



# **AMERICAN ASSOCIATION FOR JUSTICE**

## **2009 NATIONAL STUDENT TRIAL ADVOCACY COMPETITION**

**OFFICIAL RULES**

**And**

**FACT PATTERN**

## **Important Dates**

(Dates subject to change)

Requests for fact pattern clarification due: December 22, 2008  
Answers to requests for fact pattern clarification by: January 23, 2009  
Final list of students on team(s) due: January 26, 2009  
Students must be members of AAJ by: January 26, 2009  
Regional competitions: February 27 – March 1, 2009  
Final competition: April 2 – 5, 2009, West Palm Beach, FL

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### **Please note!**

All information regarding the 2009 National Mock Trial Competition is also available on AAJ's Web site, at <http://www.justice.org/cps/rde/xchg/justice/hs.xsl/1091.htm>, and will be updated frequently.

All questions and correspondence should be addressed to:

Nathalie Etori  
American Association for Justice  
777 6th Street, NW  
Suite 200  
Fax: 202-298-6351  
Washington, D.C. 20001  
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202-965-3500 or 800-424-2725, ext 593

## **GENERAL INFORMATION**

One of AAJ's goals is to inspire excellence in trial advocacy through training and education for both law students and practicing attorneys. One way AAJ accomplishes this goal is by sponsoring a national student mock trial competition. This is an exceptional opportunity for law students to develop and practice their trial advocacy skills before distinguished members of the bar and bench.

Because the purpose of this competition is to give law students the opportunity to develop their trial skills, the actual merits of the plaintiff's case and the defendant's case presented are irrelevant to this purpose. Competition rounds are decided not on the merits of a team's side but on the quality of a team's advocacy.

### **Requests for Clarification**

Requests for clarifications of the rules or fact pattern must be made in writing and received by Nathalie Etori via email at [nathalie.etori@justice.org](mailto:nathalie.etori@justice.org), no later than 5:30 p.m. (Eastern Standard Time) on December 22, 2008. Each school is limited to asking no more than five (5) questions. No school, regardless of the number of teams it has in the competition, may submit more than five questions. Each subpart of a question is counted as a question.

Answers to questions will be posted on the web site no later than January 23, 2009.

## **RULE VIOLATION AND FILING OF COMPLAINTS**

A competitor or coach violating any of the rules governing the National Student Trial Advocacy Competition may be penalized or disqualified. If a team wants to file the complaint under the rules, the team's coach should immediately notify the regional coordinator, at a regional competition, or the final round coordinator at the final competition. The coordinator will review the complaint and make a ruling which shall be binding for that round of competition. The coordinator's rulings will be governed by the rules of the competition and the objectives of the program.

Complaints after a regional competition or after the national competition must be filed in writing with Nathalie Etori at the address provided above no later than the seven (7) days following the last day of the regional or final round, as appropriate. The AAJ Law School Committee promptly will consider and rule on any such complaints.

## **LAW SCHOOL & STUDENT ELIGIBILITY**

The competition is open to all law schools nationwide. A law school may enter up to two teams. Each team shall be comprised of four law students. A school's selection method of its trial team(s) is left for the school to determine. However, for a student to be eligible, he or she must be enrolled for a J.D. degree and be a student member of AAJ.

Students who graduate in December 2008, are eligible to participate only if the competition counts toward their credits for graduation and they will not be admitted to practice prior to March 2009.

Each student participant must be an AAJ student member by January 26, 2009 in order to participate.

## **REGISTRATION PROCEDURES**

### **Refund Policy**

Requests for a refund of a school's registration fee were due in writing before November 17, 2008. It is inevitable that a few teams drop out of the competition in the months leading up to the regionals. Teams placed on the waiting list because the competition is full will be contacted for participation in the order that their registrations were received. Teams on the waiting list will also be issued a refund check if it is determined that the team will not be competing. Schools that registered two teams, but are only able to enter one team because the competition is full, will receive a refund of the registration fee for the second team.

### **AAJ Student Membership**

Student team members must be AAJ members by January 26, 2009, in order to participate. Please call AAJ's member hotline at 800-424-2727 to determine whether students on the team are current members and that their memberships will be active at the time of the competition. AAJ Student membership dues are \$15. To become a member or to renew a membership, you may complete an application online at [www.justice.org](http://www.justice.org), or call AAJ's member hotline at 800-424-2727 and join over the phone. Students should indicate that they are Student Trial Advocacy Competition participants.

