

PARENTAL LIABILITY AND THE CRIMINAL MISCONDUCT OF CHILDREN IN THE WAKE OF AN UNREGULATED INTERNET: WHO SHOULD PAY?

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"Nigger," says Michael, all but spitting out the word.
"That's the last thing he heard. Should that be the last thing
you have to hear before the last breath leaves your body?"¹

I. INTRODUCTION

American youth has become increasingly violent.² This violence has recently become quite apparent in high schools and prayer meetings across America where kids are shooting kids and, in some cases, killing themselves immediately thereafter.³ One of the greatest questions facing society today is that of who to blame for such atrocities.⁴ Society is now searching for the reasons that underlie American youth violence trends that have become in-

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¹ Lisa Belkin, *Parents Blaming Parents*, N.Y. TIMES MAG., Oct. 31, 1999, at 60 (quoting Micheal Shoels, whose son was murdered by Dylan Klebold and Eric Harris at Columbine High School in April, 1999). Allegedly, one of the two now deceased killers of Isaeah Shoels had uttered "[T]here's that little nigger," before fatally shooting Isaeah Shoels in the chest with a shotgun.

² Kathy Scruggs, *School Violence: Class is in for SWAT Teams*, ATLANTA J., Oct. 24, 1999, at 2C. According to the National School Safety Center in California, the number of deaths related to school shootings have "see-sawed" over the past seven years. In 1992-1993, there were thirty-two deaths related to school shootings. In 1996-1997, there were only eleven. Yet in 1997-1998, there were twenty-six deaths related to school shootings. This number dropped only slightly in 1998-1999 to nineteen. This type of violence contrasts the drive-by, crack-cocaine gang violence of the 1980s that has become "commonplace" in poor neighborhoods of inner cities.

³ Belkin, *supra* note 1, at 62. In the past two years, there have been at least three shootings by teenagers at their respective public schools and at least one shooting at a prayer meeting that have resulted in the deaths of more than a dozen students and teachers. In at least two of these cases, the gunmen killed themselves following the acts.

⁴ See generally Belkin, *supra* note 1. The author presents the interesting juxtaposition between holding the actor of the crime liable for his or her actions versus the facilitator of the crime, that being the parent who failed to control the behavior of his or her child. The fact that some of the killers took their own lives following their shooting rampages makes asking this question extremely intriguing.

creasingly severe.⁵ Furthermore, there exists a looming curiosity as to who ought to be legally responsible for curbing such violence.

Some argue that federal and state government should work to curb this violence by monitoring and restricting obscene or offensive materials to which today's youth have ready access.⁶ Others argue that parents should be held accountable for the violent criminal acts of their children because parents are the ones who have, in one way or another, failed to adequately supervise their children and, thereby, failed to prevent the child's criminal behavior.⁷

However, part and parcel to either argument is the question of *how* liable a person or entity ought to be for essentially playing a causal role in a minor's violent behavior resulting in harm to third parties.⁸ Should this person or entity be held criminally or civilly liable, and if so, to what extent? Ultimately, society is faced with the question of whether or not parents should be liable for their failure to control their children.⁹ In this Note, I address the preceding concerns with specific regard to the recent advent of the

⁵ Theresa Walker, *Crusade Targets Kids Killing Kids*, SAN DIEGO UNION-TRIB., Nov. 13, 1999, at E-5. "Kids are killing kids because their parents have abandoned them. Sometimes physically and emotionally. Kids are killing kids because adults aren't listening and paying enough attention to them. Kids are killing kids because their communities provide nothing else for them to do but fall into drug use, gangs and despair. Kids are killing kids because they've been given too much freedom and not enough discipline. Kids are killing kids because the stress and pressure at school from their peers can be overwhelming. Kids are killing kids because it's just too easy to get a gun if you have the money."

⁶ Brian M. Werst, Note, *A Survey of the First Amendment "Indecency" Legal Doctrine and Its Inapplicability to Internet Regulation: A Guide for Protecting Children from Internet Indecency after Reno v. ACLU*, 33 GONZ. L. REV. 208, 227 (1997). The author makes note of several different "filtering" devices that can be used to screen that which children may view on the Internet.

⁷ Belkin, *supra* note 1, at 62. Michael Schoels, father to one of the shooting victims at Columbine High in April 1998 states, "They ask us if we blame the parents [...] Who else do we blame? I taught my son right from wrong. My son was in the library doing what he was supposed to do." Furthermore, Mr. Shoels asserts that the parents of his son's killers "taught those children hate [...] They raised children who hate." See also *Push to Prosecute Parents Won't Stop Violent Teens*, USA TODAY, Apr. 29, 1999, at 13A. Governor Bill Owens (CO) stated soon after the Columbine shootings occurred that "charges should be filed against the gunmen's parents if authorities found open evidence of the shooters' plans in their homes." Furthermore, the presiding Sheriff John Stone said that the parents of the gunmen "should have known [what was coming and that] parents should be accountable for their kids['] actions."

⁸ For the purpose of this article, a child, infant to minor is an unemancipated person under the age of eighteen.

⁹ Tami Scarola, *Creating Problems Rather Than Solving Them: Why Criminal Parent Responsibility Laws Do Not Fit Within Our Understanding of Justice*, 66 FORDHAM L. REV. 1029 (1997). See also Kimberly A. Gobla, Comment, *The Infeasibility of Federal Internet Regulation: The Online Parental Control Act of 1996 – A Reaction to the Communications Decency Act of 1996*, 102 DICK. L. REV. 93, 94 (1997) ("[p]arental guidance has proven ineffective in keeping Internet pornography out of the hands of innocent children. Nonetheless, the apparent inability of some parents to protect their children does not necessarily impose a burden on the federal government to assume this responsibility."); *Push to Prosecute Parents Won't Stop Violent Teens*, *supra* note 7, at 13A (the author equates holding parents liable for their children's criminal acts to nailing down Jello and that, furthermore, "[e]xisting criminal laws –

Internet,¹⁰ the lacking regulation thereof,¹¹ and the ramifications that any regulation, be it parental or governmental, might have on today's youth, parents, and community.

As society grows with technology, children are being significantly influenced by the material they obtain on the Internet.¹² Increasingly, today's parents are failing to supervise what their children view on the Internet.¹³ Despite having reaped many of the benefits that the Internet offers, society is now experiencing many of the Internet's unfortunate side-effects.¹⁴ Children and teens have become more violent as a result of what they are viewing on the Internet.¹⁵

The main issue that I address in this Note is whether parents should be held liable for the criminal actions of their children, resulting in physical harm to third parties, that stem from un-

including those for aiding and abetting and contributing to delinquency – already enable prosecutors to go after truly criminal parents.”).

¹⁰ Reno v. ACLU, 521 U.S. 844, 850-53 (1997). The Internet is an electronic form of communication conducted in a network of computers world-wide, that is constantly growing and evolving. Between 1981 and 1997, more than 9,400,000 computers had become part of the Internet, which is home to the “World-Wide-Web.” On the Internet, people can send electronic mail to others who have access to the Internet. Furthermore, users of the Internet can find a wealth of information on “web-sites,” which are “pages” containing “hyperlinks” upon which any user can click to go to another source. Many individuals, corporations, and other organizations have “web sites” that anyone can access with the click of a mouse.

¹¹ Gobla, *supra* note 9, at 103. See also Scott Sonner, Murray, White, Wyden Press *Cybersmut Views at White House*, ASSOC. PRESS POLIT. SERVICE, July 17, 1997 available in 1997 WL 2540012. The Internet currently remains unregulated by the federal government to the same extent that other forms of communication in this country have been regulated (i.e.; telephone, radio, and television under the FCC). It has taken on a role similar to that of the movie industry in that many major Internet service providers offer subscribers the option to screen the material for obscene or violent content and limit that which subscribers' children's access. See generally ACLU, 521 U.S. at 849. The only presidentially approved attempt to regulate the Internet by the federal government (under the Communications Decency Act of 1996) has been declared unconstitutional by the U.S. Supreme Court.

¹² Deirdre Donahue, *Struggling to Raise Good Kids in TOXIC TIMES: Is Innocence Evaporating in an Open Door Society?*, USA TODAY, Oct. 1, 1998, at 1D.

¹³ *Id.*

¹⁴ Anthony Flint, *An Industry Fights for Acceptance; SEX WITHOUT BORDERS*, BOSTON GLOBE, Dec. 2, 1996, at A1. See also Werst, *supra* note 6, at 232-233. Thus far, the Internet has not been successfully regulated by the federal government and, absent some form of software limiting what users may view on the Internet, pornography and violent materials are readily available with the click of a button.

¹⁵ See Belkin, *supra* note 1, at 61. The author discloses that at least one set of parents of the high school shootings victims have either filed or plan to file lawsuits against owners of Internet web sites following the shooting death of their daughter by the hands of her fellow classmates. See also Allen S. Hammond, IV, *Indecent Proposals: Reason, Restrain and Responsibility in the Regulation of Indecency*, 3 VILL. SPORTS & ENT. L.J. 259, 267 (1996) (“The extensive use of sex as both a marketing tool and a critical component in much of media entertainment is alleged to have profound negative effects on society and on children in particular”); Dr. Jeff Lindebaum, *Parenting – Parental Strategies to Stem Teen Violence*, SEATTLE TIMES, May 5, 1999, at C2 (there is a connection between the Internet and children's bad behavior).

supervised use of the Internet and whether the want of Internet regulation ought to exempt parents from such liability. Furthermore, I discuss whether or not the federal government should attempt to regulate the Internet as the government has regulated other telecommunications industries, including television and radio, to curb violence among today's youth. Finally, I conclude that it is unrealistic for the government to attempt to regulate the content of the Internet and that parents should only be held responsible for the criminal actions of their children that stem from material viewed on the Internet where there exists a distinct causal link.

