Memorandum

TO: All Tryout Participants

From: Steve Emens & Robert Prince

Date: August 2017

Thank you for participating in the 2017 Trial Advocacy Tryouts. By participating in this tryout you will take an important step in the journey from classroom to courtroom and learn much about your future profession. As coaches we wish everyone good luck.

The tryout consists of a closing argument and additional questions that may be asked by the judges. Your closing is limited to 10 minutes.

Enclosed is the 2017 Tryout case. This case is an actual problem used in one of our past competitions. Some material that does not apply to this tryout has been omitted, that is why it starts on page 18. You will not be graded on rules of evidence issues. You may assume that all witnesses testified at trial consistent with their prior statements. All exhibits were admitted and may be used by either party during closing. You may bring and use enlargements of any exhibit or Jury Question or Jury Charge. An easel and dry erase board will be available in the tryout room.

You may choose to represent the plaintiff or the defendant. You will be allowed 10 minutes to present your closing argument.

The time and room for your tryout will be posted on the law school web site on Aug. 7. You cannot swap times without prior approval of Steve Emens. Please remain outside the tryout room until you are requested to enter. The dress is appropriate courtroom attire.
Here is a list of the ten most common problems we have noticed in past tryouts. If you avoid these you will be on your way to a successful tryout. Good luck to all

**The Ten Most Common Problems** (not in order of importance)

1. Not using simple and understandable language.

2. Talking too fast.

3. Talking in a monotone.

4. Reading from notes.

5. Disorganized and rambling.

6. Failing to identify the most persuasive facts.

7. Failing to identify why your client should win.

8. Failing to personalize your client (hint don’t call them “my client” use their name.)

9. **Not telling a persuasive story.**

10. Failing to maintain eye contact with the jury.

Finally – Ask yourself “would a non-lawyer friend of mine understand my closing”? Then call one and try it out on them and find out. Yes it is OK to get your closing critiqued and get advice before your tryout.

**NOTE:** you are not allowed to use a podium for the closing. - Remember this is an argument to a “jury” not a group of appellate judges.
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INTRODUCTION AND SUMMARY OF THE PLEADINGS

In this premises liability case, Plaintiff, the Estate of R. Parsons \(^1\) has sued the Defendant, Everyday Inn, Inc. for Parsons’ wrongful death.

Plaintiff’s complaint alleges that on March 1, 2006, Parsons was a business invitee of Defendant’s hotel, the Palm County International Airport Everyday Inn located at 5\(^{th}\) Street and Airport Road in New Palm City, State of Justice. The complaint asserts that Parsons was shot to death during the course of a robbery that occurred in the parking lot of the hotel. Finally, according to the complaint allegations, Defendant had the duty to ensure that its hotel was physically secure for the intended use of its guests; that Defendant breached that duty, and that Defendant’s breach of its duty proximately caused the death of the Parsons. Statutorily permitted wrongful death damages are alleged but the trial of this matter has been bifurcated with the initial trial limited to liability.

Defendant answered admitting that Plaintiff’s decedent was a business invitee of the Defendant and that it had a duty to reasonably ensure that its hotel was physically secure for the intended use of its guests. Defendant’s answer, however, specifically denies that Defendant breached any duty and says that even if there was a breach of duty, that breach, if it existed, was not a proximate cause of Plaintiff’s decedent’s death. All allegations of damages are denied but, again, the bifurcated case is being tried to a jury on the issue of liability alone.

\(^1\) All characters in the file are gender neutral
The parties have stipulated that:

- The Palm County Sheriff’s Department Incident Report, which is part of this file, is authentic and admissible, including the illustrative diagram that depicts the relevant ground level aspects of the Palm County International Airport Everyday Inn;
- The diagram referenced above is not to scale;
- The facts contained in this case file represent all the information available to the witnesses and persons referenced in the file;
- The only witnesses available to testify live at the trial are:
  - M. (Michelle or Michael) Parsons
  - E. (Elizabeth or Edward) Donovan
  - C.W. (Carol or Carl) Howard (Plaintiff’s expert)
  - R.L. (Robert or Roberta) Morgan (Defendant’s expert);
- Either party may read into the record portions of the deposition of Greta Wilson and G.B. Masterson. Time spent reading portions any deposition to the jury will count against the time of the party doing the reading. If a party invokes FRE 106 to require the reading of additional portions of a deposition, time spent reading those portions will count against the party who invoked the rule;
- Wilson and Masterson are unavailable for the purposes of the FRCP and FRE;
- The depositions of Wilson and Masterson are authentic; and
- The depositions of Wilson and Masterson are admissible.
INFORMATION

INCIDENT DATE: March 1, 2006

LOCATION: Palm County Airport Everyday Inn
5th Street & Airport Road
New Palm City, Justice

TIME: 10:31 P.M

REPORTED BY: E. Donavan, Manager
Palm County Airport Everyday Inn
(555)-555-5555

CRIME: Homicide/Robbery

VICTIM: R. Parsons
8 Artisan Way
Newport, Justice
DOB: March 8, 1948
NEXT OF KIN: M. Parsons (Spouse)

NARRATIVE

911 call received at 10:31 p.m. from E. Donovan, night manager of the Palm County Airport Everyday Inn located at 5th & Airport Road in New Palm City. Donovan stated got call from Morrison Hotel employee (adjacent to subject property) that there was a robbery in progress in the north east corner of the Inn’s ground level parking lot. Uniformed officers dispatched. Officers found body of R. Parsons on the pavement in the Inn’s parking lot. Victim appeared dead with likely cause single gunshot wound to back of head. Nature of shooting (execution style) caused undersigned chief of the organized crime bureau of the Palm County Sheriff’s department to get assignment to investigate arriving at 10:56 p.m.

Victim had been removed by EMT personnel, transported to Palm Memorial Hospital and pronounced dead on arrival. Cause of death was confirmed as single shot to
back of victim’s head. Undersigned spoke with Donavan and G. B. Masterson, Chief of Security for the hotel facility. Masterson is known to undersigned as a former detective with the Palm County Sheriff’s Department. Noted the crime scene and ordered that a detailed diagram of area be prepared which is attached. Obtained surveillance video from Masterson. Determined that camera that could have captured the crime but had been moved on its mounting so area of murder not in view.

Crime scene investigation revealed that two security street lights at northern most portion of the parking lot were not functioning. Also determined that chain link fence on the north perimeter of the Inn was in disrepair with several holes large enough for an adult person to enter and exit, and that barbed wire along top of six foot chain link fence was largely missing.

Victim’s automobile found next to where victim was shot with driver’s door open and interior light on because of the open door. Smith & Wesson 38 pistol found in the glove box in console between front seats. (Victim had carry license for the gun based on frequent possession of large amounts of cash/valuable related to victim’s business.)

At morgue, viewed body of the victim, identified by E. Donavan as R. Parsons of Newport, Justice. Parson was hotel guest and had checked in approx. 30 minutes before robbery was reported. Victim’s name known by undersigned as person identified as a potential victim and/or co-conspirator in racketeering activity (interstate transport of stolen art objects) belonging to reputed crime boss, Roger Willerman. As of date of incident victim had not yet been contacted by investigators in that investigation, nor had victim been interviewed by the grand jury investigating Willerman.
Body and clothing of victim revealed apparent signs of struggle, (torn clothing, scrapes on hands and arms), in addition to fatal gunshot. Victim’s wallet missing. Four rings were still on fingers, Rolex watch still on wrist and $400.00 in cash found in victim’s pockets. Check of police records revealed that victim had no criminal record, wants or warrants.

**Interviews**

1. E. Donavan – Everyday Inn manager. Knew victim as frequent guest, was in the fine arts business. Travelled abroad often using hotel as base for flights in and out of Palm County International, and for vehicle parking. Victim normally arrived evening before flight, parked car in hotel lot and used hotel van to and from airport. Victim described a friendly, outgoing. Avid swimmer – habitually requested rooms in north wing of hotel closest to pool. Known to park near pool. (See signed statement)

2. B. D. Norman – Night manager, Morrison Hotel. Reports guest in room 345 which overlooked crime scene called Morrison front desk at approx. 10:15 p.m to report apparent robbery in progress in northeast corner Everyday Inn. Guest reported that he yelled at assailant to stop and then left window to call manager. When guest returned to window, victim on ground and apparent assailant gone.

