

THE LURE AND THE LAW OF HOMICIDE

Homicide intrigues virtually all of us. From the sensational and historic double-murder trial of ex-football star O. J. Simpson to the travails of the elusive yet fictional Hannibal Lecter of Thomas Harris's *The Silence of the Lambs*, we are drawn irresistibly to the drama, mystery, intrigue, and power of murder and murderers, both real and invented.

It would hardly be an overstatement to suggest that within popular culture, murder has become profitable. True crime books exploded in popularity in the late 1980s, detailing the crimes and lives of serial killers, mass murders, killer cults, killer kids, and crimes involving celebrities. Entire television channels devoted to crime stories, and mostly tales of murder and mayhem, now exist. *People* magazine, a yardstick for America's enchantments, frequently places killers on its front cover. Films, books, trading cards, action figures, even artwork, center on murders and murderers, creating a cottage industry in murderabilia.

Although U.S. homicide rates are relatively low compared to previous decades and nowhere near those of the late 1980s and early 1990s, the media focus on homicide can distort our perceptions of the actual risk. A focus on the facts and the science of homicide studies will guide our journey.

FASCINATION WITH MURDER

What is it about homicide that captures our attention? Or perhaps a more fitting question is, what is it about us that explains our captivation? And what kinds of killings are especially appealing to the general public, which seems to have an insatiable appetite for true crime books and films? It is our obsession with murder—both as news and as entertainment—that prompts online sources, print, movies, and television shows to feature infamous killers.

For most of us, a fascination with murder is entirely benign. Ironically, we are drawn to murder, and especially to its most grisly and grotesque examples, as an escape from the mundane problems we face in everyday life, problems such as how to pay the bills, how to avoid being mugged, or how to get a long-awaited promotion at work. Paying the bills, avoiding a mugger, and waiting for an overdue promotion—these are all too real. By contrast, some homicides are so extraordinary that psychologically they might as well be fiction. The killers might as well be characters in a novel or a film. Because they are so unlikely, at least from the point of view of true crime buffs, they are also a form of entertainment and enjoyment. Homicides yielding large body counts, for example, a massacre in a shopping mall or at a school or in the family, may qualify as crossing the line into

fantasy. But the most fascinating homicides are those involving extreme forms of sadism: crimes in which victims are tortured, raped, and dismembered. The more grotesque (and therefore removed from ordinary life) a particular killing spree is, the more likely it is to provide an escape from everyday life.

A second source of fascination with murder is not so trivial. In fact, there are many people who feel intensely vulnerable to the effects of violence, so much so that they read true crime stories and watch TV docudramas about murder not because they seek to escape psychologically but in order to learn how to avoid becoming victims of homicide (and hopefully not to learn how to avoid being caught). Going beyond their role as members of the audience for murder, some actually seek to overcome feelings of powerlessness, anxiety, and vulnerability by planning careers as criminologists, crime investigators, or forensic psychologists. They hope to learn the techniques of criminal profiling and DNA analysis. The better they understand the murdering mind and the process of criminal investigation, the more they are able to distance themselves psychologically from the killers they fear and to feel safe.

The third and final source of fascination is also the most troubling. There are some individuals—hopefully, few in number—who live vicariously through the exploits of sadistic killers. Fascinated with power but controlled by normal feelings of conscience, these individuals are psychologically incapable of murdering for pleasure, money, or protection. They can, however, learn every detail of a killer's biography, every detail of a killer's modus operandi, and every detail of the investigation by which a killer is brought to justice.

The most infamous and celebrated killers sometimes attract fan clubs, complete with member organizations, newsletters, and even fund-raisers. At the extreme, we occasionally hear about someone, usually a woman, a so-called killer groupie, who dates or even marries an incarcerated murderer. Among the many possible motivations for her attraction, she may regard her man as an important celebrity, a powerful figure worthy of respect and admiration. Women who are attracted to men who have committed gruesome crimes may actually have a paraphilia, called *hybristophilia*, a sexual attraction to really bad boys.

The public preoccupation with murder apparently extends to the news media as well, both print and electronic. In a sense, the prime-time news is more like the crime-time news, and the events that are the least common in reality appear to be featured more than the rest.

According to the *Tyndall Report*, the extent of crime coverage in national network news on ABC, CBS, and NBC quadrupled between 2010 and 2016, and a healthy share of it focused on homicide, including mass shootings and deadly acts of terrorism. Moreover, local news programs are especially focused on reporting about murder.

The reality of crime is quite different, however. According to Federal Bureau of Investigation (FBI) tallies, homicide accounts for only 1% of all violent offenses and 0.1% of all serious offenses. Furthermore, the murders that seem particularly exploited are those that involve sex, sadism, or celebrity—hardly the norm in stark reality.

The 1995 criminal trial of O. J. Simpson, who was accused of having stabbed to death his estranged wife Nicole Brown Simpson and her companion Ronald Goldman, provides a prime (and prime-time) example of this excess. The case contained all of the elements required to gain the attention of the nation and achieve top TV ratings—a well-liked, even heroic, celebrity football player and his beautiful wife, an interracial romance gone bad, rumors of spouse abuse, and charges of police racism. Indeed, the television coverage of the trial was so excessive

that someone unfamiliar with American popular culture might have thought that O. J. Simpson was a senator or that the trial was a congressional impeachment proceeding. Not only did Court TV (later renamed truTV) televise the entire 195-day trial live, but for a period of time, regular television programming was preempted so that Americans could get their daily dose of courtroom drama. In addition, periodic rundowns of trial proceedings were regularly featured on network newscasts, morning talk shows, and prime-time news magazine shows. Television trials, while entertaining millions of people who subscribed to cable news channels, also gave them access to a nondegree education in U.S. law.

Interest in O. J. Simpson remains strong, even two decades after the jury acquitted him on the murder charges. Three television series aired in 2006–2007 delved into the O. J. case, including an eight-part documentary on ESPN, a 10-part series on FX, and an Investigation Discovery program focusing on the possibility of his innocence. In July 2017, after Simpson served only 9 years of a 33-year sentence for a 2007 armed robbery in Las Vegas, the Nevada Parole Board granted him parole. All major networks interrupted their regular programming to air the hearing. Clearly, this case continues to draw attention, speculation, conspiracy theories, ratings, and pain for the Goldman and Brown families.

SELLING EVIL

In 1985, the *National Lampoon* spoofed the U.S. glorification of murderers by publishing a series of “Mass Murderer Trading Cards,” complete with photos, autographs, and statistics on “all your favorite slayers.” As a parody, the *Lampoon* had placed despicable multiple killers in a context generally reserved for superstars. What was meant as social satire in 1985 soon became a social reality. In 1991, a California trading card company published its first series of mass and serial killer cards, spotlighting such infamous criminals as Jeffrey Dahmer, Theodore Bundy, and Charles Manson. Selling for \$10 per pack (without bubble gum), it was no joke. Several other card makers soon followed suit, hoping to cash in on the celebrity of multiple murderers.

Even comic books have been used as a vehicle for celebrating the exploits of vicious killers like Jeffrey Dahmer, rather than traditional superheroes. By giving him a starring role once held by the likes of Batman and Superman, the killer is unnecessarily glorified, as in Marshall McLuhan’s famous adage, “The medium is the message.” The victims’ memory is trivialized by being placed in a comic book format. In a more respectable context, the coveted cover of *People* magazine has often served as a spotlight for infamous criminals. It was bad enough that Milwaukee’s confessed cannibal Jeffrey Dahmer was on the cover of *People* multiple times, an honor usually reserved for Hollywood stars and Washington politicians, but this magazine also chose Dahmer as one of its “25 Most Intriguing People of 1991” and later placed him on its list of the “100 Most Intriguing People of the Century.”

Consider how *People* magazine has changed since the 1970s, when celebrities selected for the cover included First Lady Pat Nixon, Barbara Walters, Richard Burton, Joe Namath, Ralph Nader, and Mary Tyler Moore—individuals who were honored for their achievements in politics, industry, sports, and entertainment. By the late 1980s, many of the cover stories had turned negative, covering stories such as JFK and the mob, Robin Williams’s love affair with his son’s nanny, the troubled life of Christina Onassis, and the scandal behind the Tawana Brawley rape case. *People*’s covers also began to feature rapists, murderers, and other criminals,

including preppy murderer Robert Chambers, school shooter Laurie Dann, wife killer Charles Stuart, the parricidal Menendez brothers, “Long Island Lolita” Amy Fisher, cult leader David Koresh, Columbine murderers Dylan Klebold and Eric Harris, and, of course, serial killer Jeffrey Dahmer. Additional *People* magazine covers have included the JonBenét Ramsey case, the Long Island serial killer, Steven Avery, Jodi Arias, Oscar Pistorius, Scott Peterson, and Casey Anthony.