The first section of this Note addresses the recent and widely publicized school shootings in Moses Lake, Washington; Pearl, Mississippi; Paducah, Kentucky; Jonesboro, Arkansas; Springfield, Oregon; Littleton, Colorado; and Mount Morris Township, Michigan.¹⁶ I then examine the nature of the Internet and attempts by the government and other entities to regulate children's access to pornographic and violent information available on the Internet. A correlation between youth violence and such material will then be drawn.

Following such discussion, I then examine traditional and current civil and criminal penalties placed upon parents for the criminal misconduct of their children. After a thorough examination of traditional and current liability placed upon parents by various state governments and court systems, I will discern whether or not parents should be afforded any sort of immunity from suit that directly links the criminal acts of their children to information that the children obtained from Internet web-sites while unsupervised or supervised.

II. YOUTH VIOLENCE ESCALATES

A. *The School Shootings*

On April 20, 1999, in the small Colorado town of Littleton, Dylan Klebold and Eric Harris slaughtered twelve of their fellow classmates in the library and hallways of Columbine High School.¹⁷ One of the victims of this tragic event was a young, popular, African-American athlete named Isaiah Shoels. Isaiah's parents have since brought suit against the parents of Dylan Klebold and Eric

¹⁶ Robert Ingrassia, *Gun Owner Faces Rap in Slaying of Girl*, 6, N.Y. DAILY NEWS, Mar. 3, 2000, at 4; Steve Schmidt, *Small Town's Horror Hard to Forget: 1996 School Shooting in Washington First of Deadly Series of Attacks*, SAN DIEGO UNION TRIB., May 23, 1999, at A-1.

¹⁷ See Belkin, *supra* note 1, at 62.

Harris in a civil action in which they seek \$250 million, arguing that the parents of the gunmen should have prevented the incident.¹⁸ The Shoels have also filed an "intent to sue" against the Jefferson County Sheriff's Office for failing to warn them that Eric Harris had threatened to kill another student some months prior to the Columbine shootings.¹⁹ It is also argued by some that the gunmen's actions may have resulted from information that the gunmen viewed on the Internet.²⁰

Unfortunately, high school shootings are not as novel as the public may think. In February of 1996, Barry Loukaitis used a "mini-arsenal" to kill three people and badly injure another in Moses Lake, Washington.²¹ On October 1, 1997, in Pearl, Mississippi, sixteen-year old Luke Woodham shot nine of his classmates, killing two of them, after having stabbed his mother to death.²² Currently, the mother of one of the victims is suing Luke Woodham's father.²³

This tragedy joins several other similar instances of teenage violence that have sadly become a growing trend across the United States. In 1998, eleven-year old Andrew Golden and thirteen-year old Mitchell Johnson staged a false fire alarm at their middle school in Jonesboro, Arkansas.²⁴ The two gunmen waited outside of the school building and, as their teachers and classmates exited the building, the two opened fire on the crowd, killing four female students and one teacher.²⁵ Many of the families who suffered a loss at the hands of Andrew Golden and Mitchell Johnson have filed suit against Golden's and Johnson's parents.²⁶ The parents of another gunman, Kip Kinkell, will never have to face suit from the parents of his victims because Kinkell, a fifteen-year old high school student, killed his parents prior to killing four people and wounding twenty-six others in Springfield, Oregon in May of

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Push to Prosecute Parents Won't Stop Violent Teens*, *supra* note 7, at 13A. "Absent a clear understanding of what drove two students to kill 13 and then themselves at Columbine High School in Colorado [...] officials have been quick to recite the full roster of potential bad influences: the Internet, violent movies, rambunctious television and poor parenting." See also Joe Salkowski, *There's No Filtering Parents' Role in Monitoring Web Use*, CHI. TRIB., May 17, 1999, at 5. "After working so hard to invent the Internet, [Al Gore] couldn't just sit still while people wondered whether his brainchild had something to do with causing the slayings at Columbine High School in Littleton, Colorado."

²¹ Schmidt, *supra* note 16, at A-1.

²² Belkin, *supra* note 1 at 62.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

1998.²⁷ Kip Kinkell has been sentenced to 111 years in prison without the possibility of parole.²⁸

A most recent tragic school shooting occurred in March, 2000 when a six-year old boy shot and killed six-year old Kayla Rolland, the youngest of the school shooting victims yet, at Buell Elementary School.²⁹ The shooter, who will not be charged for the crime due to his youth and his inherent inability to understand the ramifications of his acts, was living in an alleged crack house.³⁰ He discovered the loaded gun that his uncle had shown him several times, under a pillow.³¹

The massacre of the twelve students and one teacher at Columbine High School in Littleton, Colorado, and the increasing array of victims of similar tragedies still carries with it a newfound fear of violence where it would least be expected.³² This violence, however, is not just limited to middle school and high school hallways and playgrounds anymore. Michael Carneal shot and killed three young girls at a prayer meeting in their high school in Paducah, Kentucky, in December of 1997.³³ As the parents of other victims have done, the parents of Nicole Hadley are suing the gunmen's parents.³⁴

Not surprisingly, many parents of the victims in the above attacks have also filed lawsuits against the school districts in which these horrific acts occurred.³⁵ What comes as a shock, however, is that some of these parents have taken their legal assertions one step further by filing suits against the makers and distributors of violent video games and the owners of several Internet web sites.³⁶ Nicole Hadley's parents are suing several owners of anarchistic and pornographic web sites that her killer allegedly visited.³⁷ The parents of those children whose lives ended so tragically allege that, in one way or another, particular Internet web site owners are respon-

²⁷ *Id.*

²⁸ Sam Howe Verhovek, *Teenager To Spend Life in Prison For Shootings*, N.Y. TIMES, Nov. 11, 1999, at A14.

²⁹ Ingrassia, *supra* note 16, at A-1.

³⁰ *Id.*

³¹ *Id.*

³² See Belkin, *supra* note 1, at 96. The author asks whether or not parents should have to ask themselves "[w]ill someone shoot [my child] at school?" or, just as importantly, "[w]ill [my child] do the shooting?"

³³ *Id.* at 94. See also Steve Schmidt, *supra* note 16, at A-1.

³⁴ See Belkin, *supra* note 1, at 66.

³⁵ *Id.* at 100.

³⁶ *Id.*

³⁷ *Id.* at 66. See also Salkowski, *supra* note 20, at 5. "People started worrying about the net's role in the April 20 [Columbine] shootings after learning that Eric Harris had a homepage filled with violent racist ramblings."

sible for the behavior of the gunmen and that those owners should be held liable for such behavior, no matter how remote the causal relationship may be.³⁸

B. *The Legal Implications of Youth Violence*

These lawsuits raise many interesting points that deal with parental liability for those acts committed by their children with regard to regulation of the Internet. Most importantly, they raise an issue that parents did not have to face twenty years ago. Parents, though still responsible for the criminal acts of their children to some degree in every state,³⁹ have at the very least been able to rely on the safe-guarded notion that the federal government plays a minimal role in governing that which their children may see on television or hear on the radio.⁴⁰ Parents are currently unable to rely on any government safe-guards when it comes to the Internet. With the advent of the Internet, a form of communication that continues to be essentially unregulated in the United States, parents receive little protection from the government with regard to that which their children can access on-line at any time, day or night.⁴¹ Therefore, children who remain unsupervised on the Internet at *any* time may be in danger of viewing materials that could have potentially serious ramifications.⁴² This contention supports not only a need for a regulated Internet, but an increased need for parental supervision when it comes to Internet use by children.

³⁸ See Belkin, *supra* note 1.

³⁹ Scarola, *supra* note 9, at 1040. Nearly every state has adopted some form of civil law that holds parents responsible for the actions of their children. Some states have even adopted criminal laws that punish parents for the acts of their children.

⁴⁰ See generally Glen Robinson, *The Electronic First Amendment: An Essay for the New Age*, 47 DUKE L.J. 899, 901-02 (1998). See also Hammond, *supra* note 15, at 269 (quoting Cokie and Steven Roberts, *Let's Give Parents the Tools to Protect Their Children*, TIMES-PICAYUNE, June 29, 1995, at B7). “[I]t is argued that children have gained greater control over access to and manipulation of [media technologies of broadcasting, cable television, telephone, and computers] at a time when parental ability to monitor and control such access and manipulation is believed to be decreasing.”

⁴¹ See generally FCC v. Pacifico, 438 U.S. 726 (1978). I make the “day or night” scenario to emphasize the fact that other mediums, such as television and radio, are regulated in such a manner that children are ordinarily unable to access material that might be considered offensive during certain daylight hours. The irony here is found in the fact that anyone can access offensive material at any time of day on the Internet without much difficulty.

⁴² See Hammond, *supra* note 15, at 269.

III. THE INTERNET

A. *The Internet Defined*

The Internet is a compilation of interconnected computers which form a network that is located in no particular geographical place but is increasingly available to persons throughout the world.⁴³ There is no central point from which the Internet stems.⁴⁴ The Internet is neither created nor controlled by any single person or corporation⁴⁵ and is home to the World-Wide-Web, which has been characterized as a vast, readily available and rapidly growing source of information, offering access to informative publications, commercial shopping, on-line trading, and a worldwide economic forum.⁴⁶

The World-Wide-Web is home to many Websites which, in turn, often reference many different "Web-pages."⁴⁷ Each Website contains information placed on the site by the site's owner or agent.⁴⁸ Because the Internet has no home state or country and spans the globe, persons with access to the Internet are able to send electronic messages to destinations all over the world in a matter of seconds.⁴⁹ The Internet contains information on nearly every possible topic imaginable, including those topics upon which society often frowns, such as pornography, hate speech, and other violent information.⁵⁰

Many children have easy access to the Internet and all of its contents,⁵¹ absent an Internet content filtering device which acts somewhat like the newly introduced "V-Chip" that screens what children may view on television.⁵² Children are able to access Websites containing information of a pornographic nature and instructions on how to build a bomb.⁵³ When parents are not available (or not willing) to regulate what children choose to view on the

⁴³ *ACLU*, 521 U.S. at 850-853.

