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FOLDER TITLE:

Police Officers Bill of Rights

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RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

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RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

FILES

Jose Cerda
OEOB, Room 222
Domestic Policy Council
January 1993 - May 1995

BOX 8

Police Officers

Prevention - General

Pride

Rasco

ACORN Meeting (July 25, 1994)

CADCA Meeting

DPC Meeting (June 27, 1994)

Zinberg

Republican Crime Miscellaneous

Safe and Drug Free Schools

Safe Schools

School Safety

State Drug Enforcement Agencies

TASC

Technology

Terrorism

Treasury - Firearms Initiative

Treatment

PHOTOCOPYING FILED OVERSIGHT ATTACHMENTS

5319

NARA 3739

General
Hard Core Initiative
SSI Benefits

Violence

General
TV

POLICE UNIONS - AN INSTRUMENT FOR CHANGE IN THE 90'S

WHAT DOES THE I.U.P.A. WANT?

Police unions, like all unions, developed to give employees the opportunity to deal equitably with their employers. Police unions developed special characteristics as a consequence of the tragic 1919 Boston Police Strike and the resultant social, political, labor and organizational backlash to it. Given the opportunity to run police organizations unilaterally, with the excesses of Taylorism (the classical or scientific method of organizing and managing), and with relatively little city accountability, police chiefs in many, if not most cities, ran police departments like personal kingdoms. Attempts to organize police officers from the 1920s to the 1960s were dealt with unilaterally through threats, discipline and firings. During the 1960s, police in many states successfully organized police departments.

Two basic characteristics of police unions have to be understood. First, analogies between public and private sector unionization are limited. In the private sector, market forces drive collective bargaining; in the public sector, political forces drive collective bargaining. Second, in response to Taylorism, police unions like most private sector unions, have developed factory model unions - that is, their concerns are largely limited to wages and benefits; job security; hiring, retention, promotion and disciplinary processes; access to "good" jobs, shifts, assignments, overtime, etc.; and regulation of work practices by rules. This is in contrast to trade unions in which concern for quality of goods and services remains a traditional concern of unions and drives recruitment and apprenticeship programs.

The historical excesses of Taylorism and anti-union zealotry have resulted in a badly split occupation within policing resulting in two distinct cultures: a police street culture and a police management culture. This schism has retarded the professionalization of line police officers and is a hinderance to contemporary attempts to implement community and problem-oriented policing. The I.U.P.A. wants to change this Tayloristic System to better serve our communities and make them safer.

New Issues for Police Unionists

Recently, the I.U.P.A. has informally surveyed 22 union leaders. We found the following: Community policing was being implemented in 16 departments; unions were formally involved in planning for community policing in 7 of the 16 cities and informally involved in 5 others. Despite widespread beliefs that unions opposed such change, the vast majority of union leaders were in support of the move. They believed it would increase the quality of police services, improve the safety of officers through improved relationships to their communities and would enhance the role of the police. Union leaders were frustrated, however, at the limited ways in which unions had been invited to participate. For the most part, the "down" side of community policing was how it was being implemented.

Some lessons emerged:

- (1) Police unions will oppose changing work conditions without putting them on the table -- this is a simple legacy of Taylorism;
- (2) Police unions want to improve policing and want to participate in plans for change;
- (3) Many police unionists, like many administrators, are true believers in the role of police as narrow "law enforcers" involved in "wars on crime" -- managers and unionists must find ways to explain community and problem-oriented policing in ways that give meaning to their new work;
- (4) In both the private and public sectors smart managers are starting to understand that labor is not a mere commodity -- it is a human resource embodying considerable know-how, expertise and commitment; and,
- (5) Labor must explore new forms of unionism that balance legitimate concern for traditional issues of wages and

working conditions with professional responsibility for
quality of service.

The foregoing is just one of the issues the I.U.P.A. has taken a strong
position on. Change will not occur without street level police officer input.

Law Enforcement Officers Bill of Rights of 1995

There is no question that law enforcement officers are engaged in a dangerous and stressful occupation. They are also held to a higher standard of conduct than is required by other occupations and are vulnerable to false accusations and abusive conduct in the course of performing their jobs. For example, police officers are often subject to lawsuits under Section 1983, Title 42 of the United States Code. Further, any officer who has been terminated for alleged misconduct finds it impossible to be re-employed in law enforcement. These conditions and the absence of basic procedural rights make the prompt enactment of the Law Enforcement Officers Bill of Rights imperative. If police officers are expected to protect American society from the scourge of crime, it follows that they must be provided with rights and benefits commensurate with the physical and emotional risks that this job entails.

Under this legislation, officers subjected to investigation or interrogation in regard to disciplinary matters (other than of a criminal nature) would be entitled to the following basic rights:

- *Questioning must be conducted at reasonable times and for a reasonable amount of time.**
- *Questioning must be held at the office of those conducting the investigation or where the officer normally reports for duty unless the officer agrees otherwise.**
- *Officers must not be threatened, harassed or rewarded (except an offer of immunity from prosecution) to induce the answering of a question.**
- *An officer shall be entitled to have counsel or any other individual of their choice to represent them at the interrogation.**
- *An officer shall be entitled to be advised of the results of the investigation.**
- *An officer under investigation shall be entitled to a hearing and to hearing transcripts and documents.**
- *An officer shall not have any adverse material placed in their file without an opportunity to review and comment in writing.**
- *Except when on duty or acting in an official capacity, no officer shall be prohibited from engaging in political activity or be denied the right to refrain from engaging in such activity.**

Working together in a coalition in strong support of this important legislation and collectively representing over 475,000 sworn law enforcement officers are the following national law enforcement organizations:

Fraternal Order of Police (FOP)
International Brotherhood of Police Officers (IBPO)
National Association of Police Organizations (NAPO)



NATIONAL CONFERENCE OF STATE LEGISLATURES

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**TESTIMONY OF EDWARD A. PEASE
CHAIR, INDIANA SENATE JUDICIARY COMMITTEE
VICE CHAIR, NCSL LAW AND JUSTICE COMMITTEE
ON BEHALF OF THE
NATIONAL CONFERENCE OF STATE LEGISLATURES
REGARDING
POLICE OFFICERS' BILL OF RIGHTS
BEFORE THE
CRIME AND CRIMINAL JUSTICE SUBCOMMITTEE
JUDICIARY COMMITTEE
U.S. HOUSE OF REPRESENTATIVES**

MARCH 19, 1992

Good morning. My name is Ed Pease. I serve as chairman of the Indiana Senate Judiciary Committee and as Vice Chair of the Law and Justice Committee of the National Conference of State Legislatures (NCSL). I am here this morning on behalf of NCSL to present our objections to legislative proposals that would nationalize rules for state and local law enforcement discipline. Let me first assure the committee that our purpose is not to criticize specific procedural safeguards suggested in the bills, but to emphasize that decisions regarding such procedures should be made at the state and local levels in accordance with provisions of the federal and state constitutions. The federal constitution protects rights, but it also establishes a federal system of government. In our federal system, the states should be able to define the disciplinary procedures for their own employees, provided that their constitutional rights are protected.

NCSL represents all of the nation's legislatures in seeking to foster the goals of federalism. We ask you to consider how the various proposals to detail procedures for internal affairs investigations would affect our federalism. How would federal preemption here affect accountability, responsiveness, and the capacity for innovation in state and local government? We also ask you to consider questions regarding abrogation of sovereign immunity, expansion of municipal liability, and federal court jurisdiction, all of which deserve considerably more examination than we are able to offer here. In asking these questions, we are not seeking to take the side of either the line officers or their supervisors with respect to the procedures outlined in the bills. We simply seek to inform the committee of the important reasons for leaving these decisions to state and local governments.

Proposals to apply nationally imposed procedures for police disciplinary inquiries would preempt state legislation. Under the sections entitled "states' rights", some of the bills specify that the law "does not preempt State law or collective bargaining agreements or discussions during the collective bargaining process that provide rights for law enforcement officers that are substantially similar to the rights that are afforded by this

section." The phrase is not benign; it opens challenges to virtually every state law that is not identical. So we are concerned about the extent that the bills would substitute the judgment of Congress for the considered decisions of the nation's other legislative bodies at the state and local level.

Supervision of state and local law enforcement has always been an area of state and local authority. In describing the federal Constitution, James Madison noted that the federal powers were "few and defined." On the other hand, "[t]he powers reserved to the several States will extend to all objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the states." Federalist No. 45. The dispute over the reach of the central government resulted in the adoption of the Tenth Amendment, reserving powers to the states and to the people. That states should feel strongly about maintaining control over their own police forces should come as no surprise. The West Virginia Constitution states the principle in this way: "Among the powers so reserved to the States is the exclusive regulation of their own internal government and police; and it is the high and solemn duty of the several departments of government, created by this Constitution to guard and protect the people of this state from all encroachments upon the rights so reserved." Article I.2.

In addition to the historical and constitutional roots of state and local control of police are three practical reasons that Congress should retreat from preempting state laws: accountability, responsiveness, and innovation.

In order for legislators at the federal and state level to remain accountable to their constituents, it is important that the constituents know who should receive credit or blame for passage of a law. When Congress forces states to pass laws, accountability is muddled. Were Congress to mandate that states pass the police officers' bill of rights, then state legislators, who should act according to the best interest of their constituents, would be compelled instead to act according to the wishes of Congress. Depending upon how the

issue might arise at the state and local level, police officers, victims of alleged police misconduct, communities, and police supervisory personnel would be uncertain whom to hold responsible for the act of the state legislature.

Part of the issue of accountability is the decision made in these bills to abrogate state sovereign immunity. Abrogation of sovereign immunity is a strong weapon to force compliance with laws essential to the national purpose. In these bills, states are being held accountable to an undefined, ambiguous goal of "substantial similarity." Under the statute, failure of a state to pass a law substantially similar to the federal bill would open them to suit in state court for "pecuniary and other damages." Litigation to define what comprises "substantial similarity" could last indefinitely. While NCSL agrees with allowing flexibility when requiring state action, these bills include a penalty of unknown magnitude -- the abrogation of sovereign immunity -- for violation of an undefined law. Taking the drastic step of abrogating sovereign immunity seems particularly inappropriate and unfair given the intended flexible language of the proposals.

Creating a federal cause of action that state courts would be mandated to hear is an unusual proposition for the federal Congress. This choice further erodes government's accountability by saddling the courts of one jurisdiction with rights created by another level of government. Adding a claim for damages against departments that do not comply creates added liability in states that rely upon the mandamus procedure to insure compliance with procedural due process. Although there appears to be an effort to leave the matter to state courts, federal courts would inevitably be called upon to interpret the extent of preemption under federal law. Eventually, the Supreme Court would be called upon to determine the extent of preemption. Members of the Supreme Court have publicly stated their objection to Congressional expansion of federal court jurisdiction into areas of traditional state power.

The proposals' efforts to hold cities accountable actually places them in an untenable position. These bills could create a costly dilemma for municipalities that face

increasing pressure to take steps to stop police misconduct. They are currently subject to lawsuits under 42 U.S.C. sec. 1983 for certain violations of civil rights by their law enforcement personnel. On the other hand, these bills propose to create federal procedural rights for law enforcement personnel that would form a basis for Section 1983 lawsuits beyond the due process protections afforded by the Constitution. Since the bills create additional rights under federal law, officers could possibly state a claim against the employer under 42 U.S.C. sec. 1983 in federal court. In seeking the discharge of an officer whose conduct indicates potential to violate the rights of citizens and subject the municipality to liability, the municipality could open itself to suit by the officer. Further, by abrogating state sovereign immunity, Congress would give the police officer greater rights against the state than exist for the victim of alleged police misconduct.

