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AM I MY BROTHER'S KEEPER? HOW TECHNOLOGY NECESSITATES REFORM OF THE LACK OF DUTY TO RESCUE OR DUTY TO REPORT LAWS IN THE UNITED STATES

Sharon Yamen*, Nanci K. Carr**, and Aaron Bartholomew***

ABSTRACT

Due to advancing communications technology and the advent of smartphones, we are at a pivotal point in our interconnectedness as a society. The world is literally at our fingertips. We connect to the far reaches of the globe in real time with a click, swipe, tap, or voice command. With such universal connectivity, and phones in our pockets, why are we not required to do the bare minimum of calling 9-1-1 when someone is in danger? Traditionally, our common law system never imposes a duty to rescue, except when a special relationship exists, and has only required a duty to report in limited circumstances.¹

This article examines the viability of current duty to rescue and duty to report laws in the United States as well as whether reform is necessary given the capacity and availability of today's technology. First, the article explores the history and rationale behind the lack of duty to rescue laws and their exceptions. The article next considers the nature of the duty to report, given the absence of a common law duty to rescue, suggesting that neither duty to rescue nor duty to report laws are adequate in their present forms. By examining pending cases and past precedent, this article then analyzes why changing the current state of the law is essential. Utilizing model statutes, this article proposes imposing liability upon actors who fail to

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¹ See *infra* note 81.

report an event or act causing injury to a person or to rescue another when the actor's conduct created the circumstances causing the injury or harm.

"[T]he world is in greater peril from those who tolerate or encourage evil than from those who actually commit it." Albert Einstein²

ABSTRACT	117
I. INTRODUCTION	118
II. HISTORY	121
A. The Duty to Rescue	122
B. Good Samaritan Laws	129
C. Duty to Report	130
III. JAMEL DUNN.....	134
IV. FIRST AMENDMENT OBJECTIONS	138
V. STATUTORY PROPOSALS.....	142
VI. CONCLUSION.....	144

I. INTRODUCTION

We are more than fifty years removed from the vicious murder of Kitty Genovese outside of her Queens, New York apartment.³ The case was and remains infamous not for the violence of the attack and murder but because of the apathetic non-response and non-intervention of witnesses.⁴ Numerous people heard her screams for help: "Oh my God, he stabbed me! Help me!"⁵ One neighbor even screamed down to the attacker,⁶ but no one

² JOSEP MARIA CORREDOR, CONVERSATIONS WITH CASALS 11 (André Mangeot trans. 1956) (attributing quotation variously to Albert Einstein in his tribute to the famed cellist Pablos Casals on March 30, 1953).

³ See A.M. ROSENTHAL, THIRTY-EIGHT WITNESSES: THE KITTY GENOVESE CASE 11-13 (1964). The murder of Catherine Genovese—who called herself "Kitty"—occurred in the early morning hours of March 13, 1964. To this day, controversy persists surrounding the contemporaneous published accounts by A.M. Rosenthal and Martin Gansberg, who were, respectively, an editor and a reporter for *The New York Times*. While they claimed at the time that up to 38 bystanders witnessed the murder, the number of witnesses, how much they witnessed and other published details have been disputed in subsequent accounts. See Jim Rasenberger, *Kitty, 40 Years Later*, NY TIMES (Feb. 8, 2004), <https://www.nytimes.com/2004/02/08/nyregion/kitty-40-years-later.html>; Nicholas Lemann, *A Call for Help*, NEW YORKER (Mar. 10, 2014), <https://www.newyorker.com/magazine/2014/03/10/a-call-for-help>. For the purposes of this article, none of these disputed facts are material.

⁴ See Rasenberger, *supra* note 6; Lemann, *supra* note 6.

⁵ Rosenthal, *supra* note 6, at 33.

⁶ Lemann, *supra* note 6.

came to her aid during the thirty-minute attack or summoned the police until she was mortally wounded and dying of her injuries.⁷

More than half a century later, not much has changed.⁸

On September 8, 2018, two teens entered a convenience store in the state of Washington and argued with the clerk about some jerky sticks they had taken, finally presenting \$1 to the clerk to pay for them.⁹ With the dollar bill in his hand, the clerk stumbled and fell, the victim of an apparent heart attack.¹⁰ Instead of calling 9-1-1 for the dying man, the boys hopped over him, took the dollar bill out of his hand, and spent several minutes milling about the store, stealing cigarettes and emptying the cash register.¹¹ At least twice, the teens entered and exited the store to further exploit the situation and steal additional merchandise, stepping over the unconscious clerk on their way out, leaving him there to die.¹² Their actions and inactions are the most current illustration of the consequences of the lack of duty to rescue and duty to report laws.

Modern smartphones are capable of recording geolocation data, taking high-resolution photographs and video, answering verbal questions and responding to verbal commands, paying for purchases, ordering products, and posting to social media. An entire world can know where one is and what one is doing in real time with a swipe and a tap of a screen. In many respects, we may have surpassed the novelty future depicted in the *Jetsons* (save for the jetpacks and flying cars).¹³

⁷ See Rosenthal, *supra* note 6, at 29-33.

⁸ See, e.g., *Commonwealth v. Vieira*, 519 N.E.2d 1320, 1321 (Mass. 1988) (describing the sexual assault of a woman in a bar while approximately 15 male bystanders were present); Laura Collins et al., “*There was no way I could have saved him*”: *Photographer Claims He was Too Far Away to Pull “Doomed” Subway Rider Off Train Tracks*, DAILYMAIL.COM (Dec. 5, 2012, 2:57 PM), <http://www.dailymail.co.uk/news/article-2243344/Subway-death-New-York-Post-photographer-claims-help-doomed-Ki-Suk-Han.html> (discussing the subway death of Ki Suk Han where bystanders declined to help him after he was pushed onto the tracks).

⁹ See Chris Perez, *Teens rob store, leave clerk to die after he suffers heart attack*, N.Y. POST (Sept. 11, 2018, 11:10 PM), <https://nypost.com/2018/09/11/teens-rob-store-leave-clerk-to-die-after-he-collapses-from-heart-attack/>.

¹⁰ Lindsey Bever, *A cashier collapsed—then two teens stepped over him to clean out the register, police say*, WASH. POST (Sept. 12, 2018), https://www.washingtonpost.com/crime-law/2018/09/12/cashier-collapsed-then-two-teens-stepped-over-his-body-clean-out-register-police-say/?noredirect=on&utm_term=.2a939f9b44b7 (noting that authorities had identified the teenagers).

¹¹ See Chris Perez, *supra* note 12.

¹² See *id.*

¹³ *The Jetsons*, an American animated sitcom produced by Hanna-Barbera, originally aired in primetime from September 23, 1962, to March 17, 1963. See *The Jetsons*, IMDB,

Consequently, never before has there been so much access to instantaneous communication.¹⁴ Although access has increased, we still cannot account for the user's discretion in using the power inherent in this access. How will users react in any given situation? Will they call emergency services, or instead, will they taunt, record, and post? Chief Justice John Roberts wrote in 2014: "[M]odern cell phones, which are now such a pervasive and insistent part of daily life that the proverbial visitor from Mars might conclude they were an important feature of human anatomy,"¹⁵ are an actual extension of our being. So why are we not required to at least call 9-1-1 or press a button when someone is in danger instead of filming the circumstances to deride and heckle?¹⁶

<http://www.imdb.com/title/tt0055683/> (last visited Sept. 22, 2018).

¹⁴ See Ian Brown, *Humanity Takes Millions of Photos Every Day. Why are Most So Forgettable?* GLOBE & MAIL (May 11, 2018), <https://www.theglobeandmail.com/life/humanity-takes-millions-of-photos-every-day-why-are-most-so-forgettable/article12754086/> ("The numbers [of photos and recordings] are inconceivable. . . . [T]here are more than 2.6 billion camera phones on the planet today. Facebook alone has been known to upload six billion photographs in a month. We snap as many pictures today, every two minutes, as were taken in the entire 19th century, another boom time for photography."); Bernard Marr, *Big Data: 20 Mind-Boggling Facts Everyone Must Read*, FORBES (Sept. 30, 2015), <https://www.forbes.com/sites/bernardmarr/2015/09/30/big-data-20-mind-boggling-facts-everyone-must-read/#37568b3717b1> ("7. We are seeing a massive growth in video and photo data, where every minute up to 300 hours of video are uploaded to YouTube alone. 8. In 2015, a staggering 1 trillion photos will be taken and billions of them will be shared online. By 2017, nearly 80% of photos will be taken on smartphones. 9. This year, over 1.4 billion smartphones will be shipped - all packed with sensors capable of collecting all kinds of data, not to mention the data the users create. 10. By 2020, we will have over 6.1 billion smartphone users globally (overtaking basic fixed phone subscriptions). 11. Within five years there will be over 50 billion smart connected devices in the world, all developed to collect, analyze and share data.").

¹⁵ *Riley v. California*, 573 U.S. 373, 385-86 (2014) (deciding whether suppression of evidence found during warrantless search of data stored on a cell phone violated the individual's right to privacy under the Fourth Amendment, as well as describing the central role that cellphones play in contemporary life).

