



Jeff Sessions as Alabama Attorney General: 1995-1997

Trump's Attorney General Nominee Blundered Corporate
Accountability in Alabama

Acknowledgments

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KEY FINDINGS

- When campaigning for attorney general, Sessions reportedly received a \$20,000 from the vice chairman of a corporation he declined to prosecute as U.S. Attorney.¹ The corporation, a restaurant chain (Morrison's Inc.), had been contracted by the government to provide meals for senior citizens. Instead of providing 100 percent meat, as stipulated by the contract, Morrison's added to its profits by diluting the meat it served with as much as 25 percent vegetable protein.² After Sessions' departure, the U.S. attorney's office told federal officials that racketeering charges could have been brought against Morrison's.³ (For details see Section I, beginning at page 5.)
- Sessions refused⁴ to join other states in suing Big Tobacco. His successor, William Pryor, also resisted, yet ultimately joined a multi-state tobacco settlement. As a result of Alabama's latecomer status, the state received only about half of the settlement amount it would have received had it joined from the outset.⁵ (For details see Section II, beginning at page 6.)
- Sessions botched an alleged fraud case against Tieco, an Alabama industrial equipment company. While the merits of the case are unclear, the judge handling the case found pervasive wrongdoing by the attorney general's office, and dismissed the fraud charges due to the attorney general's office's misconduct.⁶ (For details see Section III, beginning at page 8.)
- Sessions sided against 22 of his fellow state attorneys general⁷ and instead took the side of an insurance company, Exxon and the corporate lobby group National Association of Manufacturers⁸ in *Adams v. Robertson*, a U.S. Supreme Court case about consumer class actions. (For details see Section IV, beginning at page 10.)

¹ Robin DeMonia, "Evans Says Sessions' Decisions Uneven" *Birmingham News* (Nov. 3, 1994)

² *Mobile Register*, "Outlaw-Sessions link draws Evans' fire," (Nov. 3, 1994)

³ Robin DeMonia, "Evans Says Sessions' Decisions Uneven" *Birmingham News* (Nov. 3, 1994)

⁴ See *The Sun Herald*, "Ala. Might Not Sue Companies Conflicting Rulings Hamper Some States" (Sept. 27, 1996)

⁵ See Bill Rankin, "Judicial nominee a conservative true believer"

Atlanta Journal-Constitution, May 25, 2003, <http://www.freerepublic.com/focus/f-news/917396/posts>

⁶ Robin DeMonia, "State Won't Appeal Dismissal of Tieco Case," *Birmingham News* (July 26, 1997)

⁷ Eddie Curran, "Sessions fights 22 other AGs He's the only one defending Liberty National 'non-opt-out' settlement, as Supreme Court hears appeal," *Mobile Register* (December 13, 1996)

⁸ *Adams v. Robertson*, 520 U.S. 83 (1997) <https://supreme.justia.com/cases/federal/us/520/83/case.html>

INTRODUCTION

U.S. Senator Jeff Sessions' history of racism and hostility to civil rights is well documented. In 1986, racist comments attributed to Sessions and his prosecution of three African Americans for voter fraud who were later acquitted led to his rejection when he was nominated to serve as a federal district judge.⁹ Following Sessions' nomination by President-elect Donald Trump to serve in the Trump administration as U.S. Attorney General, these issues have resurfaced drawing significant media attention.¹⁰

Receiving comparatively little coverage, however is Sessions' checkered record on corporate crime during his two-year stint as Alabama Attorney General, from 1995 to 1997.