With respect to the question of responsiveness, state legislatures have been actively listening to individuals and groups seeking the procedural safeguards now sought in Congress. In the past several years, states have been active in according procedural rights to law enforcement personnel. In fact, nearly half of the states have statutes that provide a variety of statutory safeguards, including six states that have passed laws designated as "law enforcement (or police officer) bill of rights." Other states offer protections through court interpretations of due process rights, and local communities also offer procedures through ordinances and collective bargaining agreements. Worthy of separate consideration is the question of whether court interpretations of the requirements of due process would satisfy the congressional mandate for substantial similarity.

Under Indiana law, we have outlined specific causes for discipline, including neglect of duty and conduct injurious to the public peace or welfare. Before any officer of a town's force may be suspended in excess of five days, the officer must be notified in writing of the specific conduct giving rise to the charges. The officer is entitled to a hearing before the town's safety board at which he or she is entitled to counsel, to cross-examine witnesses, and to require production of evidence. Appeals may be filed in state court. These rules

are in place to specify some of the requirements of due process. Further refinements of constitutional requirements are made by the courts as well as the legislature. We encourage members of Congress to examine their state laws that federal legislation would preempt.

If Congress passed preemptive legislation, state legislatures and city councils would no longer be as responsive to their citizens. The democratic debate would be shut down at those levels of government. Should there be some particularly egregious act by a police officer that calls for a response in law, states and local governments would be unable to take any measures other than those defined by federal statute. Congress may claim that it is only trying to be responsive itself, and in fact, these hearings arise from efforts to be responsive to a sector of interest. Nevertheless, action by the national government necessarily means that every other level of government cannot respond to citizen concerns. Too often, parties interested in seeking legislative assistance for their perspective turn to Congress when they are unsatisfied with the results in their states. Often, it would be more affirming of the process of democratic representative government to continue the pursuit of particular goals at the local and state level. Because workable solutions in one part of the country may be unnecessary or burdensome in another, it is essential that Congress leave the Constitution as the floor and allow states and localities the flexibility to respond to their particular needs.

Finally, the passage of this legislation could foreclose many opportunities for states and localities to develop innovations in handling issues of police misconduct. With Congress preempting the field, states would have little incentive to evaluate how they can better balance the rights of the community with the rights of the individual police officer. When a community is thrown into turmoil over police conduct, it is important for the community to bring together the police and the other parties to communicate to find a workable solution. So long as they are able to do so within the boundaries of the Constitution they should be able to work without the intrusive hand of the central

government. Even in circumstances that are not of crisis proportions, communities can resolve the balance between individual and societal rights and responsibilities through agreements that would not necessarily conform to the Congressional mandate in every detail. Yet by including such details as mode of questioning and duration of rests for personal necessities in federal law, these details are elevated to a substantial and unwarranted degree. State and local laws and agreements can suitably address such issues as damages or remedies, and promotions or reassignments.

The federal Constitution provides a baseline of constitutional action by the states. Any further requirements from the federal level interfere with the capacity of states to act as laboratories of democracy. Once the federal government acts, it is virtually impossible for it to remove itself from the field. Because of institutional differences, Congress acts more deliberately in responding to societal needs; state legislatures and local legislative bodies are often able to react swiftly to perceived needs.

There are times when the national government needs to intervene when states and localities fail, especially in protecting the civil liberties of citizens in situations where the democratic process may not protect minorities or the unrepresented. There is little evidence that this is one of those times. Police officers are well represented and are able to communicate effectively with state and local legislative bodies. Congress should not inject itself unnecessarily into matters of principally local concern. We urge you to suspend action on these bills unless and until it is shown that what is at stake is truly a national interest and not merely an issue common among all the states. Substituting your judgment for the judgment of the several state legislatures should be avoided so that the ability of state and local governments to be accountable, responsive, and innovative is affirmed.

Thank you for inviting NCSL to present these issues to the subcommittee.

NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS, INC.

Representing America's Finest

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TESTIMONY OF
ROBERT SCULLY
PRESIDENT
NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS
BEFORE
THE HOUSE SUBCOMMITTEE ON CRIME AND CRIMINAL JUSTICE
ON THE
RIGHTS OF POLICE OFFICERS DURING INTERNAL INVESTIGATIONS

MARCH 19, 1992
WASHINGTON, D.C.

Mr. Chairman, Members of the Subcommittee:

My name is Robert Scully. I am the President of the National Association of Police Organization which represents over 135,000 rank-and-file police officers across the nation. I also serve as Vice President of the Detroit Police Officers Association. I have been a member of the City of Detroit police force since 1967.

I am here today at the invitation of the Subcommittee to address a matter of deep concern to all of the more than 500,000 rank-and-file law enforcement officers in the United States, namely achieving and maintaining for all police officers the fundamental American right of due process, including a fair hearing, in connection with disciplinary matters relating to their employment. For some years achieving this goal has been the focus of Federal legislative efforts to enact what has been identified as the Police Officers Bill of Rights.

However, before discussing such legislation let me begin by thanking the Subcommittee and its Chairman for providing me with this opportunity to appear before you. Police officers are sworn to serve the public and accordingly they tend generally to neglect their own interests as being secondary. Accordingly, it is good for them to know that there are members of Congress who are concerned about their welfare and who are prepared to take appropriate action along these lines.

For example, in the Crime Bill that passed the House of Representatives on November 27, 1991, there are provisions introduced by Congresswoman Louise Slaughter of New York which would establish a National Commission to Support Law Enforcement; (2) there are provisions introduced by Congressman Ed Feighan of Ohio which would assist the States in funding college and graduate educational opportunities for law enforcement officers; and (3) there are provisions introduced by Congresswoman Pat Schroeder of Colorado which would establish a national program dealing with stress related problems affecting law enforcement officers and their families. Further the Crime Bill contains the Brady Bill which would establish a national five working day waiting period for the purchase of handguns which Chairman Schumer so skillfully succeeded in steering through the House with substantial assistance from Congressman Jim Sensenbrenner of Wisconsin. These are provisions that show that you care about cops and for that we are all grateful.

On the other hand, we do not appreciate the fact that these and other badly needed anti-crime provisions are presently stalled in the Senate and may not become law this session. Nor are we pleased by the fact that the Police Officers Bill of Rights which passed the Senate on July 15, 1991, was not included in the pending Crime Bill by the Conferees. Indeed, but for that fact we would not be here today.

The foregoing circumstance does provide me with an opportunity, however, to explain to you why a Police Officers Bill of Rights is badly needed.

Over the last two decades more than 75 bills have been introduced in Congress which would provide to State and local law enforcement officers specific procedural rights in connection with internal police department disciplinary proceedings. These bills, generally referred to as "The Police Officers Bill of Rights," reflect the fact that while under State law and/or collective bargaining agreements many of the approximately 500,000 law enforcement officers in the United States enjoy procedural protections against arbitrary, vindictive, and discriminatory discipline imposed by police management, vast numbers of law enforcement officers have no such protections. This is because in many States no statutory "bill of rights" exists and collective bargaining over discipline is not available to law enforcement officers. In this connection I have attached to my statement a listing of some, if not all, of the State laws which presently provide such a bill of rights or collective bargaining, or both, to law enforcement officers.

The congressional proponents of a police officers bill of rights over the last two decades have been many. For example, twenty years ago, then New York City Congressman Ed Koch, who later served as that city's mayor, declared most eloquently in support of his proposed police officers bill of rights bill, as follows:

This bill does not provide any special privileges for police officers; it simply affirms the rights they are due as citizens of this country. It is unfortunate that in a nation like ours such a bill is needed; but history has shown all too often that policemen's rights are abridged by local department regulations and procedures. In some communities, . . . when accused of malfeasance, [police officers] are not given the same rights and protections accorded ordinary citizens. Furthermore, an imbalance has evolved because, while we have taken steps to insure the rights of defendants and complainants, we have failed to protect the rights of policemen.

And over the last two decades many other lawmakers too numerous to mention from both sides of the aisle have supported a Police Officers Bill of Rights.

Congressional concern for the procedural rights of law enforcement officers reached its high point during the First Session of the current Congress when on July 11, 1991, the Senate, by a vote of 55 to 43, adopted S. 1241, the Police Officers Bill of Rights Act of 1991 ("POBR"), which had been introduced by Senator Joseph Biden of Delaware, Chairman of the Senate Judiciary Committee. The bill was made part of the Omnibus Crime Bill which passed the Senate on July 15, 1991.

Under Senator Biden's POBR, police officers subjected to investigation or interrogation in connection with disciplinary matters (other than of a criminal nature) would be entitled to the following basic rights:

- 1) Questioning must be conducted at reasonable times and for a reasonable amount of time;

2) Questioning must be held at the office of those conducting the investigation or where the officer normally reports for duty unless the officer agrees otherwise;

3) The officer must be advised in advance of the identity of the interrogator and the nature of the investigation;

4) Police officers must not be threatened, harassed or rewarded (except an offer of immunity from prosecution) to induce the answering of a question;

5) Questioning must be recorded and a copy of a transcript must be made available to the officer under investigation;

6) The officer shall be entitled to have counsel or any other single individual of his choice present at the interrogation;

7) An officer shall be entitled to be advised of the results of the investigation; and

8) An officer under investigation shall be entitled to a hearing and to hearing transcripts and documents.

The bill also protects an officer from having any adverse material placed in his file without an opportunity to review and comment in writing.

These and several other procedural rights would be required to be provided to all law enforcement officers under Senator Biden's bill.

As you know the Bill of Rights did not fare as well in the House principally because of massive opposition, regrettably at public expense, by police management, and State, county and city

government lobbyists who oppose such a law. I note that their representatives are here again today in opposition to such legislation. I know, however, that there are many in their ranks who came up the service ladder from patrol officer or deputy sheriff to chief or sheriff who agree with us on the need for this legislation. They have told us so privately.

Indeed, as the representative of more than 135,000 rank-and-file police officers whose police associations and unions belong to the National Association of Police Organizations which actively supported the bill, I must publicly state that I believe police management's opposition to POBR to be shortsighted, unenlightened and unfair.

There is no question that police officers are engaged in a highly dangerous and stressful occupation, and as you know, cops are on the job 24 hours a day. Further, police officers are held at all times to a standard of conduct which is much higher than that required in other occupations. Also, police officers are extremely vulnerable to false accusations and other abusive conduct in the course of performing their difficult and dangerous jobs. Further, it is well known in police circles that an officer who has been terminated for alleged misconduct by a law enforcement agency will usually find it virtually impossible to be reemployed in law enforcement.

These considerations, and the absence of basic procedural rights in connection with disciplinary proceedings in too many jurisdictions, make the prompt enactment of a police officers bill

of rights at a national level imperative. That it has been vigorously opposed by police management groups only serves to signify to me their failure to act in accordance with the enlightened image that they would like to project to the public, and more importantly, their failure to support the men and women in blue who are so loyal to them on the job.

In fact, the experience of the hundreds of member organizations in NAPO, representing more than 135,000 law enforcement officers nationwide, is that the existence of a state law enforcement officers bill of rights, or a collective bargaining agreement, has not prevented a responsible police department from imposing discipline upon an abusive, corrupt or irresponsible police officer. On the other hand, the existence of a bill of rights provision under law, or similar provisions in police officer collective bargaining agreements, has served to protect police officers from unfair and discriminatory treatment that they otherwise would have had to endure without recourse.

I firmly believe that if police officers are expected to protect American society from the growing scourge of crime and criminals, it follows that they must be provided with rights and benefits that are commensurate with the physical and emotional risks and hazards that their jobs entail.

Accordingly, the National Association of Police Organizations plans to continue its efforts on behalf of the Police Officers Bill of Rights and urges this subcommittee to move forward promptly on this badly needed piece of legislation.

