



Attorney General Jeff Sessions: A Rubber Stamp for the Chief Executive?

*What His Record as Alabama Attorney General
Portends for America as Donald Trump's Attorney General*

Introduction

President-elect Donald Trump has designated Alabama Senator Jefferson B. Sessions to be his nominee to lead the Justice Department as the 84th Attorney General of the United States. How would Sessions perform in that role?

Would Sessions be an independent voice, fighting Trump Administration corruption, acting as a bulwark against Trump's abuse of constitutional text and values? Or would Sessions be a rubber stamp for an administration that [threatens](#) to be the most corrupt since [Warren Harding](#)? For clues, we have examined Sessions' record as Alabama Attorney General under Governor Fob James – compiled from archived press reports and original source documents.

As discussed below, during his brief two-year tenure as Alabama Attorney General from 1995-97, Sessions was asked by Governor James or his Administration for formal legal advice, and on at least two occasions Sessions produced legally flawed opinions that aligned with James' known preferences, increased his power, and enabled James to act as he intended.¹ Troublingly, those Sessions opinions also aligned with the interests of one of Alabama's most politically powerful and deep-pocketed organizations at the time, whose leadership took credit for electing James and Sessions to office (an assessment of his own political career that Sessions publicly agreed with), and an official of which personally contributed to Sessions and benefited from one of his opinions.

Years later, after Sessions had left the Attorney General's office and won election to the U.S. Senate, his legal reasoning in those same two opinions was overruled by broad majorities of the Alabama Supreme Court, including one ruling written by a Republican justice. The fact that those rulings came so long after he issued his opinions, however, meant Sessions' actions had served their political purpose for Governor James, making them essentially *faits accomplis* – demonstrating that even with the courts as a check, an Attorney General willing to bend to pressure and corruption can do nearly irreversible damage.

¹ As Alabama Attorney General, Jeff Sessions issued [opinions](#) from February 1, 1995 to December 30, 1996, and issued 627 opinions in all. Eight of those opinions are addressed to Governor James by name ([95-00182](#), [95-00261](#), [95-00262](#), [96-00049](#), [96-00052](#), [96-00162](#), [96-00226](#), and [96-00242](#)). Five of those address the Governor's appointment power in specific instances.

Sessions did at least once issue an [opinion](#) to Governor James that appeared to contradict the Governor's preferences. Little in that instance was at stake, however, apart from the retirement funding of a [vanquished](#) political opponent. Sessions also issued an [opinion](#) favoring disclosure of campaign finance [expenditures](#). (As a Senator, however, he – along with other Republicans – [exhibited](#) a “[full reversal on disclosure](#)” in 2012.) And the Republican Sessions did burnish his anti-corruption bona fides by successfully [prosecuting](#) staff of the former Democratic Governor Jim Folsom, Jr.

But those bright spots during Sessions' tenure as Alabama's Attorney General are, the record shows, outweighed by more examples of Sessions' questionable judgment, including: “clear[ing] the way” for a politically connected insurance company's planned no-bid coverage of state road work; urging the Alabama Ethics Commission to approve corporate-funded junkets for state employees; providing formal support for a local sheriff's use of chain gangs; and fighting successfully against seating the first African American intermediate appellate court judges in Alabama's history.

This record only deepens doubt about the ability of Sessions to stand up to President Trump to defend basic constitutional values, police Trump's unethical behavior, and monitor, investigate, and, if necessary, prosecute the raft of conflicts of interest that Trump, his family, and his executive branch nominees will import into his Administration immediately upon taking the oath of office.

In short, the record indicates that – if he were to perform as he did as Alabama's Attorney General – a U.S. Attorney General Jeff Sessions could be little more than a legal rubber stamp for President Donald Trump and his Administration, at a time when America most needs an independent, anti-corruption watchdog leading the Justice Department.

1994

Turn back the calendar to 1993. Jeff Sessions was in his 12th year as U.S. Attorney for the Southern District of Alabama, originally nominated to the post by President Ronald Reagan in 1981. Having later been nominated to be a federal judge by Reagan in 1986, only to be rejected by the Senate Judiciary Committee due to damning accusations of racism by his colleagues, Sessions [decided](#) in December 1993 to run for Alabama Attorney General. He took the opportunity in that first set of midterm elections after Democrat Bill Clinton became President (whose own election pushed the Republican Sessions out of his U.S. Attorney post) to win a new job.

In 1994, Alabama had a Democratic Governor and Attorney General. The Governor's office was held by Jim Folsom, Jr., (son of Jim Folsom, Sr., another Alabama Governor) who had ascended to that office in April 1993 as the Lieutenant Governor, after Alabama's first Republican Governor since Reconstruction, Guy Hunt, was forced to [resign](#) following a criminal conviction for illegally using campaign and inaugural funds to pay personal debts. The Attorney

General who prosecuted Hunt was Jimmy Evans, himself the latest in a [nearly unbroken line](#) of Democratic Alabama Attorneys General since Reconstruction.

Of course, the November 1994 election was a balloting bloodbath for Democrats across the country, and it marked the end of Democratic dominance of Alabama politics. Jeff Sessions won his race with Evans [handily](#), but Folsom lost his bid to win the Governorship in his own right to Republican Fob James by less than [11,000 votes](#) out of 1.2 million cast. Alabama's Governor and Attorney General were both Republicans for the first time since 1873.

