

1990

A Landlord's Duty to Protect Against Criminal Act On Premises: A Proposal for Virginia

Bonnie McDuffee
University of Richmond

Follow this and additional works at: <http://scholarship.richmond.edu/lawreview>

 Part of the [Property Law and Real Estate Commons](#)

Recommended Citation

Bonnie McDuffee, *A Landlord's Duty to Protect Against Criminal Act On Premises: A Proposal for Virginia*, 24 U. Rich. L. Rev. 395 (1990).

Available at: <http://scholarship.richmond.edu/lawreview/vol24/iss3/4>

This Note is brought to you for free and open access by the Law School Journals at UR Scholarship Repository. It has been accepted for inclusion in University of Richmond Law Review by an authorized editor of UR Scholarship Repository. For more information, please contact scholarshiprepository@richmond.edu.

NOTES

A LANDLORD'S DUTY TO PROTECT AGAINST CRIMINAL ACTS ON PREMISES: A PROPOSAL FOR VIRGINIA

"The world abounds with laws, and teems with crimes,"¹ a statement made in 1775, applies with equal force today. No one escapes the specter of crime. An Arlington, Virginia woman, assaulted in her apartment,² knows the toll crime takes. So does a woman falling victim to an attacker in a dark Norfolk, Virginia parking lot.³

Such violence exacts a great price, not only on the victims, but on society as a whole. In purely economic terms, crime cost Americans \$350 billion in 1983.⁴ Recently landowners have faced novel litigation, and sometimes sizeable monetary judgments, aimed at holding them accountable for criminal activity on their premises.⁵

This Note explores the imposition on landowners of a duty to protect against criminal acts by third parties on their premises. First, it examines three theories of such liability, developed by courts and commentators. Second, it addresses the way in which Virginia courts have handled the issue. Third, it argues that a duty should be placed on the landlord, defines that duty, and suggests its adoption in Virginia.

I. THEORIES OF LANDOWNER LIABILITY FOR CRIMINAL ACTS OF THIRD PERSONS ON THEIR PREMISES

A. *No Duty*

There is no duty to control the conduct of third persons.⁶ Historically,

1. M. REYNOLDS, *CRIME BY CHOICE* 11 (1985) (quoting the Philadelphia Gazette (Feb. 8, 1775)).

2. See *Klingbeil Management Group Co. v. Vito*, 233 Va. 445, 357 S.E.2d 200 (1987).

3. See *Wright v. Webb*, 234 Va. 527, 362 S.E.2d 919 (1987).

4. M. REYNOLDS, *supra* note 1, at 39.

5. See Haines, *Landlords or Tenants: Who Bears the Costs of Crime*, 2 *CARDOZO L. REV.* 299, 352 (1981).

6. RESTATEMENT (SECOND) OF TORTS § 315 (1965). Section 315 reads:

There is no duty so to control the conduct of a third person as to prevent him from

it made sense not to hold a landlord responsible for criminal acts of third persons on his premises. During the development of common law property rules, the landlord had little or no control over conveyed land.⁷ Following a transfer of land to a tenant in feudal times, the landlord stepped back, passively practicing non-interference.⁸

Modern courts remain reluctant to impose a duty on a landlord to protect patrons or tenants against criminal acts.⁹ The case most clearly articulating the no-duty concept is *Goldberg v. Housing Authority of Newark*.¹⁰ The case involved the assault and robbery of a man delivering milk to a tenant on the defendant's premises.¹¹ The plaintiff milkman claimed that the defendant had a duty to provide police protection guarding against such criminal acts.¹²

In rejecting the plaintiff's claim, the Supreme Court of New Jersey raised three obstacles to imposing a duty on the defendant landowner.¹³ First, the court expressed its concern over placing law enforcement in private hands. The government alone, it emphasized, has the right and ability to maintain a police force.¹⁴

Second, the court claimed that any duty imposed would inevitably be unacceptably vague.¹⁵ This concern stems from the difficulty in determining the cause of criminal activity.¹⁶ The question becomes, if we do not know the causes of crime, how can we decide with any certainty what is sufficient to deter it?¹⁷ As the *Goldberg* court asked, "[h]ow can one know

causing physical harm to another unless

(a) a special relation exists between the actor and the third person which imposes a duty upon the actor to control the third person's conduct, or

(b) a special relation exists between the actor and the other which gives to the other a right to protection.

7. Haines, *supra* note 5, at 309.

8. *Id.*

9. See generally Bazyley, *The Duty to Provide Adequate Protection: Landowners' Liability for Failure to Protect Patrons from Criminal Attack*, 21 ARIZ. L. REV. 727, 735-36 (1979); Haines, *supra* note 5 at 307-09; Note, *Tort Law — Merchant's Duty to Protect its Customers from Third-Party Criminal Acts — Foster v. Winston-Salem Joint Venture*, 18 WAKE FOREST L. REV. 114, 118-20 (1982).

10. 38 N.J. 578, 186 A.2d 291 (1962).

11. *Id.* at —, 186 A.2d at 291.

12. *Id.* Note that *Goldberg* addresses the rather narrow issue of whether a duty should be imposed to provide a security force.

13. *Id.* at —, 186 A.2d at 296-98.

14. *Id.* at —, 186 A.2d at 296.

15. *Id.* at —, 186 A.2d at 297. *Accord*, *Trice v. Chicago Hous. Auth.*, 14 Ill. App. 3d 97, —, 302 N.E.2d 207, 210 (1973).

16. See *Goldberg*, 38 N.J. at —, 186 A.2d at 297; see also 7735 Hollywood Blvd. Venture v. Superior Court, 116 Cal. App. 3d 901, —, 172 Cal. Rptr. 528, 529-30 (1981). See generally Johnson, *Landlord's Responsibility for Crime: Determining Legal Causation*, 17 REAL EST. L.J. 234 (1989).

17. See Johnson, *supra* note 16, at 237.

what measures will protect against the thug, the narcotic addict, the degenerate, the psychopath and the psychotic?"¹⁸

Third, the court insisted that the burden of a duty, if one were imposed, would fall upon tenants in the form of increased rent.¹⁹ One commentator takes this criticism to its unfortunate extreme.²⁰ The argument posits that while rent increases may be feasible in luxury buildings, they are impossible in the poor neighborhoods hardest hit by crime. If the landlords in the poor areas are faced with a substantial economic burden occasioned by a duty to provide security measures, they may simply abandon their enterprises. The result is more homelessness, continued urban decay, and, ironically, increased crime rates.²¹

B. *Limited Duty*

Several courts willing to impose a duty do so reluctantly and strictly define the circumstances under which liability will attach. Courts prefer a narrowly drawn foreseeability requirement which demands that the landlord could foretell with some certainty that the victim's injury was going to occur.²² Some courts go even further and require that the operation of the business itself must "lure" or "abet" criminal activity in order for the landlord to be liable.²³

*Cornpropst v. Sloan*²⁴ represents the aiding and abetting concept. The plaintiff, Cornpropst, suffered a brutal attack in the parking lot of the defendant mall owner. Previous assaults had occurred on the premises, and in the areas surrounding the mall, but no security guards were posted.²⁵ The court held that those instances of prior conduct were irrelevant, stating that an indispensable element in any case such as this was a

18. *Goldberg*, 38 N.J. at ___, 186 A.2d at 297.

