sen. Jeff Sessions Doesn’t Buy The Whole “Stop-And-Frisk Is Racist” Thing*, BUSTLE (Sept. 27, 2016), <https://www.bustle.com/articles/186282-sen-jeff-sessions-doesnt-buy-the-whole-stop-and-frisk-is-racist-thing>.

<sup>130</sup> *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).

<sup>131</sup> Thomas J. Sugrue, Op-Ed., *Jeff Sessions’ Other Civil Rights Problem*, N.Y. TIMES, Nov. 21, 2016, <http://www.nytimes.com/2016/11/21/opinion/jeff-sessions-other-civil-rights-problem.html>.

A coalition of almost thirty poor school districts, together with disability rights and civil rights organizations, brought suit against Alabama for violating the state constitution's guarantees of equal and adequate educational opportunities, equal protection under the law, and due process. Testimony by the assistant state superintendent of schools revealed that "disparities are evident among schools within the same system but on opposite sides of the tracks, a difference, . . . 'between the haves and have-nots,' which . . . frequently in Alabama 'means the difference between black and white.'"<sup>132</sup> Another expert witness confirmed that predominantly Black school districts experienced much higher rates of serving students with learning disabilities, notwithstanding uneven resource allocation.<sup>133</sup>

Following years of intensive litigation, the Alabama Circuit Court in 1993 concluded that the state of Alabama had, in fact, violated various state constitutional provisions. The Court found that Alabama students "do not receive substantially equal (or equitable) educational opportunities in the state's public schools" as a result of funding disparities.<sup>134</sup> In addition, the Court concluded that Alabama had violated state laws requiring "appropriate instruction and special services" for students with disabilities because "the quality of a child's special education program—facilities, instruction, special or related services . . . depends entirely upon the system in which the child attends school."<sup>135</sup> Finally, the Court ordered Alabama to implement a remedial plan because "[a]ll special education needs, including the needs of students with disabilities, must be addressed."<sup>136</sup>

Two years later, in 1995, when Sessions began serving as state Attorney General, he chose to essentially re-open and re-litigate this matter, challenging the ruling on the theory that the Court lacked the authority to oversee the schools in the first place.<sup>137</sup> Sessions petitioned to vacate the order and dismiss the case, arguing, among other things, that the court's orders violated the principle of separation of powers.<sup>138</sup> Incredibly, he also alleged that prior state officials had improperly coordinated with the plaintiffs and failed to adequately represent the state because they declined to appeal the court's finding of liability and instead supported the remedial plan.<sup>139</sup> Moreover, to aggressively pursue this matter, Sessions took the

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<sup>132</sup> Opinion of the Justices, 624 So. 2d 107 (Ala. 1993), <http://law.justia.com/cases/alabama/supreme-court/1993/624-so-2d-107-1.html>.

<sup>133</sup> *Id.* (summarizing testimony of Dr. Rostetter).

<sup>134</sup> *Id.* at 114.

<sup>135</sup> *Id.* at 124.

<sup>136</sup> *Ex parte James*, 713 So. 2d 869, 923 (Ala. 1997).

<sup>137</sup> Stephen Merelman, *James, A.G. Taking on Reese Ruling - Sessions Enlisted for Supreme Court Challenge of School Reform Order*, MOBILE REGISTER, Feb. 23, 1995 at A1.

<sup>138</sup> Brief and Argument of Appellants at \*17, *James v. Alabama Coalition for Equity*, Nos. 1950240, 1950241, 1995 WL 17961142 (Ala. Oct. 6, 1995).

<sup>139</sup> *Id.* at \*29.

unusual step of hiring outside counsel and lifted a fee cap governing their compensation amid layoffs in the Attorney General's office.

Ultimately, the Alabama Supreme Court affirmed the core finding that the state's school funding scheme was unconstitutional. But Sessions succeeded in persuading the Court to vacate the remedial plan and shift to the legislature any further response to the serious inequities in the school system.<sup>140</sup> In turn, the state legislature did little to address the underlying problems with regard to school resources and the education and inclusion of disabled students.<sup>141</sup>

To this day, leading jurists in Alabama and in the civil rights and disability rights communities view Sessions' concerted attacks as deeply problematic and as having led to ongoing inequities in Alabama's schools, particularly for students with disabilities in poor districts.<sup>142</sup> The former Chief Justice of the Alabama Supreme Court, C.C. Tolbert (who once served as a lawyer for the school districts in this case), lamented that Sessions was "asking for the last 50 years to disappear, as far as improving public education" and sought to "consign an ever-growing number of Alabama schoolchildren to an unconstitutionally inadequate and inequitable education."<sup>143</sup>

A quarter-century later, the original concerns that animated the suit by Alabama schools and public interest groups here proved to be sadly prescient. For example, many of the school districts around Birmingham remain among the fifty most segregated in the nation, primarily because local enrollment and line-drawing decisions have "created a vastly unequal local environment."<sup>144</sup> Alabama has the second largest number of active federal school desegregation cases in the country—with the net effect being that for schools in major cities, such as Tuscaloosa, "nearly one in three black students attends a school that looks as if *Brown v. Board of Education* never happened."<sup>145</sup>

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<sup>140</sup> Stan Bailey & Mary Orndorff, *Court Rejects Remedy in School Funding Case*, BIRMINGHAM NEWS, (Dec. 4, 1997).

<sup>141</sup> Sugrue, *supra*, n.131.

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> Erin Edgemon, *Birmingham schools, neighboring systems among most income segregated in US*, report shows, ALABAMA.COM, August 23, 2016, [http://www.al.com/news/birmingham/index.ssf/2016/08/birmingham\\_six\\_neighboring\\_sch.html](http://www.al.com/news/birmingham/index.ssf/2016/08/birmingham_six_neighboring_sch.html) (internal quotations and citation omitted).

<sup>145</sup> Stan Diel, *Segregation again? Racial picture of Alabama schools changes 60 years after Brown v. Board of Education*, ALABAMA.COM (Apr. 16, 2014), [http://blog.al.com/wire/2014/04/segregation\\_still\\_racial\\_pictu.html](http://blog.al.com/wire/2014/04/segregation_still_racial_pictu.html) (internal quotation and citation omitted).



Sessions' record on education raises serious concerns about his opposition to equality in public schools, and specifically the integration of racial minorities and students with disabilities, the equitable funding of school districts, and also the authority of judges to remedy constitutional violations in public education. It is unfathomable that someone with his record would be charged with overseeing the largest desegregation effort in our nation and ensuring equal access to education for the country's more than 73 million children.

#### **D. Employment Discrimination & Consumer Protection**

Finally, we are concerned with Sessions' Senate record of restricting the ability of employees and consumers who suffer discrimination to vindicate their rights in court. Civil rights protections can be rendered meaningless if courts cannot hold wrongdoers accountable and provide relief to victims. Yet Sessions has advanced a number of policies that would close the courthouse doors on legitimate claims, raising serious doubt that Sessions would vigorously enforce civil rights laws as Attorney General.

The Attorney General is responsible for enforcing federal laws that prohibit racial and other forms of discrimination in the workplace and marketplace, including Title VII of the Civil Rights Act and the Equal Credit Opportunity Act (ECOA), which protects borrowers from discrimination when they seek credit. Indeed, between 2010 and 2015, DOJ reported that it obtained more than \$1.4 billion in monetary relief on behalf of discrimination victims in cases filed under ECOA, the Fair Housing Act, and the Servicemembers Civil Relief Act.<sup>146</sup>

But Sessions has taken positions that would weaken the protections of such laws by placing relief in the courts out of reach. For example, in 2009, Sessions voted against the Lilly Ledbetter Fair Pay Act. The bill—the first that President Obama signed into law—amended the Civil Rights Act of 1964 to ensure that the statute of limitations does not unfairly bar claims of pay disparity based on unlawful discrimination.

The bill overturned a 5-4 Supreme Court decision that read the Civil Rights Act narrowly and barred claims of longstanding pay discrimination when the employer's discriminatory *decision* to set lower pay occurred outside the short 180 day limitations period, even when the lower pay, based on unlawful discrimination, was reflected in every subsequent paycheck.<sup>147</sup> As Justice Ruth Bader Ginsburg argued in dissent, the decision ignored the “common characteristics of pay discrimination”—namely, that pay disparities tend to develop incrementally over

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<sup>146</sup> See The Attorney General's 2015 Annual Report to Congress Pursuant to the Equal Credit Opportunity Act, 2 (Aug. 2016) (“2015”), <https://www.justice.gov/crt/file/882481/download>.

<sup>147</sup> *Ledbetter v. Goodyear Tire & Rubber Co., Inc.*, 550 U.S. 618 (2007).



time, and can be difficult to uncover because comparative pay information is not disclosed to employees.<sup>148</sup> In the Court’s view, an employee unknowingly paid less for decades because of race or gender had no protection under Title VII.

In *Ledbetter*, the Supreme Court was faced with a question of statutory interpretation. But the question before Congress was one of policy: should victims of discrimination like Lilly Ledbetter, who lost hundreds of thousands of dollars over nineteen years because of unlawful gender discrimination, have a viable claim in court? Senator Sessions’ answer to that question was no.

Sessions has also supported the use of pre-dispute—or “forced”—arbitration agreements in consumer and employee contracts. These agreements, slipped into the fine print of take-it-or-leave-it contracts, force people to forfeit their right to go to court if their rights are violated and often prohibit the use of class actions. In recent years, defendants have increasingly invoked arbitration clauses to prevent discrimination claims from proceeding in court, shifting them to private arbitration proceedings where plaintiffs must proceed alone and corporate defendants have a distinct advantage.<sup>149</sup> The ability to dismantle class actions is an especially powerful weapon against civil rights claims, as class treatment of claims alleging pervasive and systemic discrimination is often the best, and sometimes the only, way to effectively redress civil rights violations. Yet Sessions has specifically advocated “arbitration for any claim under Title VII of the Civil Rights Act.”<sup>150</sup>

In defending forced arbitration, Sessions has incorrectly stated that “arbitration agreements contained in employment contracts are not only valid but in most instances beneficial,”<sup>151</sup> and that “the results of arbitration are very similar to jury

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<sup>148</sup> *Id.* at 645 (Ginsburg, J., dissenting).

<sup>149</sup> See Jessica Silver-Greenberg & Robert Gebeloff, *Arbitration Everywhere, Stacking the Deck of Justice*, THE NEW YORK TIMES (Oct. 31, 2015), <http://www.nytimes.com/2015/11/01/business/dealbook/arbitration-everywhere-stacking-the-deck-of-justice.html>; see also Letter from Janai Nelson, Associate Director-Counsel, NAACP Legal Defense Fund, to CFPB Director Richard Cordray re: Forced Arbitration Clauses and Class Action Bans (Aug. 22, 2016), [http://www.naacpldf.org/files/case\\_issue/LDF%20Comment%20on%20Consumer%20Financial%20Protection%20Bureau%20Arbitration%20Agreements.pdf](http://www.naacpldf.org/files/case_issue/LDF%20Comment%20on%20Consumer%20Financial%20Protection%20Bureau%20Arbitration%20Agreements.pdf).

<sup>150</sup> Statement of Sen. Jeff Sessions, Opposition to Franken Amendment, Amendment No. 2588 to H.R. 3326, the “Department of Defense Appropriations Act” (2009), <https://www.congress.gov/amendment/111th-congress/senate-amendment/2623/text>.

<sup>151</sup> *Id.*

verdicts.”<sup>152</sup> In both the consumer and employee context, these conclusions have been refuted by empirical studies of the practice.<sup>153</sup>

Sessions’ positions on employment discrimination and consumer protection underscore his lack of commitment not only to fairness and equality, but to basic access to justice. As the Attorney General, he would in many ways determine the nation’s access to justice at the highest levels on these and other important issues. His record indicates that he is unfit for this charge.

#### IV. CONCLUSION

Altogether, across many years and issue areas, Senator Sessions has amassed a deeply and consistently troubling record on issues of civil rights, racial justice, and equality. This is not a close call. This is not an instance where an individual was simply slow to adapt to changing times, or remained silent or neutral on sensitive matters of discrimination.

Rather, at every stage of his career, including through the most recent presidential campaign, Sessions has repeatedly and often vociferously opposed civil rights laws, organizations, and principles. These sorts of choices evince Sessions’ limited if not critical view of equality, integration, and inclusion. Along the way, Sessions has also questioned the patriotism of civil rights organizations and engaged in (or countenanced) remarks that are racially insensitive at the least.

Sessions’ attempted about-face on civil rights to ease his confirmation does nothing to mollify and only deepens our concerns. Rather than forthrightly present his record to the Judiciary Committee and the American public, Sessions has tried to rewrite history by taking credit for civil rights victories in which he had no meaningful role. Even standing alone, this misleading characterization of his work casts doubt on Sessions’ credibility and fitness to serve as Attorney General.

In sum, the nomination and hasty consideration of Senator Sessions for Attorney General on a record that is both woefully incomplete and yet alarming in what it reveals raises serious concerns. His substantive positions on a number of issues,

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<sup>152</sup> *Workplace Fairness: Has the Supreme Court Been Misinterpreting Laws Designed to Protect American Workers from Discrimination?*: Hearing before the S. Comm. on the Judiciary, 111th Congress (2009) (Statement of Sen. Jeff Sessions, Member, S. Comm. on the Judiciary), <https://www.gpo.gov/fdsys/pkg/CHRG-111shrg56089/html/CHRG-111shrg56089.htm>.