3. M. Parsons – Spouse of victim interviewed on March 3, 2006 at home in Newport. Still distraught. Jewelry and cash found on victim returned. Witness informs that victim had a black briefcase with him used to carry cash for purchase of art objects as well as small art jewelry items. Contents of briefcase on date of incident unknown to spouse. Briefcase determined to be missing. Check of bank
accounts pursuant to search warrant from on-going Willerman investigation revealed numerous large cash withdrawals and deposits to victim’s business account on a regular basis. $100,000 cash withdrawal from personal account noted on morning of March 1, 2006. $100,000 unaccounted for by spouse or otherwise. Spouse reports that after check-in with victim, spouse went to room to unpack and organize for next day travel to the Bahamas for an early birthday trip with victim. Victim went to park car and take briefcase to hotel safe and that was last spouse saw of victim alive. Spouse claims to know of no one who had animus towards victim sufficient to explain killing. Provides names of several business acquaintances (including Willerman) who spouse describes a jealous of victim’s business successes. Describes incident in late ‘05 where Willerman and victim engaged in loud argument in which she perceived as Willerman being threatening to victim. (See signed statement attached.)

4. J.W. (“Jamie) Parsons – child/business partner/accountant of victim. Confirmed that parent routinely made cash purchases and sales in parent’s fine arts business. Shows business account activity (of which we were already aware.) and books and records of business. No apparent irregularities. Denies that victim had any relationship with Willerman other than Willerman, a collector of fine art, had made numerous purchases from victim’s business.

5. Marty Hickerson – Resident of apartment located across from northern perimeter of hotel property. Reports seeing late model blue car arrive in apartment lot at approximately 9:45 p.m, and park. (see diagram for placement) Sees person exit from passenger side and proceed towards hotel fence and then go out of sight
before reaching fence. Witness leaves window to watch pre-season baseball game from Arizona. Witness sees nothing else until arrival of law enforcement and EMT personnel at crime scene when attention again called to window.

**FURTHER INVESTIGATION**

Followed leads on blue car, checked with street informants, checked with informants inside Willerman organization. Unable to confirm any connection with Willerman other than that identified by victim’s spouse and victim’s child, Jamie. No leads developed through tip line or otherwise. Case remains open but not active.

**CONCLUSION**

Homicide secondary to an armed robbery.

/s/ T. S. Burns (Captain)  
Chief, Organized Crime Unit Palm County Sheriff’s Department
STATEMENT OF M. PARSONS

I was married to R. Parsons who was murdered at the Everyday Inn in New Palm City on March 1, 2006. I am 34 years old and live at 8 Artisan Way in Newport, Justice. I am giving this statement on request of Captain Burns of the Palm County Sheriff’s Department who is investigating my R’s death.

R. and I had checked into the hotel. We had a trip planned to the Bahamas, leaving from the Palm County International Airport on March 2, 2006 at 8:00 a.m. I went to our room to unpack and at approximately 10:15 p.m. I got a call from the hotel manager, E. Donavan, saying that R. had been shot while in the hotel parking lot. I ran to R’s side, but then I saw the head wound and the blood. I blacked out right there. When I awoke I called my step-son, Jamie, told him what happened, and arranged for him to pick me up. The police wanted to keep our car for follow-up investigation. At any rate, I was in no condition to drive.

I know of no one who would want to kill my R. However, R’s success in the very competitive fine arts business made people like Roger Willerman, Mary Closterman, George Abrams and J.R. Carter jealous. Those are the ones that come to mind but I am sure there are many others. The only person I ever remember ever having an in-person argument with R. was Willerman. That was late last year around the holidays in 2005. I remember there was some shouting and Willerman was very threatening in the way he acted towards R., but I think they must have patched up any differences because he did buy artwork from R. after that.

I can confirm that R. had a wallet and briefcase when he was in the car. R. used briefcase in his business – sometimes to carry cash, sometimes to carry art items. R. also
owned a gun and was licensed to carry it because of R. often carried cash and valuable art jewelry. Please don’t return the gun to me. My step-son can take it if he wants it. Otherwise you can destroy it. I do not want to be reminded of all this.

I am too upset to talk any more. Can you leave me alone? I am willing to sign a statement at a later date.

/s/ M. Parsons

Witnessed:

/s/T.S. Burns –

Captain March 6, 2006
STATEMENT OF E. DONAVAN

My name is E. Donavan. I am the manager of the Palm County Airport Everyday Inn located at the intersection of 5th and Airport Road in New Palm City, Justice. I own a condominium in Westport, Justice on the Palm Causeway, but the Inn provides me a suite at the Hotel where I spend most nights. On the evening of March 1, 2006 our night manager was out sick and I was on the check-in/reception desk.

At approximately 10:00 p.m. one of our regular guests, R. Parsons, checked in. Parsons frequently flew in and out of Palm County International and used our hotel as a place to say the night before for early morning flights. Parsons would park in our lot and use our shuttle service to and from the airport. On that evening, R. Parsons was with his spouse, who from time to time accompanied him on business trips. Parsons told me that they were taking a flight to the Bahamas the next day.

R. Parsons also made use of our heated swimming pool in both the evenings and the early mornings. As such, Parsons always requested rooms in the north wing of the hotel which had an entrance right on to the pool. Both the pool gate and the door locked and were accessible with a guest key card. On check-in, I asked if Parson was going to use the pool that night (even though the pool was officially closed at 10:00p.m) so I could put on the lights in the pool area if he needed them. Parson’s response was that it was late and that after parking near the room, they were turning in.

At about 10:15 p.m., I got a call from the night manager at the next-door Morrison Hotel. He informed me that a guest had called the desk and reported an apparent armed robbery in our ground level parking lot. I immediately called 911 and G.B. Masterson our chief of security. I stayed at the desk. C.B. called in and said that someone had
apparently been shot to death in the parking lot. I asked the bellman to watch the desk and went to the lot. The person on the ground was R. Parsons. I used my cell phone to call Parsons’ spouse who rushed down to where Parsons was on the ground in the parking lot. After getting close and apparently seeing all the blood and the head wound, Parsons’ spouse passed out. We stayed with Parsons’ spouse until an EMT arrived. I later arranged for M. Parsons’ step son to come. M. Parsons gave me the number of the step son and I put the call through and spoke with him.

M. Parsons and I waited for the step-son (who was also a frequent guest of the hotel) in the hotel bar. He took M. Parsons home.

The killing was in the northeast corner of the parking lot where R. Parsons always parked.

/s/ E. Donavan

WITNESSED:

/s/ T. S. Burns,

Captain March 2, 2006
### KEY TO THE DIAGRAM

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>ENT</td>
<td>Entrance/Exit to Everyday Inn</td>
</tr>
<tr>
<td>TC</td>
<td>Traffic Circle</td>
</tr>
<tr>
<td>R</td>
<td>Reception Area</td>
</tr>
<tr>
<td>HCP</td>
<td>Handicap Parking</td>
</tr>
<tr>
<td>CP</td>
<td>Check-In Parking</td>
</tr>
<tr>
<td>A</td>
<td>Parking Garage Attendant/Security Station</td>
</tr>
<tr>
<td>BW</td>
<td>Four foot high brick walls</td>
</tr>
<tr>
<td>MW</td>
<td>Six foot high brick wall</td>
</tr>
<tr>
<td>CLF</td>
<td>Chain Link Fence</td>
</tr>
<tr>
<td>G</td>
<td>Card Key locked gates to Swimming Pool</td>
</tr>
<tr>
<td>K</td>
<td>Card Key locked doors to North Wing</td>
</tr>
<tr>
<td>NP</td>
<td>North Parking Lot – Ground Level</td>
</tr>
<tr>
<td>SP</td>
<td>South Parking Lot – Ground Level</td>
</tr>
<tr>
<td>E</td>
<td>Entrance to Parking Lot</td>
</tr>
<tr>
<td>EX</td>
<td>Exit from Parking Lot</td>
</tr>
<tr>
<td>L</td>
<td>Street Lights</td>
</tr>
<tr>
<td>W</td>
<td>Witness on Fourth Floor of Apartment Complex</td>
</tr>
<tr>
<td>PV</td>
<td>Parsons Car (facing towards pool)</td>
</tr>
<tr>
<td>P</td>
<td>Parsons Body Location</td>
</tr>
<tr>
<td>B</td>
<td>Blue/Black American Sedan</td>
</tr>
<tr>
<td>C</td>
<td>Security Cameras</td>
</tr>
</tbody>
</table>
My name is M. Parsons. I am 34 years old was married to R. Parsons. I have no biological children. R. and I had been married for 10 years at the time of the shooting. R’s 58th birthday was imminent and we were traveling to the Bahamas to celebrate when the shooting took place. R. had two children from a prior marriage, a son, Jamie, who is 34 years old and an accountant, and a daughter, Laurie, who is 32, married to a physician and lives in New York City with her husband and two young children. Jamie has taken over R’s business since his death.

