

GETTING AWAY WITH MURDER

RAOUL FELDER & BARBARA VICTOR

WEAPONS FOR THE
WAR AGAINST
DOMESTIC
VIOLENCE



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“Why Didn’t She Just Leave?”

CHARLES AND TRACEY THURMAN had been married only long enough to have a child when she left him. The reason: he was abusive. For the next eight months, Tracey, with her infant son, lived in constant fear. Thurman made harassing phone calls. He followed her when she left the house, abused her, and on several occasions even publicly threatened to kill her. But it wasn’t until Tracey was sitting in her car one afternoon and Thurman came along and smashed the windshield in view of a policeman that he finally was arrested. After his conviction the court suspended his six-month sentence and put him on probation, but the probation order nonetheless prohibited Thurman from assaulting or harassing her.

Within days, Thurman violated his probation by showing up at Tracey’s house, brandishing a gun and threatening to shoot her and their baby. Tracey called the police. The police, however, refused to make an arrest. Instead, they told Tracey to call back in three weeks, and in the interim, if she was “really afraid,” to seek help from the Family Relations Office there in Torrington, Connecticut. Tracey begged the police to help her, arguing that a violation of probation was police business, not the problem of a local social service agency. The police remained adamant.

With no other option available, Tracey went to the social

service office and, as she suspected, was told that her problem was a police matter. Returning to court and explaining what the police and the social service office had told her, she was finally able to convince the judge to issue a restraining order against her estranged husband, barring him not only from assaulting or threatening her, but also from coming within two miles of her house.

During the next three weeks, Charles Thurman continued to harass and threaten his ex-wife, and on several occasions showed up at her house, followed her, and publicly abused her. Three weeks later, and armed with that order of protection, Tracey returned to the police and demanded once again that they arrest her estranged husband for having violated the order on numerous occasions since it had been issued. The excuse that the police gave Tracey on that occasion was that they couldn't make an arrest until after the Thanksgiving weekend. Again, Tracey went away without police protection but returned first thing on Monday morning, demanding Charles Thurman's arrest for violation of the restraining order. Once again, the police refused to act, informing her that the only officer who could help her happened to be on vacation and was not due back for several weeks. And so, yet another time, Tracey went away empty handed, but not without putting it on record that she was in constant fear for her life and the life of her baby.

In fact, Tracey's family and friends also reported Thurman's threats to the police. It was clear to everyone except the police that Thurman was making it impossible for Tracey to leave the house or lead a normal life. As Tracey told CBS-TV's Dan Rather in a television interview long after the fact, "I went as far as I could go; if my ex-husband would call me on the telephone and threaten me, I would call the police immediately. 'I want this put down on record,' I would tell them, because I figured that if they heard his name enough times, they would finally pick him up." But Tracey figured wrong. It took much more before the police would finally respond.

On June 10, 1983, Charles Thurman showed up in front

of Tracey's house shouting, threatening, and demanding to see her and their baby. Tracey called the police. By now, the police were well aware of the name "Thurman." For eight months, they had taken numerous calls about incidents of violence, neighbors' complaints, and violations of court orders, all concerning Tracey and against Charles. Yet, despite all that, plus the fact that the police knew that Charles Thurman had a history of battering his wife and threatening to kill both her and their infant child, the officer who took the call apparently considered it more important to stop by the station to urinate before speeding off to protect Tracey Thurman from what was a potentially lethal attack.

According to testimony by neighbors, the policeman arrived twenty-five minutes later but remained across the street from Tracey's house in his car. In fact, according to those same witnesses, the police officer stayed in his car and watched while Charles Thurman chased Tracey to the backyard with a knife, grabbed her by the hair, slashed her cheek, stabbed her in the neck, knocked her down, and stabbed her twelve more times. Though the policeman saw Charles Thurman run behind the house and heard a scream, when he finally got out of his car, he went to knock on the front door first. When he got to the backyard, he persuaded Thurman to turn over the bloody knife, but still did not either subdue him or arrest him. The officer later said he had not seen Tracey's body and could not tell whether Charles Thurman had stabbed a person or a chicken or a dog, though he had heard Tracey's scream. While the policeman went to lock the knife in his trunk, Thurman, now unarmed, attacked Tracey again as she lay there, injured and bleeding. Kicking her in the base of the skull, Thurman broke her neck before he ran upstairs and grabbed the baby, dropping him on Tracey's limp body before kicking her one final time in the head. Apparently, while that first officer on the scene was still inside his car, he had summoned backup help, because suddenly everywhere were flashing lights and sirens. An ambulance along with several police cars arrived on the scene, uniformed reinforcements spilling out of the

cars and gathering on Tracey's front lawn. But it wasn't until Tracey was being lifted into the ambulance and Thurman rushed forward to attack her again that the police finally restrained him and took him into custody.

The question that comes to mind, even before the obvious one about why the police didn't interfere earlier, is, what exactly was Charles Thurman thinking at the time, knowing that he was able to assault his wife again and again in front of the police without being stopped? Here is what Charles Thurman said: "I wasn't thinking. I don't even remember being there or what happened. All I saw was this blinding white light, nothing else. I don't remember anything else." But Tracey remembers, and so do a lot of other people, including the Torrington police.

