

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8487 SENATE STATE AFFAIRS



CONFERENCE OF

LEGISLATURES



National Conference of State Legislatures
1560 Broadway, Suite 700
Denver, Colorado 80202

Non-Profit Organization
U.S. Postage
PAID
Denver, Colorado
Permit No. 3533

Marv Van Nimwegen, Librarian
Legis. Reference Library
Legislative Affairs Agency
130 Seward Street, Suite 400
Juneau, AK 99801





Official Business

Alaska State Legislature

HOUSE OF REPRESENTATIVES

REPRESENTATIVE CYNTHIA D. TOOHEY

DISTRICT 13

State Capitol
Juneau, AK 99801-1182

SPONSOR STATEMENT

HOUSE BILL 64

Reports across the country of victims being stalked by estranged boyfriends, husbands, acquaintances, or strangers has motivated states to take action against the perpetrators of such offenses. Stalking affects not only the victim, but often other members of the victim's household.

The stalking law was birthed in California in 1990. The year before, actress, Rebecca Schaeffer, had been murdered by a fan who stalked her. Early in 1990 five Orange County women were murdered. In each case, the victim had been stalked and threatened and had a temporary restraining order against her assailant. One victim asked police, "What does he have to do--shoot me?" A few days later that is just what happened.

Alaska is not free of stalkers. A Homer woman was stalked by her ex-husband and it resulted in her friend being murdered by him. In Anchorage, a woman was stalked and eventually shot to death in her office by a former boyfriend. The stalker often knows the victim and, in the majority of cases, the estranged husband or boyfriend is the stalker.

HB64 creates the crimes of stalking in the first and second degree. In the first degree, it is a class C felony and in the second degree, a class A misdemeanor. A peace officer has the authority to arrest without a warrant. Like cases of domestic violence, stalking defendants are given conditions regarding their release before trial. The probation period for stalking in the first degree is 5 to 99 years.

HB64 is modelled after the Michigan law which was passed in December 1992 and considered one of the toughest in the nation. Over 30 states now have stalking laws.

SECTIONAL ANALYSIS OF PROPOSED CSHB64 (JUD)

Section 1 of the bill creates the crimes of stalking in the first and second degrees. Stalking in the first degree is a class C felony and stalking in the second degree is a class A misdemeanor.

Section 2 of the bill amends AS 11.41.220(a) adds intent to place another person in fear of death or serious physical injury by making repeated threats to cause death or serious physical injury to another person as another form of assault in the third degree. This language was taken from AS 11.56.810(a) (See Section 3 of the bill.) and was moved as this conduct is basically an assault type of offense and is more properly placed in AS 11.41 as a crime against a person.

Section 3 of the bill amends AS 11.56.810(a) removes intent to place another person in fear of death or serious physical injury by making repeated threats to cause death or serious physical injury to another person

Section 4 of the bill amends AS 12.25.030(b) to provide a peace officer with the authority to arrest without a warrant a person the peace officer has reasonable cause to believe has committed stalking in the second degree.

Section 5 of the bill amends AS 12.30.025 to extend the provisions of that section that relate to conditions of release before trial in cases involving domestic violence to stalking cases.

Section 6 of the bill amends AS 12.55.085(f) by extending the provisions of that subsection, that prohibit the suspension of imposition of sentence, to stalking cases.

Section 7 of the bill amends AS 12.55.090(c) to conform to section 8 of the bill.

Section 8 of the bill provides that for a conviction of stalking in the first degree a probationary term may not be less than five years nor more than 99 years.

Section 9 of the bill is an applicability section

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

February 16, 1993

The Honorable Cynthia Toohey
Alaska House of Representatives
State Capitol
Juneau, AK 99801-1182

Re: Anti-Stalking Legislation

Dear Representative Toohey:

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

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

CRIMINAL DIVISION CENTRAL OFFICE
P. O. BOX 110300 - 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

February 17, 1993

The Honorable Cynthia Toohey
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: HB 64, An Act relating to the crime of stalking

Dear Representative Toohey:

You have asked for our review of the February 16, 1993, work draft of a Committee Substitute for HB 64, "An Act creating the crimes of stalking in the first and second degrees." We are pleased to indicate that this version addresses virtually all of the concerns raised for us by the original version of the bill.

A minor, technical point we note is that usually the class of offense is the last subsection of a statute. To be consistent with this, proposed AS 11.41.270(b) and (c) should be reversed.

Further review leads us to believe that it would be beneficial to narrow the definition of "course of conduct" to the following:

"course of conduct" means repeated acts of nonconsensual contact directed toward the victim or a family member of the victim.

This eliminates any ambiguity as to whether "pattern of conduct" means something other than repeated acts.

The Honorable Cynthia Toohey

February 17, 1993

Page 2

If you have any questions or comments, or if we may be of assistance in any other manner, please do not hesitate to contact us.

Very truly yours,

CHARLES E. COLE
ATTORNEY GENERAL

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

cc: Charles Cole
Attorney General

Deborah Behr
Legislation Attorney
Department of Law

Kris Lethin
Legislative Liaison
Office of the Governor

C.F. Swackhammer
Deputy Commissioner
Department of Public Safety

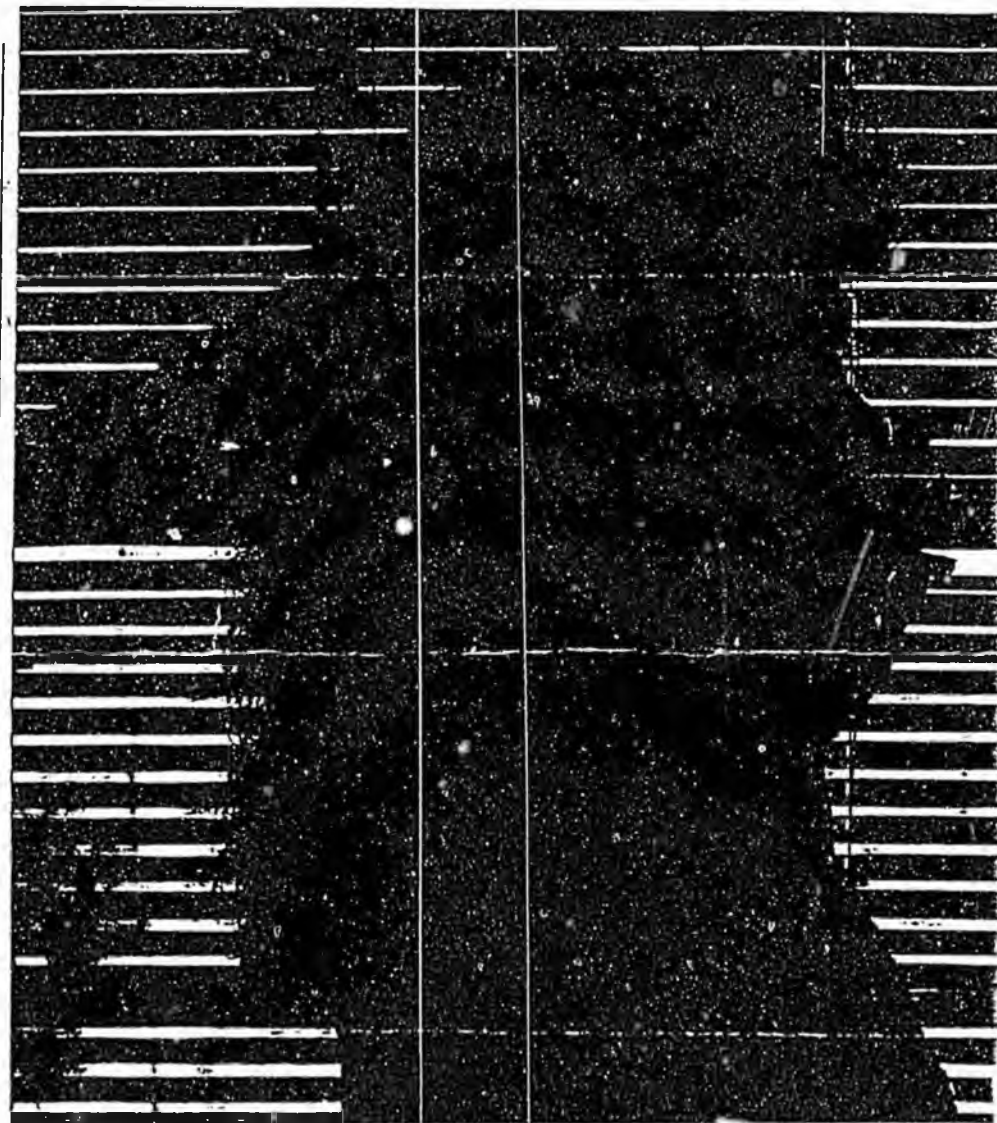
Murderous Obsession

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 Butkowiak'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.

Lowery 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 UT-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.



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.

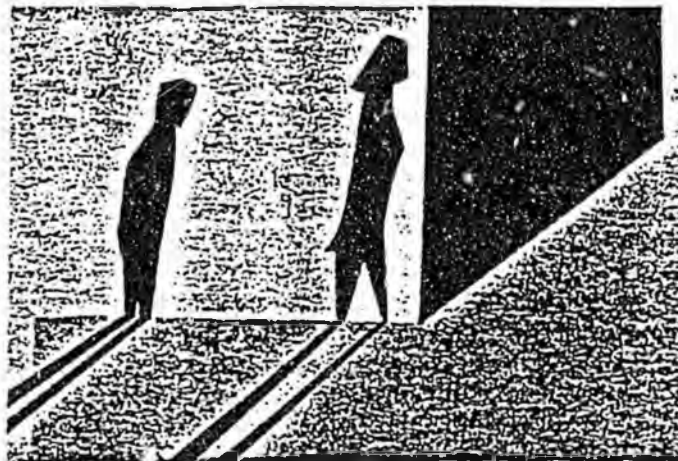
The prospect of more victims arming themselves is no comfort to law-enforcement officials. Yet most admit there is very little they can do in the face of a persistent stalker. "You can put a person in jail for a year or so, but they eventually will get out," says Det. John Lane, part of a four-member 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 FOOKE in Los Angeles, HOWARD MANLY in Atlanta and PETER KATZ in Tampa

California Law Targets Obsessed Fans, Vengeful Lovers

In separate cases this summer two California men were convicted for repeatedly harassing their former girlfriends, marking the first time in the nation that people have been prosecuted successfully under a felony "stalking" law.

The legislation was passed by California lawmakers last year to give police and courts authority to intervene when victims are being seriously and repeatedly threatened but before they are attacked. Senator Ed Royce introduced the stalking bill after five Orange County women were murdered in 1989, even though they had obtained temporary restraining orders against their assailants and had reported threats of violence to police. Without a law prohibiting harassment, police had been powerless to act until victims were actual-



ly assaulted.

The new law, which went into effect Jan. 1, defines stalking as "willfully, maliciously and repeatedly following or harassing another person" and making credible threats that create a fear of death or serious injury. If the victim has obtained a temporary restraining order against the assailant, stalking is a felony. If no restraining

order is in effect, a first offense of stalking is a misdemeanor; a second similar conviction becomes a felony.

The law also permits judges to establish high bail in some stalking cases to ensure that dangerous individuals are not released to continue to harass, terrorize and possibly kill their victims. The maximum penalty for felony stalking is three years

in prison and a fine of up to \$10,000.

The most sensational stalking cases involved celebrities harassed by obsessed fans. David Letterman, Michael J. Fox and Sharon Gless were recent victims; and two actresses, Rebecca Schaeffer and Theresa Saldana, were brutally attacked by men who lay in wait for them. Schaeffer died. The legislation was strongly supported by groups representing Hollywood stars.

The usual stalking victim, however, is a woman terrorized by a vengeful ex-husband or boyfriend. Senator Royce cites a 1987 report of the U.S. Department of Justice, stating that 31 percent of all female murder victims are killed in incidents of domestic violence; many of the women were harassed or terrorized before being murdered. Although men are stalked less often than women, male victims of harassment received some notoriety in the movie "Fatal Attraction."

In one California case, the court found that the victim's former boyfriend had repeatedly violated a restraining order and had threatened to "blow her head off." The man was sentenced to two years in prison. In the other stalking case, a woman's former boyfriend allegedly poured acid on her car and slashed its tires, abducted her dog, confronted her on the street and shoved her into a pole, and made threatening phone calls. He was awaiting sentencing at press time.

Checks May Stop Criminals from Buying Guns

In its first year, Oregon's new gun law kept almost 1,000 firearms out of the hands of people prohibited from owning them, according to a study by the Oregon State Police. The state's 15-day handgun waiting period and mandatory background check on all firearm sales uncovered convicted felons and other prohibited purchasers trying to buy firearms from licensed gun dealers.

"The report demonstrates that a handgun waiting period combined with a mandatory background check of

criminal and mental health records works," said Representative Vera Katz, who sponsored the law.

For the study, the first of its kind conducted by a law enforcement agency in the nation, the Oregon State Police screened all firearm sales during 1990 by federally licensed firearm dealers in Oregon. The report, "The 1990 Study of Retail Firearm Sales and Concealed Handgun Licensing in Oregon," indicated that at least 968 people who attempted to buy firearms from licensed

gun dealers had been convicted of felony crimes, convicted during the past four years of violent misdemeanor crimes or committed to a state mental hospital for mental illness.

The state police report was mandated by a law that regulates the sale and possession of firearms, passed in 1989 by the Oregon legislature. The bill had support from the National Rifle Association, local gun organizations, law enforcement agencies in Oregon and gun control advocates.

cc: Network
MAY 19 1992

MAY 19 1992

LUCILLE BROWN: BRINGING PEACE



Over the course of the 1980s, cities all over the country lived through the phenomenon of the razzle-dazzle school superintendent: arrival from out-of-state, accompanied by high hopes and a glittering résumé; promises of instant change and dramatic educational improvement; bitter quarrels with the existing power structure; and finally, after only a couple of years, a disillusioned community and one more fired superintendent.

Richmond, Virginia, has been through all that. But last year, when Albert L. Jones became the latest in a long string of highly touted failures in the superintendent's office, the city went for somebody completely different: Lucille M. Brown.

Lucille Brown is no newcomer. She has been in the Richmond school system since her days there as a pupil, and she has worked there as teacher, principal and administrator for the past 34 years.

She not only doesn't court the press, she doesn't even want to be interviewed. She offers no promises of dramatic change, only a promise to go slow and keep things calm.

And the city seems to like it. When the *Richmond Times-Dispatch* profiled Brown recently, just about everyone said she was just what Richmond needed after years of educational turmoil. "She's bringing some peace that needed to be back," said the school board chairman. "We had too many new initiatives coming out too fast," said a principal. "She saw the need to slow down the pace."