I live in Newport, Justice, which is a suburban community. The closest city is Palm City which is about 50 miles away. I teach political science at the local community college. R. was in the fine arts business, buying and selling original paintings, etchings and statuary. R. also dealt in antique jewelry. R. frequently traveled by air on business, usually starting with a drive to New Palm City, a stay overnight at the Palm County Airport Everyday Inn on Airport Road, and then the Inn’s shuttle to and from the airport for an early morning flight. We had plenty of money but R. loved saving money by parking at the hotel instead of at the airport. R. also liked that hotel because it had a heated swimming pool. R. swam every day and was in great shape for 58 -- a lot of good it did.

As I said, on March 1, 2006 we were traveling to the Bahamas to celebrate R’s birthday. We got a late start after dinner and arrived at the hotel a little before 10:00 p.m. We checked in at the front desk. The person on the desk was named Donavan. R’s introduced Donavan as the hotel manager and kidded with Donavan about working so late. They exchanged some small talk and we were provided our key cards. Donavan told R that the room was the usual one on the second floor of the north wing of the hotel. R liked that area of the hotel because it was one flight down and out the door to enter the pool area. I remember Donavan asked R if swimming was in the offing. R said no, but that the room was still great as it was an easy in and out of the car from the parking lot.

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2 This role, as all others in the case file is gender neutral. If a female plays the role, the character is Michelle. If a male plays the role, the character’s name is Michael.
No, Donavan did not say anything about lights being out in the parking lot. I’m sure I would have remembered if that topic had been mentioned. R really liked the hotel but I would have been happier if R stayed in a better part of town. I never liked the area near that hotel. If it had not been R’s regular place because of the year-round pool, I would have stayed somewhere else, especially because there was no valet parking.

I went to the room to unpack and R was going to park the car and be right up after dropping some things off at the hotel’s safe. I was just hanging a few things up and getting organized for the next day’s flight when I got a call from Donavan. I don’t remember anything other than Donovan saying that R had been shot in the parking lot. I ran to the place where I knew R liked to park and saw R bleeding on the ground. It was very dark in the lot and I noticed that the light near where our car was parked was out. Someone came over and was introduced as something Masterson who was with security or something. Masterson said something about a crime scene and tried to keep me away from R, saying R was dead, and that there was nothing I could do. I couldn’t help myself, I tried to hold him R my arms, but when I saw that part of his head had been taken off by a gun shot, I guess I passed out. I am not good with blood.

When I came to, there was an ambulance attendant there. He told me that R had been taken to the hospital, but that there was no doubt R was dead. I didn’t know what to do so I went back in to the hotel, called my step-son Jamie, told him what happened and went to the hotel bar. Jamie got there in about an hour. He took me home as I was in shock. Donavan was kind enough to sit with me in the hotel bar until Jamie arrived.

The next day I was visited by an officer from the Palm County Sheriff’s office, Deputy Corson. He asked me a lot of questions about R’s business, about which I knew very little. He asked if I knew anyone who was angry with R for any reason and I told him no, but that there were many people in the fine arts community who were jealous of R’s success. I may have even mentioned the names of some of them, I can’t be sure; I was very upset as you could imagine. He then asked me if I was aware that R had a gun in the car and I told him that I knew about it and R had a license to carry the gun for protection since R’s work involved carrying extremely valuable art work, including easily transportable jewelry, and often his customers preferred to deal in cash so R would sometimes transport have large amounts of money in the briefcase R carried.
The officer returned to me R’s wedding ring and two other rings R always wore, as well R’s favorite Rolex watch and $400.00 in cash. He said that R’s wallet was missing. I asked about the brief case, and the officer also said it was missing. He told me that he was going to have to hold on to the gun for a while, and I told him that I had no use for it but that Jamie, R’s son, might want to get in back. The officer asked whether he could check the activity in R’s business accounts and I referred him to Jamie. I did some checking on my own and found out that R had withdrawn $100,000 in cash two days before the shooting from our personal account which was unusual. I do not know what happened to that money. Maybe it was in the briefcase that was stolen. As I said R often dealt in cash, and many items R purchased were valued in excess of $100,000.

The officer returned several weeks later and asked me to sign a statement that he said he had written up based on our interview the day after R’s murder. Because he was a police officer I signed it without reading it. Looking at the statement you are showing me, I do recognize my signature. That must be what I signed for the officer. Looking at it I see that it says that a man named Roger Willerman had threatened R. I know that Willerman had bought and sold some art work from R, and that they had argued about from time to time about those transactions, but I never knew him to threaten R, so I’m sure I said no such thing to the officer. As I said I didn’t read the statement. I trusted the officer. Apparently, that was a big mistake.

I did read about Willerman in the papers in late 2007 when he was on trial for some organized crime conspiracy charges. I understand that he was out on bail during the trial, and that he disappeared. I have no knowledge of Willerman other than what you have told me and what I read in the papers and heard on the news, but I am sure that R had nothing to do with anything illegal and I resent your suggestion otherwise. That is offensive.

I have read the foregoing and it is a true and accurate rendition of my testimony given at deposition on July 6, 2008 at the office of Defendant’s counsel.

/s/ M. Parsons

Subscribed and sworn before me this 120th day of July, 2008 /s/ David Sheriden, Certified Court Reporter
My name is G.B. Masterson. I am 48 years old, married and live with my spouse and two children at 115 Park Lane in Drexel Lakes, Justice. I am the Director of Security at the Palm County International Airport Everyday Inn, located at the intersection of 5th Street and Airport Rd in New Palm City, Justice. The diagram you have shown me is accurate as to the layout of the ground level of our facility as on March of 2006.

I have been the Security Director since 1999, and participated in the security aspects of the major renovation of that facility by Everyday Inns as well as directing security during the renovation project. Before that I had served three years in the U. S. Army following graduation from Palm County High School and, after an Honorable Discharge, worked for 20 years with the Palm County Sheriff’s Department, the last 15 of which as a Detective in the Major Crimes Bureau. I am a lifelong resident of Palm County.

As I said, when I was hired by Everyday Inns their facility at Palm County International Airport was undergoing a major renovation, which was, at that time in its second year. My job was essentially two-fold --- to participate in the design, construction and/or installation of security systems and to secure the renovation site. Although I was primarily responsible for the security aspects of the renovation, I did consult with a Regional Security Chief from Everyday Inns by the name of Greta Wilson who was very knowledgeable about hotel industry specific security concerns, which was very helpful to me. I believe she spent about a month on site, was available for telephone consultation and then returned when the renovation was near completed and signed off on the
renovation. Her only concern was about the condition of the temporary chain link fence that separated the facility from an apartment complex on our northern perimeter. The fence had been erected during construction, and was supposed to be replaced at the end of the project with a permanent brick wall. Ms. Wilson recommended repairs to the fence and the placement of security cameras until the wall was constructed and I believe we followed her advice. I do not recall whether she recommended additional lighting on that north perimeter, but if she did, we did not follow that advice as we felt that the lighting was more than adequate. Finally, she did recommend a formal Risk Assessment/Risk Analysis for the property. But given my experience with the area, we were well aware of the crime risk and knew that formal risk assessment was not necessary.

