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Negligent Security

Thorough and Effective Investigation and Discovery

Nationwide Security Standards

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LETTER FROM THE DIRECTOR

By Jim Ferguson

Dear Colleague,

Suzette Hemmings and her husband, Howard, lived at the Pelham Wood Apartments in Parkville, Maryland. At about 1:15 a.m. on June 13, 1998, an unidentified intruder broke into their apartment, encountered Howard in the bedroom, and shot him twice in the abdomen, killing him. The murder of Howard Hemmings was one of approximately 8.1 million violent crimes nationwide in 1998. Suzette Hemmings responded to this tragedy by seeking justice in a manner that far too few victims consider or even know about. She filed a negligent security lawsuit against the Pelham Wood landlord.

The Hemmings lived in a second-story apartment with a rear patio balcony that could be accessed through a sliding glass door. The entire back of their building overlooked a wooded area. Although there was supposedly a light in the back of the building, other tenants said that at the time of the murder, the rear area was "pitch black." One neighbor said that the back of the building had always been dark at night until the landlord added more lights after the murder.

There was a long history of prior criminal activity at the Pelham Wood complex. During the two years before the murder, the local police department had filed crime reports for twenty-nine burglaries or attempted burglaries and two armed robberies on the property. One armed robbery took place inside of an apartment and the other involved a perpetrator carrying a sub-machine gun who approached his victim from the woods near one of the buildings. In at least five of the burglaries, the perpetrator entered an apartment through its sliding glass door—which was how the killer had entered the Hemmings' apartment. The police call report list for calls from Pelham Wood also included reports of kidnaping, rape, attempted rape, robbery, and numerous assaults. One report indicated that less than two years before the murder, there had been a burglary in the actual apartment that the Hemmings later leased.

Suzette Hemmings faced several difficult hurdles in her wrongful death and survival claims against the landlord. Most significantly, Maryland courts had a history of not looking favorably upon negligent security lawsuits, often emphasizing that there is no general duty to protect against crime and that landlords cannot be "insurers" against criminal activity. More specifically, although there was some authority for the proposition that a landlord could have a legal duty to protect against criminal activity in the common areas of an apartment complex, it was less clear whether a similar duty would apply with respect to criminal activity that happened within leased premises which were controlled by the tenant and not the landlord. Howard Hemmings was murdered inside his family's apartment.

Initially, success seemed unlikely. The trial court granted the landlord's request to dismiss the case. Maryland's intermediate appellate court agreed with the dismissal, finding that Suzette Hemmings would not be able to prove that the landlord's failure to maintain the Pelham Wood common areas (*e.g.*, provide adequate lighting) was the legal cause of the murder. Despite these setbacks, Hemmings fought on.

The Court of Appeals of Maryland, the state's highest court, took the case and agreed with Hemmings's arguments. The court reversed the dismissal of the case and offered a broad interpretation of a landlord's legal duty to provide security. A Maryland landlord must take reasonable security measures when it knows or should know about criminal activity taking place on the premises and when a landlord of ordinary intelligence should have foreseen, based upon the nature of the past criminal activity, the harm the victim suffered. This duty can extend beyond crimes committed in common areas which are under the landlord's control. It can also apply in leased premises if a tenant suffers an injury on those premises which was caused by a landlord's failure to properly maintain the common areas. Here, the court pointed to the landlord's failure to maintain the lighting in the back of the building as a possible cause of the murder within the apartment.

Suzette Hemmings's fight for justice on behalf of her husband is just one example of many negligent security lawsuits that have been pursued across the country. While this is still a relatively new and underused legal theory, courts in a number of states are already going out of their way to make it more difficult for victims to succeed in these cases. (Some of these difficulties and strategies for overcoming them are discussed in this issue of *Victim Advocate*.) However, for all of the unjust decisions, there are still many encouraging legal developments, such as Maryland's broad embrace of Suzette Hemmings's arguments.

Negligent security litigation is an important avenue to justice, and the NCVBA stands ready to help crime victims and their attorneys successfully pursue these cases.

Sincerely,

Jim Ferguson

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Apportionment of Fault in Inadequate Security Cases

By John Elliott Leighton, Esq.

A client stands in your office, having been mugged at a supermarket for a purse containing $66. The client is scared, agitated, hurt, and, most of all, angry. How could this happen to her—she shops there all the time? Why wasn't something done to prevent this kind of attack? The client looks to you for answers.

You try to explain that the law is complicated, and that although the criminal justice system has punished the perpetrator, the civil remedies against the supermarket owners are less certain. The liability of a negligent premises owner for the intentional acts of a criminal varies from state-to-state. Liability in negligent security cases is one of the most bitterly debated issues in tort law.

Inadequate security cases essentially are premises liability cases which arise out of the failure of the possessor of the premises to reasonably maintain the premises. The failure may be a lack of security guards or lighting, or faulty security mechanisms or designs. Although derived from general premises liability theories, inadequate security litigation has developed its own area of case law in most jurisdictions. Many jurisdictions hold that property owners have a duty to take reasonable steps to protect the public from foreseeable criminal acts, and they hold owners liable when no harm would have befallen the plaintiff but for the owner's negligence. These courts note that owners are in the best position to know of a property's risks, and to guard against those risks.

However, premises owners are increasingly trying to minimize their liability for negligence in providing security by shifting blame to the criminal. Such a shifting of blame can make it much more difficult to prove key elements of the plaintiff's case. Much like professional malpractice cases, inadequate security cases require proof that some standard of care existed, that the defendant breached the standard of care, and that the breach was a proximate or legal cause of the damage. A failure to prove each element dooms the case.

Plaintiffs already enter this arena with some automatic disadvantages. Primarily, the problem lies in the fact that the case is being brought against people who did not themselves commit the crime and often were not even present. The jury is asked to award damages against a party for failing to prevent an arguably random act. A plaintiff asks the jury to conclude that the defendant not only should have foreseen this assault, but also should have taken steps to prevent it, and that those reasonable measures in all likelihood would have deterred the crime. Quite a burden.

Safety First?

From a policy standpoint, holding landowners responsible has produced a safer society. Despite the alarming number of violent crimes every year, especially on commercial premises, inadequate security lawsuits have made many commercial premises safer. There are now security guards at shopping malls, hotels, and apartment complexes. Hotels routinely employ better key controls (*e.g.*, automatically changing the code after each checkout) and do not reveal guests' room numbers to the public. Were it not for inadequate security litigation, it is reasonable to assume

that much of the security we see today would not exist. Security is a cost, not a source of profits. Given the choice between spending money and making money, corporate America will usually choose the latter.

For many years, especially in the infancy of inadequate security litigation, commercial premises owners defended their lack of security by claiming that the presence of uniformed guards would "scare off" customers and create a climate of fear that would harm business. This argument, while specious at the time, has since been debunked through focus groups, polls, and simple observation. The American public prefers premises where a security presence exists. This is particularly true in the wake of the September 11 terrorist attacks.

Shifting the Blame

Many people do not realize that a negligent business or landowner might be able to minimize its fault in favor of the person who intentionally committed the crime. However, recent changes in fundamental tort principles have permitted this to happen in a number of jurisdictions. To effectively fight the apportionment of fault between negligent defendants and intentional tortfeasors, it is necessary to understand the three changes in tort law which are necessary before a negligent defendant can try to shift the blame.[1]

The three changes are:

- Abolition of joint and several liability;
- Listing of nonparties on the verdict form; and
- Comparison of negligent and intentional conduct.

If joint and several liability is available, apportionment of fault is largely irrelevant because a judgment that is fully collectable against any one defendant can be recovered from any other, including a negligent premises owner. This is true even when the owner is found responsible for a proportionately small degree of fault. However, since the mid-1980s, many jurisdictions have either abolished joint and several liability or significantly limited its application.[2]

Traditionally, a plaintiff chooses whom to sue. By suing only the property owner, a plaintiff can keep the issue of an intentional tortfeasor's share of fault from going to the jury because the jury is generally allowed to consider only the fault of a party defendant. But in jurisdictions that permit nonparties to be listed on the verdict form, defendants may argue that the nonparty tortfeasor is wholly or partially to blame for the plaintiff's injuries, and the jury is instructed that it can apportion fault among the party defendant, the plaintiff, and the nonparty.

