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Apartment Security and Litigation: Key Issues

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Abstract

The Connie Francis case ushered in a new era of civil litigation establishing premises liability for negligent security as a major type of tort case. Lawsuits against multifamily and apartment property landlords constitute a significant proportion of this litigation. Routine activities theory and overall crime trends are useful in explaining the increase in numbers of victims and potential plaintiffs. The victims' rights movement and the evolution of law toward consumerism help explain the willingness of courts to hear negligent security lawsuits. An analysis of appellate cases identifies the major security breaches brought before the courts. Also discussed are the role of the expert witness and the overall nature and outcomes of apartment-related security litigation.

Introduction

When Sarah Kline first signed a lease for her apartment with the 1500 Massachusetts Avenue Apartment Corporation, the building had a twenty-four hour doorman stationed at the main entrance, and one desk clerk monitored the elevator at all hours. Parking attendants also monitored an entranceway to the parking garage. It was Ms. Kline's concern for security which led her to move into the building initially. She had complained to the landlord when security in the building began to deteriorate as evidenced by an increasing number of assaults, larcenies, and robberies being perpetrated in and from the common hallway of the building. The doorman, desk clerk, and garage attendant were no longer routinely posted to monitor entry into the building, and a side entrance was often left unlocked at night, even though a female tenant had recently been attacked in a common area. After Ms. Kline was assaulted and robbed, she brought suit against her landlord (Kline v. 1500 Massachusetts Avenue Apartment Corporation).

The U.S. District Court of Appeals, reversing the district court, found a duty of protection because the landlord had notice of repeated crimes in common areas and had exclusive power to take preventive action. The court said the relationship between landlord and tenant was much like that of innkeeper and guest; and, therefore, a duty similar to that imposed on innkeepers should be imposed on landlords (Carrington and Rapp, 1991). Ironically, it was to be a subsequent case involving an innkeeper, which, in conjunction with the Kline case, would establish premises liability for negligent security as a prominent tort action on behalf of crime victims (Lawrence, Dabertin and Ray, 1986).[1]

In November of 1974, internationally known entertainer Connie Francis Garzilli checked into two adjoining rooms at a Howard Johnson motel near the site of the Westbury (Long Island)

Music Fair. Her rooms on the second floor provided access to a balcony through sliding glass doors. Unknown to her, the balcony sliding glass doors had a deficient latch; and, in fact, there had been several prior unauthorized entries to guests' rooms through sliding glass doors. Motel management was aware of this problem. While a guest at this motel, Connie Francis Garzilli was assaulted by an unknown assailant who entered through a faulty sliding glass door. Based on the centuries old, common law duty of innkeepers to keep their guests reasonably safe, Connie Francis Garzilli sued Howard Johnson Motor Lodges, Inc., for negligence in failing to provide adequate security (Garzilli v. Howard Johnson Motor Lodges, Inc.) A jury awarded her $2.5 million in compensatory damages and her husband $150,000. She later settled for $1.5 million, and her husband's award was reduced to $25,000.

The notoriety given this case by the local and national press came not only from her celebrity status and the size of the award but from the still uncommon premises liability legal theory she raised. In spite of the Kline case, crime victims had not yet been broadly viewed as a class of people with rights, which could be effectively enforced (Carrington, 1978, 1983, 1988; Carrington and Rapp, 1991). From the time of her lawsuit forward, however, the legal landscape relative to victims' rights would be altered permanently. Although apartment landlords had already experienced a certain amount of litigation stemming from criminal attack, the Connie Francis Garzilli case now clearly placed innkeepers into a possible defendant category. It also demon strated to the nation's plaintiffs' lawyers and the judiciary that any landlord deemed to be in control of premises could be held liable for foreseeable criminal injuries suffered by tenants or guests. Soon, crime victims attacked at such disparate venues as parking lots, shopping centers, movie theatres, ATM machines, restaurants, and bars would bring their claims to the courts in increasing numbers (Kuhlman, 1989; Page, 1988; Tarantino and Dombroff, 1990).

