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TESTIMONY

of

Patrick Yoes

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at the

Hearing on Police Use of Force and Community Relations

before the Senate Committee on the Judiciary

Good afternoon, Chairman Graham, Ranking Member Feinstein, and the distinguished members of this Committee. Thank you for the opportunity to appear before you today to speak for the more than 350,000 members of the Fraternal Order of Police.

My name is Patrick Yoes and I am the National President of the FOP. We are the nation's oldest and largest law enforcement labor organization.

I was shocked and horrified by the tragic death of George Floyd and the FOP shares the pain and anger from the communities we protect. Police officers need to treat all of our citizens with respect and understanding and should be held to the very highest of standards for their conduct. The FOP has full confidence in our criminal justice system. I believe justice will be served.

We cannot allow this incident to define our profession, but there is no doubt that this tragedy has diminished the trust and respect our communities have for the men and women of law enforcement. We will work hard to rebuild that trust and we will continue to protect our communities. I am here today to let you know that the FOP stands ready to work with anyone, speak with anyone, and cooperate with anyone who genuinely wants to work collectively, in a fact-based way, to improve policing in our country. This is what we did to pass President Trump's historic First Step Act initiative and I believe it is the model we should use moving forward on areas of broad agreement like on car and body-worn cameras as well as accreditation for law enforcement agencies.

How do we do that? Perhaps a better question is, where do we begin? Let's start at the beginning—the point at which an officer is hired by an agency. In my experience, bad cops are hired, not made. Some Members of this Committee favor the creation of a Federally-managed database of terminated or de-certified officers, which we would oppose, to ensure that a police chief or sheriff does not hire a bad officer from another agency. I submit to you that chiefs and sheriffs who do not discover this information as part of their own screening process have clearly failed in their most basic responsibility, which is to hire men and women who will make effective police officers.

The "Justice in Policing Act" does not address this issue fully and there is little training, transparency, and accountability for law enforcement executives with respect to the hiring process. There is no provision for data collection on the hiring and recruitment of officers by law enforcement executives. There is no training for hiring managers. There is no language providing for the development of model policies or best practices for conducting proper screenings and ensuring vigorous background checks prior to hiring. There is almost nothing in the bill that addresses transparency and accountability when it comes to hiring apart from the creation of a database which they claim will help them ensure they don't hire "gypsy cops" who lost their jobs in other jurisdictions. A law enforcement agency with proper hiring protocols in place would not need such a database. When testifying before the House Committee on the Judiciary last week, Philonise Floyd was asked what he wanted the world to hear in this moment and he replied: "I want them to stop hiring corrupted police officers." These were powerful words and I believe we should heed them by developing better hiring practices as part of any police reform legislation.

I also want to forcefully reject arguments advanced by some who blame our nation's problems in policing on the law enforcement labor movement or the local police union. But I find myself constrained from doing so by the importance of this moment and the critical need for all parties to set aside their preconceived notions, egos and unrelated agendas to do what the American public—a public we are sworn to serve—wants us to do. There will be plenty of time later for recriminations, but right now we need to roll up our sleeves and get to work.

I also want to address the dangerous calls to “defund the police.” For many years now, my predecessor and countless other law enforcement officers, from the beat cop to the chief law enforcement officer, have been struggling with the very basic fact that when something goes wrong in our society, they call the cops to deal with it. When there is an individual in need of mental health services exhibiting extremely erratic behavior, what do you do? Call the cops. If there is an individual at a bus stop under the influence of drugs or alcohol, what happens—someone calls the cops. Do you have an unruly student in your classroom? Don't worry, call the cops. Is there a homeless person sleeping in a park where you walk your dog? Just call the cops.

A police officer, in addition to protecting the public and getting bad guys off the streets, are now expected to be therapists, marriage counselors, addiction specialists, mental health experts, homeless advocates and spiritual advisors. The truth, however, is we do not have the training to perform these functions very well. But in too many communities, the police are the only option. But when you call law enforcement, you should expect a law enforcement response. People that need mental health services or treatment for issues related to addiction, instead find themselves in the backs of squad cars. Our prisons and jails are the nation's largest provider of mental health services and that should not be the case.

Law enforcement would very much welcome the expansion of social services in our communities, especially in the areas of mental health, substance abuse and homelessness. The citizens in our communities need social services—including police. It is extremely irresponsible to think that violence and crime will just go away if you disband your local law enforcement agency. I believe that, as we work together here to enact real reform about the way we police our communities, we should also think about reforms that address the national failure of our society on social needs. Our citizens should not have to choose between safe streets and medical treatments for mental illness and addiction or services to our homeless.

