LAW AND SOCIETY ON THE WEB

1.3 YOU DECIDE

On the morning of March 13, 1964, 28-year-old Kitty Genovese arrived home from work. As Kitty exited her automobile, she was confronted by Winston Moseley, who later would testify that he received emotional gratification from stalking women. The thirty-eight residents of the building where Kitty lived turned on their lights, opened their windows, and watched as Moseley returned on three separate occasions over a period of thirty-five minutes to stab Kitty seventeen times. The third time Moseley returned, he found that Kitty had crawled to safety inside a nearby apartment house, and he stabbed her in the throat to prevent her from screaming, attempted to rape her, and took $49 from her wallet. One observer found the courage to persuade a neighbor to call the police, who arrived in two minutes to find Kitty's dead body.

Commentators asked whether America had become a society of passive bystanders who were concerned only with their own welfare and cared very little for others. Kitty's neighbors explained that they did not want to get involved, were tired, and went back to bed or offered no explanation for their failure to act.

A less prominent and more recent example of a failure to intervene to protect others occurred in October 2012 when Hurricane Sandy hit the coasts of New York and New Jersey. The wind, torrential rains, and storm surge brought massive flooding. Glenda Moore and her 2- and 4-year-old sons were fleeing Staten Island when their SUV became trapped in a ditch and was inundated with water. Glenda and her sons unsuccessfully knocked on a series of doors in an effort to escape the rain. Her two sons were swept away, and their bodies were uncovered several days later. One homeowner noted that Glenda and her sons never should have been out in the rain and it was "one of those things" (Robbennolt and Hans 2016: 85).

The American bystander rule provides that although the individuals who witnessed the death of Kitty Genovese along with the individuals who failed to open the door to Glenda Moore may be morally tainted, they did not possess a legal duty to rescue Kitty or Glenda. As a result, they were neither civilly nor criminally liable for their failure to act although some states have Good Samaritan statutes that protect individuals from civil liability for any injuries that may result from their decision to rescue an individual in peril. California, for example, provides that "[n]o person who in good faith, and not for compensation, renders emergency care at the scene of an emergency shall be liable for any civil damage resulting from any act of omission." Keep in mind that the criminal law does provide certain protections for individuals who choose to intervene to protect another individual who they perceive is being physically attacked.

Why are bystanders not held civilly or criminally liable for a failure to act? The average individual lacks the expertise and stamina to assist a person in peril and may merely make matters worse or place him- or herself in jeopardy. Observers also may misunderstand a situation,

and it may be difficult to apportion responsibility between multiple observers.

Critics respond that there is little difference between pushing a child onto the railroad tracks and failing to rescue a child from an ongoing train. The law in the view of critics should promote a sense of caring and concern about other individuals and, at a minimum, should require individuals to take reasonable steps, however limited, to assist others. There is a practical reason to require individuals to act because the willingness of people to help others has proven effective in preventing crime and foiling terrorist attacks.

There are several exceptional situations in which an individual because of his or her relationship with another person has a duty to take reasonable steps to rescue another individual. These situations include a contract, a statute (requiring an individual take steps to care for a child or elderly individual), a status (e.g., parent and child), and an individual who decides to intervene and assumes a duty.

Bibb Latané and John Darley's research on bystander response finds that an observer generally will fail to intervene when there are other individuals who fail to act because this sends the message that other people have determined that outside intervention is unnecessary. The inaction by the observer sends the same message to other individuals, and the result is collective inaction (Latané and Darley 1968).

A second explanation for inaction is diffusion of responsibility. Individuals share responsibility with other observers and do not feel as responsible as when no one else is present.

These two tendencies toward a failure to act are less powerful when there is situational clarity, meaning there is a clear imperative to act (Robbennolt and Hans 2016: 88–89).

Several other studies suggest that the overwhelming majority of Americans will rescue others even at great personal risk. Individuals do not seem to calculate their legal liability in deciding whether to intervene and instead base their decision on cultural expectation to "assist thy neighbor" (Horwitz and Mead 2009; Hyman 2006).

Should the criminal law require individuals to take reasonable steps to rescue individuals in peril?

