Omissions & Duty to Rescue:
What Do Kitty Genovese, Princess Diana and Sherrice Iverson Have in Common?

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Omissions & Duty to Rescue

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Introduction

From its inception our criminal justice system has required that two elements be present before imposing liability for the commission of a crime. It must be shown that the defendant had a culpable state of mind, the requisite intent or *mens rea*, as it is known by its Latin name, and that she or he committed a bad act, an actus reus. From this we might conclude that failures to act, that inaction cannot, should not, be punishable under the law. The following famous incident that occurred several decades ago seems to bear this suspicion out:

I.

Do Citizens Have a Legal Duty to Rescue?
What Are the Precedents?

i. The Murder of Kitty Genovese

In March of 1964 *The New York Times* reported a murder of a woman by a lone assailant:

For more than half an hour thirty-eight respectable, law-abiding citizens in Queens watched a killer stalk and stab a woman in three separate attacks in Kew Gardens. Twice the sound of their voices and the sudden glow of their bedroom lights interrupted him and frightened him off. Each time he returned, sought her out and stabbed her again. Not one person telephoned the police during the assault; not one witness called after the woman was dead.


"Almost forty neighbors heard screams. Nobody did anything. Nobody called cops. Some of them even watched. Do you understand?"
There has been some dispute about the facts in the original *Times* story, but no one came to Genovese’s aid although she was stabbed on three separate occasions in three distinct places in Kew Gardens, all within walking distance of one another and all within earshot if not the sight of witnesses. The sub-headline of the original Times story read: “Apathy at Stabbing of Queens Woman Shocks Inspector.”

What do you think?

Many of you know the rough outlines of Kitty Genovese’s murder. It has taken on a life of its own.

And most people upon learning of it have been disturbed by it, in particular, by the failure of residents and neighbors who heard Genovese’s cries for help to come to her rescue or, at the very least, to have made a phone call to police.

What would do you think you might have, would have done, if you found yourself in the position of a bystander to this crime?

And quite apart from what you would have done, what do you believe a witness to a crime such as this should have done?

Then consider the following:

**ii. The Death of Princess Diana**

On August 30, 1997, Princess Diana’s Mercedes-Benz crashed in France, killing her and critically injuring other passengers in the car. Diana herself was not driving, but sat in the back seat. She apparently survived while still in the car for a time, but then died.

![Princess Diana](image)

Before medical help arrived for Diana and the other occupants of the car, photographers who had arrived at the scene allegedly snapped photographs of her body instead of assisting her and the others who trapped inside.
As a result, the seven photographers were investigated for possibly violating, among other things, France’s “Good-Samaritan” law, which requires that onlookers lend aid to victims in peril so long as the rescue does not require bystanders to put themselves at great risk of injury.

In other words, according to French law, the photographers should have, under the circumstances, engaged in an easy rescue rather than to have continued to take pictures.

What do you think? What might you have done, had you been in the shoes of one of the photographers at the scene of the crash of Princess Diana’s car?

In the state of New York there is no “duty to rescue” law and none of the bystanders in the Kitty Genovese case were charged with any crime or failure to act and not only was there no such law in the State of New York in 1964, there is no such law now. There is none today.

A partial explanation that there is a “duty to rescue” law in France but not in New York may simply reflect a difference between French and American culture. The French after all have a peculiar way of looking at the world, a way that is typically French.

But what you and I may think is odd or a bit unusual, that is, that France has a criminal law on its books requiring its citizens to engage in acts of easy rescue and is ready to punish its citizens for not only causing harm to others but for failing to prevent harm in situations of emergency, it turns out France is not alone in this regard. All the European countries have “duty to rescue” laws, including Romania, Poland, and Russia as well as Turkey.

So, while it is true in this country, i.e., with us, that all of us are under a general legal duty to refrain from inflicting harm on others, we are not under any similar general legal duty, it seems, to prevent harm from befalling another. The American law is dramatically expressed in the following example given by the Judge in an opinion from the end of the nineteenth century:

iii. Buch v. Amory (1897)

Suppose A, standing close by a railroad, sees a two year old baby on the track and a [train] approaching. He can easily rescue the child with entire safety to himself, and the instincts of humanity require him to do so. If he does not, he may, perhaps, justly be styled a ruthless savage and a moral monster, but he’s not liable in damages for the child’s injury, or indictable under the statute for its death . . . There is a wide difference - a broad gulf - both in reason and in law, between causing and preventing an injury; between doing by negligence or otherwise a wrong to one’s neighbor, and preventing him from injuring himself; . . . The duty to do no wrong is a legal duty. The duty to protect against wrong is, generally speaking and excepting certain intimate relations in the nature of a trust, a moral obligation only, not recognized or enforced by law.