Then and now

Echoes of 1994 ring today. After eight years of the Democratic administration of President Barack Obama, Republican Donald Trump was elected his successor with a slim Electoral College majority while losing the popular vote by more than [2.8 million](#). Trump has designated Sessions to be his Attorney General and, if confirmed, would put Sessions in a similar relationship to Trump as Sessions had to Fob James 22 years ago.

One key difference between Alabama politics then and the national scene today, however, is that the Alabama state legislature in 1994 was [controlled](#) by Democrats opposed to the James Administration. In 2017, of course, both houses of Congress and the White House will be controlled by Republicans. This is a critical point, one we will return to later.

On the other hand, a key similarity between Alabama politics then and our nation's politics now is the influence of corporate money on the outcomes of our campaigns, our government's decision-making, and the independence of our elected officials.

Alfa

Alabama politics in 1994 was dominated by a few corporate interests, perhaps the largest of which was the [Alabama Farmers Federation](#), the political arm of the [Alfa Insurance Company](#). Alfa, in fact, apparently ["control\[ed\] politics in Alabama"](#) in the 1990s – and still has [influence](#) today. According to one [columnist](#), "Alfa paid out more than \$4.3 million in campaign contributions for the 1994 elections, sometimes concealing the money in nifty if legal dodges to lengthen its shadow without voters knowing how darkly it blocked the sun of open government."

Alfa funded the successful 1994 campaigns of Fob James for Governor, Jeff Sessions for Attorney General, and Perry Hooper, Sr. for Chief Justice – all three Republicans – spending [nearly \\$150,000](#) on James and [\\$73,000](#) on Sessions. As for Hooper, according to one [report](#) of his 1994 campaign financing, the Alabama Republican Party spent "\$384,822 on behalf of his campaign. Much of the party's money came from the Alabama Farmers Federation and the Republican National Committee.... \$10,000 ...[came] from the Conservative Coalition PAC, which got its money from the Alabama Farmers Federation, which runs Alfa insurance." As one

columnist [described](#), “Alfa provided a significant portion of the money for Perry Hooper Sr.’s campaign for chief justice.” (Hooper [died](#) in April 2016.)

Alfa’s then-chief executive officer took credit for their victories, on the record, [saying](#), “We got Fob James. I feel like we did. We got Jeff Sessions.” Later in that interview the executive added, “I’ll tell you another one we got. We got the Supreme Court chief justice. Do you know how important that is?” Alfa was also [accused](#) of playing political hardball, hiring private [investigators](#) to develop material on elected officials who opposed them.

The month after he won his race for the U.S. Senate in 1996, Jeff Sessions [said on the record](#), “Without Alfa’s support, I could not have run” for Attorney General, which was his springboard to Washington. Sessions was awarded the Alabama Farmers Federation “Service to Agriculture” Award [in 1998](#).

Senator Sessions’ Test for Attorney General Sessions

Of course, while incredibly problematic, such connections between moneyed interests and elected officials are neither new nor definitively corrupt. Additional questions must be asked about the actions such an elected official takes once in office.

Examining Sessions’ record as Alabama Attorney General is therefore particularly important given the standard to which, as a U.S. Senator, Sessions has held other nominees for U.S. Attorney General. Speaking to then-Judge Michael Mukasey [in 2007](#), President George W. Bush’s nominee to lead the Justice Department, Senator Sessions said:

I’ve said repeatedly that **the Attorney General has got to say no to the President if he wants to do something, just like a good corporate lawyer has to tell the CEO sometimes, "We can't do it that way, Mr. CEO"** or "Mr. President. You can do it this way, but you can't do it that way." And then you've got to be able to articulate and defend the legitimate actions of your President, the head of the executive branch, and I'm not sure we've done that very well. And so things have gotten pretty confusing.
[emphasis added]

As the examples that follow indicate, when Senator Sessions was Alabama Attorney General, he likely failed his own standard for U.S. Attorney General on more than one occasion.

Alfa, Sessions, and the Auburn University Board of Trustees

In 1996, Governor Fob James – a former Auburn [football star](#) – wanted to appoint three people to seats on the Auburn University Board of Trustees, two of which were still filled. Those two members, Bobby Lowder and James Tatum, were serving past the expiration of their terms because the Alabama Senate had not yet confirmed their replacements – a requirement of the Alabama Constitution.

James formally asked Attorney General Sessions' office for an opinion of the situation (the precise date of that request isn't clear) and Sessions provided one on [May 31, 1996](#). His office concluded that James could consider those seats vacant because the incumbent Trustees had outlasted a statutorily under-defined "reasonable time" since their terms should have expired.

According to one [report](#), on June 3, 1996, "James, carrying a new opinion from the attorney general's office, marched into a board meeting and escorted his appointees – who have yet to receive the blessing of the Alabama Senate – to the trustee table." James ousted Lowder and Tatum, announced his appointments to replace them, and [named himself](#) chairman of Auburn's athletic committee.

Lowder and Tatum reportedly [said](#) that "James gave them no warning he planned to remove them at Monday's trustees meeting." James [said](#), "What I'm doing is going strictly by the attorney general's opinion."

