

# **TESTIMONY**

of

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on

**H.R. 218**  
**the “Law Enforcement Officers’ Safety Act of 2003”**

before the

**House Subcommittee on Crime, Terrorism, and Homeland Security**  
**Committee on the Judiciary**

**15 June 2004**

Good afternoon, Mr. Chairman and distinguished members of the Subcommittee on Crime, Terrorism and Homeland Security. My name is Chuck Canterbury, and I am the National President of the Fraternal Order of Police, the largest law enforcement labor organization in the United States, representing more than 318,000 members in every region of the nation.

I want to begin by thanking you, Mr. Chairman, for holding this hearing and giving the Fraternal Order of Police an opportunity to talk about the importance of H.R. 218, the “Law Enforcement Officers’ Safety Act.” To the Fraternal Order of Police, its members and rank-and-file officers across the nation, whatever their representative organization, the enactment of legislation exempting qualified active and retired law enforcement officers from State and local prohibitions on the carrying of concealed firearms is a top legislative priority. Virtually every rank-and-file officer in the nation agrees with us that this bill is not and has never been a “firearms issue”—it is an officer safety issue, and, on 11 September 2001, it became a critical public safety and homeland security issue as well.

Our nation’s police officers are as much guardians of our security as they are our protectors from crime and violence. We allow our children to play in local parks because we know our streets are patrolled by the men and women of our local police department. We trust these officers to keep our homes and neighborhoods safe. They provide us with a sense of security in all aspects of our daily lives. These men and women are unlike other professionals because they are rarely “off-duty.” Moreover, their instincts, their desire to help and their fidelity to an oath to serve and protect their fellow citizens never retires and never goes off the clock.

Consider the case of John Perry, a Lieutenant with the New York City Police Department who had the morning of 11 September 2001 off from work. He was at Police Headquarters in lower Manhattan filing his retirement papers when the first airliner struck the World Trade Center. The off-duty lieutenant rushed to the scene, joining Captain Timothy Pearson and other officers evacuating victims from the second-floor mezzanine of the north tower. John Perry never made it out.

Lt. John Perry spent his day off responding to one of the greatest tragedies our nation has ever endured. John Perry risked his life to do his duty—and he did not worry about whether or not he punched his time card.

While John Perry was the only off-duty officer to be lost that day, he was not the only off-duty officer to help respond to the aftermath of the attacks. The ranks of volunteers in New York City, Pennsylvania, northern Virginia and Washington, D.C., were swelled by retired law enforcement officers and off-duty officers from every region of the country who had come to offer their services. Police officers, firefighters, and EMS personnel worked side-by-side, with each professional relying on one another to assist according to their specialized training and experience. The help rendered by these public safety officers was received with gratitude by the victims and their fellow emergency response personnel. It did not matter whether they were off-duty or not—they knew they could count on a particular level of training and professionalism from these volunteers. Yet off-duty and retired law enforcement officers were in legal jeopardy as a result of their volunteer efforts.

As the World Trade Center burned, many off-duty and retired officers rushed to New York and New Jersey, hoping to help the victims of the attack and provide relief for the exhausted New York City police officers. These well-intentioned volunteers may have been in violation of State and local law because New York and New York City restrict the ability of off-duty police officers from other jurisdictions to carry their firearms. Similarly, across the river in New Jersey, which was used as a staging and recovery area, armed law enforcement officers not employed by that State may not have been eligible for exemption from New Jersey's statute against unlawful weapons possession. Any armed officer crossing a jurisdictional boundary to volunteer his time in response to this tragedy may have been breaking the law.

Pennsylvania, the only State on 11 September without casualties on the ground, does not have a clear exception for police officers employed outside of Pennsylvania. Off-duty police officers that, without hesitation, volunteered in response to the scene may have been in violation of State law if they carried their firearms with them while assisting their colleagues in Pennsylvania.

I feel certain that most of the officers who volunteered had their firearms with them. I do not know any law enforcement officer who would feel comfortable being in uniform or performing official duties without their firearm. None of the other professional first responders that volunteered their services on 11 September left their tools, instincts or training behind. Only police officers were exposed to legal jeopardy while at or traveling to the site of the attacks.