Do you agree with the Judge? If so, why? If not, why not?

Are you happy with the conclusion that “the duty to protect against wrong is, generally speaking . . . a moral obligation only, not recognized or enforced by law”? Or do you think France and the other European countries may perhaps be onto something?

We have come a long way since these words were written by the Judge in Buch v. Amory (1897). The general American rule that there is no legal duty to rescue another in danger, even though a moral obligation may exist has slowly eroded as the result of several clear exceptions.
Personal relationships, such as the relationship of parent and child, have legal duties in the parent such that a parent who fails to feed their own child, a parent who simply omits meals from the child's daily activities, is criminally liable for any injury, fatal or otherwise, the child may suffer from the parent's failure to act. So, too, courts have concluded that someone may be held criminally liable for an injury that occurs to a person whom the defendant has begun to rescue, but who then abandons that person in mid-rescue. So, for an example, consider the following:

**John, the Designated Driver, Fails to Rescue Henry**

Henry calls John from a bar where he has been drinking heavily for much of the night. It is almost closing time and Henry asks if John will come, pick him up and drive him home. Henry realizes he is too drunk to drive himself home. John agrees. On the way to Henry's house they have an argument and John tells Henry to get out of the car. He has stopped on a very dark stretch of road next to a pond. Henry wanders drunkenly into the pond and drowns. Henry's parents sue John, claiming that he had a duty to look out for Henry once he picked him up and that he should not have abandoned him on the way home. Did John's failure to come to Henry's aid make John in some way criminally liable for Henry's death?

Most states would say "yes." But what is the reasoning here? And why have the courts thought that persons, in situations such as the one in which John found himself with Henry, have a duty to rescue? You may wish to look at a number of "duty to rescue" cases on the Philosophy of Law Website or in the chapter in Katz, BAD ACTS AND GUILTY MINDS on "Crimes of Omission," pp. 135-153 to get a "feel" for the current state of thinking about these cases in the absence of a specific "duty to rescue" statute requiring citizens of a given state to look out, in some minimal fashion, for their neighbors. Here I am thinking, in particular, of cases like the following:


McFall suffered from aplastic anemia, a disease in which the patient's bone marrow fails to manufacture certain necessary blood components. Shortly after his condition was diagnosed in June of 1978, a search began to find a bone marrow donor. Transfusions of bone marrow require a high degree of compatibility between donor and recipient and McFall's relatives were tested first. Initial tests of McFall's immediate family failed to produce a compatible donor, but preliminary tests of McFall's first cousin, David Shimp, indicated a high compatibility rating. Shimp was scheduled for further testing during the third week of July, but he failed to show up, stating that his wife had urged him not to go through the procedure. Running out of time and with no one else to turn to, McFall filed suit, asking the court (Judge Flaherty presiding) for an injunction ordering Shimp to submit to the transfusion procedure.

If you were the Judge in this case, how would you rule?


John Bigan owned a coal strip-mining operation in Somerset County in Pennsylvania. There were several large trenches in the earth on his property where Bigan had removed dirt to uncover and remove the coal underneath. Some of these trenches had filled with rain water. In one of them Bigan had installed a pump to drain the water.

The water was about 8 to 10 feet in depth and the dirt side-walls about 16 to 18 feet high. At around 4:00 p.m. on September 25, 1957 Joseph Yania, another strip mining operator, and Boyd Ross visited Bigan to discuss a business matter with him and while they were there, Bigan asked them to help him to start the pump. Ross and Bigan stood on one side of the trench and Yania stood atop the embankment on the other and Bigan urged him to jump into the water. Bigan did not tell Yania that the water was 8 to 10 feet deep, although it is not clear whether Bigan himself knew the exact depth of the water in the cut. Bigan, however, did not warn Yania to be careful; he merely cajoled him to jump
into the water, since the pump was submerged. Yania jumped into the water and drowned. While Yania struggled, Bigan did not take steps to rescue him.

Yania's widow, in her own right and on behalf of her three children, instituted wrongful death proceedings against Bigan, alleging that Bigan negligently caused Yania's death: "(1) by urging, enticing, and inveigling Yania to jump into the water; (2) by failing to warn Yania of the dangerous condition of the cut wherein lay 8 to 10 feet of water; and (3) by failing to go to Yania's rescue after he had jumped into the water."

Did Bigan have a duty to warn Yania and/or to rescue him?

What do you think?

