

THE “ACTIVE SHOOTER”

PREVENTION, RESPONSE, AND LIABILITY

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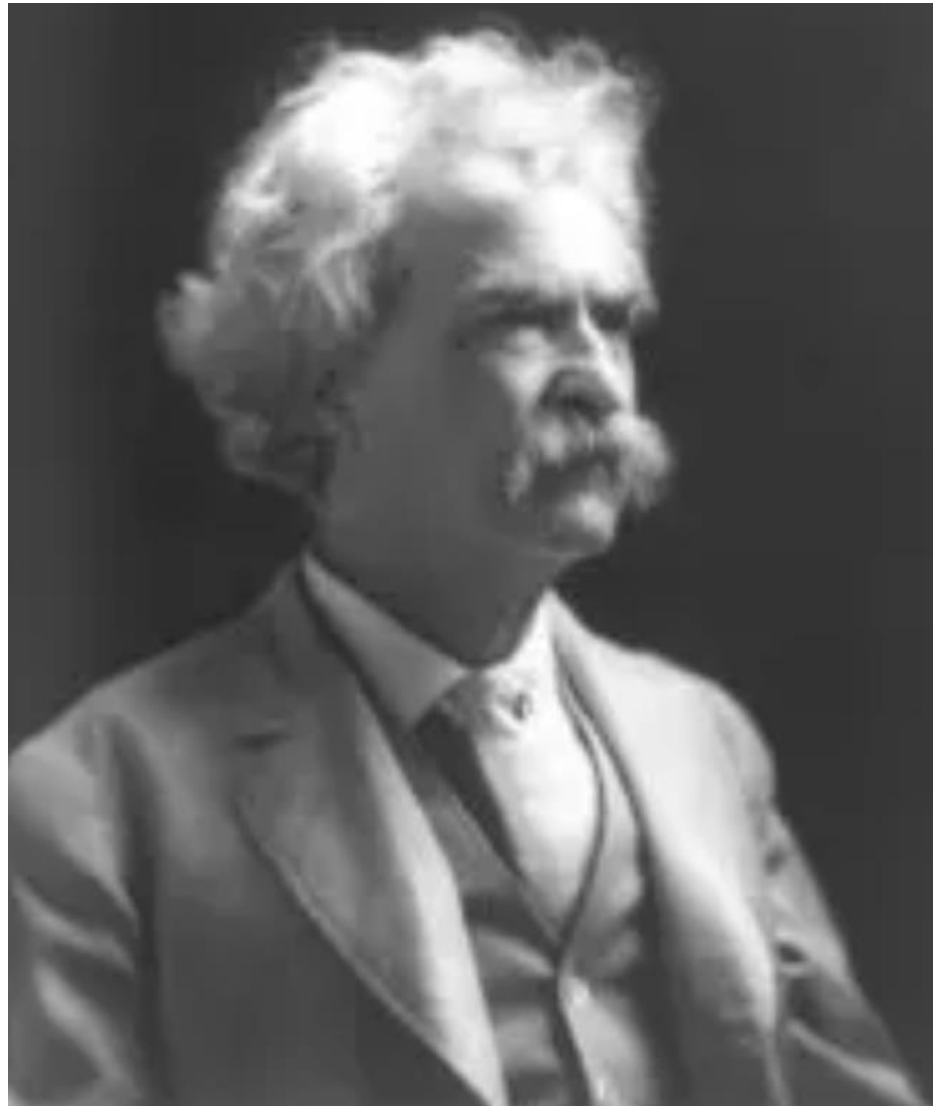
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OUR WORLD

- RISING FREQUENCY OF INCIDENTS
- INCREASING LEVELS OF VIOLENCE
- MEDIA ATTENTION
- HINDSIGHT LIABILITY COMBINED WITH PREDICTION IMPOSSIBILITY

