

OFFICE OF PROFESSIONAL RESPONSIBILITY (Senate - March 09, 1990)

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Mr. HEFLIN. Mr. President, in the Department of Justice there is an office known as the Office of Professional Responsibility, which has the duty to investigate complaints against officials of the Department of Justice relative to alleged improper activities. This Office of Professional Responsibility was created for the purpose of conducting investigations into the allegations of possible improper, illegal, or unethical conduct by offices or various officials of units of the Department of Justice. Over a number of years the work of the Office of Professional Responsibility has had a remedial effect, to some extent, relative to such improper, illegal or unethical activities. The presence of this office has deterred officials of the Department of Justice from questionable conduct in many instances.

The Committee on the Judiciary of the U.S. Senate frequently receives allegation of possible improper, illegal, or unethical conduct concerning offices and officials of the Department of Justice. These complaints historically have been referred to the Office of Professional Responsibility of the Department of Justice for their investigation. Generally, the Office of Professional Responsibility has done a good job of investigating such charges. But there are other reasons that the Committee on the Judiciary has followed the policy of referring charges and allegations of improper conduct to the Office of Professional Responsibility. Many charges and allegations may involve ongoing grand jury activity or other ongoing investigations that the Department of Justice deems to be secret, and because of such secret classification the Department will not make available to the committee on the Judiciary information on witnesses that are essential for the committee to make a complete investigation. The alleged necessity of secrecy has frequently been raised by the Department in many matters outside of grand jury activities. Without the cooperation of the Department of Justice in making documentary evidence, reports, and witnesses available, the Committee on the Judiciary finds that it is virtually impossible for it to thoroughly investigate such charges.

The Department of Justice has threatened to invoke the doctrine of executive privilege on occasions. The uncertainty of this doctrine is usually met with the prospect of extended litigation and thus far a court confrontation on this issue hasn't occurred since the Nixon tapes case.

The practice of referring investigations first to the Office of Professional Responsibility before a decision is made by the Committee on the Judiciary of the U.S. Senate has come about out of necessity and also because generally that office has done a competent job in most instances.

Around the middle of the year of 1989 the Committee on the Judiciary received a request to conduct an investigation into allegation of possible improper or unethical activity in connection with officials of the Department of Justice, including the FBI, related to elected black officials in Alabama. The chairman of the Committee on the Judiciary determined that the request for such an investigation should be referred to the Office of Professional Responsibility of the Department of Justice. There is ongoing at the present time an investigation into those charges and such investigation has not yet been completed. When it is complete, the Judiciary Committee will review it and determine what further action the Committee on the Judiciary should undertake.

Recently the Judiciary Committee received `A Report From the City of Birmingham, Alabama on the Harassment of African-American Birmingham City Officials by Offices of the U.S. Attorney, the Federal Bureau of Investigation, and the Internal Revenue Service (Criminal Division).' This report was submitted by Donald V. Watkins, Esq., special counsel to Richard Arrington, Jr., mayor of the city of Birmingham, AL. A copy of this report has been referred to the Office of Professional Responsibility of the Department of Justice since it relates to the ongoing investigation heretofore mentioned. The city of Birmingham has requested that a copy of this report be printed in the **Congressional Record**. I, therefore, ask unanimous consent that a copy of this report appear in the **Congressional Record** following my statement. In doing so I want it understood that the Committee on the Judiciary and no Member to my knowledge has passed judgment on any of the charges or allegation contained therein.

There being no objection, the report was ordered to be printed in the **Record**, as follows:

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A Report From the City of Birmingham, AL, to the U.S. Senate Judiciary Committee on the Harassment of African-American Birmingham City Officials by Offices of the U.S. Attorney, the Federal Bureau of Investigation, and the Internal Revenue Service (Criminal Division)

(SUBMITTED BY DONALD V. WATKINS, ESQ., SPECIAL COUNSEL TO RICHARD ARRINGTON, JR., MAYOR, BIRMINGHAM, AL, FEBRUARY 21, 1990)

I. INTRODUCTION

On July 21, 1989, the City of Birmingham, Alabama filed a formal complaint with the United States Senate Judiciary Committee. The complaint, in the form of a memorandum from Birmingham Attorney Donald V. Watkins to Committee Members, outlined the nature and scope of the harassment that City of Birmingham officials have experienced at the hands of the U.S. Attorney for the Northern District of Alabama, the Federal Bureau of Investigation (`FBI'), and the Internal Revenue Service, Criminal Division (`IRS'). 1

Footnotes at end of article.

The City's complaint alleged that the above-mentioned federal law enforcement agencies selectively targeted, without probable cause, Birmingham Mayor Richard Arrington, Jr. and several City Council members, all of whom are African-American and Democrats. The complaint summarized several unsuccessful FBI/IRS `sting' operations aimed at Arrington and the Council members from 1987 through 1989. The City also expressed concern about the attitudes of investigating federal officials, some of whom reportedly referred to African-Americans as `dope heads', `niggers', and `nigger whores'. The City also complained about the tactics employed by the investigating federal officials. For

example, the 1987 and 1988-89 'sting' operations were launched against the Mayor despite warnings from two separate investigative sources that Arrington and other City officials were not involved in bribery activities and had no propensity for bribery. Another incident involved the display of Mayor Arrington's picture on the wall of the Birmingham IRS office in October 1988, with the word 'corruption' written above it. Finally, the City complained about the steady stream of federal grand jury leaks regarding the alleged criminal conduct of several African-American elected officials which have surfaced with no resulting grand jury action. 2

Footnotes at end of article.

The City requested that the Judiciary Committee take the following actions on its complaint:

1. Hold confirmation hearings on the appointment of Frank Donaldson, James Wilson, and Jeff Sessions reappointment as President Bush's appointees for the office of U.S. Attorney in the Northern, Middle and Southern Districts of Alabama, respectively;
2. Undertake a thorough investigation to ascertain whether federal prosecutors and law enforcement agencies are engaged in a pattern and practice of selective prosecution of black elected officials; and
3. Undertake a thorough investigation into the existence and implementation of the FBI's 'Fruhmenschen' policy.

The City has prepared and is submitting this report to the Judiciary Committee to aid the Committee in its consideration of the City's complaint. The City's investigation into these matters suffered a major set-back when one of its cooperating sources, former FBI/IRS informant Robert Moussallem, was killed under mysterious circumstances. 3

II. AN ANALYSIS OF THE HARASSMENT

A. Richard Arrington, Jr. was a 1972 FBI Cointelpro Target

Using a Freedom of Information Act request in 1988, Mayor Arrington received 292 pages of his 518 page FBI file. The documents were heavily censored by the Bureau. However, even these censored documents bear witness to a sad state of affairs for the Bureau.

The FBI file released to Arrington begins with a report of a January 26, 1972, through August 4, 1972, FBI 'confidential' investigation of an organization called the Alabama Black Liberation Front (ABLF), which was said to be affiliated with the Black Panther Party. The report characterizes the investigation as an 'extremist matter'. The exact nature of the investigation is blackened out, but the report states that 'disclosure of data could be prejudicial to the defense interests of the United States.' The report is heavily censored, and links Arrington to the ABLF, the Black Panther Party, and a group called Concerned Citizens for Justice. While Arrington does not personally know why he was the subject matter of an FBI investigation at the time it was conducted, 4 the 1972 FBI report was made shortly after his election as a Birmingham City Council member in late 1971 and during a period when Arrington became an outspoken advocate for blacks who were victims of police brutality.

Arrington's civil rights activism in 1971 and 1972 came during a period when the FBI officially operated its infamous and well-documented racial counter-intelligence program COINTELPRO. 5 According to FBI documents, COINTELPRO was a FBI program which operated on an official basis during the late 1950s through the early 1970s. COINTELPRO selectively targeted, without cause, vocal black civil rights activists like Dr. Martin Luther King, Jr., Floyd McKissick, Stokely Carmichael, Richard Arrington, and others. COINTELPRO had a 'Black Nationalist' operation which was formally established in the 1960s 'to expose, disrupt, misdirect, discredit, or neutralize the activities of black nationalists . . . their leadership, spokesman, membership, and supporters'. The long-range goals for COINTELPRO were: to prevent African-American groups (e.g., SCLC, CORE, SNCC, etc.) from forming coalitions, building their membership, gaining respectability, and developing charismatic leaders. Twenty-three FBI field offices participated in COINTELPRO-Black Nationalists, with the various special agents in charge assigning 'experienced and imaginative' agents for 'counter-intelligence coordinators'. COINTELPRO's activities included, *inter alia*: (a) the 'felonious' harassment of Dr. King and other African-American activists which, according to a Justice Department task force, 'very probably' violated their civil rights; (b) the development of 'target lists' of some 1,897 African-American activists during the 1960s and 1970s to be 'neutralized'; (c) the drafting and mailing of obscene, racially offensive hate mail and tape recordings to family members, friends, and supporters of African-American activists; and (d) the planting of embarrassing stories in 'friendly newspapers.' 6

The 1972 FBI report notes that Arrington, the Black Panther Party, the Alabama Black Liberation Front, and the Concerned Citizens for Justice 'are included on the Administrative Index (ADEX).' It further states: 'The Black Panther Party (BPP) is a Black extremist organization started in Oakland, California, in December, 1966. It advocates the use of guns and guerilla tactics to bring about the overthrow of the U.S. Government.'

The Administrative Index (ADEX) 7 was the FBI's master listing of 'white and black racial extremists' and 'subversives,' and included 'four categories representing degrees of dangerousness.' African-Americans were well represented on the ADEX. Category I listed the names of 'national leaders of black extremist separatist organizations,' along with 'active participants (i.e., people who furthered the aims and purposes of the revolutionary or black extremist separatist organization with which affiliated.' Category III listed 'rank-and-file membership,' along with the name of any 'individual who, although not a member or a participant in activities of revolutionary organizations or considered an activist in affiliated fronts, has exhibited a revolutionary ideology.' Category IV listed 'individuals whose activities do not meet criteria of Categories I, II, or III.' The categories were sufficiently and purposefully broad enough to cover 'the new breed of subversive,' the free-lance black radical who had 'a seething hatred of the white establishment' and who might at any time 'associate, explode, or otherwise destroy white America.' A parallel reserve index incorporated into ADEX the names of persons who did not engage in subversive activities (e.g. 'teachers, writers, lawyers, etc.') but 'were nonetheless influential in exposing their respective philosophies.'

Arrington's 1972 files are so heavily censored, it was difficult for the city to determine which ADEX category contained Arrington's name. However, the codes on Arrington's files and other information subsequently obtained by the City suggest that Arrington was a 'Key Black Extremist' whose name was placed in the ADEX Category I index. The Key Black Extremist (KBE) Program, a division of COINTELPRO, had its roots in an October, 1970, racial conference. 8 Noting the need for 'intensified coverage on a group of black extremists who are either key leaders or activists and are particularly extreme, agitative, anti-government, and vocal in their calls for terrorism and violence,' the racial conference demanded the systematic identification and neutralization of such persons. 'Certain elements' were simply 'more likely to resort

to or order terrorism as a tactic,' and these types required `particular attention.'

FBI headquarters solicited nominations of KBEs from the field and stressed the need for `initiative and imagination.' In addition to a listing in the ADEX, the Bureau placed the KBE's pictures in the FBI's Black Nationalists Photograph Album; monitored their bank accounts and financial affairs; obtained handwriting specimens and tape recordings of their speeches and statements, and kept them in `the national security file' at the FBI laboratory; `vigorously investigated' all `possible' violations of federal law; processed individual reports every ninety days; and checked federal income tax records annually. On this last point, when the FBI requested the tax returns of seventy-two KBEs, the IRS honored every request, without asking any questions.

Arrington continued to be a vocal advocate for Birmingham blacks throughout his tenure as a Birmingham City Council member (i.e. 1971-1979). In addition to fighting police brutality, Arrington led the effort in Birmingham City Hall during this period for fair employment practices in City government, the creation of the City's Minority Business Enterprise program, and fair housing opportunities. Arrington was a founding member of the Jefferson County Citizens Coalition, a grassroots broad-based predominantly black political organization in Birmingham that has significantly influenced the outcome of many State and local elections. These activities made Arrington a prime target for COINTELPRO surveillance and `neutralization.'

Between 1972 and 1976, various U.S. Congressional Committees conducted hearings on domestic surveillance activities. 9 These committees focused on the FBI and its `racial matters' activities. During the same period of time FBI acting Director L. Patrick Gray, III became involved in the Watergate cover-up. Also, Congress passed amendments to the Freedom of Information Act in 1974. These developments gave traditional African-Americans targets of FBI COINTELPRO activities a temporary reprieve from the agency's harassment.

In April, 1978, President Jimmy Carter's Justice Department obtained indictments against Gray and two other FBI executives; Edward S. Miller and W. Mark Felt. These three were charged with conspiracy to violate the civil rights of friends and relatives of the Weather Underground--specifically, for authorizing burglaries of their homes. Felt and Miller were subsequently convicted. The government dropped its charges against Gray. In March, 1981, President Ronald Reagan pardoned Felt and Miller, without even bothering to read their trial transcript. This symbolic gesture signed a new era for FBI activities against Arrington and scores of vocal African-American political officials around the nation.

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B. The FBI's 1985 `preliminary investigation' of Mayor Arrington

From August to October, 1985, the FBI conducted a `preliminary investigation of Mayor Arrington' to determine if a Hobbs Act violation had been committed. 1 0 This investigation covered virtually every aspect of Arrington's business, financial and political dealings. The investigation, which included an FBI interview with Arrington, was summarized, in part, in this November 7, 1985 memo. 1 1

`* * * In February 1985, Mayor Arrington; Mayor's Aide, Willie Davis; and Tarlee W. Brown, who is an architect in Atlanta, Georgia, entered into a marketing and consulting business called ABD Marketing Corporation. This corporation represents the interest of Time-Energy Systems of Houston, Texas. ABD Marketing is involved in seeking out clients or customers for Time-Energy Systems in Alabama.

