

03/05/97 Committee on the Judiciary - Johnson Statement
WRITTEN TESTIMONY OF
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BEFORE THE UNITED STATES HOUSE OF
REPRESENTATIVES SUBCOMMITTEE ON CRIME
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Mr. Chairman, honored members of this Subcommittee, fellow colleagues, on behalf of the more than 185,000 sworn, professional law enforcement officers throughout this country who are proud to call themselves members of the National Association of Police Organizations (NAPO), I thank you for today's opportunity to add our voices to those calling for fundamental fairness and due process of law for our nation's police. My name is Bill Johnson, I am a former police officer, in Maine; and prosecutor, in Miami. I now am proud to serve as General Counsel to NAPO.

Let me begin by saying, in the clearest possible terms, that NAPO, and the officers NAPO represents, abhor violence of any sort. The men and women who serve our communities as law enforcement officers probably do more, every day of their working lives, to ameliorate and prevent the effects of violence and armed aggression than any other group of people in this country. No one sees first hand the results of violence like our police do. No one makes a greater effort, to the point of sometimes risking the forfeiture of their own lives, to stop it.

It is also crucial to emphasize at the outset of today's hearing that America's police are not asking for preferential treatment, although I believe that these men and women are certainly special, and among the best this nation has to offer. What America's police ask is simply recognition by the Congress of the same basic, fundamental rights enjoyed by all free citizens of this republic: The right of freedom from arbitrary governmental action against them. The right to be heard when their government seeks to impose punishment upon them. The right to continue to earn one's own paycheck and to use the tools of one's profession free of interference unless and until an accuser submits evidence of wrong-doing on the job. These freedoms form the very bedrock of our American experiment in the rule of law. They predate the Constitution itself. Indeed, it was for these freedoms that men and women laid down their lives in our Revolution; sacrificing all they had in order even to have the chance to frame a constitution such as ours.

It is particularly appropriate to argue for the honoring of basic human rights here, today. This Congress sits as the direct heir to the Continental Congress and the Constitutional Convention of our forefathers. It was these patriots who perceived the fundamental truth that the lawful possession of firearms by those who are disciplined in their legitimate use and who are sworn to serve the populace is one of the fundamental safeguards of liberty. Today's professional police forces are the worthy descendants of the first citizen militias organized to preserve and defend the peace from lawbreakers. It is altogether fitting, therefore, to take this time to contemplate how America treats her guardians of liberty and the rule of law: her police.

It is crucial to understand that NAPO is today arguing for the right and duty of police departments throughout this nation to properly equip their officers, in the course, and only in the course, of the officers' duties. NAPO has no quarrel with the goal of removing firearms from the households where domestic violence is ongoing. Indeed, such a goal would certainly make our officers' jobs safer. NAPO does assert, however, that the federal firearms regulatory framework as it now exists goes too far. It would take firearms out of households regardless of whether violence is still ongoing, indeed regardless of whether any violence had ever occurred in that dwelling or in that family. It also serves to deprive the

one group of men and women who depend on the lawful protection of a firearm most, of the ability to protect themselves and others (protect, not harm). This group of citizens is, of course, our professionally trained police force.

Because of the public's just anger with intolerably high levels of crime, and their revulsion at society's ever-increasing level of violence, public officials throughout this country are constantly bombarded with demands for new, tougher laws, more prison space, more judges, more prosecutors, more aggressive law enforcement, and, always, more police. The police officer on patrol is correctly regarded not just as the symbol of public safety and order, but as the real, tangible servant of the law. He or she is a living, breathing example of hope in the forlorn city; of rescue on the desolate highway; of service to others and of obedience to a higher law in the face of temptation and evil. The public demands more police because they are angry and frightened, and legitimately so. But the public not only demands more police officers, they also demand more from the police that are hired. They want police who are smart, well-trained, tough when they need to be, compassionate to the less-fortunate. They want, above all, police who will reduce and eradicate crime where they live and work.

These political and societal pressures are perhaps nowhere more apparent than in the expressions of public concern over domestic violence. The multiple trials of O.J. Simpson and the Menendez brothers have served to fuel the already-heightened sensitivities to domestic violence. (It is interesting to note that the Lautenberg/Barr amendment would have saved none of the victims in those cases.) Representatives of the victims of violence are justifiably angry and understandably seek some measure of preventative deprivation of firearms in the home. However, such a "cure" proves ill-thought out and superficial when examined in the context of police work.

