



NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS, INC.

Representing America's Finest

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September 17, 2019

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The Honorable Jerrold Nadler
Chair

Committee on the Judiciary
United States House of Representatives
Washington, D.C. 20515

The Honorable Doug Collins
Ranking Member

Committee on the Judiciary
United States House of Representatives
Washington, D.C. 20515

RE: September 19, 2019 Oversight Hearing on Police Practices

Dear Chairman Nadler and Ranking Member Collins:

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. NAPO is a coalition of police unions and associations from across the nation, which was organized for the purpose of advancing the interests of America's law enforcement officers through legislative advocacy, political action and education.

For the oversight hearing on police practices the Committee is holding today, I urge you and the Committee to strongly consider the views of our members, rank-and-file police officers, who work tirelessly to keep our communities safe and have firsthand knowledge of the issues that are being considered. It is a view that the Committee is largely ignoring in this hearing. Our members have a significant stake in the outcomes of this hearing, 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.

Further, as the premise of this hearing stemmed from the U.S. Department of Justice (DOJ) clearing New York City Police Officer Daniel Pantaleo of any federal criminal charges in the Eric Garner case, it is striking that not a single witness represents the officers of the New York City Police Department (NYPD). NAPO, which represents NYPD patrol officers, detectives, lieutenants, and captains, strongly agrees with the DOJ's decision to clear Officer Pantaleo of federal criminal charges and derides Police Commissioner James P. O'Neill for relenting to political pressure and firing Officer Pantaleo, effectively blaming him for Eric Garner's death during a lawful arrest. While the death of Eric Garner was a tragedy, it was not Officer Pantaleo's fault. Garner was an uncooperative suspect resisting arrest.

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 important to consider 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, the electronic media, and protestors, falsely accuse the officer of misconduct. The officers 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.

Good leadership must be courageous enough to speak out publicly in defense of their officers, and not just when a critical incident occurs. The steady drip of small lies and sweeping stereotypes against police - "Police aren't held accountable", "Police want to kill people", "Police are racist" - eventually accumulates into an atmosphere where violent physical attacks on officers are no longer unthinkable. Unfortunately, officers are already working in that atmosphere. Law enforcement officer assaults, injuries, and deaths have increased sharply in recent years. In 2017, 60,211 officers were assaulted while performing their duties.¹ According to a January 2019 report from the Office of Community Oriented Policing Services (COPS), 2018 saw a 24 percent increase in the number of officers shot and killed compared to 2017.

Further, the consistent drumbeat by politicians of distrust of the police absolutely helps engender attacks on officers and encourages the public not to comply with police commands. It is becoming more and more common for persons who come in contact with the police to resist, obstruct, interfere, thwart and even attack officers. In July, there were four instances where New York City Police Officers were assaulted, doused with water and harassed while performing their duties. On September 3, 2019, NYPD officers working crowd control outside a major fire in the Bronx were attacked by residents as they tried to clear the area for firefighters. One woman tore off an officer's body camera and threw it and another individual threw a milk carton at officers who were merely trying to ensure the safety of the crowd and allow the over 100 firefighters on scene to do their job. These are just a few recent high-profile examples of the unacceptable situations officers are increasingly finding themselves facing.

Yet politicians do not defend officers when they take actions to protect themselves against such harassment.

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.

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 oversight hearing, unfortunately, seems aimed to do the opposite.

¹ Federal Bureau of Investigation (FBI) Uniformed Crime Report, *Law Enforcement Officers Killed and Assaulted, 2017*

As a former officer and the voice of hundreds of thousands of officers, I can adamantly say that no officer wants to use force while on duty. It is the police who try to save lives and protect people from injury. The officer does not intend to deliberately injure the suspect; the officer wants to stop the crime. That being said, officers are trained to use force, if necessary, not only to enforce the law, but to defend themselves and protect other citizens in dangerous situations. For these reasons, Federal and state laws recognize an officer's right to use force.

Officers spend many weeks training on how to properly use force to protect themselves and others. During this multi-week training, officers are taught that the person who comes into contact with the officer controls the level of force. That person controls the escalation or cessation of force, not the officer.

