

Inadequate Security Litigation: Assessing the Effectiveness of Security Measures Designed to Prevent Criminal Attack

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Introduction

For the most part, criminologists and sociologists have until quite recently paid very little attention to the field of private security. Most of their research activity has focused on public justice and public police Theodore M. Becker, *The Place of Private Police in Society: An Area of Research for the Social Sciences*, 21 *Social Problems* 438-453 (1974); Melissa G. Davis, Richard J. Lundman, & Ramiro Martinez, *Private Corporate Justice: Store Police, Shoplifters, and Civil Recovery*, 38 *Social Problems* 395-410 (1991); Clifford D. Shearing, & Philip C. Stenning, *Private Policing* (Sage, 1987). Commensurately, they have done very little evaluation research into what constitutes effective private security measures W. J. Crow, Rosemary J. Erickson, & Lloyd Scott, *Set Your Sights on Preventing Retail Violence*, 31 *Security Journal* 60-64 (1987); Lawrence W. Sherman, *Protecting Customers From Crime* (Crime Control Research Corporation, 1984). If a given security practice seems even superficially valid on its face, it will often become a standard against which juries will be asked to measure a landowner's security efforts, even if there is no empirical scientific evidence to prove that the practice is an effective crime deterrent.

In fact, that research which actually is conducted suggests that some “common sense” security measures can often be “non-sense” security measures. In other words, some security practices which experts argue should have been in place in order to prevent a crime may not really have made a difference. The “but for” test or “substantial contributing factor” test is failed, and there should be no liability.

This is not to say that the security measures to be discussed herein are useless and do not work much of the time. That is not true. The general question is, “Do they work all the time?” and, more specifically, “Would they have worked given the unique circumstances of the case at bar?” As the defendant in premises liability for negligent security litigation, the landlord is generally charged with failure to implement security measures which should have been in place given the level of foreseeability of criminal attack. Some of the more common crime preventive measures include enhanced lighting, Closed-Circuit Television (CCTV), fencing, security officer patrols, and alarm systems. Each will be considered in turn below.

Lighting

The average citizen tends to think light is a good thing. If a neighborhood seems scary at night, the city should put up more streetlights. If crimes have occurred in a dark parking lot, lighting levels must be doubled. In short, there is a general belief that lighting deters crime.

Unfortunately, controlled empirical research does not conclusively support the notion that lighting deters crime. Common sense also tells us that many crimes occur in broad daylight. A review of 103 street lighting projects shows that lighting sometimes reduces crime in a neighborhood, and sometimes it does not James M. Tien, *Street Lighting Projects* (U.S. Department of Justice, 1979). More recent experimental research conducted in England found

that lighting produced a 41 percent reduction in crime in experimental areas compared to only a 15 percent reduction in crime in control areas Ronald V. Clarke ed., *Situational Crime Prevention: Successful Case Studies* (Harrow and Heston, 1997). However, a systematic review of lighting studies conducted in the United States that tested the efficacy of lighting as a crime deterrent found that only half of the reviewed studies produced results where a reduction in crime was observed. It was also observed that the results varied among specific crime types David Farrington & Brandon Welsh, *Effects of Improved Street Lighting on Crime: A Systematic Review* (Home Office, 2002). Sometimes just property crimes are reduced; sometimes only crimes against the person are reduced. At other times, neither type of crime is reduced. See, e.g., Edward B. Lewis, & Tommy T. Sullivan, *Combating Crime and Citizen Attitudes*, 7 *Journal of Criminal Justice* 71-79 (1979).

In fact, one researcher has suggested that a little bit of light is worse than no light at all. In a study of three police jurisdictions, it was demonstrated that more breaking and entering crimes occurred when the moon was more fully illuminated than on non-full moon nights Philip P. Purpura, *Police Activity and the Full Moon*, 7 *Journal of Police Science and Administration* 350-353 (1979). On darker nights criminals couldn't see well enough themselves to commit their crimes!

