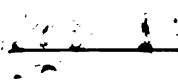




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**PUBLIC CRIME - CIVIL JUSTICE
A STUDY OF CRIME AND LIABILITY ISSUES IN
PARKING FACILITIES**

By

Wilbur Lewis Rykert

A DISSERTATION

**Submitted to
Michigan State University
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ABSTRACT

PUBLIC CRIME - CIVIL JUSTICE A STUDY OF CRIME AND LIABILITY ISSUES IN PARKING FACILITIES

By

Wilbur Lewis Rykert

Parking facilities are the anchors of the American transportation system. When crime threatens parking security, business and business invitees suffer great harm.

A significant portion of the liability suits generated from criminal attacks on business invitees involve parking lots. Parking facilities are crucial to the economic viability of a vast array of business and public service institutions. Protecting the consumers of parking services against criminal attack raises important public policy issues concerning the duty to protect users and the level of protection required. Resolution of these issues by state policy makers has direct impact on a large number and variety of business and service organizations. Security experts have characterized parking areas as inherently dangerous, but opinions are seldom supported by empirical evidence. Few statistics exist on parking crime.

This exploratory research was designed to discover the nature of parking crime, and the policy issues of parking area tort actions. Crime data from three cities in differing geographical areas and social climates were analyzed.

Parking areas were found to constitute a small portion of the communities' violent crime, but a substantial segment of auto related property crime. Elected legislators and executives have generally ignored the parking crime issue. As a result, public policy, defining the duty to protect users of parking facilities, results from court driven initiatives, and varies substantially among the states. The continuum of business responsibility for crime victims runs from near zero in one state to almost absolute in other states. There is a shortage of data and capabilities for data analysis in many communities

Recommendations include legislative proposals that define public and private duties to protect parking areas, requirements for data collection and analysis, procedures for improved cooperation and communication between private security and public police, and a program for victim compensation.

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I would like to thank the police executives, police officers, and civilian members of the Lansing, Michigan; Jacksonville/Duval County, Florida; and Fairfax County, Virginia Police Departments for providing the data for this research. Their detailed crime data collection and analysis capabilities made their organizations unique among the scores of agencies previewed for this study. They are truly leaders in crime data collection and analysis.

My appreciation is to members of my dissertation committee: Kenneth E. Christian, my chairman, who perceived the emerging prominence of parking security; Robert C. Trojanowicz, who assisted in so many essential areas during my graduate education; Charles O. Press, whose work and instruction on state policy issues inspired a policy oriented view of security issues; Justin Kestenbaum, whose interest in historiography is contagious; Leon H. Weaver, a pioneer in the parking security movement, for his inspiration and direction; and Vincent Hoffman whose international perspectives open new possibilities of problem solving.

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TABLE OF CONTENTS

INTRODUCTION.	1
CONCEPTUAL AND THEORETICAL APPROACH	3
The Study Of Crimology	3
The Integration of Security Theory with Criminology.	5
Legal Analysis	7
Security Recommendations	8
REVIEW OF THE LITERATURE.	10
The Mystique Of Parking Ramp Dangerousness	13
Fear Driven Sales Efforts.	15
Security In Parking Lot Planning	22
RESEARCH METHODOLOGY.	26
Crime Data Sources	26
Research Questions	26
Other Considerations And Assumptions	27
Content Analysis	27
Specific Research Questions.	28
Anticipated Results And Recommendations.	29
DATA ANALYSIS	30
Capture And Recording Of Crime Reports	30
Lansing, Michigan	32
Fairfax County, Virginia	33
Jacksonville/Duval County, Florida	35
Parking Lot/Major Crime Comparisons	36
Primary Locations	36
Secondary locations	38
Vehicle Related Larcenies	43
Foreseeability of Dangerousness	43
Auto Theft	45
Destruction of property and Tampering	45
LIABILITY ISSUES	68
Public Policy Development--The National Scene.	70
Duty to Protect.	72
The Foreseeability Of Criminal Attack.	77
Totality of Circumstances	81
Past Criminal Experience	83
Public Policy Development	
The Michigan Experience.	85
Askew v Parry	86

Police Officers Duty To Individuals.	91
Simonds v Tibbitts	93
Williams v Cunningham.	97
Marr v Yousif.	105
Holland v Mc Donald's.	106
CONCLUSIONS	111
Absolute Duty To Protect	118
Duty To Protect-It All Depends	120
No Duty To Protect	121
RECOMMENDATIONS	131
BIBLIOGRAPHICAL ESSAY	149
ENDNOTES	155
INDEX	160

LIST OF TABLES

Table 5.1 Major Crime By Primary Reporting Locations-Fairfax And Jacksonville.	37
Table 5.2 Major Crime By Secondary Reporting Areas-- Fairfax And Lansing.	39
Table 5.3 Crime By Primary Area And Usage Groups- Fairfax 1984-88, And Jacksonville 1985-88. Murder And Rape.	47
Table 5.4 Crime By Primary Area And Usage Groups-Fairfax 1984-88, and Jacksonville 1985-88. Robbery And Assault.	49
Table 5.5 Crime By Primary Area And Usage Groups-Fairfax 1984-1988 And Jacksonville 1985-1988. Larceny And Auto Theft.	51
Table 5.6 Fairfax County Crime 1984-88. Parking Lot Crime Identified With A Specific Location. Primary And Secondary Data.	54
Table 5.7 Percent of Fairfax Parking Crime By General Use Areas 1984-1988. Murder, Rape, Aggravated Assault, and Simple Assault.	55
Table 5.8 Percent of Fairfax Parking Crime By General Use Areas, 1984-88. Robbery, Larceny From Vehicles, Larceny Of Auto Parts, And Auto Theft.	56
Table 9.5 Parking Lot Crime: Fairfax County by Specific Housing Areas, 1984-88. Number And Percent of Total Parking Lot Crime.	58
Table 5.10 Parking Lot Crime: Fairfax County by Specific Service Business Areas, 1984-88. Number and Percent of Parking Crime for Murder, Rape, Aggravated and Simple Assault.	59
Table 5.11 Fairfax County Crime. Parking Lot Crime 1984-88. Specific Service Business areas by Number of Crimes and Percent of Total Parking Lot Crime. Robbery, Larceny from Vehicles, Larceny of Auto Parts, and Auto Theft.	61

Table 5.12 Fairfax County Crime. Parking Lot Crime 1984-88. Comparison of Higher Crime Use Areas by Number and Percentage of Total Parking Lot Crime. Murder, Rape, Aggravated and Simple Assault.	62
Table 5.13 Fairfax County Crime. Parking Lot Crime 1984-88. Comparison of Higher Crime Use Areas By Number and Percentage of Total Parking Lot Crime. Robbery, Larceny from Vehicles, Larceny of Auto Parts, and Auto Theft.	63
Table 5.14 Fairfax County Crime, 1984-88. Parking Lot Crime by Category and Use Area Rank.	64
Table 5.15 Fairfax County Crime. 1984-88 Parking Lot Crime by Category and Use Area Rank. Robbery, Larceny from Auto, Larceny Auto Parts, And Auto Theft.	66

SUMMARY OF CONCLUSIONS

1. Parking lot crime is fundamentally non-violent motor vehicle related crime. The focus on liability actions tends to inflate the relative risk of parking lot violence. Still, the quasi-public nature of parking lots raises important public policy issues
2. Property crime is the dominant type of parking lot crime and makes a significant contribution to a political jurisdiction's crimes related to motor vehicles.
3. The property crime volume on parking lots is such a major proportion of motor vehicle related crimes that a concerted effort by the police, in cooperation with business owners, could substantially reduce a community's overall crime rate.
4. Parking lots are not inherently dangerous places, and property crime does not generally escalate into violence. Foreseeability of violent parking lot crime for liability purposes should be connected to a repeated and reasonably predictable pattern of violent criminal activity on or in the immediate vicinity of the property of a particular defendant.

5. The major public policy issue regarding criminal attacks on business invitees is the question of duty owed the victim by the owner of property. Policy varies widely among the states from near absolute duty to no duty whatsoever. In some states, crime foreseeability provides a decision point for duty. Other states rely on economic considerations to resolve this question.

6. Business persons may find that crime prevention strategies make good business sense even in states that adopt the no duty rule.

7. Policy making by the Michigan appellate courts regarding the duty of businesses to protect their invitees from criminal attack illustrates the need for legislative and executive initiatives that respond more directly to the democratic process.

8. Parking lot crime data and victim specific parking lot data is not readily available. In the absence of reasonable data, evaluation of dangerousness becomes a creative art rather than a scientific endeavor.

CHAPTER I

INTRODUCTION

Shortly before the advent of the Christian era, Rome became so crowded with vehicular traffic that a parking ban was instituted near the Circus Maximus. Chariot owners and drivers had to seek parking elsewhere and walk to the great events.¹ One can imagine the surprise, followed by rage, experienced by a spectator to a gladiatorial contest when returning to the parking lot and finding a chariot wheel or team stolen. A more serious scenario could be envisioned that ends with the hapless spectator being beaten or killed and his wife carted away to be ravished by a villainous mob. From 60 BC to the 1990's, the need for parking facilities at the start and finish of the transportation system has sparked political debate and opportunities for crime.

While the need for motor vehicle parking and the attendant problem of parking lot crime is a development of this century, metropolitan parking in the age of the horse presented unique problems and solutions. New York City at the turn of the century was awash with the natural pollution caused by horse drawn traffic. Instead of abandoned motor vehicles rusting in the streets, thousands of dead horses rotted in the gutters, as city workers labored to clear

parking areas of dung, putrid flesh, and discarded and broken vehicles.²

Parking facilities consisted of on-street stalls and livery stables. While crime in the form of larceny of horse and carriage, and various forms of assault most certainly existed, no accurate count is available, and therefore comparisons of crime then and now would be of little value. Conversely, the nature of the parking facilities may indeed be instructive of modern problems. Parking on the street in front of the business establishment or in a livery stable provided both opportunities for misdeeds and opportunities for citizen and merchant involvement that reduced the opportunity for the successful completion of criminal acts. The human care required for tending horses while owners worked or socialized provides a severe contrast to the anonymity created through the construction of high rise parking garages and shopping center tarmac.

Concepts of "defensible space" and "territoriality" suggest modern parking facilities to be more vulnerable to crime than their 19th century counterparts, but may also imply means by which today's parking lots can be made safer for the traveling public. How much actual crime occurs in parking lots and what is the nature of that crime? Are parking facilities more hazardous than the environment in which they are located?

CHAPTER II

CONCEPTUAL AND THEORETICAL APPROACH

Conceptually, parking lots and ramps (hereafter referred to as parking lots) are viewed as an integral part of human transportation systems. They can be viewed as the start and finish of a particular mode of travel, such as on motor vehicle highways, and as link pins connecting other modes of transportation.

Historically, parking lots share some political aspects of the overall transportation network. Thus, the political nature of parking can be viewed from the perspective of where and how they are built, and who owns and operates them.

The Study Of Crimology

The study of parking lot crime will take a "crimological" approach³. Clearly, this is a new term, not found in the literature of criminology. The creation of new words in the discipline of Social Science is not without risk, as the field is filled with words that tend to defy common meaning. Clarity of purpose, however, justifies such a risk.

Criminology, as a branch of sociology, is defined as "the study of crime and criminals." Such a definition is extensive enough to cover the concept crime in the broadest sense. Nevertheless, American Criminology focuses primarily on criminals, their development, deviant behaviors, treatment, incarceration, and future expectations. In the late 1960's, it became apparent that serious efforts to analyze the role crime victims play in their own victimization should be developed. Thus the term "victimology" came into vogue in the United States⁴

The spatial and situational aspects of crime were of some interest in the decade of the 1970's but, with the exception of practical police and community crime prevention programs that relied on "opportunity reduction" theory,⁵ major criminological research focused on the criminals and their victims. Therefore, it is appropriate at this late date to develop a term for the neglected child in the field of criminology.

"Crimology is the study of crime and criminal opportunity. It is that part of criminology that focuses on the environment of crime and the study of criminal methods." ⁶ The key focus of crimology is on HOW the criminal act takes place, and thus provides a foundation for a substantial portion of crime prevention and control activities.

In legal tradition, crimology studies the criminal act and the criminal agency rather than the desire or motivation

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of the criminal. In sum, criminology provides an examination of the spatial and environmental dimensions within which the intended victim and criminal succeeds or fails.

The Integration of Security
Theory with Criminology

When people and business organizations seek protection from crime, recovery for crime caused damages, and placement of criminal responsibility, two basic routes are available: the criminal justice system or private security. The basic difference between the two is found in the answer to the question, Who pays the bill-- society or individuals?

When police and security officials meet, the evolutionary primacy of their respective professions is often debated. Actually, attempting to clearly define functional differences between law enforcement and security adds little to the protection of society or individuals. Rykert and Christian point out the lack of security theory and the security profession's pre-occupation with the mundane. In their article on security theory, the fictional Dr. Dodge, thinks "about the emerging theories of criminology that focus on the preventive activities of community based police work...{and} court decisions that are requiring private security to recognize due process in their activities."⁷ Clearly, the functional lines are merging, while at the same time, lines of authority and accountability remain separate.

Neither security practice nor theory can remain outside the framework of criminological theory or research and hope to achieve operational success. Yet, the security profession cannot bear sole responsibility for the lack of a "theory of security." Criminologists, for the most part, have ignored the legitimate role of security in crime prevention and control. Rykert emphasizes this point in his article promoting a unified field model for criminological research. He points out, "In most cases, the protection of persons and property from crime is the major goal of security officers {therefore} their crime orientation exceeds, by far, that of public police officers."⁸ The sheer number of people working in the field of security lends some credence to such a claim, so it is indeed strange that criminological research has generally ignored security.⁹

The fundamental reason for criminologists' failure to embrace security on their playing field is found in the historical development of American criminology. According to Rykert, "The American school of criminology develop{ed} a research paradigm out of sync with the political ideology."¹⁰ Essentially, it suggests that criminologists ignore security because of it's connection to the market system of production and distribution. But the point is not to determine who wears the "white or black hats." The real purpose is to develop a research model within which security is an interactive partner in the development of

criminological theory. Rykert's "Organicistic" approach provides such a model, and the recommendations as a result of this research will reflect the model.¹¹ Essentially, this model is volumetric to the extent that criminals and criminal events are not independent from their political, social, psychological, and natural and artificial physical environment. The organicistic approach evaluates pre-crime events, in the human and physical environment, that influence crime and criminal behavior. Post-crime recommendations are designed to alter the human and physical environment, thus preventing the repetition of specific criminal events.

Legal Analysis

The legal analysis of appellate court decisions can be defined as policy studies, because the critical legal issue of this research involves the extent to which judicial policy making affects the liability exposure of parking lot owners and operators. The theory that appellate courts are more than passive bodies, measuring cases against established law, is now the conventional wisdom. Historically, the policy emphasis of court deliberations is clear from the very start of the American Judicial System, and one can expect to see the same phenomena in state courts which, of course, are based on the national model.

While evidence of such policy making abounds, the best analysis is found in the work of the leading American

authority on Supreme Court decision making, Dr. Harold Spaeth, of Michigan State University. Dr. Spaeth maintains, " On the whole, the policy made by the Court has been qualitatively superior to that of either legislators or executive officials." ¹² While other scholars may argue over his opinion as to the quality of Supreme Court policy production, one thing is certain--judges have the ability and mandate to make decisions when legislators and executives end up in political gridlock. The legal analysis for this research will therefore proceed on the theory that policy intentions of the court will be articulated to the extent that security recommendations are made from court directed policy.

Security Recommendations

Security recommendations will be made according to principles of Risk Management and Opportunity Reduction.¹³ In brief, opportunity reduction theory posits that opportunity is a necessary but not sufficient element to the creation of a criminal event. The other aspect of the crime event equation is the human side with intent, motivation, ability, and desire. Clearly, these human factors are necessary factors to the production of crime, but again they are not sufficient in themselves to create the criminal event. Thus, criminal ability and desire must interact with the opportunity structure for a criminal event to result.

Opportunity theory further suggests a high degree of synergism takes place during the interaction of the criminal with the opportunity structure, such that success or failure of the criminal act becomes a predictor of future criminal activity, and a predictor of future security and loss prevention requirements.

In addition to the dictates of opportunity theory, risk management principles guide security managers within the economic reality that security and loss prevention activities must be cost effective. In the context of the American business organization, where profit is the driving force and the only real purpose of the organization, crime prevention and control resources cannot be justified unless they positively affect the profit line.

But, while crime and criminals may affect business profits, criminal acts also affect the social fabric of which business is only one of many parts. It is the concern for the safety of society that forces legislative, executive and judicial policy making into the cost-effective evaluations employed by business organizations.

CHAPTER III

REVIEW OF THE LITERATURE

A cursory review of the parking literature indicates an extremely limited volume of published material relating to crime and the prevention and control of crime in parking areas. The bulk of the research and discussions of parking lots involves the economic aspects of construction and operation. Methods to increase revenue, efficiency of operations, and private versus public operation are the major themes encountered.

Where public safety is discussed, focus is on accident prevention rather than criminal activities. Some historical studies are available demonstrating the political nature of parking, with particular emphasis on the transition from curb parking to various forms of off street parking.

A few articles have appeared within the last ten years that discuss the need for parking lot security, but none produce data that enlightens one on the actual risk posed by criminal attacks in or on parking lots. Recommendations follow accepted security practices for reducing opportunity, but the cost effectiveness of the solutions have not been determined.

More recent articles and books examine liability issues where business invitees have been assaulted in parking lots and have met with various levels of success in law suits based on inadequate security. This focus on law suits from parking lot incidents prompted the well known security and legal expert, Norman M. Spain, to declare that "parking lots appear to be the 'achilles heel' of most security programs."¹⁴ The problem with this declaration is that the knowledge base is restricted to the unusual incidents that appear in court. It is hard to deny the obvious increase in third party law suits over the past ten years as a result of criminal attacks, but the data to demonstrate the relative danger of parking lots in an increasingly dangerous United States is not available.

The lack of data is evident in Bottom's most recent publication dedicated to parking lot security. His anecdotal evidence is valuable when analyzing a particular set of facts, and most recommendations square with the conventional wisdom of security; but to generalize from court cases to establish a standard of dangerousness for all parking facilities is misleading and dangerous to the field of security.¹⁵ For example, in spite of a lack of crime data, a South Dakota murder case led the Supreme Court of that state to set a very severe standard for parking areas.

On November 12, 1982, a parolee out of prison just eleven days, abducted a woman from a hospital parking ramp

in Sioux Falls. He killed her within the hour. The recent release of the killer from prison, his finding the ramp "quiet, dark, and lonely like," and the possibility that the victim's husband may have seen the killers car leave the ramp were factors that kept this case before the public. Ultimately, the husband sued on behalf of his wife's estate.¹⁶

The plaintiff employed a well known security expert and author. This expert found the reported crime rate in Sioux falls to be about twice the state average, but in a state with one of the lowest crime rates in the nation. The hospital parking ramp had no record of serious crime and the police considered it to be in a "low crime area." In the words of the Court, the expert testified that, " parking ramps are generally dangerous because of the many vehicles parked there. Parking ramps attract people who are looking to commit theft, vandalism and damage to vehicles." In addition he stated that, " Crimes such as theft, and vandalism can escalate into violent crimes, especially where the perpetrator is in danger of being apprehended." Further, "if illegal activity is combined with alcohol and drugs, the risk of violence is inherently increased."¹⁷ This is a classic case of expert opinion based primarily on conventional wisdom.

Unsupported assumptions are often presented in the testimony of expert witnesses with final judgements left to

juries; but, if security testimony is to advance beyond the realm of educated speculations, more concrete data must be available. The lack of published data for evaluating parking lot crime in relation to other crime event locations, demonstrates the need for this project.

The literature of court policy making seems to be more abundant and will be used to establish court policy making concepts. The security issue, however, will be pursued through the literature of court decisions. The major topic of exploration will concentrate the issue of duties owed to a business invitee injured during a criminal event. Critical to this issue is the question of who determines the duty owed, and under what conditions it is owed.

The Mystique Of Parking Ramp Dangerousness

A narcotics officer agrees to a late night meeting with a top drug dealer. The meeting place is an underground garage of a downtown office building. The officer drives to the middle of the garage, and very cautiously steps from his vehicle. Although he closes the car door carefully, the near empty garage acts as a giant megaphone spilling sound into a mountainous echo chamber. The click of the door latch is amplified and bounced from every nook and cranny. Every footstep the officer makes receives the same treatment until he stands quietly but taut with nervous energy, surrounded by concrete pillars and their erie shadows cast by the dawn like orange glow of electric lights.

