

Legal Liability and Workplace Violence

Samuel Jan Brakel, JD

Workplace violence is a growing social problem. Some of this growth may be perceptual, reflecting our new awareness of what constitutes violence in the workplace. Furthermore, much of what falls under its current rubric does not correspond to the classic image of worker-on-worker or worker-on-employer mayhem. Nevertheless, the total number of incidents is alarmingly large; the problem is real. It is natural to consider law (i.e., legal liability) as a potential solution. Aiming the liability threat at the employer may be the most effective and efficient strategy. There are ample theories to choose from: negligence (tort) law, agency law, contract, civil rights, and regulatory law. Judges and juries appear eager to hold employers accountable for violent incidents in the workplace, sometimes in the face of other, more logical constructions of the facts or theory. One's best hope is that the fear this strikes in the hearts of employers will make for maximum preventive results.

Over the last several years, the American public has been subjected to many alarming stories and statistics regarding violence that occurs at the workplace. It seems that one can hardly pick up the morning newspaper without encountering some report of job-related slaughter. Scary numbers often accompany these disturbing anecdotes: for example, (1) there are more than 1,000 workplace homicides in the United States annually (1995); (2) such homicides are the second most common cause of workplace deaths

(and the leading cause, in fact, for women at work); (3) one in six violent crimes occurs in the workplace; and (4) according to recent surveys, 60 percent of American workers do not feel safe at their jobs.^{1,2} "Going postal" has entered our language as a phrase for becoming violently crazy, its origin requiring explanation only for souls of truly Van Winklean innocence.

Perhaps not all of this alarmist "stuff" needs to be taken at face value. To the extent that the data suggest a rise in the incidence of workplace violence, for example, there may be a measure of comfort in the likelihood that some, although not all, of it is a function of "better reporting." It is our new consciousness of the workplace violence "problem" that drives us to recognize any number and range of

Mr. Brakel is Vice President of Administration, Legal Affairs and Program Development at the Isaac Ray Center and Adjunct Lecturer in Law at DePaul University College of Law as well as Director of Research of the DePaul Health Law Institute, Chicago, IL. Address correspondence to: S. Jan Brakel, Isaac Ray Center, 1720 W. Polk Street, Chicago, IL 60612.

incidents as workplace-related, whereas previously no such connection would have been made. The very categorizing of an event as a species of violence may be influenced by our altered awareness.*

Some other reality-based considerations may also mitigate the alarm or at least its distinctive relation to the workplace. For example, 1,000-plus homicides is a lot—indeed, 1,000 too many by any humane reckoning—but in the context of the overall number of homicides in the United States, which in 1994 reached 23,305,⁴ it is only a fraction (1 in 23 to be precise). Most Americans work, and most of those who do work spend one-third to one-half of their waking hours and as much as one-quarter of their total time at the workplace. Against that background, the workplace homicide incidence is not especially high. Nor should the fact that one in six violent crimes occurs “on the job” be grounds for astonishment.

As for workplace violence being one of the major causes of workplace death and injury, one salient contextual factor that must not be overlooked is the dramatic *diminution* of other major causes. Accidental workplace fatalities have been more than halved over the last two decades,⁵ due to better safety practices, resulting in an inevitable rise in the *proportion* of harm caused by intentional violence. The same logic suggests that the unhappy fact of homicide being the number one cause of workplace deaths for

women is a function of the more fortunate happenstance that women tend to be employed in jobs that are safer than men’s jobs in terms of accident potential.

Finally, to the factoid that 60 percent of Americans do not feel safe at work, at least one relevant response is another question (which deserves to be posed at least rhetorically in the absence of good survey data): how many Americans feel much safer at home or in the neighborhood than at work?

There is also a problem of skewed “image.” Whereas “workplace violence” conjures up the specter of a disgruntled (male) employee seeking revenge on his heartless employer or, alternatively, a romantically obsessed “nut” irrationally stalking an innocent (female) co-employee, the cited statistics include all kinds of other incidents. In fact, the classic worker-on-employer or worker-on-worker brand of violence comprises only a small minority of the cases (4 to 10% of the workplace homicides).⁶ The vast bulk of intentional harm (75% and up for homicides) is committed in the course of random, economically motivated crime (or even randomly motivated crime), in which the perpetrator has no connection to the workplace or the victim whatsoever. The crime occurs at the workplace because that is where the loot is, where it is easy to get at (unprotected 24-hour convenience stores, for example), and where people—employees in particular, but also customers—unfortunately get in the way when criminals ply their trade. A remaining small percentage of workplace violence incidents, about the same as the

* For example, sexual harassment, including the display of pornography (in the workplace), has in some circles been classified as a species of violence against women.³

Legal Liability and Workplace Violence

worker-on-worker prototype, is of a third category, in which the perpetrator is the unhappy recipient of a service provided by the particular workplace or victim.⁷ We are speaking here of individuals who are current or former clients, customers, passengers, patients, or even prisoners. Those most at risk for being victimized by members of this diverse group tend to be employed particularly in large public service agencies or endeavors.

