Police oversight languished under Trump. Biden's DOJ is bringing federal inquiries back

Trump Attorney General Jeff Sessions all but suspended federal oversight of troubled police agencies. Will we see a resurgence under Merrick Garland?

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Whenever top Trump Justice Department officials addressed a law enforcement audience, their remarks would invariably include familiar parting words: “You have our thanks, and we have your backs.”

The refrain, however, would come to represent more than a warm send-off.

In 2018, Attorney General Jeff Sessions issued a formal directive curtailing the department’s intervention in local police departments to force changes involving the use of lethal force, training, recruitment and officer discipline.

The memo effectively discouraged federal oversight of troubled police agencies, with the Trump administration opening just one so-called pattern and practice investigation compared with the 25 launched during the Obama administration.

With the country reeling from a string of fatal police shootings, the Biden administration has signaled that an era of indifference is over.

After Chauvin: A trial for American policing, the struggle for public trust begins anew

AG Garland announces Minneapolis police probe (2/3)
In launching a sweeping investigation into the operations of the Minneapolis Police Department less than 24 hours after a jury convicted former officer Derek Chauvin in the murder of George Floyd, Attorney General Merrick Garland also put American law enforcement back on notice.

More: DOJ launches inquiry into Minneapolis police operations, a day after Chauvin guilty verdicts

The review extends beyond an examination of the department's lethal force policies to include training practices, supervision, discrimination and encounters with the mentally ill.

"I know that justice is sometimes slow, sometimes elusive, and sometimes never comes. Building trust between the community and law enforcement will take time and effort by all of us, but we undertake this task with determination and urgency, knowing that change cannot wait."

Attorney General Merrick Garland

"I know that justice is sometimes slow, sometimes elusive, and sometimes never comes," Garland said in announcing the inquiry this week. "Building trust between the community and law enforcement will take time and effort by all of us, but we undertake this task with determination and urgency, knowing that change cannot wait."

Policing: What does 'defund the police' mean and why some say 'reform' is not enough

Garland's message, delivered more than a month after taking office and less than a week after he rescinded Sessions' directive, already is finding an audience beyond Minneapolis.
"It definitely sends a signal that the 800-pound gorilla – the federal government – could be knocking on your door unless you get your house in order," said David Harris, a University of Pittsburgh law professor who analyzes police behavior.

For the departments in the most need of change, Harris said the Justice Department action in Minneapolis represents a dramatic pivot from the previous administration, whose collective message "looked to (police) like a green light to do anything they wanted."

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David Harris, University of Pittsburgh law professor

Trump to police: 'Don't be too nice'

From the Justice Department to the White House, few groups enjoyed more access or warmer relations than law enforcement in the Trump administration.

More: Courts are formidable obstacle to rolling back police agreements

In his first major speech as the nation's chief law enforcement officer, Sessions signaled local police departments to force reforms.

Sessions' move, coming after the Obama administration's scrutiny of police agencies – including high-profile investigations in Ferguson, Missouri, Baltimore and Chicago – represented a dramatic shift in policy.
In 2018, President Donald Trump's attorney general, Jeff Sessions, issued a formal directive curtailing the Justice Department's intervention in local police departments' practices.

Evan Vucci, AP

"Somehow, some way, we've undermined respect for police and made – oftentimes – their job more difficult," Sessions told a gathering of state attorneys general in 2017. "We need to help police officers get better rather than reduce their effectiveness, and I'm afraid we've done some of that. So, we're going to pull back a little on this. I don't think that it's wrong or mean or insensitive to civil rights or human rights. I think it's out of concern to make the lives of those, especially in poorer communities and minority communities, live a safer, happier life."

While Sessions aimed to reduce federal scrutiny of police, President Donald Trump appeared to go even further in supporting a more aggressive form of policing.

In an animated speech in 2017, delivered against a backdrop of police in dress uniform, Trump urged officers "don't be too nice" in their treatment of suspects.

“Like when you guys put somebody in the car and you’re protecting their head, you know, the way you put their hand over, like, don’t hit their head and they’ve just killed somebody, don’t hit their head, I said, ‘You can take the hand away, OK?’ " the president said.
President Donald Trump appeared to advocate rougher treatment of people in police custody during a speech in New York. He spoke dismissively of arresting officers who protect suspects' heads while putting them in police cars. (July 28)

AP

The president's remarks prompted a wave of pushback from some law enforcement officials who cast Trump's remarks as outrageous.

"To suggest that police officers apply any standard in the use of force other than what is reasonable and necessary is irresponsible, unprofessional and sends the wrong message to law enforcement as well as the public," said then-New York City Police Department Commissioner James P. O'Neill.

William Bratton, who has led police agencies in the country's two largest cities – New York and Los Angeles – described the Trump administration's approach to policing as "an opportunity lost."

