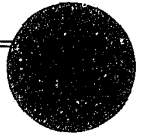
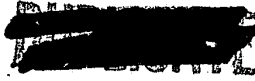


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S. HRG. 103-206

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ANTISTALKING PROPOSALS



HEARING BEFORE THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

ON

COMBATING STALKING AND FAMILY VIOLENCE

MARCH 17, 1993

Serial No. J-103-5

Printed for the use of the Committee on the Judiciary



U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1993

NOV 08 1993

71-890

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-041527-6

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ANTISTALKING PROPOSALS

WEDNESDAY, MARCH 17, 1993

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 10:05 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Joseph R. Biden, Jr. (chairman of the committee) presiding.

Also present: Senators Kennedy, Simon, Feinstein, Moseley-Braun, Hatch, Thurmond, Grassley, and Cohen.

OPENING STATEMENT OF CHAIRMAN BIDEN

The CHAIRMAN. The hearing will come to order. Good morning, everyone, and happy St. Patrick's Day. I am sure that is why you are all gathered here today. We have several very important pieces of legislation that we want to begin to review and we have several of our very distinguished colleagues, and the most distinguished among them, the distinguished Senator from California, who will be our first witness.

I have a brief opening statement, then I will yield to Senator Hatch and other members of the committee. I would request that you keep your opening statements relatively brief, if we can, because we have a very interesting and what I believe will be a very informative group of witnesses today.

As indicated, today the Senate Judiciary Committee convenes its second hearing on the important issue of stalking. Stalking obviously is not a new crime, but we have seen an increase in the incidence of stalking and associated violence in recent years.

We are aware from increasing news coverage of the thousands of people who are literally held hostage by stalkers who are required to, in effect, change their identity, in some cases, change their entire lives, alter everything that has been up to that point normal in their lives to accommodate a person who, in many cases, ends up inflicting serious bodily harm and in many cases death upon the person that they stalk.

There are in this country today over 400,000 protective orders issued every year; 400,000 times a year a family court judge or a court of competent jurisdiction indicates that in almost all cases a man is ordered to stay away from a woman whom he is bothering, stalking, or otherwise. Typically, these protective orders are issued by civil courts pursuant to special civil protection order statutes in 49 States to address domestic violence. These orders are usually sought typically by the victim of the stalking or the violence, and the States have begun to respond to this changed circumstance in

ways that each State legislature—I think over 28 have now passed antistalking bills themselves, while half a dozen others are in the process of doing that.

Each year, a terrible toll is exacted by stalkers on their victims. Held hostage by fear, a victim never knows when or where or how the harassment or violence will resume. When the violence does return, serious injury or death often results.

It has just been pointed out to me 32 States have laws on stalking now and 15 are pending. Thank you.

What the high-profile cases we have recently read about do not make clear, however, is that stalking is not a crime suffered only by the rich and famous. In fact, over half of the Nation's stalking victims are ordinary citizens who are stalked by a coworker or by someone they once dated, someone who worked for them or worked with them, or by a former spouse or boyfriend.

Nor do the high-profile cases make clear that, unfortunately, our criminal justice system is not adequately responding to this crime. Many of those who suffer from violence at the hands of stalkers have gone to great lengths to seek protection from the courts, but to little or no avail in most cases.

Last year, for example, a California woman was stalked by her former husband. She obtained a protective order, but because the judge was unaware of a prior felony charge against that same person, the defendant was released and he then killed the woman as her 9-year-old son watched the murder take place.

Today, we will hear from witnesses who can tell us of the terror of being stalked and the horror of the justice system's failures. We will hear of a stalker who terrorized an entire family and was brought to justice after the FBI intervened, and only after they intervened. You will hear about a young woman gunned down by a former boyfriend who stalked her after she obtained a restraining order and after an arrest warrant had been issued against the stalker for violating the previous order. And you will hear that judges in family and civil courts where victims of stalkers often go to get restraining orders do not have access to the criminal histories of alleged stalkers, or even to the current arrest warrant information relating to those stalkers.

It is in response to this failure that I have drafted a proposal designed to increase the flow of information to all judges that deal with stalking and family violence cases. This proposal, called the Stalker and Family Violence Enforcement Act, or the SAFVE Act, would for the first time give all judges in all courts that deal with stalking and domestic violence access to the Federal criminal history records now available only to State criminal justice officials.

