

THE PRIVATE ADJUDICATION OF
DISHONEST EMPLOYEES IN SELECTED RETAIL
ESTABLISHMENTS IN ARLINGTON COUNTY, VIRGINIA

Thesis for the Degree of M. S.

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JAMES ANDREW CONSER

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THESIS



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By

James Andrew Conser

A THESIS

Submitted to
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Dr. Leon Weaver (Chairman)



Professor Zolton Ferency (Member)

Professor Marvin Zalman (Member)

588656

ABSTRACT

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The private disposition of criminal offenses committed in the course of one's occupation has received relatively little attention in the field of criminology. The social phenomenon of private justice is addressed by this thesis. Private justice is defined as that action taken against the perpetrator (employee) of a criminal offense by the victim (employer) in lieu of criminal (public) prosecution.

The purpose of this study was to analyze, describe, and define the concept of private justice in the retail industry in Arlington County, Virginia. This was done by applying the concept of private justice to the philosophies of security as enforcement and security as protection.

A review of the literature revealed diversified approaches to the topic of private justice. Most items addressed themselves to the question of prosecution and then only superficially. Only a few items contained an adequate

discussion of the process of private justice.

Structured interviews were conducted in ten selected firms in Arlington County. Specific attention was given to the disposition of dishonest employee incidents. The disposition of the incidents in light of the firm's view of punishment shed some light on the use of private justice.

The major findings of this study were expressed in terms of hypotheses and indicators since the scope of the thesis was exploratory. Indications were that the majority of the respondents believed that dismissal was adequate punishment in dishonest employee incidents. However, most respondents indicated a desire to prosecute apprehended employee offenders. Private justice was utilized when more visible forms of punishment could not be pursued. Therefore, it was hypothesized for future research that private justice in retail establishments is utilized primarily as a form of punishment and that it is used when more visible forms of punishment cannot be pursued.

The conclusion reached by the author is that private justice is classifiable; that by classifying a firm's use of private justice in conjunction with the firm's view on punishment, one can identify a firm as subscribing to (a) no philosophy of security, (b) a security as protection philosophy, or (c) a security as enforcement philosophy.

Many hypotheses for future testing are posed in this study. They relate to (a) employee morale, (b) the effect of the polygraph on turnover rates of personnel, (c) the

James Andrew Conser

detection and apprehension techniques utilized by security agents, (d) the discretionary disposition of cases, (e) the recidivism of offenders, (f) the consistent application of disposition procedures, (g) the competency of the security agent, (h) the issue of the firm's public image, and (i) the classification of firms according to their philosophical view of the security function.

A number of recommendations were discussed which would make private justice less "private" and more "public." Diversion of trust violators from the criminal justice system was suggested as an alternative to prosecution. Additional research was strongly urged by the author as the best method of giving retail security policies and procedures an empirical foundation.

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To Linda
and her patience

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TABLE OF CONTENTS

LIST OF TABLES	vi
--------------------------	----

Chapter

1. INTRODUCTION	1
THE PROBLEM	3
THE PURPOSE OF THE STUDY	4
THE SIGNIFICANCE OF THE STUDY	5
DEFINITIONS	6
THEORETICAL FRAMEWORK	8
2. A REVIEW OF THE LITERATURE	15
BOOKS	16
PERIODICALS	30
GOVERNMENT PUBLICATIONS	34
UNPUBLISHED MATERIAL	38
3. METHODOLOGY	42
THE SETTING	42
DATA GATHERING TECHNIQUE	44
4. FINDINGS	48
FIRM CHARACTERISTICS	48
DISPOSITION OF APPREHENSIONS	51
THE CONCEPT OF PUNISHMENT	55

Chapter	Page
THE PROBLEM OF PROSECUTION	57
MISCELLANEOUS FINDINGS	61
5. THE CONCEPT OF PRIVATE JUSTICE	66
THE CONSEQUENCE OF PRIVATE JUSTICE	70
RECOMMENDATIONS	72
6. SUMMARY AND CONCLUDING COMMENTS	78
BIBLIOGRAPHY	83
APPENDICES	
A. INTERVIEW SCHEDULE	86
B. RELATED STATUTES FROM THE CRIMINAL CODE OF VIRGINIA	89

LIST OF TABLES

Table	Page
1. Percentage of Adult and Juvenile Shop-lifting Cases Prosecuted and Released . . .	31
2. Description of Firms Interviewed by Type of Goods Sold and Number of Employees . . .	49
3. Disposition of Apprehended Employees by Firm	52

Chapter 1

INTRODUCTION

In 1972 an official of the Small Business Administration stated that the impact of crime in business may run as high as twenty-five billion dollars annually.¹ Projections of retail losses from employee theft alone range as high as \$5.4 billion for 1975 and \$5.6 billion for 1980.²

Figures relating to the impact of crime on business vary significantly and are dependent upon the source supplying the data. A dozen different figures could be quoted here and their accuracy debated for hours.

Even a government study for the year 1967-68 estimated revenue loss via employee theft in all business at \$381 million.³ Most authorities on the subject, including the sponsors of the study, agreed that the figure was grossly underestimated.

The purpose of this study is not to discuss the issue

¹U.S. Department of Justice, Seminar on Urban Design, Security and Crime, Proceedings of a National Institute of Law Enforcement and Criminal Justice, April 12 and 13, 1972 (Washington: Government Printing Office, 1973), p. 61.

²Louis J. Camin, "Some Projections for Business Security," Security World, V (February, 1968), 12.

³U.S. Congress, Senate Select Committee on Small Business, Crime Against Small Business, Document 91-14, 91st Congress, 1st Sess., April 3, 1969 (Washington: Government Printing Office, 1969), p. 24.

of accurate statistics on the impact of crime on business. It is not to discuss the seriousness of such crime or how to combat internal security deficiencies. While such issues are important, the premise of this study is that the problem of internal theft by employees is real and very costly and need not be proven.

The problem of internal losses affects every person in this society. It affects the price of commodities and the cost of living in general. This, in turn, affects demands for higher wages and salaries. Business losses are passed on to the consumer. No one can state what percentage of inflation is due to such losses, but as prices go up, so might the employee's perceived need to steal.

The field of retail security addresses the problem of internal losses. Millions of dollars are spent each year to prevent, detect, and apprehend offenders. Much is publicized, for example, on the efforts to combat shoplifting. However, recently many authorities and practitioners in retail security have admitted that employee dishonesty accounts for more losses than shoplifting.⁴ Even the insurance industry estimates that employee dishonesty has forced into bankruptcy thirty percent of all the stores forced out of business for one reason or another, according

⁴"Sources of Inventory Loss in Your Organization to Identify, Correct, and Control," Security Letter, II (December 11, 1972).

to a recent magazine article.⁵

This study addresses the issue of apprehended dishonest employees. The subsequent disposition by the employer is the target of this research. The details of this study are explained more fully in the following sections of this chapter.

THE PROBLEM

The problem under consideration in this study is the disposition of dishonest employee incidents by the employing firm. Specifically, it involves the policies, procedures, and philosophies that selected retail establishments in Arlington County, Virginia adhere to when an employee is caught participating in criminal behavior. Particular attention is given to the concept of "private justice."

For our purposes, private justice is defined as the action taken against a perpetrator of a criminal offense by his victim (employer) and in lieu of criminal (public) prosecution.

Much has been written in the area of retail security in terms of the mechanics of employee theft. Articles on who steals, how they steal, how to detect theft, and how to prevent employee dishonesty have been published and widely acclaimed.

⁵David Steeno, "Loss Prevention in Retail Stores," Security World, X (December, 1973), 50.

Such articles are most beneficial, of course, but little has been published concerning what happens after an employee is detected and apprehended. What proportion of apprehended dishonest employees are taken to police headquarters, booked, released on bail, or jailed? If they are not booked and subsequently prosecuted, what action is usually taken against them? What are retail establishments' policies regarding prosecution of dishonest employees? These and related questions make up the focus of this inquiry.

THE PURPOSE OF THE STUDY

Past research in the field of retail security has been often descriptive in nature. Too much emphasis is often placed on statistics and mechanics of retail security. As one security director (who wishes to remain anonymous) aptly stated during a discussion of retail security, "Why aren't there more studies done on ideas, opinions and philosophies?"

The purpose of this study is to analyze, describe, and define the concept of private justice as it exists in selected firms in the retail industry. The concept is closely related to various theories of security and to private security personnel's decision to prosecute employees.

The primary purpose of this study, therefore, becomes complex because of the various factors that influence private justice. Since little research has been conducted on this

topic, this study is necessarily exploratory in nature.

Research needs to be conducted into the decisional processes regarding prosecution in retail security. For example, what factors influence the decision to prosecute? Can they be identified? Do certain "key" factors determine the course of action taken against an employee? What options besides prosecution are available and utilized by retail establishments when dishonest employees are detected and apprehended? Is there too much discretion in this decisional process? Other problem areas or influences will undoubtedly be encountered and will be discussed in later chapters.

The study's aim, therefore, is to discover areas in which further research could lead not only to a greater understanding of private justice, but also to a possible coordination with or incorporation into our public criminal justice system. It is conceivable that private justice can be assimilated into our public justice system in the same manner that plea bargaining has been incorporated into our judicial system.

THE SIGNIFICANCE OF THE STUDY

Any research into the area of retail security and the process of disposition of employee offenses is timely and relevant. The decision to prosecute or release is becoming more complex as the problem of employee dishonesty increases.

Ideally, this study may shed some light on the

problems of prosecuting dishonest employees as well as principal guidelines employed in the decisionary process of whether to prosecute or release.

The scope and definition of the concept of private justice should be sharpened after completion of this study. This researcher believes that this concept is presently at the level of discussion that plea bargaining was two decades ago. The future of this concept is vital to retail security and loss prevention theory.

It is also hoped that research topic areas are revealed by this study. Suggestions regarding possible research frameworks may benefit other students of retail security.

DEFINITIONS

The following terms and concepts are used throughout this study. The reader should familiarize himself with these definitions for clarity and understanding of the material that follows.

Associate or employee--synonymous terms in this thesis; any individual who is on the payroll of the firm.

Criminal offense--any behavior defined by a legislative body as a prohibited act.

External loss--pilferage by persons not employed by the firm.

Firm--a retail outlet of a business establishment.

Internal loss--pilferage by dishonest employees.

Pilferage--theft (larceny) of merchandise and/or cash.

Private justice--the action taken against the perpetrator of a criminal offense by the victim firm in lieu of criminal prosecution.

Prosecution--the act of filing and pursuing legal charges against an employee.

Retail establishment--a business entity structured to sell merchandise at a profit; a company.

Security--the managerial operation of providing a pattern of relationships which will protect a firm from actual and/or potential transgressions and losses.

Security agent--a person or persons having the delegated authority from the management of a firm for the protection of the firm's assets; a security officer.

Security as enforcement--a philosophy predicated upon behaviorist psychology which implies control through means of power and the fear of power. Enforcement of rules and regulations is the basic objective and this enforcement is predicated upon punishment for transgressions (misbehavior).

Security as protection--a philosophy predicated upon Gestalt psychology which emphasizes control through understanding, persuasion, and loyalty. Emphasis is on prevention of future dishonesty rather than punishing present and past transgressions.

Shrinkage--loss in net profit to the firm caused by internal loss, external loss, and paperwork errors.

THEORETICAL FRAMEWORK

The security function in a retail setting is only one element of a large managerial enterprise. The enterprise is so structured as to achieve a desired result, that of rendering a profit.

The retail security function is fundamental to a self-service form of marketing. Its purpose is to prevent or reduce costly losses of merchandise and cash (i.e., losses resulting from pilferage, breakage, mishandling, and external destruction.

The security function is a managerial responsibility. Any business enterprise must be concerned over the protection of its assets, personnel, and operating procedures. Management may delegate some of this responsibility to a separate department or individual within the organization (e.g., a security department or security director). Whether this responsibility be delegated or not, its implementation must be interdepartmental. In short, every business enterprise performs the security function of protection or self-preservation, be it delegated or assumed by management itself.

Since the security function exists in every business enterprise, let us discuss the theoretical roles of that function.

Paul E. Knight and Alan M. Richardson in The Scope and Limitation of Industrial Security describe two divergent

philosophies of the security function. Reference is made in the "Postscript" of their book (pages 95-100) to the psychological framework encompassed by the two schools of thought, security as enforcement and security as protection.

Security as enforcement is deduced from the psychology of behaviorism. According to Knight and Richardson, behaviorist psychology is concerned with the empirical and operational world. It deals with events which are measureable and observable. It reduces these events into complexes of constants and variables and attempts to correlate these events in terms of specific responses elicited from specific stimuli.