As the nation's chief law enforcement officer and head of the U.S. Department of Justice, the U.S. Attorney General is responsible for pursuing and prosecuting corporate criminals. Some news reports speculate that the Justice Department under Sessions would mean strong enforcement against corporate crime.¹¹

But Sessions' actions when serving as Alabama Attorney General undermine confidence in Sessions' tough talk during his U.S. Senate service. For starters, immediately after taking office Sessions fired 69 employees, over a third of the state attorney general's office staff, significantly diminishing its law enforcement resources.¹² His record on corporate crime

⁹ Lena Williams, "Senate Panel Hands Reagan First Defeat on Nominee for Judgeship," *The New York Times* (June 6, 1986), <http://www.nytimes.com/1986/06/06/us/senate-panel-hands-reagan-first-defeat-on-nominee-for-judgeship.html>

¹⁰ See "Jeff Sessions' Record on Civil Rights, Race Revisited After Trump's Attorney General Tap," Associated Press (Nov. 19, 2016), <http://fortune.com/2016/11/19/jeff-sessions-race-civil-rights/>; Daniella Diaz, "Civil rights groups denounce Sessions as AG," CNN (Nov. 18, 2016), <http://www.cnn.com/2016/11/18/politics/civil-rights-jeff-sessions-attorney-general-donald-trump/index.html>; Nikita Vladimirov, "Congressional Black Caucus head: 'Sessions's civil rights record is appalling'," *The Hill* (Nov. 18, 2016), <http://thehill.com/homenews/administration/306798-cbc-chairman-sessions-civil-rights-record-is-appalling>

¹¹ See Jodi L. Avergun, Bret a. Campbell, Joseph V. Moreno et al. "White Collar Crime Law Enforcement in a Trump Justice Department - 8 Predictions," *The National Law Review* (Nov. 29, 2016), <http://www.natlawreview.com/article/white-collar-crime-law-enforcement-trump-justice-department-8-predictions>, and Mike Koehler, "I was taught if they violated a law, you charge them. If they didn't violate the law, you don't charge them," *Corporate Compliance Insights* (June 21, 2010), <http://corporatecomplianceinsights.com/exchange-jeff-sessions-james-cole/>. During a Senate Judiciary Committee hearing, Sessions took pride in the Savings & Loan prosecutions he oversaw during his time at the U.S. Attorney's Office for the Southern District of Alabama. He has questioned the idea that the potential failure of a company is a reason not to prosecute, and said that BP, regarding its responsibility for the Deepwater Horizon spill, "should be held liable for their responsibilities to the extent of their existence."

¹² By the end of Sessions' time as attorney general, the size of the staff bounced back somewhat, down 28 instead of 69. Robin DeMonia, "Sessions Hinges his Appeal on Track Record as a Prosecutor," *Birmingham News* (Sept. 29, 1996)

when he served as Alabama's chief law enforcement officer should complicate the view that corporate criminals should fear – and that supporters of strong enforcement should cheer – a Justice Department under Sessions.

On the contrary, the apparent refusal of Sessions to seek justice against Morrison's and Big Tobacco, his mishandling of a corporate criminal investigation against Tiece and his siding with corporate interests in a U.S. Supreme Court case pitting business interests against consumer interests do not bode well for corporate criminal justice enforcement.

SECTION I: For Sessions' Alabama Attorney General Campaign, He Received Contributions From an Executive From a Corporation He Declined to Prosecute

Morrison's Inc., an Alabama-based restaurant chain, was a contractor with the Alabama Commission on Aging starting in 1982. Morrison's Inc.'s contract was to provide food for a federally funded program that served meals to senior citizens. While Morrison's Inc.'s contract stipulated the meals should contain 100 percent meat, between 1985 and 1990 the company was found to have diluted its beef and turkey with as much as 25 percent textured vegetable protein¹³ — a soy product substitution that enabled the company to pocket an extra \$216,000 from savings.¹⁴ Don Siegelman, a Democratic official and then Alabama's Attorney General, filed a civil case against Morrison's, which led to the company paying a \$1 million settlement.