In 1988, after Charles Thurman was sentenced to jail for twenty years for the attempted murder of Tracey Thurman and had served four years of his sentence, Dan Rather came to Torrington, Connecticut, to interview Tracey for the CBS television program *48 Hours*. The subject of Rather's show was Tracey's feelings about the fact that her ex-husband would be eligible for parole in 1990. "I know he's going to come back after me," Tracey told Rather, "and that frightens me. And it scares me to think that I'm going to have to live like I lived for eight months, when I was going through the separation . . . And I know I'm going to have to go through it all again . . . Hopefully they [the police] will be there on time, and they'll be able to protect me . . . but I know he [Charles Thurman] is determined . . . He stated several times that both of us can't live in this world and he's not going to be the one to go. But if he was ever to get to me again, I would rather that he finish the job, because I could never deal with another beating like this . . . How much more handicapped could I be?"

In response to Tracey's fears concerning Thurman's possible parole, Dan Rather posed the following question: "Why not move away?" he asked, "Why not get a long, long way away?" It was an interesting variation on the more familiar question "Why didn't she just leave?" In the case of Tracey Thurman, "leaving" had not been enough, since she

had tried that and still suffered dire consequences. In fact, not only had Tracey left her abusive and violent husband and filed for divorce, but she had followed all the rules, utilized every service available to her within the community, called the police, reported her estranged husband's abuse and threatening behavior, went to court, signed a complaint that resulted in Charles Thurman being placed on probation, reported that he violated his probation, went back to court and swore out a restraining order against him, called the police to report that he violated the restraining order—and still ended up partially paralyzed and permanently disfigured because the system failed her each and every time. Even on that very last day, when Tracey sustained her most serious injuries, it was because the police remained consistent in their policy of not taking Tracey's pleas seriously and because the police officer who took that final emergency call evidently judged it more effective to remain in his car yards away from a woman who was being beaten almost to death.

In fairness to Dan Rather, however, and to everyone else who asks that question or any variation of it, there is a history worth citing.

According to historian Elizabeth Peck, the question "Why didn't she just leave?" was first asked in the 1920s. Back then, sociologists believed that battered women stayed in abusive relationships because they were of low intelligence or mentally retarded. During the 1940s, sociologists changed their minds and assumed that battered women remained with their battering mates because they were masochistic and enjoyed being beaten. By the 1970s, the victim was thought to stay with her abuser because, as a married woman, she was isolated from her friends, family, and neighbors, had few economic or educational resources, and had been terrorized into a state of "learned helplessness"* resulting from repeated beatings.

* Years of studies conducted by Lenore Walker and described in her book *The Battered Woman* reveal that "traumatic psychological infantilism," which is seen in hostages or political prisoners, is comparable to what she calls "learned helplessness," a condition that, according to Walker, has "three basic components: information about what will

But the truth was, even then, that the victim frequently had, indeed, tried to use the medical, social service, and legal systems to protect her: she *did* call the police, she *did* seek medical attention, and she *did* tell friends and family and doctors that one day her partner would kill her. In too many cases, all these cries for help went unheard and the woman ended up predicting her own murder. While the experts' rationalizations have changed from the 1920s to the present as to why victims don't leave their assailants, one thing hasn't changed: in most states assaults against wives and girlfriends are still considered misdemeanors. This is true even in states where an identical assault against a stranger is a felony.

Another thing that hasn't—and won't—change is that *the* question, “Why didn't she just leave?” (or any variation of it) is rhetorical. It is not only rhetorical but, more important, it is life threatening as it pertains to Tracey Thurman and every other woman who suffers abuse, terrorization, or attempted murder at the hands of an intimate partner. In fact, the real problem with that question, however phrased, is that it isn't really a question at all. Rather, it is a statement that, while often made unknowingly by those who think they are asking a question, tells everything that is wrong with society's response to the crime of domestic violence. By the mere asking of that question, the victim of this type of crime is automatically blamed for not taking action, either by leaving or moving away—an action or reaction to violence that is supposed to protect her from her assailant.

The reality is that women leave all the time. Often they give up their homes, friends, family, and jobs, all in an at-

happen; thinking or cognitive representation about what will happen (learning, speculation, belief, perception); and behavior toward what does happen.” That concept, Walker believes, is important for understanding why battered women do not attempt to free themselves from a battering relationship. “Once the women are operating from a belief of helplessness,” Walker says, “the perception becomes reality and they become passive, submissive, and helpless.”

tempt to be safe and far from their abusers. And most of the time, as in the case of Tracey Thurman, leaving doesn't protect them or make them safe. There are many other cases, especially if children are involved, when the courts actually make it possible for the abuser to find the victim: when they force her to give the court and the lawyer for the accused her address and phone number so that the accused is not deprived of his parental rights, and can keep in touch with, or even visit, his children.