Toward this end I have attached to my testimony an article from the Spring, 1987 issue of the University of Baltimore Law Review written by Professor Byron L. Warnken of that law school. I consider Professor Warnken's article to be a persuasive brief in favor of the kind of legislation that we seek. Indeed, the article has an appendix which contains a "Model Law Enforcement Officers' Bill of Rights." Professor Warnken is undoubtedly the nation's leading academic authority on the Police Officers Bill of Rights, and I was fortunate in being able to persuade him to join us today. He has indicated that he would be pleased to provide the Subcommittee members and staff with such assistance as they might deem appropriate in fashioning such legislation.

I thank the Subcommittee for having scheduled this hearing and for your kind attention.

#

STATUTORY REFERENCES

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Title 14, Chap. 52

"Bill of Rights for Law Enforcement Officers"

California Deering's Codes, Government § 3300 et seq. (1992)

"Law Enforcement Officers' Bill of Rights Act"

Connecticut Gen. Statutes Ann. chap. 3, Title 7 § 474, 7-474 (1991)

"Collective Bargaining Agreements - Policement & Firemen"

Delaware Code § 9200

Title 11 (1991), Chap. 92

"Law-Enforcement Officers' Bill of Rights"

District of Columbia Code § 4-110 (1991) Part V, Title 4

"Police & Fire Departments" chap. 1 "Metropolitan Police"

Florida Statute (1990), § 112.532, Title X, part VI, chap 112

"Law Enforcement & Correctional Officers Rights"

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Division 5, § 89-6

"Collective Bargaining in Public Employment"

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"Peace Officer Standards"

Illinois Rev. Stat. ch. 24, § 10-1-18.1 (1991)

"Police Removals or Suspensions"

Indiana Code Ann. § 36-8-3.5-17 (Burns) (1991) Title 36

"Police & Fire Depts. -- Disciplinary Actions"

Kentucky Revised Statutes (1991) § 15.520, chap. 15 - KRS

"Policemen's Bill of Rights" (Baldwin)

Louisiana Statutes -- LA.R.S. § 33:2560 (1991), Chap. 5

"Fire & Police Civil Service Laws"

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Massachusetts, Ann. Laws of MA, chap. 22 22:9A (1991)

"State Police-Appeal & Review - Disciplinary Proceedings"

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"Metropolitan Police Law"

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"Public Officers & Employees"

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"Fire & Police Municipalities"

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"Proceedings Officers"

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Title XLI (1991)
"Public Employee's Collective Bargaining"

11 Oklahoma Statute § 51-102 (1990), Title 11, Chap. 1
"Collective Bargaining", Article LI "Fire & Police Arbitration"

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Title 22, § 243 650-782
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§ 236.430

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"Collective Bargaining by Policement or Firemen" § 217.1-10

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part 8 chap. 95
"Police of Puerto Rico"

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Tennessee Code Ann. § 38-8-307 (1991), Title 38 part 3
"Investigations of Police Officers"

Texas Gov't Code § 143.057 (1991), Title 5 chap. 143
"Disciplinary Actions -- Municipal Officers"

Vermont Statutes Ann. 3 V.S.A. § 1004 (1991), Title 3,
part 1, chap. 27

"State Employees Labor Relations Act -- State Police"

Virgin Islands Code; 23 V.I.C. § 6 (1991), Title 23, Chap. 1

"Police Force - Internal Security and Public Order"

Virginia Code Ann. § 2.1-116.1-.5 (1991)

"Policeman's Bill of Rights"

"Law Enforcement Officers' Procedural Guarantees"

Revised Code of Washington -- RCW 36.65.050 (1991), Title 36,
Chap. 36.65

"Fire Protection or Law Enforcement Units - Collective Bargaining"

Wisconsin Stat. § 154.01 (1989-1990)

Chap. 164

"Law Enforcement Officers' Bill of Rights"

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001. bio	re: Robert Scully [Personally Identifiable Information] [partial] (1 page)	00/00/0000	b(6)

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Clinton Presidential Records
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FOLDER TITLE:

Police Officers Bill of Rights

2016-0931-S
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Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
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ROBERT SCULLY

Robert Scully, Vice President of the Detroit Police Officers Association (DPOA), is President of the National Association of Police Organizations (NAPO).

Scully, 46, was one of the founders of the 135,000 member group which represents member organizations on national political and legislative issues and which serves as an informational clearing house. NAPO also conducts educational seminars on topics such as Collective Bargaining, Fair Labor Standards Act, drug testing, pension and benefits and occupational health and safety issues.

When NAPO was formed in 1979, Scully was elected its first secretary. He was named Vice President in 1981 and was appointed President in May 1982 to fill a vacancy. He was elected President in 1983 and re-elected in 1985, 1987, 1989, and 1991.

A Detroit Police Officer since October 1967, Scully served five years in a patrol car and four years as a court security officer.

He became a full-time officer in the Detroit Police Officers Association in 1976, when he won election as Sergeant-at-Arms.

Two years later, he was elected the Union's Vice President, winning re-election in 1980, 1982, 1984, 1986, 1988 and 1990. Michigan's largest police union, the DPOA represents the 4,000 sworn, non-supervisory personnel of the Detroit Police Department. Since 1973 Scully has been a member of the team that negotiates the DPOA - City of Detroit collective bargaining agreements.

60013

A native [REDACTED] Scully graduated from Redford St. Mary High School and attended the University of Michigan.

He and his wife, Patricia, are parents of two boys.

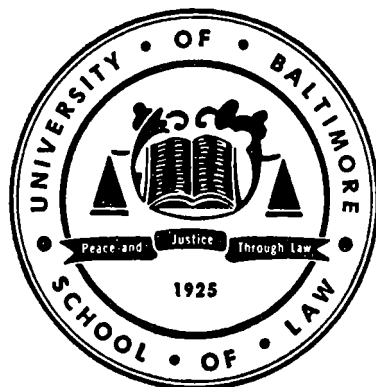
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UNIVERSITY OF BALTIMORE LAW REVIEW



The Law Enforcement Officers' Privilege Against Compelled
Self-Incrimination

Byron L. Warnken

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**STATEMENT OF SENATOR JOSEPH R. BIDEN, JR.
INTRODUCING
"LAW ENFORCEMENT OFFICERS' BILL OF RIGHTS OF 1995"
FEBRUARY 1, 1995**

Mr. President: Today I and Senator McConnell are introducing the "Law Enforcement Officers' Bill of Rights Act of 1995," a bill aimed at protecting the rights of law enforcement officers on the front line of this nation's fight against violent crime and drug trafficking.

Police work is an incredibly difficult job, demanding split-second decisions that have life-or-death consequences. My colleagues may be surprised to find that despite the critical role that front-line law enforcement officers play to enforce the Constitution's rights and guarantees, and the related need to guarantee the highest standards of police conduct, internal disciplinary procedures in law enforcement agencies continue to vary widely across the nation.

The often ad hoc procedures that many departments use to guide internal investigations frequently allows police executives to take arbitrary and unfair actions against innocent police officers, while allowing culpable officers to avoid any punishment at all.

02-01-95 03:01PM FROM JUDICIARY COMM. USS TO 98424396

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The 'Law Enforcement Officers' Bill of Rights is designed to replace the ad hoc nature of many internal police investigations by encouraging states to provide minimum procedural standards to guide such investigations. The standards and protections offered by this bill are modeled on the Standards for Law Enforcement Agencies developed by the National Commission on Accreditation for Law Enforcement.

As the preface to the Commission's standards on internal affairs notes:

The internal affairs function is important for the maintenance of professional conduct in a law enforcement agency. The integrity of the agency depends on the personal integrity and discipline of each employee. To a large degree, the public image of the agency is determined by the quality of the internal affairs function in responding to allegations of misconduct by the agency or its employees.

The specific standards and rights guaranteed by the Law Enforcement Officers Bill of Rights introduced today include:

The right to engage or not to engage in political activities independent of an officer's official capacity;

The right to be informed by a written statement of the charges brought against an officer;

The right to be free from undue coercion or harassment during an investigation; and

The right to counsel during an investigation.

The provisions of this bill will take effect at the end of the second full legislative term of each state. After such time, a law enforcement officer whose rights have been abridged may sue in state court for pecuniary and other damages, including full reinstatement.

Although the bill provides certain procedural rights, it gives states considerable discretion in implementing these safeguards, including the flexibility to provide for summary punishment and emergency suspensions of law enforcement officers.

It is also important to note what the bill does not do. The bill explicitly provides that the standards and protections governing internal investigations shall not apply to investigations of criminal misconduct by law enforcement officers. As a result, criminal investigations of law enforcement officers would not be affected by this bill.

Moreover, the protections in this bill do not apply to minor violations of departmental rules or regulations, nor to actions taken on the basis of an officers' employment-related performance.

I would also like to acknowledge the hard work of several of the nation's leading law enforcement organizations on this important bill. The real leaders behind this effort -- and they have been the leaders since the Police Officers' Bill of Rights won passage in the Senate in 1991 -- are the Fraternal Order of Police, the National Association of Police Organizations, and the International Brotherhood of Police Officers. No one should be confused about where the force behind the Law Enforcement Officers Bill of Rights lies -- it lies with these organizations.

Finally, let me say to the entire law enforcement community -- you enjoy one of the most amicable and productive relationships between the rank and file and management. Many have observed that the reason for these relations is the fact that today's chief was yesterday's patrol officer -- just as today's patrol officer will be tomorrow's sheriff. That is why I look forward to working with all members of the law enforcement community to pass legislation protecting the rights of all law enforcement officers.

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Mr. President, I have heard many members of the Senate reflect on the commitment of those brave individuals who risk their lives as a front-line law enforcement officers. Mr. President, the bill we introduce today gives every member of the Senate the chance to provide at least some of the protections these police heroes deserve.

Thank you.



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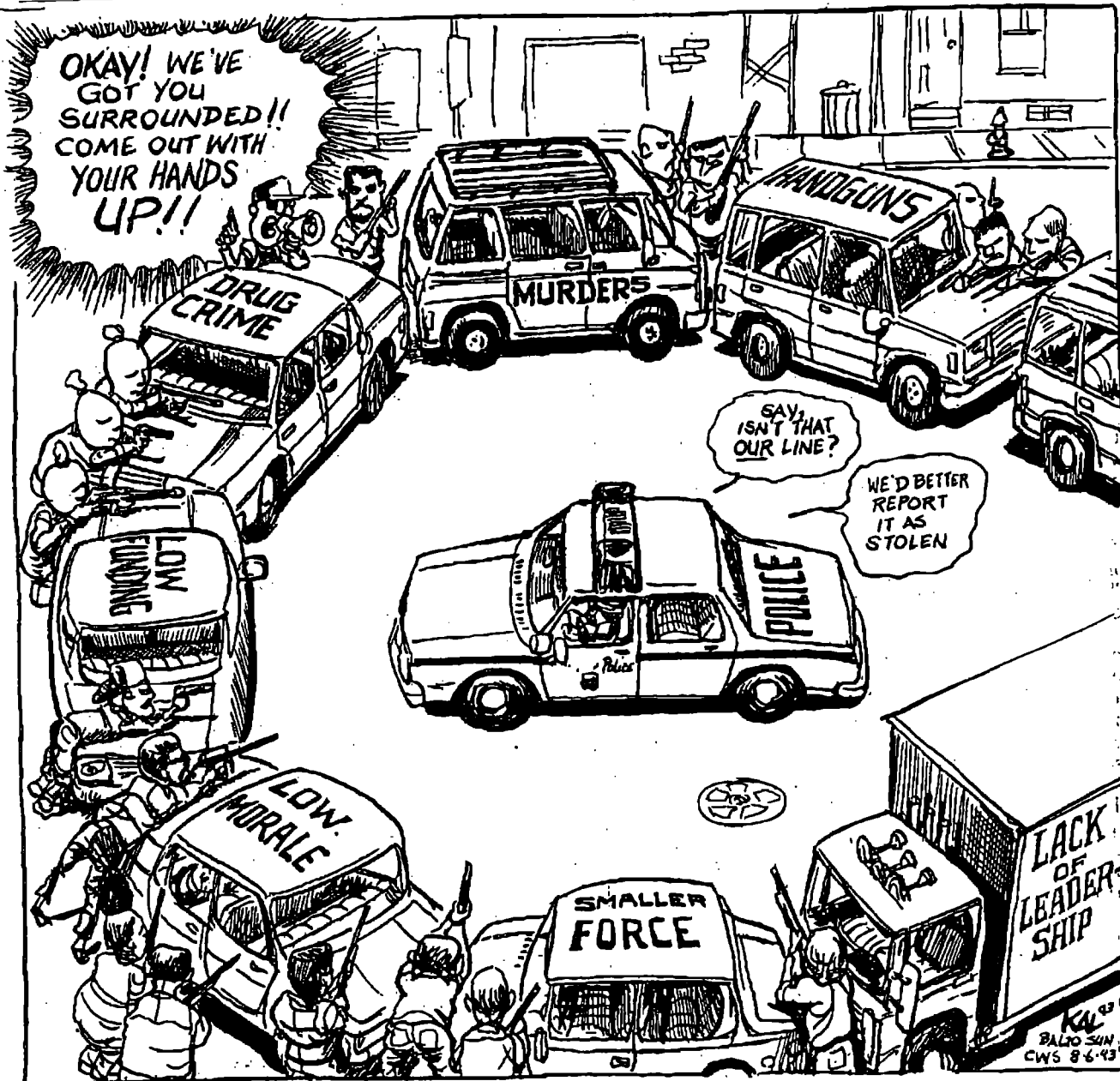
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For cops: standards, support