It is true that I approved the removal of the Valet Kiosk on the property. We decided that rather than to offer a valet service we would use a single entry parking facility monitored by video surveillance. That surveillance video is accessible in both the security office located on the first floor near the entrance to the hotel, adjacent to my office, and in the guard station that controls the sole entry to the parking facility on the ground level adjacent to the main entrance to the hotel. The parking facility has a ground level and two below ground levels, all of which are video monitored.

Security renovations, in addition to the video surveillance, included the use of a key card system for all entrances other than the main entrance, as well as to the pool area, improved lighting (as shown in the diagram you showed to me), the maintenance of a patrolling security guard, and most importantly the dual observation positions for our security cameras (in the guard station, as well as in the security office.)
Security personnel include myself, three senior security officers, patrolling security guards, as well as parking lot attendants who monitor the traffic and activity in and out of our parking facility. We run three shifts per day. On every shift there is a senior security officer (on a regular basis I will assume this role to assure myself that our security system is working efficiently), a patrol officer, and a parking lot guard/attendant. The senior security officers and patrol officers have received security training by me. The parking guard/attendants have more limited security training. It is not atypical for a parking guard/attendant to move into a patrol position when an opening occurs whereupon they receive more training by me.

The area around the airport can be fairly described as being more dangerous than most. That is particularly true in Palm City, where the airport is actually located. Palm City has a population of approximately 100,000 and includes commercial, warehouse and low cost residential areas. Our facility is located in New Palm City, which is predominantly commercial in nature, and as such is much less dangerous. I am proud to say that other than the Parsons tragedy, we had never had a crime against person on our facility from 1999 when I started with Everyday Inns until the present. We have had vandalism incidents over the years which average about two per month, all of which are relatively minor involving less than a few hundred dollars per incident.

One of the contributing factors to the vandalism we experienced was the situation that evolved concerning the chain link fence on our northern perimeter that bordered on a large apartment complex. When it came time to replace that temporary fence a property line dispute arose between Everyday and the apartment complex. The dispute lasted several years until it was settled in December of 2005, whereupon I made a request
through Ms. Donavan, the facility manager, that the brick wall that was originally contemplated actually be built. Given scheduling difficulties with our Everyday-designated construction company that project was not scheduled nor completed until April of 2006. No, I did not request the wall be built on any sort of “rush” basis. As I said our problems with the fence were minor.

The problems with the fence consisted mainly of kids using our property as a short-cut from the apartment complex to 5th Street. It seemed that we made monthly repairs to openings in the fence, and the original barbed wire on the top of the fence was missing or removed along most of its length (we did not replace that barbed wire --- that would have required essentially building a new fence). It was also not unusual to have damage done to the surveillance cameras placed on the north side of the north wing of the facility, or to have those cameras turned out of position on their movable mounts. There were several incidents where our security personal chased kids off of the property who were either using it as a short-cut or, during heat waves, sneaking in and using our pool facility. Although I cannot be positive, it makes sense that the vandalism incidents in our parking lot were also attributable to juvenile activity on the part of residents from the apartment complex. But none of this was out of the ordinary for the area or dangerous to the physical safety of our patrons in any way. As I said, the Parsons incident was the only personal injury assault we ever had on our property during my time at the facility. I am very proud of our record.

I was on duty on the evening of March 1, 2006. On that evening I was taking a regular shift as the senior security officer during the 3-11 shift. Unfortunately, there was some sort of bug going around the facility and our patrol officer and parking guard
scheduled for that shift both called in sick at the last minute. I was not able to get
replacements on such short notice so I was the sole security person on duty and I was
operating from the guard station from which I could monitor all of our security cameras.
It is true that one of our cameras on the north wall of the north wing was not operating ---
it was reported the day before and repair had been requested. In addition, several lights
were out in the northern most section of the ground level parking area (which were also
scheduled for repair), but given other lighting there was no cause for alarm. I do not
recall whether I informed E. Donavan about either the security camera or the lights ---
it would have been unusual for me to do so --- ordering repairs was my responsibility
and required no approvals.

I first became aware of the Parsons incident was when I received a call from
Donavan (who was on the front desk) saying a call had come in from a Morrison Hotel
(located adjacent to our property) employee that one of their patrons reported a robbery in
progress in the northern portion of our ground level parking lot. I left my post to find the
body of R. Parsons who was apparently dead from a single gunshot to the back of the
head. No, I did not hear any gunshots.

I immediately informed E. Donavan who called for sheriff and EMT back-up.
Donavan identified the gunshot victim as R. Parsons. The victim’s spouse appeared on
the scene but passed out upon viewing the victim.

We cooperated fully with the investigation of the Palm County Sheriff’s
Department which was conducted by the Organized Crime Bureau. Our video
surveillance tape did not capture the actual assault on Parsons. The camera that would
have recorded the incident was slightly turned on its movable mount from its normal and intended viewing angle and did not capture the incident.

According to some of my friends in the Sheriff’s Department, Parsons had some involvement with an organized crime boss named Roger Willerman, but I never learned the actual connection. As far as I know the killer was never found.

I am sorry that this murder occurred, but I am not sure we could have done anything to prevent it.

/s/ G.B. Masterson

Subscribed and sworn before me this 8th day of July, 2006. /s/ David Sheriden

Certified Court Reporter
DEPOSITION OF GRETA WILSON

My name is Greta Wilson. I am 67 years old and retired. I live at 4 Point Harbor Court in San Diego, California. I am the former Chief of Security for the Southeast Region of Everyday Inns, Inc., which included the state of Justice. I served in that position from 1995 through my retirement date of December 31, 2002. Before taking the job as the Chief of Security for the Southeast Region of Everyday Inns I was the Deputy Security Chief for the West Region of the company and had my office in San Diego, California. I was in that position for eight years. Before that I was Director of Security for the San Diego Airport Everyday Inn. I had taken that position after retiring after 22 years with the San Diego Police Department where I was a Detective working in major crimes, including burglary, rape and homicide. I joined the San Diego P.D. in 1961 after five years in the United States Navy. While in the Navy, in which I enlisted after high school, I had worked in base security where I got my interest in law enforcement.

I am familiar with the Palm County Airport Everyday Inn located at the intersection of 5th Street and Airport Road in New Palm City. That property was acquired by Everyday Inns in 2000, and I had some involvement in the security aspects of the renovation of the property before it opened for business under its current name in April of 2001.

When Everyday purchased the Palm County property in 2000 I participated in formulating a security plan for the property. In order to do so I spent about three weeks on site, reviewed the plan as it existed when the property was purchased, and made suggestions regarding security systems for the property. When the property was

4 This witness is unavailable for trial. The parties have stipulated that at trial either party may introduce portions or all of this deposition consistent with the other rules of the competition.
purchased it was much in need of overall renovation. With regard to security a new card key locking systems was needed to secure entrances (other than the main reception area) to guests only. In addition, a guard station was needed at the entry to the parking facility which consisted of a ground level and two below ground levels. The guard station prevented unauthorized access. The parking facility was updated with improved lighting and limited access through one entrance. A security camera system was needed to provide observation via camera of the entire facility. This was especially important because part of the renovation plans as they were completed did away with a valet kiosk and valet parking on the property. During renovation, a chain link fence was built around the facility. That fence was to be replaced with a permanent structure when the facility reopened for business.

Once the renovations were completed I suggested that the company perform a formal Risk Assessment/ Risk Analysis for the property. Included in that evaluation would have been a CRIMECAST Comprehensive Report to evaluate the risk to persons and property at the facility. In performing that analysis, the Cap index would have been computed by utilizing crime statistics from both New Palm City and the surrounding area that serviced the airport. This recommendation was rejected by the company. The reason I was given for not performing that assessment/analysis was that the facility had brought on G.B. Masterson, a recently retired detective from the Palm County Sheriff’s Department who was said to be very familiar with the area where the facility was located and its security needs. I disagreed with that decision. Masterson was new to the hotel security business and while detective experience is a good qualifier for being the Security

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5. The parties have stipulated that the CRIMECAST Comprehensive Report and the resulting Cap index is a reliable predictor of crime risk.

6. That area includes Palm City, New Palm City, Sharon Hill and Drexel Lakes.
Chief at a facility (that’s the path my career took) there is a lot to learn that is specialized to the hotel industry that only comes with experience.