Law enforcement is a profession, and professionals fill its ranks. Among the many tools of a professional law enforcement officer are the badge and the gun. The badge symbolizes the officer's authority and, in worst-case scenarios, the gun enforces that authority. These tools are given to the officer in trust by the public to enforce the peace and fight crime. In asking Congress to pass this bill, we seek a measured extension of that trust. In emergency circumstances, an officer's knowledge and training would be rendered virtually useless without a firearm. This bill will provide the means for law enforcement officers to enforce the law, keep the peace and respond to crisis situations by enabling them to put to use that training and answer the call to duty when need arises. Without a weapon, the law enforcement officer is like a rescue diver without diving gear—all the right training and talent to lend to an emergency situation, but without the equipment needed to make that training of any use. Neither criminals nor terrorists give up their weapons when they cross jurisdictional boundaries, why should police officers?

When the Fraternal Order of Police talks about the passage of H.R. 218 as an officer safety issue, we mean it. A police officer cannot remember the name and face of every criminal he or she has locked behind bars, but criminals often have long and exacting memories. Passage of this legislation will give police officers the legal means to defend themselves and their families from vengeful, violent acts. Police officers are frequently finding that they, and their families, are targets in uniform and out, off-duty and on, active and retired.

Consider, Mr. Chairman, the case of a police officer from your own district, Detective Charles Edward Harris, a twenty-year veteran with the Southern Pines Police Department in North Carolina. Detective Harris was targeted after drug dealers spotted him attending a "crime watch" meeting at an apartment complex. His killers waited until he was at home and off-duty, then rang

his doorbell. Detective Harris was shot and killed. His wife, who was also home at the time, was also hit.

Over the years that the F.O.P. has been working on this legislation, we have compiled the names of 58 officers who, like Detective Harris, were off-duty when they were killed. Yet despite not being on the clock, the circumstances of their deaths qualified them as having died “in the line of duty.” Some, like Detective Harris, were recognized as, discovered to be, or identified themselves as police officers, prompting their assailants to kill them. Others were killed when they placed themselves in harm’s way to help a victim or stop a crime in progress. With your permission, Mr. Chairman, I would like this document to be entered into the record.

Permit me to provide a few additional examples from this document:

- Detective Thomas G. Newman, a twelve-year veteran of the Baltimore City Police Department in Maryland had been shot and wounded while off-duty in 2001. He testified against his assailant, who was sentenced to thirty years in prison. On 23 November 2002, Detective Newman was shot to death by three suspects—friends and relatives of the criminal that Detective Newman had sent to jail—in an act of criminal retaliation.
- Police Officer Joseph Jerome Daniels, a ten-year veteran of the Birmingham Police Department in Alabama, was shot and killed on 11 November 2002. The officer was eating his dinner at a local restaurant when a man entered, announced that he was robbing the establishment and ordered everyone on the floor. Officer Daniels immediately took action and was shot several times in a struggle with the robber. He died of his injuries on the scene.
- Detective Donald Miller, a ten-year veteran with the New Bern Police Department in North Carolina was off-duty on 23 December 2001. He and his wife had just finished their visit to their newborn child in the hospital when the detective observed a man driving recklessly through the hospital parking lot. He confronted the man, who drew a handgun and fired—striking Miller in the head. Detective Miller, father of two, died two days later on Christmas Day.
- Detective Kevin Darrell Rice, Sr. was off-duty on the evening of 3 August 2001 when he approached two suspicious men loitering near the construction site of his new home. The fourteen-year veteran of the Rockford, Illinois Police Department was shot and killed by the men he confronted.
- Officer Dominick J. Infantes, Jr., a seven-year veteran with the Jersey City Police Department in New Jersey, was attacked by two men wielding a pipe on 4 July 2001. Infantes was off-duty when he asked two men to stop setting off fireworks near playing children. He identified himself as a police officer, but the two killers did not believe him because Infantes did not have a gun. He died two days later, a newlywed at the age of twenty-nine, from his injuries. More than 5,500 police officers, including some from as far away as Canada and Ireland, attended his funeral.