There are millions of women, including Tracey Thurman, from many different social, racial, ethnic, religious, economic, and intellectual backgrounds, who call the police, testify in court, swear out orders of protection, seek care at hospitals or at the offices of private physicians, detail their injuries, allow their injuries to be photographed, flee to shelters, to friends or family, and even, trusting of the system, bravely name and identify their abusers for police to arrest, prosecutors to prosecute, and judges to sentence. These are the same women who depend on the system to protect them, rely on the good advice and instructions of law enforcement officers and on the judicial process, and in the end are brutally and violently disappointed, if not brutally and violently injured or killed.

And then there are the battered women who don't leave, who have no family, money, or support system to help them escape a violent situation. Some of these women remain silent about their abuse because they are ashamed that society will judge them to be mentally ill or unable to control their own lives. Occasionally, these are the same women who finally muster up the courage to tell their priest, rabbi, or pastor about the abuse they suffer, and instead of receiving help and understanding, are ultimately blamed for provoking the abuse or being less than perfect wives.

There are still other victims of this crime, women who happen to be married to rich men, famous men, pillars of the community, men who control their every financial decision and monetary expenditure, men who are in a position to finance a long, drawn-out divorce case and mobilize pub-

lic opinion—actions that might result in these women losing their children or ending up homeless and destitute. The reality is that, rich or poor, most of the battered women who hide their agony are so beaten down emotionally and physically that they are unable to make decisions, plan escapes, or even feed themselves or their children without depending solely on their abusers.

There are no guaranteed outcomes for victims of domestic violence, whether they leave or stay, whether they tell the world about the abuse they suffer or hide it even from their closest friends and family. These are the innocent victims of crime who risk losing their children in either case, just because they can neither stop the abuse in their homes nor stop their abusers from finding them. These are the same women who, even when they flee to shelters to escape and give up their homes and all their possessions, are still at risk. These are the innocent crime victims who, often employed and even highly successful in their professions, lose their jobs either because their abusers harass them at work or because bruises, injuries, or emotional trauma force them to call in sick one time too many. These are the battered women who are afraid to report their abusers for fear that they will retaliate either physically or financially, or who are afraid that even if their abusers are arrested and incarcerated, they themselves will lose everything in the process.

Although each of the above-cited eventualities and fears is well known, they have never provoked adequate response throughout society to deal with the problem from the beginning. For example, whose responsibility is it to see that all women and children at risk are protected under the law, are given adequate medical care, are offered viable options to start new lives, and are assured that they can keep their children and care for them in a happy and healthy atmosphere? Whose obligation is it to protect these women when they finally do report their injuries and press charges against their abusers? Whose obligation is it to insure these women their rights in every sense of the word so they are not forced to pay over and over again an inordinate and inhuman price

for having once made a bad choice of a life partner? Or twice, or however many times it happens to them. Whose responsibility is it to lead them to safety?

According to a survey done in 1995 by the Federal Bureau of Investigation, somewhere in the United States a woman is battered every seven seconds. The problem is that every time a woman suffers this kind of abuse, there are very few people—even among those who are otherwise enlightened, respectable, intelligent, and sane and who consider themselves politically correct and nonviolent—whose first question when they hear about a case of spousal assault or murder is not, “Why didn’t she just leave?” Tragically, what this particular type of violent crime usually does *not* provoke is questions that are far more relevant and lucid and that would provide much more useful and concrete solutions to stopping it, questions such as

“How can that man get away with that?”

“Where were the police?”

“Was he arrested?”

“Was he thrown out of his house?”

“Will he stand trial and be convicted and serve a stiff jail sentence?”

“Will the victim get police protection, financial aid, medical care, legal advice, child support?”

“How will that woman and her children survive, financially and emotionally?”

Instead, by asking the question “Why didn’t she just leave?” society makes an immediate judgment about the victim’s part in a crime that was committed against her—a crime, by the way, that is covered under every single criminal statute throughout the United States, whether that crime is assault, battery, harassment, or, in the extreme, murder. In every instance, the only possible outcome of that question is that it automatically blames the victim of the crime for inciting, tolerating, or even enjoying the abuse. What usually follows is the assumption that in some kind of macabre and

inexplicable way, the victim of spousal violence cooperated or acted in complicity with her assailant, allowing him or enabling him to carry out his assault. This in turn exonerates the police, health care providers, social service workers, prosecutors, and judges from acting on the victim's behalf. Consciously or unconsciously, inadvertently or on purpose, the effect of that question is to separate crime victims assaulted by intimate partners from crime victims assaulted by strangers.

The implications of that question are not unlike a remark made by the former French prime minister, Raymond Barre, after a terrorist bombing by Palestinian Arabs of Goldenberg's Restaurant in the Jewish quarter of Paris. Condemning the act on national television, Prime Minister Barre said, "There were sixteen Jews killed and twenty-four innocent victims." Now, what Raymond Barre meant to say was that there were sixteen specifically targeted victims—Jews—who lost their lives and twenty-four non-Jews who also died, because they just happened to be passing by when the bomb exploded. As they concerned the terrorist attack in Paris, the prime minister's words were an unfortunate error in judgment.

