Evolving Practice Parameters of Forensic Criminology

1

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As is probably true for many of us in the workplace, my career has not turned out quite as I envisioned it would some 40 years ago. More specifically, as a beginning graduate student in sociology, I had no idea I would eventually practice forensic criminology or be in a position to write about what follows. In fact, I had never heard of forensic criminology (FC) until years later and, I believe, neither had my academic colleagues. It was only after I began to practice as a forensic criminologist and to identify myself as one that the parameters of this fascinating area of expertise began to reveal themselves more fully to me.

In the early 1980s I was serving as an assistant professor of criminal justice at the University of Detroit. While listening to the radio en route to work one day, I heard a news story about a suicide in the Wayne County Jail. Given my "publish or perish" mode at the time, I decided to study this inmate's suicide and learned, much to my surprise, that a custody suicide can be quite difficult to predict or prevent. After developing a rudimentary theory to explain certain custody suicides, I published an article in a widely read police journal (Kennedy, 1984a) then continued about my standard academic business. Not long after the article was published, an attorney involved in litigation generated by a student's death in a university police department's lockup contacted me. I consulted on that case and then another. Meanwhile, a colleague at Michigan State University who had written about police pursuit collisions was also contacted by various attorneys. Eventually, both of us fielded inquiries about crimes committed on business premises, at educational institutions, in apartment complexes, and at a variety of other property types. I was able to field these inquiries because I had developed a course sequence in private security in order to attract students to replace those lost when the federal LEEP program ceased paying for the tuition of police and correction officers. As time went on, I immersed myself further in the security literature and the publications of the American Society for Industrial Security. The knowledge thus accumulated was to prove extremely helpful in my newfound forensic career.

In a most serendipitous fashion, then, I had stumbled into the litigation explosion (Olson, 1991). The victims' rights movement and a number of appellate court cases, such as *Kline v. 1500 Massachusetts Avenue* (1970) and *Monell v. Department of Social Services* (1978), enabled the types of litigation to be described throughout this chapter to go forward (Carrington & Rapp, 1991; Homant & Kennedy, 1995; Kaminsky, 2008; Ross & Chan, 2006). As I was eventually to learn, there was and is a central role for criminological knowledge to play in this consumerist expansion of legal liability generated by crime and the actions or inactions of formal and informal agents of social control (Horwitz, 1990). In essence, security

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"place managers" (Eck, 2003; Felson, 1995), police officials, corrections officials, and their employers could be held responsible for negligent action or inaction. Just as importantly, however, they were to be exonerated when appropriate.

None of this chronology should be taken to imply that I "discovered" the practice of FC. True pioneers in this field would include Hans Gross at the turn of the twentieth century (Turvey, 2008) and the early contemporary contributions of Marvin Wolfgang (1974). More current FC scholarship may also be found in the work of Kennedy (1984b, 1990, 1993), Anderson and Winfree (1987), Sherman (1989), Voigt and Thornton (1996), Jacobs (2004, 2005), Winfree and Anderson (1985) and, most recently, Petherick, Turvey, and Ferguson (2010).

What I chronicle here in a broader sense is the entry of the social sciences into the courtroom. Ever since a young Louis Brandeis pleaded the now famous "Brandeis Brief" discussing the sociological impact of females in the labor pool, more and more of the human sciences now help clarify issues before judge and jury (Monahan & Walker, 2006; Smith, 2004). There is, of course, a well-established and strong forensic psychology (Bartol & Bartol, 2008; Wrightsman & Fulero, 2005). Also present in the courts are such disciplines as forensic social work (Marchi, Bradley, & Ward 2009), forensic anthropology (Cattaneo, 2006; Rosen, 1977) and, of course, a growing forensic sociology (FS) (Hart & Secunda, 2009; Jenkins & Kroll-Smith, 1996; Mulkey, 2009; Richardson, Swain, Codega, & Bazzell, 1987; Thoresen, 1993). Given that much of American criminology is deeply rooted in sociology, discussions of FS and FC are sometimes somewhat fungible in nature.

Definitions and Domains

When most people encounter the words "forensic criminologist," an image of CSI's Gill Grissom probably springs to mind. On many occasions, I have been treated to comments about blood splatter, ballistics, trace evidence, and the wonders of DNA when conversation partners learn that I am a forensic criminologist. Although I believe a forensic criminologist should know about these things as well as several other issues to be determined at a crime scene, criminology is not criminalistics. Nor is it what most people think of when they think about forensic science.

The word "forensic" is derived from the Latin word "forum," which was a place where public issues were debated (Siegel, 2009). Gradually, the word came to be applied to the courts so that a "forensic" issue meant an issue before the criminal or civil courts. Forensic means "having to do with the law." Science, including behavioral science, when applied to legal problems is forensic science (Gaensslen, Harris, & Lee, 2008). Forensic science would then refer to scientific findings of interest to the court in rendering its decision. Less "scientific" analysis such as pattern evidence analysis would still be described as forensic in nature. If blood-related evidence is to be important in a case, then the term forensic serology is appropriate. If the findings of a psychologist are helpful to a court in resolving a legal issue, we would then be talking about forensic psychology. As will become evident throughout this chapter, forensic psychology and FC overlap in many ways (Canter, 2010). Several of the topics central to forensic psychology are of great interest to forensic criminologists as well (e.g., false confessions, criminal profiling, psychopathic criminals, suicide in custody, police behavior). On the other hand, while criminologists do not generally administer personality tests or evaluate a subject's capacity to form "*mens rea*," psychologists do not normally compute crime rates or assess the criminogenic nature of urban neighborhoods.

FC is the application of criminological knowledge to issues before the courts. It includes within its scope the scientific study of the making of law, the breaking of law, and societal reactions to the breaking of law (Sutherland & Cressey, 1978). These issues may also be explored on various theoretical levels as in academic criminology or on a more practical level which may become an applied criminology. If presented in court or at deposition, we are now putting forth a FC. For the purposes of this chapter, then, criminology is

the scientific study of the etiology, patterns, and control of crime and criminals. Whenever this type of information becomes useful to judicial or jury decision making, we are then describing FC.

As a multidisciplinary field of study as well as a professional practice, FC is pertinent to both criminal and civil courts. Owing to differences between criminal and civil law, insofar as parties, proofs, and penalties are concerned (Abadinsky, 1995; Siegel, 2004), the efforts of a forensic criminologist may be differentially constrained by evidentiary and procedural matters depending on the type of case. Although the nature and quality of criminological analysis should not vary, the scope of the opinions a forensic criminologist is eventually allowed to express will depend not only on the pertinent law but also on the trial judge's interpretation of this law (Buchman, 2007). The criminologist's role is to present evidence relevant to his or her expertise in a dispassionate and objective manner and not to advocate for a given verdict. Forensic criminologists must fully understand they are but guests at a trial. While criminologists may dominate a classroom, the courtroom is run by the judge and the lawyers arguing therein.

Forensic criminologists can make numerous contributions to criminal matters before the court. They can prepare presentence investigations to balance those prepared by state-employed probation officers (Kulis, 1983). They can participate in capital punishment mitigation proceedings (Andrews, 1991; Forsyth, 1998; Hughes, 2009) or opine on gang-involved criminality pertinent to gang enhancement penalties (Yablonsky, 2008). Some criminologists offer criminal profiles which differ from those offered by state-employed current or retired investigators presented by prosecutors (Keppel, 2006; Turvey, 2008; Youngs, 2009). Other forensic criminologists testify as to the validity of confessions (Leo, 2008; Ofshe, 1989), while still others may assist investigators seeking search warrants by attesting to the manner in which certain criminal types gather and hoard contraband. Social scientists have also been able to shed much light on the dynamics of historical child abuse and violence against women (Connolly, Price, & Read, 2006; Portwood & Heany, 2007). These topics constitute simply a small sampling rather than the universe of criminological knowledge available to the courts in their efforts to render criminal justice. Fuller elaboration of the parameters of criminal FC must await another chapter. Given the nature of my forensic involvement over the past 25 years, however, I shall delve more deeply into civil FC for the remainder of this chapter.

Whereas crime and guilt are the foci of criminal FC, tort and liability are the foci of civil forensic criminology (Kennedy & Sakis, 2008). Basically, a tort is a civil wrong, a noncontractual civil liability. One may injure another or do a wrong to another by failing to act reasonably when there is a duty to do so or by acting unreasonably when one should not. While these are certainly not formal legal definitions of negligent or intentional torts (Keeton, Dobbs, Keeton, & Owen, 1984), the idea behind both is that when an individual or a government acts negligently so as to cause unjust harm, this harm must be compensated for, generally in the form of monetary damages. Because issues in tort litigation may involve the failure of a landholder or employer to protect against criminal behavior or may involve the actions of police, corrections, and security personnel, the insights provided by FC in the form of expert reports and testimony can be of crucial assistance to judicial and jury decision making. For example, an apartment complex may be sued because a woman who was assaulted in her unit believes the premises were inadequately secured (Kennedy & Hupp, 1998). Or an employer may be sued under certain conditions for acts of violence in the workplace (Perline & Goldschmidt, 2004; Schell & Lanteigue, 2000). A young man's family may sue the police over what they consider to be the use of excessive force against him (Kennedy & Hupp, 1998), or a prisoner's family may sue corrections officers over an alleged failure to prevent his suicide in custody (Kennedy, 1994; Kennedy & Homant, 1988). More recently, law enforcement investigators and even prosecutors face litigation over allegations arising from miscarriages of justice involving wrongful conviction (Forst, 2004). Because prosecutors, juries, and judges cannot be

sued, various "Innocence Projects" have resulted in increased litigation against police agencies which have participated in an erroneous conviction. The above examples are merely illustrative and only begin to describe the wide-ranging legal causes of action involving premises liability for negligent security (Ellis, 2006; Kuhlman, 1989) and the actions or inactions of criminal justice system personnel (Kappeler, 2006; Ross, 2009). Each year, tens of thousands of lawsuits are filed against private landholders, and security, police, and correctional personnel. FC knowledge is integral in varying degrees to virtually all of these cases.

