CHAPTER FOUR

ACTUS REUS

We know that the intent of a person must be considered if we are to hold them legally liable for a criminal act. In law, we have to align the person's mental or even emotional intent at the time of the offense, plus what it was that they actually did. These must be combined in a package, so to speak, to be able to prove that under law, not only that a crime occurred, but that the person who committed it really intended to inflict harm or injury on another. Since the prosecution has the burden of proof, the ability to convince a judge or jury that the defendant had not only committed an act, but did it specifically to injure or harm the victim, is the essence of the case. In addition, the elements of the crime must be proven of course, but the "why" is often the most elusive component of the case. Especially when defendant's rarely say, *"Sure, I did it! And here's why I did it!"* If they did, we would have a very streamlined criminal justice system. That's why alibis and affirmative defenses are popular discussions among the inmates in jails and prisons.

Since there must also be a combination of the intent, or ***mens rea***, and the criminal act, ***actus reus***, of a criminal act or omission, the result is a **concurrence** between the *actus reus* and *mens rea*. As your text cites, the requirement of concurrence is illustrated by the California Penal Code 20, (see below) which provides that "[i]n every crime . . . there must exist a union or joint operation of act and intent…." But what about incidents that occur, that result in some harm, injury, loss or even death to someone else, when there was no "criminal intent" present? The law looks at the ***totality of the circumstances***, what the context of the scenario was, and any ***"attendant circumstances"*** that may have been present at the time.

In California, the Penal Code establishes what a crime is:

PC 15. Definition of Crime or Public Offense
A crime or public offense is an act committed or omitted in violation of a law forbidding or commanding it, and to which is annexed, upon conviction, either of the following punishments:
1. Death
2. Imprisonment
3. Fine
4. Removal from office
5. Disqualification to hold and enjoy any office of honor, trust or profit in this State

The connection then between the Mens Rea and Actus Reus, or criminal intent and the criminal act is outlined in PC 20:

> ***PC 20. Unity of Act and Intent or Negligence***
> *In every crime or public offense there must exist a union, or joint operation of act and intent, or criminal negligence.*
>
> ***PC 21. Intent Manifested by Circumstances***
> *(a) The intent or intention is manifested by the circumstances connected with the offense.*
> *(b) In the guilt phase of a criminal action or a juvenile adjudication hearing, evidence that the accused lacked the capacity or ability to control his conduct for any reason shall not be admissible on the issue of whether the accused actually had any mental state with respect to the commission of any crime. This subdivision is not applicable to Section 26 (Persons incapable of committing a crime- discussed later in the chapter)*

While the "result" of the incident may be the loss or harm to another, the defendant's actions must be the "***actual cause of the resulting harm***," as stated by your text. Another term, the ***"proximate cause" rule,*** refers to the issue of the loss or injury as a direct result of the actions by the defendant and that anything else that follows would not have occurred but for those actions. ***(sine qua non*** *- (see-nay kwah nahn) prep. Latin for "without which it could not be," an indispensable action or condition*[1]*.)* Thus, the reason why the victim fell down and cracked his head on the fireplace was because the defendant, while burglarizing the house, pushed past the victim, knocking him down. In murder cases, the fact that an accomplice is involved in a homicide, but does not themselves kill the victim, are they still liable for the death of the victim? Under the ***"felony murder rule,"*** they would be.

In the text, Chapter 4 addresses criminal intent, concurrence and causality, which will be discussed in relation to specific crimes in Chapters 8-15. At this point, merely appreciate that a crime consists of various "elements" or components that the prosecution must prove beyond a reasonable doubt. For example, in the crime of robbery, what must be "proven" by the prosecution? Should there be a gun? Must there be a weapon? Is there a more serious element if the crime occurs at night? What about injuries or is fear alone enough to justify the crime?

For example, in California Penal Code 211, the crime of robbery, the law states that there must be an element present which is not required in most other crimes. In this case, it's the presence of fear and force.

PC 211 Robbery is the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear.

What is needed then to prove a robbery occurred?

- First that the property is in the POSSESSION or IMMEDIATE PRESENCE…
- That it is a "FELONIOUS TAKING" of the personal property
- That it is AGAINST the victim's WILL and….
- That the robbery was accomplished by the use of some sort of FORCE or FEAR.

A couple of issues should be addressed in the term "felonious" itself. How do we prove that it was "felonious?" Also, was it the victim's personal property? What if they were in possession of someone else's' property and were on their way to return it?

What exactly is the "person," or "immediate presence?" And how would you describe the "means of force or fear?" How afraid do you have to be? Does a weapon have to be used? The "*force*" used must be something more than that just to seize the property…but is related to the degree or amount of the victim's resistance, whether that is mental, (psychological), emotional or physical. A scary looking person yelling, ***"Give me the money or I'll kill you!"*** without any weapons present would still be enough to frighten (use of fear) the average person.

All the force that is required to make the offense a robbery is such force as is actually sufficient to overcome the victim's resistance. What about a purse snatch vs. a robbery? The issue again has to be clarified in what it is that the prosecution can prove. (See *Case Study People v. Thomas* (Mar. 4, 2005) 127 Cal.App.4th 368**)**

CRIMINAL ACTS

Your text discusses the philosophical debate over the definition of an "act." It is sufficient to note that the modern view is that an act involves a bodily movement whether voluntary or involuntary. The significant

[1] http://dictionary.law.com/definition2.asp

point is that the *criminal law punishes voluntary acts and does not penalize thoughts.* Why? If we first look at who is capable, in California law and compare it to who IS NOT capable of committing a crime, you'll see why.

PC 26. Persons Capable of Committing Crime
All persons are capable of committing crimes except those belonging to the following classes:

1. *-Children under the age of 14, in the absence of clear proof that at the time of committing the act charged against them, they knew its wrongfulness.*
2. *Idiots.(Based on a Stanford- Binet test of an IQ of 24-26)*
3. *Persons who committed the act or made the omission charged under an ignorance or mistake of fact, which disproves any criminal intent.*
4. *Persons who committed the act charged without being conscious thereof.*
5. *Persons who committed the act or made the omission charged through misfortune or by accident, when it appears that there was no evil design, intention, or culpable negligence.*
6. *Persons (unless the crime be punishable with death) who committed the act or made the omission charged under threats or menaces (duress) sufficient to show that they had reasonable cause to and did believe their lives would be endangered if they refused.*

These are the exceptions. ***Everyone else would be liable for a crime – whether it be a specific "act," or an "omission."*** Omissions will be discussed shortly.

But what is the real reason these types of people (described in sections 1-6) would be not liable for a crime. It is because something critical is missing. It is the element of "mens rea." If one cannot formulate either the prerequisite "criminal thought" and appreciate its wrongfulness, the impact on others, etc., then how can they be held legally accountable for a "crime?" They may have actually physically committed the act, *but the element of "intent" or "mens rea," is missing.*

In each of the other cases, the "intent" element is absent. Even in the last case, with duress, the intent is a forced act, and not committed with any criminal intent, but under the threat of injury or death at the hands of another.

Today, with the advent of the Internet and virtual environments, the law is sorely tested to keep up with changing technology. Your textbook cites the historical English crime of "imagining the King's death." Today, the ability to project threats literally around the world nearly instantaneously can be a daunting challenge for both law enforcement and prosecution.

A VOLUNTARY CRIMINAL ACT

The requirement of a voluntary act is based on the belief that it would be fundamentally unfair to punish individuals who do not consciously choose to engage in criminal activity and who therefore cannot be considered morally blameworthy.

Some defendants actually have managed to be acquitted by persuading judges or juries that their crime was an involuntary act. A California Court of Appeals concluded that the evidence supported the "inference" that a defendant who had been wounded in the abdomen had shot and killed a police officer as a reflex action and was in a "state of unconsciousness."

In this case, the defendant, Huey Newton, was at the time, a rather notorious member of a "radical militant" group, the "Black Panthers." While in hindsight, we know much more now that we could have in 1967, students should note that the times were indeed changing, and revolution was in the air. Cities were aflame with riots, protesters were burning the flag, protesting the war in Vietnam, the Civil Rights Movement was in

full swing, and the police were smack in the middle. His history is full of conflict with the police, including the shootout that left him wounded, and one officer dead. Despite his radical and violent history, he did eventually write his story, “Revolutionary Suicide,” and finished a PhD with his dissertation, *War against the Panthers: A Study in Repression in America*. However, he could not escape his past and was shot and killed in 1989, while walking along a street in Oakland.