Specifically, my proposal would amend current law to permit access to the Federal database that provides criminal histories, the National Crime Information Center, the NCIC, and the Interstate Identification Index, referred to as III. These are the areas where the Federal Government has records that are available now only to State courts relating to the criminal histories of individuals in this country. NCIC and the III contain millions of records on criminal histories and wanted persons. All 50 States input information into these systems and request information from them every day.

I believe this approach offers several advantages. First, by utilizing the NCIC and the III system, it would focus on existing Federal resources that can be used by States with modest training, modest funds, and little other support. The proposal provides an incentive for States to put information on arrest warrants issued in domestic violence and stalking cases into the NCIC and III systems, the Federal systems, information that is not now included, signaling that this violence is a serious crime.

It would also make use of the nationwide system permitting information on stalkers and perpetrators of domestic violence to be shared not only within the borders of one State, but among courts of all States. Other provisions would authorize the National Institute of Justice to conduct training programs for judges who hear family violence and stalking cases with respect to the need for relevant criminal history information and would direct the National Institute of Justice to issue recommendations about how State courts can increase intrastate communication between courts of all jurisdictions.

The FBI, the Federal agency that oversees these two networks, supports the concept of this proposal. Today, I hope the witnesses who will testify will share their views on this proposal with me.

In addition, we will hear from our distinguished colleague from California, Senator Boxer, who, along with Senator Krueger, has introduced a bill to make stalking a Federal offense if the crime occurred on Federal land or if the telephone or mail system was used in furtherance of the crime.

I look forward to the testimony of the witnesses and I applaud the efforts of Senator Cohen and Senator Boxer, Senator Cohen having introduced last session a bill on stalking, and Senator Krueger along with Senator Boxer introducing it this year.

There is, as you can see, a heightening of awareness of the extent of the problem. If I am not mistaken from our last hearing, there are up to 800,000 people in America who are stalked today, as we meet here today, by some unwanted intrusion into their lives—I have just been corrected again. Thank goodness I have a sharp staff. It is 200,000 people, not 800,000 people. Thank you.

I hope to work with all of my colleagues to find a solution to this crime of stalking and to the problems that have hampered the efforts by States to effectively respond to it.

So before I announce who our panels will be, let me turn now to my colleague from Utah, the ranking member, for any statement he wishes to make, and then to Senator Feinstein and then down the line.

OPENING STATEMENT OF SENATOR HATCH

Senator HATCH. Well, thank you, Mr. Chairman. I am pleased to be here this morning and I want to commend you for holding this particular hearing, and I want to acknowledge that you have been in the forefront of confronting the critical issue of violence against women in our society, and stalking is certainly an important aspect of that issue.

The criminal act of stalking is of deep concern to all of us. An untold number of victims and their families face this horror each and every day, as the chairman has said, and I certainly appreciate

that a number of the witnesses with us here today are going to share their experiences and help to educate this committee and the general public about this very important issue.

On the positive side of the ledger, however, it is noteworthy and extremely encouraging that since California passed the first stalking law in 1990, 32 States, including Utah, my home State, have passed such laws. In fact, 12 of these States are currently considering bills to amend or expand their State law provisions.

Against this backdrop of State activity, Senator Cohen's bill, and I want to compliment him for that, passed last year to assist the States in their enactment of antistalking legislation, and it was indeed timely and important. I believe we will all benefit from the National Institute of Justice's study and evaluation of State laws called for in that legislation which is due later this year. And, of course, I compliment our chairman for the efforts that he is making in this regard, too.

Nonetheless, these recent positive efforts can by no means justify a sense of complacency on our parts. So I look forward to this hearing and to working with the chairman and others in our continued focus on this issue, and I want to compliment you, Senator Boxer, for being here today. I look forward to hearing your testimony and that of the other witnesses as well.

The CHAIRMAN. California is very well represented on this committee and at the hearing. Senator Feinstein.

OPENING STATEMENT OF SENATOR FEINSTEIN

Senator FEINSTEIN. Thank you very much, Mr. Chairman, and I am particularly delighted to have my colleague here and interested in this issue. I am interested in it. I have been, I think, the victim of stalking, and it is an interesting story because it also accompanies mental instability of someone who, while I was mayor, made some threats, believes I killed his mother, had prior weapons charges, went to State prison, had a psychiatric report that he should not be released, was released, had an order not to make any contact with me or my office, did make contact, went back to prison.