- Officer Shynelle Marie Mason, a two-year veteran with the Detroit, Michigan Police Department was shot and killed on 14 July 2000 by a man she had previously arrested for carrying a concealed weapon. She encountered the man while off-duty; he confronted her and shot her several times in the chest.
- Correctional Officer Leslie John Besci, a sixteen-year veteran with the North Carolina Department of Corrections was beaten to death with a baseball bat in an unprovoked attack. The officer had just returned from work when he was attacked by two former inmates of the prison where he worked.
- Corrections Officer Anthony L. Brown, a seven-year veteran from Nassau County Sheriff's Department in New York, broke up a fight between a man and his girlfriend while off-duty. The man returned later and shot and killed the officer.
- Officer Ralph Dols, a three-year veteran of the New York City Police Department was off duty when he was ambushed in front of his home. He was attacked by three men who shot him a total of six times. The investigation into the officer's murder suggests that the killing was in retaliation for the officer's identification of suspects in a robbery who may have had some connection to organized crime.
- Detective Edward Stefan Kislo, an eighteen-year veteran with the Los Angeles Police Department, was off-duty when he confronted a prowler in a neighbor's yard. The suspect shot and killed him.
- Officer Louis Anthony Pompei was shopping off-duty when he witnessed a robbery in progress. The seven-year veteran of the Glendora, California Police Department was shot and killed while attempting to stop the robbery.
- Officer Ronald Levert Richardson served nine years with the District of Columbia Department of Corrections. He was shot and killed outside his home by suspects seeking to prevent him from testifying at a drug trial.
- Officer Oliver Wendell Smith, Jr., of the Metropolitan Police Department in Washington, D.C. was off-duty when he was robbed at gunpoint. Upon discovering the victim was a police officer, the robbers shot and killed him.
- Officer Charles Kirksey Todd, a three-year veteran of the Police Department in Mayfield, Kentucky was attending a wedding off-duty when one guest attacked another with a knife. The officer was fatally stabbed trying to subdue the attacker.

Law enforcement is a dangerous profession; there is no legislation, act of Congress or government regulation which will change this sobering fact. However, the adoption of H.R. 218 will, at the very least, give officers who do choose to carry a chance to defend themselves, their families and the public whenever or wherever criminals or terrorists choose to strike.

I want to share with you two more examples, both with happier endings, to demonstrate how a tragedy was averted because of an armed, off-duty law enforcement officer.

In 2000, Dennis Devitte had logged twenty years with the Las Vegas Police Department. He was off duty at a sports bar late one evening when the establishment was attacked by three armed assailants. Two of the men opened fire on the crowd, and a man in a wheelchair was hit. Devitte did not hesitate—he pulled his tiny .25-caliber gun and, knowing he would have to get very close to make sure he hit his target, charged a man firing a .40-caliber semi-automatic. Officer Devitte got within one foot of the man, fired and killed the gunman. But not before he was shot eight times.

The remaining two gunmen fled. All six civilians wounded in the assault recovered. One witness described Officer Devitte's action as "the most courageous thing I've ever seen." Officer Devitte lost six units of blood, his gun hand was badly damaged and his knee had to be entirely reconstructed with bones taken from a cadaver. And yet, he was back on the job six months later.

This incredibly heroic officer was selected as the "Police Officer of the Year" by the International Association of Chiefs of Police (IACP) and *PARADE* magazine.

That same year, the IACP and *PARADE* also recognized off-duty Officer Joseph H. Shackett of the Houston Police Department for his heroism. He was visiting a friend at a check-cashing store while off-duty when the establishment was attacked by two gunmen. The robbers forced their way in, but Officer Shackett, who was armed, managed to draw his own weapon and kill them both before either gunman could fire at the store owner.

Despite this clear and convincing evidence that the legislation would have a positive impact on public safety, the IACP is the only law enforcement association to oppose H.R. 218. A position which is somewhat ironic, given that the IACP's own "Police Officer of the Year" for 2000 and an Honorable Mention are police officers whose heroic acts which earned them this recognition occurred while they were off-duty and armed.

In testimony before the Senate Committee on the Judiciary in July 2003, the IACP gives four reasons for their opposition to this legislation, which we will rebut in turn.

The first is a philosophical opposition to Federal legislation preempting State law on the carrying of concealed firearms. We respectfully disagree with this position—philosophical objections must not be permitted to trump the very real risks to the public from opportunistic criminals or terrorists, nor to the risks to law enforcement officers who are vulnerable when traveling outside their jurisdictions.

The F.O.P. also maintains that this is a carefully crafted bill and is not, by any means, a broad preemption of State law by any means. Congress has the power, under the "full faith and credit" clause of the Constitution, to extend full faith and credit to police officers who have met the criteria to carry firearms set by one State, and make those credentials applicable and recognized in all States and territories in these United States. States and localities issue firearms to their police officers and set their own requirements for their officers in training and qualifying in the

use of these weapons. The bill maintains the States' power to set these requirements and determine whether or not an active or retired officer is qualified in the use of the firearm, and would allow only this narrow universe of persons to carry their firearms when traveling outside their jurisdiction. We believe this is similar to the States' issuance of drivers' licenses—standards may differ slightly from State to State, but all States recognize that the drivers have been certified to operate a motor vehicle on public roadways. I sincerely doubt that the IACP has a philosophical objection to recognizing a driver's license in one State from a State with lower or different standards for their drivers.

