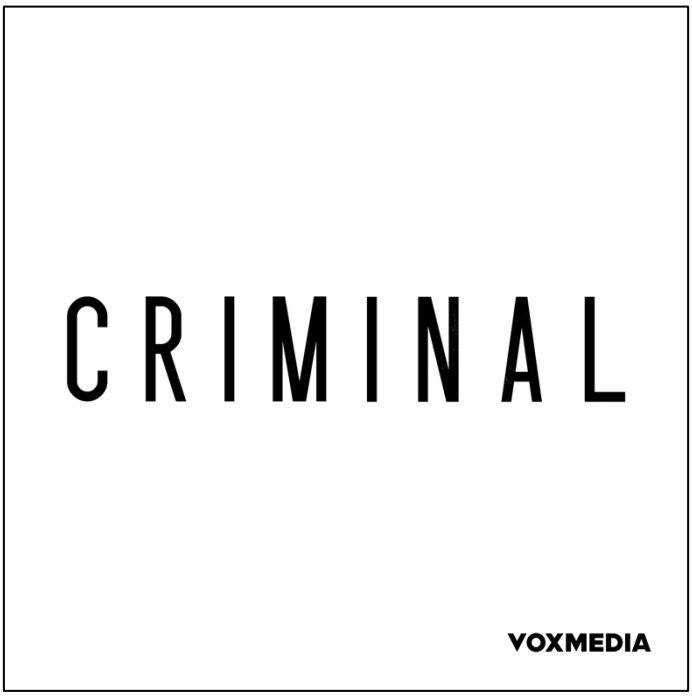


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Episode 324: The Man Nobody Killed
Air Date: July 11, 2025

PHOEBE JUDGE: (As narrator) In 1982, Madonna was shooting her first music video in New York City. It was for the song "Everybody." The idea for the video was that she would be performing at a nightclub. The room would be mostly dark, with a spotlight on her and a crowd of people dancing to her music. She'd been given a budget of $1,500. A friend did her makeup for the video. Friends of friends came in to fill the dance floor.

ELON GREEN: I would hear stories of people in the East Village either going to parties with Madonna or their roommate would be dating Madonna. She would come up in just about every conversation. And it would get to the point where I would get suspicious if somebody didn't bring up a connection to Madonna, because I thought to myself, were you really living in the East Village in 1983? I have my doubts.

PHOEBE JUDGE: (As narrator) Elon Green is a journalist and writer. One of the people in the music video was a young man named Michael Stewart. You can see him for a moment, about two minutes in. He's wearing a hat and a vest over a T-shirt, dancing near the front of the stage.

[MUSIC PLAYING]

PHOEBE JUDGE: And who was Michael Stewart? How did he fit into the whole East Village scene?

ELON GREEN: Mike Stewart was a young Black man. He was tall, 5 foot 11, about 140 pounds. He was gorgeous. He was modeling for Dianne Brill, The Queen of the Night.

PHOEBE JUDGE: (As narrator) Dianne Brill was a popular New York City fashion designer in the 1980s. She'd hired Michael Stewart to model. She said he always gave good faces. Michael had grown up in Brooklyn. His mother said that he started drawing on paper napkins and writing stories as a child.

He went to City College for a year and then attended the Pratt Institute for a summer class. He worked at the phone company and later as a busboy at a nightclub. But he was eventually fired for not being assertive enough to push his way through crowds to bust tables.

ELON GREEN: One of the reasons he stuck out, aside from his looks, was that he was a quiet, contemplative person who did not talk unless he had something to say. And frankly, that was something that was out of character for a very loud, brash era.

PHOEBE JUDGE: (As narrator) Michael rented studio space in an old theater. When he didn't have the money for rent, he paid with his artwork. His landlord described Michael's art as, quote, "slashes of color." "I thought that he was trying to leave proof of his own existence."

ELON GREEN: When it came to art, well, he was by definition of where he was. He was on the avant garde.