These, then, are some of the “real” facts of the matter. They are presented not to minimize workplace violence as either a problem in the aggregate or in terms of individual loss and suffering caused, but to provide a proper context for thinking about remedial strategies. Among other things, these observations show that by no means all of what is commonly classified as workplace violence is amenable to the insights or ministrations of psychiatrists—treaters, forensicists, or the hybrid practitioners who make up the bulk of this publication’s readership. In fact, psychiatric interventions are likely to be useful in only a minority of incidents and incident types (unless one wants to project their uses for guilt, grief, and stress management in the aftermath of unprevented and psychiatrically unpreventable workplace violence). Law, however, both civil and criminal (and for good or for ill, to be properly skeptical), has eminent relevance to the aspiration to prevent and control workplace violence in all its diverse presentations—in particular the law that seeks to hold employers accountable, which is the focus of this article.

Employer Liability Concepts and Their Objectives

It should hardly need saying in this litigious day and age that the growing incidence of violence in the workplace (or even the mere perception of such growth) has legal consequences for those who own businesses and employ or supervise workers. Recent years have thus seen a pace-keeping, if not pace-setting, expansion in the array of laws and legal theories that may be invoked by victims in the effort to hold employers liable for bad things that happen at or near (or sometimes even far from) the workplace.

The assumption behind these liability laws and theories is a salutary one: it is that the threat of legal liability (or for that matter, its incurrence) creates an incentive for employers to take preventive or interventive measures to curb injurious behavior and to render the workplace environment safer and healthier. The evidence to date from the legal cases is that judges and juries strongly support this underlying assumption and for this reason (and perhaps some other motives relating more to “gut sympathy” than social policy) they have been eager to apply the liability laws in favor of victims or alleged victims of workplace violence.

Tort Liability

The most fruitful area of law for workplace violence-related litigation, both in terms of the array of theories available and their success potential for plaintiffs, is the civil tort law of negligent conduct. There are two strands: one is “impersonal” and centers on allegations of employer

failure to adequately secure the workplace premises against outside threats; the other is personal/internal in that it focuses on the employer's conduct in the hiring and retention of employees who commit or cause violence.

Failure to Secure the Premises (Against Unknown Perpetrators)

Cases raising the issue of owner/employer failure to secure the (physical) premises are the unfortunate true workplace violence classics. Two well-known cases from Illinois, one a fast food restaurant robbery culminating in a gratuitous homicide (*Martin v. McDonald's Corporation* (1991)),⁸ the other an unsolved murder (no witnesses, no known or suspected perpetrators) in a remote company parking lot (*Vaughn v. Granite City Steel* (1991)),⁹ are illustrative. They show that the employer's legal risks are large in such cases, as judges and juries display a marked predisposition to find in favor of plaintiffs (i.e., the victims and/or their survivors). In each of these cases, employers were found liable even though (1) the violence was, given no history of similar incidents, essentially unforeseeable (and thus difficult to prevent or protect against); (2) the harm done was not provably related to (i.e., caused or caused proximately by) any alleged negligence of the employer; and (3) there was only forced support, at best, for the tort law's threshold requirement that the employer have a duty to protect the plaintiffs in the first place—in fact, the conclusion in both cases rested on the logically unpersuasive, not to mention disincentive-creating, legal fiction that an employer who voluntarily takes *some* measures to protect/

prevent assumes a duty to make them effective against virtually all incidents, whether foreseeable or not, and for all victims, whether employees or others.

When it comes to the safety of the physical plant, then, employers are between the proverbial legal rock and a hard place. If they take no steps to secure the premises, they virtually guarantee themselves liability verdicts when things go wrong; when they do take steps on their own initiative, they assume due diligence duties toward events and parties that would not have been there otherwise, and the steps they take will have to satisfy potentially onerous and difficult-to-predict adequacy standards.