19. *Id.* at ___, 186 A.2d at 297-98.

20. See Haines, *supra* note 5, at 351.

21. *Id.* Haines, however, goes on to suggest that the standards placed on landlords need not be exorbitant. *Id.* at 351-52. The suggestion applies to *Goldberg*. Where a duty to provide police protection would demand a great financial expenditure, the "basic protective measures" referred to by Haines (dead-bolt locks, adequate lighting, secure windows) come at a reasonable cost. See *id.* at 351.

22. Note, *supra* note 9, at 120; see *Stripling v. Armbruster*, 451 So. 2d 789 (Ala. 1984); *Latham v. Aronov Realty Co.*, 435 So. 2d 209 (Ala. 1983); *Cook v. Safeway Stores, Inc.*, 354 A.2d 507 (D.C. 1976); *Shipes v. Piggly Wiggly St. Andrews, Inc.*, 269 S.C. 479, 238 S.E.2d 167 (1977); *Cornpropst v. Sloan*, 528 S.W.2d 188 (Tenn. 1975); *Castillo v. Sears, Roebuck & Co.*, 663 S.W.2d 60 (Tex. Ct. App. 1983).

23. *Cornpropst*, 528 S.W.2d at 197; see Note: *The Tort Liability of Mall Owners for the Criminal Conduct of Third Parties*, 36 DRAKE L. REV. 755, 761-63 (1986-87). Compare *Morris v. Barnette*, 553 S.W.2d 648 (Tex. Civ. App. 1977) (all-night, self-service washateria was conducive to criminal activity) with *Castillo*, 663 S.W.2d at 60 (mall owners not liable because they neither aided crime nor had knowledge of any imminent danger).

24. 528 S.W.2d 188 (Tenn. 1975).

25. *Id.* at 190.

showing of "some mode of operation of, or condition upon the premises that lures, aids or abets" criminal activity.²⁶ *Stripling v. Armbrester*²⁷ clearly sets forth the idea that in order for a duty to arise, the landowner must have specific knowledge of prior criminal activity on the premises. Stripling parked his car in the defendants' shopping center parking lot, only to have it stolen, stripped and vandalized. The complaint alleged that the defendants knew of previous auto thefts in their parking lot. The defendants, not surprisingly, claimed to have no such knowledge.²⁸ The Supreme Court of Alabama held that, even though Stripling submitted a police officer's affidavit recounting two other car thefts, several purse snatchings, two robberies and a kidnapping, he failed to prove both that the mall owners knew of those incidents and that they had reason to believe Stripling himself would be harmed by similar acts.²⁹ "Absent such specialized knowledge," the court concluded, "the mere recital of prior criminal activity in or around the parking lot . . . will not constitute constructive knowledge on the part of the defendants" sufficient to impose liability on them.³⁰

C. General Duty

Most case law expanding a landowner's duty to protect against criminal acts of third parties on his premises arises in the commercial setting.³¹ The fundamental distinction between a narrow and a broad duty lies with the interpretation of foreseeability.³² Specifically, courts supporting expanded duty require only that the landowner be aware of general criminal activity on his premises, rather than have knowledge of prior instances of the same type that harmed the plaintiff.³³

The Restatement (Second) of Torts lends support for broad commercial landowner liability.³⁴ Jurisdictions adopting the Restatement position

26. *Id.* at 197.

27. 451 So. 2d 789 (Ala. 1984).

28. *Id.* at 790.

29. *Id.* at 791.

30. *Id.*

31. See generally Bazylar, *supra* note 9, at 742-44; Note, *supra* note 9, at 122-26.

32. See Note, *supra* note 23, at 766-67; Note, *supra* note 9, at 125-26.

33. See Note *supra* note 23, at 766-67; see also *Morgan v. Bucks Assoc.*, 428 F. Supp. 546 (E.D. Penn. 1977); *Galloway v. Bankers Trust Co.*, 420 N.W.2d 437 (Iowa 1988); *Foster v. Winston-Salem Joint Venture*, 303 N.C. 636, —, 281 S.E.2d 36, 40 (1981).

34. RESTATEMENT (SECOND) OF TORTS § 344 (1965). Section 344 reads:

A possessor of land who holds it open to the public for entry for his business purposes is subject to liability to members of the public while they are upon the land for such a purpose, for physical harm caused by the accidental, negligent, or intentionally harmful acts of third persons or animals, and by the failure of the possessor to exercise reasonable care to

(a) discover that such acts are being done or are likely to be done, or

(b) give a warning adequate to enable the visitors to avoid the harm, or otherwise

usually read it to mean that knowledge of general criminal activity suffices to impose a duty to guard against subsequent, even dissimilar, criminal harm.³⁵ Due to the Restatement's mandate, courts hesitant to hold a residential landlord liable for criminal acts on his premises may be persuaded to place responsibility on commercial landowners.³⁶

Some courts, however, look beyond foreseeability and further expand the duty to protect against criminal acts of third persons.³⁷ In *Taylor v. Centennial Bowl, Inc.*,³⁸ for example, the plaintiff suffered permanent disability from an attack in the defendant's parking lot. As Miss Taylor left the establishment, a bouncer employed by the defendant warned her that a stranger, who had previously been verbally harassing her, was in the parking lot.³⁹ The Supreme Court of California ruled that the warning

to protect them against it.

Comment f elaborates:

Since the possessor is not an insurer of the visitor's safety, he is ordinarily under no duty to exercise any care until he knows or has reason to know that the acts of the third person are occurring, or are about to occur. He may, however, know or have reason to know, from past experience, that there is a likelihood of conduct on the part of third persons in general which is likely to endanger the safety of the visitor, even though he has no reason to expect it on the part of any particular individual. If the place or character of his business, or his past experience, is such that he should reasonably anticipate careless or criminal conduct on the part of third persons, either generally or at some particular time, he may be under a duty to take precautions against it, and to provide a reasonably sufficient number of servants to afford a reasonable protection.

35. See Note, *supra* note 23, at 766-71; *Morgan*, 428 F. Supp. at 550; *Galloway*, 420 N.W.2d at 440; *Foster*, 303 N.C. at ___, 281 S.E.2d at 40; *Brown v. J.C. Penney Co.*, 297 Or. 695, ___, 688 P.2d 811, 818-20 (1984) (numerous reports of crime, similar or dissimilar, sufficient to put question of liability before the jury); see also *Morris v. Barnette*, 553 S.E.2d 648, 650 (Tex. Civ. App. 1977) (duty imposed on washateria's operator if because of location, mode of doing business, observations or past experiences he should reasonably anticipate criminal conduct, either generally or at a particular time).