Some folks don’t find just information from their murder viewing; they find inspiration. A number of films and television shows may have inspired real killers. The Reelz channel features an entire series on copycat killers that were inspired by, or at least paralleled, the fictional murders in *RoboCop*, *Scream*, *Hannibal*, and other movies. Likewise, other films, including *The Dark Knight*, *Natural Born Killers*, *Saw*, and *American Psycho*, appear to have given some killers gruesome ideas. Troubled people can find messages to mimic almost anywhere they look.

Television and movies have also helped to turn our criminals into celebrities. Docudramas are often biographies of vicious criminals, many of whom are played by leading actors and actresses, for example, Mark Harmon as Theodore Bundy, Brian Dennehy as John Wayne Gacy, and Helen Hunt as Pam Smart. In fact, Charlize Theron won an Oscar for playing serial killer Aileen Wuornos in the film *Monster*. And two forthcoming movies will star Zac Efron as Ted Bundy and Leonardo DiCaprio as H. H. Holmes. Having glamorous actors cast in the roles of vicious killers unfortunately infuses these killers with glamour.

Capitalizing, and profiting, from public fascination with murder, the first ever true crime conference, CrimeCon, was held in Indianapolis in 2017. With their own Facebook page, CrimeCon encourages attendance by prodding, “You know you’re dying to go.” With 2017 registration fees ranging from \$200 to \$600, true crime fans were entertained with podcasters, documentary filmmakers, homicide detectives, TV personalities, mock trials, and Nancy Grace as the keynote speaker.

The glorification of serial killers has created a big-money market for almost anything that they say or do: the artwork of John Wayne Gacy, who got the death penalty for killing 33 young men and boys in Des Plaines, Illinois; the paintings of mass murderer Richard Speck, who slaughtered eight nurses in Chicago; the refrigerator in which Jeffrey Dahmer had stored his victims’ body parts; songs written or recorded by Charles Manson; the poetry of Danny Rolling, who brutally tortured, killed, and mutilated five college students in Gainesville, Florida; and the writings of Theodore Kaczynski, the Unabomber. The popularity of murderabilia, the collectibles of murder, has inspired a market for various third-party souvenirs and products of questionable taste: aprons, boxer shorts, and thongs with images of serial killers; mass killer T-shirts bearing quips such as “Gardening helps you hide bodies”; and action-figure toys of infamous murderers like Manson and Dahmer. Although murder-based board games like *Clue* have been around since the 1940s, the murder mystery game trend has seen the development of several different serial killer trivia and board games. For example, *Serial Killer: The Board Game* comes packaged inside a body bag, features “dead baby” markers, and instructs players to kill as many children and babies as possible before being captured by the FBI.

Son of Sam laws, named after serial killer David Berkowitz, were passed in a number of states in an attempt to prohibit murderers from profiting off royalties from books and movies, but these statutes have been struck down as violations of free speech. Similarly, various state laws designed to halt the distribution of killers’ fingernails, dirt from victims’ graves, autographed Christmas cards, art work, or clothes have been ruled unconstitutional. The U.S. Congress attempted, unsuccessfully, to stop prisoners from using the mail to send out anything that would garner them a profit.

Although some states have passed laws that prohibit payments to the killers from purchasers and allow for asset forfeiture, the murderabilia industry isn't going away. Assuming a prisoner does not use the mail to share the items with a distributor and does not personally profit from their sale, most states allow an individual to sell items linked to heinous murder cases. The online site eBay may have stopped the sale of murderabilia, but several other websites still offer such items, and what many consider a despicable industry continues to thrive.

HOMICIDE LAW

In everyday usage, the terms *murder*, *homicide*, *kill*, plus a variety of more colorful synonyms such as *slaughter*, *butcher*, *massacre*, *slay*, or even slang terms like *knock off*, *bump off*, and *polish off*, are often used somewhat interchangeably. This practice (except for the slang) will be followed throughout most of this book for the sake of convenience, if not readability. It is important, nevertheless, to understand the distinctions among these concepts.

The term *killing* represents the most general notion of extinguishing life. Although there is nothing inherent in the broad concept of killing that excludes suicide or even animal abuse, our attention will be limited to homicidal acts, those specifically directed against other human beings. We will discuss suicides, but only those that are coupled with a homicide. We also will examine killers who train on animals, but only as a pathway to targeting human prey.

Not all acts of killing are illegal. Most societies authorize agents of the state—police officers and soldiers, for example—to kill under appropriate circumstances. Wartime aggression against an enemy nation as well as state-sanctioned executions of condemned prisoners are not violations of the law, although certain governmental acts of violence can be proscribed by international treaty (e.g., genocide, the attempt to exterminate a racial or ethnic group).

Criminal homicide refers to unlawful and unjustifiable actions or inactions that result in the death of other human beings. The level of homicide charged will be a function of two dimensions, *mens rea* and *actus reus*. *Mens rea* refers to the concept of guilty intent, and *actus reus* refers to the act itself (or omission of an act). Thus, with *mens rea* we must determine the state of mind/guilty mind and with *actus reus*, a guilty act. When a guilty mind concurs with a guilty act, the elements of a crime has occurred. Homicidal acts include such clear-cut misdeeds as shooting a semi-automatic rifle at a crowd of people in a shopping mall or poisoning over-the-counter cold medications. As we will see, stabbing an intruder to death during a burglary is also a homicide but may be legally justifiable (i.e., noncriminal), depending on the particular circumstances.

Failures to act (known in the law as omissions) can also result in criminal charges if such inactivity helps to precipitate a death. Omissions can be subtle yet are nonetheless illegal, such as when a landlord disregards faulty wiring that causes a fatal blaze or a parent neglects a child to the point the youngster starves to death, even if the parent had not intended this tragic outcome.

Although it may seem self-evident, a necessary condition for homicide is that the intended victim of a dangerous act or neglectful omission is indeed a living human being. Thus, shooting at a suitcase hidden underneath bedsheets to look like a sleeping person constitutes attempted murder, but shooting at someone who had just died in bed of a heart attack technically does not. That is, it is factually impossible to kill someone who isn't where he or she is believed to be, but it is legally impossible to kill a corpse. Even though the defense of legal impossibility

derives from the English common law origins of our system of jurisprudence, in recent years U.S. courts have been reluctant to recognize it as an excuse.

The often-debated question of when life begins—be it at birth or at conception—has turned into a wider issue for homicide law than just the legality of medically performed abortions. Pregnant mothers who place their unborn babies at risk by using narcotics have been prosecuted for child endangerment, as well as homicide, more specifically feticide, should the fetus fail to survive. In Alabama, a conviction for “using while pregnant” that leads to the death of a newborn can result in a sentence of 10 years to life. In a recent Indiana case, Bei Bei Shuai was charged with murder and feticide after her failed suicide attempt by rat poison resulted in the death of the baby she was carrying. Ten days after ingesting the poison, Shuai’s baby was delivered by emergency cesarean section at 33 weeks gestation and lived for only two days. This case triggered international attention and a public outcry, including concern from *The Guardian* news in the United Kingdom regarding the criminalization of pregnancy in the United States. Shuai’s case was the first in the history of Indiana in which a woman was prosecuted for murder for a suicide attempt while pregnant. Although originally charged with murder and feticide, in 2013 Shuai pleaded guilty to a misdemeanor charge of criminal recklessness and was released, having been sentenced to time served (433 days).

According to the National Conference of State Legislatures, at least 38 states have on their books laws recognizing unborn children as homicide victims, some states only recognizing the fetus if viable, and at least 23 of those states recognize the fetus at the earliest stages of pregnancy. Some states may charge the fetal death as an involuntary manslaughter. And, in 2004, by the closest of margins (one vote in the Senate), the U.S. Congress passed the Unborn Victims of Violence Act, which recognizes unborn children as victims if injured or killed during the commission of federal or military crimes of violence.

The various situations described here may all constitute homicide, but they do so at varying levels of culpability and, therefore, involve varying levels of punishment. The criminal law recognizes types and degrees of homicide based on such notions as intent, reasonableness, premeditation, gravity, provocation, and foreseeability. The law of homicide is particularly complex and differs somewhat from jurisdiction to jurisdiction. State laws change frequently, moreover, as politically minded legislatures and constitutionally minded courts struggle to fine-tune the definitions and applications of criminal codes.

