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Preponderant Relationships: Violent Crime, Premises Security Litigation, and Low-Income Housing

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ABSTRACT

This paper advances knowledge of the ways in which criminological research can assist the courts in rendering legal decisions. To do so, we examine case examples from premises security litigation involving low-income housing developments. We describe the investigative tasks of a premises security lawsuit, address the challenges of examining and explaining a criminal assault, and show how criminological scholarship can point to the importance of place management in suppressing or facilitating crime in low-income housing developments. We examine three preponderant relationships – offender and victim, security standards and proximate causation, and place management and crime opportunities – to provide insight into the translation of criminological knowledge into actionable legal outcomes. We address the nexus of environmental criminology and premises security litigation to strengthen the scientific foundation of criminological research and improve the quality of forensic social scientific research in the legal system.

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Introduction

The purpose of this paper is to describe the ways in which scholars and researchers can use criminological research and knowledge to assist courts in adjudicating legal disputes. Courts may hold apartment owners and property managers negligent for failure to maintain reasonable security measures in the face of foreseeable criminal events against residents and invitees. In order to prove negligence, a plaintiff must establish by a preponderance of evidence that (1) the defendant owed a duty to provide reasonable security, (2) the defendant breached the duty to provide reasonable security, (3) this breach of duty was the proximate cause of the plaintiff's (4) injury. Proximate causation requires the victim of an assault to show a close connection between the assault and the business owner's failure to exercise reasonable care (Kennedy and Hupp 1998; Gotham and Kennedy 2019: chapters 4 and 5). Failure to assess risk factors and to adjust security measures in the face of a foreseeable risk of criminal harm can expose a commercial or residential facility to litigation. As one attorney has advised, "[e]specially in cases of murder and rape, evidence of corporate indifference in the face of obvious signs of criminal activity in the area can lead to runaway jury verdicts" (Ford 2011:24).

Apartment negligent security cases are heterogeneous and fall into several different types and categories. Rape and sexual assault incidents generally take place within the dwelling unit itself, but a substantial number can occur within the common areas of the building and on the grounds themselves. Inoperable lighting and video surveillance cameras, and faulty security gates and locks can also become major points of contention (Kennedy and Hupp 1998). Some cases may address the actions and inactions of security personnel, who may not have been properly trained, or who took

inappropriate action in a violent crime situation. Plaintiffs may accuse security guards and security companies of lax supervision and thereby argue that supervision was inadequate at the apartment complex.¹ Plaintiffs may focus on the apartment's and security company's policies and procedures to argue that the landlord or landowner did not have security policies and procedures in place or the security personnel did not follow those procedures.²

In this paper, we engage scholarship in Environmental Criminology to address three relationships that can be central aspects of a forensic investigation and major factors in determining the legal outcome of a case. These relationships are offender and victim, security standards and proximate causation, and place management and crime opportunities. We refer to these as preponderant relationships due to paramount and essential importance in establishing and connecting the four elements of a tort that we mentioned above. For decades, the United States civil court system has required that plaintiffs demonstrate the four elements of a tort with a preponderance of evidence (Callen 2017; Kennedy 2006; Orloff and Stedinger 1982). Preponderance does not mean single sources of otherwise decontextualized data presented in a case. Nor does it mean a simple count of the number of witnesses, documents, or arguments and facts in favor of one side. Rather, preponderance is a relational concept that refers to the totality of evidence that is likely to persuade a jury that the defendant acted negligently. Preponderance refers to the evidentiary standard necessary for a victory in a civil case. Proving a proposition by the preponderance of the evidence requires demonstrating that the proposition is more likely true than not true. Preponderance of the evidence standard is the weight of the evidence, meaning more than 50% proof. Therefore, under this standard, the burden of proof is met when the party with the burden convinces the fact finder that there is a greater than 50% chance that the claim is true. Our investigation of preponderant relationships highlights the importance of investigating the interactions and connections among different actors, forms of knowledge, and decision-making to help a judge and jury understand complex criminological issues and nuanced information in a case.

Environmental criminology, low-income housing, and premises security litigation

Scholarship in environmental criminology is centrally concerned with the interaction of criminal incidents and the socio-spatial context in which they occur (Weisburd et al. 2016). Crime is an event that involves the intersection of “offenders, victims or criminal targets, and laws in specific settings at particular times and places” (Brantingham and Brantingham 1991:2; Cohen and Felson 1979). While crimes can happen anywhere, much research has demonstrated that such events are not randomly and evenly distributed across the built environment but are highly concentrated at specific places including street segments, land-uses, properties, and commercial businesses (Andresen, Linning, and Malleeson 2017; Brantingham and Brantingham 1981, 1991:2). In any given city, most places of any type are not at high risk for criminal events. Rather, “only a small proportion of any specific type of facility will account for the majority of crime and disorder problems experienced or produced by the group of facilities as a whole” (Clarke and Eck 2007:4). This crime concentration pattern is so common that Wilcox and Eck (2011) term it the “iron law of troublesome places,” and Weisburd et al. (2016) refer to it as the “law of crime concentration at places.”