`In August 1984, Brown was hired by the City of Birmingham to do a feasibility study on the refurbishing of Boutwell Auditorium. In March 1985, Brown was paid \$25,000 for his feasibility work. By August 1985, Brown had been paid a total of \$49,105.00 and is expected to be paid \$240,000 within the next nine (9) months for work on Boutwell Auditorium.

`In May 1985, Mayor Arrington and his wife, Rachael bought 40% of the stock in Chapel Funeral Services, Ensley, Alabama, from James H. Parker, who continues to own the 60% of the stock. Then in July 1985, the City of Birmingham sold a ten (10) story building in Ensley called the Ramsay-McCormick Building to Parker for \$10,000 with Parker to assume mortgages totalling \$240,000, which are payable at the rate of \$4,000 per month * * *.

`Inspection of the Ramsey-McCormick Building reveals that it is in terrible disrepair. Large outlays of funds will be required to make it rentable. Thus far, only the 5th floor out of this 10 floor structure is rented. The building is located in the Ensley area of Birmingham which has been economically depressed since the steel mills closed six (6) years ago. . . .

`Numerous spot checks at Chapel Funeral Services tend to confirm that the funeral home is not doing any business.

`Mayor Arrington was interviewed and denied having any knowledge of the conveyance of the Ramsay-McCormick building to Parker until after the fact. Mayor Arrington denies that he has in any way benefited by the sale of the building to his funeral home business partner.

`Mayor Arrington stated that he has not done any work for ABD Marketing in Birmingham. According to Arrington, the only customer that he has found for Time-Energy Systems is Tuskegee Institute, Tuskegee Alabama. ABD Marketing was paid \$9,000 by Time Energy as a finders fee.

`Arrington denied that he has ever received any monies from Tarlee W. Brown for any reason. Arrington said that he met Brown through Atlanta, Georgia, Mayor, Andrew Young, three or four years ago. Arrington gave the Boutwell contract to Brown simply to entice Brown, who is a minority, to open an office in Birmingham.

`On November 1, 1985, Chief Prosecutor Herbert H. Henry, III, Birmingham, stated that there is insufficient probable cause to seek Grand Jury subpoenas for financial records of Arrington, ABD Marketing Corporation, and/or Chapel Funeral Services. Chief Prosecutor Henry noted that his office will vigorously prosecute any corrupt public officials in this district including Mayor Arrington if any evidence of a crime is developed.

`Chief Prosecutor Henry stated that it is his opinion that based on the results of this preliminary inquiry there is no reason to believe that a federal crime has been committed. Therefore, there is insufficient probable cause to go forward with an investigation.

`No further inquiries into this matter are being made.'

The FBI also investigated charges by former Arrington bodyguards Billy and Gwen Webb 12 that Arrington took bribes. Arrington was asked by the Bureau whether he had ever received money or anything of value for using his influence as Mayor to cause someone to receive a City contract or concession. His answer was `no'. Furthermore, Arrington offered `to take a polygraph if asked to do so'. He was never asked to do so by the Bureau or any other law enforcement agency.

The investigation also focused on Arrington's wife, Rachael, and a retail shoe store she operated until the spring of 1984. There is no indication in the FBI records as to what the store, Rae's Designer Shoes, had to do with a possible Hobbs Act violation.

An August 7, 1985, FBI memo states that the `preliminary inquiry' of Arrington *began on August 6, 1985*, after Birmingham SAC Cecil E. Moses, ASAC William W. Westberg and two other agents `discussed what appears to be improprieties and perhaps Hobbs Act violations in several recent business ventures entered into by Birmingham Mayor Richard Arrington, Jr.' based upon a series of articles which began on August 1, 1985, and appeared in the *Birmingham News* and the *Birmingham Post Herald* newspapers. 13 However, the FBI had actually conducted a `discrete investigation', based on `innuendo and rumor', into the same matters before August 6, 1985. 14 The Bureau was concerned in February, 1985, that `an active investigation by the BH Division would result in additional controversy and possible embarrassment to the Bureau'. 15

During the period of the FBI's active `preliminary inquiry,' a bugging device was found on one of the Mayor's office telephones. 16 The device was mounted inside one of Arrington's multi-button telephone sets and was connected to the T and R leads of the telephone line. It was powered by South Central Bell's Central office and it appeared to be a microphone/transmitter approximately one inch square and about one-half inches thick. A spot check of other telephones throughout City Hall indicated that six other telephones had the same type of wiring clipped off where some type of bugging device had been previously installed. The apparent `bugging' of City Hall occurred in the following offices:

Mayor's Office-Staff area.

Mayor's Private Office.

Legal Department.

Finance Director's Office.

Personnel Director's Office.

The City has not been able to determine who deserves the credit for the bugging of City Hall. It does not know what conversations, if any, were monitored by the bugging devices.

On November 6, 1985, SAC Cecil Moses wrote Frank W. Donaldson, U.S. Attorney (N.D., Ala.), a letter which stated the following: `A preliminary inquiry was conducted between August and October, 1985 to determine if any federal public corruption laws may have been violated. There is no probable cause at this point to believe that any laws have been violated.'

However, the `no probable cause' finding did not close the FBI's book on Arrington.

C. The 1987 FBI `Sting' Effort

On July 28, 1987, a consensually recorded conversation occurred between FBI Special Agent Clifford Cormany, Jr., (acting in an undercover capacity as Steve Hawkins) and then Fulton County, Georgia Commissioner A. Reginald Eaves, who is African-American. Eaves was under investigation by the Bureau for alleged violations of the Hobbs Act, 17 U.S.C. 1951(a). 17 during this conversation, Cormany introduced the subject of doing real estate development business with City Hall officials in Birmingham.18 The relevant transcript portions of that meeting are as follows:

`CC: All right. All right. The, ah, when, what I wanted to talk to you about, are you, are you very strong over in Birmingham?

`ARE: I have some good contacts.

`CC: The reason I asked we've been over there looking for some property and * * *

(Pause.)

`* * * some people introduced me to a developer over in Birmingham and I don't really know him, I've never done business with him and, ah, but he tells me that he was involved in a project several years ago with a, ah, some investors out of Texas, and what they intended to do is put together a, ah, some kind of recreational water theme park in downtown in the city limits of Birmingham.

`ARE: Uh-huh.

`CC: (Clears throat) It involves a, evidently two hundred acres of land owned by the city. (Clears throat) Now the city, or evidently these investors or other developers out of Texas reneged (coughs), excuse me, reneged on a deal for whatever reason. (Clears throat) And, ah, the guy that we talked to claims that he has all the necessary contacts with the people in the city which we were, we were totally non-committal on one way or the other but, particularly, ah, with their story of this guy tells us about being involved with a group out of Texas that backed out at the last minute it just kind of, the question to me was what to this credibility would be with these people and it look like he's trying, ah, out of some probably some, somewhat of desperation of to find somebody to get back involved with him now (clears throat) and we don't need that guy but evidently there is this two hundred acres of land that the city is interested in having developed. And there, ah, according to some of the press, ah, from time to time over the last year, they have two hundred acres and, ah, they want, ah, someone to come in there and do something that I would guess, ah, promote the development and growth of, of the city overall.

`ARE: What kind of development, though? Multipurpose?

`CC: Well, ah, like I said the only thing I know that they were supporting from the outset was a recreational, ah, kind of water theme park. (Clears throat) but, according to this guy, they would, they'd support anything. I would I get the feeling Reggie that they're looking for something that, that, ah, could draw the people, tourist crowds and so forth * * *.

`ARE: (Unintel.). Downtown.

`CC: Yeah. But it's partially commercial and partially recreational this I don't know though. The only thing I feel fairly confident about is the fact that there evidently is two hundred acres and the city is, is gonna provide the land if they can get somebody to, ah, come in there and commit the resources to develop it. Now if they're providing the land, either turning the land, signing the land over or just providing a long-term, ah, lease or whatever, of course, that's sounds attractive to me and, ah, that, of course, would be one your major up-front costs to go into any city and buy that kind of acreage in the, ah, within the city limits. Now I haven't pursued it any further than that because, ah, I just didn't know what this guy's * * *.

`ARE: Where he was coming from.

`CC: * * * reputation was with, cause he had evidently, ah, rubbed some people the wrong way by bringing this guy in the first time and then having it fall through. So I got a feeling that his interest was two-fold: One to ah obviously get involved in something that he's gonna make some, some good money on, and number two-to reestablish himself with the ah * * *

`ARE: People (unintel).

`CC: With his contacts over there who * * *.

`ARE: What you can do is ah if you, (CC: Clears throat) want us to look at it if you could give me his name I can call Willie Brown, the Mayor's Deputy, who's friend of mine and just find out what the guy's ah reputation with them. 19

`CC: Well now this guy mentioned ah, he mentioned the guy he wanted to introduce us to and, and that wasn't it was Willie something, but it wasn't Brown I don't think. Said he was in . . . Yeah I, well . . . The guy's name I talked to is ah Robert Moussallem, 20 it's, it's like a, I got a business card here.

`ARE: You can keep it, I just need his name.

`CC: MOUSSALLEM I don't know how you spell that.

`ARE: I got it.

`CC: That's that's ah phonetic ah you know I have no idea if that's the correct spelling. It sounds like Moose and Salem. (Clears throat)

`ARE: (Unintel)

`CC: Well he's one of these guys, he's, claims he's a developer and . . . `Whatta ya got going right now?' `Well you know I've got (unintel) I got a good idea here and a good idea there.' Well what what do you have going now.' `Well I really don't have anything going right at the minute but I have some excellent contacts' * * * all of which you know we, we run into all the time but the important, the thing that's really interesting to us and ah talking to some of my investors is the prospect of, of, of that much land being available, inasmuch as we are interested anyway in looking ah at that area.

`ARE: You know (unintel) Steve I, even if I can't make it, I'd like for you and your investors to let me set up a meeting.

`CC: Sure * * * the, look, if, I mean can you make a call over there and find out?

`ARE: Un-huh.

`CC: Cause, why I mean if the city's got the land and they're, they're probably * * *

`ARE: I need to * * * .

`CC: * * * in development ah * * *.

`ARE: . . . I need to cash in with the mayor, I did him a big favor on a guy he wants to get into some zoning ah down here, we got it done for him.

`(Background noise from restaurant)

`ARE: And I've ah * * *

`CC: I've got to ask him for a favor.

`(PAUSE)

`ARE: Well if we, if this guy's anywhere close to accurate and then don't ah make sure they have a clear understanding that we're not in anyway associated with this guy because I don't if he's got a good repu--if he's got a good reputation we associate with him (ARE and CC both chuckle) but ah I just didn't have enough information about the guy to, to ah and I didn't try to get that much and just listening to the story it sounded like he might of, of hurt hsi credibility in dealing with these people and * * *

`ARE: Did he say why the Texas people pulled out?

`CC: If he did, I don't remember.

`ARE: Anybody doing business with Texas folk knew and I've got to be scared to death anyway.

`CC: I really, you know like you said if he did tell me, you gotta understand we got so many people that, that run these opportunities by us and out of the whole conversation with him the only thing I cam of it with was that feeling pretty confident that the city does have some pretty nice acreage there that they've wanting somebody to do something with and they're willing to provide the land if they get the right program put together.

`ARE: (Unintel).

`CC: You know that could be a heck of a project. Ah two hundred acres. Whatever they want. I'd like to find out, if, if (a) they do have the land, and if so what, what they would prefer we'd do with it and how, and how they would like to put it together and who we would work with over there (ARE clears throat) if anybody and, see what we can find out.

`ARE: I'll get some answers for you.

After that conversatin, Eaves inquired about the water theme park project and Robert Moussallem in a meeting with Arrington's then Chief Administrative Assistant, Willie Davis. On August 11, 1987, Eaves gave a report about this matter to Cormany, Special Agents Robert A. Hood (acting in an undercover capacity as Robert A. Howard), and James Vaules (acting in an undercover capacity as Jim Volpe). The FBI tape recording made on August 11, revealed that Eaves advised the above-mentioned agents that Birmingham City officials did not want to deal with Robert Moussallem or anyone else who was dishonest or who had a shady reputation. 21 The following are excerpts from transcriptions of the August 11, 1987 tape:

`ARE: * * * The last thing I think uh, I needed to mention to you, (UI) talk to you, is that I did have (UI) in there in the office the other day from Birmingham.

`CC: That's, uh * * *.

`ARE: WILLIE.

`JV: WILLIE DAVIS?

`ARE: Yes, and uh * * *.

`CC: He was here?

`ARE: Yes, he was in my office. As a matter of fact I tried to reach you but I forgot you were out of town. He said don't touch that man, he's dishonest. And that, that administration would not touch him.

`CC: Did he say what they want to develop on it?

`ARE: No, I didn't get into that.

`CC: But the city owns the land?

`ARE: I was more concerned about trying to determine whether or not this guy was legitimate. And he's not legitimate.

`CC: What'd he say about the guy, cause some of our people * * *

`ARE: Are still messing with him? Well in terms of city government uh, he's been going around uh, uh, using the mayor's name and uh, this guy, somebody contributed a million, five million dollars in some project and then all of a sudden all the money's disappeared. And uh, and what I said to him was uh, that I felt the best thing for him to do was to write a disclaimer, just sending out a letter telling him to stop doing that, because as a lawyer what I thought he was doing wrong * * * they were allowing him to do that and therefore could be interpreted as an Agent of the Mayor, so he got on the phone and dictated that letter to his secretary while he was in my office.

`CC: Huh?

`ARE: But uh, but uh, if you're gonna go to that administration he's the wrong person to use.

`CC: The guy that I met down there?

`ARE: Yes.

`CC: Is that right?

`ARE: He said but if you'll really interested uh, uh, if you have work from here then I'll there's a guy here that's, that's uh, the contact guy, I'll put you in touch with him or if you go into Birmingham uh, he will meet you and take you in to see the Mayor, but they really want to develop that area.

`CC: OK. But there is, what the guy told me about there being two hundred acres available is true?

`ARE: There is, and they're looking now to develop that.