(6) Depue v. Flateau (Minnesota, 1907)

Depue, a traveling cattle buyer, called upon a customer, Flateau, who asked Depue to stay for dinner. During the meal Depue was overcome by “a fainting spell” and became seriously ill. He asked permission to stay the night since it was a cold winter evening in Minnesota. Flateau, however, refused to let Depue stay the night. Instead, he led him to his cart, put him in it, handed him the reins which Depue was too weak to hold, and started the horses on their way. The following morning Depue was found in a ditch nearly frozen to death. Depue alleged that Flateau was negligent in not allowing him to stay the night.

Should Depue win his suit against Flateau?

What do you think?

(7) People v. Beardsley (1907)

Beardsley was a clerk at the Columbia Hotel in Pontiac, Michigan. While his wife was out of town, Beardsley invited a woman who worked at another hotel in town and with whom he had been having an extended affair, to his house for the weekend. They party (drinking heavily) until the early afternoon on Monday when Beardsley informed the woman that it was time to leave. The woman had a suicidal fit and swallowed several pills of morphine. She became drowsy. Anxious to hide her from his wife, Beardsley hid her in the basement. He did not call a doctor. The woman died. He was charged with manslaughter.

What do you think? If you were the judge, would you find him guilty?

Now consider the following:
(8) New Bedford Tavern Rape

On March 8, 1983, a 21 year old woman was raped by four men in a tavern in New Bedford, Massachusetts. Indictments were subsequently brought against six men, four of the men who were involved in the alleged rape and two additional men who allegedly witnessed the assault. Some of you may think you recall this case.

But it occurred quite some time ago in Big Dan's Tavern in New Bedford, Massachusetts; nineteen years ago, to be exact, in March 1983.

If you think you remember the case it may be that you remember the film which was based on that case. The movie starred Kelly McGillis and Jodie Foster and was called "The Accused".

Only in the film, if you remember correctly, the bystanders were more actively involved, egging the attackers on and as a result the case against any of the bystanders was somewhat easier to prosecute.

In the actual New Bedford case two of the onlookers were charged as accessories to rape and were acquitted. There was no "duty to rescue" law in the State of Massachusetts at that time. Sentencing of the defendants in the New Bedford rape case took place on March 26, 1984.
“Massachusetts Superior Court Justice William Young sentenced three of the defendants to maximum prison terms of 9 to 12 years. The fourth defendant convicted of aggravated rape received a six to eight year prison term. Two other men indicted in the case were acquitted upon evidence that they had not actually participated in the rape, although they had watched and encouraged the perpetrators.”


At the time of the incident Newsweek also ran a story with the following headline: "The Tavern Rape: Cheers and No Help," NEWSWEEK, Mar. 21, 1983.

The New Bedford Standard Times noted that when police returned to the bar later that night, “two of the victim’s alleged assailants were still there, and the bar had been open for business the entire time. Such reports fueled the national outrage over the incident. Approximately 2,500 people took part in a candlelight procession in New Bedford one week after the attack. One protestor was quoted as saying: "They should take every one of those guys who were there cheering and fine them $1,000 apiece”

These sentiments were echoed by magazine and newspaper editors throughout the country, see, for example, "Violence and the Social Fabric," AMERICA, Apr. 2, 1983: "It is the kind of atrocity that strikes sharply at the national consciousness and stirs feelings of revulsion and outrage miles from the scene of the assault, among people with no possible connection to the victim ".

At the first trial, it was established that there had been more than ten men who had stood by, watched the assault, and done nothing. Two had been positively identified. None of the witnesses had encouraged the assault by their cheers and applause but none of them had taken steps to discourage the attackers either or to stop the rape or to call for help. A waitress who worked at the bar testified that there was a public telephone in the front room of the bar and a local police officer testified that phone calls to 911 from this area of town produced a response within five minutes. The attack lasted more than one hour, at which point the young woman managed to break free of her attackers and run out onto the street where she hailed a passing motor vehicle and was taken to a local hospital.

What is your opinion of this case?

Did the Judge do the right thing when he acquitted the bystanders?

Whichever way you are inclined to rule, do you think the Massachusetts legislature took steps in the right direction when it passed a "duty to report" law in the following in 1984?

You may find that viewing the case based on the case is not only helpful to clarify your views of the case and cases of its kind, but a way to continue the conversation about whether a duty to rescue belongs in the criminal justice system.

The Accused (1988): “This is the first film I can remember that considers the responsibility of bystanders in a rape case. The drunken fraternity boys and townies who climb on the furniture and chant and cheer are accessories to rape, although our society sometimes has difficulty in understanding that. When the McGillis character finally decides to bring some of them to trial, she gets no support at all from the chief district attorney, and many of her colleagues feel she’s lost her mind. Assistant D. A.s are supposed to try cases they can win, not go looking for lost causes. But the lesson learned in the movie’s second trial may be the most important message this movie has to offer.”

