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## EVA AND HER BABY (A STORY OF ADOLESCENT SEX, PREGNANCY, LONGING, LOVE, LONELINESS, AND DEATH)

MICHELLE OBERMAN\*

My grandmother Lillian, may her memory be for blessing, used to say, "You could be dying of cancer, but if my little pinky hurts, it's all I can think about." We thought she was a narcissist—albeit a self-aware one. Of late, I've come to wonder whether her condition was congenital, or maybe even endemic. It's like that quote from Anais Nin, "We don't see things as they are; we see them as we are."<sup>1</sup>

I want to tell you the story of how I've come to see a woman I call Eva. It's more than just Eva's story, which is interesting in itself; it's also my story, puny like a pinky.

The story starts on a frigid February morning in 1992, when my friend Jack, a criminal defense lawyer with a solo-practice in downtown Chicago, called to talk with me about his sixteen-year-old client, Eva, who had hidden her pregnancy from her family and then given birth in a toilet. Her case was going to trial. He had never heard a story like hers. Oddly enough, I had.

Three years earlier, in my first year of teaching, I was sitting in my office grading memos from my legal writing students when I got a call from a Will County defense lawyer, just south of Chicago. The lawyer called because she mistakenly believed the "Institute for Health Law" where I worked might have the sort of expert who could help her explain to a jury why her fourteen-year-old client hadn't told anyone she was pregnant and had delivered her baby into the toilet.

"This girl never had sex education," she said. "They don't teach sex-ed in Will County."

"She'd only gotten her period once," the lawyer added.

I listened to the slow whish of her breath in and out through the receiver.

"She sent her dad out for some aspirin while she sat in the bathroom. She thought she had cramps. When her dad got home, he found her passed out on the bathroom floor."

The lawyer paused again and exhaled into the phone. "Her dad said there was blood everywhere. He called the EMTs. They found an eight-pound baby,

\* Professor of Law, Santa Clara University School of Law. Many thanks to: Katharine Baker, Jordan Blumenthal, Sarah Delson, Barbara Fried, Peter Handler, Todd Hasak-Lowy, Marina Hsieh, Bradley Joondeph, Mike Newdow, Ticien Sassoubre, Stephanie Wildman, my Santa Clara law school colleagues, and Shane Book and participants in the Stanford Continuing Education Creative Non-Fiction Workshop, Fall, 2007.

1. ANAIS NIN, *SEDUCTION OF THE MINOTAUR* 124 (1961).

dead, in the toilet.”

I could tell the lawyer believed this girl was not a murderer. Although I'd never heard anything like it before, I instinctively agreed.

In those days, I volunteered once a week at Planned Parenthood, talking teenagers through pregnancy tests and helping them identify options. I had not yet had my babies; had never even been pregnant. We sat in hard chairs at the table in the tiny yellow counseling room, staring at the future foretold in the plus or minus on their plastic pregnancy wands. Some girls brought their boyfriends with them, but most came alone. Pregnant or not, most girls wept.

I felt sorriest for the ones who didn't cry—those who were thirteen or fourteen and had little idea how a baby would shape their future. As often as not, they preened in pink-faced delight at their positive pregnancy tests, amazed at what their bodies had done and dreaming of the future they would share with their absent boyfriends, their babies' fathers. More than once, excited at learning they were pregnant, these girls looked up in concern and asked, “Are you going to tell my parents?”

I collected their stories like souvenirs, fingering them in my mind as I rode the El train home to the dingy apartment my husband and I rented just north of the city. Unlike the girls I met, I had a pretty clear sense of the love and stability I expected to have in my life when I became a mother. What I didn't know was how I was going to get to motherhood from where I was, on the cusp of thirty. Nothing was going according to plan. My marriage was coming apart; I had no job security, an adjunct teacher's salary, and all my law school debt.

I should have been paying those Planned Parenthood girls for what they gave me. They looked at me across the counseling room table as though I had the answer—as though the decisions I'd made had come out all right, as though I was there already.

I told the lawyer from Will County I would try to find her an expert. A week later, she called back. She didn't need an expert to explain her client's actions after all. Her client had pled guilty to involuntary manslaughter.

