

1301 Fifth Avenue
Suite 3535
Seattle, WA 98101
www.officelease.com

☎ 206-624-0000
☎ 206-464-1389

Fall 2001

Commercial Real Estate Planning
Tenant & Buyer Representation
Since 1981

A QUOTE TO REMEMBER.

FDR at his inauguration:

"First...let me assert my firm belief that the only thing we have to fear is fear itself -- nameless, unreasoning, unjustified terror which paralyzes needed efforts to convert retreat into advance"

From the Editor
Paul Suzman:



A LESSON FROM AMY

Last month, while the Infamy of September 11th was yet fresh, I had the distinct privilege of introducing to Seattle Rotary, Peter and Linda Biehl. They are the inspirational parents of Amy Biehl, the American Fulbright Scholar murdered in the townships of Cape Town in 1993.

This senseless act of violence that would leave lesser souls embittered and vengeful, unleashed a different and more powerful force. Bishop Tutu described it: "We should be giving to the Biehls reparations. They have turned it all upside down. It is these victims in their agony who say- 'we want to help the community that produced these murderers be transfigured'"

The Biehls, who describe themselves as "ordinary parents" have recently provided business backing to two of the four men, Ntembeko Peni and Easy Nofemela, that were implicated in Amy's murder. They make the point that it is not in their power to 'forgive' the attackers.

TABLE OF CONTENTS

A LESSON FROM AMY	1
FACILITES ROUNDTABLE	2
SUBLEASING? CAVEAT RENTOR!	3

Rather they have taken the time to understand the circumstances which engendered the violence and the hopelessness that led to such vitriol. And because they believe Amy would have lived were these conditions to have been improved they are helping transform the community. Sports fields, skateboard parks, golf driving ranges, childcare programs, bakeries, parent counseling, school literacy programs; the Amy Biehl Foundation <http://www.amybiehl.org/> now has over 300 employees in the Cape!

Ordinary indeed! They are not haunted by the memory of their daughter. Rather, it completely inspires them. And their passionately positive attitude and creative action pays tribute by ensuring that Amy's passion for emerging democracy is fulfilled in ways she could never imagine.

Can we too learn a lesson from Amy? While justice will be done and punishment meted out in no small measure to those squalid perpetrators of the September 11 action and their accomplices, we as a nation, and the West as an alliance need to commit to positive long term actions to 'help the communities that produced these murderers be transfigured'

We in the USA have an opportunity to transform tragedy into great opportunity. A lesson from Amy.

(PS. When a bomb exploded not far from the Biehl's Cape Town HQ early this year; the first two calls about the Biehls' well-being came from none other than Peni and Nofemela!)

FACILITIES ROUNDTABLE: EMERGENCY PLANNING STRATEGIES.

OfficeLease facilitates a quarterly RoundTable for a group of facilities directors of 10 large local companies providing Legal, financial services, software development, communications, banking, technology manufacturing and airline training. We recently met with a security veteran, Rob Ledenko (tledenko@msn.com). Rob has been in the business with both the government and private sectors for nigh on twenty years. (Many of us yearn for the simpler days of the FacilitiesRoundtable when we were discussing disaster recovery from straightforward occurrences; like our last Earthquake!)

We discussed the following issues:

Q. How does one track personnel movement? i.e. who is in or out of a building if 'something' occurs?

A. With difficulty, especially in a multi-tenant building. 'Swipe' or proximity cards only work up to 36" maximum. And employees generally resist being 'tracked'.

Q. Security guards vs. electronic access control and close circuit TV (CCTV). Which is better?

A. Rob argued that if you are to have guards they should be employees with the right background qualifications (vs. subcontractors) and they should be involved with other human resource activities and training in the company. Keep them engaged and motivated. (security work alone can be stultifying) How well either option works is also dependant on the physical design of the facility and their intended role.

Q. How effective is CCTV?

A. Quite; both for tracking past occurrences and personnel movement and for real time security assurance. But there should be a mechanism for tracking imagery remotely. e.g. in the Columbine High School shootings if Law Enforcement agencies could have tapped into the existing system, it is believed many lives could have been saved. And it is technically quite feasible to set up remote tracking capability. (New York based Xanboo allows access to a website for \$9.95/month which allows you to remotely monitor motion sensor tripped colour cameras at home.)

