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How Kristin Died

A disturbed man, and a flawed system, took her young life

By George Lardner Jr.
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The phone was ringing insistently, hurrying me back to my desk. My daughter Helen was on the line, sobbing so hard she could barely catch her breath. "Dad," she shouted, "Come home! Right away!"

I was stunned. I had never heard her like this before. "What's wrong?" I asked. "What happened?"

"It's—it's Kristin. She's been shot... and killed."

Kristin? My Kristin? Our Kristin? I'd talked to her the afternoon before. Her last words to me were, "I love you Dad." Suddenly I had trouble breathing myself.

It was 7:30 p.m. on Saturday, May 30. In Boston, where Kristin Lardner was an art student, police were cordoning off an apartment building a couple of blocks from the busy, sunlit sidewalk where she'd been killed 90 minutes earlier. She had been shot in the head and face by an ex-boyfriend who was under court order to stay away from her. When police burst into his apartment, they found him sprawled on his bed, dead from a final act of self-pity.

This was a crime that could and should have been prevented. I write about it as a sort of cautionary tale, in anger at a system of justice that failed to protect my daughter, a system that is addicted to looking the other way, especially at the evil done to women.

But first let me tell you about my daughter.

She was, at 21, the youngest of our five children, born in Washington, D.C., and educated in the city's public schools, where not much harm befell her unless you count her taste for rock music, lots of jewelry, and funky clothes from Value Village. She loved books, went trick-or-treating dressed as Bette Garbo, played one of the witches in "Macbeth" and had a grand time in tap-dancing class even in her sneakers. She made life sparkle.

When she was small, she always got up in time for Saturday morning cartoons at the Chevy Chase library, and she took cheerful care of a succession of cats, mice, gerbils, hamsters and guinea pigs. Her biggest fault may have been that she took too long in the shower—and you never knew what color her hair was going to be when she emerged. She was compassionate, and strong-minded too; when a boy from high school dropped his pants in front of her, Kristin knocked out one of his front teeth.

"She didn't back down from anything," said Amber Lynch, a close friend from Boston University. "You could tell that basically from her art, the way she dressed, the opinions she had. If you said something stupid, she'd tell you."

Midway through high school, Kristin began thinking of becoming an artist. She'd been taking art and photography classes each summer at the Corcoran School of Art and was encouraged when an art teacher at Wilson High decided two of her paintings were good enough to go on display at a little gallery there. She began studies at Boston University's art school and transferred after two years to a fine arts program run jointly by the School of the Museum of Fine Arts and Tufts University. She particularly liked to sculpt and make jewelry and, in the words of one faculty member, "showed great promise and was extremely talented."

In her apartment were scattered signs of that talent. Three wide-banded silver and brass rings, one filigreed with what looked like barbed wire. Some striking sculptures of bound figures. A Madonna, painstakingly gilded. A nude self-portrait in angry reds, oranges and yellows, showing a large leg bruise her ex-boyfriend had given her on their last date in April.

"It felt as though she was telling all her secrets to the world," she wrote of her art in an essay she left behind. "Why would anyone want to know them anyway? But making things was all she wanted to do. She always had questions, but never any answers, just frustration and confusion, and a need to get out whatever lay inside of her, hoping to be meaningful."

Kristin wrote that essay last November for a course at Tufts taught by Ross Ellenhorn, who also happens to be a counselor at Emerge, an educational program for abusive men. He had



Kristin Lardner, killed at the age of 21

once mentioned this to his students. He would hear from my daughter in April, after she met Michael Cartier.

By then, Kristin had been dating Cartier, a 22-year-old bouncer, for about 2½ months. She broke off with him on the early morning of April 16. On that night, a few blocks from her apartment, he beat her up.

They "became involved in an argument and he knocked her to the ground and started kicking her over and over," reads a Brookline, Mass., police report. "She remembers him saying, 'Get up or I'll kill you.' She staggered to her feet, a car stopped and two men assisted her home.

"Since that night," the report continues, "she has refused to see him, but he repeatedly calls her, sometimes 10 or 11 times a day. He has told her that if she reports him to the police, he might have to do six months in jail, but she better not be around when he gets out.

"She also stated the injuries she suffered were hematomas to her legs and recurring headaches from the kicks."

Kristin didn't call the police right away. But she did call Ellenhorn in hopes of getting Cartier into Emerge. "I made clear to her that Emerge isn't a panacea, that there was still a chance of him abusing her," Ellenhorn says. "I told her that he could kill her... because she was leaving him and that's when things get dangerous."

Cartier showed up at Emerge's offices in Cambridge, around April 28 by Ellenhorn's calculations. Ellenhorn, on duty that night, realized who Cartier was when he wrote down Kristin's name under victim on the intake form.

"I said, 'Are you on probation?'" Ellenhorn remembers. "He said yes. I said, 'I'm going to need the name of the probation officer.' He said, '[Expletive] this. No way.'"

With that, Cartier ripped up the contract he was required to sign, ripped up the intake form, put the tattered papers in his pocket and walked out.

"He knew," Ellenhorn says. "He knew what kind of connection would be made." Michael Cartier was, of course, on probation for attacking another woman.

Cartier preyed on women. Clearly disturbed, he once talked of killing his mother. When he was 5 or 6, he dismembered a pet rabbit. When he was 21, he tortured and killed a kitten. In



a bizarre 1989 incident at an Andover restaurant, he injected a syringe of blood into a ketchup bottle. To his girlfriends, he could be appallingly brutal.

Rose Ryan could tell you that. When Kristin's murder was reported on TV—the newscaster described the killing as “another case of domestic violence”—she said to a friend, “That sounds like Mike.” It was. Hearing the newscaster say his name, she recalls, “I almost dropped.”

When Ryan met Cartier at a party in Boston in the late summer of 1990, she was an honors graduate of Lynn East High School, preparing to attend Suffolk University. She was 17, a lovely, courageous girl with brown hair and brown eyes like Kristin's.

“He was really my first boyfriend,” she told me. “I was supposed to work that summer and save my money, but I got caught up with the scene in Boston and hanging out with all the kids. . . . At first, everything was fine.”



CARTIER WAS A FAMILIAR FACE ON THE BOSTON Common, thanks to his career as a freelance nightclub bouncer. He had scraped up enough money to share a Commonwealth Avenue apartment with a Museum School student named Kara Boettger. They dated a few times, then settled down into a sort of strained coexistence.

“He didn't like me very much,” Boettger said. “He liked music loud. I'd tell him to turn it down.”

Rose Ryan liked him better. She thought he was handsome—blue eyes, black hair, a tall and muscular frame—with a vulnerability that belied his strength. To make him happy, she quit work and postponed the college education it was going to pay for. “He had me thinking that he'd had a bad deal his whole life,” she said, “that nobody loved him and I was the only one who could help him.”

Cartier also knew how to behave when he was supposed to. Ryan said he made a good first impression on her parents. As with Kristin, it took just about two months before Cartier beat Ryan up. She got angry with him for “kidding around” and dumping her into a barrel on the Common. When she walked away, he punched her in the head; when she kept going, he punched her again.

"I'd never been hit by any man before and I was just shocked," she said. But what aggravated her the most, and still does, is that "every time something happened, it was in public, and nobody stopped to help."

Cartier ended the scene with "his usual thing," breaking into tears and telling her, "Oh, why do I always hurt the people I love? What can I do? My mother didn't love me. I need your help."

Shortly after they started dating, Ryan spent a few days at the Cartier-Boettger apartment. He presented her with a gray kitten, then left it alone all day without a litter box. The kitten did what it needed to do on Cartier's jacket.

"He threw the kitten in the shower and turned the hot water on and kept it there under the hot water," Ryan remembers in a dull monotone. "And he shaved all its hair off with a man's shaving razor."

The kitten spent most of its wretched life hiding under a bed. On the night of Oct. 4, 1990, Cartier began drinking with two friends and went on a rampage. He took a sledgehammer and smashed through his bedroom wall into a neighbor's apartment. And he killed the kitten, hurling it out a fourth-floor window.

"I'd left the apartment, without telling them," Ryan said. "When I came back, the police were in the hallway. . . . They said, 'Get out. This guy's crazy.' They were taking him out in handcuffs."

Three months later, Cartier, already on probation, plea-bargained his way to probation again—pleading guilty to malicious destruction. Charges of burglary and cruelty to animals were dismissed; the court saw nothing wrong with putting him back on the street.

"I thought he was going to jail because he violated probation," Kara Boettger said. So did Cartier. "[But after the January hearing] he told me. . . . 'Oh yeah, nothing happened. They slapped my wrist.'"

WHEN MICHAEL CARTIER WAS BORN IN NEWBURYPORT, Mass., his mother was 17. Her husband, then 19, left them six months later. Gene Cartier has since remarried twice. Her son, Penny Cartier says, was a problem from the first.

"He'd take a bottle away from his [step]sister. He'd light matches behind a gas stove. He was born that way," Penny Cartier asserted. "When he was five or six, he had a rabbit. He ripped its legs out of its sockets."

"None of this," she added in loud tones, "had anything to do with what he did to Kristin. . . . Michael's childhood had nothing to do with anything."

Lie with mother, in any case, ended at age 7, when she sent him to the New England Home for Little Wanderers, a state-supported residential treatment center for troubled children. Staff there remember him—although Penny Cartier denies this—as a child abused at an early age. "That's the worst childhood I've ever seen," agrees Rich DeAngelis, one of Cartier's probation officers. "This didn't just happen in the last couple of years."

Cartier stayed at the New England Home until he was 12. In October 1982, he was put in the Harbor School in Amesbury, a treatment center for disturbed teenagers. He stayed there for almost four years and was turned over to his father, a facilities maintenance mechanic in Lawrence.

Michael Cartier was bitter about his mother. "I just know he hated her," Kara Boettger said. "He said he wanted to get a tattoo, I think maybe on his arm, of her hanging from a tree with animals ripping at her body."

Penny Cartier didn't seem surprised when I told her this. In fact, she added, after he turned 18, "he asked my daughter if she wanted him to kill me."

Cartier entered Lawrence High School but dropped out after a couple of years. "He was just getting frustrated. He couldn't keep up," said his father. By his second semester, he was facing the first of nearly 20 criminal charges that he piled up in courthouses from Lawrence to Brighton over a four-year period.

Along the way, he enjoyed brief notoriety as a self-avowed skinhead, sauntering into the newsroom of the Lawrence Eagle-Tribune with his bald friends in June 1989 to complain of the bad press and "neo-Nazi" labels skinheads usually got. "The state supported me all my life, with free doctors and dentists and everything," Cartier told columnist Kathie Neff. "My parents never had anything to do with that because they got rid of me. This is like my way of saying thanks [to them]."

Neff said Cartier cut an especially striking figure, walking in a trench coat and wearing a patch on one eye. He had just sur-



Michael Cartier, Kristin Lardner's killer

been a magic purse for him. He told friends he had a big insurance settlement coming and would get periodic advances on it from his lawyer. Gene Cartier said his son got a final payment late last year of \$17,000 and "went through \$14,000" of it before he murdered Kristin.

The high-ceilinged main courtroom in Brighton has a huge, wide-barred cell built into a wall. On busy days, it is a page from Dickens, crowded with yelling, cursing prisoners waiting for their cases to be called.

Cartier turned up in the cage April 29, 1991, finally arrested for violating probation. Ten days earlier, when Rose Ryan was coming home from a friend's house on the "T," Boston's trolley train and subway system, Cartier followed her—and accosted her at the Government Center station with a pair of scissors. She ducked the scissors and Cartier punched her in the mouth.

Even before that, Ryan and her older sister Tina had become alarmed. After a party in December, Cartier got annoyed with Rose for not wanting to eat pizza he'd just bought. She began walking back to the party when he backhanded her in the face so hard she fell down. "And I'm lying on the ground, screaming, and then he finally stopped kicking me after I don't know how long, and then he said, 'You better get up or I'll kill you.'"

The same words he would use with Kristin. And how many other young women?

Rose Ryan said Cartier threatened to kill her several times after they broke up in December and, in a chance encounter in March, told her he had a gun. The Ryan sisters called his probation officer in Brighton, Tom Casey. He told Rose to get a restraining order and, on March 28, he obtained a warrant for Cartier's arrest. It took a month for police to pick him up even though Cartier had, in between, attacked Rose in the subway and been arraigned on charges for that assault in Boston Municipal Court.

"Probation warrants have to be served by the police, who don't take them seriously enough," said another probation officer. "Probationers know they can skip court appearances with impunity."

When Cartier turned up in Brighton, "he was very quiet, sulky, and withdrawn," Casey said. "It was obvious he had problems, deeper than I could ever get to." Yet a court psychiatrist, Dr. Mike Annunziata, filed a report stating that Cartier had "no acute mental disorder, no suicidal or homicidal ideas, plans or intents." The April 29, 1991, report noted that Cartier was being treated by the Tri-City Mental Health and Retardation Center in Malden and was taking 300 milligrams of lithium a day to control depression.

Cartier, the report said, had also spent four days in January 1991 at the Massachusetts Mental Health Center in Boston. He was brought there on a "Section 12," a law providing for emergency restraint of dangerous persons, because of "suicidal ideation" and an overdose of some sort. On April 2, 1991, he was admitted to the Center on another "Section 12," this time for talking about killing Rose Ryan with a gun "within two weeks." He denied making the threats and was released the next day.

Tom Casey wanted to get him off the streets this time, and a like-minded visiting magistrate ordered Cartier held on bail for a full hearing in Brighton later in the week. When the Ryan sisters arrived in court, they found themselves five feet away from Cartier in the cell. "Soon as he saw me," Tina Ryan said, "he said, 'I know who you are. I'm going to kill you too.' All these filthy words, calling me everything he could..."

After listening to what the Ryans had to say, the judge sent Cartier to jail on Deer Island for three months for violating probation. The next month, he was given a year for the subway attack, but was committed for only six months.

That didn't stop the harassment. Cartier began making collect calls to Ryan from prison and he enlisted other inmates to write obscene letters. The district attorney's office advised the Ryans to keep a record of the calls so they could be used against Cartier later.

Despite all that, Cartier was released early, on Nov. 5, 1991. "He's been a very good prisoner and we're overcrowded," the Ryans say they were told.

Authorities in Essex County didn't want to see him out on the streets even if officials in Boston didn't care. As soon as he was released from Deer Island, Cartier was picked up for violating his probation on the ketchup-bottle incident and sentenced to 59 days in the Essex County jail. But a six-month suspended sentence that was hanging over him for a 1988 burglary—which would have meant at least three months in jail—was wiped off the books.

"That's amazing," said another probation officer who looked at the record. "They dropped the more serious charges."

Cartier was released after serving 49 of the 59 days.

Ryan had already been taking precautions. She carried Mace in her pocketbook, put a baseball bat in her car and laid out a bunch of knives next to her bed each night before going to sleep. "I always thought that he would come back and try to get me," she said.

KRISTIN LOVED TO GO OUT WITH FRIENDS UNTIL ALL hours of the morning, but she didn't have many steady boyfriends. Most men, she said more than once, "are dogs" because of the way they treated girls she knew.

She was always ready for adventure, hopping on the back of brother Charles's motorcycle for rides; curling up with Circe, a pet ball-python she kept in her room; and flying down for a few weeks almost every August to Jekyll Island, Ga., to be with her family, a tradition started when she was less than a week old. Last year she caught a small shark from the drawbridge over the Jekyll River.

"I think she'd give anything a go," said Jason Corkin, the young man she dated the longest, before he returned last year to his native New Zealand. "When she set her mind to something, she wouldn't give it up for anything."

She could also become easily depressed, especially about what she was going to do after graduation. As she once wrote, her favorite pastime was "morbid self-reflection." Despite that, laughter came easily and she was always ready for a conversation about art, religion, philosophy, music. "I don't really remember any time we were together that we didn't have a good time," said Bekky Elstad, a close friend from Boston University.

Left in her bedroom at her death was a turntable with Stravinsky's "Rites of Spring" on it and a tape player with a punk tune by Suicidal Tendencies. Her books, paperbacks mostly, included Alice Walker's "The Color Purple" and Margaret Atwood's "The Handmaid's Tale," along with favorites by Sinclair Lewis, Dickens and E. B. White and a book about upper- and middle-caste women in Hindu families in Calcutta.

Her essays for school, lucid and well-written, showed a great deal of thought about art, religion and the relationship between men and women. She saw her art as an expression of parts of her hidden deep inside, waiting to be pulled out, but still to be guarded closely. "Art could be such a selfish thing. Everything she made, she made for herself and not one bit of it could she bear to be parted with. Whether she loved it, despised it or was painfully ashamed of it, she couldn't stand the thought of these little parts of her being taken away and put into someone else's possession."

Buddhism appealed to her, and once she wrote this: "Pain only comes when you try to hang on to what is impermanent. So all life need not be suffering. You can enjoy life if you do not expect anything from it."

SHE MET CARTIER LAST JAN. 30 AT A BOSTON NIGHT-club called Axis, having gone there with Lauren Mace, Kristin's roommate and best friend, and Lauren's boyfriend. At Axis, Kristin recognized Cartier as someone she'd seen at Bunratty's, a hard-rock club where Cartier had been a bouncer. Cartier was easily recognizable; he had a large tattoo of a castle on his neck.

What did she see in him? It's a question her parents keep asking themselves. But some things are fairly obvious. He reminded her of Jason, her friend from New Zealand. He could be charming. "People felt a great deal of empathy for him," said Octavia Ossola, director of the child care center at the home where Cartier grew up, "because it was reasonably easy to want things to be better for him." At the Harbor School, said executive director Art DiMauro, "he was quite endearing. The staff felt warmly about Michael."

So, at first, did Kristin. "She called me up, really excited and happy," said Christian Dupre, a friend since childhood. "She said 'I met this good guy, he's really nice.'"

Kristin told her oldest sister, Helen, and her youngest brother, Charlie, too. But Helen paused when Kristin told her that Cartier was a bouncer at Bunratty's and had a tattoo.

"Well, ah, is he nice?" Helen asked.

"Well, he's nice to me," Kristin said.

Charlie, who had just entered college after a few years of blue-collar jobs, was not impressed. "Get rid of him," he advised his sister. "He's a zero."

Her friends say they got along well at first. He told Kristin he'd been in jail for hitting a girlfriend, but called it a bum rap. She did not know he'd attacked Rose Ryan with scissors, that he had a rap sheet three pages long.