Despite the above statements that Birmingham officials viewed Moussallem as `dishonest', agents Cormany and Hood launched Moussallem on a planned `sting' operation against Arrington in Birmingham. Still posing as Steven W. Hawkins and Robert A. Howard of Land Development Investments of Atlanta, Georgia, the FBI agents directed Moussallem to arrange a meeting with the Mayor for the purpose of structuring real estate transactions which directly involved Arrington. According to Moussallem, the FBI agents eventually wanted to gain the Mayor's trust and then offer him money for his role in a planned real estate development deal. At a later point, Moussallem provided the City with the phony business card used by Cormany and Hood as proof of his undercover work with the two agents. The business card is set-out below.

[Business card is not reproducible for the **Record**.]

In late August or early September, 1987, Moussallem sent a message to Mayor Arrington--if Moussallem came to see him, Moussallem would be accompanied by two FBI agents whom he would introduce to Arrington as contractors. 22 Moussallem later insisted that the agents wanted him to approach Arrington and involve him in real estate deals involving property purchases, re-zonings and leasing buildings to the City. 23 Somehow the agents learned that Arrington had been informed of their presence in Birmingham, and they did not go forward with the plans for a meeting with Arrington. 2 4

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D. The 1988-89 FBI/IRS Efforts To Entrap Arrington and Other City Officials

On March 25, 1988, FBI SA Stephen E. Branner swore before the Honorable Sam C. Pointer, Jr., United States District Judge (N.D., Ala.) that he had probable cause to believe that `Bobbie McDowell, Hugh Boles, Lewis Spratt, John Rogers, John E. Amari, Ed Porter, Sandra Escott, Sidney Laskow, Robert Gafford and others yet unknown' were participating in the affairs of the Bessemer Metropolitan Dog Track, Inc., `through a pattern of racketeering activities, that is briberies of public servants . . . in violation of Title 18, United States Code, Sections 1962(b), (c), and (d) 1983'. 2 5 Branner went on to state in his affidavit that: ` * * * There is also evidence which indicates that Earl Williard, Richard Arrington, Jim Folsom, Jr., John Pemberton, E.B. McClain, Pat Davis, and Jimmy Filler may be a part of the conspiracy.' 2 6

On the basis of Branner's sworn testimony, Judge Pointer entered an order authorizing wire taps on the telephones of McDowell, Boles, Spratt, and John Rogers. 2 7 The investigation into possible Hobbs Act violations muddled along despite the lack of any credible evidence of bribery and extortion with the Bessemer Dog Track enterprise.

At some point in early 1988, 2 8 federal law enforcement officials met in Alabama and developed a `hit list' of African-Americans elected officials (and others) they would target for public corruption probes. The criteria for selection and ranking of those officials was based upon who was most vocal, who was most visible, and who was most complained about by conservative watch-dog groups in the Alabama area. 2 9 Mayor Arrington headed the list, State Senator Earl Hilliard was second, State Representative John Rogers was third, fourth and fifth (the correct order is uncertain) were Birmingham City Council members Jeff Germany and William Bell, and State Representative Pat Davis was sixth on the list. 3 0

On October 25, 1988, the FBI, IRS (Criminal Division), and U.S. Attorney's Office in Birmingham began efforts to entrap Arrington and others. According to an IRS internal memo obtained by the City:

` On 10/25/88, IRS employee William E. Cooper met with Robert A. Moussallem at Shoney's Restaurant, 18th Street, South, Birmingham, Alabama in Cooper's vehicle. They traveled to the Office of the Regional Inspector, 500 22nd Street South, Birmingham Alabama. Moussallem was approached by inspectors and was advised he was not under arrest but that inspectors wished to question him. Moussallem was initially interviewed by William F. Coady, Assistant Regional Inspector, Internal Security Division, Southeast Region.

` After this interview, Moussallem was interviewed by Inspectors M. H. Mullins and A. M. Hatcher * * *.

` Moussallem was told he was the subject of a criminal investigation involving bribery of an IRS employee. It was explained this was a very serious matter. Moussallem was advised he was being interviewed at the direction of the U.S. Attorney's Office and that his cooperation would be made known to them; however, no promises could be made to him * * *.

As mentioned earlier in this report, Robert Moussallem had worked with the FBI in its 1987 attempted sting of Arrington. This time, the IRS, FBI, and the U.S. Attorney wanted him to help set-up Arrington and others on the `hit list.' According to Moussallem's sworn June 5, 1989 testimony:

` 4. On October 25, 1988, I was summoned to a meeting in Birmingham at the 500 Building on 22nd Street South where I encountered a half-dozen or so Internal Revenue Service (IRS) and Federal Bureau of Investigation (FBI) agents. Among the agents present were persons later identified to me as Marshall Mullins (IRS), and James Kiel (FBI). I knew one of the other federal agents because of work I had done under his supervision before October 25, 1988. 31 In the room I entered, where the agents were present there was a black and white picture of Mayor Arrington on wall with the word `corruption' above it. I asked why was the Mayor's picture on the wall, but I did not receive an answer to this question. I was taken to another room where another agent was the only one present with me. That agent, whom to my knowledge I had never met before, told me that I had a golden opportunity to work [myself] out of a hole, and to stay faithful, and that he wanted me to work with two other agents. I was offered limited immunity from prosecution and told by this agent that if I did what was wanted, I would get full immunity from prosecution. He did not tell me at this time what I had to do to stay faithful.

` 5. Later, I met with agents who identified themselves as Mullins and Kiel. I talked with them in Jefferson County, Alabama on several occasions. One one occasion they asked me whether I had ever given money to Mayor Arrington. 32 I told the agents that I had never bribed the Mayor. I was telling the truth.

` 6. In November, 1988, I had a meeting in the Birmingham office of Bill Barnett (Assistant U.S. Attorney, Northern District of Alabama) with agents who identified themselves and Kiel, Mullins, and Allen. Barnett was present during part of the meeting. For the first time, Kiel and Mullins told me exactly what I had to do to get full immunity from prosecution. The agents said that they wanted me to set the Mayor up, but

to do it under their direction. They told me to implement this scheme as follows:

`a. I was to get some property in Birmingham that was recently refused rezoning by the City Council.

`b. I was to approach the Mayor, Council President William Bell, Council member Jeff Germany, State Senator Earl Hilliard, and State Representative John Rogers to solicit their involvement and influence in getting the property rezoned.

`c. I was to offer each of these public officials a bribe, however, the Mayor was their number one priority.

`If I carried out this scheme successfully, I would get full immunity from prosecution. The agents explained to me that I could not have full immunity at that time, (November, 1988) because any resulting criminal charges would be too vulnerable to attack by defense attorneys if I received full immunity on the front end.

`7. On or about November 23, 1988, I received a letter from the U.S. Attorney, Mr. Frank Donaldson, offering me limited immunity for my role in the scheme. 33 Thereafter I started out my efforts to set up Mayor Arrington (and others named by the Federal agents), as directed by Mullins and Kiel:

`a. I got some property near the airport which I proposed to turn into an automall. The property had previously been submitted to the Council for rezoning and had experienced problems.

`b. I had a couple of meetings with an associate of John Rogers and with John Rogers, and one meeting with William Bell. I suggested to these persons that money would be made available in exchange for their influence in getting the property rezoned. Each declined the offer of money and seemed to be confused and irritated by my suggestion. All of these meetings occurred in Jefferson County, Alabama.

`8. I never talked to Mayor Arrington, Hilliard or Germany about the rezoning because the agents called me off after the meeting with Bell. They said that my role in the scheme was over, and that the deal for total immunity was dead. My part in the attempt to set-up the Mayor ended about March 1989.

`9. During the November, 1988 meeting in Barnett's office, Kiel and Mullins acknowledged that I had never bribed the Mayor. However, they said that I could pull off this scheme because they knew I got screwed on that Water Park deal. They said that, `They [the blacks] all are bunch of dope heads.'

Moussallem provided the City with copies of business cards from SA James E. Kiel and IRS agent Phillip L. Shobe.

`The City also obtained tape recorded conversations between Moussallem and Kiel, Shobe and Marshall Mullins his FBI and IRS handlers during 1988-1989. Transcripts of the tapes reveal an open understanding between the IRS and FBI agents and Moussallem with respect to setting-up Arrington. A March 30, 1989, taped telephone conversation between IRS Agent Marshall Mullins and Moussallem contains the following dialogue:

`M. Marshall, one more thing. I was asking Lynn. The Mayor, Mayor Arrington, he called me. Wants to have lunch with me. Do you still want me to do something with him?

`MM. What does he want to do?

`M. He just wants to have lunch with me cause what I prepared you know in the past.

`MM. Yeah

`M. What you told me to do he called and wants to have lunch.

`MM. Uh-huh.

`M. If you still want me to do something, tell me what you want me to do so I'll know what.

`MM. When does he want to have lunch?

`M. Next week.

`MM. You know what day? You just call him?

`M. Well I told him I'm gonna call him back and let him know what day would be a good day. I thought that way I would buy a little more time til I call you.

`MM. Is this the first time you heard from him in awhile?

`M. Yes.

`MM. What do you think he wants to talk about?

`M. Marshall I wouldn't know. I just thought maybe you, you know if you tell me what you wanted me to do or say or prepare... .

`MM. You gonna be here all this week and next. You going out of town anytime soon?

`M. No I'll be here.

`MM. OK, all right let's just hold off. Let me talk to Jim Kiel.

- ` M. Uh huh.
- ` MM. And talk to Bud Henry and Bill Barnett and then go from there.
- ` M. Yeah.
- ` MM. OK. OK then you get back with me?
- ` M. OK so you want me, I'm not gonna call him until Monday, Tuesday. Be best for me to call him Monday. I don't want to put it off and it make him feel like I don't want to meet him. I don't want to give him that impression.
- ` MM. So you need to call him by Monday?
- ` M. I'm just, just you know.
- ` MM. Yeah to let him know one way or the other.
- ` M. Yeah.
- ` MM. All right.
- ` M. But the reason you know as you told me before always buy a little time until I talked to you so you tell me what you know want me to do.
- ` MM. Right. On April 1, 1989, Moussallam taped the following telephone conversation with James Kiel:
- ` M. OK. Uh, Mr. Kiel, I have a couple points to ask you, Un, No I, because you haven't you and I, we haven't spoken in quite a while, you definitely want me still, I mean you know, the way when you get into a discussion with the blacks, you kinda just left things, it's under your direction, but I just wanted to make sure that you still, cause one time you made a point to me and you said `whether it you know it happened or happens it counts.'
- ` K. That's right.
- ` M. Yeah. And I'm doing this under your direction and nothing changed, it's just that, you know, you kinda left it at a standstill at the time and I just gotta let it sit there until you let me know something. But when I heard something I called you.
- ` K. OK.
- ` M. You know, uh but we are still wanta do something, is that right?
- ` K. If we can, that they got our pro shots
- ` M. They come from them.
- ` K. Yeah.
- ` M. Ok so that's the reason why when I approached you when the Mayor called, uh, that's the reason when I called you I picked the best time to call.
- ` K. Uh huh.
- ` M. Yeah, Uh, I won't call on Monday, Ok, I'll proceed with that. Ok?
- ` K. Yeah.'

It is apparent from the two transcripts quoted in this report that Moussallem, Mullins and Kiel discussed a prior FBI/IRS operation involving Arrington which required the supervision and direction of these agents.

Several days after informing Arrington of the federal entrapment scheme, Moussallem was indicted by a federal grand jury. About four months later, he was tried and convicted of tax law violations.

A few weeks after his conviction and before his sentencing, Moussallem was killed by a shotgun blast which blew away most of his face. According to police reports of the September 26, 1989, homicide, Moussallem was meeting with several friends when he was shot by the owner of the office in which they were meeting. Mullins and Kiel were on the scene immediately after the killing, and a federal investigation of the incident ensued. Federal agents also confiscated audio tapes which Moussallem had made of some of his discussion with them, including those referred to earlier in this report. A July 3, 1989, *Newsweek* feature story on the entrapment efforts against Arrington and other African-American officials was found at the death scene in front of Moussallem. The story reported on Moussallem's involvement in the matter.

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E. The `Fruhmenschen' Policy

The official FBI COINTELPRO program ended in the early 1970s. However, it was replaced quickly by an unofficial FBI policy and program which apparently continues to the present time under the code name `Fruhmenschen.'

Fruhmenschen, as detailed in two 1987 affidavits of Atlanta attorney and former FBI undercover operative, Hirsch Friedman, is an FBI policy of selectively targeting African-American elected and appointed officials for investigation. 34

According to the Friedman affidavits, the basis for this policy was 'the assumption by the FBI that black officials were intellectually and socially incapable of governing major governmental operations and institutions.' Fruhmenschen is a German term for 'primitive man.'

The details of the Fruhmenschen policy, as outlined by Friedman, are strikingly similar to the components of the unsuccessful FBI and IRS sting operation outlined in the Moussallem affidavit. The pattern of harassment and attempted obstruction of Birmingham's governmental operations by Frank Donaldson's office and the federal agencies under his supervision appears to be unfairly focused on African-American officeholders. At the same time, white Republican officeholders appear to receive only scant scrutiny from these federal agencies. 3 5

The city recognizes and respects the duty and responsibility of all law enforcement officials and prosecutors to investigate possible criminal violations, but only when there is a sufficient, unbiased justification to do so. The City is concerned that its working relationship with the U.S. Attorney's Office in Birmingham and the law enforcement agencies under its supervision has been undermined by the apparent implementation of the Fruhmenschen policy in Birmingham by the FBI and IRS under Frank Donaldson's supervision.

In a letter dated April 14, 1988, to the Honorable Peter Rodino, then Chairman, House Committee on the Judiciary, FBI Director William Sessions denied that his agency has an unofficial Fruhmenschen policy of routinely investigating black elected and appointed officials around the country. Sessions stated that the FBI's Undercover Operations Review Committee in Washington, which is composed of senior Department of Justice (DOJ) and FBI officials, has standards and oversight guidelines which preclude the agency's use of undercover operations for the purpose of discrediting political figures in public corruption cases. If Sessions is correct, then there are several major flaws in the FBI and DOJ's oversight system.

