CRIMINAL AND CIVIL PARENTAL LIABILITY STATUTES: WOULD THEY HAVE SAVED THE 15 WHO DIED AT COLUMBINE?

ERIC PAUL EBENSTEIN*

I. INTRODUCTION

On April 20, 1999, two high school students armed with guns and explosives opened fire during lunch time in their high school common area, library, and cafeteria, killing fifteen people.[1] The two gunmen, Eric Harris and Dylan Klebold, were armed with approximately thirty homemade bombs, a semi-automatic rifle, a pistol, and two shotguns.[2] These members of a self-styled group known as the Trench Coat Mafia[3] killed themselves at the end of their rampage, but not before they had littered the school grounds with gunshots, bombs, and blood.[4] Some of the bombs were not discovered until hours later because they were set to explode after the initial assault.[5]

It would be sad enough if this was the only incident involving children, guns, and schools; three things that most assuredly should not be in the same sentence. While the aforementioned incident in Littleton, Colorado, at Columbine High School was the deadliest,[6] it was far from being the only. In Pearl, Mississippi, a sixteen year-old boy stabbed his mother to death in October of 1997 and then went on to shoot nine of his classmates, killing two of them.[7] In West Paducah, Kentucky, three students were killed when eight children were shot at a morning prayer group before school; a fourteen year-old boy was tried and sentenced to life in

* Articles Editor, Cardozo Women's Law Journal, *J.D. Candidate*, (June, 2001). I would like to dedicate this Note to my parents, Michael and Sue Ebenstein, who have always helped me to choose the right path.

1 James Brooke, *2 Students in Colorado School Said to Gun Down as Many as 23 and Kill Themselves in a Siege*, N.Y. TIMES, Apr. 21, 1999, at A1. *See also* Sam Howe Verhovek, *2 are Suspects; Delay Caused by Explosives*, N.Y. TIMES, Apr. 22, 1999, at A1.

2 Brooke, *supra* note 1. *See also* CNN, *Squad Found Almost 60 bombs at Columbine, available at* http://cnn.com/ us/9905/07/school.shooting.01/ (last modified May 7, 1999).

3 Brooke, *supra* note 1. This group of high school students dressed in Gothic themed clothing and long trench coats. They occasionally dressed with dark eyeliner and white facial makeup and had a passion for guns.

4 Brett Pulley, *Students on the Fringe Found a Way to Stand Out*, N.Y. TIMES, Apr. 21, 1999, at A17.

5 Brooke, *supra* note 1.

6 *Id.*

7 Lisa Belkin, *Parents Blaming Parents*, N.Y. TIMES MAG., Oct. 31, 1999, at 62.

that case.[8] In another recent case, a fifteen year-old assailant shot twenty students at his high school, killing two of them.[9] In addition to the two students, the fifteen year-old assailant shot and killed both of his parents on the morning of his rampage.[10] In another highly publicized case in 1998, an eleven and a thirteen year-old boys staged a false fire alarm at their middle school in Jansboro, Arkansas, and then started shooting at the exiting crowd, killing four female students and a teacher.[11]

In the aftermath of these horrible shootings, there was a great deal of public soul-searching, angry accusations, and questions of how to prevent this type of tragedy in the future. These issues were never as prominent as they were during the aftermath of the Columbine incident, since the Columbine incident involved the highest body count and was played out live on CNN over the course of several hours on April 20, 1999. In the days following the incident, it seemed that everyone had an opinion on what needed to be done to stem the flow of juvenile murder at our nation's schools. On the day of the tragedy, President Clinton weighed in with a message to the nation.

> "I have spoken with Governor Bill Owens and County Commission Chair Patricia Holloway and expressed my profound concern for the people of Littleton. I have spoken to Deputy Attorney General Eric Holder and who, along with Attorney General Reno, is closely monitoring the situation. [. . .] I think that Patricia Holloway would not mind if I said that amid all the turmoil and grief that she and others are experiencing, she said to me just a moment ago *that perhaps now America would wake up to the dimensions of this challenge if it could happen in a place like Littleton, and we could prevent anything like this from happening again.* We pray that she is right."[12]

In the months following the Columbine incident, there has been a great deal of behind the scenes action, gearing up for what promises to be a long line of lawsuits that will drag on for a considerable amount of time. Michael and Vonda Shoels, parents of one of the murdered children, filed the first lawsuit against the parents of the slain murderers.[13] The lawsuit is "asking for $250 million

---

[8] *Id.*

[9] James Barron & Mindy Sink, *Chronology: Other Shootings Involving Students*, N.Y. TIMES, Apr. 21, 1999, at A17.

[10] *Id.*

[11] *Id.*

[12] *President's Remarks on School Shootings*, N.Y. TIMES, Apr. 21, 1999 at A17 (emphasis added).

[13] Belkin, *supra* note 7, at 62.

[contending] that the parents of Eric Harris and Dylan Klebold should have prevented the rampage by their children. With this suit, the push to hold parents responsible for mass murder committed by offspring has taken on the mantle of a movement."[14] It is this "movement" that the bulk of this Note will discuss.

The first part of this Note will cover Colorado's statutes pertaining to this area of law known as parental liability.[15] This Note will discuss whether parental liability should be imputed to Eric Harris' and Dylan Klebold's parents, and if so to what extent. Perhaps, the bigger issue is the kind of liability that can be imputed to the parents. All fifty states have some form of civil liability for parents for the actions of their children.[16] However, civil liability is an insufficient deterrent. States are now turning toward imposing criminal liability for the parents of these children.[17] At least seventeen states have such laws.[18] However, the bite and the effectiveness of these laws are in question, as is the frequency of their use. This Note will examine the use of these laws in Colorado and other jurisdictions with a special focus on their effectiveness, or lack thereof. Following an examination of these statutes and the cases prosecuted under these statutes, this Note will consider whether the Shoels' lawsuit is governed by the statutes and what legislative action, if any, might be taken in response to the Columbine incident and the subsequent lawsuits.[19]

The following sections will examine the contemporary debate as to the effectiveness and legality of imposing civil and criminal penalties on parents for the acts of their children. While this Note will argue that both civil and criminal penalties should be imposed on parents in certain situations, there will be a significant discussion as to the pros and cons of each of the different positions. The biggest problem with successfully applying parental liability statutes is found in the question of where to draw the lines. While this

---

14 *Id.*

15 *See* BARRON'S LAW DICTIONARY 543 (4th ed. 1996). Parental liability is modeled on the idea of vicarious liability in which there is an imputation of liability upon one person for the actions of another. Parental liability can occur when the liability of a minor child is imputed to the child's parent if that child lives with the parent or legal guardian.

16 *See generally* Christine T. Greenwood, *Holding Parents Criminally Responsible for the Delinquent Acts of Their Children: Reasoned Response or "Knee-Jerk Reaction?"* 23 J. CONTEMP. L. 401 (1997).

17 *Id.*

18 *Id.*

19 Belkin, *supra* note 7, at 62. Geoffrey Fieger, the attorney who filed the suit for the Shoelses, is a Michigan attorney who is known for representing Dr. Jack Kevorkian and winning a wrongful death judgment against the Jenny Jones Show. The lawsuit at issue here asks for $250 million in damages, while applicable statutes in the areas of law that will be challenged in the lawsuit cap relief to $250,000.

Note makes suggestions as to where and how to engage in line-drawing, obviously the answer to this question cannot be found until it is put into law, and challenged in court.

The general premise of this Note is that the current statutes dealing with parental civil and criminal liability are grossly ineffective and underused. A better way to handle the issue of parental liability is to strengthen the bite of civil parental liability laws, thus giving parents of wayward children an incentive to provide a more effective supervision over their children's activities. A more strict parental liability law premised on the idea of negligence would give the parents the impetus to not look away from possible warning signs and to take a proactive role in parenting their children. A strict negligence standard, along with a greater likelihood of liability, would be one good way to compel parents to better monitor their children. Such changes will help to make our country's schools safer places.