The IACP frets that law enforcement executives which have very rigorous standards for qualification will be “forced to permit officers who may not meet those standards to carry a concealed weapon in his or her jurisdiction.”<sup>1</sup> The IACP should more closely analyze the information contained in the *Reciprocity Handbook*, a document prepared by the International Association of Directors of Law Enforcement Standards and Training (IADLEST), which consolidates information gathered from all fifty (50) State peace officer standards and training organizations (POST Agencies) and the United States Bureau of Indian Affairs. The *Reciprocity Handbook* shows that the training standards on the use of firearms are very similar and do not “vary significantly,”<sup>2</sup> as the IACP has claimed.

This legislation carefully defines who will and will not be able to carry under this bill. Only employees of a government agency who are or were authorized by law to engage in or supervise the prevention, detection, investigation or prosecution of, or the incarceration of any person for, any violation of law, and have or had statutory powers of arrest will be able to carry their firearms if this legislation is enacted. Active officers must be authorized to carry a firearm and meet the standards established by the agency which require the employee to regularly qualify in the use of a firearm, and retired officers must have retired in good standing from a government agency with a nonforfeitable right to benefits under the retirement plan of the agency in order to be considered “qualified.” In addition, retired officers who wish to carry under this bill must requalify with their firearm at their own expense every twelve (12) months and meet the standards for training and qualification to carry a firearm in the State in which they reside.

Mr. Chairman, these are individuals who have been trained and entrusted by their communities with the use of firearms for the public good who chose law enforcement as their profession, not a hobby. These men and women are more than qualified and more than worthy of the measured extension of the trust that this legislation would provide.

I have also heard the so-called “States' rights” objections from some lawmakers here on the Hill. Frankly, Mr. Chairman, this claim doesn't hold water. As mentioned previously, not only does Congress have the authority under the “full faith and credit” clause of the Constitution, Congress has acted to force States to recognize permits to carry issued by other States on the basis of employment in other, and, in my opinion, less worthy, instances. In June of 1993, the Senate and House approved PL 103-55, the “Armored Car Industry Reciprocity Act.” This legislation mandated reciprocity for weapons licenses issued to armored car company crew members among

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<sup>1</sup> Written Statement of Colonel Lonnie J. Westphal, Chief, Colorado State Patrol before the U.S. Senate Committee on the Judiciary, 23 July 2002.

<sup>2</sup> *Ibid.*

States (including the District of Columbia). In its final form, the bill passed both the House and the Senate by voice vote. Congress amended the Act in 1998, providing that the licenses must be renewed every two years.

This precedent allows armored car guards—who do not have nearly the same level of training and qualifications as law enforcement officers—to receive a license to carry a firearm in one State and forces other States to recognize its validity. Mr. Chairman, if Congress sees fit to stretch the elasticity of the commerce clause to mandate that private guards who obtain firearms licenses should have those licenses recognized in all States, why does it balk at extending that same authority to fully-sworn, fully-trained and government-employed law enforcement officers?

Similarly, in its debate on homeland security during the 107th Congress, both the House and Senate overwhelmingly passed legislation deputizing airline pilots and granting them an exemption to State prohibitions on the carrying of firearms. The House adopted H.R. 4635, the “Arming Pilots Against Terrorism Act,” on 10 July 2002 by a vote of 310-113 (Roll Call Vote #292) and, on 5 September 2002, the Senate adopted Senate Amendment No. 4492, the “Arming Pilots Against Terrorism Act and Cabin Defense Act,” which passed on an 87-6 vote and was ultimately incorporated into H.R. 5005 (now PL 107-296).

Contrary to popular opinion, airline pilots who complete the Federal flight deck officer program are not limited to carrying their firearms only aboard their aircraft. According to the statute, they are exempt from State law with respect to prohibitions on the carrying of firearms, per Section 44912 to Subchapter I of chapter 449 of title 49, United States Code, which reads in part: “(f)(2) PREEMPTION - Notwithstanding any other provision of Federal or State law, a Federal flight deck officer, whenever necessary to participate in the program, may carry a firearm in any State and from 1 State to another State.”

This is yet another Federal preemption that grants a certain class of persons—based on the nature of their employment and risks inherent to that employment—the authority to carry firearms in all States. Mr. Chairman, in an emergency situation, I would want a pilot in control of the aircraft, not a law enforcement officer. Similarly, I believe that most people would prefer a law enforcement officer over a pilot in any emergency situation involving firearms. No matter how many weeks a pilot spends training with a gun, it will not equal the experience and training of a fully-sworn and fully-trained law enforcement officer.