Several jurisdictions have recently interpreted comparative-fault laws to allow comparison of negligent and intentional conduct, allowing negligent premises owners to shift their liability to intentional tortfeasors. In addition, some courts are rewriting time-tested definitions of proximate cause and even usurping the province of the jury in order to apportion liability.[3] This issue is one of the most bitterly fought in tort law today.

Neglect Versus Intent

Inadequate security cases usually involve criminal assaults at commercial premises, including automated teller machines, parking lots, malls, hotels, apartments, parking garages, office buildings, and even school dormitories. Duties owed by owners and lessors of property may differ, and duties owed to different types of plaintiffs—such as tenants, visitors, or other invitees—may also vary. However, the general elements of a claim against a premises owner alleging inadequate security are the same. The plaintiff must show that the owner owed a duty of care to the plaintiff; that the crime was reasonably foreseeable by the defendant; that, in light of the foreseeability, the defendant was negligent in failing to act reasonably to prevent the harm; and that this negligence caused the plaintiff's harm.

Even where an owner's negligence is proven, some jurisdictions allow that owner's liability to be reduced under comparative-fault statutes. Most states codified rules of comparative fault in the 1970s, but retained the common law distinction between negligent and intentional conduct.[4] Pursuant to this distinction, a court cannot compare negligent and intentional conduct. Therefore, when a victim sues a premises owner for negligence, that owner is not allowed to shift blame to an intentional tortfeasor.

As one court stated, "[I]ntentional torts are fundamentally different in nature than negligent torts. . . . [A] true comparison of fault based on an intentional act and fault based on negligence is, in many circumstances, not possible."[5] Many courts continue to uphold this distinction. Regrettably, others interpret comparative-fault statutes to allow comparison of negligent and intentional conduct and, thus, apportion more blame to criminals and less to negligent premises owners.

Apportionment of Fault

The idea of apportioning fault in such cases strikes at the very heart of the tort itself. Clearly negligent defendants have argued that they should be able to minimize or eliminate their own liability by blaming the very person they had a duty to defend against—the criminal. Unfortunately, a number of jurisdictions have embraced this defense, and several more are on the fence.

The problem with comparing negligent and intentional conduct is that perpetrators will, at least theoretically, be found 100% at fault because it was their intentional acts that actually caused the harm ("cause-in-fact").[6] By failing to accurately apply the concept of proximate causation, some courts have eviscerated longstanding law on premises liability, pursuant to which a landowner has a duty to visitors (invitees).

The general statement of law is that one who possesses property (owner/landlord/lessee)[7] owes a duty of care to visitors to eliminate reasonably foreseeable hazards or, if it is not possible to eliminate them, then to warn of any hazards about which the landowner has greater knowledge than the invitee. Thus, when there is a history of violent crime against persons on a particular premises, the possessor is charged with that knowledge and owes a duty to

invitees to protect them from that danger. The owner's failure to protect the invitee is the proximate cause of the harm.

With some courts willing to "compare" the fault of the perpetrators to the negligence of the premises owner, traditional concepts of negligence, accountability, and proximate cause are being bastardized. It had been held that because the commercial premises owner was profiting from the presence of the invitee, it was the owner who should bear the loss as between the two. Now the party bearing the loss is the one from whom the premises owner was supposed to protect the invitee. The possessor is always in a better position to know of and guard against the harm than the invitee.

It is akin to a circus lion that has leaped into the audience and attacked a small child. The circus owner could have put up nets and fences, but chose not to because of cost. When the lion next attacks, do we blame the lion, or instead is it the responsibility of the party profiting from the attendance of this child who should pay the loss? The premises owner who seeks and receives financial benefit from the invitee on his premises, and who could and should have foreseen and prevented the harm to the plaintiff, should be accountable.

The significance of apportioning fault to the perpetrator cannot be overestimated. One court has noted that "such a rule could, in effect, defeat Plaintiff's cause of action."[8] Another judge said that "the assailants' paramount, and probably exclusive, responsibility for the victim's beating will be reflected in the jury's percentage allocation of fault."[9]

The case of *Blazovic v. Andrich* involved a bar patron who was beaten in a parking lot by other patrons. The jury returned a verdict allocating seventy percent of the negligence to the bar owner and thirty percent to the plaintiff. The trial court then took it upon itself to apportion the seventy percent liability among the bar owner and the assailants. The New Jersey Supreme Court affirmed the lower court's ruling, stating that for comparative-negligence purposes, intentional wrongdoing is different in degree, but not in kind, from negligence or wanton and wilful conduct, and thus "does not preclude comparison by the jury."[10]

The practical effect of allowing negligent defendants to lessen their liability in favor of intentional tortfeasors is that the victim's recovery will be only a fraction of what it would be without apportionment of fault. In the first of the handful of reported cases in which the fault of the negligent defendant was compared with the intentional conduct of the assailant, the jury found the negligent landowner's share of fault to be only twenty percent.[11]

In some cases, juries have only partially approved a defendant's attempt to shift responsibility to the assailant. For example, one jury found that the negligent defendant was responsible for seventy-five percent of the fault.[12] However, even where a jury finds that most of the fault rests with negligent defendants, appellate courts have sometimes stepped in and overturned jury verdicts, essentially overstepping the role of appellate court and making findings of fact.

In recent years, California has created a hostile environment for victims of negligence. In *Pamela B. v. Hayden*, a young girl was raped by two men in the underground garage of the "secure" building where she lived. She presented expert testimony that the poor garage lighting, together with the easy accessibility to the garage and a lack of adequate security mechanisms, led to the attack.[13] The jury found that the negligent landlord's share of fault was ninety-five percent, but the appellate court concluded that this finding was not supported by substantial evidence and ordered a new trial. The court claimed: "Just as Justice Potter Stewart knew hardcore pornography when he saw it, we know a blatantly unfair, inequitable and unsupported apportionment of fault when we see it." In another case, an appellate court overturned a jury's finding that the negligent defendant's share of fault was seventy-five percent.[14]

In short, the comparison of fault between negligent defendants and intentional tortfeasors may be devastating to the negligent security cause of action.

Cases Rejecting Apportionment

A number of jurisdictions have expressly rejected the argument that negligent defendants should be able to minimize their liability by shifting blame to intentional tortfeasors. For example, the Florida Supreme Court recently held in *Merrill Crossings Associates v. McDonald* that the apportionment of fault statute was inapplicable and that it was not proper to compare the acts of an intentional actor to the negligence of the tortfeasor who is charged with preventing the incident.[15]

The court based its ruling on a finding that a tort-reform statute enacted to abrogate joint and several liability was inapplicable to actions based on intentional torts. The plaintiff, McDonald, was shot and injured by an unknown assailant in the parking lot of a Jacksonville Wal-Mart.[16] The court agreed with McDonald's interpretation of the statute that negligent acts are fundamentally different from intentional acts. Statutory language excluding actions "based on an intentional tort" gives effect to a public policy that negligent tortfeasors should not be permitted to reduce their liability by shifting it to another tortfeasor whose intentional criminal conduct was a foreseeable result of their negligence.[17]

The U.S. Court of Appeals for the Fifth Circuit reached a similar conclusion when analyzing Mississippi's comparative-fault statute. In affirming a lower court's ruling that the defendant could not apportion liability to a criminal who had abducted a mother and her twelve-year-old daughter from a parking lot and repeatedly raped the mother while forcing the daughter to watch, the Fifth Circuit held that the term "fault" in the statute does not include intentional torts.[18]

Even when courts have interpreted comparative-fault statutes to encompass intentional torts, many have continued to properly recognize the liability of the premises owner. For instance, in a 1994 case involving a tenant who was raped in her apartment, a Louisiana court held that the term "fault" in the state's statute was broad enough to encompass both negligent and intentional conduct—yet

the court refused to reduce the property owner's liability.[19] The court stated that "[a]s a general rule, we find that negligent tortfeasors should not be allowed to reduce their fault by the intentional fault of another that they had a duty to prevent."[20]

Similarly, the Kansas Supreme Court found that "negligent tortfeasors should not be allowed to reduce their fault by the intentional fault of another that they had a duty to prevent."[21] The court conceded that in some circumstances it might be proper to compare intentional conduct with negligence, but not where the negligence was a failure to protect the plaintiff, a mentally retarded six-year-old girl, from sexual molestation by a school bus driver.