Brown has faced her share of problems, such as a serious equipment shortage and a protest by senior teachers who feel the salary scale discriminates against them. A few critics complain that she is so slow-moving as to border on indecisiveness. But Brown clearly has some priorities. She has launched an interdisciplinary science program at the high-school and middle-school levels. She surprised some observers by staking out a pro-neighborhood school policy and reversing an earlier decision to turn a large neighborhood high school into a regional school exclusively for the gifted.

Mostly, though, Lucille Brown seems to be doing well because of what she isn't: a flashy and charismatic salesperson of the sort that has failed too many times in too many places in America in the last few years.

—Alan Ehrenhalt

person faculty includes teachers, a medical director and support staff. The school will admit 20 students by June, and hopes to hold a maximum of 100 by 1993. After spending time in this transitional, non-diploma program, students can then transfer credits back to Albuquerque's other high schools.

Principal Hayes has received positive feedback from participants thus far. For students who used to spend their days on drugs, a day in this school "is a whole different situation," says Hayes, "but they are kept busy, and the day goes by fast."

—Jeanne Ponessa

For more information, contact Marijo Rymer, Public Information Director, Albuquerque Public Schools, P.O. Box 25704, Albuquerque, NM 87125.

A High School Just for Kids Kicking the Drug Habit

Don't look for football or cheerleaders at a new Albuquerque high school. From its name, Recovery High, to some of its activities, including extensive therapy sessions, the school is anything but traditional.

Recovery High, which opened in February, is believed to be the only high school in the country dedicated exclusively to former substance abusers.

The school offers a regular curriculum for

grades 9 through 12. But along with math and English, the program includes art therapy, group discussions about recovery and weekly meetings with students' families. "We also have experiential or adventure therapy such as rock climbing or ropes courses all day every Wednesday," says Principal Jan Hayes.

The idea for Recovery High was first developed by an Albuquerque neighborhood anti-drug organization in 1990. The

Robert Wood Johnson Foundation awarded an \$800,000 grant for the school's first 18 months, and the school district provided the remaining \$267,000 needed to open the doors.

Students are admitted to Recovery High on a voluntary basis after referral from a counselor or treatment center—and after passing a drug test. "What we're looking for is an interest and a commitment to recovery," says Hayes. And the idea seems to be catching on—so far, the school has been swamped with referrals.

Recovery High's 12-

Stalking 'Stalkers' With Tough New Laws

For nearly a year, Carrie Prickett successfully shielded herself from harassment by an ex-boyfriend, moving in with friends and having them screen her telephone calls. Her efforts, however, could not prevent an outcome that is all too familiar in "stalking" cases: Police recovered Prickett's charred body from a creek near her Virginia home and charged the man with her slaying.

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 do 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 \$1000 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.

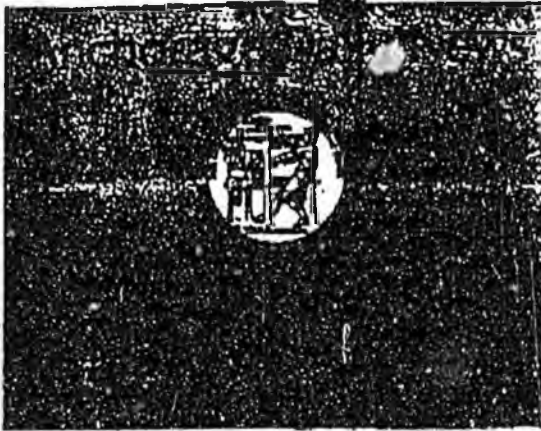
The National Victim Center has acted as an information clearinghouse regarding stalking laws. By providing interested legislators with information and technical assistance, and heightening public awareness through the media, the Center has assisted many states in drafting and passing anti-stalking laws. 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

ADN
6-30-92



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.

Stalking laws cover gaps that restraining orders don't fill. For example, say a man has never abused his ex-wife, and even keeps his distance from her. But he tells her that he'll kill her when she least suspects it, and every day she sees him waiting in the parking lot where she works. He could be arrested for stalking her.

California's stalking law also gives the state more leverage against people who ignore restraining orders. Say a woman gets a restraining order and her ex-partner continues to follow her. Under a stalking law, such behavior would be a felony, and the man, if convicted, would be more likely to serve jail time and would be subject to parole supervision afterwards.

The Alaska Network on Domestic Violence and Sexual Assault is looking into California's and other states' laws to see if a stalking law would be useful here. No one pretends it would guarantee safety. A person obsessed with revenge and indifferent to authority can still elude arrest or get out on bail. He will not stop being a danger.

But a stalking law could be one more tool to control this needless violence.

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

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 the charges against Nelson to trial. He worried when Nelson's family hired a sought-after defense attorney with a reputation built on a steady stream of high-profile felony cases, fearing that Parkes, a less-experienced state prosecutor, might be out of 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 carouser 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."

THE BACK PAGE

STALKER: Proposal would raise penalty in some circumstances

Continued from Page A-1

specifically addressing stalking another person. 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 Toohay, a sponsor of the stalking bill. "As women get more involved in working and supporting their families, they need more protection." At least 25 states have passed such laws.

Police won't release the name of the 32-year-old woman involved in the Anchorage 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 Kalkus 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. "That's just the police report. There are falsehoods," he said. "There's more involved than what you think."

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. 8, and he followed her in his car as she tried to speed away.

After a short chase, speeds that reached 80 mph, she was safe she had lost him. But when she got to the 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.

Petersen's harassment has caused her to not feel safe in her own home and she constantly fears for her husband and children's welfare, the complaint says.

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

The proposed anti-stalking 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 and watching, even if they are in front of the victim's home.

"There is really nothing we can do unless they trespass or directly harass the victim," Warner said.

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 An-

chorage was charged and convicted of murder after he stalked his former girlfriend, then shot and killed her.

Janice Lienhart, director of Victims For Justice in Anchorage, says about 150 women a year call her to say they are afraid of men who are stalking them.

"I have encouraged them to contact their legislators to help get a stalking law."

One woman was so frightened that she left her job and the state, Lienhart said.

Lienhart said she knows of another woman being stalked and terrorized by a man she once had a relationship with. The woman tells few people where she lives and approaches each day with fear.

"She's basically in her own little prison," Lienhart said. "It's sad to have to live that way."

New bill targets stalkers

Under proposal, penalties may rise

By PAMELA TOTO
Daily News reporter

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 a half-dozen complaints with police about Petersen, the 36-year-old Federal Aviation Administration employee was arrested and charged with disorderly conduct. He was released from the Sixth Avenue Jail four days later after posting \$2,000 bail.

Disorderly conduct, a misdemeanor, is the most police could charge Petersen with because Alaska has no laws

Please see Back Page.
STALKER

SENATOR LOREN LEMAN'S OFFICE

TELECOPIER COVER SHEET

State Capitol, Juneau, Alaska 99811
907-465-2095 (office) 907-465-3810 (fax)

ATTN: Denise Mackura-Tromski FAX: 312-786-2131

OFFICE: Americans United for Life PHONE: 312-786-9494

FROM: Deborah Luper DATE/TIME: 2/19/93 11:00PM

NUMBER OF PAGES (including cover sheet): 12

Here is a copy of HB64 (committee substitute) sponsored by Representative Cynthia Toohey of Anchorage. This bill, in its original form, did not appear to threaten constitutionally protected activity (I am sending the original version for your perusal as well.).

I am very concerned that the current version will be used against demonstrators (see page two, lines 16-19. "Physical injury" in Alaska means pain (stepping on a toe, for example). The victim would only have to be placed in "fear" of physical injury.

Of additional concern, is the felony charge for those convicted the second time of a stalking charge. Pro-life demonstrators, told once that their presence was not wanted, could be arrested and charged with a misdemeanor, I believe, and then arrested and charged with a felony the second time.

I apologize for my note taking in the margins. This was my working copy, and I did not get a chance to get a clean one.

Please let me know if there is anything I can assist you with. I anxiously await your analysis.

God Bless You.

How Kristin Died

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

By George Lardner Jr.
Washington Post Staff Writer

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."

Life 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 tree 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 patches and wearing a patch on one eye. He had just survived a car accident that produced what seems to have



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 Boston police 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, sullen, 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-class 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 Bunnratty'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 Bunnratty'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 Bunnratty's.

Rosemary: He does what?

Kristin: He works at Bunnratty'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 who 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.

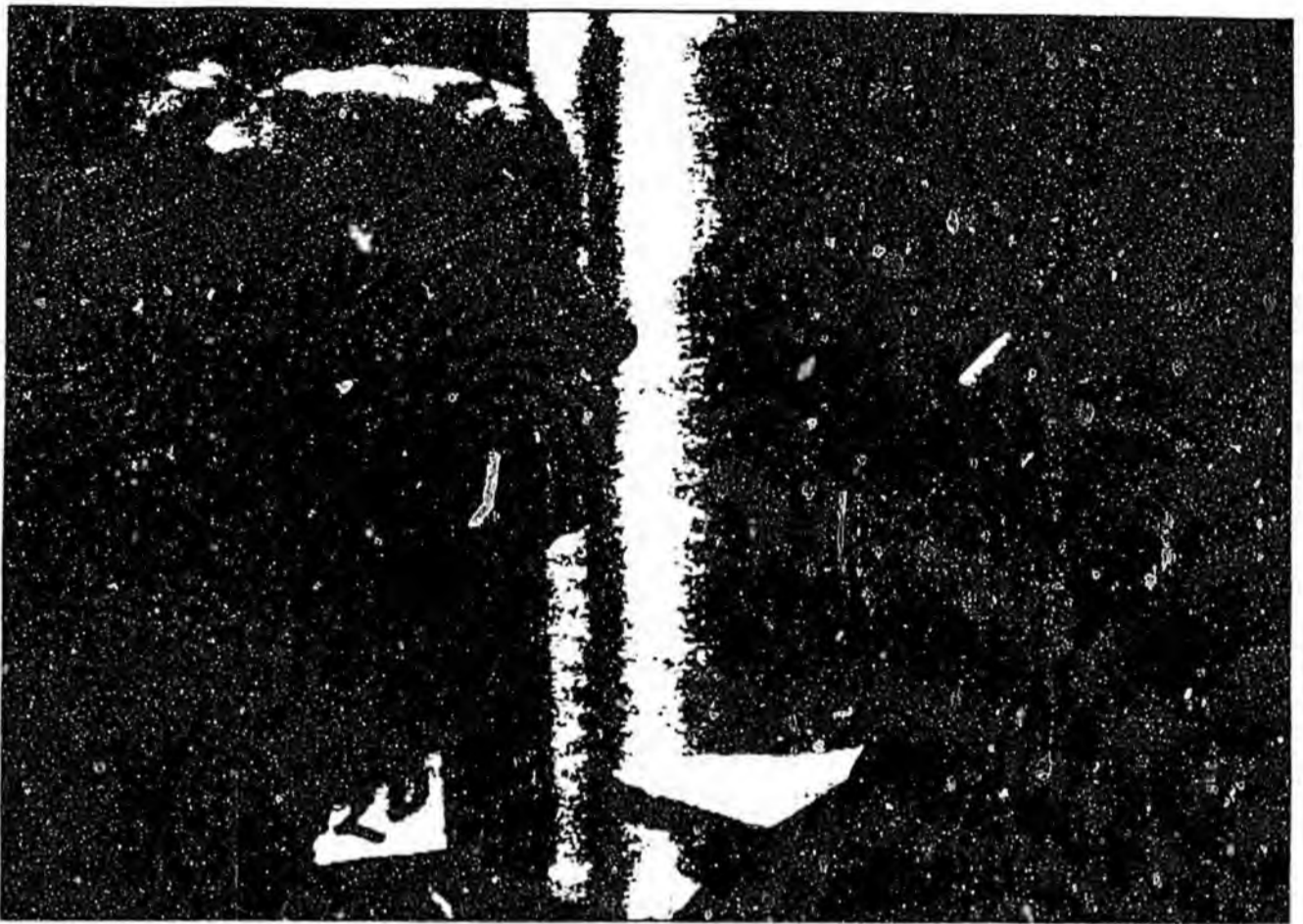
"She was concerned about getting additional assistance for this guy," the state official said of the May 14 meeting. "No charges were filed."

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 Bunnatty'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 Bunnatty'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 Bunnatty'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 out."

After lunch, the day turned sour. Lealie 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 Bunnatty'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 HOLSTI 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 "disgusting . . . 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."

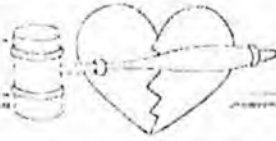
It's doubtful that would have done any good. The system is so mindless that when the dead Cartier failed to show up in Boston Municipal Court as scheduled on June 19, a warrant was issued for his arrest.

It is still outstanding. ■

Victims for Justice

Volume 1 Issue 1

February 1993



COMING EVENTS

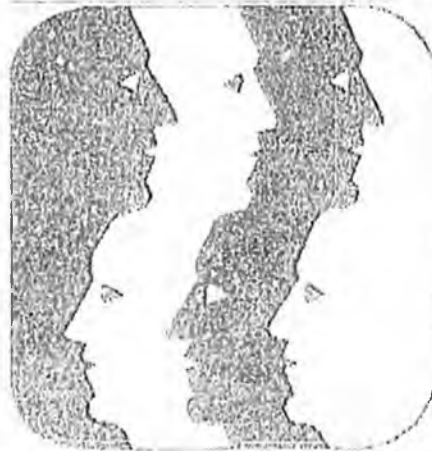
Rally 'Round the Flag for Victims Rights

The theme of this year's national Crime Victim's Rights Week is "Rally 'Round the Flag for Victim's Rights". The colors, red, white and blue, symbolize dedication and commitment to the ideals of the victims movement and a tribute to those who have died and those who have survived the crisis of crime, respectively. Together, the red, white and blue will mark the road to victim justice in 1993.

Kicking off this events is the Tree Ceremony which will be held April 26th at noon at the Victim's Tree, 9th and G. in honor of those who have been affected by violent crime. Colored ribbons symbolic of different types of crimes will decorate the tree. Awards will be given at this time for the Essay Contest winners.

The Seventh Annual Memorial Observance will be held at the Loussac Library on May 2nd, at 3 p.m. This year's keynote speaker will be announced. After the keynote address, family members will then have an opportunity to say something special about their murdered loved one. The ceremonies will be concluded with the lighting of a candle in honor of each of the murdered victims.

If you wish to attend, have a murdered loved one remembered, or would like more information please contact the VJ office at 278-0977 before April 30.



STUDENT ESSAY CONTEST IN HONOR OF VICTIMS RIGHTS WEEK

As a part of Victims Rights Week we are offering an Essay Contest to the Junior and Senior High School students with cash prizes awarded by the Alaska Peace Officers Association and sponsored by the Coalition for Victims of Crime. This gives young people a chance to offer their insights into the growing problems of crime and the possible solutions.

Winners of this year's Essay Contest will be announced at the Victims Rights Week ceremonies. There will also be a coloring contest for grade school students with the theme of "Rally 'Round the Flag for Victims Justice" which will be a picture of a flag pole with the symbolic ribbons.

