REPORT OF THE JEFFERSON COUNTY (ALABAMA) CITIZENS COALITION

CONCERNING THE FEDERAL INVESTIGATION, BY THE OFFICE OF THE UNITED STATES ATTORNEY FOR THE CENTRAL DISTRICT OF CALIFORNIA, OF CERTAIN ALLEGATIONS AGAINST THE HONORABLE U.W. CLEMON, UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ALABAMA

April 27, 1996

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PREFACE

The following Report of the Jefferson County (Alabama) Citizens Coalition is the product of an investigation which was authorized by the Resolution attached hereto as Appendix A. That authorizing Resolution was approved on April 8, 1996, by the Executive and Political Action Committees of the Coalition, in the interim between meetings of the Coalition, as the nature of the matters involved would not permit delay. The following Report was then duly adopted and approved by the Coalition at its April 27, 1996, meeting, by the Resolution attached hereto as Appendix B; that second Resolution furthermore ratified and confirmed the action of the Executive and Political Action Committees in approving the prior authorizing Resolution.

By direction of the April 27, 1996, Resolution (Appendix B), the Chairman of the Coalition has forwarded copies of this Report to United States Deputy Attorney General Jamie Gorelick, United States Attorney Nora Manella (C.D. Cal.), United States Senator Howell Heflin, Counsel for the U.S. Department of Justice Office of Professional Responsibility Michael E. Shaheen, Jr., and other appropriate persons.

TABLE OF CONTENTS

I. INTRODUCTION.

The following is the preliminary report of the investigation undertaken on behalf of, and at the instruction of, the Jefferson County (Alabama) Citizens Coalition,[1] into the pending federal investigation involving various allegations against the Honorable U.W. Clemon, United States District Judge for the Northern District of Alabama. That investigation is being carried out under the supervision of the office of the U.S. Attorney for the Central District of California, in Los Angeles. The U.S. Attorney for that District is Nora Manella,

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[1] The Jefferson County Citizens Coalition ("the Coalition") was founded more than two decades ago to promote equal justice for all, and to advance the interests of Black citizens in political and economic life in Jefferson County, Alabama. Because of its large membership and constituency, as well as its history of successful community organizing, it is one of the most powerful political organizations of any nature in the State of Alabama. Through its own influence and alliances with other progressive groups throughout the nation, the Coalition has had a significant impact on electoral politics at the local, state, and national levels, the appointment of members of the federal and state judiciary and of executive officials at all levels of government, and the setting of the public agenda.

The Coalition has a special interest in the composition of the federal judiciary, as that body (when functioning properly) has been at the vanguard of protection of civil rights of Blacks and other minorities for the past four decades. Indeed, the Coalition was the primary sponsor of Judge Clemon's appointment to the federal bench, and President Jimmy Carter's appointment of Judge Clemon was political reciprocity for the Coalition's political activity on President Carter's behalf in Alabama. Likewise, the Coalition was instrumental in blocking then-U.S. Attorney Jefferson B. Sessions's nomination by President Reagan to the federal bench in Mobile, Alabama, in the mid-1980s.

a former Assistant U.S. Attorney in that office, appointed to her present position by President Bill Clinton.

As set forth in the Coalition's April 8, 1996, Resolution authorizing this investigation, the Coalition has a significant interest in the conduct of the federal investigation. The appointment of Judge Clemon was due, in no small part, to the efforts of the Coalition. As set forth in that Resolution, "the Coalition views Judge Clemon's nomination, confirmation and distinguished service as being in large part the fruit of the Coalition's political labors and a victory over fierce opposition from political conservatives and racists." Furthermore, the Chairman and a founding member of the Coalition, Dr. Richard Arrington, Jr., Mayor of the City of Birmingham, Alabama,[2] was subpoenaed to appear and did appear before the grand jury investigating these allegations in November 1995.[3]

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[2] Mayor Arrington was the first Black Mayor of Birmingham, the largest City in Alabama. First elected as Mayor of the City of Birmingham in 1979, he is currently serving an unprecedented fifth term as Mayor, having most recently been reelected in October 1995.

[3] Mayor Arrington himself is no stranger to the abuse of federal prosecutorial and investigative power, having suffered a well-documented history of such abuse for decades. That history began, for Mayor Arrington, in 1972, after he had first been elected to the Birmingham City Council; he then became a target of the FBI's notorious COINTELPRO program, which targeted Black leaders and other progressive figures. The federal government later initiated several more waves of intense investigation of Mayor Arrington, (continued...)

The Coalition has authorized a heightened investigation of these matters after learning of the March 14, 1996, letter sent to attorneys for Judge Clemon by Assistant United States Attorney, and Senior Litigation Counsel, Stephen A. Mansfield.[4] That letter indicates that the office of the U.S. Attorney is contemplating seeking a grand jury indictment of Judge Clemon on charges described by prosecutors as follows:

> 1. Defrauding, and conspiring with Arnese Clemon and others to defraud, the Institute for Successful Living ("ISL") of approximately $450,000. (18 U.S.C. § 1343).
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> 2. Defrauding, and conspiring to defraud with Arnese Clemon and others, the Los Angeles Unified School District of money in

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[3](...continued)
including (at least) one investigation in 1984, two more in 1985 and 1986, three in 1987, one in 1988, three more in 1989 and a final one (at least for the present) in 1990. The decades of harassment finally ended, at least provisionally, with the admission by federal prosecutors in late 1992 that there was no basis for any prosecution of Mayor Arrington. See generally David Burnham, Above the Law (Scribner, 1996) at 247-53. The federal investigations of Mayor Arrington have been chronicled in detail, and have been published by the U.S. Congress in the Congressional Record - Senate at S2533-2546 (March 9, 1990).

[4] Although AUSA Mansfield's letter includes the name of U.S. Attorney Nora Manella, Mr. Mansfield was the only signatory to that letter. It is the Coalition's understanding that a final position will not be formulated by U.S. Attorney Manella until after she has met with Judge Clemon and his counsel in early May, 1996. Therefore, it appears that U.S. Attorney Manella has, to date, approved neither the contemplated charges set forth in Mr. Mansfield's letter nor the conduct of the federal investigation.

connection with payments to ISL. (18 U.S.C. §§ 1343, 666).

3. Conspiring with Arnese Clemon and others to defraud the United States by impairing, impeding and obstructing the IRS with respect to the operation of ISL and the payment of individual tax liability. (18 U.S.C. § 371).

4. Money laundering involving the transfer of title, sale of the West Vernon property and attempted sale of the Westmoreland property in that those properties constituted the proceeds of a fraud on ISL. (18 U.S.C. § 1956(a)(1)(A)(i)).

5. False statements on the loan applications set forth below:

Institution	Date	False Statement
Cal Fed	4/30/86	Lists source of down payment for 358 S. Westmoreland, L.A., as "investment funds."
Great Western	10/12/89	Lists source of down payment for 3210 W. Vernon St., L.A., as "savings."
One Stop Mortgage	11/8/95	Lists himself as owner of 3210 W. Vernon, L.A., and 636 6th St., Birmingham, Alabama with monthly rent of $840 and $800, respectively.

There is currently scheduled a meeting for May 3, 1996, at which Judge Clemon's attorneys will discuss these contemplated charges with U.S. Attorney Nora Manella and other members of her office.

As more fully explained herein, these charges – although variously stated and constantly mutating – all arise from the purchase of two properties in Los Angeles (the "Westmoreland property," alternately known as "Clemon House,"

and the "West Vernon property") and from a December 17, 1991, response by the Institute for Successful Living ("ISL") to an audit report prepared by the Los Angeles Unified School District ("LAUSD").

By letter dated April 19, 1996 (but not received by Judge Clemon's counsel until April 23, 1996), AUSA Mansfield suggested an intention to pursue additional charges relating to Judge Clemon's subpoena compliance testimony regarding certain church records. Mansfield requested that Judge Clemon's attorneys include in their scheduled May 3, 1996, pre-indictment presentation to U.S. Attorney Nora Manella and other prosecutorial officials a response to the subpoena compliance testimony issue.[5]

This federal investigation takes place in the context of a prior indictment of Judge Clemon's sister Arnese (the Executive Director of ISL) and her colleague Dewey Hughes. Ms. Clemon and Dewey Hughes were indicted in December 1994 for conspiracy, for seventeen specific incidents of program fraud against LAUSD totaling several hundreds of thousands of dollars, and for two counts of mail fraud, in charging LAUSD for professional services allegedly not

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[5] As discussed below in Sections X and XII(2), the new prosecutorial allegations concerning subpoena compliance arise out of the unlawful seizure, by a federal agent in Birmingham, of certain church records and privileged documents from Judge Clemon's briefcase on March 15, 1996.

performed. In February 1995, Ms. Clemon and Dewey Hughes pleaded guilty to certain charges relating to those allegations.[6] Thus Ms. Clemon and Dewey Hughes are convicted, and admitted, felons. Their sentencing proceedings have been continually postponed while the ongoing federal investigation of Judge Clemon continues. In such circumstances, it is common that witnesses who have themselves entered guilty pleas understand that their sentences will be significantly reduced if they offer testimony which incriminates other significant targets of the investigation. In light of the fact that Ms. Clemon's and Mr. Hughes's sentencing was most recently postponed in February 1996 pursuant to a sealed agreement between them and the federal prosecutors, one can safely

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[6] Ms. Clemon and Dewey Hughes each entered a plea of guilty to a superseding prosecutorial "information." Investigators for the Coalition have reviewed the official federal court file in the case of U.S. v. Arnese Clemon and Dewey Hughes, CR 94-995 (U.S. Dist. Ct., C.D. Cal.). The guilty pleas of Ms. Clemon and of Hughes came less than two months after the indictment. The Court file contains only one motion or other pleading filed on behalf of Ms. Clemon prior to her guilty plea. It may be noted that both Ms. Clemon's lawyer and Dewey Hughes's lawyer are court-appointed and are therefore being paid for their services in this case by the United States government. No sooner had Ms. Clemon's lawyer participated in her guilty plea than he filed, with the Court, a request for "interim" payment from the United States, with the expectation of a further request for payment after her sentencing.

It is beyond the scope of this Report to comment on, or to make any conclusions about, the effectiveness of counsel for Ms. Clemon and/or Dewey Hughes; and no such comment is made in this regard, nor should any be inferred.

assume that such an arrangement exists in this matter.

Significant to any assessment of this matter is the conduct of Judge Clemon after learning that he was the subject of a federal investigation into these matters. Judge Clemon's conduct toward the prosecutors has been the exact opposite of what one would reasonably expect from a person who has participated in improper and illegal conduct. Soon after learning of the investigation into his affairs, Judge Clemon did what is rarely done in criminal investigations: in early 1995, he voluntarily agreed to waive the statute of limitations, in order to facilitate the federal investigation and not to evade prosecution on a technicality. Furthermore, at that time, he voluntarily turned over many documents requested by the federal investigators, waiving valid objections which could have been interposed to their requests.

In April 1995, federal prosecutors then indicated to Judge Clemon's lawyers that they intended to bring certain charges against him. They stated an intent to charge Judge Clemon with (1) defrauding his sister Arnese through mail and wire fraud; and (2) income tax fraud in connection with his 1988, 1990, and 1991 tax returns, relating to non-California transactions. The prosecutors stated at that time that they did not propose to charge Judge Clemon with knowledge of, or participation in, Ms. Clemon's scheme to defraud the LAUSD.

In May 1995, Judge Clemon, through his attorneys, provided the federal prosecutors with a twenty-nine (29) page report responding to those proposed charges. Thereafter, rather than making a decision at that time, as they had agreed to do when Judge Clemon waived the statute of limitations, the federal prosecutors plowed ahead with a continuing and expanded investigation.[7] It is that continued investigation which has resulted in the proposed charges which are currently contemplated; those charges have mutated substantially from those originally proposed by the prosecutors in April 1995.

The Coalition began its investigation of this matter after Mayor Arrington's November 1995 appearance before the grand jury. The first stages of the Coalition's investigation took place in Birmingham, Alabama, through interviews of witnesses and review of voluminous documents. In furtherance of the Coalition's strong interest in this matter, and in order to fully investigate this matter, counsel for the Coalition (Donald V. Watkins, H. Lewis Gillis, and Sam Heldman) traveled to Los Angeles, California, on April 10, 1996, and remained there until April 13, 1996. During that visit, counsel made contact with potential

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[7] After the May 1995 presentation by Judge Clemon, the Assistant U.S. Attorney leading the investigation, Mark Flanagan, abruptly resigned. Supervisory AUSA Stephen Mansfield, who ultimately wrote the March 14, 1996, letter, notified Judge Clemon's attorneys that the investigation would continue.

witnesses and their attorneys, and with members of Judge Clemon's immediate and extended family. Counsel for the Coalition provided a courtesy copy of the Coalition's Resolution to an Assistant U.S. Attorney for the Central District of California on April 12, 1996, for delivery to the prosecutors directly involved in this investigation[8]; time did not allow a face-to-face meeting with those prosecutors on this visit. Counsel for the Coalition furthermore met with local government officials to review pertinent documents.

Counsel for the Coalition have been fortunate, in furtherance of this investigation, to have extensive and repeated interviews with Judge Clemon. Counsel have subjected Judge Clemon to searching inquiry, uninterrupted questioning, and substantial "grilling." Judge Clemon has cooperated in this matter and has not refused to answer any question put to him by the Coalition's attorneys.[9]

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[8] A copy of the Resolution was hand-delivered to Warrington S. Parker III, Esq., an Assistant U.S. Attorney in the criminal division of the Los Angeles office. Counsel did not discuss the merits of the federal investigation, nor any details of the Coalition's investigation, with Mr. Parker. He was merely requested to deliver the Resolution, and Mr. Watkins's business card, to AUSA Maurice Suh, the lead prosecutor in the Clemon matter.

