Dear Zachary...

'YOUR MOTHER DESTROYED OUR LIVES. TWICE'

Kate and David Bagby's beloved son was murdered by a deranged ex-lover, who then announced she was carrying his baby. But that wasn't the only surprise she had in store for them... **Paul Kendall** tells the tragic, twisted story behind the documentary 'Dear Zachary'

Shattered family Zachary, top; and his father Andrew, left, with his parents Kate and David

Face of a killer
Shirley Turner outside the Supreme Court of Newfoundland and Labrador; and Andrew Bagby before his death in 2000, below

Kate Bagby was at work, caring for patients at a hospital in California, the day she heard her son had been murdered.

'I will never forget that phone conversation as long as I live,' she says today, eyes swollen with tears. 'It was a policeman and he said, "Your son is dead under suspicious circumstances. Can you tell me what he was doing in the park?" I had no idea what park he was talking about. All I could say was: "My son is dead? My son is dead?"' Then she collapsed.

Seven hours later Kate, a nurse from Rochester, Kent, and her husband, David were on a plane to Pennsylvania, where their only child, Andrew, had been working as a family practice doctor, the American equivalent to a GP.

It would soon become all too apparent who was responsible for his death. Shirley Turner, a 40-year-old mother-of-three and Andrew's on-off girlfriend, had fled a bloodstained scene littered with incriminating evidence. But, as the Bagbys flew towards Pittsburg consumed with grief, they could scarcely imagine what lay in store for them.

Turner had not finished with the family yet...

Andrew Bagby had a fatal flaw – he was just too nice. An easy-going man with a wide circle of friends, he found it virtually impossible to say no to people. On the one hand, this made him a loyal and loving son and a popular doctor among both colleagues and patients, but it was also a trait that attracted the needy and the insecure.

Shirley Turner was both of these.

Twelve years older than Andrew, she had met him at the Memorial University of Newfoundland (MUN) in Canada, in 1999, where he was in his last year of a medical degree and she was employed as a doctor.

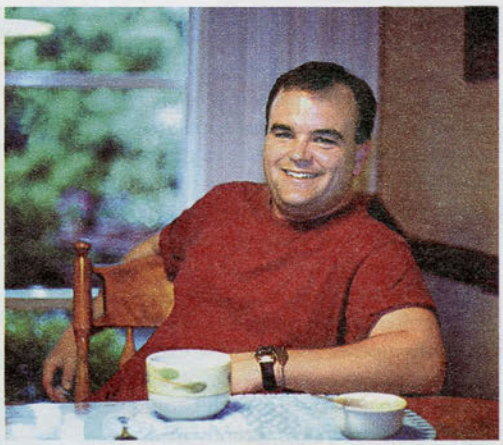
Former classmates of Andrew remember her 'just kind of appearing' and then being around all the time.

Extremely bright (she had sailed through a chemistry degree before qualifying as a doctor) Turner nevertheless had a knack of unsettling people. She would make inappropriate remarks or crack poor-taste jokes.

Her bedside manner left much to be desired and her confrontational style had given her something of a reputation among fellow doctors and nurses at MUN. They called her 'The Witch'.

And there were other aspects of her personality that were even more disturbing.

Before meeting Andrew, Shirley, who had been divorced twice, had dated another younger man. He had tried to break off the relationship several



times but Turner was tenacious and wouldn't leave him alone. Eventually he moved from Newfoundland to Labrador, also in Canada.

Turner followed him there, so he moved again, this time to Philadelphia. But she tracked him down there too and one night, returning home from the gym, he found the steps leading up to his apartment covered in blood.

At the top was Shirley, passed out in front of his door.

She had taken an overdose of a mild, over-the-counter sleeping remedy and then dragged herself up the staircase, scraping her wrists raw as she did so. In her left hand was a bunch of red roses and lying next to her was a half-finished suicide note.

She had not, however, made a serious attempt on her life. After one night in hospital, Turner left Philadelphia and the ex-boyfriend never saw her again. But her search for a partner who would provide unconditional devotion continued and very quickly she became obsessed with another man instead: Andrew Bagby.