They will hold him as long as they can and then he will be released again. Now, this is somebody, unless treatment has really made a difference, who is going to continue on with this same pattern. I am very interested to hear my colleague's testimony, as well as Ms. Krueger's, because I believe it is really a chronic situation often accompanied by mental aberration. The definition of stalking, I think, in any law is particularly important to clarify it, to be able to indicate a chronic pattern over a period of time.

I thank you and I am delighted to be here.

The CHAIRMAN. Thank you, Senator.
Senator Grassley.

OPENING STATEMENT OF SENATOR GRASSLEY

Senator GRASSLEY. Mr. Chairman, thank you very much for holding this hearing. I have had an opportunity to work with people in this Congress in cosponsoring legislation and working with them on dealing with the problem. Stalking deals with a right that we don't think of often as a right, but I think Justice Brandeis said it better

than anybody else when he said, in his judgment, the greatest right was the right to be let alone.

So, obviously, in the case of people who are being stalked, that is a right that is very meaningful to them. These Americans are victims of a crime in some places. In other places, it is not a crime, and whether it is celebrities or ordinary citizens, their entire freedom of movement is confined by the constant surveillance and harassment of other people who don't respect the basic right that Brandeis stated. Frequently, the stalker poses a threat to serious bodily harm, and yet until recently the law allowed victims little recourse until there was a threat of actual physical contact.

Now, in many States, of course, this has changed, including my home State of Iowa. Victims have received considerable relief through State enactments. I cosponsored legislation last year to provide the States with a uniform antistalking measure that would not run afoul of some of the constitutional provisions that have been raised about the legislation.

So, today, we are going to have an opportunity to consider testimony relating to two very important bills that try to deal with this basic right, as Brandeis described it, and I compliment the people who are our leadership in this area because we should consider what the appropriate Federal response should be to this problem so that people have this right.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Kennedy.

OPENING STATEMENT OF SENATOR KENNEDY

Senator KENNEDY. Thank you, Mr. Chairman. I think all of us were impressed when we listened to our Attorney General-designate talk about violence in our communities, and when she said that if we are not able to deal with violence at home or close to home, among people who commit violence on people that they know or within the family, we will not be able to deal with violence in other aspects of our society.

I know that Chairman Biden, over a very considerable period of time, has been providing important leadership in dealing with violence against women. The issue which is before us today, the stalking of women, is the most vicious and premeditated activity threatening women in our society, and it is of enormous urgency.

We had a very tragic situation which we will hear about today from a member of the family of Kristin Lardner, who was victimized by this conduct last year in my own State of Massachusetts. When you hear the facts of that particular case, it will sadden you—to realize what could have been done and what should have been done. Important steps have been taken in my State of Massachusetts to try and address this issue, supported by the women's legislative caucus there. It has been impressive, and other States have taken action too.

But I think the purpose of these hearings is to try to find out what, in addition, the Federal Government can do to help the States on this issue. So I commend Chairman Biden for having these hearings, and we certainly look forward to a group of witnesses who have given this a great deal of thought and attention,

and in a number of instances who have suffered immeasurably themselves because we as a society have not addressed this issue.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator. Now, I would like to recognize Senator Cohen, whom I joined in introducing the first stalking legislation last year, and we are awaiting the report on that.

Senator Cohen.

OPENING STATEMENT OF SENATOR COHEN

Senator COHEN. Thank you very much, Mr. Chairman. I do have a prepared statement I would like to submit for the record and I will just summarize it.

The CHAIRMAN. Without objection, it will be placed in the record. Senator COHEN. As Senator Biden has indicated, last year we were successful in passing legislation that would call upon the National Institute of Justice to develop a model statute for the States to follow and to predicate their own laws upon. It was brought about in terms of my own interest by the death of Kristin Lardner, whose sister, Helen, will be one of our witnesses here today.

I might say that following a hearing on our bill, I received some 1,700 letters from Maine on this one issue and there was a consistent theme throughout the letters. Two words seemed to emerge. "Long overdue" were the words that kept appearing.

