



4-1-2016

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### Recommended Citation

Shaundra K. Lewis, *The Cost of Raising a Killer – Parental Liability For the Parents of Adult Mass Murderers*, 61 Vill. L. Rev. 1 (2016).

Available at: <https://digitalcommons.law.villanova.edu/vlr/vol61/iss1/1>

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# VILLANOVA LAW REVIEW

VOLUME 61

2016

NUMBER 1

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## Articles

### THE COST OF RAISING A KILLER—PARENTAL LIABILITY FOR THE PARENTS OF ADULT MASS MURDERERS

SHAUNDR A K. LEWIS\*

“People never really recover from the death of a child. How much more difficult, then, is it to deal with the deaths of other children whom your child has killed? . . . So much shame surrounds the issue of mental illness that many parents don’t seek help for their kids or are afraid to talk about it publicly. . . . [T]hat needs to change.”<sup>1</sup>

#### INTRODUCTION

ONE simply cannot ignore the significant number of mass shootings continuing to occur in places one would least expect gun violence to erupt.<sup>2</sup> In the last seven years, there has been a shooting rampage at a

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1. Belinda Luscombe, *Elliot Rodger’s Parents Break Silence on Shooting*, TIME (May 29, 2014), <http://time.com/136764/elliott-rodger-parents/> [https://perma.cc/HK4X-ZP2V].

2. Shaundra K. Lewis, *Firearm Laws Redux—Legislative Proposals for Disarming the Mentally Ill Post-Heller and Newtown*, 3 MENTAL HEALTH L. & POL’Y J. 320, 323 (2014) (observing that “public mass shootings are now ubiquitous in America”). According to a recent FBI report, from 2000 to 2013, there were approximately 160 active mass shooter incidents across America, including “in urban and rural areas, and in 40 of 50 states and the District of Columbia.” J. PETE BLAIR & KATHERINE W. SCHWEIT, TEX. STATE UNIV. & FBI, U.S. DEP’T OF JUSTICE, A STUDY OF ACTIVE SHOOTER INCIDENTS IN THE UNITED STATES BETWEEN 2000 AND 2013, at 8 (2014),

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grocery store,<sup>3</sup> movie theater,<sup>4</sup> elementary school,<sup>5</sup> and even a church.<sup>6</sup> Far too often, the shooter displayed clear signs of mental illness prior to their murderous attack,<sup>7</sup> inevitably leading many to ponder whether the shooter's parents were partially to blame.<sup>8</sup> Were they too permissive? Were they not loving enough? Were they aware of their child's deranged state and had a responsibility to protect the public? Do they have a duty to supervise an adult, mentally ill child? At the very least, should parents warn the proper authorities about their potentially deadly kin?

The quintessential example raising these issues is the case of Adam Lanza's single mother, Nancy Lanza. Ms. Lanza's twenty-year-old son utilized her firearms to inexplicably gun down twenty school-children and six educators at Sandy Hook Elementary School in Newtown, Connecticut, in 2012.<sup>9</sup> At the time of the massacre, her son, who had a significant history of mental illness, resided with her in her large suburban home where, to the bewilderment of many, she stockpiled an arsenal of firearms—including a very powerful semi-automatic rifle.<sup>10</sup> Notwithstanding Adam's mental health issues, Ms. Lanza gave him unfettered access to her legally purchased the weaponry.<sup>11</sup> In fact, when the police searched the Lanzas'

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available at <https://www.fbi.gov/about-us/office-of-partner-engagement/active-shooter-incidents/a-study-of-active-shooter-incidents-in-the-u.s.-2000-2013> [https://perma.cc/R9DG-7AC3].

3. See Tung Yin, *Were Timothy McVeigh and the Unabomber the Only White Terrorists?: Race, Religion, and the Perception of Terrorism*, 4 ALA. C.R. & C.L. L. REV. 33, 50 (2013).

4. See Jana R. McCreary, "Mentally Defective" Language in the Gun Control Act, 45 CONN. L. REV. 813, 823 (2013).

5. See Lewis, *supra* note 2, at 322.

6. See *Manhunt on for South Carolina Church Gunman*, CBSNEWS (June 18, 2015, 10:21 AM), <http://www.cbsnews.com/news/9-dead-in-shooting-in-historic-black-south-carolina-church/> [https://perma.cc/Q898-XYK3]; see also BLAIR & SCHWEIT, *supra* note 2, at 8 (averaging 16.4 active shooter incidents occurring from 2007–2013 in various places—including city streets, health care facilities, and houses of worship—which is more than double the number of such incidents from 2000–2006, when an average of only 6.4 such incidents occurred annually).

7. See Lewis, *supra* note 2, at 324, 325–38 (noting "the all too familiar storyline behind nearly every shooting spree, prior to the shootings, the gunman exhibited clear signs of mental illness[ ]").

8. See, e.g., Garance Franke-Ruta, *What About the Parents?*, ATLANTIC (Jan. 10, 2010), <http://www.theatlantic.com/politics/archive/2011/01/what-about-the-parents/69176/> [perma.cc/4JZZ-LAXZ]; *Is Nancy Lanza to Blame for Her Son's Actions*, DEBATE.ORG, <http://www.debate.org/opinions/is-nancy-lanza-to-blame-for-her-sons-actions> [https://perma.cc/K2H4-BX24] (last visited Feb. 29, 2016) (citing online poll where 89% of respondents blame Nancy Lanza for Adam Lanza's shooting rampage at Sandy Hook Elementary School).

9. See Lewis, *supra* note 2, at 322.

10. STEPHEN J. SEDENSKY III, STATE OF CONN. DIV. OF CRIMINAL JUSTICE, REPORT OF THE STATE'S ATTORNEY FOR THE JUDICIAL DISTRICT OF DANBURY ON THE SHOOTINGS AT SANDY HOOK ELEMENTARY SCHOOL AND 36 YOGANANDA STREET, NEWTOWN, CONNECTICUT ON DECEMBER 14, 2012, at 28, 36 (2013).

11. See *id.* at 28 (observing Adam lived alone with his mother). A search of the Lanza home after the shooting rampage revealed a gun locker intact that had

home, they discovered a check Ms. Lanza had given her son for Christmas to purchase his own gun.<sup>12</sup> Moreover, Ms. Lanza frequently took her son to shooting ranges,<sup>13</sup> despite an unconfirmed report that she was contemplating having him involuntarily committed to a psychiatric institution around the same time of the shootings.<sup>14</sup> Unfortunately, Ms. Lanza paid the ultimate price for this lapse in parental judgment with her own life, as her son shot and killed her before embarking on his elementary school killing spree.<sup>15</sup> Nevertheless, this did not stop the Sandy Hook victims' loved ones from suing Nancy Lanza's estate for wrongful death,<sup>16</sup> raising the question of whether a parent can be civilly liable for a mass shooting committed by their adult offspring under general common law negligence principles.

This Article is the first to explore this issue in great detail, using Nancy Lanza and other parents of notorious shooters as examples. Specifically, this Article attempts to evaluate, clarify, and build upon parental negligence law. Part I discusses the evolution of parental liability. Part II addresses whether there can be parental liability for parents of adult mass shooters based upon a special relationship. Part III provides an overview of negligence in general and its complexities, as well as exploring whether a duty to protect or warn can be established in mass shooting cases. Part IV examines whether the parents in the real-life examples breached a duty to protect or warn. Part V analyzes whether the aforementioned parents' breach caused the shooting victims' injury or death. Part VI concludes that in some circumstances parents can and should be held liable for negligence that leads to their child committing a mass killing. It further submits that the mere possibility of parents being subjected to financial liability for their child's mass shooting will not only incentivize parents to take more aggressive measures to keep firearms out of their mentally ill

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not been broken into—the inference being that Adam had access to his mother's arsenal and did not forcibly steal her weapons. See Bill Cummings, Ken Dixon & John Pirro, *Lanza's Secret Arsenal: Swords, Guns and 1,400 Rounds of Ammo*, HOUS. CHRON., Mar. 28, 2013, 9:05 PM, <http://www.chron.com/news/nation-world/article/Lanza-s-secret-arsenal-swords-guns-and-1-400-4393243.php> [<https://perma.cc/6TNK-KBEF>].

12. See SEDENSKY, *supra* note 10, at 28.

13. See *id.* at 31; see also Cummings et al., *supra* note 11; Matt Flegenheimer & Ravi Somaiya, *A Mother, a Gun Enthusiast and the First Victim*, N.Y. TIMES, Dec. 15, 2012, [http://www.nytimes.com/2012/12/16/nyregion/friends-of-gunmans-mother-his-first-victim-recall-her-as-generous.html?\\_r=0](http://www.nytimes.com/2012/12/16/nyregion/friends-of-gunmans-mother-his-first-victim-recall-her-as-generous.html?_r=0) [<https://perma.cc/U42J-5638>].

14. See Jana Winter, *Exclusive: Fear of Being Committed May Have Caused Connecticut Gunman to Snap*, FOXNEWS (Dec. 18, 2012), <http://www.foxnews.com/us/2012/12/18/fear-being-committed-may-have-caused-connecticut-madman-to-snap/> [<https://perma.cc/M57Q-DLNH>].

15. See Lewis, *supra* note 2, at 322.

16. Dave Altimari, *11th Sandy Hook Family Files Wrongful Death Claim Notice*, HARTFORD COURANT, Dec. 10, 2014, 11:10 AM, <http://www.courant.com/news/connecticut/hc-sandy-hook-shooting-parents-may-sue-p-20141208-story.html> [<https://perma.cc/BF34-K4FU>].

child's hands, but to obtain the mental health assistance their child so desperately needs—measures that in the end will make everyone safer. Finally, Part VI provides advice to parents for dealing with significantly mentally ill, adult children residing in their home.

### I. A HISTORICAL PERSPECTIVE ON PARENTAL LIABILITY

As explained in more detail below, while in early American history parents generally were not personally liable for their children's torts, the law has evolved over time such that parents can now be held civilly responsible for their offspring's actions under certain circumstances, even for a criminal attack like a mass shooting.

#### A. *Early Common Law on Parental Liability*

Originally, under early common law, parents could not be found vicariously liable for their child's torts solely because of their parent-child relationship.<sup>17</sup> Children were considered separate legal entities responsible for their own torts, and any judgment had to be satisfied by them personally, which left most victims uncompensated since children are usually insolvent and cannot satisfy a judgment.<sup>18</sup> Parents were only responsible for their children's actions if the parents themselves were somehow independently negligent by, for example, entrusting a minor child with a dangerous weapon.<sup>19</sup>

#### B. *Parental Liability Statutes*

To both address the problem of victims going uncompensated for property damage or personal injuries caused by children and to deter juvenile delinquency, every state enacted some form of a parental liability stat-

17. See, e.g., *Alioto v. Marnell*, 520 N.E.2d 1284, 1286 (Mass. 1988) (noting that one's parental status, without more, does not impose duty to supervise and control emancipated adult children); *Guzy v. Gandel*, 229 A.2d 809, 810 (N.J. Super. Ct. App. Div. 1967) (declaring "[t]he mere existence of the relationship of parent and child does not render a parent liable for his child's torts"); *Childers v. A.S.*, 909 S.W.2d 282, 287 (Tex. Ct. App. 1995) (agreeing that "the mere fact of paternity or maternity does not make a parent liable to third parties for the torts of his or her minor child and that generally, minors are civilly liable for their own torts"); see also Elizabeth G. Porter, *Tort Liability in the Age of the Helicopter Parent*, 64 ALA. L. REV. 533, 555 (2013); Joan Morgridge, Comment, *When Does Parental Liability End?: Holding Parents Liable for the Acts of Their Adult Children*, 22 LOY. U. CHI. L.J. 335, 336 (1990).

18. See *Lavin v. Jordon*, 16 S.W.3d 362, 366 (Tenn. 2000) (citing W. PAGE KEETON ET AL., PROSSER & KEETON ON TORTS § 123 (5th ed. 1984)); see also Morgridge, *supra* note 17, at 336.

19. See B.C. Ricketts, *Validity & Construction of Statutes Making Parents Liable for Torts Committed by Their Minor Children*, 8 A.L.R.3d 612 § 1[a] (1966); see also *Kaminski v. Town of Fairfield*, 578 A.2d 1048, 1051 (Conn. 1990) (noting "[a]t common law, the torts of children do not impose vicarious liability upon parents qua parents, although parental liability may be created by statute, or by independently negligent behavior on the part of parents" (footnote omitted) (citation omitted)).

ute that permitted plaintiffs to sue parents for their child's actions, regardless of any wrongdoing on the parents' part.<sup>20</sup> The different variations of parental liability statutes include some permitting vicarious liability for property damage only, some for personal injury, others permitting both, and some covering only damage to school property.<sup>21</sup>

Clearly, these statutes were enacted in derogation of common law, because they premise liability on the parent-child relationship itself—presuming that if parents could themselves be sued, they will be encouraged to control their children and prevent juvenile delinquency.<sup>22</sup> Thus, this is the first time that the law tacitly recognized that parents have some obligation to supervise or control their youth so as to prevent them from harming others or others' property.

The problem with parental liability statutes, however, is that even though the statutes were purportedly created to compensate innocent victims by allowing them to go after the parents with deeper pockets than their children,<sup>23</sup> these statutes severely capped the amount of monetary recovery. In some jurisdictions, financial recovery is limited to as little as \$250–\$500.<sup>24</sup> Because of these low caps, scholars have recognized that parental liability statutes were not truly intended to compensate the victims, but to penalize the parents.<sup>25</sup> Nevertheless, the overwhelming majority of courts have found parental liability statutes constitutional because the statutes are reasonably related to the legitimate state interest of reducing juvenile delinquency.<sup>26</sup>

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20. See Morgridge, *supra* note 17, at 337.

21. See, e.g., FLA. STAT. § 741.24 (2015) (allowing a person to sue parents of child under eighteen who “maliciously or willfully destroys or steals property” of another); LA. CIV. CODE ANN. art. 225 (2016) (“Parents are responsible for damage occasioned by their child as provided by law.”); N.J. STAT. ANN. § 18A:37-3 (West 2015) (making parents or guardians liable for property damage done to school property); OHIO REV. CODE ANN. § 3109.09(b) (West 2015) (creating cause of action and compensatory award of up to \$10,000 against parents or guardians for their minor child's willful damage to another's property).

22. See Morgridge, *supra* note 17, at 337; see also *Distinctive Printing & Packaging Co. v. Cox*, 443 N.W.2d 566, 572 (Neb. 1989) (noting that “[s]ome courts have held that where parental liability statutes limit liability, the statutory purpose must be only to deter juvenile delinquency, not to compensate victims”).

23. See Morgridge, *supra* note 17, at 337.

24. See Ricketts, *supra* note 19.

25. See *id.*

26. See James Lockhart, *Cause of Action Under Parental Liability Statute for Tort Committed by Minor Child*, 19 CAUSES ACTION 1st 271 § 12 (1989 & Supp. 2015); Laura Pfeiffer, Note, *To Enhance or Not to Enhance: Civil Penalty Enhancement for Parents of Juvenile Hate Crime Offenders*, 41 VAL. U. L. REV. 1685, 1716 (2007) (noting parental liability statutes “resemble a form of strict liability because the parents are liable regardless of whether they acted reasonably”). At least one court has held that for parental liability statutes to be constitutional, compensation for injuries caused by minor children must be capped to avoid limitless liability for parents who may not be at fault for their child's conduct. See *Corley v. Lewless*, 182 S.E.2d 766, 770 (Ga. 1971) (holding Georgia statute permitting parents to be sued for property damage or personal injury caused by their minor child without any caps

## C. Sections 316 and 319 of the Restatement (Second) of Torts

To address the concern that parental liability statutes failed to adequately compensate victims suffering personal injuries committed by a child, Section 316 of the Restatement (Second) of Torts was created to provide a cause of action for parental negligence.<sup>27</sup> Under common law negligence claims, there are no caps.<sup>28</sup> This Restatement has been adopted by many state courts and serves as the basis for negligent supervision and “negligent entrustment of a dangerous weapon to a child” lawsuits.<sup>29</sup> Section 316 provides:

A parent is under a duty to exercise reasonable care so to control his minor child as to prevent it from intentionally harming others or from so conducting itself as to create an unreasonable risk of bodily harm to them, if the parent

- (a) knows or has reason to know that he has the ability to control his child, and
- (b) knows or should know of the necessity and opportunity for exercising such control.<sup>30</sup>

Subsection B’s requirement that the parent “know of the necessity” to control the child apparently means that the parent must have some reason to believe their child is dangerous and poses a risk to others. Parental liability lawsuits based upon Section 316’s theory of negligent supervision, often fail, however, because regardless of how disorderly or strange a child’s behavior is at home, rarely would parents have the foresight that this behavior would manifest itself into the murdering of others.<sup>31</sup> This then poses an obstacle in trying to hold parents liable for their child’s violent, criminal acts, including a mass killing.

