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Crime and Security Liability Concerns at Shopping Centers

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Introduction

Crime can be prevalent at large shopping centers. In-house and contract security organizations have responded by adopting unique security measures tailored to protect their properties from this criminal encroachment as well as legal liability. Governing through corporate security either on an in-house or on a contract level has become paramount in private industry such as shopping centers.[1] This chapter focuses on corporate security at shopping centers. We first examine the evolution and types of shopping centers. We then discuss the common elements and nature of security efforts, the nature and locations of crime, and the liability issues concerning shopping centers. Finally, we consider possible future directions of corporate security at shopping centers.

Evolution of shopping centers

In the US, it is sometimes claimed that the modern shopping center came into being in a Baltimore, Maryland, neighborhood in 1907 when a group of stores constructed off-street parking (Feinberg, 1960) for motorized vehicles and horse-drawn carriages. However, it is in the 1920s, when California supermarkets began serving as anchors to a group of small stores, that the true starting point of the modern-day shopping center emerged. These centers then grew at such a high rate that by 1960 there were 4,500 malls accounting for 14 percent of all retail sales. By 1987, that number ballooned to 16,400 malls and more than 50 percent of all retail sales (Feinberg and Meoli, 1991). The North American Main Street that served as the location where people would shop was decimated as a result of this shopping center proliferation.

In Great Britain too the town center's role as a major source of shopping and economic activity has declined. This has been termed the 'doughnut syndrome' where the development of shopping centers on the outside of town has left a blighted and desolate hole in its heart. In 1984, the total amount of retail sales acquired in all British High Streets was 59 percent, but in 1994 those retail sales dropped to 48 percent. A prime example of this decline is the town of Dudley, England. With the opening of the Merry Hill Shopping Centre in 1985 on the outskirts, followed by expansions and upgrades, Dudley's town center experienced a decline when 'big name' stores left for the more prosperous shopping center and were replaced with lower end stores. This process is called a 'consolidation of decline' whereby popular brand name stores are replaced with businesses that can be considered intrinsically problematic and contribute to town center decline (Beck and Willis, 1995). As a consequence, the perception that some shoppers have of the town center can become negative. For example, a study found that approximately 28 percent of shoppers at a town center were seriously concerned about violent crime, whereas approximately 8 percent of shoppers at a shopping center were so concerned (see Beck and Willis, 1995). Furthermore, compared to only approximately 20 percent of shopping center shoppers, 56 percent of town center shoppers believed quality of life issues, such as litter, were a serious issue. As suggested by the notorious broken windows policing thesis, a town center replete with rubbish and graffiti can signify to both shoppers and potential criminals a sense of social disorganization (Wilson and Kelling, 1983). A shopping center can contribute to the quality of life and economic well-being of an area with the consolidation of new jobs. However, there can be an iatrogenic effect when the adjacent town center experiences a steep decline in its quality of life and economic activity. Regardless of any public policy debate concerning the overall impact of shopping centers, they remain a major element of a community's social and economic life.

Shopping center types

Shopping centers have evolved from a group of adjoining stores representing a common theme that provided convenient shopping to large enclosed malls and upscale open-air centers with an eclectic array of services. The International Council of Shopping Centers created a typology that groups shopping centers into three main categories: (1) general-purpose; (2) specialized-purpose; and

(3) limited-purpose. General-purpose shopping centers include super-regional malls, regional malls, community centers, neighborhood centers, and strip malls. Super-regional malls are bigger in scope and offer a wider variety of stores than regional malls. Both feature enclosed buildings and large parking lots. Community centers offer general merchandise and apparel for shoppers and are often anchored by a supermarket. A community center is also a place where the shopper can find supermarkets, super drugstores, and discount department stores. Neighborhood centers differ slightly from community centers in that they cater to the 'day-to-day' needs of shoppers and do not include tenants who sell general merchandise, such as sporting good and home improvement stores. Strip malls include a row of attached retail stores with parking that is normally located directly in front of the stores.

Specialized-purpose centers include lifestyle centers, factory outlets, and theme/festival centers. Lifestyle centers contain upscale retail stores and outdoor dining and entertainment options. These centers also have sophisticated architectural designs and landscaping. Factory outlets are made up of several manufacturer and retail outlet stores. Theme/festival centers are usually located in urban areas where retailing and servicing activities are centered on some type of theme. These centers also can be mixed-use properties in that they contain entertainment, office, residential, and retail developments. As the name suggests, mixed-use properties are diverse and therefore can produce security challenges. For example, mixed-use properties invite the intermingling of people who visit the property for differing reasons. Because of this, a group of teenagers patronizing a mixed-used property purely for social reasons may come into conflict with tenants and residents of the property. However, public and private advocates of mixed-use properties claim that the presence of more people for longer periods on these properties can deter crime and enhance personal safety (Pettersson, 1997). Finally, limited-purpose properties include retail-type establishments located within commercial airports.