Various other courts have agreed, finding that allocating fault to the intentional actor, where the intentional tort is the very risk that the negligent tortfeasor has a duty to prevent, serves as a direct disincentive for premises owners to act with due regard for the safety of people they invite onto their property.[22]

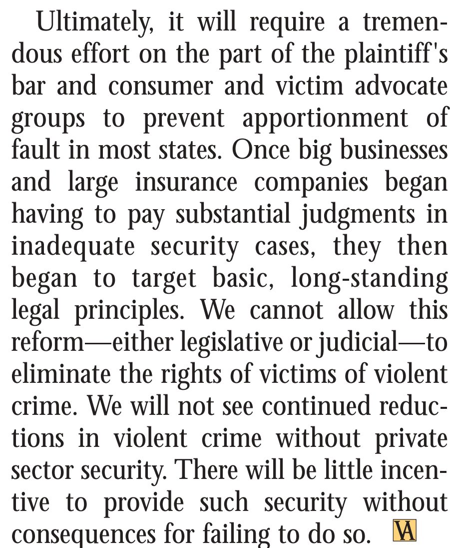
The American Law Institute (ALI) recently readdressed these issues when it drafted the Restatement of Torts (3rd), Apportionment of Liability. The ALI analysis may be persuasive when arguing to a court that does not already have controlling law.[23] A comprehensive law review article makes this point clearly:

> Not all cases involving the combination of negligence and intentional misconduct are alike. There may be exceptional circumstances where, by reason of the unique nature of the duty allegedly breached, it would be inappropriate to allocate fault between a party who negligently exposed another to injury from intentional harm and the intentional wrongdoer. One example would be the liability of an apartment owner for negligently failing to protect tenants from criminal trespassers, such as neglecting to provide sufficient lighting around the building or keeping entrances locked or guarded to discourage burglars or rapists. In that instance, the distinctive nature of the duty of care—to prevent precisely such intentional wrongdoing—is such that the negligent actor should not escape responsibility to the plaintiff by shifting the major share of the blame to the intentional wrongdoer.[24]

Conclusion

The concept of apportionment of fault has a superficial intellectual appeal. It is difficult to argue against the proposition that parties should only have to pay for their share of fault. However, the veneer cracks when this argument is applied to inadequate security cases. Much like a crashworthiness product liability case, it would be irrational and legally disingenuous to compare the fault of the person who caused the crash with the fault of the manufacturer whose car could not protect its occupants in a low-speed accident. The manufacturer owes the user a duty to design the vehicle in a manner consistent with the known risks of operation. Because it is foreseeable that a collision will occur, manufacturers must take that into account in their designs. They owe purchasers a duty to sell a vehicle reasonably safe for its intended and foreseeable use. Similarly, it is intellectually dishonest to compare the intentional act of a criminal perpetrator with the ordinary or gross negligence of a premises owner who allows it to occur.

Ultimately, it will require a tremendous effort on the part of the plaintiff's bar and consumer and victim advocate groups to prevent apportionment of fault in most states. Once big businesses and large insurance companies began having to pay substantial judgments in inadequate security cases, they then began to target basic, long-standing legal principles. We cannot allow this reform—either legislative or judicial—to eliminate the rights of victims of violent crime. We will not see continued reductions in violent crime without private sector security. There will be little incentive to provide such security without consequences for failing to do so. VA



John Elliott Leighton, Esq., is a partner in a Miami, FL, trial firm. A board-certified trial specialist, Mr. Leighton is nationally recognized as one of the leading trial lawyers specializing in inadequate premises security cases. He currently serves as co-chairman of the Association of Trial Lawyers of America's (ATLA) Inadequate Security Litigation Group and is past chairman of ATLA's Motor Vehicle, Highway and Premises Liability Section. He is a member of the Board of Trustees of the National College of Advocacy and a charter member of the National Crime Victim Bar Association. He can be contacted at LEESFIELD, LEIGHTON, RUBIO, MAHFOOD & BOYERS, P.A., 2350 South Dixie Highway, Miami, FL 33133, (305) 854-4900, (800) 836-6400, Leighton@Leesfield.com, www.Leesfield.com.

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1. *See generally* John Elliott Leighton, *Fighting New Defenses in Inadequate Security Cases*, TRIAL, Vol. 35 No. 4, Apr. 2000, pp. 20-25; and John Elliott Leighton, *Apportionment of Fault in Inadequate Security Cases*, TRIAL, Vol. 37 No. 13, Dec. 2001, pp. 18-25.
2. *See, e.g., Whitehead v. Food Max, Inc.*, 163 F.3d 265, 281 (5th Cir. 1998).
3. *Pamela B. v. Hayden*, 31 Cal. Rptr. 2d 147 (Ct. App. 1994); *Scott v. County of Los Angeles*, 32 Cal. Rptr 2d 643 (Ct. App. 1994).
4. *See, e.g., Melendres v. Solares*, 306 N.W.2d 399 (Mich. Ct. App. 1981); *Sieben v. Sieben*, 646 P.2d 1036 (Kan. 1982).
5. *Veazy v. Elmwood Plantation Assocs., Ltd.*, 650 So.2d 712, 719-20 (La. 1994); *see also Burke v. 12 Rothschild's Liquor Mart, Inc.*, 593 N.E.2d 522, 532 (Ill. 1992).
6. This illustrates the difference between legal causation ("proximate cause") and factual causation ("cause-in-fact").
7. For purposes of this article, "possessors," "landowners," and "lessees" are being treated interchangeably. There are often some important distinctions as to duty, which vary state by state.
8. *Bach v. Horizons, Ltd.*, 838 F. Supp. 559, 561 (M.D. Fla. 1993).
9. *Blazovic v. Andrich*, 590 A.2d 222, 225 (N.J. 1991) (citing dissenting judge in court of appeals).
10. *Blazovic*, 590 A.2d at 231.
11. *Weidenfeller v. Star & Garter*, 2 Cal. Rptr. 2d 14 (Dist. Ct. App. 1991).
12. *Rosh v. Cave Imaging Systems*, 26 Cal. App. 4th 1225 (Dist. Ct. App. 1994).
13. *Pamela B. v. Hayden*, 31 Cal. Rptr. 2d 147, 157 (Dist. Ct. App. 1994).
14. *Scott v. County of Los Angeles*, 27 Cal. App. 4th (Dist. Ct. App.1994).
15. *Merrill Crossings Associates v. McDonald*, 705 So.2d 560 (Fla.1997).
16. 705 So.2d at 561.
17. *Id.* at 562.
18. *Whitehead v. Food Max*, 163 F.3d 265, 281 (5th Cir. 1998).
19. *Veazy v. Elmwood Plantation Assoc.*, 650 So.2d 712, 718 (LA 1995).
20. *Id.* at 719.
21. *See Kansas State Bank & Trust Co. v. Specialized Transp. Servs.*, 819 P.2d 587, 606 (Kan. 1991); *see also Turner v. Jordan*, 957 S.W.2d 815 (Tenn. 1997) (holding that an intentional criminal assault on a nurse by a mentally ill patient could not be compared with the negligence of the treating psychiatrist in failing to protect the staff from foreseeable violent acts).
22. *See, e.g., Turner*, 957 S.W.2d 815; *Whitehead*, 163 F.3d 265. *See also* RESTATEMENT (SECOND) OF TORTS § 449, and cmt. b (1963):"The happening of the very event the likelihood of which makes the actor's conduct negligent and so subjects the actor to liability cannot relieve him from liability. The duty to refrain from the act committed or to do the act omitted is imposed to protect the other from this very danger. To deny recovery because the other's exposure to the very risk from which it was the purpose of the duty to protect him resulted in harm to him, would be to deprive the other of all protection and to make the duty a nullity."
23. *See §14: Tortfeasors Liable for Failure to Protect the Plaintiff from the Specific Risk of an Intentional Tort.* (Establishing joint and several liability for those who fail to protect someone from a specific risk.)
24. Gregory C. Sisk, *Interpretation of the Statutory Modification of Joint and Several Liability: Resisting the Deconstruction of Tort Reform*, 16 U. PUGET SOUND L. REV. 1, 30-31 (1992). *See also Merrill Crossings Associates v. McDonald*, 705 So.2d 560 (Fla.1997)(such comparison inappropriate).