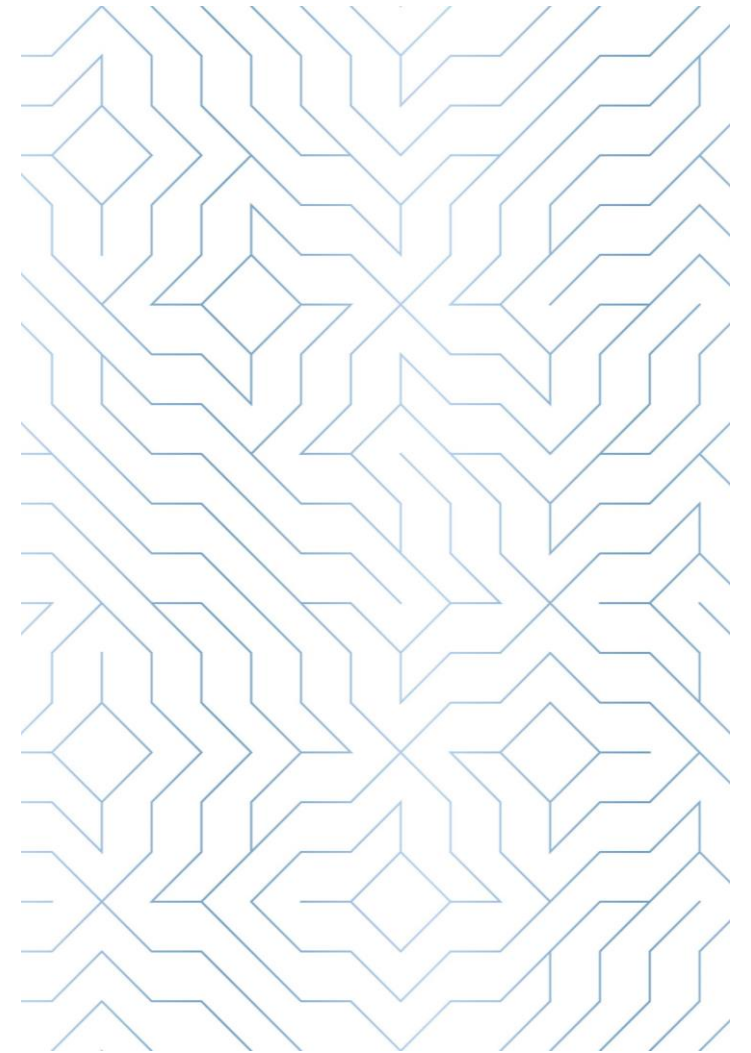




“There are
three
kinds of
lies: lies,
damn lies,
and
statistics.”
~ Mark Twain

WHAT IS A MASS SHOOTING?

- **FBI Definition**
 - Actively engaged in killing or attempting to kill people in a populated area
 - 3 or more fatalities
- **Gun Violence Archive / Media**
 - 4 or more shot and / or killed
- **Who commits these acts?**
 - Customers, clients, patients, and other 3rd parties
 - Employees or supervisors
 - Domestic partners or relatives of employees
 - Typically, males between the age of 18 and 25 who are often victims of bullying

