


# CASINO LAWYER

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A man in a dark suit, white shirt, and blue tie is seated at a desk in a law office. He is looking slightly to his right. The background shows wooden bookshelves filled with books and stacks of papers. The lighting is warm and professional.

## Gaming Executive of the Year: Timothy Cope

**Kentucky's Instant Racing Update**

**The Dormant Commerce Clause**

**Adolescent Gambling**

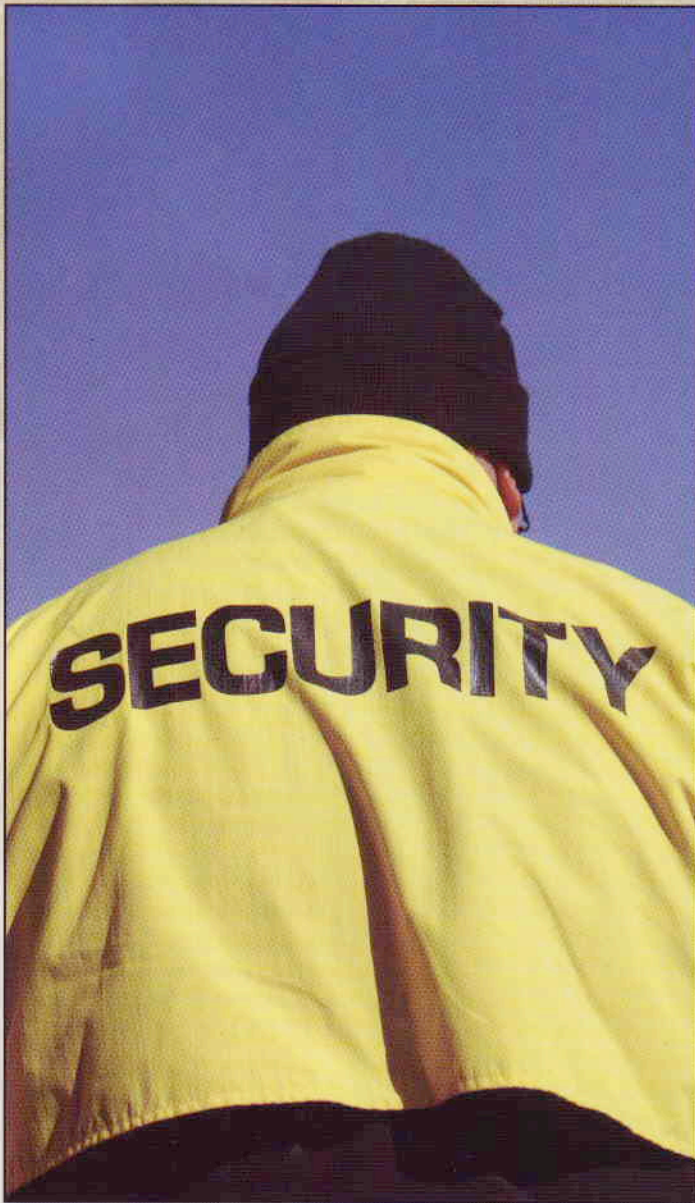


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INTERNATIONAL MASTERS OF GAMING LAW

# LEGAL ISSUES FOR THE HOTEL/GAMING SECURITY OFFICER

By Tommy Burns, CPP



**A**s a security director, general manager or corporate counsel, it is never a desirable situation to arrive at the office on any morning and find out that someone is being detained by security. Then, the apprehensive attitude asks “Could this have been avoided?” and “What happened that would require arrest and detention?” And last, but always on our minds, “We will probably be sued over this one.” Is this apprehensive attitude a result of a lack of confidence in the security department, policies that may be deficient or training that is always discussed but often not implemented? Hotel/casino security is unique to most other security operations. Not a nuclear facility, a manufacturing plant, a retail box store or most other facility-type security operations, nowhere—not even the retail security business—will see the number of arrests and detention as in gaming security, especially in Atlantic City and Las Vegas. The mere size, location and scope of the gaming facilities that promote 24-hour access and entertainment are not seen in any other security industry.

## **What is the Focus of Gaming Security?**

Guest protection and providing a reasonable and safe atmosphere for all involved is often heard along with the term “protection of assets” as a security officer’s primary focus. A fitting definition of asset protection by D. Dalton is the “formulation of an over-arching plan that is designed to enhance the workplace by assuring that every reasonable thing is done to promote a secure environment and mitigate the likelihood of loss or injury.”<sup>1</sup> Our guests come to hotels/gaming properties as invitees, either active or passive. Marketing departments actively pursue guests through promotions, customer rewards and junkets to name a few, attracting both desirable and the undesirable guests (hookers, pimps, thugs, pan handlers, smut peddlers and so on). The passive guests are customers that come in the front door as they drive or walk from property to property. These patrons come to have a good time, sometimes having too much fun. These guests also bring personal issues, medical and psychological problems, and

strange or abnormal personalities with them. Often, the guest is completely oblivious to potential problems from a third party and that they may be a target of a criminal act, all the while expecting property security to handle anything and everything. Security will attempt to protect them from themselves by their intoxication, drug influence, inattention, carelessness, ignorance of casino operations and from each other. The guests expect a reasonably safe environment through the deterrence of criminal activity, prevention of third party injuries, containment of incidents quickly and elimination of disruptive or offensive individuals or unacceptable behavior as soon as possible. We have yet to find this superhuman security officer, although most do strive to fulfill guest expectations.