⁴⁴ *Id.* at 853.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.* at 852.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Flint, *supra* note 14, at A1.

⁵² Werst, *supra* note 6, at 227. "Commercial filtering software programs, such as 'SurfWatch,' 'Net Nanny,' or 'Cyber Sitter' allow a Netsurfer to block inappropriate sites based on databases built into the software that read the headers [of Websites]." See also Flint, *supra* note 14, at A1.

⁵³ Flint, *supra* note 14, at A1.

Internet, parents are arguably failing to take the active role necessary in preventing violence that stems from Internet use.⁵⁴

Information that can be found on the Internet, regardless of its origin, is most likely protected speech under the First Amendment.⁵⁵ Therefore, it has been increasingly difficult for the government to effectively regulate what children may access on the Internet. The mere nature of the Internet itself has also presented somewhat of a jurisdictional dilemma which the government has had to face because “[a]pproximately 40% or more of all content on the Internet originates outside of the United States.”⁵⁶ For example, how is it possible for the United States government to enforce any regulation of speech on the Internet originating in another country absent an international treaty that authorizes the United States or other government(s) to do so? Material stemming from Web-sites originating outside of the United States that may be deemed inappropriate for children is and would therefore be a continuing danger.

B. Governmental Attempts to Regulate the Internet

In 1996, the United States Government attempted to regulate the Internet by imposing a criminal penalty upon web site owners or persons who knowingly transmitted “obscene or patently offensive” material to persons under the age of eighteen.⁵⁷ This act was

⁵⁴ Lindebaum, *supra* note 15, at C2. The author asserts that there exists a connection between the Internet and children’s bad behavior because children can readily ascertain information about how to build a bomb, pornography, and hate speech.

⁵⁵ *ACLU*, 521 U.S. at 873.

⁵⁶ Werst, *supra* note 6, at 237 (citing *ACLU v. Reno*, 929 F. Supp. 824, 882-83 (E.D. Pa. 1996)). “Approximately 40% or more of all content on the Internet originates outside of the United States, and [p]ornography from, say, Amsterdam will be no less appealing to a child on the Internet than pornography from New York City, and residents of Amsterdam have little incentive to comply with [Internet regulation by the U.S. government].”

⁵⁷ See Hammond, *supra* note 15, at 272 (citing 47 U.S.C. § 223 (1999)):

(d) Whoever-

(1) knowingly within the United States or in foreign communications with the United States by means of telecommunications device makes or makes available any obscene communication in any form including any comment, request, suggestion, proposal, or image regardless of whether the maker of such communication placed the call or initiated the communications; or

(2) knowingly permits any telecommunications facility under such person’s control to be used for an activity prohibited by subsection (d)(1) with the intent that it be used for such activity; shall be fined not more than \$100,000 or imprisoned not more than two years, or both.

(e) Whoever-

(1) knowingly within the United States or in foreign communications with the United States by means of telecommunications device makes or makes available any indecent communication in any form including any comment, request, suggestion, proposal, image, to any person under 18 years of age regardless of whether the maker of such communication placed the call or initiated the communication; or

known as the "Communications Decency Act of 1996."⁵⁸ Congress explicitly enacted the CDA in order to protect the innocence of children.⁵⁹ This was the main compelling governmental interest in enacting the CDA that Attorney General, Janet Reno presented and argued in *Reno v. ACLU*.⁶⁰ The United States Supreme Court, in a unanimous decision in judgment, declared the CDA unconstitutional.⁶¹ The CDA ultimately failed due to First Amendment concerns because, as a statute that regulated the content of speech, it was vague and therefore voidable.⁶² Although the language of the act specified the material which was to be regulated as "obscene," Congress failed to provide an adequate definition thereof, so that a reasonable person would be able to ascertain just what type of speech the CDA regulated.⁶³ Despite the fact that the objective of the CDA was to "protect the innocence of children," the Supreme Court ruled that because the CDA infringed on the rights of adults to access protected speech, the interest in protecting children's innocence was outweighed.⁶⁴

The United States Congress came under a great amount of critical fire following the Supreme Court's *Reno* decision, not only

(2) knowingly permits any telecommunications facility under such persons control to be used for an activity prohibited by paragraph (1) with the intent that it be used for such activity, shall be fined not more than \$100,000 or imprisoned not more than two years, or both.

⁵⁸ *Id.* Hereinafter referred to as "CDA."

⁵⁹ *ACLU*, 521 U.S. at 868.

⁶⁰ *Id.*

⁶¹ See Hammond, *supra* note 15, at 272 (citing 47 U.S.C. § 223 (1999)). See also *ACLU*, 521 U.S. at 849 (opinion delivered by Justice Stevens, Scalia, Kennedy, Souter, Thomas, Ginsburg and Breyer, JJ., joining, O'Connor, J., concurring in the judgment in part and dissenting in part; joined by Rehnquist, C.J.).

⁶² See *ACLU*, 521 U.S. at 865. A statute that asserts a regulation on speech content will be evaluated by the Supreme Court under the strict scrutiny analysis. Furthermore, a statute regulating the content of speech may be declared void for vagueness if a reasonable person would not know what speech was covered or allowed under the statute. See also, *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942). There are three areas of speech, however, that fall outside the protection of the first amendment: defamation, pornography, and fighting words.

⁶³ See *ACLU*, 521 U.S. at 865.

⁶⁴ *Id.* at 864 (construing *Ginsberg v. New York*, 390 U.S. 629 (1968)). In *Ginsberg v. New York*, the Supreme Court rejected the notion that children have the same rights to sexually explicit materials as adults do; *ACLU*, 521 U.S. at 865 (quoting *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944)). The United States Supreme Court based this contention by relying on the "[s]tate's independent interest in the well being of its youth, but also on our consistent recognition of the principle that 'the parents' claim to authority in their own household to direct the rearing of their children is basic in the structure of our society.'" See also *Pope v. Illinois*, 481 U.S. 497, 513, 517 (1989) (Brennan dissenting) ("To be sure, the Government has a strong interest in protecting to pornographic material that might be harmful to them."); Eugene Volokh, *Freedom of Speech, Shielding Children, and Transcending the Balance*, 1997 U. CHI. SUP. CT. REV. 141, 141 (citing *Ginsberg v. New York*, 390 U.S. at 649-50 (Stewart concurring to distinguish children's rights to access speech from adults' rights to access speech)).

because the CDA was written and passed in a rather sloppy manner nearing the end of the 104th Congressional Session, but because the statute was written in such a manner that First Amendment concerns arose immediately.⁶⁵ The CDA essentially forbade any Web-site owner or person to knowingly transmit to any person under the age of eighteen material that was considered "obscene."⁶⁶ The CDA made no exception for parents transmitting information to their children.⁶⁷ Nor did the CDA make an exception for the transmission of material that might be considered educational.⁶⁸

The federal government reacted to the declaration that the CDA was unconstitutional by introducing the Online Parental Control Act of 1996,⁶⁹ which, in order to give parents more control over what their children viewed on the Internet while maintaining access to the type of free speech that adults enjoy, added a "harmful to minors" standard to a framework similar to that of the CDA.⁷⁰ This time, bill drafters took the time to actually define the standard as effecting sexually explicit material wherein:

- (A) "[C]onsidered as a whole, the matter appeals to the prurient interest of minors[;]"
- (B) [T]he matter is patently offensive as determined by contemporary local community standards in terms of what is suitable for minors[; and]
- (C) [C]onsidered as a whole, the matter lacks serious literary, artistic, political, educational, or scientific values for minors."⁷¹

⁶⁵ See *ACLU*, 521 U.S. at 861. "[I]mmediately after the President signed the [CDA], 20 plaintiffs filed suit against the Attorney General of the United States and the Department of Justice challenging the constitutionality of § 223(a)(1) and § 223(d) [of the CDA]. See also Werst, *supra* note 6, at 212. "The CDA faced an uphill battle almost as soon as the ink dried on the legislation."

⁶⁶ See Hammond, *supra* note 15, at 272 (citing 47 U.S.C. § 223 (1999)).

⁶⁷ See Hammond, *supra* note 15, at 272 (citing 47 U.S.C. § 223 (1999)).

(f) Defenses to the subsections (d) and (e) [*see* 47 U.S.C. § 223(d-e), *supra* note 48], restrictions on access, judicial remedies respecting restrictions for persons providing information services and access to information services-

(1) No persons shall be held to have violated subsections[. . .](d) and (e) solely for providing access or connection to or from a facility, system or network over which are incidental to providing access or connection. This subsection shall not be applicable to a person who is owned or controlled by, or a conspirator with, an entity actively involved in the creation, editing, or knowing distribution of communications which violate this section.

⁶⁸ *Id.*

⁶⁹ H.R. 3089, 104th Cong. (1996).