One of James' two appointees was Phil Richardson, then-[executive vice president of Alfa insurance company](#), who reportedly said "James called him Sunday night and told him" of the appointment. Multiple contemporaneous reports noted the contributions that Alfa made to the James campaign. The other James appointee, former state Agriculture Commissioner Albert McDonald, was later also [reported](#) to be "aligned closely with ALFA."

One [article](#) from 1997 reported that a state Senator, whose vote Governor James needed to confirm his Trustee picks, said that he had spoken with Alfa's chief executive. The state Senator said the Alfa CEO "threatened him about his continuing support for Auburn trustee and Montgomery banker Bobby Lowder. Alfa wants to replace Lowder, whose term on the Auburn board has expired, with former Alfa executive Phil Richardson. But the state Senate has failed to take up Richardson's nomination."

(Note: Lowder [contributed](#) \$25,000 to the 1994 campaign of Governor Jim Folsom, the Democrat who James defeated. Lowder was the chair of Colonial Bank, which [failed](#) in 2009, and was a wealthy and [controversial figure](#) at Auburn. There was also complicated history between Lowder and Alfa. As one report [stated](#), Bobby "Lowder's late father, Ed, was the founder of Alfa insurance in 1946. About 34 years later, a bitter split occurred between him and other company leaders, including [Phil] Richardson, that resulted in [Ed] Lowder retiring in 1980 as executive vice president.")

On June 4, 1996, Lowder and Tatum [initiated a lawsuit](#) against Governor James.

A June 5, 1996 report [stated](#) that Auburn University's football coach at the time, Terry Bowden – son of the legendary coach [Bobby Bowden](#) (a Trump 2016 [supporter](#)) – said, "I'm frightened as far as what all this means as a citizen of Alabama and as the decision maker in the football program... I have been shocked by the scenario. I don't think any of this is being done in

the best interests of Auburn University.” (In 1998, Bowden reportedly [accused](#) Lowder of pushing him out of the Auburn coaching job.)

Almost two weeks later, reports revealed that Alfa executive Phil Richardson had given Attorney General Sessions a \$1,000 contribution on [May 29, 1996](#). As one report put it, “Within days [of that contribution], Gov. Fob James cited [the] advisory opinion by Sessions in seating Richardson on the Auburn University Board of Trustees....” As another report [stated](#), “Sessions returned the contribution from Richardson, which had been solicited, on June 4, according to [Sessions campaign spokeswoman Claire] Austin and Sessions' campaign disclosure report filed with the Federal Election Commission.” As another report [bluntly put it](#), Sessions “issued an opinion that allowed Gov. Fob James to replace three trustees of Auburn University. The decision benefited an executive of Alfa Insurance, one of Sessions' key campaign donors.”

Sessions' Republican opponent in the upcoming June 25, 1996 runoff election for the GOP nomination to the U.S. Senate was Sid McDonald (now deceased). McDonald's campaign manager was [Steve French](#), who [said](#), “This was politically motivated as a way for Jeff Sessions to pay off a campaign debt to Alfa. This is politics as usual in Montgomery.” Sessions' spokeswoman [denied](#) the charge, saying, “Absolutely at no time was there a relationship between the contribution and the opinion. Jeff Sessions would not do that.”

Sessions was apparently [surprised](#) by the news that the Auburn controversy, and his opinion, generated. “I knew there was some interest in it, although frankly it has caused more ripples than I expected,” the attorney general said following a campaign appearance in Huntsville....”

On September 13, 1996, a complaint [was filed](#) with the Alabama Ethics Commission against Sessions regarding the Auburn trustee issue. According to the report linked above, the complaint said, “Alfa's political action committees and its officials have donated \$30,000 to Sessions campaigns during the past two years.” The complaint also said, according to the above report, “It appears that Sessions took campaign contributions and turned around and issued an attorney general's opinion that offered a direct benefit to his campaign contributors.” The complaint was not acted on because of Ethics Commission [policy](#) (at least at the time) to not consider complaints filed within 60 days of an election. [The complaint is not available online. The filer, Rufus Hartman, has likely [passed away](#). Following a December 2016 general query on the availability of ethics complaints from the 1990s, an attorney with the Alabama Ethics Commission replied, “We are subject to Grand Jury Secrecy. Anything relative to a complaint is confidential and cannot be disclosed.”]

On Friday, [May 9, 1997](#), the Alabama Supreme Court [reinstated](#) the ousted Auburn trustees and ruled against Governor James' appointments – and therefore Attorney General Sessions' conclusion – by a vote of 6-2, in an opinion written by Republican Justice Gorman Houston. As one report [explained](#), “the Supreme Court emphasized that a trustee's term remains in effect until a replacement is appointed by both the governor and confirmed by the Senate.” Another report [said](#), “The Alabama Supreme Court ruled Friday that [the ousted

trustees] may continue as trustees past the expiration of their terms because the people James appointed to replace them have not received the Alabama Senate's blessing, as the state Constitution requires.”

