



NATIONAL FRATERNAL ORDER OF POLICE®

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The Honorable Lindsey O. Graham
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman,

Thank you again for the opportunity to testify before the Committee on the Judiciary at the hearing last month entitled “Police Use of Force and Community Relations.”

I am happy to respond to the written questions from members of the Committee.

Questions from Senator Patrick J. Leahy

I think you would agree with me that we have a real crisis in this country when many young African American children react with fear when seeing police officers. If we don't meet this moment now and ensure there is fundamental change going forward, what is at stake for law enforcement? What is at risk for law enforcement if they do not fully recognize the problem and work with us to fix it?

Senator Leahy, we appreciate our long-standing partnership on so many issues over the years. You have been a leader on so many of the FOP's legislative priorities and we stand ready to work with you now and in the future.

We do agree that the most pressing issue is the perspective that law enforcement officers are viewed with fear and animosity in too many communities. I believe the right approach is enhanced community policing—we need to interact positively with the communities we have pledged to serve. Community policing has been the cornerstone of our national policing strategy for more than 30 years. We have the most success when our communities interact with officers they know and trust, when they see “Officer Bill” and not an officer they do not know.

I also think our law enforcement leaders need to do a better job at recruiting officers from these communities to further strengthen the ties between the residents and the agency.



Senator Leahy, you are correct—law enforcement as a whole must meet this moment and take the necessary, and perhaps overdue, steps to improve our profession. Until we do so, our communities will see sharp increases in crime and violence. We must not allow this to happen. 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 help improve policing in our country.

What are some specific measures in the Justice in Policing Act that FOP would support?

The FOP could support several of the provisions in H.R. 7120, the “Justice in Policing Act,” though we may differ on how to achieve the policy goals, especially when it comes to withholding Federal law enforcement assistance grants. We provided a lot of feedback and suggestions to the House and hope that the passage of H.R. 7120 is just the first step on the path to develop bipartisan legislation to reform policing in America.

For example, we support the concept of using independent investigators and prosecutors in use of force cases which result in death or serious bodily injury. Many departments have pre-existing agreements or memorandums of understanding in such cases.

We support data collection, provided that State and local agencies have access to funding and resources to comply. We also support the concept of accreditation and making the policies and practices, including training and standards, more uniform nationwide. As one example, the FOP and the International Association of Chiefs of Police led an effort to create a *National Consensus Policy on the Use of Force*, which is supported by nine other major law enforcement organizations, and we have urged all law enforcement agencies to adopt it.

We support prohibitions on the use of chokeholds and vascular neck restraints unless deadly force is authorized. We also support expanded use of body-worn cameras and improved training in areas like de-escalation.

Question from Senator Christopher A. Coons

Some are hesitant to create national standards for local law enforcement, but you have emphasized the value of consistency and said that you “would like to see some type of standardization of models across the country.” Can you explain why having consistent standards of conduct is important to your members?

There are more than 18,000 different law enforcement agencies in our nation and they are as diverse as the communities they serve. That being said, the FOP believes that more uniform standards is a realistic and laudable goal. Agency policies do not need to be standardized—what works in New York City would not work in a small rural sheriff’s office—but our profession would certainly benefit from greater commonality in many areas.

One example is with respect to the use of force. The FOP and IACP, over the course of nearly two painstaking years, developed a *National Consensus Policy on the Use of*



Force, which has been endorsed by nine other major law enforcement organizations. It is a use of force model that can be adopted to fit the needs of any agency and the communities they serve without being a one-size-fits-all model. The law enforcement community, having developed and embraced this model, has been urging its adoption since January 2017.

Question from Charles E. Grassley

In your opinion, does qualified immunity still serve its intended purpose? If so, explain.

Yes, Senator, it does. Under the doctrine of qualified immunity, government officials, performing discretionary functions—like a law enforcement officer making an arrest—are immune from being sued as an individual unless the official violated clearly established statutory or constitutional rights of which a reasonable person acting in good faith would have known. It is important to emphasize that this immunity is not automatic and does not protect any who engages in a criminal act. It exists only for civil suits against an official for a discretionary act and is only available if granted by a court.

We firmly believe the current doctrine, which was upheld most recently by the Supreme Court of the United States in 2019, serves its intended purpose.

Do you think eliminating qualified immunity in its entirety, as some recently introduced bills propose to do, strikes the right balance in holding bad actors accountable? Or, are more tailored reforms appropriate, given the difficult and unclear situations officers often face?

We believe eliminating the doctrine of qualified immunity would not strike the right balance in holding bad actors accountable. Quite the opposite, we believe such an action would have a very negative effect on good law enforcement officers. It may reduce civilian-police interactions, damaging the community policing model and creating an unnecessary distance between police and the communities they serve. I also believe it will make recruitment of officers very, very difficult.

If Congress eliminates the qualified immunity doctrine as we know it, could law enforcement personnel or police departments—which already operate on limited budgets—face unfounded or abusive litigation? And if so, could that hinder public safety?

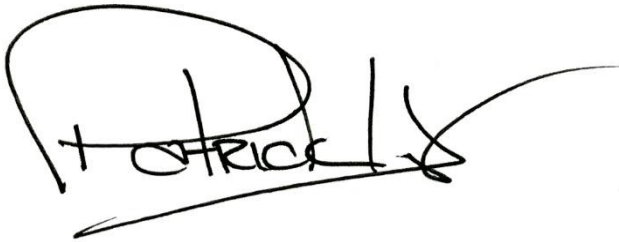
Senator, law enforcement officers and agencies often face frivolous and unfounded lawsuits under the current doctrine. I can only believe that they would increase if the doctrine is eliminated. I do believe such a change would reduce public safety, not just for budgetary reasons, but for a fear that any discretionary actions would put an officer in legal jeopardy.

Should any narrowing of qualified immunity be tailored to specific actors, such as just police officers or their departments? Or should Congress be considering reforms across the board for anyone who acts under the color of law?

Senator, we would be very willing to work with you to consider reforms to those acting under color of law. In fact, the FOP supports S. 1480, the "Back the Blue Act," which would limit the types of civil damages and attorney's fees recoverable by an individual as a result of purported injuries incurred during the commission of a felony or crime of violence.

Mr. Chairman, this concludes my responses to all received questions for the record. On behalf of the more than 351,000 members of the Fraternal Order of Police, I thank you and the Committee again for the opportunity to appear before you and I look forward to working with you on this issue. If I can be of any further assistance, please do not hesitate to contact me or my Executive Director, Jim Pasco, in my Washington office.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick Yoes", with a large, stylized flourish above the name.

Patrick Yoes
National President