



JAMES ALAN FOX JACK LEVIN KENNA QUINET

THE WILL TO KILL

MAKING SENSE OF SENSELESS MURDER

FOURTH EDITION

Fourth Edition

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James Alan Fox

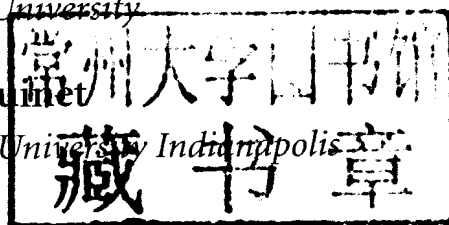
Northeastern University

Jack Levin

Northeastern University

Kenna Quinn

Indiana University-Purdue University Indianapolis



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PREFACE

We feel very fortunate, in the fourth edition of *The Will to Kill*, to have an opportunity to update a number of topics and expand or refine our discussions in critical places throughout the text. Indeed, virtually every chapter has undergone significant revision. We have updated sections to reflect legislative changes and recent Supreme Court decisions. All tables, charts, and other statistical references have been updated, most through 2009 figures. Throughout the book, we have inserted new and recent cases to illustrate various themes and have updated developments in others. Our discussions of family and school homicide in Chapters 4 and 6, respectively, have been especially expanded.

Like earlier editions, this book is about the circumstances in which people kill one another. In the pages that follow, we review homicide laws, introduce theories purporting to explain why murder occurs, and present statistical data depicting patterns and trends in homicide. Then, we cover a range of topics from domestic and workplace homicide to cult and hate killings; from murder committed by juveniles to serial slayings. In the two closing chapters, we examine criminal justice responses to homicide, including the strategies and tactics employed to apprehend, prosecute, and punish killers.

Notwithstanding its broad scope, this edition of the book is by design far from comprehensive. As our subtitle, “Making Sense of Senseless Murder,” correctly indicates, we purposely concentrate on the extraordinary and seemingly inexplicable cases—those involving large body counts, bizarre crime scenes, elements of sadism, and seemingly irrational motivation. Thus, the reader will hardly find in the pages that follow detailed accounts explaining why a man who loses his temper impulsively shoots his spouse, why a barroom brawl results in a fatal stabbing, or why an impoverished out-of-work father robs a liquor store. The chapters focus much more on family annihilations, fatal romantic attractions, school shootings, mass poisonings by cultists or medical practitioners, serial killers who torture their victims, and disgruntled ex-workers and customers who go on a rampage.

We have accepted the challenge to concentrate on homicides that don’t make obvious sense. This is not to suggest, however, that *The Will to Kill* would not be useful for understanding a much broader range of murders. We believe, on the contrary, that the lessons to be learned from examining outrageous or atypical murders can be easily extrapolated to more ordinary and mundane homicides as well. By dissecting extreme cases, we derive a selection of “pure types” against which most murders can be compared and, hopefully, better understood.

The intriguing and sensational circumstances that surround most, if not all, of the cases of homicide presented throughout this book have made them inordinately important in a public policy sense. These are, after all, the murder cases that have typically made the headlines and the evening news; they are the examples that politicians refer to when they seek to change some aspect of criminal law or to secure funding for programs and policies to reduce violence. These are also the murder cases on which public opinion about homicide is often based.

A number of tables and charts are included throughout the book to explain, document, or illustrate various homicide patterns and society’s response to them. Although a variety of data sources are used, most of the tabulations and graphs are based on a 1976–2009 cumulative file of the FBI’s Supplementary Homicide Reports, a data file created and maintained by James Alan Fox.

Work on this data resource was supported by several grants from the U.S. Department of Justice, Bureau of Justice Statistics, and the Committee on Law and Justice Statistics of the American Statistical Association.

We owe a special debt of gratitude to the Lipman and Brudnick families for their generous support and encouragement of our work. We also benefited from the institutional support of Northeastern University, Indiana University-Purdue University Indianapolis, the Indiana University Public Policy Institute, Center for Criminal Justice Research, and Guardsmark, L.L.C. Editorial comments provided by Jenna Savage of Northeastern University were of great help as well. Finally, we wish to thank our families, whose love is only equaled by their patience.

James Alan Fox
Jack Levin
Kenna Quinet

ABOUT THE AUTHORS

James Alan Fox is the Lipman Family Professor of Criminology, Law, and Public Policy at Northeastern University. He has written 18 books, including his newest, *Violence and Security on Campus: From Preschool through College*. He has published dozens of journal and magazine articles, primarily in the areas of multiple murder, youth crime, school and campus violence, workplace violence, and capital punishment.