First, U.S. Attorneys in Alabama have an extremely low conviction rate against African-American elected officials and political leaders who were indicated and prosecuted during the 1980s. Of the twenty African-Americans indicted, three were found guilty, two pleaded guilty and fifteen were ultimately cleared of all criminal charges. This represents a 25% conviction rate. Most reputable prosecutors maintain conviction rates ranging from 90 to 95% in criminal cases. A history of African-American elected and political officials prosecuted by U.S. Attorneys in Alabama during the 1980s, compiled from federal court records, is shown on the next three pages of this report.

SUMMARY OF BLACK ELECTED OFFICIALS AND POLITICAL LEADERS PROSECUTED BY THE U.S. ATTORNEYS IN ALABAMA DURING THE 1980'S

Year	Black elected officials and political leaders	Office/position	County	Federal court	Offenses charged
Sept. 30, 1981	W.D. Johnston	County Commission	Macon County	Middle District	Racketeering, conspiracy
Nov. 10, 1982	Lee Allen Ivory	.....do	.....do	.....do	Mail fraud
Nov. 10, 1982	Johnny R. Carter	.....do	.....do	.....do	.....do
June 15, 1982	Benjamin Jordan	.....do	Bullock County	.....do	.....do
June 15, 1982	Fred Crawford	.....do	.....do	.....do	.....do
June 15, 1982	Alonza Ellis	.....do	.....do	.....do	.....do
Jan. 25, 1985	Albert Turner	Dir./PCCLI	Perry County	Southern District	Conspiracy, racketeering
Jan. 25, 1985	Spencer Hogue, Jr	.....do	.....do	.....do	.....do
Jan. 25, 1985	Evelyn Turner	Member/PCCLI	.....do	.....do	.....do
June 10, 1985	Spiver Gordon	Dir./Comm. service block grant program	Greene County	Northern District	Conspiracy, racketeering
June 10, 1985	Frederick Daniels	Employee/Greene County Nursing Home	.....do	.....do	.....do
June 10, 1985	Bessie Underwood	Employee/Greene County BOE	.....do	.....do	.....do
June 10, 1985	James Colvin	Mayor/town of Union, AL	.....do	.....do	Conspiracy, racketeering
June 9, 1986	Douglas Wicks	County Commission	Mobile County	Southern District	Extortion
June 16, 1988	Thomas Reed	State Representative	Macon County	Middle District	Extortion and conspiracy
May 12, 1989	Bobbie McDowell	.....do	Jefferson County	.....do	Conspiracy to defraud
May 12, 1989	Edward McClain	.....do	.....do	.....do	.....do
May 12, 1989	Lewis Spratt	.....do	.....do	.....do	.....do
Oct. 16, 1989	Patricia Davis	.....do	.....do	Northern District	Interference with justice
Sept. 6, 1989	John W. Rogers, Jr	.....do	.....do	.....do	.....do

The dismal conviction rate for aforementioned indicted African-Americans suggests that an overwhelming majority of the cases were not brought by the Republican U.S. Attorneys with a sound belief that they would result in a conviction, but, rather, were initiated for the purpose of harassing the targeted African-Americans.

Second, the racial attitudes of State and local FBI (and DOJ) officials have not changed appreciably since the COINTELPRO days. In the 1960s, FBI Director Herbert Hoover referred to Dr. King as a 'burrhead,' 'degenerate,' 'top alley cat,' and a 'notorious liar.' Form 1986 to 1989, federal agents in Birmingham and around the State reportedly referred to African-Americans as 'dope heads,' 'nigger whores,' and 'niggers'. 3 6 Also, there have been several well publicized incidents around the country involving racial harassment and discrimination by white FBI agents against fellow African-Americans (e.g., Donald Rochon) 3 7 and Hispanic (e.g. Bernardo Perez, Leo Gonzales, and Fernando Mata, etc.) 3 8 agents.

Third, federal law enforcement officials continue to plant potentially embarrassing stories in 'friendly newspapers.' A classic example of leaking grand jury evidence to friendly news reporters occurred in June, 1989. Information was released to a reporter for the *Birmingham Post-Herald* and the publisher of the now defunct *Advocate* regarding two cashier's checks which were allegedly negotiated for payment in 1987 and which purportedly bore the endorsement of a former staff person in the Mayor's office. These checks were in the exclusive possession of the FBI and U.S. Attorney's Office. At the time these news organizations contacted the former staff person in pursuit of their news stories, the same cashier checks had not been provided by the U.S. Attorney's Office to another individual who was facing criminal tax evasion charges involving the checks. 3 9

Fourth, FBI and DOJ officials continue to selectively target blacks for investigation even when, as mentioned earlier in this report, these officials were repeatedly forewarned by their informants and undercover surveillance activities that the targeted blacks abhor the prospect of political dealings with dishonest and shady individuals.

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F. THE APPARENT IMMUNITY FROM PROSECUTION EXTENDED TO PROMINENT WHITE ALABAMA REPUBLICANS

According to the Hirsch Friedman affidavit, indictable cases against white public officials have been dropped and, in some instances, investigations continued altogether while the Fruhmenschen policy was applied in full force against African-Americans.

Two prominent examples of the apparent immunity afforded white officeholders under the Fruhmenschen policy are found in Alabama. One involves the Governor of Alabama, Guy Hunt. The second example involves U.S. Representative William Dickinson (R-Ala.). Both men are white, conservative and powerful Republicans. Hunt's election in November, 1986, marked the first time a Republican held the Governor's seat in Alabama in 112 years. Dickinson has served in Congress for more than two decades and is the ranking Republican on the House Armed Services Committee.

1. THE GUY HUNT MATTER

The City has learned that U.S. Attorney James Wilson (M.D., Ala.) and his predecessor in office, John Bell, both of whom are white Republicans, failed, declined or refused to prosecute or present to a federal grand jury possible criminal violations allegedly committed by Guy Hunt. This, despite overwhelming evidence of numerous acts allegedly committed by Hunt while he was Executive Director of the Alabama State Agricultural Stabilization and Conservation Service (ASCS), an appointed position Hunt obtained through the political generosity of then U.S. Senator Jeremiah Denton (R-Ala.).

On March 1, 1985, Attorney Richard Allen, then Regional Inspector General for the U.S. Department of Agriculture issued a report to Thomas J. Burke, then Assistant Inspector General for Investigations. The report stated as follows: 'The purpose of this memorandum is to request the immediate removal from office of Harold Guy Hunt, State Executive Director, Alabama State ASCS Office, Montgomery, Alabama. This request is based upon significant evidence of activities, and upon evidence of Hunt's repeated and continuing efforts to interfere with our ongoing investigation through direct and indirect contacts with subordinate ASCS employees and other witnesses seeking non cooperation and withholding of information by these persons. Additionally, we have information that Hunt has removed from the ASCS office information relative to certain witnesses of interest in this case * * *

The following is a brief summary of the evidence which prompts this request:

'In January, 1985, this office initiated investigation of a 'whistleblower' complaint, alleging that Hunt's official travel vouchers and other documents demonstrate violations of travel regulations, official telephone credit calls were made from his residence(s) at times when his vouchers show him to be at other locations, a pattern of frequent official travel to areas in and around his permanent residence in North Alabama, and engaging in prohibited political activities. By early February 1985, our examination of Hunt's travel vouchers and telephone credit call records confirmed his frequent official trips to the area of his permanent residence, and also confirmed the existence of a number of discrepancies relative to calls charged to his residence at times when travel vouchers show him to be at other locations.

'On February 11, 1985, Hunt was placed under oath by an agent of OIG, and questioned regarding any political activities in which he may have engaged during his tenure in ASCS. Under oath, Hunt advised that his 'friends' had formed a corporation in 1981, prior to his current appointment in May, 1981, to solicit funds to retire outstanding debts from his unsuccessful race for Governor of Alabama in 1978. He denied any personal involvement in this effort. He further denied that he had been actively involved in any political activities of any kind during his ASCS employment. He confirmed that he attended an 'appreciation dinner' in April 1982, wherein funds were collected to help pay his 1978 campaign expenses. He denied any active involvement in that effort, and he denied any knowledge of any use of Government resources, time or personnel regarding the 'appreciation dinner' or any ongoing effort by his 'friends' to prepare for a second race for Governor in 1986. He said he had 'considered' a second race for Governor, but denied that he had made any firm decision in this regard.

'On February 13, 1985, Hunt advised our agent that his 'personal' activities were not a matter of legitimate interest to OIG, and that any questions on matters other than his travel should be submitted in writing for review by his attorney. Three subordinates of Hunt advised they were given 'direct orders' by Hunt to this effect. On February 21, 1985, Hunt advised our agent that he then understood, from advice which we believe to have been issued by national ASCS officials on February 15, 1985, that OIG was empowered to conduct the investigation. He further said he had rescinded the 'direct orders' previously given his subordinates.

'Since February 21, 1985, six subordinates of Hunt have furnished signed statements under oath furnishing information indicating that, during the period from about March 1982, until the initiation of our investigation in January 1985, Hunt caused subordinates to prepare, on Government premises during official duty hours, voluminous political mailing lists, political correspondence, a political campaign budget, and listings of persons involved in his prior and current political campaign organizations; accepted political contributions received by mail at his office; gave a check to a campaign worker visiting at his office; was frequently visited at his office by persons determined to be directly involved in development of his campaign structure(s) and/or solicitation of funds; caused political fund-raising letters to be mailed to a number of his ASCS subordinates; requested from his subordinates information as to persons who might be contacted to participate in his current political campaign organization and/or political fund-raising efforts; interviewed at his office potential candidates for active roles in his

current campaign effort; frequently mentioned to subordinates his participation in various social gatherings hosted by campaign workers off ASCS premises in efforts to raise campaign funds; and caused an ASCS subordinate to prepare typed correspondence containing instructions to campaign workers relative to such social gatherings.'

We have signed sworn statements from an ASCS subordinate of Hunt, and from the father of this subordinate, stating that:

'In 1983 and 1984, Hunt asked the subordinate to arrange meetings with the subordinate's father; in late 1983 Hunt personally met the father at the latter's residence, accompanied by two persons he introduced as campaign workers; Hunt personally asked the father to assist in the current campaign by identifying potential campaign workers, soliciting campaign funds, and hosting social gatherings at which Hunt was to speak to the attendees, after which campaign workers were to solicit campaign funds; and the father was furnished campaign literature and funds/support solicitation forms. The father of a second ASCS subordinate of Hunt has advised:

'In late 1984, and again on February 6, 1985, he (the father of this ASCS employee) was present at two social gatherings at the residence of a member of the Alabama State ASCS Committee, wherein Hunt made remarks concerning his political views and plans to the attendees, and wherein political donations were solicited. This witness has also advised that he in fact made a donation of funds at the first of these two meetings. The witness informed that, in both instances, the member of the ASCS State Committee personally invited the witness to these gatherings.

'We have three sworn statements, and a number of oral statements, which we have not yet reduced to writing from ASCS subordinates of Hunt, delineating direct and indirect efforts by Hunt to intimidate, coerce, or persuade his subordinates to withhold full cooperation in the investigation and/or furnish misleading or false information if interviewed regarding this matter. Evidence shows that this activity began no later than February 15, 1985, and continued until at least February 28, 1985. Some examples of this activity follow:

'On February 15, 1985, Hunt suggested to his secretary that she should deny any knowledge of the matters under investigation.

'On February 19, 1985, Hunt instructed his secretary to contact two ASCS employees and advise the employees that, if questioned regarding this matter, their 'best answer' would be 'I don't know.'

'On February 20, 1985, Hunt told a group of perhaps 50 ASCS employees that, 'by telling (the investigator) too much', these employees might discover that 'the noose is around (the employees') neck(s)'. Later that same day, Hunt told two clerical employees that they should respond to our investigator's questions by saying 'yes, no, or I don't know.'

'On February 21, 1985, Hunt asked one of the ASCS district directors to contact three ASCS employees, to advise them of the investigation, and to ask that they 'be careful' in answering any questions associated with the investigation. Hunt told the district director that by this method, 'if he (Hunt) were asked, he could say he had not talked with' these employees.

'On February 22, 1985, Hunt told another group of perhaps 50 ASCS employees, 'when someone comes in asking questions, answer yes or no, and don't say, but * * * just remember, you may end up on the witness stand to testify about something you will be sorry about saying * * * We have come to the place that we should remember that if what we say will not do any good, we do not need to say it.'

'On February 28, 1985, Hunt telephoned an ASCS employee known to have knowledge of his political activities, and advised this employee substantially, 'The best way to handle this is not to know anything.' On the same date, he telephoned two other persons, generally advising one of these persons of the ongoing investigation, and telling the other person substantially, 'If the investigator tries to make an appointment to talk with you, put him off for a week. You're too busy. You can tell him to get off your property * * * You don't need to tell anyone I called and told you this.'

'Also on February 28, 1985, Hunt directly asked his secretary if she had furnished a particular witness's telephone number to the investigator. He also asked if the secretary had any 'personal telephone numbers' of interest to Hunt. After the secretary informed Hunt that the office rolodex file contained certain such telephone numbers and associated addresses, Hunt examined the file. Subsequently, the secretary observed that cards listing information as to two significant witnesses in this case had been removed.

'Within the past few days, Hunt has made a number of statements to subordinates to the effect that he was engaged in direct and continuing efforts to identify 'the culprit who turned me in.'

'We have identified a number of investigative leads which, in our opinion, are likely to result in substantial additional evidence of Hunt's direct and active participation in, and management of, development of a political campaign structure relating to his candidacy for Governor of Alabama in the 1986 election. We have copies of a number of records from the bank account set up to receive and disburse funds collected for retirement of Hunt's prior campaign debt, and we have identified the location and custodian of an account set up in August 1984, to receive and disburse funds associated with Hunt's current political aspirations. *If necessary, we are prepared to follow these leads to their logical conclusion.* However, there are indications that such investigation will likely escalate the sensitivity of this case to a point beyond the scope of our immediate interest; i.e., Hunt's involvement in prohibited political activities. As stated above, we believe that the evidence developed thus far is more than sufficient to require Hunt's immediate removal from Federal service.' (Emphasis added).