PHOEBE JUDGE: (As narrator) In 1983, Michael was still doing modeling jobs and was starting to DJ for big parties. He was 25 years old. On September 14, he met two friends to go to a party at Keith Haring's, but they couldn't get in. So they went to a place called The Pyramid Club Instead.

ELON GREEN: The Pyramid Club was sort of the center of the universe. Anybody who was an artist or filmmaker in the East Village would orbit around the space, whether it be Jean-Michel Basquiat, Thurston Moore of eventually Sonic Youth, the artist David Wojnarowicz. A typical night would be-- there were two floors. Downstairs was kind of where the action was, because that's where the regulars and the staff would hang out.

And one of the features, or nonfeatures, of The Pyramid was there was really no velvet rope. It was an incredibly egalitarian place when it came to race, gender, sexuality. I think anybody who is anybody would pass through there in the same way that they would pass through Studio 54, or Danceteria, or any of the places that were probably more well known to people outside of the East Village.

PHOEBE JUDGE: And what was the East Village like in the '80s?

ELON GREEN: A total dump. It was likened to me like post-war Vienna, basically. Most of the buildings were uninhabited or uninhabitable. There were lines coming out of these empty buildings for people buying heroin, just whole blocks essentially being dark.

PHOEBE JUDGE: (As narrator) In the 1970s, New York City's government ran out of money. The city froze transit workers' wages, and they cut the budget for park maintenance. Between July of 1975 and November of 1979, the city hired no new police officers. The city even borrowed money from the teachers union pension fund.

ELON GREEN: Because the East Village was such a sort of desolate place at a time when New York City had not recovered from the financial crisis, it tended to attract a certain type of person who did not mind those kind of conditions, who wanted dirt cheap rent, and was often creative, and who were all either artists or aspiring artists, and were perfectly happy to endure those conditions in order to be able to do what they loved.

PHOEBE JUDGE: (As narrator) On the night of September 14, 1983, Michael Stewart called an acquaintance, Patricia Pesce, and asked her to meet him at the pyramid club. According to Patricia Pesce, after about an hour, they left. What do we know about what happened after Michael Stewart left The Pyramid Club that night?

ELON GREEN: He and Patricia start walking. And eventually, it's time for Michael to go home in Brooklyn. He lived in Fort Greene with his parents. So they get in a cab, and Patricia and he part ways at 14th Street and 1st Avenue where the L Train is. And they have a fairly chaste kiss. He walks down the stairs. And that's the last that she would see him alive and well.

And here's where things get a little murky. A transit policeman named John Kostick, who's just come on shift there, allegedly catches him defacing the wall of a subway with a marker and promptly arrests him. So he's led upstairs, and he and Officer Kostick are standing next to the booth which houses the token clerk.

And depending on who you ask, Michael either runs up the stairs towards the street or walks quickly. Either way, by the time he gets up there, he's quickly followed by Officer Kostick. And other officers are called to the scene.

PHOEBE JUDGE: (As narrator) A man named Robert Rodriguez was working at a Blimpie sandwich shop that night. He was also an auxiliary police officer. He saw what happened next.

ELON GREEN: And he watches as Michael is led onto the street. He is not able to identify who precisely is doing the leading, but he testifies and, in fact, tells an NYPD officer the next day that he sees Michael assaulted as soon as he is taken up the stairs.

PHOEBE JUDGE: So the one version is that Michael went running up the stairs trying to escape the arrest at the L station, and Robert Rodriguez sees some sort of scuffle where Michael is thrown to the ground or assaulted?

ELON GREEN: That's correct.

PHOEBE JUDGE: (As narrator) Michael was then driven to a transit police station at Union Square.

ELON GREEN: Officers would later testify that he began to make trouble on the ride over. He was kicking the seat, essentially, being uncooperative. Now, when Michael is removed from the car, the officers would later testify that he made a run for it and sprinted, and in doing so, runs into another officer. And it sets off what can only be described as an assault.