Additionally, Section 316’s application is restricted to parents of *minor* children, providing no recourse when a child who has reached the age of majority commits the violent attack.<sup>32</sup> This restriction makes it difficult

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on amount of recovery violated Due Process Clause because, it would “authorize a recovery without liability, and would compel payment without fault” (internal quotation marks omitted); *see also Distinctive Printing*, 443 N.W.2d at 572 (upholding constitutionality of parental liability statute that permitted full compensation for property damage intentionally committed by children residing with them but limiting compensatory damages for intentional personal injury to \$1,000 per person, on grounds statute did not violate Equal Protection Clause because there was rational basis for classification: property damage happens more frequently and legislature might have wanted to incentivize parents to better control their children).

27. *See* Morgridge, *supra* note 17, at 338.

28. *See id.*

29. *See* Ralph D. Mawdsley, *Parent Liability for the Intentional Acts of Their Children Under Common Law Negligence Theories and Parental Responsibility Statutes*, 230 EDUC. L. REP. 469, 471–72 (2008).

30. RESTATEMENT (SECOND) OF TORTS § 316 (1965).

31. *See* Mawdsley, *supra* note 29, at 473.

32. *See, e.g., Carney v. Gambel*, 751 So. 2d 653, 654 (Fla. Dist. Ct. App. 1999) (refusing to hold parents responsible for their “emancipated, adult child[’s]” con-

for a plaintiff to invoke Section 316 to hold the parents of a mass shooter responsible for a shooting rampage because most mass shooters are adults.<sup>33</sup> To get around this obstacle, some plaintiffs began invoking Section 319 of the Restatement (Second) of Torts to establish a parent's duty to control their adult offspring. Section 319 provides:

[o]ne who takes charge of a third person whom he knows or should know to be likely to cause bodily harm to others if not controlled is under a duty to exercise reasonable care to control the third person to prevent him from doing such harm.<sup>34</sup>

Plaintiffs have alleged that parents who permit their adult children to reside with them "take charge" over the child and thus have a duty to control them.<sup>35</sup>

Courts, however, have repeatedly rejected this as a legitimate basis for imposing a duty on a parent to control their adult offspring, absent a court order or other legal process expressly making the parents the adult-child's legal custodian.<sup>36</sup> For example, in *Kaminski v. Town of Fairfield*,<sup>37</sup> the Connecticut Supreme Court rejected the defendant police officer's counterclaim, premised upon the Restatement (Second) of Torts Section 319, that the parents of an adult male, who seriously wounded him with an axe, had a duty to control their adult, paranoid schizophrenic son.<sup>38</sup> In rejecting the defendant's counterclaim, the court observed that reported cases had only imposed a duty to control pursuant to Section 319 where professional custodians or institutions had formal, legal custody of the tortfeasor, such as in the case of an individual placed in the care of a hospital or under the supervision of a prison warden.<sup>39</sup> The court further pointed out that, at that time, no court had ever held that a parent who

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duct, noting "where a special relationship has been found imposing liability on a parent for conduct of a child, the duty to exercise control is limited to a *minor* child").

33. See Mark B. Melter, *The Kids Are Alright; It's The Grown-Ups Who Scare Me: A Comparative Look at Mass Shootings in the United States and Australia*, 16 GONZ. J. INT'L L. 33, 39 (2012) (observing that "roughly 80% of all mass murderers are aged between 20 and 50 years old. . . . men make up 94% of all mass murderers, and 63% of offenders are white").

34. RESTATEMENT (SECOND) OF TORTS § 319.

35. See, e.g., *Kaminski v. Town of Fairfield*, 578 A.2d 1048, 1051 (Conn. 1990).

36. See *id.*; see also *Lott v. Goodkind*, 867 So. 2d 407, 408 (Fla. Dist. Ct. App. 2003) (disagreeing that Section 319 can be utilized as basis to impose duty on parents to control adult children, reasoning "[l]iability of the type described in section 319 has typically been imposed on persons having someone committed to their legal custody, such as a jailer or superintendent of a residential institution which has the ability to control the actions of its residents"); *Blevins v. Hartman*, Nos. 12CA116, 12CA115, 2013 WL 3936039, at \*8 (Ohio Ct. App. July 18, 2013).

37. 578 A.2d 1048 (Conn. 1990).

38. See *id.* at 1050–51.

39. See *id.* at 1051–52.



had made a home for an adult, mentally ill child had taken charge of that person within the meaning Section 319.<sup>40</sup>

Similarly, in *Knight v. Merhige*,<sup>41</sup> a Florida appellate court recently reaffirmed that Section 319 does not provide a basis for imposing a duty on parents to control an adult child, stressing that “the ‘take charge’ requirement of section 319 has generally been limited to ‘the context of professional custodians with special competence to control the behavior of those in their charge,’” like jailers or superintendents of residential institutions.<sup>42</sup> In *Knight*, the adult son shot and killed four relatives at a Thanksgiving family gathering.<sup>43</sup> The court held that providing financial assistance to their son (who did not reside with them) and controlling whether he attended family gatherings was insufficient to place the adult son “within the functional equivalent of their ‘legal custody.’”<sup>44</sup>

#### D. A Special Relationship

Thus, in the absence of any statute or Restatement provision explicitly permitting parental liability for an adult child, courts have been divided as to whether a parent can be held accountable for their emancipated offspring’s miscreant acts. Part of this division is based upon the well-settled common law principle that no one has a duty to protect others from dangers posed by third parties—or a duty to control or warn a third party to prevent harm to others—unless they have a special relationship with either the victim or the perpetrator.<sup>45</sup> Since, as used in this Article, mass or rampage shootings refers to the *random* shootings of people, the parents of the shooter likely will not have a special relationship with the victims. Thus, the only way a parent can be held accountable for a mass shooting committed by their child is if the courts recognize a special relationship between the adult shooter and their parent—something most courts have been reluctant to conclude, because parents have no legal duty to control their emancipated offspring.<sup>46</sup>

For example, in *Carney v. Gambel*,<sup>47</sup> a Florida appellate court held that the parents of an adult child who assaulted the head of security in the country club community where the parents and adult child lived did not have a special relationship with their adult child and thus did not have a

40. *See id.* at 1052.

41. 133 So. 3d 1140 (Fla. Dist. Ct. App. 2014).

42. *See id.* at 1146–47 (quoting *Kaminski*, 578 A.2d at 1051).

43. *See id.* at 1143.

44. *See id.* at 1142, 1147.

45. *See id.* at 1145; *see also* RESTATEMENT (SECOND) OF TORTS § 315 (1965).

46. *See e.g.*, *Hartsock v. Hartsock*, 592 N.Y.S.2d 512, 513 (App. Div. 1993) (“No justification exists [ ] for imposing liability on parents for the conduct of their emancipated, adult child. Inasmuch as parents have no legal right to control their adult child’s activities, they cannot be held liable for those activities.” (citations omitted)).

47. 751 So. 2d 653 (Fla. Dist. Ct. App. 1999).

duty to control his conduct.<sup>48</sup> In so holding, the court reasoned that in order to have a special relationship with their adult offspring, the parents had to have the right or ability to control his conduct, and parents have no legal right to control an emancipated, adult child.<sup>49</sup> The court further emphasized that parental liability had been limited to cases involving a *minor* child.<sup>50</sup> However, the court left open the possibility for parental liability to incur for an adult child where the adult child is insane or mentally deficient, citing to *Thorne v. Ramirez*.<sup>51</sup>

Similarly, in *Grover v. Stechel*,<sup>52</sup> a New Mexico appellate court concluded that no special relationship existed between a mother and her adult son who had stabbed the plaintiff. The court reasoned that the mother lived across the country from her adult son when the assault happened, and it was too much of a logical leap to find that, by merely assisting her adult son financially, she had the ability to control his conduct.<sup>53</sup> The court further explained that without the right or ability to control another's conduct, no duty to control could arise.<sup>54</sup>

In both of these cases, although the courts did not specifically reference Section 316 of the Restatement (Second) of Torts, they apparently incorporated Section 316's ability-to-control consideration in their analyses to determine whether there was a special relationship between the parents and their adult offspring. In these cases, the courts found the parents lacked the ability to control their emancipated offspring because either (1) the child had obtained the age of majority *and* had no mental illness, as in the *Carney* case; or (2) the parents did not have the opportunity to control the adult because the adult child did not reside with them, as in the *Grover* case. As demonstrated by the next few case illustrations, however, where these conditions do not exist, parental liability for adult children could attach.

For instance, contrary to the *Carney* and *Grover* cases, in *Silberstein v. Cordie*,<sup>55</sup> a Minnesota court held that the defendant-parents had a special relationship with their schizophrenic, twenty-seven-year-old son who resided with them.<sup>56</sup> In that case, the parents knew their son was delusional and nonverbal, had hallucinations about the devil and beasts, and had threatened to harm the victim in the past while suffering from delusions.<sup>57</sup>

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48. *See id.* at 654.

49. *See id.*

50. *See id.*

51. *See id.*; *see also* *Thorne v. Ramirez*, 346 So. 2d 121, 122 (Fla. Dist. Ct. App. 1977).

52. 45 P.3d 80 (N.M. Ct. App. 2002).

53. *See id.* at 84.

54. *See id.*

55. 474 N.W.2d 850 (Minn. Ct. App.), *rev. granted in part, cause remanded by* 477 N.W.2d 713 (Minn. 1991).

56. *See id.* at 856–57.

57. *See id.* at 852.

In fact, the mother had her son involuntarily committed to a mental healthcare facility prior to the incident in question.<sup>58</sup> Four months after the son was released from involuntary commitment, the son moved in with his parents, and the parents noticed he had stopped taking his medication.<sup>59</sup> Nevertheless, the parents traveled out of town, leaving their 12-gauge shotgun readily accessible to him.<sup>60</sup> The son used the gun to kill his friend whom he believed was in collusion with the devil.<sup>61</sup> In recognizing the parents had a special relationship with their adult son, the court stressed that months before the murder, the mother assumed responsibility for her son's day-to-day care, and the son's mental condition "was like that of a child . . . ."<sup>62</sup>

Similarly, in *Frederic v. Willoughby*,<sup>63</sup> an Ohio court determined that a special relationship existed between parents and their mentally disturbed adult offspring who resided in the same household.<sup>64</sup> There, the adult son sexually assaulted the plaintiff while her four-year-old daughter lied next to her in the bed.<sup>65</sup> Prior to this incident, the father had struck his son in the head after the son had broken into the plaintiff's house and masturbated with a pair of her underwear.<sup>66</sup> The court explained that a "special relation" exists between a parent and an adult child when the parent either "has accepted such responsibility in a legally recognized way, such as a guardianship, or *in a situation where an adult child's dependence and the parent's overt acceptance of responsibility for the adult child establish a de facto guardianship.*"<sup>67</sup>

In determining whether there was a de facto guardianship, the court considered whether the perpetrator posed a risk to others; whether the parents were aware of the perpetrator's mental condition and the risk he posed to others; and whether the parents accepted responsibility for their son-perpetrator's actions and took charge of him.<sup>68</sup> In finding that the parents were aware of their son's mental condition and posed a risk to others, the court highlighted that the parents knew their son was "not right," had violent criminal convictions including for a sexual battery on a blind woman and domestic violence, and was drawing Social Security benefits for his mental illness since his illness prevented him from working.<sup>69</sup> Additionally, the parents were aware their son posed a risk to others be-

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58. *See id.*

59. *See id.*

60. *See id.* at 856.

61. *See id.* at 852–53.

62. *See id.*

63. No. 2007-P-0084, 2008 WL 2582593, at \*1 (Ohio Ct. App. June 27, 2008).

64. *See id.*

65. *See id.*

66. *See id.* at \*1–2.

67. *See id.* at \*5 (emphasis added) (internal quotation marks omitted).

68. *See id.*

69. *See id.* at \*5–6.

cause they adopted his son (their grandson) and raised him in their residence upstairs to protect the grandson from their son, who lived downstairs in the basement.<sup>70</sup>

The court held there was sufficient evidence for a jury to determine whether the parents assumed responsibility for the perpetrator and took charge of him.<sup>71</sup> That included evidence that the parents bailed the child out of jail; attended his court hearings; paid for his legal expenses and vasectomy; confiscated the perpetrator's keys to prevent him from leaving the house late at night; drove him to see a counselor; monitored him closely by restricting him from leaving their property; beat the perpetrator for masturbating in the neighbor's house; and, after the first masturbation incident, told the plaintiff-victim to contact them if she had any additional problems with their son.<sup>72</sup> The court noted that all of this evidence not only was sufficient for a jury to conclude that the defendant-parents owed a duty to the plaintiff neighbor, but that they breached the duty, and the breach was the proximate cause of the neighbor's rape.<sup>73</sup>

Finally, in *Smith v. Freund*,<sup>74</sup> a California appellate court found that a special relationship existed between a nineteen-year-old mentally disturbed man and his parents, but ultimately decided the parents owed no special relationship-based duty to the victims because their son's criminal act was unforeseeable.<sup>75</sup> In *Smith*, the plaintiffs alleged that the parents negligently supervised their nineteen-year-old son, who shot and killed their immediate family members.<sup>76</sup> At the time of the shootings, the adult son lived with his parents, and they were aware he had been diagnosed with a major depressive disorder with psychotic features, Asperger's Syndrome, and attention deficit disorder.<sup>77</sup> In the past, the son had flown into violent rages and attacked his parents.<sup>78</sup> The plaintiffs argued the parents had a special relationship with their son, notwithstanding that he was an adult, because he "was autistic and lived with his parents in the same way as a minor child," and thus they had the ability to control and monitor him.<sup>79</sup> The appellate court agreed, reiterating that a defendant has a duty to take affirmative action for the protection of another if a special relationship exists between the defendant and the person whose conduct needs to be controlled.<sup>80</sup> Most importantly, the court held that a "parent and child is one such special relationship," and "[a]nother special

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70. *See id.* at \*1.

71. *See id.* at \*6.

72. *See id.* at \*6–8.

73. *See id.* at \*8.

74. 121 Cal. Rptr. 3d 427 (Ct. App. 2011).

75. *See id.* at 429.

76. *See id.*

77. *See id.* at 429–30.

78. *See id.* at 430.

79. *See id.* at 432 n.3 (internal quotation marks omitted).

80. *See id.* at 432.

relationship ensues when a party takes charge of a third person whom he or she knows or should know to be likely to cause bodily harm to others if not controlled,”<sup>81</sup> apparently relying on Sections 316 and 319 of the Restatement (Second) of Torts.