Additionally, as technological changes occur, homicide investigation techniques and laws change as well. A California woman, Deborah Matis-Engle, was convicted of vehicular manslaughter and sentenced to six years in prison for killing a woman in another vehicle as she was texting and speeding through a construction zone. She was paying her bills by cell phone in the minutes before and up to the horrific car crash. In the weeks after the “accident,” Matis-Engle was, on two occasions, spotted by California Highway Patrol continuing to text and drive. Hundreds of deaths have occurred as a result of people recklessly taking selfies, and emergency rooms are filled with “petextrians,” pedestrians who are injured or killed as a result of texting while paying little or no attention to passing vehicles. The *New York Post* was right in its June 18, 2016, headline, “Our Cellphones Are Killing Us.”

As illustrated by Table 1.1, the sentences can be considerable for using a car as a deadly weapon in the case of drunk driving. The vast majority of states have vehicular homicide and/or vehicular manslaughter laws on the books. Depending on the circumstances (e.g., intoxication, speeding, reckless driving, drag racing, and texting), someone without the intent to kill can be sentenced to prison a long term of years. In many states, the most severe penalties are meted out for distracted

motorists who kill a worker in a construction zone. At the 2014 South by Southwest music festival in Austin, Texas, Rashad Owens, 21, drunk and attempting to flee the police, crashed his car through a barricade and accelerated into a group of

Table 1.1 Possible Jail/Prison Sentences for DUI Fatalities by State

State	Sentence	State	Sentence
Alabama	1–10 years	Montana	0–30 years
Alaska	1–99 years	Nebraska	1–50 years
Arizona	1–22 years	Nevada	2–25 years
Arkansas	5–20 years	New Hampshire	0–15 years
California	0–10 years	New Jersey	5–10 years
Colorado	0–24 years	New Mexico	0–6 years
Connecticut	1–10 years	New York	0–15 years
District of Columbia	0–30 years	North Carolina	15–480 months
Delaware	1–5 years	North Dakota	0 to life
Florida	0–15 years	Ohio	1–15 years
Georgia	0–15 years	Oklahoma	0–1 year
Hawaii	0–10 years	Oregon	0–20 years
Idaho	0–15 years	Pennsylvania	0–10 years
Illinois	1–28 years	Rhode Island	5–20 years
Indiana	2–20 years	South Carolina	1–25 years
Iowa	1–25 years	South Dakota	0–15 years
Kansas	0–172 months	Tennessee	8–60 years
Kentucky	0–10 years	Texas	2–20 years
Louisiana	3–30 years	Utah	0–15 years
Maine	6 months–10 years	Vermont	1–15 years
Maryland	0–5 years	Virginia	1–20 years
Massachusetts	30 days–15 years	Washington	31–177 months
Michigan	0–20 years	West Virginia	90 days–10 years
Minnesota	0–10 years	Wisconsin	0–40 years
Mississippi	5–25 years	Wyoming	0–20 years
Missouri	0–15 years		

Source: Mothers Against Drunk Driving.

people, killing 4 and injuring 20 others. Convicted of capital murder, he received an automatic sentence of life without the possibility of parole.

Road rage, clearly a loss of self-control, routinely makes headlines as motorists run each other off the road, engage in high-speed chases, get into fights, and even shoot and kill one another. A 2014 survey of 2,705 licensed drivers taken by the AAA Foundation for Traffic Safety found that 78% admitted to at least one instance of aggressive driving during the previous year—acts such as purposely tailgating, intentionally blocking another car's path, and deliberately cutting someone off. Nearly 4% reported having exited their car to confront another motorist. Also according to the AAA Foundation for Traffic Safety, over one-third (37%) of aggressive driving incidents (the technical term for road rage) involve a firearm. No matter how one feels about gun owners' rights and gun control, hopefully we can all agree on one thing as an immediate fix. When it comes to driving, "gunning it" should be about horsepower, not firepower.

As the nuances of using vehicles to commit murder and mayhem have become codified into law, so, too, are lawmakers scrambling to respond to crimes facilitated by use of the internet, including the well-publicized assaults committed by "Craiglist Killer" Philip Markoff. Taking time from his studies, the 23-year-old medical student selected his victims online through their erotic services listings. Some he robbed in order to pay his gambling debts, and another, 25-year-old "masseur" Julissa Brisman, he killed in a guest room of an upscale Boston hotel. Months before his trial, Markoff took his own life, writing the name of his fiancé in his own blood on the wall of his jail cell.

In another internet-related homicide case, Thomas Montgomery, 47, of Buffalo, New York, fatally shot his coworker and friend, Brian Barrett, 22, because they were both involved with the same woman in an internet love triangle. The woman was older than 40, but pretended to be 18, as she chatted with the two men and sent gifts to Montgomery through the mail (gifts intercepted by Montgomery's wife). Montgomery's jealousy over the fact that his coworker was talking about having an internet relationship with the same woman led him to fire three shots at Barrett with a .30-caliber rifle. Montgomery pleaded guilty to first-degree manslaughter; he then tried to retract his plea, but the retraction was refused by the judge, and he was sentenced to 20 years in prison.

One blog, *craiglistkillings*, identifies more than 100 homicides that have occurred as a result of Craiglist transactions. And a number of other online sources, such as *backpage.com*, have been linked to homicides, including the recent case of serial murderer Darren Vann, who hunted for victims through classified ads for sex for sale. A 2015 *Washington Post* story chronicled the potential horrors of online dating and profiled five murders resulting from love online. Online dating services and apps like *Match.com*, *Tinder*, *OkCupid*, and *eHarmony* can serve as hunting grounds for killers and other predators. Although these online opportunities for predators are relatively new, classified ads have long been tied to murder cases as offenders hunt for victims who advertise to sell property, sell services, or meet a mate. For virtually as long as classifieds have existed, killers or killer teams have used want ads to find their victims. Raymond Fernandez and Martha Beck killed as many as 20 women in the late 1940s, trolling for women who had placed "lonely hearts" ads, an early version of online dating; these women were tricked out of their life savings and then murdered by Fernandez and Beck, who were eventually executed for their crimes.

Online fantasizing about murder can potentially serve as criminal intent sufficient for a conviction, as Gilberto Valle, a former NYPD cop, found out. Dubbed the "cannibal cop," Valle expressed online his sexual fetishes of kidnapping, raping,

murdering, and eating women but never actually kidnapped, raped, murdered, or cannibalized anyone. Finding evidence of his online activities, his wife reported Valle to the police and later testified against him in court. Valle was convicted of conspiracy to commit kidnapping. Many legal scholars argued that he was being prosecuted for thought crimes, and the appeals court agreed, overturning his conviction. According to the appeals court, even though he had done research on methods of torture and abduction, accessed a database for information, and conducted some surveillance on his fantasy victims, the *actus reus* element of the crime was missing. His fantasies of abduction were just role-play. Although he escaped criminal penalties, Valle was fired from the NYPD for illegally accessing a law enforcement database to find information about his fantasy victims. Even after losing his job because of his fantasies, Valle apparently still continued to visit cannibalism fetish websites. Having destroyed his marriage, Valle signed up for a dating website but was forced off when his identity was revealed.

Offenders can exploit the power of the internet to further their crimes, but law enforcement and vigilant cybersleuths can also use the internet to apprehend them. A suspected serial/spree killer was arrested in July 2010 after he became Facebook friends with the sister of one of his victims. Mark Dizon, 28, was charged with killing nine people over the course of three robberies. A family friend of one of the murder victims had looked up Dizon on Facebook, as she thought he matched the description given by witnesses, and saw that the sister of a victim was on Dizon's friend list. Many other crimes have been solved when offenders posted and boasted on social media.

Rather than just boasting about their crimes, some offenders have taken things a step further and actually posted video of their murders. In April 2017, Steve Stephens, dubbed the "Facebook Killer," livestreamed himself killing a random citizen, Robert Godwin, Sr. Two days later, after a nationwide manhunt, an observant citizen tipped off police to Stephens's whereabouts. When confronted by the police, Stephens killed himself.

MURDER

The laws governing homicide vary from state to state, yet all jurisdictions distinguish murder from less serious forms of homicide (e.g., manslaughter). Murder requires malicious intent (or simply "malice"), an aim to cause death or great bodily harm. In addition, malicious intent can extend to acts that are reckless or show "depraved indifference" to human life, such as exploding a bomb inside a school, even if the perpetrator never meant to hurt anyone. Assaults not necessarily designed to be fatal can constitute murder so long as the deadly outcome is a reasonable or foreseeable possibility. Thus, if a victim of an unarmed assault (e.g., a blow to the chest) falls down, bangs his head on the sidewalk, and then dies three days later from the head injury, the assailant can be charged with second-degree murder. A parent, distraught over a crying, colicky baby, who shakes the infant to silence her and does it so vigorously as to cause death, can also be charged with second-degree murder (assuming that the parent is aware that this rough form of treatment can be detrimental).

