

# United States Senate

WASHINGTON, DC 20510

April 11, 2017

The Honorable Rod Rosenstein  
United States Attorney for the District of Maryland  
United States Department of Justice  
36 S. Charles Street, 4<sup>th</sup> Fl.  
Baltimore, MD 21201

Dear Mr. Rosenstein:

If confirmed as Deputy Attorney General, you would oversee the Justice Department's criminal justice and police reform efforts, which are critical to the fair and effective administration of justice in our nation. This would be a daunting challenge under the best of circumstances, but I am concerned that actions being taken now could make your job even more difficult. We would appreciate if you could clarify how you will respond if you are confirmed.

The Department plays a vital role in protecting public safety by prosecuting and incarcerating our nation's most serious and violent offenders. However, our federal prisons are about 30 percent over capacity and runaway prison expenditures are undermining other important public safety priorities, like funding for crime prevention, drug courts, and addiction treatment. The largest increase in the federal prison population has been individuals convicted of nonviolent drug offenses who are then separated from their families for years on end as a result of inflexible mandatory minimum sentences. This has a destructive effect on our communities and erodes faith in our criminal justice system.

Congress needs to pass legislation to reform our federal drug sentencing laws, but the Justice Department's charging policies for nonviolent drug offenses also can help address this challenge. The Smart on Crime Initiative directs federal prosecutors to reserve stiff mandatory minimum sentences for individuals convicted of the most serious offenses. This Initiative has been very effective in focusing the Department's limited resources on the worst offenses and ensuring that people convicted of low-level nonviolent offenses are not subject to the harshest and most inflexible penalties.

The Department also helps protect public safety by working constructively with state and local law enforcement agencies across the country to ensure compliance with federal law and the Constitution and to improve community-police relations. The men and women of law enforcement risk their lives every day to protect us, and it is incumbent upon them to live up to the standards they have sworn to uphold. Effective community policing must be built on a foundation of trust, accountability, and mutual respect.

To this end, in numerous communities, the Civil Rights Division has negotiated meaningful and enforceable agreements to implement reforms that strengthen community-oriented policing, enhance training, and ensure accountability when officers fail to live up to the standards they have sworn to uphold.

As a long-serving U.S. Attorney based in Baltimore, and as a former member of the Justice Department's Sentencing Working Group, you are very familiar with these issues. Nonetheless, we understand you may not want to prejudge or reach any conclusions without a thorough review and consultation with the Department's career professionals. However, it appears that prior to your confirmation decisions about these policies are already being made and that dramatic changes are in motion.

In a public memorandum to all federal prosecutors last month, Attorney General Sessions said "an updated memorandum on charging for all criminal cases" will be "forthcoming." And prior to your confirmation, the Attorney General has already appointed Steven Cook as your top deputy on criminal justice policy. Mr. Cook, who has publicly opposed bipartisan sentencing reform legislation, is described by media reports as a "hardliner" who "fiercely supports controversial policies calling for lengthy prison sentences."

If confirmed, you will be the chair of a Task Force on Crime Reduction and Public Safety (Task Force) that the President established by executive order. However, on April 5, the Attorney General sent a memorandum, "Update on the Task Force on Crime Reduction and Public Safety," saying that the Task Force's subcommittees are "already hard at work" and providing Mr. Cook as the point of contact. The Attorney General directs the Task Force to provide initial recommendations no later than July 27, but says he "will continue to act upon recommendations as they become available and direct the policy of the Department on an ongoing basis."

Changes in police reform policies are also underway. In a March 31 memorandum, the Attorney General ordered the Deputy Attorney General and Associate Attorney General to "immediately review all Department activities - including collaborative investigations and prosecutions, grant making, technical assistance and training, compliance reviews, existing or contemplated consent decrees, and task force participation." Then, on April 3, the Justice Department asked a federal judge to delay implementation of a consent decree to reform the Baltimore Police Department (BPD), a delay strongly opposed by the BPD and rejected by the judge on April 7.