As if on cue, the quiet is disturbed by the distant sound of tires straining against concrete. The tempo and volume of the screeching tires increase and at the peak of the crescendo, a sleek sedan roars into sight and straight at our hero. With a cat-like leap, the officer dives behind a concrete pillar as automatic gunfire erupts and bullets ricochet throughout the complex. The villain now attempts to escape, but a divinely directed shot from the embattled officer hits its mark. Just as the vehicle is about to be spat from the mouth of this parking monster it strikes the toll both and bursts into flame. The officer arrives as the fire descends. The villain pays the ultimate toll-- the dragon is slain.

Parking ramps and lots are indeed dangerous places. This scene surfaces time and time again in the movies and on TV. Indeed, it was a parking lot scene in the movie version of Bernstein and Woodward's story of the Watergate investigation that provided the only tense moment in an interesting but rather drab docudrama.¹⁸ Certainly, one must consider the media treatment of parking lots as contributing to the conventional wisdom of parking lots as "generally dangerous places." To what extent this conventional wisdom has affected perceptions of the public, parking lot owners and expert witnesses is a matter of conjecture. Nevertheless, few instances, if any, exist where experts offer concrete data to back up their experienced judgement.

Fear Driven Sales Efforts

The parking lot industry has a full repertoire of toll booths, electrically operated gates and barrier arms, closed circuit television (CCTV), and lighting systems to choose from in setting up their parking systems. While certain industrial organizations may use these various systems for primarily security purposes, the majority of municipal and privately operated parking ramps and garages are concerned with the revenue aspects of their equipment categories.

Automatic Parking Devices, Inc. (APD), a division of Federal Signal Corporation, claims to be the "oldest manufacturer of parking control equipment." APD has developed a systems approach to parking that emphasis " revenue and access control." Access control in their approach is the key element in obtaining the best revenue return. Clearly, revenue based access control can help cut down criminal attacks by trespassers, but cannot deal very effectively with authorized parkers who victimize each other. The APD product manual provides an interesting section on parking lot layout planning. It emphasizes the need to maximize capacity for a given area and understand local traffic and building codes. There is no mention of design as it might relate to user protection from crime.¹⁹

While revenue enhancement is the goal of traditional parking lot equipment manufacturers, others have used crime and the threat of crime related litigation to their

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advantage. Louroe Electronics of Van Nuys, California advertises, "a complete audio security system for multilevel parking structures, buildings, and correctional institutions." Their product literature explains that, "Life is so precious in this country that the loss of one individual becomes a national tragedy." The literature then states, "The reduction of possible harm to life and property is the prime requisite of Louroe Electronics."²⁰

The heart of their system is audio sensors. These sensors are very good devices, but like a great deal of other security devices, they must demonstrate cost effectiveness. One way Louroe demonstrates cost effectiveness is by citing a trade magazine article where the lack of audio surveillance may have contributed to a one million dollar punitive damage award against a hotel. In this case, a guest was assaulted in a parking garage elevator. The article suggests that the hotel was in a high crime area, had experienced prior acts of vandalism, and had not taken proper security precautions.²¹ The implications of this fear driven sales pitch is clear-- buy our audio system and save a million dollars.

Dianne Keegan, spokesperson for the newsletter Lawyers Alert, advertised the service in the Michigan Lawyers Weekly, by quoting the South Dakota Supreme Court rule in a parking lot murder case. In the ruling the Court held, "A long history of good fortune does not relieve a party from

exercising ordinary and reasonable care." The article further pointed out that the Court also agreed that a "violent criminal activity can be foreseeable simply upon common experience." The advertisement, entitled, Rape and Murder in a Parking Garage, implies that lawyers who subscribe may find a source of information that will help them make money in the crime liability field.

Lighting. Conventional wisdom holds that proper lighting provides a deterrent to crime. Based on this conclusion, the major discussion of security lighting involves the selection of the most efficient light source. Hypotheses regarding the actual effect of parking lot lighting systems are untested. Most favorable reports regarding lighting are anecdotal and combine security needs with safety and customer counts in the evaluation process. The major reference work on lighting, The Lighting Handbook, sets forth the following objectives of parking area lighting:

From the standpoint of traffic safety; protection against assault, theft, and vandalism; convenience and comfort to the user; and in many instances, for business attraction, adequate parking area lighting is as vital as roadway lighting.... A well lighted parking area spells security particularly to the female motorists, who constitute a major portion of the shopping public.²²

The book also presents specific engineering standards for light levels, but points out that, "The illumination requirements of a parking area depend on the type of usage the area receives." Further it notes that, "For competitive reasons, many stores and shopping plazas use higher illumination levels to attract attention." 23

A Security World article, "Lighting the Way To Outdoor Protection," made a bold observation, "Good outdoor lighting can be the single most cost-effective crime deterrent." The author then presented several case studies to demonstrate the security value of lighting. The studies were provided by a lighting industry lobby organization and emphasize the ability to obtain higher light levels at lower cost through system upgrade. Dramatic crime reduction figures were developed shortly after installation but long term benefits were not examined. In the case of a shopping mall, energy savings due to new technology would have taken 100 years to recover the expense, but the system "paid for itself in less than 100 days due to increased retail sales and other benefits." Among the other benefits was the cutting of \$5000 from the security budget. Clearly, it was the sales increase and not the security benefits that made the new lighting project a success. One could argue, based on the type of data presented, that parking lot lighting is cost effective if it brings in new customers irrespective of

the crime prevention effects. Does the additional lighting also attract additional criminals?

A portion of parking lot crime is daylight crime. A daylight robbery or rape at a parking area would not create a liability problem in respect to lighting, but the same incident at night would cause a severe examination of light levels. This is not to suggest that light does not discourage certain criminals. However, research regarding the type of crime and criminals most affected by light is minimal, and results must be narrowly interpreted. In the retail environment, operational experience has shown light to help increase the number of customers. Thus, security lighting may be cost effective when organized around sales criteria.²⁴

Closed Circuit Television. If a burglar can gain entrance to a modern parking garage, it may be possible to break into the main building. James T. O'Brien suggests closed circuit television (CCTV) as "among the most cost effective ways of preventing this[activity]."²⁵ This article was published in Access Control, a trade journal for the access control industry. The author suggests the threat of being sued is one justification for developing CCTV systems. According to O'Brian, "Compared to the personal suffering of crime victims and liability judgements currently being awarded by many courts, the costs of CCTV are relatively modest."²⁶

CCTV is often a cost effective tool. Suggesting, however, even in a sales oriented article, that CCTV is cost effective based on the probability of a catastrophic law suit is certainly questionable. It is this type of article that can create courtroom mischief in negligent security cases because cost effectiveness may be overlooked in an attempt to burden small operators with expensive devices to protect against statistically rare events. Ralph V. Ward, a well known independent security consultant in technology and engineering, emphasizes the cost and human problems with CCTV. In a brief article on garage security he points out that after a series of crimes in parking garages, "one of the first requests is to install CCTV." "In general", says Ward, "CCTV is not a cost effective solution to monitoring garages. The view is too restricted, and the installation and maintenance cost is high." He also points out that, "To expect a guard [with other duties] to continually watch a TV monitor is not practical."²⁷

However, a good example of effectively integrating CCTV into a total security program, including parking areas, is demonstrated by the Spartanburg Regional Medical Center of Spartanburg, North Carolina. It is a large complex requiring a substantial security force. CCTV was shown to be cost effective as part of the overall security program.²⁸

Product literature and trade journal articles tend to over-simplify CCTV as a solution to security problems. CCTV

used for intrusion detection purposes can be cost effective on a modest budget, but used in general surveillance for the protection of business invitees, may require a substantial investment in the human resources required to monitor the system. The human interaction often becomes a costly burden and monitoring chores are relegated to lower priority levels. CCTV monitors are often installed in the front desk area of the hotel lobby or in the telephone switchboard of a hospital or in a security office with part time staff for monitoring purposes. In these cases, the money spent for very good systems may be wasted because the lack of monitoring and the elevated expectation of protection by business guests and invitees may increase the liability risk. 29

Some manufacturers and distributors of security equipment feel a more objective sales pitch may be to their advantage. In an article that Schlage Electronics provides with its product literature", What Every Executive Should Know About The Ins And Outs Of Access Control," the authors state," The optimum security level is the point where the cost for additional controls would be more than the resulting loss reduction is worth." This may seem rather candid for a company with access control hardware to sell but text books on security all have similar statements on cost effectiveness. This approach helps to legitimate the Schlage sales presentation. The company also recommends that

potential customers employ outside security consultants to design their access control systems.³⁰ While this type of approach is designed to gain customer confidence in the fairness of the company, it does avoid the brash fear driven sales pitch often seen in the security hardware business. But, cost effectiveness may not be an issue of public policy in appellate court decisions. In Small v. McKennan the South Dakota Supreme Court sided with the security expert who, without any reference to cost effectiveness, faulted a hospital for not having CCTV in its parking garage.³¹

Security As A General Proposition In Parking Lot Planning

As mentioned at the outset of this chapter, security aspects of parking area planning were not an issue in the early days of motor vehicle parking. The major fault with handling early parking problems was that parking was not integrated with the development of roadway location and design to the effect that parking reached crisis proportions before the political system was ready to address the problem.

Private v. public parking, the acquisition of high priced real estate for what was viewed as a necessary evil in a downtown area, ways to make parking garages look like a business establishment, determining the best way to safely park the most cars in the space available, and methods to recover the cost of the service were crisis oriented policy

issues. They are still current issues today in the parking business.

Protection of customers against criminal attack is an issue of more recent vintage. A review of the National Criminal Justice Reference Service files produced 254 abstracts of materials relating to parking between 1972 and 1986. Usually, parking was of minor importance in the books and articles. Where parking security and crime prevention was discussed, the statistical basis for conclusions were not developed.

The Eno Foundation of Westport, Connecticut has, over many years, been the bedrock agency for supporting research relating to transportation issues. A review of some of their early efforts failed to reveal a vital interest in crime prevention. This is not unusual and certainly not a criticism. With the exception of the prohibition era and the parking garage executions of several members of the Bugs Moran gang by the forces of Al Capone, crime was not a major political issue. With the close of prohibition and the rise of World WarII, the issue was not prominent and did not surface until the rise in actual and perceived crime in the late 1960's. Only in the 1980's do we find literature starting to address specific issues of criminal behavior on or about parking areas. Interest in parking crime is apparently driven by court judgements rather than statistical studies of parking crime.

In 1982 Edward M. Whitlock, on behalf of the Eno Foundation, in his article "Parking For Institutions and Special Events," focused on hospital parking lots because of their 24 hour operation. The author discussed the need for good lighting and the shopping list of hardware and personal services required in various security environments. No general crime statistics were presented but that would not negate the advice for use in any particular location.³²

In 1983 the Urban Land Institute and the National Parking Association included parking security in one of their major publications. While the normal litany of security devices are discussed, the major use of security is for marketing purposes. The Association recognized that lots which are dangerous or are perceived to be dangerous will not be used by the public.³³ Within this concept, security standards are driven by the market economy rather than public safety concerns. As in the case of the previously mentioned shopping malls, if a lighting system or access control system brings in customers, and incidently cuts crime, the effort is cost effective. In this situation crime statistics are not critical factors. They become critical only when issues of public policy, such as who should provide police protection and how much should be provided, reach legislators and judges. They are critical because judgements are being made about the distribution of scarce public and private resources as regards crime prevention and

police protection. The most cost effective distribution of these resources is contingent upon the evaluation of a particular crime problem in the context of a community's general crime problem. The current literature does not address parking lot crime in this manner. This research will move in the direction of addressing the statistical void regarding crime in parking areas.

CHAPTER IV

RESEARCH METHODOLOGY

Crime Data Sources

The research methodology for this project is based on the examination of historical data of three reporting areas: Lansing, Michigan; Jacksonville, Florida; and Fairfax County, Virginia. The data covers four and five year periods and consists of a 100% sample (the full universe) of crime incidents reported to these police agencies.

City selection was based on the ability of agencies to retrieve crime data by specific location. While geographic diversity was thought to be desirable, financial restraints limited the search to governmental units East of the Mississippi River.

Research Questions

Because the collected data represents the data universe, and there is no intention to project future crime in these cities, inferential statistics will not be required. The prime objective of this analysis is to present descriptive

statistics that demonstrate the proportion of crime, in various categories, that is attributable to parking lot locations. Prime research questions are: How much crime occurs at parking sites? What is the proportion of violent crime to property crime? What is the proportion of parking lot crime to the total city crime events for each parking lot crime of interest?

Other Considerations And Assumptions

For qualitative reasons, government jurisdictions were selected where administrators would welcome on-site visits to discuss the data recording process for their departments, and have personnel available to direct the researcher to parking facilities of interest.

Two major assumptions are made regarding the data base: (1) The rate of unreported crime remained constant during the years under investigation and did not vary according to site location; (2) Crime site recording mistakes by police were minimal and did not vary among the three police agencies. Both assumptions appear reasonable based on interviews with administrative officers and an extensive audit of narrative case reports.

Content Analysis

The legal focus will be on Michigan law and will consist of a qualitative content analysis and interpretation of Michigan Supreme Court policy-making in the area of third

party liability. Differing policies in other states will also be examined.

Specific Research Questions

Question #1: Interest in parking lot crime has been driven by attention to law suits against businesses. How do these suits affect perceptions of dangerousness, and what is the nature of parking lots that make them subject to public debate?

Question #2: What are the major types of parking area crime, and what impact do they have on a jurisdictions overall crime rate?

Question #3: Does actual crime data support the perception that parking lots are inherently dangerous places that require a high level of security?

Question #4: What are the major public policy issues security directors must confront when evaluating security needs, and how do these issues vary among the states?

Question #5: How can security directors justify parking lot security programs in states that do not hold owners responsible for injuries as a result of criminal activity on their property?

Question #6: Policy production and implementation is traditionally the function of the legislative and executive branches of government. Why did the Michigan Supreme Court and the Court of Appeals find it necessary to produce

radical policy changes regarding duties owed to business invitees injured by criminals?

Question #7: The analysis of nearly every category of criminal activity has suffered from the lack of sufficient data collection and analysis. Can security directors and expert witnesses properly evaluate the dangerousness of parking lots based on readily available data?

Anticipated Results And Recommendations.

As a result of this research, several outcomes can be expected: (1) a more precise description of the nature of parking lot crime; (2) a suggested explanation of changing public policy guidelines regarding business owners' responsibility for the criminal victimization of business invitees; (3) recommendations for reducing the frequency and severity of parking lot crime losses; and (4) recommendations for future research.

CHAPTER V

DATA ANALYSIS

Capture And Recording Of Crime Reports

One of the objectives of this project was to identify at least three municipalities whose crime reporting system would yield comparable data on parking lot crime. This would require the department to record incidents by location such that a summary by location could be obtained. Lansing, Michigan was able to provide such a format. A search was made for two other cities with location reporting capabilities whose police departments would share their data for this project. The objective was to locate one city in the deep South and another somewhere between Lansing and the Southern location. Financial limitations required that the cities be located East of the Mississippi.

Locating a police organization that captured location data from original offense reports proved to be much more difficult than was expected. Many cities have never attempted such detailed analysis of criminal events and others had dropped previous programs when Federal money dried up. Several departments were willing to help on the project but their participation would have required a manual examination of incident reports to determine location data.

In Florida, Jacksonville proved to be one of the few cities to indicate that crime by parking lot location could be compiled by their data center. In the central area, Fairfax County, Virginia, proved to be an excellent selection. The police department there has many years experience in detailed crime analysis including location information coded on original complaint reports.

Indeed, by recording both primary and secondary locations, Fairfax can calculate crime location by structural purpose and specific use areas. For example, a residential apartment might be a primary location but the secondary location would indicate if the crime occurred in the parking lot or inside the building. This capability went beyond the capability of Lansing and Jacksonville. Thus, no direct comparisons of crime by location can be made among all three cities. This was not a fatal problem because it was not the purpose of the study to compare and evaluate reasons for crime level differences. Rather it was to determine if patterns of parking lot crime could be detected. However, because the search for patterns in crime location data requires some side by side display of data, certain characteristics of the three cities and their data collection and recording capabilities are examined.

Lansing, Michigan

Lansing is Michigan's Capitol city with the current population estimated at 133,000. It is a combined manufacturing and service industry area as well as serving the State's governmental interests. Lansing experienced the typical vacating of business from the center city to the suburbs, and the traditional business establishment has been replaced by government and service businesses, and expanded convention trade. These modernizing trends have created new downtown parking problems and a growing concern for the safety of city visitors.

While Lansing has its share of below average housing, new housing developments are being constructed at the city's edges and efforts are being made to rehabilitate some of the older parts of the city. Clearly, urban blight cannot match that of the larger cities of the nation. Geographically, Lansing has reached its practical limits; there is very little interest in the development of a regional government as in Jacksonville/Duval County, Florida, and Fairfax County, Virginia.

The Lansing Police Department has a very good program for location identification and recording of specific sub-crime categories. Larceny, for example, is recorded in fifteen different categories, which includes three categories of larceny from a vehicle. Larceny of parts can fall into two categories. This causes comparison problems

with Fairfax County where car parts are in one category and other larcenies from a vehicle in another. The detailed sub-crime and other non-crime incident categories allows Lansing to be very specific in it's crime analysis activities. In addition to structural locations, Lansing also records by address. It is thus possible to compile a listing of parking lot crimes at a particular address. While Lansing cannot pull out crime data according to the nature of the land use, officers and crime analysts can identify a particular use based on local address.

Fairfax County, Virginia

Fairfax County (hereafter referred to as Fairfax) provides county-wide police services from seven District Police stations. The Department serves approximately 670,000 people and corresponding service industries. There is a large rural area of the county but development continues at a rapid pace. Most district police stations were built or renovated since 1980.³⁴ Fairfax is one of the more affluent counties in the Washington D. C. area and is cushioned from the D.C. crime flow by the Potomac River and Arlington County.

The only so called "older section" of the County is Fairfax City and their crime statistics are not included in the County system. In part because of the generous tax base, the police department has grown and has been able to take

full advantage of the latest police related technology. Part of this ability is reflected in their computer based crime analysis system. Crime reports are coded according to "primary" and "secondary" location code. The primary code reflects the basic purpose of the space usage and a secondary code will identify a crime location within a primary usage category. In the case of an auto theft report, the primary location might be a fast food outlet and the secondary location the parking lot. This is an extremely important scheme for crime analysis because it enables the data center to identify crime by major use categories and in the case of this research project also identifies parking lot crime in any category of basic use.

The secondary classification allows some comparison with Lansing by crime category, and using the primary location allows some comparison with Jacksonville. Clearly, Fairfax has the ideal system for identifying parking lot crime and specific use categories most likely to be victimized by parking lot criminals. As will be observed from the tables, Fairfax experiences very little street crime. Other than in the old city of Fairfax, it is hard to walk to services. Most movement for services starts and ends with the automobile. The county is laced with freeways that connect residential and office districts with shopping centers; so with few exceptions, there is little opportunity for street crime in the traditional sense.

Jacksonville/Duval County, Florida

Jacksonville/Duval County(hereafter called Jacksonville) is a complete city/ county regional based government. Serving 660,0000 people, Jacksonville is one of the older cities of America. Its large central city population experiences the greatest volume of predatory crime of any of the three cities. The city/county consolidation has brought modern police services to the entire area, and the data collection and reporting system is one of the most complete in Florida. Parking areas are identified as a crime location, but in reviewing their reports it appears that parking is reported similar to the primary location reporting system of Fairfax. Thus it can be determined how many rapes occur on church property, but does not distinguish between the parking lot and an inside location. The lack of a secondary classification severely underreports crime in parking lots but allows for some reasonable judgements regarding crime categories such as auto theft and larceny from vehicles.

In spite of cautions regarding direct comparisons between cities, comparisons are often valuable in looking for specific crime patterns. Thus it seems reasonable to compare Jacksonville data to the primary data from Fairfax, and Lansing data with Fairfax secondary data. Location data between Lansing and Jacksonville is not comparable. In sum, the three cities are different in size, population

characteristics, geography, and land use patterns. Therefore, similarities in parking crime experience should suggest criminal choices and methods of operation that can be generalized beyond the three cities of this study.