Kristin, friends say, often made excuses for his behavior. But they soon started to argue. Cartier was irrationally jealous, accusing her of going out with men who stopped by just to talk. During one argument, apparently over her art, Cartier hit her, then did his "usual thing" and started crying.

Cartier, meanwhile, was still bothering Ryan. A warrant for violating probation had been issued out of Boston Municipal Court on Dec. 19, in part for trying to contact her by mail while he was in jail. But when he finally turned up in court, a few days before he met Kristin, he got kid-glove treatment. Rather than being sentenced to complete the one-year term he'd gotten for the scissors attack, he was ordered instead to attend a once-a-week class at the courthouse for six weeks called "Alternatives to Violence."

"It's not a therapy program, it's more educational," said John Tobin, chief probation officer at Boston Municipal Court. "It's for people who react to stress in violent ways, not just for batterers. Cartier... showed up each time. You don't send probationers away when they do what they're supposed to do."

What Tobin didn't mention was that Cartier had actually dropped out of his Alternatives to Violence course—and, incredibly, was allowed to sign up for it again. According to a chronology I obtained elsewhere, Cartier attended the first meeting of the group on Feb. 5 and skipped the class Feb. 12. His probation was revoked two days later. But instead of sending him back to jail, the court allowed him to start the course over, beginning April 1.

Cartier's probation officer, Diane Barrett Moeller, a "certified batterer specialist" who helps run the program, declined to talk to me, citing "legal limitations" that she did not spell out. Her boss, Tobin, said she was "a ferocious probation officer."

"We tend to be a punitive department," Tobin asserted. "We are not a bunch of social rehabilitators."

However that may be, it is a department that seems to operate in a vacuum. Cartier's record of psychiatric problems, his admissions to the Boston mental health center in January and April 1991 and his reliance on a drug to control manic-depression should have disqualified him from the court-run violence program.

"If we had information that he had a prior history of mental illness, or that he was treated in a clinic or that he had been hospitalized, then what we probably would have done is recommend that a full-scale psychological evaluation be done for him," Tobin told the Boston Herald last June following Kristin's murder. "We didn't know about it."

Probation officer Tom Casey in Brighton knew All Tobin's office had to do was pick up the phone to find out what a menace Cartier was. Meanwhile, in Salem, where she had moved

to work with her sister at a family-run business, Rose Ryan remained fearful. But she had a new boyfriend, Sean Casey, 23, and, as Rose puts it, "I think he intimidated Mike because he had more tattoos. Mike knew Sean from before."

Around March 1, Sean went to Boston to tell Cartier to leave Rose alone. As they were talking, Kristin walked by. Sean didn't know who she was, but recognized her later, from newspaper photos.

Cartier nodded at Kristin as she passed. "He said, 'I don't need Rose any more,'" Casey recalled. "I have my own girlfriend."

Cartier was a frequent visitor at the six-room flat Kristin shared with Lauren Mace and another BU student, Matt Newton, but he didn't have much to say to them or the other students who were always stopping by. He told Kristin they "intimidated" him because they were college-educated.



A nude self-portrait features angry colors and a large leg bruise.

As the weeks wore on, they started to argue. When he hit her the first time, probably in early March, Kristin told friends about it, but not Lauren. She was probably too embarrassed. She had always been outspoken in her disdain for men who hit women.

"He hit her once. She freaked out on that. . .," Bekky Elstad said. "She wanted him to get counseling. . . . He told her he was sorry. He was all broken up. She wanted to believe him."

Kristin came home to Washington in mid-March, outwardly bright and cheerful. She was more enthusiastic than ever about her art. She was "really getting it together," she said. She had yet to tell her parents that she had a boyfriend, much less a boyfriend who hit her.

When she got back to Boston, Cartier tried to make up with her. He gave her a kitten. "It was really cute—black with a little white triangle on its nose," Amber Lynch said. "It was teeny. It just wobbled around."

It didn't last long. Over Kristin's protests, Cartier put the kitten on top of a door jamb. It fell off, landing on its head. She had to have it destroyed.

Devastated, Kristin called home in tears and told her parents, for the first time, about her new boyfriend. Part of her conversation with her mother was picked up by a malfunctioning answering machine.

Rosemary: What does Mike do?

Kristin: Well, he does the same thing Jason did actually. He works at Bunnatty's.

Rosemary: He does what?

Kristin: He works at Bunnatty's.

Rosemary: Oh. Is he an artist also?

Kristin: No.

Rosemary: Well, that's what I was asking. What does he—Is he a student?

Kristin: No. He just—he works. He's a bouncer."

"Oh," Rosemary said, asking after a long pause why she was going out with a boy with no education. Kristin told her that she wanted to have a boyfriend "just like everyone else does."

When I came home, Rosemary said, "Call your daughter." When I did, Kristin began crying again as she told me about the kitten. She was also upset because she had given Cartier a piece of jewelry she wanted to use for her annual evaluation at the Museum School. He told her he'd lost it.

Gently, perhaps too gently, I said I didn't think she should be wasting her time going out with a boy who did such stupid things. We talked about school and classes for a few minutes more and said goodnight.

She went out with him for the last time on April 16, the day after one of his Alternatives to Violence classes. He pushed her down onto the sidewalk in front of a fast-food place, cutting her hand. She told him several times to "go home and leave me alone," but he kept following her to a side street in Allston.

"Kristin said something like, 'Get away from me, I never want to see you again,'" Bekky Elstad remembers. But when Kristin tried to run, he caught up with her, threw her down and kicked her repeatedly in the head and legs. She was crying hysterically when she got home with the help of a passing motorist. She refused to see him again.

But Cartier kept trying to get her on the phone. He warned her not to go to the police and, for a while, she didn't. She felt sorry for him. She even agreed to take a once-a-week phone call from him the day he went to his Alternatives to Violence class.

He was rated somewhat passive at the meetings, but he got through the course on May 6 without more truancy. The next day, he walked into Gay's Flowers and Gifts on Commonwealth Avenue and bought a dozen red roses for Kristin. He brought in a card to be delivered with them.

Leslie North, a dark-haired, puffy-faced woman who had known Cartier for years, had helped him fill it out in advance. "He always called me when he had a fight with his girlfriends," she said. "He said that he was trying to change, that he needed help, that he wanted to be a better person. He said, 'I'm trying to get back with her.'"

Flower shop proprietor Alan Najarian made the delivery to Kristin's flat. "One of her roommates took them," Najarian remembers. "He was kind of reluctant. . . . I think he must have known who they were from."

Police think Cartier may have gotten his gun the day of the murder, but Leslie North remembers his showing it to her "shortly after [he and Kristin] broke up," probably in early May.

Why did he get the gun? "He said, 'Ah, just to have one,'" North says. "I asked him, 'What do you need a gun for?' He said, 'You never know.' I didn't realize you're not supposed to get a gun if you've been in jail. I didn't tell anyone he had it."

"He told me he paid \$750 for it," she continues. "I showed him just a little bit of safety . . . how to hold it when you shoot. . . . It looked kind of old to me."

The gun found in Cartier's apartment after he killed Kristin and himself was 61 years old, a Colt .38 Super, serial number 13645, one of about a 100 million handguns loose in the United States. It was shipped brand new on Jan. 12, 1932, to a hardware store in Knoxville, Tenn., where all traces of it disappeared.

North remembered something else she says Cartier told her after he got the gun. "He goes, 'If I kill Kristin, are you going to tell anyone?'"

"I said, 'Of course, I'm going to tell.' I didn't take him seriously. . . . He said that once or twice to me."

On May 7, the same day Cartier sent flowers to Kristin, he told her that he was going to cheat her out of the \$1,000 Nordic Flex machine she'd let him charge to her Discover card. When she told him over the phone that she expected him to return the device, he laughed and said, "I guess you're out the \$1,000."

Kristin was furious. She promptly called Cartier's probation officer, Diane Barrett Moeller, and gave her an earful: the exercise machine, the beating.

Kristin's call for help was another of the probation office's secrets. Tobin said nothing about it to the Boston press in the days after Kristin's murder, when it grew clear that there was something desperately wrong with the criminal justice system. Tobin told me only after I found out about it from Kristin's friends.

"Your daughter was concerned," Tobin said. "She put a lot of emphasis on the weight machine. Mrs. Moeller said, 'Get your priorities straight. You should not be worrying about the weight machine. You should be worrying about your safety. . . . Get to Brookline court, seek an assault complaint, a larceny complaint, whatever it takes . . . and get a restraining order.'"

According to Tobin, Kristin wouldn't give her name even though Moeller asked for it twice. "We can't revoke someone's probation on an anonymous phone call," he said. Kristin, he added, "did say she didn't want this man arrested and put behind bars."

Tobin also claimed that his office could have taken no action because Kristin was "not the woman in the case we were supervising," which is like saying that probationers in Boston Municipal Court should only take care not to rob the same bank twice.

The next day, Friday, May 8, instead of moving to revoke Cartier's probation, Moeller called Cartier and, in effect, told him what was up. Tobin recalled the conversation. "She told him to get the exercise machine back to her. She told him she didn't want to hear about it anymore. And she ordered a full-scale psychiatric evaluation of him. She also ordered him to report to her every week until the evaluation is completed."

Cartier did all that while planning Kristin's murder.

When Cartier called Kristin again, she told him that if he didn't return the exercise machine, she was going to take court action. "He called back 10 minutes later from a pay phone," remembers Brian Fazekas, Lauren's boyfriend. "He said, 'Okay, okay. I'll return the stupid machine.'"

Kristin was skeptical about that. And she was worried about more violence. The warnings of her friends, her brother Charlie, her teacher Ross Ellenhorn and now Cartier's probation officer rang in her ears. Her art reflected her anguish. She had painted her own self-portrait, showing some of the ugly bruises Cartier had left. Hanging sculptures showed a male, arms flexed and fists clenched. The female hung defensively, arms protecting her head.

BY MONDAY, MAY 11, SHE HAD MADE UP HER MIND. She was going to rely on the system. She decided to ask the courts for help. She talked about it afterwards with her big sister, Helen, a lawyer and her lifelong best friend. Kristin told her, sparingly, about the beating and, angrily, about the exercise machine. Helen kept the news to herself, as Kristin requested. "She said she found out what a loser he was. She said, 'He's even been taking drugs behind my back,'" Helen recalls. He was snorting heroin, confirms Leslie North—it helped him stay calm, she remembers him saying.

Late in the day, Kristin went to the Brookline police station, Lauren Mace and Brian Fazekas beside her.

"The courts were closed by the time we got there. We waited outside," Lauren said. "An officer showed her [Cartier's] arrest record. When she came out, she said, 'You won't believe the size of this guy's police record. He's killed cats. He's beat up ex-girlfriends. Breaking and enterings.' The officer just sort of flashed the length of it at her and said, 'Look at what you're dealing with.'"

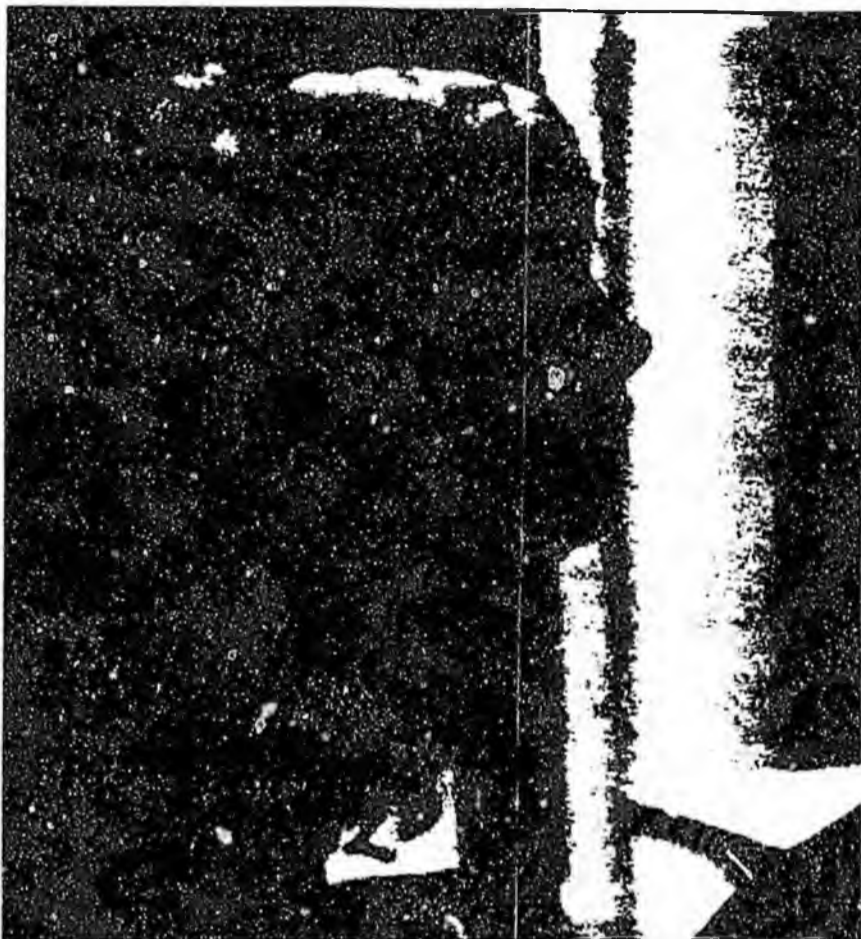
Brookline police sergeant Robert G. Simmons found Kristin "very intelligent, very articulate"—and scared. Simmons asked if she wanted to press charges, and she replied that she wanted to think about that. Simmons, afraid she might not come back, made out an "application for complaint" himself and got a judge on night duty to approve issuance of a one-day emergency restraining order over the phone. The next day, Kristin had to appear before Brookline District Judge Lawrence Shubow to ask for a temporary order—one that would last a week.

Other paperwork that Simmons sent over to the courthouse, right next door to the police station, called for a complaint charging Cartier with assault and battery, larceny, intimidation of a witness and violation of the domestic abuse law. It was signed by Lt. George Finnegan, the police liaison officer on duty at the courthouse that day, and turned over to clerk-magistrate John Connors for issuance of a summons.

The summons was never issued. Inexcusably, the application for it was still sitting on a desk in the clerk's office the day Kristin was killed, almost three weeks later.

Other officials I spoke with were amazed by the lapse. Connors shrugged it off. "We don't have the help," he said. "It was waiting to be typed."

Shubow was unaware of the criminal charges hanging over Cartier's head at the May 12 hearing. And Shubow didn't bother to ask about his criminal record. Restraining orders in Massachusetts, as in other states, have been treated for years by most judges as distasteful "civil matters." Until Kristin was killed, any crime in the Commonwealth accused under the



Kristin Lardner with one of her sculptures

domestic abuse law of beating up his wife or girlfriend or ex-wife or ex-girlfriend could walk into court without much fear that his criminal record would catch up with him. Shubow later told *The Boston Globe*, "If there is one lesson I learned from this case, it was to ask myself whether this is a case where I should review his record. In a case that has an immediate level of danger, I could press for a warrant and immediate arrest."

Instead, Shubow treated Docket No. 92-RO-060 as a routine matter. He issued a temporary restraining order telling Cartier to stay away from Kristin's school, her apartment and her place of work for a week, until another hearing could be held by another judge on a permanent order, good for a year.

"The system failed her completely," Shubow told me after Kristin's death. "There is no such thing as a routine case. I don't live that, but I believe that. All bureaucrats should be reminded of that."

Downtown, in Boston Municipal Court, chief probation officer Tobin said that "if we had found out about the restraining order, we would have moved immediately." But Tobin's office made no effort to find out. Cartier's probation officer knew that the anonymous female caller lived in Brookline; a call to officials there would have made clear that Cartier had once again violated probation by beating up an ex-girlfriend. No such call was made.

Apparently, the probation officer didn't ask Cartier for the details either. According to a state official who asked not to be identified, Diane Moeller met with Cartier on May 14, just eight days after he completed her Alternatives to Violence course and three days after Kristin obtained her first restraining order. Moeller did nothing to get him off the streets.

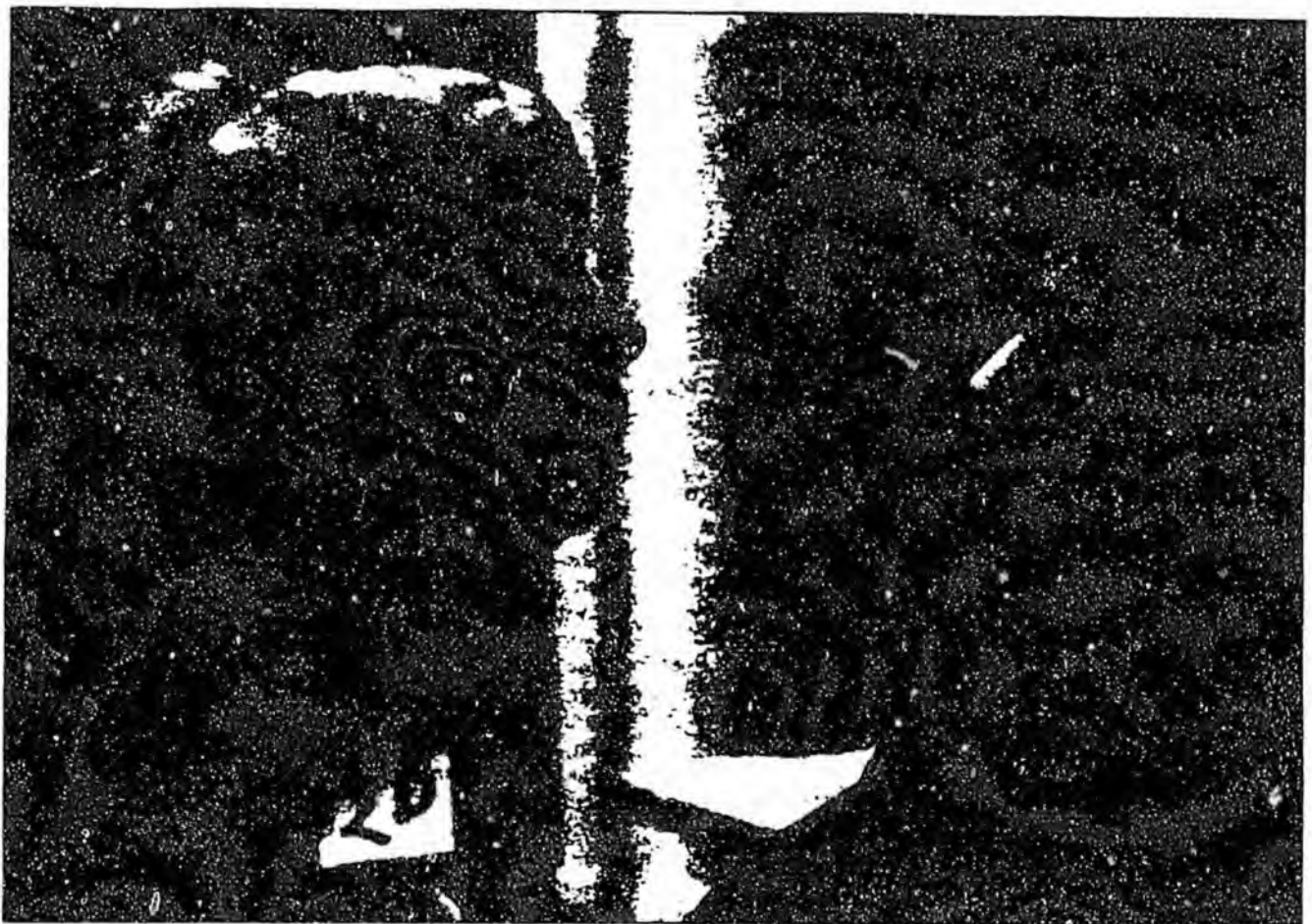
"She was concerned about getting additional assistance for this guy," the state official said of the May 14 meeting. "No charges were filed."