36. See *Feld v. Merriam*, 506 Pa. 383, 485 A.2d 742 (1984). In *Feld*, a couple was abducted from the parking garage adjoining their apartment complex. The complex provided the parking service for an extra fee. Mr. Feld was abandoned on an empty street, while Mrs. Feld was assaulted. *Id.* at ___, 485 A.2d at 744. The Supreme Court of Pennsylvania, which had adopted the Restatement § 344 position in *Moran v. Valley Forge Drive-In Theater, Inc.*, 431 Pa. 432, 246 A.2d 875 (1968), distinguished the commercial setting from the residential setting. *Feld*, 506 Pa. at ___, 485 A.2d at 745. The court reasoned that a merchant invites the public and profits from their patronage. Therefore, the commercial landowner bears the burden of protecting against the criminal harm that may inevitably occur because "places of general public resort are also places where what men can do, they might." *Id.* An apartment complex, by contrast, is not such a place. *Id.* The court did find liability, however, because the landlord voluntarily assumed the responsibility for a security program, and was therefore obligated to provide it satisfactorily. *Id.* at ___, 485 A.2d at 746-47.

37. See *Taylor v. Centennial Bowl, Inc.*, 65 Cal. 2d 114, 416 P.2d 793, 52 Cal. Rptr. 561 (1966); *Samson v. Saginaw Professional Bldg., Inc.*, 393 Mich. 393, 224 N.W.2d 843 (1975).

38. 65 Cal. 2d 114, 416 P.2d 793, 52 Cal. Rptr. 561 (1966).

39. *Id.* at ___, 416, P.2d at 795, 52 Cal. Rptr. at 563.

by its employee failed to relieve the defendant of liability.⁴⁰ Furthermore, even if the warning had adequately apprised Miss Taylor of the danger, heeding it would have deprived her of what the court termed her "right" to enter the parking lot and gain access to her car.⁴¹ Thus, the *Taylor* court recognized a certain right to safety that a merchant must affirmatively protect.

The Supreme Court of Michigan, in *Samson v. Saginaw Professional Building, Inc.*,⁴² acknowledged that "the mere fact that an event may be foreseeable does not impose a duty upon the defendant to take some kind of action."⁴³ Along with foreseeability, the court considered the magnitude of the risk of harm and the relationship between the defendant landlord and the plaintiff business invitee which demanded "more than mere observation of events."⁴⁴ In *Samson*, an employee of a tenant in the defendant's office building was assaulted in the elevator by a patient from a mental health clinic also located in the building.⁴⁵ The court concluded that, the harm being foreseeable, the relationship being one where the defendant retained control over common areas, and the risk of harm being substantial, the defendant owed two duties to the plaintiff - the duty to further inquire into its responsibilities and the duty to reasonably protect the tenants and their invitees.⁴⁶

40. *Id.* at ___, 416, P.2d at 799, 52 Cal. Rptr. at 567.

41. *Id.*

42. 393 Mich. 393, 224 N.W.2d 843 (1975).

43. *Id.* at ___, 224 N.W.2d at 849.

44. *Id.*

45. *Id.* at ___, 224 N.W.2d at 845.

46. *Id.* at ___, 224 N.W.2d at 849-50. The facts of *Samson* involve an office building that leased space to, among other businesses, a mental health clinic. Mrs. Samson worked for an attorney who also rented space in the building. She was robbed and assaulted in the elevator by one of the clinic's outpatients. *Id.* at ___, 224 N.W.2d at 845. In reaching its decision, the Supreme Court of Michigan relied in part on the Restatement (Second) of Torts § 302B, which reads:

An act or omission may be negligent if the actor realizes or should realize that it involves an unreasonable risk of harm to another through the conduct of the other or a third person which is intended to cause harm, even though such conduct is criminal.

Id. at ___, 224 N.W.2d at 847 (quoting RESTATEMENT (SECOND) OF TORTS § 302B (1965)).

The court focused on comment 3, which states that although under ordinary circumstances the presumption is that no one will act criminally,

[t]here are, however, situations in which the actor, as a reasonable man, is required to anticipate and guard against the intentional, or even criminal, misconduct of others.

In general, these situations arise where the actor is under a special responsibility toward the one who suffers the harm . . . or where the actor's own affirmative act has created or exposed the other to a recognizable high degree of risk or harm.

Id. at ___, 224 N.W.2d at 847 (quoting RESTATEMENT (SECOND) OF TORTS § 302B comment 3 (1965)).

In addition, the court quoted comment f, which provides:

It is not possible to state definite rules as to when the actor is required to take precautions against intentional or criminal misconduct. As in other cases of negligence,

The quintessential case imposing general duty on a residential landlord is *Kline v. 1500 Massachusetts Avenue Apartment Corp.*⁴⁷ Miss Kline was assaulted in the common hallway of her apartment building, owned and operated by the defendant.⁴⁸ At the time Kline signed her lease, seven years prior to the incident, doormen guarded the main entrance, and an employee always manned the lobby desk. Also, the parking garage was consistently guarded, and the third and final entrance to the building was locked at 9:00 in the evening. By the time of the attack, no doorman watched any entrance, the desk often sat unattended, and one entrance stayed open at night.⁴⁹ Crime in the building, of which the defendant was aware, increased as the safeguards decreased.⁵⁰

Holding that the landlord had a duty to safeguard the common areas against crime by maintaining the once available security measures, the Circuit Court for the District of Columbia cited three justifications.⁵¹ First, the court reasoned that the landlord was better able than the tenant to take precautionary safety measures.⁵² In fact, the court asserted, the residential landlord possesses an ability to protect his tenants that even surpasses the capabilities of the police.⁵³ Second, the landlord, said

(see § 291-93) there is a matter of balancing the magnitude of the risk against the utility of the actor's conduct. Factors to be considered are the known character, past conduct, and tendencies of the person whose intentional conduct causes the harm, the temptation or opportunity which the situation may afford him for such misconduct, the gravity of the harm which may result, and the possibility that some other person will assume the responsibility for preventing the conduct or harm, together with the burden of the precautions which the actor would be required to take.

Id. at ___, 224 N.W.2d at 848 (quoting RESTATEMENT (SECOND) OF TORTS § 302B comment f (1965)).

47. 439 F.2d 477 (D.C. Cir. 1970).

48. *Id.* at 478.

49. *Id.* at 479.

50. *Id.*

51. *Id.* at 483.

52. *Id.* at 484.

