

January 9, 2017

The Honorable Charles E. Grassley
The Honorable Dianne G. Feinstein
United States Senate Committee on the Judiciary
Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Grassley and Ranking Member Feinstein:

We submit this letter in connection with the nomination of Senator Jeff Sessions for the position of Attorney General of the United States. We urge you to reject his nomination because he is ethically unfit to undertake the weighty role of the country's chief law enforcement officer.

We are law professors who have decades of experience as teachers of legal ethics in numerous law schools around the country. Many of us focus our scholarship on lawyers' ethics in the criminal justice system. Some of us served as prosecutors or defense attorneys in state or federal courts prior to our current positions. Some of us continue to litigate trial and appellate criminal cases in law school clinics. All of us strive to uphold the integrity of the legal profession and to inculcate the significance of the values of honesty, trustworthiness, and moral character in those we educate and train to be lawyers.

As Attorney General of Alabama, a position analogous to, if less powerful than, that of the nation's chief prosecutor, Senator Sessions demonstrated that he lacked the fundamental qualities required for the job. Our conclusion is based upon our knowledge, training, experience, scholarship, and relevant ethics rules and standards, as well as the judicial opinions of the Circuit Judge of Jefferson County and the 11th Circuit Court of Appeals. We have also reviewed the letter of Professor Bennett Gershman submitted to this Committee that details the facts underlying Senator Sessions' handling of that case as the Attorney General of Alabama.¹

¹ Letter of Professor Bennett Gershman to Honorable Charles Grassley and Dianne Feinstein, January 6, 2017.

As more fully set forth in Professor Gershman's letter, in 1995, the Office of the Alabama Attorney General investigated and prosecuted TIECO, an industrial equipment sales company, and a number of its employees, in what it publicly proclaimed to be the case of the "greatest magnitude that the Attorney General's Office had undertaken in the last twenty-five years."² In a stunning dismissal of all ten indictments, Judge James S. Garrett, Circuit Judge of Jefferson County, Alabama, excoriated the Office of the Attorney General. The Court held that "the misconduct of the Attorney General in this case far surpasses in both extensiveness and measure the totality of any prosecutorial misconduct ever previously presented to or witnessed by this Court...."³ The misconduct is so pronounced and persistent that it permeates the entire atmosphere of this prosecution and warrants a dismissal of these cases."⁴

Among the facts cited by the Court to support this conclusion were the following:

- (1) "the Attorney General's repeated refusals and failures to produce exculpatory evidence";⁵
- (2) "the Attorney General's repeated denials of the very existence of exculpatory evidence subsequently discovered by the Defendants";⁶
- (3) "the flagrant disregard of the constitutional rights of those accused";⁷
- (4) "the completely incredible and deceptive testimony of so many witnesses this Court treated as officers of the court (some of whom were either assistants or agents for the Attorney General)";⁸
- (5) "the Attorney General's refusal and/or failure to comply with the previous discovery orders issued by this Court";⁹ and
- (6) the "apparent changing of evidence."¹⁰

In describing the misconduct, the court made clear that the listed misconduct was "only a summary" of some of the misconduct in the case.¹¹

In an uncommon conclusion for any court, Judge Garrett said that "this Court can only conclude it is dealing with either intentional and deliberate misconduct or conduct so reckless and

² Opinion of James S. Garrett, Circuit Judge of Jefferson County, Alabama, *State of Alabama v. TIECO, et al.*, Case No. CC-96-2961 (July 16, 1997) at 4 (hereinafter cited as "Op.>").

³ Op. at 2.

⁴ Op. at 13.

⁵ Op. at 2.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Op. at 11.

¹⁰ Op. at 13.