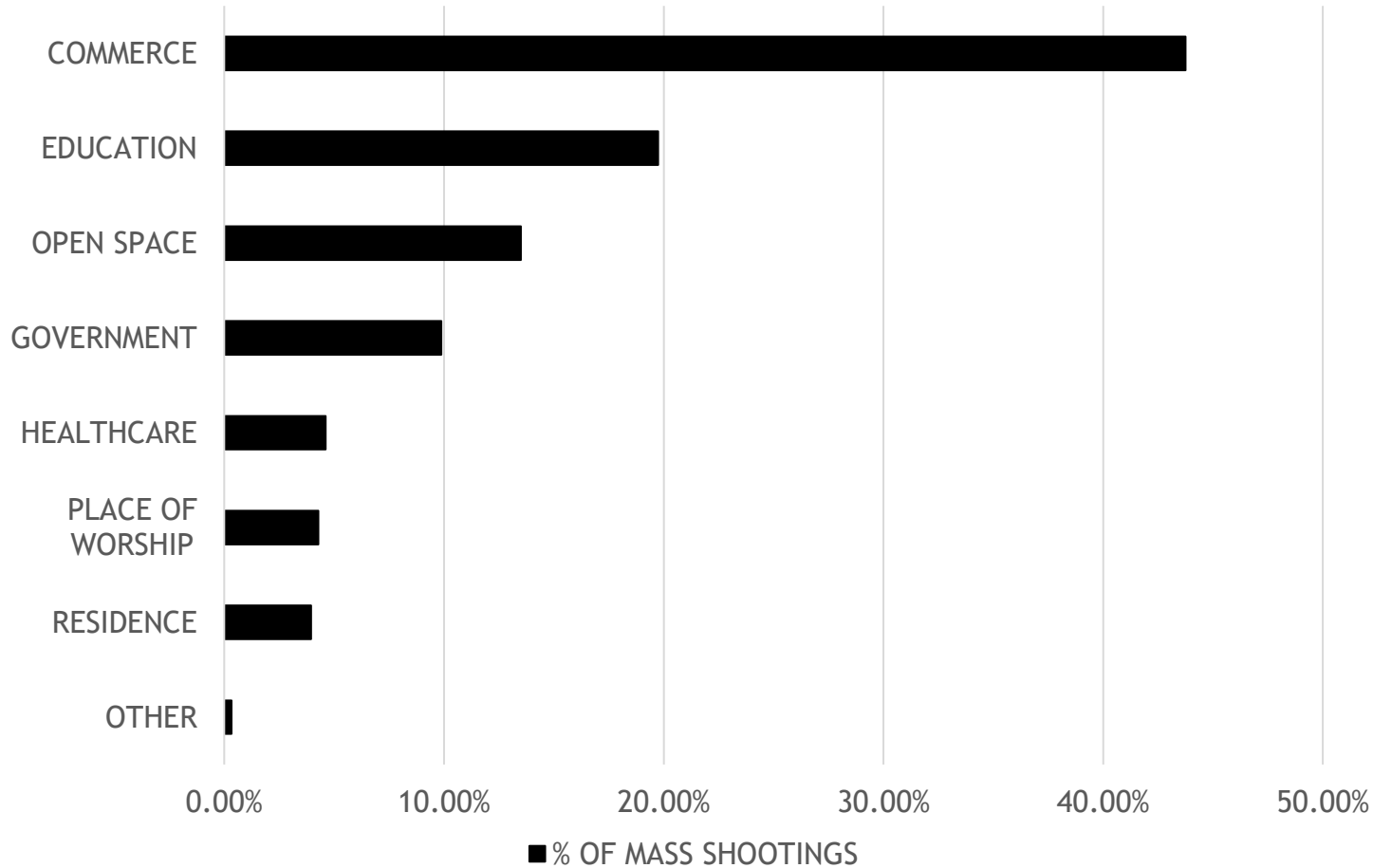


THE FIGURES

Location of US Active Shooter Events

2000 - 2019

% OF MASS SHOOTINGS



8 in 10

of all murders and suicides
in the U.S. involved a gun
in 2020

PEW research centre

116

average of Americans who die
from gun violence daily

Giffords

ANNUAL STATISTICS

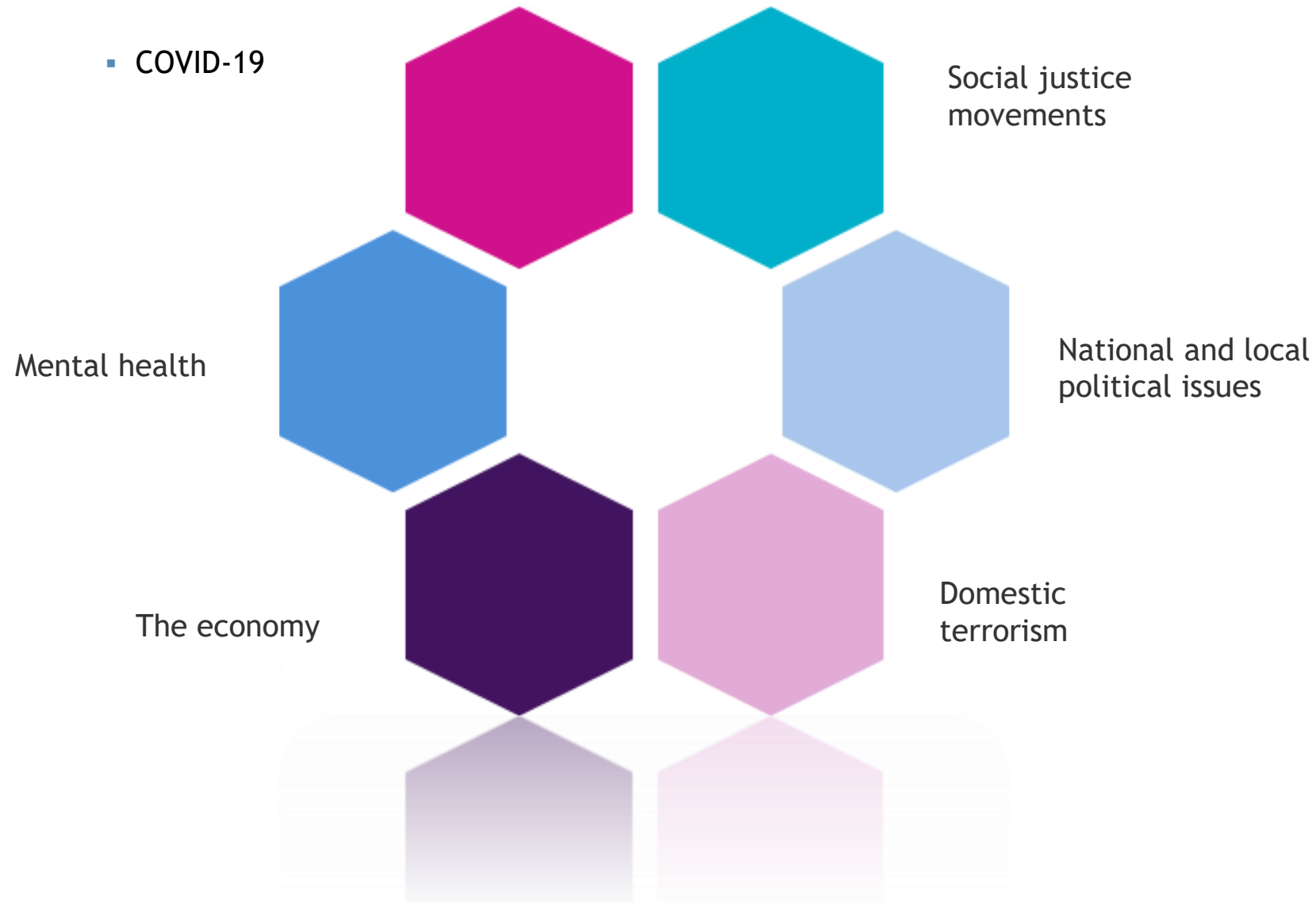
Mass shooting statistics ¹			
2019	2020	2021	2022
415 total incidents	610 total incidents	690 total incidents	646 total incidents
35 mass shootings per month	51 mass shootings per month	58 mass shootings per month	53 mass shootings per month

Gun violence statistics ¹		
2020	2021	2022
total of 43,736 deaths, equating to 119 deaths each day	total of 45,126 deaths, equating to 123 deaths each day	total of 44,352 deaths, equating to 121 deaths each day

Date	Incident	State	Killed	Injured	Perpetrator
10.01.17	Mandalay Bay	NV	59	441	Stephen Paddock
06.12.16	Pulse Nightclub	FL	50	53	Omar Mateen
04.16.07	Virginia Tech	VA	32	17	Seung-Hui Cho