Judges for this year's contest are D.A. Ed McNally, Julie Hasquet from Channel 2 News and a representative from the Anchorage Daily News. Cash prizes of \$100, \$75, and \$50 will be awarded for first, second, and third places respectively. Lets include those of all ages in recognizing the needs of victims of crime.

LEGISLATIVE NEWS

LEGISLATORS LOOK AT ANTI-STALKING LAW FOR ALASKA

"Stalking" is the violent, threatening and harassing behavior that is not a new phenomena to victims of domestic violence and sexual abuse. Although protective injunctions and stay-away orders do exist, the police can not react until such orders have been violated.

Twenty six states now have anti-stalking laws on the books. In most states, stalking is defined as the "willful, malicious and repeated following or harassment of another person." Penalties vary but most carry the maximum penalty of one year in jail and/or a \$1000 fine.

California has led the way in legislating an anti-stalking law in 1990, primarily because of the high profile "celebrity" cases that have occurred in recent years. As a result, Senator Bill Cohen of Maine has introduced legislation which charges the National Institute of Justice with developing a model stalking law to raise this to the Federal level and set a national precedent that would pass constitutional muster.

It is not just celebrities that experience this "stalking" behavior. The issue was brought to the forefront January 1, 1993 when the Daily News reported on a current case and on a 1989 case that resulted in the murder of a local girl.

In that article, Janice Lemhart, our director, commented on the importance of legislating this as a crime. There are currently four bills dealing with this issue in the House, all of which are backed by both VJ and the CDVSA. All interested persons are encouraged to contact their legislators

at

561-7007

VICTIMS RIGHTS AMENDMENT PROPOSED FOR ALASKA'S

Loren Lehman and Dave Donley, a long time champion of victims rights are co-sponsoring a resolution to amend Alaska's Constitution which would provide constitutional guarantees to victims of crime. The resolution (SJR-2) includes the following rights, as provided by law:

- (1) The right to be treated with fairness and respect for their dignity and privacy throughout the criminal justice process;
- (2) The right to timely disposition of the case following arrest of the accused;
- (3) The right to be reasonably protected from the accused throughout the criminal justice process;
- 4) The right to notification of court

proceedings:

(5) The right to attend trials and all other court proceedings that the accused has the right to attend;

(6) The right to confer with the prosecution;

(7) The right to make a statement to the court at sentencing;

(9) The right to information about the conviction, sentence, imprisonment, and release of the accused.

VFJ asks that you contact your legislators through the Legislative Information Office at 561-7007 and encourage them to support this important resolution.

NEW PROGRAMS OFFERED BY VFJ

Two new programs are offered through Victims for Justice. The first began in November 1992 and is an *Assault Victims Support Group* for those who have been the victims of a felony assault. A felony assault is a stabbing, beating, attempted murder or kidnapping. It is not sexual assault or domestic violence. Anchorage is fortunate to have organizations to effectively handle those crimes such as: STAR, AWAIK, and the Women's Resource Center. There are currently no programs for those traumatized by a felony assault and Victims for Justice is attempting to fill the void by providing services for those victims.

The other program to begin soon is a 12 week *Grief Group Support Program* patterned after Lou Redmond's highly praised program of surviving when someone you loved is murdered. This is a very structured, and effective healing program. It is recommended that it be taken six months following the death. This is a separate program from our twice monthly peer support group for homicide survivors.

The Grief Group Support Program offers therapy by a trained professional and helps to resolve the conflicts created by the murder of a loved one.

Its purpose is to teach survivors how to handle life in the absence and void left by a homicide. It requires a 12 week commitment. The Counsel on Domestic Violence and Sexual Assault is providing the funds to pay the therapist. There is a maximum limit of six victims per session. If you are interested, please call VFJ at 278-0977.

Foxhole Humor for the Survivor
The following is a poem by Dorothy Parker. We have all been there.

Razors pain you,
Rivers are damp,
Acids stain you,
And drugs cause cramp.

Guns are unlawful,
Nooses give,
Gas smells awful,
You might as well live.

*There is no greater grief
than to remember days of
joy when misery is at hand.*
-Dante

VICTIMS FOR JUSTICE BOARD OF DIRECTORS

EXECUTIVE DIRECTOR
Janice Lienhart

COURTWATCH DIRECTOR
Sharon Nahorney

BOARD PRESIDENT
Lawrence Rodriguez

SECRETARY
Rose Courtwright

Treasurer
Lila Vogt

Editor
Laura Miller

BOARD MEMBERS

- Lonzo Henderson
- Jo Kalkus
- Dr. Janet Mischler
- Dr. Lawrence Frostle
- Nola Hogge
- District Attorney Ed McNally
- Tom Pinman
- Lt. Bill Gifford
- Samantha R. Cline

Board Meetings

VFJ Board meetings are held at 5:30 p.m. on the third Wednesday of each month at our office at 619 E. Fifth Avenue.

NOTE

VFJ is now eligible to receive funding through the Combined Federal Campaign. Those of you who contribute through your employer, you can now designate Victims for Justice as your charity of choice.

Please send us change of addresses when you move. Either call at 278-0977 or drop us a card at 619 E. 5th Avenue, Anchorage AK 99501. We want to stay in touch!

Supreme Court Upholds Use of Victim Impact

In a move hailed by the victims rights movement as a significant victory, the U.S. Supreme Court ruled that juries deciding a death penalty may consider evidence relating to the victim's personal characteristics as well as the emotional impact of the murder on the victim's family.

In the case of Payne v. Tennessee, two previous rulings that had prohibited juries considering victim impact evidence were overruled, adopting the argument that victim impact evidence is a method of informing the jury of the harm caused by the crime and that the extent of such harm is indeed a factor in determining what is an appropriate sentence.

The Court also noted that a defendant can present to the jury virtually unlimited mitigating evidence in arguing against the death penalty and therefore, it is reasonable to permit the victim's survivors to counteract that evidence by letting the jury know the full extent of the harm caused by the crime.

In a letter to Ms. Ruhe, the director of Parents of Murdered Children, Dick Thornburgh, the Attorney General of the United States, stated that "The Payne case represented an opportunity for the highest Court in the nation to restore the balance of justice for victims and to reaffirm that justice, though due to the accused, is due to the accuser."

VJF DOES ITS PART

VJF continues its effort in saving the environment, and your assistance is requested. You may drop off your recyclables at the Anchorage Recycling Center and have the proceeds put on the Victims For Justice account.

Newspapers, cardboard, and aluminium cans all help to clean up the environment and also give us badly needed funds. Last year we received a check for \$90.26 which translates to three rolls of stamps! EVERY LITTLE BIT HELPS!!

VJF NOW REPRESENTS PARENTS OF MURDERED CHILDREN

Victims for Justice has been chosen by the national organization, Parents of Murdered Children to be their contact in Alaska.

Charlotte Robert Hullinger started the first group of Parents of Murdered Children in her kitchen after the murder of her daughter Lisa in 1978. The group has now gained recognition both nationally and internationally and we are honored to be recognized by this important organization.

Parents of Murdered Children is a self help support group which is made up of persons whose loved ones have been murdered. They provide information to victims on the grieving process, the criminal justice system and attempt to increase society's awareness of these problems.

Sharon Nahorny attended training at the Portland Oregon meeting in August of 1992 and we are hoping to be able to conduct a seminar for homicide survivors sometime this fall.

FUR RONDY EVENTS

COOKBOOKS:

Victims for Justice will have a booth at the Sullivan Arena Trade Fair to help in the never ending quest for funding. We will be selling cookbooks and giving out wonderful samples. Follow you nose to the "Poulet Al 'Ail" (garlic chicken) and our booth. Support Victims for Justice and enjoy "French Cuisine Under Pressure".

QUILT RAFFLE:

A wonderful and unique quilt was donated to Victims for Justice by Norma Van Horn. Norma makes beautiful "recycled jean" bed quilts and this one is for a double bed and even has pockets! Norma's son Kurt Gilruth was murdered in 1986 and she made this quilt to help VJF and to honor her son. Proceeds will be used to help those whose lives have been devastated by crime. Tickets are 3 for \$5.00.

WHY JOIN VICTIMS FOR JUSTICE?

It takes more than interest to keep Victims for Justice alive and well. Frankly, it takes money which in these times is getting harder and harder to find. Your \$25.00 membership fee helps us to help others. And as an extra inducement, we are offering a copy of "French Cuisine Under Pressure" cookbook to those who donate \$50 or more to VJF. Your support is needed and appreciated!

- YES I am interested in improving the justice system. Enclosed is my \$25 membership fee.
- YES I wish to make a \$50 donation to Victims for Justice which entitles me to a free copy of "French Cuisine Under Pressure".
- YES I am interested in volunteering. Please call me between the hours of _____

NAME _____ PHONE _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

Please make checks payable to Victims for Justice and include this form when mailing to: Victims for Justice, 613 East 5th Avenue, Anchorage, AK 99501.

According to IRS Code, Section 501 (c) 3, donations are deductible, memberships

In Loving Memory

DONATIONS



Lee Nichols
in loving memory of
his son
PETER DODD
NICHOLS
Kodiak, Alaska

Mavis & Chester
Cone
in loving memory
of their son
CURTIS SHANE
CONE
Kenai, Alaska

Sharon Nahorney and
Janice Lienhart
in loving memory of
Mother, Father,
and Aunt.
TOM & ANN
FACCIO
and
EMELIA ELLJOT
Anchorage, AK

Lou Ann Buchford
Reward Fund for
SHAWNA EVON
Anchorage, AK

Mozellar Hutcherson
in loving memory of
her son
GUS BUMPHRIES
Anchorage, AK

Laura Miller
and
Valerie Lorenz
in loving memory
of
DAMIEN
WHITESIDE
Los Angeles, CA

Cook Inlet Regional
Corporation
Reward Fund for
SHAWNA EVON
Anchorage, AK

Bonnie Smith
in loving memory of
her son
KELLY
VARCE
Tampa, Florida

AITNA, Inc
Reward Fund for
SHAWNA EVON
Anchorage, AK

John & Jane Sedor
in loving memory of
DAVID KERR
Eagle River, AK

AVOIDING THE CLICHES OF GRIEF

So often we have calls from the friends of a homicide survivor asking what to do or say to help. We are bringing as a regular feature helpful hints that we hope will benefit all those whose lives or whose friends lives are touched by tragedy. The following quote is from Erin Lynn's book I Know Just How You Feel... Avoiding the Cliches of Grief.

So often it seems as if there is a blinding determination to make sure that "life goes on" no matter what happens. It is as if we are all actors in the play of life and the "show must go on." But when a loved one dies, bereaved people want the whole world to stop and take notice. Something tragic has happened. The truth is, to most of the world, a loved one's death will go unnoticed. The sun will continue to rise and set and people will go on about their lives. But the bereaved person now feels that they have been set apart from life in general. To deal specifically with the bereaved person's life, you could say, "Life has dealt you a terrible blow. I know it will be hard for you in the months to come to live with this pain." As a consoler, you need to give credence to the seriousness of their tragic loss. Trite statements like, "Life goes on," or "That's life," offer casual, almost flippant, solutions to difficult and devastating problems. "

VOLUNTEERS CORNER

A non-profit organization cannot operate without the time and energy of its many volunteers and we would like take this opportunity to recognize those who have given so much to our cause.

Tracey Lee Hallman, UAA Justice Major is doing her student practicum at our office. Her help is invaluable.

Pat Gallagher works in the office and has the added responsibility of being the Court Watch Assistant Director. Her contributions are greatly appreciated by all.

Kathy Needles had done data entry for us and helped take some of the load off Janice and Sharon.

In honor of all those who have taken the time and effort to give so much, we will be having our Volunteer Luncheon in mid March and will be giving out a "Volunteer of the Year Award" sometime in the near future. Again to all of you:

HEART FELT THANKS

from all of us at VJ

BOMBING TRIAL MOVED TO L.A.

Most of us at VJ have been closely following the progress of the Cheely, Gustafson and Barnett trials that are now taking place in L.A. The victims in the case are both Jeffery Cain, who was murdered in a highway shooting and David Kerr who was killed by a mail bomb attempt directed at his son who was a witness to the Cain shooting. The handling of this case by Judge Fitzgerald has some disturbing implications for the victims families. Once again, the justice system seems to be more concerned with the rights of the accused criminal than with those of the victims.

When a trial is moved so far away from a victim's home town, not only does the family have to carry the often prohibitively expensive cost of staying far from home, but they also do not have their emotional support network available to help them deal with the trauma of reliving the events and circumstances surrounding the death of their loved one.

This issue needs to be addressed and one of the first steps in insuring victims full access to the criminal proceedings that concern them is the ratification of a Victim's Rights Amendment to all state constitutions.

Fortunately, there are other Victim's Rights organizations in L.A. to help the Cain and Kerr families by accompanying them to court, but because they are not as intimate with the details of the crime and not personally known to the families, they are not able to offer the kind of support that friends and other family members could give.

Their dilemma should give all of us the impetus to continue to push for the passage of SJR-2, Alaska's bill to endorse a constitutional amendment outlining Victim's Rights in criminal cases.

Meanwhile, our hearts and our prayers are with both families.

CRIME AND PUNISHMENT



USED BY PERMISSION OF THE COLORADO SPRINGS GAZETTE TELEGRAPH.



Director's Comments by Janice Lienhart

INTRODUCTION by Sharon Nahorny
Janice Lienhart, founding mother of VFJ has been elected as Executive Director once again. Her goals are to keep the heart felt vision of this grass-roots organization in tact and to expand our services to include all those victimized by crime in our community. We welcome Janice back to the front lines of this important battle.

Dear VFJ Supporters,
The Board of Directors has once again appointed me Executive Director of VFJ. I am excited about the job but also a bit overwhelmed by the daunting task ahead. There are many internal issues that must be addressed if we are to be able to survive and grow.
Victims for Justice receives a small grant from the Council on Domestic Violence and to meet those grant requirements, we must expand our services and upgrade our organizational procedures. This entails expanding our database to better track statistic on those we serve, reviewing our policies and procedures manual and getting VFJ in a position to apply for federal, corporate and foundation grants. In order to improve VFJ, and to be able to fully serve our current clients as well as expand

our client base, we MUST have more funding. As a result, I am taking a grant writing class in hopes of relieving some of the financial pressure so that we can concentrate on helping those who so badly need our support.

As always, anyone who can donate time to our restructuring efforts will be welcomed with open arms! We need people with computers at home who can produce flyers, people with ideas for fundraisers, and most of all, people who can come in the office and help man the fort when Sharon and I are either in court or out taking care of the many needs of our clients.

FAREWELLS
Maxine Coppe has left VFJ to complete her Master's Degree. She will be sorely missed and we thank her for her many new ideas and the long hours she has contributed.