[9] During one such interview session with Judge Clemon, on April 16, 1996, at the offices of Donald V. Watkins, P.C., 1205 North 19th St., Birmingham AL, a federal agent was observed conducting surveillance of the (continued...)

There is every reason to believe that all witnesses interviewed by counsel for the Coalition have likewise been available for interview by the federal investigators, and that all documents reviewed by counsel for the Coalition are likewise in the hands of (or readily available to) the government investigators. The only conceivable advantage which counsel for the Coalition might have enjoyed over federal investigators in this matter is the extensive and open-minded questioning of Judge Clemon, together with a presumably deeper understanding of the social, cultural, and familial context from which the key participants come. During the day spent in Los Angeles in connection with his grand jury appearance in November 1995, Mayor Arrington (along with his counsel) saw at close range what appeared to be a vast cultural gap between the California-based federal agents and prosecutors (on the one hand) and the key participants and witnesses (on the other). As the federal agents and prosecutors have displayed no signs of willingness or ability to bridge this cultural gap, this Report serves in large part as an earnest effort by the Coalition to do so.

Based on the investigation to date, the Coalition through its counsel herein sets forth the following findings and conclusions.

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[9](...continued)
interview location, and photographing the interview site and vehicles in the parking lot (including Judge Clemon's automobile).

II. THE INSTITUTE FOR SUCCESSFUL LIVING.

The Institute for Successful Living ("ISL") was a non-profit public service organization, the brainchild of Arnese Clemon (hereafter "Arnese" or "Ms. Clemon"). Ms. Clemon is the older sister of the Honorable U.W. Clemon.[10] ISL was formed in the 1980's in order to provide innovative teaching services to disadvantaged youth.

According to the information available to the Coalition, ISL was incorporated in the early 1980's. Ms. Clemon was solely responsible for carrying out its incorporation. The ISL had a nominal and passive Board of Directors which included Ms. Clemon, her brother Judge Clemon, Mayor Arrington, and several others. Reflecting the fact that Arnese Clemon and ISL were, in effect, one and the same, the Board never met as a corporate entity.[11] Ms. Clemon did

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[10] Ms. Clemon and Judge Clemon were two of nineteen (19) children of Addie Bush and Mose Clemon, who were sharecroppers and tenant farmers in Macon, Mississippi and who moved to Birmingham Alabama so that Mr. Clemon could work for U.S. Steel. The first ten children of Mr. and Mrs. Clemon died in poverty at very early ages. Arnese Clemon and Judge Clemon dedicated Clemon House, discussed below, to the memory of their parents Mose and Addie Clemon.

[11] Board members like Mayor Arrington and Judge Clemon -- and presumably the others -- never expected to have active participation on this type of a corporate board. Their names were lent to the organization to provide a vehicle for enhanced credibility, based on their belief in the

(continued...)

meet from time to time with various Board members to discuss the mission and programs of ISL. No Board member of ISL was involved in the day-to-day operations of the Institute.

In May 1982, Ms. Clemon submitted a written proposal to the Los Angeles Unified School District ("LAUSD"), proposing a program for independent study for teenagers who had dropped out of school and other unmotivated teenagers. The proposal set forth an innovative, community-based, mechanism for rekindling the learning skills of those at-risk teenagers. Ms. Clemon's proposal was approved by the LAUSD shortly thereafter, and the LAUSD entered into the first of a series of contracts for such services.

Again reflecting Ms. Clemon's identity with ISL, the LAUSD's contracts (on forms prepared by and provided by the LAUSD) were personal service contracts with Ms. Clemon. The contracts (including, for example, the contract for school year 1987-88) included attachments setting forth the duties and qualifications of the "contractor," and reflected that the "contractor" was "Ms.

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[11](...continued)
worthiness of the program and the people involved in its day-to-day operations. This type of passive board involvement is fairly common for public officials and high-visibility celebrities.

Arnese Clemon dba, Institute for Successful Living."[12]

The ISL, as a corporation, was suspended by the California Franchise Tax Board on March 3, 1984. Under California law, such action by the Franchise Tax Board had the legal effect of nullifying the corporate status of the entity during the period of suspension, and removing for that period its "corporate powers, rights and privileges." See California Revenue and Taxation Code § 23301 et seq. It appears that at no time prior to the 1991 LAUSD audit did ISL take any steps to reinstate its corporate status.[13] This is further explanation for

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[12] While the contracts most at issue in the federal investigation -- those for the 1989-90 and 1990-91 school years -- appear on their faces to be agreements between the LAUSD and the "Institute for Successful Living, Inc.", they were in fact (like previous contracts) nothing more than personal service agreements between the LAUSD and Arnese Clemon dba Institute for Successful Living. This was the case as a matter of law -- given the suspension of corporate status of ISL, Inc. (which is discussed immediately below) -- even had the Board intended to be contracting with a corporation. The evidence, however, tends to show that the Board knew or should have known that it was not contracting with a corporation during those and other years. This knowledge (or imputed knowledge) came, *inter alia*, from use of the phrase "Arnese Clemon dba Institute for Successful Living" on official attachments to at least some of the relevant contracts, as well as from the reasonable conclusion that the LAUSD -- an adjunct of the State of California -- may be charged with the knowledge that the State of California had temporarily removed from ISL, Inc., the statutory power to contract.

[13] Only on December 13, 1991, did Ms. Clemon take steps to revive the corporation. It was, in fact, revived under a new corporate name, "Los Angeles Institute for Successful Living."

(continued...)

the LAUSD's contracting with Ms. Clemon rather than with ISL as a corporation.

The independent study program concept was well received by the LAUSD and by the Los Angeles community. ISL's program became the model for other independent study programs contracted by LAUSD. Ms. Clemon's efforts with ISL were widely applauded, and it was widely recognized that she was the moving force behind the program. Indeed, Ms. Clemon was celebrated by USA Today on December 23, 1986, on the front page of its "Life" section, as one of the newspaper's "People Who Made a Difference" along with Bill Cosby and Marian Wright Edelman. The program was so successful that Ms. Clemon's contracts with LAUSD were renewed annually until the 1991 school year. These annual renewals were not simply *pro forma*; Ms. Clemon had to re-prove to LAUSD each year that the ISL programs were deserving of continued funding.[14]

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[13](...continued)
It appears that, under California law, any creditor or a majority of the Board of Directors could have taken steps, at any time, to revive ISL as a corporation if there had been reason to believe that Ms. Clemon was mismanaging the operation or using ISL's name and assets for improper purposes. See California Revenue and Tax Code, § 23305. No such person or persons took any such step.

[14] In most years, the LAUSD Board did not actually approve that year's contract with Ms. Clemon dba ISL until after the commencement of the (continued...)

Mrs. Marnesba Tackett, a well respected business woman and civil rights leader, who believed in the program concept, assisted ISL and Arnese Clemon as a professional fundraiser and financier. Mrs. Tackett provided $8000 to Ms. Clemon in the first year of the program, and $10,000 in the second year of the program, in order to enable Ms. Clemon to continue the program while awaiting reimbursement from LAUSD pursuant to her contract.[15] Upon acting as a real estate agent in ISL's purchase of its first office at 9012 San Pedro St. in Los Angeles, Mrs. Tackett further made to ISL a $1000 donation of her sales commission. Mrs. Tackett not only believed in the program, she believed in the Executive Director, Ms. Clemon.[16]

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[14](...continued)
academic year in question.

[15] As stated in the previous footnote, in most years LAUSD did not formally approve Ms. Clemon's contract until the school year was well underway. While awaiting formal approval at those times, Ms. Clemon and ISL nonetheless undertook the work contracted for, with all associated costs. At these times, and at other times, payments from LAUSD came slowly and late. This bureaucratic situation contributed greatly to the fluctuations in the financial health of ISL, in turn affecting ISL's ability to timely pay its own obligations to persons such as Judge Clemon.

[16] While Ms. Clemon at times listed Mrs. Tackett, on ISL literature, as a Board member of ISL, in fact, according to Mrs. Tackett, she never occupied or agreed to assume such a role. The motivation of Ms. Clemon in making this false representation is somewhat unclear. However, it appears that Mrs.
(continued...)

III. ISL'S FIRST PURCHASE OF PROPERTY: THE SAN PEDRO PROPERTY.

The first purchase of property by ISL (or Arnese Clemon dba ISL) set the pattern for what was to come. Ms. Clemon approached Isaac Hunter, her nephew,[17] and requested his assistance in helping her purchase a building on San Pedro Street in Los Angeles for the purpose of locating her ISL program and its daily operations. Mr. Hunter agreed to serve as a financing vehicle for this acquisition project.

It was necessary for Ms. Clemon to have Mr. Hunter's assistance in this regard because her own credit history would not allow her to purchase such a property in her name or in the name of the Institute. The Institute, having few assets and no credit history, was in no position to receive substantial credit from a financial institution. Ms. Clemon, for her part, had recent financial setbacks arising from two failed marriages, which crippled her ability to lend her credit

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[16](...continued)
Tackett had substantial respect in the community and, as such, her public association with ISL was of potential benefit to Ms. Clemon. Ms. Clemon gladly took advantage of such association, for instance, in presenting her response to the 1991 LAUSD audit (a matter which is discussed in more depth below).

[17] Mr. Hunter, the son of the oldest surviving sibling, was reared with his uncles and aunts including Arnese Clemon and Judge Clemon.

to the Institute. Therefore, the only way for the Institute to ultimately obtain property was to utilize the financial standing of a third party, such as a family member, Board member, or other extremely committed supporter.

Therefore, Mr. Hunter used the borrowing power of his credit to obtain the necessary mortgages for the San Pedro property. In time, Mr. Hunter obtained not only a first mortgage on the San Pedro property (allowing its purchase) but also a second mortgage (to finance needed repairs and certain debts associated with the daily operations of ISL). Arnese Clemon and ISL provided the funds for the down payment on the San Pedro property. Because of the limits of Mr. Hunter's borrowing power, Mrs. Tackett cosigned the first mortgage along with Mr. Hunter. The agreement was that Ms. Clemon and ISL would pay "rent" to Mr. Hunter, who would use those proceeds to pay the mortgage and associated costs on the San Pedro property; ultimately, when the mortgage was satisfied, Mr. Hunter and Mrs. Tackett would convey the property to Ms. Clemon and ISL.[18]

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[18] In addition to setting the pattern for future real estate acquisitions for Ms. Clemon and ISL, Mr. Hunter's assistance in obtaining the San Pedro property set the pattern in another respect: the personal financial losses incurred ultimately by those who so assisted Ms. Clemon and the Institute. Upon the failure of ISL, in light of the fraudulent activities of Ms. Clemon (discussed in more depth below), Mr. Hunter was left with substantial

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IV. THE ECONOMIC MODEL FOR FINANCING ISL PROPERTIES.

The financial situation of Arnese Clemon, and the neophyte status of the Institute as an organization, made it necessary to develop a creative financing model if the Institute was to have a permanent home. The basic financial components of the San Pedro property acquisition, and for the two subsequent property acquisitions, included the following elements.

1. The borrowing power of a third person or persons, to hold legal title to the property in his or her name during the pendency of the mortgage.

2. The supplying of funds for the down payment by Arnese Clemon dba ISL.

3. The acquisition of the property for the exclusive and long-term use of ISL activities.

4. The obtaining of long-term financial obligations, i.e., 30-year first mortgages, and second mortgages.

5. The agreement by Arnese Clemon dba ISL, in exchange for the use of another's credit, to indemnify the borrower(s) for (a) all closing costs, (b) real

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[18](...continued)
mortgage payments which he could not afford. There was no income from ISL to meet these payments, and the property was ultimately sold at auction in foreclosure.

estate taxes on the property, (c) all insurance costs, (d) maintenance of the property, and (e) the mortgage payments, both principal and interest, for the life of the mortgage liabilities. In fact, with respect to the second and third property acquisitions by Ms. Clemon for ISL, Ms. Clemon received powers of attorney from Judge Clemon so that she could, on his behalf, apply for financing, negotiate the terms, and consummate the details of the property acquisitions.

6. The agreement that legal title to the property would pass to Arnese Clemon dba ISL only when all financial liabilities and contingencies associated with the property acquisition, maintenance, and mortgage(s) were satisfied.[19]

Because of the closeness of the family relationships involved, and the mutual love and respect of the participants, the above-listed elements of these financial and legal arrangements were not codified in formal legal documents. Instead, the essence of these principles was captured in the course of conduct

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[19] Judge Clemon (while holding legal title to the Westmoreland and West Vernon properties during the terms of those mortgages) recognized that Ms. Clemon dba ISL had some claim to equitable title provided that Ms. Clemon dba ISL remained current on its obligations under this financing model. It was for this reason that Judge Clemon undertook various steps to protect the interests of Ms. Clemon dba ISL in equitable title to the properties, including (as discussed in more detail below) amending his will to protect those interests, obtaining a quitclaim deed from his wife as to those properties, and amending his life insurance plan to make Ms. Clemon a partial beneficiary.

among the parties.

While some might question the wisdom of entering into substantial financial obligations without formal written documents, such conduct is quite understandable in the context of the Clemon family and other families which have similarly escaped dire poverty through mutual love and support. It is not unusual for large families from disadvantaged backgrounds to waive formalities based on faith and belief in one another's love. In particular, such close bonds are very common among Black southern families. (By the same token, it must be noted -- as discussed in more depth below -- that Judge Clemon's relations to his family include another element of love: the willingness to force a relative, from a position of family love, to face the consequences of his or her own misconduct. Judge Clemon did so, with respect to a brother who became involved in drug-dealing activities; and there is every reason to believe that he would have done so, with respect to his sister Arnese, had he known of any wrongdoing by her.).