“The prosecutor subpoenaed the boys from her 8<sup>th</sup> grade class,” she said. “They told him they used to line up outside of her bedroom after school and take turns having sex with her. She didn't want to face them at trial, so she took the guilty plea the state offered her.”

The judge sentenced her to probation and counseling, which, her lawyer said, probably was the best thing for her. The case was over. Although I wondered about the story from time to time, my life moved on.

When Jack called me that February morning, three years later, for help with Eva's defense, I was a full-time professor teaching health law at a local law school. He needed to explain Eva's story to a jury. The only way I could think of helping was to introduce Jack to a woman with whom I'd taught, Dr. Molly Gruter, the head of obstetrics and gynecology at Cook County Hospital. All of her patients were poor women and girls; maybe she'd understand what Eva had done, and why.

County Hospital was a hulking structure, since condemned, on the city's West side. Molly met us in the hospital lobby where, after work, uninsured mothers and their crying babies lined the eggshell-colored benches of the waiting room, eating dinner from the single vending machine.

At thirty-five, Molly was one of only a handful of U.S.-born doctors in her department. Stocky and wearing dull green scrubs, she seemed matronly in spite of her youth and her political edge. "This country," she said, nodding at the waiting patients as she steered us toward her office, "has a penchant for blaming individuals for society's ills."

Jack told her about Eva's case. "Oh, we get girls in here all the time who don't know they're pregnant," Molly said. "Someone will bring them here in full-blown labor, thinking they're having a real bad stomachache. Sometimes they wait until after the baby is born, and in comes the aunt, the grandmother, the teenager, and her new baby. One of the nurses adopted a child from a family who came in that way."

Jack asked Molly to testify at Eva's trial. He liked Molly's tone; she was compassionate and professional, and she would help him persuade jurors that Eva was not a monster, but a girl.

Criminal law is not subtle; it's efficient. All the state needed to prove in order for Eva to be guilty of murder was that she had committed a prohibited act, an *actus reus*, such as drowning her newborn baby, and that she did so purposely, or with *mens rea*. Legally, it didn't matter why Eva didn't tell anyone she was pregnant. She could be guilty even though she was ashamed she had had sex, believed abortion was murder, and was convinced her family would throw her out if they knew she was pregnant. It didn't matter that her boyfriend of two weeks had left her when she told him she'd missed her period, or that Eva had cried for them to bring her the baby afterwards, when she lay in the emergency room.

The trial went forward. I watched from a seat toward the back of the crisp pine-paneled suburban courtroom as the pregnant prosecutor pointed at Eva and said, "This girl has committed the vilest of crimes known to man." Eva sat shrunken and pathetic beside Jack in his tailored suit at the narrow counsel's table. Her long brown hair covered her eyes, her shoulders hunched under her baggy, blue button-down shirt.

The jury convicted Eva, but not of murder, which would have meant decades behind bars. Instead, she got only involuntary manslaughter and probation. "A victory for the defense," Jack said, "as these things go." Her story ended without her ever really telling it.

Long after the trial was over, thoughts of Eva and her baby still festered in me. Why didn't she tell anyone she was pregnant? Was she like the girls I'd met at Planned Parenthood who wanted to keep their pregnancies secret from their parents? Was she just a bit more broken than they were, or was she completely different, keeping her secret as if she were playing a game of chicken, headlights off, running her car blindly into the future. And under it all there was the question I couldn't begin to answer: could it have happened to me?

At the time, these seemed like academic questions, so I began studying the subject of mothers who kill, finding scattered books and articles about infanticide in medical collections, historical records, and social science journals. I found research about abandoned baby girls in China, about drug-addicted mothers whose babies were born stoned and shaking, about postpartum psychosis and mothers who threw their babies in front of oncoming traffic. None of these stories shed any light on why Eva had killed her baby.

I knew there were other cases like hers, so I turned to newspapers and magazines. The internet was in its infancy in 1994, when I started collecting journalists' reports about girls like Eva. I searched for articles that mentioned pregnancy within ten words of toilet or dumpster. It was easy. I found 97 stories in the first few months alone. But none of them discussed why these girls hid their pregnancies; none of them helped explain why they did it.