12.14.12	Sandy Hook	CT	27	2	Adam Lanza
11.05.17	Sutherland Springs	TX	27	20	Delvin Patrick Kelley
16.10.97	Luby's Shooting	TX	23	27	George Hennard
03.08.19	El Paso Walmart	TX	22	24	Patrick Crusius
18.07.84	San Ysidro McDonald's massacre	CA	22	19	James Huberty
02.14.18	Stoneman Douglas high	FL	17	17	Nikolas Cruz
01.08.66	University of Texas Tower shooting	TX	18	31	Charles Whitman

TOP 10 COSTLIEST US ACTIVE SHOOTER EVENTS BY CASUALTY LOSSES

ONGOING SOURCES OF TENSION



EXEMPLAR AFFECTED INSTITUTIONS

Any Business and Third-Party Claims



BUSINESS





PROTECTION GOALS

- EMPLOYEES
- CUSTOMERS
- STUDENTS
- THE BUSINESS OR INTITUTION



“An individual(s) actively engaged in killing or attempting to kill people in a populated area.”

(source: White House, U.S. Dept. of Justice/FBI, U.S. Dept. of Education, and Dept. of Homeland Security/FEMA)

Generally, uses firearms, but can also use explosives and cutting instruments

WHAT IS AN “ACTIVE SHOOTER”?