Commenting on the ruling, State Sen. Lowell Barron, an Auburn trustee, [said](#), “The Supreme Court put us back under the rule of law instead of the rule of Fob,” referring to Governor James. One columnist [said](#), “James could find not a single justice who thinks he has the right to appoint new trustees without consent of the Senate.” While the Supreme Court’s opinion does not directly address AG Sessions’ formal 1995 opinion, their conclusion is a direct and apparently unanimous repudiation of it. As another columnist [said](#), “Indeed, the only ‘victory’ James has managed in the Auburn case was an opinion issued by former Attorney General Jeff Sessions that Lowder and Tatum were out and Richardson and McDonald were in. But a lawsuit was filed, and the Supreme Court, reading the state constitution for exactly what it says, disagreed.”

As yet another columnist [said](#), “As attorney general... Jeff Sessions was asked for an opinion relating to the nomination of two Alabama Farmers Federation candidates for Auburn's Board of Trustees. Only Sessions knows whether his non-binding opinion, favorable to the Alfa people, was based on his unbiased view of the law or on the fact that, as he once put it, ‘Without Alfa's support, I could not have run’ for attorney general.”

Alfa, Sessions, and Chief Justice Perry Hooper, Sr.

The 1994 campaign for Alabama Chief Justice was between Democratic incumbent Sonny Hornsby and his Republican challenger, the former Judge Perry Hooper, Sr. While the vote count initially [favored](#) Hornsby, the race was called (and eventually decided) for Hooper by a razor-thin [262](#) votes. There were [roughly 2,000](#) absentee ballots that were in dispute, however, and because counting some or all of them could have changed the outcome of the election, they became the subject of litigation – with Attorney General Sessions [intervening](#) on behalf of Hooper to prevent the counting of those ballots – that prevented Hooper from assuming office for almost a year, until [October 1995](#).

That left the intervening 11 months between November 1994 and October 1995 without a formally declared winner in the race for Alabama Chief Justice. Hornsby continued to serve as Chief Justice for that period, excepting his judicial participation in the absentee ballot litigation.

Early in this period, however, on [January 25, 1995](#), Governor James – through his acting finance director – decided to ask Attorney General Sessions for a formal opinion on whether Hornsby should continue to be paid while the absentee ballot litigation continued. One report [explained](#), **“The James administration has asked Attorney General Jeff Sessions whether Chief Justice Sonny Hornsby is entitled to hold office and thus receive his paycheck until the courts decide whether Hornsby won re-election.”**

Another report further [explained](#), “A state law provides that Supreme Court justices shall continue holding office ‘until their successors are elected and qualified.’ Hornsby, relying on that provision, has said he will continue to serve until the election contest is decided. But Perry Hooper Sr., Hornsby's Republican opponent in the general election, argues that another state law passed later provides only that justices shall serve six-year terms.”

That same report continued, “Michael Tucker, a spokesman for Hornsby, said Hornsby asked [Supreme Court Clerk Bob] Esdale and other legal advisers for advice and was told that all three state laws dealing with the terms of judicial officers were re-enacted in 1975 and had been in the State Code since 1852. ‘We feel like these three statutes clearly require Mr. Hornsby to remain in office until a successor is elected and qualified,’ Tucker said. Hornsby has stepped aside from participating in any decision on questions relating to the disputed absentee ballots but is performing all the other duties of his office and thus is entitled to his paycheck, Tucker said.”

That same report added, “Donnie Claxton, spokesman for Gov. Fob James, said the decision to question Hornsby 's pay status wasn't politically motivated.”

On February 1, 1995, Attorney General Sessions issued his formal [opinion](#) that Hornsby’s term as Chief Justice had expired – since his service had persisted past a “reasonable time” since the election – and therefore he should not be paid. That same day, Governor James used the Sessions opinion to “[choke off](#)” Hornsby’s salary.

On February 2, 1995, Hornsby [filed](#) a lawsuit against James, asking “a Montgomery judge Thursday to verify that he is, indeed, head of the state's legal system.” (To underline the political message of Governor James’ move, enabled by Sessions: James also “choked off” the salary of another official, George Wallace, Jr., at the same time as Hornsby, whose post-election status was also in question. A report [notes](#), Wallace “said that he could not afford to serve long without compensation.”)

Note that two strands of litigation were then running in parallel: one to determine whether the disputed absentee ballots would be counted (litigation that Hornsby was not a party to); the other, whether Hornsby would continue to be paid as Chief Justice while he served during the ongoing absentee ballot dispute (which Hornsby initiated against Governor James, who justified his action with Sessions’ formal opinion).

While the absentee ballot question, and hence the outcome of the 1994 Alabama Chief Justice race, was [resolved](#) in federal court by October 1995 – effectively installing the Alfa-supported Republican Judge Perry Hooper, Sr. by 262 votes – the litigation over Hornsby’s salary, and whether James properly revoked it for the 11 months Hornsby served past election day 1994, was still live.

On January 5, 1997, a special panel of retired judges sitting as the Alabama Supreme Court was [announced](#) to hear Hornsby’s appeal of a lower court ruling [dismissing](#) his claim. (All

the then-current justices recused themselves because they had each worked with Hornsby.) Sessions was no longer Attorney General, having been elected to the U.S. Senate the previous November.

