

A LEGALLY SOUND APPROACH TO CHURCH SECURITY



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I N T R O D U C T I O N

I remember being at church on a hot July Sunday morning a couple of years ago. It was between the second and third services and the lobby was full of people coming and going. But even in the bustling crowd, there was a young man who stood out. He was tall and thin to the point of being gaunt. Most notably, he was wearing a knit cap and a full-length trench coat in spite of the summer heat. My pastor saw him at about the same time that I did and both of us were unsettled by his appearance.

Never one to be hesitant, my pastor walked straight up to the young man and greeted him with a handshake. He then stated rather plainly to him that his appearance was causing us concern, then he proceeded to frisk him to assure that he was not carrying a weapon. As it turned out, the strangely-dressed young man was not armed and was apparently harmless. Still, it was an unnerving experience.

This episode made me think about what could have happened if the young man's intentions had matched his ominous presentation. Soon afterward, my

pastor asked me to begin carrying a concealed weapon to church. I obtained the proper permit and have been armed at most every service since then. That is, unfortunately, a sign of the times.

In John 10:14, Jesus described himself as "the Good Shepherd." This is one of those passages with multiple layers of meaning, including a reference to the shepherd's role as protector of the flock. At least one parallel between the shepherds of Jesus' day and the church leaders of today is clear: leaders are responsible for the safety of the people they lead.

In recent years, the task of protecting people at church has become more challenging due to the profoundly disturbing phenomenon of mass shootings. Formulating a security plan requires us to contemplate what causes people to engage in these horrible acts. But unlike many issues in our post-modern culture, a satisfactory explanation for mass shootings, including those that occur at churches, is elusive.

It is axiomatic that we live in a fallen world in which evil is as real as the bricks and mortar that comprise the walls of our buildings. But somehow, this explanation seems incomplete. Is the problem that there are too many guns? Or is it that there are too few guns in the hands of the right people? Are we witnessing an unprecedented mental health crisis unfold before us? Is it possible that the destruction of the American family is creating monsters who commit inexplicable evil simply because they can? Perhaps the epidemic of fatherlessness is to blame? Or the relentless cultural attack on masculinity?

Even if we could find definitive answers to these questions, we would still grapple with how to respond. In the final analysis, we must pursue solutions wherever they may be found. A Legally Sound Approach to Church Security gives you the tools necessary to evaluate your church's efforts to provide effective security. For reasons that I will explain later on, the focus is on the evaluation process rather than adopting a particular policy. That is a particularly important theme of this little book.

This resource is divided into three parts. Part I helps you develop a practical understanding of the legal concept of negligence and to use that understanding to guide your security evaluation process. Part II offers a discussion of the importance of insurance with an emphasis on assuring that you have the right coverage in the right amounts. Part III walks you through a *5-Step Security Evaluation Process* for developing and implementing a security plan that meets your specific needs.

At the end of the *5-Step Security Evaluation Process*, you will have accomplished two important goals for your church. First, by being deliberate in evaluating your security situation, you are more likely to actually make people safer. Second, by carefully documenting your efforts, you will have a strong legal defense to any negligence claim asserted against your church or its leaders—an expression of good stewardship.

For those who want more in-depth guidance, there are links to premium content on the Crain|Schuette Attorneys website (www.csafirm.com). This content consists of videos that can be used by your security team as it works

through the 5-Step Security Evaluation Process as well as document templates to simplify the task of keeping a written record of your efforts. In addition, we have an experienced team of attorneys in our Church Law Practice Group that can provide direct assistance on a fee-for-service basis.

With all of these things in mind, let's get started by taking a look at the Biblical foundations of our civil justice system and, in particular, the legal remedy of negligence.

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A LEGALLY SOUND APPROACH TO CHURCH SECURITY

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**PART I: UNDERSTANDING THE LEGAL
CONCEPT OF NEGLIGENCE**

LAW IS GROUNDED IN BIBLICAL TRUTH

When I went to law school in the fall of 1987, I was under the impression that the law was a set of rules and principles developed in a secular vacuum. I had no understanding of its philosophical underpinnings. Within a fairly short time, however, I came to recognize that the law was anything but an arbitrary set of rules. In fact, bore the unmistakable imprint of Biblical truth. I could see that the law possessed and in many ways is a reflection of the character attributes of our Creator.