Allen's report was the work-product of a federal government oversight agency willing to follow its 'leads to their logical conclusion.' His official investigation alleged that Hunt was using the power of his office to coerce ASCS employees to lie and to obstruct the investigation. Allen had obtained as many as nine sworn statements from Hunt's subordinates, including one from Hunt's secretary. Hunt was using his ASCS resources to aid 'his candidacy for Governor of Alabama in the 1986 election,' stated Allen.

Notwithstanding this wealth of documentary evidence and nest of potential witnesses who had already given sworn statements, the Hunt matter was 'handled' politically--Hunt resigned his ASCS office several days later, and federal prosecutors looked the other way. To do that, Wilson and Bell had to forego a possible grand jury investigation into the following charges which might have been considered against Hunt: (1) *Extortion* in violation of 18 USC 872, (2) *Subordination of Perjury*, (3) *Perjury* in violation of 18 USC, 1621, (4) *Intimidation of ASCS employees* to secure a political contribution in violation of 18 USC 606 (5) *Solicitation* of political contribution in violation of 18 USC 602, (6)

Solicitation or receipt of political contributions while an officer of a United States Department and in a building used in the discharge of official business in violation of 18 USC 603, (7) *Solicitation* of political contributions in violation of 18 USC 602, (8) The *submission of fraudulent travel* vouchers in violation of 18 USC 1001, and (9) *Obstruction of Justice* by impeding the investigation of his possible criminal misconduct.

The Republican United States Attorney(s) for the Middle District applied one standard of justice for Governor Hunt and another standard of justice for African-American Democrats in the 1989 case of State Representatives Bobbie McDowell, Lewis Spratt, and E.B. McClain. There, the U.S. Attorneys marshalled scores of agents, spent hundreds of thousands of dollars, tapped many phone calls, conducted numerous grand jury sessions, and enlisted the aid of the press and media, all at the behest of a single Republican informer. Each of these African-American defendants was tried and acquitted of all criminal charges. However, the same U.S. Attorney(s) deliberately ignored the overwhelming evidence gathered by another federal watch-dog agency against Republican Hunt because he needed their protection to remain in the Governor's office. In contrast to the investigation against the African-American Democratic legislators, neither Attorney Allen nor any of the many witnesses who gave sworn testimony against Hunt have ever been called before a grand jury to testify, nor has any grand jury ever been impaneled to investigate the allegations.

The investigation into Hunt's alleged misconduct was stopped before it was started; it never went beyond Mr. Allen's report. This matter came to James Wilson's personal attention in late 1988 through a complaint filed by Doug Carter 40 with the United States Attorney's Office in Montgomery. Still, Wilson refused to present these charges and this matter to a grand jury.

In the final analysis, Guy Hunt was allowed to resign his ASCS job to avoid criminal prosecution and possible injury to his political career. No such officer was ever extended to any black elected or appointed official by Republican U.S. Attorneys during the federal investigations and prosecutions of blacks that swept Alabama in the 1980s.

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2. THE WILLIAM L. DICKINSON MATTER

On October 15, 1986, Congressman William L. Dickinson entered into a joint venture with Montgomery, Alabama industrialist Ben C. Collier called the Montgomery Investment Club. The terms of the joint venture were as follows:

The joint interest will be 2/3 for Ben C. Collier, and 1/3 for William L. Dickinson. All profits and losses will be shared, 2/3 for Ben C. Collier and 1/3 for William L. Dickinson. Any loss of capital will be shared the same. (That is, William L. Dickinson agrees to indemnify Ben C. Collier for 1/3 of any loss sustained of the capital advanced to start the venture. No part of the capitalization is to be considered a loan.)

Ben C. Collier will contribute to the joint venture capital in the amount of \$300,000. William L. Dickinson will use his capabilities to cause the capital to be invested in as profitable a way as possible.

This agreement can be terminated at any time by either joint venturer and refund and disbursements made within 30 days. At such time the entire capital advanced by Ben C. Collier will be returned to him first, plus 2/3 of any profits to Ben C. Collier and 1/3 of any profits to William L. Dickinson. If there is no profit, and a loss is sustained on any part of the capital that Ben C. Collier has advanced, William C. Dickinson will refund to Ben C. Collier 1/3 of any loss.

Any withdrawal of capital or profits can only be accomplished by a signed statement from each member of the joint venture requesting the same.

In the event of death of either joint venturer, this joint venture will cease and the agreement will be terminated in accordance with the above.

The Congressman and Collier also executed a separate 'Agreement' on October 15, 1986, which named Steven E. Streit as 'Trustee' of the \$300,000 seed money for the joint venture. This trust agreement contained the following provisions:

Grantor has transferred and paid over, in trust, to the Trustee, the property identified in Schedule 'A' [i.e, the \$300,000]. Grantor may, with the consent of Trustee, subsequently transfer and pay over other property to the Trustee under this agreement. All of such property shall be referred to as the 'Trust Estate' and subject to the provisions of this agreement, Trustee shall have full power and authority to control, manage, comingle with other Trust Estates, invest and reinvest the same as it, the Trustee, deems prudent in the course of its investment business * * *

Trustee's fee for managing these investments shall be 1% of the market value of investment computed annually * * *

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This Agreement constitutes all that has been agreed between the parties hereunder and represents the Christian love each has for the other and to the glory of our Saviour, Jesus Christ.

The agreement was signed by Streit, Dickinson, and Collier.

In a letter dated October 8, 1986, and written on U.S. Congressional stationery, Dickinson directed Streit to send monthly statements of the \$300,000 investment portfolio to Ben Collier at his Montgomery address, and to Dickinson at the following address: 2406 Rayburn HOB, Washington, D.C. 4 1 Dickinson also sent Collier an undated memo which states, 'Ben--This is F.Y.I.! Hope our joint venture does as well. Bill.'

In copyrighted stories which were published on October 4 and 5, 1989, by *The New York Times Regional Newspapers* in Tuscaloosa, Florence and Gadsden, Alabama, 'Dickinson reportedly offered the 'know-how' to gain the greatest possible return on the investment made by businessmen Ben Collier * * *.' In a September 21, 1989, interview at Dickinson's Washington office, Dickinson reportedly told *Times* reporter Norman Zumwalt that 'there was no link between the partnership, which ultimately lost money to convicted Huntsville swindler Steven A. Streit 4 2 and contacts he made to help Collier obtain defense contracts.' Dickinson was quoted by Zumwalt as saying, 'I haven't done anymore for Ben than I would for any other business in my district * * * We're personal friends. That's got nothing to do with me

pushing his business.' Zumwalt further quotes Dickinson as saying, 'I talked to Ben and said, I've got a good deal. You put up the money, and I'll put up the know-how' to increase Collier's \$300,000 investment for the benefit of both men. Zumwalt reports that 'Dickinson said he helped Collier obtain government contracts for a bankrupt uniform-producing firm in Selma, 4 3 but he said he did so at the request of U.S. Representative Claude Harris, Democrat-Tuscaloosa, and with the cooperation of the full nine-member Alabama Congressional Delegation.' Dickinson is also quoted as saying, 'I wrote most major defense contractors to say he (Collier) has a good product.' 4 4

Collier obtained Selma Apparel 4 5 in November, 1987. The renamed firm reportedly received its first government contract in January 1988, and picked up other contracts in April and July of that year.

After a series of October, 1989, news report of the Dickinson-Collier business arrangement were published in Alabama, U.S. Attorney James Wilson was questioned about any prior knowledge he had of this matter. He stated that he had none. Wilson also admitted that his office has conducted no investigation into this matter. To date, the City is aware of no grand jury investigation into the Dickinson-Collier joint venture by Wilson or any other U.S. Attorney in Alabama.

It is widely recognized and acknowledged in Alabama political circles that Congressman Dickinson was extremely influential in James Wilson's appointment to the position of U.S. Attorney, Middle District of Alabama.

African-American political leaders in Alabama are keenly interested in whether the U.S. Attorney's Office will subject Dickinson to the same scrutiny and prosecutorial vigor that was so dutifully afforded African-American State Representatives Bobbie McDowell, E.B. McClain, and Lewis Spratt. The perception is that Republican public officeholders like Dickinson will be allowed to continue business as usual.

G. The Department of Justice's (DOJ) Response to the City of Birmingham's Complaint

U.S. Attorney Frank Donaldson became aware of the City's concerns on May 2, 1989, when a cover letter from Attorney Donald Watkins and an April 27, 1989, affidavit executed by Mayor Arrington 4 6 were hand-delivered to his office. On May 5, 1989, Donaldson wrote Watkins a letter stating that he had dispatched a copy of the May 2nd letter and affidavit to the DOJ.

On May 18, 1989, the Watkins letter and the Arrington affidavit became public knowledge through various media stories. After an initial period of declining comment on Arrington's affidavit, Donaldson finally broke media silence by declaring that the matters set forth in Arrington's affidavit were 'absurd.' 4 7

On June 7, 1989, Alabama's top elected African-American officials met in Montgomery and charged that federal prosecutors in Alabama disproportionately focused their public corruption and voter fraud investigations on African-American officeholders. In denying this charge, Donaldson was quoted as saying: 'The answer * * * is clearly no, just plain N-O. The United States Attorney will look at facts. We base investigations and whether the matter should go to the grand jury on facts. I usually don't even know the color of those people who're investigated and those who're indicted, unless of course the person is prominent.' 4 8

When Arrington and other African-American political leaders in Alabama tried to schedule a meeting with U.S. Attorney General Richard Thornburgh in late June, 1989, Donaldson and James Wilson reportedly engaged in political maneuvering to block the appointment. 4 9 David Runkel, a spokesperson for Thornburgh, announced on the day before the scheduled June 29th meeting that it would not be appropriate for Thornburgh to meet with Arrington because Arrington's May 2nd complaint to Donaldson was under investigation by DOJ's Office of Professional Responsibility. Thornburgh did offer to meet with a smaller group of African-Americans hand-picked by him to speak on the federal harrassment of African-American officeholders. Those persons selected by Thornburgh refused to meet with him after Thornburgh black-balled Arrington and other African-Americans who were on the original list of representatives scheduled to talk with Thornburgh. 5 0

In its July 3, 1989, issue, *Newsweek* ran an article entitled, 'Backtracking in Birmingham,' written by reporter Howard Manly. The article chronicled the plight of Arrington and other Alabama African-American officeholders who fought harrassment by various federal law enforcement agencies during the 1980s. The City has obtained a copy of a June 28, 1989, letter Frank Donaldson sent to Rick Smith, *Newsweek's* Editor. In the letter, Donaldson wrote:

' . . . Since I became U.S. Attorney in 1981, the overwhelming majority of public corruption investigations have had white public officials as their subject. Relatively few black officials have been the subject of such an investigation. . . . Of the few black public corruption defendants that have been indicted in Alabama, most were convicted and the majority of those convictions are still standing.'

A cursory review of the chart summarizing the history of prosecutions of African-American elected officials and political leaders in Alabama during the 1980s clearly demonstrates that the overwhelming majority of those African-Americans indicted were ultimately cleared of all criminal charges.

III. BIRMINGHAM'S PLAN OF ACTION

The City of Birmingham knows that there were a number of Congressional investigations during the 1970s regarding the harassment of African-Americans by the FBI, IRS, and other federal law enforcement agencies. The City also realizes that DOJ's Office of Professional Responsibility was created in the aftermath of these investigations to prevent and redress misconduct and abuse by federal prosecutors and the FBI. The City also knows that OPR's resources for carrying out its mission are limited when measured against the scope of the harassment problem identified in this report.

Presently, the City is not asking the Judiciary Committee to draft legislation which would restrict the use and abuse of federal law enforcement activities. It is not asking any court to hold the federal officials identified in this report accountable for the actions taken against its Mayor and Council members. The City merely seeks to restrain the arbitrary and capricious interference with its municipal affairs by the law enforcement agencies mentioned in its complaint.

Until the harassment ends, 5 1 the City plans to take several actions. First, the City will continue to nurture and expand its intelligence

network within the federal law enforcement agencies. Second, the City will continue to expose prosecutorial misconduct and law enforcement harassment. Third, the City will closely monitor all law enforcement activities involving it and federal law enforcement agencies. Fourth, the City will actively participate in Congressional (and other governmental) hearings on the harassment problem. In this regard, the City is willing to be a field site for any such hearings.

At the heart of these planned actions is a recognition by Birmingham that it may have to stand alone in fighting for a uniform standard of federal law enforcement in public corruption investigations and prosecutions. It is ironic that the same Birmingham African-Americans who faced Bull Connor and his brand of law enforcement in the 1960s now have to restrain various federal law enforcement officials who represent the modern day threat to civil and constitutional rights. Police dogs and fire hoses are no longer used to intimidate and harass African-Americans in Birmingham. Today's harassment is administered through the use of FBI/IRS surveillance and 'sting' attempts, 'discrete' investigations, 'preliminary inquiries', federal grand jury sessions, and grand jury leaks to the media. Indeed, these harassment activities have followed Mayor Arrington throughout much of his nineteen years as an elected public official.

While Birmingham's resources for safeguarding the civil and constitutional rights of its African-American officeholders are limited, its resolve is not. The City knows that the struggle to end the harassment of African-American public officials is a difficult one for most politicians to embrace, even for those politicians of interracial good will. However, the U.S. Constitution must be upheld, even when it is not politically expedient to do so. If Birmingham must stand alone in the protection of the rights guaranteed by the Constitution, so be it.

