
REGULATING OPPORTUNITIES: MULTIPLE ROLES FOR CIVIL REMEDIES IN SITUATIONAL CRIME PREVENTION

by

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***Abstract:** This chapter attempts to provide a first step toward systematically examining the part that civil remedies can play in situational crime prevention. First, it reviews the main features of the concept and uses the script-analytic model to describe the mechanisms by which this approach seeks to prevent crime. The model is expanded to incorporate concepts useful for examining how situational controls are implemented. Second, two main roles for civil remedies in situational crime prevention are discussed: (1) a direct role in the implementation of situational controls as formal inducements for those who influence or control crime opportunities; and (2) an indirect role, either influencing the decisions of those who control crime opportunities or increasing the likelihood that potential offenders will perceive that situational controls have been implemented.*

INTRODUCTION

As advocates of situational crime prevention have long noted, the criminal law is not the only mechanism available for dealing with criminal behavior (Clarke, 1997). Recently, lawyers, researchers and crime prevention advocates have discussed the use of civil remedies as non-penal interventions directed against criminal behavior (e.g., Buerger and Mazerolle, 1998; Cheh, 1991; Davis et al., 1991; Finn and Hylton, 1994; Fried, 1988; Green, 1996; Jensen and Gerber, 1996; Mann, 1992; National Crime Prevention Council, 1996). A remedy is "an action taken by an authoritative body — a legislature,

a court, or an administrative agency - to enforce compliance with prescribed conduct or to impose a cost for failure to comply" (Mann, 1992:1809). Traditionally, this term has been applied to actions that are civil in nature. Much of the recent focus on civil remedies in crime prevention has been on their role as regulators of offenders, noting their flexibility (see, e.g., the use of restraining orders in domestic violence cases in Cheh, 1991; Finn and Hylton, 1994) or discussing the potential pitfalls of their use from a legal or constitutional perspective (e.g., Cheh, 1991; Mann, 1992). When used as offender regulators, civil remedies are directed toward an identified person as offender or potential offender.

There has also been recognition that civil remedies can be used in situational crime prevention — to control the crime opportunities of the unidentified offender or potential offender rather than the offender him or herself. For example, in a discussion of the particular types of interventions applied in the SMART program in Oakland, CA, Green (1996) drew upon situational crime prevention concepts (Clarke, 1992) in her description of how the police used existing regulatory statutes, and other forms of inducements, to try to get landowners and tenants (acting as place managers) to clean up properties where drug dealing had occurred so that these places would be less attractive sites for future drug offenses. "Place manager" is the concept developed by Eck (1995) from previous work by Felson (1986) and Cohen and Felson (1979) to describe the non-offending third party who controls a potential crime place. Buerger and Mazzerolle (1998) have used the term "third-party policing" to describe the police use of civil controls against place managers. This emphasis on directing crime prevention measures toward the place manager demonstrates the importance of place in crime commission and prevention (see, e.g., Brantingham and Brantingham, 1981; Cohen and Felson, 1979; Eck and Weisburd, 1995; Jeffery, 1971; Newman, 1972; Sherman et al, 1989), as well as the suitability of directing prevention measures at crime opportunities rather than at identified criminal actors (see, e.g., Clarke, 1995).

Recognition of the importance of place in crime prevention should not obscure the potential of directing crime prevention efforts toward others who control or influence crime opportunities, that is, toward: (1) the target guardian (Felson, 1995), who oversees the victim or crime target (Cohen and Felson, 1979); (2) the offender handler (Felson, 1986; 1995) who influences the offender; and (3) the "props controller," a concept developed here to describe the person who controls the instrumentalities of the crime, the so-called "props" used by the offender as part of crime-commission scripts (Cornish, 1994a; 1994b). Civil remedies can assist crime prevention efforts involving

each of these actors whose roles deserve wider recognition within both civil remedy and situational crime prevention contexts. Given the four types of persons who can exert control over crime opportunities — the place manager, target guardian, offender handler, and props controller — and the possibility that civil remedies can be used to influence each of these actors, there promise to be a large number of ways to use civil remedies to control crime opportunities.

