

TESTIMONY BEFORE
CRIMINAL JUSTICE REFORM SUBCOMMITTEE MEETING

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GOOD AFTERNOON, CHAIRMEN MAESTAS AND RUE, AND MEMBERS OF THE CRIMINAL JUSTICE REFORM SUBCOMMITTEE. I WANT TO TAKE THIS OPPORTUNITY TO THANK YOU FOR ALLOWING ME TO SHARE MY THOUGHTS AND EXPERIENCES REGARDING THE TOPIC OF THE PEACE OFFICERS EMPLOYEE-EMPLOYER RELATIONS AND POLICE ACCOUNTABILITY.

IN AN EFFORT TO RESPOND TO THE TASK OF DEVELOPING GOOD PUBLIC POLICY, I'D LIKE TO PLACE MY REMARKS IN HISTORICAL PERSPECTIVE. FIFTY YEARS AGO, WHEN I WORKED AT THE UNIVERSITY OF ALBUQUERQUE, THE CITY OF ALBUQUERQUE AND POLICE DEPARTMENT LEADERSHIP HAD THE VISION TO TRAIN POLICE OFFICERS TO MEET THE NEEDS OF THE RESIDENTS AND TO ACHIEVE THE GOALS AND OBJECTIVES OF PROTECTING AND SERVING THE PUBLIC. FOR EXAMPLE, THE CITY OF ALBUQUERQUE AND THE UNIVERSITY ENTERED INTO A COLLABORATIVE EFFORT BY PHYSICALLY PLACING THE POLICE ACADEMY ON THE CAMPUS AND PROVIDING CLASSROOM ACCESS TO THE CADETS TO OBTAIN AN ASSOCIATE ARTS DEGREE IN POLICE SCIENCE WHICH WAS A PATH FOR THE CADETS UPON CERTIFICATION AS POLICE OFFICERS COULD CONTINUE THEIR STUDIES IN OBTAINING A BACHELORS DEGREE IN CRIMINOLOGY. AT THAT TIME THE FEDERAL GOVERNMENT PROVIDED FINANCIAL ASSISTANCE TO THE CADETS AND OFFICERS THROUGH THE LAW ENFORCEMENT EDUCATION PROGRAM (LEEP).

THE CADETS THAT COMPLETED THEIR ACADEMY TRAINING AND BECAME ALBUQUERQUE POLICE OFFICERS WERE GIVEN THE OPPORTUNITY TO ACQUIRE ABILITIES AND SKILLS TO THINK CRITICALLY AND TO PREPARE THEM IN THEIR DAY TO DAY ENCOUNTERS WITH THE PUBLIC. IT WAS NOT SIMPLY A PHYSICAL ACADEMY. IT WAS AN ACADEMY THAT NOT ONLY PREPARED YOU PHYSICALLY TO PERFORM YOU JOB; BUT, THE ACADEMY ALSO PROVIDED YOU WITH THE OPPORTUNITY TO THINK CRITICALLY IN MAKING MAKE DECISIONS, NOT SIMPLY REACT.

IN TALKING ABOUT POLICE ACCOUNTABILITY, WE SHOULD KEEP IN MIND THAT POLICE OFFICERS HAVE DUE PROCESS RIGHTS THAT ARE CODIFIED IN STATE STATUTE AT CHAPTER 29; LAW ENFORCMENT, ARTICLE 14: PEACE OFFICER'S EMPLOYER- EMPLOYEE RELATIONS, 29-14-1 THROUGH 29-14-11. THIS STATUTE IS

COMMONLY REFERRED TO AS THE OFFICER'S BILL OF RIGHTS. THE PURPOSE OF THE LAW ENFORCEMENT OFFICERS' BILL OF RIGHTS IS INTENDED TO PROTECT AMERICAN LAW ENFORCEMENT PERSONNEL FROM INVESTIGATION AND PROSECUTION ARISING FROM CONDUCT DURING OFFICIAL PERFORMANCE OF THEIR DUTIES, AND PROVIDES THEM WITH PRIVILEGES BASED ON DUE PROCESS ADDITIONAL TO THOSE NORMALLY PROVIDED TO OTHER CITIZENS. IT WAS FIRST SET FORTH IN 1974, FOLLOWING SUPREME COURT RULINGS IN THE CASE OF GARRITY V. NEW JERSEY (1967) AND GARDNER V. BRODERICK (1968). IT DOES NOT PROHIBIT POLICE DEPARTMENTS FROM SUBJECTING OFFICERS TO DRUG TESTS.