To demonstrate the fear at the time, within one year of the formation of the Black Panther Party, the FBI established a special counter-intelligence program called COINTELPRO, to neutralize political dissidents. Between the years 1956 and 1971, the FBI used the COINTELPRO program to investigate "radical" national political groups for intelligence. Today, the COINTELPRO term is rarely heard, but students should review its history and study the impact that it had at the time, keeping in mind that the country was also in the middle of the “Cold War,” as well. (See Case Study: People v. Newton, 87 Cal. Rptr. 394 (Cal.. App. 1970)

But, you ask, what about “involuntary” manslaughter? In this case, it’s not the “act” that is involuntary; it’s the result that was involuntary. In other word, the act itself was typically voluntary, (i.e., hitting someone over the head with a bat in a brawl), but the fact that they died as a result was not intended, hence the use of the term involuntary manslaughter.

California Penal Code PC 192 (b) Involuntary Manslaughter – (that occurs)

- *in the commission of an unlawful act*
- *not amounting to felony*
- *or in the commission of a lawful act which might produce death, in an unlawful manne,*
- *or without due caution and circumspection*

STATUS OFFENSES

“Status” offenses are reserved for juveniles, who, while under the age of 18 (in California) commit certain offenses that are legislated only for minors.

For example, as an adult, you couldn’t be criminally convicted of being a drunk, drug addict, common thief or for having a violent personality. What about being a prostitute, or a homeless person? In People v. Kellogg, the Superior Court of San Diego, California confronted an appellant who contended that his criminal convictions for public intoxication unconstitutionally punished him for his status as a homeless, chronic alcoholic. Your text cites the San Diego case of People v. Kellogg. 14 Cal. Rptr.3d 507 (Cal. App.2004)

But juveniles are different. What about being a Juvenile Delinquent? Is the mere fact that one is a minor (Under the age of 18 in California) and out after curfew make you a “status offender?” What about smoking a cigarette, getting your ears (or other parts of your body) pierced, or getting tattooed? Because of your age (under 18) you would be a “status offender,” since those laws specifically prohibit those acts being committed solely because you were a minor. Thus, it is referred to as a “status offense,” with your status as a minor.

In Juvenile law, the law takes the role of ***“parens patriae,”*** and can regulate behaviors that do create status offenses. The concept of parens patriae (common Latin translation of either the “father of the country” or "the parenthood of the state") comes to us from the days of Kings, when the ruling power or political state was regarded as the primary father over their subjects. It is seen today as a legal means for the state to step in, via established legislated statutes, to protect those who cannot protect themselves, including children. In a sense, it refers more to the state acting in place of the parents (or guardians or caretakers of either dependent adults or children) who have neglected, abused or abandoned their children.

W&I 305. Temporary Custody of Minors by Peace Officers without Warrant

- *Any peace officer may, without a warrant, take into temporary custody a minor:*
- *When the officer has reasonable cause for believing that the minor is a person described in Section 300, and, in addition, that the minor has an immediate need for medical care, or the minor is in immediate danger of physical or sexual abuse, or the physical environment or the fact that the child is left unattended poses an immediate threat to the child's health or safety. In cases in which the child is left unattended, the peace officer shall first attempt to contact the child's parent or guardian to determine if the parent or guardian is able to assume custody of the child. If the parent or guardian cannot be contacted, the peace officer shall notify a social worker in the county welfare department to assume custody of the child.*

- *Welfare and Institutions Code 300. Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court:*
    - *The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted non-accidentally upon the child by the child's parent or guardian.*
    - *For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child's siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm.*
    - *For* purposes of this subdivision, "*serious physical harm" does not include reasonable and age-appropriate spanking to the buttocks* where there is no evidence of serious physical injury.
- *(b) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse.*

PC 308 (b) Every person under the age of 18 years who purchases, receives, or possesses any tobacco, cigarette, or cigarette papers, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking of tobacco, *products prepared from tobacco, or any controlled substance shall, upon conviction, be punished by a fine of seventy-five dollars ($75) or 30 hours of community service work.*

PC 652. Body Piercing - Person Under the Age of 18 Years
(a) It shall be an infraction for any person to perform or offer to perform body piercing upon a person under the age of 18 years, unless the body piercing is performed in the presence of, or as directed by a notarized writing by, the person's parent or guardian.

PC 653. Tattooing Minor
Every person who tattoos or offers to tattoo a person under the age of 18 years is guilty of a misdemeanor. As used in this section, to "tattoo" means to insert pigment under the surface of the skin of a human being, by pricking with a needle or otherwise, so as to produce an indelible mark or figure visible through the skin.
California Vehicle Code 23140. Alcohol; Minor Driver

It is unlawful for a person under the age of 21 years who has 0.05 percent or more, by weight, of alcohol in his or her blood to drive a vehicle.

VC 13202.7. Minor Truant or Ward of Court; Suspension or Delay of Driving Privilege
(a) Any minor under the age of 18 years, but 13 years of age or older, who is an habitual truant within the meaning of Section 48262 of the Education Code, or who is adjudged by the juvenile court to be a ward of the court under subdivision (b) of Section 601 of the Welfare and Institutions Code, may have his or her driving privilege suspended for one year by the court.

Curfew laws are perhaps the most common of status offenses. Here is an example of a curfew statute as "status offenses" from the city of Huntington Beach, CA. :

Curfew Law: City of Huntington Beach, CA.

- *Municipal Code 9.68.020 Curfew-Prohibited conduct.*
- *A minor commits a misdemeanor if he/she remains, walks, runs, stands, drives or rides about, in or upon any public place or on the premises of any establishment within the city between the hours of 10:00 p.m. and 6:00 a.m. of the following day…*

An example of another status offense from the city of Davis, CA, refers to possession of graffiti implements by a minor. An adult would not be liable for the same offense.

Sample Municipal Code – City of Davis, CA

25.01.040 Purchase or possession of graffiti implements by minors.

(a)Purchase. It is unlawful for any person under the age of eighteen years to purchase any graffiti implement unless accompanied by a parent or guardian, except as subject to state law.

(b)Possession. No person under the age of eighteen years shall have in his/her possession with the intent to deface property any graffiti implement while upon any public property, including any public park, playground, swimming pool or recreational facility in the city, except as subject to state law.

This section shall not apply to authorized employees of the city or an individual or authorized employee of any individual, agency or company under contract with the city.

Juveniles and Jails
You may recall that a misdemeanor is punishable by a fine of $500 or up to 6 months in jail. This brings up a legal conundrum. *One can't house juveniles in with adults in the local jail.* So they would have to be housed in a juvenile facility, although frankly, that would be very rare in curfew cases. The real issue is the nature of the status offense.

Here's why:
In California, there are essentially two statutes that govern juveniles as either status offenders or criminal offenders. The California Welfare and Institutions Code established these differences between sections 601 and 602. Note that 601 refers to mostly very minor violations, but does include being incorrigible, i.e., not obeying one's parents, being unduly disruptive to the family, etc., but also local ordinances, including both truancy and curfew violations.

Welfare and Institutions Code 601:.

- *Any person under the age of 18 years who persistently or habitually refuses to obey the reasonable and proper orders or directions of his or her parents, guardian, or custodian, or who is beyond the control of that person, or who is under the age of 18 years when he or she violated any ordinance of any city or county of this state establishing a curfew based solely on age is within the jurisdiction of the juvenile court which may adjudge the minor to be a ward of the court*
- *If a minor has four or more truancies within one school year as defined in Section 48260 of the Education Code or a school attendance review board or probation officer determines that the available public and private services are insufficient or inappropriate to correct the habitual truancy of the minor, or to correct the minor's persistent or habitual refusal to obey the reasonable and proper orders or directions of school authorities, or if the minor fails to respond to directives of a school attendance review board or probation officer or to services provided, the minor is then within the jurisdiction of the juvenile court which may adjudge the minor to be a ward of the court.*

Welfare and Institutions Code 602*. (a) Except as provided in subdivision (b), any person who is under the age of 18 years when he or she violates any law of this state or of the United States or any ordinance of any city or county of this state defining crime other than an ordinance establishing a curfew based solely on age, is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court.*

Charging Juveniles as Adults in California

On the night of January 21, 1995, in San Diego, 14-year-old Tony Hicks shot and killed a pizza delivery man, 20-year old Tariq Khamisa. Hicks acted on the order of an 18-year-old gang leader. Hicks became the first 14-year-old to stand trial as an adult in the state of California, receiving a 25-year prison sentence. Azim Khamisa, along with Hick's grandfather and guardian, Ples Felix, work together on promoting the vision of the Tariq Khamisa Foundation – an organization committed to "stopping children from killing children." See web sites at the end of the chapter.