By SEN. JOSEPH R. BIDEN JR.

Our nation's police officers — our first line of defense against crime — are called on to take an ever greater role in working with their communities. And rightly so — stopping violent crime requires police officers to "walk the beat" and work one-on-one with more members of the community than ever before.

These changes add to the already incredibly difficult job facing our police, who must make split-second decisions that

that all officers enjoy the right to join a union and bargain collectively. No officer should ever be fired, harassed or even demoted for exercising these rights. Similarly, police officers should not be forced to do political campaign work that conflicts with their own beliefs.

Recently, a federal appeals court actually upheld the dismissal of an Illinois deputy sheriff for refusing to help re-elect the sheriff. Our nation will ensure that we have a professional police force by avoid-

viously enacted, but never realized, national commission to support police officers, which will place idea about how to improve their situation on the national agenda.

Still, more needs to be done. To its credit, the law enforcement community is taking its own initiative, with the establishment by the 165,000-member National Association of Police Organizations (NAPO) of a National Law Enforcement Officers' Rights Center. The center will conduct research and serve as a clearing-

have life or death consequences for themselves, crime victims, innocent bystanders and criminals. Suicides — a leading cause of death among police officers — offer stark testimony to the level of stress in police work.

As we demand more and more of our nation's police officers, they need our support. Guaranteeing the highest standards of police conduct — as in any profession — requires a motivated and committed work force.

We must give our police the support they need to meet the highest professional standards, including attention to practical issues that affect their working environment. First, internal investigation and disciplinary procedures must ensure both that no culpable officers avoid punishment and no innocent officers are treated unfairly. Without these procedures both police officers and citizens lose faith in the law enforcement system.

A motivated work force also requires

ing these practical consequences that demoralize police officers.

As public servants, police officers are our employees — so it is all of our responsibilities to provide the support and working environment that builds an enthusiastic and effective work force.

The crime bill that I sponsored in the Senate, which was recently signed into law by President Clinton, takes several important steps toward the kind of working environment that will help produce the best police work force — and the best police work.

First, in providing 100,000 new law enforcement officers, the new crime law will help ease the crushing load that skyrocketing crime rates and increased public demands place on police forces already stretched to the limit. Second, it commits new resources to address problems of stress that afflict most officers and their families at some point in their careers. Third, the law facilitates creation of a pre-

house for information on law enforcement officers' legal rights; undertake training programs for police and education programs for the lawyers who represent them; monitor litigation, filing "friend of the court" briefs where appropriate; and work to improve relations between police officers and the communities where they serve.

I welcome the formation of this desperately needed center by NAPO and look forward, as chairman of the Senate Judiciary Committee, to working closely with it in developing legislation to ensure that law enforcement officers' rights are preserved and enhanced.

Law enforcement officers risk their lives every day to protect our right to be free from harm. The least we can do is protect their rights in return.

Biden, D-Del., is chairman of the Senate Judiciary Committee.



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October 13, 1994

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WASHINGTON, D.C., October 13 — The National Law Enforcement Officer Rights Center was established this week by the 175,000-member National Association of Police Organizations (NAPO) to protect officers' legal and constitutional rights "that are being infringed upon by a wave of anti-police civil litigation."

"Our society must recognize that you don't check your rights at the door when you walk into the station house and put on your police badge," said NAPO Executive Director Robert T. Scully.

"Unfortunately, at a time when Americans' number one concern is crime, our first line of defense — law enforcement officers — are increasingly becoming paralyzed by the prospect that they will be sued for doing their job," Scully commented. "Stopping violent crime requires empowering law enforcement officers, not immobilizing them. Police must have confidence that the legal system is their ally, not their enemy.

"That's why we have established this Rights Center," Scully explained. "By improving the working conditions and morale of law enforcement officers, it will help us win the war on crime."

-MORE-

National Law Enforcement Officer Rights Center Established

Page Two

Sen. Joseph R. Biden, Jr. (D-Del.), in a statement, added his support: "I welcome the formation of this desperately needed Center by NAPO and look forward, as chairman of the Senate Judiciary Committee, to working closely with it in developing legislation to ensure that law enforcement officers' rights are preserved and enhanced. Law enforcement officers risk their lives every day to protect our right to be free from harm. The least we can do is protect their rights in return."

Scully explained the need for the Center by outlining a series of obstacles that police officers face in doing their jobs, including:

- A litigation "explosion" resulting from "an entire cottage industry of trial lawyers who solicit the public to sue law enforcement officers, motivated by the prospect of large damage awards and hefty fees."
- Lawsuits and disciplinary action against police officers "for doing nothing more than following existing police department policies to the letter."
- Employers forcing police officers to engage in political activity against their will. Scully cited a recent federal appeals court ruling which upheld the dismissal of an Illinois deputy sheriff over his refusal to participate in the sheriff's re-election campaign.
- Officers who are denied their "constitutional right to live where they choose through restrictive residency requirements." A New Hampshire appeals court upheld such a rule last year, declaring that the right to live where one chooses is "fundamental" but not absolute.
- Unlawful firings, harassment and demotions resulting from officers' involvement in union organizing efforts. "A motivated work force requires that all officers enjoy the right to join a union and bargain collectively," Biden said.

-MORE-

National Law Enforcement Officer Rights Center Established

Page Three

"Every other group out there — our public employers, the attorneys who sue us, and even criminals — has well-funded, effective organizations busily fighting for their rights," Scully said. "We believe the time has come for police officers to have the same."

According to Scully, the Rights Center will:

- Be a clearinghouse on issues affecting the legal rights of law enforcement officers;
- Research labor and employment, contract, pension, criminal and constitutional law as they affect police officers' rights;
- Train law enforcement officers about proper techniques in search and seizure, use of deadly force and other key issues;
- Conduct legal education programs for attorneys representing police officers;
- Follow key legislation in Congress and the state legislatures;
- Track important legal cases and file "friend of the court" briefs;
- Produce a law enforcement officer employment rights and responsibilities manual; and
- Open new lines of communication between law enforcement officers and the people they protect, removing misunderstandings that can keep police and their communities at odds.

NAPO's Executive Director, Robert T. Scully, is a 26-year veteran of the Detroit police force. NAPO's President, Thomas J. Scotto, is the President of the Detectives' Endowment Association of New York City. The Center's director is Professor Byron L. Warnken of the University of Baltimore School of Law. He is a national authority on legal issues pertaining to law enforcement officers.

NAPO is a coalition of police unions and associations from across the United States. NAPO represents 3,000 police organizations with a combined membership of 175,000 law enforcement officers.

Law Enforcement Officers' Bill of Rights Act of 1995

S.334 McConnell/Biden--H.R. 878 Lightfoot/Stupak

Law enforcement officers are engaged in arguably the most dangerous and stressful occupation requiring life and death decisions all in a day's work. Officers are also held to a higher standard of conduct than is required by other occupations and are vulnerable to false accusations and abusive conduct in the course of performing their jobs. For example, officers are often subject to lawsuits under Section 1983, Title 42 of the United States Code.

Citizens enjoy legal protections against abusive or improper conduct by law enforcement officers. Unfortunately, law enforcement officers are sometimes subjected to abusive and improper conduct on the part of the department through which they serve. In many jurisdictions, these officers have no procedural protections and some are even terminated for the most minor of infractions. These conditions and the absence of basic procedural rights make the prompt enactment of the Law Enforcement Officers Bill of Rights imperative. If police officers are expected to protect American society from the scourge of crime, it follows that they must be provided with rights and benefits commensurate with the physical and emotional risks that this job entails. We must demand for police officers the same rights we demand from police officers.

Under this legislation, officers subjected to investigation or interrogation in regard to disciplinary matters (other than of a criminal nature) would be entitled to these basic rights:

- *Questioning must be conducted at reasonable times and for a reasonable amount of time.

- *Questioning must be held at the office of those conducting the investigation or where the officer normally reports for duty unless the officer agrees otherwise.

- *Officers must not be threatened, harassed or rewarded (except an offer of immunity from prosecution) to induce the answering of a question.

- *An officer shall be entitled to have counsel or any other individual of his or her choice to represent he or she at the interrogation.

- *An officer shall be entitled to be advised of the results of the investigation.

- *An officer under investigation shall be entitled to a hearing and to hearing transcripts and documents.

- *No adverse personnel action shall be taken against the law enforcement officer unless the officer has been found to have violated an administrative rule, following a due process hearing.

- *An officer shall not have any adverse material placed in his or her file without an opportunity to review and comment in writing.

- *Except when on duty or acting in an official capacity, no officer shall be prohibited from engaging in political activity or be denied the right to refrain from engaging in such activity.

Working together in strong support of this important legislation and collectively representing over 475,000 law enforcement officers are the following national law enforcement groups:

Fraternal Order of Police (FOP)

International Brotherhood of Police Officers (IBPO)

National Association of Police Organizations (NAPO)



Assistant Attorney General

Washington, D.C. 20530

January 3, 1994

MEMORANDUM

TO: Thomas F. McLarty, III
Chief of Staff
The White House

FROM: Eleanor D. Acheson 
Assistant Attorney General

SUBJECT: The Police Officers' Bill of Rights Legislation

The National Association of Police Organizations (NAPO) has requested Administration support for the enactment of federal legislation to provide state and local law enforcement officers with specific procedural rights in connection with their employing agencies' noncriminal disciplinary investigations and proceedings. The following background and analysis is provided in response to your staff's request for information on this issue from the legal, political, and policy perspectives.

Background

History of Congressional Action

Since 1970, more than 75 pieces of federal legislation to extend due process protections to law enforcement officers have been introduced. In recent Congresses, several different bills, generally referred to as the "Police Officers' Bill of Rights" (POBR) have been considered. During the 102nd Congress, despite Bush Administration objections, the Senate adopted the Police Officers' Bill of Rights Act of 1991 as part of the Senate crime bill, S. 1241. A similar proposal was rejected by the House Judiciary Committee and subsequently the Senate version was deleted from the House Conference Report crime bill.

by the Attorney General. This year NAPO worked with several other police labor and management organizations and Congressional supporters to draft a revised POBR bill in hope of again seeing it included in a Senate passed crime bill. However, due to the controversial nature of the provision even its supporters made no serious effort to add POBR to S. 1607 during the Senate's crime bill deliberations. The Senate passed bill also omitted any related study requirement.