Common elements of a shopping center security program

Just as shopping centers vary, so too do their security operations. A small strip mall may offer little more than a clean, crisp, well-maintained physical environment to display a strong managerial interest in safe, peaceful operations. A large regional mall, however, may maintain a fully staffed in-house or contract contingent of security personnel supported by marked vehicles, CCTV, moonlighting sworn police officers,

electronic guard tour recording systems, and more. The point here is that in-house or contract security programs must be tailored to fit unique requirements of each property.

Shopping centers may draw customers from different socioeconomic populations, be located in diverse neighborhoods, have a different overall tenant mix and have previously experienced various security and safety incidents. Accordingly, potential measures used to secure these properties will vary. Nevertheless, we can offer some general observations about elements commonly encountered at regional malls, which probably constitute the sort of facility most shoppers think of when contemplating 'a day at the mall.' Once again, a given mall's security program should be designed for the unique needs of governing through corporate security at that particular mall.

Mall management is responsible for all common areas, up to the merchant's lease line. Individual retailers are responsible for security and safety within their own walls and leave the security of all corridors, service hallways, and parking areas to the mall's security department. Mall security may be proprietary in nature (direct employees of the mall itself) or may consist mostly of contracted private security guards. The backbone of any security program, however, is the mall security officer who patrols common area corridors and parking facilities. The security officer is expected to respond to shopper inquiries and needs, respond to security incidents, and watch for safety issues such as spills that could lead to 'slip and fall' conditions. Mall security may also respond to security incidents within a retailer's premises, although many large retailers or anchor stores in malls have their own security personnel. Mall security officers (in the US) are licensed and trained according to state law; however, many security personnel have undergone advanced and in-service training that generally exceeds state requirements.

Although no widely applicable standards require enclosed malls to deploy CCTV, more and more properties use cameras to record incidents, monitor problem and accident-prone areas and capture emergency situations once they become known to command center operators. The effectiveness of CCTV in deterring crime is by no means established (Taylor, 2010). While there is no doubt security officers can effectively diffuse or otherwise deal with crime and conflict situations, their ability to deter crime by random patrol alone remains unsubstantiated, a situation which, unfortunately, is true for the public police in the community surrounding the mall itself too (Lee et al., 1999; Telep and Weisburd, 2012).

Some mall security operations employ electronic guard tour systems involving the scanning of bar codes by hand wands. This allows supervisors to track the course of a security officer as he or she walks the patrol route. Where such electronic tools are unavailable, security officers continue to rely on daily logs and incident reporting to apprise mall management of security and safety issues.

Generic physical security practices are also expected of well-run mall security operations (Garcia, 2001; Baker and Benny, 2013). Lighting quality in terms of uniformity ratios and lighting quantity in terms of foot-candles are to be present in modern centers. Overgrown foliage is to be cut back. Appropriate signage aids in way-finding throughout parking garages and also advises young people of appropriate rules of conduct. Merchant information programs and security awareness training for all mall employees are also part of modern mall security. All mall employees are expected to serve as the 'eyes and ears' of the security department.

This discussion of modern mall security practices is by no means exhaustive.[2] Many measures have not been included, and those discussed are not necessarily universal. A given security objective also may be achieved in more than one way. For example, visual inspection of an area may be accomplished through physical patrol, CCTV monitoring or virtual patrol, mirrors, and natural surveillance. While the 'what' of what must be done is fairly standard, the 'how' varies substantially. No matter their ultimate choices, mall management teams across the country generally strive to provide a safe and secure shopping experience by following many practices discussed above.

Nature of security efforts at shopping centers

Efforts to prevent crime at shopping centers are important when considering they have millions of visitors annually. Even though shopping centers can be considered cities unto themselves, they are still connected to the larger 'socio-circulatory system' via major thoroughfares which provide for the convenient access and egress of visitors (Felson, 1987). The relationship that shopping centers have to the socio-ecological environment is important because shopping centers can be designed to allow for aesthetically pleasing architectural designs and permeable borders, sometimes ignoring how such layouts will relate to crime 'probability,' site 'vulnerability,' and 'target criticality' (Kennedy, 1992). To deal with these diverse issues, security departments have at their disposal a large repertoire of crime prevention techniques borne of such criminological perspectives as Crime Prevention Through

Environmental Design (Jeffery, 1971; Newman, 1973), environmental criminology (Brantingham and Brantingham, 1981), and situational crime prevention (Cornish, 1994; Clarke, 1997).

