After Canadian mother killed herself and their only grandchild, U.S. couple started 10-year fight to change Canada's bail laws

NP Douglas Quan, Postmedia News | 09/08/13 | Last Updated: 09/08/13 9:15 PM ET
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Family handout

All these years later, David Bagby's voice still trembles with anger.

Can you blame him?

Ten years ago this month, he and his wife, Kate, both of California, lost their only grandchild, 13-month-old Zachary.

Zachary's mother, Newfoundland native Dr. Shirley Turner, had taken the toddler in her arms and jumped into the Atlantic Ocean. They both drowned.

At the time, Turner was fighting extradition to the United States, where she was accused of murdering her ex-boyfriend and the baby's father, Dr. Andrew Bagby, the Bagbys' son.

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Having lost their only child and their only grandchild, the Bagbys had more-than-casual thoughts about taking their own lives. They even had a "fleeting fantasy" to kill the Canadian judge who granted Turner's release on bail. But that idea was quickly discarded as "stupid."

Instead, the American couple set their sights on Ottawa, lobbying — ultimately with mixed results — for Criminal Code changes to make it more difficult for people accused of serious crimes to be let out on bail.

Looking back on their decade-long crusade, David Bagby said they had no other option.

"To walk away would've been, to my mind and Kate's mind, to deny the importance of Zachary. .... We had to push it as far as we could," he said.

"Like wartime, you don't have a choice, the enemy's over there, go get 'em."

Tragedy first struck the Bagby family in November 2001. Andrew Bagby was found dead in a state park just outside Latrobe, Pa., where he was a resident in the local hospital's family medicine program. He had been shot in the head, face, chest and twice in the buttocks.

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Investigators quickly turned their attention to Turner. Turner and Bagby had met while attending medical school at Memorial University in St. John's, Nfld., but Bagby had recently broken off the relationship.

By the time Pennsylvania State Troopers charged her with first-degree murder and obtained a warrant for her arrest, Turner had fled back to Canada and re-settled in the St. John's area.

During a prolonged extradition process, Turner gave birth to Zachary in July 2002. Andrew Bagby's parents packed up and moved to Newfoundland in an attempt to gain custody.

For months, the couple had to play nice with Turner in order to visit their grandson.

"That's about as hard as it gets," David Bagby said. "My blood pressure — I just cringe facing that bitch, having to be civil to her."

> 'It's a very personal thing, murder. It goes to a grief too deep for crying'

In November 2002, Derek Green, chief justice of the Supreme Court of Newfoundland trial division, ordered Turner be returned to custody pending a decision by the federal justice minister whether to have Turner surrendered to U.S. authorities.

But two months later, in January 2003, an appeal court judge, Gail Welsh, agreed to release Turner and reunite her with Zachary. While the offence Turner had been charged with was violent and serious, "it was not directed at the public at large," the judge reasoned. Further, "there is no indication of a psychological disorder that would give concern about potential harm to the public generally." She also cited the fundamental right to be presumed innocent.

Later that year, in the early hours of Aug. 18, 2003, Turner drove herself and Zachary to the town of Conception Bay South. It is believed she fed Zachary up to 30 tablets of Ativan, an anti-anxiety medication, before leaping off the end of a wharf into the ocean.

National Post/Files

A 2006 inquiry led by Dr. Peter Markesteyn concluded that Zachary's death had been entirely preventable and that Zachary should not have been in the care of his mother.

But the Bagbys were still not satisfied, outraged that the justice system had allowed a first-degree murder suspect out on bail.

David Bagby vowed to "scream long and loud about that."

He penned a book, *Dance with the Devil: A Memoir of Murder and Loss*, released in 2007. He and his wife also participated in a heart-wrenching documentary produced by a close family friend, Kurt Kuenne.

The film, released in 2008 entitled *Dear Zachary: A Letter to a Son About His Father*, had been intended as a tribute to Andrew Bagby that Zachary could appreciate when he got older. But after Zachary was killed, it became a vehicle for justice reform.