Major Provisions of the POBR

The POBR would protect law enforcement officers from arbitrary, vindictive and discriminatory disciplinary proceedings by imposing a series of restrictions on any questioning that could lead to a "disciplinary action," including "suspension, demotion, reduction in pay or other employment benefit, dismissal, transfer, or similar action taken . . . as punishment for misconduct." Among other things, the bill's requirements include that --

(1) the questioning must be conducted "at a reasonable hour," and "preferably" when the officer is on duty in the absence of "exigent circumstances";

(2) the questioning must take place at the office of the investigators or the place where the officer reports for duty unless the officer consents in writing to questioning elsewhere;

(3) the officer must be informed before questioning of the name, rank, and command of the questioner;

(4) all questioning must be done through a single investigator;

(5) the officer must be informed in writing of the nature of the investigation prior to any questioning;

(6) questioning must be conducted only for a "reasonable period of time" and with "reasonable" breaks;

(7) no threat, harassment, promise, or reward is permitted to induce the answering of any question;

(8) all questioning must be fully recorded or transcribed, and a copy of the recording or transcript must be made available to the officer; and

(9) the officer is entitled to the presence of counsel or another person of his choosing during any questioning.

In addition, the person in charge of the investigation is required to inform the officer in

writing of the results of the investigation and any recommendations for disciplinary action, and to fully disclose to the officer all "transcripts, records, written statements, written reports and analyses, and video tapes" that are exculpatory or that are to be introduced at a disciplinary hearing or used in support of disciplinary action.

Review of State Law and Other Protections

Under state law and/or collective bargaining agreements, many of the approximately 500,000 law enforcement officers in the United States enjoy procedural protections against arbitrary, vindictive, and discriminatory discipline imposed by police management.

Currently, most officers in jurisdictions permitting comprehensive collective bargaining secure these rights through contracts with the city or state. Other states offer protections through court interpretations of due process rights, and local communities offer procedures through ordinances as well as collective bargaining agreements.

Based upon a preliminary review, it appears that as many as seventeen states may have enacted state statutes to provide officers with some specific procedural rights. Some of these states -- including Indiana, Kentucky, New Mexico, West Virginia, and Nevada -- prohibit collective bargaining, especially for public employees, and thus rely on statutory provisions to ensure due process during disciplinary proceedings. However, a number of states that permit collective bargaining also have adopted statutory provisions granting due process rights to police officers, including Florida, Illinois, and California. Other states that appear to have adopted state bills of rights for police officers are Arkansas, Delaware, Louisiana, Maryland, Rhode Island, Virginia, and Wisconsin. Some of these, like Arkansas, provide for local discretion. Utah and Minnesota as of January 1992 had passed bills to conduct studies about whether to adopt police officers' bills of rights. The existing state statutes guarantee many of the due process rights contained in the proposed federal legislation.

Constitutional, Legal, and Policy Issues

Constitutional Issues

Enactment of a POBR proposal similar to that passed as part of the Senate crime bill in 1991, would probably be held to be within Congress's constitutional authority. The due process clause of section 1 of the Fourteenth Amendment provides that no State shall "deprive any person of life, liberty, or property, without due process of law." Section 5 of the Fourteenth Amendment empowers Congress to enforce section 1 "by appropriate legislation." Pursuant to section 5, Congress may prohibit or require State actions if it concludes that such prohibitions or requirements are reasonable means of protecting the constitutional rights protected by section 1.² Section 5 legislation thus may impose

² Katzenbach v. Morgan, 384 U.S. 641, 652-53 (1966).

limitations on the States' discretion that are broader than the judicially enforceable limitations contained within section 1.

The provisions of the POBR would be held to be within Congress's section 5 authority so long as they can be described as "'plainly adapted' to furthering th[e] aims" of the due process clause.³ The procedural requirements of the 1991 senate crime bill would generally appear to satisfy this standard, although individual provisions might fail to pass constitutional muster. For example, one provision [section 819(j) of S. 1241], which limits the States' ability to require law enforcement officers to disclose their personal assets, might be held to be outside the section 5 authority because it does not appear to relate to procedural due process.

Legal and Policy Concerns

The NAPO supported POBR proposal raises a number of policy concerns. Anecdotal evidence suggests that there are very real problems in a number of jurisdictions which have not implemented adequate procedural protections for officers in disciplinary actions. However, it is not clear that federal intervention of the scope or nature proposed by NAPO is warranted or in the best public interest at this time.

Establishing a federal code of procedure for the investigation and adjudication of disciplinary matters involving state and local law enforcement officers at a time that many states are actively considering the need for such protections, while constitutional, raises numerous questions of federalism and preemption. This is particularly true since no comparable requirements are imposed on, nor deemed appropriate for, federal law enforcement agencies and because some states and localities have affirmatively rejected similar proposals.

There is some evidence to support the contentions of POBR opponents that in the aggregate the bill's requirements could impede effective police supervision and discipline. For example, the written notice rule and other requirements would tend to bar a supervisor from informally calling in an officer to counsel or talk with him or her when a question was raised about his or her conduct. The use of undercover methods of investigation in relation to possible disciplinary violations would appear to be entirely precluded. Moreover, some of the specific requirements are modeled after state laws and/or collective bargaining provisions which have been cited in federal police brutality prosecutions and public corruption investigations as having deterred or prevented the employing police agency from looking into early indications of problems and from taking appropriate disciplinary action. It is possible that enactment of the proposed POBR accordingly could result in a need for substantially greater reliance on federal civil rights prosecutions as the mechanism for enforcing police discipline.

³ Katzenbach, 384 U.S. at 652.

Political Support and Opposition

Support for a federal POBR is grounded in NAPO and other rank and file police organizations, including the International Brotherhood of Police Officers (IBPO), International Union of Police Associations (IUPA), and the Fraternal Order of Police (FOP). Opponents include police management organizations such as the International Association of Chiefs of Police (IACP), National Sheriffs Association (NSA) and groups representing state and local government interests, such as the National League of Cities (NLC), U.S. Conference of Mayors, National Public Employers Labor Relations Association, and the National Conference of State Legislatures (NCSL).

On the Hill, POBR has a number of key supporters most notably Senate Judiciary Committee Chairman Biden. Despite his previous support for and sponsorship of this legislation, Senator Biden did not include the measure in the crime bill in order to avoid a fight over it. This decision surprised many in the House who thought that the strategy for passing the POBR was to have it in the Senate crime bill and then take it in conference because they did not believe it would pass on its own in the House.

Staff for Senator Biden and Representative Schumer reported this week that they had heard of no post Senate crime bill activity directed toward moving this legislation.

Recommendation

Based upon our preliminary review it does not appear appropriate to support enactment of federal legislation mandating such detailed and restrictive procedures for the conduct of internal, noncriminal investigations of State and local law enforcement officers. In general, this may be an area better left to state and local discretion. In the alternative, consideration might be given to developing and supporting less intrusive strategies for guaranteeing fair and effective internal affairs investigations and protecting law enforcement officers from false accusations and abusive conduct.

May 17, 1993

MEMORANDUM

To: Jose Cerda

From: Barbara McCall and Stephanie Stapleton *ms*

Subject: Major Objections to the Police Officers' Bill of Rights

After our recent discussion regarding President Clinton's "100,000 Cops-on-the-Beat" proposal and related law enforcement issues, I wanted to communicate to you the following position on the police officers' bill of rights, a so-called anti-crime issue of great concern to cities throughout the State of Texas. The police officers' bill of rights, which was included in last year's Senate crime bill and has already been introduced as part of the Law Enforcement Responsibility and Improvement Act of 1993 (HR 1148) in the House, completely undercuts the ability of local police departments to conduct internal investigations into misconduct complaints. The major cities of Texas and the Texas Municipal League have worked hard to defeat similar legislation at the state level. In the past, Texas cities joined a broad coalition of public interest groups, including the National Governors' Association, the International Association of Chiefs of Police, the National Sheriff's Association, the National Association of Counties, the National League of Cities, and the U.S. Conference of Mayors, to oppose this measure. An outline of major objections follows.

I. Procedural Obstacles

The police officers' bill of rights would put into place a number of administrative hurdles which would restrict the ability of police chiefs to investigate allegations of police misconduct or use of excessive force. For instance, this proposal would mandate that law enforcement personnel accused of misconduct be given written notice that their activities may be under investigation. In addition, the officer must also be given written notice of the time, date, participants and location of even basic questioning before it

occurs. On-site investigations regarding shootings could be subject to this requirement. Moreover, the police department must allow a lawyer or person of the officer's choice to be present during any questioning sessions. Minor supervisory inquiries regarding a police officer's whereabouts, behavior, etc., are potentially subject to these requirements. Ultimately, enactment of this bill could actually cause police chiefs to turn over many offenses, which would have been handled internally in the past, to an official hearing officer or into a criminal proceeding.

II. Pre-emption of State and Local Laws and Procedures

Enactment of the police officers' bill of rights would impose federal law on an area which has traditionally been governed by state and local governments. Currently, states and localities have in place guidelines which govern how internal investigations are conducted. Many of these have been passed as part of referendums or, some cases, developed in cooperation with civilian review boards or committees. Some states, among them California, Florida, and Nevada, have state legislation in this area which has been painstakingly negotiated. Because these laws would be preempted, jurisdictions in these states are among the most vocal opponents of federal action. Similarly, many states have enacted "little Hatch" acts which govern the behavior of state and local employees. It appears that these laws would also be preempted.

The police officers' bill of rights is not anti-crime legislation or a law-and-order matter. It is a federal mandate of the content of collective bargaining agreements. Even supporters of the measure have described it as a labor issue.

III. Increased Liability and Costs

The police officers' bill of rights leads to further liability for local governments. Police officers will have the right to sue the state or locality in regard to the administrative and investigative procedures required by the bill of rights. This ability would refocus the proceedings away from the question of misconduct to the actual methodology of the investigation.

In addition, large police departments will have to add administrative staff to fulfill the needed paperwork requirements, conduct the investigations, and to provide counsel when requested by the officer being questioned. Small departments, already overwhelmed by the increasing crime rate, would have great difficulty.

May 17, 1993
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Finally, police departments operate within a number of constraints, including limited financial and human resources. Passage of this legislation at the federal level would, of necessity, divert police attention from fighting crime to re-organizing internal operations and procedures.

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TESTIMONY OF**ROBERT SCULLY****PRESIDENT****NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS****BEFORE****THE HOUSE SUBCOMMITTEE ON CRIME AND CRIMINAL JUSTICE****ON THE****RIGHTS OF POLICE OFFICERS DURING INTERNAL INVESTIGATIONS****MARCH 19, 1992****WASHINGTON, D.C.**

Mr. Chairman, Members of the Subcommittee:

My name is Robert Scully. I am the President of the National Association of Police Organization which represents over 135,000 rank-and-file police officers across the nation. I also serve as Vice President of the Detroit Police Officers Association. I have been a member of the City of Detroit police force since 1967.

I am here today at the invitation of the Subcommittee to address a matter of deep concern to all of the more than 500,000 rank-and-file law enforcement officers in the United States, namely achieving and maintaining for all police officers the fundamental American right of due process, including a fair hearing, in connection with disciplinary matters relating to their employment. For some years achieving this goal has been the focus of Federal legislative efforts to enact what has been identified as the Police Officers Bill of Rights.

However, before discussing such legislation let me begin by thanking the Subcommittee and its Chairman for providing me with this opportunity to appear before you. Police officers are sworn to serve the public and accordingly they tend generally to neglect their own interests as being secondary. Accordingly, it is good for them to know that there are members of Congress who are concerned about their welfare and who are prepared to take appropriate action along these lines.