Design flaws can create challenges to effective security provisions at shopping centers, though they are not inherently criminogenic. The design may attract and generate crime only because of the millions of people that visit its property each year (Brantingham and Brantingham, 1995; Kinney et al., 2008). Large shopping centers with higher volumes of patrons tend to attract more crime compared to smaller shopping centers because there are more potential victims, but an individual's risk of becoming a crime victim does not necessarily increase. However, shopping centers that experience drug-related activities may generate crime because of a drug-crime nexus as it relates to psycho-pharmacological, economic, and systemic violence (Goldstein, 1985). An associated idea is that some legitimate businesses at a shopping center, such as bars or clubs that sell cheap alcohol or otherwise attract a 'rough crowd,' will pollute the social environment and contribute to problems of crime (Farrell and Pease, 2006). As true as this may be, Lee et al. (1999) found that crime at shopping centers seemed to be more connected to 'problematic patrons,' such as loitering juveniles, gangs, and people waiting for public transportation, than 'problematic tenants,' such as bars, movie theaters, and video arcades.

Security managers need to recognize the potential problem of crime displacement. It would be wise for security departments to evaluate or be aware of what security measures are being deployed at surrounding commercial establishments. Keeping in mind that a shopping center's security needs may differ from those of surrounding businesses, its property should have an equal degree of protection. Displacement occurs when crime at a well-defended property is not prevented but rather pushed elsewhere (Barr and Pease, 1990). It is not inconceivable that crime can be displaced to a shopping center from an adjacent hospital or apartment complex that is well-defended against criminal behavior.

Crime displacement falls into one of five categories: functional, territorial, tactical, temporal, and target. Functional displacement can refer to a burglar who may switch their crime to a street robbery. Territorial displacement would involve an individual who chooses a different neighborhood to commit their crime. Temporal displacement would include an individual who decides to commit a crime at a different time of day or night. Target displacement involves criminals choosing a different property to target based on the greater opportunity it presents (Reppetto, 1976). Although all types of displacement are important for

a security manager to consider, it would seem that territorial, temporal, and target would be of an immediate concern. For example, a potential armed robber may be displaced from an adjacent property and seek out a shopping center as an alternative target. Also, a potential offender may alter their criminal activities according to the security measures present at a shopping center. Finally, target displacement may be the most consequential as an offender may target a shopping center because they view it as the most opportunistic due to lax security measures.

It is important to keep in mind that properties can be unique in anticipating crime and in the security measures deployed to prevent it. For example, for an individual the odds of becoming a robbery victim at a large regional mall are small given the large number of annual visitors. One could conclude that a criminal attack at a regional mall is foreseeable, but this would be due in large part to the number of visitors, and not reflective of a given individual's statistical risk of victimization. This is not meant to negate the occurrence of crime at shopping centers; certainly, crime can be a problem at some properties. The point is that a shopping center's architectural design, tenant mix, and location within a certain neighborhood may be more problematic compared to a shopping center in a higher-end neighborhood with a well-thought-out, security-conscious architectural design, and 'high-end' tenant mix. A 'one size fits all' security approach cannot be used for all properties (Kennedy, 2006).

If a criminal act is a rational choice and one who perpetrates it is a 'reasoning criminal,' it would follow that such an offender would rationally consider both the personal and situational factors surrounding the act. According to this perspective, crime can be thought of as 'offense-specific' and 'offender-specific.' The former explains that an offender will choose a specific crime by weighing the pros and cons associated with the act, whereas the latter explains that an offender will introspectively evaluate their own skills before committing such an act (Siegel, 2007). If crime is a rational act, attempts at preventing crime may be bolstered by physically altering the environment in which a potential criminal may operate. Situational crime prevention is a method to reduce the opportunities available to a potential offender. For example, the employment of contract security guards in the form of capable guardians at a shopping center can help prevent a motivated offender from entering the premises and victimizing a person in the parking lot who represents a suitable target (Cohen and Felson, 1979). Understanding the unique characteristics that some parking lots present in relation to predatory attacks is important for a security manager. Some