In this framework, social behavior is seen as being formulated and directed through the encouragement or inhibitions of particular responses to particular stimuli. This is done by repetitive application of rewards or punishments.

Following this philosophy further, antisocial behavior is inhibited by sanctions, instructions, and regulations. Injunctions are specific, transgressions determinate. Permissible and impermissible actions are clearly distinguished.

The function of the security agent in this aspect is to provide guidance through proscribing permissible and impermissible behavior. Prohibitive behavior must be publicized along with the penalties for transgressions. Violators must be dealt with accordingly. In short, the

security function is reduced to that of a policing or enforcement agency.

Knight and Richardson go on to explain the second school of thought, that of security as protection. This view stems from Gestalt psychology. It is described as non-punitive, preventive, and precautionary. This is achieved through systematic organization of operating relationships. Understanding, rather than the fear of power, guides the security function in maintaining the protection of the firm's assets. This is control through intelligence as opposed to the behaviorist's control through power.

Gestalt psychology views a given response as resulting from a stimulus that is composed of a complex relationship of conditions or circumstances. It is not an isolated stimulus, but instead, a totality of situational elements that combines to form the response. This view, therefore, relies on the actor's interpretation of the complex situational factors confronting him. The resultant response is the culmination of beliefs and interpretations from the complex stimulus. Therefore, the process of maintaining the desired atmosphere is geared to education, persuasion, and understanding. The security agent appeals to the employees' sense of loyalty, fairness, and appreciation of the social implications of transgressions against the specified behavioral guidelines. Maintenance is based on voluntarism as opposed to forced compliance through fear of punishment.

From the practical standpoint, security as protection is fundamentally synonymous to "loss prevention" philosophy. There is a trend toward greater use of this phrase today. Some prefer this phrase because it is more descriptive of their function and procedure, while others employ the phrase because they like the sound of it. The former is the proper use of the phrase.

Loss prevention philosophy is advocated by a number of well-known authorities in the security field. Sargent J. (Bob) Curtis has recently published two books that subscribe to a loss prevention (security as protection) philosophy.⁶ Norman Jaspen, a noted management consultant and author has labeled his philosophy as "preventive management."⁷

From the Gestalt viewpoint, security is the system that guides an integrated structure of complex relationships towards a desired end. Its instructions and proscriptions are usually explicit. However, transgressions are viewed more from the "spirit" of the law than the "letter" of the law. Correctional measures take the form of appealing to reason instead of automatic punishment. If punishment is meted out, it is for purposes of education by example.

⁶Sargent J. Curtis, Security Control: Internal Theft, (New York: Chain Store Age Books, 1973); see also Sargent J. Curtis, Security Control: External Theft, (New York: Chain Store Age Books, 1971).

⁷Norman Jaspen with Hillel Black, The Thief in the White Collar, (Philadelphia: J.B. Lippincott Company, 1960), pp. 233-254.

As examples, let us use two hypothetical retail firms employing twenty to thirty persons. The security responsibilities are performed by the managers of each firm. Manager of firm number one subscribes to a hard line philosophy regarding dishonesty and theft. The employees are aware of the firm's policy regarding dishonesty. If any employees are caught pilfering, the manager takes punitive action against the employee. This action may include a spectrum of choices from mere dismissal to prosecution. If prosecution is desired, the authorities are notified, the employee is arrested and the case is eventually heard in court, assuming that there is sufficient evidence against the employee.

In firm number two, the manager relies on a different approach. He attempts to gain the loyalty, cooperation, and honesty of his employees through extra orientation and training when the employee is hired. He also attempts to continue a sound working relationship through understanding and by appealing to the employee's moral obligation. If losses begin to appear and indications are that a certain employee is responsible, the manager wants to know about it immediately. He then confronts the employee in an indirect questioning session. He stresses the point that losses are occurring in his area of the firm and that they need to be curtailed before the situation gets worse. When the employee realizes that the manager is not interested in prosecuting the offender, he admits to the dishonesty. The manager continues to question the employee as to how the offense was

committed and what reasons or causes precipitated it. The manager obtains the information he needs and then advises the employee to go back to work, after agreeing not to commit any other offenses. The manager hopes that he has deterred any further reoccurrence of dishonesty on the part of that employee and he has given the employee an opportunity to regain his self-respect.

These two firms are operational examples of the two philosophies of security mentioned above. Firm number one expresses security as enforcement while number two expresses security as protection.

Careful analysis of the two philosophies on security reveals that the process of private justice is inherent in security as protection. Since its basis is not punitive, there is little expectation of prosecution of dishonest employees.

On the other hand, security as enforcement implies a likelihood of prosecution. However, prosecution is only one option available to the firm that subscribes to security as enforcement. The other options fall into the realm of private justice.

Since this thesis is exploratory in nature, the following questions are the basic objectives of inquiry: What factors influence the decision on prosecution of dishonest employees? Or conversely, what factors influence private justice? Can factors influencing private justice reveal the philosophy of the firm's security procedures?

In other words, can a firm be identified as subscribing to one theory of security or the other by classifying its process of private justice? The answers to these questions will benefit the formulation of testable hypotheses for future research.

Chapter 2

A REVIEW OF THE LITERATURE

The concept of private justice is probably as old as retail marketing itself. The phrase is not in common use, however, in the literature on the subject. Searching indexes for the phrase is seldom fruitful.

The concept concerns more than just the non-reporting of criminal acts. It implies that the victim firm administers its own justice without involving outside intervention agencies (police, courts, etc.).

Gerald Robin, in his studies of the disposition of employee thieves, referred to the "private administration of justice."⁸ The Rand Corporation's study of the private police industry in the United States referred to the "private systems of justice" that operate in various commercial arenas. The Rand study stated:

It is clear that some criminal activities, particularly pilferage and shoplifting, are often handled by the employer and never reported to police. Many security executives and half of the security employees we surveyed admitted it. If the suspected perpetrator is an employee, he may be fired and the crime never reported to the police. If the suspected perpetrator

⁸Gerald D. Robin, "Employees as Offenders: A Sociological Analysis of Occupational Crime," (unpublished Doctor's dissertation, University of Pennsylvania, 1965), cited by Erwin O. Smigel and H. Lawrence Ross, (eds.), Crimes Against Bureaucracy, (New York: Van Nostrand Reinhold, 1970), pp. 119-142.

is a customer, the store policy often is to seek restitution and warn the suspect. Thus there are several private systems of justice operating in which crimes are not reported, nor are suspects confronted with society's official system of justice. Whether these private systems create net social benefits or disbenefits, they will continue to coexist with the formal public system of justice. And often there are real and perceived disincentives for reporting: the high costs of prosecution, the low probability of a conviction, and the perceived adverse effects of prosecution on a company's image.⁹

When one analyzes the above quotation in terms of the theoretical framework discussed in Chapter 1, many observations and questions arise. Does the use of private justice stem from theoretical concepts of retail security or are the "inconveniences" and perceived "drawbacks" of public intervention agencies the motivating force? Philosophies of security, such as security as protection, do not preclude the use of private justice in the disposition of internal theft cases, in fact, it is implied by definition.

These and related issues reveal the need and importance of further study in the area of private justice. Some of the literature that relates to the concept of private justice is discussed in this chapter.

BOOKS

A book that dealt entirely with the issue of crime against businesses and organizations was entitled Crimes Against Bureaucracy. The book contained a number of

⁹James S. Kakalik and Sorrel Wildhorn, Private Police In The United States: Findings and Recommendations, (Santa Monica, California: The Rand Corporation, 1971), p. 60.

previously published articles regarding the concept of bureaucracies (business, corporate, and governmental organizations) as victims of crime. A detailed discussion of the book here would be quite lengthy. For this reason, selected portions of the book are summarized below.

The "Introduction," written by Erwin O. Smigel discussed the phenomenon of bureaucracy as a victim of crime in a psychological and sociological context. Since a bureaucracy is characteristically large, impersonal, and dominated by formal rules and regulations, it lacks the public image of a personal victim. The low visibility of crimes against bureaucracies combined with the unpopularity of the victim (in terms of the public's attitudes toward it) leads to a failure of the public to stigmatize the perpetrators of these crimes. A criminal justice system based on the personal victim concept tends to deny access by a bureaucracy to a necessary source of protection. This creates a dilemma for the bureaucratic victim because his interest is usually reimbursement, not retribution. Prosecution also becomes costly and time consuming to such victims, which in turn creates a response of developing their own system of private disposition.¹⁰

Another chapter entitled "Public Attitude Toward Stealing as Related to the Size of the Victim Organization,"

¹⁰Erwin O. Smigel and H. Lawrence Ross, (eds.), Crimes Against Bureaucracy, (New York: Van Nostrand Reinhold, 1970), pp. 2-5.

by Erwin O. Smigel, discussed the results of a study of 212 adults in Bloomington, Indiana. The hypothesis tested was that if obliged to choose, most individuals would prefer to steal from large-scale and impersonal rather than from small-scale and personal organizations. The hypothesis was confirmed by the results in that the preferred order of stealing was large business, government, and then small business.¹¹

The most significant chapter of the book, in relation to this study, was the one entitled "The Corporate and Judicial Disposition of Employee Thieves" by Gerald D. Robin.¹² Dr. Robin's data were gathered from three large department stores and consisted of their records of apprehended employees over a multi-year period.

The three companies--A, B, and C--apprehended a total of 1681 employees. Company A prosecuted thirty-four percent; Company B, two percent; and Company C, eight percent. Company A's basic policy was that criminal behavior would result in observable punitive consequences extending beyond dismissal whenever possible. In contrast, Companies B and C maintained a policy of termination as quickly as possible. They were more sympathetic and felt that prosecution served no useful purpose. They wished to avoid further publicity in the matter.¹³

¹¹Ibid., pp. 15-21.

¹²Refer to fn. 8.

¹³Smigel, op. cit., pp. 119-122.

Since Company A had such a high rate of prosecution, Dr. Robin studied that particular department store in depth. He tabulated the prosecutions according to positions, amount stolen, sex of the offender, marital status, and age of the offender. Only the most significant findings are discussed in the following paragraphs.

With regard to position, no representative conclusion could be drawn other than that cleaning personnel received the highest rate of prosecution while white sales employees received the lowest. However, when the amount stolen was controlled in relation to position, it was discovered that lower status employees (cleaners, servicemen, stock personnel, etc.) were prosecuted at a higher rate (73% to 50%) than higher status employees (executives, sales persons, and white-collar workers). It was concluded that the offenders with whom the enforcers could more easily identify were treated more sympathetically.¹⁴

The size of theft in terms of dollar value pilfered by the employee during his employment emerged as the single most important and decisive determinant of disposition. Nineteen percent of those who stole less than one hundred dollars were prosecuted as compared to fifty-seven percent of those who stole more than one hundred dollars. The average amount stolen by prosecuted employees (\$608) was three times as large as that of released offenders (\$194).

¹⁴Ibid., pp. 127-129.

With regard to the sex of the offender and when the amount stolen was held constant, the proportion of males to females that were prosecuted was sixty-seven percent and forty-seven percent respectively.¹⁵

In the 338 cases in which Company A gave reasons for not prosecuting, thirteen percent were released because the amount stolen was considered trivial, six percent were released upon recommendation by the District Attorney, three percent were turned over to military and juvenile authorities, two percent were released because of technical legal problems, seven percent were released because of personal and/or family considerations, less than one percent were released because their dishonesty was self-confessed, nine percent were released for "other" reasons, and fifty-eight percent were released because of insufficient evidence to secure a conviction.¹⁶

With regard to disposition of cases prosecuted, 256 of the 259 were convicted. Twelve of these were sentenced to prison. The number of offenders that pleaded guilty were 249 or ninety-six percent. The most frequently imposed sentence was restitution. Dr. Robin stated that the very absence of the deterrent which middle class individuals fear most--imprisonment--and the imposition of monetary fines in its place, was tantamount to an admission by the court that it could do little for the offender and that it chose to

¹⁵Ibid.

¹⁶Ibid., pp. 130-131.

do nothing to them.¹⁷

Gerald Robin concluded his article with a brief discussion of the private administration of justice. Emphasis was placed on the employer's tenuous responsibility in deciding whether or not to report a known apprehended offender. Many questions were posed regarding the ethical, moral, and legal consequence of this discretionary power. The purpose of prosecution was discussed in the final paragraphs and various views on the issue were described. Dr. Robin's concluding statement was that in disposing of offenders, consideration of the victim, of the objective of punishment, and of the power of the employer over trust violators are not all perfectly integrated but rather are characterized by conflict and ambivalence. Yet such strain among these parts is perhaps an inevitable, if not wholly desirable, reflections of our social system.¹⁸

Of all the literature reviewed for this study, the above material was the most relevant and the most encompassing. However, other books addressed the disposition of dishonest employees as a related matter to broader issues.