In early English common law, the root of the U.S. legal system, murder was automatically punishable by death. However, wishing to mitigate the law's inflexibility and excessive harshness, legislatures in postrevolutionary America moved to limit capital punishment only to the most grievous acts by establishing degrees of homicide, typically first and second degrees for capital and noncapital murder, respectively.

First-Degree Murder

In contemporary statutes, the degree of murder, first versus second, essentially turns on whether the offender premeditated the act of violence. Premeditation entails some evidence of planning, deliberation, or scheming, although not necessarily over a prolonged time period. In fact, the extent of deliberation can be a matter of minutes or even seconds. A plan to kill one's spouse after doubling the size of her life insurance policy obviously reveals cunning and cold-blooded deliberation. Yet an act of road rage in which a motorist deliberately chases another vehicle, forcing it off the road into a fatal encounter with a concrete pole, can also reflect sufficient deliberation so as to constitute first-degree murder.

Scott Peterson, for example, told his mistress, Amber Frey, that his wife had died two weeks before he actually murdered her (and her unborn son). This and other elements of premeditation clearly showed that Peterson had planned to murder his pregnant wife, Laci. Peterson was convicted and sentenced to death by lethal injection. He currently spends his days in a 4-by-9-foot cell on San Quentin's death row. Jodi Arias's claims of self-defense were rejected by jurors, who found her guilty of the first-degree murder of ex-boyfriend Travis Alexander. Although jurors could not agree on sentencing and she avoided a death penalty verdict, she will spend the rest of her life in prison in Arizona. A rental car, a change in hair color before the trip, and the purchase of three five-gallon gas cans for the nearly 3,000 miles of travel to get to Alexander was evidence enough for premeditation, and the nearly 30 stab wounds, slit throat, and a gunshot wound to the head convinced the jury that Arias was a cold-blooded murderer. Illustrating that hybristophiles aren't just women, Arias received marriage proposals every week before and after her conviction. Thriving on the attention, she has even contemplated a prison wedding to one of her pen pals.

Many states also consider intentional acts of homicide that are especially brutal, cruel, or extreme to be first-degree murder, even if the crime is not premeditated. On the evening of August 28, 1995, for example, Richard Rosenthal and his wife, Laura Jane, argued heatedly in the backyard of their suburban Boston home. The fight began over a burned ziti dinner and escalated quickly. The 40-year-old insurance executive lost all control over his temper and started beating his wife repeatedly with a rock. He then cut open her chest with a six-inch kitchen knife and impaled her heart and lungs on a stake in the backyard. Although Rosenthal may not have planned the fatal attack, the jury convicted him of first-degree murder because of the "extreme atrocity and cruelty" of the crime. Rosenthal mounted an unsuccessful insanity plea at trial but was instead convicted of first-degree murder and received a sentence of life without parole.

The so-called felony-murder rule also grants murder status, typically in the first degree, for any death that results during the commission of a dangerous felony, such as a robbery or arson. Even though the felon may not have planned or intended for someone to die during the crime, the intent and planning surrounding the commission of a reckless act are by law transferred to the homicide. If, for example, a robber fatally shoots a store clerk because the victim is too slow in handing over the contents of the cash register, the charge is "murder one." He may have planned to use the gun only to intimidate but not to kill; however, the deliberation in committing a dangerous felony like robbery translates into premeditation for the homicide.

The felony-murder rule may apply even when the felon does not directly cause the death, so long as the fatality results from an act or conspiracy in which he or she is implicated. If, for example, the police shoot and mistakenly kill a hostage

whom the robber has taken as a shield, the offender may be charged with first-degree murder.

Twenty-nine-year-old Aldrin Diaz was charged with murder following a disturbance on January 28, 2000, outside of a Providence, Rhode Island, restaurant, even though he never fired his weapon and dropped it when ordered to do so by the police. During the incident, an off-duty cop, rushing to assist fellow officers with his gun drawn, was fatally shot by a uniformed officer who had mistakenly identified the cop in street clothes as one of the combatants. Because Diaz's use of a gun precipitated the chain of events leading to the officer's death, he could have been held legally responsible under the felony-murder rule, although the charge was ultimately dropped.

The felony-murder rule may appear unreasonably strict when, for example, the person charged with murder takes a fall for the one who directed the crime, or, as in the Diaz case, when a police action results in a death. In an attempt to address this concern, some courts have limited the application of the rule to deaths that were foreseeable during the commission of the dangerous felony. You can be charged with murder without killing anyone.

A North Carolina man, Larry Whitfield, 21, was charged with felony-murder after he robbed a bank and then broke into a home looking for a place to hide. The 79-year-old grandmother living there had a heart attack, being literally scared to death when she saw Whitfield in her home. Whitfield was found not guilty of murder but was convicted of causing her death by kidnapping and received an automatic life sentence. Although the conviction was eventually overturned, the U.S. Supreme Court upheld his bank robbery conviction, for which he was sentenced to 27 years in prison. "Homicide by heart attack" occurs when a victim suffers a fatal heart attack after, for example, being hit on the head by an object, being punched in the face by a robber, being startled awake by a home intruder, or being engaged in a struggle with a purse snatcher. The offender can be arrested for murder for having precipitated a victim's cardiac arrest, without even having touched the deceased.¹

The "Elkhart Four" case illustrates how felony-murder convictions can result even when the offenders didn't take a weapon to the scene. In 2012, five young men from Elkhart, Indiana, decided to burglarize a house, believing incorrectly that no one was home. Four members of the group broke into the house while another waited across the street as a lookout. The homeowner, awoken by noise, confronted the intruders with a gun, killing one and wounding another. The surviving four would-be burglars were charged with felony-murder. Although they were unarmed, the four defendants were convicted, and all received prison sentences in excess of 45 years. After years of legal wrangling and significant national media exposure, the murder convictions were vacated and all four were resentenced for burglary.

The nature of the crime determines not only how the homicide is charged but also the potential penalty, including death in the majority of states (see Chapter 14 for details). Various aggravating and mitigating factors can be considered in determining the appropriate sentence, but they are required elements for deciding in capital cases between the death penalty or a life sentence. Aggravating factors, such as multiple victims or torture, increase the defendant's culpability, while mitigating factors, such as no prior offenses and acting under extreme duress, may lessen criminal responsibility and, therefore, lighten the sentence. The range of aggravators and mitigators varies by jurisdiction. Table 1.2 lists aggravating and mitigating factors for the imposition of the federal death penalty. Note that the last mitigating factor, "other factors in background, character, or circumstance," is

Table 1.2 Aggravating and Mitigating Factors in the Federal Death Penalty

Aggravating Factors	Mitigating Factors
Death during commission of another crime	Impaired capacity to appreciate wrongfulness of conduct or conform to the requirements of law
Previous conviction of violent felony involving firearm	Substantial duress
Previous conviction of offense with a sentence of death or life imprisonment	Minor participation in commission of crime
Previous conviction of other serious offenses	Equally culpable defendants not being punished by death
Grave risk of death to additional persons	No prior criminal record
Heinous, cruel, or depraved manner of committing offense	Mental or emotional disturbance
Procurement of offense by payment	Victim consented to conduct resulting in death
Offense committed for pecuniary gain	Other factors in background, character, or circumstances
Substantial planning and premeditation	
Conviction for two felony drug offenses	
Victim vulnerability due to old age, youth, or infirmity	
Conviction for serious federal drug offenses	
Continuing criminal enterprise involving drug sales to minors	
Victim was a government official	
Prior conviction of sexual assault or child molestation	
Multiple killings or attempted killings	

basically anything else that your defense attorney can argue that would convince a jury to show leniency.

Second-Degree Murder

Homicides that reflect malicious intent yet lack premeditation, that do not show extreme cruelty, and that are not committed during the course of a dangerous felony are considered murders in the second degree. For example, a man who impulsively stabs his teenage son to death during an argument over a football game has, given the spontaneity of the act, committed second-degree murder. Homicides committed under the influence of alcohol or drugs are also generally considered

second-degree murders, if the intoxication is believed to have reduced the drunken person's capacity to act deliberately and premeditate the deadly assault. In some states, the jury can only consider the charges the prosecutor has presented, whereas in other states, the jury has a wide range of choices to make regarding what level of homicide they may convict on. In some cases, jurors may not find that the elements of first-degree murder have been met beyond a reasonable doubt but those of second-degree murder have. But if a prosecutor initially overcharges, hoping for a plea bargain, and the defendant chooses to go to trial, the strategy can backfire.

