



NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS, INC.

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Testimony of Michael McHale

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**“Policy & Oversight Listening Session”
President’s Task Force on 21st Century Policing**

University of Cincinnati

January 30, 2015 10:00am

Commissioner Ramsey, Professor Robinson, and members of the Task Force on 21st Century Policing, thank you for inviting me to speak today at the second public listening session. My name is Michael McHale. I am an active duty K-9 Sergeant with the Sarasota Police Department. I also serve as the President of the National Association of Police Organizations, NAPO. I am here today to testify on behalf of NAPO's members.

NAPO represents over 241,000 sworn law enforcement officers from across the country. These officers work tirelessly to keep our communities safe. We urge the Task Force to strongly consider the views of our members, rank-and-file police officers, who have firsthand knowledge of the issues that are being considered. Moreover, our members have the greatest stake in the outcomes of the Task Force, 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.

I have been asked to use my allotted time to discuss our views on “use of force” policies. To frame this issue, it must be noted that another layer of risk has been added to an already dangerous job. Individuals are increasingly

willing to harm law enforcement officers. Social media and news outlets have perpetuated an environment of extreme hostility in communities across our nation. Pundits continue to mischaracterize law enforcement as agitators and harassers, when the fact is that police officers chose a career to serve their communities and protect our citizens. The inflammatory rhetoric culminated in murder just months ago, when two of our member officers, New York City Police Department Officers Wenjian Liu and Rafael Ramos, were deliberately assassinated in the line of duty.

Even in this environment, our officers continue to work each day to protect communities across the nation.

As an officer and as 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 want to hurt 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 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 at the state level 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. 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 beliefs. This is a Constitutional standard recognized by the U.S. Supreme Court in *Graham v. Connor*, not a local standard. The Supreme Court has ruled that the most important factor to consider in evaluating use of force incidents is the threat reasonably believed to be faced by the officer at the time of the incident. Therefore, utilizing an outside agency, or relying on "special" prosecutors with little or no experience of the actual circumstances and locations involved risks depriving the investigation of those significant facts which only the local agency may know.

Building on this, we are concerned with the trend of calling on outside entities to intervene on "use of force" cases when the public disagrees with a decision on an officer's use of force. The recent case in Ferguson, Missouri is a prime example of this issue. The investigation involved many parties, including the local police department, the State Police, the St. Louis County Police Department, the Governor's Office, the Prosecuting Attorney, the Department of Justice, the United States Attorney's Office, the local grand jury, the federal Civil Rights Division and the Federal Bureau of

Investigation. After a thorough investigation, involving all of the aforementioned parties, the Grand Jury concluded that no criminal action took place. But, many deemed that this was not enough, and demanded another level of investigation. We strongly believe that it would be a mistake to add yet another level of bureaucracy based on political considerations whenever one part of the public disagrees with a legally correct and unbiased decision.

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 fellow citizens.

In light of these facts, we have several recommendations that we urge you to strongly consider. First, 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.

Second, it is vital that political leaders publicly support grand jurors and other public officials when they make correct, but unpopular decisions, applying the law to the evidence. Our leaders' lack of support of fair decisions, made by multiple, unbiased parties, has led our communities to lose faith in a process that works. A lack of support from our leaders will fray the trust that our law enforcement officers continue to work to build.

Finally, as our officers work to engage citizens through community policing efforts, we feel that it would be beneficial to encourage citizens to go on ride-alongs, 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 appreciate the opportunity to convey these thoughts to you, and hope you will consider our perspective moving forward. I look forward to answering your questions.