Various theories have been developed over the decades to explain this nexus of place and crime including routine activities theory, crime pattern theory, environmental design theory, and place management theory (for an overview, see Wilcox and Cullen 2018). Despite the diversity of these theories, what is common among them is that criminal offenses are dependent upon situational factors

¹*Steward v. Stratus Security Services, Inc.*, No. E048630 (Cal. Ct. A Oct. 19, 2010); *Kuti v. Sera Sec. Servs.*, 182 A.D.3d 401, 121 N.Y.S.3d 263 (A Div. 2020); *Cullen v. Henry Phipps Plaza E., Inc.*, 2021 N.Y. Slip Op 30,003 (Sup. Ct. 2021).

²*Kline v. 1500 Massachusetts Avenue Apartment Corp.*, 439 F.2d 477 (D.C. Cir. 1970); *Saelzler v. Advanced Group 400*, 23 P.3d 1143, 107 Cal. Rptr. 2d 617, 25 Cal. 4th 763 (2001); *Jacqueline S. v. City of New York*, 81 N.Y.2d 288, 598 N.Y.S.2d 160, 614 N.E.2d 723 (1993); *Timberwalk Apartments, Partners, Inc. v. Cain*, 972 S.W.2d 749 (Tex. 1998); *Leslie G. v. Perry and Associates*, 43 Cal. A 4th 472, 50 Cal. Rptr. 2d 785 (Ct. A 1996); *Mitchell v. Ridgewood East Apartments, LLC*, 205 So. 3d 1069 (Miss. 2016).

and crime is patterned according to the location of criminogenic environments. “Crime will be concentrated around crime opportunities and other environmental features that facilitate criminal activity” (Wortley and Townsley 2016:2). Thus, a major purpose of crime analysis is to identify these crime opportunities and environmental facilitative factors and explain how they interact to influence the etiology of a crime event at a particular time and place. More recently, criminological research has focused on the ways in which contextual level factors interact with place characteristics and facility place management to explain crime events (Gilchrist et al. 2019; Tillyer 2015). In some cases, crime is highly concentrated at places that lack adequate place management practices broadly defined as the organization of space, regulation of conduct, control of access control, acquisition of resources (Madensen and Eck 2008; for an overview, see; Eck, Linning, and Herold 2023).

Decades of research by criminologists, sociologists, and security researchers have shown that the relationships among low-income housing developments, crime offending and victimization, and place management are dynamic, complex, and defy easy categorization. On the one hand, criminological and sociological research has found that a high percentage of renter-occupied housing units is an indicator of residential instability which is a positive and significant predictor of neighborhood crime rates (Konkel, Ratkowski, and Tapp 2019; Shaw and McKay 1942). Violent crime is less likely to occur in neighborhoods that have high rates of owner-occupied housing (Barton, Valasik, and Brault 2021). Residents in rental housing are often transient and thus less likely to know one another compared to homeowners living in single-family homes. In rental housing, community watch groups can be more difficult to create and sustain because many residents are not permanent and therefore less vested in the physical and social wellbeing of the neighborhood than residents of owner-occupied housing (Bennett, Holloway, and Farrington 2008; Meredith and Paquette 1992; Rohe and Stewart 1996). Street segments with large apartment complexes (five or more units) generally have more crime than those with small apartment complexes and duplexes, and crime is less likely to occur on streets with detached single-family units compared with other types of housing. Thus, “[i]t may be that the anonymity associated with these larger complexes is more conducive to crime,” as noted by Hipp and colleagues (Hipp, Kim, and Kane 2019:1588).

Criminological research has found that low-income housing complexes can be places of violent criminal offending, especially in places with lax security measures and inattentive place management. Sociological research has shown that some low-income housing developments can concentrate poverty which can then operate as a contextual level neighborhood characteristic that increases victimization risk to violent crime (DeLuca, Garboden, and Rosenblatt 2013; Kucheva 2013). Research has shown a positive relationship between the location of government subsidized housing in cities and crime hot spots (Galster et al. 2002; McNulty and Holloway 2000; Roncek, Bell, and Francik 1981; Suresh and Vito 2009). Opportunities for involvement in gang violence and drug sales, among other kinds of offending, are more readily available to youth who reside in low-income housing developments than to those who live elsewhere (Popkin et al. 2000; Venkatesh 2000). Low-income housing residents also experience increased levels of criminal victimization relative to people who do not live in low-income housing developments (DeFrances and Smith 1998; DeKeseredy et al. 2003; Griffiths and Tita 2009; Holzman, Hyatt, and Dempster 2001; Kling, Liebman, and Katz 2005). Some low-income housing developments can be poorly maintained and display visible signs of disorder – trash and litter. In criminology, broken windows theory has long maintained that spaces of disorder and dilapidation can attract crime and deter use by legitimate users (Kelling and Coles 1997; Lewis and Maxfield 1980; Lewis and Salem 2017; Ross and Mirowsky 1999; Skogan and Maxfield 1980; Vrij and Winkel 1991; Wilson and Kelling 1982). On the one hand, a dirty and unkempt space can give criminals the idea that here is a space where they can get away with their illegal behaviors. On the other hand, research suggests that the routine maintenance of areas on and around a property can discourage criminal offending and reduce crime (Atlas 2013; Fennelly and Perry 2018).