Recent Developments in Nationwide Security Standards:

The General Security Risk Assessment Guideline

By Norman D. Bates, J.D.

The need for nationwide security standards and guidelines has never been more pronounced than in the wake of the September 11, 2001 terrorist attacks. Public awareness of security measures is high, whether during air travel, at concerts or sporting events, or on visits to office buildings or shopping malls. The average citizen is increasingly concerned about the quality of security programs and services provided by private industry to the consumer. This article explains the importance of security standards and guidelines and describe one set of guidelines, ASIS International's recently published General Security Risk Assessment Guideline.

Historically, the private security industry has been poorly regulated. Frequently, such regulation has only taken the form of limited state statutes that set forth licensing requirements—and on rare occasions, minimum training standards—for contract security agencies or so-called guard companies. Proprietary security staff—individuals who are the direct employees of, for example, a hotel, shopping center, or office building—traditionally have not been regulated by states or municipalities.

Since the early 1970s, when the Connie Francis rape case against a motel in New York received widespread publicity, there has been a multitude of civil litigation alleging inadequate security against privately owned businesses. With many verdicts of more than one million dollars and increased public awareness of this alternative remedy for victims of crime, business owners have become motivated to improve the quality of their security services to guests, tenants, visitors, and employees. Unfortunately, with a dearth of standards guiding property owners on how much or what type of security to provide, many of them failed to take the appropriate steps to properly analyze the risks of crime associated with their businesses. As a consequence, these businesses have failed to provide adequate protection for the public despite their legal duty to do so.

After thirty years of claims against property owners for poor security, a public outcry for nationwide security standards requiring some minimal measures to prevent crime would seem inevitable. In fact, during that thirty-year period, only a handful of technical standards were developed by such standard-setting organizations as the American National Standards Institute (ANSI) and the American Society for Testing and Materials (ASTM). However, these standards typically have been limited to technical items such as locks, fencing, safe construction, or lighting levels. There were no standards or guidelines for the management of security services or the use of security devices in any given application. This means that the landlord of an urban apartment building or the general manager of a downtown hotel would not be able to refer to a written standard regarding what type of locks should be installed on sliding glass doors. The liability of the motel in the Connie Francis case was predicated on the poor quality locks that were provided for the singer. She was raped in her room by an unknown intruder who gained access via a defective locking device on a sliding glass door.

As recently as the early 1990s, there was still opposition by three major industries to the development of any type of security standard or guideline. The apartment, hotel, and shopping-center industries, through their respective trade groups, fought an effort by ASTM to develop minimum guidelines for security measures in all types of privately owned businesses open to the public. A three-year effort to develop the guidelines dissolved with threats to the non-profit ASTM that it was working outside its charter. Although it is doubtful that there was any charter violation, the organization could not afford the cost of litigation and consequently disbanded the committee.

In late 2000 and early 2001, the National Fire Protection Association (NFPA), another standard-setting organization, made public its intentions to start the process of writing national security standards. However, NFPA was a fire-prevention-oriented organization which had no justifiable business entering the domain of the security industry. In February of 2001, this author wrote an article calling upon the private security industry, through its largest professional association—ASIS International (formerly called the American Society for Industrial Security)— to start the process of writing national standards and guidelines for all aspects of security.

ASIS Commission on Guidelines

In August of 2001, one month before the tragic events of September 11, the ASIS Commission on Guidelines was established. The twelve members of the Commission are appointed by the ASIS president and serve indefinitely. They represent a wide variety of interests and industries, including academia, information technology, and private-contract services. During the early stages of the Commission's work, it decided that its initial product would be in the form of guidelines (and not standards *per se*) to allow for the rapid development of useful materials for private industry. The Commission has been in the process of obtaining ANSI certification as a consensus standard-setting organization. Formal standards will come later.

Standards or Guidelines?

The difference between a standard and a guideline is to some degree a matter of semantics, and yet, there are distinctions. A standard usually refers to an adopted standard of practice for the construction, design, use, or application of a product or service. For example, there are national standards for the manufacturing of certain types of locking devices. An adopted standard usually goes through a time-consuming consensus-setting process where all interested parties have input on the content. Words such as "shall" are frequently used. Standards can beand are often adopted by municipalities in codes or ordinances, such as a building code.

Guidelines are generally less restrictive than standards, using language such as "it is recommended" or "courses of action may include." By definition, guidelines are meant to provide guidance to the end user—the private business owner or manager—who needs help in identifying options that may be available for a certain type of application.

The legal implications of a standard versus a guideline are somewhat blurry. While a standard is developed over a longer period of time and goes through a more rigorous process, the effect in the courtroom of invoking standards or guidelines is not likely to be very different. For the plaintiff who is introducing a guideline, the objective is to show a jury that there was a business practice that, arguably, the defendant company should have followed in this case. The alleged failure to adhere to that practice or guideline becomes evidence of negligence in most jurisdictions.

Why Have Security Standards?

At least two views have emerged on whether standards or guidelines that attempt to regulate the security of private organizations should be adopted. The more conservative view is that no standards or guidelines can be written to fit all circumstances. The "one-size-does-not-fit-all" argument has been made numerous times, including during the early 1990s ASTM effort. However, this argument is misleading. It fails to recognize that many efforts can be undertaken by any size organization to improve the quality of its security program.

The more progressive view on standards development is that they are necessary to ensure a higher level of professionalism within the security industry and to render a more consistent approach to the provision of security measures in any private-sector application. Security standards or guidelines can be written to apply in any given setting or circumstances, a fact which is well illustrated by the "General Security Risk Assessment Guideline" written by the ASIS International Guidelines Commission and approved on November 13, 2002.

General Security Risk Assessment Guideline

The General Security Risk Assessment Guideline was written by the members of the Guidelines Commission over a one-year period starting in the fall of 2001. The Commission recognized that the best starting point for the development of security standards and practices was with a practice guide that addressed the most basic of issues for private industry. The obvious place to start was by developing a standardized approach to conducting security risk assessments. Regardless of the application or the business or organization type, there is a long-recognized, logical method of analyzing security risks and identifying the options that are available to manage security-related problems. The General Security Risk Assessment Guideline seeks to outline this method. (The Guideline is available free on-line at *www.asisonline.org*.)

The Guideline describes itself as being "applicable in any environment where people and/or assets are at risk for a security-related incident or event that may result in human death, injury, or loss of an asset." The phrase "a security-related incident or event" is not limited to criminal activity. It also includes natural disasters, war, and other activities that could result in a loss of life or property.