- Roger Ebert, from his review of the film in the Chicago Sun-Times.
Consider the following hypothetical case modeled, as mentioned, on the Tarasoff case, where Ariana Bernstein, for example, might be seen as occupying Tatiana Tarasoff’s shoes:
Charles Gilbert was a sophomore at Harvard University as was Ariana Bernstein. Charles and Ariana had "gone out" together during the Spring semester, but Ariana had broken off their relationship before she went home for the summer.

Charles pleaded with her to try again when they returned to the campus in the Fall, but Ariana had made up her mind. She asked him not to call or write.

Charles went into a deep depression. Shortly after he arrived on campus to begin the Fall semester he became a voluntary outpatient at Harvard University Health Services. On October 5th he informed his therapist, Dr. Lawrence Stone, that he was going to kill Ariana as soon as she moved into her off-campus apartment. Ariana was planning to move sometime during the month of October, was not speaking to Gilbert, and knew nothing of his intentions.

Dr. Stone, with the concurrence of Dr. Brown, who had initially examined Gilbert when he came in to the Heath Services, and of Dr. Yankovich, the assistant head of the department of psychiatry at the Heath Services, decided that Gilbert should be committed for observation in a mental hospital. Stone notified Officers Armstrong and Tyson of the University campus police that he was going to make a request for commitment. He then sent a letter to Police Chief William Kelley of the Cambridge Police requesting the assistance of the Cambridge Police Department in securing Gilbert's confinement. On the evening of October 6th four officers, two from the campus police and two from the Cambridge Police took Gilbert into custody.

After three days of confinement Gilbert's parents complained to the head of the psychiatry division at Harvard Health Services, Dr. Nathan Lane, Stone's superior. Lane looked into the matter and asked the psychiatrists at the hospital for an "evaluation." They determined that Gilbert was rational and Dr. Lane ordered his release on the condition that Gilbert promise to stay away from Ariana. Lane then asked the Cambridge Police to return Stone's letter, directed that all copies of notes that Stone had taken as therapist be destroyed, and "ordered no further action be taken to detain Charles Gilbert." No one warned Ariana of her peril.

On October 27th Charles Gilbert killed Ariana Bernstein. Ariana's parents sued Harvard University claiming that the University Health Services and its psychiatrists permitted Gilbert to be released from police custody "without notifying them, Ariana's parents, or their daughter that Ariana was in grave danger from Charles Gilbert." Is the University liable for its failure to warn Ariana or her parents of the impending danger? The psychiatrists, Stone and Lane, say that they owed no duty of reasonable care to Ariana since she was not their patient and that they are immune from suit. They argue further that to require them to have warned Ariana of the danger would have necessarily involved them in a breach of confidentiality between doctor and patient. They also argue that it is extremely difficult to predict violent behavior.

Is Harvard University liable in damages for failing to notify Ariana or her parents? If you were the judge in this case, how would you rule?

On what grounds? What do you think is the best argument for the "other" side and how would you respond to it?

And after each of you has had a chance to weigh in on the case, consider the following:
(10) *Farwell v. Keaton* (1976)

On the evening of August 26, 1966 Siegrist and Farwell in separate cars drove to a trailer rental lot to return the car that Siegrist had borrowed from a friend who worked at the lot. While they were waiting for Siegrist's friend to finish work, they consumed some beer.

Two girls walked by the entrance to the lot and the two men tried to engage them in conversation. They followed the girls on foot to a local drive-in restaurant down the street.

The girls complained to some of their male buddies at the restaurant that they were being followed by a couple of "creeps." Six boys chased Siegrist and Farwell back to the lot. Siegrist escaped but Farwell was severely kicked and beaten.

Siegrist found Farwell on the ground next to his car. He applied some ice to his forehead. He then helped him into his car and then drove Farwell around for about two hours, stopping at a number of drive-in restaurants. Farwell fell asleep in the back seat of the car. Around midnight Siegrist drove the car to the home of Farwell's grandparents, parked the car in the driveway, tried to rouse Farwell to no avail, and left.

Farwell's grandparents only discovered their grandson in the car in the driveway the next morning. They took him to a hospital where he died three days later of an epidural hematoma. If a person in Farwell's condition is taken to a doctor before, or within half an hour after he loses consciousness, there is an 85 to 88 per cent chance of survival.

Did Siegrist have a duty to rescue Farwell?