This chapter draws upon situational crime prevention theory and related models and concepts to emphasize the broad reach that civil remedies can have in the regulation of crime opportunities. The discussion is divided into three parts. The first section is designed to provide the reader with a brief, general description of civil remedies and some of their potential advantages and disadvantages. Section two provides a background discussion of theoretical concepts developed to explain the operation of situational crime prevention, as a framework for describing how civil remedies can be used to help regulate crime opportunities. The third section discusses the direct role that civil remedies can play in situational crime prevention, focusing on the implementation of situational initiatives, as well as the indirect role they can have in regulating opportunities.

CIVIL REMEDIES

What are Civil Remedies?

As noted earlier, Mann (1992) defined a remedy as "an action taken by an authoritative body — a legislature, a court, or an administrative agency — to enforce compliance with prescribed conduct or to impose a cost for failure to comply" (p. 1908). The prescription can be based on a legal duty (which is, in turn, based on statute or the common law) or a contractual agreement. Thus, under this definition, civil remedies would include fines imposed for the violation of a civil statute. Cheh (1991) listed the following as civil remedies: "compensatory damages, punitive damages, restitution, special performance, injunctive relief, constructive trusts [on property fraudulently transferred], abatement of nuisances, and forfeitures" (p. 1333). With the exception of compensatory and punitive damages, all of these measures involve an attempt to force a party to do something (or to stop doing something), with the variety of names attesting to the many different legal duties that one can fail to meet. These remedies seek primarily to change the situation in which the harm is occurring rather than to punish the person. "Remedy" implies that an aggrieved party can seek relief from the non-compliance of another.

Historically, such remedies were primarily used in disputes between private parties: the harm was to the individual and the individual sought redress.

Potential Advantages and Disadvantages of Civil Remedies

Whether civil remedies regulate criminal offenders or crime opportunities, they are useful when they can force someone to do or not to do something in a way that is not otherwise possible using the usual measures in these two areas — criminal penalties (for regulating offenders), or forms of non-coercive encouragement (for most forms of situational crime prevention). For example, an offender convicted of assault following a domestic violence case may serve a jail sentence (a criminal penalty) and have no further restrictions made on his or her movement, while another person involved in the same type of assault might be the subject of a restraining order (a civil remedy) restricting access to the home of the victim. With situational prevention, the police could seek to get property owners to clean-up their property voluntarily (a form of non-coercive encouragement), or they could use an existing vermin ordinance (a civil remedy) to force property owners to clean up their property (see Green, 1996).

Regulating Offenders

Civil remedies used to regulate offenders also have advantages over criminal penalties purely because they involve the civil rather than the criminal law. They do not require the same level of proof that is required with a criminal prosecution, nor do they call into operation the same constitutional protections that criminal cases do, such as the right to counsel and the right to cross-examine witnesses (see Cheh, 1991). This can make civil remedies speedier to apply (see Finn and Hylton, 1994), as well as increasing the likelihood that they will be applied. Also, the underlying prohibitions or duties do not have to be serious enough to warrant criminal penalties, so they can be imposed prior to the occurrence of serious harm (see Finn and Hylton, 1994). Interestingly, civil remedies can themselves sometimes hold out the threat of criminal penalties. For example, non-compliance with some civil remedies, such as restraining orders, can result in the imposition of criminal penalties on the ground that the judges' orders were violated (Cheh, 1991).

The legal and constitutional problems with the use of civil remedies to regulate offenders or potential offenders are well-documented (e.g., Cheh, 1991; Finn and Hylton, 1994; Mann, 1992; von Hirsch et

al., 1995), as are the adjustments made to address these issues (Cheh, 1991; Finn and Hylton, 1994), so they will not be reviewed here. The primary focus of this chapter is on the use of civil remedies to regulate crime opportunities.

Regulating Opportunities

Civil remedies are particularly useful in regulating opportunities because they can not only force the subjects of the legal prescription to act (or refrain from acting), but they also can determine who enforces the remedy. As Engstad and Evans (1980) noted nearly 20 years ago, when civil remedies are used to regulate crime opportunities, then the lines of responsibility for enforcement of the situational control are clearly set out. In addition, the areas of responsibility are wider than just police departments since they include regulatory departments as well. Wider responsibility for enforcement spread throughout other parts of the community demands cooperation among agencies, since the mere existence of regulatory schemes does not guarantee that enforcement will occur. As Ross (1996) has documented in the area of housing code enforcement, those who enforce regulations use a great deal of discretion in deciding which ones to enforce in particular situations. The use of civil remedies, especially that involving the passage of new legislation, brings the possibility of over-regulation, which could result in backlashes from those regulated as well as the regulators. As a first step toward examining systematically the actual advantages and disadvantages of using civil remedies to regulate crime opportunities, the language of situational crime prevention and its related models and concepts will be used and expanded in the next section.

