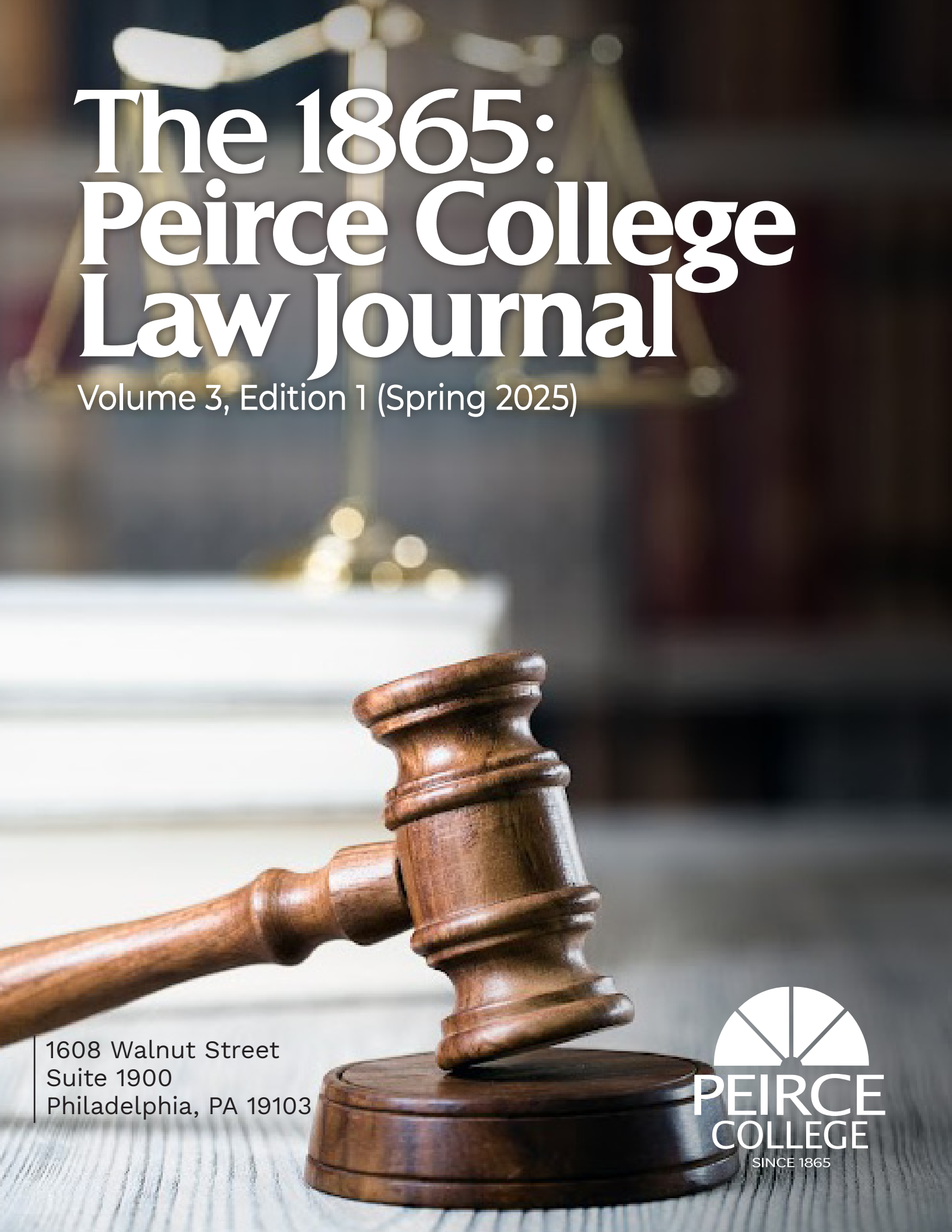

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THE 1865
PEIRCE COLLEGE LAW JOURNAL [1]

[1] *The 1865: Peirce College Law Journal* uses outside editors (practicing attorneys) for the Journal's double-blind, peer-review process.

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— HISTORY OF THE LEGAL STUDIES PROGRAM —

Peirce College was established in 1865 as Union Business College to provide career-focused education for soldiers returning from the Civil War and was one of the country's first schools to embrace women as students.[1]

As the College grew, it was renamed the Peirce College of Business and moved to larger facilities. Growth led to distinction with honors in the form of awards and well-known commencement speakers visiting Peirce for graduation ceremonies, like John Wanamaker, Andrew Carnegie, and ex-presidents, including Benjamin Harrison, Grover Cleveland, Theodore Roosevelt, and William Howard Taft.[2]

Through the 1970s and '80s, Peirce's success was fueled by interest in its practical business and technology programs. While Peirce continued to be a leader in business education, Peirce established a paralegal studies program in 1985—one of the first paralegal programs in the region. After the Paralegal Program gained approval from the American Bar Association (ABA), the Program quickly became one of Peirce's more popular offerings.

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In keeping with its reputation as a leading legal studies educator in the region, Peirce College offers this publication—*The 1865: Peirce College Law Journal*. *The 1865,* now in its third volume, provides a forum for compelling issues, trends, and topics in the legal field as well as specific topics in the paralegal profession. *The 1865* also provides our student editors with invaluable education in legal research, legal writing, and legal citations.

In addition to the Journal, *The 1865* also has an online component.[4] The online component serves as a forum for the articles

[1] Peirce is designated as a Minority Serving Institution (MSI) by the U.S. Department of Education and is the only college or university in Pennsylvania dedicated exclusively to serving working-adults.

[2] Taft was also Chief Justice of the United State Supreme Court.

[3] The ABA (the American Bar Association) is the preeminent organization for legal academic programs. *See* https://www.americanbar.org/.

[4] *See*: https://www.peirce.edu/blog/2022/11/the-1865-peirce-college-law-journal/

in the Journal and a host for short-form writings and discussions on issues, trends, and developments in the legal field. With these ventures, Peirce College will no doubt continue to be a leader in legal studies education in this region and beyond.

– ABOUT THE LAW JOURNAL –

The 1865: Peirce College Law Journal is a student-run, double-blind peer-reviewed law journal that provides a forum for original articles written by attorneys, paralegals, legal professionals, legal scholars, alumni, professors, and law enforcement. The Journal publishes once a year. *The 1865* addresses compelling issues, trends, and topics in the legal field as well as specific topics in the paralegal profession.

The Journal staff consists of a faculty advisor, a technical advisor, and a handful of current Peirce College students. Each year, Peirce College's Legal Studies Department selects three to five students to run the Journal as staff editors. The students are selected based on their outstanding academic achievements and writing abilities. The staff editors elect an editor-in-chief. Students may also be admitted to the Journal by authoring an article suitable for publication (i.e., "writing on"). For the Journal's double-blind, peer-review process, the Journal uses "outside editors" (practicing attorneys).

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[5] Note that articles sent by regular mail will not be accepted.

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[6] https://www.peirce.edu/degrees-programs/undergraduate/legal-studies/the-1865-peirce-college-law-journal

ARTICLES, COMMENTS, & ESSAYS

NAVIGATING DOXING LAWS IN THE INTERNET AGE: A Case Study on the Application and Challenges of Civil Liability for Doxing

By Ryan Plummer[1]

I. INTRODUCTION

In today's digital era, the rapid growth of social media and online communication platforms have transformed the dissemination, sharing, and access to information. While these advancements offer numerous benefits, they have also led to new forms of online harassment and privacy violations, including doxing. Doxing, also spelled "doxxing," is defined as "to publicly identify or publish private information about (someone), especially as a form of punishment or revenge" and has become a prevalent issue in the internet age, posting significant challenges to personal safety, privacy, and reputation.[2]

The recent Illinois Civil Liability for Doxing Act, effective January 1, 2024, aims to provide legal recourse for victims of doxing by imposing civil liability on individuals who engage in such malicious acts.[3] This article examines the application of the Act in the case of *D'Ambrosio v. Meta Platforms, Inc.*, involving Nikko D'Ambrosio, who claims he was targeted by disparaging posts and false accusations online.[4] This case tests the boundaries of newly enacted legislation, highlighting the complex interaction between individual rights to privacy and the protections afforded by Section 230 of the Communications Decency Act to online platforms, setting a precedent for how similar cases might be handled in the future.[5] This case draws public attention due to its implications for the accountability of social media platforms in cases of online harassment and defamation, potentially influencing future legal standards for internet conduct and platform responsibility. Through analysis of the case, this article seeks to evaluate whether the Act strengthens D'Ambrosio's legal position and explores the potential challenges in applying the act to social media conduct.

II. SOCIAL MEDIA AS THE MODERN PUBLIC SQUARE

[1] Peirce College B.S. in Paralegal Studies student (expected graduation, Fall 2025). I am deeply grateful to my family and friends, especially my husband Bill, for their unwavering support and encouragement.

[2] "Dox." *Merriam-Webster.com Dictionary*, Merriam-Webster, https://www.merriam-webster.com/dictionary/dox. Accessed 23 Mar. 2024.

[3] 740 Ill. Comp. Stat. Ann. 195.

[4] *D'Ambrosio v. Meta Platforms, Inc.*, No. 1:24-cv-00200 (N.D. Ill. January 8, 2024) (https://www.courtlistener.com/docket/68144026/d-ambrosio-v-meta-platforms-inc/).

[5] 47 U.S.C.A. § 230 (West).

Social media platforms have evolved into the modern "public square," where individuals engage in public discourse, share ideas, and connect with others.[6] However, this transformation has also given rise to complex legal and ethical challenges, including online defamation and free speech. For example, in *Packingham v. North Carolina*, the Supreme Court held that a North Carolina law that restricted registered sex offenders from accessing social networking websites was unconstitutional as it "prevent[s] the user from engaging in the legitimate exercise of First Amendment rights."[7]

Further, several landmark cases have shaped the landscape of online defamation and free speech. For instance, in *New York Times Co. v. Sullivan,* the Supreme Court established the "actual malice" standard, significantly raising the bar for public officials seeking to win defamation lawsuits. This standard requires that for a public official to succeed in a defamation claim, they must prove that the defamatory statement was made "with knowledge that it was false or with reckless disregard of whether it was false or not."[8] The Court reasoned that this standard was necessary to ensure "uninhibited, robust, and wide-open" debate on public issues, even if it sometimes includes "vehement, caustic, and unpleasantly sharp attacks on government and public officials"[9] This decision has had a profound impact on libel law and the protection of free speech in the United States,

Another significant case, *Zeran v. America Online, Inc.*, dealt with the liability of online service providers for third-party content.[10] The court ruled that online platforms are generally not liable for the defamatory statements made by their users, thanks to Section 230 of the Communications Decency Act.[11] Further, the Supreme Court in *Reno v. ACLU* addressed the regulation of indecent and harmful content online.[12] There, the Court struck down provisions of the Communications Decency Act that sought to regulate online speech, emphasizing the importance of First Amendment protections in the digital realm.[13] These precedents offer insights into the Courts' efforts

[6] "[T]o what for many are the principal sources for knowing current events, checking ads for employment, speaking and listening in the modern public square, and otherwise exploring the vast realms of human thought and knowledge." *Packingham v. North Carolina*, 582 U.S. 98, 107 (2017).

[7] *Id.* at 108.

[8] To meet the "actual malice" standard: (a) the defendant knew the statement was false when they made it, or (b) the defendant acted with reckless disregard for the truth, meaning that they had serious doubts about the statement's accuracy but published it anyway. *New York Times Co. v. Sullivan*, 376 U.S. 254, 280 (1964).

[9] *See New York Times, supra,* at 270.

