

# COLUMBIA LAW SCHOOL

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January 9, 2017

Hon. Charles Grassley, Chairman  
Hon. Dianne Feinstein, Ranking Member  
United States Senate  
Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington, D.C. 20510-6050

Re: Nomination of Hon. Jefferson B. Sessions III to the position of Attorney General

Dear Chairman Grassley and Ranking Member Feinstein:

I have been asked by the NAACP Legal Defense Fund to respond to Christian Adam's Jan. 4, 2017 letter to the Committee regarding Jefferson B. Sessions' direction of the 1985 prosecution of Albert and Evelyn Turner and Spencer Hogue, Jr. (the last of whom I represented in the case while serving as a staff attorney for the Legal Defense Fund).

In a separate filing with the Committee, I have been listed among law professors who oppose Mr. Sessions' appointment as Attorney General. I signed the law professors' letter because of policies Mr. Sessions promotes that I believe are insufficiently hospitable to important constitutional and civil rights of the American people. I leave to the Committee to determine the effect of the *Turner* and *Hogue* prosecution on Mr. Sessions' fitness to be Attorney General. My purpose in writing this letter is to describe the facts of the 1985 prosecution as I observed them to be and as a federal magistrate, judge, and jury found them to be at the time.

Mr. Adams played no part in the *Turner/Hogue* case, and his letter omits or misstates important information about it. To be sure, Mr. Adams makes a number of unobjectionable points about the importance of the integrity of American elections and the evil of outside interference with the right of American voters to decide for themselves what the outcome of elections should be. He illustrates his points by reference to a case he brought in regard to a different Alabama county involving entirely different actors and actions from those in the *Turner/Hogue* case. I will limit this letter to two aspects of Mr. Sessions' handling of the *Turner/Hogue* prosecution that I believe are not in dispute and yet are not mentioned or accurately reflected in Mr. Adams' letter:

1. It was the stated position of Mr. Sessions' office and staff throughout the prosecution of the Turners and Mr. Hogue that *any* assisted change in any absentee ballot, including a change that the voter in question *asked a third party to make* and/or to which that voter *consented*, was illegal by virtue of the assisted alteration itself. As I reported in my testimony to this Committee on March 19, 1986 (Appendix 1 to this letter), Mr. Sessions' staff repeatedly conveyed this view to the court and to me and other defense lawyers on the case. More importantly, agents representing Mr. Sessions' office so informed elderly and infirm African-American absentee voters when first confronting them in their homes with the allegation that alterations to their ballots—alterations they later testified in court were made at their request and with their consent—constituted voter fraud or other illegality either by them or by the Turners and Mr. Hogue. The view of the law taken by Mr. Sessions and his staff at the time is contrary to the Voting Rights Act of 1965 as amended in 1982, which, as Mr. Adams acknowledges in his letter, recognizes "the right of voters to receive assistance." Upon applying the correct law, the trial judge in the case dismissed a substantial number of the allegations of fraud in the indictment Mr. Sessions had brought. And when appropriately instructed on the law, the jury of seven African-American and five white citizens promptly acquitted the Turners and Mr. Hogue of the remaining counts based upon the testimony of the voters in question—under oath and subject to cross-examination by Mr. Sessions and his staff—that they desired and consented to the changes made on their ballots.
2. In elections in Perry County, Alabama around the time of the events alleged in this indictment, it was common for both white and black voters—indeed, for as many as one-third of those of both races casting ballots, many of whom were elderly and infirm—to cast their votes by absentee ballot. It was also common for competing political groups who promoted the election of mainly white and mainly black candidates to assist voters in casting absentee ballots. As my 1986 testimony, and the attached Motion to Dismiss that I assisted in drafting and filing in the case documents (Appendix 2 to this letter), there was substantial evidence of actual voter fraud on the part of a competing political group of white individuals who supported the election of white candidates—evidence that was much stronger than any alleged against the Turners and Mr. Hogue. And the white candidates supported by this competing political group actually won the election, defeating the candidates whom the Turners and Mr. Hogue had supported. Yet Mr. Sessions and his staff took no steps to investigate or prosecute those other actors even when presented with this evidence in court.