⁷⁰ *Id.*

⁷¹ *Id.*

Although it appeared that drafters of the Online Parental Control Act of 1996 took precautions and included language that might shield the bill from First Amendment suits,⁷² those precautions would likely fail because the regulation continued to be a content based one.⁷³ Therefore, the regulation would be subject to a judicial scrutiny based in a community standard.⁷⁴ Unfortunately, the very medium of the Internet impedes use of this standard because there is no one community on which the scrutiny may be based.⁷⁵

It seems as if these concerns were reflected by the House of Representatives soon after the bill was introduced. The House of Representatives never took action on the bill and the Online Parental Control Act died in committee.⁷⁶ No committee reports or formal hearings were ever held regarding the bill.⁷⁷

C. Internet Regulation Would Ultimately Prove Ineffective

Even if the CDA or the Online Parental Control Act of 1996 were to satisfy constitutional muster, legal scholars argue that regulation of the Internet under the CDA would not have solved the problem that such regulations set out to remedy.⁷⁸ Apart from First Amendment concerns, there are many other obstacles which Internet regulation would have to tackle.⁷⁹ The most important of which is a jurisdictional one.⁸⁰ Because the Internet has no specific

⁷² See *Miller v. California*, 413 U.S. 15, 25 (1973). Obscene material is not protected by the First Amendment. Obscene material is material which (a) an average person, applying contemporary community standards, would find as a whole to appeal to the prurient interest; (b) depicts, describes, in a patently offensive manner, sexual conduct as defined by applicable state law; (c) taken as a whole lacks serious literary, artistic, political or scientific value (emphasis added). See also *Pacifica*, 438 U.S. at 732. Indecent material includes material describing sexual or excretory activities and organs in a patently offensive manner at times of the day when there is a reasonable risk that children will be in the media audience.

⁷³ See Gobla, *supra* note 9, at 119.

⁷⁴ *Id.*

⁷⁵ *Id* at 120.

⁷⁶ Library of Congress, *Thomas: Legislative Information on the Internet*, available at <http://www.thomas.loc.gov/cgi-bin/cpquery> (last visited Mar. 9, 2000).

⁷⁷ *Id.* See also [1995-1996 Transfer Binder] Cong. Index (CCH) ¶ 34,001 at 35,071 (Nov. 2, 1996). "When a measure does not appear in the pertinent "Status Table," it has not progressed beyond its initial referral or reported activity. Bills and resolutions do not "carry over" to a future Congress unless they become law during the Congress in which they are introduced."

⁷⁸ See Hammond, *supra* note 15, at 113.

⁷⁹ See generally Gobla, *supra* note 9, at 93; Volokh, *supra* note 64, at 141; Werst, *supra* note 6, at 207; See also Robert Cannon, *The Legislative History of Senator Exon's Communications Decency Act: Regulating Barbarians on the Information Superhighway*, 49 FED. COMM. L.J. (1997); Robinson, *supra* note 37, at 899.

⁸⁰ See Werst, *supra* note 6, at 237 (citing Charles Nesson & David Marglin, *The Day the Internet Met the First Amendment: Time and the Communications Decency Act*, 10 HARV. J.L. & TECH. 112, 122-23 (1996)). "Local ordinances" such as the CDA, and similar regulation in Canada and Singapore, have virtually no effect on the world-wide Internet."

origin, it can be accessed from computers all around the country and the world.⁸¹ Regulating the actions of persons in other countries by implementing United States law would be rather impractical, improbable, and most importantly, ineffective.⁸²

Second, there is the problem of anonymity.⁸³ Persons placing information on Internet web sites may not only remain anonymous in most situations, but those accessing the information may remain anonymous as well.⁸⁴ Neither the purveyor nor the viewer of pornographic or violent web-sites could be held liable for their actions if they could not be identified.⁸⁵ Therefore, regardless of any restrictions that the United States federal government might choose to impose on the content permitted to be shown by purveyors of the Internet, the very idea that this step might consequently have an effect on what children view on the Internet is an unrealistic one.⁸⁶

D. Independent Regulation of the Internet

There are many others who have taken their own initiative to regulate what children view on the Internet independent of federal legislation. Shortly following the Supreme Court's decision in *Reno*,⁸⁷ President Bill Clinton held a private meeting with several owners of Internet service providers.⁸⁸ These providers serve a large portion of American clients.⁸⁹ President Clinton urged them to manipulate their services to allow parents the option of filtering the information which their children could access.⁹⁰ These owners accepted President Clinton's challenge by doing just that.⁹¹

Not only are Internet service providers taking steps to reduce the amount of violent and pornographic content that minors view

⁸¹ ACLU, 521 U.S. at 851.

⁸² See Werst, *supra* note 6, at 237.

⁸³ See Gobla, *supra* note 9, at 99. "To this day, the composer is free to hide behind the anonymity of the Internet and enlarge the underground world of child pornography and abuse."

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ See generally Werst, *supra* note 6, at 225. "The nature of the Internet does not justify regulating Internet indecency."

⁸⁷ 521 U.S. 844 (1997).

⁸⁸ See Sonner, *supra* note 11, at 1997 WL 2540012.

⁸⁹ *Id.*

⁹⁰ *Id.* Microsoft and Netscape Communications, both providers of popular Internet browsers, offer technology that "allows parents to rate World Wide Web sites according to their content and block those they consider inappropriate [. . .] [Senator] Murray said that [the meeting with President Clinton] was a 'great step in seeking a solution [. . .] that provides parents with options, but remains constitutionally sound.'"

⁹¹ *Id.*

on the Internet, but the halls of academia are following suit.⁹² Recently, many public elementary schools, middle schools and high schools have adopted policies that limit the content viewed by its students by purchasing software programs that can either track the sites viewed by each student or forbid students access to violent and pornographic sites.⁹³ Paducah's Heath High School had a program similar to those that schools across America have adopted.⁹⁴ At one point prior to the high school shootings there, a Heath High School librarian suspected that Michael Carneal, a now convicted killer, had accessed a Playboy web site at school and contacted Carneal's parents with the information.⁹⁵ Considering the tragedy that occurred at Paducah following this warning, however, it is hard to discern whether or not these software programs are at all effective.⁹⁶

Even web-site owners are getting into the Internet-filtering game.⁹⁷ Holding the strong belief that hate propaganda negatively influences behavior, the Anti-Defamation League of America has offered their web-site visitors the option of purchasing their very own Internet content filter entitled "Gate Keeper."⁹⁸ A visitor to

⁹² Anemona Hartocollis, *Board Blocks Access to Web Sites: Computer Filter Hobbles Internet Research Work*, N.Y. TIMES, Nov. 10, 1999, at B1. For example, the New York City Board of Education has followed many other public school systems by installing a system called "I-Gear," which is one of the most popular Internet filtering devices used across the nation and in Canada. This program allows administrators to select those subjects that administrators might find inappropriate for students and disallow students from accessing that information on the Internet. The main problem with programs of this sort is that the programs also limit students' access to information that is purely educational in nature. One New York City school teacher noted that his children could not complete an assignment wherein the students had to determine how members of Congress ranked in the NRA. Even John Steinbeck's "Grapes of Wrath" was forbidden. Teachers complain that the filtering system limits students' ability to effectively research legitimate issues including breast cancer, anorexia and bulimia, child labor, AIDS, and sites of groups supporting women's reproductive rights and freedoms.

⁹³ *Id.*

⁹⁴ See Belkin, *supra* note 1, at 67.

⁹⁵ *Id.*

⁹⁶ *Id.* Despite the fact that the Heath High School Librarian had notified Carneal's parents and despite the fact that Michael Carneal's parents restricted his Internet access both at school and at home, Michael Carneal went on to kill three students and wound five others at Heath High School on December 1, 1997. *See also* Schmidt, *supra* note 16, at A-1.

⁹⁷ *Internet Content Filters*, available at http://infoseek.go.com/WebDir/Family/Parent_Pages/_Internet_content_filters?sv=M6&svx=Related (last visited Jan. 16, 2000). This particular web-site recommended filters including Cyber Patrol, Net Nanny, Safe Surf, WebSense, For Parents, PICS, and Surfwatch. Not surprisingly, many of these programs are put out by Internet web-site owners including the Gate Keeper program which is authored by the Anti-Defamation League.

⁹⁸ *Id.* The Gate Keeper is "software that protects children by blocking access to web sites of individuals or groups that advocate hatred, bigotry, or violence towards groups on the basis of their religion, race, or ethnicity."

the Anti-Defamation League's home-page⁹⁹ will learn that the Anti-Defamation League's Gate Keeper doesn't seek to limit speech, but rather aims to serve as a tool to help parents make better judgments and limit their children's exposure to hate material.¹⁰⁰ The Anti-Defamation League "sells" a visitor on this software by including links in its web-site denoting the dangers that parents' children face while surfing the web without supervision, arguing that hate propaganda is aimed at influencing attitudes and behavior.¹⁰¹ At the extreme, purveyors of hate material use the Internet to recruit new, young members by offering on-line membership, free mail publications, jewelry, and even links to sites that provide instruction on bomb-making.¹⁰²

Regardless of the fact that many Internet service providers, schools, Web-site owners and parents are now implementing software programs that allow them to restrict the content that minors can view on the Internet, it seems that a lack of parenting still remains¹⁰³ and that this lack may be causally linked to the violent acts of children resulting from what children view on the Internet.¹⁰⁴ The link, though it may seem far-fetched, is based on an idea that, though statistically weak and substantially unfounded, is and has been extremely influential. Children that view pornographic and violent material tend to adopt personalities that are violent.¹⁰⁵ If children are able to access this type of information on the Internet, then it is likely that children will learn from such information and act upon what they have learned.¹⁰⁶ Those parents

⁹⁹ *Anti-Defamation League*, available at <http://www.adl.org/default.htm> (last visited Jan. 16, 2000).

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *What are the dangers my child faces when being confronted by racist and anti-semetic messages?* available at http://www.adl.org/frames/front_parents_guide_hate_net.html (last visited Jan. 16, 2000).

¹⁰³ Donahue, *supra* note 12, at 1-D. "[T]he fault lies not in the culture, not in the children, but in their materialist, self-centered and indulgent parents."

