Rescue Without Law: An Empirical Perspective on the Duty to Rescue

David A. Hyman*

I. Introduction...................................................................................655
II. Rescue and Non-rescue.................................................................658
   A. Analytical Framework ..............................................................658
   B. Why Frequency Matters...........................................................660
III. Non-rescue: Perception and Reality..............................................661
IV. Rescue: How Many and How Dangerous? ...................................666
V. The Demographics of Rescue and Non-rescue.............................669
   A. Temporal Trends in Rescue ......................................................670
   B. Gender and Rescue .................................................................671
   C. Age and Rescue .......................................................................676
   D. Class and Rescue ....................................................................677
   E. Risk and Rescue .......................................................................678
   F. Sources of Peril .......................................................................682
VI. A Tale of Three States ..................................................................683
VII. Validity of the Results ..................................................................688
   A. Selection Bias: Underreporting of Non-rescue .........................689
   B. Selection Bias: Overreporting of Non-rescue ...........................690
   C. Selection Bias: Underreporting of Rescue ................................691
   D. Selection Bias: Overreporting of Rescue ..................................693
   E. Summary...................................................................................693
VIII. Discussion.....................................................................................694
   A. Legal Scholarship......................................................................694
   B. The Perils of Anec-data ...........................................................695
      1. Truthfulness........................................................................695

* Professor of Law and Medicine, University of Illinois. I owe a considerable debt of gratitude to the organizations that provided access to their records on rescues. In particular, I want to acknowledge the extraordinary assistance of Walter Rutkowski, the Executive Director of the Carnegie Hero Fund Commission, who was an early and enthusiastic supporter of this research. Yvonne McMorris did her typical superhuman job entering data into spreadsheets and preparing tables and figures. I received helpful comments when this Article was presented at the University of California at Los Angeles, the University of Illinois, the University of Maryland, the University of Alabama, and the Midwest and Canadian Law & Economics Association Annual Meetings. I am also indebted to Michael Abramowicz, Anita Bernstein, Kenworthey Bilz, Richard Epstein, Lee Fennell, John C.P. Goldberg, Oscar Gray, Michael Heise, Keith Hylton, Nancy King, Andrew Klein, Andrew Kull, Saul Levmore, Richard McAdams, Brett McDonnell, Tom Miles, Bill Sage, Cathy Sharkey, Charles Silver, and David Zaring, who provided helpful written comments.
For almost two centuries, legal scholarship on the duty to rescue has proceeded on a sophisticated theoretical plane. Proponents of a duty to rescue have argued that it will increase the frequency of rescue without creating undue distortions or other difficulties. Opponents of a duty to rescue have argued that such statutes are ineffective, infringe on individual liberties, may actually discourage rescue, and are likely to be misused by politically ambitious prosecutors. No effort has been made to test any of these claims empirically, even though from a policy perspective the critical threshold question—how often do Americans fail to rescue one another in circumstances where only a generalized duty to rescue would require them to do so—is entirely factual. This Article provides the first empirical study of the no-duty rule in action. Using more than twenty independent data sources, the Article provides a “law and reality” perspective on rescue and non-rescue that complicates—and sometimes is flatly inconsistent with—the positions of both proponents and opponents of a duty to rescue. The results paint a rich and largely reassuring picture of the behavior of ordinary Americans faced with circumstances requiring rescue and indicate that both more and less is at stake in the debate over the no-duty rule than has been commonly appreciated. Law professors and judges have been fascinated with the no-duty rule for theoretical reasons, but the ongoing debate should not obscure the reality that in the real world, rescue is the rule—even if it is not the law.

I. Introduction

The common law approach to rescue is straightforward. Absent a limited number of specific exceptions, there is no duty to rescue, regardless of the ease of rescue and the consequences of non-rescue. Indeed, by restricting the ability of rescuers to recover in tort for injuries they might suffer, the common law actually creates affirmative disincentives to rescue. Generations of law students have learned of the no-duty rule by reading hypothetical cases of babies who drowned in bathtubs and actual cases of people who drowned in ditches and lakes while bystanders did nothing.

The no-duty rule may prevail in forty-seven of the fifty states, but it is distinctly unpopular. When a case of non-rescue becomes public, newspaper editorials and television commentators will denounce the indifference of bystanders. If the non-rescuers can be identified, they will be held up to public scorn. The responsible district attorney will reluctantly acknowledge that the criminal law is powerless in such cases while condemning the non-rescuers on moral grounds. If a tort case is actually brought against a non-rescuer, the judge will throw it out but note that the non-rescuer must answer to God for failing to act. Politicians will introduce legislation reversing the common law rule. Comparisons will be drawn to other infamous cases of non-rescue, such as Kitty Genovese.

In short order, academic conferences and symposia will be held at which speakers will criticize the no-duty rule and the indifference of bystanders. Communitarians will suggest that Americans are insufficiently civic-minded. Social meaning scholars will suggest that the no-duty rule is sending the wrong “expressive” message. Feminists will decry the “male” orientation of tort law, with its emphasis on individual autonomy and rule-based decisionmaking. Psychologists and evolutionary biologists will report the insights derived from research on altruism and collective inaction. Corrective justice scholars will argue that the law should enforce common moral intuitions. Comparative law scholars will suggest the United States should follow the rest of the civilized world in adopting a duty to rescue. Law and economics scholars will debate whether the no-duty rule is efficient. Doctrinal scholars will debate the relative merits of criminal and tort sanctions in dealing with future non-rescues. Law review articles and notes

---

2. See Ernest J. Weinrib, The Case for a Duty to Rescue, 90 YALE L.J. 247, 247 (1980) (“No observer would have any difficulty outlining the current state of the law throughout the common-law world regarding the duty to rescue. Except when the person endangered and the potential rescuer are linked in a special relationship, there is no such duty.”). The no-duty rule is based on the fundamental distinction drawn by the common law between omissions and commissions. See Francis H. Bohlen, The Moral Duty to Aid Others As a Basis of Tort Liability, 56 U. PA. L. REV. 217, 219 (1908) (“There is no distinction more deeply rooted in the common law and more fundamental than that between misfeasance and non-feasance . . . .”).


condemning the current state of the law will be published. The sequence will
then terminate, to be repeated after the next instance of non-rescue.

Everyone involved in these serial exercises in ritual indignation behaves
as if non-rescues occur frequently enough that a statutory solution is urgently
required. Stated more concretely, the entire debate over the no-duty rule has
proceeded based on the assumption that non-rescues are too common—
meaning that rescues are too infrequent. Proponents of a duty to rescue have
argued that a statutory solution can decrease the frequency of non-rescue
without creating undue distortions or other difficulties. Opponents of a duty
to rescue have argued that such statutes are ineffective, infringe on individual
liberties, and are likely to be misused by politically ambitious prosecutors.

Unfortunately, little or no effort has been made to test any of these
claims empirically, even though the merits of the no-duty rule have been
debated for almost two centuries.5 Indeed, remarkably enough, to date no
one has tried to offer a useful answer to the most preliminary and significant
of questions about non-rescue—its frequency.6 Instead, the debate over the
no-duty rule has largely proceeded on a sophisticated theoretical plane, even
though from a policy perspective the critical threshold question—How often
do Americans fail to rescue one another in circumstances where only a
generalized duty to rescue would require them to do so?—is wholly factual.

This Article provides the first empirical study of the no-duty rule in
action. Using more than twenty independent data sources, this Article
provides a “law and reality” perspective on rescue and non-rescue in the
United States throughout the twentieth century. The results presented in this
Article paint a rich and largely reassuring picture of the behavior of ordinary
Americans faced with circumstances requiring rescue. These results
complicate—and are sometimes flatly inconsistent with—the positions of
both opponents and proponents of the no-duty rule.

To summarize briefly, proven cases of non-rescues are extraordinarily
rare, and proven cases of rescues are exceedingly common—often in
hazardous circumstances, where a duty to rescue would not apply in the first
instance. Controlled for population, the frequency of proven cases of rescue
decayed in the first forty years of the twentieth century, but has remained

5. See, e.g., Jeremy Bentham, An Introduction to the Principles of Morals and
Legislation 322–23 (1823); James Barr Ames, Law and Morals, 22 HARV. L. REV. 97, 111–13
(1908); Bohlen, supra note 2; Thomas B. Macaulay, Notes on the Indian Penal Code (1838),
(“Although the empirical studies provide a broader perspective than the narratives, they still fail to
provide a useful answer to the most preliminary and significant of questions about patient dumping—its frequency.”). Although numerous law review articles and books discuss the duty to
rescue, none specifically address the issue of frequency. See infra notes 15–17. Obviously, the
frequency of non-rescue is not dispositive of the issue of whether something should be done about
non-rescue. See infra notes 141–142 and accompanying text. However, the frequency of non-
rescue profoundly affects the costs and benefits of attempting to address the problem. See infra
notes 134–135 and accompanying text.
fairly stable or increased since then. Most rescuers are young males, particularly when strangers are rescued or the rescue is risky. States that have adopted a duty to rescue rule have not seen an increase or decrease in the number of non-risky rescues or in the number of accidental deaths. The rate of non-risky rescue in these states is also lower than that in comparable states that do not have a duty to rescue. There is no evidence that prosecutors are misusing these laws; indeed, after a combined total of almost eighty years of experience in three states, there have been no prosecutions for non-rescue—most likely because there were never any actionable non-rescues in those states to begin with.\footnote{See Daniel B. Yeager, \textit{A Radical Community of Aid: A Rejoinder to Opponents of Affirmative Duties to Help Strangers}, 71 WASH. U. L.Q. 1, 8 n.37 (1993) ("In written response to a questionnaire that I sent to 387 prosecutors in the eight states that impose duties to render easy aid or duties to report serious crimes . . . none of the 139 prosecutors who responded could recall filing a complaint under the relevant statute."); id. at 25 (noting that no appellate decisions have upheld the conviction of a defendant prosecuted under a contemporary easy-rescue statute); Maura Dolan, \textit{Good Samaritan Laws Are Hard to Enact, Experts Say}, L.A. TIMES, Sept. 9, 1998, at A1 (noting that Vermont has had a “Good Samaritan” law since 1967, but “officials say they know of no instance in which it has been employed”); Aron Kahn, \textit{Good Samaritans: Why They Heed Cries for Help}, CHI. TRIB., July 7, 1985, at 3 (“Minnesota, Massachusetts, Rhode Island and Vermont have Good Samaritan laws requiring bystanders to aid crime victims in ways that won’t endanger the bystanders, such as calling police or providing first aid. But no one apparently has ever been charged with violating the law in this state, or any of the others.”); Allie Shah, \textit{How Good Is “Good Samaritan” Legislation?}, STAR TRIB. (Minneapolis), Sept. 18, 1997, at 1B (“In Minnesota there have been no known arrests or prosecutions under the [Good Samaritan] provision since its inception in 1983, causing some to question its usefulness.”).}

Finally, if the no-duty rule that prevails in forty-seven of the fifty states is “sending the wrong message” about the desirability of undertaking a rescue, it is doing a singularly poor job of it. Indeed, even in the absence of a statutory duty, Americans appear to be too willing to undertake rescue if one judges by the number of injuries and deaths among rescuers. Indeed, proven rescuer deaths outnumber proven deaths from non-rescue by approximately 70:1.

These results suggest that both more and less is at stake in the debate over the duty to rescue than has been commonly appreciated. The handful of highly salient anecdotes of non-rescue that everyone knows about are extraordinarily unrepresentative of the real world. Simply stated, rescue is the rule—even if it is not the law.

Part II provides an analytical framework for analyzing rescue and non-rescue and explains why knowing the frequency and results of rescue and non-rescue is important before assessing what (if anything) should be done about the issue. Part III describes popular and scholarly perceptions of the consequences of the no-duty rule and then collects the documented cases of non-rescue. Part IV uses approximately twenty unique data sets, none of which have been previously analyzed in the massive literature on the duty to rescue, to document the actual frequency of rescue. Part V addresses the demographics of rescue and non-rescue. Part VI considers the reliability of
the data presented in Parts III–IV. Part VII assesses the impact of creating a statutory duty to rescue in the three states that have done so. Part VIII explores the implications of these results for the ongoing debate over the no-duty rule and suggests several reasons why the debate has been so completely divorced from reality. Part IX concludes.

II. Rescue and Non-rescue

A. Analytical Framework

Rescue occurs in a wide range of circumstances. Figure 1 presents the analytical framework for collecting and analyzing data:

“Circumstances require rescue” means that a victim was facing a peril that was reasonably understood by a nonprofessional rescuer to place the victim’s life or limb at risk, consistent with the statutory requirements in the three states that have adopted a duty to rescue. The rescuer had to have no

8. Only cases involving nonprofessional rescuers were considered, unless a professional rescuer (typically a policeman or a fireman) was off-duty at the time of the rescue or took action well beyond that reasonably expected under the circumstances. When it was not possible to make such distinctions, the rescues were excluded from further consideration.
legal obligation to undertake rescue and no responsibility for the risk that necessitated rescue. 9 The peril could be natural in origin (e.g., fire and flood), created by the intentional or negligent actions of other individuals (including a third party’s criminal behavior), or it could have “just happened” (e.g., someone collapsed and would have died without CPR).

“Risk to rescuer” means that a rescuer faced a significant risk to life or limb during the rescue attempt. Several of the organizations that provided data on rescue performed this kind of sorting for their own purposes. Rescues documented by organizations that did not differentiate between risky and non-risky rescues were typically treated as either all risky or all non-risky, depending on the criteria for the award and the amount of detail that was available.

“Rescue attempted” means that a rescuer took an affirmative step intended to protect the victim from the source of peril or prevent further injury. The rescue need not have been successful to satisfy this requirement. Providing notice to a professional rescuer was treated as an attempted rescue. 10 Of course, this definition means that as long as one individual attempts a rescue, the fact that others stood by does not create a non-rescue. 11

Proponents of a duty to rescue have, without exception, focused on individual anecdotes from cell 1 and ignored the other cells entirely. Subpart II(B) explains why knowing the frequency of rescue and non-rescue is important in determining the policy consequences of the no-duty rule and deciding what (if anything) needs to be done about the issue.

9. Stated differently, none of the status-based exceptions to the no-duty rule could apply. Thus, if the rescuer had caused the risk that required rescue, it was excluded from the frequency estimate for a cell.

10. To be sure, one might argue that simply providing notice to a professional rescuer should not count as a non-risky rescue. Yet, Kitty Genovese only counts as a non-rescue if the failure of her neighbors to provide notice to a professional rescuer is blameworthy. In like fashion, Minnesota treats notice to a professional rescuer as satisfying the statutory duty to rescue. Regardless, the calculations presented in Part IV are sufficiently transparent that those who do not believe that notice constitutes rescue can simply “back-out” such rescues from the totals.

11. There are certainly cases in which some people stand by while others rescue. Under a strict definition of the term, one could argue that all those who failed to assist should be counted as non-rescuers. The difficulty with this approach is twofold. First, I have been unable to locate any cases in which non-rescuers were prosecuted or otherwise held up to significant public scorn when a rescue actually occurred. The absence of an identifiable victim obviously affects the political saliency of that issue. Second, the practical difficulties of identifying blameworthy non-rescuers when a rescue was performed are even more daunting than in the typical non-rescue case. For example, a non-rescuer could argue that they knew someone else was performing the rescue, and hence saw no reason to intervene—particularly if the person performing the rescue was better trained, more expert, younger, or less risk-averse than the bystander.

Finally, too many rescuers can be just as bad (or even worse) than too few, since they can get in one another’s way and place each other and the victim at risk. Professor Nancy Levit, who noted the “wonderful problem” of too many rescuers, did not appreciate this basic fact about rescue. See Nancy Levit, The Kindness of Strangers: Interdisciplinary Foundations of a Duty to Act, 40 WASHBURN L.J. 463, 477 (2001). Indeed, a “bad” rescuer may well be worse than no rescuer at all, in that the total number of deaths may increase as a result of his intervention. See infra Part V.
B. Why Frequency Matters

From a public policy perspective, context (i.e., how the mine-run of situations where rescue is necessary are handled) matters a great deal more than the facts—however bad they may be—of any given non-rescue matter in assessing the overall merits of the no-duty rule. Disregarding this fundamental point can result in “reforms” that are intended to correct what is perceived to be a real problem (non-rescue) but that might not be a significant problem at all—while risking disruption of the larger system that might actually be working tolerably well. Until the comparative magnitude of the problematic non-rescue numerator and the unproblematic rescue denominator is assessed, one simply cannot know the potential benefits of trying to fix the problem of non-rescue—let alone how to address it or score the costs and benefits of different strategies for doing so.12

Instead of basing policy on potentially unrepresentative, anecdotal evidence of particular non-rescues, it is necessary, to the extent feasible, to develop frequency estimates for each of the cells in Figure 1. Indeed, defensible frequency estimates for cell 1 and cell 2 are required simply to “score” the potential benefits from implementing a generalized duty to rescue. For example, if cell 1 is large relative to cell 2, that fact would tend to indicate that imposing a duty to rescue has the potential to save a substantial number of lives. Conversely, if cell 2 is large relative to cell 1, there are likely to be limited benefits from imposing a duty to rescue, regardless of how efficiently the duty is implemented.

The comparative magnitude of the cells also provides useful information about the extent to which the no-duty rule has any significant expressive function. Legal theorists have suggested that individuals take their cues as to acceptable and unacceptable behavior from the substantive content of the law.13 For example, if the law prohibits littering, fewer people will litter even if the law is never enforced. Many people will also think less of those who choose to litter. If the no-duty law has a significant expressive function, it should be detectable by comparing the magnitude of cell 1 and cell 2 in states that do and do not have a duty to rescue. If cell 1 is large relative to cell 2 in states that have not enacted a duty to rescue, then it is plausible that the no-duty rule has an expressive function—but only if there is a substantially lower ratio of cell 1 to cell 2 in states that have adopted a duty to rescue.

On the other hand, if cell 2 is large relative to cell 1 even in states that have a no-duty rule, it is unlikely that the no-duty rule has a

12. Strictly speaking, the denominator should be total cases, including both the “smoothly working” instances of rescue and the “problematic” cases of non-rescue.

significant expressive function. In like fashion, if cell 4 is as large or larger than cell 1, and individuals are willing to expose themselves to significant risk in undertaking a rescue the law instructs them is nonobligatory, then it is unlikely the no-duty rule has any expressive effect—even at the margins—on the actions of ordinary citizens.

III. Non-rescue: Perception and Reality

The problem of non-rescue has attracted considerable scholarly attention over the past two centuries. Every major textbook and treatise on torts features a section on the subject. There are several books focusing on the duty to rescue. More than 100 law review articles and several books have been written on the subject, with dozens more touching on it in passing. These articles follow a consistent strategy of

14. Of course, there are other possible explanations. For example, the states’ citizens simply may not know about the no-duty rule, or may be proceeding based on deep-seated moral intuitions about what the law should be, independent of what it actually says. See John M. Darley et al., The Ex Ante Function of the Criminal Law, 35 L. & Soc. Rev. 165, 185 (2001) (finding no difference in likelihood that Wisconsin residents predicted punishment of a non-rescue, compared to residents of states that lacked a duty to rescue, and noting “this result may be another indicator that the passing of these ‘be a better person’ laws is a symbolic activity, which does not have much effect on what actions prosecutors actually choose to prosecute. We are then left with the odd thought that those who got the written code of their state ‘wrong’ are in some sense right about how the law is administered in reality, while those who got it ‘right’ are wrong about who actually will be prosecuted.”)


Finally, there are numerous articles published in non-law journals on the subject of rescue and the no-duty rule and numerous law review articles that address the no-duty rule in passing. See, e.g., Susan Bandes, The Negative Constitution: A Critique, 88 MICH. L. REV. 2271 (1990); George P. Fletcher, Law and Morality: A Kantian Perspective, 87 COLUM. L. REV. 533 (1987); Mary Ann Glendon, Does the United States Need “Good Samaritan” Laws?, 1 RESPONSIVE
recounting the horrific details of a few particular anecdotes and then offering vague generalities to the effect that the anecdotes illustrate a larger problem. Similar strategies are used to address objections to the administrability of a duty to rescue; the typical response takes the form: “Europe can do it, why can’t we?” None explore the typicality of such anecdotes or attempt to specify the frequency of non-rescue and rescue. For most commentators, the inevitable conclusion is that there is a problem with non-rescue for which “there ought to be a law.” The willingness of average Americans to rescue one another is typically discounted or dismissed entirely. Attention is called to the moral superiority of the European countries that have adopted a duty to rescue.

As outlined in Part II, such strategies provide an insufficient factual basis for recommending “reform” of the no-duty rule. Instead, before even beginning the analysis of the policy implications of the no-duty rule, it is necessary to develop a defensible frequency estimate for non-risky non-rescue (cell 1). Several strategies were employed to develop this estimate. The first step was collecting a dozen leading criminal and tort law textbooks and identifying every occasion in which an actual instance of non-actionable non-rescue was described. The second step involved similarly analyzing every law review article written about the no-duty rule.


18. See, e.g., Elaine D’Aurizio, Fighting Violence with a Scream, BERGEN RECORD, June 30, 1996, at N01 (“As society has become increasingly plagued by random violent crime, stories about unresponsive bystanders have increased, too. Heroes with the impulse to rescue, or just help, another person, especially a total stranger are indeed rare.”); Hayden, supra note 17, at 27–28 (“Too many cases of onlooker apathy demonstrate that this country needs to enact ‘good samaritan’ statutes to encourage and remind people to do what they ought to feel obligated to do.”); Prentice, supra note 17, at 16 (“Unfortunately, horror stories like these occur with alarming frequency.”). But see GLENDON, supra note 16, at 79 (“The Yania case was indeed bizarre, and fortunately such cases do not arise frequently. But there was nothing unusual about its legal outcome.”); Adler, supra note 17, at 868 n.6 (“Although cases involving one private individual’s failure to engage in an effortless rescue do still arise, today they are relatively rare.”). Other strategies include disclaiming the possibility of determining non-rescue’s frequency or ignoring the issue entirely and instead focusing on the philosophical and moral issues raised by the no-duty rule.

19. See Melvin A. Eisenberg, The Duty to Rescue in Contract Law, 71 FORDHAM L. REV. 647, 685 (2002) (“It is hard to believe that civil-law countries would have persisted in maintaining a duty to rescue if the rule was unadministrable.”); Smith, supra note 17, at 19–20. Smith, criticizing arguments based on administrability concerns, states:

From a practical standpoint it has been argued that such laws will cause insurmountable problems of evidence and enforcement. These arguments, however, are unpersuasive in face of the fact that many countries (for example, most of those in western Europe) have had Good Samaritan laws in operation for many years without noting any particular practical problems peculiar to them.

Id. (citation omitted).

