



# THE HOSPITALITY LAW CONFERENCE: SERIES 2.0

October 3, 2018



Washington, D.C.

Crime Doesn't Pay.  
Neither Should You.

2018 HOSPITALITY  
LAW CONFERENCE:  
WASHINGTON D.C.

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OCTOBER 3



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- Co-Founder of the National Retail and Restaurant Defense Association (NRRDA)
- Over 50 jury trials for multiple Fortune 500 SIR clients.



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# Liability for Third Party Criminal Acts

“There is no duty so to control the conduct of a third person as to prevent him from causing physical harm to another unless a special relationship exists between the actor and the other which gives to the other a right of protection.”

Restatement (Second) of Torts § 315.



# Liability for Third Party Criminal Acts

## Virginia

“A business owner does not have a duty to take measures to protect an invitee against criminal assault unless he knows [of] . . . an **imminent probability** of harm to an invitee.” Yuzefovsky v. St. John’s Wood Apts., 261 Va. 97, 110 S.E.2d 134, 140 (2001).

## Maryland

Landlords and business owners have a duty “to take reasonable security measures to eliminate harm that is **foreseeable** based on the nature of the known criminal activity on the premises.” Univ. of Md. E. Shore v. Rhaney, 159 Md. App. 44, 858 A.2d 497 (2004).

## Washington, D.C.

“[T]he proprietor of a place of public resort is subject to liability . . . for injuries inflicted by the acts of other patrons . . . if the proprietor . . . should have known that such acts **were being done or about to be done**.” Novak v. Capital Mgmt. & Dev. Corp., 452 F. 3d 902, 912 (DC Ct. App. 2006).

## Pennsylvania

A business owner has a duty “to protect its business invitees from **foreseeable criminal activity**.” Vann v. Bd. Of Education, 76 Pa. Common. 604, 607 (1983).



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# Liability for Third Party Criminal Acts

Innkeepers owe guests a heightened duty of care:

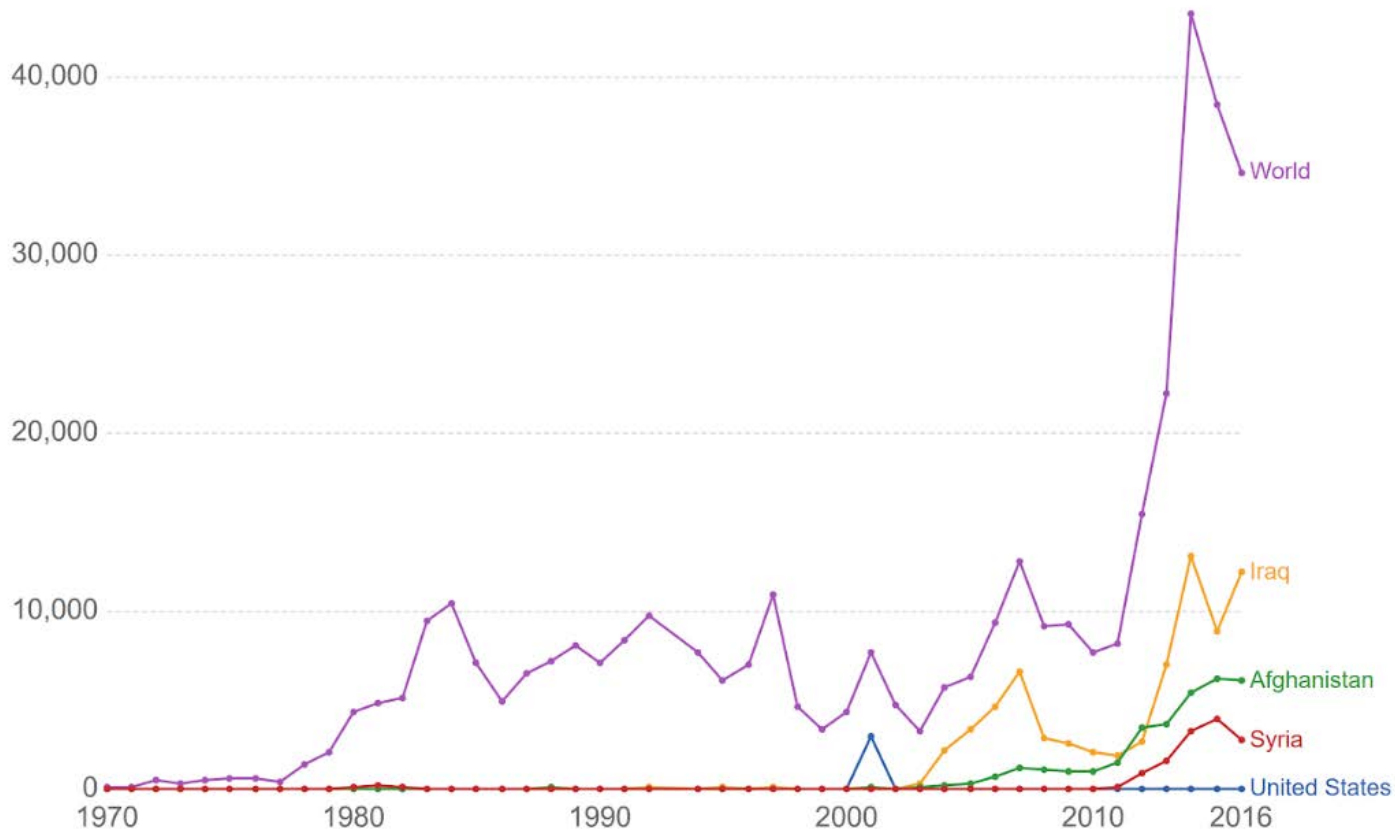
1. Must take reasonable steps to protect guests from
2. Foreseeable harm.



