

Solid Security Program Best Defense Against Liability

Shopping center owners and managers must exercise reasonable care to minimize foreseeable dangers at their properties.

By Barry S. Rothman

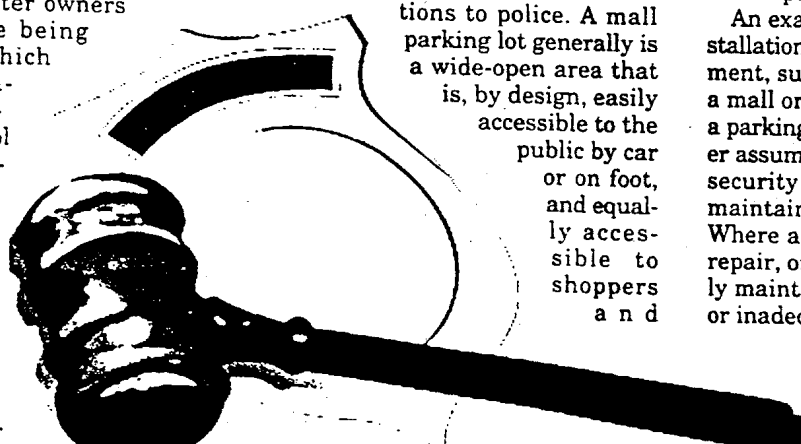
It is axiomatic that we are living today in a period of increasing crime and criminal activity. Municipal law enforcement departments are facing growing challenges in their fight to keep law and order. Yet, at the same time, courts and the civil jury system have expanded the responsibility of private landowners, including shopping center owners/managers, for criminal acts on their property. Essentially, shopping center owners and managers are being asked to do that which municipal law enforcement admittedly cannot do — control crime on their property, or face civil liability for damages to crime victims.

The implementation of some type of security program in any shopping center is essential. The objectives of the owner or manager in implementing a security program are to provide for the safety and protection of shoppers, tenants and property. Once a criminal event occurs, however, the potential for civil liability always exists, and the avoidance of liability is an unfortunate but omnipresent part of a manager's job in running a shopping center property, both before and after the event.

There are inherent problems in successfully challenging a lawsuit brought by a victim. Since these cases often can involve violent assaults, rape, gunshot wounds or even death, they generally

carry enormous sympathy from the jury. Juries decide the issue of damages or compensation for the victim who establishes liability, and that sympathy for the victim is readily translated into dollars and cents, often resulting in substantial damages awards against shopping center owners or managers.

Shopping center parking areas are one of the hardest locations to police. A mall parking lot generally is a wide-open area that is, by design, easily accessible to the public by car or on foot, and equally accessible to shoppers and



criminals alike. In addition, there is a steady stream of potential victims, a high percentage of which are women, and all or most of whom are carrying money, merchandise or both. Similarly, the inside of a mall carries its own security challenges, such as spotting and removing undesirables, or breaking up large crowds.

The dilemma of a shopping center owner or manager is to strike a successful balance between creating a friendly, pleasing atmosphere for shoppers while maintaining adequate control over entry to the property by a criminal element.

Defending a liability suit

Under the current state of the law in most jurisdictions, property owners and managers are not insurers or guarantors of the safety of its patrons or employees. Historically, the liability of a property owner or possessor for criminal acts of third-parties was generally limited to situations in which the evidence showed an "assumed duty" on the part of the owner/manager.

An example of this concept is the installation of a security system or equipment, such as closed circuit TV inside a mall or the installation of lighting in a parking area. Once the property owner assumed the duty of providing those security measures, the obligation to maintain those systems was created. Where a security system fell into disrepair, or the lighting was not properly maintained and became inoperable or inadequate, and where those conditions led to the commission of a crime, the property owner generally was held liable to pay damages to the victim of the crime.

As a result of court decisions handed down during the past 10 to 15 years, the question of where the owner or manager of a shopping center will be held liable for a criminal act on their property depends upon whether the criminal act could have been reasonably anticipated. The owner/manager must exercise reasonable care to minimize foreseeable dangers and is required to maintain sufficient security equipment and take reasonable security measures in the face of foreseeable criminal intrusion.