Parking Lot/Major Crime Comparisons

Major crime in parking areas is examined as a percentage of total major crime in the following tables. When comparing parking lot crime based on primary location reporting with secondary reporting systems it becomes painfully clear that trying to determine the nature, extent, and seriousness of parking lot crime is tied directly to the reporting system. Therefore, any analysis or conclusions about intervention strategies by police or security forces, and opinions in civil cases over issues of foreseeability must be grounded in part by knowledge of the reporting system in a particular police jurisdiction.

Primary Locations

The percentage of parking lot crime by major crime categories in Fairfax 1984-85 and Jacksonville 1985-88 is shown in Table 5.1. Location data is by primary reporting locations. Based on this system, parking areas merit very little attention as high crime areas, as they account for only 1.6 percent of total crime in Fairfax and 4.4 percent in Jacksonville over the five and four periods.

Table 5.1 Major Crime By Primary Reporting Locations-Fairfax And Jacksonville.

	Fairfax 1984-88			Jacksonville 1985-88		
	Total	Parking	%Total	Total	Parking	%total
Murder	86	1	1.2	550	10	1.8
Rape	574	5	.9	2517	46	1.8
Robbery	2620	43	1.6	13759	623	4.5
Assault	1761	31	1.8	41790	1064	2.5
B&E Res	0	0	0	49824	0	0
B&E NonRes	17157	5	.03	24375	14	.04
Larceny	90151	1571	1.7	140961	8951	6.3
Auto Theft	10073	319	3.2	16726	2157	12.9
Total	122422	1975	1.6	290726	12868	4.4

When looking at serious person to person crime, parking lots appear to be even more insignificant. Fairfax and Jacksonville report only 1.2 and 1.8 percent of the murders occurring at parking locations. Clearly, Jacksonville is a more violent community than Fairfax. During the period examined, Jacksonville, on the average, experienced eight times more murder, six and one half times more rape and robbery; and thirty times more assaults per year than

Fairfax. In spite of this vast difference in total violent crimes, the percents at parking lots are very similar.

While the percentage of robbery and assault in Jacksonville appears to be several points higher than Fairfax, their higher susceptibility to street crime in Jacksonville may make the job of pin pointing parking lot crime more difficult. A person forced off a street and onto a parking lot before being assaulted or robbed may make the task of location identification difficult for the police officer at the scene.

In both cities, parking lot crime accounts for less than 5 percent of any category of violent crime. Therefore, it would be very hard indeed to allocate the resources needed to make an impact on parking lot crime. The same argument holds for business owners. Parking lots, by these measures, would seem to be reasonably safe locations, and the foreseeability of an attack at any particular parking location would be highly speculative.

Secondary locations

The percentage of parking lot crime by major crime categories in Fairfax 1984-85 and Lansing 1984-87 is displayed in Table 5.2. In this table, the Fairfax data is based on primary plus secondary reporting locations and is roughly equivalent to the location reporting system of

Lansing. A vastly different picture of parking lot dangerousness is presented in Table 5.2 than Table 5.1. Because of the importance of these findings, each crime category will be discussed separately.

Table 5.2 Major Crime By Secondary Reporting Areas-- Fairfax And Lansing.

	Fairfax 1984-88		Lansing 1984-88	
	Parking	% City Total	Parking	%City Total
Murder	16	19.0	2	4.5
Rape	43	7.0	62	6.0
Robbery	554	21.0	188	18.7
Assault	3425	12.4	693	9.5
Larceny				
Motor Vehicle	7419	54.0	3954	57.7
Larceny Parts	10949	56.0	800	46.2
Larceny Other	1882	3.0	1732	10.8
Total Larceny	20250	22.5	6486	26.3
Destruction . Property			3022	28.8
Tampering	12637	42.0		
Auto Theft	4954	49.0	2461	39.5

Murder. Fairfax reports 19 percent of murders at parking area locations and Lansing 4.5 percent. Obviously, murder at parking areas in Fairfax takes on a more serious dimension and suggests that in high crime cities such as Jacksonville, if secondary locations were recorded, parking areas would appear considerably more dangerous than past data has indicated.

Lansing on the other hand, still shows less than five percent of reported murder at parking sites. In both cities and Lansing in particular, the number of murders are quite low in the statistical sense. Without some analysis of the primary locations containing parking areas, intervention strategies by police and security administrators would be difficult to design.

The Fairfax numbers appear to be rather stable over the five reporting years even though the total for the period amounts to only sixteen. In Lansing, the two parking lot murders occurred in just one of the four years under study. These are rare events and Lansing cannot justify extraordinary measures by the police or business community in an attempt to reduce parking lot murder.

Rape. The percentage of parking lot rape to total rape is very close in Fairfax and Lansing with 7 and 6 percent of the total crime respectively. While the percentage of rapes in parking lots to total rape is nearly the same in both jurisdictions, the fact that Lansing with less than half the

population of Fairfax reports more total rape is an interesting side issue. It is the only crime category that seems out of step when the reported crime of the two cities are compared. The percent of actual rape to reported rape is notoriously low and could vary widely from city to city. Whether Lansing has a higher rape rate than Fairfax or just a higher level of reporting is not a question this research can answer. One clear conclusion can be drawn from the location study of these two cities; parking lots as a generic category are not major contributors to the reported rape problem. Further specific analysis would be required before any direct attack on parking lot rape would be cost effective.

Robbery. Parking Lot robbery makes a significant contribution to the robbery totals in both Fairfax and Lansing. Both report about 20 percent of their robberies occur in parking lots. This suggests that if parking lot robbery could be cut down it would impact favorably on the city wide robbery situation. These data clearly suggest that police and security forces should take a close look at the robbery problem in parking locations.

Robbery at parking lot locations, as in all other major crime categories, should be examined in conjunction with the major use category to which the parking lot is attached in order to harness the resources of public police and private security in the prevention of robberies and the apprehension

of robbers. As previously noted, Fairfax routinely collects this information whereas Lansing must physically examine incident clusters and then determine the major use category.

The population, and geographical and land use differences between Fairfax and Lansing might suggest a wide disparity in criminal attack choices. The fact is, with all the differences, the percentage of robberies on parking areas is very similar. It is argued that robbers note some special opportunities for successful robberies at parking areas. Further it could be argued that a commonality of perception by robbers exists across a broad and varied background of political and social environments. There are admitted methodological problems in trying to generalize from two samples but the experience of these two cities seems to support the opportunity theory.

Assault. This section includes both simple and aggravated assault. Fairfax records a slightly higher parking area percentage, 12.4 to Lansing's 9.5, as a percent of city wide assaults. While these figures indicate a similar picking of target areas by assailants, the nature of assault varies considerably from that of robbery where the prime motive is money or property. It cannot be determined from these raw location data the assault motives or the proportion of stranger to stranger assault. This would be important in judging the dangerousness of a parking area.

Vehicle Related Larcenies

Larceny from a vehicle and larceny of auto parts are the two crimes that plague parking areas. Both Fairfax and Lansing record approximately 55 percent of all larcenies from vehicles and larceny of auto parts from parking areas. There is some disparity in the Lansing auto part data because some larceny of parts are included in the larceny from vehicle category. In Fairfax, they are discrete categories.

These totals should not be surprising, but parking lots are seldom singled out as a problem. Again, credit goes to the criminals who correctly perceive the opportunity to steal parts and other items from parked cars.

Foreseeability of Dangerousness

A more interesting aspect of the total picture of parking area dangers is the idea that assaults may be foreseeable from the level of other crime such as larceny of parts and larceny of other valuables from vehicles. The argument of course is that if an owner were to confront a thief in the act of stealing a car part or item from the vehicle, an assault is likely to occur. The other side of the argument holds that because the attacker is interested in stealing and not robbery or assault, the surprised thief will attempt to flee the scene. Danger would only be encountered when someone attempts to block the escape route.

In a civil case, the plaintiff's expert is likely to argue from the first point of view and the defense expert from the latter. For the most part they are both guessing and both theories make sense.

This research cannot be conclusive in answering the question. If the first argument holds, one would expect to find a higher percentage of parking lot assaults or at least case by case information indicating the assault foreseeability of criminal confrontation. The lack of such evidence suggests that the "retreating thief" theory may be the most likely scenario. Expert witnesses advancing the "stop and fight" theory do so at some considerable peril.

Approximately one-quarter of all larceny in Lansing and Fairfax results from parking areas and most of this is motor vehicle related. The time, inconvenience and cost of larceny of auto parts and larceny from vehicles consumes a substantial volume of police and security resources and creates a public relations problem for store and apartment house owners.

While more specific research should be undertaken, these results indicate the possible cost effectiveness of programs to reduce these two parking related crimes. Research attention to the role of police and private security, parking area design, and motor vehicle design, may provide new crime prevention information.

Auto Theft

Approximately 40 percent of Lansing's auto theft and 50 percent of the auto theft in Fairfax occurs at parking areas. The other half are taken from street parking, driveways, dealer lots and other non-parking area locations. Parking lots are different from these other locations. Parking lots have a clustering effect and can give the thief a good choice without arousing a great deal of suspicion.

Destruction of property and Tampering

In Lansing, 28.8 % of the cases of malicious destruction to property occurs at parking areas. This is a large and significant number when all of the other types of malicious destruction are considered. It also makes sense to conclude that the bulk of parking lot destruction has to do with motor vehicles. Fairfax has a category called "TAMPERING." It is similar to malicious destruction but is confined to motor vehicles. This crime occurs in parking areas 42 percent of the time. These two categories are not necessarily comparable, but one factor they may share was voiced by a police analyst. It was suggested that the difference between a reported case of malicious destruction and a motor vehicle accident may be related to the owner and the police officer trying to determine the best way for the owner to approach the insurance company regarding damage on a parking lot.

Overall, parking lot crime in Lansing and Fairfax produces similar patterns for two very diverse communities, and indicates that criminal events are planned and executed with considerable logic and skill. As in any environment, property crime outnumbers violent crime by a huge margin. Nevertheless, violent crime is not as high for parking areas as might be expected. This is not to say that in the areas of robbery and assault special strategies might not be called for to reduce such crimes and to arrest perpetrators.

Indeed, there is considerable work to be done. A much more serious picture arises when property crimes are examined. What happens in motor vehicle related crimes affects directly each city's crime rate for these categories. Therefore, a campaign to combat auto related crime on parking areas may be cost effective. Primary data from Fairfax and Jacksonville is grouped into primary use categories in Table 5.3. Primary reporting areas do not reveal where in a particular environment the crime occurs but provide an account of the overall dangerousness of a certain environment. The most dangerous place for murder and rape is in a person's home. Both Fairfax and Jacksonville report the same (48%) percentage of murder, and 45.8 percent and 64.5 percent respectively for rape that takes place in a housing location. The geographical and social differences of Fairfax and Jacksonville are apparent,

as street and open area murder in Jacksonville is more than three times the percent as in Fairfax.

Table 5.3 Crime By Primary Area And Usage Groups- Fairfax 1984-88, And Jacksonville 1985-88. Murder And Rape.

	Fairfax				Jacksonville			
	Mrdr	% Total	Rape	% Total	Mrdr	% Total	Rape	% Total
Housing	42	48.8	263	45.8	268	48.7	1624	64.5
Streets								
Open areas	8	9.3	50	8.7	177	32.2	543	21.6
Parking	1	1.2	5	.9	10	1.9	46	1.8
Schools								
Churches	1	1.2	14	2.4	3	.5	58	2.3
Service								
Business	7	8.1	80	13.9	63	11.5	144	5.7
Recreation	3	3.5	33	5.7	6	1.0	43	1.7
Auto								
Service	0	0	1	.17	2	.4	5	.1
Business								
Industry	7	8.1	25	4.5	8	1.5	10	.4
Other	17	19.8	103	17.9	13	2.4	44	1.7
Total	86	98.8	574	99.9	550	100.	2517	99.8

In the service industry, which includes stores, shopping malls, banks, and fast food outlets, murder and rape each account for less than 15 percent of the city wide total. The weakness of this type of primary reporting system is illustrated by data showing that schools and churches have a much higher murder rate than parking areas.

Violence vs Property Crime

The basic difference between a crime of personal violence and a serious property crime aided by a threat of violence is demonstrated in Table 5.4. Thirty eight percent of robberies in Fairfax and Jacksonville involve service businesses. This makes sense because "that's where the money is." Since money is the motive for robbery, service businesses are the obvious choices based on perceived opportunities. Jacksonville registers 35 percent of it's robberies at street and open areas and is about five times that of Fairfax. The more affluent Fairfax on the other hand, has twice the percentage of robberies that occur in housing environments as does Jacksonville.

When the assault data is reviewed a completely different picture emerges. Assaults in housing areas account for 41 percent of the cases in Fairfax and 55 percent in Jacksonville. Street violence is also reflected in the 24 percent of assaults that occur on Jacksonville's streets. Assaults at business locations are of less importance with 15 percent at Fairfax and 9 percent in Jacksonville.

Table 5.4 Crime By Primary Area And Usage Groups-Fairfax 1984-88, and Jacksonville 1985-88. Robbery And Assault.

	Fairfax				Jacksonville			
	Rob	% Total	Asslt	% Total	Rob	% Total	Asslt	% Total
Housing	595	22.7	728	41.3	1626	11.8	7214	55.0
Streets								
Open Area	194	7.4	146	8.3	4872	35.4	3158	24.0
Parking	43	1.6	31	1.8	623	4.5	385	2.9
Schools								
Churches	48	1.8	45	2.6	144	1.0	236	1.8
Service								
Business	1002	38.2	254	15.0	5259	38.0	1150	8.8
Recreation	41	1.6	57	3.2	131	1.0	94	.7
Auto								
Service	246	9.4	21	1.2	654	4.8	115	.9
Business								
Industry	310	11.8	103	5.8	47	.3	69	.5
Other	141	5.4	366	20.8	403	2.9	708	5.4
Total	2620	99.9	1751	100.0	13759	99.7	13129	100.0

When secondary locations are examined, parking lot crime will be shown in its true volume but the primary data indicates that it is not the parking lot that constitutes the basic opportunity structure but rather the basic use category. Murder, Rape, and assault are all different dimensions of assault motivations. Robbery, a serious crime that can involve violence and death, is motivated by the need for money or property. Service businesses and people on the street are the main targets of robbers.

Larceny Targets

Table 5.5 delineates location factors for larceny and auto theft. Based on primary reporting areas, the two favorite targets for larceny are housing areas and service businesses. Both jurisdictions report about 30 percent for housing and 23 percent for service businesses. A large portion of larceny is motor vehicle related. Nearly 45 percent of the Fairfax auto theft and 43 percent of the Jacksonville auto theft is connected to housing areas. Service businesses are nearly the same for both cities -- about 10 percent. Business and industry connected auto theft in Fairfax outstrips Jacksonville many times, but the many parking lots for the growing office buildings in Fairfax may explain this great difference.

Housing areas in both cities account for 30 percent of all larceny. Secondary data for Fairfax shows much of this

Table 5.5 Crime By Primary Area And Usage Groups-Fairfax 1984-1988 And Jacksonville 1985-1988. Larceny And Auto Theft.

	Fairfax				Jacksonville			
	Larc	% Tot	Auto Theft	% Tot	Larc	% Tot	Auto Theft	% Tot
Housing	27482	30.5	4626	45.9	13496	30.3	7108	42.5
Streets								
Open Area	1546	1.7	363	3.6	2186	5.0	1629	9.7
Parking	1571	1.7	319	3.2	2850	6.4	2157	12.9
School								
Church	3662	4.1	127	1.3	769	1.7	437	2.6
Service								
Business	20598	22.8	1189	11.8	10262	23.1	762	10.5
Recreation	2356	2.6	90	.9	218	.4	46	.2
Auto								
Service	4515	5.0	821	8.2	9020	20.2	1978	11.8
Business								
Industry	14860	16.5	1227	12.2	1205	2.7	104	.6
Model Home	10374	11.5	0	0	0	0	0	0
Other	3187	3.5	1311	13.0	4578	10.3	1505	9.0
Total	90151		10073		44584		16726	

is larceny of auto parts and larceny from motor vehicles. Jacksonville motor vehicle connected larcenies contribute a large portion to their larceny totals. Both cities record about 23 percent of their larceny at service business locations. This would include shoplifting and employee theft reports. Because of the rapid pace of building, Fairfax has an unusual category -- Model Home. As these new homes are occupied, attacks against the persons or property would be reclassified in the traditional manner.

Model homes provide a neat opportunity for burglary and many forms of larceny, and an interesting crime prevention possibility. Could it be that practice at victimizing model homes suggests to criminals that they can continue to have an easy target even after the home is sold and occupied? Force of habit is a powerful motivating force and this possibility requires further exploration.

Based on primary reporting areas, the two favorite targets for larceny are housing and service businesses. Both jurisdictions report nearly the exact same percentages with 30 percent for housing and 23 percent for service businesses. As demonstrated in Table 5.5, a large portion of larceny is motor vehicle related and the obvious place for attack is parking lots.

Three other locations are of interest in this table. For Fairfax, business and industry, and model homes seem to attract large proportions of larcenies. The large number of

office locations and the constant building makes these areas interesting larceny targets. In Jacksonville, 20 percent of the larcenies are related to the auto service business including dealers' repair and new car lots. Further inquiry into the nature of larceny at these locations would be helpful. Part of the answer comes from the data on auto theft. A near majority of all auto thefts occur in housing areas, 46 percent in Fairfax and 43 percent in Jacksonville. Thefts from parking areas and service businesses and auto service establishments are remarkably close for the two cities.

In theory, the public parking areas of service business such as shopping centers, taverns, and other similar locations should encourage more auto theft than seems to be the case. What is being revealed by primary reporting data is that housing areas are not only the most likely areas in which to be assaulted or killed but the most likely place to lose property.

Selected crime categories for Fairfax County are identified in Table 5.6. It includes the number and percent of parking lot crime, the number of crimes that can be identified with a specific location, and the percent of parking lot crime that can be identified with a specific location.

In Fairfax, 90 percent of the above crime can be identified with a specific use location. They range from a low

Table 5.6 Fairfax County Crime 1984-88. Parking Lot Crime Identified With A Specific Location. Primary and Secondary Data.

	FAIRFAX COUNTY				
	Total Park Lot	Total County	% Park Lot	Total Location Specific	% Total Park
Murder	16	86	19	15	94
Rape	43	573	7	39	91
Robbery	554	2620	21	498	90
Agg. Assault	300	1761	17	264	88
Larceny From Vehicle	7419	13656	54	6766	91
Larceny Auto Parts	10949	19619	56	9971	91
Auto Theft	4954	10073	49	4538	91
Total	27360	74321	37	24939	91

of 88 percent for aggravated assault to 94 percent for murder. This table and the ones that follow demonstrate the value of both primary and secondary location classifications. Fairfax was the only one of the three cities capable of such a detailed analysis.

Clearly, any attempt to generalize from such a micro-analysis of one jurisdiction is fraught with peril. But the similarities in some categories using primary data suggest that the Fairfax data may provide the bench mark for further research.

The percentage of parking lot crime in Table 5.6 is a combination of secondary and primary location data. The addition of secondary location data makes parking lots appear much more dangerous than when primary data is used alone. Still, it does not allow one to pin point problem geographic areas needed in the planning process. Fortunately, the secondary classification scheme allows for a high degree of location specificity. Tables 5.7 and 5.8 provide a location specific analysis. Table 5.7 provides ample evidence that housing area parking lots are the most dangerous for murder and service business lots are the most dangerous for rape, and minor as well as serious assaults.

Table 5.7 Percent of Fairfax Parking Crime By General Use Areas 1984-1988. Murder, Rape, Aggravated Assault, and Simple Assault.

FAIRFAX COUNTY								
		%		%	Agg	%	Simpl	%
	Mrdr	Park	Rape	Park	Asslt	Park	Asslt	Park
Housing	6	40	9	23	92	35	1120	39
Government & Public Service	2	13	4	10	9	03	139	05
Service Business	2	13	14	36	111	42	1026	36
Recreation	0	0	5	13	7	03	55	02
Auto Service	0	0	0	0	7	03	118	04
Business and Industry	5	33	7	18	38	14	390	14
Grand Total	15	99	39	100	264	100	2848	100

The data on parking lot location for robbery and other theft crimes is presented in Table 5.8. Service businesses contribute 41 percent of the parking lot robberies in Fairfax County. Interestingly, housing parking lots come in a close second at 31 percent. When larceny from vehicles, larceny of auto parts and auto thefts are examined, housing lots outstrip any of the other categories, contributing well over 50 percent of these auto related crimes.