¹⁶ See Patricia Grande Montana, *Watch or Report? Livestream or Help? Good Samaritan Laws Revisited: The Need to Create a Duty to Report*, 66 CLEV. ST. L. REV. 533, 533 (2018). ("In July 2017, a group of five Florida teenagers taunted a drowning disabled man while filming his death on a cell phone. In the video, the teenagers laughed and shouted harsh statements like 'ain't nobody finna to help you, you dumb bitch.' At the moment the man's head sank under the water for the very last time, one of the teenagers remarked: 'Oh, he just died' before laughter ensued. None of the teenagers helped the man, nor did any of them report the drowning or his death to the authorities. Because the Good Samaritan law in Florida, like in most states, does not require bystanders to assist another person who they know is in danger or is suffering serious physical harm, the teenagers who chose to film, rather than aid, the drowning disabled man are free of any liability. They face no penalties

This article examines the duties to report and to rescue in the United States and why, under most circumstances, there is no duty to either report to emergency services or to rescue an ailing party. Contrasting the historical and policy reasoning for the absence of these duties with today's technology and instant, effortless communication suggests that the duties to report and to rescue should be substantially revisited and changed. Following the introduction in this Part I, Part II of this article discusses the historical origins of these duties and provides a description of the law and its impact on United States society. Part III of this article considers a recent case impacted by the lack of duty to rescue laws and the harms and pitfalls that could have been avoided. Part IV of this article analyzes the implications of First Amendment interpretations, enforcement of current laws, and the results that these laws have on the duty to rescue. Part V of this article proposes model statutes that will impose liability upon those who fail to report an active event or an act that is causing harm or injury to a person and upon those who fail to rescue another when their own conduct has created the circumstances causing injury or harm. Finally, Part VI of this article concludes with the consequences of the current lack of a duty to report.

II. HISTORY

The laws of the United States have a rich history that dates back to the English common law system.¹⁷ The common law system has been based on the doctrine of judicial precedent, wherein lower courts must follow the decisions of higher courts in addition to statutes.¹⁸ Civil law, the oldest and most frequently occurring of legal systems, is based upon a comprehensive system of codes and rules that “promotes cooperation between human

for their inaction and no punishment for their callousness.”).

¹⁷ William the Conqueror, the first Norman King of England, created what is now known as the common law in 1066 A.D. England. It developed through custom and precedent rather than by written code. This common law integrated into society by the 14th century with courts and lawyers deferring to precedent in legal decisions and commentaries. Another strain of English law is the law of equity (chancery). This law was issued by the monarchy to order or prohibit specific acts. *See generally* R.C. VAN CAENEGEM, *THE BIRTH OF THE ENGLISH COMMON LAW* 12, 75, 88 (1973).

¹⁸ This principle has perhaps been best explained by United States Supreme Court Justice Oliver Wendell Holmes, Jr.: “The life of the law has not been logic: it has been experience. The felt necessities of the time, the prevalent moral and political theories, institutions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed. The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics.” OLIVER WENDELL HOLMES, JR., *THE COMMON LAW* 1 (1881).

beings.”¹⁹ Conversely, the American legal system is “highly individualistic and against selective enforcement” while civil law prizes “social solidarity . . . over individual choice.”²⁰ Therefore, these inherently different and distinct treatments of the individual guide the principles captured in each system’s duty to rescue laws and Good Samaritan laws, civil law systems being much more likely to impose such duties on citizens, who are “much more prepared to accept state-enforced pity.”²¹

A. *The Duty to Rescue*

In American tort law, the long-established absence of a duty to rescue has been the center of significant debate between legal scholars.²² Typically, American common law in tort punishes people for their actions, not their omissions or inaction.²³ In contrast to American common law and similar to civil law systems that contain formalized statutory duties to rescue, America’s penal system contains some formalized, but limited, statutory duties to rescue that bring legal penalties upon those who fail to act.²⁴ The variance between the common law and statutory schemes can be explained by an analysis of long-held maxims and precedent in appellate decisions.

As previously established, the common law requires no general duty to come to the rescue of another.²⁵ Generally, a person cannot be held liable for doing nothing while another person is in peril: “A number of people who stand round a shallow pool in which a child is drowning, and let it drown without taking the trouble to ascertain the depth of the water, are no doubt shameful cowards, but they can hardly be said to have killed the child.”²⁶

¹⁹ *What is the Civil Law?*, LSU LAW, <https://www.law.lsu.edu/clo/civil-law-online/what-is-the-civil-law/> (last visited Sept. 22, 2018).

²⁰ Jennifer L. Groninger, Comment, *No Duty to Rescue: Can Americans Really Leave a Victim Lying in the Street? What Is Left of the American Rule, and Will It Survive Unabated?* 26 PEPP. L. REV. 353, 370 (1999) (alteration in original).

²¹ Damien Schiff, *Samaritans: Good, Bad, and Ugly: A Comparative Law Analysis*, 11 ROGER WILLIAMS U. L. REV. 77, 121 (2005).

²² See *id.* at 123-27; Ernest J. Weinrib, *The Case for a Duty to Rescue*, 90 YALE L.J. 247, 249-51, 258-68 (1980); see also Jay Logan Rogers, Note, *Testing the Waters for an Arizona Duty-to-Rescue Law*, 56 ARIZ. L. REV. 897, 903-10 (2014).

²³ See Weinrib, *supra* note 25, at 260 n.48, 278 n.120; McCall C. Carter, *Morality, Law and the Duty to Act: Creating a Common Law Duty to Act Modeled After the Responsibility to Protect Doctrine*, 2 WASH. U. JURIS. REV. 138, 149 (2010).

²⁴ See *infra* note 81.

²⁵ See Francis H. Bohlen, *The Moral Duty to Aid Others as a Basis of Tort Liability*, 56 U. PA. L. REV. 217, 219 (1908) (describing the act versus omission distinction as “deeply rooted in the common law”).

²⁶ 3 JAMES FITZJAMES STEPHEN, *A HISTORY OF THE CRIMINAL LAW OF ENGLAND* 9–11

The evolution of the absence of a duty to rescue in the United States stems from a case dating to the year 1897, *Buch v. Amory Manufacturing Co.*²⁷ Buch, an eight-year-old boy, accompanied his thirteen-year-old brother to the mill owned and operated by Amory Manufacturing Company, for whom his older brother worked.²⁸ Buch's older brother was trying to teach him how to use a machine at the mill.²⁹ A supervisor saw this and, knowing the dangers accompanying the use of such machinery, immediately told Buch to leave the mill.³⁰ Since the boy did not understand English and therefore did not understand the supervisor's instruction to leave, he stayed.³¹ Buch thereafter crushed his hand in the equipment.³² Buch brought a suit against the mill for negligence in failing to forcibly eject the eight-year-old boy.³³ The court ruled in favor of the mill, holding that the boy was trespassing and consequently the mill's only duty was to refrain from personal violence, which it did by leaving Buch alone.³⁴ Negligence only becomes actionable if a legal duty is neglected; moral duties are never considered.³⁵

Following the decision in *Buch v. Amory Manufacturing Co.* came *Union Pacific Railway Co. v. Cappier*,³⁶ in which the court decided that railroad workers were not required to aid individuals struck by freight cars.³⁷ Though the railroad had operated its train with due care, it struck and killed Cappier's trespassing son.³⁸ The train operator did not stop the train to give immediate medical attention to Cappier's son but summoned an ambulance

(London, MacMillan & Co. 1883) (describing the general derivation of no duty to rescue laws in the common law system); *see also* *Yania v. Bigan*, 155 A.2d 343, 346 (Pa. 1959) (holding that decedent was a reasonable and prudent adult and performed an act which he knew or should have known was perilous, and it was that act, and not defendant's failure to warn or rescue, that caused decedent's death).

²⁷ *Buch v. Amory Mfg. Co.*, 44 A. 809 (N.H. 1897).

²⁸ *See id.* at 809-10.

²⁹ *See id.*

³⁰ *See id.*

³¹ *See id.* at 810.

³² *See id.*

³³ *See id.* at 809-10.

³⁴ *Id.* at 810 ("The defendants are not liable unless they owed to the plaintiff a legal duty which they neglected to perform.").

³⁵ *See* Patrick J. Kelley, *Restating Duty, Breach, and Proximate Cause in Negligence Law: Descriptive Theory and the Rule of Law*, 54 VAND. L. REV. 1039, 1041 (2001) (noting that the elements for negligence include duty, breach of duty, cause in fact, proximate cause, and damage).

³⁶ *Union Pac. Ry. v. Cappier*, 72 P. 281 (Kan. 1903).

³⁷ *Id.* at 282.

³⁸ *See id.* at 281.

which arrived thirty minutes later.³⁹ Cappier's son subsequently died from his injuries.⁴⁰ Although the agents of the plaintiff called the police and an ambulance was sent, the appellate court found that when the injuries result from one's own negligence, as in this case, a third party owes no duty to protect or to aid the negligent individual.⁴¹ Although these acts might be morally required, they are not recognized as legal duties.⁴² The agents of Union Pacific did not cause the injuries of Cappier's son, and thus, a claim of negligence could not be supported.⁴³ Because the court found no duty existed in this case, it could not find negligence.⁴⁴ There is no duty to act in order to help or to aid an individual who has been injured solely by his or her own actions.⁴⁵ A party cannot be found negligent for failing to prevent harm if they have not contributed to the risk of that harm.⁴⁶

People v. Beardsley was decided a few years later in 1907.⁴⁷ Beardsley's mistress Blanche Burns passed out after overdosing on morphine.⁴⁸ Instead of seeking medical assistance, Beardsley had a friend hide her in the basement.⁴⁹ Burns died a few hours later.⁵⁰ Beardsley was tried for manslaughter for failing to provide reasonable care to Burns.⁵¹ The prosecutor argued that Beardsley was Burns' natural guardian at the time and had a clear duty to protect her.⁵² The defense argued that no such legal duty is created by a moral obligation, and none of the categories of legal duty applied.⁵³ The fact that Burns was a woman does not create the same legal duty that a husband has toward his wife or a parent to a child, as the prosecutor sought to infer.⁵⁴ Beardsley was convicted of manslaughter, but the Supreme Court of Michigan reversed his conviction on appeal.⁵⁵ The

³⁹ See *id.* at 281-82 ("The engine was stopped. After the injured man was clear of the track, the yardmaster signaled the engineer to move ahead, fearing, as he testified, that a passenger-train then about due would come upon them.").

⁴⁰ *Id.* at 281.

⁴¹ See *id.* at 282-83.

