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## BOOK REVIEWS

### THE STALKING OF KRISTIN

By

GEORGE LARDNER JR.

ATLANTIC MONTHLY PRESS - NEW YORK 1995

In May 1992, Kristin Lardner, a twenty-one-year-old art student at the Museum School in Cambridge, Massachusetts, was shot three times in the head at point-blank range by her ex-boyfriend, who then killed himself. The outrageous chain of events leading up to Kristin's murder forced the public to scrutinize the serious problems within the Massachusetts Department of Social Services and Massachusetts criminal justice system. It also raised public consciousness about the apathetic attitude that many battered women face when they turn to law enforcement officials for protection from their abusers.

In *The Stalking of Kristin*, George Lardner Jr., a long-time investigative reporter for the Washington Post, painstakingly reveals the details of his daughter's terrifying experience of being abused, stalked, and finally murdered by her ex-boyfriend, Michael Cartier. As Lardner traces the events leading up to Kristin's murder, he reveals the details of her life and transforms her from a murder victim to a young, intelligent, and beautiful woman. It is not long until the reader is overcome with the senselessness of her murder and sympathizes with Lardner's grief. *The Stalking of Kristin* should be read by everyone if only for the reason that it successfully gives a face and voice to the countless victims of violent crimes.

Lardner's book does more than raise the reader's consciousness. The author's profound feeling of loss is magnified by the fact that but for the series of mistakes by the authorities charged with protecting Kristin, she would be alive today. The author writes, "The chain of circumstances that put Kristin on Commonwealth Avenue that day would make any parent shudder. Any break in that chain would have kept her alive. Life and death are a series of accidents. Some are wonderful. Some are inevitable. Some are inexcusable."

Among the many mistakes in the handling of Kristin's case by the authorities, Lardner highlights those committed by the criminal justice system. With a criminal record dating back to the age of seventeen, Cartier's history of violence and emotional problems was well documented in the Massachusetts criminal justice system. When Kristin sought a temporary restraining order, however, the judge who granted it failed to check Cartier's criminal record. This would have revealed vital information about him, such as his active probation status, which

could have helped the court better assess his level of dangerousness. As one judge pointed out, if the courts are able to perform a criminal background check for minor traffic violations, then courts should be able to run a similar check for restraining order petitions. Here, the author raises a valuable point: a battered woman could be any woman and is, in a sense, every woman who is supposed to be protected by a system that remains decentralized and susceptible to making very dangerous mistakes.

One of the strengths of *The Stalking of Kristin* is the author's success in not succumbing to his own rage and demonizing Kristin's murderer. Instead, Lardner seeks the root causes of Cartier's deviant behavior. Lardner points out: "He wasn't born that way, but something went wrong very early in his life and kept going wrong." Cartier's mother left him at a children's home when he was seven years old. As a result, he grew up blaming and hating his mother for abandoning him. His father had also been almost completely absent from his life and had abandoned Michael and his mother when he was just a few years old.

Cartier's hatred for his mother manifested itself in the intimate relationships he had with women. As Lardner notes, Kristin was not the first woman that Cartier had physically abused and it was more than a coincidence that the women he abused were physically similar to his mother. Specifically, Rose Ryan, a former girlfriend of Cartier, also suffered several beatings by Cartier. Even a restraining order filed against him did not keep him from continuing to attack Ryan. In fact, during the proceeding for the restraining order, Ryan felt accused of inciting Cartier's behavior. As Lardner points out, judges often allow abusers to ask for a mutual restraining order which, in the end, allow abusers to maintain control over their victim. Since a mutual restraining order implies that two persons merit punishment instead of one, this dilutes any punitive effect it may have on the abuser.

One of the author's major weaknesses is his occasional frustration in attempting to bring together the public and the private sphere. Lardner sometimes appears to suggest that certain fundamental rights afforded criminal defendants should be removed because of the silence and ignorance that usually surrounds a battered woman's experience. Specifically, Lardner notes his failure in accessing Cartier's psychological record even after his death. In his frustration, Lardner contends that after death an individual no longer has an interest in keeping these records private. Although insight into Cartier's psychological profile may be helpful in understanding the psyche of a stalker, whose every known intimate relationship had been characterized by control and violence, it fails to justify why an individual should forfeit privacy rights upon death. Lardner appears to lose sight of the probable chilling effect on seeking psychological counseling if the confidentiality of such information were removed upon death.