2.2 YOU DECIDE

Raymond Wacks in his 2006 introduction to the philosophy of law proposes the following hypothetical for discussion. You are stranded on a desert island with a dying man who entrusts you with $100,000 for his daughter, Rita, if you manage to survive and return home. You promise to fulfill his dying wish, and after your rescue, you find Rita living in a mansion and learn that she has earned millions of dollars based on sales of an app. You know that a local homeless shelter is about to close and that the street people who sleep there no longer will have access to a hot meal, a warm bed, a safe place to sleep, and concerned caretakers. Among the homeless are military veterans, individuals with mental challenges, and victims of domestic violence. Many of the homeless will find themselves living on the street and inevitably will be arrested for various offenses and spend considerable time in jail or prison. The $100,000 will be of little consequence to Rita given her income.

Should you fulfill the promise? Or give the money to the homeless shelter?

2.3 YOU DECIDE

Suicide at common law was considered the felony of self-murder because it deprived the king of one of his subjects and therefore was a crime against the Crown and against God. The punishment for suicide entailed forfeiture of the deceased person's estate and loss of the right to a formal burial. In 1961, England abolished the offense of suicide, although assisting suicide remains a crime.

In the United States, suicide in most states also no longer is considered a criminal offense. Assisting suicide, however, remains a crime. New York provides that an individual who "intentionally causes or aids another person to commit suicide" is guilty of manslaughter in the second degree (N.Y. Penal Law § 125.15).

In November 1997, the Oregon "death with dignity" law went into effect. The law provides for physician-assisted suicide (Ore. Rev. Stat. §§ 127.800, et seq.). In 2006, the U.S. Supreme Court held that the federal government had no legal authority under the Controlled Substances Act (CSA) to prevent Oregon doctors from prescribing legal drugs to be used in suicide. Roughly six hundred individuals have made use of the Oregon law (*Gonzales v. Oregon*, 546 U.S. 243 [2006]).

Washington passed a similar law in 2008. Wash. Rev. Code § 70.122.070(1) provides that the withholding or withdrawal of life-sustaining treatment at a patient's request "shall not . . . constitute a suicide or a homicide." In May 2009, a 66-year-old woman suffering from pancreatic cancer became the first person in Washington to make use of the law to end her life. Approximately 150 persons have made use of the law in Washington.

In both Oregon and Washington, two doctors are required to certify that a patient has six months or less to live. After receiving these separate, independent certifications, the patient is eligible to terminate his or her life. Then, the patient must request lethal drugs on two occasions, fifteen days apart. The fatal dose must be self-administered.

The Oregon and Washington laws are opposed by various religious organizations and by the American Medical Association, which believes that doctors should not be involved in assisting in the taking of human life.

In Oregon, an equal number of men and women have made use of the law, and the median age of these individuals is 71 years. Of these individuals, 81 percent were suffering from cancer. Studies determined that most of these individuals were motivated by a desire to control their fate rather than to eliminate pain. There was apprehension when the Oregon law was passed that poor individuals would be pressured into suicide because of the cost of their care. Studies, however, indicate that most people employing the law were solidly middle class.

In 2014 in Oregon, prescriptions for lethal medications were written for 155 people as compared to 122 people in 2013 and 116 in 2012. There were 71 "assisted deaths" during 2013, nearly all of which involved individuals who were over 65 years of age and died at home. These people expressed concern for a loss of autonomy, for decreasing capacity to participate in activities that made life enjoyable, and for a loss of dignity.

In 2009, in *Baxter v. State* (224 P.3d 1211 [Mont. 2009]), the Montana Supreme Court held that a doctor is not criminally liable for assisting a mature, aware, and terminally ill patient to take his or her life. The court reasoned that state public policy respected the end-of-life autonomy of patients and that doctors had an ethical obligation to respect a patient's wishes. The Alaska Supreme Court earlier had held that terminally ill patients have no right to a physician's assistance in committing suicide. See *Sampson v. State,* 31 P.3d 88 (Alaska 2001). In May 2014, the Vermont Legislature recognized that terminally ill patients have a right to assistance in dying.

In 2014, 29-year-old Brittany Maynard, diagnosed with terminal brain cancer, moved from California to Oregon to take her life under Oregon law. She wrote, "My question is: Who has the right to tell me that I don't deserve this choice?" Brittany's death led to the California Legislature's adoption in 2015 of the End of Life Option Act, which

legalized physician-assisted suicide. The California law requires two doctors to certify that a patient has six months or less to live before lethal drugs may be prescribed. Patients are required to be physically able to swallow the medication themselves and must have the mental capacity to make medical decisions. Colorado voters in November 2016 passed a referendum establishing Colorado as the sixth state recognizing a right to die.