The Guideline is a "seven step process that creates a methodology for security professionals by which security risks at a specific location can be identified and communicated, along with appropriate solutions." (It also includes definitions, a flow chart, appendices, and a bibliography.) The Guideline's seven-step framework for conducting a security risk assessment is broken down as follows:

Step 1:
Understand the Organization and Identify the People and Assets at Risk

The first objective for a security practitioner in the risk-assessment process is to understand the nature of the organization being evaluated, including its peculiarities, business purpose, methods of operating, and corporate goals. In addition, the nature of the assets and the type of people at risk are essential pieces of information in a proper risk assessment. The Guideline's appendices include two sections: a qualitative approach to risk assessment and a quantitative approach. In the first appendix—which addresses the qualitative approach that will be described further in this article—there are numerous examples used to illustrate such issues as what constitutes an "asset" or the type of "people" that the practitioner should consider when making the assessment.

Step 2:
Specify Loss Risk Events/Vulnerabilities

The Guideline defines risks or threats as "those incidents likely to occur at a site, either due to a history of such events or circumstances in the local environment. They can also be based on the intrinsic value of assets housed or present at a facility or event." For clarification of this definition, the reader can again refer to the appendices. For example, the concept of "loss risk" events includes prior crimes at the site or in the immediate vicinity and crimes that may be common to that type of industry (*e.g.*, robberies in convenience stores or burglaries in apartment communities). Loss risk events are not just crime or security-related problems. They also include non-criminal events such as human-made or natural disasters such as storms, power outages, and labor disputes.

Step 3:
Establish the Probability of Loss Risk Events and Frequency of Events

In establishing the probability of loss, one should consider such factors as prior incidents, trends, warnings, and threats. The probability is not based on mathematical certainty, but simply a consideration of the likelihood that an event will occur, based on historical data, events at similar establishments, and so forth. For instance, it is well known within the industry that convenience stores are targets for armed robbery. This is primarily because they are cash businesses, often are open twenty-four hours a day, frequently have only one clerk, and commonly are located at major intersections where there are more escape routes for the criminal. The security practitioner would take this "inherent risk" into account when assessing the probability of future robberies in similar establishments and would provide the appropriate recommendations.

Step 4:
Determine the Impact of the Events

The impact of an event refers to financial,

psychological, and other related costs incurred by an organization. "Other related costs" may not be so obvious. The appendix describes a number of issues raised by certain loss events, such as negative media coverage, poor consumer perception, the inability to obtain insurance coverage (*e.g.*, in the wake of the recent terrorist attacks), or poor employee morale which affects worker productivity.

Step 5:
Develop Options to Mitigate Risks

It is understood and accepted within the security industry that one cannot eliminate all risks or prevent all losses. Frequently, however, there may be several options or security solutions that can be applied to the same set of factors. Examples of security solutions include staffing, security equipment (*e.g.*, card access systems, closed-circuit television cameras, alarms, lighting, and locks), transferring the financial risk of loss through insurance coverage, indemnification agreements with security service providers, and a number of creative approaches to address a problem. Security solutions often involve a compromise arising out of the long-standing conflict between security and "convenience." Convenience is the argument that "we have always been doing it that way and it wouldn't be convenient to change the way we operate." The example of forcing employees to use a single entrance to a facility to enhance access control illustrates the problem.

Step 6:
Study the Feasibility of Implementation of Options

The questions are whether the security measures available are feasible for an organization and whether the measures would substantially interfere with the organization's operation. If they do substantially interfere, the security measures may not be practical. As an absurd example, if a retail store had severe shoplifting problems, one possible "solution" would be to simply lock the doors of the store. In doing so, the shoplifters would be prevented from stealing the merchandise. Of course, legitimate shoppers would also be prevented from purchasing the merchandise and the store would go out of business. The "solution" here would obviously substantially interfere with the operation.

Step 7:
Perform a Cost/Benefit Analysis

Security measures should be proportional to the risks against which they are designed to protect. The impact of a loss that involves the death or injury of people can be substantial in a variety of ways—from the obvious emotional costs to the economic harm caused by the loss of key employees. On the other hand, some property losses are more bearable than others and as such, the security practitioner would be expected to compare the cost of the various options against the cost of the loss. While many people would insist that no cost is too great to save a human life, most would also concede that it makes no sense to spend $100,000 on security equipment to prevent the loss of $1,000 dollars of property.

Conclusion

The methodology found in the General Security Risk Assessment Guideline is not new. Research conducted by this author over the last several years has revealed similar approaches in a number of publications, ranging from basic security texts to Department of Justice guidelines on assessing security risks in federal buildings. Several of these publications are cited in the bibliography provided in the Guideline.

The fundamental question is: who benefits from the development of security standards and guidelines? The answer, first and foremost, is the public. We all benefit. Private organizations have incentives to minimize their losses, and now, more than ever, the public is concerned about security and having safer places to live, work, and spend their free time. Ultimately, security standards will help ensure that these mutually inclusive goals are achieved. VA

Norman D. Bates, J.D., is the president of Liability Consultants, Inc. in Sudbury, MA, a member of the ASIS International Commission on Guidelines, and a charter member of the National Crime Victim Bar Association. For more information, visit www.liabilityconsultants.com.

GERALD LEWIS, a clinical psychologist practicing in the Boston area, consults with organizations on a variety of issues, including workplace hostility and violence, crisis and trauma, and other employee-relations issues. The organizations he has worked with include the U.S. Postal Service, the U.S. Army, the Federal Aviation Administration, the governments of Panama and Barbados, Merrill Lynch, and Johns Hopkins University and Medical School. Lewis has written numerous articles and authored two books, *Critical Incident Stress and Trauma in the Workplace* (1994) and *Workplace Hostility: Myth & Reality* (co-author, 1998). He also is involved in litigation consulting. *Victim Advocate* spoke with him about his work.

Q: What types of issues do you address in the litigation context?

A: I will consult and testify about posttraumatic stress disorder and other emotional injuries. In some cases, the harm has been caused by workplace hostility and violence, sexual harassment, or other work-related traumas. I also work on a variety of other issues, including malpractice, wrongful retention/termination, the Americans with Disability Act, and fitness-for-duty evaluations.

Q: What led to your work on workplace safety issues?

A: In the late 1970s, I was a chief psychologist for a psychiatric unit. Safety was a key consideration when dealing with disruptive, abusive patients. As my career moved toward employee assistance work, I found that safety was once again an important consideration. I learned that employers can impact both the physical and emotional safety of a workplace by developing and implementing "safety" policies in areas including drugs and alcohol, workplace violence, sexual harassment, and even bans on smoking.

Q: What are some of the causes of workplace violence, and what can be done to prevent it?

A: More than 160 million people are employed in this country. During the past twenty years, there have not been more than 1,000 workplace homicides in any year and now the annual total is down to about 850. Seventy-five percent of workplace homicides arise out of a robbery or attempted robbery. About twenty percent are the result of displaced domestic violence where a batterer comes to the victim's workplace, kills her, and perhaps some of her co-workers as well. Only four to six percent of such homicides are committed by "disgruntled workers."

If people are willing to kill themselves in the process, workplace violence is not preventable. However, there is a significant distinction between prevention and protection, and there is a great deal that employers can do to protect their workplace. Organizations can improve worker protection by reviewing how they treat their employees. For example, when a massive layoff occurs, employees are brought into a room, security takes them to their offices, they load up all their stuff, security ushers them out the door, and they are issued a no-trespassing order. Security and liability experts might recommend these measures to prevent an employee from becoming upset or disruptive. I believe such measures constitute shaming behavior that could increase the danger. If you have employees who are prone to acting out, and you shame them, you increase the likelihood that they might act out inappropriately. It is troubling that employers treat people that were good employees yesterday like criminals today, simply because the company does not have enough money to pay them anymore.

Workplace homicide has decreased in the last ten years, but we are seeing an increase in a variety of behaviors that give rise to a hostile work environment. These behaviors include harassment, sexual harassment, bullying, and intimidation. Much of the increase is the result of increased stress and demand in the workplace, as well as inadequate training and education.