Judge Clemon's assistance to his sister Arnese in facilitating her acquisition of property was nothing new for him. He had, in 1978, entered into a very similar agreement with his sister-in-law Wyomia Lamar Cannon, purchasing a mobile home for her use, holding legal title to it himself, and

ultimately passing legal title to her upon the satisfaction of the mortgage some fifteen years later. Likewise, Judge Clemon has acted as financial advisor and guardian of sorts to his youngest sister Kate, holding $10,000 of her money for her in his personal account at her request, and disbursing all of it to her periodically at her request until it was depleted. In the same vein, it may be noted that Judge Clemon is the unpaid trustee of the educational funds set aside for his grandnephew and nieces, amounting to approximately $22,000; according to a financial institution involved in this trusteeship, the federal authorities in Los Angeles have even gone so far as to investigate this educational fund.

Judge Clemon's pattern of purchasing property in his own name, with the intention of conveying it ultimately to another, was not only done for the benefit of his family. It has been, as well, a mechanism by which Judge Clemon has engaged in philanthropy not only toward ISL but also toward his church. Thus, Judge Clemon has -- despite his still being liable on the mortgage -- conveyed an apartment building in Birmingham, which he purchased in his own name, to his church.

Similarly, Mr. Hunter's assistance of his aunt Arnese Clemon (like Judge Clemon's assistance) was part of the same pattern of close family support. Mr. Hunter has continued this pattern to this day, despite the harm to his finances

and credit as a result of his purchase of the San Pedro property, by allowing Ms. Clemon and her foster daughters to live with him rent-free since late 1994.

In addition to the strong bonds of trust that arise from such close family relationships and shared history, there were other reasons why Ms. Clemon and Judge Clemon did not memorialize all of their transactions together in written formalities. For one thing, Judge Clemon's worklife as a United States District Judge is a very busy one at all times, and was particularly busy during the periods in question here. Furthermore, his sister Arnese was not the only family member whose problems and needs occupied Judge Clemon's time and energies. Among the matters more pressing than legal niceties in his dealings with Arnese were the financial difficulties and ultimate suicide of an older brother.

V. THE SECOND PROPERTY ACQUISITION: CLEMON HOUSE.

In 1986, Arnese Clemon requested her brother, Judge Clemon, to finance the purchase of a building located at 358 South Westmoreland Avenue in the Wilshire District of Los Angeles.[20] This building was a large home on a relatively

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[20] It should be noted that, prior to seeking Judge Clemon's help in this way, Ms. Clemon had first sought to utilize the credit of her consultant and program director Dewey Hughes in an arrangement similar to the one utilized with Isaac Hunter. Dewey Hughes is a co-defendant with Ms. Clemon and,

(continued...)

upscale residential street. This building was to be a base from which Ms. Clemon and ISL could teach "mothering skills" to unwed teenage mothers enrolled at the Institute. Judge Clemon agreed, and gave his sister Arnese a power of attorney in order to obtain financing and legal title in his name. This home became known as "Clemon House," in honor of their parents.

It is undisputed that the sole purpose of Judge Clemon's acquisition of Clemon House was for the exclusive use of Ms. Clemon and ISL in connection with ISL's programs and activities. No one can seriously claim that Judge Clemon acquired this property -- or the West Vernon property -- to enhance his personal financial portfolio.

The basic financing model used with the purchase of the San Pedro property was employed again to acquire Clemon House, only this time Ms. Clemon used her brother's borrowing power rather than her nephew's. As discussed above with regard to the financing of a home for his sister-in-law, this economic financing model was not a new experience for Judge Clemon.

With respect to Clemon House, Ms. Clemon agreed with Judge Clemon

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[20](...continued)
like her, pleaded guilty in February 1995 to fraud charges. For reasons not apparent to the Coalition's investigators, Ms. Clemon abandoned efforts to utilize Hughes's credit, and then sought Judge Clemon's help instead.

that she, dba ISL, would pay the financial liabilities in connection with the acquisition, financing, and maintenance of that property throughout the life of his liability on the mortgage. Her suggested vehicle for accomplishing this goal was a landlord-tenant arrangement wherein she, on behalf of ISL, would pay to Judge Clemon "rent" sufficient to cover all costs associated with the acquisition and maintenance of the property. As with the San Pedro property, Ms. Clemon dba ISL made the down payment on Clemon House.

The gross purchase price of Clemon House was $265,000. The first mortgage was a thirty-year adjustable rate mortgage for a principal amount of $180,000. The second mortgage was at a rate of 11% for a principal amount of $32,000, for a term of five years with a final balloon payment of approximately $27,000.[21]

After purchasing Clemon House with legal title in his name, Judge Clemon took several steps in recognition of the fact that Ms. Clemon dba ISL would have a claim to equitable title in the property so long as she and ISL satisfied their

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[21] In November 1995, long after the failure of ISL, Judge Clemon refinanced Clemon House in order to pay his daughter's upcoming college tuition. Clemon House was sold during the week of April 22, 1996, for approximately $240,000, although Judge Clemon remains liable on the mortgage. It is unclear at this time what, if any, profit will be realized from the sale; but it is believed that such profit, if any, will be relatively small.

total obligations under the financing mechanism described above. The long-term plan, agreed by Judge Clemon and Ms. Clemon, was for transfer of legal title to her, dba ISL, upon final satisfaction of the mortgages and other financial obligations. In the interim, Judge Clemon took the following steps to protect the equitable interests of his sister and ISL in Clemon House (as well as the later-purchased West Vernon property). He obtained from his wife a quitclaim deed on these properties, voluntarily renouncing the interests which she acquired, by operation of law, in these California properties. He made provision in his will so that, if he died, his interest in these California properties would pass to his sister, Arnese.[22]

The course of payments from Arnese Clemon dba ISL to Judge Clemon, on this property and on the West Vernon property, will be discussed in depth below. For present purposes, it may be noted that -- like Mr. Hunter -- Judge Clemon ultimately suffered significant financial burdens as a result of his generosity to his sister's program. After the LAUSD ceased contracting with Ms. Clemon and ISL (as a result of the fraud perpetrated by Ms. Clemon and Dewey

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[22] Again, by the time of this will, January 1988, ISL as a corporation was long-suspended, and the LAUSD's contracts (like other dealings with ISL) recognized that ISL was in reality "Arnese Clemon dba ISL". Therefore the bequest to Ms. Clemon in her name was consistent with the understanding that the property was to be used, always, for ISL purposes.

Hughes), payments from Ms. Clemon and ISL to Judge Clemon ceased, leaving Judge Clemon with substantial financial obligations relating to the two properties. Ultimately, Judge Clemon had to evict his sister Arnese from Clemon House, despite her attempt to live there indefinitely and rent-free. Reflecting her descent into deception, after initially agreeing that the property should be sold and engaging the services of a realtor, Arnese Clemon attempted to disrupt Judge Clemon's sale of Clemon House by filing an undisputedly false lien, under oath, on the property in May 1993, falsely claiming that Judge Clemon owed her $250,000 for repairs and construction work on the property. The sole purpose of Judge Clemon's current efforts to sell Clemon House is to free himself from the associated on-going financial burdens and liabilities.

VI. THE THIRD PROPERTY ACQUISITION: THE WEST VERNON PROPERTY.

By 1989, the Institute seemed to be a great success, and indeed had outgrown its headquarters at the San Pedro property and Clemon House. Ms. Clemon informed her brother, Judge Clemon, that the Institute needed an additional facility. At her request, he agreed to support the acquisition of a third property, at 3210 West Vernon Avenue in Los Angeles. This property, located

in a business district of moderate means, became the primary site for the programs and activities, as well as the offices, of Arnese Clemon and ISL.

Once again, it is undisputed that the sole purpose of Judge Clemon's acquisition of the West Vernon property was for the exclusive use of Ms. Clemon and ISL in connection with ISL's programs and activities. No one can seriously claim that Judge Clemon acquired this property to enhance his personal financial portfolio.

Once again, the economic financing vehicle described above, and used for the acquisition of the San Pedro property and Clemon House, was used at West Vernon. Again, Ms. Clemon dba ISL provided the down payment funds. The entire purchase price of the West Vernon property was $135,000. Again, Judge Clemon obligated himself to a thirty-year adjustable rate first mortgage of approximately $91,200, and to a second fixed-rate 12% five year, $18,800 second mortgage with a final balloon payment. Again, Judge Clemon took legal title in his name. Again, Ms. Clemon dba ISL agreed to bear the financial liabilities and expenses associated with acquisition and maintenance of the property throughout the term of the obligations. Again, as with Clemon House, the equitable interests of Ms. Clemon dba ISL were protected by Judge Clemon's will, by the quitclaim deed executed by Judge Clemon's wife, and by Arnese Clemon's status as one of

the beneficiaries of Judge Clemon's insurance.

In December 1992 -- after the folding of ISL in the wake of the fraud of Arnese Clemon and Dewey Hughes -- the West Vernon property was sold to a Ms. Gertie Moore. However, Ms. Moore was not permitted by the lending institution to assume Judge Clemon's mortgage liability on the West Vernon property.

The relatively small "proceeds" from this sale were not sufficient to reimburse Judge Clemon for his mortgage payments and other financial obligations on this property and on Clemon House. Moreover, Judge Clemon remains responsible for that mortgage to the present; and, indeed, he has had to make more than a year of unreimbursed mortgage payments, taxes, and insurance payments on behalf of Ms. Moore, despite receiving no tax benefit or other benefit from the property. In this light, it is unrealistic to suggest that Judge Clemon profited from the acquisition or disposition of the West Vernon property.

VII. JUDGE CLEMON'S GOOD FAITH RELIANCE ON MS. CLEMON'S FISCAL MANAGEMENT AND RESPONSIBILITY FOR ISL.

Central to the prosecutors' contentions and allegations against Judge

Clemon is the fact that Arnese Clemon dba ISL did not make perfectly regular installment payments to Judge Clemon in reimbursement of his property expenses on ISL's behalf. At times, Ms. Clemon and ISL fell well behind what they owed Judge Clemon; at other times, their monthly payments included a surplus. However, the Coalition has concluded, based on review of the relevant documents and interviews with witnesses, that these facts simply reflect the natural and understandable tendency of Judge Clemon to rely on Ms. Clemon -- his dear sister and a successful Executive Director -- to manage the books of ISL and to ensure that it paid all, and only, those amounts due him.[23]

Judge Clemon knew that Ms. Clemon, dba ISL, utilized the services of locally prominent bookkeeper Mr. Rufus Still, whose professional responsibility was to assist Ms. Clemon in maintaining proper books documenting and accounting for the operations of the Institute's activities and fiscal affairs. Judge

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[23] It should, also, not be forgotten that some of the supposedly "surplus" payments from ISL to Judge Clemon were in fact repayment for interim loans made by Judge Clemon to Ms. Clemon dba ISL, in order to tide the Institute over during those lean periods when it was awaiting contract approval and payment by the LAUSD. Their brother Billie Clemon made similar loans in the same sort of circumstances, but made those loans through Judge Clemon because of Arnese's unwillingness to ask her brother Billie directly for assistance. Arnese would in turn have ISL repay these loans from Billie through checks issued to Judge Clemon, who would forward the appropriate amounts to Billie.

Clemon naturally assumed that the bookkeeper reviewed disbursement records, whether wire transfers, money orders, or checks drawn on Institute accounts, for the appropriateness of those payments and the accuracy of the Institute's underlying documentation and records. At no time during the flow of funds from Ms. Clemon and ISL, from 1985 through 1992, did Mr. Still notify Judge Clemon (either as Board member or as property acquirer for ISL), or Board member Mayor Arrington, nor apparently anyone else, either directly or indirectly, formally or informally, that the payments from Ms. Clemon and ISL were improper expenditures or excess transfers of Institute funds.[24]

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[24] This investigation has revealed that the bookkeeper, Mr. Still, may himself face an imminent indictment as an alleged co-conspirator with Ms. Clemon, Dewey Hughes, and possibly Judge Clemon. Such an indictment is potentially imminent because Mr. Still has not provided federal prosecutors with the sort of testimony which they are actively seeking to implicate Judge Clemon in the admitted fraudulent scheme of Ms. Clemon and Dewey Hughes. In an April 12, 1996, interview with Coalition attorneys, Mr. Still and his attorney Robert Ramsey, Jr., revealed that (during his service as bookkeeper to Ms. Clemon and ISL) Mr. Still was himself denied certain vital financial information by Ms. Clemon and Dewey Hughes, which impaired his ability to perform his bookkeeping function in accordance with accepted professional standards of financial recordkeeping and preparation. Mr. Still even admonished Ms. Clemon to improve the quality of her recordkeeping and financial affairs, but she repeatedly failed to do so.

It should be noted that Mr. Still was indicted last year by federal prosecutors on charges related to his personal finances, unrelated to ISL matters, and that he pleaded guilty to a limited number of the counts contained in his original indictment. Subsequent to his guilty plea, he became

(continued...)

Not only did Judge Clemon rely on the Institute's bookkeeper; he furthermore relied on Ms. Clemon herself to properly manage the financial affairs associated with the programs. When Ms. Clemon would send to him a monthly check which "exceeded" the mortgage payments and associated financial expenditures for that month, there was no reason for Judge Clemon to think that anything was amiss. To the extent that Ms. Clemon dba ISL had previously fallen behind in lean times, such supposedly "surplus" payments were in actuality repayments for past-due obligations (as well as reimbursement for the substantial mortgage-imposed "late fees" incurred by Judge Clemon when Ms. Clemon's monthly payments were late). To the extent that the supposedly

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[24](...continued)
a government cooperating witness in the current investigation of Judge Clemon. However, upon the advice of his counsel, he broke off his discussion with federal prosecutors Maurice Suh and others after they became irritated at his inability to provide them with incriminating evidence relating to Judge Clemon.