MANSLAUGHTER

Homicides that lack malicious intent or reckless disregard for life are considered manslaughters, which in turn are divided into voluntary and involuntary forms. Voluntary manslaughter is the intentional killing of another person under extenuating circumstances, such as provocation or emotional duress (the so-called heat of passion) without time or opportunity for cooling off. The action is downgraded to a reaction as a response to some sort of provocation, and thus the malice is somewhat negated and the crime is a manslaughter instead of a murder. A woman who kills her husband on finding him sexually molesting their daughter has committed voluntary manslaughter. If, on the other hand, she deliberately seeks him out in order to avenge his act of incest, she could be charged with murder, although most juries would likely respond sympathetically.

In 1993, a man was on trial for molesting four young boys at a Christian camp, including Ellie Nesler's 6-year-old son. The irate mother took a gun to the courtroom and shot the defendant five times, killing him. She was convicted of voluntary manslaughter and sentenced to 10 years in prison. Nesler became a folk hero to many and had supporters across the United States, although some of her support faded when it was revealed she was high on meth at the time of the shooting and had an extensive criminal history. Her original conviction was overturned as a result of juror misconduct, and she eventually pled guilty to manslaughter, serving a total of three years in prison (she was released early after being diagnosed with breast cancer). But that was not the end of the story. In 2002, Nesler was convicted for selling methamphetamine and went back to prison until 2006.

Also considered acts of manslaughter are deaths that result from fistfights, barroom brawls, or similar conflicts between equal combatants. Of course, a person who picks a fight with someone much smaller can be charged with murder if the disadvantaged victim dies. Voluntary manslaughter also applies when a person uses excessive force in self-defense or wrongly but honestly perceives that self-defense is required given the situation. Thus, for example, shooting a neighbor under a genuine, yet mistaken belief that he was a burglar is not considered murder, but neither is it accidental in the eyes of the law. As the recent case of a couple seeking YouTube fame illustrates, there are also multiple degrees of manslaughter in some states and clearly multiple levels of stupidity. Nineteen-year-old Monalisa Perez, seven months pregnant, shot a gun aimed at a book that her boyfriend, Pedro Ruiz III, was holding at his chest, both expecting that the hardcover volume would stop the projectile. It didn't, and Ruiz died from the gunshot wound. Perez was charged with second-degree manslaughter, which, in Minnesota, equates to involuntary manslaughter as a result of recklessness or gross negligence.

Some cases involving mob mentality cross the line between self-defense and criminal behavior. In 2007, for example, an angry crowd in Austin, Texas, dragged a passenger from a car that had just hit and injured a small girl. The driver of the

automobile managed to escape the mob, but the passenger, David Rivas Morales, 40, was beaten to death by eight bystanders. According to witnesses, it was 16-year-old Samuel Byrd who delivered the final blow, resulting in his conviction for manslaughter in juvenile court. Kurtiss Colvin, a 22-year-old boxer, was also charged with manslaughter but was convicted of the lesser included offense of aggravated assault.

In the crime of manslaughter, it is the heat of passion, intense fear, or provocation that negates the malice required for murder. Malicious intent is presumed absent when the killer reacts, understandably yet unjustifiably, to some provocation (such as the discovery of an unfaithful lover or the attack by an inebriated drinking buddy) or duress (such as murdering and cannibalizing another human being in order to stay alive while lost in the wilderness). Although one may use deadly force in self-defense or to survive a perilous attack, the use of excessive force (e.g., shooting an unarmed attacker) also constitutes manslaughter.

The provocation necessary to reduce the crime of murder to that of manslaughter must be reasonable in some objective sense. The fact that an offender feels provoked does not automatically constitute the lesser offense. Vigilantism, for example, may entail a deeply felt emotional reaction to a perceived injustice in society, as in the actions of 36-year-old Michael A. Mullen, but is not recognized as legitimate provocation. In September 2005, Mullen telephoned the Bellingham, Washington, police and confessed to having shot to death two men—Hank Eisses, 49, and Victor Vasquez, 68—whom he had identified from Whatcom County's online registry of sex offenders. Mullen was outraged and upset about a recent widely publicized case involving Joseph E. Duncan III, a repeated sex offender from Washington State who had been arrested in Idaho for kidnapping and murder. Duncan had bludgeoned to death three people inside the Groene family home near Coeur d'Alene, Idaho, in order to kidnap for sex 9-year-old Dylan and 8-year-old Shasta. Dylan eventually became Duncan's fourth murder victim, but Shasta was rescued when an observant Denny's waitress recognized the little girl and called police.

Shasta's rescue hardly assuaged Mullen's anger over the fact that a repeat sex offender was free to commit this heinous act. For Mullen, Duncan's release from custody by Washington State was the final straw—someone had to do something. He explained in a letter sent to the *Seattle Times* that he targeted the two sex offenders, Eisses and Vasquez, as a step toward preventing another tragedy like what had happened in Idaho. It especially galled the vigilante that Duncan had bragged to his female abductee about ending the lives of her siblings and that he had discarded their remains like garbage.

Michael Mullen's decision to target locally accessible sex offenders to avenge Duncan's alleged crimes was in part to dramatize the plight of victims like the Groenes. Mullen also indicated his desire to be executed as soon as possible; he wanted to reach the hereafter in time to welcome Duncan's arrival: "I am not proud of taking two lives . . . but my death alone would have meant nothing," wrote Mullen. While serving a 44-year prison sentence, the convicted vigilante was found dead inside his cell, an apparent suicide.

There are limits to the levels of provocation that can reduce murder to manslaughter. Words, slogans, insults, gestures, or style of dress and appearance may be socially provocative, yet not so in a legal sense. A hot-tempered individual who fatally attacks someone for uttering a racial slur and a homophobic man who kills in reaction to a proposition from another man have committed murder, even though in both cases the victims may have precipitated their own demise.

Jonathan Schmitz of Lake Orion, Michigan, for example, was convicted of second-degree murder for slaying his friend and neighbor Scott Amedure with a

12-gauge shotgun because the victim had publicly humiliated him. Amedure, age 32, had revealed his sexual attraction to Schmitz during a 1995 taped episode of the Jenny Jones television talk show, titled “Same-Sex Secret Crushes.” During the program, the host elicited Amedure’s whipped cream and strawberries fantasy involving Schmitz. The heterosexual defendant testified that he was embarrassed and mortified in front of a crowd and had been led to believe by the staff of the show that his secret admirer was a woman.

The critical factor in assessing Schmitz’s criminal responsibility was the three-day time span separating the defendant’s public embarrassment from the subsequent shooting. Because of the “cooling-off” period, the jury rejected Schmitz’s claim that he killed during an insane rage provoked by his victim’s public admission. Schmitz’s conviction was overturned on appeal because of errors in the jury selection process. Yet, in his subsequent retrial, a second jury convicted him of second-degree murder, rejecting his “crime of passion” defense. Schmitz was given a prison sentence of 25 to 50 years but was released in August 2017 after having served 22 years.

A death resulting from negligence is considered involuntary manslaughter. The law punishes those whose recklessness or negligence causes loss of life as well as those who fail in their duty to act in a manner that may prevent someone from dying. For example, on February 20, 2003, a swiftly moving blaze killed 100 people and injured over 200 more at a West Warwick, Rhode Island, club when a pyrotechnic display used by the rock band Great White accidentally ignited soundproofing material behind the stage. Daniel Biechele, Great White’s tour manager and the man who set off the pyrotechnics, pled guilty to 100 counts of involuntary manslaughter and was sentenced to four years in prison. Jeffrey and Michael Derderian, the two brothers who owned the Station Nightclub, pled no contest to charges of involuntary manslaughter. Jeffrey Derderian was sentenced to three years of probation and 500 hours of community service, while his brother Michael was ordered to serve four years in a minimum-security prison and three years of probation. All three men are now out of prison and the short prison terms and probation were difficult for many who lost spouses or children to accept, especially in view of the large death toll, yet the absence of malice certainly influenced the legal outcome.

It is also involuntary manslaughter if a physician carelessly writes out a prescription for the wrong medication or the improper dosage, thereby causing the death of a patient, or if a gun owner does not responsibly lock away his weapons. Following the February 29, 2000, fatal shooting of a 6-year-old girl by her first-grade classmate at the Buell Elementary School in Mount Morris Township, Michigan, 19-year-old Jamelle James, who lived with the young perpetrator, was charged with involuntary manslaughter. Although James was not present at the scene of the shooting, court papers alleged that he had carelessly left the murder weapon, a loaded .32-caliber semi-automatic, within easy reach of the 6-year-old shooter. The irresponsible adult was convicted and sentenced to serve a prison term of 2 to 15 years.

