

ATLAS SAFETY & SECURITY DESIGN, INC.

DESIGN AGAINST SECURITY LAWSUITS

As presented at the American Society of Industrial Security Convention, 1994

By Randall Atlas Ph.D., AIA

Atlas Safety & Security Design, Inc.

Miami, Florida

Criminologists have studied the causation of criminal behavior for the last three hundred years and have usually associated crime with urban centers. However, the flight from the cities to suburbia over the last three decades has created lucrative magnets of crime in the suburbs such as office parks, apartment complexes, industrial sites, or multi-unit residential properties. The courts are finding the owners liable for criminal acts that occur on their property.

Owners and property managers, as well as their security directors working for them, have some obligations and responsibilities in the prevention of premises liability litigation. The most important steps a security manager can undertake to prevent premises liability are:

- ◆ Identify the level of criminal activity in the site and the neighborhood. The evaluation should include a three year history, with periodic annual reviews. The radius of area for review will vary from site to site. Consult a security expert for a site specific recommendation for your property.

- ◆ Conduct a security survey or audit that identifies the assets to be protected, the threats, vulnerabilities, and recommendations for security improvement. The survey should be submitted in a written report form, and used as the basis for a plan of action.
- ◆ Provide a total security delivery system. Security is more than the guard gate, perimeter fence, wall construction, closed circuit television, security patrol, or detection technology. A security delivery system is the integrated approach for the protection of people, information, and property using access control, surveillance, management and territorial strategies.
- ◆ Do as you say, say as you do! If you start a security program, complete it. The installation of CCTV with no one watching the monitors, or having broken equipment, or not having trained staff to respond to emergencies, creates a false sense or "illusion of security". The illusion can be very damaging in court.

In order to determine the level of preparedness of your facility please answer the following questions:

- ◆ Do you maintain good relations with the local police agency?
- ◆ Do you maintain active membership associations that have strong national standards, such as ASIS, BOMA, IREM?
- ◆ Have you established policy and procedures for notifying tenants or residents of the development of security and crime problems?
- ◆ Do you record and log all incidents and keep them on file for that jurisdiction's statute of limitation of negligence?
- ◆ Do you have a clearly stated mission of security, job description, shift description, and essential functions?
- ◆ Are you able to provide or ensure that sufficient training is given to security and non-security staff on the proper practices of security at that site?
- ◆ Do you review, update, and document all policies and procedures at least annually?
- ◆ Do you ensure that all employees are issued their own copy of P&P and sign off that they reviewed them?
- ◆ Can you ensure that all locks and locking devices are of sufficient quality and quantity to protect tenants from an unauthorized entry?
- ◆ Have locking devices on doors and windows been inspected at least annually, and reviewed upon each tenant entry or user turnover?
- ◆ Have intercom, security alarm, fire safety, CCTV systems been periodically tested, inspected, and documented at least annually?
- ◆ Is there even and consistent lighting levels in all exterior parking areas, walkways and entries?
- ◆ Is all perimeter fencing maintained and in good condition?
- ◆ Do residential units have door viewers provided for all main entries?

- ◆ Are all vacant building spaces and units kept secured at all times to event unwanted criminal activity?
- ◆ Are all keys properly and continuously controlled for their distribution? Are the inventory of keys kept in a secure location? Is there a key control P&P that is followed?
- ◆ Is foliage around the grounds and building perimeter trimmed to eliminate hiding spaces and allow exterior lighting penetration?
- ◆ Are all roof, basement, and utility and mechanical space doors secured to prevent unlawful entry?
- ◆ Are security bars, grill or screens designed to allow fire egress in the event of an emergency?
- ◆ Are the buildings designed to screen persons and visitors who do not belong on the property?
- ◆ Are all utilities, power supplies, telephones, air conditioners, generators, gas containers placed in as secure a manner as possible?
- ◆ Do all advertising and marketing materials accurately and adequately represent the level and type of security at the site?
- ◆ Do rental agents, managers, or staff misrepresent the level of security or history of crime at the site?
- ◆ Are disclaimers used in lease agreements and contracts and warnings posted in common areas, such as pools, parking areas, mail areas, alerting residents of potential risks?
- ◆ Are all tenants and residents kept informed of any changes in security and criminal events that require warning?
- ◆ Are all employees thoroughly screened, tested, and had their backgrounds checked prior to employment?