Perhaps the real answer lies in the notion of observability. It is probable the criminal does not care so much about lighting levels per se but cares more about if he can be seen, identified, and caught. All the lighting in the world may not deter him if he believes there is no way this lighting can be utilized against him. If nobody could see him anyway, does it matter if light shines upon his face?

We are not here suggesting a call for darkness, only that light is not the panacea. Remember, too, that aside from costs, many communities have ordinances against light trespass or spillover. Even if many properties wanted to maximize their lighting levels, they may be unable to do so politically, if not economically.

Closed-Circuit Television (CCTV)

The explosion of modern technology has made CCTV both familiar and available to most landowners. CCTV has been widely adopted for security purposes and is a familiar sight at many malls, hotels, stores, and other locations Dennis M. Savard & Daniel B. Kennedy, *Crime and Security Liability Concerns at Shopping Centers* (Palgrave Macmillan, 2014) 254-275. As with lighting, the assumption is that criminals do not want to be seen, much less recorded, and will avoid committing their crimes under the surveillance of a CCTV system. As with lighting, however, the corresponding reality may be somewhat different. The effectiveness of CCTV in deterring crime is by no means established Emmeline Taylor, *Evaluating CCTV: Why the Findings Are Inconsistent, Inconclusive and Ultimately Irrelevant*, 12 *Crime Prevention and Community Safety* 209-232 (2010).

A number of studies have challenged the common sense efficacy of CCTV. An older study evaluated the impact of CCTV on crimes committed at a public housing development in New York City. Residents were able to use their own TVs to monitor cameras placed in elevators and lobbies. A three month follow-up failed to reveal any significant effect on crime as compared to matched control buildings Michael C. Musheno, James P. Levine, & Denis J. Palumbo, *Television Surveillance and Crime Prevention: Evaluating an Attempt to Create Defensible Space in Public Housing*, 58 *Social Science Quarterly* 647-656 (1978). Similarly, the installation of cameras throughout a business district in Florida seem to have no effect on

reported crimes Raymond Surette, *Video Street Patrol: Media Technology and Street Crime*, 13 *Journal of Police Science and Administration* 78-85 (1985). The study did, however, report an increase in feelings of security among business people. More recent research has also produced results where people reported feeling safer as the result of the presence of CCTV Ben Brown, *CCTV in Town Centres* (Home Office, 1995). These studies seem to suggest that CCTV does more to make people feel good about their well-being rather than actually protecting them from criminal victimization. Consequently, feeling better about one's own safety may do more harm than good because a false sense of security may lower a person's guard in being vigilant about his or her own safety.

With regard to the particular crime of robbery, two other studies report somewhat disappointing results concerning the value of CCTV for crime prevention. In a study of 236 banks, no evidence was found that the installation of cameras had any value as a deterrent to bank robbery Timothy H. Hannan, *Bank Robberies and Bank Security Precautions*, 11 *83-92* (1982). In another study, 181 armed robbers in five state prisons were interviewed to determine what makes a target attractive or unattractive to rob. Based on their own numerical estimations, robbers attached little deterrent effect to security hardware. Cameras, alarms, and video systems were ranked as the least important factors to robbers in selecting targets. The amount of money available and the existence of an escape route were much more important W. J. Crow, Rosemary J. Erickson, & Lloyd Scott, *Set Your Sights on Preventing Retail Violence*, 31 *Security Journal* 60-64 (1987). Regardless of the historical period in which research is performed in evaluating the efficacy of CCTV, it seems that multiple studies have mixed reviews of the value of CCTV as a crime prevention tool. A systematic review of 22 CCTV studies conducted between 1978 and 2002 found that the usage of CCTV produced reduced levels in crime, increased levels in

crime, and had no impact on crime reduction Brandon Welsh & David Farrington, *Crime Prevention Effects of Closed Circuit Television: A Systematic Review* (Home Office, 2002). In the end, the real value of CCTV might be more in its ability to aid investigators as an ex post facto criminal investigation tool rather than a crime prevention tool Dennis M. Savard & Daniel B. Kennedy, *Responding to Intimate Partner Violence in the Workplace*, 26 *Security Journal* 249-263 (2013).