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For example, in the Crime Bill that passed the House of Representatives on November 27, 1991, there are provisions introduced by Congresswoman Louise Slaughter of New York which would establish a National Commission to Support Law Enforcement; (2) there are provisions introduced by Congressman Ed Feighan of Ohio which would assist the States in funding college and graduate educational opportunities for law enforcement officers; and (3) there are provisions introduced by Congresswoman Pat Schroeder of Colorado which would establish a national program dealing with stress related problems affecting law enforcement officers and their families. Further the Crime Bill contains the Brady Bill which would establish a national five working day waiting period for the purchase of handguns which Chairman Schumer so skillfully succeeded in steering through the House with substantial assistance from Congressman Jim Sensenbrenner of Wisconsin. These are provisions that show that you care about cops and for that we are all grateful.

On the other hand, we do not appreciate the fact that these and other badly needed anti-crime provisions are presently stalled in the Senate and may not become law this session. Nor are we pleased by the fact that the Police Officers Bill of Rights which passed the Senate on July 15, 1991, was not included in the pending Crime Bill by the Conferees. Indeed, but for that fact we would not be here today.

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The foregoing circumstance does provide me with an opportunity, however, to explain to you why a Police Officers Bill of Rights is badly needed.

Over the last two decades more than 75 bills have been introduced in Congress which would provide to State and local law enforcement officers specific procedural rights in connection with internal police department disciplinary proceedings. These bills, generally referred to as "The Police Officers Bill of Rights," reflect the fact that while under State law and/or collective bargaining agreements many of the approximately 500,000 law enforcement officers in the United States enjoy procedural protections against arbitrary, vindictive, and discriminatory discipline imposed by police management, vast numbers of law enforcement officers have no such protections. This is because in many States no statutory "bill of rights" exists and collective bargaining over discipline is not available to law enforcement officers. In this connection I have attached to my statement a listing of some, if not all, of the State laws which presently provide such a bill of rights or collective bargaining, or both, to law enforcement officers.

The congressional proponents of a police officers bill of rights over the last two decades have been many. For example, twenty years ago, then New York City Congressman Ed Koch, who later served as that city's mayor, declared most eloquently in support of his proposed police officers bill of rights bill, as follows:

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This bill does not provide any special privileges for police officers; it simply affirms the rights they are due as citizens of this country. It is unfortunate that in a nation like ours such a bill is needed; but history has shown all too often that policemen's rights are abridged by local department regulations and procedures. In some communities, . . . when accused of malfeasance, [police officers] are not given the same rights and protections accorded ordinary citizens. Furthermore, an imbalance has evolved because, while we have taken steps to insure the rights of defendants and complainants, we have failed to protect the rights of policemen.

And over the last two decades many other lawmakers too numerous to mention from both sides of the aisle have supported a Police Officers Bill of Rights.

Congressional concern for the procedural rights of law enforcement officers reached its high point during the First Session of the current Congress when on July 11, 1991, the Senate, by a vote of 55 to 43, adopted S. 1241, the Police Officers Bill of Rights Act of 1991 ("POBR"), which had been introduced by Senator Joseph Biden of Delaware, Chairman of the Senate Judiciary Committee. The bill was made part of the Omnibus Crime Bill which passed the Senate on July 15, 1991.

Under Senator Biden's POBR, police officers subjected to investigation or interrogation in connection with disciplinary matters (other than of a criminal nature) would be entitled to the following basic rights:

- 1) Questioning must be conducted at reasonable times and for a reasonable amount of time;

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2) Questioning must be held at the office of those conducting the investigation or where the officer normally reports for duty unless the officer agrees otherwise;

3) The officer must be advised in advance of the identity of the interrogator and the nature of the investigation;

4) Police officers must not be threatened, harassed or rewarded (except an offer of immunity from prosecution) to induce the answering of a question;

5) Questioning must be recorded and a copy of a transcript must be made available to the officer under investigation;

6) The officer shall be entitled to have counsel or any other single individual of his choice present at the interrogation;

7) An officer shall be entitled to be advised of the results of the investigation; and

8) An officer under investigation shall be entitled to a hearing and to hearing transcripts and documents.

The bill also protects an officer from having any adverse material placed in his file without an opportunity to review and comment in writing.

These and several other procedural rights would be required to be provided to all law enforcement officers under Senator Biden's bill.

As you know the Bill of Rights did not fare as well in the House principally because of massive opposition, regrettably at public expense, by police management, and State, county and city

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government lobbyists who oppose such a law. I note that their representatives are here again today in opposition to such legislation. I know, however, that there are many in their ranks who came up the service ladder from patrol officer or deputy sheriff to chief or sheriff who agree with us on the need for this legislation. They have told us so privately.

Indeed, as the representative of more than 135,000 rank-and-file police officers whose police associations and unions belong to the National Association of Police Organizations which actively supported the bill, I must publicly state that I believe police management's opposition to POBR to be shortsighted, unenlightened and unfair.

There is no question that police officers are engaged in a highly dangerous and stressful occupation, and as you know, cops are on the job 24 hours a day. Further, police officers are held at all times to a standard of conduct which is much higher than that required in other occupations. Also, police officers are extremely vulnerable to false accusations and other abusive conduct in the course of performing their difficult and dangerous jobs. Further, it is well known in police circles that an officer who has been terminated for alleged misconduct by a law enforcement agency will usually find it virtually impossible to be reemployed in law enforcement.

These considerations, and the absence of basic procedural rights in connection with disciplinary proceedings in too many jurisdictions, make the prompt enactment of a police officers bill

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of rights at a national level imperative. That it has been vigorously opposed by police management groups only serves to signify to me their failure to act in accordance with the enlightened image that they would like to project to the public, and more importantly, their failure to support the men and women in blue who are so loyal to them on the job.

In fact, the experience of the hundreds of member organizations in NAPO, representing more than 135,000 law enforcement officers nationwide, is that the existence of a state law enforcement officers bill of rights, or a collective bargaining agreement, has not prevented a responsible police department from imposing discipline upon an abusive, corrupt or irresponsible police officer. On the other hand, the existence of a bill of rights provision under law, or similar provisions in police officer collective bargaining agreements, has served to protect police officers from unfair and discriminatory treatment that they otherwise would have had to endure without recourse.

I firmly believe that if police officers are expected to protect American society from the growing scourge of crime and criminals, it follows that they must be provided with rights and benefits that are commensurate with the physical and emotional risks and hazards that their jobs entail.

Accordingly, the National Association of Police Organizations plans to continue its efforts on behalf of the Police Officers Bill of Rights and urges this subcommittee to move forward promptly on this badly needed piece of legislation.

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Toward this end I have attached to my testimony an article from the Spring, 1987 issue of the University of Baltimore Law Review written by Professor Byron L. Warnken of that law school. I consider Professor Warnken's article to be a persuasive brief in favor of the kind of legislation that we seek. Indeed, the article has an appendix which contains a "Model Law Enforcement Officers' Bill of Rights." Professor Warnken is undoubtedly the nation's leading academic authority on the Police Officers Bill of Rights, and I was fortunate in being able to persuade him to join us today. He has indicated that he would be pleased to provide the Subcommittee members and staff with such assistance as they might deem appropriate in fashioning such legislation.

I thank the Subcommittee for having scheduled this hearing and for your kind attention.

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TESTIMONY OF

CHIP WARREN

NATIONAL VICE PRESIDENT

OF

THE INTERNATIONAL BROTHERHOOD OF

POLICE OFFICERS

BEFORE THE

HOUSE JUDICIARY COMMITTEE

SUBCOMMITTEE ON CRIME AND CRIMINAL JUSTICE

ON

THE POLICE OFFICERS' BILL OF RIGHTS

MARCH 19, 1992

Introduction

Good Morning Mr. Chairman, and members of the Subcommittee on Crime and Criminal Justice, Committee on the Judiciary. My name is Chip Warren, and I am the National Vice President for the International Brotherhood of Police Officers. IBPO is an affiliate of the Service Employees International Union, the fourth largest union in the AFL-CIO. On behalf of the thousands of rank and file police officers which make up the membership of the IBPO, I am pleased to appear before the committee to discuss the concept of a police officers' bill of rights for each law enforcement officer in America.

To me, discussion of the police officers' bill of rights is not theoretical; I was an Atlanta, Georgia police officer for ten years in a department that did not then, nor now, afford officers these rights. I have seen firsthand police management treat officers in an unfair and discriminatory manner by police management. Unfortunately, officers in Atlanta and many other jurisdictions have little recourse available to them during investigations since they are not covered by the bill of rights. On the other hand, I see other IBPO members who receive full due process rights in Massachusetts, Rhode Island, and Florida. In my experience, departments which set out standards for investigations and discipline are generally fairer and better run than departments that can arbitrarily or capriciously mete out discipline. A system

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that clearly spells out the rights of officers under investigation for administrative violations while protecting the department's right to hold officers accountable for their performance of duties is in the best interest of labor, management, officers and the chief or city official. We applaud this hearing today as one step in developing legislation that will accomplish this goal. Today in my testimony I will outline the need for a national police officers' bill of rights, the experiences of those with and without the bill of rights, and the key elements which we believe should be contained in a national police officers' bill of rights.

Discipline and the Police Officer

Almost every city and town in America has some sort of internal disciplinary system for their officers, most often an internal affairs division which investigates citizen complaints received about officers. The disciplinary system has three goals: 1. to bring errant behavior into line with acceptable conduct for the individual officer. 2. to discourage by example other officers from committing the same or similar conduct: and 3. to show the community that the department enforces rules and regulations on its own members in the same stringent way that the law is applied to the citizens of the community. An overriding principle of such a disciplinary system is that it is used as a means to promote efficiency and proper standards of conduct within the department, and not as a means to punish, harass, or intimidate.

History and the Need for the Police Officers' Bill of Rights

Police officers are often subject to unfounded, harassing complaints by the public due to the nature of their jobs. Police officers don't often make very many friends by enforcing the laws, writing traffic tickets, investigating domestic disputes, etc. Combine this with the absence of a rational complaint and disciplinary procedure in many departments and management's potential to abuse its authority in disciplinary proceedings becomes enormous. To this end, and to protect officers more fundamental due process rights in administrative and other matters, the IBPO has long supported a national police officer bill of rights, extending to all law enforcement rational due process procedures for disciplining officers for administrative violations.

Currently, most officers in jurisdictions permitting comprehensive collective bargaining secure these minimal rights through contracts with the city or state. In other states which prohibit collective bargaining, especially for public employees, legislatures have enacted state statutes which secure these due process rights. For example, the states of Indiana, Kentucky, New Mexico, West Virginia, and Nevada have adopted state statutes providing officers with a bill of rights. Furthermore, some states that permit collective bargaining have also adopted a state statute granting due process for police officers. For example, three of our largest states, Florida, Illinois, and California, have followed this route. However, substantial numbers of law

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enforcement personnel, especially the rank and file and deputy sheriffs in rural areas, do not have any protections.

The purpose of the bill of rights is to afford to police officers fair procedures when determining discipline and to increase the professionalism of the law enforcement profession. We strongly believe that the existence of a police officer's bill of rights increases the professionalism of the department from the rookie cop to the chief of the department.

Police officers play a critical role in upholding the Constitution and its guarantees, yet internal disciplinary procedures vary wildly from agency to agency, county to county, and State to State. A police officers bill of rights enacted by the Congress and signed by the President would establish a much-needed floor of rights for officers under investigation of administrative conduct. Very simply, the genesis of the police officers bill of rights is that at times, arbitrary and capricious disciplinary actions are taken against police officers.

