

**Criminologists in the Courtroom:**  
**Consulting and Forensic Criminology**

by

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- I. Introductory Considerations
  - A. Criminology as a multidisciplinary field of study
  - B. The nature of forensic criminology
  - C. Role of the expert in civil and criminal justice
  - D. Negligence torts, intentional torts and crimes
  - E. Law of expert testimony (Daubert, Kumho, Joiner cases)
  
- II. Private Sector Forensic Applications
  - A. Premises liability for negligent security
    - 1. Growth of premises liability litigation
    - 2. Duty/foreseeability and expert testimony
      - a) Working definitions
        - (1) Reasonably likely to occur
        - (2) Reasonable cause to anticipate
        - (3) A foreseeable risk is one a reasonable person would not disregard
        - (4) Appreciable chance
        - (5) Not “more likely than not”
        - (6) Judicial notice, e.g. parking lots, casinos
      - b) Imminent danger aka Doctrine of Specific Harm (few states)
        - (1) Events presently unfolding in front of defendant should have told him someone was about to get hurt.

- (2) Action needed to be taken immediately
- c) Prior similar acts (several states)
- (1) Timberwalk v. Cain (Texas) analyses including proximity, recency, frequency, similarity, publicity
  - (2) City crime rates (number of crimes ÷ number of people x 100,000)
  - (3) Dark figure of unreported crime
  - (4) Police geographic reporting area rates, where possible, e.g., Milwaukee and Houston report crime by census tracts which allow for rate estimation.
  - (5) Police department calls for service and crimes reported at specific addresses collated with security agency and/or corporate incident report data.
  - (6) Police and security narrative reports as most valuable evidence
  - (7) Reading narratives for indicators of other criminal behavior
- d) Totality of the circumstances (most states)
- (1) Takes into account prior crime history but does not require prior similar crimes if social or other circumstances point to a real opportunity for crime to occur
  - (2) Census tract socioeconomic data, e.g., income, unemployment, percentage below poverty, percentage married couple households, property values
  - (3) Crime generators (volume of people) versus crime attractors (nature of their activity)
  - (4) Journey to crime and distance decay phenomenon
  - (5) Critical intensity hypothesis
  - (6) Crime displacement

- (7) Physical and social incivilities (tipping point and “broken windows” theory)
- e) Balancing test (few states)
  - (1) In response to criticisms of the totality of the circumstances test and the prior similar incidents rule, other courts have established a “balancing” approach. (See *McClung v. Delta Square*, Tennessee)
  - (2) Short form: “...duty is a flexible concept, and seeks to balance the degree of foreseeability of harm against the burden of the duty to be imposed.”
  - (3) Long form: “Those factors include the foreseeable probability, the harm or injury occurring; the possible magnitude of the potential harm or injury; the importance or social value of the activity engaged in by defendant; the usefulness of the conduct to the defendant; the feasibility of alternative, safer conduct and the relative costs and burdens associated with that conduct; the relative usefulness of the safer conduct; and the relative safety of alternative conduct.”
  - (4) Old wine in new bottles? Recalling Judge Learned Hand in *U.S. v. Carroll Towing* (1947), “...if the burden of security is less than the probability of attack multiplied by the seriousness of the potential injury, the landlord will be liable. If, on the other hand, the burden outweighs the probability times the harm, there is no negligence.”
- f) Shorthand recommendation: three-prong test
  - (1) Assess foreseeability of crime
  - (2) Assess likelihood preventive measures will, in fact, work
  - (3) Assess burden on the landlord of implementing these measures
- 3. Breach of standard of care
  - a) Stakeholder industries and professions

- (1) Security professionals
    - (2) Industry professionals
    - (3) Cross-cutting industries
  - b) Sources of standards
    - (1) Statutes and ordinances
    - (2) National consensus standards
    - (3) Community practices
    - (4) Organizational policies and procedures
    - (5) Learned treatises, association literature, and expert opinions
    - (6) Reasonableness (cf., Clarke's Situational Crime Prevention measures, e.g., increase effort, increase risk, reduce reward, etc.)
    - (7) Not personal standards or "ipse dixit"
4. Causation and expert testimony
- a) Scientific versus legal causation
  - b) Proximate cause
  - c) Cause in fact
  - d) Deterrence value of preventive measures
    - (1) Abstract negligence
    - (2) "What works" and evidence-based crime prevention
    - (3) Impulsivity and psychopathy
    - (4) Criminal profiling and threat assessments
5. Damages and comparative negligence