Industrial Security Management by Richard J. Healy and Timothy J. Walsh discussed security administration on a managerial level. Only a few pages were devoted to dishonest employee dispositions. The authors stated:

For an employer to act as though his was the only

¹⁷Ibid., pp. 135-137.

¹⁸Ibid., pp. 141-142.

interest at stake in the theft of his property is as wrong in terms of overall social good as for a passerby or witness to street crime to refuse to "become involved." Theft is a crime against all the people and an economic wrong against the particular victim as well. Both aspects of the theft problem must be considered.¹⁹

The authors also presented four primary reasons why some firms follow a "no prosecution" policy. The reasons included corporate image, employee morale, law suits, and dismissal as enough punishment. All were refuted as legitimate reasons for such a policy. The tone of this section of the book was primarily "pro prosecution".²⁰

Another book stated that reputable firms often maintained a policy of no prosecution for two primary reasons. Firstly, the firm was concerned about the negative public image and opinion that might result from the publicity of the charges. Secondly, the firm was concerned about the effect of prosecution on the other employees. The author, however, argued that leniency would be viewed by employees as a sign of management weakness, resulting in little deterrence to dishonesty.²¹

Sargent J. (Bob) Curtis has written several books and articles on retail security. His Modern Retail Security

¹⁹Richard J. Healy and Timothy J. Walsh, Industrial Security Management, (U.S.A.: American Management Association, Inc., 1971), p. 129.

²⁰Ibid., p. 130.

²¹Charles F. Hemphill, Jr., Security for Business and Industry, (Homewood, Illinois: Dow Jones-Irwin, Inc., 1971), p. 254.

published in 1960, became a "classic" in the field. Since 1970 he has published two books which are basically updated versions of the 1960 publication, although the material is now separated into external and internal loss categories.²²

In 1960, Curtis advocated a fixed policy for disposing of all dishonest employees. Anyone caught stealing should be immediately dismissed. Failure to be consistent or failure to take decisive action against dishonest employees could have an adverse effect on other employees and could lead to increased dishonesty.²³

Curtis maintained that the firm had three disposition alternatives: dismissal based on admission of theft, dismissal for violation of store policies, and prosecution. He again suggested a consistent policy in whatever disposition alternative was undertaken. This section of Curtis' book was concluded with the warning that when prosecution is undertaken, the store risks a lot. There are possibilities of civil suits and loss of community good will. He suggested that these risks be evaluated at the time of decision.²⁴

In another section of the book, prosecution of dishonest employees was discussed again:

The prosecution of the dishonest employee requires

²²Curtis, op. cit.

²³Sargent J. Curtis, Modern Retail Security, (Springfield Illinois: Charles C. Thomas, 1960), p. 172.

²⁴Ibid., P. 280.

additional thought by management, because here the problem involves the store's moral and ethical responsibility in relationship to the individual. Did the store, because of its poor operation, because of lack of judgment by a supervisor, create the situation which lead to dishonesty? Was the employee placed in a position of undue temptation? If you and your store placed an employee in the position of undue temptation and the employee stole, then you and the store have a responsibility to that person. It is a moral and ethical responsibility and one which cannot be set aside.

For example, if you have a teen-age stockboy and put him into a stockroom where there are a lot of very desirable things for a teen-age boy, such as expensive watches, jack knives and lighters, and if you have this boy work in there four or five hours unsupervised, isn't this putting him in the position of undue temptation? If he steals who is responsible? He and his family are the ones who will carry the scars of disgrace if he is caught. But who had the responsibility for placing this boy in such a position of undue temptation? Before you prosecute any employee ask yourself did our store create this dishonesty? (*Italics supplied.*)²⁵

In Curtis' latest book, the philosophy implied above, managerial responsibility, is the dominating theme. Its focus is on loss prevention by creating a more cooperative and secure environment within the firm.²⁶ In this vein, he is less rigid on prosecution of employees. He again emphasizes the concept of undue temptation but he also states that all dishonest employees should be discharged. However, retention of a perceived "valuable" employee under specified conditions--that the employee seek psychiatric help--is discussed by Curtis as an exception to the discharge policy.²⁷

²⁵Ibid., p. 529.

²⁶Curtis, Security Control: Internal Theft, p. 216.

²⁷Ibid., p. 214.

The Booster and the Snitch by Mary Owen Cameron provided some observations regarding the decision to prosecute apprehended shoplifters.* These observations were made after analyzing the security operation of a large Chicago department store. Because of time consuming court appearances, store personnel wanted to prosecute as few shoplifters as possible. However, prosecution was sought in cases where the shoplifter was believed to be a professional thief. Also, if the shoplifter showed signs of mental illness, prosecution was initiated. Factors of prior criminal record and the amount of resistance to apprehension were also considered. No prosecution, however, would be sought unless evidentiary requirements for conviction could be met. Another generalization made from the data collected was that pilferers who were apprehended and interrogated by the security agents of the store, but set free without formal charge, had very little or no recidivism.²⁸

* Although shoplifting is outside the scope of this study, the problems associated with prosecuting shoplifters have been addressed by several books, articles, and other documents. Some are discussed in this chapter for comparison purposes. Sargent Curtis, for example, enumerates specific situations in which prosecution should be pursued (see page 26 of this thesis). However, few situations or specific guidelines have been equally developed for prosecuting dishonest employees, either by Curtis or other authorities. The articles on shoplifting by Roger K. Griffin (pages are included to indicate that private justice is very evident from the statistics on the prosecution and release of shoplifters but that it is not readily discussed in many articles.

²⁸Mary Owen Cameron, The Booster and the Snitch, (New York: Free Press of Glencoe, 1964), p. 151.

With regard to shoplifters, Sargent Curtis has enumerated seven situations when prosecution should be pursued;²⁹

1. When the suspect does not admit to the theft or refuses to sign a confession statement.
2. When a suspect cannot be identified.
3. When a suspect has a previous criminal record.
4. When the suspect injures the person making the arrest.
5. When the suspect appears to be a vagrant with no visible means of support.
6. When the suspect's thefts total a large sum of money.
7. When there is indication that the suspect is a professional thief.

A prerequisite, of course, for prosecuting shoplifters in these situations is that sufficient evidentiary requirements for a prosecutable case be met.

A booklet entitled The Thief You Pay contained informative material which was directed toward helping an employer to establish policies and guidelines in dealing with the problem of employee dishonesty. The booklet suggested maintaining a flexible policy since it is impractical to prosecute all offenders. It also suggested that the legal requirements necessary to maintain a conviction be obtained

²⁹Curtis, Security Control: External Theft, pp. 110-112.

from the local prosecutor's office. With regard to which option (prosecution, dismissal, or retention) should be employed and when, only one conclusion was presented: "Most security professionals will agree that you should prosecute the employees who have been stealing systematically for resale; these are professional thieves..."³⁰ Regarding restitution, the booklet explained that private "agreements" on recovery of stolen goods are not enforceable. The only enforceable restitution agreement is the court imposed sentence (usually a condition of probation). Under private agreements the discharged employee can claim duress and coercion, thus opening the possibility of civil suits.³¹

According to the booklet, retention of the employee is a gamble, but it may be a worthwhile gamble since the employee may have been a one-time thief. Sometimes neither prosecution nor dismissal would be "right" for the offender.³²

The booklet contained informative and valuable information, especially for the novice employer or manager. However, it was not an in-depth, theoretical discussion of the entire subject of employee dishonesty, especially the section entitled "Handling Employee Theft Cases."³³

Employee Discipline by Lawrence Stessin discussed the

³⁰The Thief You Pay, (Los Angeles: Security World Publishing Co., 1969), p. 52.

³¹Ibid., p. 53.

³²Ibid., pp. 52-53.

³³Ibid., pp. 49-54.

problems that management often encounters in the area of discipline for theft. That is the disagreement between management and labor (unions) on the dismissal of employees. The book directed itself primarily to the issue of arbitration board hearings when a dispute existed. The primary finding was that arbitrators are reluctant to remove a laborer's livelihood by branding him a thief and, therefore, often authorizes discharge for policy infractions (absenteeism, refusal to take a polygraph test, etc.).³⁴

The importance of union influence on the disposition of dishonest employees in a retail setting has been difficult to document. If firms have unionized personnel, they must handle discipline and discharge of employees according to the union's contract with the management. Diversion from past practices in handling such cases could also be grounds for union grievance.³⁵ The effect of unions on the disposition of dishonest employee cases deserves further study.

Employee dishonesty is often considered a form of white-collar crime. At least one type of employee dishonesty--embezzlement--is always included in whatever definition of white-collar crime one prefers.

To review all the significant literature on the

³⁴Lawrence Stessin, Employee Discipline, (Washington: BNA Incorporated, 1960), pp. 103-105.

³⁵George Strauss and Leonard R. Sayles, Personnel: The Human Problems of Management, (Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1972), pp. 107-110.

subject of white-collar crime would be outside the scope of this study. However, books on the subject were scanned; some are noted here and others appear in the bibliography.

The solution to white-collar crime, as viewed by Norman Jaspen and Hillel Black lies in the realm of those most responsible for creating it--top management. Because of a lack of awareness of the seriousness of the problem, the majority of American businessmen have failed to realize that they themselves are the main contributors to their own employees' dishonesty.³⁶ Employee dishonesty is a barometer of how well an organization is being run. The authors suggest that a system of preventive management is the solution to white-collar crime. This is defined as management's initiation of preventive measures without waiting for the symptoms to appear. They include a plan of action for preventive management in their book.³⁷

Other books on white-collar crime largely discuss the social, moral, and ethical implications of such crime. Its low visibility and non-physical nature also creates considerable difficulty in resource allocation of enforcement funds and manpower.³⁸

³⁶Jaspen and Black, op. cit., p. 233.

³⁷Ibid., pp. 243-254.

³⁸Herbert Edelhertz, The Nature, Impact, and Prosecution of White-Collar Crime, (Washington: Government Printing Office, 1970), pp. 25-26.

PERIODICALS

Some data were found relating to private disposition of shoplifting cases. One such article by Roger K. Griffin appeared in the September, 1973 issue of Security World. The data were compiled from 632 supermarkets and eighty-five drug stores that contributed information regarding 18,193 cases of apprehension in a year's period. The tables presented in the article analyzed the cases by (a) prosecution or release, (b) time of day, day of week, and month incident occurred, (c) sex of the offender, (d) age groups, (e) methods of operation, and (f) average value of merchandise recovered per apprehension. A summary of the prosecution-release data appears in Table 1. Tables of this type are frequently presented in the literature on shoplifting but few exist for dishonest employee incidents. The need for such tables is evident.

As indicated in the table, two-thirds of all apprehended suspects in the reporting supermarkets were released. However, a larger percentage of juveniles were released (76.3%) as opposed to adults (60.6%). The percentage of released offenders was higher for the reporting drug stores, but adults were released less frequently than those in the supermarkets.

The data presented by Mr. Griffin revealed interesting questions regarding prosecution and release, but this

area was not even discussed in the article. Instead, Mr. Griffin presented the data and textually extrapolated the statistics to arrive at a cost figure of victimization to the retail firms surveyed.³⁹

Table 1^a

Percentage of Adult and Juvenile Shoplifting
Cases Prosecuted and Released

Disposition	Total		Adults		Juveniles	
	Mkt. ^b	Drug ^c	Mkt.	Drug	Mkt	Drug
Shoplifters Booked	33.3	26.6	39.4	41.4	23.6	14.9
Shoplifters Released	66.7	73.4	60.6	58.5	76.3	85.1
Total Cases	15542	2651	9327	1150	6130	1497

^aSource: Roger K. Griffin, "Shoplifting," Security World, X (September, 1973), 17.

^bMkt.--Supermarket.

^cDrug--Drugstore.

Mr. Griffin also had an article published in Police Chief in July of 1964. The article also concerned shoplifting and it described a study encompassing 7,294 cases in supermarkets. The purpose of the study was to analyze the cases in order that security personnel could better utilize their resources. The same type of data as described above was collected. In reference to the issue of prosecution

³⁹Roger K. Griffin, "Shoplifting," Security World, X (September, 1973), 16-19.

versus release, 22.5 percent (1,766 cases) of the shoplifters were prosecuted while 77.7 percent (6,158 cases) were released.⁴⁰ This article by Mr. Griffin concerned the need for security procedures in supermarkets in combatting shoplifting.

An article entitled "Considerations for Prosecution" appeared in the February, 1970 issue of Industrial Security. The article was written by the Investigations Committee of the American Society for Industrial Security. The article called for reevaluation of business as a victim of criminal acts.