Pam Minsch has been our board president for the past year and has served above and beyond the call of duty, helping with the Newsletters and taking on many of the duties of Executive Director. She resigned as of January 1st to complete her Criminal Justice Degree at the University. We thank you Pam, and we will miss you. Good luck in all you do!

VICTIMS FOR JUSTICE
619 East 5th Avenue
Anchorage, AK 99501

Non Profit Org.
U.S. Postage
PAID
Permit No. 130
Anchorage, Ak.

ADDRESS CORRECTION REQUESTED

PERMIT TO DELIVER
MAIL BY FIRST CLASS
POSTOFFICE NO. 99502

HB

98

ALASKA STATE LEGISLATURE

3111 C STREET
ANCHORAGE, ALASKA 99503
(907) 561-2039
FAX: (907) 561-1691

STATE CAPITOL
JUNEAU, ALASKA 99801-1182
(907) 465-3875
FAX: 907-465-2294



MINORITY WHIP
CHAIR
CHILDREN'S CAUCUS
HEALTH, EDUCATION
& SOCIAL SERVICES
STATE AFFAIRS
ECONOMIC TASK
FORCE

REPRESENTATIVE BETTYE DAVIS
DISTRICT 21

MEMORANDUM

APR 8 1993

TO: SENATOR LOREN LEMAN, CHAIR
SENATE STATE AFFAIRS COMMITTEE

FROM: REPRESENTATIVE BETTYE DAVIS BD

DATE: APRIL 8, 1993

RE: SCHEDULING OF HB98

**********/*****

I respectfully request that HB98, " Naming the Black Veterans Recognition Bridge on the Alaska Highway over the Gerstle River" be scheduled at your earliest convenience.

HB98 has received favorable consideration from the Senate Transportation Committee. A quorum of Committee Members signed a "do pass".

I have attached a copy of the Bill, sponsor statement, fiscal note and other pertinent information for your review.

If you have any questions, please feel free to contact me, or Liz Roberts, or Renee Chatman of my staff at X3875. Thank you for your attention to this matter.





Official Business

Alaska State Legislature

House

REPRESENTATIVE BETTYE DAVIS

Pouch V
State Capitol
Juneau, Alaska 99811

SPONSOR STATEMENT

HB 98 - Naming the Black Veterans Recognition Bridge on the Alaska Highway over the Gerstle River.

1992 marked the 50th anniversary of the construction of the Great Alaska Highway, a 1,522 mile-long road from Dawson Creek, British Columbia to Fairbanks, Alaska. Heralded as a near impossible feat, the construction was completed in a record time of eight months and twelve days.

Of the 10,607 soldier who worked on the road, 3,695 were members of the Black Corps of Engineers, a fact not widely known or reported. These men, mostly from the South, toiled under great duress, ill-housing, sub-zero temperatures, insufficient clothing, monotonous food and 20 hour work days.

During the formal dedication of the road, Brig. General James O'Connor, head of the Northwest Service Command, stated:

"Some day, the accomplishments of these colored soldiers -- achievements accomplished far from their homes -- will occupy a major place in the lore of the North Country."

Instead, they were forgotten.

It was just last year that their contributions received state and national recognition. In January, thirteen veterans were reunited in a fun-filled event in Tallahassee, Florida, sponsored by the University of Alaska and Florida A&M University.

In July, Alaska hosted eight of the men during "*Alaska Highway Rendezvous 92.*" In addition to the "Miles and Miles" pictorial at the Anchorage museum, the veterans were honored at parades, picnics, and a host of other events sponsored by local groups, the Great Alaska Highway Society and the Division of Tourism.

The Alaska Highway, rich in historic and scenic sites, is enjoyed by thousands every year. I hope you will join me in honoring the black soldiers who helped to make it possible.

FISCAL NOTE

Revision Date: Department Affected: DOT&PF
 Title: Black Vet's Recognition Bridge, Alaska Hwy BRU: Interior District M&O
 Sponsor: B. Davis Component: Highways & Aviation
 Requestor: B. Davis Component Serial Number: 584

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING:	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE FUND SOURCE	0	0	0	0	0	0
---------------------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

1002 FEDERAL RECEIPTS	0	0	0	0	0	0
1003 GF MATCH	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/PROGRAM RECEIPTS	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL FUNDING:	0	0	0	0	0	0

POSITIONS

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

Estimate of current year (FY93) impact: \$0

ANALYSIS: (Attach a separate page if necessary)

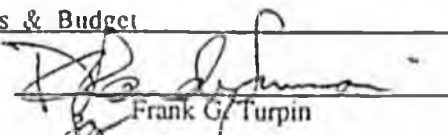
The direct costs of plaque preparation and installation will be absorbed by the Alaska Highway MP 1222 N / Celebration 92 balance.

Prepared by: Dawn Mach

Phone: 465-6987

Division: Plans, Programs & Budget

Date: February 2, 1993

Approved by Commissioner: 
Frank G. Turpin

Phone: 465-3901

Agency: Department of Transportation and Public Facilities

Date: February 2, 1993

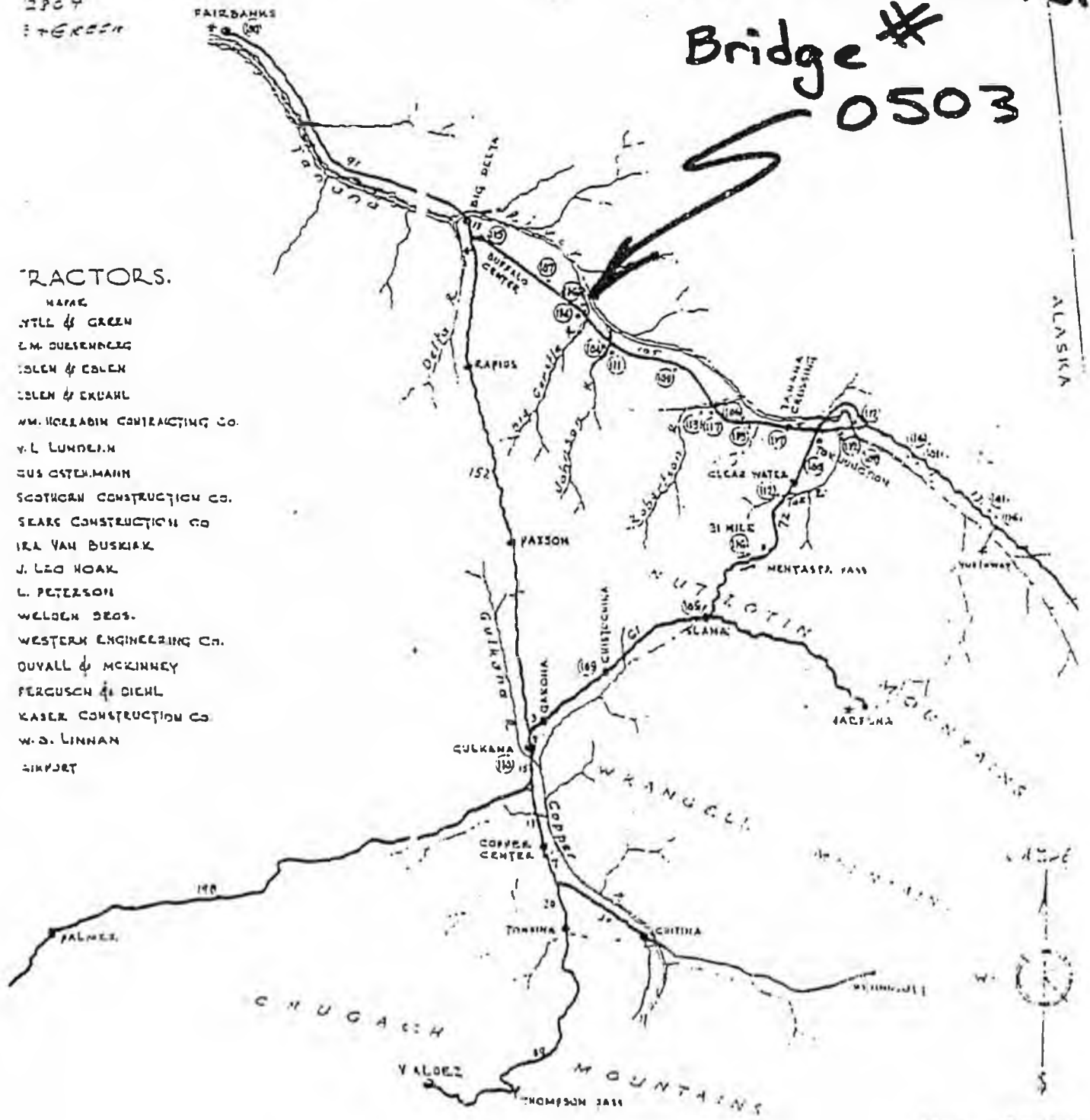
PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information call the Governor's Legislative Office

REF
 V. ST. APPS
 SWR
 2804
 176888

Gerstle River
 Bridge #
 0503

FACTORS.

- NAME
 YLLE & GREEN
 E.M. DUBENECZ
 SOLEN & SOLEN
 SOLEN & ERKAHL
 W.M. HOREADIN CONTRACTING CO.
 V.L. LUNDLUN
 BUS OSTENMAHN
 SCOTHORN CONSTRUCTION CO.
 SEARS CONSTRUCTION CO
 IRA VAN BUSKIAK
 J. LEO HOAK
 L. PETERSON
 WELDEN SEAS.
 WESTERN ENGINEERING CO.
 OUVALL & MCKINNEY
 FERGUSON & DIEHL
 KASER CONSTRUCTION CO
 W.S. LINNAN
 SIMPSET



1943 Map of Construction Camps

Miles and Miles

Honoring Black Veterans Who Built the Alcan Highway



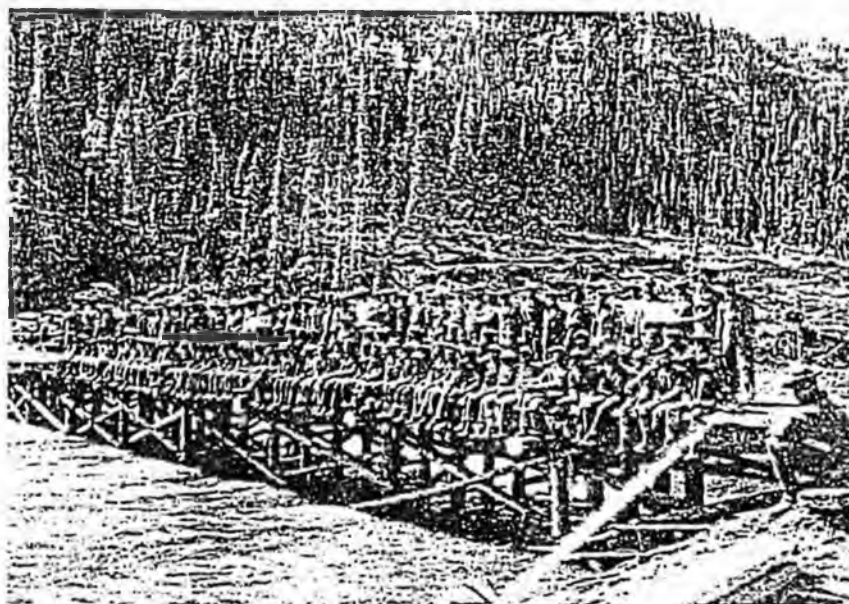
Presented by the
Department of
Journalism and Broadcasting
University of Alaska Fairbanks

at the

The University of Alaska Museum
February 1 — March 15, 1992

Men of the 95th, stationed at the wild Sikanni Chief River, bet their paychecks they could break all records bridging it and won in 84 hours—roughly half the time usually required for bridge construction. It is one of the few original bridges still standing.

Photo courtesy of
Edward G. Carroll



Deep in a stack of dusty 1943 war records is a wistful quote from a Negro soldier who had been asked what working on the Alcan highway was like.

"It's miles and miles of nothing but miles and miles!" he said.

The building of the Alcan (Alaska) Highway during World War II has been likened to the construction of the Panama Canal. Most experts predicted it couldn't be done. The route spanned some of the coldest, toughest, least explored, most dazzling country on the North American continent. Yet the U.S. Army Corps of Engineers pushed through a 1,500-mile pioneer road in just eight months and 12 days.

One third of the 10,607 men who built it were Blacks, originally deemed unfit for the task. Yet despite incredible odds in an harsh and alien land, they more than proved themselves.

Alaska Went to the 97th

The Alaska section of the road was built by the all-Black 97th Division of the Corps of Engineers over the protests of the U.S. Army commander for Alaska, Gen. Simon Bolivar Buckner Jr., son of a Confederate general who had surrendered to Grant.

"Certainly, the Army has a responsibility in not further complicating the population characteristics of the Territory by leaving a trail of new racial mixtures," he argued. And he was placated only by the

Cover: Mired! Engineers muster to help a trucker who failed to pass in a big way.

Photo by Father John Paul Tanguay, Yukon Territory

promise that Black troops would not be allowed near any settlements.

Buckner's objections were echoed by top brass in Washington who worried that Black soldiers would not have suitable intellectual capacity to handle bulldozers. Blacks who had little chance at education were delegated to stateside "housekeeping" assignments until a desperate shortage of manpower caused military planners to chance sending them north for the strategic Alcan mission.

It proved to be a good gamble but the coldest winter in recorded history was a setback. The majority of the men, like Fred Spencer of Snead, Florida, were from the deep south.

"We knew we were going to freeze to death so we took precautions," he recalls with a grin. "Those northern boys thought they could 'bulldoze' the weather so they froze their fingers and their toes and their ears."

A confidential report noted during a field inspection at -63 below the clothing of Delta's Black



This outdoor latrine may not look too plush but it was a luxury compared to early accommodations in the field. It wasn't too bad in summer but picture it in blowing snow at 63° below!

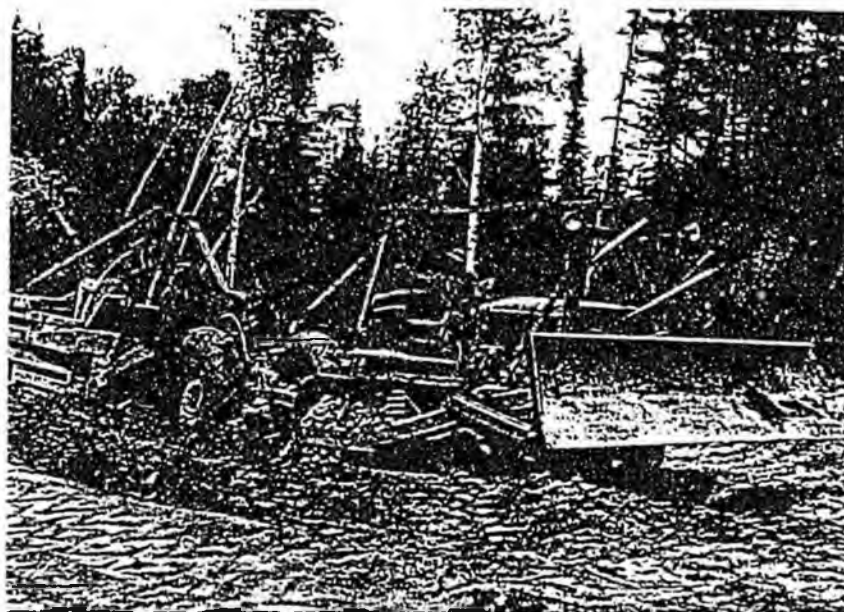
Photo Courtesy of
Howard Garbor

A Pontoon bridge spans the Stikin River at Milepost 119 on July 22, 1942. The Engineers built a total of 133 bridges and 8,000 culverts to complete the highway.