He has also published nearly 200 op-ed columns in newspapers around the country and writes a blog on crime and punishment for the *Boston Globe's* website, boston.com. As an authority on homicide, he frequently appears on national television news programs and has been profiled in *USA Today*, the *New York Times*, and the *Scientific American*. Fox has consulted on homicide investigations and frequently testifies as an expert witness in murder trials. He has given over 100 keynote or campus-wide addresses around the country and has appeared before the U.S. Congress on numerous occasions. Finally, he served as a visiting fellow with the Bureau of Justice Statistics specializing in the measurement and analysis of homicide trends.

Jack Levin is the Irving and Betty Brudnick Professor of Sociology and Criminology and codirector of the Brudnick Center on Violence and Conflict at Northeastern University. He has published 30 books and numerous journal articles and newspaper columns, primarily in the areas of serial and mass murder, hate crimes, school violence, juvenile murder, and workplace violence. Levin has appeared on numerous national television programs and all network newscasts and is often interviewed by the national press. He has served as a keynote speaker to a wide range of community, college, and professional groups including the Dallas Woman's Club, the International Association of Chiefs of Police, the American Psychological Association's Symposium on School Violence, the Academy of Psychiatry and the Law, the White House Conference on Hate Crimes, OSCE's Office for Democratic Institutions and Human Rights, the National Association of Hostage Negotiators, and the University of Paris Conference on "Killing the Other." In 2009, Levin was the recipient of the American Sociological Association's Public Understanding of Sociology Award and the New England Sociological Association's Apple award for his contributions to teaching.

Kenna Quinet is an associate professor of criminal justice, law, and public safety in the School of Public and Environmental Affairs at Indiana University-Purdue University Indianapolis (IUPUI). She is also a Faculty Fellow at the Indiana University Public Policy Institute, Center for Criminal Justice Research. Her research interests include homicide, missing persons, unidentified dead, and unclaimed dead. Since 1992, Quinet has worked with various law enforcement agencies to evaluate the effectiveness of police interdictions and to consult on homicide cases. She is a member of the Indiana Homicide and Violent Crime Investigator's Association and serves as the Indiana Victim's Advocate for NamUs, the National Institute of Justice-funded National Missing and Unidentified Persons System. Quinet teaches "Murder in America" and "Theoretical Foundations of Criminal Justice Policy" at IUPUI and has won more than 15 teaching awards.

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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 a cottage industry. In bookstores across the United States, the true-crime section, new since the late 1980s, offers an expanding array of books primarily about serial killers, multiple murders, killer cults, and crimes involving celebrities. *People* magazine, a yardstick for America's enchantments, frequently places killers on its front cover. Film, trading cards, action figures, even artwork, center on murders and murderers, creating a cottage industry in *murderabilia*.

FASCINATION WITH MURDER

What is it about homicide that captures our attention? Or perhaps the 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 print and TV magazines to feature infamous killers of the day.

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—how to pay the bills, how to avoid being mugged, how to get a long-awaited promotion at work, and so on. 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—a massacre in a shopping mall or at a law firm 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, the more likely it is to entertain us.

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 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—a bizarre 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 Center for Media and Public Affairs, more than one-third of the crime stories presented on the major network evening news broadcasts concern homicides.¹ By contrast, homicide, according to FBI tallies, accounts for only 1 percent of all violent offenses and 0.1 percent 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 criminal trial of O.J. Simpson, who was accused of having stabbed to death his estranged wife and her companion, provides a major 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. 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 magazines.

The advent of *Court TV* (later renamed *TruTV*) ensured that the “O.J. Simpson phenomenon” would continue unabated into the foreseeable future. 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.

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 has since become 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 become 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—JFK and the mob, Robin Williams’ love affair with his son’s nanny, Jimmy Swaggart’s sex scandal, Drew Barrymore’s alcoholism, Kristy McNichol’s drug addiction, the troubled life of Christina Onassis, why everyone hates Robin Givens, the scandal behind the Tawana Brawly rape case, and on and on. And finally, *People*’s covers began to feature rapists, murderers, and other criminals: Preppie murderer Robert Chambers, schoolyard sniper Laurie Dann, tax evader Leona Helmsley, rapist Mike Tyson, child killer Joel Steinberg, corrupt minister Jim Bakker, wife killer Charles Stuart, the parricidal Menendez brothers, “Long Island Lolita” Amy Fisher, cult leader David Koresh, Hollywood madam Heidi Fleiss, husband abuser Lorena Bobbitt, accused wife slayer O.J. Simpson, Columbine murderers Dylan Klebold and Eric Harris, and, of course, serial killer Jeffrey Dahmer.

