

# SEX DRUGS & VIOLENCE

Negligent Premises Security Litigation In Florida Seminar



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**The field of inadequate security litigation has been explosive in the last two decades. Florida is a leading state both in terms of violent crime as well as in its development of case law in the field of premises liability. For several years, Miami was the number one city for overall crime per 1,000 residents, and Broward County ranked third in the country for crime. In 2008, there was one violent crime every four minutes and 11 seconds in Florida. That means that crime – and inadequate security litigation – is a growth industry.**

The following is an edited summary of “Sex, Drugs and Violence,” a continuing legal education seminar on premises liability torts by Leighton Law, P.A., held November 21, 2013 at The Bankers Club in downtown Miami. Attorney John Elliott Leighton and criminologist Dr. William Bopp were the presenters at the seminar, which was moderated by Richard Westlund, editor, *South Florida Legal Guide*.

The seminar covered tactics and strategies in investigating, litigating and trying premises security cases, as well as relevant statutes, codes, ordinances and Florida’s new *Daubert* law.

Sponsors of the seminar included: The Halpern Group, City National Bank, Galloway Office Supply, Friedman, Lombardi & Olson court reporters, Lingua Franca Translations, Velocity Social Media and Vine Communications public relations.

Leighton Law, P.A. produced and paid for this supplement in cooperation with the marketing department of the *Daily Business Review*. This supplement was produced independent of the editorial staff of the *Daily Business Review*.

*Editor’s Note: John Elliott Leighton is the managing partner of Leighton Law, P.A., a trial law firm with offices in Miami and Orlando. A board certified trial lawyer, his practice is focused on the representation of severely injured victims, primarily due to the failure to maintain reasonable or adequate security at commercial premises, resort injuries, medical malpractice, vehicle collision, and consumer product liability. He is the author of the book, Litigating Premises Security Cases (West 2006)*

Both the plaintiff and the defense side need to understand that security cases are serious matters. The damages in these cases need to be significant because these are complex, expensive, time-consuming cases that may involve death and serious injuries. Because of their complexity and cost a security case can take a long time. In almost every case there is a need to engage one or more experts.

With negligent security cases, the plaintiff is almost always seeking to recover damages from a third party. Understanding the basis of liability is the crucial first part of any case.

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## Screening the case

Screening a security the case is the most important step in the entire process. It's better to turn down a bad case than take one that will keep you from handling more productive matters. Since your time, money and reputation are on the line, don't lose sleep if you decide to pass on a case.

When screening a negligent security case, it's important backwards. Start by assessing damages. If the case involves a sprained wrist or broken foot, you probably won't be able to justify the time and money you need to put into the case. Insurance companies are willing to spend heavily to defend even a small case. Damages have to justify the investment both for counsel as well as the client. It is important to communicate the economics to the client during the pendency of the case.

Insurance coverage can be a major issue in these cases. Many insurers have added exclusions to their policies, and as a result a business or property owner may be uninsured and unable to satisfy a judgment.

Finally, remember that the facts are not always what they seem. You might think that the law and the facts points toward a solid position, but an expert in criminology or security might tell you something completely different. Don't cut corners, since a thorough investigation can make a big difference in the outcome of a trial.

## Types of security cases

There are many types of negligent security cases, which include:

- Security guards and guard services. These can be based on acts or omissions.
- Lighting.
- Security mechanisms and equipment.
- Security policies or procedures.
- Property design. Fences, landscaping, entrances and exits all play a part.
- Key control cases involving hotels, apartments, dormitories, etc.
- Supervision cases involving employees at nursing homes, schools and day care centers, etc.
- Hiring/retention cases: An employer who does not have proper screening procedures in place

In general, crimes between acquaintances or where a victim has been targeted by the criminal prove more difficult.

Most premises security cases involve a crime of opportunity committed against a victim who was previously unknown to the assailant.

## Who has the duty?

Although there are many complexities in inadequate security litigation, these cases have at their heart basic premises liability law. As in all tort cases, a duty must first be established as a threshold for liability.