National Archives Photo

Early on, officials debated about whether or not Blacks could be trained to use heavy equipment. Here Corpsmen show the answer is "yes" with a Caterpillar Diesel D7 Tractor and LeTourneau Carryall scraper.

U.S. Army Photo
National Archives



regiment was found to be in "abominable condition."

"The pathetically ill-equipped 97th is doing little else but hibernating at present. It is of great importance, however, to point out that these men are not freezing in unusual numbers," the report concluded.

The warm accommodation of the newly built air base was off limits to Blacks. Most wintered in tents. But the men and their white commanding officers often made good use of off hours for training programs. And, given a break in the weather, these troops made up for lost time.

Walter E. Mason's "A" Company built 295 miles of road through stunted forest from Slana, across the Tanana River, and then south into Canada. And 85 miles of that was corduroy road—some of it five layers deep to counter the permafrost.

"We made about five miles a day; had to move camp every two or three days," the Virginia engineer recalls. "Ours was the first Cat (bulldozer) to cross the border and everybody climbed on. We were supposed to meet the (all white) 18th coming up from the south. When they didn't show up, we kept on going."

Like many other companies, Mason's men went

for long periods without leave, mail or fresh food, but there were few complaints.

"The morale was good as every man accepted the conditions and lived with them," agrees Howard Garber who headed Company "E" of Alaska's 97th Second Battalion. "Our men's work effectiveness was very good considering that during the summer they worked seven days per week and almost 24 hours a day."

The 95th, 94th, 93rd and 388th also Mustered

Other Black regiments—the 95th, 94th, 93rd and 388th—moving north from Dawson Creek also made good showings. The 95th, stationed at wild Sikanni Chief River, bet their paychecks they could break all records bridging it and won in 84 hours—roughly half the time usually required for bridge construction.

Many like Joseph Prejean of Lafayette, Louisiana, were highly motivated. Prejean made good money in the endless rounds of crap games that kept Alcan troops from boredom in off hours. Learning to read from a buddy who was going with a school teacher, he got through Army cooking school and went on to become a highly paid chef in civilian life.



An *ice bridge* fails big time near Ft. St. John. Engineers would replace it with a pontoon structure after spring breakup, but the in-between season was rough trucking.

Photo courtesy
Ft. St. John—North Peace
Museum Archives



U.S. Army commander for Alaska, Gen. Simon Bolivar Buckner Jr., son of a Confederate general who had surrendered to Grant, was not pleased to learn Black troops would be sent to Alaska. Because of his protests, Blacks were generally not allowed near towns or villages.

Painting by
Lt. William Cummings
Alaska 1944.

His parents had worked as tenant farmers for 21 years and Prejean recalls that their landlord tried to scare him out of enlisting, warning he'd be killed.

"I told him I just couldn't make it on \$1.50 a week," the tall well-spoken restaurateur recounts gleefully. "When I got home, I had all that money in the bank and he was dead."

When Herbert Tucker, Washington, D. C., narrowly missed passing an entrance exam for officer's training in the spring of 1942, he found himself crossing the Peace River on an ice bridge with the 95th and lasted until October when he recalls the mercury suddenly plunged to -50 below.

"If I have to pass that test to get out of here, that's what I'm going to do," he declared on the spot, and the next week he was on his way south to become a career officer.

Our Men Proved Themselves

The Alcan assignment offered unprecedented opportunity for many Blacks who, for the first time, received the same pay and benefits as white workers, notes the Rev. Edward G. Carroll, a graduate of Columbia University and Yale Divinity School, recently retired as bishop of the Methodist Church for New England.

"Yes, there were discrimination problems," he concedes. As one of few Blacks allowed officer status by virtue of his calling, he sometimes felt the brunt of it.

"They said we didn't have the mentality to deal with heavy equipment. The race you don't know is the race you suspect, but our men proved themselves."

During the formal dedication of the road, Brig. Gen. James A. O'Conner, head of the Northwest Service Command, singled out the Black troops for special recognition.

"Some day the accomplishment of these colored soldiers—achievements accomplished far from their homes—will occupy a major place in the lore of the North country," he promised.

Instead they were forgotten. When the Alcan was completed, the Black engineers were sent to

active duty in the South Pacific, Europe and Burma, reversing an earlier pronouncement that they would be unfit for battle. Many were decorated. Ultimately, after Blacks performed with valor and skill under fire, the military became the first agency in America to integrate. But the only tangible tribute to the Black builders of the Alcan is the remarkable road they left behind them...still in use and our sole land link to Alaska after 50 years.

Lael Morgan
Guest Curator



Corps of Engineers camp on the shore of Kluane Lake. This photo was taken in the early morning when trucks lined up to take troops to work. Note logs in foreground used to build "corduroy road" over permafrost.

National Archives Photo

Carolyn White
907 (353-5414) home
306-7604 duty

Black vets honored in parade, exhibit

By KELLY SHEETS
Daily News staff

Nehemiah Atkinson of Louisiana was inducted into the Army in 1942. After eight months of medical school, he was sent to Alaska to join the all-black 97th Division of the Corps of Engineers, which was constructing the Alcan Highway.

"We worked more than 10 hours a day," he said. "But I don't have to do much, because everybody was healthy. There were a few accidents with the heavy equipment, but Alaska was so healthy that if you got a flu on you, it would be gone the next day."

One-third of the 10,607 men working on the project were black. The Alaska section of the road was built by the 97th Division over the protests of the U.S. Army Commander for Alaska, Gen. Simon Bolivar Buckner Jr. Buckner didn't think black soldiers were intelligent enough to handle bulldozers. He was proved quite wrong.

In one of the most outstanding accomplishments during the building of the Alcan, the 95th, stationed at the wild Sikanli Chief River, bet their paychecks they could break all records rigging it, and they won in 48 hours — roughly half the time usually required for the construction. The bridge is one of the few original Alcan bridges still standing.

During the formal dedication of the road, Brig. Gen. James A. O'Conner, head of



University of Alaska Fairbanks
Corps of Engineers veterans gather for a 50th anniversary reunion in Florida. They are, back row, from left: Donald Norland Sr., Walter Dudrow, Albert Franca, Irving Smith, Alexander Powell. Front row: Reginald Beverly, Frank Brehon, Willie Richardson, Richard Trent, Bishop Edward Carroll, Nehemiah Atkinson.

the Northwest Service Command, singled out the black troops for special recognition.

But other than O'Conner's commendation, the black troops — the 97th in Alaska and the 93rd, 95th and 388th in Canada — were forgotten. Most literature about the highway overlooked their significant contribution.

Frank Brehon of Florida joined the 388th at age 18. He said the hardest part of the job was the cold. The winter of '42-'43 was the worst on record at that time. Temperatures hovered at 50 degrees below zero for weeks, and the temperature

dropped into the minus 60s and 70s a few times. The troops were issued inadequate leather boots and cumbersome mittens to work in, Brehon said, and had virtually no fresh food for months. They slept in tents.

Working in the summer was equally hard, Brehon said: "It was light out for so long that they made us work 12 hours or more hours a day," he said, often "in mud over our ankles. Sometimes it was almost up to our knees."

It was 72 degrees below zero when Nehemiah Atkinson left Alaska. He was then

sent to New Guinea, where the temperature was 120 degrees — a difference of almost 200 degrees. He hasn't been to Alaska since working on the Alcan, but he, Brehon and eight other black veterans have returned to take part in today's Fourth of July parade. They will also attend a reunion reception at 7 p.m. at the Anchorage Museum of History and Art, where a photo exhibition titled "Miles and Miles: Honoring Black Veterans Who Built the Alcan Highway" will be on display all summer. The public is invited to the reception.

HB

117

HB117
Rep. Curt Menard
2/20/93

HOUSE BILL NO. 117
Representative Curt Menard

SPONSOR'S STATEMENT

I introduced HB117, naming bridge #1030, located at Schrock Rd. over the Little Su River, after Manvil Olson. Mr. Olson spent many years constructing bridges at this same area in order for people to gain access to the end of Schrock Rd.

When people in the Schrock area are giving others directions they always refer to this river crossing as, "the Manvil Olson bridge". Many of my constituents and others in the community have put together a petition requesting the bridge be named after Mr. Olson.

Enclosed is a brief history of Mr. Olson's accomplishments. After reading it, I'm sure you will agree with my constituents that it is only fitting that this new bridge be named after Manvil Olson. He has demonstrated and captures the true spirit of an Alaskan pioneer.

HISTORY

MANVIL H. OLSON

Manvil Olson was born January 19, 1908, in Bird Island, Minnesota. He was among the first civilian travelers on the Alcan Highway, moving to Alaska with his wife and daughter in 1947. The family first settled in Haines, where he operated a garage.

In 1949, the Olsons moved to Skagway, where he became a machinist on the White Pass and Yukon Railroad. The family moved to Anchorage in 1951, where Manvil became a machinist on the Alaska Railroad.

In 1953, he lived on a homestead near Wasilla, six miles off the end of the nearest road. He and his family developed the homestead over the next several years. He opened and operated a commercial dairy farm from 1959 until 1964. The farm still produces hay and beef. During the homesteading period, Mr. Olson also worked full time on the railroad and after leaving the railroad worked at the Fort Richardson Motor Pool. He continued to work on the homestead evenings and weekends. He also did custom machine and equipment work for his neighbors.

In 1978, he drew a tract of land in the Delta Barley Project. At the age of 70, he began developing the parcel with his sons, eventually clearing and planting 2,400 acres of land. The farm, known as Big G Ranch, which is now owned by the family is still in operation.

Mr. Olson was a strong advocate of agriculture development and its potential in Alaska. He founded one farm on the family homestead north of Wasilla, where he cleared the land. In order to develop the area and continue his operation, he built four vehicle bridges over the little Su River, using three different designs. At the time of his death he was involved in managing a purebred herd of Scottish Highland beef cattle in Wasilla.

Mr. Olson's drive for great projects did not end with statehood and he remained committed to agricultural development in Alaska all of his life.

Mr. Olson is survived by his wife of 48 years, Beulah Weedon Olson; his daughter, Karen Olson Lee of Anchorage; his sons, Harold and Arnold of Wasilla; and his four grandchildren.

11/18/92

Page 1

We the UnderSigned petitioners
of Schrock Road and Surround
area Request the appropriate
naming of the New Bridge Be
The
manud Olson Bridge.

Betty Jean Bosch - 746-4007

Tim Reed - 373-5457

Ray Reed 373-5457

Dennis R. Caswell 376-2335

Dog Washburn 376 6431

Ed A W Edward T Wooley 373-7506

Theresa Burton 373-4506

Laketta Caswell 376-2335

Carl Wilbur 376-5623

Marcella Wilbur 376-5623

Ed E Wooley 373-0527

Betty Wooley 373-0527

Wm L Pena 376-8635

Jerry Debra 373 5794

Mrs Miller 892-7887

Andrew Scharber 373-5794

Susan Zipp 373-2822

Ben Baldwin 376-2080

Glen Butts Mes. = 376-0549

Jess on Rose 376 4676

Mathew M. Bush "

FRANK BUSH 376 5722

J Marguerite Colvin

Roxanne Willard 373-6918

Tom Darby 376-2647

Richard Berk

..... 376-2000

Angela Buson

N/A

Kenneth Jenks

(Nancy HETTER)
(Randy Rindall)

Debra Snelling

Harold Pratt

Joel Smith

Shelia D. Smith

Rozannak Smith

Shelia D. Hess

James S. Helminich

Debra Helminich

Bob K. ...

Marjorie

Carol Gray

373-2991

Jim S. ...

W. Fitzgerald

376-5837

William Smith

Joyce Fitzgibbon

Jimmy L. Brown 746-4007

Timothy S. Thompson " "

Arnold Olson 373-1794

Samuel OLSON 373-11

Jason G. Brown

Dana L. Richards

Harold J. Olson 373-1092

Onaive Rich (Kusan)

John PEGER

Beverly W. Olson 376-5771

Craig Turner 376-1004

Ray Adrester 746-2774

Jesse Spray	746-1090
Jim Spray	^h ^h ^h ⁱ
Troy Weers	376-1004
Andy Hunter	376-7608
Ernie	376-929
Ann Jobi	376-6979
Carolyn Bush	376-5722
Randa Sawley	376-2647
Callie Willard	376-2647
Fritz Slater	376-5666
Lois Wier	376-7510
John A. Antone	376-5527
Mae Antone	376-5527
Harry Antone	376-5527
Christie D. Worwin	373-0597
Michael J. Willhit	373-1795
Timothy W. Willhit	373-1795

Bridge No. 1030

Location: on the little Susitna River
at the end of the Schrock Rd.

I am requesting that the above bridge
be dedicated in memory of my father
Manvil N. Olson, recently deceased, July 13, 1992.

He has a long history in this area, one that
predates statehood. He homesteaded north of
the little Su 1/4 mile north of the end of the
Schrock Rd in 1953.

Our original access to the homestead
was where the present day North Shushana Road is.

He built a bridge there in 1954, actually just
down stream, where the current Shushana bridge
is, was our ford.

In 1955 the Federal Road Commission
extended the Schrock Rd. Three miles ~~down stream~~
west, to where it ends to this day.

He worked on that road extension operating a
dozer.

That same year he built a bridge over the
little Su and a new road to the homestead
from the end of Schrock Rd.

During the time from 1954 - 1958 he cleared
land on the homestead and land for many other
homesteaders within the area, a lot of this was
later rented and used for the dairy that was
started in 1957. For the first year of the
dairy operation milk was hauled in ten gallon
cans to a dairy owned and operated by Pat (Arney),
another individual who embodied the true definition of the

LEGAL
3-18
18021W

homestead act, to Farm.

The reason the milk was delivered to the CARNEU FARM WAS ^{that} the milk truck would not cross the bridge, a gross weight question. (late 57) => In 1958 he built a cantilever suspension bridge over the little su, this piece of artistic engineering. The milk truck crossed.

In 1959 we had our 100 yr. flood and the bridge floated down stream like a big ship.

During this time, with water three feet deep in the river bottom flats, he rowed the milk to the south side in ten gallon cans and hauled them to the CARNEU FARM.

When the water went down the Corps of Engineers put in a ferry; however, the milk truck would not cross this.