PHOEBE JUDGE: (As narrator) The station at Union Square was also just a block away from a dorm for first-year students at the Parsons School of Design. Many of the students had their windows open that night.

WITNESS 1: We started hearing this kind of crying out, "help me, help me. Please, help me" over and over and over again.

WITNESS 2: It was a gut-wrenching screaming life and death sound that brought us to the windows.

WITNESS 3: I heard this blood-curdling scream that was just you had to look to see what was going on. It was right down on the pavement.

WITNESS 4: There were a lot of cops down there, a lot of cops that I-- maybe 10, 12, something like that.

WITNESS 5: They had them on the ground, and he was screaming, and they would kind of take turns. It'd be one officer that would be on him, and then one would get up, and another one would get down on him and start hitting him and beating him. And they had clubs. This one police officer kneeled right up by his shoulder blades, put a billy club underneath his neck and pulled up really hard, violently.

WITNESS 6: I just felt sick. I was like, oh my god, this poor guy. It seemed like they could have just put him in handcuffs and taken him away. But then they tied him up. And it was horrible.

WITNESS 7: They picked him up. Literally, his hands and feet were tied behind his back. And they just tossed him into this little paddy wagon they had, and they just threw him in there. And then they just left him. They just sat there and talked. And it was a big group of cops, and they were all just hanging out.

[MUSIC PLAYING]

ELON GREEN: There were perhaps 40 witnesses. Not one of them went to the phone.

PHOEBE JUDGE: (As narrator) Elon Green interviewed many of them years later and asked why they didn't call the police.

ELON GREEN: Some of them who had only really heard stories about what New York City was like, felt, well, this is what we had been led to believe would happen. So it's not really a big deal. Others would say, well, because he was handled so violently, he must have murdered somebody and tacitly deserved it, while others were just sort of confused about what to do, because could you really call the police on the police?

PHOEBE JUDGE: (As narrator) I'm Phoebe Judge. This is *Criminal.*

[MUSIC PLAYING]

We'll be right back.

[MUSIC PLAYING]

PHOEBE JUDGE: (As narrator) The transit police officers brought Michael Stewart to Bellevue Hospital. A nurse wrote in her notes that he was face down, handcuffed, in a prone position on a stretcher, and that he had obvious head trauma and battle signs. He wasn't breathing. Doctors tried to resuscitate him, but they had to wait for the police to look for the keys for his handcuffs.

ELON GREEN: The doctors and nurses observe bruising. He has clearly been through some kind of ordeal. They begin to hear stories about what has happened. The nurses even begin to suspect that a cover-up is in the works. What they don't find, though, are classic signs of strangulation. And that would later become important.

PHOEBE JUDGE: (As narrator) Michael Stewart was admitted to the intensive care unit and put on a ventilator. He couldn't breathe on his own. He also received a CT scan. Two neurologists looked at the scans and noted there were no blood clots or lesions and no skull fracture. But one of the doctors saw swelling on the left side of Michael's head, something that could happen if he'd hit his head very hard against something. The doctors tested Michael's reflexes. He showed almost no response.

PHOEBE JUDGE: Did he ever gain consciousness again?

ELON GREEN: No, never.

PHOEBE JUDGE: (As narrator) Two Transit Authority officers went to see Michael Stewart's parents in Brooklyn. The officers told them their son was in critical condition at Bellevue. Michael's mother then called a woman named Suzanne Mallouk.

ELON GREEN: Suzanne Mallouk was Michael's on and off girlfriend and also the on and off girlfriend of Jean-Michel Basquiat.

PHOEBE JUDGE: (As narrator) Suzanne Mallouk had met Michael about a year earlier at The Pyramid Club. They had lived together for a while. But eventually, Suzanne asked him to move out. She said she was still in love with Basquiat. But they were still close. They'd seen each other the day before Michael's assault.