Controlling Known Individuals Employee-caused violence in the workplace, as distinct from violence by outsiders, may lead to employer liability on the theory that control could or should have been exerted by the employer at any of several junctures in the employment relationship, which presumably would have prevented the occurrence. Victims of the violence can sue employers on any of a number of doctrines or theories: negligent hiring, negligent training, negligent supervision, negligent retention, and even negligent recommendations concerning an employee made by one employer to another. These doctrines have considerable overlap and not infrequently several are invoked in a single suit by plaintiffs who expect the facts as developed at trial and the legal strategies employed on either side to determine which particular doctrine will bring the desired liability and damages outcomes.

A quick look at each of these doctrines

Legal Liability and Workplace Violence

separately will give an indication of the range of the employer's risk exposure and some ways in which both risk and liability can be minimized.

Negligent Hiring The hiring standards and procedures that an employer must observe depend in good part on the nature of the work to be performed by the employee: these standards and procedures become more exacting when the job (1) entails regular contact with the public, (2) when that contact is with an especially vulnerable population (e.g., school and preschool children), and (3) when the employee is expected to do difficult work and make difficult decisions in difficult circumstances (e.g., police officers, airline pilots).[†] Routine investigation into the employee's background and prior conduct combined with prehire screening via standard psychological evaluations performed by licensed professionals are prudent things for an employer to do for many high-risk jobs. There are no absolute guarantees against liability, however, given juries' demonstrated sympathies for injured victims going up against employers whose pockets are proverbially, if not in fact, deep and who are assumed to frequent the courtroom armed with superior lawyers, if inferior sensitivities.¹¹

Negligent Training Legal actions brought under the rubric of negligent training are premised on the fact that the employee's job requires specialized skills in dealing with procedures, customers/

clients, or "instrumentalities" that in turn require special training to ensure everyone's safety. Although often duplicative of negligent hiring theory, negligent training appears to ease expansion of employer liability to situations in which injuries were caused by employees' inadequate performance (i.e., employee, in addition to employer, negligence and carelessness or recklessness as distinct from willful violence; e.g., *County of Riverside v. Loma Linda University* (1981), in which a medical university was held liable for the failure of resident trainees to intervene surgically during a prolonged labor that led to the birth of a child with cerebral palsy, and *Roberts v. Benoit* (1991), in which the parish of Orleans (Louisiana) barely escaped liability for a shooting that resulted from the drunken gunplay of a deputy sheriff who, in the defense's favor, was a staff cook deputized primarily to get better state pay and who was neither expected nor required by the deputization to carry a gun).¹²

Negligent Supervision Conceptually and factually quite close to negligent training and hiring actions, cases brought on a complaint of negligent supervision have been viewed as advantageous in particular by plaintiffs in clergy sexual abuse cases (whose number is not insignificant).¹³ The reason is that the negligent supervision doctrine appears to be more resistant than the other doctrines, if not impervious to, a Constitution-based defense often invoked by the employer-church—that the court's inquiry into the defendant's hiring and training procedures results in "excessive state entanglement" in church policies and practices, as

[†] As far back as 1964, a Presidential Commission on Law Enforcement Standards and Accreditation recommended that all police applicants be screened via standard psychological testing procedures.¹⁰

proscribed by the First Amendment (*Isley v. Capuchin Province* (1995)).¹⁴ Supervisory practices are apparently viewed as less central to the church's inner religious workings.

Another reason for plaintiffs to proceed on negligent supervision (this one in instances where assault and battery or some other more direct action might on the facts be more appropriate) is that it circumvents the statute of limitations restrictions of the latter action(s) (*Bradley v. Guess* (1989), in which a Colorado court found employer liability and awarded punitive damages on top of compensatory relief to an employee injured in a fight with his project manager and other employees at a company-sponsored Christmas party).¹⁵

Negligent Retention Workplace violence litigation tends to be brought under the rubric of negligent retention when the employee's violent tendencies do not, and could not have, become known until after the hiring decision. The negligent retention doctrine also suggests that once evidence of the employee's violent propensities came to light, the employer took insufficient protective action and that firing the employee would have been the only proper remedy. The doctrine's strength in the hands of injured plaintiffs is indicated by decisions that have held employers liable despite the fact that the employees were off-duty at the time they committed the violence and/or not on the work premises (*Bryant v. Livigni* (1993)¹⁶; *Yunker v. Honeywell, Inc.* (1993)¹⁷) and, in the latter case, notwithstanding the employee's resignation eight days prior to the act—a fact difficult to

reconcile with the linguistic logic of negligent retention, if nothing else.