Providing one among many examples of the relevant evidence of voter fraud by members of this group is the following passage from my written testimony to this Committee in 1986:

[A]lthough the absentee ballots of many patrons of a senior citizens center in Uniontown, Alabama were moved and signed in the same color felt-tip pen with what appears on its face – and expert handwriting analysis confirmed – was the same handwriting, that of Andrew Hayden [the leader of the competing political group supporting white candidates], who also witnessed each of those



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

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

Revealing how seriously a federal magistrate took the issue of whether Mr. Sessions' office had engaged in improper selective prosecution of blacks for alleged crimes left uninvestigated and uncharged despite equal or stronger evidence in the case of white actors is the following passage from the same testimony:

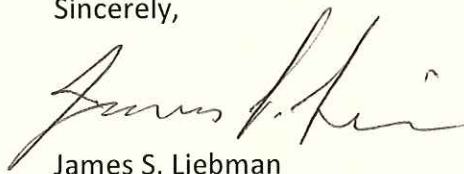
. . . After considering the selective-prosecution papers filed by defendants in this case, and conducting a day long hearing on the matter, the United States Magistrate for the Southern District of Alabama concluded that defendants had satisfied the first prong of their burden to get a hearing on selective prosecution by producing credible evidence in this record that, in bringing the Turner/Hogue indictment, "the Government [-- Mr. Sessions' office --] was activated by constitutionally impermissible motives such as racial . . . discrimination." Second, the Magistrate found that "[t]here is credible evidence adduced by the Defendants that a number of absentee ballots cast in Perry County in September 1984, contained irregularities related to candidates marking, witnessing, attestation, and mailing; . . . that the preparation of some of these ballots likely was connected with voter assistance activity carried out by groups in Perry County which are led by whites; and . . . that these ballot irregularities have not been investigated, nor the individual apparently connected with the ballots prosecuted [by Mr. Session's office]." [May 24, 1985 Recommendations of the Magistrate, at 3; see also id. at 6, 8.]

Finally, I must take issue with Mr. Adams' statements implying that the Turners, Mr. Hogue, and other individuals in Perry County, Alabama were illegally "harvesting and often casting absentee ballots on behalf of African-American voters," actions he claims were not "a noble civil rights endeavor" but instead "activities [that] steal votes by stripping the will of the voter

away and giving it to a corrupt political enterprise" (page 1). This is a rash statement as applied to the Turners and Mr. Hogue, and it is patently unproven and untrue. Although Mr. Sessions so alleged in an indictment—albeit based on the improper view that any assisted change in an absentee ballot, including one the voter desired and to which he or she consented, is illegal—the facts are that (1) the trial judge dismissed many of the counts in that indictment as so lacking in evidence that they couldn't be taken to the jury, and (2) the jurors unanimously rejected all of the counts that were brought to them and acquitted the defendants. Indeed, as the *New York Times* reported today, Senator Sessions himself recently "co-sponsored legislation awarding Alabama's civil rights marchers and Rosa Parks Congressional Gold Medals"—marchers who included one of the defendants in the 1985 prosecution, Albert Turner.<sup>1</sup> Evidently, in sponsoring this prestigious award for Mr. Turner along with others, Mr. Sessions has accepted the judgment of the federal court and jury in the case that the allegations against Mr. Turner, his wife, and Mr. Hogue were at the very least untenable and unproven. On behalf of my former client, I would ask the same courtesy from Mr. Adams who never bothers to mention that the people he accuses were relieved of many of the charges by the court and acquitted of the rest by a unanimous multi-racial jury of twelve Alabama citizens.

Thank you for the opportunity to submit this letter.

Sincerely,

A handwritten signature in cursive script, appearing to read "James S. Liebman".

James S. Liebman

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<sup>1</sup> Sharon LaFraniere & Matt Apuzzo, *Jeff Sessions, a Lifelong Outsider, Finds the Inside Track*, N.Y. TIMES, Jan. 8, 2017.