Respectfully submitted,

Donald V. Watkins, Esq.,

1205 North 19th Street, Birmingham, AL, Special Counsel to Richard Arrington, Jr., Mayor, Birmingham, AL.

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FOOTNOTES

1 A copy of the City's complaint is attached to this report as Appendix 'A'. The Judiciary Committee also received a June 12, 1989 complaint on the same subject from the Alabama Black Elected and Appointed Officials' Legal Defense Fund, of which Mayor Arrington is a founding member and convener. These complaints have been assigned by the Judiciary Committee to the Department of Justice's Office of Professional Responsibility for an investigation.

2 None of the targeted African-American Birmingham City officials has been indicted by any grand jury.

3 Moussallem's September 26, 1989 death by a shotgun blast to his face is still under investigation by Birmingham Police Department homicide detectives.

4 Arrington was not and has never been a member of the organizations mentioned in the FBI report.

5 A thorough description of the COINTELPRO program is provided in *Racial Matters: The F.B.I.'s Secret File on Black America, 1960-1972*, by Kenneth O'Reilly, The Free Press, 1989. This report quotes heavily from the description of the COINTELPRO program which O'Reilly chronicles and documents in his book. Most references to the program are drawn directly from O'Reilly's book.

The COINTELPRO program is also well-documented in Pulitzer Prize-winning author David J. Garrow's 1981 book entitled, *The FBI and Martin Luther King, Jr.*, Penguin Books.

6 As discussed in the July 21, 1989 complaint by the City to members of the U.S. Senate Judiciary Committee and this report, the same type of harassment activities by federal law enforcement agencies have continued in Alabama.

7 The description of ADEX provided in this report is quoted directly from O'Reilly's *Racial Matters*, pgs. 338-339.

8 The description of KBE provided in this report is quoted directly from O'Reilly's *Racial Matters*, pgs. 339-340.

9 In June 1972, the Congressional Black Caucus held hearings on government lawlessness. The House Subcommittee on Civil and Constitutional Rights, chaired by Representative Don Edwards (D.Cal.), conducted hearings on COINTELPRO in 1974. On January 27, 1975, the U.S. Senate established a Select Committee to Study Governmental Operations with Respect to Intelligence Activities (the Church Committee), chaired by then Senator Frank Church (D-Ida). On February 19, 1975, the House created its own Select Committee (the Pike Committee), chaired initially by Lucien N. Nedzi (D-Mich.) and then by Otis Pike (D-N.Y.). The Church and Pike Committees completed their investigations in 1976.

10 FBI LHM to the Director, dated July 31, 1985.

11 The memorandum was heavily censored and was obtained by Arrington under the Freedom of Information Act.

12 The Webbs were fired by the City in December, 1984 for making false allegations about Mayor Arrington. Their appeals for reinstatement before the Jefferson County Personnel Board and in federal court were unsuccessful.

13 The articles referred to in this memo dealt with Arrington's business relationship with Tarlee Brown d/b/a ABD Marketing Corporation and James Parker d/b/a Chapel Funeral Home.

14 Memo from SAC, BH to FBI Director, dated February 19, 1985. Approval for the 'discrete investigation' was given by FBI Headquarters on January 11, 1985.

15 *Id.*

16 The City has never made this matter public before this time.

17 In October, 1987, Eaves was charged with four violations of the Hobbs Act. After a plea of not guilty, Eaves was tried and convicted on three of the four counts. On appeal, his conviction with respect to two counts of extortion was affirmed and his conviction on the third count was reversed. See, *U.S. v. Eaves*, 877 F. 2d. 943 (11th Cir., 1989)

Eaves was interviewed by Donald Watkins on July 13, 1989, at Maxwell AFB Prison Camp in Montgomery, Alabama in the presence of his attorney, Mr. Chuck Floyd.

18 At the time the FBI introduced this subject to Eaves, its investigation claimed that Eaves had accepted \$5,000 from one Charles Woods on June 19, 1985 and an \$8,000 payment from Cormany (as Hawkins) on July 2, 1985. Eaves was acquitted on the count involving the alleged \$8,000 payment. Eaves was convicted on the count involving Woods.

19 Eaves reference to 'Willie Brown' was an erroneous reference to Willie Davis, who was then Chief Administrative Assistant to the Mayor of Birmingham. Eaves corrected the name later in the tape.

20 Robert Moussallem was an FBI and IRS (Criminal Division) informant who had worked with those agencies for more than a year prior to this conversation. Moussallem had been under close scrutiny by the City since February 26, 1986, after city officials learned that he was an informant for various federal law enforcement agencies.

2 1 At this point, Eaves still did not know he was talking to FBI undercover agents.

2 2 Arrington did not know at this time that the message had come from Moussallem. He learned that Moussallem was the source of the message of April 25, 1989 when Moussallem visited his home to disclose his full involvement with the FBI, IRS, and U.S. Attorney's office.

2 3 Arrington's affidavit, dated April 27, 1989, pgs. 2-3; Moussalem's interview (off the record) with Donald Watkins, dated May 15, 1989.

2 4 *Id.*; Also, Arrington's Department of Justice, OPR, statement, dated July 11, 1989, pgs. 4-5.

2 5 Branner was swearing to a Hobbs Act violation. McDowell, Spratt, Rogers, and Escot are black. The other persons named are white. As discussed in Section F, The 'Fruhmenschen' Policy, McDowell, Spratt, and another black legislator, E.B. McClain, were indicted on May 12, 1989 on the Bessemer-Metropolitan Dog Track Hobbs Act charges. Federal prosecutors added Bessemer Mayor Ed Porter, a Democrat, as a defendant in that case only after the black defendants raised the issue of selective prosecution. All four defendants were tried together and acquitted in November, 1989 by a Montgomery, Alabama Federal Court jury. Rogers was indicted on an unrelated Hobbs Act charge in October, 1989, and was acquitted in December, 1989 by a Birmingham Federal Court jury.

2 6 Hilliard, Arrington, McClain, and Davis are black. Davis was indicted in October, 1989 on an unrelated Hobbs Act charge, and was convicted by a Birmingham Federal Court jury in December, 1989. Her case is presently on appeal.

2 7 It is not clear why white legislators mentioned in the Branner affidavit did not have their phones tapped and were not investigated with the same vigor that was directed toward the blacks. It should be noted that John Amari is a white Republican State Senator from Birmingham. Amari received only token scrutiny by the FBI compared to the focus placed by the Bureau on Arrington and other black elected officials.

2 8 The City has not determined the precise date or place of the meeting.

2 9 Arrington OPR statement, pg. 11.

3 0 *Id.* The City also verified the 'hit list' with reliable sources. These sources gave detailed information about the names on the list and their location on an FBI prepared investigative chart.

31 Moussallem was referring to IRS agent William Cooper.

32 The October 25, 1988 IRS memo states that Moussallem was asked by a business associate to approach Arrington with 'a percentage' of a real estate company owned by the Business partner and two others in hopes of obtaining a land purchase commitment from the City. Although the IRS memo states that Moussallem met with Arrington several times after that instruction from his business associate. Moussallem 'did not offer the Mayor any money because he knew Arrington would not entertain that action.'

33 Moussallem provided the City with a copy of a November 23, 1988 letter he received from Frank Donaldson. The letter stated as follows:

'I have been informed that on October 25, 1988, you expressed a desire to cooperate in an on-going criminal investigation. As a consequence of your cooperation, this office agrees as follows:

' 1. No criminal charges will be brought for any action taken by you after October 25, 1988 provided such action is at the specific direction and under the supervision of Inspectors of the Internal Revenue Service, Internal Security Division of Special Agents of the Federal Bureau of Investigation.

' 2. Favorable consideration will be given to you when the number and type of charges are considered for ultimate presentment to the federal grand jury based upon your criminal conduct prior to October 25, 1988.

' 3. The Court will be fully advised of the extent of your cooperation at the time the Court considers sentencing in the indictment resulting from paragraph 2 herein.'

34 The Friedman affidavits are attached in their entirety to the July 21, 1989 memo from Donald V. Watkins to the U.S. Senate Judiciary Committee. The memo and affidavits constitute Appendix 'A' to this report.

35 Section `F' of this report discusses the apparent immunity from prosecution extended by U.S. Attorneys in Alabama to prominent white Alabama Republican officeholders.

3 6 OPR/DOJ Assistant Counsel David P. Bobzien and SSA Sarah Pickard, OPR/FBI sought information on these racial slurs in their July 11, 1989 interview with Mayor Arrington. They were informed that the City did not know at that time how it would handle the disclosure of the source(s) who reported these slurs. On September 11, 1989, Watkins wrote Bobzien advising him that he would check with his source(s) to see if they would meet with Bobzien. On October 5, 1989, Watkins wrote Bobzien and advised him that Robert Moussallem had been killed by a shotgun blast to the face and that his death `had made it difficult for us to get source(s) to come forward to meet with you.' As discussed earlier in this report, Moussallem was an FBI/IRS informant who went public with his undercover activities. His death is still under investigation by the Birmingham Police Department Homicide Detectives.

During the pendency of the City's complaint with the U.S. Senate Judiciary Committee, SAC William Hinshaw, of the Mobile, Alabama FBI office was promoted to SAC of the Bureau's Atlanta Office. Hinshaw reportedly told a group of FBI agents from the Mobile and Montgomery offices being assigned to investigate alleged public corruption in the Alabama Legislature that the legislators should be fixed up with `nigger whores.' Hinshaw's promotion while the City's charges were pending against him undermined the credibility, as far as the City's source(s) were concerned, of the OPR/DOJ and OPR/FBI investigation in this matter.

3 7 DOJ and EEOC officials have already found that agent Donald Rochon was the victim of `blatant racial harassment' in the FBI's Omaha field office in 1983 and 1984.

3 8 On September 28, 1988, U.S. District Judge Lucius D. Brenton (Texas) ruled that the FBI had systematically discriminated against its Hispanic agents by denying them promotions and detailing them to the least rewarding and, in some cases, the most hazardous assignments.

3 9 In *U.S. v. Henry Johnson*, CR-89-PT-108-S (N.D., Ala), defense attorneys were ultimately provided copies of the checks by the U.S. Attorney's office in Birmingham. Also, the former employee in the Mayor's office has not been charged with any offense.

4 0 Doug Carter was Guy Hunt's challenger in the 1986 Republican primary election.

4 1 Carl A. Barranco, a Montgomery, Alabama C.P.A., who was an accountant for Ben Collier, also received a blind copy of the letter and agreements.

4 2 Streit was convicted in State Court on two counts of securities fraud stemming from his investment practices in September, 1987, and sentenced to 10 years in prison. According to officials of the Alabama Securities Commission, Streit was engaging in a `Ponzi Scheme', involving hundreds of investors including the Montgomery Investment Club.

4 3 The bankrupt firm was Selma Apparel Company, which is located in U.S. Representative Claude Harris' Congressional District. The firm went bankrupt in My, 1987, after the Defense Department suspended a government contract to make military uniforms.

4 4 Dickinson (and other members of the Alabama Congressional Delegation) also signed a May 5, 1987 letter to Defense Department officials urging the Department to lift the suspension imposed on Selma Apparel.

4 5 The firm was renamed American Apparel, Inc. by Collier. He is reported to be a minority stockholder in American Apparel with 45% of the stock. Montgomery accountant Carl Barranco and Atlanta Attorney C. Lask Harrison each own 27.5% of the stock.

4 6 Arrington's affidavit details Moussallem's involvement in FBI/IRS efforts to `sting' Arrington. The Watkins cover letter requested an investigation into possible prosecutorial and law enforcement misconduct.

4 7 Article entitled, `Arrington Not First Black Leader Under Microscope,' by Stephen Kipp, *The Birmingham Post-Herald*, June 3, 1989.

4 8 Article entitled, `Arrington Wants Probe of Federal Prosecutions,' by Tom Lindsay, *Birmingham News*, June 8, 1989.

4 9 The City's source for this statement is a prominent, conservative Republican insider with close ties to U.S. Attorney James Wilson. This source has been reliable and accurate on information given to the City in the past.

5 0 Relations between the City and the U.S. Attorney's Office in Birmingham are so strained, it is questionable whether a meeting between the City's representatives and Thornburgh would be desirable or fruitful at this time.

5 1 Unfortunately, the harassment of Arrington has continued to the present time. On January 17, 1990, the City learned that the U.S. Attorney's Office in Birmingham wanted an individual who was cooperating with one of its investigations to give `creative testimony' which would implicate Arrington in a 1985 real estate transaction. This matter was reported to OPR's David Bobzien on January 24, 1990, by Donald Watkins, along with a request for a cessation of this type of harassment.

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Appendix `A'

The City of Birmingham, Alabama's Formal Complaint With the U.S. Senate Judiciary Committee

DONALD V. WATKINS, P.C.,

Attorney-At-Law,
Birmingham, AL.

MEMORANDUM

To: Members, the United States Senate Judiciary Committee.

From: Donald V. Watkins, attorney for the city of Birmingham, Alabama.

Date: July 21, 1989.

Re: Nature and scope of the harassment problem by Federal law enforcement agencies.

The City of Birmingham has learned that the Federal Bureau of Investigation (FBI) and Internal Revenue Service, Criminal Division, (IRS) conducted an unsuccessful undercover operation, under the general supervision of the United States Attorney's Office (N.D., Ala.), from October 25, 1988 to April 1989. This undercover operation selectively targeted, without probable cause, the Mayor and several City Council members of the City of Birmingham, Alabama, all of whom are black.

The City has learned that the United States Attorney Frank Donaldson offered Birmingham real estate developer Robert Moussallem immunity from prosecution on November 23, 1988 for his cooperation in assisting the above-named federal agencies with their undercover operation in Birmingham. The details of the undercover operation are outlined in a sworn affidavit from Moussallem, dated June 5, 1989, which said affidavit is attached hereto.

The City is convinced that the attempted undercover operation, as outlined by Moussallem and supported by other evidence, demonstrates an attempt by federal agents to obstruct the City's governmental operations by (a) seeking to effectuate arbitrary and capricious governmental approval of zoning requests, and (b) attempting to undermine the Offices of Mayor and City Council member through unilateral efforts designed to induce corrupt governmental practices.