In Brookline, Lt. Finnegan said he sensed something was wrong. He walked up to Kristin outside the courthouse on May 12. "I had this gut feeling," he said. "I asked her, 'Are you really afraid of him?' She said, 'Yeah.' I asked her if he had a gun. She said, 'He may.'"

Finnegan told her to call the police if she saw Cartier hanging around.

THE PHONE RANG AT THE BROOKLINE POLICE STATION shortly after midnight on May 19; Kristin's request for a permanent restraining order was coming up for a hearing that morning. Now, in plain violation of the May 12 order, Cartier had called around midnight, got Kristin on the line and asked her not to go back to court. She called the cops.

Sgt. Simmons on duty that night as shift commander



Kristin Lardner with one of her sculptures

advised Kristin to file a complaint and sent officer Kevin Mealy to talk to her. Mealy arrived at her apartment at 1:10 a.m. "Ms. Lardner said that Mr. Cartier attempted to persuade her not to file for an extension of the order," Mealy wrote in his report, which he filed as soon as he got back to the station house. "A criminal complaint application has been made out against Mr. Cartier for violating the existing restraining order."

Sgt. Simmons says, "I told Kevin, 'They've got a hearing in the morning.' The documents went over there. But who reads them?"

Kristin arrived at the courthouse around 11:30 a.m. May 19, accompanied by Lauren Mace and Amber Lynch.

"He [Cartier] was out in front of the courthouse when we got there," Lynch said. "We all just walked in quickly. We waited a long time. He kept walking in and out of the courtroom. I think he was staring at her."

There was no one in the courtroom from the Norfolk County D.A.'s office to advise Kristin. Brookline probation officials didn't talk to her either. They had no idea Cartier was on probation for beating up another woman.

Neither did District Judge Paul McGill, a visiting magistrate from Roxbury. Like Shubow, he didn't check Cartier's criminal record. Unlike Shubow, it didn't trouble him. To him, it was a routine hearing. Kristin was looking for protection. She was processed like a slice of cheese.

"She thought he was going to be arrested," Lauren said. Brian Fazekas said, "It was her understanding that as soon as he got the permanent restraining order, he was going to be surrendered" for violating probation.

"What he [Cartier] did on the 19th was a crime," David Lowy, legal adviser to Gov. William Weld and a former prosecutor, said of the midnight call. "He should have been placed under arrest right then and there."

The hearing lasted five minutes. It would have been shorter except for a typical bit of arrogance from Cartier, trying to stay in control in the face of his third restraining order in 18 months. He agreed not to contact Kristin for a year and to stay away from her apartment and school. But he said he had a problem staying away from Marty's Liquors, where Kristin had just started working as a cashier. "I happen to live right around the corner from there," Cartier complained, according to a tape of the hearing.

The judge told him to patronize some other liquor store, but not before more argument from Cartier about how he would have to "walk further down the street" and about how close it was to Bunratty's, only half a block away. McGill ended the hearing by ordering Cartier to avoid any contact with Kristin, to stay at least 200 yards away from her and not to talk to her if he had to come closer when entering his home or the nightclub.

And with that, Cartier walked out scot-free. Yet, Massachusetts law, enacted in 1990, provides for mandatory arrest of anyone a law enforcement officer has probable cause to believe violated a temporary or permanent restraining order. In addition, a state law making "stalking" a crime, especially in violation of a restraining order, had been signed by Gov. Weld just the day before, May 18, effective immediately.

McGill later said that if he'd known Cartier had violated his restraining order by calling Kristin that morning, he would have turned the hearing into a criminal session.

The application for a complaint charging Cartier with violating the order was moldering in clerk John Connors's offices. Like the earlier complaint accusing him of assault and battery, it was still there the day Kristin was killed.

"Kristin 'could have said something [in court], I suppose,'" Lauren said. "But she just figured that after that, he would be out of her life. She said, 'Let's go home.' She felt very relieved that she had this restraining order."



KRISTIN, WHO NOW HAD 11 DAYS TO LIVE, TALKED enthusiastically about going to Europe after graduation, only a year away. After that she was hoping to go to graduate school. She had lost interest in boys, wanting to concentrate on her art.

"I spoke to her the night before [she was killed]," Chris Dupre said. "She was like the most optimistic and happiest she'd been in months. She knew what she wanted to do with herself, with her art."

She even had a new kitten, named Stubby because its tail was broken in two places. She was working part-time in the liquor store and hoping for more hours as summer approached. But she liked to stay home and paint or just hang out with friends now that classes were over.

Cartier was still skulking about, even after issuance of the permanent restraining order. One afternoon, Kristin stepped out of the liquor store to take a break. She saw Cartier staring at her from the doorway of Bunratty's.

On the afternoon of May 28, she and Robert Hyde, a friend who had just graduated from BU, decided to get something to eat after playing Scrabble (Kristin won) and chess (Robert won) at Kristin's flat. The two hopped on the back of his Yamaha and were off. First stop was the Bay Bank branch on Commonwealth Avenue, two doors from Marty's Liquors. As they turned a corner, Kristin saw Cartier looking in Marty's window. "Did you see that?" she asked Hyde moments later as they got off the bike. "Mike was peeking in the window. What a weirdo!"

Hyde didn't think that Cartier saw them, but later that night, after taking Kristin home, he went over to Bunratty's to play pinball. Cartier was there, and he began an awkward conversation to find out where Hyde lived.

"I thought it was kind of weird, but I didn't think too much of it," Hyde said. He shuddered about it after the shooting.

Cartier had always been disturbingly jealous—and unpredictable. "He'd get under pressure, he'd start breathing heavy and start talking all wild," a longtime friend, Timothy McKernan, told the Lawrence Eagle-Tribune.

He couldn't handle rejection either. Cartier "told his friends that she broke up with him because she wanted to see other people," Bekky Elstad said. "That's not true. But that's why he killed her, I think. If he couldn't have her, no one else was going to."

If Kristin was bothered by the stalking incident that Thursday, she seemed to put it out of her mind. The usual stream of friends moved through the flat all day. She called me that afternoon in an upbeat mood. We talked about summer school, her Museum School evaluation and a half dozen other things, including the next month's check from home. I assured her it was in the mail. She had a big smile in her voice. All I knew about Cartier was that she had gotten rid of the creep. When I made some grumpy reference to boyfriends in general, she laughed and said, "That's because you're my dad."

Cartier called his father that day, too.

Gene Cartier knew about Kristin and about the restraining order. "I asked him what happened," the older Cartier said. "He said, 'Well, me and my girlfriend had a fight.' I figured they argued. . . . He loved animals, he loved children. He wouldn't hurt a fly."

A man with a persistent drinking problem, Gene Cartier at times seemed to confuse Kristin with other girlfriends his son had, but his son's last call about her stuck firmly in his mind. "He said, 'She's busting my balls again,'" Cartier recalled. "I think she was seeing another guy—in front of Michael—to get him jealous. . . . He was obsessed with her."

Kristin went to bed that night with a smile. It had been Lauren's last day at Marty's and some of the students who worked there stopped by the flat. "We were having a really, really good time," Lauren Mace said. "I remember, I said, 'Good night, Kristin.' I gave her a hug. The next morning, I saw her taking her bike down the street, on the way to work. I did not see her again."

Saturday, May 30, was a beautiful spring day in Boston, a light breeze rustling the trees on Winchester Street below the flat. Kristin was looking forward to a full day's work; Lauren was supposed to meet her at 6, when she was done at Marty's. Lauren had just graduated from BU; they were going to buy a keg for a big going-away party at the flat on Sunday.

One of the managers at the liquor store, David Bergman, was having lunch across the street at the Inbound Pizza when Kristin walked in. He waved her over to his table. She had a slice of Sicilian pizza and then, as he remembers, two more. "We talked for half an hour," Bergman said. "She was going to travel to Europe with her friend, Lauren. She had all these plans laid on."

After lunch, the day turned sour. Leslie North walked into Marty's with another girl. So, clerks say, did a man in his thirties with rotting teeth and thinning hair—North's boyfriend. He got in Kristin's checkout line and started cursing at her.

Not long after North and her friend left Marty's, J.D. Crump, the manager at Bunratty's, walked in for a sandwich from the deli counter. He'd known Kristin since she had dated Jason. "She said she was having a tough day," he told the Globe. "The customers were being mean. I told her it would get better."

When Crump spoke with Kristin on May 30, it was about 4:30. Cartier, meanwhile, was at a noisy show at the Rathskellar on Kenmore Square. Friends told the Lawrence Eagle-Tribune that he was acting strangely, greeting people with long hugs instead of the usual punch in the arm or a handshake.



BY ROBERT FOR THE DALLAS MORNING NEWS

"He wasn't the hugging type," Timothy McKernan told the Eagle-Tribune. "I think he knew what he was going to do." Cartier left suddenly, running out the door.

Kristin was scheduled to work until 6, but at 5 p.m., she was told, to her chagrin, to leave early, losing an hour's pay. "We had other cashiers coming in," the manager explained. Instead of hanging around to wait for Lauren, Kristin decided to go to Bekky Elstad's apartment and return at 6. It was a decision that seems to have cost her her life.

Lauren had come by around 5:40 p.m., and left when told Kristin had already gone. Kristin was still at Bekky's, keeping her eye on the clock and by now recounting how this "disturbing . . . slimy person" had been cursing at her at the cash register.

"She was laughing about how gross he was and then his being with these two girls—friends of Michael's—who were so gross," Bekky Elstad said. "She seemed pretty much in a good mood."

It was getting close to 6. By now, Cartier was back in the neighborhood, looking for a crowbar. He first asked for one at the Reading Room, a smoke shop about a block away, "maybe

20 minutes before it happened," said the proprietor. "I asked him why he wanted a crowbar. He said he had to go hurt somebody." Then he went over to Bunratty's, in a fruitless search for the same thing.

At one minute to 6, Kristin was heading down Commonwealth Avenue toward Marty's. Cartier, approaching from the other direction, stopped at a Store 24 convenience shop on the other side of Harvard Avenue. J.D. Crump was in there, buying a pack of cigarettes. According to the police report: "Crump stated that while in Store 24 . . . he saw Mike and asked him [whether] he was going to work that night. Mike said that he was but had [to] shoot someone first. Crump stated that he did not take him seriously and walked away from him."



THE SHOTS RANG OUT SECONDS LATER. MIKE DILLON, a clerk at Marty's who clocked out at 6, had just stepped onto the sidewalk when he heard the first shattering noise.

"It was very loud," he said. "I looked up immediately. I saw Kristin fall."

Dressed all in black, she dropped instantly to the pavement outside the Soap-A-Rama, a combination laundromat, tanning salon and video rental store four doors from Marty's.

"She was lying on her right side, curled up in kind of a fetal position," Mike Dillon said. "I kind of froze dead in my tracks."

Cartier must have seen her and hid in a doorway or alley until she passed by him. Witnesses said he came at her from behind and shot into the rear of her head from a distance of 15 or 20 feet. Then he ran into a nearby alley.

Al Silva, a restaurant worker, started to walk towards Kristin to see if he could help when Cartier darted back out of the alley, rushed past Silva, and leaned down over her.

"He shot her twice more in the left side of the head," Mike Dillon said. "Then I saw him run down the alley again. . . . I was still in shock. I didn't know what to do. I took one of her hands for a second or so, I don't know why. Then I ran back to call the police, but I saw a woman in the flower shop. She was already on the phone."

Chris Toher, the proprietor at Soap-A-Rama, heard the first shot from the back of his store and hurried up to the doorway. "I saw him fire the final shots," Toher said. "It happened so fast she never had a chance. She was completely unconscious at the point he ran up to her. Her eyes were shut."

A brave young woman was dead.

The killer fled down the alley, which took him to Glenville Avenue where he lived in a red brick apartment building. Back on Commonwealth Avenue, police and an ambulance arrived within minutes. But the ambulance was no longer necessary.

Police questioned Crump at the Soap-A-Rama and learned where Cartier lived. Brooke Mezo, a clerk from Marty's who witnessed the interrogation, heard Crump say "that Michael had spoken to him in the past couple of weeks and said he couldn't live without her, that he was going to kill her. And he talked about where to get a gun."

That made at least two people who knew Cartier had or wanted a gun and was talking about killing Kristin. How many others should have known she was in grave danger?

Police quickly sealed off the area around Cartier's apartment. "He had apparently made statements to several people that he hated policemen and had no reservations about shooting a cop," homicide detective Billy Dwyer said in his report. "He stated that he would never go to prison again."

A police operations team entered Cartier's apartment at 8:30 p.m. He was dead, lying on his bed with the gun he used to kill Kristin in his right hand. He had put it to his head and fired once. Police recovered the spent bullet from the bedroom wall. They found three other shell casings in the area where he murdered Kristin.

Later that night, Leslie North walked into Bunratty's, looking for Cartier. "I said, 'He shot Kristin,'" said J.D. Crump. "She didn't look surprised. I said, 'Then he went and shot himself.' At that point, she lost it. She started screaming, 'What a waste! What a waste! He's dead!'"

Crump later said, "I've had to live the past couple of weeks feeling I could have stopped him. I should have called his probation officer."

It's doubtful that would have done any good. The system is so mindless that when the dead Cartier failed to show up in Boston Municipal Court as scheduled on June 19, a warrant was issued for his arrest.

It is still outstanding. ■

Stalking Legislation Sweeps the Nation

Violent, harassing and threatening behaviors toward innocent citizens have always been a serious problem particularly for victims of domestic violence and sexual abuse. yet it has taken a series of high profile cases during the last few years — often involving celebrity victims — to focus public attention on stalking as a serious crime problem.

While laws such as protective injunctions and stay-away orders to exist to protect victims from violent pursuers, law enforcement officers may not intervene until such orders have been violated. By then, it is usually too late to prevent the offenders from harming or even killing those whom such orders were designed to protect.

In recognition of the ineffectiveness of such orders and in response to a series of tragic crimes committed by perpetrators who stalked and harassed their victims before turning to violence, California passed the nation's first "stalking" law in 1990. In simple terms, the law makes it a crime to engage in a pattern of behavior that harasses and/or threatens other people. Its purposes are two-fold: to eliminate behaviors which disrupt normal life for the victim, and to prevent such behaviors from escalating into violence.

In July 1991, the Center included the concept of stalking laws in its *Crime Victims and Corrections* training and technical assistance project sponsored by the U.S. Department of Justice Office for Victims for Crime. Two months later, Center staff appeared on NBC's *The Today Show* and *A Closer Look with Faith Daniels* to emphasize the importance of stalker laws. In September 1992, Center staff joined Journalist Ted Koppel on ABC's *Nightline* to defend the constitutionality of such legislation.

California's landmark legislation has led to an unprecedented deluge of "anti-stalking" legislation nationwide. To date, twenty-seven states have passed laws based on the California model this year alone.

In most states, stalking is defined as the "willful, malicious and repeated following or harassing of another person, and requires the existence of a credible threat of violence." Penalties for violation vary; however, most carry a penalty of one year in jail and/or a \$100 fine.

Senator Bill Cohen (R-ME) has introduced legislation which charges the National Institute of Justice with developing a model stalking law which should pass constitutional muster. This model would then be made available to state legislators.

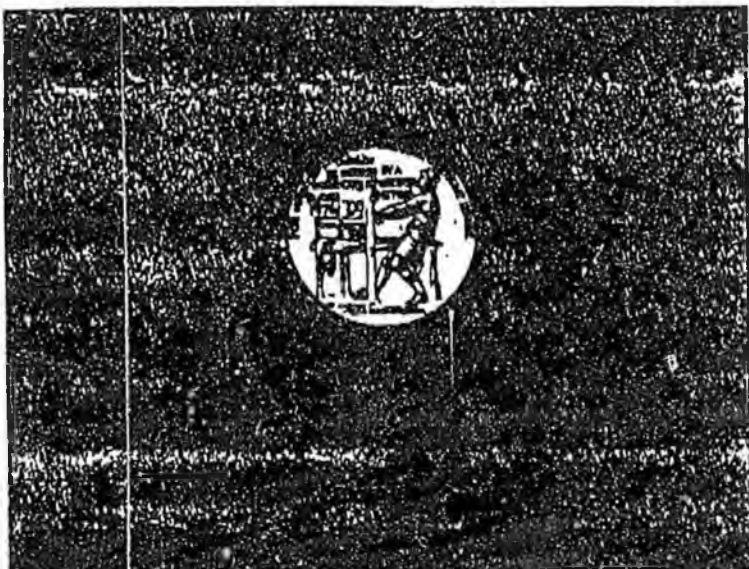
In Los Angeles, stalking laws have led to the creation of the four-member *Threat Management Division* of the Los Angeles Police Department. In the last year and a half, the Division has handled more than 150 stalking cases. In other states, law enforcement officials are already making arrests under these newly passed statutes.