FC in Premises Security Litigation

Legal Backdrop

Although most forensic criminologists are not lawyers, it would behoove them to know something about civil law in order to maximize their contributions and minimize their confusion. While a thorough discussion of legal precepts is beyond both the scope of this chapter and the expertise of this author, there are a few fundamentals with which I believe forensic criminologists should be familiar.

Basically, forensic criminologists are utilized as liability experts rather than damages experts, even though they may be quite familiar with the directly related field of victimology (Karmen, 2010; Stark & Goldstein, 1985). As liability experts, forensic criminologists may be expected to opine on questions of crime foreseeability, and security, police, and corrections standards of care in light of this foreseeability. The causal relationship between any alleged breach of standards and the damages suffered by a plaintiff may also be addressed by the forensic criminologist. These three areas of input correspond directly to three of the four basic elements of a tort: duty (of which foreseeability is an integral element), breach of duty (failure to act reasonably or to follow a recognized standard of care), and causation (whether proximate cause or cause-in-fact). Highly readable discussions of the origins of security-related law may be found in texts written primarily for attorneys (Page, 1988; Tarantino & Dombroff, 1990) and legal tracts written more specifically for the private security sector (Bilek, Klotter & Federal, 1981; Hannon, 1992; Inbau, Aspen & Spiotto, 1983; Pastor, 2007). Bottom (1985) authored what may be the first comprehensive textbook to address security malpractice issues and illustrates his analyses through the presentation of several case studies. Other excellent compendia of security-related premises security liability cases are also available (Ellis, 2006).

On another note, it is important for the forensic criminologist to remember that each of the fifty states may have statutory and case law which bears upon security issues. Federal courts will also draw from statutory and case law as well as evidentiary issues pertinent to cases within their jurisdiction. Established precedent may include definitions and tests of foreseeability, observations on the reasonableness of security measures in specific situations, and controlling opinions on causation. Although there is general consistency across the country, new cases in each state may arise from time to time, and these cases may have an impact on the litigation in which the forensic criminologist is consulting. Obviously, the retaining attorney should be queried as to these matters. In the sections which follow, I present typical forensic scenarios and the legal frameworks within which FC expertise has been applied.

Predatory Attacks

By way of example, a common scenario leading to litigation involves the robbery or abduction of a female from a large, retail store parking lot or parking garage. Although it may seem that the number of incidents in parking areas is disturbingly high, criminologists must also be prepared to point out that at least 350 million pedestrian trips through parking facilities are made each day (Smith, 1996). Whenever possible, the number of criminal incidents at a given property should be evaluated in the context of the number of persons at risk within the same time period.

Some parking areas will be more dangerous than others, depending on location, history, characteristics of facility users, and the real or perceived efficacy of security measures. Forensic criminologists asked to explain the level of crime in certain facilities have pointed to the notion of "critical intensity" to explain victimization in large, retail center parking lots and the concepts of prospect, refuge, and escape to explain crime in parking structures. Critical intensity is that tipping point where there are enough potential victims in a parking lot to attract predators but not enough potential victims or witnesses to deter these predators. Prospect refers to the limited surveillance capacity available to a pedestrian in a parking garage. There are also multiple criminal hiding places (refuge) in a garage and fewer escape routes feasibly open to a potential victim (Kennedy, 1993).

Regardless of the type of parking facility which is the focus of premises liability litigation, plaintiff and defense forensic security experts and forensic criminologists will be expected to address three basic issues. First, foreseeability will be addressed generally from a prior, similar acts perspective or from a totality of the circumstances perspective. Second, based on the level of foreseeability, or its absence, experts must establish the reasonableness of then extant security measures to determine whether appropriate standards of care were breached.

Finally, experts may sometimes opine as to whether any such breach of duty was a proximate cause and cause in fact of injuries suffered by the plaintiff (Kennedy, 2006). Thus, if a female shopper is attacked in a parking lot which has seen several prior muggings, there may be a duty to warn her or to remedy the problem through appropriate security measures. While plaintiff attorneys will often attribute the attack to a dearth of security patrols, poor lighting, or the absence of CCTV, defense attorneys can point to a substantial body of accumulating research which questions the presumed effectiveness of these measures in deterring violent crimes (Welsh & Farrington, 2003, 2009). Inconsistent findings in the general crime prevention literature can only be resolved in a case at bar through a close examination of the unique circumstances of a specific property, its particular history, and other issues special to the site. Certainly, the dynamics of the criminal event itself must be considered as well.

Unfortunately, other land uses are sometimes associated with predatory attacks. Because millions of citizens, many of these women, reside in large apartment complexes, sexual assaults associated with burglaries are not infrequent. Home invasions for the purposes of robbery are also occurring around the country. An early premises liability case, *Kline v.1500 Massachusetts Avenue Apartment Corporation* (1970), established a duty on the part of landholders to provide reasonable security for the common areas of a multioccupancy property. Thus, property owners and their management companies are regularly named as defendants in premises liability lawsuits alleging negligent security measures (Kennedy & Hupp, 1998).

Once again, the question of foreseeability arises immediately. Section 8 properties, public housing, and market rental complexes in lower income neighborhoods often suffer unfortunate patterns of interpersonal violence and property crimes (Suresh & Vito, 2009; Wenzel, Tucker, Hambarsoomian, & Elliott, 2006). Although a certain amount of this violence is of a domestic nature and not reasonably attributable to management practices, forensic criminologists have argued that improved tenant selection practices and aggressive lease enforcement can significantly improve the security of a property (Clarke & Bichler-Robertson, 1998; Sampson, 2001). Questions of physical security such as the trimming of foliage, illumination levels, key control, and the efficacy of fencing and gating frequently arise. Where sexual assault is the crime which originally generated the lawsuit, rapist typologies are often introduced into legal discussions by forensic criminologists and psychologists (Fradella & Brown, 2007). Essentially, there is a causal argument which suggests that rapists will be differentially deterrable based on their classification as anger rapists or power rapists, for example, or whether they could be characterized as disorganized or organized perpetrators (Crabbe, Decoene, & Vertommen, 2008; Hazelwood &

Burgess, 1999; Keppel & Walter, 1999). Again, while much in the psychological and criminological literature can be helpful to a jury as "social framework" evidence (Monahan & Walker, 1988; Monahan, Walker & Mitchell, 2008), each case must be judged on its own merits with an understanding that properties, victims, and criminals are unique in their own ways.

Interpersonal Disputes

With the proliferation of mass private properties have come endless opportunities for interpersonal altercations which can often lead to serious injuries or even death. As commercial landlords develop huge business, entertainment, and retail properties (Shearing & Stenning, 1983), millions of people each year find themselves in the proximity of strangers representing all walks of life and a multitude of age and ethnic groups. From time to time, conflict is inevitable. A regional shopping mall, for example, can draw over ten million shoppers each year, including many young people who are more interested in socializing than shopping. Food courts can become the venue for group fights, arcades the hunting ground for pedophiles, and parking lots the place for a parade of flashers.

As criminologists have predicted, when motivated offenders and suitable targets come together in space and time, in the absence of capable guardians, crime is a foreseeable occurrence (Cohen & Felson, 1979; Felson & Boba, 2010). Because this crime may take place on a large commercial property owned by a "deep pockets" commercial landlord, the possibility of liability immediately presents itself. In earlier days, smaller merchants sold their wares from much smaller properties; and visitors to shopping areas spent much of their time on public streets, leaving no identifiable landlord to sue for failing to protect one prospective invitee from another or from a criminal trespasser. In this day and age, however, some private entity often owns or manages the property on which much leisure time is spent, thus allowing for third-party lawsuits for tortious injuries. It is the role of the forensic criminologist to determine whether a pattern of prior disturbances or crimes existed which should have put the commercial landholder on notice that business invitees were in need of protection. The existence of a sufficient number of employees and/or effective security measures to protect these invitees or warn them of the dangers must then be assessed. Whether the injuries sustained during interpersonal violence were causally related to the condition of the property must also be determined, ultimately by a jury, of course, but often armed by one opinion or another from a civil forensic criminologist at trial. Even if a civil suit settles before a trial, which is a far more likely outcome, forensic criminologists and forensic security experts have often helped to shape much of the settlement discourse between plaintiff and defense attorneys.

Of course, interpersonal disputes can take place on the premises of businesses which long preceded the advent of mass private property. For example, drinking establishments such as bars and nightclubs have generated a great deal of litigation sparked by alcohol-fueled violence. Criminologists and other social and behavioral scientists have generated a substantial literature on the relationship between alcohol and violence (Felson & Staff, 2010; Graham & Homel, 2008; Greenfield, 1998; Hughes, Anderson, Merleo, & Bellis, 2008; Saitz & Naimi, 2010). The past few decades have also seen solid research on methods of preventing barroom violence. Responsible alcohol service training programs, bartender and doorman training, and an understanding of the pejorative influences of toxic environments (heat, noise, smoke, and crowding) have all been helpful in reducing violence among bar patrons (Graham, Bernards, Osgood, & Wells, 2006; Roberts, 2007). A number of ethnographies and manuals for bar employees charged with "keeping the peace" have also contributed to the abilities of innkeepers and publicans to offer safer establishments for young revelers (Graham, 1999; McManus & O'Toole, 2004; Rigakos, 2008; Scott & Dedel, 2006).