### **Student and Coach Registration**

AAJ needs to receive the names of the participating students and coach for each team. Each team must complete a team registration form and return it to AAJ by January 26, 2009. Please be sure to include the complete mailing address, date of birth and graduation date for each student on the team registration form. This information is required to process the team registration.

### **Student Substitution Policy**

Substitution of team members after January 26, 2009, is not permitted except in the case of personal emergencies. Requests for substitution after the January 26, 2009, deadline must be made in writing with an explanation of why the substitution is needed and sent to Nathalie Etori at AAJ for consideration.

## **REGIONAL AND FINAL COMPETITION ASSIGNMENTS**

Entering teams will be assigned to one of fourteen regional competitions based on geographical convenience **to the extent possible**. Teams from the same law school will be assigned to the same region. If a school's second team is waitlisted, there is no guarantee that second team will be sent to the same region as the first team. Teams will be notified of any date changes when regional assignments are made. Please remember that a school's second team will not be officially registered until one team from each law school has entered the mock trial competition. Then the second teams will be registered on a first-come, first-served basis, until all the team slots are filled at 224 teams. If you paid for two teams and only one team is able to participate, you will receive a refund for that team.

In order to officially compete in the competition, a team **MUST** receive their regional assignment. If a team is not informed by AAJ that it is able to compete, that team is not registered for the competition.

### **Coaches**

A coach must accompany each team to the regional and the final competitions. The coach for a team that goes to the final competition does not have to be the person who coached the team at the regional competition.

A coach may be a law student, but not a student who is competing in the competition.

Only team coaches are permitted to attend the coaches' meeting. If a coach is unable to attend, he/she must notify AAJ and the regional coordinator. Only then can students be permitted to attend in the coach's absence.

### **Team Expenses**

Travel expenses for the regional and final competitions are the responsibility of the participants. Teams competing in past competitions have obtained funds from law school deans and alumni associations, members of the local legal community, state and local trial associations, and AAJ law school chapters.

## **COMPETITION FORMAT**

This is a trial skills competition. There is no motion or trial brief writing component. Each team will consist of four law students. Two students will be advocates and two students will play the witnesses for their side in each round. Advocates and witnesses

may change their roles from round to round but roles must remain consistent throughout each individual trial.

**In the regional competitions:**

- each team will compete in three qualifying rounds
- the top four teams from the qualifying rounds will advance to a single elimination semi-final round
- the top two teams from the semi-final round will compete to determine which one team will advance to the National Finals

**In the final competition:**

- each team will compete in three qualifying rounds
- the top eight teams from the qualifying rounds will advance to a single elimination quarter-final round
- the top four teams from the quarter-final round will advance to a single elimination semi-final round
- the top two teams from the semi-final round will advance to a single elimination final round

**Regional Team Pairings in Qualifying Rounds**

Pairing of teams in the qualifying rounds will be at random and conducted during the coaches' meeting prior to each competition. Teams may also be pre-assigned by the regional coordinator prior to the coaches' meeting. Each team will represent both plaintiff and defendant in the first two rounds. No two teams shall compete against each other more than once in the qualifying rounds. Teams from the same school will not compete against each other during any of the rounds of the regional competition or in the qualifying rounds of the national final competitions.

**Team Rankings in All Other Rounds**

In the semi-final round, the first ranked team will meet the fourth-ranked team, and the second-ranked team will meet the third-ranked team.

**Regional semi-final round** (Normal pairings: 1 v. 4; 2 v. 3)

Situation 1: Teams ranked 1 and 4 are from the same school

New pairings: 1 v. 3; 2 v. 4

Situation 2: Teams ranked 2 and 3 are from the same school

New pairings: 1 v. 3; 2 v. 4

The ranking of teams to determine the semi-finalists and finalists will be determined by the following factors (in this order):

1. Win/Loss record

2. Number of winning votes
3. Number of total points awarded to the team

Each succeeding criterion above will be used only if the prior criterion does not fully rank the teams and will be used only to break ties created by the use of the prior criterion.

If paired regional semi-final teams have met in the qualifying rounds, they will each represent different sides than in the previous meeting. If they have not yet met, each team will take the side they represented only once in qualifying rounds. If matched teams represented the same side only once, the winner of a coin toss will choose sides.

