

TESTIMONY

of

**Lt. Steve Young
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on

**S. 2480
the "Law Enforcement Officers' Safety Act of 2002"**

before the

Senate Committee on the Judiciary

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Good afternoon, Mr. Chairman and distinguished members of the Committee on the Judiciary. My name is Lieutenant Steve Young, and I am the National President of the Fraternal Order of Police, the largest law enforcement labor organization in the United States.

I want to begin by extending the sincere gratitude of our nation's rank-and-file officers to you, Mr. Chairman, for holding this hearing as well as the gratitude of the Fraternal Order of Police to you and to Ranking Member Hatch for authorizing S. 2480, the "Law Enforcement Officers' Safety Act," which is the subject of this hearing. Both of you have proven time and time again throughout your careers that you stand ready to help police officers across the country. Your work on this legislation is perhaps the strongest example of that support.

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. For the past three Congresses, the F.O.P. has worked to pass such legislation. It seems that each and every year, our bill would be favorably reported in the House Judiciary Committee, but was always derailed by the "firearms politics." Mr. Chairman and members of this Committee, this legislation has never been a "firearms issue"—it is an officer safety issue. And it is my belief that, on September 11, 2001, it became a critical public safety and homeland security issue. For this reason, the F.O.P. has made the enactment of S. 2480, the "Law Enforcement Officers' Safety Act," its highest legislative priority.

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 them to keep our homes and neighborhoods safe. They provide us with a sense of security in all aspects of our daily lives.

The events of September 11 have caused many of us to wonder if we will ever feel safe in our homes, neighborhoods, or offices again. But on the other hand, September 11 also produced extraordinary tales of heroism—of men and women risking their lives to save others. Too often, we forget the everyday heroism of our police officers and firefighters. The tragedies at the World Trade Center and the Pentagon reminded us how much we depend on these everyday heroes.

I do not believe that Americans have to or will ever accept the idea that we must live in fear of terrorism, any more than we ever accepted we must live in fear of crime. But I believe that all of us would be comforted by the knowledge that, no matter what happens, a police officer—maybe in uniform, maybe not—is ready to come to the aid of his fellow citizens and honor their oath to protect and serve. It is for this reason that S. 2480 is an important public safety and homeland security issue.

Law enforcement officers are a dedicated and trained body of men and women who, unlike other professionals, are rarely "off-duty." 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, on his morning off, had just filed his retirement papers at Police Headquarters in lower Manhattan. When the first airliner struck the World Trade Center, off-duty Lt. Perry rushed to the scene. There he joined Police 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. He was the only off-duty officer to be lost that day. John Perry risked his life to do his duty—and he did not worry about whether or not he punched his time card.

Whenever there is a threat to the peace or to public safety, the police officer is sworn to answer the call of duty, on the clock or off. On September 11, 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, has no exception for police officers employed outside of Pennsylvania. Off-duty police officers that, without hesitation, volunteered in response to the scene were undoubtedly 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. And why shouldn't they? None of the other professional volunteers on 11 September left their tools, instincts or training behind, and yet 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 certain emergency circumstances, an officer's knowledge and training would be rendered virtually useless without a firearm, as would his ability to provide for his own self-defense or that of his family. 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 S. 2480 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.

We have compiled the following information from data obtained by National Law Enforcement Officers' Memorial. With your permission, Mr. Chairman, I would like this document to be entered into the record. In the last ten years, more than sixteen hundred police officers have been added to the Wall of Remembrance in Judiciary Square. Of these, fifty-four (54) officers were not "on-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 of these officers put themselves into danger by having rushed to aid a victim or interfered with a suspect committing a crime. Other officers were murdered by criminals they'd arrested, and still others were killed because their assailants learned that they were police officers.

To the best of our knowledge, these officers were unarmed when they answered the call—and paid the ultimate price. If they had been armed, would they have lived? This is an impossible question to answer, knowing that, on average, more than one hundred and fifty armed and uniformed officers die in the line of duty each year. But one thing is certain: even one life saved demonstrates the need for this legislation.

Permit me to provide a few examples:

- 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.
- 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 Charles Edward Harris, a twenty-year veteran with the Southern Pines Police Department in North Carolina, was at home and off-duty when drug suspects rang his doorbell. The suspects targeted the officer after he attended a "crime watch" meeting at an apartment complex. The officer was shot and killed, and his wife, home at the time, was also shot.
- 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 Robert Porter, a seven-year veteran with the Philadelphia Police Department, was killed in an ambush. While dropping off an item at a local tavern, his partner was confronted by several bar patrons whom he had previously arrested. The two officers left the tavern when the argument was settled and drove away. The three suspects caught up with the two partners, drove up to the passenger side and fired into the vehicle. Officer Porter, though not the intended target, was killed.

- 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.
- Officer Ernest Andrew Whitten, a twelve-year veteran of the Albertville Police Department in Alabama, was shot and killed in his home because of a case he had made against the suspect.

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 S. 2480 will, at the very least, give officers who do choose to carry a chance to defend themselves and their families if confronted with the situations like those I have just described.

This legislation is about officer safety. Police officers are patrolling our streets and keeping our communities safe, and Congress must do its part by working to make police officers safe by passing this critically important piece of legislation.

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, hitting a man in a wheelchair. 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 hit 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.

It is ironic to me that the IACP opposes this legislation when their own choice for “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. Perhaps they will be able to explain this contradiction today.

According to a 24 March 2000 letter, the IACP objects to this bill for four reasons. The first is a philosophical opposition to Federal legislation preempting State laws. We respectfully disagree with this reasoning. 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. This legislation 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—the 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.

We believe that S. 2480 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 requires 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 I mentioned earlier, 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 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, two weeks ago the House voted overwhelmingly to deputize airline pilots who volunteer to perform as “Federal flight deck officers.” Section 2(f)(3) of H.R. 4635, the “Arming Pilots Against Terrorists Act,” states: “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 one State to another State.”

This is yet another mandate that grants a certain class of persons—based on the nature of their 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 want a law enforcement officer and not 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 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. Such a shooting occurred here in Washington, D.C. somewhat recently, in fact. These incidents are tragedies, just like training accidents or other accidental injuries or deaths. You cannot legislate against tragedy. However, it is clear to me from the facts that police officers are in far more danger from vengeful, armed assailants than from their fellow officers.

Thirdly, the IACP maintains that the bill would do little to improve the safety of our communities. I submit that, especially since last September, we have 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's irresponsible to portray their officers in that way.

Lastly, I would note that the House 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 is truly a legitimate concern, I feel confident that agreeable language insulating the employing agency can be crafted.

Another concern 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 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.

The companion bill to S. 2480, H.R. 218, the "Community Protection Act," currently has two hundred and sixty-one (261) cosponsors. Just two years ago, the House passed an amendment identical to the bill on the floor by an overwhelming vote of 372-53. Though the underlying measure was defeated, it is clear that the House of Representatives discerned the merits of the bill. It is my hope that this Committee will as well.

Mr. Chairman and members of this Committee, it is an increasingly dangerous world that the men and women wearing the badge are asked to patrol. After dropping for nearly a decade, violent crime is on the rise again. 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.