

Tort Liability for Gun Violence: Exposures in a Dynamic Social and Political Landscape



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“The liability law is quickly becoming known as “cash for trial lawyers” as that is the only group that stands to benefit from the legislation. As [the] Senator quipped to reporters, trying to hold gun manufacturers liable for gun violence is like trying to hold Coors responsible for drunk drivers.”

vs.

“If not the gun makers, then who should bear the cost of gun violence? We could, of course, raise taxes on sales of assault weapons and high-capacity magazines, much like we tax cigarettes, another big threat to public health. But there's a better solution that deserves consideration: liability insurance for gun owners.”

Introduction

Although the rapid succession of horrific incidents of gun violence over the last several months has now created a firestorm of public debate, the issue of how or even whether the civil justice system can respond to these incidents is not a new issue. Indeed, a decade ago, municipalities were lining up in what some considered a post-tobacco-settlement frenzy to sue gun manufacturers and distributors for damages flowing from the illegal but anticipated use of their products. The legal flavor *du jour* at that time was “nuisance” theory, a cause of action that the governmental entities were in a particularly good position to use to maneuver past the kind of early dispositive motions that accompanied attempts to plead under negligence and product liability theories. The gun industry seemed to be on the defensive and many predicted that large settlements were in the offing or that even larger verdicts in favor of various plaintiffs would result.

Instead, federal tort legislation was passed by Congress, generally immunizing the gun industry from civil suits for damages. The Protection of Lawful Commerce in Arms Act (2005) brought a sudden and fatal end to the municipalities’ lawsuits against manufacturers and distributors of firearms and, to this day, remains their single most effective protection against civil liability. Interestingly, given that tort legislation is typically a matter for the states and not the federal government, critics were quick to deny that any national interest was served in thus protecting the gun industry. Today, that legislation is once again in the news and many are calling for its repeal, potentially



taking us back to where we started – a nation attempting to fashion a solution to a problem not everyone thinks exists. Making the issue even more complex is that the problem of widespread gun violence, if one exists at all, is clearly modern, while the legal system’s attempts to address it use concepts and theories that, in part, predate both the Industrial and the American Revolutions.

Clearly, legal issues are now being swept up in a hotly politicized debate while the American public also weighs in by way of opinion polls, talk radio and the occasional election. Should victims of gun violence have recourse against anyone other than the perpetrator of the criminal act, recognizing that compensation is not likely to come often from that source? If compensation is a worthy goal of our judicial system, who should pay the price? Is the gun industry appropriately immunized? Should the insurance industry be expected to pay the initial freight, perhaps under the theory that it will set appropriate premium to pass the costs to those who pose the risk? Or, are these proposals for change simply a “cash cow for trial lawyers,” which should be rejected, leaving well enough alone?

It is not the intent of this paper to choose a political side or to push for any particular agenda. Rather, it attempts to portray the historical and potentially future framework for considering legal liability for acts associated with gun violence – acts that unquestionably lead to horrific loss and damages but which, on a daily basis, typically go uncompensated. In the current days, with its real or imagined furor over this issue, the legal system may be called upon to change and an understanding of how it can deal with this issue becomes ever more important. To paraphrase authors studying the United States Supreme Court, one may well observe that:

In the final analysis, it is simply not clear whether the Law responds to public opinion, or shapes public opinion, or whether it responds to the same sort of factors that themselves shape public opinion.



American Journal of Political Science, Vol. xx, No. x, xxx 2010, Pp. 1–15. Whatever the answer, who, if anyone will be liable for damages caused by acts of gun violence remains a societal and legal sticking point. How it is resolved may greatly affect the law and notions of compensation for all civil wrongs, potentially bringing great change to tort law across the country.

Liability Case Issues

Recent events set a dramatic stage for the consideration of tort law and gun violence. For example, on April 16, 2007, a senior student at Virginia Tech University, shot and killed 32 people and wounded 17 others in two separate attacks, approximately two hours apart, before committing suicide. A civil suit was filed by the parents of two students, Erin N. Peterson and Julia K. Pryde. A jury found that VA Tech was negligent for not issuing a timely warning of an active threat. It awarded both families \$100,000 judgments against the school.