OTHER THREAT DEVICES



CHEMICALS AND
ACIDS



KNIVES AND
SHARPS



ARSON AND
INCENDIARY
DEVICES



BOMBS AND
EXPLOSIVES



POISONS AND
CONTAMINATIONS



MOTOR VEHICLES



DRONES



THE HINDSIGHT STANDARD: EMPLOYEE AND PUBLIC EXPECTATIONS

- EXPECTATION OF SAFETY
- INABILITY TO PREDICT VIOLENT BEHAVIOR
- “IF IT HAPPENED BEFORE, IT CAN BE PREVENTED”
- HINDSIGHT STANDARD IN THE MINDS OF VICTIMS AND JURORS
- THESE COMBINE TO SIGNIFICANTLY INCREASE LIABILITY





THE MANDALAY BAY ASSAULT

- LAS VEGAS SHOOTING 2017
 - Shooting at an outdoor concert from elevated hotel room
 - 58 dead, 800 injured in shooting and aftermath
 - Plaintiffs claimed the hotel was negligent in allowing the shooter to stockpile weapons
 - Hotel settled most cases for a collective sum of \$800 Million





Mandalay Bay

Luxor

Excalibur

Las Vegas Blvd.

Main Stage Area

VIP Area

Route 91
Harvest Festival

Box Office

Bleachers &
Chair Corral

Giles St.



EXPECTATION OF HEIGHTENED
SECURITY

INSPECTIONS OF LUGGAGE,
BRIEFCASES, COATS, HOODIES, AND
BACKPACKS - NOW GOLF AND SKI BAGS

METAL DETECTORS

ARMED GUARDS

**THE
MANDALAY
BAY
IMPACT:
HOTELS
AND OTHER
BUSINESS**



PREVENTATIVE MEASURES



PREVENTATIVE MEASURES

HUMAN RESOURCE Department

Should engage in planning for emergency situations, including an active shooter scenario, by:

- Conducting effective employee screening and background checks
- Creating a system for reporting signs of potentially violent behavior
- Making counseling services available to employees
- Developing an **Emergency Action Plan** that includes policies and procedures for dealing with an active shooter situation, as well as after-action planning

(source: FEMA IS-907 *Active Shooter: What You Can Do*)



PREVENTATIVE MEASURES

There are no “usual suspects.”

There is no demographic profile of a targeted violence offender.

Objective assessment of threat enhancing and mitigating circumstances is the key to evaluating concern for violence.

Any individual, no matter what age, sex, race, religion, education or income level, marital status, or occupation, has the potential to engage in targeted violence.



The first step in preventing future violence is identifying and evaluating a person's behaviors.

No single behavior is predictive of targeted violence; rather, a "perfect storm" sometimes develops based on a multitude of factors and conditions.

When conducting an assessment, the facts and circumstances identified in this chapter must each be examined while focusing on the person of concern, the potential target(s), the situation, and the setting.

PREVENTATIVE MEASURES

PREVENTATIVE MEASURES

Threat assessment is a multifaceted process, stemming from a holistic analysis of the pattern of behaviors displayed by a person of concern.

(source: FBI Behavior Analysis Unit (BAU) *Making Prevention a Reality*)





SEE (HEAR OR READ) SOMETHING, SAY SOMETHING

- Transforming bystanders into upstanders is a must
- However, bystanders may feel overwhelmed by or fearful of informing on a friend or associate
- Potential for ridicule
- Potential reprisal from person of concern or organization



SEE (HEAR OR READ) SOMETHING, SAY SOMETHING

- Fear of being a “snitch”
- Potential of not being taken seriously
- Uncertainty about the seriousness of the info or situation
 - Mistrust of confidentiality or of the system to handle situation appropriately
 - Desire to remain uninvolved in the affairs of others
 - Other concerns which may be unique to each person



SEE (HEAR OR READ) SOMETHING, SAY SOMETHING

To overcome multiple reporting obstacles, there will likely need to be a cultural shift

- Education
- Common goals of protecting everyone
- An expression of corporate policy - if the policy is to default in favor of health and safety of fellow employees and customers, it is easier to report concerns for evaluation



PREVENTION RESOURCE

The FBI's behavioral experts in the Behavioral Threat Assessment Center (BTAC) are available to work with TATs and develop threat mitigation strategies for persons of concern.