⁴² See *id.*

⁴³ See *id.*

⁴⁴ *Id.* at 283.

⁴⁵ See *id.* at 282-83.

⁴⁶ See *id.*

⁴⁷ *People v. Beardsley*, 113 N.W. 1128 (Mich. 1907).

⁴⁸ See *id.* at 1129.

⁴⁹ See *id.*

⁵⁰ See *id.*

⁵¹ See *id.* at 1128.

⁵² See *id.* at 1131.

⁵³ See *id.* at 1129.

⁵⁴ See *id.* at 1131.

⁵⁵ See *id.* at 1128, 1131.

court found it “repugnant to our moral sense” that a duty would be created because Burns was a woman because no such moral or legal duty would have been implied if she had been a man.⁵⁶

A 1928 case, *Osterlind v Hill*,⁵⁷ further illustrated the harshness of the rule against a duty to rescue. The plaintiff Albert Osterlind and his companion Ryan rented a canoe from the defendant Harold Hill, a commercial lessor of boats.⁵⁸ Osterlind and Ryan were intoxicated and shortly after leaving in the canoe, it capsized.⁵⁹ Osterlind clung to the canoe for half an hour, calling for help.⁶⁰ Hill apparently heard the calls but did not respond even though he was an extremely strong swimmer.⁶¹ Osterlind eventually let go of the canoe and drowned.⁶² The administrator of his estate sued Hill, alleging that Hill’s conduct was willful, wanton, reckless, or negligent and that such conduct caused Osterlind to suffocate and drown.⁶³ The trial court sustained Hill’s demurrer to the complaint, and the administrator of Osterlind’s estate appealed.⁶⁴ The appellate court held that the boat owner was not liable to Osterlind’s estate because Osterlind was capable of caring for his own safety and Hill had no legal duty to rescue Osterlind.⁶⁵ The argument could have been made that Hill should have never rented the canoe to two inebriated men, but the court held that even the fact that he had rented the canoe was an insufficient relationship to create a duty of care, and thus, Hill was not liable.⁶⁶ The outcome of this case would have been different if the canoe had been defective, but the claim then would have been based on the supply of faulty or dangerous goods, not on a failure to respond to an accident.⁶⁷

Yania v. Bigan, an even more recent case from 1959, further established that there is no duty to rescue, even when a person induces another to jump into a water-filled trench and watches him drown.⁶⁸ The court held that the person could not be held legally responsible for the death even under such

⁵⁶ *Id.* at 1131.

⁵⁷ *Osterlind v. Hill*, 160 N.E. 301 (Mass. 1928).

⁵⁸ *See id.* at 302.

⁵⁹ *See id.*

⁶⁰ *See id.*

⁶¹ *See id.*

⁶² *See id.*

⁶³ *See id.*

⁶⁴ *See id.*

⁶⁵ *See id.*

⁶⁶ *See id.*

⁶⁷ Francois Jaeck et al., *The Good Samaritan Law: Across Europe*, THE DAN LEGAL NETWORK 5, http://www.daneurope.org/c/document_library/get_file?uuid=c09228f3-a745-480b-9549-d9fc8bbbd535&groupId=10103.

⁶⁸ *Yania v. Bigan*, 155 A.2d 343 (Pa. 1959).

circumstances.⁶⁹

United States Supreme Court Justice Anthony Kennedy commented that in the United States, no general duty exists that requires one to render aid to someone in distress. “You don’t have the duty to rescue someone if that person is in danger. The blind man is walking in front of a car and you do not have a duty to stop him absent some relation between you.”⁷⁰ His statement solidifies black letter American tort law, which holds that there is no duty to rescue a person who is in peril, sick, injured, or under criminal attack under the reasonable person standard. To demonstrate this principle, consider the classic first-year law student’s tort hypothetical:

A man comes upon a complete stranger who is drowning in a lake. There is a rope and a boat on a nearby dock. The man stands on the dock, smokes a cigarette, and watches the stranger drown. Under today’s American rescue rule, black letter law continues to allow a bystander who comes upon a person in need of rescuing to watch instead of help⁷¹

Good Samaritan laws, as further discussed below,⁷² typically offer immunity from civil liability if a person, with no expectation of compensation, chooses to assist someone who is injured or exposed to harm. However, even when there is no obligation to act in emergencies, once a person chooses to act by coming to a victim’s aid, the rescuer may be found liable if matters are made worse through act or omission of the rescuer constituting gross negligence or willful or wanton misconduct.⁷³ Even still, the common law has been slow in recognizing liability for nonfeasance. Courts distinguish “between nonfeasance, an omission to act (for which one cannot be liable without a specific relationship creating a

⁶⁹ *Id.* at 346. A person also has no liability to protect another from a criminal act or violent attack. *See, e.g., St. Louis-S.F. Ry. v. Mills*, 271 U.S. 344, 347 (1926) (holding that an employer had no duty to protect employees from the criminal acts of striking workers); 57A AM. JUR. 2D *Negligence* § 96. Similarly, government agencies have no duty to rescue. *See Riss v. City of N.Y.*, 240 N.E.2d 860, 860-61 (N.Y. 1968) (holding a municipality not liable for failure to protect a person upon request who was continually threatened). Even doctors have no duty to rescue victims in need of their professional services. *See Hurley v. Eddingfield*, 59 N.E. 1058, 1058 (Ind. 1901) (holding that a doctor is not required under the laws regulating the practice of medicine to give services to everyone who requests them). *See generally Groninger, supra* note 23, at 356 nn.29-33.

⁷⁰ *Supreme Court: The Health Care Law And The Individual Mandate*, NPR (Mar. 27, 2012), <https://www.npr.org/2012/03/27/149465820/transcript-supreme-court-the-health-care-law-and-the-individual-mandate>.

⁷¹ Groninger, *supra* note 23, at 356.

⁷² *See infra*, Part II.B., and note 93.

⁷³ *See, e.g., CAL. HEALTH & SAFETY CODE* § 1799.102 (Deering 2009); *MASS. GEN. LAWS* ch. 112, § 12V (2016).

duty to act), and misfeasance, an act wrongfully or negligently performed (for which one can undoubtedly be liable),⁷⁴ and are reluctant to force persons to help one another.⁷⁵

Nevertheless, to state that no person ever has a duty to rescue others would be wholly inaccurate.⁷⁶ The categories in which a legal duty is imposed to rescue others are as follows: statutory duties,⁷⁷ duties based upon legal or special relationships,⁷⁸ duty of a professional rescuer,⁷⁹ voluntary undertaking to rescue victim,⁸⁰ negligent injury caused by a rescuer,⁸¹ an innocent injury caused by rescuer,⁸² and the duty to not prevent the giving of aid.⁸³

We do not punish people for “not” rescuing another. “The most significant development under the statutory duty exception is that six states

⁷⁴ Francois Jaeck et al., *The Good Samaritan Law: Across Europe*, DIVERS ALERT NETWORK, http://www.daneurope.org/c/document_library/get_file?uuid=c09228f3-a745-480b-9549-d9fc8bbbd535&groupId=10103. See also Philip W. Romohr, Note, *A Right/Duty Perspective on the Legal and Philosophical Foundations of the No-Duty-to-Rescue Rule*, 55 DUKE L.J. 1025, 1030–31 (2006) (“There is no distinction more deeply rooted in the common law and more fundamental than that between misfeasance and non-feasance, between active misconduct working positive injury to others and passive inaction, a failure to take positive steps to benefit others, or to protect them from harm not created by any wrongful act of the defendant. This distinction is founded on that attitude of extreme individualism so typical of Anglo-Saxon legal thought.”).

⁷⁵ *Id.*

⁷⁶ Groninger, *supra* note 23, at 356–57.

⁷⁷ Romohr, *supra* note 74 at 1034–35.

⁷⁸ See *id.* at 1032 (describing special relationships as including (but not limited to) common carriers/innkeepers/business owners to guests/customers, legal custodians to charges, teachers to students, or when a defendant controls a third person’s conduct). For example, parents have a duty to rescue their minor children, and this duty also applies to those acting *in loco parentis*, such as schools. Vincent R. Johnson & Claire G. Hargrove, *The Tort Duty of Parents to Protect Minor Children*, 51 VILL. L. REV. 311, 322 (2006). Common carriers have a duty to rescue their patrons. Romohr, *supra* note 77, at 1032.

⁷⁹ Jay Silver, *The Duty to Rescue: A reexamination and Proposal*, 26 WM. & MARY L. REV. 423, 426 (1985) (listing those who have a duty to rescue by contract, including “firemen, police, nurses, baby-sitters, . . .”).

⁸⁰ See Romohr, *supra* note 77, at 1032–33 (describing a voluntary undertaking to rescue as an individual that has no duty to rescue but chooses to do so and explaining that he must exercise reasonable care or be subject to liability for harm caused by negligent action).

⁸¹ See *id.* at 1033 (stating that an individual who negligently injures another or negligently places another in a dangerous situation has a duty to provide reasonable assistance to prevent further harm).

⁸² See *id.* (describing an innocent injury by a rescuer as a defendant’s conduct that harms or places another in danger although the conduct itself is without fault).

⁸³ See *id.* at 1034 (stating that an individual cannot interfere with another’s rescue attempt, which is rooted in the idea that a victim should have the opportunity to receive aid).

have rejected outright the common law no-duty-to-rescue-rule and instead legislated a duty to rescue in ‘easy rescue’ situations.”⁸⁴ In other words, one should rescue another in danger if there is no risk to himself.⁸⁵ Where a duty to rescue arises, the rescuer must generally act with reasonable care, and can be held liable for injuries caused by a reckless rescue attempt. However, many states have used Good Samaritan laws to limit or remove liability from rescuers in such circumstances, particularly when the rescuer is an emergency worker. Furthermore, the rescuers need not endanger themselves in conducting the rescue.