¹¹ Op. at 13.

improper as to constitute conscious disregard for the lawful duties of the Attorney General and the integrity and dignity of this court and this Judge.”¹²

Judge Garrett contrasted the shocking conduct of the Attorney General’s Office in *TIECO* with cases of prosecutorial misconduct based upon a single failure to produce exculpatory evidence or other lesser misconduct. According to the Court, the poor system of supervision and management within Attorney General Sessions’ office contributed to the pervasive misconduct in *TIECO*.¹³

Upon examination of the detailed facts in this case, we concur with Professor Gershman’s conclusion that “Senator Sessions, as the chief law enforcement officer in the State of Alabama, together with his assistants and investigators, engaged in a pattern of flagrant, willful and repeated misconduct, which undermined the integrity of the criminal justice system, harmed the reputation of entities and individuals who were wrongfully accused of criminal conduct, and violated the ethical and constitutional duties of a prosecutor to serve the cause of justice fairly, and the administration of criminal law with dignity and respect.”¹⁴

The *TIECO* case, one of the last cases prosecuted by Senator Sessions as a state attorney general, is a most pointed example of how Senator Sessions might administer justice as Attorney General of the United States.

The integrity and legitimacy of our country’s legal system depend upon the ethical leadership of those in positions of authority. The Attorney General is this country’s chief “Minister of Justice.” Senator Sessions has demonstrated that he is unqualified for this role.

Respectfully,

Cheryl Bader
Associate Clinical Professor of Law
Fordham University School of Law*

Vincent M. Bonventre
Justice Robert M. Jackson Distinguished Professor of Law
Albany Law School

David N. Cassuto
Professor of Law
Elisabeth Haub School of Law at
Pace University

¹² Op. at 2.

¹³ Op. at 4-6.

¹⁴ Letter from Bennett Gershman at 11-12.

Elizabeth Chambliss
Professor of Law & Director, NMRS Center
on Professionalism
University of South Carolina School of Law

Kami N. Chavis
Professor of Law and Associate Dean of Research
and Public Engagement
Wake Forest University School of Law

Liz Ryan Cole
Professor of Law
Vermont Law School

George W. Conk
Senior Fellow
Stein Center for Law & Ethics
Fordham Law School

Angela J. Davis
Professor of Law
Washington College of Law
American University

Anthony Davis
Lecturer in Law
Columbia Law School

Peter L. Davis
Associate Professor of Law Emeritus
Touro Law School

Lawrence Fox
Crawford Lecturer in Law and Director
of the Ethics Bureau
Yale Law School

Jill Friedman
Associate Dean
Pro Bono & Public Interest Program
Rutgers Law School

Barbara S. Gillers
Adjunct Professor of Law
New York University School of Law

Cynthia Godsoe
Associate Professor of Law
Brooklyn Law School

Lissa Griffin
James D. Hopkins Professor of Law
Elisabeth Haub School of Law at
Pace University

Peter A. Joy
Henry Hitchcock Professor of Law
Washington University in St. Louis

Richard Klein
Professor of Law
Touro Law School

Theo Liebmann
Clinical Professor of Law
Maurice A. Dean School of Law at Hofstra University

Lynn Mather
SUNY Distinguished Service Professor Emerita
University at Buffalo School of Law

Vanessa Merton
Professor of Law
Elisabeth Haub School of Law at
Pace University

James G. Milles
Professor of Law
University at Buffalo School of Law

Ronald C. Minkoff
Association of Professional Responsibility Lawyers, Past President
Former Adjunct Professor of Law

Russell G. Pearce
Edward & Marilyn Bellet Chair in Legal Ethics, Morality and Religion
Fordham University School of Law

Carla D. Pratt
Associate Dean for Academic Affairs and Professor of Law
Dickinson Law School
Penn State University

Jenny Roberts
Professor of Law and Associate Dean for Scholarship
American University
Washington College of Law

Norman I. Silber
Professor of Law
Maurice A. Deane School of Law
Hofstra University

Marjorie Silver
Professor of Law
Touro Law School

Abbe Smith
Professor of Law and Co-Director of the E. Barrett Prettyman
Fellowship Program
Georgetown School of Law

Ellen Yaroshefsky
Professor of Law and Legal Ethics
Maurice A. Deane School of Law
Hofstra University

Steve Zeidman
Professor of Law
City University of New York School of Law

Richard Zitrin
Lecturer in Law
Hastings College of Law
University of California

*Affiliations are listed for identification purposes only.