"I have a lot of documentary filmmaker friends and back when (Zachary was still alive) and they knew what was happening and what I was doing, they were saying, 'Man, this is the most insane story I've ever heard. You've got to release this publicly,'" Kuenne recalled. "At the time, I got mad at them. 'Are you kidding? Zachary's going to have enough trouble growing up when he learns that his mother killed his father without his Uncle Kurt putting his private life all over the media. Absolutely not.'

"But once there was no him to protect anymore, suddenly I realized I kind of have to release this publicly. It's my responsibility."

After travelling the film-festival circuit — the film was recognized in 2008 as one of the top five documentaries that year by the National Board of Review — Kuenne and the Bagbys turned their attention to Parliament Hill.

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In early 2009, Kuenne sent out letters to every member of Parliament and senator offering to screen the film for them. He also tapped Ottawa-based lobbyist and public relations consultant Gord McIntosh to spread the word.

A special screening was held in an auditorium in the capital in March 2009. Liberal MP Scott Andrews and Liberal Sen. Tommy Banks were moved.

That fall, a private member's bill was introduced. It proposed to add a clause to the Criminal Code to say that bail could be denied if it was deemed necessary for the protection of anyone under the age of 18.

It wasn't exactly what the Bagbys had hoped for — they wanted a blanket denial of bail for anyone accused of murder — but it was better than nothing. They pressed for the bill's passage in March 2010 before the Commons justice and human rights committee.

"It's a very personal thing, murder. It goes to a grief too deep for crying," Kate Bagby testified.

During second reading of Bill C-464 in April 2010, Banks said the proposed changes "may seem innocuous, but they may be enough to cause judges to look a little more carefully at the children involved or affected by a bail hearing."

The bill became law in December 2010. For the first time since the death of their son and grandson, the Bagbys celebrated Christmas.

"They had a mission. They kept their eyes on what they had to do," McIntosh said this week.

But David Bagby admits a question lingers. Even if this law had been in place 10 years ago, would it have made a difference?

"My fear is most judges would have done what we've heard them do many times — invoke presumption of innocence and say, 'Sorry, we have to interfere with this accused's life as little as possible.'"

The Bagbys have done their best to resume life in California. They've retired, hang out with friends and travel a bit, David Bagby said.

The memory of their son and grandson are never far. They've set up a "mini shrine" in the family room that includes Andrew's favourite lava lamp, pictures and memory boxes put together by his friends.

There's also a little memory box for Zachary, though it is "virtually empty," he said.

"And the symbolism of that pisses me off again."

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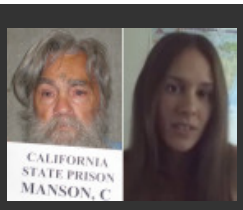

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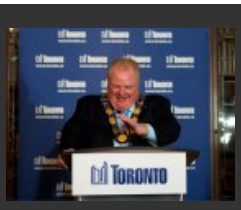

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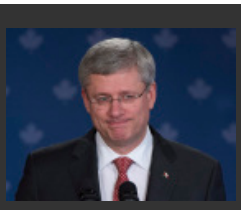

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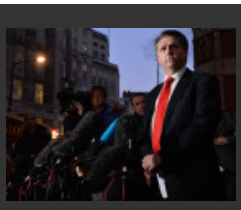

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Avatar **Rabid Hamster** · 3 months ago

There is one fundamental piece of this story missing. What happened to the judge whose ridiculous decision was ultimately responsible for the murder of a child? I suspect she went on to destroy other lives from the bench. This case highlights the need for judicial accountability. If you make decisions that end in disaster you should be held accountable. Just like any other profession in the world.

57 ^ | 2 v · Share ›

Nakara ↗ Rabid Hamster · 3 months ago

This is what we apparently have to swallow to have an independent judiciary. Judges can make what seem to be the most ludicrous decisions, but are typically protected from the consequences of those decisions because of their special status.

Exceptions may include decisions which violate laws or which bring the administration of justice into disrepute (although the latter are vague).

It's no surprise that judges are rarely censured or removed from the bench. In the case above, the argument will be that the judge made her
decision based on precedent and that laypeople are too stupid and
emotional to understand complex issues of law.

