

By Jeff English

## Praise the Lord and Pass the Ammunition

It's never boring around here. I walked into the office with a song in my heart and not mad at a soul thinking it's going to be a productive day. Contracts to approve, calls to make, e-mails to return, and best of all – no meetings!

OK, we don't need Nostradamus to predict where this is going. On my desk lands a letter with a legal brief explaining why a certain religious organization has the Constitutional right to bring a 10 ft. cross and a megaphone to Thunder Over Louisville and proselytize against all "sinners." After doing a quick internet search of the group, I discover that our friends are loud and unafraid of confrontation. Not wanting to turn Thunder Over Louisville into one big happy smack-down revival, I did some research and consulted with the Louisville Metro Police Department about what could be done to ensure the safety of everyone in attendance. What I found surprised me.

If the protestors stay on a public sidewalk, the Kentucky Derby Festival owes a duty of care to protect them and ensure their safety. Their 1st Amendment right to free speech trumps our right to host an event without religious interruption. Ok, so what if the crowd gets restless? KDF must ensure that local police officers are stationed nearby to keep any confrontation at bay.

Thunder Over Louisville arrived and sure enough, so did a giant cross and a guy with a megaphone. Police and Sheriff Officers were stationed on both sides of the protestor to ensure his safety. Well, at least they tried to make sure he was safe. The protestor stayed on the sidewalk, drew a crowd, told them they were all going to hell, and got punched in the mouth. The woman who hit him (yes, woman) was put in the back of a police car, but so was the protestor for his own "protection." No lawsuits were filed against KDF because we followed our obligation to the letter of the law. We allowed the protestor to say his peace and provided him a venue with protection.

The fact that he got decked did not place liability on KDF. That would fall to the civil arena to decide between the protestor and his assailant. She was never sued.

The other issue that has come up is whether citizens have the right to openly carry a gun onto a KDF venue. KDF was confronted with this question after an advocate of the 2nd Amendment noticed on [www.kdf.org](http://www.kdf.org) that guns are not allowed on the Thunder Over Louisville venue. No way was he going to stand for that! KDF received an e-mail telling us that "city law" allows a citizen to carry a gun onto public parks and venues. Come to find out, he was right! After consulting with the city attorney, KDF was told that any citizen is allowed to openly carry a gun onto the venue. However, I'll allow an e-mail from Lt. Curtis Flaherty explain the Police Department's stance on the issue:

### **Mr. Perkins,**

You do have the right to open carry in Kentucky on public property and on private property with the consent of the property owner. Unfortunately, the Louisville Metro Police have an obligation to investigate any complaints of a "man with a gun." Once we receive a complaint of this nature, the age and criminal background (making sure he is not a felon) of the object of the complaint has to be verified. Obviously, many citizens will feel threatened by someone openly displaying a weapon at a public venue. LMPD officers are required to keep their weapons concealed while off duty, so as not to cause undue alarm. I hope you reconsider carrying your weapon openly at any public venue. You do have a right

to carry your weapon openly. However, LMPD has a greater obligation to ensure the safety of those attending Thunder.

Sincerely,  
*Lieutenant Curtis R. Flaherty*  
*Louisville Metro Police*  
*Special Events Section*

As you can see, while Mr. Perkins certainly had the right to carry his gun, the Louisville Metro Police Department was not going to compromise public safety at the event.

When faced with the potential of a protestor or public safety issue, the best thing your festival can do is have an open dialogue with your public agencies. The Police, Fire & EMS departments are your best resources to manage these situations. They also carry the responsibility of making the call on whether protecting 1st or 2nd Amendment Rights might compromise public safety. If a government agency intervenes and removes a protestor from a venue, or confiscates a weapon, the lawsuits for violating Constitutional rights will be directed at them and not your festival.

**Jeff English** is the Sr. Vice President of Administration/General Counsel of the Kentucky Derby Festival. After graduating from Washburn University School of Law (Topeka, KS) in 2004, Jeff worked in politics and practiced law before joining the KDF staff. As General Counsel for KDF, he is charged with overseeing all of the Festival's legal issues, along with serving as its risk management officer.