SITUATIONAL CRIME PREVENTION

What is Situational Crime Prevention?

Clarke (1983) has defined situational crime prevention as "comprising measures (1) directed at highly specific forms of crime (2) that involve the management, design, or manipulation of the immediate environment in as systematic and permanent a way as possible (3) so as to reduce the opportunities for crime and increase its risks as perceived by a wide range of offenders" (p.225). This may, at first, sound very similar to Crime Prevention Through Environmental Design (Jeffery, 1971) and defensible space (Newman, 1972), with their emphases on the physical environment and crime. Yet, though situ-

ational crime prevention was developed at roughly the same time as these perspectives, it has a different etiology and different theoretical underpinnings (see Clarke, 1995, for a discussion of the history of situational crime prevention).

The rational choice perspective (Clarke and Cornish, 1985; Cornish and Clarke, 1986) was developed to provide a theoretical framework for thinking about situational crime prevention (Clarke, 1995; Cornish, 1993). By assuming that human actors make broadly rational choices, it looks at offenders' perceptions of the risks, rewards and efforts in situations to guide its analysis of crime prevention possibilities. It does this by focusing on the instrumentality of person-situation interactions. This perspective has a number of ramifications for situational crime prevention. For example, Clarke and Homel (1997) have noted the need for situational measures to be very crime-specific and delivered at the point where the criminal decisions are made. This means that they are not designed primarily to produce long-term changes in dispositions to offend. One of the advantages of this situational approach to crime prevention is that "offenders do not have to be identified before they can be dealt with" (Cornish, 1994b: 153).

Classifying Situational Techniques

Beginning with Clarke and Mayhew's (1980) eight techniques of preventing crime, classification schemes have been used to highlight similar features among various situational measures (Clarke, 1992; Clarke and Homel, 1997). These classification schemes categorize measures, first, according to the technique used, that is, according to the way that the measure affects the environment (e.g., by removing the target or through the use of some form of surveillance). These techniques are then classified into broad categories according to the purpose served. The most-recent scheme (Clarke and Homel, 1997) sets out 16 different techniques and four broad purposes: (1) increasing perceived effort; (2) increasing perceived risk; (3) reducing anticipated reward (identified in Clarke, 1992); and (4) inducing guilt or shame.

Fitting the Technique to the Crime

There are several models that could be used to match crime prevention controls and crimes. For example, Ekblom (1994a; 1994b; Ekblom and Pease, 1995) has designed a model of the crime prevention intervention process for use in the evaluation of the wide variety of situational and non-situational interventions used in the Safer Cities Programme in Great Britain. The SARA model (Eck and Spel-

man, 1987), used in problem-oriented policing (an approach complementary to situational crime prevention), emphasizes the need to gather information about the problem presented, analyze its operation and respond to it. Although routine activity theory (Cohen and Felson, 1979) was not developed with situational crime prevention in mind, some of its concepts, as shown in the introduction to this chapter, have direct application to situational prevention and are very useful for explaining the reach of civil remedies. Here, however, the script-analytic approach (Cornish, 1994a; 1994b) will be used as the underlying model for describing the operation of situational crime prevention, because it was designed to deal with situational crime prevention and is very flexible.

Crime Scripts

Cornish's (1994a, 1994b) script-analytic approach provides a way of conceptualizing how crime prevention measures can be focused in a crime- and situation-specific manner, that is, at the successive points in the crime where various criminal decisions are made. Cornish (1994b) used the concept of a script as "a way of generating, organizing and systematizing knowledge about the procedural aspects and procedural requirements of crime commission.... helping to enhance situational crime prevention policies by drawing attention to a fuller range of possible intervention points" (p. 151).