With respect to legislative efforts to end qualified immunity, the FOP is strongly opposed. Police officers need protection in order to perform discretionary functions fundamental to law enforcement. Every single factual scenario an officer encounters is different and unknown. It is extremely difficult for an officer to determine how a legal doctrine will apply to a split-second factual scenario that the officer confronts. Thus, unless there is existing precedent that squarely governs the facts before the officer, the reasonable officer needs to be afforded a certain degree of discretion to make split-second decisions in situations that could put lives, including their own, at risk. Officers should not be punished for doing so.

The courts have been balanced in denying or granting qualified immunity. A recent study of more than 200 lower court decisions where qualified immunity was raised as a defense, the court denied officers qualified immunity 43% of the time. Only 5 cases have made it to the Supreme

Court since 2015. In all 5 cases, officers were granted qualified immunity, including 9-0 and 8-1 decisions. This suggests that there is very little dispute the current doctrine is working.

With respect to the use of force and so-called “choke holds,” the FOP was proud to lead an effort, with our partners at the International Association of Chiefs of Police, to develop a *National Consensus Policy on the Use of Force*. This document was painstakingly drafted over the course of almost two years and was published in January 2017. The FOP, IACP and nine other major law enforcement organizations support the *National Consensus Policy* and we urge this Committee to be guided by its principles.

The *National Consensus Policy* defines a choke hold as: “a physical maneuver that restricts an individual’s ability to breathe for the purposes of incapacitation.” The document further states:

In the most common choke hold, referred to as an arm-bar hold, an officer places his or her forearm across the front of the individual’s neck and then applies pressure for the purpose of cutting off air flow. These are extremely dangerous maneuvers that can easily result in serious bodily injury or death. Therefore, the Consensus Policy allows their use only when deadly force is authorized.

A choke hold should never be used against a subject who is restrained or in restraints and, as the policy states, should only be used when the use of deadly force is authorized or justified. I think it is a mistake to legislate, for or against, specific law enforcement tactics within the use of force model, but I do believe it is appropriate to categorize the use of a choke hold as deadly force.

During this pandemic crisis, the men and women of law enforcement were in the field putting themselves, and by extension, the members of their family, at risk of exposure to the virus. There have been 121 line of duty deaths due to COVID-19. My members could not “work from home.” In the wake of the terrible tragedy in Minneapolis, members of the public demonstrated across the nation about police violence. These voices calling for reform were sadly overshadowed in many cases by rioters and looters who took advantage of the situation to enrich themselves and commit criminal acts.

Once again, our nation’s cops could not “stay home” because they have a duty to protect the community, even when it means placing themselves in harm’s way. Protesters at lawful demonstrations do not injure cops or set fires; rioters do. Thousands of officers were injured during the riots, and more than 20 officers have been shot. Officers have been struck with bricks, Molotov cocktails and other projectiles, while others have been runover by cars and injured by physical assaults.

Despite the increased violence aimed at us, we in law enforcement are working to improve our profession. As noted above, we support provisions that would expand the use of body cameras, which, with the right policies in place, will increase police accountability and performance. We also support, conceptually, the accreditation of law enforcement agencies in an effort to make policing standards more uniform throughout our country.

On all of these issues, the FOP has stepped up to the plate. I believe the FOP provided testimony at each and every public meeting of the President's Task Force on 21st Century Policing in 2014-15. We support many of that body's findings and have worked with Members of Congress to implement them. The FOP is also deeply invested in the current Presidential Commission on Law Enforcement and the Administration of Justice. The Commission is doing good work in examining how we recruit and train officers, and how to earn and maintain the trust and respect of the communities we serve.

We engaged with the Administration and many groups to support the historic First Step Act—the largest and most comprehensive overhaul of the Federal criminal justice system in recent history. While many of our fellow law enforcement organizations chose to withhold support or even oppose this legislation, the FOP was able to support it because we stayed at the table—we were engaged in constructive dialogue. We did so because we have a genuine commitment to improve, not just our profession, but the criminal justice system as a whole. I think everyone should be proud of the result, in part, because we achieved it *together*.

Finally, my profession will continue to work hard to build and maintain the trust and respect of the communities we protect. We cannot do it alone, but it must be done.

We are committed to doing this and, as I said at the start of my testimony—we will engage with anyone at any time if they have a sincere desire to improve policing in our nation. Not only does the safety of our officers and their ability to protect the citizens of their community depend on this; working together to improve policing in our nation is critical to preserving our country and the American way of life.

I thank you all again for this opportunity and would be pleased to answer any further questions.