<sup>153</sup> See Consumer Financial Protection Bureau, *Arbitration Study: Report to Congress Pursuant to Dodd Frank Wall Street Reform and Consumer Protection Act § 1028(a)* (March 2015), [http://files.consumerfinance.gov/f/201503\\_cfpb\\_arbitration-study-report-to-congress-2015.pdf](http://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf); Alexander Colvin, *An Empirical Study of Employment Arbitration: Case Outcomes and Processes*, CORNELL UNIVERSITY, JOURNAL OF EMPIRICAL LEGAL STUDIES, (8)(1), 1-23 (2011), <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1586&context=articles>.

along with his lack of candor and independence, are fundamentally disqualifying. The Senate Judiciary Committee should carefully vet and question Sessions about his lengthy record and be aware of what they are voting for and the inevitable consequences for the Department and the enforcement of our nation's civil rights laws.

In the end, for all the reasons set forth in this report, the Senate should vote down the nomination of Senator Sessions to serve as Attorney General of the United States.

# ***APPENDIX A***

Declaration of Theodore M. Shaw

Pursuant to 28 U.S.C. Section 1746 I hereby declare the following:

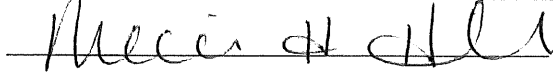
1. I am Theodore M. Shaw. I live at 127 Graylyn Drive, Chapel Hill, North Carolina 27516. I am the Julius L. Chambers Distinguished Professor of Law and the Director of the Center for Civil Rights at the University of North Carolina Law School at Chapel Hill.
2. From September of 1979 until March of 1982 I worked as a Trial Attorney in the Civil Rights Division of the U.S. Department of Justice in Washington D.C.
3. During that time the usual practice in civil rights cases in which the Justice Department was involved was that Civil Rights Division attorneys, based in Washington, D.C., were the lead litigators for the United States. The name of the local U.S. attorney for the district in which the case was brought appeared on the government's briefs and pleadings as a matter of course, but generally the U.S. attorneys were not intimately involved, if at all.
4. From March of 1982 until April of 2008, except for a period of time between 1990 through 1993 during which I taught at the University of Michigan Law School, I worked in various capacities for the NAACP Legal Defense Fund, Inc. Beginning in 1982 I directed the Legal Defense Fund's education docket, which primarily consisted of school desegregation cases in the South.
5. During that time I worked with local Mobile cooperating attorneys on *Birdie Mae Davis v. Board of School Commissioners of Mobile, Alabama*. On information and belief, during some of that time Jeffrey Sessions was the U.S. Attorney for the Southern District of Alabama.
6. I have no recollection, knowledge, information and belief of Mr. Sessions working directly on the *Davis* case or working directly with me or any other LDF attorney while I was involved with the *Davis* case.

Executed on this 9<sup>th</sup> day of January, 2017



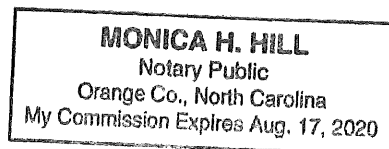
Theodore M. Shaw

Sworn to before me this 9 day of Jan, 2017



Notary Public

my com exp 8-17-2020



# ***APPENDIX B***



## CHAPTER SEVEN

# Selma, Alabama, June 1985: Building Bridges from the Bottom Up

**W**ATCH OUT," Rose Sanders had warned me when she picked me up from the airport in Montgomery in June 1985, a week prior to the first day of trial. "Selma can change you," Rose whispered. "Selma changes people's lives. It changed my life." Rose was reminding me of the need to remain connected to the passion and indignation that gave the civil rights movement its strength and its resilience. By the mid-1980s, the civil rights movement was in danger of succumbing to empty phrases and moral indifference in the White House and Congress, where a few smooth phrases about voting rights resembled the obligatory nondenominational prayer, a meaningless gesture in which the words carry no substance.

"Watch out," Rose repeated, smiling this time despite the heat. It was one of those sultry, heavy Alabama summer afternoons. I could feel my forehead already glistening with sweat. As we drove from the airport to Selma, Rose was explaining her decision to settle there. Rose was guided by a romantic vision that paid tribute to Selma as a site of historic struggle. But her life was hardly the stuff of fantasy. Her definition of a successful life meant continuing that struggle.

At five feet five, Rose Sanders is a dervish of energy and enthusiasm. One of her most striking characteristics is her voice. It sounds perpetually hoarse, almost gravelly, as if driven by an inner urgency and passion. She and her husband Hank have lived their entire professional lives in Selma. Compared to others in their Harvard Law School class, they chose a hard life. For them, achievement would not be measured in a fast track to partnership in a prestigious law firm, or in the number of awards or high-status "big jobs" they received, but by the

number of people they helped, and the number of local institutions they built.

That commitment to collective struggle is also what keeps them going. For Rose Sanders, "the fact is that struggling is as natural as air." Rose says to stop struggling is "like trying to stop breathing." When I asked her how she and her law partners had sustained three decades of resistance, she told me, "It takes faith." Rose said, "You have to believe that the mighty river is filled drop by drop. You just have to put your drop in the river, and somebody else will put in their drop, and then eventually one day those drops will make a river. And then faith—that's what keeps us going."

Rose was an acquaintance of mine from the early 1970s when she was in law school and I was in college. Rose and her husband Hank settled in Selma soon after they both passed the Alabama bar because, as Rose explained, "we have always been community-oriented. We always wanted to do community work with our law degree." Looking for a community in which to settle, Hank drove south. He was awed when he "came through Selma, came across the Edmund Pettus Bridge, with all of its symbolism of struggle and victory in the civil rights movement." He "made a right turn at the bridge and knew instantly that's where he wanted to be." They were home.

They subsequently discovered there was only one black lawyer in town, J. L. Chestnut, brilliant, but an alcoholic. Rose remembered how "Hank made contact with him and stepped out on faith. A lot of young people had said, 'Well, he's an alcoholic; I'm not gonna go into business with him.' It never crossed Hank's mind that Ches's alcoholism would be a problem. And Ches basically said, 'Give me time to straighten up a few things and I will join you.'"

Rose Sanders, Hank Sanders, and J. L. Chestnut were in Selma when, in the early 1980s, the Reagan administration "launched its assault on black leadership in the Black Belt," Rose says, "through using voter fraud as the tool to disenfranchise black people." Tipped off by several white politicians who had lost ground in the September 1984 Democratic Party primary elections in Alabama, the federal probe fastened on key black activists throughout the Black Belt, including Spiver Whitney Gordon, a former official of the Southern Christian Leadership Conference who was called the "black Moses" of neighboring Greene County, and Albert Turner, Alabama coordinator for SCLC during the 1960s, who was one of the marchers beaten on Bloody Sunday in 1965 and who subsequently led the mule train at Martin Luther King's funeral in Atlanta. Prominent politicians worked closely with FBI agents and Justice Department attorneys in the investigation of seven black activists and a white sympathizer. The Perry County Civic League was

a particular target of the investigation. Headed by Turner, this community organization had helped black voters who could not get to polling places to vote by absentee ballot.

Rose explains, "Fortunately, we were here. Being the kind of law firm that we were, we instantly came to the defense of people without money. Never asked them for a penny. What we did do, because we realized it was too awesome, that the task was too great for us to handle, because it was coming from every direction and about eight different counties, [was] we called upon the NAACP LDF, the Center for Constitutional Rights, we called lawyers throughout the country to help us. And the response was overwhelming."

That's how Rose met me for the second time. She had not seen me since I was an undergraduate at Harvard and she was there in law school. This time, she got to know me as a person, when I came to Selma, as Rose remembers, "in response to our cry. In response to our human cry you came with Deval Patrick and other people from other parts of the country."

It was Hank Sanders, by then an Alabama state senator, who had first called me at LDF's offices in New York. Hank's manner was low-key and persuasive. I remembered Hank as a big man with smooth, dark brown skin. What I also knew was that behind that cherubic face is a razor-sharp intellect and a deep integrity. Hank told me that the federal government initially pursued seventeen people in Perry County alone, all of whom were black, but finally "decided to cut it down and get Albert Turner, his wife [Evelyn], and Spencer Hogue, who were the key leadership in most of Perry County." Hank told me that the Reagan administration zeroed in only on the absentee ballots cast by blacks and only on black voters who had received assistance from local black civil rights activists. The Reagan attorneys had issued a total of 212 felony indictments between Greene and Perry counties alone. This was not about the federal government upholding democracy or dispensing even-handed justice, Hank explained. This was about the federal authorities helping a few local whites hold on to power, the old-fashioned kind of power of the local planter class.

After the passage of the Voting Rights Act in 1965, the white South, terrified by the specter of black political power, fought back. With all that the act accomplished, one thing it could not do was change the minds of southern traditionalists determined that blacks would have no voice in political life.

As hard as voting was, voting effectively, that is to say, voting with the possibility of one's vote mattering, was even harder. J. L. Chestnut recalled that after the federal registrars came in 1965, the number of blacks registered to vote shot up in Dallas County alone, from 150

registered voters to 10,000 in a matter of six weeks. Before 1965, Perry County had twelve registered black voters; by 1980, it had five thousand. Yet they still couldn't win any elections.

THE USE OF AT-LARGE, winner-take-all elections was only one of many schemes to dilute and disenfranchise the newly registered black voters. Many blacks continued to work on land owned by whites on whom they were economically dependent and to whom they felt socially beholden. Others worked for whites who would give blacks, but not whites, overtime on election day, even though they never gave overtime away during the rest of the year. Still others found themselves prohibited from leaving during their lunches, and watched while their white colleagues left to exercise their citizenship rights. Some voting places were only open from 1:00 to 5:00 P.M., making it very difficult for anyone who worked during those hours to vote, and all but impossible for the many blacks who worked out of the county. Deputy registrars who had been successful at registering blacks to vote were eliminated. Finally, a disproportionate percentage of the black population was over sixty-five years old. Though many were people who had marched on the Edmund Pettus Bridge, and many more witnessed Bloody Sunday, they were older now, and it was difficult for them to get to the polls in a rural county with no public transportation.

Black electoral success in the Black Belt was inhibited not only by efforts to chill the black vote but also by whites' effective use of the absentee ballot. By using the absentee ballot to register every possible white voter, white leaders maintained political control of many majority-black counties. Observers of the region were fond of noting that black politicians went to bed thinking they had won the election, but in the morning, after the absentee ballots had been counted, they would always learn they had lost. As Reverend Joseph Lowery of the SCLC complained in 1985, "They have given us our voting rights, but they are trying to take away our voting results."

Throughout the late 1970s, Chestnut and others complained to the Carter Justice Department about the way local white politicians were using absentee ballot boxes to manipulate elections to keep blacks from winning any office. As Chestnut explained to me:

Jimmy Carter has a relative named Chip Carter, and it was through Chip that we first began to complain to the White House that these people were cheating us; we always win at the polls but we never can win when they count the absentee ballots. Somebody in the White House directed us to the Justice Department and directed somebody down there at the Justice Department to hear us and we complained not directly to [Attorney General] Griffin Bell but we complained to



officials at the Justice Department and we sent them letters directed to Griffin Bell and the first explanation we got back was that "you need to learn how to do that better; it's more y'all than them. You coming up here complaining to us; get out there and learn how to do that."

Chestnut spoke to several people and got back the same directive: "Get out there and learn how to do that." Every time he went to Washington, Chestnut kept lodging his complaint that whites in the Black Belt who could go to the polls were instead voting absentee. Every time he got back the same answer: This is a state matter, the federal authorities don't have any jurisdiction. Chestnut and others continued to complain, but they were simply told: Don't complain. Do it better. Chestnut remembers:

We finally got word from the White House that, and this came from my uncle Preston Chestnut. Word came back through him that this is something that the Carter administration will address in its second term; we don't want to deal with that now. That was the last answer that we got on that.

Albert Turner also remembered specifically being told, "It's more of y'all than them. What are you up here complaining for? They ought to be up here complaining." Everyone they spoke with at Justice directed them to learn to use the absentee process themselves. And so, in the early 1980s, they did.

They were careful. Turner was "suspicious": "If we were catching all this hell from Jimmy Carter, the Democrat, and now we got Ronald Reagan, the Republican, I know things are gonna go from bad to worse." As a result, Alabama State Senator Hank Sanders testified to Congress, "blacks have gone out of their way to stay within the bounds of legality." As had always been his habit, Turner continued to pay close attention to the rules: "I know the law," he said.

The Perry County Civic League (PCCL), of which Turner was president, became very active in providing voter assistance in the form of sample ballots, published slates of endorsed candidates, door-to-door registration of voters, and door-to-door organizing to assist infirm or elderly voters in applying for and filling out absentee ballots. They had to ensure that the forms were properly filled out with birth dates, signatures, notarization, and the like. Certain forms of voter assistance could only be provided through absentee voting.