On July 20, 2012, a mass shooting occurred inside of a Century movie theater in Aurora, Colorado, during a midnight screening of the film “The Dark Knight Rises.” A gunman entered the theater with multiple firearms, killing 12 people and injuring 58 others. The suspected shooter was arrested outside the cinema minutes later. A Colorado University psychiatrist treated the shooter while he was a student at Colorado University. A widow of a man killed in the shooting filed a civil lawsuit against the school and the psychiatrist. She alleges that the psychiatrist had the opportunity to use reasonable care when a Colorado University Police Officer offered to apprehend the shooter and place him on psychiatric hold. The suit alleges that there was a failure the treating psychiatrist failed to act reasonably or as required under governing standard of care.

On April 20, 1999, two senior high school students murdered a total of 12 students and one teacher. They injured 21 additional students, with three other people being injured while attempting to escape the school. The pair then committed suicide. Nine civil suits were filed against Sheriff John P. Stone and the Jefferson County Sheriff's Department for various acts of negligence, including failing to act on indications



of imminent violence. In November 2001, all but one of the suits were dismissed in federal court. The judge ruled that, while possibly negligent, officials were nevertheless protected by governmental immunity unless their actions were "willful and wanton." The only case allowed to move forward involved a teacher who bled to death while waiting to be rescued.

In addition to the Sheriff's Department, the shooters' families themselves faced several wrongful death suits, one of which was reportedly settled in April 2001 for \$2.53 million, the proceeds to be shared by more than 30 families of the victims. Lawsuits were also filed against school officials and the Tanner Gun Show, where one of the guns was purchased by friend of the shooters when she was eighteen years old.

Legal Theories in Shooting Cases

Case law is fairly uniform across the country in applying a negligence standard to cases involving gun violence. As when dealing with other kinds of acts allegedly causing damages, various actors involved in incidents of gun violence may be found negligent if their conduct creates an unreasonable risk of harm or falls below the standard established by law for the protection of others from unreasonable risk of harm. Some courts may, depending on the approach taken generally under tort law of their particular state may apply a risk-benefit analysis to ascertain whether conduct is deemed negligent.

Some of the particular conduct relating to gun violence that plaintiffs have alleged to be negligent focus on the purported negligent storage of the firearm involved. Some have argued that the gun must be stored safely and that, in particular, it must be left locked and unloaded. Other claims have focused on whether the owner of a firearm should be held to reasonably foresee the risk of criminal misuse of stolen guns and therefore be held responsible for any failure to take reasonable precautions to prevent such theft of his or her weapon. Inevitably, the courts, in looking at these questions will examine the financial burden and inconvenience of safe storage against the consequences of failing to ensure safe storage. In light of the often tragic



consequences of gun violence, this is not a balancing test that is likely to lead to favorable results for the defense.

Another negligence theory that is often asserted is that of negligent entrustment. Certainly, as with an automobile or other potentially dangerous instrumentality, entrusting a gun to one who, for example, is a child, who is intoxicated or likely to become intoxicated, has a criminal record (or at least a record of gun violence) or suffers from mental illness or psychological problems, will certainly subject a defendant to liability in tort.

In the days before federal statute immunized gun manufacturers and distributors, theories of product liability were commonly raised. In particular, under most states' product liability law, a manufacturer or distributor could be held liable for design defects. For example, if a product were marketed with inadequate instructions or warnings as to foreseeable risks, it could be deemed defective. Likewise, if a product were designed in such way that its resulting injury from normal use was foreseeable and if the risk of injury could have been reduced by an alternative design, then the gun could be considered defective in its design. In that regard, when looking at alternative designs, some courts would look at the costs associated with the alternative designs, whether the proposed alternative would, in fact, have reduced the foreseeable risks of harm associated with the gun and whether the failure to use the alternative design made the product unreasonably unsafe at the time it was manufactured.

Manufacturing defects were also a basis for finding liability against a gun manufacturer or distributor. Even if the design of the gun was reasonably safe, if it malfunctioned causing injury or suffered from some other manufacturing flaw, the product could be considered unreasonably dangerous and liability result. Under strict product liability, defendants often successfully argued that there could be no liability where the gun operated precisely in the manner anticipated and for which it was designed. This often became an issue with respect to product liability cases involving handguns and "Saturday Night Specials," which some had argued were inherently dangerous and defective.