Perhaps that is what underlies the Apostle Peter's admonition regarding submission to authority:

[13] Be subject for the Lord's sake to every human institution, whether it be to the emperor as supreme, [14] or to governors as sent by him to punish those who do evil and to praise those who do good. [15] For this is the will of God, that by doing good you should put to silence the ignorance of foolish people. [16] Live as people who are free, not using your freedom as a cover-up for evil, but living as servants of God. [17]

Honor everyone. Love the brotherhood.
Fear God. Honor the emperor.

1 Peter 2:13-17 (ESV)

The Apostle Paul offers a similar directive in Romans, along with a bit of explanation regarding the role of governmental leaders in God's overall plan:

[1] Let every person be subject to the governing authorities. For there is no authority except from God, and those that exist have been instituted by God. [2] Therefore whoever resists the authorities resists what God has appointed, and those who resist will incur judgment. [3] For rulers are not a terror to good conduct, but to bad. Would you have no fear of the one who is in authority? Then do what is good, and you will receive his approval, [4] for he is God's servant for your good. But if you do wrong, be afraid, for he does not bear the sword in vain. For he is the servant of God, an avenger who carries out God's wrath on the wrongdoer. [5] Therefore one must be in subjection, not only to avoid God's wrath but also for the sake of conscience. [6] For because of this you also pay taxes, for the authorities are ministers of God, attending to this very thing. [7] Pay to all what is owed to them: taxes to whom taxes are owed, revenue to whom revenue is owed, respect to whom respect is owed, honor to whom honor is owed.

Romans 13:1-7 (ESV)

It is worth noting that Paul most likely wrote these words while under house arrest in Rome, the seat of a pagan empire that brought great suffering to Jews and early Christians alike. This shows us that strong anti-government sentiment is frankly unbiblical, except in those rare instances where government forces us to choose between serving the Lord or serving human authorities.

Those of us who seek to understand the world through the perfect revelation of the Bible should find comfort in seeing God exercise His sovereignty in this area of human government.

CIVIL LIABILITY AND THE LAW OF NEGLIGENCE

The notion of holding a person responsible for carelessly causing harm to another is nothing new. In fact, the concept of civil liability goes back thousands of years. The Law of Moses imposes negligence-type liability for careless acts or omissions that are as relevant today as when they were first delivered. Examples include: 1) digging a pit but failing to cover it (Ex. 21:33-34); 2) allowing animals to trespass on to the property of another and do harm (Ex. 22:5); 3) kindling a fire but negligently al-

lowing it to get out of control and harm a neighbor's property (Ex. 22:6); and 4) building a flat roof on which people foreseeably would spend time, but failing to construct protective parapets to prevent their falling off the sides (Deut. 22:8).

These concepts are essentially timeless because they reflect the divine attribute of "justness." For this reason, it is wrong for churches to seek to avoid accountability. On the contrary, we should readily accept responsibility for our actions and the associated financial consequences. This attitude is very much in keeping with the idea of submission to governmental authority, including that part of the legal system that seeks to compensate those who suffer harm as a result of our carelessness, i.e. our negligence.

This does not suggest that we should open the coffers of the church to be raided by anyone who claims harm. Instead, we should recognize our responsibility to operate with care. This is best understood by an examination of the modern law of negligence.

THE MODERN LEGAL PRINCIPLES OF NEGLIGENCE

The law of negligence under American law has largely developed over the last 150 years or so. “Negligence” is defined as “a failure to behave with the level of care that someone of ordinary prudence would have exercised under the same circumstances. The behavior usually consists of actions, but can also consist of omissions when there is some duty to act (e.g. a duty to help victims of one’s previous conduct.)” Under Kentucky law, negligence has recently and helpfully been described as follows:

To recover under a claim of negligence, the plaintiff must prove [1] that the defendants owed a duty of care to the plaintiff; [2] that the defendants breached that duty; and [3] that the breach was the proximate cause of [4] the plaintiff’s damages. In general, each person owes a duty to every other person to exercise ordinary care in his activities to prevent foreseeable injury.