5 ^ | 1 v · Share ›

Elilla Shadowheart ↗ Rabid Hamster · 3 months ago

You mean what happened to the crown who was responsible for what happened right? The court room is always the ownership of the crown. Besides that, changing Canada's bail laws would require changing the Charter.

1 ^ | 1 v · Share ›

Rabid Hamster ↗ Elilla Shadowheart · 3 months ago

The crown doesn't own the court room the Judge does. Take a day and spend it in court. Crown's may oppose bail, judges and justices decide who gets bail and under what conditions.

3 ^ | 1 v · Share ›

Elilla Shadowheart ↗ Rabid Hamster · 3 months ago

How little people know of how our justice system works. The judge at the end of the day has a single word on sentencing and the fact of law. Everything else, from what charges are laid, to whether or not the crown wants to prosecute comes down to the crown.

The court always comes down to the crown and "what they want to do." Including taking their ball and going home, perhaps you should spend a day in court yourself and see how it works.

1 ^ | v · Share ›

Avatar **Guest** · 4 months ago

sham legal system.dr.turcotte stabbed his 2 kids 49 times in quebec and he's free riding on a bike. my condelence to bagbys and the 2 painful tragedies available online in a documentary, dear Zachery for their memory.

52 ^ | 2 v · Share ›

Avatar **dogbite186** · 4 months ago

Canada does not have a judicial system. It has a sociology experiment that practiced in different ways in different courtrooms throughout the nation by a phalanx of appointed judicial quacks masquerading as judges.

55 ^ | 3 v · Share ›

Avatar **passerby1969** · 4 months ago

My sympathies to this American family for their multiple losses. What an incredibly selfish woman!

44 ^ | 2 v · Share ›

Avatar **SeaChange9898** · 4 months ago

Judge Welsh killed that baby just as much as his mother did.

50 ^ | 3 v · Share ›

Avatar **Guest** · 3 months ago

I do not understand WHY anyone would call what we have in Canada a JUSTICE SYSTEM. All it is is a revolving door created by

judges and lawyers to create lots and lots of work for all the judges and graduating lawyers that we have in this country. IF all the criminals were in jail we would NOT need them all would we and we working, taxpaying canadians would not have to pay for such an expensive justice system would we? Someone needs to look into why they have been allowed to create this kind of job creation program for their own profession at the expense of all our lives. How else would they create so much work to keep them all rolling in the dough and making lots of work for themselves??? I wonder WHO - what professional psychiatrist - deemed this woman who killed herself and her child free of any psychological illness especially after she had just killed the father of this child. Does it not stand to reason and common sense really that if she killed once should COULD DO IT AGAIN? The judge erred on this one and she is guilty of having killed this beautiful little boy.

30 | 1 · Share ›

Guest → Guest · 3 months ago

dr. shirly turner shot her ex lover , mr. bagby , a decent man after a premeditated plan , then fled to the rock in Canada where she committed murder /suicide with her infant , Zachery in her arms , watch the documentary, dear Zachery , a master piece .why did dr. doucette put up $65,000 in bail, what concern was it of his and what's the connection. These are not normal people. They lack empathy, remorse, evade Justice. What does normal society identify them as.
Masters at deceit and killers.

17 | 1 · Share ›

Ballyclatters → Guest · 3 months ago

You, as with so many others, are presuming she was guilty.

6 | 13 · Share ›

Guest → Ballyclatters · 3 months ago

She was - watch the documentary, it includes forensic evidence to back up in that she did, indeed, murder Mr. Bagby.

14 | 3 · Share ›

Ballyclatters → Guest · 3 months ago

Yes. A one-sided presentation of forensic evidence, not subjected to the test of cross-examination and analysis by defence expert witnesses. That's certainly credible.

2 | 2 · Share ›

This comment was deleted.

afterlife → chester · 3 months ago

Just because some one is tried and not convicted, does not mean they are not guilty.
The US prosecutors must have had solid proof to apply for extradition. And our judges in Canada allow known terrorists and their brothers (KHADR) bail and let them live off taxpayers hard earned dollars.