We fully understand and support investigations of officers who 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 have been 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 could be 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. This is a Constitutional standard recognized by the U.S. Supreme Court in *Graham v. Connor*. The Supreme Court has ruled that the most important factor to consider in evaluating use of force incidents is the objectively 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.

Again, we feel that police officers continue to be unfairly and inaccurately portrayed, which has led to dangerous misconceptions about their work. We expect our officers to offer every citizen respect, dignity, compassion, and fairness. Officers are expected to enforce the law strictly based on the law, not based on politics, gender, or race. This is a standard that we expect from all of our officers, and a standard that our officers uphold. We strongly feel that they should receive this same treatment when they are being investigated.

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.

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 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.

I will conclude by referring the Committee to the National Consensus Policy on Use of Force (enclosed), that NAPO created in collaboration with ten of the most significant national law enforcement leadership 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 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."²

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 a 1960's Supreme Court case called *Tennessee v Garner*, which held that our Fourth Amendment applies to situations where an officer uses force, and that what the Constitution requires is that an officer act reasonably (not perfectly, but reasonably) in the situation, given the circumstances as he or she *believed* them to be *at the time*.

² *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 – in the 1980’s case of *Graham v. Connor*, in 2007 with *Scott v. Harris* and up to 2015 with *Mullenix v. Luna*. The standard by which to evaluate an officer’s actions is one of reasonableness. Not 20-20 hindsight. Not how any given Chief might have wished it to be. And not what Chiefs 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. Focusing on “police misconduct” and subjectively changing the legal standard for holding officers accountable for the use of force 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.

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. We hope that this hearing does not do irreparable damage to rank-and-file law enforcement’s trust that they will be supported when enforcing our nation’s laws and not just thrown under the bus for political expediency.

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", with a long horizontal line extending to the right.

William J. Johnson, Esq.
Executive Director

Enclosure: National Consensus Policy on Use of Force



NATIONAL
CONSENSUS
POLICY ON USE OF
FORCE

January 2017



This National Consensus Policy on Use of Force is a collaborative effort among 11 of the most significant law enforcement leadership and labor organizations in the United States (see back panel for list). The policy reflects the best thinking of all consensus organizations and is solely intended to serve as a template for law enforcement agencies to compare and enhance their existing policies.

I. PURPOSE

The purpose of this policy is to provide law enforcement officers with guidelines for the use of less-lethal and deadly force.

II. POLICY

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

This policy is to be reviewed annually and any questions or concerns should be addressed to the immediate supervisor for clarification.

III. DEFINITIONS

DEADLY FORCE: Any use of force that creates a substantial risk of causing death or serious bodily injury.

LESS-LETHAL FORCE: Any use of force other than that which is considered deadly force that involves physical effort to control, restrain, or overcome the resistance of another.

OBJECTIVELY REASONABLE: The determination that the necessity for using force and the level of force used is based upon the officer’s evaluation of the situation in light of the totality of the circumstances known to the officer at the time the force is used and upon what a reasonably prudent officer would use under the same or similar situations.

SERIOUS BODILY INJURY: Injury that involves a substantial risk of death, protracted and obvious disfigurement, or extended loss or impairment of the function of a body part or organ.

DE-ESCALATION: Taking action or communicating verbally or non-verbally during a potential force encounter in an attempt to stabilize the situation and reduce the immediacy of the threat so that more time, options, and resources can be called upon to resolve the situation without the use of force or with a reduction in the force necessary. De-escalation may include the use of such techniques as command presence, advisements, warnings, verbal persuasion, and tactical repositioning.

EXIGENT CIRCUMSTANCES: Those circumstances that would cause a reasonable person to believe that a particular action is necessary to prevent physical harm to an individual, the destruction of relevant evidence, the escape of a suspect, or some other consequence improperly frustrating legitimate law enforcement efforts.²

CHOKE HOLD: A physical maneuver that restricts an individual’s ability to breathe for the purposes of incapacitation. This does not include vascular neck restraints.

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

2 Based on the definition from *United States v. McConney*, 728 F.2d 1195, 1199 (9th Cir.), cert. denied, 469 U.S. 824 (1984).

WARNING SHOT: Discharge of a firearm for the purpose of compelling compliance from an individual, but not intended to cause physical injury.

