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## **Proving Foreseeability**

**By Andrew P Sutor**

**Unfortunately, we live in dangerous times, especially when venturing outside of our homes and residences to engage in necessary commerce and participate in the general "pursuit of happiness." Far too often people fall victim to violence, crime or suffer serious injury while doing so.**

**Innocent victims, or sometimes, sadly, their survivors, often seek out legal redress and compensation for their loss through their attorneys. Most of the elements of these cases are patently obvious: Serious damage done; a likely breach of the legal duty and moral obligation of someone to provide for a minimum standard of care for their customers, patrons and guests. The question is, how does counsel prove proximate cause and negligence in the case?**

**In order to bring a case to a successful conclusion, plaintiffs' attorneys need to establish the actual level of, and foreseeability of risk at the time and place of their occurrence. The level of prior crime on and near the property is needed to determine the level of risk that was present.**

**Once that is established, attorneys need to make their case around the evidence that the defendant's security measures in the face of that risk were inadequate. An expert in the security field can determine the level of risk and whether the security provided by the defendant was adequate or reasonable.**

**The actual and genuine "foreseeability" of risk required for successful prosecution of your case is often hidden, and hard to prove. Defendants in negligent security cases often have a vested interest in under-reporting crime and diminishing the actual risk to the public mainly because reasonable and proper security performed by professionals is quite expensive. Furthermore, many defendant companies do not want to record events that would demonstrate their civil liability.**

**In other words, many defendants ignore risk and fail to provide adequate and reasonable security. This behavior is a shortsighted and reckless attempt to increase margins and profits. Obfuscation, downgrading and confusion about crime and risk exist and even proliferate in many industries. Where do plaintiffs' attorneys go to establish the foreseeable risk facing their client/victims in a negligent security case? How does one obtain accurate and factual information in taking a scientific approach to comply with the tenants of the rules of evidence?**

**In order to determine the actual level of risk existing at the time and place of the incident, a security expert is required. John Leighton, Esq., one of the nation's foremost lawyers handling premises security cases, says, "Expert witnesses are almost always necessary to bring an inadequate security case. Since the plaintiff has the burden of proving foreseeability and negligence and causation, doing so without expert testimony is almost impossible."**

**Knowledgeable security experts make use of public and private sources on crime and risk, such as the FBI Uniform Crime Report (UCR). The eight most common serious index crimes listed in the UCR are Homicide, Rape, Robbery, Aggravated Assault, Burglary, Larceny, Auto Theft, and Arson.**

**There are private companies that can provide accurate and graphic data on the index crimes and forecast risk at a particular location. It should be noted that this data is available to the defendants involved in negligent security cases prior to the event even occurring.**

**Police departments have computerized communications systems that provide an extraordinarily accurate record of all founded police actions at a particular location within the agency's jurisdiction. This relevant crime data is automatically gathered, mainly by 911 calls. These sources of foreseeable risk data will enable your security expert to provide a stronger opinion in considering the totality of the circumstances in determining the level of negligence and the proximate cause of your client's injury.**

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