I did inspect the property before it opened and the diagram you have shown to me from the police incident report and as far as I can recall it is accurate of how the facility appeared during that inspection. I specifically recall speaking with Masterson about the condition of the chain link fence on the north perimeter of the property which had not been replaced. He informed me that repairs would be made. I recommended further that surveillance cameras be placed along that perimeter until the fence was repaired, and that additional lighting be installed along that fence line. According to the diagram you showed me, that second recommendation was not acted upon favorably.

I am not familiar with any of the facts of this case except that I have been informed that a person was murdered on the property. I have no opinion as to whether there was any fault on the part of the security provided by the Everyday Inn facility.

/s/ Gretta Wilson

Subscribed and sworn before me this 10th day of July,

2008 /s/ David Sheriden Certified Court Reporter
DEPOSITION OF E. DONAVAN

My name is E. Donavan. I am 35 years old and live at 3 West Causeway Place in Westport, Justice. I work as the manager of the Palm County Airport Everyday Inn at the intersection of 5th and Airport Road in New Palm City, and I am provided a suite at that facility where I spend many of my evenings. I am a 1995 graduate of the University of Justice where I received a B.S. degree in Hospitality Science. Following graduation from college, I first worked as a staff member and then as assistant manager for Club Carib at their Punta Cana, Dominican Republic facility. I left Club Carib in 2000, and took a job with Everyday Inns as an assistant manager at the Palm County Airport facility, which had just re-opened. In 2002 I was named the manager of that facility which is my current position. As the manager, I am responsible for our day to day operation and I am the highest level manager working at the facility.

The Palm County Airport Everyday Inn predominantly services business clients using the Palm County International Airport. We have extensive meeting facilities on-site and many corporate clients fly their personnel into Palm County International, and hold meetings at our facility. We have full services including catering. We also have two on-site restaurants and a Sports Bar that attracts not only our guests but many people who work at the airport and other airport-support businesses in the area. In addition to eating and meeting facilities, we have a fitness center and a heated pool that is used year-round. The diagram you have shown me is accurate and fairly represents the ground level of our facility.

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7 This role, as all others in the case file is gender neutral and may be played by a man or a woman, as Elizabeth Donovan or Edward Donovan.
When I started at Everyday Inn it had just re-opened after a major renovation. There were some finishing touches left to be done, but the facility was ready to go. The only part of the renovation that remained unfinished as of 2006 was the replacement of a chain link fence along the northern perimeter (which bordered an apartment complex) with a brick wall. The chain link fence was temporary for construction; a brick wall was to replace it was scheduled to be built in early 2002.

When it came time to construct the brick wall, a dispute as to the property line between our facility and the adjacent apartment complex arose. There was a failed negotiation followed by litigation. The case settled at mediation in December of 2005. Construction of the brick wall was then scheduled for and actually completed in April of 2006. The lag time between December of 2005 and April of 2006 was normal as Everyday Inns uses specific, designated contractors in its various regions, and that means that there is some small lag time between scheduling and completion of projects.

Yes, it is possible to get projects like the brick wall done on a "rush" basis, but we do that only when the construction is needed on an emergency basis since emergency construction usually entails additional constructions costs of 10-15% due to the rush nature. No, there was no discussion at all as to whether the wall project should be expedited. I saw no reason to even discuss the matter.

During the period of the boundary dispute and until construction of the wall was actually completed, we maintained the chain link fence as best we could repairing it often. In addition, we installed security cameras on our building (as shown on the diagram) that sent picture to both our security office on the first floor of the facility and to the parking attendant station that controlled access to our parking lot. The chain link
fence and that property line was, however, a source of irritation. The apartment complex adjacent to our facility had a lot of teenage kids living there. From time to time we would have to chase them off the property which they used as a short cut to 5th Street, or to get access to our swimming pool after hours. The fence had to be repaired many times to close gaps and holes. I would say that there was a fence repair at least once a month. In addition, the security cameras were frequent targets of kids who seemed to get a kick out of damaging them. Mostly the fence and the neighborhood kids were just an annoyance.

Except for the tragedy with Mr. Parsons, we had never had a robbery or crime of violence on our facility. There were some vandalism incidents, including the damage to the cameras and to some of the cars parked in the lot, but they were relatively infrequent (less than three incidents per month) and minor in nature (never more than $1,000 for an incident with most under $250). And that was even though the area surrounding the airport in which we were located has had its share of more serious property crimes, as well as personal assaults and robberies. The fact that we had been so fortunate until the Parsons tragedy is because of the excellent job G. B. Masterson and his great team do to ensure facility security.

Masterson was the Chief of Security at the facility when we opened in 2000. As I understand it, G. B. was hired during the renovation to work on security design. Before that, I think G. B. was a detective with the Palm County Sheriff’s Department. Masterson’s office is on the first floor, down the hall from mine. In addition to Masterson, we have an officer 24 hour a day at the guard station at the one parking lot entrance (which is equipped with monitors for all of our security cameras), another 24
hour a day security officer in the security office next to Masterson’s office (which has another set of monitors), and a third 24 hour a day security officer who patrols the facility. G. B. is the best person to talk about the security system. I do know that we were under-staffed on March first when R. Parsons was shot. There was a flu-bug going around and our lot attendant and patrolling guard both called in sick at the last minute, as did our night desk clerk. As a result I was handling check-in with one bellman, and G. B. was working security from the parking lot attendant/security guard station.

Parsons was a regular guest. R. frequently checked in the evening, checked out in the morning, left a car in our lot and used our free shuttle service to and from the airport. Parsons was in the fine arts business and I know frequently traveled with a significant amount of cash. Parson often would have us keep a briefcase in our safe overnight. Parson’s trips usually lasted one to three days.

Parsons was an avid swimmer, normally swimming laps after an evening check in and before check out in the morning. The pool is directly adjacent to the north wing of the facility. For that reason Parsons preferred a room in the north wing. Another preference was an inside room (which overlooked a courtyard as opposed to the apartment complex), on the second floor. I know that after checking in, Parsons would normally self park (we do not offer valet parking) on the ground level of the parking lot (there are two below ground levels as well) as close to the pool as possible, use the room key card to cut through the pool area, and then go up the stairs to the room I described in the north wing. Because R was a good customer, we would frequently accommodate R’s swimming by turning on the pool lights so R could swim laps after pool closing hours (10:00 p.m.).
On the evening of March 1, 2006, as I said, I was working the check-in desk when Parsons checked in with his spouse at about 10:00 p.m. They travel together on business from time to time, but I recall that they said that they were on their way to a vacation to celebrate R’s birthday. I think they it was a 58th birthday or something like that. During check-in we made some small talk and I asked R about swimming that evening so I could turn the pool. R said that no swimming was planned so I didn’t turn on the lights in the pool area. I do remember telling R. what G. B. had told me several days before --- that the northern most lights in the lot were out so to be careful not to trip. R. made some joke about not being so old that walking and chewing gum was a problem and left to park.

I sent the bellman up to the room with M. Parsons and their luggage while R was parking. The next thing I remember is getting a phone call from B. D. Norman, the night clerk at the Morrison Hotel which is next door to our facility, saying that one of their guests reported an apparent robbery in progress in the northern part of our ground level parking lot. I immediately informed G. B. who, as I said, was in the parking guard station, and then I called 911.

Within a few minutes G. B. called in that someone was apparently dead from a gunshot wound to the head in our lot. I again called 911 and requested emergency medical services. From G. B.’s description I believed that it was R. Parsons who had been shot and, sadly, that turned out to be correct. It was me who identified him in the lot. I then called M. Parsons with the horrible news. She came downstairs and ran to R’s side, but seemed to black out on seeing the severity of the gunshot wound,. After reviving M, we confirmed to her that R was dead and called R’s child, Jamie at M’s
request. M. was really upset and we found a quiet place in the empty bar to sit until Jamie arrived.

I was later interviewed by a Captain Burns of the Palm County Sheriff’s Department, answered all the questions I was asked and gave a signed statement.

