

## **Marriage Dissolution and Protective Orders**

### **The Robert Cantor Murder**

We all know divorce can get ugly, but rarely do we consider the very real, life-threatening risks associated with marital separation. These risks are especially great when the split invokes feelings of jealousy, possessiveness and revenge – and the stakes are even higher when children are involved. Pursuing legal protection to help guard against potential harm can be crucial to the safety of yourself and your loved ones. However, obtaining and extending protective orders can be easier said than done.

Protective orders have time limits. If you don't have an experienced family law advocate backing you up (along with some very intelligent family court Judges), you could find yourself fighting an uphill battle. If little to no evidence exists to prove that the alleged perpetrator has threatened you or has the potential to cause significant harm, obtaining a protective order can be even more difficult. After all, the perpetrator also has rights.

### **A Seemingly Amicable Divorce**

In early 2011, a 40-year-old Parisian accountant named Sophie Menuet came to me to discuss pursuing a divorce. She lived in New York City with her Hong Kong-born husband, Sui Kam 'Tony' Tung, and their three young daughters, ages five, eight and ten. Sophie described the divorce as relatively simple and cordial. She had been dating someone else for about a year and was ready to move on. Her husband Tony knew about the affair, and wasn't particularly pleased, but Sophie didn't allude to any problems or potentially dangerous repercussions regarding the separation.

Sophie and Tony lived on the Upper East Side of Manhattan at the time. She explained that after the divorce she planned to move to the Lower East Side, to Chinatown, so that the children could take Chinese language classes at a public school and still see their father regularly. She suggested Tony could remain in their small Upper East Side apartment. She wasn't seeking child support or alimony, just freedom.

After my meeting with Sophie, our firm wrote a letter to Tony saying that we would be representing her. A few weeks passed with no reply. By this time, Sophie had moved out of their Upper East Side apartment. Tired of waiting for a response, she suggested we go ahead and serve Tony with a divorce summons, reasoning it might wake him up and prompt him to get a lawyer and begin the process. Sophie said she would be happy to pay for his lawyer. She just wanted them both to be able to

move on with their lives. On February 17, 2011, we pressed ahead and sent the divorce summons in New York County Supreme Court. Tony was served by a process server on Thursday, March 3, 2011.

## **The Loss of Rob Cantor**

Sophie met her husband Tony when she moved to New York to obtain her Master's degree in international finance. They married in 2005, but the marriage began to unravel within a short five years. Tony was somewhat of a ne'er do well. Throughout their marriage, he had generally stayed home with their three daughters while Sophie worked as a corporate finance officer. At one point, Tony decided to try his hand at running a computer store. Sophie backed him financially, but he didn't work particularly hard at it and the business failed. He spent his days watching hours of television, often violent shows like Dexter, while Sophie supported the family financially, took care of the children and arranged their affairs. Not surprisingly, she grew tired of the irresponsibility and intellectual imbalance.

While attending a science lecture in the fall of 2009, Sophie met 57-year-old Rob Cantor. They quickly discovered they had lots in common. They both enjoyed running, science and philosophy, and became fast friends. Rob worked as a software engineer for Verizon, had two grown daughters, was amicably separated from his wife and was in the process of getting a divorce. He lived in Teaneck, New Jersey – right across the river around 13 miles from Manhattan.

Sophie is a very beautiful, petite and smart French woman – very engaging and funny. I'm not exactly sure how she ended up with an indolent character like Tony, perhaps they met at a bad time in her life. But, Rob and Sophie were suited for one another. He was an upbeat, attractive, hardworking, fun and interesting guy. Over time, Rob and Sophie's relationship grew, and on Valentine's Day weekend in 2010, their relationship became intimate. Things were looking up for Sophie. She was ready to make some changes in her life and looking forward to a bright future.

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On Sunday afternoon, March 6, 2011, just three days after Tony had been served with the divorce summons, Rob and two friends met up with Sophie and one of her daughters at a museum. It was the first time Sophie had introduced any of her children to Rob. Around 8 pm that evening, Sophie's daughter mentioned to Tony that she had enjoyed her trip to the museum and had met Rob, a friend of mom's. Approximately two hours later, Tony traveled to Rob's home in Teaneck, New Jersey, directed him to the basement bedroom at gunpoint, shot him execution style in the back of the head, and set his body and home on fire.