On May 30, 1997, the special panel of the Alabama Supreme Court [heard](#) Hornsby's appeal, and on September 19, 1997 [ruled](#) in Hornsby's favor by a vote of 7-2. “We conclude that under the unique circumstances of this case, Hornsby's tenure as chief justice continued beyond his six-year term,’ the panel said in an opinion by Tuscaloosa Circuit Judge John M. Karrh,” [reported one article](#).

That same report [continued](#), “Former Alabama Attorney General Jeff Sessions said in a 1995 advisory opinion that Hornsby – who stayed in office, even though he trailed Hooper in the vote count, while disputed absentee ballots were reviewed – was not entitled to the pay or benefits. But the special court's decision said Hornsby, while the dispute was going on, remained the state's ranking judge and ‘had all the powers, rights, functions, duties, obligations, and benefits attendant upon the office of the chief justice.’” Meanwhile, Hornsby's [attorney](#) “said the decision removes any doubt about the validity of Hornsby's decisions during the dispute. He said it was ‘purely partisan political motivation’ that led to Hornsby being denied his benefits.”

Later that year, on [December 19, 1997](#), the regularly empaneled **Alabama Supreme Court ruled along party lines by a vote of 5-3 against Alfa Insurance (five Democrats vs. three Republicans)**, in a dispute over whether or not Alfa properly refused to pay out a claim by a homeowner and policyholder whose house burned down on February 16, 1994 (the year of the race for Chief Justice between Hornsby and Hooper). Republican **Chief Justice Hooper was among the three in the minority, who voted in favor of Alfa**. According to one [report](#), “Chief Justice Perry Hooper Sr. said the majority's ruling would let a policyholder hide his dishonesty for the initial year of the insurance policy and then ‘be free from the consequences of being untruthful. I do not believe one should benefit from being untruthful.’”

Sessions, Palomar Insurance Corp., Perry Hooper, Jr., and state road work

Perry Hooper, Jr. is a former Alabama State Representative and the son of former Alabama Supreme Court Chief Justice Perry Hooper, Sr. In 1996, Hooper Jr. was Governor Fob James' [floor leader](#) in the Alabama House of Representatives, while Hooper was also employed by the Palomar Insurance Corporation. Over the years, Hooper facilitated millions of dollars in state business to Palomar, earning him hefty [commissions](#) on his sales.

According to an April 1996 [report](#), “Palomar Insurance Corp., which employs state Rep. Perry Hooper Jr., ... proposed a statewide contract to provide all the insurance coverage required for private contractors on state highway projects.” The report continued, “Lumping the coverage together under a state-administered plan would mean ‘millions of dollars to

Palomar or any other company locking up the business,' said Jim Gray, executive director of the Alabama Road Builders Association, whose members oppose the change."

That same report said of Palomar, "The Montgomery-based company had no state business four years ago when it hired Hooper. Since October 1994, Palomar has snagged five of the state's eight largest insurance contracts, the Montgomery Advertiser has reported."

As one editorial [put it](#), "What's wrong with this picture? A state legislator who works for an insurance company proposes that one company provide all the insurance coverage required for private contractors on state highway projects instead of continuing to spread it out among a variety of insurers. And, of course, the company the legislator works for would be in the running for the lucrative insurance contract.... **This proposal stinks to high heaven.**" [emphasis added]

Yet five weeks earlier, in February 1996, **Attorney General Sessions had already issued an [opinion](#) in response to a request from the Director of Alabama's Department of Transportation, Jimmy Butts, that "[clear\[ed\] the way for the Palomar plan.](#)"** While the Sessions opinion included a vague caution that Palomar's proposal "would involve a number of complex issues and should be entered into, if at all, with care," the executive director of the Alabama Road Builders Association said of the proposal, "It's a real nightmare. We think it could open a tremendous legal problem for the state." The Sessions opinion didn't discuss, or even mention, the ethical implications of Hooper's connection to the proposal.

Months later, in September 1996, a news report [revealed](#) "State Transportation Director Jimmy Butts sold property to a company owned by Palomar Insurance Corp.'s president shortly before Palomar made a multi-million dollar proposal to insure all state road projects.... Butts and [the then-President of Palomar Insurance, George W.] Skipper adamantly denied a connection between the land buy and the Palomar proposal that could have meant millions of dollars in commissions for Palomar and, opponents say, huge headaches for contractors."

That same report continued, "While Skipper and Butts said the land sale had been talked about for years, Butts said he never spoke with Skipper about the insurance proposal. He said he only talked to Palomar agent Tony Craft once. State Rep. Perry O. Hooper Jr., R-Montgomery, another Palomar agent, also was involved, but Butts said he never discussed the proposal with Hooper."

The Palomar proposal ultimately was not approved (it is unclear exactly when that decision was made, but it was sometime between the news reports of April and September 1996). "Butts said that even if the proposal had been approved," the September report [stated](#), "Palomar could have only won the contract by competitive bid. But several insurers, who would only speak on condition of anonymity, expressed a lack of confidence in the bidding process as it applies to state insurance contracts. Palomar's success is their reason for concern. The company made news in June when it was reported that the Alabama Bureau of Investigation

was conducting a probe into the company's contracts with the state and into the possible use of influence by Rep. Hooper in securing those contracts.”