The absentee ballot and voter organizing made a difference in people's access to voting. Those who otherwise would not have been able to vote, either because they worked out of the county or could not get to the polls on election day, were now voting. As Mattie Brown, a

Perry County resident, observed, "People just wouldn't vote if they couldn't vote absentee."

The results were visible. Compared with the kind of near-complete political domination of whites immediately following the Voting Rights Act, gradually during the early 1980s blacks gained some representation in seven county commissions and nine towns. Before 1965, there were virtually no blacks registered to vote in the ten western Black Belt counties of Alabama; in 1982, there were now about 70,000 blacks registered and voting. The 138 black elected officials in these ten counties now constituted almost half of the total number of black state elected officials. In particular, blacks gained majorities in both the county government and the school boards in five counties: Greene, Sumter, Perry, Lowndes, and Wilcox.

The results in Perry County were particularly startling. According to Albert Turner, compared with Birmingham's voter turnout rate of 15 to 20 percent, and the state's average of 50 percent, Perry County often turned out 2,300 of its 2,600 black citizens. He boasts that on average, Perry County has a turnout rate of about 80 percent. "And that doesn't just happen," Turner reminded me. "We organize daily, down to the precinct level." Consequently, the Perry County Civic League and organizations in other counties mobilized to make black voters in the Black Belt a vote to be reckoned with, even at the state level.

In imitating others' success with absentee ballots, the Perry County Civic League was able to elect a few blacks to political office. This electoral success did not go unnoticed by some elected white officials in Perry County, including Clerk Mary Aubertin and District Attorney Roy Johnson, both of whom then initiated the federal investigation. Joined by a carefully selected handful of local politicians, Aubertin and Johnson identified for the federal authorities the key black leaders in each of these counties: Albert Turner and Spencer Hogue in Perry County; Spiver Gordon in Greene County. Albert Turner, his wife, Evelyn, and Spencer Hogue would become known as the Marion Three.

Aubertin and Johnson wrote to Assistant Attorney General Brad Reynolds, who told them to go to the FBI and to the U.S. Attorney for Alabama's Southern District. In the fall of 1984, U.S. Attorney for Alabama's Southern District Jefferson Beauregard Sessions III initiated an investigation of the PCCL. The local lawmen were now joined by federal agents, who hid with them in the bushes at the post office, watching as Albert Turner posted his mail. They then swooped inside and seized absentee ballots from the mail slot as if the ballots contained drug paraphernalia, making special marks on the envelopes.

Finding nothing criminal going on at the PCCL meetings, the federal agents began to harass the voters themselves. Dozens of FBI agents made repeated visits to scores of rural shacks on dirt roads with no



indoor plumbing, interrogating Willie Lee and hundreds of other elderly citizens who resided in the Black Belt. The FBI showed their badges and flashed a copy of each voter's ballot. Still standing, the agents then asked how each voter had voted and if the voter had received voting assistance from the Perry County Civic League. Agents often returned to these rural residents two and three times to pursue their inquiries, demanding to know, "Can you read and write?" and, "Why did you vote by absentee ballot?" Department of Justice rules said that voter ballots could not be investigated to reveal the identity of the voter. The FBI agents investigating ballots cast by black voters in 1984 paid the rule little heed.

Whereas the Justice Department under President Carter had dismissed years of complaints from blacks about white use of the absentee process, under Ronald Reagan it seized the very first opportunity to investigate the absentee ballot process when called upon to do so by whites who had long held power. The FBI descended on precisely those five Black Belt counties where incumbent politicians lost support and where black newcomers were slowly gaining political ascendancy—Greene, Sumter, Perry, Lowndes, and Wilcox counties. The agency conducted no investigations where local white politicians won. At the same time that the intensive federal investigation of Spiver Gordon in Greene County and Spencer Hogue and Albert Turner in Perry County was underway, blacks reported scores of substantial allegations of voter misconduct in ballots handled by white political organizations, but these violations went uninvestigated by the federal authorities. Whites continued to use the absentee ballot process in much higher proportions than blacks, but no white absentee ballots were investigated.

The geography of the prosecutions revealed the racially biased nature of the investigations. Senator Mank Sanders's testimony to Congress detailing the selective prosecution of black voting rights activists is worth quoting at length:

Our concern is that the investigations are only going on in counties where blacks have achieved control of a government. If you look at a picture of a map there, you would see Lowndes which has a black county commissioner and blacks on the Board of Education; you would see them investigating there. Then you would go down to Wilcox. It has a black Board of Education, a black county commission; investigations were there.

Then you would come to Dallas, where I live. We have no black elected officials on the county level. They skip over Dallas and they go to Perry. Perry has a black elected county commission and Board of Education. Investigations are going on there. Hale County, which is 63 percent black, but had only two county-elected officials, they skip over that and go to Greene. Greene has a black controlled government

—investigations there. They skip over Pickens because they have no black elected officials. They come back down to Sumter again where they have black officials controlling the government; investigations going on there.

If you look over the entire Black Belt, you see that pattern.

Clarence Mitchell, then a Maryland state senator, commented with exasperation, "The White Citizens' Council and the Ku Klux Klan can just close up shop these days because the Justice Department is doing their job with the taxpayers' money."

Despite a devastating record of black complaints about suspected misuse of the absentee ballots by white politicians, Reagan officials saw Turner as the charlatan, the PCCL as the vehicle by which he accumulated corrupt power, and black absentee voters as the victims to whose defense the federal government now came running. One official in the Reagan Justice Department's Public Affairs office defended the racially partial focus of these investigations as part of a "new policy," brought on by the "arrogance on the part of blacks" in these counties. Thus, by 1984 the federal government, twenty years earlier the main ally of Alabama's grass-roots voting rights movement, now became their prosecutor.

Not all the federal authorities were close-minded when confronted with the evidence of selection prosecution. The U.S. Magistrate who heard Spiver Gordon's selective prosecution claim in Greene County found that the federal investigation took place during a time of "an intense struggle between whites and blacks in the Alabama Black Belt with white persons seeking to retain political power and blacks seeking to share in it." After a hearing, the magistrate concluded that Spiver Gordon's evidence showed that "while others similarly situated have not been proceeded against," Gordon and his colleagues had "been singled out for prosecution."

It also did not take much to convince many local lawyers and civil rights activists in the Black Belt that the Reagan Justice Department had initiated these grand jury proceedings for political reasons solely to intimidate black voters. Alabama black attorneys J. L. Chestnut, Joe Reed, John England, and Fred Gray were alarmed at what was happening. With one or two others, these black lawyers went to Washington to meet Justice Department official Brad Reynolds and Attorney General Edwin Meese, to complain that black voters were being targeted for doing the same things that whites in the Black Belt had always done—vote by absentee ballot. These local lawyers brought evidence with them that blacks alone were being prosecuted. They presented absentee ballots cast by white voters that had not been investigated despite similar deficiencies.

—Their suspicions were confirmed by the reputation of the leading prosecution attorney, Jefferson Beauregard Sessions III. U.S. Attorney Jeff Sessions had been quoted as saying that he "used to think" the Ku Klux Klan was "O.K." until he found out that some members were "pot smokers." Sessions was also reported to have made statements that he believed the NAACP was "un-American" and that the American Civil Liberties Union was "Communist-inspired." Sessions acknowledged many of the remarks but said they were taken out of context or were made by others in his presence, as, for example, when he agreed with the statement made by another person that a white civil rights attorney was a "disgrace to his race." But suddenly Chestnut had more than just U.S. Attorney Sessions to worry about. Chestnut was greeted by a level of ignorance and contempt for the facts that he found shocking when he met with Sessions's superiors at the Department of Justice in Washington, D.C.

Chestnut, who had by then been practicing law in Selma for thirty years, calls the session with Attorney General Meese "the strangest meeting" he had ever attended in his life. Chestnut met with Meese in the Attorney General's conference room, the same room in which eight years later Howard Paster delivered the Clinton administration message to me that "we don't have the votes." Given my own experience in that room, I could understand how eerie it must have felt for Chestnut, a small-town black lawyer, to be there. Certainly, the sheer size and cavernous dimensions overwhelmed many of its occupants. But Chestnut was just as disoriented by the rush of activity, then the two minutes of absolute silence that followed Meese's entrance.

The group of Justice lawyers who accompanied Meese "were like trained seals," Chestnut reported.

I've never seen anything like that. They were sitting around this table with Ed Meese and when Ed Meese laughed they laughed, when Ed Meese had a cough in his throat they had one. It's just like trained seals. We sat around this long table and here we were five little black lawyers from Alabama, ushered into this huge room with this huge table and sat down at the far end and we were left cooling our heels there for at least forty minutes and finally in comes Edwin Meese like some grand potentate with his legal pad, and surrounded by an entourage of at least at least twelve Justice Department lawyers all dressed alike, all dressed in black, looked like they all going to a funeral, all in black. This is the truth. And they sit at one end of the table and we sit at another end and there was this big gap of space and I thought that was so symbolic.

Ed Meese sat at the head of the table, his arms folded. With his big legal pad laid out in front of him, Meese listened as Chestnut and his



companions presented examples of some ballots that a number of white activists had handled in precisely the same manner as Albert and Spencer and the others were handling them. Chestnut reminded Meese that it was from whites in Alabama that Albert and the other defendants had learned how to use absentee ballots. The black lawyers pointed out all the similarities in the ballots to Mr. Meese. The black lawyers then said, "if it was wrong for Albert and Spencer, it was wrong for these other people and the government ought not to have singled out these black folks."

Meese looked at the people from Main Justice who were following his every gesture. He asked them whether this was so. They said they didn't know anything about it but they would look into it. According to Chestnut, Meese began "to write seriously on his legal pad and he promised us that he would look into it and we would hear from him shortly. We never did hear from him, never expected to."

Chestnut left the meeting with Attorney General Meese "unbelieving," convinced that those who testified before the grand jury were deliberately intimidated while federal officials in Washington looked on approvingly. His law partner, Rose Sanders, agreed, calling them "Voter Persecution Cases," whose "whole purpose was to chill the black vote." Rose saw the Reagan-initiated inquiry as playing into "the politics of race in the South—it's used to engender fear and apathy, because what it does is it leads black people to think, 'Well, it's no use,' and they give up, and what white people do is come to the polls en masse because of fear of black control." Jesse Harper, a member of the Perry County Civic League who was not investigated, said emphatically, "The people that are testifying . . . are doing so because they are scared."

Here was Willie Lee, ninety-two years old, disenfranchised for most of his life, facing a federal grand jury asking details about his voting practices during the 1984 season's primary election. Ninety-two years old and feeble, Willie Lee was hauled by federal agents to Mobile to testify before a federal grand jury. After interrogating almost two hundred voters in Perry County—and conducting hundreds more interviews in five Alabama Black Belt counties—the government had scraped together twenty people whom they bused to Mobile to testify before a grand jury. Some witnesses were led to believe that they would receive \$300 for testifying, though in the end the money covered only lodging and expenses. Four state troopers, three FBI agents, two Marion, Alabama, police officers, and a state conservation officer gathered Lee and the other elderly black witnesses onto a Greyhound bus headed 160 miles for the trip from Perry County to Mobile.

Many witnesses were intimidated by an investigation focused, as it was, solely on local black civil rights leaders in Alabama's Black Belt and raising the specter once again that voting was absolutely dangerous.

For most of the lives of these grand jury witnesses, even trying to register had required great courage. As black people over the age of sixty in Perry County, they also did not assume that white people who came to their door were there to help them. Indeed, many concluded from the investigation that they had broken some law simply by voting absentee. Their natural inclination was to distance themselves from voting at all. Ninety-two-year-old Willie Lee, for example, whose absentee ballot was immaculately prepared, was so frightened by "the law" that he was afraid to admit he had even voted.

One grand juror joked with eighty-four-year-old Maggie Fuller when she was on the stand: "You didn't know you was going to get to come to Mobile when you was voting, did you?" Assistant U.S. Attorney General E. T. Rolison chimed in, "You made that X and got a ride all the way down to Mobile!"

But voting was not a joking matter for black people in Alabama. The government's witnesses had risked a great deal to register and then to vote. Now their worst fears had come true, and some took the experience as a lesson.

"Is this the first time you've voted absentee?" a grand juror asked another Perry County resident, Fannie Mae Williams. After having her ballot investigated by the FBI, and having her voting practices intensely scrutinized by a federal grand jury inquiry, Mrs. Williams could only murmur, "Uh-huh. First and the last."

Other elderly blacks in Perry County, Alabama, had already reached similar conclusions. They had believed deeply in democratic participation and acted accordingly; but the government-sponsored fracas in Mobile had convinced them that voting was a dangerous activity, one not worth the risk. Like Fannie Mae Williams, Zayda Gibbs declared that due to "all that had gone on with the investigation," she didn't want to vote any more at all. Mattie Perry said loudly that she "may be through with voting." Another elderly woman, wearied by all the activity, sighed, "If I'm able to get to the polls, I'll vote. But I ain't voting no more absentee."

Following the grand jury sessions in Mobile, the federal government charged Perry County activists Spencer Hogue, Albert Turner, and Albert's wife, Evelyn Turner, with mail fraud and conspiracy to vote more than once. The government indictments promised each defendant more than one hundred years in prison if convicted on all counts of federal criminal activity, including felony charges under the Voting Rights Act of 1965. I joined the defense team several months after the Mobile grand jury investigated and then indicted the three Perry County civil rights activists.