At the time, Arthur Outlaw, vice chairman of Morrison's, was also the chairman of the Alabama Republican Party.¹⁵ Four years later, Outlaw reportedly contributed \$20,000 to Sessions' campaign for Alabama Attorney General.¹⁶

Meanwhile, Jeff Sessions was U.S. Attorney for Alabama's Southern District.¹⁷ An investigator with the U.S. Department of Health and Human Services briefed Sessions' staff on the diluted meat. Sessions' office declined to pursue any criminal or civil action against Morrison's. Sessions downplayed the matter, saying "[T]his matter was, at most, a violation of the terms of the contract."¹⁸

¹³ *Mobile Register*, "Outlaw-Sessions link draws Evans' fire," (Nov. 3, 1994)

¹⁴ Robin DeMonia, "Evans Says Sessions' Decisions Uneven" *Birmingham News* (Nov. 3, 1994)

¹⁵ *Mobile Register*, "Outlaw-Sessions link draws Evans' fire," (Nov. 3, 1994)

¹⁶ Robin DeMonia, "Evans Says Sessions' Decisions Uneven" *Birmingham News* (Nov. 3, 1994)

¹⁷ Biography of U.S. Senator Jeff Sessions of Alabama via Sessions' U.S. Senate web page, accessed Dec. 21, 2016, <http://www.sessions.senate.gov/public/index.cfm/biography>

¹⁸ *Mobile Register*, "Outlaw-Sessions link draws Evans' fire," (Nov. 3, 1994)

After Sessions was no longer serving as U.S. Attorney, prosecutors in the Alabama U.S. Attorney's Office told federal officials that it might be possible to bring racketeering charges against Morrison's over the diluted meat, but that the terms of the Siegelman settlement made a conviction unlikely.¹⁹

Alabama Attorney General Jimmy Evans, who highlighted Sessions' refusal to pursue Morrison's during his unsuccessful re-election campaign and ultimately was unseated by Sessions, said, "It's clear charges should have been brought and they weren't brought because a high-ranking Mobile Republican was involved."²⁰

SECTION II. As Alabama Attorney General, Sessions Refused to Join Other States in Suing the Tobacco Industry

In May 1994, Mississippi Attorney General Mike Moore filed a lawsuit against the tobacco industry.²¹ Many states followed suit, leading ultimately to a historic settlement in 1998 between tobacco companies and 46 states to hold the industry accountable for tax dollars spent dealing with tobacco-related illnesses and end cigarette advertising that targets children.²²

Alabama Attorney General Jeff Sessions in 1996 resisted joining the states – then more than a dozen, including Mississippi – that had sued the tobacco industry.²³ Instead, he formed a task force to consider whether the state should join the other states in suing. The chair of the task force was Deputy Attorney General William Pryor, a former corporate lawyer and outspoken critic of the litigation.²⁴ At the same time Sessions' office was considering whether to sue the tobacco industry, Sessions was campaigning to become Alabama's junior U.S. senator, a campaign he ultimately would win.

Sessions was criticized for accepting campaign money from the tobacco industry. An opinion piece in the Mobile register read:

¹⁹ Ibid.

²⁰ Ibid.

²¹ Michael Janofsky, "Mississippi Seeks Damages From Tobacco Companies," *The New York Times* (May 24, 1994), <http://www.nytimes.com/1994/05/24/us/mississippi-seeks-damages-from-tobacco-companies.html>

²² Master Settlement Agreement web page via Public Health Law Center (accessed Jan. 3, 2017), <http://www.publichealthlawcenter.org/topics/tobacco-control/tobacco-control-litigation/master-settlement-agreement>

²³ *The Sun Herald*, "Ala. Might Not Sue Companies Conflicting Rulings Hamper Some States" (Sept. 27, 1996)

²⁴ Bill Rankin, "Judicial nominee a conservative true believer"

Atlanta Journal-Constitution (May 25, 2003), <http://www.freerepublic.com/focus/f-news/917396/posts>