Hooper, Jr. was the subject of probes by the Alabama Ethics Commission in [1996](#), [1998](#), and [2000](#). In a [bizarre](#) move, Governor Fob James even [tried to quash](#) the 1996 investigation of Hooper that James himself had initiated (he failed). Yet while cleared of ethics charges in 1996 and 1998, Hooper ultimately received the largest ethics fine in the state’s history at the time, [\\$12,000](#), in 2001. But due to Alabama’s [weak ethics laws](#), he was fined not for using his elected position to facilitate contracts with Palomar Insurance, his employer, but instead [because](#) he “failed to report two years’ worth of contracts he sold to the state for Palomar Insurance. State law requires public officials and employees who contract with government entities to report the contracts to the commission within 10 days.” After being defeated for reelection in 2002, Hooper later became a [vice president](#) at Palomar Insurance.

Even if the conflict of interest posed by Hooper’s participation in the Palomar proposal wasn’t clear when Attorney General Sessions issued his opinion of February 1996 – and it should have been – it certainly ought to have become clear enough by June 1996 that revisiting his office’s “clear[ing] the way” for the Palomar proposal, with only tepid caution and no alertness to the glaring ethical alarms of Hooper’s involvement, was in order. Searches of the public record offer no indication that Sessions did this.

Sessions and corporate-sponsored junkets for state employees

In [June 1995](#), Attorney General Sessions’ office sent then-Deputy Alabama Attorney General Kristi Lee to the Alabama Ethics Commission to argue in two cases that government workers “should be allowed to travel at the expense of private companies.” “Why would we require the state to pay?” Lee asked. “This is a free education to an employee.”

Regarding the fact that “state Revenue Department division chief Eugene J. Akers wanted to take a three-day trip paid for by a company upgrading a computer system in his office,” Ethics Commissioners “pointed out that the itinerary for the three-day trip included two days of golf tournaments” and that “the planned travel was an unnecessary ‘nice trip’ for officials.” The Ethics Commission rejected the argument of Sessions’ office. As one report [explained](#), “The Alabama Ethics Commission says state and local governments, not private companies, should pick up the tab for employee junkets.”

The decision of Attorney General Sessions to argue for relaxing ethical standards against corruption of government employees with privately sponsored travel makes little sense. Apart from the obvious conflict-of-interest concerns in letting corporations and other private parties provide favors to state officials – whose allegiance should be to the people alone, without even the appearance of impropriety – the Ethics Commission had [ruled](#) only six months earlier in two separate cases, by votes of 5-0, that corporate-sponsored travel for state or local government workers was unethical. In one case, an Alabama mayor accepted a trip to Switzerland to tour a

wastewater treatment facility, paid for by an engineering company. "I think if they want to show him a sewer treatment plant, they can take a \$10 video and do a very good job," the executive director of the ethics agency said. In the other case, the Commission rejected an Atlanta-based company's request to pay expenses for 30 state legislators and governor's office staff members to visit its Georgia hunting preserve.

Sessions and chain gangs

In [February 1995](#), Alabama Prison Commissioner Ron Jones – appointed by Governor Fob James – announced his plan to revive the use of chain gangs in the state prison system. "With leg shackles, we can put higher-risk inmates to work," Jones said. Reports at the time explained that Governor "James took office last month with a pledge to put more inmates to work and to try to find ways to relieve the backlog of state inmates in county jails without building additional state prisons."

While presenting remarks at a Huntsville banquet in [September 1995](#), Attorney General Sessions voiced his emphatic support for the chain gang plan of Commissioner Jones. According to one report, **Sessions said that he "endorses the inmate chain gangs started in May by State Prison Commissioner Ron Jones and intends to 'aggressively defend any legal challenge against it.'" Sessions went on to say, "I believe it's constitutional and proper... and I don't think it's hurt the state's image at all."** Sessions also stated that he was actively seeking the GOP U.S. Senate nomination following the announced retirement of Senator Howell Heflin.

The Alabama NAACP disagreed with Sessions' assessment of chain gangs. Months earlier, in [March 1995](#), the Rev. O. Wendell Davis said, "This concept will take us backward in time in terms of racial image and relations for all black men. The image of the black man in prison is impossible to repair now, and this will hurt the image of our beloved state, as well, when people travel through it and see chain gangs."

Governor James denied this charge. "The idea of inmates having to work has nothing to do with race at all," he said. According to one [report](#), "Asked if the sight of blacks in chains would give the state a black eye, James said, 'Of course not. It sends the right kind of signal. You commit a crime in this state and you go to prison (and) you're going to work awfully hard for a period of time before you earn certain privileges. That's the whole idea behind that.'"

In December 1996 – the month after his election to the U.S. Senate in one of his final opinions as Attorney General – **Sessions issued an [opinion](#) to Marshall County Sheriff "Mac" Holcomb providing legal support for the Sheriff's desire to use chain gangs**, as long as they were "voluntary." Sessions' opinion reads, "I see no legal prohibition against shackling inmates together to work on the voluntary County Inmate Work Crew, given that the inmates freely, knowingly, and intelligently volunteer for such work."