In other states in the United States, the law continues to treat aiding and abetting a suicide as a crime. In 1999, the late Dr. Jack Kevorkian was convicted of the second-degree murder of Thomas Youk and was sentenced to serve from ten to twenty-five years in prison. Youk was in the final stages of Lou Gehrig's disease and had signed a consent form authorizing Kevorkian to take his life (*People v. Kevorkian,* 642 N.W.2d 681 [Mich. 2002]). Kevorkian had videotaped the process leading to Youk's death. The tape was played on CBS's *60 Minutes* and was used by the prosecution at trial. Kevorkian was unrepentant and claimed that he was providing a "medical service for an agonized human being."

The U.S. Supreme Court in two decisions has upheld the constitutionality of a state's criminally punishing assisted suicide. See *Vacco v. Quill*, 521 U.S. 793 (1997), and *Washington v. Glucksberg*, 521 U.S. 702 (1997). The Court noted in *Washington v. Glucksberg* that an examination of "our Nation's history, legal traditions, and practice demonstrates that Anglo-American common law has punished . . . assisting suicide for over seven hundred years."

How would various theoretical perspectives discussed in this chapter approach the issue of the right to die?

3.4 YOU DECIDE

Immediately following the untimely death of Associate Supreme Court Justice Antonin Scalia in February 2016, the Republican majority leader, Senator Mitch McConnell of Kentucky, announced that the Republicans would not consider any individual nominated by President Obama and that the next president following Obama should appoint the next Supreme Court justice. McConnell explained that President Obama was in his last year in office and that the American people would determine in the next election whether a Democrat or Republican would nominate Justice Scalia's successor on the Supreme Court. President Obama countered that he intended to "fulfill my constitutional duty to appoint a judge to our highest court" and that there was no "well established tradition" against a president nominating and the Senate considering an appointee to the Supreme Court during the president's last year in office (Kar and Mazzone 2016).

McConnell's announcement according to observers was in large part motivated by the fact that absent Justice Scalia the Court was divided 4–4 between liberals and conservatives and the new judge might tip the balance toward the liberal wing of the court. Conservatives would find it particularly painful to see a Democratic appointee replace Justice Scalia, a highly influential and original thinker who left an indelible impact.

In March 2016, President Obama seemingly anticipated that there would be opposition to his Supreme Court nominee when he named Merrick Garland as his choice for the next justice. Garland, age 63, was older than any nominee over the past thirty-five years and could expect a briefer tenure on the bench than a younger justice. President Bill Clinton had nominated Garland to be the chief judge of the influential U.S. Court of Appeals for the District of Columbia Circuit. Garland's nomination was

ratified by a 76–23 vote in the Senate, and a number of prominent, current members of the Senate voted to support him. During President Obama's consideration of potential nominees, influential Republican senator Orrin Hatch of Utah had stated that Garland was a "fine man" and the best of all candidates who were being considered by President Obama. Garland's legal record as a moderate judge was clearly established, and he had been a high-achieving student at Harvard Law School, practiced corporate law at an establishment law firm for many years, and had more judicial experience than any other nominee in recent history.

Garland was widely respected by his fellow federal judges, and his legal ability and commitment to following the law was praised by no less than John Roberts, chief justice of the Supreme Court and a former colleague of Garland's on the District of Columbia Court of Appeals. Garland was known as a moderate on criminal justice issues, and his views had been shaped by his experience in the Department of Justice supervising the prosecution of Oklahoma City bomber Timothy McVeigh. Fourteen of the fifteen dissents he filed on the bench involved his siding with the government against a majority decision against the government.

Garland, of course, was more liberal than the type of judges that the Republican Party likely would nominate and had ruled against the government in several high-profile national security and environmental cases.

The primary issue surrounding the Garland nomination was whether the Senate was obligated to provide Garland with a hearing and vote before the Senate Judiciary Committee followed by a vote of the entire Senate. Article 11, Section 2 of the U.S. Constitution provides that the president "shall have Power, by and with the Advice and Consent of the Senate, . . . [to] nominate, and appoint . . . Judges of the Supreme Court." Law professors Robin Bradley Kar and Jason Mazzone in a study of earlier Supreme Court vacancies going back to the earliest days of the Republic found that in almost every instance the Senate considered the president's nominee. There were two categories of exceptions to this finding. Three individuals succeeded to the presidency following the death of the president, and in each instance, the Senate refused to consider the nomination. In three other instances, the Senate refused to consider the nominees of presidents who started the nomination process following the election of their successor in office. In the twentieth century, Kar and Mazzone concluded that there is no precedent for failing to consider a president's nominee that is submitted in an election year.