However, Lardner unwillingly recognizes the dichotomy between Cartier's rights as a previously convicted stalker and alleged murderer, with those of Kristin, a woman seeking protection by a justice system created for that purpose. The author presents a compelling account of the tension and frustration found in a system which, in many cases, favors the individual criminal's right to privacy over a woman's right to life and liberty and society's right to safety.

Another criticism of Lardner's book is that a reader may tend to discount Lardner's evaluation of the criminal justice system because he is the father of the murder victim. However, the benefit of this very personal and passionate account underscores that Lardner is also a victim. Whether this book will be useful for the general public or merely those persons affected by domestic violence will depend on the individual reader's expectations. Because the story is personal in nature, it should appeal to both audiences equally. It is this level of intimacy that makes Lardner's account effective.

In the end, Lardner achieves some personal as well as public closure regarding the death of his daughter. Subsequent to Kristin's death, media coverage on the growing incidence of domestic violence increased and changes in Massachusetts law soon followed. A new statute was passed which no longer permitted Massachusetts judges to treat cases of domestic violence as routine civil matters. In September 1992, four months after Kristin's death, the Massachusetts legislature passed a bill creating a computerized, statewide domestic violence registry and requiring judges to check it whenever they receive a request for a restraining order. The bill also enables and encourages judges to check a batterer's criminal record, allows civil and criminal access to FBI records for the first time in all domestic violence and stalking cases, and authorizes the creation of a nationwide registry patterned after the one in Massachusetts. Lardner's assessment of the changes in the law is from a personal perspective. He perceives the changes as a sort of personal triumph aimed at protecting other people from suffering the same fate as his daughter.

The National Stalker and Domestic Violence Reduction Act is the federal version of the Massachusetts law. The law requires the establishment of a national domestic violence registry as a means of improving the reporting of stalking violations. Lardner proposes that the best strategy against stalking crimes is tightening the definition of stalking, by limiting it to instances that cause fear of bodily injury or death and raising it to a felony crime. Such changes would help the courts become immediately aware of the danger posed by an individual stalker like Cartier. The Massachusetts law was successful because it addressed what Lardner points out as one of the biggest problems of the judicial system or any large institution: the failure of its parts to communicate with each other.

Overall, *The Stalking of Kristin* meets its objective through careful evenhandedness achieved by an extremely detailed account of the history of events leading up to the murder of Kristin Lardner and the subsequent suicide of Michael Cartier. Lardner's account is driven by his underlying premise that perhaps the biggest flaw in our criminal justice system is its disregard of a supposedly "minor crime" and its failure to deal effectively with deviant behavior that disrupts communities. Through the account of Kristin's abuse, stalking, and murder, Lardner forces the reader to confront the concept of "deviant behavior" and its multifaceted underpinnings.

Nancy Ozimek



# GUILTY: THE COLLAPSE OF THE CRIMINAL JUSTICE SYSTEM

BY

JUDGE HAROLD J. ROTHWAX

RANDOM HOUSE - NEW YORK 1996

*Guilty: The Collapse of Criminal Justice*, written by Judge Harold J. Rothwax, criticizes a criminal justice system that favors procedure over "truth," and thus, results in freeing many guilty defendants. A former defense attorney and ACLU activist, Rothwax contends that defendants' constitutional rights undermine the effectiveness of the criminal justice system. In order to reflect truth as the system's ultimate goal, he suggests numerous revisions to criminal procedure that run counter to established constitutional doctrine.

Rothwax challenges the use of the exclusionary rule, which governs police searches and prevents evidence obtained in violation of the Fourth Amendment from being used in criminal trials. He contends that the exclusionary rule is a technicality that allows guilty defendants a windfall of freedom. As Rothwax sees it, since strict police compliance with the Fourth Amendment is difficult because of the underlying theoretical complexities, its proper enforcement is unlikely.

Instead, Rothwax believes that the exclusionary rule should be discretionary and offers a standard of his own. In the interest of using as much evidence as possible against the accused, courts should apply a reasonableness standard against the evidence defendants wish to exclude. This more flexible standard would allow judges greater freedom to consider factors such as the nature of the intrusion, the seriousness of the crime, the available evidence, any exigent circumstances, and the defendant's level of dangerousness.