Over the decades, criminological research has shown that the connections between violent crime and low-income housing are contingent, context dependent, and place specific. That is, different premises will have different levels of crime risk due to neighborhood-based, locational and situational

characteristics that can intensify or lessen the criminogenic nature of some apartment complexes. “Low-income housing developments are not uniformly criminogenic, and both development characteristics and neighborhood conditions are relevant for understanding crime in low-income housing developments,” as noted by Tillyer and Walter (2019):984 Environmental design theories such as crime prevention through environmental design (CPTED) and defensible space suggest that the on-site criminal opportunities can be significantly reduced through enforced access control measures, enhanced surveillance opportunities, clear territorial reinforcement, and active image and space maintenance and management (Cozens 2008; Jeffery 1971; Newman 1972; Taylor and Harrell 1996). Importantly, the crime reduction effectiveness of physical design and defensible space measures are not equally effective in all socio-spatial contexts. Rather, their effectiveness can vary by neighborhood conditions and how they are operated and implemented by property management (Gilchrist et al. 2019). In short, the success of specific crime prevention measures is not only likely to vary by time and place but also by different locational and socio-spatial conditions (Hodgkinson, Andresen, and Saville 2018).

We can add that specific place management strategies regarding tenant selection, tenant retention, and strong and consistent enforcement of rules of conduct can reduce opportunities for on-site crime and deviance (Eck 1998; Eck, Linning, and Herold 2023). There is nothing inherently specific to a low-income housing development per se that creates an especial temptation and opportunity for violence or other criminal misconduct. Freedman and Owens (2011) quasi-experimental study of the effect the federal government’s Low-Income Housing Tax Credit (LIHTC) program on crime found that “low-income housing development in the poorest neighborhoods brings with it significant reductions in violent crime that are measurable at the county level” (Freedman and Owens 2011:115). Other studies have suggested that housing and blight remediation of buildings and land, reducing alcohol availability, improving street connectivity, and providing green housing environments can reduce violent crimes in areas populated by low-income housing (Kondo et al. 2018). Thus, claims and assertions about the violent propensity of any property should be evaluated on a case-by-case basis since violence is not a universal feature of all apartment complexes populated by low-income people. Indeed, violent crime varies within low-income neighborhoods, whether measured at the level of census tracts or even at the level of block groups. Quoting Sampson (2013:7): “crime varies within smaller places too – most apartments on a high burglary street are not burglarized, for example. Within an apartment complex, crime risk varies by apartment and so on almost like an infinite regress problem.”

In short, criminological research has documented that low-income housing projects are not universally high crime places or sites of omnipresent danger. Rather, variations in criminal offending in low-income housing developments are likely an outcome dependent upon the interaction of place management characteristics, neighborhood characteristics, and other socio-spatial and contextual level features. Below we briefly present three cases of premises security litigation involving violent crime in low-income housing developments. In each of these different cases we explain how forensic criminological research can aid an investigator in understanding the etiology of a crime event and thereby assist courts in rendering a legal decision as to liability for negligent security.

Preponderant relationship: offender and victim

The first author was retained by an attorney to consult on a case involving the murder of a young man at a low-income housing development in a southern US city. In this case, Mr. Tom Brown (a pseudonym) was shot seven times and killed by unknown assailant(s) in his apartment unit on a sunny afternoon.

The wife of Mr. Brown brought suit against the apartment complex property owners and management company claiming these defendants were negligent because they failed to control and monitor the apartment complex; refused and failed to repair, remediate, and address unsafe conditions that existed at the apartment complex, such as inoperable security cameras, nonfunctioning security gates,

and broken artificial lighting; and failed to employ full-time security personnel to monitor the defendants' property and protect residents of the apartment complex.

Before arriving at any opinions in this matter, the first author reviewed the Complaint, Requests for Admission, Interrogatories, and Requests for Production of Documents; the local police department calls-for-service (CFS) and narrative incident reports; assorted plaintiff and defense production of documents; crime scene photographs and documents; plaintiff's expert's report; apartment management company documents; publications of the state-level apartment association publication; and performed a site visit. The forensic investigation also relied on scholarly journals, books and online newspaper articles and media reports of the incident, security industry reports, and peer-reviewed academic publications and criminological literature.

In this case, the first author opines since the violent incident was not reasonably foreseeable and the management of low-income housing apartment complex was reasonable under the circumstances, then there was no causal relationship between the injury-causing violent crime and the alleged condition of the property or the actions or inactions of the defendants. To support this opinion, the first author examined offender-victim relationships and investigated whether the incident that formed the basis of the suit was a victim-targeted criminal attack or a location-based crime. Below are paraphrased statements from the forensic report:

In this case, the plaintiff's expert has not provided evidence to show how exactly the offender(s) exploited a security shortcoming to commit the violent crime against Mr. Brown. That is, since I have not seen evidence as to how any assailants entered or exited the apartment complex, it would be pure conjecture and speculation to assume that either a broken access gate, inoperable security cameras, or insufficient lighting or a combination of two or more of these alleged security shortcomings was a substantial factor in causing the injury.