In the regional finals, the teams will represent a different side than in the semifinal round. If two teams opposing teams each represented the same side in the semi-final round, the winner of a coin toss will choose sides. The two regional finals teams will represent a different side than in the semifinal round. If matched teams in the final round represented the same side in the semi-final round, the winner of a coin toss will choose sides.

When an odd number of teams compete at a regional competition, one randomly chosen team will receive a “bye” in each qualifying round. For ranking purposes, a bye will count as a win and the team with the bye will be deemed to have had 3 votes and the points equal to the average of the team’s points from the two other qualifying rounds.

**NATIONAL FINALS: Quarter-final round** (Normal pairings: 1 v. 8; 2 v. 7; 3 v. 6; 4 v. 5)

Situation 1: Teams ranked 1 and 8 are from the same school  
 New pairings: 1 v. 7; 2 v. 8; 3 v. 6; 4 v. 5

Situation 2: Teams ranked 2 and 7 are from the same school  
 New pairings: 1 v. 7; 2 v. 8; 3 v. 6; 4 v. 5

Situation 3: Teams ranked 3 and 6 are from the same school  
 New pairings: 1 v. 8; 2 v. 7; 3 v. 5; 4 v. 6

Situation 4: Teams ranked 4 and 5 are from the same school  
 New pairings: 1 v. 8; 2 v. 7; 3 v. 5; 4 v. 6

**Semi-final round** (Normal pairings: 1 v. 4; 2 v. 3)

Situation 1: Teams ranked 1 and 4 are from the same school  
 New pairings: 1 v. 3; 2 v. 4

Situation 2: Teams ranked 2 and 3 are from the same school  
 New pairings: 1 v. 3; 2 v. 4

If teams from the same school are matched to compete based on rank in the semi-final and final rounds of a regional competition, regional hosts will re-pair teams according to the following scenarios:

## **Determination of Team Representation**

If the four national and regional semi-final teams have already met in the qualifying rounds, they will represent different sides from the previous confrontation. If they have not yet met, each team will take the side they represented only once in qualifying rounds. If matched teams represented the same side only once, the winner of a coin toss will choose sides.

The national finals semi-final teams will represent a different side than in the quarter-final round. If matched teams represented the same side in the quarter-final round, the winner of a coin toss will choose sides. The two national final teams will represent a different side than in the semi-final round. If matched teams represented the same side in the semi-final round, the winner of a coin toss will choose sides.

## **THE TRIAL**

The competition this year involves the trial of a civil lawsuit. The same fact pattern will be used in the regional and final competitions. The trial judge previously rules that the case would be bifurcated and the case being tried in the competition is the first phase of the case, the liability phase. Only evidence relevant to the liability issue will be received. There are no pending third party claims.

The Federal Rules of Evidence (FRE) and Federal Rules of Civil Procedure (FRCP) are the applicable rules of evidence and civil procedure. Only these rules, and the law provided in the fact pattern, shall be used in argument. Specifically, no statutory, regulatory, or case law shall be cited unless such law is provided in the fact pattern.

Students may argue based upon the comments or advisory notes to the Federal Rules of Evidence but may not cite the cases contained therein. No written briefs or motions, trial notebooks, or other written materials may be presented to the judge hearing a case.

No pretrial motions of any kind are allowed.

Motions for a judgment as a matter of law and evidentiary objections are permitted.

The trial will consist of the following phases by each team in this order:

- Opening statements for plaintiff followed by defendant
- Plaintiff's case-in-chief
- Plaintiff's direct of plaintiff's witness #1
- Defendant's cross of witness
- Plaintiff's redirect of witness
- Similar for plaintiff's witness #2
- Defendant's case-in-chief

- Defendant's direct of defendant's witness #1
- Plaintiff's cross of witness
- Plaintiff's redirect of witness
- Similar for defendant's witness #2
- Closing argument
- Plaintiff's first closing
- Defendant's closing
- Plaintiff's rebuttal closing

Each side is limited to two live witnesses whom they may call in any order.

- Plaintiff must call M. Parsons and C.W. Howard (expert)
- Defendant must call E. Donovan and R.L. Morgan (expert)

Either party may read into the record portions of the deposition of Greta Wilson and G.B. Masterson who are unavailable for the purposes of the FRCP and FRE. Time spent reading from a deposition is taxed to the party doing so. If an opposing party successfully invokes FRE 106, time spent reading the requested additional portions of the record are taxed to the party invoking the rule.