A synthesis of the above-referenced cases demonstrates that courts are willing to find a special relationship between a parent and their adult child based upon a de facto guardianship where three factors coalesce: (1) the parents knew, or should have known, their adult child had *significant* mental health issues and posed a risk to others; (2) the child resided with his parents; and (3) the parents acted as if they believed they had the ability to control the child.<sup>82</sup> This proposed test is consistent with Section 316 of the Restatement (Second) of Torts. Knowing that the child has significant mental health issues addresses Section 316’s parental liability criterion requiring the parent to know of the need to control the adult child. Residing with the adult child is at least prima facie evidence that the parent had the ability and opportunity to control the child.

## II. ESTABLISHING A SPECIAL RELATIONSHIP BETWEEN PARENTS AND ADULT CHILDREN IN MASS SHOOTING CASES

Having clarified the standard for determining whether a special relationship exists between parents and an adult child, it is necessary to see if it is a workable test that does not lead to absurd results. As demonstrated by the real-life illustrations that follow, the test is workable.

### A. Application of Special Relationship Test to Nancy Lanza

Utilizing the test in Nancy Lanza’s case proves that the special relationship test above is useful; it yields a finding that a special relationship existed between Nancy and her son—a result that is not only reasonable, but instinctively feels correct.

The first requirement of the test, that the parent knows or has reason to know their child has significant mental health issues and poses a security risk, is satisfied. Nancy knew Adam had a long history of mental health problems. At age six, Adam was diagnosed with sensory integration disorder, a condition that makes one overly sensitive to stimuli in the environment and that made him dislike being touched and around many people.<sup>83</sup> By age thirteen, a psychiatrist diagnosed Adam with Asperger’s

81. See *id.* (internal quotation marks omitted).

82. See *Silberstein v. Cordie*, 474 N.W.2d 850, 855–56 (Minn. Ct. App.), *rev. granted in part, cause remanded by* 477 N.W.2d 713 (Minn. 1991); see also *Todd v. Dow*, 23 Cal. Rptr. 2d 490, 493–94 (Ct. App. 1993) (holding there was no special relationship between parents and their adult son absent any facts showing they had ability to control him); cf. *Thorne v. Ramirez*, 346 So. 2d 121, 122 (Fla. Dist. Ct. App. 1977) (suggesting that, had plaintiff alleged defendant-parents’ child was “dependent, insane or mentally deficient,” plaintiff’s complaint against parents for child’s intentional tort may have alleged sustainable cause of action).

83. See *Lewis*, *supra* note 2, at 334–35.

Syndrome, a high-functioning form of autism resulting in unusual social awkwardness.<sup>84</sup> While neither one of these conditions have been linked to violence,<sup>85</sup> Adam displayed other disturbing behavior over the years that would be disconcerting to most parents. For example, in the fifth grade, Adam wrote a document entitled the “Big Book of Granny,” wherein the main character had a gun in her cane and shot people, including children.<sup>86</sup> In the seventh grade, Adam’s writing assignments contained descriptions of battles and war far more than others his age, and “[t]he level of violence in the writing was disturbing.”<sup>87</sup> Additionally, a month before the shootings in November of 2012, Adam’s mother confided in a friend that she was worried about Adam because he had not left the house in three months, even refusing to go to a hotel with her when Hurricane Sandy caused a power outage in their home.<sup>88</sup>

Those who knew Adam described him as a “shut-in who rarely left home and played military-style video games.”<sup>89</sup> Additionally, Adam would only communicate with his mother through email, even though they resided in the same household.<sup>90</sup> Adam also had been estranged from his father and only brother—one of many indicators he had some mental health issues.<sup>91</sup> Medical doctors found that Adam “lacked empathy and had very rigid thought processes.”<sup>92</sup> For instance, shortly before Adam killed his mother and the children at Sandy Hook, he told his mother that he would not care if she had passed away.<sup>93</sup> The most compelling evidence that Nancy Lanza knew, or had reason to know, that her son was mentally ill and dangerous was the fact that she had completed paperwork to have Adam involuntarily committed to a mental health treatment facil-

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84. *See id.*; *see also* Flegenheimer & Somaiya, *supra* note 13.

85. *See* Adam Clark Estes, *Revelations About Adam Lanza’s Mental Health Still Don’t Explain the Violence*, WIRE (Feb. 19, 2013, 11:26 PM), <http://www.thewire.com/national/2013/02/revelations-about-adam-lanzas-mental-health-still-dont-explain-violence/62317/> [<https://perma.cc/G65D-6ZC2>].

86. *See* SEDENSKY, *supra* note 10, at 33 (internal quotation marks omitted).

87. *See id.* at 34.

88. *See id.* at 28; John Christoffersen, *New Report Provides the Most Disturbing Picture Yet of Nancy Lanza’s Relationship with Her Son*, BUS. INSIDER (Dec. 28, 2013, 11:34 AM), <http://www.businessinsider.com/paramedic-at-sandy-hook-was-warned-this-will-be-the-worst-day-of-your-life-2013-12> [<https://perma.cc/H3KR-EC4W>].

89. *See* Susan Candiotti, Greg Botelho & Tom Watkins, *Newtown Shooting Details Revealed in Newly Released Documents*, CNN (Mar. 29, 2013, 9:53 AM), <http://www.cnn.com/2013/03/28/us/Connecticut-shooting-documents/> [[perma.cc.G26Y-J9XB](https://perma.cc.G26Y-J9XB)].

90. *See* SEDENSKY, *supra* note 10, at 28; Christoffersen, *supra* note 88.

91. *See* SEDENSKY, *supra* note 10, at 3, 29–30 (noting Adam’s brother, who was four years older, had not had contact with Adam since 2010, despite attempts to reach him, and Adam’s father had not seen him since 2010, despite the father’s invitations for Adam to join him for various activities).

92. *See id.* at 34.

93. *See id.* at 30.

ity.<sup>94</sup> Since an involuntary civil commitment in Connecticut requires a finding that a person is mentally ill *and* poses a danger to themselves or others,<sup>95</sup> one may conclude that Nancy had to believe Adam would harm himself or someone else. Indeed, a week before the Sandy Hook tragedy, Nancy told an acquaintance, “I’m worried I’m losing him,” referencing his illness.<sup>96</sup>

The second and third requirements for finding a special relationship between a parent and their emancipated offspring—that the adult child resides with his parent and the parent believes he or she has the ability to control the child—are also satisfied in this case. Adam lived at home with his mother at the time of his shooting spree.<sup>97</sup> In fact, Adam’s mother indicated that she did not work because of Adam’s mental condition and apparently devoted her life to caring for him.<sup>98</sup> Like the mother in *Silberstein*, Nancy assumed responsibility for his day-to-day care by washing his clothes daily, cooking for him, shopping for him, and taking care of him as if he were a minor child, even though he was an adult.<sup>99</sup> Nancy’s care of her son is distinguishable from a situation where a parent cares for an adult child out of the goodness of their heart. Nancy provided for all of Adam’s needs because he was incapable of caring for himself due to his mental issues. For example, she purchased a car for Adam that was registered in her name only.<sup>100</sup> One can infer from the fact that she owned the car that she could have taken it away from Adam at any time by, for example, taking his keys away or disabling the vehicle.

Additionally, because Adam did not work, he was wholly dependent on Nancy for food and his daily needs just like a minor child.<sup>101</sup> Adam’s mother had the ability to and, in fact, did control Adam’s environment. Persons hired to work on the Lanzas’ home reported that Adam’s mother never let them in the house, instructed them not to ring the doorbell, and

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94. See Winter, *supra* note 14.

95. CONN. GEN. STAT. ANN. § 17a-502 (West 2015) (permitting psychiatric commitment under an “emergency certificate” if physician determines person has “psychiatric disabilities” and poses danger to himself or others).

96. See Matthew Lysiak, Kerry Wills & Stephen Rex Brown, *Exclusive: Nancy Lanza Feared Son, Adam, Was ‘Getting Worse’; Told Friend ‘He Was Burning Himself with a Lighter’ and That She Was ‘Losing Him,’* N.Y. DAILY NEWS (Dec. 17, 2012, 9:17 AM), <http://www.nydailynews.com/news/national/nancy-lanza-feared-son-adam-worse-article-1.1221505> [<https://perma.cc/5D5E-5GMC>] (internal quotation marks omitted).

97. See SEDENSKY, *supra* note 10, at 28 (noting that only Nancy and her son had resided in their family home for extended time prior to shootings on December 14, 2012).

98. See *id.* at 30.

99. See *id.* at 30, 35.

100. See *id.* at 23.

101. See Alaine Griffin & Josh Kovner, *New Report on Lanza: Parental Denial, Breakdowns, Missed Opportunities*, HARTFORD COURANT (Nov. 21, 2014), <http://www.courant.com/news/connecticut/hc-newtown-adam-lanza-child-advocate-report-20141121-story.html> [<https://perma.cc/WZ9B-PJTS>].

advised them to make prior arrangements for using power equipment because Adam had problems with loud noises.<sup>102</sup> In fact, a number of people who knew the mother for years had neither been inside her home nor met Adam.<sup>103</sup>

In sum, the overwhelming evidence demonstrates that this was not a case of a parent simply providing for their child financially; rather, Adam's mother had assumed responsibility and charge over Adam. Accordingly, a court could easily conclude a relationship between a parent(s) or child like the Lanzas' would meet the special relationship test formulated in Part I(D) for parental liability for adult children.

#### B. *Application of Special Relationship Test to Jared Loughner's Parents*

Likewise, the aforementioned special relationship test could lead a court to reasonably conclude that Jared Loughner and his parents, Randy and Amy Loughner, had a "special relationship" for purposes of establishing the first element of negligence—a duty.<sup>104</sup> Jared is the twenty-two-year-old who shot United States Congresswoman Gabrielle Giffords in the head and then fired at seventeen others who were waiting to meet Giffords outside a grocery store in Tucson, Arizona on January 8, 2011.<sup>105</sup>

Prior to his shooting spree, Jared's parents knew he had significant mental health issues and posed a risk of violence to the public. In the months leading up to the shootings, Jared was clearly unraveling. While attending Pima Community College, he would make inappropriate outbursts during class, including remarks about "blowing up babies" and asking the professor if he believed in mind control.<sup>106</sup> He would repeatedly utter nonsensical statements such as, "How can you deny math instead of accepting it."<sup>107</sup> Jared also was contacted five times by the police for disruptive behavior on campus.<sup>108</sup> Jared posted a disturbing video on YouTube showing him walking around the campus at night with a video camera threatening to torture students and calling his college a "genocide

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102. See SEDENSKY, *supra* note 10, at 31.

103. See *id.*

104. See Claire Martin & Masada Siegel, *Loughner's Parents: Did They Know About His Mental Illness?*, DAILY BEAST (Jan. 11, 2011, 9:31 AM), <http://www.thedailybeast.com/articles/2011/01/11/jared-loughners-parents-randy-and-amy-did-they-know-about-his-mental-illness.html> [https://perma.cc/M4J7-44UK] (discussing Jared's parents).

105. See Marc Lacey & David M. Herszenhorn, *In Attack's Wake, Political Repercussions*, N.Y. TIMES, Jan. 8, 2011, [http://www.nytimes.com/2011/01/09/us/politics/09giffords.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2011/01/09/us/politics/09giffords.html?pagewanted=all&_r=0) [https://perma.cc/AC2W-RYAY] (reporting at least seventeen persons were shot and six murdered by twenty-two-year-old Jared Loughner). Miraculously, Congresswoman Giffords survived the shooting.

106. See Lewis, *supra* note 2, at 332 (internal quotation marks omitted).

107. See *id.* (internal quotation marks omitted).

108. See *id.*



school.”<sup>109</sup> Pima Community College then notified Jared’s parents of what he had done and that he was suspended from school, warning that Jared had mental health issues and may be dangerous and that Jared could not return to school until he had a mental health clearance.<sup>110</sup>

Randy and Amy Loughner also personally observed their son talking to himself and displaying other strange behavior like refusing to communicate with them and making worrisome noises.<sup>111</sup> Randy found some of Jared’s journals that were written in script that was “indecipherable.”<sup>112</sup> Jared’s parents indicated by their actions that they believed Jared was dangerous; for example, they confiscated the only gun they believed he had and disabled his car every night to keep him home.<sup>113</sup> Additionally, both of Jared’s parents pleaded with him to get help, but Jared refused, and his parents never had Jared psychologically evaluated.<sup>114</sup> In light of these facts, it is clear that the Loughners knew their son had significant mental health issues and was potentially dangerous; thus, the first criterion of the special relationship test is met. The second requirement that the adult child live with his parents is clearly satisfied because Jared resided with his parents.<sup>115</sup>

The third criterion—that the parents believed they had the ability to control Jared—is a closer call. On one hand, Amy and Randy acted as if they believed they had the ability to control their son by routinely disabling his car and taking away his shotgun after he started acting erratically.<sup>116</sup> The night before Jared’s shooting spree, however, his father

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109. See *id.*; Michael Martinez & Chelsea J. Carter, *New Details: Loughner’s Parents Took Gun, Disabled Car to Keep Him Home*, CNN (Mar. 28, 2013, 11:45 AM), <http://www.cnn.com/2013/03/27/justice/arizona-loughner-details/> [https://perma.cc/3JM9-HCJN]; Tim Steller, *What Loughner’s Parents Knew: They Watched His Decline but Didn’t Arrange for Treatment*, ARIZ. DAILY STAR, Mar. 28, 2013, 12:00 AM, [http://tucson.com/news/local/crime/what-loughner-s-parents-knew-they-watched-his-decline-but/article\\_fb334f4e-4d20-5d80-baac-b467e8f56cb9.html](http://tucson.com/news/local/crime/what-loughner-s-parents-knew-they-watched-his-decline-but/article_fb334f4e-4d20-5d80-baac-b467e8f56cb9.html) [https://perma.cc/3GDV-CMQS] (internal quotation marks omitted).

110. See Franke-Ruta, *supra* note 8; Courtney Hutchison & ABC News Med. Unit, *Violence and Mental Illness: Is Loughner a Case for Involuntary Commitment?*, ABC NEWS (Jan. 12, 2011), <http://abcnews.go.com/Health/MindMoodNews/jared-loughner-involuntarily-committed/story?id=12593355> [https://perma.cc/5FW9-NHK6]; Martinez & Carter, *supra* note 109; Dennis Wagner, *Records Detail Shooter’s Agitation Before Ariz. Rampage*, USA TODAY (Mar. 27, 2013, 10:47 PM), <http://www.usatoday.com/story/news/nation/2013/03/27/gabby-giffords-shooting-records/2024589/> [https://perma.cc/XBK7-WWPR].

111. See Wagner, *supra* note 110.

112. See *Jared Lee Loughner Grew Delusional in Months Before Tucson Rampage*, *Police Reports Show*, CBSNEWS (Mar. 27, 2013, 6:29 PM) [hereinafter Loughner CBS Article], <http://www.cbsnews.com/news/jared-lee-loughner-grew-delusional-in-months-before-tucson-rampage-police-reports-show/> [https://perma.cc/L9GF-AA65].

113. See Martinez & Carter, *supra* note 109.

114. See *id.*; Hutchison & ABC News Med. Unit, *supra* note 110; Wagner, *supra* note 110.

115. See Martinez & Carter, *supra* note 109.

116. See *id.*

forgot to disable the car.<sup>117</sup> Additionally, on the day of the shooting, Jared tried to leave the house with a black bag, and when his parents asked what was in the bag, Jared bolted out the door.<sup>118</sup> Jared's father chased him down the street on foot but, unfortunately, could not catch him.<sup>119</sup> The father then jumped in his car to follow Jared and Jared ran off into the desert.<sup>120</sup> Apparently, the bag contained a gun Jared had legally purchased on November 30, 2010, unbeknown to his parents.<sup>121</sup> Jared then caught a cab to the grocery store where he shot Congresswoman Giffords and seventeen others.<sup>122</sup>

While some could argue that Jared's parents' inability to stop him from leaving the house on the day of the murders shows that they did not have the ability to control him, the test requires only that the parents *believe* they have the ability to control their adult offspring; it does not require the ability to control in actuality. On the other hand, Jared's parents stated that during this time period they could not have a rational conversation with Jared, who had stopped speaking with them. They also reported to investigators "they had lost control of their son long before the shootings."<sup>123</sup> At times, Jared would leave the Loughners' home and check-in at a hotel, and they would go looking for him and bring him home. Thus, a court could come out either way on whether a special relationship existed in this case.