The duty to act can extend to some rather dark places, as illustrated by the bizarre “dominatrix trial” of Barbara Asher, aka Mistress Lauren M., following the July 2000 disappearance of 53-year-old Michael Lord. According to the prosecution theory, Lord suffered a heart attack while strapped to a rack in a Quincy, Massachusetts, condominium in which Asher performed her “bondage and discipline” professional services. The prosecutor argued that Asher deliberately chose not to seek medical help for the dying man out of fear that her illicit business would be exposed. It was further alleged that Asher, with the assistance of a friend,

dismembered Lord's body, disposing of it in a trash dumpster in Maine. At trial, the state failed to produce any physical evidence to support its argument or even to prove that the victim had visited Asher's dungeon of domination. Despite its distaste for the defendant's trade, the jury acquitted Asher due to lack of proof.

Like the felony-murder doctrine, the misdemeanor-manslaughter rule applies if a death occurs while the offender is engaged in a misdemeanor, an act less serious than a felony. In Worcester, Massachusetts, for example, a homeless man and woman, both marginally disabled intellectually, were charged with involuntary manslaughter following an abandoned 1999 warehouse blaze in which six firefighters perished. Not only had the homeless squatters caused the fire by carelessly burning a candle, but they apparently failed to report the fire as it spread rapidly. Because both defendants were marginally disabled intellectually, a plea bargain was offered and accepted, placing the two on 5 years' probation.

Recently in the United States, five former Michigan state government officials were charged with involuntary manslaughter as a result of deaths associated with the contaminated Flint, Michigan, water supply. Prosecutors have argued that at least 11 people died of tainted water and thousands more were made sick, as officials covered up what they knew to be poisonous drinking water. More than two dozen other state officials were also charged criminally for obstruction of justice and neglect of duty.

All the cases just described involve the crimes and punishments of individuals or groups of individuals. But can corporations have *mens rea*? The United Kingdom passed a corporate manslaughter and homicide act in 2007 that allows corporations, unions, police, and some government agencies to be charged with murder or manslaughter. The sentences handed out include orders to remedy a dangerous condition, orders to publicize the failure, and fines. Hundreds of charges have been brought since the act was passed. Prior to 2007, only individuals could be charged, but now the corporate or governmental agency itself is also liable criminally (as well as civilly). In the United States, by contrast, only individuals or groups of individuals within an organization can be charged for worker deaths from falls, explosions, and machinery malfunction. There is some movement, however, to follow the lead of the Brits in this regard.

DEFENSES TO CRIMINAL HOMICIDE

The law recognizes both justifications and excuses that limit an individual's criminal responsibility for committing homicide. In certain defenses (sometimes referred to as justifications), defendants admit to having carried out the killing but maintain that, under the circumstances (e.g., the exercise of police powers or citizen use of self-defense), what they did was proper under the law and therefore noncriminal. Thus, a claim of self-defense would suggest that an individual committed the act but was justified in doing so. The accused admits being responsible for the act but claims that it was legal. In excuses, by contrast, defendants admit what they did was wrong but maintain that, under the circumstances (e.g., duress, mistake, entrapment, insanity, intoxication, extreme youth or senility, diminished capacity, sleepwalking, and various psychiatric syndromes), they were not fully responsible for the criminal act they perpetrated.

In July 2003, 86-year-old George Russell Weller hit the gas pedal instead of the brake in his 1992 Buick and careened into a crowded farmers market in Santa Monica, killing 10 people ranging in age from 7 months to 78 years. In addition, he injured more than 60 pedestrians. Although Weller had tested negative for drugs

and alcohol and had passed a vision and written driving exam three years earlier, evidence came to light that his driving skills had been impaired for some time. Ten years earlier, Weller had crashed his car into a retaining wall. More recently, he damaged his own garage on at least two occasions. Weller's horrendous accident brought the issue of elderly drivers and the law to the forefront of public debate.

Weller never accepted responsibility or showed genuine remorse. Evidence suggested that he had actually been in control of the car and was steering his way through the crowd; perhaps he could have avoided hitting many of the people. On the day of the accident, moreover, he had had a minor accident a short distance away and was possibly fleeing the scene when he crashed into the farmers market. After the carnage, as people lay dead or dying, Weller was heard chastising the victims because they didn't get out of his way and also asking witnesses to imagine how he felt.

Despite his age, Weller was charged and convicted of 10 counts of vehicular homicide with gross negligence. By his November 2006 sentencing date, Weller's health had so deteriorated that Superior Court Judge Michael Johnson ordered the frail defendant to serve 5 years' probation but no jail time, a decision that upset the families of Weller's victims. Judge Johnson noted that Weller's actions and apparent indifference to the suffering he had caused clearly warranted prison time, yet the judge was persuaded against incarceration for practical reasons. Not only would prison life kill the man, but it would burden the state with the cost of his medical care. Thus, in the final analysis, old age and senility did not excuse Weller from responsibility for his actions. Come sentencing time, however, age did play a role in assessing the appropriate punishment. Based on inadequate barrier protection at the farmers market, the City of Santa Monica paid out \$21 million to settle dozens of civil lawsuits. Weller died in 2010 at age 94.

More recently, Laura Lundquist, 98, was indicted in 2009 on second-degree murder charges after allegedly strangling and suffocating her 100-year-old nursing home roommate, Elizabeth Barrow. Lundquist had complained about the number of visitors her roommate received, accused Barrow of taking over their room, and wanted Barrow's bed because it was by the window. Lundquist was ruled incompetent to stand trial due to dementia and was placed in a state psychiatric hospital.

Justifiable Homicides by Police and Citizens

In contrast to excuse defenses that lessen or eliminate responsibility for criminal conduct, certain homicides are considered completely legitimate. Killings by public officials in the course of executing their duties and job responsibilities are generally considered justifiable, although in reaction to recent abuses of power, the police have been restricted from using deadly force against unarmed, nondangerous suspects fleeing the scene of a felony. Four white New York City police officers were charged with, but acquitted of, second-degree murder after firing a 41-shot barrage of bullets at an unarmed West African immigrant, 22-year-old Amadou Diallo, on February 4, 1999, during an anticrime sweep through the Bronx. The jury felt that the officers were justified in using deadly force when they mistakenly yet reasonably believed Diallo had reached for a gun. The victim was actually reaching for his wallet, presumably in order to produce some identification.

Police action shootings have come under increased scrutiny, thanks in part to video recordings of the events. Controversial police killings of citizens—including Michael Brown in Ferguson, Missouri; Philando Castile in Falcon Heights, Minnesota; Alton Sterling in Baton Rouge, Louisiana; and Tamir Rice in

Cleveland, Ohio—sparked protests, riots, and debates, as well as the Black Lives Matter movement. Although the Uniform Crime Report of the FBI reports the number of justifiable homicides by police against citizens and citizens against citizens, these statistics, particularly the police action killings, have been found to be grossly inaccurate. The lack of reliable data on police use of deadly force encouraged the *Washington Post* to start tracking all instances of civilians killed by police. The *Post* tallied 991 citizens killed by the police in 2015, 963 in 2016, and 987 for the year 2017. Not surprisingly, black males are overrepresented in these deaths, as are the mentally ill, who account for as many as 25% of persons killed by police.

The vast majority of officers who kill citizens in the line of duty are found to have been acting within the deadly force laws, policies, and procedures of their department. When on rare occasions officers are charged in civilian deaths, they are rarely convicted. Thus, it is not just the death of a citizen that creates community outrage but the lack of convictions at trial when officers are in fact prosecuted.

There has been a recent uptick in the number of police officers killed by civilians. Although the overall number of fatal assaults on the police has remained fairly stable over the past decade (an average of about 50 officers killed annually), there have been clusters of murders of officers, including the five officers killed and nine others injured in a Dallas, Texas, shooting in 2016.² The offender was a U.S. Army veteran who was angry over the shootings of black men by police and had stated he wanted to kill white people. There is clearly a need for greater transparency, accountability, and open dialogue regarding the police use of force.