In a 2001 murder case in San Diego county, 14-year old Charles "Andy" Williams, was also charged, tried and sentenced as an adult for a high school shooting rampage that left two students dead, and 13 other people wounded. He's now serving a 50-year sentence.

Proposition 21

In Welfare and Institutions code 602, the provisions for charging juveniles as adults were firmly established after Proposition 21 passed.

Proposition 21, a California citizen's initiative was a reaction to the citizen's "get tough on crime," especially for gang members and juvenile offenders. This expanded the ability of prosecutors to remand juveniles to adult court for juveniles who committed certain felonies. This included the ability to sentence them into adult institutions, but, due to the obvious problems with housing adults with minors, the correctional system had to come up with an alternative process. Since they were no longer considered mere "juveniles," and they were still under 18, and not adults, the term "youthful offenders" was developed. As a result the transportation and housing of "youthful offenders" had to be kept separate from either "juveniles" or "adult" offenders. What this actually does is allow a juvenile court judge to "waive" the juvenile court's original jurisdiction over cases that meet certain criteria and refer them to the local district attorney for prosecution in an (adult) criminal court.

W&I 602 (b) *Any person who is alleged, when he or she was 14 years of age or older, to have committed one of the following offenses shall be prosecuted under the general law in a court of criminal jurisdiction:*

(1) Murder, as described in Section 187 of the Penal Code, if one of the circumstances enumerated in subdivision (a) of Section 190.2 of the Penal Code is alleged by the prosecutor, and the prosecutor alleges that the minor personally killed the victim.

(2) The following sex offenses, if the prosecutor alleges that the minor personally committed the offense, and if the prosecutor alleges one of the circumstances enumerated in the One Strike law, subdivision (d) or (e) of Section 667.61 of the Penal Code, applies:

(A) Rape, as described in paragraph (2) of subdivision (a) of Section 261 of the Penal Code.

(B) Spousal rape, as described in paragraph (1) of subdivision (a) of Section 262 of the Penal Code.

(C) Forcible sex offenses in concert with another, as described in Section 264.1 of the Penal Code.

(D) Forcible lewd and lascivious acts on a child under the age of 14 years, as described in subdivision (b) of Section 288 of the Penal Code.

(E) Forcible sexual penetration, as described in subdivision (a) of Section 289 of the Penal Code.

(F) Sodomy or oral copulation in violation of Section 286 or 288a of the Penal Code, by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(G) Lewd and lascivious acts on a child under the age of 14 years, as defined in subdivision (a) of Section 288, unless the defendant qualifies for probation under subdivision (c) of Section 1203.066 of the Penal Code.

This means that if a juvenile in California commits a crime *other than a minor violation* of a city or county ordinance, or a curfew violation, and of course depending on the totality of the circumstances, a 14 year old may find him or herself in the unenvious position of being charged, tried, and punished, as an adult. This means no juvenile court, and no juvenile hall. It means going to an “adult” trial and ultimately, an “adult” prison. However, there are still provisions for housing juveniles with adults in California corrections, so a new program was developed to accommodate the “new” status of a “youthful offender.”

Fitness Hearings

Fitness hearings are held to determine if a juvenile should be charged as either a juvenile or as an adult.

W&I 707. *(a) In any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of any criminal statute or ordinance except those listed in subdivision (b), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence which the petitioner or the minor may wish to submit, the juvenile court may find that the minor is not a fit and proper subject to be dealt with under the juvenile court law if it concludes that the minor would not be amenable to the care, treatment, and training program available through the facilities of the juvenile court, based upon an evaluation of the following criteria:*

- *The degree of criminal sophistication exhibited by the minor.*
- *Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.*
- *The minor's previous delinquent history.*
- *Success of previous attempts by the juvenile court to rehabilitate the minor.*
- *The circumstances and gravity of the offense alleged in the petition to have been committed by the minor.*

A determination that the minor is not a fit and proper subject to be dealt with under the juvenile court law may be based on any one or a combination of the factors set forth above, which shall be recited in the order of unfitness. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing, and no plea which may already have been entered shall constitute evidence at the hearing.

W&I 707. *(3) If, pursuant to this subdivision, the minor is found to be not a fit and proper subject for juvenile court treatment and is tried in a court of criminal jurisdiction and found guilty by the trier of fact, the judge may commit the minor to the Youth Authority in lieu of sentencing the minor to the state prison, unless the limitations specified in Section 1732.6 apply.*
(b) Subdivision (c) shall be applicable in any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of one of the following offenses:

W&I 707.01. Minor Found Unfit for Juvenile Court Law
If a minor is found an unfit subject to be dealt with under the juvenile court law pursuant to Section 707
(A) The minor was 16 years of age or older at the time he or she is alleged to have violated a criminal statute or ordinance.
(B)The minor was under 16 years of age at the time he or she is alleged to have violated a criminal statute for which he or she may not be presumed or may not be found to be not a fit and proper subject to be dealt with under the juvenile court law.

The irony is that under *PC 1170.19 (Sentencing Pursuant to Section 1170.172)* the person *shall not be housed in any facility under the jurisdiction of the Department of Corrections, if the person is under the age of 16 years.*

PC C 1170.17. Second Conviction; First Conviction as Juvenile Tried as Adult
(a) When a person is prosecuted for a criminal offense committed while he or she was under the age of 18 years and the prosecution is lawfully initiated in a court of criminal jurisdiction without a prior finding that the person is not a fit and proper subject to be dealt with under the juvenile court law, upon subsequent conviction for any criminal offense, the person shall be subject to the same sentence as an adult convicted of the identical offense

OMISSIONS

Crimes of "omissions." This is where you are liable for not doing something you are legally required to do. Can you be held criminally liable for a failure to something? How about failure to take care of your children? Not filing your Income Taxes? Or driving without your glasses, or even driving without your license?

The Model Penal Code, as we have seen, requires that criminal conduct be based on a "voluntary act or omission to perform an act of which [an individual] is physically capable." An omission is a failure to act or a "negative act."

The criminal law generally is concerned with punishing individuals who engage in voluntary acts that violate the law. The law, on occasion, imposes a duty or obligation on individuals to act and punishes a failure to act. For example, we are obliged to pay taxes, register for the draft, serve on juries and to report an accident. These duties are required in the interests of society and are limited exceptions to the requirement that a crime requires a voluntary act.

However, consider this case. In May 1997, 19-year-old Jeremy Strohmeyer raped and strangled seven year-old Sherrice Iverson in a bathroom at the Primadonna, a casino at the Nevada-California border. His friend, David Cash, who witnessed the struggle between Strohmeyer and the little girl, walked away without saying or doing anything to prevent what was happening. Nor did Cash report the crime then, as he walked past security guards, or later, when his friend told him he had raped the child and strangled her. When he was interviewed about the incident by the Los Angeles Times, Cash said he was not going "to lose sleep over somebody else's problems," and the only regret he ever expressed was that since Strohmeyer had been

arrested and convicted of the crime, he had lost his best friend. National outrage erupted and many called for Cash to be charged at least as an accessory if not an accomplice.

Nevada wanted to charge Cash with violating ***"the Good Samaritan"*** law by not preventing or at least helping Sherrice. Unfortunately, there was no such law at the time, and since we know that we cannot enact any "ex-post facto" laws, the best Nevada could do was to pass a law that would hopefully prevent a similar occurrence. The name ***Good Samaritan*** refers to a parable in the New Testament (Luke 10:33-35). Unfortunately for Sherrice Iverson, it wouldn't have helped. Good Samaritan laws are designed to protect from blame those who choose to aid others who are injured or ill. They are intended to reduce bystander's hesitation to assist, for fear of being prosecuted for unintentional injury or wrongful death.

California's reaction was to create the "Sherrice Iverson Child Victim Protection Act."
The law makes it a crime to witness specific acts against a child and not report it to authorities. Although it's only a misdemeanor, it's at least a step in the right direction to hold people accountable for not alerting the police. Unfortunately, it's still a very reactive law and frankly, most people wouldn't even know it exists. It does demonstrate the legislative reaction to public opinion, as was generated by the Iverson case. Since we can't create "ex-post" facto laws, the next best action is to try to prevent future reoccurrences, or at least have the tools to hold people accountable for future similar actions.