Michael's mother asked Suzanne to meet them at the hospital. According to Suzanne, when she arrived, no one would tell them why he had been arrested. She tried to see Michael. She said she was his fiancée, but the nurses wouldn't let her. A doctor said Michael was brain dead. A detective approached her and asked if Michael did drugs or if he was known to be violent. Suzanne came back to the hospital the next day.

ELON GREEN: She went and borrowed a camera and put on the dowdy conservative dress and talked her way into Michael's room at Bellevue, which was no small thing, because, of course, he was in custody. Even though he was comatose, he was, by law, handcuffed to the bed. And she proceeded to take photos of him with the tubes coming out of his mouth and the bruises all over his body. And she did this extraordinary thing of documenting the wounds at a time when nobody else thought to do this.

PHOEBE JUDGE: What kind of investigation was being done after Michael Stewart's hospitalization?

ELON GREEN: It wasn't really an investigation in the traditional sense. The NYPD was not handling the case. As ADA said to me, nobody was going to trust the cops. So it was the investigators of District Attorney Robert Morgenthau who were going around Union Square looking for witnesses. And they went floor by floor in the Parsons dorm and started to talk to the students, until they were able to dredge up dozens who had seen the incident.

In the hours after the assault, investigators went to talk to each of the policemen. Internal affairs was asked to investigate the case. And that was something that they did routinely when there were complaints of police malfeasance. And for reasons that remain mysterious to me, they refused, which was something they almost never did.

PHOEBE JUDGE: (As narrator) The police charged Michael with criminal mischief, resisting arrest, attempted escape, and possession of marijuana. A newspaper wrote that a Transit Authority spokesman said Michael, quote, "went berserk after officers tried to arrest him for writing graffiti on a subway wall."

They said that he had been drawing 3-foot tall letters, by some accounts, R-Q-S, by others, R-A-S. Elon Green says it's never been clear whether that was true or what those letters could have been referring to. Michael Stewart died on September 28, 1983, 13 days after his arrest.

PHOEBE JUDGE: How quickly did the story of what happened to Michael Stewart make the news?

ELON GREEN: Well, the first story appeared certainly within 24 hours in the tabloids. And the turning point for the story, because this otherwise, I think, would have been treated as a routine police brutality case, because, of course, they were routine, but the case got the attention of Gabe Pressman. He was a TV news reporter. In fact, he essentially invented the job of being a TV news reporter.

And he became immediately obsessed with the case and began investigating every facet of it. And a *New York Times* reporter told me that nobody else would have cared about it if Gabriel Pressman had not cared about it first. And once he got on the story, it began to make the cover of every tabloid for days and for weeks.

PHOEBE JUDGE: (As narrator) In a TV segment that aired on the day of Michael Stewart's death, Gabe Pressman reported that the Transit Authority would only say that Michael had gotten a cut over his eye.

[MUSIC PLAYING]

PHOEBE JUDGE: And what was the reaction from Michael's own community, from his friends, the artists, from his family, parents.

ELON GREEN: Rage. Even before Michael died, that September, there was a protest held in Union Square. As far as I know, it was the first, and it was organized by a man named Haoui Montaug. Haoui Montaug was a famous doorman who worked at The Palladium, and Studio 54, and Danceteria, and all sorts of places. He also was a man who had an activist streak going back to his childhood.

And as soon as Michael was hospitalized, he and Suzanne Mallouk and some others began to organize the protest in Union Square. And David Wojnarowicz created these beautiful flyers to advertise it. And those were hung from lampposts in the East Village.

PHOEBE JUDGE: (As narrator) The poster showed two skeletons in police uniforms, hitting a faceless figure with his arms handcuffed behind his back. Madonna headlined a concert to raise money for Michael's parents to pay for their legal expenses. They'd hired a lawyer and experts to look at Michael's medical records and autopsy and to make sure the city was investigating. Madonna said that Michael made one really strong impression on me. And that was that he was really fragile.