The National Victim Center has acted as an information clearinghouse regarding stalking laws. By providing interested legislators with information and technical assistance, and heightening public awareness through the media, the Center has assisted many states in drafting and passing antistalking laws. The Center intends to keep abreast of all aspects of this significant and expedient legislative trend.

For additional information, please contact the Center's Director of Public Affairs, David Beatty, at (703) 276-2880.

States With Anti-Stalking Laws

- California
- Colorado
- Connecticut
- Delaware
- Florida
- Idaho
- Iowa
- Illinois
- Hawaii
- Kentucky
- Louisiana
- Massachusetts
- Mississippi
- Nebraska
- New York
- North Carolina
- Ohio
- Oklahoma
- South Carolina
- South Dakota
- Tennessee
- Utah
- Virginia
- Washington
- West Virginia
- Wisconsin



Domestic violence

Alaska should look at stalker laws

Anyone familiar with domestic violence knows that leaving a relationship can be a risky act. One national study says that three-quarters of domestic assaults occur after the couple separated. More women are killed when leaving than at any other time.

We don't need statistics to understand this fact. Here in Anchorage over the last year, one woman was murdered by her ex-boyfriend when she went back to their apartment to pick up her belongings. Another barely escaped with her life after the man she'd broken up with stalked her with a bomb.

The law does what it can to safeguard women in these dangerous circumstances. Women can request restraining orders, and most of the time — but not always — their boyfriends or husbands obey a court order to stay away. The community also provides shelters for women who so fear their ex-partners they need a place to hide.

But when these measures don't work, we end up asking ourselves, is there more we can do?

Nineteen other states have answered, yes. They have passed stalker laws.

These originated in California, partly in response to a disturbed fan's stalking and murdering a Hollywood star. But California also uses its stalking law for domestic violence cases, and other states have started to follow suit.

The stalking law applies to anyone who follows or harasses another person and threatens violence. Stalking is considered a felony rather than a misdemeanor if the behavior is repeated, or if a restraining order already has been issued.

States' new laws include 'stalking bans'

By MITCHELL LANDSBERG
The Associated Press

Laws against "stalking" take effect in several states this week, part of a rapidly spreading effort to protect women from the terrifying advances of obsessed men.

Such statutes in Colorado, Florida and Mississippi are among hundreds of new laws around the country that come into force on July 1. Others include a compromise law on abortion in Kansas, the biggest tax cut in New Jersey's history, an "assault pistol" ban in Hawaii and assorted environmental regulations in several states.

So far this year, laws

against stalking have been enacted in 19 states, a remarkable number considering that only one state had a stalking law on the books at the beginning of the year. Laws in many states take effect on July 1 as well as Jan. 1 of each year.

"This was a very popular thing this year," said Donna Hunzeker, manager of the criminal justice program at the National Conference of State Legislatures in Den-

ver.

The pioneering state, California, passed an anti-stalking law in 1990, a year after four women in Orange County were killed despite temporary restraining orders against men who were following them.

The California bill had added impetus from cases involving Hollywood celebrities who were stalked by obsessed fans.

After that law was

passed, Hunzeker said, stalking victims in other states "started coming forward and saying, 'We have a problem here, too.'"

She said states typically define stalking as "willful, malicious and repeated following and harassing of another person." Most require some "credible threat" of violence against the victim.

Previously, the only weapon against stalking was a restraining order.

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'Stalkers' must face punishment

What happens when a man repeatedly follows a woman down the street, lurks outside her house, tails her in his car or waits for her in the office parking lot? In Alaska, too often, the answer is nothing.

Thankfully, there are efforts under way in the Legislature to change that.

Several so-called "anti-stalking" measures are now under consideration. It's a good bet they'll be consolidated into a new law that will stiffen the penalties for such behavior.

It's good news, because stalking is a crime that terrorizes women and, sometimes, their families. On occasion the roles have been reversed, with women following men.

Usually it's a would-be boyfriend or angry ex-lover or estranged husband. Sometimes it's a stranger.

In the worst instances, their threats eventually escalate into violence. Even when they don't, the fear of what might happen is enough to terrify the victims of stalkers. No one should have to live like that.

Under current Alaska law, authorities can't do much to discourage stalking — trespassing and disorderly conduct charges aren't a

strong enough deterrent — until the incident turns violent. In other words, the victim isn't helped until it's too late.

There are seven bills in the Legislature to change the law. Although the proposals are different — some would expand the existing prohibition against terroristic threatening, others would create a new anti-stalking statute — the ideas generally are the same. First-time stalking offenses would be a misdemeanor and, notably, the crime would become a felony if it's repeated, if it's done in violation of a court order or if it involves a weapon.

The intent is clear: With an anti-stalking law on the books, authorities will be able to act before threats become violent.

As many as 30 states have adopted similar legislation in the past couple of years. Alaska needs to do so, too.

TOPIC: Measures that would make 'stalking' a crime

Police say anti-stalking law would protect women

THE ASSOCIATED PRESS

ANCHORAGE — An anti-stalking bill now before the Legislature would stiffen penalties against men who obsessively follow women, a move police and victims say is desperately needed.

Under laws now on the books, police often can only charge stalkers with misdemeanors like trespassing and disorderly conduct, sanctions victims and their families call inadequate.

That may change, however, because lawmakers have introduced legislation this session that would make stalking a felony in certain circumstances.

"This is a major concern," said state Rep. Cynthia Toohey, a sponsor of the stalking bill. "As women get more involved in working and supporting their families, they need more protection."

At least 27 states have passed such laws.

One case involving a 32-year-old Anchorage woman provides a compelling example.

Police say Gary Woodrow Petersen's obsession began in 1990 when he went to a chiropractic clinic and met a woman who looked like his late wife.

For more than a year, he didn't want to let her out

of his sight. Police say he would hang out in the parking lot of the building where she worked. He would follow her home. He would watch her house at night.

On Jan. 18, after the woman had filed six complaints with police, the 58-year-old Federal Aviation Administration employee was arrested and charged with disorderly conduct. He was released from jail four days later after posting \$2,000 bail.

Police won't release the name of the woman in the case.

According to the criminal complaint filed against Petersen, the woman and her husband befriended him until he began following her. At one point, the clinic where she worked issued him a notice not to trespass or bother employees. Then Petersen got a call from Anchorage police.

"The police officer called him and told him to stay away," APD spokeswoman Jo Katkus said.

But police say that didn't stop Petersen, who continued to wait, follow and stare.

On Jan. 6, 1992, he parked his car in the driveway of the woman's home. Her husband turned on the floodlights outside, approached Petersen with a gun

and fired two warning shots. Petersen finally left, but police later cited him for trespassing.

Almost two weeks later, he called officers to report that one of the bullets fired that day had hit his car. The woman's husband was cited for misconduct involving weapons, police said.

Petersen, reached at his home recently, denied ever bothering the woman. He would not comment further and referred questions to his attorney, who would not talk about the case.

This year, exactly one year after the shooting incident, police say the woman had another confrontation with Petersen: She spotted him watching her when she left work Jan. 6, and he followed her in his car as she tried to speed away.

After a short chase at speeds that reached 80 mph, she was sure she had lost him. But when she got to an intersection near her home, she saw Petersen's car parked in a lot nearby, at South Birchwood and the Old Glenn Highway. Petersen gunned his accelerator and drove straight toward her. She veered out of the way and sped home.

Police arrested Petersen 12 days later.

If found guilty of disorderly conduct, Petersen would face up to 90 days in jail and a \$1,000 fine.

The proposed legislation would carry both misdemeanor and felony penalties. If someone continues to follow and harass a person in violation of a restraining order, he or she could be charged with a felony that carries up to five years in jail and a \$50,000 fine.

Petersen's victim had obtained a restraining order against him, but that failed to stop him.

Police Capt. Shirley Warner, who serves on the Anchorage Domestic Violence Committee and the Task Force on Sexual Assault, says a stalking law would help the efforts of both organizations.

Police generally can't do much if someone is on public property, but a stalking law would prevent someone from hanging around and intimidating the victim, even if the stalker is not violent.

"They are somebody who is just obsessed," Warner said.

Sometimes the obsession turns deadly. In 1990, 21-year-old Andy Nelson of Anchorage was charged and convicted of murder after he stalked his former girlfriend, then shot and killed her.

Efforts to Protect Women From 'Stalkers' Gain Momentum at State, Federal Levels

By David Holmstrom

Staff writer of The Christian Science Monitor

BOSTON

THE many incidents of domestic violence in the United States, like frayed parts of a fabric, continue to challenge the viability of hundreds of thousands of families and relationships.

In an effort to stop more unraveling, Congress approved a plan in October to create a model antistalking law. The objective is to help states deal effectively with the estimated 200,000 people, mostly men, who stalk someone each year —

usually an estranged wife or girlfriend.

Since 1990, when California passed the first antistalking law after actress Rebecca Schaeffer was shot and killed by a stalker, 29 states have followed suit — despite claims that some of the laws are not constitutional. Five more states are preparing such legislation. Studies indicate that the leading cause of injury today for American women is the result of being beaten by a man.

According to Sen. William Cohen (R) of Maine, the sponsor of the congressional bill, each year in the US an estimated 4 million men kill or violently attack women they live with, date, or were formerly intimate with. "Women who seek protection," he said when the bill was passed, "often

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Tuesday, December 22, 1992

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face a judicial system that has traditionally viewed such violence as 'domestic disputes.' "

Some argue that a pervasive male attitude that women should be subservient, and a judiciary inclined to see domestic violence not as a crime, but rather as a domestic issue, place many women in peril. Of all those women murdered by their ex-husbands or boyfriends, studies indicate that 90 percent had called the police at least once for protection, and more than half had called five times or more. The Federal Bureau of Investigation reports that 30 percent of female murder victims in 1990 were slain by husbands or boyfriends.

The congressional bill, signed by President Bush, directs the National Institute of Justice - a government criminal-justice research agency - to develop a statute against stalking that will be constitutional and based on recommendations from a number of law enforcement agencies and governmental public interest groups. Many law enforcement agencies could not take action against stalkers until now because they had not committed a crime.

The growing awareness of stalking as a crime is the product of recent, well-publicized deaths of several women. In suburban Boston, 34 year old Kristin Larcher was shot to death by her ex-boyfriend on the street recently. Last week, two more women were slain here by stalkers.

Earlier this year in Elmhurst, Ill., a couple was shot to death in their driveway by a man who had been stalking the woman.

In Maine, a man who has been in and out

of mental hospitals, and repeatedly violated restraining orders, has been stalking Kimberly Poland for eight years. He first saw her photo in a newspaper and continues to stalk her. (In most cases, the men do not have mental disorders.)

In Massachusetts, officials say at least 40 women have been killed this year because of domestic violence, with several deaths preceded by stalking. In Minnesota last year 26 women were killed in domestic violence in-

States with 'Stalking' Laws

Stalking is typically defined as willful, malicious, and repeated following and harassing of another person.

Alabama	Iowa	Oklahoma
California	Kentucky	Rhode Island
Colorado	Louisiana	South Carolina
Connecticut	Massachusetts	South Dakota
Delaware	Maine	Tennessee
Florida	Nebraska	Utah
Hawaii	New York	Virginia
Kansas	North Carolina	Washington
Michigan	Ohio	West Virginia
Minnesota	Wisconsin	

Source: Department of Justice, Bureau of Statistics

idents. Half of the Minnesota women had sought help from the state. "Whenever the woman takes a step to end an abusive relationship," says Janet Fine, chief of the Victim Witness Service in the Suffolk County, Mass., district attorney's office, "she is potentially at greater risk."

Typically, after being regularly battered, a woman obtains a restraining order against her abuser and tries to separate herself from him. In Massachusetts since September, when a new state record-keeping system went into effect, of the 2,000 restraining

orders issued, more than a third had been violated in the first few days. Often the order triggers men to stalk and harass the women.

Michael Paymar, training coordinator with the Duluth, Minn., Domestic Abuse Intervention Project, says: "There are a certain percentage of men who are extremely afraid of the law."

A battered and frightened woman seeking to end such a relationship needs help and support. In Massachusetts, the legislature has earmarked funds for support necessitated by domestic violence.

"In the courts here where the greatest number of restraining orders are issued," Ms. Fine says, "we have a program to assist women and assess their level of risk. We can help them get to a shelter or figure out another safe plan for them and provide other kinds of services. But there are so many victims here, and nationally, too, that we are nowhere near where we should be in terms of services."

In Minnesota, Mr. Paymar says, "the state has committed a lot of money to shelters and legal advocacy for women." Transitional housing is provided to abused women. For some women a two-year program in an apartment style complex helps them reorient their lives. Duluth also has programs to try to reform perpetrators of violence.

Paymar says: "It has been sanctioned in society for a thousand years that a man has control over his woman.... We confront those beliefs and ask him where does he get the right to do it? What do you want a woman in your life for? You are depersonalizing her, humiliating and injuring her, yet you say you love her. It doesn't make sense. We help them learn how to live differently."

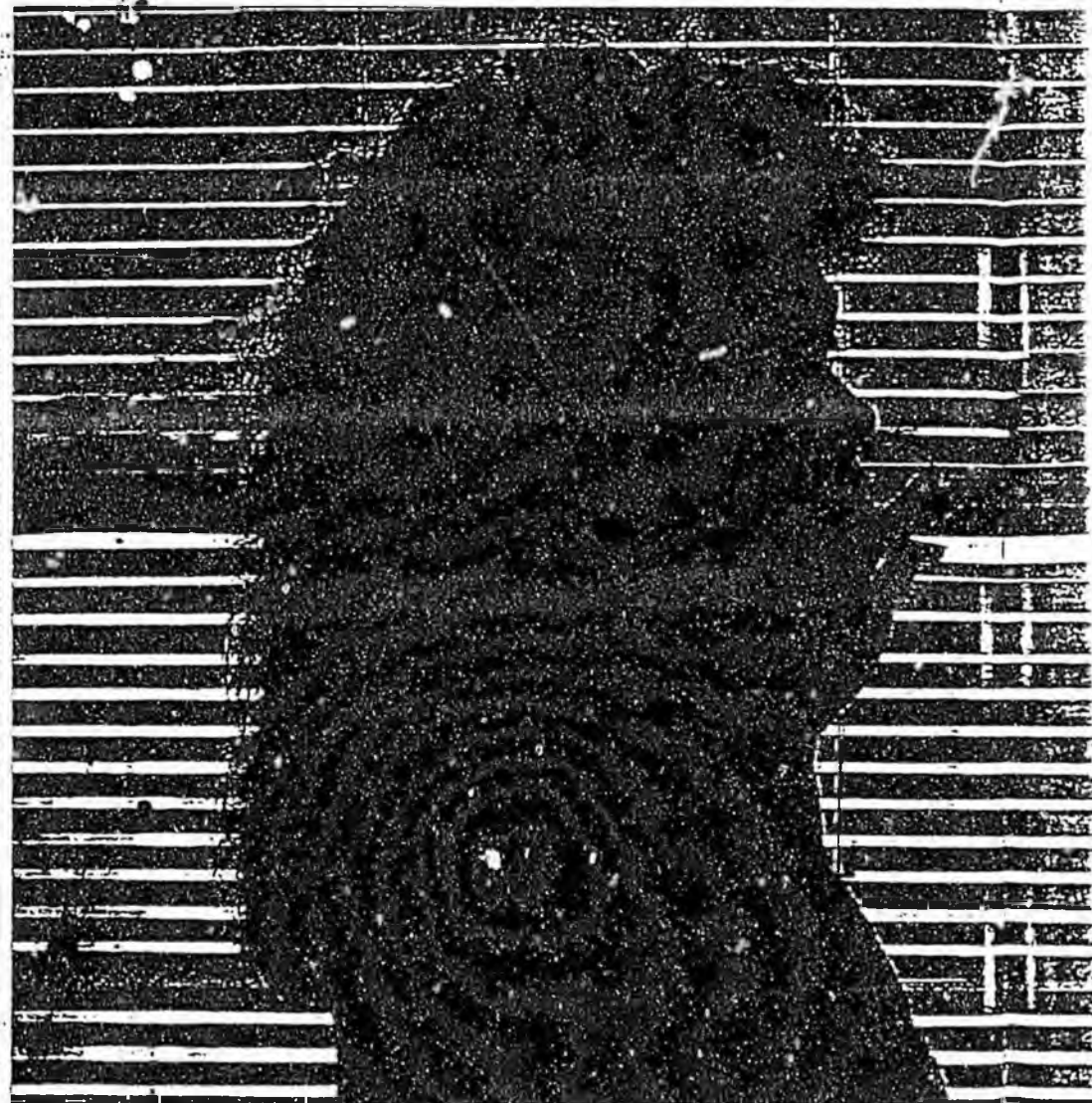
Murderous Obsession

Can new laws deter spurned lovers and fans from 'stalking'—or worse?

Barbara Erjavec and Grace Beach sometimes take a rug to the cemetery and have lunch by the graves of their children, sharing a sad litany of what ifs. What if they had known that Kenneth Kopecky had talked openly about his plans to kill the young lovers? What if the law now awaiting the Illinois governor's signature had been in place—could the police have done something then? Grace and Barbara will never know the answers. All they do know is that Kopecky became infatuated with Karen Erjavec last summer when they were both members of a wedding party, and that for the next six months Karen and her boyfriend, Glenn Beach, lived in fear. They received anonymous letters and bizarre, threatening phone calls. Glenn's car was vandalized, and there were tire tracks across the lawn of the house where he lived with his parents. Karen's father, a policeman, knew that the law was powerless against what seemed like just a persistent creep. Even the surveillance lights Glenn's parents installed around their home had no effect last Feb. 16. The Beaches returned from a movie that night to a bustling crime scene in their driveway. Glenn had been shot six times in the back and stabbed twice; Karen had been shot in the head at close range. Two days later, police tracked Ken Kopecky to a motel in Michigan. He shot himself to death as the cops moved in.