An example from Cornish's analysis of how intervention points can be combined with particular situational measures is reproduced here as Figure 1, which describes the graffiti offense known as tag writing. Although crimes can be described at various levels of abstraction — e.g., the protoscript (vandalism), the script (graffiti writing) and the track (tag writing) — only the levels of script and track are usually crime-specific enough to generate information effective for situational crime prevention purposes. Figure 1 shows: (1) various general scenes (or functions) — such as preparation, entry and doing — that together make up the criminal act; (2) identified script actions occurring within each scene that are specific to the particular crime; and (3) the situational controls that are linked to script actions and scenes. If a measure is effective, then it will disrupt the crime script. If the offender does not overcome the disruption through innovation, then the crime will be prevented.

Figure 1: Cornish's (1994b) Script Disruption Figure for Graffiti Tag Writing

PROTOSCRIPT: VANDALISM
 SCRIPT: GRAFFITI WRITING
 TRACK "TAG WRITING"

SCENE/FUNCTION	SCRIPT ACTION	SITUATIONAL CONTROL
PREPARATION	Buy spray-can Find good setting	Sales regulation City paint-out program
ENTRY	Enter setting	Access control Entry/exit screening
PRE-CONDITION	Loiter	Surveillance
INSTRUMENTAL PRE-CONDITION	Select target	Remove target
INSTRUMENTAL INITIATION	Approach target	Surveillance
INSTRUMENTAL ACTUALIZATION	Reach target	Protective screens Legal target provided
DOING	Spray graffiti	Graffiti-resistant paint
POST-CONDITION	Get away quietly	Moisture-activated alarm
EXIT	Leave setting	Entry/exit screening
DOING (later)	"Getting up"	Rapid cleaning

From "A Procedural Analysis of Offending" by Derek Cornish. In: R.V. Clarke (ed.), Crime Prevention Studies, vol. 3, p.165.

Key to the script-analytic approach is the identification of the crime problem as the first step in a method that goes on to analyze criminal and intervention processes. There should be tight theoretical links between the crime to be disrupted, the actions and the conditions (props, accomplices and settings) under which these scripts are carried out. Crime-script specificity can force a crime preventor to consider a range of alternative measures or some combination of measures to disrupt a crime script. It may also be used to limit the reach of a proposed measure so that it only targets areas where the scripts are operating. This focus on crime-script specificity does not mean that a measure can only address one crime script at a time, only that each script should be identified and analyzed separately.

This should help ensure that the measure will be targeted against the undesirable behavior in a way that increases its likely success without wasting valuable crime prevention resources. For example, curfews might be successful in keeping a designated group off the street at particular times, but will only affect crimes that had this factor as part of their crime scripts. This is why it is important to discuss situational controls in terms of the crime scripts to which they are linked: they may be successful against one crime but not another. The script-analytic model for situational crime prevention is still relatively new, so it has yet to be used to explore questions related to the comparative ease of disrupting various crime scripts or the part that script complexity may play in disruption or in offender innovation.

Describing the Mechanism

Implicit in the script approach are its connections with the purposes and techniques of situational crime prevention discussed earlier (Clarke, 1992; Clarke and Homel, 1997). Columns could be added to Figure 1 to illustrate the purpose of and technique for each situational control. For example, the city paint-out program against tag writing shown in Figure 1 may act to reduce temptation (the technique), thereby reducing the anticipated rewards for the potential offender (the purpose). When planning prevention initiatives, the mechanism by which the control is to operate should be clearly identified (see Ekblom, 1994a).

Implementation

Despite the importance of correctly analyzing the processes of crime commission and script disruption, crimes will not be prevented if the situational controls are not implemented effectively. Cornish's (1994a, 1994b) discussion of the script disruption process did not include a section on implementation, but, because civil remedies can be used most directly in situational prevention at this stage of the disruption process, it is important to set out some of the key factors related to implementation. These factors can be easily added to the script-analytic model, and displayed in figure form. For example, as Figure 1 stands now, situational control is the last column listed. Additional columns could be added for each new implementation factor to be considered, with the characteristics of the new factors that apply for a particular situational control added along each row under each new factor heading.

Five important factors to be considered in this context are identified here (although others could be considered as well):

- (1) the intervenor (i.e., individuals, governmental agencies, businesses, community groups and multi-agency partners);
- (2) the focus of the situational control (i.e., offenders, crime targets, accomplices, props, scenes);
- (3) the medium of control (i.e., offender handlers, crime target guardians, place managers and props controllers);
- (4) the inducement type (i.e., non-coercive encouragement, civil remedies and criminal penalties); and
- (5) the inducement enforcer; (i.e., the same groups as in [1]).

