

Supplemental Statement of J. Gerald Hebert
On the Nomination of Jefferson B. Sessions III
To Be United States Attorney General
January 11, 2017

I am submitting this supplemental statement to respond to questions raised by Senator Ted Cruz during this Committee's hearing on the nomination of Senator Jeff Sessions to be Attorney General on Tuesday, January 10, 2017. During the hearing, Senator Cruz referenced the testimony I gave in a deposition and to this Committee regarding Mr. Sessions' nomination for a federal judgeship in 1986. Senator Cruz has mischaracterized my prior testimony, intimating that I essentially recanted my 1986 testimony and that I had "lied." He claimed that, because of the events of 1986, people cannot trust my current testimony that Mr. Sessions had no substantive involvement in civil rights cases I handled at the Department of Justice in the 1980's. I would like to clarify for the Committee what occurred in 1986, in order to rebut the unfounded and misleading accusations that Senator Cruz made at the hearing yesterday.

On March 12, 1986, staffers on this Committee contacted the Department of Justice, asking my supervisor, Paul Hancock, and me to come to Capitol Hill to provide sworn testimony regarding Mr. Sessions. Civil Rights Division leadership requested that we comply, and we did so. Mr. Hancock and I had mere minutes between being contacted by Committee staff and being transported to the Hill to provide deposition testimony. Neither of us had any time to consult Department records regarding our cases or Mr. Sessions' involvement in them prior to giving our deposition testimony for this Committee.

During his deposition, Mr. Hancock stated that Mr. Sessions had contacted the FBI and stopped an investigation related to a voting rights case Mr. Hancock was conducting in Conecuh County, Alabama.¹ Mr. Hancock was unable to recollect, or to piece together from his records, in which of two Conecuh County cases this interference occurred, or when exactly it occurred.² He admitted: "[M]y recollection is really not clear."³ In my deposition, I was asked whether Mr. Sessions had interfered with Department of Justice cases. I stated that "I only know what happened with our Conecuh County case, but Paul Hancock is in a better position to talk about that than I am."⁴ I said that "he and I both have a very fuzzy recollection about Conecuh County," and that it "was Paul's case primarily."⁵

¹ 78-84 (deposition of Paul Hancock). Both Mr. Hancock's and my deposition testimony are a part of the 1986 hearing record on Mr. Sessions' nomination to be a federal judge.

² *Id.* at 79-80.

³ *Id.* at 87.

⁴ *Id.* at 109 (deposition of J. Gerald Hebert).

⁵ *Id.*

The next day, I was called to testify before this Committee. Senator Joe Biden questioned me about Mr. Hancock's statement in his deposition. I replied, based on Mr. Hancock's previous testimony and my own limited recollection, that Mr. Sessions had gotten the FBI to call off its investigation.⁶ Unfortunately, we were unable to collect and review all of the DOJ records regarding Alabama voting rights investigations until a few days after the hearing. When we did so, we realized that the investigation at issue related to a case in Clarke County, Alabama, not Conecuh County, and that the interfering U.S. Attorney was Mr. Sessions' predecessor, not Mr. Sessions. Mr. Hancock and I immediately submitted sworn declarations to that effect to this Committee, correcting our testimony.⁷ Those declarations were filed on March 17, 1986, well before the Committee voted on Mr. Sessions' nomination.⁸ Mr. Hancock testified before this Committee regarding the error on March 19, 1986.⁹

Senator Cruz distorted this regrettable occurrence to suggest that I had somehow recanted my testimony before this Committee, that I had lied, and that therefore my word cannot be trusted now. This is patently false. First, the only testimony that I corrected was that regarding the FBI investigation, a matter which constituted ten lines of a 24-page deposition and one page of my ten-page live testimony.¹⁰ In my declaration correcting the error, I reiterated that I stood behind the rest of my testimony.¹¹ Second, neither Mr. Hancock nor I "lied" regarding the one incorrect piece of our testimony. As I stated in my declaration: "When I rendered that testimony, it was true to the best of my knowledge, recollection and belief."¹² At that time, Mr. Sessions acknowledged that we had acted in good faith.¹³ And third, the idea that an error regarding a minor aspect of my testimony in 1986 should render suspect, not only my own statements today on Mr. Sessions' nomination to be Attorney General, but also those of my former Department of Justice colleagues, is shameful.

As I and other Department of Justice attorneys have stated, both in the 1980s¹⁴ and today,¹⁵ the very structure of our voting rights and school desegregation cases meant that Mr.

⁶ *Id.* at 59-60 (statement of J. Gerald Hebert).

⁷ *Id.* at 209-16 (declarations of Paul Hancock and J. Gerald Hebert).

⁸ *Id.* at 209.

⁹ *Id.* at 206-08 (testimony of Paul Hancock).

¹⁰ Compare *id.* at 59-60 (testimony regarding FBI investigation), with *id.* at 56-66 (full live testimony); *id.* at 109 (testimony regarding FBI investigation), with *id.* at 94-117 (full deposition).

¹¹ *Id.* at 216 (declaration of J. Gerald Hebert) ("This revelation concerning the non-involvement of Mr. Jefferson Sessions in interfering in any voting investigations in the Southern District of Alabama does not affect in any way my other testimony rendered before the Senate Judiciary Committee on March 13, 1986.").

¹² *Id.* at 216.

¹³ *Id.* at 537 (statement of Jefferson B. Sessions III) ("I simply refuse to believe that Mr. Hancock, who came in here and apologized for his error, or Mr. Hebert were deliberately out to discredit me or embarrass me. But I want to point this out: When I was asked about it, I did not call them liars.").

¹⁴ See *id.* at 77-78 (deposition of Paul Hancock).

¹⁵ J. Gerald Hebert, *Written Testimony of J. Gerald Hebert On the Nomination of Jefferson Beauregard Sessions III For Attorney General of the United States*, Testimony to U.S. Senate Comm. On Judiciary (Jan. 9, 2016), <http://www.campaignlegalcenter.org/sites/default/files/J.%20Gerald%20Hebert%20Testimony%20Regarding%20N>

Sessions was not substantively involved in those cases as U.S. Attorney. His statements to the contrary in his questionnaires to this Committee are false. Nothing that occurred in 1986 changes that fact.

Nominatio% 20of% 20Jefferson% 20B.% 20Sessions% 20III.pdf; J. Gerald Hebert, Joseph D. Rich & William Yeomans, Op-Ed, *Jeff Sessions Says He Handled These Civil Rights Cases. He Barely Touched Them.*, Wash. Post (Jan. 3, 2017), https://www.washingtonpost.com/opinions/jeff-sessions-says-he-handled-these-civil-rights-cases-he-barely-touched-them/2017/01/03/4ddffa6-d0fa-11e6-a783-cd3fa950f2fd_story.html?utm_term=.38b1b899295d.