II. COLORADO STATUTES AND CASE LAW

In the days, weeks, and months following the Columbine assault, there was a maelstrom of activity. One of the most interesting developments was the National Rifle Association's ("NRA") annual meeting scheduled to be held within two weeks after the April 20th attack. The event met with heavy protesting from local residents and many calls for the NRA to take their meeting elsewhere. Charlton Heston, the NRA's president, issued a statement expressing sorrow for the event, but indicated that the meeting would go on as scheduled.[20] However, groups such as the Colorado Coalition Against Gun Violence were upset about the timing and placement of the event, and protested.[21] The NRA's annual meeting took place as was planned, but the NRA made resounding condemnation of the events that happened at Columbine High School during the meeting.[22]

The bulk of the post-Columbine activities revolved around legal actions. The Shoelses were the first to take legal action by filing their $250 million dollar lawsuit.[23] Although they were the first, the Shoelses were hardly the last family to start down the path to-

---

[20] Charles Zewe & Tony Clark, *Littleton Authorities Warned About Harris' Death Threats, available at* http://cnn.com/us/9904/30/school.shooting.03/ (last modified Apr. 30, 1999).

[21] *See id.*

[22] *Id.*

[23] Belkin, *supra* note 7, at 62. After the initial filing of the lawsuit Geoffrey Fieger was alerted to the fact that Colorado prohibits plaintiffs from putting an expected dollar figure on their recovery amount, and the lawsuit had to be re-filed. Although Fieger claimed that

ward legal action. The family of Mark Taylor, a Columbine student who was shot but survived the assault, originally decried the lawsuits, fearing that the lawsuits would destroy the goodwill and charitable donations made by people all across the country.[24] However, using a local lawyer, the Taylor family satisfied the 180 day deadline to file an "intent to sue."[25] Shortly thereafter, the Taylor family joined in the Shoels' lawsuit to sue the Klebolds and the Harrises.[26] Sixteen other families of the murdered and injured Columbine students also filed similar lawsuits.[27]

The intentions to file lawsuits were expressed, not only by the families of the victims, but by the shooters' families as well. Although the parents of the shooters have been quiet since the shootings at Columbine in early October 1999, the Klebolds filed court papers explaining that they were considering a lawsuit of their own.[28] In the court papers, the Klebolds stated that the sheriff's office had information that Eric Harris had threatened to kill someone.[29] The Klebolds argued that the sheriff's office was "reckless, willful and wanton" in their actions by not telling them that their child's friend was dangerous.[30] The Klebolds went on to state that had they possessed this information, they would have prohibited their child from being in contact with the Harris' son.[31]

These papers, while not lawsuits in and of themselves, were filed in order to satisfy the "intent to sue" requirement.[32] The filed lawsuits will be subject to Colorado state law. There are at least three applicable major statutory provisions under the Colorado state law. While it is important to understand the body and language of these statutes, it may not be of great relevance once the suits actually get litigated. The victims have already asserted that the applicable Colorado statutes are unconstitutional because they place caps on potential recovery.[33]

Colorado has two statutes that deal with parental liability issues and one that deals with limitations on damages for non-economic

---

the error was mistakenly made, others are under the impression that it was gamesmanship and that Fieger was attempting to influence prospective jurors.

24 *Id.*

25 *Id.*

26 *Id.* at 100.

27 *Id.*

28 Belkin, *supra* note 7, at 62.

29 *Id.*

30 *Id.*

31 *Id.*

32 *Id.*

33 *Id.* at 62-63. Several other state damage caps have already been struck down as unconstitutional.

loss or injury. Colorado statute § 13-21-107 is entitled "Damages for destruction or bodily injury caused by minors."[34] Section two of the statute limits recovery from parents of guilty minors to an amount not more than $3,500 plus reasonable attorneys' fees.[35] This figure will be challenged by the Shoels' lawsuit.[36] Another Colorado statute, § 19-2-919 "Sentencing requirements imposed on parents," deals with other possible sanctions placed on parents, including some that might be considered quasi-criminal.[37] Section

---

[34] COLO. REV. STAT. ANN. § 13-21-107 (West 1999).

> The state or any county, city, town, school district, or other political subdivision of the state, or any person, partnership, corporation, association, or religious organization, whether incorporated or unincorporated, is entitled to recover damages in an amount not to exceed three thousand five hundred dollars in a court of competent jurisdiction from the parents of each minor under the age of eighteen years, living with such parents, who maliciously or willfully damages or destroys property, real, personal, or mixed, belonging to the state, or to any such county, city, town, or other political subdivision of the state, or to any such person, partnership, corporation, association, or religious organization or who maliciously or willfully damages or destroys any such property belonging to or used by such school district. The recovery shall be the actual damages in an amount not to exceed three thousand five hundred dollars, in addition to court costs and reasonable attorney fees.
>
> (1) Any person is entitled to recover damages in an amount not to exceed three thousand five hundred dollars in a court of competent jurisdiction from the parents of each minor under the age of eighteen years, living with such parents, who knowingly causes bodily injury to that person, including bodily injury occurring on property belonging to or used by a school district. The recovery shall be the actual damages in an amount not to exceed three thousand five hundred dollars, in addition to court costs and reasonable attorney fees.

[35] *Id.*

[36] Belkin, *supra* note 7, at 63.

[37] COLO. REV. STAT. ANN. § 19-2-919 (West 1999).

> (1) In addition to any of the provisions specified in section 19-2-907 to 19-2-918, any sentence imposed pursuant to section 19-2-907 may require:
>
> (a) the juvenile or both the juvenile and his or her parent or guardian to perform volunteer service in the community designed to contribute to the rehabilitation of the juvenile or to the ability of the parent or guardian to provide proper parental care and supervision of the juvenile;
>
> (b) the parent or guardian of a juvenile or both the parent or guardian and the juvenile to attend the parental responsibility training program described in section 19-2-304. The court may make reasonable orders requiring proof of completion of such training course within a certain time period and may provide that any violation of such orders shall subject the parent or guardian to the contempt sanctions of the court;
>
> (c) the juvenile or both the juvenile and his or her custodial parent or parent with parental responsibilities or guardian to perform services for the victim, as provided in section 19-2-308, designed to contribute to the rehabilitation of the juvenile, if the victim consents in writing to such services. However, the value of the services required to be rendered by the parent, guardian, legal custodian of, or parent with parental responsibilities with respect to the juvenile under this paragraph (c) shall not exceed the damages as set forth in section 13-21-107 C.R.S., for any one delinquent act.

Part 2 of the statute goes on to restate many of the same civil penalties that COLO. REV. STAT. ANN. § 13-21-107 (West 1999) lists. It also goes on to state that before any restitution occurs, there must be a special restitution hearing at which the juvenile's parent must be present. If the court finds that the juvenile's parent has made diligent, good faith efforts

19-2-919 has not been mentioned in the early court filings for several different reasons. First, it merely reiterates the $3,500 figure which many consider to be absurdly low.[38] Second, the families are not suing the assailants' parents for criminal penalties[39] since a criminal prosecution would be pursued by the state. Finally, although the legislative history does not specify, it seems that this statute was established to deal with minor damages caused by a juvenile delinquent – for example, a minor assault by a juvenile - rather than the nature of the crimes surrounding the Shoels' case.[40] The relative leniency of the penalties do not seem to be in concert with more serious crimes such as murder, let alone twelve different murders.

The other statute mentioned in the preliminary court filings is one that deals with limitations on damages for non-economic loss or injury under tort law.[41] This statute, § 13-21-102.5, allows only up to $250,000 in damages to be awarded, unless the court finds justification[42] by clear and convincing evidence in which the award can be raised up to $500,000.[43] This amount, while clearly intended to benefit the victims of more serious crimes and their fam-

---

to prevent or discourage the juvenile from engaging in delinquent activity, the court can absolve the parent of liability.

[38] Belkin, *supra* note 7, at 64-65.

[39] *Id.*

[40] *See* COLO. REV. STAT. ANN. § 13-21-107 (West 1999).

[41] *Id.*

[42] Although not specifically mentioned in the body of the statute, a possible justification would be that the crime was particularly heinous or grotesque. Alternatively, if the crime showed racial or gender bias, a harsher penalty might be in order.

[43] COLO. REV. STAT. ANN. § 13-21-102.5 (West 1999). The statute reads, in relevant part:

(1) The general assembly finds, determines, and declares that awards in civil actions for noneconomic losses or injuries often unduly burden the economic, commercial, and personal welfare of persons in this state; therefore, for the protection of the public peace, health, and welfare, the general assembly enacts this section placing monetary limitations on such damages for noneconomic losses or injuries.

(2) As used in this section:

(a) "Derivative noneconomic loss or injury" means nonpecuniary harm or emotional stress to persons other than the person suffering the direct or primary loss or injury.

(b) "Noneconomic loss or injury" means nonpecuniary harm for which damages are recoverable by the person suffering the direct or primary loss or injury, including pain and suffering, inconvenience, emotional stress, and impairment of the quality of life. "Noneconomic loss or injury" includes a damage recovery for nonpecuniary harm for actions brought under section 13-21-201 or 13-21-202.