Q: Do you think the "increase" in these behaviors is actually an increase in the frequency of the behaviors, or is there a greater sensitivity which increasingly recognizes these behaviors as dangerous and inappropriate, and accordingly, such behaviors get reported more often?

A: In the last twenty-five years, I think we have developed a greater sensitivity to behaviors that had been tolerated for generations. For example, bosses cannot scream at employees anymore, and you can no longer say sexually inappropriate things in the workplace. I see safety policies now being enforced to make the workplace a physically, as well as an emotionally, safer place to be.

Q: Can you address employer liability in a case of displaced domestic violence?

A: The first question I would ask is whether the employer has a workplace violence policy that also addresses domestic violence. Do they tell their employees what to do if they have taken out a restraining order in their personal lives? If twenty percent of violent incidents at work are the result of displaced domestic violence, does the company have a policy that says that if you have taken out a restraining order, please let human resources and security know. We will then inform, on a need-to-know basis, your supervisor, the receptionist, and other relevant employees, and we will try to make sure that we accompany you to your car. An additional question is whether the organization has an employee assistance program that can help people who are going through these difficulties in their personal lives. Do department heads, human resources, and security personnel receive any training on what to do in these situations?

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Investigation and Discovery in a Negligent Security Case

By Amanda A. Farahany, Esq.

To succeed in a negligent security case, you must do an exhaustive investigation and thoroughly pursue discovery. The strength of these cases is highly dependent upon the unique circumstances of the crime in question. The purpose of this article is to describe the types of information and documentation you should seek during investigation and discovery of a negligent security case.

Negligent security cases can differ significantly based on the type of security involved. The issues in an apartment break-in will be different from the issues in a bank robbery. A case arising out of a campus sexual assault is different from one involving a kidnapping at a shopping center. Because cases can differ so much, discussing how to handle "a negligent security case" is challenging, and the ideas presented in this article may not fully apply to every type of case.

Elements of a Negligent Security Case

One challenge in proving any negligent security case is the threshold issue of "duty." Before a defendant can be held liable, the plaintiff must prove that the defendant had a duty to provide a certain level of security. Whether a defendant had a duty to provide security in a particular set of circumstances is an issue of law for a judge to decide. Defendants are often successful at convincing judges to dismiss negligent security cases at the summary judgment stage. Therefore, it is essential to uncover and bring together the evidence that will enable you to survive a dispositive motion.

> The strength of these cases is highly dependent upon the unique circumstances of the crime in question.

A question central to the issue of duty is whether the crime that harmed the plaintiff was foreseeable to the defendant. If an owner has reason to anticipate a criminal act, then he or she has a duty to exercise ordinary care to guard against injury caused by such an act. Negligent security law varies from state to state. Whether a defendant had a duty to provide some level of security for a victim depends on the type of case being pursued and the state's laws being applied. In some states, you must prove that a crime was foreseeable based exclusively on evidence of prior similar crimes occurring on the same property where the plaintiff was victimized. Other states use a "totality of the circumstances" standard pursuant to which further relevant evidence may be offered to prove that a criminal act was foreseeable.[1] State laws differ on which types of prior crimes can be used as evidence of foreseeability and on the size of the geographic area that can be used in determining whether the premises are in a "high-crime" locale.

Whichever legal standards apply, you should search for evidence to prove the essential elements of the cause of action, including whether the crime was foreseeable, whether the defendant took sufficient reasonable steps to prevent the crime, and whether the defendant's failure to take these steps caused the plaintiff's injuries. The object is to be tenacious and thorough in uncovering as much evidence as possible to prove that the defendant knew or should have known that its failure to provide reasonable security measures would cause harm to people on the property.

Law Enforcement's Investigative File

The police should have an investigative file relating to the crime in question. If the case has been closed, request a copy of

the file under the state freedom of information or open records act. If the case is still open, contact the investigators, police detectives, and prosecutors to determine what information they will share with you.

Prior Criminal Activity on the Premises

Many jurisdictions will provide a crime analysis or a police grid for the property address and for other nearby addresses. A crime analysis will list all police reports of crimes that have occurred on the property. After obtaining such analysis, you should order the police report of each crime listed in order to evaluate whether any of the crimes could be used to prove the foreseeability of the crime in your case. Check the law in your jurisdiction to determine what types of crimes can be used to prove foreseeability. In some states, even property crimes can be used to show foreseeability of, for example, crimes of physical violence. Prior automobile break-ins may be relevant to show the extent or escalation of crime in the area. Evidence of such crimes may also support expert testimony that it was likely that there would be an increase in violent crime on the premises because it was located in a "high-crime" area.

Order the 911 calls report from the county as soon as possible. Many jurisdictions save the tapes of these calls for short periods of time before discarding or reusing the tapes. Many times you will find that there is not a corresponding police report for calls that have been made to 911. For calls that may be useful in proving your case, you can also order the actual tape recordings of the calls. You should also order the recording for all 911 call(s) reporting the incident that involved your client. Such audio evidence can have a strong impact, especially when used in conjunction with visual evidence (*e.g.*, photographs).

Another source of prior crimes evidence is local government or FBI crime statistics. Local governments may provide statistics from particular neighborhoods or larger areas. The FBI publishes the Uniform Crime Reports which contain information about eight types of major crimes in both cities and rural areas.

Potential Witnesses

Contact every crime victim whom you have identified in your review of the prior crime records. These victims may be able to provide you with not only a more detailed version of what happened to them, but they can also tell you whether they informed the property owner about crime occurring on the property, which could be evidence of actual notice to a defendant. If prior victims have filed suit against the defendant, contact their attorneys and request a copy of their investigation and discovery files. It is not uncommon to find evidence of similar prior crimes when a defendant is claiming that it had no reason to know of past problems on the property.

Your client may be able to identify current or former employees of the defendants in the case. Consistent with the ethical rules of your state regarding contact with employees of parties to a suit, contact each employee to determine what types of crimes occurred on the property, what the property owner's awareness was of these crimes, and what security measures the defendants took in response to the crimes. Ask each of these individuals to identify other crime victims or knowledgeable employees.

Scene of the Crime

Personally visit the scene of the crime and document its condition. The best time to do this is immediately after the crime, or if a substantial amount of time has passed, during the same month and time of day as the crime. Prior to using the documentation as evidence in your case, determine whether improvements or other changes have been made to the property. Look for problems like holes in fences or a lack of fences around the property, broken locks, inadequate lighting, or other evidence of carelessness and disregard for safety in the maintenance of the property. Graffiti, broken windows, and high, uncut foliage are signs of poor property management and can indicate a lackadaisical attitude about the safety of the people on the property.

Foreseeability may also be established by the nature of the property. Because of the unique opportunity for criminal activity presented by automatic teller machines (ATMs), in some states a criminal attack at an ATM is foreseeable without any additional evidence.[2] Crime at other categories of properties, such as convenience stores, may also be *per se* foreseeable. Additionally, it may be possible to compare crime on one type of property with crime occurring on other types (*e.g.*, crime at convenience stores and gas stations.)

Information About Corporate Defendants

Newspaper articles can contain a wealth of information. Research the property owner, landlord, management company, security company, criminal, and other parties involved, as well as the surrounding neighborhood to determine whether prior crimes have occurred. Ascertain whether the neighborhood has experienced a crime spree or a recent increase in particular crimes. Articles may feature quotes from property managers about prior crimes. Also, locate any newspaper articles relating to your client's claim.

Determining the appropriate defendant(s) is essential. In order to be liable, the property owner, management company, or landlord must have some measure of control over the property. A courthouse search of the property records will reveal the property owners and, perhaps, whether the property is leased to others. Also check for the owner, tenant, or management company's business license. Check local government planning and development offices, building inspector records, building departments, and registers of deeds for any blueprints, surveys, aerial photographs, or applications for licenses or building permits. Sometimes plans will have been submitted for security measures that were never implemented.