Police work has long been recognized as an extremely stressful occupation. The risks of alcoholism, depression and even suicide are higher for police than for the public at large. It is no surprise, therefore, that police officers also suffer from a high risk of separation or divorce, yet there is no evidence of which NAPO is aware that shows a higher propensity for armed violence by police officers going through a separation or divorce as compared to the public at large. Indeed, it would appear that officers are less likely, not more, to commit violence for several reasons. One is that they have been forced to learn, by months or years of training and experience, to keep their cool in the face of provocation. Another is that they daily live a life of restraint in the use of weapons. They know every day that any use of force by them will have to be justified to superiors, investigators, prosecutors and licensing commissions. But perhaps the biggest and most effective element of restraint is the fact that an officer knows that he or she risks suspension or termination for any violation of the law, a fact of the officer's working life that distinguishes him or her from those in any other walk of life.

Our citizens may properly exercise their rights to criticize or express concern about police activities that are ongoing in the community. This criticism and comment is a facet of the American tradition of a healthy skepticism of authority. It is understood and honored by America's police as one of the parameters of policing a democratic society. Healthy and constructive criticism is to be well-received by police. Reckless bad-mouthing of the police, without regard for the facts, however, tears down police morale, destroys the public's confidence in their police, and inflames, sometimes to the point of violence, the passions surrounding controversial cases. Such defamation of the individual men and women who serve our communities as police officers serves no other purpose than to further some political agendas, or to satiate the personal desire for celebrity on the part of certain demagogues. There is, however, clearly no rational basis upon which to discriminate against police when we consider the actual likelihood of armed abuse.

And yet, continuing to focus on the law's effect on police, we must note that

police are the only group of people who, as a class, are being fired or suspended under this new law, which makes no allowance for date, circumstance, or age of conviction. Indeed the law makes no allowance for rehabilitation or reconciliation, no matter how complete. If indeed we are concerned about domestic violence, common sense would tell us that taking away the major bread-winner's job at the very moment his or her family is teetering on the brink of collapse is probably the worst thing we could do for all involved. The sudden loss of employment will inevitably lead to increased stresses within the family, and, thus, to an increased risk of domestic violence. The ability to reconcile and preserve our society's families is thus severely gutted. If, indeed the couple divorces, the ability of the bread winner to pay child support, alimony, or to maintain health insurance benefits has just been lost. Again, the practical effect of this law, when we speak of police officers, is to increase the risk of domestic discord, not alleviate it, no matter how noble the intentions of the legislators when they wrote this law.

As this subcommittee knows better than perhaps any other deliberative body in the world, public officials are bound by their duty to their constituents to seek to do whatever is possible to ameliorate the effects of crime in their communities. It is no different at the state, county or local level. Elected and appointed officials must be responsive to the concerns of the public on crime issues, or face the certainty of loss of office. Councils pressure the mayor, the mayor pressures the chief of police, and the chief orders his or her officers to be smart, be tough, be aggressive, be involved in the community, because that's what's going to reduce crime. Police agencies are compelled to be responsive to the communities which they serve. Local sheriffs and chiefs know that they must respond effectively to community concerns, or risk losing their own jobs. This fact does not fail to hold true when we talk about which officers should be hired or retained on a police force. If the intent of Congress was to distrust local chiefs and sheriffs in the process of locally hiring men and women to locally enforce state and local laws, such concern is misplaced. There is simply no need for Congress to issue a blanket ban on the local hiring or retention of local governmental employees to enforce local laws when local entities are already both sensitive and responsive to local community concerns. This one-size-fits-all approach makes no allowance for local discretion, for circumstance, for local need, nor for rehabilitation; no matter what. By directly and without exception dictating exactly who local agencies may hire or retain to enforce local laws, NAPO would respectfully assert that Congress has overstepped its bounds and trampled on the legitimate rights of State and local governments.

This action by Congress is seen to be even less defensible when we consider that the existing federal statutory scheme for the regulation of firearms in this country has, since its inception, always recognized the constitutional requirement that state and local governments still be free to operate and enforce their own state and local laws as they, not Congress, sees fit. The so-called "official use" exception needs to be seen for what it is. It is not a license for individual officers to do as they please regardless of federal law; rather it is a recognition by Congress that the Constitution permits Congress to go only so far in regulating the affairs of the Republic. Much of the right, and the ability, to govern is deliberately left to States and localities, and wisely so. It is those localities which best know the local needs and wants of citizens. Please understand why the official use exception is there, it is not intended as a sop to individual officers, although an individual officer would certainly see it as a benefit to be able to keep his or her job, even if he or she could no longer possess a firearm off duty; the exception is a necessary and constitutionally mandated recognition of the fact that state and local governments may not be dictated to by Congress in matters of state and local enforcement of state and local law.

