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of

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President,

Ohio State Lodge, Fraternal Order of Police

on

“Policy and Oversight”

before the

President’s Task Force on 21st Century Policing

30 January 2015

Good morning Commissioner Ramsey, Ms. Robinson and distinguished members of the President’s Task Force on 21st Century Policing. Thank you for allowing me to be here today to share with you the perspective of the rank-and-file officers. I am the President of the Ohio State Lodge of the Fraternal Order of Police and have the honor to represent more than 25,000 officers of every rank in this State.

Today I would like to talk about the use of force from the perspective of the rank-and-file officer who is governed in its use by the *Graham* standard. The *Graham* standard provides that an officer should apply constitutionally appropriate levels of force to control resistive or aggressive behavior toward involved personnel, other personnel, third parties, or property. The level of force in response to a given situation must be “reasonable.”

Reasonable, of course, is a subjective term but in the *Graham* decision, then-Chief Justice William H. Rehnquist makes it clear:

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 calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in

circumstances that are tense, uncertain and rapidly evolving—about the amount of force that is necessary in a particular situation. The test of reasonableness is not capable of precise definition or mechanical application.

I think its important to reiterate that we must interpret reasonableness from the perspective of the officer and the information he had at the moment the decision to use force was made. We cannot judge the reasonableness of an officer's actions with information collected after the fact that was not known to the officer at the time. This is one of the FOP's concerns about surveillance cameras, body-worn cameras and other electronic images recorded of the events. An article published in *PoliceOne.com*, entitled "10 limitations of body cams you need to know for your protection," gives the reader an excellent overview of the limitations of this technology in reviewing use of force situations. I have attached this article to my testimony and would also urge the Task Force to review the many instructive articles and reports made available by the Force Science Institute. The Institute, which also provides training and certifications for law enforcement, is a tremendous resource.

In addition, I want to make clear that the FOP does not oppose the use of body-worn cameras or other similar technology, provided that appropriate administration and oversight is in place to ensure evidentiary integrity and the protection citizen and officer rights. In fact, we have developed a “best practices” document along with a slide presentation and one hour webinar that is available on our website, *www.fop.net*. I have submitted these materials as part of my testimony today.

Given the holding in *Graham*, the next key step is to appropriately train your officer as to what “reasonable” means in the proper and constitutional application of force in response to a given situation. Before the officer can be properly trained, however, there needs to be an agreement on a use of force continuum. How do we define, in terms of policy and in a very general way, the different types or levels of force at the officer’s lawful disposal? The Columbus Police Department’s Directive defines 8 levels of force:

- Level 0: Officer presence, verbal and non-verbal commands, searching, handcuffing, sparking a taser for compliance, using flashbangs and multiple baton rounds as diversions;**

- **Level 1: Empty hand control, pressure points, grounding techniques, and joint manipulations;**
- **Level 2: Use of chemical spray;**
- **Level 3: Use of electronic device (electric custody belt or taser);**
- **Level 4: Hard empty hand control (strike/punch/kick)**
- **Level 5: Use of impact weapon (baton/flashlight)**
- **Level 6: Police K-9 bite**
- **Level 7: Less lethal weapons (beanbag/multiple baton rounds/stinger cartridges)**
- **Level 8: Deadly force**

These levels define the use of force continuum for Columbus police officers and it comports, generally, with most law enforcement agencies. Officers are trained to apply them appropriately to meet

the threats and needs of a given situation and they provide a guide for the officer's decision-making when situations deteriorate or there is a need to respond to an escalation of resistance or threat to the public or the officer.

Resistance to direction or arrest does not mean an officer should desist or refrain from an enforcement act. Agency policy should be clear as to what and how much force is considered reasonable based, albeit generally, on the situation. Again, using the Columbus Police Department as an example, there are four factors to consider prior to engaging in the use of force and at what level:

- the severity of the crime at issue;**
- whether the suspect poses an immediate threat to the safety of the officer or others;**
- whether the suspect is actively resisting arrest; and**
- whether the suspect is attempting to evade arrest by flight.**

Given the general guidelines on factors to consider and the levels of force, we are still relying on the officer's judgement of the situation and the threat *as he sees it*. The officer's judgement and his subsequent reaction must be governed by the training he receives, which makes proper training and continued training absolutely vital.

In conclusion, I want to emphasize two points. The first is that we recruit, hire and train men and women knowing that we must be able to rely on their judgement in the field. When they put on the uniform, badge and gun, they are empowered to exercise their police powers in the course of performing their sworn duty. Of all the characteristics we look for in our officers, the most critical is their judgement.

The second most important point I would like to emphasize is that we should not allow technology to replace an officer's judgement. Technology is a tremendous asset to law enforcement and to investigators. Internal reviews of use of force incidents have been greatly improved because we often have dash cam footage,

surveillance camera tapes or other electronic means to analyze and evaluate the actions of all parties when it comes to a use of force incident. But we should not allow this type of technology to affect the judgement of the officer who, with his own two eyes and ears is in that exact moment facing that exact threat, must make a split second life or death decision.

We do not want our officers, even for a second, to think: “How will this look on camera?” Hesitation can mean death or serious injury to the officer or others.

Thank you for having me here today and I would be pleased to answer any questions you might have.