More:  Controversial NYPD chief William Bratton stepping down

For agencies in need of help, federal intervention can force investments in technology, equipment and training that communities might not otherwise provide without the oversight a federal judge and a court-appointed monitor that often result from Justice Department investigations, the former chief said.

Bratton helped lead the Los Angeles Police Department to a resolution of a more than decade-long federal inquiry after a 1999 scandal involving a department anti-gang unit whose officers engaged in evidence tampering, excessive force and perjury.

"Some departments are so bad that they do need outside assistance," Bratton said.
Jim Pasco, executive director of the nation's largest police union, the Fraternal Order of Police, said federal intervention that results in court-enforced consent decrees can often provide the "illusion" of progress that further strain relations between street officers and the communities they serve.

Too often, Pasco said, the investigations "fault the rank and file officers when the real problems involve management deficiencies."

"Bad things don't happen indefinitely in a well-managed police department," Pasco said.

**18,000 police departments, no national standards**

But there are real limits on what the Justice Department can do alone.

Large-scale federal investigations of police departments are often time-consuming and affect only a handful of agencies. While the Obama administration's approach was regarded as aggressive, its formal scrutiny extended to only 25 of the country's estimated 18,000 police agencies.

“It’s impossible to get to all 18,000 police departments and conduct the kind of investigation that is going to happen in Minneapolis,” said Jonathan Smith, a former Justice Department attorney who supervised such investigations during the Obama administration. “Pattern-and-practice investigations are so labor intensive, and you can only do so many.”
But Smith said the Biden administration has other tools at its disposal to influence policing nationwide, such as attaching conditions to federal grants to local agencies and using federal task forces that would require police departments to operate under federal rules.

More: ‘A nightmare scenario': Extremists in police ranks spark growing concern after Capitol riot

Chuck Wexler, chief executive of the think tank Police Executive Research Forum, said the Justice Department can provide a clearing house for best policing practices – an idea that Wexler acknowledges will face resistance from some law enforcement leaders who oppose federal intervention.

“The reality is, you know, we don’t have any national standards, and what we have had for the last 20 years is investigations by the Justice Department into determining whether departments are doing constitutional policing,” Wexler said. “The federal government has a role here. The question is whether the federal government can have another role, which is to help departments prevent egregious actions.”
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Chuck Wexler, chief executive of the Police Executive Research Forum

Wexler said one way for police agencies to preemptively fix systemic problems that might attract federal intervention is to look at the resolution of past federal investigations to see what they can apply to their practices.

“For example, they may want a policy that looks at early warning systems” that are meant to identify problematic officers, “use of force, de-escalation,” Wexler said. “So any department that is concerned about being studied by the Justice Department should look at previous consent decrees and ask themselves, ‘How should we measure up to these standards?’”

Re-arming DOJ's Civil Rights Division

Before taking office, Biden had been planning a rearming of the Justice Department's Civil Rights Division, hosting an online meeting in December with civil rights leaders to hash out a path forward.

Among those on the call was Kristen Clarke, then-president of the Lawyers' Committee for Civil Rights Under Law and now Biden's nominee to lead the Justice Department's Civil Rights Division.
“We need this administration to make fighting white supremacy, confronting racial violence, addressing police violence and tackling rampant voter suppression top-line priorities,” Clarke said then.

More: Kristen Clarke, Joe Biden's pick for top civil rights job, tells senators about her own son

More: Top DOJ nominees vow independence; Vanita Gupta opposes moves to defund the police

Also on that call was Vanita Gupta, then-CEO of the Leadership Conference on Civil and Human Rights, who was narrowly confirmed by the Senate last week as associate attorney general, the third-ranking official at the department.
Gupta, who also was acting chief of the Obama Civil Rights Division at Justice, oversaw the investigations in Ferguson, Baltimore and Chicago. She was also among the most vocal critics of Sessions' decision to curtail such inquiries.

"Jeff Sessions’ parting act was another attack on the core mission of the Department of Justice," Gupta said after Sessions' action just before his firing in 2018.

"The rationale for such oversight has not disappeared," she said then. "This move is a slap in the face to the dedicated career staff of the department who work tirelessly to enforce our nation’s civil rights laws."

In the Minneapolis investigation, the Justice Department won't be starting from scratch.

On the same day Garland announced the far-reaching investigation in Minnesota, Gupta was confirmed by the Senate.

Pasco of the Fraternal Order of Police said that while the union "does not see eye to eye" with the Justice Department on scrutiny of law enforcement, the team assembled by the Biden Justice Department are "honest brokers."

"Going forward, I think they will use (federal inquiries), but I think there is an understanding that there are deficiencies in the system that can be rectified," he said.