## **A Year of Disturbing Behavior**

Authorities first reported the terrible incident as a fatal fire, perhaps caused by someone falling asleep with a lit cigarette. Sophie called me in utter shock and disbelief early Monday morning when she heard the news. At that point, we only knew that Rob was deceased. We didn't know it was a murder, but Sophie suspected that Tony was somehow responsible.

The medical examiner and forensics investigators soon discovered the bullet wound to the head, nearby 380 caliber bullet fragments and casing and an ethanol-based accelerant having been poured over the basement bed where the fire had started. As more and more evidence of foul play surfaced, a devastated Sophie and Rob's stunned family, friends and coworkers began to recall a number of disturbing things about Tony's behavior that had occurred over the past year, all starting around the time Tony first learned of Sophie's affair with Rob.

A few days after that Valentine's Day weekend at Rob's home in 2010, Sophie learned that Tony had put spyware on her computer, hacked her email account and found out about the affair. At one point, Tony came home and showed Sophie a gun he had purchased in Chinatown. Tony was also telling Sophie he had been getting weird emails and was fabricating stories suggesting that the mob was after him.

Rob had told his friends that someone had been stalking him prior to his murder. They said he had received some creepy emails in the year before his death suggesting he was being watched, saying things like "saw you today with so and so." Rob's friends also told investigators that Tony had actually visited Rob at his Teaneck home several times to ask him to end the affair, even asking to see the basement room where Rob and Sophie spent time together – the same room where Rob's body was found.

## **Ex Parte Order of Protection**

On Monday, March 7, 2011, the day after Rob's death, I headed to New York County family court and filed for an order of protection on behalf of Sophie and the children against Tony. Family court will issue an order of protection when one person claims that a family member or significant other is physically harming them or threatening to do so. The Order will usually require someone to stay away from the victim and certain locations like the victim's home, place of work or school. The Order may also alter child visitation rights and impose any other restrictions that the court deems necessary to protect the concerned parties.

Because orders of protection involve a potential immediate threat to one's safety, the court will usually grant a temporary order of protection right away. The legal term for this is an "ex parte" order of protection and allows one party to obtain an order without the other party present. Of course, each person has the right to defend their side of the story. The Court can't take away a person's right to see their children or visit certain public places indefinitely without a formal hearing and proof that a threat exists. So, once the ex parte order of protection is obtained, the alleged perpetrator is then served with notice of the order and assigned a hearing date to defend their side of the story.

On Friday, March 11, four days after Sophie obtained the temporary order of protection, we were back in court for Tony's hearing. At this time, there was no proof that Tony was a danger to anyone. He had no history of domestic violence and had not been charged with any crime. There was no DNA evidence, no witnesses and no murder weapon.

To help prove the legal standing for Sophie's protective order, we brought along the Bergen County Prosecutor's Office investigators in Rob's case - led by Detective Sergeant Cecelia Love. We introduced Detective Love to Judge Marva Burnett, explained that Tony was a person of interest in this murder, and asked Judge Burnett to extend the temporary order of protection. With the aid of Detective Love and by speaking on Sophie's concerns and the possibility of Tony's involvement in Rob's death (though slight at the time), Judge Marva Burnett decided it was indeed permissible to extend the temporary order of protection on behalf of Sophie and the three children. Tony and his lawyers didn't say much, likely trying to keep a low profile.

## **Time is Running Out**

But again, temporary orders are just that, temporary. We must continue to seek extensions every couple of months, attending hearings multiple times for the next 10 months. And, the court won't just continue to extend a temporary order forever. It either gets withdrawn, dismissed, or becomes a final order of protection, which lasts, at most, three years (renewable every three years). After 10 months of getting extensions on Sophie's temporary order of protection, we were getting concerned. Tony still hadn't been arrested, time is running out for extensions, and he is becoming more and more confident with each hearing. Where he wouldn't speak or look at us in court early on, now he's looking at me, he's looking at Sophie, he's looking around and his body language is becoming more assertive.

By January of 2012, Tony's lawyers have had enough. They argue that he hasn't been arrested and wants to see his children. It doesn't matter that he's a person of interest. They can call him a person of interest for the next 20 years, but this is not proof that he is a threat to his children.