Criminological research has illustrated the nature of inter-male aggression as involving challenges to and defenses of "face." In many such

disputes, there is a discernible escalation of violence potential as each disputant repudiates the other's insults until violence becomes the next alternative (Felson, 1982; Luckenbill, 1977). It is during this escalation that bar security must intervene and divert the attention of potential pugilists from each other. Failure to detect readily audible or visual signs of a developing altercation can lead to liability on the part of a liquor or gaming establishment. In other words, if bar or casino security personnel were or should have been in a position to detect signs of an escalation of threats and yet failed to intervene, they were on imminent notice of a danger to patrons and failed to take reasonable action to prevent injury. Obviously, if an establishment is so overcrowded that monitoring is difficult and getting to the scene of a dispute even more so, then a liability argument exists. Even if security is able to intervene in a dispute in a timely fashion, the standard of care has evolved from the days when a bartender could simply declare, "Take it outside." It is now more appropriate for security personnel to separate combatants, isolate them from each other, and evict them through different doors at different times. The idea, of course, is to take reasonable steps to discourage the fight from reigniting outside yet still on the premises of the business. A landholder's obligation to an invitee does not end when he walks out the door but generally when he leaves the property altogether. In some cases, however, a landholder may be expected to provide reasonable security where many guests are known to park even if such parking area is not owned by the principal landholder. Note the importance of the word "reasonable" in all the above scenarios, as no landholder is expected to guarantee the safety of an invitee or licensee.

Workplace Violence

The problem of workplace violence (WV) first took its place in the American psyche in a very dramatic fashion. One day in August of 1986, a US Postal Service employee by the name of Patrick Sherrill came to work with two .45 caliber pistols and murdered 14 of his coworkers. He also wounded six others before finally killing himself. Since that fateful day, numerous mass shootings have taken place at workplaces, restaurants, schools, shopping centers, and other venues. A significant literature has evolved to describe and explain these rampage shootings. While some professional thinking on the subject focuses on the shooter's workplace as a violence-generating organization (Denenberg & Braverman, 1999; Homant & Kennedy, 2003; Kennedy, Homant & Homant, 2004), other approaches focus more on the personal characteristics of the individual as central to the explanation of multicide (Dietz, 1986; Fox & Levin, 2007; Holmes & Holmes, 2000; Meloy, 1997). The workplace killer is often motivated by a narcissistic injury which he takes as the final insult in a long series of injustices foisted upon him by an organization and the people within it which he believes have betrayed him (Baumeister, 2001; Cale & Lillienfeld, 2006; Cartwright, 2002). Forensic criminologists are often called upon to consider whether such an extreme reaction on the part of the shooter was foreseeable and whether it could have been prevented. Over the past 25 years, however, criminologists have realized that WV is far too complex to be analyzed as a homogeneous topic. In reality, WV across the USA is more quotidian in nature and is comprised basically of four types of mundane crimes (Loveless, 2001).

Type I WV involves robbery of a workplace and leads more often to worker death than other forms of WV. For example, in 2008, 526 workplace homicides occurred, most of which involved retail clerks or other workers serving the public where cash was involved. Notably, the number of workplace murders was down from about 900 work-related homicides occurring between 1993 and 1999. During this same period, 1.7 million violent assaults were also perpetrated against persons twelve or older who were at work or on duty (Duhart, 2001). Overall, about 85 % of all workplace murders occur during robberies.

Type II WV involves attacks by customers, patients, passengers, students, or others who vent their anger on workers attempting to provide them a service or care for them in some way.

About 3 % of workplace homicides are so classified.

Type III WV involves worker-on-worker attacks, some of which result in death but most of which are far less serious in nature. About 7 % of workplace murders stem from worker-on-worker violence.

Type IV WV is a form of domestic violence wherein a former intimate comes to the workplace and assaults a worker on the job. The workplace is often chosen as the site of the attack because the estranged attacker knows where his victim will be and when she will be there (there are, of course, not an insignificant number of instances when a male will be the target). About 5 % of work-related murders may be placed in this category.

Given the four types of WV introduced above, it is obvious that the role of forensic criminologists in case analysis will vary depending on the nature of the events in question. It is also important to note that workers' compensation laws across the USA limit the ability of workers to bring lawsuits against their employer for injuries sustained while at work. The injured employee will generally have to prove gross negligence on the employer's part or, perhaps, link the injury to some form of gender discrimination. Although more and more exceptions to workers' compensation as an exclusive remedy are appearing on the legal landscape (Sakis & Kennedy, 2002), statutory roadblocks to employee litigation remain formidable. Nevertheless, WV generates a considerable amount of litigation as will be explained below.

As a forensic criminologist in practice for over 25 years, I have been involved in litigation generated by WV on frequent occasions. When retail clerks are murdered on the job, it is not unusual for their grieving families to blame store management for their deaths. Convenience store robberies have been the subject of much research as has the efficacy of robbery prevention measures (Altizio & York, 2007; Erickson, 1998; Hunter, 1999; Loomis, Marshall, Wolf, Runyan, & Butts, 2002). Unless plaintiff experts can establish that a robbery or injury was virtually certain to occur, and wholly inadequate preventive measures were nonetheless in place, a negligent security lawsuit is likely to fail due to worker compensation exclusions.

In an attempt to escape limitations on liability imposed by workers' compensation laws, worker victims have often sued other entities in some way connected to the security or other operations of their workplace. Thus, bank tellers have successfully sued a camera installation company and office workers have sued office cleaning companies or other vendors. It is becoming increasingly common for victims of Types I–IV WV to sue contract security companies for somehow failing to prevent an irate patient or armed student from entering the premises. Security officers at manufacturing facilities have been accused of failing to prevent armed workers from entering a plant and shooting ex-lovers and former supervisors. While the actual connection of these third-party defendants to the violence which precipitated the litigation is often tenuous, what is known as the "sympathy factor" can never be discounted. It has been my experience that some jurors will award damages to plaintiffs for whom they feel sorry even where foreseeability, violation of a standard of care, and causation seem quite difficult to establish. Likewise, cases have been lost because jurors find a defendant more to their liking than a particular plaintiff. Such examples of "jury nullification" are to be found as readily in civil litigation as in criminal prosecution or perhaps even more so (Smith, 2004; Wrightsman, 2001).

Finally, no discussion of WV liability can be complete without mention of violence by employees directed at their customers, patients, students, coworkers, or others with whom they come into contact. Unless a defendant employer can establish that certain interactions are clearly "beyond the scope of employment," I have seen employers sued when their employees attacked a fast-food customer, sexually assaulted a student, patient, or guest, misrepresented security levels at a property, and when workers have murdered coworkers. Employers have also been sued for the actions or inactions of independent contractor employees such as housekeeping personnel and security personnel under the notion of "nondelegable duty."

Personnel Issues

Forensic criminologists are generally not lawyers and are not retained for legal opinions. Even so, their efforts can be utilized more efficiently if they have a working knowledge of the legal context in which their criminological expertise is sought. For example, although a store detective who makes a false arrest without protection of "merchant's privilege" can expose his employer to vicarious liability through the doctrine of *respondeat superior*, an employer may also be found to be directly negligent based on his own negligent actions rather than because of his servants' actions. An employer can be held liable for administrative negligence if it can be shown through a preponderance of the evidence that the employer negligently hired, trained, supervised, assigned, entrusted, or retained an errant servant. Negligent "failure to direct" is yet another example of administrative negligence (Pastor, 2007; Schmidt, 1976).

It has been my experience over the years that sociology and criminology can shed much light on various issues of administrative negligence. With regard to the question of negligent hiring, it is axiomatic that more sensitive jobs granting access to valuables or vulnerable individuals require more screening. On the other hand, it is against public policy and even the law in some states to automatically exclude an individual from employment consideration because of a prior conviction unrelated to the type of job sought. Variables such as age at conviction, years since conviction, and more current accomplishments should be considered. Current research on criminal redemption, for example, demonstrates that an individual with a certain type of prior conviction poses no greater risk than another potential employee once a specific number of crime-free years have passed (Blumstein & Nakamura, 2009). A knowledge of criminal desistance based on life events such as military service, marriage, and the assumption of other responsibilities should also inform employment decisions (Kazemian, 2007; Sampson & Laub, 1995; Warr, 1998).

Negligent training can be argued in cases of false arrest, use of force, and a variety of additional job failures with liability potential. Functional task analysis can generally identify the specific job responsibilities and skill sets required to perform employee responsibilities. With regard to security personnel, for example, forensic criminologists can readily access a significant literature on training for police roles and identify those skills which are particularly relevant to the job of a security officer. Just as importantly, task analysis can also identify those parts of a security officer's job which are not expected to parallel police actions.

Early sociologist Max Weber established many of the principles of bureaucratic management which apply with equal force today. Along with Henri Fayol, Weber taught the value of clear definitions of authority and responsibility. The importance of chain of command, unity of command, span of control, written records, and formalized policies, procedures, and rules can be readily explained where these questions and their answers can inform a civil jury on ultimate issues (Leonard & More, 2000; Souryal, 1981).

