

INTRODUCTION TO SECURITY CONSULTING

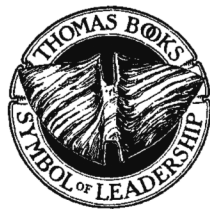
INTRODUCTION TO SECURITY CONSULTING

A Lucrative Business Service

Edited by

WILLIAM F. BLAKE

(With Six Other Contributors)



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PREFACE

I*ntroduction to Security Consulting: A Lucrative Business Service* provides the private investigator with information to become a proactive partner with the business owner in enhancing safety and security within a business. The business owner has a legal requirement to provide for a safe and secure business environment.

Frequently, the average business owner does not have the information to provide for such a requirement. The threats to a business can originate within as well as outside the business. The business owner must rely on an outside professional resource to identify the risks to the business and the development of cost-effective, reasonable, and appropriate countermeasures.

The appropriate resource is a well-qualified professional private investigator who can analyze the risks and assist the business owner in increasing the safety and security of his business as well as providing advice on strategies to counter negligent security litigation claims.

Security consulting is an expansive area for the private investigator to increase his business service offered to clients. The purpose of this publication is to afford the private investigator with the knowledge and skills to provide information and assistance to the business owner.

This book includes information pertaining to the legal ramification of negligent security claims; how to ensure employees are whom they claim to be; the optimum utilization of security personnel and electronic security devices and systems; development of relevant security-related policies and procedures; and supervision and management controls.

W.F.B.

INTRODUCTION

Today's business owner is facing a new set of challenges and in many cases is not adequately prepared for their consequences. Historically, threats to the safety of businesses and their patrons were relatively infrequent and consisted of primarily minor criminal acts. The myriad of current threats has morphed into more serious incidents including multiple deaths and injuries. The business owner's response to these current threats can be a complicated issue for the uninformed.

The prudent business owner has only to look to the professional security consultant for assistance in developing strategies to increase the safety and security environment of his business. Many of the threats to the business can be minimized by putting in place proactive strategies for loss and crime prevention and mitigation.

The threats to a business come in many forms. Some originate within the business setting and are more easily limited through actions under the control of the business owner. For example, many businesses fail to conduct an adequate background investigation of employment applicants who may alter their application information to cover criminal and non-professional actions in their past. This provides these individuals, many of whom have a previous criminal background, to observe business operations for potential criminal activity. This activity can include theft of proprietary information as well as opportunities for theft of company product.

Another potential in-house problem results from employee domestic issues. For example, a female employee is involved in a serious divorce action where the spouse has threatened bodily harm. The female employee moved from the spousal residence to an unknown location because of her fear of death or injury. Her spouse attempts to locate the employee but is unable to find her new address and cannot contact her through her cell-phone. Her place of employment is known and the aggressor goes to her there to exact vengeance, which could involve danger to all persons on the premises. The security consultant can assist in mitigating this type of problem.

The major and most costly threat to a business is a hostile act by a third party which results in death and injury to those on the property. When a shooting incident occurs on the property, the damage that occurs is not only death and injury, but a negative impact on the reputation of the owner and his business. This type of action normally results in very expensive litigation for negligent security claims.

Utilizing the skills and experiences of the professional security consultant are a relatively minor expense when the cost of resulting litigation is considered. This is a true example of a dollar spent on prevention is considerably less than that spent on defending inadequate security.

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INTRODUCTION TO SECURITY CONSULTING

Chapter 1

INTRODUCTION TO SECURITY CONSULTING

William F. Blake

Security consulting is a lucrative business service that the private investigator can develop to increase billable hours. The average professional private investigator has the basic requisite skills to be a successful security consultant. The primary role of the security consultant is to assist the business owner in providing adequate safety and security for staff members and business invitees while on the owner's property.

As recent events have demonstrated, terrorism, mass shootings, and criminal acts are increasing with individuals or small groups taking possession of public venues, such as shopping centers, sports arenas, business offices, bars and restaurants, and other locations where large numbers of individuals gather. The psychological and financial costs of such activities become astronomical when the public fears being in a public place. A security consultant who understands the terrorist and criminal mentality and operating methods can identify threats to a facility and assist in developing cost-effective countermeasures.

The benefits to the security consultant are only limited by the consultant's experience, imagination, ambition and dedication as a professional. As a result of the consultant's demonstration of professionalism, experience and dedication to the client as a business team player and partner, there will be an opportunity to develop additional billable hours. The security consultant's average billable rate can be expanded to provide significant additional income. Additionally, there will be marketing opportunities for the consultant who never tells a client they cannot perform a particular security service. This is an obvious opportunity for networking with other safety and security personnel on a sub-contract basis to increase consulting management hours and activities as well as the range of service to be offered.

One factor for justification of increasing the safety and security at a business facility is demonstrated by 159 mass shootings that occurred across the United States during the first six months of 2016, resulting in 213 deaths and 547 wounded. When reasonable and appropriate security measures are in force, the defendant in a negligent security litigation claim wins more often than the plaintiff. The majority of negligent security lawsuits involved assault and battery crimes (42%), followed by sex assault and rape claims (26%), wrongful death (25%), robbery (9%) and false imprisonment (4%).