Keith Haring donated the proceeds from some of his gallery sales to Michael's family. Haring, who was white, said he'd been arrested four times for graffiti and had always been let go. He was even arrested once on camera, drawing on a wall in a subway station while a news crew was following him for a profile.

REPORTER: He may do as many as 30 such drawings in a day. He puts them down here so that millions can see them, and millions do.

KEITH HARING: You don't have to know anything about art to appreciate it.

REPORTER: But he's got to be careful because technically, what he's doing is illegal graffiti.

POLICE OFFICER: You're under arrest for graffitiing the subway.

REPORTER: Haring doesn't think he is defacing anything. He believes it is art, and many subway riders seem to agree. But the law is the law. For Haring, the arrest is always short-lived, and it's worth the temporary humiliation for him, because he wants ordinary people, subway riders, to see his stuff. Art for the people, all for the price of a subway token.

ELON GREEN: Later, Jean-Michel Basquiat would wander over to Haring's studio and leave a painting on Haring's wall of a silhouetted black figure, surrounded on both sides by blue pig-faced policemen.

PHOEBE JUDGE: (As narrator) Keith Haring later cut out the part of the wall Basquiat had painted and put it in a frame over his bed. Basquiat never named the painting, but based on writing on it, Keith Haring called it *Defacemento.* It was later displayed at the Guggenheim and called *Defacement,* and then in parentheses, *The Death of Michael Stewart.*

On September 29, the day after Michael Stewart's death, his body was autopsied, and there was a press conference. There was mounting pressure for the city to release their findings about the cause of his death.

ELON GREEN: The chief medical examiner of New York, Elliot Gross, declared that the cause of death was "cardiac arrest with survival for 13 days, bronchopneumonia, pending further study," which is one of those statements that is both true but also meaningless.

PHOEBE JUDGE: (As narrator) Elliot Gross told the press, quote, "While there was evidence of healing injuries on the body, the autopsy demonstrated no evidence of physical injury resulting or contributing to death." When asked by a reporter about Michael's injuries, Dr. Gross said that Michael Stewart's wrists showed abrasions consistent with injuries caused by handcuffs. But he said that the other injuries could have been caused by other things, like a fall.

A doctor who had assisted in the autopsy later told Elon Green, of course, they did something to cause his death. A lawyer representing Michael Stewart's family said that one of the doctors who was serving as a witness to the autopsy had said that Michael Stewart's eyes showed signs of strangulation or choking.

Elliot Gross said that he had found no signs of strangulation. He said they would be conducting further tests, including an examination of Michael's brain and spinal cord. And the next day he removed Michael's eyes.

ELON GREEN: And he puts them in a solution called formalin, which is a preservative. And the removal eventually gets out, and it is widely interpreted as an attempt by Dr. Gross to engineer a cover-up on behalf of police.

PHOEBE JUDGE: Why-- what could the eyes have shown?

ELON GREEN: They could have shown petechial hemorrhages, which is often an indication of strangulation.

PHOEBE JUDGE: (As narrator) The doctors the Stewart's had hired said they hadn't been informed that Dr. Gross had done this procedure.

PHOEBE JUDGE: When those initial autopsy results came out, what was the reaction?

ELON GREEN: Anger, justifiably so, because certainly, the idea that Michael's cause of death was cardiac arrest was seen as a passing of the buck, an abdication of responsibility, an endorsement of the idea that the cops were not at fault.

PHOEBE JUDGE: (As narrator) Protesters gathered outside the Office of the Chief Medical Examiner, chanting "Dr. Gross lied." We'll be right back.

[MUSIC PLAYING]

PHOEBE JUDGE: Early '80s in New York, are there a lot of these kind of interactions between the police and citizens? Is this happening often?

ELON GREEN: It happens often enough that in 1983, there are 400 reported police brutality incidents over a two-year period.