¹⁰⁴ Hammond, *supra* note 15, at 267 (citing Debbie Treise, et al., *Ethics in Advertising: Ideological Correlates of Consumer Perceptions*, J. OF ADVERTISING, Sept. 1994, at 59). Pornographic material is alleged to have negative effects on children. "[I]f the premise of media advertising is correct, violence and sex saturated programming cannot help but have an adverse impact on children in particular."

¹⁰⁵ *Id.* See also Flint, *supra* note 14, at A-1. "Pornography has long been linked with organized crime. And parts of the industry routinely cross into outright illegality, such as credit card fraud, rip-offs and, in the case of escort services particularly, prostitution, guns, and drugs. The adult industry might talk a good game about being a legitimate interest, anti-porn activists say, but it remains a tangle of crime and bad influence." *Contra Flint*, *supra* note 14, at A-1. "The connection between pornography and violence against women has been much debated. But studies show that when pornographic images are described in terms of physical domination or violence, demand for it decreases."

¹⁰⁶ *Id.*

must play a bigger role in regulating what their children access on the Internet.¹⁰⁷

The argument that children are taught violent behavior by viewing violent messages conveyed through the Internet is closely paralleled to the familiar argument that pornographic material, when viewed by anyone, tends to make that person act violently.¹⁰⁸ However, as many scientists and scholars alike have shown, the argument that pornography causes violence is a weak argument.¹⁰⁹ "Still, many parents wonder what makes the rare kid crack and become Lizzie Borden. *The anything-goes Internet?* An often violent pop-culture? A world where rage seems on the rise? Guns that are as easy to get in some places as a loaf of bread? *Asleep-at-the-wheel parents?*"¹¹⁰

Therefore, we must first examine whether or not a link exists between viewing violence and the adoption of violent tendencies. Co-authors of the book "Stop the Killing," David Grossman and Gloria DeGaetano, argue that, in some children, violence can be traced to early childhood.¹¹¹ Essentially, Grossman and DeGaetano assert that childhood violence stems "in part [from] the neglect of parents who allow their children to sink into a two dimensional world of television and video games."¹¹² Grossman, a member of the faculty in the Department of Psychology and Counseling at the University of Arkansas and a former member of the U.S. Army, argues that "many children have been subliminally trained to be skilled killers."¹¹³ The crux of Grossman's and DeGaetano's argument lies in this: "'The brain is like wet cement [...] In early childhood it is impressionable and malleable. What we put in it stays.'"¹¹⁴

¹⁰⁷ Salkowski, *supra* note 20, at 5. "[P]arents who truly want to protect their kids will take time to learn enough to maintain meaningful authority over their children's on-line lives."

¹⁰⁸ Hammond, *supra* note 15, at 267. "This extensive use of sex as both a marketing tool and a critical component in much of media entertainment is alleged to have profound negative effects on society and on children in particular." See also Hammond, *supra* note 15, at 261. "Proponents in legislation stress public health concerns regarding pornography, teenage pregnancy, AIDS, and the vulnerable nature of child development."

¹⁰⁹ *Id.* at 260 n.3 (citing Cheryl Wetzstein, *Anti-porn Group Targets On-line Activities*, WASH. TIMES, June 8, 1995, pt. A, at A2). "Those who argue that violence in the media is not the cause of society's current ills are partly right as well. The nihilism of the 90s is not an aberrant dream of media moguls. It is the reality of a significant portion of our urban and rural populations beset by deteriorating infrastructure, changing family structures, poverty, drugs and violence at the time of shrinking public concern and dwindling government action."

¹¹⁰ Schmidt, *supra* note 16, at A-1 (emphasis added).

¹¹¹ Scruggs, *supra* note 2, at 2C.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

Most persons and scholars alike are willing to associate the early viewing of violence with eventual violent tendencies more than they are willing to link pornography and violence.¹¹⁵ However, regardless of how much of a role parents play in screening the information that children view on the Internet, scholars concur that parental supervision may have little effect.¹¹⁶ Many parents have either never used the Internet or lack the ability to navigate the Internet in a day and age where children are being taught how to master the Internet in classrooms across the nation.¹¹⁷ Thus, it might be improbable to ask parents to supervise and guide their children in an area of technology that is nearly completely foreign to the parent.

IV. PARENTAL LIABILITY

Traditionally, parents have been statutorily liable for the criminal acts of their children under the penalty of civil and sometimes criminal law.¹¹⁸ Often, parents are held liable for property damage stemming from the willful and malicious acts of their minor children.¹¹⁹ In *Izzo v. Gratton*,¹²⁰ a fifteen-year old boy struck another

¹¹⁵ *Id.*

¹¹⁶ See Hammond, *supra* note 15, at 269-71 (quoting Cokie and Steven Roberts, *Let's Give Parents the Tools to Protect Their Children*, TIMES-PICAYUNE, June 29, 1995, at B7). “[C]hildren have gained greater control over access to and manipulation of these technologies at a time when parental ability to monitor and control such access and manipulation is believed to be decreasing. [...] [A]merican parents lack sufficient time and technological expertise to monitor and control what their children see on television and cable, hear on CDs or play and interact with on their computers. Consequently [...] parents have ‘lost control over their messages and moral values that inundate the homes.’ [...] [P]arents are unprepared to respond in a meaningful fashion. As a result, parents are often at a loss to determine what their children see, hear, and interact with or to address issues of sexuality and morality which the child-media interface may raise.”

¹¹⁷ *Id.* at 269-271 (quoting Cokie and Steven Roberts, *Let's Give Parents the Tools to Protect Their Children*, TIMES-PICAYUNE, June 29, 1995, at B7). See also Salkowski, *supra* note 20, at 5. “Many adults know less about computers than do their children, who seem to pick up technical savvy like black socks pick up lint.”

¹¹⁸ See Scarola, *supra* note 9, at 1041 (citing Gilbert Geis & Arnold Binder, *Sins of Children: Parental Responsibility for Juvenile Delinquency*, 5 NOTRE DAME J.L. ETHICS & PUB. POL'Y 303, 307-12 (1991)). “[P]arents have been held civilly liable for their children’s criminal acts, often resulting in decisions requiring that the parents pay restitution for property and physical damage to victims. Civil compensatory laws provide victims with remedies against parents when juveniles are unable to pay in an attempt to compel parents to supervise their children.” See also CAL. PENAL CODE § 272 (West 1999) (imposing criminal sanctions on parent for conduct of child); COL.REC. STAT. § 19-2-133 (1999) (imposing criminal and civil sanctions on parent for conduct of child); MASS. ANN. LAWS ch. 229, § 2 (Law Co-op. 1999) (imposing civil sanctions on parent for conduct of child); MASS. ANN. LAWS ch. 231, § 85G (Law. Co-op. 1999) (imposing criminal sanctions on parent for conduct of child); N.Y. GEN. OBLIG. LAW § 3-112 (McKinney 1999) (limiting liability of parents for misconduct of children); N.Y. PENAL LAW § 260.10 (McKinney 1999) (imposing criminal and civil sanctions on parent for conduct of child).

¹¹⁹ N.Y. GEN. OBLIG. LAW § 3-112 (McKinney 1999). “[T]he parent, legal guardian, other than state or local social services department or a foster parent, having custody of an

teenager in an altercation, breaking the victim's glasses. At the time of the trial, New York State Law provided that "the parent or legal guardian[. . .]having custody of an infant over ten and less than eighteen years of age, shall, if such infant willfully, maliciously, or unlawfully damages or destroys real or personal property owned or maintained by another, be held liable for such damage or destruction in a civil action brought in a court of competent jurisdiction *unless such parent shall establish that he has exercised due diligence in the supervision of the activities of such infant.*"¹²¹ The court held that the accused boy's parent was not liable for the damage caused by their son because there was no evidence indicating any past hostile behavior by the boy that would impose any special duty upon the parent.¹²²

Shortly following this decision, the New York State Legislature amended New York General Obligations Law § 3-112 and removed the phrase "unless a parent shall establish that he has exercised due diligence in the supervision of the activities of such infant," which in 1976 allowed the parent in *Izzo* to escape liability for the property damage.¹²³ The purpose of the amended version of § 3-112 was articulated in *A. v. B.*¹²⁴ seven years later when the court stated that "[t]here is no question [. . .] than an innocent party, injured by the unlawful conduct of another, ought to be compensated for his injury and that the primary source of his compensation is, and should be, the person who caused the injury."¹²⁵ The court further stated that "[r]ecognizing the obvious inability of the average infant to answer for his misdeeds, the legislature chose to impose liability upon an infant's parents to answer, at least partially, for the actions of their child."¹²⁶ Although the court in *A. v. B.* permitted the aggrieved party to recover damages from the parents of the child, a significant public policy change occurred when

infant over ten and less than eighteen years of age, shall, if such infant willfully, maliciously or unlawfully damages or destroys real or personal property [. . .] be held liable for such damage or destruction in a civil action brought in a court of competent jurisdiction." See also MASS. ANN. LAWS ch. 231, § 85G (Law. Co-op. 1999). "Parents of an unemancipated child under the age of eighteen and over the age of seven year shall be liable in a civil action for any willful act committed by said child which results in injury or death to another person or damage to the property of another."

¹²⁰ 383 N.Y.S.2d 523 (1976).

¹²¹ *Id.* at 524. See also N.Y. GEN. OBLIG. LAW § 3-112 (McKinney 1999) (amended 1979) (emphasis added).

¹²² *Izzo*, 383 N.Y.S.2d at 524.

¹²³ *Id.*; N.Y. GEN. OBLIG. LAW § 3-112 (McKinney 1999).

¹²⁴ 121 N.Y.S.2d 992 (1983).

¹²⁵ *Id.* at 993.