Table 5.8 Percent of Fairfax Parking Crime By General Use Areas, 1984-88. Robbery, Larceny From Vehicles, Larceny Of Auto Parts, And Auto Theft.

FAIRFAX COUNTY								
		% Robry	% Larc Park Lot	% Larc From Veh.	% Larc Park Lot	% Larc Auto Parts	% Park Auto Theft	% Park Lot
Housing	165	31	3393	50	6185	62	2607	57
Government and Public Service	15	03	389	06	423	04	109	02
Service Business	14	36	1253	19	1024	10	723	16
Recreation	5	13	429	06	123	01	49	01
Auto Service	0	0	254	04	777	08	319	07
Business and Industry	7	18	1048	15	1439	14	731	16
Total	39	101	6766	100	9971	99	4538	99

Based on the eight crimes displayed in Tables 5.7 and 5.8, a person is three times more likely to be a victim of robbery and auto larceny in a housing parking lot than in any other use area. Recreation areas and activities appear to provide the safest parking facilities.

Residential Crime

Table 5.9 breaks down the housing area and displays the number and percent of total parking lot crime for each specific housing area. Apartment parking lots appear to be the most vulnerable of any housing parking lot. For example, apartment parking lots account for 50 percent of the murders, 90 percent of the rapes, 60 percent of the robberies and well over half of the auto thefts that occur on housing parking lots.

This shows apartment parking lots to be fairly dangerous until it is realized that of all serious crime, they contribute a mere 3.5 percent of murder, 1.5 percent of rape and 16 percent of the larceny of auto parts. Only larceny of auto parts appears to be of such volume that a lowering of this crime on apartment parking lots could affect the county-wide figures. The best prevention strategy in the case of housing would be to stress the overall level of crime for housing areas with special emphasis on apartment parking lots.

Two important factors should be considered as regards this analysis. First, the data does not take into account

crimes per unit at risk. Very few opportunities exist in Fairfax county for trailer park crime while apartments house many people. Secondly, residential homes and trailer parks do have a higher level of potential personal and community surveillance possibilities which may contribute to their lower crime rates.

Table 5.9 Parking Lot Crime: Fairfax County by Specific Housing Areas, 1984-88. Number and Percent of Total Parking Lot Crime.

	Apart ment	Condo	Single Family	Town House	Mobile Home	Total
	n/%	n/%	n/%	n/%	n/%	n/%
Murder	3/20	0/00	1/07	2/13	0/00	6/40
Rape	8/21	1/03	0/03	1/07	0/00	9/23
Agg- Asslt	66/25	3/01	9/03	14/05	0/00	92/35
Smpl- Asslt	713/25	49/02	109/04	248/09	1/00	1120/39
Robbery	113/23	15/03	11/02	16/03	1/00	156/31
Larceny From Veh	1460/22	193/03	356/05	1370/20	3/00	3393/50
Larceny Auto Parts	3233/32	422/03	541/05	1982/20	7/00	6185/62
Auto Theft	1576/35	144/03	292/06	593/13	2/00	2607/57

Data on specific use areas of service businesses is presented in Tables 5.10 and 5.11. As a group, service businesses account for 17 percent of the total parking lot crime within the eight selected crime categories. Service business are most vulnerable to rape, robbery, and aggravated assault, as they contribute 36 percent, 41 percent and 42 percent of the total parking lot crime in these three categories.

Table 5.10 Parking Lot Crime: Fairfax County by Specific Service Business Areas, 1984-88. Number and Percent of Parking Crime for Murder, Rape, Aggravated and Simple Assault.

	Murd	% Prk	Rape	% Prk	Agg Asslt	% Prk	Smpl Asslt	% Prk
Savings/Loan	0	00	0	00	0	00	15	01
Hotel	1	07		03	6	02	31	01
Motel	0	0	3	08	4	02	48	02
Convenience	0	0	2	05	20	08	219	08
Drug Store	0	0	0	0	2	01	9	00
Fast Food	0	0	0	0	9	03	81	03
Grocery store	0	0	0	0	2	01	37	01
Restaurant	0	0	1	03	29	11	185	06
Shopping Mall	1	07	7	18	34	13	346	12
Tavern	0	0	0	0	5	02	55	02
Total	2	13	14	36	111	42	1026	36

Shopping malls are the most dangerous parking lots for the crimes in Table 5.10. They compare with apartment parking lots as favorite spots for parking lot rapes, but only about half as dangerous as apartment lots for the other assaultive crimes.

In Fairfax, 18 percent of the parking lot rapes take place in mall parking lots. The actual number however, seven over a five year period, cannot be considered a crime wave. This number represents about 1 percent of all reported rape during the five year period under study.

In a civil suit, rape is the kind of assault that can garner a substantial jury award for the plaintiff. The question of duty aside, for an expert to strongly support foreseeability of rape at any particular Fairfax mall parking lot would not be very credible.

Table 5.11 presents data for parking lot crimes at specific locations for the crimes of robbery, larceny from vehicles, larceny of auto parts and auto theft. Parking lot robbery for the service businesses is 41 percent of total parking robbery. Shopping Malls account for about 40 percent of this total. Across the board shopping malls are the most crime prone of service business parking lots.

Percentages of the various parking lot crimes in the areas of Government and Public Service, Recreation, Auto Service, and Business and Industry are small and not very instructive.

Table 5.11 Fairfax County Crime. Parking Lot Crime 1984-88. Specific Service Business Areas by Number of Crimes and Percent of Total Parking Lot Crime. Robbery, Larceny from Vehicles, Larceny of Auto Parts, and Auto Theft.

			Larc % From Veh	% Prk	Larc Auto Parts	% Prk	Auto Theft	% Prk
	Robry	prk						
Savings and loans	18	04	11	00	10	00	14	00
Hotel	6	01	117	02	82	01	49	01
Motel	7	01	127	02	65	01	75	02
Convenience	34	07	102	02	24	00	73	02
Drug store	6	01	5	00	5	00	6	00
Fast Food	13	03	32	00	12	00	22	00
Grocery Store	13	03	28	00	25	00	23	01
Restaurant	23	05	147	02	105	01	69	02
Shopping Mall	79	16	665	10	689	07	376	08
Tavern	3	01	16	00	7	00	16	00
Total	202	41	1253	19	1024	10	723	16

Tables 5.12 and 5.13 extract specific use areas from general use areas for a direct comparison of the higher crime use areas.

Table 5.12 Fairfax County Crime. Parking Lot Crime 1984-88. Comparison of Higher Crime Use Areas by number and Percentage of Total Parking Lot Crime. Murder, Rape, Aggravated and Simple Assault.

	Murd	% Prk	Rape	% Prk	Agg Asslt	% Prk	Smpl Asslt	% Prk
Apartment	3	20	8	21	66	25	713	25
Town House	2	13	0	00	14	05	248	09
Shopping Mall	1	07	7	18	34	13	346	12
Restaurant	0	00	1	03	29	11	185	06
Park	0	00	4	10	2	01	6	00
General Business	5	33	4	10	24	09	259	09
Total	11	73	24	62	169	64	1747	61

In the above table, six general use areas account for 73 percent of the murder and about 60 percent of rape and other assaults. A similar format for the eight property crimes is presented in Table 5.13.

Robbery and the other property crimes are more widely scattered than the violent personal crimes. What is more striking is the apparent lack of specific target selection in the larceny area. While it is true that all larceny

Table 5.13 Fairfax County Crime. Parking Lot Crime 1984-88. Comparison of Higher Crime Use Areas By Number and Percentage of Total Parking Lot Crime. Robbery, Larceny from Vehicles, Larceny of Auto Parts, and Auto Theft.

	Robry	% Prk	Larc From Veh	% Prk	Larc Auto Parts	% Prk	Auto Theft	% Prk
Apartment	113	23	1460	22	3233	32	1576	35
Shopping Malls	79	16	665	10	689	07	376	8
General Business	55	11	546	08	770	08	423	09
Convenience	34	07	105	02	24	00	73	02
Restaurant	23	05	147	02	105	01	69	02
Service Station	18	04	55	01	226	02	59	01
Other stores	21	04	74	01	54	01	34	01
Total	343	70	3052	46	5301	51	2610	58

categories are related to motor vehicles, one might predict a greater difference in thieves who are interested in stealing packages from cars than stealing the entire car. This does not seem to be the case. Another explanation may be that a genuine target selection is in operation but thieves, interested in these auto related crimes, perceive nearly equal opportunities for success in each specific use area.

Table 5.14 Fairfax County Crime, 1984-88. Parking Lot Crime by Category and Use Area Rank.

Rank	Murder	Rape	Agg-asslt	Smpl-asslt
1	Gen-Bus	Apartment	Apartment	Apartment
2	Apartment	Malls	Malls	Malls
3	Town House	Gen-Bus	Restaurant	Gen-Bus Town House
4	Church Govt.Lot Hotel Mall Residential	Motel	Gen-Bus	Convenience
5	-----	School Church Convenience	Convenience	Restaurant
Total Crime	15	28	173	1924
% Specific location parking crime	100.0	72.0	66.0	59.0
% of all crime per category	17.4	04.9	09.8	07.4

Another way to examine the relative dangerousness of parking lots is to rank the various general use areas according to the specific crime. The vulnerability for serious crime at apartment and mall parking lots is shown in Table 5.14. While general business parking lots rank number one in murder, as a category it is not well defined. In the context of Fairfax County one could conclude that this category consists of office building parking lots. In general, apartment parking lots and shopping mall parking areas are the most dangerous parking areas in Fairfax County, but they are also the most numerous and highly used.

There were eleven use areas out of the thirty five use areas identified in this study included in the top five parking lot crime areas in Fairfax County. They account for all of the murder cases, seventy two percent of rape, sixty six percent of aggravated assault and 59 percent of the simple assault. This ranking scheme would indicate that some of these areas such as apartments and shopping malls are indeed very dangerous places until parking lot experience is evaluated in the context of the distribution of all crime for each category.

The importance of this approach is demonstrated in Table 5.14. Parking lot murder accounts for only 17.4 percent of all murder in Fairfax County. While five use areas are responsible for 72 percent of the parking lot rape, they represent only 4.9 percent of total rape. The

figures for the two categories of assault are equally interesting with five parking use areas making up 66 and 59 percent of the parking problem, but amounting to only 9.8 and 7.4 percent of the county-wide crime in these two assault categories.

Some insight into Robbery and the other property crimes is provided in Table 5.15. Apartment and Town House parking lots rank number one and two in most of these areas.

Table 5.15 Fairfax County Crime.1984-88 Parking Lot Crime by Category and Use Area Rank. Robbery, Larceny from Auto, Larceny Auto Parts, And Auto Theft.

Rank	Robbery	Larceny From Vehicle	Larceny Auto Parts	AutoTheft
1	Apartment	Apartment	Apartment	Apartment
2	Mall	Town House	Town House	TownHouse
3	Gen-Bus	Mall	Gen-Bus	Gen-Bus
4	Convenience	Gen-Bus	Mall	Mall
5	Restaurant	Residence	Residence	Residence
Total crimes	304	4408	7215	3260
% of total Specific Location Parking Crime	62	65	72	71
% of All Crime per Category	11.6	32.3	36.8	32.4

To further demonstrate the vulnerability of housing area parking lots, notice that eleven of the top twenty areas of vulnerability relate to housing. Only in parking lot robbery do the various business locations outnumber housing areas.

Robbery and thefts related to motor vehicles take on a different complexion when compared to personal crimes of violence. About two-thirds of the parking lot crime can be accounted for by the five highest ranking areas in each crime category. While parking lot robbery accounts for more than ten percent of overall robbery, one-third of all motor vehicle related larceny is perpetrated in the parking lots identified in Table 5.15. This is another clear indication that it is parking lot property crime and not crimes of violence that should be of prime concern to business and police operational strategists.

CHAPTER VI

LIABILITY ISSUES

Parking lot management is faced with an interesting and challenging array of liability issues related to the loss prevention function. The main focus of business security is the protection of company assets--in most cases property belonging to the company. Parking lots pose a different set of problems. Other than the land of the parking lot and a few light poles, the most valuable property on a parking lot belongs to customers as represented by vehicles, other valuables and their person.

While attacks against customers and their property pose little threat of direct loss, liability costs relating to the duty a merchant may owe a business invitee can, in some jurisdictions, grow to catastrophic proportions. Requiring owners of business property to provide reasonably safe premises for tenants and business invitees has a well established history; but, requiring owners to protect tenants and invitees against the criminal acts of third parties is of more recent vintage.

The recognition of physical security as a critical aspect of providing for the reasonable safety of business invitees was given nationwide publicity when popular singer

Connie Francis won a multi-million dollar award against Howard Johnson Motels. Francis was the victim of a rape while staying at a Howard Johnson property on November 8, 1974. A jury found the motel was negligent in its duty to provide a reasonably safe place for guests, because defective locks had allowed the assailant to enter her hotel room.³⁵

The discovery that security could produce dollars for plaintiffs brought renewed interest from trial lawyers to the issue of third party liability as a result of criminal attack. As attention to a rising crime rate during the 1970's and the development of public sponsored crime prevention campaigns grew, so did the realization that the active use of security measures could reduce criminal attacks. By tying security theory to the established principle that business owners owe a duty to provide a reasonably safe premises for invitees, the plaintiff's bar has been successful in a large number of jurisdictions. Are jury awards excessive ? Large jury awards, particularly in unusual or bizarre type cases, have resulted in a public perception that juries are often excessive in their awards. The phrase, "our increasingly litigious society," is represented as a fact by defense lawyers, insurance companies and the media. While debate continues as to the truth or falsity of this statement, the increase in

liability insurance rates during the past decade is hardly open to question.

The high costs of doing business due to taxes, liability and workman's compensation insurance, and unemployment compensation, can be critical in industrial states. Profit squeezing downturns in production bring costs into sharper focus than during times of expanding consumer demand. Costs related to liability claims and other government regulated programs such as workman's compensation can be viewed as politically inspired costs and thus could call for a political response.

Public Policy Development--The National Scene

American constitutional theory would seem to require legislative bodies take the lead in developing public policy decisions, but it can also be argued that when legislatures fail in their policy making function, the courts may enter the arena. The U.S. Supreme Court's interest in civil liberties and race relations in the 1950's and 60's provides ample evidence of their policy making leadership.

Do citizens have policy making power? Citizens are not without direct power to decide policy issues. The most recognizable of these powers include provisions in state constitutions for the process of referendum, initiative and recall. These democratic procedures are not available at the Federal level but are left as powers reserved to the states and the people. The development of these democratic concepts

and their attachment to state constitutions can be identified with reform movements of the late 19th and early 20th century. Michigan first recognized these citizen policy making powers in its 1909 Constitution³⁶

Less recognized is the policy making power of citizens in the exercise of their jury duties in tort cases. Civil cases, with decisions based on the preponderance of evidence, provide citizens with an opportunity for direct democratic decision making and are one of the few American examples of actual majority rule. This rule is not absolute, but judges hesitate to overrule a jury unless its decision is patently unfair.³⁷

In cases involving an owner's duty to protect a business invitee from criminal acts of third parties, juries are typically asked to determine the reasonableness of the owner's action. In addition, they are asked to determine if the injurious acts were foreseeable and if the owner's actions or failure to act was the proximate cause of the injuries. In some jurisdictions juries are also asked to determine the comparative negligence of the parties in the suit or to determine if the plaintiffs contributed to their own victimization. Clearly, these are decisions that establish public policy through the building blocks of the common law tradition.

Juries are restricted in this policy making process by legislative acts and judicial decrees. Thus the legislature

can define duties owed one citizen to another; they can set monetary limits on compensation for injured parties, and can determine if injured parties are to any degree responsible for their own injuries. Likewise, in the absence of legislative policy, a court can decide whether a jury can become the decision maker. Because the English/American tradition holds that judges decide law and juries matters of fact, the question of "duties owed" as a matter of law or fact is the pivotal point in limiting or expanding a jury's policy making power.

This is particularly true when legislatures fail to define statutorily the duties of citizens one to another. In such cases the courts must act on their own sense of political philosophy and social responsibility. They must decide whether to allow the democratic common law process of jury determination of "duties owed" or to take it upon themselves to determine duty as a "matter of Law." Clearly, when a court determines that a particular duty is not owed from one person to another there is nothing for a jury to decide. Thus, when a duty is not owed the defendant automatically wins.

DUTY TO PROTECT

When people are assaulted or robbed, witnesses often come to their aid by physically intervening or calling for other forms of help. This is commendable and is encouraged as long as the they do not jeopardize their own safety. It

also seems appropriate to warn others of dangerous conditions or to provide them a safe haven from attack if possible.

Such actions seem to be the decent response to the plight of another human being and, as long as the actions are voluntarily undertaken by the helpful person, humanity is well served. It is however, up to every person to determine the risk to be taken on behalf of other humans and to act according to his/her own ability and conscience. The difficulty arises when society through it's legal system requires one to come to the aid of another--that is to say, requiring by law to make one his brother's keeper. The law does not burden one with such a duty unless the wisdom of experience suggests that the benefit to society clearly overrides the inconvenience and danger to the duty holder.

This concept is commonly defined as third party liability, or vicarious liability. Business persons, as individuals and corporations, have long been charged by law with certain duties of protection for the customers and guests. For example, the duty to protect customers from fire, accidents, and environmental dangers is seldom open to argument. But, what about the duty to protect customers and other guests from the criminal acts of third parties? The assignment of this duty started in earnest in the hotel industry and gradually spread via court interpretation to other areas including nearly all possessors of land.

The creation of a special relationship. In general, forcing a duty on one person to protect another has depended on the type of relationship that existed between the injured party and the proposed protector. This duty applies to the innkeeper who invites a customer to use his facilities as a home away from home or the home owner who invites a friend to dinner. In these cases, it may be the duty of the innkeeper to take reasonable precautions to the end that the guest is not hurt in a fire or that the room does not collapse, and the homeowner must be sure that his faithful guard dog does not assault the invited guest. Such invitations clearly establish the special relationship between the invitor and invitee, and provide the potential for establishing a legal duty for one person to provide some degree of protection to another.

A special relationship is one based on control. Key to establishing the duty of one person to protect another is the concept of control, control in the sense that one person has the ability to influence the outcome of an event which may cause injury to a guest or invitee. Such is the case of the hotel owner in the construction of the hotel and the home owner with the control of his dog. Thus when one has a degree of control over the outcome of events and has invited another into his/her sphere of influence, a duty to care for the other person may have accrued. The degree of control and the nature of the invitation required to establish this

special relationship is the realm of judicial wizardry and the stuff of courtroom debate. Cases abound in the literature that define what it takes to establish this special relationship, but it is beyond the scope of the current discussion. In general, in the absence of legislative directive, or unless a court recognized special relationship based on control is established, the injured party cannot ask a jury to require the invitor to come to his rescue.

The duty to protect against the foreseeable. While the special relationship is a prerequisite for establishing duty, that duty is conditioned on one's ability to foresee the probability of danger. Thus it is foreseeable that a dog trained to protect the owner's home might mistake a guest for an intruder, and the owner of a poorly constructed building may foresee the building's collapse.

For the most part, foreseeability is the province of the jury. For negligence to grow out of the harmful event it should have been reasonably foreseeable, and as reasonable persons may disagree--it becomes a fact situation to be decided by the jury. Once the reasonable foreseeability of an event is established, the circle of duty is complete. The jury then proceeds to determine if the duty to protect was carried out in the proper fashion. If the failure to carry out the duty was the proximate cause of the guest's injuries--the one with the duty will be expected to

compensate the injured person. In the traditional negligence case, juries deal with humans as they confront the physical world around them. The person with the duty intends no harm against the injured party. The actual instrument of harm; the slippery floor, the falling tree, the fire, and the bare electrical wire have no will of their own and are merely the instruments of damage because a duty was not properly discharged.

Foreseeability -- the first step towards "deep pockets." The issue of foreseeability launches a jury into the policy making arena. Foreseeability involves theoretical and empirical probability, perceptions of dangerousness, and conventional wisdom. Once the possibilities are assessed, policy making decisions involve whether the duty holder did foresee or should have foreseen the dangerous situation, and what he/she should have done to protect the injured party. The final set of policy decisions relate to the evaluation of injuries and the assessment of punitive damages. The awarding of damages is a measure of society's resolve to insist on the performance of one's duty to protect, and is the ultimate implementation of policy.