The City is also aware that the FBI conducted a prior unsuccessful undercover operation against the Mayor which involved two FBI agents posing as real estate developers seeking to structure a real estate deal with the City. This operation also involved Robert Moussallem and the City believes it was aborted sometime in 1987. This effort was undertaken by the FBI even though an extensive 1985 FBI investigation of the Mayor resulted in a finding by that Agency and the U.S. Attorney's office that no probable cause existed to believe that the Mayor had violated the Hobbs Act or any other criminal offense.

The United States Attorneys' Offices in Alabama have a history of selectively investigating and prosecuting blacks in the areas of political activities and governmental affairs, as evidenced by the 1984-86 Alabama voter fraud trials handled by U.S. Attorneys Frank Donaldson (N.D., Ala.) and Jeff Sessions (S.D., Ala.), wherein Donaldson and Sessions brought 210 charges of vote fraud against 8 persons, 7 of whom were black. The City has learned that Frank Donaldson and Jeff Sessions' investigation of the Alabama voter fraud defendants has been characterized as 'racially motivated' because the same practices for which the defendants in the voter fraud cases were investigated and indicted had been carried out in an unfettered fashion for years by whites in these same counties. Also, the federal government responded to criticism at the time by promising a similar investigation of white voter fraud, but never did. The blacks indicted went to trial in 1985. Four were acquitted by juries, two pleaded guilty to minor misdemeanors to avoid trial and received probation, and one, Spiver Gordon, charged with 37 counts, was convicted on four counts following Court pressure on an all white jury. Gordon's convictions were reversed on appeal.

Frank Donaldson has termed the Moussallem allegations as 'absurd,' and reportedly has blocked the City's efforts to discuss this concern with the United States Attorney General.

FBI undercover operations to 'neutralize,' 'completely discredit,' 'expose,' and 'destroy' black leaders can be traced back to the Bureau's well-documented efforts to destroy Rev. Martin Luther King, Jr., in the 1960's at a time when the FBI's belief and philosophy was that these efforts would leave blacks 'without a national leader of sufficiently compelling personality to steer them in the proper direction' and would allow the FBI to gradually develop pre-selected blacks to assume 'the role of leadership of the Negro people.' According to FBI documents, the Agency wanted to groom former New York Attorney Samuel R. Pierce, Jr., to assume the premier leadership role. Pierce went on to become HUD Secretary under President Ronald Reagan. Pulitzer Prize winning author David J. Garrow, using voluminous FBI and Department of Justice records in his 1981 book entitled, 'The FBI and Martin Luther King, Jr.,' details the orchestrated efforts of the FBI to neutralize and discredit Martin Luther King, Jr., and other vocal black leaders.

Dr. Mary R. Sawyer, an assistant professor at Iowa State University, has authored two comprehensive and well-documented reports which detail the harassment of black elected and appointed officials by the FBI and other governmental agencies in the following publications:

- A. 'The Dilemma of Black Politics: A Report on Harassment of Black Elected Officials,' published by the National Association of Human Rights Workers, 1977, and;
- B. 'Harassment of Black Elected Officials: Ten Years Later,' published by the Voter Education and Research Action, Inc., 1987;

The City has learned that the FBI's activities in targeting black elected and appointed officials for investigation without probable cause is part of an 'unofficial' policy called 'Fruhmenschen,' as detailed in a sworn 1987 affidavit of Atlanta attorney and former FBI undercover operative, Hirsch Friedman, which said affidavit is attached hereto. According to the Friedman affidavit, the basis for this policy was 'the assumption by the FBI that black officials were intellectually and socially incapable of governing major governmental operations and institutions.' 'Fruhmenschen' is a German term for 'primitive man.' In early 1988, U.S. Representative Mervyn Dymally placed in the Congressional Record the sworn affidavit from Hirsch Friedman.

The details of the 'Fruhmenschen' policy, as outlined by Friedman, are strikingly similar to the components of the unsuccessful FBI and IRS sting operation outlined in the Moussallem affidavit. The pattern of racial harassment and obstruction of governmental operations by Frank

Donaldson's Office and the federal agencies under its supervision appear to be unfairly focused on black officeholders, while white officeholders enjoy relatively little scrutiny from these federal agencies.

The City recognizes and respects the right and responsibility of all law enforcement officials and prosecutors to investigate possible criminal violations when there is sufficient, nonbiased justification to do so. However, the City is now concerned that its working relationship with the U.S. Attorney's Office in Birmingham and the law enforcement agencies under its supervision has been undermined by the apparent implementation of the `Fruhmenschen' policy in Birmingham by the FBI and IRS under Frank Donaldson's supervision.

The City has attempted to discuss this matter with Mr. Donaldson's superior, United States Attorney General Richard Thornburgh in June 1989. This effort was unsuccessful.

The City is also concerned about the attitudes of investigating federal officials. It has been reported to the City that the federal investigators in Birmingham have referred to blacks as `dope heads'. Lately, the City has learned that white FBI employees in Birmingham refer to black FBI employees as `niggers'. Also, the City has learned that Mobile, Alabama SAC Bill Hinshaw reportedly told a group of FBI agents being assigned to investigate alleged public corruption in the Alabama Legislature that the legislators should be fixed up with `nigger whores'.

The City is also concerned about the tactics employed by investigating federal officials. Specifically, the City is disturbed by efforts to entrap its public officials. FBI tape transcriptions reveal that FBI undercover agents were warned by former Fulton County, Georgia Commissioner A. Reginald Eaves in August, 1987 that Birmingham City officials did not want to deal with Robert Moussallem or anyone else who was dishonest or who had a shady reputation. At the time, Eaves did not know that he was talking to undercover agents. IRS documents also indicate that the IRS (Criminal Division) and FBI agents were warned again on October 25, 1988 that Mayor Richard Arrington, Jr., and other City officials were not involved in bribery and had no propensity for bribery. Despite these two separate warnings, FBI and IRS agents embarked upon the sting operation outlined in the Moussallem affidavit.

The City finds it offensive that IRS officials, on October 25, 1988, had Mayor Arrington's picture on the wall of the Birmingham IRS office, with the word `corruption' written above it.

The City is dismayed at what appears to be a steady stream of federal grand jury leaks regarding the alleged criminal conduct by several black public figures in Birmingham. These leaks have gone on for several years with no resulting grand jury action. The latest episode of these leaks occurred in June, 1989, and involved the release of information to two news organizations regarding two cashier's checks which were allegedly negotiated for payment in 1987 and which purportedly bear the endorsement of a former staff person in the Mayor's Office. These checks were in the exclusive possession of the U.S. Attorney's Office. At the time these news organizations contacted the former staff person, the same cashier checks had not been provided by the U.S. Attorney's Office to an individual who is currently facing criminal tax evasion charges involving the checks. It was several days after the news media inquiries that the checks were provided to defense counsel in the pending criminal case.

Finally, the City recognizes that the harassment problem outlined in this memo is national in scope. While the City is concerned about those aspects of the problem which adversely affect its relationship with the federal agencies involved, the City also realizes that the problem should be investigated thoroughly from its national perspective. The City believes that the United States Congress is an appropriate agency to conduct such an investigation. The U.S. Attorney General may show some interest in this problem at a future date. In any event, the City now believes it has discharged its affirmative duty to: (a) preliminary probe the harassment problem summarized in this memorandum, and (b) report its findings to governmental agencies with the power and authority to properly redress it.

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STATE OF ALABAMA, COUNTY OF JEFFERSON

AFFIDAVIT OF ROBERT MOUSSALLEM

Before me the undersigned Notary Public, personally appeared Robert Moussallem, who being known to me, and who was duly sworn by me, deposes and says as follows:

1. My name is Robert Moussallem. I reside at 7927 Lakeshore Drive in Trussville, Alabama, 35173. I am a real estate developer and a U.S. citizen.
2. I have known Birmingham's Mayor Richard Arrington, Jr. on a personal basis for about 9 years. I campaigned for Mayor Arrington in the Roebuck area of Birmingham during his 1983 re-election campaign.
3. After Mayor Arrington's successful re-election campaign, my personal contact with him was infrequent and limited. At times, it would be several years between our meetings and conversations.
4. On October 25, 1988, I was summoned to a meeting in Birmingham at the 500 Building on 22nd Street South where I encountered a half-dozen or so Internal Revenue Service (IRS) and Federal Bureau of Investigation (FBI) agents. Among the agents present were persons later identified to me as Marshall Mullins (IRS), and James Kiel (FBI). I knew one of the other federal agents because of work I had done under his supervision before October 25, 1988. In the room I entered, where the agents were present there was a black and white picture of Mayor Arrington on the wall with the word `corrupton' above it. I asked why was the Mayor's picture on the wall, but I did not receive an answer to this questiion. I was taken to another room where another agent was the only one present with me. That agent, whom to my knowledge I had never met before, told me that I had a golden opportunity to work [myself] out of a hole, and to stay faithful, and that he wanted me to work with two other agents. I was offered limited immunity from prosecution and told by this agent that if I did what was wanted, I would get full immunity from prosecution. He did not tell me at this time what I had to do to stay faithful.
5. Later, I met with agents who identified themselves as Mullins and Kiel. I talked with them in Jefferson County, Alabama on several occasions. On one occasion they asked me whether I had ever given money to Mayor Arrington. I told the agents that I had never bribed the Mayor. I was telling the truth.

6. In November, 1988, I had a meeting in the Birmingham office of Bill Barnett (Assistant U.S. Attorney, Northern District of Alabama) with agents who identified themselves as Kiel, Mullins and Allen. Barnett was present during part of the meeting. For the first time, Kiel and Mullins told me exactly what I had to do to get full immunity from prosecution. The agents said that they wanted me to set the Mayor up, but to do it under their direction. They told me to implement this scheme as follows:

- a. I was to get some property in Birmingham that was recently refused rezoning by the City Council.
- b. I was to approach the Mayor, Council President William Bell, Council Member Jeff Germany, State Senator Earl Hilliard, and State Representative John Rogers to solicit their involvement and influence in getting the property rezoned.
- c. I was to offer each of these public officials a bribe, however, the Mayor was their number one priority.

If I carried out this scheme successfully, I would get full immunity from prosecution. The agents explained to me that I could not have full immunity at that time (November, 1988), because any resulting criminal charges would be too vulnerable to attack by defense attorneys if I received full immunity on the front end.

7. On or about November 23, 1988, I received a letter from the U.S. Attorney, Mr. Frank Donaldson, offering me limited immunity for my role in the scheme. I thereafter started out on my efforts to set up Mayor Arrington (and the others named by the Federal agents), as directed by Mullins and Kiel:

- a. I got some property near the airport which I proposed to turn into an auto-mall. The property had previously been submitted to the Council for rezoning and had experienced problems.
- b. I had a couple of meetings with an associate of John Rogers and with John Rogers, and one meeting with William Bell. I suggested to these persons that money would be made available in exchange for their influence in getting the property rezoned. Each declined the offer of money and seemed to be confused and irritated by my suggestion. All of these meetings occurred in Jefferson County, Alabama.
8. I never talked to Mayor Arrington, Hilliard or Germany about the rezoning because the agents called me off after the meeting with Bell. They said that my role in the scheme was over, and that the deal for total immunity was dead. My part in the attempt to set-up the Mayor ended about March, 1989.

9. During the November, 1988 meeting in Barnett's office, Kiel and Mullins acknowledged that I had never bribed the Mayor. However, they said that I could pull off this scheme because the blacks owed me and felt guilty because they knew I got screwed on that Water Park deal. They said that, 'they [the blacks] all are a bunch of dope heads'.

10. I am giving this affidavit voluntarily and in the presence of my attorneys. This is all my attorneys will allow me to say at this time. I have been promised no favors or special treatment by anyone for the testimony contained herein.

ROBERT MOUSSALLEM.

Sworn to and subscribed before me on this 5th day of June, 1989.

JOANNE R. BOWEN,
Notary Public,

Criminal Indictment No. CR87-406-A in the United States District Court for the Northern District of Georgia, Atlanta Division

[CRIMINAL INDICTMENT NO. CR87-406-A IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION]

United States of America v. A. Reginald Eaves

AFFIDAVIT

The undersigned, Hirsch Friedman, having been duly sworn does hereby depose and state that the following is based upon his personal knowledge and is intended for use in connection with the above-captioned case:

1. I served in the United States Marine Corps during the period of March 1960, through September 1963, and left the service with an honorable discharge. Thereafter, I attended New York University at nights and obtained an A.A.S. (business) degree.
2. During the period of late 1963 through 1972, I was employed in various capacities in private industry. In 1976, I received a Juris Doctorate degree from John Marshall Law School and was admitted to practice law in the State of Georgia in June 1976.
3. In February 1979, I was requested to work in an undercover capacity with the Federal Bureau of Investigation (FBI) on a number of occasions. In 1979, I was approached by an Atlanta City official in a criminal case with a proposal whereby he would 'fix' the case for the sum of five hundred dollars (\$500.00) plus other considerations. The official was an individual named John R. Collicot, a Zoning Inspector for the City of Atlanta.
4. I advised the FBI of the incident and agreed to work in an undercover investigative capacity with the FBI for purposes of gathering evidence for use in connection with a criminal prosecution of Collicot.
5. Collicot and others were subjects of audio and video covertly recorded conversations with the undersigned and others. These recorded

conversations were highly incriminating and were used by the FBI to persuade Collicot to become a cooperating witness for the government.

6. Collicot was originally promised that the charges which could be brought against him would be reduced in exchange for his complete cooperation. Collicot agreed to cooperate and participated with the FBI in an extensive program of covertly recorded video and audio tape-recorded conversations with numerous individuals.

7. The undersigned continued to work with the FBI in an undercover capacity up to and including January 1980, and through June 1982 in an advisory capacity. Throughout a major period of this time, the activities of the undersigned were under the control of Special Agent John C. McAvoy of the FBI, Atlanta office. I worked closely with McAvoy and several other Special Agents on a number of investigations. I was routinely admitted to the FBI offices throughout this time and was generally allowed access to FBI records and sources for their investigations. FBI reports regarding investigations in which I was involved were routinely shared with me.