The stories sound like the plot lines of hit movies, from "Fatal Attraction" to "Sleeping With the Enemy" to "Cape Fear." But increasingly, state legislators are hearing real-life versions, and they are responding with astonishing speed. California passed the first "anti-stalking" law in 1990, making it a crime to repeatedly follow or harass someone with a "credible threat" to cause fear of bodily harm. Since then, 20 more states have enacted similar laws, and at least a dozen others are considering them. Most make the first stalking offense a misdemeanor, punishable by up to one year in jail and a \$1,000 fine, with felony counts and stiffer penalties for repeat offenses. Florida's law, which went into effect last week, even allows police to make arrests without obtaining a warrant.

Behind almost every state bill has been at least one local tragedy. Wisconsin lawmakers acted after Shirley Lowery was fa-



tally stabbed 19 times, allegedly by her ex-boyfriend in a Milwaukee courthouse where she had gone to obtain a protective order. Virginia lawmakers were moved after Regina Butkowski's mother testified that her daughter had been stalked for six months by a weight lifter who finally shot her, set her body on fire and dumped it into a creek, where it was found eight months later. Georgia's proposed law may pick up more support after the sad case of Joyce Durden, whose estranged husband carried out his repeated death threats last month. He gunned her down at a school where she taught mentally disabled preschoolers, then shot himself in the head.

Love gone mad: A battered wife living in fear in Tampa, grieving mothers Beach (left) and Erjavec

Such horrifying examples aside, no one can say how widespread a problem stalking is—mainly because it has never been a crime category before. The new laws aim at halting a pattern of threats and harassment that often precedes violent acts, from assault to rape, child molestation and murder. Some of the most publicized cases have involved celebrities, like actress Rebecca Schaeffer, fatally shot by an obsessed fan, Robert John Bardo, in 1989. A few stalkers

fixate on co-workers or complete strangers, and not all victims are female; women sometimes stalk men. But the vast majority of cases involve former lovers or spouses. Nearly one third of all women killed in America are murdered by their husbands or boyfriends, and, says Ruth Micklem, codirector of Virginians Against Domestic Violence, as many as 90 percent of them have been stalked.

Some civil-liberties experts argue that the new laws are overly vague and carry a potential for misuse, particularly in marital disputes. "There are very often false allegations made in all sorts of contexts against spouses or former spouses," says Miami criminal-defense attorney Jeffrey Weiner, who thinks Florida's no-warrant provision may be unconstitutional. Critics also say that people who fear for their safe-

Will the laws actually deter such crimes? Much depends on what twisted logic motivates the stalker. "A lot of these people are just caught up in the emotion of a bad breakup," says David Beatty of the National Victim Center in Arlington, Va. "Sitting someone down in jail for a while may make him rethink his actions." But some stalkers are mentally deranged. Stanton Samenow, a Virginia clinical psychologist and author of "Inside the Criminal Mind," says that many have disturbed self-images in which they see themselves as irresistible or complete zeros. When they are rejected, they resort to intimidation in a desperate attempt to try to regain self-esteem. The threat of prison may deter some of them, but for others, says Samenow, "it's like putting fuel on a fire."

For the anti-stalking laws to have a real impact, courts must take them seriously and apply the new legal muscle they provide. Ironically, the first person sentenced under California's law, Mark David Bleakley, was put on probation and ordered to serve time in a psychiatric facility. Unsupervised, he wandered away and was found waiting outside his victim's health club. Fortunately, he was reapprehended before he could harm her and sentenced to three years in prison.

"Won't hunt": Kristin Lardner wasn't so lucky. The 21-year-old Brookline, Mass., art student was murdered by her former boyfriend in May, just two weeks after the state's anti-stalking law went into effect. Michael Cartier had already served six months in jail and was on probation for attacking another ex-girlfriend. He was attending a violence-treatment program when he began beating Lardner. She reported the

incidents to the police, who issued a warrant for his arrest. She also obtained two restraining orders from civil-court judges, but they were unaware of the outstanding warrant and merely barred Cartier from going within 200 feet of her. That didn't faze him. On May 30, Cartier waited outside the liquor store where Lardner worked and shot her repeatedly as she walked down Boston's Commonwealth Avenue. Police found him in his apartment, dead from a self-inflicted gunshot wound. "The restraining orders don't restrain, and I strongly suspect the new anti-stalking order won't hunt," says Kristin's father, Washington Post reporter George Lardner.



NICK LT-AP

Bardo behind bars

Where Stalking Is Illegal

- California
- Colorado
- Connecticut
- Delaware
- Florida
- Hawaii
- Idaho
- Iowa
- Kentucky
- Massachusetts
- Mississippi
- Nebraska
- Oklahoma
- South Carolina
- South Dakota
- Tennessee
- Utah
- Virginia
- Washington
- West Virginia
- Wisconsin

SOURCE: NATIONAL CONFERENCE OF STATE LEGISLATURES

ABOVE: BILL GENTILE FOR NEWSWEEK, BELOW: DAVID WALBERG

ty can already apply to the civil courts for restraining orders. But such orders are notoriously hard to enforce, and all too often, the first violation is fatal. The California law was drafted after five Orange County women were killed in a six-week period in early 1990. All but one had sought help in vain from authorities. "What does he have to do—shoot me?" 19-year-old Tammy Marie Davis asked police just days before an ex-boyfriend did just that, fatally, in Huntington Beach. When Patricia Kastle, a onetime Olympic skier from Newport Beach, was shot by her former husband, police found a restraining order in her purse.



Death in a Storage Locker

An inept kidnapping scheme ends in tragedy



DAN MULSHUZZER—AP

Settling old scores? Irene Seale after plea bargain

Massachusetts has since instituted a number of reforms—including computerizing all records of restraining orders and violations. By fall, any police officer or judge should be able to cross-reference them to pinpoint repeat offenders. In Brookline, civil-court judges now routinely look at criminal records of all accused batterers. A committee of the chief justice's office is also studying the idea of outfitting stalkers and their victims with electronic monitoring devices, like those used in house-arrest cases, that would automatically sound an alarm if a stalker came within a certain range.

ADT Security Systems is testing another kind of personal-alarm system for battered women. The victim wears a pendant around her neck, and if she spots her stalker, she presses a button that triggers an alarm at an ADT monitoring station, which in turn alerts police. The system isn't foolproof, however. It works only in close range of a receiving device installed in her home, and a determined stalker could foil it by disconnecting the phone lines. Six Tampa, Fla., women, all former residents of The Spring women's shelter, have been wearing the beepers for the last six months. But only one has used it, when her ex-husband turned up at her home, daring her to shoot him. Police arrived, but the episode left the woman so shaken that she handed in her beeper and went underground. Staffers at The Spring say they don't know what's become of her.

Packing weapons: Other desperate victims have taken to packing their own weapons. Sabine Tsang, 27, had filed numerous futile complaints about a former co-worker. Last month, when Irineo Dominguez allegedly accosted her in a parking lot and ordered her into her car, she pulled out a handgun and shot him twice in the abdomen. Dominguez, now recovering in a Houston hospital, has been charged with attempted kidnapping, according to police. But they have not charged Tsang. "I don't think you'd find a jury in Texas that would convict her, so why try?" says Houston homicide Sgt. Doug Bacon.

The prospect of more victims arming themselves is no comfort to law-enforcement officials. Yet most admit there is very little they can do in the face of a persistent stalker. "You can put a person in jail for a year or so, but they eventually will get out," says Det. John Lane, part of a four-member anti-stalking unit established by the Los Angeles police after Schaeffer's murder. Even so, the new laws do give police one more weapon to employ against stalkers—and if they deter even a small percentage of crimes, that's better than none.

MELINDA BECK with DEBRA ROSENBERG in Boston, FARAI CHIDEYA in Chicago, SUSAN MILLER in Houston, DONNA FOLTZ in Los Angeles, HOWARD MANLY in Atlanta and PETER KATEL in Tampa

Lasting success had always eluded Arthur Seale. He had been a policeman, a security officer for Exxon in New Jersey and a furniture-store owner in Hilton Head, S.C. But at 45, Seale was jobless and living quietly with his wife, Irene, and their two adolescent children back at his parents' home in New Jersey. In one final, desperate effort to make it big, Seale and his wife—and, the FBI suspects, possibly another accomplice—allegedly kidnapped Exxon International president Sidney Reso from his driveway in April, triggering the largest FBI manhunt since the Patty Hearst case 18 years ago. The ransom demanded from Exxon was a whopping \$18.5 million. But last week the two-month hunt ended with Reso dead, Arthur Seale facing charges of kidnapping and extortion, and his wife of 25 years supplying evidence against her husband that could put him in prison for life.

Almost from the beginning, the kidnapping scheme went awry. According to Mrs. Seale's statement, Reso was shot in the arm after her husband wrestled the victim into a van that she was driving. The couple drove Reso to a do-it-yourself storage warehouse, where they locked him into a small, stifling metal room. Mrs. Seale also stated they had treated Reso's wound, but four days later—even as they demanded a ran-

som—their 57-year-old hostage was dead. In the letters to Exxon, the kidnapers insisted that officials set up a cellular phone to receive their calls, which proved to be a mistake. "They seemed under the impression that cellular phone calls were harder to trace than regular calls," said Lois Ferguson, spokeswoman for the Morris County prosecutor's office. They were wrong.

Ransom Day: In an effort to frustrate the kidnapers, the police initially told the media that they were treating Reso's disappearance as a missing-person case. Meanwhile, the FBI deployed more than 300 agents to find Reso and his assailants. Weeks of negotiations by phone and widely dispersed notes finally focused on June 13: Ransom Day. What happened next, says an FBI spokesperson, "was 80 percent investigative skill, 20 percent luck." Although agents had no idea whom they were looking for, they staked

out selected public phones across Morris County. At the Chester Mall, one young agent spotted a man removing a pair of gloves after making a phone call. Agents followed him to a car-rental agency, where Seale—and later his wife—were arrested. A search of their home produced nearly a dozen handguns, lists of foreign banks, a book on money laundering and other incriminating evidence. What they didn't have was Reso.

At their arraignment, where they refused to cooperate with police, Irene Seale told her husband, "I love you." But a little more than a week later, in a plea bargain for reduced charges, she led authorities to a remote area of southern New Jersey, where a police dog located the shallow grave of Sidney Reso. "She wanted him to have a decent burial," explained Sallyanne Floria, Mrs. Seale's court-appointed attorney. Apparently she also wanted to settle old scores. Last week in federal court, as Mrs. Seale supplied details of the abduction, her lawyer accused Seale of having manipulated and abused his wife throughout their marriage. Two hours later, Arthur Seale pleaded not guilty. And though he knew that his wife had agreed to testify against him, he showed no sign of anger. Asked what he thought of his wife, Seale said: "I love her."

KENNETH L. WOODWARD with VERA AZAR

Family keeps watch through murder trial

'Long, hard battle' for victim's kin, friends

By **DON HUNTER**
Daily News reporter

It was Sandra Pogany who wanted to be a lawyer, not her father.

At 21, she had the tools. She was bright, a good student, a national debate champion. But it is Gary Pogany who has prowled the hallways and offices of the state courthouse the past 10 months, a guy in jeans and a weather-worn brown leather jacket among the suits and wingtips.

"There's not really much a person can say," Pogany said Thursday, a few moments after the state's case against the young man who killed Sandy Pogany last summer went to the jury.

"It's been a long, hard battle. Susan Parkes did a good job with

her presentation. She worked hard, and so did Jim Hanley."

The jury in Andy Nelson's case is deliberating today. Nelson, 22, has conceded firing the shots that killed Pogany and wounded Thomas Van Flein, a law clerk who was dating Pogany for the second time. But his attorneys and a psychiatrist who interviewed him this spring say Nelson was overcome by a psychotic depression and mentally unable to form the intent to kill necessary for a first-degree murder conviction.

At trial, the psychiatrist, Dr. G. Christian Harris, said Nelson was confused and uncertain when he opened fire, but told him he drove home with the sense that a burden

Please see Back Page, **MURDER**



JIM LAVRAKAS / Anchorage Daily News

Gary Pogany listens to opening arguments at the trial of Andy Nelson.

MURDER TRIAL: Victim's family endures long ordeal

Continued from Page A-1

had been lifted from him.

"When he said that he felt relieved after the killing," Gary Pogany said, "any compassion in our family for him was gone at that time." For months, Gary Pogany had prodded and pushed to get the charges against Nelson to trial. He worried when Nelson's family hired Bill Bryson, a sought-after defense attorney with a reputation built on a steady diet of high-profile felony cases, fearing that Parkes, the less-experienced state prosecutor, might be out of her depth.

"I had a lot of concern about that," he said, although Parkes did a good job. "The victim's family should have some rights in

deciding who prosecutes the case."

By the time Nelson came to trial, the patience, and sometimes the composure, of the Pogany family was wearing thin.

Early in the trial, the judge warned that it was important for Sandy's family and friends to mask their feelings in the courtroom. It wasn't easy to keep a mask in place. The trial brought hurts and subtle affronts.

When the attorneys described how Nelson stalked Sandy at a couple of Anchorage nightspots before her death, reporters picked it up; the retelling seemed to make Sandy sound more like a carousee than the dutiful student who occasionally went dancing on weekends.

And then Harris, the defense expert, talked about the relationship between Nelson and Sandy Pogany: "I didn't feel the psychiatrist had a right to call Sandy by her first name when he always called Andy 'Mr. Nelson,'" said Sandy's brother, Steve Pogany. "And when they used the term 'making out,' they made it seem like she'd done a lot of that. She hadn't."

Steve testified early in the case and then joined his father in the first row behind the prosecution table for the duration of the trial.

A couple of days later, one of the alternate jurors complained to the judge that he felt pressured when Steve looked at him. If one juror felt pressured, another

seemed oblivious. An elderly woman who appeared to keep nodding off was eventually excused before deliberations began.

Harris also testified that the attack on Sandy early on the morning of Aug. 5 was one of several options racing through Nelson's mind. He also considered shooting Louise Pogany, Sandy's mother, thinking that hurting her mother would cause Sandy the kind of pain he felt, Harris said.

"We thought we knew him," Gary Pogany said. "But you couldn't read him. He called my wife up on July 15; he called her to wish her a happy birthday. And then in a matter of a couple of weeks later, he's thinking about killing her."

Holidays: Tough Times or Joyous Times You Can Make a Difference

When most of us think of the holiday season, it's one of the happiest times of the year for us. We hear the music, laugh at the holiday parties, and share gifts with those we love.

For others impacted by domestic violence, the holidays may be some of the toughest times. Instead of laughter, there is crying. Instead of music, there is hitting. Instead of love, there is pain and hurt.

When Sue came to the shelter for the first time, her husband hit her so hard the whole left side of her face had swollen. Her speech was blurred. She tried to find refuge for her two children under two and herself by living with her father in another state. Her spouse followed her there, kicking down the door at her father's house. She hid in the bathroom with her children while the neighbor called the police. After she returned to Alaska to resolve things, he pulled a knife and beat her so badly he broke her ribs. While at our shelter with her two children, she had to be confined to a wheelchair. We were glad we were here to help.

We were glad we were here to help Joe. Joe exploded so violently he chased his spouse down in a car, punched out the car window and beat her. Today, Joe can talk about the time he expressed his opinions and his feelings in an argument instead of hitting.

During this holiday time, we may pause to realize how very lucky we are and take time to care about others not so fortunate. We want to make a difference in someone's life. You can make a difference at AWAIC. AWAIC saves lives.

To be here for Joe and Sue has been hard this year. AWAIC was hurt twice by the Governor's vetoes. The Social Services Block Grant veto left us \$53,802 short after the partial restoration of funds. The Council on Domestic Violence and Sexual Assault veto resulted in a \$54,600 loss. Our overall losses from our planned budget for this year totaled \$108,402.

We lost a position in the men's program at a time when the use is 44% higher than we had planned. We lost funds for sheets, towels and food in the shelter at a time when the use was 26% higher the first 6 months of this year than last year. And we lost a position in our community program at a time when the groups were seeing a 45% increase.

Yes, you can make a difference here. Domestic Violence is a very serious issue that endangers lives. Your assistance goes directly to the services to those women, children and men who want to change, who want happiness, who want peace.

Helping to bring joy and peace to people's lives.....those words have a familiar ring this time of year. Amidst all the tinsel, all the parties, isn't that what this season truly means.

From all of us at AWAIC, we wish you a very meaningful holiday season full of your own joy and peace.

Nancy K. Scheetz-Freymiller
Executive Director

Holiday Wish List

Towels & Wash Clothes
Personal Care Items: esp
toothbrushes, combs, deodorant
Disposable Diapers
Linen (twin & full size)
Blankets
Alarm Clocks
Silverware (tsp spoons)
Plastic Bowls/Cups
Large Sectional Couch
Baby Bottles
Baby Fruit & Juice
Storage Shed or Storage Space
Paper Shredding Machine
Polaroid Camera
Scissors
Large Size Women's Clothing
Night Gowns/Robes
Gloves/Socks/Underwear
Office Supplies
Pantyhose
Bus Tokens
#10 Canned Goods
Industrial Strength Sofas
Computer - Macintosh
Office Typewriter
Decorator Plants (non-poisonous)
Dinnerware
Coffee
Small Refrigerator
Slippers
Lamp Tables
Snow Shovels
Snow Plowing Service
Cleaning Supplies





Extended
to summer
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more exercise
Lifestyles, F-1

Paul Krake
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ANCHORAGE, ALASKA, THURSDAY, MARCH 26, 1982

Hostage-taker kills

4 freed; blast ends standoff in Chugiak

By PETER BLUMBERG
and LARRY CAMPBELL
Daily News reporters

A man boiling with rage over a woman who left him died amid gunfire and a fiery explosion Wednesday afternoon after holding a family hostage with a gun and a bomb in a Chugiak trailer.

Conn Wayne Duncan, 40, held Bob and Wendy Lydy and their two young daughters for nearly five hours before attempting a desperate bolt to freedom with one of his hostages.

Police bullets and his own bomb stopped him.

The Lydy home had been a refuge for Duncan's ex-girlfriend, who had been fleeing his violent attacks for nearly a month. But that haven turned to hell when Duncan showed up Wednesday morning.

Anchorage Police sharpshooters' bullets dropped Duncan to the ground outside the trailer as he tried to escape to a pickup truck with Bob Lydy. The hostage ran to safety before the plastic explosive clutched by Duncan blew up in his hand.

Lydy's wife, Wendy, and the couple's 10- and 4-year-old daughters were released earlier unharmed. Lydy's only injury was a cut on the chin.