6 | 2 · Share ›

Ballyclatters → afterlife · 3 months ago

The standard of required evidence in extradition cases is very low; lower than the civil burden of proof on the balance of probabilities (is it more likely than not).

1 | · Share ›

broke → chester · 3 months ago

The child was dead without a trial.

3 | 1 · Share ›

broke → Ballyclatters · 3 months ago

She killed her child. That's guilt enough for the rest of us.

7 | 1 · Share ›

Avatar **picklesdilly** · 3 months ago
Just another example of Canadian justice! The system works for the criminals and leaves the victims out in the cold or dead
20 ^ | 1 v · Share ›

Avatar **Smoov** · 3 months ago
Judges need to be held to account for allowing accused murderers out on bail.
34 ^ | 4 v · Share ›

Avatar **illegalsout** · 3 months ago
Justice is a joke in Canada (and here too).
29 ^ | 3 v · Share ›

Avatar **Guest** · 3 months ago
If you haven't already, please watch the documentary Mr. Kuenne made. It is powerful, raw, and moving. You can view it on Netflix (and maybe You Tube).
14 ^ | 1 v · Share ›

Tom ↗ Guest · 3 months ago
Would like to, but can't. Would be too heart wrenching. Life is not fair but some things are more unfair than others.
4 ^ | 1 v · Share ›

Guest ↗ Tom · 3 months ago
So true... :(
1 ^ | v · Share ›

Avatar **William Bevan** · 3 months ago
This is a tragic story, and with a no good end to it, even death brings no peace for the living, who must relive the horror of the events until they also die. The judge could've made a difference, knowing the extreme punishment of the U.S Justice System, but failed in her duty to show compassion, and issued the final verdict!
10 ^ | 1 v · Share ›

Tom ↗ William Bevan · 3 months ago
Would be interesting to know who appointed this person as a judge. All judges are is politically connected lawyers who kiss the correct butts at the correct time.
15 ^ | 1 v · Share ›

Avatar **broke** · 3 months ago
Thanks to P.E.T., Canada doesn't have a justice system. We have a legal system which is a series of laws for the benefit of the lawyers, prosecutors, judges and criminals.
10 ^ | 2 v · Share ›

This comment was deleted.

spiritofwicca ↗ LPCastor · 3 months ago
If you were in their place, how easy would it be for you to "just move on?"
22 ^ | 1 v · Share ›

Avatar **HardConsent** · 3 months ago
what if these two had killed or arranged the death of the judge....my money goes on them both pleading mental anguish/defect at the time they had killed him/had him killed.
Do they not see they almost walked the same path of mental illness that is likely the background to the murder of their son and grandson?

11 | 8 · Share ›

Fred → HardConsent · 3 months ago
First off, it was a passing thought against an adult who they felt was partly responsible for a murder, and second, they didn't act on it.

That is NOT comparable to a selfish woman actually murdering an innocent toddler.

Are you actually defending the child-killer?
31 | · Share ›

Nunoyer Bizniz → HardConsent · 3 months ago
That's a gigantic leap in logic you just made. How is lobbying to change bail laws anything like murdering somebody?
17 | · Share ›

Ballyclatters → Nunoyer Bizniz · 3 months ago
Read the article. "They even had a "fleeting fantasy" to kill the Canadian judge who granted Turner's release on bail."
3 | 5 · Share ›

Fred → Ballyclatters · 3 months ago
What part of "fleeting fantasy" do you not understand?
12 | 2 · Share ›

trishmac → Ballyclatters · 3 months ago
I've had a fleeting fantasy to do likewise to the person who callously harmed my children. I didn't decide to think about it, it came to me in my pain but...as with the Bagby's...it was fleeting. They are simply being honest about how deep the wound is that was inflicted on them that it caused them to think about committing suicide or harming those who are reponsible for the harm that was done to them. Too bad with Turner it stuck and she followed through. Twice.
4 | 1 · Share ›

HardConsent → Ballyclatters · 3 months ago
yeah like you just said
1 | 2 · Share ›

HardConsent → Nunoyer Bizniz · 3 months ago
it arose from their own statements in the story - that they (the grandparents) contemplated killing the judge who released her on bail

it wasn't a giant leap in logic - it was based on their admissions
3 | 7 · Share ›

Fred → HardConsent · 3 months ago
Way to reword it to justify yourself. A "fleeting fantasy" is not "contemplating".