20. The overwhelming majority of published articles support the imposition of a generalized duty to assist. Almost without exception, all frame the duty in generalities (“easy rescue should be required”), instead of offering specific statutory language.
rule during the twentieth century. The analytical basis for this second step was the assumption that those who criticized the current state of the law had every incentive to identify and describe every possible instance of non-rescue.\textsuperscript{21} Finally, the third step was searching Lexis and Westlaw for newspaper stories, magazine articles, and common law precedent for similar incidents. The study focused on the period from 1994 to 2004 because more recent incidents are more likely to have received press coverage.\textsuperscript{22} Because the goal was identifying the frequency of non-rescues in situations where there was no duty to rescue, the analysis necessarily excluded all cases in which an exception to the no-duty rule applied (i.e., in which there was a statutory or common-law duty to rescue).

These search measures are likely to be underinclusive for a variety of reasons.\textsuperscript{23} Nonetheless, they provide a collective picture of non-rescue that is more systematic than that resulting from the recounting of salient individual anecdotes. Table 1 presents the results of this analysis.

\textsuperscript{21} Professor George Stigler concisely defended the logic of a similar assumption regarding the nonexistence of Giffen goods:

> How can we convince a skeptic that this “law of demand” is really true of all consumers, all times, all commodities? . . . Perhaps as persuasive a proof as is readily summarized is this: if an economist were to \textit{demonstrate} its failure in a particular market at a particular time, he would be assured of immortality, professionally speaking, and rapid promotion. Since most economists would not dislike either reward, we may assume that the total absence of exceptions is not from lack of trying to find them.


\textsuperscript{22} A similar analysis was performed for incidents of non-rescue that occurred during the period 1964–1993. An infamous case of non-rescue (Kitty Genovese) occurred in 1964, and the issue attracted more attention as a result. \textsc{Rosenthal, supra} note 4. However, relatively few additional cases were identified during the 30-year period in question (1964–1993). As such, the frequency estimate of non-rescue employed in the balance of the article is based on the past decade only.

\textsuperscript{23} See infra Part VII.
Appendix A contains additional detail on each case of non-rescue. As Table 1 reflects, confirmable instances of non-rescue are actually extraordinarily rare events, occurring about 1.6 times per year in the entire United States during the past decade. Ninety-four percent of non-rescue cases had their origins in criminal conduct by a third party. Women and men each accounted for 50% of the victims of non-rescue.

By way of comparison, Table 2 provides the annual death toll attributable to a range of causes.

Table 1
<table>
<thead>
<tr>
<th>Year</th>
<th>Last</th>
<th>First</th>
<th>Sex</th>
<th>State</th>
<th>Peril</th>
</tr>
</thead>
<tbody>
<tr>
<td>1994</td>
<td>Levick</td>
<td>Joey</td>
<td>M</td>
<td>WA</td>
<td>Crime</td>
</tr>
<tr>
<td>1995</td>
<td>Word</td>
<td>Deletha</td>
<td>F</td>
<td>MI</td>
<td>Crime</td>
</tr>
<tr>
<td>1995</td>
<td>Vasquez</td>
<td>Gabriella</td>
<td>F</td>
<td>NY</td>
<td>Crime</td>
</tr>
<tr>
<td>1995</td>
<td>N/A</td>
<td></td>
<td>F</td>
<td>VA</td>
<td>Crime</td>
</tr>
<tr>
<td>1995</td>
<td>Gugel</td>
<td>David</td>
<td>M</td>
<td>AZ</td>
<td>Crime</td>
</tr>
<tr>
<td>1996</td>
<td>N/A</td>
<td></td>
<td>F</td>
<td>TX</td>
<td></td>
</tr>
<tr>
<td>1997</td>
<td>Iverson</td>
<td>Sherrice</td>
<td>F</td>
<td>NV</td>
<td>Crime</td>
</tr>
<tr>
<td>1998</td>
<td>N/A</td>
<td></td>
<td>F</td>
<td>MA</td>
<td>Crime</td>
</tr>
<tr>
<td>1998</td>
<td>Maarouf</td>
<td>Mostapha</td>
<td>M</td>
<td>CO</td>
<td>Crime</td>
</tr>
<tr>
<td>1998</td>
<td>N/A</td>
<td></td>
<td>F</td>
<td>NJ</td>
<td>Crime</td>
</tr>
<tr>
<td>1998</td>
<td>N/A</td>
<td></td>
<td>F</td>
<td>MA</td>
<td>Crime</td>
</tr>
<tr>
<td>1998</td>
<td>Collins</td>
<td>Anthony</td>
<td>M</td>
<td>WA</td>
<td>Drown</td>
</tr>
<tr>
<td>2000</td>
<td>Heisinger</td>
<td>Kevin</td>
<td>M</td>
<td>MI</td>
<td>Crime</td>
</tr>
<tr>
<td>2001</td>
<td>McCann</td>
<td>John</td>
<td>M</td>
<td>ME</td>
<td>Crime</td>
</tr>
<tr>
<td>2002</td>
<td>Viscome</td>
<td>Robert</td>
<td>M</td>
<td>NY</td>
<td>Crime</td>
</tr>
<tr>
<td>2003</td>
<td>Price</td>
<td>Allen</td>
<td>M</td>
<td>DC</td>
<td>Crime</td>
</tr>
</tbody>
</table>

Table 2
<table>
<thead>
<tr>
<th>Cause of Death</th>
<th>Annual Deaths</th>
</tr>
</thead>
<tbody>
<tr>
<td>All Accidents</td>
<td>100,000</td>
</tr>
<tr>
<td>Motor Vehicle Accidents</td>
<td>41,000</td>
</tr>
<tr>
<td>Drowning</td>
<td>8,000</td>
</tr>
<tr>
<td>Foodborne Illness</td>
<td>5,000</td>
</tr>
<tr>
<td>Electrocution (Home)</td>
<td>1,000</td>
</tr>
<tr>
<td>Bicycle Accidents</td>
<td>800</td>
</tr>
<tr>
<td>Lightning</td>
<td>75</td>
</tr>
<tr>
<td>Bee Stings</td>
<td>50</td>
</tr>
<tr>
<td>Rabies</td>
<td>1-2</td>
</tr>
</tbody>
</table>
Although each case of non-risky non-rescue is tragic, the trivial magnitude of Figure 1’s cell 1 makes it difficult to argue that non-risky non-rescue is actually a serious problem, even without considering the magnitude of cells 2 and 4 (the subject of Part IV) and the legal process difficulties of implementing a duty to rescue.24 Stated differently, if non-rescue is a serious problem, then so is rabies—but the “scourge” of rabies has not led to a significant legal literature.25

IV. Rescue: How Many and How Dangerous?

The obvious challenge to quantifying the frequency of non-risky rescue (cell 2) and risky rescue (cell 4) is identifying and securing the necessary data.26 As noted previously, prior commentators have focused on cell 1, disclaimed the possibility of quantifying cell 2, and ignored cell 4 entirely. Identifying individual rescues and obtaining sufficient information to confirm what actually happened presents numerous challenges. Rather than attempting to identify and confirm individual instances of risky and non-risky rescue, the analysis focused on identifying entities that give awards or recognition to individuals who perform rescues. This Article describes approximately 20 different entities that provided data on awards or recognition for civilian rescue. None of these data sources have been analyzed (and only one has ever been mentioned) in the vast literature on the duty to rescue.27

24. See Henderson, supra note 17, at 928–43.
25. The vaccine for rabies, on the other hand, is commonly referenced in the legal literature because it appears in comment k to Section 402A of the Restatement of Torts 2d:

There are some products which, in the present state of human knowledge, are quite incapable of being made safe for their intended and ordinary use. These are especially common in the field of drugs. An outstanding example is the vaccine for the Pasteur treatment of rabies, which not uncommonly leads to very serious and damaging consequences when it is injected. Since the disease itself invariably leads to a dreadful death, both the marketing and the use of the vaccine are fully justified, notwithstanding the unavoidable high degree of risk which they involve. Such a product, properly prepared, and accompanied by proper directions and warning, is not defective, nor is it unreasonably dangerous.

RESTATEMENT (SECOND) OF TORTS § 402A cmt. k (1965).

26. See Volokh, supra note 17, at 108 n.11 (“It would be great to have some empirical data on how large this effect would be, but I don’t think any such data is available. The few American duty-to-rescue laws are heavily under-used and largely unknown by the public, but even if they were more common it would be hard to gather data on behavior (unknown witnesses’ failure to go to the police) that by definition does not come to light.”).

27. The Carnegie Awards data has only been analyzed in detail in one article. See Ronald C. Johnson, Attributes of Carnegie Medalists Performing Acts of Heroism and of the Recipients of These Acts, 17 ETHOLOGY & SOCIOBIOLOGY 355 (1996). A handful of law review articles have briefly mentioned empirical research on rescue. See Assaf Jacob, Feminist Approaches to Tort Law Revisited—A Reply to Professor Schwartz, 2 THEORETICAL INQ. L. 211 (2001), available at http://www.bepress.com/til/default/vol2/iss1/art7/; Gary T. Schwartz, Feminist Approaches to Tort Law, 2 THEORETICAL INQ. L. 175 (2001); Yeager, supra note 7, at 11 n.51. None of these law
For varying periods during the nineteenth and twentieth centuries, these entities recognized risky and non-risky lifesaving behavior by ordinary citizens. Some entities awarded certificates, others gave cash awards, others gave out medals, and some did all three. Each entity reviewed and investigated the underlying facts—some of them exhaustively—before giving out their respective awards. Most of these entities provided sufficient access to their records to include them in the analysis. Detailed information on each of these entities is provided in Appendix B.

Because there are multiple entities, each of which made individualized, independent determinations whether to recognize a particular case of rescue using consistent standards over time, one can be reasonably confident that any observable patterns are not likely to be the result of random chance. At the same time, it is important to recognize that these results reflect proven cases of actual and attempted rescues, which is not quite the same thing as “circumstances requiring rescue.” Because these data sources do not include “unreported” rescues and instances in which rescue was not attempted, they can be used to determine how many proven rescues there are but not the probability of rescue for those exposed to some peril (e.g., drowning).

Aggregating the figures on rescue derived from these distinct sources creates some methodological problems. Each source uses its own definition of rescue and risk. So, for example, a Silver Lifesaving Medal from the U.S. Coast Guard is not readily comparable to a Certificate of Merit from the American Red Cross. Conduct that qualifies for a lifesaving medal from the Girl Scouts might not qualify for a medal from the Boy Scouts. Should rescue by quasi-professional rescuers and those with specialized training be combined with rescue by those who simply saw a need and “jumped in?” On the other hand, so long as the calculations are sufficiently transparent, readers who disagree with the analysis can do the math for themselves and draw their own conclusions about the best estimate of the magnitude of cell 2 and cell 4. Table 3 summarizes the average annual awards granted by each of the entities described in Appendix B.
As Table 3 reflects, there are 946 non-risky rescues (cell 2) and 243 risky rescues (cell 4) per year in the United States. Thus, confirmed rescues outnumber non-rescues by approximately 740:1. If one loosens the standard for rescue only slightly, to encompass instances of rescue that were reported in a newspaper but did not pass initial screening by the Carnegie Hero Fund Commission, the ratio increases to approximately 1,350:1.

At least 78 Americans lose their lives every year as a result of attempting to rescue someone else, while there were only 1.1 deaths per year attributable to non-rescue.28 Thus, even in the absence of a duty to rescue, deaths among rescuers outnumber deaths attributable to non-rescue by at least 70:1 every year. Injury is also common among rescuers. Aggregate figures are unavailable since most of the data sources did not separately track injury, but in those that did, as detailed below, a substantial percentage of

<table>
<thead>
<tr>
<th>Organization</th>
<th>Non-risky</th>
<th>Risky</th>
</tr>
</thead>
<tbody>
<tr>
<td>AAA</td>
<td>7</td>
<td></td>
</tr>
<tr>
<td>American Red Cross</td>
<td>200</td>
<td></td>
</tr>
<tr>
<td>Bell</td>
<td>38</td>
<td>5</td>
</tr>
<tr>
<td>Boy Scouts</td>
<td>191</td>
<td>30</td>
</tr>
<tr>
<td>Carnegie</td>
<td>260</td>
<td></td>
</tr>
<tr>
<td>Commonwealth Edison</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>Federal Government</td>
<td>39</td>
<td>43</td>
</tr>
<tr>
<td>Girl Scouts</td>
<td>17</td>
<td>5</td>
</tr>
<tr>
<td>Goodyear</td>
<td>15</td>
<td>5</td>
</tr>
<tr>
<td>Heimlich</td>
<td>15</td>
<td></td>
</tr>
<tr>
<td>Kiwanis</td>
<td></td>
<td>15</td>
</tr>
<tr>
<td>LSBA</td>
<td></td>
<td>4</td>
</tr>
<tr>
<td>NALC</td>
<td>75</td>
<td></td>
</tr>
<tr>
<td>State Government</td>
<td>11</td>
<td>43</td>
</tr>
<tr>
<td>Truckload Carriers</td>
<td>40</td>
<td>13</td>
</tr>
<tr>
<td>Association</td>
<td></td>
<td></td>
</tr>
<tr>
<td>U.S. Sailing</td>
<td>8</td>
<td></td>
</tr>
<tr>
<td>VITA Wireless</td>
<td>25</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>946</strong></td>
<td><strong>243</strong></td>
</tr>
</tbody>
</table>

28. These calculations are based on Carnegie Hero Fund Commission records.
V. The Demographics of Rescue and Non-Rescue

The demographics of rescue and non-rescue (including trends over time) provides additional insight into the accuracy of numerous assertions made by academic commentators on the no-duty rule. Part V focuses on whether the frequency of rescue has declined over the course of the twentieth century; whether women or men are more likely to be rescuers, victims, or both; whether women or men are more likely to rescue strangers; the class implications of rescue; and the risks associated with rescue.

These demographic realities are important because they reflect the current distribution of the “costs” of voluntary rescue, and they may well predict the likely demographic distribution of the “costs” of a duty to rescue. These demographic realities are also important because, as Professor Richard Hasen has demonstrated, if “individuals assess the probability of being a victim or potential rescuer if involved in a rescue situation as about equal, the duty to rescue is both Pareto and Kaldor–Hicks efficient.” Conversely, if individuals believe they are more likely to be either a rescuer or a victim, then the effects of a duty to rescue are unlikely to be Pareto and Kaldor–Hicks efficient. Thus, if rescuer and victim demographics are different, and those realities inform the perceived likelihood of being a rescuer or victim, a duty to rescue is unlikely to be Pareto and Kaldor–Hicks efficient.

29. It is fair to ask how a non-risky rescue can result in injury. This result flows from the definitions used in the study, and the criteria employed by the entities that recognized rescue. If all rescues where the rescuer is injured are reclassified as risky rescues, the number of total rescues is unchanged, but the ratio of non-risky to risky rescues changes dramatically.


31. See William M. Landes & Richard A. Posner, Salvors, Finders, Good Samaritans, and Other Rescuers: An Economic Study of Law and Altruism, 7 J. LEGAL STUD. 83, 126 (1978) (modeling the impact of the duty to rescue and suggesting that “the results under the common law, occasionally imposing liability but mostly denying it, may be consistent with efficiency”).

32. Professor Mel Eisenberg described this assumption (that individuals are either potential victims or potential rescuers) as “exceptionally improbable” and flatly stated that “potential rescuers are also potential victims.” Eisenberg, supra note 19, at 687. Professor Eisenberg provided no evidence supporting this claim.

Professor Hasen investigated the issue with a survey and discovered that there were systematic gender differences in the perceived likelihood of being a victim or rescuer. Hasen, supra note 30, at 149 nn.12–13 (1995) (reporting results of a small survey of 40 law students and 26 undergraduates regarding attitudes toward rescue and finding that men thought it much more likely that they would be a rescuer than that they would be a victim (62:38) compared to women (48:52)). See also infra notes 34–43, and accompanying text.
A. Temporal Trends in Rescue

The communitarian critique of the no-duty rule is that it reflects and reinforces the overly individualistic tendencies of modern America. These tendencies are asserted to have become more pronounced with the rise of urbanization over the course of the twentieth century and to have emerged most forcefully since the late 1960s. The empirically falsifiable hypothesis that results from this critique is that rescue frequency should have declined over the course of the twentieth century as urbanization increased and that the slope of decline should have increased in the past forty years.

The data outlined in Part IV make it possible to directly test this claim. Figures 2 and 3 present the results for the 3 data sets that span most of the twentieth century. Figure 2 presents the results for the Carnegie and Coast Guard Awards, expressed in terms of awards per 10 million population per year, averaged over each decade.

Figure 2

![Figure 2](image)

Figure 3 presents the results for the three awards made by the Boy Scouts, expressed in terms of awards per million Scouts per year, averaged over each decade.

33. GLENDON, supra note 16, at 136; Ackerman, supra note 17, at 654–60; Heyman, supra note 17, at 47.
As Figures 2 and 3 demonstrate, the results reported in this Article are inconsistent with the claims made by communitarian scholars. Although rescues declined during the course of the twentieth century, they did so in the first half of the century; the number of rescues stabilized or even increased in the latter half of the twentieth century—even though the urban population increased steadily from 1900 to 1980. There is also no evidence that the trends since the early 1970s are discontinuous with those in the 1950s and 1960s. Stated more directly, these results are inconsistent with the communitarian critique of the no-duty rule.

These results, however, point to a different problem: Why is it that the frequency of rescue awards declined so precipitously from 1900 to 1940? The percentage of the population living in urban areas rose steadily over this period, but the decline in the number of rescues was far steeper. Possible explanations include a decline in the demand for civilian rescue (whether because professional rescuers were available in urban areas or because the population as a whole—whether in urban or rural areas or both—became more self-reliant and less in need of rescue), a decline in the supply of civilian rescuers, or a decline in willingness to report rescue. However, none of these reasons explain why rescue became more frequent from 1950 to 2000 in two of the three datasets, when urbanization reached an all-time high. Research continues on this issue.

B. Gender and Rescue

Professor Bender has asserted that the no-duty rule reflects a rule-based “male” perspective that ignores the interconnectedness of every human
being. Professor Lake has similarly asserted that the no-duty case law is a series of cases about “bad boys” and “bad men.” The demographics of rescue and non-rescue cast some light on the extent to which gender figures into rescue and non-rescue. Table 1 demonstrates that males and females are equally likely to be the victim of a non-rescue, but in most of these cases, it was either impossible to determine the gender of the non-rescuer or there was a crowd of bystanders composed of both men and women.

However, as Table 4 demonstrates, the overwhelming majority of rescues, both non-risky and risky, are performed by men.

<table>
<thead>
<tr>
<th>Organization</th>
<th>Male Rescuers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Red Cross Certificate of Merit (Non-risky)</td>
<td>63%</td>
</tr>
<tr>
<td>Carnegie Non-Risky (News Reports)</td>
<td>77%</td>
</tr>
<tr>
<td>Carnegie Non-Risky (Reviewed)</td>
<td>87%</td>
</tr>
<tr>
<td>Carnegie Risky</td>
<td>91%</td>
</tr>
<tr>
<td>Coast Guard Lifesaving Medals (Risky)</td>
<td>98%</td>
</tr>
</tbody>
</table>

Stated differently, when rescue is necessary, it is overwhelmingly men who rescue—particularly when the rescue is risky. Figure 4 offers particularly compelling evidence on this point because the populations that are in the Boy Scouts and Girl Scouts are closely matched demographically (with the obvious exception of gender) and both organizations had comparable processes for reporting and recognizing rescues.

34. See Bender, Primer, supra note 17, at 33–36 (proposing a duty of care “informed by a feminist ethic based upon notions of caring, responsibility, interconnectedness, and cooperation”); Bender, Overview, supra note 17, at 580–81 (arguing that the no-duty rule fails to adequately incorporate feminist ideals and instead utilizes a standard taken from a view of human nature as individualistic and autonomous). But see McClain, supra note 17, at 1228–42 (critiquing Bender’s proposed duty to rescue).

35. Lake, Bad Boys, supra note 17, at 385–413 (arguing that “[s]ituations involving males behaving badly . . . shaped the historical cases and became bad law”).

36. See also Hasen, supra note 30.

37. To be sure, the Boy Scouts had much more historical data available than the Girl Scouts. To correct for this fact, Figure 4 was calculated using results for the same time period for the Girl Scouts and Boy Scouts (1988–2002).
As Figure 4 reflects, and controlling for the number of Boy Scouts and Girl Scouts, the Boy Scouts were responsible for 84% of total rescues, 86% of non-risky rescues, and 75% of risky rescues. Stated differently, when non-risky rescue was needed, the rescuer was 6.35 times more likely to be male than female. If the rescue was risky, the rescuer was 3 times more likely to be a male.

These ratios are computed based on the assumption that the Boy Scouts and Girl Scouts had comparable standards for which conduct constituted a risky rescue. A qualitative assessment of news coverage of individual awards suggests that the Girl Scout Award for risky rescue generally involves a lesser degree of risk than is the case for the awards given by the Boy Scouts for risky rescue. This disparity in the standards means that the 3:1 ratio for awards for risky rescues probably understates the ratio that would result if comparable standards were employed.38

Figures 5 and 6 cast light on the intersection between risk, rescue, gender, and whether the victim is a stranger, relative, or friend, using data from Carnegie Awards.

---

38. Of course, if comparable standards were employed, the ratio for non-risky rescues would be smaller than 6.35:1, since every reclassified Girl Scout risky rescue would now be counted as a non-risky rescue. The ratio is unlikely to change very much because the number of non-risky rescues is substantially larger than the number of potentially reclassifiable risky rescues. Thus, if 10 of the rescues are reclassified, the ratios for risky rescues would increase to 4.9:1 (a 33% increase), and the ratio for non-risky rescues would only fall to 5.53:1 (a 13% decrease).
As Figure 5 reflects, of 212 risky rescues of strangers, 81% of rescuers were male. When relatives or friends were rescued in comparable circumstances, 58% of the rescuers were male, meaning that females were much more likely to rescue friends or family members than strangers. Stated differently, when males performed a risky rescue, it was to rescue a stranger 73% of the time. When females performed a risky rescue, it was to rescue a stranger only 47% of the time.

The point is further confirmed by Figure 6, which presents information from rescues that occurred in 2003 that were insufficiently risky to satisfy even a preliminary review for a Carnegie award.

39. Figure 5 is drawn from Johnson, supra note 27.
As Figure 6 reflects, even with less risky rescues, men are still responsible for a substantial majority (77%) of rescues, whether of relatives (65%), friends (74%), or strangers (83%). Conversely, women were much more likely to rescue relatives (35%) than friends or acquaintances (27%) or strangers (16%).

These results indicate that it is actually women who are failing to satisfy the test enunciated by Professor Bender: “[W]hether one acted out of a conscious care and concern for the safety, health, and well-being of the [stranger] victim in the way that one would act out of care for a neighbor or friend.”

To be sure, these results are likely affected by access and opportunity. Men are more likely to work than women, and they are more likely to work in hazardous jobs—meaning that their opportunities to rescue (and to rescue strangers) are likely greater than those of women. However, the rescuer gender imbalance has been quite stable throughout the entirety of the twentieth century—even as female participation in the work force has increased dramatically.

