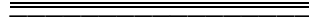
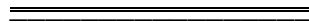


**The Bill Blackwood
Law Enforcement Management Institute of Texas**



Off-duty Police Officers: No Guns Allowed



**A Leadership White Paper
Submitted in Partial Fulfillment
Required for Graduation from the
Leadership Command College**



**By
Matthew Coggins**

**Canyon Police Department
Canyon, Texas
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ABSTRACT

Police officers choose to work in the field of law enforcement for a variety of reasons. Perhaps one of the most common reasons is because of their desire make a positive impact on society by providing protection to their citizenry and upholding the law. This applies not just while they are on-duty, but while they are off-duty as well. Unfortunately, one of the tools officers need in order to help assure their safety and the public's safety while attempting to protect and uphold the law is their firearm. Gun control has traditionally unaffected off-duty officers, but there is a growing trend with private property business owners to disarm off-duty officers before entry onto their premises. This type of approach to provide a safer setting by restricting the number of firearms is misguided and instead conflicts with existing laws and fundamental law enforcement principles primarily aimed at improving public safety. Support of gun control concepts such as this is especially relevant to law enforcement because this can pave the way for further firearm restrictions in the future. This issue does, however, bring to light valid concerns for improvements law enforcement officials can make for officers who carry off-duty. The recommendation of this research paper is that police should work with educating private business owners to the benefits of allowing off-duty officers to carry their firearms on their property.

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INTRODUCTION

There are many political hotbeds which tend to spur intense debate among the American public, but one of the most heated topics has been that of gun control. Active or retired law enforcement officers have often found themselves to be personally unaffected by restrictions, giving some officers almost a full reign to carry whenever or wherever with few exceptions. The perception of this seemingly unfettered privilege may only be wishful thinking as the ability for an officer to carry off-duty has been challenged on numerous occasions during recent years, some of which have occurred in the highly perceived pro-gun state of Texas. In 1996, Six Flags Over Texas attempted to ban all weapons, including those of off-duty officers, from entering the park (Bartosek, 1996). In 2003, past New York City Mayor, Michael Bloomberg, strived to make another similar sweeping ban on all firearms from city hall (Lott, 2003), while in 2005, off-duty officers were prohibited with taking their firearms into the Del Mar Thoroughbred Club county fair in California (Steinberg, 2005).

One could think looking at how long ago these incidents occurred that there has been a substantial gap in time which may have quashed the arguments supporters of these bans made. Fast forward to 2013 to see one of the most powerful influences in modern day entertainment, the National Football League (NFL), create a new policy which once again attempts to disarm off-duty officers when attending NFL venues. It does not stop here either. Other businesses, such as Staple's, Wal-Mart, Dick's Sporting Goods, and Cabela's are constantly under pressure from interest groups in favor of firearm bans inside their stores, which may ultimately attempt to encompass off-duty officers (O'Connor, 2013).

This paper will discuss why there are not only legality issues with making such sweeping gun control policies, but why there are important law enforcement principles that are being compromised. Any kind of gun control victories in favor of further restricting officers from carrying firearms while off-duty on private property will only open the door for further disarmament of the very people who have made it their duty to try to protect the public. It is commendable that businesses and organizations would look for ways to improve the safety of everyone on their property. Forcing the disarmament of the off-duty police force in order to step foot onto their property, however, is not the way to achieve this goal. Private property owners should not refuse admittance to off-duty officers carrying firearms onto their property. It should be noted, references to private property in this discussion do not pertain to residences, but rather property owned by businesses or organizations that are accessible to the public.

POSITION

Law enforcement professionals ought to be accustomed to adapting to changes which impact their profession, whether it be through changes in the law or their own departmental policies. While change may not always seem beneficial to the officer, change is for the best when the result is an improvement in public safety. For example, some Texas officers were initially hesitant about the impact passing of concealed handgun license laws (CHL) had because of perceptions about increased danger to the officers. Black (2012) discussed CHL holders were more of a benefit to officers rather than a danger because the type of people who were more likely to undergo strict requirements were “good guys”, and more importantly, public safety improved by allowing the public to defend itself outside of the home. Even when arguing safety

concerns to the public and to other off-duty officers, as proponents of restricting access to private property by armed officers have cited, there are clear violations of federal laws and some state laws, as well as contradictions of several fundamental principles of policing.