(3) (a) In any civil action in which damages for noneconomic loss or injury may be awarded, the total of such damages shall not exceed the sum of two hundred fifty thousand dollars, unless the court finds justification by clear and convincing evidence therefor. In no case shall the amount of such damages exceed five hundred thousand dollars.

(b) In any civil action, no damages for derivative noneconomic loss or injury may be awarded unless the court finds justification by clear and

ilies, is hardly in the range of the amounts sought by the families involved. This amount was compared to that which a middling ballplayer would be paid per year.[44] The growing chorus of displeasure with the state of parental liability statutes in the country indicates that the only mechanism of change for such statutes would be to bring nationwide lawsuits for similar school-gun related violence that express the need for larger recovery amounts and non-economic damage awards.

While $250 million might be a fanciful number, it has accomplished at least one concrete thing: it has served to put people on notice that parental liability statutes will be closely re-examined and most likely be restructured. Michael Hartund is an attorney representing the family of one of the students killed in the Pearl, Mississippi, attack. He admits, "[it's] an emerging theory. [. . .] We're kind of breaking new ground here. [. . .] In this case I clearly think we have a claim. [. . .] But that's a darn long way from crystal clear and darn sure."[45]

The Restatement (Second) of Torts is another codified provision that may apply. Section 316 of the Restatement deals with the duty of a parent to control his or her child's conduct. It reads:

> 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 knows or has reason to know that he has the ability to control his child, and knows or should know of the necessity and opportunity for exercising such control.[46]

While § 316 is not binding on courts, it may be a persuasive precedent for a judge deciding parental liability cases.[47] Although it is settled law in Colorado that a parent is not liable for the tortious conduct of his child merely due to the parent-child relationship, a parent is still required to use reasonable care when dealing with that child.[48] If a parent knows that his or her child has a propensity to commit a harmful act, there is an imputed duty to use rea-

---

convincing evidence therefor. In no case shall the amount of such damages exceed two hundred fifty thousand dollars.

44 Belkin, *supra* note 7, at 65.

45 *Id.* at 66.

46 RESTATEMENT (SECOND) OF TORTS § 316 (1963-1965).

47 *Id.*

48 *See id.* Colorado uses a subjective-based test in its Torts Restatement, hence the need to use reasonable care.

sonable care to prevent that harmful act, should the parent have the ability and opportunity to dissuade the child.[49]

In addition to the Restatement, a leading Colorado case, *Houston v. Mile High Adventist Academy*,[50] applied Colorado law in a federal court and came to many of the same conclusions as did the Restatement. The court in *Houston* held that physical injury is an "essential element [. . .] under the Restatement formula adopted in Colorado."[51] The Shoels family should have no problem proving the element of physical injury in their case. In *Houston*, the court held that "because these torts occurred during school hours, at times when Mr. Chaffin could not possibly have supervised his son, and the Houstons have not alleged any physical injury to Andrea, they fail to state a claim against him based on Nathaniel's actions."[52] *Houston* is clearly distinguishable from the case that will be brought based on the Columbine assault. The issue of physical damage is the easiest issue to prove in the Columbine case. While the *Houston* case concerned a minor who committed certain acts at school that required no prior planning or preparation at home,[53] the Columbine case involves minors who completed an extensive preparation and worked at home, at a time and place where their parents could have enforced more strict supervision.[54]

All of these questions of physical injury may become moot, as the Shoels' lawsuit promises to be divergent from previous paths. The suit will also form an attack on the constitutionality of the vari-

---

[49] *See* Mitchell v. Allstate Ins. Co., 534 P.2d 1235, 1236 (Colo. App. 1975). The opinion cites the Restatement of Torts, holding that evidence of the parents' serious efforts to prevent the child from driving the family's automobiles were sufficient to support the trial court's finding of no negligence.

[50] 846 F. Supp. 1449 (D. Colo. 1994).

[51] *Id.* at 1458.

[52] *Id.*

[53] *Id.*

[54] Martin Savage, *Diary Reveals Colorado Massacre was Planned for Year, available at* http://cnn.com/ us/9904/24/school.shooting.04/ (last modified Apr. 24, 1999). Although it has only been released in small increments, there is an overwhelming amount of evidence that the parents could easily have been aware of what was going on in their homes. Eric Harris kept a diary that detailed the planning and motivation for the attack. He had kept the diary for over a year. He also had a Website that contained hate-filled rantings and threats of killing people with pipe bombs. One investigator, without mentioning what it was specifically, saw clear evidence in plain view in one of the boys' bedrooms. Both boys' parents were called in for conferences after teachers were alarmed at the violent and threatening nature of essays that they turned in as school projects. There is other evidence that the boys worked on constructing the pipe bombs used in the attack in their garages. The cumulative nature of the evidence combined with the places where they did most of their work, points to an abdication of parental responsibility for failing to notice anything that was taking place. The boys even made videotapes before the attack, willing various possessions to friends and apologizing to their parents for what was going to happen. *See id.* This case should be the paradigm for the negligence standard for parental liability advocated by this Note.

ous caps on liabilities. Because of these differences, analysis of previous case law may not be of much help. Nevertheless, because the decision of the judge will likely be bound and framed in some precedent, a review is worthwhile.

Other jurisdictions have approached parental liability cases in a manner similar to Colorado. In *Dinsmore-Poff v. Alvord*,[55] the Supreme Court of Alaska found that the parents could not have foreseen their child's assault on the victim with a stolen gun, and thus held that the parents owed no duty to protect the victim.[56] In this case, the Alaska court applied a three-part test derived from Restatement 316, and found that the parents of the assailant could not be held liable under the facts of the test.[57] The Alaska court stated that most other state courts simply asked if parents knew about previous bad conduct rather than following the three part test suggested by the Restatement. If the court found that the parents did know about previous bad conduct, the court then asked whether the parents made some reasonable effort to prevent the bad conduct from happening again.[58] If the parents satisfied both of these two requirements, the case was dismissed.[59] While some cited cases resulted in a finding of liability, or at least survived a motion to dismiss, they were all distinguishable from the facts of *Dinsmore-Poff*.

Although the Columbine incident may appear to be distinguishable from the cases above,[60] based on the given framework, it seems that the facts surrounding Littleton, Colorado incident may survive a motion to dismiss.[61] The *Dinsmore-Poff* court suggests that a good-faith effort on the part of the parents to correct misconduct is sufficient to absolve the parents of liability.[62] One must recognize, however, that while simply reprimanding young children may

---

55 972 P.2d 978 (Ala. 1999).

56 *See id.*

57 *See id.*

58 *See id.* at 981. The court states that § 316 poses three issues: Whether parents knew or should have known of the (1) need, (2) ability, and (3) opportunity to control their child. The court then explains how other states do not follow this test, and instead engage in their own, less-than-demanding inquiry if parents have done anything at all to watch over their children.

59 *Id.*

60 *See id.* at 982-983. The cases cited by the *Dinsmore-Poff* court involved younger children that participated in less dangerous activities. As a corollary to § 316, these courts stated that it is more difficult for parents to control and supervise the actions of a near-adult child than it is to control the behavior of a younger child.

61 *Id.* at 982. The main case discussed in detail was *Singer v. Marx*, 301 P.2d 440 (Cal. App. 1956). The court distinguished *Singer* because the child at issue was much younger than the seventeen year-old in the present case, and the complaint was of minor injuries from throwing rocks as opposed to death by a gunshot wound.

62 *Id.*

be considered as a good-faith effort, a parent needs something more to reprimand older minors with more self-awareness. Should knowledge be imputed when there was a gun in plain sight in one of the murderer's bedrooms? Or when the teenagers were in the driveway breaking bottles to make shrapnel? Or when bombs were made in the garage? Or how about when there was previous trouble with the police, a surefire sign that something was wrong and something needed to be done?[63]

It would seem that all of these questions must be answered in the affirmative. While it may be difficult for a parent to know everything that is going on in their children's heads and lives, it is not unreasonable to require parents to alert themselves to illegal activities going on in their own houses, especially if the activities are conspicuous. It is not an excuse to bury one's head and plead ignorance.