The fact that men are substantially more likely to rescue than women, particularly when strangers are rescued, does not directly affect a judgment as to whether a duty to rescue is sound public policy. It does, however, indicate that the status quo has substantial gendered consequences, and it

40. Bender, Primer, supra note 17, at 36; see also Linda C. McClain, “Atomistic Man” Revisited: Liberalism, Connection and Feminist Jurisprudence, 65 S. CAL. L. REV. 1171, 1228–42 (1992) (critiquing Bender’s proposed duty to rescue).
thus seems likely that imposing a duty to rescue will replicate (if not magnify) those consequences.

To summarize, the costs and risks of a duty to rescue are likely to be disproportionately borne by men. A duty to rescue might result in an increase in the absolute and relative number of rescues performed by females, but that result seems improbable given the extent to which subjectively perceived risk will figure in determining whether a particular rescue is non-risky. Research studies indicate that women are less prone to risky behavior than men, in part because they subjectively assess the risks to be much higher than men do.41 Enforcement decisions in cases of non-rescue are likely to track this dynamic, which means that non-rescue by a male is likely to be judged much more harshly than non-rescue by a female.

C. Age and Rescue

Rescuers are found in every age range—some are as young as 5 and others are as old as 88. However, as Figure 7 reflects, a disproportionate number of non-risky rescues are performed by individuals between the ages of 20 and 49.

Similarly, as Figure 8 reflects, a disproportionate number of risky rescues are performed by individuals between the ages of 10 and 39.

41. See e.g., Jan L. Hitchcock, Gender Differences in Risk Perception: Broadening the Contexts, 12 RISK: HEALTH, SAFETY AND ENVIRONMENT 179, 186-88 (2001) (citing studies showing that women perceive greater risks from sexual behaviors and cigarette smoking); cf. Schwartz, supra note 27, at 197 n.107 (noting that women may be more risk averse than men).
The largest disparity between the age distribution of rescuers and their percentage in the general population was for individuals in their 30s for non-risky rescues and individuals in their 20s for risky rescues. Thus, non-risky rescues are disproportionately a “young person’s game” and risky rescues even more so. Of course, access and opportunity also figure in the age distribution of rescuers. For example, traffic accidents tend to draw rescuers from the ranks of other drivers, who, by law, have to be at least 16 years old. As with gender, the status quo has substantial age-based consequences, and it thus seems likely that imposing a duty to rescue will replicate (if not magnify) those consequences.

D. Class and Rescue

Risky rescue appears to have some class-based distributional implications. A disproportionate number of Carnegie Awards are given to rescuers from small towns and rural areas.42 This over-representation could be because professional rescuers perform more of the rescues in larger towns and cities (substitution effect), because rescue in small towns and rural areas is more likely to be reported to the award sponsors (selection effect), because residents of small towns and rural areas are more likely to perform a rescue, or because more people in small towns and rural areas need to be rescued.

42. See Johnson, supra note 27, at 360–61.
(base rate effects). It is impossible to differentiate among these possibilities with the available data. Research on this issue continues.

A disproportionate number of Carnegie Award recipients are individuals with relatively low income, unskilled occupations, or both. Interestingly, one risky rescuer expressed class-based solidarity with the person he rescued, stating, “I knew there was a good chance I could be electrocuted too . . . . He was on fire. But I’m not going to let a working man burn to death in front of me.”

Thus, as with gender and age, the status quo has substantial class-based distributional consequences. As noted previously, it seems likely that imposing a duty to rescue will replicate (if not magnify) those consequences.

E. Risk and Rescue

Many rescues involve a range of risks, not all of which are necessarily obvious to potential rescuers. Rescuers can be injured or killed, either by the peril that necessitates the rescue, or, in some instances, by a completely unrelated risk. These risks are not trivial: 13% of Carnegie Award nominees and 16% of Carnegie Award recipients died. Fully 50% of Carnegie Award recipients were injured in the rescue. This group of rescuers is admittedly highly preselected for risky rescues, but the rate of injury (ranging from scrapes and minor burns to severe injury) among rescuers who did not even satisfy the preliminary review for a Carnegie award was 80%. Media accounts of risky rescues often highlight those in which the rescuers were injured or killed. On occasion, willingness to rescue goes beyond heroism.

43. Deborah Mendenhall, Survivor’s Story, PITT. POST-GAZETTE, Jan. 22, 2002, at B1 (describing a rescue in which firefighters and police did not intervene because they thought it was too risky, and quoting a truck driver who stopped his truck in the middle of traffic and crawled out on the supposedly electrified boom with a fire extinguisher). I am indebted to John Singer for bringing this case to my attention.

44. The risk required to obtain a Carnegie Award is demonstrated by the title of a book that recounts the heroism of particular rescuers. Jack Markowitz, A Walk on the Crust of Hell (1973).

45. These calculations are based on Carnegie Hero Fund Commission records.

46. These calculations are based on newspaper clippings obtained from Carnegie Hero Fund Commission.

47. See, e.g., Lee Anderson, Good Samaritanism Here, CHATTANOOGA TIMES FREE PRESS, July 3, 1998, at A6 (telling of a rescuer who was beaten unconscious with a concrete block); Jay Apperson, Family, Friends Mourn Student, BALT. SUN, May 22, 2000, at 1B (relating that a student who chased a pursesnatcher was stabbed and killed); Leslie Berestein, Man Shot to Death As He Chases Suspect in Purse Snatching, ORANGE COUNTY REG., July 8, 1996, at B3 (informing of a good Samaritan who was shot in the chest and head while pursuing a purse snatcher); Don Babwin, Boy, 6, Critical After Saving Girl’s Life, NEWSDAY, June 11, 2004, at A28 (6-year-old boy on life support after spending five to twenty minutes underwater when he went into pool to rescue 5-year-old girl); Mayna A. Bracheur & John Biemer, 4 Drown, 3 Missing in Lake Michigan, CHI. TRIB., July 6, 2003, at 1 (detailing the death of 5 swimmers, 1 original victim, and 4 who attempted rescue); Conn. Hero Rewarded, NEWSDAY, Dec. 27, 1990, at 14, available at 1990 WLNR 270769 (lamenting that a rescuer who jumped into an icy pond to save a motorist was robbed of $370 and his jacket while in the water); Elaine D’Aurizio, What Makes Heroes Refuse to Run?, THE RECORD
into outright stupidity. In lifesaving circles it is a truism that an untrained rescuer should never go into the water to rescue a drowning person because the result is likely to be two, or more, dead people instead of just one.

Another unappreciated risk of encouraging voluntary rescue is that the situation may be a trap. There are a number of examples where individuals who appeared to be in need of help later turned on the Good Samaritans who stopped to help them.49

48. See Lee H. Whittlesey, Death in Yellowstone: Accidents and Foolhardiness in the First National Park 3–4 (1995) (recounting the story of a man who dove into a hot spring to try to save his friend’s dog, suffered third degree burns over 100% of his body, and died the next day).

49. For example, Clemson University’s website directs: Someone is drowning! What should I do? The first reaction for most people is to jump in and try to save the person. This is WRONG. NEVER do this unless you have taken a course in Lifesaving . . . . In many water accidents each year both the rescuer and the drowning person drown. What happens? The rescuer swims out to the drowning person, who is [so] scared that he/she grabs at anything close by—usually the rescuer’s head. Without proper lifesaving training, the rescuer and the drowning person panic (lose control) and both drown. NEVER try to make a swimming rescue without proper lifesaving training.

Clemson University, General Water Safety, http://virtual.clemson.edu/groups/FieldOps/CGS/water_s2.htm.

50. Michael A. Barber, Would-Be Helper Gets Acid in Face, SEATTLE POST-INTELLIGENCER, Jan. 9, 1990, at B1, available at http://seattlepi.nwsource.com/archives/1990/9001090048.asp (relating the tale of a Good Samaritan who had acid thrown in his face when he stopped to assist and quoting the Samaritan as saying that “[t]he police officer who came to help told me that nowadays you should never stop to help out like that” but should phone 911 instead); Kathy Fair, “Good Samaritan” Killer Faces Almost Certain Execution, HOUS. CHRON., July 1, 1993, at A26 (reporting that a Good Samaritan was murdered by those he stopped to assist); Susan Gilmore, Is Being Good Samaritan Worth Risk?, SEATTLE TIMES, Mar. 20, 1994, at B1, available at 1994 WLNR 1237064 (reporting on a real estate broker who was shot and killed after stopping to help two stranded motorists); see also Julie Bykowicz, Man, 32, Charged in Theft of Pickup at I-95 Accident, BALT. SUN, May 10, 2002, at 2B, available at 2002 WLNR 1352238 (describing the story
Not surprisingly, attempting to intervene when a crime is being committed exposes the rescuer and unrelated third parties to significant risks.\textsuperscript{51} Witnesses who scream for help or call 911 are subjecting themselves to some risk.\textsuperscript{52} Indeed, the Supreme Court of California recently held that “neither a business proprietor nor his or her employees have an absolute obligation to call 911 in the face of ongoing criminal conduct: in some situations, doing so actually might increase the danger to customers or invitees or might unreasonably place proprietors or their employees in danger.”\textsuperscript{53} Given this backdrop, it is not surprising that the overwhelming majority of documented non-rescues in Table 1 involve criminal conduct. These facts raise a serious question as to whether any of the cases in Table 1 are actually non-risky non-rescues.\textsuperscript{54}

The risk of civil litigation against a rescuer has been largely obviated by the enactment of Good Samaritan statutes by all 50 states,\textsuperscript{55} but there appears to be a perception that potential rescuers may face significant legal risks.\textsuperscript{56}

\textsuperscript{51} See, e.g., Hassoon v. Shamieh, 89 Cal. App. 4th 1191, 1193–94 (2001) (describing an incident in which customers in a grocery store were injured by gunshots fired from outside the store after store employees provided refuge to a man who was being assaulted nearby); Brian Haynes, \textit{Risking Life, Saving Lives: In the Face of Danger}, LAS VEGAS REV.-J., Nov. 21, 2004, at 33A (“Ask a firefighting professional, and he’ll say people should leave heroics to the trained professionals. . . . [W]ould-be rescuers [should] wait for firefighters and tell them if someone is trapped inside.”). This view is also shared by academics:

[Professor] Piliavin believes that direct intervention in an assault is often the wrong response and that yelling and calling the police is frequently a better way. Bibb Latane, a professor at the University of North Carolina, pioneered the research on the “bystander effect” and agrees with Piliavin. “There’s nobody benefited if two people are killed rather than just one . . . . I don’t always think direct intervention is a good thing.”

Kahn, supra note 7. \textit{See also} supra note 47.

\textsuperscript{52} See D’Aurizio, supra note 18 (recounting a case in which a bystander screamed to prevent an attempted child abduction, even though, by doing so, she put herself at risk).

\textsuperscript{53} See Morris v. De La Torre, 36 Cal. 4th 260, 277 (2005).

\textsuperscript{54} See supra Table 1; \textit{see also} State v. Joyce, 433 A.2d 271, 273 (Vt. 1981) (noting that there is no duty to intervene in a fight since “[s]uch a situation [presents] ‘danger or peril’ to the rescuer which under the statute prevents a duty from arising”); Tatsha Robertson, \textit{The Bystanders’ Dilemma: When to Stand Back, When to Assist}, BOSTON GLOBE, Jan. 21, 2001, at A1 (“[I]t is often wiser to call the police instead of jumping into the fray, since that may save a life rather than raise the body count, said Portland Police Chief Michael Chitwood.”).


\textsuperscript{56} The following passage sums this attitude up nicely:

Move over, Good Samaritan. In the 1990s version of the parable used to teach children the value of compassion, darker specters dominate: the Sued Samaritan and the Jailed Samaritan. Reports across the country tell sad tales of bystanders who want to help the lost child or stranded commuter, but are paralyzed by fear. What if they mistake me for a kidnapper and I end up behind bars? What if I scratch the car and end up in court?
One risk is the possibility of arrest, and even criminal prosecution, if the rescuer’s intentions are misperceived or excessive force is employed in the rescue. In one recent case, second-degree murder charges were brought against a Tennessee man who used lethal force against an individual who attacked the woman who ran the business next to his. The case was ultimately resolved with a plea agreement of voluntary manslaughter and a sentence of probation and community service, but the defendant was forced to turn to the general public for assistance in funding his defense. Even though such cases are considerably rarer than non-rescues, they are likely to have a disproportionately adverse impact on the willingness of potential rescuers to get involved.

Thus, individuals who choose to get involved in a rescue face a significant risk of injury or death. A duty to rescue is likely to make this problem worse—by exposing more people to more risks—and potential rescuers will have to balance the immediate perceived risk of the rescue against the risk of having their inaction incorrectly second-guessed. Simply stated, the academic focus on the plight of the victims of non-rescue has overlooked the far more frequent problem of injured and dead rescuers who are left without significant recourse or remedy by the no-duty rule.
F. Sources of Peril

Law school textbooks typically illustrate the no-duty rule with criminal cases involving child abuse or domestic violence and tort cases involving drowning. However, rescue is required, and occurs, in a far wider range of circumstances. For example, in rescues that did not pass an initial screening by the Carnegie Hero Fund Commission, the five most frequent circumstances in which rescue occurred were fire (45%), drowning (22%), accidents (16%), crimes (9%), and animal attack (4%). Among Carnegie Award recipients, the 5 most frequent causes of rescue are drowning (37%), fire (20%), falling through ice (9.5%), suffocation (9.4%), and motor vehicle accidents (7.1%).

Obviously, all of these circumstances are likely to prove as perilous to the rescuer as to the victim. Stated more bluntly, the favored non-rescue hypothetical used by law professors to torment first year students (a toddler drowning in the shallow end of the swimming pool as an Olympian swimmer watches with indifference) bears no relationship to the actual circumstances under which rescue is needed and occurs in the real world. It also bears no relationship to the actual circumstances when a rescue is needed but does not occur in the real world.

61. These calculations were based on newspaper articles obtained from the Carnegie Hero Fund Commission.
62. These calculations were based on Carnegie Hero Fund Commission records.
63. Id.
64. Glendon provides an example of the standard hypothetical:
Generations of first-year law students have been introduced to . . . one or another variant of the following hypothetical case: An Olympic swimmer out for a stroll walks by a swimming pool and sees an adorable toddler drowning in the shallow end. He could easily save her with no risk to himself, but instead he pulls up a chair and looks on as she perishes.

GLENNDON, supra note 16, at 78. See also John C. Moorehouse et al., Law & Economics and Tort Law: A Survey of Scholarly Opinion, 62 ALB. L. REV. 667, 680 (1998) (“[A]lthough first year law students are commonly tormented by hypotheticals concerning the wisdom of imposing a duty to rescue infants toddling in front of speeding trucks on those who could attempt a rescue at no danger to themselves, such cases make up a small minority of actual rescue opinions.”).
65. See Appendix A.
VI. A Tale of Three States

Three states have enacted statutory duties to rescue: Vermont, Rhode Island, and Minnesota. Vermont and Rhode Island require individuals to perform non-risky rescues; Minnesota requires individuals to either perform the non-risky rescue or provide notice of the problem to police or rescue personnel. One other state, Wisconsin, has a statute that requires persons present at the scene of a crime to either report the incident to the police or to assist the crime victim. Several other states have imposed limited duties to report crimes, and every state imposes a duty to remain at the scene of a car accident at least long enough to render aid and exchange information, when it

66. Vermont law provides:
A person who knows that another is exposed to grave physical harm shall, to the extent that the same can be rendered without danger or peril to himself or without interference with important duties owed to others, give reasonable assistance to the exposed person unless that assistance or care is being provided by others.
VT. STAT. ANN. Tit. 12, § 519 (2002). Individuals who willfully violate this obligation may be fined no more than $100.
  Id.
67. Rhode Island law provides:
Any person at the scene of an emergency who knows that another person is exposed to, or has suffered, grave physical harm shall, to the extent that he or she can do so without danger or peril to himself or herself or to others, give reasonable assistance to the exposed person.
R.I. GEN. LAWS § 11-56-1 (2002). Violation is a petty misdemeanor, punishable by no more than 6 months imprisonment or a $500 fine, or both.
  See also § 11-1-5.1 (criminalizing the failure of a bystander to report a sexual assault, murder, manslaughter, or armed robbery “as soon as reasonably practical”).
68. Minnesota law provides:
A person at the scene of an emergency who knows that another person is exposed to or has suffered grave physical harm shall, to the extent that the person can do so without danger or peril to self or others, give reasonable assistance to the exposed person. Reasonable assistance may include obtaining or attempting to obtain aid from law enforcement or medical personnel.
MINN. STAT. ANN. § 604A.01 (West 2000) (“A person at the scene of an emergency who knows that another person is exposed to or has suffered grave physical harm shall, to the extent that the person can do so without danger or peril to self or others, give reasonable assistance to the exposed person.
  See also § 11-1-5.1 (criminalizing the failure of a bystander to report a sexual assault, murder, manslaughter, or armed robbery “as soon as reasonably practical”).
69. Wisconsin law provides:
Any person who knows that a crime is being committed and that a victim is exposed to bodily harm shall summon law enforcement officers or other assistance or shall provide assistance to the victim.” The statute goes on to note that compliance is not necessary if it would place the individual in danger or interfere with duties owed to others, if assistance is being summoned or provided by others, or if the crime has already been reported by others.
WIS. STAT. ANN. § 940.34 (West 2005) (“Any person who knows that a crime is being committed and that a victim is exposed to bodily harm shall summon law enforcement officers or other assistance or shall provide assistance to the victim.”). The statute goes on to note that compliance is not necessary if it would place the individual in danger or interfere with duties owed to others, if assistance is being summoned or provided by others, or if the crime has already been reported by others.
  Wisconsin has had several cases implicating the statute, but only one is close to the circumstances of a prototypical duty to rescue case. See State v. LaPlante, 521 N.W.2d 448 (Wis. 1994) (citing a failure to aid the victim of a beating)
70. Florida law provides:
Creating a duty to report observed sexual batteries; HAW. REV. STAT. ANN. § 663-1.6 (LexisNexis 2002) (applying to all crimes in which the victim suffers “serious physical harm”); MASS. GEN. LAWS ANN. ch. 268, § 40 (West 2000) (“Whoever knows that another person is a victim of aggravated rape, rape, murder, manslaughter or armed robbery and is at the scene of said crime shall, to the extent that said person can do so without danger or peril to himself or others, report said crime to an appropriate law enforcement official as soon as reasonably practicable.”); MASS. GEN. LAWS ANN. ch. 269, § 18 (West 2000) (requiring the reporting of hazing); OHIO REV. CODE ANN. § 2921.22 (West 1997) (“No person, knowing that a felony has been or is being committed, shall knowingly fail to report such information to law enforcement authorities.”); WASH. REV. CODE ANN. § 9.69.100 (West 2003) (applying to certain crimes against children and violent offenses).
is safe to do so.\footnote{See generally AM. JUR. 2D Automobiles and Highway Traffic §§ 349–355.} There have been unsuccessful attempts to impose a duty to report criminal conduct at both the state and federal levels.\footnote{See H.R. 4531, S. 2452, 105th Cong. (as introduced in the House and Senate on Sept. 9, 1998) (proposing that federal funds be withdrawn from any state that does not impose a duty to report on people who witness sexual abuse of a child); A.B. 2157, 208th Gen. Assem., Reg. Sess. (N.J. 1998) (proposing a more general duty to report); see also Earl Ofari Hutchinson, Protecting Children Always a Good Cause, L.A. TIMES, Sept. 6, 1998, at M5 (describing bills in California and Nevada to impose a duty to report on people who witness assault against a child).}

The fact that three states have enacted such laws creates a natural experiment for testing some of the assertions made by academic commentators on the no-duty rule. For example, law and economics scholars have asserted that imposing a duty to rescue will lead potential rescuers to avoid locations where they are likely to be forced to rescue—meaning that the number of rescues is likely to decline and the number of accidental deaths is likely to increase.\footnote{Ian Ayres notes: [Posner and Landes] argue that imposing liability on potential rescuers will cause them to avoid activities in which they might encounter a duty to rescue—so that there might actually be less rescuing if liability is imposed. . . . The assumption that potential rescuers will be motivated by the potential of liability to change their behavior indicates that they would fail to rescue if they came upon a victim and there was no threat of liability. Ian Ayres, A Theoretical Fox Meets Empirical Hedgehogs: Competing Approaches to Accident Economics, 82 NW. U. L. REV. 837, 841 (1988) (reviewing William M. Landes & Richard A. Posner, The Economic Structure of Tort Law (1987)).} Conversely, social meaning scholars have asserted that imposing a duty to rescue will have an expressive effect even if the laws are unenforced, meaning that the number of rescues is likely to increase and the number of accidental deaths is likely to decline.\footnote{Murphy, supra note 17, at 665 n.223.} Moreover, critics of the duty to rescue have also asserted that such laws are likely to be misused by politically ambitious prosecutors and extended to impose broader obligations of assistance. With almost eighty years of experience with these laws in three states—Vermont (thirty-seven years), Rhode Island (twenty years), and Minnesota (twenty-one years)—it is possible to begin an assessment of these competing claims.