On the other hand, some have a duty to rescue due to their profession. Every day, we count on professionals who care for others or who act as first responders. We trust that police officers and firefighters will answer our 9-1-1 calls and that hospital personnel will care for us. Certainly, they have a duty to rescue, to care for others, and to do no harm in the performance of their jobs. Unfortunately, not all people in those professions take those duties seriously. In one case, instead of caring for an ailing WWII veteran, nurses laughed at him for over an hour before providing assistance.⁸⁶ Furthermore, the nation was recently shocked and appalled in the aftermath of the tragic Marjory Stoneman Douglas High School shooting when we learned that an armed school officer hid outside and did not enter the school to protect or rescue students and staff.⁸⁷

There may also be a duty to rescue if there is a special relationship, if there is a contract for care and a risk of harm is created with no effort made to prevent it from occurring,⁸⁸ or if a person who has no duty begins a rescue but stops, thereby putting the victim in worse circumstances than if there had been no attempted rescue.⁸⁹ It is notable that there is a duty to

⁸⁴ Groninger, *supra* note 23, at 368.

⁸⁵ *Id.* (“An easy rescue is one where a victim is in danger and a potential rescuer is in a position to alleviate the harm without any significant cost to himself.”).

⁸⁶ Maria Perez, *Nurses Laugh as WWII Veteran Cries for Help Before Dying*, NEWSWEEK (Nov. 18, 2017, 4:25 PM), <http://www.newsweek.com/nurses-laugh-wwii-veteran-calls-help-and-dies-716102> (noting that eighty-nine-year-old veteran James Dempsey called out to staff members at Northeast Atlanta and Rehabilitation in Georgia on February 27, 2014, and that it took an hour before nurses provided aid, which was accompanied by laughter).

⁸⁷ Lori Rozsa & Mark Berman, *Armed sheriff's deputy stayed outside Florida school while mass killing took place*, WASH. POST (Feb. 23, 2018), https://www.washingtonpost.com/news/post-nation/wp/2018/02/22/armed-sheriffs-deputy-stayed-outside-forida-school-while-mass-killing-took-place/?noredirect=on&utm_term=.f32ea31fd79c.

⁸⁸ See *R v. Miller* [1982] UKHL 6, [1983] 2 AC (HL) 161 (appeal taken from Eng.) (finding the defendant guilty of arson when he accidentally started a fire and thereafter failed to take steps to extinguish the blaze).

⁸⁹ Joshua Dressler, *Some Brief Thoughts (Mostly Negative) About “Bad Samaritan”*

rescue at sea⁹⁰ even though there is no duty to rescue on land. On the high seas, federal law requires a “master” of any vessel under United States jurisdiction to help anyone found at sea in danger of being lost.⁹¹ Further, “a 1989 international treaty extends that obligation to mariners around the world.”⁹² If the captain of a ship must render aid to another ship, then the driver of a car could be required to render aid to another driver, particularly, since the law will protect the driver in the event that such aid is unsuccessful.

B. Good Samaritan Laws⁹³

Good Samaritan laws, alternatively referred to as duty to rescue or volunteer protection statutes, are legal protections offered to people who assist others who are injured or in danger.⁹⁴ Without Good Samaritan laws, bystanders may worry that they will be the subject of a civil or criminal action in the event the rescue attempt results in injury or death. But beyond the issues of liability, the compelling force of public policy founded in the ethical and moral treatment of neighbors animates the enactment of such laws.

Good Samaritan laws take their name from a Bible parable, commonly referred to as the *Parable of the Good Samaritan*, set forth in Luke 10:25-37.⁹⁵ Jesus told this parable to teach his followers about the importance of caring for one’s neighbor. It details the aid given by a traveler from Samaria to another traveler who had been beaten and robbed by bandits on the road from Jerusalem to Jericho.⁹⁶ The Samaritan was not the first traveler to set his eyes upon the injured man.⁹⁷ First a priest and then a Levite each saw the injured man, crossed the street, and kept walking

Laws, 40 SANTA CLARA L. REV. 971, 976 (2000).

⁹⁰ 46 U.S.C. § 2304(a)(1) (2006) (“A master or individual in charge of a vessel shall render assistance to any individual found at sea in danger of being lost, so far as the master or individual in charge can do so without serious danger to the master’s or individual’s vessel or individuals on board”).

⁹¹ *Id.*

⁹² Curt Anderson, *Experts: No duty for laughing teens to rescue drowning man; police to charge youths*, WJLA (July 21, 2017), <https://wjla.com/news/nation-world/experts-no-duty-for-laughing-teens-to-rescue-drowning-man>.

⁹³ See generally Eugene Volokh, *Duties to Rescue and the Anticooperative Effects of Law*, 88 GEO. L.J. 105 (1999) (analyzing the different “types” of Samaritans, who act or fail to act, their motivations, and the effectiveness of affirmative duties to rescue and report).

⁹⁴ Jaeck, *supra* note 77, at 2.

⁹⁵ Luke 10:25-37.

⁹⁶ *Id.*

⁹⁷ *Id.*

without rendering aid.⁹⁸ But the Samaritan saw the befallen fellow, took pity on him, cleaned and bandaged his injuries, put him on the Samaritan's donkey, took him to an inn, and provided the innkeeper with money for his care.⁹⁹ After recounting the parable, Jesus asks the question to an expert in the law: "Which of these three do you think was a neighbor to the man who fell into the hands of robbers?"¹⁰⁰ The expert in the law replied, "The one who had mercy on him."¹⁰¹ Jesus told him, "Go and do likewise."¹⁰²

As a reflection of shared values in our public policy, all fifty states and the District of Columbia have some type of Good Samaritan law, although most vary in content from one jurisdiction to the next.¹⁰³ Each jurisdiction sets out its own laws regarding who is protected from liability and under what circumstances when rendering aid to another.¹⁰⁴

C. Duty to Report

When rescuing requires effort, and possibly even puts the rescuer at risk, should witnesses be required to report a person in danger and in need of aid? In 2018, ninety-five percent of adult Americans owned a cellphone.¹⁰⁵ Seventy percent of 9-1-1 calls are placed from wireless phones.¹⁰⁶ So if reporting danger is that easy to do, should it be criminal to not report?

A sickening story from 2009 accentuates the need to answer this question. For two and a half hours, while a high school homecoming dance was taking place inside a gymnasium in the San Francisco Bay Area, approximately ten men gang-raped a fifteen-year-old student and beat her savagely while ten others stood around laughing and taking pictures with their cell phones.¹⁰⁷ The crowd reached twenty, and no one called the

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ James Moss, *Good Samaritan Laws by state*, RECREATION LAW (May 28, 2014), <https://recreation-law.com/2014/05/28/good-samaritan-laws-by-state/>.

¹⁰⁴ *Id.* In addition, The United States even has Good Samaritan laws to protect those that render aid while in flight. Aviation Medical Assistance Act of 1998, Pub. L. No. 105-170, § 5(b), 112 Stat. 47, 49 (1998) (providing coverage for "Good Samaritans" while in flight).

¹⁰⁵ *Mobile Fact Sheet*, PEW RESEARCH CTR. (Feb. 5, 2018), <http://www.pewinternet.org/fact-sheet/mobile/>.

¹⁰⁶ FED. COMM'NS COMM'N, CONSUMER GUIDE: 911 WIRELESS SERVICES, <https://transition.fcc.gov/cgb/consumerfacts/wireless911srvc.pdf>.

¹⁰⁷ *Vicious Homecoming Dance Gang Rape May Have Been Videotaped, Watched by Dozens*, FOX NEWS (Oct. 27, 2009), <http://www.foxnews.com/us/2009/10/27/vicious-homecoming-dance-gang-rape-videotaped-watched-dozens.html>.

police.¹⁰⁸ The assistant principal saw men at the scene who were not wearing the required badges, but he did nothing.¹⁰⁹ It is a sad state of affairs when so many people take the time and effort to record a crime on their cell phone and post it on social media later.¹¹⁰

Such behavior needs to be discouraged in favor of reporting crime and dangerous situations. The police are doing what they can to educate the public and encourage reporting, but without a legal obligation to report, the police can only do so much. For example, on May 25, 2017, traffic stopped as drivers took to their phones to record a naked woman walking on the sidewalk.¹¹¹ They did not summon help but focused on recording the incident.¹¹² When the naked woman reached into a car and grabbed the driver's head, a deputy intervened and was punched in the mouth by the woman.¹¹³ After this incident, San Bernardino County Sheriff's Department spokeswoman Cindy Bachman explained:

People are very socially engaged today and want to capture those viral video clips. However, we strongly urge people to call 911 any time there is a threat to public safety: a situation that could result in someone being hurt or requires immediate medical aid. If you are involved in, or a witness to a potential life-or-death situation, please turn the camera off and call for help.¹¹⁴

A related problem is that rather than calling 9-1-1, people are reporting crimes, deaths, and injuries on a police department's Facebook page, which is not effective.¹¹⁵ "The rise of Facebook and neighborhood app 'Nextdoor' enable neighbors to quickly share reports, but increasingly reports stop there. . . . In Tulsa, pictures and multiple reports of a suspicious

¹⁰⁸ Stephanie Chen, *Gang rape raises questions about bystanders' role*, CNN (Oct. 30, 2009), <http://www.cnn.com/2009/CRIME/10/28/california.gang.rape.bystander/>.

¹⁰⁹ Anna North, *Why Did No One Stop The Richmond Gang Rape?*, JEZEBEL (Oct. 29, 2009), <https://jezebel.com/5392582/why-did-no-one-stop-the-richmond-gang-rape>.

¹¹⁰ Emory Bryan, *Sand Springs Chief: Don't Report Crime On Social Media Instead Of To Police*, NEWSON6 (July 27, 2017, 4:37 PM), <http://www.newson6.com/story/35990020/social-media-crime-reports-becoming-a-replacement-for-calling-police>.