A premise in the article was that the business community had not yet accepted its role as a victim of criminal acts. The idea that pressing charges against an offender was bad for the corporate image was refuted in the article. Reassessment of other notions, such as being in business to provide a service or to make a profit and not to prosecute criminals, was proposed. In other words, the business community has social, moral, and ethical obligations also.

The article stated that experience showed that those firms that had made the decision to prosecute never had their anticipated fears materialize; that neither their employees nor the labor unions resented the decision to prosecute.

A commitment toward a policy of prosecution where appropriate could be a long stride toward the recognized

⁴⁰Roger K. Griffin, "Shoplifting in Supermarkets," Police Chief, XXI (July, 1964), 37.

need for a new law and order standard, according to the article.

The purpose of the article was apparently a call for the business community to establish policies regarding prosecution of offenders, both employees and outsiders. The authors of the article, however, were definitely for a hard line approach toward increasing prosecutions. The article did not really explore the in-depth consequence of prosecution versus release.

An article published in Security Management in July of 1973 discussed employee dishonesty more objectively than did most. The author, Robert L. Mersky, titled his article "The Dishonest Employee...A Behavioral Problem." According to Mr. Mersky, there are four common elements in every successful employee theft:

1. The employee must feel an economic or psychological need to steal from his employer.
2. The employee must be able to overcome his conscience--the belief that it is morally wrong to steal.
3. The employee must have the opportunity to commit the theft.
4. The employee must not get caught.⁴¹

The article covered various areas of employee theft and white-collar crime. Reference was made to the present security philosophies used to combat the problem. Also discussed was the covert financial loss involved in dismissing an employee for dishonesty. In terms of recruiting, acquisition, training, familiarization, experience, development,

⁴¹Robert L. Mersky, "The Dishonest Employee...A Behavioral Problem," Security Management, XVII (July, 1973), 7.

and on-the-job-training, in many cases the employee caught stealing and subsequently dismissed was worth more than the things he stole. Other costs included correcting documents (if forgery or embezzlement was involved), rebuilding customer relations, combatting general disruptive and demoralizing effects on other employees, prosecution costs and possible law suits.⁴²

With regard to the purpose of this thesis, in terms of disposition of apprehensions, Mr. Mersky stated:

While the punishment should be no more severe than the crime, experience has proved that most firms will not prosecute, even in the most obvious criminal thefts. Consequently, most thieves steal in the assurance that if caught, they will only be fired, but not prosecuted.⁴³

Most of the literature discussed in this section only touched the surface of the problem of disposition of employee theft cases in retail establishments. Most articles appeared to be preoccupied with the statistics of crime against business.

GOVERNMENT PUBLICATIONS

Since 1967, with the passage of the Small Business Protection Act, the Federal government has taken a more active role in gathering data on the effect of crime on business establishments. The major direction of initial efforts has been to collect and analyze data. This has been done by Senate Hearings and surveys funded by various governmental

⁴² Ibid., p. 9.

⁴³ Ibid., p. 10.

agencies.

In 1969 the Small Business Administration published a report entitled Crime Against Small Business (Senate Document 91-14). The information contained in the report was the first comprehensive gathering of statistics from a representative sample of all American business.

The study contained a wealth of information. Summary statements relating to employee dishonesty included:

1. Employee theft ranked fourth in dollar losses for all businesses (page 24).

2. The ratio of losses to receipts for firms under \$100,000 was eighteen times as great as firms with over five million dollars in receipts (page 25).

3. The proportion of all businesses reporting each major type of employee theft--of money, of merchandise, and of supplies and equipment--was substantially the same at four to five percent (page 86).

4. However, for retail businesses the theft of money and merchandise was twice that of supplies and equipment (page 86).

5. Employee theft did not seem to bear as close a relationship to location of the business as one would expect. The only significant discrepancy was found in locations under 10,000 population which reported fewer incidents of employee theft (page 86).

6. With regard to preventive actions, the only recommendation relating to disposition of apprehended

1

employees was that there should be fixed policies about discipline for dishonesty. Failure to take decisive action or failure to be consistent can have an adverse effect on other employees (page 263).

Another government publication, The Economic Impact of Crimes Against Business, was published in February of 1972 for the U.S. Department of Commerce, Bureau of Domestic Commerce. It stated that the loss to retail stores from petty theft was conservatively estimated at \$4.6 billion annually,⁴⁴ Petty theft included shoplifting, employee theft, and accounting errors.

According to this document, the retail industry sustained about one-fourth of the total dollar losses to all businesses and yet their contribution to the Gross National Product was about 10.2 percent in 1970. Therefore, the retail industry suffered a disproportionate amount of losses relative to other commercial sectors.⁴⁵

The study's recommendation in the area of disposition of offenders apprehended was to make greater efforts to follow through on prosecution. "Laws against theft have little deterrent effect if they are not enforced. Even limited tactical enforcement might do much to help deter minor offenders."⁴⁶

⁴⁴U.S. Department of Commerce, The Economic Impact of Crimes Against Business, (Washington: Government Printing Office, 1972), p. 2.

⁴⁵Ibid., p. 11.

⁴⁶Ibid., p. 24.

The National Institute of Law Enforcement and Criminal Justice conducted a seminar on April 12 and 13, 1972, the proceedings of which were published under the title "Urban Design, Security and Crime." One speaker at that seminar was Verne A. Bunn of the Small Business Administration's Kansas City Office.

In Mr. Bunn's address, he spoke of some of the problems encountered in small business security. He stated that most crimes in business go unnoticed and unreported, especially crimes of employee pilferage, fraudulent checks, vandalism, and shoplifting.

Secondly, most merchants are unwilling to admit to their losses since they would be admitting to internal weakness of operation.

Thirdly, most businesses are unwilling to take formal action. They want to take the easy way out and not get involved in court cases because of the time and expense. All they want is to get their money or their merchandise back with the least amount of effort on their part.⁴⁷

According to Mr. Bunn, estimates of the impact of crime on business, when broadly defined, probably run as high as \$25 billion.⁴⁸

Presently, the bulk of the governmental literature has been directed toward statistical data on the amount and

⁴⁷U. S. Dept. of Justice, op. cit., p. 59.

⁴⁸Ibid., p. 61.

type of crime confronting the business community.

Mr. Bunn's address, for example, regarding small business security did touch on major problem areas, but once again, little was discussed in terms of the disposition of apprehended offenders and its impact on private and public justice.

UNPUBLISHED MATERIAL

The National Chamber of the United States Chamber of Commerce provided the author of this study access to a draft of a book being published, entitled White Collar Crime: Everyone's Problem, Everyone's Loss. It discussed all types of criminal trust violations. Reasons for non-reporting of criminal offenses by the business community to law enforcement agencies included:⁴⁹

1. The firm obtains restitution in return for a promise not to inform enforcement agencies.
2. An executive covers up his protege's illegality so that chances for a promotion will not be tarnished.
3. The company covers up an embezzlement for fear it might be found actionably negligent in having not detected the crime sooner.
4. The company may be exposed to bad publicity and its image may suffer.

⁴⁹U.S. Chamber of Commerce, White Collar Crime: Everyone's Problem, Everyone's Loss, (unpublished to date, Washington: National Chamber of Commerce, 1974), p. 63.

5. Executives are afraid of countersuits for libel, malicious prosecution, false arrest, etc.

6. The criminal justice process is so fraught with delay and legal maneuvers that defense attorneys can prolong a case for two years or more, considerably draining managerial time and resources.

7. The end result of adjudication will often be a mere slap on the wrist--an outcome considered not worth the effort.

8. The firm is interested only in eliminating the cause of profit loss, that is, in terminating the employee, perhaps on a collateral issue (e.g., poor work, absenteeism, tardiness, etc.).

9. Management often pities the offender.

The study suggested that none of the reasons were sufficient to support a no-prosecution policy and that many of the reasons, in themselves, could be considered illegal. For example, in some jurisdictions, granting the offender a promise not to prosecute in return for restitution could be considered criminal compounding of a crime. It also may permit an offender to successfully claim duress or that his confession was not voluntary.⁵⁰ The study also stated that the dollar amount involved and the intent of the offender regarding a criminal offense were common criteria on which the decision to press charges was based.

⁵⁰Ibid.

A strong appeal for reassessment of the above reasons was advocated by the study and it suggested that the criminal justice system should be improved through pressure and not circumvented or ignored. This section of the draft concluded with an example of one firm's policy that apparently met with approval from the National Chamber of Commerce:⁵¹

1. Employees will cooperate in the investigation, detection, and prosecution of criminal offenders.

2. Those committing crimes will be aggressively prosecuted.

3. Except for incidents of petty theft and dishonesty, all misdemeanors and felonies will be reported to police. Police are not to be used as a collection agency.

4. Restitution will in no way alter the company's above stated policy to prosecution.

The importance of this document will be determined after its publication and distribution. It should receive considerable attention from the business community and the academic world as well as legal scholars.

In summary of the literature, it is evident that the concept of private justice is overtly discussed in some circles (primarily the academic community and a few noted authorities such as Gerald Robin and Sargent Curtis), but it is largely an implied matter that has received little public attention. Apparently the idea of "private enterprise" has carried over into the criminal arena. In other words, the business community may prefer to handle its own dishonest employees with little public attention and fanfare.

Emphasis is being placed on the impact of crime on

⁵¹Ibid., p. 65.

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the business community by governmental studies and by some trade association reports. Business as a victim is receiving greater attention, but in this day and age of "big business" and inflation, the problem of public empathy on this issue is probably as serious as ever. There is an overwhelming plea by many authors for increased prosecutions. Some authorities, however, are not convinced that prosecution is the complete answer to the problem. Sargent Curtis' views on prosecution, for example, have become less rigid over the years primarily because of his view of managerial responsibility in preventing internal losses.

There is a notable lack of empirical data to support the procedures and policies suggested by some of the "authorities." Employee dishonesty may be more difficult to analyze because of its inherent sensitivity, but it is too serious of a problem to ignore. As a method of preventing dishonesty, few have addressed the disposition process and its related impact.

Chapter 3

METHODOLOGY

The methodology used in this thesis is relatively simple. As an exploratory study, emphasis is on discovery of independent variables that help to explain the use of private justice in the retail industry.

THE SETTING

The setting for this study is Arlington County, Virginia, the second smallest county in the United States. In its 25.7 square miles of land live an estimated 170,284 persons.

Arlington County is situated southwest of the District of Columbia. It is bordered on the northeast by the Potomac River and on the southeast by the city of Alexandria, Virginia.

According to 1972 statistics, there were 8,667 businesses in the County of which 1076 were designated retail. Retail sales amounted to \$452,596,204 per year.⁵²

Arlington County has a county-manager form of government. The judicial system is made up of a Circuit Court, part of the State system, and the General District

⁵²Arlington Chamber of Commerce, Arlington Blue Book (Arlington: Cooper-Trent, 1973), p. 19.

Court. The General District Court is sub-divided into the Criminal Court, the Traffic Court, and the Juvenile and Domestic Relations Court.

Under the management of the Circuit Court is the Office of the Special Magistrate. The Office is staffed by four full-time and eight part-time appointees. They are authorized by statute to hear evidence of probable cause, to issue warrants and summonses, to set bond on arrested persons, and to collect fines on parking and traffic citations.

When on duty, the Special Magistrate is located at the Violations Bureau in the County Court House. The Violations Bureau is open twenty-four hours a day every day of the year (except for brief periods of time at the dinner hour). Any citizen or police officer has access to the Violations Bureau and the Special Magistrate.

Arlington County was chosen as the setting for this study for four primary reasons. Firstly, the variable of the system of public justice could be held constant by limiting the study to one jurisdiction. Secondly, the availability of the Special Magistrate makes prosecution of individuals less cumbersome in terms of obtaining warrants of arrest. Thirdly, the retail community in Arlington ranges in size from the small owner-proprietor store to firms employing as many as 533 individuals. And fourthly, as a police officer employed by the County of Arlington, this researcher hoped to overcome the communications gap

that often arises when an "outsider" attempts to investigate a particular segment of society.

DATA GATHERING TECHNIQUE

The structured interview was the primary method used to gather data in the inquiry. Some of the information was collected from unstructured interviews.

The questions employed in the structured interview were phrased in such a manner as to allow broad latitude in answering them.

Initial questions in the interview concerned the number of full and part-time employees and whether the firm maintained a full-time security department. These questions were asked for purposes of detecting a possible link between the size of the firm and the disposition of dishonest employee incidents.

A number of questions dealt directly with the actions taken against dishonest employees if legal charges were not pressed against them. These questions, of course, were for purposes of identifying the various options used in private justice and the justifications for the actions taken.