As they concern domestic violence, judgments about which victim is innocent or guilty based on her relationship with the assailant or whether or not she was the only intended target are the result of an inherent prejudice throughout society regarding this particular crime. To put it another way, if the public stopped and considered the following questions before asking *the* question—"Why didn't she just leave?"—they might find that they wouldn't have to ask it at all:

Should the crime of domestic violence be ignored by the system, and the perpetrator of that crime go unpunished, if he manages to injure or kill only his intended target?

Should the crime of domestic violence be punished, and the perpetrator of that crime be convicted,

only if, in the course of his committing that crime, “innocent” people were also harmed?

Should criminals be convicted on the basis of the law and not on the basis of whether or not they successfully isolate their intended target?

Should criminals be convicted of a crime regardless of their relationship to their victim?

Should any victim of a crime be judged innocent or guilty on the basis of whether the victim facilitated the crime that was committed against him or her?

Or, should the accused be the only one forced to stand trial for a specific crime, to be judged innocent or guilty by a jury of his peers in a court of law?

The answers to these questions seem obvious, at least on the surface, as long as crimes are not broken down into specific categories depending on whether victims and perpetrators happen to have, or have had, a relationship. The immediate and correct response should be that there are only innocent victims of crime; accused criminals, when convicted, must be punished under the law regardless of what their relationship is to the victim, regardless of what the victim did or did not do to prevent the crime from occurring in the first place, regardless of whether the intended victim was the only one who was injured or killed. Most people, if they think about it, might even add that there should be no exceptions to the law, or extenuating circumstances based on social, emotional, familial, or economic reasons when it comes to arresting and convicting criminals of assault, rape, or murder. Considerations such as personal feelings and opinions on the part of the police concerning the crime itself, the victim, or the perpetrator should not be a factor in the arrest. Concern on the part of prosecutors or judges that the perpetrator may lose his job if he is convicted or that legal action against him will break up the family—or doubts about whether the victim will carry through to press charges

and testify down the line—should not influence the legal process. Assumptions on the part of the police, prosecutors, judges, or health care providers that the couple will work things out themselves, a belief that what happens behind closed doors is a private matter, suspicion that the victim is lying to get a better financial settlement in a divorce, concern about false-arrest lawsuits, or a belief that the victim has the right to conceal her injuries and protect the person who inflicted them should all be irrelevant to the crime that was committed.

When the police arrive on the scene of a crime and determine that an individual's life is at risk, all other issues—social, emotional, or financial—should be dealt with only after measures are taken to separate the victim from her assailant. Tracey Thurman is one of the best examples of a woman who not only left, but also considered it her right to use the system to protect her from harm. Yet in the end, she was a victim not only of her husband, but also of a system that failed her by its blatant lack of response.

In quite another way, and with all good intentions, advocates for battered women, while the most effective voices for making society aware of this crime, are also guilty of compromising the safety of victims. Their support of “empowerment,” that is, the right of women to choose whether or not to report their injuries at hospitals or offices of private physicians, to press charges against their assailants, to testify in court, to return home to their abuser to try and calm things down, to work things out—at the moment when they are terrorized, traumatized, or badly injured—puts victims in continued jeopardy. As they pertain to “stranger crime,” these same so-called rights are not considered, which might account for the fact that perpetrators of stranger crime are arrested and prosecuted far more often and far more successfully than men who assault women with whom they share or have shared an emotional history.

Regardless of whether the intentions are good or bad, it is the victim who pays the ultimate price because the system does not respond or because the system does not take the

initiative to protect her without her consent. The crime of domestic violence, therefore, risks becoming a secondary issue, while the rights of the victim are put before the wrong that has been committed—or the rights of the perpetrator are put before the most important rights of the victim, which are to live without fear and free from harm. Even more detrimental to the victim is this: that encouraging her to make her own decisions precisely at a point in her life when she needs others to take over for her only provokes the question “Why didn’t she just leave?”

The answer to the question of when to arrest a batterer is suddenly not so obvious. On some very visceral level, society judges that if a victim knows her assailant, she should somehow be able to prevent the assault, while at the same time, society also judges that a victim who is assaulted by a stranger has no way of avoiding what is considered to be a random attack. In other words, when it comes to crimes of domestic violence as opposed to stranger crimes, society differentiates, just as Prime Minister Barre did in Paris, between victims who are innocent and victims who are guilty.

While judging any victim of a crime carries serious moral consequences in our system of justice, judging the guilt or innocence of a victim of domestic violence creates an even more dangerous consequence. Sending a message to men—specifically husbands, ex-husbands, boyfriends, or ex-boyfriends—that battering women they know is treated less severely under the law than battering strangers makes all women more vulnerable. Instead, given the proximity of victim and assailant in crimes of domestic violence, not only should the victim be overprotected, but every crime should be treated as a potential homicide. That would not only insure greater protection to all women, but also, as a secondary gain, send a new message to men: that the crime of domestic violence is considered more serious than stranger crime.

Tracey Thurman answered Dan Rather’s question on television that evening—“Why don’t you move a long, long way away?”—by saying, “Why should I leave? I grew up here,

my family is here, my support is here . . . and even if I did run away, he'd find me."