lots will be more dangerous than others due to their location, history, users, and how security measures are perceived (Kennedy, 2013); regardless of these characteristics, a parking lot that attracts a lot of people will include some who are criminally motivated (Brantingham et al., 1990). On any given day, it has been estimated that approximately 350 million pedestrian trips are made through parking lots. This large number coupled with poor design may contribute to criminal attacks (Crowe, 1991; Smith, 1996). Fayard (2008) conducted a study that looked at the number of workplace homicides in parking lots from 1993 to 2002. Of the workplace fatalities attributed to homicide, 9 percent took place in a parking lot. The point is that security measures implemented in a shopping center parking lot or garage can deter crime because of the situational and relationship dynamic between perpetrator and victim who are unknown to each other. However, it is important to keep in mind that some criminals may be easier to deter than others. For example, deterring a serial rapist who carefully chooses his victim based on ease of access and physical characteristics, compared to a drug-induced criminal looking to rob an individual, may be easier to accomplish.

The nature of crime at shopping centers

Security guards at shopping centers must concern themselves with many duties, such as watching for pedophiles around arcades and fights in the food court, assisting merchants detaining a shoplifter, providing extra-duty services for special events, recognizing problems generated by late night movie theaters, and handling young loiterers. Fire protection and slip and fall safety concerns are within the purview of corporate security responsibilities too. In recent years, the scope of security efforts at shopping centers has moved beyond preventing ordinary crimes. Since the 11 September 2001 terrorist attacks, security efforts have been expanding to prevent, respond, and address concerns about terrorism (LaTourrette et al., 2006; Rigakos et al., 2009). A British study found that 61 percent of shoppers entertained the possibility of a terrorist attack, 38 percent stated they were concerned about a bomb exploding while shopping, and an additional 12 percent stated they altered their shopping behavior fearing a terrorist attack (Beck and Willis, 1993). Even though this study was performed 12 years prior to the 7 July 2005 coordinated bombings of London's public transportation system, shoppers still feared terrorist attacks in spaces frequented by the public.

Reliable research that addresses shopping center crime is scant, but there are a handful of studies focusing on these issues. For example, a

British study found the reported victimization rate at shopping centers was much less than respondents' fear of victimization. Ramsay (1990) found 2 percent of shoppers indicated they were assaulted and 3 percent indicated they had been robbed. However, 50 percent of respondents feared being assaulted and 59 percent feared being robbed. Another British study by Phillips and Cochran (1988) found that during a four week period, security personnel recorded 68 incidents that were categorized as criminal offenses. There were 44 incidents of theft, such as shoplifting and vehicle burglaries. There were also 11 incidents of vandalism, six incidents of indecency, four incidents of fraud, two of robbery, and one assault. In another British study, Poole (1991) interviewed 255 woman shoppers at shopping center and city-center locations and found that approximately 10 percent had personal property stolen and 9 percent had their vehicle broken into or stolen. An additional 9 percent of woman shoppers stated they carried a protective device, which indicates they had a fear of potential criminal victimization. In a North American study, Poole (1994) found that security personnel were mostly concerned with shoplifting.

We examined data from the Federal Bureau of Investigation's (FBI) National Incident-Based Reporting System (NIBRS) for 2005–2010 about crime at shopping centers. NIBRS data collection is the FBI's attempt to move from the Uniform Crime Reporting System's (UCR) summary-based measurement of crime to an incident-based measurement.[3] The UCR is an aggregate system that includes the total number of crimes, whereas NIBRS reports on each incident of crime. In other words, the UCR reports on the aggregate number or total number of crimes, and NIBRS reports individual incidents in greater detail (Maxfield and Babbie, 2005; Addington, 2007). NIBRS data has 'segments' for each incident which include administration, offense, property, victim, offender, and arrestee.

Table 13.1 indicates shoplifting, with 759,327 incidents, far outnumbers other crime types. Drug offenses are a distant second with 61,480 incidents, followed by motor vehicle theft with 4,988 incidents, and prostitution with only 79 incidents. Shoplifting is the most prevalent type of crime to occur at shopping centers. However, it is important to examine crimes against the person (Miethe and McCorkle, 1998). While property crimes such as theft and vandalism could be expected everywhere, crimes against the person are another matter.