Parental liability is one area of law where lines must be drawn in order to prosecute. Given the aforementioned set of facts, drawing lines is not particularly difficult. For example, in the Columbine incident a diary was discovered indicating that the attack had been planned for more than a year.[64] The diary, and the methodical information plotted within, is a significant evidence of long-term planning.[65] The diary, the weapons, an incriminating web site, and the testimony of neighbors and other children[66] make it seem that the parents of the assailants missed obvious clues along the way. If this knowledge is imputed, it is apparent that at least under § 316, the Klebolds and the Harrises were negligent in failing to control their children's behavior. Had the parents been more diligent, they may have been able to prevent their children from committing such atrocities.

The Klebolds and the Harrises should not be required to prevent the precise instant of the tort, however, because that would imply that they would have to have been at the school on the day of the tort, stopping Eric and Dylan. However, if the parents had paid attention to even some of the evidence accumulating in their homes, they would have known that an attack was imminent and would have alerted the authorities. More specifically, had the parents discovered the boys' diaries, they would have seen that the

---

63 Belkin, *supra* note 7, at 65.

64 Savage, *supra* note 54.

65 *Id.*

66 *See generally* Charles Zewe & Tony Clark, *Columbine Shooter's Parents ask for Immunity, available at* http://cnn.com/us/9905/01/school.shooting.02/ (last modified May 1, 1999); Martin Savidge, *Columbine Investigation Turns to Parents' Role, available at* http://cnn.com/us/9904/25/school.shooting.04/index.html/ (last modified Apr. 25, 1999).

attack was planned for April 20, a day coinciding with Hitler's birthday.[67] This knowledge would have allowed the parents to come very close to stopping the precise instance of the tort, even if that much is not required of them. In sum, the Klebolds and the Harrises had sufficient evidence to take prompt action. However, due to the parents' inaction, the unfortunate event ensued. Therefore, the Klebolds and the Harrises should be held liable for the children's criminal acts.

In a case based on negligence, the question for the fact finder would be whether it was reasonable for the parents not to find or know the existence of the diary. Legal experts examining the Shoels' suit are skeptical that such an approach can be successful. In a profession where words are carefully defined, the case may come down to words as simple as "should" and "ought." As the Restatement states, the Klebolds and the Harrises knew or should have known what their child was going to do.[68] Naomi Cahn, a George Washington University professor of family law states that, "[i]n order to hold the parent liable you have to show a close connection between what the parent has done or failed to do, and what the child has done."[69] This "close connection" may exist in the Columbine case, but it depends partially on a court's construction of "close." Cahn goes on to state that, "[t]here is an enormous amount of discretion around words like 'close' and 'should.' How much are parents required to know about their children?"[70] Most parents of the Columbine children say that parents should be required to know quite a lot about their children or be prepared to face the consequences.[71] This is not to say that parents must lord over their child's every move and idea, but missing obvious clues should lead to at least some amount of liability.

Martin Guggenheim, a New York University law professor, takes a more strict approach to parental liability laws than Professor Cahn. He believes that in order to hold a parent liable for his child's acts, the parent must take an affirmative action to facilitate the crime. [72] He then qualifies his stance, stating that in order to

---

67 Savage, *supra* note 54. There is anecdotal evidence in the article that the diary was not well hidden, and that if the parents had taken an even cursory examination of their child's bedroom, they would have discovered it.

68 RESTATEMENT (SECOND) OF TORTS, § 316 (1965).

69 Belkin, *supra* note 7, at 65.

70 *Id.*

71 *Id.*

72 *Id.*

facilitate a crime, one must have had specific knowledge beforehand or must have aided and abetted the crime in some way.[73]

While this approach seems to be divergent from case law and other practitioners' ideas, it does show the outer limits of the debate. The Klebolds and Harrises did not directly aid and abet their children's murders. They clearly did not want this tragedy to occur. They did not go out and purchase the guns that their children later used. However, it seems likely that they did neglect to notice major signs of impending danger. Mr. Guggenheim's discussion of "specific knowledge" relates back to the issue of the diary that cited the exact date upon which the attack was to be committed. Since the parents have thus far been silent and since there has been no discovery to date, what we know is limited. However, once a parent notices something like a gun in plain view,[74] the parent would be, at the very least, negligent if the parent did not extend the search to see what else might be located. If the diary could have been located, the parents would have possessed specific knowledge of the planned crime, and that would have forced even those as conservative as Mr. Guggenheim to admit to the parents' liability.

Richard Kling, a professor at the Chicago Kent College of Law offers another viewpoint. He asserts that "[y]ou can be the best parent in the world and have a kid who goes bad. [. . .] And you can be the most neglectful parent and your kid might never shoot up a schoolyard."[75] However, Mr. Kling is missing a broader point: there is a big difference between "going bad" and spending a year planning and preparing an attack that later kills thirteen innocent people. Cutting class, shoplifting and being disrespectful can all be associated with "going bad." This can happen in even the most caring of households. However, a parent can obtain much information by watching a child carefully, generally inspecting his room, and getting to know those with whom he spends his time. When there is evidence of police reports, hate-filled web sites, and

---

73 *Id.*

74 *See generally* Savage, *supra* note 54. Police investigations of the teens' rooms indicate that weapons and racist memorabilia were in plain view. Further investigation of the rooms and garages found other weapons, bomb materials and the aforementioned diary. There is other evidence that the parents of Eric Harris and Dylan Klebold were completely unaware of what was going on in their homes and with their sons. In the weeks leading up to the attack, Harris and Klebold made five videotapes, explaining their motivations and goals and making a will to distribute their possessions to friends. They also asked people not to blame their parents for what they were going to do and claimed that their parents had absolutely no idea of what was going to happen. *See also* Michael Janofsky, *Columbine Killers, on Tape, Thanked 2 for Gun*, N.Y. TIMES, Nov. 13, 1999, at A1.

75 *See* Belkin, *supra* note 7, at 65.

weapons being littered around a house,[76] a caring parent should have a higher duty of care. It seems even a cursory reading of the law would be in concert with that idea.

At the very least, these lawsuits will get the country talking about the idea of parental liability, and perhaps put parents across the country on notice that they have to be more aware of their children's activities. An ostrich approach to parenting is no longer acceptable, and could possibly result in heavy penalties. Bobby McDaniel is a lawyer for the families of those killed in the Jonesboro, Arkansas, attack. He echoes many of these same thoughts. "Fear of consequences is a significant factor in controlling behavior. [. . .] We've already won to some degree because we got people talking about it."[77] The Shoels' attorney goes a step further with his sentiments. He agrees that the message sent across the country is very important and could have a positive impact in parental awareness.[78] McDonald also thinks this situation is analogous to the auto industry and thousands of other industries in its cause and effect.[79] "The auto industry doesn't worry about safety out of the goodness of its heart. [. . .] They do it because they're worried someone will sue them."[80] While this may be a cynical approach in general, especially in the area of parenting, horse and carrot statutes are not foreign to American law.[81] If that is what is necessary to put parents on guard to prevent future attacks, then cynicism is a small price to pay.

III. Legal Commentary and Justifications for Parental Liability Statutes

The idea of holding parents liable for their children's crimes is not a novel one. The problem has actually been around a great deal longer. One of the earliest cases dealing with parental responsibility concerns a fourteen year-old boy who killed three people with a stolen gun.[82] The police charged the mother of the child

---

76 *See Id. See also* Zewe & Clark, *supra* note 66.

77 Belkin, *supra* note 7, at 66.

78 *Id.*

79 *Id.*

80 *Id.*

81 The term "horse and carrot statutes" is used to depict the situation where a reward is placed in front of an animal to get it to perform a certain task. The negative variation of this term is that to avoid a punishment placed in front of them, people or corporations will do what is necessary to stay away from the behavior that warrants the punishment. An example of a "horse and carrot statute" is Super-fund regulations that force liable corporations to pay for environmental cleanups that may cost the corporations millions of dollars.