BTAC members rely upon extensive research and operational experience to assist in identifying, assessing, and managing persons of concern who may become violent.



PREVENTION RESOURCE

- ▶ BTAC services can be accessed by contacting the Behavioral Analysis Unit [BAU] Coordinator in any of the FBI's 56 field offices located throughout the United States.



PREVENTION:

WARNING SIGNS

- ▶ Employees typically do not just “snap,” but display indicators of potentially violent behavior over time.
- ▶ If these behaviors are recognized, they can often be managed and treated.



PREVENTION: **WARNING SIGNS**

Potentially violent behaviors by an employee may include one or more of the following:



PREVENTION:

WARNING SIGNS

Repeated
violations of
company policies

Noticeably
unstable,
emotional
responses

Explosive outbursts
of anger or rage
without
provocation

Suicidal; comments
about 'putting
things in order'

Behavior which is
suspect of paranoia
(‘everybody is
against me’)

Increasingly talks
of problems at
home



PREVENTION: **WARNING SIGNS**

Talk of previous incidents of violence

Empathy with individuals committing violence

Increase in unsolicited comments about firearms, other dangerous weapons, and violent crimes

The angry/mentally ill partner, spouse threat



Active Shooter Incident - Awareness

In approximately 80% of school shootings,

at least one person

had information that the attacker was thinking about,
or planning, an act of violence.

PREVENTION: WARNING SIGNS
Someone Knows Something



RESPONDING TO ACTIVE SHOOTER

FBI, DHS/FEMA
all provide
similar advice:

RUN

HIDE

FIGHT



REGULATORY LANDSCAPE

OSHA requirements

- General Duty Clause Section 5(a)(1) - an employer is required to furnish a place of employment which is free from recognized hazards that are causing and likely to cause death or serious physical injury to its employees
- Active shooter is now a recognized hazard

Employer liability

- Liability is on the employer to train their employees to recognize the indicators of a potential active shooter and how to respond when they are faced with an actual active shooter situation
- Civil lawsuits – negligence
- Training to recognize potential shooters and respond
- Training needs to be made available and safeguards put in place
- Location of insured's business becoming more frequently targeted for claims of negligent security and employee / 3rd party welfare

TRADITIONAL INSURANCE OPTIONS

General Liability	Terrorism
• May not respond unless the insured is deemed liable • Ambiguity regarding personal attacks against customers or other third parties • Excludes employees • Excludes damage to property of subsequent business interruption • High SIR • Occurrence = Accident	• Terrorism defined as political, religious or ideological act • Physical damage trigger required • Third part cover purchased as separate add-on • No crisis management
Workers Compensation	TRIPRA
• Varies by state • Excludes property damage • Excludes injuries to any third party	• \$5m triggers threshold for property and casualty combined • “Certified” acts of terrorism only
Workplace Violence	Property All Risk
• Excludes injuries to any third party	• Requires physical damage trigger • If sublimit are offered for various services they are often extremely restrictive
Little to no prevention or crisis management services	

INSURANCE CONSIDERATIONS



LEGAL ISSUES



**THEORIES OF LIABILITY AGAINST PROPERTY
OWNER AND/OR BUSINESS (BANK)**



Premises Liability / Dangerous Condition



LEGAL ISSUES



THEORIES OF LIABILITY AGAINST PROPERTY OWNER AND/OR BUSINESS (BANK)



NOTICE



THE PROBLEM WITH NEGLIGENCE

In a perfect world, jurors would dispassionately follow the law.

However, many factors influence deliberations, including:

- Sympathy for victims and the “reverse-engineering” of verdicts
- Concern for community safety
- “Sending a Message” to corporate America
- 20/20 Hindsight- the puzzle is easy to see once assembled
- The emerging notion that all harm should be compensable, with or without fault – particularly where large institutions are involved
- Disturbing trends to place more blame on an [innocent] business than the criminal



DEFENSE ATTORNEY OBSERVATIONS



THE WORLD OF 20/20 HINDSIGHT

We live in a world where 20/20 hindsight is the effective standard.

The perception is that gun violence is increasing and, therefore, foreseeable.