### C. *Applying Special Relationship Test to Elliot Rodgers's Parents*

In contrast to the Lanza and Loughner cases, the special relationship test articulated in Part I(D) of this Article would lead a court to conclude that no special relationship existed between Elliot Rodgers and his parents. Elliot is the twenty-two-year-old community college student who, in May of 2014, stabbed his three roommates to death and then randomly shot and killed three other college students from his BMW in Santa Barbara, California.<sup>124</sup> A month before Elliot's heinous acts, his mother saw

117. David Trifunov, *Jared Loughner Evidence Reveals Parents Hid Guns Before Tucson Shooting (VIDEO)*, GLOBAL POST (Mar. 27, 2013, 6:01 PM), <http://www.globalpost.com/dispatch/news/regions/americas/united-states/130327/jared-loughner-evidence-gabby-giffords-tucson-shooting> [https://perma.cc/5WKS-9L3P].

118. See Martinez & Carter, *supra* note 109.

119. See Wagner, *supra* note 110.

120. See *id.*

121. See Steller, *supra* note 109.

122. See *id.*; see also Martinez & Carter, *supra* note 109.

123. See Wagner, *supra* note 110.

124. See *Elliot Rodger's Family Tried to Intervene Before Deadly Rampage*, FOX NEWS (May 27, 2014) [hereinafter Fox News Elliot Rodger's Article], <http://www.foxnews.com/us/2014/05/27/elliott-rodgers-family-tried-to-intervene-before-deadly-rampage/> [https://perma.cc/9P7M-YRCV]; Christopher Weber & Alicia Chang, *Elliot Rodger's Family Tried to Intervene Before Rampage*, HUFFINGTON POST (May 26, 2014, 8:57 AM), [http://www.huffingtonpost.com/2014/05/26/elliott-rodgers-family\\_n\\_5392211.html](http://www.huffingtonpost.com/2014/05/26/elliott-rodgers-family_n_5392211.html) [https://perma.cc/AVS8-8QMZ] (updated July 26, 2014).

some disturbing videos he had posted on YouTube and alerted one of her son's mental health counselors.<sup>125</sup> The mental health counselor notified the police, who went to Elliot's doorstep to check on him, but ultimately took no action because Elliot presented himself as a well-mannered young man who posed no risk for violence.<sup>126</sup> As Elliot divulged in his 140-page manifesto, which was found after the killings, if the police searched his room, they would have uncovered a cache of firearms and his murderous plot.<sup>127</sup> In fact, hours before Elliot committed his shooting spree, he emailed his manifesto about committing a deadly rampage "to a couple of dozen people, including his parents" and one of his therapists.<sup>128</sup> Upon receiving this manifesto, Elliot's mother promptly called the authorities and raced to Santa Barbara with her husband to stop Elliot but, unfortunately, arrived too late.<sup>129</sup>

While under these facts, Elliot's parents knew he had significant mental health issues and had reason to believe he may harm someone due to his Internet postings, the second and third criterion of the special relationship test are not met. Elliot did not live with his parents, and there was no evidence that they acted in a manner that would cause one to believe they had the ability to control him. In fact, the evidence points to the contrary: when they learned of his inflammatory internet postings, they did not try and handle the matter alone but contacted the authorities. Moreover, they did not assume responsibility for Elliot's day-to-day care, as he was taking care of himself and living independently in his own apartment hours away.<sup>130</sup> Therefore, no special relationship was established, and thus no duty to warn or protect others arose in this case nor could arise in others like it.

In sum, the special relationship test formulated in the Part I(D) is workable. Its application will only yield findings of a special relationship between a parent and their adult child when the parent has assumed de facto guardianship of their adult offspring by taking full responsibility for that child, allowing the child to reside with them, and trying to control their behavior. Establishing a special relationship, however, does not end the duty inquiry. It is only a prerequisite for finding a special relationship-based duty. Should a court recognize a special relationship in the context of a mass shooting case, the next inquiry is whether the majority of policy

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125. See Fox News Elliot Rodger's Article, *supra* note 124.

126. See *id.*

127. See *id.*

128. See Daily Mail Reporters, *Virgin Killer's Parents Read His Hate-Filled Manifesto Then Called the Police and Rushed to Stop Him When They Heard of Murder Spree on Their Car Radio*, DAILYMAIL.COM (May 25, 2014, 7:44 PM), <http://www.dailymail.co.uk/news/article-2639177/Parents-shooter-read-manifesto-driving-stop-son-heard-massacre-radio-revealed-investigators-search-moms-house.html> [https://perma.cc/3PRK-BXFH] (updated May 2, 2014, 10:47 PM).

129. See *id.*

130. See *id.*

considerations weigh in favor of recognizing a duty, which is addressed in Part III.

### III. OVERVIEW OF PARENTAL NEGLIGENCE AND ESTABLISHING A DUTY TO PROTECT OR WARN

#### A. *The Negligence Cause of Action and Its Pitfalls*

To establish parental negligence, the plaintiff must prove that: (1) the parents owed a duty to the plaintiff; (2) the parents breached that duty; and (3) the parents' breach caused the plaintiff's injury.<sup>131</sup> While this formula seems rather straightforward to apply, it is fraught with difficulties, particularly the first and third elements.<sup>132</sup>

The first element of parental negligence—duty—can be problematic; it is essentially a policy and moral question concerning how far parental liability should reasonably extend, which varies from court to court and is constantly evolving over time, hampering the ability to predict, with any certainty, how a court will resolve a future similar case.<sup>133</sup> This fluctuation, however, is not necessarily a negative when it comes to negligence in the context of mass murder, which is a relatively new phenomenon. Additionally, the duty analysis in the third-party criminal act context is complicated because it is partially dependent upon whether the third party's criminal act was foreseeable, and in the majority of mass shooting cases, the perpetrators had no prior history of shooting violence, making their sudden criminal attack arguably capricious.<sup>134</sup> Further adding to the con-

131. See Lisa Lockwood, Comment, *Where Are the Parents? Parental Criminal Responsibility for the Acts of Children*, 30 GOLDEN GATE U. L. REV. 497, 512 (2000).

132. See Andrew J. McClurg, *Armed and Dangerous: Tort Liability for the Negligent Storage of Firearms*, 32 CONN. L. REV. 1189, 1226 (2000) (“Virtually all cases involving negligence liability for criminal attacks, including those involving negligent firearm storage, purport to turn on the elements of ‘duty’ and ‘proximate cause’ along with their damnable, murky companion, ‘foreseeability.’ Duty and proximate cause have long been sources of confusion for law students and lawyers alike, who search in vein for concrete rules on which to base such determinations.” (footnote omitted)).

133. See *Lopez v. McDonald’s Corp.*, 238 Cal. Rptr. 436, 440, 441 (Ct. App. 1987) (explaining judicial treatment of duty—which “is not sacrosanct or an immutable fact of nature, but only a shorthand expression of the sum total of public policy considerations which lead the law to protect a particular plaintiff from harm”—has “left a legacy of analytical confusion”); *Craig v. A.A.R. Realty Corp.*, 576 A.2d 688, 692 (Del. Super. Ct. 1989) (explaining that duty is “frequently an expression by the court of evolving public policy”); see also Porter, *supra* note 17, at 567 (observing that “[o]ver the past few decades, duty has evolved into a more individualized, less predictable inquiry”).

134. See Rhonda V. Magee Andrews, *The Justice of Parental Accountability: Hypothetical Disinterested Citizens and Real Victims’ Voices in the Debate over Expanded Parental Liability*, 75 TEMP. L. REV. 375, 389 (2002); see also W. Jonathan Cardi, *Purging Foreseeability*, 58 VAND. L. REV. 739, 740–41 (2005) (noting foreseeability determination in negligence is problematic for two reasons: (1) it leads to inconsistency in judicial outcomes and (2) it usurps the role of the jury in deciding whether the defendant’s conduct was reasonable).

volution of the duty analysis in the case of a mass shooting is the fact that the law has been reluctant to hold parents responsible for the violent acts of their *minor* children.<sup>135</sup> If the law is hesitant to hold parents liable for the violent criminal acts of their minor children, will courts be even more reticent to hold parents responsible for the violent acts of their legally emancipated offspring, who are often the offenders in mass shootings?

The third element of negligence—causation—has also been a source of puzzlement. Tort experts have long opined “[t]here is perhaps nothing in the entire field of law which has called forth more disagreement, or upon which the opinions are in such a welter of confusion.”<sup>136</sup> Part of the confusion stems from the fact that a foreseeability determination must also be made at this stage of the negligence analysis, and some courts use duty-foreseeability cases to make causation-foreseeability determinations.<sup>137</sup> The foreseeability consideration for causation is different from the one used to determine whether the law should recognize a duty, however. As one scholar has noted, “[w]hile duty employs a forward-looking foreseeability analysis, proximate cause employs a backward-looking foreseeability analysis.”<sup>138</sup> In other words, when considering foreseeability in the duty analysis, the question is whether it was generally foreseeable that the harm—or, in the third-party criminal act context, the third party’s criminal act—would occur. This requires *foresight*. When considering foreseeability for the purposes of determining proximate cause, however, the relevant inquiry is whether, looking back in *hindsight* at what actually occurred, was it foreseeable that the precise harm that occurred would happen, i.e., was the injury or mass shooting a natural and probable consequence of the defendant’s breach of duty?<sup>139</sup> Thus, foreseeability in the causation-element analysis is more specific, whereas the foresight determination in the duty analysis is more general.<sup>140</sup> The concept of foreseeability also appears in the analysis for the second element, breach of

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135. See Porter, *supra* note 17, at 535 (observing “common law courts have resisted exposing parents to civil liability” and “it remains the rare case that survives summary judgment or a motion to strike”).

136. See WILLIAM L. PROSSER, HANDBOOK OF THE LAW OF TORTS § 41, at 236 (4th ed. 1971).

137. See Deborah J. La Fetra, *A Moving Target: Property Owners’ Duty to Prevent Criminal Acts on the Premises*, 28 WHITTIER L. REV. 409, 410 (2006) (noting courts “frequently use duty-foreseeability cases as precedent to support causation-foreseeability holdings and vice versa”).

138. Rory Bahadur, *Almost a Century and Three Restatements After Green It’s Time to Admit and Remedy the Nonsense of Negligence*, 38 N. KY. L. REV. 61, 86 (2011).

139. See *id.* at 87; see also *McKown v. Simon Prop. Grp., Inc.*, 344 P.3d 661, 665 (Wash. 2015) (en banc) (explaining foreseeability of harm determination in causation element analysis limits scope of defendant’s duty and asks “whether the harm sustained is reasonably perceived as being within the general field of danger covered by the duty owed by the defendant”).

140. See Bahadur, *supra* note 138, at 87.

duty, and this overlap also adds to the perplexity of the negligence analysis.<sup>141</sup>

Notwithstanding the complexities of the negligence analysis, the rest of this Article will demonstrate that by employing general negligence principles, there are some instances where a plaintiff should be able to prove that a parent's conduct or failure to act is clearly unreasonable and negligent under common law negligence principles in mass shooting cases. There will be other cases where the parents' conduct or failure to act was certainly reasonable and no liability should attach. Finally, some parental conduct or omissions will fall squarely in the middle of the spectrum and should be left for a jury to decide.

#### B. *Proving a Duty Should Be Recognized in Mass Murder Cases*

It is axiomatic that

[r]egardless of how morally, ethically or socially deplorable a defendant's conduct may be viewed by other constituencies, in the eyes of the law, the defendant may not be held to answer in negligence unless and until the court determines, as a matter of law, that the defendant owed a duty of care to the plaintiff.<sup>142</sup>

A "duty" is an "obligation, recognized by the law, requiring the person to conform to a certain standard of conduct, for the protection of others against unreasonable risks."<sup>143</sup> Thus, the first issue that must be addressed is whether the parent of an emancipated, mentally ill child has a duty to prevent that adult child from committing a mass shooting. More specifically, does the parent have a duty to supervise or control that child's behavior so that they do not have access to firearms, and if they cannot control the child, do they have a duty to warn the proper authorities (the police, the court, or mental health professionals) so they can attempt to contain the child or prevent them from harming the public?

Whether a duty exists is a threshold question of law that is decided by the court.<sup>144</sup> In fact, many negligence cases fail because of the court's

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141. *Accord id.* at 62–64 (describing confusion over foreseeability determination that is part of test for three negligence elements—duty, breach, and proximate cause—and various ways courts have tried to distinguish the determinations by using differentiating terms like *specific foreseeability* vs. *general foreseeability* and *forward-looking foreseeability* vs. *backward-looking foreseeability*); Cardi, *supra* note 134, at 743 (noting that courts rely upon some form of foreseeability determination in ascertaining whether duty, breach, and proximate cause elements of negligence are satisfied).

142. *Doe 30's Mother v. Bradley*, 58 A.3d 429, 436 (Del. Super. Ct. 2012).

143. *Bridges v. Parrish*, 731 S.E.2d 262, 265 (N.C. Ct. App. 2012) (quoting *Davis v. N.C. Dep't of Human Res.*, 465 S.E.2d 2, 6 (N.C. Ct. App. 1995)) (internal quotation marks omitted), *aff'd*, 742 S.E.2d 794 (N.C. 2013).

144. See Shelley Ross Saxer, "Am I My Brother's Keeper?": *Requiring Landowner Disclosure of the Presence of Sex Offenders and Other Criminal Activity*, 80 NEB. L. REV. 522, 526 (2001) (footnote in title omitted).

finding that there was no duty to act, either because there was no special relationship or the third party's criminal conduct was unforeseeable.<sup>145</sup> As previously explained, a court can find a special relationship between an adult mass shooter and his parents if the criteria specified in Part I(D) are met.

"Courts will generally find a duty where reasonable persons would recognize and agree that it exists,"<sup>146</sup> and it is well established that "[e]very one owes to the world at large the duty of refraining from those acts that may unreasonably threaten the safety of others."<sup>147</sup> But remember, parental liability is generally not premised on negligent acts affirmatively committed by the parents themselves, but rather on their failure to prevent malevolent acts by their children. Thus, how the duty issue is analyzed depends upon whether the plaintiff is alleging misfeasance or nonfeasance.<sup>148</sup>

### 1. *Nonfeasance vs. Misfeasance*

Nonfeasance refers to when a defendant fails to act for the protection of others,<sup>149</sup> whereas misfeasance is "active misconduct working positive injury to others."<sup>150</sup> Classic examples of nonfeasance in the third-party, criminal attacker context are the defendant's failure to (1) control the criminal attacker; (2) warn identifiable potential victims or the proper authorities of the assailant's dangerousness; or (3) take measures to protect the victims from the third-party attacker.<sup>151</sup> An example of misfeasance that could arise in the context of a mass shooting would be that the parent acted negligently by entrusting a dangerous instrumentality to a known mentally ill person.<sup>152</sup>

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145. See Bahadur, *supra* note 138, at 69–70 (observing that judges play important role in negligence cases "as gatekeepers or screeners of negligence actions" because "[i]f the court determines that no duty of care is owed to the plaintiff or that no duty of care exists, then the court may dismiss the action as a matter of law").

