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New Jersey Ruling on Free Speech Burdens Shopping Malls

To the Editor:

I read with mixed reaction "Court Protects Speech in Malls" (front page, Dec. 21), on the New Jersey Supreme Court decision upholding a protest group's right to hand out leaflets in shopping malls.

As a proponent of the right of free speech, I am satisfied whenever I read a court decision that upholds or expands that right. As an occasional patron of shopping malls, I tend to agree with the position of the shopping center industry that the primary purpose of malls is commercial.

However, as a lawyer who represents shopping center owners and managers in New York and New Jersey, I take issue with the New Jersey court's observation that upholding the right of free speech in malls involves nothing more than minimal interference with private property.

The modern mall has replaced the downtown shopping area as a magnet for commerce and socialization. But the mall is still considered private property, and most courts hold the mall owners and managers to the standard of care of the private property owner when it comes to the imposition of civil liability.

An example of this double standard is security and civil liability for criminal acts by third parties on public versus private property. If I am the victim of a crime while shopping in a downtown shopping area, I almost always have no recourse against the municipality or local law enforcement agency in a civil suit.

If a similar criminal act occurs on mall property, the owners and managers of the mall or center are held to the standard of care of the private property owner in the avoidance of foreseeable criminal activity. This places shopping center owners and managers at risk of civil liability if a crime occurs on their property.

If courts treat malls as the new downtown for purposes of furthering free speech, there should be consistency of approach in other mall operations as well. It is more than minimal interference to require a mall to meet public access needs while imposing a private property owner's duties.

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New York, Dec. 23, 1994