Hank Sanders believes that getting lawyers like me from out of town was crucial, not simply because of who but because of what we

represented LDF in particular, "helped to give a legitimacy to the whole struggle that was very much needed. Because other civil rights organizations were diving away from it, that sent an unusual message. And because of the long history of the Legal Defense Fund in the whole civil rights arena, it gave a legitimacy that I can't tell you how much that meant. It was all out of proportion to the actual litigation role you played."

Sanders organized a team of lawyers, recruiting an experienced and impressive group. The most prominent were Oakland attorney Howard Moore, who had defended Angela Davis in the 1970s, and Morton Stavis, an experienced First Amendment and constitutional lawyer from the Center for Constitutional Rights, who celebrated his seventieth birthday during trial preparation. Also helping out were J. L. Chestnut; lawyer Robert Turner (Albert's brother) of Marion, Alabama; Dennis Balske, a young white criminal defense lawyer from Montgomery and the Southern Poverty Law Center; Margaret Carey, a young black woman then practicing civil rights law in Mississippi; and several LDF staff lawyers, including Deval Patrick (who replaced James Liebman mid-trial), and me.

Rose Sanders remembered fondly this national roundup of legal talent:

Our law firm has been in the Black Belt up to about 15 to 16 years and we had carried so many of these struggles alone. We have responded to so many of these things without any resources other than the immediate resources that we had. We had taken a range of cases all without pay and it was clear to us that we could not do that, that we could not respond to this level of attack without help. And the fact that the help came so—I guess it was quick, I can't remember—but the people who came, they were just very dynamic, very caring, as well as confident. And that's what made it so exciting because they weren't just technicians, they were caring as well as confident people.

Hank also had to raise funds for those lawyers who were working free of charge. No lawyer got paid, but some lawyers were not with organizations, and Hank had to pay their expenses. Hank Sanders described what he did as a three-front effort. The first was "to get lawyers from all around the country to participate in this fight." The second was "to fight on a community organization basis." Within the Black Belt and in other places, it was Hank's job to organize "our communities so that whatever happened those communities would be able to go ahead and function politically afterward." This meant that Hank had to fight constantly "to try to define the issues so the community would be able to understand" what was at stake in the case and would rally in support



of the defendants. He conducted a grass-roots appeal to educate the public in the face of a full-blown media effort to present only the criminalized image of the Marion Three. Finally, "we fought on a political basis. So we organized not just in Alabama, but we decided to nationalize it. We got help and support from lawyers from all over the country. We got help and support from community organizations all over the country."

The public relations battle was especially difficult. Hank recalls that the local press was very hostile. "They tried to publish anything negative and anything positive they simply wouldn't say." But despite initial resistance from the local media, Hank and Rose persisted.

We first tried to organize it so that people other than us lawyers here would be able to speak. But the press would just shut them out. There would be no article at all. So at some point the lawyers—me and Rose and Ches—had to speak out a lot more. And we spoke out in ways that were strong and we had a lot of bar complaints filed against us to have our license taken on the basis of us speaking out on these issues. Ultimately, nothing came of those because they really were freedom of speech issues. Still, most folks would have slowed down, wouldn't have continued. Part of their theory was to weigh us so much down in our fight for ourselves that we couldn't fight for our clients and we could not fight for our community.

But the effort to intimidate the local lawyers, just like the effort to intimidate local residents, didn't work. For Hank Sanders, Rose Sanders, and J. L. Chestnut, "it was a political life-and-death situation." They saw the absentee ballot charges as the opening wedge in a full-fledged Republican battle to undermine black political power in the Black Belt. "If they had succeeded in that situation, we expected that they would be able to go to other places in the political spectrum. So, in light of that, we just simply said, 'Well, if they get us on that front, then they're gonna get us on every other front.' We really saw that as the beginning of an effort to roll back those gains—a second end of Reconstruction." Inspired by the determination of the local lawyers in Alabama, others joined the effort. Maryland State Senator Clarence Mitchell declared, "Vigilance is the price of liberty. We should never have left the streets. Now we're going to get back out there."

IN TRYING to take the measure of the effects of the investigation on blacks in Perry County, and in order to prepare for trial, a group of LDF lawyers and researchers rented a car and traveled the dusty dirt roads to meet the people the government had hauled down to Mobile. I also traveled the rural dirt roads to interview some of the people in Perry

County who had voted absentee but had not been hauled down to the grand jury in Mobile. We soon discovered that the government had pursued its case against the Perry County Civic League activists even though most of the FBI formal interview forms (called "302's") revealed nothing suspicious about the ballots in question. Our follow-up interviews uncovered nothing wrong from the voters' perspective in the way their absentee ballots had been prepared. Many residents told us that they had indeed received voting assistance, and that the ballots were precisely as they should be. Yet many of the FBI interviewers never addressed the content of the ballot at all, demanding to know instead why these elderly people needed assistance to vote, asking them to recall in minute detail the specific actions they took in checking off each name on the ballot. The FBI took the opportunity to investigate other matters as well. While interviewing eighty-four-year-old Maggie Fuller, the FBI "observed . . . in her front yard a 1965 Ford pickup truck." Whose was it, they wanted to know, writing down the license plate number. Who drove it?

A few of the people we met had refused to talk to the FBI altogether. Alma Price told the special agents who tried to interview her that "they have no business" at her home. Carrie Sewell wanted to know, "if the ballot is sealed, how do they know it's been changed?" Believing that the FBI had "done all of this dirty work" in order "to scare people," Mrs. Sewell challenged the special agents who came to see her: "The FBI came around to my house asking me a lot of questions. 'It's none of your business who I voted for. You better get out of my yard.' I got nasty with them because they made me mad. I told them, 'Don't you ever come around here.' No one had to tell me how to vote. I vote the way I want to vote. I've got a mind of my own."

These interviews helped confirm in my mind that I was on the side of justice fighting the Justice Department. But the sense of righteousness about my mission was incomplete until I met one of my clients, Spencer Hogue.

Spencer Hogue is a soft-spoken man. He and his wife Jane live in Marion, the largest town in Perry County. Although it was the county seat, Marion looked pretty much just like the rest of this rural county except that the roads were paved, some of the houses were brick, not just wooden shacks, and all of the houses were closer together. Spencer and Jane lived in a frame house with its own makeshift porch; it was a small house, with only two bedrooms. Their daughter and her family lived in a trailer at the rear of the house, so close it almost knocked up against the backroom wall.

During our strategy sessions, Spencer often sat at the dining-room table without speaking for long periods of time. He kept his hands folded in his lap; his back was erect. He wore his simple, freshly laun-

dered shirt always buttoned up to the neck, no matter how hot the weather. Jane kept us all eating, with fresh tomatoes from her garden and delicious hot pies, still warm from the oven.

Spencer Hogue is a proud man. He has a few teeth missing in the front. To protect his dignity and sense of control, he preferred not to smile. But when he was genuinely amused, he could laugh with his whole body. His dark brown face would light up, his eyes twinkling with delight. When I first met him in 1985, however, Spencer did not laugh often. He was facing multiple felony charges; if convicted, he could spend the rest of his life in jail.

I asked Spencer why he joined the Perry County Civic League and why he worked with Albert Turner, knowing all that was at risk. "I guess a lot of things happened to me coming up," he explained. "My great-grandmother had been a slave. She used to tell me how they were treated and everything, and I guess that had a lot to do with it. It had a lot of effect on me and I didn't want to come up that way."

Not all of Spencer's activism reflected his great-grandmother's stories. Spencer had a few stories of his own. When he was five years old, in the 1930s, he and his great-grandmother and grandfather were living on a plantation. Cotton was the staple. The overseer had come over to his great-grandfather's house.

That afternoon, my grandfather had a little plot of corn that he was plowing and I took him some water up there and I guess the overseer got there just about the time I did and when I carried the water to my grandfather, the overseer was right there. And when my grandfather finished drinking, he handed me the jar. The overseer was angry that my grandfather was working on his own plot. He cussed at him, calling him boy and everything else that he could think of. And I never did forget that. That followed me. I can remember having that jar in my hand and I didn't know whether he was gonna hit Grandfather or not, but I made up my mind that if he did I was gonna break that jar on him. And that followed me a long way. I didn't hate white people but that always stayed with me and it's still with me. I never did forget that.

Spencer Hogue also remembered how inspired he had been working with the Civic League during the 1960s. Throughout the South, Septima Clark of South Carolina had spread the idea of "Citizenship Schools," which were held "in people's kitchens, beauty parlors, and under trees in the summertime" to teach adults directly from voter registration forms how to write their names in cursive. Spencer and Jane Hogue turned their living room in Perry County into one such school. As Spencer explained to me, "We ran a school in our home to teach people how to read and write. People would come sit in the living

room or we would move everything from the dining room into the kitchen and people would sit there. And a lot of people came to love us from that.

"My wife even taught her daddy how to read," he boasted quietly. In their small wooden bungalow, the Hogues, with help from SCLC, ran the school about two months without stopping, and then on and off for a number of years. People from the community would talk about whatever they had done that day; their stories would be written down, becoming the text for the reading lesson. Discussion deliberately emphasized "big" ideas—citizenship, democracy, the powers of elected officials. Local adults were taught to read newspaper stories critically and to be skeptical of politicians' promises. Neither Spencer nor Jane Hogue had finished high school, but they were the best teachers in these "schools." As respected members of the community who could project well, they could teach. People, they discovered, learn best from their peers, from people whose own status was not so different than theirs. Spencer and Jane became local leaders, just waiting to be discovered and further developed.

Spencer Hogue, a quiet, slow-moving man who wouldn't forget the indignities of growing up black in Alabama, soon associated himself with Albert Turner. Turner, who had also lived all his life in the same community, is an enthusiastic talker. Albert Turner has a story for every occasion, a fighting spirit, and a reservoir of energy that would keep two men going. Albert laughs easily; he is gregarious and full of life. He enjoys the sound and feel of his own words. When Albert speaks, he holds the words in his mouth while his tongue slides over the fullness of his message the way a connoisseur might sip wine, allowing it to linger on his palate to savor the texture.

Turner explained why the activities of the Perry County Civic League were so threatening to some of the people in the county. We had been standing in front of the courthouse facing a row of stores, a drug store across the street, and a fairly narrow sidewalk. I asked Albert what his life had been like.

When I first started with the Civil Rights Movement, we couldn't even walk the streets, I mean a black man had to tip his hat to a white lady, and walk off the street when he met her. Uh, they put you in jail and you would never get out. Now, this is in my lifetime, this is in the early sixties.

Probably 80 or 90 percent of all the blacks [in this area] worked the land. And you grew crops for them and you didn't get no money, you know. Hm! You picked cotton and they just buy you some shoes, something, or some groceries, but no money. You could make a hun-



dred bales of cotton and there was no cash. It was like South Africa. That's a fact. And this, I'm talking about some thirty years ago. And this is what people did. It seems like for years [we've] just been their property, someone to make a living off of, to use for their economic purposes.

Now, suddenly, blacks were talking about sharing power. That idea frightened many whites, who figured blacks would simply use their newly acquired seat at the table to do to whites what had been done to them. What those whites didn't realize was that Albert Turner did not consider himself a regular politician. He was a man of big ideas. "I'm the kind of person," Albert said, "I consider myself as being one of those that make deep-seated changes. I'm called the 'root doctor' sometimes, and it's because I like to deal with the roots of a situation, I like to plow it out, to go down to deal with what really makes a situation work."

This was not about revenge. This was about justice. This was about a government that represented all the people.

Against the advice of their lawyers, Evelyn Turner, Spencer Hogue, and Albert Turner went to Mobile prior to trial and voluntarily testified before the federal grand jury. Albert Turner insisted on telling his story to the grand jury even though grand jury proceedings are secret: the only people present are the jurors and government attorneys. Turner and Hogue would not be permitted defense counsel in the grand jury. Nor would they be able to ask questions. But Albert Turner knew that he was innocent. He wanted to begin his defense early. He wanted to tell the local people in Perry County he was not afraid. He wanted to show his supporters that they had nothing to fear either. Albert Turner also knew that by testifying freely, he might begin to turn around the public perception that had been created by the local media.

Turner began his testimony to the grand jury by saying, "I felt that probably the grand jury ought to know the real truth about this. And I came today to answer whatever questions you want to ask." Albert Turner explained why he went to testify before the grand jury. "I'm simply doing this to try to prove that I'm not a person who walks around with a gun trying to intimidate people to make them vote absentee." Instead, he said, he helped people cast an informed ballot, telling them who the candidates are, what they stand for, and what the PCCL thought about their political agendas.

Turner explained to the grand jury how, in 1962, he, Spencer Hogue, and others formed the PCCL to mobilize for the right to vote. Turner was inspired to create the organization when he returned from college with a bachelor of science degree and found he was prevented

from voting. He remembered, "I graduated from college, and I thought I knew something. And I couldn't register to vote. That set me off so I started by trying to get myself registered. That took about two years."