Kar and Mazzone argued that over time a "norm of fair dealing" had developed in which the Senate had considered the Supreme Court nominee. They stressed that there is a difference between the right of the Senate to reject a nominee on merit and the position that the president is not entitled to exercise his or her constitutional powers and that there was "simply no historical precedent" for the Senate's refusal to consider Garland's nomination.

Ed Whelan, a conservative legal commentator, argued that each nomination had to be analyzed in the context of the surrounding events and that presidents anticipate difficulties in a nomination receiving consideration in the type of situation confronting President Obama. The nomination of Garland presented a set of facts in which a president was unlikely to be successful: the nomination (a) was made by an opposite-party president from the majority of the Senate, (b) occurred in a presidential election year, and (c) threatened to change the ideological alignment of the Supreme Court. Whelan also noted that there is no constitutional rule establishing that the Senate's past behavior created a binding practice. In any event, the Senate historically on numerous occasions refused to consider nominations for lower federal court judgeships (Whelan 2016).

Do you agree with the Republican decision to not provide Judge Garland Senate consideration? What of the claim by some Democratic senators that the Republicans "stole" a Supreme Court appointment from them? Is the nomination of Supreme Court justices too political?

5.3 YOU DECIDE

The state of New York as of January 1, 2015, requires candidates seeking admission to the bar to document that they have worked for at least fifty hours in a pro bono activity. This may be satisfied by any legal activity supervised by a law professor or practicing attorney. Examples are working in a law school clinic or working for a government or private legal assistance organization. The policy is based on a desire to cultivate a culture of social responsibility among young lawyers. Critics assert that young people do not have the time to devote to pro bono work and need to focus on working to pay off their law school loans. Experienced lawyers, on the other hand, are not being required to meet a pro bono requirement.

What is your view?

6.5 YOU DECIDE

Ten days after the September 11, 2001, attack on the World Trade Center (WTC), the U.S. Congress passed the Air Transportation Safety and System Stabilization Act, which created the September 11th Victim Compensation Fund (VCF) of 2001. The fund was to be administered by attorney Kenneth Feinberg, who had experience negotiating and administering large-scale settlements for military veterans exposed to the chemical Agent Orange during the Vietnam War and settlements involving harmful breast implants, birth control devices, and asbestos (Hadfield 2008).

The fund was designed to compensate the families of those individuals who died in the attack on the WTC as well as individuals who suffered injuries. Roughly 1,600 hearings were conducted to determine the amount that each family was to receive. Feinberg authorized roughly $7 billion in payments to 5,560 eligible claimants. The average payment was $2.083 million for the death of a family member and $400,000 for an injury. Feinberg was sensitive to accusations that he was profiting from the pain of other individuals and did not accept payment for his work as a "special master."

A second purpose of the compensation fund was to protect the airlines. The carriers confronted possible liability for permitting the hijackers to board the planes and for not providing adequate security on the flights. In return for receiving compensation, individuals waived all legal remedies against the airlines and the New York City Port Authority, which owned the WTC. The advantage of seeking compensation through the fund was that individuals received a fairly certain amount of money without the uncertainty and lengthy delay of a trial.

Most families had lost their primary wage earner and could not wait to receive compensation. Congress discouraged individuals from seeking judicial remedies by limiting the liability of air carriers to the amount of insurance that they carried on each airliner. The fund, in effect, protected the airlines against billions of dollars in legal claims. As part of the Air Transportation Safety and System Stabilization Act, the airlines were given $5 billion in cash and other financial benefits.

Ninety-seven percent of the 2,880 families who lost a loved one chose to pursue compensation from the fund.

Congress required that individuals receive compensation for both economic and non-economic factors. More than 1,600 hearings were conducted to determine the amount that families were to receive. The families of victims killed in the attack received a non-economic award of $250,000 and received an additional $100,000 for each dependent. Payments were reduced by the compensation that families received from other sources such as pensions, life insurance, and charity. The formula used by Feinberg for economic loss was based on a victim's age, lost wages, and life expectancy. This meant that families of younger individuals with high incomes received more than older individuals earning the same amount. The surviving spouse of a 25-year-old with no children who was earning $125,000 per year received roughly $4.5 million. The widow of a 40-year-old earning the same amount who did not have children received half as much as the spouse of the 25-year-old.