In 2004, the United States Congress recognized whether an officer is in their own jurisdiction or not, they incidentally bring their “identity, training, experience, and dedication to the safety and welfare to the community” everywhere they go (Bulzomi, 2011, para. 19). Subsequently, the Law Enforcement Officers Safety Act of 2004 (LEOSA) was passed to allow qualifying officers the ability to carry concealed weapons not just in their own jurisdiction, but in all 50 states. There are numerous restrictions an officer must adhere to in order to be covered by LEOSA. These restrictions include active employment or retirement from a local, state, or federal law enforcement agency, passing a firearms proficiency test through their department, not presently under the influence of intoxicating or hallucinatory substances, possession of a photo ID from their agency, or under any prohibition of state or federal law to carry a firearm (Bulzomi, 2011). For further clarification, from this point onward, the term “off-duty” also incorporates retired officers, because their ability to carry off-duty is one in the same. While the LEOSA provides federal off-duty protections, it does not override state laws or federal laws restricting firearms possession, and furthermore it does not override laws allowing private property owners the ability to restrict firearms possession on their property (Bulzomi, 2011).

For Texas officers, when the NFL policy was handed down, it was almost immediately overturned due to existing state law (Texas law trumps NFL, 2013).

According to Texas Penal Code 46.15 (“Weapons,” 2013), on-duty and off-duty officers are not subject to firearms restrictions described in Unlawfully Carrying of Weapons [Texas Penal Code 46.02] and Places Weapons Prohibited [Texas Penal Code 46.03]. Missouri officers are similarly exempt from concealed carrying restrictions, specifically at sports arenas (Lynch, 2013). Several police organizations throughout the country, such as Minnesota’s largest police group and police union, have begun to file lawsuits against the NFL under the premise the policy violates their state’s laws (Hanners, 2014). As these issues are resolved either through the courts or through possible negotiations between the NFL and these police organizations, there is another key issue why private property owners should not refuse admittances to off-duty officers who are carrying their firearms onto their property, and that is the discounting of several fundamental police principles.

When Six Flags Over Texas restricted firearms on their properties, Houston Police Chief Sam Nuchia was left with halting all extra duty employment with Six Flags. Six Flags spokesman, Bruce Neal, explained mandatory off-duty carry policies in some departments as a reason for the eventual lift of the ban (Bartosek, 1996). Today, departments still vastly vary whether their officers are required to carry off-duty or not, but this brings up one of the core concepts of whether an officer is only an officer during their scheduled shift or whether they are actually an officer 24 hours per day, 7 days per week, and 365 days per year. Many law enforcement professionals view their job as a calling to serve and protect instead of just a means of income that ends with going off the clock (Wills, 2013). With this in mind, officers who advocate off-duty carry do so with a preparedness mindset that anything can happen at any time that may require the

need to become involved in the incident. Much of the training an officer receives supports this preparedness concept. Examples include use of deadly force and active shooter training. An officer may go through an entire career without utilizing any of the knowledge gained from these trainings, but the profession recognizes it is better to be prepared for such events, than to be ill-prepared and hope for the best.

COUNTER POSITION

The entire premise behind gun control is the theory that restrictions on firearms will increase public safety. When each of these organizations or businesses further enacted restrictions on guns to include off-duty officers' firearms, their centralized theme related to safety to all attending. The NFL supplemented this concern to specifically address safety of off-duty officers as well as officer unfamiliarity with game day procedures.

Del Mar fairground general manager, Tim Fennell, explained one of their reasons for deciding to restrict firearms was to limit the number of firearms on the fairgrounds (Steinberg, 2005). Gun control proponents firmly believe there is a direct correlation between firearms and violence. In other words, the fewer guns there are the less violence there will be. Gun control debates often reignite following catastrophic events when supporters on both sides of the discussion are left with trying to answer questions how such disasters can be averted in the future. Robinson (2012) discussed in a case study in Australia following a mass shooting in New Town that killed 35 people; the government responded by outlawing assault rifles, semi-automatic rifles, and shotguns. The Australian government subsequently implemented a buyback program which resulted in the government purchasing 650,000 weapons at a profit to the public. In the

15 years since this shooting, there have been no other mass shootings. This is just one of many studies gun control supporters present as evidence that fewer guns equal fewer crimes. The NFL says the utilization of metal detectors and the search of personal belongings being brought into the stadium will help guarantee the absence of firearms. In addition to citing the limitation on firearms at venues create a safer environment for attendees, management of Centurylink Field, the home of the Seattle Seahawks, echoed the NFL's sentiment that hired uniform security personnel provided sufficient protection to the public and additional protection from off-duty officers were no longer necessary (Gynn-Williams, 2013).