We are concerned about what this memorandum may mean for the Department's negotiations toward an enforceable consent decree to implement the findings in the Department's January 13th report on the Chicago Police Department (CPD). Zach Fardon, the previous U.S. Attorney for the Northern District of Illinois, whose service you praised in response to questions for the record, wrote on March 13 that, "The DOJ findings report is a roadmap to addressing the systemic deficiencies in [CPD's] training, supervision and accountability. . . . It's past time to give our police officers what they need to succeed. A Consent Decree with an independent federal monitor is the only way that will happen."

Please respond to the following questions:

1. Have you been consulted on any of the memoranda issued by the Attorney General that are cited above? If so, please describe the nature of this consultation and the advice you have provided.

2. Have you been consulted on the “updated memorandum on charging for all criminal cases” that is “forthcoming”? If so please describe the nature of this consultation and the advice you have provided.
3.
  - a. Have you been consulted on the work of the Task Force and its subcommittees, including the appointment of Task Force and subcommittee members? If so, please describe the nature of this consultation and the advice you have provided.
  - b. Please provide lists of the members of the Task Force and each Task Force subcommittee.
4. Were you consulted on the appointment of Steven Cook as Associate Deputy Attorney General? If so, please describe the nature of this consultation and the advice you provided.
5. Were you consulted on the Department’s decision to seek a delay in the hearing on the proposed consent decree with the BPD? If so, please describe the nature of this consultation and the advice you provided.
6.
  - a. Have you been consulted on or participated in the Department’s discussions or negotiations regarding the Chicago Police Department?
  - b. In your responses to questions for the record, you said that you met on March 17 with Chicago Police Superintendent Eddie Johnson. Please describe the details of your discussion.
  - c. Will you commit to continue good faith negotiations towards a consent decree with the City of Chicago and the Chicago Police Department?
7.
  - a. Will you ask the Attorney General not to make any changes in criminal justice policies, including the Smart on Crime Initiative, until he receives the initial recommendations of the Task Force?
  - b. Will you ask the Attorney General not to make any changes in police reform policies until the review ordered by his March 31<sup>st</sup> memorandum is completed?
8.
  - a. Will you commit not to recommend any changes in criminal justice policies, including the Smart on Crime Initiative, until the Task Force chaired by the Deputy Attorney General makes its initial recommendations?

- b. Will you commit not to recommend any changes in police reform policies until you complete the review ordered by the Attorney General's March 31<sup>st</sup> memorandum?
  
- 9. In written responses to questions for the record, you agreed that the Deputy Attorney General has an obligation to give independent legal advice. You also said "generally the Department should focus on the most dangerous violent offenders" and:

"The Justice Department has multiple tools to help improve police practices. The most effective and efficient remedy in any individual matter should be determined by the particular facts and circumstances. I believe this is consistent with the approach taken by the last Administration: pattern-and-practice investigations and consent decrees may be a useful tool when there is sufficient evidence of systemic constitutional violations and local officials are not capable of properly managing their police department and maintaining public order."

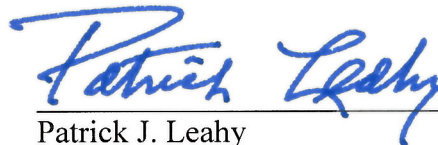
Do you commit that, if confirmed, you will adhere to these principles in leading the Task Force and the review ordered by the Attorney General's March 31<sup>st</sup> memorandum?

Please respond to this letter no later than April 20. Thank you for your time and consideration.

Sincerely,



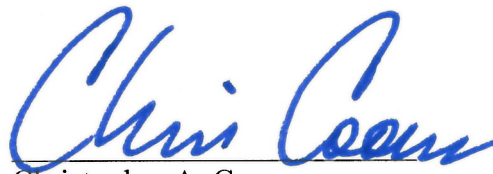
Richard J. Durbin  
United States Senator



Patrick J. Leahy  
United States Senator



Sheldon Whitehouse  
United States Senator



Christopher A. Coons  
United States Senator



Mazie K. Hirono  
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