I had some hunches about Eva's story, but they weren't the sorts of things I knew about from books. Eva must have been terrified to find herself pregnant. Anyone who's ever been "late" one month can tell you as much. Fear is part and parcel of unplanned pregnancy, if only because it brings change upon you, demanding your attention. The official story was that Eva ignored her pregnancy. Like her jury, I rejected the vision of Eva as an intentional killer who chose to look away because she wanted her baby to die. Still, it seemed hard to believe that fear alone would have paralyzed her for those many long months. Things in my life, my own puny story, told me the truth had to be more complicated.

By the fall of 1995, my first marriage was long over. My new partner Leo and I had been living together for two years; first in the small, square house with a backyard perfect for wiffle ball, and now in a too big grown-up house with a long living room. The windows looked out on a patch of community gardens next to a wriggling branch of the Chicago River.

Sundays, when Leo's kids were with us, we played football on the lot between our house and the gardens. The kids stayed over on Saturday nights; thirteen-year-old Rebecca in her own room, which she decorated in black and purple, and Michael and Joey, eleven and seven, in the red and blue train room, decorated by the doting mother who used to live here. We set up a computer on Michael's desk and loaded it with games. But mostly, we hung out in the living room watching the light recede and listening to Leo sing along with the sad songs he played on our CD player, which sat on the floor in the corner.

After we took the kids back to their mom's house, Leo and I sat on the sagging couch, facing the dark window. The only thing visible was the traffic signal over the busy street that separated our house from the creek. Because our street had less traffic on it, the light was mostly red.

"We need to talk," I said, into the darkness. At 34, it seemed like every passing month was a missed opportunity. More days than not, I lived in quiet panic.

"I can't believe you're going to bring this up now. It was a beautiful day. The kids were happy. We went for a long walk. They love you. Why can't you just let it be?"

He retreated into silence after I screamed, "If you're still unsure, why don't you get a vasectomy?"

I was afraid to leave Leo and have a baby on my own, but I was also afraid that staying with him meant I'd never experience the connection I craved—a baby's perfect love, growing in my belly.

Meanwhile, three years after Eva's trial I had read everything I could find about mothers who kill their children, and still I didn't really understand what had happened to her. I asked Jack if he thought Eva might talk to me. Jack suggested we meet for lunch.

Eva spotted Jack as she came through the hot-dog stand's door, and walked over to us. She was wearing a sweatshirt hood over her head, even though it was a glorious blue-sky fall day. Everything about her seemed average to me—her height, her weight, even the hue of her straight hair, not dark, not light, just plain brown. Jack made the introductions, talking fast, "Eva, this is my friend Michelle. She's doing research on girls who kill their babies, you know, like . . ." He faded out.

Eva didn't flinch. She sat across from me, slouching in the plastic chair, her hood still up, her eyes on the white plastic table. When Jack had called to ask if she was willing to meet with me, Eva said she had never told anyone about what had happened. Her probation terms had not included counseling, and as for her family, no one had asked her—not her mother, nor her father, nor her step-mother. Not her uncle, nor his fiancée, with whom she had been living when it happened. Not her grandparents, who had not been at the trial. Not even her best friend, who had been with her in her secret daily life then, and who was with her still.

Eva sat without moving, waiting for me to begin questioning her. In the background, there was a low buzz of conversation from customers in line. Cashiers called out order numbers as they slid plates along the stainless steel counter. There was an insistent pulse of tuneless music coming through the overhead speakers. Everything sounded distant and blurry, as if we were under water. I didn't have much of a plan, but we both had come to hear her story, so I began.

"Where were you living when you found out you were pregnant?" I asked.

Jack went to buy her a Coke and a hot dog.

Her eyes still on the table, Eva started slowly.

"I was living with my grandparents first. Maybe it was the winter of my sophomore year. We were fighting a lot, because they were just like . . . different. Like, uh, they don't really speak English, and uh . . . so my uncle told me to come and live with him and his girlfriend."

Eva's voice was quiet and flat, every word delivered in the same tone and at the same pitch. I looked away from her, and plunged. "What about your mom? How come you weren't living with her?"

"She was busy. She had my two younger sisters and my step-dad, and it was a small place and I was always having to babysit and so I went to live with my grandparents."