The idea armed off-duty officers better serve society by being in a position to rapidly respond to threats to public safety was a primary reason for the passage of the LEOSA (Bulzomi, 2011). Officers in New York City fear a ban on firearms unjustly places the public at risk by preventing a timely response by officers "when seconds might matter" (Lott, 2014, para. 3). Yale professor, John Lott's book, "More Gun, Less Crime", further argued in states that passed legislation permitting citizens to carry concealed weapons, there was a decrease in violent crime (Robinson, 2012).

An armed citizenry is quite possibly the most effective form of deterrence to crime in the nation according to a U.S. Department of Justice study by Professors James Wright and Peter Rossi (NRA Institute for Legislative Action, 1994). The study established how important the possible possession of firearms by victims had on whether a crime would be committed by the 1,800 polled felons who participated. According to the study, 81% felt a smart criminal would try to find out if a potential victim was armed while 40% avoided the crime altogether just out of fear the victim was

armed. By creating gun-free zones where criminals know potential victims will not be armed, criminals need only know where the uniformed officers are and then avoid these areas (Gynn-Williams, 2013). Even worse, these zones may actually attract people who want to kill ("CPRC Interview," 2014). If mass murder is the objective, terrorists would obviously kill the easily identifiable uniformed police first, as they are the only present line of armed defense. Police have also pointed out the contradiction why during their shift they are trusted with their duties yet when off-duty, some no longer express that trust by restricting their effectiveness as officers (Lott, 2014). The NFL expressed that the use of metal detectors will help ensure firearms will only be in the hands of authorized security personnel, but Lott (2014) felt it would be a mistake to place so much faith in metal detectors as being entirely effective. Terrorist groups, who often have the time and resources to extensively plan attacks, can still devise methods to introduce weapons into these types of sites. The genuine threat terrorist groups present to susceptible targets, such as high population venues, has actually vastly increased the need for government on federal, state, and local levels to hire more officers (Lott, 2003).

The second issue the NFL presented was, in addition to improving safety concerns to the public, the new policy specifically offered an increase in safety to the off-duty officers attending games. Jeffrey Miller, who is a Vice President and Chief of Security for the NFL, remarked off-duty officers who bring firearms to their venues increase the possibility of blue on blue incidents (Hanners, 2014). Miller explained off-duty officers are at an increased risk because they do not attend briefings aimed at planning and strategizing emergency response procedures and protocols (Lynch, 2013). The NFL also stated armed off-duty officers presented a problem because their

presence was unbeknownst to uniformed officers. This concern of anonymity seems to be validated in Texas because even though Texas law has overturned the NFL's restriction in Texas stadiums, off-duty officers who decide to bring their firearms with them still need to check in at designated gates and inform security where they will be seated ("Texas Law Trumps," 2013).

To be fair, the claim off-duty officers lack valuable information obtained by attending briefings to discuss procedures and protocols at the game has merit to it, but at the same time, all officers receive training in the use of force, which is the focal point in anyone carrying a firearm. In Texas, for example, the governing body who regulates and enforces officer requirements and mandatory training, the Texas Commission on Law Enforcement (TCOLE), requires the completion of a specific use of force class in order for an officer to receive a significant progressive certification (Texas Commission on Law Enforcement, 2013). Furthermore, agencies who seek accreditation from organizations to promote high professional standards are required to have their officers attend use of force training on a regular basis. For example, the Texas Police Chief's Association accreditation program requires use of force training every two years and use of deadly force training annually ("Texas Law Enforcement," 2015). Additionally, many officers have received specialized training in the application of force.