¹²⁶ *Id.* at 994. A parent's responsibility is also separate and distinct from the responsibility of his child.

the court also held that the aggrieved party could *not* claim restitution solely "to compel the parent to supervise his children more closely."¹²⁷

When dangerous instruments utilized by a child are involved, courts tend to take a different view and apply more strict standards. In *Pfenning v. Agri Business Brokerage Corporation*,¹²⁸ where a thirteen-year old boy rode a gasoline-fueled motorcycle in a barn, sparking a fire and burning the barn down, the court denied a summary judgment motion by the boy's father, stating that "[a] parent owes a duty to a third person for negligent entrustment of a dangerous instrument to his child when he is aware and capable of controlling the instrument's use."¹²⁹ The *Pfenning* court further stated that "[a] parent may be liable for entrusting his child with an instrument which "is so dangerous as to constitute, in the hands of the child, an unreasonable risk to others."¹³⁰ The boy's father submitted evidence based on the boy's intelligence and experience handling a motorcycle that the motorcycle, in his son's hands, did not pose an unreasonable risk to others, particularly the risk of danger by fire.¹³¹ The court did not accept this evidence.¹³² The standards set out in this decision continue to be good law in New York. The question that this precedent presents in light of this Note is that of whether or not the Internet can be considered a dangerous instrument when use of it by children is unsupervised.

Parents have not ordinarily been held criminally liable for the criminal acts of their children stemming from negligent supervision despite the fact that parents' contributory negligence has often been a factor in apportioning liability in civil trials.¹³³ On March 6, 2000, Assemblyman Robert J. Smith sponsored and introduced the Parental Responsibility Act to the New Jersey Legislature.¹³⁴ The Parental Responsibility Act would essentially

¹²⁷ *Id.* at 995 (emphasis added).

¹²⁸ 509 N.Y.S.2d 225 (1986).

¹²⁹ *Id.* at 226.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ Scarola, *supra* note 9, at 1041-42. As of 1997, only seven states had laws that imposed criminal sanctions against parents for their failure to adequately supervise their children. These laws were primarily enacted to eliminate the lack of parental supervision. See also N.Y. GEN. OBLIG. LAW § 3-111 (McKinney 1999). "In an action brought by an infant to recover damages for personal injury, the contributory negligence of the infant's parent or other custodian shall not be imputed to the infant."; Searles v. Dardani, 347 N.Y.S.2d 662, 665 (1973). "It has long been recognized that parents, during their children's early years, have a duty to exercise reasonable care to protect them from injury. [...] The parent's obligation to the child is commensurate with the risks reasonably to be perceived, and terminates when the child attains sufficient maturity to exercise reasonable care for his or her own safety."

¹³⁴ N.J.A.B. 2189, 209th Leg. (2000).

criminalize parents or guardians of children who commit acts which, were they committed by adults, would constitute a criminal offense.¹³⁵ Parents would be punished by fines of up to \$10,000, or up to 18 months imprisonment, or both.¹³⁶

Specifically, the proposed bill requires parents to exercise reasonable supervision or control over a juvenile who is convicted of a crime or adjudicated delinquent for an act which, if committed by an adult, would constitute a crime if such failure or neglect *substantially contributed* to the commission of the delinquent act or the crime.¹³⁷ Furthermore, “[t]he court may order a parent or guardian convicted of an offense under this act to make restitution to any person or entity who has suffered a loss as a result of that offense. The court may determine the reasonable amount, terms and conditions of restitution.”¹³⁸ This act seems dangerous in that it stands to criminally penalize parents for an act, namely supervision, which has traditionally been within parental discretion and shielded parents from liability.¹³⁹ The Parental Responsibility Act fails to recognize that its penalties would inherently place a parent who ought to be supervising their child behind bars or in a situation of dire financial straits, thus contradicting the ultimate purpose of the law which is to encourage better supervision of children by parents. Parents behind bars cannot supervise the daily activities of their children any better than parents working several jobs to pay court sanctions.¹⁴⁰

A prevalent argument against the imposition of criminal sanctions against parents for the criminal misconduct of their children is that there are criminal laws in place that already punish truly criminal parents.¹⁴¹ To adopt more laws that criminally punish parents would be not only an invasion into the privacy of the parent-child family relationship, but would place good parents in fear of criminal sanctions for acts that they truly may not have been able to foresee or even prevent.¹⁴² This type of criminal regulation

¹³⁵ *Id.* The parent or guardian would be found guilty of a disorderly person offense if the juvenile for whom that parent is responsible commits an act that would, if committed by an adult, constitute a crime.

¹³⁶ *Id.*

¹³⁷ *Id.* “This offense is a crime of the fourth degree if the juvenile is convicted of a crime of the third or fourth degree or adjudicated delinquent for an act which if committed by an adult would constitute a crime or the first of second degree.”

¹³⁸ *Id.*

¹³⁹ RESTatement (SECOND) OF TORTS § 147 (1965) (current through 1997).

¹⁴⁰ Of course, this law also stands to criminally punish those parents who so severely neglect their children that the child would be better off without the parent.

¹⁴¹ See *Push to Prosecute Parents Won't Stop Violent Teens*, *supra* note 7, at 13A.

¹⁴² See Scarola, *supra* note 9, at 1046-48.

would place a chilling effect on the family relationship that the Supreme Court has previously held to be so dear to the identity of this nation.¹⁴³

States, however, continue to enforce and adopt laws that impose criminal sanctions against parents of children who commit criminal acts.¹⁴⁴ For example, New York law will find a parent guilty of a class A misdemeanor if the parent endangers the welfare of a child by failing or refusing to "exercise reasonable diligence in the control of such child to prevent him from becoming an 'abused child,' a 'neglected child,' a 'juvenile delinquent,' or a 'person in need of supervision.'"¹⁴⁵ Colorado takes a more sympathetic stance by holding a parent in contempt if the parent fails to "attend all proceedings that may be brought . . . concerning the juvenile."¹⁴⁶ A Colorado court may specify its expectations for the juvenile's parent when the parent is a party to the delinquency proceedings.¹⁴⁷ This includes expectations that parents be involved in sentencing orders, parental responsibility training, performance of public service, cost of care reimbursement, supervision of the juvenile, and "any other provision the court deems to be in the best interest of the juvenile, the parent's other children, or the community."¹⁴⁸ The latter provision allowing judicial discretion regarding the best interests of the juvenile, other children, or the community, serves as an unfortunate catch-all which essentially allows the court

¹⁴³ See *Lassiter v. Department of Social Servs.*, 452 U.S. 18, 27 (1981) (stating that parental rights deserve deference "absent a powerful countervailing interest."). See also *Lehr v. Robertson*, 463 U.S. 248, 258 (1983) ("[T]he relationship of love and duty in a recognized family unit is an interest in liberty entitled to constitutional protection."); *Santosky v. Kramer*, 455 U.S. 745, 753 (1982) ("[F]reedom in personal choice matters of family life is a fundamental liberty interest"); *Bellotti v. Baird*, 443 U.S. 622, 626 (1979); *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978) ("[T]he relationship between parent and child is constitutionally protected."); *Roe v. Wade*, 410 U.S. 113, 152-53 (1973); *Griswold v. Connecticut*, 381 U.S. 479, 482 (1965); Kathryn J. Parsley, *Constitutional Limitations on State Power to Hold Parents Liable for the Delinquent Acts of Their Children*, 44 VILL. L. REV. 441, 462-64 (1991) ("The [United States Supreme] Court has discussed the fundamental nature of parental rights in the context of state proceedings to terminate parental rights, in cases concerning the rights of unwed fathers and foster families, and in privacy concerning other family matters. The Court also has upheld parents' authority over their children in the light of challenges to that authority by the child. [...] [B]y insulating the rights of parents to control the upbringing of their children, the state serves the interests of the parents, the child, and society. [...] [P]arental rights may deserve different degrees of protection depending on which of the identified interests are present."); *Scarola*, *supra* note 9, at 1046-48.

¹⁴⁴ See *Scarola*, *supra* note 9, at 1041. See also CAL. PENAL CODE § 272 (West 1999); COL. REV. STAT. § 19-2-133 (1999); MASS. ANN. LAWS ch. 229, § 2 (Law Co-op. 1999); MASS. ANN. LAWS ch. 231, § 85G (Law. Co-op. 1999); N.Y. GEN. OBLIG. LAW § 3-112 (McKinney 1999); N.Y. PENAL LAW § 260.10 (McKinney 1999).

¹⁴⁵ N.Y. PENAL LAW § 260.10 (McKinney 1999).

¹⁴⁶ COL. REV. STAT. § 19-2-133 (1999).

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* at § 2(b)(7).

to place upon a parent duties that might not normally be imposed upon parents. It is likely that laws like this are enacted through necessity to calm current turbulent times of youth violence and unrest and to ultimately serve some sort of deterrent purpose.

In fact, many laws imposing both criminal and civil sanctions have been adopted to encourage increased parental supervision and decelerate the rapid rise in youth violence.¹⁴⁹ The foundation for holding parents civilly liable for the criminal misconduct of their children is, mainly, to compensate the injured party for a loss suffered.¹⁵⁰ Generally, the loss must be suffered as a result of the intentional conduct of a child that was both "willful and reckless."¹⁵¹

Basic tort theory traditionally provides parents with immunity from suit by their own children when parents fail to supervise a child.¹⁵² However, many states allow children to sue their own parents for failing to supervise them adequately when there is possible recovery available from insurance policies held by the parent.¹⁵³

¹⁴⁹ Scarola, *supra* note 9, at 1041.