Negligent security costs, not including attorney fees, are expensive. It is not unusual for attorney fees to equal the cost of a settlement or judgment. In some cases, the losing party may be required to pay the opposing party's legal costs. Representative costs were 40% where the settlement or judgment amounts were less than \$250,000; 16%—250,000 to \$500,000; 13%—500,000 to \$1 million; 13%—\$1 million—\$2 million; 10%—\$2 million to \$5 million; and 8%—more than \$5 million.

The security consultant can provide a variety of services to the business owner. Among them are:

- Analysis and assessment of security operations
- Identification and assessment of potential security services
- Assessment of physical security devices and systems
- Assistance with security officer contract negotiations
- Active shooter protocol
- Assessment and development of proprietary information security programs
- Assessment of employee and vendor background investigation programs
- Communication redundancy
- Development of a litigation support program
- Development of an internal investigation program
- Development of employee and executive protection programs
- Development of safety and security policies and procedures
- Evacuation planning
- Personnel accounting procedures
- Procedures for sheltering place
- Protocols to escalate notification and briefing of management in emergencies
- Resourced and rehearsed remote work options
- Up-to-date emergency supply storage
- Vulnerability or risk assessments

Some potential targets for terrorist and criminal activity include:

- Aviation facilities
- Banking and financial offices
- Child care facilities
- Churches
- High-rise office buildings
- Hospital and medical clinic
- Hotels and motels
- Libraries
- Lone-standing off-campus educational facilities
- Low-rise multi-tenant office buildings
- Marijuana grow and sales facilities
- Pharmacies and drug manufacturing facilities
- Shopping centers
- Small office complexes
- Theaters and entertainment venues

Chapter 2

LEGAL ELEMENTS OF PREMISES LIABILITY AND NEGLIGENT SECURITY

William F. Blake

Introduction

A security liability claim usually arises when a guest, customer, or employee, while on the premise of a business, is injured by the criminal act of an unknown third party. The claim is brought against the owner or occupier of the business premises for failing to provide adequate security. Since requiring a business to guarantee the safety of all guests, customers, and employees violates our notions of common sense, the battle rages over whether the business used *reasonable* security measures and whether the criminal act was foreseeable.

Lawsuits against businesses for inadequate security may be brought under various legal theories, depending on the facts of a particular case and the creativity of the lawyers. Common theories include breach of contract, promissory estoppel, deceptive trade practices, and negligence.

Although premises liability law varies from state to state, the general legal analysis used by practitioners is consistent. As with other negligence theories, practitioners apply the tort law concepts of duty, foreseeability, reasonableness, and causation.

Duty and Reasonableness

The duty owed by an owner or occupier of a business to individuals on its premises depends on the relationship of the parties. Historically, the extent of owner or occupier's liability rested upon whether the individual was a *trespasser*, a *licensee*, or an *invitee*. A trespasser is someone who enters

upon the premises without consent or a privilege to do so.¹ A licensee is someone who enters the premises with consent, generally for his or her own purpose (a social guest, sales person, etc.)² An invitee is someone who enters the premises at the invitation of the owner or occupier for a purpose upon which the premises are held open (paying guests, customers, delivery people, employees, students at a school, etc.)³

The owner or occupier owes no duty to a trespasser until the owner or occupier discovered the trespass. To a licensee, the owner or occupier owes the duty of using *reasonable* care regarding active operations and to warn of hidden dangers. The duty owed to an invitee was one of *reasonable* care under the circumstances, which required the owner or occupier to inspect the premises for dangers, to carefully operate its business, make the premises reasonably safe, and warn of hidden dangers.

Some states have adopted the traditional definitions and still distinguish between trespasser, licensee, and invitee while others do not. Practitioners should consult their local statutes to determine if the distinctions will affect a particular case. By and large, however, the owner or occupier of a business that is held open to the public will have a duty to use reasonable care under the circumstances for the protection of people using its premises. That duty generally applies to dangers, such as criminal activity, that the owner or occupier knew or should have known existed on its premises.

Traditionally, courts have held that owners and occupiers had no duty to protect against criminal acts by third persons on their premises. However, that position is rapidly changing. The Restatement (Second) of Torts gives a framework for the duty owed by owners and occupiers for acts on their premises by third persons. Under certain circumstances, a duty to police the premises or to provide adequate security may arise. Where the place or character of the possessor's business, "or his past experiences is such that he should reasonably anticipate carelessness or criminal conduct on the part of third persons, either generally or at some particular time, he may be under a duty to take precautions against it, and to provide a reasonably sufficient number of servants to afford reasonable protections."⁴

If a duty exists (and it usually will with regard to a business that is held open to the public), it applies to the entire premises—buildings, parking lots, and structures. The duty could extend to adjacent or extraterritorial properties if the business owner or occupier knows his or her customers or employees commonly use such properties. If the business commonly encourages its

1. Restatement (Second) of Torts, 329.

2. Restatement (Second) of Torts, 330.

3. Restatement (Second) of Torts, 332.

4. Restatement (Second) of Torts, 344, comment f.