On November 3 2001, Andrew put Turner on a plane back to Council Bluffs, 1,300 miles away, and went home to carry on with his life. But he didn't have much life left

Kate and David first heard her name during one of their regular weekly telephone conversations with Andrew, sometime in the summer of 1999. A few weeks later, while he was staying at their home in Sunnyvale, California, during a break from university, Shirley phoned.

Andrew was out at the time, but she seemed more than happy to talk to Kate. Over the next hour, Turner hardly drew a breath as she ran through her life story.

She and her mother had a difficult relationship, she said, but she had been very close to her stepfather, who had just died. Her two ex-husbands had tried to hold her back from her ambition to be a doctor and she wanted nothing more to do with marriage.

Her two oldest children lived with their grandparents, and her youngest child, a daughter, was living with her father, Shirley's second husband.

With her beloved stepfather gone, Shirley just wanted someone to talk to and Andrew had proved to be a great 'friend', she said, because he was such a good listener.

When the conversation finally came to an end, Kate turned to David and said: 'Phew!' Turner seemed nice enough, Kate thought, but it was difficult to end the conversation.

This favourable opinion soon changed, and over the coming weeks it gradually became clear that Shirley and Andrew were a lot more than just 'friends'. They saw each other an increasing amount during Andrew's final year at MUN and continued to date long-distance the following year, despite Andrew starting a surgical residency in Syracuse, New York, and Shirley moving to a job in Council Bluffs, Iowa.

But Andrew wasn't happy. As time went on, he began to complain to friends, saying Shirley wouldn't leave him alone, and at a wedding in July 2001, guests who knew Andrew noticed that he was being plagued by phone calls.

Shirley rang his mobile 30 times that day but, after speaking to her on a few occasions, he started ignoring her calls. For Andrew to do this to anyone was exceptional and friends realised he must have been at his wits' end.

By this time he had moved to a new job in Latrobe, Pennsylvania, and on Saturday, November 3, 2001, Andrew, despite previous failed attempts, broke up with Shirley 'once and for all' over lunch at the Latrobe airport.

He put her on a plane back to Council Bluffs, 1,300 miles away, and went home to carry on with his life.

RICHARD KLEENE; DAVID BAGBY; CBC NEWS

All to live for Andrew with his friend Kurt Kuenne in 1981; the pair on graduation day in California in 1995

But he didn't have much of his life left.

Two days later, at 5.30am, Shirley turned up at his apartment, having driven 16 hours to see him. 'Guess who showed up on my doorstep this morning,' Andrew said to his supervisor, Dr Clark Simpson, when he reported for work two hours later.

Dr Simpson, who had spoken to Andrew before about his troubled relationship, replied immediately. 'Shirley?' 'Yup,' said Andrew. 'That psychotic b---- was on my doorstep.'

'You know,' said Dr Simpson, 'when I break up with somebody and put them on a plane and send them 1,300 miles away, if they knock on my front door, I'm going out the back door and I'm calling the police.'

Andrew told him he was overreacting, but Dr Simpson insisted.

'Andrew, be serious. *Nobody* drives 16 hours after you have just broken up with them. Do *not* meet her in private.'

But Andrew, incapable of such suspicious thoughts, did exactly that.

After work, he drove 20 minutes to the deserted car park of Keystone State Park, where he had arranged to meet Shirley at 6pm.

The next day, his body was found riddled with bullets.

Andrew had been shot five times – in the face, the chest, twice in the buttocks and once in the back of the head. Spent casings found on the ground beside him matched a handgun owned by Shirley Turner, and a witness described seeing a four-wheel drive similar to Shirley's parked next to Andrew's car in Keystone Park. All this, despite Turner insisting to police that she had been ill in bed on the day of the murder.

It looked like an open-and-shut case, but before the police could arrest her, Turner fled over the Canadian border, back home to the city of St John's in Newfoundland.

And so began a second terrible chapter in the lives of Kate and David Bagby.

Kate talks about the events following Andrew's murder in a British accent distorted by four decades in America and a voice cracking with emotion.

Sitting in the open-plan kitchen of a bungalow she and David have moved into only five days beforehand, she is dressed head-to-toe in black – a black, embroidered top, black cotton trousers and black sensible shoes.