These factors will now be discussed.

Intervenors

Intervenors are those who decide to carry out a crime prevention initiative and get it going. They are the people who decide which situational controls to use. They are the organizers. Intervenors include individuals and governmental agencies as well as businesses (see Felson and Clarke, 1997), community groups (see National Crime Prevention Council, 1996) and multi-agency partners (see, e.g., Walters, 1996).

Foci of Control and Media of Control

The foci of situational controls can include any material conditions necessary for the script action to occur — that is, offenders, crime targets (victims), accomplices, props (instrumentalities) and scenes (Cornish, 1994b). These foci of situational controls should directly involve crime opportunities. The media of control are those who control or influence the material conditions (or crime opportunities) of the script action that are to be regulated. They can best be understood by incorporating terminology emanating from routine activity theory (Cohen and Felson, 1979) — offender handler, crime target guardian (Felson, 1995) and place manager (Eck, 1995) — with another category — "props controller" — describing those who exert some control over the instrumentalities of crime.¹ Because accomplices are essentially additional offenders, those who control them are offender handlers. As this scheme is designed to explain the operation of situational crime prevention, offender handlers within it exert situational controls, rather than social control (cf. Felson, 1986). For example, when a parent (as an offender handler) sets limitations over when a teenager leaves the home, this could be considered as access control (a situational control) that increases the perceived effort (the purpose of the control) of carrying out a particular offense.

The foci of the situational controls will differ according to the crime script and the criminal actions or scenes. For example, with graffiti tag writing, certain types of crime targets are likely to be more suitable than others — for example, those with graffiti already present (Ferrell, 1993; Smith, 1996) and those located in places with little opportunity for surveillance (Ley and Cybriwsky, 1974; Mawby, 1977; Mayhew et al., 1979; Poyner, 1992; Sturman, 1980; Webb, 1984). These choice-structuring properties (Cornish and Clarke, 1987) of tag writing mean that situational controls can be focused toward the crime target or the scene, with inducements directed toward those who exert some control or influence over these elements of the crime script. In this example, the media of control would be the crime target guardian and the place manager, respectively. Not all of the script actions in tag writing involve crime targets or scenes (see Figure 1): one of the props used — the spray paint can — could also be a focus of control.

As yet, it is not clear whether one type of focus of control is easier to control than another, or whether one type of medium of control is easier to induce to act than another. The importance of scene and place manager in situational crime prevention (e.g., Eck, 1995; Green, 1996) may be related to the types of crime problems addressed or the ubiquitous nature of scene in crime commission. It may also be that some places — so-called "hot spots" (Sherman et al., 1989) - are the sites of multiple crime scripts, and that it is possible to control crime scenes even if little else is known about the scripts going on there (see discussion of offender lifestyles in Cornish, 1994b).

Inducement Type

A large number of situational controls do not involve any kind of formal inducement by a governmental agency, no actual or threatened sanction by an administrative body or court. For example, the mundane precautions that many of us take for granted, such as locking one's car or front door, as well as such diverse measures as off-street parking, burglar alarms, phonecards and trash bins (Clarke and Homel, 1997), usually involve voluntary cooperation by those in control of the opportunity. Where voluntary cooperation is unlikely or not forthcoming, it may be possible to use a civil remedy (or occasionally even a criminal penalty) as an additional coercive inducement. Existing statutes, ordinances, regulations, and non-statutory legal duties may be used or special legislation may be passed (see National Crime Prevention Council, 1996) to require those in control of crime opportunities (the media of control) to carry out some action

that is thought to have a crime-preventive effect. Inducement type is important to the extent that it affects the likelihood that the medium of control will exercise the needed control over the opportunity (the focus of the situational control).² While implementation effectiveness is the primary consideration for choosing one type of inducement over another, the decision to try to use a criminal penalty requires additionally that the behavior to be encouraged or discouraged be harmful enough to warrant the use of the censuring power of the criminal law.

Inducement Enforcers

Inducement enforcers include the same group of potential actors as the intervenor, but they play a different role in the process. The enforcer oversees the medium of control to ensure that the situational control the intervenor seeks to use in a particular crime prevention initiative is actually used. For example, with an initiative involving informal encouragement, the intervenor may be a community group that decides that a paint-out program would be a good way to try to eliminate the rewards for graffiti writers, with the same group cajoling individual property owners to paint out graffiti on their property.