[10] *Zeran v. Am. Online, Inc.*, 129 F.3d 327 (4th Cir. 1997).

[11] *Id.* at 331; *see also* 47 U.S.C.A. § 230 (West).

[12] *Reno v. Am. Civ. Liberties Union*, 521 U.S. 844 (1997).

[13] "As a matter of constitutional tradition, in the absence of evidence to the contrary, we presume that governmental regulation of the content of speech is more likely to interfere with the free exchange of ideas than to encourage it. The interest in

to balance free speech rights with protections against defamation and privacy invasion in online communication.

III. THE ILLINOIS CIVIL LIABILITY FOR DOXING ACT

Enacted on January 1, 2024, the Illinois Civil Liability for Doxing Act ("Illinois Doxing Act"), aims to combat the malicious dissemination of personal information, or doxing, by imposing civil liabilities on individuals and entities engaged in such practices.[14] The Illinois Doxing Act seeks to protect individuals' privacy and safety in the digital age by establishing legal consequences for those who intentionally disclose someone's private information without consent.[15] For an action to be considered doxing under The Illinois Doxing Act, the information must be published with the intent to harm or harass the person whose information is published.[16] Additionally, the publisher must act with knowledge or reckless disregard that the person whose information is published would be reasonably likely to suffer death, bodily injury, or stalking.[17] Furthermore, the person whose information is published must be identifiable from the published personally identifiable information itself.[18]

The Illinois Doxing Act allows victims of doxing to bring a civil lawsuit against the individual who committed the offense or any entity that directed and benefited from the doxing.[19] The victim can seek damages, including recovery of economic injury, emotional distress damages, attorney's fees, and other relief like temporary restraining orders or injunctions to prevent further disclosure of their personal information.[20] The Illinois Doxing Act is part of a broader movement across the United States to provide legal protections against online harassment and privacy violations. Similar legislative efforts have been observed in other states, such as California, which has introduced a bill allowing doxing victims to sue for damages up to $30,000, court costs, and attorneys' fees.[21] These legislative efforts reflect a growing recognition of the need to update legal frameworks

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encouraging freedom of expression in a democratic society outweighs any theoretical but unproven benefit of censorship." *Id.* at 885.

[14] 740 Ill. Comp. Stat. Ann. 195/.

[15] 740 Ill. Comp. Stat. Ann. 195/20.

[16] 740 Ill. Comp. Stat. Ann. 195/10(a)(1).

[17] *Id.*

[18] 740 Ill. Comp. Stat. Ann. 195/10(a)(3).

[19] 740 Ill. Comp. Stat. Ann. 195/15(a).

[20] *Id.*

[21] Mike Blount, *Assemblymember Ward Introduces Bill to Provide Recourse for Doxing Victims* A78.Asmdc.org. (Apr. 2, 2024) (https://a78.asmdc.org/press-releases/20240402-assemblymember-ward-introduces-bill-provide-recourse-doxing-victims).

to address the challenges posed by digital communication and social media platforms.

While the Illinois Doxing Act shares similarities with other state laws aimed at combating online harassment, there are notable differences in the scope, penalties, and specific provisions of these laws. The Illinois Doxing Act specifically targets the act of doxing by defining it in legal terms and setting clear criteria for what constitutes a violation.[22] This focus on doxing distinguishes it from broader anti-harassment or cyberbullying laws in other states that may not explicitly address doxing.[23] Currently, forty-eight states have specific cyberbullying or online harassment laws, with forty-five including criminal sanctions for cyberbullying or electronic harassment.[24] The Illinois Act allows for a wide range of relief for victims, including monetary damages and injunctions to prevent further harassment. This is similar to the approach taken by Kentucky and Oregon laws, which also specify punitive damages and legal fees.[25] However, the exact amounts and types of relief can vary significantly between different states' laws. Like its counterparts in other states, the Illinois Act attempts to navigate the complex interplay between protecting individuals' privacy and upholding free speech rights.[26] The Act is designed to ensure that it does not prohibit any activity protected under the Constitution, reflecting a careful balance between legal and ethical considerations. [27]

The emergence of laws like the Illinois Doxing Act signifies a broader legislative movement toward recognizing and addressing the unique challenges posed by the digital age. Various states have enacted or are considering laws specifically targeting doxing or related forms of online harassment. For instance, Maryland, Nevada, Oregon, and Washington have passed similar laws with the help of organizations like the Anti-Defamation League (ADL), which has been instrumental in pushing for such legislation.[28] Similarly, Maryland's "Grace's Law 2.0" increases penalties for cyberbullying and includes provisions

[22] 740 Ill. Comp. Stat. Ann. 195/5.

[23] Utah Code Ann. § 76-9-201 criminalizes electronic communication harassment, including repeated unwanted contact, threats, and publishing personal information without consent, with the intent to intimidate, abuse, or disrupt, classifying it as a misdemeanor offense with escalating penalties for subsequent violations.

[24] Cyberbullying Research Center, *Bullying and Cyberbullying Laws Across America,* Cyberbullying Research Center (Jul. 11, 2024) (https://cyberbullying.org/bullying-laws).

[25] Ky. Rev. Stat. Ann § 525.085 (West); Or. Rev. Stat. Ann. § 30.835 (West).

[26] Katabella Roberts, *Illinois Gov. Pritzker Signs into Law Anti-Doxing Act Amid Concerns Over Free Speech Implications,* The Epoch Times (Aug. 17, 2023), (https://www.theepochtimes.com/us/illinois-gov-pritzker-signs-into-law-anti-doxing-act-amid-concerns-over-free-speech-implications-5471843).

[27] 740 Ill. Comp. Stat. Ann. 195/30; Ky. Rev. Stat. Ann. § 525.085(5) (West).

[28] Anti-Defamation League, *Doxing Should Be Illegal. Reporting Extremists Should Not,* www.adl.org (Jan. 15, 2021) (https://www.adl.org/resources/blog/doxing-should-be-illegal-reporting-extremists-should-not).

against the creation of fake social media profiles to harass a minor, with penalties including fines and imprisonment.[29] Nevada's Assembly Bill 296 establishes the crime of doxing and allows victims to bring civil actions to recover damages and attorney's fees, with penalties varying based on the severity of the harm caused.[30] These state-level initiatives underscore the importance of localized efforts in shaping the legal landscape for digital rights and privacy protections.[31] As more states adopt similar laws, there may be increased momentum for federal legislation to provide uniform protections against doxing and other forms of online harassment.[32]

IV. *D'AMBROSIO V. META PLATFORMS, INC.*

The lawsuit filed by Nikko D'Ambrosio against more than fifty defendants, including Meta Platforms, revolves around several disparaging posts about him in a Facebook group called "Are We Dating the Same Guy?"[33] The posts, which include his first name, photos, and screenshots of text messages that D'Ambrosio sent to one defendant, allegedly damaged his reputation and ignited a legal battle over defamation, privacy invasion, intellectual property rights, and platform owner responsibilities.[34]

D'Ambrosio's attorneys argue that the disparaging posts contain false and defamatory statements not protected under the First Amendment.[35] His attorneys emphasize the emotional distress and

[29] Todd K. Mohink, PA, *Maryland Cyberbullying and Cyberstalking Laws,* Law Offices of Todd K. Mohink, PA (May 13, 2024) (https://www.marylandlawhelp.com/maryland-cyberbullying-and-cyberstalking-laws/).

[30] Assembly Bill 296 establishes a civil cause of action allowing individuals to sue for damages if their personal identifying or sensitive information is disseminated without consent, with intent to cause harm or facilitate criminal activity, while providing certain exemptions for protected speech and reporting of unlawful conduct. Assemb. 296, 81st Reg. Sess. (Nev. 2021).

[31] *Id.*

[32] Hannah Shankman, *How to Close Pandora's Dox: A Case for the Federal Regulation of Doxing*, 33 U. Fla. J.L. & Pub. Policy 273, 296 (2023).

[33] *D'Ambrosio v. Meta Platforms, Inc.*, No. 1:24-cv-00200.

[34] *D'Ambrosio v. Meta Platforms, Inc.*, No. 1:24-cv-00200, p. 16.

[35] Screenshot submitted under Exhibit C, page 4 contains a post from "Anonymous Member"—"We met organically in Chicago two and a half months ago. Very clingy very fast. Flaunted money very awkwardly and kept talking about how I don't want to see his bad side, especially when he was on business calls. He came to see me yesterday, and I explained how I didn't really want to stay the night I just wanted to spend the day together. And this was his response." "Anonymous member After I blocked his number, he texted me on another one. Which is the other text screenshot." Screenshot submitted under Exhibit C, page 3 contains a post from Hannah Eve: "I went out with him a few times just over a year ago—he told me what I wanted to hear until I slept with him and then he ghosted.... I'd steer clear." Underneath is another post by Marnie Knouse: "He's been posted here before. The poster said he sent her a slew of texts calling her names because she didn't want

harm that the posts caused, asserting that the speech infringes upon D'Ambrosio's rights to privacy and reputation.[36] Based on the provisions of the Illinois Doxing Act, the attorneys argue that the defendants violated the Act by intentionally publishing D'Ambrosio's personally identifiable information without his consent and with the intent to harm or harass him.[37]

The Illinois Doxing Act potentially offers D'Ambrosio a legal foundation for seeking redress against those responsible for the online posts and false accusations. Under the Act, an individual engages in doxing when they intentionally publish another person's personally identifiable information without consent, with the intent to harm or harass, and causing significant economic injury, emotional distress, or substantial life disruption.[38] In D'Ambrosio's case, the disparaging posts and accusations likely meet the criteria outlined in the Act. The Illinois Doxing Act allows aggrieved individuals to bring civil action against those who committed the offense of doxing or any individual or entity knowingly benefiting from a violation of the Act.[39]

However, several challenges exist in applying the Illinois Doxing Act to some defendants in this case. The inclusion of Meta Platforms may conflict with Section 230 of Title II of the Communications Act of 1934, which protects online platforms from liability for content posted by their users.[40] Further, there is the question as to whether statements made about D'Ambrosio were made "with the intent that it be used to harm or harass the person whose information is published and with knowledge or reckless disregard that the person whose information is published would be reasonably likely to suffer death, bodily injury, or stalking."[41] It could be argued that the personally identifiable information shared in the group posts was freely available through his online dating profile, which was the source of the photos shared.[42] As the Supreme Court noted in *Cox Broad. Corp. v. Cohn* "interests in privacy fade when the information involved already appears on the public record."[43]

V. LEGAL AND ETHICAL IMPLICATIONS

to spend the night with him. I just searched and this was on November 2nd so take a look!"

[36] *D'Ambrosio v. Meta Platforms, Inc.*, No. 1:24-cv-00200, p. 18.

[37] 740 Ill. Comp. Stat. Ann. 195/10.

[38] *Id.*

[39] 740 Ill. Comp. Stat. Ann. 195/15.

[40] 47 U.S.C.A. § 230 (West).

[41] 740 ILCS 195/10(a)(1).

[42] *D'Ambrosio v. Meta Platforms, Inc.*, No. 1:24-cv-00200, pp. 31–37.

[43] *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 494–95 (1975).