Two questions dealt directly with the factors influencing prosecution. One question asked for the factors considered in the decision to prosecute or release if prosecution was not a foregone conclusion at the time of apprehension. The second question asked, "If it were possible to successfully prosecute the majority of your dishonest

employees, would you do so? If not, why not?" The purpose of this question was twofold. Firstly, it measured some degree of the desire to punish the dishonest employees and secondly, it elicited factors influencing the decision to prosecute. A third question related to prosecution indirectly in that it asked whether the respondent believed that apprehended dishonest employees received their just rewards in terms of punishment.

Other questions concerned various areas of procedure and policy of the firm, such as use of release forms and exchanging information with other businesses.

A list of the questions asked during the interviews can be found in Appendix A. The first fourteen questions were submitted to each respondent in order that he could better understand the questions and ask for clarification if necessary. The other questions were asked by the interviewer as a matter of routine even though they were not written out for the respondent.

Selection of the firms for interview was made by judgment (purposive) sampling. The criteria of size, in terms of the number of employees, and type of goods sold was utilized in the selection process. Some variation in size was desired for comparison purposes. Very small firms were excluded because they were primarily family owned and run, thereby reducing the likelihood of employee dishonesty. Two of the three firms in Arlington County with in-house security forces were selected because they would tend to have a

formal structure in processing dishonest employees. With regard to the type of goods sold by the firm, this criterion was chosen to determine whether private justice was more evident in certain types of retail establishments. The size and type of retail firms surveyed is found in Table 2 on page 49.

Ten firms were selected for interview. Two of these firms were branch outlets of an area-wide company. The managers of these two firms referred this interviewer to the loss prevention director of their respective companies. Interviews were subsequently conducted with those loss prevention directors. Because the loss prevention directors represented all the firms of his company in Arlington County, the ten interviews reflected the procedures and policies of twenty-four retail firms.

In Arlington County, the location of all retail firms are along major traffic arteries. This pattern developed from the strict zoning laws of the county. In this respect, the environment in which the retail firms were situated was essentially equal. The entire county was suburban in nature and in regard to race, socioeconomic status, availability of county resources, etc., no differentiation can be made.

Time and resources were critical constraints on this study. Since this researcher utilized a very time-consuming data gathering technique (the structured interview), only a limited number of interviews could be conducted.

One could question whether ten interviews were sufficient in analyzing the problem addressed by this study. This researcher maintains that ten interviews were sufficient. In exploratory research one is concerned primarily with discovery of variables, hypothesis formulation, and relevancy. Exploratory research is not as interested in "proving" something as it is in formulating and devising something to prove later. Ten interviews are sufficient if those ten yield enough data to indicate a pattern or possible hypotheses.

Prior to interview, this researcher knew nothing of the policies and procedures of the selected firms in relation to employee dishonesty. He did not know whether the firms had experienced much difficulty with dishonesty or whether they engaged in private justice. And yet, all ten respondents indicated that they had apprehended dishonest employees and that they did engage in private justice. Considering the type of information being sought by the interviews, this researcher contends that additional interviews most likely would have yielded limited dividends (in terms of different policies and practices) for the amount of resources invested.

Chapter 4

FINDINGS

A total of ten separate interviews were conducted. Two respondents represented more than one firm because of branch outlets of the company. A total of twenty-four separate retail locations in Arlington County were represented in the interviews.

All of the managers, proprietors, or security directors were promised complete anonymity; therefore, a number has been assigned to each interview. Where some respondents represented more than one retail firm in Arlington County, the number runs consecutively to include the number of firms represented. For example, 5-17 represents thirteen firms in Arlington County, and 19-21 represents three firms.

FIRM CHARACTERISTICS

The twenty-four retail firms represented a variety of retail concerns. The size of the firms, in terms of persons employed, varied considerably. A breakdown by type and size is found in Table 2.

The size of the firm was measured by the number of employees and not by the total dollar receipts as in other studies. The latter would be more difficult to determine or

Table 2

Description of Firms Interviewed by Type
of Goods Sold and Number of Employees

Firm	Type	Employees		Firm	Type	Employees	
		Full	Part			Full	Part
1	Department	533 ^a	n/a	18	Department	49	61
2	Department	35	35	19-21	Grocery	12 ^b	20 ^b
3	Department	226	160	22	Sports	8	2
4	Furniture	20	15	23	Clothing	7	3
5-17	Drug	10 ^{a,b}	n/a	24	Clothing	11	16

^aBreakdown between full- and part-time not available (n/a).

^bFigure varies from one firm to the other. The number quoted represents an average per firm.

in some cases would not even be available to the person being interviewed.

The size of the firms ranged from 10 employees to 533 employees (including part-time personnel). Department stores were over-represented primarily because of their size. Most retailing firms employing a large number of employees tend to be department-style establishments. Firm 18 was a discount-catalog department store with a different character than the common self-service department store.

Firms 1 and 3 maintained full-time security staffs, while firms 2 and 18 employed off-duty police officers at "peak" periods (e.g., Christmas and holidays). Firms 5-17, 19-21, and 24 had regional security agents or loss prevention offices that were notified of special problems or suspected criminal activity.

Regarding pre-employment screening, practices ranged from application only to various means of credit/criminal checks. Firm 18 occasionally used the polygraph. (The polygraph was used as a tool by this firm to periodically check on the employees' honesty. If the tests were being conducted on the same day as an applicant's interview, the applicant might also be asked to take the test.) Two firms, 3 and 24, were members of the Stores Mutual Association (SMA). Members of the association submitted data sheets on all apprehended suspects to the main office and, as a membership service, could request record and clearance checks on suspects and prospective employees.

DISPOSITION OF APPREHENSIONS

All the respondents were asked for the number of apprehensions of dishonest employee suspects for the year 1973. Dispositions, in terms of prosecution, restitution, or dismissal were also requested. Many of the respondents could only estimate the number for various reasons. Either the case papers had been forwarded to the main or regional office or a notation of the incident had merely been put in the employee's file. Most respondents estimated the number or gave an exact number, but not always in terms of 1973. For example, one response was: "Three in the last five years, that's how long I've been here." (See firm 23 in Table 3 below.) Since the purpose of the question was for indication purposes and not for a highly standardized statistical study of the apprehensions, the issue of just a one year period was not pressed. The purpose of the question was to obtain a number to be used as a guide. For example, whatever figure the respondent quoted, that number was used in the following questions regarding the number of employees who were dismissed and the number prosecuted. The responses were used as an indication of the firm's actual practice in disposing of cases. It also indicated whether the firm adhered to a highly visible punitive approach to dishonesty.

A summary of responses to the question regarding the disposition of employee apprehensions is contained in Table 3.

With reference to the table, it must be noted that

the figures for firm 5-17 represent apprehensions made in 151 Metropolitan Washington, D.C. area firms of the company. The figures were quoted by the Loss Prevention Director of the firm. The figure was included in the table because it indicated the firm's pattern of disposition. The figures for firm 5-17 should not be interpreted as two hundred apprehensions in the thirteen firms located in Arlington County.

Table 3

Disposition of Apprehended Employees by Firm In 1973

Firm	Apprehended	Dismissed	Prosecuted	Authorities Notified (w/o pros.)
1	11 ^a	11 ^a	4 ^a	7
2	2	2	0	0
3	n/a	n/a	n/a	n/a
4	3	3	2	0
5-17	200 ^b	200 ^b	6 ^b	n/a
18	50-60	50-60	4	n/a
19-21	n/a	n/a	n/a	n/a
22	2	2	0	2
23	3 ^c	3 ^c	0	0
24	4	4	0	0

^aTwo year period, 1972 and 1973.

^bIn 151 firms, figures for 5-17 alone not available.

^cFive year period, 1969-1973.

n/a Not available.

From Table 3, one observes that all persons apprehended for criminal activity by the twenty firms from which figures were obtained were summarily dismissed from employment. In fact, nine of the ten respondents stated that their firm's policy was automatic dismissal. Only one respondent, the loss prevention director of the supermarket chain (firm 19-21), indicated that it was his policy to retain dishonest employees. The employees were given a break and given the opportunity to rehabilitate themselves.

When the above findings are viewed in light of the various characteristics of the firms, a number of testable hypotheses for future research emerge. Excluding firm 5-17 for the moment, because the available disposition figures represent 151 firms, one finds that firm 18 has a very high rate of personnel turnover. The firm employs a total of 110 persons, yet 50-60 persons were apprehended and dismissed in a one year period. It is not known whether most of these persons were part-time or full-time employees. The length of employment of the apprehended employees is not known either. It is also not known whether any employees resigned prior to the polygraph examination. It is known, however, that firm 18 does not maintain a full-time security staff and that it utilizes the polygraph for periodic "honesty checks." Therefore, the following hypothesis is proposed: Retail firms utilizing periodic polygraph examinations as a condition of employment experience a larger turnover rate in personnel than do other firms. An additional hypothesis to

explore in relation to this one would be that voluntary (non-forced) resignations of employees are submitted with increasing frequency as the polygraph examination date approaches (assuming that the date of the examination is common knowledge among the employees). Another related hypothesis is: Most employees dismissed after polygraph examination are part-time employees. A companion hypothesis would be that the voluntary resignations received just prior to polygraph examination are also primarily from part-time employees.

The relationship between full-time and part-time employees with regard to dishonesty is also a general topic for research. Are part-time employees more prone to dishonesty than are full-time employees? In other words, what are the rates of apprehension for full-time employees as compared to part-time employees? Is it worth employing part-time personnel if they are caught in a disproportionate amount of dishonesty?

Time graphs could be utilized in the analysis of most of the above stated hypotheses. Selection of firms for analysis should be based on the criterion of the use of polygraph examination at a periodic interval and as a condition of employment. Factors such as size and type of retail firm, security staffs, screening processes, etc., should be comparable, if not held constant.

THE CONCEPT OF PUNISHMENT

Prosecution is by far the most visible form of punishment for a dishonest employee. Table 3 indicates that of those employees apprehended, only sixteen were actually prosecuted and another nine were reported to the authorities (e.g., juvenile authorities), without further processing.

In light of other questions asked of the respondents, the low figures on prosecution were surprising. The respondents were asked, "If it were possible to successfully prosecute the majority of your dishonest employees, would you do so?" Of the ten respondents, five answered, "Yes"; one answered, "No"; one stated that it depended upon the severity of the dishonest act; two answered, "Personally, yes, but the store policy is not to prosecute"; and one stated, "Operationally, no, if I had a security department, yes."

The response to the above question indicates that most store managers and security agents surveyed would prefer to prosecute the dishonest employee when prosecution is likely to be successful. This also indicates that most of the respondents adhere to a punitive philosophy with regard to employee dishonesty. Such views coincide with the philosophy of security as enforcement as discussed in the theoretical framework on pages 8 to 13.

Another question, "Do you believe that those employees detected and apprehended by your firm receive their just rewards in terms of punishment?" was asked of the

respondents. The responses to this question must be viewed in the light of the firms' actual practices. Firm 1 answered in the affirmative, as did firm 4. Both firms had a high rate of prosecution. Firm 1 prosecuted four of the eleven apprehended employees but the other seven were reported to the authorities. Firm 4 had three apprehensions with two prosecutions. Respectively, firms 3, 5-17, and 22 replied negatively with comments: "The courts appear to be too lenient," "Maybe so in small towns where one's reputation is hurt," and "They knew what they were doing." Although no figures were furnished by firm 3, they stated that prosecution was usually considered. In firm 5-17, prosecution is attempted in all felonies (dollar value in excess of \$100). If they have a good case and a prosecutable offense, they will prosecute. In firm 22, the respondent (manager) wanted to prosecute the apprehended employees (the police had entered the case), but the owner subsequently decided not to prosecute.

Firms 2, 18, 23, and 24 indicated that they thought the dismissal, humiliation, and bad recommendation was enough punishment for those apprehended. Of these firms, only firm 18 had attempted any recent prosecution of apprehended employees.

Firm 19-21 did not adhere to a punitive philosophy toward initial dishonesty. Five of the respondents (firms 1, 3, 4, 5-17, and 22) indicated that more than mere dismissal would have been "just" punishment for those

apprehended employees. This was another indication of adherence to punitive philosophy.

THE PROBLEM OF PROSECUTION

The data suggest that most respondents took a strong personal (if not corporate) position for prosecution of dishonest employees. The actual practice of the firms, however, contradicted that position. Why were there not more prosecutions?

The respondents were asked about the factors that influenced their decision concerning whether to prosecute an apprehended employee. Firms 1, 2, 3, 4, 5-17, and 18 indicated that the amount of evidence and the type and seriousness of the offense were dominating factors influencing the decision to prosecute.