The use of other, more formal types of inducement increases the possibility that the intervenor and the enforcer will not, in fact, be the same group of actors. For example, the intervenor may be a community group and the enforcer may be a government agency. The government agency may have formal responsibility for enforcement of a particular civil code, but may not share the crime prevention goals of the local community group. For example, where resources are limited, the relationship between the civil enforcement and the crimes to be prevented may not be widely recognized, or the agency may not view its mission as one involving crime prevention. When the intervenor and enforcer are not the same group of actors, the intervenor does not necessarily have authority over the enforcer, such as in the community group-government agency example. Thus, in effect, when a civil remedy is used, the intervenor's need for voluntary cooperation is no longer focused on the media of control but instead shifts to the enforcer.

REGULATING OPPORTUNITIES WITH CIVIL REMEDIES

To understand how civil remedies operate to regulate opportunities in the dynamic atmosphere of crime commission, it is helpful to look at how they are used within the script-analytic framework of

situational crime prevention described in the previous section. The most direct role for civil remedies in situational crime prevention is in the implementation process, providing an inducement for the medium of control (that is, the offender handler, crime target guardian, place manager, or props controller) to exert his or her influence over a crime opportunity, defined above as the focus of control (that is, offender, crime target, scene and props). The direct operation of civil remedies in the implementation of situational crime prevention initiatives will now be illustrated. Attention is also focused on premises liability suits and civil recovery, in which civil remedies can play an indirect role in situational crime prevention.

Civil Remedies and Implementation

While the choice of whether to use a particular civil remedy rather than rely on voluntary cooperation in a situational crime prevention scheme may be one of the last decisions an intervenor makes, its inclusion may have important, possibly determinative, effects on the success of the initiative. The decision requires a balancing of three primary considerations: (1) how successful the situational control will be without the added enforcement power; (2) whether the resources for using the remedy are available; and (3) whether the use of the remedy will have negative effects. These factors are discussed below in the context of using civil remedies to help prevent graffiti tag writing.

Mechanism of Control

Cornish's tag-writing script (Figure 1) will be used again to help describe how civil remedies can be employed to assist in the disruption of a crime script. One of the script actions in tag writing is to enter the setting. Fenced yards could be used to control access (the situational technique) to that crime setting (the focus of control) by increasing the perceived effort (the purpose of the control) of the tag writer. However, if a municipal code were passed requiring property owners (as place managers) to erect fences to control access to particular places, then it would not be the imposition (or threat of imposition) of the civil remedy itself that would be intended to have the crime prevention effect. It would still be the fence that is intended to control access and increase perceived effort. The civil remedy would just be another way of getting owners to erect or keep up fences — that is, a different type of inducement. While the use of the civil remedy could aid in the disruption of the crime script, it would do so through an increase in the complexity of the implementation process — not by changing the mechanism of control.

Choosing the Type of Inducement

One of the tools or props frequently used by graffiti writers is the spray paint can. As noted earlier, this can be one of the foci of control in a tag-writing script-disruption plan (see Figure 1). One medium of control for the spray paint can could be the spray paint retailer, acting as a props controller (for others, see National Crime Prevention Council, 1996). It is possible that a props controller might voluntarily cooperate in whatever situational control is proposed; for example, retailers could limit the sale or display of spray paint cans voluntarily. However, intervenors may judge that (a) such cooperation is unlikely or unworkable without the aid of a threatened civil (or possibly criminal) sanction; (b) the imposition of an actual sanction is needed to force some of them to cooperate (see, e.g., Green, 1996); or (c) enforcement responsibility should fall to another group (Engstad and Evans, 1980).

Despite the added benefit that a prohibition against the sale of spray paint to minors may provide, however, it may still turn out that it is not the right control for the situation. For example, although city ordinances limiting spray paint sales to minors might be a good way to "control facilitators" (Clarke and Homel, 1997) through the props controller and to disrupt the tag-writing crime script, such an ordinance may be impossible to implement effectively in an area if it includes many small jurisdictions or if the enforcement resources are limited. These particular problems with using a civil remedy would not necessarily be solved by trying to secure voluntary cooperation, since non-coercive inducements may also be difficult to coordinate across jurisdictions and can require resources as well (see, e.g., Gladstone, 1980; Hope, 1985). An intervenor may decide not to use a potentially powerful control if it cannot be implemented properly, despite the existence of several different types of possible inducement.