Aside from considering the studies questioning the absolute value of CCTV, the security manager has other problems with the use of CCTV. Unless the monitors are regularly watched, of course, CCTV loses some of its value. Viewers may have a tendency to be distracted or fall asleep and should be rotated every two hours or so. This can prove operationally difficult, particularly for a security precaution whose efficacy has been challenged as in the above studies. Security management must also consider the privacy concerns of their guests and customers. Many hotel guests do not want their hours, whereabouts, and companionship recorded by CCTV. Once again, this discussion is not meant to reject all CCTV applications. It is likely that many crimes have been deterred and certain that many criminals have been identified due to CCTV. As is true with other security measures, however, CCTV is not to be considered a panacea for crime. At present, its most valuable use is post-event investigation and monitoring a live situation once an operator's assistance is requested.

Fencing

In the thinking of most people, a criminal cannot attack a victim if he cannot get to him. Early humans used the walls of a cave as a barrier between themselves and their enemies. To modern folks, fences seem to serve a parallel function. Thus, if a property and the people upon it are to be protected, fences should be erected as protective barriers.

The problem with this assumption is that humans are far more nimble than we apparently give them credit for. Several years ago, the U.S. Army did penetration testing on a variety of fence types at Ft. Belvoir, Maryland. Using basically inexperienced raw recruits, it was determined that a common six foot chain link fence could be climbed in three seconds. A seven foot fence with a barbed wire top guard could be penetrated with one man assisting in four seconds. Remember, also, that most link fences can be crawled under almost as fast as they can be climbed unless the mesh is anchored to a bottom rail Timothy J. Walsh, *Protection of Assets, Volumes I-IV* (Merritt, 1992).

On a sadder, yet equally illustrative note, a study prepared for the National Swimming Pool Institute looked at the circumstances of 546 drowning deaths and the role fences played, or did not play, in these tragedies. One clear finding was that children below five years of age have the ability to climb a locked 6 foot chain link fence without the use of any aids such as a ladder or stool. One two-year old child scaled a six foot chain link fence. A 17-year-old climbed an eight foot chain link fence protected by barbed wire only to drown in a municipal pool after hours R. Weiner & R. Cunitz, *Swimming Pool Safety: Walls and Fences* (The National Swimming Pool Institute, n.d.).

These sad facts tell us that most fences are not barriers but must be regarded primarily as property markers. They can help us clearly identify a trespasser and might make a thief think twice about climbing them if he is carrying a television set. But even the gratuitous use of fencing, as with security officers, can be iatrogenic in nature, as explained below.

Many modern condominium structures and apartment buildings are built with a small “privacy” fence surrounding outside patios. These fences are made of wood and curtail surveillance from neighbors or other residents’ patios and sliding doors. The problem is, of course, that the burglar

or rapist will risk being visible for the two to three seconds it takes to jump this fence because he knows he can attack the door locks within for literally hours once he is inside the fence perimeter.

Also, certain kinds of fencing can block sight lines into a commercial property that motorists would never drive into due to the obvious activities on its premises. In one Michigan case (*Wagner v. Regency Inn*, 186 Mich App 158, 1990), a woman motorist pulled into a motel which looked good from a distance simply because its interior disheveled courtyard was blocked from public view by a fence. Had she been able to view the premises, she would not have entered them or would the ensuing attack have occurred. Finally, current research has suggested that gated communities are not particularly effective against criminals. Oftentimes the gating is defeated through tailgating or the threat emanates from within the community Gregory D. Breetzke & Ellen G. Cohn: *Burglary in Gated Communities: An Empirical Analysis Using Routine Activities Theory*, 23 *International Criminal Justice Review* 56-74 (2013); Edward J. Blakely & Mary G. Snyder, *Fortress America: Gated Communities in the United States* (Brookings Institution Press, 1999).