As discussed above, public nuisance lawsuits became quite popular and, for a time, seemed to enjoy some success. This theory is based on the right of citizens to be



free from disturbance and reasonable apprehension of danger to person and property. The claimed nuisance can be based on either a violation of an ordinance specifically enacted to protect the public from a threat to public health or safety or on some particular unreasonable conduct, including negligence. Some state laws allow the targeted nuisance to be enjoined as well as allowing the recovery of compensatory damages.

Immunities in Gun Violence Cases

The Protection of Lawful Commerce in Arms Act (2005).

As noted above, the legal landscape was drastically altered by The Protection of Lawful Commerce in Arms Act (2005). Under the Act, the gun industry was granted broad protections against claims. According to Congress, the purpose of the Act was to:

- a. Prohibit causes of action against manufacturers, distributors, dealers, and importers of firearms or ammunition products, and their trade associations, for the harm solely caused by the criminal or unlawful misuse of firearm products or ammunition products by others when the product functioned as designed and intended;
- b. Preserve a citizen's access to a supply of firearms and ammunition for all lawful purposes, including hunting, self-defense, collecting, and competitive or recreational shooting;
- c. Guarantee a citizen's rights, privileges, and immunities, as applied to the States, under the Fourteenth Amendment to the United States Constitution, pursuant to section 5 of that Amendment;
- d. Prevent the use of such lawsuits to impose unreasonable burdens on interstate and foreign commerce;
- e. Protect the right, under the First Amendment to the Constitution, of manufacturers, distributors, dealers, and importers of firearms or ammunition products, and trade associations, to speak freely, to assemble peaceably and to petition the Government for a redress of their grievances;



- f. Preserve and protect the Separation of Powers doctrine and important principles of federalism, state sovereignty and comity between sister states;
- g. Exercise congressional power under article IV, section 1 (the Full Faith and Credit Clause) of the United States Constitution.

There are a number of exceptions to the prohibition against civil liability actions against gun manufacturers and distributors. For example, there is no immunity against an action brought against a transferor (i.e. a federal firearms licensee) if the transferor was convicted under 18 USC Sec. 924, which makes it unlawful for anyone to “knowingly transfer a firearm, knowing that such firearm would be used to commit a crime of violence.” Likewise, a seller is not immune from suit for negligent entrustment or negligence per se. Claims may also be brought against gun manufacturers and distributors in the following circumstances:

- a. An action in which a manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale or marketing of the product and the violation was a proximate cause of the harm for which relief is sought.
- b. An action for breach of contract or warranty in connection with the purchase of the product.
- c. An action for death, physical injuries or property damage resulting directly from a defect in design or manufacture of the product, when used as intended or in a reasonably foreseeable manner, except that where the discharge of the product was caused by a volitional act that constituted a criminal offense, then such act shall be considered the sole proximate cause of any resulting death, personal injuries or property damage.
- d. The Act does not prevent the Attorney General from enforcing the relevant Gun Control Act or National Firearms Act against federal firearms licensees through the administrative or civil proceedings provided for in those statutes.

Therefore, even under the Act, knowing violations of laws such as the Brady Act would extinguish the sellers’ immunity. The Brady Act requires that background checks be conducted on individuals before a firearm may be purchased from a federally



licensed dealer, manufacturer or importer—unless an exception applies. These prohibitions apply to any person who:

1. Has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;
2. Is a fugitive from justice;
3. Is an unlawful user of or addicted to any controlled substance;
4. Has been adjudicated as a mental defective or committed to a mental institution;
5. Is an alien illegally or unlawfully in the United States;
6. Has been discharged from the Armed Forces under dishonorable conditions;
7. Having been a citizen of the United States, has renounced U.S. citizenship;
8. Is subject to a court order that restrains the person from harassing, stalking, or threatening an intimate partner or child of such intimate partner;
9. Has been convicted in any court of a misdemeanor crime of domestic violence; or
10. Has a record of being a felon.

Immunity Issues of Federal Protection

The Act also provides immunities for those who use firearms provided that certain steps are taken to secure it and keep them safe. The Act provides that:

Notwithstanding any other provision of law, a person who has lawful possession and control of a handgun, and who uses a secure gun storage or safety device with the handgun, shall be entitled to immunity from a qualified civil liability action.