While the First Amendment protects freedom of speech, including online expression, the courts have recognized that carefully crafted laws can address harmful online behavior like harassment and doxing without violating constitutional rights. A key example comes from the case of *United States v. Moreland*.[44] In this case, the court upheld the conviction of a man who engaged in cyberstalking and made online threats against a journalist and author working in Washington, D.C. The court ruled that the federal cyberstalking statute used to prosecute him was constitutional and did not violate the First Amendment.[45] Specifically, the Fourth Circuit stated:

> The [cyberstalking] statute does not criminalize a defendant's mere transmission of communications that could be perceived by anyone as merely annoying or insulting. Instead, a conviction under the statute requires proof beyond a reasonable doubt that his communications caused, attempted to cause, or were reasonably expected to cause substantial emotional distress and that such transmissions were made with the intent to intimidate, harass, or injure.[46]

The court emphasized that the law targeted the conduct of harassment and intimidation, not protected speech. It also noted that any impact on speech was incidental to addressing harmful conduct.[47]

The First Amendment safeguards a wide range of expression, including speech that may be deemed offensive or unpopular.[48] Overly broad restrictions on online speech could inadvertently censor legitimate discourse, political commentary, or artistic expression. Striking the right balance between protecting individuals from harm and preserving free speech requires clear definitions, narrow tailoring, and robust safeguards to prevent overreach or selective enforcement.[49] In the article "Thinking Outside the Dox: The First Amendment and the Right to Disclose Personal Information," the authors argue that while the government has a legitimate interest in protecting individuals from true threats and invasions of privacy, laws aimed at curbing doxing must be carefully crafted to avoid infringing upon

[44] *U.S. v. Moreland*, 207 F. Supp. 3d 1222 (N.D. Okla. 2016).
[45] 18 U.S.C.A. § 2261A (West).
[46] *See Moreland*, 207 F. Supp. 3d at 1229.
[47] *Id.*
[48] United States Courts, W*hat Does Free Speech Mean?* (Jul. 03, 2024) (https://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/what-does).
[49] Distinguished Panelists, Private Control over Public Discourse, 34 Regent U.L. Rev. 539, 557 (2022).

constitutionally protected speech.[50] The authors contend that the disclosure of personal information about public figures or those involved in matters of public concern should receive strong First Amendment protection, even if the disclosure causes emotional distress or reputational harm.[51]

The Illinois Doxing Act attempts to strike a balance by prohibiting the intentional publication of another person's personally identifiable information without consent, with the intent to harm or harass, while also ensuring that the Act does not prohibit any activity protected under the Constitution.[52] Collaboration between social media platforms, law enforcement agencies, and legal authorities could enhance efforts to combat doxing and online harassment, creating a safer online environment that respects free speech rights and individual privacy.[53]

VI. CONCLUSION

Key findings indicate that the Illinois Doxing Act provides a valuable legal framework for addressing the growing concerns of online harassment and doxing. The Illinois Doxing Act strengthens individuals' protections against the unauthorized disclosure of their personal information.[54] However, challenges exist in its application to social media conduct due to the complexities of regulating online behavior and the limitations imposed by existing laws, such as Section 230 of the Communications Act of 1934.[55]

The regulation of online conduct, including the prevention of doxing and online harassment, requires continued legal and societal dialogue. While the Civil Liability for Doxing Act represents a step in the right direction, ongoing efforts to adapt and refine existing laws and policies are essential. Collaboration among various stakeholders, including lawmakers, legal experts, social media platforms, and civil society organizations, is crucial in shaping effective and balanced regulations that reflect the evolving nature of online communication and technology.

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[50] Frank D. LoMonte & Paola Fiku, *Thinking Outside the Dox: The First Amendment and the Right to Disclose Personal Information*, 91 UMKC L. Rev. 1, 11 (2022).
[51] *Id.* at 33.
[52] 740 ILCS 195/30.
[53] Hannah Shankman, *How to Close Pandora's Dox: A Case for the Federal Regulation of Doxing*, 33 U. Fla. J.L. & Pub. Policy 273, 296 (2023).
[54] 740 ILCS 195/.
[55] 47 U.S.C.A. § 230 (West).

Precedent or Anomaly? The Involuntary Manslaughter Convictions of the Parents of a School Shooter.

By Jeffrey Doms[1]

As James and Jennifer Crumbley were each sentenced to ten to fifteen years for manslaughter for their role in their son's mass shooting at a school in Michigan, one must consider if the conviction of the parents of a child mass shooter who killed four individuals sets a precedent for future cases or is merely an anomaly? The Crumbleys' convictions are potentially a shift in how the law views parents' role in preventing school shootings. Alternatively, it may just be an outlier to the specific circumstances in this case.

Regardless of the broader implications, before the Crumbleys could be tried, the court had to establish "probable cause" before proceeding: "As the statute indicates, the preliminary examination has a dual function, i.e., to determine whether a felony was committed, and whether there is *probable cause* to believe the defendant committed it."[2]

"Probable cause" requires evidence, that when presented, would cause a reasonable person to entertain the idea of the accused's guilt.[3] This is not to say that there cannot be doubts regarding guilt to bind the defendant over for trial.[4] In considering whether there was sufficient evidence of causation to bind the defendants over for trial on the charges of involuntary manslaughter, the Court of Appeals of Michigan highlights the parent's reckless and criminally negligent behavior, emphasizing one inappropriate decision after another, culminating with Ethan Crumbley bringing a gun to school and murdering four students. The court held that "[g]iven all those facts, it was not an abuse of discretion to conclude that there was probable cause to believe that a juror could conclude that a reasonably foreseeable outcome of defendants' alleged gross negligence was EC committing a shooting that day."[5]

This article will outline the extreme circumstances of the *Crumbley* case and provide the court's reasoning for its decision. It will also compare *Crumbley* with cases involving similar circumstances and detail the similarities and differences affecting the court's decision. Finally, the article will consider how the involuntary

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[2] *People v. Yost*, 468 Mich. 122, 125–26, 659 N.W.2d 604 (2003) (emphasis added).

[3] *Id.* at 126.

[4] *Id.*

[5] *People v. Crumbley*, --- N.W.3d ---, 2023 WL 2617524, 11 (Mich. Ct. App. 2023).

manslaughter convictions of the parents of a school shooter may affect future decisions in cases with similar circumstances.

II. PROBABLE CASE

In *People v. Crumbley*, the Michigan Appeals Court was faced with the following issue: "whether there was sufficient evidence of causation to bind the defendants over for trial on the charges of involuntary manslaughter."[6] Simply, did the prosecution establish probable cause with respect to factual causation and with respect to "proximate cause?"

"Proximate cause" occurs when the harm from an action is foreseeable, and this cause happens in a direct sequence, unbroken by a superseding cause, resulting in the injury or death.[7] Regarding factual causation, the court said factual causation existed based on preliminary evidence detailing the defendants' incontestable decisions, in which the final act of Ethan Crumbley committing a shooting at the school does not happen "but for" the defendants' actions.[8] A reasonable person would conclude that the evidence presented during the preliminary exam showed that Ethan would not have been able to murder four students "but for" the parents decision to purchase him a gun and carelessly secure it, allowing him to bring the gun to school.[9] Further, Ethan's parents refused to remove him from school after knowing he made threats to hurt others that day.

With the factual causation determined, the court addressed the "probable cause" established with respect to the "proximate cause," stating that Ethan's intentional misconduct did not supersede the defendants' (his parents') actions, as the intentional misconduct was foreseeable, thus the parents' actions were a "proximate cause" of the shootings.[10]

> Defendants' actions and inactions were inexorably intertwined with EC's actions, i.e., with the intervening cause. This connection exists not simply because of the parent-child relationship but also because of the facts showing that defendants were actively involved in EC's mental state remaining untreated, that they provided him with the weapon used to

[6] *People v. Crumbley*, --- N.W.3d ---, 2023 WL 2617524 (Mich. Ct. App. 2023).
[7] Legal Information Institute. (n.d.). *proximate cause.* (https://www.law.cornell.edu/wex/proximate_cause)
[8] *See Crumbley supra,* at 10.
[9] *Id.*
[10] *Id.* at 12

> kill the victims, and that they refused to remove him from the situation that led directly to the shootings.[11]

Simply put, the court determined that the defendants' actions and inactions were closely linked to Ethan's actions. This connection was not solely due to the parent-child relationship but also because the parents failed to address Ethan's untreated mental state, provided him with the weapon used in the killings, and refused to remove him from the environment that ultimately led to the tragic events.

II. OUTLIER

The court admitted this is an unusual case, but the worries from the public about criminally charging parents for their child's actions can be diminished when one realizes the extreme circumstances of the parents' lack of diligence and care in this instance.[12] "Finally," the court said "we share defendants' concern about the potential for this decision to be applied in the future to parents whose situation viz-a-viz their child's intentional conduct is not as closely tied together, and/or the warning signs and evidence were not as substantial as they are here."[13] The court stated these concerns are diminished by well-established principles and that this case is an outlier. Grossly negligent or intentional acts are still generally considered superseding causes, and the court held that the facts of this case are unique and fall outside the general rule regarding intentional acts because the shootings were "reasonably foreseeable."[14]

This determination of "reasonable foreseeability" is presented when deciding if the defendants' conduct was the legal, or proximate, cause of the decedents' deaths, and could set a precedent for future cases involving mass shootings by children and subsequent involuntary manslaughter charges against a parent if a death from the shooting has occurred.[15] Still, the court again stressed in the concurring opinion the anomaly of the decision in the case based upon specific facts presented, most importantly EC's drawings of individuals being shot, and the defendants' prior knowledge of the situation and facts as established by the court. The concurring opinion addressed how this case was distinguishable from most cases where parents are not held

[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Id.* at 12.
[15] Shrier, A. (2024, April 18). *Jailing Ethan Crumbley's parents sets a troubling precedent.* The Wall Street Journal. https://www.wsj.com/us-news/law/jailing-ethan-crumbleys-parents-sets-a-troubling-precedent-58b0e77e.

liable for their child's crime.[16] The overwhelming evidence of considered harm to others makes this case an outlier.[17]

The court differentiates why the defendants' prior knowledge and actions, in addition to the drawings by EC presented to them, is adequate to determine that EC's actions were reasonably foreseeable, while it would not be the same situation as merely being presented with and having knowledge of the violent drawings, as was the case for the school counselor.[18] The counselor was unaware that Ethan's parents purchased him a gun and that Ethan had access to the gun, even if he was aware that Ethan had shot the gun at a range before.[19] Even though the counselor had seen Ethan's drawings and could conclude that Ethan wanted to harm others, he would have no way of knowing Ethan had access to a gun and the means to make the drawings a reality.[20]

Does the court's conclusion of reasonable foreseeability in this case set a precedent for future cases to charge parents for crimes involving gun violence by their children, or to charge parents for violence by their children? In *People v. Schaefer,* Michigan Supreme Court court addressed the relationship between "reasonable foreseeability" and establishing the "proximate cause."[21] The court found that the "standard by which to gauge whether an intervening cause supersedes, and thus severs the causal link, is generally one of reasonable foreseeability."[22] As mentioned before, the decision in *Crumbley* goes against the usual decisions regarding third-party intentional acts and proximate causes. The *Schaefer* court held that intentional misconduct by a third party would usually sever the link between the defendant's conduct and the victim's death:

> The linchpin in the superseding cause analysis, therefore, is whether the intervening cause was foreseeable based on an objective standard of reasonableness. If it was reasonably foreseeable, then the defendant's conduct will be considered a proximate cause. If, however, the intervening act by the victim or a third party was not reasonably foreseeable—

[16] *See Crumbley supra.*
[17] Shrier, A. (2024, April 18). *Jailing Ethan Crumbley's parents sets a troubling precedent.* The Wall Street Journal. (https://www.wsj.com/us-news/law/jailing-ethan-crumbleys-parents-sets-a-troubling-precedent-58b0e77e).
[18] *See Crumbley supra.*
[19] *See id.*
[20] *Id.* at 14.
[21] *People v. Schaefer*, 473 Mich. 418, 703 N.W.2d 774 (2015).
[22] *Id.* at 437.