THE FRATERNAL ORDER OF POLICE WHICH WAS FORMED IN 1915 AND HAS A MEMBERSHIP ACROSS THE COUNTRY OF MORE THAN 354,000 ACTIVE AND RETIRED LAW ENFORCEMENT OFFICERS AND OF WHICH I HAVE BEEN A LIFE LONG MEMBER SUPPORTS THE LAW ENFORCEMENT OFFICERS BILL OF RIGHTS FOR THE FOLLOWING REASONS:

- LAW ENFORCEMENT OFFICERS, EXCEPT WHEN ON DUTY OR ACTING IN AN OFFICIAL CAPACITY, HAVE THE RIGHT TO ENGAGE IN POLITICAL ACTIVITY OR RUN FOR OFFICE.
- LAW ENFORCEMENT OFFICERS SHALL, IF DISCIPLINARY ACTION IS EXPECTED, BE NOTIFIED OF THE INVESTIGATION, THE NATURE OF THE ALLEGED VIOLATION, AND BE NOTIFIED OF THE OUTCOME OF THE INVESTIGATION AND THE RECOMMENDATION MADE TO SUPERIORS BY THE INVESTIGATORS.
- QUESTIONING OF A LAW ENFORCEMENT OFFICER SHOULD BE CONDUCTED FOR A REASONABLE LENGTH OF TIME AND PREFERABLY WHILE THE OFFICER IS ON DUTY UNLESS EXIGENT CIRCUMSTANCES APPLY.
- QUESTIONING OF THE LAW ENFORCEMENT OFFICER SHOULD TAKE PLACE AT THE OFFICES OF THOSE CONDUCTING THE INVESTIGATION OR AT A PLACE WHERE THE OFFICER REPORTS TO WORK, UNLESS THE OFFICER CONSENTS TO ANOTHER LOCATION.
- LAW ENFORCEMENT OFFICERS WILL BE QUESTIONED BY A SINGLE INVESTIGATOR, AND HE OR SHE SHALL BE INFORMED OF THE NAME, RANK, AND COMMAND OF THE OFFICERS CONDUCTING THE INVESTIGATION.
- LAW ENFORCEMENT OFFICERS UNDER INVESTIGATION ARE ENTITLED TO HAVE COUNSEL OR ANY OTHER INDIVIDUAL OF THEIR CHOICE PRESENT AT THE INTERROGATION.

- LAW ENFORCEMENT OFFICERS CANNOT BE THREATENED, HARRASSED, OR PROMISED REWARDS TO INDUCE THE ANSWERING OF ANY QUESTION.
- LAW ENFORCEMENT OFFICERS ARE ENTITLED TO A HEARING, WITH NOTIFICATION IN ADVANCE OF THE DATE, ACCESS TO TRANSCRIPTS AND OTHER RELEVANT DOCUMENTS AND EVIDENCE GENERATED BY THE HEARING AND REPRESENTATION BY COUNSEL OR ANOTHER NON-ATTORNEY REPRESENTATIVE AT THE HEARING.
- LAW ENFORCEMENT OFFICERS SHALL HAVE THE OPPORTUNITY TO COMMENT IN WRITING ON ANY ADVERSE MATERIALS PLACED IN HIS OR HER PERSONNEL FILE.
- LAW ENFORCEMENT OFFICERS CANNOT BE SUBJECT TO RETALIATION FOR THE EXERCISE OF THESE OR ANY OTHER RIGHTS UNDER FEDERAL, OR STATE.

THE PREMIER REASON THE FRATERNAL ORDER OF POLICE SUPPORTS THE LAW ENFORCEMENT BILL OF RIGHTS HAS ITS GENESIS WHEN THE ORGANIZATION WAS FORMED IN PITTSBURGH, PENNSYLVANIA BY A COUPLE OF DOZEN POLICE OFFICERS WHO WERE PRICIPALLY CONCERNED ABOUT PROVIDING FOR THEIR FAMILIES, THEIR WAGES, AND THEIR WORKING CONDITIONS. IN 1915, POLICE OFFICERS WERE WORKING FOR SUBMINIMAL WAGES, NO BENEFITS, POOR WORKING CONDITIONS AND CONSIDERED AT WILL EMPLOYEES. CONSIDER FOR A MOMENT, IF THAT EXISTED TODAY. THEN, AGAIN, THERE APPEARS TO BE MOVEMENT IN TODAY'S ENVIRONMENT TO REMOVE ANY PROTECTION THAT A POLICE OFFICER ENJOYS.