"Did you want to?"

"Well, it was okay."

"How old were you when you left your mom's?"

"Fourteen."

Eva looked at me. She seemed puzzled by my curiosity about these details. I was thinking about her mother—judging her for having sent Eva away.

"So, where did you go after you left your grandparents' home?"

"I asked my dad and step-mom if I could live with them, but they said it wouldn't work. They had a new baby. So I was staying at my friend Clara's apartment for a few months. But then Clara's mother wanted to get some money from my mom to pay for things for me, and my mom said no. So after that, I

went to stay at my uncle's."

Her dad and her mom both said "no"? Of the recurring themes in Leo's and my ongoing struggle over whether to have a baby, the most common was his guilt about having abandoned his three kids. In accord with his divorce decree, he got to see the children every Wednesday evening, and from Saturday night until late Sunday. When we decided to live together, Leo and I limited our search to a ten minute drive from their mother's house.

By 7 p.m. on Sundays, no matter how much fun we'd had, his middle son Michael, always got quiet.

"Is it the dinner? What, you don't like my curry?" I'd ask, trying to prod him into smiling.

We'd wait until the last minute to get into the car and return them to their mother's place. No one ever spoke on the ride back except me. Waiting outside until we saw the porch light switch on and her door open and close, Leo and I sat breathing the thick car air.

I loved them from the beginning, my step-children. And yet, I wanted more. Every month, I felt a new egg ripen in me, yearning, insistent.

"I can't keep waiting like this. My eggs are growing old," I told Leo one Sunday when the kids were upstairs.

"Don't leave," he said. "I'm just not ready to talk about it yet. Wait until December, when work settles down. We'll talk then."

I was furiously quiet that fall.

Eva said she got pregnant toward the end of winter, in early 1992. She still was living at Carla's house when she met a boy from another school. "We only saw each other a couple of times," she said. "He was my second boyfriend."

I looked at Eva. I didn't need to ask why she hadn't used contraception. I couldn't imagine her stopping him, let alone asking him to put on a condom.

"So did you know you were pregnant?" I asked.

"Yeah, and then I told him and he offered me money for an abortion and I said no. And so we just never talked again."

"Why didn't you want an abortion?"

"I don't know."

Eva told me her sixteen year-old cousin had had a baby the year before. "Don't be a fuck-up like Lauren," her relatives occasionally warned her.

Once, when Eva was several months pregnant, Eva asked her mother how she would respond if Eva got pregnant. "I'd kick your ass and throw you out and send you and your baby to live with your boyfriend," she replied.

Eva did not have a boyfriend anymore. Her mother's words sounded like bluster to me, but Eva probably did not feel that certainty.

"I kept telling them I needed a job, I needed insurance. They never asked me why."

Eva did not need to conceal her pregnancy, I realized at last. Not because she was heavy—she wasn't—and not because she wore baggy clothes. No one was looking at her.

In the background, as Eva spoke, I could hear the rattle of the approaching El train. I wanted to ask her again why she didn't have an abortion, but I would have had to shout. The landscape of the South Loop is defined by this odd aural

fact: any conversation of substance inevitably will be interrupted, randomly, and perhaps irrevocably, when the train passes overhead. It was coming now, the loudest noise in the restaurant.

Leo never let me talk about the two of us having a baby when we were alone, but the subject often surfaced when we were with our closest friends, Beth and Martin.

Beth's parents had a farm an hour or so outside the city. We visited all the time. The fall days were short yet glorious in her father's newly flat fields of harvested soy beans.

One Saturday, Beth, her niece Mimi, and I swung on the oversized hammock out front. Golden leaves fell on us from the giant oak trees that anchored the hammock. Baby Mimi giggled as we passed her back and forth between us, tickling her, sucking her toes, keeping her distracted and happy for an hour, maybe two. It was easy.

Later, we sat with Leo and Martin by the fireplace drinking hot cider.

"People just use children as an excuse. Their kids become a moral justification for failing to do anything meaningful with their lives," Leo said.

"I don't buy it," said Martin. "There are plenty of people who are parents and are working to improve the world."

"Name one who's doing really significant work," said Leo.