> e.g., *gross* negligence or intentional misconduct—then generally the causal link is severed, and the defendant's conduct is not regarded as a proximate cause of the victim's injury or death.[23]

The *Schaefer* decision highlights how the *Crumbley* ruling diverges from the legal approach to third-party intentional acts. This departure stresses that the *Crumbley* case may indeed be an outlier. Moreover, holding the parents accountable may also have been, potentially, a response to the public outcry surrounding the mass shooting.

III. INVOLUNTARY MANSLAUGHTER.

Involuntary manslaughter is "a homicide that results from the defendant's reckless or criminally negligent conduct or the defendant's commission of an unlawful act."[24] The Michigan courts had defined involuntary manslaughter as "the killing of another without malice and unintentionally, but in doing some unlawful act not amounting to a felony nor naturally tending to cause death or great bodily harm, or in negligently doing some act lawful in itself, or by the negligent omission to perform a legal duty."[25]

In Michigan, involuntary manslaughter applies to a defendant who did not intend to cause death or injury.[26] In Jennifer Crumbley's recent criminal trial, the task of the prosecution was to prove beyond a reasonable doubt that Jennifer "'caused death' due to her grossly negligent actions, or that Jennifer breached her duty as a parent to 'exercise reasonable care to control their minor child so as to prevent the minor child from intentionally harming others or prevent the minor child from conducting themselves in a way that creates an unreasonable risk of bodily harm to others.'"[27] As stated above, Jennifer, along with her husband, were convicted of involuntary manslaughter charges in an unprecedented ruling that has many in the legal realm questioning what is to come.[28]

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[23] *Id.* at 437–38.

[24] Bacigal, R. J., & Tate, M. K. (2014). *Criminal Law and Procedure: An Overview* (4th ed., p. 85). Cengage Learning US.

[25] *People v. Ryczek*, 224 Mich. 106, 110, 194 N.W. 609 (1923).

[26] *People v. Richardson*, 409 Mich. 126, 293 N.W.2d 332 (1980).

[27] *See* M.C.L.A. 750.321 (Manslaughter); *see also* FindLaw. (2024, April 1). *Michigan involuntary manslaughter law. Michigan Involuntary Manslaughter Law – FindLaw.*

[28] Gonzalez, A. (2024, February 27). The Conviction of Jennifer Crumbley: How a Michigan jury's decision could potentially impact the prosecution of mass shootings in America. *University of Miami Law Review, Vol. 78.* https://lawreview.law.miami.edu/the-conviction-of-jennifer-crumbley-how-a-michigan-jurys-decision-could-potentially-impact-the-prosecution-of-mass-shootings-in-america/.

Parents of children who have carried out shootings have pled guilty to criminal charges before, such as the father of the twenty-one-year-old Highland Park shooter who pled guilty to seven counts of misdemeanor reckless conduct and the mother of a six-year-old who shot his teacher who pled guilty to possessing a firearm as a drug user and lying on a background check.[29] Nevada has recently implemented a statute regarding a parent's liability for a child's willful misconduct concerning the use of a firearm,[30] while gross negligence regarding firearms has been debated in the Court of Appeals of Michigan before in *People v. Head*.[31] There, the court ruled the defendant grossly negligent when a child of the defendant found a loaded gun in an unlocked closet and proceeded to shoot a sibling, all while being unsupervised in the very room where the gun was kept. The court found that the "evidence demonstrates that defendant kept an illegal, loaded, short-barreled shotgun in an unlocked closet in his bedroom. [The defendant had] allowed his children to spend time in that bedroom while unsupervised."[32] The defendant argued against the claims that he was grossly negligent and argued against the claim that the element of causation did not exist to justify his involuntary manslaughter conviction. The court reasoned that by allowing young children to play unsupervised in a room where a loaded gun was kept, the defendant had failed to use the requisite care and diligence to avert a danger to children. Therefore, the court concluded, that there was sufficient evidence of gross negligence.[33]

Regarding the defendant's gross negligence, the court stated: "A rational trier of fact could find that defendant acted with gross negligence in allowing his children to have unsupervised access to a loaded shotgun. The defendant knew the situation required the exercise of ordinary care and diligence to avert injury."[34] The court also addressed the element of causation, stating that factual causation was beyond question.[35] As for the proximate cause, the court said that the outcome was reasonably foreseeable by the defendant's actions of keeping a loaded gun in a room where children play unattended:

> Proximate causation likewise exists. The result of defendant's conduct was not remote or unnatural. A child dying from an accidental gunshot is exactly

[29] Rissman, K. (2024, February 6). *How Jennifer Crumbley was convicted of involuntary manslaughter in historic case*. Independent. How Jennifer Crumbley was convicted of involuntary manslaughter in historic case | The Independent (the-independent.com)

[30] Nev. Rev. Stat. Ann. § 41.472 (West 2024).

[31] *People v. Head*, 323 Mich. App. 526, 917 N.W.2d 752 (West 2024).

[32] *Id.* at 533.

[33] *Id.* at 534.

[34] *Id.* at 533.

[35] *Id.* at 534.

> the type of harm that is to be expected from defendant's conduct of keeping a loaded weapon readily accessible in a room where young children were playing. Nor does TH's action of obtaining the weapon and accidentally firing it constitute an intervening cause that superseded defendant's conduct.[36]

While the defendants in *People v. Crumbley* stated that the court's reliance on *People v. Head* 's decision was erroneous, the situations are strikingly similar, specifically the foreseeability of the action and the court ruling that there was a lack of an intervening cause superseding the defendant's conduct.[37]

Knowing the facts of the *Crumbley* case and the court's opinion regarding the gross negligence and causation concerning involuntary manslaughter in the *Head* case, the outcome of convicting the Crumbley parents was foreseeable. A similarity in both cases is the lack of an intervening cause to eliminate the defendant's actions from being the proximate cause of the shooting. Exercise of ordinary care and diligence to avert injury to another and to their own child was totally disregarded in both cases, with the Crumbley parents having the chance on multiple occasions to avoid the resulting harm and stop a disastrous act from happening.[38] Refusing the child's request for medical help due to his deteriorating mental state, leaving a gun and ammo out for Ethan to find and toy with, purchasing a gun illegally for the fifteen-year-old child and failing to properly secure it, the total apathy of his being disciplined at school for reading and watching material on firearms, and also refusing to take him home from school upon suggestion from the school after discovering his disturbing writings and morbid drawings of people being shot.[39]

The ramifications of this case can already be observed in a new policy in Michigan. An individual who stores or leaves a firearm unattended on premises under the individual's control and knows a minor is present or likely to be present must store the firearm in a locked container or box and keep the firearm unloaded and locked with a locking device, rendering it inoperable.[40] Seventy-five percent of school shootings involve the child either obtaining the firearm from home or a friend or relative.[41] While more strict legislation to address

[36] *Id.*
[37] *Id.* at 535.
[38] *See Crumbley, supra*, at 11.
[39] *Id.*
[40] 2023 Mich. Pub. Acts 17.
[41] National Threat Assessment Center. (2019). Protecting America's Schools: A U.S. Secret Service Analysis of Targeted School Violence. U.S. Secret Service, Department of Homeland Security.

firearms and minors would make sense to many and would be seen as a step in the right direction to addressing the gun crisis, many individuals question if the courts will now look at mass shootings by children through a different legal lens when hearing a case.[42] School shootings and mass shootings aside, will parents now be more heavily scrutinized and liable for the crimes of their children?

VI. FINAL THOUGHTS

In the *Crumbley* case, the prosecutor was able to prove the factors of criminal negligence needed to convict Ethan's parents. Simply, James and Jennifer Crumbley's actions caused the death of someone; their conduct was inherently dangerous to others or done with reckless regard for human life; and they should have known their actions threatened the lives of others.[43] That said, critics fear that the over prosecution of these matter may be pervasive: "I don't have a lot of confidence in the exercise of prosecutorial discretion to pick and choose only cases like this," Northern Illinois University law professor Evan Bernick said: "Once you've got a hammer—and this is definitely a hammer—everything can look like a nail."[44]

The circumstances surrounding this case were so extreme, and the parents' actions satisfied the elements to be criminally negligent.[45] Obviously, the concerns about mass prosecution of parents for their child's crimes, the finger-pointing at who to blame, and the need to hold parents liable for their child's action is warranted, but does a prosecutor really want to risk criminally charging parents if there is not overwhelming evidence that it justified?

However, the prosecution of Jennifer and James Crumbley is not the first time that someone was charged with involuntary manslaughter for a child obtaining a firearm and killing someone. In 2000, also in Michigan, Jamelle James reached a deal with prosecutors to avoid trial and avoid a possible conviction of up to fifteen years, pleading no contest to an involuntary manslaughter charge in exchange for an imposed sentence of two years or less. [46]Jamelle James had left his firearm loaded and in an unlocked shoebox. His six-year-old brought the firearm to school and shot and killed a classmate.[47]

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[42] Tebor, C. (2024, March 3). *Who is accountable for a mass shooting? It's no longer only the person who pulled the trigger*. CNN. (https://www.cnn.com/2024/03/03/us/ james-crumbley-trial-mass-shooting-accountability/index.html).

[43] FindLaw. (2024, February 6). *Are parents liable for their child's gun violence?* https://www.findlaw.com/legalblogs/law-and-life/are-parents-liable-for-their-childs-gun-violence/.

[44] The Marshall Project. (2024, April 13). *The parents paying for their children's crimes.* (https://www.themarshallproject.org/2024/04/13/michigan-school-shooting-parents).

[45] *See Crumbley, supra,* at 11.

[46] ABCNews. (2000, August 2022). *Deal for gun owner in school shooting. https://abcnews.go.com/US/story?id=96077&page=1*

[47] *Id.*

The prosecution believed Jamelle James was grossly negligent enough to convict criminally, but it would have been interesting to see the verdict had Jamelle James not pled guilty in exchange for a lower sentencing time. This happened almost twenty years ago, showing how few and far between these cases are. The difficulty in proving a parent or guardian was criminally liable for the actions of their child and prosecuting, specifically with an involuntary manslaughter charge, remains an uphill battle in most scenarios.

THE HISTORY AND EVOLUTION OF INSANITY AS A DEFENSE IN CRIMINAL LAW

By Elizabeth M. Vinciquerra *

I. INTRODUCTION

According to *Black Law's* Dictionary, an individual perceived to be insane may suffer from delusions or false beliefs that have no foundation in reason or reality, are not credible to any reasonable person of sound mind, and cannot be overcome in the sufferer's mind by any amount of evidence or argument.[1] The insanity defense may challenge a defendant's mental state at the time of the crime, insofar as that they lacked the *mens rea*, that is, the criminal intent, for a conviction. This can lead to a complete acquittal if successful.[2]

This article will outline the history and evolution of this defense within criminal law, specifically its origins and shifts in burden. By examining these aspects, this article will provide an understanding of how the insanity defense has been shaped in the law.

II. HISTORY OF INSANITY DEFENSE

To negate a plea of insanity, the prosecution may look at the *mens rea* and *actus reus* at the time the crime was committed. *Mens rea* translated means "guilty mind" and is used to demonstrate intent behind actions, where the prosecution must show that a defendant acted intentionally, willfully, maliciously, or knowingly.[3] In extreme cases such as murder, there must also be an element of malice.[4] *Actus reus* is the physical act of the crime—it is essential to have both elements to prove specific intent.[5]

The impact of mental illness on society dates to Medieval times. Back then, people suffering from mental illness were thought to be possessed by evil.[6] It was not until around the Eighteenth Century that insanity was documented in court for the purpose of

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[1] *Insane*, *Black's Law Dictionary* (11th ed. 2019).