In the interim, he joined and was elected the second president of the PCCL. Over the years, the PCCL broadened its reach to include voter registration and voter education. The latter entailed the production of voting slates—lists of endorsed candidates such as those produced by many political organizations and such as were published by other political groups in Perry County. In more recent years, the PCCL turned its attention to serving the community's everyday needs, such as getting groceries to the elderly, helping the homebound get to the doctor, providing scholarships to students, sponsoring a radio program. Albert Turner told the grand jury, "the main goal of the Perry County Civic League now is to try to make life better for people who are oppressed, whatever we have to. For instance, we help people get food stamps and we . . . haul commodities to people. We try to encourage education and try to improve education." Turner explained that the Perry County Civic League was not just concerned about winning elections. "I mean, we went to the whole community, wherever the problem was. If they had a problem with the school, we worked on it; if they had a problem with food stamps, we worked on it. It was not just what you called electoral politics."

For Spencer Hogue and Albert Turner, this was what the civil rights movement meant by participatory democracy. As Albert later told me, "This government doesn't believe poor people should run government. They think people who own property and are wealthy—only the elites should vote and run government. I think everybody ought to run the government." Whereas some people had felt in the past that "we were just interested in what you call the *right* to vote," they weren't aware that more was at stake than the outcome of an election. It was about getting people involved in making decisions that affected their lives. "That's what it was all about all along," Albert said. "Everybody ought to run the government."

Government attorney E. T. Rolison completely ignored the subtleties of Turner's philosophy. He simply asked Turner at the grand jury:

How do you do it? Do you say, "Who do you want to vote for?" Or do you say, "We're voting for this"—How do you actually handle it when you get to a person that's got the ballot? How do you help them vote? Tell me how you do that.

A. In incidents where people don't know who the candidates are or nothing, we let them know who the candidates are.

Q. That you're supporting?



~~A. And most times we also carry with us a sample ballot and let them know who we're supporting. And we let them make that choice *after they know who we are supporting, after they know who the candidates are.* And once the people say we want to vote such and such a way, then we vote that way. (italics added)~~

Spencer Hogue, though much less gregarious and outspoken than Albert Turner, also testified to the ongoing work that the Perry County Civic League performed. "The voter looks to us for more than just voting. They look to us for other services. . . . Well, in some cases I have to take some of my people to the doctor. I have to help them with other necessary business papers that they have. And a lot of them is on the food stamp program. I have to help them there." Spencer continued: "We've been working with these people ourselves since 'sixty-two for various things. And we have never deceived them. So whenever we make a representation, they almost always go with us. Ain't no doubt about it. The people in my community do." The people "almost always go with us" because of the work that Spencer and Jane Hogue did starting in the 1960s to hold citizenship schools in their dining room. "They loved us for that," Hogue said.

Flouting the recommendations of their lawyers, Turner and Hogue talked freely and voluntarily. They were, in this sense, their own lawyers, or at least insistent on advocating for themselves, speaking in their own voice. It was a commitment to speaking up, despite the risks, that in 1993 inspired me to struggle to go public on *Nightline* despite repeated administration warnings against defending myself and my ideas. It was my own exposure to Albert's and Spencer's experiences and their belief that everybody ought to run the government that later influenced my law review articles and my search for a more democratic way to include all of the people in making the decisions that affected their lives.

Just as administration staff kept counseling me before the confirmation hearings to remain silent, Albert and Spencer's lawyers worried that the defendants' stance before the grand jury was courageous but risky. As attorney Rose Sanders later explained: "Albert just wanted to talk because in his mind, he had nothing to hide. He actually testified before the grand jury and he didn't have to. That was a part of his right and in his mind, 'because I am right, I don't have nothing to hide.' But what Albert was not recognizing is that righteous behaviors are all right for righteous people but if you are dealing with the unrighteous, it often doesn't matter if you are right."

In Albert's case, the sense that he was entitled to be heard turned out to be a useful strategy. At trial, the prosecution presented the jury with copies of Albert and Spencer's grand jury testimony. Both had

done such a good job of explaining themselves to the grand jury that we decided not to put them on the witness stand at trial, where they might have been tricked up by clever cross-examination.

Although Albert and Spencer never stopped believing that their cause was just, some of the defense attorneys early on looked for a way to avoid a lengthy trial, knowing that a conviction, even on a weak evidentiary record, was a distinct possibility. At one point, a couple of lawyers tried to negotiate a plea bargain. It had become clear to J. L. Chestnut, for example, that in all of the massive documents the government had collected, they could find some technical violations of the law. Since no one had any intent to do anything wrong, the question for Chestnut was whether U.S. Attorney Sessions "would be interested in some sort of misdemeanor which somebody could plead to, not have any permanent record, not serve any time, send some message that we want to be careful about voting." As Chestnut later explained to me: "I don't think you know about this, there was a discussion of whether or not to meet with Jeff Sessions and to see whether or not anything could be worked out. And we met with Jeff Sessions along those lines. Mort Stavis, deep down in his heart, I think did not want any compromise. Mort wanted it tried out and the government put on trial so the rest of the country could see it." Although Chestnut pursued the plea negotiations, he "didn't think we had a prayer of working anything out." Chestnut went down to meet with Jeff Sessions, but he didn't have any high expectations.

J. L. Chestnut told me, "I had no doubt in my mind about how ambitious Jeff Sessions was and is, and we met with him and I said to him: 'Jeff, what possibility is there, if any, of trying to work something out on a misdemeanor basis? I suspect that from what we have seen from this evidence, you may be able to establish some technical violation of the law.' And Jeff said there was no way that he was going to agree to any kind of misdemeanor plea.

"And I said, 'You're gonna fall flat on your face because you can't win.' And I'd tried cases before him, and Jeff was not then or now what I would call a number one trial lawyer by anybody's standards, and here he was in this case talking about no way. But that also confirmed that he had an agenda with me. I had made deals with him, plea bargains with criminals and all that, and here he was with these people saying no. It didn't even make sense, except I understood that he had this larger agenda far beyond convicting Albert and Spencer."

Albert also realized that the trial was not about punishing him "in terms of incarceration." "I was offered a bargaining chip, and Spencer was, too," Albert explained. "I was given the option, through a plea bargain situation, to be set free, one hundred and forty-five years dropped completely for a five-year probation which would have been,

In reality, two election cycles, and all I had to do was tell them that I was not involving myself in politics." At that point there was absolutely no question in Albert's mind that the issue was "the deep-seated, deep-rooted kind of politics I was involved in."

Since Albert was not going to agree to change his "deep-seated, deep-rooted" politics, there was no deal. In response, the government's most important strategy was to criminalize the Marion Three. They indicted them each on twenty-nine counts, including conspiracy, mail fraud, voting more than once, furnishing false information to election officials, marking absentee ballots of elderly voters, vote dilution, "defrauding the citizens of Perry County and the State of Alabama of a fair and impartial primary election," and "causing the casting and tabulation of false, fictitious, spurious and fraudulently altered absentee ballots." Together, Albert Turner, Evelyn Turner, and Spencer Hogue were looking at 180 years in prison if convicted on all the charges.

The tactic worked at first: many people in the community were frightened by the number and the weight of the indictments. Senator Sanders remembered how hard it was to gather support for the Marion Three at the beginning of the trial:

We tried to get help from SCLC and from ADC [Alabama Democratic Conference], and other places. We didn't get much help from the traditional places, even though Albert Turner had been state director for SCLC back in the '60s and early '70s, and led the mule train at Martin Luther King's funeral. But the reason we didn't get support is because people say, "Well, if they got that many charges against 'em, they must've done something! And they're going to get a conviction, and if I get too close to them I'll get dragged down in the process." A lot of individuals will desert you because they think, "They wouldn't have indicted them if they hadn't done something wrong."

The civil rights leadership were not the only ones initially wary of associating with the Marion Three. Community members were also afraid of getting involved. Though Perry County residents knew the PCCL well, the number and weight of the charges made them "nervous" and "self-conscious."

DAYNA CUNNINGHAM was a law student working for LDF that summer. She came down to help us get ready to cross-examine the government's witnesses. During the trial, she and LDF staff lawyer Deval Patrick traveled throughout the county interviewing people about the PCCL, about Albert Turner and Spencer Hogue, gathering information about the PCCL's practices and its activists' relationship to the community. The task was difficult because people were scared. Initially, they resisted

talking to Dayna and Deval at all: "People were so afraid. The sense of fear was palpable. Nobody trusted us in the beginning, the law had been through there so many times." Dayna remembered one woman in particular:

I'll never forget, we went to this one house and there was a woman on the front porch sweeping the front porch. We had learned by now that we couldn't just walk right up to the house, and so we were standing about twenty feet back, and Deval said, "I guess you know what's going on in the county and we just wanted to talk to you some about what's going on." And this woman had this broom, and she was holding this broom and sweeping the porch, and as she was sweeping it she said, "No! No! No! I ain't talkin' to nobody! Not nobody! Now you just get off my porch!" This broom was her weapon, and she was sweeping us off the porch with all the dust, you know?

And Deval said, "Please, ma'am, we really need to talk to you. We are trying to help Spencer and Albert and we just want to spend a few minutes talking to you."

The woman did not look up. "How do I know you are here to help Albert and Spencer?" The whole time she's sweeping. She did not stop sweeping once. She's not going to let us onto the porch and this broom is going to ensure that we don't get onto the porch. And so finally Deval, who is a master at this, said to her with this angelic smile, "Ah, now why are you being so mean to me?" And the woman could not help herself. She cracked a smile and said, "I ain't that mean, am I?" The next thing we were sitting in her living room drinking lemonade and she was complaining about her no-good husband.

Historical memory may also have solidified community fear of and for the Marion Three. In addition to the illicit and dangerous quality inherent in black voting in the South for so much of the lives of all but Perry County's young people, there were some very recent prosecutions of voting activists, including the well-publicized case of Mrs. Maggie Bozeman, the fifty-five-year-old black schoolteacher from neighboring Pickens County. Although her conviction was ultimately overturned after I filed a habeas petition in federal court, the case had a lingering effect in reducing black voter turnout in Pickens County, and an instructive and depressing effect for blacks in neighboring counties like Perry and Greene.

That local Alabama authorities might come after blacks for voting was one thing. But, presumably, the federal government should have been something entirely different. After all, it was a federal judge in Montgomery who ruled in Mrs. Bozeman's favor and threw out her state conviction for insufficient evidence. Even the blue suits in Wash-



ington had played an apparently sympathetic role, certainly for the last third of the century. Indeed, not until the federal examiners came down in 1965 after the U.S. Congress passed the Voting Rights Act did most blacks in the Black Belt of Alabama join the voting rolls.

Yet here we were being summoned once again to Alabama to defend voting rights activists, this time from federal, not state, prosecution.

EMMETT COX was the presiding judge at the trial. As Deval Patrick said: "He looked like what you would expect a judge to look. He looked older than he was. He wore a perpetual scowl on his face. He was impatient and crotchety. He had whitish hair. He seemed bigger than he was. Particularly in criminal cases, judges often convey they are giving the defense its time but not its due. The more vigorous the defense, the more impatient they seem. That was Judge Cox."

Dayna Cunningham remembered Judge Cox literally stepping down to do whatever he could to bend the stick toward the prosecution. During the testimony of a white law enforcement officer, "the judge actually got down off the bench and poured the witness a glass of water." By contrast, Dayna recalled the judge's demeanor with an eighty-five-year-old black prosecution witness. "The witness was sort of bent over and spoke very quietly, and the microphone was far from his mouth and so he was not very well heard by the jury, and the judge at one point just kind of leaned over and barked at him and said, 'Sit up straight and talk into the microphone! The jury can't hear you!' And it was just such a striking contrast to the judge getting off the bench and going to fill the water glass of a white witness."

The prosecution team, although not outresourced, was certainly outnumbered. Our defense team—seven blacks and three whites—took up two long tables. During most of the trial, U.S. Attorney Jeff Sessions was not present, leaving only two young white attorneys at the government table. Perhaps the judge was just trying to level the playing field in his own way.

Both Robert Turner (Albert's younger brother and a lawyer in Marion) and J. L. Chestnut thought Judge Cox was one of the fairest judges in the area. Robert in particular remembers how Judge Cox let him pull the numbers from the master wheel to select the jurors who would be seated in the box for questioning by the lawyers. Robert thought Judge Cox did this because he had already denied all of our defense motions challenging the discriminatory way in which the jury was empaneled in Mobile to hear a case from another part of the state that was dramatically different geographically and demographically. Robert Turner assumed that Judge Cox, given his jury rulings, was so confident the defendants would be convicted that he could appear to



give them a little boost. Robert memorized the jury numbers of the black prospective jurors. After Robert finished pulling the numbers and both sides finished voir dire, we had a jury of seven blacks and five whites.