¹¹¹ Gail Wesson, *Nude Woman Arrested for Punching a San Bernardino County Sheriff's Deputy*, PRESS-ENTERPRISE (May 26, 2017, at 11:41 AM), <https://www.pe.com/2017/05/25/deputies-arrest-nude-woman-for-assault-on-a-peace-officer/>.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ Brian Rokos, *Police: Call 911 first, then post on social media*, PRESS-ENTERPRISE (May 29, 2017, 8:52 PM), <https://www.pe.com/2017/05/28/frustrated-police-want-people-to-call-911-first-and-then-film-for-facebook-social-media/>.

¹¹⁵ *Id.*

man exposing himself to people at a park were on social media long before anyone called the police.”¹¹⁶ Police are trying to direct the public to 911 rather than social media, but public education would be more effective with a law to back up the lesson.

Some states have passed laws that create a duty to report a range of crimes and dangerous circumstances.¹¹⁷ For example, in 1983 an incident occurred in a New Bedford bar, during which customers cheered for more than an hour as four men raped a female customer.¹¹⁸ In response, Massachusetts imposed duties on witnesses to report certain crimes.¹¹⁹ Every state also has a compulsory reporting obligation for child abuse.¹²⁰ In other words, those who are at the scene of child abuse or who believe that child abuse has occurred have a duty to report this information to police or other authorities.¹²¹ Additionally, ten states have laws on the books requiring that people at least notify law enforcement of or seek aid for strangers in peril under certain conditions.¹²²

¹¹⁶ Bryan, *supra* note 113.

¹¹⁷ Moss, *supra* note 106.

¹¹⁸ Ruth Marcus, *Alleged Rape in Barroom Troubles New Bedford*, WASH. POST (Mar. 21, 1983), https://www.washingtonpost.com/archive/politics/1983/03/21/alleged-rape-in-barroom-troubles-new-bedford/d390f45a-645b-4588-9fa2-d200ccfb52ff/?utm_term=.4666899c6eee.

¹¹⁹ MASS. GEN. LAWS ANN. ch. 268, § 40 (West 1990); R.I. GEN. LAWS §§ 11-37-3.1-3.3 (Supp. 1984).

¹²⁰ See Caroline T. Trost, *Chilling Child Abuse Reporting: Rethinking the CAPTA Amendments*, 51 VAND. L. REV. 183, 194 n.63 (1998) (discussing child abuse reporting obligations across the states).

¹²¹ See, e.g., FLA. STAT. § 794.027 (1993) (outlining the duty to report sexual battery and “seek assistance for the victim”); HAW. REV. STAT. § 663-1.6 (1993) (“Any person at the scene of a crime who knows that a victim of the crime is suffering from serious physical harm shall obtain or attempt to obtain aid from law enforcement or medical personnel”); MASS. GEN. LAWS ch. 268, § 40 (West 1990) (requiring a duty to report crimes to law enforcement officials); R.I. GEN. LAWS § 11-1-5.1 (1994) (same); R.I. GEN. LAWS § 11-37-3.1 (Supp. 1984) (requiring a duty to report sexual assault); WASH. REV. CODE § 9.69.100 (1998) (requiring a duty to report an offense against a child or any violent offense against another); WIS. STAT. § 940.34 (1996) (requiring a duty to aid a victim or report a crime when a “crime is being committed and a victim is exposed to bodily harm”).

¹²² CAL. PENAL CODE § 152.3 (West 2018); FLA. STAT. §§ 316.062, 794.027 (1993); HAW. REV. STAT. § 663-1.6 (1993); MASS. GEN. LAWS ch. 268, § 40 (West 1990); MINN. STAT. ANN. § 604A.01 (2018); OHIO REV. CODE ANN. § 2921.22 (LexisNexis 2018); R.I. GEN. LAWS §§ 11-1-5.1, 11-56-1 (1994); VT. STAT. ANN. tit. 12, § 519 (2018); WASH. REV. CODE § 9.69.100 (1998); WIS. STAT. § 940.34 (1996). While these laws are also referred to as Good Samaritan laws, they are fundamentally different in substance and scope from other laws of the same name. *But see* THANE ROSENBAUM, *THE MYTH OF MORAL JUSTICE* 247-48 (2004) (noting that these laws are rarely applied and are generally ignored by citizens and lawmakers).

Many of these state statutes were passed after the well-known Strohmeyer crime.¹²³ Seventeen-year-old Jeremy Strohmeyer raped and murdered seven-year-old Sherrice Iverson in a Nevada casino restroom.¹²⁴ David Cash, Strohmeyer's friend, entered the restroom, peered over the wall of the bathroom stall, and saw Strohmeyer with his hand over Iverson's mouth, quieting her.¹²⁵ Cash left the restroom and said nothing.¹²⁶ He did not report it to casino security or the police.¹²⁷ He told reporters,

It's a very tragic event, okay? But the simple fact remains I do not know this little girl. I do not know starving children in Panama. I do not know people that die of disease in Egypt. The only person I knew in this event was Jeremy Strohmeyer, and I know as his best friend that he had potential. . . . I'm sad that I lost a best friend. . . . I'm not going to lose sleep over somebody else's problem.¹²⁸

The duty to rescue and the duty to report are often inextricably entwined, particularly when the spectators are encouraging the very behavior that they could be reporting. We see this in hazing incidents,¹²⁹ which has caused an increasing number of injuries and loss of life.¹³⁰ As of this writing, forty-

¹²³ Lynda Gorov, *Outrage Follows Cold Reply to Killing*, BOS. GLOBE, Aug. 7, 1998, at A20. Iverson's murder led to the passage of Nevada State Assembly Bill 267, imposing a duty to report when there are reasonable suspicions that a minor is being sexually abused or violently treated. NEV. REV. STAT. 200.5091-5095 (1999). It also led to California Assembly Bill 1422, the Sherrice Iverson Child Victim Protection Act, requiring that a person notify law enforcement if they "reasonably believe he or she has observed the commission of" murder, rape, or any lewd or lascivious act, where the victim is under 14 years old. CAL. PENAL CODE § 152.3 (West 2017).

¹²⁴ Gorov, *supra* note 123.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ Hazing has been defined as "any activity expected of someone joining or participating in a group that humiliates, degrades, abuses, or endangers them, regardless of a person's willingness to participate." Michelle Chaney, *Hazing on School Campuses: What Parents and Students Need To Know*, STOP HAZING, <https://www.stophazing.org/hazing-school-campuses-parents-students-need-know/> (last visited Sept. 23, 2018).

¹³⁰ See, e.g., *High school athletes face charges in hazing incident*, DESERET NEWS U.S. & WORLD (Sept. 24, 2004, 12:00 AM), <https://www.deseretnews.com/article/595093636/High-school-athletes-face-charges-in-hazing-incident.html> (detailing the story of several players on the high school football team in Sandwich, Massachusetts, who faced felony charges after a teammate lost his spleen in a hazing incident). One particularly chilling incident occurred in 2005 when Matthew Carrington died as a result of hazing at Chico State University. He was ordered downstairs at the fraternity house and told to do calisthenics in raw sewage followed by hours of

four states have passed anti-hazing laws,¹³¹ likely in response to or as a way of preventing such injuries and deaths.

III. JAMEL DUNN

The consequences of not requiring a duty to report are demonstrated by the particularly poignant case of Jamel Dunn.¹³² On July 9, 2017, five teenage boys¹³³ who were smoking marijuana watched a disabled man, Jamel Dunn, drown in a Cocoa Beach, Florida retention pond.¹³⁴ They taunted him while they recorded his death.¹³⁵ In Dunn's last moments of

interrogation and taunting that included pushups and trivia quizzes. They drank excessive amounts of water, and when Carrington collapsed with a seizure, the fraternity members did not immediately call an ambulance. He died, alone at the hospital, from water intoxication that caused his brain and lungs to swell. Sadly, his parents were out of state and not one fraternity brother was with him at the hospital. One of the junior students in charge of the hazing, Gabriel Maestretti, was sentenced to one year in jail. Elaine Korry, *A Fraternity Hazing Gone Wrong*, NPR (Nov. 14, 2005, 12:00 AM), <https://www.npr.org/templates/story/story.php?storyId=5012154>. In another hazing incident on November 2, 2012, at Northern Illinois University, 19-year-old David Bogenberger, a freshman, died in a hazing incident that led to 22 students being charged with a crime. His mother, Ruth Bogenberger, said at the hearing, "22 men pledging to be David's brothers for life ridiculed, tormented, poisoned and killed him. The human decency that most of us would render to a sick animal, these self-proclaimed 'brothers' would not even extend to a young man they pledged a lifelong brotherhood to." The fraternity brothers were all found guilty of misdemeanors ranging from reckless conduct to hazing. They paid fines of \$500 or \$1000, 100 hours of community service, and 24 months on probation. Clifford Ward, *22 former NIU frat members guilty of misdemeanors in death of pledge*, CHI. TRIB. (May 8, 2015, 6:51 PM), <http://www.chicagotribune.com/news/local/breaking/ct-niu-hazing-death-hearing-met-20150508-story.html>. In Plano, Illinois, five high school students were charged with criminal sexual assault, aggravated battery, and unlawful restraint as a result of a hazing incident. Students claimed that this was a part of team culture. One student said, "I've seen it happen a couple of times and I just left the locker room." *Five Plano High Students Charged Over Possible Hazing Incidents*, CBS CHI. (Aug. 28, 2013, 2:12 PM), <http://chicago.cbslocal.com/2013/08/28/five-plano-high-students-charged-over-possible-hazing-incidents/>.

¹³¹ Chaney, *supra* note 132.

¹³² Niraj Chokshi, *Teenagers Recorded a Drowning Man and Laughed*, N.Y. TIMES (July 21, 2017), <https://www.nytimes.com/2017/07/21/us/video-drowning-teens-florida.html>.