Unlike Ms. Clemon and Dewey Hughes, who resisted and evaded interviews with Coalition attorneys, Mr. Still was forthright in his answers and in the search for truth. Having been offered (at least implicitly) personal benefit if he could provide information which incriminated Judge Clemon, and having no apparent reason or relationship with Judge Clemon which would lead to him to protect Judge Clemon, his denial of any such information must be accepted as honest.

Mr. Still's attorney, Mr. Ramsey, is a respected former Assistant U.S. Attorney for the Central District of California and an experienced criminal defense attorney. He is counsel of record for former Congressman Walter Tucker of California.

not "income" to Judge Clemon because they were not for the personal benefit or financial well-being of Judge Clemon; they were, instead, entirely for the immediate and future benefit of Ms. Clemon dba ISL.

It may be conceded, in retrospect, that the recordkeeping with regard to payments by Ms. Clemon dba ISL to Judge Clemon, and with regard to payments by Judge Clemon on behalf of Ms. Clemon dba ISL, was unfortunately sloppy. That fact, however, does not amount to, or prove, any degree of criminal intent on the part of any participant. It certainly does not amount to proof of such intent on the part of Judge Clemon, in light of his well-established history and pattern of acquiring property for the benefit of others, and of ultimately conveying such property to those beneficiaries.

VIII. JUDGE CLEMON'S INVOLVEMENT WITH THE DECEMBER 17, 1991, ISL RESPONSE TO THE AUGUST 21, 1991, LAUSD AUDIT REPORT.

As noted above in the introduction, one of the allegations on which the federal prosecutors seek to charge Judge Clemon is the suggestion that he was involved in a conspiracy with his sister Arnese and others to defraud the LAUSD. Based on this investigation and interviews by Coalition attorneys, it is clear that

the alleged conspiracy, and the alleged fraud on LAUSD, has to do with the alleged scheme to charge LAUSD for services not performed, with the August 21, 1991, LAUSD audit report which supposedly uncovered said scheme, and with ISL's December 17, 1991, response to that audit report.

It is clear from all interviews and documentation that Judge Clemon had no involvement in the day-to-day operation and management of ISL. There is no hint of any indication, from any source, that Judge Clemon had any way of knowing about, or being involved in, the original alleged scheme to defraud the LAUSD in the manner charged in the original indictment of Ms. Clemon and Dewey Hughes. Counsel for the Coalition have learned that Ms. Clemon's lawyer has stated emphatically that Ms. Clemon's consistent testimony has been that Judge Clemon did not know of, and was not involved in, such a scheme to defraud the LAUSD. Judge Clemon has been interviewed by lawyers for the Coalition and by an investigative reporter for George magazine on several occasions. Judge Clemon emphatically states, as well, that he had absolutely no involvement in any alleged scheme to defraud the LAUSD.

Even for a long time prior to the LAUSD's August 29, 1991, audit report regarding ISL, Ms. Clemon had indicated to Judge Clemon that her difficulties with LAUSD – and any disagreements between her and LAUSD about proper

payment – were the result of a personality conflict between herself and the LAUSD's Donald Martin. For example, in a July 7, 1990, letter (over a year prior to the audit report), Ms. Clemon wrote Judge Clemon stating, among other things, that Martin was "truly an `asshole'".

At the time of the August 29, 1991, audit report, LAUSD had not paid Ms. Clemon dba ISL for the last two months of the 1990-91 school year, nor had it executed a written contract for the upcoming (1991-92) school year. Although Ms. Clemon notified Judge Clemon of these facts – and of ISL's attendant (and resultant) financial difficulties – she did not tell Judge Clemon about the LAUSD's August 29 audit report.

The August 29, 1991, audit report contained several criticisms of ISL. Among them were three findings with a monetary impact, on the basis of which LAUSD sought reimbursement from Ms. Clemon dba ISL in the amount of $356,398. Those findings were, in essence, (1) that certain forms showing students' "completed work assignments" (CWAs) were not made available for the auditors to review; (2) that certain CWAs were deficient in various ways, including that they had not been reviewed by a teacher supplied by the LAUSD (a "District teacher"); and (3) that there were allegedly "phantom students," for whom ISL charged the LAUSD but who did not actually attend ISL at the time.

However, as noted above, Ms. Clemon did not tell Judge Clemon about this August 29, 1991, audit report at the time. This is shown, *inter alia*, by Judge Clemon's preparation of a letter for Ms. Clemon's signature, which he drafted for her to send to the LAUSD. That draft, which Judge Clemon sent to Ms. Clemon by telecopier on October 8, 1991, sought the reasons for the LAUSD's failure to pay for the last two months of the prior school year and for its failure to execute a written contract for the then-current school year. The wording of this draft letter, seeking answers to those questions, clearly indicates that Judge Clemon did not know of the August 29, 1991, audit report by October.

Around the time of the August 29, 1991, audit report, Judge Clemon -- like his sister Arnese -- was financially strapped. Among the reasons for this was the fact that the final balloon payment for the second mortgage on Clemon House was due. Later in the autumn of 1991, however, Judge Clemon's financial situation improved as the result of a settlement in major civil rights litigation in which he had acted as counsel before taking the bench.[25] The first things which Judge Clemon did, on receiving funds from that settlement, were to pay the

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[25] That litigation, for employment discrimination against African-Americans, was known as Swint v. Pullman-Standard. In its many years of litigation, it traveled to the United States Supreme Court and became a landmark civil rights case.

balloon payment on Clemon House and to advance his sister additional funds to keep ISL afloat.

Later that autumn, Ms. Clemon finally let Judge Clemon know about the August 29, 1991, internal audit report from the LAUSD regarding ISL. As to why she had not let him know sooner, she explained that she had been embarrassed about the audit report. Judge Clemon found that Ms. Clemon dba ISL was being represented, in discussions with the LAUSD about this matter, by attorney Ara Hovanesian of Pasadena, California, who apparently also represented the bookkeeper Mr. Still. Judge Clemon learned that neither Ms. Clemon nor Mr. Hovanesian had prepared a written response to the LAUSD's written audit report. Based on his legal and negotiating experience, Judge Clemon told Ms. Clemon that it would be advisable for her (and her ISL colleague Glorina Varner) to prepare such a written response.

At this juncture, Ms. Clemon also solicited the assistance of Mrs. Marnesba Tackett (whose aid to the ISL has been discussed above) and of Mr. Rufus Still (whose bookkeeping services have been discussed above), seeking help in addressing the LAUSD's concerns and in responding through oral and written presentations to the audit report. Like Mrs. Tackett and Mr. Still, Judge Clemon was a staunch supporter of Arnese and of ISL at the time the audit report was

received. Like Mrs. Tackett, Judge Clemon had no reason to believe that Arnese was anything less than a respected professional educator with a valued outreach program. Like Mrs. Tackett and Mr. Still, Judge Clemon rendered his assistance to his sister.

Upon receiving Ms. Clemon's draft of a written response to the LAUSD audit report, Judge Clemon found it to be nearly incomprehensible and fundamentally unresponsive to the critical points in the audit report. As most lawyers do at one time or another, Judge Clemon found himself thrust into the role of family advisor and editor, helping a family member (whose strengths lie in other sorts of tasks) to prepare a document with some legal significance. Taking on this understandable (though not always welcome) role, Judge Clemon flew to Los Angeles on the day before Ms. Clemon's scheduled presentation to the LAUSD officials, arriving at her office as a surprise to her.

While in Los Angeles, Judge Clemon helped Ms. Clemon and Ms. Varner revise their draft response to the LAUSD audit report. That response included, and referred to, various attachments and documents, which helped to refute some of the LAUSD's critical findings; those attachments and documents were all prepared by others, prior to Judge Clemon's arrival, and were (so far as Judge Clemon knew) entirely authentic and proper. Judge Clemon's role, in

regard to revising the response to the audit report, was more in the nature of editing than of fact-checking. He did not "go behind" the assertions of fact which Ms. Clemon and Ms. Varner included in their draft. He did not create factual responses to the LAUSD's criticisms himself, but relied on the responses which Ms. Clemon and Ms. Varner provided.

For instance, in response to the LAUSD audit finding that certain CWA forms were not available to the auditors, Judge Clemon relied on his sister's repeated assertion to him that those forms had been available and were still available to the auditors. The responses to the other critical findings were also based on Ms. Clemon's assertions of fact, such as her explanations for why certain students could not be located by the LAUSD. In short, Judge Clemon did not create a response for Ms. Clemon dba ISL. Instead, he helped her put her own story into a readable, concise, and responsive format.[26]

Judge Clemon, along with Mrs. Tackett and Mr. Still, also attended the meeting at which Ms. Clemon made her presentation to the School Board. Judge Clemon was not in attendance at that meeting as attorney for Arnese or for ISL. He attended the meeting as a Board member, interested party, staunch

[26] The December 17, 1991, response was hand-delivered to the School Board. This hand-delivery certainly undermines the mail fraud charges in Count 20 of the original indictment of Ms. Clemon and Dewey Hughes.

supporter, and devoted brother. Unlike Judge Clemon, Mrs. Tackett personally talked to School Board officials on behalf of Arnese Clemon dba ISL, prior to this meeting.[27]

Like Mrs. Tackett and Mr. Still, at no time during this audit hearing did Judge Clemon believe his sister to be a con artist, swindler or hustler out to make a buck for professional services not rendered. Indeed, Ms. Clemon steadfastly maintained that the audit report was simply the result of a personality conflict between herself and School Board official (and project consultant for independent study) Dr. Donald Martin. She made that assertion in private conversations with Judge Clemon, as well as with Mrs. Tackett, and in public discussion with the School Board. Also significant is the fact that ISL's bookkeeper, Rufus Still, attended the same meeting. At no time prior to, during, or after this meeting did the paid bookkeeper inform Board member Judge Clemon that there were any financial improprieties associated with the

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[27] Mrs. Tackett is not a defendant, nor a target or subject of the federal investigation. She occupies witness status. Nothing in this Report is intended to diminish or call into question her distinguished record of service to her community, and the many benefits her civic efforts have bestowed upon the children of Los Angeles. Rather, Mrs. Tackett's active involvement with, and on behalf of, Ms. Clemon and ISL shows that no reasonable person could have anticipated or suspected that Ms. Clemon and Dewey Hughes were engaged in any improper activities.

recordkeeping or disbursement of funds from the Institute to anyone, including Judge Clemon.

It is clear that, at no time during the preparation of ISL's response to the LAUSD audit report (nor at any other time) did Ms. Clemon tell Judge Clemon that she was engaged in any improper activity in connection with ISL. She did not tell Judge Clemon that she and Hughes had defrauded the LAUSD in any way, and she did not tell Judge Clemon that the payments to him by herself dba ISL were any improper expenditure of ISL funds. This is clear, in part, because Judge Clemon's history of dealing with his family members was well-settled: his love for them including not only helping them financially and emotionally when they were striving for professional excellence, but also disciplining them when they strayed. Even prior to this December 1991 visit to Los Angeles, Judge Clemon had the unfortunate task and duty of turning in his brother, Joe Louis Clemon, to a Jefferson County Sheriff's Deputy upon the discovery that Joe Louis and a nephew were operating a crack-house in the Birmingham area. In light of this history, it is highly unlikely that Ms. Clemon would have confided in Judge Clemon about any criminal activity on her part.

After the December 1991 meeting with the LAUSD officials, Judge Clemon returned to Birmingham. He agreed to be designated as Chairman of the Board

of Directors of ISL, which once again had corporate status. In that capacity, he attempted to remain aware of the outcome of the LAUSD audit, and wrote to the LAUSD in follow-up to the December meeting in an effort to ensure that all of the LAUSD's concerns had been addressed.

On January 29, 1992, at his sister's request, Judge Clemon reviewed a letter which attorney Hovanesian was going to send to the LAUSD. Through review of this draft letter, and in subsequent conversations, Judge Clemon learned that the LAUSD had –after further review – reversed its own audit findings, had stopped claiming any "reimbursement" from ISL, and had in fact paid ISL most of the past-due amounts for the prior school year. This fact – that the LAUSD, having the opportunity for full audit and review, had found no basis for reimbursement from ISL – further confirmed Judge Clemon's belief in his sister's trustworthiness.

IX. THE ALLEGEDLY FALSE STATEMENTS MADE BY JUDGE CLEMON ON LOAN APPLICATIONS.

The final set of allegations in the federal investigation includes three allegedly false statements by Judge Clemon in connection with three loan applications. The allegedly false statements are as follows:

Institution	Date	False Statement
Cal Fed	4/30/86	Lists source of down payment for 358 S. Westmoreland, L.A., as "investment funds."
Great Western	10/12/89	Lists source of down payment for 3210 W. Vernon St., L.A., as "savings."
One Stop Mortgage	11/8/95	Lists himself as owner of 3210 W. Vernon, L.A., and 636 6th St., Birmingham, Alabama with monthly rent of $840 and $800, respectively.

Such allegations of false statements on loan applications are a common prosecutorial tool, often appended to other charges merely in order to multiply charges, and commonly signal the weakness of more substantive allegations.

In the present matter, these allegations of false statements are without merit (even aside from their relatively trivial nature).