She looks like she is still in mourning and the way Kate talks about her son, it is obvious that time has done little to heal the pain of his passing. It is as if Andrew died just last week, rather than seven years ago.

She peppers her conversation with stories about him; little jokes he made, special chats she remembers and things that happened to him at school. And when we drive to the Bagbys' home from a nearby restaurant, Kate tells me we are in Andrew's old car, which she and David drove back to California from Pennsylvania.

'I know that he has touched the handle,' she says. 'I know that he has touched the gear shift, so I'm never going to part with it.'

Clearly, mother and son were extremely close (and David was an equally devoted father) but the couple's wounds are also fresh because an old friend of Andrew's has recently made a documentary about the murder.

Kurt Kuenne didn't set out to make a film for public consumption; he simply asked friends and family to share their memories of Andrew, as part of a celluloid tribute that he would then send to them as a keepsake. But two things happened after the murder which changed the saga from a tragic, but all-too-familiar crime story into something far more extraordinary.

First, only a few hours after she was arrested in Newfoundland on December 12, Turner was – to the astonishment of the Bagbys – let out on bail.

Both the Crown prosecutor and Shirley's attorney agreed that – while a request from the Pennsylvanian authorities to extradite Turner was considered – she did not represent a danger to the public at large and was not likely to flee the country.

All she was required to do was post $75,000 in sureties (money a nominee promises to pay if the accused fails to appear in court); surrender her passport; sign in once a week at the local police station; promise not to leave Newfoundland; and avoid contact with a specific list of people related to the case, including Kate and David.

The second twist came two months later: with the extradition process still grinding on, Turner announced she was four months pregnant with Andrew's child.

At first, the Bagbys didn't know whether to believe her. In her interviews with the police Shirley had proved she was capable of making up stories at a moment's notice. And even if she was pregnant, there was no assurance that it was Andrew's child.

But if her claims were true and she was carrying their grandchild, then Kate and David were clear: they wanted to sue for custody. The baby would be the end of their ancestral line; the last of their DNA left on Earth. It would mean that a part of their son lived on and, after three dark months, during which they had both contemplated suicide, the couple finally had a reason to carry on living. What's more, with the baby's father no longer alive and its mother eventually in prison (or so they hoped), the baby would have the worst possible start in life. Without them, it would be destined for a childhood in care.

So the Bagbys were now involved in two legal cases – the extradition of Shirley Turner back to Pennsylvania and a custody battle for their grandchild – and, in order to give both their full attention, they moved to St John's in Newfoundland.

Five months later, they were still there. The extradition process had almost ground to a halt, and Shirley was still at large.

Canada's Extradition Act is an unwieldy law. Despite the country enjoying friendly relations with its more powerful neighbour, it is mistrustful of American justice and places numerous obstacles in the path of an extradition.

First, the Federal Government of Canada has to ask the province in question (in Shirley's case, Newfoundland) to hold a hearing.

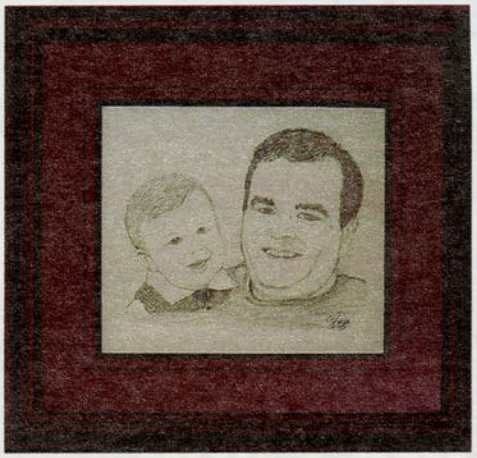
Then the provincial court examines the evidence. A judge will only issue a Committal Order (an order to extradite) when he is satisfied that there is a sufficiently strong case against the defendant. In particular, he has to be convinced that, if the crime had been committed in Canada, there would have been enough evidence to go to trial.

Even once that has been done, the final decision lies with the Attorney General of Canada and he will only issue a Surrender Order once he is convinced that the defendant will not, under any circumstances, face the death penalty. (Canada abolished capital punishment in 1976.)