I KNOW OF NO LAW ENFORCEMENT OFFICER THAT WANTS TO WORK ALONG SIDE A BAD COP. TO BE SURE WHAT HAPPENED IN MINNEAPOLIS WAS AN EGREGIOUS ACT AND THE SAME CAN BE SAID OF OTHER SIMILAR ACTS IN OTHER PARTS OF THE COUNTRY. HOWEVER, I SURMISE THAT THAT THERE IS NOT A WHOLESALE VIOLATION OF THE CIVIL RIGHTS OF INDIVIDUALS ACROSS THE COUNTRY BY POLICE. THE OVERWHELMING MAJORITY OF LAW ENFORCMENT OFFICERS DO THEIR JOBS OF SERVING AND PROTECTING THE PEOPLE IN THEIR COMMUNITIES IN A PROFESSIONAL AND CARING MANNER. WHAT WE NEED TO REMEMEBER IS THAT POLICE OFFICERS ARE DEALING WITH, OFTEN TIMES, VIOLENT CRIMINALS WHO HAVE LITTLE TO NO RESPECT FOR AUTHORITY AND WHO FEEL EMPOWERED TO RUN AROUND AND COMMIT CRIMES WITH IMPUNITY BECAUSE THEY BELIEVE THEY CAN GET AWAY WITH THE COMMITTING OF A CRIME AND THAT THEY CAN BLAME THE COPS. UNFORTUNATELY, IN MANY CASES THIS IS THE REALITY BECAUSE TOO MANY

INDIVIDUALS IN ELECTED AND/OR APPOINTED POSITIONS BELIEVE THE RHETORIC THAT THE POLICE ARE THE AGRESSOR OR THE PROBEM. THE POLICE ARE NEITHER THE AGGRESSORS NOR THE PROBLEM. THE POLICE ARE THE PROTECTORS OF THE PEOPLE FROM THE CRIMINALS. ANOTHER WAY TO PUT IT, POLICE OFFICERS ARE THE SHEEP DOGS PROTECTING THE SHEEP FROM THE WOLVES.

WITH RESPECT TO QUALIFIED IMMUNITY, CONSIDER THE ALTERNATIVE, IF THE MOVEMENT TO DO AWAY QUALIFIED IMMUNITY BECOMES A REALITY, IT WILL CAUSE A TREMENDOUS AMOUNT OF UNINTENDED CONSEQUENCES. ALLOW ME A MOMENT TO ELABORATE ON AND UNDERSTAND QUALIFIED IMMUNITY. THERE ARE THREE UNITED STATES SUPREME COURT DECISIONS OF IMPORTANCE THAT ESTABLISHES LEGAL PRECEDENT AND DOCTRINE:

1. HARLOW V. FITZGERAL (1982), 2. ANDERSON V. CREIGHTON (1987), AND 3. GRAHAM V. CONNOR (1989). THE SUPREME COURT RULED THAT QUALIFIED IMMUNITY PROTECTS LAW ENFORCEMENT OFFICERS FROM FRIVOLOUS OR BASELESS LAW SUITS WHEN THEY PERFORM THEIR JOBS PROPERLY. IF POLICE OFFICERS FAIL TO ACT WITHIN THE LEGAL AND PRUDENT GUIDELINES, THEN THEY ARE SUBJECT TO CIVIL LAW SUITS. IF YOU TAKE AWAY QUALIFIED IMMUNITY FROM LAW ENFORCMENT OFFICERS, A LARGE VOID WILL BE CREATED IN THAT POLICE AGENCIES WILL HAVE A DIFFICULT TIME RECRUTING OFFICERS AND RETANING OFFICERS.