The starting point for analysis is that there were no reports of non-risky non-rescues in these three states prior to enactment of their respective statutes. In Vermont, the statute was enacted in response to a campaign by physicians to obtain immunity if they stopped to assist at the site of an accident. The bill was broadened while in committee to cover everyone who stopped to assist, and the legislators apparently reasoned that as long as people had immunity for assisting they ought to provide assistance to those in need, so the legislators imposed the duty to rescue found in the current statute.\footnote{Franklin, supra note 17, at 52–54.} The Rhode Island and Minnesota statutes were enacted in response
to a case in New Bedford, Massachusetts where a woman was raped in a bar and onlookers could not be prosecuted for failing to call the police.\footnote{This incident subsequently inspired a film. \textit{The Accused} (Paramount Pictures 1988).}

Since these statutes were enacted, there have been no reported accounts of criminal enforcement of these statutes or of non-risky non-rescues in those three states.\footnote{See Yeager, supra note 17, at 25 (observing that a review of appellate decisions in states with duty-to-rescue statutes failed to yield a single appeal of a criminal conviction based on a "Bad Samaritan" statute).} There have been a handful of civil and criminal cases in which these statutes were implicated, but none of them involved anything like a paradigmatic instance of non-rescue.\footnote{See Stodgell v. City of Warroad, No. C0-03-258, 2003 LEXIS 1141, at *15 (Minn. Ct. App. Sept. 16, 2003) (holding that ambulance personnel were not liable for the death of a child during transport under the state’s Good Samaritan statute); Swenson v. Waseca Mut. Ins. Co., 653 N.W.2d 794, 800 (Minn. Ct. App. 2002) (holding that a driver whose vehicle was struck by a speeding truck while transporting an injured child to an emergency room was immune from liability under the state’s Good Samaritan statute); State v. McLaughlin, 621 A.2d 170, 175 n.4 (R.I. 1993) (noting that the trial court had rejected an attempt by the prosecution to use the state’s duty-to-rescue statute to establish the defendant’s criminal liability for involuntary homicide); Sabia v. State, 669 A.2d 1187, 1194–95 (Vt. 1995) (agreeing that the state’s Good Samaritan statute—broadly construed—established an actionable breach of duty on the part of state social workers who failed to provide assistance to two young girls who were being regularly molested by their stepfather); Tiedeman v. Morgan, 435 N.W. 2d 86 (Minn. Ct. App. 1989) (finding immunity provisions of a Good Samaritan Statute inapplicable, and relying on the common law duty to assist); Smith v. Day, 538 A.2d 157, 158 (Vt. 1987) (rejecting the argument that a private university owed a duty to the plaintiffs under the state’s duty-to-rescue statute and was therefore liable for failing to prevent its students from causing the plaintiffs’ injuries).} If these statutes are being misused by politically ambitious prosecutors, it has happened without a whisper of complaint. On the other hand, in France there is good evidence that such statutes are routinely used for cases that bear little resemblance to the paradigmatic conduct that is used to argue for a duty to rescue.\footnote{See Tomlinson, supra note 17, at 457, 475 (outlining the difficulty of and arbitrariness in prosecuting defendants under such a statute and noting that the courts’ interpretation of the elements have led to an expanded duty to rescue). The unsavory origins of the French statute should also be acknowledged: The statute was enacted by the Vichy government to provide a basis for punishing French citizen–bystanders who refused to assist German soldiers when they were ambushed by the Resistance.}

Data from the Carnegie Hero Fund Commission on the frequency of non-risky rescues provides a more systematic perspective on the issue. Table 5 calculates the average number of non-risky rescues per year per 100,000 population in Minnesota and Rhode Island, both pre-enactment and post-enactment.\footnote{The average was calculated for the 11 years before the enactment and the 18 years after the enactment for Minnesota and the 12 years before the enactment and the 17 years after the enactment for Rhode Island. The year in which the statute was enacted (1983 for Minnesota and 1984 for Rhode Island) was excluded from consideration. Unfortunately, Carnegie records did not begin indicating the state in which a rescue occurred until 1969, which was after Vermont enacted its duty to rescue. As such, it is impossible to perform a comparable analysis for Vermont.}
As Table 5 reflects, although there was an increase in non-risky rescues in both states, the increase was not statistically significant in either state. Similarly, Table 6 calculates a blended average accidental death rate per 100,000 people in Rhode Island, Minnesota, and the other 48 states, both pre-enactment and post-enactment.\footnote{The average was calculated for the 5 years before the enactment and the 6 years after the enactment for Minnesota, and the 6 years before the enactment and the 5 years after the enactment for Rhode Island. The year in which the statute was enacted (1983 for Minnesota and 1984 for Rhode Island) was excluded from consideration.}

<table>
<thead>
<tr>
<th>State</th>
<th>Pre-enact</th>
<th>Post-enact</th>
<th>Increase</th>
<th>z value</th>
<th>p value</th>
</tr>
</thead>
<tbody>
<tr>
<td>MN</td>
<td>0.065</td>
<td>0.072</td>
<td>0.007</td>
<td>0.379</td>
<td>.70</td>
</tr>
<tr>
<td>R.I.</td>
<td>0.044</td>
<td>0.134</td>
<td>0.089</td>
<td>1.65</td>
<td>.098</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>State</th>
<th>Pre-enact</th>
<th>Post-enact</th>
<th>Decrease</th>
<th>S.D</th>
</tr>
</thead>
<tbody>
<tr>
<td>MN</td>
<td>43.64</td>
<td>35.50</td>
<td>8.14</td>
<td>N/A</td>
</tr>
<tr>
<td>48 states</td>
<td>49.78</td>
<td>41.38</td>
<td>8.4</td>
<td>5.83</td>
</tr>
<tr>
<td>R.I.</td>
<td>30.97</td>
<td>29.92</td>
<td>1.05</td>
<td>N/A</td>
</tr>
<tr>
<td>48 states</td>
<td>48.6</td>
<td>41.30</td>
<td>7.31</td>
<td>5.71</td>
</tr>
</tbody>
</table>

As Table 6 reflects, although per capita accidental deaths declined in Minnesota and Rhode Island during the time periods in question, they also declined in the 48 states that did not enact a duty to rescue. In Rhode Island, the decline in per capita accidental deaths (1.05 deaths per 100,000 people) was less than the mean decline in the other 48 states (7.31 deaths per 100,000 people), but the variance in the other 48 states was substantial, with a standard deviation of 5.71. Per capita accidental death rates in three states (Arkansas, Delaware, and South Carolina) had smaller changes than in Rhode Island, with the death rate actually increasing in two of those states (Arkansas and Delaware). Finally, there is a “floor effect” to be considered: Rhode Island had the lowest accidental death rate in the nation pre-enactment.
(and the second lowest post-enactment), so there was effectively little room for improvement in the accidental death rate.

Figure 9 displays the annual number of non-risky rescues per 100,000 population in all 50 states from 1991 to 2001, plotted against the number of accidental deaths per 100,000 population in each state.
Interestingly, the three states that have enacted a duty to rescue have fewer non-risky rescues per 100,000 population than is the average for all states, particularly those that are geographically proximate with comparable numbers of accidental deaths.

Of course, state-by-state examination of the rate of accidental death is a decidedly indirect and imperfect way of assessing the potential impact of imposing a duty to rescue. 82 If the rate of non-rescue is small, even a substantial increase in the probability of rescue is unlikely to show up in the accidental death statistics. On the other hand, this argument necessarily concedes the rarity of non-rescues, making it difficult to see what is left to argue about from a social policy perspective.

To summarize, enacting a duty to rescue does not appear to materially increase the number of non-risky rescues or lower the number of accidental deaths, most likely because there were no non-risky non-rescues in those states to begin with. At the same time, the number of non-risky rescues did not decrease, and the number of accidental deaths did not increase. Thus, the predictions of both social meaning scholars (likely increase in rescues and decrease in accidental deaths) and law and economics scholars (likely decrease in rescues and increase in accidental deaths) are each inconsistent with the results of this analysis. Stated bluntly, the available data provides no indication that imposing a duty to rescue has any effect whatsoever on the impetus to perform a non-risky rescue.

VII. Validity of the Results

The obvious objection to the results presented in Parts III–VI is validity. Relying on reported incidents to identify rescues and non-rescues creates an obvious problem of selection bias. The selection bias is compounded by its asymmetry: Part IV identifies numerous entities that recognize rescue, but no comparable entities exist to recognize non-rescue. Selection bias can also work in both directions: one has to be concerned about under-identifying and

82. Professor Levmore makes the point more concrete:
   Indeed, the only appealing example of identifiable rescue spots and, therefore, of a counterproductive activity-level effect concerns beaches, but one can barely imagine evening strolls on the beach decreasing if potential strollers feared that in the event of a drowning they would be identified as having passed within earshot of the victim. It is difficult to imagine potential rescuers identifying and avoiding other such prime rescue spots and more difficult still to imagine their continuing to frequent such spots but somehow putting less effort into rescue missions that arise because of the imposition of penalties for nonrescue. In short, both arguments concerning the counterproductive aspects of sticks for nonrescue build on the questionable proposition that there can be a substantial activity-level effect, or that rescue spots can be identified and will be avoided.

Levmore, supra note 17, at 890.
over-identifying both non-rescue and rescue. Finally, there is the problem of representativeness. Each of these issues is considered in turn.

A. Selection Bias: Underreporting of Non-rescue

The problem of selection bias leading to underreporting of non-rescues is fairly straightforward. If there were no witnesses and the non-rescuer kept his mouth shut, or if there were witnesses but they kept their mouths shut, such non-risky non-rescues would never become known to the public. Alternatively, even if cases of non-risky non-rescue become known to the public, the strategies employed to identify such cases may have missed them. For example, if prior scholarship, case law, or news media accounts failed to identify such cases, if the search terms employed were unduly restrictive, if media accounts simply failed to provide sufficient detail, or if the relevant sources were not included in Lexis or Westlaw, they would not be counted as a non-risky non-rescue.

Subjective beliefs and community expectations matter as well in assessing the problem of underreporting of non-rescue. A person who does not perceive that a rescue is necessary or views the rescue as unnecessarily risky will not believe their inaction constitutes a non-risky non-rescue. Some examples help illustrate the point. Does the failure to call police or

83. Non-rescuers sometimes “confess” because they feel guilty and embarrassed, even though there are no criminal or civil sanctions for non-rescue. See Robertson, supra note 54 (reporting that a non-rescuer “initially felt a lot of guilt [and that] friends and specialists [he] sought for advice insist the guilt he initially felt was normal, but he couldn’t blame himself for the elderly man’s death”). A recent posting on DemocraticUnderground.com reflects a similar dynamic. The poster (demgurl) was on a highway off-ramp and did not stop to assist a woman with a child in her arms next to a broken-down minivan because the minivan had a Bush bumper sticker on it. The posting reflected that she felt guilty about not stopping to see whether they needed assistance. The posting precipitated a lengthy thread, with some people vigorously defending her actions but many others condemning them. Posting of demgurl to Democratic Underground, http://www.democraticunderground.com/discuss/duboard.php?az=view_all&address=104x4582698 (Sept. 2, 2005, 13:01 EST). Another blog cited the original posting as evidence of “Bush Derangement Syndrome.” Posting of Katheryn Jean Lopez to The Corner, http://corner.nationalreview.com/05_08_28_corner-archive.asp?075247 (Sept. 3, 2005, 13:35 EST). Demgurl ultimately posted a follow-up indicating that she believed she was “100% wrong.” Posting of demgurl to Democratic Underground, http://www.democraticunderground.com/discuss/duboard.php?az=view_all&address=104x4582698 (Sept. 2, 2005, 14:40 EST).

Psychologists who have studied the bystander effect have observed guilt, shame, and anxiety among study participants. See John M. Darley & Bibb Latane, Bystander Intervention in Emergencies: Diffusion of Responsibility, 8 J. PERSONALITY & SOC. PSYCHOL. 377, 382 (1968) (finding that subjects who did not respond to an emergency “showed physical signs of nervousness . . . had trembling hands and sweating palms . . . [and] worried about the guilt and shame they would feel if they did not help the person in distress”).

A non-rescuer that can psychologically distance himself from the victim can avoid such feelings if the words of David Cash (non-rescue #7 in Appendix A, infra Part XI) are any indication. See Lynda Gorov, Outrage Follows Cold Reply to Killing, BOSTON GLOBE, Aug. 7, 1998, at A1 (“‘It’s a very tragic event, OK,’” Cash said on the radio. ‘‘But the simple fact remains I do not know this little girl. I do not know starving children in Panama’’”).
personally intervene in response to the sounds of an argument count as a non-rescue? What about the failure to call police or personally intervene in response to a scream coming from a dark alley or the house next door? Does the answer vary depending on the crime rate in the neighborhood and the number of individuals on the street? Does the answer vary depending on the size and strength of the potential rescuer?

These problems are compounded by the reporting asymmetry noted previously; there is no Seinfeld Award for Craven Non-rescue. To summarize, it is certainly possible that particular instances of non-rescue never became publicly known or fell outside the search methodology outlined in Part III.

B. Selection Bias: Overreporting of Non-rescues

Non-rescues can also be overreported. In other words, circumstances that are not actually non-rescues are deemed to be non-rescues. Several of the instances of non-risky non-rescue in Table 1 are questionable because preliminary reports that bystanders did nothing were false (Cases 1, 2, 3, 6, 9, 11, and 14); or the victim was almost certainly dead and nothing could have been done to assist him (Case 16). A related problem involves assessing the risk of the non-rescue. As noted previously, an overwhelming majority of the proven cases of non-rescue involve criminal conduct, where direct intervention is particularly likely to be dangerous. A strict interpretation of non-risky non-rescue would result in a far smaller number of verifiable non-risky non-rescues (0.8 per year, instead of 1.6), and associated deaths (0.5 per year, instead of 1.1).

A final complexity in assessing overreporting of non-rescues is determining the minimum amount of time that must pass before the failure to assist counts as a non-rescue. For example, according to press accounts, the case of Kitty Genovese involved a delay of approximately 30 minutes, but Case 14 involved a delay of less than a minute, and Case 16 involved a delay of 2 to 3 minutes. Reasonable people could disagree about whether these latter cases constitute non-rescues—particularly given their facts.

---

84. In the final episode of Seinfeld, the four main characters witnessed a carjacking and made fun of the victim for being fat. They were charged with violating a statute that required people to help or assist anyone in danger as long as it was reasonable to do so. The episode took place in Massachusetts, which does not have a duty to rescue. Seinfeld: The Finale (Part 1) (NBC television broadcast May 14, 1998). Professor Paul Mahoney suggested, in the alternative, the “Selfish Bastard’s Club.” Conversation with Professor Paul Mahoney, University of Virginia School of Law (Jan. 8, 2003).


86. Research uncovered several additional cases in which it was unclear or disputed how quickly someone intervened to prevent a crime. See Nicole Brodeur, Response to a Victim, RALEIGH NEWS-OBSERVER, Apr. 19, 1998, at B1 (reporting conflicting stories on how quickly people assisted the victim of a carjacking); Joyce Price, Drivers in N.Y. Gawk at Tot’s Rape, WASH. TIMES, July 17, 1991, at A1 (reporting how 20 drivers on the expressway in New York did not
C. Selection Bias: Underreporting of Rescues

The search methodology employed in Part V is likely to miss many rescues. The totals reported in this study only include award-granting entities for which sufficient historical and background information was available. Numerous additional entities were identified that give out such awards but were excluded from the analysis because they refused access to their records or because insufficient information was available to ensure reliability of the results.87 If the awards issued by these organizations were included, the number of verifiable non-risky rescues would be substantially higher, with a modest increase in the number of verifiable risky rescues.

In like fashion, the totals reported in Table 3 exclude numerous rescues that did not meet the selection criteria of award-granting entities. For example, as detailed in Appendix B, Carnegie Commission staff perform an initial screening of newspaper stories they receive from a clipping service and exclude cases of civilian rescue that do not come close to meeting their standards for risk. Such incidents total approximately 1000 additional rescues per year.

An additional factor contributing to underreporting of rescue is that certain forms of conduct that might qualify as a non-risky non-rescue (e.g., stopping someone from stepping out into traffic, calling 911 after witnessing an auto accident, stopping a toddler from wandering away from an inattentive parent) are sufficiently trivial that no one would think the rescuer deserved an award. For example, although awards were given by the Heimlich Institute and various employers to individuals that performed the Heimlich maneuver on a choking person, there is considerable evidence that hundreds of these incidents occur every year but are never recognized with an award.88

Underreporting of rescue is also compounded by the reluctance of many rescuers to be recognized for their actions. News accounts of risky rescues indicate that many rescuers shun the spotlight.89 Such reluctance to seek

87. See infra notes 277–99 and accompanying text.

88. A Lexis search of the phrase “Heimlich Maneuver and choking” in the News, Most Recent Two Years (English, Full Text) database found 730 results. Not all of these reports involved U.S. newspapers, incidents in which the Heimlich maneuver was performed, or instances in which the Heimlich maneuver was performed in the United States.

89. See, e.g., Haynes, supra note 51, at 33A (“Most [rescuers] are uncomfortable with the attention that comes with being a hero. Even years after the fact, they are often reluctant to talk about their exploits.”); Kruh, supra note 47, at 1F (citing research that such reticence is common, and recounting facts of one such case); Joel Mills, Heroes Rush to Help Friends and Neighbors;
recognition is presumably even more pronounced with conduct that constitutes a non-risky rescue. For all of these reasons, it seems probable that many instances of rescue never became known and accordingly could not be identified using the strategies outlined in Part III.

Finally, it is important to recognize that a focus on awards and documented rescues necessarily excludes a broad range of conduct where individuals voluntarily provide assistance to one another or are prepared to do so. Millions of Americans are volunteer firefighters, participate in search-and-rescue teams, belong to the Coast Guard auxiliary, volunteer to participate in disaster relief for the American Red Cross, donate blood, have been screened to be a blood stem cell donor, assist in providing police services, and the like. Millions more have voluntarily received training in first aid, CPR, and lifesaving. Such conduct may not receive public recognition and awards, but a fair picture of the behavior of ordinary Americans should take account of such conduct.

Three Teens will be Honored Today for Good Deeds, LEWISTON MORNING TRIB. (Idaho), Dec. 29, 2005, at 1C (reporting that one rescuer felt uncomfortable when other people referred to him as a hero).


91. The Coast Guard auxiliary has more than 33,000 members, who volunteer more than 2 million hours per year. United States Coast Guard Auxiliary Accomplishments, http://www.cgaux.org/cgauxweb/public/tbjoinaux1.shtml.

92. National Marrow Donors Program, http://www.marrow.org/NMDP/about_mmdp_idx.html (claiming that over 5.5 million Americans have been screened and agreed to donate marrow or blood cells to any patient, anywhere in the world).

93. Volunteers in Police Services, http://www.policevolunteers.org/ (noting that more than 82,000 individuals have registered with VIPS).

94. American Red Cross, Our 2004 Report to the American People, http://www.redcross.org/pubs/car04/A501_04ARinsert.pdf (estimating that in 2004, the American Red Cross trained 11 million people in life saving skills such as first aid, CPR, water safety, and the use of automated external defibrillators). The Save A Life Foundation has trained more than a million children in CPR and first aid. http://www.salf.org/. Research indicates that bystander CPR is a critical factor in ensuring the survival of those who suffer out-of-hospital cardiac arrest, particularly as portable automatic defibrillators have become more widely available. See E.J. Gallagher et al., Effectiveness of Bystander Cardiopulmonary Resuscitation and Survival Following Out-of-Hospital Cardiac Arrest, 274 JAMA 1922, 1922 (1995) (finding that effective bystander CPR dramatically improves the likelihood of survival); Samantha R. Hauff et al., Factors Impeding Dispatcher-Assisted Telephone Cardiopulmonary Resuscitation, 42 ANNALS EMERGENCY MED. 731, 731 (2003) (finding that 59% of sudden cardiac arrest victims received CPR from bystanders and that the risk of disease transmission or liability did not impede bystanders’ willingness to perform CPR); Public Access Defibrillation Trial Investigators, Public-Access Defibrillation and Survival After Out-of-Hospital Cardiac Arrest, 351 NEW ENGLAND J. MED. 637, 637 (2004) (finding that public access defibrillation can increase the rate of CPR and reduce the time between cardiac arrest and defibrillation); Ian G. Stiell et al., Advanced Cardiac Life Support in Out-of-Hospital Cardiac Arrest, 351 NEW ENGLAND J. MED. 647, 648 (2004) (finding that early CPR by bystanders and rapid defibrillation by firefighters was critical in maximizing survival rates); see also Robert Davis, Only Strong Leaders Can Overhaul EMS, USA TODAY, May 20, 2005, available at http://www.usatoday.com/news/nation/ems-main.htm (noting that Seattle has one of the highest bystander “CPR rates” in the nation because it aggressively trains citizens to perform CPR).
D. Selection Bias: Overreporting of Rescues

Although overreporting of rescues is possible, it is unlikely to be a significant problem given the methodology employed in this study. The process for nominating and investigating rescues before awards are made (and the large number of individuals that were turned down for certain awards) makes it relatively unlikely that there is a serious problem with overreporting. Indeed, a conservative estimate is that the analysis excluded several thousand reported rescues each year because of inadequate documentation.

There is the possibility of “doublecounting” rescues because the same conduct can qualify for multiple awards. Thus, a member of the Boy Scouts who used Red Cross training to save a life could receive awards from both the Red Cross and the Boy Scouts. Although such doublecounting is possible, the underlying documentation that was reviewed indicates that it is exceedingly rare and unlikely to involve more than a handful of rescues per year.

E. Summary

Selection bias complicates interpretation of the results presented in this article. It is likely that there is underreporting of both rescues and non-rescues, but the actual magnitude of such underreporting cannot be quantified. At the same time, the number of verifiable instances of rescue exceeds the number of verifiable instances of non-rescue by approximately 740:1, and that ratio is based on multiple years and multiple independent data sources. It seems unlikely that the underreporting ratio for non-rescues is so much larger than the underreporting ratio for rescues to overcome this huge disparity in the number of verified cases.

The results presented in this article do not allow one to reach firm conclusions as to the actual frequency of rescue and non-rescue in the United States because there is insufficient evidence that the studied sample of rescuers and non-rescuers is representative of the general population. However, the results convincingly demonstrate that documented cases of rescue, both risky and non-risky, overwhelmingly outnumber documented cases of non-risky non-rescue. This consistent finding is drawn from numerous independent data sources, each using its own strategies for identifying the nominees, investigating the facts, and making the decisions as to which individuals deserve recognition.

---

95. For example, the Carnegie Hero Fund Commission starts with a pool of approximately 2,500 news articles and nominations per year. Telephone Interview with Walter Rutkowski, Executive Director, Carnegie Hero Fund Commission (April 2001). It closely evaluates 800–1,000 nominations and gives approximately 90–100 awards each year. Steve Levin, Carnegie’s 100 Years of Heroes, PITT. POST-GAZETTE, Oct. 3, 2004, at A1.
VIII. Discussion

A. Legal Scholarship

How is it that the no-duty rule has been featured so prominently in legal scholarship but so little in the real world? Figure 10, which provides a frequency distribution of the law review articles written every decade for the last 50 years on the no-duty rule, provides a starting point for analysis of this puzzle.

![Figure 10](image)

A simple comparison of Table 1 and Figure 10 makes clear that the number of articles written each year on the no-duty rule substantially exceeds the number of non-rescues during the same time period. Even more remarkably, all of these articles rely on the same handful of anecdotes of non-rescue—even when they even bother to mention particular instances of non-rescue. These simple facts have escaped mention in all previous scholarship on the duty to rescue.

How did this state of affairs come about? Several possibilities suggest themselves. Legal academics are particularly prone to “perfectionitis.” Any deviation from absolute perfection in the performance of a system is typically taken as a license to upend the entire system. 96 Worse still, when things are working tolerably well, they are, by definition, not reducible to salient

anecdotes, and so the (more than) tolerable performance of the system never registers in the (exclusively anecdotal) scheme of things.97

The selection and socialization processes that produce lawyers and law professors, along with the incentives under which these professions operate, also have a substantial influence on the type of legal scholarship that is generated.98 Professor Rosenberg neatly stated the problem (along with its causes and consequences) at a symposium on civil procedure:

The tendency of legally trained minds to prefer thinking to counting is legendary. So is the lawyer’s preference for learning by watching for the vivid case rather than tabulating the mine-run cases. The problem is not that watching this case or that is useless. A dramatic case or anecdote may be more informative and more memorable than a tubful of printouts. But the rub is that good anecdotes do not care if they are not representative; they can be badly misleading if generalized.99

Finally, there is a well-known fascination of law professors with hypothetical examples and intellectual puzzles. In combination, these elements result in an echo chamber of anecdata driven scholarship, with each author convincing himself that there is a problem based on the number of articles criticizing the no-duty rule that have preceded his efforts.100

B. The Perils of Anecdata

Anecdotes offer a highly unreliable basis for policymaking and scholarship. The difficulties are usefully analyzed in terms of the truthfulness and typicality of such anecdotes and the dynamics of argument by anecdote.

