

FEATURE

U.S. documentary filmmaker wants politicians to change Canada's bail laws

Some MPs say Canada's federal judicial system must be reviewed after watching *Dear Zachary: A Letter to a Son About His Father*, a documentary about how an accused killer awaiting extradition charges to the United States was able to kill herself and her baby while free on bail.

By BEA VONGDOUANGCHANH

There needs to be a review of the federal justice system, say Parliamentarians who watched a documentary about how an accused killer awaiting extradition charges to the United States was able to kill herself and her baby while on bail.

"I'm sure there are steps that everybody could agree to that could be taken. I hope that we can find some progress that we can make on this and try to prevent something like this from happening again," said Independent MP Bill Casey (Cumberland-Colchester-Musquodoboit, N.S.), after the screening of *Dear Zachary: A Letter to a Son About His Father* at the World Exchange cinemas in downtown Ottawa.

Dear Zachary is a documentary about Andrew Bagby, an American doctor who studied medicine at Memorial University in St. John's, Nfld., before going to Latrobe, Pennsylvania to do his residency. He was shot and killed in 2001. Mr. Bagby, was shot five times—in the face, chest, twice in the buttocks and the back of his head—allegedly by his ex-girlfriend, Shirley Turner. Before the Pennsylvania state police could arrest her on murder charges, Ms. Turner, also a doctor, fled to her hometown of St. John's, Nfld., where she later announced that she was pregnant with the late Mr. Bagby's son. The Pennsylvania state police finally gathered enough evidence to charge Ms. Turner with murder, but had to work through the Canadian justice system to extradite her back to the United States.

When Ms. Turner gave birth to her son, Zachary, Mr. Bagby's parents, David and Kate Bagby, packed up their belongings in Sunnyvale, California, and moved to St. John's in order to file for custody of the baby. Ms. Turner, who was granted bail twice for almost a year-and-a-half while awaiting the extradition, was awarded custody of Zachary, but allowed the Bagbys supervised visits with him. On Aug. 18, 2003, Ms. Turner strapped Zachary, 13 months, to herself and jumped into the Atlantic ocean, killing him and herself.

Kurt Kuenne, the film's creator, was Mr. Bagby's best friend who started making the film as a tribute so that Zachary could know his father. When Zachary was killed, Mr. Kuenne switched gears and produced a feature documentary that could be seen by the public in an effort to promote bail reforms in Canada.

"It doesn't take a genius to figure out that that was a really dangerous situation, an accused killer walking around free and with custody of the child. We were all quite nervous," Mr. Kuenne told *The Hill Times* when he was in Ottawa to screen the film for MPs and Senators on March 11.

Mr. Kuenne, who travelled from west to east through the States before coming to St.

John's and going to the U.K. to interview Mr. Bagby's friends and family for the documentary, said he met Zachary a month before he was killed. "At that point, I just put the project away for awhile, because I thought, 'What am I going to do now?' because I've been working on this thing that I was going to give him and my audience has been murdered. During that time, Andrew's parents, Zachary's grandparents, started speaking out in the media in support of a law denying bail to people accused of murder awaiting trial, a law which would've saved Zachary's life."

That was the message that he brought to Ottawa to a theatre of about 30 people. Only a handful of MPs showed up at the screening, and one Senator. Producers from NBC's *Dateline*, which is filming a documentary on the case and the movie, also attended the screening.

"It's difficult, if not impossible to find a night, or afternoon or morning, when everyone isn't really busy, including tonight," said Alberta Liberal Senator Tommy Banks, who first saw the documentary at the Edmonton Film Festival last summer.

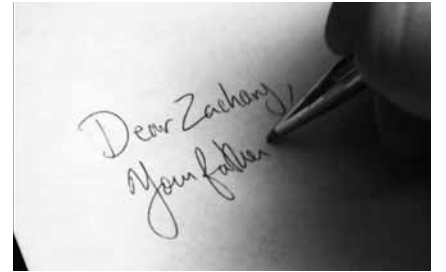
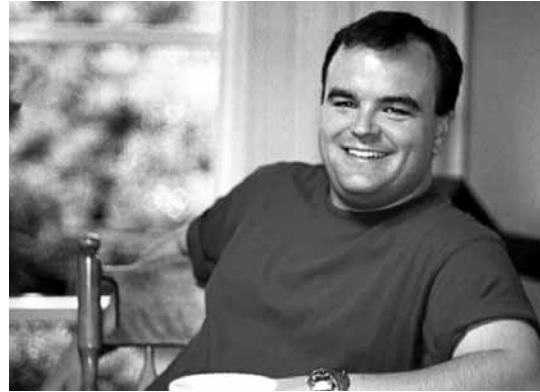
He said he was "affected" by it and began corresponding with Mr. Kuenne on how he could help.

"It's difficult to get people to these things, so I'm going to get copies of this DVD and send it to every Member of Parliament so they can see because I'm not absolutely sure that it's possible without unduly constraining the discretion that judges must have to change the bail laws, which is the main question raised in the film. There are other questions, but that's the main one," said Sen. Banks.