Though I thought I could get another extension for the order of protection on behalf of Sophie, I wasn't as confident about getting it on behalf of the children. And, of course, Sophie was petrified that he would have access. Sophie had been having bodyguards accompany her to work and wasn't letting the children go out after school on playdates or overnights. They had to come straight home every day. She was scared that Tony would abduct them or hurt them or her in some way. And rightfully so.

Tragically, parents faced with losing their children may turn to child abduction or homicide as their only viable option. Feelings of anger or jealousy against a partner may prompt certain people to want to seek revenge or inflict pain by violence or kidnapping. The frightening thing is, family and friends of the perpetrator rarely see these events coming. Many times, the perpetrator has no prior behavioral or legal problems, and most victims say they never would have expected that sort of behavior from that person.

There is no such thing as being too cautious when it comes to protecting yourself and your children during divorce. The National Center for Missing and Exploited Children receives over 200,000 cases of family kidnapping each year,<sup>1</sup> many following marital separations. Between 2008 and 2017, data from the Center for Judicial Excellence shows that at least 636 U.S. children were murdered by a parent involved in divorce, separation, custody, visitation or child support discussions.<sup>2</sup> At least 287 of those cases involved custody battles.<sup>3</sup> In fact, research suggests that 4% of all U.S. filicides (parent killing a child) involve spousal revenge in infidelity or child custody battles.<sup>4</sup>

At the time of Rob's death, the FBI's Uniform Crime Reporting Program reported that 36.5% of all U.S. female murder victims for whom the relationships to their offenders were known were murdered by their boyfriends or husbands. Of the murders for which the circumstance surrounding the murder was known, 42.9% of victims were murdered during arguments (including romantic triangles) in 2011.<sup>5</sup>

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<sup>1</sup> Gamble H. What Risks do Children Face Today? Facts on Parental Child Abduction. KidGuard. Apr 21, 2017. Accessed at

<https://www.kidguard.com/prevent-child-abduction-kidnapping-and-missing-children/risks-children-face-today-facts-on-parental-child-abduction/>

<sup>2</sup> Center for Judicial Excellence. 2008-2017 U.S. Divorce Child Murder Data. Accessed at <http://www.centerforjudicialexcellence.org/cje-projects-initiatives/child-murder-data/>

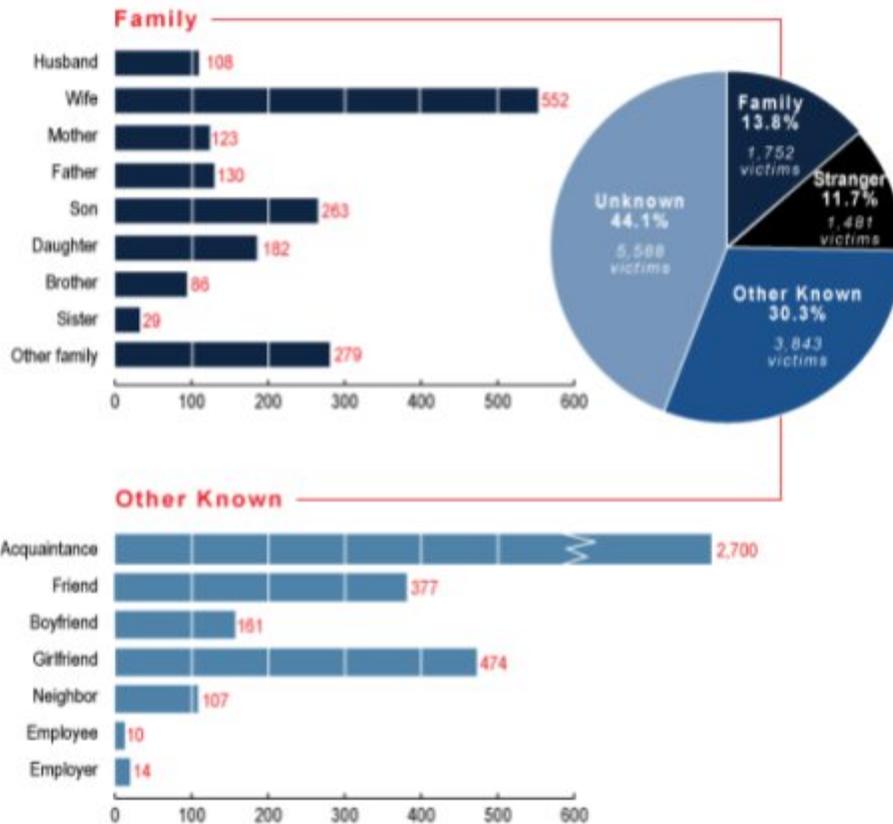
<sup>3</sup> Bello M. When parents kill: FBI data reveal disturbing patterns. USA Today. Oct 25, 2014. Accessed at <https://www.usatoday.com/story/news/nation/2014/10/25/parents-who-kill-custody-battle/13721487/>