A number of individuals who filed for compensation explained that their decision was motivated by a need for money, desire for emotional closure, and a belief that litigation would not result in disclosure of information about the attack. Only ninety-four families ultimately filed suit and explained that they viewed it as their civil responsibility to obtain information about the attack, ensure legal accountability, and promote change to ensure that this type of attack would not be repeated.

Despite these seeming inequities, Feinberg was conscious that Congress did not want "20 percent of the victim families receiving 80 percent of the funds." He exercised his discretion to protect the interests of lower-earning victims and limited the top payment to $6 million. The decision to limit payments was controversial because hundreds of victims worked for major investment firms and were earning six-figure salaries at a young age.

The "first responders" bill signed by President Obama in 2011 appropriated money to pay the health care costs and compensation for the injury and death of first responders associated with the 9/11 attack on the WTC. In 2016, Congress created and President Obama signed the United States Victims of State Sponsored Terrorism Fund to compensate the victims of state-sponsored international terrorism. The fund will provide up to $4.4 million in compensation for each of the fifty-three Americans who were taken hostage as a result of the takeover of the U.S. Embassy in Iran in 1979, and will pay compensation to individuals and their family members who have received a court judgment against Iran, Cuba, Sudan, Syria, North Korea, and other state sponsors of terrorism.

As a "special master" administering the fund, would you use the Feinberg formula? Would you require the victims to employ the normal judicial procedures in seeking compensation? Should public money be used to compensate victims or their families, or should private funds be used to compensate individuals as is the case with the victims of the Oklahoma City and Boston bombings and shootings at Virginia Tech and the Pulse nightclub in Orlando, Florida? Each family that lost a child in the Newtown, Connecticut, killing of schoolchildren received roughly $281,000.

7.5 YOU DECIDE

In 2011, following a four-year investigation, the Newport News, Virginia, police arrested Antwain Steward, a rapper who performs by the name of Twain Gotti, for a double homicide. The arrest was based on the lyrics to Gotti's song "Ride Out." On a YouTube video, Gotti sings, "Nobody saw when I [expletive] smoked him. . . . Roped

him, sharpened up to the shank, then I poked him, 357 Smith & Wesson beam scoped him." Gotti's lyrics differ from the crime. A knife was not involved in the murders, and the shell casings at the crime scene were of a different caliber from the firearm mentioned in the lyrics. In other cases, individuals writing and performing rap music attacking the police have been tried and convicted for making a criminal threat. Steward was acquitted at trial (Manly 2014).

Should rap music be admissible at trial to establish, along with other evidence, that a defendant committed a crime?

8.4 YOU DECIDE

Hillary Transue was a top-flight student in Wilkes-Barre, Pennsylvania, who had never been in trouble. In 2007, the 17-year-old Hillary found that her life was turned topsy-turvy when she constructed a "spoof" MySpace page making fun of the assistant principal at her high school. The bottom of the page indicated that this was a "joke." The school responded by referring her to juvenile judge Mark A. Ciavarella, known as a no-nonsense jurist. Hillary anticipated being reprimanded and instead was shocked when the judge convicted her of harassment and sentenced her to three months in a juvenile detention facility.

Kevin Mishanki of Hanover Township, Pennsylvania, was brought before Judge Ciavarella for a simple assault, a charge that customarily results in probation. His mother looked on as Kevin was led away in shackles and sentenced to ninety days in a detention facility.

Sixteen-year-old A. A. was arrested for gesturing with her middle finger at a police officer who was intervening in a dispute involving her parents. A. A. was an honor roll student, a Girl Scout, and a YMCA member who attended Bible school. She had no arrest record. Judge Ciavarella told A. A. that she had no respect for authority and did not let her speak. She was led out of the courtroom in shackles and held in juvenile detention for six months.

Edward Kenzakoski, a first-time offender, was sentenced to a four-month boot camp and thirty days in a juvenile detention facility for possession of drug paraphernalia. A wrestler who looked forward to a college scholarship, Edward's life spiraled out of control. At age 23, he committed suicide, a death that his mother said resulted from the abuse he had suffered during incarceration.