Essentially, the courts have come to regard the occurrence of a crime on private property as a foreseeable event,

rather than as an intervening event that would not reasonably be anticipated by the owner or manager of the property. Where there is shown to be a history of criminal activity in a shopping center, or in the community surrounding the center, the owner or

manager is charged with the legal obligation of taking reasonable steps to minimize those dangers.

Questions concerning the reasonableness of steps taken by the owner/manager are generally decided on a case-by-case basis and is ultimately

a question for a jury to decide in a civil action suit brought by the crime victim. However, security directors and consultants generally agree that certain steps must be taken in order to successfully defend a claim for damages arising out of a criminal event on a

Managing The Media

By Linda Sonnonstine and Andrea Plate

With car jackings, thefts and gang violence on the rise, the news media will continue to pursue stories on shopping mall crime which, in turn, can negatively impact retail sales, tenant lease figures and mall investment values. How can property managers and owners keep from being wounded when caught in the crossfire of reporters' queries? A swift, sure media management plan set up in advance of an emergency situation is a necessary component to shopping mall crisis management. Here are some tips for dealing with the media:

1. Establish a system for handling media calls of a routine nature, then augment your daily procedure to meet the demands of a crisis situation. Before answering the reporter's queries, answer a few of your own, such as: Who is the appointed spokesperson for your organization? Who else should be notified when the press calls? Has the receptionist or secretary been instructed to ask the reporter's name, media affiliation and deadline before fielding the call?

2. Be professional. The reporter is neither your enemy nor your friend, but someone with a job to do. Provide relevant facts, help meet deadlines and avoid hostility. Be cool and cooperative, but don't ramble. A skilled reporter may get you to say something you didn't intend to, especially if catching you off-guard — a good reason to avoid picking up the phone after hours, when calls are not being screened.

3. Be prepared. Know your local media. Familiarize yourself with the style and, perhaps, slant of the newspaper and reporters covering shopping mall or related crimes by reviewing prior stories on the topic. Regularly watch and listen to local TV or radio news to accomplish the same.

4. Never say "no comment" or "off-the-record." To a reporter, "no comment" means "guilty". If you do not know an answer to a question or cannot answer for a bonafide reason, say so, offering to call back with the information when you can answer. Never talk "off-the-record." Many reporters are honorable, but few can resist the temptation to print a good quote.

5. Be available for follow-up calls. Although your interview may occur first thing in the morning, the reporter will want to check facts later in the day. Respect such diligence. An accurate story will inevitably reflect better on you. Stick to the facts, though. The purpose of a follow-up call is to finalize the story, not begin one anew.

6. Endure. Don't think that by day's end the crisis is over just because you've received only a few media calls. Usually, subsequent days bring new waves of media queries. Continue to put information — not emotion or irritation — into your answers if the questioning gets tougher.

7. Do not complain after publication that a story was not completely positive. The reporter's job is to present a balanced account of the news, not to serve as your advocate. Do not retaliate by pulling advertisements; advertising and editorial departments are separate.

8. Keep in mind that you are the reporter's source, not the editor. Do not ask to see the story before it is printed; your request will almost surely be denied. Prevent an error of fact from reappearing in future stories, however, by immediately calling the reporter with a correction.

9. Know your audience — the general public does not understand shopping center industry jargon or acronyms. Use layperson's words.

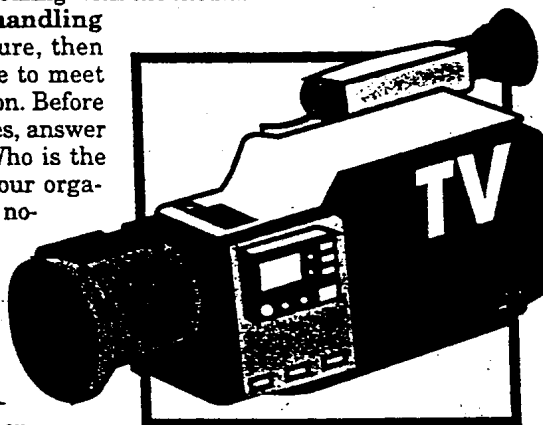
10. Outline two or three main message points for your interview and make sure they are worked into your responses to questions. Do not, however, stick to them like glue. No reporter likes to feel his/her subject is reciting rote.