Another objection raised by the IACP and others is that such legislation would jeopardize the lives of officers who might mistake a fellow officer from outside the jurisdiction for an armed assailant. There have been and will be incidents of friendly fire—police who, tragically, mistakenly shoot a fellow officer. These incidents are tragedies, just like training accidents or other accidental injuries or deaths. You cannot legislate against tragedy. Police officers are in far more danger from vengeful, armed assailants than from their fellow officers and the latter is the only issue that we can address with legislation.

Thirdly, the IACP maintains that the bill would do little to improve the safety of our communities. I submit that 11 September 2001 dispensed with that argument.

Finally, the IACP erects the straw man of liability—that the departments are financially at risk if an off-duty officer is involved in an incident outside his home jurisdiction. First of all, an off-duty officer who elects to carry his or her firearm when traveling is liable for his own actions, not the department which employs him or her. Secondly, the chiefs should remember, if they can, that police officers are trained how and when to use firearms and the proper method of escalating force in the variety of situations which may confront them. Most police officers will serve their entire careers without ever having drawn their firearm in the line of duty, so there is no reason to think, as the IACP intimates, that the nation will suddenly be overrun by out-of-control vacation cops drawing guns on jaywalkers. It is irresponsible to portray their officers in that way.

Lastly, I would note that Congress found a means by which to inoculate pilots who choose to carry from liability with respect to their actions, and they will not have had nearly the same level of training and experience as a fully sworn law enforcement officer. If this were a legitimate concern, I feel confident that agreeable language insulating the employing agency would have already been crafted.

Another objection we often hear expressed is with respect to the provision covering retirees. We believe that requiring retired officers to meet the same standards as active officers in their State, which this bill does, sufficiently addresses this concern.

I am often asked by opponents of concealed carry authority for law enforcement officers why this is not a States' rights issue. The simple answer is that, in this instance, it is the variety of State laws that make Federal legislation necessary. The bewildering patchwork of concealed carry laws in the States and other jurisdictions often results in a paradox for law enforcement officers—local, State, and Federal—and can put them in legal jeopardy.

States and localities issue their police officers firearms to perform their jobs. Each State and local jurisdiction sets their own requirements for their officers in training and qualifying in the use of these weapons for both their own safety and the public's. This legislation maintains the States' power to set these requirements and determine whether or not an officer or retired officer is qualified in the use of the firearm, and exempts those qualified officers from local and State statutes prohibiting the carrying of concealed weapons when those officers are off-duty or retired.

The aim of the bill—allowing qualified active and retired law enforcement officers to carry their firearms outside their own jurisdiction is not a controversial position. With the exception of the IACP, this legislation has widespread, bipartisan support throughout the law enforcement community.

It is my understanding that this Subcommittee will be marking up this legislation following this afternoon's hearing and may consider an amendment in the nature of a substitute. At this time, the F.O.P. has not seen or reviewed this amendment, but we do oppose any legislative language that would prevent or delay the provisions of this bill from taking immediate effect and any provisions which would enable States to "opt out" of compliance. We see no need for any amendments to a piece of legislation which has two hundred and ninety-two (292) cosponsors—

a two-thirds majority of the House of Representatives. This total includes eleven (11) of the thirteen (13) members of this Subcommittee, all of whom have cosponsored this legislation as introduced. Just a few years ago, the House passed an amendment identical to H.R. 218 by an overwhelming vote of 372-53.

In the Senate, the companion bill to H.R. 218 has sixty-nine (69) cosponsors—a filibuster-proof majority. Just three months ago, in March, the Senate considered an amendment identical to H.R. 218 and approved it on a 91-8 vote. Congress recognizes the merits of this legislation.

Mr. Chairman and members of this Subcommittee, it is an increasingly dangerous world that the men and women wearing the badge are asked to patrol. The level and degree of violence in the crimes being committed is becoming almost incomprehensible in terms of sheer brutality. Even more striking is the lack of remorse with which this violence is committed. Law enforcement officers are targets—in uniform and out; on duty and off; active or retired. We need the ability to defend ourselves against the very criminals that we pursue as part of our sworn duty, because the dangers inherent to police work do not end with our shift.

Perhaps the strongest endorsement I can give you for this legislation is that thousands of violent criminals will hate to see it pass.

Mr. Chairman, thank you for the opportunity to testify before you and the Committee today on this issue. I would be pleased to answer any questions you might have.