¹³³ Dave Berman, *Drowning case teaches lesson about social media's impact on society*, USA TODAY (July 22, 2017, 4:04 PM), <https://www.usatoday.com/story/news/nation-now/2017/07/22/drowning-case-teaches-lesson-social-medias-impact-society/502248001/> (noting that the five boys' ages ranged from fourteen-years-old to eighteen-years-old).

¹³⁴ Chokshi, *supra* note 132 (describing Jamel Dunn, age 31, as a disabled man who walked with a cane).

¹³⁵ See SpaceCoastDaily, *Five Brevard Teens Mock Distressed Jamel Dunn as He Drowned*, YOUTUBE (July 21, 2017), <https://www.youtube.com/watch?v=FBNKLCqvZQI>.

life, he groaned in agony and despair during his final attempt to stay afloat and be saved.¹³⁶ The boys standing on the banks of the pond could have easily reported his plight—if not saved him—but chose instead to revel in the spectacle of his death.¹³⁷ They did not signal for help, and among them there was never a sense of urgency that a man was dying, drowning in front of them, and calling for help.¹³⁸ They just continued to laugh after he was no longer visible on the surface.¹³⁹ They shared the video with friends and posted it on YouTube.¹⁴⁰ A relative of Dunn saw the video and immediately alerted authorities.¹⁴¹ Dunn's body was found five days later floating in the pond.¹⁴²

Cocoa Beach Police Department spokesperson Yvonne Martinez said that the prosecutors had thoroughly reviewed the case, and it was unlikely the teens would face any criminal charges, therefore, the initial goal was to charge the teens with some sort of negligence that could contribute to manslaughter.¹⁴³ However, since the teens were not directly involved and did not push or coerce Dunn into the water, they could not be charged with

The video is two minutes and forty-one seconds long. It shows Dunn as a black figure in the water, bobbing up and down and making audible sounds. You can hear the boys' commentary loud and clear. They make the following statements: "fucking junkie, get out the water yo, you gonna die, and we not gonna help you"; "ain't nobody gonna help you, you dumbass bitch"; "You shouldn't have gotten in"; and "Bitch, you should have never gone in there." Chokshi, *supra* note 135.

¹³⁶ Chokshi, *supra* note 132. A viewer can hear Dunn's groan and the statements, "Bitch, you should have never gone in there" and "He keeps putting he [sic] head under, wow!" See SpaceCoastDaily, *supra* note 138.

¹³⁷ Chokshi, *supra* note 132.

¹³⁸ SpaceCoastDaily, *supra* note 135.

¹³⁹ See Chokshi, *supra* note 132 (The boys are laughing and saying, "holy shit, he dead!" and "he ain't coming back.").

¹⁴⁰ See Chokshi, *supra* note 132; SpaceCoastDaily, *supra* note 135 (At one point, one of the boys asked if they were scared of seeing a dead body: "bro, you scared of seeing a dead person?" and one of the boys answered, "I aint scared of seeing no dead person.").

¹⁴¹ Chokshi, *supra* note 132.

¹⁴² *Id.*

¹⁴³ Florida Statute § 782.07 states, "The killing of a human being by the act, procurement, or culpable negligence of another, without lawful justification." FLA. STAT. ANN. § 782.07 (LexisNexis 2018). See also, *What Constitutes as Involuntary Manslaughter in Florida?*, BAEZ L. FIRM (Oct. 28, 2016), <https://www.baezlawfirm.com/what-constitutes-as-involuntary-manslaughter-in-florida>. ("In order to prove that [one is] guilty of involuntary manslaughter, the prosecution must submit evidence supporting the following three elements: (1) that someone was killed as a result of [his or her] actions; (2) that [his or her] actions were either inherently dangerous to others, done with reckless disregard for human life, or both; and (3) that [he or she] knew or should have known that [his or her] conduct was a direct threat to the lives of others.").

a crime.¹⁴⁴ While the local police department recommended to the state attorney's office that the youths be charged "under a statute that requires a person with knowledge of a death to notify a medical examiner,"¹⁴⁵ the state attorney's office declined in June 2018 to file any charges related to Dunn's death and surrounding events:

I know that everyone was sickened by the callous disregard for human life exhibited by these young people. We can only hope that this was an isolated and rare circumstance that will never happen again. . . . Unfortunately, Florida law does not address this behavior and we are ethically restrained from pursuing criminal charges without a reasonable belief of proving a crime beyond and to the exclusion of every reasonable doubt.¹⁴⁶

The state of Florida, like most states, has no duty to rescue law.¹⁴⁷ Since there is no duty to rescue, these shameless young men went on to live their lives without consequence.¹⁴⁸

The Jamel Dunn case is no different than the first-year hypothetical posed earlier in this paper. The youths came upon a complete stranger who was drowning, and like the man who stands on the dock and smokes a cigarette in the hypothetical, they watched the stranger drown.¹⁴⁹ At this point, in both scenarios, the bystanders owe no duty whatsoever.¹⁵⁰ However, the hypothetical diverges here from what happened to Dunn.¹⁵¹ In the hypothetical, the man merely watched the stranger drown and

¹⁴⁴ *Id.*

¹⁴⁵ *Florida Teens Weren't Legally Obligated to Help Drowning Man, Experts Say*, ORLANDO SENTINEL (July 21, 2017, 4:45 PM) <https://www.orlandosentinel.com/news/breaking-news/os-jamel-dunn-drowning-florida-teens-20170721-story.html>.

¹⁴⁶ Faith Karimi, *Teens who laughed and recorded a drowning man in his final moments won't face charges*, CNN (June 26, 2018, 6:27 PM), <https://www.cnn.com/2018/06/26/us/florida-teens-no-charges-drowning-man/index.html>.

¹⁴⁷ Police chief Michael Cantaloupe, who "looked long and hard" at Florida law to find a way to make the boys accountable for the "immorality of their actions," found the answer in Florida Statute § 406.12, which states: "It is the duty of any person in the district where a death occurs, who becomes aware of the death of any person occurring . . . must report such death and circumstances to the district medical examiner." The charge is deemed a minor misdemeanor and carries a \$1,000 fine. Jon Lockett, *What price a life?*, THE SUN (July 24, 2017, 4:12 PM), <https://www.thesun.co.uk/news/4087268/lorida-teens-filmed-jamel-dunn-drowned-1000-pound-fine/>.

¹⁴⁸ At the time of the writing of this article, no criminal charges have yet to be filed against the teens.

¹⁴⁹ Groninger, *supra* note 23.

¹⁵⁰ *Id.* at 356.

¹⁵¹ *Id.*; Karimi, *supra* note 146.

rendered no aid.¹⁵² With Dunn, the youths went further: they taunted, jeered, and yelled profanities at the stranger in peril.¹⁵³ Dunn, already struggling to survive, was surrounded by callous disregard for his life.¹⁵⁴ In addition to the taunting and heckling, the youths filmed his untimely demise on their smartphones to post on social media.¹⁵⁵

The question is not whether these boys knew they did not have a duty to rescue, but whether their taunting and jeering at Dunn while he was drowning created a duty to rescue. We argue that it does. Where does one cross the line from no duty to duty? The rules for ethical wildlife photography require that, when observing animals in the wild, the photographer not interfere with them, even when the cutest of baby elephants is being mauled by a pack of lions.¹⁵⁶ The photographer allows nature to take its course and documents it for all to see.¹⁵⁷ Here, the youths were not mere passive observers “documenting” Dunn’s drowning.¹⁵⁸ They interacted, engaged, and added to Dunn’s distressing situation and arguably precipitated the events that caused his death. Thus, we argue that these interactions should expand the special relationships enumerated in *Jones v. United States*¹⁵⁹ and create a duty based on such interactions.¹⁶⁰ An interactive special relationship should exist when a person interacts physically or verbally with a person in peril and that interaction is not for the purpose of rendering or seeking aid. In addition, an interactive special relationship should exist if a person films, photographs, or records the victim in peril for a purpose other than rendering aid or seeking aid. Both instances should create a duty to rescue.

¹⁵² Karimi, *supra* note 146.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ See *The Photographer’s Guide to Ethical Wildlife Photography*, FORMAT MAG. (Sept. 20, 2017), <https://www.format.com/magazine/resources/photography/ethical-guide-to-shooting-wildlife-photography>.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Jones v. United States* explains:

There are at least four situations in which the failure to act may constitute breach of a legal duty. One can be held criminally liable: first, where a statute imposes a duty to care for another; second, where one stands in a certain status relationship to another; third, where one has assumed a contractual duty to care for another; and fourth, where one has voluntarily assumed the care of another and so secluded the helpless person as to prevent others from rendering aid. *Jones v. United States*, 308 F.2d 307, 310 n.8-11 (D.C. Cir. 1962).

¹⁶⁰ Groninger, *supra* note 20 at 356.

IV. FIRST AMENDMENT OBJECTIONS

Critics of a universal duty to report often argue that the First Amendment protects not just the “freedom of speech” but also the freedom not to speak.¹⁶¹ However, this reading of the First Amendment is outdated and so riddled with exceptions as to fail in its application.¹⁶²

Brandenburg v. Ohio clarified that speech that may incite illegal action is protected unless it expressly advocates a violation of law, calls for an immediate violation of law, and is likely to cause an immediate violation of the law.¹⁶³ The First Amendment guarantees freedom of speech, which extends to all artistic and literary expression, whether in music, concerts, plays, pictures, and books.¹⁶⁴ The First Amendment protects a broadcaster’s authority to make programming and entertainment decisions as well as political and ideological speech.¹⁶⁵

However, the First Amendment is not without its limits. The Supreme Court has enumerated categories of unprotected speech, including: (1) obscene speech,¹⁶⁶ (2) libel, slander, misrepresentation, obscenity, perjury, false advertising, solicitation of crime, complicity by encouragement, conspiracy, and the like,¹⁶⁷ (3) speech or writing used as an integral part of conduct in violation of a valid criminal statute,¹⁶⁸ and (4) speech that is directed at inciting or producing imminent lawless action and that is likely to incite or produce such action.¹⁶⁹

For example, recently, a female shooting victim sued an Indiana Steak ‘n Shake for failing to protect her from being shot in the face on December 12, 2012.¹⁷⁰ Although it is established that restaurants and bars cannot be held liable for shootings when violence erupts suddenly, plaintiff Amber Hamilton successfully alleged that Steak ‘n Shake had enough warning signs to take action.¹⁷¹ Two men threatened and taunted Hamilton and her

¹⁶¹ See generally HAIG BOSMAJIAN, *THE FREEDOM NOT TO SPEAK* (1999).