[2] Micah L. Issitt, *Rational Behavior: Capital Punishment and Insanity* (1920s—1980s), in Opinions Throughout History: The Death Penalty (2019); Editor-Phelps. Shirelle, *Mens Rea*, in World of Criminal Justice, Gale (2022).

[3] Editor-Phelps. Shirelle, *Mens Rea*, in World of Criminal Justice, Gale (2022).

[4] *Id.*

[5] *Id.*

[6] Micah L. Issitt, *Rational Behavior: Capital Punishment and Insanity* (1920s—1980s), in Opinions Throughout History: The Death Penalty (2019).

developing case law and insight on this topic.[7] Prior to the McNaughton trial, there were two pivotal tests used to help shape today's standards for an insanity plea: the "good versus evil" test, and the "wild beast" test.[8]

The "good versus evil" test dates back to 1313 and focuses around religious ideologies.[9] This test compares the mentally ill or insane to a child instituting that they are unable to sin because they cannot discern between right and wrong.[10] While possible that the ideology of "good versus evil" test dates to earlier times, William Hawkins is credited with this idea.[11] Hawkins proposed that "[t]hose who are under a natural disability of distinguishing between good and evil, as infants under the age of discretion, ideots, [*sic*] and lunaticks, [*sic*] are not punishable by any criminal prosecution whatsoever."[12]

It was not until 1724 that this test was replaced by the wild beast test, first used in *Rex v. Arnold*.[13] The "wild beast" test required the defendant to have a lack of understanding, memory, and knowledge of their actions, similar to the aptitude of a farm animal.[14] The wild best test set forth new precedence and there was a shift from focusing on morals to cognitive awareness.[15]

In 1843, the *McNaughton Rule* was created from the *McNaughton* case.[16] The test is named after Daniel McNaughton, who on January 20, 1843, shot and killed Edward Drummond.[17] Daniel had a dim childhood and was treated poorly by his father growing up. Eventually, he decided to move away from home and run his own business to support himself.[18] He took on a partner who later became a roommate and a star witness at the trial, testifying that Daniel would pace around in the middle of the night and mumble things that were

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[7] Trant E, Captain Charles, *The American Military Defense: A Moral, Philosophical and Legal Dilemma* 99 Mil. L. Rev. 1, (Winter, 1983) LEXIS, 2024.

[8] Eagan A Michael, *The Effect Of The Guilty But Mentally Ill Verdict On The Outcome Of A Jury Trial,* Texas State University, http://www.kvccdocs.com/KVCC/2014-Spring/SOC101/content/L-12/InsanityPlea.pdf.

[9] *Id.* at 3.

[10] Captain Trant E, Charles, *The American Military Defense: A Moral, Philosophical and Legal Dilemma* 99 Mil. L. Rev. 1, (Winter, 1983) LEXIS, 2024.

[11] *Id.* at 25.

[12] *Id.*

[13] Eagan A Michael, *The Effect Of The Guilty But Mentally Ill Verdict On The Outcome Of A Jury Trial,* Texas State University, http://www.kvccdocs.com/KVCC/2014-Spring/SOC101/content/L-12/InsanityPlea.pdf.

[14] *Id.*

[15] *Id.*

[16] Asokan, T.V., *The Insanity Defense Related Issues* Indian Journal of Psychiatry, 58 Suppl 2 (Dec, 2016), DOI: 10.4103/0019-5545.196832.

[17] Long, F. William, *Dickens and McNaughton: Insanity and the Punishment of Death.,* Vol. 116, Iss. 510, Spring 2020.

[18] Captain Trant E, Charles, *The American Military Defense: A Moral, Philosophical and Legal Dilemma* 99 Mil. L. Rev. 1, (Winter, 1983) LEXIS, 2024.

incoherent.[19] Further, it was noted by the court that Daniel complained frequently of head pain and delusions. Daniel's father was made aware of his son's behavior by the sheriff.[20]

Edward Drummond was not Daniel's intended victim; Daniel had planned to kill Prime Minister Sir Robert Peel, but mistakenly mistook the two men and killed Drummond.[21] When Daniel was apprehended, taken into custody, and interviewed, he said that the Tories—a monarchial group in England—had been following him, falsely accused him of crimes, and wanted to murder him.[22] At trial, the prosecution did concur with the defense that Daniel suffered from delusions but felt the delusions occurred around the subject matter of politics, and unless the defense could prove he did not know right from wrong, he should be held responsible for the crime.[23] The defense rebutted by having McNaughton's father testify, as well as medical examiners who found Daniel's behavior was abnormal and that he lacked a moral compass. The Judicial Lords focused on the mental state of the individual when the crime was committed to determine the verdict of the case.[24] They concluded that McNaughton was innocent on the grounds of insanity. McNaughton was admitted to a mental institute at Bethlam Hospital and was later transported to Broadmoor where he died on May 3, 1865, at age fifty-two.[25]

Today, many states use the American Law Institute Test to determine if one suffers from insanity. This adaptation to the Model Penal Code was introduced in 1962.[26] This test proclaims that a person cannot be held responsible for the actions of his or her crime if the crime was a result of a mental disease or the person lacks the capability to comprehend the significance of the crime and are unable to conform their conduct.[27] This test offers more leniency from McNaughton, and you begin to see a shift from the absolute knowledge requirement to the element of substantial capacity.[28]

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[19] *Id.*
[20] *Id.* at 36.
[21] *Id.*
[22] Asokan T.V., *Daniel McNaughton (1813–1865),* Indian Journal of Psychiatry, 2007, DOI 10.4103/0019-5545.37328 (Jul.-Sep).
[23] Kaplan M. Robert, *Daniel M'Naghten: The Man Who Changed the Law on Insanity,* Psychiatric Times Vol. 40 Iss.1, Jan 20, 2023 https://www.psychiatrictimes.com/view/daniel-m-naghten-the-man-who-changed-the-law-on-insanity.
[24] *Id.*
[25] Asokan T.V., *Daniel McNaughton (1813–1865)*, Indian Journal Of Psychiatry, 2007 DOI 10.4103/0019-5545.37328, (Jul-Sep, 2007)
[26] *The American Law Institute 's Model Penal Code Test.* U.S.Legal.com https://criminallaw.uslegal.com/defense-of-insanity/the-american-law-institutes-model-penal-code-test/.
[27] *Id.*
[28] *Id.*

III. THE *HINCKLEY* CASE

One of the most infamous cases relating to the insanity plea is the John Hinckley Jr case. Hinckley was born in Admore, Oklahoma on May 29, 1955, to John and Jo Ann Hinckley, the youngest of three siblings.[29] Hinckley had a seemingly normal childhood. He performed well in school and participated in extracurricular activities such as sports.[30] Over time, his behavior changed drastically, and while in high school, he became more withdrawn and lost interest in both friendships and sports. Despite the change in behavior, Hinckley graduated from high school and began college in the mid-1970's at Texas Tech University.[31] During college, Hinckley did not have the best attendance record and dropped out in 1976. With dreams and aspirations of becoming a songwriter, he decided to move out to California shortly after dropping out of college.[32] Unfortunately, Hinckley found little to no success on this career path and ultimately ended up moving back in with his parents in their Colorado home. For the next few years, Hinckley would relocate between Texas and California.[33]

In 1976, the film *Taxi Driver* came out in theaters, starring Robert DeNiro.[34] The main character Travis Bickle (DeNiro), suffers from insomnia and, as the film plays out, becomes more detached from reality.[35] Jodi Foster also stars in the movie—this is where Hinckley's obsession for her commenced.[36] DeNiro's character in the movie fantasizes and obsesses about killing a political figure which the character eventually acts upon. Hinckley took on the characteristics of the main character and the ideologies he posed.[37] Hinckley believed that if he could successfully assassinate a political figure, he would earn

30 Collins, Kimberly., Hinkebein, Gabe., Schorgl, Staci., *The John Hinkley Trial: Key Figures* UMKC School of Law 1995-2024 https://famous-trials.com/johnhinckley/530-keyfigures.

[30] Biography.com Editors, *John Hinckley Jr. Biography*, Biography.com, (Sep. 14, 2022), https://www.biography.com/crime/john-hinckley-jr.

[31] *Id.*

[32] Collins, Kimberly., Hinkebein, Gabe., Schorgl, Staci., *The John Hinkley Trial: Key Figures* UMKC School of Law 1995-2024 https://famous-trials.com/johnhinckley/530-keyfigures.

[33] *John Hinckley Jr,* Biography, Sep 13, 2022, https://www.biography.com/crime/john-hinckley-jr.

[34] Screenrant.com *Taxi Driver Ending Explained: What's Real and What's in Travis' Head,* Screenrant.com (Feb. 12, 2022) https://screenrant.com/taxi-driver-ending-travis-bickle-explained/#:~:text=Martin%20Scorsese's%20classic%201976%20film,%22scum%22%20on%20the%20streets.

[35] *Id.*

[36] *Id.*

[37] Linder O. Douglas, *The Trial of John W. Hinckley Jr.* UMKC School of Law 1995- 2024 https://famous-trials.com/johnhinckley/537-home?__cf_chl_tk=FpBcrfEUItcGHJE40s26uuMJWXN8nEjNfUe3GY7mdMs-1711234800-0.0.1.1-1365.

Foster's love—again, these were the same ideologies DeNiro's character possessed in *Taxi Driver*.[38]

As Hinckley's obsession with Foster progressed, he tried getting into contact with Foster, in various ways such as writing love letters, phone calls, and moving to New Haven, Connecticut, where Foster lived.[39] His efforts proved to be of no avail and Hinckley decided he must do something even more drastic to gain the attention of Foster and began planning the assassination of President Carter.[40] Thankfully for the president, the assassination was never attempted as Hinckley was stopped by law enforcement and issued a weapon charge.[41] It was not until Reagan took office that Hinckley decided to go through with his plan once again.

On March 30, 1981, Hinckley attempted to assassinate President Reagan in the driveway of the Washington Hilton Hotel.[42] While Reagan was shot under the arm, Hinckley was unsuccessful at his attempt to assassinate him, and ended up injuring the President's Secret Service Agent Timothy McCarthy and Police Officer Thomas Delahanty.[43] The Presidential Press Secretary James Brandy was also injured and sustained permanent brain damage.[44] Hinckley was charged with the attempted assassination of the President of the United States, assault of a federal officer, use of a firearm in the commission of a Federal Offense, attempted murder, multiple assault charges, and a weapons charge in the District of Columbia.[45] In response to being found competent to stand trial Hinckley raised the defense of insanity.[46]

The psychiatric reports varied significantly between the defense and the prosecution. The government psychiatrist had concluded, based on the testing, that Hinckley was sane at the time of the crime.[47] The appointed psychiatrists for the defense felt differently and concluded that Hinckley was insane when the crime was committed.[48] To further note the defense's argument of insanity, the severity of Hinckley's mental state was documented by his two suicide attempts. On May 27, 1981, he attempted suicide by overdosing on

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[38] Klein Christopher, *John Hinckley, Jr. Tried to Assassinate Ronald Reagan Because He Was Obsessed with Jodie Foster,* History, Jun 1, 2018, Updated Mar. 27, 2019, (https://www.history.com/news/ronald-reagan-attempted-assassination-john-hinckley-jodie-foster).

[39] *John Hinkley is Officially a Free Man*, Salon.com, June 16, 2022 at Nexis Uni.

[40] *Id.*

[41] *Id.*

[42] *Id.*

[43] *U.S. v. Hinckley,* 200 F. Supp. 3d 1 (D.D.C. 2016).