This fear of accidental shootings is not a new concept. When Texas was in the process of passing their CHL laws, some law enforcement officers believed CHL holders would be mistakenly confronted by police in deadly circumstances (Sanow, 2008). Off-duty officers also minimize their exposure to danger because they understand there are times to get involved in incidents and there are times to simply act

as a witness (Wills, 2013). Safety to officers is actually compromised by gun restrictions because while officers are less identifiable when off-duty, they always have a target on their back (Wills, 2013). Whether an officer works in a small town where everyone knows each other, or in a big city, off-duty officers can encounter suspects they have arrested while working (Steinberg, 2005). Sanow (2008) advocates off-duty carry because he fears if a bad guy recognizes an off-duty officer in civilian clothes, he may be more inclined to retaliate in hopes the officer may not be armed.

RECOMMENDATION

When all of each of these business or organizations created sweeping firearm restrictions that encompassed even off-duty officers, their ultimate goal was noble: create a safer atmosphere for everyone visiting their property. Their theory, unfortunately, was flawed because instead what it creates is a less safe environment. Not only are there federal and state laws that may be applicable invalidating these policies, but these restrictions clash with many fundamental principles of policing, such as an officer is an officer around the clock, off-duty work is still part of serving and protecting the public, preparedness to react to a situation that can occur at any time, and lastly some agencies still require their officers to carry off-duty.

These organizations reasoned public safety would improve because more guns equal more violence, existing security personnel were providing a good enough service, and the use of metal detectors and searches of bags would ensure compliance. The NFL added a second justification was also to specifically improve safety to off-duty officers. The NFL stated off-duty officers were at an elevated risk since they do not attend briefings, meetings, and trainings to address emergency procedures and

protocols, so they feared there was an increased risk of danger by uniformed officers due to mistaken identity, and their presence was not made aware to existing security personnel.

In response to these points, research exists that suggests an increase in guns, particularly by concealment laws, actually decreases crime. By creating “gun-free zones”, they may only be attracting violence, largely due to the lack of deterrence that would exist otherwise. Uniformed officers will essentially be able to provide the only present line of armed defense, so criminals will know they need only avoid the areas where uniformed officers are, or in the event mass murder is the plan, killing the officers can help ensure more casualties because no one else will be armed. While metal detectors do offer a level of compliance, venues such as NFL stadiums, which make ideal terrorist targets due to the high number of people in a confined location, are still at risk since terrorists have shown they can still devise plans to get weapons in to restricted areas due to their time and resources into planning. These policies also offer a contradiction in the sense that during an officer’s shift they are trusted with the duties and responsibilities that come with the job, but for some reason, once they are off the clock, they are no longer trusted to protect the public.

In regards to attempting to improve safety for off-duty officers, these policies likewise have the opposite effect. Notwithstanding the fact it is true off-duty officers would be lacking in the NFL’s specific protocols and procedures outlined to security personnel, police still receive adequate training in the use of deadly force. Quite the contrary, the training off-duty officers can bring can substantially improve safety. The belief is that there is an elevated risk of danger to off-duty officers by security personnel

due to mistaken identity; this is rooted in cynicism, similarly to the perception by Texas law enforcement that CHL holders would be injured by law enforcement due to mistaken identity. Off-duty officers are put at an increased risk in the event they encounter someone they arrested during the course of their duties, recognizes them in civilian clothing. These subjects may be inclined to attack the off-duty officer with knowledge the officer would not be armed. Business owners should be encouraged aid in improving safety to everyone on their property, but they should not try to do so by refusing admittance to off-duty officers who are carrying firearms on their property.

When evaluating the NFL's claim, there was an increased risk of danger to off-duty officers by uniformed officers in the event of mistaken identity, an area of potential improvement by law enforcement was identified. Mistaken identity actually accounts for almost 15% of all line of duty deaths where friendly fire was involved (Sanow, 2008). Only about 30% of police departments train their personnel on off-duty force or off-duty confrontation training. There are liability issues with this but there is also room for improvement. Departments should incorporate off-duty force / confrontation training into their regular use of force training to include topics such as how off-duty officers would identify themselves to uniformed officers in a deadly force situation, how on-duty officers should handle situations where an unrecognized subject engaged in a use of force incident claims to be an officer, affirmation the person is an officer when circumstances dictate intervention, and developing a family plan in the event the situation occurs when the officer is with their family (New York State Division of Criminal Justice Services, 2008).