53. *Id.* The court stated that the police "cannot patrol the entryways and hallways, the garages and the basements of private multiple unit apartment dwellings." *Id.*

The concern over private police protection is a theme in the issue of landlord liability for criminal acts on his premises. *See, e.g.,* *Goldberg v. Hous. Auth. of Newark*, 38 N.J. 578, ___, 186 A.2d 291, 296 (1962) ("The police function is highly specialized, involving skills and training which government alone can provide."); *Foster v. Winston-Salem Joint Venture*, 303 N.C. 636, ___, 281 S.E.2d 36, 42 (1981) (Carlton, J., dissenting) ("[t]he creation of myriad private police forces and the shift of law enforcement duties into the private sector amounts to taking the law into one's own hands and contravenes public policy.").

The *Kline* court responded to such concerns by noting that "in the fight against crime the police are not expected to do it all." *Kline*, 439 F.2d at 484. The court gave examples of when private citizens are expected by law to reduce criminal opportunity. For example, a car owner may be liable for damage done by a thief if he negligently allows that thief access to his car. *Id.* So, said the court, "it is only just that the obligations of the landlord in their sphere be acknowledged and enforced." *Id.*

the court, impliedly contracted to provide protective measures.⁵⁴ Third, the court compared the modern landlord-tenant relationship to the common law relationship of innkeeper-guest, where the innkeeper traditionally had a duty to protect guests against criminal harm.⁵⁵ Due to all these factors, the *Kline* court decided that a landlord has a duty to exercise "reasonable care in all the circumstances" to guard his tenants from criminal injury inflicted by third persons on his premises.⁵⁶

II. A LANDLORD'S DUTY IN VIRGINIA

In determining a landlord's liability to protect against criminal acts of third persons on her premises, Virginia differentiates the commercial from the residential landowner.⁵⁷ In neither case do the courts demand much from the landlord. According to Virginia common law, a residential landlord owes no duty of protection whatsoever to a tenant,⁵⁸ while a business invitor/landowner owes an extremely limited duty to safeguard a business invitee.⁵⁹

A. Residential Landowners

The Supreme Court of Virginia first addressed the issue directly in *Gulf Reston, Inc. v. Rogers*.⁶⁰ Mr. Rogers suffered a heart attack when a trespasser threw aluminum paint on him from the roof of his apartment building, owned and operated by Gulf Reston.⁶¹ The defendant was aware of prior wrongdoing resulting from unauthorized access to the roof.⁶² Gulf

54. *Id.* at 485. For a discussion of obligations to provide security based on the implied warranty of habitability, see *Warranty of Security in New York: A Landlord's Duty to Provide Security Precautions in Residential Buildings Under the Implied Warranty of Habitability*, 16 *FORDHAM URB. L. J.* 487 (1988).

55. *Kline*, 439 F.2d at 482-83, 485.

56. *Id.* at 485-86.

57. Compare *Klingbeil Mat. Group Co. v. Vito*, 233 Va. 445, 357 S.E.2d 200 (1987) (no duty on residential landlord) and *Gulf Reston, Inc. v. Rogers*, 215 Va. 155, 207 S.E.2d 841 (1974) with *Wright v. Webb*, 234 Va. 527, 362 S.E.2d 919 (1987) (narrowly defined duty imposed on commercial landlords).

58. *Klingbeil*, 233 Va. at 447, 357 S.E.2d at 201; *Gulf Reston*, 215 Va. at 157, 207 S.E.2d at 844; see also *Deem v. Charles E. Smith Mat., Inc.*, 799 F.2d 944 (4th Cir. 1986).

59. *Wright*, 234 Va. at 533, 362 S.E.2d at 922. The court stated:

[A] business invitor, whose method of business does not attract or provide a climate for assaultive crimes, does not have a duty to take measures to protect an invitee against criminal assault unless he knows that criminal assaults against persons are occurring, or are about to occur, on the premises which indicate an imminent probability of harm to an invitee.

Id.

60. 215 Va. 155, 207 S.E.2d 841 (1974).

61. *Id.* at 156, 207 S.E.2d at 843.

62. Young boys dropped water bags from the roof onto a shopping area, dove from the roof into an adjacent lake, and put a hole in the Rogers' roof. *Id.*

Reston had hired security personnel to prevent such incidents.⁶³

The particular incident injuring Mr. Rogers occurred during a period of construction on the roof. The construction company left a ladder against the wall leading to the roof.⁶⁴ The paint was used in the repair process, and Gulf Reston did not know that it had been left on the roof.⁶⁵

The court identified the issue as "whether the landlord owed a duty to protect the tenant from a criminal act of an unknown third party."⁶⁶ It answered in the negative. The court stated the traditional common law rule that there is no duty to protect another from harm inflicted by a third person unless a special relationship exists between the parties.⁶⁷ No special relationship exists between a landlord and a tenant.⁶⁸

The *Gulf Reston* court also addressed the issue of foreseeability.⁶⁹ In this case, the court decided that the defendant could not have reasonably anticipated the misfortune that befell Mr. Rogers.⁷⁰ The court intimated, though, that known criminal activity in buildings located in high crime areas may be sufficiently foreseeable.⁷¹ However, with no duty imposed in the first place, the role that foreseeability might play in liability remained unclear.

Another landlord-tenant case, *Klingbeil Management Group Co. v. Vito*,⁷² followed *Gulf Reston* by thirteen years. Miss Vito was raped in her apartment. The door to the apartment contained a button lock, rather than a dead-bolt.⁷³ After returning late one night, Miss Vito heard a noise, prompting her to check her front door. The button was in the unlocked position. At that point she was assaulted.⁷⁴ With much reiteration,

63. *Id.*

64. *Id.* Trespassers had previously gained access to the roof by way of built-in concrete flower boxes. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*, 215 Va. at 157, 207 S.E.2d at 844. The court quotes from the Restatement (Second) of Torts § 315. See *supra* note 6.

68. *Gulf Reston*, 215 Va. at 158, 207 S.E.2d at 844. The court distinguished between cases holding common carriers liable for criminal harm inflicted by third persons on passengers by recognizing that a special relationship exists between a common carrier and its passengers. *Id.*; see *Hines v. Garrett*, 131 Va. 125, 108 S.E. 690 (1921); *Virginia Ry. & Power Co. v. McDemmick*, 117 Va. 862, 86 S.E. 744 (1915); *Norfolk & W. Ry. Co. v. Birchfield*, 105 Va. 809, 54 S.E. 879 (1906); *Connell's Ex'rs v. Chesapeake & O. Ry. Co.*, 93 Va. 44, 24 S.E. 467 (1896).

69. *Gulf Reston*, 215 Va. at 159, 207 S.E.2d at 845.

70. *Id.*

71. *Id.*

72. 233 Va. 445, 357, S.E.2d 200 (1987).