Rothwax also criticizes the exclusion of confessions and evidence obtained in violation of the Supreme Court ruling in *Miranda v. Arizona*. Under this ruling, the police face the difficult task of arresting defendants without urging them to confess. However, according to Rothwax, *Miranda* excludes voluntary confessions. The protections afforded under *Miranda* represent yet another way in which defendants can avoid taking responsibility for their criminal acts.

In his frustration with the various rights granted to defendants, Rothwax seeks to find a justifying rationale for them. For example, he asserts that the right to counsel in order to avoid self-incrimination, as mandated by the Sixth Amendment, was only intended to apply during the "critical stages" of trial. Rothwax states, "[T]here is no constitutional prohibition against the use of incriminating information voluntarily obtained from an accused despite the fact that his attorney might not be present." He emphatically questions the basis of such a right because he fails to find its justification in the text of the Constitution, sound public policy, or historical purpose.

Throughout his analysis, Rothwax assumes that most defendants are guilty and the adversarial system succeeds in preventing this "truth" from surfacing. In his discussion of a defendant's right to choose whether to testify at trial, remaining silent, according to Rothwax, provides the defendant the freedom to withhold evidence which further subverts the truth. Therefore, juries should be able to infer guilt from a defendant's silence. Not surprisingly, Rothwax does not view the defense attorney's role as any better than the defendant's since she also serves to prevent, distort, and mislead the court from discovering the truth, i.e., her client's guilt.

While Rothwax challenges what seems like the entire gamut of a defendant's constitutional rights, he supports limited aspects of the criminal justice system. The author acknowledges the privilege against self-incrimination, the right to confront and cross-examine witnesses, and the standard of proof beyond a reasonable doubt. He also supports the use of plea bargains as both ethical and reasonable, because they bear at least some relationship to the defendant's criminal act. Because the system does not have sufficient resources to adjudicate every criminal case, plea bargains become more important than certain constitutional protections. While Rothwax concedes that on some occasions an innocent defendant will plead guilty if the evidence against him is strong, pursuing a risky venture such as trial will not necessarily lead to a more just result.

For Rothwax, the discovery process, which governs the disclosure of evidence between opposing counsel, represents perhaps the largest obstacle against discovering the truth. Under the current discovery rules, defendants are allowed a complete overview of the state's case which, in turn, induces the defense to formulate its theory based on the state's weakest link. In contrast to the prosecution's affirmative duty to disclose evidence to the defense, most states have taken a more lenient stance towards a defendant's reciprocal duty to disclose. According to Rothwax, this uneven treatment is inconsistent with a system committed to seeking the truth. As an alternative to the current discovery process, Rothwax suggests the "sealed envelope proposal."

This proposal requires the discovery process to begin only after the defendant has written his version of events of the incident. Such information, contained in a sealed envelope, would only be opened if the defendant chose to testify. The written version would be used to impeach the defendant if his testimony was inconsistent with his initial version of events. In the end, the proposal will prevent the defense from misusing information gained in the discovery process.

The viability of Rothwax's suggestion is based on the likelihood that defendants will choose to testify. However, Rothwax loses sight of the fact that most defendants choose not to testify; therefore, the sealed envelope will remain unopened and defendants will continue to have access to the prosecution's evidence. Even if the defendant does testify, the defendant will most likely provide an explanation for any discrepancies found between both versions, e.g., drug use or police coercion. Thus, whether the defendant testifies, Rothwax's proposal fails to provide a persuasive and effective alternative to the current discovery process.

Although *Guilty* refers to case law, legal treatises, and law review articles, it does not represent scholarly work. Instead of providing substantive legal analysis, Rothwax gives a jaded overview of the criminal justice system in which he relates his personal views and frustrations. His discourse is directed at a general public frustrated by crime and violence and thus an easy target for simplistic analysis and solutions.

While Rothwax focuses on the "truth" as the ultimate goal of the criminal justice system, he fails to adequately address another goal of the system: upholding the Constitution. His suggestions, which are premised on the belief that most defendants are guilty, are not compelling in light of established constitutional doctrine. Rothwax fails to discuss the multifaceted aspects of constitutional jurisprudence and criminal procedure to the extent necessary to make his suggestions viable. Thus, the legal and the lay reader are provided with a one-sided view of a complicated criminal justice system which ultimately seeks to find a delicate balance between seeking the truth and upholding the Constitution. Because his analysis is so superficial, the lay reader in particular may fail to understand that protecting a defendant's rights also means protecting the rights of the public at large.

Jodi F. Bouer  
Elizabeth Ortecho