Tracey Thurman could have added that, at least the next time, if Charles Thurman went after her again, when and if he was released on parole, the Torrington Police Department would think twice about ignoring her pleas for help, not think twice about arresting him, and certainly take appropriate measures against any member of their police force who stopped to urinate before speeding over to a possible homicide in progress, or worse, remained inside a police car, watching an attempted homicide in progress.

While Tracey Thurman is by no means an exception to what can and often does happen to any victim of domestic assault, she is an exception when it comes to the judicial outcome of her case. Under the circumstances, however, she paid an enormous price for her victory.

Suing the city of Torrington as well as twenty-nine individual police officers, Tracey Thurman claimed a violation of her constitutional rights set forth in the Fourteenth Amendment to the United States Constitution, which says, "nor shall any State . . . deny to any person within its jurisdiction the equal protection of the laws." Originally, the equal protection clause was applied only to cases of race discrimination, but in 1961, the Supreme Court held that Section 1982 of the U.S. Code afforded a more general "federal right in federal courts because, by reason of prejudice, passion, neglect, intolerance or otherwise, state laws might not be enforced and the . . . rights guaranteed by the Fourteenth Amendment might be denied by state agencies."

A federal court jury heard the case in 1985, found twenty-four of the officers liable, and awarded Tracey Thurman \$2.3 million in compensatory damages.

Tracey Thurman was fortunate in that an extraordinary man came forward and offered to represent her. Burton Weinstein was not only a good lawyer but a genuinely good human being who believed that a major injustice had been done and that Tracey Thurman had the right to be heard in a court of law to rectify that injustice. But what about all the

other battered women who are failed by the system and who aren't able to sue the police for violating their civil rights? What about the women who don't have a Burton Weinsten to stand up for them?

Ideally, the answer should be found within each system already in place within society—medical, legal, judicial, and social service—but for that to happen, concrete changes must be made within each system and under the law to insure that not one woman or child slips by untreated or unprotected. Only then is it possible to save victims of this crime before they become statistics in another book, article, or government study on domestic violence.

Success depends on a unified effort. As in the case of Tracey Thurman and millions of other victims of this crime, all it takes is one part of one system to fail along the way, and all systems fail; that gives the abuser blanket permission to continue his abuse until it can (as it often does) escalate into murder. If one doctor or nurse, one social worker or police officer, one prosecuting attorney or judge fails in his or her job to treat, diagnose, record, report, and advise concerning injuries or traumas suffered by the victim, to arrest, prosecute, and sentence a batterer, it is tantamount to handing down a guilty verdict against the victim, sentencing her to life in prison or even death.

To those of us who followed the O. J. Simpson murder trial, one of the most chilling reports was the one that described Nicole Brown Simpson, after she was already divorced, cowering behind hedges on her own property, beaten and bruised, bloodied and terrorized, clad only in a bra and sweatpants, waiting for the police to arrive after her ex-husband broke into her house, beat her, and threatened to kill her. Nicole's words to the police when they finally showed up sum up perfectly the failure of the system—and our failure as citizens of a democracy dedicated to protecting the rights and well-being of everyone, including women harassed by the men they love, trust, honor, and even divorce. "You never do anything," Nicole cried. "You always come here and you never arrest him."

Perhaps an even more chilling commentary on society, however, is the typical response given by men who batter their partners or ex-partners when they are confronted by the authorities.

According to police reports, on another occasion, years before Nicole Brown Simpson was divorced, when she was still living with her husband and their children, in the early morning hours of a New Year's Day, her husband came to the door of their house after he had just blackened her eye, split her lip, and choked her, to tell police, "This is a family matter. Why do you want to make a big deal out of it?"

Similarly, two years before the bloody end of the Steinberg/Nussbaum case in New York City, while Hedda Nussbaum huddled in a corner, bloodied and beaten, Joel Steinberg came to the door of their Greenwich Village apartment to tell the police, "Interfering in a private discussion in my home is a violation of my civil rights."

Both men spoke for thousands of others who think it unworthy of public notice when they assault the women they live with, bully them with words, silence them with fists, and finally shut them up permanently with knives or guns.

Domestic violence is a crime. The confusion about this crime begins when it is assumed that, given its private nature, it presents less of a threat to society at large. Police and the judicial system often share the belief that crimes involving family members or crimes that occur within the privacy of the home are less of a threat to the general public. After all, the man who beats, rapes, or kills his partner is not likely to stalk strange women on the street, mug the elderly, or molest random children. As a result, the system tends to justify its nonintervention by reason of quantity, the number of those at potential risk, rather than quality, the seriousness of the crime committed. Only when domestic violence ends in murder does the quantitative aspect of the crime cease to be an issue. What was once considered a private matter changes, and the horror of private lives becomes grist for the tabloids and confessional talk shows, when television cameras appear in courtrooms, making the public privy to every last grue-

some detail of what was once considered to be the personal hell of one dysfunctional family. Tragically, what society chooses *not* to do is to penetrate those walls and doors and interfere in that private violence before it becomes a public funeral.