82 Frederick J. Ludwig, *Delinquent Parents and the Criminal Law*, 5 VAND. L. REV. 719, 719 (1954) (citing Report, N.Y. TIMES, Feb. 1, 1947, at 17).

with "developing him in a pattern of delinquent behavior."[83] While this idea borrows heavily from and is intertwined with ideas of juvenile delinquency, parental liability is its own separate offshoot, with different laws, ideas and problems.[84] Juvenile delinquency laws are attempts to rehabilitate the juvenile offenders and to rectify the problem. Parental responsibility laws are aimed at the parents who have abrogated their duty to raise their children with a good sense of what is right and wrong, and thereby have allowed their children to cause repeated damage to other innocent people. While it is an undeniable fact that more children are being born out of wedlock or raised in broken homes,[85] the problem of uncontrollable children is also evident in cases where the children came from intact, nuclear families. Indeed, both of the assailants in the Columbine incident grew up in what appears to be stable nuclear families with both parents present.[86] In at least one ordinance the intent of the legislature was "to address situations where parents have failed to act responsibly and reasonably in the supervision of their minor children to the detriment of the general public."[87]

There have been many parental responsibility laws enacted across the nation. One study found that forty-three jurisdictions have enacted such laws.[88] Interestingly enough, the first of these parental responsibility laws was passed in Colorado in 1903.[89] However, as discussed previously, the language of the Colorado statute is barely applicable to the situation at hand. This is one of the reasons why the families involved in the lawsuit are seeking to have the Colorado statute declared unconstitutional, and to replace it with new legislation.[90]

---

[83] *Id.*

[84] Juvenile delinquency is outside the scope of this Note. Many of the sources in this Note explored the beginnings and evolution of juvenile delinquency, but the subject is too broad to be considered in this Note.

[85] The general social feeling is that broken homes are partially responsible for uncontrollable children and that they lead to children committing violent crimes.

[86] CNN, *$250 million Columbine Lawsuit Filed, available at* http://cnn.com/ us/9905/27/ columbine.lawsuit.02/ (last modified May 27, 1999).

[87] ST. CLAIR SHOERES, MICH., CODE § 20.561 (1994) (citing A. Dale Ihrie III, *Parental Delinquency: Should Parents Be Criminally Liable For Failing To Supervise Their Children?*, 74 U. DET. MERCY L. REV. 93, 97 (1996)).

[88] *See* Howard Davidson, *No Consequences—Re-Examining Parental Responsibility Laws*, 7 STAN. L. & POL'Y REV. 23, 25 (1995-1996) (citing Gilbert Geis & Arnold Binder, *Sins of Their Children: Parental Responsibility for Juvenile Delinquency*, 5 NOTRE DAME J. L. ETHICS & PUB. POL'Y 303 (1991)).

[89] COLO. REV. STAT. ANN. § 18-6-701(1) (West 1996).

[90] The statute calls for liability without mention of fault. The parent must perform an affirmative act, similar to aiding and abetting, to become liable. This transgression is punishable by up to one year in jail, a fine of up to $1,000, or both. *See* Belkin, *supra* note 7 (discussing the challenge to the statutory limits on civil recovery).

A particularly notorious parental liability statute in St. Clair Shores, Michigan, gained attention for its use in a highly publicized case. This statute bases its liability on a theory of negligence, and it states, "[it] is the continuous duty of the parent of any minor to exercise reasonable control to prevent the minor from committing any delinquent act."[91] If a parent or guardian "fail[s] to exercise reasonable control over such minor," that parent or guardian is guilty under the ordinance.[92] The statute includes a laundry list of duties imposed on the parents. While the duties are extensive, they are reasonable and are especially applicable to the Columbine case. They include:

> To keep illegal drugs or illegal firearms out of the home and legal firearms locked in places that are inaccessible to the minor. [. . .] To arrange proper supervision for the minor when the parent must be absent. To take the necessary precautions to prevent the minor from maliciously or willfully destroying real, personal, or mixed property. [. . .] To forbid the minor from keeping stolen property, illegally possessing firearms or illegal drugs, or associating with known juvenile delinquents, and to seek help from appropriate governmental authorities or private agencies in handling or controlling the minor, when necessary.[93]

The text of this ordinance is unmistakably applicable to the events that led up to the tragedy at Columbine. Similar to the Columbine incident, there were illegal firearms in the house, insufficient parental supervision, no precautions taken to prevent destruction of property, illegal possession of firearms by minors, and the children were associated with known juvenile delinquents.[94]

The case that drew attention to this town's ordinance was the that of Susan and Anthony Provenzino, who were prosecuted under the St. Clair Shores ordinance. In this case, which drew nationwide coverage because of its controversial nature, the parents were convicted of failing to prevent their sixteen year-old son from

---

91 ST. CLAIR SHORES, MICH., CODE § 20.563(a) (1994).

92 *Id.* at § 20.565(a).

93 *Id.* at § 20.563(b).

94 *See generally* Zewe & Clark, *supra* note 20; Savage, *supra* note 54; Martin Savidge, *Columbine Investigation Turns to Parents' Role, available at* http://cnn.com/us/9904/25/school.shooting.04/index.html (last modified Apr. 25, 1999); Carol Lin and Mark Savidge, *Diary: Teens had hoped to kill 500, available at* http://cnn.com/us/9904/26/school.shooting.02/index.html (last modified Apr. 26, 1999).

acting in a series of illegal activities.[95] He burglarized homes and churches, kept a marijuana plant in his room, and engaged in random assaults.[96] This case illustrates two very important points. First, it shows the possible danger of setting parental liability statutes under a negligence, or reasonable man theory. While it is the position of this Note that the most effective standard for a parental liability statute is the negligence standard, it must be noted that the negligence standard is not without its pitfalls.[97] In the case of the Provenzinos, the parents attempted many times to bring their child back under control.[98] They attempted to get him into counseling, to have him stop spending time with those friends whom they considered to be bad influences, and kept a closer eye on his actions.[99] They even resorted to asking the police to keep their son in a jail sine they could not control him.[100] Still, however, the court ruled that their actions were not reasonable, as defined by the statute.[101]

Secondly, the Shores' case aptly illustrates the largely symbolic and political nature of parental responsibility laws.[102] With all of the coverage and notoriety of the Provenzino case, one might expect that there would have been a major resolution to the case. This did not occur. The parents were found guilty of violating the ordinance,[103] their sentence consisted of $100 fines for each par-

---

95 Paul W. Schmidt, Note, *Dangerous Children and the Regulated Family: The Shifting Focus of Parental Responsibility Laws*, 73 N.Y.U. L. REV. 667, 689 (1998) (citing *Should Parents Be Responsible for the Crimes of Their Children?* JET MAG., May 27, 1996, at 14 (describing the facts and the disposition of the court in the *Provenzino* case)).

96 *Id.*

97 This Note advocates a negligence standard, rather than a standard that requires parents to make an affirmative act before being convicted, or a standard in which something more than mere negligence is required to sustain a conviction. The Colorado statutes mentioned above generally require an affirmative action, i.e.; "something more" than negligence. A negligence standard would probably be more effective and perhaps used more. This conclusion is based on the paucity of cases brought, and ultimately convicted under parental liability statutes requiring an affirmative action.

98 Tami Scarola, Note, *Creating Problems Rather Than Solving Them: Why Criminal Parental Responsibility Laws Do Not Fit Within Our Understanding of Justice*, 66 FORDHAM L. REV. 1029, 1061 (1997).

99 *Id.*

100 *Id.*

101 *Id.* This serves to explain the possible pitfalls of a negligence theory in parental liability laws. It is in the hands of the jury whether or not the parents have been reasonable in their attempts to bring their wayward child back under control. This may be an uncomfortable place for parents to put their trust, as a jury's decision that they acted unreasonably could possibly cost them a great deal of money.

102 Schmidt, *supra* note 95, at 689.

103 The fact that the case actually even made it to court and then to a final, judicial resolution was a surprise in and of itself. The vast majority of cases dealing with parental responsibility laws never make it to court, or if they do, they usually end with some minor plea bargain soon after the start of the case. The main evidence of this is in the history of the case law. While most states have some type of parental liability law- - and many would agree that unsupervised juveniles and the resultant crimes committed by them is a major problem - there are comparatively few reported cases. One example of this is the cele-

ent and court costs of $1000.[104] These numbers are not much different than those of the fines in the relevant Colorado statutes.[105] However, these numbers are woefully inefficient. If the stated goal for the laws, i.e. of reducing juvenile crime, is to be taken seriously, a higher penalty must be required. Even if the fines for the Provenzinos were appropriate for their son's crimes, a similar fine for the parents of the Eric Harris and Dylan Klebold would plainly be inappropriate, unless the legislature wants to send a message that robbery and a violent massacre are of equal import.