It is also important to note that the exception, which has been with us for nearly thirty years, does indeed work well. It is constitutional, it makes common sense, it is easily applied and understood, and it comports well with our nation's history of Anglo-American jurisprudence. Since before the founding of our Republic, the right of a person to lawfully keep a firearm was understood to be an important mark of freedom and citizenship. It shared this distinction with the right to vote, to serve as a juror, and to hold property. In keeping with its importance, this right could be stripped for only the most serious of offenses, felonies. The commission of a felony brought with it the forfeiture of these rights of citizenship. Federal law has thus traditionally followed the lead of both English law and State law in denying to felons the personal right of firearm ownership. This new Barr/Lautenberg law shatters this time-honored and effective restriction of the private right to bear arms. For the first time, misdemeanants are stripped of a fundamental civil right, and retroactively at that! Now, NAPO knows very well that the right to bear arms is not our most popular right at times, yet popular or not, it survives in our Constitution to this day, just like the right to vote, to sit on a jury, or to hold property.

Although taking away one's right to own (or even to temporarily possess in the course of duty) a firearm because of a domestic violence misdemeanor may be politically satisfying, it is no more constitutional than stripping a citizen of the right to a jury trial because of serious speeding violation (a misdemeanor in most states) which occurred forty years ago when the citizen was sixteen. We wouldn't dream of doing that. Yet if we are honest with ourselves, we are forced to admit that the only difference between the two cases is that one is politically popular, and one would not be. Constitutionally there is no difference.

As a practical matter, it is also important to note that the existing governmental use exceptions have not led to any increased risk of armed violence committed by police. Such happenings are extraordinarily rare. When they do happen, they make the news precisely because of their rarity. While every violent act that does occur must be prevented when possible and punished where prevention fails, it is important to point out that every violent act cited as an example by the opponents of reform was already against the law when carried out. Congress making it doubly against the law will not prevent it from happening again, if in fact someone is so consumed with rage, so blind with fury, so evil and so malevolent, that he or she would do violence to his or her own family. Such persons have, sad to say, determined to do it whatever the cost; and the fact that Congress has said "You're not supposed to have a gun in the house anymore" will be ignored with the same vicious contempt with which these criminals already abuse the law and loved ones alike.

How are we, then, to fix this mess which has been brought upon us? H.R. 445 provides the framework for doing so. By simply restoring the governmental use exemption, both the legitimate and weighty concerns of victims' advocates as well as those of law enforcement are served. The law would be restored to the form in which it passed the Senate, and would still allow the removal of firearms from any home (including a policeman's) where domestic violence is occurring. It would still make criminal the violation of its provisions. It would still provide a deterrent against abuse. And, while accomplishing all these things, H.R. 445 would additionally allow local officials to decide whether or not any one individual officer should lose his or her job or should be rehabilitated, counseled, disciplined, evaluated, suspended, reconciled, demoted, restricted, censured, reprimanded, treated or reassigned instead. Note please that H.R. 445 does not require any agency anywhere to hire or retain any domestic offender. It does, however, allow for the possibility that maybe, just maybe, out of the more than 600,000 law enforcement officers in this nation, there are one or two or ten who can be and still are good cops of great value to their communities, despite a one-time offense for which they have already

repented and paid whatever price was to be had.

In closing, let me emphasize that NAPO is the same police group which stood up in 1994 when almost no one else would, to support the 1994 Crime Bill, which included the Violence Against Women Act; the Safe Homes for Women Act; the Civil Rights Remedies for Gender-Motivated Violence Act; the Equal Justice for Women in the Courts Act; the Crimes Against Children and Sexually Violent Offender Registration Act; the Assaults Against Children Subtitle; the Task Force on Missing and Exploited Children Act; and the Prohibition Against Disposal of Firearms to, or Receipt of Firearms by, Persons Who Have Committed Domestic Abuse. We are the same group which took the heat to defend the Assault Weapons Ban and The Brady Bill when it was unpopular to do so. We would willingly put our record against violence and for the protection of children and women against any other group's in the country. Congress respected our advice then: Please listen to us now. Reinstate the governmental use exception. Help get firearms out of the homes where violence is in fact ongoing, regardless of the occupations of the parties involved. But help the good cops who are out there retain their careers when (and only when) that is the right thing to do.

On behalf of the more than 185,000 sworn, rank-and-file law enforcement officers represented here today by NAPO, I thank you for your time and your attention to these critically important matters.

(In accordance with House Rule XI, clause 2(g)(4), Mr. Johnson's curriculum vitae is attached. Neither Mr. Johnson nor NAPO has received, in this or either of the two preceding fiscal years, any federal grant, contract or subcontract. NAPO does have a sister 501(c)(3) organization, the Police Research and Education Project, Inc. (PREP), which has received federal Office of Justice Programs grants in this and the immediately preceding fiscal year: One in the amount of \$103,022.84 and one in the amount of \$145,626.97, awarded to PREP to conduct an ongoing study of the causes, effects, and reduction of police officer stress in the family.)

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