Turning first to the October 12, 1989 statement in connection with a loan application to Great Western Bank, the Coalition through its counsel has reviewed said application. That application was made in connection with the purchase of the West Vernon property. In the space marked "Source of Down Payment and Settlement Charges," there is written the one word "Savings." It is far from clear that this statement was false in any sense; the downpayment was, in fact, paid from savings of Ms. Clemon dba ISL. More importantly for present purposes, however, the October 12, 1989, loan application is not even

signed by Judge Clemon, nor is there any other indication that he attested to the correctness of every minute detail thereof. Instead, in the space for Judge Clemon's signature, there appears the following, handwritten:

Arnese Clemon (power of attorney)

For: U.W. Clemon 10/12/89

This was written, ostensibly by Ms. Clemon (and not by Judge Clemon) just under the warning that it is a federal crime "to knowingly make any false statement concerning any of the above facts as applicable under the provisions of Title 18, United States Code, Section 1014."[28]

As to the alleged statement in connection with a loan application to Cal Fed Mortgage, counsel for the Coalition have, to date, been unable to obtain any such application or statement dated April 30, 1986, as suggested by the prosecutors. However, counsel for the Coalition have obtained a loan application, made to Cal Fed in connection with the purchase of the Westmoreland property, dated August 11, 1986. That application includes the notation that the "Source of Down Payment and Settlement Charges" was "Investment funds." As with the

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[28] Notwithstanding the fact that the putatively false statement was ostensibly made by Ms. Clemon, her December 1994 federal indictment and her superseding information included no charge based on this loan application.

prior statement, it is far from clear that this was false; the downpayment was, in fact, invested by Ms. Clemon dba ISL, for the benefit of ISL. Likewise, as with the prior statement, this August 11, 1986 loan application was not signed by Judge Clemon. Instead, just below the same warning language as quoted above, there appears the following handwritten notation, ostensibly by Ms. Clemon:

U.W. Clemon August 11, 1986

by Arnese Clemon, his attorney in fact

This August 11, 1986, statement ostensibly by Ms. Clemon would – by operation of law – supersede any April 30, 1986, statement on a prior loan application to Cal Fed (if, in fact, there was such a prior statement[29]), by virtue of the fact that Ms. Clemon held a valid transactional power of attorney from Judge Clemon, and ostensibly executed the August 11 document pursuant to that power of attorney.[30]

Most troubling – and most indicative of investigative work which is either

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[29] The Coalition's counsel understand that the federal investigators have furnished to Judge Clemon's attorneys an unsigned application dated April 30, 1986.

[30] As with the statement to Great Western, notwithstanding the fact that the putatively false statement was ostensibly made by Ms. Clemon, her December 1994 federal indictment and her superseding information included no charge based on this loan application.

grossly incompetent or undertaken in bad faith – is the prosecutors' attempt to create a criminal charge based on a November 8, 1995, statement purportedly made to One Stop Mortgage. Judge Clemon's primary dealings were with Elite Funding Corporation, in late 1995, for the purpose of refinancing the Westmoreland property. Elite later "shopped out" Judge Clemon's application to One Stop Mortgage. In furtherance of his dealings with Elite, Judge Clemon completed and submitted various documents. As with any financial transaction (particularly any substantial financial transaction in which the allegedly victimized party is a sophisticated and experienced lending institution), all such documents must be taken as a whole, and read together, on a "transactional" basis.

Among the documents completed and submitted in connection with this transaction was a four-page "Uniform Residential Loan Application," dated August 21, 1995, and supplemented to include as an attachment a two-page "Schedule of Real Estate Owned" dated September 22, 1995. The "Schedule" included, among many other statements and figures, certain information relating to the West Vernon property and a property at 636 6th St. in Birmingham (i.e., the properties which were allegedly the subject of the false statements in this final allegation).

As to the West Vernon property, while the prosecutors seek to create the impression that Judge Clemon simply listed himself as its owner and declared a monthly rental income from it of $840, in fact, the Schedule stated quite differently. The Schedule listed Judge Clemon's ownership interest as "contingent," showed a net rental income (after payment of taxes and mortgage) of $0, and referred the reader to page 4 of the Uniform Application. That Uniform Application, in turn, set forth the undisputed, and essentially complete, facts regarding the West Vernon property: that it was sold to Ms. Gertie Moore, that the bank did not approve her assumption of the mortgage, that he paid the mortgage note and that she reimbursed him for such payments. Furthermore, the Schedule listed this property as "owner-occupied," further reflecting the understanding that Ms. Moore was the owner and occupant of the property.

The prosecutors' erroneous implications as to the Birmingham property are nearly the same. The Schedule showed that property, at 636 6th St., and listed Judge Clemon's ownership interest correctly as "contingent; loan guarantor." The Schedule referred the reader again to page 4 of the Uniform Application, where the undisputedly true and essentially complete facts were set forth: that he donated that property to his church, that he remained liable on the mortgage, and that the church "either makes the payments directly or

reimburses me for doing so." The statement on the Schedule that the property brings monthly rental income of $800, with net rental income of $260, is therefore to be understood by the reader of reasonable sophistication as reflecting that the church (to whom Judge Clemon donated that property, as he correctly stated on this Application) received that rental income from the tenants of that apartment building. In short, this allegedly false statement – like the others discussed above – was in fact nothing of the sort.

X. JUDGE CLEMON'S SUBPOENA COMPLIANCE TESTIMONY

As noted above in the introduction, shortly before the scheduled May 3, 1996, meeting between Judge Clemon's counsel and U.S. Attorney Nora Manella (and other prosecutors) to address the contemplated charges, AUSA Mansfield apparently attempted to expand the scope of contemplated charges against Judge Clemon by letter dated April 19, 1996.

AUSA Mansfield's letter came in response to a letter from Judge Clemon's counsel, protesting the unlawful seizure by a federal agent in Birmingham of church records and privileged correspondence between Judge Clemon and his counsel. In the course of responding to that letter, AUSA Mansfield raised the stakes by injecting a new set of issues, stating "this office is concerned about

certain statements [Judge Clemon] has made in connection with the grand jury subpoenas seeking financial records for the church" of which Judge Clemon is a member and unpaid treasurer.

AUSA Mansfield stated that a grand jury subpoena had been served on that church on or about January 16, 1996, and that in response to that subpoena Judge Clemon had voluntarily produced "only photocopies of Church checks written in 1995 and no other financial documents of the Church." AUSA Mansfield then stated that a subpoena of identical scope, dated February 29, 1996, had been served personally on Judge Clemon seeking the same financial documents, and that Judge Clemon then produced "only two leases and no other documents requested." AUSA Mansfield stated that Judge Clemon had "appeared before the grand jury for the purpose of providing subpoena compliance testimony in connection with this subpoena."

AUSA Mansfield's letter concludes:

> But it appears that [Judge Clemon] failed to produce, as Treasurer for the Church, the following documents required by subpoena within his possession, custody or control, among many others:
>
> 1. Numerous church ledger/spread sheets circa 1986 and 1991.
>
> 2. Treasurer's report 3/6/95, uncancelled checks.
>
> 3. Annual reports.

4. Memo to U.W. Clemon re: request for check from church account 10/15/95.

5. Weekly offering reports and deposits for 1995-1996.

6. Folder containing Jones Chapel A.M.E. Church bank reconciliations.

7. 1984-85 Jones Chapel A.M.E. Church proposed annual budget.

The character of documents not produced by your client, combined with their location in the Church's "finance room" (to which only [Judge Clemon], Mr. Young and Ms. Taylor had keys) gives the troubling impression that documents responsive to the grand jury subpoenas served on the Church and on your client, as Treasurer and a custodian of records, were withheld by your client. Further, it would appear that the facts surrounding the recent production of documents from the Church contradict your clients' subpoena compliance testimony.

Please include in your presentation for May 3rd a response to these concerns (other than a reiteration of your allegation that an unlawful seizure of documents in the finance room occurred).

In light of AUSA Mansfield's letter, and in order to show the lack of merit in his charges, it is necessary to set out the words of the subpoenas to which AUSA Mansfield referred[31]:

Jones Chapel AME Church

ATTACHMENT

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[31] The following was the one-page attachment to the grand jury subpoenas in question.

All documents and records in your possession or control for the period January 1, 1987 to the present reflecting the financial transactions of the above named including, but not limited to, the following:

1. General ledger and chart of accounts prepared, reviewed, signed, or examined by U.W. Clemon.

2. Accounts receivable ledgers and journals with adjusting and closing entries prepared, reviewed, signed, or examined by U.W. Clemon.

3. Accounts payable ledgers and journals with adjusting and closing entries prepared, reviewed, signed, or examined by U.W. Clemon.

4. All deposit tickets, bank statements, and canceled checks from checking accounts and savings accounts.

5. Records of non-profit status.

6. By-laws of the church and all amendments thereto.

7. Church Minute Book.

8. All records reflecting salaries and/or payments from the sale of church assets.

9. Purchase and/or sale agreements, escrow instructions and closing escrow statements.

10. Records to show the purchase and/or lease, and sale of assets.

11. Forms 1099 and W-2 issued; employment tax returns; employee or independent contractor work records, to include employment applications and accounting records to show hours worked or services provided and manner of payment.

12. State information returns and workpapers, Federal information returns and workpapers.

13. Records of loans to or from the church.

14. Payroll ledgers and checks.

15. List of all members of the board of directors and trustees.

16. Any records which further explain the above.

Please provide a cover letter signed by Custodian of Records certifying accuracy and completeness of records provided.

A simple comparison of the subpoena requests, versus the documents referred to in AUSA Mansfield's April 19, 1996, letter, shows that the documents at issue in AUSA Mansfield's letter were not called for by the subpoenas in question. Thus, taking AUSA Mansfield's seven categories of documents, the facts are as follows:

(1) "Numerous church ledger/spread sheets circa 1986 and 1991." The first thing to note is that AUSA Mansfield's suggestion, that documents "circa 1986" should have been produced and were improperly withheld, is flatly contradicted by the introduction to the subpoena, which plainly limits its scope to documents "for the period January 1, 1987, to the present ..." Second, the church ledgers and/or spread sheets in question were not "prepared, reviewed, signed or examined" by Judge Clemon, and the relevant portion of the subpoena

(items 1, 2 and 3) was plainly limited to documents which had been so prepared, reviewed, signed or examined by Judge Clemon.

(2) "Treasurer's report 3/6/95, uncancelled checks." The subpoena, however, did not request any "treasurer's report" or "uncancelled checks."[32]

(3) "Annual reports." The subpoena nowhere references, or requests, any "annual report."

(4) "Memo to U.W. Clemon re: request for check from church account 10/15/95." The subpoena does not include any request which would encompass such a document.

(5) "Weekly offering reports and deposits for 1995-1996." All deposit tickets which were available were produced pursuant to item 4 of the subpoena. The subpoena does not include any other request which would encompass "weekly offering reports and deposits."

(6) "Folder containing Jones Chapel A.M.E. Church bank reconciliations." The subpoena does not include any request for, or any request which encompasses, "bank reconciliations."

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[32] It is somewhat unclear what AUSA Mansfield meant by "uncancelled checks." However, no such thing is clearly encompassed by the relevant subpoenas. Item 4 clearly requested "canceled checks," and item 14 requested "Payroll ... checks." There is no indication that these were payroll checks.

(7) "1984-85 Jones Chapel A.M.E. Church proposed annual budget." The subpoena, as noted above, is plainly limited to documents "for the period January 1, 1987 to the present" and does not request anything for 1984-85. Moreover, the subpoena did not seek church budgets, much less proposed church budgets.

AUSA Mansfield might try to rely on subpoena item 16, "Any records which further explain the above." However, that item is too vague in its scope to support such reliance, and is certainly too vague to justify any assertion that Judge Clemon acted in bad faith or improperly "withheld" any document covered by the subpoenas. Item 16, it must be noted, did not expand the scope of the subpoena beyond the limited and specified types of documents requested in items 1 through 15. Nor did it seek all "documents" which might in some way "relate" to items 1 through 15. Instead, it sought only "records" (a legal term of art) which "explain" items 1 through 15.

In his grand jury testimony regarding compliance with these subpoenas, Judge Clemon was asked whether he had produced all documents responsive to each item of the subpoenas. His response, in substance, was that he had to the best of his knowledge produced every document responsive to the subpoenas.

The above analysis shows that there is no merit to AUSA Mansfield's

suggestion of improper subpoena compliance, and improper testimony, by Judge Clemon. AUSA Mansfield's letter, however, like the "false statement" charges discussed above, raises troubling questions about the prosecutors' conduct in this investigation. This matter is further discussed below.

XI. THE EXPECTED TESTIMONY OF, AND CREDIBILITY OF, WITNESSES WHO HAVE REFUSED TO COOPERATE WITH THE COALITION'S INVESTIGATION.

The Coalition's attorneys have attempted to interview every material witness to the allegations regarding Judge Clemon. Two potentially important witnesses, however, have proven to be unavailable for interviews by the Coalition's investigating team: Arnese Clemon and Dewey Hughes.

On April 11, 1996, Arnese Clemon informed the Coalition's counsel, in a telephone conversation, that she had been instructed by federal prosecutors and by her own lawyer not to discuss these allegations or to divulge her knowledge of facts regarding these events. She referred any questions to her attorney, Mr. Wayne Young of Los Angeles.[33]

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[33] After repeated messages left at his office, Mr. Young called the Coalition's counsel on April 12, 1996, and informed counsel that he was out of (continued...)

This Report will assume, for the sake of argument, that Ms. Clemon would testify for the government to any of the following facts: that Judge Clemon knew of her scheme to defraud the LAUSD (the scheme set forth in the original indictment of Ms. Clemon and Dewey Hughes), that he furthered that scheme by helping to prepare the ISL response to the LAUSD audit report, that he agreed with her to siphon funds from ISL for their personal benefit, and perhaps that he never intended to deed the West Vernon and Westmoreland properties to ISL upon satisfaction of the mortgage obligations. Against that backdrop, we examine her credibility and how such a theory would be supported or undermined by the other available evidence.