IV. PROCEDURES

A. General Provisions

1. Use of physical force should be discontinued when resistance ceases or when the incident is under control.
2. Physical force shall not be used against individuals in restraints, except as objectively reasonable to prevent their escape or prevent imminent bodily injury to the individual, the officer, or another person. In these situations, only the minimal amount of force necessary to control the situation shall be used.
3. Once the scene is safe and as soon as practical, an officer shall provide appropriate medical care consistent with his or her training to any individual who has visible injuries, complains of being injured, or requests medical attention. This may include providing first aid, requesting emergency medical services, and/or arranging for transportation to an emergency medical facility.
4. An officer has a duty to intervene to prevent or stop the use of excessive force by another officer when it is safe and reasonable to do so.
5. All uses of force shall be documented and investigated pursuant to this agency's policies.

B. De-escalation

1. An officer shall use de-escalation techniques and other alternatives to higher levels of force consistent with his or her training whenever possible and appropriate before resorting to force and to reduce the need for force.

2. Whenever possible and when such delay will not compromise the safety of the officer or another and will not result in the destruction of evidence, escape of a suspect, or commission of a crime, an officer shall allow an individual time and opportunity to submit to verbal commands before force is used.

C. Use of Less-Lethal Force

When de-escalation techniques are not effective or appropriate, an officer may consider the use of less-lethal force to control a non-compliant or actively resistant individual. An officer is authorized to use agency-approved, less-lethal force techniques and issued equipment

1. to protect the officer or others from immediate physical harm,
2. to restrain or subdue an individual who is actively resisting or evading arrest, or
3. to bring an unlawful situation safely and effectively under control.

D. Use of Deadly Force

1. An officer is authorized to use deadly force when it is objectively reasonable under the totality of the circumstances. Use of deadly force is justified when one or both of the following apply:
 - a. to protect the officer or others from what is reasonably believed to be an immediate threat of death or serious bodily injury
 - b. to prevent the escape of a fleeing subject when the officer has probable cause to believe that the person has committed, or intends to commit a felony involving serious bodily injury or death, and the officer reasonably believes that there is an imminent risk of serious bodily injury or death to the officer or another if the subject is not immediately apprehended

2. Where feasible, the officer shall identify himself or herself as a law enforcement officer and warn of his or her intent to use deadly force.³

3. Deadly Force Restrictions

a. Deadly force should not be used against persons whose actions are a threat only to themselves or property.

b. Warning shots are inherently dangerous. Therefore, a warning shot must have a defined target and shall not be fired unless

(1) the use of deadly force is justified;

(2) the warning shot will not pose a substantial risk of injury or death to the officer or others; and

(3) the officer reasonably believes that the warning shot will reduce the possibility that deadly force will have to be used.

c. Firearms shall not be discharged at a moving vehicle unless

(1) a person in the vehicle is threatening the officer or another person with deadly force by means other than the vehicle; or

(2) the vehicle is operated in a manner deliberately intended to strike an officer or another person, and all other reasonable

means of defense have been exhausted (or are not present or practical), which includes moving out of the path of the vehicle.

d. Firearms shall not be discharged from a moving vehicle except in exigent circumstances. In these situations, an officer must have an articulable reason for this use of deadly force.

e. Choke holds are prohibited unless deadly force is authorized.⁴

E. Training

1. All officers shall receive training, at least annually, on this agency's use of force policy and related legal updates.

2. In addition, training shall be provided on a regular and periodic basis and designed to

a. provide techniques for the use of and reinforce the importance of de-escalation;

b. simulate actual shooting situations and conditions; and

c. enhance officers' discretion and judgment in using less-lethal and deadly force in accordance with this policy.

3. All use-of-force training shall be documented.

³ *Tennessee v. Garner*, 471 U.S. 1 (1985).

⁴ Note this prohibition does not include the use of vascular neck restraints.

Every effort has been made to ensure that this document incorporates the most current information and contemporary professional judgment on this issue. However, law enforcement administrators should be cautioned that no "sample" policy can meet all the needs of any given law enforcement agency.

Each law enforcement agency operates in a unique environment of court rulings, state laws, local ordinances, regulations, judicial and administrative decisions, and collective bargaining agreements that must be considered, and should therefore consult its legal advisor before implementing any policy.

CONTRIBUTING ORGANIZATIONS

This document is the result of a collaborative effort among the following organizations.