An additional problem that could be encountered with the use of civil remedies is illustrated by another situational control used against tag writing — painting out. Graffiti writers have reported finding places with graffiti already present attractive sites for their handiwork (Ferrell, 1993). As noted previously, painting out existing graffiti may reduce tag writing. Ferrell (1993) reported that the city of Denver, CO, as part of a wider anti-graffiti campaign, used a zoning ordinance to force property owners (as target guardians) to remove graffiti from their premises. The use of this civil remedy, however, may have contributed to the campaigns' limited success for, as the National Crime Prevention Council (1996) has observed, "Legislation that requires removal of graffiti by property owners may meet with resistance from [those] who feel the burden is misplaced and unjust"

(p. 11). Intervenors may find that attempts to win property owners over and secure voluntary cooperation with clean-up campaigns is a better way to achieve their goal of decreasing perceived rewards for potential tag writers. Furthermore, resources that might go toward enforcing mandatory clean-up by the property owners could be used to finance painting-out by the local government. Such a campaign was carried out in the London Borough of Bromley ("Council Hopes to Rub out Graffiti," 1993). With a government-run paint-out initiative, the property owners might feel as if the government were doing them a favor rather than making them bear the burden for someone else's crime, and they might cooperate more readily in the control.

The decision about the type of inducement to use in a particular situation is likely to involve difficult comparisons for intervenors and deserves wider attention in the crime prevention literature. The review by the National Crime Prevention Council (1996) describes a variety of civil remedies and criminal penalties that have been used across the U.S. to address particular crime problems. More research in this area is needed, particularly controlled comparisons of the use of the three different types of inducements, as well as comparisons of particular inducements used across different situational controls and crime scripts.

An Indirect Role in Situational Crime Prevention

Civil remedies may play an indirect role in the operation of situational crime prevention as well. Two civil remedies that may affect crime opportunities are premises liability suits and civil recovery statutes. These two remedies, unlike those already discussed, are not directly used by crime prevention intervenors to try to get those who control crime opportunities to modify these opportunities. Their potential roles in situational crime prevention follow different paths, as described below.

Premises Liability Suits

Premises liability suits have been cited as another means by which a civil action can be used for crime-preventive purposes (Gordon and Brill, 1996). The theory is that a civil suit by a crime victim against the person responsible for the place where the crime occurred (the place manager) leads other landlords to use measures that will reduce the likelihood of future similar crimes occurring on property under their control. Eck (1997) examined three possible models of attorney and business decision making in this area, looking at factors such as individual risk, place risk, area crime rates, costs of being sued and risk of suit. He predicted differing levels of

investment in crime prevention by businesses depending on which model was applied. Although all of the models predicted an increase in investment, only one anticipated that the threat of premises liability suits improved public safety. Some of the models predicted investment that would reflect the risk of suits more than the risks of crime at a particular place, while another foresaw a lack of correspondence between risk of victimization and investment.

Eck's (1997) analysis lends support to the view that civil remedies may sometimes have indirect situational crime prevention effects. Individual plaintiffs bring premises liability suits primarily to receive compensation. Unlike the potential uses of civil remedies against graffiti tag writing described earlier, such suits are not designed to make the medium of control change the situation in which scripts are played out or to directly control crime opportunities. Changes made by similarly placed persons who seek to avoid having premises liability suits brought against them do not ensure that they will actually avoid these suits by making the changes. The fit between the situational controls (e.g., locks, lighting, surveillance) and the civil remedy (compensation following a criminal harm) is neither tight nor direct. In addition, there is no single intervenor to oversee the remedy's crime prevention effects, overcome this lack of fit, or initiate other control measures, nor is there a single enforcer. Given these features, it is not surprising that premises liability suits may not have a situational crime-preventive effect (Eck, 1997). What is perhaps more unexpected is that, despite their indirect relationship to those who control crime opportunities, these suits may in fact have such an effect.