P.C. § 152.3. Observation of offenses against children
(a) Any person who reasonably believes that he or she has observed the commission of any of the following offenses where the victim is a child under the age of 14 years shall notify a peace officer…

(1) Murder
(2) Rape
(3) A violation of paragraph (1) of subdivision (b) of Section 288 of the Penal Code.(Lewd Act on a Child)
(b) This section shall not be construed to affect privileged relationships as provided by law
(c) The duty to notify a peace officer imposed pursuant to subdivision (a) is satisfied if the notification or an attempt to provide notice is made by telephone or any other means
(d) Failure to notify as required pursuant to subdivision (a) is a misdemeanor and is punishable by a fine of not more than one thousand five hundred dollars ($1,500), by imprisonment in a county jail for not more than six months, or by both that fine and imprisonment.

In an interesting twist, however, the law states:
(e) The requirements of this section shall not apply to the following:

(1) A person who is related to either the victim or the offender, including a husband, wife, parent, child, brother, sister, grandparent, grandchild, or other person related by consanguinity or affinity.
(2) A person who fails to report based on a reasonable mistake of fact.
(3) A person who fails to report based on a reasonable fear for his or her own safety or for the safety of his or her family.

In some cases, the "omission" to protect children would be punishable, such as in California's Penal Code, 270.

Child Neglect - Liability of Person Adjudicated as Parent
If a parent of a minor child willfully omits, without lawful excuse, to furnish necessary clothing, food, shelter or medical attendance, or other remedial care for his or her child, he or she is guilty of a misdemeanor punishable by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment. Proof of abandonment or desertion of a child by such parent, or the omission by such parent to furnish necessary food, clothing, shelter or medical attendance or other remedial care for his or her child is prima facie evidence that such abandonment or desertion or

omission to furnish necessary food, clothing, shelter or medical attendance or other remedial care is willful and without lawful excuse.

PC 270c. Neglect of Indigent Parent
Except as provided in Chapter 2 (commencing with Section 4410) of Part 4 of Division 9 of the Family Code, every adult child who, having the ability so to do, fails to provide necessary food, clothing, shelter, or medical attendance for an indigent parent, is guilty of a misdemeanor.

PC 270.5. Refusing to Accept Minor Child Into Home
Every parent who refuses, without lawful excuse, to accept his or her minor child into the parent's home, or, failing to do so, to provide alternative shelter, upon being requested to do so by a child protective agency and after being informed of the duty imposed by this statute to do so, is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars ($500).

PC 271. Abandonment of Child Under 14 Years of Age
Every parent of any child under the age of 14 years, and every person to whom any such child has been confided for nurture, or education, who deserts such child in any place whatever with intent to abandon it, is punishable by imprisonment in the state prison or in the county jail not exceeding one year or by fine not exceeding one thousand dollars ($1,000) or by both.

PC 271a. Failure to Provide For Child Under 14 Years of Age
Every person who knowingly and willfully abandons, or who, having ability so to do, fails or refuses to maintain his or her minor child under the age of 14 years, or who falsely, knowing the same to be false, represents to any manager, officer or agent of any orphan asylum or charitable institution for the care of orphans, that any child for whose admission into such asylum or institution application has been made is an orphan, is punishable by imprisonment in the state prison, or in the county jail not exceeding one year, or by fine not exceeding one thousand dollars ($1,000), or by both.

PC 272. Contributing to Delinquency of Minor
(a)(1) Every person who commits any act or omits the performance of any duty, which act or omission causes or tends to cause or encourage any person under the age of 18 years to come within the provisions of Section 300, 601, or 602 of the Welfare and Institutions Code or which act or omission contributes thereto, or any person who, by any act or omission, or by threats, commands, or persuasion, induces or endeavors to induce any person under the age of 18 years or any ward or dependent child of the juvenile court to fail or refuse to conform to a lawful order of the juvenile court, or to do or to perform any act or to follow any course of conduct or to so live as would cause or manifestly tend to cause that person to become or to remain a person within the provisions of Section 300, 601, or 602 of the Welfare and Institutions Code, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding two thousand five hundred dollars ($2,500), or by imprisonment in the county jail for not more than one year, or by both fine and imprisonment in a county jail, or may be released on probation for a period not exceeding five years.
(2) For purposes of this subdivision, a parent or legal guardian to any person under the age of 18 years shall have the duty to exercise reasonable care, supervision, protection, and control over their minor child.

PC 273a. Child Abuse or Endangerment
(a) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health is endangered, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison for two, four, or six years.

(b) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health may be endangered, is guilty of a misdemeanor.

PC 11165.2.Neglect, Severe Neglect, General Neglect Defined
As used in this article, "neglect" means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare.

Note that this includes*: (a) "Severe neglect" means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive.*

*(a) "**Severe neglect**" also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by Section 11165.3, including the intentional failure to provide adequate food, clothing, shelter, or medical care.*

*(b)"**General neglect**" means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred.*

Mandated Reporters
In most states now, there are “Mandated Reporters” who must follow specific duties to report certain crimes, abuse or neglect of both the elderly and minors. Some of these do include the “omission” or failure to act, protect or report abuse.

Who are mandated reporters? Chances are, if you are in law enforcement, corrections, the medical profession, teachers or child care workers, social workers, even the clergy in some cases, you already are a mandated reporter. You are required under statute to report acts of child abuse, neglect, molestation, sexual abuse, including those of elders or dependent adults.

For example:

PC 11165.9. Reports of Suspected Child Abuse or Neglect; Agencies Required to Accept
Reports of suspected child abuse or neglect shall be made by mandated reporters to any police department or sheriff's department, county probation department, if designated by the county to receive mandated reports, or the county welfare department.

PC 11165.14. Investigation of Complaints Filed with a School or Local Child Protective Agency

PC 11166. Suspected Child Abuse; Reporting Requirements

PC 11166.01. Violation of Section 11166 is Infraction
Any supervisor or administrator who violates paragraph (1) of subdivision (gh) of Section 11166 is guilty of an infraction punishable by a fine not to exceed five thousand dollars ($5,000).

PC 11166.05. Mental Suffering or Endangering Emotional Well-Being May Also Be Reported

PC 11166.1. Report of Child Abuse - Notification of Licensing Office Within 24 Hours

PC 11166.2. Immediate Telephone Report by Child Protective Agency

PC 11167. Information Contained in Child Abuse Reports; Identity of Informant Confidential

Dependent Adult Abuse
What about failure or the omission to report either elder abuse or dependent adult abuse? California has some protections for them as well:

W&I 15610.23. Dependent Adult
(a) "Dependent adult" means any person between the ages of 18 and 64 years who resides in this state and who has physical or mental limitations that restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities, or whose physical or mental abilities have diminished because of age.
(b) "Dependent adult" includes any person between the ages of 18 and 64 years who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

W&I 15610.05. Abandonment
Abandonment means the desertion or willful forsaking of an elder or a dependent adult by anyone having care or custody of that person under circumstances in which a reasonable person would continue to provide care and custody.

W&I 15610.07. Abuse
Abuse of an elder or a dependent adult means physical abuse, neglect, fiduciary abuse, abandonment, isolation, or other treatment with resulting physical harm or pain or mental suffering, or the deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering.

W&I 15610.65 (Defining***) Reasonable Suspicion***
Reasonable suspicion means an objectively reasonable suspicion that a person would entertain, based upon facts that could cause a reasonable person in a like position, drawing when appropriate upon his or her training and experience, to suspect abuse.

W&I 15630. When Reports of Adult Abuse Are Mandatory
(a)Any person who has assumed full or intermittent responsibility for the care or custody of an elder or dependent adult, whether or not he or she receives compensation, including administrators, supervisors, and any licensed staff of a public or private facility that provides care or services for elder or dependent adults, or any elder or dependent adult care custodian, health practitioner, clergy member, or employee of a county adult protective services agency or a local law enforcement agency, is a mandated reporter.

POSSESSION

Can merely "having" something in your possession be a crime? Can it be a part or element of a crime? Your text refers to various states of "possession" and describes it as a **"preparatory offense.**" The rationale is that by punishing the mere possession of contraband either deters or prevents the assumed logical next step—a burglary, sale of narcotics or the use of a weapon in a robbery. Possession typically is defined as the ability to exercise "dominion and control over an object." In effect, once you are in possession of it, you control what you do with it.

Actual possession refers to drugs and other contraband within an individual's physical possession or immediate reach.

Constructive possession refers to contraband that is outside of an individual's actual physical control over which he or she exercises control as a result of access to the location where the items are stored or through his or her ability to control an individual with physical control over the contraband. A drug dealer has constructive possession over narcotics stored in his or her home or under the physical control of a member of his or her gang.

Joint possession refers to a situation in which a number of individuals exercise control over an object. Several members of a gang may all live in the home where the drugs are stored. There must be specific proof connecting each individual to the drugs. The fact that a gang member lives in the house is not sufficient.