Negligent Recommendations Employers are in a legal squeeze even after an employee leaves. Candid recommendations for future employment may generate the wrath, including legal actions, of the erstwhile employee. On the other hand, lack of candor may expose the employer to liability for failure to provide information that, had it been disclosed, could have averted harm at the next workplace (*Doe v. Methacton School District* (1995), in which the employer school district was held liable in a sexual molestation case for failure to include in its reference information of known or "reasonably suspected" instances of previous sexual misconduct by the offending teacher).¹⁸

Legally, complete silence or providing only minimal employment-verifying information may be the best strategy for employers. Even then, they should follow this policy consistently, lest their silence is construed as knowing, complicit withholding of specific, potentially harm-preventive information. What the ethical obligations are is presumably a different matter, although not therefore to be ignored.

Liability Through Agency Law

In cases (or, for that matter, jurisdictions) in which a negligence action does not hold out much promise, plaintiffs injured by workplace violence may sue employers under agency law. The principle of agency law is that the employer is automatically and vicariously responsible

(the *respondeat superior* principle) for the actions of his employees. Liability does not rest on negligence on the part of the employer or even the employee, whose injurious actions may be willful, malicious, or even criminal, but on the employment relationship as such. So long as the employee's act was committed in the scope (or course) of employment and the act can be shown to be the cause of the plaintiff's injury, the employer is subject to liability (*Lisa M. v. Henry Mayo Newhall Hospital* (1995)).¹⁹

The scope/course of employment requirement of course presents a limitation on the ability of the plaintiff to succeed in his or her suit. While the phrase is susceptible to interpretations that range from narrow to broad, one would surmise that the inquiries into the relation of the act to the work present at least some constraints that are not encountered in cases brought on the alleged negligence of the employer. Another downside of *respondeat superior*-style actions, from the perspective of plaintiffs, is that they are subject to sovereign immunity defenses in cases brought against government entities (*Virginia G. v. ABC Unified School District* (1993), another teacher sexual abuse case).²⁰ Finally, the scope and amount of damages that can be collected in suits based on agency theory are likely to be more restricted than in negligence cases. These disadvantages, however, in the eyes of plaintiffs and their lawyers, may well be offset by not having to prove concepts such as duty, foreseeability, causality, and the like in cases where such proof is likely to be problematic.

Contractual Liability

The possibility that employers will be found liable under contract law for employee misconduct that injures third parties is, at this point, mostly theoretical. That does not mean, however, that the prospect can be dismissed. While the legal doctrine of privity of contract (i.e., that the contract's terms extend to the parties making the agreement only and not to any other alleged beneficiaries) currently provides protection against most third-party claims, judicial inroads on this principle have been made, including in a leading case involving employee fraud (*Degenhart v. Knights of Columbus* (1992)).²¹ As the barriers of privity crumble further, the risk of liability to the employer increases correspondingly.

Moreover, contractual obligations to protect employees have been found to be implied in a number of situations in which the outer boundaries are, given the adversarial essence of the law, inevitably subject to expansive pressure. Cases such as *Foley v. Interactive Data Corp.* (1988)²² suggest that "contractual" limits on the employer's power to terminate employees can be inferred from the language of company handbooks, manuals, or otherwise-stated policies. It is not difficult to foresee the application of such contract-based liability theory to workplace violence issues. Similarly, giving a contractual twist to the old voluntary assumption of duty bugaboo from negligence theory, it is not farfetched to believe that employers who proactively (and "progressively," if you will) articulate a strict policy against sexual harassment may find them-

selves subject to a breach of (implied) contract suit when an incident of harassment occurs or when the cross-gender atmosphere becomes sufficiently poisoned to create a "hostile work environment" (as per the U.S. Supreme Court case of *Meritor Savings Bank, F.S.B. v. Vinson* (1986)).²³

The contract route will typically not be the most direct or promising for victims of violence who want to hold the employer responsible (in most cases, negligence or another accountability theory will be more suitable), but there will be instances where implied contract will be the action of choice because the facts do not support the other liability-generating options.