<sup>4</sup> Esposito L. Who's to Blame When a Child Dies in High-Conflict Divorce? Psychology Today. Aug 11 2017. Accessed at <https://www.psychologytoday.com/us/blog/anxiety-zen/201708/who-s-blame-when-child-dies-in-high-conflict-divorce>

<sup>5</sup> Federal Bureau of Investigation. Uniform Crime Reporting Program. Crime in the U.S. 2011. Expanded Homicide Data. Accessed at

## Expanded Homicide Data Figure

### Murder by Relationship<sup>1</sup> Percent Distribution,<sup>2</sup> Volume by Relationship, 2011



<sup>1</sup> Relationship is that of victim to offender.

<sup>2</sup> Due to rounding, the percentages may not add to 100.0.

NOTE: Figures are based on 12,664 murder victims for whom supplemental homicide data were received and includes the 5,588 victims for which the relationship was unknown.

SOURCE: FBI Uniform Crime Reporting Program 2011

## Proving an Existing Threat

It was a terrible, traumatic year for Sophie, waiting for Tony to be arrested. Detective Love, myself and Sophie continued to fight for protective order extensions, telling Judge Burnett that Tony wasn't just a person of interest, he was THE person of interest. In an effort to bolster our argument that Sophie and her children needed continued protection, we began to seek out more and more information

<https://ucr.fbi.gov/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/offenses-known-to-law-enforcement/expanded/expanded-homicide-data>

regarding Tony's behavior in the year prior to Rob's death. Gathering witnesses willing to testify against Tony wasn't easy. Nor was getting information out of investigators.

I learned that Sophie and Tony had visited New York psychotherapist, Anne McDonnell, for couple's therapy. Sophie had agreed to couple's therapy to help Tony accept their separation and divorce. Anne was disturbed with the way Tony was behaving during therapy and was very concerned for Sophie. Thankfully, Anne was more than willing to testify at Sophie's hearing about Tony's strange comments and creepy behaviors during therapy – an extremely valuable asset to our case.

I also learn more from Rob's Teaneck friends about how he had described his fear of Tony. Rob's friends had been very vocal and critical of the local prosecutors for taking so long on an arrest. They held press conferences and public demonstrations to put pressure on the prosecution. But when I asked Rob's friends if they would be willing to testify at Sophie's hearing, they refused. They were too scared, since Tony had told Rob he had mob ties.

Their refusal to participate was a big blow to our side, not to mention a shock. After all, they had been so passionate about getting justice for Rob, and therapist Anne McDonnell, a 70-year-old grandmother, was fearless in her willingness to testify against Tony. But at least they had made some noise in the press.

As we're getting ready for what may be the final trial on Sophie's order of protection, I get a call from the New Jersey prosecuting attorney, Wayne Mello. He says he needs to speak to me. Sophie and I travel to New Jersey for a meeting with police, detective and prosecutors. In this meeting, the prosecutor asks me what I think our chances are on the order of protection. I tell him that, based upon what I know, I think I can get an order of protection on behalf of Sophie, but I'm very concerned about being able to get it on behalf of the children, - unless he can give me some information. I ask him to tell me where they are at in the police investigation. The prosecutor doesn't budge. No help at all.

Meanwhile, Judge Burnett grants Tony's application to have telephone contact with the children. The calls must occur in the office of a supervisor, but he is now allowed to call the children. Sophie is devastated.

## **Arrest of Tony Tung**

It is now May of 2012. Fourteen months have passed since Rob's death, and the final order of protection trial was scheduled to start on a Monday. Several days prior, Sophie and I are in my office preparing for the trial and working on her testimony. I'm working on my cross-examination of Tony when we get a call from Detective Cecilia Love. They had arrested Tony for murder.