For J. L. Chestnut, the case was almost over once the jury sat in the box. "Black jurors," he told me later, "will convict blacks, Chinese, Eskimos, anybody else, they do it all day every day. If they would not convict in these counties which are seventy percent and seventy-five percent black, you wouldn't have anybody going to the penitentiary and there are no less people being sentenced in a county in Alabama that's seventy-five percent black than in a county that is fifteen percent black. There is no appreciable difference. What occurred is that because of the black experience, when the judge charges a black juror about the state's burden to prove beyond a reasonable doubt, they're glad to hear that and probably would hold the state to that standard even if it were not the law. Because they have had somebody in their family, somebody in their neighborhood that has had experiences which cause them to be suspicious of all authority and in particular of all authority that's closest to them—the police. Jeff Sessions never understood that, and his arrogance and the arrogance of the people working for him who selected that jury when they put all of those blacks in the jury box with this circumstantial case and they were not going to get close to proving any criminal intent, and once I saw the jury I knew that that case was over with."

Chestnut found Jeff Sessions's miscalculation understandable: "They figured they were the government; all they had to do was prove that these people had violated the letter of the law, and the jury would give the government the benefit of the doubt and assume intent. That's what they did and that's a crucial mistake. These blacks were not going to give the government the benefit of the doubt."

Early in the trial, the judge seemed to rule against every defense motion. He seemed particularly overwhelmed by the amount of legal papers the LDF lawyers filed. We motioned him to death. Most of our experience was as appellate lawyers. As in Maggie Bozeman's case, we were often the ones called in to salvage a case on appeal that had been lost at trial. Our strategy, therefore, was to protect the record in the event the defendants were convicted. Fortunately, the other defense lawyers, particularly Howard Moore and J. L. Chestnut, were more single-minded; they were interested in convincing the jury seated in the jury box to vote to acquit.

Judge Cox infuriated the defense team when he ruled that we could not even mention the word "race" in court. He had already denied our pretrial motion to dismiss the entire case on the grounds that the government was selectively prosecuting our clients because they were black. Now, the judge was afraid that, given the composition of the jury,

he would lose control of the courtroom or the case if witnesses were even racially identified. He was not content merely to scold us at every mention of the racial undercurrents. At one point, Judge Cox went so far as to hold defense attorney Howard Moore in contempt with the promise of a later fine (the citation was later thrown out by the Eleventh Circuit) when, on cross-examination, Howard Moore simply asked Clerk Mary Aubertin, a government witness and one of the primary forces behind the federal investigation, to state for the record the race of two white voters whose absentee ballots she had handled personally although the voters had long since moved out of Perry County.

The government's case hinged on twisting constitutionally protected voter assistance into a criminal activity. They employed a novel theory to make federal criminals out of Alabama civil rights activists. The government claimed that marking a ballot *with the consent* of a voter, what Judge Cox called "proxy voting," was illegal. In the government's eyes, Turner and Hogue, by helping illiterate voters to fill out their ballots—with the voter's specific and voluntary consent—were themselves voting more than once. Assistant Attorney General E. T. Rolison told the court that

It is our position that if a person obtains a ballot from an individual and the voter says, "All I did was make my X on this ballot where my name was to go" and that voter says, "I didn't make any of these marks" [in the candidate boxes], [then the voter] did not exercise any of these choices for these candidates. [T]hat is voting more than once and if a voter just hands over to a member of the Perry County Civic League without knowing anything [about] the slate or who they are supporting and they vote that ballot, that is also voting more than once.

Judge Cox immediately saw the extraordinary implications of the government's theory for any kind of political slate or public endorsements, or for spousal communication in which one spouse deferred to the political judgment of the other. Many people vote without being personally knowledgeable about every candidate. People vote with lists in their hands given them by neighbors or with sample ballots provided by advocacy organizations they trust. And, perhaps most commonly, they pull the lever in the voting machine for a political party sometimes without even knowing what offices they are voting for, let alone which candidates they are supporting. The court, comprehending the disjuncture of the government's theory with standard American practices, asked:

Even if the voter authorizes someone to complete the ballot?  
Mr. Rolison: That is correct . . .

*The Court:* Even if the voter authorizes someone else to fill out the ballot?

*Mr. Kolison:* If the voter has no idea who is going to be voted for on that ballot that is voting more than once, because that person is exercising their will and control over that ballot and are making a choice that that person had nothing to do with.

In other words, the act of writing and marking a ballot was necessary to forming a political judgment. For the Reagan U.S. attorneys, voting was a profoundly solitary act, to be performed under circumstances in which the voter acts without connection to any other members of his or her family or community and without availing him/herself of trusted sources of information.

Judge Cox found that proxy voting was a legal and constitutionally protected activity in Alabama, yet the U.S. Attorney's office presented witness after witness to show that Spencer Hogue or Albert Turner had helped a person to vote with that person's consent. When the voter was illiterate, Hogue and Turner marked the ballot for them, calling out the names of the candidates. When the voter was confused, they informed the voter of the merits of various candidates.

There had been an unusual amount of confusion during the primary elections of 1984 in Perry County because the PCCL, for tactical reasons, decided not to put out a sample ballot or announce their preferences on the radio. Much of the voter education, therefore, took place in face-to-face encounters with the voters themselves. Of course, the opportunity for overreaching was certainly present. Had Albert Turner and Spencer Hogue been strangers to the community, or political hired guns, or even conventional political operators, they might have misused this moment of intimacy. But Albert and Spencer were a different kind of political activist: voting for them was about community empowerment, not individual advancement.

Perhaps Albert and Spencer could have spent more time with each voter educating them about the political process generally, not just advising them on the merits of individual candidates. Perhaps they should have insisted that the voters attend public meetings to make their voices heard. But these were elderly, impoverished people living in the countryside, with no means to get around. If voting was important, voting had to come to them.

One witness, a Mrs. Sanders, testified she told Hogue that she wanted "the man we all want." For Mrs. Sanders and others, voting was an expression of solidarity, based on relationships of mutual trust and common understandings of a collective plight. Other government witnesses also testified that they wanted to vote the PCCL slate, the "way the crowd was voting." They trusted Spencer Hogue and Albert Turner

and wanted to vote the Perry County Civic League slate. "I-been knowin' Albert all my life. I know his daddy. I know his mama and that's his little brother sittin' there beside him. Albert's been pickin' my ballot for sixteen years," one witness said.

Far from the picture of exploitative activists using unknown elderly people for their voting power that the prosecution needed, the witnesses expressed affection for the defendants, describing their relationships with Albert and Spencer sometimes from birth, but always characterized by cooperation and goodwill. Spencer and Albert helped them to the doctor when they were sick; they brought them food when they were hungry. Witness after witness testified to the longstanding bonds of community that held them together. They depended on the Perry County Civic League to gather information about the candidates, some of whom were running statewide and about whom the witnesses knew little or nothing. As Mrs. Sanders testified, she "didn't know none of the folks" running, and the PCCL slate was *itself* her choice. She, and others, deferred to the expertise and informed judgment of the Perry County Civic League in general, and in particular its members Albert Turner and Spencer Hogue.

LDF defense attorney James Liebman, who is now a Columbia Law School professor, told the court, "I don't see how that is any different from that situation where they have made a choice and that choice is I want to go with you or the PCCL slate." Judge Cox agreed: "I am not inclined to think that a situation where a voter gives someone else his ballot with the authority to mark the candidate he wants to mark and vote it is a criminal offense." He instructed the government's lawyers not to argue in court that such activity was a violation of the law. Judge Cox recognized that voting, for the government witnesses, was not an isolated act by a lone individual. Nor was it merely an autonomous expression of unmeditated, individual will. The witnesses' vision of voting—the one they insisted upon in court even when it provoked badgering by government lawyers, and the one upheld by Judge Cox as legal proxy voting—was an expression of community power. It did not take much cross-examination for the government's evidence to collapse under the weight of its own estrangement from common, democratic, and perfectly legal practices.

Still, this was only the beginning of the prosecution's problems. Judge Cox may have been initially sympathetic to the prosecution. He could not, however, resuscitate the government's case once it started to fall apart. The Reagan-appointed U.S. Attorney had delegated most of the dirty work to two junior attorneys, who based their case on the testimony of seventeen witnesses out of two hundred people interrogated by the FBI in Perry County. These witnesses turned out to be the prosecution's biggest liability.



~~A few of the witnesses were clearly disoriented to find themselves~~ in a wood-paneled and physically imposing courtroom, testifying about something that did not stand out in their mind at the time, and that moved ever further into the past as the months passed between the September 1984 primary and the June 1985 trial. A few days into the trial, local papers, hardly sympathetic to the defense, were reporting that witnesses "could not remember voting at all," and that they "appeared frightened during the questioning process" or "confused and their testimony has been confusing." For example, Renear Green's testimony on direct examination by the government did little to further E. T. Rolison's theory:

Q. Okay. And who marked the ballot for you?

A. I marked it for him to sign.

Q. So you—

A. I done some scratching, but I don't know whether that is the paper or which one. It has been more than that and that. . . .

Q. Did you tell the FBI that you did not know why Spencer Hogue marked the ballot for a candidate other than Reese Billingslea. Now, the answer is yes or no?

A. I told him no, I didn't know none of them but him. I told him, yes or no.

The government attorney, getting frustrated, pressured another witness, Robert White, to name whom he voted for. "I can't remember what did I do because I had him fill it for me. I couldn't do it." White, like many other government witnesses, was corroborating the defense theory, what the judge called perfectly legal proxy voting.

Some witnesses gave contradictory testimony. Others revealed, on cross-examination, that they couldn't read or write, and therefore could not identify the ballots being waved in their faces by the government attorneys. Others could barely see. Some had no long-term memory of voting at all, but admitted that the problem was their memory, not their voting. Each in their own way actively undermined the government's case that they had been coerced or intimidated into voting against their will. Most of the government witnesses went even further, giving endorsements for Albert and Spencer. Their stories did not help the government. Had the government lawyers or agents ever listened to them, really listened, they would have known that.

Judge Cox tried to alert the government. "You should be on notice by now," he said, "that you have witnesses that are saying one thing in court that is different from the way the FBI understood it." But the government agents failed to pay attention to such details; they projected their own views onto their rural, community-oriented witnesses.



Mrs. Price's trial testimony, for example, revealed that she needed voting assistance because she "had arthritis in my hand and my eyes were bad." She had marked the candidates she did not want to vote for and she was "nervous [about voting] and couldn't write." Albert Turner provided the assistance that she needed. Frustrated and indignant that its witnesses were not making its case, the government badgered Mrs. Price, as it had every other witness, about the ostensible inconsistency between the FBI's 302s and the witnesses' court testimony.

Q. Do you remember telling Mr. Bodman [a special agent] that you don't know Evelyn Turner?

A. I remember that.

Q. Is that a true statement or were you mistaken?

A. Well, I meant that I knew her but I didn't know her as well as I knew her husband.

What the white FBI agents did not realize is that many black people in the rural South, confronted with their own powerlessness in the face of overwhelming white domination, often developed a way to soft-pedal bad news. They cleverly coded their messages so white folks could hear exactly what the white folks wanted, at the same time carefully maintaining the integrity of their own version of the truth. Some scholars call it "signifying"; Dayna Cunningham calls it "classic dissembling. Where you can't confront anybody, but you just want to go on your own way the best you can—steadfastly, you know? And 'Yeah, that's right, sir, that's exactly what I said'—never disagree with the man, but clarify and tell the whole story exactly the way you see it."

This is apparently what happened with Mrs. Price, when the government pressed on in questioning her as if she were not their own witness.

Q. When you talked to Mr. Bodman, do you remember telling him that you did not authorize anybody to make any changes?

A. No more than what I told them to make.

Q. Let me try to rephrase it [the prosecuting attorney insisted]. It really calls for a yes or a no, if you can answer it that way. Do you remember telling Mr. Bodman that you did not authorize anybody to make any change, either yes or no?

A. No, I didn't tell them to make no changes.

Q. Do you remember telling Mr. Bodman that you did not authorize telling anybody to make any changes? I am trying to get at what you told Mr. Bodman? [The prosecution leaned in toward Mrs. Price]

A. Yes.

Q. Do you remember telling Mr. Bodman that you did not authorize anybody to make any changes for you? [leaning in even closer]

A. The only changes were made—no more than the changes—

As the prosecution's voice got louder and the government attorney moved in closer to the witness, Howard Moore objected: "This witness has problems, but hearing does not seem to be one of the problems."

"Where would you like me to stand?" The prosecution sneered.

"Wherever you like, but not in the witness's ear," Mr. Moore shot back.

The government's aggression toward their own witnesses startled the jury. Albert's brother Robert observed during the trial that the jury appeared to be thinking, "You ought to be ashamed for asking something like that question. Why are you being like that, why are you picking on them?" The prosecution's overzealousness and hostility toward its own witnesses even led Judge Cox to interrupt the prosecutors:

You know, I can understand it once or twice, but you folks are on notice that we have witnesses coming in here saying things differently from what they said on a 302. We have to waste all of this time and that is what it amounts to, calling these witnesses to say one thing and proving that they told the F.B.I. something else, you know, and it doesn't accomplish anything.

One of Dayna Cunningham's jobs was to make a note of what moved the jury, what failed with them, what they paid attention to, and the like. She was watching the jury during Willie Anderson's testimony. Mr. Anderson, a man who seemed afraid of his own shadow, testified for the government that he didn't support the defendants because black people had never done anything for him. "To tell you the truth," Anderson said on cross-examination, "if it wasn't for the white people, I don't believe we would get them [Social] Security checks."