There was another letter I received from a mother whose daughter-in-law had been stalked by an ex-boyfriend and she received no help from the local police "because the stalker hasn't done anything yet." This reminded me, Senator Biden, that Democrats have long been attacking Republican philosophy. I think it was Adlai Stevenson who said, in pointing to the Republican philosophy, don't just do something, stand there.

Of course, stalkers are doing something just by standing there. The act of just standing there in the case of a stalker is, in fact, instilling fear in the hearts of those victims, of the individual or the families. He or she is engaged in an act of terrorism. The question is can you make it a criminal act just by standing there? Must there be something else? What kind of overt activity would cross the line from just standing to criminal activity?

Sandra Poland testified before the committee last fall, Mr. Chairman, and she talked about a stranger who had stalked her daughter, Kimberly, for 8 years after seeing a picture of her in a newspaper. He followed her in State, out of State, as she graduated through junior high school, high school, and college. He changed her whole life. She had to change her identity. She couldn't visit her folks and have a normal, healthy relationship with her own parents. That is the kind of terror that is being struck day after day in the hearts of thousands of people. In that case, simple infatuation escalated to threats, followed by that stalking all over the New England area.

As the chairman has indicated, the problem that we have is that many of our laws are so narrow as to be simply meaningless, unenforceable, and some of them are so broad as to be unconstitutional, and that is the reason why Senator Biden and I called upon the Justice Department to develop a model statute so that the States

who are, in fact, passing these laws will feel somewhat confident that they will withstand constitutional scrutiny.

I also want to commend Senator Biden for drafting legislation which will help courts feed into the FBI computer system. Hopefully, that kind of legislation will prevent another case that happened in Maine recently where a young woman was stalked and finally shot. As a result of that act, a young woman of the age of 20 will spend the rest of her life in a wheelchair.

These are the kinds of issues that we are dealing with, Mr. Chairman. I want to commend Senator Boxer for testifying, and Ms. Krueger, whom I watched on Fox Morning News with some very moving testimony, and indeed Helen Lardner who will be testifying later this morning.

[The prepared statement of Senator Cohen follows.]

Statement of Senator William S. Cohen

Senate Judiciary Committee

March 17, 1993

Thank you, Mr. Chairman, for holding this hearing today to continue the committee's work on the problem of stalking. I also want to thank Senators Boxer and Krueger for introducing further legislation addressing this issue because it is vitally important to maintain focus on the lack of effective laws until this tragic problem is solved. I also want to especially thank Mrs. Krueger and Ms. Lardner for sharing their very poignant stories today.

Last summer, Senator Biden and I introduced legislation to assist the states in addressing this insidious crime by directing the National Institute of Justice to develop a model state anti-stalking law and make recommendations for further federal measures. Our legislation was passed in October and the Justice Department is now working on creating an effective statute.

I was drawn to this action because tragic cases like that of Kristin Lardner, whose sister Helen Lardner is testifying today, made clear that existing state laws did not effectively protect

individuals from becoming victims of stalkers. My constituents in Maine agreed. I have received over 1700 letters regarding this legislation, and I am struck by the frequency with which two words are used to characterize last year's Congressional action in this area: "long overdue." I was also struck by the hundreds of stalking victims and family members who wrote. One woman told of her daughter-in-law who is being stalked by an ex-boyfriend. She wrote that the family has "not been successful yet in getting local police protection." Why? Because, the stalker "hasn't done anything yet." Interesting words: "Hasn't done anything yet." But he has. He has terrorized and hounded this family and made it impossible to lead a normal life. What's more, as so many of these cases have shown, the gap between threats and actual violence is very small.

Several tragic cases have brought national attention to this insidious but growing problem, challenging the general perception that stalking is an issue that only happens to celebrities -- like David Letterman, Jodie Foster, or Stephen King from my home town of Bangor, Maine. The overwhelming majority of victims are, in fact, ordinary citizens; only 17% are celebrities.

Just last September, Sandra Poland from my home state of Maine told this committee of her family's ordeal with a virtual stranger stalking her daughter Kimberly for eight years after seeing her picture in the newspaper. The ordeal began as simple infatuation with a few love letters and gradually escalated to threats, following her out of state to her college and, eventually, stalking and threatening the whole family and the law enforcement officer assigned to the case.