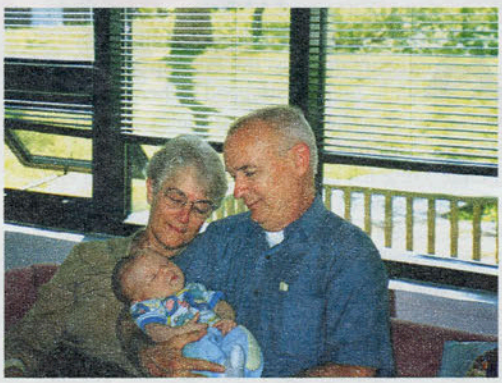
Of course, the police files were full-to-bursting with evidence that incriminated Turner. As well as the bullets from her gun and the witness who saw her car, there was also a record of mobile phone calls that Shirley made during her 32-hour round-trip from Iowa to Pennsylvania – a trip she said she never made. The signal from the mobile phone placed her at various points along the route.

But the extradition process had been hamstrung by an argument between the two sides over the wording of Section 32 of the Extradition Act. As with every Act in Canada, it was written in both French and English, but the meaning of the two texts was not exactly the same and the sides disagreed over which interpretation applied to Shirley's case. (Later, there would be a further delay

RICHARD KUENNE



Family ties Andrew graduates from medical school, left; and with the son he never met, right. Below: Shirley Turner with Zachary; and the proud grandparents



of a month when Shirley's lawyer, Randy Piercy, sent his definition to the wrong fax machine.)

Meanwhile, in July 2002, while the lawyers bickered, Shirley gave birth to a baby boy.

Kate and David were in turmoil. They finally had a grandson, who had been born healthy (a DNA test proved it was Andrew's), but who was nursing at the breast of a woman who they felt sure had killed their son.

Over the next three weeks, the Bagbys agreed to an out-of-court settlement with Shirley regarding access to the boy, who Shirley had named Zachary.

They were allowed no more than one visit per week and this had to take place in the visiting room of a family court, under supervision. It wasn't much time, but the Bagbys went along with it, in the hope that they would get Zachary to themselves once Shirley was locked up.

They fell in love with the boy the first time they saw him.

'It was an overpowering feeling,' says Kate. 'He was in a little crib and David and I knelt down at his feet and he was just…' Kate pauses and stares at her shoes. 'Beautiful.'

Zachary's birth had also given Kurt Kuenne a new impetus for his film. Instead of simply creating a tribute for those who had known Andrew, the film, now called *Dear Zachary*, would be a 'letter' to Zachary about the father he'd never meet. With this in mind, Kurt embarked on an epic journey to film friends and family all over the United States and the UK and record their memories and their messages of love to Andrew's son.

While he was doing this, the Bagbys' bond with Zachary grew stronger. He was a very contented baby, always smiling, with strawberry blond hair and Andrew's nose. David and Kate smothered him in kisses and spoke to him in baby language, often about Andrew.

Shirley, despite still being under orders to avoid contact with the couple, sent them studio photographs of the baby and they, in turn, sent her photos of Zachary that they had taken. The Bagbys also sent her clothes and toys and Shirley sent them a 'baby book' so that they could fill out their side of a family tree.

The insanity of this situation – exchanging little notes and civilities with Andrew's murderer – was not lost on them, but the couple were so scared of upsetting Turner and losing access to Zachary that they forced themselves to be cordial.

'The law had let her out on the street and let her keep formal custody of the baby,' says David matter-of-factly. 'Ergo, we had to deal with her to get to Zachary.'

Kate and David were in turmoil. They finally had a grandson, born healthy, but who was nursing at the breast of a woman who they felt sure had killed their son

As they speak to me, the couple are sitting side-by-side on wooden, cushioned chairs.

Unlike Kate, who wears her emotions on her sleeve and greets visitors to her house with kisses and warm hugs, David is quite cold. A trim 63-year-old, in a formal grey-and-white striped shirt and large bifocals, he lets out the occasional angry expletive – he refers to Turner as 'that b----' or 'that f---ing b----' – but most of the time, as he recounts his story, he restricts himself to the facts.