/s/ E. Donavan

Subscribed and sworn before me this 14th day of June,

2008. /s/ David Sheriden

Certified Court Reporter
SAFETY CONSULTANTS, INC
12 INTERNATIONAL BLVD
PALM CITY, JUSTICE

October 1, 2008

Ms. Meredith Kramer
Feinberg & Kramer
1 Liberty Place
New Palm City, Justice

Re: Estate of Parsons v. Everyday Inn, Inc.

Dear Ms. Kramer:

You have requested that I review the facts and circumstances of the death of R. Parsons that occurred on the premises of the Palm County Airport Everyday Inn in New Palm City, Justice on March 1, 2006 to determine, as a professional security expert, whether the design and operation of the parking lot at the Defendant’s facility was safe and provided adequate security for patrons of that lot, and if not, whether that failure was cause of the death of R. Parsons. In addition, you have requested that I review the facts and circumstances of the death of R. Parsons to determine the manner in which he died.

In making this analysis I relied on:

1. Two on-site visits to the facility;
2. The Depositions of M. Parsons, Greta Wilson, E. Donavan and G. B. Masterson;
3. The Investigative Report of the Palm County Sheriff’s Department regarding the death of R. Parsons; and
4. The diagram attached to the above Investigative Report.

Facts of the Incident

At approximately 10:00 p.m. on March 1, 2006, the deceased, R. Parsons and his spouse, M. Parsons, had checked in to the Defendant’s Palm County Airport Everyday Inn (hereinafter the facility) located at the intersection of 5th Street and Airport Road in New Palm City, Justice. They were checked in by the manager of that facility, E. Donavan. M. Parsons proceeded to their room and R. Parsons went to move their car from a Check-In parking spot to the ground level of the facility’s parking lot near their room.

Parsons parked the car in the northern most parking space in the northeast corner of the lot, adjacent to the gated pool area of the facility. It was Parson’s intention and habit when staying at the facility, to use the room key card to proceed through the gate of
the pool area and, again using the room key card, enter the door of the north wing of
the facility where their room was located.

Shortly thereafter E. Donavan received a report from the night manager of the
Morrison Hotel (located just to the west of the Everyday Inn) that a guest at the Morrison
Hotel reported that there was a robbery in progress in the northeast portion of the ground
level of the facility parking lot. Donavan immediately notified the Palm County Sheriff’s
Department and G. B. Masterson, the Chief of Security for the facility who, at the time,
was in the Garage Attendant/Security Station located just outside the parking lot where
the robbery was reported to be occurring.

Masterson found R. Parsons in the far northeast corner of the parking lot, lying
face down on the pavement. Parsons appeared to be dead of an apparent gunshot
wound to the head. R. Parson was later pronounced dead at Palm Memorial Hospital at
10:45 without ever regaining consciousness.

Parsons’ assailant had apparently fled the scene. It was reported by an eyewitness
that an unknown person had exited from a blue/black American sedan parked in the
apartment complex adjacent to the facility parking lot, and next to the chain link fence
(which was in a state of disrepair), and walked towards the facility parking lot at
approximately 9:30 p.m.

An autopsy report determined that the cause of death was a single shot to the
back of the head of fired at close range. Despite the fact that the Guard/Security Station
was less than 100 feet from where Parsons was shot, and despite the fact that there was
evidence of a struggle between Parsons and the assailant, Masterson did not see the
assault, hear the struggle or even hear the gun shot.

**The Facility**

The facility is located in close proximity to the Palm County International Airport
which is located in Palm City, Justice. It is part of a four community in Palm County that
depends on the airport and its customers for its economic vitality. The four communities
are Palm City (population 500,000), New Palm City (population 100,000), Sharon Hill
(population 55,000) and Drexel Lakes (population 45,000). The airport, itself, is located
in Palm City, with the other communities surrounding Palm City.

Everyday Inn had taken over this facility from the Hilton Corporation in 2000
and after approximately one year of renovation reopened under its current name. The
diagram of the facility attached to the police report shows its salient features. The
markings on the diagram, together with the attached key, are accurate for both the time
of the incident and the time of my two site visits.

The renovations included upgrading of the rooms, modernizing of the entrance
and common areas, re-paving of the driveway and parking areas, repair and rebuilding
of some, but not all external walls; removal of a valet service kiosk from the entryway,
installing new lights, installing a video security system, and building a guard/security station/lot attendant station at the entrance to the parking facility which included a ground level lot and two below ground levels.

**Standard of Care**

The owner and operator of a hotel facility must ensure that its facility is physically secure for the intended use of its guests. The term “physically secure” requires making it as difficult as possible for persons to gain entry and remain unobserved and unchallenged on a facility, thereby making the determination of their legitimacy and purpose for being on the facility property.

**Factual Findings**

1. Although there was consultation with the Chief of Security for the Southeast Region of Everyday Inns, Inc., (Greta Wilson) there was no formal Risk Assessment/Risk Analysis performed on the property as suggested by her, the Defendant choosing instead to rely on the safety assessment of its security chief for the facility, G. B. Masterson, a former police detective who had no special expertise in security for hotel facilities;

2. The Defendant did not obtain a standard CRIMECAST Comprehensive Report to evaluate the risk of personal and property crimes at the location of the facility, which when performed revealed a Cap index\(^8\) that averaged 8.6 or a crime risk score 8.6 times the national average;

3. When operated by the Hilton Corporation, valet parking services were available for a fee for facility guests. This service was discontinued when the facility re-opened under the management of Defendant;

4. The lighting at the facility entrance is adequate to good. The lighting in the ground level parking area is barely adequate, the Defendant refusing to accept the advice of its then regional security chief, Ms. Wilson, to install an additional four street lights over and above the nine existing street lights. Moreover, on the night in question, the two northern most street lights were not functioning;

5. The video monitoring system relies on cameras movable mounts that allows the direction in which the camera is pointed to be changed. The video monitoring system is adequate, assuming proper placement of the cameras, however, on the night in question the camera which was designed to provide coverage of the area where R. Parsons was assaulted was pointed so that the area of attack was not within the camera’s view;

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\(^8\) The parties agree that the CRIMECAST Comprehensive Report and the resulting CAP index is a reliable predictor of crime risk. The parties agree that the Cap index is 16 for Palm City, 4 for New Palm City, and 2 for both Sharon Hill and Drexel Lakes.
6. The facility’s airport shuttle vans were routinely parked in a place that effectively blocked the direct view of the northeast section of the parking lot from view from the guard station;

7. The guard/security/attendant station manned by an employees (most of whom had no security training) who was required to not only make observations of the video monitors, conduct direct observation of the entrance area of the facility, but also ensure the operation of the automatic gate/ticketing system to the parking lot and to collect parking lot fees from exiting cars;

8. During renovation, a six foot construction chain link fence was installed all around the facility. That fence was replaced by four foot brick walls along the south and east perimeter of the facility. The west perimeter chain link fence was replaced by a six foot brick wall constructed by the Morrison Hotel which borders that perimeter. The chain link fence on the northern perimeter adjacent to an apartment complex was never replaced. The fence was in poor repair with several holes large enough to accommodate entry and exit by an adult person, and the barbed wire along the top of the fence was missing in most areas, thereby allowing easy entry on to the facility; and

9. Everyday Inn, Inc. advertises that it provides safe and secure facilities for its guests.

Opinions

My overarching opinion, which I hold to a reasonable degree of professional certainty, is that the design, construction and operation of the security system of the Defendant at the subject facility resulted in an unsafe environment that failed to ensure the physical security of its guests, and further that this failure contributed to the death of R. Parsons on March 1, 2006.

The bases for my opinion are as follows:

1. The Defendant should have followed the advice of Ms. Wilson, its regional security chief, and conducted a formal Risk Assessment/Risk Analysis of the subject facility;

2. Given a Cap index of 8.6, it was foreseeable that a guest would be unsafe in an open parking lot and subject to both property and personal crime. As a result, as with any Cap index over 5, the Defendant failed to meet its duty by not providing valet service for parking its cars;

3. The placement of video cameras on movable mounts made it possible for a person to enter and remain on the facility, undetected by facility personnel;

4. The lighting system, with the two northern most street lights inoperable on March 1, 2006, provided an unacceptable deterrent to personal and property crime in the facility parking lot;
5. The work load and lack of training for personnel in charge of the guard/security/attendant was such that there was inadequate protection of facility guests;
6. The shuttle vans where they were parked by the Defendant blocked direct observation from the security station of significant portions of the ground level parking lot, including the area in which R. Parsons was assaulted and killed;
7. The failure to replace or repair the chain link fence along the northern perimeter of the facility permitted the undetected entry on to the facility by persons posing a threat to the person and property of facility guests; and
8. The advertising and marketing by Everyday Inns, Inc., of providing a safe and secure environment for its guests, created an expectation on the part of its guests, which caused them to be less than vigilant in protecting their own safety.