These harsh sentences did not merely reflect Judge Ciavarella's "no nonsense" law-and-order philosophy. In February 2009, Judge Ciavarella and Judge Michael Conahan pled guilty to accepting money from real estate developer Robert Mericle in return for sending juveniles to Mericle's two private, for-profit juvenile facilities. The two judges received as much as $2.6 million in kickbacks from the corporations that owned and administered the private prisons. The judges' plea agreements were voided by a federal court judge. Conahan later entered a revised guilty plea to a racketeering conspiracy in July 2010 and was sentenced to seventeen and a half years in federal prison. Ciavarella was convicted in a jury trial on February 18, 2011, on twelve of thirty-nine counts and was sentenced to twenty-eight years in prison and ordered to pay $1.17 million in restitution.

Conahan, who in 2002 was president of the juvenile court, shut down the county-operated facility on the grounds it was in a dilapidated condition and entered into a contract with the two private facilities owned by Mericle. This paved the way for Conahan and Ciavarella to trade "kids for cash."

Ciavarella sentenced a quarter of juvenile defendants who appeared before him to detention centers between 2002 and 2005 as compared to a state rate of one in ten. Ciavarella disregarded requests for leniency from prosecutors and probation officers and failed to inform juveniles of their right to an attorney. Roughly 60 percent of these children subsequently were ordered to serve time at a detention facility. (Contrary to the practice in Pennsylvania, Illinois, New Mexico, and North Carolina require juveniles to be represented by a lawyer when they appear before a court.)

The irony is that the juvenile system is intended to be less harsh than the conventional criminal justice system, and yet hundreds of children who had committed minor infractions were incarcerated. Juvenile courts are closed to the public to protect the privacy of children. The probation officers, prosecutors, and public defenders who were present in Judge Ciavarella's courtroom inexplicably turned a blind eye to what was transpiring.

Attorney Robert Powell, co-owner of the two juvenile detention facilities, pled guilty to providing kickbacks to the two judges and was sentenced to eighteen months in federal prison. Real estate developer Mericle pled guilty and agreed to pay $2.15 million to fund local children's health and welfare programs. He also agreed to pay over $17 million to settle civil suits brought on behalf of juvenile defendants.

An investigation by the Pennsylvania Supreme Court determined that Ciavarella had trampled on the constitutional rights of thousands of juveniles and had run his juvenile court as a criminal enterprise. The Supreme Court vacated the convictions of more than four thousand juveniles who appeared before Ciavarella between 2003 and 2008 and ordered the expungement of their records. In August 2009, then Pennsylvania governor Ed Rendell stated that Ciavarella and Conahan had "violated the rights of as many as 6,000 young people by denying them basic rights to counsel and handing down outrageously excessive sentences. The lives of these young people and their families were changed forever."

Judge Ciavarella apologized to the community and to the children he had unjustifiably ordered to be detained. He continued to reject claims that he had exchanged "kids for cash" and complained that prosecutors had made him into the "toxic . . . personification of evil." His lawyer contended that the media attention had exceeded the attention given to almost all capital murderers and that Ciavarella would "forever be unjustly branded as the 'kids for cash' judge."

As a judge, what type of sentence would you impose on Judges Ciavarella and Conahan?

9.8 YOU DECIDE

The criminal law is based on the presumption that most individuals are rational decision-makers who weigh the costs and consequences of their actions before deciding to commit a crime. There are isolated cases in which an individual is not held responsible for committing a crime because he or she was in an "automatic state," and his or her act is not considered to be the product of a "conscious mind." An example is a defendant who was driving and experienced a "blackout." This involuntary act is different from legal insanity. Defendants who are determined to be legally insane are not held criminally liable because they are unable to understand the quality of their act or distinguish right from wrong.

In 2005, Brian Dugan was convicted of the 1983 murder and rape of 10-year-old Jeanine Nicarico in suburban Chicago. Neuroscientist Kent Kiehl testified at Dugan's sentencing that Dugan and other psychopathic criminals whose brains Kiehl had scanned were programmed for violence and were different than the brains of other individuals. Kiehl hypothesizes that the brains of psychopaths, who he believes comprise roughly 30 percent of prisoners in maximum security, look different than the brains of other individuals. Psychopaths exhibit highly impulsive behavior, manifest poor planning, and have no sense of guilt or empathy toward others. They lack feelings of guilt and remorse.

Early in their lives, psychopaths typically engage in violence, arson, and animal torture. Kiehl believes that psychopaths with malfunctioning brains should not receive the death penalty because in his opinion their behavior is a product of their brain abnormality. The notion that individuals' criminal behavior is dictated by the structure of their brain calls into question the notion of individual responsibility and the effectiveness of criminal deterrence. Kiehl's findings, if accepted, undermine the notions that our behavior is the product of free will and moral accountability, which are the cornerstones of criminal liability.