PHOEBE JUDGE: (As narrator) In the days after Michael Stewart's assault, there also happened to be a congressional hearing being held in Harlem on police brutality. Mayor Ed Koch refused to attend.

ELON GREEN: Mayor Koch's attitude towards police brutality was to act as if it did not exist. As he once put it, it was to him a phony, false issue. I think at the time, just as now, many people were enthralled to law enforcement. And I think that he did not want to believe that the NYPD, and the housing policemen, and the transit policemen might be routinely assaulting Black New Yorkers.

PHOEBE JUDGE: (As narrator) Quote, "People would get the baton to the head and have to have a neurosurgeon," a doctor at Bellevue Hospital remembered. In 1980, New York City's crime rates were the worst they'd ever been. There were over 1,800 murders reported that year.

A few years earlier, people visiting New York received pamphlets at the airport titled "Welcome to Fear City," with a skull looking out from a hood. It listed nine rules to survive the city without being killed or robbed, like not going out after 6:00 PM and to never take the subway. The pamphlets had been created by a group called The Council for Public Safety in response to the city laying off police and firefighters. The group was made up of their unions.

A year after Michael Stewart's death, a white man named Bernhard Goetz got on the 2 Train. He sold electronics in Greenwich Village. He'd been mugged a few years earlier and had started carrying a gun. He was wearing it under his windbreaker.

ELON GREEN: He gets on the subway, and in the subway car along with him are some teenagers.

PHOEBE JUDGE: (As narrator) Their names were Troy Canty, Barry Allen, Darrell Cabey, and James Ramseur. All four were Black and around 18 years old. At one point, Troy Canty asked Bernhard Goetz for $5.

ELON GREEN: And these kids, perhaps they looked at him funny. One apparently smiled. And Bernhard Goetz pulls a gun out of his windbreaker, and without provocation, shoots them all.

PHOEBE JUDGE: (As narrator) All four survived, but Darrell Cabey's spine was severed by a bullet. He was paralyzed. Bernhard Goetz got off the subway and left the city. He went to Vermont, where he burned the windbreaker he'd been wearing and buried his gun. Just over a week after the shooting, he turned himself in.

ELON GREEN: He confesses, and is thoroughly unapologetic, and implies, if not outright says, that he would have killed them if he hadn't run out of bullets.

PHOEBE JUDGE: And what's the public response like?

ELON GREEN: He is greeted as a hero. And one of the reasons he's greeted as a hero is because much of the reporting about what he had done was incorrect. He was portrayed as having responded to this imminent threat to his life. The teenagers were supposed to have been brandishing sharpened screwdrivers. And this did not turn out to be true.

These kids actually did have screwdrivers, but they were are blunted. They were used to apparently break into vending machines. And in any case, they were in their pockets. Bernhard Goetz could not have seen them. And the great tabloid reporter Jimmy Breslin is perhaps the first person to write about what the actual story was. But by the time Breslin does this, it's basically too late. New York City has embraced Goetz as a hero.

PHOEBE JUDGE: A white man shooting Black teenagers on a subway?

ELON GREEN: Yes, and even substantial portions of the Black community in New York supports Goetz to the palpable consternation of the Black newspapers.

PHOEBE JUDGE: (As narrator) Bernhard Goetz was eventually acquitted of attempted murder but served eight months for criminal possession of a weapon. On January 28, 1985, *The New York Times* ran an article with the headline, "Lawyer Says Goetz Does Not Feel Remorse Over Subway Shooting." That same day, an article about Michael Stewart also appeared in the newspaper on the front page, "Family of Victim Levels Charges of Deceit-- An Autopsy Conclusion."

[MUSIC PLAYING]

A month after the autopsy, Dr. Gross had held a second press conference and changed the cause of death to, quote, "an injury to the spinal cord in the upper neck." But he didn't classify it as a homicide. One of the doctors hired by the Stewart family told *The New York Times* this is not the sort of injury you could give yourself.