As for the sanguine Sessions view of the toll that the chains took on Alabama's image, observers disagreed. "Alabama finally seemed ready to be accepted into the 20th century; with the shackling of chain gangs, it seems our reputation is clanking back into a dark history," [read](#) one Alabama editorial. Civil Rights icon and U.S. Circuit Judge Nathaniel Jones wrote a scathing concurring opinion in one 1996 case requiring the extradition of a fugitive, Phillip Chance, to Alabama. Originally convicted as a juvenile there, Jones wrote of Chance [saying](#), "I shudder to think what would have happened to [one of the Scottsboro boys, Haywood] Patterson had he been returned to Alabama. Today, Chance will not be faced with lynch mobs or counterfeit retrials. He will, however, be tossed into a prison system that has adopted the barbaric 'discipline' of the chain gang." Sessions reportedly [called](#) Jones' remarks "highly improper and really irresponsible and said they showed Jones' liberal bias." (Chance, while still a prisoner in Alabama, [died](#) there in November 2016.)

As for the image of Governor James, [more than once](#) he was compared in Alabama media to Governor George Wallace in the wake of the chain gang announcement. George Wallace, Jr. himself said, "People stop me all the time and say, 'This sounds like what your father was saying.' The return of chain gangs is a prime example. People want common sense. People are tired of crime."

By October 1999, the political value of touting chain gangs (called "slavery by another name" in one 2012 [documentary](#)) had diminished enough in Alabama that they were finally phased out of use – not because of their cruelty but, ostensibly, because of their cost. As one editorial [explained](#), "The chain gangs were ended because the guards used to watch the prisoners are needed instead for duty inside the state's prisons because there's such a shortage of prison guards."

Finally, in 2002, the U.S. Supreme Court [ruled](#) that an Alabama state prison inmate could sue the state for chaining him to a hitching post, which was found unconstitutional. As one report [said](#), "Justices seemed disgusted with treatment of Larry Hope, an inmate who says he was twice chained to an outdoor pole in 1995 and denied food and water as punishment for fighting while assigned to a chain gang." Justice Stevens wrote for the majority that Hope "was treated in a way antithetical to human dignity – he was hitched to a post for an extended period of time in a position that was painful, and under circumstances that were both degrading and dangerous."

Sessions' attack on seating Alabama's first black appeals court judges

In [January 1994](#), African American plaintiffs filed a lawsuit challenging the way appeals court-level judges are chosen in Alabama. As one report [explained](#), "A federal court lawsuit filed... by members of the black Alabama Democratic Conference... seeks to end at-large elections for the state appellate courts, including the Supreme Court." As [reported](#) in July 1994, "Justice Ralph Cook [was then] the only black justice of the state Supreme Court, and **the Court of Civil Appeals and Court of Criminal Appeals always have been all-white.**" [emphasis added]

While at first he [defended](#) Alabama’s judicial election system, then-Attorney General Jimmy Evans (D) – in an effort to head off litigation that he [said](#) the state “will lose, and ... waste millions of dollars in legal fees” to fight – decided to try and arrange a settlement with the challengers. Eventually, a complex agreement was hammered out among the parties and [approved](#) by U.S. District Judge Myron Thompson, who presided over the case:

By Dec. 31, 1996, the state will create two new posts each of its courts of civil and criminal appeals, bringing the number of judges on each court to seven. The governor will appoint judges to each new post from a list of nominees selected by a judicial nominating commission. The nominating commission will consist of five members, two of whom must be blacks selected by attorneys for the Alabama Democratic Conference, a predominantly black political group; one member will be selected by the predominantly black Alabama Lawyers Association; one member will be selected by the predominantly white Alabama State Bar Association; the fifth member will be elected by the other four members.

The appointed judges will serve six-year terms before facing voters for election. If one or more vacancies occur on the Supreme Court after January 1995, and if there are fewer than two blacks or other members selected by the nominating commission serving on the court at the time, the vacancies will be filled with nominees selected by the commission. On Jan. 1, 1996, 1998 and 2000, if the Supreme Court has fewer than two blacks or other justices selected by the nominating commission on the Supreme Court, the post of any justice up for election that year who decides not to seek re-election will be filled by the appointment of a nominee selected by the commission; if all justices subject to re-election decide to seek re-election, the state will create additional Supreme Court posts to maintain at least two blacks or justices selected by the nominating commission on the court.

The basic outcome of this agreement, if carried out, would be a landmark: **for the first time in the history of the state of Alabama, African American judges would serve on the state’s intermediate courts of appeals**, in addition to increasing their presence on the state Supreme Court. Yet while the agreement had solid enough foundation in the confines of Judge Thompson’s chambers, the political underpinnings of the settlement in the 1994 election season were fragile. Republicans almost immediately attacked the plan, and continued their attack relentlessly.