¹⁵⁰ 12 A.L.R. 812 (Liability of parent for injury inflicted by minor child with dangerous instrumentality left accessible to him); 68 A.L.R. 2d 782 (liability of person permitting child to have gun, or leave gun accessible to child, for injury inflicted by the latter); 155 A.L.R. 85 (parents' liability for injury or damage intentionally inflicted by minor child). *See also* A. v. B., 468 N.Y.S.2d 992, 992 (1983). "Purposes of [. . .] imposing liability upon parent for offspring's willful or malicious acts are to create limited source of compensation to property owner for damages to their property and to compel parents to supervise their children more closely."

¹⁵¹ *Id.* *See also* RESTATEMENT (SECOND) OF TORTS § 316 (1965) (Duty of Parent to Control Conduct of Minor Child).

¹⁵² RESTATEMENT (SECOND) OF TORTS §§ 147, 153 (1965) (current through 1997).

§ 147 GENERAL PRINCIPLE:

- (1) A parent is privileged to apply such reasonable force or to impose such reasonable confinement upon his child as he reasonably believes to be necessary for its proper control, training, or education.
- (2) One other than the parent who has been given by law or has voluntarily assumed in whole or in part the function of controlling, training, or educating a child, is privileged to apply such reasonable force or to impose such reasonable confinement as he reasonably believes to be necessary for its proper control, training, or education, except in so far as the parent has restricted the privilege of one to whom he has entrusted the child.

§ 153 POWER OF PARENT TO RESTRICT PRIVILEGE:

- (1) One who is in charge of the control, training, or education of a child solely as the delegate of its parents is not privileged to inflict punishment which the parent has forbidden or to punish the child for doing or refusing to do that which the parent has directed the child to do or not to do.
- (2) One who is in charge of the education or training of a child as a public officer is privileged to inflict such reasonable punishments as are necessary for the child's proper education or training, notwithstanding the parent's prohibitions or wishes.

The general idea behind this statement is that there would be a negative policy effect. Parents would live in fear of suit by their own children. Thus parents and those authorized to care for children are entrusted with broad discretion when it comes to the discipline of children.

¹⁵³ *Id* at § 153.

Respondents to children's suits may also bring the parents of the child into the suit in order to show contributory negligence on the part of the parent which may exempt the respondent from total civil liability.¹⁵⁴ Ordinarily, the parents in these cross claims will not be held financially liable to the child for damages, but will instead be party to the suit to accept blame for their contributory negligence and subsequently impose liability on other respondents for respondent's damages alone.¹⁵⁵

Parents are not entirely immune from civil or criminal suit by third parties for the criminal actions of their child that harm such third parties under both traditional and current tort theory.¹⁵⁶ Under § 316 of the Restatement (Second) of Torts, “[a] parent is under a duty to exercise reasonable care so to control his minor child and 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 has reason to know of the necessity and opportunity for exercising such control.”¹⁵⁷ The age of the child does not make a parent’s duty to control the conduct of the child any less dear.¹⁵⁸ However, just because a parent is under such a duty, a parent is not implicitly under another duty to “discipline his child as to make it amenable to parental control when its exercise becomes necessary to the safety of others.”¹⁵⁹ It must be emphasized that a parent is responsible for the conduct of their child “so far as [the parent] has the ability to control it.”¹⁶⁰

For example, in *Hall v. McBryde*,¹⁶¹ a Colorado court was faced with resolving the issue of whether the parent of a nine-year old

¹⁵⁴ RESTATEMENT (SECOND) OF TORTS § 704A (1965) (Contributory Fault of Parent).

¹⁵⁵ *Id.* *Contra* Figueroa v. Wald-Baum’s, 609 N.Y.S.2d 764, 765 (1994) (“For the record, a three-year old is incapable of contributory negligence as a matter of law, and any negligence of a parent in supervising a child may not be imputed to the child”); Young v. Greenberg, 581 N.Y.S.2d 26, 27-28 (1992) (“While we agree that parental negligence which creates a risk of injury to the world at large may be actionable, [absent and indication there was a risk of injury], a claim based on appellant father’s having assumed a duty to the world at large may not be sustained”).

¹⁵⁶ RESTATEMENT (SECOND) OF TORTS § 316 (1965) (Duty of Parent to Control Conduct of Child).

¹⁵⁷ *Id.*

¹⁵⁸ RESTATEMENT (SECOND) OF TORTS § 316 cmt. c (1965). “The child may be so young as to be incapable of negligence, but this does not absolve the parent from the performance his duty to exercise reasonable care to control the child’s conduct. Indeed, the very youth of the child is likely to give the parent more effective ability to control its actions and to make it more often necessary to exercise it.”

¹⁵⁹ RESTATEMENT (SECOND) OF TORTS § 316 cmt. b (1965).

¹⁶⁰ RESTATEMENT (SECOND) OF TORTS § 316 cmt. a (1965) (emphasis added).

¹⁶¹ 919 P.2d 910 (1996).

boy who shot another young boy with the nine-year old boy's father's gun was liable to the victim's family for failure to supervise the nine-year old boy.¹⁶² The court required that a claim for relief founded on negligence required that (a) the defendant to conform to a standard of conduct for the protection of others against risks, (b) there was a failure or breach of duty by the defendant to conform to the standard required by law, (c) a *sufficient* causal connection between the offensive conduct and resulting injury existed, and (d) an actual loss or damage to the plaintiff occurred.¹⁶³ After applying this very traditional negligence standard, the court found that the parents of the nine-year old boy were not liable to the victim's family because there was failure to find a sufficient causal link between the offensive conduct and resulting injury.¹⁶⁴

V. APPLICATION OF THE LAW

"Let me tell you this much, they have no clue. So don't blame them and arrest them for what we did."¹⁶⁵

In this portion of the note, I will discern whether or not parents should be held civilly or criminally liable for the criminal misconduct of their children if and when that conduct was essentially unforeseeable by using laws and proposed law mentioned earlier in this discussion. One of the major difficulties in proving that parents should be held liable for the criminal misconduct of their children, such as the high school shootings mentioned in section II (A) of this note, is found in proving whether or not any sort of criminal misconduct by the child was truly foreseeable or unforeseeable in light of the argument that the Internet is virtually uncontrollable by parents with respect to what their children view.¹⁶⁶ Many parents argue that they cannot shield their children from

¹⁶² *Id.*

¹⁶³ *Id.* at 912.

¹⁶⁴ *Id.* at 913.

¹⁶⁵ Michael Janofsky, *Columbine Killers, on Tape, Thanked 2 for Gun*, N.Y. TIMES, Nov. 13, 1999, at A1 (quoting Dylan Klebold who, with Eric Harris, killed fellow classmates of Columbine High School and left video taped messages which clearly stated their plans for the shootings on April 20, 1999). It is believed that Klebold made this statement to "ensure that none of his or Mr. Harris' family members would be charged in the shooting."

¹⁶⁶ See Donahue, *supra* note 12, at 1-D (citing a poll conducted by Diane Lane and published in her book "Remote Control Childhood"). "Although 75% of those polled say that they have taken specific steps to [shelter their children from outside influences], almost the same number — 73% — concede that limiting children's exposure to popular culture is 'nearly impossible.' [...] In part, they blame technology that has exploded in children's lives [...] Parents fear [that television, movies, video, and computer games] isolate their children. And they fear the messages they send about sex, violence and materialism."

outside influences that are deemed undesirable.¹⁶⁷ Thus, technically speaking, how can the violence stemming from the Internet possibly be foreseeable if it is not susceptible to control? This is one of the main flaws with parental liability laws today.

In order to render a fair argument, one must first examine the issues underlying juvenile delinquency in light of societal norms. "The notion that parents can create delinquent children does not appear [...] to provide a satisfactory basis for the assumption that punishing parents will break the chain or will induce other parents to pay greater heed to their offsprings' waywardness."¹⁶⁸ Although delinquent behavior can often be attributed to the limited resources of a family including marital discord, the loss of a partner, social isolation, a lack of support from outside the nuclear family, poor parental physical or mental health, and socio-economic status, studies indicate that the manner in which a child is raised "has less bearing on the subsequent delinquency than the child's rejection of the parent or the parent's rejection of the child."¹⁶⁹

However, "[w]hile parents may be able to counteract a rebellious attempt by the child to assert his own personality, there are often other conditions which determine the child's behavior and which are outside the reach of the parents."¹⁷⁰ The notion that there are inadequate parents who sometimes raise respectable children does not satisfactorily challenge the notion that punishing those who seemingly fail to do so is fair.¹⁷¹

A. Negligence and Parental Supervision

The basic standard for a claim against a parent for negligent supervision of a child is set out in *Hall v. McBride*.¹⁷² The four basic elements include the establishment of a legal duty, a breach of that duty, a sufficient causal connection between the breach of said

¹⁶⁷ *Id.*

¹⁶⁸ Gilbert Geis & Arnold Binder, *Sins of Their Children: Parental Responsibility for Juvenile Delinquency*, 3 NOTRE DAME J.L. ETHICS & PUB. POL'Y 303, 318 (1991).

¹⁶⁹ *Id.* (citing Loeber and Stouthamer-Loeber, *Family Factors as Correlates and Predictors of Juvenile Conduct Problems and Delinquency*, 7 CRIME AND JUSTICE: AN ANNUAL REVIEW OF RESEARCH 29, 30 (M. Tonry & N. Morris, eds. 1989)).

¹⁷⁰ Michelle L. Maute, *New Jersey takes Aim at Gun Violence by Minors: Parental Criminal Liability*, 26 RUTGERS L.J. 431, 432 (1995) (quoting Patterson & Dishion, *Contributions of Families and Peers to Delinquency*, 23 CRIMINOLOGY 63 (1985)). "When a teenager skips school, hangs out at a pool hall, joyrides, drinks, smokes pot, and steals from stores, it should be no great surprise that he does not tell his parents little about his day [...] No matter how hard they try, mothers and fathers cannot penetrate the secrecy, and they discover that they do not know their child."