146. Estate of Heck v. Stoffer, 786 N.E.2d 265, 268 (Ind. 2003).

147. Palsgraf v. Long Island R.R. Co., 162 N.E. 99, 103 (N.Y. 1928) (Andrews, J., dissenting).

148. See Smith v. Freund, 121 Cal. Rptr. 3d 427, 431 (Ct. App. 2011).

149. See Price v. E. I. DuPont de Nemours & Co., 26 A.3d 162, 167 (Del. 2011).

150. Cara McDonald, Case Note, *Torts Law: Blurred Elements: The Nebulous Nature of Foreseeability, the Confounding Quality of Misfeasance, and the Minnesota Supreme Court's Decisions—Doe 169 v. Brandon*, 41 WM. MITCHELL L. REV. 365, 369 (2015) (internal quotation marks omitted).

151. See Eric J. v. Betty M., 90 Cal. Rptr. 2d 549, 551, 558 (Ct. App. 1999) (recognizing failure to warn and failure to protect as nonfeasance claims).

152. See RESTATEMENT (SECOND) OF TORTS § 302B cmt. e, illus. 11 (1965) (listing negligent entrustment of firearms to minors as one situation where defendant can be responsible for third party's criminal act because his affirmative act—misfeasance—created the risk of harm).

Obviously, claims of misfeasance are easier to prove and will fare far better than nonfeasance allegations, because misfeasance actually involves wrongdoing on the parents' parts.<sup>153</sup> For example, in the case of Nancy Lanza, it would be easier to make a case that she negligently stored her firearms or entrusted them to her son, whom she knew was severely mentally ill, than to establish that she was negligent for failing to supervise or control him.<sup>154</sup> This is especially true because in negligent entrustment and other misfeasance cases, the plaintiff does not have to establish a special relationship between the parent and third-party criminal actor, since the gravamen of a misfeasance complaint is not based upon the third party's criminal act, but rather the parent's own affirmative act that created an unreasonable risk of harm.<sup>155</sup> Indeed, it could be argued that giving a mentally ill person a firearm is negligence per se in light of federal and state laws prohibiting the transfer of firearms to mentally unstable persons.<sup>156</sup> Accordingly, where possible, a plaintiff should frame the parents' duty as a question of misfeasance to increase their odds of success.

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153. See John M. Adler, *Relying Upon the Reasonableness of Strangers: Some Observations About the Current State of Common Law Affirmative Duties to Aid or Protect Others*, 1991 WIS. L. REV. 867, 872–73 (noting if defendant's behavior is characterized as nonfeasance, in most cases courts will find no duty); Brian D. Bender, Case Note, *Torts: The Failings of the Misfeasance/Nonfeasance Distinction and the Special Relationship Requirement in the Criminal Acts of Third Persons*—State v. Back, 37 WM. MITCHELL L. REV. 390, 391–92 (2010) (acknowledging that “[i]f the defendant’s act is characterized as misfeasance, a duty generally attaches to prevent the harm caused by those actions[.]” but “[i]f the defendant’s act is characterized as nonfeasance, there is typically no duty to prevent the harm caused by the third person absent some special relationship”).

154. Courts have no problem finding that homeowners have a duty to not entrust an inherently dangerous instrumentality like a gun to a mentally disturbed individual or to safely store such a dangerous instrumentality in a home where a mentally ill individual has access. See e.g., *Jupin v. Kask*, 849 N.E.2d 829, 832–33 (Mass. 2006) (holding that “a homeowner who permits guns to be stored on her property and allows unsupervised access to that property by a person known by her to have a history of violence and mental instability, has a duty of reasonable care to ensure that the guns are properly secured,” and that it was foreseeable that her live-in boyfriend’s mentally ill son could take one of the guns and shoot someone, including a police officer). “[N]early every state has [recognized] some form of the negligent entrustment doctrine.” See Andrew D. Holder, Comment, *Negligent Entrustment: The Wrong Solution to the Serious Problem of Illegal Gun Sales in Kansas* [Shirley v. Glass, 241 P.3d 134 (Kan. Ct. App. 2010)], 50 WASHBURN L.J. 743, 747 (2011).

155. See Bender, *supra* note 153, at 396 (stating “courts will generally hold a person accountable for their misfeasance . . . [because] [t]his accountability generally does not depend on whether that harm arises from an act—criminal or otherwise—of a third person[.]” and that Minnesota requires plaintiff to show special relationship only in nonfeasance cases); see also *Price v. E. I. DuPont de Nemours & Co.*, 26 A.3d 162, 170 (Del. 2011) (recognizing that “[i]n cases of nonfeasance, no duty of care exists between the parties unless a ‘special relationship’ between them gives rise to one”).

156. See, e.g., *Martin v. Schroeder*, 105 P.3d 577, 583 (Ariz. Ct. App. 2005) (recognizing that parents violated 18 U.S.C. § 922(d) by buying a gun for their adult, eighteen-year-old son whom they knew was a drug abuser and thus commit-



Additionally, it should be noted that whether a policy consideration weighs in favor of recognizing a duty depends on the particular duty the plaintiff alleges the defendant owed to them and the specific facts of the case. For instance, the duty-policy analysis in a case alleging that parents were negligent for failing to have their child involuntarily committed to a mental institution will be quite different than one alleging the parent was negligent for failing to properly supervise their offspring to prevent him from accessing a gun, the former being much more difficult to prove because of the competing policy considerations concerned—the need to protect the public versus the mentally ill individual’s freedom. Thus, it would be better to cast the duty in, broader terms—such as *the duty to supervise or control the third-party attacker*—than a more specific allegation—such as *the defendant parents had a duty to have their emancipated offspring involuntarily committed*.

Although nonfeasance duties are harder to prove than misfeasance duties, it does not follow that plaintiffs cannot successfully establish nonfeasance negligence cases against parents. Because most parental liability cases involving mass shooters will probably also involve negligence allegations based upon nonfeasance, this Section will primarily focus on the nonfeasance duties of parents’ failure to control, protect, or warn.

## 2. Duty-Policy Considerations

As previously explained, in order for courts to find a special relationship-based duty to prevent a mass shooting under a nonfeasance theory, a plaintiff has to prove more than the existence of a special relationship between the parents and their emancipated offspring; they must also establish that a myriad of policy considerations weigh in favor of recognizing a duty.<sup>157</sup> The policy concerns that have been considered include (1) the reasonable foreseeability of the injury; (2) the degree of certainty that the plaintiff suffered injury; (3) the closeness of the connection between the defendant’s conduct and the injury suffered; (4) the moral blame at-

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ted negligence per se); *West v. MacHe of Cochran, Inc.*, 370 S.E.2d 169, 173 (Ga. Ct. App. 1988) (holding licensed firearms dealer committed negligence per se by knowingly selling firearm to mentally ill individual, in violation of federal and state law); *Rubin v. Johnson*, 550 N.E.2d 324, 330–31 (Ind. Ct. App. 1990) (holding there was sufficient evidence that pawn shop owner violated state statute prohibiting sale or transfer of a firearm to person of “unsound mind” and thus committed negligence per se). To establish negligence per se, you have to show (1) a violation of a statute; (2) the statute was intended to protect the class of people to which the plaintiff belongs; and (3) the statute was design to prevent the type of harm that occurred. See *Rubin*, 550 N.E.2d at 329. It should be noted that a finding of negligence per se is not necessarily a finding of liability per se; the plaintiff must still prove that the defendant’s negligence caused the harm. See *Williams ex rel. Raymond v. Wal-Mart Stores E., L.P.*, 99 So. 3d 112, 116–17 (Miss. 2012).

157. See *Smith v. Freund*, 121 Cal. Rptr. 3d 427, 433 (Ct. App. 2011). But see *Estate of Strever v. Cline*, 924 P.2d 666, 670 (Mont. 1996) (dispensing with special-relationship inquiry in duty analysis and only considering foreseeability of risk of harm and weighing policy considerations to determine existence of duty).

tached to the defendant's conduct; (5) the policy of preventing future harm; (6) the extent of the burden to the defendant to prevent the harm; (7) the consequences to the community of imposing a duty to exercise care with resulting liability for breach; and (8) the availability, cost, and prevalence of insurance for the risk involved.<sup>158</sup> All of these policy factors will be addressed below. Because foreseeability is the most important policy consideration in the duty analysis in the majority of jurisdictions,<sup>159</sup> it will be addressed first, separate from the other policy concerns.

a. Foreseeability of Mass Murders

It is well settled that for an act to be foreseeable for purposes of the duty analysis, the third party's criminal conduct must be reasonably anticipated,<sup>160</sup> thereby excluding remote and unexpected events from the realm of foreseeability.<sup>161</sup> Courts disagree, however, over what test should be applied to determine whether the defendant should have foreseen the third party's conduct.

Some jurisdictions have found that the third party had to have committed a "similar" prior criminal act for the defendant to foresee a criminal act could occur again, but nevertheless treat similar prior criminal acts as if they must be identical.<sup>162</sup> In these jurisdictions, it will be impossible

158. These policy concerns were originally enunciated by the California Supreme Court in *Rowland v. Christian*, and many courts have subsequently adopted some or all of the *Rowland* policy concerns in its duty analysis. See, e.g., *Marshall v. Burger King Corp.*, 856 N.E.2d 1048, 1057 (Ill. 2006); *Rodriguez v. Spencer*, 902 S.W.2d 37, 43 (Tex. Ct. App. 1995); see also Tory A. Weigand, *Duty, Causation and Palsgraf: Massachusetts and the Restatement (Third) of Torts*, 96 MASS. L. REV. 55, 57–58 (2015) (reporting recent survey that revealed most states (1) utilize multi-policy test to make duty determinations and (2) include foreseeability in that multi-factor policy duty assessment).

159. See Weigand, *supra* note 158, at 58 (observing most jurisdictions include foreseeability in their duty analysis and leave duty-foreseeability determination for jury to decide); Benjamin C. Zipursky, *Foreseeability in Breach, Duty, and Proximate Cause*, 44 WAKE FOREST L. REV. 1247, 1260 (2009) (noting foreseeability plays significant role in duty analysis in forty-seven states); see also *Tarasoff v. Regents of Univ. of Cal.*, 551 P.2d 334, 342 (Cal. 1976) (observing "most important" policy consideration in establishing whether duty exists is foreseeability); *Margaret W. v. Kelley R.*, 42 Cal. Rptr. 3d 519, 530 (Ct. App. 2006) (recognizing that in determining defendant's liability in third-party criminal conduct cases, foreseeability is crucial factor); *Romero v. Giant Stop-n-Go, Inc.*, 212 P.3d 408, 410 (N.M. Ct. App. 2009) (reiterating "[f]oreseeability is a critical and essential component of New Mexico's duty analysis because no one is bound to guard against or take measures to avert that which he or she would not reasonably anticipate as likely to happen" (alteration in original) (internal quotation marks omitted)).

160. Steve Jasper, Note, *Congratulations! It's a Tort: Expanding the Scope of Duty in the Surrogacy Setting*, 67 MO. L. REV. 421, 429 (2002); Jeffrey H. Powell, Comment, *Marshall v. Burger King Corp.: Making a Mess of "Duty" for Businesses in Illinois*, 28 N. ILL. U. L. REV. 95, 112 (2007).

161. See *Lopez v. McDonald's Corp.*, 238 Cal. Rptr. 436, 444 (Ct. App. 1987).

162. See *Trammell Crow Cent. Tex. Ltd. v. Gutierrez*, 267 S.W.3d 9, 11, 12, 17 (Tex. 2008) (stating that foreseeability of criminal acts of third party on one's property is established by evidence of "specific previous crimes on or near the

to establish that an adult child's mass shooting was foreseeable because, as previously mentioned, the typical mass shooter has no prior criminal history, and in the event they had committed a mass murder before, they may have already been incarcerated, serving a life sentence, or sitting on death row, consequently unable to commit the mass shooting at issue.

Other states have concluded that for an act to be foreseeable, it has to be of the same general character of the past event or harm, and they apply a totality of the circumstances test—which includes considerations such as the proximity of, frequency of, and publicity surrounding prior similar incidents—to determine whether the act is of the same general character.<sup>163</sup> In these jurisdictions, it will also be virtually impossible to show a mass shooting is foreseeable because rarely, if ever, does a mass shooting occur at the same locale. And while the occurrence of mass shootings overall nationwide may have increased, the frequency of mass shootings in particular areas has not.

A few jurisdictions, like California and Tennessee, treat foreseeability as a flexible, fluid concept and employ a balancing test that weighs the foreseeability and gravity of the harm against the burden of preventing the harm.<sup>164</sup> In these jurisdictions, if the burden of preventing the harm is great—such as hiring security guards to prevent criminal activity on a property—a heightened degree of foreseeability is required.<sup>165</sup> Conversely, if the burden of preventing harm is minimal—such as placing a telephone call to 911 during an ongoing criminal attack—then a lesser degree of foreseeability is required because, for example, it does not take much foresight for a defendant who is witnessing a fistfight to know someone will be seriously injured when the defendant also knows one of the participants has a knife.<sup>166</sup>

Depending upon the duty alleged and the facts of the case, applying this more flexible foreseeability test will make it easier to determine

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premises” and holding prior robberies at a shopping center were insufficient to make shooting and killing of apparent robbery victim foreseeable when no one was seriously injured in previous robberies and no weapon was used on person (internal quotation marks omitted)); *see also* Craig Crawford, Comment, *Delgado v. Trax Bar & Grill: Determining the Scope of the Prior Similar Incidents Test in Terms of Efficient Resource Allocation*, 39 U.S.F. L. REV. 499, 503 (2005) (noting that in premises liability cases, “[s]ome jurisdictions interpreted the prior similar incidents test to require prior ‘identical’ incidents. . . . [and] imposed a duty on a landowner only where there was evidence of a prior incident of the same crime occurring in approximately the same manner”).

163. *See* Glenda K. Harnad, *Effect of Foreseeability*, 53 TEX. JUR. 3D NEGLIGENCE § 59 (3d ed. & Supp. 2015); Saxer, *supra* note 144, at 527–30 (acknowledging foreseeability may be based upon prior similar conduct or totality of circumstances).

164. *See* *Delgado v. Trax Bar & Grill*, 113 P.3d 1159, 1166–70 (Cal. 2005); *Lopez*, 238 Cal. Rptr. at 444 (noting “[f]oreseeability is . . . an elastic factor within a somewhat flexible concept”); *McClung v. Delta Square Ltd. P’ship*, 937 S.W.2d 891, 901–02 (Tenn. 1996).

165. *See* *Delgado*, 113 P.3d at 1166–69.

166. *See* *Morris v. De la Torre*, 113 P.3d 1182, 1184, 1189 (Cal. 2005).

whether a mass shooting was foreseeable. For instance, if it is alleged that the defendant had a duty to supervise the adult child to prevent a mass shooting, the degree of foreseeability will be high and more difficult to meet. If the alleged duty is a duty to call the police when a known-to-be mentally ill child runs out the door with a gun or plans a mass murder, the degree of foreseeability required is low because the burden on the parents is minimal. Thus, the foreseeability requirement will be easier to satisfy in the latter case and others like it.