The trial has 6 major advocacy opportunities for each team: Opening statement; Direct/Redirect examinations (2); Cross examinations (2); and Closing Argument. Each member of a team must handle three of the six opportunities. Opening statement and closing argument may not be done by the same person and neither may be split between team members.

During the competition each team will represent both parties. Pairing in the qualifying rounds will be at random, with each team representing both plaintiff and defendant at least once in the three rounds.

Except in the final round, the courtrooms will be off-limits to all team members, coaches, friends, and family members who are not associated with either team competing, unless their team has already been eliminated from the competition.

No team may receive any coaching from anyone in any form during a round, including any recesses or breaks. The regional or national coordinator, as applicable, has the authority to punish any violation of this rule by disqualifying the team from the remainder of the competition.

A team may have its trial video-recorded, if (1) no additional lighting is required, (2) recording of the trial does not interfere with or delay its conduct, and (3) all participants of the round, including the presiding and scoring judges, and the regional or national coordinator, as applicable, agrees.

## **Timing of the trial**

- Each team will have 80 minutes to complete its argument.
- The time limit will be strictly enforced, although it is not necessary that all time allotted be used.
- There will be no time limits for specific aspects of the trial.
- Time on cross-examination is charged against the team conducting the cross-examination.
- Time will be stopped for objections and responses to objections.
- Performance at trial will be evaluated by a panel of judges and/or attorneys, one of whom will preside over the trial as Judge, making rulings as necessary, and the remainder (up to three) of whom will act as the jury.

## **Facts Outside the Record**

Lawyers must confine the questions and witness must confine their answers to the facts given in the fact pattern and inferences which may reasonably be drawn therefrom (“the Record”) and any matters judicially noticeable under Rule 201 of the Federal Rules of Evidence. An "inference" is not any fact a party might wish to be true; rather, it is a fact that is likely to be true, given the other facts in the case.

Except during closing argument, no objection may be made to the effect that that the opposing team is going outside the record. Instances of a party going outside the record may be addressed, instead, by means of impeachment of the offending witness or by contradiction using another witness or document.

When true, witnesses must admit, if asked, that the “facts” they have testified to are not in their deposition or otherwise in the record. Witnesses may not qualify this response in any misleading way by saying, for example, that they were not asked about the fact at deposition, or that the facts were contained in some other portion of the deposition, which was omitted from the record. The witness who is asked to admit the material was not in the deposition must answer that the questioner’s assertion is correct: “Yes, I did not say that in my deposition.” All judges will be instructed as to the significance of this form of impeachment in the mock trial competitions and are likely to take into account unfair additions to the record (i.e., inferences which may not reasonably be drawn from the record) in their scoring of the witness’s team.

## **Witnesses**

Any witness may be played by a person of either gender. Before the opening statement, each team should notify the other of the gender of each witness they intend to call and for any witness they could call but are choosing not to call.

Assume that all the witnesses have seen the exhibits and depositions. Witnesses know only the facts contained in the background information, exhibits and depositions.

All depositions are signed and sworn. The same attorney conducting direct examination of a witness shall also conduct any redirect examination.

The only witness who may object during a witness's testimony is the lawyer who will be examining that witness.

Witnesses may not be re-called.  
Witnesses will not be sequestered.

### **JURY INSTRUCTIONS**

The instructions provided in the fact pattern are the only instructions that will be given. The instructions are the only statements of the applicable substantive law. Instructions will not be eliminated or modified. No additional instructions may be tendered or will be given.

### **EXHIBITS**

The use of demonstrative evidence is limited to that which is provided in the fact pattern but participants are free to enlarge any diagram, statement, exhibit or portion of the fact pattern, only if it is identical to the item enlarged or any changes provide no advantage to the party intending to use it.

Subject to rulings of the court, counsel and witnesses may draw or make simple charts or drawings in court for the purpose of illustrating testimony or argument. These materials may not be written or drawn in advance.

No demonstrative evidence, including charts or drawings may reflect facts outside the record. Participants must clear all demonstrative evidence with the regional or national coordinator, as applicable, at the coaches' meeting preceding the competition.

All exhibits are stipulated as authentic and genuine for purposes of trial.

### **SCORING CRITERIA**

Performances at trial will be evaluated by a panel of three judges and/or attorneys, one of whom will preside as the trial judge, the others sitting as jurors. The trial judge will rule on any objections or motions for judgment as a matter of law.