Not only do these minor penalties hint at the symbolic nature of the laws, they sometimes inflate their effectiveness to justify their enactment as well as to try to gain political currency from one's constituents.[106] An ordinance in Silverton, Oregon, is a good example of such political grandstanding.[107] This is another publicized liability statute, but the maximum penalty for violation of the ordinance carries only a $1000 fine.[108] In addition, in the entire year following the enactment of this contentious ordinance, only two parents were convicted under it.[109] However, in what may be one of the greatest cases of selective analysis of data to promote certain legislative goals, the town of Silverton claimed a large drop in juvenile crime, implicitly crediting the ordinance for the reduction.[110] Perhaps the legislation really did deter the parents from abdicating their parental duties of supervising their children. It is

---

brated case of *Williams v. Garcetti*, 853 F.2d 507 (1993). The charges in this case were dismissed, even though it was one of the first cases to be brought under the controversial California Street Terrorism Enforcement and Prevention Act in 1988. This involved a violent crime committed by the child of a single mother. The mother was charged with failing to control or supervise her child. There is evidence that the house, where the incident occurred, was defaced with gang-related symbols. There were pictures all over the house of family members holding guns and making gang signals. Even with this evidence and the violent nature of the crime, however, the charges against the mother were dismissed once the authorities had learned that she had attended parenting classes. *See* Howard Davidson, *No Consequences—Re-Examining Parental Responsibility Laws*, 7 STAN. L. & POL'Y REV. 23, 25 (1995-1996) (citing Toni Weinstein, *Visiting the Sins of the Child on the Parent: The Legality of Criminal Parental Liability Statutes*, 64 S. CAL. L. REV. 859, 880-881 (1991)).

104 *See* Schmidt, *supra* note 95. The parents were, however, ordered to pay $13,000 a year for their child's care in a youth detention home.

105 *See generally* Belkin, *supra* note 23.

106 *See* Schmidt, *supra* note 95, at 689.

107 Silverton, Or. Ordinance 94-132(6) (Jan. 1, 1995).

108 *Id.*

109 *See* Mike Dorning, *In Growing Trend, If a Child Does Crime, Parents May Do the Time*, CHI. TRIB., Dec. 11, 1995 at 11. The article discusses the fact that while there is a great deal of arguing over whether or not to enact such statutes, once they are enacted, they are used infrequently.

110 *See* Schmidt, *supra* note 95, at 689 n.143. The crediting of a large drop in juvenile crime due to two convictions seems to be lacking in credibility. There could be any one of a number of different reasons for the drop in crime, starting with mere coincidence. Two convictions in an entire town do not seem to be a sufficiently large number to justify the claims that the statute was the cause of the effect of less juvenile crime.

unlikely, however, that two convictions with such small penalties had the capacity to induce such a reaction. This begs the question of what an ordinance with a higher, more meaningful penalty would be able to accomplish. It is often lamented in the area of professional sports that the penalties rarely fit the crime. When an athlete who makes several million dollars a year is hit with a $5,000 fine by his sport's commissioner, the effect is predictable. The athlete feigns regret, pays the fine, and continues in whatever behavior he pleases. To most athletes, the fines are irrelevant. The response to this behavior has been to raise the amount of the fines, with a corresponding raise in games that a player can be suspended for. This is analogous to the situation of parental liability laws. While the Klebolds and the Harrises are plainly not multi-millionaires, they are affluent enough to pay more than several hundred-dollar fines. By hitting them where it really hurts, in the pocketbook, a better result might be accomplished. As one commentator has stated:

> Ultimately, what is important about these laws may not be the credibility of claims about their effectiveness, but rather society's perception of their impact on the crime rate. This is in line with their symbolic function. The laws are fulfilling their symbolic function of exerting a direct influence on crime rates as opposed to merely punishing individual criminals.[111]

This is a particularly apt observation on the state of parental liability laws, especially in the more high profile areas. This may be why police departments are compelled to publish reports on the results of these laws on juvenile crime.[112] There would perhaps be nothing wrong with this if these reports and these laws did in fact result in a major drop of violent juvenile crimes across the country. However, it is not apparent that this has happened. Although no concrete report exists, anecdotal evidence demonstrates that there is no shortage of violent incidents involving young children.[113] While it is possible that these are exceptions to the overall trend of a decrease in juvenile crime, there is no evidence to support that these incidents are exceptions to the overall trend of a decrease in juvenile crime. One might venture an educated guess that for every twenty cases of murder by a juvenile, there are another five to ten waiting for the right circumstances to occur.

---

111 *See* Schmidt, *supra* note 95, at 689.

112 *Id.* at n.143.

113 *Chronology: Other Shootings Involving Students*, N.Y. TIMES, Apr. 21, 1999, at A17 (listing several other high-profile cases of juveniles committing murders, including cases from Kentucky, Arkansas, and Oregon, in addition to the Columbine case).

While the effectiveness of the laws is in question, some scholars have advocated a hybrid-type model where the parental liability laws are one part of an overall picture that can scare, help, or nurture families into more effectively parenting their children.[114] This idea seems to make good sense. In addition to possible monetary fines, criminal penalties, and other court ordered remedies, the government could play a more nurturing role than the general penalty-imposing one that has been suggested throughout the rest of this Note. Of course, this would be even more intrusive than a mere law-oriented program. This suggestion involves getting ideas from an entire range of public and private officials.[115] While this democratic ideal of combining parents with the public sector to help better police children may face mass protest, it might prove to be a better solution than approaching the problem strictly from a taskmaster's point of view. Some argue that, "[i]t is simply inappropriate to rush into legislative solutions that punish parents for the children's criminal acts without ensuring that effective services are readily available to families at all income levels, and in all parts of a state, to help them be better parents."[116] The proponents of this argument favor more parental education programs in schools, as well as more federal initiatives to serve the families in trouble.[117]

IV. Criticisms of Parental Liability Laws

While many have argued that the current parental liability laws are effective, there has been an equal amount of arguments as to why the legislature should revoke the current laws and take a different path. Putting parents on trial is a direct and frightening way of gaining compliance. Those against parental liability laws argue that parental liability laws create a greater division in family relationships, and possibly make parenting an even more difficult job.[118] At least one scholar feels that parental liability laws do more harm than good. "Punishing the parents for their child's delin-

114 *See* Davidson, *supra* note 88, at 28.

115 *See id.* (discussing the idea of using judges, child advocates, civil libertarians, educators and social scientists, among others, to aid parents in achieving the overall goal of parental accountability for their children's actions. This idea hopes to intercede more on the side of the preventative, rather than the punishment).

116 *Id. See generally* Title IV, Human Services Amendments of 1994, Pub. L. No. 103-252 (adding a Community Based Family Resource Program as Title II of the Federal Child Abuse Prevention and Treatment Act, 42 U.S.C.A. § 5116 *et seq.* (West Supp. 1995)). These ideas are noted, although not investigated in an in-depth manner because they are only periphery issues. The main idea of this Note concentrates on the criminal and civil liability statutes that are already part of the law, in addition to those which are only as of now being contemplated.

117 *Id.*

118 *Id.*

quent acts might result in further deterioration of the parent-child relationship. This could result in parental abuse of the child, or increased violence between the parents. Instead of preventing violence, the laws may foster it."[119] Another academic response is that the conservative policy of criminal parental liability statutes will not be beneficial due to the fact that "[l]aws and judicial action alone will never make all parents pay proper attention to their children."[120] While this may be true, there is no policy that can make *all* of one group do anything. All that can be hoped for is that one program, or combination of programs, will help parents become more responsible when it comes to parenting their children. It may be that parents are simply unable to control their children regardless of their best efforts.[121] However, that is specifically the time when a parent must seek the counsel and help of an outside governmental agency to assist them in controlling their difficult youths. If parents fail notwithstanding these efforts, it does not mean that these good parents are doomed to a guilty verdict at trial. The type of parental liability envisioned by this Note revolves around the negligence standard, and a parent who makes a good faith effort but simply cannot reach their children will not be at risk under one of these statutes.

There are legal reasons, in addition to the policy reasons, that indicate why parental liability laws are not the best way to solve the problem of serious crime by juvenile. Parental liability law presents issues of vagueness, overbreadth, and imputing liability without fault.[122] The argument that parental liability laws impose liability to those without fault is based in agency law. Generally, the law tolerates a criminal prosecution against a person for the conduct of another only when the defendant was an active participant in the commission of the crime, or if the defendant intentionally encouraged the crime.[123] However, the penalties at issue in this Note and in the Columbine lawsuit are civil penalties, rather than criminal penalties.[124] This Note advocates a negligence standard, but most of the criticism regarding the "liability without fault" argu-

---

[119] Greenwood, *supra* note 16, at 427 (citing Naomi R. Cahn, *Pragmatic Questions about Parental Liability Statutes*, 1996 WIS. L. REV. 399, 412 (1996) (forwarding the theory that these laws are "overly punitive and intervene too late with the wrong person")).