¹⁶² See, e.g., *R.A.V. v. City of St. Paul*, 505 U.S. 377, 386 (1992) (excluding “fighting words” from the scope of the First Amendment).

¹⁶³ *Brandenburg v. Ohio*, 395 U.S. 444, 447–48 (1969).

¹⁶⁴ *Miller v. California*, 413 U.S. 15, 22-23 (1973) (“This is not remarkable, for in the area of freedom of speech and press the courts must always remain sensitive to any infringement on genuinely serious literary, artistic, political, or scientific expression.”).

¹⁶⁵ *Id.*

¹⁶⁶ *Paris Adult Theater I v. Slaton*, 413 U.S. 49, 54 (1973).

¹⁶⁷ *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 49 n.10 (1961).

¹⁶⁸ *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490, 498 (1949).

¹⁶⁹ *Brandenburg v. Ohio*, 395 U.S. 444, 447–48 (1969).

¹⁷⁰ *Hamilton v. Steak ‘n Shake Operations Inc.*, 92 N.E.3d 1166, 1167 (Ind. Ct. App. 2018).

¹⁷¹ *Id.* at 1173-74.

brother for over thirty minutes while employees did nothing.¹⁷² Their taunting was not protected speech, and the restaurant should have known that the men's words and actions were likely to incite or produce violence.¹⁷³ After she was shot, an employee finally went for help.¹⁷⁴

The law already compels speech in various circumstances, most notably in reporting cases of child abuse.¹⁷⁵ In addition, failing to report to governmental entities such as the United States Census Bureau¹⁷⁶ or filing tax returns with the IRS¹⁷⁷ can incur criminal penalties under current law.¹⁷⁸ It is well-established that the government has the authority to compel speech under penalty of criminal prosecution.¹⁷⁹

The concept of incitement arises in entertainment cases where producers seek protection under the First Amendment in order to avoid liability for songs or movies that do not rise to the level of incitement.¹⁸⁰ For example, nineteen-year-old John Daniel McCollum struggled with alcohol abuse and

¹⁷² *Id.* at 1167-68.

¹⁷³ *Id.* at 1173-74.

¹⁷⁴ *Id.* ("Given the circumstances, we conclude that Steak 'n Shake had a duty as a proprietor to take reasonable steps to provide for patron safety once the raucous behavior came to its attention.")

¹⁷⁵ See MASS. GEN. LAWS ANN. ch. 268, § 40 (West 1990); R.I. GEN. LAWS §§ 11-37-3.1-3.3 (Supp. 1984); see also UTAH CODE ANN. § 62A-4a-403 (West 2018).

¹⁷⁶ Econ. & Statistics Admin., U.S. Dep't of Commerce, *Resources for Congress*, U.S. CENSUS BUREAU 1, https://www.census.gov/content/dam/Census/programs-surveys/acs/contact/CT_answers.pdf (last visited Sept. 23, 2018) (citing 13 U.S.C. §§ 141, 193 as requiring responses to U.S. Census surveys and affixing penalties for failure to respond thereto).

¹⁷⁷ Alison Frankel, *When the Government Can Make Businesses Talk*, REUTERS (Apr. 24, 2017, 4:27 PM), <https://www.reuters.com/article/us-otc-speech/when-the-government-can-make-businesses-talk-idUSKBN17Q262>.

¹⁷⁸ For example, Utah law levies the potential criminal penalty of a Class B Misdemeanor for failure to report child abuse. UTAH CODE ANN. § 62A-4a-411. An unresponsive party to the United States Census Bureau may be fined, 13 U.S.C. § 221 (1954), and in addition to fees and financial penalties relating to owed amounts, a non-filer of a tax return may be punished up to 1 year in prison and a \$25,000 fine for each tax year for which a return is not filed, 26 U.S.C. § 7203 (1954).

¹⁷⁹ See *supra* notes 175-178.

¹⁸⁰ See Chuck Philips, *Ruling Favors Band in Suit Over Girl's Murder*, L.A. TIMES (Jan. 25, 2001), <http://articles.latimes.com/2001/jan/25/business/fi-16740> (discussing that David and Lianne Pahler's fifteen-year-old daughter, Elyse, was kidnapped, tortured, raped, and murdered by three adolescent males, after which the Pahlers sued the boys, their parents, the band "Slayer" and those who record, promote, market, and distribute Slayer products); see also *Pahler v. Slayer*, No. CV 79356, 2001 WL 1736476 (Cal. App. Dep't Super. Ct. 2001) (noting that based on previous rock-lyric rulings, Slayer's music is protected under the First Amendment).

had serious emotional problems.¹⁸¹ On October 26, 1984, while lying on his bed listening to rocker Ozzy Osbourne's music, he shot and killed himself.¹⁸² McCollum's family argued that Osbourne's music was the proximate cause of McCollum's suicide and filed suit, alleging negligence, product liability, and intentional misconduct.¹⁸³ Defendants Ozzy Osbourne and CBS Records composed, performed, produced, and distributed certain recorded music, including two albums that were on the shelf above McCollum's bed in addition to the album on the record player at the time of his death.¹⁸⁴ Before going to his room that night, he had been listening to the lyrics of "Suicide Solution," which said, "get the gun and try it."¹⁸⁵ The court sustained the defendants' demurrer because the plaintiffs' pleading "(1) fail[ed] to allege any basis for overcoming the bar of the First Amendment's guarantee of free speech and expression and, in any event, (2) fail[ed] to allege sufficient facts to show any intentional or negligent invasion of plaintiffs' rights."¹⁸⁶ McCollum's parents tried to allege a special relationship between Osbourne and his fans because he said "you" in his songs and made the listener feel as if Osbourne was speaking directly to him.¹⁸⁷ The plaintiffs argued that the defendants knew or should have known that it was foreseeable that the music, lyrics, and hemi-sync tones would influence McCollum, who was susceptible to suggestion.¹⁸⁸ The plaintiffs also argued that the defendants negligently disseminated Osbourne's music and (1) aided, advised, or encouraged McCollum to commit suicide or (2) created "an uncontrollable impulse" in McCollum to commit suicide.¹⁸⁹ McCollum's parents alleged that the defendants' conduct constituted (1) an incitement of McCollum to commit suicide and (2) an intentional aiding, advising, or encouraging of suicide in violation of California Penal Code section 401.¹⁹⁰ While the defendants agreed that the lyrics may have been depressing, they successfully argued that generalized depressing music is not enough to meet the *Brandenburg* standard.¹⁹¹

Two other examples from the entertainment industry are worth noting:

¹⁸¹ *McCollum v. CBS, Inc.*, 249 Cal. Rptr. 187, 189 (Cal. Ct. App. 1988).

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.* at 191.

¹⁸⁶ *Id.* at 188-89.

¹⁸⁷ *Id.* at 190.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.* at 191.

¹⁹⁰ *Id.*; CAL. PENAL CODE § 401 (stating that "[e]very person who deliberately aids, advises or encourages another to commit suicide is guilty of a felony," which can lead to prison time and/or a fine of up to \$10,000).

¹⁹¹ *McCollum*, 249 Cal. Rptr. at 195.

In the first example, Patsy Byers sued Sarah Edmondson and Benjamin Darrus, who shot her during a robbery, their parents, their insurance companies, and the *Natural Born Killers* director and production company, claiming that the attackers had been inspired by the Oliver Stone movie.¹⁹² Her argument was that the film treated perpetrators of such violent acts as celebrities and heroes, thus inspiring others to want the same celebrity.¹⁹³ The court found that the movie did not rise to the level of incitement since Byers' incident happened "three days, five states and 500 miles away"¹⁹⁴ from where the shooters had watched the film.¹⁹⁵ Attorney Walter Dellinger, who represented the production company, Time Warner, told the *Los Angeles Times*, "This ruling is important not only for filmmakers but for people who make documentaries and news programs, because they could also be attacked for depicting violence that some people will allege was suggested to them."¹⁹⁶

In another example, Ronald Ray Howard, driving a stolen car, shot and killed Bill Davidson, a Texas state trooper.¹⁹⁷ At the time of the shooting, Howard was listening to 2Pacalypse Now,¹⁹⁸ which Davidson claimed did not merit First Amendment protection because it was (1) obscene, (2) contained "fighting words," (3) defamed police officers and (4) tended to incite imminent illegal conduct by people like Howard.¹⁹⁹ Then United States Vice President Dan Quayle publicly criticized the album for its strong theme of police brutality by stating, "There's no reason for a record like this to be released. It has no place in our society."²⁰⁰

While functionally unresolved as a legal theory, the issue of incitement that creates, aggravates, contributes to, or escalates a situation by endangering the bodily integrity of another person has become more

¹⁹² Byers v. Edmondson, 826 So. 2d 551, 554 (La. Ct. App. 2002).

¹⁹³ *Id.* at 556.

¹⁹⁴ REPORTERS COMM. FOR FREEDOM OF THE PRESS, *Incitement lawsuit against Stone, "Natural Born Killers" dismissed*, NEWS MEDIA & THE LAW 22 (Mar. 13, 2001), <https://www.rcfp.org/journals/the-news-media-and-the-law-spring-2001/incitement-lawsuit-against/>.