Jeff Sessions was a leader of this attack. In July 1994, per one [report](#), “Jeff Sessions of Mobile, the Republican candidate for attorney general, on Thursday blasted a plan by Jimmy Evans that would allow blacks to be appointed to the state's top courts. Sessions said Evans, the Democratic attorney general, cut a deal to protect incumbent judges, preserve the influence of plaintiff trial lawyers on the courts and garner for himself the support of black political groups, all by violating **a constitutional requirement that judges be elected.**” [emphasis added]

Another July article [explained](#), “Jeff Sessions, a former U.S. attorney in Mobile, said the settlement creates a ‘racial quota’ for the courts, takes away voters' rights to elect judges and protects incumbent judges.” Another article that month [reported](#), “Jeff Sessions of Mobile, the Republican candidate for attorney general, said many past hindrances to black voting rights in Alabama already have been eliminated, but if further changes must be made, Evans' settlement plan is not the way to do it.” Talking to Judge Thompson in one hearing, according to one [report](#), “Sessions stressed that it was put together by Democratic Attorney General Jimmy Evans and members of the Alabama Democratic Conference, a black political group that is run by Joe Reed and is an official wing of the Democratic Party.”

By Election Day 1994, the settlement had become a “key issue” in the Sessions-Evans race for Attorney General. Sessions [said](#), “When I'm elected attorney general, I will do everything in my power to see this settlement overturned and, if necessary, pursue it all the way to the U.S. Supreme Court.” Meanwhile, according to another [report](#), “Republicans hope[d] to claim their first seats on the Alabama Supreme Court by reminding voters again and again about a plan by Democrats to appoint five blacks to the state appeals court,” while another [stated](#), “Republicans plan to launch a united assault on their Democratic rivals, using as ammunition a new plan to add black judges to state appeals courts.” After Sessions won his election to Alabama Attorney General, he did pursue his appeal of the settlement.

Finally, by [January 1996](#), Sessions convinced a panel of the U.S. Court of Appeals for the 11th Circuit ([composed](#) of Ford, George H.W. Bush and George W. Bush appointees) to overturn the settlement and send the parties back to square one.

At no time does the record show that Sessions ever attempted to solve the problem of Alabama’s complete lack of African American jurists on its intermediate appeals courts. As of [September 2016](#) – just as when the initial anti-bias litigation was filed in 1994 – **Alabama still has never had an African American judge serve on its Criminal or Civil Courts of Appeal**. Yet unlike in 1994, no black judges [currently](#) serve on the Alabama Supreme Court.

A noteworthy coda to this story: Two months after the 11th Circuit ruled in his favor, following months of arguing that there is “a constitutional requirement that judges be elected” in Alabama, Attorney General Sessions received a request for an opinion from Governor James. James asked Sessions whether the judgeships at issue in the 11th Circuit litigation “should be appointed.” Lo and behold, on March 26, 1996, Sessions delivered his [opinion](#) that indeed, Governor James *could* appoint judges to the open seats, after all.² The irony was not lost on Alabama observers.

As one editorial [pointed out](#), “Now that the U.S. Justice Department has approved Alabama's expanded trial and appeals courts, voters should be allowed to pick who fills those

² Ironically, Sessions’ reasoning in this opinion was largely sustained by the Alabama Supreme Court by a vote of 6-1 in a 1998 [ruling](#). The reasoning Sessions used in his 1994 campaign and first 14 months of his tenure as Alabama Attorney General more closely mirrors the dissent in that case.

seats. Especially since the state, led by Attorney General Jeff Sessions, successfully fought against a controversial settlement to appoint blacks to the state's appeals courts on the grounds that the settlement would have denied Alabama voters the right to elect judges. Yet, Gov. Fob James is hinting that he might try to appoint judges to three new circuit court positions.... He has asked Sessions to research the legality of such a move. The appointments would be a mistake.”

Another editorial [remarked](#), “Gov. Fob James says he prefers letting voters decide who will fill three new circuit judgeships recently approved by the U.S. Justice Department. We wholeheartedly agree. But the governor, armed with a controversial opinion last week from Attorney General Jeff Sessions that such an election this year is all but out of the question, says he might appoint the judges anyway. That would be wrong.”

In April 1996, armed with Sessions’ opinion, Governor James [appointed](#) judges to those seats anyway.

Conclusion

The Trump [transition](#) team and their supporting outside [organizations](#) list the experience of Senator Jeff Sessions as Alabama Attorney General as a qualification for Sessions to become the 84th Attorney General of the United States. A review of the public record of his tenure in that role from 1995-97, however, shows a legal officer who, at key moments, supplied his state’s chief executive – Governor Fob James – with flawed legal opinions that aligned with the Governor’s known preferences and most powerful contributor, and increased the Governor’s power – even as Sessions made other decisions that, overall, should lead observers to question both his commitment to fundamental constitutional values and the enforcement of the most rigorous ethical standards on officials in the government.

In a moment when the same party controls both elected branches of our national government, independence, ethical fortitude, and the will to enforce the law even against political friends are essential attributes of the Attorney General. Those qualities become critical when faced with the myriad conflicts of interest posed by a President like Donald Trump, as well as his family and the array of his cabinet and other Administration officials as they enter government service. In that light, the test that Senator Sessions set out for the U.S. Attorney General in 2007 is a good one: **“The Attorney General has got to say no to the President if he wants to do something, just like a good corporate lawyer has to tell the CEO sometimes, ‘We can't do it that way, Mr. CEO.’”**

The record shows that too many times as Alabama Attorney General, Jeff Sessions failed his own test. For an America living under its first CEO President – leading potentially the most corrupt Administration in nearly 100 years – a rubber stamp U.S. Attorney General will not do.