Civil Recovery

Civil recovery is also indirectly linked to potential situational controls. About half of the U.S. states have expanded the normal civil tort action available to store owners into a civil recovery action that allows them to choose whether to prosecute offenders, or to bring a civil recovery action involving restitution and, depending on the statute, some type of punitive damages (Davis et al., 1991). The primary thrust of the statutes appears to be compensatory rather than crime preventive. However, if store owners find that the advantages of seeking civil recovery outweigh the burdens of criminal prosecution and use it, then this civil restitution option could have an increased crime prevention effect through situational means. This could happen, for example, if the increased financial incentive to pick up shoplifters leads to increased surveillance or exit screening, and the increase in risk of capture from the use of these controls leads to less

shoplifting. Crime would also be prevented if the existence or use of the civil recovery option alone resulted in a perception of greater risk among offenders, and this led to less shoplifting.

On the other hand, at least three conditions could operate to lessen any crime prevention effect from civil recovery. First, where arrests for shoplifting are the normal response in all cases (as in the store described by Davis et al., 1991), a switch to civil recovery actions may result in owners pursuing a policy that does not decrease the amount of shoplifting but merely provides enough compensation to cover the costs of the thefts. Second, if potential offenders were to learn that they might not face prosecution if apprehended and this was seen as a less risky result, then they might increase the level of their stealing to cover the risks of paying compensation if discovered. Finally, Hollinger (1997) warned that although there may be financial incentives for retailers to eschew criminal prosecution and pursue monetary restitution, if they have trouble getting money from apprehended shoplifters who have little incentive to pay, then the retailers may find themselves without an effective option — and in the same position regarding crime prevention that they were in before.

Again, unlike the use of civil remedies against tag writing discussed earlier, the sanction available with civil recovery statutes is not directed against those who control crime opportunities. Instead, it is targeted at identified offenders, with the retailers (acting as both place managers and target guardians) carrying out the enforcement role. And, like premises liability suits, even though the remedy is not directed against those who control the crime opportunities for shoplifting, there may be a situational crime-preventive effect — though, again, it is an empirical question as to whether there is such an effect. Here, the situational effect will occur if the remedy increases the perception of risk among unidentified potential offenders or makes the reduction of crime opportunities by the retailers profitable enough for them to increase their situational controls.

It remains to be seen whether the indirect roles of particular civil remedies in situational crime prevention will be shown to have a crime-preventive effect, and, if they do, whether they will prove as successful as some of the direct applications of remedies at the implementation stage (see, e.g., Green, 1996). Indirect roles for civil remedies may be fairly rare occurrences, certainly less common than the potential uses of civil remedies to influence the four groups — offender handlers, crime target guardians, place managers and props controllers — that control or influence crime opportunities.

CONCLUSION

Civil remedies can be used in several different ways to prevent crime. In addition to regulating identified offenders or potential offenders, they can also regulate crime opportunities. Most notably, civil remedies can be used directly as formal inducements to increase the likelihood that those with influence or control over crime opportunities carry out activities designed to affect a situational control over these opportunities. Other possible inducements, including non-coercive encouragement and criminal penalties, may be used as well. The decision to choose one inducement over another to affect a particular situational control requires that the intervenor evaluate the following for each inducement: (1) how well it will work; (2) necessary and available resources; and (3) potential negative effects.

It is also possible that civil remedies can be used indirectly to produce a situational crime prevention effect, that is, to regulate crime opportunities. Such an effect may occur where the existence or use of a remedy (usually invoked to serve some other purpose) increases the likelihood that those in control of opportunities will perceive that it is in their interest to increase effective situational controls, or where the remedy increases the likelihood that potential offenders will perceive that increased situational controls have been implemented, whether or not they have been.



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NOTES

1. Controlling the instrumentalities of the crime — "the props" in Cornish's (1994b) script approach — is analogous to "controlling facilitators," a situational crime prevention technique described in Clarke (1992) and in Clarke and Homel (1997).
2. According to Clarke and Homel (1997), criminal penalties can be used situationally in a way that does not involve inducements to the media of control in the manner described. Harassment codes (for rule setting) and drinking age laws (controlling disinhibitors) are situational because, by inducing guilt or shame, they can be used to change the situation in which offending decisions are made. Their purpose is not to identify and prosecute an individual offender, or to produce long-term changes in dispositions to offend, but to act upon the general public in particular situations.