Challenges to the Impact of Federal Immunities

As might be expected, the federal legislation providing these immunities to the gun industry was not the end of the debate, nor the end of litigation against manufacturers and sellers. In Daniel Williams et al v. Beemiller, Inc., the plaintiff was allowed to proceed with his suit against the manufacturer, distributor and dealer of the semi-automatic pistol used to shoot him. In that case, the shooter was a convicted felon who was barred by law from purchasing guns. The shooter traveled to Ohio, which did not require a license to buy a gun, to procure large numbers of handguns, including the pistol used to shoot the plaintiff.

The complaint alleged that the defendants:

- a. negligently distributed and sold the gun at issue to individuals they knew or should have known were in the business of illegally distributing handguns;
- b. negligently entrusted the gun to individuals they knew or should have known would create an unreasonable risk of physical injury to others;
- c. committed negligence per se by violating various federal and state gun laws;
- d. created a public nuisance by distributing a large number of guns into the illegal gun market and selling them to that market; and
- e. Intentionally violated federal, state, and local legislative enactments.

The defendants claimed that they could not be sued because of the Protection of Lawful Commerce in Arms Act, which shielded them from all liability for harm caused by the criminal misuse of their non-defective products. The appellate court reversed a 2011 ruling that threw out the case against the defendants. The court found that “although the complaint does not specify the statutes allegedly violated (by the defendants), it sufficiently alleges facts supporting a finding that defendants knowingly violated federal gun law.” Although the lower court had tossed the case under the Act, the appeals court held that the law does not provide immunity to gun companies that



illegally supply gun traffickers or irresponsible dealers. The case was remanded to the trial court.

Governmental and School Immunities

In most states, statutory or common law immunizes governmental entities, schools and public officials from liability for acts of ordinary negligence or discretionary acts. In order for lawsuits seeking damages against such defendants to succeed, plaintiffs must typically allege and prove that the conduct of those entities or individuals was willful, wanton or intentional. Such a standard is, under the facts surrounding random acts of gun violence, exceedingly difficult to meet and there has been no consistent success in seeking to hold these defendants liable for these shootings. Nevertheless, while schools in particular are often sympathetic parties in their own right, the specific facts of each case must be closely examined and the conduct of those with knowledge of potential or actual dangers posed to their students or communities considered in light of a perceived need to compensate those victims who are usually seen as innocent and without fault themselves.

Constitutional Issues Potentially Affecting Gun Violence Cases

Recent Decisions of the United State Supreme Court

In District of Columbia v. Heller (2008), the United States Supreme Court affirmed the Court of Appeals for the D.C. Circuit. The Court of Appeals had struck down provisions of the Firearms Control Regulations Act of 1975 as unconstitutional, determined that handguns are "arms" for the purposes of the Second Amendment, found that the District of Columbia's regulations act was an unconstitutional banning, and struck down the portion of the regulations act that required all firearms including rifles and shotguns be kept "unloaded and disassembled or bound by a trigger lock." "Prior to this decision the Firearms Control Regulation Act of 1975 also restricted residents from owning handguns except for those registered prior to 1975."



McDonald v. Chicago (2010) arose when McDonald wanted to purchase a handgun for personal home defense. Due to Chicago's requirement that all firearms in the city be registered, yet refusing all handgun registrations after 1982 when a citywide handgun ban was passed, he was unable to legally own a handgun. He joined three other Chicago residents in filing suit against the city. The United States Supreme Court held that the right of an individual to "keep and bear arms" was protected by the Second Amendment and is incorporated by the Due Process Clause of the Fourteenth Amendment, therefore applying to the states. The decision cleared up the uncertainty left in the wake of District of Columbia v. Heller, which involved legislation in the federally controlled District of Columbia, as to the whether the states or their municipalities could ban citizens from owning guns. The Court's response was that, while some restriction may still be possible and indeed desirable, a ban could not be supported under the Second Amendment's "right to bear arms."

President Obama's Proposals Regarding Gun Rights

The recent announcement by the White House of its proposals for a proper response to the Newtown tragedy and to the daily deaths of Americans due to gun violence will go a long way in shaping the continuing debate over gun violence and the law. It addresses issues outside of liability concerns but bears close attention in that any changes to the legal system are likely to be result from this particular agenda. It is therefore noteworthy that the White House package clearly calls into question the immunities provided under the Lawful Commerce in Arms Act. Indeed, repeal of that Act appears to be a distinct possibility.

