



NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS, INC.

Representing America's Finest

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EXECUTIVE OFFICERS

June 15, 2020

MICHAEL McHALE
President
Florida Police Benevolent
Association

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

The Honorable Diane Feinstein
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

JOHN A. FLYNN
Vice President
Police Benevolent
Association of New York City

TODD HARRISON
Recording Secretary
Combined Law Enforcement
Associations of Texas

RE: June 16, 2020 Oversight Hearing on Police Use of Force and Community Relations

Dear Chairman Graham and Ranking Member Feinstein:

SCOTT HOVSEPIAN
Treasurer
Massachusetts Coalition
of Police

I am writing to you today on behalf of the National Association of Police Organizations (NAPO), representing over 241,000 sworn law enforcement officers from across the country.

MARC KOVAR
Sergeant-at-Arms
New Jersey State Policemen's
Benevolent Association

Unequivocally, what happened to George Floyd was egregious. There was no known legal justification, self-defense justification, or moral justification for the actions of the officer. We, as rank-and-file officers, support improving policing practices to ensure what happened to Mr. Floyd is never repeated. However, in the weeks since this horrible incident, rank-and-file police officers have uniformly been vilified and abused. While some leaders and politicians stand up and recognize the dedicated and ethical service of the men and women in law enforcement, the entire premise of the national dialogue thus far has largely been that all cops are bad.

CRAIG D. LALLY
Executive Secretary
Los Angeles Police
Protective League

MARK YOUNG
Vice President,
Associate Members
Detroit Police Lieutenants &
Sergeants Association

For any police reform to be truly successful, you must engage the views of rank-and-file police officers, who work tirelessly to keep our communities safe and have firsthand knowledge of the issues that are being considered. Our members have a significant stake in the outcomes of this hearing and forthcoming legislation, both as public safety officers who are responsible for carrying out the law, and as citizens of communities that will be impacted by new policies on public safety. It is, quite literally, a matter of life and death for them when we consider when and how they may defend themselves.

JAMES PALMER
Parliamentarian
Wisconsin Professional Police
Association

WILLIAM J. JOHNSON, CAE
Executive Director and
General Counsel

We have significant concerns with several policing reform proposals that have been put forth, including those impacting *mens rea*, qualified immunity, and the current legal standard of "objective reasonableness" for the use of force outlined in the 1989 U.S. Supreme Court decision *Graham v. Connor*.

It is vital that society nurtures a culture where the public's default view is that the police are ordinary men and women doing an extraordinarily difficult job, making split second decisions, and more often than not, getting it right. This is important to ensure mutual trust

in community-police relations and does not imply that addressing current policing practices cannot also be carried out.

No officer wants to use force while on duty. It is the police who try to save lives and protect people from injury while enforcing the laws established by the Congress and state and local governments. Officers do not want the suspect killed or injured, in fact, it is almost always the officer who summons medical help for the person who was just resisting, or even trying to kill, the officer. The officer wants to stop the threat and the crime, and we rightly expect and need her to do so.

Officers are trained, and must continue to be trained, on the use of force, when necessary, not only to enforce the law that others write, but to defend themselves and protect other citizens in dangerous situations. For these reasons, our Federal and state Constitutions and laws recognize the legitimacy of the reasonable use of force by officers.

I will refer here to the [National Consensus Policy on Use of Force](#), which was created in collaboration with NAPO and ten of the most significant national law enforcement management and labor organizations. It is intended to serve as a template for law enforcement agencies to compare and enhance their existing policies for the use of both less-lethal and deadly force. The Policy reflects the thinking and best practices of law enforcement and it has been embraced across the law enforcement community:

“It is the policy of this law enforcement agency to value and preserve human life. Officers shall use only the force that is objectively reasonable to effectively bring an incident under control, while protecting the safety of the officer and others. Officers shall use force only when no reasonably effective alternative appears to exist and shall use only the level of force which a reasonably prudent officer would use under the same or similar circumstances.

The decision to use force “requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officer or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.”

In addition, “the ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight...the question is whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them.”¹

The National Consensus Policy rests on our Constitution and binding Supreme Court cases that define and shape what officers can and cannot do. The policy explicitly follows the Constitutional requirements in governing use of force by officers, and those requirements have been clearly understood for more than 50 years, since the 1960’s Supreme Court case *Tennessee v Garner*, which held that the Fourth Amendment’s reasonableness standard is what is required to be used in judging the legality of an officer’s use of force, given the circumstances as he or she *believed* them to be *at the time*.