The Extent and Economics of Premises Liability for Negligent Security Litigation

Notwithstanding the various efforts at tort reform, which have caught the nation's attention in recent years, the number of tort case filings remained relatively unchanged from 1986 to 1993. Of all cases filed in the nation's 75 largest counties, premises liability cases ranked second in frequency (17.3%) to auto lawsuits (60.1%) as the most common type of dispute (Smith, DeFrances and Langan, 1995). Although there is no way of knowing how many of these premises liability lawsuits involved security issues as opposed to, for example, slip and fall cases, premises liability for negligent security has been described as the fastest growing area of tort litigation (Kaminsky, 1995).

There is no central repository which records the exact nature of all civil cases filed in county-level courts of general jurisdiction. There is also no way to determine how many cases are settled informally before filing or during the litigation process itself. Hence, researchers often rely on reported appellate cases to gauge current litigation trends even though generalizability from this convenience sample to the reality of the nation's courtrooms is problematic. For example, a recent study by Bates and Dunnell (1993) reported that the crime most frequently made the basis of litigation is rape. Rape and sexual assaults, which prompt third-party lawsuits, take place most often in apartment units, parking areas, and hotel rooms. Multi-unit residential properties (37.6%) and hotels/motels (24.2%) are the two categories of property most often involved in law- suits. Again, while the generalizability of these data has not been established, it is clear that landlords of multiple-unit residential properties are exposed to the threat and reality of litigation.

Bates and Dunnell (1993) reported the average settlement (plaintiff and defendant agree on an amount of money in order to drop the case) for premises liability cases to be $545,800. The average verdict (jury awards an amount of money to plaintiff) in this type of case was $3.35 million. While several exceptionally high awards tended to artificially inflate the overall trend, landlords must understand that a rape victim is often looked upon with a great deal of sympathy by juries, notwithstanding "blaming the victim" literature to the contrary (Coates, Wortman and Abbey, 1979; Rubin and Peplau, 1975; Ryan, 1971). A recent search of sexual assault cases through Westlaw revealed several verdicts or settlements well over a million dollars, with other cases bringing $6.5 million, $8.5 million, and $10 million (Kennedy and Homant, 1997).[2]

Viewed from a macroeconomic perspective, one estimate assesses crime costs in lost wages, medical expenses, and property losses at $105 billion per year. Using a method commonly employed to project pain and suffering damages based on the value of more tangible losses, crime costs to victims total an additional $345 billion each year, an amount which they often seek to recover through litigation (Simonsen, 1998). Miller, Cohen and Wiersema (1996) offer a greatly detailed explanation of economic approaches to tangible and intangible losses suffered by crime victims nationwide. There is little doubt that negligent security lawsuits carry great import in the eyes of many plaintiff and defense attorneys. Also, there is reason to believe that this type of litigation will continue to increase, in general, and that apartment security cases will continue to burgeon, in particular.

A Convergence of Social Forces

Certainly this litigation leviathan did not evolve in a vacuum. An increasing supply of large numbers of victims willing to prosecute their civil cases along with a society willing to consider their allegations explains the spread of apartment security litigation across the country.[3] A routine-activity approach can be utilized to explain the former while the growth of the victims' rights movement explains the latter.

According to Cohen and Felson (1979), in order to occur, a crime requires the convergence in space and time of likely offenders, suitable targets, and the absence of capable guardians against crime. Although routine-activity theory tends to take as a given the existence of an adequate supply of offenders, social developments since the 1960s suggest an increase in their numbers and a commensurate increase in the rate of crime since that tumultuous decade (Felson, 1994). While the crime rate has leveled off somewhat in recent years (Ringel, 1997), it is still at a far higher level than it was in the early 1960s. The baby boom, the availability of drugs and weapons, an increase in single-mother households, and a number of other factors have been advanced to explain this increase in crime (cf., Barak, 1998; Brown, Esbensen and Geis, 1996; Conklin, 1998). In addition, according to the "proximity hypothesis," many apartment complexes located within a mile or two of high crime areas may be particularly susceptible to criminal attack (Meadows, 1998; see, also, Kennedy 1990, 1993). As more neighborhoods become crime ridden, more apartment dwellers become "at risk" of criminal attack. Since the focus of this research is not so much the etiology of crime as it is the sequelae of crime, the existence of an ample supply of offenders will be assumed.