We wish to make clear from the outset the scope of coverage of the police officer's bill of rights that Senator Biden introduced. The bill of rights would cover administrative violations only; it does not cover criminal investigations. This is a very important distinction. IBPO firmly believes that police officers, who are expected to uphold the public trust given to them, must be fully accountable for their actions when, on occasion, that trust is betrayed. However, the police officers' bill of rights in no way attempts to excuse, delay, or de-emphasize the responsibilities

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that police officers accept when joining the force. The bill which Congress considered earlier in this session did not preclude a state or locality from providing for a summary punishment (punishment for a minor violation of rules and regulations that does not result in disciplinary action) or an emergency suspension for misconduct by a law enforcement officer. Moreover, the bill did not apply in an investigation of criminal conduct by a law enforcement officer.

Elements of a workable police officers' bill of rights

We believe that certain crucial elements should be contained in a bill of rights that the subcommittee develops; the bill would serve as an effective model for states to adopt as a procedural "floor" for all officers. We recognize, however, that states and localities may wish to add provisions to this floor. This is currently the case, as many collective bargaining agreements and many state statutes offer increased protections than what would have been provided in the bill Congress considered earlier this year. What follows are the seven (7) basic protections which should be included in a bill of rights.

1. Interrogations should be conducted at reasonable times, at reasonable places (preferably on duty), allowing for periods of rest.

2. Questions shall be asked by and through a single investigator, and the officer shall be informed of the name,

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rank, and command of the officer in charge of the investigation, and the interrogating officer.

3. No threat against (i.e. transfer, dismissal, or disciplinary action), harassment of, or promise or reward (except an offer of immunity from prosecution) to any law enforcement officer shall be made to induce the answering of any question.

4. At the request of the law enforcement officer under investigation, he or she shall have the right to representation by his or her choice of counsel or other representative, who shall be present at all times during the interrogation.

5. The officer shall be notified in writing of the findings of the investigation, and no adverse material shall be placed in his or her employee file unless the officer has an opportunity to review and receive a copy of the material in writing.

6. Provisions that ensure that officers are not repeatedly investigated for the same violation. In other words, double jeopardy standards should apply for officers. In addition, some sort of statute of limitations should apply for investigating alleged complaints.

7. If the investigation or interrogation results in the recommendation of some disciplinary action (dismissal, demotion, transfer, loss of pay, etc.), the officer shall be entitled to a hearing on the issues, at which an official

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transcript shall be kept. Appeals to the verdict of the hearing committee shall be to a court of competent jurisdiction.

Bill of Rights Violations--Examples from the field

Mr. Chairman, from my experience in Atlanta I know of numerous examples of situations where officers would have been protected under a bill of rights from the harassing conduct of police management. I know of officers who were consistently denied the opportunity to review allegations made against them, and who were subjected to confusing, tiresome interrogation from numerous investigators. I know of an officer who was repeatedly denied requests that a union representative or his supervisor be present during his interrogation. This officer was threatened with criminal arrest when he requested the presence of his supervisor before relinquishing his gun and badge to the internal affairs investigator. Another officer with whose case I am acquainted was threatened with demotion if he did not file a formal complaint against a superior officer against whom he had made general allegations during a grievance hearing. Finally, I know of one case where administrative statements were subsequently used for a criminal indictment, which is a direct contradiction of the Garrity decision, which prohibits compelled self-incrimination. It is

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clear that such conduct is not consistent with sound management practices, should be prohibited, and would be prohibited if a bill of rights was in place.

Conclusion

Mr. Chairman, we believe that the record today will demonstrate the need for a national police officers' bill of rights used as a procedural floor for every law enforcement officer in America. We look forward to working with you and your staff to design a bill of rights that will protect officers' rights while safeguarding the ability of the department to accomplish its mission. I would ask that you pay particular attention to the testimony of Chief Mancuso, who argues that the presence of a strong bill of rights augments his ability to run his department. I know of many chiefs who agree with our position, making the institutional opposition of police management groups more puzzling. I am not aware of any officers who desire to be free of due process protections. Even so, officers covered by the bill of rights can waive those rights at any time.

Once again, Mr. Chairman, I thank you for the opportunity to present the views of the IBPO and would be delighted to answer any questions that the committee might have.

Vol. 7, No. 4

July/August 1993

Subject to Debate

A NEWSLETTER OF THE POLICE EXECUTIVE RESEARCH FORUM

Next Generation of Police Chiefs Graduate From SMIP

North Andover, Massachusetts—Forty-two police executives graduated from the 14th annual session of PERF's Senior Management Institute for Police (SMIP) held this past June at Merrimack College.

During the three-week course, SMIP participants received intensive training in management concepts and practices used in business and other sectors of government.

Among the topics covered during the course were political management, organizational change, media relations, community policing and innovations in policing.

Designed for senior police executives, SMIP helps prepare up-and-coming police leaders for top management positions. Many of the previous 500-plus SMIP graduates have become chiefs of police at agencies across the country.

Said one graduate, Annapolis (MD) Police Lt. Barbara Hopkins, "SMIP

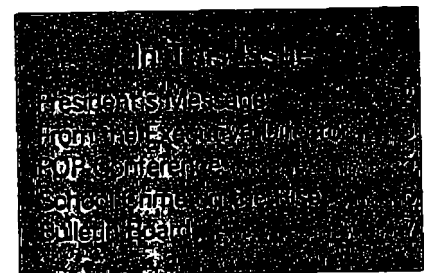


(Photo by Jeff Chester)

was a great experience for me, especially because of my interaction with colleagues I met there. I've already implemented some of the suggestions I learned about leadership, such as how simple things can make a real difference in boosting employee morale."

Another SMIP participant, Major Stan Aston, of the Washington State Patrol said, "I went to SMIP looking for answers, but it challenged me to evaluate what we're doing in my department and learn how we can actually manage in better ways."

At the graduation ceremony, retired Edmonton Police Superintendent Chris Braiden urged the graduates to lead an intellectual revolution in policing by seeking to understand and address the root problems faced by their communities.



Subject to Debate, published bimonthly by the Police Executive Research Forum, welcomes input from PERF members and other interested parties. 210 Washington, DC 20037

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President's Message

Chiefs Need Employment Protections, Too

Police unions from across the country are attempting to strengthen the individual rights of officers through state and federal laws that delineate police officer rights. Many mayors and police chiefs are actively opposing such legislation. This opposition by police chiefs is ironic, in that chiefs themselves could benefit from some of the due process clauses contained in certain of these measures.

Chiefs Operate Under "At Will" System

Police chiefs normally serve city managers and mayors as "at will" employees. Although the laws dealing with civil service vary from state to state, most chiefs are not protected by civil service provisions that would allow for removal from their positions only for cause.

Quite understandably, many talented, young managers do not want to become police chiefs because they feel they can be left "high and dry" by politicians and without adequate means to sustain themselves and their families until reemployed.

Further, the prospects for quick reemployment are dim. In most departments, chiefs cannot reenter the lower ranks, and lateral entry into another department at a lower rank is virtually unheard of. Thus, a police chief with a family and mortgage, or other lifestyle commitments, can be manipulated by elected officials for their own personal and political interests.

If an "at will" system is harmful to

the chief and department, and chiefs don't want to join rank-and-file unions, then what concepts of employment should chiefs promote, and how should they go about it?

The formulation of independent oversight commissions could give chiefs autonomy from the political process. Wisconsin is a classic example of a state that has designed measures to protect police chiefs. The Wisconsin Police and Fire Commission hires and fires, and chiefs cannot be relieved of their duties without cause.

Many talented, young managers do not want to become police chiefs because they feel they can be left "high and dry" by politicians.

PERF Committee Could Research the Problem, Propose Solutions

PERF has been a leader in dealing with tough personnel and other employment issues. In recent years, PERF has addressed these issues through several publications, including *On the Dotted Line*, which addresses police chief contracts, and *The Third Envelope*, which offers advice to chiefs who have been fired.

To supplement these publications, PERF should develop a comprehensive program to protect professional police chiefs. I would recommend that PERF form a committee to research the problems, gather information on the ways mayors, city managers and corporate executives enhance their job security, propose



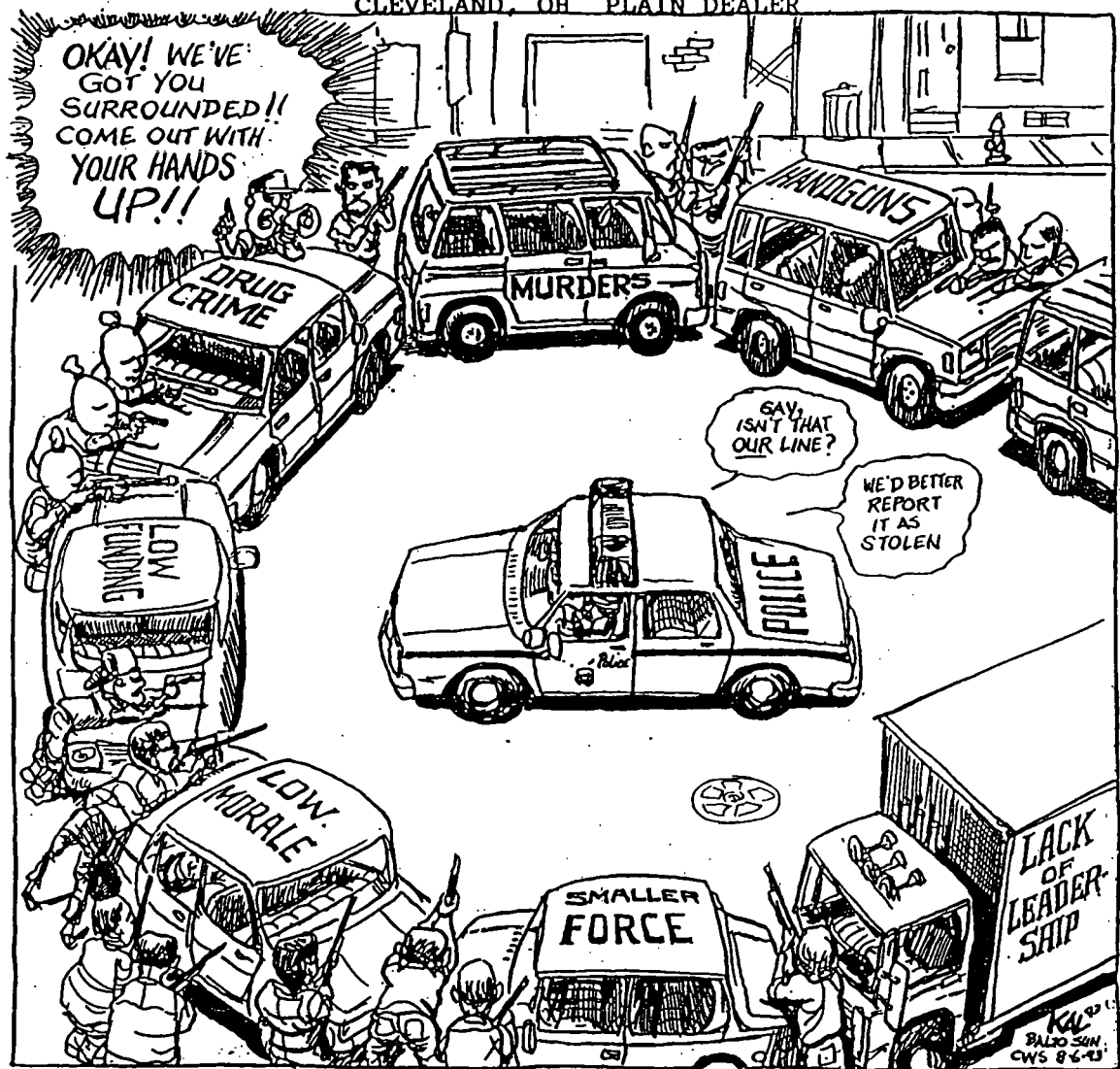
Jim Carvino

solutions appropriate for police chiefs and present these ideas at the open forum portion of PERF's semi-annual meeting in October. PERF could then decide what we can accomplish on this front as an organization. I encourage anyone interested in chairing such a committee to contact Chuck Wexler at (202) 466-7820.