This issue also encompasses cases of domestic violence. The Federal Bureau of Investigation reported that 30 percent of all women murdered in 1990 were killed by their husbands or boyfriends in domestic violence incidents. Furthermore, as many as 90 percent of these women killed by their husbands or boyfriends were stalked prior to the attack. Unfortunately, until recently, women who seek protection from this abuse often face a judicial system that has traditionally viewed such violence as merely "domestic disputes."

Thirty-two states, plus the District of Columbia, now have stalking laws. Sixteen other states, including my home state of Maine, have introduced legislation this year. I also understand

that, due in large part to Mrs. Krueger's testimony on behalf of this issue, a state anti-stalking law has been approved by the legislature in Texas.

But in many cases problems have arisen regarding these laws. Criticisms have been raised that some of these laws are so narrow as to be unenforceable and others so broad as to be unconstitutional. In fact, twelve of the states which passed legislation addressing this issue last year have introduced legislation this year to amend their anti-stalking laws.

This was a key factor in spurring Senator Biden and me to ask for the development of a model statute. I am pleased that the National Institute of Justice is well along in its work, enlisting the assistance of recognized experts on this subject, such as the National Victims' Center, the National Conference of State Legislators, the American Bar Association, and the National Criminal Justice Association. I am also pleased to note that Helen Lardner, who is testifying before the committee today, is a member of the advisory board. In view of the increasing urgency for enacting remedies for stalking, Senator Biden and I will be exploring with NIJ the possibility of expediting the completion of

the model state law and the recommendations for further Congressional action.

I look forward to continuing to work with Senator Biden and the members of the committee who have expressed such strong interest in this very serious issue. This effort will include legislation to help enforce anti-stalking laws, such as Senator Biden's proposal to give courts handling stalking cases access to the FBI's national criminal history computer system.

Perhaps such a measure would be helpful in cases like one I recently learned of involving a Maine woman whose daughter was harassed and ultimately shot by her stalker. According to a letter from her neighbor, because the police "could not do anything," this young woman "will spend the rest of her life in a wheelchair at 20 years of age. [The stalker] is now getting out of jail and [the victim and her family have] moved out of state because of our laws."

For the sake of this young woman and the thousands of other victims, I hope this committee's work, combined with the NIJ's release of the model state law and recommendations for further federal action, will help states ensure that our citizens are protected by enforceable anti-stalking statutes, no matter where they reside.

The CHAIRMAN. Well, thank you very much.

Senator Cohen has indicated the witness list. I want to say both to Ms. Lardner and to Ms. Krueger we appreciate your being willing to be here. This is not an easy thing for either of you to do and we do appreciate it. It is important that people understand what each of you have gone through and your families have gone through, but we have no illusions about how difficult it is to testify.

Now, our first witness is our distinguished colleague from California who, along with Senator Krueger, has introduced a piece of legislation federalizing this crime where the mails and the telephone have been used, or on Federal land, which is an approach that is slightly different than the one that Senator Cohen and I are suggesting. The purpose of the hearing today is to vent all the possible solutions here, and hopefully we will arrive at the best conclusion that will help impact most positively on the lives of those people who are now being victimized.

Senator, welcome. It is a delight to have you here.

**STATEMENT OF HON. BARBARA BOXER, A U.S. SENATOR FROM
THE STATE OF CALIFORNIA**

Senator BOXER. Thank you, Mr. Chairman.

I want to thank all my friends on the committee and my fellow Californian who has herself been a victim of a stalker. Let me begin by personally thanking all of you for the work you have done preceding this piece of legislation. I also want to thank Senator Cohen and Senator Biden for all their work on the whole issue of violence against women. I think this may be the year when we can finally get a bill into law. I certainly hope so, and I want to do what I can to help you.

I wanted to mention that Congressman Kennedy, Joe Kennedy, brought this issue up to me about a year or two ago and has been a real leader over on the House side. So maybe this is the year, Mr. Chairman, when we can make some good inroads. With regard to S. 470 I don't have any pride of authorship. What I hope that the committee will do is look at this approach that I and Senator Krueger are suggesting, put it together with your approach, and then let us move forward with a bill that meets all the constitutional tests and yet protects the people we want to protect.

Mr. Chairman, Senator Krueger and I have introduced S. 470, the antistalking legislation. As you have pointed out, this bill would make stalking a Federal crime and offer Federal protection for those women and men who are victims of stalking. Mr. Chairman, the victims of stalking aren't always women. They are sometimes men, as Senator Krueger can and his wife will explain to you.