Television and motion pictures 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, like Mark Harmon as Theodore Bundy, Brian Dennehy as John Wayne Gacy, and Helen Hunt as Pam Smart. In fact, Hollywood starlet Charlize Theron won an Oscar for playing serial killer Aileen Wuornos in the film *Monster*. Having glamorous actors cast in the roles of vicious killers unfortunately infuses these killers with glamor. In addition, a variety of news magazine programs regularly feature the biographies of multiple murderers, delving into every minute detail of their past. Highlighting the way in which they suffered as children places them unjustifiably in the role of helpless victims.

The glorification of mass 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 has inspired a market for various third-party souvenirs and products of questionable taste: tee-shirts, aprons, boxer shorts, and thongs bearing the images of serial killers like Ted Bundy; calendars featuring Hillside Strangler Kenneth Bianchi; and action-figure toys of infamous murderers like Manson and Dahmer. Arguably over the top, a recent serial killer board game, which comes with its own body bag and features “dead baby” markers, 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, banned profits that offenders could receive from books and movies, but the Son of Sam laws have not been interpreted to include the sale of murderabilia. Some states have passed laws that limit the sale of murderabilia, but a recent bill proposed in Congress, “Stop the Sale of Murderabilia to Protect Dignity of Crime Victims Act of 2010” may stop serial killers and all other state and federal prisoners from using the mail to send out anything that would garner them a profit. No more fingernails, autographed Christmas cards, or clothes, at least not any that includes payment to the killers from purchasers. Supporters of the bill hope to stop the private sale of items, such as the hubcap from Bundy’s Volkswagen. eBay stopped selling murderabilia, but several other Web sites still offer such items, most without the knowledge or cooperation of the killers themselves. The proposed bill would also enable families to seek injunctions, damages, and attorney fees from those who continue to sell murderabilia.

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 important 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 shall be limited to homicidal acts, those specifically directed against other human beings. We shall discuss suicides, but only those that are coupled with a homicide. We shall also 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. 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 shall 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 only *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, 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. At present, two dozen states have on their books homicide laws recognizing unborn children as victims throughout the entire period of prenatal development. Ten other states recognize fetal homicide as a crime under certain circumstances. And, in 2004, by the closest of margins (one vote in the Senate), the U.S. Congress passed the Unborn Victims of Violence Act recognizing unborn children as victims if injured or killed during the commission of federal or military crimes of violence.

The various situations described above 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, 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 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.

The Internet has played a major role in several recent homicides, including the well-publicized attack 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 “masseuse” 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 ex-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, allegedly shot and killed his coworker and friend, Brian Barrett, 22, because they were both involved with the same woman in an Internet love triangle. The woman was over 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.

Offenders can use the Internet to perpetrate their homicides, but law enforcement and vigilant cyber sleuths can also use the Internet to apprehend the killers. 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 across three robberies, and witnesses were able to give a description. A family friend of one of the murder victims looked up Dizon on Facebook, as she thought he matched the description, and saw that the sister of a victim was actually on Dizon's friend list. They were able to download his photo and show it to witnesses, so that police subsequently were able to make an arrest. Several other criminal cases in the United States have been solved by finding stolen items for sale on eBay and by reading the boastful details of crimes posted on offenders' social networking sites. Talk about America's dumbest criminals!

MURDER

The first distinction among types of criminal homicide is that between murder and 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—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 brought up on second-degree murder charges. 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 the postrevolutionary United States 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.

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 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.

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.

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 crime 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 even apply 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 robber 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.

A North Carolina man, Larry Whitfield, 21, was charged with felony-murder after he robbed a bank and 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. In a “homicide by heart attack” ruling, the cause of death is regarded as arrhythmia (usually occurring in people who already have an underlying heart problem) and the manner of death is ruled a homicide. Research published in the *Journal of Forensic Sciences* illustrated several cases of “homicide by heart attack” that include heart attacks after being hit on the head by an object, punched in the face by a robber, startled awake by a home intruder, and engaged in a struggle with a purse snatcher. The offender need not have even touched the victim to be charged with the homicide.²

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.