The foreseeability test will be easiest to satisfy in jurisdictions that also require lesser foreseeability when there are strong policy reasons for preventing the harm.<sup>167</sup> For example, in *Juarez v. Boy Scouts of America, Inc.*,<sup>168</sup> a California appellate court found that it was foreseeable that a child would fall victim to a sexual predator who was serving as an adult scoutmaster in the Boy Scouts, irrespective of the fact that the troop leader had no prior documented instances of sexual molestation.<sup>169</sup> In reaching this conclusion, the court emphasized that based upon legal commentary, reported cases, and books, the Boy Scouts organization had to have known the possibility existed that pedophiles would be attracted to the Boy Scouts organization because working there would give them legitimate access to young children.<sup>170</sup>

Additionally, the court pointed to a much earlier California case that found sexual assault by unknown third parties against young children was foreseeable because “[i]t is certain that there exists in our civilization the constant possibility that persons suffering from a lack of proper mental balance or normal decency might subject young people to sexual molestation.”<sup>171</sup> In that earlier case, the court stressed that the constant threat of sexual abuse against children abounded, as illustrated by frequent newspaper accounts of sexual crimes against children, the many litigated criminal cases on the issue, and the legislative enactment of laws to protect children.<sup>172</sup> Most significantly, the court emphasized that “[i]f injury to another . . . is likely enough in the setting of modern life that a reasonably thoughtful [person] would take account of it in guiding practical conduct[,] . . . we must label the injury reasonably foreseeable . . .”<sup>173</sup> The court further explained that a showing of foreseeability—not the more stringent standard of probability—is what is required to satisfy this aspect of the special relationship-based duty test.<sup>174</sup> Accordingly, the court found that the sexual as-

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167. *See id.*

168. 97 Cal. Rptr. 2d 12 (Ct. App. 2000).

169. *See id.* at 31.

170. *See id.* at 30.

171. *Id.* at 31 (quoting *Wallace v. Der-Ohanian*, 18 Cal. Rptr. 892, 896 (Ct. App. 1962)) (internal quotation marks omitted).

172. *See Wallace*, 18 Cal. Rptr. at 896.

173. *Juarez*, 97 Cal. Rptr. 2d at 30 (second alteration in original) (emphasis added) (internal quotation marks omitted).

174. *See id.* at 31.

sault was foreseeable, and the Boy Scouts had a duty to take reasonable measures to protect the victim, such as by training the boy scouts on how to handle a sexual predator.<sup>175</sup>

Applying *Juarez* to the foreseeability of mass shootings in general, and Adam Lanza's and Jared Loughner's mass shootings in particular, an argument can easily be made that mass shootings are foreseeable when certain factors exist. First, similar to the sexual assaults in *Juarez*, the possibility of a random mass shooting committed by a mentally unbalanced person who exhibits certain signs has been so well-publicized in literature and the media that it should be reasonably anticipated if someone is acting in the manner described in the next two sentences, they are a candidate for committing a mass murder. For instance, the media has consistently reported that most mass shooters have no prior criminal history of violence, which makes the lack of a criminal record itself a common characteristic of a mass shooter.<sup>176</sup> Other common characteristics include a person (1) displaying mentally unbalanced behavior to the extent that it causes others around them to be concerned; (2) being anti-social, reclusive, or angry with the world; (3) having an unusual obsession with prior public mass shootings or firearms; and (4) manifesting an intent to kill either in writings, YouTube postings, other social media, or telling a friend or acquaintance of their murderous plot.<sup>177</sup>

Both Adam Lanza and Jared Loughner displayed most, if not all, of these signs, and thus their parents should have known they were severely mentally ill, potentially dangerous, and capable of shooting someone. As to Adam Lanza, he displayed clear signs of mental illness and was the epitome of a recluse. He had stopped verbally communicating with his mother except through email and refused to leave their home for any reason in the three months leading up to the shootings, even when their electricity went out due to Hurricane Sandy.<sup>178</sup> These actions, coupled with his lifetime history of mental health issues, should have put his mother on notice that he was not in a healthy mental state and had no business handling a firearm. Adam also had an unusual obsession with mass shootings and guns. After Adam's killing spree, police found an enormous amount of material on mass shootings and firearms, including a spreadsheet on mass murders listing details about each shooting.<sup>179</sup> Thus, it was foreseeable that Adam could harm anyone in the general public with a firearm.<sup>180</sup>

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175. *See id.*

176. *See Weber & Chang, supra* note 124 (observing commonalities between recent mass shooters James Holmes, Adam Lanza, and Elliott Rodger—"[a]ll were young loners with no criminal history").

177. *See Lewis, supra* note 2, at 338–39.

178. *See SEDENSKY, supra* note 10, at 28.

179. *See id.* at 25–26.

180. *See Silberstein v. Cordie*, 474 N.W.2d 850, 856 (Minn. Ct. App.) ("Significantly, the duty to control, unlike the duty to warn, may arise if there is foreseeable

Regarding Jared Loughner, there is substantial evidence that his parents also should have reasonably anticipated that he would shoot and kill someone, given his mental instability and potential for violence. Evidence of his mental instability included talking to himself while at the same time refusing to communicate with his parents, making nonsensical rants, and writing incoherent statements in his journal.<sup>181</sup> Additionally, Jared's parents knew he had been suspended from school for exhibiting mentally unstable behavior, including making an outburst in class about "blowing up babies" and posting a YouTube video showing him prowling around his campus at night with a video camera threatening to torture students.<sup>182</sup> Jared's college further advised his parents that they believed Jared posed a danger to himself and others and could not return to campus until a mental health professional had determined he was no longer dangerous.<sup>183</sup> Accordingly, it was certainly foreseeable that someone with this mental state could harm someone if they were armed.

Indeed, not only were Adam Lanza's and Jared Loughner's mass shootings foreseeable, but their parents' actions demonstrate that they actually foresaw their sons seriously injuring or murdering someone. As previously mentioned, Adam Lanza's mother had planned to have him involuntarily committed to a mental health facility shortly before his shooting spree,<sup>184</sup> which indicates she believed he was capable of committing violence because in order to have someone involuntarily committed, you have to believe the person is mentally ill and dangerous.<sup>185</sup> Jared Loughner's parents obviously believed he was capable of harming the public, as they confiscated the only firearm they believed he owned and disabled his vehicle every night to keep him home.<sup>186</sup> Also, on the morning of Loughner's shooting rampage, his father tried to see what was in the bag he was carrying, rightfully believing it was a gun, and even chased Jared in an apparent effort to seize him and his belongings, though he was ultimately unsuccessful.<sup>187</sup>

It could be argued, based upon *Lopez v. McDonald's*, that mass shootings of random people in general are a remote and unexpected event and thus are unforeseeable. In *Lopez*, a California court found that a mass

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harm to a member of the general public."), *rev. granted in part, cause remanded by* 477 N.W.2d 713 (Minn. 1991).

181. See Wagner, *supra* note 110.

182. See Shaundra K. Lewis, *Bullets and Books by Legislative Fiat: Why Academic Freedom and Public Policy Permit Higher Education Institutions to Say No to Guns*, 48 IDAHO L. REV. 1, 2 (2011).

183. James B. Jacobs & Jennifer Jones, *Keeping Firearms Out of the Hands of the Dangerously Mentally Ill*, 47 CRIM. L. BULL. 388, 388 (2011).

184. See Winter, *supra* note 14, and accompanying text.

185. See John Glenn et al., *Persons Subject to Commitment or Confinement*, 56 C.J.S MENTAL HEALTH § 54 (2015) ("A person may not be involuntarily committed to an institution for the mentally ill unless the person is mentally ill and dangerous.").

186. See Martinez & Carter, *supra* note 109.

187. See Wagner, *supra* note 110.

murderous assault on McDonald's patrons and employees that left twenty-one persons dead and eleven others wounded was unforeseeable.<sup>188</sup> There, survivors and deceased victims' family members sued McDonald's for negligence, claiming the company had a duty to protect its patrons from reasonably foreseeable criminal acts of third parties—namely, a mentally disturbed gunman—and that it had breached that duty by not having security personnel to protect the patrons.<sup>189</sup> The plaintiffs presented evidence the shooting was foreseeable, because that particular McDonald's was in a high-crime area, and there had been some thefts, robberies, and assaults with a deadly weapon in the vicinity.<sup>190</sup> The appellate court found that the prior criminal activity at McDonald's and the immediate surrounding area were predominately theft-related offenses and not the type of shooting massacre that occurred in the instant case. The court further reasoned that a shooting rampage was so remote and unexpected that, as a matter of law, McDonald's nonfeasance in not providing security guards did not facilitate the shooting's occurrence.<sup>191</sup> Further, the court concluded that a mass killing was so unlikely to occur within the setting of modern life that a reasonably prudent business would not consider the possibility of its occurrence in trying to protect its invitees.<sup>192</sup>

*Lopez* is clearly distinguishable from Adam Lanza's and Jared Loughner's case. First, and significantly, the mass shooting in *Lopez* occurred in 1984.<sup>193</sup> Since then, mass shootings have occurred with much greater frequency; thus, it can no longer be said in 2016 that a mass killing is an unlikely or remote occurrence.<sup>194</sup> Second, having the foresight that a stranger entering a business would embark on a killing spree is quite different than anticipating someone with whom you live—and whom you know has significant mental health issues and an unusual fascination with firearms, killing, or mass shootings—may be planning a mass murder of their own. Indeed, the law in every jurisdiction reasonably anticipates that a mentally ill person with a firearm might harm someone, which is why every jurisdiction has some variation of a law intended to preclude mentally ill persons from possessing firearms.<sup>195</sup> Accordingly, not only were Adam Lanza's and Jared Loughner's mass killings foreseeable, but it is more generally foreseeable that any mentally ill person acting as they did could commit mass murder.

Even if a court reasoned that a mass shooting was unforeseeable in Adam Lanza's, Jared Loughner's, or a future mass shooting case, it does not mean that no duty can be recognized; foreseeability is a dominant

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188. See *Lopez v. McDonald's Corp.*, 238 Cal. Rptr. 436, 438 (Ct. App. 1987).

189. See *id.*

190. See *id.* at 439.

191. See *id.* at 445.

192. See *id.*

193. See *id.* at 438.

194. See *id.* at 445.

195. See Lewis, *supra* note 2, at 341–48.

consideration in the duty-policy analysis, but it is not the *sin qua non*.<sup>196</sup> A court can still find that a duty exists if the majority of other policy considerations weigh in favor of recognizing a duty. Moreover, a minority of jurisdictions have adopted the Restatement (Third) of Torts, which removes foreseeability completely from the duty calculus.<sup>197</sup> This is probably because no special expertise is required to determine whether something is foreseeable, since “deciding what is reasonably foreseeable involves common sense, common experience, and application of the standards and behavioral norms of the community—matters that have long been understood to be uniquely the province of the finder of fact.”<sup>198</sup> Thus, in these jurisdictions, foreseeability will not even be a factor, much less a bar, to the recognition of a duty.

#### b. Other Policy Considerations

The majority of the remaining policy factors weigh in favor of recognizing a parental duty to supervise or control a mentally ill, adult child residing at home, and if the parents cannot control the child, to warn the proper authorities (the police, the court, or mental health professionals) that their adult child has a firearm, is mentally ill, and may be potentially dangerous. As previously mentioned, the other policy considerations include the degree of certainty that the plaintiff suffered injury; the closeness of the connection between the defendant’s conduct and the injury suffered; the moral blame attached to the defendant’s conduct; the policy of preventing future harm; the extent of the burden to the defendant to prevent the harm; the consequences to the community of imposing a duty to exercise care with resulting liability for breach; and the availability, cost, and prevalence of insurance for the risk involved.<sup>199</sup> Each will be addressed in turn.

#### i. The Degree of Certainty the Plaintiff Suffered Injury

This policy consideration weighs in favor of recognizing a parental duty to (1) supervise or control mentally ill, adult children residing at home to prevent them from accessing a firearm or (2) warn the proper authorities when they do have a gun or have evidenced an intent to commit a mass murder. Thus, this policy factor without question will always tip in favor of recognizing a parental duty.

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196. See Harnad, *supra* note 163, § 59; see also *Juarez v. Boy Scouts of Am., Inc.*, 97 Cal. Rptr. 2d 12, 31 (Ct. App. 2000) (noting “foreseeability is not coterminous with duty”). Thus, it stands to reason a finding of unforeseeability, standing alone, will not automatically mandate a finding of no duty.

197. See Weigand, *supra* note 158, at 64.

198. See *A.W. v. Lancaster Cnty. Sch. Dist.* 0001, 784 N.W.2d 907, 914 (Neb. 2010).

199. See *supra* note 156 and accompanying text.



ii. The Closeness of the Connection Between the Defendant's Conduct and the Injury Suffered

Second, there is a close connection between the defendant's conduct of (1) failing to supervise or control an adult, mentally ill child residing with them or (2) warning the proper authorities of a mentally disturbed child planning a mass killing or on the loose with a gun, and someone in the community randomly being shot by that individual. A recent FBI report shows that almost 70% of mass shooting incidents end before the police can respond to the scene.<sup>200</sup> Indeed, research on mass school shootings reveal that most foiled school rampage shootings were detected and prevented because a family member or friend alerted the proper authorities before the would-be perpetrator could execute their plan.<sup>201</sup> Parents who reside with their children and observe them on a daily basis are in the best position to observe their child's mental state and behavior. Failure to prevent a mentally ill child from accessing a firearm is strongly connected to a third party's injury or death. Thus, this factor weighs in favor of recognizing a parental duty in the typical mass shooting case.

iii. The Moral Blame Attached to the Defendant's Conduct

Third, at least one research study indicates that parents of a mass shooter are partially morally to blame for their child's mass shooting because, prior to its occurrence, the parents had a history of accepting and accommodating their child's pathological behavior. According to this study, parents of school shooters failed to "react to behavior that most parents would find very disturbing or abnormal" and minimized their child's erratic conduct.<sup>202</sup> These parents set no limits on their child's behavior and did not supervise or monitor their child's use of the Internet.<sup>203</sup> The parents also had a turbulent relationship with their child to the extent that the child expressed contempt for one or more of their parents and rejected their parents' role in their lives.<sup>204</sup> Finally, the par-

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200. See BLAIR & SCHWEIT, *supra* note 2, at 8–9.

201. See PETER LANGMAN, *Ten Lessons Learned from School Shootings and Foiled Attacks*, in WHY KIDS KILL: INSIDE THE MINDS OF SCHOOL SHOOTERS (2014), available at [https://schoolshooters.info/sites/default/files/ten\\_lessons\\_1.1.pdf](https://schoolshooters.info/sites/default/files/ten_lessons_1.1.pdf) [<https://perma.cc/9ENM-QZ2G>] (recognizing "[n]umerous students have prevented possible [school shooting] attacks because they knew enough to report what they heard to parents or school personnel"); see also KATHERINE S. NEWMAN ET AL., RAMPAGE: THE SOCIAL ROOTS OF SCHOOL SHOOTINGS 59 (2004) (noting that in *New York Times* study of 102 rampage killers, "more than half of the cases, friends, family, and even the offenders themselves tried to get help or warn others about the impending violence"). See generally MARY ELLEN O'TOOLE, FBI, THE SCHOOL SHOOTER: A THREAT ASSESSMENT PERSPECTIVE 21 (2000), available at <http://www.fbi.gov/stats-services/publications/school-shooter> [<https://perma.cc/N7EC-NZYQ>].

202. O'TOOLE, *supra* note 201, at 21.

203. See *id.* at 22.

204. See *id.* at 21.

ents carelessly kept firearms in the home, giving their children unfettered access to these deadly weapons.<sup>205</sup>

The commonalities observed among parents of school rampage shooters in this study are consistent with Nancy Lanza's case. Despite expressing concern over her son's behavior, including plans to commit him, Nancy downplayed her son's behavior and told friends that she was not afraid Adam would harm her.<sup>206</sup> Nancy allowed her son to live in isolation, even permitting him to stay in their home without leaving once for three months.<sup>207</sup> Adam had a strained relationship with both his parents. He had stopped verbally communicating with them and was estranged from his only sibling.<sup>208</sup> Toward the end, Nancy apparently realized that her son needed emergency mental health attention and was in the process of having him involuntarily committed, but she nevertheless left him alone in their home with numerous firearms that were not securely stored while she went on vacation.<sup>209</sup> While she was away, her son made a practice run in his car to Newtown where Sandy Hook Elementary School was located.<sup>210</sup> Shortly thereafter, her son used her firearms to murder the elementary school children and educators.<sup>211</sup> Not only did she provide Adam with unrestrained access to her firearms, but she also encouraged his usage of firearms by taking him to shooting ranges and giving him a check to purchase his own gun for Christmas.<sup>212</sup> This was not only morally reprehensible; it was arguably criminally negligent. Therefore, this policy consideration would tip in favor of recognizing a duty in the case of Adam Lanza's mother.