During the summer of 1959 he ~~re~~ built a new bridge over the river this time with a center pier. In 1960, ^{or late 1959,} the Corps of Engineers, (or late 1959) built us a Bailed bridge.

My father was a major bridge builder in the '20s before statehood. He, to my knowledge ~~was~~ built the only suspension bridge over the little su. The close proximity of the homestead,

the incredible energy expended in the development of the area.

The operation of a business, his commitment to Alaska.

He built four vehicle bridges over the little su of three different designs.

His drive for great projects did not end with statehood as he remained committed to agriculture and development in Alaska all of his life. This new bridge is a fitting memorial to my father. Thank you Harold Olson

MANVIL H. OLSON

Wasilla resident Manvil Harold Olson, 84, died July 13 at his Little Susitna River home.

A funeral will be held at 2 p.m. Friday at First Presbyterian Church of Wasilla, 1375 E. Boggard Road.



Mr. Olson Olson was born Jan. 19, 1908, in Bird Island, Minn. He spent the first 18 years of his life on a farm in the Mille Lacs area of Minnesota. He left the farm after high school and moved to Chicago where he became a machinist and tool and dye maker. He was a member of the Machinists Union International.

Mr. Olson enlisted in the Navy during World War II, serving on a destroyer in the Pacific and Atlantic theaters. He married Beulah Weedon Nov. 13, 1944, in Virginia. He was among the first civilian travelers on the Alcan Highway, moving to Alaska with his wife and daughter in 1947. The family first settled in Haines, where he operated a garage.

In 1949, the Olsons moved to Skagway, where he became a machinist on the White Pass and Yukon Railroad. The family moved to Anchorage in 1951. Mr. Olson became a machinist on the Alaska Railroad.

In 1953, he lived on a homestead near Wasilla, six miles off the end of the nearest road. He and his family developed the homestead over the next several years. A commercial dairy farm was opened in 1959 and operated until 1964. The farm still produces hay and beef.

During the homesteading period, Mr. Olson also worked on the railroad and at the Fort Richardson Motor Pool. He did custom machine and equipment work for his neighbors.

In 1978, he drew a tract of land in the Delta Barley Project. At the age of 70, he began developing the parcel with his sons, eventually

clearing and planting 2,400 acres of land. The farm, known as Big G Ranch, was successfully completed and is still in operation.

According to his family, Mr. Olson was a strong advocate of agriculture development and its potential in Alaska. He founded one

farm on the family homestead north of Wasilla and another at Delta. At the time of his death, he was involved in managing a purebred herd of Scottish Highland beef cattle in Wasilla.

Mr. Olson is survived by his wife of 48 years, Beulah

Weedon Olson of the family farm; his daughter, Karen Olson Lee of Anchorage; his sons, Harold and Arnold of Wasilla; his grandchildren, Leighton and Conan Lee of Palmer and Anchorage, and John Olsen and Stanley Olson, both of Wasilla; his niece, Louise Augustsson of

Anchorage; his nephew, Wayne Lofgren of Anchorage; his brother, Otto of Missouri; and his sisters, Vicki MacClean and Florence Haglund, both of Minnesota, and Lorraine Veith of Dallas.

Arrangements were by Kehl's Palmer Mortuary.

HEB

148




UNIVERSITY OF ALASKA
Office of the General Counsel
203 Butrovich Building
Fairbanks, Alaska 99775-5320
Office: (907) 474-7259
FAX: (907) 474-5574

Fairbanks
William R. Kauffman
Vice President and General Counsel
J. Mark Neumayr
Associate General Counsel

Anchorage
Jean S. Sagan
Associate General Counsel

TO: Representative Gene Therriault

FROM: William R. Kauffman, Vice President and General Counsel 

DATE: March 8, 1993

RE: Applicability of the Adjudication Provisions of the Administrative Procedures Act, AS 44.62.330 - 44.62.630, to the University of Alaska

This memorandum provides a synopsis of the history associated with the University's inclusion in the administrative adjudication provisions of the Administrative Procedures Act, AS 44.62.330 - 44.62.630 and the effects of that inclusion on University operations. I believe it will become clear why the passage of HB 148 is so crucial to the effective management of the University.

The University was included in the Administrative Procedures Act (APA) in 1977 at a time when the University was facing intense legislative criticism for its' inability to adequately account for its funds. The same bill included the University in the Fiscal Procedures Act provisions of AS 37.05 and the Executive Budget Act provisions of AS 37.07. The legislation provided that the administrative adjudication procedures would be applicable to the University of Alaska "except to the extent that its inclusion is inconsistent with the provisions of AS 14.40.", the statutes defining the authority and responsibilities of the Board of Regents and the president of the University of Alaska. The legislative record indicates little interest in the APA's applicability but instead reflects legislative interest in the fiscal regulations. In a memorandum to Senator Sackett responding to the Senator's request for a draft bill that was to become SB 261, Billy G. Berrier, Director of the Legal Services Division, explained to Senator Sackett:

As you have requested, we have drawn an act relating to accounting and fiscal matters of the University of Alaska which has the effect of providing that the accounting for the University will be done by the Department of Administration and that all of the fiscal controls applicable to any other unit of government are applicable to the university.

As you have instructed, this bill does not impair in any way the management function of the university, except in the area of fiscal controls. This would not, for example, in any way infringe upon the powers of the board of regents in academic matters, in matters relating to selection, retention or dismissal of faculty and other employees, in matters relating to admission of students, or curriculum or in matters relating to management of university property, except of course, as limited by amounts appropriated and available for expenditure.

Thus, it was never Senator Sackett's intent, in proposing Senate Bill 261 in the first instance, to intrude into the internal management of the University in any way other than in fiscal controls.

When SB 261 was first discussed on April 13, 1977, Senator Holman, then chair of the Legislative Budget and Audit Committee, spoke almost entirely about the financial problems of the University and the need for legislation to require the University to conform to accounting and budgetary practices of those of other state agencies. As the bill was discussed during committee hearings and floor sessions, the record indicates considerable concern that there be no interference with the Board's power to manage and govern the internal affairs of the University. As you will see below, however, the legislative history and intent were not considered relevant by the Supreme Court. The court's decision, put simply, is that because the University is not specifically excluded from the adjudication provisions of the APA, their internal review procedures must comply with the adjudication provisions set out in the APA. The effect of this ruling has been to dismantle the internal peer-review grievance procedures that have been in place at the University for decades and to require the implementation of costly and cumbersome procedures requiring the use of expensive outside hearing officers, and a complex hearing process that was never intended for employee or student grievances.

In reviewing the adjudication provisions of the APA (Attachment #1), it is noteworthy that those agencies to which the adjudication provisions are applicable by provision of AS 44.62.330, 27 are essentially occupational licensing entities. Seven relate to what I characterize as health and safety issues such as the "Department of Health and Social Services, under AS 47.35, relating to Boarding and Foster Homes for Children" (AS 44.62.330(a)(24)) and seven other entities such as the Alaska Public Offices Commission (AS 44.62.330(a)(39)), and the Department of Transportation and Public Facilities "as to functions relating to aeronautics and communications" (AS 44.62.330(a)(16)). The last category also includes the University of Alaska in the global manner referenced at the outset. Frankly, I can find no application of the administrative adjudication procedures to any other entity with the same breadth as the university's provision.

It was not until 1987 that the University was first viewed by a court to fall within the administrative adjudication provisions of the Administrative Procedures Act. In the case of *Aden v. University of Alaska*, Third Judicial District Superior Court Judge Douglas J. Serdahely ordered the University to grant a faculty member whose contract had not been renewed a grievance hearing under procedures modified to comport with the elements of the APA. Please note the issue before Judge Serdahely was the decision of the University to not reappoint a person whose appointment with the University had expired. It was not a case of terminating or firing someone in the middle of an appointment or in breaking tenure. Instead, it was for a person who basically had no vested property right in continued employment. As a result of the decision, a modified APA hearing was held and the hearing panel found against Ms. Aden. She appealed to the superior court and the appeal was dismissed on December 15, 1989. The cost to the University for the APA hearing was approximately \$44,000 for the University's attorney and the hearing officer. Despite Judge Serdahely's decision, the University continued to use its established grievance procedure for the resolution of disputes in all other cases.

Subsequently, as a result of the restructuring of the University, two ACCFT union leaders filed a grievance in 1987 contesting the academic rank and tenure status of approximately 130 persons who received transfer opportunities to the restructured University of Alaska.

As a part of their grievance, they asserted the applicability of the APA to the university's grievance procedure. This matter was litigated initially in the superior court in Anchorage. While Judge Brian Shortell was first inclined to rule for Messrs. McGrath and Mohr, Judge Shortell was convinced by the university's review of the legislative history as researched by Juneau attorneys Avrum Gross and Susan Burke that the legislature did not intend for the provision to be applicable to the University in the manner suggested by the plaintiffs. Hence, the superior court granted the university's motion for summary judgment. On June 21, 1991, the Alaska Supreme Court reversed Judge Shortell in the case of *McGrath and Mohr v. University of Alaska* (Attachment #2). Notwithstanding the legislative history, the arguments of the University that such a procedure is inconsistent with the Board of Regents' independent authority to manage and govern the internal affairs of the University and the President's statutory authority with respect to employees, the court concluded that it found nothing in the provisions of AS 14.40 which are inconsistent with the application of the adjudicative procedures. The University also argued that neither state employees in the non-exempt service nor state employees covered by the Public Employment Relations Act are covered by the APA procedures for grievances, and therefore suggested that the legislature intended University employees to have the same rights as state and other public employees in personnel matters. The court, however, concluded that University employees are exempt from the State Personnel Act under AS 39.25.110(5). In conclusion, the court quoted with favor Judge Serdahely's decision in *Aden* when he said "[u]ltimately, if Defendant seeks to be exempted from the workings of the APA, it must seek such remedy from the Legislature, not this Court." As a result of the *McGrath* decision, the University of Alaska on September 10, 1991, amended its grievance procedure to incorporate the administrative adjudication procedures of the APA. Since that time, the University has concluded one hearing concerning the decision to not grant tenure, settled one academic promotion case, has two promotion cases pending, held one hearing on a nonretention, and has approximately seven other pending matters involving the APA hearing procedures. Curiously enough, the grievance that gave rise to the case was withdrawn by Messrs. McGrath and Mohr after the University reached a collective bargaining agreement with the Alaska Community Colleges Federation of Teachers, AFL-CIO, of which McGrath and Mohr are officers.

The application of the administrative adjudication provisions has now taken another turn. At the conclusion of the 1991-92 academic year, administration officials at the University of Alaska Anchorage had concerns about the conduct of faculty member Rose Odum. The dean advised Dr. Odum that her conduct was unprofessional and could result in her termination. A hearing was held before a panel of faculty and administrators to determine what, if any, action should be taken with respect to Dr. Odum. Dr. Odum appeared and was assisted, but not represented by counsel, in a proceeding which lasted over two days and included approximately 18 hours of testimony. The committee made a number of findings that Dr. Odum had engaged in unprofessional conduct and recommended that a letter of reprimand be placed in Dr. Odum's personnel file and that a plan of remediation be formulated. The dean, however, on receiving the recommendations of the committee, determined that Dr. Odum should be terminated. Subsequently, Ms. Odum sought a preliminary injunction against the termination in the superior court. The university contended that Ms. Odum was obligated to exhaust her administrative remedy which included an opportunity for a grievance hearing incorporating the administrative adjudication provisions of the APA in the university's grievance procedure. Ms. Odum, however, contended that procedure must be afforded before the termination decision. After the superior court denied the motion for the injunction, Dr. Odum petitioned the supreme court for review. The Alaska Supreme Court accepted the appeal on the question of

whether there is a right under the Alaska Constitution to have representation by counsel in a pre-termination hearing and whether the administrative adjudication provisions of the APA must be afforded at the pre-termination hearing level, as opposed to a post-termination proceeding. On January 29, 1993, the supreme court answered the second question in the affirmative (Attachment #3)..

The significance of *Odum* is that the court has interpreted AS 44.62.360 as requiring a hearing *before* the termination even if provision is made for the same process *after* the termination. When this application is then read in light of the language of AS 44.62.360, the true magnitude of the problem comes into light: an APA hearing is required before any action is taken to, paraphrasing the statute, revoke, suspend, limit or condition a "right, authority, license or privilege." An APA hearing is required before the University can "limit or condition" a "privilege." It is that simple.

One point that is absolutely critical to remember in the consideration of the applicability of the APA to the University is that this is not a question of denial of an individual's right to due process under the United States or the Alaska Constitutions. Those rights are guaranteed by those documents and I am confident that the University's procedures, absent the APA's adjudication provisions, meet all constitutional requirements for due process. Those rights are secured and the University faces liability for failing to afford those protected rights. Of course, please also remember that "due process" does not describe some fixed bundle of rights. Instead, it is simply that process which is due under the circumstances when the various interests are considered. Hence, all other things being equal, there is more process due in the case of the termination of a person for cause and in the case of putting a student on disciplinary probation. Instead, the APA is a statutory definition of the process which is due with no distinction whatsoever from top to bottom.

During the 1992 legislative session, bills were introduced in each house of the Alaska Legislature to exempt the University of Alaska from the administrative adjudication procedures of the Alaska Administrative Procedures Act. Those measures, in the form of HB 549 and SB 441, were not passed during the last session, largely because of the pressure exerted by the Alaska Community Colleges' Federation of Teachers and the AFL/CIO to block any University legislative initiatives until such time as a resolution of labor disputes was reached with the ACCFT. That resolution has now been achieved and the ACCFT has indicated no objection to the legislation.

The ability of the University of Alaska to make decisions concerning its internal affairs in a timely fashion is critical to the successful operation of this enterprise. The University is bound by the United States and Alaska Constitutions to provide due process. The administrative adjudication provisions of the APA were not intended to affect the University's operations. They have: drastically. The supreme court on two occasions has said that relief must come from the legislature. I seek your support in this effort to secure that relief.

Alaska State Legislature

REPRESENTATIVE
GENE THERRIAULT
P.O. Box 55326
North Pole, Alaska 99705
(907) 488-0862



White in Juneau
State Capitol
Juneau, Alaska
99801-1182
(907) 465-4797

House District 33

House Of Representatives

M E M O R A N D U M

TO: Senator Loren Leman
Chair, Senate State Affairs Committee

FROM: Representative Gene Therriault *G.T.*

DATE: April 19, 1993

RE: Scheduling of HB 148

I would like to request that HB 148, "An Act exempting the University of Alaska from the administrative adjudication provisions of the Administrative Procedure Act; and providing for an effective date" be scheduled for a hearing before the Senate State Affairs Committee.

The adjudication provisions of the administrative procedure act were not designed for employee or student grievances. They were established for citizens with grievances against the state boards and commissions. Traditionally, employee and student grievance procedures are built around a process that involves review by peer committees with several levels of appeal available.