Mr. Chairman, I believe S. 470 is a logical complement to your Violence Against Women Act which I was so privileged to carry in the House as your coauthor. I certainly look forward to seeing us move these pieces forward in tandem, if we can, along with your other approaches on antistalking.

Over the past few years, several high-profile cases involving celebrities have awakened our Nation to the problem of stalking. My State, California, was the first State to pass an antistalking law, and did so because Rebecca Schaefer, an actress, was murdered by

a stalker. But stalking, as you point out, is neither new nor limited to the famous. Unfortunately, it is a reality for many American men and women. You put out the number of 200,000; we think it is about that. None of us, whether we are a school teacher or a construction worker or a police officer or a college professor or a day laborer or a Senator—no matter what our profession—is immune from the threat of being stalked.

All across our Nation, Mr. Chairman, newspapers bear witness to the scope and brutality of stalking. Just a few months ago, Yonsoon Cho, a resident of Richmond, CA, survived her ex-husband's assault as he emptied numerous rounds from his M-1 rifle into her and their teenage son. Her former husband had stalked and beaten her for 6 years, Mr. Chairman, and nothing, not marriage counseling nor a women's shelter nor restraining orders, could keep him away.

In Massachusetts, which has one of the toughest laws and penalties, Susan Foster, an assistant dean at Tufts University, and her boyfriend were both beaten and almost killed by her ex-husband who had stalked her for 2 years. Ms. Foster had concluded that after her former husband had violated numerous restraining orders, threatened her, and stalked her, that there was nothing anyone seemed able or willing to do.

When Senator Krueger made his statement on the Senate floor it really amazed me—and you will hear in more detail from the other witnesses today—how stalking leaves law enforcement in a state of paralysis. They just can't seem to find the legal leg with which to act.

Ms. Foster's life was saved because a citizen, a private citizen, responded to her plea for help. In Florida, Larissa Aniello, now a college freshman, had been stalked since she was 14 years old by a man who sent her wedding cards, pizzas, dolls, and eventually threats. For her entire high school career, she could go nowhere alone. Only last summer when Florida passed its antistalking law was her stalker finally arrested.

States are beginning to recognize the seriousness of the crime. Over the past 2 years, 30 States have passed some type of antistalking law. However, the State laws vary. Some States have both misdemeanor and felony offenses, while others allow for only a single-offense level. I might add, Mr. Chairman, that the penalties in our bill are pretty harsh.

Some States very narrowly define stalking, as Senator Cohen pointed out, limiting it to persons who have shared an intimate relationship; other States, for example, take a broader view and recognize its effect on nonintimate parties. The very nature of stalking has made it an elusive target for traditional State criminal laws because certain stalking behavior, though perhaps a prelude to some violent physical act, may not rise to the level of either a crime or a serious crime under a particular law. As Senator Cohen pointed out, a stalker can just stand there. Now, what law is he or she breaking? Probably none, unless we act.

Our bill attempts to fill the void that exists between behavior that is legally acceptable and the indisputably criminal acts that can and do result from stalking. So while the legislation Senator Krueger and I have introduced can't apply to every single incident

of stalking, it would provide far greater protection than currently exists.

S. 470 would make stalking a Federal crime if committed on Federal property or by the use of means of interstate commerce, for example, through the mail or by telephone or by crossing a State line. We include this provision, Mr. Chairman, because you could have a stalker who starts in one State that has an antistalking law but who stalks a victim into a State that has no antistalking law.

The legislation would punish a person who harasses or makes a credible threat—that is the operative word—against another person by allowing for up to 2 years in prison or up to a \$5,000 fine, or both. If the convicted stalker were under any kind of restraining order, it would increase to a minimum of 2 years in prison to a maximum of 4 years, and a minimum of \$5,000, up to \$100,000, or both. Repeat offenders would receive a minimum 5-year, up to a maximum 10-year sentence, and a minimum \$25,000, up to a maximum \$200,000 fine, or both. As I pointed out, these penalties are more severe than the penalties in most of the States.

Senator Krueger and I are sensitive to the workload currently faced by our Federal judges. We are sensitive to that point. Thus, under S. 470, stalking incidents are not automatically put before a Federal court. The Attorney General or her subordinate responsible for criminal prosecutions must make a determination that the offender will not be expeditiously or effectively punished under State law.