Knowing possession means an individual's awareness that he or she is in possession of an object. A drug dealer, for instance, is aware that marijuana is in his or her pocket.

Mere possession refers to physical control without awareness of the object. An individual may be paid by a drug dealer to carry a suitcase across international borders and lack awareness that the luggage contains drugs.

The **fleeting possession** rule is a limited exception to criminal possession. This permits an innocent individual to momentarily possess and dispose of an illegal object.

Criminal Possession means that a defendant would be in unlawful possession of certain prohibited articles, such as illegal drugs or drug paraphernalia, firearms, (in certain conditions) or stolen property. There is no mention of a time limit or "circumstances."

But what if you only possessed "contraband" for a moment? This is an example of the "***fleeting possession***" rule. In *People v. Mijares,* (1971) 6 Cal. 3d 415, the defendant removed and disposed of narcotics that he took from an unconscious friend whom he was driving to the hospital. In this case, Andrew Mijares, while helping his friend who had overdosed on heroin, took the drugs out of his friend's (Johnny Ramirez) pocket. Mijares threw it away and drove Rodriguez to get help. The police charged Mijares with possession of the heroin.

The California District Court, citing a fleeing possession exception, ruled that to hold Mijares liable would "result in manifest injustice to admittedly innocent individuals."

In California law, the term "*nonviolent drug possession offense*" means the unlawful personal use, possession for personal use, or transportation for personal use of any controlled substance (identified in Section 11054, 11055, 11056, 11057 or 11058 of the Health and Safety Code) It would *not* include the possession for sale, production, or manufacturing of any controlled substance. PC 1210. In Mijares' case, none of these elements were present.

If for example, the thing possessed is a .50 BMG rifle, and that specific weapon is prohibited by California law, merely having one then is illegal. (PC 12280(c)).

There's an interesting and seemingly unending list of things that cannot be possessed it seems, in California, but there is another side to possession, and that is just who it is that can or cannot possess certain things. For example: Ex-Felons' and Drug Addicts are prohibited from possession firearms.

PC 12021. Convicts, Persons Convicted of Offenses Involving Violent Use of Firearms, and Addicts Prohibited From Possessing Firearms
(a)(1) Any person who has been convicted of a felony…or who is addicted to the use of any narcotic drug, who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

For the rest of us, merely having a firearm in a public place, loaded or not, concealed or not, can be a risky affair. Having it in a vehicle, depending on where and how you have it located in the vehicle can make a difference. Even the size of the weapon is regulated, as well as the maximum size of any ammunition.

Sawed off- shotguns
A firearm which is designed or redesigned to fire a fixed shotgun shell and having a barrel or barrels of less than 18 inches in length.
(B) A firearm which has an overall length of less than 26 inches and which is designed or redesigned to fire a fixed shotgun shell.
(C) Any weapon made from a shotgun (whether by alteration, modification, or otherwise) if that weapon, as modified, has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length.

Short-barreled rifle means any of the following:
(A) A rifle having a barrel or barrels of less than 16 inches in length.
(B) A rifle with an overall length of less than 26 inches.
(C) Any weapon made from a rifle (whether by alteration, modification, or otherwise) if that weapon, as modified, has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches ***in length.***

12026.1. Transportation in Trunk or Locked Container
(a) Section 12025 shall not be construed to prohibit any citizen of the United States over the age of 18 years who resides or is temporarily within this state, and who is not within the excepted classes prescribed by Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, from transporting or carrying any pistol, revolver, or other firearm capable of being concealed upon the person, provided that the following applies to the firearm:

(1) The firearm is within a motor vehicle and it is locked in the vehicle's trunk or in a locked container in the vehicle other than the utility or glove compartment.

(2) The firearm is carried by the person directly to or from any motor vehicle for any lawful purpose and, while carrying the firearm, the firearm is contained within a locked container.

(b)The provisions of this section do not prohibit or limit the otherwise lawful carrying or transportation of any pistol, revolver, or other firearm capable of being concealed upon the person in accordance with this chapter.
(c)As used in this section, "locked container" means a secure container which is fully enclosed and locked by a padlock, key lock, combination lock, or similar locking device.

One best brush up on California law then if one expects to be "carrying," e.g., in possession of a firearm in some fashion. In some states, a citizen may carry a firearm with little "red-tape." In California, you may as well appeal to the Pope for all the good it would do you. Local county Sheriff's control the use of permits and they are rare indeed for the average citizen. If you don't believe it, just try it in your county and see what happens.

PC 12050. License to Carry Concealed Firearms; Issuance
(a)(1)(A) The sheriff of a county, upon proof that the person applying is of good moral character, that good cause exists for the issuance, and that the person applying satisfies any one of the conditions specified in subparagraph (D) and has completed a course of training as described in subparagraph (E), may issue to that person a license to carry a pistol, revolver, or other firearm capable of being concealed upon the person…

Other firearms sections include:

PC 12025. Unlawful to Carry Concealed Firearms Without License
(a)A person is guilty of carrying a concealed firearm when he or she does any of the following:
(1) Carries concealed within any vehicle which is under his or her control or direction any pistol, revolver, or other firearm capable of being concealed upon the person.
(2) Carries concealed upon his or her person any pistol, revolver, or other firearm capable of being concealed upon the person.
(3) Causes to be carried concealed within any vehicle in which he or she is an occupant any pistol, revolver, or other firearm capable of being concealed upon the person.

PC 12031.Loaded Firearm; Carrying in Public Place or in Vehicle
(a)(1) A person is guilty of carrying a loaded firearm when he or she carries a loaded firearm on his or her person or in a vehicle while in any public place or on any public street in an incorporated city or in any public place or on any public street in a prohibited area of unincorporated territory.

Just being in a Street Gang and in possession of a firearm can be a penalty enhancement:
PC 12021.5 Carry Loaded or Unloaded Firearm - Street Gang Crimes
(a) Every person who carries a loaded or unloaded firearm on his or her person, or in a vehicle, during the commission or attempted commission of any street gang crimes described in subdivision (a) or (b) of Section 186.22, shall, upon conviction of the felony or attempted felony, be punished by an additional term of imprisonment in the state prison for one, two, or three years in the court's discretion.

PARENTAL LIABILITY

Are parents liable for the action of their children? The answer is yes, and it can be for both criminal and civil damages. Parents are responsible if the parent has knowledge of the child's potential for misconduct and fails to take reasonable steps to prevent such misconduct.

Parents of gang members can be prosecuted and held criminally liable for their child’s gang-related activities. If the parents fail to exercise reasonable care, supervision, protection and control over their minor child, they can be charged with contributing to the delinquency of a minor. (***PC § 272) By law, such neglect on the part of parents is punishable by up to one year in jail and a fine of $2,500. (PC § 272(a)(1)***

(See the Case Study of Williams vs. Garcetti.)

PC 272 (a)(1) Every person who commits any act or omits the performance of any duty, which act or omission causes or tends to cause or encourage any person under the age of 18 years to come within the provisions of Section 300, 601, or 602 of the Welfare and Institutions Code or which act or omission contributes thereto, or any person who, by any act or omission, or by threats, commands, or persuasion, induces or endeavors to induce any person under the age of 18 years or any ward or dependent child of the juvenile court to fail or refuse to conform to a lawful order of the juvenile court, or to do or to perform any act or to follow any course of conduct or to so live as would cause or manifestly tend to cause that person to

become or to remain a person within the provisions of Section 300, 601, or 602 of the Welfare and Institutions Code, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding two thousand five hundred dollars ($2,500), or by imprisonment in the county jail for not more than one year, or by both fine and imprisonment in a county jail, or may be released on probation for a period not exceeding five years.

(2) For purposes of this subdivision, a parent or legal guardian to any person under the age of 18 years shall have the duty to exercise reasonable care, supervision, protection, and control over their minor child.

Review Questions

1. What do you think about the Sherrice Iverson case and the passage of the Good Samaritan Law in California? How would you like to change the law if you could?
2. Do you think the Mijares case should have been upheld? Why or why not
3. Do you think parents should be criminally liable for the actions of their children who commit crimes or are involved in gang activity?
4. What is a "Dependent Adult?"
5. Do you think that a 14 year old has the mental capacity to form the prerequisite mens rea to commit a crime and really appreciate the wrongfulness of what they had done? Do you think they should be housed with adults as part of their punishment?