Although security measures such as gates, lights, and guards may lessen the general probability of crime occurring on the premises, I have not seen evidence in this case that such measures would have succeeded in thwarting the criminal act and changing the outcome. Since the incident happened during the day in the afternoon, broken artificial lighting would not have been a substantial factor in the cause of the crime since visibility would not have been an issue.

Concerning the alleged inoperable gate, I have not seen evidence that the assailant entered through a broken gate, or that a gate was the only means of entry into the apartment complex, where the murder took place. The assailants might have followed some tenant in while the gate was open. They could also have climbed over a closed gate. The apartment complex also had an open portal/entrance on the street near the office through which the attacker(s) might have come.

Concerning the alleged failure to repair inoperable security cameras, it is not clear how one or more functioning security cameras would have been effective in preventing the crime against Mr. Brown. Had there been a security camera trained on Mr. Brown's unit, the shooting would have been completed long before a guard, alerted by what the camera showed, would have arrived on the scene.

There is insufficient evidence to conclude that the assailant was an unauthorized intruder into the premises, as opposed to one who had authorized access (like a resident, employee, or guest of a resident of the apartment complex). If the assailant was an invitee or tenant of the complex, who would have been authorized to enter the premises, any increase in the security – e.g., locked vehicular gates, functioning artificial lighting, or operational video surveillance – would not have prevented the attack. A perimeter boundary has little to no crime prevention value against a violent crime committed by a resident, employee, or invitee. No amount of perimeter security to keep people out will prevent an attack by someone authorized to be in.

A major question is whether the crime involving Mr. Brown was the product of a location-based crime or a victim-targeted crime. A victim-targeted crime is one in which the offender specifically selects a person to victimize rather than the physical location of the victim. A location-based crime is one in which an offender deliberately targets a property and then randomly selects a stranger on the property to victimize. Location-based crimes can reflect, offender's perception of low risk of detection and/or apprehension, high opportunity to commit a violent act, and low degree of effort to carry out the crime (Clarke 1980, 1983). The selection of victim(s) to target comes after the selection of the property to

target. Some active shooter events are illustrative of a location-based crime to the extent that the assailant chooses the place to attack and then randomly targets people to kill at that place.

Whether we are studying active shooter incidents or other crimes, criminological research has long known that offenders do not target places randomly, spontaneously, or by happenstance. Offender decision-making is often purposive, rational, and goal specific. Some offenders may case the place and methodically choose to attack people there while other offenders may target places based on familiarity and awareness (Brantingham and Brantingham 1981, 1993, 1999). In some cases, “[a] distinct journey-to-crime case is created for each offender-offense combination, and an offender’s selection of crime location is modeled as a discrete choice among a limited set of alternative locations” (Wilcox and Cullen 2018:130).

In addition, the offender search literature has documented that “offenders often make decisions in a multi-staged manner that follows the hierarchical nature of opportunity structures: Robbers and burglars, for example, select a neighborhood that is attractive for offending and then a specific target” (Tillyer 2015:115; Wilcox, Quisenberry, and Jones 2003). Tillyer notes that “[o]nce an area is selected, offenders choose specific targets based on cues about the effort, risk, and reward associated with the potential target” (115). Research on armed robbers, for example, reveals that target selection is based on offender perceptions about place and victim vulnerability, and the likelihood of victim compliance (Jacobs 2010:519). “Similarly, burglars select targets based on the perceptions of vulnerability including “appearance of valuables, property maintenance, occupancy, alarms, dogs, and proximity to other houses, among other things” (115) (see also Coupe and Blake 2006; Wilcox, Gialopsos, and Land 2013; Wright and Decker 1997)

Location-based crimes and victim-targeted crimes are heterogeneous and can display much variety and complexity. Actions associated with a location-based crime or a victim-targeted crime can be dissimilar and cannot be easily classified or compartmentalized. That is because the two concepts are not separate, autonomous, or mutually exclusive. Whether a crime is location-based or victim-targeted must be evaluated on a case-by-case basis. Moreover, assessing whether a violent incident is victim-targeted or location-based is not always an either-or question and it is not akin to evaluating a perpetrator’s motive or “profile.” Questions concerning the motive or intent of a perpetrator are the purview of the trier of fact (e.g., judge and jury). Some courts have prohibited experts from opining as to a perpetrator’s intention or motive in selecting or targeting a place or person to victimize (for an overview, see Zinober 2015:328–9).

There are three major indications that the violent act against Mr. Brown was a victim-targeted attack. First, on the day of Mr. Brown’s murder, the assailants did not target any other apartment units or individuals on the property. The offenders entered the property and victimized one person in one apartment unit and then exited the property as soon as they had finished firing seven shots to kill Mr. Brown. Burglary or robbery does not appear to be a motive because nothing was missing from the unit.