At a time when attorneys general of neighboring states are aggressively attacking the ravages of tobacco, why is our attorney general strangely silent? Is Mr. Sessions too busy with his campaign? Does his silence and inaction indicate approval of tobacco's role in the health of Alabama? Are there simply too many other priorities keeping him away from the tobacco issue? All good questions. Where are the answers?²⁵

The writer said Sessions could eliminate the appearance of the industry using campaign money to buy influence by “doing the right thing and suing the hell out of big tobacco.”²⁶

Just over one week later, Sessions pledged to return the tobacco industry’s contributions to his senate campaign.²⁷

Other Alabama officials were divided over suing the tobacco companies. Governor Fob James also resisted going to court against the tobacco companies.²⁸ However, Don Siegelman, then Alabama’s Lieutenant Governor, supported suing and filed his own lawsuit against the tobacco companies, partly on behalf of Alabama taxpayers.²⁹

Deputy Attorney General Pryor insisted that only the attorney general could sue on behalf of the state and voiced skepticism of the suit’s goals by questioning how the companies could be sued without harming consumers or shareholders.³⁰

After Sessions won his Senate campaign, Pryor, a more forceful opponent of the tobacco litigation, succeeded him as attorney general. Though Pryor’s task force report claimed that tobacco-related deaths save taxpayer money rather than cost money, he ultimately signed on to the tobacco settlement. The delay meant that Alabama would receive only about half of the settlement amount that it would have received had the state signed on sooner.³¹

²⁵ Stan Tiner, “Tobacco and its role in Alabama's U.S. Senate campaign Suit ready to file,” *Mobile Register* (April 28, 1996)

²⁶ Ibid.

²⁷ “Sessions says he'll return tobacco money,” *Mobile Register* (May 9, 1996)

²⁸ *The Sun Herald*, “Ala. Might Not Sue Companies Conflicting Rulings Hamper Some States” (Sept. 27, 1996)

²⁹ Bill Poovey, “Tobacco not an issue in Senate race Sessions not interested in filing lawsuit; Bedford won't say if he favors such action,” *Mobile Register* (Sept. 4 1996)

³⁰ Ibid.

³¹ Bill Rankin, “Judicial nominee a conservative true believer”

Atlanta Journal-Constitution (May 25, 2003), <http://www.freerepublic.com/focus/f-news/917396/posts>

SECTION III: As Alabama Attorney General, Sessions Botched an Alleged Fraud Case His Office Brought Against an Alabama Corporation

In 1995, Alabama Attorney General Jeff Sessions launched a criminal investigation into Tieco, an Alabama-based industrial equipment company.³² Sessions announced the probe as one of the state's largest-ever commercial fraud investigations, and said the case could involve millions of dollars and more than 50 victims. But the attorney general's office's handling of the case would lead to the disdainful dismissal of the state's case by a circuit judge³³ and touch off nine years of litigation between Tieco and an alleged victim, a Pittsburgh-based steel and fossil fuel corporation, U.S. Steel (then USX).³⁴

The Sessions' office used a search warrant in August 1995 to acquire accounting documents from Tieco. Apparently lacking the resources to fully interpret the more than 100 boxes of Tieco's documents and data on its own, Sessions' office took what some considered to be an unusual step: to interpret the data, the attorney general's office turned to USX, an alleged victim of Tieco's fraud.³⁵ Two days after USX received the data from Sessions, USX sued Tieco for filing false bills to USX and bribing USX employees who knowingly paid for goods that were not shipped.³⁶ No criminal charges had yet been brought. Tieco's relationship with USX was not solely as a customer; in some aspects of their businesses, they were competitors.³⁷

Tieco's lawyer, Mark White, criticized Sessions' collaboration with USX, claiming that the collaboration gave USX an unfair advantage in its civil suit. "The use of a search warrant to assist a private party in a civil case is unprecedented and quite frankly the consequences of those acts remain to be seen because nobody's ever tried it that I know of," said White.³⁸ Elsewhere, White said, "Perhaps what we're dealing with is [Sessions'] complete lack of