Each member of the jury may award up to five points in each phase of trial for each party. A sample score sheet is attached.

If at the end of the trial, an evaluator awards the same number of points to the plaintiff and defendant, the evaluator will award one additional point to either plaintiff or defendant for effectiveness of objections and/or overall case presentation in order to break the tie.

Evaluators have been instructed not to score teams on the merits of the case.

The following criteria for scoring trial performances are set forth to assist both judges and student advocates. Evaluators are not limited to these criteria and may consider other aspects of strategy, technique, etc., which they view as important.

### **Evaluator Shortage**

For each match, there must be three votes from evaluators. In the event due to circumstances beyond AAJ's control there are not three evaluators in a particular match, "ghost" evaluator(s) will be used to score the round.

The vote of a ghost evaluator is determined by calculating the average of all other evaluators in the session. If there is only one evaluator for a trial, the score for each of the absent evaluators will be the same as the score for the evaluator who is present.

### **Suggested Evaluation Criteria**

#### **OPENING STATEMENT**

##### Did Counsel...

1. Generally confine statement to an outline of the evidence that would be presented?
2. Clearly present counsel's theory of the case?
3. Persuasively present counsel's theory of the case?
4. Personalize self and client?
5. Allow opposing attorney to make argument during opening statement?
6. Make unnecessary objections?

#### **EXAMINATION OF WITNESSES**

##### Did Counsel...

1. Ask questions that generated a minimum of valid objections?
2. Make/fail to make objections with tactical or substantial merit?
3. Respond appropriately to objections made?
4. Know the rules of evidence and express that knowledge clearly?
5. Develop rapport with the witness?
6. Maintain appropriate general attitude and demeanor?
7. Address court and others appropriately?
8. Demonstrate awareness of ethical considerations?

Did direct examiner...

9. Unnecessarily use leading questions?
10. Develop testimony in an interesting and coherent fashion?
11. Follow up on witness' answers?
12. Present the witness in the most favorable light?

Did cross-examiner...

13. Appropriately use leading questions?
14. Control witness?
15. Follow up on answers and elicit helpful testimony?
16. Use impeachment opportunities?

**CLOSING ARGUMENT**

Did Counsel...

1. Present a cohesive theory of the case pulling all the positive arguments together?
2. Deal effectively with the weakness in his or her own case?
3. Make an argument that was persuasive?
4. Have an effective style of presentation?
5. Utilize the law effectively in the argument?
6. Inappropriately interrupt the argument of the opposing counsel?
7. Properly confine rebuttal to rebuttal matters?
8. Effectively counter the opponent's speech in rebuttal

**Discrepancies in Remaining Match Time**

Often bailiffs are unavailable to keep time for rounds. In such cases, one or more judges in each match should be instructed to keep time according to the timekeeping rules. In some cases, a discrepancy may arise between the time accounted by the judge and the time accounted by team itself. In the event that the match judge or judges declare the time remaining as less than the team requirements for closing or other parts of the trial, during the break, the coach or team member (whomever records the time discrepancy, note that coaches and team members may not communicate between rounds) should immediately consult with the Regional Coordinator, who should then evaluate the circumstances and decide the amount of time remaining. Neither the team coach nor the team member should discuss the discrepancy with the match judge. Should the team not be able to consult with the Regional Coordinator before the completion of the trial—and the team requires additional time to complete the trial, the team may elect to complete the trial beyond the time allotted. When the trial is complete, the time will be evaluated by the Regional Coordinator. The team will lose one point for every five minutes—or fraction thereof—of time that it has exceeded its allotment.

### **Viewing of Score Sheets by Teams**

Viewing of the score sheets is done at the discretion of the regional coordinator(s). Each team will have the right to view their score sheets for each round. Teams may only view scores sheets after the completion of the second regional round. This should be done one team at a time. Teams are not allowed to take score sheets with them or make any markings to the score sheets. Teams may view score sheets only in the presence of the regional coordinator(s).

## **AMERICAN ASSOCIATION FOR JUSTICE**

### **MISSION**

*The Mission of the American Association for Justice is to promote a fair and effective justice system – and to support the work of attorneys in their efforts to ensure that any person who is injured by the misconduct or negligence of others can obtain justice in America’s courtrooms, even when taking on the most powerful interests.*

### **ABOUT TRIAL LAWYERS**

Trial lawyers ensure access to the civil justice system for the powerless in America—working families, individual workers, and consumers who often lack the resources to take their grievances to court.