Civil Rights Laws

Plaintiffs suffering (emotional) injuries at the workplace may also have a cause of action against employers under one or more civil rights-oriented statutes. When an employer knew or should have known of harassment incidents based on race, religion, sex, age, nationality, or disability and failed to take appropriate action to stop the activity, legal relief from the employer may be obtained, for example, via the equal employment opportunity provisions of the Civil Rights Act of 1964 and the voluminous "interpretive guidelines" issued for the purpose of clarifying the law's reach since its enactment.²⁴ Recent cases suggest that employer knowledge is not even a necessary element, as harassment claims have been decided in favor of plaintiffs on "strict liability" the-

ory.²⁵ Harassment based on disability is also prohibited under the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, the provisions of which can be invoked as a basis for employer liability similar to their civil rights counterparts.²⁶

Liability Through Regulatory and Criminal Law

Federal and state occupational safety and health laws make employers directly responsible for the safety of the workplace. When injuries or fatalities occur as a result of alleged safety regulation violations, Occupational Safety and Health Administration (OSHA) agents may investigate, take punishing administrative action, or recommend legal action, including criminal charges in cases where the employer's conduct is felt to be knowing, willful, and particularly egregious. Although OSHA-style actions are typically in response to physical conditions or hazards that are inherent in a business' operations, their application to incidents of violence perpetrated by employees or

²⁵ In a case decided just before this article went to press (*Gebser et al. v. Lago Vista Independent School District*, No. 96-1866, June 22, 1998), the U.S. Supreme Court ruled that for the plaintiff in a teacher-student sexual harassment suit brought under federal civil rights law (namely Title IX of the Education Amendments of 1972, Rev. Stat. § 1979, and 42 U.S.C. § 1983) to recover from the (employer) school district, the latter had to have had actual knowledge of the abuse and failed, out of "deliberate indifference," to take action. This actual notice/knowledge requirement constricts only partially the plaintiff's litigation options and her chances of success. Absent such knowledge, she might still have a winnable claim against the school district under state (negligence) law as well as against the (employee) teacher directly under state law or federal civil rights law, the latter option not being affected by the employer knowledge requirement.

even outsiders, is a short lawyerly leap. The extension of OSHA coverage to discriminatory or harassment activities is, at least under the federal law, a longer jump, given the statute's reference to "hazards that are causing or are likely to cause death or serious physical harm."²⁷ However, administrative regulations "promulgated" under the statute and specifically targeted to these issues could accomplish this²⁸; they are as binding on employers as the statutory provisions themselves.

"Borrowed" Affirmative Duty Liability Law

The famous, if not infamous, *Tarasoff* case (*Tarasoff v. Regents of University of California* (1976))²⁹ imposed on therapists a duty to warn or protect identifiable victims of a patient's intended violence, despite the cloak of therapeutic confidentiality that normally protects the doctor-patient relationship. The holding of the case was based on the element of control that therapists are presumed to have over those in therapy. Given similar presumptions regarding the employer-employee relationship, it does not stretch the imagination to believe that *Tarasoff*-style duties may shortly be imposed on employers (*Peek v. Equipment Services, Inc.* (Tex. 1995)).³⁰ The argument will be made by plaintiffs whose relationship to the employer, or lack of one, would ordinarily not support the recognition of an employer duty to protect. Or it will be made by plaintiffs who believe they can collect larger damages, including punitive damages, under this theory than others.

Conclusion

If recent case developments are any guide, we can expect the inclination on the part of judges and juries to be sympathetic to injury victims to continue to expand the range of legal theories to match the boundless array of factual situations under which employers might be found liable for harms occurring at or near the workplace. The same inclination may also widen the typology of injuries for which damages may be awarded as well as drive upward the size of the awards themselves. Where existing law appears prohibitive of, or resistant to, such increases in legal risk to employers, there is always the card of "public policy" that can be played by courts eager to trump the forces of resistance (*Foley v. Interactive Data Corp.* (1988)).³¹

Employers today operate in a legal world in which liability is less and less dependent on the foreseeability of events that cause harm. About the only foreseeable event is the lawsuit that will follow when harm occurs. Employer awareness of these realities via appraisal of the literature or consultation with legal or other forensic advisors ultimately furnishes the best protection, as it allows employers to embark on the preventive actions best designed to forestall workplace violence and the liability that so often results from it.