To go from one extreme to the other in order to achieve the norm is not unlike what the Japanese and the Germans did after World War II. Both countries adopted an official policy that dissolved and prohibited the rebuilding of their armed forces. With the exclusion of an armed police force, laws were written into their constitutions that forbade any military intervention or involvement anywhere in the world.

In order to achieve the norm concerning a response to domestic violence, taking action in the extreme might be the appropriate way to begin. Only when there are no automatic judgments made about victims, or opinions about extenuating circumstances for men who abuse, beat, rape, or terrorize women they know, will this crime eventually be viewed, judged, and punished the same as stranger crime. Actions against batterers such as must-arrest laws, no bail, mandatory jail sentences, and participation in batterers' intervention programs are all possible solutions.

The problem of domestic violence has itself become so extreme that it isn't necessary to recount the details of certain cases. The names of the victims are enough to conjure up immediately what these women went through at the hands of their intimate partners. But what does it take for those names to become synonymous with public apathy and nonintervention regarding domestic crime, in the same way that Kitty Genovese has become a byword for public apathy and nonintervention regarding stranger crime? Just the name "Kitty Genovese" forces us to remember the tragedy when neighbors listened to her cries for help and did nothing while someone brutally murdered her on a Queens street in front of her own house. If public apathy concerning random crime in the streets has as its symbol of shame the name of Kitty Genovese, domestic violence certainly has enough names to choose from, beginning with Tracey, Hedda, or

Nicole, to provoke shame throughout society for ignoring their cries for help.

There are social issues related to every crime, and they must not be forgotten as part of society's obligation to each member; but in criminal cases involving strangers, those issues do not interfere with, trivialize, influence, or ignore the due process of the law. If an individual holds up a 7-Eleven and it is later learned that he was unemployed and hungry, society does not create a social issue, calling for long-term goals (such as wiping out unemployment, illiteracy, hunger, and prejudice) in lieu of the short-term solution of incarcerating the criminal. To achieve a crime-free society means upholding the law in the short term; to create better social conditions vital to a crime-free society in the long term means instituting social programs to wipe out prejudice, illiteracy, poverty, and unemployment.

While long-term programs, such as teaching children and adults new attitudes and behavior about respect, equality, and alternative ways to work out disagreements, are critical in changing fundamental attitudes and prejudice within society about women, the crime of domestic violence remains a crime regardless of any concurrent sociopolitical, gender-related, or social programs that are put in place in schools, churches, synagogues, or corporations. Robbery is a crime, just as assault and battery are crimes, just as rape and murder are crimes. Relationships between victims and assailants, under all circumstances, must remain irrelevant under the law. In the case of any crime, short-term programs should not preclude long-term goals, nor should long-term goals replace short-term solutions.

If there is one long-term program that should be instituted in conjunction with these short-term changes across the board regarding the law, it is a total revision of the standards that have been applied in our criminal justice system and throughout society over the last two hundred years concerning men and women who are or have been in a relationship. In other words, anyone has the potential to become a victim or perpetrator.

The response to change in so many cases has always come down to financial—that it costs money, tax dollars, to make changes or implement new programs within any system in society, whether it is the medical, legal, judicial, or social service system. For every proposed change and program, this book will show that it costs less money than financing one trial of a man accused of murdering his wife, ex-wife, girlfriend, or ex-girlfriend—less money than mounting another case against the accused should he decide to appeal his conviction.

There are a limited number of case histories in this book, mainly because, just like that question “Why didn’t she just leave?” they have become redundant. We all know the stories. We can’t avoid knowing them, because we read the printed press or watch television, or because we know people who are involved in this crime either as victims or perpetrators, or because we have personal experience—we have suffered in the past, or continue to suffer, or are making or have made others suffer. By and large, the stories do not differ. The names are different, as are the circumstances and the reactions, but not the methods of abuse, or the injuries that result, or the permanent psychological damage, or the legal outcomes in most cases.

Rather than giving only details of isolated cases of abuse, we have set out the situation as society currently deals with the problem of domestic violence. The only examples given of specific cases of criminal assault or murder are provided to underline failures in each system throughout our society. By citing case studies to underline those failures, we offer alternatives and solutions that will best deal with this crime, protect its victims, and punish the perpetrators.

Nearly a century ago, in one of the first essays ever written in English about domestic violence, Frances Power Cobbe told horror stories about wife abuse. In the process, she appealed to the essential and basic fairness of good and true Englishmen to right these wrongs. This book is written with that same intention, to appeal to the essential and basic fairness of good and true Americans to right these wrongs

throughout our society. We have overcome so many examples of injustice since America was founded, beginning with slavery and segregation; and changed so much antisocial behavior, the least of which was a successful campaign to stop secondary-smoke poisoning in public places.

Domestic violence is a crime committed by one human being against another. For this reason alone, it must be stopped. To stop it, however, takes courage, not only courage on the part of victims to report it, but courage on the part of every one of us to condemn it for what it is—a crime. Only by speaking out can we stop it from happening again and again until there is nothing left but shattered lives. Only with change, cooperation, and communication within every system throughout society and within every family and neighborhood can we stop it from affecting generation after generation of innocent women and children.