[120] Davidson, *supra* note 88.

[121] Cahn, *supra* note 119. The Provenzinos, prosecuted by the St. Clair Shores, Michigan ordinance, is one such family that comes to mind.

[122] *See* A. Dale Ihrie III, *Parental Delinquency: Should Parents be Criminally Liable for Failing to Supervise their Children?*, 74 U. DET. L. REV. 93, 101-104 (1996).

[123] *Id.*

[124] Criminal liability is an issue that must be determined by the state, and is irrelevant in this private cause of action. As of the date of this writing, the authorities in Colorado had

ment concerns those laws that allow a per se conviction of parents whose children have committed crimes.[125] The ineffectiveness of that type of law is not disputed here.

Another key criticism against parental liability laws is that they are vague. Criminal laws can always be struck down for vagueness. For example, the so called "status offenses" have been struck down in the past for vagueness.[126] A major criticism against parental liability laws is that there is not enough guidance as to how parents should act.[127] This criticism is well manifested in the *Provenzino* case. In general, terms like "reasonable control" and "proper supervision" are inherently difficult to define.[128] Critics contend that if a parental liability law is difficult to define and interpret, it fails one of its conceded purposes of informing and guiding the parents about a proper parental behavior. [129]

Overbreadth is the last of the major criticisms against parental responsibility laws. This is a constitutional claim, similar to that of vagueness.[130] This claim, in effect, says that the law in question is simply trying to do too much.[131] Instead of regulating a finite point, it sweeps too broadly and tries to catch everything with its net.[132] For example, if a state or city law impinges on regulating behavior that is to be governed strictly by the Constitution, it will be struck down, either on procedural or substantive due process grounds.[133] While it is apparent that parenting is a constitutionally protected right, it seems as though there is room for other governmental agencies to fill in the cracks not yet covered.

V. PARENTAL LIABILITY LAWS APPLIES TO COLUMBINE

As previously stated, this Note takes the position that parents must be held more accountable for their actions or in-actions concerning a child who obtains a gun and uses it in a violent assault. Although there are several different methods of holding the par-

---

not decided if they were going to pursue criminal charges against the Harrises and the Klebolds.

125 *Id.* (citing Michelle L. Casgrain, Note, *Parental Responsibility Laws: Cure for Crime or Exercise in Futility?*, 37 WAYNE. L. REV. 161, 178 (1990)).

126 A criminal law prosecutes a status offense when a particular state of being becomes a crime, such as being on the streets after a certain time, or not working and spending time in urban areas.

127 *See* Casgain, *supra* note 125.

128 *See* Ihrie, *supra* note 122, at 103.

129 *Id.*

130 *Id.*

131 *Id.*

132 *Id.*

133 *Id.* at 103-104. *See also* GLEN C. GILLESPIE, MICHIGAN CRIMINAL PRACTICE AND PROCEDURE § 16.10 (2d ed. 1994).

ents liable,[134] this Note takes the position that the parents should be held liable according to a negligence standard as applied to the parents' behavior with respect to the events leading up to the commission of a crime. The negligence standard is more relaxed than a standard that necessitates liability without fault.[135] On the other hand, the negligence standard is also more strict and realistic than some other standards currently in effect, where a parent is physically able to stop the attack and is held negligent for not doing so.[136] A straight negligence standard, which takes into consideration all of the relevant facts, would basically question whether a reasonable parent would have or could have done something different to stop the resulting crime from happening.

In the case of the Klebolds and the Harrises, this would include a fact-finding as to whether the actions of the parents were reasonable. Relevant questions include whether it was reasonable for the parents to fail to notice weapons lying in plain view in the juvenile's bedrooms and locate a diary that detailed the plans of the massacre, [137] and whether the parents should also have noticed and questioned the existence of a hate-filled website.[138] This website foreshadowed what was to come.[139] It even specifically mentioned using pipe bombs to kill people, which was exactly what happened months later.[140] In fact, once the school was cleared of immediate danger, bomb squad experts swept the school and found nearly sixty pipe bombs in the halls and several more outside

---

134 *See generally* Ihrie, *supra* note 122 (discussing different theories of parental liability and examining specific cases of each type).

135 *Id.* at 97.

136 *See generally* Dinsmore-Poff v. Alvord, 972 P.2d 978 (Ala. 1999); Seifert v. Owen, 460 P.2d 19 (Ariz. App. Div. 1 1969); Williams v. Garcetti, 853 P.2d 507 (Cal. 1993) (en banc); Hice v. Pullum, 275 P.2d 193 (Colo. 1954) (en banc),;Horton v. Reaves, 526 P.2d 304 (Colo. 1974) (en banc); Lahey v. Benjou, 759 P.2d 855 (Colo. 1988); Casebolt v. Cowan, 829 P.2d 352 (Colo. 1992) (en banc); Hall v. McBride, 919 P.2d 910 (Colo. 1996); Mitchell v. Allstate Insurance Company, 534 P.2d 1235 (Colo. App. 1975); Silberstein v. Cordie, 474 N.W.2d. 850 (Minn. 1991); National Dairy Products Corp. v. Freschi, 393 S.W.2d 48 (Mo. 1965); Doe v. City of Trenton, 362 A.2d 1200 (N.J. Super. A.D. 1976); Nearor v. Davis, 694 N.E.2d 120 (Ohio App. 1997); Frey v. Smith, 685 A.2d 169 (Pa. Super. 1996). These cases discuss different parental liability statutes for negligent entrustment, negligent and other different standards. They deal with deadly weapons, deadly accidents and other mistakes, resulting in serious injury, damage or death. These cases were selected to show different ways courts across the country handle this issue. Most of them resulted in summary judgments or dismissals against the party seeking damages against a parent. It is the opinion of this Note that the burdens placed on the plaintiffs in these cases were too difficult to sustain.

137 Martin Savidge & Charles Zewe, *Report: Harris and Friends Tried to Buy Machine Gun, available at* http://cnn.com/us/9904/30/school.shooting.03/ (last modified Apr. 27, 1999).

138 Zewe & Clark, *supra* note 20.

139 *Id.*

140 *Id.*

in the parking lot.[141] Did the parents know about it? It seems that the parents must have known about the Websites since it appears that school officials were warned of the existence of the Website.[142] If the parents did know about the Websites, was it reasonable for them not to do anything about it? If the parents did not know about the Websites, why did they not know of its existence when others in the town did?[143] The fact that the crude pipe bombs were constructed in the garages is another problem to consider. Were the parents aware of this? Is it reasonable that they were not, as they claim to be? In another related issue, both of the shooters authored violent school essays that alarmed the teachers to the point that the teachers had extended conversations about the nature of the writings at parent-teacher conferences.[144] After some discussion both matters were dropped, but again, this is another issue that should be discussed at a trial and another indication that the parents were more aware of the violent tendencies of their sons than what they now admit.[145]

Another issue that will come up in the near future is monetary considerations. As the law is currently written in Colorado, the cap on monetary damages against parents who are held to be civilly liable for the acts of their children is only $5,000.[146] The plaintiffs in the lawsuit against the Harrises and Klebolds plan to sue under a related statute that caps a monetary relief for negligence and wrongful death at $250,000.[147] The amount the parents plan to sue for is $250 million dollars.[148] The families plan to try to compel the judge hearing the case to decide that the damage cap is

---

141 *Squad Found Almost 60 Bombs at Columbine, available at* http://cnn.com/us/9905/07/school.shooting.01/ (last modified May 7, 1999).

142 *See* Zewe & Clark, *supra* note 137.

143 An obvious ancillary question involving this issue is the potential liability of the school. While there has not been any evidence of legal action against the school, there is a question about their negligence in handling this issue. The Jefferson County Sheriff's Department spoke about this issue and how it was investigated and then quickly closed. "We could not get to the point where there was a crime that could have been identified. At that time, everything we did with that case. . . was reasonable within the workload and policies of the department." *See* Zewe & Clark, *supra* note 20. A broader discussion of these events is outside the scope of this Note. However, it seems apparent that more could have been done, if not by the police department, than by the school in conjunction with Eric Harris's parents. The parents of the child who made the complaint wanted the families contacted, and disputed the Sheriff's Department's allegations that they did not want the parents contacted.

144 *See* Savidge & Zewe, *supra* note 137.

145 *Id.*

146 *See* n. 33 and 37 (text of Colorado statutes pertaining to money damages and caps on recovery of $3,500 and $5,000).

