



Jeff Sessions Is Indeed on the Way Out

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More than two thousand libertarians attended the annual Freedom Fest conference last weekend in Las Vegas. Numerous speakers focused their criticism of the Trump Administration on one man — Attorney General Jeff Sessions.

It wasn't personal animus toward Jeff Sessions. Some of the speakers know him and like him. I even heard a few critical of Sessions to acknowledge that he is a "good and decent man" but he is "wrong...on issues that 'libertarians care about.'" More than one of his critics was even sympathetic — noting that Sessions was being subject to a "slow water torture" — unseemly and undignified, and even unfair to Sessions, that is the leaks, and even the past statements by President Donald Trump. This weekend conference concluded before the most recent statement by POTUS.

I myself have had occasion to relieve people of their responsibilities, that is, to fire them. But I would treat those people with respect and courtesy and surely not criticize them in semi-public or, worse, in a public situation. I would know that doing so would demoralize their colleagues, even those who might support the dismissal. After all, if the man or woman being fired is treated shabbily, they could be next!

The fact that Jeff Sessions was the first major political figure to endorse Donald Trump early in the primary season entitled (and entitles) him, at the least, to respectful consideration and professional courtesy by the Administration. Then Senator Sessions took quite a risk; his early endorsement of Trump triggered ridicule, even some ostracism. His colleagues wondered about his judgment. And then he gave up his seat in the U.S. Senate to accept this cabinet appointment. He is not some billionaire of staggering wealth who can simply return to the hedge fund after an Administration appointment goes sour.

Some of the libertarians at Freedom Fest from, say, the Cato Institute or the Reason Foundation, or other think tanks, even hoped that on matters involving economics, AG Jeff Sessions' Department of Justice would be oriented toward the free market and not for rampant antitrust enforcement that stifles innovation and competition. There is good reason to believe that on such matters involving economics and regulations, Jeff Sessions *is* the right guy at the right time in the right place. But those enlightened policies can continue, even under a successor.

And, to be sure, some of the "open borders" libertarians are not keen on this attorney general's tough stance on immigration. However, many in Trump's base favor a hard-line. And even those

in the middle do not favor a purist position on open borders. And give credit to President Trump and AG Sessions: Trump's election and the Administration's hard line have effectively reduced illegal border entries. Expect a successor to be, if not as hardline as Sessions on immigration, to be much closer to his position than "open borders."

Many libertarians simply have found Sessions, in their view, as too much of an authoritarian. Not only libertarians but many mainstream conservatives are increasingly concerned about an imperial executive, and that concern extends to the Department of Justice. That's another discussion, but regarding Sessions it's been under way since at least early June. (See [my June 8 article](#) in these pages, "Is Jeff Sessions on the Way Out?")

Many libertarian speakers at Freedom Fest late last week and over the weekend faulted Sessions for his apparent renewal of the failed War on Drugs. Long ago William F. Buckley Jr. came to question the efficacy of the War on Drugs. That "War" is an anachronism and has fallen out of favor with many conservatives beyond libertarians. AG Sessions — *without consulting the White House* — unilaterally directed U.S. Attorneys throughout the country to return to "tough" prosecution of drug offenders. They were skeptical, and they cannot simply be dismissed as Obama holdovers who are "soft on crime."

In a related matter, congressional Republicans believe in states rights and are weary of the federal government enforcing a tough marijuana policy on states which decriminalize marijuana. AG Sessions is tough on marijuana, a stance at odds even with some of his friends and closest supporters, like conservative Congressman Dana Rohrabacher who has long opposed the War on Drugs, favors marijuana decriminalization and is a strong advocate of medicinal marijuana, especially for PTSD, and is gaining support in Congress for his legislation, including his bill to prohibit federal interference with states on the marijuana issue. Rohrabacher has publicly pledged to take the battle to legalize not only medicinal marijuana but recreational marijuana to Sessions.