73. *Id.* at 447, 357 S.E.2d at 201. A button lock is located on the door knob. Turning the key to enter the apartment does not cause the button to pop out of the locked position. *Id.*

74. *Id.* The court conceded that, even though it was not known with certainty how the perpetrator got into the apartment, ample evidence supported a conclusion that he came in

but no reconsideration, of *Gulf Reston*, the supreme court adhered to its position that no duty exists on the part of a landlord to protect tenants from the kind of harm suffered by Miss Vito.⁷⁵ This time the court did not even reach the foreseeability issue. Nothing in the facts or the opinion indicated whether Miss Vito lived in the kind of high crime area that the court had mentioned in *Gulf Reston*.⁷⁶

On the topic of residential landlord liability, then, Virginia remains staunchly pro-landlord. The only discussion of policy considerations in this area has come from the United States Court of Appeals for the Fourth Circuit, which decided *Deem v. Charles E. Smith Management, Inc.*⁷⁷ in 1986, during the interim between *Gulf Reston* and *Klingbeil*.

Miss Deem also lived in Arlington, and she was raped there outside her apartment as she walked from her parked car to the entrance of the building.⁷⁸ The court of appeals held that *Gulf Reston* controlled the outcome of the case.⁷⁹ In doing so, the court rejected Deem's argument that a statutory duty imposed on the landlord to maintain the common areas in a safe condition extended to providing physical safety from criminal acts.⁸⁰ In its opinion, though, the court noted an underlying policy consideration in deciding cases such as this one:

Virginia . . . must strike the balance between the need to protect the safety of tenants and the need to ensure affordable low and moderate income rental housing throughout the state. The extent to which landlords are liable for third-party acts profoundly affects that equation. If landlords face such liability, tenant safety might be greater, but rents may be higher, and apartment units, especially in urban centers, may become more scarce.⁸¹

Perhaps Virginia made its choice a year later with *Klingbeil*.

B. Commercial Landowners

The Supreme Court of Virginia turned its attention to commercial

through the front door. *Id.*

75. *Id.* The court also considered the statutory question of whether an Arlington county ordinance requiring all exterior doors in multiple dwelling buildings to be equipped with dead-bolt locks imposed liability on the landlord. The court held that it did not. The ordinance was superseded by §§ 55.248.2 to 248.40 of the Virginia Residential Landlord and Tenant Act of 1974, which provided that a landlord need not furnish a dead-bolt in any unit with five or fewer apartments, and need only furnish one in larger dwellings upon receipt of a written notice and a fee from the tenant. *Id.* at 448, 357 S.E.2d at 202.

76. See *supra* note 71 and accompanying text.

77. 799 F.2d 944 (4th Cir. 1986).

78. *Id.* at 945.

79. *Id.*

80. *Id.* at 945-46 (citing the Virginia Residential Landlord and Tenant Act § 55-248.13(a)(3) (1974)).

81. *Deem*, 799 F.2d at 946.

landowners in *Wright v. Webb*.⁸² Miss Webb was the victim of an assault in the parking lot of the defendants' motel. She stopped at the motel to ask for directions to an adjacent dinner theater, which the Wrights also owned and for which they provided parking. On her way back to her car she was accosted.⁸³ On an average of once or twice a month prior to Webb's assault, thefts had occurred either in the rooms or in the parking lot of the motel. In addition, a guest had been attacked in her room the year before, and three years earlier a double murder had been committed in an adjoining parking lot, operated by the City of Norfolk. The motel manager knew of these prior incidents.⁸⁴

Again the court refused to recognize any special relationship that would authorize the imposition of a duty.⁸⁵ In doing so, the court explained its reasoning more fully than it had in the residential cases. The discussion, resulting in a narrowly framed rule, raised three concerns.⁸⁶ First, the court equated the business invitor-invitee relationship with that of landlord-tenant. Since the mere relationship between the latter involves no duty, neither does the former.⁸⁷ Second, the court asked who should bear the burden to protect against criminal acts in circumstances such as these. Two reasons led to the conclusion that it would be unfair to place the burden on the landowner. First, "it would be difficult to anticipate when, where, and how a criminal might attack."⁸⁸ Second, the cost of providing the most effective deterrent, a private security force, would be prohibitive.⁸⁹ Therefore, concluded the court, "where invitor and invitee [were] both innocent victims of assaultive criminals," it is unfair to place that burden on the invitor.⁹⁰ Third, the court revisited foreseeability. In general, criminal assaults were not reasonably foreseeable. Furthermore, a history of property crimes failed to put one on notice of a likelihood of physical violence.⁹¹

Then the court narrowed the idea of foreseeability to the point that it became almost unrecognizable. The court gleaned from common carrier cases dealing with liability for third-party acts⁹² that, in order for the carrier to be held responsible it must have "notice of specific danger just prior to the assault."⁹³ The court distinguished this type of immediate

82. 234 Va. 527, 362 S.E. 2d 919 (1987).

83. *Id.* Va. at 529, 362 S.E.2d at 920.

84. *Id.*

85. *Id.* at 531, 362 S.E.2d at 921; see *supra* notes 6 and 67 and accompanying text.

86. See *Wright*, 234 Va. at 531-32, 362 S.E.2d at 921-22.

87. *Id.* at 531, 362 S.E.2d at 921.

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. See *supra*, note 68.

93. *Wright*, 234 Va. at 533, 362 S.E.2d at 922; see *Virginia Ry. & Power Co. v. McDem-*

notice from knowledge of previous criminal activity and declined to impose liability solely for the latter.⁹⁴ The resulting rule stated that

a business invitor, whose method of business does not attract or provide a climate for assaultive crimes, does not have a duty to take measures to protect an invitee against criminal assault unless he knows that criminal assaults against persons are occurring, or are about to occur, on the premises which indicate an imminent probability of harm to an invitee.⁹⁵

Virginia's apparent willingness to impose liability on commercial landowners is a conditional willingness fraught with limitations. The *Wright* rule echoes the language of the "aiding and abetting" theory,⁹⁶ which addresses those "whose method of business does not attract or provide a climate for assaultive crimes."⁹⁷ Furthermore, *Wright* suggests that knowledge of previous criminal activity may never be sufficient to justify liability.⁹⁸ Commercial landowners in Virginia, then, possess only the narrowest of duties to protect an invitee against criminal harm by third parties.⁹⁹

mick, 117 Va. 862, 86 S.E. 744 (1915). In the *McDemmick* case, a boarding passenger was injured on the defendant's trolley by a man who had been arguing with the conductor over the right to smoke a cigarette on the car. During the dispute, the trolley slipped off its track, making it necessary for the conductor to leave the car to fix it. The man who had been smoking blocked the exit. The conductor pushed him aside and asked another young passenger to detain him until his arrest could be arranged. The young man and the smoker then began a "scuffle," just as the plaintiff was boarding the trolley. This conflict resulted in the smoker kicking the plaintiff. *Id.* at 863-64, 86 S.E. at 745.