Succinctly stated, civil liability for negligence arises from the failure to act reasonably in response to a foreseeable risk of harm in a given circumstance.

APPLYING NEGLIGENCE PRINCIPLES TO CHURCH SECURITY

So, how can we apply these concepts to a church security evaluation process in a practical way? The answer is by operating within a framework based on two questions:

- 1) What are the foreseeable risks?
- 2) What is the best way to address these risks?

The first question leads us to look broadly at our security measures from as many angles as possible. The second question directs us to focus more narrowly on solutions. The net effect is a well-rounded approach that yields two important benefits. First, responding to identified risks, we actually make our churches safer. Second, by being proactive in our approach and documenting our efforts, we generate a strong legal defense to a claim of negligence. It is perhaps a bit surprising that this can be so simply stated, but it really is that straightforward.

Having considered the modern legal principles of negligence, we next examine two cases that offer valuable insights into the legal analysis applied to a claim of neg-

ligence with regard to security.

The first is a case from the Kentucky Court of Appeals and arises out of a claim against the Housing Authority of Paducah.¹ Magdalene Smith was shot and killed by a man named Albert Williams outside her residence at Elmwood Court, a public housing project in Paducah. Before the shooting, Williams made several threats toward Smith. She and others reported these threats to Housing Authority personnel. In addition to these reports, it was also known to Housing Authority personnel that Williams was residing in the complex without permission. In spite of possessing this knowledge, the housing authority took no action to evict Williams or otherwise discourage his presence in the area. Further, even though they knew of Williams' threats toward Smith and the frequent occurrence of crimes at the complex, there were no security guards retained to patrol the area at the time of the shooting. After Smith was killed, her estate brought a wrongful death action against the Housing Authority alleging the negligent failure to provide adequate security.

Once the case was developed, the trial court dismissed the Smith Estate's claims

against the Housing Authority on the grounds that it was not responsible for the intentional act of a third party, namely, Williams. The estate appealed this ruling to the Kentucky Court of Appeals. The appellate court reversed the trial court's ruling and sent the case back down to be tried on the question of whether the Housing Authority breached its duty to provide reasonable security at the Elmwood Court complex. The court explained the basis of its ruling as follows:

In Kentucky, "[t]he rule is that every person owes a duty to every other person to exercise ordinary care in his activities to prevent foreseeable injury." In addressing questions of proximate cause, recent cases apply the general principles of foreseeability in those cases involving intervening or superseding cause. Even an intervening criminal act does not relieve one of liability for his or her negligent acts or omissions, where the criminal act is a reasonably foreseeable consequence of the defendant's negligent act.

The holding in this case can be summarized by saying that the Housing Authority knew that there was a problem and unreasonably failed to do anything about it. This principle can be applied to churches, which is why it is important to conduct the two-question analysis stated above: what

are the foreseeable risks and what can we do about them?

The second case is a Texas case in which a tenant sued her landlord after she was raped by an intruder in her apartment. As with the Kentucky case, the trial court ruled in favor of the defendant. The Texas Supreme Court reversed the trial court's ruling and identified the following legal principles for analyzing a negligent security case:

- Generally speaking, no one is responsible for protecting others from harm caused by a third person.
- An exception to this rule arises when a person or entity controls the premises if he knows or has reason to know of an unreasonable and foreseeable risk of harm to the injured person.
- In order to be "foreseeable," there must be "specific previous crimes on or near the premises."
- If the risk is not foreseeable, the person or entity who controls the premises is not legally responsible.
- Even if the risk is foreseeable, it is then necessary to determine the scope of

the duty owed to users of the premises.

- The duty to provide protection does not arise unless "the risk of criminal conduct is so great that it is both unreasonable and foreseeable."
- The determination of foreseeability must not be based upon hindsight; instead, the following factors should be considered:
 - Whether any criminal conduct previously occurred on or near the property;
 - How recently the criminal conduct occurred;
 - How often the criminal conduct occurred; and
 - What publicity was given the occurrences to indicate that the landowner knew or should have known about them.