Web Resources

California Codes On line:
http://www.leginfo.ca.gov/calaw.html

California Bar Association – See *Kids and the Law*
http://www.calbar.ca.gov/state/calbar/calbar_home.jsp

California Courts: http://www.courtinfo.ca.gov/
To find a court case, select ***"Opinions",*** click on ***"Officials Reports Page"*** that is highlighted, ***"Continue,"*** then ***Accept*** the ***LexisNexis©*** agreement and you'll see the options for which court you want to choose from.

If you know the citation, it's much easier than just trying to search by name. For example, In People v. Mijares (1971) 6 Cal. 3d 415 you would scroll down to the area where it says "get Opinion by Cite (Citation). You'll see a box below. It says "Enter Citation" The citation is the combination of the Volume, the actual type of case it was, i.e., a California Supreme Court case or an Appellate case. The Volume refers to the particular "volume" that that case is listed. In this case it's in Volume 6, so type in "6" where it says "Enter Volume." In the Select Reporter box, use the down arrow to select the Cal.3rd option, then type in 415, where it says "enter Page #. Then select "Go," and your case should come up.

California – Safe State Program – See Focus on Gang and Youth Violence
http://safestate.org/

Citing California cases
These examples are from the California Courts website:

- California Supreme Court cases are abbreviated either C or CA followed by a number. For example, in Intel Corp. v. Hamidi (2003) 30 Cal.4th 1342, 1351, the "30 Cal.4th" refers to volume 30 of the fourth series of Official California Reports, which is the official reporter for California Supreme Court opinions. The "1342" refers to the page in volume 30 where the case starts. If you were citing page an issue on page "1351" you would include that the page number in your brief.
- California Appellate Court cases are abbreviated either CAL APP. For Example, in the case of Albertson's, Inc. v. Young (2003) 107 Cal.App.4th 106, 113. The "107 Cal. App. 4th" refers to volume 107 of the fourth series of Official California Appellate Reports, which is the official reporter for California Court of Appeal opinions.
- www.courtinfo.ca.gov/courts/courtsofappeal/4thDistrictDiv1/proper/Appendix4.pdf

Criticism of the law on Good Samaritan law: http://www.law.ucla.edu/volokh/rescue.htm

Huey P. Newton: http://www.pbs.org/hueypnewton/

People v. Newton, 8 Cal. App. 3d 359 (1970) http://www.courtinfo.ca.gov/

National Center on Juvenile Justice: http://www.ncjj.org/

Office of Juvenile Justice and Delinquency Prevention
http://www.ojjdp.ncjrs.org/

NCJRS – National Criminal Justice Reference Service:

- **Article:** ***Delinquency Cases Waived to Criminal Court, 1990–1999*** by Charles M. Puzzanchera OJJPD Fact Sheet September 2003 #04
  http://ncjj.servehttp.com/NCJJWebsite/publications/topical/topicalsentence.htm
- **Article:** ***Parental Responsibility Laws*** http://ojjdp.ncjrs.org/pubs/reform/ch2_d.html

Web Sites related to the Tony Hicks and Azim Khamisa case
http://tkf.org/tony_story.html
http://www.theforgivenessproject.com/stories/azim-khamisa-ples-felix

Williams v. Garcetti, (1993) 5 Cal. 4th 561 .http://www.courtinfo.ca.gov/

Case Study #1: People v. Mijares (1971) People v. Mijares, 6 Cal. 3d 415

Discussion Question: What was the legal rationale for the court's decision in this case?

Facts
In People v. Mijares (1971) 6 Cal. 3d 415 [99 Cal. Rptr. 139, 491 P.2d 1115], a case involving the charge of possessing heroin in violation of former Health and Safety Code section 11500 (hereafter section 11500). In that case, the appellant, Andrew Mijares, admitted possessing heroin but claimed he did so only momentarily for the sole purpose of putting an end to its unlawful possession by a friend, Johnny Rodriguez, who had overdosed on the narcotic. Mijares explained that, believing his friend needed medical help, he looked in Rodriguez's pocket and found the "narcotics outfit" containing heroin, which he thought might be there since Rodriguez recently had ingested the narcotic. Mijares threw the contraband out of the car and drove Rodriguez to a fire station to get medical assistance. (People v. Mijares, supra, at p. 419.)

Issue
On appeal, Mijares argued ". . . the jury should have been instructed that if it believed he did not himself use heroin on the day in question or handle it in furnishing narcotics to Rodriguez but instead had no contact with the narcotic other than to remove it from Rodriguez' pocket for the purpose of disposal, such handling is insufficient for conviction of the crime of possession as defined by section 11500." (Ibid.)

Decision
The Supreme Court agreed. The jury should have been instructed that the possession prohibited by section 11500 of the code does not include merely handling for only brief moments prior to abandoning the narcotic. The jury should have been instructed that the possession prohibited by section 11500 does not include merely handling for only brief moments prior to abandoning the narcotic.

For the full case citation, go to California Courts, Select Court Opinions and follow the prompts to LexisNexis. Use the citation 6 Cal. 3rd 415. (People v. Mijares, 6 Cal. 3d 415)

Case Study #2: People v. Newton (1970) 8 Cal. App. 3d 359;

Facts
John Frey and Herbert Heanes were officers of the Oakland Police Department. The criminal charges against defendant arose from a street altercation in which Frey was fatally wounded by gunfire, and Heanes and defendant were shot, on October 28, 1967. Through the testimony of Oakland police radio dispatcher Clarence Lord, and a tape recording of the radio transmissions mentioned therein, the People showed that the following events first occurred on the date in question:

Lord was on radio duty in the Oakland Police Administration Building. Officer Frey was also on duty, and alone in a police car, patrolling an assigned beat in Oakland. At about 4:51 a.m., he radioed Lord and requested a check on an automobile which was moving in his vicinity and which bore license number AZM 489. Less than a minute later, Lord told Frey that "we have got some … information coming out on that." n1 Frey replied, "Check. It's a known Black Panther vehicle. . . . I am going to stop it at Seventh and Willow [Streets]. You might send a unit by." ("Check," in this context, meant that Frey had received Lord's message.) Officer Heanes, who was listening to this conversation in his police car on another beat, called in that he was "enroute" to Seventh and Willow Streets. This transmission terminated at about 4:52 a.m.

A few minutes later Frey asked Lord by radio, "you got any information on this guy yet?" Explaining this call, Lord testified that "when I gave him [Frey] the information there was PIN information he made the car stop on the strength of that, on the strength of the PIN information. He [now] wants to know what information I have that told him to stop the vehicle." Lord gave Frey the name "LaVerne Williams" and asked him "if there were a LaVerne Williams in the vehicle." Frey replied in the affirmative. Lord told him there were a "couple" of warrants issued to LaVerne Williams, for parking violations, on the identified vehicle.

Lord testified that under such circumstances "[we] check and see if the warrants are still outstanding, first of all, and if they are, and then they [the officers outside] can ascertain if they have that person stopped on the street, then they take action concerning the warrant." Pursuing this procedure in the radio conversation, he gave Frey an address for "LaVerne Williams" and said "Let me know if this is the same address or not." Frey asked Lord, "What's his description?" Lord replied ". . . I don't have the description. Do you have a birth date on him there? We're checking him out right now downstairs."

After another brief interval, and just before 5 a.m., this further exchange occurred by radio: "Frey: 1A, it's the same address. He has on his registration 1114 - 12th Street? Radio [Lord]: Check. What's his birth date? Frey: He gave me some phony. I guess he caught on. Radio: Okay, check. It's not necessary, anyway. We're checking him out downstairs there. We'll have the information back in a few minutes. Frey: Check. Thanks." The next relevant radio call, received at 5:03 a.m., was a "940B" ("an officer needs assistance immediately") from Officer Heanes at Seventh and Willow Streets.

Officer Heanes testified for the People as follows: He arrived at Seventh and Willow Streets "three to four minutes" after responding by radio to Officer Frey's "cover call." Officer Frey's police car was parked at the south curb of Seventh Street, east of Willow Street and facing east. A beige Volkswagen was parked directly in front of it, also facing east. Heanes parked his car behind Frey's, alighted and walked to the right rear of the Volkswagen. At this time, two men were seated in the Volkswagen, both in the front seat; Officer Frey was standing near the driver's door of the vehicle, writing a citation. (Heanes made an in-court identification of defendant as the man seated in the driver's seat of the Volkswagen.)