The majority of University grievances are resolved with little or no expense at an early stage or review. This peer-review process characterizes the approach found in the university settings, and has proven to be a successful model at the University of Alaska for many decades. The procedure outlined in the APA would result in an extraordinary expense. The APA process requires that an outside hearing officer be assigned, at University expense, to hear any and all grievances that employees or students may choose to bring forward. The University should be treated like all other agencies and employers in the state and should be allowed to provide internal grievance processes subject to the due process provisions of the state and federal constitutions.

UNIVERSITY OF ALASKA

TO: Senator Loren Leman
Chairman, Senate State Affairs Committee

FROM: Wendy Redman, Vice President *WR*

DATE: April 19, 1993

RE: HB 148 - Letter of Intent

I appreciate your willingness to work with me and the representatives of the UAS Classified Advisory Committee in writing a letter of intent that addressed their concerns regarding the need for an interim grievance policy. In our haste, however, the HESS letter of intent was not well written in terms of how actions become policy with the Board of Regents, and I am asking that you accept the attached as a substitute. I have discussed this with the UAS representatives and they agree to the changes. The changes are not substantive in terms of what the HESS committee and the UAS employees desired, but more clearly reflect that the Board adopts policy with the advice and recommendation of the General Assembly.

The changes are shown below, and a revised copy is attached for State Affairs Committee approval.

It is the intent of the Senate State Affairs Committee that upon passage of HB 148 the University put into place the draft grievance policy distributed to employees for review on March 22, 1993. It is the understanding of the legislature that this policy will be used as an interim policy only until the University of Alaska ~~General Assembly and the Board of Regents, with advice and recommendations of the University of Alaska General Assembly, adopts, a formally and jointly agree to a~~ successor grievance policy.

It is further the intent of the legislature that the University of Alaska ~~General Assembly and the~~ Board of Regents reach final approval of a successor grievance policy by June 15, 1993.

cc: Rep. Gene Therriau

—
LETTER OF INTENT
—



Official Business

Alaska State Legislature

SENATE STATE AFFAIRS COMMITTEE

State Capitol
Juneau, AK 99801-1182

Letter of Intent For House Bill 148

It is the intent of the Senate State Affairs Committee that upon passage of HB 148, the University implement the draft grievance policy distributed to employees for review on March 22, 1993. It is the understanding of the Legislature that this policy will be used as an interim policy only until the University of Alaska Board of Regents, with the advice and recommendations from the University of Alaska General Assembly, adopts a successor grievance policy.

It is further the intent of the Legislature that the University of Alaska Board of Regents reach final approval of a successor policy by June 13, 1993.

A handwritten signature in cursive script that reads "Loren A. Lemman".

Senator Loren Lemman, Chairman
State Affairs Committee

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB148

Revision Date:
Title: An Act Exempting U of A from the Administrative Procedure Act.

Department Affected: University of Alaska
BRU: All
Component: All

Sponsor: Representative Therriault
Requestor: University of Alaska

COMPONENT SERIAL NO.

EXPENDITURES/REVENUES (Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

REVENUE FD SOURCE						
-------------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL FUNDING	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:						
FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

There is no cost associated with the passage of this legislation. However, if this legislation fails to pass, the costs to the University to administer faculty/staff and student grievances, could add tens of thousands of dollars in litigation costs each year.

Prepared by: Marsha Hubbard, Director
Division: Statewide Budget Office

Phone: 474-7593
Date: 3/8/93

Approved by: Brian Rogers, Vice President for Finance
Agency: University of Alaska

Date: 3/8/93

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

University of Alaska

Statewide System

HB 148 Exempt UA Grievance from APA

In June 1991, the Alaska Supreme Court overturned a Superior Court decision and found that because the University of Alaska was not specifically excluded from the adjudication procedures of the Alaska Administrative Procedures Act (APA), it must implement grievance procedures pursuant to APA, or "...seek a remedy from the legislature."

The APA adjudication procedures apply to boards and commissions listed in Sec. 44.62.330, in third party actions dealing with the granting or denying "...a right, authority, license, or privilege..." For instance, when an individual is denied a real estate license, that person is entitled to a hearing before the Real Estate Commission through the process outlined in this statute. The quasi-judicial proceedings included in the APA are not intended for employee or student grievances, but rather for what are essentially licensing decisions and disputes involving state boards and commissions.

The University was included in the APA in 1977 at a time when the University was facing intense legislative criticism for its inability to adequately account for its funds. The same bill included the University in the Fiscal Procedures Act provisions of AS 37.05 and the Executive Budget Act provisions of AS 37.07. The legislation stated that the administrative adjudication procedures would be applicable to the University of Alaska, "except to the extent that its inclusion is inconsistent with the provisions of AS 14.40.", the statutes defining the authority and responsibilities of the Board of Regents and the president of the University of Alaska.

The record shows that legislators felt the constitutional and statutory provisions were sufficient to assure that the Board of Regents would retain their authority to manage all internal functions of the University, and this new legislation would effect only the fiscal management and accounta-

contact: Wendy Redman
UA Statewide System
3-3086/474-7582

Notice: This is subject to formal correction before publication in the Pacific Reporter. Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, in order that corrections may be made prior to permanent publication.

THE SUPREME COURT OF THE STATE OF ALASKA

RALPH McGRATH and)	
DON MOHR,)	
	)	Supreme Court No. S-3418
Appellants,)	
	)	Superior Court No.
v.	)	3AN-S88-08936 Civil
)	
UNIVERSITY OF ALASKA,	)	<u>O P I N I O N</u>
)	
Appellee.	)	[No. 3708 - Jun 21, 1991]

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Brian C. Shortell, Judge.

Appearances: Robert A. Royce, Jermain, Dunnagan & Owens, Anchorage for Appellants. Thomas P. Owens, Jr. and C. Ann Courtney, Owens & Turner, P.C., Anchorage, William R. Kauffman, Fairbanks, for Appellee.

Before: Rabinowitz, Chief Justice, Burke, Matthews, Compton and Moore, Justices.

RABINOWITZ, Chief Justice.

I. FACTS AND PROCEEDINGS

The University of Alaska ("University") is a statewide institution which operates both four-year universities and community colleges. In 1987, the University undertook a

system-wide restructuring and eliminated the separate administration of the community colleges. Previously, the faculty at the community colleges had been represented by the Alaska Community Colleges' Federation of Teachers, Local 2404, and covered by a collective bargaining agreement. This agreement had no rank or tenure provisions. After the restructuring, the community colleges' faculty was offered an opportunity to transfer to the combined faculty of the University of Alaska. In the combined faculty, the community college faculty would not have union representation and the employees would be subject to the same rank and tenure system as their colleagues at the University of Alaska.

All members of the community colleges' faculty were offered an opportunity to transfer to the combined faculty, and all but one accepted. The University's Board of Regents adopted a policy "to provide the guidelines for faculty appointment, tenure, academic ranks, and salary for faculty in the transition." The policy provided that former full-time community college faculty with seven full years of service were eligible to receive tenure; those with four to six years were eligible to receive two-year contracts; and those with fewer years of service were eligible to receive one-year contracts. No former community college faculty member was offered a full-professorship; the highest rank offered was associate professor.

Many community college faculty members were dissatisfied with their rank and tenure assignments. Associate Professor Don Mohr, as a representative of the community colleges' faculty union,

filed an informal grievance on behalf of faculty members who claimed that they were wrongly denied tenure. Similarly, Associate Professor Ralph McGrath requested a change in the rank assignments. Thereafter, the two professors filed a formal grievance on behalf of themselves and seventy-three other former community college faculty members.

At the time Mohr and McGrath filed their initial complaints, the University of Alaska's administration had not yet established grievance procedures for the newly integrated institution. The Anchorage campus chancellor adopted an interim grievance procedure, which mirrored the procedures previously used by the Anchorage campus. The chancellor then appointed an interim grievance council ("council") to implement the interim procedures.

The council conducted a preliminary investigation and determined that a grievance hearing should proceed. Additionally, the council recommended that the University hold this formal grievance hearing in accordance with the provisions of Alaska's Administrative Procedure Act ("APA"), AS 44.62.330-.650.

However, the president of the University rejected the council's recommendation that the grievance be processed in accordance with the APA. Instead, it was determined that the grievance would be processed under the Board of Regents' Policy, see 04.04.01 (June 4, 1987), and the interim grievance procedures. Under the Board of Regents' policy, the council was required to recommend dismissal or hold a hearing on the grievance within thirty days of its filing, and then forward a recommendation to the

chancellor for decision. The chancellor's decision was then appealable to the president.

The council notified McGrath and Mohr that it was ready to go forward with the hearing and that procedures would not be governed by the APA. Rather than proceeding with the hearing before the council, McGrath and Mohr then filed a complaint in superior court, seeking a declaratory judgment and mandatory injunction to require the University to conduct the grievance hearing under the APA. They contended that the APA procedures were required and that the contemplated grievance procedures denied them due process.

Thereafter, the plaintiffs and the University filed motions for summary judgment. The superior court held that the APA did not apply to the grievance proceedings in the instant case.

II. DISCUSSION

A. Do the provisions of the APA govern the grievance proceedings in this case?

Article 8 of the APA deals with administrative adjudication. AS 44.62.330(a) provides, in part, that "[t]he procedure of the state boards, commissions, and officers listed in this subsection . . . shall be conducted under AS 44.62.330-

1. Summary judgment was granted in this case on the basis of stipulated facts and exhibits. De novo review is the applicable standard of review on an appeal from a grant of summary judgment. Kollodge v. State, 757 P.2d 1028, 1032 (Alaska 1988). There is no genuine issue of material fact; rather, this appeal concerns statutory interpretation, which involves our own independent judgment. Waller v. Richardson, 757 P.2d 1036, 1039 n.4 (Alaska 1988).

44.62.630. This procedure, including, but not limited to . . . conduct of hearings . . . shall be governed by this chapter. . . ." AS 44.62.330(a)(45) lists the University of Alaska as a covered entity, with the proviso "except to the extent that its inclusion is inconsistent with the provisions of AS 14.40."

McGrath and Mohr argue that AS 44.62.330(a)(45) mandates that their grievances be processed in accordance with procedures called for by the APA. The University advances numerous arguments in support of the superior court's grant of summary judgment and its holding that the APA is inapplicable to the proceedings in question.² More particularly, the University contends that the legislative history of AS 44.62.330(a) demonstrates that the

2. The University emphasizes that the superior court reasoned, in part, as follows in reaching its decision:

(1) AS 44.62.330(a)(45) requires the University to comply with the procedural requirements of the APA "except to the extent that [the APA's] inclusion is inconsistent with the provisions of AS 14.40;" (2) AS 14.40 specifically authorizes the Board to "adopt reasonable rules, orders and plans . . . for the good government of the University;" (3) the Alaska Legislature did not intend the University to be required by law to conduct the APA grievance procedures if the University were to adopt valid, adequate, and fair grievance procedures of its own; (4) under AS 14.40.170(b)(1), grievance procedures adopted by the Board need only be "reasonable," and the procedure instituted by the University meet this test of reasonableness; and (5) to the extent that the APA would require the University to hold substantially more extensive, time consuming, and expensive procedures than would be required under the validly adopted and reasonable University grievance procedures, application of the APA would be inconsistent with AS 14.40.170(b)(1).

legislature never intended to interfere with the Board of Regents' independent power to manage and govern the internal affairs of the University; that the University's grievance procedures are reasonable; that application of the APA to the University's grievance proceedings would be inconsistent with AS 14.40; that the APA by its very nature does not apply in the circumstances of this case; that grievance procedures are not "procedures" within AS 44.62.330; that the APA only applies to "adjudicative facts" not to "legislative facts;" and that the statutory framework governing personnel matters for state agencies and other public employees shows that the APA does not apply to the University's grievance procedures.

We have reviewed all of the University's contentions listed above and conclude that they should be rejected. Therefore, the APA's procedures must govern any grievance hearings in the case at bar.

..

(i) Applicability of the APA

As noted at the outset, AS 44.62.330-.630 governs the adjudicative procedures of the University "except to the extent that its inclusion is inconsistent with the provisions of AS 14.40." AS 44.62.330(a)(45). The University notes that under AS 14.40.170(b)(1), the Board of Regents may "adopt reasonable rules, orders and plans . . . for the good government of the university. . . ." The University then argues that since its rules governing grievance procedures are reasonable, an application of

the APA procedures to its grievance proceedings would be inconsistent with the authority of the Board to manage the University. More specifically, the University contends that the APA procedures are inconsistent with AS 14.40 because they are more extensive and costly than its own reasonable grievance procedures, and therefore they are precluded under AS 44.62.330(a)(45).

We think these contentions are adequately and correctly answered by Judge Serdahely's opinion Aden v. University of Alaska, No. 3AN-85-17179 Civil (Alaska Super., Feb. 2, 1987). In rejecting contentions similar to those advanced by the University in the instant case, Judge Serdahely held the following:

The Court concludes that AS 44.62.330 et seq. does apply to Defendant University of Alaska and that Defendant's grievance proceedings must comply with the provisions of such Act.

In so ruling, the Court notes that on its face, the APA applies to Defendant University of Alaska. AS 44.62.330(45) [sic] expressly provides that the provisions of the Act apply to the "University of Alaska, except to the extent that its inclusion is inconsistent with the provisions of AS 14.40." Having reviewed the provisions of AS 14.40, particularly including the powers and duties of the University President as defined in AS 14.40.210-.220, the Court concludes that there is nothing inconsistent between such provisions and the APA. Clearly, the President's power to appoint professors and assistants, and to define and supervise the duties of such persons, are not inconsistent with the APA hearing procedure which is designed to guarantee due process to persons adversely affected by administrative action, such as adverse employment or personnel action.

(ii) Does the APA govern intra-agency adjudications, such as employee grievance hearings?

Three arguments advanced by the University of Alaska converge here. The University contends that the statutory framework governing personnel matters for state agencies and public employees shows that the APA does not apply to University grievance proceedings; that grievance procedures are not procedures within AS 44.62.330; and that the APA applies only to adjudicative facts, not legislative facts.

The University correctly observes that the State Personnel Act, AS 39.25.010-.220, "governs personnel matters for all state employees in non-exempt service positions." AS 39.25.090. Neither those state employees in non-exempt service positions nor state employees covered by the Public Employment Relations Act ("PERA"), AS 23.40.070-.260, are covered by the APA procedures when grievance proceedings are implicated.³ Therefore, the University concludes that the "the Legislature intended

3. The personnel division of the Department of Administration administers the State Personnel Act. AS 39.25.030. The labor relations agency administers PERA. AS 23.40.090; AS 23.40.170. Neither of these agencies are enumerated under the APA. AS 44.62.330(a). However, hearings conducted pursuant to either of these statutes contain considerable procedural protections. See AS 39.25.170-.176; 2 AAC 10.400-.440. PERA applies to the University when the University has a collective bargaining agreement. See Alaska Community Colleges' Fed'n of Teachers v. University of Alaska, 669 P.2d 1299 (Alaska 1983). Hearings conducted under that agreement would be conducted pursuant to 2 AAC 10.400-.440. The University concludes that where no collective bargaining agreement exists, hearings should be conducted pursuant to internal policy. We think a more logical conclusion is that where no collective bargaining agreement exists, hearings should be conducted pursuant to the APA.