³² Robin DeMonia, "Company Blasts Sessions Tieco: Release of Records by Attorney General Unfair," *Birmingham News* (Feb. 9, 1996)

³³ Frank Sikora, "Judge Raps AG Office in Tieco Suit," *Birmingham News* (July 17, 1997)

³⁴ U.S. Steel, LLC v. Tieco, Inc., 261 F.3d 1275 (11th Cir. 2001); USX Corp. v. Tieco, Inc., 227 F.R.D. 680 (N.D. Ala. 2004)

³⁵ Robin DeMonia, "Company Blasts Sessions Tieco: Release of Records by Attorney General Unfair," *Birmingham News* (Feb. 9, 1996)

³⁶ Robin DeMonia, "AG Ordered to Release Document to Firm in Investigation," *Birmingham News* (March 1, 1996)

³⁷ Frank Sikora, "Judge Raps AG Office in Tieco Suit," *Birmingham News* (July 17, 1997)

³⁸ Robin DeMonia, "AG Ordered to Release Document to Firm in Investigation," *Birmingham News* (March 1, 1996)

experience in state court matters. But his ignorance is no excuse.”³⁹ USX’s civil suit was soon dismissed for the duration of the criminal proceedings against Tieceo.⁴⁰

Sessions’ office defended its actions, describing its work with USX as a standard way for a prosecutor to work with an alleged crime victim.⁴¹ Tieceo sued Sessions and filed a complaint with the state Ethics Commission over his handling of the investigation. Sessions was cleared by the commission of any wrongdoing. Tieceo dropped the suit against Sessions.⁴²

As the criminal case proceeded, the attorney general’s office was criticized by Circuit Judge James Garrett, who oversaw the proceedings. Garrett ordered the attorney general’s office to release documents related to the state’s investigation and said “The state of Alabama has exhibited and continues to exhibit a complete disregard for its responsibilities under the laws of the state of Alabama, the Alabama Rules of Criminal Procedure and the Code of Professional Responsibilities.” Garrett’s criticism came just a few days after Sessions’ was elected to the U.S. Senate.⁴³

As the case proceeded, the charges against the USX employees accused of conspiring with Tieceo eventually were dropped, as were the charges against Tieceo itself.⁴⁴

In Judge Garrett’s dismissal order, he included harsh words for the Alabama Attorney General’s Office under Jeff Sessions (which was now under the purview of Sessions’ successor, William Pryor). The judge accused Sessions’ office of “serious and wholesale prosecutorial misconduct,”⁴⁵ and said that it had shown “flagrant disregard of the constitutional rights of those accused ... this court can only conclude it is dealing with either intentional and deliberate misconduct or conduct so reckless and improper as to constitute conscious disregard for the lawful duties of the Attorney General.”⁴⁶ Garrett also criticized Sessions’ office for not considering that USX’s desire to have Tieceo investigated could have stemmed from USX’s interest in gaining a competitive advantage, for working so closely with USX that sharing expenses was considered, and for the selective transcription

³⁹ Robin DeMonia Company Blasts Sessions Tieceo: Release of Records by Attorney General Unfair, *Birmingham News* (Feb. 9, 1996)

⁴⁰ “Judge dismisses suit against Tieceo New suit may be filed after criminal charges are considered,” Associated Press, Sept. 1, 1996

⁴¹ Robin DeMonia, “Should State Pay for Sessions’ Lawyers?” *Birmingham News* (Sept. 15, 1996)

⁴² *Ibid.*

⁴³ Staff Report, “AG’s office ordered to release file,” *Mobile Register*, (Nov. 10, 1996)

⁴⁴ Robin DeMonia, “Case in Tieceo Probe Dismissed Because it Was in Wrong County,” *Birmingham News* (Oct. 8, 1996); Robin DeMonia, “Charges Dropped Against USX Trio,” *Birmingham News* (April 15, 1997); Frank Sikora, “Judge Raps AG Office in Tieceo Suit,” *Birmingham News* (July 17, 1997)