During the extradition, he immersed himself in the law – he wanted to understand every clause and subclause – and, during the tortuous negotiations over access to Zachary, the former computer engineer trained himself, through sheer force of will, to remain 'ice cold' and detached.

'David was always friendly and outgoing but he's very introspective now,' Kate tells me later. 'He is always reading about murder and the criminal system. We talk about it every day.'

In November 2002, a year after Andrew's murder, the judge in Shirley's extradition case finally threw out the queries raised by her lawyer and put Turner in jail, ruling that there was enough evidence to warrant a trial.

Extradition was still not guaranteed – the case was now referred to the Attorney General. But, suddenly, the Bagbys were appointed Zachary's main carers. It was the result the couple had been waiting for, but two things marred their victory.

First, the baby was fractious. His routine had been broken and he found it difficult to adapt to new surroundings. And second, the Bagbys were under orders to accept one collect phone call a day from Turner in prison and to bring Zachary to see her once a week.

Both the phone calls and the visits – which involved a 150-mile round trip, normally in bad weather – were excruciating.

According to the Consent Order, Shirley was supposed to talk only about Zachary, but instead the Bagbys had to listen to her complaints about the prison regime and how much she missed her baby. (The couple wanted to remind her that at least *her* son was still alive, but they bit their tongues.)

Most painful of all, Shirley would constantly draw Kate into conversations about Andrew; discussions about his hair – was it curly when he was a child? – and whether Kate would consider displaying a framed photograph of her (Turner) and Andrew on her mantelpiece.

'Do you feel all right about putting that up?' she asked one day over the phone.

'Not quite yet,' said Kate through gritted teeth.

On the days of their visits, David took to reading a book in the corner of the room while

KATE & DAVID BAGBY: CBC NEWS

Kate spoke to Shirley and played with Zachary.

'Once she is extradited all this will be over,' they thought. But in January 2003, the legal system confounded their expectations yet again. Ruling on a request by Turner's lawyers, Justice Gale Welsh released Shirley on bail.

'Dr Turner's detention is not necessarily in the public interest,' she said. 'While the offence with which she is charged is a violent and serious one, it was not directed at the public at large.

'There is no indication of a psychological disorder that would give concern to the public generally.'

For the second time, the Bagbys were left open-mouthed at the leniency of the courts. To their horror, they were forced to hand Zachary back to Shirley and, again, tiptoe around her in order to see their grandson.

A new schedule of visits was agreed, which entitled Kate and David to have the baby for three or four hours, three times a week, and overnight once every two weeks. But it involved more painful dealings with Shirley, and because the Bagbys wanted to see Zachary more than the Consent Order allowed, they spent a great deal of time in her company – accompanying her and the baby to the mall, swimming lessons and the park.

'It was like being at war,' David says in Kurt Kuenne's film. 'Nobody wants to do it, but you have to do it. That was the price we had to pay to ensure we had a good connection with Zachary.'

This 'war' went on for six months. As the summer approached, the net finally began to close on Turner. On June 10, 2003, the Attorney General ordered that she be surrendered to the United States.

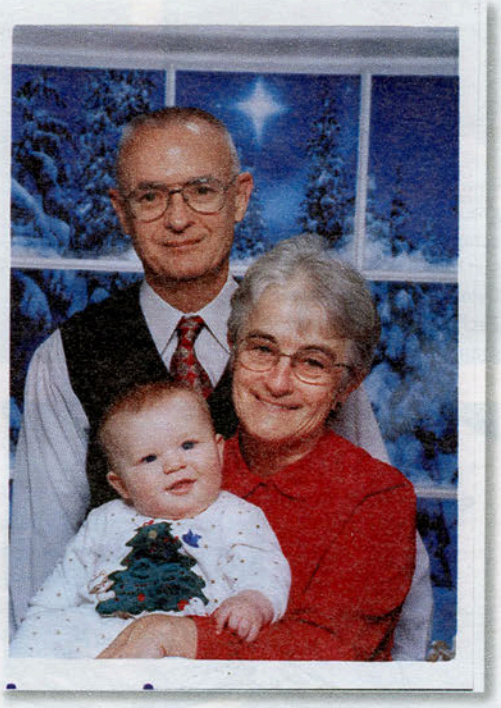
Turner appealed and a final hearing was scheduled for September 25.