Trial lawyers play a valuable role in protecting the rights of American families. They champion the cause of those who deserve redress for injury to person or property; they promote the public good through their efforts to secure safer products, a safe workplace, a clean environment and quality health care; they uphold the rule of law and protect the rights of the accused; and they preserve the constitutional right to trial by jury and seek justice for all.

Some of the types of cases our attorneys handle include:

- A child paralyzed after being struck by a drunk driver;
- A young woman unable to have children because of a medical mistake;
- A person denied a promotion due to racial discrimination;
- An elderly man injured in a nursing home; and
- A community whose water was made toxic by a local manufacturer.

### **ABOUT AAJ**

As one of the world's largest trial bar, AAJ promotes justice and fairness for injured persons, safeguards victims' rights--particularly the right to trial by jury--and strengthens the civil justice system through education and disclosure of information critical to public health and safety. With members worldwide, and a network of U.S. and Canadian affiliates involved in diverse areas of trial advocacy, AAJ provides lawyers with the information and professional assistance needed to serve clients successfully and protect the democratic values inherent in the civil justice system.

## **AAJ LAW STUDENT MEMBERSHIP BENEFITS**

Mentor Program —You'll be paired with an experienced trial lawyer who will share valuable guidance.

Student Newsletters—You'll receive *From Classroom to Courtroom*, the AAJ Law Student newsletter that brings you professional advice as well as news about upcoming law student events.

Student Chapters—A Network of Your Own—Chapter programs concentrate on areas of law that most interest your group. AAJ works closely with the chapters, providing lecturers and program ideas.

Law School Ambassador Program—AAJ member “ambassadors” give talks at various law schools to give students a true view of what it's really like to be a trial lawyer.

Law Student Information Web Page —  
<http://www.justice.org/cps/rde/xchg/justice/hs.xsl/1091.htm>, you can conduct research and participate in the AAJ Law Student list server.

AAJ's Authoritative Legal Publications—Stay up-to-date with your free subscriptions to *TRIAL*, AAJ's award-winning monthly magazine, and *Law Reporter*, a case-reference journal.

AAJ's Annual Student Mock Trial Competition —You'll be eligible for AAJ's annual Student Mock Trial Competition, the nation's premier mock trial competition.

Network with Top Trial Lawyers—AAJ's Annual and Winter Conventions cover every aspect of trial law—all at an 85% discount for Law Student members.

Scholarships—AAJ offers several scholarships to Law Student Members.

### **How to Join**

The yearly dues are \$15. Call AAJ at 800-424-2727 or visit  
<http://www.justice.org/cps/rde/xchg/justice/hs.xsl/1091.htm>.

**ESTATE OF PARSONS V. EVERYDAY INN, INC.**

PREPARED BY:

ANTHONY J. BOCCHINO

Professor of Law  
Temple University  
Beasley School of Law

## Table of Contents

Introduction and Summary of the Pleadings .....	19
Incident Report .....	21
Statement of M. Parsons .....	27
Statement of E. Donovan .....	29
Diagram .....	31
Key to Diagram .....	32
Deposition of M. Parsons .....	33
Deposition of G. B. Masterson .....	36
Deposition of Greta Wilson .....	42
Deposition of E. Donovan .....	46
Report of C. W. Howard .....	51
Report of R. L. Morgan .....	56
Jury Instructions .....	61

## **INTRODUCTION AND SUMMARY OF THE PLEADINGS**

In this premises liability case, Plaintiff, the Estate of R. Parsons<sup>1</sup> 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<sup>th</sup> 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.

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<sup>1</sup> All characters in the file are gender neutral. For example, R. Parsons is either Robert Parsons or Roberta Parsons, depending on the gender of the person playing the role. However, if M. Parsons is being called as a witness and the composition of a team representing the Estate of R. Parsons permits, the author recommends that R. Parsons be Robert Parsons and M. Parsons be Michelle Parsons.

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.