Duncan's violent death marked the end of a month of terror he inflicted on the 30-year-old woman he once lived with, as documented in court records.

On Feb. 28, the woman was granted a restraining order against Duncan after she told a judge he'd threatened her by holding a gun to her head. A judge also issued an arrest warrant for assault.

The following week Duncan, under arrest, appeared in court on a charge of growing some 60 mari-



After the bomb exploded, police officers train their rifles on Conn Duncan in case he is still alive while firefighters move

■ TAKE HIM OUT: Order to fire was first for special city police team. E-1

juana plants at a Spenard trailer he owned. At another hearing later that day, he tried to have the arrest warrant on the assault dropped. He denied ever threatening his ex-girlfriend.

"I'm not a violent person," Duncan told one judge. "I have no record of that. I have no desire to bother (the victim). I'm not going to do that."

Duncan posted a \$7,500 bond March 4 and was freed. Five days later, he allegedly abducted her from work, took her to her South

Anchorage home and, over the next 36 hours, raped her seven times. According to police investigators, the attacks were interspersed with aimless ramblings and violent assaults.

At one point he bound her to the bed with duct tape. And he threatened her again with a gun. Only when her boss called her at home for missing work did Duncan leave.

"She was definitely a woman living in fear," said Sgt. Gary Apperson, who investigated the assault.

Another arrest warrant was is-

Please see Back Page.
HOSTAGE-TAKER



APO Lt. Audie Holloway talks to the 10-year-old c

Captor had violent background



Conn Wayne Duncan

By DAVID HULEN
Daily News reporter

Conn Wayne Duncan, the man who took four people hostage in Chugiak Wednesday before being blown to bits by a bomb he was holding, was no stranger to violence — or explosives.

Five years ago this month, Duncan was arrested for beating up his former wife, Laura Risinger, according to court records. Police seized a 9mm handgun.

Angry about their pending divorce, he had been calling her as often 30 times a day with threats, Risinger recalled in an interview Wednesday.

And, she said, he threatened to kill her with a bomb.

"He was harassing me," Risinger said. "He took to following me around with plastic explosives. He was calling me every 15 minutes telling me how much of the neighborhood he could flatten."

The woman obtained a court order requiring Duncan to stay away from her, though prosecutors never filed criminal charges against him. When she got an unlisted phone number, Duncan's threats ended, she said.

Duncan, an auto-body repairman.

Please see Back Page, DUNCAN

Female victim of Oceanview shooting dies

By Jean Lamming

Times Writer

Renee Vega, the 31-year-old woman shot in an Oceanview insurance office Tuesday afternoon, died Wednesday night and the prosecutor says he will upgrade the charges to first-degree murder against her former boyfriend.

The former boyfriend, William O'Shea, 35, was arraigned on charges of first-degree, attempted murder and first-degree misconduct involving weapons in Anchorage Superior Court Wednesday. Assistant District Attorney Stephen Branchflower said he will file a murder charge against O'Shea today.

Alaska State Troopers said Wednesday they had fielded complaints from Vega against O'Shea before the attack.

Troopers said there was nothing extraordinary about Vega's complaints against O'Shea or her fear of being attacked by him. But within minutes of the time a trooper left her office Tuesday afternoon she was shot four times and fatally wounded.

Vega died at 8 p.m. Wednesday at Providence Hospital. She suffered from gunshot wounds in her head, chest, shoulder and wrist.

A friend of Vega's said Tuesday the 31-year-old insurance agent was terrified in the hours before she was shot, and was almost expecting a confrontation with O'Shea.

Through the morning and early afternoon O'Shea called her Huffman Road Allstate Insurance Co. office about 20 times, according to Vega's friend Marcel Pritchett. "That was the day she learned he was drinking again," Pritchett said.

Vega had asked him to seek help for a drinking problem, Pritchett said. The two had been girlfriend and boyfriend for several months but she had asked him to move out of her Hillside home.

Friday night, troopers had escorted O'Shea from Vega's house.

Pritchett said a drunken O'Shea flipped up some of her clothing and beat Vega.

Monday, troopers served O'Shea with a restraining order.

See Shooting, page A-8

Shooting: Charges raised to 1st-degree murder

Continued from page A-1

order barring him from seeing Vega, according to Lt. George

Wednesday, Vega called a friend for help and he sent Pritchett to stay with her until he got to her office. "She was worried that he might come and get her up again," Pritchett

at 1:30 p.m. Pritchett had stationed himself in the reception area of her office.

When a trooper came to take Vega out on the calls shortly before 3 p.m. shooting, Vega told her she was afraid of being

"She was asking him what if he comes in with a gun and shoots me?" Pritchett said. "He (the trooper) was there about 30 minutes before the shooting."

A man using O'Shea's name bought a 22-caliber Luger handgun and ammunition at the Fred Meyer Shopping Center on Northern Lights Boulevard after 1:30 p.m. Tuesday, according to the Anchorage District Attorney's office. One of the charges against O'Shea stems from the fact he is a convicted felon and is not allowed to own a firearm.

Just after 3 p.m. a man burst into Vega's office and shot her four times with a Luger while Pritchett tried to wrestle the gun

from him.

"He just ran in and I jumped up and got between them and tried to talk him out," Pritchett said. The man's words were slurred, he said.

Meanwhile Vega called police and was on the phone when the man reached to his back, pulled out a pistol and started firing. The first shot hit Vega in the head, Pritchett said.

The men wrestled about five feet from Vega, and the gun fired at least three more times. At one point Pritchett said the man aimed the gun down his own throat. Pritchett pulled it out.

When he was able to take the pistol from the assailant, the

man said he had another and reached for something. Pritchett said he pushed the man against a wall and out of the office.

The gunman fled and police immediately closed in on the neighborhood with a helicopter, state and city patrol units, and police dogs. At 6 p.m. they took O'Shea into custody about a mile from the insurance office.

Pritchett said he thought police could have prevented the shooting.

But Lt. Pollitt said that until the shooting, there had been no impetus to arrest O'Shea.

When a trooper responded to Vega's home at 12:30 a.m. Satur-

injured and she did not ask for O'Shea to be arrested. Troopers told Vega how to apply for a restraining order.

On Saturday, she secured an order from a magistrate and Sunday troopers attempted to serve it. They found O'Shea Monday.

Vega was upset and afraid but never told troopers she feared for her life, Pollitt said. O'Shea's extensive criminal record didn't indicate he should be suspected of murder, Pollitt said.

On March 2, O'Shea was released from probation for a con-

Police staked out site for week seeking Dore

By KRIS CAPPS
Staff Writer

For one week before Jack Dore killed his wife, Carmen, and then himself, city police officers staked out Carmen's apartment periodically, hoping to catch him.

With an arrest warrant for harassment in hand, they searched the woods and alleys near her South Fairbanks home. They made sure he wasn't lurking in a nearby vacant house.

"No one was taking him lightly," said Lt. Victor Gunn, who kept a log on Jack's activities when he began publicly threatening his wife. "We simply hadn't found him."

Early last Tuesday morning, Jack shot and killed his wife of nearly 10 years outside her 17th Avenue apartment building, as she and a neighbor got into her car to drive to the store. Her friend Carl Emery, who was shot in the head and upper back shoulder, was released from Fairbanks Memorial Hospital a few days ago.

Then Jack, 33, drove his taxi cab to the parking lot behind the Maranatha Inn. As an intoxicated passenger slept beside him, he pointed

Courts filled with domestic violence cases. Page A-3

the .22 weapon at his head and pulled the trigger.

Police conducted an investigation this week to doublecheck their own actions in the case. The detective doing the report made two recommendations—that one police officer be assigned to serve warrants, and that all records be computerized.

Computerization is already under way. But because records are not yet centralized, police did not discover that Jack obtained a chauffeur's license last February. They didn't know he had started working for King Cab six days before the shooting.

Had they known, however, a check of cab companies would have occurred several days before Jack was actually hired, according to Acting City Police Chief Richard Cummings.

"We did everything reasonable we could do, given our manpower," Cummings said.

(See DORE, back page)

by
Donna Hunzcker

January 1993

Volume 1, No. 4

Stalking Laws

States have enacted "stalking" laws to punish people who repeatedly watch, follow, harass or threaten someone with physical harm or death. Stalking laws criminalize these activities and give police recourse before an attack takes place.

*Restraining orders
inadequate*

States passing stalking laws determined there were inadequate provisions in existing law to protect stalking victims. In drafting and considering laws, legislatures in many states heard about victims who were brutally attacked and sometimes killed after enduring months and even years of threats and intimidation. Civil restraining or protective orders were nearly always in place but inadequate to deter the stalker from committing an act of violence. A third of female murder victims in 1990 were slain by husbands or boyfriends, according to the FBI.

*Twenty-nine states
with stalking laws*

Twenty-nine states now have stalking laws. California passed the first in 1990, creating (and coining) stalking as a crime. States enacting similar laws in 1992 were: Alabama, Colorado, Connecticut, Delaware, Florida, Hawaii, Kansas, Idaho, Illinois, Iowa, Kentucky, Louisiana, Massachusetts, Mississippi, Nebraska, New York, North Carolina, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Virginia, Washington, West Virginia and Wisconsin.

States with stalking measures pending on November 1, 1992, include Michigan, New Jersey and Pennsylvania. Other states, including Texas and Indiana, are preparing legislation to be introduced in 1993.

In other states, laws called something other than stalking have similar intent and purpose. Since 1987, Minnesota has had trespass and harassment laws on the books to apply to stalking situations that include "intent to harass, abuse or threaten." Minnesota law also has felony penalties for "terroristic threats" which can apply to stalking situations. Similarly in Maine, "terrorizing" is a Class D or Class C crime when threats of violence are made. Arizona created misdemeanor classifications of harassment last year.

*Stalking defined,
classified*

States typically have defined stalking as willful, malicious and repeated following and harassing of another person. Most stalking laws require that the perpetrator make a "credible threat of violence" against the victim, and in many states, it includes threats against the immediate family of the victim. Many provisions require that the victim have "reasonable fear of death or great bodily injury."

The 1990 California measure was enacted following the murders of five Orange County women the year before. In each case, the victim had been stalked and threatened and had a temporary restraining order against her assailant. The California measure was hailed by victims' and women's groups, and had support from the entertainment community because of cases in which celebrities are stalked and threatened by obsessed fans.

Nineteen states have both misdemeanor and felony classifications of stalking with up to one year of jail typical for first offenses. Tougher penalties of up to three, five and even six years often apply to second or subsequent stalking offenses. Enhanced penalties also apply in 18 states where a stalker violates a protective order.

In some states with a felony stalking provision, bail can be established to increase the likelihood or duration of detention of alleged stalkers. Stalking laws in Iowa, Ohio and Illinois deal more specifically with the bail issue.

Constitutionality

Stalking laws in Florida and Ohio provide for warrantless arrest of alleged stalkers. Defense attorney groups and others have questioned the appropriateness, if not constitutionality, of warrantless arrest of stalkers, but other observers point out that such provisions in domestic violence laws have been found permissible.

A report last fall by the federal Congressional Research Service discussed whether some state stalking laws are too vague to be constitutional. In particular, that report questioned constitutionality of state laws in which following and harassing are considered stalking without also requiring credible threats of violence.

The U. S. Congress last year approved legislation under which the National Institute of Justice will work with states to monitor constitutionality and other outcomes of state stalking laws. Model provisions will be developed to help states adapt or enact laws.

STALKING CRIME CLASSIFICATIONS

Felony only:	Delaware, Florida, Illinois
Misdemeanor only:	Colorado, Kansas, Hawaii, Utah, South Carolina, West Virginia
Both Felony and Misdemeanor crimes:	California, Connecticut, Idaho, Iowa, Kentucky, Louisiana, Massachusetts, Mississippi, Nebraska, New York, North Carolina, Ohio, Oklahoma, Rhode Island, South Dakota, Tennessee, Virginia, Washington, Wisconsin.

(Where both felony and misdemeanor classifications can apply, felony treatment is generally for when a protective order is violated and for second or subsequent stalking convictions.)

Selected References

Thomas, Kenneth B. *Anti-Stalking Statutes: Background and Constitutional Analysis*. Washington, D.C.: Congressional Research Service, Library of Congress, September 26, 1992.

Resnick, Rosalind. "States Enact 'Stalking' Laws." *The National Law Journal* (May 11, 1992): 3 and 27.

Contacts for Further Information

Donna Hunzeker
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CHIEF CLERK OF THE SENATE
WISCONSIN
STAFF CHAIR, NCSL

WILLIAM POUND
EXECUTIVE DIRECTOR

"STALKING" LEGISLATION UPDATE

December 18, 1992
Donna Hunzeker

Thirty states have "stalking" laws as of this writing. California passed the first law in 1990, creating (and coining) "stalking" as a crime. States known to have added similar laws this year are: Alabama, Colorado, Connecticut, Delaware, Florida, Hawaii, Kansas, Idaho, Illinois, Iowa, Kentucky, Louisiana, Massachusetts, Michigan, Mississippi, Nebraska, New York, North Carolina, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Virginia, Washington, West Virginia and Wisconsin.

New Jersey and Pennsylvania considered, but did not pass, stalking measures in 1992. A number of states, Arkansas, Indiana and Texas among them, are preparing stalking legislation to be introduced next year.

In other states, laws called something other than "stalking" have similar intent and purpose. For example, "terrorizing" in Maine is either a Class D crime or Class C crime when threats of violence are made. Since 1987, Minnesota has had "trespass" and "harassment" laws to apply to stalking situations that include "intent to harass, abuse or threaten." Multiple acts of harassment are punishable through enhanced penalties, and in the 1992 omnibus crime bill, Minnesota increased penalties for repeat offenses. Minnesota law also has felony penalties for "terroristic threats" which can apply to stalking situations. Arizona created misdemeanor classifications of harassment this year.

States typically have defined "stalking" as willful, malicious, and repeated following and harassing of another person. Most stalking laws require that the perpetrator make a "credible threat of violence" against the victim, and in many states, credible threat includes threats against the immediate family of the victim. Many provisions require that the victim have "reasonable fear of death or great bodily injury." Stalking laws generally apply to cases where women allegedly are terrorized by former boyfriends or husbands. Cases where women (or men) are stalked by casual acquaintances or even strangers have brought about some state laws and are applicable under most stalking laws. Statute language in most states broadly provides that the victim could be any person or circumstance in which following, threats and intimidation are present.

Many states have both misdemeanor and felony classifications of stalking, with up to one year of jail typical for first offenses. Tougher penalties (up to three, five and even six years) often apply to second or subsequent stalking offenses. Enhanced penalties also apply in many states where a stalker violates a protective order.

California amended its original stalking law this year, redefining "credible threat" of harm to include threats against immediate family, and increasing penalties for second or subsequent stalking convictions. The new law also allows restraining orders for up to 10 years.

For more information, please contact NCSL Marketing/Book Order Department at 303-830-2200 for "Stalking Laws" State Legislative Report.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SB 11

Revision Date: February 1, 1993
Title: "An Act relating to the crime of terroristic threatening."
Sponsor: Senator Kerttula
Requestor: Senator Kerttula

Department Affected: Department of Law
BRU: Prosecution
Component: All
COMPONENT SERIAL NO. 0085 through 0090

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE FUND SOURCE:						
----------------------	--	--	--	--	--	--

FUNDING:

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared by: Richard I. Peques, Director
Division: Administrative Services Division

Phone: 465-3672
Date: February 1, 1993

Approved by Commission.: Charles E. Cole, Attorney General
Agency: Department of Law

Date: February 1, 1993

PREPARER TO F [REDACTED] LATIVE OFFICE
For [REDACTED]

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SB 11

ANALYSIS (Continued):

This bill amends the state's existing terroristic threatening law, AS 11.56.810, to make stalking a criminal act. The bill does this by dividing terroristic threatening into two levels, terroristic threatening in the first degree and terroristic threatening in the second degree. The first degree would be a class C felony and the second degree would be a class A misdemeanor.

Terroristic threatening in the first degree includes the criminal conduct contained in the existing law. It also includes conduct that constitutes terroristic threatening in the second degree when the conduct violates a court order, or when the person who commits the crime of terroristic threatening in the second degree has been convicted of the crime of terroristic threatening in the second degree within seven years before committing the new crime.

Terroristic threatening in the second degree would cover situations where a person recklessly places another person in fear of death or physical injury, or in the fear of the death or physical injury of a family member, by knowingly and repeatedly following or lying in wait for the person or family member, or engaging in conduct similar to following or lying in wait for the person or family member.

Although this bill will cause some new prosecutions, it will probably also prevent some more serious crimes from being committed. We cannot predict how many new prosecutions will occur. However, the prevention of one murder will certainly outweigh the prosecution of several terroristic threatening crimes, both in human and monetary terms.

Last, including the anti-stalking provisions in the existing terroristic threatening law will also help the state defend against legal challenges to overturn the amended law, because it helps demonstrate that these provisions are part of a broader legislative plan to protect the general population from the fear of death or physical injury at the hands of another person.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450

FAX (907) 465-2029

Mail Stop 3101

130 Seward Street, Suite 409

Juneau, Alaska 99801-2105

MEMORANDUM

January 19, 1993

SUBJECT: Sectional Analysis of SB 11 (Work Order No. 18-LS0200\A)

TO: Senator Jay Kerttula
Attn: Bill

FROM: Jerry Luckhaupt *JL*
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1 of the bill amends AS 11.56.810, terroristic threatening, to create the crime of terroristic threatening in the first degree. The bill retains the existing forms of terroristic threatening as violations of terroristic threatening in the first degree and adds that a person commits a violation of terroristic threatening in the first degree if the person commits a violation of terroristic threatening in the second degree and that conduct violates a court order or occurs within seven years of a previous conviction for terroristic threatening in the second degree. The bill retains terroristic threatening's classification as a class C felony.^{1/}

Section 2 of the bill creates the crime of terroristic threatening in the second degree, a class A misdemeanor.^{2/} A person commits terroristic threatening in the second degree if the person

- (1) recklessly places another person in fear of death or bodily injury, or in fear of death or bodily injury of a family member;
- (2) by knowingly and repeatedly following or lying in wait for the person of family member or similar conduct.

^{1/} A class C felony is punishable as provided in AS 12.55.125(e).

^{2/} A class A misdemeanor is punishable as provided in AS 12.55.135(a).