First, any such testimony would seemingly contradict prior statements made by Ms. Clemon regarding these matters to relatives and others. The Coalition has learned that Ms. Clemon's testimony and statements to date have been consistent. She has repeatedly stated that Judge Clemon did not know of, or participate in, any scheme to defraud the LAUSD or ISL, and that Judge Clemon did not impede any governmental investigation into such a scheme.

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[33](...continued)
town and would contact counsel in Birmingham during the following week. He inquired as to whether counsel represented "U.W.", and was informed that we did not. No follow up contact has been initiated by Mr. Young to the Coalition's counsel.

Those prior statements, exculpating Judge Clemon, are coupled with and consistent with Ms. Clemon's statements and behavior in the presence of her nephew Isaac Hunter during the early stages of the investigation of Judge Clemon. In early 1995, at or around the time she pleaded guilty, Mr. Isaac Hunter asked Ms. Clemon (who was then, as now, living with him rent-free) about the federal prosecution which she was facing. At that time, Ms. Clemon broke down in tears, explaining that the federal prosecutors wanted her to "wear a wire" and to make contact with Judge Clemon in order to obtain or induce potentially incriminating evidence against him. Ms. Clemon explained tearfully that the prosecutors wanted her to incriminate Judge Clemon, which she could not do.

However, given the seriousness of the allegations against Judge Clemon, the desire (confirmed by more than one witness) on the part of federal prosecutors to "break" witnesses and to obtain evidence against Judge Clemon, and the repeated postponing of Ms. Clemon's sentencing while the investigation of Judge Clemon proceeds, this Report must reckon with the possibility that Ms. Clemon – despite her earlier protestations of her brother's innocence – might find herself in a position in which she feels she has no choice but to offer testimony against him. Therefore it is, unfortunately, necessary to assess her

credibility as a witness.

Despite her early history of impressive achievements on behalf of disadvantaged youth, Ms. Clemon has a history of deception and false statements, including some made under oath, which history has come to light during this investigation. As far back as 1983, Ms. Clemon used a false Social Security number, California Driver's License number, and other information in order to lease space for ISL.[34] On May 7, 1993, Ms. Clemon filed, under oath with the Recorder's Office of Los Angeles County, a fraudulent "mechanic's lien," falsely claiming under penalty of perjury that Judge Clemon owed her $250,000 for repairs and construction on the Westmoreland property.[35] In addition, of course, any assessment of Ms. Clemon's credibility must include the fact that she has pleaded guilty to conspiring to defraud the LAUSD and to mail fraud.

The other effectively unavailable witness, Dewey Hughes, would be of

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[34] An August 11, 1983, letter to the LAUSD School Board from the landlord, Catherine Lewis, alerted the School Board to those false identification numbers and other asserted misrepresentations by Ms. Clemon, and stated Ms. Lewis's conclusion about "what a LIAR this woman really is."

[35] This false statement was flatly contradicted by Ms. Clemon's statement a few months later, under oath in a personal bankruptcy petition, that she owed Judge Clemon $30,000.

similar questionable credibility if he attempts to incriminate Judge Clemon. Counsel for the Coalition drove to Hughes's home in Venice, California, on April 11, 1996, and called on the telephone from outside his home.[36] The telephone was answered by a Black male (according to the vocal characteristics). When counsel asked for Dewey Hughes, the person hesitated and asked who was calling, along with a series of other detailed questions about the nature of the call. Counsel for the Coalition explained his identity, how to reach him, and the nature and purpose of the call. The person on the telephone thereafter sounded nervous and evasive, stated that he was not Dewey Hughes, but that he would pass the message along to Dewey Hughes. No call was ever received, thereafter, from Dewey Hughes. Based on counsel's extensive experience in interviewing witnesses using the "cold call" technique, it is counsel's firm belief that the person spoken to was, in fact, Dewey Hughes. There was no apparent reason for him to disavow his identity except for a desire to deceive and not to cooperate

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[36] Hughes's home address is an upscale apartment within strolling distance of the Pacific Ocean, literally one-half block from the beach in Venice Beach, a stylish area. Counsel for the Coalition have not been able to ascertain how Hughes – who qualified for representation by the Public Defender's Office, thereby indicating a lack of funds – could live in such a desirable apartment in such a desirable area, one year after entering a guilty plea to a federal felony information. It is not uncommon for federal prosecutors to provide cooperating witnesses with financial assistance during their period of cooperation.

with the Coalition's investigation.[37]

Certainly Dewey Hughes's testimony concerning Judge Clemon could not be more extensive -- and would have to be much less extensive -- than testimony which Ms. Clemon could offer. Hughes met Judge Clemon through Ms. Clemon, with whom Hughes already had an association. In time, Hughes and Judge Clemon became personal friends due to Hughes's winning personality and "people skills."[38] However, there was no contact between Hughes and Judge Clemon between December 17, 1991 (when Judge Clemon accompanied his sister to her presentation at the LAUSD) and the time of Hughes's indictment in December 1994.[39] While they had a warm personal relationship, it did not extend

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[37] Attempts to reach Dewey Hughes's attorney, including a visit to her office at which counsel for the Coalition left a business card and local telephone number (as well as a copy of the Coalition's resolution authorizing this investigation), were unsuccessful and resulted in no contact from that attorney.

[38] Hughes was, prior to his move to Los Angeles, a talented music promoter, and radio and television personality, in the District of Columbia.

[39] After the indictment of Hughes and Ms. Clemon, there was a telephone conference call among Hughes, Ms. Clemon, Judge Clemon, and their sister Kate. Arnese Clemon and Dewey Hughes were, understandably, seeking information from Judge Clemon (due to his tenure as a federal judge) as to what procedural steps they could expect in securing the appointment of an attorney, pretrial proceedings in federal court, and related judicial matters. Hughes expressed surprise at his indictment, given "all that [he] had

(continued...)

to discussion of ISL's operations and management. At no time during any of their contacts did Hughes confide in Judge Clemon regarding any alleged fraud perpetrated by Hughes, Ms. Clemon, or anyone else connected with ISL. Nor was there any discussion between them regarding any payments from Ms. Clemon dba ISL to Judge Clemon.

As with Ms. Clemon, counsel for the Coalition have learned that Dewey Hughes also stated to a third party that the federal prosecutors were attempting to have him implicate Judge Clemon in some allegedly improper ISL activities, but that he could not do so. Unlike Ms. Clemon, Hughes reportedly agreed to wear a hidden microphone and transmission device in the summer of 1994. He reportedly wore such a device, when contacting Ms. Clemon, in order to capture at least one conversation which would implicate her.

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[39](...continued)
done for them," apparently speaking of the federal government. Judge Clemon advised Hughes to turn himself in, explained the mechanics of voluntarily surrendering without the embarrassment of public arrest, and told Hughes that a lawyer would be appointed for him if he could not afford one.

XII. THE INDICIA OF IMPROPER MOTIVATION, AND IMPROPER CONDUCT, ON THE PART OF FEDERAL INVESTIGATORS AND PROSECUTORS.

The Coalition's investigation to date reveals that the federal investigation of Judge Clemon is part of a pattern and practice of such investigations by certain federal law enforcement officials in the Central District of California[40] and throughout the nation. This pattern and practice is set out in detail in two scholarly books: David Burnham's Above the Law: Secret Deals, Political Fixes, and Other Misadventures of the U.S. Department of Justice (Scribner, 1996), and Kenneth O'Reilly's Racial Matters: The FBI's Secret File on Black America, 1960-1972 (Free Press, 1991). Without regurgitating all of the findings by

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[40] As noted above, this Report does not, at this time, conclude that U.S. Attorney Nora Manella has, herself, any active involvement in such a pattern with respect to this investigation. Nor is there, at this time, indication that her entire office is pervaded with such misconduct; it appears that law enforcement agents outside the U.S. Attorney's Office are attempting to infect that Office with improper motivations and techniques. Those attempts have, to date, met with only limited success in this case.

However, one of the recurring problems within the U.S. Department of Justice and the offices of the many United States Attorneys, as discussed by David Burnham in the work cited below, is the lack of any meaningful oversight and review of line prosecutors and agents by the appropriate higher officials in field offices and in "Main Justice" in Washington. One purpose of this Report is to make U.S. Attorney Manella personally aware of the nature and scope of some of the improper conduct on the part of certain prosecutors and investigators under her supervision and control.

Burnham and O'Reilly, it is sufficient to refer the reader of this Report to those works.[41]

1. The pattern of racially motivated, and otherwise improperly motivated, federal prosecutorial and investigatory misconduct.

The pattern disclosed by the analyses of Burnham and O'Reilly, as well as of other commentators, is one of improper motivations as well as improper techniques. At times, according to these sources, federal investigative and prosecutorial powers have often been misused for racially discriminatory reasons. At other times, such powers have been misused for politically discriminatory reasons, or on the basis of a target's beliefs. And equally often, whatever the identifiable motivation, such powers are misused because of a lack of adequate supervision and coordination by higher officials, and because of the willingness of certain law enforcement officers and prosecutors to violate ethical and legal standards.

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[41] The Coalition has also learned that an investigative reporter for George magazine is in the process of writing an extensive review and analysis of the disparate investigative and prosecutorial focus on Black elected and appointed officials, as compared to similarly situated white officials, on public corruption charges. That reporter has already concluded, based on extensive data, that this disparity is "statistically significant," meaning in short that it cannot be explained as the result of mere chance. The investigative report is expected to be published in the summer of 1996.

See also Wall Street Journal, January 12, 1996, Page A1.

This pattern is by no means simply a thing of the past; nor is it confined to any geographic region of the nation. In that connection, the Coalition has obtained an Affidavit from Patricia Moore, dated March 8, 1996, which describes in detail the current tenor of the federal authorities in the Central District of California. Ms. Moore explained that she, a Black community activist in Compton (a predominately Black area of greater Los Angeles), was subjected to continued intimidation and threats by the office of the U.S. Attorney for that District, as well as the Federal Bureau of Investigation. Federal agents repeatedly stated to Ms. Moore that their goal was to investigate, indict, and ultimately convict Black political leaders. Among such statements was the statement by an Assistant United States Attorney that the federal government was not interested in investigating a white member of the Compton City Council, "only blacks." In furtherance of that goal, as stated by Ms. Moore, the federal agents and prosecuting attorneys engaged in a long and stark pattern of deception, threats, intimidation, and denial of access to counsel.

2. The misuse and abuse of prosecutorial and investigatory authority with respect to Judge Clemon.

There are various indicia to suggest that the current federal investigation of Judge Clemon, by some persons in the same office of the United States

Attorney and in the F.B.I., is similarly motivated. Among such indicia is the fact that throughout this investigation -- in discussions with attorneys, in discussions with witnesses, and in presentations to the grand jury -- a lead prosecutor has continually referred to Judge Clemon not as "the Honorable U.W. Clemon," not as "Judge Clemon," not even as "Mr. Clemon," but simply as "U.W." This is highly inappropriate treatment for a federal judge who has not even been properly accused of, much less tried for, any crime. This arrogant tone toward a sitting United States District Judge, appointed by a President of the United States and unanimously confirmed by the Senate of the United States, smacks of the era in which all Black witnesses, no matter their station in life, were referred to by their first names in southern courts. Cf. Ex parte Hamilton, 156 So.2d 926 (Ala. 1963), reversed, Hamilton v. State, 376 U.S. 650 (1964) (reversing contempt conviction of Black witness who demanded to be addressed by her full name).

In addition to this arrogant and derogatory treatment by one of the prosecutors, the federal investigation of Judge Clemon has been, in other ways, an unusually aggressive one. In contrast to usual and legitimate prosecutorial techniques, this investigation has, without apparent reason, been extended over an extraordinary period. During that time, the prosecutors' "theory" apparently mutated significantly, changing to some other set of allegations against Judge

Clemon whenever it became apparent that the last set of allegations were not supported by the evidence. And, particularly troubling, the federal investigation has apparently now been pursued through the use of not one, but multiple and successive, grand juries.[42]

Other disturbing tactics utilized by federal authorities in this matter include the seizure by a federal agent of a file containing privileged communications between Judge Clemon and his counsel.[43] Not only does that

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[42] The grand jury, a centuries-old institution, was originally designed as a check on the prosecutorial power of the King; it was the citizens' assurance that the awesome weapon of a criminal charge would be levied against a person only if a group of his peers – and not merely entrenched government officials – thought such charges to be warranted. See Wood v. Georgia, 370 U.S. 375, 390, 82 S.Ct. 1364, 1373 (1962): "Historically, this body has been regarded as a primary security to the innocent against hasty, malicious and oppressive persecution; it serves the invaluable function in our society of standing between the accuser and the accused, whether the latter be an individual, minority group, or other, to determine whether a charge is founded upon reason or was dictated by an intimidating power or by malice and personal ill will." While the grand jury has, in more recent years, been largely taken over by prosecutors and used by them as an investigating tool, still it can in certain circumstances serve its original function as a check on overzealous prosecutors. For that reason, an unexplained prosecutorial decision to present a matter to multiple and successive grand juries raises the disturbing potential of "grand jury shopping" by prosecutors.

[43] It should be noted that, in interviews with counsel for the Coalition, Judge Clemon did not waive his attorney-client privilege with respect to those documents. Although Judge Clemon stated that the subject documents were communications between himself and his attorneys setting forth his defense to

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seizure violate Judge Clemon's indisputable privacy rights, the manner in which the seizure was accomplished is particularly unconscionable. The seizure, carried out as a massive intrusion by federal authorities into the affairs of Judge Clemon's church, was accomplished through intimidation and misleading remarks by a federal agent.