In this effort, we have approached this issue as a journey, taking everyone—victims and batterers, as well as men and women who believe they have never suffered abuse at the hands of an intimate partner or have never inflicted it—through the process of this crime step by step, before, during, and after it has been committed: from the beginning of a relationship to the beginning of abuse, to the actual physical assaults, to the police, hospitals, social service agencies, shelters, batterers' intervention programs, offices of lawyers and prosecutors, judges, and into the private lives of the victims and their children. The hope is that eventually we will all be able to judge the successes, condemn the failures, and, above all, identify and recognize this crime in all its different forms. Instead of asking the question "Why didn't she just leave?" we propose three crucial words: change, cooperation, and communication.

Last Rights

ON AUGUST 8, 1993, United States Attorney General Janet Reno spoke at the Women Lawyers of Achievement Awards Luncheon. Her speech began, "There is a lot of discussion about whether domestic violence is a public health problem. There should be none. Of course it is. If doctors and lawyers work together, focusing on it as a true public health problem, [in] a criminal justice system that cares, we can make a difference."

Domestic violence is not a public health problem, nor is it a disease, preexisting condition, or accidental injury. Domestic violence is a crime. It becomes a public health problem only after the crime is committed, when physical injury and psychological trauma (if they don't result in death) are seen and treated by health care providers in hospitals and private offices. Any cooperation between doctors and lawyers to "make a difference," as Attorney General Reno stated, will matter only when doctors and lawyers cooperate within a criminal justice system and understand that domestic violence is a crime that causes, just as stranger crime does, physical and emotional injuries.

At the same moment that Attorney General Reno was addressing the Women Lawyers of Achievement Awards Luncheon, paramedics from the Hatzolah emergency service in the Crown Heights section of Brooklyn alerted the Brook-

dale Medical Center in East New York that they were bringing in a white female, age twenty-four, who had been hit by a car.

The paramedics advised the emergency room staff that Emily Goldenberg was stable and conscious, with a steady blood pressure, and at first glance appeared not to have suffered any fractures or head trauma. An IV had already been started as a precaution against blood loss, as there was every reason to assume that she had sustained internal injuries. A bed in the emergency room had been cleared for Emily, and the trauma surgeon on duty had been alerted that an accident victim was coming in with possible internal hemorrhaging. An operating room had also been prepared, and a team of trauma nurses, an anesthesiologist, and two surgical residents were standing by.

Emily was still conscious when she arrived at the hospital. After the trauma surgeon palpated her abdomen, he announced that there was significant tenderness over the patient's liver, which suggested that she was sustaining abdominal bleeding. While two nurses removed Emily's clothes and put a blood pressure cuff on one arm, a technician placed electrodes on her chest, arms, and legs and a resident hooked up another IV bag to make sure she was getting sufficient fluid to maintain her blood pressure. Emily's condition remained stable while yet another resident drew blood to cross-match in the event a transfusion was indicated, before he began prepping her for further diagnostic studies.

As the team worked on Emily, the surgeon questioned her, more in an effort to keep her alert than to solicit information. He considered it encouraging that she was sufficiently oriented to recite her mother's telephone number as well as request that someone call the insurance company where she worked as an executive secretary to explain what had happened. When a nurse appeared with a set of hospital release forms, Emily had no trouble signing her name, giving the hospital permission to operate if necessary.

In response to the surgeon's questions about the accident, Emily explained that her fiancé had accidentally run

her over as she stepped off the curb to get into the passenger side of his car. According to Emily, he had stepped on the accelerator instead of the brake. The doctor later remembered thinking at that point how guilty and anguished the young man must be feeling, knowing he had inadvertently caused the woman he loved to go through such an ordeal.

After Emily had been hooked up to the monitoring equipment and preliminary examinations were finished, the doctor announced to the others that, in his opinion, a vein or small artery had been nicked or torn as a result of the patient's impact with the car. Given Emily's vital signs, he remained optimistic that any blood loss was due to a slow leak; that made it possible to repair before her condition became life threatening. Within twenty seconds of the surgeon's observation, however, Emily's blood pressure dropped and her abdomen distended markedly. What had been a controlled situation had suddenly turned critical, with all the signs pointing to massive hemorrhaging in the abdominal cavity. There was no time for further diagnostic tests or X rays. Rallying in response to her rapidly failing condition, the trauma team prepared Emily for emergency surgery. Wrapped in an antishock garment with only her pale face visible, Emily Goldenberg was rushed upstairs to the operating room. As she was being wheeled through the corridors, she clutched the surgeon's hand tightly, pleading with him not to let her die.

By the time Emily was anesthetized and her abdominal cavity opened, her medical condition had deteriorated even more. What became immediately evident was that the source of blood leaking into her abdomen was due to a tear in the inferior vena cava, the main vein that drains blood from the lower half of the body, filtering it through the liver before it runs back into the heart. Tragically, what the doctors had no way of knowing until Emily was on the table was that her liver had been literally severed from her heart. Precisely, the medical report would read that "patient's condition passed the critical point by the time she was opened up due to hemorrhagic shock which led to refractory cardiac arrest."