Once again, the government had failed to anticipate the effects of its witnesses and their testimony on community members—and though they were sequestered, that is what some of the black members of the jury remained: peers of the defendants and members of the Black Belt community. As Dayna recalled:

I remember there were a couple of black women in the jury, and they looked like good, upstanding, churchgoing, solid Sunday-dinner-cookin' sisters. You know, they were matronly looking, with very large breasts, and you just knew when they left the courtroom they were wearing their hats. And I will never forget, they were sitting there, and when this man started to talk, they looked like my husband Phil's

Aunt Pearl. They had their arms wrapped around their massive chests and they just went, "Um um um." I mean, their faces were just dripping with contempt and pity. Their faces looked as if they smelled something really bad in the jury or had a memory of something that was really disturbing.

Despite the many moments of high drama in the trial, for Dayna Cunningham, whose job it was to observe the jury closely during the trial, the sad testimony of this quiet, beleaguered witness was memorable precisely because of the effect it had on the jury. His testimony also inadvertently bore witness to a nuanced black economic dependency that persisted in the Black Belt. Though blacks no longer lived in large numbers on white land, nor shopped at plantation commissaries, economic tethers continued to constrain black political expression.

By the seventh day of the trial, local newspaper headlines read: PROSECUTION WITNESSES FAIL TO ADVANCE GOVERNMENT'S CASE and WITNESSES SAY THEY AUTHORIZED AMENDMENTS TO ABSENTEE BALLOTS. On July 3, Judge Cox dropped the number of charges against the Marion Three from twenty-nine to sixteen against Albert Turner; fifteen against Evelyn Turner; and seven against Spencer Hogue—due to insufficient evidence. Only one witness (and a family which harbored a grudge against Albert Turner but couldn't seem to work out the inconsistencies in their own story) performed as the government wanted.

For its part, the defense did its homework. Its homework, however, was not just limited to making well-honed legal arguments. Its homework meant getting to know the witnesses, the community, learning the facts, not just the law. Deval Patrick and Dayna Cunningham's interviews with voters and with witnesses were part of the defense's research strategy. As Deval put it, the logwork in the community "paid off in spades." Because Deval had visited Robert White at his home and knew that Mr. White was living on his own quite independently, when a nurse appeared out of the blue in court, Deval felt "outdone." Deval immediately suspected that the prosecution had deliberately staged the entrance of a nurse in white dress uniform to send a message to the jury that Robert White was not only feeble but incompetent. Deval gently cross-examined Mr. White to show he did not need, nor had he asked for a nurse to be present.

Deval Patrick then asked that "the government dispense with the theatrics of having a nurse in full dress and stethoscope." "The judge scolded me," Deval remembered. "The Assistant U.S. Attorney threw her pad down. But the nurse did not come back."

As a result of the community organizing that Rose Sanders and Hank Sanders did, and as people heard what was happening in the courtroom, more and more local people rallied around the Marion

Three, attending court in greater numbers, until the courtroom was full on a daily basis. Community support was never more evident than after the fire at the Turners' house.

Judge Cox prohibited any mention of the fire in court—or defense suspicions that it was deliberately set on a night when Albert, Evelyn, and their lawyers were sitting in the kitchen. Howard Moore, who was helping the Turners prepare for court the next day, remembered it was late in the evening when he heard what he thought was a thunderclap and then saw the fire as it “just bolted through the house,” accelerating rapidly and searing half the Turners' house. Dayna Cunningham remembered that though there was no mention of the fire in court, its effects permeated the courtroom. Attorneys Morton Stavis and Howard Moore, both of whom had been staying at the Turners' home, sent their clothes to the cleaners, but the smell of fire could not be gotten out and “every day there was a smell of smoke in that trial.”

Evelyn Turner lost all of her clothes in the fire. But her family was determined that the fire not affect her appearance in court. “Every day,” Dayna remembered, “she came to court with a beautiful new dress on. Because her aunt and her family and her supporters felt so strongly that she should maintain her pride and her dignity.” Evelyn Turner remembered quietly how “different women in the community gave my aunt material and my aunt stayed up late into the night to make me clothes so that I could be decent in court during the trial.”

If anything, the fire simply reinforced the extraordinary outpouring of community support for the defendants. Evelyn Turner remembers, “Oh, they were behind us, if there is such a thing, three thousand percent. During the trial we couldn't pay some of our bills: light, gas. People helped us pay the utility bills. We had one outstanding note where we had borrowed money and the church paid it for us. We got donations from as far away as Africa, and that money went to our defense fund.”

At the conclusion of its reading of the defendants' grand jury testimony, the prosecution rested. The defense brought in character witnesses, including Andrew Young, then mayor of Atlanta. Andy Young had been pastor of a church in Marion. His wife grew up there. They were connected both to Albert Turner and to Marion, Alabama. Indeed, one day several weeks before trial, as I was leaving my apartment building in New York City headed to Alabama, suitcases and briefcases slung over both arms, a woman who lived several floors below me stopped to chat. She wanted to know where I was headed. This was an unusual request anywhere, but particularly from a stranger in New York, where anonymity is treasured, even among neighbors. I told her, “Alabama.” Where in Alabama, she asked me. “Near Selma,” I

volunteered, thinking that was enough to satisfy her curiosity. "Where near Selma?" she persisted. "Marion, Alabama," I blurted out, worried now that I might miss my plane. "Oh," she answered with great delight. "I'm from Marion. My sister is married to Andy Young."

My neighbor had heard about the federal investigations in the Black Belt and was hoping, since she knew I worked for the NAACP LDF, that I might be involved. What seemed to be serendipity, however, turned out to reveal an important historical lesson about Marion, Alabama. I learned that Coretta Scott King also grew up in Marion, along with many others who eventually became prominent in the civil rights movement. Apparently, nineteenth-century missionaries had made Marion an educational center of the Black Belt.

At trial, my neighbor's brother-in-law testified about working with Albert Turner when Turner was the Alabama director for SCLC. Andy Young knew Albert Turner "as an independent person," who kept the staff on course in Alabama during the height of the civil rights demonstrations during the 1960s. "Dr. King was very much impressed with Albert Turner," Andy Young said. "I have trusted Mr. Turner in many difficult situations over the last twenty-five years." I asked Albert Turner why, when other local civil rights leaders waited quietly on the sidelines not eager to get involved, Andy Young was so willing to testify on his behalf. Albert Turner answered simply, "Andy and I were comrades. We slept and ate and we went to demonstrations in the streets. When we were being shouted at and beaten up and put in jail, Andy and I would sit side-by-side. Andy, I'd say really knew who I was, not what somebody said about me."

Before the case went to the jury, the attorneys had a chance to make their closing arguments. It was July 4, 1985. The jury had been sequestered for more than two weeks and the judge was eager to get back to Mobile, where he, the court staff, and the prosecutors all lived. All the lawyers made some reference to the Edmund Pettus Bridge. F. T. Rolison, the Assistant U.S. Attorney with the unique view that proxy voting was per se illegal, said no man was above the law, no matter who his friends were or who he marched with. Albert Turner, Rolison declared, had lost sight of his purpose and his civil rights dreams, pursuing naked power instead. Defense attorney Morton Stavis said the jurors would have a big impact on democracy in the region. "What happens to the democratic process if the people who win elections and have control of law enforcement can routinely go into court and kill off the opposition by criminal prosecution?"

When my turn came to speak, I carefully rebutted in detail the government's evidence against Spencer Hogue, demonstrating all the inconsistencies and contradictions. What was more important, in some



ways, was my demeanor; the close attention I paid to every nuance in the government's case gave substantive reinforcement to the more powerful courtroom orators.

I also have a vivid recollection of what I did during the lunch break just before I was due to speak. In the front seat of a car parked outside the courthouse, I rehearsed my closing. I was not talking to myself. Deval sat in the seat next to me, prompting me, helping me revise for different emphasis, closely following every word. Like everything else about that trial, those moments of quiet collaboration meant so much more than the subsequent performance. I do, however, remember, as does Deval, J. L. Chestnut's closing. Now that was a performance. Indeed, when Chestnut finished, Deval had to wipe the tears from his eyes.

Chestnut is a great courtroom orator. He is not a big man, but he has an enormous, almost operatic command of his voice. When he speaks, he uses his entire body to punctuate his sentences. He knows how to reach an audience. Sometimes, Chestnut explains, "I'm speaking beyond the courtroom. I may be speaking to the public at large. If this is a case in which there are significant public issues and there is an opportunity within the vortex of representing my client that I can also educate the public, I will gladly yield and do that." This was such a time. He developed a refrain: "Who is this Albert Turner? . . . The government has singled out this black man in Alabama. I ask, 'Who is this Albert Turner?' He is a man who risked his life so blacks in Alabama could vote; a man who faced police dogs and armed state troopers when the government would not come. It did not come then. Now a scant twenty years after blacks fought, marched, bled and died to gain the vote, the government comes to criminal court to prosecute three black people."

On July 5, the jury deliberated for approximately three hours. They returned a verdict of not guilty on all counts for all three defendants.

WE HAD PREVAILED. All of us, from the government witnesses to the sequestered jury, had spoken truth back to power. The courtroom erupted in singing. It was not merely a victory—it was a triumph. We sang many of the old civil rights songs on the steps of the courthouse, the same steps we had climbed for the last few days, steps then crowded with community folk waiting to get into the trial, steps that almost parted in half as the lawyers approached. "Make room, the lawyers are coming," and the people who had taken off time from work, the people who had gotten up early in the morning, made a pathway for us to cross. Now we were leaving the courthouse, all of us, jubilant. We celebrated together right there on the steps of the courthouse.

Spencer Hogue had awaited the jury verdict calmly. He had been angry when they first brought the charges—experiencing the false accusations as “something that goes real deep”—but now he felt a sense of peace. For Evelyn, the anxiety kept mounting. The lowest point for Evelyn Turner had been the day she was fingerprinted. “They said I had been indicted and I just blurted out ‘For what?’ And Hank and Rose, they talked to me and told me that it was just a part of the procedure that they had to go through, that I had to go through. But I just didn’t want to do it. It made me feel like I was a criminal, and I hadn’t done anything, so I didn’t want to be fingerprinted for nothing.” Yet, here she was, moments after the jury verdict. “Words cannot describe how I felt,” Evelyn said. “No words can describe how I felt—none. I had made up my mind that, well, what will be, will be. And when they came back with a ‘not guilty,’ I was overwhelmed with joy.” We all were.

As the people spilled outside, the brooding image of the Edmund Pettus Bridge loomed in the background. We had labored throughout the trial in its shadow. With the memory of the marchers who passed the 1965 Voting Rights Act on that bridge, we had carried on a noble tradition. That is how powerful we felt: we had history on our side. Buoyed by the converging streams of historical memory and contemporary struggle, we spoke truth to power in the most meaningful way in a democracy—from the bottom up.

That bridge and the Selma trial reinforced for me so many of the things my father had taught me as a little girl. I always believed that ordinary people with little education still had a lot to teach. That belief, which my father’s stories certainly planted, was cemented during the trial. I was my father’s *Virago*—to some, a troublemaker, but to others a persistent questioner with big ideas, enormous curiosity, and an appetite for collective struggle. We pursued a dual strategy in the courtroom: some of us did the meticulous, well-researched preparation that provided the foundation for the more fiery performers. We were engaged in a series of collaborations, among the lawyers, between the lawyers and the clients, with the lawyers and the community witnesses. We showed that civil rights lawyers did their best advocacy partnering with a community. All of us worked in tandem to represent our clients and to locate that representation in the context that really mattered to Albert Turner, Evelyn Turner, and Spencer Hogue—their community. In representing Albert, Evelyn, and Spencer, we were also representing their neighbors and their friends. Those with whom they lived and worked were not technically our clients, but they came to see us as their advocates, too.

The trial also reinforced the idea that while lawyers often focus too much only on the legal aspects of a case, this case was an example of a different model. It was a different model because Hank Sanders pursued

a public education strategy alongside the defense team in court. It was a different model because the lawyers were working not for fame or fortune or because we knew what was best but because we were willing to support local leadership in a community struggle against the more powerful forces of federal authority. We were lawyering to empower Albert Turner and Spencer Hogue to be able to return to their local community and do their important work as community organizers.

I saw firsthand the importance of "motherwit," the wisdom of common folk that Albert Turner and Spencer Hogue displayed, when they sought out opportunities to defy publicly both the government's and the media's characterizations of them and their ideas. This was an early lesson that ordinary people can prevail, even when up against the enormous resources of a government bureaucracy.

All of us eventually realized we had to speak beyond the courtroom. As was evident in Chestnut's closing argument, we had to speak to the public at large, trying, as Albert Turner did, to change the way people think. We saw an opportunity within "the vortex" of representing our clients to educate the jury and the public, both. We were architects of a legal bridge anchored in history but designed to allow the forces of change to meet the forces of tradition.

Our clients assumed enormous leadership within the trial strategy itself. They bridged the role between lawyer and client, sometimes advocating for themselves and their community against the advice of counsel, but always speaking out not from the elevated perch of technical expertise but from the more humble yet secure ground of their communities.