Stop defending child-murder.
21 | · Share ›

Nunoyer Bizniz → HardConsent · 3 months ago
Oh all right. I read the article last night and forgot about their thoughts towards that judge. Point taken.

I expect they do realize they nearly traveled the same path. But that doesn't make their lobbying invalid. They had believed Turner was a threat towards their grandson and they were proven right.
11 | · Share ›

Fred ↗ Nunoyer Bizniz · 3 months ago
There's no parallel... the toddler was innocent, so the killer mom had nothing to seek revenge for.

It is normal to have passing thoughts of revenge against people facilitating the murder of a loved one.

It is not normal to murder an innocent child.

What are you people smoking?
23 ^ | v · Share ›

fireclown ↗ Fred · 3 months ago
"What are you people smoking?"

why? you got something good?

oh, you mean the other posters.. i think its a nice mix of crazy and stupid...
1 ^ | 1 v · Share ›

Fred ↗ fireclown · 3 months ago
I don't smoke, to preserve my lungs, as everyone should.

My opinion of "the other posters" is not as charitable as yours. I applaud the few who make sense, and dismiss those who don't.
^ | 2 v · Share ›

broke ↗ fireclown · 3 months ago
The last part of your last sentence describes you perfectly.
^ | v · Share ›

HardConsent ↗ Nunoyer Bizniz · 3 months ago
correct, i never said their lobbying was invalid, just noting an observation
^ | 4 v · Share ›

Willy01 ↗ HardConsent · 3 months ago
This is just another case of two Americans trying to interfere with the Canadian justice system.
8 ^ | 11 v · Share ›

Willy01 ↗ Willy01 · 3 months ago
Nine thumbs down but no comment as to why.
1 ^ | 1 v · Share ›

Avatar **Ballyclatters** · 3 months ago
Even if I were innocent, I would fight to the end to avoid extradition to the United States for trial on any criminal offence. Their rules are slanted against the accused person.

I don't think I would kill myself, but I appreciate the despair and desperation Dr. Turner felt at impending extradition to face a sentence of death/life in prison. She experienced extreme social isolation and was craving simple human interaction. A mental breakdown is understandable.

I met with her a number of times during that period. There was never a hint that she might harm her child. She would speak of "staying strong" for Zachary and the need to be there to raise him up.
8 ^ | 22 v · Share ›

Fred ↗ Ballyclatters · 3 months ago
It is sick that you seem to have a soft spot for this vicious killer of an innocent toddler

It is sick that you seem to have a soft spot for this vicious killer of an innocent toddler.

And it's horse puckey to accept her wanting to "raise him up" when she is a fugitive from justice. If she were innocent, she would have faced the charges. And if US justice is so "slanted" against the accused, why did OJ walk?

Wow, you really seem snowed.

What is it that makes some people always side with the perp?

44 ^ | 3 v · Share ›

Ballyclatters ➔ Fred · 3 months ago

Faced the American legal system? You must be joking! Conrad Black put it well in another article in Saturday's paper:

" But it also must be said that Snowden's father, a retired officer of the U.S. Coast Guard, and his lawyer, have made a very effective case on television for the impossibility of Edward Snowden obtaining a fair trial if he were to face justice in the United States. Nobody does, as has been discussed in this space before — since prosecutors win 99.5% of their cases, so stacked is the procedural deck in their favour. And they win 100% of the cases where the accused is branded by the president of the U.S. as guilty and by prominent members of the Congress and administration day after day in the national media as a traitor and a monstrous criminal.

The facts are that no country should have an extradition treaty with the United States; it is not, in criminal matters, a society of laws at all."

^ | v · Share ›

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