Six weeks beforehand, on Saturday August 16, the Bagbys went with Shirley and Zachary to the Bowring Park children's pool in St John's. Zachary enjoyed himself in the water and a couple of hours later the Bagbys drove Shirley and the baby home.

By the time they arrived at Shirley's house, Zachary was fast asleep and Kate and David prepared to leave. But Shirley did a strange thing: she woke Zachary up and said to him: 'Say goodbye to grandma and grandad.'

He started to cry and reached out to Kate, but Shirley swept him up in her arms and said firmly: 'You can't always be with your grandparents.'

That was the last time the Bagbys saw Zachary alive.



KATE & DAVID BAGBY

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At about 3am on Monday August 18, Turner drove to the Foxtrap Marina and, with Zachary strapped to her stomach with a sweater, she jumped off the main wharf and into the Atlantic Ocean.

Unless one has experienced the death of a child, it is impossible to imagine how the Bagbys felt. Often, novels or films have their protagonists deal with the news in a restrained or reserved manner.

But that was not the way it was.

When Kate and David were told by police that the bodies of Shirley and Zachary had been found on the beach, they began to scream and they didn't stop for several hours.

Kate lay down on the floor, David kicked a hole in a door. In the mortuary, confronted with Zachary's tiny body, covered by a white sheet, Kate collapsed and David collapsed on top of her.

'We had a complete meltdown,' says David, raising his hand to his mouth. 'It's just a blur of emotion. Then we went to friends and cried all night.'

On Tuesday August 19, another couple who were friendly with the Bagbys came by their house, saw it was in darkness and thought: 'They've killed themselves.' But, instead of bursting in through the door or phoning the police, they chose not to interfere, reasoning that, if Kate and David had decided to take their own lives, then that was their choice. 'I saw that as love,' says Kate quietly.

'I should have killed her. I could sit in prison and get pictures of Zachary and be a happy man. Versus this. That beats the hell out of this'

By now, we have been speaking for nearly seven hours. The sun has set and a single bare light bulb is casting long shadows on the wall. It is cold in the Bagbys' home; most of their belongings are still in boxes in the garage, following their move, and a heater is blowing hot air only intermittently.

There is the faint noise of a dog barking, but apart from that, and the sound of the Bagbys' flat, broken voices, the house is in silence.

There are so many unanswered questions, they say. Why was a son of theirs ever attracted to Shirley? Could they have done anything to save Zachary? In the absence of any support from the legal system, they should have just taken him away, out of the reach of his deranged mother.

David goes further. He thinks he should have killed Shirley himself. 'Obviously I should have,' he says firmly. 'I've been through this a thousand times so pardon me if I cut to the chase. We're in this situation now. Compare this with me sitting in a Canadian prison and Zachary with Kate in California. Which is better? I've got no trouble with that. I could sit up there and get pictures of him and be a happy man. Versus this. That beats the hell out of this, hands down.'

Today, David deals with his loss by campaigning to change the bail law, in Canada, so that no one charged with murder is ever allowed to walk the streets like Shirley Turner. On a 'Dear Zachary' website, he asks anyone who sees Kurt's film (which was hailed in the US as one of 2008's best, most moving documentaries and regularly appears at film festivals around the world) to write to the Canadian Minister of Justice and add their name to his campaign.

So far, nothing has changed.

Kate, meanwhile, has become a mentor, working with disadvantaged children. She derives great satisfaction from the work, but the joy – the real joy – has gone from her life forever.

As I sit opposite her, shivering in the cold, she tells me of a dream she had recently.

'I was at a bus stop and Andrew and Kurt came over to me,' she says, staring into the distance. 'They were very smart, dressed in black and with long black coats and I said, "You look very smart. Where are you going?" And they said: "We're going to a funeral." And I said, "Whose funeral?" And Kurt said: "Andrew's."'

I shiver again and, this time, it's not because of the cold.

www.dearzachary.com