



# Risk Management

by Michael Gentile, J.D.

## Safeguarding guests' right to privacy poses a dilemma for hoteliers

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The nature of hotel guests and the length and purposes of their stays have evolved over the years. Much of this has to do with the nature of our society and the activities in which people become involved, both legal and illegal. Guests are now staying for extended periods and conducting business from their hotel rooms. For years many guests have and continue to engage in illegal and dangerous activities on hotel property.

The recent case of Anna Nicole Smith points out the serious nature of what could be occurring in a hotel room. It is for activities of this kind that hoteliers may find themselves in a legal dilemma. How does one determine, or assist others in determining, if illegal activities are being conducted from a guestroom without violating the rights of the registered guest? And when management discovers such activities, what can and should they do then, keeping in mind that there may be evidence of a crime in place?

### The guest's right to privacy

First, management must deal with the initial outrage. Yes, registered guests who are engaged in illegal activities in their room do have rights. Their rights are the same as any other hotel guest. Such rights typically include the right to occupy the guestroom without disruption unless there is a legal reason to remove them, such as non-payment or expiration of the rental. Essentially, the guest has the right to privacy when occupying the room except in the following instances:

- For normal maintenance, repair or routine housekeeping
- Imminent danger (which is difficult to determine)
- Nonpayment
- When the guest requests entry to respond to a service request
- When the rental period has expired
- When the guest is breaking "house rules" or disturbing others

The importance of honoring the guest's right to privacy in these cases is that if the innkeeper enters the room of the guest without authorization, not only can they be subject to legal liability from the guest personally, but any potential evidence of a crime they discover while in the room improperly may be excluded by a court in a subsequent criminal prosecution. Commonly referred to as the "exclusionary rule", such exclusions are similar to that used to exclude evidence obtained in illegal police searches.

In the United States, the Fourth Amendment of the Constitution generally conveys protections to all individuals against unreasonable search and seizure. Furthermore, another legal doctrine, known as the "fruit of the poisonous tree", makes the use of any evidence in a criminal proceeding that is gathered with the aid of information obtained illegally inadmissible. The "fruit of the poisonous tree" doctrine is intended to deter police from using illegal means to obtain evidence.



It should be noted that recent court cases have upheld the right of a manager or police, at the request of hotel staff, to enter a room in cases where the hotel believes a stolen credit card was used to pay the bill (non-payment) or where a guest held over after the posted check-out time (rental expired). Notwithstanding these results, it is critical to determine that there is a valid reason to enter the room before doing so, regardless of the suspicions hotel staff might have.

### **Extension of privacy**

The guests' right to privacy not only applies to hotel employees but also to visitors, employees and even spouses. In one case, a hotel refused a wife access to her husband's guestroom. The evidence showed that the man had rented the room on an ongoing basis for business reasons and had allowed for his employees to use the room. He also had his wife stay with him on several occasions. Each time, however, he had advised management who was staying with him and obtained additional keys for his guests. When the wife arrived one weekend while the husband (and registered guest) was not present, hotel management refused to grant her access. The wife, distraught, sought accommodations at another property and subsequently sued for her loss and inconvenience. In this case where the damages were limited, the hotel staff was found to have acted properly, notwithstanding the fact that they were aware of the marriage.

Another case where management was not so prudent had more dire consequences. In an apparent battered wife case, a woman checked into a hotel, informed the front desk that her husband had beaten her and requested that no calls be put through to the room and that no one be informed of her presence. Her husband arrived and convinced the hotel manager to not only unlock the guestroom door but also to cut the security chain. In the presence of the manager, the husband threatened to kill his wife. The man later beat his wife so severely that she died the next day. In the subsequent civil case, the hotel was not dismissed from the lawsuit and was forced to go to trial. The hotel eventually settled for an unknown amount. While this is a graphic example of the hotel's exposure for violating a guest's right to privacy, there is a middle ground that allows hotel staff to exercise discretion.

Some states require the potential harm to a guest to be foreseeable before courts will impose liability for disclosure of a guest's room or access to the room. In the previous case, because of the wife's statements and the husband's threats, foreseeability would be established. However, in cases where the visitor provides false information to a clerk or manager, the hotel may not be responsible for the harm that results. Management should ascertain the current status of the law in their state before relying on this defense.

### **Conclusion**

The bottom line in all of these cases is that the room in question is the property of the registered guest, subject to the exceptions listed previously. Hotels bear a legal responsibility to protect each guest's right to privacy, not only with respect to hotel staff but to any unauthorized visitors as well, subject to any foreseeability defenses that may be available in some states.

Future articles in TRC will address guests' right to protection from illegal searches and how hotel management can properly become involved with law enforcement agencies in conducting searches on their premises. ✧

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