A jury's policy initiatives cannot be implemented if the party held responsible is not able to pay, therefore, the legal system must search for duty holders with adequate assets to compensate those with serious and permanent injuries. Thus, the initial impact of policy implementation

falls on personal and corporate wealth. Because tort judgements can reach catastrophic proportions that threaten corporate profits or the very life of the company, the bulk of liability risk is transferred to insurance companies. As a result, juries rarely consider cases in which the holder of the duty is not backed by insurance or in a financial position to compensate severe injuries. Essentially, the jury system becomes a collection of democratic policy making bodies and reflects the political and economic values of the juror's communities.

When these local democratic policy decisions tend to disrupt the American market economy and the dominant political philosophy, legislative and judicial aspects of representative democracy check the popular democracy of the jury system. American federalism allows a substantial variance among the states in the manner and extent to which the jury form of pure democracy expands or contracts. Business persons constantly assess this diversity among the states as part of their decision making process. Their actions, such as moving from states with high liability costs, can have considerable impact on the legislative and judicial policy making machinery.

The Foreseeability Of Criminal Attack

The United States has the dubious honor as a leading industrial nation in the production of crime and criminals. Consequently, crime in some form is foreseeable in nearly

every geographical location and social situation. Legions of arguments abound as to the causes of crime and methods for the prevention of crime and criminality, and statistics support every side of each argument. The responsibility for the arrest, prosecution, and punishment of criminals is the duty of the state, but whose duty is it to compensate the victim for lasting injuries due to criminal activity? Who is at fault for providing the opportunity for successful criminal deeds--the victim, the state, or the economic system? Who is at fault for creating the human desire to violate the laws designed to protect humans and their property-- individuals, the state, or the economic system? Who should bear the cost of permanent damage and injury due to criminal attack-- the victim, the criminal, the state, or the economic system? In short, who has the duty to protect individuals from criminals? Traditional Western philosophy holds individuals responsible for their criminal acts; are punished by the state through fines, forfeitures, and isolation from society. They are also responsible for their victim's financial losses due to their crimes. The problem is that criminals, who inflict the most severe and permanent damage to individual victims, often go unidentified and when apprehended are seldom able to pay. Therefore, the financial burdens created by criminals fall squarely on the shoulders of their victims.

Duty to Protect From Criminal Attack

The state assumes a duty through the operation of the criminal justice system, to protect its citizens from crime. Unfortunately, the system is designed to operate primarily after a crime is committed, and the actual prevention of individual acts of crime are limited. The prevention aspects of the criminal justice system defy measurement, but the failures are counted in the daily tally of victims.

Individuals, in a free society, must share with the state the burden for protection against the risk of economic loss due to crime. When the risk of crime is high and the potential economic loss severe, is the risk borne by the individual reasonable? This public policy question has been answered in various forms by the several states. The increasing attention to the plight of victims during the past twenty years has produced laws providing for state compensation to victims of specified crimes. In enacting such laws, policy makers have decided that citizens do indeed face an unreasonable risk of crime in modern day life. Taxpayers are reluctant, however, to pick up all of the compensation needs of victims. The only remaining source of economic compensation is the market economy. Thus the focus shifts to define the duty owed by businesses for the protection of their guests and business invitees.

The duty to protect business invitees. The duty to protect business invitees from the criminal acts of third

parties has taken a number of paths since the Connie Francis case in 1974.³⁸ The basic authority regarding a duty to protect against criminal acts is the Restatement of Torts which requires, "(1) the existence of a special relationship between the landowner and the injured party, and (2) a finding that the intentional criminal acts are foreseeable."³⁹

A business establishment satisfies the special relationship part of this equation. The major policy disagreements, except for Michigan, focus on the foreseeability issue and the level of protection required. This two element test for duty splits the policy making authority between the court and the jury, as the issue of foreseeability is normally a fact situation for the latter to decide. The rules by which a jury must approach foreseeability remain the province of the court and have led to various standards throughout the nation.

Three general rules of duty have evolved regarding the protection of business invitees:

- A. Foreseeability based on the "totality of circumstances," and the standard of protection given;
- B. Foreseeability based on past experience with criminal behavior, and the standard of protection given; and

- C. The rejection of the Restatement of Torts rule with duty the total responsibility of the court.(Michigan Rule which finds no duty for the protection of invitees)

Totality of Circumstances

This rule is best exemplified by the parking lot murder case of Small v. McKennan Hospital. No prior rapes or serious crimes had been reported in the hospital ramp. There was a security patrol, but not as many personnel were employed in security as was requested by the Security Director. The Director did, however, feel that the lighting was adequate and had sponsored rape awareness programs and escort services for employees. The local chief of police reported the hospital to be in a low crime area. The plaintiff's expert was much more persuasive. The quality of light, the lack of constant CCTV, and the lack of personnel to discover trespass activity were all items the Court felt should be considered by the jury. The Court agreed with the proposition that confrontation with a minor criminal would result in a violent crime, and that lack of prior crime was not at the heart of foreseeability. Finally, the Court concurred with the standard in New York that, "A violent criminal activity can be foreseeable simply upon common experience." In sum, South Dakota followed the "totality of circumstances" test used in California where the Court

said," foreseeability depends on the facts in each individual case."⁴⁰ This test, also used in Massachusetts and Washington, is the most difficult of all tests for business to meet because the existence of the crime tends to prove its foreseeability and that security was inadequate. The South Dakota rule forces business to depart from cost effective analysis. The South Dakota hospital discussed above could never have justified the cost of security to cover the remote possibility of murder. In effect, this rule is very close to establishing absolute liability. If crime is foreseeable based on common experience, and a crime occurs, any competent security consultant can find fault with the pre-existing security.

In 1988, the Missouri Supreme Court ruled to support the Restatement of Torts test of duty but maintained that the court rather than the jury should determine foreseeability. In Madden v. C&K Barbecue Carryout, Inc., the Missouri Court took a little different route, but reached a position similar to the jury in the South Dakota parking lot murder, which placed additional protective burdens on business. Two very sharp and instructive dissents were presented in that case. Judge J. Donnelly had the following comment:

Historically, Missouri public policy has been to seek to prevent crime through utilization of public police forces financed by tax money. Today the Court opts for crime prevention in business localities through utilization of private police forces financed by consumers through higher

prices.... I do not believe that people expect judges to decide such questions of public policy. They are for the general assembly.

Judge J. Welliver in his dissent said:

Today, all of the Missouri business community is clearly and unequivocally saddled with liability for criminal acts committed against persons on the property of the business. Every person in Missouri is going to find the cost of guards, security systems, and higher liability insurance premiums added to the cost of the groceries and products sold by the business establishments. All of this in addition to the taxes we pay to have the finest Highway Patrol, City and County police forces possible.⁴¹

The policy concerns of the dissenting judges echo the concerns of business. But what are the alternatives? In spite of Judge Welliver's description of the public police forces as the "finest", crime and its offspring--injured victims continue to plague Missouri society.

Past Criminal Experience

In 1989, the Texas Court of Appeals dealt with the totality of circumstances concept and emphasized prior criminal experience. On June 10, 1985, Darrow Garner and his son went to their favorite barber shop. At some point a potential customer came in, obtained directions to the restroom, and after finding another employee in the area near the restroom proceeded to conduct an armed robbery. The barbers cooperated but the robber wanted more. He herded the barbers and customer Garner into the restroom and, "after threatening everyone with death, he held the pistol next to Garner's head and said, 'this is for you', and fired." Garner

was not hit but the sound "caused severe damage to his hearing." The Court maintained the responsibility to determine foreseeability. They used the totality of circumstances rule but arrived at a different result than the South Dakota Court. In this case the Court held:

A business invitor owes a duty to his business invitees to take reasonable steps to protect them from intentional injuries caused by third parties if he knows or has reason to know, from what he has observed or from past experience, that criminal acts are likely to occur, either generally or at some particular time.

Over the past two years the shop experienced several burglaries and one possible robbery. In addition, the shop owner had advised her employees on what to do in the case of a robbery, but the Court, as opposed to the South Dakota Court, did not view such advice as evidence of the owner expecting a robbery. The Court in this case supported the "totality of circumstances" rule, but did not allow the jury to evaluate the circumstances. In the Court's view, burglaries two years before a daring daylight robbery does not add up to foreseeability. The Court in this case was careful not to close the door on victims and yet it also expressed concern for defining duty as "whenever it is foreseeable that criminal activity might occur." Clearly, the Court did not want to open the door to an absolute duty to insure a customer's safety.⁴²

Courts throughout the nation have been struggling with the issue of duty and foreseeability of crime at a

particular business location. No single standard has been accepted by the various states. Even where the same standard such as "the totality of circumstances" rule is used, results differ widely. It is clear from this brief review of the national scene that scientific evidence is not as important in influencing judges as is a philosophy of public policy regarding who should compensate victims. In the bulk of the states, the market economy and its insurance apparatus shoulder some level of responsibility. Michigan has taken a different road in recent years and is viewed by many authorities as taking a maverick position that may not stand the test of time.⁴³ Yet, Michigan has addressed some of the very issues of concern expressed by both the majority and dissenting opinions of courts in various states. The discussion that follows gives a detailed account of the Michigan rule and its implications for private security at business locations, including parking areas.

Public Policy Development The Michigan Experience

In Michigan, business costs are perceived to have risen because of broadened duties owed by business to their invitees. Evidence of these broadened duties exists in the so called "excessive" awards by juries. This added cost has provided the excuse for some businesses to threaten to leave the state. Clearly, policy decisions were needed to solve the business liability crisis.

For nearly forty years, Michigan's legislature has been stalemated by split party control of the Senate and House of Representatives. Control by one party or the other of the State House seems to have little effect on this stalemate so that legislative change comes slow even when faced with critical decision making needs.

This stalemated political atmosphere creates an ideal situation for direct citizen action such as jury decisions and legislative activities such as referendums, petitions drives, and recall elections--all of which Michigan has experienced in the 1980's.

Judicial policy making can also thrive in the vacuum created by legislative inaction as witnessed by the civil rights battles of the 1950's and 60's. In Michigan, judicial policy making regarding the duty to protect business invitees from the criminal attack of third parties has taken a dramatic turn in the recent past. The following discussion traces the changing Michigan position on the question of duty owed to a business invitee from 1983 to the complete rejection of duty in 1988.

Askew v Parry

During the early morning of January 5, 1979, a man carrying a rifle walked into an Oakland County bar and announced a robbery. He ordered everyone to the floor. His command was complied with by all but one very foolish individual who swore at the robber and backed up his opinion

with an obscene gesture. The robber was not at all amused and fired a fatal shot into his chest.

The deceased widow sued on the basis that the bar owner owed a duty to protect her husband from a foreseeable event such as a robbery and assault while a business invitee, and that the bar owner's failure to carry out such a duty was the proximate cause of her good husband's death.

Common sense would lead one to conclude that the victim was shot as a result of his own foolish behavior. The Circuit Court Judge agreed and ruled that " the killing was wholly unforeseeable and that the defendant had no duty to prevent the killing." On appeal, the Michigan Court of Appeals ruled 3-1 in favor of the plaintiff and remanded the case back to the trial court for a jury verdict. In dissent, Judge J.J. Kallman, prepared a blistering attack on the opinion. He acknowledged the duty of a business to protect customers from foreseeable dangers, but not against "sudden and unforeseeable injuries caused by assailants." Clearly the deceased's actions led to his death. Judge Kallman was obviously upset and concerned about law suits that appeared to have little merit and vented his frustrations in a statement that must be viewed in its entirety:

One wonders just what the majority thinks defendant should have done to protect the decedent. If defendant had hired an unarmed guard, the latter would have been in no position to do anything other than what all of the defendant's patrons, with the exception of decedent, did; namely, to comply with the robber's commands. Had defendant hired an armed guard, the possibility of

violence would only have increased. No doubt had the decedent been killed in a cross fire between the assailant and an armed guard, plaintiff would have filed a complaint alleging that the guard was negligent in attempting to stop the robbery. Perhaps defendant should have required the decedent to wear a gag as a condition for allowing him on the premises.

I believe that the majority opinion is simply another example of the modern trend in the judiciary to look for a "deep pocket" when a wrong has been committed. While plaintiff's loss is very real, it is clearly not a loss for which defendant is even remotely responsible, either in law or in fact.

Judge Kallman's dissent would have been an excellent argument for the defense attorney to present to a jury. It is hard to believe that any reasonable jury could have ruled for the plaintiff in this case, but Kallman did not trust jury actions and wanted to rule on both law and the facts regarding the foreseeability aspects of duty-- the latter of which is often left to the jury.

Kallman did not directly challenge the issue of DUTY. Instead, he attempted to supersede the jury's role to determine foreseeability and proximate cause. The sharpness of Judge Kallman's dissent reveals an interest much broader than a single case. His concern was for the plight of businesses being victimized by Michigan's comparative negligence rules. Such victimization, in Michigan as across the nation, was based on the popular understanding that it is the discovery of one with the ability to pay, rather than the merits of a case that rules the thinking of juries. Michigan had gained the reputation as a state where the

"deep pocket" rule controlled juries. This perception was constantly being advanced by political leaders, insurance representatives, and business leaders. But neither the legislature nor Michigan governors seemed able or willing to tackle the issue in a direct manner. Kallman's dissent was the start of such a direct attack by the Michigan judiciary.

Interestingly, the majority in this case did not express any opposition to Kallman regarding foreseeability or proximate cause. Because Michigan recognized the duty of a merchant to provide some measure of safety for customers they believed it was up to a jury to decide the issue of foreseeability and proximate cause. The question of duty had long been settled in most jurisdictions and Michigan had followed the majority rule requiring a business to provide for the reasonable safety of guests and invitees.

The majority cited a number of cases between 1971 and 1982 to support their position. The precedents held that "a landlord owes an affirmative duty to protect tenants from ...assaults," and that a "duty to guard another against the criminal acts of third parties can arise when there is a 'special relationship' between the party owing the duty and the one to be protected." Further the court noted that "the relationship between a business invitor and its invitee is sufficiently 'special' to give rise to the duty." Finally the majority concluded that the "question of proximate cause" is a matter for the jury to decide.⁴⁴

The Court in this case suggested areas where material facts might be helpful to a jury in determining foreseeability. Previous criminal activity at the bar, the location in a high crime area, and the awareness of the owner as to criminal activity in the area, were mentioned as facts a jury could consider in determining foreseeability. In sum, the Court had merely recognized Michigan and national precedents regarding the issue of duty and then left it, also according to precedent, to the jury to determine foreseeability and proximate cause. Judge Kallman did not directly attack the issue of duty but tried, in a very dramatic way, to take over the jury role.

For the next several years, nothing really exciting occurred in this area except sporadic attempts to control liability judgements through proposals to secure legislative caps on jury awards. In general, the plaintiff's bar was successful in maintaining the duty of a business to provide a guest or business invitee a reasonable degree of protection from criminal attack. Expert witnesses could testify as to the general crime conditions of an area and what a business person could do to lower the probability of criminal attack at a particular location.⁴⁵ There is no great evidence that jury awards in Michigan were excessive in security cases, but members of the public and the insurance industry felt the brakes should be applied because liability awards were out of control. It was also felt that

juries understood the game that was being played in many of the cases brought to court. Even though the word insurance could not be mentioned during a trial, there was a feeling that the person being sued would not be harmed financially because the judgements were being paid by insurance companies. Evidence that the high cost of claims are passed on to policy holders and eventually to consumers through higher prices is never very persuasive when the obvious needs of a crime victim are before a jury for consideration. Therefore, Michigan seemed politically helpless to solve its so called "liability problem," due to criminal attacks on business invitees.

Police Officers Duty To Individuals

If Michigan's business climate was being clouded by the liability problem, the social disruption due to community wide crime was, in some areas, akin to a festering volcano. Murder, robbery and drugs abounded in the larger cities and were spreading to suburban and rural areas. People were demanding more of their police than could be delivered. The police were perceiving their role as being more and more restricted by court rulings, and individual officers were hesitant to risk certain actions for fear of personal liability actions.

The rise of victim rights advocates, such as Mothers Against Drunk Driving (MADD), pressed for more action and accountability by police agencies. When they appeared to

fail, many groups and individuals attempted to correct the problems with law suits rather than additional resources for police services. If police failed to arrest a drunk driver before a fatal accident they were taken to court; if they staked out a robbery location but missed the robber, they had a "day in Court"; if they failed to catch a prowler before an attack took place, they were asked to pay; and if they shot the burglar suspect too soon, the burglar's estate could be enhanced considerably.

In the past, police officers had little to fear from civil suits if they acted in good faith and played by normal rules set forth by their departments. After all, one could be sued, but a supportive community was very hesitant to bring back jury awards against an individual officer. The insurance companies and insurance adjusters who often settled claims on cost effective grounds, not on the merits of the case, unwittingly encouraged frivolous suits. Settling with plaintiffs on cost effective grounds rather than the merits of the case, made police officers feel uneasy about getting involved in any action where a law suit might arise. It could be argued, but hard to prove, that criminals may have detected this reticence on the part of police and became less fearful of law enforcement action. In any event, the stage was set for a landmark Michigan case regarding the duty of a police officer to act and the consequences of his/her failure to act.

Simonds v Tibbitts

During his tour of duty on October 10, 1978, the Stockbridge Police Chief had found a car in a ditch. After checking out the car he determined that the driver was "visibly intoxicated," but for some reason, the Chief did not arrest the driver nor have the car towed from the highway or disabled so to make it unlikely that the driver could again enter the highway. The Chief simply left the scene and went about his patrol. Unfortunately, the driver was able to get the vehicle back on the roadway and headed East on route M-106 where he promptly crossed the center line striking another vehicle head-on and killing the driver.

The driver's wife claimed the Chief had neglected his duty to arrest the drunken driver or to prevent his car from being operated. Therefore, his negligence was the proximate cause for her husband's death.

The trial court dismissed the case on the basis that the Chief's duty was to the "public at large and not to any individual," to which the Court of Appeals agreed. Obviously, this case could not go to a jury. The Chief's action by any standard was below par by leaving an intoxicated driver in control of a motor vehicle. Any jury of reasonable persons would have had little trouble in finding that he should have done more than to note the intoxicated nature of the driver and then leave the scene.

What makes sense and good police practice, however, may not create a legal duty to put good practices into effect. The issue here was one of duty owed based on the establishment of a "special relationship" between the Chief and the plaintiff's dead husband. The plaintiff had argued that the Chief's observation of the other intoxicated driver and the fact that under Michigan law a police officer has the duty to arrest drunk drivers had created a special relationship "between defendant and the motoring public, including Buist[the deceased], under which defendant [police Chief] owed a special duty to any motorists injured by Risner[the drunk driver].

While this case had been simmering on the Court's back burner, another case, Maksinczak v Salliotte, had been decided stating that a "police officer's duty to preserve the peace is owed to the general public, not to any one individual." This case alone may have been enough for the Court to decide the Simonds case, but it went further. In response to plaintiff's "duty to arrest" theory, the Court reviewed the Michigan Vehicle Code regarding driving under the influence of alcohol and cited the wording providing that an officer " may arrest, without a warrant, a person he has reasonable cause to believe was operating a motor vehicle while under the influence of alcohol on a public highway at the time of an accident." 46

This expression of the Court was clearly overkill. The Court interpreted this statute as permitting the arrest of a drunk driver rather than requiring the police to make an arrest. ⁴⁷ Members of the public expect that their tax supported police agencies shall arrest drunk drivers, and most police departments pass this expectation on to their officers. The statute cited merely instructs the officer as to the level of evidence required to make a particular misdemeanor arrest not witnessed by the officer. Perhaps part of the fault was with the plaintiff for citing an improper statute, but a casual reading of the case can be interpreted to allow an officer to escape responsibility for not carrying out departmental policy or the will of the public as regards drunk driving.

The issue of "special relationship" is an essential ingredient in the establishment of the duty one person owes another. The rule adopted by Michigan and most other states, now known as the "public duty" doctrine will make it increasingly difficult for the public and political leaders to expect accountability from their police agencies. Everyone's responsibility turns out to be no one's responsibility; a doctrine that maintains that a police officer's duty to preserve the peace is owed to the general public, not to any one individual, means in practice that such duty is owed to no one.