[MUSIC PLAYING]

On June 1, 1984, the New York County District Attorney Robert Morgenthau announced a grand jury found enough evidence to bring charges against some of the officers who had arrested Michael Stewart-- John Kostick, Anthony Piscola, and Henry Boerner.

ELON GREEN: Manslaughter in the second degree, criminally negligent homicide, reckless endangerment in the second degree, assault in the third degree, hindering prosecution in the second degree, and official misconduct.

PHOEBE JUDGE: (As narrator) But soon it came out that one of the jurors on the grand jury had attempted to conduct his own investigation.

ELON GREEN: So Ronald Fields was a French teacher and just an intensely curious, inquisitive person to a fault. And he decides that what they've been presented, the case they've been presented by the prosecution is incomplete. He feels that there must be more to the story than what they've been hearing. So he decides to do his own investigation.

PHOEBE JUDGE: (As narrator) Ronald Fields read press releases from the medical examiner's office while he was serving on the jury. He also went to Union Square to take photos of the crime scene.

PHOEBE JUDGE: This is kind of unorthodox for someone to be going out on their own.

ELON GREEN: Yes, it's not only unorthodox, but it may even be against the law because he takes these exhibits, essentially, back to the grand jury and shows them to the prosecutor, and who promptly admits them as evidence. But you are not allowed to bring in outside information that has not been vetted by the prosecution.

You're not allowed to do this because there is a process by which evidence is vetted. And you can't have certainly one juror be privy to outside information. As the judge overseeing the grand jury said, this will be grounds for overturning this.

PHOEBE JUDGE: Did he apologize for interfering? Was he remorseful for--

ELON GREEN: Not to me. He was always very unapologetic. The New York County district attorney is forced to go through this grand jury process again. Dozens of witnesses over however many weeks are made to testify again. And at this point, these freshmen at Parsons are no longer freshmen and, in many cases, no longer living nearby. And they've been subpoenaed. They have to trek back to Manhattan to tell the same story over again.

PHOEBE JUDGE: (As narrator) In February of 1985, nearly a year and a half after Michael Stewart's death, the district attorney announced that a second grand jury had voted to indict the officers again with new charges. Instead of manslaughter for recklessly causing Michael's death, the officers were charged with criminally negligent homicide for failing to prevent his death.

The DA said what this indictment means is that when a police officer makes an arrest, he's responsible for the prisoner in his custody. If he beats him up or he permits some other officer to beat him, he's now going to be held legally responsible.

ELON GREEN: And while they each faced more than 20 years in prison, these are substantially weaker charges.

PHOEBE JUDGE: So what happens at the trial?

ELON GREEN: What happens at the trial is, to me, nothing less than a complete muddying of the waters, because the witnesses in the days after the assault and in their testimony to the grand jury tell a very coherent version of events. And maybe there are slight discrepancies. Perhaps one student sees three officers around Michael Stewart, while another might see five. One of them might mistake an emergency services vehicle for an ambulance.

And then what happens at the trial is, of course, what all good defense attorneys are supposed to do, he undermines every witness by finding these minuscule, piddling discrepancies between the grand jury questionnaires they'd filled out, their grand jury testimony, and then what they've just testified to at the criminal trial.

And in doing so, he discredits essentially all of them. And in addition to the students, one of the most important witnesses for the people, if not the most important witness, was that sandwich maker at Blimpie's, the auxiliary policeman Robert Rodriguez. And it comes out that Rodriguez had been hospitalized for I think what would be called today suicidal ideation and schizophrenia.

And the judge allows the defense attorneys to bring this up on cross-examination. So Rodriguez is kept on the stand for days and destroyed. So by the time the trial ends, the witnesses have, to some degree, been discredited falsely, I would believe. And then, of course, there's the matter of Elliot Gross, the chief medical examiner of New York.