These questions will be the first ones asked by a security expert in the event of a personal injury or premises liability litigation. How many of these questions can you answer affirmatively?

A man is robbed in an apartment lobby left unguarded in the afternoon. A woman is attacked in a parking lot of a design showroom. A faulty door allows a rapist to enter an apartment building and rape a tenant. A faulty stairway design allows for a serious injury to an elderly visitor at a condominium. A hotel room balcony facing an open atrium is wide enough to allow a child to slip through and fall ten stories. An inmate hangs himself from an air return grill over the toilet that is not properly secured. A secretary walks through a sliding glass door in an office that had no window markings on it. An entry rug in a bank buckles when the door jamb hits the edge of the carpet and trips an elderly client. A child is shot accidentally shot in an apartment walkway by a stray bullet from a drug deal gone bad. These are just a few examples of the cases that are being litigated under premises' liability.

According to a study published in 1984 by Professor Lawrence Sherman, a professor of criminology at the University of Maryland at College Park, the number of major awards reported nationwide each year in security liability cases increased 3000% between 1965 and 1982. Simultaneously, the average dollar amount awarded in those cases increased by 5000% (New York Times, March 17, 1985). Moreover, the study suggests that almost half the major awards are from four states: New York, New Jersey, Florida, and the District of Columbia. Security negligence lawsuits are one of the fastest growing civil torts in the United States currently.

To protect yourself, your property, or your client against potential lawsuits a security/safety expert should be employed to look for vulnerabilities in the building and conduct a risk analysis. The security expert can be used to reduce the foreseeability and liability of crimes and accidents. The expert can check your city's codes for specifications and fire-safety regulations. The expert can serve a crime preventative role and a critical role in litigation prevention.

A risk analysis is a study of the crime and safety threats on the premises and building. Rape, robbery, burglary, thefts, and safety concerns are addressed in the risk analysis and security audit. The audit gives the owner direction of what are the challenges that need addressing and what is a reasonable standard of care. The risk analysis also serves to put the owner on notice as to defects in the building or staff. However, if the owner can show that reasonable steps were made to correct defects, they have greatly enhanced the defensibility in a case.

A key issue in security and safety liability cases is the "foreseeability" of a crime or accident at a given location. If several tenants have been robbed or attacked in a parking lot or building lobby, further criminal incidents can be considered foreseeable, and thus preventable. Legal liability increases dramatically if no action is made to correct the defect.

The expert in security and safety can provide a risk analysis or security threat analysis to assess the vulnerability, foreseeability, and precedent of crime or accident incidents. The landlord, building management, and/or owner has certain duties that have been established in court decisions. These duties include: 1) reasonable care; 2) contractual duty based on implied warranty of habitability; and 3) the landlord, like an innkeeper, must exercise reasonable care to protect a guest or invited party from third party actions, i.e. the duty of care.

In reviewing cases from around the United States the courts have examined many different facts and issues. The following criteria seemed to be most frequent that lead to premises liability litigation:

- ◆ Prior crime on the premises, ie.. foreseeability.
- ◆ Prior crime in the neighborhood, or being in a "high crime area", thus having increased awareness.
- ◆ If similar building complexes in the area have a "standard of care" better than the subject property, and which took reasonable measures and were aware or experienced precedent, then their action establishes your property's "standard of care".
- ◆ Does physical maintenance and upkeep of existing conditions in the building meet industry standards? Were the conditions in the building up to the standard of care? Items might include the working order of lights, doors, locks, fences, closed circuit television, and intercoms.
- ◆ The adequacy of the security delivery system to detect, delay, or deter criminals. Foreseeability and adequacy are the overall measure by which security legal cases are usually judged.
- ◆ The availability and performance of security personnel are key factors to be considered. Verify employee screening, training, policy and procedures, response time, and qualifications.
- ◆ Is there active or constructive notice of prior crimes or any defective condition to management or tenants? Did the landlord have notice of prior criminal incidents or defective conditions? Did the landlord have notice of a broken door, faulty stairway, burned out light, or past crimes?
- ◆ The lack of warnings to the tenants for dangerous conditions. Were the tenants warned of an activity, so as to be put on notice and take care; ie. posting caution for slippery conditions, or ask for escort to their car and was denied, a rape on the property and residents not told, car thefts and owners not told to lock their cars?
- ◆ Look for violations of statutes, codes, or regulations. A breach of a building code or ordinance provides strong support for negligence and liability.
- ◆ Decreased measures of safety and security below a prior level of reliance, and expectations. Were services cut back due to finances or management changes and the tenants not notified of the cutback or change in services?