If so, on what grounds? Is Siegrist liable in damages for Farwell's death?

What do you think?

What do you think is the best argument for the "other" side and how would you respond to it?

Once you have formed your own opinion, you may wish to consult the excerpts from the opinions of two justices who held opposite opinions in the Michigan Supreme Court 's review of this case.

Justice Fitzgerald, as you will see, argued that Siegrist had no affirmative duty to rescue; whereas Judge Levin disagreed. Whose side are you on? Whom do you think has the better argument, Fitzgerald or Levin?

Whose side are you on?
Justice Levin’s OPINION: “There is ample evidence to support the jury determination that David Siegrist failed to exercise reasonable care after voluntarily coming to the aid of Richard Farwell and that his negligence was the proximate cause of Farwell’s death. We are also of the opinion that Siegrist, who was with Farwell the evening he was fatally injured and, as the jury found, knew or should have known of his peril, had an affirmative duty to come to Farwell’s aid.”

“Siegrist contends that he is not liable for failure to obtain medical assistance for Farwell because he had no duty to do so.

“Courts have been slow to recognize a duty to render aid to a person in peril. The law has persistently refused to recognize the moral obligation of common decency and common humanity, to come to the aid of another human being who is in danger. The remedy in such cases is left to the ‘higher law’ and the ‘voice of conscience,’ which, in a wicked world, would seem to be singularly ineffective either to prevent the harm or to compensate the victim.” Prosser, Torts (4th ed), 56, pp 340-341. At the other end of the spectrum are cases where the peril to the plaintiff has come from a source in no way connected with defendant’s conduct or enterprises or undertakings, past or present, but where the defendant has it in his power by taking some reasonable precaution to remove the peril. Here the law has traditionally found no duty, however reprehensible and unreasonable the defendant’s failure to take the precaution may be. See “There is no legal obligation to be a Good Samaritan.” 2 Harper & James, The Law of Torts:

Where such a duty has been found, it has been predicated upon the existence of a special relationship between the parties; in such a case, if defendant knew or should have known of the other person’s peril, is required to render reasonable care under all the circumstances.

“Carriers have a duty to aid passengers who are known to be in peril. Employers similarly are required to render aid to employees. Innkeepers to their guests; a jailer to his prisoner.

“Maritime law has imposed a duty upon masters to rescue crewmen who fall overboard.

“In Depue v Flatau, 100 Minn 299; 111 NW 1 (1907), the Supreme Court of Minnesota reversed an order of the trial court dismissing the cause of action and said that if the defendants knew their dinner guest was ill, it was for the jury to decide whether they were negligent in refusing his request to spend the night and, propping him on his wagon with the reins thrown over his shoulder, sending him toward home.

“The Sixth Circuit Court of Appeals, in Hutchinson v Dickie, 162 F2d 103, 106 (CA 6, 1947), said that a host had an affirmative duty to attempt to rescue a guest who had fallen off his yacht. The host controlled the only instrumentality of rescue. The Court declared that to ask of the host anything less than that he attempt to rescue his guest would be "so shocking to humanitarian considerations and the commonly accepted code of social conduct that the courts in similar situations have had no difficulty in pronouncing it to be a legal obligation”.

“Farwell and Siegrist were companions on a social venture. Implicit in such a common undertaking is the understanding that one will render assistance to the other when he is in peril if he can do so without endangering himself. Siegrist knew or should have known when he left Farwell, who was badly beaten and unconscious, in the back seat of his car that no one would find him before morning. Under these circumstances, to say that Siegrist had no duty to obtain medical assistance or at least to notify someone of Farwell’s condition and whereabouts would be "shocking to humanitarian considerations” and fly in the face of "the commonly accepted code of social conduct”. "[Courts will find a duty where, in general, reasonable men would recognize it and agree that it exists.”
“Farwell and Siegrist were companions engaged in a common undertaking; there was a special relationship between the parties. Because Siegrist knew or should have known of the peril Farwell was in and could render assistance without endangering himself he had an affirmative duty to come to Farwell’s aid.

“The Court of Appeals is reversed and the verdict of the jury reinstated.”

Justice Fitzgerald’s OPINION: “The unfortunate death of Richard Farwell prompted this wrongful death action brought by his father against defendant, David Siegrist, a friend who had accompanied Farwell during the evening in which the decedent received injuries which ultimately caused his death three days later. The question before us is whether the defendant, considering his relationship with the decedent and the activity they jointly experienced on the evening of August 26-27, 1966, by his conduct voluntarily or otherwise assumed, or should have assumed, the duty of rendering medical or other assistance to the deceased. We find that defendant had no obligation to assume, nor did he assume, such a duty.