Senator Jay Kerttula

January 19, 1993

Page 2

Section 3 of the bill amend AS 12.25.030 to provide a peace officer with the authority to arrest a person the peace of whom has reasonable cause to believe has committed the types of terroristic threatening in the first or second degrees added in section 1 and 2 of the bill, or similar ordinance, when the victim is in a domestic relationship, as defined in AS 12.25.030(b)(2), with the defendant.

GPL:gc

93-038.glc

ALASKA
DEPARTMENT OF LAW

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

CRIMINAL DIVISION CENTRAL OFFICE
P. O. BOX 11030 - STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3428

OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
1031 W. 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

CRIMINAL DIVISION

*Copy in file
all BIC up*
January 22, 1993

JAN 22 1993

The Honorable Jay Kerttula
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: SB 11, "An Act relating to the crime of terroristic threatening"

Dear Senator Kerttula:

By letter dated January 19, 1993, you have requested our opinion as to whether SB 11, "An Act relating to the crime of terroristic threatening," presents any legal difficulties. The purpose of this bill is to criminalizing "stalking." Although some stalking laws are subject to challenge on the basis that they are constitutionally vague or overbroad, SB 11 has been carefully drafted and we do not believe that it presents either of these problems.

We note that this bill creates the crime of stalking by amending Alaska's existing terroristic threatening statute and adding terroristic threatening in the second degree. We believe that this is the best method of addressing stalking and, in particular, that this method is least likely to inadvertently jeopardize the state's existing offenses relating to terroristic threatening.

For your general information, we have just been advised of a Library of Congress publication entitled "Anti-Stalking Statutes: Their Background and Constitutionality." We have requested a copy of this report, which was published in September 1992. Please let us know if you would like a copy, as well; if so, we will provide one to you when we receive it.

Finally, we have also just learned that the National Criminal Justice Association will be coordinating a "stalking laws project," to be undertaken by the National Institute of Justice for the purpose of considering and drafting model legislative options. This project is to be initiated within the next two months or so and its work is expected to be completed within six or eight months.

The Honorable Jay Kerttula

January 22, 1993

Page 2

Thank you for the opportunity to comment on SB 11. If you have any further questions, or if we may be of assistance in any other fashion, please do not hesitate to contact me.

Very truly yours,

CHARLES E. COLE
ATTORNEY GENERAL

By: Margot O. Knuth
Margot O. Knuth
Assistant Attorney General

MOK/sf

cc: Deborah Behr
Legislation Attorney
Department of Law

Kris Lethin
Legislative Liaison

Bruce Botelho
Deputy Attorney General

Charles Cole
Attorney General

C.E. Swackhammer
Deputy Commissioner
Department of Public Safety

BILL NO: SB 11

DATE: January 26, 1993

TITLE: An Act relating to the
Crime of Terroristic
Threatening

CONTACT: C.E. Swackhammer
Deputy Commissioner
465-4322

SB 11 amends AS 11.56.810 Terroristic Threatening and defines two levels of terroristic threatening. Existing statute provides for a class C felony; this is amended by defining the class C felony as Terroristic Threatening in the First Degree to include violation of a court order, covers individuals who have been previously convicted of terroristic threatening in the Second Degree and also changes the individuals who are covered from the individuals' "immediate family" to "family member." Terroristic Threatening in the First Degree, a Class C Felony, carries a penalty of fine of up to \$50,000 and 0-5 years in jail. Additionally, SB 11 provides for Terroristic Threatening in the Second Degree, a class A misdemeanor, which addresses placing a person in fear by following or lying in wait for the person.

The Department of Public Safety suggests the following amendments:

The Department recommends that definition of "family member" (lines 18-23) be amended and broadened to include "...a person who ...is in or has been in a dating, courtship of engagement relationship...". Lack of this language may eliminate a substantial number of victims from recourse under the proposed statute.



Richard L. Burton
Commissioner

1-28-93

Alaska Association Chiefs of Police



January 25, 1993

Senator Jay Kerttula
State Capital Building
Room 427
Juneau, Alaska 99811-1182

Dear Senator Kerttula:

On behalf of the Alaska Association of Chiefs of Police I would like to express our support for Senate Bill 11. A Criminal Statute that identifies "Stalking" as a crime is long overdue in the State of Alaska.

All Chiefs from around the State can cite repeated examples from their communities of persons who have been seriously beaten, injured, or killed as a result of "family" or "domestic" violence. For many of these victims their injuries were preceded by periods of time wherein the offender stalked, harassed, threatened and intimidated before acting. Being able to intervene during this earlier conduct would be a welcome relief for law enforcement as well as the hundreds of victims.

If we can be of any assistance in the passage of your bill, please let me know.

Very truly yours,

Ronald L. Otte
President

RLO/lp

ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

419 6th Street, No. 116 • Juneau, Alaska 99801 • (907) 586-3650

Abused Women's Aid in Crisis (AWAIC); Advocates for Victims of Violence (AVV);
Arctic Women in Abuse and Rape Emergencies (AWARE);
Alaska Women's Resource Center (AWRC); Arctic Women in Crisis (AWIC);
Berling Sea Women's Group (BSWG); Emmonak Women's Shelter;
Kodiak Women's Resource & Crisis Center (KWRCC);
Marinaq Regional Women's Crisis Program; Parent Aid Family Support Center;
Safe & Fear-Free Environment (SAFE); Seward Life Action Council (SLAC);
Sikans Against Family Violence (SAFV); South Peninsula Women's Services (SPWS);
Standing Together Against Rape (STAR);
Tongass Community Counseling Center; Tundra Women's Coalition (TWC);
Unalaskans Against Sexual Assault & Family Violence (USAFV);
Valley Women's Resource Center (VWRC);
Women in Crisis Counseling & Assistance (WCCA);
Women in Safe Homes (WISH); Women's Resource & Crisis Center (WRCC)

January 15, 1993

The Honorable Jay Kerttula
Alaska Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Kerttula:

The Alaska Network on Domestic Violence and Sexual Assault is pleased to write in support of SB11, which creates the crime of stalking, and provides police with the ability to make arrests for this offense based on probable cause.

The Alaska Network on Domestic Violence and Sexual Assault is a statewide non-profit organization comprised of 22 member programs from around Alaska which work with victims and their families. Every Network program has worked with victims of domestic violence or sexual assault who are being stalked, know their lives are in danger and are unable to gain protection for themselves or their families under current statutes.

Currently twenty-seven states have passed legislation similar to Senate Bill 11. Stalking is commonly recognized by victim's advocates and police as potentially lethal behavior. Ironically, victims are told over and over that nothing can be done unless they're injured or killed. And each year, they are. I enclose some clippings from recent cases that ended in death here in Alaska.

In reviewing your bill, the Network would request that two changes be considered. They are:

1. An additional aggravating factor should be added that causes the crime to be charged as a felony if the offender stalks the victim and is in possession of a deadly weapon. This is clearly a very dangerous combination. Such a change was made two years ago to the restraining order provisions in recognition of the higher risk of lethality this behavior presents.

Senator Kerttula
Page Two

2. In Section 1(3)(B), the provision should be broadened to include the conviction of any violent crime against a person. In domestic violence and sexual assault cases, while there may be no prior record of stalking (and there certainly won't be for some time) there may be repeated convictions for assault or sexual assault. A past history of violence is another strong indicator of potential lethality.

Thank you for your sponsorship of this important legislation. Please let me know if you need other information or if the Network can be of any assistance in the passage of this bill.

Sincerely,

A handwritten signature in cursive script that reads "Cindy Smith".

Cindy Smith
Executive Director

c.c. Council on Domestic Violence and Sexual Assault
Network programs

D. Elizabeth Cuadra
P. O. Box 33678
Juneau, AK 99803

February 16, 1993

The Honorable Loren Leman
Alaska House of Representatives
State Capitol
Juneau, AK 99801-1182

Re: Anti-Stalking Legislation

Dear Senator Leman:

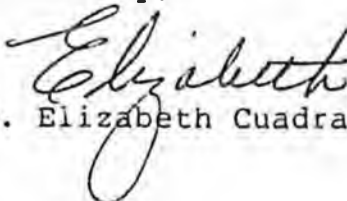
Thank you for sponsoring legislation that would make stalking another person unlawful.

Enclosed is an article from a national newspaper, which I thought might be of help to you in presenting the problem to committees which will be considering your legislation.

If you are looking for personal testimony, please feel free to call on me. I can testify from personal experience (in Kansas) as to the terror such a situation causes. I can also testify as to my own attempts (in Virginia) to save my daughter (then newly graduated from high school) from a stalker who eventually gave her a broken nose and threatened to kill her if she reported it to the police. Needless to say, I shipped her out of the State of Virginia (to the west coast) immediately, in order to place her out of further danger from this man who was already awaiting trial for felonious assault (with a deadly weapon) against another person. The police had been of no help whatsoever, indicating that they could do nothing with respect to a stalker, nor could they provide any sort of help unless she could overcome her fear sufficiently to file a complaint.

I applaud what you are doing and wish you every success. I suspect there are many women who could provide personal testimony concerning similar events here in Alaska, and similarly "helpless" police absent a law that makes stalking a criminal offense.

Sincerely,


D. Elizabeth Cuadra

DEC/k11.212
Enclosure

CRS Report for Congress

Anti-Stalking Statutes: Background and Constitutional Analysis

Kenneth R. Thomas
Legislative Attorney
American Law Division

September 26, 1992



Congressional Research Service • The Library of Congress

CRS REPORT

ANTI-STALKING STATUTES: BACKGROUND AND CONSTITUTIONAL ANALYSIS

SUMMARY

Over the past two years, twenty-seven state legislatures have passed legislation which prohibits "stalking." These laws have apparently been passed in response to a number of well-publicized cases where criminal assailants repeatedly followed, harassed, or threatened their victims, generally women, prior to an assault on those victims. Although some of the more publicized cases have involved attacks on individuals by strangers, many "stalking" incidents involve attacks on victims by people they know.

This report analyzes the various deficiencies which prevent traditional state legal systems from responding and effectively punishing "stalking." The report will then examine the various approaches that states have taken in passing laws on this issue, and discuss constitutional challenges that might be made to these statutes. Finally, the report discusses legislative phrasing that would be likely to satisfy constitutional concerns.

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ANTI-STALKING STATUTES: BACKGROUND AND CONSTITUTIONAL ANALYSIS

Over the past two years, twenty-seven state legislatures have passed legislation which prohibits "stalking."¹ These laws have apparently been passed in response to a number of well-publicized cases where criminal assailants repeatedly followed, harassed, or threatened their victims, generally women, prior to an assault on those victims.² Although some of the more publicized cases have involved attacks on individuals by relative strangers,³ many "stalking" incidents involve attacks on victims by people they know.⁴

Anti-stalking laws appear to have been passed to address various perceived problems with how traditional criminal laws are applied to threatening behavior. Certain stalking behavior, although disturbing to the victim and often indicative of potential future harm, may not rise to the level of criminal activity under traditional criminal statutes, or it may violate laws under which only minimal sanctions can be imposed. Absent statutes specifically prohibiting such

¹ Those states which have passed laws relating to stalking include: Arizona, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Mississippi, Nebraska, New York, Oklahoma, Ohio, South Carolina, South Dakota, Tennessee, Utah, Virginia, Washington, West Virginia, Wisconsin. *Id.* See AZ Legis 241 (Westlaw 1992)(slip) to be codified at Ariz. Rev. Stat. Ann. §13-2921 (1991); Cal. Penal Code §646.9 (1992) & 1991 CA S.B. 1342 (Westlaw 1992); CO LECIS H.B. 92-1189 (Westlaw 1992) to be codified at Colo. Rev. Stat. §18-9-111; CT LEGIS 92-237 (Westlaw 1992); DE LEGIS 250 (Westlaw 1992) to be codified at Del. Code Ann. tit. 11, §1312A; FL LEGIS 92-208 (Westlaw 1992) to be codified at Fla. Stat. §784.048; ID LEGIS 227 (Westlaw 1992) to be codified at Idaho Code §18-7905.; Illinois Public Act 87-870 to be codified at Ill. Rev. Stat. ch. 38, §12-7.3; IA LEGIS H.F. 2025 (Westlaw 1992) to be codified at Iowa Code §708.11; KS LEGIS 298 (Westlaw 1992) to be codified at Kan. Crim. Code Ann §8-1567; KY LEGIS 443 (Westlaw 1992); LA LEGIS 80 (1992) to be codified at La. Rev. Stat. Ann. §40.2; MA LEGIS 31 (Westlaw 1992) to be codified at Mass. Gen. L. ch. 31, §43; MS LEGIS 532 (Westlaw 1992); NE LEGIS 1098 (Westlaw 1992); NY LEGIS 345 (Westlaw 1992) to be codified at New York Penal Law §120.13-.15 & §240.25-.30; OK LEGIS 42 to be codified at Okla. Stat. tit. 22, § 60.1; OK LEGIS 107 (Westlaw 1992) to be codified at Okla. Stat. tit. 21, § 1173; SC LEGIS 417 (Westlaw 1992) to be codified at S.C. Code Ann. §16-3-1070; SD LEGIS 162 (Westlaw 1992); TN LEGIS 795 (Westlaw 1992); UT LEGIS 188 (Westlaw 1992) to be codified at Utah Code Ann. §76-5-106.5; VA LEGIS 888 (Westlaw 1992) to be codified at Va. Code Ann. §18.2-60.3; WA LEGIS 186 (Westlaw 1992); WV LEGIS 52 (Westlaw 1992) to be codified at W. Va. Code. §61-2-91; WI LEGIS 194 (Westlaw 1992) to be codified at Wis. Stat. §29.05. Bills have also been introduced in both the Senate and the House directing that the Attorney General, through the National Institute of Justice, develop model anti-stalking legislation. See S. 2922, 102d Cong., 2d Sess. (1992); H.R. 5876, 102d Cong., 2d Sess. (1992).

² Melinda Beck, *Murderous Obsession*, *Newsweek*, July 13, 1992, at 60.

³ Marie Puente, *Legislators tackling the terror of stalking*, *USA Today*, January 21, 1992, at 9A.

⁴ Beck, *supra* note 2, at 61.

activities, law enforcement officials may be disinclined to vigorously respond to "stalking" reports, or they may find that the legal remedies available to prevent such behavior are inadequate.⁶

Anti-stalking statutes may also serve to supplement various civil laws to which individuals turn when subjected to threatening behavior. Individuals who are threatened by another person may seek a "civil protection order" or a "restraining order" under which a court will order an individual to cease harassing behavior against the individual seeking the order. Obtaining a civil protection order, however, is generally the responsibility of the victim of the harassment, and enforcement of such orders has proven problematic. Consequently, anti-stalking statutes may be an additional legal basis on which victims may seek protection from threats or harassment.

The "anti-stalking" statutes which have been passed by the various states vary in the type of behavior which is sanctioned. Some statutes are narrowly drafted, and are restricted to those individuals who make credible threats of serious harm coupled with some overt following or harassment. Other statutes, however, appear to prohibit any repeated unwelcome contact between individuals, regardless of potential threat.⁶ Consequently, concerns have been raised that some of these statutes may punish non-threatening or even constitutionally protected activities, such as picketing.

This report analyzes deficiencies which often prevent traditional state legal systems from responding and effectively punishing "stalking." The report then examines the various approaches that states have taken in passing laws on this issue.

I. Traditional Criminal Law Punishments Against Stalking

Stalking behavior generally refers to harassing or threatening behavior which an individual engages in repeatedly, such as following a person, appearing at a person's home or place of business, making harassing phone calls, leaving written messages or objects or vandalizing a person's property.⁷ These actions may or may not be preliminary steps taken before a stalker commits an act of assault, rape, child molestation or murder.⁸ Although women stalking men is not unknown, and some stalkers are strangers to their victims, the majority of cases reportedly involve women being stalked by former lovers or spouses.⁹ As

⁶ Danielle Bochove, *Living in Fear*, Calgary Herald, July 26, 1992, at A10.

⁶ See *infra* note 35-37 and accompanying text.

⁷ Melinda Beck, *supra* note 2, at 60 (July 13, 1992).

⁸ *Id.*

⁹ *Id.*

many as 90 percent of women killed by their husbands or boyfriends have been stalked prior to the attack.¹⁰

Stalkers generally engage in behavior which is threatening to the victim, but which may not, absent an anti-stalking statute, rise to the level of a criminal violation. For instance, the crime of assault is committed when an individual attempts or places a person in reasonable apprehension of being subjected to immediate physical violence.¹¹ While an individual who is "stalking" another may intend or threaten physical violence, the crime of assault is not generally committed unless there is such "proximity" between the potential assailant and the victim that immediate violence is anticipated. In the words of one court, the "proximity" required is such that "the next movement would . . . complete the battery."¹² Consequently, stalking behavior which threatens a physical harm at some future unspecified time would not generally be considered an "assault."¹³

A "stalker" who follows a person need not necessarily engage in actions which would violate a state criminal law, such as trespass or destruction of property.¹⁴ When a stalker does violate criminal law, they are often misdemeanors, and the penalties imposed are usually fines and probation. More serious criminal violations are not generally available if the "stalker" has made no overt attacks on the person being followed. Consequently, there may be no adequate criminal deterrent to prevent stalking behavior.

II. Civil Protective Orders and Stalking

Courts generally have the authority to order that an individual refrain from contacting or coming within the vicinity of another person, if a sufficient basis for such an order can be established. Such an order is generally referred to as a civil protection order. If a civil protection order is violated, then a court may

¹⁰ *Id.*

¹¹ Perkins & Boyce, *Criminal Law* 163 (1982). The crime of assault, traditionally meant an attempt to complete a simple "battery" or act of physical violence. *Id.* By statute, however, it has been expanded to include numerous other forms of threatened violence such as assault with a deadly weapon and assault with intent to kill. *Id.*

¹² *Fox v. State*, 34 Ohio St. 377 (1878).

¹³ Similarly, laws regarding an "attempt" to commit physical violence could generally not be applied to a stalker, as an attempt to commit a crime generally requires that the assailant has gone beyond preparation, and has acted towards the consummation of the illegal goal. *Id.* at 614.