1. Truthfulness.—People lie. When they are not affirmatively lying they often shade the truth, downplaying some facts and emphasizing others to enhance the persuasiveness of the story they are telling. As such, context, uncomfortable facts, and the adverse consequences associated with proffered reforms are likely to be omitted entirely from anec-data.101 This ability to

97. A comparative institutional analysis helps moderate these academic tendencies because it makes it clear that “[b]ad is often best because it is better than the available alternatives.” Neil K. Komesar, Imperfect Alternatives: Choosing Institutions in Law, Economics, and Public Policy 204 (1994).


use anec-data to load the evidentiary dice suggests that such “evidence” should be approached with considerable skepticism—and the more egregious the described conduct, the greater the degree of skepticism required.

Heightened skepticism is also required because such anecdotes do not emerge into public view at random or by accident. Instead, they are sought out, packaged, and spun by policy entrepreneurs and advocacy groups who use them to further their agendas. When the only source of information we have on an incident is someone complaining about the conduct in question, it is fair to wonder whether we are getting the truth, let alone “the whole truth and nothing but the truth.” The result is that anecdotes frequently misframe, if not completely misrepresent, the costs and benefits of the status quo and its alternatives. It is no accident that the legal system generally declines to take action on the say-so of one party and looks with considerable disfavor on limitations on the right to confrontation and cross-examination. These questions about truthfulness call into serious question the utility of anecdotal evidence as a basis for policymaking and scholarship. Thus, examples of non-rescue (cell 1) are insufficient, standing alone, to even document the existence of the problem they purport to identify.

2. Typicality.—Scrupulously accurate and complete anecdotes can still be atypical. Atypical (or unrepresentative) anecdotes can lead to the adoption of policies that make the underlying problem worse or cause other unintended consequences. The problem was nicely framed by Professor Saks:

Even if true and accurate, anecdotes contribute little to developing a meaningful picture of the situation about which we are concerned. It

---

102. See Daniel E. Koshland, Jr., Scare of the Week, SCIENCE, Apr. 7, 1989, at 9 (“Each group convinces itself that its worthy goals justify oversimplification to an ‘ignorant’ public.”).

103. See Fuentes v. Shevin, 407 U.S. 67, 83 (1972) (“Because of the understandable, self-interested fallibility of litigants, a court does not decide a dispute until it has had an opportunity to hear both sides—and does not generally take even tentative action until it has itself examined the support for the plaintiff’s position.”).

104. See Coy v. Iowa, 487 U.S. 1011, 1016, 1019–20 (1994) (“[T]he Confrontation Clause guarantees the defendant a face-to-face meeting with witnesses appearing before the trier of fact . . . . It is always more difficult to tell a lie about a person ‘to his face’ than ‘behind his back.’”). One notable evidence treatise directs:

If the calling party’s opponents cannot subject the witness to cross-examination for reasons that are not his fault, some remedy is necessary. . . . If cross-examination is permanently blocked, the direct testimony usually should be stricken in both civil and criminal cases, or a mistrial declared if the direct testimony is critical and striking it would not be effective.


105. As Part VII explains in greater detail, several of the standard non-rescue anecdotes do not bear close examination. This problem is not unique to this area.
makes a difference if for every ten anecdotes in which an undeserving plaintiff bankrupts an innocent defendant, one, ten, one hundred, or one thousand equal and opposite injustices are done to innocent plaintiffs. The proportion of cases that results in one or the other error, and the ratio of one kind of error to the other, ought to be of greater interest to serious policy-makers than a handful of anecdotes on either side of the issue. Reforms are intended to change that ratio and the tens of thousands of anecdotes the ratio summarizes.106

Absent proof of typicality, a single anecdote of non-rescue could be just that: singular. Even if a single anecdote of non-rescue is representative of a larger reality, one must know how frequent that larger reality actually is before deciding what, if anything, to do about it.107

3. **Dynamics of Argument by Anecdote.**—Anecdotes are used because they are effective persuasive tools, particularly for creating mass support for a policy proposal.108 The more compelling the anecdote, the more likely it is to be credited as truthful and typical, whether it is or not, and anecdotes are at their most compelling when they appeal to our passions and prejudices.109 Argument by anecdote also worsens the tendency in policy debates to privilege identifiable lives over statistical lives—hardly a recipe for sensible and cost-effective policies.110 Indeed, even if an anecdote is highly

---


107. Judge Posner writes:

> The significance of a story of oppressiveness depends on its representativeness. In a nation of more than a quarter of a billion people allblanketed by the electronic media, every ugly thing that can happen will happen and will eventually become known; to evaluate policies for dealing with the ugliness we must know its frequency, a question that is in the domain of social sciences rather than of narrative... Even if all these stories are true... frequency is an essential issue in deciding what if anything the law should try to do about the suffering that the stories narrate.


108. *See* Jill Lawrence, *When Studies Don’t Sway, Bring on the Victims*, L.A. TIMES, July 15, 1990, at A18 (“Capitol Hill hearings are often characterized by the relentless recitation of government statistics, the polite drone of think tank researchers, the familiar arguments of professional lobbyists. Even the most sensitive lawmakers can become numbed. That’s when it’s time to bring on the victims.”).


110. *See* Deborah A. Small & George Lowenstein, *Helping a Victim or Helping the Victim: Altruism and Identifiability*, 26 J. RISK & UNCERTAINTY 5, 9-10 (2003) (providing experimental evidence confirming that identified victims fare better than unidentified victims). Havighurst et al. contrast the willingness of society to sacrifice identifiable lives versus statistical lives:

It is difficult to improve significantly on the more commonplace observations that human beings cannot empathize with faceless abstractions and that “squeaking wheels”—the complaints of known victims, such as the very vigorous lobbying of kidney-disease patients—not the silence of statistical unknowns will get the
representative, other considerations may dictate a policy diametrically opposed to the one suggested by the anecdote.111

4. *The Proof Is in the Pudding.*—People know Kitty Genovese’s name because the facts still resonate more than forty years after Genovese’s death resulted in a front-page article in the New York Times.112 Yet, other more representative anecdotes were readily available. Consider the following incident, which occurred in New York City one week before Kitty Genovese’s death:

Marsha S. Cozier saved Lillian R. Robinson from being killed by a train, New York, New York, March 5, 1964. Miss Robinson, 26, fell from a subway station platform onto a track on which a train, approaching at 20 m.p.h., was 150 feet away. Badly dazed, she lay face upward with her leg and arm over one of the rails. At the other side of the track there was a third rail, which carried electricity. The motorman applied the emergency brakes. Mrs. Cozier, 28, counter clerk, jumped downward four feet from the platform onto the track, spraining her ankle. The train then was within 75 feet of her and approaching at decreasing speed. Dropping to her knees between the rails, Mrs. Cozier took hold of Miss Robinson’s clothing with one hand and her leg with the other and immediately lunged with her into a drainage gutter, which was 20 inches wide and four inches deep, at the center of the track. Two cars of the train passed over them, the motors beneath each car being only 14 inches above the bottom of the gutter. The train stopped with the front end 140 feet beyond them. They crawled 10 feet to an opening between the cars and were aided from the track. Neither Miss Robinson nor Mrs. Cozier was seriously injured.113

Mrs. Cozier’s heroism was recounted in a single short news article that appeared on page 33 of the New York Times on March 6, 1964, seven days before Kitty Genovese’s death.114 Mrs. Cozier’s heroism was not mentioned governmental grease. Spending “millions of dollars to save a fool who has chosen to row across the Atlantic has external benefits” lacking from highway safety spending.

Clark C. Havighurst et al., *Strategies in Underwriting the Costs of Catastrophic Disease*, 40 LAW & CONTEMP. PROBS. 122, 141 n.81 (1976) (citation omitted).

111. *See* David A. Hyman, *Do Good Stories Make for Good Policy*, 25 J. HEALTH POL. POL’Y & L. 1149, 1153 (2000) (presenting a narrative that suggests that third-party coverage of medical expenses should be unacceptable as a matter of public policy, but then pointing out that other considerations, when taken into account, dictate the opposite policy).


114. *Alert Friend Saves Woman from Death Beneath IND Train*, N.Y. TIMES, Mar. 6, 1964, at 33. Ironically, the New York Times identified Mrs. Cozier as the victim, and Miss Robinson as the rescuer.
in the other six newspapers published in New York city (the New York Post, New York World-Telegram/Sun, New York Herald Tribune, New York Journal and American, New York Newsday (Nassau) and New York Amsterdam News). This coverage disparity is not unique to the New York city newspapers. Table 7 provides the results of various online searches quantifying the point.

<table>
<thead>
<tr>
<th>Search Tool</th>
<th>Marsha Cozier</th>
<th>Kitty Genovese</th>
</tr>
</thead>
<tbody>
<tr>
<td>Google</td>
<td>0</td>
<td>71,900</td>
</tr>
<tr>
<td>Lexis</td>
<td>0</td>
<td>85</td>
</tr>
<tr>
<td>(Law Review Citations)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Westlaw</td>
<td>0</td>
<td>93</td>
</tr>
<tr>
<td>(Law Review Citations)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

It is clear that Mrs. Cozier’s heroism is much more representative of the real world of rescue and non-rescue than the case of Kitty Genovese’s neighbors. Both are anecdotes, but one reflects a larger reality, while the other dramatically distorts it. It is unclear whether the debate over the duty to rescue would have played out differently if Mrs. Cozier’s heroism had received the same news coverage as the circumstances surrounding Kitty Genovese’s death—but the decision to ignore the former and popularize the latter can’t have helped.

C. Psychology/Sociology/Evolutionary Biology and Non-rescue

Rescue and non-rescue have been analyzed extensively by psychologists and sociologists, using laboratory experiments and real-world observational studies. These experiments have elegantly demonstrated that, under the “right” circumstances, a majority of Americans will not provide assistance to someone in need. See generally Bibb Latane & John M. Darley, The Unresponsive Bystander: Why Doesn’t He Help? (1970) (summarizing experimental research finding that a variety of factors might affect the intervention process); Darley & Latane, supra note 83, at 377–78 (arguing that the explanation for bystander inaction may lie more in the bystander’s response to other observers than in his indifference to the victim); John M. Darley, Bystander Phenomenon, in 1 Encyclopedia of Psychology 493–95 (Alan E. Kazdin ed., 2000) (explaining that 3 psychological processes are critical for producing bystander inaction); John M. Darley et al., Do Groups Always Inhibit Individuals’ Responses to Potential Emergencies?, 26 J. Personality & Soc. Psychol. 395 (1973); John M. Darley & C. Daniel Batson, “From Jerusalem to Jericho”: A Study of Situational and Dispositional Variables in Helping Behavior, 27 J. Personality & Soc. Psychol. 100 (1973); Ted Huston et al., Bystander Intervention into Crime: A Study Based on Naturally Occurring Episodes, 44 Soc. Psychol. Q. 14, 21–22 (1981) (finding perceived competency much more important than gender or personal characteristics in determining intervention); Mary Laner et al., Bystander Attitudes Toward Victims of Violence: Who’s Worth
the Kitty Genovese tragedy, found that the likelihood of rescue was significantly affected by the number of witnesses and the ambiguity of the situation. At first glance it is difficult to reconcile the findings of these psychological studies with the results presented in this article. How can documented rescues outnumber documented non-rescues by 800:1 when a majority of Americans have been shown to be non-rescuers?

In fact, these findings are readily reconcilable. First, even if a majority of Americans are non-rescuers under certain carefully defined conditions, it does not follow that those carefully defined conditions actually occur with any particular frequency in the real world. Although the need for rescue is sometimes ambiguous, it is more often perfectly clear. Second, unless willingness to rescue declines more than inversely with group size, larger groups actually increase the probability that there will be at least one individual willing to perform a rescue. Third, these psychological factors are far from dispositive; even with highly ambiguous conditions and large groups, approximately 30% of subjects are still willing to rescue.

Psychology does provide a reason for why cases of non-rescue are so salient when they do occur. Human beings get much more upset about a negative event if a readily available “counterfactual” would have prevented the bad outcome. This cognitive phenomenon, known as “counterfactual thinking,” has been demonstrated in numerous settings. People often have
difficulty in resisting counterfactual reasoning when learning of a misfortune. Non-risky non-rescues are particularly susceptible to such reasoning because the atmospherics of a non-rescue are generally loaded with precursors to “if only” reasoning. Indeed, if they were not, the circumstances would probably not have counted as a non-risky non-rescue in the first instance.

There is also a substantial literature from evolutionary psychology indicating that risky altruism (kin-selected, reciprocal and from sexual selection) can be adaptive. Evolutionary psychology has attracted considerable attention from legal scholars in recent years. The duty to rescue is an obvious area for the application of such work. In the context of the results reported in this article, kin-selected altruism appears to be a more important factor in rescues involving female rescuers, and reciprocal and sex-selected altruism appear to be more important factors in rescues involving male rescuers.

Finally, a separate literature from social psychology and sociology makes it clear that in mass disasters, rescue by ordinary civilians is the rule. Professor Glass summarized the literature as follows:

Fifty years of research on floods, hurricanes, earthquakes, fires and similar “mass casualty events” shows clearly that disasters are more orderly, more predictable and more civil than the movies would lead us to believe.

Isits Alternatives, 93 PSYCHOL. REV. 136 (1986) (presenting the idea that norm construction occurs post hoc, based on comparison of an event with possible alternatives); Daniel Kahneman & Amos Tversky, The Simulation Heuristic, in JUDGMENT UNDER UNCERTAINTY: HEURISTICS AND BIASES 201 (Daniel Kahneman et al. eds., 1982) (suggesting that the ease with which a person can mentally simulate an event is used to judge the propensity of that event to actually occur); Dale T. Miller & William Turnbull, The Counterfactual Fallacy: Confusing What Might Have Been with What Ought to Have Been, 4 SOC. JUST. RES. 1, 2 (1990) (theorizing that counterfactual thinking reflects a cognitive fallacy). I am indebted to Lee Fennell for calling my attention to this literature.


121. See Bailey Kuklin, Peril Invites Rescue: An Evolutionary Perspective (Nov. 15, 2005) (unpublished manuscript, on file with author) (arguing that legal doctrine regarding rescue should take account of the insights of evolutionary psychology).

122. See Thomas A. Glass, Understanding Public Response to Disasters, 116 PUB. HEALTH REP. (SUPPLEMENT) 69, 71 (2001) (“What we saw repeatedly in disasters was that victims formed spontaneous groups that have roles, rules, leaders, and a division of labor. This is the phenomenon of emergent collective behavior talked about extensively in the literature on the social science side.”); see also FACING THE UNEXPECTED: DISASTER PREPAREDNESS AND RESPONSE IN THE UNITED STATES 106–20 (Kathleen J. Tierney et al. eds., 2001); Benigno E. Aguirre et al., A Test of the Emergent Norm Theory of Collective Behavior, 13 SOC. F. 301 (1998).
In most, an awkward and spontaneous order springs forth as victims organize resourcefully to stay alive and regain safety.

The real heroes are the ordinary citizens at the immediate scene, who rescue the majority of their fellow citizens, transport the majority of the injured and demonstrate exceptional resourcefulness and cooperation.

. . . These many acts of spontaneous heroism are seldom recognized because reporters and photographers arrive on the scene when the policemen, firemen[,] and paramedics do.

Most of what makes a difference in disasters is never captured by the media, which focus understandably on the fire chief, the federal official[,] or the hospital spokesmen, most of whom were in bed when the height of the drama played out.123 These voluntary responses are most important when professional rescuers are unavailable—precisely the circumstances under which the debate over a duty to rescue has played out.124 Thus, far from supporting the imposition of a duty to rescue, the psychological literature actually indicates that willingness to rescue is quite robust, regardless of whatever the law might happen to say on the subject.

D. Rescue, Non-rescue, Altruism, and Social Norms

Professor Robert Ellickson titled his seminal book on the subject of social norms Order Without Law.125 As the title of this Article suggests, the United States similarly has “rescue without law.” Those who rescue receive awards and public recognition; those who fail to rescue are treated with scorn

123. Thomas A. Glass, Post-Katrina Frenzy Extraordinary Case, BALT. SUN, Sept. 18, 2005, at 1F.

124. Glass observes:
The dominant pattern is that EMS professionals tend to arrive late to multisite events, because of disruptions, communication, traffic, and other kinds of problems. Take, for example, the Nimitz Freeway collapse during the Loma Prieta earthquake. . . . There were about 150 people on the Nimitz Freeway. About 50 people were killed instantly or relatively quickly; about 50 people walked away from the scene on their own; and about 50 were rescued. Of those 50 who were rescued, 49 were rescued by lay bystanders, workers in an industrial facility below the Nimitz Freeway. These people did amazing things such as making backboards out of road signs. Then they waited several hours for EMS to finally arrive. You may remember that one person who was excavated by EMS. It was widely televised by CNN. However, of course, by the time the EMS arrived the majority of people had been rescued.

Glass, supra note 122, at 72.

125. ROBERT C. ELICKSON, ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES (1994). In this book, Professor Ellickson describes a number of situations that demonstrate the “pervasiveness of order without law” to illustrate his contention that social norms often supplement and even preempt state-sponsored efforts to establish order in society. Id. at 4–5.
and disdain. 126 Are these patterns the result of social norms or something else? How do such patterns develop when the law not only does not require rescue but actually creates affirmative disincentives to doing so? Might the imposition of legal obligations crowd out such behavior?127

Complete consideration of these issues lies beyond the scope of this Article, but some preliminary observations are possible. Rescue without law is unlikely to be the result of social norms because these patterns developed in the teeth of laws that encourage the opposite behavior, they involve strangers who are unlikely to ever meet again,128 and their development and maintenance do not fit easily into either of the two main theories of social norms.129 Instead, research into behavioral psychology suggests that rescue

126. Many of the articles decrying the no-duty doctrine comment on this public scorn and use this observation as the basis for their arguments to impose a duty to rescue. One article explored the extent to which this scorn could be leveraged into sanctions in other domains and discovered considerable reluctance to do so as long as the law sanctioned the underlying conduct. See Norman J. Finkel, When Principles Collide in Hard Cases: A Commonsense Moral Analysis, 7 PSYCH. PUB. POL’Y & L. 515, 538 (2001) (finding that 52% of study participants believed that student David Cash should not be expelled from school for his non-rescue “despite universally condemning his moral failure”).

127. See Landes & Posner, supra note 31, at 124 (“Under a regime of liability for failure to rescue, it would be impossible for a rescuer to prove that he was motivated by altruism—for how could he negate the inference that he really was motivated by fear of liability?”); see also Mark A. Cohen, Norms Versus Laws: Economic Theory and the Choice of Social Institutions, in SOCIAL NORMS AND ECONOMIC INSTITUTIONS 95, 99 (Kenneth J. Koford & Jeffrey B. Miller eds., 1991) (discussing the interaction between internally motivated samaritanism and legal rules imposing liability).


129. Compare Richard H. McAdams, The Origin, Development, and Regulation of Norms, 96 Mich. L. Rev. 338, 355–57 (1997) (suggesting, through an “esteem theory,” that people shape their behaviors in order to gain the esteem of others, which can create a social norm of behavior), with ERIC POSNER, LAW AND SOCIAL NORMS 21 (2000) (suggesting that people use behavior to signal they are reliable and trustworthy trading partners). Although participating in a rescue can result in greater self-esteem and signal one’s value as a trading partner (assuming one survives), the limited time frame available for weighing the costs and benefits of rescue make it hard to see how the prevalence of rescue could turn on such calculations, irrespective of whether one is seeking esteem or better trading partners. See Mills, supra note 88, at 1C (“I didn’t think nothing of it,” he said. ‘[The fire] didn’t look too bad, but it must’ve been because the house went up pretty fast.” (quoting an individual who rescued an 84-year-old woman from a burning building)); Mary W. Walsh, Impulse to Help Allows a Wife to Understand, N.Y. TIMES, Dec. 10, 2001, at B1:

When Harry Ramos died while trying to help an incapacitated stranger, named Victor, escape from the burning World Trade Center, the world turned him into a hero. His wife, Migdalia, was angry. She was left alone with two children, a half-built house, a six-figure mortgage, a flood of bills and questions that would not go away about why her husband put a stranger ahead of his family. [After a fire broke out at her mother’s apartment three weeks later] she found herself running into a smoke-filled stairway,
without law is most likely the result of hard-wired altruism, which induces rescue even at significant personal risk.\textsuperscript{130} As such, the presence or absence of a duty to rescue (let alone ex post awards or public recognition for rescuing) are unlikely to be material factors in whether a rescue occurs. Interestingly, Andrew Carnegie believed the same thing. Though he contributed a considerable sum of money to the Carnegie Hero Fund, he wrote: “I do not expect to stimulate or create heroism by this fund, knowing well that heroic action is impulsive, but I do believe that if the hero is injured in his bold attempt to serve or save his fellows, he and those dependent upon him should not suffer pecuniarily.”\textsuperscript{131}

In like fashion, the scorn to which non-rescuers are routinely subjected is most likely the result of a combination of counterfactual thinking and hard-wired expectations of altruistic rescue, although social norms may enter into the extent and depth of public scorn. The prospect of ex post public scorn obviously attaches a cost to non-rescue, but it seems unlikely to be a material factor in whether a particular rescue occurs or not.

A final norms-related issue is the question of why the universal public scorn of non-rescue has not resulted in statutes imposing a duty to rescue. Stated differently, if Mothers Against Drunk Driving (MADD) can change social and legal norms regarding drunk driving, why can’t norm entrepreneurs do the same thing for non-rescue?\textsuperscript{132} After all, public attitudes regarding non-rescue are far more unfavorable than they have ever been for drunk driving. Drunk drivers may be sent to prison, but they are almost never the target of mass demonstrations, nationwide press coverage, and

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{130} See KRISTEN RENWICK MONROE, THE HEART OF ALTRUISM: PERCEPTIONS OF A COMMON HUMANITY 210–13 (1996) (concluding that, for those who risked their lives to save Jewish victims from the Holocaust, such altruism appeared to be a reflex—not a choice); see also William M. Landes & Richard A. Posner, Altruism in Law and Economics, 68 AM. ECON. REV. 417, 417 (1978) (suggesting that altruism is a primary motivating factor in rescues).
\item \textsuperscript{131} History of the Carnegie Hero Fund, http://www.carnegiehero.org/fund_history.php. The inflation-adjusted present value of Carnegie’s initial endowment of $5,000,000 exceeds $100,000,000.
\item \textsuperscript{132} See Harold G. Gramsick et al., Reduction in Drunk Driving As a Response to Increased Threats of Shame, Embarrassment, and Legal Sanctions, 31 CRIMINOLOGY 41, 45 (1993) (describing how MADD was instrumental in changing community standards and morals about drunk driving); Margaret Raymond, Penumbral Crimes, 39 AM. CRIM. L. REV. 1395, 1416 n.90 (2002) (noting that the changed public perceptions of driving while intoxicated may stem from the work of MADD). On norm entrepreneurs, see Cass R. Sunstein, Social Norms and Social Roles, 96 COLUM. L. REV. 903, 909 (1996).
\end{itemize}
\end{footnotesize}
tabloid television shows, as happened with David Cash. The most likely explanation is that there simply aren’t enough cases of non-rescue to create the necessary group of concerned and committed activists and norm entrepreneurs. In the three states that have enacted a duty to rescue, there was no lobbying by concerned citizens or public pressure for such legislation. Although relatives of those who have died from a non-rescue have been known to lobby for a duty to rescue, such norm entrepreneurs are few and far between, and for that reason they have proven insufficient to the task of changing legal norms. Stated differently, the absence of any organization to speak for the victims of non-rescue is itself further evidence of the rarity of non-rescue.