REFERENCES

- Bartosek, N. (1996, June 26). Six Flags, police reach sidearms accord – Officers will be urged to set their guns aside but won't be required to, under a compromise plan. *Fort Worth Star-Telegram*, pp. B3.
- Black, B. (2012, July). *The modern day posse: Concealed handgun permits and law enforcement*. Huntsville, TX: The Bill Blackwood Law Enforcement Management Institute of Texas.
- Bulzomi, M.J. (2011, January). Off-Duty officers and firearms. *FBI Law Enforcement Bulletin*, 80(1), 24-31. Retrieved from http://www.fbi.gov/stats-services/publications/law-enforcement-bulletin/january2011/off_duty_firearms
- CPRC interview about NFL gun ban on off-duty police carry guns inside stadiums. (2014, March 11). Retrieved from <http://crimepreventionresearchcenter.org/2014/03/cprc-interview-about-nfl-gun-ban-on-off-duty-police-carry-guns-inside-stadiums/>
- Gynn-Williams, G. (2013, January 17). Seahawks stadium bans off-duty cops from carrying weapons at events. Retrieved from <http://cnsnews.com/blog/gregory-gwyn-williams-jr/seahawks-stadium-bans-duty-cops-carrying-weapons-events>
- Hanners, D. (2014, February 18). Minnesota cops sue NFL over gun ban. *Pioneer Press*. Retrieved from http://www.twincities.com/localnews/ci_25172868/minnesota-police-group-sues-nfl-over-no-handgun
- Lott, J. R. (2003). Should off-duty police be banned from carrying guns? Retrieved from <http://johnrlott.tripod.com/armingpolice.html>

Lott, J. R. (2014, March 13). The police should carry guns off the job to protect us.

Retrieved from <http://news.investors.com/ibd-editorials-viewpoint/031314-693180-police-can-protect-by-carrying-guns-off-duty.htm?ven=rss>

Lynch, M. (2013, November 22). Can the Rams ban off-duty police from carrying guns?

Retrieved from <http://stlouis.cbslocal.com/2013/11/22/can-the-rams-ban-off-duty-police-from-carrying-guns/>

New York State Division of Criminal Justice Services, Office of Public Safety. (2008,

September 22). Off-duty and plain clothes encounters. Retrieved from <http://www.criminaljustice.ny.gov/ops/training/bcpo/part4s.pdf>

NRA Institute for Legislative Action. (1994, October). Ten myths about gun control.

Retrieved from <http://people.duke.edu/~gnsmith/articles/myths.htm>

O'Connor, C. (2013, September 26). After Starbucks success, gun control advocates

target Staples. Retrieved from

<http://www.forbes.com/sites/clareoconnor/2013/09/26/after-starbucks-success-gun-control-advocates-target-staples/>

Robinson, M. (2012, December 22). Do more guns lead to less crime? *Reno-Gazette*

Journal. Retrieved from <http://blogs.rgj.com/factchecker/2012/12/22/do-more-guns-lead-to-less-crime/>

Sanow, E. (2008, May). Always armed, always on duty. *Tactical Response*, 6(5), 111.

Retrieved from

<https://ezproxy.shsu.edu/login?url=http://search.proquest.com/docview/221835013?accountid=7065>

Steinberg, J. (2005, June 25). Fair officials stand by their firearm ban. *Union-Tribune San Diego*. Retrieved from

http://www.utsandiego.com/uniontrib/20050625/news_7m25guns.html

Texas Commission on Law Enforcement. (2013). *Peace officer proficient certification requirements chart*. Retrieved from

<http://www.tcole.texas.gov/sites/default/files/documents/PO%20intermediate%201.1.pdf>

Texas law enforcement recognition program best practices and glossary. (2015, January 29). Retrieved from

http://rp.tpcaf.org/index.php?_m=downloads&_a=viewdownload&downloaditemid=476&nav=0

Texas law trumps NFL policy prohibiting armed off duty officers in stadiums. (2013, October 10). Retrieved from <http://dfw.cbslocal.com/2013/10/10/texas-law-trumps-nfl-policy-prohibiting-armed-off-duty-officers-in-stadiums/>

Weapons, Tex Penal Code 46 (2013).

Wills, J. (2013, November 4). Off-duty carry – yes or no? Retrieved from

<http://www.officer.com/article/11221281/off-duty-carry-yes-or-no>