However, it is a closer call as to whether this factor would weigh in favor of finding a duty in the case of Jared Loughner's parents. On one hand, Jared's parents were warned by Jared's community college that Jared was mentally unstable, dangerous, and needed a mental health evaluation, yet the parents never followed up or made sure that Jared saw the mental health professional. Although they advised him to see one,<sup>213</sup> after Jared refused, they should have given him an ultimatum similar to the one issued by Jared's college—seek help or leave.<sup>214</sup> Alternatively, they could have sought involuntary commitment.

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205. *See id.*

206. *See* SEDENSKY, *supra* note 10, at 28.

207. *See id.*

208. *See id.* at 29–30.

209. *See id.* at 25, 28; Winter, *supra* note 14.

210. *See* SEDENSKY, *supra* note 10, at 28.

211. *See* Lewis, *supra* note 2, at 322.

212. *See* SEDENSKY, *supra* note 10, at 28; Cummings et al., *supra* note 11.

213. *See* Wagner, *supra* note 110.

214. *See Helpful Tips for Families: Living with a Mentally Ill Relative—Practical Advice*, NAT'L ALLIANCE MENTAL ILLNESS, <http://www.namiyo.org/tipsforfamilies.html> [<https://perma.cc/5E5K-P8GY>] (last visited Mar. 1, 2016); *see also* Donald Kern, *Tough Love and Bipolar Disorder*, BIPOLAR BY CHANCE, <http://bipolarbychance.blogspot.com/2009/06/tought-love-and-bipolar-disorder.html> [<https://perma>

Although not as much information is available on the relationship between Jared and his parents, one media outlet reported that Jared had a strained relationship with his parents and claimed that they were “hassling” him.<sup>215</sup> Neighbors described Jared’s father as angry and antagonistic towards them and insinuated that he was “crazy.”<sup>216</sup>

On the other hand, the Loughners did try to supervise Jared and monitor his whereabouts.<sup>217</sup> For instance, Jared had once left home without his parent’s knowledge, and his parents went looking for him.<sup>218</sup> The parents of Jared’s friend told the Loughners Jared was staying at a hotel, and the Loughners went and retrieved him.<sup>219</sup> The parents also took away Jared’s firearm and disabled his car every night to keep him home in the evenings,<sup>220</sup> although they forgot to disable his car the night before the shootings.<sup>221</sup> Additionally, in the months leading up to the shootings, the Loughners pleaded with their son to “see someone.”<sup>222</sup> Thus, a court could find that this factor goes either way.

As illustrated by the Loughner and Lanza exemplars, whether the “moral blame” policy consideration weighs in favor of recognizing a duty will depend on the specific facts of each mass shooting case.

#### iv. The Policy of Preventing Future Harm and the Consequences to the Community of That Harm

Fourth, the policy of preventing future harm also weighs in favor of finding parents liable for failing to prevent an adult, mentally ill child from possessing a firearm. According to a recent FBI report, mass shoot-

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.cc/TCE6-MRZZ] (last visited Mar. 1, 2016) (advocating for “tough love” to get a mentally ill family member to seek treatment, explaining that “[s]ometimes it means giving an ultimatum of going for treatment or leaving the family home”); Madison Park & Elizabeth Landau, *Warning Signs from a Troubled Mind: What Parents Should Do*, CNN (Jan. 14, 2011, 6:09 PM ), <http://www.cnn.com/2011/HEALTH/01/14/mental.health.loughner/index.html> [https://perma.cc/KBH7-9K8T] (reporting how Dr. Charles Raison, psychiatrist at Emory University, recommends giving adult children ultimatums to take their prescribed medication or leave).

215. Amanda Lee Myers & Justin Pritchard, *Jared Loughner’s Parents Devastated, Neighbor Says*, HUFFINGTON POST (Jan. 1, 2011), [http://www.huffingtonpost.com/2011/01/11/jared-loughner-parents\\_n\\_807479.html](http://www.huffingtonpost.com/2011/01/11/jared-loughner-parents_n_807479.html) [https://perma.cc/W6H9-L786] (updated May 5, 2011, 6:25 PM).

216. See Martin & Siegel, *supra* note 104.

217. See *id.*

218. See Myers & Pritchard, *supra* note 215.

219. See *id.*

220. See Martinez & Carter, *supra* note 109.

221. Hipolito Corella, *Tucson Shooting: No Mental Health Treatment for Loughner Before Giffords Rampage*, ARIZ. DAILY STAR, Mar. 27, 2013, 8:38 AM, [http://tucson.com/news/local/crime/tucson-shooting-no-mental-health-treatment-for-loughner-before-giffords/article\\_70b5b03c-96f4-11e2-b7dc-0019bb2963f4.html](http://tucson.com/news/local/crime/tucson-shooting-no-mental-health-treatment-for-loughner-before-giffords/article_70b5b03c-96f4-11e2-b7dc-0019bb2963f4.html) [https://perma.cc/XP4W-C439].

222. See Martinez & Carter, *supra* note 109.

ings undoubtedly are on the rise.<sup>223</sup> It has become an epidemic. Since an individual can kill a number of people in a matter of minutes before the police even arrive on the scene, the best approach to decreasing the incidence of mass shootings is to prevent them before they start, and the best place to start is in the home. No one knows a child better than his or her parent. Parents are in the best position to evaluate the mental health and propensity for violence of their child and whether they should have a gun.

Moreover, most mass shootings are committed at schools where innocent children are victimized.<sup>224</sup> As one court has recognized, “[o]ur greatest responsibility as members of a civilized society is our common goal of safeguarding our children, our chief legacy, so they may grow to their full potential and can, in time, take our places in the community at large.”<sup>225</sup> Recognizing a parental duty to control or supervise adult, mentally ill children living with them will hopefully encourage more dialogue on mental illness and what parents should do when dealing with an adult, mentally ill child—a dialogue that can save lives. Thus, this policy factor weighs in favor of recognizing a parental duty to supervise/control adult children to the extent necessary to prevent them from accessing a firearm and to warn authorities when they have a gun. Failure to do so will have dire consequences for the community.

#### v. The Extent of the Burden to Prevent the Harm

Fifth, the burden on parents of keeping firearms out of a mentally ill, emancipated child’s hands is slight. It does not take much effort to safely store firearms, or even better, to not have them in the home where a mentally ill person lives at all. Indeed, at least one state has a statute expressly prohibiting firearms in a house where a mentally ill individual resides.<sup>226</sup> Alternatively, parents can take measures to ensure that their child cannot access firearms by safely storing them in a safe that is only unlocked by the parents’ fingerprints. Additionally, the burden on parents of monitoring an adult child’s activities living in their home is also slight. For example, parents can easily search their child’s room for any weapons or writings suggesting their child is planning something sinister.

#### vi. The Availability, Cost, and Prevalence of Insurance for the Risk Involved

This factor can weigh in favor of or against imposition of a duty depending upon the facts of a case. If the defendant parents own a house,

223. See BLAIR & SCHWEIT, *supra* note 2, at 20.

224. See *id.* at 12–13.

225. See *Juarez v. Boy Scouts of Am., Inc.*, 97 Cal. Rptr. 2d 12, 33 (Ct. App. 2000).

226. *Jupin v. Kask*, 849 N.E.2d 829, 838–39 (Mass. 2006) (recognizing “the financial costs of ensuring the proper securing of firearms and the more esoteric costs involved with requiring certain actions to relieve potential liability—are modest”).

insurance may be available because most homeowners' insurance policies cover personal injuries caused by the insured's negligence on their property and "on the street[s]."<sup>227</sup> Some homeowner's insurance, however, expressly excludes criminal acts from coverage,<sup>228</sup> and some parents may not own a home or have any insurance whatsoever. If no insurance covers the risk of someone in the household committing a crime like a shooting, this factor would weigh against recognizing a duty.

#### vii. Other Policy Considerations

Some may argue that exposing parents to civil liability for the shooting rampages of their children may dissuade parents from housing their mentally ill children who already have few options in life, as they often cannot keep employment and support themselves. Even if this was true, this is not necessarily a negative. A person who is severely mentally ill and dangerous also poses a danger to their parents with whom they reside—Adam Lanza is a prime example, as he shot his mother, killing her, before unleashing his fusillade upon the twenty-six elementary school children and educators at Sandy Hook. Thus, it is in the parent's own best interest to supervise and control their mentally ill, emancipated offspring to make sure their children receive mental health assistance and avoid firearms, and if they cannot control them, to make them leave their residence or have them involuntarily committed to a mental healthcare facility. Finally, perhaps refusing to provide refuge for a severely mentally ill, adult child who will not accept mental health treatment will force that child to obtain the medical assistance he or she so desperately needs in order to have their parents continue to provide food, shelter, and the other necessities and comforts of life. Forcing the mentally ill child to seek professional treatment is also in the individual's best interest, as mass shooters often die during a shooting rampage incident, either from a self-inflicted wound, a bystander, or law enforcement trying to stop the shooting.<sup>229</sup>

Second, some may argue that recognizing a duty in cases involving adult, mentally unstable shooters could unfairly penalize the parents for having a mentally ill child and further stigmatize mental illness. After all, no one is advocating for parental liability in other murder cases (e.g., gang-related). This argument misses the point. Recognizing a parental duty in mass shooting cases is based on the widely accepted premise that a person with significant mental health issues has no business possessing a

227. See *Survivor's Guide to Civil Remedies Against Criminals*, ELLIOT GLICKSMAN PLLC, <http://www.glicksmanlaw.com/CM/Custom/Survivors-Guide.asp> [<https://perma.cc/DZ4H-MG6C>] (last visited Mar. 1, 2016) (stating that most homeowners policies covers personal injuries caused by insured's negligence on insured's property and "on the street[s]").

228. See Steven Plitt et al., *Risks and Activities Covered by Insurance Policy*, 7A COUCH ON INS. § 103:40 (3d ed. 2015).

229. See BLAIR & SCHWEIT, *supra* note 2, at 11.

firearm because, like a minor child, they do not have the mindset to safely handle such a dangerous instrument. Severely mentally ill individuals require the same supervision and monitoring as a minor child. Parents have no obligation to support an adult, mentally ill child, but if they do assume responsibility, they should take the same precautions with them as they would with a five-year-old child. In contrast, a parent has no ability to control an adult, legally emancipated drug dealer or gang member with no mental illness who is not financially dependent upon them.

Moreover, there are multiple safeguards embedded in the intricate negligence analysis that will prevent parental liability in mass shooting cases solely because the parents have a mentally ill son or daughter. For a parental duty to arise, the plaintiff has to do more than merely show the parents were aware of their child's mental health issues. Plaintiffs must prove that the parents also knew or had reason to know their child posed a risk to the community, and that they had the ability to control the child before a special relationship—a prerequisite to recognizing a duty and thus liability—will be found. Assuming that a special relationship can be established, the plaintiff must still show a myriad of policy considerations weigh in favor of recognizing a duty, including the policy consideration that considers the parents' blameworthiness. Thus, a parent will never be penalized for simply having a mentally ill offspring.

In sum, the majority of policy considerations tip in favor of recognizing a parental duty, and, therefore, courts should recognize such a duty under the circumstances described.

#### IV. PROVING A BREACH OF PARENTAL DUTY

Unlike the issue of whether a duty exists, which is a question of law, whether there was a breach of that duty is a question of fact for the jury.<sup>230</sup> In ascertaining whether a defendant breached any particular duty, the fact-finder is essentially asking whether the defendant acted reasonably under the circumstances; in other words, was it reasonably foreseeable that by acting (or in the case of nonfeasance, not acting), the complained of harm would result?<sup>231</sup>

The foreseeability determination in this stage of the negligence analysis is slightly different than the one in the duty-foreseeability test because it is not just asking whether the third-party adult child's act—the mass shooting—was foreseeable generally, but whether it was reasonably foreseeable that the parents' misfeasance or nonfeasance created a risk for the mass shooting to occur. Part of the analysis to determine whether the defen-

230. See, e.g., *Regions Bank v. Joyce Meyer Ministries, Inc.*, 15 N.E.3d 545, 549 (Ill. App. Ct. 2014).

231. See *A.W. v. Lancaster Cnty. Sch. Dist. 0001*, 784 N.W.2d 907, 916–18 (Neb. 2010) (adopting RESTATEMENT (THIRD) OF TORTS approach of removing foreseeability from duty analysis and considering it in context of whether the defendant breached his duty, i.e., acted reasonably).

dant's conduct or omission was a breach of duty or, stated differently, a failure to exercise reasonable care, is considering what a reasonable and prudent parent would have done.<sup>232</sup>

Applying this test to Lanzas' and the Loughners' cases, a jury could reasonably find that a breach occurred. In Nancy's case, a reasonable and prudent parent would not give her mentally ill, adult son unlimited access to a military-style assault rifle and other firearms and most certainly would not take him to the shooting range or give him funds to purchase his own gun. A reasonable and prudent parent would also not leave a son they had recently planned to have involuntarily committed alone and unsupervised for a whole weekend with her guns,<sup>233</sup> as it is foreseeable that he could use those weapons to harm himself or someone in the general public. What a reasonable and prudent parent would have done in Nancy's case is completely deny their mentally ill son access to their guns by safely storing the weapons or not having guns at all in the house. A reasonable and prudent person would not have left their severely mentally ill child—who had not left the house in months—alone and unsupervised. A reasonable and prudent person would have sought immediate mental health assistance for their child, even involuntary commitment, before leaving town. At the very least, Nancy could have given Adam an ultimatum, as some mental health professionals have recommended, to seek help or get out.<sup>234</sup>

Likewise, a jury could find that the Loughners did not exercise reasonable care. A reasonable and prudent parent in their case would have forced their child to obtain an evaluation from a mental health care professional upon their child being suspended from college for displaying mentally disturbing behavior.<sup>235</sup> The Loughners themselves witnessed Jared's profound, yet professionally undiagnosed, mental illness when they observed him engaging in incomprehensible and nonsensical rants and being nonverbal.<sup>236</sup> Despite being concerned about his erratic and angry behavior,<sup>237</sup> they never took the community college's advice to have Jared evaluated.<sup>238</sup> One could argue that after Jared refused to be evaluated, a

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232. See *Doe Parents No. 1 v. Haw. Dep't of Educ.*, 58 P.3d 545, 593 (Haw. 2002).

233. See *id.*

234. See Kern, *supra* note 214; Park & Landau, *supra* note 214.

235. See Martin & Siegel, *supra* note 104; see also Bob Orr, *Newly Released Jared Lee Loughner Files Reveal Chilling Details*, CBS NEWS (Mar. 27, 2013, 7:12 PM), <http://www.cbsnews.com/news/newly-released-jared-lee-loughner-files-reveal-chilling-details/> [<https://perma.cc/UXM5-R9AH>].

236. See Dan Barry, *Looking Behind the Mug-Shot Grin*, N.Y. TIMES, Jan. 15, 2011, [http://www.nytimes.com/2011/01/16/us/16loughner.html?\\_r=0](http://www.nytimes.com/2011/01/16/us/16loughner.html?_r=0) [[perma.cc/623M-UDJA](https://perma.cc/623M-UDJA)]; Loughner CBS Article, *supra* note 112.

237. See Loughner CBS Article, *supra* note 112 (explaining how parents were so disturbed by Jared's behavior they believed he was on drugs and tested him for narcotics but test came back negative); Orr, *supra* note 235.