As part of a comprehensive program, PERF could create a resume bank of members seeking new employment, as well as collect model contracts, memoranda of understanding and exit packages for police chiefs who are negotiating positions. Negotiating an exit package at the beginning of a chief's tenure is critical to maintaining professionalism.

Chiefs also need a portable 401K retirement package, similar to the package offered to city managers by the International City/County Management Association.

All of these efforts are critical because police chiefs can never be free from inappropriate political pressure—nor be truly professional—without some form of security.



For cops: standards, support

By SEN. JOSEPH R. BIDEN JR.

Our nation's police officers — our first line of defense against crime — are called on to take an ever greater role in working with their communities. And rightly so — stopping violent crime requires police officers to "walk the beat" and work one-on-one with more members of the community than ever before.

These changes add to the already incredibly difficult job facing our police, who must make split-second decisions that have life or death consequences for themselves, crime victims, innocent bystanders and criminals. Suicides — a leading cause of death among police officers — offer stark testimony to the level of stress in police work.

As we demand more and more of our nation's police officers, they need our support. Guaranteeing the highest standards of police conduct — as in any profession — requires a motivated and committed work force.

We must give our police the support they need to meet the highest professional standards, including attention to practical issues that affect their working environment. First, internal investigation and disciplinary procedures must ensure both that no culpable officers avoid punishment and no innocent officers are treated unfairly. Without these procedures both police officers and citizens lose faith in the

that all officers enjoy the right to join a union and bargain collectively. No officer should ever be fired, harassed or even demoted for exercising these rights. Similarly, police officers should not be forced to do political campaign work that conflicts with their own beliefs.

Recently, a federal appeals court actually upheld the dismissal of an Illinois deputy sheriff for refusing to help re-elect the sheriff. Our nation will ensure that we have a professional police force by avoiding these practical conditions that demoralize police officers.

As public servants, police officers are our employees — so it is all of our responsibilities to provide the support and working environment that builds an enthusiastic and effective work force.

The crime bill that I sponsored in the Senate, which was recently signed into law by President Clinton, takes several important steps toward the kind of working environment that will help produce the best police work force — and the best police work.

First, in providing 100,000 new law enforcement officers, the new crime law will help ease the crushing load that skyrocketing crime rates and increased public demands place on police forces already stretched to the limit. Second, it commits new resources to address problems of stress that afflict most officers and their

viously enacted, but never realized, national commission to support police officers, which will place idea about how to improve their situation on the national agenda.

Still, more needs to be done. To its credit, the law enforcement community is taking its own initiative, with the establishment by the 165,000-member National Association of Police Organizations (NAPO) of a National Law Enforcement Officers' Rights Center. The center will conduct research and serve as a clearinghouse for information on law enforcement officers' legal rights; undertake training programs for police and education programs for the lawyers who represent them; monitor litigation, filing "friend of the court" briefs where appropriate; and work to improve relations between police, officers and the communities where they serve.

I welcome the formation of this desperately needed center by NAPO and look forward, as chairman of the Senate Judiciary Committee, to working closely with it in developing legislation to ensure that law enforcement officers' rights are preserved and enhanced.

Law enforcement officers risk their lives every day to protect our right to be free from harm. The least we can do is protect their rights in return.



NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS, INC.

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Testimony of Robert Scully, Executive Director National Association of Police Organizations

Before The Secretary of Labor's Task Force on Excellence in State and Local Government Through Labor-Management Cooperation

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Chairman, members of the Task Force, my name is Robert Scully, I am the Executive Director of the National Association of Police Organizations (NAPO). NAPO is a national law enforcement organization made up of over 3,500 law enforcement organizations from cities, counties, and states throughout the country representing over 180,000 sworn rank-and-file law enforcement officers. NAPO's primary mission is to lobby on Capitol Hill for legislation most beneficial to law enforcement in general and to the American public we serve.

I retired from the Detroit Police Department in January of 1993 after over twenty-five years of service. My last twenty years in Detroit, I was the full-time elected Vice President of the Detroit Police Officers Association which is the official recognized collective bargaining agent for all sworn Detroit police officers. In 1978 I was elected the first Recording Secretary for NAPO, several years later I was elevated to the position of Executive Vice President and from 1983 to 1993 served as its elected President. In 1993 I retired from the Detroit Police Department and was hired as NAPO's first Executive Director and re-located to Washington, D.C. to manage its full time office.

EXAMPLES OF SUCCESSFUL LABOR-MANAGEMENT COOPERATIVE EFFORTS:

Examples of successful labor-management cooperative efforts have, unfortunately, become all too rare in recent years. At NAPO's annual legislative conference, held earlier this month, the request for successful examples was presented to our National Board of Directors which includes police labor representatives from more than twenty states. It proved extraordinarily difficult to provide even one or two examples of successful cooperation, which, in itself, should tell you something. Notwithstanding these difficulties however, I am able to report to you the following examples:

A) One of NAPO's member organizations, the Phoenix Law Enforcement Association (PLEA) and the City of Phoenix have a memorandum of understanding that has a provision that calls for a joint labor-management committee to discuss major policy issues. The PLEA has a seat at the table for the weekly police management staff meeting and is successful in resolving potential problems before they reach the membership.

PLEA, police management and city representatives have an annual retreat, both sides place topics on the agenda and good faith discussions take place. Several positive results of the retreat are the current drug testing policy, the current critical incident debriefing team, and the start of discussions on a positive discipline review process.

There was also a recent incident in Phoenix in which a citizen lost his life while resisting arrest as a result of a police officer applying a choke hold. There were demands that this officer be fired, charged criminally, prosecuted and imprisoned. Management stood by the officer, told the special interest groups that the Department would fully investigate the incident and that the officer was innocent until proven guilty. Compare that to a case in Detroit where two veteran police officers were attempting to arrest a person on drug charges and the person resisted arrest and died during the ensuing struggle. Within twelve hours of the incident, the Mayor and Chief of Police of the City of Detroit held a press conference and stated that the officers would be fired and should be charged with murder.

Phoenix obviously believes in good labor-management relations and supports its work force while Detroit on the other hand chose to completely abandon its officers and found them guilty before the investigation even started.

I feel it is important for this Task Force to note the impact on the public of these two different approaches. Police service to the public, and thus public confidence in the police goes hand-in-hand with good police morale. Cooperative labor-management relations, which recognize the value, worth and dignity of the individual officer, greatly improve morale and efficiency in a department. These improvements translate directly to improved law enforcement of the street. Management cannot deprive their own officers of basic human respect yet still expect these officers to honor and respect the rights of others. People tend to treat others the way they are treated, and police officers are no different.

B) Law Enforcement Steering Committee (LESC). In 1986, after a bill was introduced which called for a national seven-day waiting period to purchase a handgun, commonly referred to as the Brady Bill, eleven national organizations representing law enforcement who all supported the passage of this legislation formed the National Law Enforcement Steering Committee in Washington, D.C. They agreed not only to work on the passage of the Brady Bill but also to meet monthly to discuss federal legislation that would impact law enforcement in general. The Steering Committee was made up of national organizations

that represented both top level management groups as well as labor organizations and several law enforcement research organizations. The LESC worked together in raising the funds to build the National Law Enforcement Officers Memorial and to pass legislation which increased the federal death benefit when a law enforcement officer is killed in the line of duty. The LESC also worked together in the passage of the Brady Bill and the 1994 Crime Bill. These successes are an excellent example of what can be accomplished when labor and management work together.

The organizations of the Law Enforcement Steering Committee have the right to bring any issue they choose to the table at the monthly meetings. Issues that are supported by three-quarters of the members of the steering committee earns the complete endorsement of the steering committee. Issues that fail to receive the necessary three-quarter's endorsement then have to be pursued by the organizations independently without the steering committee's support. During the 102nd Congress, NAPO and several other law enforcement organizations representing rank-and-file officers were successful in getting a Law Enforcement Officers' Bill of Rights passed in the Senate and were successful for the first time in having a hearing on the House side, although we failed in getting the support of the full House Judiciary Committee. Shortly after the Senate passed this bill and the House Judiciary Committee called for hearings, the two largest management groups, without discussion, dropped their membership with the LESC. The remaining groups on the LESC were informed that the two management groups withdrew their membership because of the labor organizations introducing a Law Enforcement Officers' Bill Of Rights and having it successfully moved through the Senate. During the 103rd Congress, one of the management groups chose to re-affiliate with the Law Enforcement Steering Committee and actively worked with the Committee in the passage of the 1994 Crime Bill. At the urging of the Administration and several members of Congress the labor organizations did not introduce a Law Enforcement Officers' Bill Of Rights in the 103rd Congress for fear that it might hurt the passage of a Crime Bill in the 103rd Congress.

At the start of this 104th Congress, a coalition representing the majority of the labor organizations introduced the 1995 Law Enforcement Officers' Bill Of Rights and shortly thereafter the management group that had recently re-affiliated with the Law Enforcement Steering Committee once again announced it was dropping out of the Law Enforcement Steering Committee.

It is my belief that the Law Enforcement Steering Committee serves as an excellent tool to bring all labor and management organizations to the table to discuss legislative issues that impact both labor and management organizations. It's unfortunate that the minute we introduce legislation that is perceived to be a labor issue that some of the management groups chose to pick up their marbles and go home, rather than intelligently discussing the issue and trying to work out any differences we may have.

C) Community Policing - NAPO has been an early and strong proponent

of Community Policing based on the positive results that several communities have experienced. In 1993 at NAPO's annual convention, several hours were put aside to conduct a workshop on Community Policing: Why It Works In Some Cities And Is A Dismal Failure In Others!

NAPO member organizations had several clear examples of Community Policing being implemented within their police departments with very positive results. Two examples would be the cities of Phoenix, Arizona and Portland, Oregon. The presidents of the collective bargaining organizations that represent all of police officers in these two cities clearly stated that the unions had substantial and meaningful involvement in the developmental stages of community policing. They attributed the success of their community policing efforts to the outstanding labor-management relationship they have within their cities. An example of the opposite, would be St. Louis, Missouri where the union leaders there were completely ignored, their input falling on deaf ears. Management's refusal to bring them to the table resulted in a vote of low confidence in the Community policing program by the rank-and-file officers.

I am confident that tragedies like the St. Louis community policing experience can be avoided in the future, however. During crucial negotiations that led to the final passage of the 1994 crime bill, police labor organizations, led by NAPO, succeeded in convincing the Administration of the necessity for labor's input at the front end if community oriented policing projects are to have a chance of succeeding. Congress recognized the inherent common-sense wisdom of this proposition, and so provided, in the final law, that management should, indeed, consult with labor prior to and during the implementation of these programs.

The people who benefit or suffer from good or poor cooperation between labor and management are not only the officers themselves, but the public at large. Seen in this context, poor labor-management cooperation is a distinct disservice to the American citizen. Improvement is an obligation of good government. America's police labor organizations, like NAPO, stand ready to cooperate and truly want to improve the situation. All they ask is to be met half-way as equal partners worthy of respect.

This respect has been earned at an horrific cost. Last year, according to the U.S. Department of Justice, 157 officers gave what Lincoln called "the last full measure of devotion", and were killed in the line of duty. Sixty-six thousand (66,000) were assaulted, more than twenty-four thousand (24,000) of whom required medical attention for their injuries.

Any experienced beat-cop can tell you that a trusted partner is worth more than anything else in getting through a dangerous situation. In these difficult times, when policing in America has become such a dangerous profession, management needs to realize that police labor is the essential and necessary partner for success.