When norm entrepreneurs have sought to address the problem of non-rescue, they have focused solely on legal norms (i.e., reversing the no-duty rule) and not on social norms or harm reduction. MADD, on the other hand, has been successful because it simultaneously addressed legal norms (by seeking stiffer sentences for those who drive while intoxicated and lobbying to lower the blood alcohol level required to violate the law) and social norms of harm reduction (by organizing public campaigns discouraging people from driving while intoxicated).

To summarize, although rescue is routine and viewed as normatively appropriate, rescue without law is not a social norm in the standard sense of those words.133

E. Implementation and Legal Process Issues

The debate over the duty to rescue has been carried out on a wholly theoretical plane, but the issue necessarily involves a host of wholly practical implementation and legal process problems. Should the duty to rescue be enforced by criminal penalties or through private tort litigation? If criminal penalties are appropriate, how severe should they be? How broadly should the law be cast? How risky must the rescue be to convert a “guilty bystander” into an “innocent bystander”?134 How will those enforcing the law correct for hindsight bias in making these determinations? Will the creation of affirmative duties of assistance encourage unqualified rescuers to

133. See, e.g., Strahilevitz, supra note 128, at 363–64 n.24 (“Thus, it is improper to speak of a social norm of ‘breathing’ among restaurant customers, but there may be a norm of tipping.”).

134. In the final Seinfeld episode, the defense attorney’s opening statement for the four main characters charged with non-rescue was as follows:
You know what these four people were? They were innocent bystanders. Now, you just think about that term. Innocent. Bystanders. Because that’s exactly what they were. We know they were bystanders, nobody’s disputing that. So how can a bystander be guilty? No such thing. Have you ever heard of a guilty bystander? No, because you cannot be a bystander and be guilty. Bystanders are by definition, innocent. That is the nature of bystanding. But no, they want to change nature here. They want to create a whole new animal—the guilty bystander.

undertake risky rescues or lead to broader invasions of individual liberty and second-guessing of private conduct?

These implementation and legal process issues must be factored into the equation, particularly since statutory design and implementation are imperfect arts. There is always the risk that statutes (even well-intentioned statutes) will have unforeseen costs and unintended consequences. It is worth incurring these risks if the statute promises a clear improvement on the status quo. Yet existing institutional arrangements result in approximately 740 rescues for every non-rescue, and considerable evidence indicates that the real problem is that Americans are too willing to rescue in risky circumstances. Is it really plausible that a duty to rescue statute, no matter how artfully drafted and efficiently enforced, will improve on the status quo? To be sure, no obvious adverse consequences have materialized in the three states that have imposed a quite limited duty to rescue, but are we willing to gamble that this pattern will continue in exchange for a virtually nonexistent upside?

Finally, there are institutional risks inherent in relying on the legislature to undertake the moral instruction of the citizenry through the enactment of laws. Consider the deep insight into the human condition that prompted the state of Maryland to declare jousting as its state sport and select a state anthem that refers to Abraham Lincoln as a despot in the first stanza and urges the citizens of Maryland to “spurn . . . the Northern scum” in the last stanza. Numerous attempts to change the state song to something less offensive to the dignity of the “Northern scum” have proven unsuccessful. Such examples may constitute atypical outliers, but that description applies equally well to instances of non-rescue.

135. More formally, there are always Type I and Type II errors in designing and implementing laws. A Type I error is a false positive, such as someone being prosecuted for non-rescue when their conduct does not meet the statutory requirements. A Type II error is a false-negative, when conduct that meets the statutory requirements for prosecutable non-rescue is not pursued. Both Type I and Type II errors undermine the perception that the law requiring rescue is being enforced in an evenhanded way.

136. See supra Part IV tbl.3 & notes 47–51. To be sure, it does not follow that rescuers should stop all rescues—just those where both rescuer and victim are likely to die. The efficiency of other rescues falls on a spectrum, depending on how one weights the risks of death and injury for rescuers and victims.

137. See supra Part VI.


139. Id. § 13-307. The poem on which the state song is based was intended to push Maryland into the Confederacy—not that the residents of Baltimore needed much encouragement. See William Rehnquist, Civil Liberty and the Civil War: The Indianapolis Treason Trials, 72 Ind. L.J. 927, 928–29 (1997) (recounting support for the Confederacy in Baltimore).

F. Preferences and the No-Duty Rule

The frequency of non-risky non-rescue is an important factor in deciding how urgent the problem of non-rescue actually is, but other factors are obviously material as well.141 For example, the severity of the adverse consequences that result from non-rescue and the potential adverse consequences from addressing (and not addressing) non-rescue also need to be factored into the equation. Indeed, some conduct is deemed sufficiently blameworthy that society seeks to deter it (typically through criminal sanctions) regardless of its frequency.142 Thus, personal preferences matter in determining whether anything should be done about non-rescue.

Yet the only cases of non-rescue that can be punished are those that become known, meaning that the maximum potential upside from imposing a duty to rescue must be based on the number of reported non-rescues that occur in the absence of such a duty. Worse still, there is a plausible argument that imposing a duty to rescue will actually decrease the willingness of witnesses to provide information about such circumstances.143 There are already reports of difficulties getting witnesses to assist in criminal investigations and prosecutions, and social norms discouraging “snitching.”144 Since the overwhelming majority of reported non-rescues involve criminal conduct, this consideration should be factored into the analysis.

To be sure, many law professors have used instances of non-rescue as the opening wedge for a broader set of arguments about the duties that Americans should owe one another. One can certainly believe that Americans should do more to assist one another than they currently do, but


142. See Richard Posner, Blackmail, Privacy, and Freedom of Contract, 141 U. PA. L. REV. 1817, 1841 (1993) (claiming "that blackmail is rarely prosecuted . . . . because [it] may be that it is rarely committed"). The important point is that it does not follow that blackmail should be decriminalized simply because it is rare. Indeed, it is striking that blackmail is rare against a background condition of legal prohibition while non-rescue is rare against a background condition of legal encouragement.

143. Volokh, supra note 17, at 112 (noting that in the context of tort law, “Delayed or Passive Samaritans” might be less likely to come forward and answer police questions since risk of civil liability from victim lawsuits would be great).

144. See, e.g., Adrian Walker, No Honor in Silence, BOSTON GLOBE, Dec. 19, 2005, at B1 (reporting that fear and social norms against “snitching” are factors in witness reluctance); See Christopher Heridia, T-Shirts Illustrate Divide: 'Stop Snitchin' Stymies Police Trying to Cut Crime, S.F. CHRON., Jan. 28, 2006, at B8 (reporting that fear and social norms against “snitching” are factors in witness reluctance); Tanika White, 'Stop Snitchin' Shirts Have People Talking for Different Reasons in City, BALT. SUN, Apr. 30, 2005, at 1A ("Baltimore prosecutors have said that witness intimidation hampers their efforts to convict criminals— about one-quarter of last year's gun cases, for example, were dropped because direct or perceived threats created problems with testimony.")
that case should be made based on the facts rather than on highly salient but extraordinarily unrepresentative anecdotes of non-rescue. The verifiable frequency of non-rescue and rescue simply does not support such claims. Those who believe a duty to rescue is necessary have some obligation to either come up with persuasive evidence indicating that the frequency and severity of non-rescue is appreciably higher than demonstrated in this article or explain why they are relying on atypical outliers to make their case to the general public. Alternatively, they should drop the issue of non-rescue and instead make their arguments based on the broader issues they are actually concerned about.

The broader issue, of course, is money, and how much of it we are willing to spend on other people. People starve to death, and die from lack of medical attention and shelter. Some of these people could be saved if money were spent to address their problems—but should that simple fact translate into an obligation for each of us to contribute some of our money to do so? And if so, how much? Anglo-American reluctance to embrace a duty to rescue is related to concern about the ability to cabin the obligation to “true rescues” of the sort exemplified by Cell 1. This observation is not new; Macaulay noted these difficulties almost 170 years ago, in rejecting a duty to rescue:

We are sensible that in some of the cases which we have put, our rule may appear too lenient; but we do not think that it can be made more severe without disturbing the whole order of society. It is true that the man who, having abundance of wealth, suffers a fellow creature to die of hunger at his feet, is a bad man, a worse man, probably, than many of those for whom we have provided very severe punishment. But we are unable to see where, if we make such a man legally punishable, we can draw the line. If the rich man who refuses to save the beggar’s life at the cost of a little copper is a murderer, is the poor man just one degree above beggary also to be a murderer if he omits to invite the beggar to partake his hard-earned rice? Again, if the rich man is a murderer for refusing to save a beggar’s life at the cost of a little copper, is he also to be a murderer if he refuses to save the beggar’s life at the cost of a thousand rupees?145

145. Macaulay, supra note 5, at 161–62. Epstein observes: Once one decides that as a matter of statutory or common law duty, an individual is required under some circumstances to act at his own cost for the exclusive benefit of another, then it is very hard to set out in a principled manner the limits of social interference with individual liberty. . . . Even if the rule starts out with . . . modest ambitions, it is difficult to confine it to those limits. Take a simple case first. X as a representative of a private charity asks you for $10 in order to save the life of some starving child in a country ravaged by war. There are other donors available but the number of needy children exceeds that number. The money means ‘nothing’ to you. Are you under a legal obligation to give the $10? Or to lend it interest-free? Epstein, supra note 17, at 198–99:
To be sure, preferences on the desirability of a duty to rescue may be immutable. When this research has been presented to scholars who are enthusiasts of the duty to rescue, they typically respond with one of two arguments, asserting either that the methodology is flawed because there “are lots of non-rescues out there,” or that “one non-rescue is one too many.” The first argument is a common response to empirical legal research; as Professor Maurice Rosenberg once reportedly observed, “There are two kinds of empirical studies of law, those that confirm the hunches of lawyers and those that lawyers perceive to be false.”

The assertion that there must be “lots of non-rescues” because the speaker believes it to be so is an assertion of faith and not a fact. The best response to such faith-based assertions is simple: “In God we trust, all others bring data.”

The second argument (“one non-rescue is one too many”) is somewhat more appealing, at least rhetorically. After all, who could be in favor of non-rescue? However, the objective reality, as previously noted, is that the rarer the frequency of non-rescue, the more likely it is that attempts to address it will have no real upside and the potential for substantial downside. The absurd consequences that have already resulted from zero-tolerance policies in other areas of the law show the difficulties that can result from single-minded pursuit of a desired objective.

Finally, the dynamics of the policy debate over the duty to rescue are not unique to this setting. As Professor Sunstein has noted, “[W]hen intense emotions are engaged, people tend to focus on the adverse outcome, not on its likelihood.” Such “probability neglect” can have profound consequences, including “indifference to real risks or costly expenditures for little or no gain.” A generalized duty to rescue fits into both of Sunstein’s categories—the emotional overlay associated with infrequent non-rescue has distracted attention from the far more frequent problem of injured and dead

146. Paul D. Carrington, Renovating Discovery, 49 ALA. L. REV. 51, 51 (1997). Professor Rosenberg also noted:

   No matter how carefully the facts or data are gathered to respond to the pivotal questions, there will be great trouble in penetrating made-up minds. Commonly, lawyers, lawmakers, and judges treat systematic data with casual disdain, preferring individualized experience and intuition that they can encapsulate in a war story. Their reaction to systematically gathered data is very often either “It’s obvious!” or “It’s wrong!” depending on whether it squares with their own viewpoint or experience. As I have said, they prefer anecdotes to tables.

Rosenberg, supra note 99, at 2211.

147. Charles M. Cutler, Research Needs for Managed Care, HEALTH AFF., Fall 1996, at 93.

148. If zero tolerance is desirable for non-rescue, it should be even more desirable for handling the problem of drugs in the public schools. The result has been frequent, absurd cases of children suspended or expelled for bringing aspirin, Midol, cough drops, and the like to school. See Cherry Henault, Zero Tolerance in Schools, 30 J. L. & EDUC. 547 (2001).


150. Id. at 63.
rescuers and the dubious prospects for solving the “problem” of non-rescue without creating undue distortions in other domains.

G. Directions for Future Research

The data presented in this Article relates solely to the United States. One obvious avenue for future research is to perform a comparable study in other countries. Further research on how many risky and non-risky rescues and non-risky non-rescues occur in countries with a duty to rescue might cast additional light on the issues addressed in this Article. Canada presents an obvious location for further study because it has nine provinces and three territories in which the no-duty rule prevails and one province with a duty to rescue. Similarly, there are Carnegie Funds in ten European countries. Future research will focus on obtaining comparable data from these Funds and performing a similar analysis to that presented in this Article.

Another obvious direction for future research is to examine the role of technology in individual incidents of rescue and non-rescue. It seems likely that the availability of cell phones and wireless technology has made some forms of non-rescue much less probable. One need not search for a payphone or ask a bartender for permission to use his phone when a substantial percentage of the population carries a cell phone. Similarly, General Motors offers a wireless system in many vehicles that allows drivers to contact emergency services with the push of a button. On the other hand, too many cell phones could lead to further diffusion of responsibility as everyone could reason that someone else has called. Sorting out this issue and assessing the feasibility of a duty to report (but not to rescue) will require further qualitative and quantitative research.

151. Several of the data sets include awards to Canadians or to Americans in foreign lands, but such awards were excluded from the analysis.
152. The Quebec Charter of Human Rights and Freedoms, enacted in 1975, imposes an obligation to render aid if it can be accomplished without serious risk. Charter of Human Rights and Freedoms, R.S.Q., ch. C-12, s. 2 (1977). Interestingly, Quebec is also the only province to routinely compensate good samaritans who suffer injury or other losses. An Act to Promote Good Citizenship, R.S.Q., ch. C-20, s. 2 (1977).
153. See, e.g., Soldano v. O’Daniels, 190 Cal. Rptr. 310, 317 (Ct. App. 1983) (finding that a refusal to allow the use of a telephone in a bar was actionable as failure to assist).
154. See, e.g., General Motors’ OnStar Subsidiary Partners with the National Center for Missing & Exploited Children: OnStar’s 2.5 Million Subscribers Can Be Good Samaritans in the Search for Missing Children (2004), http://www.onstargm.com/promo/html/press_release_ncmec.html (noting 3,000 “Good Samaritan” calls per month relating to car crashes or emergencies involving other parties); OnStar Helps Police Nab FBI Fugitive (2004), http://www.gm.com/company/gmability/safety/security/onstar/onstar_fbi_033004.html. If these contacts are included as non-risky rescues, the figures in Table 3 become dramatically higher.
155. Of course, the availability of the technology is one thing, and willingness to contact professional rescuers and testify in any resulting criminal prosecution is entirely another. The latter problem may have a host of causes, including coordination problems, social norms, or fear of getting involved.
Of course, any supply-side effect might be offset by a demand-side effect; the availability of cell phones and handheld GPS devices might well increase the need for rescue of individuals that get in “over their heads” and lack the necessary training or self-reliance to get themselves out of trouble.\textsuperscript{156} It seems unlikely this demand-side effect will have a significant impact on the number of instances where rescue is necessary because of criminal conduct, which accounted for an overwhelming majority of the cases of non-rescue in Table 1. On the other hand, there may be both a supply- and demand-side effect on such cases, arising from broader availability of “concealed carry” permits.\textsuperscript{157} Examining these issues will require extensive qualitative research.

Rescuer demographics indicate that rescue has a substantial age, gender, and class overlay. Further research is necessary to determine whether the imposition of a duty to rescue affects these patterns. If the burden of a duty to rescue falls disproportionately on particular demographic groups, it will magnify the consequences of leaving injured and dead rescuers without legal recourse.

Further research will be necessary to determine whether victim demographics mirror these patterns. As noted previously, victim demographics are significant because the duty to rescue might be efficient if rescuers and victims are drawn from the same population.\textsuperscript{158} Preliminary evidence indicates that victims are more likely than rescuers to be drawn from a population more reflective of the general population, at least with regard to age and gender, meaning that the world may well be, in fact, divisible into two distinct, but somewhat overlapping, classes. At the same time, although rescues substantially outnumber non-rescues, they are still relatively infrequent when spread across 50 states, 365 days, and 291 million Americans. People are unlikely to spend much time thinking of themselves as likely rescuers or likely victims, and so the objective realities may not figure in their ex ante behavior. On the other hand, it is difficult to explain why large numbers of Americans voluntarily receive training in CPR,

\textsuperscript{156} As one reporter has observed:

Emboldened with a desire for extreme challenges and a false sense of confidence by having cellular phones in their backpacks, more people than ever are trudging into the outback with not only greater ambitions of confronting danger but higher expectations of getting rescued fast . . . . ‘A small but increasing percentage of our visitors are pushing the limits of their abilities, because they believe help is just around the corner.’ Todd Wilkinson, \textit{Thrill-Seekers Count on Fast Rescues}, \textsc{Christian Sci. Monitor}, June 26, 1998, at 4.


\textsuperscript{158} See supra notes 30–32 and accompanying text.
lifesaving, and first aid if they do not think of themselves as potential rescuers. Further research will be necessary to sort this issue out.

Finally, the application of the no-duty rule to public entities has been controversial. Academic commentary on such cases has been overwhelmingly hostile. The results presented in this article focus on rescue by private individuals and representatives of public entities acting well beyond the scope of their duties. Further research would help clarify the frequency of non-rescue and rescue by representatives of public entities.

IX. Conclusion

During the past decade, there have been an average of 1.6 documented cases of non-rescue each year in the entire United States. Every year, Americans perform at least 946 non-risky rescues and 243 risky rescues. Every year, at least sixty-five times as many Americans die while attempting to rescue someone else as die from a documented case of non-risky non-rescue. If a few isolated (and largely unverified and undocumented) cases of non-rescues have been deemed sufficient to justify legislative reform, one would think a total of approximately 1,200 documented cases of rescue every year should point rather decisively in the opposite direction. When it comes to the duty to rescue, leaving well enough alone is likely to be sufficient unto the day.

What of the impact of statutes reversing the no-duty rule? Although three states have had generalized duties to rescue in effect for a combined total of almost 80 years, there is no evidence that these statutes have affected the number of rescues or non-rescues. At least in the United States, there is also no evidence that these statutes are being employed in the sweeping manner feared by critics. Further research will be required to determine whether the enactment of these statutes has led to the creation of broader affirmative duties within these states.

What do we know about rescue and rescuers? Controlled for population, the frequency of civilian rescue declined over the first 40 years of the twentieth century and stabilized or increased over the next 60 years. Rescuers tend to be young males, particularly when strangers are rescued.

---

159. See DeShaney v. Winnebago County Dep’t of Soc. Servs., 489 U.S. 189 (1989) (holding that city social workers’ failure to adequately protect a child from his father did not violate his rights under the Due Process Clause); Jackson v. City of Joliet, 715 F.2d 1200 (7th Cir. 1983) (holding that failure of police to rescue occupants of a burning car is not a violation of the 14th Amendment).

160. See, e.g., Amy G. Markowitz, The Constitutional Duty to Complete a Rescue: An Examination of Archie v. City of Racine, 23 COLUM. J.L. & SOC. PROBS. 487 (1990) (criticizing a 7th Circuit decision that a 911 dispatcher’s improper advice and failure to send an ambulance did not violate the victim’s 14th Amendment rights).

161. See supra Part VI.

162. See supra note 62 and accompanying text.

163. See supra fig.3 and accompanying text.
Rescue is frequently dangerous: a sizeable percentage of rescuers are killed or injured.\(^\text{164}\)

Non-rescues are tragic, but it is important to have a sense of proportion about the magnitude of the problem. In a nation of 291 million people, of whom approximately 200,000 die every year in accidents, it is inevitable that there will be occasional instances of non-rescue, just as there are occasional instances of people being decapitated by elevators,\(^\text{165}\) drowning in a flood of molasses,\(^\text{166}\) killed on amusement park rides,\(^\text{167}\) and otherwise dying under freakish and extraordinary circumstances. Given the rarity of non-rescue and the high frequency of rescue, creating a statutory duty to rescue seems unlikely to have any material impact on the number of rescues and non-rescues.

It is certainly possible that the measures employed are insufficiently sensitive to identify non-rescues and capture the effects of statutory reversal of the no-duty rule, and are overly sensitive to instances of rescue, but that seems unlikely given the number of distinct data sources employed, the differing measures employed, and the consistency of the results. This particular dog may not have barked in the night simply because there wasn’t a dog to do any barking.\(^\text{168}\)

The argument that the absence of a statutory duty to rescue teaches bad morals by example also appears distinctly implausible. The data indicates that Americans have figured out that it is better to rescue someone in need than to stand by and watch him die. It is unlikely that additional moral instruction, in the form of a statutory duty to rescue, will do anything to reach those few individuals who do not understand this basic insight.

Blanche DuBois depended on the kindness of strangers,\(^\text{169}\) and the empirical evidence provides no reason to disagree with her strategy for handling the “problem” of non-rescues. Of course, leaving rescue to the independent discretion of potential rescuers results in a world that is short of perfection, but the right question is whether imposing a duty to rescue will improve on the status quo.\(^\text{170}\) Despite the automatic “yes” offered by

---

\(^{164}\) See supra tbl.3 and accompanying text.


\(^{169}\) WILLIAMS, supra note 1, at 142.

\(^{170}\) See Hyman, supra note 168, at 1453 & n.67 (noting that, despite their deficiencies, “[t]he rules . . . appear to beat the possible alternatives, which is the right question to ask about any institutional arrangement”).
proponents of the duty to rescue, the evidence presented in this Article suggests that the answer to this question is almost certainly “no.”

To be sure, there is room for improvement in the status quo. A substantial number of rescuers are injured or killed every year, and they, or their estates, must largely bear the consequences themselves. It is somewhat surprising that law professors, who have lavished such concern on the subject of what Americans owe one another, have completely ignored the plight of ordinary Americans who voluntarily choose to rescue and suffer injury or death as a result. Professor Norval Morris focused attention on this issue almost 40 years ago, but his insight has been widely ignored:

It is so easy to talk about the failure of others; of how Good Samaritanship seems to be a dying art among others. There is another parable, something about a mote and an eye, which seems to me to have some relevance. Perhaps we should first talk about ourselves, and our failure to provide even minimum conditions financially to protect those amongst us who are willing to act the Good Samaritan.171

The results presented in this Article suggest that this problem is a serious one, deserving of immediate attention.172 This issue may lack the glamour of taking yet another run at reversing the no-duty rule, but it is a much more serious problem than the one that has preoccupied scholars who have written on the subject of the duty to rescue for the past two centuries.