According to Table 13.2, there were 47,174 assaults at shopping centers from 2005 to 2010. In addition, there were 12,257 robberies, 4,644 purse snatchings, 1,425 sexual assaults, 995 abductions, and 75

Table 13.1 Frequency distribution of property and drug crime types at shopping centers, National Incident-Based Reporting System, 2005–2010

Crime type	f	%
Shoplifting	759,327	92.0
Drug offenses	61,480	7.4
Motor vehicle theft	4,988	0.6
Prostitution	79	0.009
Total	825,874	100

Table 13.2 Frequency distribution of violent crime types at shopping centers, National Incident-Based Reporting System, 2005–2010

Crime type	f	%
Assault	47,174	70.9
Robbery	12,257	18.4
Purse snatching	4,644	7.0
Sexual assault	1,425	2.1
Abduction	995	1.5
Murder	75	0.1
Total	66,570	100

murders at shopping centers. Assaults, robberies, and murders at shopping centers appear in the same order in terms of their rate of occurrence compared to the general population. For example, the FBI's 2011 UCR reported that aggravated assault accounted for the highest percentage of violent crime reported to police at 62.4 percent, robbery was second at 29.4 percent, rape was third with 6.9 percent, and murder was fourth with 1.2 percent.

When considering Table 13.3, it is important to note that not only are women more likely to be victims of particular crimes that one would expect, such as purse snatchings and sexual assaults, but women approach the same victimization rate for crimes in which men are normally overrepresented. Women outnumber men in that they are sexually assaulted at shopping centers at a higher rate. However, when we consider robbery, men were robbed at a higher rate when compared to women. When shopping centers are considered, the gender gap in victimization between men and women begins to shrink. The percentage rate of men to women robbery victims at shopping centers is virtually

Table 13.3 Cross-tabulation of violent crime types at shopping centers by gender, National Incident-Based Reporting System, 2005–2010

Crime type	Gender of victim		Total
	Male	Female	
Assault	26,195	20,979	47,174
Robbery	6,178	6,079	12,257
Abduction	298	697	995
Purse snatching	181	4,463	4,644
Sexual assault	154	1,271	1,425
Murder	50	25	75
Total	33,056	33,514	66,570

equal. The rate of assaults for both women and men at shopping centers is relatively equal. Furthermore, 25 women and 50 men were murdered at shopping centers, and women not surprisingly experienced more instances of purse snatchings and a higher rate of abductions.

Regarding a parking lot's design and number of visitors, the concept of 'critical intensity' and the ideas of prospect, refuge, and escape can help explain criminal victimization. Critical intensity tells us that when there are enough potential victims to attract a criminal but not enough potential victims or witnesses to deter a potential criminal, crime is more likely to occur. From the victim's point of reference, prospect refers to being able to freely overlook a parking lot or structure, refuge refers to being able to observe possible places of protection, and escape refers to options for fleeing an area if threatened. From the offender's point of reference, these concepts can be turned on their head if a victim's ability to watch an area is limited (prospect) and ample places of concealment are available (refuge) to an offender who can easily flee an area (escape) after attacking a victim (Fisher and Nasar, 1992). These concepts may more readily apply to parking structures in that a victim's ability to maintain his or her own safety according to these concepts may be hindered because of the nature of parking structures, such as a lack of natural surveillance. However, the implementation of formal surveillance, place managers, and target hardening in and around parking structures could help offset challenges inherent in protecting parking structures (Cornish and Clarke, 2003). Even successful efforts aimed at reducing vehicle crimes in parking structures by employing either in-house or contract

security patrols could have the added benefit of reducing other forms of crime (Hollinger and Dabney, 1999; Welsh et al., 2010).

Shopping centers are considered soft targets because their permeable perimeters allow for people to freely enter and exit with little to no interaction with security personnel. In contrast, high-rise buildings located in large downtown areas provide for more effective management by in-house or contract security. In particular, target hardening and access control efforts in high-rise buildings are more easily accomplished because of the nature of businesses and tenants located in the building. Therefore, shopping centers face the dilemma of incursions by people who have intensions of committing criminal or terroristic acts, while at the same time facilitating entry for legitimate customers. Shopping centers must perform a sensitive balancing act between providing an aesthetically pleasing and inviting environment for customers while simultaneously providing security mechanisms that protect patrons and employees. Certainly, shopping center management is hesitant to offset an inviting environment with security features that create a fortress-like effect.

Notwithstanding idiographic etiological factors that contribute to mass public shootings, it is likely that economic, political and cultural factors both contribute to the occurrence of crime at shopping centers and to its prevention. Economic factors drive shopping centers to attract people to their properties to spend money, and shopping centers that are heavily guarded against may prevent people from doing that. Political factors in the form of legal decisions have allowed groups to freely express their constitutional rights without disruption at shopping centers. In *Pruneyard v. Robins* a group of high school students were prevented from distributing pamphlets at a privately owned shopping center when a security guard told the students they were violating the shopping center's rules and regulations.[4] The US Supreme Court ultimately ruled that individuals are allowed to freely express their constitutional right of free speech even on privately owned shopping centers. Because of this, shopping centers have to delicately weigh potential security concerns with a citizen's right to peacefully exercise free speech.