"Name one who's a mother," said Beth.

I said nothing. I didn't want to think about how having a baby would change my life.

Eva and I sat quietly. The El had passed. Jack had returned with the food: a rubber-pink hot dog in its bun, relish and mustard all over it.

"So then you were pregnant, and you moved to your uncle's house, right?"

"Yeah. And his fiancée."

"Were you okay with living there?"

"Yeah. I was sort of scared of him though. He had a real bad temper."

"So what did you do, I mean, day by day, as time passed?"

"I don't know. I didn't really think about it. Not really. I mean, some days I would go over to Carla's house and we would lie on her bed and she would touch my belly and ask how it felt."

"So Carla knew you were pregnant?"

"Yeah. She was the only one I told. One day, we were lying on her bed after school and Carla's boyfriend was over. I pulled up my shirt and showed my belly. Afterwards, she said, 'Jeez, you better not do that or someone's going to find out.' "Nobody else knew you were pregnant?"

"Well, some people sort of guessed. Like this girl in gym one day said to me, 'From far away, you look like you're pregnant, but then up close, it's different.'"

In Eva's story, the months of her pregnancy passed slowly.

"When I thought about being pregnant," she said, "I just kept wishing and hoping someone would say something or maybe call my family and tell them, 'You know, Eva is pregnant.'"

Late in her pregnancy, someone finally noticed. Eva's mother took her to a school nurse to get a vaccination she needed in order to begin the fall semester

of her junior year of high school. Eva went into the examination room alone. The nurse looked at Eva and asked whether she had made arrangements for the baby.

"It was weird," Eva said, "It was the first time any adult had said something about me being pregnant. I didn't know what to say, so I just shrugged."

The nurse didn't ask again, and Eva left the room. Her mother must have seen something odd in her face, because Eva recalls her having said, jokingly, "What happened in there? You look like you saw a ghost."

"How did you respond?" I asked.

"I just shrugged."

"So your parents and your step-parents must have suspected something."

"Well, I kept trying to get my mom to notice," Eva said. Her eyes, still downcast, now were brimming with tears. "I kept telling her I was getting fat, and putting her hand on my belly. She would just pat it and say, 'No, you're not getting fat.' Afterwards, when it was all over, my step-mom said to me, 'We sort of knew that you were pregnant, but we didn't want to butt in or anything.'"

Eva's hands were folded on the table, her fingernails bitten so short that the skin popped out red and hard at the tips. I reached my hand across, and let it rest on Eva's forearm. Jack shifted in his seat. He glanced at me, rolled his eyes and shook his head lightly in disbelief. He didn't know Eva's story either. I saw Eva squeeze her eyes tightly and bite her bottom lip. I pretended not to notice her soft tears.

Most of the time, the law says you're not responsible for others. There's no duty to rescue someone you see drowning, even if you're an Olympic swimmer. You're not responsible. Unless of course, you threw them into the lake.

Eva's parents hadn't thrown her into the lake. They just kept on walking the beach.

Parents have a legal duty to save their children, of course. But cases involving what the law calls "failure to protect" are about mothers who didn't stop their boyfriends from abusing their children. They aren't about parents who touch the rock-hard seven-month pregnant belly of their teenaged daughters and just say, "No, you aren't getting fat."

Sometimes though, the criminal law says you're not allowed to look the other way. For instance, if someone pays you \$10,000 to drive a car over the border and you choose not to look in the trunk, it's called "willful blindness." You can get convicted of smuggling even if you didn't know what you were sneaking over the border, because the only reason you didn't know was that you looked the other way.

But willful blindness does not apply to the boy who gets his girlfriend pregnant and doesn't stay around to find out what she's going to do about it.

I'm a lawyer, and I understand why it would be a problem to prosecute Eva's mother or father, her step-mom, her uncle, his fiancée, her best friend, her boyfriend, the nurse, or anyone else who knew about Eva's baby. It would be nearly impossible to warn people what they owe to one another ahead of time, or to decide, after a tragedy, who should be guilty for having failed to stop it from happening. Still, so many people had looked away from Eva that I couldn't

figure out who was really to blame for what had happened.

"So you just went on with your everyday life?" I asked.