Another issue that requires attention is harm reduction. Danger does appear to “invite rescue,” as Judge Cardozo noted in passing more than 80 years ago.173 Too many of those who accept the invitation to rescue are seriously injured or killed because the rescue is too dangerous or because they are inadequately trained.174 Rescuers are usually “self-assured people who are certain they will emerge victorious.”175 Self assurance is one thing;

---


172. Some states have victim compensation programs that can help defray the costs of medical treatment of rescuers who are injured by intervening to protect the victim of a criminal act. Kruh, supra note 47, at 1F. Such programs invariably undercompensate those who are injured and are not available to rescuers who are injured in noncriminal settings. See Murphy, supra note 17, at 658 (stating that most states’ crime victims’ compensation statutes do not provide for rescuers in noncriminal settings).

173. Wagner v. Int’l Ry., 133 N.E. 437 (N.Y. 1921) (“Danger invites rescue. The cry of distress is the summons to relief.”).

174. See supra notes 47–49 and accompanying text.

175. Kahn, supra note 7, at C3; see also Ted L. Huston & Chuck Korte, *The Responsive Bystander: Why He Helps*, in MORAL DEVELOPMENT AND BEHAVIOR: THEORY, RESEARCH, AND SOCIAL ISSUES 269, 273 (T. Lickona ed., 1976) (discussing studies that show a bystander is more willing to help when he believes he is the most capable, in a given situation, to help); Huston et al., supra note 115, at 21–22 (finding that self-perceived competence matters most in predicting intervention); Kruh, supra note 47, at 1F (stating that most rescuers shared in common the belief that they would be successful).
overconfidence is another—and overconfidence increases the death toll. A
superior strategy, from a harm-reduction perspective, would be to encourage
rescuers to appreciate that they should “want to be involved, but [not] want
to get hurt.”176 At a minimum, potential rescuers should understand that
multiple fatalities (the original victim, plus those who bravely but foolishly
attempt to assist) are the likely result of an attempted rescue by someone
without sufficient training. Such outcomes may be viewed as the price of
success for those who believe non-rescue is a serious problem, but the results
presented in this Article suggest that the real problem is excessive
enthusiasm for rescue, and not non-rescue. As such, better education of
rescuers (and of potential victims, to avoid getting into such situations) is
likely to prove a more fruitful strategy than reversing the no-duty rule.177

Finally, most scholars who have written on the no-duty rule in the past
two centuries appear to have believed that non-risky non-rescue was a
widespread problem—and that imposing a duty to rescue would result in
significant changes in behavior and social norms. The results presented in
this Article indicate that neither assumption was accurate and that injury and
death among rescuers is a much more serious and frequent problem than non-
risky non-rescue. Future discussions of the merits of the duty to rescue
might more profitably begin with the “facts on the ground,” instead of
moving immediately to theories of justice and obligation.

Of course, debates over the duty to rescue implicitly involve these
broader issues and theories, which is why cases of non-rescue are
prominently featured in torts textbooks and why legal scholars have been
arguing about such cases for more than two centuries. Yet, when neither the
initial suppositions nor the expectations for change of proponents seem
justified, it is fair to ask them what they believe is actually at stake when the
issue of the duty to rescue is under discussion. More broadly, the results
presented in this Article suggest that the standard “instrumentalist”
conception of legal scholarship—in which a legal scholar identifies a
significant social problem, analyzes it, and then offers a policy prescription
to be implemented by government officials that promises to cure it—is
poorly suited to the problem of non-rescue. Theorizing without data has
obvious charms, but one of the risks—here fully realized—is that the data
will embarrass both the theory and the theorizer.178

177. Of course, to the extent rescue is “hard-wired,” better information will not necessarily
affect the decision to rescue. Education is also likely to be inefficient, since only a small number of
those who receive the information are likely to be potential rescuers. On the other hand, a
substantial number of Americans already receive such training voluntarily. See supra note 90
and accompanying text. On the importance of perceived competency, see Huston, supra note 115, at
21–22.
178. See Sir Arthur Conan Doyle, A Scandal in Bohemia, in The Complete Sherlock
Holmes 161, 163 (1930) (“It is a capital mistake to theorize before one has data.”); see also Otto
Although the no-duty rule presents a vital intellectual puzzle for law professors, judges, and philosophers, the rule has no detectable influence on the behavior of ordinary people. Americans, motivated by the imperfect obligations of beneficence, have proven themselves more than up to the task of rescuing those in need, irrespective of whatever the law might happen to say on the subject. The evidence presented in this Article simply does not support the received wisdom that there “ought to be a law” imposing a duty to rescue.

X. Appendix A:

Case 1: Joey Levick (1994)

On June 2, 1994, Joey Levick was assaulted by 2 men who he had known for several years. Levick fell into a shallow pool of water in the bottom of a ditch. His attackers returned to check on him periodically during the next 12 hours, accompanied by various friends and relatives. One of the assailant’s friends placed an anonymous call to 911, but no one rendered assistance to Levick, who ultimately drowned.

Case 2: Deletha Word (1995)

On August 19, 1995, Deletha Word was assaulted on the Belle Isle Bridge in Detroit by a man in the view of numerous witnesses. She jumped into the water to escape the assault and drowned. Two men jumped in the water to rescue Word, but she swam away from them. Several motorists on the bridge called 911, and 26 people subsequently came forward to help police track down the suspect.

Case 3: Gabriella Vasquez (1995)

In July 1995, 3-year-old Gabriella Vasquez was beaten to death by her mother for not being toilet trained. Several neighbors heard the child being beaten on numerous occasions, but no one called the police. One neighbor called a child abuse hotline.

Lilienthal, Practical Experiments in Soaring, 220 PROMETHEUS 192, 195 (1893) (“Indulging in subtle inquiries and theorizing does not promote our knowledge.”).

179. JOHN STUART MILL, UTILITARIANISM 61 (Geraint Williams ed., Everyman 1993) (1863). Absent a law-centric view of the world, this outcome is not surprising, See Charles Frankel, Code of Professional Responsibility, 43 U. CHI. L. REV. 874, 877–79 (1976) (book review) (“Among the values which society has an interest in promoting are some which cannot be made the objects of direct command. . . . They must be seen as ‘aspirations,’ not legal duties.”); Macaulay, supra note 5, at 162 (“the penal law must content itself with keeping men from doing positive harm, and must leave to public opinion, and to the teachers of morality and religion, the office of furnishing men with the motives for doing positive good.”)

Case 4: Unnamed (1995)\textsuperscript{183}

In April 1995, a female convenience store clerk was assaulted. Six customers stood by and did nothing. No one called the police or rendered assistance. After local television stations aired a videotape of the incident, viewers inundated the police with tips that led to the identification of a suspect.

Case 5: David Gugel (1995)\textsuperscript{184}

On May 18, 1995, David Gugel was assaulted and killed by his estranged wife and her boyfriend. At least 2 neighbors witnessed the assault but did not call the police.

Case 6: Unnamed (1996)\textsuperscript{185}

On March 4, 1996, a man sexually molested 2 girls on a public street in downtown Dallas. Several people witnessed the assaults but did nothing. A passing motorist stopped and tackled the assailant.

Case 7: Sherrice Iverson (1997)\textsuperscript{186}

On May 25, 1997, Jeremy Strohmeyer raped and murdered 7-year-old Sherrice Iverson in a casino bathroom in Primm, Nevada. Strohmeyer’s best friend, David Cash, witnessed part of the assault, but did nothing. Cash subsequently gave several interviews in which he expressed no remorse for his actions or sorrow for the death of Iverson, triggering protest at the University of California, Berkeley, where Cash was a student.

Case 8: Unnamed (1998)\textsuperscript{187}

During July 1998, Calvin Bugg verbally and physically assaulted his ex-girlfriend in an elevator. None of the other passengers on the elevator intervened. Bugg was arrested.


\textsuperscript{185} Todd Bensman, \textit{Man Saves Two from Sex Attacks}, DALLAS MORNING NEWS, Mar. 6, 1996, at 1A.


Case 9: Mostapha Maarouf (1998)\(^{188}\)

On March 29, 1998, Mostapha Maarouf, a taxicab driver, was beaten to death by 4 assailants who dumped him in the trunk of his cab. The beating took place in front of a high rise apartment building. Initial reports were that no one in the apartment building called the police or told the police that Maarouf’s body was in the trunk of the cab. Subsequent reports indicated there had been at least 2 calls to 911.

Case 10: Unnamed (1998)\(^{189}\)

On August 18, 1998, a woman was assaulted and beaten by 2 men who were trying to carjack her Acura Integra. Three friends of the attackers watched and did nothing.

Case 11: Unnamed (1998)\(^{190}\)

In October 1998, a 13-year-old student was fondled by 4 of her classmates on the Boston subway. Initial reports indicated that other passengers ignored the assault. Subsequent reports stated that adult passengers on the subway could not see what was occurring and that approximately 10 other students were on the car and some “giggled and laughed about it.” At least one student attempted to intervene, but was “too little.”

Case 12: Anthony Collings (1998)\(^{191}\)


Case 13: Kevin Heisinger (2000)\(^{192}\)

Kevin Heisinger was attacked and beaten to death in a bus restroom in Kalamazoo, Michigan, by a schizophrenic man. No one came in response to Mr. Heisinger’s calls for help. The beating was over in under a minute.\(^{193}\)

\(^{188}\) Police Did Get Calls During Fatal Beating, CHI. TRIB., Mar. 31, 1998, at 8N.

\(^{189}\) Lilo Stainton, Victim Pleads for “Good Samaritan” Law, ASBURY PARK PRESS (Neptune, N.J.), Sept. 17, 1998, at A14.

\(^{190}\) Daley, supra note 187, at B5.


\(^{193}\) See also Editorial, Give Courts Power to Order Treatment for Mentally Ill: Current Code Makes It Too Hard to Prevent Problems, DETROIT NEWS, June 28, 2005, at 8A (arguing for the passage of a law named after Kevin Heisinger).
Case 14: John McCann (2001)\textsuperscript{194}

On January 12, 2001, John McCann was walking into a supermarket when he was assaulted by Derek Soucy. Soucy approached McCann, knocked him to the ground, and kicked him repeatedly in the face as half a dozen elderly witnesses watched. Several shouted at Soucy to stop, and at least one called the police, but no one intervened for several minutes until a retired firefighter pushed Soucy away from McCann. Interestingly, 2 of the bystanders tried to prevent the firefighter from intervening, telling him that McCann was dead and Soucy was “crazy.”

Case 15: Robert Viscome (2002)\textsuperscript{195}

On April 23, 2002, Robert Viscome, a high school student and football player, was assaulted by Patrick Rukaj, a classmate and teammate. They were at a party and had been drinking. Viscome taunted Rukaj about a personal matter. Rukaj punched Viscome once, who fell and hit his head on a concrete patio. Other partygoers failed to call 911 and delayed taking Viscome to the hospital while the evidence of liquor at the party was disposed of. Viscome ultimately died. Six other partygoers were charged with obstruction of justice for telling the police that the incident took place at a local park, but those charges were ultimately dropped.

Case 16: Allen Price (2003)\textsuperscript{196}

On January 31, 2003, Allen Price was shot in the head at a gas station in northeast Washington, D.C. One witness finished filling his tank, paid, and drove away. Over the next few minutes, cars pulled in and out of the gas station, but no one reported the shooting. The gas station manager stated that he called 911 three minutes after the shooting but got a recording and hung up. Someone flagged down a police car a few minutes later, and it arrived 7 minutes after the shooting.

\textsuperscript{194} Gregory Kesich, \textit{Man, 88, Kicked to Death}, PORTLAND PRESS HERALD (Maine), Jan. 13, 2001, at 1A; Gregory Kesich, \textit{A Retired Firefighter Says: 'I Just Had to Do Something'}, PORTLAND PRESS HERALD (Maine), Jan. 16, 2001, at 8A.


XI. Appendix B

A short summary of the awards issued by each entity follows. The data provided is on file with the author.

A. Organizations that Recognize Rescues: Records Available

1. American Automobile Association (AAA).\textsuperscript{197}—Since 1949, the AAA has given School Safety Patrol Lifesaving Awards to members of a school safety patrol who, while on duty, have saved the life of a person in imminent danger.\textsuperscript{198} The safety patroller cannot have negligently caused or contributed to the person rescued being placed in the situation where his or her life was endangered.\textsuperscript{199}

School advisors or teachers can nominate a school safety patrol member for the award by filling out a detailed two-page form and providing supporting material before March 4th of the school year in question.\textsuperscript{200} Nominations are then reviewed by a National Board made up of representatives from educational, law enforcement, and safety organizations.\textsuperscript{201}

2. American Red Cross, Certificate of Merit.\textsuperscript{202}—The American Red Cross provides training in a variety of skills that can be used to save another’s life (e.g., water safety, first aid, CPR). Since 1928, the American Red Cross has awarded a Certificate of Merit to individuals who have used Red Cross training to rescue or attempt to rescue the life of another person. Records relating to Certificates of Merit awarded prior to 1983 are maintained at the National Archives depository in College Park, Maryland. Records relating to Certificates of Merit awarded from 1990 to 1996 are maintained in a warehouse in Virginia, and records from 1996 on are maintained on two computer databases at Red Cross headquarters in Fairfax, Virginia.\textsuperscript{203}

Individuals are nominated for a Certificate of Merit by their local Red Cross chapter. The national headquarters of the Red Cross first confirms that the nominee received Red Cross training and that he used that training in rescuing someone in need of assistance, and then it determines whether a Certificate of Merit is warranted. Since 1999, 

\begin{footnotes}
198. Id. at 1.
199. Id. at 2.
201. Id.; Fact Sheet, supra note 197, at 2.
203. Unfortunately, the Red Cross was unable to locate records relating to the Certificate of Merit from 1983 to 1989.
\end{footnotes}
professional rescuers (e.g., firemen and policemen) may not receive a Certificate of Merit although they qualify for another award. The Red Cross does not distinguish between risky and non-risky rescues, so all Certificates of Merit are treated as non-risky rescues. A simple count of awarded Certificates of Merit overstates the number of rescues because the Red Cross awards multiple Certificates of Merit when more than one individual in a particular rescue satisfies the requirements. On the other hand, a simple count of awarded Certificates of Merit understates the number of rescuers since only those who received official Red Cross training and used that training during the rescue are recognized. Each recipient of a Certificate of Merit is deemed to have participated in a non-risky rescue.

3. Bell System.204—Theodore N. Vail was the first president of the AT&T Corporation. After his death in 1919, a memorial fund was set up to recognize extraordinary acts of public service by employees of the Bell System. Gold, Silver, and Bronze Vail Medals are given to Bell System employees who demonstrate behavior above and beyond what would have been expected in an emergency. Some Vail Medals were given for extraordinary service in maintaining phone service during exigent conditions, but the majority appear to have been given for rescue or lifesaving activities. All potentially qualifying cases were submitted to local review committees, who could award a Bronze Vail Medal on their own. All recipients of a Bronze Vail Medal were separately considered by a national review committee, which had the authority to upgrade the award to a Silver or Gold Vail Medal. Initially, Vail Awards were given only to employees who performed heroic acts while “on duty.” This requirement was eliminated in the late 1940s, and awards were made to employees who performed heroic acts while not necessarily on duty.

After the Bell System broke up in 1983, the regional Bell operating companies (RBOCs) each continued awarding three different Vail Medals, using a similar process for review of nominations. Nynex also awards a Certificate of Meritorious Service. Information on pre-breakup Vail Awards was obtained from Verizon and from a book published about the program by the Bell system in 1950.205 Information about post-breakup Vail Awards was available for only 2 of the RBOCs (Bell Atlantic and Nynex) through their corporate successor Verizon.

On July 1, 2001, Verizon replaced the Vail Medals with a Verizon Heroes Award. Individuals may receive a certificate of recognition (for a good deed or act performed without threat to personal safety, risk, or inconvenience) or a citation of meritorious service (for special acts or

204. BELL SYSTEM, FOR NOTEWORTHY PUBLIC SERVICE: THEODORE N. VAIL NATIONAL AWARDS (1950).
205. Id.
service with little risk or threat to personal safety but a slight degree of inconvenience that may have contributed to the saving of a life). Gold, Silver, and Bronze Medals may be awarded for lifesaving activities associated with corresponding degrees of personal risk.

4. **Boy Scouts of America.**\(^{206}\) —The Boy Scouts of America has three distinct awards for lifesaving and two more for meritorious conduct. All members (including adult leaders) qualify for these awards. The Honor Medal with Crossed Palms is awarded in exceptional cases to an individual who has demonstrated both unusual heroism and extraordinary skill or resourcefulness in saving or attempting to save another’s life at extreme risk to self. The Honor Medal is awarded to an individual who has demonstrated unusual heroism and skill in saving or attempting to save another’s life at considerable risk to self. The Heroism Award is awarded to an individual who has demonstrated heroism and skill in saving or attempting to save another’s life at minimum risk to self. The Medal of Merit is awarded for an outstanding act of service of a rare or exceptional character that reflects an uncommon degree of concern for the well-being of others.

The Honor Medal with Crossed Palms, Honor Medal, and Heroism Award have been awarded since 1911.\(^{207}\) The Medal of Merit was first awarded in 1946.\(^{208}\)

For purposes of this analysis, recipients of the Honor Medal and the Honor Medal with Crossed Palms were treated as having engaged in a risky rescue. Recipients of the Heroism Award and Medal of Merit were treated as having engaged in a non-risky rescue.

Mechanically, local councils nominate members for these awards. A National Court of Honor reviews the factual record and makes an independent determination of which award, if any, is appropriate under the circumstances. On average, approximately 30 Honor Medals, 56 Heroism Awards, and 135 Medals of Merit were awarded every year.

5. **Carnegie Hero Fund Commission.**\(^{209}\) —In 1904, Andrew Carnegie created the Carnegie Hero Fund Commission (Carnegie Commission) to recognize outstanding acts of selfless heroism performed in the United States and Canada.\(^{210}\) Awardees receive a medal and a modest cash award. The Carnegie Commission can also make monetary grants of

---


\(^{208}\) Id.


\(^{210}\) Id.
continuing support, scholarship assistance, and death benefits. The Carnegie Commission requires that recipients perform an act that “voluntarily risks his or her life to an extraordinary degree while saving or attempting to save the life of another person.” The rescuer can have no responsibility for the circumstances that compel rescue. The Carnegie Commission will not consider persons whose duties require them to perform a rescue; members of the armed services; children thought to be too young to comprehend the risks involved; and members of the same family as the victim, except in cases of outstanding heroism where the rescuer loses his life or is severely injured. Professional rescuers can qualify if the rescue is clearly above and beyond the line of duty.

The Carnegie Commission identifies awardees through a multistep process. A clipping agency reviews newspapers from throughout the nation and sends the Carnegie Commission accounts of rescues and similar incidents every week. A senior investigator reviews these clippings and selects those that are plausible contenders for an award from the Carnegie Commission. Each such case is assigned a tracking number and is assigned to an investigator. The investigator is responsible for interviewing those with knowledge of the events in question and determining whether any of the grounds for exclusion apply. After multiple levels of review, a list of potential awardees is presented to the Carnegie Commission’s Board, which votes on them individually. On average, during the period of 1904–2001, the Carnegie Commission awarded approximately 100 medals per year for risky rescues, with approximately 80 for rescues in the United States. Additional data was available on nominees for the period of 1991–2001. During this period, on average, 260 nominees per year did not receive an award because the rescue was not risky enough to qualify for a Carnegie Medal. Such rescues were deemed to be non-risky rescues.

The Carnegie Commission also provided all newspaper articles sent to them during May 2002 to May 2003 by their clipping service that did not satisfy the Commission’s “first cut” to determine nominees for the

213. Id.
214. See Martin Morse Wooster, Ordinary People, Extraordinary Rescues, AM. ENTERPRISE, Sept. 2000, at 18, 19–20 (discussing the multistep process).
215. The grounds for exclusion include: whether the event in question can be demonstrated to have occurred as recounted (establishment); whether the rescuer was a member of the military; whether the event was reported to the Carnegie Commission within two years; whether the event occurred within the United States or Canada; whether the rescuer had any responsibility for the circumstances necessitating rescue; and whether the risk involved in undertaking the rescue was consistent with the requirements of the award. Requirements for a Carnegie Medal, supra note 212.
These articles were coded and entered into a database. During this one-year period, an additional 1,000 incidents of non-risky civilian rescue were reported in these articles.

6. Commonwealth Edison of Illinois. — Commonwealth Edison gave Lifesaving Awards to employees who “act[ed] effectively in emergencies that threaten[ed] human life.” The award was granted to any employee who “by any act, including rescue or resuscitation or both, save[d] the life of any person, anywhere, at any time.” The standard for making an award was that the victim would have died had the candidate not performed the lifesaving act. Applications for the Lifesaving Award included a written description of the event, supporting reports and documentation, newspaper accounts, hospital and doctor records, and statements of witnesses. A committee met periodically to review pending applications and to determine which individuals deserved a Lifesaving Award. Applications were solicited from the division and station safety advisors. Recipients received a fully paid $1,000 life insurance policy and a certificate.

The program started in 1956, after Commonwealth Edison merged with the Public Service Company of Northern Illinois. It replaced the existing programs of the two separate companies. No records were available for awards since 1990, with the exception of 1997. A representative of Exelon, the corporate successor to Commonwealth Edison, stated in 2002 that the Lifesaving Award had been discontinued several years previously, but he was uncertain of the date.

7. Federal Government Awards. —

a. Coast Guard. — In 1874, Congress authorized the Secretary of Treasury to bestow medals upon persons who “endangered their own

---

216. Collection on file with author.
218. Id.
219. Id. The rules provide that the Lifesaving Award shall be granted irrespective of and in addition to any non-company awards for which an employee may be eligible. Company records indicate that four Commonwealth Edison employees also received American Red Cross Certificates of Merit—two in 1986 and two in 1987.
220. Commonwealth Edison of Illinois, Comments for Presentation of Lifesaving Awards (Feb. 26, 1990) (unpublished document) (on file with author). The cases involved asphyxiation (11 cases), choking (46 cases), drowning (11 cases), electric shock (37 cases), heart attack (17 cases), and miscellaneous causes (23 cases).
221. Telephone Interview with Scott D. Murphy, Policy and Compliance Manager, Exelon Corp. (Nov. 7, 2002).
222. 14 U.S.C. § 500(a) (2000) (providing that “Life-saving medal[s]” may be awarded to Coast Guard personnel for rescuing or attempting to rescue any person from “drowning, shipwreck, or other peril of the water”).
lives in saving or endeavoring to save lives from perils of the sea, within the United States or upon any American vessel.” Effective April 1, 1967, this authority was transferred to the Secretary of Transportation. The authority to make eligibility determinations was subsequently delegated to the Commandant of the United States Coast Guard.