Other factors mentioned in deciding whether to prosecute employee offenders included (a) the cost of prosecution in terms of lost manhours and wages for court appearances, (b) company policy, (c) the overall attitude of the offender, (d) the likelihood of recovery or restitution, (e) the leniency of the court on first-time offenders, (f) the deterrence effect on other employees, and (g) embarrassing circumstances. One respondent (firm 22) merely stated, "The owner is softhearted."

It was interesting to note that no respondent ever mentioned the factors of possible adverse publicity (public image) or employee morale as is often mentioned in the

literature. However, this researcher believes that they should receive some attention in future research.

For example, Arlington County may be unique in terms of the publicity coverage given to dishonest employee incidents. The inhabitants of the county rely primarily on the two large newspapers based in the District of Columbia. There is relatively little "local" news coverage in either of these newspapers. Arlington County is serviced by a number of weekly newspapers, but crime coverage is often limited. A researcher might attempt to analyze the publicity issue by reviewing the news coverage, if any, of dishonest employee incidents that terminated in prosecution. Various criteria could be devised to evaluate the news coverage as favorable or unfavorable to the firm involved. A survey of a number of citizens following the coverage of a dishonest employee incident could also address the issue of public image. What are the citizens' feelings toward the firm? An unobtrusive approach to citizen reaction after coverage of the criminal offense would be a before and after measure of the number of customers that pass through the firm

Employee morale is a factor that employers should recognize as a possible contributing factor to the dishonest behavior of employees. For this reason, another proposed hypothesis for future research would be: A consistent disposition procedure raises employee morale. One possible approach to this hypothesis would be to identify a number of firms as having a procedure of consistent or inconsistent

disposition. For testing purposes, one might substitute "prosecution" for "disposition," thereby making the hypothesis read: A consistent prosecution procedure raises employee morale. Employee morale could be measured by a scale or index similar to those named in Part IV, Section C, "Morale and Job Satisfaction," of Delbert C. Miller's Handbook of Research Design and Social Measurement (pages 231-271).

Subhypotheses in this framework would include (a) a low rate of prosecution lowers employee morale while (b) a high rate of prosecution raises employee morale. An interested student might want to analyze the effect of dismissal procedures on employee morale. Suggested hypotheses include (a) consistent dismissal procedures for dishonest acts maintain high employee morale and (b) inconsistent dismissal procedures cause low employee morale. By testing the above hypotheses, one could generally infer what effect, if any, private justice has on employee morale. By testing the above hypotheses, it might be possible to discuss whether it is private justice or prosecution that affects employee morale or whether it is the consistent application of either one that directly affects employee morale. Sargent Curtis contends that it is not the disposition per se that affects morale; it is the consistency with which it is applied to all offenders.⁵³

Most respondents in this study indicated that the

⁵³Curtis, Modern Retail Security, p. 278.

amount of evidence and the seriousness of the offense were primary determinants in deciding whether to prosecute an employee. The lack of data on each offense precludes proper analysis of these two factors. However, an analysis of a firm's detection procedure in relation to the number of offenses prosecuted yielded data for thought. For example, firm 1 tended to develop a case against a suspected dishonest employee. When the employee was observed perpetrating the offense, an apprehension was made. Thus, prosecution was a more practical alternative from an evidentiary standpoint. Firm 18, as mentioned above, relied on the polygraph to detect offenders. As a condition of employment, personnel submitted to periodic polygraph testing. Many employees subsequently admitted to dishonest acts against the firm. Because of insufficient evidence to take into court (polygraph results are not admissible in court), most employees were merely dismissed. Firm 18 did not maintain a security department while firm 1 did. Not enough information is known regarding the detection procedures of the other establishments surveyed to make similar comparisons.

To this researcher's knowledge, no attempt has ever been made to correlate detection procedures with the rate of prosecutions. Could it be possible that some firms choose the easy way out by making premature apprehensions without sufficient evidence for prosecution? If so, they subsequently could excuse non-prosecution by stating that they had insufficient evidence for conviction. The findings of

this study suggest further research into the techniques of detection and apprehension in terms of the requirements necessary for prosecution.

The procedures and policies that a firm utilizes may be directly related to the "competency" of the manager or the person responsible for policy formulation. A hypothesis regarding this issue might attempt to relate personality and background characteristics of security agents to the apprehension techniques and the disposition process of the firm. For example, educational achievement, occupational background, knowledge of legal requirements for conviction, position on punishment, etc. are measureable characteristics that may be possibly correlated to security policies and procedures. Do graduates of criminal justice programs have a higher or lower rate of prosecution than non-graduates? Does a "police background" affect a security agent's apprehension technique (which may affect the prosecutability of a case)?

MISCELLANEOUS FINDINGS

Some questions were asked of the respondents to gauge their knowledge of the problem of dishonesty in their own firms.

All were asked what type of crime related activity was encountered most often from the standpoint of employee dishonesty. Six respondents indicated that theft of merchandise was the most encountered criminal activity. The

other four indicated that the cash terminal was the primary location of their problems. This included larceny of cash and collusion between cashiers and "customers." From the standpoint of private justice, this study does not address whether the type of crime-related activity (e.g., theft of merchandise, theft of cash, etc.) has any bearing on the type of private disposition of the case. The type and seriousness of the offense was mentioned by several respondents as affecting the decision to prosecute but does it also affect the "type" of private justice (dismissal, restitution, retention, etc.) utilized in the disposition? Case analysis in future studies is necessary to address this issue. The issue of collusion as a determinate factor in the disposition process could also be addressed by such analysis.

With regard to those firms that considered prosecution, all did so after interviewing the employee and deliberating the facts of the case.

With regard to a question concerning the processing procedure of an apprehended employee, the responses were generally very disappointing. Only the larger firms (1, 2, 3, and 5-17) maintained any forms such as the Miranda warnings and an admission form. They also took written statements when possible. The basic procedure followed a pattern of detection, apprehension, advisement of rights, statements regarding offense, and concluded with the decision regarding disposition.

The respondents were asked if there were any special conditions regarding security procedures that were required of all employees upon being hired. Generally speaking, there were few. Firms 1 and 3 held training classes for new employees but security was only one topic of discussion. Firm 2 required new employees to sign a statement indicating that they had read and agreed to the firm's policy on rules and regulations. Firm 4 required signed permission on the application to permit a police check on any past record. Firm 18, as mentioned earlier, made periodic submission to a polygraph examination a condition of employment. Firm 24 required completion of a bonding application since all their employees were bonded. The remaining firms had no particular employment requirements regarding security practices.

Inquiry into the firms' practices of exchanging information concerning dishonest employees with other firms was often met with a long pause. The only official exchange of any information by most of the respondents were reference checks on prospective employees. Firms 3 and 24 often requested record checks through the Stores Mutual Association, but this proved beneficial only if the person was once employed by an SMA member firm. The responses to this question were evaluated by this researcher as unreliable because of the sensitivity of the question. The practice of exchanging such information with anyone would open possible avenues for law suits.

The legal questions involved in exchanging this

information have not been adequately documented. Under what legal restrictions do associations such as the Stores Mutual Association operate? What are the problems associated with such organizations? With the cooperation of such an organization, a researcher could probably obtain a wealth of data for analysis. An interested student should attempt to contact a number of these associations. (Most are located in large cities such as Chicago, New York, and Washington, D.C.) He could prepare a term paper on the type of information that is submitted to these organizations. After analysis of this information, various hypotheses could be formulated for a thesis design.

Section 18. 1-127 of the Virginia State Code is the merchant's protection statute in regard to civil suits for false arrest, illegal detention, etc. Four firms were evaluated as being familiar with the statute, three firms were aware of what the law provided, one firm was barely aware of its provisions, and two firms were not aware of it at all. This and related statutes are found in Appendix B.

The firms most familiar with the merchant's protection statute were also the firms with the larger rates of prosecution of apprehended offenders (i.e., 1, 4, 5-17), thus indicating that another hypothesis for future testing would include possible correlation between the rate of prosecution and the firm's knowledge of the law in terms of the merchant's authority and civil protection. Conceivably, an index to measure the level of knowledge of the merchant's

authority could be devised and administered to a number of security agents and firm managers. Hypothetical situations and points of law would be included in the index. The hypothesis that a low "level of knowledge" (of the merchant's authority) reduces the likelihood of prosecuting dishonest employees is suggested for testing. If this is confirmed, it implies that other actions (private justice) would be taken against the employee in lieu of prosecution. It is also hypothesized that a firm's fear of civil suits (in security related matters) is directly proportional to the firm's knowledge of the merchant's authority. However, before this hypothesis could be tested, the concept of "fear of civil suits" would have to be operationally defined.

The above findings relate to the concept of private justice, either directly or indirectly. That concept is the issue in this thesis and, therefore, a separate chapter is devoted to it.

Chapter 5

THE CONCEPT OF PRIVATE JUSTICE

Private justice is a common practice in the retail industry of Arlington County. There is no denying it, nor should there be. It is time that the problems associated with retail security be discussed in an open manner in order that practical solutions may be formulated.

As discussed in Chapter 1, the philosophy of security as enforcement adheres to a punitive approach to the disposition of employee offenses against the firm. In terms of this study, the punishment ranges from automatic dismissal to prosecution. The data discussed in Chapter 4 indicate that nine of the ten respondents subscribed to a punitive approach to dishonesty. Even though the firms' self-acclaimed profile was "protectionist," they still operated by means of control through power, a behaviorist trait. In other words, the firm is concerned with only the conduct of the employee. The intent and motivation of the action is of relative unimportance. Behavior is maintained within specified boundaries and any employee that transgresses beyond those bounds must be punished. These traits are operational examples of security as enforcement which is predicated upon behaviorist psychology (see pages 8-13).

The data gathered for this study suggest that private justice in the security as enforcement context exists

as a means of punishment, especially when the desired form of punishment--prosecution--cannot be achieved because of technicalities (e.g., evidentiary limitations, economic considerations, and self-image). Therefore, suggested hypotheses for future testing are that private justice in retail firms is utilized primarily as a form of punishment and that private justice is used when more visible forms of punishment cannot be pursued. Those cases that support these hypotheses should be operational examples of security as enforcement. If the alternative hypothesis of private justice being utilized as an educational process (as opposed to a punitive process) is supported, those cases should be operational examples of security as protection. Of those respondents interviewed in Arlington County, only one (representing firm 19-21) could be classified as adhering to a philosophy of security as protection.

That respondent was the Loss Prevention Director of a supermarket chain in the Washington, D.C. area. His responsibilities included the security operations in fifty-eight grocery outlets. In his company, he stated that employee dishonesty represented an estimated eighty percent of the company's losses. Three percent was attributed to shoplifting and seventeen percent to paper errors and mishandling. The check-out register was the problem area in terms of employee dishonesty. The respondent described his operational technique as loss prevention. He emphasized that his concern was in preventing future thefts and losses

as opposed to punishing past dishonesty. He added that he usually retained employees suspected of dishonesty. The employees were given a chance to reform on their own.

Whenever employees were "apprehended" in relation to a dishonest act, the terms thief, theft, crime, or criminal were avoided. In other words, the act was treated as misbehavior and not as a crime. The characteristics of this approach closely compare to the traits mentioned on pages 10 and 11 of this study regarding security as protection.

Careful analysis of the theory of security as protection reveals that private justice is implied; it exists by definition. Since security as protection is non-punitive, there is little expectation of prosecution of dishonest employees. On the other hand, security as enforcement implies a likelihood of prosecution since it is a highly visible form of punishment. However, prosecution is only one option available to the firm that subscribes to security as enforcement. The other options, such as dismissal only, fall into the realm of private justice.

This thesis was initiated by this researcher because of the vagueness of the concept of private justice. After analysis of the data gathered in the interviews and viewing it in relation to the theoretical framework of this thesis, this researcher believes that classification of firms by their use of private justice is possible. By classifying a firm's use of private justice coupled with the responses to questions regarding the punishment of offenders, a firm's

philosophy of security can be identified. The criteria of (a) the firm's disposition process regarding dishonest employees and (b) the firm's view on punishment emerged as indicative factors in this study in relation to this identification process. The multitude of factors affecting private justice necessitates more than just an analysis of apprehended offenders. Some type of measurement is necessary to elicit the firm's view on punishment. Only in this manner can one determine whether the use of private justice by a given firm results from economic and social consequences or from the firm's philosophical view of the function of security.