¹ *Graham v. Connor*, 490 U.S. 386 (1989).

Our courts across the United States, including the Supreme Court, have *never* deviated from this Constitutional standard. The standard by which to evaluate an officer's actions is one of reasonableness at the time the force was used, given what the officer believed. Not 20-20 hindsight. Not how any given chief might have wished it to be. And not what chiefs, prosecutors or inexperienced panelists imagine they would have done.

Law enforcement officers across the nation take an oath that they will run towards danger when everyone else is running away – and they do so to protect our families and communities. Subjectively changing the legal standard for holding officers accountable for their actions will have a chilling effect on the men and women in uniform. It undermines their ability to respond in an immediate and decisive manner, and thus creates a hesitation that would threaten the safety of our families, communities, and officers.

We fully understand and support thorough, fair and timely investigations when officers must resort to the use of deadly force to protect themselves and their communities. However, we believe it is only right that the officer be investigated by someone who is unbiased and not subject to political pressures. The investigator should have an understanding of an officer's duties and be absolutely impartial throughout an investigation.

There are proposals to require an outside entity, from a different jurisdiction, to investigate an officer's use of force, barring the officer's own agency from investigating the incident. In some instances, this is beneficial. For example, some law enforcement agencies are too small or do not have enough experienced investigators to conduct such an investigation.

However, any investigation of an officer's use of force must include an evaluation of the officer's knowledge and observations, and the Constitutional standard recognized by *Graham v. Connor*. The Supreme Court has ruled that the most important factor to consider in evaluating use of force incidents is the objective reasonableness of the force used based upon the totality of the circumstances at the time of the incident.

These concerns must be considered when making decisions to set up a special prosecutor's office. Individuals running this office will be under a great deal of pressure to justify their work. There is a risk that decisions to prosecute will be made based on politics, not on the law and admissible evidence. We fear that an officer will be indicted, even if he or she did nothing wrong, in a special prosecutor's effort to deliver on the demands placed by the public and those who put him or her in that position.

Officers are often times forced to make difficult decisions to protect themselves and their communities. These brave men and women must know that they will be supported when they make the right decision. It is absolutely critical that officers know they will be treated fairly during use of force investigations. And officers' rights must be honored, just as officers continue to respect and honor the rights of fellow citizens.

Let me be clear, no cop wants to work with a bad cop – it makes the job more dangerous and difficult. We support ensuring that officers who have substantiated serious allegations of misconduct, which have been officially and fairly adjudicated, can no longer practice law enforcement, but we must ensure officers have been afforded due process before they are decertified.

We support creating national best practices for training on de-escalation and communication techniques to help officers stabilize situations and reduce the immediate threat so that more time, options, and resources can be used to resolve the situation without the use of force. Such training will go much further in reducing the use of lethal force than will the lessening of legal protections for officers. We also believe that rank-and-file officers, as practitioners, or their representatives, must play a role in developing national training standards.

Training requirements on the use of force and de-escalation would also reduce the use of “chokeholds” and carotid artery restraints, which are already banned by law enforcement agencies across the country as a means of less-than lethal force for their officers. However, “chokeholds” are still a tool for officers to have when use of deadly force is justified. If the subject poses an immediate threat to the safety of the officer or others and a “chokehold” is the officer’s best or only option, it is vital that she is able to use it. We strongly recommend against criminalizing these maneuvers and we oppose making them a *per se* civil rights violation. Instead, we advise any policy regarding these tactics follow the National Consensus Policy, which states that “[c]hokeholds are prohibited unless deadly force is authorized”.

Further, data collection on the use of force is key to improving integrity and transparency in policing and to better understand why officers use lethal force. It is important that the data collected on the use of deadly force reflect the entirety of the situation: use of force by officers and use of force against officers, and not just force involving firearms. In 2019, the Federal Bureau of Investigation, in collaboration with national law enforcement organizations, created a [Use of Force Database](#) to help law enforcement agencies hold themselves accountable to the public they serve. We recommend incentivizing and expanding agency participation in the FBI’s Use of Force Database as part of any policing reform policy.