The court absolved the defendant of any liability for the plaintiff's injury. The court held that the conductor could not have anticipated, at the time he left the car, that such harm would occur, and he was not able to intervene when it happened. *Id.* at 868-71, 86 S.E. at 747. Therefore, the carrier bore no burden to protect the plaintiff because the injury was "unexpected and inflicted at a time when the servants of the defendant were unable to protect" the plaintiff. *Id.* at 867, 86 S.E. at 746 (quoted in *Wright*, 234 Va. at 533, 362 S.E.2d at 922).

94. *Wright*, 234 Va. at 533, 362 S.E.2d at 922.

95. *Id.*

96. See *supra* notes 23-27 and accompanying text.

97. *Wright*, 234 Va. at 533, 362 S.E.2d at 922.

98. See *id.*

99. The Supreme Court of Virginia, however, recently allowed a commercial tenant to bring suit on a breach of contract theory. See *Richmond Medical Supply Co. v. Clifton*, 235 Va. 584, 369 S.E.2d 407 (1988). The parties' lease included a provision requiring the landlord to repair a door on the leased premises. The defendant landlord failed to make the repairs by the agreed date, and a thief broke in through the door, stealing \$60,000 worth of property. *Id.* at 585-86, 369 S.E.2d at 408. The court distinguished *Gulf Reston, Klingbeil* and *Wright* because none of the defendants in those cases had expressly assumed a duty to protect the plaintiffs. *Id.* at 587, 369 S.E.2d at 409. Because "contracting parties are entirely capable of assuming duties toward one another beyond those imposed by general law," the landlord was bound by his promise to fix the door. *Id.* The court remanded the case to let the jury decide if the resulting damage was within the contemplation of the parties at the time of contracting. *Id.*

III. SUGGESTIONS AND SUPPORT

A. *A Proposed Duty*

A landlord should have a duty to protect against criminal acts of third persons committed on his premises. By no means should he be made to insure the safety of his tenants or patrons,¹⁰⁰ but he should be responsible for reducing the likelihood that they will fall victim to crime on his property.¹⁰¹ The duty proposed here is that a landlord must act reasonably in light of all circumstances to reduce the opportunity for criminals to harm those lawfully on his premises.¹⁰²

B. *Support*

The justification for imposing this duty already exists in case law and commentary. Previous discussions, however, distinguished commercial and residential settings.¹⁰³ Such distinction is unnecessary. Basically, two policy considerations justify imposing a duty on a landlord. First, the modern conditions of both commercial and residential land use warrant it; and second, the landlord is better able to protect against the harm by

100. Courts have long held that "a landlord is no insurer of his tenants' safety." *See, e.g.,* *Wagman v. Boccheciampe*, 206 Va. 412, 416, 143 S.E.2d 907, 909 (1965); *Revell v. Deegan*, 192 Va. 428, 435, 65 S.E.2d 543, 547 (1951). For a discussion of this concept specifically in relation to liability for third-party criminal acts, see Haines, *supra* note 5, at 306-45 and Note, *supra* note 9, at 118-22.

101. *See* *Lay v. Dworman*, 732 P.2d 455 (Okla. 1986).

102. This proposed duty is an amalgamation drawn from the observations, suggestions and decisions of judges and scholars. For the specific bases for this formulation, see *infra* notes 128-38 and accompanying text.

103. *See* Note, *supra* note 9, at 122-26. The reasons behind imposing a duty on commercial landowners are generally stated as follows:

1. An "economic benefit theory" suggests that because the landowner benefits economically from the invitor-invitee relationship, it is only fair that she should bear the resulting burdens. *Id.* at 123.

2. The nature of modern commercial settings inevitably attracts criminals. Since the landowner creates and fosters this environment, she should guard against its inherent risks in it. *Id.* at 123.

3. The merchant is better able to combat the problem. She has more information about the risks of crime and more options available to guard against it than does the patron. *Id.* at 123-24.

Kline v. 1500 Mass. Ave. Apartment Corp., 439 F.2d 477 (D.C. Cir. 1970) best states the bases for placing a duty on the residential landlord:

1. The landlord is better able than either the police or the tenant to safeguard areas exclusively within his control. *Id.* at 484.

2. An implied contract obliges the landlord to provide for his tenants' safety. This includes the idea that a lease entails a "package of services" provided by the landlord to the tenant, which includes protection of physical safety. *Id.* at 481, 485.

3. The modern landlord-tenant relationship is most analogous to the traditional innkeeper-guest relationship, which demands a duty of protection on the part of the landlord. *Id.* at 485.

virtue of control and economic incentive.¹⁰⁴

1. The Modern Situation

Much justification for imposing landlord liability in the commercial arena comes from the relatively recent phenomenon known as the shopping mall.¹⁰⁵ The classic formulation of this argument states:

The modern phenomenon of merchandising and marketing through community shopping centers has opened a new vista into the concept of tort liability of the owners, occupiers, and possessors of public business premises. In such centers, aptly called "cities within cities," virtually all the marketing demands of the general public can be met on a "one stop" basis . . . The primary incentive to the utilization of these shopping areas is the availability of adequate and free parking facilities . . . [provided] with the expectancy that the tradesmen in the market places will profit by such use. Having thus caused enormous congregations of potential and actual shoppers in relatively compact areas, certain duties devolve upon the invitor for the benefit and protection of the invitees.¹⁰⁶

In other words, "one who invites all may reasonably expect that all may not behave," and must therefore act accordingly.¹⁰⁷

Shopping malls, of course, do not cause crime. One study, though, concluded that

land use "generates" crime in a manner analogous to the way in which it generates traffic. A commercial complex including stores and offices may generate traffic for purposes of employment, shopping, service-seeking, service-rendering . . . and "other" purposes, including crime.¹⁰⁸

Those commercial landowners who create and foster these environments cannot eliminate crime or control the criminal, but it is fair to expect them to operate the premises in the safest manner possible.¹⁰⁹ They can achieve that goal by reducing the likelihood that crime will occur on their premises.¹¹⁰ It has been noted that "[e]ach land use category may be per-

104. See *supra* note 103; see also, Bazylar, *supra* note 9, at 744-50. The approach taken here is similar to, and influenced by Bazylar's interest analysis, which weighs costs and benefits in deciding what duty, if any, to impose. See *infra* notes 105-28.

105. See generally, Note, *supra* note 23 (commentary specifically on imposing duty on shopping mall owners and operators).