Negligent assignment and negligent entrustment are related issues. Assigning a security officer who is hard of hearing to a night watchman's role, or assigning a security officer with a limited command of English to a call taker and dispatcher position could have unfortunate consequences. Entrusting the master keys to an apartment building's residential units to a new employee who has not been vetted for such a responsibility is highly inappropriate. Likewise, providing a company vehicle to an employee with multiple drunk-driving convictions can lead to employer liability in the case of an accident.

Negligent retention occurs when an existing employee behaves badly on the job and is inadequately disciplined, thus encouraging more bad behavior, or is not fired even though the gravity of his act clearly called for his termination. A somewhat parallel situation occurs where a landlord becomes aware that a tenant in his apartment building poses a threat to other tenants, and no action to investigate or evict is taken by the

landlord. In both instances, a crime victim can argue that the employer (or landlord) was on specific notice of a dangerous situation which only he had special knowledge of and the particular power to rectify. The crucial analytical task for the forensic criminologist here would be to assess whether the employee's or the tenant's bad behavior should have foreshadowed a subsequent criminal attack. Of course, such an analysis must avoid the hindsight bias known as "omen formation" or retrospective presifting (Azarian, Miller, Mckinsey, Skriptchenko-Gregorian, & Bilyeu, 1999; Terr, 1983).

Negligent failure to direct involves the failure of management to establish and promulgate clear policies and procedures to guide the actions of its employees. Although security personnel must be allowed to exercise discretion in the performance of their duties, unbridled discretion can lead to disaster (Davis, 1969). Where possible, appropriate responses to likely scenarios must be anticipated and communicated to line personnel. Although some line personnel may resent management incursion into their day-to-day decision making, an organization's need for fairness and consistency in dealing with its constituency is paramount. This is particularly so in the administration of both private and public systems of justice.

The above seven examples of administrative negligence are not meant to be static and all inclusive. As society evolves, so too will the public and organizational behavior which is considered "reasonable under the circumstances." Thus, new forms of negligence are likely to arise, and forensic criminologists must be cognitively flexible in order to assess these possibilities. For example, some jurisdictions have entertained the notion of "negligent referral," where management provides an employee with a good character reference in order to rid itself of him even though the employee may be dangerous to others (Ashby, 2004; Belknap, 2001). This has happened in cases of pedophilic school teachers and violent corporate administrators. The consequences of such questionable actions in terms of both human suffering and legal liability can be severe.

FC in Police and Corrections Litigation

Legal Backdrop

Over the past four decades, there has been a substantial increase in the number of lawsuits filed against municipal police departments and county sheriffs' offices. Although many government jurisdictions have countenanced a weakening of their sovereign immunity defenses and courts have been quite receptive to civil rights violation claims under Title 42, Section 1983, of the US Code, suing individual police officers and their departments still remains a formidable task. However, state court liability caps and the prospect of guaranteed attorney fees in civil rights cases have encouraged a certain amount of this federal litigation (Stafford, 1986).

Plaintiffs sue in federal court primarily for Fourth, Eighth, and Fourteenth Amendment violations and in state courts for tortious actions. While the Prison Litigation Reform Act of 1996 made frivolous litigation by prison inmates more difficult, conditions of confinement and other civil rights cases continued to be filed on a regular basis. Although forensic criminologists are retained to address policy and practices of police and corrections personnel, an understanding of the legal issues to be prosecuted or defended should inform their participation without impacting on their opinions (Kappeler, 2006; Ross, 2009; Silver, 1995). As a forensic criminologist rather than a lawyer, it is my intention to focus herein on agency policy and the behavior of police and corrections personnel rather than on the legal implications. Still, the importance to a forensic criminologist of understanding the legal environment in which he or she may be working is not to be discounted.

Lawsuits against police officers are inevitable for two major reasons: criminals do not wish to be interfered with, and they do not want to be in jail. Hence, conflict with police and corrections officers will ensue, and conflict is at the heart of litigation. I do note, however, that law enforcement

officers (LEOs) are often enough sued by law-abiding citizens who have a profoundly different opinion about the propriety of police actions than the officers themselves may have.

Twelve high-risk, critical police tasks are frequently linked to litigation against police departments and sheriffs' offices. Police pursuits, use of force, care of prisoners, searches and seizures, off-duty conduct, and sexual misconduct by officers have all been the cause of litigation. Special operations such as high-risk warrant service and dealing with mentally ill citizens have also been the source of lawsuits (Ryan, 2009b; Schultz, 2010). It has been my experience that virtually every one of these causes of action will also include a failure to train argument. In recent years, I have also seen an increase in lawsuits against police involving investigative, interrogation, and eyewitness identification practices generated by instances of wrongful conviction. Faulty "scientific" evidence claims are increasingly associated with such miscarriages of justice (Forst, 2004; Moriarty, 2010; Pyrek, 2007; Scheck, Neufeld, & Dwyer, 2000).

Corrections officers and their employers, whether county sheriffs or state prison systems, also face a set of recurring legal issues. Custody suicides and other deaths allegedly resulting from faulty medical care remain salient sources of litigation. So, too, are classification problems and failure to prevent assault on inmates. Use of force in custody settings can also lead to litigation as do policies pertaining to strip and cavity searches, nutrition, mail, and religious worship (Ryan, 2009a).

Certainly no forensic criminologist is expected to master the technical aspects of all the above police and corrections practices. In fact, for a number of lawsuits, forensic criminology may not be particularly relevant. Whether a particular type of handcuff or caliber of ammunition should have been used or issues concerning inmate food quality will have less to do with criminology and more to do with technology and food science. Nevertheless, wherever there are behavioral antecedents or consequences pertinent to police and corrections technology, there may be an opportunity for social science input. Ultimately, forensic criminology is more directly involved in evaluating the impact of criminal justice policy on behavior and the impact of behavior on criminal justice policy. Forensic criminologists are, first and foremost, social and behavioral scientists whose true clients are the courts and not the agencies or attorneys who have retained their services.

A Sampling of Causes of Action Against Law Enforcement Officers

FC is by no means a static enterprise. The nature of litigation against police agencies tends to shift as a result of controlling court decisions. When I first started my practice, it seemed that lawsuits were filed on a regular basis against police agencies whose officers had pursued eluding vehicles; and these vehicles caused death or injury to innocent motorists and pedestrians. Some very intriguing research by Alpert and Dunham (1990) had pointed out that 33 % of pursuits resulted in accidents and that a number of these pursuits were not felony related, at least initially. As national research proved a broader understanding of the nature of police pursuit policies (Kennedy, Homant, & Kennedy, 1992), there was an increasingly intense national debate about the wisdom of police pursuits. Some scholars pointed out that many felons had been apprehended in what started out as mere traffic stops and others pointed out that restricting certain pursuit practices would only increase the ultimate risk to the public. For example, any policy limiting police pursuit speeds to, say, 85 mph would only encourage eluders to go 100 mph. Forbidding police from following an eluder down a one-way street the wrong way would encourage eluders to look for one-way streets. Much of this debate seemed to end, however, when the US Supreme Court decided in *County of Sacramento v. Lewis* (1998) to limit a police agency's liability largely to cases where the officer's car strikes a victim rather than the eluder's car striking a victim. As a result, rarely do I receive a call from either a plaintiff's attorney or a defense attorney on matters pertaining to police pursuits.

On the other hand, there seems to be a noticeable increase in lawsuits claiming police officers suffocated an arrestee by placing too much weight on his back in their attempt to control him. These claims pertained to "positional asphyxia" or "compression asphyxia" and were enabled by early research into the phenomenon (Reay, Fligner, Stilwell, & Arnold, 1992). More recent research seems to call into question the whole notion of positional asphyxia and suggests instead that many arrest-related deaths are the result of a cocaine-induced "excited delirium" (Chan, Vilke, Neuman & Clausen, 1997; DiMaio & DiMaio, 2006; Ross & Chan, 2006). Because death by asphyxia and death by heart arrhythmia are difficult to distinguish at autopsy, the whole question of medical examiner competency and prejudices now comes into play. Not surprisingly, where medical professionals are granted great discretion in deciding manner of death (homicide by police, accidental overdose, a suicide by overdose, or even a natural death), there will be ample opportunities for attorneys to argue otherwise (Timmermans, 2007). While forensic criminologists may contribute little in court to the resolution of these debates, they can certainly forewarn client attorneys about what arguments may likely ensue (Robison & Hunt, 2005). Related to these death and use of force cases are questions about the police handling of persons with mental illness (PMI) or emotionally disturbed persons (EDP). Due to the deinstitutionalization of the mentally ill after *O'Connor v. Donaldson* (1975), police will often encounter disturbed individuals in a variety of circumstances calling for some sort of intervention. Where death or injury occurs during this intervention, ensuing litigation may argue that police tactics were iatrogenic and inappropriate for the situation. Forensic criminologists can assess these tactics in light of what is known about the violence potential of the acutely mentally ill. Given the complexities of this subject, further discussion is deferred to more specialized treatises (Cordner 2006; Miller, 2006; Teplin, 2000).

In recent years, the phenomenon of "suicide by cop" has attracted the attention of criminological researchers (Kennedy, Homant, & Hupp, 1998; Lord, 2004; Violanti & Drylie, 2008). There are some individuals who wish to die but do not have the means or the fortitude to pull the trigger. By purposefully maneuvering a police officer into a situation where he thinks his life is in danger, a suicidal individual can force an officer to kill him. There is certainly a defense to a charge of extensive force inherent in this scenario (Flynn & Homant, 2000).