After a minute or so, Heanes followed Frey to the latter's vehicle, where he heard Frey talk to the police radio dispatcher about an address and a birth date. When Frey finished the radio call, he and Heanes had a conversation in which Frey indicated that defendant, when asked for identification, had produced the Volkswagen registration and given his name as "LaVerne Williams." While Frey remained in his car, Heanes

walked forward to the Volkswagen, addressed defendant as "Mr. Williams," and asked if he had any further identification. Defendant, still seated in the vehicle, said "I am Huey Newton." Frey then approached the Volkswagen and conversed with Heanes, who asked defendant to get out of the car. Defendant asked "if there was any particular reason why he should." Heanes asked him "if there was any reason why he didn't want to." Frey then informed defendant that he was under arrest and ordered him out of the car.

Defendant got out of the Volkswagen and walked, "rather briskly" and in a westerly direction, to the rear of the police cars. Frey followed, three or four feet behind defendant and slightly to his (defendant's) right. Heanes followed them, but stopped at the front end of Frey's police car (the second car in line). Defendant walked to the "rear part" of Heanes's car (third in line), Frey still behind him, and turned around. He assumed a stance with his feet apart, knees flexed, both "arms down" at hip level in front of his body.

Heanes heard a gunshot and saw Officer Frey move toward defendant. As he (Heanes) drew and raised his own gun in his right hand, a bullet struck his right forearm. He grabbed his arm "momentarily" and noticed, from the corner of his eye, a man standing on the curb between the Volkswagen and Officer Frey's police car. Heanes turned and aimed his gun at the man (whom he apparently identified at the time as defendant's passenger, although he had not seen the passenger get out of the Volkswagen). The man "raised his hands and stated to me he wasn't armed, and he had no intentions of harming me." To the best of Heanes' knowledge, the man's hands were empty.

Heanes returned his attention to Officer Frey and defendant, who were "on the trunk lid of my car [the third car in line] tussling." The two were in "actual physical contact" and "seemed to be wrestling all over the trunk area of my car." He next remembered being on his knees at the front door of Frey's (the second) car, approximately "30, 35 feet" from the other two men. Defendant was then facing him; Officer Frey was "facing from the side" of defendant, toward the curb, and appeared to be "hanging onto" him. Holding his gun in his left hand, Heanes aimed at defendant and fired "at his midsection." Defendant did not fall; Heanes saw no one fall at any time. He (Heanes) then heard "other gunshots . . . from the area of where Officer Frey and . . . [defendant] . . . were tussling on the rear part of my car." n2 Heanes did not see a gun in defendant's hand at any time. He next remembered "laying" in Officer Frey's police car, and calling an "emergency 940B" on its radio. After that, and through the vehicle's rear window, he saw two men running in a westerly direction toward Seventh and Willow Streets.

Henry Grier, a bus driver employed by AC Transit, gave this testimony for the People: Driving his empty bus westbound on Seventh Street at about 4:58 a.m. on October 28, 1967, he saw the three vehicles parked at the south curb, "about bumper to bumper," west of Willow Street. "Red lights" were flashing on the police cars. He also saw two uniformed police officers and two "civilians" standing together in the street, to his left and next to the Volkswagen. He continued west on Seventh Street to a turn-around point two blocks west of Willow Street, turned without stopping, returned on Seventh Street in an eastbound direction, and stopped to pick up two bus passengers at Willow Street.

Continuing east on Seventh Street, Grier again came upon the three parked vehicles. This was four to five minutes after he passed them while headed west. He saw the same flashing lights on the police cars, and three men in the street. Two of them, a police officer and a "civilian," were walking toward the bus. When Grier first saw them, they were 20-25 feet distant from him and a point between the Volkswagen and the first police car parked behind it. The officer was walking a "pace" behind the civilian, and was apparently holding him "sort of tugged under the arm." The third man in the street was another police officer, who was walking in the same direction about "ten paces" behind the first officer and the civilian. (Grier did not then, or again, see the other "civilian" he had noticed when driving west on Seventh Street.)

As the first pair drew closer to the bus, which was still "rolling," the civilian pulled a gun from inside his shirt and "spun around." The first police officer "grabbed him by the arm." The two struggled, and "the gun went

off." The officer walking behind them "was hit and he fell"; after he was hit, he drew his gun and fired. Grier stopped the bus immediately and called "central dispatch" on its radio. At this point, the first officer and the civilian were struggling near the front door of the bus and within a few feet of Grier. He saw the civilian, standing "sort of in a crouched position," fire several shots into the first officer as the latter was falling forward. n3 These shots were fired from, or within, a distance of "four or five feet" from the midsection of the officer's body; the last one was fired "in the direction of his back" as he lay, face down, on the ground. While these shots were being fired, Grier was saying on the bus radio, "Get help, a police officer is being shot. Shots are flying everywhere; get help. Help, quick." After firing the last shot at the fallen officer, the civilian "went diagonally across Seventh [Street]." At the trial, Grier positively identified defendant as the "civilian" mentioned in his account of the shootings.

Gilbert DeHoyos and Thomas Fitzmaurice, both Oakland police officers, testified for the People as follows: Shortly after 5 a.m. on October 28, 1967, both responded to Officer Heanes' "940B" call for assistance. Officer DeHoyos arrived at Seventh and Willow Streets less than a minute later; Officer Fitzmaurice arrived just behind him. They found Officer Frey lying on the street near the rear of Heanes' police car, still alive, and Heanes in the front seat of Frey's car. They saw no other persons nearby. Officer Heanes told Fitzmaurice that "his leg hurt and his arm and that Huey Newton had done it . . . he told me he had fired [at defendant] and I think he hit him . . . he [Heanes] thought he hit him."

Defendant arrived at the emergency desk of Kaiser Hospital at 5:50 a.m. on the same morning. He asked to see a doctor, stating "I have been shot in the stomach." A nurse called the police. Officer Robert Fredericks arrived and placed defendant under arrest. He (defendant) had a bullet wound in his abdomen. The bullet had entered in the front and exited through the back of his body.

Officers Frey and Heanes were taken to Merritt Hospital, where Frey was dead on arrival. He had been shot five times, at approximately the same time but in an unknown order. One bullet entered in the front, and exited through the back, of his left shoulder; another passed through his left thigh, also from front to back. A third (the only one recovered from Frey's body) entered the midback and lodged near the left hip. A fourth creased the left elbow. Another bullet entered the back, traversed the lungs, and exited through the right shoulder in front: this wound caused Officer Frey's death within 10 minutes. Officer Heanes had three bullet wounds: one in his right arm, one in the left knee, one in the chest.

Three slugs were recovered: one from Officer Frey's hip, one from Heanes' left knee, and a third which had been lodged in the right front door of the Volkswagen. In addition, two 9-mm. Luger shell casings were found at the scene. One was in the street between the two police cars, the other near the left front bumper of Heanes' car and approximately where Frey was lying. The 9-mm. bullets had been fired from an automatic (Officers Frey and Heanes carried .38-caliber Smith & Wesson revolvers). A live 9-mm. Luger cartridge was found on the floor of the Volkswagen, between the two front seats. Only Officer Heanes' gun was found; he was holding it when the other officers arrived at the scene. Two rounds had been expended from the gun. Neither a Luger nor Officer Frey's revolver was found.

Oakland Police Department Officer John Davis testified for the People as follows: Two types of gunpowder, ball and flake, were involved in the shootings. Officer Frey's gunbelt contained high velocity cartridges with ball powder. Officer Heanes' gun used flake powder cartridges; the 9-mm. cartridges also contained flake powder. The three slugs recovered from Officer Frey's body, Heanes' knee and the Volkswagen door were .38-caliber specials fired with ball powder, similar to the cartridges in Officer Frey's gunbelt. The slugs found in both officers' bodies were fired from the same .38-caliber Smith & Wesson revolver, the type of weapon normally carried by Officer Frey; neither had been fired from Heanes' gun, which was of the same type.

Davis testified that a gunshot fired into a body from close range (up to "five, six feet," and with variations) will leave powder deposits at the point of impact; a gun firing a high velocity, ball powder bullet would have

to be fired from a distance of more than six feet to leave no such deposits. Among several bullet-entry holes in Officer Frey's clothing, three (one in the left thigh and two in the back) were surrounded by ball powder deposits. Davis estimated that these shots were fired at the victim from distances of 12-24 inches, 12 inches and 6-12 inches. The other two entry holes in Frey's clothing (in the shoulder and elbow area) showed no powder deposits, and none appeared at the bullet-entry holes in the clothing worn by Officer Heanes and defendant.

Defense Evidence

Tommy Miller gave this testimony for the defense: He boarded an eastbound bus at Seventh and Willow Streets at about 5 a.m. on October 28, 1967. As the bus moved away from the stop, and the driver was making change for him and another passenger, he saw "red lights and police cars" on Seventh Street, and police officers and another man in the street; one of the officers "had him [the man] up against the car." The witness could identify no faces; it was "too dark," and the persons in the street were facing away from him. Hearing "a lot of gunfire," he laid down in the rear of the bus. When the shooting stopped, he got up and saw, from the back of the bus (which had stopped), a police officer lying on the ground.