"Yeah. I was working with my dad and step-mom at their warehouse when I went into labor. I lay down on a couch in the lunchroom. I was feeling really bad, but I wanted to go to Carla's birthday party that night. I told them I was sick, and they put me on the bus back to my Uncle's. When I got there I started to feel like I needed to go to the bathroom, so I went, and I stayed in there all night."

Eva didn't want to talk about what happened in the bathroom—about the "gory stuff," as she put it. And now that we had reached it, I felt relieved. I didn't want to hear her describe the convulsing departure of blood, mucous, feces, and vomit—all the things that had held her baby safe within her for those long months. I didn't want to know whether she looked down and saw her perfect baby floating in that dark water. There had been plenty of discussion of this part of her story at trial. This was the part the law had been interested in.

The prosecution's expert witness testified that Eva's daughter had been born at full-term and had cried out at least once before she had drowned in the toilet. An autopsy showed there was air in her lungs.

Dr. Molly Gruter, the obstetrician from Cook County Hospital, described labor and delivery, the physical pain, the body's work in pushing out the newborn, the exhaustion. "Childbirth is not a silent process," she said.

Eva's uncle testified that neither he nor his fiancée had heard a thing that night, even though their bedroom wall adjoined the bathroom. The following morning, he said his fiancée saw blood on the floor of the bathroom, and knocked on the door of Eva's bedroom to tell her to clean it up.

Jack called Eva to the stand, where she told the story of her baby's death in a whisper. She said there had been blood everywhere—all over her, on the floor and on the walls. As soon as the baby was born, she got up from the toilet and began mopping and scrubbing. After several minutes, she laid a clean towel on the floor, and pulled her baby from the toilet. She wrapped it inside the towel. She carried it back to her bedroom, and she fell asleep, cradling the bundle against her body.

Later that day, Carla called to see why Eva hadn't come to her birthday party.

"I told her my baby had been born, told her what had happened. And she told her parents."

That evening, the police came to Eva's uncle's apartment and asked him if they could question Eva. They found her in bed, still holding her baby's body. Moments later, Eva was arrested for homicide.

The end of Eva's story didn't take long. The judge sentenced her to probation and community service, rather than to the term of years he could have demanded in punishment for the jury's involuntary manslaughter conviction. After the trial, Eva said her mom was "pissed at her."

"She was mad that I wasn't acting grateful, and so she just left me in the court house. I didn't know where I was supposed to go next. It was late, and everyone was leaving. Finally, I took the bus to my uncle's house."

I could see Eva standing there, as her mother's steps echoed down the

beige courthouse corridor, with its fluorescent lights and its bright green fake ferns. She would have walked outside alone to find the concrete bus shelter along the rush-hour road, past the manicured lawns surrounding the parking lot, past the beds of spring annuals turning mauve in the twilight.

As she spoke, I finally started crying. I cried for Eva and for her unnamed baby, the one who she had carried inside her all those silent months, the one whose body she had cradled all day in bed as she waited to be discovered.

And I suppose I cried for myself as well, and for the dream baby I'd been carrying with me in my life thick with blessing for as long as I could remember. It is so much simpler to love a vision than to contend with reality, screaming its helpless screams—not answers, but questions: "Will you? How? When?"

I screened Eva's face for some sign of what she was feeling. Her eyes were still glassy with tears.

"I don't ride the bus anymore," she said. "I feel like everyone knows me; like they're staring at me."

She was wrong. She could have walked past me in the crowded lunchtime streets a hundred times and I never would have noticed her.

I nodded at Jack and closed my notebook, letting him know I had what I needed. He shifted back in his chair and placed a hand gently on her forearm.

"You're doing o.k., Eva . . . ." he said, somewhere between a question and an observation.

I fiddled with my papers, fitting them into my backpack, avoiding standing up just yet. I wanted to give Eva something, some closure, some peace, in thanks for her having given me her story. I wanted to absolve her, to say "I forgive you," but all I could manage was, "You're not alone. You're not the only one this has happened to."

But that wasn't the truth, or at least not all of it. Because in the end, there were a million reasons why it hadn't happened to me. What mattered was that it had happened to her, and that she was still alone.