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January 9, 2017

Honorable Chuck Grassley
Chairman
Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary
UNITED STATES SENATE
224 Dirksen Senate Office Building
Washington, D.C. 20510-6050

Re: Sessions Nomination for Attorney General

Dear Mr. Chairman and Madam Ranking Member:

I am writing because I have information of which I have personal knowledge which I feel compelled to share with the Committee as it considers the important task of confirming Senator Jeff Sessions to the position of Attorney General of the United States. The Department of Justice is one of our most important federal agencies, not only in the process of keeping our streets safe but also in safeguarding and nurturing our voting rights, civil rights, civil liberties, equal opportunity and the cause of justice in America.

Let me start by informing you of who I am and what my background is before I presume to tell this Committee anything. I am a lawyer in Birmingham, Alabama. I received my undergraduate degree from The University of Alabama, and, like Jeff Sessions, received my law degree from The University of Alabama School of Law. In between, I received a masters degree in speech communication from The University of North Carolina. Immediately after law school, I was in private practice in Birmingham with a large, full service firm, doing civil litigation. In 1978, I became a White House Fellow and spent a year as a Special Assistant to Vice President Walter Mondale in the Carter Administration. After that, I went to the Hill, where I served as Counsel to Senator Howell Heflin's Sub-committee on Jurisprudence and Governmental Relations of the Senate Judiciary Committee. Shortly thereafter, Senator Heflin became Chairman of the Select Committee on Ethics, the first freshman in seventy-six years to chair a Senate committee, and he moved me over to that Committee to be counsel, shortly after which we began the ABSCAM investigation into Senator Harrison Williams of New Jersey.

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After three years with the Ethics Committee, I worked in the Washington office of RCA as Director of Corporate Issues. RCA groomed me to be its Washington Vice-President, and sent me to the Stanford Graduate School of Business where I graduated from the Stanford Executive Program. I returned to Washington, but before I could assume the job of Vice-President of RCA, General Electric acquired RCA. After a brief stint in the GE Washington office, Senator Heflin was named as one of eleven senators on the Iran-Contra Committee. Each of the eleven Senators got to name one lawyer to serve as Associate Counsel to the Committee, which I did. During the Iran-Contra investigation, I was responsible on the Senate Committee for the Pentagon, which involved both the sale of arms to Iran and Contra-support activities in Central America. After our hearings were completed and our report issued, our Staff Director returned to her prior job. Senator Daniel Inouye, Chairman, asked me to stay on and become Staff Director, which I did for eight months. My charge from Senator Inouye was three-fold: one, to place all of the staffers who were not able to return to their prior jobs; two, to deal with the Independent Counsel, Judge Walsh, by transmitting to his office deposition transcripts and documents for the criminal investigation; and three, to index, archive and transmit to the National Archives more than 300,000 documents, most of which were classified and some of which were highly classified.

When I worked on the Iran-Contra Committee regarding the Pentagon's involvement, I worked closely with Senator Sam Nunn, a member of the committee. At the time, Senator Nunn chaired the Armed Services Committee. After our work with Iran-Contra was completed, he asked me to become Special Counsel to the Senate Armed Services Committee, during which time I conducted a classified study into how the Pentagon oversees its involvement in Special Access Programs and manages covert military operations. I submitted that study to Senator Nunn and Ranking Member John Warner, then I returned home to Alabama. I was honored while on the Hill to have worked under Howell Heflin, Daniel Inouye, and Sam Nunn, and to have worked with the Vice Chairs or Ranking Members, Malcom Wallop, Ted Stevens, and Warren Rudman.

When I returned to Birmingham, I engaged in the private practice of law, which I have done continuously since 1988. I have had my own law firm since April of 1995. In my practice, I specialize in plaintiff's employment law. I represent people mistreated in the work place: women who have been grabbed and groped, employees called the "N" word, denied promotion because of their age, made fun of because of their disability, or retaliated against because they took Family and Medical Leave. I practice primarily in Federal District Court, where I have tried dozens of jury trials in all three of Alabama's federal districts, and have argued before the 11th Circuit more than half a dozen times.

I am listed in Best Lawyers in America, and Alabama Super Lawyers, which for the last seven years has included me as one of the Top Fifty lawyers in the state. I am honored to be a Fellow of the American College of Trial Lawyers. I include mention of these things not to impress anyone but to

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establish some credibility for what I am about to address. I love the institution of the Senate. It is the world's most deliberative body. I am also passionate about the cause of justice, for which reason I offer the following information of which I have personal knowledge.