Second, Mr. Brown’s apartment unit was not easily accessible, and it is likely that the offenders had to spend considerable effort locating and getting to it. The apartment unit was behind a large steel staircase that obscured one’s sight, making it difficult to access and reach. The partially concealed apartment unit suggested that the offenders did not randomly and impulsively target this particular unit but knew in advance the person living there and when he would be home.

Third, the high number of gun shots (7) fired to kill Mr. Brown suggests that this violent crime was not a burglary gone wrong or the spontaneous result of a suddenly escalating argument. A reasonable inference was that this violent act in broad daylight in a hard to access apartment unit was the execution of a specific victim by one or more highly motivated and malicious offenders who knew the resident. Criminologists describe “overkill” as violence well beyond what was needed to kill a victim and suggest that such actions are often impulsive, sadistic and personal (Chopin and Beauregard 2021; Solarino et al. 2019; Trojan, Salfati, and Schanz 2019).

The forensic testimony concerning whether a crime is a location-based opportunistic crime or a victim-targeted crime can aid a jury in evaluating the essential issue of causation. A victim-targeted

violent act is not necessarily a foreseeable outcome of the condition of a property but, rather, could be a product of preexisting animosities. In protecting assets, organizations typically deploy crime prevention and security measures to reduce crime opportunities and increase the effort an offender would have to expend to commit a crime. In general, the harder the offender has to work to commit a crime, the higher the risk of exposure and apprehension.

Tillyer and Eck (2011) and Tillyer (2015:116) point out that “the techniques for situational crime prevention have largely been operationalized to prevent crimes by unknown offenders.” Highly motivated violent offenders may not be deterred by conventional security measures such as lighting, video surveillance, security personnel, physical barriers, access control measures, intrusion detection systems (e.g., alarms) (Kennedy and Homant 1997). Such measures are also not likely to be effective in deterring the behaviors of an impulsive, highly emotional person who specifically targets a person they know. Thus, any alleged deficiencies or defects in the apartment’s level of physical security typically do not cause such acquaintance-related offenses to happen. Rather, the cause lies in the victim-offender relationship, which is not derivative of the conditions of a property but is *sui generis*, personal, and unpredictable.

Preponderant relationship: security standards and proximate causation

The second author was hired by an attorney to investigate a case involving allegations that the actions and/or inactions of a security guard were causally related to the death of an apartment complex resident. Specifically, Brian McBade [a pseudonym] was a security officer (SO) employed by New World Protection Security NWPS [a pseudonym] and assigned to the Bay Street [a pseudonym] apartment complex. One night, while making required rounds at the apartment building, SO McBade came across resident Larry Jackson [a pseudonym] lying on the floor in the hallway in front of his apartment unit. As Mr. Jackson was unresponsive, SO McBade immediately called 911 and requested medical assistance. SO McBade remained with him until the arrival of fire department paramedics/EMTs. The responding unit allegedly had trouble entering the gated community and locating the apartment where SO Brewster was waiting with the ailing Mr. Jackson. The administrator of Mr. Jackson’s estate brought suit against the apartment complex and NWPS arguing that NWPS’s conduct led to a delay in reaching Mr. Jackson and thus, subsequently, to his death.

Before arriving at any opinions in this matter, the second author reviewed the Complaint, Answers to Interrogatories, and Requests for Production, NWPS general orders and post orders, a map of the property, and NWPS contracts with the apartment complex. Also examined were the guard logs, incident reports, local Fire Department EMS report, Medical Examiner’s reports and the toxicology report. The second author also listened to the Fire Department dispatch audio tape; inspected the property; and read depositions taken of the property manager, former property manager, former assistant property manager, president of the property ownership investment firm, property supervisor, owner of NWPS, medical examiner, and several fire department personnel and supervisors.

In this case, the plaintiff’s theory presumes that Mr. Jackson could have been saved by the arrival a few minutes earlier of appropriate medical help. The forensic investigation addresses claims that that security guard violated security standards and that such a violation was the proximate cause of the plaintiff’s alleged harm. Below is an excerpt from the forensic report.

A responsibility to staff the guardhouse at all times, if such a responsibility existed, would have been owed by apartment ownership and management and not by NWSP. [President of the defendant management company] notes in his deposition that the lease agreement indicates that guardhouse staffing is up to management to decide and that the guardhouse would not be staffed continuously. [He] also states emphatically that the number of guards and guard hours in place at the [apartment complex] at the time of this incident were sufficient and he would not have approved more. [He] also states that he decides not only the number of guard hours but where they will be positioned.

Security researchers and practitioners have long recognized that place managers make the decision as to the number of guards, guard hours, scope of work, and where and when guards will be posted.

“Place managers are individuals who are physically and legally able to prevent crime in proprietary places, in addition to their designated functions within these places,” as noted by Douglas and Welsh (2020:99). Place managers “can be apartment complex owners, store managers, bar owners, parking lot attendants, or other individuals who have ownership claims to a place or are employed by that place” (99). “A place manager’s primary concern is not crime prevention, but rather to ensure the smooth functioning of their respective place through the management of its social and physical characteristics” (99).