Based upon the rulings in both the Kentucky case and the Texas case, it is pretty clear that the circumstances under which a church will be held liable are fairly limited. There is a common misconception that the owner of property is automatically responsible for injuries suffered by an occupant of that property. That is not the law. Lia-

bility is always based upon a negligent act or omission on the part of the landowner. Those who advise churches on security issues should take care to avoid exaggerating the risk of legal exposure. Rather, our focus should be on encouraging a proactive approach that appraises actual risk that leads to a reasonable response, i.e. the exercise of ordinary care.

The purpose of this discussion of negligence is not intended to make you an expert on legal matters. Instead, I share this information in the hope that it will improve the way you think about church security issues.

Next, we turn our attention to a brief discussion on the importance of insurance coverage.

PART II: THE IMPORTANCE OF INSURANCE

Obviously, every church should have insurance that covers its property and provides liability coverage. What may be a little less obvious is that not all insurance policies are equal. So, it is important to choose carefully. To do so, it helps to have a basic understanding of how insurance works.

For the purposes of this resource, I am going to keep our discussion of insurance relatively short because there are abundant resources available on internet. There are a few areas that deserve brief attention.

THE PURPOSE AND FUNCTION OF LIABILITY INSURANCE

An insurance policy is fundamentally a risk-shifting contract between two parties. The covered person or entity pays a premium in return for the insurance company's assumption of the risk of financial loss from specified events.

There are two basic benefits that a liability policy provides, often described as "duties." The first is the insurance company's "duty to indemnify" and second is the "duty to defend." The duty to indemnify is simply the obligation of the insurance company to cover certain losses. For example, if someone gets hurt at your church because of a dangerous condition that you failed to address, the company would be required to compensate the injured person for his or her loss.

The duty to defend is the insurance company's obligation to defend you against liability claims asserted by third parties.

This means that if your church is sued, the company must hire an attorney and cover the costs necessary to defend the lawsuit. Where the potential loss is significant, the cost of defense can be considerable—sometimes as much as or more than the value of the injured person’s claim.

The duty to indemnify and the duty to defend are interrelated. If a claim is not covered by the duty to indemnify, then the insurance company doesn’t have a duty to defend. In that situation, you would not only have to pay the claim, you would also have to cover the cost of defending it. It doesn’t take long for these expenses to drain a church’s resources. So, being without good insurance coverage is a very risky proposition.

SELECTING THE RIGHT INSURANCE COVERAGE

When selecting an insurance policy for your church, I recommend that you keep three specific factors in mind. First, you should pay close attention to the scope of coverage that the policy provides. Second, you should make sure that the amount of coverage is sufficient to satisfy a substantial claim against you. Third, you should obtain coverage from an insurance compa-

ny that is sensitive to the fact that you are a Christian ministry. I briefly address each of these below.

TYPES OF COVERAGE

Perhaps the most important consideration in choosing an insurance policy is the type of coverage that it provides. While that seems like a simple proposition, that’s not always the case. A policy may be labeled “general liability coverage,” which suggests that it applies generally. However, the general coverage language is often modified by exclusions that limit coverage to the point that it seems like the exception is swallowing up the rule.

When working with an agent, describe your ministry activity in reasonable detail. Ask questions and make sure that you get answers that are understandable. In the era of electronic communication, it is a good idea to put your questions in an email and ask the agent to answer by a reply email. This reduces the possibility of a miscommunication.

Your goal in getting insurance should be to cover all the major risks that arise from your ministry activities. Finding out that your policy contains an exclusion that

deprives you of coverage and a defense after the fact is really bad—and largely preventable.

Regarding specific types of coverage, you should be sure to include the following:

General liability coverage. Liability coverage pays for damages for which your church is legally responsible. You should have an absolute minimum of \$1,000,000 in general liability coverage.