In the context of apartment litigation, there is no dearth of suitable victims. Over the past several decades, more and more people have become apartment tenants, and more and more of them are women living alone or with other women. In 1970 there were about 8.5 million apartment households, in 1985 there were 12.9 million such households, and in 1995 there were

14.5 million apartment households in the U.S. (National Multi Housing Council and National Apartment Association, 1996).

In 1996, there were approximately 48,120,000 apartment residents in this country (National Apartment Association, 1998). As more and more women work outside the home, attend school, and delay marriage, more and more women maintain single-adult households. Burglary and robbery victimization rates are about twice as high for persons living alone as for other persons (Cohen and Felson, 1979). Sexual assaults directed against female apartment residents may be specifically targeted crimes or may be opportunistic. A crime initiated as a burglary may become a rape because a female is found unexpectedly in a vulnerable situation (Douglas et al., 1992; Hazelwood and Burgess, 1993). Victimization rates of American women are rising, then, partially as a result of their changing routines; and crimes committed against women by strangers are on the rise (Kennedy, 1992). Many of these crimes take place on the premises of apartment complexes.

Routine activity theory posits that crime is more likely to occur in the absence of capable guardians (Cohen and Felson, 1979). [4] On one level, it is obvious that a single woman living in an apartment building would have no guardian when she is alone. Even family domiciles may be seen to be without guardians if everyone is out working. In past years and in traditional neighbor hoods, most households tended to have guardians in that neighbors would give surveillance to each other's properties and keep an eye on strangers entering the neighborhood (Jacobs, 1961). In modern apartment complexes, however, such neighborly concern is no longer an effective crime preventive measure. High turnover rates often lead to a sense of anonymity and estrange ment from neighbors. According to Rand (1983), "...if a building has more than five apartments per floor, or more than fifty apartments in general...residents begin to treat one another as strangers" (Rand, 1983: 5; see also, Rand, 1984). It is such anonymity and loss of territoriality that has so plagued the nation's high-rise public housing developments (Newman, 1973). Although some apartment dwellers and property managers have attempted to recapture the protective atmosphere of a true "community" through Neighborhood Watch and Apartment Watch programs supported by local police departments, results so far have been mixed (Lab, 1997; Merry, 1981; Rosenbaum, 1987, 1988).

While the routine activities perspective can explain the production of crime victims, the crime victims' movement best explains why victims have decided to bring suit and why courts are now listening to them. Each year, some 140,930 persons are raped; roughly 1,225,000 individuals are robbed; and some 5,250,000 are assaulted (Karmen, 1996). In 1996, 19,645 people were murdered (Federal Bureau of Investigation, 1997). If one were to consider the number of crime victims added each year to the nation's previous years' victims, as well as their friends and loved ones, it is obvious there are millions of Americans who have been direct victims of crime or indirect victims of crime. Aside from seeking compensation, many victims bring suit because they want guilty and negligent parties to be so declared by juries, they wish to prevent future crimes against other innocents, and they wish to establish the sense of control over their lives taken from them by the criminal (Carson, 1986).

Courts and juries have listened closely to these victims not only out of a natural sympathy but because of a philosophy of justice which has permeated much of the nation since the "due process" revolution of the 1960s. The civil rights movement and the feminist movement focused the attention of Americans on social victims while the experience and fear of crime itself focused attention on crime victims. Just as victims realized they could have an impact on sentencing in criminal cases, they also began to realize they could pursue civil litigation against both

perpetrator and negligent landlord (Wallace, 1998). Judges and juries empathized with these victims as the common law was evolving to accommodate third party lawsuits against apartment owners and other landlords who should have foreseen a crime risk to their tenants yet failed to take reasonable crime prevention measures.