106. Cornpropst v. Sloan, 528 S.W.2d 188, 199 (Tenn. 1975) (Henry, J., dissenting).

107. Feld v. Merriam, 506 Pa. ___, ___, 485 A.2d 742, 745 (1984).

108. HARRIES, CRIME AND THE ENVIRONMENT 93 (1980).

109. See *supra* note 104.

110. See generally Johnson, *supra* note 16, at 238-41 (discussion of environmental factors influencing criminal activity). Johnson suggests three approaches to making the environment less conducive to crime. First, increase the visibility of crime by adequate lighting or security patrols. *Id.* at 239. Second, "harden" the target with measures such as locks in residential buildings. *Id.* Third, manage the environment by controlling factors such as van-

ceived as offering a set of crime opportunities,"¹¹¹ and that criminal offenders respond to visual cues that can deter or encourage criminal behavior.¹¹²

While much emphasis has been placed on the uniqueness of the modern commercial environment as a justification for creating commercial landlord duty, today's residential living also supports such a duty. The landlord is no longer the passive conveyor of land that traditional property law depicts him to be, although the traditional view still dominates much landlord-tenant law.¹¹³ He is, in reality, like an innkeeper who maintains much control over his premises.¹¹⁴ Residential landlords, in fact, not only maintain control over common areas, but often take control from tenants over the securing of individual apartments. For example, there may be a fee for the installation of a dead-bolt lock.¹¹⁵ At least one realty company in the Richmond, Virginia area requires a tenant who puts a dead-bolt lock on the door to relinquish a copy of the key to the management.¹¹⁶

The Oklahoma case of *Lay v. Dworman*¹¹⁷ supports imposing a duty based on the control that a landlord retains in the modern day landlord-tenant relationship. That control, the court said, opens the landlord up to potential liability for failure to maintain the controlled areas.¹¹⁸ The *Lay* rule identifies a landlord's duty as one "to use reasonable care to maintain the common areas of the premises in such a manner as to insure that the likelihood of criminal activity is not unreasonably enhanced by the condition of those common premises."¹¹⁹

dalism with quick repair. *Id.*; see also Bazylar, *supra* note 9, at 733.

111. HARRIES, *supra* note 108, at 93.

112. Murray, *The Physical Environment and Community Control of Crime*, in CRIME AND PUBLIC POLICY 109 (J. Wilson, ed. 1983).

113. Haines, *supra* note 5, at 309; see *supra* notes 7-8 and accompanying text.

114. *Kline v. 1500 Mass. Ave. Apartment Corp.*, 439 F.2d 477, 485 (D.C. Cir. 1970).

115. See *Klingbeil Management Group Co. v. Vito*, 233 Va. 445, 448, 357 S.E.2d 200, 202 (1987).

116. Policy of Commonwealth Realty Development Company (1988).

117. 732 P.2d 455 (Okla. 1986).

118. *Id.* at 459. Lay was raped in her apartment. The defendants allegedly knew of and failed to repair a defective lock on her apartment, through which, the plaintiff asserted, the intruder entered. The case was remanded to resolve these factual questions. *Id.* at 459-61.

119. *Id.* at 458. The idea of enhancement of the risk and reduction of the opportunity for criminal activity are synonymous. A landowner who fails to reduce the opportunity for criminal activity is actually enhancing the risk that criminal conduct will occur. For this Note's reasons for choosing this terminology, see *infra* notes 133-36 and accompanying text. See also, *Braitman v. Overlook Terrace Corp.*, 68 N.J. 368, —, 346 A.2d 76, 84 (1975) (a reasonable person would realize "the possibility of enhanced risk that a defective lock would create").

2. Economics and Ability

Both in the residential and commercial settings, the landlord is in the best position to combat crime on the premises.¹²⁰ The landlord has greater access to information concerning crime on and around his premises, especially in the commercial environment, where victims are often transient invitees.¹²¹ Moreover, the landlord generally has control over those areas in which crime is likely to occur (common areas of a residential or office building or parking lots in a shopping center), or over devices relied upon to provide security, such as door locks or alarm systems.¹²² Furthermore, the landowner has numerous security options available, such as providing lighting, alarm systems, security patrols and doormen as well as changing the building design.¹²³

A landlord also has more financial control. The landlord, in either a residential or a commercial context, benefits financially from tenants or patrons.¹²⁴ A mall owner can certainly better afford to contract for private security protection than can a shopper. Similarly, a residential landlord is better able to finance, for example, the rewiring of common areas to provide suitable lighting.

Economics factor into the imposition of a duty in other ways. Crime affects landowners by raising wages that businesses must pay to attract employees to locations where they risk criminal attack and by reducing property values in high crime locations.¹²⁵ Patrons may avoid certain establishments after dark, and residents may move out of, or refuse to move into, neighborhoods where they are victimized or fear victimization.¹²⁶

120. See Note, *supra* note 9, at 123-24; cf. *Kline v. 1500 Mass. Ave. Apartment Corp.*, 439 F.2d 477, 484 (D.C. Cir. 1970) (residential landlord is better able to combat crime than tenant).

121. See Note, *supra* note 9, at 123-24; see also *Samson v. Saginaw Professional Bldg., Inc.*, 393 Mich. 393, ___, 224 N.W.2d 843, 849-50 (1975) (implicitly acknowledging the landlord's informational advantage by placing a duty of inquiry on him); Bazyley, *supra* note 9, at 747 (discussing landlord's liability for failure to protect patrons from criminal attack).

122. See *supra* notes 107-117 and accompanying text.

123. Bazyley, *supra* note 9, at 748; see also Note, *supra* note 9, at 123-24. Some fear that placing a duty of protection against crime on a landlord encourages the proliferation of private security forces. See *supra* note 53 and accompanying text. Leaving the burden on the tenant just as conceivably could cause individual citizens to "take the law into their own hands" as they become more fearful and frustrated with the crime in their communities.

124. Bazyley, *supra* note 9, at 745.

Involvement of owners of private businesses in crime reduction is especially necessary. As the holders of economic power in this country, private businesses are in a key position to help reduce the rate of crime. Involvement of those citizens who hold the greatest amount of economic power and influence, necessarily should produce the greatest positive effect.

Id. at 750, n.151. See also Note, *supra* note 9, at 122.

125. M. REYNOLDS, *supra* note 1, at 51.

126. Bazyley, *supra* note 9, at 748-49.

Landlords can avoid these detrimental affects of crime by safeguarding their premises.¹²⁷

C. *The Formulation of the Duty*

Once the imposition of a duty is justified, the question remains as to what is a fair duty. The proposal made here has several components, each of which will be examined.

1. Reasonableness in all Circumstances

The standard of reasonableness based on the relative degree of security in place when the premises were initially leased, comes from *Kline v. 1500 Massachusetts Avenue Apartment Corp.*¹²⁸ It permits flexibility in determining liability in a particular case.¹²⁹ For example, a commercial establishment may require greater efforts to secure than an apartment unit, and a building with fewer tenants who exercise greater control over the premises may demand less intervention by the landlord.¹³⁰

"Reasonableness in all circumstances" purposefully does not include "reasonableness in light of prior criminal activity on the premises." Liability should not rest with the foreseeability of crime based on previous instances, similar or dissimilar, of crime.¹³¹ Basing a duty to act on prior wrongdoing in effect allows a few "free" crimes before something is done.¹³² It is like requiring a certain number of accidents at an intersection before a traffic light can be put up.