A property owner has a duty to maintain the premises in a reasonably safe condition and give warning of concealed perils that are or should be known to people who come on to the property. Businesses are obliged to protect its guests from reasonably foreseeable criminal conduct and a there is a non-delegable duty to provide reasonable protection against third-party criminal attacks.

## The issue of foreseeability

Demonstrating foreseeability is a key factor in negligent premises security cases. Should the owner, landlord or business have foreseen the possibility of a violent crime or other incident?

Past incidents and crimes on and near the property in conjunction with experts. Knowledge of

prior crimes is relevant on the issue of foreseeability. Police crime grids and incident reports provide a good starting point to analyze foreseeability.

Next, look at the defendant's internal records, which may include incidents that were not reported to the police.

## Using expert witnesses

This field of litigation has seen a wide range of expert witnesses, from seasoned criminologists like Dr. Bopp to academics who try to manipulate statistics and "flip-floppers" who will say anything for a price. There are also a number of ex-cops who now lay claim to being "security consultants." Just remember a case can be destroyed by using a so-called expert whose testimony gets excluded.

Choosing the right experts is even more important since Florida adopted the *Daubert* standard in July, 2013. In essence, *Daubert* puts the trial judge in the position of a gatekeeper with regard to expert testimony. That means both the plaintiff and the defense need to be sure their experts can meet the new criteria.

# Applying the Lessons of Criminology

By Dr. William Bopp

If you are new to the field of negligent premises security cases, I recommend that you read one or more of the college textbooks on criminology. They explain the theories and the studies about crime in an easily understandable way. One of the dominant themes is that you can't prevent crimes unless you can predict when and where they will happen.

By focusing on the issue of predictability, criminologists have helped law enforcement officers apply more effective crime-fighting policies and procedures. As a result, the nation's crime rate has fallen about 50 percent, despite the daily barrage of media coverage.

In general, criminals are lazy, insecure, easily discouraged and incapable of planning ahead. That means that applying the right security measures can be highly effective in preventing crimes.

For example, security assessments of a property can help owners and landlords reduce their risks by pointing out the need for fences, walls, gates, lights and guard patrol strategies. Having significant deterrents in place makes it more likely that a rational criminal will look for other opportunities.

One of the most important findings of the past 20 years was that police officers were most effective when they focused on patrolling the 10 percent of addresses in a neighborhood that were identified as high-crime locations. That's a far better strategy than random patrolling.

Armed robbers clearly prefer a target with minimal risks, even if the potential reward is low. That's why you see more robberies at ATMs than inside bank branches. In a study funded by the convenience store industry, researchers talked with 300 convicted robbers about why they picked a certain store. The number one reason was an easy escape route. Videocameras, lighting and having an unarmed guard on the premises were much lower on the list.

Common sense indicates that lack of an easy escape route can reduce the risk of crimes of opportunity. A jewelry store that has two doors, so you have to stand in an alcove before being buzzed in, is not likely to have an armed robber coming in – or going out. A gated residential community with a 24-hour manned guard post is less likely to have break-ins because a burglar would need to walk a long distance to his car.

As for foreseeability, studies have shown that a business in a city has about an 8 percent chance of a robbery. But if a robbery does occur, the likelihood of a second robbery increases to 24 percent. After four or five robberies, there is a 100 percent chance on a similar crime, unless significant security measures are taken, such as hiring an armed guard.

## Building the case

In addition to gathering evidence from documents, it's important to investigate the crime scene and talk with police officers, and other potential witnesses. Getting an expert involved early in the case can help you determine the right questions to ask during depositions, so that you get the answers you need for your case. Here are some issues to consider when preparing for depositions:

- Has security been increased or decreased, either in the number of guards, pattern of deployment of budget size?
- Can you find a property and compare the two security policies and practices? For instance, there might be less security in a lower-rent apartment complex for budgetary reasons.
- Has there been a change in the size of the property? A shopping center might add a second floor or a new wing without a proportional increase in its security **force**.
- Has there been a change in the nature of the business? If a bar or an adult book store opens at a local shopping center, security may need to increase because the property may attract "rough" customers.
- Has there been a rise in the crime rate in the area or on the property?
- Have there been prior requests for additional security on the property or complaints from patrons?
- If security cameras are used on the premises, what are the monitoring policies and procedures?
- Have employees been given security procedures to use when parking their cars or leaving the establishment at night?