Finally, cultural factors are a driving force behind the successful implementation of stringent security protocols at shopping centers. Israel provides a prime example of these practices and arguably has among the best protected shopping centers in the world. Story (2003) reported that even though vehicles on shopping mall property and people at entrances are subjected to a search, shoppers do not consider it an

unacceptable inconvenience. Because of the cultural beliefs regarding acts of terrorism, Israeli citizens may be more willing to give up certain rights if it can prevent a terrorist attack. In these ways, security practices at shopping centers can either assuage or exacerbate criminal behavior.

Liability issues concerning shopping centers

The exponential growth of mass private properties in the form of shopping centers has led to private security being progressively adopted by property owners to police their premises (Shearing and Stenning, 1983). The proliferation of shopping centers has further led to the direct intersection of people from many walks of life. While seeking the multitude of shopping, entertainment, and social amenities shopping centers have to offer, diverse groupings of strangers of differing ages and ethnicities come into direct contact and every so often conflict is present. Consequently, issues of liability are present in these conflicts because they occur on private properties often owned by 'deep pocket' landowners (Swirsky, 2009).

In earlier periods, shopping activities took place in the public sphere where smaller merchants sold their goods to visitors. Because shopping occurred in a more public setting, there often was no identifiable landlord who could be held liable in the event a visitor was criminally victimized. But large corporate entities often control common areas of shopping centers that allow 'for third-party lawsuits for tortious injuries' (Kennedy, 2013: 237). It has been said that premises' liability for negligent security lawsuits are becoming the second most common type of negligence claim in the US (Kaminsky, 2001).

Mall ownership as well as security managers of large shopping centers must be aware of liability issues as they relate to negligent security and tort law. A tort is a civil wrong in which a plaintiff seeks to receive compensation because a defendant's actions caused an injury. A plaintiff must establish by a preponderance of evidence the following four elements: (1) the defendant owed a duty to protect the plaintiff from injury; (2) the defendant breached this duty; (3) the defendant's breach of duty was a proximate cause of the injury; and (4) actual damages. However, before the defendant owes a duty to protect the plaintiff from injury, a special relationship and crime foreseeability must be established. A special relationship exists between the two parties in the form of merchant-invitee, landlord-tenant, or innkeeper-guest, for example. In instances where a forensic security expert or security manager are

involved in examining cases of premises liability for negligent security, the determination of a special relationship is generally beyond their duties and is often decided by a judge in a particular jurisdiction. Yet, the examination of crime foreseeability by a security manager is something that falls within their duties and expertise. In a legal sense, crime foreseeability can be both elusive and abstract in its definitional language and meaning. For example, some jurisdictions define crime foreseeability as 'reasonably likely to occur,' 'reasonable cause to anticipate,' or 'appreciable chance.' These definitions can help the security manager gain an appreciation of the meaning of crime foreseeability, but to better understand how courts may determine crime risk, having knowledge of 'tests' of foreseeability the courts may employ will better orient the security manager as to how a court may apply crime foreseeability to a case (Kennedy, 2006). The tests most commonly encountered are: (1) imminent or specific harm test; (2) prior similar acts test; (3) totality of the circumstances test; and (4) balancing test.

The imminent or specific harm test holds that a plaintiff must show that a merchant was aware of a specific harm to an individual. When considering the sheer size of some shopping centers, this test of foreseeability is difficult for plaintiffs because it is unlikely that a business owner is going to be aware of or present during the commission of a crime in the parking lot. Because of its difficultly, jurisdictions will instead resort to one of the other tests of foreseeability. For a duty to be imposed upon a business owner to protect a business invitee, the plaintiff must show that prior similar incidents occurred on the property which put the business owner on notice that a criminal incident was foreseeable. When investigating the criminal history of a specific property, it is important to triangulate sources by examining the shopping center's own incident reports, in-house or contracted security incident reports, and public law enforcement records. One important note is that police incident reports may provide a clearer picture about the nature and types of crime occurring on a property compared to police calls for service. The latter can be a double-edged sword in that they may over or undercount crime (Klinger and Bridges, 1997), whereas police incident reports may be more valid and contextually rich by providing actual crime known to police and a qualitative understanding of a particular incident. This is not to say calls for service are invalid; certainly, law enforcement and victimization data, such as the FBI's Uniform Crime Reports and the National Victimization survey, suffer from issues of measurement quality too. Another important factor when examining foreseeability is the timeframe in which to examine a property's criminal