For the civilian actions, homicides are considered justifiable if they are in reaction to a level of provocation so great that deadly force is necessary in defense of self or others, and sometimes home or property. To constitute self-defense, however, only that amount of force sufficient to repel an attack or intrusion is permitted by law. Generally, one cannot fend off a fist with a gun, unless the weapon is required to counterbalance any disadvantage in size or strength. Thus, a child or diminutive adult may be justified when using a gun to defend against a knife assault by a larger assailant. However, if excessive force is in fact used in defense of self or others, then manslaughter charges may result. Media accounts are filled with homeowners killing would-be robbers and burglars. According to FBI data, approximately 300 citizens justifiably kill their fellow citizens every year, and nearly 85% of those are firearm deaths.

Rarely has a citizen-on-citizen killing resulted in more controversy than the February 2012 fatal shooting of Trayvon Martin, a black 17-year-old dressed in a hoodie, at the hands of neighborhood watch coordinator George Zimmerman. Martin was walking back from a convenience store in Sanford, Florida, where he was visiting his father's fiancé. Zimmerman, 28, called the police to report a suspicious person dressed in a hoodie and then started following him. Shortly after the call, Zimmerman shot the youth dead. After questioning him, the police released Zimmerman that same evening, deciding that there was little reason to dispute the claim of self-defense. Even though the victim was not armed, Zimmerman still feared for his safety.

Months later, after a national outcry over an apparent injustice, a special prosecutor charged Zimmerman with second-degree murder. Many legal scholars claimed that this was a case of politically motivated overcharging, as the details did not support the elements of second-degree murder, especially in the poster state for stand your ground laws, which allow citizens to use deadly force when they feel threatened. Zimmerman was acquitted, which would serve as the first straw leading eventually to the Black Lives Matter movement.

The law pertaining to criminal defenses, be they justifications or excuses, is constantly changing in line with various shifts in culture, advances in science, or public responses to high-profile crimes. Historically, self-defense was only justified if no other reasonable means of escape or retreat existed. Known in many states as the retreat doctrine, if the victim of an attack could safely flee, rather than use lethal force, then this opportunity had to be taken. Fewer than 20 states still require retreat or even partial retreat in cases of self-defense. States are allowing homeowners to defend their homes by using deadly force, and juries have typically been sympathetic to this “castle doctrine” over the retreat requirement. Moreover, the “castle” now often includes not only the home but also businesses and vehicles. In addition, many states have passed “shoot first” or “stand your ground” laws that give citizens the right to use deadly force anywhere and anytime they feel themselves, others, or their property being threatened.

Of course, there are limits even to the newer laws expanding the right of self-defense. Once the perceived threat has subsided, citizens must allow the police to take control. A citizen cannot keep a would-be robber or rapist in the basement to mete out his or her own form of justice. Nor can he or she pursue the assailant beyond the reasonable “curtilage” area surrounding the home. In December 2001, Indianapolis resident Michael Clements responded aggressively when Leon Williams Jr., unlawfully entered his home. Clements chased Williams down the street and shot him in the back. Clements was charged and convicted of aggravated battery and of carrying a weapon without a license and was sentenced to six years in prison. In pursuing the intruder beyond his home, Clements had changed roles from victim to assailant.

Even though the law generally permits individuals to use force in the defense of property, it is the element of personal danger (not property rights) that underlies this prescription. Thus, a resident or retailer is not permitted to set a death trap in order to catch a burglar or some other intruder. Even so, the sympathies of jurors often run contrary to the law. In 1986, Prentice Rasheed, a store owner in the Liberty City section of Miami, set a makeshift booby trap to ward off burglars, resulting in the electrocution of a drug-addicted intruder. The grand jury, seeing him more as hero than villain, elected not to indict Rasheed for manslaughter.

The highly controversial stand your ground law in Florida prompted the Brady Campaign to Prevent Handgun Violence to fight the move by impacting the Sunshine State’s tourism industry. The Brady Center produced warning cards and distributed them to visitors arriving at Florida airports:

Thinking about a Florida Vacation? Please Ensure Your Family Is Safe.

A new law in the Sunshine State authorizes nervous or frightened residents to use deadly force.

In Florida, avoid disputes. Use special caution in arguing with motorists on Florida roads.

Police and prosecutors are concerned about the potential for unnecessary violence.

TRAVELERS: BE VERY AWARE OF FLORIDA’S SHOOT FIRST LAW.

A one-year follow-up of “shoot first” cases in central Florida published by the *Orlando Sentinel* newspaper identified 13 shootings resulting in six deaths and four injuries.³ All but one of those shot were unarmed. The reasonableness of the

perceived threat apparently has opened a perplexing gray area in the law. In one episode, 43-year-old Michael Brady of Winter Haven was cleared of any responsibility for fatally shooting Justin Boyette, as the 6'2", 270-pound man, who had been drinking at Brady's neighbor's home, approached on his lawn. Brady claimed to have been frightened by Boyette's menacing gestures. Friends of the victim argued that Boyette was just trying to be friendly.

Following Florida's lead and with encouragement from the politically powerful National Rifle Association, several other states passed their own expanded castle doctrine or stand your ground laws. Although the exact details vary considerably, over half the states have some form of stand your ground. The Texas and Oklahoma shoot-first provisions are even more forgiving and broad than Florida's. In those states, citizens can use deadly force in self-defense or in defense of a third person in order to prevent imminent kidnapping, murder, sexual assault, or robbery. Such force may also be used to protect property (if during the night) and to prevent arson, burglary, robbery, theft, or criminal mischief. Time will tell whether this approach to empowering victims results in more innocent lives lost than saved. Research conducted in 2012 found that states with stand your ground laws have actually experienced an increase in homicide, suggesting that these laws have no real deterrent effect.⁴ Altercations that otherwise may have resulted in a fistfight, a shouting match, or retreat are now increasingly likely to lead to homicides.

Whatever the specific provisions of a state's stand your ground law, people sometimes perceive personal danger where there is none. In Louisiana in 1994, for example, a 16-year-old Japanese exchange student, Yoshihiro Hattori, was shot and killed by Rodney Peairs. Dressed up like John Travolta in the film *Saturday Night Fever*, Hattori went to the wrong address looking for a Halloween party to which he had been invited. As Mrs. Peairs saw him approach their house, she told her husband to get his gun. Hattori was gesturing wildly and had a camera in his hand, trying to explain to Mr. Peairs that he was there for a party. The Japanese exchange student likely did not understand Mr. Peairs's demand to "Freeze!" Although the case prompted local petitions for tighter gun control and sparked public outcry in the victim's home country of Japan, a jury acquitted Mr. Peairs. It seems that his wife panicked, and he feared for her safety and the safety of their three children. The jury thought this was a reasonable response to a perceived threat, even if the perception was incorrect.

The legitimate use of deadly force as self-defense is also limited to the immediate time frame when danger is imminent. An attempt to fight back, for example, following an assault that occurred the previous day becomes an act of aggression or vengeance and can be punishable as murder. In such instances, we might sympathize with the avenger. We may feel that his or her culpability is limited, even though the act of revenge cannot be tolerated or legitimated in a civilized society. Thus, the law provides a range of excuses that reduce the wrongfulness of the act. Contrary to justifiable homicide, in which the claim is, "I killed him, but it was my responsibility, right, or duty," in excusable killings, the reasoning is, "I did it, but I couldn't help myself."

Excuses for Homicide and Diminished Capacity

Historically, mental illness (being too confused), intoxication (being too drunk), and age (being too young) have been used to negate or reduce culpability, the logic being that these conditions limit or even eliminate criminal responsibility or punishability. More recently, legislatures and courts have grappled with novel theories of how free will may be restricted, including defenses based on such

conditions as battered woman syndrome (BWS), premenstrual syndrome (PMS), postpartum depression (PPD), and posttraumatic stress disorder (PTSD). The list of potential defenses is seemingly endless. In recent years, even some defenses, such as black rage, urban survivor syndrome, and gay panic, have been raised in attempts to excuse criminal responsibility, although with very little success.

In one bizarre case, 44-year-old Scott Falater of Phoenix, Arizona, raised a somnambulism (sleepwalking) defense as an excuse for his rather bad night in January 1997 when he stabbed his wife of 20 years with a hunting knife 44 times before holding her head under water until she drowned. The defense argued that lack of consciousness would fail to meet the intent requirement of the law. The jury rejected entirely his explanation and excuse.