In addition to the above opinions, it is my opinion as a criminologist, to a reasonable degree of professional certainty, that the death of R. Parsons on March 1, 2006, was the result of a shooting during the course of a random robbery. There is simply insufficient evidence from which to reasonably infer that the death of R. Parsons was the result of someone lying in wait for Parsons, an intentional killing, a killing committed for hire, or was a killing based on personal animus.

Respectfully,

C. W. Howard 9, B.S., M.A., AIA, CPP 10

9 Discovery materials and investigation has revealed the following regarding C.W. Howard. Howard graduated from Justice State University in 1986 with a BS degree in Architecture. In 1988, after three attempts, he received his license from the State of Justice as an architect. He is a member of the American Institute of Architects (AIA) Beginning in 1986 he worked with Orsell Architecture, first as a trainee and, after licensure, as an architect. He developed an interest in the security aspects of architecture and while employed there earned a MA in Criminology from Justice State University. In 1993 Howard went to work for Universal Safety as a security consultant, advising clients on building design to insure security, with a specialty in hotel security. In 2000 he received his certification as a Certified Protection Professional. In 2001, Howard formed his own consulting company, Safety Consultants, Inc. His primary business is in the field of litigation support. In the past four years he has had 160 engagements in litigation support. He has testified in a wide variety of cases, including premises liability, predominantly (90-95 percent) on behalf of plaintiffs. In the past four years, Howard has provided testimony in either deposition and/or trial in 140 cases. Howard’s hourly rate is $300 per hour. As of the date of this report, Howard has billed the Plaintiff, $6,000. His hourly rate for court time is $600 per hour, portal to portal, with a minimum billing of 6 hours. Howard is an adjunct Associate Professor at Justice State University where he teaches courses on the security aspects of building design for both architecture and criminology students.

10 This role, as all others in the case file is gender neutral and may be played by either a man or a woman. The character is Carol when played by a woman and Carl when played by a man.
November 1, 2008

Mr. John Bender
Bender Weiss, LLP
1835 Market Street
Palm City, Justice

Re: Estate of Parsons v. Everyday Inns, Inc.

Dear John:

Pursuant to your request I have reviewed the tragic facts surrounding the murder of the deceased on March 1, 2006 to determine whether your client, Everyday Inns, Inc. bears any responsibility for R. Parson’s death. For the reasons stated below, it is my opinion to a reasonable degree of professional certainty that your client is without responsibility for the victim’s unfortunate demise.

In making my analysis of the facts and circumstances underlying this law suit I have reviewed the following:

1. The Depositions of Elizabeth Donavan, G. B. Masterson, Marie Parsons, and Greta Wilson;
2. The Investigative Report of the Palm County Sheriff’s Department regarding the murder of the deceased, including a diagram agreed to be accurate of the relevant area of the facility; and
3. The report of C.W. Howard, expert witness hired by the Plaintiff.

A. Facts Underlying the Case

At approximately 10:15 p.m., the deceased, a fine arts dealer known to conduct the purchase and sale of art objects on a cash basis, was murdered in the parking lot of the Palm County Airport Everyday Inn located at 5th and Airport Road in New Palm City, Justice. The murder was accomplished by a single shot execution-style to the back of the head. Despite there being numerous people in relative close proximity to the murder, no gun shot was heard. The wallet of the victim, and perhaps a briefcase, were taken from the victim. Left behind on the person of the victim were four valuable rings, a Rolex watch and $400.00 in cash. The victim was found adjacent to victim’s automobile and its open driver’s side door. Inside the car was a loaded 38 caliber pistol located in the glove box between the driver’s and front passenger’s seats. No suspects have been apprehended by the Palm County Sheriff’s Department Organized Crime Bureau, which conducted an investigation of the incident underlying this case.
The incident was first brought to the attention of the hotel manager at approximately 10:20 p.m. when that person received a call from the manager of the adjacent Morrison Hotel who informed the manager that a guest on the third floor on the Morrison Hotel reported an apparent robbery in progress in the northeast section of the ground level parking lot of the facility. The manager immediately contacted the Security Chief of the facility who was on the grounds and the Palm County Sheriff’s Department. The immediate investigation by the security chief revealed that the victim had been shot in the back of the head and was dead. No suspects or persons of interest were identified at that time.

The murder was investigated by the Palm County Sheriff’s Department that, due to the execution style of the shooting, assigned the Chief of the Organized Crime Bureau to conduct the investigation. Chief Burns determined that just before the murder a blue/black sedan had pulled into the parking lot of an apartment complex located to the immediate north of the facility and that an unknown person in dark clothing had exited the vehicle and walked towards the fence separating the facility from the apartment complex, before disappearing. There were no eye witnesses to the shooting.

Chief Burns also determined that the deceased was a dealer of art objects, who frequently conducted cash transactions. It was also determined that the deceased had several dealings with a Roger Willerman, who was a reputed organized crime boss, who, according to a signed statement of the victim’s spouse, had threatened the victim. Willerman was later on trial in 2007 for unrelated organized crime activities when he disappeared.

**B. The Facility**

The Palm County Airport Everyday Inn is a modernized hotel that primarily serves the travel and business needs of persons traveling to and from the Palm County area. It is located in New Palm City.

The diagram of the facility attached to the Palm County Sheriff’s Incident Report is a fair representation of the facility according to both the facility manager and its security chief with whom I spoke and whose depositions confirm those conversations. The following describes the security aspects of the facility:

1. The entryway to the facility and its main reception area is well lighted;
2. Access to the facility is limited to that main entrance off of 5th Street;
3. The parking garage consists of three levels: one open lot at ground level and two closed below ground levels;
4. The ground level (where the murder occurred) is well lighted, paved and, except with regard to the north perimeter (for reasons that will be explained), protected from the public by brick walls;
5. The north perimeter of the facility was protected by a chain link fence. The fence had been erected during the renovation of the facility. When it came time to replace that fence with a more permanent structure (a six floor brick wall was
planned) a dispute arose regarding the property line that divided the facility from the adjacent apartment complex. Attempts to resolve the dispute informally failed and the matter was in litigation until it was settled in December of 2005. The plans to build the brick fence called for construction to begin in April of 2006. In the period between the opening of the facility in 2001 until the day of this incident, the facility had, on numerous occasions installed video cameras along the north perimeter. (See item 7 that follows regarding the surveillance camera system). Unfortunately, those cameras were the frequent target of vandalism and theft. At the time of this incident, one of the cameras on the perimeter (located on the northeast corner of the building near Airport Road pointed west along the north perimeter) was missing or not working.

6. Video surveillance cameras are utilized throughout the facility, but in particular in the ground level parking area. They provide real time visualization and make a video record of activity in the facility. Images from all surveillance cameras can be viewed in two places: the security office located on the first floor of the facility near the reception area and in the guard station to the parking facility. That office is normally manned by a security guard;

7. The guard station at the only entrance to the parking area is monitored by a surveillance camera, and normally manned by an attendant;

8. Everyday Inn, Inc. has a policy designed to insure the security of its guests.

Normal operation of the facility included the presence of a bellman and a night manager in the reception area, a security guard in the security office, and a security guard who patrolled the facility.

On the night of March 1, 2006, there was an unusual personnel situation. Both the parking lot attendant and one of the security guards, as well as the night manager had all called in sick. As a result, the reception area was being manned by E. Donavan the manager and a bellman, and the guard station that protected the parking lot was manned by Security Chief Masterson (who regularly took a shift as a security officer to insure the smooth operation of security of the facility), from which Masterson was monitoring the surveillance camera system. Due to the absence of the second security guard, who called in sick at the beginning of his 6:00 p.m. to 2:00 a.m. shift, there was no security patrol.