PHOEBE JUDGE: (As narrator) In the months leading up to the trial. Doctor Gross became uncertain about the cause of death. He now thought that Michael's spinal cord injury was a result of his time at Bellevue Hospital, not his arrest. On his first day on the witness stand, he testified that he had no opinion about the cause of Michael's death. He was on the witness stand for 11 days.

ELON GREEN: Dr. Gross eventually testifies that Michael Stewart's death was the result of acute intoxication, the effects of his being under restraint, and the effects of blunt force injuries. And in his closing remarks, John Kostick's lawyer says, look, this is multiple choice. If you can't even decide on a cause of death, how can you possibly convict this man.

PHOEBE JUDGE: And what is the verdict in the trial?

ELON GREEN: Not guilty.

PHOEBE JUDGE: For everyone?

ELON GREEN: Yes.

[MUSIC PLAYING]

PHOEBE JUDGE: (As narrator) After the trial, a local magazine called *The East Village Eye* published an editorial about the verdict. It was headlined, "The Man Nobody Killed."

[MUSIC PLAYING]

PHOEBE JUDGE: Do you think that things might have turned out differently if there had been a clearer autopsy that said, these actions led to Michael Stewart's death, from the beginning?

ELON GREEN: Yes, but the only circumstances I could see where such a case would have ended in a conviction-- because, of course, this would have been a very big deal if it had ended in a conviction-- would be if Michael had not been in a coma and had died that night at Bellevue.

Because if he had died that night, there wouldn't have been 13 days for bruises to disappear, for any sort of breaks to heal, any of those really severe injuries to disappear. And I think that the jury would have had to have been confronted with circumstances that were impossible to ignore. But that's not what happened. And I think that the minor inconsistencies about the case allowed the jury to find the cops not guilty.

[MUSIC PLAYING]

PHOEBE JUDGE: (As narrator) In 1989, Spike Lee's movie *Do the Right Thing* came out. One of the characters, Radio Raheem, is killed by a police officer, choking him with a nightstick. Spike Lee wrote in the stage directions of the script, "The officers all look at each other. They know. They know exactly what they've done. The infamous Michael Stewart chokehold." The movie ends with a dedication to the families of victims of police brutality, including Michael Stewart.

In 1990, Michael's family settled a lawsuit against the Transit Authority and the officers involved in the assault for $1.7 million, but the mayor's office said the settlement did not constitute any admission of wrongdoing. Michael's father died in 2002. His mother still lives in Brooklyn.

The Guggenheim Museum paid tribute to Michael Stewart's death in 2019, showing work by Basquiat, Keith Haring, and newspaper clippings, and protest posters about Michael. They displayed several of Michael Stewart's own paintings. They were untitled. The curator said, I didn't want to make him into a myth. I thought the best way to do that was to take a step back and let him speak for himself.

[MUSIC PLAYING]

Criminal is created by Lauren Spohrer and me. Nadia Wilson is our senior producer. Katie Bishop is our supervising producer. Our producers are Susannah Roberson, Jackie Sojico, Lilly Clark, Lene Sillesen, and Megan Cunnane. Our show is mixed and engineered by Veronica Simonetti. Julienne Alexander makes original illustrations for each episode of *Criminal.* You can see them at thisiscriminal.com.

Elon Green's book about Michael Stewart is called *The Man Nobody Killed.* You can sign up for our newsletter at thisiscriminal.com/newsletter. We hope you'll consider supporting our work by joining our membership program, Criminal Plus. You can listen to *Criminal, This is Love,* and *Phoebe Reads a Mystery* without any ads. Plus, you'll get bonus episodes.

These are special episodes with me and *Criminal* co-creator Lauren Spohrer talking about everything from how we make our episodes, to the crime stories that caught our attention that week, to things we've been enjoying lately. To learn more, go to thisiscriminal.com/plus.

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[MUSIC PLAYING]