Although some causes of action will tend to come and go, generic use-of-force issues are likely to remain a common cause of action because the use of force is so central to the police role (Bittner, 1970). Criminologists have contributed much to the academic study of police use of force (Alpert & Fridell, 1992; Fyfe, 1988; Geller & Toch, 1995) and are also able to make a forensic contribution as well. Police are expected to overcome unlawful resistance to their legitimate actions but must do so within the boundaries of reasonableness. As a measure of what is reasonable, criminologists utilize various versions of a "use-of-force continuum" wherein legitimate police responses to subjects' levels of resistance are graphically detailed in many publications (Gillespie, Hart, & Boren, 1998; Hemmens & Atherton, 1999; Kinnaird, 2003; Patrick & Hall, 2005). Guidance in when to use what level of force is provided by these continua although the placement of intermediate levels of force can vary from one tactical expert to another. Criminologists are not necessarily expected to detail the precise mechanics of force, as there are defense and control tactics experts who will do that. Rather, the criminologist can search for agency patterns, or their absence, and can provide comparative and historical perspective on the force-related policies and practices of the department or agency involved in litigation.

A Sampling of Causes of Actions Against Corrections Officers

As is true with litigation pertaining to police and law enforcement, the corrections function tends to generate lawsuits which may vary in nature

over succeeding years. Until the demise of the "hands off" doctrine, the courts were reluctant to peer behind the walls of our jails and prisons. Particularly since *Estelle v. Gamble* (1976), however, forensic criminologists and penologists have been called upon to investigate the quality of jail and prison health care throughout the USA (Kerle, Stojkovic, Kiekbusch, & Rowan, 1999; Vaughn, 2001; Vaughn & Carroll, 1998; Vaughn & Smith, 1999). The Eighth Amendment's provision against cruel and unusual punishment extends not only to health care but to psychiatric care as well. Thus, should an inmate die because he was not provided reasonable medical attention, the decedent's estate can sue for a constitutional violation in federal court and for gross negligence in a state court. Should an inmate die by his own hand, litigation arguing that his or her mental health needs were not met is likely to ensue. From 2000 to 2007, 8,097 jail inmates died in custody. Of this number, 2,361 died due to suicide (Noonan, 2010). Given the importance to a free society of custody death accountability, there is a growing legal and criminological literature addressing death in custody.

Custody suicide is a statistically rare event given that about 500 prisoners may die each year out of an eligible population of 2.2 million state and county prisoners and over 14 million arrestees each year (Glaze, 2010; Mumola, 2005). However, courts have found repeatedly that officials must respond to the mental health care needs of individuals determined to be suicidal or, at the very least, take steps to prevent them from completing the act. Early research by Hayes (1983) called national attention to the problem and was followed by several attempts at further delineating characteristics of the suicidal inmate (Kennedy & Homant, 1988; Knoll, 2010; Lester & Danto, 1993). More recent scholarship has clearly established the parameters of the problem and, due to the focused attention of our nation's criminal justice professionals, the rate of jail suicide across the country has declined significantly. Nevertheless, several problems remain which continue to make carceral suicides and their attendant litigation an ongoing area of practice for forensic criminologists.

One of the biggest reasons for the continued tragedy of custody suicide is that suicide is not possible to predict (Large, 2010; Murphy, 1984; Pokorny, 1983). Notwithstanding booking and screening interviews designed to identify suicide potential, some newly admitted prisoners who had denied suicidality will kill themselves. Others with significant psychiatric histories pass their time in custody without incident. Because suicide watch is in itself quite stressful and possibly iatrogenic, mental health workers may eventually take an inmate off suicide precautions. In fact, many inmates tire of the boredom, lack of activity, and constant surveillance and will plead to be returned to general population. Some eventually kill themselves there and, even though the decision to return them to a normalized routine may have been right at the time, their ultimate death could still lead to litigation. Unfortunately, custody suicide remains an issue within any corrections system even though much study and effort have been expended to deal with this problem.

Because of limited income or lifestyle choices, many inmates come into custody in very poor health. Alcohol withdrawal syndrome may be masked by other symptoms, traumatic organ failure may be misread as acute intoxication, and psychiatric decompensation with subsequent general health ramifications may go unrecognized. Forensic criminologists are not medical personnel but may be called upon to assess the extent to which corrections staff carried out those custody instructions reasonably directed by medical personnel. The adequacy of a sheriff's or warden's policies and procedures with regard to the provision of inmate access to competent medical care will thus be subject to review. Guiding but not determining evaluation efforts by forensic criminologists will be standards-related publications of the American Jail Association, the American Correctional Association, the National Commission on Correctional Health Care and the Commission on Accreditation for Law Enforcement Agencies, to name but a few.

Rape and sexual abuse remain a problem in some custody settings. Forensic criminologists will encounter from time to time instances where

a female arrestee had "voluntarily" engaged in a sex act with a lockup police officer or jail corrections officer. An agency may be liable for such reprehensible acts to the extent its policies and staffing created an environment in which such abuses were foreseeable or due to negligent personnel practices. Recently, the Michigan Department of Corrections paid $100 million to 500 female prisoners to settle a class action lawsuit dealing with systemic sexual abuse. Rape in male prisons remains an issue with sometimes devastating consequences, as first recognized judicially in *Farmer v. Brennan* (1994). The problem became so alarming that in 2003, the US Congress passed the Prison Rape Elimination Act to respond to prison sexual violence in correctional facilities (Neal & Clements, 2010). While prison rape may constitute a legitimate cause of inmate legal action, other legal theories, particularly "creative" theories of administrative wrongdoing, have been denied inmate plaintiffs in recent years. The Prison Litigation Reform Act of 1996 shrunk the number of new federal filings by inmates by over 40 %. Lawsuits must now be more focused and seek more narrowly drawn relief, and prisoners must exhaust all institutional administrative remedies before a federal lawsuit will be entertained (Schlanger, 2003).

As I have suggested consistently throughout this chapter, causes of action against private security, police, and corrections officers continue to evolve. Some litigation is curtailed by new higher court decisions while other litigation becomes possible either due to judicial propensities or changing social and political conditions. Depending on whether we are discussing lock-ups, jails, or prisons, strip searches may be improper for arrestees but not for inmates. Body cavity searches would seem appropriate for only high security units. Yet, cases arguing Fourth Amendment violations continue to be filed as correction agencies continue to do what seems to be in the best interests of institutional security sometimes in spite of judicial leanings (Collins, 2004).

In addition to conventional conditions of confinement cases, forensic criminologists should anticipate new causes of action or at least evolving nuances of old causes. Given the global concern over Islamist terrorism and revelations concerning prison conversions to radical strains, will corrections officials attempt to suppress "prislam" in order to combat future terrorism (Hamm, 2008; Kennedy, 2009)? Will this result in increasing numbers of First Amendment lawsuits arguing improper restrictions on inmates' abilities to practice their religion? Will courts eventually be required to distinguish between the tenets of a religion which are essentially spiritual in nature as opposed to those tenets which are really just political? Will institutions increasingly tolerant of homosexuality resist demands for same-sex marriage between inmates or provide for cohabitation of wedded convicts? I offer these questions not because I have an answer but because I wish to illustrate the evolving nature of correctional litigation. Needless to say, I have only touched on a few of the many correctional liability issues either presently undergoing litigation or certain to do so in the future.

Concluding Remarks on the Role of the Forensic Criminologist

Looking back over the past 25 or more years of my involvement in FC, I can say it has been somewhat of a lonesome experience. Few academic criminologists seem to fully realize the amount and variety of litigation to which the applied version of their multidisciplinary field of study can contribute. Many of those who do appreciate the magnitude of the enterprise simply wish to avoid courtrooms and are somewhat apprehensive of the judges and attorneys who run them. This hesitation is based on a fear of the unknown combined with a vague realization that, while the academic criminologist may be central to the classroom, he or she is but another witness in a courtroom controlled by powerful others. It is my hope this chapter can dissipate some of these concerns by illustrating the value and quantity of substantive knowledge a forensic criminologist can offer judge, jury, and attorneys as well. In my opinion, this knowledge can help judge and jury render their decisions more efficiently and can also help lawyers craft their arguments more tightly, secure

in the knowledge there is foundation in the social sciences for many of their arguments. In order to render such a service, however, the forensic criminologist would do well to better understand his or her role in the civil litigation process and the major case law which controls it.

A forensic criminologist may serve as a consulting expert whose main purpose is to act as a resource for plaintiff or defense attorneys, but the identity of a consulting expert need not be disclosed to opposing counsel. Some experts may be appointed by a judge to advise the court, but this practice is found more often in Europe than the USA. Such an expert can advise as to liability issues, standards of care, and causation and can help plan the discovery process. Consulting experts can also provide background on opposing experts and their likely arguments. Testifying experts do all of the above but are also expected to provide written reports, give deposition testimony, and testify at trial. Testifying experts should be aware of case law guiding admissibility of their testimony as found in *Frye v. United States* (1923), *Daubert v. Merrell Dow Pharmaceuticals, Inc.* (1993), and *Kumho Tire Co. v. Carmichael* (1999). Every courtroom criminologist should also come to a clear understanding of the distinction between an advocate and expert. He or she is the latter and not the former. Forensic experts should also become familiar with Federal Rules of Evidence-Rule 26, which lays out the criteria for expert reports.