Another tactic is to conduct a reverse surveillance of the property. Have your investigator go on site to see the real dynamics of the security program before filing your suit. If the defense says, "We always have a security guard at the gatehouse" and you learn that's not really the case, you can turn the tables on the defense.

In general, when the owner, tenant or business appears to be primarily concerned with protecting its own assets – but not the public –there is a strong foundation for your case. After all, juries don't like to see companies putting their profits ahead of people's security.

After you have done your homework, it's time to employ tenacious written and oral discovery. This is the key to winning these cases. When you walk into a courtroom, you want to be able to predict the outcome based on what has been uncovered in the discovery process and the testimony secured from



it. So, choose knowledgeable experts, gather the facts and obtain the depositions, and you'll have a solid foundation in place for trying a negligent premises security case.



# NEGLIGENT PREMISES SECURITY LITIGATION

## Q&A

### QUESTIONS FROM ATTENDEES

**Q. Can video surveillance deter crimes?**

**Bopp:** The best situation for deterrence is when someone is watching the video and has a loudspeaker to talk to someone on property and it is interactive.

**Q. Should the owner of a small shopping center hire a guard?**

**Bopp:** Hiring an armed guard for 24-hour coverage can cost \$80,000 to \$100,000 a year, which may be more than the owner collects in rent. But if the owner says "I couldn't afford a guard," the plaintiff's attorney may be able to examine the owner's financial records.

**Q. Can a concealed weapon be a deterrent?**

**Bopp:** If a gun is hidden, it's not a deterrent. If you want to deter a criminal, it's better to wear it on your hip.

**Q. How long do police grids cover in terms of time?**

**Bopp:** They can go back for 10 years.

**Q. How far back should you search?**

**Bopp:** I usually go back five years. If there's a problem like a series of robberies, I try to trace things back to see why it started.



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## John Elliott Leighton

Board certified trial lawyer

**John Elliott Leighton** is the managing partner of Leighton Law, P.A., a Miami and Orlando trial law firm. He represents victims of negligence and the families of those whose lives have been taken due to the fault of others. He is a Board Certified Civil Trial Specialist by the Florida Bar Board of Legal Specialization. He specializes in catastrophic injury, maritime, resort injuries, inadequate premises security/violent crime, motor vehicle/motorcycle/trucking crashes, brain injury, medical malpractice, product liability, legal malpractice and complex commercial litigation.

John is an accomplished author, having published numerous articles, books and book chapters on a variety of personal injury and trial skills topics. His writings have been featured articles in *Trial* magazine seven times. He is a frequent national lecturer at legal programs and conventions and has spoken and taught at seminars, colleges and conventions in over a dozen states.

Mr. Leighton regularly chairs national trial skills colleges and seminars. He sits on the National College of Advocacy Board of Trustees Executive Committee and is past Chairman of the Association of Trial Lawyers of America's Motor Vehicle, Highway and Premises Liability

Section. He is the current Chairman of its Inadequate Security Litigation Group, which he has chaired since 1996. He also currently serves as the Chairman of the Academy of Trial Advocacy, a national invitation only organization of the country's leading catastrophic injury trial lawyers. John is also a charter member of the Cooperative Association of Medical Malpractice Attorneys, a national consortium of top medical malpractice trial lawyers and is on the national Board of Advisors of the National Crime Victim Bar Association, having received its 2007 "Advocate of Justice" award.

Mr. Leighton is the author of the two-volume text, *Litigating Premises Security Cases* (West Publishing, 2006). It is the most comprehensive treatise on investigating, preparing, litigating and trying inadequate premises security cases, and he updates it annually.