Security guard companies may suggest recommendations pertaining to security guard duties, hours, and overall scope of work, of course. But the standard and custom is that property owners and/or managers make the ultimate decision since they have ownership and management claims to the place. In essence, any guard company’s responsibility is to follow its contract and to fulfill its post orders. These post orders are derived directly from the requirements and preferences dictated by the client (here, the apartment complex). As the forensic report notes:

In my opinion, NWPS complied with its contractual obligations as well as its Post Orders and any responsibility it owed. It is important to note that the apartment complex manager confirms that NWPS was in compliance with its contract on [date of the incident] . . . NWPS was specifically required by its client to leave the guardhouse every hour in order to patrol the entire property. At the time of the incident, SO McBade, in accordance with the contract, was away from the guardhouse performing one of his rounds because this was exactly what NWPS was hired to do.

Mr. McBade’s cell phone call log from the time of the incident, as well as the cell phone records of the property manager, indicate that Mr. McBade came upon Mr. Jackson at approximately 7:10 p.m. Immediately, at 7:11 p.m., SO McBade called the property manager and 911. Further, EMS records confirm that their personnel reached Mr. Jackson by 7:14 p.m. Therefore, three minutes or less elapsed between the time of Mr. McBade’s 911 call and EMS contact with the patient. Even if Mr. McBade proceeded immediately to the guard booth upon calling 911, it would have taken appreciable time to arrive there from the scene.

There are several important issues raised in his case that speak to the relationship between security standards and proximate causation. First, evidence provided in this case indicates that NWPS had no responsibility or authority to decide on the mechanisms by which emergency vehicles were to gain entry to the property. Deposition testimony in this case reflected uncertainty about the fire department’s method for entering gated communities. It is unclear whether a universal gate code was known to first responders or whether fire and EMT personnel were familiar with the property and how to enter. Apparently, no city ordinances addressed this issue. The forensic investigation notes that NWPS was in no position to dictate that buildings should be visibly numbered or that maps of the property should have been on display. These were clearly property management functions and not within the purview of any security guard contract.

Second, an important concern raised in this case was whether NWPS and SO McBade should have stayed with Mr. Jackson or gone outside to wait and look for responding emergency vehicles. Plaintiff’s experts contended that SO McBade and NWPS violated relevant and applicable security standards when McBade stayed with Mr. Jackson to care for him. As the forensic report responds:

Such a decision was completely discretionary in nature. Either option would have constituted a reasonable response. That McBade did not want to leave a helpless and vulnerable man who was not conscious and who was lying in a hallway, possibly to die alone, was reasonable. It was also reasonable to believe that a call taker or dispatcher would have called McBade back if there was trouble making entry to the property, since this is a common practice among emergency responders. That said, SO McBade, after checking Mr. Jackson’s pulse, trying to revive him, and making the necessary phone calls, was about to proceed to the gate to meet any first responders arriving in response to his 911 call. As he was about to do so, he observed EMS responders walking into the building. Apparently, they had already been dispatched based on Mr. Jackson’s call and were making entry to the property perhaps about the time SO McBade was first attending to Mr. Jackson.

Third, since there was no evidence of any specific violation of any security standard, then there is no causal relationship between the actions and/or inactions of NWPS and the harm alleged by the plaintiff. In this case, nobody in apartment management had previously faulted Mr. McBade’s

discretionary actions in the past, and there is no reason to believe he abused his discretion in this instance. Indeed, one property manager and another property supervisor both confirmed that Mr. McBade complied with all contractual obligations on the day of the incident. Likewise, the president of the property ownership company, who was not involved in the day-to-day operation of the apartment complex, conceded that he could not say with any degree of reasonable certainty whether NWPS violated any contractual obligations on the day in question. Moreover, responding EMT and responding paramedic personnel were unable to testify that if they had arrived and found a guard waiting for them at the gate they would have been able to save Mr. Jackson.

Finally, plaintiff experts testified in this case that NWPS breached several security standards of care but could not provide any citations to any specific security standards published by premises security standards promulgating organizations. Claims were made that NWPS failed to make emergency plans for the property; failed to inform the apartment complex management how to interact with police and fire agencies; and failed to conduct a formal security survey of the property. These are security options, of course, but they are not specific standards promulgated by ASIS International, the International CPTED Association (ICA), or any law enforcement body or state or local governments for contract security companies. More importantly, relevant and applicable security standards can be defined in a variety of ways. They can be the customs and practices commonly followed within an industry. They can also be defined by state and local ordinance, industry publications and trade journals, practices unique to a particular geographic area, or by the handbook or policy and procedure manual of a company (Gotham and Kennedy 2019:96).