This issue has been discussed with a number of police officers from various Michigan Police Departments and they all demonstrate a concern for not establishing the type of special relationship where a jury could review their actions. Therefore, many police officers will not take special pains to watch for prowlers at " Mrs. Jones" home, but will advise her that they will be on the look out for suspicious persons in the general neighborhood area. They are also reluctant to make any special patrols of business parking lots because they fear that if a special relationship is created, and they fail to detect or stop trouble, they could be hauled into court.

This discussion is not to infer that police should be held accountable every time they fail to protect, in fact the opposite argument is being presented. But, by requiring them to be concerned about this business of "special relationship" as a prerequisite to being sued, they may avoid the type of aggressive police action that will protect the "general public" through the collective protection of individuals.

The public has the right to expect performance by their police and most police want to perform protective actions. The general public is served only when police officers interact with individuals. Police arrest individuals not the public at large. Rape victims are individuals not the public at large. If police cannot be held accountable to rape

victims as individuals and to arrest individuals responsible for crime, then the public in general cannot be protected.

The remedy for this dilemma is legislative and executive action and not additional court policy making. But, if the former institutions fail to act, the latter will someday be called upon to right the murky condition of current policy.

While the above discussion may appear to have gone astray from the subject of business liability, it should be accepted on the basis of "laying a foundation" for the policy implications of the case of Williams v Cunningham and those cases following in its aftermath.

Williams v Cunningham

On May 4, 1979, a Cunningham Drug Store in a high crime section of Detroit was robbed. The robbery generated considerable concern and as might be expected some panic on the part of customers. One such customer, Willie Williams, tried to run out of the store and had the misfortune to run out directly behind the fleeing robber. The robber seeing Willie, and perhaps mistaking him for a pursuing police officer or security guard promptly shot him. Willie survived the shooting but felt that as a business invitee he did not deserve to be shot during his shopping trip. He sued Cunningham for not providing a safe place to shop. The plaintiff claimed that it was the duty of Cunningham to

provide armed security guards for his protection, and that they should have tried to arrest the robbers.

The trial court granted the defendant's motion for a directed verdict on the theory that "defendant did not have a duty to protect plaintiff from the unforeseeable acts of a third party." The Court of Appeals did not go to the foreseeability issue but upheld the lower court on the basis that "as a matter of law defendant's duty of reasonable care did not extend to providing the degree of protection plaintiffs claimed was due," which was a request for armed guard protection. The Michigan Supreme Court affirmed the lower Court's decisions.

The Supreme Court clearly wanted to put a lid on the level of security required of business and pointed out the general rule that there is "no duty that obligates one person to aid or protect another." The exception is where a special relationship such as innkeeper and guests exists, and further that the basis of a special relationship is "based on control." Thus, the "duty to protect is imposed upon another person in control because he is best able to provide a place of safety." The Court recognized the traditional areas such as poor maintenance and defects in buildings, where an owner could be liable for injury to guests, but cautioned that such a duty does not "extend to conditions from which an unreasonable risk cannot be anticipated."

The Court initially defined the issue narrowly as to whether reasonable care included the provision of armed guards, but, before arguing the issue, digressed to the subject of how duties in a negligent case are divided between a court and jury. Justice Cavanagh explained that "the court decides the questions of duty and the general standard of care and the jury determines what constitutes reasonable care under the circumstances."⁴⁸ The Justice then started to move in the direction of judicial policy making by saying that in "cases in which overriding public policy concerns arise, the court determines what constitutes reasonable care," thus taking away the decision making authority of the jury. Justice Cavanagh cites Moning v Alfono as the authority regarding "overriding public policy concerns"; but, a fair reading of Moning suggests that the jury is best equipped to decide the standard of care where the issue is in doubt and that the overriding public policy concerns should be of near crisis proportions before the court should take on the mantle of judge and jury.⁴⁹ Nevertheless, Justice Cavanagh felt that a serious public policy concern was present in this case and therefore "the question of whether defendant's conduct constituted reasonable care is one the court should determine as a matter of law." The core of the Court's opinion followed with the statement that a "merchant's duty of reasonable care does not include providing armed, visible security

guards to deter criminal acts of third parties." This decision, according to the Court, was based on the "degree of control in a merchant's relationship with invitees, the nature of the harm involved, and the public interest in imposing such a duty." Up to this point the Court did not reveal what this public interest was all about and in fact it was left for later courts to determine. Justice Cavanagh did, however, in a footnote, demonstrate the radical nature of this decision by rejecting the standard authority on the subject--2 Restatement of Torts, 2d §334, again by referring to the "public policy concerns underlying our decision in this case."

In the dicta, following the rather narrow decision, one begins to grasp the ultimate direction in which this case would lead. The Court completely failed to differentiate between law enforcement and the preventive aspects of security. "The duty advanced by plaintiffs," said the Court, "is essentially a duty to provide police protection." Justice cavanagh then went on to point out that police protection is a duty "vested in the government by constitution and statute," and that "neither the Legislature nor the constitution has established a policy requiring that the responsibility to provide police protection be extended to commercial business."

The Michigan Supreme Court was either totally uninformed about the capabilities of private security or

thought they were doing private business a favor by rescuing it from potential law suits. Liability actions are costly, but not as costly as maintaining a place so dangerous that people will not enter to shop or do business. The logic of the Court is revealed in the following statement:

Although defendant can control the condition of its premises by correcting physical defects that may result in injuries to its invitees, it cannot control the incidence of crime in the community. Today a crime may be committed anywhere and at any time. To require defendant to provide armed, visible security guards to protect invitees from criminal acts in a place of business open to the public would require defendant to provide a safer environment on its premises than its invitees would encounter in the community at large. Defendant simply does not have that degree of control and is not an insurer of the safety of its invitees.

Providing reasonable safety for business invitees has never been interpreted as requiring the owner to become the insurer of safety, nor can it be argued that a business person can control the incidence of crime in a community. The fact is, however, a merchant is a member of a greater community and the merchant's actions can contribute dramatically to the increase or decrease of crime in a given community.

Merchants who fail to cooperate with police in the prosecution of shoplifters, disorderly persons, and parking lot thieves, and who fail to maintain good lighting programs, or follow safe money handling policies, increase substantially the probability of attracting criminals to their business location. Criminals drawn to these locations,

find the business and its customers ready targets. No one could argue that protecting a business in a high crime area is not more difficult than in a low crime area, but every major study since the 1970's has demonstrated that merchants, particularly in high crime areas, can reduce crime at their specific location with a variety of security measures.

The Williams case involved a narrow issue of requiring armed guards. Armed guards are not always required and where used cannot guarantee a 100 percent crime free environment. But, there is enough research and experience available to guide a merchant to the best use of security including armed guards. Justice Cavanagh went beyond the issue of guards and set the stage for freeing business of any responsibility for crime prevention.

Justice Cavanagh and the Court failed to grasp the nature of "police protection " in present day America. While major strides have been taken since the early 1970's in police/community crime prevention programs, the bulk of police "crime fighting time" is consumed with after the fact investigation, arrest and prosecution. As important and essential that this role is-- it does not substitute for prevention activities at a particular location.

What type of "police protection" would the court allow a merchant to seek? After all, as has been discussed in Simonds v Tibbitts, the Court of Appeals maintained that the

police are only required to protect the general public and not individuals. Who then must protect individuals? Perhaps we are about to recede to frontier justice and require every person to provide his/her own protection, but the Court in Williams does not want that scene either. An interesting and far reaching statement of the Court reveals a theory that private security is akin to vigilantism. The Court made the following statement that finally reveals the "overriding public policy concern" that prefaced its argument of this case:

Finally, we note that imposing the duty advanced by plaintiffs is against the public interest. The inability of government and law enforcement officials to prevent criminal attacks does not justify transferring the responsibility to a business owner such as defendant. To shift the duty of police protection from the government to the private sector would amount to advocating that members of the public resort to self-help. Such a proposition contravenes public policy.

The code word here is "self-help." Self-help is often used to describe vigilante type activities where frustrated citizens have taken the law in their own hands such as the well publicized "subway bandit" case in New York City. Such situations are clearly against public policy, but declaring self-help situations anti-public policy actions does not remedy the underlying dynamics that leads to direct citizen action against criminal attack. But equating private security with the vigilante implication of the term "self-help" is a gross failure to understand the role and capability of private security.

In its closing remarks, the Court opened the door for further erosion of precedent and declared that "for reasons of public policy he [the merchant] does not have the responsibility for police protection on his premises." The cases the Court used to make its strongest points go back to the early 1960's and mid 1970's and have been overturned in most jurisdictions.⁵⁰

Defense action was swift in coming. Early reaction to Williams by most plaintiff lawyers and security advisors viewed it as a narrow holding limited to the use of armed guards. However, the full extent of the implications resulted in a series of Appellate Court decisions culminating with Williams v Nevel's Jarrett on May 3, 1988, which states "A merchant incurs no tort liability for harm to its customers resulting from the criminal acts of others." This all encompassing statement is based on Williams and is clearly a logical extension of Justice Cavanagh's arguments.⁵¹

A discussion of the above case and several intervening cases is instructive in demonstrating how the Court in Williams, in its attempt to turn back the clock has caused more mischief than help to merchants who need police protection and a safe community environment as well as protection against frivolous liability claims.

Marr v Yousif

On March 27, 1981 at 2:30 PM, a delivery person was held up while making a delivery to a small market in the city of Detroit. The market was in a high crime area and the victim had asked the owner if he could make the deliveries at another door because of the element of safety. The owner refused even though there had been a number of assaults and armed robberies at this location.

The victim pointed out that the situation could have been avoided if "(1) a guard had been on the premises;(2) there was a fence around the parking area; (3) the clerk had not refused to allow plaintiff to use the left hand door into the stock room;and(4) defendants did not have poles around the right front door requiring plaintiff to make three trips to the truck." In other words there were a number of things the plaintiff could have done to lower the probability of an attack that was foreseeable in this area, and that it was the defendant's duty to take some type of preventive action.

The Court of Appeals ruled, based on the Williams case, that the owner had no duty to protect the vendor even though it was a high crime area. In effect, the Court rejected the idea that there could be a predetermined level of security that could be expected by a business owner. The Court claimed that the plaintiff would "have us create a duty on the part of store owners to turn their stores into

fortresses." The result the Court declared would be to impose "strict liability in the guise of negligence."⁵²

While most security managers and consultants would probably disagree with the Court's interpretation, the Court was clearly following the Williams lead.

Holland v Mc Donald's

In Williams v Cunningham, the Court implied that control over the premises was an important consideration. Thus it appears that hotel guests, and restaurant customers were owed some duty to protect them from crime. The Appeals Court in this case dismissed such an idea. In this case the plaintiff, a high school student, was an innocent victim of a shooting while at a Detroit Mc Donald's restaurant. The restaurant was overcrowded and, when a fight broke out, the victim decided to leave; he was shot in the back as he ran for the door. He alleged that the overcrowding was partly responsible for the fight and that trouble was foreseeable because a shooting had occurred there a year before.

The trial court ruled that "overcrowding of the restaurant could not, as a matter of law, be a proximate cause of a violent confrontation resulting in gunfire." This is a strange statement for anyone who claims to understand life in "the big city." The Appeals Court avoided this issue however by saying that based on Williams,

McDonalds had no duty to provide protection for its customers against the criminal acts of third parties.⁵³

As a result of the above cases, the significance of Williams v. Cunningham started to become evident to the plaintiff bar. Before many of the post Williams cases were decided, the general feeling was that Williams was a narrow holding and applied primarily to cases where security guards were recommended. Such was the case of Read v. Meijer where a woman was accosted in a supermarket parking lot, ordered at gun point to drive the assailant to a nearby road and then raped. In the suit that followed, the judge allowed the jury to decide on the standard of security and if the store had met the standard. The jury ruled in favor of the rape victim. By the time the case reached the appellate court other cases had followed Williams and the case was reversed on the basis that Meijer had no duty to provide protection. At about the same time, a different Michigan Appeals court seemed to go in another direction. In Johnson v Olde Colonial Restaurant, the Court recognized "a duty on the part of a restaurant once a fight has broken out on the premises." Based on this decision, some lawyers believed that business owners still had a duty to provide reasonable protection to customers while inside the establishment. William E. Rheume, the plaintiff's attorney in Read v Meijers, believes that on the basis of his experience in the case that "a store owner is not responsible for the criminal

acts of a third party, period. [The Court is] saying that it's the duty of law enforcement." ⁵⁴ It appears that Rheume's reading of the case is most nearly correct, but who could guess the breadth of the Williams decision?

In a current case, and one that leaves victims with little recourse to the courts is Bryant et al v Brannen. In this case, an apartment house tenant tried to protect himself against drug dealing in his building by installing a better door lock over the objection of the resident manager. The manager objected to the point that he shot the tenant Bryant, who now has no use of his legs. His 2.5 million award against the ownership was set aside by the Court of Appeals based on Williams and other cases subscribing to the theory that citizen protection must be the responsibility of the police and not the business owner. If this case holds, no business owner of any type will have any duty to provide security for customers, guests, or tenants. The clear dilemma for the victim is that the same Court system has ruled that police protect only society and not individuals. ⁵⁵ Poor Mr. Bryant, his mistake, based on this case, was that he failed to shoot the manager before installing the lock on his apartment. He might have gone to prison for murder--but at least he could walk.

Trial lawyers are predictably upset at the current state of affairs, but they refuse to give in to what might be described as the "Michigan Rule." One remaining avenue

appeared to be open for victims. It has often been assumed that once a merchant volunteers to protect a customer and fails, the business owner's security systems are open to severe scrutiny. Such a case was brought before the Michigan Court of Appeals and decided on June 6, 1989. In Tame v. A.L. Damman Co., Mr. Tame was shot and killed on the parking lot of the Damman Hardware Store located on the South side of Detroit. Damman had voluntarily employed security officers to patrol the parking lot, but while the officer was at one end of the lot-- Mr. Tame was gunned down. In an attempt to get around the "Michigan Rule," the plaintiff argued that once Damman undertook to protect customers he was duty bound to properly implement the protection. This meant the close supervision of the guards. Somehow, the security officer should have been counseled as to which end of the parking lot to guard at the time of the shooting. The Court quickly disposed of such a claim. In logical support of Williams, the Court said, "Such a policy would penalize merchants who provide some measure of protection, as opposed to merchants who take no such measures."⁵⁶

As of July 1, 1990, no major inroads have been made on Williams v. Cunningham. Broadening of the holding in that case has been left to the Court of Appeals. The Michigan Supreme Court has remained silent. A number of cases are now moving through the system with a strong possibility that the

Supreme Court may take the opportunity to reconsider the entire issue of a merchant's duty to protect business invitees. There is no doubt but that Michigan is no longer viewed as a "deep pockets" state as regards criminal assault on parking lots and other business locations. Hopefully, the Michigan Supreme Court will find a way to maintain a good business climate and still compensate victims of crime in public places.

CHAPTER VII

CONCLUSIONS

1. Parking lot crime is fundamentally non-violent motor vehicle related crime. The focus on liability actions tends to inflate the relative risk of parking lot violence. Still, the quasi-public nature of parking lots raises important public policy issues.

This conclusion contradicts the current wisdom based on professional opinion and the analysis of law suits based on violent crime. Research by Dr. Lawrence Sherman provided dramatic examples of parking lot violence and successful monetary recoveries by victims. This, "collection of tragedy", approach to parking lot crime raises unwarranted fears regarding the dangerousness of parking lots and complicates the search for reasonability in the development of crime control solutions. Moreover, it tends to move criminal responsibility from the perpetrator to the owner of property. Such a move may also change crime from a moral perspective to one of pure economics. This would be a dangerous policy move in a society that respects individual liberty and responsibility. Yet, society must recognize the nature of personal harm due to criminal attack and be willing to make policy choices that maintain economic

liberty while providing crime victims reasonable and timely recovery of economic losses due to such attacks.

In sum, our litigious society is a factual reality, while the "collection of Tragedy" approach is not confined to parking lot crime, discussions of parking lot crime and liability assignment is an important sub-set of the fundamental questions of liability due to crime. This is true because parking areas become demarcation lines between what is public and what is private. Therefore, the nature of parking lot crime can become an important public policy issue. For example, a broad brush conclusion, that parking lots are inherently dangerous, may provide a plaintiff with prima facie evidence of foreseeability regarding probable victimization. Such a standard of foreseeability, in states where merchants have a duty to provide reasonable security for their invitees, may create a security standard not at all in line with reality.

Public law enforcement can also be improperly impacted by inordinate attention to parking lot crime. Pressure by merchants, citizen groups, and political leaders to assign extra personnel to parking areas, based on an unrealistic perception of violence, could lead to service deficiencies in other critical areas.

2. Property crime is the dominant type of parking lot crime and makes a significant contribution to a political jurisdiction's crimes related to motor vehicles.

In all the jurisdictions studied, a high percentage of auto theft, malicious destruction to property, larceny of auto parts, and larceny from motor vehicles occurred on parking lots. Secondary crime classifications disclose that parking lots account for 30-55 percent of the total crime in these auto related categories. This substantial proportion of a community's auto related crimes should have an important impact on criminal justice policy and crime prevention efforts.

While the results are quite logical, most communities have not developed the statistical analysis capabilities to verify this very interesting experience. Crimes are often tied to a particular business address but the data are not prepared such that crimes in the parking lot and crimes inside the premises are separated.

The high volume of property crime on parking lots prompts an interesting set of questions. Why are business owners seldom sued for negligence as a result of customers' losses due to property crime? After all, individual auto theft losses can reach thousands of dollars in value and even small larceny losses can be serious for people on limited budgets. Why do insurance companies not attempt recovery from business establishments owning parking lots where cars are stolen? What about vehicle owners without comprehensive theft insurance, is it appropriate for them to file claims in small claims court for these numerous though

modest losses? In states that find a business owner has a duty to protect people from the criminal events of third parties, should not this duty be extended to all criminal acts and not just acts of violence?

There is abundant evidence that property crimes related to motor vehicles are foreseeable. Owners and operators of parking facilities can seldom claim lack of prior knowledge of criminal activity on facilities under their control. The obvious answer to the above questions is that victims and insurance carriers recognize the criminal's responsibility, and if the responsible person is arrested and convicted, attempts will be made to force restitution from the thief. Furthermore, insurance carriers honor their contracts and pay the claims. Those without insurance chalk it off to a bad experience or vow not to park in that area again.

But the real difference is that plaintiff lawyers have no interest in initiating suits hardly worth more than the limits of small claims courts. If, however, a suit for personal injury due to crime stands up in a state's court of last resort, small claims based on the foreseeability of parking lot property crime should be automatic. Just the thought of a cooperative venture by insurance representatives to recover from businesses in small claims court for property crimes on parking areas would make scenes

from the television series "Night Court" appear quite mundane.

3. The property crime volume on parking lots is such a major proportion of motor vehicle related crimes that a concerted effort by the police, in cooperation with business owners, could substantially reduce a community's overall crime rate.

While violent crime gets the headlines and attention of trial lawyers, it is the large volume of property crime that consumes the bulk of police crime fighting resources. The high percent of motor vehicle parking lot crime should encourage police administrators to develop crime prevention programs for these areas. Thus, the public policy issue should not be confined to those rare but dramatic cases of violent crime where a business owner is put to the task of proving lack of negligence, but to the broader economic and social issue of crime and loss reduction.

4. Parking lots are not inherently dangerous places, and property crime does not generally escalate into violence. Foreseeability of violent parking lot crime for liability purposes should be connected to a repeated and reasonably predictable pattern of violent criminal activity on or in the immediate vicinity of the property of a particular defendant.

Data from this study supports the contention that parking lots are not magnets for violent crime. In fact, in

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the three cities studied, parking lots were much safer than residential areas and internal business locations.

A three city sample must be used with a great deal of caution when developing generalizations. Nevertheless, the geographic, social, and economic diversity of the cities in this study suggests that a more extensive study of parking lots would most likely confirm these results.

Serious crimes of murder, rape, robbery and assault are every day occurrences in human society. In such a broad setting, they are clearly foreseeable. As crime, victim, and location specificity increase, foreseeability takes on more difficult dimensions. For example, this study demonstrates that people are much more likely to be victims of violent crime in their homes than on parking lots, but this conclusion has little relevance when evaluating the foreseeability of crime in a particular home or parking lot.

Experts have argued, and some courts have accepted the proposition, that a person unlucky enough to encounter a parking lot property crime in progress has a good chance to become a victim of violent crime. This is a very logical argument, but the alternative logic suggests that confronted property criminals flee rather than fight.