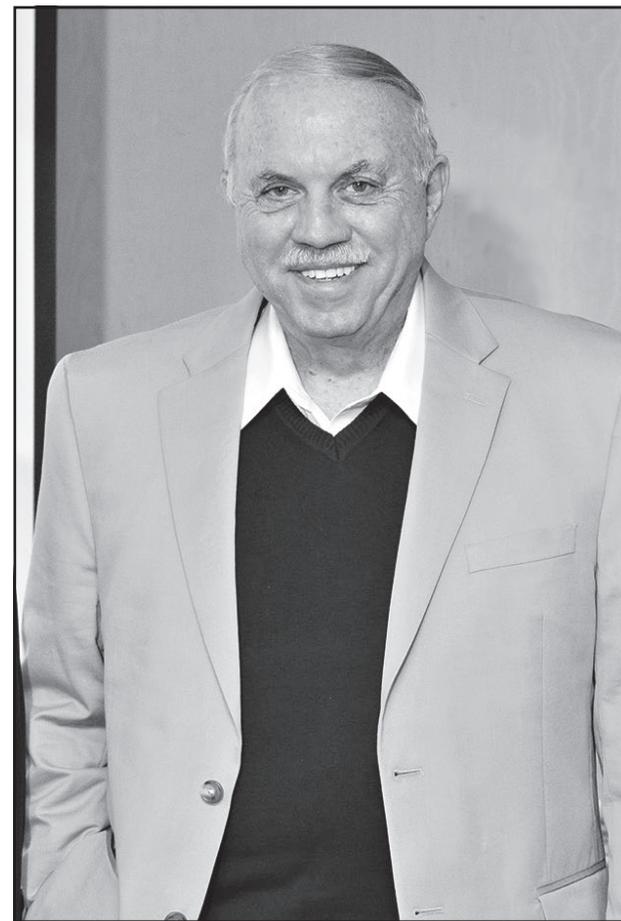
He has been sought out to consult and litigate premises security cases throughout the United States, including Indiana, Wisconsin, Texas, Hawaii and Georgia. He is often called upon to handle catastrophic and complex matters in other states, and his victories on behalf of families who have lost loved ones to negligence have resulted in record setting verdicts and settlements.

Mr. Leighton was lead counsel in the nationally recognized parasailing death case involving 15 year-old Amber May White. Amber and her sister Crystal were parasailing in Pompano Beach, Florida in August 2007 when an improperly maintained parasail combined with negligence on the part of the operator caused the parasail to break loose, hurling the two girls into a hotel.

Amber was killed and Crystal suffered head injuries. Mr. Leighton has fought for passage of a law regulating the parasailing industry, known as "the Amber May Act." He often appears on news shows such as CNN and NBC's *Today Show* as a legal consultant.

Mr. Leighton has been selected for inclusion in *The Best Lawyers in America*, voted as one of the "Top Lawyers" in the *South Florida Legal Guide* for the last ten years, has been named a Florida *SuperLawyer*<sup>TM</sup> (and voted as one of the top 100 of all Florida SuperLawyers), and has been elected to the *Florida Trend* magazine "Legal Elite" Top Lawyers in Florida by peer selection. He is rated as "10.0/10 - Superb" by AVO.com and holds an AV rating (highest possible) by Martindale-Hubbell.

Leighton received his undergraduate and law degrees with honors from the University of Florida, where he was an editor of the *Florida Law Review*, competed on the Trial Team, and taught first-year jurisprudence.



## Dr. William J. Bopp

**William J. Bopp** is Professor Emeritus of Criminology at Florida Atlantic University, where he was the founder and first Chairman of the department. A graduate of the University of California at Berkeley, Dr. Bopp is an accomplished criminologist and security expert. He is the author of nine books and scores of journal articles, book chapters and published papers, many of which are studies of crime, criminals and victims.

He has been invited to lecture at institutions such as the FBI's National Academy, the Southern Police Institute at the University of Louisville, and the universities of Texas, Georgia, Pittsburgh and North Carolina.

He has served as the crime prevention consultant to and conducted security surveys for entities and properties such as Walt Disney World; Busch Gardens, Tampa and its water park; Busch Gardens, Williamsburg, VA and its water park; Sheraton Inns; Taco Bell; Burger King; Circle K convenience stores; The Florida Gas Corp.; Metrorail; and dozens of apartment complexes, jewelry exchanges, office buildings, strip malls, regional shopping centers, bars and nightclubs, restaurants, etc.

Dr. Bopp has testified as an expert in negligent security cases, and was a police officer for 10 years: five years in Miami-Dade County and five years in Oakland, California.



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