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# Number of fatalities from terrorism-related attacks

Total number of fatalities per year from terrorist attacks. This represents the number of total confirmed fatalities for the incident. This includes all victims and attackers who died as a direct result of the incident.



Source: Terrorism Fatalities- Global Terrorism Database

OurWorldInData.org/terrorism/ • CC BY-SA

## Terrorism in hotels worldwide: 1970-2015

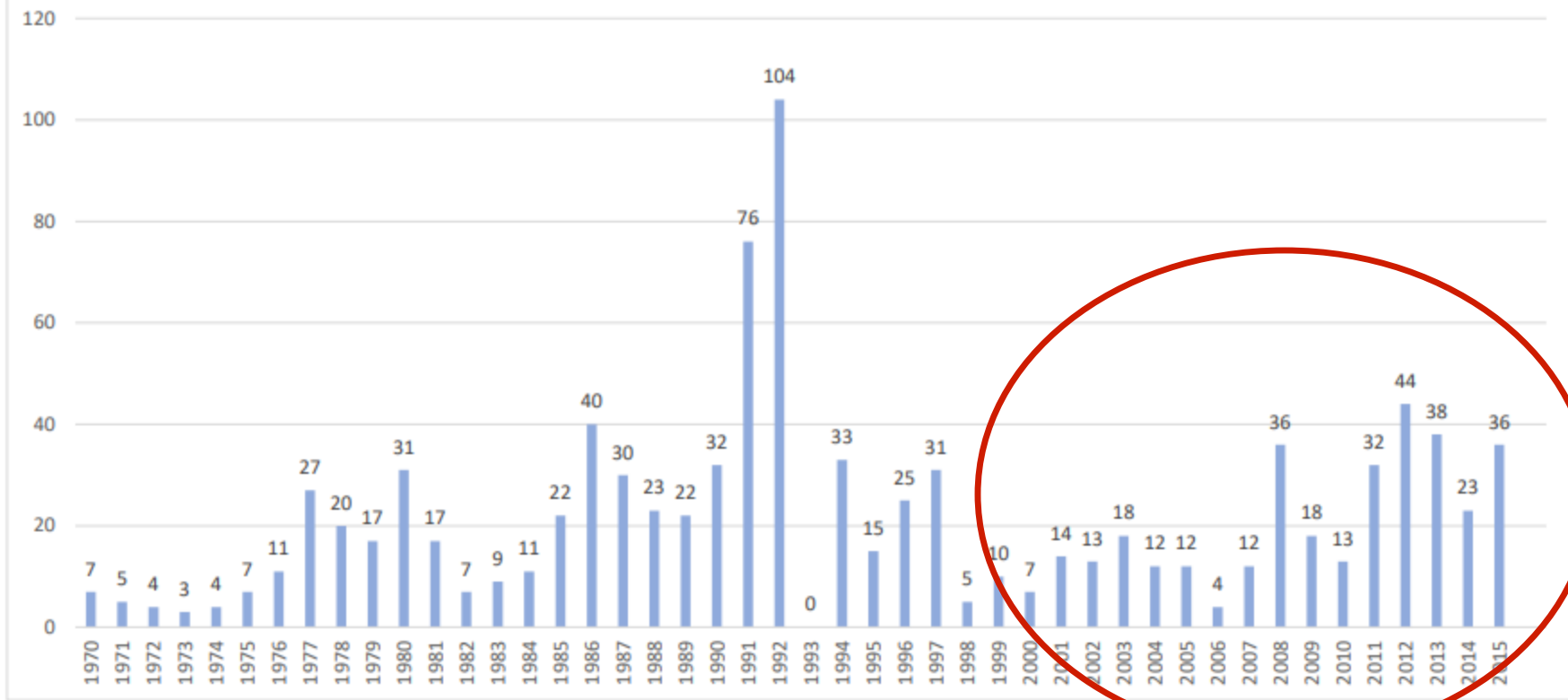


Figure 5: Frequency of all terrorist attacks in hotels worldwide

Source: Author's graph, based on the GTD (2015)



# Terror Attacks on the Rise

Hotels and Food and Beverage Entities are the ultimate “soft” targets:

- Wide open environments;
- Constant flow of guests;
- Easy pre-attack reconnaissance;
- Reluctance to make guests feel unwelcome.