[44] *Id.*

[45] United States v. Hinckley, 407 F. Supp. 2d 248 (D.D.C. 2005), modified, 462 F. Supp. 2d 42 (D.D.C. 2006).

[46] *Id.* at 251.

[47] Law2.umkc.edu, Linder, Doug *The Trial of John W. Hinckley, Jr,* (2008) http://law2.umkc.edu/faculty/projects/ftrials/hinckley/hinckleyaccount.html.

[48] *Id.*

Valium and Tylenol. On November 15, 1981, he tried to hang himself in his jail cell.[49]

Hinckley's strange obsession with Jodi Foster also continued to grow. When his attorneys refused to relate Hinckley's messages to Foster, he rendered a hunger strike in prison.[50] Vince Fuller (Hinkley's attorney) eventually agreed with the Court and Foster that she would testify in a closed room with only the judge, lawyers, and Hinckley in attendance.[51] On March 30 1982, the police had taken Hinckley down to the courthouse for the videotaping of Foster's testimony.[52] Not once did Foster look at Hinckley during the testimony, nor did she utter a single word on his behalf. When Foster reported to the Court that she had no relation to Hinckley, he became outraged and screamed, "I'll get you Foster."[53] Hinckley was then escorted out by Court Marshals.

When the trial began, the prosecution called on a neurosurgeon to explain the trajectory of the bullet that struck James Brady.[54] The prosecution attempted to show that there was an element of premeditation on Hinckley's end.[55] Evidence that was examined for the premeditation charge was the fact that Hinckley was at a Carter campaign in Daytona, and a video of Hinckley at a Colorado rifle range a few months prior to the Carter campaign.[56] Once the prosecution rested, the defense presented JoAnn Hinckley and Dr. John Hopper.[57] JoAnn Hinckley informed Dr. Hopper a few months prior to the assassination that things were fine with John.[58] Dr. Hopper testified on how he originally found Hinckley to be an intelligent man with no obvious signs of mental illness.[59] Dr. Hopper also testified that he was unaware of Hinckley purchasing the handgun and of his stalking. After Hopper was done testifying, the Court reviewed video

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[49] CNN Editorial Research, *John Hinckley Jr Fast Facts,* May 29, 2024 https://www.cnn.com/2013/03/20/us/john-hinckley-jr-fast-facts/index.html.

[50] Kiernan A Laura, *Psychiatrist Says Hinckley Believes in Link to Foster,* The Washington Post, May 25, 1982, https://www.washingtonpost.com/archive/politics/1982/05/26/psychiatrist-says-hinckley-believes-in-link-to-foster/12fb7cef-8ae2-43e7-9197-546b6ddbc898/.

[51] *Id.*

[52] Library Of Congress, *John Hinckley, Leaning Forward, Chin Cupped in Right Hand, Listens to Videotaped Testimony of Actress Jodie Foster, with Whom He Was Obsessed,* May 12, 1982, https://www.loc.gov/resource/ppmsca.51568/.

[53] Pollock Brooke, *Jodi Foster's Unknown Link To The Assassination Attempt On the President,* Nov 20, 2023, https://www.celebritytidbit.com/2023/11/20/jodie-fosters-unknown-link-to-the-assassination-attempt-on-the-president/.

[54] Law2.umkc.edu, Linder, Doug *The Trial of John W. Hinckley, Jr,* (2008) http://law2.umkc.edu/faculty/projects/ftrials/hinckley/hinckleyaccount.html.

[55] *Id.*

[56] *Id.*

[57] *Id.*

[58] *Id.*

[59] Hasson Judi, *John W. Hinckley Jr. Wrote A Psychiatrist About Five...,* UPI, May 10, 1982, https://www.upi.com/Archives/1982/05/10/John-W-Hinckley-Jr-wrote-a-psychiatrist-about-five/9483389851200/.

testimony made by Jodie Foster. When asked about the love letters written to her by Hinckley, Foster said that at first, the letters came across as "lover-type letter."[60] As more and more letters came, the more obscure the writing had gotten—by the time Foster had received the last batch of letters, she described them as being "distress-sounding."[61]

One letter to Foster mirrored a rescue letter that the main character (Travis Black) sent to Foster's character (Iris) in *Taxi Driver*. The last letter before the attempted assassination of President Reagan read, "I will admit to you that the reason I'm going ahead with this attempt now is because I just cannot wait any longer to impress you. I've got to do something now to make you understand in no uncertain terms that I am doing all of this for your sake."[62] Hinckley never delivered that final letter to Foster, leaving her unaware of Hinckley's plans to assassinate the President.[63]

The psychiatrist for the defense, Dr. William Carpenter, interviewed Hinckley for about forty-five hours.[64] Based on the conversations with Hinckley, Carpenter concluded that Hinckley suffered from schizophrenia. Carpenter came to this conclusion based on the facts that Hinckley was unable to have emotional arousal, he withdrew from reality, suffered from depression, had suicidal ideologies, and could not structure social bonds with people.[65] Furthermore, the doctor concluded that Hinckley's inability to create his own identity causes him to take on personality traits from books or movies.[66] On the third and last day of his testimony, Dr. Carpenter concluded that John was unable to separate reality from fiction, and used Hinckley's fixation with *Taxi Driver* as evidence to show that Hinckley could not comprehend that his acts were illegal and wrongful.[67]

In response, the prosecution had the government's lead psychiatrist, Dr. Park Dietz, testify that he found Hinckley did not

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[60] Law2.umkc.edu, Linder, Doug *The Trial of John W. Hinckley, Jr,* (2008) http://law2.umkc.edu/faculty/projects/ftrials/hinckley/hinckleyaccount.html.

[61] *Id.*

[62] Staff Newsweek, *John Hinckley's Last Love Letter to Jodi Foster,* Aug. 1, 2016, https://www.newsweek.com/john-hinckley-love-letter-jodie-foster-reagan-assassination-484716.

[63] *Id.*

[64] Corbin Hendrix, Laura, *Witnessing History, Witnessing for Mental Illness,* Wofford College, https://www.wofford.edu/about/news/wofford-today/archive/2018/ summer/witnessing-history-witnessing-for-mental-illness#:~:text=Carpenter%2C%20now%20a%20professor%20of,that%20he%20suffered%20from%20schizophrenia.

[65] *Id.*

[66] Law2.umkc.edu, Linder, Doug *The Trial of John W. Hinckley, Jr,* (2008) http://law2.umkc.edu/faculty/projects/ftrials/hinckley/hinckleyaccount.html

67 Cappellino Anjelica, *The Trial of John Hinckley Jr. and It's Impact on Expert Testimony,* Jun.23,2020, https://www.expertinstitute.com/resources/insights/the-trial-of-john-hinckley-jr-and-its-impact-on-expert-testimony/.

lack the mental culpability to comprehend the wrongfulness of his actions.[68] To support his findings, he stated that the attempted assassination showed an ability to plan, the idolization of the characters in *Taxi Driver* was that of a fan, and his obsession with Foster could be seen as more of a crush.[69] The jury found Hinkley not guilty by reason of insanity.[70] Following the verdict, Hinkley was transported to St. Elizabeth's Hospital in Washington, D.C. He was ordered to stay in the mental facility until the doctors felt that he posed no threat to himself or society.[71] Hinckley bided in St. Elizabeth's Hospital until 2016—he was fully released in June 2022.[72]

IV. THE EFFECT OF THE *HINKLEY* CASE

To say that Americans were outraged by the verdict would be an understatement. Within a month of the *Hinkley* verdict, the House and Senate held meetings to figure out how to amend the insanity defense.[73] Arlen Specter, a Senator from Pennsylvania, proposed a switch in the burden of proof in an insanity plea from the prosecution to the defense.[74] President Reagan agreed with this change, stating "If you start thinking about even a lot of your friends, you would have to say, 'Gee, if I had to prove they were sane, I would have a hard job.'"[75]

Three years after the verdict in *Hinkley*, two-thirds of the states placed the burden on the defense to prove insanity, and eight states acquired that there would be a different verdict, which would be guilty but mentally ill.[76] Congress went even a step further in 1984 and required the defense to prove with clear and convincing evidence that the defendant suffers from a mental disease or suffered from a mental disease during the act of the crime.[77]

V. HOW STATES INTERPRET INSANITY TODAY

[68] Linder O Douglas., *The John Hinckley Trial: Transcript Experts* (1995-2024) https://www.famous-trials.com/johnhinckley/543-excerptshinckley#park.
[69] Law2.umkc.edu, Linder, Doug *The Trial of John W. Hinckley, Jr,* (2008) http://law2.umkc.edu/faculty/projects/ftrials/hinckley/hinckleyaccount.html.
[70] *The Road to the Release of John Hinckley,* The American Law Institute, May 23,2024, https://www.ali.org/news/articles/road-release-john-hinckley/.
[71] Law2.umkc.edu, Linder, Doug *The Trial of John W. Hinckley, Jr,* (2008) http://law2.umkc.edu/faculty/projects/ftrials/hinckley/hinckleyaccount.html
[72] Brown Olivia, *The Unconditional Release of John Hinckley: Too Soon or Not Soon Enough,* Oct. 7, 2021, https://lawreview.syr.edu/the-unconditional-release-of-john-hinckley-too-soon-or-not-soon-enough/#:~:text=Elizabeths%20Hospital%20in%20Washington%2C%20D.C.,release%20beginning%20in%20June%202022.
[73] *Id.*
[74] *Id.*
[75] *Id*
[76] Law2.umkc.edu, Linder, Doug *The Trial of John W. Hinckley, Jr,* (2008) (http://law2.umkc.edu/faculty/projects/ftrials/hinckley/hinckleyaccount.html).
[77] *Id.*

Since *Hinkley*, each state has interpreted insanity differently. Some states have since abolished the defense altogether. In Idaho, for example, "Mental condition shall not be a defense to any charge of criminal conduct."[78] The statute further goes on to mention that if a sentence of incarceration has been given, the defendant will receive treatment for his/her illness while serving time in prison.[79] But there is a tedious process for addressing mental health issues in Idaho. If the defense wishes to have an expert witness on mental health testify or introduce evidence of a mental health problem to the court, that is subject to an adversarial process.[80] A defendant must give the court a ninety-day notice, the expert witness must be scheduled to testify when the court deems appropriate; there is a waiver of privilege, and the court does have a right to appoint an individual to prove there is no need to investigate the topic of mental health. Further, if the defendant is unwilling to succumb to a mental evaluation, the examiner shall advise the court through writing.[81]

When compared to other states such as California, Idaho seems to be much less tolerant when raising the insanity defense. California is one of the states that permits the defendant to plea insanity. Under Cal. Penal Code Ann. § 1026, "if the defendant pleads only not guilty by reason of insanity, the question whether the defendant was sane or insane at the time the offense was committed shall be promptly tried."[82] To have a successful insanity defense, the attorney must show that when the crime was committed the defendant lacked the *mens rea* and was not in proper mindset when the crime was committed. If the court does hold that the defendant is rendered insane under California law, he shall be committed to State Department of State Hospitals for treatment.[83]

V. CONCLUSION

The definition of insanity has had many ideologies, theories, and meanings attached to it since it was first noted in Medieval Times. Theories such as the "good versus evil" test and the "wild beast" test were first studied and implicated when crimes pertaining to mental illness became more common.[84] But these tests were much more simplistic and often alleviated the individual of their crime by proclaiming that humans who are insane cannot comprehend the implications of their actions, and do not have the ability to distinguish

[78] Idaho Code Ann. § 18-207 (West).
[79] *Id.*
[80] *Id.*
[81] *Id.*
[82] Cal. Penal Code Ann. § 1026 (West).
[83] *Id.*; *see also* Cornell Law School *Insanity Defense*, Legal Information Institute https://www.law.cornell.edu/wex/insanity_defense#:~:text=The%20federal%20insanity%20defense%20now,the%20wrongfulness%20of%20his%20acts.
[84] *See* footnotes 9 and 13, *supra*.

between good and bad. The *McNaughten* case codified some of the early insanity tests and helped form the tests used to measure insanity for decades.[85] Yet some would argue that in the case of John Hinckley Jr., the *McNaughten* test failed. There was an uproar in the country after he was found to be not guilty by reason of insanity.[86]

After Hinckley's sentencing, the United States amended the tests for insanity once again to the "American Law Institute test," which is currently used by the federal government to measure the mental capacity of a defendant.[87] This was a huge milestone as the burden shifted from the plaintiff or government to the defendant. States, however, have diverged, many enacting statutes governing their own guidelines for insanity pleas.[88] Some states have even opted to get rid of the plea altogether. If history is any indication, the burden and measure for the insanity test is not settled.