8. The FBI throughout this time placed a high priority on the investigation of elected and appointed officials in local government. The undersigned understood that this priority was national in scope and not limited solely to the Atlanta office.

9. Shortly after I began working with the FBI in 1979, I was made aware of an 'unofficial' policy of the FBI which was generally referred to by Special Agent John McAvoy as 'Fruhmenschen.' The purpose of this policy was the routine investigation without probable cause of prominent elected and appointed black officials in major metropolitan areas throughout the United States. I learned from my conversations with special agents of the FBI that the basis for this policy was the assumption by the FBI that Black officials were intellectually and socially incapable of governing major governments organizations and institutions.

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10. An upshot of the FBI's Fruhmenschen policy in Atlanta was the investigation generally referred to in the Atlanta FBI field office as 'Blue Eyes, Green Eyes, and Brown Eyes.' This investigation specifically referred to: 'Blue Eyes,' Eldrin Bell, a top-ranking black police official in Atlanta who has blue eyes; 'Green Eyes,' Maynard Jackson, the black Mayor of Atlanta at the time who has green eyes; and, 'Brown Eyes,' A. Reginald Eaves, the Defendant in this case who has brown eyes. The investigation had targeted these particular individuals with the aim of prosecuting them if possible although there was no probable cause to have started the investigation.

11. The Fruhmenschen policy of the FBI and the Blue Eyes, Green Eyes, Brown Eyes investigation were conducted throughout the period, 1979-1982, that the undersigned worked with the FBI in Atlanta as described herein. During this time, Special Agent John McAvoy was the first supervisor of the Eaves' investigations.

12. FBI agents and an Atlanta Police detective assigned to work with the FBI would routinely discuss the progress of their investigations with me. I understood that over a dozen indictable cases against white appointed officials and others in the Northern District of Georgia were dropped and investigations discontinued altogether during this period of time while great effort was put forth in connection with the Fruhmenschen policy and pursuit of the 'Blue Eyes, Green Eyes, and Brown Eyes' case, notwithstanding the absence of indictable cases against these three particular targets.

13. In one instance during this period of time, information was received by the FBI that a then sitting Judge in the Appellate System had received the sum of \$15,000.00 in exchange for the Judge's vote and the use of his influence in connection with a case then pending before the Court on which he was then a member. This information was considered reliable by the FBI. Special Agent John McAvoy was instructed by his superiors not to pursue an investigation of this matter because it was 'too explosive.' The Judge involved was white.

14. Special Agent McAvoy, in the presence of others, routinely made remarks regarding the targets of his investigative efforts which the undersigned took as strictly racist. An example of these remarks used in connection with his investigation of elected and appointed black officials in the Northern District of Georgia would be, 'We've got to get the Fruhmenschen!'

15. In the fall of 1979, the undersigned was approached by an individual named Russell Weiss. Weiss wished to retain the services of the undersigned for assistance in connection with federal charges then pending against him as well as a conviction before District Judge William C. O'Kelley. Weiss had been sentenced to a prison term. The undersigned was advised by Weiss that Weiss understood the undersigned had 'connections' within the FBI and that the undersigned might be able to assist Weiss in obtaining a favorable resolution of Weiss' federal problems.

16. I discussed Weiss with Special Agent John McAvoy who advised me that Weiss might be useful in the Blue Eyes, Green Eyes, Brown Eyes investigation.

17. Because I was working with the FBI at this time and because I had been retained as a private attorney by Russell Weiss to assist him in pursuing a favorable resolution of other federal criminal charges pending against him at that time, it was necessary for Weiss to formally waive any conflict of interest claim which he might have regarding the representation of the undersigned. In this regard, the undersigned appeared with the attorney handling the Eaves' investigation, and Special Agent John McAvoy before Judge William C. O'Kelley, the Judge who had sentenced Weiss.

18. At the meeting, Judge William C. O'Kelley reviewed the possible conflict which might exist in connection with the services rendered by the undersigned since the undersigned was then working with the FBI in an undercover capacity. In writing, Weiss had waived any claim which he might have had regarding any possible conflict. At that time, the undersigned and the Assistant United States Attorney requested that Weiss be allowed to assist the FBI pending the appeal of his criminal case in order that he might continue to assist the government in various undercover operations. The Court granted the request provided that it was advised from time to time regarding Mr. Weiss' activities and whether they were of any use to the government.

19. Russell Weiss was, prior to his conviction, a notorious nightclub owner in Atlanta. Because of that business, Weiss would from time to time have dealings with city and county officials regarding licensing, zoning and other problems. Weiss was directed by McAvoy to offer a bribe to A. Reginald Eaves in exchange for his influence in connection with a licensing matter fabricated for purposes of the attempted bribe. In late 1979, the undersigned, Russell Weiss, Special Agent John McAvoy and another agent traveled to the Fulton County Courthouse, Atlanta,

Georgia, the location of the offices for the Commissioners of Fulton County. Weiss was provided with a tape recorder, microphone and transmitter that could broadcast conversations in which he was involved to a receiver which was located in the auto occupied by the undersigned and Special Agent McAvoy. To conceal the transmitter and tape recorder, Weiss was armed by Special Agent McAvoy with a pistol and the equipment was placed behind the holster containing the pistol.

20. Weiss was able to meet with Commissioner Eaves and in the discussion which followed, Weiss described the artificial licensing problem which he and Special Agent McAvoy had created for purposes of the FBI's planned bribery attempt. When Weiss indicated that he wanted to pay Eaves money for the use of his influence, Eaves refused and stated that he was a public servant and was routinely available to assist taxpayers with any legitimate problem which they might have with the Fulton County Government and spurned the money that was proffered. Mr. Weiss then left Commissioner Eaves Office.

21. Sometime shortly thereafter, the undersigned together with the Assistant United States Attorney handling the cases and Special Agent John McAvoy advised Judge O'Kelley of Mr. Weiss' undercover activities including the one described herein. When Judge O'Kelley was advised that Weiss was permitted to carry a firearm by the FBI, the Judge became outraged and reprimanded both the Assistant United States and Special Agent McAvoy.

22. On other occasions in 1979 and 1980, the undersigned, at the direction of Special Agent John McAvoy, made extensive plans for the possible exchange of money for the official influence of Commissioner Eaves, with Commissioner Eaves' brother, Manuel. On each occasion, no evidence was produced to indicate an actual willingness to participate in such conduct.

23. I told Special Agent John McAvoy that there appeared no basis for believing that Commissioner Eaves was about to break any law involving the abuse of public office, and no basis for pursuing him. In light of that, I asked him why the FBI continued to focus on Eaves. His reply was simply that they would pursue an investigation because Eaves was a Fruhmenschen and would thus have to break the law. McAvoy used Fruhmenschen to describe black people. The undersigned understood from this and from his knowledge of the investigations by the FBI, that the investigation of Eaves and the other black elected and appointed officials in the Northern District of Georgia was based upon suspicion and racial bias and not upon reliable information or evidence.

24. As far as the undersigned is aware, the Fruhmenschen policy of the FBI and the Blue Eyes, Green Eyes, and Brown Eyes investigation of the FBI, were ongoing at the time the relationship between the undersigned and the FBI was terminated in 1982.

I have read the foregoing statement and hereby certify that it is true and accurate to the best of my knowledge and belief.

HIRSCH FRIEDMAN.

Sworn to and subscribed before me, this 1st day of December, 1987.

G.W. HOWARD,
Notary Public.

Criminal Indictment No. CR87-406-A in the United States District Court for the Northern District of Georgia, Atlanta Division

[CRIMINAL INDICTMENT NO. CR87-406-A IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION]

United States of America v. A. Reginald Eaves

AFFIDAVIT

The undersigned, Hirsch Friedman, having been duly sworn, does hereby depose and state that the following is based upon his personal knowledge, is intended for use in connection with the above-captioned case, and supplements the Affidavit dated December 7, 1987, previously given by the undersigned in this case.

1. In Paragraphs 8 and 9 of my Affidavit previously tendered in this case, I referred specifically to the priority which the FBI placed upon the investigation of elected and appointed officials in local government. In that Affidavit I referred very specifically to an 'unofficial' policy of the FBI which was generally referred to by Special Agent John McAvoy as 'Fruhmenschen' or the routine investigation without probable cause of prominent elected and appointed Black officials in major metropolitan areas throughout the United States.

2. This so-called policy was discussed on numerous occasions with me by John McAvoy and on a few occasions in the presence of his FBI supervisor, Special Agent Michael P. Keown, Atlanta Police Officer Aubrey Melton, and other Federal, State and local police investigators with whom I worked during the time period described in my prior Affidavit. Specifically, McAvoy stated to me that it was the intent and express directive of the FBI to obtain indictments and prosecute Black elected and appointed politicians because, according to the belief of FBI officials, Blacks were intellectually inferior to white persons and hence prone to criminal activity. None of the other law enforcement investigators who were present during some of these discussions contradicted McAvoy or otherwise disagreed with his statements regarding the 'Fruhmenschen' policy. At least one other Federal investigator present at the time agreed and made her own derogatory comments.

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3. Attached hereto, as an Exhibit, are a few of the FBI 302 reports prepared in connection with the investigation of the Defendant in this case conducted by Special Agent McAvoy and in which the undersigned participated actively and about which he was regularly advised by McAvoy. These 302 reports were shared by McAvoy with his co-workers and supervisors at the Bureau, including but not limited to Michael P. Keown. There are many more 302 reports which were accumulated by the FBI during this period regarding the Defendant in this case as well as other

lected and appointed Black officials in the City of Atlanta and Fulton County generally. The Federal Bureau of Investigation should have copies of these and all other 302 reports regarding the investigation of this Defendant and other prominent elected and appointed Black officials within the City of Atlanta and Fulton County, which investigations were conducted during and since the time that the undersigned worked with the Bureau.

4. A review of the attached 302 reports demonstrates the fact of investigation and surveillance but does not indicate any basis for any reasonable belief that the Defendant Eaves or any other elected or appointed Black official in the City of Atlanta or Fulton County that was the target of an FBI investigation was engaged in any sort of criminal conduct, and in fact there was none.

5. John Collicot, who was identified in some of the attached 302 reports as an FBI informant, was at the time that the 302 reports were prepared a cooperating witness with the Federal Bureau of Investigation. At that time Mr. Collicot was a white appointed official of the City of Atlanta. Collicot was cooperating with the FBI because he had been caught extorting people while the subject of an FBI investigation and threatened with prosecution unless he did in fact cooperate with them in their investigation.

6. As a cooperating witness, Collicot was the subject of numerous video and audio recordings with other white City officials and white citizens who were engaged in unlawful conduct. None of these audio or video recordings were ever used to obtain a conviction or initiate a prosecution against any of the subjects of the said recordings. Moreover, as far as the undersigned is aware, the Federal Bureau of Investigation no longer has any of the video recordings in its possession, the same having been destroyed or otherwise disposed of by Special Agent John McAvoy.

7. One of the individuals who was the subject of audio recordings made by the FBI in connection with their use of Collicot as a cooperating witness in an undercover capacity was a white female who, at that time, was a senior member of the Atlanta Board of Zoning Adjustment. This person acted in concert with John Collicot relative to his extortionate activities. Prior to the time Collicot became a cooperating witness with the FBI and while under surveillance and investigation by the FBI, I went to dinner one evening with Collicot and this woman. I was accompanied by a female Special Agent of the FBI whom I pretended to escort for the evening. Both myself and the FBI agent wore recording devices for the express purpose of taping the conversation among the parties. Those tapes conclusively established that Collicot and the woman who worked with him were engaged in bribery and extortion. The tapes of the conversations recorded that evening by myself and the Special Agent who accompanied me are, to the best of my knowledge, no longer in existence. The cost of the dinner that evening was paid by the FBI and was at least several hundred dollars.

8. At about the same time, the FBI was using as undercover sources several individuals who had serious criminal felony records. These undercover sources made several contacts with various white suspects who were suspected by the FBI of engaging in unlawful activities, including but not limited to bribery and extortion. At least one of these sources brought to the Bureau specific instances of proof, verified by audio transcription, of incriminating conversations between themselves and the said white suspects. None of this information, however, was used by the FBI for purposes of obtaining indictments against any white person, regardless of convincing evidence that the white suspects had in fact violated Federal and State criminal law. Instead, all information so obtained was used, if at all, almost exclusively in furtherance of the 'Blue Eyes, Green Eyes, Brown Eyes' investigation described in my earlier Affidavit.

9. In 1980, in the case of *United States vs. Roscoe Dean*, the undersigned's capability and trustworthiness as a source for the Federal Bureau of Investigation and the United States generally was the subject of considerable evidence presented on the part of the United States. Specifically, the United States in that case established through considerable testimony and other evidence that my character was good, my credibility was high, and my trustworthiness as a citizen and as an undercover operative was absolute. Very similar testimony was recently offered by Special Agents of the FBI during the case of *Friedman, Et Al vs. United States*, Case No. (N.D. Ga. 1987).

10. As early as 1979, I was convinced that the Defendant in this case would ultimately become the subject of an indictment brought by the United States and that the same would be based on the desire of the FBI Agents to prosecute Black officials. It appeared to be the attitude in the local office of the FBI and as expressed by John McAvoy that Eaves would eventually be prosecuted and indicted for 'something.' The attitude expressed at that time was one which the undersigned believed to be based exclusively upon the fact that Eaves was a prominent and outspoken Black elected official. This certainly was the tone and direction provided to the undersigned by Special Agent John McAvoy who was my control agent during the time I acted as an FBI operative. This tone and direction was particularly evident during the time that McAvoy supervised my actions in connection with the use of Russell Weiss and the attempted bribe of the Defendant in which I personally participated at the request and direction of the FBI and more particularly described in my prior Affidavit.

HIRSCH FRIEDMAN.

Sworn to and subscribed before me this 20th day of January, 1988.

SUSAN S. GOGER,
Notary Public.

END

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