One part of President Obama's plan includes his proposal to close background check loopholes by requiring criminal background checks for all sales by both licensed dealers and private sellers. This is primarily a criminal issue but one can easily imagine that this standard would easily transfer over and apply to questions of negligence and intentional conduct under a civil tort analysis of liability. Additionally, the plan calls for the banning of military-style assault weapons and high-capacity magazines, the



limitation of magazines to 10 rounds and the banning of armor-piercing bullets, often used against police and other law enforcement officials.

Another portion of the White House proposal calls for increased tools to prosecute and prevent gun crime. In particular, it calls for legislation preventing “straw purchasers,” increasing police presence, improving gun-tracing data collection and preservation, preventing guns from being returned to wrong hands, confirming a director for the Bureau of Alcohol, Tobacco and Firearms, which has been vacant for the last six years, improving regulations on outdated firearms, increasing the prosecution of felons who illegally attempt to purchase and evade background checks by providing false information, and conducting more analysis of information on lost and stolen guns.

As part of his proposal regarding increased research on gun violence, President Obama suggested creating a \$10 million fund for the Center on Disease Control to research relationship between video games, media, and violence. Concern about such a relationship has led to a number of lawsuits against video game manufacturers and designers and has called into question the obligations and possible liabilities of the media, especially those who make and distribute movies and television shows. This remains a potential area of heightened scrutiny in the current environment.

The White House also seeks to preserve the rights of health care providers by ensuring that no federal law would prevent them from warning law enforcement officials of potential dangers posed by those they treat. This, too, mirrors an existing area of concern in tort law, as doctors, psychiatrists and counselors have, as noted above with respect to Columbine, been sued for failing to provide such warnings in advance of a violent incident.

President Obama’s proposals also call for improved gun owner safety and responsibility, better storage and locking of firearms and innovative gun safety technology. Any changes made in these areas are also likely to become part of a new



standard for determining the reasonableness of a defendant's conduct and the viability of allegations of negligence.

Once again, while it does not appear that civil liability is at the forefront of the White House proposals, there can be little doubt but that civil liability in tort and, in particular, under theories of negligence, will, in the future, be greatly influenced by any action taken with respect to these particular initiatives.

Liability of Others for Gun Violence

School Officials and Government Agencies

A number of cases have alleged that schools, government agencies and/or their officials were guilty of conduct that should give rise to liability for acts of gun violence. This liability has been based, for example, on the purported failure to provide adequate protection or to prevent the shooting from occurring. Courts will consider each of the elements of negligence in the context of education law when determining a school's liability. These considerations include whether the reasonable standard of care would apply to the particular circumstances and whether the school satisfied that standard of care. As noted above, however, many states require that a school, a governmental agency and their officials be guilty of willful and wanton conduct before liability will attach and provide immunities for mere negligence as a matter of legislative mandate or public policy.

Gun Manufacturers and "Sellers" (Retail and Private Sales)

See discussion above concerning the Protection of Lawful Commerce in Arms Act, which, with certain specified and limited exceptions, provides immunity to gun manufacturers and sellers from civil liability.

In Illinois, a lawsuit was only recently filed in Cook County Circuit Court by the Brady Center to Prevent Gun Violence against Armslist LLC, a website gun distributor relating to the sale of a gun involved in a murder. This is the first lawsuit filed against a



website seller of firearms and brings into question provisions in federal law that allow private sales of firearms over the Internet and at gun shows without background checks. The complaint alleges that the shooter illegally purchased the gun from a private seller whom he located through armslist.com, an online gun auction site owned by defendant Armslist, LLC. The complaint alleges that the website's design encourages and enables users to evade laws that allow private sellers to sell firearms only to residents of their own state by enticing prospective buyers to search for and find gun sellers throughout all 50 states.

The shooter allegedly contacted a gun dealer in Seattle through Armslist.com. He then drove from Surrey, British Columbia, to Seattle to purchase the handgun and ammunition and headed to Chicago, where he shot and killed a woman on April 13, 2011. The case is now pending.

Parents of Shooters

Allegations against parents of shooters generally focus on their alleged failure to control and properly monitor their children or the firearms in their possession. Although in most states parents can be held liable for the intentional acts of their children, there is often a cap on the amount they must pay. Parents are usually not held liable for their children's unintentional but negligent acts.