Judge Alex Howard, of Alabama's Southern District, was ready to slow down. A Reagan appointee to the Federal bench, he didn't want a Democratic President to appoint his replacement. He waited to see whether Senator Bob Dole would defeat President Clinton in the 1996 election. When Dole lost, Howard decided he didn't want to wait four more years. In December of 1996, he took senior status, thereby creating a vacancy.

The 1996 election determined more than that Judge Howard would take senior status; it also determined how his predecessor would be selected.

In 1996, U.S. Senator Howell Heflin of Alabama, a Democrat, retired. Former Alabama Attorney General and U.S. Attorney for the Southern District of Alabama, Jeff Sessions, won the Republican nomination to replace Heflin, and defeated the Democratic nominee. In January of 1997, Sessions was sworn in. Alabama's other Senator, Richard Shelby, had already switched parties (having been elected as a Democrat in 1986), giving Alabama two Republican Senators. In a state in which there was no Democratic Senator to vet nominees and forward names to the White House, the Clinton White House requested that the political establishment in each such state create a patronage committee to deal with federal appointments.

That was done in Alabama. As Chair of President Clinton's Alabama Campaign, both in 1992 and 1996, I was a member, as was Joe Turnham, our State Party Chairman; Birmingham Mayor Richard Arrington; Millport Mayor Barbara Bobo; Congressman Earl Hilliard; prominent trial lawyer Larry Morris; Dr. Joe Reed, Chairman of the Alabama Democratic Conference, Alabama's oldest black political group; and Dr. Yvonne Kennedy, a state legislator and President of Bishop State Community College. We convened in early 1997 to consider a replacement for Judge Howard. Consensus quickly emerged that it was time to desegregate the Southern District. The Southern District, headquartered in Mobile, where Sessions had been U.S. Attorney, had never had an African-American U.S. District Judge, Federal Magistrate Judge, U.S. Attorney, or U.S. Marshall.

The Northern District, headquartered in Birmingham, had an African-American District Judge, U.W. Clemon, and U.S. Marshall, Bill Edwards. The Middle District had an African-American District Judge, Myron Thompson, and two female African-American Magistrate Judges, Vanzetta Penn McPherson and Delores Boyd. Clemon and Thompson were Carter appointees to the bench.

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We vetted and sent to the White House not one name, but five: all African-American lawyers or sitting state court judges. We would let the President choose which name to send to the Senate.

But nothing happened. Senator Sessions, who had wrangled an assignment to the Judiciary Committee, let the White House know of his opposition to all five candidates. Back stage maneuvering took place, and lobbying, all to no avail. Sessions refused to signal approval for any candidate.

After a long and frustrating period, I was with Senator Sessions in the President's Box in Tuscaloosa at a University of Alabama football game. Our private conversation had as its sole topic the filling of the Southern District vacancy. I argued, politely and respectfully, until I was blue in the face. Sessions would not relent. Finally, out of frustration, I said calmly but firmly, "Jeff, it doesn't work this way. Our guy won the election. We get to name the federal judge." He replied, "I'm sorry, but I can't live with any of those people whose names ya'll sent up." So I said, "Fine. Give us another name. Name an African-American lawyer or state court judge anywhere in the state you would find acceptable." He refused.

The reader might say, "Yes, but he wanted qualified nominees, and there were none." Assuming, without accepting, that there were no qualified African-American candidates in the Southern District, one need only look to the Northern or Middle Districts to find a bevy of able lawyers and judges.

In Tuscaloosa, there was John England, a State Circuit Judge, and Bryan Fair, a constitutional law professor at The University of Alabama. In Birmingham, there was Ken Simon, who had practiced with an insurance defense firm in Mobile, then was a White House Fellow in Washington where, in the Reagan Administration, he worked as a Special Assistant to Attorney General William French Smith. Upon returning to Alabama, Simon was a Circuit Judge in Birmingham before becoming a partner at Bradley Arant, the largest law firm in the state. There was also Ralph Cook, a former Circuit Judge in Bessemer, former Dean of the Miles College School of Law, and a Justice on the Alabama Supreme Court. Or Frank James, a former law professor at The University of Alabama, who was a partner at Baker Donelson, a full-service establishment firm, or LaVeeda Battle, a Howard Law graduate who at the time served on the National Board of the Legal Services Corporation.

One could have looked to the Middle District where two very qualified Magistrate Judges sat, Vanzetta Penn McPherson and Delores Boyd, either of whom would have served with distinction in the Southern District.