IN CLOSING, I AM ENCORAGED THAT THE SUBCOMMITTEE IS GIVIING SERIOUS THOUGHT TO THE ISSUE OF CRIMINAL JUSTICE REFORM AND TO BASE ANY CHANGES TO THE POLICE PROFESSION ON FACTS, DATA, METRICS AND EVIDENCE AND NOT ON POLITICAL HYBERBOLE. IN ORDER TO DEVELOP COMPREHENIVE AND GOOD PUBLIC POLICY, IT IS IMPERATIVE THAT ANY CHANGE IN EXISTING LAW OR THE DEVELOPMENT AND PASSAGE OF NEW LAW SHOULD BASED ON AND RESULT FROM EMPIRICAL DATA AND NOT SOLEY FROM ANECDOTAL INFORMATION OR POLITICAL NUANCE. I AM REMINDED OF MY SERVICE ON THE CRIMINAL JUSTICE AND PUBLIC SAFETY TASK FORCE AND THE APPROACH THAT WAS TAKEN BY THE TASK FORCE IN 2018 AND THE SUBSEQUENT REPORT THAT WAS PROVIDED TO THE LEGISLATURE AND WHICH WAS ADOPTED. THIS IS THE TYPE OF VEHICLE THAT SHOULD BE USED IN ANY EFFORT TO ARRIVE AT POSITIVE AND LASTING CHANGE IN THE POLICE PROFESSION AND CRIMINAL JUSTICE REFORM, THE INSITUTION AND THE SYSTEM. HOWEVER, I DO NOT WANT TO GIVE THE IMPRESSION THAT NOTHING HAS BEEN DONE TO DATE. I ENCOURAGE THE MEMBERS TO FAMILIARIZE THEMSELVES WITH THE FINDINGS OF THE 2015 PRESIDENTIAL TASK FORCE ON 21ST CENTURY POICING REPORT AND THE SIX PILARS THAT WERE IDENTIFIED

FOR EFFECTIVE POLICING AND THE FINDINGS IN THE 2017 MODEL STANDARD ON THE USE OF FORCE REPORT. THESE REPORTS SHOULD SERVE AS A BASIS FOR THE WORK THAT HAS BEEN DONE AND PERHAPS FOR THE WORK THAT NEEDS TO BE CONTINUED. I ALSO ENCOURAGE THE MEMBERS TO UNDERSTAND THAT POLICE OFFICERS FOLLOW THE MISSION, POLICIES AND PROCEDURES ESTABLISHED IN THEIR REPECTIVE AGENGIES. FOR ME, IT BOILS DOWN TO LEADERSHIP, ACCOUTABLITY, OVERSIGHT, AND TRANSPARENCY IN POLICE DEPARTMENTS AS UNDERSCORED BY CORE VALUES OF TRUST AND RESPECT THAT ARE EMBRACED BY BOTH THE POLICE AND THE COMMUNNTY.

FINALLY, THE MOVEMENT TO DISSOLVE OR DEFUND POLICE DEPARTMENTS IS NOT SUPPORTED BY THE FACTS. FOR EXAMPLE, THE PEW RESEARCH CENTER AND QUNNIPIAC UNVERISTY POLLING RECENTLY REPORTED THE FOLLOWING:

- 73% OF AMERICANS BELIEVE THAT POLICE DEPARTMENT FUNDING SHOULD STAY THE SAME OR INCREASE
- 77% OF AMERICANS APPROVE OF THE WAY POLICE OFFICERS ARE DOING THEIR JOB
- 81% OF AMERICANS DO NOT WANT TO ELIMINATE THEIR POLICE DEPARTMENT

ADDITIONALLY, IN CITIES CALLING FOR DEFUNDING POLICE, CRIME AS INCREASED, FOR EXAMPLE:

- IN MINNEAPOLIS THERE HAVE BEEN 60% MORE HOMICIDES THIS YEAR THAN LAST YEAR
- IN SEATTLE A 525% CRIME INCREASE LAST MONTH COMPARED TO 2019
- IN NEW YORK CITY A 130% INCREASE IN SHOOTINGS THIS YEAR COMPARED TO LAST YEAR
- IN CHICAGO, MAY THROUGH JULY 2020, 1,130 SHOOTINGS, 212 OF THEM FATAL
- IN PORTLAND, VIOLENT SHOOTINGS UP 240% FROM 2019
- IN ALBUQUERQUE WE HAVE SEEN A STEADY INCREASE IN VIOLENT CRIMES, HOMICIDES, DRIVEBY SHOOTINGS AND AUTO THEFTS

AGAIN, I WANT TO THANK THE MEMBERS OF THE CRIMINAL JUSTICE REFORM SUBCOMMITTE FOR GIVING ME THE OPPORTUNITY TO PROVIDE MY COMMENTS AND OBERVATIONS TO YOU.