Brian Dugan was born in 1956 and at the age of 18 began attempting to abduct and rape young women. He compiled a lengthy record of arson, battery, criminal damage to property, and burglary and at age 23 was sentenced to three years in prison. A year after his release, Dugan abducted and murdered 10-year-old Jeanine Nicarico, a crime for which he would not be charged and prosecuted for more than twenty years. The next year, he raped and murdered a 27-year-old nurse after cutting her car off the road, and in 1985, he raped and murdered a 7-year-old girl. Dugan was arrested the next day and confessed to the murders of the nurse and the 7-year-old girl.

There is a growing movement to persuade judges to consider neuroscience in adjudicating defendants guilty and in sentencing defendants. The most marked development are the roughly three hundred veterans' courts, which adjudicate minor offenses committed by military veterans and which structure a program of treatment rather than punishment for individuals suffering from traumatic brain disorder and post-traumatic stress disorder (K. Davis 2017).

Assuming criminal behavior is at least partly physiologically determined, does this call into question reliance on legal punishment to deter crime? Should Dugan have been sentenced to death?

10.5 YOU DECIDE

A popular campaign to combat "distracted driving" has recently emerged. Distracted driving includes a variety of voluntary behaviors that limit a driver's ability to concentrate on driving. This ranges from applying makeup to talking on a cell phone to texting. Psychologists term this *inattention blindness*, which is the inability of the brain to fully process an event within eyesight, such as a pedestrian, stalled car, or red light.

A driver texting on a cell phone while driving has the same reaction time as a legally intoxicated individual. A driver talking on a phone while driving is four times more likely to crash than drivers not talking on a phone. An individual texting is even more likely to get into a crash. Texting while driving fifty-five miles per hour is equivalent to driving the length of a football field with closed eyes.

In 2009, Secretary of Transportation Ray LaHood convened a distracted driver summit and called for states to act against this "deadly epidemic." A generation of drivers now is behind the wheel that is accustomed to using their phones to text, answer e-mail, and use GPS. Seven states and the District of Columbia prohibit texting while driving. Utah punishes texting that results in the death of another with fifteen years in prison.

Fourteen states and the District of Columbia require hands-free talking on a cell phone while driving. There is no state that bans cell phone use for all drivers although thirty-seven states and the District of Columbia prohibit cell phone use by novice drivers. Forty-six states prohibit texting while behind the wheel, and two states prohibit texting by novice drivers.

In 2014, According to the National Highway Traffic Safety Administration (NHTSA), distracted driving was the leading cause of fatal crashes for the fifth successive year. The NHTSA reported that 10 percent of fatal crashes and 18 percent of crashes resulting in injuries involved drivers eating, manipulating the radio or air conditioning, or involved in other distractions. An estimated 3,179 people lost their lives and 431,000 were injured in these accidents.

A 2009 survey by the American Automobile Association found that 91.5 percent of drivers view talking on the phone while driving a threat to their safety, and 97 percent view texting while driving as "unacceptable." Prohibiting driving with a handheld phone is favored by 80 percent of respondents. Fifty percent responded that texting while driving should be punished as severely as drunk driving. Yet two-thirds of respondents admitted to driving while talking on a phone, and one in seven had texted while driving. Seventy-three percent of teens admit to texting while driving. Students Against Destructive Decisions (SADD) reports that 73 percent of teens have texted while driving.

New Jersey has some of the toughest laws in the nation punishing cell phone use and texting and playing video games while driving. State residents because of suburban sprawl view their automobiles as an extension of their home and vociferously protested when a state legislator introduced a law that would impose a fine as high as $800 on drivers engaged in any activity "unrelated to the operation of the vehicle . . . that interferes with the safe operation of the vehicle." The law was viewed as "big brother" crossing the line and threatening drivers' eating donuts, drinking coffee, applying makeup, and combing their hair.

One individual interviewed asked what was next, coughing or sneezing in your car (Yee 2016)?

In Great Britain, texting while driving is considered a serious aggravating factor equivalent to drunk driving when an individual is charged with causing the death of another person by dangerous driving and carries a punishment of between four and seven years in prison. British law also punishes "driving without due care and attention." One individual reportedly was fined roughly $450 and three penalty points on her license for eating a banana in a traffic jam.

Can law deter distracted driving? Should the use of hand-held phones while driving be prohibited?