Kate Bagby, Andrew's mother, said the main concern of her and husband David's activism is to deny bail to anyone who is accused of murder, and if extradition is on the line, for the case to move through the courts more quickly than it did for Ms. Turner.

David Bagby said that keeping the accused in jail is not necessarily the issue, but rather keeping the accused secure. "Obviously, a piece of paper doesn't do it, it has to be physically secure because the actual killers don't give a damn about a piece of paper. They'll do what Shirley did," David Bagby said.

For his part, Mr. Casey said he was happy the "striking film" was made. "You get to know these people so well, and then these awful things happen to them. Then you see the system fail," he said. "It is obviously a problem with the justice system that the mistake could happen. I don't know the other arguments on the case, but I believe there were a series of errors here that were made because maybe track records, or past histories weren't required to be researched, maybe bail is too easy, maybe the parameters are too wide for options for people in the judicial system. I intend to meet with the attorney general with the other Members of Parliament that were



Photographs courtesy of *Dear Zachary: A Letter to a Son About His Father*

In memory: Clockwise from top left, Andrew Bagby was murdered in 2001. His alleged killer was his ex-girlfriend, Shirley Turner. Film creator Kurt Kuenne, writing to Zachary. An ultrasound photo of Zachary, Mr. Bagby's and Ms. Turner's son. Kate and David Bagby, Andrew's parents. A friend of Andrew's, Rhonda Ridenhour, Andrew's cousin. Mr. Kuenne was in Ottawa recently to promote bail reforms.

here, and at least have a discussion, talk about possible action that we might take."

Sen. Banks said he's not convinced that it's the bail hearings that should be reformed, because it could constrain a judge's discretion.

"I don't know if it's either legally possible or wise to further constrain the discretion of judges in those kinds of matters, but it's something that we at least have to look at and find out if there's at least a way to make sure that when a judge is making that kind of decision, they have before them all of the available information that would be attendant to the question, which in this case, the judge who granted bail did not have," he said. "It is perfectly reasonable to assume that if the judge who granted bail in this case had before the court all of the information in respect of the nature of the person that was charged, that bail might not have been granted, but that information was not available."

At the end of the documentary, Mr. Kuenne said that Ms. Turner's past history was not taken into consideration when Judge Gail Welsh granted her bail. In her ruling, Judge Welsh wrote that there was "no indication of a psychological disorder that would give concern about potential harm to the public generally."

But Mr. Kuenne said while she was incarcerated at the Correctional Centre for Women in Clarendville, Nfld., she was on suicide watch every 15 minutes and threatened to stab another inmate with a fork. In addition, her ex-boyfriend prior to Andrew Bagby, filed a report with the Pennsylvania state police that she had attempted suicide on his front doorstep when he broke up with her and she threatened to also kill him. On top of this, eight people had restraining orders against her. Despite this information being available, which the crown did not present in her bail hearings, Judge Welsh ruled that "Dr. Turner's detention is not necessary in the public interest."

Sen. Banks said this is not a unique case as there are numerous people who commit crimes while on bail or early release, but at the same time a similar case may not happen exactly like this one, which is why it's important to allow judges discretion when granting bail. "I expect that if that information

had been before the court, that bail would probably not have been granted," he said. "So it may be a failure of the system requiring that at least the Crown should know of those things, or should find out those things, or should take the trouble to assiduously find out those things, particularly in the case of a capital crime. ... In the bare facts of it, that is to say, a violent criminal committing a crime while out on bail, that's not all that unusual. You can look at each of those situations and say that was a mistake of the justice system, yeah, but the justice system is comprised of humans, and they can only deal with the information they have. What this basically boils down to is an information shortfall."

Kate and David Bagby also want child protection services to be more stringent in protecting children from parents who are accused of murder. In a child death review for the province of Newfoundland, coroner Peter Markesteyn found in a three-volume October 2006 report that Zachary's death could have been prevented if more attention was being paid to his needs rather than Ms. Turner's. "It wasn't empowered to look at the issue of bail, which we felt was the key point," Mr. Kuenne said. "Though he couldn't address it, what he did say, very clearly, was 'had Dr. Turner not been released on bail on Dec. 12, 2001 and on Jan. 10, 2003, my review would've been unnecessary. Zachary would've been alive today.' He recommended that the federal government do a review of justice services, in this case, arrive at the conclusions of bail that he was not able to look at. To date, nothing has happened on that regard."

Justice Canada did not return an email before deadline last week with questions about whether the government would take an interest in doing a review of the federal justice system and bail reforms, but Mr. Casey said he is confident that Justice Minister Rob Nicholson (Niagara Falls, Ont.) will have a sympathetic ear. "I've got an extra movie here if he wants one. I think he'll listen to this," Mr. Casey said, referring to the DVD copies of the film handed out at the screening. "We're going to meet, the MPs who were here, again, to figure out what the possible remedy might be as soon as possible."

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