A Review of Appellate Cases

Based on appellate cases reported by *Private Security Case Law Reporter* and *Premises Liability Report*, Leavitt, Ellis and Vaughan (1997) have compiled a book of case summaries which they believe reflect the diversity, breadth of issues, and varying perspectives of contemporary premises liability litigation. The first of the book's fourteen chapters deals exclusively with apartment security lawsuits and contains briefs and commentaries on 125 significant cases from around the United States. An analysis of the types of crimes and locations of crimes reported in this casebook provides a suitable overview of the kinds of incidents, which lead to litigation.

TABLE I

Types of Crimes Generating Lawsuits

Crime	N	%
Rape	42	34
Assault	37	30
Robbery	14	11
Murder	13	10
Kidnapping	4	3
Child Molestation	4	3
Burglary	2	<1
Explosives	1	<1
Vandalism	1	<1
Miscellaneous	7	6
Total	125	100

Overall, the 125 cases generated lawsuits complaining of 10 sorts of crime: rape (42), assault (37), robbery (14), murder (13), kidnapping (4), sexual molestation of children (4), burglary (2), explosives violations (1), vandalism (1), and miscellaneous (7).[5] A number of scenarios are typical. For example, rape often involves a single female living alone in a first- floor corner apartment. Natural surveillance by neighbors of her windows and doors is often limited by the corner position of her unit and some combination of inadequate lighting and overgrown foliage. Entry is possible because a window was left open for ventilation or pried open. It is not uncommon to find that sliding glass doors, so common in "curb appeal" apartments, are manipulated into an unlocked position by lifting the doors out of their tracks. More often than not, the victim would be surprised while sleeping. She would be awakened, raped, tied up in some fashion, and left at the scene. The rapist generally helps himself to her belongings and vanishes into the night.

Assaults usually take place in the common areas of a property. While neighbors or guests could sometimes be attacked or do battle in the hallways or pool areas, a significant number of both assaults and robberies take place in parking lots. A common scenario involves a male or group of males being attacked or shot at while milling about recreationally in some area of the

apartment complex parking lot. Given the often limited living space in the apartments themselves, warm weather often drives working-class apartment residents into the public areas both for comfort and for socializing. Murders occur as a result of rape in the apartment unit itself (although, fortunately, this is not a frequent outcome of the rape event) or, more commonly, as the product of a robbery or assault in the parking lot.

Kidnappings generally involve women who are approached on the grounds or in the parking lots at night. Once control of the victim is established, the perpetrator drags her into a nearby forested area or into a nearby vehicle for transportation and rape offsite. In a number of cases, the victim is forced to lead the rapist to her own apartment where she is raped and robbed. In some incidents, her female roommates are also victimized if they happen to be present when the criminal and initial victim arrive.

Although children living in apartment complexes are subject to molestation by friends of the family and their various neighbors, landlords sometimes hire resident managers who, unknown to management, take this particular job to practice pedophilia. Pedophiles are often attracted to positions where they might have influence over children. An apartment manager not only has certain power over the residents of a property, particularly if they are socially or economically disadvantaged, he is also in a position to know all the familial details of a property's residents and to therefore identify vulnerable children and perhaps overly permissive or gullible parents.

TABLE II
Location of Incidents

Location	N	%
Apartment Unit	60	48
Common Areas	28	23
Parking Lot/Structure	18	14
Grounds	19	15
TOTALS	125	100

The various incidents made the subject of litigation tend to occur within the apartment building (71%) with further analysis revealing the exact locations as apartment unit itself (48%) and building common areas, including elevators (23%). Other locations include parking lot/ structure (14%) and grounds (15%).

The specific security failures complained of as primary issues are inadequate locks (16%), guard issues (10%), and lighting (9%). There is a major argument in 29% of the cases that management knew of prior crimes and/or failed to warn tenants of threats against them. Because numerous cases involve overlapping issues, a more finite breakdown of crime types, locations, and negligence is problematic. Further, the imprecise nature of the briefs and commentaries makes quantification even the more difficult, and no claim of generalizability is made. It should be noted, however, that the patterns described above tend to comport with cases reported from other sources and the litigation experience of the present authors. The importance of understanding as much as possible about crimes committed on the premises of apartment complexes is obvious. Before management can prevent crime, its nature must be understood.