In the three cities examined in this research, not a single case was found where a property crime escalated into a crime of violence. This is not to say it did not happen; but, based on police records, interviews with police crime

analysts, and a reading of representative investigative reports-- no escalations were found. In addition, the high portion of auto theft, auto vandalism, and larceny from motor vehicles that occur on parking lots infers that if escalation was a problem it would be reflected in a larger number of violent victimizations. Thus, it appears that property criminals run rather than stay and fight, and that property and assaultive crimes on parking lots are indeed independent events. Clearly, the assessment of parking lot crime foreseeability is less an analytical proposition and more a matter of political and judicial judgement. Actually, such judgements are more properly directed toward the question of duty.

5. The major public policy issue regarding criminal attacks on business invitees is the question of duty owed the victim by the owner of property. Policy varies widely among the states from near absolute duty to no duty whatsoever. In some states, crime foreseeability provides a decision point for duty. Other states rely on economic considerations to resolve this question.

If people are many times more likely to be the victim of a violent crime in their own home than in a business parking lot, should merchants be given the duty to protect them when parking to shop? It has been shown that police have no duty, as regards tort liability, to protect people as individuals, thus leaving citizens primarily responsible

for their own protection.⁵⁷ If people assume the duty for their own individual protection in high crime locations such as their homes, should a business person be required to protect a business invitee against a less foreseeable crime at his/her favorite market?

There are at least three possible answers to this question: yes, it all depends, and no. A definitive YES would amount to accepting the theory of absolute liability. The IT ALL DEPENDS answer, the rule across the nation, maintains the quest for pointing fingers of blame toward those able to pay and fosters much fictional analysis of foreseeability. To answer NO, such as the Supreme Court has answered in Michigan, clearly retards the growth of liability claims due to criminal attack.

Absolute Duty To Protect

A policy decision favoring absolute liability to protect a business invitee against the violent acts of third parties would be similar to workman's compensation insurance. Such a political/judicial decision would foster a further eroding of accountability for crime control by public agencies and could arguably reduce a person's sense of individual responsibility. False rape reports in parking lots could be expected. False robbery reports, and in rare cases self inflicted wounds, would be reported in an attempt to cash in on a sure thing. Such a rule would clearly

increase the cost of business and thus pass on an inflation tax to consumers.

Yet, there is a brighter side to the issue of absolute liability. As in the case of workman's compensation, once the absolute duty is established the duty to control losses becomes an economic reality and total control of the area of protection is assumed by the responsible party. As in workman's compensation, liability claims would be limited to actual damages such as medical expenses and loss of earnings. Much of the "funny money" of the current "deep pockets" syndrome would be eliminated. Rates for liability insurance would be more predictable and loss prevention efforts tied to cost/benefit analysis.

Business would clearly exert control over access to their services including parking lots, and customers would be requested to comply with certain requirements analogous to queuing up at check out counters and limitations on the use of dressing rooms. The problem of control, identified by the Michigan Supreme Court, would be solved. The claim of the Court that merchants could not control crime on their premises would be shown to be in error.⁵⁸

Criminals would nevertheless continue to operate, but in areas under the supervision of the public police. This could increase the pressure for police to be more accountable for individual incidents of crime. Business organizations could be expected to lead the charge for more

effective criminal justice policies in an attempt to lower their own premium costs. A similar situation exists in traffic law enforcement and in safety programs in all areas of business and industry.

Duty To Protect-It All Depends

The bulk of the states rely on the "it all depends" theory of business responsibility regarding third party liability. Foreseeability, unreasonable risk, and probability of victimization are the concepts relied on by plaintiff and defense lawyers to lead juries in and out of "deep pockets." Expert testimony is relied on to assist jurors in their judgments and has created, for security consultants, an interesting sub-profession.

Scientific crime risk analysis is in the dark ages of development. While it is quite reasonable to expect a security consultant or company security manager to provide a system to lower an organization's overall exposure to crime losses, it is not reasonable under the "it all depends" theory of liability to cost effectively prevent the victimization of any one person under highly specific conditions known only after a crime has taken place.

Until the Michigan Supreme Court so dramatically ended the merchant's duty to protect invitees from crime, parking lot cases were progressing in a predictable direction. If plaintiffs' investigators could find evidence of numerous violent acts on a parking lot prior to their clients

victimization, foreseeability could be established. A security expert can usually find flaws in any security program and thus demonstrate how the defendant failed to provide reasonable protection.

If no previous criminal activity can be demonstrated, foreseeability is established by examining the incidents of crime in the general area of the attack, or by examining property crime such as auto theft, larceny of auto parts and larceny from inside motor vehicles. In the latter case, foreseeability depends on the escalation of property crime to violence. As described previously, this research does not support the escalation theory.

No Duty To Protect

Michigan leads the nation in developing the theory that a business owes no duty to protect a business invitee against the criminal acts of third parties. As a result of Williams v Cunningham⁵⁹, business operators are clear of this duty with a few possible exceptions. One exception is the unlikely case of a business hiring criminals who attack customers. The other possibility is when a business chooses to protect customers and makes such an intention a guarantee for their safety. Failure to make good on such a guarantee might land a business in court.

The potential to fail in spite of good faith security action contributed to the Michigan Supreme Court's quest to rid business persons of the burden to protect business

invitees from criminal attack. Prior to *Williams*, if a customer was not assaulted then there was sufficient protection. If a customer was assaulted, the assault itself was evidence of failure. Plaintiffs expected to be supported by expert testimony suggesting ways and means by which they could have been protected.

Under *Williams*, the business person is better off not being concerned about customers' welfare. Business invitees are now, in Michigan, left with the choice of not shopping in high crime areas or using self-help measures for their own protection-- a scheme so abhorrent to the Michigan Supreme Court that it provided the main public policy thrust of the *Williams* decision.⁶⁰

6. Business persons may find that crime prevention strategies make good business sense even in states that adopt the no duty rule.

Such strategies can be justified in at least three circumstances: (1) when customers are afraid to shop and business declines due to the fear of crime, (2) when employees refuse to work in a crime prone environment, and (3) when business owners and managers feel vulnerable and in need of protection. All three of the above decision points can be justified and all may lead to closing of business in high crime areas as was the case in Washington D.C. and Newark, New Jersey.⁶¹

Provide security when customers refuse to shop. Some shopping centers in the Detroit area voluntarily provide security for this very reason. Dramatic incidents of crime worry customers and the provision of security becomes a vital public relations device.

This study has demonstrated that parking lots are relatively safe areas yet there is something foreboding about walking through a parking area. Perhaps walking through parking lanes past unfamiliar vehicles is akin to walking through a cemetery at night. Cemeteries are not the most promising places for assailants to lie in wait, and in spite of some remaining superstitions in modern day life, few problems can be expected from the residents. Perhaps the fear is generated by the unfamiliar and the unknown. Similarly, when a report of parking lot crime is generated--irrational fears may be heightened. The problem with this approach, from a public policy perspective, is that unless adequate control is maintained the public fear of crime will not be abated, customers may not return, and business tenants may move elsewhere.

Provide security when employees refuse to work. While the unsuspecting business invitee may not have intimate knowledge of the crime probabilities of parking lots, employees are a different matter. Fear of crime, based on an isolated case of rape or robbery, may be intensified by the

more numerous cases of auto theft and larceny that create the volume of parking lot crime statistics.

Hospitals in the Detroit area have maintained armed security forces in part because of the inability to get people to work nights because of crime. A major insurance company closed its operation in Newark, New Jersey, because the cost of personnel protection was too high and the effort to protect employees did not keep people from worrying about crime at this downtown location. Many good paying jobs were lost when the office was closed.⁶²

Protecting employees from actual or perceived threats of crime can be good business until the costs outstrip the benefits and management is forced to relocate the business. It should be understood at this juncture that attributing business closing to parking lot crime may not be justified. Even in high crime areas, parking lots can be relative safe areas. But fear is not always a rational situation as has been suggested before, and fear of parking lot crime may contribute heavily to the decision to close a business. High crime areas are created by crime in the home, on public streets, and within business establishments. Therefore, the high cost of protecting employees stems basically from the crime experience in the total community environment and is manifested by employees not willing to work in high crime areas. While it may not be a business responsibility to

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prevent crime in the area or on the premises, the loss of business becomes a public policy problem.

Provide security when owners and managers fear crime.

Company expenditures can be justified when owners and managers are afraid to park or work in a high crime area. If the company location is vital to the production, sales, or management of an organization, then substantial costs for personnel protection may result. When management determines the cost of security outstrips the benefits of the location, the business may be moved.

7. Policy making by the Michigan appellate courts regarding the duty of businesses to protect their invitees from criminal attack illustrates the need for legislative and executive initiatives that respond more directly to the democratic process.

Parking lot security should be viewed within the framework of overall community security and overall security concerns of an operating business. But the loss of business due to crime is a public policy issue, and the manner in which the Michigan Supreme Court sought to resolve the issue is seriously flawed. While relieving business of certain duties regarding security, it did so on the basis that public agencies are unable to cope with the crime problem. Requiring business to tackle a crime problem out of control would force, according to the Court, business into the role of vigilantism.

The Courts goal of reducing business costs is negated by the security costs required to protect the business and its property. The reduction of business cost due to crime will require the courts and legislatures to come up with new programs to reduce community crime rates. Across the nation, the courts are preoccupied with figuring out who is responsible for police protection. It is an outdated question. If legislative, executive, and judicial policy makers were to focus on managing crime prevention efforts more progress would be made.

While police regularly respond to take reports of property crimes and conduct cursory investigations, there still exists the uncertainty of whether a parking lot is a public or private responsibility. Parking lot owners often resist asking for extensive patrol coverage because they may feel extra police presence may scare away customers and tie them up in court if the police do arrest reckless drivers and assorted criminals in the act of committing crimes. Police are also hesitant to respond to merchant demands for increased police coverage on private property, even though it is open to the general public, on the grounds that they might establish a "special relationship" and then become liable for damages when they failed to prevent a violent criminal act.

This research did not attempt to assess the actual economic impact of parking lot crime on business, but one

could reasonably argue, based on the data, that total property losses on parking lots exceeds the total dollar losses due to violent crime. Together, property and violent parking lot crimes have important social and economic impact and involve public policy issues long neglected.

As a policy issue, parking is a vital link in the transportation system. In America, the automobile holds priority over all other forms of transportation. The economic impact of the availability or lack of parking is a matter of common knowledge. Downtown areas live or die in part due to parking problems, and shopping centers and other business activities, dependent on motor vehicle transportation, prosper or suffer depending on the actual or perceived crime problems related to parking.

When the courts are forced to decide thorny public policy issues on a case by case basis, as they did in Michigan regarding crime related liability, neither the public nor business obtains a fair hearing. The "IT ALL DEPENDS" approach used by other states may be even worse.

The duty of a merchant to provide reasonable protection against the criminal attacks of third parties developed from long held theories of safety prevention. It can be demonstrated how to avoid dangerous situations for customers when dealing with mechanical situations such as sanding an icy walk or securing merchandise such that it will not cause injury. It is quite another problem to deal with an unknown

threat from an unknown assailant. The Michigan Supreme Court recognized this problem but failed to recognize that there are proven methods to gain control of a given location including parking lots.

Even in safety considerations there are few fail-safe programs when dealing with the general public, but business has accepted certain responsibilities for customer safety and most claims are paid without protest. Long standing court policies provide incentive for not contesting obvious claims, but safety legislation, including the referencing of privately developed standards such as those developed by the National Fire Protection Association and Underwriters Laboratory, establish clear legal requirements for business invitee protection.

In the crime area, standards for security have not been legislatively developed. Legislative policy development is a slow, painful, deliberate process, but once developed provides a level playing field for all interests. Crime prevention and security policy suffer from legislative neglect. As a result, the courts have acted without the benefit of the full democratic process and neither crime victims nor businesses have benefitted.

8. Parking lot crime data and victim specific parking lot data is not readily available. In the absence of reasonable data, evaluation of dangerousness becomes a creative art rather than a scientific endeavor.

Scores of cities were informally contacted to determine if they could generate the type of data required for this project. Most jurisdictions can provide information required for the Uniform Crime Reporting program administered by the Federal Bureau of Investigation, such as total rapes and robberies, but few could tell if the rapes took place in the home or in a parking lot.

Where parking lots were identified as the crime scene, most had no connection to other business operations. The robbery of a convenience store is placed in a geographical location according to street address, but the report coding system seldom determines if the crime took place inside or outside the store. Without such specific information, parking lot crime research lacks scope and meaning.

Victims and crime perpetrators make rational decisions about parking lots, and the behavior of either cannot be understood unless specific criminal attack and specific use data is collected. The need for both crime specific and victim specific data was evident in this research. Vulnerability and criticality assessments differ according to the way crime data is recorded on police reports and summarized by record bureaus.

Based on the difficulty in finding political jurisdictions with adequate data for this study, one could conclude that most business operators would have a very difficult time assessing the dangerousness of parking lots

in their operating environment. Further, it sheds doubt on the cost effective ability of consultants or expert witnesses to make any reasonable conclusion as to the dangerousness of a particular parking lot based on past police data. In the 1970's, a great deal of effort and money was spent to develop improved crime specific data. Many promising programs were developed. Some attempts were made to develop uniform criminal attack systems but interest waned when Federal money dried up. Cities that had joined in crime analysis research and development often abandoned their efforts when grant money was no longer available.⁶³

Police department representatives were generally sympathetic to the need for better data but many felt the additional crime specific data would make little difference in their operational strategies. In general, business does not ask police to collect data they can share, therefore business oriented data is not high on the police departments' data collection priorities.

Police and business could, however, work together to determine data valuable to both public and private needs. If more police organizations were able to identify the high incident rate and service time accounted for by certain parking lot crimes, it might spark interest in improved analysis of parking lot operations. In the absence of some catalyst for change, data collection systems are not likely to be improved in the near future.

CHAPTER VIII

RECOMMENDATIONS

The following recommendations are based on the realities of parking lot crime and the need for a coordinated public/private policy approach to protect the interest of business, business customers, and society. Sometimes, the recommendations extend beyond the direct needs of parking lot protection but were generated by this research.

1. Business oriented security organizations should provide leadership to improve data collection and analysis capabilities of law enforcement agencies. The American Society for Industrial Security (ASIS) should form a task force to define their role in coordinating this need.

Many business and public safety organizations collect crime data independent of the police, but ways to coordinate and interpret this data is lacking. The American Insurance Association keeps computerized files on fraud and arson losses. The National Auto Theft Bureau develops interesting data on auto theft. Underwriters Laboratories keep detailed crime and victim specific data on compromises of certificated intrusion detection systems. Many other fine organizations attempt to develop meaningful crime analysis

information for their clients. Unfortunately, much information developed fails to reach police decision makers and the reverse is true of the extensive police collected data.

An ASIS task force could help identify the mutual crime data needs of business and public law enforcement. The outstanding precedent for such activity is the development of police traffic accident reports through the instigation of the National Safety Council. Today, police accident investigation reports provide basic data for highway engineering, police strategic operations, highway safety programs and vehicle design. These are often supplemented by special crash studies sponsored by government and private research organizations.

Parking lot crime could be a starting point for the ASIS task force. Using the three cities that cooperated in this research as a model, defining an appropriate standard for identifying parking lot crime from police reports would be an excellent place to start. A parking lot standard could set the tone for further private/ public crime data coordination.

There are many excellent organizations representing specific security/crime prevention professional interests. The broad based nature of ASIS would assure the cooperation of other security organizations and public law enforcement.

2. Every major political subdivision should have adequate personnel and equipment assigned to the task of crime analysis, and the ability to communicate with other crime analysis units. There are a number of ways this recommendation can be formulated. Major city and county wide police organizations should have their own crime analysis capabilities. Smaller cities can be assisted by Sheriffs and other county units. Counties lacking the capability could be assisted by State Police crime analysis units or units developed by State Bureaus of Investigation. Ideally, some state agency should provide a collection and distribution point for uniform criminal attack data such as is the case for information used to compile the Uniform Crime Reports.

Every police officer and manager contacted in this study was willing to cooperate, but unfortunately few departments had systems in place to capture and summarize parking lot crime data. In some cases modernization of equipment had wiped out older but important software programs, and in other situations police management did not view specific crime and location data vital to their mission. The high percentage of motor vehicle related crimes that occur on parking lots indicates a need for a reappraisal of the past analysis. Police crime analysis personnel were eager to learn about systems developed by other agencies and deplored the lack of communication in the form of newsletters, seminars, and training programs in

operational crime analysis. The parking crime data needs are merely symbolic of the broader needs in this area.

The International Association of Chiefs of Police(IACP) and the Police Executive Research Forum (PERF) and other professional police organizations should be invited to join the ASIS task force on crime data analysis. The police role of public service cannot be complete without attention to appropriate services to the business community. Law enforcement is the most effective organizational structure for the capture of initial crime data. Business, however, cannot be expected to develop cost-effective methods for the protection of customers and business assets, unless crime incident data is properly collected, analyzed, and shared. Furthermore, law enforcement cannot effectively pursue its duty to society unless it understands crime at business locations.

3. Every state should develop a crime analysis program similar in scope to their highway safety and traffic accident bureaus. Many of the duties of these bureaus are defined by law, such as the design and production of accident reporting forms and the collection and dissemination of accident and highway traffic safety information. The ASIS task force should analyze the state organization responsible for both criminal data and traffic accident records, and develop proposals for legislative and organizational recommendations.

4. States should pass a Business/Consumer Rights And Responsibility Act that defines the duties a business person owes a business invitee regarding the criminal acts of third parties and provides for victim compensation as a result of such losses. Legislation of this variety must recognize the perpetrator as the proper focus for criminal and civil liability. It must also recognize the fundamental inability of victims to recover monetary damages from thieves and assaultive criminals. Nonetheless, when a perpetrator is identified, all legal means should be taken to recover actual losses from the criminal. The responsibility for police to protect the community should be articulated and police held accountable for implementing professional standards of police crime prevention and investigative services. Police should be encouraged to provide personal service to individuals and businesses as well as society at large without fear of financial liability as long as professional standards are met.

The right of business to conduct profitable ventures in a free market economy should not be jeopardized by forced responsibility for criminal conduct over which they have no control. Yet, it must be recognized that normal business decisions create various forms of criminal opportunities, and that business owners, employees, and business invitees should be protected from harm inherent in the criminal acts of those who exploit these opportunities.

Finally, the business invitee should not be required to maintain a war zone capability when shopping for breakfast cereal or changing a tire in a shopping center parking lot. It is reasonable to assume that taxes paid for police protection and prices paid for goods and services will be used to provide a safe public or quasi-public environment. Some responsibility must, however, be shared by the business invitee for his/her own protection. Citizens should be expected to understand explicit dangers in their environment and respond according to conditions and warnings of danger. For example, a citizen given ample warning not to pick up hitchhikers in an identified prison area, should not blame public authorities for assaults caused by giving a ride to an escaped prisoner.

Proposed legislation must implement public policy to the extent that all rights and responsibilities are clear and in line with established standards of justice and equity. The Michigan Supreme Court in *Williams* recognized such a need but failed to provide adequate protection for victims of crime or for business operators. Consider the case of *Marr v Yousif*.⁶⁴ Think of the dilemma of a delivery person so afraid to deliver at a certain door that he requested help from the owner for his safety. The owner refused and the driver was forced to use the unsafe area or refuse delivery. Refusing to deliver the goods would result in the loss of his job and income for his family. Completing

the delivery resulted in an armed robbery and the threat of death.

What remedy is available to the victim? The assailant was not caught, the police are not accountable to individuals, and the business was ruled not to have a duty to provide any measure of security for the delivery person. Who can explain to the delivery person that justice demands he pay taxes for police protection and live a life of fear to earn enough money to pay them. The term "blood money" has a real meaning to this worker and family provider.

The community minded business person is thrilled with the vision of customers and vendors beating a path to his/her door but not by visions of them being beaten or killed on the path or parking lot. Nor do they feel responsible for all crime in the community, some of which occurs on their property.

Police officers like to catch criminals and protect citizens, but they do not relish being sued if they act in good faith but are unable to prevent a crime at a specific time and place. Legislation such as described above could help establish fair and effective public policy as regards relationships between police, business, and business invitees. The following specific recommendations are intended to provide the outlines for model legislation in the area of victim compensation and business rights and responsibilities.

5. Model Business/Consumer Rights and Responsibility Act.

(a) Crime perpetrators are criminally responsible to the state and civilly liable to their victims.

(b) Crime victims must assist in the prosecution of their assailants or be barred from civil compensation for their injuries or property losses.