The key factor in evaluating causality is whether any violation of a security standard was causally related to the plaintiff's alleged harm. Plaintiffs may be able to make a strong argument for causation if they can identify any security inadequacies and breaches of security standards that contributed directly to the crime. Whether a defendant's actions or lack of actions was a proximate cause of a plaintiff's injury is the purview of the jury. "But a forensic criminologist's investigation will reveal the factual background that will allow the fact finder to determine causation and liability" (Gotham and Kennedy 2019:98). In the case above, the forensic investigator opines that since there was no violation of any security standard or any security breach, then there was no causal link between any actions and/or inactions by the defendant and the death of Mr. Jackson.

Preponderant relationship: place management and crime opportunities

This case involves the murder of Brian James [a pseudonym], a 65 year-old resident by several other residents in Tall Homes [a pseudonym] apartment, a public housing project designed for disabled and senior citizens located in a southern U.S. city. According to case materials, Mr. James was being extorted for money by a prostitute named Penelope Lenna [a pseudonym] and a 33 year old parolee and drug user residing in the building named Steve Wallace [a pseudonym]. Another parolee living in the building, a 46 year old ex-convict and drug user named Harry Elmo [a pseudonym] was also strongly implicated in the murder. Apparently, Wallace and Elmo would periodically "borrow" money from Brian James. When he finally refused to give them any more money, they gained entry into James' apartment by having Ms. Lenna knock on the door, whereupon they entered and beat, stabbed, and strangled this senior citizen. The forensic investigation in this case focuses on the limitations, problems, and security deficiencies of the tenant selection and tenant retention rules and practices of the local public housing authority. Below are paraphrased excerpts of the forensic report.

It is well known among property managers that subsidized multi-occupancy apartment complexes and public housing facilities must be very closely managed due to the attendant social problems often associated with poverty ([Freeman and Botein 2002]). Because of their age and diminishing physical and sometimes cognitive capacities ([Brank 2007]), people 65 and older are at increased risk for injury, illness, criminal attack, and murder during robbery ([Fox and Levin 1991; Lindquist and Duke 1982]). For these reasons, senior citizens are often housed in communities designed especially for them and where both their safety and security needs can better be met. Senior citizens and the physically handicapped are not incompatible tenants and do not present an internal

threat to each other due to their quieter lifestyles and physical limitations. They can be protected from external threats by physical security measures such as locks, fencing, alarms, security officers and such.

At some point in time, however, the Tall Homes Commission made a decision to place at the [apartment complex] younger tenants disabled by psychiatric disturbances or disorders, often complicated by substance abuse and criminal histories. . . . Although psychiatric disabilities do not automatically translate to crime, individuals with a psychiatric disorder are at a greater risk of committing crimes, particularly if there is attendant substance abuse ([Swanson et al. 1990]). Although public housing authorities are under no obligation to house those with a criminal history and should aggressively evict anyone posing a threat to other tenants ([Bryson and Youmans 1990]), the [housing authority] allowed individuals with criminal histories to become tenants if they did not have a new conviction within the three years prior to their application. Based on research conducted by [apartment staff and management], approximately 25% of Tall Homes' residents had criminal histories. [citation to depositions]

Based on police reports and the deposition testimony of Tall Homes' management as well as Detective McCloud [pseudonym], it appears there was a significant drug trafficking problem in this building. Where there is drug trafficking, there will be systemic crime (violence between dealers); economic crime (violence employed to get money to buy drugs); and psychopharmacological crime (violence caused by the effect of drugs on emotion and cognition) ([Goldstein 1985]). Mr. James' death was most likely caused by the last two forms of drug-related violence: economic and psychopharmacological violence. Poor tenant selection practices made this kind of crime problem foreseeable; and failure to evict, or negligent tenant retention, ensure the problem will continue.

The above excerpts provide insight into the importance of examining the ways in which place management activities can suppress or facilitate crime opportunities in low-income housing developments. Studies of crime concentration have suggested that landlords' management styles, specifically their tenant screening and property monitoring techniques, can impact risks of criminal offending and victimization (Clarke and Bichler-Robertson 1998; Eck and Madensen-Herold 2018). Gomory and Desmond's (2023) analysis of landlord strategies and crime concentration in Milwaukee notes that "[l]andlords who rigorously screen potential tenants and enforce rules of behavior at their properties can reduce the level of crime there, whereas those who neglect their properties, focusing only on whether they receive rent, can increase the crime rate" (271). For decades, government agencies such as the Department of Justice and real estate industry groups have advocated that property owners and managers adopt a responsible and concerted approach to refusing to retain tenants whose activities threaten their neighbors' well-being and rights to peaceful enjoyment of property (Campbell 2000; Sampson 2001; Webster and Connors 1992; Weisel 1990).