C. Standard of Care

The owner and operator of a hotel facility must reasonably ensure that its facility is physically secure for the intended use of its guests. The term “physically secure” requires making it difficult for persons to gain entry and remain unobserved and unchallenged on a facility, thereby making the determination of their legitimacy and purpose for being on the facility property knowable, so as to provide reasonable security for the persons and property of hotel guests.

D. Findings of Fact
1. Given the state of the security system of the facility and the expertise of G. B. Masterson, its Security Chief, there was no need to perform a formal Risk Assessment/Risk Analysis\(^1\);  
2. The CRIMECAST Cap index for New Palm City is 4 (4 x the national average);  
3. Valet service was not required at this facility given the Cap index under 5\(^2\);  
4. Even though two of the lighting towers were inoperable at the time of the incident, the lighting was adequate, especially in light of the fact that a guest on the third floor of the Morrison Hotel was able to see the incident in progress. In addition, the Parsons were told about the inoperable lights by E. Donavan before the deceased went to move the Parsons’ car to a space near their room;  
5. The video monitoring system was adequate to provide physical security to the hotel guests. The fact that one of the cameras was inoperable or missing on the date of the incident and that one camera had been moved slightly on its mount (as noted by Plaintiff’s expert) does not change my opinion;  
6. The chain link fence was adequate in light of the fact that it was only temporary (awaiting the result of property line litigation) and that numerous repairs had been made to the fence; and  
7. Although the parking lot attendant received minimal training, on the evening in question the guard station was manned by the Chief of Security.

### E. Opinions

Based on the above findings of fact it is my opinion to a reasonable degree of professional certainty that the Palm County Airport Everyday Inn provided a physically secure environment for the intended use of its guests. There is nothing about the nature and operation of the facility and its security system that caused the tragic death of the deceased.

Although I cannot opine to a reasonable degree of professional certainty that this murder was intentional (and not merely incidental to a robbery) and committed for profit or revenge, given the manner of killing (one shot to the back of the head); that no one heard that shot (indicative that some sort of silencing device was used on the murder weapon); the known fact that the deceased carried large amounts of cash (now missing); the fact that the deceased possessed and was apparently attempting to get to the fire arm in the car’s console at the time of the execution; and the fact that the deceased had been threatened by a reputed organized crime figure, I believe that it likely that a person or persons, knowing of the deceased’s presence at the facility, drove to the apartment complex adjacent to the facility in the blue/black sedan reported by the apartment resident, entered through a temporary hole in the facility fence, and lay in wait and when the opportunity arose, executed the decedent, taking both wallet and briefcase (if one

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\(^1\) The parties agree that this analysis would have provided a CRIMECAST Comprehensive Report, and that the resulting CAP index is a reliable predictor of crime risk. The parties agree that the Cap index is 16 for Palm City, 4 for New Palm City, and 2 for Sharon Hill and Drexel Lakes.  
\(^2\) The parties agree that valet parking services are recommended for any area with a Cap index over 5.
existed) to make the killing look like a robbery gone bad. Under those circumstances, no amount of security short of an armed guard travelling with R. Parsons, could have prevented this tragic death.

Respectfully submitted:

/s/ R. L. Morgan ¹³, B.A., MA ¹⁴

Morgan Security Consultants

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¹³ Discovery and background investigation has revealed the following regarding R.L. Morgan who is Robert or Roberta depending on the gender of the person playing the role. Morgan is a 1988 graduate of the University of Justice with a degree in B.A. degree in Criminal Justice. Following graduation from college he went to work for U.S. Security Consultants, a national consultant on security, and developed an expertise in security systems for business premises in the private sector. While working at U.S. Security he obtained a Masters Degree in Criminal Justice in the evening program at the University of Justice. In 1998, Morgan left U.S. Security and formed his own consulting business, which is headquartered in Palm City, Justice. Morgan has numerous commercial clients, including a number of hotel chains that do business in the State of Justice. Everyday Inns is one of those clients. Morgan has advised Everyday on security matters for the past two years and before that served on a number of occasions as an expert witness for Everyday in premises liability cases. Over the past four years Morgan has been retained to serve as an expert witness by Everyday in ten different litigations, none of which involved the Palm County facility. Morgan estimates that approximately one quarter of his business is in litigation support. His average billing when retained in a litigation matter is approximately $5,000 which is billed at the rate of $250.00 per hour. For trial testimony Morgan bills a flat rate of $3,000 per day. In the instant case he has received $5,400 for investigation of the Plaintiff’s claim and report preparation. He has also received a $3,000 retainer for his trial testimony time. Morgan has testified on behalf of other litigants in premise liability cases, but always on behalf of defendants such as Everyday. In the past four years he has had 80 such engagements.

¹⁴ This role, as all others in the case file is gender neutral and may be played by either a man or a woman. As a man, the witness is Robert. As a woman, the witness is Roberta.
JURY INSTRUCTIONS

1. The sole issue in this case is whether the plaintiff was injured or damaged by the negligence of the defendant. On this issue, the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, that the defendant was negligent and that such negligence was a proximate cause of the plaintiff’s injury.

2. The greater weight of the evidence does not refer to the quantity of the evidence but to the convincing force of the evidence. It means that you must be persuaded considering all the evidence, the necessary facts are more likely to exist than not. If you are so persuaded, it would be your duty to answer the issue in favor of the party with the burden of proof. If you are not so persuaded, it would be your duty to answer the issue against the party with the burden of proof.

3. You are the sole judges of the credibility of the witnesses. You must decide for yourselves whether to believe the testimony of any witness. You may believe all, or any part, or none of that testimony. In determining whether to believe any witness you should use the same tests of truthfulness which you apply in your everyday lives including the opportunity of the witness to see, hear, know, or remember the facts or occurrences about which the witness testifies; the manner and appearance of the witness; any interest, bias, or partiality the witness may have; the apparent understanding and fairness of the witness; whether the testimony of the witness is sensible and reasonable; and whether the testimony of the witness is consistent with other believable evidence in the case.

4. Expert witnesses have testified in this case. You are the sole judges of the credibility of expert witnesses and the weight to be given the testimony of expert witnesses. Consider the testimony of any expert witnesses using the same tests you are to use with any other witness. In addition, in addition to those tests, consider any evidence about the witness’s training, qualifications, and experience or the lack thereof; the reasons, if any, given for the opinion; whether or not the opinion is supported by the facts that you find from the evidence; whether or not the opinion is reasonable; and whether or not it is consistent with the other believable evidence. You should consider the opinion of an expert witness, but you are not bound by it.

5. You are also the sole judges of the weight to be given to any evidence. If you believe that certain evidence is believable, you must determine the importance of the evidence in the light of all other believable evidence in the case.

6. The owner or operator of a hotel must exercise reasonable care to ensure that the facility is physically secure for the intended use of its guests. The term “physically secure” requires making it as difficult as is reasonably possible for unauthorized persons to gain entry and remain unobserved and unchallenged at the facility, thereby making the determination of their legitimacy and purpose for being on the facility’s property.
knowable, so as to provide reasonable security for the persons and property of hotel guests.

7. An owner or operator of a hotel or other residence for hire is not liable for injuries or damages to the person or property of a guest of a hotel from intentional, criminal acts of third persons unless the circumstances gave the owner reason to know that third persons were likely to endanger guests and that an injury or damage to guests or their property was foreseeable. The specific kind of injury that actually occurred need not be foreseeable; all that need be foreseeable is that an injury or damage from criminal acts was reasonably likely. An owner or operator is liable for injuries or damages to the person or property of a guest of a hotel from intentional criminal acts when criminal acts were foreseeable and the actual injury or damage could have been prevented by the exercise of reasonable care.

8. The plaintiff not only has the burden of proving negligence but also that such negligence was a proximate cause of the injury or damage plaintiff sustained. Proximate cause is a cause which in a natural and continuous sequence produces a person’s injury or damage, and is a cause which a reasonable and prudent person would have foreseen would probably produce such injury or damage or some similar injurious result. There may be more than one proximate cause of an injury or damage. Therefore, the plaintiff need not prove that the defendant’s negligence was the sole proximate cause of the injury only that the defendant’s negligence was a proximate cause.