Q. How do we get staff to 'buy in' to a security plan?

A. One really needs an independent third party to conduct a 'threat assessment' or audit. Management then needs to decide what is important and needs to prioritize. Is all data duplicated and stored off site? Do you have emergency contact names for all employees? Do your employees know what to do/where to call/go in the event of fire/earthquake/riot/etc.....? If you can clearly communicate the reason for and the extent of a security plan that is backed up by the management team, the more likely it will be 'saleable' to staff.

Summary: A well considered emergency plan presented to well inform employees will go a long way to bolstering confidence in the workplace. Hire a consultant to help facilitate 'threat analysis', establish corporate priorities and direct management towards the appropriate resources and advisors. Some companies provide all employees emergency 'kits'. One survivor of the WTC attack suggests that he now takes everywhere with him: a dust mask, goggles, saline solution to wash out eyes, spectacles (for contact wearers), and a cotton kerchief. It is advisable to wear natural fibers (more fire resistant especially when dampened).

Finally, be aware that there is no such thing as complete safety e.g. 4500 Americans are killed in traffic accidents every month. And 40,000 die monthly from cancer related illnesses. So, horrific as the effects of terrorism might be, and they are, and how clear the need to deal with the perpetrators wherever they skulk, and it is, we do need to maintain our sense of perspective

SUBLEASING? CAVEAT RENTOR!

November 2000: new buildings were still coming out of the ground, and even though for dot.coms venture capital was running dry, vacancy rates were in the very low single digits and rents were still rising. It was a classic 'landlords' market'. What a difference a year makes!

October 2001: Accurate numbers are hard to come by because of the amount of sublease space which now accounts for approximately 40% of the available space. Seattle's vacancy rate is around 12%, and Bellevue CBD vacancies by some estimates are at 20%. Clearly better times for tenants have arrived.

Sublease deals abound in the Greater Seattle area. But tenants need take care because if the sublandlord's lease terminates for any reason, the subtenant's right to occupy the property terminates as well.

Ellen Dial, a partner in Perkins Coie's Real Estate Practice (diale@perkinscoie.com) suggests that Subtenants should ask for various assurances from the prime landlord, as well as from the sublandlord. The extent to which a prime landlord will be willing to give these assurances depends on the leverage each party has in the transaction.

Such items might include:

an estoppel from both prime landlord and sublandlord to the effect that the prime lease is in full force and effect and there are no defaults, etc.;

an agreement from the prime landlord to give the subtenant a copy of any notice (including any default notice) given to the sublandlord;

an opportunity (but not obligation) to cure defaults by the sublandlord;

the right to pay rent directly to the prime landlord (especially) in the event of a default by the sublandlord;

an agreement from the prime landlord to recognize the subtenant as its direct tenant in the event of a termination of the prime lease so long as the subtenant is not in default, (hopefully on the same terms and conditions as are set forth in the sublease);

an agreement to execute a new direct lease between the prime landlord and the subtenant on the same terms and conditions as the sublease for the full remaining stated term of the sublease;

And a release and waiver of subrogation among prime landlord, sublandlord and subtenant.

Ellen also prefers to get the agreement of the prime landlord to deliver building services directly to the subtenant with respect to that portion of the premises the subtenant occupies. This is more problematic for landlords, though, and landlords are typically resistant to giving this kind of covenant.

Depending on the transaction, a subtenant may also want assurances from the sublandlord that it will not amend the prime lease without the subtenant's consent. A subtenant would of course resist any attempt on the part of the sublandlord to absolve itself of liability if the prime lease were to terminate before the end of the stated term of the sublease. Depending once again on the leverage that the subtenant has, it may also get an 'affirmative covenant' from the sublandlord to make payments due under the prime lease and keep the prime lease in full force and effect.

Every transaction is different, and there may be other assurances that subtenants will need under the specific circumstances. This list should be a good starting point for consideration. Thanks Ellen!

As always we welcome your comments.

Pauls@officeLease.com, Seattle.