In sum, understanding the history and evolution of an insanity defense provides crucial insights into the foundations of our current laws. The history and evolution not only inform the reasons for existing legal standards but also highlights the political factors that have influenced an insanity defense over time. Consequently, understanding the history of an insanity defense is essential to understanding why we have certain statutes and rules regulating mental illness.

[85] *See* footnotes 16, *supra*.
[86] *See* footnotes 72–74, *supra*.
[87] *The American Law Institute 's Model Penal Code Test.* U.S.Legal.com https://criminallaw.uslegal.com/defense-of-insanity/the-american-law-institutes-model-penal-code-test/.
[88] *Id.*

Son of Sam Laws: Should they apply to victims of abuse who kill?

By Melody Infantolino *

I. INTRODUCTION

The "Son of Sam" law has existed since the well-known murders committed by David Berkowitz in New York City in 1977.[1] Since the original "Son of Sam" law was enacted, the landscape of murder and crime coverage in the United States has changed vastly. With these changes, many adaptations to the "Son of Sam" law have occurred, none of which tackle exemptions for victims. With the recent release of Gypsy Rose Blanchard from prison, following her murder conviction of her mother, the extent and application of the "Son of Sam" law will be tested.[2]

This article examines inadequacies in the current "Son of Sam" laws as it pertains to victims of abuse across the country. First, this article reviews the history of the "Son of Sam" law and its purpose. Second, it explores the case of Gypsy Rose Blanchard and the impact of the law on her. Gypsy Rose Blanchard will prove to be a prominently exampled case for the need for an exemption to the law.

Gypsy Rose is a convicted murderer who was a victim of years of abuse at the hands of her mother.[3] Gypsy Rose's recent release from prison and plans for documenting her experience test the extent of "Son of Sam" laws and exploit a significant discrepancy in its application to victims.[4] She is both the victim of a crime (her mother's abuse) and the perpetrator of the crime against her mother.

As it stands, Gypsy Rose's interest in retelling her story and any proceeds from that retelling would apply to the restrictions of "Son of Sam" laws. The proceeds should legally be diverted to a victim fund for her mother's family, but should Gypsy receive the profits as the victim? This article will compare and examine this real-life scenario as it offers an argument for victim protections in this legislation.

Third, the article considers the injustices in abuse legislation that have resulted in unnecessary convictions. Next, it examines changes in the legislation of the "Son of Sam" law and the holes that still exist. Fifth, it explores the changing landscape of "True Crime"

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[1] N.Y. EXEC § 632-a.

[2] Rubenstein, J, *Gypsy Rose Blanchard's Release From Prison After Her Mother's Murder: "I'm Ready for Freedom,"* People. Vol. 101 Issue 2, p. 36–41 (January 15, 2024).

[3] *See Rubenstein, supra.*

[4] *See id.*

television and the exploitation of victims. The article argues that revisions to state and federal "Son of Sam" law or notoriety-for-profit laws should include exceptions for victims of abuse.

Next, this article provides an examination of circumstances surrounding this conundrum and the pitfalls of the "Son of Sam" law's applications, including how abuse victims are not classified or viewed in the eyes of the law as victims, post-conviction. From the point of conviction, abuse victims are excluded from compensation for their story, and, in some cases, profits from the media that include the retelling of their crime under "Son of Sam" laws. Domestic abuse victims who commit crimes are not singularly criminals and, therefore, should have rights, as victims, applied to them in these circumstances as well. No acknowledgment of this duality exists in the laws currently enacted regarding profits.

Finally, victim's protection statutes and defenses, such as Stand Your Ground and Battered Woman's Syndrome, provide legal standing to an abuse victim's ability to independently assert and enforce his or her victims' rights. These rights include the right to privacy, protection, and fairness. The extension of fairness is not applied to victims of a crime who subsequently committed a crime against their attacker in "Son of Sam" laws. As it pertains to financial gains from the sale of their story about the crime, victims are prohibited from those profits, and this is not a fair application of victim protections.[5]

II. A HISTORY OF SON OF SAM LEGISLATION

The "Son of Sam" law was first enacted in 1977 in New York.[6] The law was created preemptively to prevent, then accused killer, David Berkowitz from profiting from retelling the story of his crime.[7] David Berkowitz was charged with second-degree murder for the shooting of six people and wounding seven more in a killing spree across New York City. Berkowitz famously left several letters engaging the police and public throughout his spree and promised further crimes.[8]

Upon his arrest in 1977, Berkowitz confessed to his crimes. He claimed to have been under the control of a demon that was manifested in the form of the dog belonging to his then neighbor,

[5] Malecki, M, *Son of Sam: Has North Carolina Remedied the Past Problems of Criminal Anti-Profit Legislation?,* Marquette L. Rev. Vol. 89, Issue 3, p. 673–91 (2006).

[6] Burnworth, J., *Making A Constitutional "Son of Sam" Law: Netflix's Booming True Crime Business*, Hastings Constitutional Law Quarterly, Vol. 49, Issue 1 (2022 February).

[7] *Id.*

[8] *Id.*

"Sam."[9] After examination it was determined that he was mentally fit to stand trial. Following sentencing Berkowitz admitted the demon and dog story was a hoax. Throughout his crime spree, Berkowitz's crimes were widely televised giving him "celebrity status" as a criminal, and rumors began of a publisher offering to pay large sums of money for the rights to his story.[10] This concern moved New York's legislature to pass what is commonly known as the "Son of Sam" law.[11] The original legislation aimed to prevent notorious individuals from profiting from the crimes they had committed and deter future criminals from engaging in like acts to also gain notoriety, fame, and benefit financially from a crime. The law extended to both the individual who acted upon the crime, relatives, and associates.[12]

The original New York "Son of Sam" law[13] was the first legislation of its kind. It defined profits from a crime as "any property obtained through or income generated from the commission of a crime in which the defendant was convicted; any property obtained by or income generated from the sale, conversion or exchange of proceeds of a crime."[14] Further, "any property which the defendant obtained or income generated as a result of having committed the crime, including assets obtained through the use of unique knowledge obtained during the commission of, or in preparation for the commission of, a crime"[15] The law prevented profits from books, movies, and other sources of media.[16] The original New York Son of Sam law was applied eleven times between 1977 and 1990.[17]

Following the enactment of the original "Son of Sam" law, the law was met with much scrutiny and legal dilemma. In 1987, *Simon & Schuster* sued New York when the publishing company intended to publish a book related to the crimes of Mobster Henry Hill.[18] The company litigated that the statute was a violation of the First Amendment right to freedom of speech and press and related that the law was both over-inclusive and would have prevented the publication of stories of individuals like Martin Luther King.[19]

The Supreme Court ultimately ruled that the original "Son of Sam" law violated the Constitution because "official scrutiny of the

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[9] *Id.*

[10] *Id.*

[11] Cobb, T., *Making a Killing: Evaluating the Constitutionality of the Texas Son of Sam Law, Houston Law Review*, Vol. 39, p. 1483 (2003); *see also* N.Y. EXEC § 632-a.

[12] *See* Malecki, *supra*, at 673–91.

[13] N.Y. EXEC § 632-a.

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Simon & Schuster, Inc. v. Members of New York State Crime Victims Bd.*, 502 U.S. 105, 112 S. Ct. 501, 116 L. Ed. 2d 476 (1991).

[19] *Id.*

content of publications as a basis for imposing a tax is entirely incompatible with the First Amendment's guarantee of freedom of the press."[20] [21] The statute was not narrowly tailored to achieve the state's objective of compensating victims from profits of crime. The statute also continues to violate the First Amendment rights of those who are convicted of a crime who are victims of abuse, as they are also not within the narrowly tailored outline of the law.[22]

Following this ruling, several revisions to the law occurred. The current "Son of Sam" law requires that victims of crimes be notified when a person convicted of a crime receives $10,000 or more.[23] The law then forces the recipient of those proceeds to forfeit them to a victim's fund and they may be applied to the cost of court fees.[24] It also gave the Crime Victim's Board the ability to act on the victim's behalf in some circumstances to ensure funds are received and applied.[25]

III. GYPSY ROSE BLANCHARD

By way of background, Gypsy Rose Blanchard was treated for several serious medical conditions as a child.[26] The diagnosis and treatment caused severe mental and physical damage. As an adult, Gypsy pled guilty to the murder of her mother, Dee Dee Blanchard. Gypsy was sentenced to ten years in prison for second-degree murder in 2016.[27]

Gypsy was a victim of Munchausen by Proxy. Munchausen by Proxy is a form of abuse in which a guardian or parent may seek attention or sympathy by making their child ill or exaggerating their child's illness.[28] Throughout her life, Gypsy suffered abuse at the hands of her mother, and subsequently assisted in planning the murder of her mother to "escape her life of abuse."[29]

Gypsy was released from prison in late December 2023. Prior to her release, Gypsy began work on her own retelling of her childhood in a book titled *Released: Conversations on the Eve of Freedom*.[30] The book chronicled her time in prison in a *Lifetime*

[20] *Id.*

[21] Stoneman, E., *Reel cruelty: Voyeurism and extra-juridical punishment in true-crime documentaries*, Crime, Media, Culture Vol. 17 Issue 3, p. 401–19 (December 2021).

[22] U.S. Constitution, amend I.

[23] *See id.*

[24] *Id.*

[25] *Id.*

[26] *See Rubenstein, supra.*

[27] *Id.* at 36–41.

[28] Berkowitz, C. D., Munchausen syndrome by proxy. Magill's Medical Guide.com (2023) (online edition).

[29] *See Rubenstein, supra.*

[30] *Id.*

docuseries, *The Prison Confessions of Gypsy Rose Blanchard.*[31] Both the release of her book and interview are categorized as violations of current "Son of Sam" laws.[32]

IV. DUALITY OF VICTIM AND CRIMINAL—AN UNFAIR STANDARD

"Stand Your ground" laws state that an individual is justified in using deadly force if that individual does so while trying to prevent a felony from being committed against himself or his dwelling.[33] Under the Model Penal Code, however, an actor loses his use of deadly force if the "the actor knows that he can avoid the necessity of using such force with complete safety by retreating."[34] The Stand Your Ground law applies to "any place where one has a right to be." Under the Stand Your Ground law:

> A person who is not engaged in an unlawful activity and who is attacked in any other place where he or she has a right to be has no duty to retreat and has the right to stand his or her ground and meet force with force, including deadly force if he or she reasonably believes it is necessary to do so to prevent death or great bodily harm to himself or herself or another.[35]

At common law, the Castle Doctrine provided an exception to the duty to retreat.[36] The Castle Doctrine permits an individual to use deadly force against an aggressor without retreating or attempting to retreat, or "back against a wall," before acting against the aggressor if the attack is being committed in the home or a "Castle."[37] It stipulates that one is not required to retreat from one's own home. A person whose home is invaded has no duty to retreat even if retreat in perfect safety is possible.[38]

The Stand Your Ground laws and Castle doctrine outline protections from criminal prosecution when being attacked either in the home or dwelling or in public spaces but fail to reconcile instances

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[31] *Id.*

[32] 18 U.S.C.A. § 3681.