The Internet can also provide useful information about a company. Most

companies have Web sites now. Locate the defendant's Web site and review it for information about the company, promises of safety, rules and regulations, and other relevant information. Dun & Bradstreet (*www.dnb.com/us*), freeEDGAR (*www.freeedgar.com*), and Hoover's Online (*www.hoovers.com/free*) all can provide background information about the company, including whether any prior lawsuits have been brought against the defendant. Other information, such as a company's financial situation also may be available. If a Web site lists a company's employees, you may be able to identify potential witnesses for the case.

Standard of Care

After establishing a duty to take reasonably necessary steps to prevent a crime, the plaintiff still must prove that the defendant breached its duty of care. The standard of care will depend on the circumstances of the case, the type of property, and the level of crime on or around the property. It is imperative to hire an expert to testify in this area, as well as to prove that the failure to provide reasonable security was the cause of the injury. However, before you hire an expert, you should research the standard of care in the relevant industry so that you hire the appropriate individual.

There are several sources to look to when attempting to determine the standard of care. You can use government standards/regulations governing property conditions or activities to show the standard of care. A violation of statutes or local ordinances may be negligence *per se*. Many times, a company's own written materials or manuals can show that the company undertook security measures for the benefit of others. Performing such measures in a negligent manner may be a breach of an assumed duty. Other sources to determine the standard of care include the industry, professional, and trade association standards.[3] Many industries publish magazines and books that include information on the standard of care. Associations publish newsletters and often have extensive information contained on their Web sites. Many government agencies have conducted studies relating to the standard of care in specific industries. Insurance companies often publish guidelines relevant to the standard of care as well.

Did Negligence Cause the Injury?

Many companies defend negligent security cases by arguing that the plaintiff cannot prove the crime in question was foreseeable. However, the law is evolving, and more courts are accepting that crimes are foreseeable. Defendants are finding their strongest defense is that the plaintiff cannot prove proposed security measures would have kept the plaintiff from being victimized. If the plaintiff cannot prove the defendant's negligence had a causal connection to the injury, then the plaintiff's case will not survive summary judgment.

Defendants are finding their strongest defense is that the plaintiff cannot prove proposed security measures would have kept the plaintiff from being victimized.

It is important to use an expert early in the case to help you determine how to establish proximate cause. The expert also can help you in determining what evidence can be uncovered during pre-suit investigation as well as during discovery.

Damages

Negligent security cases cover a wide variety of injuries. Proving the physical injury requires the same type of proof as any other personal injury case. However, one of the most significant injuries to the plaintiff is often mental anguish and emotional distress. In some states, damages are only recoverable for emotional harm if the victim also suffered a physical injury. An exception may exist if a defendant acted with specific intent, recklessness, or wantonness.

Many victims of violent crimes suffer from posttraumatic stress disorder (PTSD). PTSD impacts a victim with three categories of disabling responses including recurring intrusive recollections (like flashbacks); emotional numbing and constriction of life activities; and a physiological shift in the fear threshold, which affects sleep, concentration, and sense of security. Other common psychological effects of crime include acute stress disorder, adjustment disorder, psychosis, dissociation, and dissociative identity disorder.[4]

A psychiatric or psychological expert can be retained to explain how being victimized has impacted the plaintiff's mental and emotional states. Counselors from local rape crisis centers can make strong expert witnesses for sexual assault survivors.

Litigation Discovery Process

In negligent security discovery, the third-party defendants often possess information the plaintiff will need to prove his or her case. It is not unusual to contend with stonewalling and other discovery tactics designed to prevent the plaintiff from obtaining relevant information. To defeat such tactics, tailor the plaintiff's written discovery requests to the specific circumstances of the case, focusing on elements you will have to prove.

Some potentially fruitful categories for document-production requests include:

- security policies and procedures manuals;
- security logs books;
- periodic security reports;
- reports on prior criminal incidents;
- original and final budgets relating to security on the property;
- internal memos relating to property crime or security issues;
- documents about property maintenance, tests, and inspections, and any materials about any security malfunctions and attempts to correct such problems;
- inventories of all security equipment

on the premises, including barriers, fences, lighting, locks, and alarm sirens;

- photographs of the property;
- documents indicating ownership and control of the premises;
- information on the management company, including how long it has been in business and its relationship to the property company; and
- materials about security services, including security guards or animals, training for guards, credentialing, and written orders for security personnel.

If you are successful in obtaining such discovery, you may receive voluminous documents. Consider using a database program to enter information about each document and to code the document for future use. By utilizing a database, you will be able to uncover links between the documents you might not otherwise discover.

Expect to take more depositions than you would take in other personal injury cases. Because negligent security cases are won or lost based on the facts you present to the judge, your chances of proving that there is a disputed issue of material fact that a jury should decide improve with the more evidence you uncover. Depositions will be a vital source for uncovering the facts. Start from the bottom of an organization and work your way up through each person who may have any information relating to the standard of care, the negligent conduct, and your client's injuries. Depending on the facts of the case, those you may want to depose will include:

- security personnel,
- courtesy officers,
- architects,
- builders,
- contractors,
- financial officers and others with responsibility for budgets,
- property owners,
- individuals responsible for creating security plans, and
- building maintenance companies and personnel.

If you diligently pursue all avenues of information in a negligent security case, you will often be successful in pursuing recovery for your injured client. Negligent security cases are time consuming and expensive, yet the rewards are plentiful. Injured clients may receive compensation for their injuries, and you can help create a safer environment for others in the future. VA

Amanda A. Farahany, Esq., is a member of the National Crime Victim Bar Association Advisory Board and a partner in the Atlanta, Georgia, firm of Barrett & Farahany. Her legal practice is devoted to pursuing civil justice for victims of crime. She primarily focuses on cases involving sexual harassment, sexual assault, child molestation, and wrongful death. She can be contacted at Barrett & Farahany, LLP, 1401 Peachtree Street, Suite 101, Atlanta, GA 30309, (404) 214-0120.

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1. *See* Jeffrey P. Fritz & Daniel P. Hartstein, *Prior Criminal Acts Evidence in Negligent Security Cases*, VICTIM ADVOCATE, Vol. 1 No. 4 (Spring 2000).
2. *Sun Trust Banks, Inc. v. Killebrew*, 266 Ga. 109, 113, 464 S.E.2d 207, 208 (1995).
3. *See* Norman Bates, *Recent Developments in Nationwide Security Standards: The General Security Risk Assessment Guideline*, in this issue of *Victim Advocate*.
4. Frank M. Ochberg, M.D., *PTSD 101 For Lawyers*, 2 Ann.2002 ATLA-CLE 2125 (2002).

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Q: Can you talk more about the disgruntled worker situation?

A: Often the employee has been a problem for some time. Equally as often, companies try to ignore such problems, hoping they will go away. When the threatening behavior escalates, the employer is faced with difficult choices. The employee should be referred to a behavioral health specialist who does a fitness-of-duty evaluation on him and then makes recommendations, whether it be anger management, Alcoholics Anonymous, individual counseling, etc. It is very important that the recommendations come from the professional. If the behavior has escalated to a firing offense, employers often think that it solves the problem by firing the guy. In that situation, it becomes extremely important to have a safety protocol. If the plan is to have the individual return to work, then there must be specific recommendations and a probationary period during which the individual must maintain his or her behavior and comply with the treatment recommendations.

Q: There have been several incidents of workplace violence in which the physical set up of the work space hindered employees' ability to escape to safety. Do you encourage companies to get advice to make sure the physical workplace is safe?