The Coast Guard awards 2 medals. The Gold Lifesaving Medal is for acts of extreme heroism, and the Silver Lifesaving Medal is for lifesaving acts of extraordinary effort but of a lesser degree of heroism or risk of life. Military personnel serving on active duty can receive a lifesaving medal only if they are on leave or liberty status. Posthumous awards are possible, and there is no time limit for the awarding of a Lifesaving Medal.

Nominations for these awards are sent to the Commander of the Coast Guard District, who is responsible for conducting an investigation and making an initial determination of whether a Lifesaving Medal is appropriate. Final determination is made by the Commandant of the U.S. Coast Guard.

Both the Gold and Silver Lifesaving Medals were deemed to involve risky rescues. On average, 5 Gold Medals and 16 Silver Medals are awarded every year.

b. Department of Energy.—The Department of Energy has numerous facilities in the United States that are administered by independent contractors. One of these facilities, in Hanford, Washington, is administered by Fluor. Fluor Hanford has a Presidents’ Zero Accident Council (PZAC), which is made up of representatives of various Fluor divisions and union leaders. The PZAC grants a Presidents’ Life Saving Award to employees whose “life saving actions exemplify the true meaning of caring and courage.” The lifesaving action need not be performed at work. Nominations are presented to the PZAC for a vote. Since 2000, approximately 3 Presidents’ Life Saving Awards have been awarded each year.

---

227. Id. § 13.01-15(h).
229. Life-Saving Award Honors Heroes at Hanford, supra note 228, at 11.
c. Department of the Interior.\textsuperscript{230}—Since 1957, the Department of the Interior has awarded Medals of Valor to employees who have “demonstrated unusual courage involving a high degree of personal risk in the face of danger.”\textsuperscript{231} The act of heroism need not be related to official duties or have occurred at the official duty station. Nominations are reviewed by a committee and final decisions are made by the Secretary of the Interior. On average, 20 Medals of Valor have been awarded annually.

d. Department of Labor.\textsuperscript{232}—The Department of Labor administers the Joseph A. Holmes Safety Association Awards. The Joseph A. Holmes Safety Association (JAHSA) is a nonprofit organization that consists of representatives of federal and state governments and mining and labor organizations. Since 1916, awards have been given by JAHSA for personal heroism and distinguished service in the saving of a life to “active and inactive employee[s] of any branch of mining, quarrying, and mineral industries.”\textsuperscript{233} The award can either be in the form of a Medal of Honor for a rescue involving serious risk to one’s own life or a Certificate of Honor for a rescue involving a lesser degree of personal risk. Since 1998, JAHSA has also given a Life Savers Certificate to individuals who save a life using modern life-saving techniques or quick and appropriate action in an attempt to save a life. No risk to the rescuer’s own life is required. Trained mine rescue teams are generally disqualified from receiving all of these awards. Nominations, which must include detailed information about the circumstances of the rescue, have to be received by the JAHSA National Council within 2 years of the event. Over the years in question, JAHSA awarded on average 2 Medals or Certificates of Honor and 36 Life Savers Certificates every year.

8. Girl Scouts of America.\textsuperscript{234}—The Girl Scouts gives two distinct awards for lifesaving. The Bronze Cross is given for saving a life or

\begin{itemize}
\item \textsuperscript{231} 60th Honor Awards, supra note 230.
\item \textsuperscript{233} See Dan Harrington et al., The Joseph A. Holmes Safety Association and Its Awards, BM BULL., 1940, at 421.
\end{itemize}
attempting to save a life with risk to the awardee’s own life. The Medal of Honor is given for saving a life or attempting to save a life without risk to the awardee’s own life. The awards are reserved for Girl Scouts who “have performed heroic acts beyond the degree of maturity and training to be expected at their age.” The Awardee must be a registered Girl Scout at the time of the rescue, so adults do not qualify. If the Girl Scout caused or contributed to the circumstances requiring rescue, she is automatically ineligible. Unfortunately, the Girl Scouts had only limited historical data on awards of the Medal of Honor and the Bronze Cross but provided records from 1997 to 2001.

9. Goodyear Highway Heroes.—Goodyear has sponsored the Highway Hero program since 1983. Annual awards are given to full-time truck drivers that perform “heroic rescues or outstanding acts of humanitarianism” in the United States or Canada. The general public can nominate an individual for the award by filling out a detailed form. A panel of transportation media representatives and industry officials selects a “State Highway Hero” for each state in which a driver was nominated and then announces 5 finalists for the Highway Hero award. One driver is subsequently selected as the Highway Hero for the year. The Highway Hero receives a $20,000 U.S. Savings Bond, and the other finalists receive $5,000 U.S. Savings Bonds. State Highway Heroes receive $100 U.S. Savings Bonds.

Goodyear had limited records on the number of nominees and State Highway Heroes for years prior to 2003. However, they did pick a Highway Hero every year from 1983 to 2003, and there were, on average, 5 finalists for the Highway Hero Award from the United States every year during 1986–1988, 1992, 1999, and 2001–2003. Records are more fragmentary on the number of State Highway Heroes that were selected every year. State Highway Heroes were deemed to have performed a non-risky rescue, and finalists for the Highway Hero Award were deemed to have performed a risky rescue.

10. Heimlich Institute.—In 1974, Dr. Henry Heimlich published an article describing a method for saving the life of someone who was choking by forcibly and abruptly squeezing them sub-diaphragmatically

---


236. Id.

237. Id. Nominations must be received within a year of the incident in question. For example, nominations for the 2004 Highway Hero cover the time period between November 16, 2003, and November 15, 2004, and must be received by November 30, 2004. Id.

(i.e., performing the Heimlich maneuver).\textsuperscript{239} In short order, the Heimlich maneuver became the standard treatment for choking, and posters providing instructions on how to perform the Heimlich maneuver appeared in many workplaces, restaurants, and other places of public accommodation.

The Heimlich Institute maintains case reports of the performance of the Heimlich maneuver gathered from correspondence and newspaper clippings. Beginning in 1997, the Heimlich Institute began issuing Save-A-Life Awards to individuals who successfully performed the Heimlich maneuver on another person and provided sufficient documentary evidence.\textsuperscript{240} The Heimlich Institute also receives scores of newspaper clippings and correspondence relating to the performance of the Heimlich maneuver every year.

11. \textit{Kiwanis Foundation}.\textsuperscript{241}—Since 1967, the Kiwanis Foundation has awarded the Robert P. Connelly medal to nonprofessional rescuers who risk death or personal injury in rescuing a nonrelative. Beginning in 1980, the Kiwanis Foundation awarded either a Medal of Valor or a Certificate of Valor to individuals whose conduct did not meet the exacting standards for the Connelly medal. Only individuals nominated by a local Kiwanis chapter were considered for these awards.

12. \textit{Life Saving Benevolent Association of New York}.—The Life Saving Benevolent Association of New York (LSBA) was founded in 1849 by merchants and ship owners concerned about the frequency of shipwrecks along the Long Island coastline. The LSBA awards medals for lifesaving on the waterways of New York, New Jersey, and Connecticut. The majority of these awards are given to policeman and fireman, but every year several civilians also receive awards. Awardees receive a letter of commendation, or a silver or bronze medal and a cash stipend, ranging from $250–$1,000 depending on the particular rescue. Since 1997, the LSBA has published brochures outlining each rescue.

13. \textit{National Association of Letter Carriers}.\textsuperscript{242}—The National Association of Letter Carriers (NALC) is the union of city delivery letter carriers working for the United States Postal Service. The union has


\textsuperscript{240} Telephone Interview by Mark Dundon with Jennifer Adrabbo, Administrative Assistant, Heimlich Institute (Nov. 2, 2005).


\textsuperscript{242} National Association of Letter Carriers, About the Heroes of the Year Awards, http://www.nalc.org/commun/heroes/herofact.html.
approximately 210,000 members who are active city delivery letter carriers. The NALC publishes a monthly magazine, the *Postal Record*, which includes a section titled “Proud to Serve.” This section features accounts of NALC members who provide assistance to those in need, including heroic rescues. Individuals are selected for inclusion in “Proud to Serve” based on a form completed by their local union along with supporting documentation.

Since 1974, NALC has given out a national Hero of the Year Award, and three regional Heroes of the Year Awards, “to pay public tribute to outstanding letter carriers who, ignoring dangers to themselves, perform selfless and heroic acts to rescue those at risk of losing their lives.”243 Since 2002, NALC also has had a separate award for Carrier Alert Rescue, which honors letter carriers “who do not risk their own lives, but who, due to their alert observations of conditions and people on their routes, save customers’ lives.”244 Recipients for these awards are chosen by a panel of independent judges, representing the labor community, community service organizations, and emergency public services. The committee reviews items published in the “Proud to Serve” column, and selects winners in each of these categories. Cases in which a postal carrier noted that mail was accumulating and contacted police or a relative were not included in the total.

14. State Government Awards.—Numerous states give nonfinancial awards or recognition to citizens who perform a rescue.

   a. Iowa.245 —The Governors’ Lifesaving Program was initiated in the 1970s to recognize those who have courageously attempted to rescue someone else or have unselfishly assisted in an emergency situation. There are three awards: Lifesaving with Valor, which is awarded to those individuals who, at the risk of their own life, attempted to save that of another; Lifesaving, which is awarded to those individuals who have attempted to save the life of another individual but who did not put their own life in jeopardy during the rescue; and Meritorious, which is awarded to those individuals in recognition of outstanding and unselfish service rendered in time of distress. Nominations may be made by anyone. Nominees may not be trained in professional lifesaving techniques and cannot have rescued an immediate family member. Nominations are investigated by the Iowa Department of Public Safety, which prepares a report on the incident. The report is considered by a committee that has ultimate decisionmaking authority.246 On average, Iowa has recognized 8

---

243. *Id.*
244. *Id.*
risky rescues and 6 non-risky rescues per year since the inception of the program.\textsuperscript{247}

\textit{b. Montana.}—Since 1985, the Montana governor has had the authority to award a Medal of Valor to “any citizen of the state who displays extraordinary courage in a situation threatening the lives of one or more people.”\textsuperscript{248} The governor can also give a Special Recognition Award to individuals who have taken immediate and selfless action to assist those in need.\textsuperscript{249} The governor’s office seeks nominations from the general public, who must provide background information, names of witnesses, and supporting documentation. A selection committee reviews the nominations and makes recommendations to the governor as to which individuals should be recognized.\textsuperscript{250}

\textit{c. New York.}—Since 1984, the New York State Department of Correctional Services has awarded the Medal of Merit to employees for “extraordinary performance in the line of duty or for an exceptional contribution to the Department.”\textsuperscript{251} In practice, most of the awards have been for off-duty acts of risky rescue. After nominations are received, the Department of Correctional Services investigates the incident and decides whether an award is justified. On average, approximately 4 Medals of Merit have been awarded each year since the inception of the program.\textsuperscript{252}

\textit{d. Ohio.}—In 1985, the Ohio State Fire Commission created the Ohio Fire Service Citizens Award for Heroism.\textsuperscript{253} The Award is conferred on individuals who perform a lifesaving act in a fire or emergency situation at risk of their own life.\textsuperscript{254} Nominees cannot be a member of the same household as victims. Members of the fire service, state legislature, or local government may nominate an individual for the award by completing a form and providing supporting information and

\textsuperscript{247} For purposes of this analysis, Lifesaving with Valor Awards were treated as risky rescues, Lifesaving was treated as a non-risky rescue, and Meritorious awards were excluded.
\textsuperscript{248} MONT. CODE ANN. § 1-1-515 (2005).
\textsuperscript{251} Press Release, Department of Correctional Services, Correctional Services Honors Three Employees; Cites Their Valor, Governor’s Assistance (June 8, 2000), available at http://www.docs.state.ny.us/PressRel/medals2k.html.
\textsuperscript{252} Press Release, New York State Department of Correctional Services, Memorial Service and Medals Ceremony (June 9, 2005), available at http://www.docs.state.ny.us/PressRel/05memorialmedals/pressrelease2005.html.
\textsuperscript{254} Nomination Form for Ohio Fire Service Citizen’s Award, http://www.com.state.oh.us/odoc/sfm/app/citizen.pdf.
The supporting documentation must clearly and adequately describe “the severity and intensity of the fire or other incident, the specific dangers which the nominee faced and overcame, and just why this act of valor was exceptional.” On average, the award has been given 5 times each year since 1997.

In 2001, the State Fire Marshal created an Award for Heroism. The Award is given to “members of the general public and/or members of the fire service who, at great personal risk to themselves, are credited with directly saving or attempting to save a life or lives during an extreme fire or other emergency rescue situation.” Members of the fire service, state legislature, or local government may nominate individuals by completing the necessary form and providing supporting information and documentation. Nominees cannot be a member of the same household as victims. As with the Fire Service Citizens Award, the supporting documentation must clearly and adequately describe “the severity and intensity of the fire or other incident, the specific dangers which the nominee faced and overcame, and just why this act of heroism was exceptional.” On average, the award has been given once each year since its inception.

e. Oklahoma.—Since 1990, the Oklahoma governor has had the authority to designate individuals as “Heroic Oklahomans.” In general, the award is given for “exemplary heroism” in saving a human life, but not all the awards have involved risk to the rescuer. Recipients are nominated for the award by a state legislator. The governor’s office

255. Id.
256. Id.
260. Id.
261. Id.
262. OKLA. STAT. tit. 74, § 3116 (2004).
investigates these nominations and makes its own determination as to who should receive the award. On average, there has been one Heroic Oklahoman per year since the inception of the award.

f. Washington.265—The Washington Department of Labor and Industries issues Lifesaving Awards for heroic actions to save another person’s life. Nominees must be employees of the state of Washington who are covered by industrial insurance, whether state-funded or self-funded. The lifesaving act can have occurred at any place or time, but nominations must be received within a year of the rescue. Rescue and law enforcement personnel can receive a Lifesaving Award, but the conduct must be above and beyond the line of duty. The general public can nominate individuals by completing an application and providing supporting official documentation. The awards committee of the Governor’s Industrial Safety and Health Advisory Board reviews all nominations and makes determinations as to who should receive awards. If the victim did not survive, the individual rescuer can receive a Humanitarian Award. Extensive records are available for the past 4 years, and more sketchy records are available for 5 years before that. During the time period in question, an average of 20 Lifesaving Awards and three Humanitarian Awards were issued every year. One individual lost his life while performing a rescue during 2001.

15. Truckload Carriers Association.266—Since 1997, the Truckload Carriers Association (TCA) has designated as “Highway Angels” professional truckdrivers that do “good deeds,” ranging from fixing a flat tire to heroic life-saving efforts. Anyone can nominate a professional truckdriver by completing an online form. Nominations are reviewed by a committee at TCA. Award recipients receive a lapel pin, clothing patch, and certificate of recognition.

Approximately 135 Highway Angel awards have been issued annually since the inception of the program. TCA issues a press release when a Highway Angel award involving heroic lifesaving with significant peril to the truckdriver is announced. During the period from 1999–2004, it issued press releases for approximately 13 Highway Angel Awards annually. An additional 40 Highway Angel Awards per year qualified as non-risky rescues. The remainder of the Highway Angel Awards (82 per year) were excluded from the analysis.

16. United States Sailing Association.267—Since 1989, the United States Sailing Association has awarded the Arthur B. Hanson Rescue Medal to skippers of pleasure sailboats or race support vessels who effect

rescues of victims from the water. The award is for rescues in U.S. waters or those which occur in races beginning or ending in U.S. ports. Anyone may nominate a skipper by completing an online form. The form and any supporting documentation is considered by the Safety-at-Sea Committee of the United States Sailing Association, whose determination is final. The United States Sailing Association’s web page contains a detailed account of most such awards. On average, 8 medals have been awarded every year since the inception of the award.

17. *VITA Wireless Samaritans.*—Beginning in 1993, the Cellular Telecommunications and Internet Association’s Wireless Foundation has recognized individuals who have used their wireless phones to summon help in an emergency. From 1993–2002, VITA Wireless Samaritan Awards were given annually to one individual from each of the 50 states, the District of Columbia, and Puerto Rico. As of 2003, multiple awards may be given in a single state and awards are made on a rolling basis instead of once a year.

Employees of wireless companies whose actions take place as part of their daily job and prior recipients are ineligible. Candidates may be nominated by their local wireless company or by any member of the public by completing a form and, if possible, providing supporting documentation. A national panel of representatives from law enforcement and emergency response services judges all entries and selects award recipients based on the importance of the individual to the situation, the effort of the action that was taken, the importance of technology to the situation, and the potential educational value of recognizing the individual in question.

No information was available on the number of awards from 1993–2000. From 2001–2004, there were approximately 37 VITA Wireless Samaritan Awards each year, selected from a larger group of nominations. Not all of these awards meet the requirements of a non-
risky rescue outlined previously. After individual review, approximately 25 VITA Wireless Samaritan Awards per year were deemed to be non-risky rescues.

B. Organizations that Recognize Rescues: Records Unavailable

A number of organizations provide recognition to individuals who rescue someone in need, but sufficient records were unavailable to include such rescues in the analysis.

1. American Red Cross: Everyday Heroes.\textsuperscript{276}—Since 1999, individual chapters of the American Red Cross have administered a program called “Everyday Heroes.” Participating chapters solicit nominations from the general public for individuals who have “shown extraordinary courage, compassion, character or humanity and saved or improved the lives of other local residents.”\textsuperscript{277} Awards are given in several categories, which vary among different Red Cross Chapters. Among the various categories are: community impact, the arts, military, mentor or role model, emergency worker, Youth Good Samaritan (17 years and younger), Adult Good Samaritan, and Workplace Good Samaritan.\textsuperscript{278}

The American Red Cross does not maintain centralized records on how many chapters participate in the Everyday Heroes program or how many recipients there have been of such awards. There are approximately 900 chapters of the American Red Cross, and computer searches indicate that an appreciable number of chapters participate in the program.

2. Medic First Aid.\textsuperscript{279}—Medic First Aid (MFA) is a private company that provides emergency care training programs (including CPR and first aid) for businesses and the general public. According to MFA’s website, over 7 million students have been trained by them worldwide. MFA helps private businesses meet OSHA standards that require businesses, in the absence of a nearby infirmary, clinic, or hospital, to provide someone adequately trained to render first aid to injured employees. Since 1981, MFA has awarded a Good Samaritan certificate to individuals who received MFA training and used it to provide assistance to someone in need. MFA’s website indicates that at least 8 such awards were given


\textsuperscript{279} http://www.medicfirstaid.us.
during the period from 1997–2002.  

A representative of MFA stated that many more awards had been given, but he refused to provide access to supporting documentation or MFA records. It is unclear what process MFA goes through to determine whether or not to make a Good Samaritan Award. Accordingly, for purposes of this article, MFA Good Samaritan Awards were not treated as evidence of a rescue and were excluded from further consideration.

3. National Ski Patrol.—The National Ski Patrol (NSP) is an organization of ski patrollers, who provide emergency care and rescue services to skiers. The NSP has approximately 27,000 members, the overwhelming majority of whom are volunteers, who provide services at ski resorts throughout the United States. 

The NSP awards several different merit stars for lifesaving. The Purple Merit star is given for saving a human life through emergency care. The Blue Merit Star is awarded for outstanding or heroic use of ski patrol skills in an attempt to save a human life. The Green Merit Star is awarded for outstanding acts of heroism that do not meet the lifesaving requirements of the Purple Merit Star. The Yellow Merit Star is awarded for outstanding acts or services to the NSP, including service in support roles associated with the Purple, Blue, or Green Merit Stars. A Merit Star may be awarded irrespective of where the lifesaving assistance was provided. Individuals who perform lifesaving acts while on duty in the course of their normal occupations do not qualify for a Merit Star. The NSP Manual requires the completion of a form nominating the ski patroller for a particular Merit Star along with letters of recommendation and supporting documentation. Nominations are reviewed at multiple levels within the NSP before a Merit Star is awarded.

The NSP refused to provide access to its records relating to these Merit Stars. A representative of the NSP estimated that Purple Merit Stars were awarded about 50 times per year, and Blue and Green Merit Stars were each awarded about 100 times a year for a total of approximately 250 rescues per year.  

Press reports and other materials


282. In 2002, the NSP had 26,782 members. Membership records indicate that 22,442 were volunteer ski patrollers (64%); 3,697 were paid ski patrollers (14%); and 643 had no status indicated (2%).

283. The same individual estimated that more than 250 Yellow Merit Stars were awarded every year. However, Yellow Merit Stars are not limited to involvement in a rescue.
indicate that numerous Merit Stars have been awarded in the past to NSP members.\footnote{284 See, e.g., GRETCHEN R. BESSER, THE NATIONAL SKI PATROL: SAMARITANS OF THE SNOW (1983); Bridgewater Man to Be Honored for Rescue, PATRIOT LEDGER, May 10, 1996, at 17S (reporting an award of a Purple Merit Star); Tommy Hine, The Rescue that Made ‘Rescue 911’: Life or Death on a Ski Slope, HARTFORD COURANT, Jan. 8, 1993, at E1 (reporting an award of a Purple Merit Star); Newswatch, SEATTLE TIMES, Oct. 28, 2001, at B3 (reporting that seven members received Yellow Merit Stars for rescuing a paralyzed snowboarder); Ski Patrol Members Earn National Divisional Awards, SPOKESMAN REV. (Spokane, Wash.), Nov. 17, 1998, at D5 (reporting that five Blue Merit Stars were awarded); Ventura Association Will Register Players, VENTURA COUNTY STAR, Oct. 25, 1998, at C12 (reporting that Southern California Nordic Ski Patrol members received 39 merit stars in 1987); Marilyn Wellemeyer, The Good Samaritans of the Slopes, FORTUNE, Feb. 22, 1982, at 149 (noting the recipient of a Purple Merit Star and observing that nationwide statistics suggest that 2.16 per 1,000 skiing visits result in injury).} Unfortunately, in the absence of access to NSP records, sufficient information was unavailable to generate a defensible figure for rescues by NSP members. Accordingly, for purposes of this article, NSP Merit Stars were excluded from the reported totals.

various levels of government (the Federal Executive Board, the Harrisburg Mayor, the Governor of Indiana, the Texas Department of Agriculture, and the Los Angeles County District Attorney’s Office). Other entities seem to have given awards at some time in the past but no longer do so. All of these entities were excluded from the reported totals as well, since insufficient records were available.

294. Federal Executive Board Honors EPA Hero, http://www.epa.gov/region02/news/2003/03055.htm (reporting the Federal Executive Board’s Award for Valor that is awarded annually to people who selflessly help others).


299. For example, the National Safety Council awarded a President’s Medal approximately 72 times each year from 1928 to 1964 to individuals who used one of two specific forms of artificial resuscitation to save a life. No records were available for awards after 1964, and the President’s Medal was discontinued sometime during the 1970s. Research indicated analogous awards were also given by the Edison Electric Institute, GTE (the Morris Felton Lacroix Award), and the Federal Fire Council (Junior Fire Marshall Gold Medal).