The Nature of Premises Liability Litigation in an Apartment Setting[6]

When landlords fail to take appropriate security measures to provide their tenants reasonable protection against criminal attack, a negligent tort arises. A tort is a "private or civil wrong or injury" (Black, 1968: 1660). In order to prove a tort, the plaintiff must establish 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 cause in fact, and (4) was the foreseeable cause of (5) the plaintiff's injury (Spain, 1992). Generally, these elements must be proven to a civil jury who will decide whether a defendant is liable according to the level of proof known as "preponderance of the evidence." In other words, if a jury determines that 51 percent or more of the evidence favors the plaintiff, he or she will win and the landlord will lose.

Criminologists and security specialists are very important in premises liability for negligent security litigation (Kennedy and Homant, 1996). Although the role of criminologists and security specialists in litigation has been criticized (Godwin and Godwin, 1984; Ingraham, 1987), it is often difficult to present or defend a premises liability case without the presentation of testimony by an expert. For example, before a duty even arises, a judge must be convinced that a given crime was foreseeable; that there was a reasonable likelihood or an appreciable chance that victimization would occur (Homant and Kennedy, 1994). Information to that effect can be presented through a criminologist who analyzes prior crime patterns at a location or in its surrounding neighborhood. The principle here is that the best way to forecast future crime at a location is to examine prior crime at a location. A criminologist may also examine certain land uses, architecture, socioeconomic characteristics, and general ecology of a neighborhood in order to establish the presence of crime correlates (Kennedy, 1993).

If a plaintiff manages to establish that a duty exists, he or she must then show that this duty was breached, i.e., that an applicable standard of care was not upheld. Here, again, the criminolo gist and/or security specialist is invaluable. In an apartment setting, security standards may entail some combination of access control, sufficient lighting, effective locks, foliage control, tenant selection and retention, key control, courtesy patrols, and other property-specific measures (Apo, 1995; Loomis, 1992; Waldhuber, 1987). A security expert is in an ideal position to explain to a jury exactly which security measures should have been in place given the level of foreseeability that a crime would occur.

Criminologists and security experts may also testify as to whether the breach of duty was the cause in fact of a burglary/rape. The criminologist might opine, for example, that a burglar/rapist selected a particular apartment and victim because he believed he could gain easy entrance (poor locks), could not be seen doing so (poor lighting, overgrown foliage), and could likely make an unimpeded escape (no fencing on property). Criminologists may rely on rational choice theory (Clarke and Felson, 1993; Cornish and Clarke, 1986) and ethnographies (Cromwell, Olson, and Avary, 1991; Katz, 1988; Wright and Decker, 1994, 1997) to explain the actions of criminals in these various circumstances. Conversely, criminologists may also interpret the literature in such a way as to challenge a causal relationship between property conditions and a criminal's actions (Kennedy and Homant, 1997).

Overall, there is every indication that the number of lawsuits concerning security negligence in an apartment setting will continue to grow. As more and more apartment complexes adopt increasingly complex security systems, the standard of care tends to be driven upwards, thus causing other apartment complexes to appear inadequate by comparison. This should not be

taken to imply, however, that premises liability lawsuits are routinely decided in favor of plaintiffs. Clear cases of landlord negligence are usually settled by a cash payment to the aggrieved tenant well before a trial becomes necessary. Thus, trials tend to involve cases where the existence of liability is by no means a foregone conclusion. A recent study of litigation in the nation's 75 largest counties found that plaintiffs won 53 percent of all tort cases, many of which involved automobile collisions, but only 33 percent of premises liability cases, which would include slip and fall, other injury, and negligent security causes of action (Smith, DeFrances and Langan, 1995). It is not known whether the same loss percentage would apply if only negligent security premises liability cases were studied. At any rate, the fact that plaintiffs often lose their cases may be due largely to the causation issue. Although a plaintiff may argue that a crime was foreseeable and that lighting was inadequate, it is not so easy to convince a jury that better lighting would have stopped a criminal from attacking. There is a natural tendency for jurors to consider the perpetrator as the major culprit and to underestimate the influence of the physical environment on behavior.