The security/safety professional can provide a vital part in determining and establishing these ten conditions. Whether the expert is operating in a preventative non-litigation situation, or working as an expert witness for the defense or plaintiff, these key issues must be addressed to determine the "standard of care", foreseeability, criminal precedent, premises liability, and the most appropriate response for correction and prevention of crime on the property.

Many crime and accident sites have an architectural or environmental contributory factor that may or may not be attributable to the landlord. Architecture impacts the safety and security of a building in many different features including stairs and ramp design; handrails; interior and exterior lighting; floor materials; parking lot design; blind

spots; appliances; doors, windows, and access control systems; building circulation patterns; elevators; etc.

The security/safety expert can assist the attorney in litigation by looking at the scene of a crime or accident and determining what were the variables that lead to the cause of the incident. A risk analysis of a property might ask some of the following questions:

- ◆ Could persons be struck by any item?
- ◆ Could persons be blinded by change in lighting or surprised by floor surfaces changes?
- ◆ Are there any potholes or trenches not covered or marked that someone could fall in?
- ◆ Does the design make provisions for avoiding excessive demands on persons with respect to their height, build, ability to reach, ability to balance, their walking gate, strength or grip?
- ◆ Is the risk of injury increased for persons wearing long sleeves, loose clothes, walking barefoot, high heels, or neck ties?
- ◆ Is there sufficient lighting for surveillance of exterior grounds and interior common spaces?
- ◆ Are there guards or assigned persons to patrol the grounds or challenge strangers entry?
- ◆ Are windows on the ground floor secured?
- ◆ Are doors sturdy, with secure hinges and dead bolt locks?
- ◆ Are lobbies and elevators equipped with mirrors in their corners to allow visibility and assist in robbery and rape prevention?
- ◆ Are fire escape doors locked from the outside to prevent unauthorized entry?
- ◆ Are employees screened and provided with written security rules, regulations, and policies?

Most security professionals and lawyers say the best way to determine the "adequacy", and at the same time protect the building owners from lawsuits is through inspection of the premises by an independent non-vested consultant. From a legal viewpoint, independent inspections such as a threat analysis, can be used in court to support the building management's security decisions in the event of a lawsuit. The advantage of a security audit by an independent expert is that the fee for services pays in part for the transfer of legal liability.

The expert is liable, to the extent, of the proficiency of the package they recommend. A security company might offer an inspection for free, but the hook is the pressure to purchase a system or guard service at a substantial cost. There is no free lunch. The cost incurred for the expert now gets you a qualified opinion before litigation, or the owner can pay for the expert to defend them later in court. The best prevention of

litigation is pro-active involvement by the expert before a problem. The expert can also assist if litigation is imminent by assessing the vulnerabilities or defensibility of the site or building. The expert can be used in many ways to prevent or reduce the liabilities of premises liability.

Author History

Randall I. Atlas Ph.D., AIA, CPP is a registered architect in the State of Florida, a certified protection professional (CPP) with the American Society of Industrial Security, and holds a Doctorate of Criminology from Florida State University. Dr. Atlas has served as an expert on numerous premises liability cases around the United States and has conducted security audits, American's With Disabilities Act Accessibility Audits, and crime studies at over 50 sites in South Florida. The unique area of specialty for Dr. Atlas, and most of his recognition is in CPTED, crime prevention through environmental design. Dr. Atlas is a crime prevention trainer with the National Crime Prevention Institute, University of Louisville, and a member of the National Institute of Justice-CPTED Environmental Security National Advisory Board. Atlas has been an adjunct associate professor in criminal justice and architecture at the University of Miami and Florida International University. Dr. Atlas has written over 200 publications and articles for local and national magazines and journals and presented papers and conducted training workshops at national conferences of the American Society Of Industrial Engineers, American Institute of Architects, American Corrections Associations, Access Control Conference, the National Safety Council, and many more. Dr. Atlas serves as a technical assistance consultant to the National Institute of Corrections, U.S. Department of Justice. Dr. Atlas is vice-president of Atlas Safety & Security Design, Inc. Miami, Florida. For more information contact him at (305)756-5027 or (800) 749-6029.

(As presented at the American Society of Industrial Security Convention, 1994)