Sexual misconduct liability. With the increasing frequency of sexual misconduct claims, sexual misconduct liability coverage has become essential. Coverage for this type of claim is often excluded from a general liability coverage. It usually has to be added to the basic policy and is usually offered with lower limits than the general liability coverage. As with all liability claims, the duty to defend applies so that the company pays the cost of responding to allegations of sexual abuse. These claims are usually couched in terms of negligent supervision of staff, volunteers or other ministry participants.

Having to pay the cost of defending one of these claims can be very expensive.

But if mishandled, a claim of this type can destroy a church. Bottom line: make sure your policy covers sexual misconduct claims with a limit no less than \$250,000 per claim.

Business Auto/Hired and Non-Owned Autos. One of the greatest risks of liability that any church faces is motor vehicle accidents. Whether you have a bus or you rely upon members to provide transportation, it is imperative that you have plenty of coverage for this. Whenever it is available, you should seek the sort of coverage that will pay over and above the coverage that applies to the vehicle—and the higher the limits the better.

Medical payments coverage. Medical payments coverage is different from liability coverage because it does not require proof of negligence on the part of the church. Someone who is injured on the church premises can collect these benefits to cover the co-pays or deductibles on their health insurance. The amount of medical payments coverage ranges from \$1,000 to \$10,000 per occurrence. It is a good deterrent to lawsuits because it can protect someone who has been injured from having to pay out-of-pocket for medical expenses. That is sufficient to satisfy most

people.

This is by no means a complete list of coverages. The point is that you should treat the decision of what kind of coverage to have very seriously. You know the old saying, ‘An ounce of prevention...’

PART III: A 5-STEP SECURITY EVALUATION PROCESS

Having developed an understanding of the law of negligence and the importance of insurance, we are ready to apply this knowledge in a practical way. For this, I recommend a *5-Step Security Evaluation Process*. If you will carefully execute each of these five steps, you will go a long way toward assuring that your church is as safe as it can be while also protecting your church and its leaders from civil liability.

Before I get to the process, I want to say a few things about security *policies*. Generally speaking, I don’t think that having a *detailed* security policy is a good idea. Neither do the other lawyers that I have asked about this issue.

The reason for my objection is that the more detailed your policy, the more likely you are to deviate from it. A deviation

from your policy is not, in and of itself, negligence, but you can be assured that it will be treated that way by an attorney seeking to hold you responsible for an incident. You will recall from our discussion of the principles of negligence that your conduct will be measured by whether you acted reasonably under the circumstances. If you have adopted a detailed policy that mandates particular actions, failing to take those actions looks like a failure to exercise ordinary care.

Whether you acted reasonably will be determined in part by how you have defined what is reasonably necessary to address risks. Your own policy is an indication of what you think an ordinarily prudent church or church leader should do--even if that is a heavier burden than the law would otherwise place on you.

Policies are intended to guide your actions in view of a future risk. Our ability to anticipate how a risk might be manifested is limited at best.

A better approach than having a detailed security policy is to have a well-conceived security plan that focuses on general principles rather than particular actions. That way, your approach is responsive to your

specific circumstances as opposed to what you seek to address in a policy.

Here's the bottom line regarding *policies vs. plans*: your response to a security incident should be based upon the circumstances of that event, not based on a checklist of actions that might not reflect what is reasonable in a particular situation. For this reason, you should frame your policies in broad terms because the risks you are facing are broad risks.

Step 1: Putting Together a Security Evaluation Team

The first step in addressing security at your church is to bring together a group of capable people to carefully evaluate your situation. It is a good idea to pass a resolution² at a business meeting that gives the team authority for the undertaking and a sufficient budget to accomplish its purpose. A resolution and allocation of resources helps to demonstrate the seriousness with which you are approaching the issue, *i.e.* ordinary care.

Here are some things to consider in put-

² CSAFirm offers a packet of templates that can be used for each step of the security evaluation process. For more information, go to www.CSAFirm.com and go to the Church Law section.

ting your Security Evaluation Team together:

a) Choose a competent person to lead the effort.