*“We are greatly relieved that Tony Tung has been arrested in connection with the death of Rob Cantor. My client can now begin the process of rebuilding her life. We hope that this arrest provides some relief and comfort to Mr. Cantor’s family. We want to thank the terrific investigators and prosecutors at the Bergen County Prosecutor’s Office for all of their hard work. We know that this terrible ordeal is not over, but we are heartened by the important steps toward a conviction.” - Dror Bikel, May 2012 press release*

The murder trial began in October 2015, nearly five years after Rob’s death. The trial lasted two months. After four days of jury deliberation, Tony Tung, 53, was convicted of first-degree murder, arson, stalking, weapons crimes, desecrating human remains and other charges. In February 2016, Tung was sentenced to life plus ten years. He will be eligible for parole in the year 2084. We filed for Sophie’s divorce in supreme court while Tung was in jail. Sophie and the girls moved to Poland.

### **Pushing the Legal Limits**

While the legal system offers tools to protect individuals from potential harm by others, the process of obtaining a temporary protective order and the ability to extend that order over a long period of time – when little to no evidence of threat exists – can be difficult if not impossible without a powerful set of players supporting your case.

In Sophie Menuet’s case, the legal system protected Sophie and the children, but it was tenuous. As months passed without an arrest, Tony Tung was asserting himself more and more in terms of wanting to see the children and Sophie too. And, as a husband and father, he has rights.

To a large extent in family law cases, its very judge dependent. Family court Judge Marva Burnett was indispensable in the success of our repeated extensions. She tried to protect Sophie and her daughters for as long as possible, pushing the legal process to the limit. Judge Burnett used common sense, something we can’t rely on all the time. She extended the temporary order of protection because the investigators in the courtroom were pointing at Tung as a person of interest.

This didn’t mean that he did anything wrong. There was no conviction. There was no judicial determination that he was a threat. But Judge Burnett used her discretion. Though there were grounds for her to extend the protective order, she didn’t have to extend it as long as she did. Other judges may not have extended the order of protection for that long.

Judge Cooper, was also incredibly helpful in Sophie's divorce case. He held the divorce hearing on the record from jail and pushed the doors through to make sure that Sophie could get away and be legally free of Tung.

Ultimately, however, the arrest of Tung nearly a year and a half after Rob Cantor's murder was what saved Sophie and the children. The system worked in this case, but that doesn't mean Sophie wasn't vulnerable. At the end of the day, an order of protection is just a piece of paper. People don't always respect court orders, especially when they are emotionally or mentally unstable and motivated by jealousy, revenge or anger.

## **Protecting Yourself and Others**

For anyone in a potentially unsafe situation, it is important to take serious safety precautions on your own, especially when children are involved. If you feel vulnerable, you need to go to a safe place away from the perpetrator. Go to a shelter or have a third party (family or friends) around you at all times. Have someone walk you to and from your car at your place of work or while out for appointments. The first thing you need to do is to be physically safe.

This advice may seem a little drastic, especially when there is no history of violent behavior in your relationship. However, the "better safe than sorry" saying could not apply more than it does in cases of marital separation and divorce. Statistics show that the risk of harm to you and your children are simply too large to disregard.

You must also avail yourself of what the law allows, getting criminal and/or civil orders of protection. If you don't pursue an order of protection, there are no restrictions on a potential perpetrators access to their spouse or significant other and children. If someone violates a court order, I tell my clients to call in the violation. Go to the police or submit a petition to the court so that there is a record of the violation, which could mean incarceration for a period of time, another potential form of protection.

Reporting a violation of a protective order can be difficult for some. Many people don't want to do that to their spouse or their child's father or mother. But when you don't report a violation, you are sending a signal that there are no consequences for bad behavior. You're not setting the right boundaries, essentially saying "I'm more concerned about hurting you than about you hurting me." While it can seem challenging to report a violation, it may be a life or death decision for you or your loved ones.

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Because of the hard work and willingness to help from people like Detective Sergeant Cecelia Love, psychotherapist Anne McDonnell, Bergen County Prosecutor's Office investigators, Judge Marva Burnett, the friends and family of Rob Cantor and Sophie Menuet herself, we were able to push the legal limits and extend her protective order for as long as necessary to keep her and her children safe until the arrest of Tony Tung.

I commend Sophie on her courage in protecting herself and the children. I also applaud the judges that were involved in Sophie's case, who extended themselves and extended the law to protect her. Because of their efforts, Tung was incarcerated before the order of protection expired, and that ultimately was the best case scenario for Sophie and her three girls.