Having already subpoenaed various records from that church (the Jones Chapel A.M.E. church, a small congregation of which Judge Clemon is a member and treasurer) some time before, and knowing that Judge Clemon was en route to Birmingham from Los Angeles (having appeared before the grand jury the preceding day), a federal agent in Birmingham served a subpoena on a 79 year-old member of the church, Mrs. E. J. Taylor, seeking church records. Mrs. Taylor was at her home. At the agent's request, Mrs. Taylor summoned Mr. Owen Young, a 69-year old (and functionally illiterate) church janitor. Upon Mr. Young's arrival at Mrs. Taylor's home, the agent served Mr. Young with an identical subpoena directed to him. Both subpoenas sought a wide range of information concerning the church's operations. These subpoenas were issued

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[43](...continued)
the various allegations, counsel for the Coalition did not seek – nor did Judge Clemon offer – to penetrate the attorney-client privilege or to discuss the specific contents of any such document.

at the direction of Assistant U.S. Attorney Maurice Suh, of the Central District of California.

Neither Mr. Young nor Mrs. Taylor was in a position to understand the scope of the agent's authority, the range of procedures available to them to challenge or to comply with such a subpoena, or whether they themselves had sufficient authority to provide the church's records to the federal agent. Nor did the agent make any effort to explain such matters to them, instead choosing only to tell them that, if they did not immediately comply with the subpoena, they would have to appear before the grand jury in Los Angeles.[44] Having so intimidated these elder members of the church, the agent simply seized five sealed boxes of records, as well as other materials. In so doing, the agent seized a file of privileged attorney-client communications which Judge Clemon kept in a briefcase of his own at the church; the agents seized those items, despite Mr. Young's specifically telling the agent that the briefcase was Judge Clemon's private property and that he did not have the authority to open it.

As discussed above in Section X, Judge Clemon's protests regarding the

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[44] In fact, even despite their understandable capitulation to the agent's intimidation, both Mrs. Taylor and Mr. Young were required to travel cross-country to Los Angeles shortly thereafter to appear very briefly before the grand jury.

improper treatment of his church and its members, and regarding the seizure of privileged documents, have been met with an apparently retaliatory strike by AUSA Mansfield, in the form of his April 19, 1996, letter to Judge Clemon's attorneys. As discussed above, that letter claims that Judge Clemon "withheld" documents covered by subpoenas, and that "the facts surrounding the recent production of documents from the Church contradict [Judge Clemon's] subpoena compliance testimony." However, as explained at length in Section X above, the documents referred to in AUSA Mansfield's letter were not encompassed by the subpoenas on which AUSA Mansfield relies. Therefore, there is no basis to a charge that those documents were "withheld," or that Judge Clemon testified falsely in stating that he had complied with the subpoenas to the best of his knowledge.

It is disturbing that AUSA Mansfield attempted to inject these new, and patently meritless, potential charges into this matter at this late date. It is particularly disturbing that these allegations were created after, and in apparent response to, two critical sets of events: (1) the April 10 to April 13 on-site investigation by counsel for the Coalition; and (2) the correspondence from Judge Clemon's counsel protesting the unlawful seizure of privileged documents.

In addition to the troubling aspects of this investigation which are

discussed above, the Coalition's investigation into the indictment and pleas of Ms. Clemon and Dewey Hughes revealed other interesting matters. The court file pertaining to their case includes an abundance of notations that certain documents were filed by both prosecution and defense "under seal" – i.e., shielded from public view and oversight. Furthermore, despite the elaborate and detailed security procedures in place at the Los Angeles Federal Courthouse (including its Clerk's Office), certain portions of the record in that case are missing from the court file, and cannot be located by the Clerk. Their disappearance is, according to the Clerk's Office, unexplained.

The current federal investigation must also be assessed in light of the history of Judge Clemon's tenure as a United States District Judge. As discussed briefly at the outset of this report, there was fierce opposition from some quarters to Judge Clemon's initial appointment to the bench by President Jimmy Carter. Despite his distinguished career as an attorney, Judge Clemon met opposition from many who were not pleased at the prospect of a Black attorney (particularly a Black attorney with a strong civil rights background and stellar legal training) being appointed, for the first time in history, to the federal bench in Alabama. After winning senate confirmation with the staunch support and aid of the Coalition, among others, Judge Clemon has a distinguished career as

a jurist. Predictably, there are some attorneys among the federal prosecutors in the Northern District of Alabama – as well as other attorneys representing other entrenched interests – who prefer to litigate before other, politically conservative, members of the federal bench in the Northern District of Alabama.[45] Many such persons particularly do not relish the fact that Judge Clemon is scheduled to succeed the Honorable Sam C. Pointer, Jr., as Chief Judge of the District. However, such beliefs and prejudices on the part of some attorneys could not begin to justify the current attacks on, and allegations against, Judge Clemon.

XIII. CONCLUSION

Based on the foregoing findings and the entire investigation to date, the

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[45] The United States Court of Appeals for the Eleventh Circuit recently issued an opinion in a case which reflects the efforts by some litigants to avoid Judge Clemon through efforts to manufacture recusal. Robinson v. Boeing Co., __ F.3d ___, 1996 U.S. App. LEXIS 6575 (11th Cir. April 5, 1996). As reflected in an appendix to that opinion, the Honorable William M. Acker, Jr., United States District Judge for the Northern District of Alabama, investigated the instances in which defendants, whose cases were proceeding before Judge Clemon, secured counsel from a law firm at which one of Judge Clemon's nephews practiced (causing the recusal of Judge Clemon). Judge Acker found, "The court has no way of knowing what the incidence of [the law firm's] being retained by defendants would have been if the above-named cases had been originally assigned to judges other than Judge Clemon, but an intelligent guess is that the incidence would have been less."

Coalition sets forth the following conclusions.[46]

1. There would be no merit to a charge that Judge Clemon was involved in, or knowingly furthered, any fraud perpetrated by Arnese Clemon dba ISL and Dewey Hughes on the Los Angeles Unified School District. Such a charge would not even be supported by a preponderance of the evidence, much less by proof beyond a reasonable doubt. Any allegation to that effect by either Ms. Clemon or Hughes would be severely undermined, and ultimately disproved, by (among others things) prior contradicting statements by those witnesses, the statements by Judge Clemon, relevant documentation, and the pattern of conduct by Judge Clemon toward his family over the course of their lives.

2. Likewise without merit is the allegation that Judge Clemon sought, with Ms. Clemon, to defraud ISL of approximately $450,000 through the payments which were made to him by Ms. Clemon dba ISL. A preponderance of the evidence shows that all such payments to Judge Clemon were in recognition of his provision of financial and investment assistance to ISL in various ways (including making interim loans, bestowing creditworthiness,

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[46] It should be noted that the Coalition has not closed its investigation at this time, and that these findings and conclusions may be modified, amended, or supplemented as further evidence comes to light. If not modified, amended, or supplemented, this shall constitute the Coalition's final and official Report.

paying mortgage installments, undertaking liability, and investing in various properties for the benefit of ISL).

3. Relevant to both of these conclusions is the undisputed fact that ISL had lapsed into "suspended" corporate status during the relevant period of time. This fact leads to various conclusions. First, ISL was unable to purchase property in its own name -- either as a legal matter or at least as a practical reality -- making it all the more necessary for Ms. Clemon to rely on the credit of another such as Judge Clemon. Second, given ISL's lapse into suspension, it is reasonable to conclude -- not only as a legal matter but again as a practical matter -- that Ms. Clemon, the guiding force and Executive Director, was, in effect, one and the same as ISL during those years. Third, there is no impropriety in the fact that ISL's Board of Directors did not meet during those years in which ISL was suspended as a matter of law. Fourth, Judge Clemon's arrangements to vest the Westmoreland and West Vernon properties in his sister -- rather than in ISL as a separate entity -- were appropriate given that, at the time of such arrangements, ISL was not functioning as a legally separate corporate body. Many other similar conclusions could be drawn, and many prosecutorial questions could be answered, through recognition of the fact of ISL's suspension.

4. The allegation that Judge Clemon conspired with Ms. Clemon and others to impair, impede, and obstruct the IRS is entirely derivative of the allegations already discussed (i.e., the allegations of fraud against ISL and against the LAUSD). It fails for the same reasons enumerated above. In addition, any such charge would require proof of additional elements, including an agreement with Ms. Clemon to engage in such impairing, impeding, and obstruction; and there is no source of credible evidence of any such agreement.

5. Likewise, the "money laundering" allegations are entirely derivative of the earlier allegations of a supposed fraud against ISL; these allegations are based on the contention that the Westmoreland and West Vernon properties were bought with the proceeds of a fraud upon ISL. The "money laundering" theory collapses upon the realization that those properties were purchased, financed, and held with the intent of benefiting ISL only.

6. The "false statement" allegations constitute typical "fall-back" or "make-weight" techniques by prosecutors when there is uncertainty as to their chances of success on substantive charges of criminal wrongdoing. Such charges are often appended to indictments in hopes either of forcing a guilty plea or, at least, of salvaging some small jury conviction (and therefore some modicum of prosecutorial credibility) when the remainder of the case collapses. However,

even these "fig leaf" charges are without merit in this case.

7. There is no conceivable merit to the newly raised allegation that Judge Clemon wrongfully "withheld" documents from the grand jury or testified inaccurately about his compliance with subpoenas. These allegations plainly fail, because the subpoenas in question did not request or encompass the documents on which a prosecutor has based these allegations.

8. The federal investigation into these matters has been characterized by overreaching and abuse by prosecutors and investigators of the United States government; there are strong indicia that this is part and parcel of a resumé-building effort by mid-level career bureaucrats. This investigation, if approved by United States Attorney Manella and Justice Department oversight officials in Washington, would constitute an unconscionable smear on the sterling reputation of a distinguished public servant.[47]

Respectfully submitted,

Richard Arrington, Jr., Chairman
Jefferson County Citizens Coalition

April 27, 1996

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[47] The Coalition and its attorneys express their sincere gratitude to all witnesses and others who provided documents, agreed to interviews, and otherwise assisted in the search for truth. This Report would not have been possible without their honesty and cooperation.

APPENDIX A

APRIL 8, 1996, RESOLUTION OF THE EXECUTIVE AND POLITICAL ACTION COMMITTEES OF THE JEFFERSON COUNTY (ALABAMA) CITIZENS COALITION

RESOLUTION

Whereas, the Jefferson County Citizens Coalition was founded more than two decades ago to promote equal justice for all, and to advance the interests of Black citizens in political and economic life in Jefferson County, Alabama; and

Whereas, the Coalition has, throughout its existence, taken particular interest in the fair administration of justice in the courts of the State of Alabama and of the United States; and

Whereas, the Coalition is aware that there has been, and still is, a lengthy federal investigation centered in Los Angeles, California, into various allegations against the Honorable U.W. Clemon, United States District Judge for the Northern District of Alabama; and

Whereas, Dr. Richard Arrington, Jr., the Chairman and a founding member of the Coalition, was subpoenaed to appear before a federal grand jury in Los Angeles in connection with said investigation, and did appear before that grand jury in November 1995; and

Whereas, attorneys representing the Coalition have been requested to conduct a preliminary inquiry regarding the nature and scope of the federal investigation of the Honorable U.W. Clemon; and

Whereas, those attorneys have conducted preliminary interviews of Judge Clemon and of other witnesses who have appeared before the grand jury, and have reviewed documents relevant to the investigation; and

Whereas, those attorneys have reviewed the allegations by certain federal prosecutors, in connection with that investigation, that the Honorable U.W. Clemon engaged in conduct including: (1) defrauding the Institute for Successful Living ("ISL") of certain funds, (2) defrauding the Los Angeles Unified School District of money in connection with payments to ISL, (3) conspiring with his sister, Arnese Clemon, and others to defraud the United States Government by impairing and obstructing the IRS, (4) money laundering in connection with the title and sale of a parcel of real estate in Los Angeles and the attempted sale of another parcel, and (5) making false statements on three loan applications; and

Whereas, the attorneys representing the Coalition have preliminarily concluded, based on their in-depth interviews with Judge Clemon and others, and based on review of documents, that such allegations have no merit, and appear to be part of the pattern and practice of certain over-zealous prosecutors in harassing Black elected and appointed officials; and

Whereas, those attorneys have reported that they are disturbed as well by the manner in which the federal investigation has been carried out, including without limitation the following. In a deliberately offensive manner, even after having been requested to cease, the federal prosecutors in charge of this case have repeatedly referred to the Honorable U.W. Clemon as "U.W." or "U.W. Clemon," never recognizing him as "Judge Clemon", "the Honorable U.W. Clemon", or even simply "Mr. Clemon." For federal prosecutors to refer to any United States District Judge by his first name only is demeaning; this disrespectful behavior has particular resonance and meaning when the United States District Judge at issue is Alabama's first Black federal judge. Cf. Ex parte Hamilton, 156 So.2d 926 (Ala. 1963), reversed, Hamilton v. State, 376 U.S. 650 (1964) (reversing contempt conviction of Black witness who demanded to be addressed by her full name). Further, in clear disregard for potential witnesses who could disprove the allegations against Judge Clemon, the prosecutors have requested at least one witness from Alabama to travel cross-country to California to appear before the grand jury on multiple occasions, even though the information sought from her in the later visit was readily available on the occasion of the first visit. In addition, agents for these prosecutors have reportedly seized, in Birmingham, documents and records protected by the attorney-client privilege between Judge Clemon and his Los Angeles-based attorneys, without any authority or permission to do so. Further, prosecutors have browbeaten Birmingham-based witnesses because their testimony does not fit the government's pre-determined theory of the case. In addition, these prosecutors have, without just cause, extended their investigation and presented evidence to multiple grand juries over a long period of time, in contrast to usual and legitimate prosecutorial techniques; and