The elderly black voters, who were summoned by the federal government to testify against our clients, in effect testified as witnesses for the defense. These black citizens spoke with the greatest eloquence and the utmost dignity in their own voice and their own way. They were citizens of a community, they told the court and the jury. They were part of a communal "we" who sought to gain real power by harnessing their individual voting rights to a community agenda. They said, by the way they exercised their vote, that their power came from the power of collective action, the power of "their people." They said, by the way they spoke up in court, they had power because they did not see themselves as isolated and lonely individuals.

They may have been old. They may have been feeble. But they too were building bridges. They refused to back down from a community-based vision, even when badgered or provoked. It was their vision and their courage that stayed with me when I later became a legal academic. When I began writing about the importance of giving a voice—and a choice—to ordinary people, it was the witnesses in the Selma trial who often came to mind. They were mostly uneducated in a formal way, but

they were schooled in the more important lesson of joining hands and standing their ground.

At that moment, rejoicing on the steps of the federal courthouse in Selma, Alabama, I realized how central Derrick Bell's advice to me had been four years earlier to go south, to mix it up, to become a civil rights advocate, not just a civil rights technician. I should not be content, in Professor Bell's words, to remain an "anonymous bureaucrat" who brings expertise but "rarely learns from the people with whom they work."

Dayna Cunningham captured the almost mystical power of Professor Bell's advice when she explained the significance of her law student experience working on the trial:

That summer [1985] in Alabama just put the whole thing into focus for me. It made me realize that there was actually something immediate, and useful, and fulfilling that you could do with law school. And that was it. From that day on, the only thing I ever wanted to do was—in terms of the law—was to practice voting rights law at the Legal Defense Fund. That's the only thing I ever wanted to do. . . . I have absolutely no interest in the law or being a lawyer. Except to the extent that I could be a voting rights lawyer at the Legal Defense Fund.

That day in the shadow of the Edmund Pettus Bridge, I felt personally connected to the forces of nature Derrick Bell told me I would find if I went south. It was the kind of natural struggle Rose lived by. As individuals fighting to challenge false accusations, we each put small waterdrops of faith in the river. One by one those small drops became the river of a different truth as the lawyers, the clients, the formal witnesses, and the ordinary people who came to court every day to bear witness spoke out in unison for a change.

Rose Sanders was right. Selma changed me because it joined me to the force of the "ancient, dusky rivers" that were Langston Hughes's metaphor for a common oppression, a collective struggle, and an uncommon faith. I came to know Selma—its history, its bridges, and its underground streams of resistance.

Drawing strength from all that Selma represented, we built our own bridges to truths that were anchored in Albert Turner and Spencer Hogue's deep sense of underlying justice, fortified by Rose and Hank Sanders's grass-roots organizing to build community support.

Even in the face of intense and powerful opposition, we would not be moved.

# ***APPENDIX C***





**THE MARTIN LUTHER KING, JR. CENTER  
FOR NONVIOLENT SOCIAL CHANGE, INC.**  
449 Auburn Avenue, N.E. Atlanta, Georgia 30312 (404) 524-1956

March 19, 1986

**CORPORATE OFFICERS**

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Secretary

LLOYD DAVIS  
Executive Vice President

The Honorable Strom Thurmond, Chairman  
Committee on the Judiciary  
United States Senate  
SD-224 Dirksen Senate Office Building  
Washington, D.C. 20510

Re: Nomination of Jefferson B. Sessions  
U.S. Judge, Southern District of  
Alabama Hearing, March 13, 1986

Dear Senator Thurmond:

I write to express my sincere opposition to the confirmation of Jefferson B. Sessions as a federal district court judge for the Southern District of Alabama. My professional and personal roots in Alabama are deep and lasting. Anyone who has used the power of his office as United States Attorney to intimidate and chill the free exercise of the ballot by citizens should not be elevated to our courts. Mr. Sessions has used the awesome powers of his office in a shabby attempt to intimidate and frighten elderly black voters. For this reprehensible conduct, he should not be rewarded with a federal judgeship.

I regret that a long-standing commitment prevents me from appearing in person to testify against this nominee. However, I have attached a copy of my statement opposing Mr. Sessions' confirmation and I request that my statement as well as this letter be made a part of the hearing record.

I do sincerely urge you to oppose the confirmation of Mr. Sessions.

Sincerely,

*Coretta Scott King*  
Coretta Scott King

CSK/lm

cc: The Honorable Joseph R. Biden, Jr.  
United States Senate  
308 Senate Hart Building  
Washington, D.C. 20510

**Statement of  
Coretta Scott King  
on the Nomination of  
Jefferson Beauregard Sessions, III  
for the  
United States District Court  
Southern District of Alabama**

**Senate Judiciary Committee  
Thursday, March 13, 1986**

Statement of  
Coretta Scott King  
on the Nomination of  
Jefferson Beauregard Sessions  
for the  
United States District Court  
Southern District of Alabama

Senate Judiciary Committee

Thursday, March 13, 1986

Mr. Chairman and Members of the Committee:

Thank you for allowing me this opportunity to express my strong opposition to the nomination of Jefferson Sessions for a federal district judgeship for the Southern District of Alabama. My longstanding commitment which I shared with my husband, Martin, to protect and enhance the rights of Black Americans, rights which include equal access to the democratic process, compels me to testify today.

Civil rights leaders, including my husband and Albert Turner, have fought long and hard to achieve free and unfettered access to the ballot box. Mr. Sessions has used the awesome power of his office to chill the free exercise of the vote by black citizens in the district he now seeks to serve as a federal judge. This simply cannot be allowed to happen. Mr. Sessions'

conduct as U.S. Attorney, from his politically-motivated voting fraud prosecutions to his indifference toward criminal violations of civil rights laws, indicates that he lacks the temperament, fairness and judgment to be a federal judge.

The Voting Rights Act was, and still is, vitally important to the future of democracy in the United States. I was privileged to join Martin and many others during the Selma to Montgomery march for voting rights in 1965. Martin was particularly impressed by the determination to get the franchise of blacks in Selma and neighboring Perry County. As he wrote, "Certainly no community in the history of the Negro struggle has responded with the enthusiasm of Selma and her neighboring town of Marion. Where Birmingham depended largely upon students and unemployed adults [to participate in non-violent protest of the denial of the franchise], Selma has involved fully 10 per cent of the Negro population in active demonstrations, and at least half the Negro population of Marion was arrested on one day." -/ Martin was referring of course to a group that included the defendants recently prosecuted for assisting elderly and illiterate blacks to exercise that franchise. In fact, Martin anticipated from the depth of their commitment twenty years ago, that a united political organization would remain in Perry County long after the other marchers had left. This organization, the Perry County Civic League, started by Mr. Turner, Mr. Hogue, and others,

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-/ The New York Times, Sunday Magazine, March 14, 1985.

as Martin predicted, continued "to direct the drive for votes and other rights." In the years since the Voting Rights Act was passed, Black Americans in Marion, Selma and elsewhere have made important strides in their struggle to participate actively in the electoral process. The number of Blacks registered to vote in key Southern states has doubled since 1965. This would not have been possible without the Voting Rights Act.

However, Blacks still fall far short of having equal participation in the electoral process. Particularly in the South, efforts continue to be made to deny Blacks access to the polls, even where Blacks constitute the majority of the voters. It has been a long up-hill struggle to keep alive the vital legislation that protects the most fundamental right to vote. A person who has exhibited so much hostility to the enforcement of those laws, and thus, to the exercise of those rights by Black people should not be elevated to the federal bench.

The irony of Mr. Sessions' nomination is that, if confirmed, he will be given life tenure for doing with a federal prosecution what the local sheriffs accomplished twenty years ago with clubs and cattle prods. Twenty years ago, when we marched from Selma to Montgomery, the fear of voting was real, as the broken bones and bloody heads in Selma and Marion bore witness. As my husband wrote at the time, "it was not just a sick imagination that conjured up



the vision of a public official, sworn to uphold the law, who forced an inhuman march upon hundreds of Negro children; who ordered the Rev. James Bevel to be chained to his sickbed; who clubbed a Negro woman registrant, and who callously inflicted repeated brutalities and indignities upon nonviolent Negroes peacefully petitioning for their constitutional right to vote," -

Free exercise of voting rights is so fundamental to American democracy that we can not tolerate any form of infringement of those rights. Of all the groups who have been disenfranchised in our nation's history, none has struggled longer or suffered more in the attempt to win the vote than Black citizens. No group has had access to the ballot box denied so persistently and intently. Over the past century, a broad array of schemes have been used in attempts to block the Black vote. The range of techniques developed with the purpose of repressing black voting rights run the gamut from the straightforward application of brutality against black citizens who tried to vote to such legalized frauds as "grandfather clause" exclusions and rigged literacy tests.

The actions taken by Mr. Sessions in regard to the 1984 voting fraud prosecutions represent just one more technique

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/ "Civil Right No. 1 -- The Right to Vote," by Martin Luther King, Jr., The New York Times, Sunday Magazine, March 14, 1965.

used to intimidate Black voters and thus deny them this most precious franchise. The investigations into the absentee voting process were conducted only in the Black Belt counties where blacks had finally achieved political power in the local government. Whites had been using the absentee process to their advantage for years, without incident. Then, when Blacks, realizing its strength, began to use it with success, criminal investigations were begun.

In these investigations, Mr. Sessions, as U.S. Attorney, exhibited an eagerness to bring to trial and convict three leaders of the Perry County Civic League including Albert Turner despite evidence clearly demonstrating their innocence of any wrongdoing. Furthermore, in initiating the case, Mr. Sessions ignored allegations of similar behavior by whites, choosing instead to chill the exercise of the franchise by blacks by his misguided investigation. In fact, Mr. Sessions sought to punish older black civil rights activists, advisors and colleagues of my husband, who had been key figures in the civil rights movement in the 1960's. These were persons who, realizing the potential of the absentee vote among Blacks, had learned to use the process within the bounds of legality and had taught others to do the same. The only sin they committed was being too successful in gaining votes.

The scope and character of the investigations conducted by Mr. Sessions also warrant grave concern. Witnesses were selectively chosen in accordance with the favorability of their testimony to the government's case. Also, the prosecution illegally withheld from the defense critical statements made by witnesses. Witnesses who did testify were pressured and intimidated into submitting the "correct" testimony. Many elderly blacks were visited multiple times by the FBI who then hauled them over 180 miles by bus to a grand jury in Mobile when they could more easily have testified at a grand jury twenty miles away in Selma. These voters, and others, have announced they are now never going to vote again.

I urge you to consider carefully Mr. Sessions' conduct in these matters. Such a review, I believe, raises serious questions about his commitment to the protection of the voting rights of all American citizens and consequently his fair and unbiased judgment regarding this fundamental right. When the circumstances and facts surrounding the indictments of Al Turner, his wife, Evelyn, and Spencer Hogue are analyzed, it becomes clear that the motivation was political, and the result frightening -- the wide-scale chill of the exercise of the ballot for blacks, who suffered so much to receive that right in the first place. Therefore, it is my strongly-held view that the appointment of Jefferson Sessions to the federal bench would irreparably damage the work of my husband, Al Turner, and countless others who risked their

lives and freedom over the past twenty years to ensure equal participation in our democratic system.

The exercise of the franchise is an essential means by which our citizens ensure that those who are governing will be responsible. My husband called it the number one civil right. The denial of access to the ballot box ultimately results in the denial of other fundamental rights. For, it is only when the poor and disadvantaged are empowered that they are able to participate actively in the solutions to their own problems.

We still have a long way to go before we can say that minorities no longer need be concerned about discrimination at the polls. Blacks, Hispanics, Native Americans and Asian Americans are grossly underrepresented at every level of government in America. If we are going to make our timeless dream of justice through democracy a reality, we must take every possible step to ensure that the spirit and intent of the Voting Rights Act of 1965 and the Fifteenth Amendment of the Constitution is honored.

The federal courts hold a unique position in our constitutional system, ensuring that minorities and other citizens without political power have a forum in which to vindicate their rights. Because of this unique role, it is essential that the people selected to be federal judges respect the basic tenets of our legal system: respect for individual rights and a commitment to equal justice for all.

The integrity of the Courts, and thus the rights they protect, can only be maintained if citizens feel confident that those selected as federal judges will be able to judge with fairness others holding differing views.

I do not believe Jefferson Sessions possesses the requisite judgment, competence, and sensitivity to the rights guaranteed by the federal civil rights laws to qualify for appointment to the federal district court. Based on his record, I believe his confirmation would have a devastating effect on not only the judicial system in Alabama, but also on the progress we have made everywhere toward fulfilling my husband's dream that he envisioned over twenty years ago. I therefore urge the Senate Judiciary Committee to deny his confirmation.

I thank you for allowing me to share my views.





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*Founded in 1940, the NAACP Legal Defense and Educational Fund, Inc. (LDF) is the nation's first civil and human rights law organization and has been completely separate from the National Association for the Advancement of Colored People (NAACP) since 1957—although LDF was originally founded by the NAACP and shares its commitment to equal rights. LDF's Thurgood Marshall Institute is a multi-disciplinary and collaborative hub within LDF that launches targeted campaigns and undertakes innovative research to shape the civil rights narrative. In media attributions, please refer to us as the NAACP Legal Defense Fund or LDF.*