The above conclusion presupposes that all firms maintain a policy or philosophy on security procedures. An additional hypothesis must, therefore, be proposed. In the absence of a set policy or philosophy on security procedures, the security agent will decide upon a course of action that he believes is justified under the given circumstances. This justification is contingent upon (a) the seriousness of the incident, (b) the amount of evidence, (c) the economics of the situation (i.e., Is it worth the time and effort to prosecute the offender?), and (d) the agent's attitude, prejudice, perception, and emotional reaction to the situation. Therefore, the final disposition of the incident rests upon the agent's personality, knowledge of the law, and his own definition of justice.

THE CONSEQUENCE OF PRIVATE JUSTICE

Much of the literature reviewed herein calls for increased prosecution of dishonest employees and other offenders in the business community. This proposal sounds simple, but it presupposes (a) that most offenders are detectable, (b) that there exists enough evidence to successfully prosecute the offenders, (c) that this would create a better environment in the business community, (d) that it is economically feasible, and (e) that the criminal justice system could accommodate the increased burden. One question that has not been answered in this proposal is: What purpose does prosecution serve? As Mr. Dornbaum stated: "Most employees who pilfer are basically honest, and once caught usually end their stealing career."⁵⁴ Why prosecute someone that is already reformed? Research into the area of recidivism of the dishonest employee might yield some answers to the need for prosecution.

An approach to the issue of recidivism would be to analyze the recidivism rate of dishonest employees in a retail firm that retains the employee on his first offense. Do such firms often regret their initial decision to retain the employee or does Mr. Dornbaum's statement prove accurate? Another method for researching this topic would be to gain access to the data in a Stores Mutual Association (or similar

⁵⁴Charles Dornbaum, "Combatting Pilferage in Your Store," Security Management, VIII (August, 1972), 21.

organization) and analyze whether an apprehended employee from one member firm ever receives similar treatment from another member firm.

Let us consider the other extreme: Why not process every dishonest employee through private justice systems? Needless to say, this also has many drawbacks. Professional criminals would probably have a field day. By saying that professionals would be prosecuted as an exception, is to presuppose that they are readily identifiable as professionals upon apprehension. What controls should be placed on such a process to prevent an habitually dishonest employee from going from one employer to another merely by being dismissed for dishonesty. Is he not a professional thief? Maybe a proposal of prosecuting repeaters of criminal behavior would be practical. But how does one become a known repeater when he was not prosecuted the first time? Unless the employee was retained the first time, his present employer would probably not know of prior dishonesty. Central data banks, such as Stores Mutual Associations, could provide some data in terms of repeaters but such service is only as good as its membership, input, and its legal limitations. If only a few stores belong to such an association, its potential is extremely diminished.

Proposals requiring legislative approval may be in order. Would it be possible to create an administrative process, statutorily recognized, to act in place of a public judicial process? Could it be operated on a metropolitan

basis and be so organized as to protect the rights of both the employer and the employee? Instead of punitive sanctions, what about "conditions to retention" such as budgetary counseling, vocational guidance, domestic advisement, and psychiatric counseling from social agencies?

One thing must be remembered: the economics of business losses are felt by everyone; by the businessman through decreased revenues and the consumer through increased prices. For this reason, everyone should be interested in the disposition of offenses committed in the business community.

RECOMMENDATIONS

This discussion of private justice undoubtedly raises more questions than it answers, which is not contrary to the objective of this study. Private justice, in its broadest sense, occurs daily in the business community. If it did not, our social intervention agencies would be overly burdened by the increased caseload. This is not to imply, however, that the criminal justice system should be circumvented. On the contrary, the system should be improved to accommodate the offenders that need official attention. An initial step, therefore, is to determine what type of dishonest employees need official and societal attention.

The recommendations proposed here fall into two categories, practical and analytical. On the practical side, efforts should be made on the part of the business community and the local official agencies to discuss the problems that

are encountered in dishonest employee cases. Businessmen and local prosecutors should hold seminars on the merchant's legal authority in such situations. Attention and clarification should be given to quasi-legal practices in disposing of employee offender cases.

By initiating a dialogue on the issues surrounding the use of private justice, various legislative proposals might be initiated. One area of concern for legislative review is that of a business entity as a "victim" of trust violations. Legislatures should either take a firm stand to provide easier access to the judicial system or to divert such violations from the criminal process entirely. Easier access could be provided by enacting strong, explicit, and detailed merchant protection laws. Many such laws are on the books but they are vague and subject to broad interpretation. By establishing specific guidelines as to the limitations of civil suits, merchants would have less fear in pressing charges.

Diversion of trust violators from the criminal justice system is possibly a more attractive alternative. One method would be to eliminate larcenies of under one hundred dollars from the criminal statutes if the offense was committed by an employee during the course of his daily employment. The offense (loss) could be left to civil remedies. This type of diversion would necessarily impress upon the employer the importance of sound security measures. Such diversion would be a strong incentive for employers to improve their employee selection process as well as other

security procedures.

Another diversion technique might include development and legislative approval of regional administrative boards to analyze employee dishonesty cases and to recommend dispositions. If this recommendation were acceptable to both parties, the incident would be so remedied. If the recommendation were not acceptable, a petition would be filed for a formal judicial hearing. The actual process of this diversion technique would depend upon the amount of authority delegated to the board by the state legislature.

In terms of analytical proposals, research into the areas of prosecution, restitution, and recidivism is badly needed. Such research needs to be conducted in terms of economic and legal ramifications as well as social ramifications. Future research designs should also address the effect that the insurance industry has on security procedures in general and on dishonest employee dispositions as a specific target of inquiry.

If the use of private justice in the business community stems largely from the failure of other social processes, maybe changes are necessary. However, if the business community is largely responsible for perpetuating the situation, it must also face up to reevaluation of its current policies, philosophies, and practices.

One recommendation that the business community might consider is to retain dishonest employees in an effort to rehabilitate them. Employers might determine that this

action is the most beneficial in the long run. If the employee can refrain from further criminal activity, the employer foregoes prosecution, dismissal, and replacement expenses and should be able to recover most of the original loss. If the employee does not reform, at least the employer knows who to suspect and, if caught a second time, the employer may be more prone to prosecute.

The recommendations presented here for the handling of dishonest employee cases are not meant to be exhaustive. There is no reason why various alternatives to prosecution and mere dismissal should not be developed and advocated by employers, law enforcement agencies, social scientists, criminologists, and anyone who has an interest in the matter. Programs of an experimental design could be established to determine the true benefits of such alternatives. Experimental programs would allow for measurement of the economic factors as well as the social and psychological factors. Various business associations and research foundations may even be willing to fund such experiments in order to provide empirical validity to their recommended policies and guidelines. In the early 1960's the Polish government established a number of Workers' Courts as an experiment in the administration of justice in employee related offenses. These courts had no formal procedure, but made use solely of the pressure of public opinion within the given group. The members of the court were elected from among the workers by their colleagues. The court dealt with petty offenses and the

solution of the case did not necessarily exclude it from being sent to public court. Authorization and establishment of these courts was through the Polish Ministry of Justice. The cases were directed to the court by the factory management, the police, the public prosecutor, and tribunals. The type of offenses handled by the Workers' Courts were primarily petty theft, domestic disputes, and disorderly conduct. The "penalty" imposed by the Workers' Court took the form of public disgrace and shame. A study conducted on the Workers' Courts by Adam Podgorecki and his assistants concluded:

The experiment with Workers' Courts was based on the assumption that old means of mass repression are becoming obsolete, and are no longer sufficient to prevent certain forms of socially harmful behavior; and that in such cases the pressure of opinion of the occupational groups is more effective than legal sanctions. On the whole, the inquiry confirmed these hypotheses. It was also established that the effectiveness of Workers' Courts depends on some additional factors, mainly on the uniformity of public opinion in the given occupational group.⁵⁵

The outcome of this experiment is not known by this researcher but the point is that similar experiments in this country are conceivable. Additional inquiry into the Polish experiment should give further evidence concerning its effectiveness.

The recommendations advocated here are predicated upon additional research and investigation. The purpose of

⁵⁵Vilhelm Aubert (ed.), Sociology of Law, (Baltimore: Penguin Books Inc., 1972), pp. 142-149, citing an excerpt from Adam Podgorecki, "Sociological Analysis of the Legal Experiment Survey of the Workers' Courts," Polish Sociological Bulletin, 1962, 118-123.

the recommendations are to stimulate interest and creative thinking.

Chapter 6

SUMMARY AND CONCLUDING COMMENTS

The private administration of justice is a social phenomenon that has received relatively little attention in the field of criminology. The present study attempts to raise various issues that should be given further attention and should be openly discussed as a social and economic problem.

The purpose of the study was to analyze, describe, and define the concept of private justice in the retail industry as it exists in Arlington County, Virginia. This was attempted by interviewing managers and security directors and by analyzing the process of disposition of dishonest employees in ten different companies.

A review of the literature revealed diversified approaches to the topic of private justice. Most items reviewed addressed themselves to the question of prosecution, and then usually only superficially. Only a few pieces of literature were found that contained an adequate discussion of the process of private justice. There was a noticeable lack of empirical data regarding the policies and procedures advocated in much of the literature.

The major findings in this study of Arlington County's retail community is best expressed in terms of

hypotheses and indicators. Indications are that the majority of retail establishments in Arlington County adhere to a philosophy of security as enforcement. However, the practices and procedures employed in detection and disposing of dishonest incidents results primarily in dismissal of the employee as the predominant form of punishment. Although most respondents indicated a desire to prosecute known trust violators, the data revealed low rates of prosecution. This was explained by respondents as resulting from insufficient evidence for successful conviction.

The reliability of many responses to questions regarding the firms' policies on the disposing of dishonest employee incidents must be suspect. Although the respondents were interviewed as representatives of the various firms, it is probable that their personal views on the subject may have influenced some of their responses. However, this, of itself, is not undesirable since the personal beliefs of the respondents are factors in the disposition process.

The more important findings of the study in terms of research can be best expressed in hypotheses. From an analysis of the data, it is hypothesized that private justice in retail establishments is utilized primarily as a form of punishment and is used when more visible forms of punishment cannot be pursued. In other words, private justice in the security as enforcement context exists as a means of punishment, especially when the desired form of punishment--prosecution--cannot be achieved because of technicalities (i.e.,

evidentiary limitations, economic considerations, and self-image).

From the data obtained in this study, it is suggested that private justice be viewed from two standpoints: the first being private justice resulting from a security as protection philosophy in which private justice is inherent; and the second being private justice resulting from social consequences and used as a form of punishment.

Various other hypotheses are suggested by the data of this study. They relate to (a) employee morale, (b) the effect of the polygraph on turnover rates, (c) the detection and apprehension techniques utilized by security agents, (d) the discretionary disposition of cases, (e) the recidivism of offenders, (f) the consistent application of disposition procedures, (g) the competency of the security agent, (h) the issue of the firm's public image, and (i) the classification of firms according to their philosophical view of the security function.

The conclusion reached by this researcher is that private justice is classifiable; that by classifying a firm's use of private justice in conjunction with the firm's view of punishment, one can identify a firm as subscribing to (a) no philosophy of security, (b) a security as protection philosophy, or (c) a security as enforcement philosophy. If no philosophy can be identified, a firm's disposition procedure may be considered "inconsistent" or "discretionary."

In a sociological context, what this researcher has

hypothesized is that retail firms can be classified according to their philosophy of the security function. He suggests that the criteria of (a) the firm's disposition process and (b) the firm's view of punishment are the primary variables upon which this classification is based. For fear of oversimplification, one must visualize the philosophical views of security on a continuum. Security as enforcement lies at one end of this continuum while security as protection lies at the other end. From the data gathered by this researcher, it is further hypothesized that most retail firms tend to fall on the security as enforcement side of the continuum. It is proposed that those firms which are classified as falling toward the middle of the continuum would have an inconsistent (discretionary) type of philosophy toward security. In light of the other hypotheses suggested herein, it is further hypothesized that the firms falling near the center of the continuum (as classified by selected variables, i.e., disposition process, view on punishment, etc.) tend to have lower morale, a larger turnover of personnel, and higher internal losses than those falling near the ends of the continuum.

This researcher strongly recommends additional research and testing of the proposed hypotheses in this study. The retail security field needs empirical data to justify its philosophical principles. The economic factor of these principles can only be determined after the empirical data has been analyzed. This researcher is of the opinion that the principles justified by empirical data

will also be economically desirable. However, cost-analysis studies of a firm's security procedures are very much in order and could also be utilized to justify security principles and procedures.

A number of recommendations were discussed in this study which would make private justice less "private" and more "public." The criminal justice system should be revamped to allow for easy access by the business community, but the business community also must realize that it has a social and moral obligation to both its employees and to society as a whole. Diversion of trust violators from the criminal justice system was suggested as another alternative to prosecution. If employers prefer to function outside the public judicial system in relation to dishonest employees, then they should be made entirely responsible for their employees' actions.