(c) Conviction of a crime is proof positive of absolute liability for damages and an acquittal shall not automatically bar the recovery of damages in civil action.

(d) Business owners shall have no duty to protect business invitees against the criminal acts of third parties except:

(1) Where business owners clearly encourage criminal activity such as allowing known drug dealers, prostitutes, pimps and procurers, and other notorious criminals to openly gather, loiter or patronize the business as a way to identify, harass, and victimize other customers or business invitees.

(2) Where the owner of property clearly violates the provision of a security ordinance designed to enhance the

security and safety of customers,
vendors and other business invitees
legally on the premises.

(e) Business owners who comply with security laws and ordinances, or in the absence of such laws and ordinances install and maintain security programs for the protection of business invitees, or install and maintain such security equipment and programs in addition to those required by law shall not be liable for the failure of such devices or programs to prevent specific acts of theft or personal violence.

(f) A victim compensation fund will be created from criminal fines, forfeitures, and civil ordinance violations to cover minor and major injuries, lost wages, and any other actual expense incurred as the result of criminal attack while driving, walking, parking or otherwise being present on public or private property open to the general public for recreation or the conduct of any business.

(g) Police departments shall be required to maintain a business inspection program to assist businesses to comply with security and crime prevention laws. Appropriate inspection fees can be assessed to business organization who fail to

comply with crime prevention laws in a timely manner.

(h) Political sub-divisions whose police department fails to meet performance standards will be held responsible for a 50 percent portion of the costs of injuries due to crime in their area.

(i) Business organizations that comply with security and crime prevention ordinances designed to protect business invitees from criminal acts of third parties can deduct from their property, corporation, or other business taxes, 25 percent of the actual annual cost of meeting such requirements (This would be a reduction in actual taxes due, not a mere business expense, since the goal here is to lower the cost of business and increase public safety. The total cost of course would also be deducted as a regular business expense).

6. Legislation should be passed that protects a police officer from the threat of civil action when taking special means to protect individual citizens or business owners and when making crime prevention recommendations. The legislation should in fact define such actions as duties expected from police departments and their employees. Officers would only be liable in the case of gross

negligence from failure to act in accordance with professional standards. The Tibbitts rule that requires police to protect society at large but no one in particular is bad public policy.⁶⁵ Police officers face many violent risks during their careers, but the risk of public censure, loss of savings and perhaps their job as the result of civil action is a violent risk to the officer's financial and mental health. Currently, an officer is not at risk for failure to prevent crime if no "special relationship" has been established between the citizen and police officer. What constitutes a "special relationship" is an interesting topic not to be explored here, but discussions with police officers make it clear that many avoid situations where such a possibility exists. Such situations include giving special attention to a merchant requesting extra protection because of recent robberies, or providing a home owner with information and extra patrol services after threat of violence has been received. What if the recipients of the extra services are attacked in spite of the extra police services-- are the police liable for damages? Common sense would indicate that the police should not be liable if they acted in good faith and in a responsible manner. Many police officers are not so sure, but if they ignore such pleas on the grounds that they have no duty for individual safety but only for the safety of the public at large, they can patrol

the city yet see nor hear no evil and be assured they are not liable for the poor victim's plight.

The current rule discourages the police crime prevention role. Instead, police are in the position of waiting until the criminal robs, kills, or steals property before they go into action. While this is part of the traditional police role and one that is bound to continue, discouraging the crime prevention role is counter productive, a waste of tax money, and extremely frustrating to citizens and business operators.

The Tibbitts rule seriously impedes the ability of police and parking lot owners to bring special attention to preventing the motor vehicle related crimes that plague parking areas. While police respond to take what amounts to insurance reports following these motor vehicle related thefts, directed patrol activities that place officers in parking lots by design are avoided.

It would be difficult to offer, at this stage of the investigation, concrete evidence of the extent to which police parking lot preventive activities are avoided due to the Tibbitts rule. Nevertheless, proper legislation to erase such a possibility will also remove the temptation of using Tibbitts as an excuse for lack of action.

7. Police operational standards should be promulgated by an independent commission. The standards should identify data elements and collection techniques that will yield

information for police operations, business loss prevention programs, and citizen action groups. The standards should identify police policy and operational standards that offer cost effective police services and maximize individual citizen and business protection. Attention must be focused on standards that address the following specific issues:

(a) Crime and victim specific data should be required as part of the administrative data recorded during the initial investigation of criminal events. While there are practical limits on the amount of detail that should be required in a criminal attack data base, very few if any police organizations have approached that point. This research clearly supports the need to identify more spatial information about crime scenes. The absolute minimum would identify crime events as inside or outside of buildings. Parking lots should be one of the outside location elements. As the data from Fairfax County so aptly illustrates, the ability to determine the type of business connected with parking lot crime further enhances police and business decision making ability.

The standard for any criminal investigation is to satisfy questions that ask: Who, what, when, where, how, and why? The resolution of these

questions has traditionally been pursued for the purpose of identifying and prosecuting criminals. For example, an investigator would be expected to identify that the exact location of a rape was, "In the parking lot twenty feet directly north of the rear door of the XYZ building." Failure to identify the exact spot would be considered poor investigative work, yet, such an exact location has nothing to do with the elements of rape. For prevention purposes, however, this location information is critical. In addition to where a crime occurred, how the crime was accomplished is perhaps the most important crime prevention question. Because aggregate data, as a result of the where and how questions, have been of less importance to police than the who and why questions, capturing answers to the former questions have received little police priority.

In highway safety, the need for shared data has long been recognized. The efforts of traffic safety education, engineering, and enforcement (often referred to the 3E's of traffic safety) depend to a great degree on the ability of police accident investigation. This standard would provide similar information sharing to all those affected by criminal events.

(b) Police role definition should recognize the need to engage individual citizens and business owners in crime prevention programs. The goal of a crime free society starts with individuals who are free from criminal attack. Police are employed to assist individuals with that protection and to bring to justice those who violate the safety of individuals. Various terms such as Crime Prevention, Community Policing, Problem Oriented Policing, and Client Based Policing, have all appeared in the literature of modern police management theory. The common thread that runs through all of these concepts is the protection of individuals --human or corporate. Policy defined role definitions must be developed that recognize the advisory role police play in the collection and dissemination of shared information. The 3-E's of traffic safety must have their counterparts for the prevention of crime and the apprehension of criminals.

(c) Police operational standards should also address emergency and investigative response policy of the police. For example, modern police research has deemphasized the importance of rapid police response.⁶⁶ This takes some of the pressure off beleaguered police forces but, unfortunately,

police response research is often misunderstood. The downgrading of rapid response is based on its relationship to on-site captures or the ultimate solution of crime. But rapid response is also important in relation to the saving of life and the reduction of fear. Further, in the case of burglar alarms, rapid response is still positively related to capture of the criminal.

Police patrol assignments from a preventive standpoint need continued scrutiny. While research in this area disputes the simple assigning of more personnel to basic patrol work, the theory of directing police forces according to investigative and preventive needs has been strengthened. The present research suggests that programs to prevent crime on parking lots would require including direct patrol attention to specific parking lots with high property crime experience.

Many other investigative and prevention standards can be developed that give police administrators, political leaders, and citizen groups the ability to evaluate police services and make appropriate changes when necessary.

8. Cities and states should adopt security ordinances and statutes. These laws should spell out in advance the measures business persons must

take for the protection of business invitees.
These laws would be similar to fire and safety
codes. One of the main complaints of the Michigan Courts as regards the duty to protect business invitees, is that business persons have a right to know in advance exactly what is expected of them. This approach makes sense, and developing security codes is a way to meet this advance need.

Recommending the development of security codes is not a new or radical idea. The first major security code development dates to the late 1960's, but interest has waned at the present time. They have been shown to be effective and place all business operators on a fair and level footing.⁶⁷

Developing security codes is not without problems but, if the task is approached positively and with respect to all affected interests the public interest can be served. Referring again to the case of Marr v Yousif is instructive. To hold the business person totally responsible for the robbery is poor public policy, but an ordinance could identify certain procedures or devices that could have helped prevent the victimization of the driver. But what about the delivery company? Should it have borne the responsibility for

sending a driver into a den of thieves? Are workman compensation programs sufficient to cover such incidents?

The development of security codes should be based as much as possible on specific data. While data collection and analysis is a part of another recommendation, the need for data based laws must be stressed. Weather conditions, time of day, day of week, and business hours in relation to criminal events may become important information supporting the decision making process.

As is the case in many areas of regulatory law, a local jurisdiction may want to enact codes more restrictive than state law. The development of a local security code may often require a special crime analysis study to validate specific code requirements. Data collection requirements could be determined jointly by law enforcement and business.

Security and crime prevention laws can define engineering and design principles that will prevent crime and the fear of crime without destroying the competitive nature of American business-- after all allowing crime to compete for the financial resources and personal health of business owners and consumers is the most unfair and unjust form of competition.

BIBLIOGRAPHICAL ESSAY

The increased attention to parking security is closely associated with a perceived increase in parking lot crime and a corresponding increase in parking crime tort cases. Security directors found themselves in a quandary whenever a new group of cases were reported that placed additional burdens on them for the protection of business invitees. Traditional security practices are directed at the protection of company assets where security could exert a strong measure of control over outcomes. Thus the current security literature focuses on physical security systems, management controls, and the management of personnel. Book chapters on parking security demonstrate concern for the supervision of employee lots as regards pilferage problems and external threats to company property. Very little attention has been given to visitors and guests.

Informal communication channels, including rumor, have been instrumental in raising the level of consciousness about parking lot security. The best information on the nature of the parking security problem has been generated by the research and publications of Dr. Lawrence Sherman of the University of Maryland. His landmark research, Major Lawsuits Over Crime and Security: Trends and Patterns,

covered the broader subject of security litigation. A review and analysis of this work by Norman M. Spain brought the parking problem to the forefront. Spain found that 20 percent of the security cases studied, involved parking areas. These two articles put the end to rumors and security officials became aware that they might be very vulnerable to parking lot guests.

Sherman also publishes a newsletter covering security cases. Parking cases continue to be reported from across the nation thus keeping the spotlight on a new subject area. What to do about the problem seemed difficult because the actual crime problem in parking areas had not been investigated. Sherman and Spain had revealed a litigation problem but determining the extent of a crime problem was a kin to guilt by association. However, one route to reducing a crime related litigation problem is to prevent the criminal activity. There is no shortage of information on crime and loss prevention so there was no need to delve deeply into the literature on that subject.

Nevertheless, the first principle of crime and loss prevention is to define the nature and the quantity of the crime of concern. The literature of crime analysis was relatively silent on parking lot crime so the research by necessity moved toward police department record files. The Lansing, Michigan Police Department provided the initial information package that stimulated the search for data. The

Department has a real commitment to crime analysis and the officers and civilian members of the department were very much interested in parking lot crime. As has been discussed elsewhere, a real problem developed in finding other departments in various regions of the nation with data collection formats similar to Lansing. Police and civilian crime analysts across the nation were very much discouraged with the lack of interagency communication in crime and incident analysis. It quickly became apparent that very little was known as to the relative dangerousness of parking lots and that factors other than actual crime were at work in the business of litigation.

One of the techniques used to identify and define the problem was on site visits to parking areas in the three cities studied. Kenneth Christian and Wilbur Rykert visited several sites in Lansing and Fairfax County and Christian made the on site visit to Jacksonville, Florida. The method used was to approach various parking locations as one would in preparing for testimony in a civil case. Several parking garages owned by the city of Lansing were examined both day and night. Many of the parking ramps were open all night with a few cars left in the building. No attendants were available after the main rush of day time customers had left. There were many obvious security recommendations that could have been made in Lansing parking ramps but none that would have been cost effective based on

a crime risk analysis. The records failed to demonstrate parking ramps as high crime areas.

A large cluster of parking lot crimes were noted in one remote geographical part of Lansing. A day/night visit revealed the area as a middle class apartment complex with nearly 5000 residents. When the population was considered, the actual crime rate was not unusual. Based on address location of crime calls, it did appear that a higher than normal number of the auto larcenies were in sections of the parking lots not visible from the apartments. This suggests that criminals are well aware of the possibility of citizen surveillance thwarting their criminal opportunities.

Considerable time was spent observing the parking lot activity of a major Lansing retailer. The lot was designed for convenient ingress and egress and was well lit at night. The police records disclosed a substantial cluster of crime calls at this location but when the number of cars and people entering and leaving the lot was considered, the major crime was minimal. There was a substantial amount of property crime on the parking lot. The location of the lot would have made it very easy for the police to give it extra attention within the normal patrol function. The same general patterns were found in the other cities studied. The police departments opened the records and assisted in locating problem parking areas.

The prime source of information for the analysis of judicial policy making were appellate court decisions. These decisions, are reported in state and regional reporter systems and are available at major libraries. Duty, foreseeability, standard of care, and proximate cause of injury are the main topics of concern in liability cases. Because suits involving the intentional acts of criminals toward business invitees have a rather recent history, the question of duty was a priority in this study. The determination of duty in parking lot cases brings to the forefront the judicial policy making process. The study of court opinions and the dissents provides a good window into the business orientation of leading judges.

Indeed, the economic concerns of Michigan judges appeared to be more important than their partisanship. In the 1970's, the Michigan Supreme Court gave great relief to plaintiffs, so that Williams and its offspring shocked the legal system. A change in the political makeup of the Court was a possible explanation. A preliminary examination of the partisan balance of Michigan appellate judges failed to support such a thesis. With the exception of the "self help" rhetoric, economic issues were the foundation of the courts arguments.

One can also feel the frustration of policy makers as they struggle with the general problem of crime, failure of public police forces, the plight of seriously injured

victims, and the need to provide business services in high crime areas.

Parking lots provide an interesting locale for the debate. They are partly private and partly public, not in the sense of pure ownership but because of the nature of their operation. Parking lot crime impacts business somewhat different than other crimes against business. Criminals don't shoplift parking lots and serious vandalism is minor. Parking lot criminals attack business invitees and their property and force the examination of what is public and what is private, and who should share the responsibility for the result of criminal attacks.

The issue of duty has not been settled. From the security point of view, it does not suffice to plan loss prevention efforts based on what the courts might say in the future. In fact, it may not even be cost effective to attempt security compliance with current decisions because of the rapid changes in court policy. Security directors will, however, better evaluate the social and political environment where they execute their responsibilities if they understand the policy positions of their appellate courts.

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INDEX

ABSOLUTE DUTY TO PROTECT	118
access control	15, 19, 21, 22, 24, 157
Achilles heel	11
American Society for Industrial Security	v, 131
Apartment parking lots	57
Armed, visible security guards	100
Asis	v, 131, 132, 134
ASKEW v PARRY	87
Automatic Parking Devices, Inc	15
Bernstein, Carl	14, 156
Bolden, Charles M.	157
Bottom, Norman R. Jr.	11, 156
Bryant et al v. Brannen	108, 158
Burnell, Meghan C.	157
California	16, 82, 156, 157
Capone	23
Cavanagh	100, 103
CCTV	15, 19-22, 81, 156, 157
Christian	
Kenneth E.	155
City selection	26
Closed Circuit Television	19
Collection of Tragedy	112
clustering effect	45
CONCLUSIONS	111
Crime Data Sources	26
Crime in the community	101
Crime site recording	27
Criminal choices and methods	36
Criminal Justice Reference Service	23
Crimology	3
Criticality	129
DATA ANALYSIS	30
DATA NEEDS	128
Deep pocket	88
deep pockets	76, 110, 115, 121
duty	ii, iii, vii, 13, 28, 60, 68, 69, 71-82, 84-96, 98-101, 103, 104, 106-110, 112, 113-117, 120, 121, 124, 127, 134, 137, 138, 141, 147, 153, 154, 157, 158
duty to protect	ii, iii, vii, 71-73, 75, 76, 78-80, 86, 87, 90, 98, 99, 106, 110, 113, 114, 116, 120, 121, 124, 138, 147
Energy savings	18
Eno Foundation of Westport.	23
Evaluation of Dangerousness	129
Fairfax	v, vi, viii, 26, 31-56, 58-66, 143, 151, 157
Fairfax County	v, vi, viii, 26, 31-33, 53-56, 58, 59, 61-66, 143, 151, 157

Fear Driven Sales	15
Federal Signal Corporation	15
Foreseeability	36, 38, 43, 60, 89, 113, 122
Goalder, James S.	155
Goldberg v Newark Housing Authority	158
Holland v McDonald's	106, 158
Howard Johnson Motels	69
Hypotheses	28
International Association of Chiefs of Police	134
Jacksonville . . . v, vi, viii, 26, 31, 32, 34-38, 40, 46-53, 151	151
Jacksonville, Florida	26, 151
Jacksonville/Duval	35
Johnson v Olde Colonial Restaurant	108
Jury awards	69
Jury duties in tort cases	71
Kallman	88, 89
Keegan	
Dianne	16
Ladd	155
Lansing v, vi, viii, 26, 30-35, 38-46, 150-152, 155	155
Lansing, Michigan v, vi, 26, 30, 32, 150	150
Lansing's	42, 45
Lawyers Alert	16
LIABILITY ISSUES	68
Lighting	17
Lighting is cost effective	19
Louroe Electronics	16
MADD	92
major use category	41
Maksinczak v Salliotte	95
Mandel	155
MARR V YOUSIF	105, 136, 158, 159
Mendelsohn, Benjamin	155
Michigan 1, v, vi, vii, 8, 16, 26-28, 30, 32, 71, 80, 81, 85-87, 89-96, 98, 101, 108, 109, 110, 113-117, 120, 121, 127, 136, 147, 150, 153, 156, 157	
Michigan Court of Appeals	87, 109
Michigan Lawyers Weekly	17
Michigan Rule	81, 85, 109
Michigan Supreme Court 27, 28, 98, 101, 110, 115-117, 120, 121, 127, 136, 153	
Moning v Alfono	100, 158
Moran	23
National Auto Theft Bureau	131
National Parking Association	24
National Safety Council	132
New York	1, 82, 104, 155, 156
NO DUTY TO PROTECT	121
O'Brien	
James T.	19, 156
opportunity reduction	4, 8
Optimum security level	21

Outcomes	29
Parking lot murder	65
PERF	134
Police Executive Research Forum	134
Police Officers Duty	92
Police operational standards	142
Police protection	103
primary
vi, viii, 31, 34-38, 40, 46-55	
Primary data	35
Primary plus secondary	38
Primary reporting locations	36
Protection of company assets	68
Public duty doctrine	96
Public policy ii, iii, vi, vii, 22, 24, 29, 70, 71, 79, 83, 85, 86, 99, 100, 103, 104, 112, 117-120, 125-127, 136, 137, 141, 147	
Public policy concerns	100
Public Policy Development	70
Question of duty	89
Rate of unreported crime	27
Read v Meijers	108
RECOMMENDATIONS	131
RESEARCH METHODOLOGY	26
Restatement of Torts	80-82, 100, 157, 158
Retreating thief	44
Rheaume	108
Risk Management	8
Rykert	6
Wilbur	155
Schlage	21
Schlage Electronics	157
secondary
vi, viii, 31, 34-36, 38-40, 50, 54, 55, 123	
Secondary data	35
Secondary locations	38
Secondary reporting areas	viii, 39
Security ordinances and statutes	146
Security World	18
self-help	104, 117
Sennewald	12
Service industry	48
Sherman	111
Lawrence	149
Shority, Charles J	157
SIMONDS v TIBBITTS	93
Simonds	159
Small v. McKennan	22
South Dakota	11, 17, 22, 82, 84
South Dakota Supreme Court	17
Spaeth	8
Spaeth, Harold J.	156

Spain	11
Norman M.	150, 156
special relationship	74, 75, 80, 90, 94, 96, 97, 99, 126, 141
Stop and fight	44
Street violence	48
Tame v. A.L. Damman Co	159
Texas	83
Underwriters Laboratories	131
Unsupported assumptions	12
Urban Land Institute	24
Vicarious liability	73
Victimology	4
Virginia	v, vi, 26, 31-33, 155
Vulnerability	129
Ward	
Ralph V.	20, 156
Whitlock	24
Whitlock, Edward M.	157
Williams vii, 97, 98, 102-110, 116, 117, 136, 153, 158, 159	
Williams v Cunningham	vii, 97, 98, 106, 116, 158, 159
Williams v Nevel's Jarrett	105
Williams v Nevel's-Jarrett	158
Williams v. Cunningham	107
Woodward, Bob	156