



Sessions Leaves Feds Sidelined In Police Misconduct Fights

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A departing move by former Attorney General Jeff Sessions has effectively removed a legal tool that the U.S. Department of Justice has used to battle police misconduct and will restrict the federal government from pursuing such changes until a new administration changes course, which is no sure thing, experts say.

Just before resigning at President Donald Trump's request on Nov. 7, Sessions signed a memo targeting so-called consent decrees. The DOJ uses those court-enforced agreements in a variety of situations, including environmental cases against polluters and anti-discrimination matters regarding housing or voting rights. However, experts agreed that Sessions' decision to change department policy was likely motivated by their ability to require police departments to reform.

"Jeff Sessions wanted to make sure that his legacy would very much reflect not only his law and order agenda, but his disdain for federal oversight and federal intervention with respect to police departments which had policing issues," said Kanya Bennett, an attorney with the [ACLU's](#) Washington Legislative Office.

In the past, the DOJ has reached consent decrees with police departments in places like Los Angeles and New Orleans after stepping in and investigating allegations ranging from illegal searches to excessive force. The agreements have imposed changes that those departments have to make going forward and installed monitors to make sure the departments are meeting the requirements.

Although consent decrees were already disfavored under Sessions' tenure, the seven-page memo makes that stance an official department policy, one that does not end now that Sessions himself has exited. The memo also requires any consent decrees to get official approval from the deputy attorney general or the associate attorney general before it can be finalized and lays out factors for assessing whether the decree would be appropriate.

The memo effectively would end the use of those agreements, according to Lynda Garcia, who worked in the Special Litigation Section of the DOJ's Civil Rights Division during the Obama administration.

"Technically, this memo doesn't stop the work," Garcia said. "What it does is create these obstacles that are really hard to clear to get the consent decree approved."

She added that she believed the goal of the obstacles — and their likely impact — was to prevent DOJ attorneys from pursuing investigations and cases against local police departments to begin with.

However, the news was met with praise by some, including the Fraternal Order of Police, whose national president, Chuck Canterbury, said in a statement, "Once again, Jeff Sessions has delivered on promises made to law enforcement by the president and his administration."

Canterbury characterized the use of consent decrees under the Obama administration as "heavy-handed and coercive" measures meant to "impose [the administration's] will on local agencies," and said the previous administration relied on them while rejecting more collaborative approaches.

But a number of former DOJ officials worried that the new requirements would likely end the department's ability to crack down on police departments that have been found to violate residents' civil rights, adding that Sessions had previously also shut down other initiatives in the department, such as an program in the Office of Community Oriented Policing Services that worked with reform-minded police chiefs.

"The attorney general, from the moment he took office, has expressed hostility about the use of civil rights laws to bring about reform in critical institutions of government," said Jonathan M. Smith, who led the Special Litigation Section from 2010 to 2015.

"This is just another step, where he is trying to tie the hands of career staff who handle these cases from employing effective remedies," Smith added.

Garcia and Smith also both worried that the memo would signal to police departments that the DOJ no longer cared about reform, and that even police departments bound by a pre-existing consent decree would no longer feel pressure to comply.

Clark Neily, vice president for criminal justice at the Cato Institute, a libertarian think tank, noted that he was also disturbed by Sessions' stated rationale for the memo, which indicated he had constitutional concerns about the federal government asserting influence over other jurisdictions in this arena.

"The 14th Amendment was added to the Constitution specifically to empower the federal government to protect the civil rights of citizens against state violation," Neily said. "So the idea that the federal government lacks the power to protect individuals from civil rights violations committed by their own state and local officials is totally baseless."

Going forward, it's unclear if the new policy will remain in effect long-term. The memo could easily be rescinded by any future attorney general, but experts were unsure if that would actually

happen.

"The Department of Justice is a pretty tradition-bound institution," Smith said. "So once something like this goes on the books, it can be removed by the stroke of a pen of a new attorney general, but attorneys general rarely do that without very, very careful consideration."

At least for the short term, experts said, police reform efforts would likely have to proceed without the DOJ.

Neily said that he hoped this would push people to support even more methods of advocating for reform.

"I'm not saying this [memo] is a net good," he said, "but there is some good in encouraging people to not put all of their eggs in the DOJ basket."

Bennett said that in the absence of DOJ oversight, she hoped to see state attorneys general and local officials take up the baton, as happened in Illinois after the DOJ stopped pursuing reform efforts for the Chicago Police Department, and imagined that Congress might also get involved, with the House and Senate judiciary committees possibly stepping in.

"You can't give police departments grants and not expect there to be oversight by the federal government," she said. "You can't give police departments military equipment and not expect there to be any oversight."