At Freedom Fest there were assorted films, and panels on those films, about the problems of an American society overwhelmed with more and more laws, where people don't even know which laws they violate; uneven and volatile enforcement of those laws; required "mandatory minimum" sentencing used to compel someone possibly innocent of a substantial crime and facing draconian punishment *for that crime* if found guilty, to intimidate the accused to plead (plea bargain) to a lesser offense. Leading conservatives have led the movement for criminal justice reform. Sessions is not merely AWOL, he has been, in the view of his conservative critics, on the wrong side. (But not always — he did work with New Jersey Democratic senator Cory Booker to reduce the disproportionate sentences for crack cocaine, which unfairly targeted more African-Americans; sadly, Booker bitterly opposed Sessions' nomination for AG, claiming it was solely because Sessions opposed criminal justice reform, and not perhaps also because Booker probably wants to run for president or, failing that, vice president.)

Jeff Sessions is, one might say more broadly, on the wrong side of history when it comes to the macros of criminal justice reform. You have major conservative figures — from Newt Gingrich and Grover Norquist to former Ronald Reagan attorney general Ed Meese (and Meese respects

and admires Sessions, whom he considers a friend) — who have expressed strongly the need for criminal justice reform. And at Freedom Fest, the number of Americans incarcerated was seen not as a conservative nostrum, but as a conservative heresy.

Perhaps another major criticism at Freedom Fest — and this criticism has been simmering among some key Republicans in the Senate and House — is the matter of “asset forfeiture.” Sessions supports what many view as an unconstitutional practice of seizing assets, and then the person whose property is seized must prove he is not a criminal, i.e., effectively guilty until proven innocent (at his expense). In typical Big Government fashion, the proceeds of this theft of property go to government, thus incentivizing its practice of providing a slush fund to local law enforcement.

On the surface, the exit of Jeff Sessions will be portrayed by the media as full of intrigue, related to, they will suggest, a temper tantrum by President Trump who will be depicted as consumed with the “Russia crisis.” And many Americans will interpret his departure as further evidence of some awful conspiracy. But as others have inferred, this whole Russian thing may involve “a cover-up without a crime.” We shall see.

In the meantime, when it comes to the impending departure of Jeff Sessions, the truth is more elusive, and perhaps too subtle for some of the president’s enemies in the mainstream media to understand. It may indeed be that President Trump remains upset that Jeff Sessions had recused himself and, in the president’s view, set the stage for the rogue special counsel, and the subsequent and developing fishing expedition. (Like the IRS agents, the prosecutors and investigators are incentivized to “come up with something.”)

But while some around the president may urge his prudence in proceeding with what appears to many to be the unseemly treatment of AG Sessions, others are fearful to provide counsel that contradicts the president’s made-up-mind. Who would accept the job? And will it be someone credible? Would it be someone who would lead the conservative movement’s emphasis on criminal justice reform, a coalition that includes many devout Christian conservatives who favor restorative justice — and this group is also part of the Trump base. If so, that person could mitigate some of the conspiracy scenarios likely to be propounded by those afflicted with TDS (Trump derangement syndrome). A Sessions successor more in tune with the conservative movement for criminal justice reform could defuse (maybe a little) the hysterical and vitriolic attacks on the president and his administration; expect, for example, even Van Jones, who has praised the Koch brothers for their reformist leadership and funding, to see a silver lining in what CNN will obsess as a dark cloud.

Here is the take-away. President Trump wants to replace Jeff Sessions because the more the special counsel expands his investigation, the more the president blames Sessions, because of his recusal. The president is in a loop; he simmers over this. The president accepts none of the blame himself for any strategic failure to confront the Russia controversy head-on and not necessarily convert his true believer hardened enemies, but mollify or soften at least some of his critics. But the reality is that key people in the Trump Administration, including especially Jared Kushner (who gained credibility yesterday with his solid public appearance), are unhappy with

the *policies* of the Department of Justice under Attorney General Jeff Sessions. And that is why dumping Sessions has traction. That, as I wrote in early June when I predicted the exit of this attorney general, is the story, not Russia.