### So What is it that the Hotel and Gaming Security Officers Do?

We start with the environments that officers are assigned to patrol and protect, such as hotel areas. These include the lobbies, bell desks, front desks, elevators, guest rooms and hallways, vending areas, the spa, swimming pools, arcades and amusement areas, movie theaters, and convention areas, which at some properties are larger than entire medium-sized hotels. The casino environment will include slot areas, promotion areas, table games and pit, private gaming salons, poker rooms, walkways, escalators, public restrooms, cashier cage(s), employee banks and change booths. Food and beverage areas will include bars and lounges, restaurants, snack bars/food court/coffee stations. Outside environments will include parking garages, valet area, self-parking, sidewalks, bridges, walkways, fountains and gardens, entrances and exits, city sidewalks and property, county roads and highways and amusement attractions. This list is by no means exhaustive. Covering this vast area of venues is a difficult job for security, but providing a reasonably safe environment to all guests is accomplished through design concepts and architecture, technology, policies and procedures, adequately trained personnel and quality supervision.

### What Training Should a Security Officer Receive?

Possibly one of the least observed but most difficult situations for security officers to understand is that *security officers are not police officers*. Most would think that this is an easy conclusion; however security officers handcuff and detain people each and every day while at times possessing an extremely limited knowledge of arrest laws and an understanding of what a security officer has a right to enforce. Security officers do not have any police or special powers (some states do give security limited policing powers, which opens other litigation issues under Section 1983 of Federal Statutes, and previously addressed in *Casino Enterprise Management* in June of 2009).<sup>2</sup> The security officers are private citizens and therefore have only those arrest privileges of an ordinary citizen. In this capacity, a security officer in most states is limited to the same arrest powers as the average citizen—that being for a misdemeanor committed in the presence of security,

probable cause that a felony has occurred, and in some states such as Nevada, reasonable cause that a gaming violation has occurred. Additionally in some states, security can detain for reasonable cause in a shoplifting. However it is important to note that although “crime committed in security presence” or “probable and reasonable cause” seems rather obvious, training and policy need to dictate arrest powers. A misdemeanor committed in the presence of security should not be confused with a surveillance operator observing a misdemeanor on camera and reporting it to security. That is not “in the presence.” Nor is watching a video of the misdemeanor and then making an arrest later. “In the presence” means just that—and immediately. Security officers need to fully understand the meaning of probable and reasonable cause and not confuse this with suspicion. Police may stop and briefly detain for suspicion; security cannot. A person has no duty, under any circumstances other than outlined previously, to stop at the request of security. This also applies to guests and patrons who request security to detain another guest for a crime committed against them. Security in the gaming environment will sometimes get this request from a patron who views security as a pseudo-law enforcement officer. Although security has a duty to protect guests from third parties, that duty does not include detaining someone at the request of the guest, even if a misdemeanor crime has occurred but out of security’s presence.

The gaming security officer is often put into a difficult position when requested to detain or arrest someone at the behest of law enforcement or gaming agents. There are no statutory provisions (in most states) that allow for security to detain at the request of law enforcement or gaming agents, and security directors should ensure this is part of any training and policies in arrest laws. Security is in a position to assist law enforcement, but the rule of law and common sense should dictate any actions and involvement with law enforcement. The same rule also applies when dealing with local or state gaming agents. Detaining someone when requested by gaming agents instead of following the letter of the law leads to litigation and unwanted publicity as in *Grosbeak v. Imperial Palace* and *Robles v. Harrah’s*.<sup>4</sup> Both are cases in which Nevada Gaming Control Board agents allegedly requested security officers to detain gamblers (unlawfully) for suspicious behavior. In both cases no criminal violations were observed, no charges brought and both cases resulted in monetary awards for the plaintiffs.

Additionally, security officers may sometimes be requested to detain someone at the request of property surveillance agents or gaming and hotel managers, as in the case of Richard Dougherty and Mandalay Bay security in 2003.<sup>5</sup> In this incident, Dougherty was arrested and detained at the behest of a gaming supervisor, although security had no idea why they were detaining him. Security directors need to focus training and policy on the fact that only security will make key decisions based on the actions of a possible suspect coupled with proper application of arrest laws. It should also be noted here that security officers themselves

could be subjected to arrest for statutory crimes or ordinance violations arising out of unlawful detentions, no matter how good security's intentions or motivations.