⁴⁵ “Judge Out of Line, Sessions Says,” *Montgomery Advertiser* (July 18, 1997)

⁴⁶ Frank Sikora, “Judge Raps AG Office in Tieceo Suit,” *Birmingham News* (July 17, 1997)

of grand jury testimony. The misconduct by Sessions' staff, Garrett said, was "so pronounced and persistent that it permeates the entire atmosphere for this prosecution."⁴⁷

The state declined to appeal Garrett's dismissal of the criminal charges. Tieceo's lawyer said the decision "acknowledges all of Judge Garrett's findings and is the ultimate insult which Mr. Sessions so richly deserves."⁴⁸

USX later sued Tieceo under the federal Racketeer Influenced and Corrupt Organizations Act, and Tieceo sued USX. The jury ruled in Tieceo's favor in 2001. That ruling was overturned on appeal in 2004.

IV: As Alabama Attorney General, Sessions Sided With Corporations and Against Consumers in a U.S. Supreme Court Case

In *Adams v. Robertson*, the U.S. Supreme Court faced a legal question arising out of a class-action lawsuit against Liberty National Life Insurance Company, which allegedly fraudulently urged customers to switch to a policy that provided less coverage for cancer treatment. The question before the court regarded whether it violated due process for the court to approve the settlement when the class members were not afforded the right to opt out. The case arose out of a ruling by the Alabama Supreme Court, which affirmed the trial court's approval of the settlement that blocked further lawsuits.⁴⁹

Alabama Attorney General Jeff Sessions filed a brief supporting the settlement.⁵⁰ Twenty-two other state attorneys general, however, took the opposite side, citing, among other issues, the opportunity to strengthen requirements that defendant companies notify class members about awards to which they are entitled. One of the attorneys who represented aggrieved class members from Mobile, Alabama, in the Liberty National case called Sessions' filing "obscene." Sessions' deputy, William Pryor, defending the brief, said, "It's a major concern to the state that the company stay solvent so policy-holders can continue to have coverage."⁵¹

⁴⁷ "Judge Out of Line, Sessions Says," *Montgomery Advertiser* (July 18, 1997)

⁴⁸ Robin DeMonia, "State Won't Appeal Dismissal of Tieceo Case," *Birmingham News* (July 26, 1997)

⁴⁹ Eddie Curran, "Sessions fights 22 other AGs He's the only one defending Liberty National 'non-opt-out' settlement, as Supreme Court hears appeal," *Mobile Register* (December 13, 1996)

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

Corporate interests that also filed briefs supporting the settlement restrictions include the American Council for Life Insurance, Exxon Corporation and the National Association of Manufacturers.⁵²

The court under Chief Justice William Rehnquist unanimously dismissed the case, noting that the question was not properly presented to the state court.⁵³ John Roberts, Jr., currently chief justice of the U.S. Supreme Court, was at the time lead counsel representing Liberty National Life Insurance Company before the court.

CONCLUSION

These anecdotes contradict the claim that the Justice Department would aggressively and effectively prosecute corporate crime under Jeff Sessions as attorney general.

On the contrary, these instances show Sessions, as Alabama Attorney General repeatedly failing as a top law enforcement officer to combat corporate crime and wrongdoing. This failure will contribute to the perception that U.S. citizens are fundamentally unequal before the law. As increasingly aggressive police tactics and zero-tolerance sentencing are meted out against the nation's poor and minorities while white-collar and corporate criminals are handled with increasing delicacy, a Justice Department under Sessions will make these unacceptable circumstances even worse.

The Senate should reject his nomination.

⁵² *Adams v. Robertson*, 520 U.S. 83 (1997) <https://supreme.justia.com/cases/federal/us/520/83/case.html>

⁵³ *Ibid.*