¹⁹⁵ *Id.*

¹⁹⁶ Robert W. Welkos, *Judge Throws Out Lawsuit Against Oliver Stone*, L.A. TIMES (Mar. 13, 2001), <http://articles.latimes.com/2001/mar/13/business/fi-37083>.

¹⁹⁷ John Broder, *Quayle Calls for Pulling Rap Album Tied to Murder Case*, L.A. TIMES (Sept. 23, 1992), http://articles.latimes.com/1992-09-23/news/mn-1144_1_rap-album.

¹⁹⁸ *2Pacalypse Now* is an album by Tupac Shakur, an American rapper, which was released on November 12, 1991, by Interscope Records and EastWest Records America and certified gold in 1995. See 2Pac, *2Pacalypse Now*, GENIUS, <https://genius.com/albums/2pac/2pacalypse-now> (last visited Sept. 23, 2018).

¹⁹⁹ Davidson v. Time Warner, Inc., No. Civ. A.V.-94-006, 1997 WL 405907 (S.D. Tex. Mar. 31, 1997).

²⁰⁰ Broder, *supra* note 201.

focused in the so-called “hazing” cases.²⁰¹ On November 19, 2011, twenty-six-year-old drum major Robert Champion died on a bus after a marching band performance.²⁰² As the “last day” of the hazing process to be fully initiated into the band, thirteen students also from Florida A&M University beat him with fists, brass drum mallets, and drumsticks.²⁰³ He went into cardiac arrest and died.²⁰⁴ Eleven youths were charged for felony hazing and two for misdemeanor hazing.²⁰⁵ In these hazing cases, because of a perceived “group identity” and a loss of individualism, a “mob” or “herd” mentality incites people to do what they would almost certainly not do alone.²⁰⁶ In colleges and universities, the problem is particularly acute: “It’s like having unregulated gangs on campus.”²⁰⁷ In these situations, often no one person is the catalyst that creates the dangerous circumstance, but a mob mentality operates to incite and exacerbate the risky behavior that causes harm and often death.²⁰⁸ The same can be true in the case of a crowd observing a crime. One person sees another recording the incident and that leads to others. The crowd mentality is on recording and posting rather than rescuing or reporting.

V. STATUTORY PROPOSALS

States should adopt criminal code statutes that require bystanders—depending upon their level of involvement—to either report or to materially aid the imperiled party when the means for doing so are readily available.

The stated object of these proposed model statutes is to encourage active reporting, in light of the relative ease by which bystanders may comply with such a duty, and also to create an elevated duty to aid and to rescue when a party has participated in the events creating the dangerous circumstances. The model statute is as follows:

Duty to Report²⁰⁹

²⁰¹ See *supra* notes 132-33.

²⁰² *Martin v. State*, 207 So. 3d 310, 314 (Fla. Dist. Ct. App. 2016).

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ Megan Donley, *Examining the Mob Mentality*, SOUTHERN UNIV.: SOUTH SOURCE (Jan. 1, 2011), <http://source.southuniversity.edu/examining-the-mob-mentality-31395.aspx>.

²⁰⁷ Korry, *supra* note 133 (quoting Hank Newer, an expert on hazing and hazing prevention).

²⁰⁸ Peggy Drexler, *Frat death shows something is terribly wrong with Greek life*, CNN (May 9, 2017, 5:46 PM), <https://www.cnn.com/2017/05/09/opinions/penn-state-frat-culture-opinion-drexler/index.html>.

²⁰⁹ The Authors relied generously on TEX. PENAL CODE § 38.171; 18 U.S.C.A. § 4 (West 1994); and ALASKA STAT. §§ 11.56.765, 11.56.767 (2007) in drafting the proposed

- a) A person commits the offense of Failure to Report if the person:
 - i) observes the commission of a crime or other events under circumstances in which a reasonable person would believe that serious bodily injury or death may have resulted or may result; and
 - ii) possesses the readily available means to report the crime or events to a peace officer or law enforcement agency; and
 - iii) fails to report the same to a peace officer or law enforcement agency within a reasonable time to prevent further harm or injury and under circumstances in which:
 - (1) a reasonable person would believe that the crime or events had not been reported; and
 - (2) the person could immediately report without placing himself or herself in danger of suffering serious bodily injury or death.
- b) An offense under this section is a Class A misdemeanor.
- c) A person is deemed to have complied with his or her obligation to report by dialing the local emergency response number (911) and reporting the crime or events.
- d) Compliance with this provision does not require the reporter to remain at the scene.
- e) Compliance with this provision does not necessarily make the reporter a witness in any civil, criminal, or administrative proceeding.

Duty to Rescue

- a) A person commits the offense of Failure to Rescue if the person:
 - i) either (a) commits a crime or creates the conditions under which a reasonable person would believe that serious bodily injury or death may have resulted or may result, or (b) provokes, incites, derides, or creates a recording with intent to distribute the same or provides the instrumentality during an event under which a reasonable person would believe that serious bodily injury or death may result; and
 - ii) possesses the readily available means to aid or to rescue the victim or injured person in a manner reasonably calculated to avoid death or further injury to the imperiled party without placing himself or herself in danger of suffering serious bodily injury or death; and
 - iii) fails to render that reasonable aid to the imperiled party.
- b) An offense under this section is a felony of the third degree.

- c) It is an absolute defense against Failure to Rescue that the accused attempted to render reasonable aid, regardless of the outcome.

These proposed model statutes weigh and balance the interests of the public in saving those who are caught up in dangerous circumstances against the interests of the bystander. The rescuer is only required to provide aid if he or she creates or somehow voluntarily interjects himself or herself into the events and otherwise only need to report if not involved at all. Further, jurisdictions may consider the addition of immunity—limited or absolute—under specific circumstances to further incentivize reporting and rescuing.

The adoption of such a statutory scheme will eventually create tort liability for those who fail to report or to rescue, as required, under the *negligence per se* doctrine.²¹⁰ Cultural expectations will thus be pushed and shaped by the criminal code.

VI. CONCLUSION

Historically, American law has not compelled people to act in the interests of another who is in dangerous circumstances, even though others in countries with a civil law system—such as France and Argentina—are compelled by code.²¹¹

The interconnectedness of society and ready access to technology have substantially changed the way people are able to communicate. Many

²¹⁰ LEGAL INFO. INST., *Negligence Per Se*, CORNELL L. SCH., https://www.law.cornell.edu/wex/negligence_per_se (last visited Sept. 23, 2018) (“Negligence due to the violation of a law meant to protect the public, such as a speed limit or building code. Unlike ordinary negligence, a plaintiff alleging negligence per se need not prove that a reasonable person should have acted differently—the conduct is automatically considered negligent”).

²¹¹ *Compare Yania v. Bigan*, 155 A.2d 343, 346 (Pa. 1959), with CÓDIGO PENAL [CÓD PEN.][CRIMINAL CODE] art. 106 (Arg.). Section 106 (Text in accordance with Law 24,410) (“Any person who endangers the life or health of another, either by placing the person in a situation of abandonment, by abandoning an incapacitated person under his care or protection, or by abandoning a person whom the author himself has incapacitated, shall be punished with jailing from two to six years. If the abandonment results in a serious harm to the body or health of the victim the punishment shall be imprisonment or jailing from three to ten years. If death results, the punishment shall be imprisonment or jailing from five to fifteen years.”), and CODE PENAL [C. PÉN.] [CRIMINAL CODE] art. 223-6 (FR.). ARTICLE 223-6 (“Anyone who, being able to prevent by immediate action a felony or a misdemeanour against the bodily integrity of a person, without risk to himself or to third parties, willfully abstains from doing so, is punished by five years’ imprisonment and a fine of €75,000. The same penalties apply to anyone who willfully fails to offer assistance to a person in danger which he could himself provide without risk to himself or to third parties, or by initiating rescue operations”).

recent events illustrate that bystanders can summon aid in response to dangerous situations with almost no effort.²¹² Even those who participate in such situations through heckling or recording the victim have the capability of summoning or rendering aid and should be compelled to do so. Despite the complexities and historic objections to such statutory reforms, the failure to act should no longer be an option for bystanders when the means to report or to rescue are readily and reasonably available to most Americans. American society has been grappling with this issue for decades, and it is time that state legislatures take a firm, reasonable position to save lives and to preserve the safety of the public by enacting necessary statutory reforms.

Twenty years ago, the finale aired for the television comedy-turned-cultural-phenomenon *Seinfeld*. In that episode, the New York City Council had created a Good Samaritan law by making it “a crime to ignore a fellow human being in trouble.”²¹³ Jerry, Elaine, George, and Kramer, the show’s main characters, are tried and convicted for the charge of violating the Good Samaritan law after witnessing an overweight man getting carjacked at gunpoint.²¹⁴ Rather than helping, they made jokes about the man’s large size and later are arrested for not calling the police to help the man.²¹⁵ At their sentencing, the judge looked at them and said:

I do not know how, or under what circumstances the four of you found each other, but your callous indifference and utter disregard for everything that is good and decent has rocked the very foundation upon which our society is built. I can think of nothing more fitting than for the four of you to spend a year removed from society so that you can contemplate the manner in which you have conducted yourselves.²¹⁶

Sitcoms can be neatly wrapped up under the guise of comedy in thirty minutes, but the injury and death that the complacency of American law has allowed is very real. Bystanders should be required to do more than passively witness or ridicule and record for social media when they observe a person in physical or mortal danger if they can summon or render aid readily. The fact that injury and loss of life are completely preventable now demand it.

²¹² See Kacey Patterson, *Stories: How Cell Phones Have Saved Lives*, zBOOST: TECH. AND OUR LIVES (Oct. 20, 2010) <http://www.zboost.com/blog/real-stories-how-cell-phones-have-saved-lives/>.

²¹³ *Seinfeld: The Finale* (NBC television broadcast May 14, 1998).

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.*