The absence of forethought, a plan, and training will likely result in liability

There are various resources that can and should be used



- Recent Examples

- Sexual Molestation - San Jose - 2 High School Students - \$105, 000,000
- Sexual Molestation - Marin -Coach Brushed Genitals - \$10,000,000
- Wrongful death -Butte County - seasonal laborer - \$10,000,000
- Brain Injury - Orange County - Hotel - \$60,000,000
- Sexual Assault - Locker room by teammates - Sacramento - \$2,700,000; \$100,000 pre-trial settlement for second Plaintiff.

THE ISSUE OF “NUCLEAR VERDICTS



ESSENTIAL INGREDIENTS

IGNORING CORE FACTS: IS IT A BAD CASE?

FAILRE TO ACCEPT RESPONSIBILITY

UNREASONABLENESS

FAILURE TO ANCHOR - GIVE A NUMBER - BEGINNING IN VOIR DIRE

FAILURE TO DEVELOP A “COMON SENSE” THEME



WHILE THE DEFENSE SLEPT...

PLAINTIFFS COMPLETELY CHANGED
STRATEGY

OLD - Never ask for huge numbers

NEW - Ask for huge numbers

OLD - Sympathy

NEW - Anger

OLD - Hints at “Golden Rule”

NEW- Full-on Reptile Theory - incite jury to
protect the community



**THE
DEFENSE
IS WAKING
UP**

- Credit - Bob Tyson of Tyson Mendes - “NUCLEAR VERDICTS”
 - www.tysonmendes.com
- While the Defense Industry focused on metrics and audits - the game changed dramatically
- POST-COVID expectations were shattered
 - Surely juries would be more conservative after the long dark lockdown
- Juries now more than ever - appear to be exercising power and respond when angry at the defense

JUROR ANGER AND POWER



QUESTIONS/COMMENTS

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APPENDIX

TRAINING FOR ACTIVE SHOOTER

Create an Emergency Action Plan (EAP) and conduct training exercises. Together, the EAP and training exercises will prepare your staff to effectively respond and help minimize loss of life.

Components of an EAP: Create the EAP with input from several stakeholders including your HR department, your training department, facility owners/operators, property manager, and local/federal law enforcement.



TRAINING FOR ACTIVE SHOOTER

An effective EAP includes:

A clear procedure for reporting

An evacuation policy and procedure involving at least two escape routes

Emergency escape response procedures and route assignments (i.e., floor plans, safe areas)

Contact information for, and responsibilities of, individuals to be contacted under the EAP



TRAINING FOR ACTIVE SHOOTER

Information concerning local area hospitals (i.e., name, telephone number, and distance from location)

An emergency notification system to alert various parties of an emergency including:

- (source: FEMA IS-907 *Active Shooter: What You Can Do*)



TRAINING EXERCISES

The most effective way to train your staff to respond to an active shooter is to **conduct mock active shooter training exercises.**

Local law enforcement is an excellent resource in designing training exercises.



TRAINING EXERCISES

Recognizing the sound of gunshots



Reacting quickly when gunshots are heard and/or when a shooting is witnessed:

Run

Hide

Fight the shooter as a last resort



Call 911



TRAINING EXERCISES

Reacting when law enforcement arrives

Adopting the survival mindset during times of crisis

Ensure that EAPs, evacuation instructions, etc. address relevant information for special needs and/or disabled

Compliance with ADA requirements



FACILITY MANAGERS' RESPONSIBILITIES

- Institute access controls (keys, security system pass codes)
- Distribute critical items to appropriate managers/employees including:
 - Floor plans
 - Keys and other access controls
 - Facility personnel lists, telephone, and email
 - Schedules



FACILITY MANAGERS' RESPONSIBILITIES

Assemble crisis kits containing:

Radios

Floor plans

Keys, access codes

Employee rosters and contact info

First aid kits

Flashlights

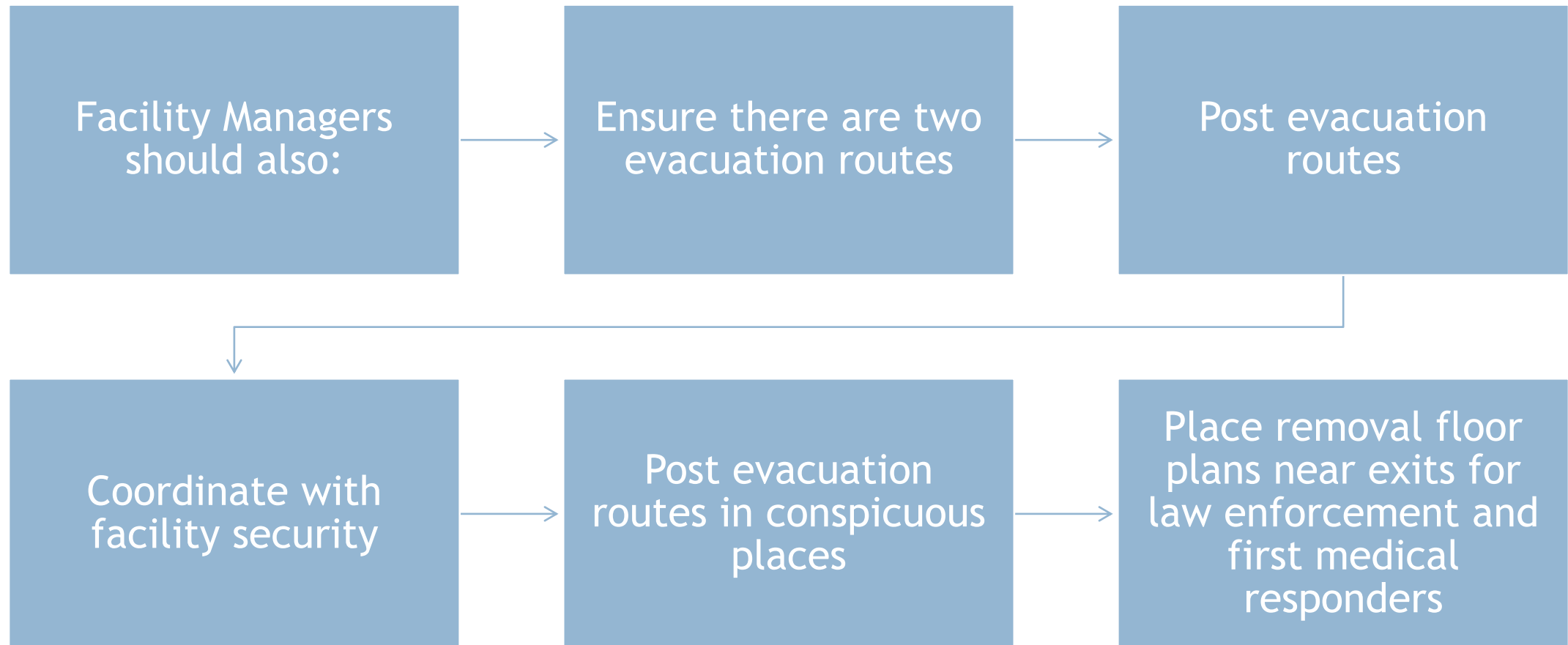


FACILITY MANAGERS' RESPONSIBILITIES

- Activate the emergency notification system
 - Develop policy directives for different scenarios for clarity
 - Activate or not



FACILITY MANAGERS' RESPONSIBILITIES



FACILITY MANAGERS' RESPONSIBILITIES

1

Include law enforcement and first responders in training exercises

2

Consider inviting law enforcement, first responder, SWAT, canine and bomb squads to train for active shooter at your facility

3

Foster a respectful workplace

4

Be aware of indications for workplace violence and take actions

- (source: FEMA IS-907 Active Shooter: What You Can Do)



RESOURCES

- **FBI Resources**
 - <https://www.fbi.gov/file-repository/making-prevention-a-reality.pdf/view>
 - <https://www.fbi.gov/about/partnerships/office-of-partner-engagement/active-shooter-resources/responding-to-an-active-shooter-crisis-situation>
- **FEMA Active Shooter: What you can do.**
<https://emilms.fema.gov/IS907/curriculum/1.html>
- **DHS** www.dhs.gov/sites/default/files/publications/active-shooter-how-to-respond-508.pdf
- **ALICE TRAINING** (Alert, Lockdown, Inform, Counter, Evacuate)
<https://www.alicetraining.com>