“Plaintiff argues that once having voluntarily undertaken the duty of caring for decedent, defendant could not discontinue such assistance if, in so doing, he left the decedent in a worse position than when such duty was assumed.

“Defendant’s knowledge of the seriousness of decedent’s injury and the failure to advise decedent’s grandparents, the close personal relationship that existed between defendant and the decedent, and the supposition that the decedent relied upon defendant for assistance leads plaintiff to conclude that defendant did not act "with the reasonable prudence and care of a reasonable man in the same or like circumstances". Defendant’s position is that there was no volunteered assumption of duty to care for the safety of the decedent. He argues that the facts within his knowledge on the evening of August 26, 1966, and the evidence introduced at trial failed to establish that defendant should have seen that Richard Farwell had suffered a potentially fatal injury requiring immediate attention.

“Defendant did not voluntarily assume the duty of caring for the decedent’s safety. Nor did the circumstances which existed on the evening of August 26, 1966, impose such a duty. Testimony revealed that only a qualified physician would have reason to suspect that Farwell had suffered an injury which required immediate medical attention. The decedent never complained of pain and, in fact, had expressed a desire to retaliate against his attackers. Defendant’s inability to arouse the decedent upon arriving at his grandparents’ home does not permit us to infer, as does plaintiff, that defendant knew or should have known that the deceased was seriously injured. [It is at this point -- plaintiff’s unsuccessful attempt to arouse the decedent in the driveway -- that counsel, during oral argument, believes that defendant volunteered to aid the decedent. Yet no affirmative act by defendant indicated that he assumed the responsibility of rendering assistance to the decedent. Consequently, there could be no discontinuance of aid or protection which left decedent in a worse position than when the alleged "volunteering" occurred. This would make operative the concession of plaintiff that where no duty is owed, the refusal to act cannot form the basis for an action in negligence.] While it might have been more prudent for the defendant to insure that the decedent was safely in the house prior to leaving, we cannot say that defendant acted unreasonably in permitting Farwell to spend the night asleep in the back seat of his car. [Defendant had no way of knowing that it was the severity of the head injury suffered by the decedent which caused him to crawl in the back seat and apparently fall asleep. The altercation combined with the consumption of several beers could easily permit defendant to conclude that decedent was simply weary and desired to rest.]

“The close relationship between defendant and the decedent is said to establish a legal duty upon defendant to obtain assistance for the decedent. No authority is cited for this proposition other than the public policy observation that the interest of society would be benefited if its
members were required to assist one another. This is not the appropriate case to establish a standard of conduct requiring one to legally assume the duty of insuring the safety of another.

"Recognizing that legal commentaries have expressed moral outrage at those decisions, the most notable of which include: Osterlind v Hill, 263 Mass 73; 160 NE 301; 56 ALR 1123 (1928); Yania v Bigan, 397 Pa 316; 155 A2d 343 (1959); and Handiboe v McCarthy, 114 Ga App 541; 151 SE2d 905 (1966). which permit one to refuse aid to another whose life may be in peril, we cannot say that, considering the relationship between these two parties and the existing circumstances, defendant acted in an unreasonable manner.

"Were a special relationship to be the basis of imposing a legal duty upon one to insure the safety of another, it would most probably take the form of "co-adventurers" who embark upon a hazardous undertaking with the understanding that each is mutually dependent upon the other for his own safety.

"There is no evidence to support plaintiff’s position that decedent relied upon defendant to provide any assistance whatsoever.

"A situation where two persons are involved in an altercation provoked by the party ultimately injured, the extent of which was unknown to the other, whose subsequent conduct included drinking beer and a desire to retaliate against his attackers would not fall within this category.

"Plaintiff believes that a legal duty to aid others should exist where such assistance greatly benefits society and only a reasonable burden is imposed upon those in a position to help. He contends further that the determination of the existence of a duty must rest with the jury where questions of foreseeability and the relationship of the parties are primary considerations.

"It is clear that defendant’s nonfeasance, or the "passive inaction or a failure to take steps to protect [the decedent] from harm" n5 is urged as being the proximate cause of Farwell’s death.

"We must reject plaintiff’s proposition which elevates a moral obligation to the level of a legal duty where, as here, the facts within defendant’s knowledge in no way indicated that immediate medical attention was necessary and the relationship between the parties imposes no affirmative duty to render assistance.

"The posture of this case does not permit us to create a legal duty upon one to render assistance to another injured or imperiled party where the initial injury was not caused by the person upon whom the duty is sought to be imposed.