- a) PTSD issues in litigation
  - b) Hindsight bias and severity bias
  - c) Victimology and victim precipitation
  - d) Lifestyle exposure theories of victimization
- B. Forensic criminology in high litigation risk settings
1. Growth of mass private property
  2. Apartment complexes
  3. Hotels/motels
  4. Shopping centers
  5. Parking lots and structures
  6. Drinking establishments and other entertainment venues
  7. Additional sites
- C. Direct versus vicarious liability
1. Negligent hiring
  2. Negligent retention
  3. Negligent training
  4. Negligent assignment
  5. Negligent entrustment
  6. Negligent supervision
  7. Negligent failure to direct
  8. Evolving torts (negligent referral and termination)
- D. Intentional torts most frequently encountered in private security settings

1. Use of force by security officer
2. False arrest and imprisonment
3. Malicious prosecution
4. Slander
5. Positional asphyxia

### III. Public sector forensic applications

#### A. Law enforcement litigation

1. Police pursuits
2. Unreasonable use of force
3. Positional asphyxiation and excited delirium
4. Suicide by cop
5. Failure to protect and witness protection
6. Racial profiling
7. Warrant execution
8. Police union/municipal contract negotiations
9. Use of confidential informants and undercover police work
10. Dealing with emotionally disturbed persons
11. Innocence Project and related litigation

#### B. Corrections litigation

1. Lockup and jail suicides
2. Inadequate medical care
3. Malingering and security issues

4. Sexual improprieties with inmates
  5. Conditions of confinement
  6. Negligent release and supervision
  7. Electronic monitoring and tethering
  8. Inmate-on-inmate assault and criminal sexual conduct
- C. Private presentence investigations
  - D. Capital sentence mitigation and analysis
  - E. Prosecution and defense consultation and testimony
- IV. Examples of forensic applications of substantive criminology and sociology to both civil and criminal matters
- A. Rapist typologies
  - B. Pedophiles and child molesters
  - C. False confessions
  - D. False accusations of rape
  - E. Murder-suicide typologies
  - F. Robbery typologies and robbery prevention
  - G. Crime Prevention Through Environmental Design
  - H. Journey to crime (environmental criminology and geographic profiling)
  - I. Criminal profiling and serial criminals
  - J. Profiles and syndromes as character evidence
  - K. Rational choice theory and situational crime prevention
  - L. Routine activities theory and lifestyle/exposure theory

- M. Workplace violence Types I-IV and crimes by employees
- N. Violence and drugs nexus
- O. Expressive versus instrumental violence and deterrability
- P. Arson typologies (e.g. crime concealment)
- Q. Hate crimes against gay bars
- R. Spouse abuse etiology and the police response
- S. School bullying and school security needs
- T. Homelessness, mental illness and crime
- U. Native American suicidology and suicidology of indigenous peoples
- V. Obedience to authority and social engineering
- W. Character contests and assaults
- X. Deterrence theories
- Y. Tourist victimology
- Z. Collective behavior, crowd control, and social contagion
- AA. ADHD and crime
- BB. Personality disorders and criminal behavior
- CC. Stalking behavior and management
- DD. Principles of threat assessment and criminal recidivism
- EE. Gang behavior
- FF. Club drugs
- GG. Tattoos and criminal behavior
- HH. Adult entertainment and the sex trade

- II. Theories of repeat victimization
  - JJ. Violence as catharsis or aggression enhancement
  - KK. Selective enforcement versus selective involvement theories
  - LL. Theories of sexual harassment
  - MM. Theories of prejudice and discrimination in hiring, including reverse discrimination
  - NN. Witness factors
  - OO. Fundamental attribution error
  - PP. Violence prediction
  - QQ. Miscarriages of justice
  - RR. Confirmation bias, anchor effect, and other cognitive errors
- V. Summary and conclusions
- A. Nature of the adversarial versus the inquisitorial system
  - B. Perils of advocacy research, emotive statistics, and junk science
  - C. Forensic and consulting criminology as both profession and enterprise
  - D. Relationships with the legal profession
  - E. Approaches to depositions and trial testimony
  - F. Ethical considerations in forensic examination and levels of certainty

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