238. See Orr, *supra* note 235.

reasonable parent would have had him involuntarily evaluated by a hospital or committed to a mental health healthcare facility, just as Nancy Lanza should have done in Adam's case. Alternatively, they could have given him an ultimatum to get help or leave because it was foreseeable that someone with untreated mental illness would harm others.

#### V. CAUSATION

Establishing a breach of duty is one thing, proving a causal connection between the defendant-parents' breach of duty and the resulting harm, is quite another. Like the issue of whether there was a breach, the question of whether the defendant's breach caused the complained of harm is a question of fact for the jury that calls for a foreseeability determination.<sup>239</sup>

Jurisdictions vary on what test should be applied to ascertain whether the defendant's negligent act caused the complained of injury. Traditionally, most states require the plaintiff to establish that the defendant's conduct was *both* (1) the cause-in-fact of the complained of injury and (2) the proximate or legal cause.<sup>240</sup> In ascertaining whether the defendant's conduct was the cause-in-fact of the plaintiff's injury, most jurisdictions employ the "but-for" test.<sup>241</sup> In other words, would the mass shooting have occurred but for the defendant-parents' negligence? "The but-for test [only] applies in cases where only one negligent act is at issue."<sup>242</sup> If more than one negligent act is at issue, then the "substantial factor" test applies, which considers if it is more likely than not that the defendant's conduct was a substantial factor in producing the plaintiff's injuries.<sup>243</sup> Some states, however, have used the substantial factor test when only one negligent act is at issue, adding to analytical confusion surrounding this element.<sup>244</sup>

Regardless of what test is used for cause-in-fact, a jury could find that Nancy Lanza's and the Loughners' breach of duty was the cause-in-fact for their children's mass shootings. As to Nancy Lanza, but-for her giving her son unfettered access to her firearms, the mass shooting would not have occurred. Adam used her .223-caliber Bushmaster Model XM15 semi-automatic firearm, known as a "killing machine," to commit his heinous

239. See *Regions Bank v. Joyce Meyer Ministries, Inc.*, 15 N.E.3d 545, 549 (Ill. App. Ct. 2014).

240. See, e.g., *Pittway Corp. v. Collins*, 973 A.2d 771, 786–87 (Md. Ct. App. 2009); *Fisher v. Swift Transp. Co.*, 181 P.3d 601, 609 (Mont. 2008); *Baggerly v. CSX Transp., Inc.*, 635 S.E.2d 97, 101 (S.C. 2006); see also Weigand, *supra* note 158, at 62.

241. See Michael Panella, *Problematic Legal Causations of Death*, 44 TENN. B.J., Feb. 2008, at 21, 22; see also *Baggerly*, 635 S.E.2d at 101.

242. See *Pittway Corp.*, 973 A.2d at 786–87 (internal quotation marks omitted).

243. See *id.*

244. See David Jakubowitz, "Help, I've Fallen and Can't Get Up!": *New York's Application of the Substantial Factor Test*, 18 ST. JOHN'S J. C.R. & ECON. DEV. 593, 606 (2004).



acts.<sup>245</sup> Under federal law, you must be at least twenty-one years old to legally purchase any firearm other than a rifle or shotgun,<sup>246</sup> and Adam was only nineteen years old. Thus, Adam could not have legally purchased the military-style weapon he used on most of the victims on his own. Also, but for Nancy Lanza leaving Adam unsupervised and failing to have him involuntarily committed to a mental institution, he would not have had the opportunity to make a practice run to Sandy Hook and commit the murders.

Regarding Jared Loughner, arguably but-for his parents' failure to have him evaluated and treated by a mental health professional, he would not have committed the murders. After Loughner was charged with the mass shooting, he was diagnosed with schizophrenia.<sup>247</sup> Studies reveal people with serious mental illnesses like schizophrenia who do not take their medication are more dangerous than the general population.<sup>248</sup> A jury could find the Loughners' failure to ensure their son received treatment for his mental illness was the cause-in-fact for the mass shootings.

Once a plaintiff proves that the defendant's conduct was the cause-in-fact of the injury, the fact-finder must move to the second part of the analysis—whether the defendant's conduct was the proximate or legal cause of the injuries, which is based upon whether the harm was foreseeable.<sup>249</sup> The foreseeability mandated here asks if, in retrospect, the injury emanating from the act or omission should have been reasonably anticipated.<sup>250</sup> In other words, the inquiry focuses on whether the injury was a natural

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245. See Lee Ferran & Shushannah Walshe, *Newtown Massacre: What Is a Bushmaster .223?*, ABC NEWS (Dec. 17, 2012), <http://abcnews.go.com/Blotter/newtown-massacre-bushmaster-223/story?id=18000884> [https://perma.cc/3PH5-MCWZ] (internal quotation marks omitted); Edgar Sandoval & Corky Siemaszko, *Inside Adam Lanza's Lair: Newtown Shooter Plotted Own Death, Obsessed with Columbine Shooting, Report Details*, DAILY NEWS (Nov. 26, 2013, 4:06 AM), <http://www.nydailynews.com/news/national/newtown-shooter-planned-death-obsessed-columbine-article-1.1528626> [https://perma.cc/TW6Y-MYH7].

246. See 18 U.S.C. §922(b)(1) (2012).

247. See Katie Moisse, *Jared Loughner's Defense Team May Be Looking for Mental Illness in His Relatives*, ABC NEWS (Aug. 19, 2011), <http://abcnews.go.com/Health/MindMoodNews/jared-loughner-mental-illness-runs-families/story?id=14332522> [https://perma.cc/7QL9-RMBS].

248. See Katherine B. Cook, Note, *Revising Assisted Outpatient Treatment Statutes in Indiana: Providing Mental Health Treatment for Those in Need*, 9 IND. HEALTH L. REV. 661, 669–71 (2012) (stating several studies suggest that one important predictor of future violence among severely mentally ill is non-adherence to medication); see also E. Fuller Torrey, *Violence and Schizophrenia*, 88 SCHIZOPHRENIA RES. 3 (2006) (explaining that severely mentally ill persons, like schizophrenics, who do not take their medication are more dangerous than people in general public); E. Fuller Torrey, *Violence and People with Mental Illness*, MENTAL ILLNESS POL'Y ORG. (1994), available at <http://mentalillnesspolicy.org/consequences/violence-statistics.html> [https://perma.cc/6CSQ-SLYB] (same).

249. See *Pittway Corp. v. Collins*, 973 A.2d 771, 787–88 (Md. Ct. App. 2009); *Baggerly v. CSX Transp., Inc.*, 635 S.E.2d 97, 101 (S.C. 2006).

250. See *Baggerly*, 635 S.E.2d at 101.

and probable consequence of the defendant's conduct.<sup>251</sup> Stated differently, the harm or injury cannot be a "freakish" consequence of the defendant's act, making the victim of the harm unforeseeable.<sup>252</sup> The landmark case of *Palsgraf v. Long Island Railroad Company*,<sup>253</sup> clearly makes this point.

In *Palsgraf*, the court held that a passenger who was waiting for a train on the other side of the platform was not a foreseeable victim of the railway guard's act of helping a passenger board a train by pushing him.<sup>254</sup> Unbeknownst to the guard, the passenger was holding a package of fireworks that was covered in newspaper.<sup>255</sup> The passenger dropped the package, the fireworks fell on the rails and exploded, and the explosion threw down some scales on the other end of the platform that struck and injured the plaintiff.<sup>256</sup> The court essentially held that the woman standing far away was not a foreseeable victim; if the guard committed a wrong, it was committed against the passenger holding the package of fireworks.<sup>257</sup>

Applying *Palsgraf* and the other causation principles to the Lanza and Loughner cases, a jury could arguably find that random people being shot by a mentally ill child was a natural and probable consequence of giving that child a gun in Nancy Lanza's case and of leaving their child's mental illness untreated in both cases. Guns are "inherently dangerous instrumentalit[ies], the use of which is likely to produce death or serious injury."<sup>258</sup> Firearms are even more dangerous when left in the hands of a mentally unstable person. Indeed, that is why there are both federal and state laws aimed at precluding mentally ill persons from possessing firearms,<sup>259</sup> laws the United States Supreme Court has recognized place a reasonable restriction on the Second Amendment right to bear arms.<sup>260</sup> Thus, the shooting of innocent victims by a mentally ill, adult child is a natural and probable consequence of parents of that child failing to adequately supervise or control the child by not preventing them from accessing firearms and of not forcing their child to obtain mental health treatment.

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251. *See id.*

252. *See* Lee S. Kreindler et al., *Foreseeability as a Factor in Proximate Cause*, 14 N.Y. PRAC. SERIES, N.Y. L. TORTS § 8:8 (West 2015).

253. 162 N.E. 99 (N.Y. 1928).

254. *See id.* at 340–41.

255. *See id.* at 341.

256. *See id.*

257. *See id.*

258. *Byers v. Hubbard*, 669 N.E.2d 320, 322 (Ohio Ct. App. 1995); *see also* *Kitchen v. K-Mart Corp.*, 697 So. 2d 1200, 1202 (Fla. 1997).

259. *See* Lewis, *supra* note 2, at 341–47.

260. *See* *D.C. v. Heller*, 554 U.S. 570, 626 (2008) (stating "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by . . . the mentally ill").

On the other hand, both parties could argue that the victims of the shootings were unforeseeable. In Nancy Lanza's case, who could predict that her son would shoot children and school personnel at an elementary school he did not attend? In the Loughners' case, who could foresee that their son would shoot Congresswoman Giffords and her constituents waiting to see her at the grocery store?<sup>261</sup> Again, as one court has recognized, albeit in the context of determining foreseeability in the duty context, it is foreseeable that a member of the general public could be a victim of a severely mentally ill person with a gun.<sup>262</sup> Moreover, this is not a case where the perpetrators committed their mass shootings hundreds of miles away from where they lived; the crimes occurred in their own communities. Therefore, a jury could find that the victims were foreseeable and the causation element is met.

Additionally, in cases involving more than one negligent act, like mass shooting cases, an extra analytical step is required. Specifically, the factfinder must inquire if an independent, intervening negligent act relieves the defendant of liability.<sup>263</sup> An "independent, intervening" negligent act is "a force that comes into motion after the defendant's negligent act, and combines with the negligent act to cause injury to the plaintiff."<sup>264</sup> Significantly, if the intervening act was foreseeable, then it does not break the causal chain between the defendant's conduct and the injury.<sup>265</sup> If the intervening act is unforeseeable because it is so remote or extraordinary that it could not have been reasonably anticipated, it is a superseding cause that breaks the causal link between the defendant's conduct and the injury—therefore, absolving the defendant(s) from liability.<sup>266</sup> Whether an intervening act is foreseeable is also a question of fact that should be left to the jury's province.<sup>267</sup> Third-party criminal conduct is a superseding cause unless it should have been reasonably anticipated.<sup>268</sup>

In the Lanza and Loughner cases, it should have been reasonably anticipated that the adult children would shoot someone with a gun if their parents did not adequately monitor, supervise, or control their behavior to

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261. After the shootings, material indicating Jared's hatred and obsession with Giffords was found in his safe, but it is unknown whether his parents were aware of this material. In fact, Jared's father said that he came across some of Jared's writing in a journal and found it indecipherable.

262. See *Silberstein v. Cordie*, 474 N.W.2d 850, 856 (Minn. Ct. App.), *rev. granted in part, cause remanded by* 477 N.W.2d 713 (Minn. 1991).

263. See *Pittway Corp. v. Collins*, 973 A.2d 771, 788–89 (Md. Ct. App. 2009).

264. *Fisher v. Swift Transp. Co.*, 181 P.3d 601, 609 (Mont. 2008).

265. See *id.*

266. Paul M. Coltoff et al., *Proximate Causation*, 65 C.J.S. NEGLIGENCE § 223 (West 2015).

267. See *Fisher*, 181 P.3d at 610.

268. See *Spears v. Coffee*, 153 S.W.3d 103, 106 (Tex. App. Ct. 2004); see also RESTATEMENT (SECOND) OF TORTS § 448 (1965). It appears that an *intervening* cause is interchangeable with *superseding* causes.

prevent them from accessing firearms. Thus, a jury could find in these cases and future similar cases that the causation element was satisfied.

## VI. CONCLUSION

In sum, it is clear that pursuant to general negligence principles, some parents can be found negligent and civilly liable for an act or omission that results in their adult child taking a gun and committing a mass killing. In determining whether a parent acted reasonably, common sense should prevail. Any reasonable and prudent parent knows, or should know, that their mentally ill child, regardless of their age, should not have access to a firearm, as an armed, mentally unstable person poses a serious risk to the public at large as well as to themselves. Thus, if a parent is going to assume responsibility for supervising an adult, mentally ill child, they have a legal obligation to exercise reasonable care.

Exercising reasonable care includes not having firearms in a house where a mentally ill person resides, or at the very least, safely storing firearms. It also entails monitoring your mentally ill child and being on the lookout for anything that might suggest they are planning to harm others, such as violent writings, Internet postings, manifestos, ammunition, and guns. If a parent believes their child poses an immediate threat to the public, they should contact the proper authorities.<sup>269</sup> Indeed, if a specific threat is made, they must contact the police upon pain of possibly being sued.<sup>270</sup> Additionally, a reasonable, prudent parent will also insist that their child obtain mental health assistance, and if the child refuses, the parents should do everything they can to make sure their child receives the professional help needed, including threatening to no longer support the child if they do not seek help, taking away their car keys and other privileges to encourage compliance, and initiating involuntary commitment to a mental institution when all else fails.<sup>271</sup>

Parenting is unquestionably the most difficult and important job on earth, which is probably why courts have historically shied away from holding parents liable for their children's actions. However, the law has long been involved in judging parents and penalizing them for poor parental decisions. For instance, courts have evaluated whether a parent's use of corporal punishment is reasonable and excessive, and if it is found to be excessive, a parent can be civilly liable or lose custody of their child.<sup>272</sup> A

269. See Hutchison, *supra* note 110 (explaining how psychiatrists advise family members to alert proper authorities if their loved one is committing worrisome behavior or has made specific threat of violence).

270. See *id.*

271. *Helpful Tips for Families*, *supra* note 214 (advising that “[i]t may be necessary to push your relative into treatment in spite of his angry response”).

272. See, e.g., *Gonzalez v. Santa Clara Cnty. Dep’t of Soc. Servs.*, 167 Cal. Rptr. 3d 148, 160 (Ct. App. 2014) (noting “parents are privileged to administer reasonable punishment with impunity, but the parent who exceeds that limit . . . commits a battery and is civilly liable for the consequences” (alteration in original) (inter-

mother was arrested for leaving her nine-year-old child in the park unsupervised while she worked at McDonald's.<sup>273</sup> Accordingly, the law should expect a certain standard of care from parents of adult children with mental illness and penalize them when they do not act reasonably with regard to that child if that child lives in the home and they have assumed a de facto guardianship over them. It not only takes a village to raise a child, but a village to stop a mass killing,<sup>274</sup> and the most important villager is a parent—our first line of defense.

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nal quotation marks omitted)); *In re T.A.*, 663 N.W.2d 225, 229 (S.D. 2003) (affirming trial court's decision to remove special needs child, who was spanked with belt and received bruises, from home because there was sufficient evidence child was abused and neglected).

273. See Kelly Wallace, *Mom Arrested for Leaving 9-Year Old Alone at Park*, CNN (July 21, 2014, 4:41 PM), <http://www.cnn.com/2014/07/21/living/mom-arrested-left-girl-park-parents/> [<https://perma.cc/R4DH-ETUN>].

274. See O'TOOLE, *supra* note 201 (discussing letter from Attorney General Janet Reno noting that federal government agencies have shown that "if communities, schools, government and other key players pull together to address the roots of violence, we can make America safer for our children").