Any criminologist starting off in the forensic arena should also review his earlier coursework in substantive and procedural criminal law in order to be comfortable with the investigative and prosecutorial history of the criminal act generating the litigation and the disposition of the offender. A reading of scholarly articles such as those authored by Bates and Frank (2010), Wise (2005), Mosteller (1989), and Saks and Faigman (2005) can reassure the testifying forensic criminologist that he or she is capable of providing the quality of opinions the courts find both relevant and reliable. As a practical matter, forensic criminologists would also benefit from reading about the courtroom experience of their close disciplinary cousins, the forensic psychologists (Brodsky, 1991, 2004) who have been frequent courtroom participants for many years now. Finally, although forensic work can be quite stressful due to shifting time demands, tight schedules, and sometimes contentious cross examinations, there is a satisfaction to be gained from an actual application of the criminological knowledge we have been for so long amassing. Most of my academic criminology colleagues prefer to remain on campus, and sometimes I wish I had stayed there as well. While I can only hope that my years of experience in the classroom have helped me in the courtroom, I know that my years of experience in the courtroom have helped me enormously in the classroom. And that has been, for me, the greatest reward.

Biography

Daniel B. Kennedy (Ph.D., Wayne State University) is a university professor and practicing forensic criminologist. Dr. Kennedy is Board Certified in Security Management and practices this specialty in three ways: academic publication, participation in litigation as an expert, and teaching. He is widely published in such journals as *Journal of Police Science and Administration, Journal of Criminal Justice, Justice Quarterly, Crime and Delinquency, Professional Psychology, Criminal Justice and Behavior, Security Journal*, *Security Management, Journal of Security Administration, Journal of Homeland Security and Emergency Management, and American Jails*. In addition, Dr. Kennedy frequently is called to court to testify in cases involving state police agencies, municipal police departments, and county sheriffs' departments. His testimony generally involves explaining to jurors the appropriate standards of care for the use of deadly force, vehicle pursuits, emergency psychiatric evaluations, prisoner health care, prevention of prisoner suicide, positional asphyxia/excited delirium, and "suicide by cop." Also, Dr. Kennedy evaluates numerous lawsuits concerning premises liability for negligent security in the private sector involving properties both in the USA and overseas. He specializes in crime foreseeability

issues, appropriate standards of care in the security industry, and analyses of the behavioral aspects of proximate causation. Although Dr. Kennedy taught forensic criminology at the University of Detroit Mercy for several years, he is currently teaching as an adjunct at Oakland University in Rochester, Michigan. He offers courses in profile and threat assessment and in homeland security through the university's criminal justice program.

References

Abadinsky, H. (1995). *Law and justice*. Chicago, IL: Nelson-Hall.

Alpert, G., & Dunham, R. (1990). *Police pursuit driving*. New York, NY: Greenwood Press.

Alpert, G., & Fridell, L. (1992). *Police vehicles and firearms*. Prospect Heights, IL: Waveland Press.

Altizio, A., & York, D. (2007). *Robbery of convenience stores*. Washington, DC: U.S. Department of Justice.

Anderson, P., & Winfree, L. (Eds.). (1987). *Expert witnesses: Criminologists in the courtroom*. Albany, NY: State University of New York Press.

Andrews, A. (1991). Social work expert testimony regarding mitigation in capital sentencing proceedings. *Social Work, 36*, 440–445.

Ashby, J. (2004). Employment references: Should employers have an affirmative duty to report employee misconduct to inquiring prospective employers? *Arizona Law Review, 46*, 117–149.

Azarian, A., Miller, T., Mckinsey, L., Skriptchenko-Gregorian, V., & Bilyeu, J. (1999). Trauma accommodation and anniversary reactions in children. *Journal of Contemporary Psychotherapy, 29*, 355–368.

Bartol, C., & Bartol, A. (2008). *Introduction to forensic psychology* (2nd ed.). Thousand Oaks, CA: Sage.

Bates, N., & Frank, D. (2010). Premises security experts and admissibility considerations under *Daubert* and *Kumho*: A revised standard. *Suffolk Journal of Trial & Appellate Advocacy, 15*, 179–208.

Baumeister, R. (2001, April). Violent pride. *Scientific American*, 96–101.

Belknap, J. (2001). Defamation, negligent referral, and the world of employment references. *Journal of Small and Emerging Business Law, 5*, 113–134.

Bilek, A., Klotter, J., & Federal, R. (1981). *Legal aspects of private security*. Cincinnati, OH: Anderson.

Bittner, E. (1970). *Function of the police in modern society*. Washington, DC: U.S. Department of Health, Education and Welfare.

Blumstein, A., & Nakamura, K. (2009). Redemption in the presence of widespread criminal background checks. *Criminology, 47*, 327–359.

Bottom, N. (1985). *Security/loss control negligence*. Columbia, MD: Hanrow Press.

Brodsky, S. (1991). *Testifying in court: Guidelines and maxims for the expert witness*. Washington, DC: American Psychological Association.

Brodsky, S. (2004). *Coping with cross-examination and other pathways to effective testimony*. Washington, DC: American Psychological Association.

Buchman, J. (2007). The effects of ideology on federal trial judges' decision to admit scientific expert testimony. *American Politics Research, 35*, 671–693.

Cale, E., & Lillienfeld, S. (2006). Psychopathy factors and risk for aggressive behavior. *Law and Human Behavior, 30*, 51–74.

Canter, D. (2010). *Forensic psychology*. Oxford: Oxford University Press.

Carrington, F., & Rapp, J. (1991). *Victims' rights: Law and litigation*. New York, NY: Matthew Bender.

Cartwright, D. (2002). *Psychoanalysis, violence and rage-type murder*. New York, NY: Bronner-Routledge.

Cattaneo, C. (2006). Forensic anthropology: Developments of a classical discipline in the new millennium. *Forensic Science International, 165*, 185–193.

Chan, T., Vilke, G., Neuman, T., & Clausen, J. (1997). Restraint position and positional asphyxia. *Annals of Emergency Medicine, 30*, 578–586.

Clarke, R., & Bichler-Robertson, G. (1998). Place managers, slumlords and crime in low-rent apartment buildings. *Security Journal, 11*, 11–19.

Cohen, L., & Felson, M. (1979). Social change and crime rate trends: A routine activity approach. *American Sociological Review, 44*, 588–608.

Collins, B. (2004). *Jail and prison legal issues: An administrator's guide*. Hagerstown, MD: American Jail Association.

Connolly, D., Price, H., & Read, J. (2006). Predicting expert social science testimony in criminal prosecutions of historic child sexual abuse. *Legal and Criminological Psychology, 11*, 55–74.

Cordner, G. (2006). *People with mental illness*. Washington, DC: U.S. Department of Justice.

County of Sacramento v. Lewis, 53 U.S. 833 (1998)

Crabbe, A., Decoene, S., & Vertommen, H. (2008). Profiling homicide offenders: A review of assumptions and theories. *Aggression and Violent Behavior, 13*, 88–106.

Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993).

Davis, K. (1969). *Discretionary justice*. Baton Rouge: Louisiana State University Press.

Denenberg, R., & Braverman, M. (1999). *The violence-prone workplace*. Ithaca, NY: Cornell University Press.

Dietz, P. (1986). Mass, serial and sensational homicides. *Bulletin of the New York Academy of Medicine, 62*, 477–491.

DiMaio, T., & DiMaio, V. (2006). *Excited delirium syndrome: Cause of death and prevention*. Boca Raton, FL: CRC Press.

Duhart, D. (2001, December). Violence in the workplace, 1993–1999. Bureau of Justice Statistics Special Report, 1–12.

Eck, J. (2003). Police problems: The complexity of problem theory, research and evaluation. *Crime Prevention Studies, 15*, 79–113.

Ellis, Z. (2006). *Avoiding liability in premises security* (6th ed.). Atlanta, GA: Strafford.

Erickson, R. (1998). *Convenience store security at the millennium*. Alexandria, VA: National Association of Convenience Stores.

Estelle v. Gamble, 429 U.S. 97 (1976).

Farmer V. Brennan, 511 U.S. 825 (1994).

Felson, R. (1982). Aggression management and the escalation of aggression and violence. *Social Psychology Quarterly, 45*, 245–254.

Felson, M. (1995). Those who discourage crime. *Crime Prevention Studies, 4*, 53–66.

Felson, M., & Boba, R. (2010). *Crime and everyday life* (4th ed.). Thousand Oaks, CA: Sage.

Felson, R. B., & Staff, J. (2010). The effects of alcohol intoxication on violent versus other offending. *Criminal Justice and Behavior, 37*, 1343–1360.

Flynn, T., & Homant, R. (2000). Suicide by police in section 1983 suits: Relevance of police tactics. *University of Detroit Mercy Law Review, 77*, 555–578.

Forst, B. (2004). *Errors of justice*. New York: Cambridge University Press.

Forsyth, C. (1998). The use of the subculture of violence as mitigation in a capital murder case. *Journal of Police and Criminal Psychology, 13*, 67–75.

Fox, J., & Levin, J. (2007). *The will to kill: Making sense of senseless murder* (3rd ed.). Boston, MA: Allyn & Bacon.

Fradella, H., & Brown, K. (2007). The effects of using social scientific rape typologies on juror decisions to convict. *Law & Psychology Review, 31*, 1–19.

Frye v. United States, 293 F. 1013 (D.C. Cir 1923).