Whereas, the Coalition supported Judge Clemon's nomination by President Jimmy Carter in 1980, and supported his confirmation before the Senate Judiciary Committee and the full Senate, and the Coalition views Judge Clemon's nomination, confirmation and distinguished service as being in large part the fruit of the Coalition's political labors an a victory over fierce opposition from political conservatives and racists; and

Whereas, the Coalition is concerned, in light of the current federal investigation of Judge Clemon, that a person who is called on by virtue of his position to dispense equal justice under the law is himself being the victim of unequal justice; and

Whereas, although the site of these apparent attempts to perpetrate a judicial lynching is California, the impact of that potential lynching resonates strongly all the way back to Birmingham; and

Whereas, this is not the Coalition's first call to arms in such a battle; the Coalition rallied to the support of its Chairman and founding member Dr. Richard Arrington, Jr., during his prolonged and successful battle with ill-motivated federal prosecutors and agents, and the Coalition likewise supported persons prosecuted in baseless federal voter fraud trials, all of whom were ultimately vindicated; and

Whereas, the despicable pattern of racially motivated abuse of federal investigatory and prosecutorial authority is not only well known to the Coalition and its members through their personal experience, but is also documented in such works as David Burnham's recently published "Above the Law" and Kenneth O'Reilly's "Racial Matters"; and

Whereas, the Coalition has a rich history of lending its support and resources to victims of racial injustice, particularly where that injustice adversely impacts the class of Black citizens and Black voters in Jefferson County on significant social, political, and economic issues; and

Whereas, the Coalition views the investigation of the Honorable U.W. Clemon to fall into that category, and finds that the pursuit of justice in response to that investigation is a cause deserving of the Coalition's staunch, unequivocal, and unwavering support; and

Whereas, the Coalition recognizes that it will be necessary to raise substantial funds to rally a meaningful effort to combat the injustice being perpetrated in the Los Angeles federal courthouse, and that it will be an expensive undertaking, but that it would in the end be infinitely more costly, both in dollars and in human rights, to delay or dawdle in combating such injustice; and

Whereas, the Coalition's executive and political action committees have reviewed and have approved this resolution and strongly lend their support to its

passage by the entire body,

Now therefore it is hereby RESOLVED:

1. That the Coalition hereby declares and renews its strong support for Judge Clemon;

2. That the Coalition hereby authorizes attorneys Donald V. Watkins, H. Lewis Gillis, and Sam Heldman, and such other attorneys and assistants as they feel are necessary to support them, to monitor this investigation and, in connection therewith, to take such other acts as they deem necessary to ensure that justice is served and that the goals of the Coalition are advanced; and in so doing, these attorneys are to coordinate their activities with the Chairman of the Coalition, Dr. Richard Arrington, Jr.;

3. That there shall be established a dedicated bank account, separate from other funds, to receive financial contributions earmarked for this freedom fight by well-wishers from throughout the country who oppose prosecutorial abuse of this nature. Dr. Arrington shall be responsible for timely review of expenses incurred in this fight and for and payment of appropriate amounts from the special project fund established pursuant to this resolution.

4. That the Chairman of the Coalition is authorized to solicit the support and cooperation of California's Black political and civil rights leadership, and of the political and civil rights leadership of other minority communities in California.

Approved by the Jefferson County Citizens Coalition Executive Committee this 8th day of April, 1996.

Richard Arrington, Jr.
Chairman

Approved by the Jefferson County Citizens Coalition Political Action Committee this 8 day of April, 1996.

Benjamin Graves
Chairman

Adopted by the Jefferson County Citizens Coalition this _____ day of _____, 1996.

_____ Attest: _____
Chairman Secretary

Benjamin Graves
Carolyn Moore
Elizabeth Cooper
Alan C. Hayes
Flora C. Gilmore

RESOLUTION

Whereas, on April 8, 1996, in the interim between regular meetings of the Jefferson County Citizens Coalition, the Executive and Political Action Committees of the Coalition adopted and approved a Resolution relating to a pending federal investigation, by the office of the United States Attorney for the Central District of California, of certain allegations against the Honorable U.W. Clemon, United States District Judge for the Northern District of Alabama; and

Whereas, the Coalition, by and through its designated legal counsel for this matter, has conducted an extensive assessment and investigation of the federal probe involving Judge Clemon, and has reviewed voluminous documents, interviewed numerous witnesses, and otherwise thoroughly reviewed this matter; and

Whereas, legal counsel have prepared a detailed Report summarizing certain findings of fact and legal conclusions based on that review of the evidence; and

Whereas, the Chairman of the Coalition, Dr. Richard Arrington, Jr., has reviewed the Report with counsel, has submitted it to the Coalition for the Coalition's approval, and has recommended that the Report be so approved and adopted by the Coalition; and

Whereas, the administration of justice in this matter may be significantly enhanced if the Report is disseminated to appropriate officials in the United States Department of Justice and elsewhere, as well as to the Black political leadership of California; and

Whereas, the Coalition finds that the investigation and other tasks performed by counsel pursuant to the April 8, 1996, Resolution were appropriate in furtherance of the goals and policies of the Coalition; and

Whereas, the Coalition finds that the Report prepared by counsel and submitted by the Chairman is due to be approved as the official Report of the Coalition;

Now therefore it is hereby RESOLVED:

1. That the Coalition hereby declares and renews its strong support for Judge Clemon;

2. That the Coalition hereby ratifies and confirms the April 8, 1996, action of the Executive and Political Action Committees, as well as the actions undertaken by counsel pursuant to the April 8, 1996, Resolution;

3. That the Coalition hereby adopts, as its own, the Report prepared by counsel and submitted by the Chairman, entitled "REPORT OF THE JEFFERSON COUNTY (ALABAMA) CITIZENS COALITION CONCERNING THE FEDERAL INVESTIGATION, BY THE OFFICE OF THE UNITED STATES ATTORNEY FOR THE CENTRAL DISTRICT OF CALIFORNIA, OF CERTAIN ALLEGATIONS AGAINST THE HONORABLE U.W. CLEMON, UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ALABAMA";

4. That the Chairman of the Coalition is authorized and directed to disseminate copies of said Report, and of the relevant Resolutions, to those persons in the United States Department of Justice and elsewhere whom he, in consultation with legal counsel, deems appropriate to the fair administration of justice; and

5. That the Chairman is authorized, in the name of the Coalition, to mobilize all persons of good will, including the Black political and civil rights leadership of California, in the pursuit of justice in this matter.

Adopted by the Jefferson County Citizens Coalition at its regular meeting this 27th day of April, 1996.

Chairman

Attest: Mayble Moore
Secretary

Donald V. Watkins, P.C.
Attorney at Law
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August 25, 2014

Honorable John G. Roberts, Jr.
Chief Justice
Supreme Court of the United States
1 First Street, NE
Washington, DC 20543

Re: U.S. District Judge/Criminal Defendant Mark Everett Fuller (Middle District of Alabama)

Dear Chief Justice Roberts:

I am a licensed attorney in Alabama (ASB-3435-W86D). I am admitted to practice before the U.S. District Court for the Middle District of Alabama, the U.S. Court of Appeals for the 11th Circuit, and the U.S. Supreme Court.

I am writing to you out of a profound respect for the United States court system to complain about a flagrant display of hypocrisy in the federal judiciary in Alabama. I have been a licensed attorney for 41 years and never thought I would have to write this letter. My sense of duty to the judiciary requires that I bring this judicial hypocrisy to your immediate attention due to inaction by the U.S. District Court for the Middle District of Alabama and an apparent pre-judgment of the matters of which I complain by the Acting Chief Justice of the 11th Circuit Court of Appeals.

On August 9, 2014, U.S. District Court Judge Mark Everett Fuller, in a drunken rage, savagely beat his wife Kelli Fuller in an Atlanta hotel room after she accused him of having an extra-marital affair with his

law clerk. He was arrested by Atlanta police officers and became criminal defendant Mark Fuller during the early morning hours of August 10, 2014.

On August 12, 2014, the 11th Circuit Court of Appeals announced that all legal matters filed with the U.S. District Court for the Middle District of Alabama that are pending before Judge Fuller would be reassigned to other judges in accordance with standard procedures for the assignment of cases. No new legal matters would be assigned to Judge Fuller until further notice.

A week ago, the Court of Appeals announced through a news interview with Acting Chief Judge Gerald Tjoflat that an administrative complaint had been filed against Fuller, who was given 21 days to answer the complaint. What is troublesome about Judge Tjoflat's announcement is the suggestion that Fuller might be going back to work soon. According to Judge Tjoflat, "Judge Fuller recognizes that he needs to deal with these serious issues quickly so when he returns there is as little disruption to his cases as possible."

Judge Tjoflat's announcement sent shock waves through the federal judiciary in Alabama because it gave birth to a flagrant display of judicial hypocrisy on the federal bench in Alabama, as explained below.

The Case of H. Dean Buttram, Jr.

H. Dean Buttram, Jr., is a former U.S. District Court judge. On August 31, 1998, President Bill Clinton appointed Buttram to a federal judgeship in Birmingham to replace Robert B. Propst. Buttram was confirmed by the United States Senate and received his judicial commission on October 9, 1998. At 48-years old, Buttram was looking forward to a long and distinguished career on the federal bench.

On June 30, 2002, less than four years later, Buttram unexpectedly resigned from the bench. President George Bush appointed Scott Googler to take his place.

"Serving as a federal judge has been one of the greatest honors in my

life," Buttram told the Gadsden Times on March 12, 2002. "I have thoroughly enjoyed working with the other federal judges and presiding over several very important cases." Buttram cited personal reasons for his decision. "Being a federal judge has been a wonderful experience and one that I will never forget," he said.

With that farewell, Buttram quietly slipped back into the shadows of private practice in Centre, Alabama.

What the public did not know at the time is that Buttram's brethren on the bench asked him to leave his judgeship. Buttram, who was married, had a quiet but growing reputation inside the courthouse for womanizing female courthouse personnel, and it had become unbearable to his fellow judges. Led by Judge James H. Hancock, who was a Richard Nixon appointee and who has long been regarded as the Court's moral conscience, Buttram's fellow judges demanded that Chief Judge U.W. Clemon request and accept Buttram's resignation. In other words, Buttram was forced to leave his lifetime judicial appointment.

Buttram's womanizing never spilled over to the public arena. He was never arrested for battering his wife or any other woman. Whatever conduct compelled the judges to ask for Buttram's resignation never rose to the level of a public spectacle.

The Case of Mark Everett Fuller

Federal judge/criminal defendant Mark Everett Fuller was bailed out of jail in Atlanta on August 11, 2014. Defendant Fuller, in a drunken rage, had savagely beaten his second wife Kelli Fuller in an Atlanta hotel room just two days earlier. Defendant Fuller's mugshot has been plastered all over the Internet since the beating. Both his first wife Lisa and current wife Kelli have accused defendant Fuller of adultery. Defendant Fuller's fellow judges on the bench in Montgomery have approached Fuller about his womanizing, but were told by defendant Fuller that this was his private business.

Lisa Fuller divorced defendant Fuller amid such allegations. Defendant Fuller caved in during the divorce proceedings without much of a fight

rather than answer questions under oath about his alleged alcohol and drug dependency, his verbal and physical abuse toward Lisa, and his infidelity.

On August 9th, Kelli Fuller accused defendant Fuller of cheating on her with his law clerk. Kelli's accusation triggered defendant Fuller's violent behavior. He hit, body-slammed, and kicked Kelli until her battered body was covered in blood. Paramedics had to treat Kelli at the scene.

What is more, defendant Fuller apparently made false statements to the police officers who were called to the scene to investigate his beating of Kelli. Defendant Fuller's version of the events was contradicted by Kelli's account, which was supported by the physical evidence at the crime scene. In Georgia, making a false and material statement to a police officer investigating a crime scene is a felony crime. Defendant Fuller's conduct in making false statements to the police officers at the scene has provided Fulton County prosecutors with an opportunity to add a felony charge against Fuller.

Mainstream and social media outlets are clamoring for defendant Fuller's resignation. Fuller has refused to do so.

Defendant Fuller's alcohol and drug dependency, his verbal and physical abuse of women, and his marital infidelity are way more egregious and reprehensible than anything Buttram was accused of doing. Yet, Judge Tjoflat, who was appointed to the U.S. District Court by Richard Nixon and elevated to the Court of Appeals by Gerald Ford, has apparently turned his head away from the crime victim (Kelli) and is clearing the way for Fuller's return to the bench. Judge Tjoflat appears to be more worried about Fuller's caseload than Kelli Fuller's emotional and physical recovery or defendant Fuller's false statements to police.

Judge Tjoflat's pronouncement represents judicial hypocrisy in action. Buttram had to leave the bench, but Fuller can stay. When the accused judge was a Democratic appointee, he had to resign. When he is a Republican appointee, he can come back to the bench after he "deal[s] with these serious issues".

We need one standard of personal and professional integrity for federal judges, and it must apply across-the-board. The federal judges who are pushing a double standard for the benefit of criminal defendant Mark Fuller ought to be ashamed of themselves. Wife-beaters, drug and alcohol abusers, philanderers, and liars have no place as judges on the federal bench. Truthful and clean living judges who have respect for women represent the standard we should expect and demand on the bench. No exceptions should be tolerated.

As a member of the federal bar, I am requesting that you take all administrative steps that are reasonable and necessary to achieve this uniform standard of personal and professional integrity for federal judges.

Thank you.

Sincerely,

Donald V. Watkins