A: Yes, that is one aspect of improving workplace safety. I have an acronym. It is S.A.F.E.T. Security assessment—Have a security assessment that evaluates the physical layout and security. Administrative preparedness—Make sure you have all your policies and procedures in place. Facilitation of resources—Know how to call the police department, and how to call the fire department and ambulances, how to summon the necessary resources should there be any type of crisis. Employee services—If there is going to be a downsizing or a layoff, do you have employee assistance programs, outplacement services, and a process by which you are going to lay people off, whether it be for cause or cost? Have you done employee education around these policies and procedures? Train your supervisors—They are the ones that run the front line and have to implement these things. That is how you protect the workplace. VA

Gerald Lewis, Ph.D., is a member of the National Crime Victim Bar Association. He can be contacted at 1290 Worcester Road, Framingham, MA 01702, 508-872-6228, 800-649-6228, glewis@geraldlewis.com, *and* www.geraldlewis.com.

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THE NATIONAL CRIME VICTIM BAR ASSOCIATION

National Crime Victim Bar Association

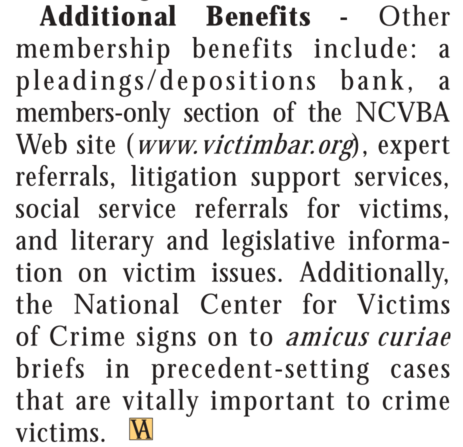
M*ore than 23 million Americans are victimized by crime each year.* Many victims suffer from more than the trauma of the original crime. All too often, they are also left with expenses for medical procedures, physical rehabilitation, counseling, lost wages, and lost earning capabilities. The National Crime Victim Bar Association (NCVBA), an affiliate of the National Center for Victims of Crime, helps victims find attorneys and allied professionals who can assist in obtaining the resources necessary for physical and emotional healing. In addition, the NCVBA provides technical assistance to attorneys representing crime victims in the civil justice process.

Benefits of NCVBA membership include:

Client Referrals - Every year, the NCVBA refers hundreds of crime victims seeking legal representation and expert testimony to local member attorneys and expert consultants throughout the country.

Victim Advocate - This one-of-a-kind quarterly law journal brings members articles on trends in civil remedies for crime victims, practice techniques, scholarly research, information on victim services, case summaries, news, and more.

Crime Liability Monthly - Members receive our monthly legal report on civil litigation involving victims of violent crime. Expertly summarized annotations on third-party liability include cases pertaining to premises liability, insurance issues, inadequate security, governmental liability, workplace violence, and more.



Access to Case Law Database - Members receive three months of free access a year to the NCVBA Civil Justice Database, a unique, Internet-accessible resource containing annotated summaries of more than 11,000 systematically collected appellate decisions focused exclusively on civil suits arising from criminal acts.

Additional Benefits - Other membership benefits include: a pleadings/depositions bank, a members-only section of the NCVBA Web site (*www.victimbar.org*), expert referrals, litigation support services, social service referrals for victims, and literary and legislative information on victim issues. Additionally, the National Center for Victims of Crime signs on to *amicus curiae* briefs in precedent-setting cases that are vitally important to crime victims. VA

How You Can Help Victims of Crime

Civil litigation can be a significant way for victims of crime to secure justice and obtain critical resources needed to rebuild their lives.

Yes, I would like to help crime victims acquire justice through civil litigation.

❑ Annual Membership in the National Crime Victim Bar Association is only $245
(includes annual subscription to *Victim Advocate*, *Crime Liability Monthly*, and the services listed above)

❑ ATLA Members Receive a $50 Discount on NCVBA Membership

Name: ______________________ Firm/Agency/Organization: ______________________

Street/City/State/Zip: ______________________

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If paying by check, please make it payable to the National Crime Victim Bar Association, 2000 M Street, N.W., Suite 480, Washington, DC 20036.

❑ Mastercard
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Account # ______________________
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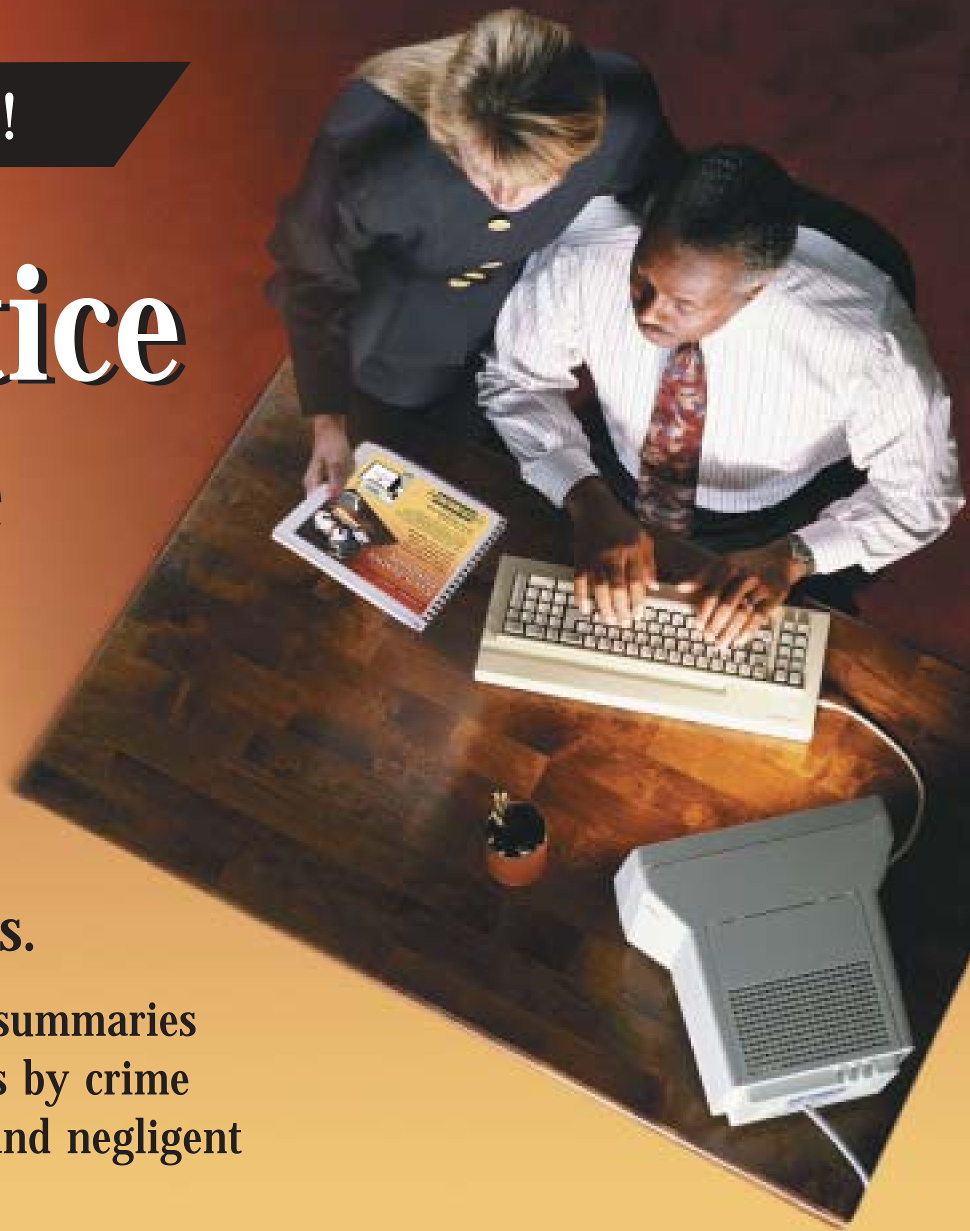
THE NATIONAL CRIME VICTIM BAR ASSOCIATION

AVAILABLE NOW!

Civil Justice Database



When a crime victim retains you for a civil case, jumpstart your research with 11,000 cases at your fingertips.

More than 11,000 annotated summaries of civil cases involving claims by crime victims against perpetrators and negligent third parties.

Search by

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