Could this be done? There was ample precedent. At the very time we were seeking to replace Judge Howard in the Southern District, a senior judge on that bench was the Honorable Virgil Pittman, a Lyndon Johnson appointee, who had been on the Etowah County Circuit Court bench in Gadsden, Alabama, in the Northern District, at the time of his appointment. In the Middle District, the Honorable Frank M. Johnson sat with distinction for many years, having been U.S. Attorney in the Northern District at the time of his appointment by President Eisenhower.

This list is by no means exhaustive. Suffice it to say there were competent and credentialed African-American candidates whose judicial temperament qualified them for the Federal bench. Precedent existed to move a lawyer or state court judge from another district. Sessions would have none of it.

The sad story, the most frustrating thing I have ever been involved with professionally, is that for the entire four years of Bill Clinton's second term as President, that federal judicial seat sat empty.

Our committee finally softened on the noble notion of desegregating the Southern District. We wanted a Democratic judge appointed. We flew to Washington and met with Clinton's Chief of Staff, John Podesta. While we were still desirous of having an African-American confirmed, we floated another name, Donald Briskman. A respected Mobile lawyer who practiced regularly in Federal Court, handling both civil and criminal matters, Briskman had chaired the Clinton reelection campaign in 1996 for Alabama's 2nd Congressional District. Sessions opposed Briskman. Whether it had anything to do with the fact that Donald Briskman was Jewish, I'll never know.

Was Sessions' resistance to an African-American on the Federal bench in Alabama twenty years ago an isolated matter? The evidence suggests otherwise.

On October 26, 2013, Judge Joel Dubina, the Chief Judge of the 11th Circuit, took senior status, creating a vacancy on the 11th Circuit. Because Dubina was from Alabama, this vacancy was an Alabama slot.

As in 1996, there was no Alabama Democratic Senator. With the blessing of Congresswoman Terri Sewell, the only Democrat in the Congressional delegation, last February, Obama sent the name of U.S. District Judge Abdul Kallon to the Senate. Kallon was an Obama appointee to the Northern District bench. Nothing happened. A year has gone by. Still nothing happened. Sessions made it known that he wanted either of two other Federal District Judges, both white, and would not support Kallon. Was Kallon qualified? His undergraduate degree was from Dartmouth, he graduated from the University of Pennsylvania Law School, and had clerked for Federal District Judge U.W. Clemon. After his clerkship, his private practice experience consisted of sixteen years as a lawyer at Bradley

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Arant, the premier establishment law firm in Alabama (and also the largest). That seat sits vacant today, more than three years later.

Myron Thompson, the first African-American Judge in the Middle District since reconstruction, took senior status on August 22, 2013. Congresswoman Sewell wanted Thompson replaced by an African-American, and sent to the White House the name of Herman N. "Rusty" Johnson, a Cumberland School of Law professor since 2010 who had been in private practice for eight years. Johnson's credentials were impeccable: B. A. in economics from Duke, masters in international affairs from Columbia, and a law degree from Columbia University School of Law. He had clerked for Judge Thompson, the judge he sought to replace, then clerked for Judge Martha Craig Daughtrey on the Sixth Circuit Court of Appeals. He had also been a Peace Corps Volunteer in Mali.

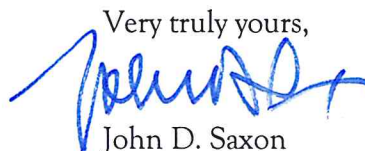
Sessions would have none of it. That seat also sits vacant, three and a half years later.

Jeff Sessions has a problem in elevating African-Americans to the Federal bench. The 1996 Southern District experience is no aberration. Sessions' reluctance to elevate competent African-American lawyers, judges or professors to the Federal bench in Alabama continues to this day.

The Senate should carefully examine whether someone with Sessions' questionable record on race should be this nation's chief law enforcement officer.

I view the position of Attorney General as one of the three most important in any President's cabinet. Secretaries of State and Defense help keep us safe and on decent relations with the community of nations. The Attorney General helps protect and preserve our rights and liberties as American citizens. He or she ensures justice, seeks to enforce the laws for all Americans, to insure and protect equal opportunity and fundamental fairness for all Americans, to protect their sacred right to vote, and to help elevate to our federal courts men and women who are competent people of integrity, fairminded and with proper judicial temperament. I seriously question whether Senator Sessions should be confirmed to such a position.

I stand ready to provide such additional information as the Committee may desire, or to answer your questions. Respectfully submitted.

Very truly yours,

John D. Saxon

JDS/erl