Emily Goldenberg died on the operating table a little more than sixteen minutes after she arrived at the hospital.

Emily's final visit to a hospital emergency room was by no means her first. During the previous year, she had sought medical treatment at hospital emergency rooms in Brooklyn, Queens, and Manhattan on three separate occasions. According to records uncovered during the investigation following Emily's death, she had presented ailments that included a split lip, black eyes, a fractured shoulder, and cigarette burns on her breasts; and not more than three months earlier, she had barely been conscious when she was brought into an emergency room by her fiancé. According to the hospital report on that occasion, Emily claimed that she had accidentally taken an overdose of barbiturates for a toothache. Concerning Emily's accidental overdose, her mother remembered calling her daughter at her fiancé's to see if her toothache was better and was surprised to hear that the couple was in the middle of an argument. Tearfully, Emily's mother also admitted that she had encouraged her daughter to work things out since invitations for the wedding had already been mailed. After all, most couples experienced tension just prior to getting married. What Emily's mother never knew until after her daughter's death was that the argument had escalated until, sometime in the early morning hours, Emily had swallowed a handful of pills. According to a close friend in whom Emily confided after the incident and who came forward after the funeral, it apparently wasn't until daybreak, when Emily was curled up on the bathroom floor, barely conscious, that her fiancé became alarmed enough to take her to a hospital emergency room somewhere in Queens.

Further examination of all the hospital records indicated that while Emily appeared to be a healthy young woman, she seemed to be accident prone. But doctors, investigators, and prosecutors soon suspected that Emily wasn't accident prone at all, nor had she ever been suicidal or depressed. What the hospital records did not indicate, and what family and friends of the dead woman did not realize until it was too late, was that Emily had become very skilled

at covering up the truth about the pain and anguish she was going through in her life. What Emily never chose to mention during any one of those hospital visits, or talk about to the people who loved her, was that none of her injuries had been the result of accidents at all but rather the result of abuse at the hands of her boyfriend. Even when Emily lay dying on the gurney in the emergency room at Brookdale, she continued to lie when she claimed that her fiancé had *accidentally* run her over by accelerating instead of braking.

In the weeks that followed Emily's death, the district attorney who was investigating the case interrogated several witnesses to the accident. They all confirmed what Emily had said and what Asher Fram, her fiancé, claimed as well, that had he not made that fatal error of accelerating instead of braking, the accident would never have happened. The only discrepancy, however, was that those same witnesses claimed that Fram, after running Emily over once, put the car in reverse and ran her over a second time. When questioned, Fram insisted that after he realized that he had hit Emily, he became so distraught that instead of accelerating or turning off the motor, he put the car in reverse and accidentally hit her a second time.

In addition to interviewing witnesses to the accident and talking to Emily's mother, the D.A. also questioned Emily's friends and coworkers, all of whom reluctantly admitted that they had suspected that the couple's two-year relationship had been troubled. Notwithstanding their testimony about the nature of the relationship, however, and despite witnesses who testified before the grand jury as to what they saw happen, the district attorney was unable to get an indictment against Asher Fram for murder.

The grand jury judged Emily's death to be an accident and did not even implicate Fram for vehicular homicide, as he had not been under the influence of either drugs or alcohol when the accident occurred. Ironically, the most damaging witness to the prosecution's case was the surgeon who testified that Emily herself had told him that Fram had accidentally accelerated instead of backing up.

As for the apparent history of prior abuse, had Emily

reported it during her three previous hospital visits, or had any of the hospitals where she sought treatment, at the very least, recorded her injuries in her official medical record, the state of New York would have had the evidence to construct a case of premeditation or predisposition of violence on the part of Asher Fram, ultimately resulting in Emily Goldenberg's death. But there was no record of Emily ever having been the victim of domestic abuse. On only one occasion, at New York University Medical Center in New York City, had any reference been made of suspected abuse, and that was because a nurse didn't believe Emily's story that the burns on her breasts were caused by an electric heater. During the investigation, the nurse testified that she had considered contacting the hospital's advocate for battered women, a staff member, but Emily had come into the emergency room at two o'clock on a Saturday morning, and the advocate was there only on weekdays between nine and five. And, anyway, the nurse added, Emily vehemently denied that her injuries were the result of abuse.

What is certain is that because of a society whose consciousness has been sufficiently "raised" to consider that abused adult women should not be treated the same as abused children, Emily Goldenberg had the right to make her own choices in her own time about her own life concerning criminal actions that had been committed against her by an intimate partner. The result was tragic. Not only was Emily Goldenberg the victim of her abusive fiancé, but she was also the victim of laws and regulations within the medical, legal, and social service systems in New York State that (just as in most other states) do not mandate hospital personnel to report or even record suspicious injuries, ailments, or vague psychological symptoms that might be the result of domestic abuse. As the product of a social, medical, and legal system that strives to be politically correct, Emily Goldenberg died an "empowered" woman at the age of twenty-four.