history. For example, both the International Association of Professional Security Consultants and the American Society for Industrial Security's General Security Risk Assessment suggest a three- to five-year period for examining data sources, such as local police crime statistics, that will provide an understanding of a property's criminal history. Many liability experts, however, prefer to examine a two- to three-year period. Other important guides include a case from Texas where the court stated in *Timberwalk Apartments, Partners, Inc. et al. v. Cain* that five factors must be considered when determining if a crime was foreseeable: (1) proximity; (2) recency; (3) frequency; (4) similarity; and (5) publicity.[5] Courts, however, have in some instances looked negatively upon this test because it is more advantageous to subsequent victims compared to an initial victim (Donohue, 2002). In *Helen Eichenbaum v. Rossland Real Estate, Ltd.*, a woman was injured during an armed robbery at a shopping center.[6] The plaintiff claimed that the defendant owed a duty to provide adequate security because the defendant was aware of prior similar acts on the property. However, a trial court disagreed with plaintiff's claim and stated the defendant did not owe a duty because the prior similar acts did not occur at the exact location where the plaintiff was attacked. This ruling was reversed by an appellate court which stated that the plaintiff does not need to prove prior similar acts occurred at the exact location of the concerned criminal incident.

The totality of the circumstances test determines foreseeability by examining a broad range of factors, such as crime in the surrounding neighborhood, prior crimes on the property, the nature of the business itself, and the presence and effectiveness of security. In *Doe v. Montgomery Mall Ltd. Partnership*, a young waitress was sexually assaulted after her shift ended while walking to her vehicle located in a desolate employee-designated area of a parking garage.[7] Not only did the plaintiff claim that the shopping center failed to warn guests and employees of prior criminal incidents, it was also claimed the shopping center did not provide adequate security and take reasonable steps to maintain the property. A district court declined to dismiss the case because the facts showed there was a genuine concern about the effectiveness of the shopping center's security. The court looked beyond prior similar acts and considered peripheral circumstances, such as adequate security. The balancing test views duty as a malleable concept in that foreseeability of harm is balanced against the burden of duty to protect. Therefore, if foreseeability is not satisfactorily established, landlords or merchants should not be expected to take burdensome security precautions (Kennedy, 2006).

Future directions

Annually, eclectic crowds of hundreds of millions of patrons are attracted to shopping centers across the globe. The location and structure of a particular property and the patrons that a center serves can also attract a diverse grouping of potential criminals. With the evolution and incredible growth of shopping centers, crime at these locales has unfortunately started to become more common. Adding to the complex nature of this problem is the existence of different types of shopping centers noted earlier. With these different shopping centers, security personnel are challenged in ways that have to evolve in line with the ever changing characteristics of shopping centers. Depending on a shopping center's tenants, clientele, and surrounding area, security managers have had to tailor security planning needs. Given the changing nature of civil liability over past decades, large retail corporations have had to refine their management styles to include proprietary, contract, and hybrid security. Notwithstanding the implementation of such security services, shopping center corporations are frequently held accountable for criminal incidents on their properties. Responsible landholders adopt prevention techniques responsive to crime foreseeability at a given property and implement standard security practices designed to reduce crime risks to customers and employees.

As early as the 1920s, the consequences of social disorganization regarding crime in urban areas had been reported in such seminal works as Shaw and McKay (1972). In almost any major city, businesses and dwellers of urban areas have to contend with many social issues ranging from chronic unemployment to poverty and crime. These social problems can have repercussions for the surrounding ecological environment through manifestations of urban decay such as graffiti, trash, neglected properties, and vacant and burnt out homes. As a response to the social and physical plights of urban environments, Business Improvement Districts (BIDs) have emerged. For example, the State of Michigan enacted BIDs legislation that was primarily driven by efforts to revitalize the City of Detroit (Stefan, 2003). BIDs are a collaborative effort between governments and businesses that attempt to revitalize depressed business areas and make them economically viable by focusing on quality of life issues. It is hoped that improving the area will attract customers who would have otherwise stayed away because of graffiti, garbage, and crime. Taxes are collected from businesses and are generally controlled by a Business Improvement Association (BIA). Because BIDs are often located in cities that suffer from severe budget