The trial of this case will proceed in this order:

- Opening statement – plaintiff first, followed by defendant. Defendant may not reserve its opening statement until the conclusion of plaintiff's case.
- Plaintiff's case in chief – direct examination, followed by cross examination, followed in the court's discretion by redirect examination. No recross or subsequent examinations will be permitted. Plaintiff must call two live witnesses, M. Parsons and C. W. Howard.
- No more than two live witnesses may be called by plaintiff.
- Defendant's case in chief – direct examination, followed by cross examination, followed in the court's discretion by redirect examination. No recross or subsequent examinations will be permitted. Defendant must call two live witnesses, E. Donovan and R. L. Morgan. No more than two live witnesses may be called by defendant.
- Closing argument – plaintiff first, followed by defendant, followed by a rebuttal by plaintiff (at plaintiff's option).

*This file is a complete work of fiction. The author gratefully acknowledges the substantive and editorial assistance of Donald Beskind of Raleigh, N.C. and thanks Dennis Donnelly of Chatham, N.J. who provided materials that inspired this fact pattern.*

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**PALM COUNTY SHERIFF'S DEPARTMENT**

**INCIDENT REPORT**

**INCIDENT DATE:** March 1, 2006

**LOCATION:** Palm County Airport Everyday Inn  
5<sup>th</sup> Street & Airport Road  
New Palm City, Justice

**TIME:** 10:31 P.M                      **REPORTED BY:** E. Donovan, 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 5<sup>th</sup> & 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 Donovan 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 a 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. Donovan 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. Donovan – 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 as 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. Donovan, 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 5<sup>th</sup> 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 stay 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.

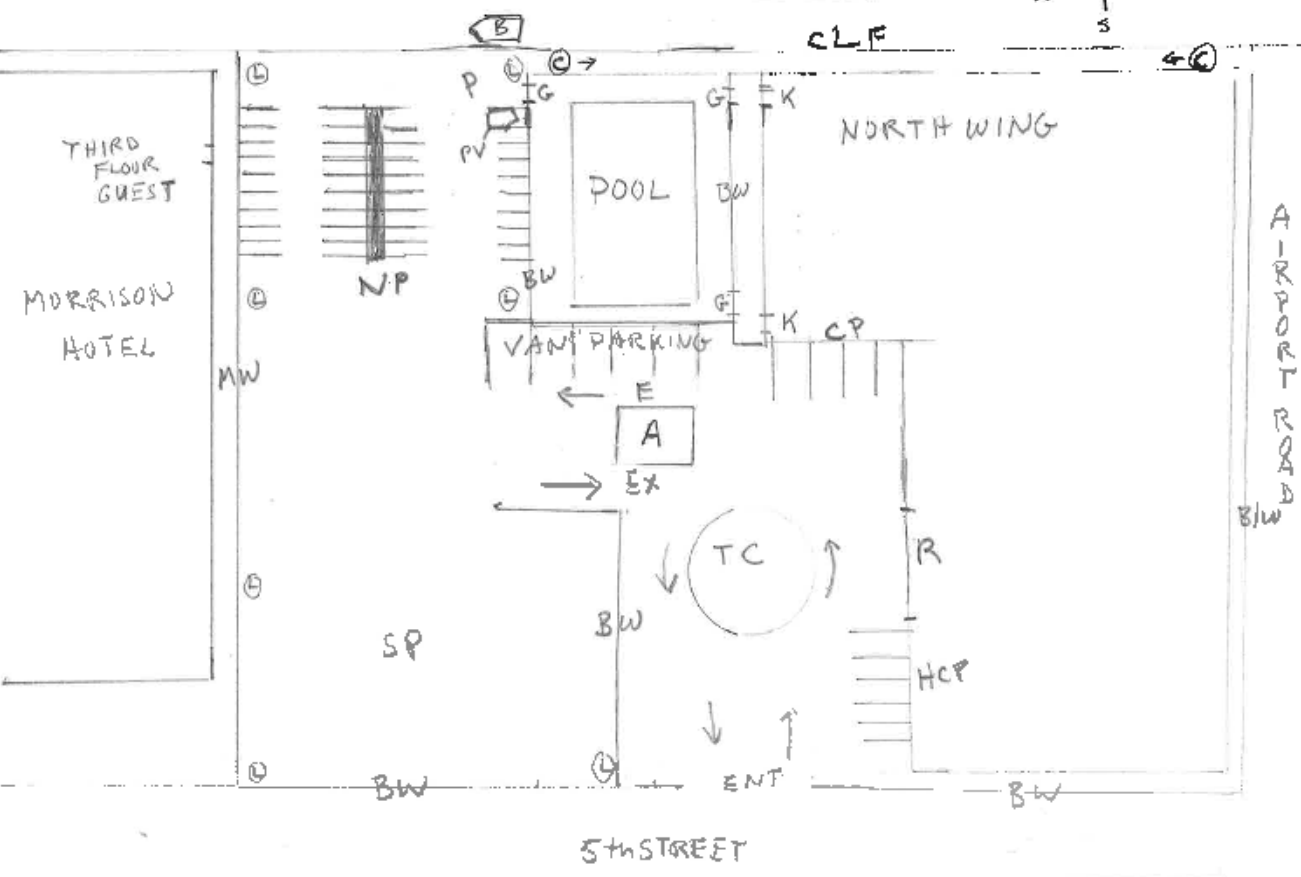
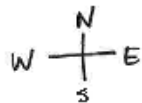
/s/ E. Donovan