This may seem like an obvious point, but that is not necessarily the case. Too often, a person is assigned responsibility based upon position or tenure, rather than actual capability. Don't default to a member of your ministry staff or the longest-serving deacon or even someone in law enforcement.

The person who leads this undertaking needs to be someone who is able to lead and whom others will follow. It is important that the head of this team assign tasks to other team members and then keep everyone on track.

Bear in mind that if you do have an occurrence, your approach to security evaluation will be closely scrutinized. Choosing the right leader is vital.

b) Choose a meticulous person to carefully document each step of the process.

As I will explain later, documenting your Security Evaluation Team's efforts is very important. So, be sure to include some-

one on the team who will prepare meeting agendas, take good notes, keep minutes of meetings, and draft reports (which I describe below).

c) Other team members

The rest of your team should include people that reflect the breadth of your church's ministry. For example, you should have someone from children's ministry, someone from student ministry and someone who is familiar with the logistics of your weekly worship services. The goal here is to assemble a team that will examine security issues from as many perspectives as possible.

Step 2: Defining your scope and purpose

Once you have assembled the Team, the next step is to define the scope of its work. Your purpose should be clear and specific. If you approach the issue too broadly, your results might be too general to be useful. It may be best to focus on each type of risk separately and work that issue until it has been fully addressed. Then, you can move on to the next one.

Safety and security issues that you should consider include:

- Preparing for Active Shooter scenarios
- Protection of Student Ministry participants
- Protection of Children's Ministry participants
- Issues relating to the safety of your premises
- Fire safety
- Transportation Safety
- Other safety or security issues unique to your church's ministry

Step 3: Evaluating Your Security Situation and Formulating an Action Plan

Once you put your team together and decided which issues to focus on, it is time to get to the heart of the matter. It is time to gather the information from which you will construct an Action Plan. This is essentially a list of the issues you are considering and the particular ways you plan to approach these issues.

Here are some suggested steps for making your plan make sense:

1) Develop criteria for evaluating the areas within your scope of review.

2) Seek outside input as necessary to assure complete coverage of the issues. Depending on the scope of your work, you should consider seeking input from;

- Local law enforcement
- Fire marshal
- Building inspector
- Children's ministry security specialist

3) Reduce the Action Plan to writing with the following elements:

a. Compile all of the suggestions you received from your team as well as any outside consultants.

b. Determine which suggestions you plan to implement. These should be specific and measurable goals.

c. Assign tasks to members of the team or, as necessary, outside consultants.

d. Create time-lines for completion of all action items.

Step 4: Carrying Out Your Action Plan

Having done your due diligence, it is now time to execute on each of the action items. This is where a good team leader becomes so important. The team should meet as often as necessary to keep the process on track. When you have carried out all of the action items, your church will undoubtedly be a safer place. But don't stop there.

2) You should document what you have done for two important reasons: first, it gives you a way to prove convincingly that you have been diligent in addressing risks (*i.e.* you have exercised ordinary care); and second, your documentation will become the first draft of your Safety & Security Plan.

3) Why a Security Plan is better than a Security Policy

Step 5: Turning Your Completed Action Plan into a Training Curriculum

1) The documentation from your action plan is easily converted into a Safety & Security Plan. This is essentially your safety checklist.

2) Conduct periodic training for ministry staff and volunteers. Your Safety & Se-

curity Plan not only serves as a checklist or sorts, it is also your training curriculum going forward. Keeping those responsible for security up-to-date is important. I don't recommend adopting a fixed frequency for training. It is better to develop an continuous quality improvement mindset by virtue of which you are also paying attention to safety and security issues. Then, based upon your particular circumstances at a give time, you can conduct training based upon your past efforts. By that time, you will have an entire team of people who have participated in the process and can keep it going.

C O N C L U S I O N

We all want our churches to be safe and that is something that can be achieved with some concerted effort. Resist the temptation to download a sample policy from the Internet and adopt it. That is a woefully inadequate approach. Developing a culture of safety and security is a far more effective way to go. In the end, a safer church is in a position to be a more effective church, one that is able to pursue its Gospel mission with less distraction. And that is ultimately what it is all about.