[33] Fla Stat. Ann § 782.02.

[34] Model Penal Code, § 3.04 (Use of Force in Self-Protection).

[35] Fla Stat. Ann § 782.02.

[36] *See People v. Tomlins*, 107 N.E. 496, 497 (N.Y. 1914) (Justice Cardozo opined that "[l]ight is for sanctuary and shelter, and shelter, if not sanctuary, is in the home. That there is, in such a situation, no duty to retreat is, we think, the settled law in the United States as in England.").

[37] Khabbaz, L., *No Turning Back: A Progressive Application of Stand Your Ground Laws to Remove the Duty to Retreat for Women Who Kill Abusers out of Self-Defense,* Wis. Journal of Law, Gender and Society Vol. 37, Issue 2, p. 215–40 (2022).

[38] *See Tomlins, supra.*

in which the attacker and victim share a dwelling or "Castle." Both fail to provide exemptions for victims of domestic abuse in most states.

Currently, of the twenty-three states that have Stand Your Ground laws, only four, Arizona, Georgia, Kentucky, and Michigan, include language that provides greater acknowledgment and enforcement of protections for victims of domestic violence and family violence.[39] Eight states—Alabama, Arizona, Florida, Kentucky, Michigan, Oklahoma, South Carolina, and Tennessee—require retreat before responding with deadly force, even in the case of domestic abuse.[40]

The legal system does not provide protections sufficient for victims of abuse and domestic violence, and thus, results in convictions of crime in instances that would otherwise be protected. In the case of Stand Your Ground, if applied to an attack from an abuser, the victim would not be taken into custody. The law provides immunity from arrest and prosecution. Likewise, the Castle Doctrine defense, if applied to a victim of abuse, by analogy, should be a reasonable defense against a conviction for an act of crime committed against a perpetrator of abuse against a victim.

Instead of these two protections, both in law and in common law defense, women specifically, are endangered and convicted rather than protected. The battered woman defense was created to provide a defense for women in this very situation and has moved from being a respected and accepted defense and is now implemented more as a cry for mercy instead of justice.[41]

At issue in applying the Battered Woman Syndrome is the definition of imminent danger, as exampled by the case of Marissa Alexander.[42] Alexander was a victim of domestic violence who had returned to her home to retrieve some of her belongings when her abusive partner returned to the home. To flee to her car, a broken garage door prevented her from leaving, Alexander found herself trapped. Fearing danger, Alexander recovered a firearm and fired a warning shot at a wall. For this, Alexander was charged with aggravated assault.[43]

Florida's Stand Your Ground law does not require a duty to retreat: "no duty to retreat and has the right to stand his or her ground and meet force with force, including deadly force if he or she reasonably believes it is necessary to do so to prevent death or great

[39] Messerschmidt, C. G., *A Victim of Abuse Should Still Have a Castle: The Applicability of the Castle Doctrine to Instances of Domestic Violence,* Journal of Criminal Law and Criminology Vol. 106, Issue 3 Article 5 (2016).

[40] *Id.*

[41] Moore, A., *Battered Woman Syndrome: When Justice Annexes the Space for Mercy*, Texas Law Review, Vol. 101, Issue 5, p. 1233–58 (2023).

[42] *See Alexander v. State*, 121 So. 3d 1185 (Fla. 1st DCA 2013); *see also In her Own Words: Marissa Alexander Tells Her Story*, Essence.com (Oct. 27. 2020) (https://www.essence.com/news/marissa-alexander-exclusive/).

[43] *See Alexander, supra.*

bodily harm to himself or herself."[44] The Stand Your Ground Law in Florida removes the duty to retreat, yet in the case of Alexander who did retreat, an abundant requirement for evidence of abuse and eminent danger required to apply her Stand Your Ground defense. The court stated that it "notes that despite the Defendant's claim she was in fear of her life at that point and trying to get away from Rico Gray, she did not leave the house through the back or front doors which were unobstructed."[45] The burden was unjustly shifted to an injury requirement as opposed to the fear requirement.

Due to the lack of exclusions under the "Son of Sam" law for victims of abuse who are found to have committed murder or attacked their abuser, they are found guilty of crimes when, in fact, they should be protected through Stand Your Ground, Castle Doctrine, and Battered Woman defenses. If these protections were extended to victims of abuse and legislation were changed, they would no longer be considered criminals. If properly and fairly applied the Castle Doctrine and Stand Your Ground victims would not be charged and, therefore, able to profit from the story of their attack. If retelling a story comes from a victim, it should not also be profiting from a criminal.

In the case of Gypsy Rose, and many others, the crime committed was a result of the abuse they received. The restrictions imposed by the "Son of Sam" law are to be applied to individuals who commit a felony crime against an individual[46] and outline no exemption for those who committed the crime as a victim of abuse. "Son of Sam" laws have no provision for the application to individuals who have committed a crime under duress or as a victim of abuse.

V. PROFITING BY ANY MEANS RESTRICT

The Supreme Court decision in *Simon & Schuster v. Members of the New York State Crime Victims Board* highlighted the overly broad application of the restrictions to profit.[47] With no definition of the limitations for profiting a convicted criminal has no rights to the profiting from any materials. This exclusion of the ability to profit thus prevents profits from speech that did not include mention of the crimes committed. In this over-inclusive application of the "Son of Sam" law, an individual who wrote a book on hiking the Appalachian Trail, profiting from the sale, would be subject to turning over the profits of the sale of their book.

Prevention of an individual to profit from their likeness in a dramatization is also included in legislation (reference this legislation). Should another individual or media entity create a series on the

[44] Fla Stat. Ann § 782.02.
[45] *See Alexander, supra.*
[46] N.Y. EXEC § 632-a.
[47] *See Simon & Schuster, supra.*

individual or the crime they do not have the ability to take part in the production or gain from its profits.[48] An abuse victim should have a right to sue for the portrayal of their likeness, profit from the gains, and should not be excluded from their story as the victim.

Denying victims of abuse the right to the profits for telling their story or owning the rights to it is based on their conviction as a criminal, and ignores their role as a victim. Individuals who are convicted of a crime because of being abused should have a right to their story and the ability to profit. An abuse victim's crime should be excluded as a qualifying crime in "Son of Sam" laws. Currently, laws do not protect victims of abuse from prosecution and do not allow a defense of abuse for a crime committed by a victim of abuse. Because those protections and exclusions do not exist, we must provide these protections and exclusions to the Son of Sam laws, as it applies to abuse victims.

Again, examining the circumstances surrounding Gypsy Rose, Gypsy was the victim of her future victim. The restrictions applied to her as a criminal remove her rights and freedoms of speech and press afforded to her as a victim. "A state cannot regulate the speech of some for a compelling reason if doing so suppresses the speech of many others."[49] Per the notoriety for profit laws, Gypsy would be prohibited from the retelling of not only her crimes but any aspect of her life outside of her crimes, including her history of abuse.

In *The Act*, a TV series produced by Universal Cable Productions in 2019 and released on the streaming platform *Hulu*, Gypsy Rose's story of abuse and the murder of her mother Dee Dee Blanchard was portrayed.[50] Gypsy Rose was, at the time of production, in prison for her murder conviction. She was not consulted on or paid in connection with the making of the series.

Any proceeds Gypsy may receive for the sale of her book, outlining her childhood or time in prison, or any of her various interviews or podcasts, should be applied to a victim's fund.[51] Though Gypsy intends to tell her story drawing attention to the abuse she suffered as a victim of Munchausen by Proxy, her profits will still be attached to her role as a criminal. Gypsy is herself the victim so these restrictions and prohibitions should not apply to her. Gypsy should both own the rights to her likeness as it is portrayed in *The Act* and for any future projects and profits.[52]

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[48] Stoneman, E., *Reel cruelty: Voyeurism and extra-juridical punishment in true-crime documentaries*, Crime, Media, Culture Vol. 17 Issue 3, p. 401–19 (December 2021).

[49] *See Cobb, supra*, at 1483.

[50] *See The Act.* Hulu.com (https://press.hulu.com/shows/the-act/.

[51] U.S.C. § 1836.

[52] *See The Act, supra.*

VI. EXPANSION OF TRUE CRIME TV AND EXPLOITATION OF VICTIMS

Many may argue that the lack of ability to retell or otherwise profit from their story is inconsequential, but the expanse of True Crime TV has resulted in gains of millions of dollars to the owner of rights to major crime stories. "Son of Sam" laws misapplied to individuals, regardless of the manner in which they were convicted of a crime, eliminates the ability of that individual to gain from their own depiction of their abuses, an equally important component to the retelling of the crime and their abuse. That person should still own the right to their story, their likeness, and the financial gains that come with it. The ability to make financial gains from the dramatization of a crime should not just fall in the hands of media entities and be stripped from individuals who are being portrayed. Bolin examines the ethics of appropriating and retelling another person's story. When "Son of Sam" laws prohibit the first-hand account of a crime, the story and rights to profit are up for grabs and taken advantage of by any television and podcast that chooses to portray the story.[53]

Justice O'Conner, in her written opinion in *Simon & Schuster*, stated that "If a famous historical figure wrote a book depicting their life that contained a crime they were convicted of then the entire proceeds would be controlled by the state and would, in turn, disincentive publishers from agreeing to publish these important pieces of literature."[54] By removing the ability of a victim of abuse to retell their story, based solely on their perpetration of a crime, excludes the stories of those victims from being shared for other victims and survivors. An individual who committed a crime should not be prevented from the ability to control the narrative of their own story. Supreme Court of California held that the state's "Son of Sam" law "penalize[d] the content of speech to an extent far beyond that necessary to transfer the fruits of crime from the criminals to their uncompensated victims."[55] The limitations set in place that hold no exclusions for victims suppress the story as a survivor.

VII. CONCLUSION

The intention of the "Son of Sam" law, or notoriety for profit laws, was victim protection and eventually restitution for victims, but

[53] Bolin, A. (2018, August 1) The ethical dilemma of highbrow true crime (Vulture https://www.vulture.com/2018/08/true-crime-ethics.html).

[54] *See Simon & Schuster, supra.*

[55] *Kennan v. Superior Court of Los Angeles County, Respondent; Frank Sinatra, Jr., Real Party in Interest.*, 27 Cal. 4th 413, 40 P.3d 718 (2002).

it does not provide exclusions for victims who are convicted of perpetrating a crime when abused. There are clearly defined circumstances in which an individual is both the victim and the criminal, and we must reevaluate how we prosecute those individuals and how we restrict their ability to tell their story under "Son of Sam" laws. Victims of abuse should not be held to the standard of a criminal as it applies to notoriety-for-profit laws. While they have committed a crime, their ability to retell their story should not be prohibited or restricted. The laws were written to provide the financial gains from the retelling to the victims; this does not apply to a victim of abuse who has been convicted. The overly broad application of the Son of Sam law to any criminal and any form of financial gain should be refined and provide exclusions for victims of abuse. Indeed, victims of abuse should be treated as victims, not as criminals.

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