References

1. Barber JS: Workplace violence: an overview of evolving employer liability. 83 Ill BJ 462-82 (1995)
2. Nordheimer J: One day: death toll on the job. New York Times. Dec 22, 1996, Section 3, pp 1, 10, 11

3. Catherine MacKinnon, Vindication and resistance: a response to the Carnegie Mellon study of pornography in cyberspace. 83 Geo L J 1959 (1995)
4. U.S. Department of Justice: National Crime Victimization Survey, Criminal Victimization. Washington, DC: Bureau of Justice Statistics Bulletin, April 3, 1996 (There has been an appreciable decrease in the homicide rate over the last few years, to a current annual total of slightly below 20,000 deaths.)
5. Drew C: Labor Secretary flexing muscles for more safety. Chicago Tribune. May 9, 1994, Section 1, pp 1, 8 (The article reports that accidental workplace deaths across the United States have fallen from 38 per day in 1970 to 17 per day in 1992.)
6. Kraus JF, Blander B, McArthur DL: Incidence, risk factors and prevention strategies for work-related assault injuries: a review of what is known, what needs to be known, and countermeasures for intervention. Annu Rev Public Health 16:355-79, 1995
7. Connie L. Michaels: Employment law considerations, stress management and elimination of bias: the risk management perspective, in MCLE Compulsories 1996 (PLI Litig & Admin Course Handbook Series, No. 555, 1996). This useful source provided the initial case law leads for much of the legal analysis in this article.
8. Martin v. McDonald's Corp., 572 NE.2d 1073 (Ill. Ct. App. 1991)
9. Vaughn v. Granite City Steel, 576 NE.2d 874 (Ill Ct. App. 1991)
10. Janik J: Psychological screening of police candidates. Maryland Sheriff 10:97-103, 1993
11. Underwriters Ins. Co. v. Purdie, 145 Cal. App. 3d 57 (1983) (This case may be read to illustrate the influence of the defendant's pocket size—that of third-party insurer, rather than the employer who made the hiring decision—on the verdict.)
12. County v. Loma Linda University, 118 Cal. App. 3d 300 (1981); Roberts v. Benoit 605 So.2d 1032 (La. 1991)
13. Berry J: Lead Us Not Into Temptation: Catholic Priests and the Sexual Abuse of Children. New York: Doubleday, 1992
14. Isley v. Capuchin Province, 880 F Supp. 1138 (E.D. Mich. 1995)
15. Bradley v. Guess, 797 P.2d 749 (Colo. Ct. App. 1989)
16. Bryant v. Livigni, 250 Ill. App. 3d 303 (1993)
17. Yunker v. Honeywell, Inc., 496 NW.2d 419 (Minn. Ct. App. 1993)
18. Doe v. Methacton School Dist., 880 F Supp. 380 (E.D. Pa. 1995)
19. Lisa M. v. Henry Mayo Newhall Hosp., 12 Cal. 4th 291 (1995)
20. Virginia G. v. ABC Unified School Dist., 15 Cal. App. 4th 1848 (1993)
21. Degenhart v. Knights of Columbus, 420 SE.2d 495 (S.C. 1992). (The plaintiff in *Degenhart* did not win because there was no relationship between the agent's fraud, involving a real estate investment scheme, and the principal's business, insurance.)
22. Foley v. Interactive Data Corp., 47 Cal. 3d 654 (1988)
23. Meritor Savings Bank, FSB. v. Vinson, 477 U.S. 57 (1986)
24. Civil Rights Act of 1964, sec. 703, title VII, 42 U.S.C. § 2000 *et seq.*
25. Miller v. Bank of America, 600 F.2d 211 (9th Cir. 1979)
26. Rehabilitation Act of 1973, 29 U.S.C. § 701 *et seq.*; Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.*
27. Occupational Safety and Health Act of 1970, 29 U.S.C. § 654 (a)(1)
28. 29 U.S.C. § 654 (a)(2)
29. Tarasoff v. Regents, 17 Cal. 3d 425 (1976)
30. Peek v. Equipment Services, Inc., 906 SW.2d 529 (Tex. Ct. App. 1995) (In this case, employer liability was denied because the violent act perpetrated by the employee was not foreseeable and the victim not identifiable prior to the act.)
31. Foley v. Interactive Data Corp., 47 Cal. 3d 654 (1988) (Cases such as *Foley* support the proposition that employees may be protected from arbitrary discharge by principles of "fair dealing" implicit in the employment contract (if any) and by other conceptions of "public policy." Currently, the latter are invoked primarily in cases where whistle-blowers are fired in retaliation for exposing company wrongs or for refusing to participate in illegal activities. Notwithstanding the *Foley* court's warning that the "public policy" stakes must be societally fundamental and substantial if they are to be invoked on behalf of an individual employee, it should be clear that the concept is inherently vague and elastic and that it can in any given case be used to stretch traditional employer liability theory to fit the particular facts or the sympathies and sentiments of the deciders.)