¹⁷¹ Geis, *supra* note 168, at 317 n.77.

¹⁷² 919 P.2d at 912.

duty, and an actual loss or damage to the plaintiff.¹⁷³ Using the example of the high school shootings, under most basic negligence laws, only one of the four elements required for a negligence claim against a parent for negligent supervision is quickly established.¹⁷⁴ There has been an actual loss or damage to the plaintiff(s) in losing a child.¹⁷⁵

B. Establishing a Duty

The first three elements of the claim are more difficult to establish because they first require the finding of a legal duty on the part of the parent. The Restatement (Second) of Torts § 147 requires that a parent exercise such reasonable force upon his or her child as the parent deems necessary for the child's proper control, training, or education.¹⁷⁶ This standard requires that the parent determine the amount of control that is necessary for the child.¹⁷⁷ A parent unaware of the fact that their child may access violent material on the Internet might not think that he or she need to control their child's use of the Internet. Furthermore, the fact that a jury in negligence cases may retroactively define "reasonable control" with regard to the Internet is quite disturbing. A parent may not think it reasonable to install a filter onto their home computer whereas a jury might find it reasonable that a parent constantly watch his or her child and control the sites which the child may view, hands-on.

Under § 3-112 of the New York General Obligations Law, the language which required a parent to exercise reasonable care and due diligence in the supervision of the child's activities was eliminated.¹⁷⁸ Thus, there is no need to establish a duty in the State of New York for the parent of a child who "willfully, maliciously, or unlawfully damages or destroys real personal property owned by another."¹⁷⁹ The fact that one is a parent or guardian alone establishes the duty. However, this is only in the case of damage to real or personal property stemming from the unlawful conduct of a child.

New York Penal Law § 260.10 requires that a parent exercise reasonable diligence in the control of a child so as to prevent the

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ Belkin, *supra* note 1, at 63-65.

¹⁷⁶ RESTATEMENT (SECOND) OF TORTS § 147 (1965).

¹⁷⁷ *Id.*

¹⁷⁸ N.Y. GEN. OBLIG. LAW § 3-112 (McKinney 1999).

¹⁷⁹ *Id.*

child from becoming an abused or neglected child, a juvenile delinquent, or a person "in need of supervision."¹⁸⁰ Thus, the duty imposed is one of a reasonable diligence. Yet this duty also presents problems because it is stated in such a manner that would not allow a parent to understand what diligence is reasonable in preventing their child from becoming harmful to others. Similar to § 147 of the Second Restatement of Torts, a parent under the New York Penal Law standard is required to predict which type of control is necessary for their child in light of ever changing technology about which the child may know more than the parent.¹⁸¹ Does this impose a duty upon the parent to hover over a child surfing the web, to install a filter, or to cut off all Internet use by the child?

The proposed New Jersey Parental Responsibility Bill requires a parent to recklessly fail to or negligently exercise reasonable supervision or control over the juvenile¹⁸² while the Colorado standard, admitting that families play a significant role in the cause, cure and behavior of children¹⁸³, clearly states the a parent is not liable for the torts committed by his or her child simply because a parent-child relationship exists.¹⁸⁴ Instead, a parent in Colorado must, when a child has a known propensity to commit a potentially harmful act, exercise reasonable care to prevent the child from causing harm to third parties.¹⁸⁵

While the New Jersey Parental Responsibility Bill poses problems similar to those presented by the Restatement (second) of Torts § 147 and New York Law, the Colorado standard, though slightly more severe in penalty, imposes a somewhat clearer standard.¹⁸⁶ The parent, instead of having to guess aimlessly at which supervision is necessary to control his or her child, must only exercise reasonable care when the child views violent sites on the Internet and has a *known* propensity to commit a potentially harmful act.¹⁸⁷ In this case, a parent who knows that a child has a propensity toward violence might have cause to discipline the child and perhaps install a Internet content filter or forbid the child from

¹⁸⁰ N.Y. PENAL LAW § 260.10 (McKinney 1999).

¹⁸¹ See Hammond, *supra* note 15, at 269.

¹⁸² N.J.A.B. 2189, 209th Leg. (2000).

¹⁸³ COL. REV. STAT. § 19-2-133 (1999).

¹⁸⁴ *Hall*, 919 P.2d at 913.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ COL. REV. STAT. § 19-2-133 (1999).

using the Internet.¹⁸⁸ The Colorado statute is similar to § 316 of the Second Restatement of Torts.¹⁸⁹

C. Breach of Duty

Once a duty has been established for parents to supervise their children, it is ordinarily significantly easier to determine whether or not there has been a breach of said duty. If a judge or jury decides that a standard of reasonable care requires a parent to supervise their child on the Internet or to install software that would serve a similar purpose, then a breach of this duty might ordinarily be obvious. However, juries do not naturally decide “reasonable standards” in a consistent manner, thus providing parents with an fluctuating standard of which they would have no notice.¹⁹⁰ This is a common problem that the laws of negligence consistently present. Retroactive law making and lack of notice violate the accepted principles of legality.¹⁹¹

D. Finding a Causal Link

The question of causation is a difficult one to answer. Causation is generally split into two sub-parts. First, a determination that parents breach of duty *actually* caused the damage to plaintiffs must be made.¹⁹² Following such determination, one must find that the breach of duty by the parent *proximately* caused the damage to plaintiffs.¹⁹³ Proximate cause generally takes the form of foreseeability wherein the question posed is whether the parent could have reasonably foreseen the damage to plaintiffs.¹⁹⁴

A child's age is a significant factor in determining whether risk of damage stemming from Internet use is foreseeable.¹⁹⁵ Teenagers are often more independent from their parents and parents cannot control the behavior of teens as easily as they can small childrens'.¹⁹⁶ “The parent's obligation to the child is commensurate with the risks to be reasonably perceived, and terminates when the

¹⁸⁸ *Id.*; RESTATEMENT (SECOND) OF TORTS § 147 (1965).

¹⁸⁹ COL. REV. STAT § 19-2-133 (1999); RESTATEMENT (SECOND) OF TORTS § 316 (1965).

¹⁹⁰ See generally *Developments in the Law: The Civil Jury*, 110 HARV. L. REV. 1408, 1513 (1997).

¹⁹¹ SANFORD H. KADISH & STEPHEN J. SCHULHOFER, CRIMINAL LAW AND ITS PROCESSES 549 (6th ed. 1995).

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ RESTATEMENT (SECOND) OF TORTS § 316 cmt. c (1965).

¹⁹⁶ See *Searles v. Dardini*, 347 N.Y.S.2d 662, 665 (1973).

child attains sufficient maturity to exercise reasonable care for his or her own safety."¹⁹⁷

Whether a failure to exercise reasonable care is an actual cause of damage to plaintiffs is ordinarily the easier of the two sub-parts of causation to determine. The court must ask, but for the respondent's failure to exercise a standard of care, would the damage to plaintiff would have occurred? As argued in parts I and II of this note, in the case of violence stemming from unsupervised use of the Internet, this question is not so easy to answer. Though there is a presumption that violent behavior results from viewing violent material, there is little statistical data to prove such a contention.¹⁹⁸ Therefore, it is necessary that actual cause be found when it is clear that a child's willful or malicious criminal acts stemmed directly from use of the Internet which the parent failed to supervise. For example, if a child visited a web site that instructed the child how to build a bomb and place it in his school cafeteria at lunch time, while his parents were absent, and the child did so, then and only then should actual cause be found.

Whether or not a parent's failure to supervise his or her child is a proximate cause of the damage done by a child, such as the one mentioned in the previous paragraph, is more difficult to determine. The question presented is whether a parent could foresee his or her child causing damage to a cafeteria of children because the parent failed to regulate what the child viewed on the Internet. For example, in *Hall v. McBryde*¹⁹⁹, a father who hid a gun under his mattress was not found liable to the parents of a boy that his son shot after discovering the loaded gun in his home because the plaintiffs failed to show that the father's lack of supervision was a proximate cause of the fatal injury.²⁰⁰

When attempting to understand proximate cause with regard to violence stemming from unsupervised use of the Internet, one may reasonably conclude that parents are essentially required to know that their child is so easily influenced by material on the Internet and so indifferent to human life, that a parent could foresee an act of violence stemming therefrom. In other words, the law essentially asks parents to do the impossible by playing psychic. The only equitable solution to this dilemma is to find proximate cause when a parent knows that their child is visiting sites that encourage or directly cause violent behavior. Failure to do so would

¹⁹⁷ *Id.*

¹⁹⁸ See Hammond, *supra* note 15, at 267.

¹⁹⁹ 919 P.2d 910 (1996)

²⁰⁰ *Id.*

result in punishing a parent who could not and should not possibly be expected to know that failing to supervise his or her child would result in harm to others by his or her child.

VI. CONCLUSION

Parental liability laws are not equipped to handle the Internet and its unfortunate results. Although parents who have suffered the loss of a child at the hands of another child deserve some form of compensation for such a loss, the parents of criminal children should not in all fairness be asked to predict the unpredictable. The very nature of the Internet prevents parents from controlling everything which his or her child may view absent constant parental supervision. Parents of victims are still free to recover damages from parents under other legal theories such as recklessness which fairly require that a parent know of a dangerous risk and consciously disregard that risk.²⁰¹

By criminally punishing a parent for negligently supervising their child on the Internet, we are essentially punishing a person absent any form culpability. By civilly punishing parents for such negligent supervision we are essentially doing the same. Criminal and civil parental liability laws for negligent supervision must be modified so that they may take into account the turbulent nature of the Internet. Then and only then can a parent who has failed to supervise their child's use of the Internet be fairly prosecuted for their child's criminal misconduct.

²⁰¹ KADISH & SCHULHOFER, *supra* note 191, at 549.