147 Belkin, *supra* note 7, at 64.

148 *Id.*

unconstitutional.[149] This has been attempted before and it has been successful in some instances.[150] If a judge rules for a monetary judgment higher than the $250,000 provided for at present, or allows a jury to deliver a multi-million dollar decision, the ruling will have the implicit effect of striking down the current law. A ruling such as this will reverberate up to the statehouse of Colorado, and likely all the way across the country. It will also most likely result in many years of appeals.

This is obviously outside of what the writers of the Colorado statute intended, and that in itself suggests several problems with the current statutes. Simply put, these statutes were never intended to deal with such polarizing major issues. $250,000 may be reasonable for a person severely injured in a car accident, but not for the victims of a premeditated murderous rampage. The statutes need to be repealed and must be replaced with more appropriate statute.

In a controversial case in Japan, the parents of a teenager who murdered two other children and stabbed a third agreed to an out of court settlement with one of the families. The parents of the teenager were ordered to pay the same amount of money as the settlement to one of the other families by the District Court in Kobe.[151] The total amount of money to be paid by this family is around $2 million dollars.[152] While obviously not binding on the case in Colorado, it is interesting to compare how such things are handled in a country with a much lower crime rate than ours.

Payment of a successful claim in this case is another issue altogether. Although any kind of resolution short of a settlement is unlikely for several years, it is an issue worth some consideration. Neither of these families have assets close to $250 million dollars. Even one million dollars might be more than the two families together could come up with. Both families are middle-class working families who do not have the deep pockets of a school system or a police force backed by a municipality. It is unclear what would happen if they were forced to pay a several million dollar judgement.

Before the parents retained counsel, they made several public statements. In one statement, the parents of Dylan Klebold said, "Like the rest of the country, we are struggling to understand why

---

149 *Id.* at 65.

150 *Id.*

151 *Killer's Parents Agree to Pay Kobe Families,* N.Y. TIMES, Jan. 21, 2000, at A14.

152 *Id.*

this happened."[153] The statement from the Harris family said that the killings were "a senseless tragedy. [. . .] Please say prayers for everyone touched by these horrible events."[154] While friends of the parents said that the Klebolds were " a conscientious, normal family that's done everything right. This came as a bolt out of the blue."[155] Governor Bill Owens of Colorado said that he thought that the parents should be charged and told reporters that investigators "[f]ound in one of the gunmen's homes clear evidence what was about to happen."[156] In addition, while Dylan Klebold's parents agreed to meet and talk with investigators, Eric Harris's parents refused to cooperate unless they were granted immunity from criminal charges.[157]

Criminal charges against the parents are an entirely separate issue. While it was spoken about as a possibility at the time of the crimes, there has not been much action since then.[158] Criminal charges would have to be brought by the state against the parents, and would be completely independent of the civil lawsuit being brought by the parents of the murdered children. Colorado does have a criminal liability law for parents of delinquent minors,[159] but it is even more inappropriate than the analogous civil laws. There is little to no case law on this subject in Colorado, suggesting that the provisions are ineffective or not taken seriously by the prosecuting attorneys in the area. This can be viewed as shocking, in light of the recent publicity given to the proliferation of laws that threaten criminal and civil liability for parents of truant schoolchildren.[160] Different variations of these laws are currently in place in more than five states, with several other states currently considering similar laws.[161] Penalties range from ten to thirty days in jail and a $100 to $500 dollar fine to six months in jail and a fine up to $1,000 dollars.[162] While there is a raging debate about the

153 Greg LaMotta, *Littleton Looks for Answers, available at* http://cnn.com/us/9904/22/school.shooting/.02/ (last modified Apr. 22, 1999).

154 *Id.*

155 *Id.*

156 Martin Savidge, *Columbine Investigation Turns to Parents' Role, available at* http://cnn.com/us/9904/25/ school.shooting.04/index.html (last modified Apr. 25, 1999).

157 Charles Zewe and Tony Clark, *Columbine Shooter's Parents ask for Immunity, available at* http://cnn.com/ us/9905/01/school.shooting.02/ (last modified May 1, 1999).

158 *See* Savidge, *supra* note 156.

159 *See* COLO. REV. STAT. ANN. § 19-2-919 (West 1999). This statute is only quasi-criminal in nature, in that it seeks to force parents to attend training sessions or do community service for the minor crimes of their children. It has no provisions to deal with the more serious crimes at issue here.

160 Robyn Meredith, *Truant's Parents Face Crackdown Across the U.S.*, N.Y. TIMES, Dec. 6, 1999, at A1.

161 *Id.*

162 *Id.*

legality and efficacy of these truancy laws, at least there is a constructive discussion about the law and the problems of truancy. However, no such discussion exists on similar criminal treatment for parents of criminal juveniles. It cannot be that truancy is a bigger problem than murderous children. However, that is the message being sent. There are many problems with adapting a more stringent law for parents of children who commit violent acts, but there needs to at least be a discussion about it to gauge whether anything better than community service and parenting classes can be done.

VI. CONCLUSION

There has been much heartbreak and debate in the days and months since the Columbine incident. There have been more talks on stricter gun measures and more defeats for those who attempted to make it harder for underage people to gain access to weapons. There has been more and more information coming out of Columbine, much of it adding to what we already knew. Videotapes that the killers made have been reviewed, as well as surveillance tapes of the killings from inside of the school.[163] These tapes reaffirm that the parents were clueless, and that is both good and bad. At one point in a tape, Dylan Klebold looks directly into the camera and says, "[l]et me tell you this much, they have no clue. So don't blame them and arrest them for what we did."[164] This plea may or may not have been sincere. The parents of both teenagers disclaimed any prior knowledge of what happened at Columbine High School on April 20.[165] However, it is possible that the children were just attempting to shield their parents from potential liability, even though they knew that their parents had some idea of what was going on. In the same tape they also say not to blame Mark E. Manes, a computer systems manager who got the teenagers one of the guns they used in the attack.[166] Their plea fell on deaf ears, as Mr. Manes was sentenced to six years in prison for supplying the weapon.[167]

Perhaps more startling was the cover story of a recent issue of the Time Magazine. The article contained yet more details about the Columbine incident as well as still photographs from cameras

---

163 Michael Janofsky, *Columbine Killers, on Tape, Thanked 2 for Gun*, N.Y. TIMES, Nov. 13, 1999, at A1.
164 *Id.*
165 *Id.*
166 *Id.*
167 *Id.*

that were inside the school. Eric Harris and Dylan Klebold made five home videos talking about what they were going to do and why, explaining some of their preparations and asking the blame to be laid squarely on them.[168] Much of this information is cumulative, but it still points to the parents being negligent for not knowing what was going on in their own houses.

While this horrible event has centered a great deal of controversy on Colorado, the fact is that Colorado is a state not much different than any other, and no more predisposed to have violent attacks by children than any other.[169] In fact, according to most major statistics, firearm related violence in children and teenagers was less prevalent in Colorado than the national averages.[170] All that this means is that what happened in Colorado is not endemic to the state. It can happen anywhere, anytime and it has spread out across the country. Few areas have been spared the horror of children killing children in school. In fact, recently a six year-old boy was reported to have shot and killed a six year-old female classmate in their first grade class in Michigan.[171] While this case is especially horrible considering the ages involved, it is just one more example of a growing litany of horrible murders. It is clear something needs to be done to stem this growing tide of atrocities. Some argue that holding the gun industry responsible or having more stringent gun regulations is the answer. This may well be. However, in this country money talks, and sad though it may be, increased civil and criminal liability for parents may be the quickest, most cost-effective way of getting parents to better monitor their children. Until this or some other remedy is effectively implemented, the headlines will remain littered with horror stories of shooting galleries in schools.

---

168 Nancy Gibbs & Timothy Roche, *The Columbine Tapes*, TIME MAG., Dec. 20, 1999, at 40-51.

169 *Colorado Statistics on Teenagers and Guns in Colorado, available at* http://vpc.org/press/9904col.html (last modified Apr. 20, 1999).

170 *Id.* There were less incidences of firearm-related death among children and teens 19 years of age or younger in Colorado, less incidences of firearm-related death among children and teens 15 years of age or younger in Colorado, and less incidences of firearm-related homicides among children and teens 19 years of age or younger than the national averages. *See also* National Center for Health Statistics Compressed Mortality File 1996 *available at* http://wonder.cdc.gov.

171 *Young Girl Critical After Mich. School Shooting, available at* http://dailynews.yahoo.com/h/nm/20000229/ts/ shooting_school_2.html (last modified Feb. 29, 2000).