
They Were Terrorists, But How Could You Have Been Sure?

It could have been any hotel, such as the Park Inn or the Days Hotel in Boston, the Charles Hotel in Cambridge, Massachusetts, or the Comfort Inn in South Portland, Maine. But it just happened to be your hotel. It was your desk clerks who witnessed men of Middle Eastern descent, without luggage, who asked for a room and paid with cash. One sought the company of a lady who looked like a prostitute. Another went into your bar and had a minor altercation with a waitress. You learned that a thick wad of cash was pulled from his pocket and a \$50 bill was left as payment.

You became suspicious and while they were out at Wal-Mart you entered the room surreptitiously because you didn't "like the way they looked or acted". Found in the room was a handwritten document in Arabic entitled "In the Name of God Almighty Death Certificate". You and your hotel have interceded and the Police are called. From all indications you believe you acted reasonably because these facts fit the FBI profile of a terrorist. You are correct, these descriptions do fit such a profile because these incidents collectively describe some of the last few acts of those who we now know committed an unspeakable atrocity which will never be forgotten.

If these are terrorists, you might be proclaimed a national hero. On the other hand, if you are wrong and these were just individual idiosyncrasies, you and your hotel are destined to be defendants in a lawsuit with its associated loss of time, energy and money, not to mention payment of attorney's fees regardless of the outcome. One might wonder how this could possibly be and what you should have done differently.

With few exceptions, under the law of most jurisdictions, a hotel with a vacancy cannot refuse accommodations to any guest desiring to stay at the hotel. The historical rationale for this rule is that travelers needed place to stay while away from home. Hotels are often viewed by the law as quasi-public facilities, and, as such, a duty befalls the innkeepers to accept all transients who seek accommodations. This common law rule was reinforced by the Civil Rights Act of 1964 and its progeny which outlaws discrimination based upon race, color, religion and national origin.

Any hotel that violates this law is not only subject to damages, but also may be forced to pay the reasonable attorney's fees for a successful prosecution in a denied accommodations case. While there are certain circumstances where a hotelier is justified in refusing to grant lodging to a guest, these are limited. Generally, a hotelkeeper can refuse lodging to persons who are criminally intoxicated, disorderly, unclean, or who cannot or are unwilling to pay a reasonable price for the room. Similarly, a hotel is often justified in refusing accommodations to guests who have dangerous firearms, explosives or pets. However, most guests don't announce the existence of such things, and often the hoteliers are none the wiser.

Compounding the issue faced by the hotelier is the competing well-established doctrine that the hotelier must also use ordinary care to protect all guests. Unfortunately, this duty of ordinary care is predicated upon the unique circumstances presented, and seldom is one rule applicable to all factual scenarios. For example, the type of security that may constitute ordinary care in a low crime location may be considered willful negligence in a high crime area.

Further compounding the hotelier's legal quagmire is the right of privacy to which a hotel guest is entitled. Typically, a guest is entitled to occupy the room without disturbance by the hotelier. The exceptions are entry for repairs and maintenance, to redress an eminent danger, nonpayment of charges or when requested to do so by the guest. This right of privacy not only obligates the hotelier to avoid unauthorized entry, but also to keep unauthorized nonemployees from the room.

In the scenario set forth above, had a desk clerk or manager interceded and prevented the terror which soon ensued, he or she certainly would have been applauded. Yet, if that same desk clerk acting on suspicion, engaged in the same conduct and found that these men were simply innocent businessmen who preferred to use cash, lost their luggage, and were simply experiencing a bad day, the hotel would be faced with claims of discrimination, if not also invasion of privacy and be embroiled in litigation.

If the hotelier did not already know the world is a dangerous place, the hotelier often must respond to a Hobson's Choice dilemma. It is a dilemma posed by the untenable matrix of "You're damned if you do, and you're damned if you don't." To correctly address such situations requires an understanding and appreciation of the applicable rules and the training of those individuals who are entrusted with the safety and well being of their hotel guests. The hospitality industry is no longer faced with the single issue of guest comfort and satisfaction, but also with the larger issue of safety and how to achieve that goal consistent with the law. It is only with the appropriate education, training and insight that hoteliers will be able to meet future challenges. It is with that spirit that this periodical is launched.

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