Defendants have also raised cultural customs and religious beliefs as excuses for criminal conduct, but also with mixed success. The First Amendment of the Constitution protects the free exercise of religion, yet this right can sometimes come in conflict with another person's rights, including the right to life. Laurie Grouard Walker, a practicing Christian Scientist from Sacramento, California, for example, was convicted of involuntary manslaughter following the 1984 death of her 4-year-old daughter, Shauntay, from meningitis. Consistent with her religious beliefs, Walker had chosen prayer rather than medicine as a means of treating her daughter's flu-like symptoms. Although California, like many other states, provides a statutory exemption to criminal prosecution in the practice of religion, the California Supreme Court held that the rights of the child preempted the exemption. A federal judge later overturned Walker's conviction, but on procedural, not religious, grounds. By contrast, in a similar case in Massachusetts (the home of the Christian Science Church), the state's Supreme Judicial Court, citing religious freedom as a basis, overturned the manslaughter convictions of David and Ginger Twitchell, who also had relied unsuccessfully on faith healing to treat their 2-year-old son, Robyn.

Law and culture sometimes come in conflict, forcing an individual to make a very difficult choice. In January 1985, after learning of her husband's adultery, Fumiko Kimura, a 33-year-old Japanese immigrant, walked with her 4-year-old son and infant daughter into the Pacific Ocean off Santa Monica to save them from the shame that her husband had brought on the family. Kimura was pulled to safety and charged with the deaths of her two children. Although customs of her cultural heritage could not excuse her actions entirely, her lack of malice resulted in a light sentence of one year in jail and five years on probation.

HOMICIDE LAW IN PRACTICE

Homicide levels, types, excuses, and justifications are summarized in Table 1.3. When homicide cases come to trial, however, the jury is typically offered an even wider range of possible verdicts. If a defendant is charged with first-degree murder, for example, jurors are typically presented with the option of convicting on a lesser charge—second-degree murder, manslaughter, or possibly even assault with a deadly weapon. On many occasions, a jury will find a defendant guilty of a lesser charge than the facts would dictate or even not guilty altogether because of their sympathies surrounding the case.

Jury nullification, as it is called, is particularly common when smaller or weaker victims are charged with using excessive force to kill an abusive partner or a feared predator. Even if the facts fall short of self-defense, the jury can still choose to excuse. The infamous subway vigilante Bernhard Goetz was cleared by

Table 1.3 Types of Homicide

Classification	Elements	Example
First-degree murder	Homicide with malicious intent and with premeditation or extreme cruelty	A man decides to kill his wife, rather than divorce her, to ensure that he maintains sole custody of their children.
Second-degree murder	Homicide with malicious intent, indifference, or recklessness, but no premeditation or extreme cruelty	A man kills his wife during an argument over how best to discipline their children.
Felony-murder	Homicide during the course of a dangerous felony	A man commits arson in order to collect insurance, not knowing that his wife is home and will die from smoke inhalation.
Voluntary manslaughter	Willful homicide with provocation, under emotional duress, or from using excessive force in self-defense	A man kills his wife when he finds her spanking their child with a belt.
Involuntary manslaughter	Non-willful homicide resulting from negligence or disregard for safety of others	Driving while dialing his cell phone, a man slams into a tree, killing his wife, who is seated next to him.
Misdemeanor-manslaughter	Homicide during the course of a misdemeanor	As a prank, a man yells "fire" in a crowded theater, and his wife dies in the subsequent rush to escape.
Justifiable homicide	Killing a fleeing felon or in self-defense	A man kills his wife as she attempts to strangle their child.
Excusable homicide	Homicide with diminished capacity based on mental illness, age, or other conditions	A man kills his wife under a delusion that she is demonically possessed.

a New York City jury of homicide charges for his December 22, 1984, shooting of several black youngsters who had accosted him on the train. Even though the teens were unarmed, the jurors apparently identified with Goetz's fear in the situation and excused his quick-on-the-trigger response. Goetz was acquitted of all charges except a minor gun offense.

In the vast majority of criminal prosecutions, the case never reaches a jury. The charges may be dropped without a trial because of insufficient evidence, or the case may be decided by a trial judge. But most often, the defendant accepts a negotiated guilty plea. In such instances, the charge may be reduced from what the facts would indicate in exchange for the defendant's plea. Also, in crimes involving two or more accomplices, one defendant will often plead a lesser charge in exchange for giving testimony against his or her accomplices.

The physician's prescription blunder, which, as noted earlier, would constitute involuntary manslaughter, may also result in a civil action—a malpractice claim or even a wrongful death suit. In fact, virtually all criminal homicides can result in two kinds of trials, which can proceed in succession: criminal prosecutions leading to prison time and civil suits brought by families of the victims to recover financial damages. Unlike the criminal proceedings, the burden of proof in the civil action

is far less demanding; guilt must be shown by a preponderance of evidence rather than beyond a reasonable doubt. Thus, for example, it is not inconsistent or even uncommon to encounter defendants like ex-football star O. J. Simpson being found not guilty in criminal court but civilly responsible.

The criminal prosecution of O. J. Simpson, the most watched trial in U.S. history, provides an important lesson for understanding the application of homicide law to real-world cases. As critical as the eyewitness testimony, the DNA evidence, and the credibility of the defendant's alibi were in shaping opinion inside and outside the courtroom, issues of race, class, and gender also had an impact. Some observers speculated that the jury, in acquitting Simpson, had sought to send a message about racism and police misconduct. Others argued that the defendant's wealth had bought him the best defense (the Dream Team) that money could buy; still others claimed that Simpson's celebrity status earned him special treatment.

Notwithstanding the actual rule of law, the political context surrounding a homicide (issues of race, gender, and class, among others) ultimately determines, as Susan Estrich persuasively argued, how the criminal law is applied to the facts, how a case is charged by a prosecutor, how a jury responds to a defendant's strategy, and how an appellate court considers procedural challenges.⁵ For these many reasons, therefore, the punishment may not exactly fit the crime.

Recent attention to the deaths of children left in hot cars illustrates that the law is not always applied equally. The parents of a 7-month-old girl who died in St. Louis in August 2007 were never charged. The mother, a pediatrician, and father, a researcher, miscommunicated, so that neither of them remembered the baby was in the car until passersby spotted her hours later and broke out a window. By that time, it was too late to save her life; the baby had died from heat exposure. In this case, the prosecutor decided that poor communication between the parents did not meet the criterion of criminal negligence. Similarly, an Ohio mom who forgot she had left her 2-year-old child in her car was not charged in the child's death. She had thought to stop and pick up doughnuts for her coworkers but did not remember her child in the backseat. The mother had been warned on previous occasions about leaving the child in the car unattended. In a 2001 case, however, a Missouri man who forgot his child in his automobile was charged with involuntary manslaughter, pleaded guilty, and received 5 years of probation. An analysis of 300 cases of children who died in hot vehicles found that there were charges in only about half of the cases.⁶

Whatever the role of gender, race, and class in charging decisions, well-meaning modifications in law sometimes carry unanticipated negative consequences. Parents and laws have moved babies and children to the backseats of cars and put them in backward-facing car seats. A sleeping child may all too easily become a forgotten child. But, although most cases of kids dying in hot cars are judged as tragic accidents or manslaughters as a result of negligence, one recent hot car death was premeditated murder. Justin Ross Harris, 35, of Georgia was recently convicted of murder after his 22-month-old son Cooper died after seven hours in the 120-degree car. Harris's claims of being forgetful were destroyed at trial when evidence showed he had researched child hot car deaths, had sexting relationships with many other women (some underage), and clearly wanted out from under the burdens of being a father. Harris was sentenced to life without parole for the murder and an additional 32 years for cruelty to children, sexual exploitation of children (for trying to get an underage girl to text him photos of her genitalia), and dissemination of harmful material to minors.

ENDNOTES

1. Staci A. Turner, Jeffrey J. Barnard, Sheila D. Spotswood, and Joseph A. Prahlow, "Homicide by Heart Attack' Revisited," *Journal of Forensic Science* 49 (2004): 598–600.
2. Federal Bureau of Investigation, *Law Enforcement Officers Killed and Assaulted—2016* (Washington, DC: U.S. Department of Justice, 2017).
3. Henry Pearson Curtis, "Gun Law Triggers at Least 13 Shootings," *Orlando Sentinel*, June 11, 2006.
4. Cheng Cheng and Mark Hoetsra, "Does Strengthening Self-Defense Law Deter Crime or Escalate Violence? Evidence From Castle Doctrine" (Working Paper 18134, National Bureau of Economic Research, June 2012); Chandler B. McClellan and Erdal Teskin, "Stand Your Ground Laws, Homicides, and Injuries" (Working Paper 18187, National Bureau of Economic Research, June 2012).
5. Susan Estrich, *Getting Away With Murder* (Cambridge, MA: Harvard University Press, 1998).
6. Jeremy Kohler, "Prosecution or Persecution?" *St. Louis Post-Dispatch*, September 10, 2007.