Gene McKinney, who was also called by the defense, testified that he was defendant's passenger in the Volkswagen at Seventh and Willow Streets. He thereafter pleaded self-incrimination as to any and all subsequent questions, was held in contempt by the trial court, and gave no further testimony.

Defendant, testifying in his own behalf, denied killing Officer Frey, shooting Officer Heanes, or carrying a gun on the morning of the shootings. His account of the episode was as follows: He was driving with Gene McKinney on Willow Street, and had just turned into Seventh Street when he noticed a red light through the rear window of the Volkswagen. He pulled over to the curb and stopped. Officer Frey approached the Volkswagen and said "Well, well, well, what do we have? The great, great Huey P. Newton." Frey asked for defendant's driver's license and inquired as to the ownership of the Volkswagen. Defendant handed him his (defendant's) license, and the vehicle registration, and said that the car belonged to LaVerne Williams. Officer Frey returned the license and walked back to his patrol car with the registration.

A few minutes later Officer Heanes arrived, conversed with Frey, then walked up to the Volkswagen and asked, "Mr. Williams, do you have any further identification?" Defendant said, "What do you mean, Mr. Williams? My name is Huey P. Newton . . ." Heanes replied, "Yes, I know who you are." Officer Frey then ordered defendant out of the car. He got out, taking with him a criminal law book in his right hand. He asked if he was under arrest; Officer Frey said no, but ordered defendant to lean against the car. Frey then searched him, placing his hands inside defendant's trousers and touching his genitals. (Officer Heanes had testified that defendant was not searched at any time.) McKinney, who had also alighted from the Volkswagen, was then standing with Officer Heanes on the street side of the Volkswagen.

Seizing defendant's left arm with his right hand, Officer Frey told him to go back to his patrol car. Defendant walked, with the officer "kind of pushing" him, past the first police car to the back door of the second one. Defendant opened his book n4 and said, "You have no reasonable cause to arrest me." The officer said, "You can take that book and stick it up your ass, Nigger." He then struck defendant in the face, dazing him. Defendant stumbled backwards and fell to one knee. Officer Frey drew a revolver. Defendant felt a "sensation like . . . boiling hot soup had been spilled on my stomach," and heard an "explosion," then a "volley of shots." He remembered "crawling . . . a moving sensation," but nothing else until he found himself at the entrance of Kaiser Hospital with no knowledge of how he arrived there. He expressly testified that he was "unconscious or semiconscious" during this interval, that he was "still only semiconscious" at the hospital entrance, and that -- after recalling some events at Kaiser Hospital -- he later "regained consciousness" at another hospital.

(Note: a criminal lawbook, with defendant's name inscribed inside, was found in a pool of blood near Officer Frey.)

The defense called Bernard Diamond, M.D., who testified that defendant's recollections were "compatible" with the gunshot wound he had received; and that "[a] gunshot wound which penetrates in a body cavity, the abdominal cavity or the thoracic cavity is very likely to produce a profound reflex shock reaction, that is quite different than a gunshot wound which penetrates only skin and muscle and it is not at all uncommon for a person shot in the abdomen to lose consciousness and go into this reflex shock condition for short periods of time up to half an hour or so."

Issue
Huey P. Newton appeals from a judgment convicting him of voluntary manslaughter.

Count One of an indictment issued by the Alameda County Grand Jury in November 1967, charged defendant with the murder (Pen. Code, § 187) of John Frey; count Two, with assault with a deadly weapon upon the person of Herbert Heanes, knowing or having reasonable cause to know Heanes to be a peace officer engaged in the performance of his duties (Pen. Code, § 245b); count Three, with the kidnaping of Dell Ross. (Pen. Code, § 207.) The indictment also alleged that defendant had previously (in 1964) been convicted of assault with a deadly weapon, a felony. He pleaded not guilty to all three counts and denied the prior.

After the People rested during the lengthy jury trial which followed in 1968, and pursuant to Penal Code section 1118.1, the trial court granted defendant's motion for acquittal on count Three (the Ross kidnaping). Similar motions, addressed to the other counts, were denied. The jury acquitted him of the Heanes assault charged in count Two, but found him guilty of the voluntary manslaughter of Frey under count One. The jury also found the charge of the prior felony conviction to be true. Defendant's motions for new trial and for probation were denied, and he was sentenced to state prison for the term prescribed by law. This appeal followed.

Decision
The judgment of conviction is reversed. (Yes, this meant his sentence was overturned and he was released.) For more about this controversial figure in history, refer to the web resources.

Case Study #3: Williams v. Garcetti, (1993) 5 Cal. 4th 561

Discussion Question: Are parents liable for their kid's Gang activities?

In 1989, Gloria Williams was the first woman to be charged under the amended CDM statute. Williams' then-12-year-old son was suspected of having participated in a gang rape of a young girl. When police visited Williams' home, they found " . . . family photo albums [containing] pictures of the 37-year-old Williams posing with gang members known as 'Crips,'" and " pictures of her 4-year-old son pointing a pistol at the camera [and] spray-painted graffiti adorning the bedroom walls of the modest stucco house of Williams and her three children." The investigating detective, after searching the house, was quoted as saying, *"I couldn't believe my eyes. In all my 20 years on the police force, I have never seen anything like this. It was obvious that the mother was just as much part of the problem because she condoned this activity."*

Issue
California's law imposing criminal parental responsibility is one of the most stringent in the Nation. Enacted in 1988 as part of the Street Terrorism and Prevention Act, the law amended the State's CDM law by making it a crime when parents or guardians do not " exercise reasonable care, supervision, protection, and control" over their children.

On behalf of Ms. Williams, Gary Williams, a professor of law at Loyola University Law School in Los Angeles, partnered with the ACLU in filing a taxpayers' lawsuit in California superior court. The plaintiff's contention was that the parental responsibility law was impermissibly vague and infringed upon the established right to privacy in family matters. Williams contended that the implementation of the law would be a waste of taxpayer funds.

Decision
Through a series of judgments and appeals, the Supreme Court of California upheld the language of the legislation, finding that the statute set a reasonable standard for parents who are making attempts to guide and control their children and that a statutorily defined notion of perfect parenting would be both inflexible and impractical. When it was shown that Gloria Williams had participated in a parenting course 2 months earlier, however, a local prosecutor indicated that it would violate the spirit of the law to try her because she had indeed taken steps to control her children by participating in parent education. As a result, the case against Williams was dropped. The full appellate decision is cited above.

Answers to Review Questions
Chapter 4

1. What do you think about the Sherrice Iverson case and the passage of the Good Samaritan Law in California? How would you like to change the law if you could?
A. While this prompts a subjective response, the student should consider the liability of someone who directly observes a crime, but is not directly involved in the crime, particularly a crime of violence, and does not render aid, attempt to stop the offense, or notify the police.

2. Do you think Mijares case should have been upheld? Why or why not?

A. This also prompts a subjective answer. Considering the case facts, most students would most likely agree with the court that Mijares shouldn't have been arrested, much less convicted. Mijares, admitted possessing heroin but claimed he did so only momentarily for the sole purpose of putting an end to its unlawful possession by a friend, Johnny Rodriguez, who had overdosed on the narcotic. Mijares explained that, believing his friend needed medical help, he looked in Rodriguez's pocket and found the "narcotics outfit" containing heroin, which he thought might be there since Rodriguez recently had ingested the narcotic. Mijares threw the contraband out of the car and drove Rodriguez to a fire station to get medical assistance

3. Do you think parents should be criminally liable for the actions of their children who commit crimes or are involved in gang activity?
A. Subjective answer. However, the courts have upheld parent's liability for the actions of their children.

4. What is a "Dependent Adult?"
A. W&I 15610.23. Dependent Adult
(a) "Dependent adult" means any person between the ages of 18 and 64 years who resides in this state and who has physical or mental limitations that restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities, or whose physical or mental abilities have diminished because of age.
(b) "Dependent adult" includes any person between the ages of 18 and 64 years who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code

5. Do you think that a 14 year old has the mental capacity to form the prerequisite mens rea to commit a crime and really appreciate the wrongfulness of what they had done? Do you think they should be housed with adults as part of their punishment?
A. While this requires a subjective response, the law does state that 14 year olds are capable of this, and may even be punished as adults. However, they generally cannot be housed with adults until they are at least 18, at least in California.