Fyfe, J. (1988). Police use of deadly force: Research and reform. *Justice Quarterly, 5*, 165–205.

Gaensslen, R., Harris, H., & Lee, H. (2008). *Introduction to forensic science and criminalistics*. New York, NY: McGraw-Hill.

Geller, W., & Toch, H. (1995). *And justice for all: Understanding and controlling police abuse of force*. Washington, DC: Police Executive Research Forum.

Gillespie, T., Hart, D., & Boren, J. (1998). *Police use of force*. Kansas City, Missouri: Varro Press.

Glaze, L. (2010, December). Correctional populations in the United States, 2009. Bureau of Justice Statistics Bulletin (pp. 1–8).

Graham, K. (1999). *Safer bars: Assessing and reducing risks of violence*. Toronto: Center for Addiction and Mental Health.

Graham, K., Bernards, S., Osgood, D., & Wells, S. (2006). Bad nights or bad bars? Multilevel analysis of environmental predictors of aggression in late-night, large-capacity bars and clubs. *Addiction, 101*, 1569–1580.

Graham, K., & Homel, R. (2008). *Raising the bar: Preventing aggression in and around bars, pubs and clubs*. Portland, OR: Willan.

Greenfield, L. (1998). *Alcohol and crime*. Washington, DC: U.S. Department of Justice.

Hamm, M. (2008, October). Prisoner radicalization: Assessing the threat in U.S. correctional institutions. *NIJ Journal*, 14–19.

Hannon, L. (1992). *The legal side of private security*. Westport, CT: Quorum Books.

Hart, M., & Secunda, P. (2009). A matter of context: Social framework evidence in employment discrimination class actions. *Fordham Law Review, 78*, 37–70.

Hayes, L. (1983). And darkness closes in…A national study of jail suicides. *Criminal Justice and Behavior, 10*, 461–484.

Hazelwood, R., & Burgess, A. (Eds.). (1999). *Practical aspects of rape investigation* (2nd ed.). Boca Raton, FL: CRC Press.

Hemmens, C., & Atherton, E. (1999). *Use of force*. Lanham, MD: American Correctional Association.

Holmes, R., & Holmes, S. (2000). *Mass murder in the United States*. Upper Saddle River, NJ: Prentice-Hall.

Homant, R., & Kennedy, D. (1995). Landholder responsibility for third party crimes in Michigan: An analysis of underlying legal values. *University of Toledo Law Review, 27*, 115–147.

Homant, R., & Kennedy, D. (2003). The crisis-prone organization as a factor in workplace aggression. *Security Journal, 16*, 63–76.

Horwitz, A. (1990). *The logic of social control*. New York, NY: Plenum Press.

Hughes, E. (2009). Mitigating death. *Cornell Journal of Law and Public Policy, 18*, 337–390.

Hughes, K., Anderson, Z., Merleo, M., & Bellis, M. (2008). Alcohol, nightlife and violence. *Addiction, 103*, 60–65.

Hunter, R. (1999). Convenience store robbery revisited: A review of prevention results. *Journal of Security Administration, 22*, 1–13.

Inbau, F., Aspen, M., & Spiotto, J. (1983). *Protective security law*. Boston, MA: Butterworths.

Jacobs, B. (2004, April). The undeterrable offender. *For the Defense*, 16–19.

Jacobs, B. (2005, June 18–20). When is crime foreseeable? *For the Defense,* 57–58.

Jenkins, P., & Kroll-Smith, S. (1996). *Witnessing for sociology: Sociologists in court*. Westport, CT: Praeger.

Kaminsky, A. (2008). *A complete guide to premises security litigation* (3rd ed.). Chicago, IL: American Bar Association.

Kappeler, V. (2006). *Critical issues in police civil liability* (4th ed.). Long Grove, IL: Waveland Press.

Karmen, A. (2010). *Crime victims* (7th ed.). Belmont, CA: Wadsworth Cengage Learning.

Kazemian, L. (2007). Desistance from crime. *Journal of Contemporary Criminal Justice, 23*, 5–27.

Keeton, W., Dobbs, D., Keeton, R., & Owen, D. (1984). *Prosser and Keeton on torts* (5th ed.). St. Paul, MN: West Publishing Company.

Kennedy, D. (1984a). A theory of suicide while in police custody. *Journal of Police Science and Administration, 12*, 191–200.

Kennedy, D. (1984b). Contributions of the social sciences to security education and practice. *Journal of Security Administration, 7*, 7–24.

Kennedy, D. (1990). Facility site selection and analysis through environmental criminology. *Journal of Criminal Justice, 18*, 239–252.

Kennedy, D. (1993). Architectural concerns regarding security and premises liability. *Journal of Architectural Planning and Research, 10*, 105–129.

Kennedy, D. (1994, January–February). Rethinking the problem of custodial suicide. *American Jails*, 41–45.

Kennedy, D. (2006). Forensic security and the law. In M. Gill (Ed.), *The handbook of security* (pp. 118–145). New York: Palgrave Macmillan.

Kennedy, D. (2009). Terrorists behind bars. *American Jails, 23*, 31–39.

Kennedy, D., & Homant, R. (1988). Predicting custodial suicides: Problems with the use of profiles. *Justice Quarterly, 5*, 401–416.

Kennedy, D., Homant, R., & Homant, M. (2004). Perception of injustice as a determinant of support for workplace aggression. *Journal of Business and Psychology, 18*, 323–336.

Kennedy, D., Homant R., & Hupp, R. (1998, August). Suicide by cop. *FBI Law Enforcement Bulletin*, 21–27.

Kennedy, D., Homant, R., & Kennedy, J. (1992). A comparative analysis of police vehicle pursuit policies. *Justice Quarterly, 9*, 227–246.

Kennedy, D., & Hupp, R. (1998). Apartment security and litigation: Key issues. *Security Journal, 11*, 21–28.

Kennedy, D., & Sakis, J. (2008). From crime to tort: Criminal acts, civil liability and the behavioral science. In D. Canter & R. Zukauskiene (Eds.), *Psychology and law* (pp. 119–142). Aldershot, UK: Ashgate.

Keppel, R. (2006). *Offender profiling* (2nd ed.). Mason, OH: Thomson.

Keppel, R., & Walter, R. (1999). Profiling killers: A revised classification model for understanding sexual murder. *International Journal of Offender Therapy and Comparative Criminology, 43*, 417–437.

Kerle, K., Stojkovic, S., Kiekbusch, L., & Rowan, J. (1999). A rejoinder to Vaughn and Smith's practicing penal harm medicine in the United States: Prisoners' voices from jail. *Justice Quarterly, 16*, 897–906.

Kinnaird, B. (2003). *Use of force*. Flushing, NY: Looseleaf Law Publications.

Kline v. 1500 Massachusetts Avenue, 439 F.2d 477 (D.C. Cir. 1970).

Knoll, J. (2010). Suicide in correctional settings: Assessment, prevention, and professional liability. *Journal of Correctional Health Care, 16*, 188–204.

Kuhlman, R. (1989). *Safe places? Security planning and litigation*. Charlottesville, VA: The Michie Company.

Kulis, C. (1983, December). Profit in the private presentence report. *Federal Probation*, 11–15.

Kumho Tire Co. v. Carmichael, 526 U.S. 137 (1999).

Large, M. (2010). No evidence for improvement in the accuracy of suicide risk assessment. *The Journal of Nervous and Mental Disease, 198*, 604.

Leo, R. (2008). *Police interrogation and American justice*. Cambridge: Harvard University Press.

Leonard, V., & More, H. (2000). *Police organization and management* (9th ed.). New York: Foundation Press.

Lester, D., & Danto, B. (1993). *Suicide behind bars: Prediction and prevention*. Philadelphia, PA: The Charles Press.

Loomis, D., Marshall, S., Wolf, S., Runyan, C., & Butts, J. (2002). Effectiveness of safety measures recommended for prevention of workplace homicide. *JAMA: The Journal of the American Medical Association, 287*, 1011–1017.

Lord, V. (Ed.). (2004). *Suicide by cop*. Flushing, NY: Looseleaf Law Publications.

Loveless, L. (Ed.). (2001). *Workplace violence: A report to the nation*. Iowa City: University of Iowa Injury Prevention Research Center.

Luckenbill, D. (1977). Criminal homicide as a situated transaction. *Social Problems, 25*, 176–186.

Marchi, T., Bradley, C., & Ward, K. (2009). *Forensic social work*. New York: Springer.

McManus, R., & O'Toole, S. (2004). *The nightclub, bar and restaurant security handbook* (3rd ed.). Swampscott, MA: Locksley Publishing.

Meloy, J. (1997). Predatory violence during mass murder. *Journal of Forensic Science, 42*, 326–329.

Miller, L. (2006). *Practical police psychology*. Springfield, IL: Charles C. Thomas.

Monahan, J., & Walker, L. (1988). Social science research in law: A new paradigm. *The American Psychologist, 43*, 465–472.

Monahan, J., & Walker, L. (2006). *Social science in law* (6th ed.). New York: Foundation Press.

Monahan, J., Walker, L., & Mitchell, G. (2008). Contextual evidence of gender discrimination: The ascendance of "social frameworks." *Virginia Law Review, 94*, 1715–1749.

Monell v. Department of Social Services, 436 U.S. 658 (1978).

Moriarty, J. (2010). Will history be servitude? The NAS report on forensic science and the role of the judiciary. *Utah Law Review*, 299–326.