11.6 YOU DECIDE

In a number of societies, women's behavior is strictly regulated by social custom and tradition. Unmarried women must be modest in behavior and in dress. The extreme version of this system of regulation requires

that women cover themselves when leaving the home and must be accompanied by a male member of the household. They may not pursue an education, work, or handle money. They must maintain a distance from males who are not members of the family, and they are expected to marry the man selected by their parents. Seeking a divorce also is unacceptable. A woman who does not follow these requirements dishonors the family and, in extreme cases, may be subject to an "honor killing" by a male member of her family. The practice of honor killings is found in the Middle East; in South Asia in Afghanistan, India, Jordan, Pakistan, and Turkey; and among immigrant populations in Europe and in the United States. The United Nations estimates that there are more than five thousand honor killings a year. In some countries, women who disgrace their family are encouraged to undertake an "honor suicide" (Cohan 2010; Helba et al. 2015).

Egypt, Iran, Jordan, and Syria have laws reducing the punishment for honor killings or providing that killing for honor is a complete defense. In Jordan, it is estimated that 25 percent of all murders are honor killings, and honor killings comprise 55 percent of all crimes against women. A 2004 United Nations report on honor killings finds that these killings are prevalent across the globe. The report provides gruesome examples of killings, including a 16-year-old Pakistani woman who was drugged with sleeping pills, chained to a wooden bed, and electrocuted. Pakistan allowed perpetrators of honors killings to go free if forgiven by the victim's family. In reaction to the killing of popular singer Qandeel Baloch by her brother, who believed that women should remain at home and follow tradition, Pakistan adopted a law requiring a twenty-five-year prison sentence for individuals convicted of honor killings.

Researchers often refer to "honor violence" against women and in addition to killings include domestic violence, genital mutilation, forced marriage, and psychological and emotional abuse.

There are an estimated twenty-three to twenty-eight honor killings in the United States each year although the precise number is difficult to determine. Virtually all of these killings are perpetrated by the woman's father and are motivated by the woman being "too western." In 2009, an Iraqi immigrant killed his daughter by running her over with a Jeep because she had adopted a western lifestyle. He objected to his daughter wearing jeans, posting on social networking sites, and expressing a desire to marry for love. Her father explained that for an Iraqi, honor is the "most valuable thing" and that his daughter "messed up." The dead girl's mother assured her husband that "you are not a criminal. I know how good-hearted and compassionate you are."

Would you convict the father of premeditated and deliberate murder or murder in the heat of passion? What type of sentence fits the father's crime?

12.4 YOU DECIDE

Sociology professor Amitai Etzioni argues the United States should adopt a national identification card. The card would contain personal information and biometric identifiers that would link to a computer program. As technology develops, the police may be able to confirm our identity by reading the card at a distance or may be equipped with portable readers. The national identification card would be used to verify an individual's identity instead of easily forged or stolen documents, such as driver's licenses, Social Security cards, birth certificates, health cards, and credit cards.

Professor Etzioni nonetheless argues a national identification card would help solve several important public policy issues.

Criminal fugitives. As many as 330,000 fugitives from justice are roaming American society, and in most cases, these individuals are using false means of identification.

Child abuse and sex offenses. Convicted sex offenders would not be able to use false identifying documents to obtain positions in juvenile facilities or to avoid registration as a sex offender.

Child support. Sixteen million children in America are owed $18 billion in unpaid child support by an absent parent. The national identification card would prevent individuals from changing their identity to avoid child support or merely skipping their financial obligations.

Unlawful gun sales. An identification card would ensure that individuals could not use false or stolen identification documents to purchase a firearm.

Unlawful immigration. There are an estimated twelve million undocumented individuals in the United States. An identification card would enable employers to avoid hiring undocumented workers and could be used by federal agents and the police to confirm that an individual is lawfully in the United States.

Credit card fraud. Individuals would be required to confirm their identity before using a credit card to purchase items or services.

Electoral fraud. A national identification card would prevent individuals from forging their identity and casting a vote under the name of a deceased individual or under the name of another individual.

Counterterrorism. Terrorists will find it difficult to conceal their identity, and a comprehensive database will improve the detection of terrorists.

A majority of Americans favor a national identification card, particularly when asked if they favor the use of a card to combat unlawful immigration. National identification cards are used in a number of European countries, including Belgium, Germany, Portugal, Spain, and Greece. The major objection, according to Etzioni, is that Americans distrust big government and fear the information will be abused by the government.

Should the United States have a national identification card?