Security Officer Patrols

Random, visible, preventive patrol has been a mainstay of American policing for many years. Police chiefs and citizens alike have believed that a continuing police presence in a community will either deter a crime from occurring or allow for immediate police intervention if a crime is being committed. This same reasoning has been applied to the patrol of private property by private security officers. Many plaintiffs' attorneys will argue that a crime would not have been committed but for the absence of security patrols.

These assumptions about the value of preventive patrol were put to the test in a classic study during 1972-1973. In a Police Foundation study conducted in Kansas City, Missouri, various parts of the city were assigned to one of three patrol categories. In one category, neighborhoods received standard patrol coverage. In the second category, neighborhoods received virtually no patrol coverage. In the third category of cities, patrol coverage was doubled. Statistical evaluation at the end of the year revealed that crime levels and citizen fear of crime remained about the same for all three patrol categories. In other words, police patrol levels had no impact on crime or citizen attitudes George L. Kelling, Tony Pate, Duane Dieckman, & Charles E. Brown *The Kansas City Preventive Patrol Experiment: A Summary Report* (Police Foundation, 1974).

It may be that random preventive patrol is not particularly effective due to the “Monte Carlo” effect. Even if a neighborhood is patrolled on an hourly basis, officers may only be visible to a stationary criminal for one out of sixty minutes. If a robbery or burglary can be committed within two or three minutes, the odds are against a patrolling police officer being within the line of sight at the time of commission. In actuality, police officers are involved in “on view” crimes in only about 10 percent of their law enforcement activities Albert J. Reiss, *The Police and the Public*, (Yale University Press, 1971). In almost 90 percent of their cases, they are called to the scene of a crime by concerned citizens. They do not “just happen” upon these crimes as a function of random, preventive patrol. All things being equal, then, it is difficult to argue that, more probably than not, a patrolling security officer would have been present in any given area and thus able to stop a crime from being committed. On the other hand, flooding an area with police officers as part of “hot spots” policing may have at least a temporary effect Lawrence W. Sherman, Patrick R. Gartin, & Michael E. Buerger, *Hot Spots of*

Predatory Crime: Routine Activities and the Criminology of Place, 27 *Criminology* 27-56 (1989).

As a related issue, keep in mind that flooding an area with stationary security officers is not necessarily a reasonable solution. It is entirely possible to have too much of a “good” thing. Too many security officers at a motel may make many motorists drive down the road because they suspect heavy criminal activity must be present. There is also a possible iatrogenic effect. For example, oversaturation of a teen rock concert with uniformed officers may instigate the challenges to authority for which teenagers are known Stephen B. Flynn, *Matching the Mood*, 25 *Security Management* 50-54 (1981). As another example, some plaintiff’s experts have even suggested the placement of uniform security officers in “rough” neighborhood taverns. We can think of fewer ways to start a fight faster than having a uniformed stranger try to keep his eyes on the behavior of several “drinking buddies” at what they consider to be “their” watering hole Michael A. Katovich & William A. Reese, *The Regular: Full-Time Identities and Memberships in an Urban Bar*, 16 *Journal of Contemporary Ethnography* 308-343 (1987). Although random security patrols can be effective in dealing with crime and responding to issues of conflict, there are still challenges to the effectiveness of random patrols being an effective crime prevention security measure Cody W. Telep & David Weisburd, *What is Known About the Effectiveness of Police Practices in Reducing Crime and Disorder*, 15 *Police Quarterly* 331-357 (2012).