"The relationship of the parties and the question of foreseeability does not require that the jury, rather than the court, determine whether a legal duty exists. We are in agreement with the general principle advanced by plaintiff that the question of negligence is one of law for the court only when the facts are such that all reasonable men must draw the same conclusion. n6 However, this principle becomes operative only after the court establishes that a legal duty is owed by one party to another. Prosser’s analysis of the role of the court and jury on questions of legal duty bears repeating:

The existence of a duty. In other words, whether, upon the facts in evidence, such a relation exists between the parties that the community will impose a legal obligation upon one for the benefit of the other -- or, more simply, whether the interest of the plaintiff which has suffered invasion was entitled to legal protection at the hands of the defendant.

"This is entirely a question of law, to be determined by reference to the body of statutes, rules, principles and precedents which make up the law; and it must be determined only by the court. A decision by the court that, upon any version of the facts, there is no duty, must necessarily result in judgment for the defendant.” Prosser, Torts (4th ed), 37, p 206.

“The Court of Appeals properly decided as a matter of law that defendant owed no duty to the deceased.

II. You Be the Judge
The Case of Sherrice Iverson
Now armed with what your knowledge of the cases, coupled with your own considered judgment, imagine that the following more recent case has come before you.

How would you rule?

Sherrice Iverson

Might any of the principles and precedents from any of the prior cases apply to this, more recent, case? What do you think?

Jeremy Strohmeyer and David Cash, Jr. had driven with David’s father to Las Vegas from their homes near Los Angeles, California. As the night turned to the early hours of the morning, the young men played video games at the Primadonna Casino. A seven-year-old girl, Sherrice Iverson, was also playing in the game room, while her father gambled in the casino. Sherrice, while playing with another young boy, was throwing wet, wadded paper towels, when an errant shot hit Jeremy Strohmeyer. Jeremy turned toward the little girl and began playfully chasing her. Video security cameras display the two playing around the game room. Sherrice then ran into the women’s restroom and began to get more wet paper towels to throw at Jeremy.

David Cash, Jr., Jeremy’s best friend, followed Jeremy into the restroom, and watched as they threw paper towels at each other. David then saw Jeremy pick up the little girl and take her into a toilet stall. David walked over to the next stall and looked over the door to see what his friend was doing. Jeremy had Sherrice pressed up against the wall with his hand over her mouth, muffling her screams. Jeremy told Sherrice to shut up or
he would kill her. David maintains that he never saw Strohmeyer actually sexually molest the girl, but that he tapped Jeremy in the head and gave him a look as if he should not be doing that Jeremy just looked back at him with a blank stare and David felt it was time to for him to get out of there.

Tapes from the video surveillance cameras showed David Cash leaving the restroom about two minutes after he walked in. He waited outside for over twenty minutes for his best friend, Jeremy Strohmeyer. Strohmeyer walked out, looked at David Cash and said, “I - I killed her.”

The two boys immediately left. They spent the rest of the night at other casinos, playing slot machines and riding roller coasters, before returning to California.

Jeremy Strohmeyer was arrested and charged with first-degree murder. He pled guilty to the crime and received life in prison without the possibility of parole. In his statement to the court he expressed remorse and blamed his friend, David, for not stopping the attack. David Cash, Jr., has not been charged with any crime.

According to Nevada prosecutors, he committed none.

Merely witnessing a crime is not a crime in itself.

There is no law against the failure to report a crime in Nevada.
So-called "Good Samaritan" laws have only been enacted in seven states.

Undoubtedly, David Cash was in a position to stop the assault and murder of Sherrice Iverson.

He could have pulled his friend off of her or summoned the nearby casino security guards.

He could have stopped the attack with little or no risk to himself.

But Cash chose not to do so.

There is no question that his decision to remain uninvolved while his friend sexually assaulted and eventually murdered a little girl was morally reprehensible, but was his failure to act in anyway illegal?

Did his failure to rescue or warn constitute a violation of a legal duty?

Might the reasoning used in either Tarasoff or Farwell v. Keaton or in other duty to rescue cases be used somehow in bringing a case against Cash?

What case might be made against him?

In talking about the incident afterwards, Cash did little to bolster his cause. On a Los Angeles radio program, he expressed no remorse for his actions,

"How much am I supposed to-to sit down and cry about this? I mean... let's be reasonable here. Is my life supposed to halt for-like, for days, weeks and months on end? The simple fact remains, I do not know this little girl. I do not know starving children in Panama."

When asked if the murder was on his conscience during a national television broadcast, Cash responded, "No, not to the extent that most people would want it to be." Cash's lack of remorse fueled the controversy surrounding his actions.