### Urban Legends in Hotel/Gaming Security

Security directors should avoid any actions that can later assist an opposing party in litigation; an example is the "perp walk." This is the misguided opinion by some, including general managers, that parading a handcuffed arrestee, be it a gaming cheat, unruly patron or an employee arrested for theft, through the casino for everyone to view will have some deterrent effect on similar actions by others. Nothing could be further from reality, and all this accomplishes is fuel for litigation and ultimately enraging prosecuting attorneys, judges and juries. Getting an arrested person to the security holding room as expeditiously as possible should be the security officer's goal and that route may in fact be through the casino. But this route should not be for the sole purpose of embarrassing the arrestee.

Another example is the urban legend that "only law enforcement" can remove handcuffs placed on an arrestee by security. As illogical as this sounds, there are security professionals that teach this to their officers. In this practice, a security officer can take away a person's Fourth Amendment right to be free of seizure, 14th Amendment right to exist as a free person, but not remove handcuffs and release that person for a variety of reasons (law enforcement unable to respond in a timely manner, realization that a crime may not have occurred or that the detainee did not commit the crime)—insanity. Releasing a person as soon as possible is the goal of security, whether that is to law enforcement for criminal charges or off-property to the outside world with "no charges filed" at that time. However, any time a release of an arrestee is done for purposes other than for discovery that they in fact committed no crime, security should always follow up with the prosecuting attorney's office to pursue criminal charges.

### What is the Answer?

Doing nothing is not an option for security in maintaining a desirable atmosphere and environment for guests and employees. Using trespass statutes is the best option in getting unruly patrons, and sometimes even those with petty criminal violations, out and away from a property. Reading someone the trespass warning as many times as it takes and then escorting that person(s) off property can avoid litigation and unwanted publicity, as happened in the *Kevin and Jeffrey Nobles v. Palms* case in 2003. Although the subjects were heading out the door to exit the property, an altercation ensued at the doors leading to the arrest and detention of father and son. The incident and subsequent litigation caused unwanted newspaper and television coverage, in addition to the plaintiffs eventually prevailing in litigation.<sup>6</sup> Just as the famous Johnny Cochran stated, "If the glove doesn't fit, you must acquit," security should adopt "when in doubt, let 'em out," or "if they're headed for the door, patience, tolerance and distance should be our rapport." Allowing or requesting someone to leave property is the most desirable method to resolve issues. Advising a

person of the trespass warning or notice, however many times necessary, with additional surveillance coverage as a backup, also gives the security officer a misdemeanor committed in his presence, if in fact arrest is necessary when the person refuses to leave the property. Also, a trespass violation would be an appropriate arrest over crimes such as disturbing the peace or disorderly conduct. The latter two charges will always face obstacles with the prosecutor's office and judges in explaining how someone can disturb the peace or be disorderly in a casino containing 3 thousand to 7 thousand patrons on a given night. Again though, arrest and detention should be the least desirable and "last resort."

Security officers face a host of issues when dealing with any patron, including the unwanted and undesirable. They are taught to be professional, show compassion and empathy, exert patience and tolerance and ultimately respect a person's right to be in a positive atmosphere. However, security directors, general managers and corporate counsel need to ensure that security officers are equipped with proper training and policies and the ability to make decisions based on statutes and not whims or desires of others. A properly trained security officer and security staff can save a hotel/gaming company unwanted and unnecessary litigation costs and public exposure.

Training is the bedrock of a balanced, stable security force. A well-trained security force is more likely to provide required services, in an effective and efficient manner, free of legal liability. Security officers will operate both as a well-orchestrated team and as effective "can do" service personnel when they are properly trained.

- 1 Dalton, D. (2003). "Rethinking Corporate Security in the Post 9-11 Era," Boston, Butterworth-Heinemann.
- 2 Pastore, C., Tatco, C. (2009) "Under the Color of State Law," *Casino Enterprise Management*.
- 3 Ryan, C. "Pro Gambler Settles Imperial Palace Claim for \$65,000," April 13, 2010, *Las Vegas Sun*.
- 4 *Encarnacion Robles v. Harrahs Las Vegas Inc.* Eight Judicial District Court of Nevada, A473999, 2001.
- 5 Smith, R. Advantage Gambler Cleared of Charges (Sept. 5, 2010), *Las Vegas Review Journal*.
- 6 "Father and Son Win Case Against The Palms," (2005) KVBC-TV. Also see *Kevin Noble and Jeffrey Noble v. Palms Hotel and Casino, Inc.* Eight Judicial District Court of Nevada, A473605, 2003.

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