Alarms

Two basic functions of alarms are to signal a robbery in progress (hold-up alarm) and to signal an intrusion into a protected area (burglary alarm). Both alarms operate on the deterrence principle in that wrongdoers may expect their crimes will come to the immediate attention of

police or security forces. Since alarm systems are sometimes supported by a manned capacity, criminals may also be deterred by the possibility of capture.

However, robbers seem to be less cautious in their choice of targets. For example, robbers ranked the existence of an alarm system as much less important in their target selection process than nine other factors W. J. Crow, Rosemary J. Erickson, & Lloyd Scott, *Set Your Sights on Preventing Retail Violence*, 31 *Security Journal* 60-64 (1987). These robbers may not take the time to look for evidence of the existence of a hold-up alarm or may believe they can surprise their victims before an alarm can be given. Since hold-up alarm systems are primarily preventive in nature, their use is even more problematic once a robbery has begun. Modern security theory argues that no emergency signal device should be activated while a robbery is in progress if there is even a remote possibility that subsequent police response could lead to an on premises shoot out or hostage situation Thad L. Weber, *Alarm Systems and Theft Prevention* (Butterworth, 1985). Of course, if gratuitous violence on the part of a robber should occur, it is possible that police may be needed immediately to place some controls on an already deteriorating situation.

Classic research has found that only one-third of burglary offenders checked on the presence or absence of alarms during the planning stages of the offense Thomas A. Reppetto, *Residential Crime* (Bollinger, 1974). Again, this could be the result of simple carelessness or it could be related to criminal estimates of police response time. Although police administrators believe that a two or three minute interval between a call for police assistance and a uniform response is ideal, few urban departments are able to meet this goal. Thus, even with an alarm annunciating, criminals may know they have enough time to commit their crime and make good their escape.

As a practical matter, alarm systems can also prove to be troublesome from the user's point of view. Studies have consistently shown that about 95 to 98 percent of activated alarms are "false" in terms of an actual crime taking place William C. Cunningham & Todd H. Taylor, *The Hallcrest Report: Private Security and Police in America* (Chancellor, 1985).

Consequently, there have been multiple efforts at reducing the number of false security alarms Troy A. Gilbertson, *Reducing False Security Alarm Calls for Police Service: A Policy Research Note* 16 Criminal Justice Policy Review 499-506 (2005). When an alarm system is tripped, it is far more likely customers or employees have made a mistake. Poor installation and servicing of faulty equipment as well as weather conditions also contribute to the false alarm problem. Police officials estimate that 12 to 15 percent of all calls for police service are due to alarm-related. In response, many municipalities have passed ordinances which allow for fines to be imposed on properties after a fourth or fifth false alarm is recorded.

The problem, of course, is that police departments and even alarm runners themselves become somewhat complacent about responding vigorously to a burglar alarm. The central station monitor, owners they may notify, police, and security personnel may acquire the "cry wolf" syndrome and fail to respond appropriately when a true emergency occurs. None of this is to say that alarm systems cannot be useful as crime deterrents. It is to say, however, that problems inherent in their use must be recognized and compensated for.

Conclusions

The use of lighting, CCTV, fencing, security officer patrols and alarms for crime prevention purposes is widespread in modern America. Although "common sense" may suggest to the average juror that such precautions are universally effective, empirical research does not always support this assumption. In fact, the limited research data available suggest that, in many

situations, common crime prevention precautions may have done little to prevent criminal attack

Lawrence W. Sherman, et al, *Preventing Crime: What Works, What Doesn't, What's Promising* (U.S. Department of Justice, 1998). The key is to identify each expected benefit realistically to be derived from any crime prevention measure given the particular fact situation. Under increased scrutiny, it is possible that the juror appeal of several of these security measures will diminish commensurately. In recent years, criminologists and security experts have more clearly examined the actual preventive value of most common crime prevention efforts See, e.g., www.crimesolutions.gov. Few have proved to be so effective as to constitute a standard of care applicable in every circumstance. In many cases, an evidence-based criminology can be defense counsel's most effective tool.

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