Surely, any decent human being would stop the molestation and murder of a little girl if it were easily within their power?

What would you do in this case?

Whose side are you on?

David Cash's or the side of those who maintain that what Cash did was not a crime, and that even if he had witnessed the entire assault and murder, he could not have been charged or if he had been charged he could not have been convicted.

Recall the bystanders in the Kitty Genovese assault and murder, the bystanders in the bar of the tavern in New Bedford, Massachusetts which served as a model for the film, The Accused, and the photographers who continued to take pictures rather than call for help at the scene of Princess Diana's car crash in Paris.

Is there anything, anything at all in previous "duty to rescue" cases that provide a handle on this case here, that offers a "way" to show that Cash has some criminal responsibility here, a legal duty of some sort that he breached?

What is the best argument one might make against Cash and what is his best defense?

What is your OPINION?
III.

Conclusion:
“There Ought To Be A Law?”

Then, whether your arguments are likely to carry the day or not, imagine that the Nevada legislature has decided to adopt a duty to rescue law, an “Iverson” law, as the media are now calling it. A special hearing has been scheduled to which you have been invited to give expert testimony for or against the adoption of this new law.

Someone in the Nevada Legislature learned recently that you are taking a law class at Brandeis: "A great university," one Nevada representative was rumored to have said.

Rumor also has it that you have been participating in conversations with other members of the class, a Philosophy and Legal Studies class and have read through a Brieflet prepared by a professor who teaches at Brandeis.

Obviously, there are many considerations that go into the drafting of a law and you are not expected to resolve all the minute particulars of wording, merely to weigh in on one side or the other, to say whether you think it is a good or bad thing to have such a law and to say, as best as you can, why you think the way you do as well as how you might respond to someone on the other side who was, let’s say, especially adept at making good arguments. Vermont has enacted a Duty to Rescue Statute. VT. STAT. ANN, 12, 519 (1972), and Minnesota has adopted a similar provision, MINN. STAT. ANN. 604.05(1) (1984), as a part of its criminal code:

Vermont Duty to Rescue Statute:
“Any person at the scene of an emergency who knows that another person is exposed to or has suffered grave physical harm shall, to the extent that he can do so without danger or peril to himself or others, give reasonable assistance to the exposed person. Reasonable assistance may include obtaining or attempting to obtain aid from law enforcement or medical personnel.”

What will you recommend at the hearing to which you have been invited?

Will you urge Nevada to pass legislation similar to Vermont’s and Minnesota’s?

Why? If not, why not?

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Suggestions for Further Reading
News Stories, Law Review Articles, Cases

I. News Stories:
Mark Gado, “The Kitty Genovese Murder”

Kitty Genovese: A critical review of the March 27, 1964 New York Times article that first broke the story
http://kewgardenshistory.com/ss-nytimes-3.html

Princess Diana Crash Animation
http://www.knottlab.com/animations.aspx
Diana Car Crash
http://www.youtube.com/watch?v=k2eNB5pCJeM

Photographers Under Investigation: World News
http://www.cnn.com/WORLD/9709/02/diana.crash.long/

BBC: Britain's most senior policeman is to investigate whether the car crash that killed Princess Diana and Dodi Al Fayed was more than just an accident.
http://news.bbc.co.uk/1/hi/uk/3371053.stm

Who killed princess Diana? Part 1 (Documentary)
http://www.youtube.com/watch?v=CKD0gds85_Y

Who killed Princess Diana? Part 2 (Documentary)
http://www.youtube.com/watch?v=NjTj_jksUgL&NR=1

Michigan Daily Viewpoint Berkeley wants student out of town

Barbara Ehrenreich, “Conscience on Campus” Online
http://findarticles.com/p/articles/mi_m1295/is_1998_Dec/ai_53281642

II. Law Review Articles and Commentaries:


• Angela Hayden, "Are Good Samaritan Laws Good Ideas?" PDF Online: www.nesl.edu/intljournal/vol6/hayden.pdf


Cases:
Farwell v. Keaton, Supreme Court of Michigan, 396 Mich. 281; 240 N.W.2d 217
http://people.brandeis.edu/~teuber/lawfarwell.html

Tarasoff v. Regents of the University of California
Supreme Court of California, 1974, 13 Cal. 3d 177 (1974)
http://people.brandeis.edu/~teuber/lawtarasoff.html

McFall v. Shimp, Allegheny County Court, 1978 (1978)
http://people.brandeis.edu/~teuber/lawmcfall.html

Yania v. Bigan, The Supreme Court of Pennsylvania, 1959
http://people.brandeis.edu/~teuber/lawyania.html