WITNESSED:

/s/ T. S. Burns, Captain

March 2, 2006

# (W) APARTMENTS



5th STREET

## **KEY TO THE DIAGRAM**

ENT	-	Entrance/Exit to Everyday Inn
TC	-	Traffic Circle
R	-	Reception Area
HCP	-	Handicap Parking
CP	-	Check-In Parking
A	-	Parking Garage Attendant/Security Station
BW	-	Four foot high brick walls
MW	-	Six foot high brick wall
CLF	-	Chain Link Fence
G	-	Card Key locked gates to Swimming Pool
K	-	Card Key locked doors to North Wing
NP	-	North Parking Lot –Ground Level
SP	-	South Parking Lot – Ground Level
E	-	Entrance to Parking Lot
EX	-	Exit from Parking Lot
L	-	Street Lights
W	-	Witness on Fourth Floor of Apartment Complex
PV	-	Parsons Car (facing towards pool)
P	-	Parsons Body Location
B	-	Blue/Black American Sedan
C	-	Security Cameras

## DEPOSITION OF M. PARSONS<sup>2</sup>

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 58<sup>th</sup> 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 Donovan. R's introduced Donovan as the hotel manager and kidded with Donovan about working so late. They exchanged some small talk and we were provided our key cards. Donovan 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 Donovan 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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<sup>2</sup> 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, Donovan 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 Donovan. 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. Donovan 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 120<sup>th</sup> day of July, 2008

/s/ David Sheriden, Certified Court Reporter

## DEPOSITION OF G. B. MASTERSON

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 5<sup>th</sup> 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. Donovan, 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 5<sup>th</sup> 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. Donovan 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 Donovan (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. Donovan who called for sheriff and EMT back-up. Donovan 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 8<sup>th</sup> day of July, 2006.

/s/ David Sheriden

Certified Court Reporter

## **DEPOSITION OF GRETA WILSON<sup>4</sup>**

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 5<sup>th</sup> 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

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<sup>4</sup> 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<sup>5</sup> 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.<sup>6</sup> 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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<sup>5</sup> The parties have stipulated that the CRIMECAST Comprehensive Report and the resulting Cap index is a reliable predictor of crime risk.

<sup>6</sup> 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 10<sup>th</sup> day of July, 2008

/s/ David Sheriden Certified Court Reporter

## **DEPOSITION OF E. DONAVAN<sup>7</sup>**

My name is E. Donovan. 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 5<sup>th</sup> 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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<sup>7</sup> 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 1005 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 5<sup>th</sup> 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 58<sup>th</sup> 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. Donovan

Subscribed and sworn before me this 14<sup>th</sup> 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. Donovan 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 5<sup>th</sup> Street and Airport Road in New Palm City, Justice. They were checked in by the manager of that facility, E. Donovan. 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. Donovan 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. Donovan 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<sup>8</sup> 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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<sup>8</sup> 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<sup>9</sup>, B.S., M.A., AIA, CPP<sup>10</sup>

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<sup>9</sup> 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.

<sup>10</sup> 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.

**MORGAN SECURITY CONSULTANTS**  
**14445 WILSON BOULEVARD**  
**PALM CITY, JUSTICE**

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 Donovan, 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 5<sup>th</sup> and Airport Road in New Pam 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 5<sup>th</sup> 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. Donovan 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<sup>11</sup>;
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<sup>12</sup>;
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. Donovan 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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<sup>11</sup> 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.

<sup>12</sup> 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<sup>13</sup>, B.A., MA<sup>14</sup>

Morgan Security Consultants

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<sup>13</sup> 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.

<sup>14</sup> 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.