These allegations in civil lawsuits continue to be filed in school-shooting cases. In Springfield, Ore., where a high school shooting occurred, the parents of one of the student victims injured in the shooting filed a \$14.5 million lawsuit against the estate of the shooter's parents, alleging that they were "negligent in providing their son with firearms and failing to supervise his access to them." The defendant parents were also killed by their son, the shooter. These tend to be fact-based cases, decided under general laws of negligence.

Psychiatrists, Healthcare Providers and Counselors

Liability may result where a patient communicates to the psychiatrist a serious threat of imminent physical violence against a specific person or persons or where, after



a personal patient evaluation determining that the person appears to have a mental illness and, as a result of the mental illness, the psychiatrist determines that the patient appears to be an imminent danger to others and then negligently fails to initiate involuntary seventy-two-hour treatment and evaluation (C.R.S. § 13-21-117) (Colorado law).

The shooting in Aurora has led to one such claim. A widow of one of the victims filed a civil suit claiming that the psychiatrist treating his patient on a psychiatric hold despite being aware of the imminent threat of danger.

The Media, Videogame Developers and Filmmakers

Lawsuits seeking to impose tort liability on the media, video and internet game manufacturers and designers and filmmakers for sensationalizing and producing movies, video games and web sites that induce violence have been unsuccessful. After a school shooting by a high school student in Paducah, Kentucky, the court dismissed a lawsuit seeking damages against a number of entertainment industry entities. The plaintiffs alleged that the shooter was spurred to go on a shooting rampage by a movie, Internet materials and video games produced and distributed by the defendants. The suit also alleged that the games trained the shooter to point and shoot a gun in a way that turned him into a more effective killer, enabling him to kill the plaintiffs' decedents. The court, however, ruled that the defendants owed no legal duty to the plaintiffs under Kentucky tort law and that their products were entitled to First Amendment protections.

Similarly, a Louisiana state court dismissed a lawsuit against Warner Brothers and film director Oliver Stone over "Natural Born Killers," which depicted crime spree across America. A couple went on a similar rampage in two states and told authorities that they had done so after repeated viewings of the film. In dismissing the portion of the case against the entertainment industry entities, the court ruled that the film was protected under the First Amendment and there was no intention to incite violence. Interestingly, the court let stand that portion of the complaint that sought damages against the mother of the woman involved in the crime spree and her homeowners



insurer based on the allegation that guns used by the couple had been taken from the mother's cabin.

Several other school-shooting victims' families have filed lawsuits against entertainment companies. One lawsuit arising out of the school shooting at Columbine High School in Colorado seeks \$5 billion in punitive damages. The victims' lawsuit states, "Absent the combination of extremely violent video games and these boys' incredibly deep involvement, use of, and addiction to these games and the boys' basic personalities, these murders and this massacre would not have occurred."

Conclusion

We find ourselves in a dynamic time. The media and, if reports are to be believed, much of the public, now believe that there is a long-unaddressed problem of gun violence in this country. Many are frustrated by what seems to be an inability of our elected officials to work effectively and outside of lobbies on both sides to identify issues, develop and consider meaningful data and legislate towards effective solutions. In this environment, fueled by a succession of tragedies, one more horrific than the next, some degree of change seems inevitable. Interestingly, one of the least discussed but ultimately perhaps the most significant area of change could come in the tort liability system. Age-old concepts of negligence and public nuisance may again form the foundation for civil actions against the gun industry if the federal legislation immunizing manufacturers and sellers from liability is repealed or, more subtly, if courts, whether in reaction to public opinion or merely responsive to the same forces shaping public opinion, find more exceptions and more ways around the legislation than they have thus far been willing to do. Insurance companies are always an easy target and economic arguments abound that insurers will, through premium, effectively and appropriately pass on some of the costs of gun violence to those responsible, whether the gun industry or gun owners.

Regardless of the political views one may hold on the subject, it once again appears that tort law will ultimately prove to be society's laboratory, where the public's taste and tolerance for gun violence can be shaped, prodded and poked. What is often



lost in the focus on guns is that changes to our traditional liability framework will affect much more than how damages are apportioned and allocated in gun cases. Rather, changes in theory and application of immunities will likely impact all of tort law and our nation's and jurists' views of how those damaged by the civil wrongs of others may be compensated. The shots fired in Newtown, like those in Concord more than 200 years ago, may well signal the start of an unanticipated and unlikely revolution.