¹⁴ Harassment by phone, on the other hand, will generally be a violation of federal law. See 47 U.S.C. §223 (1988) (fines of up to \$50,000 or imprisonment for up to six months for making repeated phone calls solely to harass a person).

hold the violator in contempt, and impose fines or incarceration.¹⁶ Some states only provide for the imposition of civil contempt for the violation of a civil protective order, while others mandate criminal sanctions.¹⁶ Most states leave it to the court's discretion whether to hold a violator in civil or criminal contempt.¹⁷

Absent anti-stalking laws, the civil protection order is generally the only basis by which an individual can prevent another individual from approaching her, her home, or her work place. There are inherent problems in obtaining civil protection orders, however, and enforcement of these orders has often proven to be a problem. Although there has been some movement to strengthen these laws, there are questions whether the civil protection order is a sufficient response to the problem of stalking, and whether the criminal law system is a more appropriate avenue for addressing this issue.

There are a number of differences between the operation of the civil protection order system and the criminal law. Under the criminal law system, the police and prosecutors are generally responsible for investigating a crime, initiating legal proceedings, providing evidence, and seeking sanctions against the law breaker. Under the civil protection system the victim, not the state, is responsible for initiating civil protection proceedings, proving her case, obtaining a protection order, and then seeking to have the order enforced. This process often requires the expenditure of significant time and money to hire a lawyer, pay court costs, develop a case, and follow the necessary legal process. These may represent significant emotional, logistical or financial hurdles for women who may need the protection the most.

¹⁶ A contempt of court is a willful disregard of the authority of a court. Wright, *Federal Practice and Procedure, Criminal 2d*, §702. Although the powers of a court to move against an individual for contempt were originally held to be "inherent" powers of the court, Note, *Civil and Criminal Contempt in the Federal Courts*, 57 *Yale L.J.* 83, 85 (1947), there is now extensive statutory authorization for the imposition of sanctions against such acts.

¹⁶ Finn, *State-by-State Guide to Enforcement of Civil Protection Order*, 14 *Response* 3-4 (1991).

¹⁷ *Id.* The distinction between acts which constitute civil contempt and criminal contempt is often unclear, because some conduct can be both criminal and civil contempt. Fundamentally, incarceration or fining for civil contempt is a remedial measure, designed to coerce an individual into compliance with a court order. *Shillitani v. United States*, 384 U.S. 364, 368 (1966). A person incarcerated or fined for civil contempt of court may agree to comply with the court order, at which time he will be released from jail. *In Re Grand Jury Investigations*, 600 F.2d 420, 423 (3rd Cir. 1979). However, an individual convicted of criminal contempt is incarcerated as punishment, and the incarceration or fine is unconditional.

Some other distinctions between the two, as noted by the Supreme Court, include the following: (1) refusal to do an act commanded is civil contempt, while doing a forbidden act is criminal contempt; (2) civil contempt proceedings are entitled as a part of the main cause, while criminal contempt actions are brought in the name of the United States; and (3) the notice in a criminal contempt proceeding must state that the proceeding is criminal in nature. *Gompers v. Buck's Stove & Range Company*, 221 U.S. 418 (1911); See Wright, *supra* note 15, at §2960.

Another difference between the criminal law and civil protection system is how quickly a "stalker" can be sanctioned under each system. A stalker who violates an anti-stalking law can be arrested immediately upon the commission of the stalking behavior. Under the civil protection system, however, a victim of a stalker must first experience some event which would create a sufficient basis for the issuance of a protective order. The victim must then apply for a protection order, which in some cases may take months to obtain. Then, if a violation occurs, the victim will generally have to go back to the court to seek the imposition of sanctions against the stalker.

Arresting an individual in the process of stalking may also differ under the two different systems. If the state only provides for civil contempt, then police may not have the authority to arrest the individual, as the defendant must be given the opportunity by a judge to "undo" his behavior.¹⁸ Even if criminal contempt is available, police are often unaware of their authority to arrest for violation of a protective order, or are reluctant to do so.¹⁹ If the violator has left before the police arrive, the police may then be required to obtain a warrant to effect an arrest.²⁰ Finally, violating a civil protective order is generally a misdemeanor, and the penalties are generally light; incarceration for more than six months is unusual.

III. Constitutional Challenges to "Anti-Stalking" Statutes

Although it does not appear that there are reported decisions regarding constitutional challenges to anti-stalking statutes, similar state laws which punish "harassment" or "phone harassment" have come under constitutional scrutiny by the Court. Generally, these statutes have been challenged as unconstitutionally vague and consequently in violation of the due process clause of the Fourteenth Amendment. An evaluation of these cases may indicate what factors a court will look to in making a determination as to the constitutionality of the anti-stalking statutes.

A. Void for Vagueness

Under the due process clause of the Fourteenth Amendment,²¹ legislation must be written with sufficient specificity so that a person of common intelligence can ascertain the limits of lawful behavior.²² If the language of a particular statute is so vague that an individual cannot ascertain whether or not

¹⁸ See Finn, *supra* note 16, at 5.

¹⁹ *Id.* at 3.

²⁰ As a violation of a civil protective order is often a misdemeanor, a police officer who has not witnessed the offense must obtain a warrant before arresting the individuals. *Id.*

²¹ U.S. Constitution, XIV Amendment. "No State shall . . . deprive any person of life, liberty or property, without due process of law . . ."

²² *Winters v. New York*, 333 U.S. 507 (1948).

his or her behavior constitutes criminal behavior, then that statute will be held unconstitutional. Courts have also been reluctant to enforce statutes whose vague language, if interpreted broadly, bear no reasonable relation to the underlying purpose of the statute.²³

When a court finds that a statute is overly vague "on its face," it may be struck down in its entirety; or, if a court finds that it could be applied properly in some cases, and if its value outweighs its negative effects, it might be held unconstitutional only as "applied" to particular cases. Where a vague statute regulates in the area of the free speech under the First Amendment, it may be found void in its entirety;²⁴ if constitutionally protected conduct is not implicated, however, then a court will be more likely to examine the statute on a case by case basis.

B. Are Some Anti-Stalking Statutes Unconstitutionally Vague

The anti-stalking statutes currently in place range from narrowly drawn laws which restrict clearly dangerous activities to broadly drawn laws which may punish non-dangerous or even constitutionally protected activities. A narrow statute, such as California's anti-stalking law, generally prohibits the following or harassment of an individual when combined with the making of "credible threats."²⁵ Florida, on the other hand, provides that any person who willfully, repeatedly or maliciously follows or harasses another person commits the crime of stalking.²⁶ Further, some of the statutes treat stalking as a misdemeanor, while others treat it as a felony with punishments ranging as high as ten years incarceration for repeated offenses.²⁷

When a state is formulating an "anti-stalking" law, a tension may arise between the desire to punish a broad range of "stalking" behavior, and the desire

²³ See *People v. Dupont*, 486 N.Y.S.2d 169 (A.D. 1 Dept. 1985)(holding that distribution of indecent material about an attorney did not violate harassment statute).

²⁴ *Lewis v. City of New Orleans*, 415 U.S. 130, 133-134 (1948); *But see Broadrick v. Oklahoma*, 413 U.S. 601 (1973)(holding that a statute infringing on the First Amendment is facially invalid only if its overbreadth is "substantial").

²⁵ Cal. Penal Code §646.9 (1992) & 1991 CA S.B. 1342 (Westlaw 1992). In order to punish a person for stalking under California law, a prosecutor must prove two elements: 1) that the person "repeatedly" followed or harassed another person, and 2) that the person has made a "credible" threat with the intent of placing that person in reasonable fear of death or great bodily injury. *Id.* at §646.9(a). In addition, harassment, as used in element one, means to alarm, annoy or harass in a way which serves "no legitimate purpose," and the emotional distress caused must be a reasonable response to the activity. Further, any constitutionally protected activity is not included in the meaning of "course of conduct".

²⁶ FL. LEGIS 92-208 (Westlaw 1992) to be codified at Fla. Stat. §784.048.

²⁷ Compare, AZ Legis 241 (Westlaw 1992)(slip) to be codified at Ariz. Rev. Stat. Ann. §13-2921 (1991)(harassment which includes following classified as a misdemeanor) and MA LEGIS 31 (Westlaw 1992) to be codified at Mass. Gen. L. ch. 31, §43 (Westlaw 1992)(imprisonment for up to ten years for second offense).

to develop a law which does not sweep too wide and consequently punish constitutionally protected or otherwise inoffensive behavior. The California statute for instance, by requiring that the act of stalking be linked to behavior threatening death or serious bodily harm, links stalking behavior with acts which are clearly punishable under criminal law. However, by refraining from making verbal threats, a stalker may apparently still follow or harass a person without falling under the prohibitions of such a law.

A statute such as Florida's, on the other hand, appears to include conduct which may be non-threatening,²⁸ or even constitutionally protected. For instance, under the Florida statute, a person who willfully, maliciously, and repeatedly "follows" another person may be prosecuted for a misdemeanor, even if the following is not threatening.²⁹ Thus, a television camera crew which repeatedly followed a public figure from her home to her work place could arguably be in violation of this statute, although its actions would be otherwise constitutionally protected.

Some of the constitutional problems with anti-stalking statutes appear to stem from inadequate definitions of terms used or from failing to distinguish between behavior which is offensive and that which is not. In some instances, however, the underlying problem is that the legislatures are attempting to prevent aberrant behavior which is indicative of potential future harm; however, such behavior is not easily distinguishable from non-criminal activity. Consequently, as a legislature attempts to expand the scope of an anti-stalking law, it may incrementally lessen the likelihood that the law will pass constitutional muster.

C. Evaluation of Specific Provisions of Existing Statutes

Although there are a variety of anti-stalking statutes, there appear to be a limited number of drafting approaches which have been used. Some of these approaches may raise constitutional issues which are resolvable by redrafting; some of the other approaches, however, are a reflection of a decision to sanction certain behavior which may be difficult to punish constitutionally. What follows is an evaluation of these various provisions.

²⁸ One of the first persons prosecuted under this statute was a sixty-six year old man who, according to the victim "had never threatened her," but who called her repeatedly and appeared uninvited at her door. Ardy Friedberg, *Elderly man may be first charged under Florida stalking law*, The Houston Chronicle, July 12, 1992, at 16.

²⁹ Although, under the Florida law, the term "harassment" requires a showing that emotional distress has been caused, the term "follows" is not similarly limited. FL LEGIS 92-208 (Westlaw 1992) *to be codified at Fla. Stat. §784.048*. In addition, while the term "harassment" is defined so as not to include constitutionally protected activities, the term "follows" is left undefined. *Id.* Under the language of the Florida statute, it is not even clear whether the victim need be aware that they are being followed. *See id.*

1. Various Statutory Formulations Prohibiting Anti-Stalking Behavior

Some of the existing anti-stalking laws require that the prohibited stalking behavior be linked with a threat of physical violence in order to fall under the provisions of the act.³⁰ This is similar to provisions in other laws which prohibit threats of physical violence,³¹ and there does not appear to be a significant constitutional argument that laws prohibiting threats of physical violence are inherently vague. As this form of anti-stalking statute is only violated when both a threat and some stalking behavior such as following or harassment are present, the law is actually punishing a subset of threatening behavior. As the underlying offense, making threats, is a sufficiently definitive prohibition so as to be constitutional, there is less of a threat of the laws being overbroad or prohibiting innocent behavior; thus the use of the limiting terms "harassment" and "follows" in conjunction with threats of physical violence would be an unlikely basis for a successful constitutional challenge.

Some statutes, however, provide that a person may be found guilty for stalking behavior alone, even if no specific threat is not made. In some cases, if the terms are sufficiently defined, this formulation may also be constitutionally acceptable. For instance, one section of the Delaware anti-stalking statute prohibits harassment, which is defined as a knowing course of conduct which seriously alarms, annoys, or harasses a person, and which would cause a reasonable person substantial emotional distress;³² this provision would appear sufficiently definitive to avoid constitutional challenges on its face.³³ However, this formulation might be held unconstitutional in application in some narrow instances, especially if there are First Amendment issues involved.³⁴

A number of the statutes, however, appear to require that a person be arrested or punished for the mere act of following a person.³⁵ For instance, in Florida, it is a misdemeanor for a person to willfully, maliciously and repeatedly

³⁰ See, e.g., Cal. Penal Code §646.9 (1992) & 1991 CA S.B. 1342 (Westlaw 1992); CO LEGIS H.B. 92-1189 (Westlaw 1992) to be codified at Colo. Rev. Stat. §18-9-111; TN LEGIS 795 (Westlaw 1992); UT LEGIS 188 (Westlaw 1992) to be codified at Utah Code Ann. §76-5-106.5.

³¹ See, e.g., 18 U.S.C. §1951 (prohibiting interference with commerce by threats of physical violence).

³² DE LEGIS 250 (Westlaw 1992)

³³ *People v. Lamb*, 384 N.Y.S.2d 929 (1976) (upholding a statute which prohibits a "course of conduct . . . which alarm[s] or seriously annoy[s] [another] person . . .").

³⁴ See *People v. Dupont*, 486 N.Y.S.2d 169 (A.D. 1 Dept. 1985) (holding that distribution of indecent material about an attorney did not violate harassment statute).

³⁵ See, e.g., ID LEGIS 227 (Westlaw 1992) to be codified at Idaho Code §18-7905; DE LEGIS 250 (Westlaw 1992) to be codified at Del. Code Ann. tit. 11, §1312A; FL LEGIS 92-208 (Westlaw 1992) to be codified at Fla. Stat. §784.048; NY LEGIS 345 (Westlaw 1992) to be codified at New York Penal Law §120.13-.15 & §240.25-.30.

to follow a person.³⁶ The statute does not define "to follow," and thus there is no indication as to how far, or how often, or in what context such a following is prohibited. Thus private detectives, newspaper reporters, policemen, or suspicious neighbors who follow a particular person more than once in order to observe that person might be prosecuted under this law; even so trivial an act as one football player chasing another with "malicious intent" might arguably be covered under this statute.³⁷ Consequently, a court might find that the statutory language at issue was unconstitutional on its face.

2. Intent to a Place a Person in Fear of Physical Injury

An important narrowing feature of a number of the anti-stalking statutes is the requirement that the acts in question were intended to place another person in fear of physical injury.³⁸ This "intent" requirement is to be distinguished from the simple requirement that a person accused of stalking be "willfully" or intentionally following a person; the former intent requirement, unlike the latter, narrows the various statutes so that the nature and context of the action in question would be considered by the court or the jury.³⁹ Thus, under this narrowing language, mere following would not be the basis for a conviction without some evidence that the following was done as part of an intentional scheme to harm the victim.⁴⁰

³⁶ FL LEGIS 92-208 (Westlaw 1992) to be codified at Fla. Stat. §784.048;

³⁷ According to Blacks Law Dictionary, "malice" is present when an act is done with evil intent, or with intent to cause harm. The requirement that the following be "malicious" does little to narrow the statute, as there is no indication as to what type of "malicious" harm must be intended.

³⁸ See, e.g. NY LEGIS 345 (Westlaw 1992) to be codified at New York Penal Law §120.13-.15 & §240.25-.30.

³⁹ This intent requirement can also be used to distinguish stalking laws from those harassment laws which are directed primarily towards protecting individuals from non-physical threats; for instance, law which prohibit actions which threaten of physical injury might provide for more severe punishments than simple harassment. See, e.g., NY LEGIS 345 (Westlaw 1992) to be codified at New York Penal Law §120.13-.15 & §240.25-.30.

⁴⁰ A concern might be raised that some mentally disturbed stalkers do not actually intend to instill fear, but are actually attracted to their victims, and thus might evade the prohibitions of the law. Under most criminal statutes, however, an intent requirement is met if a reasonable person would be aware that his actions would have a prohibited effect. Thus, if a person's actions were likely to place a person in fear of physical violence, a jury would generally be allowed to assume that these actions were intended to convey that intent. However, a legislature might desire to make it clear that the intent requirement was to include those cases where an individual knew or should have known that his behavior would be perceived as threatening; for this reason, such clarification might be set out either in the legislative history or in the text of the statute.

3. Exclusion of Lawful, Legitimate or Constitutionally Protected Behavior

A number of statutes provide exclusions for "constitutionally protected activities" or condition restrictions on harassment or following to those acts which have no "lawful" purpose. These exclusions are to a degree redundant; for instance, if an act is constitutionally protected, then the statute prohibiting that act would be unenforceable. Or, if a person has a "lawful" reason to be harassing a person, then they are by definition not in violation of any statute, including the one being interpreted; thus the phrase "lawful" has a circular meaning. Although these provisions might have the effect of discouraging a law enforcement officer from enforcing the law in marginal cases or cases involving free speech, a sufficiently definitive statute would not need the addition of these narrowing provisions.

Some statutes also use the exclusionary phrase "for no legitimate purpose;" this language, however, might be the partial basis for a court to strike down a statute for unconstitutional vagueness.⁴¹ In one state, where a harassment statute prohibited an act "that alarms or annoys another person and that serves no legitimate purpose," a court found that the phrase "serves no legitimate purpose" was vague and injected uncertainty into the statute.⁴² The court appears to have determined that the phrase "no legitimate purpose" had no defined meaning under the statute and no objective meaning outside of the statute; thus the statute's language invited subjective evaluations of what behavior was prohibited by the law.

4. Anti-Stalking Legislative Phrasing

Although narrow anti-stalking language such as California's may be on the firmest ground constitutionally, a legislature may decide that for policy reasons, a broader statute is desired in order to punish the widest possible range of stalking behavior. Thus, a legislature might need to determine whether broad anti-stalking language can be drawn while still defining the offense with constitutionally definitive language. Following is an example of language which would appear likely to pass constitutional muster.

Any person who repeatedly follows or harasses another person with the intent to place that person in reasonable fear of sexual battery, bodily injury or death; and whose actions would cause a reasonable person to suffer substantial emotional distress; and whose acts induce emotional distress to that person; is guilty of the crime of stalking.

The various terms used in such language would also need to be defined. Thus, for purposes of the above section:

⁴¹ See *People v. Norman*, 703 P.2d 1261 (Colo. 1985).

⁴² 703 P.2d 1266-67.

"Harasses" means a course of conduct directed at a specific person which would cause a reasonable person to fear sexual battery, bodily injury, or death, including by not limited to verbal threats, written threats, vandalism, or unconsented to physical contact.

"Follows" means maintaining a visual or physical proximity over a period of time to a specific person in such a manner as would cause a reasonable person to have a fear of sexual battery, bodily injury, or death.

"Repeatedly" means on two or more separate occasions.



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