Additional research is strongly urged by this author as the best method of attacking the problems and issues that are discussed within. It will also give empirical foundation to security principles and procedures.

BIBLIOGRAPHY

BIBLIOGRAPHY

- Arlington Chamber of Commerce. Arlington Blue Book.
Arlington, Virginia: Cooper-Trent, 1973.
- Aubert, Vilhelm (ed.). Sociology of Law. Baltimore: Penguin Books Inc., 1972.
- Cameron, Mary Owen. The Booster and the Snitch. New York: Free Press of Glencoe, 1964.
- Camin, Louis J. "Some Projections for Business Security," Security World, V, February, 1968.
- Curtis, Sargent J. Modern Retail Security. Springfield, Illinois: Charles C. Thomas, 1960.
- _____. Security Control: External Theft. New York: Chain Store Age Books, 1971.
- _____. Security Control: Internal Theft. New York: Chain Store Age Books, 1973.
- Dornbaum, Charles. "Combatting Pilferage in Your Store," Security Management, VIII, August, 1972.
- Edelhertz, Herbert. The Nature, Impact and Prosecution of White-Collar Crime. Washington: Government Printing Office, 1970.
- Geis, Gilbert (ed.). White-Collar Criminal. New York: Atherton Press, 1968.
- Griffin, Roger K. "Shoplifting," Security World, X, September, 1973.
- _____. "Shoplifting in Supermarkets," Police Chief, XXI. July, 1964.
- Healy, Richard J., and Walsh, Timothy J. Industrial Security Management. U.S.A.: American Management Association, Inc., 1971.
- Hemphill, Charles F. Jr. Security for Business and Industry. Homewood, Illinois: Dow Jones-Irwin, Inc., 1971.

- Jaspen, Norman, with Black, Hillel. The Thief in the White Collar. Philadelphia: J.B. Lippincott Company, 1960.
- Kakalik, James S., and Wildhorn, Sorrel. Private Police in the United States: Findings and Recommendations. Santa Monica, California: The Rand Corporation, 1971.
- Knight, Paul Emerson, and Richardson, Alan M. The Scope and Limitation of Industrial Security. Springfield, Illinois: Charles C. Thomas, 1963.
- Mersky, Robert L. "The Dishonest Employee...A Behavioral Problem," Security Management, XVII, July, 1973.
- Miller, Delbert. Handbook of Research Design and Social Measurement. New York: David McKay Company, Inc., 1970.
- Post, Richard S., and Kingsbury, Arthur A. Security Administration: An Introduction. Springfield, Illinois: Charles C. Thomas, 1970.
- Robin, Gerald D. "Employees as Offenders: A Sociological Analysis of Occupational Crime." Unpublished Doctor's Dissertation, University of Pennsylvania, 1965.
- Smigel, Erwin O., and Ross, Lawrence H. (eds.). Crimes Against Bureaucracy. New York: Van Nostrand Reinhold, 1970.
- "Sources of Inventory Loss in Your Organization to Identify, Correct, and Control," Security Letter, II, December 11, 1972.
- Steen, David. "Loss Prevention in Retail Stores," Security World, X, December, 1973.
- Stessin, Lawrence. Employee Discipline. Washington: BNA Inc., 1960.
- Strauss, George, and Sayle, Leonard R. Personnel: The Human Problems of Management, Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1972.
- Sutherland, Edwin H. White Collar Crime. New York: The Dryden Press, 1949.
- The Thief You Pay. Los Angeles: Security World Publishing Company, 1969.
- U.S. Chamber of Commerce. White Collar Crime: Everyone's Problem, Everyone's Loss. Unpublished to date. Washington, D.C.: National Chamber of Commerce, 1974.

- U.S. Congress. Senate Select Committee on Small Business. Crime Against Small Business. Document 91-14, 91st Cong., 1st Sess., April 3, 1969. Washington: Government Printing Office, 1969.
- U.S. Department of Commerce. The Economic Impact of Crimes Against Business. Washington: Government Printing Office, 1972
- U.S. Department of Justice. Seminar on Urban Design, Security and Crime. Proceedings of a National Institute on Law Enforcement and Criminal Justice, April 12 and 13, 1972. Washington: Government Printing Office, 1973.
- Virginia. Police, Crimes and Offenses and Motor Vehicle Laws of Virginia. 2 vols. Charlottesville, Virginia: The Michie Company, 1970.

APPENDICES

APPENDIX A.

Interview Schedule

DATE _____

NUMBER OF EMPLOYEES _____ Full-time _____ Part-time

PRE-EMPLOYMENT SCREEN PROCESS: _____ Application evaluation

_____ Interview _____ Credit/criminal check

_____ Background investigation _____ Polygraph

_____ Other (specify) _____

1. DOES YOUR FIRM MAINTAIN A SECURITY FORCE? _____ Yes _____ No

If yes, how many persons are employed is such capacity?

_____ Full-time _____ Part-time

If not, who is in charge of such matters? _____

2. WHAT TYPE OF CRIME RELATED ACTIVITY IS ENCOUNTERED MOST OFTEN REGARDING YOUR EMPLOYEES?

(a) _____ (b) _____ (c) _____

3. HAS YOUR FIRM EVER TAKEN DISCIPLINARY ACTION IN LIEU OF CRIMINAL PROSECUTION AGAINST AN EMPLOYEE UPON DISCOVERY OF WHAT WOULD BE CONSIDERED CRIMINAL BEHAVIOR UNDER THE LAW? _____ Yes _____ No

4. IS THE DECISION TO PROSECUTE AN EMPLOYEE MADE AT THE TIME OF APPREHENSION OR AFTER EXTENSIVE INTERVIEWING AND DELIBERATION? _____

5. WHAT FACTORS ARE CONSIDERED IN THE DECISION TO PROSECUTE OR RELEASE IF PROSECUTION IS NOT A PRE-DRAWN CONCLUSION AT THE TIME OF APPREHENSION? _____

6. REGARDING A MAJOR OFFENSE SUCH AS THEFT OR EMBEZZLEMENT AGAINST YOUR FIRM, WHAT TYPE OF ACTION DOES YOUR FIRM TAKE AGAINST THE EMPLOYEE? _____

7. IF YOUR FIRM DOES NOT PROSECUTE THE EMPLOYEE, WHAT ACTIONS, IF ANY, ARE TAKEN AGAINST HIM? _____

8. BRIEFLY DESCRIBE YOUR PROCESSING PROCEDURE ONCE AN EMPLOYEE HAS BEEN APPREHENDED. PLEASE DESCRIBE THE VARIOUS FORMS THAT MUST BE COMPLETED FOR YOUR FILES.

9. WHEN A PERSON JOINS YOUR FIRM, WHAT CONDITIONS OF EMPLOYMENT ARE AGREED TO BY THE APPLICANT WITH REFERENCE TO THE SECURITY PROCEDURES OF THE FIRM? _____

10. HOW DO YOU PERCEIVE THE ROLE OF YOUR SECURITY RESPONSIBILITIES? IS IT SECURITY AS PROTECTION OR SECURITY AS LAW ENFORCEMENT? _____

11. IF IT WERE POSSIBLE TO SUCCESSFULLY PROSECUTE THE MAJORITY OF YOUR DISHONEST EMPLOYEES, WOULD YOU DO SO? IF NOT, WHY NOT? _____

12. DO YOU BELIEVE THAT THOSE EMPLOYEES DETECTED AND APPREHENDED BY YOUR FIRM RECEIVE THEIR JUST REWARDS IN TERMS OF PUNISHMENT? _____ PLEASE COMMENT.

13. DOES YOUR FIRM EXCHANGE INFORMATION (OFFICIALLY OR UNOFFICIALLY) REGARDING DISHONEST EMPLOYEES WITH ANY OTHER FIRMS IN THE COUNTY? _____ IF SO, UNDER WHAT CONDITIONS? _____
- _____
- _____

14. ARE YOU AWARE OF AND FAMILIAR WITH SECTION 18.1-127 OF THE VIRGINIA STATE CRIMINAL CODE? IT REFERS TO EXEMPTIONS FROM CIVIL LIABILITY IN CONNECTION WITH ARREST OF SUSPECTED PERSONS. _____
- _____
- _____

The following questions were asked as a matter of routine also but were not contained on the guide sheet submitted to the respondent.

15. DOES YOUR FIRM EMPLOY JUVENILES?
16. HAVE THEY BEEN A PROBLEM IN TERMS OF DISHONESTY?
17. ARE YOUR EMPLOYEES MEMBERS OF A UNION?
18. HOW MANY CASES OF DISHONESTY DID THE FIRM ENCOUNTER IN 1973?
19. IN HOW MANY OF THOSE CASES DID YOU SEEK PROSECUTION?

APPENDIX B.

Related Statutes from the Criminal Code of Virginia

18.1-126. CONCEALING OR TAKING POSSESSION OF MERCHANDISE; ALTERING PRICE TAGS; TRANSFERRING GOODS FROM ONE CONTAINER TO ANOTHER; COUNSELING, ETC., ANOTHER IN PERFORMANCE OF SUCH ACTS. whoever, without authority, with the intention of converting goods or merchandise to his own or another's use without having paid the full purchase price thereof, or of defrauding the owner thereof out of the value of the goods or merchandise, (i) willfully conceals or takes possession of the goods or merchandise of any store or other mercantile establishment, or (ii) alters the price tag or other price marking on such goods or merchandise, or transfers the goods from one container to another, or (iii) counsels, assists, aids or abets another in the performance of any of the above acts shall be deemed guilty of larceny and upon conviction thereof shall be punished as provided by 18.1-126.1. The willful concealment of goods or merchandise of any store or other mercantile establishment, while still on the premises thereof, shall be prima facie evidence of an intent to convert and defraud the owner thereof out of the value of the goods or merchandise.

18.1-126.1. PUNISHMENT FOR CONVICTION UNDER 18.1-126.

(a) Any person convicted for the first time of an offense under 18.1-126, when the value of the goods or merchandise involved in the offense is less than one hundred dollars, shall be guilty of a misdemeanor and shall be punished by a fine of not less than the value of the good or merchandise involved nor more than one thousand dollars, or by confinement in jail not less than five days nor more than twelve months, or both, in the discretion of the jury or of the court trying the case without a jury.

(b) Any person convicted of an offense under 18.1-126, when the value of the goods or merchandise involved in the offense is less than one hundred dollars, and it is alleged in the warrant or information on which he is convicted and admitted, or found by the jury or judge before whom he is tried, that he has been before convicted in the Commonwealth of Virginia for the like offense, regardless of the value of the value of the goods or merchandise involved in the prior

conviction, shall be confined in jail not less than thirty days nor more than one year; and for a third, or any subsequent offense, he shall be confined in the penitentiary not less than one nor more than two years.

(c) Any person convicted of an offense under 18.1-126, when the value of the goods or merchandise involved in the offense is one hundred dollars or more, shall be guilty of a felony and shall be punished by confinement in the penitentiary not less than one nor more than twenty years, or, in the discretion of the jury or the court trying the case without a jury, by confinement in jail not less than thirty days nor more than twelve months and by a fine of not less than the value of the goods or merchandise involved but not more than one thousand dollars.

18.1-127. EXEMPTION FROM CIVIL LIABILITY IN CONNECTION WITH ARREST OF SUSPECTED PERSON. A merchant, agent or employee of the merchant, who causes the arrest of any person pursuant to the provisions of 18.1-126, shall not be held civilly liable for unlawful detention, slander, malicious prosecution, false imprisonment, false arrest, or assault and battery of the person so arrested, whether such arrest takes place on the premises of the merchant, or after close pursuit from such premises by such merchant, his agent or employee, provided that, in causing the arrest of such person, the merchant, agent, or employee of the merchant, had at the time of such arrest probable cause to believe that the person committed wilful concealment of goods or merchandise.

18.1-128. "AGENTS OF THE MERCHANT" DEFINED. As used in this article "agents of the merchant" shall include attendants at any parking lot owned or leased by the merchant, or generally used by customers of the merchant through any contract or agreement between the owner of the parking lot and the merchant.

18.1-303. CONCEALING OR COMPOUNDING OFFENSES. If any person knowing of the commission of an offense take any money or reward, or an engagement therefor, upon an agreement or understanding, expressed or implied, to compound or conceal such offense, or not to prosecute therefor, or not to give evidence thereof, he shall, if such offense be a felony, be confined in jail not more than one year and fined not exceeding five hundred dollars; and if such offense be not a felony, unless it be punishable merely by forfeiture to him, he shall be confined in jail not exceeding six months and fined not exceeding one hundred dollars.

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