Mosteller, R. (1989). Legal doctrine governing the admissibility of expert testimony concerning social framework evidence. *Law and Contemporary Problems, 52*, 85–132.

Mulkey, L. (2009). The sociologist as expert witness: A resource for resolving injustice in the case of personal injury. *Journal of Applied Social Science, 3*, 27–35.

Mumola, C. (2005, August). *Suicide and homicide in state prisons and local jails*. Bureau of Justice Statistics Special Report, 1–12.

Murphy, G. (1984). The prediction of suicide: Why is it so difficult? *American Journal of Psychotherapy, 38*, 341–349.

Neal, T., & Clements, C. (2010). Prison rape and psychological sequelae: A call for research. *Psychology, Public Policy, and Law, 16*, 284–299.

Noonan, M. (2010, July). *Mortality in local jails, 2000–2007*. Bureau of Justice Statistics Special Report, 1–20.

O'Connor v. Donaldson, 422 U.S. 563 (1975).

Ofshe, L. (1989). Coerced confessions: The logic of seemingly irrational action. *Cultic Studies Journal, 6*, 1–15.

Olson, W. (1991). *The litigation explosion*. New York: Truman Talley Books.
Page, J. (1988). *The law of premises liability* (2nd ed.). Cincinnati: Anderson.
Pastor, J. (2007). *Security law and methods*. Burlington, MA: Butterworth-Heinemann.
Patrick, U., & Hall, J. (2005). *In defense of self and others*. Durham, NC: Carolina Academic Press.
Perline, I., & Goldschmidt, J. (2004). *The psychology and law of workplace violence*. Springfield, IL: Charles C. Thomas.
Petherick, W., Turvey, B., & Ferguson, C. (2010). *Forensic criminology*. Amsterdam: Elsevier.
Pokorny, A. (1983). Prediction of suicide in psychiatric patients. *Archives of General Psychiatry, 40*, 249–257.
Portwood, S., & Heany, J. (2007). Responding to violence against women: Social science contributions to legal solutions. *International Journal of Law and Psychiatry, 30*, 237–247.
Pyrek, K. (2007). *Forensic science under siege*. Burlington, MA: Elsevier Academic Press.
Reay, D., Fligner, C., Stilwell, A., & Arnold, J. (1992). Positional asphyxia during law enforcement transport. *The American Journal of Forensic Medicine and Pathology, 13*, 90–97.
Richardson, J., Swain, K., Codega, J., & Bazzell, K. (1987). Forensic sociology: Some cautions and recommendations. *The American Sociologist, 18*, 385–393.
Rigakos, G. (2008). *Nightclub: Bouncers, risk, and the spectacle of consumption*. Montreal: McGill-Queen's University Press.
Roberts, J. (2007). Aggression in Hoboken, New Jersey: Don't blame the bouncers. *Journal of Drug Education, 37*, 429–445.
Robison, D., & Hunt, S. (2005). Sudden in-custody death syndrome. *Topics in Emergency Medicine, 27*, 36–43.
Rosen, L. (1977). The anthropologist as expert witness. *American Anthropologist, 79*, 555–578.
Ross, D. (2009). *Civil liability in criminal justice* (5th ed.). Cincinnati: Anderson.
Ross, D., & Chan, T. (Eds.). (2006). *Sudden deaths in custody*. Totowa, NJ: Humana Press.
Ryan, J. (2009a). *The law and best practices of successful jail/corrections operations*. Indianapolis: Public Agency Training Council.
Ryan, J. (2009b). *The law and best practices of successful police operations*. Indianapolis: Public Agency Training Counsel.
Saitz, R., & Naimi, T. (2010). Adolescent alcohol use and violence. *JAMA: The Journal of the American Medical Association, 304*, 575–577.
Sakis, J., & Kennedy, D. (2002, December). Violence at work. *Trial*, 32–36.
Saks, M., & Faigman, D. (2005). Expert evidence after *Daubert*. *Annual Review of Law and Social Science, 1*, 105–130.
Sampson, R. (2001). *Drug dealing in privately owned apartment complexes*. Washington, DC: U.S. Department of Justice.
Sampson, R., & Laub, J. (1995). *Crime in the making: Pathways and turning points through life*. Cambridge: Harvard University Press.
Scheck, B., Neufeld, P., & Dwyer, J. (2000). *Actual innocence*. New York: Doubleday.
Schell, B., & Lanteigue, N. (2000). *Stalking, harassment and murder in the workplace*. Westport, CN: Quorum Books.
Schlanger, M. (2003). Inmate litigation. *Harvard Law Review, 116*, 1557–1692.
Schmidt, W. (1976). Recent developments in police civil liability. *Journal of Police Science and Administration, 4*, 197–202.
Schultz, P. (2010, Winter). Liability management in smaller police departments. *Big Ideas for Smaller Law Enforcement Agencies*, 1–4.
Scott, M., & Dedel, K. (2006). *Assaults in and around bars* (2nd ed.). Washington, DC: U.S. Department of Justice.
Shearing, C., & Stenning, P. (1983). Private security: Implications for social control. *Social Problems, 30*, 493–506.
Sherman, L. (1989). Violent stranger crime at a large hotel: A case study in risk assessment. *Security Journal, 1*, 40–46.
Siegel, L. (2004). *Criminology* (8th ed.). Belmont: Wadsworth/Thomson.
Siegel, J. (2009). *Forensic science*. Oxford: Oneworld Publications.
Silver, I. (1995). *Police civil liability*. New York: Matthew Bender.
Smith, M. (1996, April). Crime prevention through environmental design in parking facilities. National Institute of Justice. Research in Brief, 1–11.
Smith, A. (2004). *Law, social science, and the criminal courts*. Durham, NC: Carolina Academic Press.
Souryal, S. (1981). *Police organization and administration*. New York: Harcourt Brace Jovanovich.
Stafford, A. (1986). Lawsuits against police: Reasons for the proliferation of litigation in the past decade. *Journal of Police and Criminal Psychology, 2*, 30–34.
Stark, J., & Goldstein, H. (1985). *The rights of crime victims*. New York: Bantam Books.
Suresh, G., & Vito, G. (2009). Homicide patterns and public housing. *Homicide Studies, 13*, 411–433.
Sutherland, E., & Cressey, D. (1978). *Criminology* (10th ed.). Philadelphia: J. B. Lippincott.
Tarantino, J., & Dombroff, M. (1990). *Premises security: Law and practice*. New York: Wiley.
Teplin, L. (2000, July). Police discretion and mentally ill persons. *NIJ Journal*, 9–15.
Terr, L. (1983). Time sense following psychic trauma. *The American Journal of Orthopsychiatry, 53*, 244–261.
Thoresen, J. (1993). The sociologist as expert witness. *Clinical Sociology Review, 11*, 109–122.
Timmermans, S. (2007). *Postmortem: How medical examiners explain suspicious deaths*. Chicago: University of Chicago Press.
Turvey, B. (2008). *Criminal profiling* (3rd ed.). Burlington, MA: Academic.

Vaughn, M. (2001). Nursing with prisoners: The practice of caring, forensic nursing or penal harm nursing. *Advances in Nursing Science, 24*, 47–64.

Vaughn, M., & Carroll, L. (1998). Separate and unequal: Prison versus free-world medical care. *Justice Quarterly, 15*, 3–40.

Vaughn, M., & Smith, L. (1999). Practicing penal harm medicine in the United States: Prisoners' voices from jail. *Justice Quarterly, 16*, 175–231.

Violanti, J., & Drylie, J. (2008). *Copicide*. Springfield, IL: Charles C. Thomas.

Voigt, L., & Thornton, W. (1996). Sociology and negligent security: Premises liability and crime prediction. In P. Jenkins & S. Kroll-Smith (Eds.), *Witnessing for sociology: Sociology in court* (pp. 167–193). Westport, CN: Praeger.

Warr, M. (1998). Life-course transitions and desistance from crime. *Criminology, 36*, 183–216.

Welsh, B., & Farrington, D. (2003). Effects of closed-circuit television on crime. *The Annals of the American Academy of Political and Social Science, 587*, 110–135.

Welsh, B., & Farrington, D. (2009). *Making public places safer: Surveillance and crime prevention*. New York: Oxford University Press.

Wenzel, S., Tucker, J., Hambarsoomian, K., & Elliott, M. (2006). Toward a more comprehensive understanding of violence against impoverished women. *Journal of Interpersonal Violence, 21*, 820–839.

Winfree, L., & Anderson, P. (1985). Pragmatism and advocacy in criminal justice expert witnessing. *Justice Quarterly, 2*, 213–236.

Wise, R. (2005). From Price Waterhouse to Dukes and beyond: Bridging the gaps between law and social science by improving the admissibility standard for expert testimony. *Berkeley Journal of Employment and Labor Law, 26*, 545–581.

Wolfgang, M. (1974). The social scientist in court. *The Journal of Criminal Law and Criminology, 65*, 239–247.

Wrightsman, L. (2001). *Forensic psychology*. Belmont, CA: Wadsworth/Thomson Learning.

Wrightsman, L., & Fulero, S. (2005). *Forensic psychology* (2nd ed.). Belmont, CA: Thomson Wadsworth.

Yablonsky, L. (2008). *Gangs in court* (2nd ed.). Tucson: Lawyers and Judges.

Youngs, D. (2009). Investigative psychology in the courtroom: Beyond the offender profile. *Journal of Investigative Psychology and Offender Profiling, 6*, 1–9.