Mixed-age, intergenerational and multigenerational housing developments for senior citizens, working-age adults, and youths are found throughout the United States, Canada, the Netherlands, and the United Kingdom (Butts 2023; Katz and Kaplan 2022; Suleman and Bhatia 2021). In the United States, many of these government subsidized developments have dual aims of alleviating the isolation and loneliness of seniors and youth who find themselves alone in the world with limited income. These mixed-use developments also attempt to address deeper social problems such as ameliorating homelessness, hospitalizations, and suffering both physically and emotionally for the elderly and at-risk youth (United States Department of Health and Human Services 2023). Mixed-age developments have attracted support from nonprofit housing developers, mayors, governments, and the American Association of Retired Persons (AARP). Expanded low-income tax credits have offered incentives to developers who have increased building production and conversion of older apartments into new mixed-age and mixed-use developments. "Seniors in affordable apartments act as surrogate grandparents for children in rent-assisted units designed for families with multiple adopted children," thus addressing the inequalities of age segregation which the Urban Land Institute has called "a silent and growing problem in the United States of the 21st century" (Macht 2023).

Despite much fanfare over the ostensible benefits of mixed-age housing, our analysis of the above litigated case offers a cautionary lesson and suggests several ways in which such apartment complexes could become a locus for crime concentration if they are not responsibly and properly managed. Either by intent or lack of resources, the owner might allow the building or property to become littered and dilapidated, thus inviting vandalism or trespass. The property owner and/or manager might allow door locks to fall into disrepair or stop paying for a concierge or attendant at the main entrance, thus

allowing offenders easy access. Property management might stop regulating tenant selection rules or enforce rules of conduct, thus creating an opportunity for offenders to squat in an apartment, sell drugs, and harass legitimate users of the place (Wilcox and Cullen 2018:135).

In these scenarios, management failure to maintain the property, regulate conduct, control access, and enforce rule regarding tenant selection/retention could foster criminal opportunities and future litigation. In addition, apartment managers might become crime enablers who are indifferent about crime and do little to prevent initial or repeat victimization (Eck and Madensen-Herold 2018). Such situations and scenarios have not been unanticipated or unforeseen. As one attorney noted over a decade ago, “[o]ne of the fastest growing areas of litigation in the United States today is the proliferation of negligent security claims arising out of personal injuries or wrongful deaths that occur in and around government subsidized apartment complexes” (Ford 2011:21)

Conclusions

Evaluating a case of alleged premises liability for negligent security can be complex, complicated, and challenging. While cases are diverse, what is similar is that each case involves an act or event, its connection to a particular place, and the degree to which any actions and/or inactions on the part of the property owner and/or manager may have contributed to the plaintiff’s alleged harm. Preponderance of evidence refers to the relevant degree of certainty or standard of persuasion to establish claims and defenses. Preponderance of evidence is evidence that is more credible, convincing, reasonable, and probable than evidence offered in opposition to it. Examining and evaluating relationships between offender and victim, security standards and proximate causation, and place management and crime opportunities can assist the trier of fact (judge and jury) to understand the facts and evidence in a case. Examining these preponderant relationships can also help in the confirmation and/or disconfirmation of various assertions and, most important, help the court render a legal decision.

The cases and analyses we have presented in this paper help advance a previously unrecognized area of translational criminology – the application of criminological methods and theories to the forensic realm to assist the civil court system in rendering legal decisions. Much research has focused on the mechanisms to translate criminal research findings into applicable outputs, tools, programs, interventions, and actions in criminal justice practice (Forsyth 2014, 2016). These include dissemination, partnerships, influential peers, facilitators for learning about research, and rewards and incentives (Lum and Koper 2017:266; Telep 2024). The dissemination and application of criminological methods and empirical findings on the etiology of crime events to the civil and criminal court systems constitutes a burgeoning area of forensic criminology (Gotham and Kennedy 2019; Morewitz and Goldstein 2014).

One other dissemination mechanism is the debunking of expert testimony that relies on *ipse dixit* opinions to make case-specific claims regarding foreseeability, violation of security standards, and proximate causation. *Ipse dixit* opinions are conclusory statements made by an expert witness based solely on their own experience or status authority, without any supporting evidence or proof. Experts make *ipse dixit* statements when they assert that their professional background and/or experience tells them that a crime was foreseeable or that the defendant violated a security standard. *Ipse dixit* statements refer to a plaintiff’s critique of a defendant’s security measures with reference to abstract statements espoused by a security expert. Proof of foreseeability, violation of security standards, and proximate causation are then based on speculation, conjecture, and inferences unsupported by any case-specific evidence. The deployment of *ipse dixit* opinions are the antithesis of forensic criminology and related scholarly activities based on evidence-based research and the application of scientific methods.

An additional mechanism of translational criminology is the application of criminological theories in forensic investigation and court testimony to explain the etiology of a crime event related to a litigated case. A forensic investigator could use one or more of the following perspectives: routine activities theory, crime pattern theory, situational crime prevention, rational choice theory,

environmental design theory, and/or place management theory to help a jury understand the relevance of particular crime events in the assessment of crime risk and foreseeability. These perspectives could also be used to argue for the relevance of situational opportunities and help a jury understand both the distribution of crime in the area as well as the causes of a particular crime event. Here, a forensic criminologist could interpret extant scholarship to support or challenge a causal relationship between property conditions and a criminal's actions. The richness of criminological methods, theories, and perspectives offers much opportunity for skilled researchers, scholars, and practitioners to use criminological research to address real-world problems and translate criminological knowledge into actionable legal outcomes.

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