Data collection, training, and certification, in addition to other reforms such as mandating the use of body worn cameras, all cost a significant amount of money and it is vital that any legislation mandating these policies provide additional funding to help states and localities comply. Most proposals that have been introduced penalize states, localities, and law enforcement agencies in order to force compliance by taking away all or part of the Byrne Justice Assistance Grant (Byrne JAG) and the Community Oriented Policing Services (COPS) Grant funding. The consequence of this on all sectors of the criminal justice system would be long lasting. This funding is used to address needs and fill gaps across the entire criminal and juvenile justice systems – in prevention, enforcement, courts, prosecution and indigent defense, corrections, victim assistance, mental health services, and other community support.

Additionally, at a time when it is well known that state and local governments are facing serious budget and revenue holes due to the coronavirus pandemic and officers are facing furloughs and layoffs, it is difficult to understand how governments will have the funding to comply with these expensive mandates. To incentivize compliance with any police reform policies, funding must be provided.

I wish to emphasize the importance of supporting officers and their work and the need to educate communities on that work and the difficulties and dangers officers face in executing their duties. From the rank-and-file perspective, officers must know that they will be supported by their agency leadership and elected officials when they are forced to make tough decisions or enforce unpopular laws. This is especially important when officers are compelled to use force, even deadly force, against those who threaten them or innocent third parties.

It is elected officials' duty at all levels of government to publicly and continuously defend officers when they have correctly carried out their duties, even when the press, social media, and protestors, falsely accuse the officer of misconduct. The officer on the street did not enact the law, she did not assign herself to that precinct or beat, he did not choose to be dispatched to that disturbance. But he or she is there and must act if the legitimate rights of peaceful and law-abiding citizens are to be secure. This does not mean that we do not recognize and respect the rights of citizens to debate the duties of public servants, to criticize, and make changes when warranted. But, a timely and honest defense of officers who have done the right thing is essential to recruit, keep and develop good officers and leaders.

We must work together to better educate the public about the role and rights of police officers in enforcing the law, including the right to defend themselves and innocent bystanders. A lack of understanding of law enforcement officers' responsibilities has perpetuated an environment of mistrust and unease in communities across the nation.

NAPO strongly endorses the idea of "comply, then complain." Police departments, in partnership with community leaders across the country, have had varying success in engaging their communities to do just that. Confrontations and obstruction go down, so long as the citizen believes that a complaint the next day will be treated seriously and evaluated fairly.

Further, as our officers work to engage citizens through community policing efforts, NAPO feels that it would be beneficial to encourage citizens to go on a ride-along, participate in civilian police academies, try shoot/don't shoot simulators, and explore other opportunities to increase their understanding of law enforcement's mission. These interactions will allow citizens the opportunity to understand a police officer's duties and ultimate goal of keeping our communities safe.

Law enforcement officers are working in an extremely difficult atmosphere. They are on the front lines of the unprecedented coronavirus pandemic with insufficient personal protective equipment. They are protecting the right to peaceful protests and protecting properties and civilians against looting and rioting. Officers are doing this, working back to back shifts, all in the face of unabashed hatred for the uniform and the profession with little public support to bolster morale. Unless and until the recognized leadership of police agencies and public officials stand up for our law enforcement officers against such slander and attacks, the damage is allowed to proceed. The public perception is increasingly tarnished and corroded, and eventually law enforcement is made ineffective and impotent and the result is that public safety suffers the most.

We cannot ignore that the National Law Enforcement Officers Memorial added 307 names to its wall this year, 135 of whom were killed in the line of duty in 2019. In its [Law Enforcement Officers Shot in the Line of Duty: 2019 Year-End Summary](#), the COPS Office reports that 32 law enforcement officers were shot and 11 died as a result of being ambushed. Another 84 officers were shot and 14 died in situations where the offender acted without warning in a premeditated or calculated manner taking the officer by surprise. Further, there were 244 incidents resulting in 273 on-duty officers being shot – including 34 incidents where multiple officers were shot. This does not include the thousands of officers that are assaulted and/or injured during confrontations with criminals.

The loss of even one life is too many, and an officer's use of deadly force is and must be a last resort. This is a sensitive and important issue and we urge you to work with NAPO and the law enforcement

community to develop truly effective and achievable improvements to help law enforcement minimize the use of force.

I appreciate the opportunity to convey these thoughts to you and hope you will consider our perspective moving forward. Please feel free to contact me at (703) 549-0775 if you would like to discuss our concerns or recommendations further.

Sincerely,

A handwritten signature in black ink, appearing to read 'William J. Johnson', followed by a long horizontal line extending to the right.

William J. Johnson, Esq.
Executive Director

Cc: Members, Judiciary Committee, U.S. Senate