Such a mindset, however, is not as common in large, urban areas populated by a substantial number of working class folks who may tend to identify more with the "underdog" in clashes, with defendants perceived to constitute the economic and power "elite." Suburban and rural jurors, on the other hand, tend to be more conservative in their attitudes toward premises liability and may tend to lean more favorably toward defendants. Experienced trial lawyers believe, however, that virtually all juries can be influenced by a particularly attractive victim who has suffered horrific physical and/or emotional injuries and is able to express the pain of injuries to the jury in a sincere manner. Some verdicts, therefore, are arrived at more out of an expression of sympathy than from a conviction that a defendant was liable. Appellate courts are supposedly in a position to rectify jury awards that are more emotional than logical. Often, however, both sides negotiate some financial compromise before an appeal goes forward.

Conclusion

As a result of court decisions in the Kline and Garzilli cases, landlords have been made more vulnerable to lawsuits for negligent security brought by tenants and guests of residential apartment complexes. A synergy produced by the civil rights movement, the feminist movement, the consumers movement, and the victims rights movement has resulted in substantial litigation generated by many of the nation's 48 million apartment residents and, in many cases, their lawful guests.

Rape and assault are the predominant crimes central to premises liability for negligent security litigation. These incidents generally take place within the dwelling unit itself, but a substantial number occur within the common areas of the building and on the grounds themselves. Locks, guard issues, and lighting seem to constitute the major points of contention. Just as social scientists are moving away from an exclusive focus on the causes of criminality and beginning to focus on the overall context of crime (Sherman, Gartin, and Buerger, 1989; Weisburd, 1997), such a perspective has generally guided this discussion of apartment security and litigation issues.

Routine activities theory provides a useful explanation for the increase in apartment crime victims, and there is no reason to expect a reduction in security litigation. Crime victims must prove all the elements of a negligence tort, however, and are less likely to prevail with the jury than is the defendant. This is probably explained by the fact that the strongest plaintiff cases are often settled before trial. Furthermore, the element of causation often proves to be a difficult

obstacle to overcome. It should be noted, however, that urban jurists may be more sympathetic to plaintiffs than suburban or rural juries. In any event, it is clear that issues involving apartment security and litigation will merit a substantial increase in both criminological and legal attention.

ENDNOTES

[1]A tort is a civil wrong giving rise to a legal cause of action in which a plaintiff seeks to be compensated for loss or suffering (Editorial Advisory Board, 1981).
[2]The basis for such significant awards is generally the plaintiffs' claims to suffer Post- Traumatic Stress Disorder (cf., Litz and Roemer, 1996). Although there are criticisms that some diagnosticians use this classification too readily (Schouten, 1994) or that some plaintiffs exaggerate their symptoms (Rosen, 1996), there is substantial research to suggest that a majority of rape victims are highly vulnerable to Post-Traumatic Stress Disorder (Breslau et al., 1991; Kilpatrick et al., 1989; Saunders, Arata and Kilpatrick, 1990) or the more crime-specific subtype of this disorder known as Rape Trauma Syndrome (Burgess and Holmstrom, 1974).
[3]This growth in lawsuits brought by crime victims and victims of other "injustices" has not been accepted entirely without serious criticisms. For example, Olson (1991) complains about lawyers' practices, Sykes (1992) complains about the motives of many victims, and Hagen (1997) derides much expert testimony, particularly of a psychological nature.
[4]Since the original publication of the routine activities perspective in 1979, Felson, Cohen, and others have continued its development. For example, whereas "guardians" keep an eye on potential crime targets and "handlers" do the same for potential offenders, the work of John Eck suggests that "managers" be seen as those who monitor places (Felson, 1995).
[5]There were also a number of strictly civil torts complained of, including fire issues (10), drowning (3), traffic and other accidents (4), eviction disputes (1), negligent record keeping (1), and invasion of privacy (1).
[6]For the purposes of the ensuing discussion, apartment buildings are generally defined as structures containing three or more dwelling units with independent cooking and bathroom facilities. Most of the discussion pertaining to apartments would also apply to a resident-owned condominium unit and to a cooperative (co-op) residential building where shareholders receive proprietary leases, which allow them to occupy a designated apartment within the complex (Apo, 1991).

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