11. Make your answers complete, simple and brief. Whatever the medium, broadcast or print, be concise. For TV and radio, try to adapt your message to the seconds-long soundbite. For print, you may embellish, but remember the general rule: less is more. Fewer carefully chosen words mean more control for you and less creative editing for the reporter, editor or producer.

12. Be adept at switching mediums. For television, think of visual, non-verbal cues. Look at the reporter, not the camera, when you talk. For print, too, focus on the reporter's eyes; the journalist who is listening but not taking notes may still quote you.

13. Be honest. If you distort the facts or lie, the press may publicize your untruthfulness.

14. When it is all over, critique your performance by reviewing newspaper clips and broadcast segments. Relay your messages to other important audiences — tenants, staff, mall owners and investors — by sending samples of resulting coverage.



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shopping center property. Several of these recommendations are:

- All shopping center properties should make a formal assessment of security measures and must implement some type of defined security program. The assessment should come from either the local police department or from an independent security consultant. Once an assessment of required or recommended security measures is obtained, however, the owner/manager must be prepared to adopt that plan. The disclosure of an owner and/or manager's decision not to adopt a recommended security plan or to limit the extent of the security measures called for in the plan, may later be used as evidence of a lack of reasonable care and will make a significant impact on the jury.

- Shopping center security programs should be coordinated with local law enforcement departments. This often arises in the context of patrolling open-air parking facilities and may lead to an agreement of shared responsibility with the local law enforcement department. Despite any arrangement with local law enforcement for shared responsibility, the owner/manager of a shopping center property will not be absolved of responsibility. However, the added security measures that arise from a shared responsibility arrange-

ment will help to establish the reasonableness of the security measures implemented by the owner/manager on the property.

- Careful maintenance of all security equipment, such as door locks or closed circuit TV, and maintenance of adequate lighting both inside and out, is absolutely essential.

- Record-keeping is of critical importance, including the maintenance of security logs and incident reports for any criminal event. The logs should identify who was working at any given time, where they are deployed and what they are doing, so that the activities of the security personnel can be recreated if litigation arises.

The incident report should be carefully prepared, preferably with the input of security supervisors, risk managers and perhaps legal counsel. Security personnel should be trained in the preparation of a complete and detailed incident report, and all reports should be catalogued and cross-referenced so that data can be obtained to show those vulnerable places and to facilitate the compilation of data about the types of occurrences at a given site. Records of past incidents may be damaging evidence to the owner/manager in a lawsuit; however, the failure to maintain these records may be even more damaging.

Maintaining reasonable security

The legal obligations imposed on a shopping center owner or manager to provide and maintain reasonable security measures, at the risk of potential liability to victims of crime in a mall or shopping center, pose an ongoing challenge to the shopping center industry. In light of the potential liability exposure that comes with litigation arising out of a criminal event, the best line of defense is a solid security program and the advice of security professionals.

Prompt investigation of a criminal incident, prompt and detailed reporting, and follow-up with local law enforcement are essential, as is the need to organize a "team" immediately after a criminal event, including security personnel and supervisors, local law enforcement personnel, general managers, investigators and legal counsel.

By being aware of the risks and potential exposure to liability, and scrupulously following an established security program, a shopping center owner or manager can best limit the impact of and potential exposure from litigation arising out of these events.


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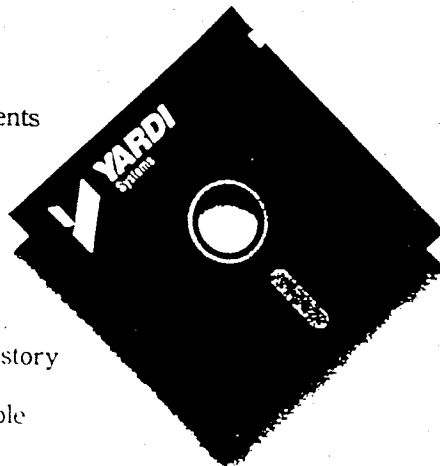
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