

CRIME STATISTICS, LIABILITY, AND YOU

By Ralph J. Luongo

Today, shopkeepers and commercial property owners are more exposed to liability for alleged failure to provide adequate security than they were just 10 years ago. It's tempting to blame the change on plaintiffs' attorneys, plaintiffs' experts, overly generous juries, or just a litigious culture. But there is a phenomenon even more "threatening," even more pervasive, than the lawsuit industry run amuck.

It's on your desk. And if it's plugged into the Internet, it's both a blessing and a curse.

Security Is Your Duty

It helps to begin with the basics. The "security" duty owed by shopkeepers and commercial property owners to patrons and others is really a two-part duty. First, the business must exercise reasonable care to discover crimes being committed, and therefore likely to be committed, on and around its property. Second, the business must take reasonable steps to warn patrons about such crimes. At the very least, it must make a reasonable effort to protect patrons when mere warnings will not adequately protect them from the criminal acts of third persons.

This double duty is the standard of care adopted in many jurisdictions. Although it may seem counterintuitive to hold businesspeople liable for the acts of criminals, it is a well-established standard in American jurisprudence. It is *not* likely to change anytime soon.

What *has* been changing, however, is the definition of that slippery word "reasonable." It's a slippery word because what is reasonable differs from city to suburb, from neighborhood mom-and-pop shops to busy strip malls, from yesterday to today. "Reasonable" varies from case to case.

Take, for instance the first "security" duty owed by the shopkeeper or commercial property owner—the duty to exercise reasonable care to discover crimes being committed, and likely to be committed, on and around the business property. Just 10 years ago, a "reasonable" crime risk assessment involved little more than keeping track of crimes actually reported to your business, perhaps reading the police blotter published in the local paper, and asking the police department for reports of criminal activity in your business's neighborhood. Your request might have elicited an invitation to knock yourself out inspecting, one by one, police records typed on forms and kept in file drawers. The word "data-base" probably would not have been uttered.

And when your business was sued by the victim of a crime on your property, the "unforeseeability" defense would be the first one you and your lawyer would proffer: *How could we have anticipated that? It is not reasonable to expect us to discover or interpret information that is not readily accessible or well organized.* That was a compelling defense.

Statistics Are Your Duty, Too

Fast-forward to the Information Age. The database you longed for is just a few key-strokes away. Punch the words "crime statistics" into your favorite search engine—you will be overwhelmed. Alta Vista alone lists over 16,000 Web pages for crime statistics.

More to the point, however, in a few minutes you will find dozens of Web sites that offer databases of historical and current crime statistics, organized by state, county, municipality, type of crime, and any number of other demographic categories. Some of these databases, like those compiled by the U.S. Department of Justice, can be manipulated and downloaded in spreadsheet form. Others, like those prepared by the Crime Mapping Research Center at the National Institute of Justice, offer visual aids—the computer equivalent of pushpins on a precinct map.

Even your local police department may have a home page, complete with online crime statistics. Even if it has no Web site, it probably collects, tracks, and may be willing to share crime statistics via spreadsheets.

University Web sites, too, often track and report crime in their communities. (Federal and state laws require most colleges and universities to keep track of crime on and around campus.) And there are now commercial Web services that will provide, for a fee, a crime activity report for any address in the U.S.

Whether access to all this information is a blessing or a curse depends on how and when you use it. Find and act on it *after* a crime victim sues your business, and your defense will take a big hit. An expert witness is sure to testify that, "Defendant failed to obtain crime statistics, perform a risk assessment, and to secure its property accordingly."

Find and act on such crime statistics *before* the crime, and the bar is raised *for the plaintiff's experts*, who now have to argue that your assessment wasn't reasonable or that your security measures weren't reasonable. That's a much tougher argument to make. If your organization winds up in court, this is the battle you want to fight.

So get on the Net and surf for statistics. Your lawyers will still lose sleep over the definition of "reasonable," but you will have blessed them and your business with a powerful defense. Some starters include www.crime.org, www.albany.edu/sourcebook, www.fbi.gov/ucr.htm, and www.ojp.usdoj.gov/other.htm.

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