2. Reducing Opportunity for Criminal Harm

Instead of holding a landlord responsible for preventing criminal activity on his premises, this duty extends only to safeguarding the environment within the landlord's control, to make it less susceptible to criminal attack.¹³³ Although some skepticism has been voiced about the effect of

127. See *id.* at 749-50; see also Haines, *supra* note 5, at 351-52.

128. 439 F.2d 477, 486 (D.C. Cir. 1970); see *supra*, note 56 and accompanying text.

129. See *Kline*, 439 F.2d at 486; see also Haines, *supra* note 5, at 334.

130. Haines, *supra* note 5, at 351-52.

131. See *Samson v. Saginaw Professional Bldg., Inc.*, 393 Mich. 393, —, 224 N.W.2d 843, 849 (1975) ("the mere fact that an event may be foreseeable does not impose a duty upon the defendant to take some kind of action . . ."); cf. *Goldberg v. Hous. Auth. of Newark*, 38 N.J. 578, —, 186 A.2d 291, 293 (1962) ("The question is not simply whether a criminal event is foreseeable, but whether a *duty* exists to take measures to guard against it.").

132. See *Isaacs v. Huntington Memorial Hosp.*, 38 Cal. 3d 112, —, 695 P.2d 653, 658, 211 Cal. Rptr. 356, — (1985); see also Note, *supra* note 23, at 769-70.

133. See *supra* note 110; see also RESTATEMENT (SECOND) OF TORTS § 302B, comment f (1965) (one factor to be considered when holding one responsible for taking precautions against third-party criminal acts is the "temptation or opportunity the situation may afford

the physical environment on crime,¹³⁴ studies have shown that the decision concerning where to commit a crime may be based on opportunity.¹³⁵ For example, a criminal may be less likely to attack a victim in a well-lit area because he is more likely to be visible.¹³⁶

3. All Persons Lawfully on the Premises

This component simply acknowledges a lack of distinction among parties based on their status.¹³⁷ Such acknowledgement avoids any difficulty that may arise in determining whether a landowner owes a duty to a tenant as opposed to a social guest as opposed to a business invitee as opposed to an employee.¹³⁸

D. Acceptance of Proposed Duty in Virginia

Virginia's analysis of the duty owed by a landlord to protect against criminal acts by third persons on his premises abides faithfully by the traditional notions of the relationship between a landlord and his tenant or invitees.¹³⁹ Unless the courts abandon this analysis in favor of one based on the contemporary conditions of commercial and residential tenancy, a tenant or invitee will continue to have no recourse in Virginia for the type of criminal injury considered in this Note.¹⁴⁰

Virginia Supreme Court Justices Poff and Stephenson endorsed the Restatement position¹⁴¹ in Poff's concurring opinion in *Wright v. Webb*.¹⁴² This view, however, applies only to commercial liability and fails to recognize the merits of extending liability to the residential setting.¹⁴³ The concurrence in *Wright* placed great emphasis on prior criminal acts, a ration-

. . . for such misconduct . . ."); cf. *Lay v. Dworman*, 732 P.2d 455, 458 (Okla. 1986) (frames duty in terms of enhancing the risk of criminal activity). See generally Johnson, *supra* note 16, at 238-41 (discussion of the interaction of the physical environment and crime).

134. See Murray, *supra* note 112, at 107-22.

135. Johnson, *supra* note 16, at 238.

136. *Id.* at 238-39.

137. See Bazylar, *supra* note 9, at 738-39; see also *Rowland v. Christian*, 69 Cal. 2d 108, 443 P.2d 561, 70 Cal. Rptr. 97 (1968). *Rowland* rejected distinctions based on whether the person was identified as a trespasser, licensee, or invitee, and declined to use them in determining the liability of an occupier of land in warning a guest of a dangerous physical condition on the premises. *Id.* at ___, 443 P.2d at 565, 567, 70 Cal. Rptr. at ___.

138. See Bazylar, *supra* note 9, at 738-39.

139. See *Klingbeil Management Group Co. v. Vito*, 233 Va. 445, 447, 357 S.E.2d 200, 201 (1987); *Gulf Reston, Inc. v. Rogers*, 215 Va. 155, 157, 207 S.E.2d 841, 844 (1974).

140. See generally Bazylar, *supra* note 9, at 744-50 (favoring modern interests analysis); *supra* notes 103-28 and accompanying text.

141. RESTATEMENT (SECOND) OF TORTS § 344 (1965); see *supra* note 34.

142. 234 Va. 527, 534, 362 S.E.2d 919, 923 (1987). (Poff, J., concurring).

143. See *supra* notes 36, 103-28 and accompanying text.

ale not sufficiently flexible or fair for liability in this context.¹⁴⁴

Furthermore, little help comes from Virginia's treatment of innkeepers and their guests. Recognition of the similarity between an innkeeper-guest relationship and a landlord-tenant relationship may support imposing liability on the landlord, because an innkeeper is generally held to a higher standard of care.¹⁴⁵ In Virginia, an innkeeper is under a duty to keep his premises "reasonably safe," but he is prevented from becoming an insurer of his guests' safety under innkeeper-guest case law.¹⁴⁶ Even with an ordinary standard of care placed on an innkeeper, Virginia has still emphasized that a landlord owes even less care, because "[a]n innkeeper is in direct . . . control of his guest rooms, while a lessee may be expected to do many things for his own protection."¹⁴⁷

In spite of the supreme court's reluctance to recognize a substantial, if any, duty in this area, victims continue to bring suit, lower court judges allow them to go to the jury, and those juries award damages.¹⁴⁸ Perhaps as more people realize the fairness of holding a landlord responsible for third-party criminal acts and continue to press the courts for relief, the law will develop to accommodate them. This Note has suggested ways in which the law can change and reasons why it should.

IV. CONCLUSION

This Note does not pretend to have a solution to the crime problem facing our society today. It does not presume to identify the causes of crime or to go the way of the "sociologist [who] is a scientist who blames crime on everything and everyone, except the person who commits it."¹⁴⁹ It simply suggests that, however slight the ultimate effect of imposing a duty on landowners may be on the overall crime situation, such a legal and fair means of minimizing crime should be implemented.¹⁵⁰

Bonnie McDuffee

144. See *Wright*, 234 Va. at 534, 362 S.E.2d at 923 (Poff, J., concurring); *supra* notes 131-32 and accompanying text.

145. See *supra* notes 114-119 and accompanying text.

146. See *Crosswhite v. Shelby Operating Corp.*, 182 Va. 713, 716-18, 30 S.E.2d 673, 674-75 (1944).

147. *Id.* at 715, 30 S.E.2d at 674.

148. See 4 VLW 345 (Oct. 16, 1989); 3 VLW 1067 (May 29, 1989).

149. M. REYNOLDS, *supra* note 1, at 57 (quoting Laurence J. Peter).

150. HARRIES, *supra* note 108, at 103.