deficits, businesses in the area cannot always rely on the city to provide services, such as regular police patrols of an area. Therefore, BIDs will not only distribute funds for clean up, they will also hire contracted security to patrol their districts. Furthermore, BIDs may also implement CCTV in hopes of providing further security for the district (Lippert, 2012; Walby and Hier, 2013). A major goal of BIAs is to make their areas more desirable and more conducive for shoppers to patronize their businesses. To accomplish this, BIAs will sponsor street fairs and a variety of other special events (Stefan, 2003). Efforts at providing security in these communal areas can present special issues. For example, in cases of premises liability for negligent security, a legal dilemma may present itself because there may be no readily identifiable party who owed a duty to protect a patron from harm who is walking on a public sidewalk within a BIA (Savard and Kennedy, 2013). In addition, the applicability of shopping center security standards and practices may not necessarily be easily transferrable to BIAs. Hundreds of BIAs are in operation in Canada and the US and may increase in numbers as more urban cities experience serious budgetary issues and can no longer provide effective basic services from trash pick up to policing services (McCrie, 2006). It can only be expected that BIAs will resort to hiring contract security to provide for the protection and safety of their businesses and patrons. Future research should attempt to elucidate the challenges faced by in-house or contract security that provides for the security and safety of BIDs.

In addition to BIAs, cities are attempting to attract foot traffic to downtown areas by creating entertainment districts which include bars, restaurants, nightclubs, and movie theaters. However, the nature of these businesses can both attract and produce problems that make it difficult to provide for the safety of the area as a whole (Berkley and Thayer, 2000; Bromley and Cochran, 2002). Furthermore, problematic entertainment districts can have the opposite effect in that they can produce fears of victimization and therefore prevent people from visiting the area (Cochran et al., 2000). Because entertainment districts are populated with businesses that serve alcohol, a primary concern includes acts of violence involving intoxicated individuals on the streets (Scott and Dedel, 2006). A reactive response to these types of issues by entertainment districts and municipalities in which the districts are located involves the installation of CCTV. However, empirical research has questioned CCTV's deterrent value (Welsh and Farrington, 2003; Ratcliffe, 2006). Even if it was proven that CCTV was effective in preventing

crime, it is doubtful that highly intoxicated men fighting on a sidewalk would be deterred from engaging in such activity because of the presence of a camera; however, if the fight is being observed in real time by a CCTV operator, resources to stop the fight can be deployed and captured footage can be used as an ex post facto investigative tool. Furthermore, there are issues of privacy rights that surround the clandestine recordings of individuals in public (Hier and Walby, 2011).

Recommendations for future research may include what types of effective proactive steps can be taken by entertainment districts to prevent crime and acts of violence. Specifically, research that examines the relationship between the density of drinking establishments in an area and acts of violence could prove instrumental in providing effective security (Graham and Homel, 2008). From a security perspective, it is important to note that as business and economic activities evolve in form and function, security programs will need to adapt accordingly.

Notes

1. There are numerous manifestations of corporations and corporate structures in most malls. For example, most malls are owned by private corporations and may be managed by employees of a distinct mall management entity. Large and small retailers are often corporate owned. Private security firms may be traded publicly as corporate entities too. In short, the typical shopping center is composed of a wide variety of corporate types and sizes.
2. For an overall view of conventional security practices, the reader is referred to *Protection of Assets Manual* published by ASIS International and chapter 17 of the *NFPA 730 Guide for Premises Security*, 2011 edition (Quincy, MA: National Fire Protection Association). The recommendations contained therein are 'best practices' and may exceed the legal standard of 'reasonable under the circumstances.' Finally, the structure of a shopping center security program may be guided by (2003) *Guide to Writing a Shopping Center Security Manual* (New York: International Council of Shopping Centers). Also see Feiler, K. (1994) *IREM Smart Partners Program: Better Properties Through Stronger Communities* (Chicago: Institute of Real Estate Management), Greene, D.H. (2005) *Shopping Center Security: Perception and Reality* (New York: International Council of Shopping Centers) and Story, D.W. (1992) *The Security Process* (New York: International Council of Shopping Centers).
3. Two values from three location variables were used to identify the location of a criminal incident. The three location variables include V20111, V20112, and V20113 from the NIBRS extract files. The two values from each respective variable include 'shopping mall' and 'Department/Discount Store.' As was mentioned above, discount department stores are present in both community and power centers. Therefore, it is appropriate to examine the value 'Department/Discount Store' as a location of a criminal incident. Furthermore, it is

conceivable that discount department stores may be present in each of type of shopping center described above.

4. 447 U.S. 74; 100 S. Ct. 2035; 64 L. Ed. 2d 741 (U.S. 1980).
5. 6972 S.W.2d 749 (Tex. 1998).
6. 7502 So.2d 1333 (Fla. 1987).
7. 962 F. Supp. 58 (U.S. Dist. 1997).

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