University employees to have only the same rights as state and other public employees in personnel matters. . . ."

University employees, however, are exempt from the State Personnel Act. AS 39.25.110(5). Thus, they do not receive the protection of grievance rules promulgated by the Director of Personnel under AS 39.25.150(16). Consequently, the exclusion of other state personnel from the APA does not, in our view, conclusively demonstrate that University personnel should be similarly excluded.

The University relies on two statutes in support of its argument that intra-agency grievance proceedings are not the type of proceedings meant to be included within AS 44.62.330. First, the APA's definition of "regulation" excludes anything which "relates only to the internal management of a state agency." AS 44.62.640(a)(3). Second, the State Personnel Act establishes procedures for amendment of personnel rules affecting non-exempt state employees. AS 39.25.140. Subsection (e) of this section states, "[t]he rules adopted under this chapter relate to the internal management of state agencies and their adoption is not subject to the Administrative Procedure Act." While the State Personnel Act does not apply to University employees, the University argues, by analogy, that a blanket legislative intent exists not to have the APA apply to employment matters.

We believe these arguments are fundamentally flawed. Both statutes refer to the application of the APA to an agency's rulemaking authority, i.e. the adoption of rules. Neither statute

applies to an agency's adjudicatory functions. If adjudication and rulemaking were coextensive, these statutes would be controlling here. However, the two functions differ significantly. Rulemaking procedures are designed to ensure a fair and open adoption of policy; adjudication procedures are intended to ensure a fair application of policy to parties.⁴ Thus, the fact that rulemaking procedures do not apply to internal personnel rules does not indicate that the protections of the APA's adjudicatory procedures are inapplicable to individual personnel decisions.

The APA outlines the manner in which a hearing "to determine whether a right, authority, license or privilege should be revoked, suspended, limited, or conditioned" is initiated. AS 44.62.360. It similarly informs as to how a hearing "to determine whether a right, authority, license or privilege should be granted, issued or renewed" is initiated. AS 44.62.370. From these provisions, the University concludes that the APA only covers hearings which concern rights, authorities, licenses, and privileges, and that this does not include "intra-agency personnel matters." In support of this argument, the University cites cases from other jurisdictions, holding that their respective

4. See Wickersham v. State, Commercial Fisheries Entry Comm'n, 680 P.2d 1135, 1139, 1143-44 (Alaska 1984). See also R. Cass & C. Diver, Administrative Law 325 (1987) ("There is no doubt, however, that the procedures requisite for decisions addressing many members of an affected class on grounds generally applicable classwide are minimal in comparison to the procedures constitutionally required for individualized determinations.").

administrative procedure acts are inapplicable to agency personnel decisions.⁵

The University further contends that the APA adjudication procedures are inapplicable because McGrath is not grieving "adjudicative facts," but rather "legislative facts." As one court explained, "agencies employ rulemaking procedures to resolve broad policy questions affecting many parties and turning on issues of 'legislative fact.' Adjudicatory hearing procedures are used in

5. In Abramson v. Board of Regents, Univ. of Hawaii, 548 P.2d 253 (Hawaii 1976), the plaintiff who was denied tenure and sued asserted, in part, a denial of her rights under the Hawaii APA. Id. at 255. This portion of her claim was rejected because the coverage of that act was limited to "'a proceeding in which the legal rights, duties or privileges of specific parties are required by law to be determined after an opportunity for agency hearing.'" Id. at 263. Accord Klien v. State Bd. of Educ., 547 So. 2d 549, 551-52 (Ala. Civ. App. 1988), cert. quashed by Ex parte Klein 547 So. 2d 554 (Ala. 1989). However, Alaska's APA has no such limitation. Therefore, this authority is not on point here.

The University of Alaska interprets McCarrey v. Commissioner of Natural Resources, 526 P.2d 1353 (Alaska 1974), as holding that "the APA applies only where a particular agency statute provides for a hearing and adjudication." This, however, overstates the holding. The APA's adjudicatory chapter only includes the "Division of Lands under Alaska Land Act where applicable." AS 44.62.330(a)(9) (emphasis added). The land act gave the commissioner discretion to terminate grazing leases; hence, we held that application of the APA was not required. McCarrey, 526 P.2d at 1356. Where not similarly limited, however, the APA would apply across the board. McCarrey quotes from the federal APA, which, like the Hawaii APA, is limited to cases where "adjudication [is] required by statute to be determined on the record after opportunity for an agency hearing." 526 P.2d at 1356 n.17 (quoting 5 U.S.C.A. § 554 (1967)). Alaska's APA as it applies to the University has no such limitation; indeed, it specifically applies "notwithstanding similar provisions in the statutes dealing with the state boards, commissions, and officers listed." AS 44.62.330(a). Thus, the fact that the adjudicatory provisions of the APA do not apply to termination of a grazing lease does not dictate that they are inapplicable to University of Alaska grievance procedures.

individual cases where the outcome is dependent on the resolution of particular 'adjudicative facts.'" Independent Bankers Ass'n of Georgia v. Board of Governors of Fed. Reserve Sys., 516 F.2d 1206, 1215 (D.C. Cir. 1975).⁶

The limitation of administrative adjudicatory hearings to adjudicatory facts is not made explicit in the APA.⁷ Nevertheless, the distinction has been recognized. See Wickersham v. State, Commercial Fisheries Entry Comm'n, 680 P.2d 1135, 1143-47 (Alaska 1984) (refusing to apply the more relaxed public notice requirements of rulemaking procedures to adjudicatory procedures which involve individual rights). The structure of the APA, which establishes separate procedures for rulemaking and adjudications, suggests that Alaska has implicitly limited adjudicative functions

6. In Independent Bankers, the United States Court of Appeals for the District of Columbia Circuit adopted the following distinction:

Adjudicative facts are the facts about the parties and their activities, businesses, and properties. Adjudicative facts usually answer the questions of "who did what, where, when, how, why, with what motive or intent; adjudicative facts are roughly the kind of facts that go to a jury in a jury case. Legislative facts do not usually concern the immediate parties but are general facts which help the tribunal decide questions of law and policy and discretion.

516 F.2d at 1215 n.26 (quoting 1 K. Davis, Administrative Law Treatise § 7.02 at 413 (1958)).

7. Cf. California Code, Government Code §§ 11000-11529 at § 11500(f) (West 1980), which defines "adjudicatory hearing" to mean "a state agency hearing which involves the personal or property rights of an individual, the granting or revocation of an individual's license, or the resolution of an issue pertaining to an individual. . . ."

to adjudicatory facts and rulemaking functions to legislative facts. Compare AS 44.62.010-.320 with AS 44.62.330-.630. See also AS 44.62.640(a)(3) (defining regulation). Further, the distinction is one which must be made in order to determine whether an administrative entity has made an adjudicatory decision for purposes of Appellate Rule 602(a)(2). See Kollodge v. State, 757 P.2d 1028, 1033 (Alaska 1988); Ballard v. Stich, 628 P.2d 918, 920 (Alaska 1981). Finally, the bifurcation of administrative functions along the legislative/adjudicative facts distinction is recognized in both federal and other state courts.⁸

The formal grievance complaint filed by both McGrath and Mohr does not explicitly distinguish between legislative facts and administrative facts. The grievance complaint alleges "[i]nappropriate placement of former community college faculty in rank Inappropriate denial of tenure for certain former community college faculty,. . . . Discriminatory treatment by UA administration against grievants."

Upon remand, it will be left to the parties and the grievance council to identify any claims of McGrath and Mohr involving legislative facts, as such issues are not controlled by the adjudicative provisions of the APA.

8. See 1 K. Davis, Administrative Law Treatise § 7.06 (1958) and cases cited therein. Ballard defined the test for determining when an agency is engaging in adjudication as "functional." 628 P.2d at 920. "Whenever an entity which normally acts as a legislative body applies policy to particular persons in their private capacities, instead of passing on general policy or the rights of individuals in the abstract, it is functioning as an administrative agency within the meaning of Appellate Rule [602(a)(2)]." Id.; Kollodge, 757 P.2d at 1033.

- B. Does application of the APA to University of Alaska's grievance proceedings impermissibly circumscribe explicit and implicit constitutional and statutory grants of power to the University in the area of personnel management?

As to this issue, we again refer to and adopt the reasoning of Judge Serdahely in Aden v. University of Alaska. In rejecting the same argument as the University makes in the case at bar, Judge Serdahely stated,

Nor does the Court find that the application of the APA to Defendant's grievance procedure violates provisions of Alaska's Constitution establishing the University of Alaska and its Board of Regents. Likewise, the Court is unpersuaded that requiring Defendant to comply with the APA in connection with its grievance procedure constitutes unconstitutional or impermissible interference with the internal affairs or academic freedom of the University. In this Court's view, the University's academic freedom is strengthened, rather than undermined, by the existence of a grievance procedure for adverse employment decisions which comports with the basic requirements of the APA and due process. Ultimately, if Defendant seeks to be exempted from the workings of the APA, it must seek such remedy from the Legislature, not this Court.

(Emphasis added).

III. CONCLUSION

The judgment of the superior court is REVERSED and the matter is REMANDED for further proceedings consistent with this opinion.⁹

9. Our resolution of the appeal has made it unnecessary to address any of the other issues and arguments raised by the parties.

On remand, we suggest that it would not be inappropriate for the grievance council to integrate the adjudicatory provisions of the APA into its grievance procedures by following the hearing procedures outlined by Judge Serdahely in his August 25, 1987 "Order Regarding Administrative Hearing," which was entered in the Aden case.

Notice: This is subject to formal correction before publication in the Pacific Reporter. Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, in order that corrections may be made prior to permanent publication.

UNIVERSITY OF ALASKA

THE SUPREME COURT OF THE STATE OF ALASKA

FEB 02 1993

ROSE M. ODUM,)	
)	
Petitioner,	)	Supreme Court File No. CS -5258
	)	Superior Court File No.
v.	)	3AN-92-5432 Civil
)	
UNIVERSITY OF ALASKA,	)	<u>O P I N I O N</u>
ANCHORAGE,)	
)	
Respondent.	)	[No. 3925 - January 29 , 1993]

Petition for Review From the Superior Court of the State of Alaska, Third Judicial District, Anchorage, J. Justin Ripley, Judge.

Appearances: Allison E. Mendel, Mendel & Huntington, Anchorage, for Petitioner. Mark E. Ashburn, Ashburn & Mason, Anchorage, for Respondent.

Before: Moore, Chief Justice, Rabinowitz, Burke, Matthews and Compton, Justices.

PER CURIAM.

The University of Alaska-Anchorage (University) terminated Rose M. Odum as an associate professor. She filed a complaint for declaratory relief, claiming that the University had denied her due process of law guaranteed by the United States¹ and

1. U.S. Const. amend. V, provides in part:

No person shall be . . . deprived of life, liberty, or property, without due process of law

Alaska Constitutions,² and also had denied her procedures guaranteed by the Alaska Administrative Procedures Act (APA), AS 44.62.330-630. She moved for a preliminary injunction, which was denied. Odum seeks review. We reverse.

I. FACTUAL AND PROCEDURAL BACKGROUND³

Odum was a tenured associate professor at the University. Laura W. MacLachlan, Dean of the University's School of Nursing and Health Sciences, received complaints about Odum. Unable to resolve the complaints internally, MacLachlan asked the University Provost to appoint a Performance Review Group to evaluate Odum's performance.

The Provost appointed a Special Peer Review Committee (Committee) to review Odum's performance. The chairperson circulated a set of guidelines for the conduct of the hearing. These guidelines provided that each party would have an opportunity to make opening and closing statements, present testimony and documentation, and question each other's witnesses. The guidelines permitted the parties to be advised by legal counsel, but prohibited counsel from questioning witnesses or speaking on behalf

2. Alaska Const. art. I, § 7, provides in part:

No person shall be deprived of life, liberty,
or property, without due process of law. . .

3. These facts are constructed from the Petition for Review, the Response to Petition for Review and attached exhibits.

of the parties. After the hearing, and following receipt of the Committee's recommendation, MacLachlan terminated Odum.

Odum filed suit. She moved for a preliminary injunction to enjoin enforcement of her termination during the pendency of the proceeding. Superior Court Judge J. Justin Ripley denied without comment Odum's motion for preliminary injunction. Odum filed a Petition for Review pursuant to Alaska Appellate Rule 402. We granted her petition, and directed the parties to address the following issues: 1) whether the APA requires that pre-termination hearings held by the University must comply with the procedures outlined in the APA; and 2) whether the right to a pre-termination hearing guaranteed by the due process clause of the Alaska Constitution includes the right to be represented by counsel, that is, the right to counsel who is permitted to question witnesses and make arguments.

We conclude that the APA governs pre-termination hearings held by the University. Since the APA affords the right to counsel to participate in hearings, we do not reach the question whether due process of law also requires the University to allow counsel to participate.

II. STANDARD OF REVIEW

The interpretation of a statute is a question of law which involves this court's independent judgment. McGrath v. University of Alaska, 813 P.2d 1370, 1371 n.1 (Alaska 1991). "On questions of law, this court is not bound by the lower court's

decision. . . . Our duty is to adopt the rule of law that is most persuasive in light of precedent, reason, and policy." Guin v. Ha, 591 P.2d 1281, 1284 n.6 (Alaska 1979).

III. PRE-TERMINATION HEARINGS AND THE APA

We have consistently held that due process of law guaranteed by the United States and Alaska Constitutions requires a pre-termination hearing. Storrs v. Municipality of Anchorage, 721 P.2d 1146, 1149-50 (Alaska 1986), cert. denied, 479 U.S. 1032 (1987); Kenai Peninsula Borough Bd. of Educ. v. Brown, 691 P.2d 1034, 1037 (Alaska 1984); McMillan v. Anchorage Community Hosp., 646 P.2d 857, 864 (Alaska 1982); University of Alaska v. Chauvin, 521 P.2d 1234, 1238 (Alaska 1974); Nichols v. Eckert, 504 P.2d 1359, 1366 (Alaska 1973) (Erwin, J., concurring).

While the University agrees that Odum was entitled to a pre-termination hearing, it contends that this hearing was not governed by the APA. The APA provides:

The procedure of the state boards . . . listed in this subsection . . . shall be conducted under AS 44.62.330-44.62.630. This procedure, including, but not limited to, accusations and statements of issues, service, notice and time and place of hearing . . . conduct of hearing . . . shall be governed by this chapter . . .

AS 44.62.330(a) (emphasis added).

The University presents no persuasive reason why the mandatory language of AS 44.62.330(a) should not apply to pre-termination proceedings. Alaska Statutes 44.62.330-.630 govern the procedures to be employed by the University "except to the