# Example Case # 1 – The Las Vegas Shooting

- Mandala Bay Hotel Concert
  - 58 people killed;
  - 489 wounded;
  - Hundreds of lawsuits.



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# Example Case # 1 – The Las Vegas Shooting

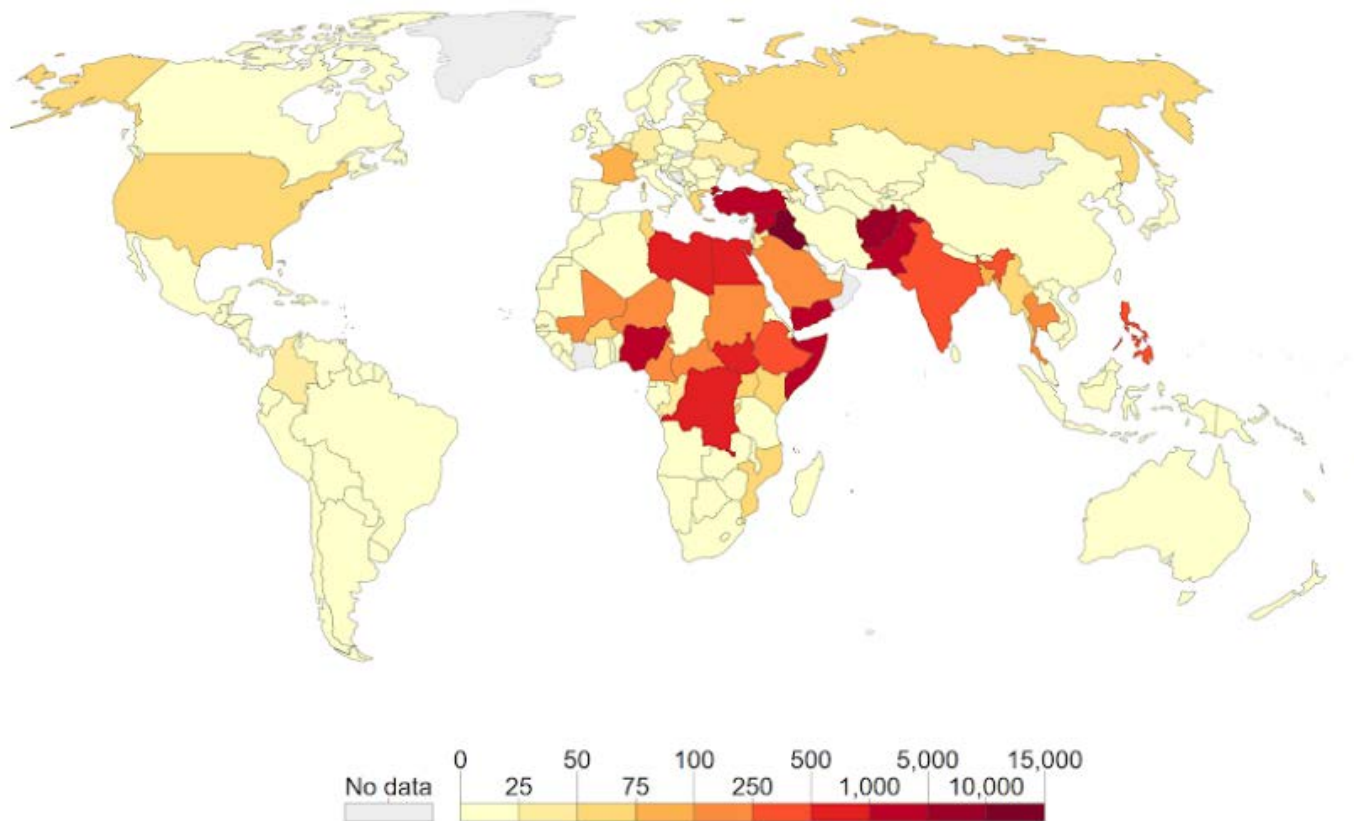
- CSC Security Contractor
  - Approved by Homeland Security “for protecting and responding to acts of mass injury and destruction.”



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## Number of fatalities from terrorism-related attacks, 2016

Total number of fatalities per year from terrorist attacks. This represents the number of total confirmed fatalities for the incident. This includes all victims and attackers who died as a direct result of the incident.



## Example Case # 2 – Foreign Attacks on a U.S. Brand



- Marriott Franchise
  - Sept. 20, 2008, truck bomb killed 56 and injured 270;
  - U.S. Citizen Albert DiFredrico among the dead.



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## Example Case # 2 – Foreign Attacks on a U.S. Brand



- Marriott Franchise
  - Case lingered for nine years in Maryland’s Courts
  - Requiring franchisee to have a “local crisis management plan” was insufficient to establish control.



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# Example Case # 3 – The Limits of Foreseeability



- Va. Tech Shooting
  - Jury verdict overturned by unanimous Va. Supreme Court.
    - Officials believed shooting was a domestic incident;
    - Officials did not know who the shooter was;
    - Officials believed shooter had fled.



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