Mr. Chairman, too often we read newspaper accounts of the horrible late-night phone calls and the threatening letters that always seem to culminate in an attack on some innocent person, and we always shake our heads and we wonder how such behavior could—which in hindsight seems so obviously threatening and outrageous—have been tolerated.

I believe Federal legislation would send a message that society will not wait until another innocent person is killed or paralyzed or has his or her life ruined before taking meaningful action against a stalker. We have a chance to send a message that the stalking of our loved ones and fellow citizens will not and must not be tolerated anywhere in America.

In closing, Mr. Chairman, let me echo what you said about the witnesses who are about to come forward. I contacted many people asking them to come forward and most of them, Mr. Chairman, would not do so because just the very act is terrifying, to relive it, to put yourself out there before the camera, to expose yourself maybe to somebody else, to the same person who may still be out there or awaiting a release. So I want to join you in thanking the witnesses. I think that they are extremely courageous and I think they are going to help your committee immeasurably because we will be putting a face on stalking.

I want to again thank you and the entire committee for its support in helping us get to the bottom of this matter and to once and for all stop these stalkers before they hurt anyone.

The CHAIRMAN. Well, Senator, thank you very much. Both you and Senator Grassley and Senator Cohen have mentioned either directly or indirectly the famous line uttered by Justice Brandeis in a particular case where, I might point out to my friend from Iowa,

he was recognizing that there are unenumerated constitutional rights which lend themselves to the establishment of the right of privacy in the Constitution. A number of people, including Judge Bork and others, argued there was no such right. But at any rate, I just thought I would point that out.

On a very, very serious note, this issue of the right to be let alone—stalking, based on the testimony we have had and our personal experiences and the experiences we have had with our constituents seeking help, takes all forms, the most brutal form we will hear, unfortunately, about later today from one of our witnesses. But it also takes the form of someone just literally standing there, just following the person, never uttering a word, never saying a thing, never passing a note, never making a threat. Every time you walk outside your house, that person is sitting out there in a parked car or standing there at the bus stop, or there when you walk out of work or there when you go to the park or go to the movies, or whatever.

You have indicated that your piece of legislation, Senator Boxer, has two distinguishing features, one of which is that we make it a Federal crime, giving the Federal courts jurisdiction over the crime if the mails have been used and/or the telephone has been used. Second, you acknowledge, which we all must, that it will not cover all circumstances where the average American would view themselves having become a victim as a consequence of someone's intrusion into their life, a disquieting intrusion, to say the least.

Now, you mentioned the California law. Do you have any sense of how effective the California law has been in stemming the number of stalking cases?

Senator BOXER. Mr. Chairman, it is uncertain at this point as to how effective it is. We had our first prosecution in northern California last spring resulting in the maximum sentence for the stalker. The victim's prior restraining orders had no effect but the stalking law did have effect, and any Californian who leaves the State and travels to a State without a stalking law can still be protected if our law passes. So that is why we think we need it.

It is hard for me to tell you that it is a success, but I can say that I believe that it will be a success particularly if we provide additional protections through Federal law.

The CHAIRMAN. One other question and then I will yield to Senator Hatch. You made reference to the fact that the Federal judiciary has been—there has been a drum beat for, I guess, the last 10 years, at least, but particularly the last couple of years, that we, the Congress, are federalizing too many activities, overloading the Federal court system with cases that the Federal courts argue are uniquely and should stay uniquely the province of State courts.

What is your response to the judges when they argue that your bill would make every State stalking offense into a Federal crime?

Senator BOXER. First, our bill only federalizes stalking if the phones are used or the mails are used. Where these conditions don't exist we still need State laws to protect our people.

Second, as stated in my testimony, the Attorney General must conclude that State prosecution won't be expeditious or effective before this matter shifts to the Federal courts. I think this Attorney

General, in particular, is very sensitive to this issue. And, of course, I feel that we are mindful of this problem as well.

The CHAIRMAN. Thank you, Senator.

Senator Hatch.

Senator HATCH. Well, thank you, Senator Boxer. We are glad to have your testimony and appreciate your comments here today.

Senator BOXER. Thank you very much.

The CHAIRMAN. Senator Kennedy.

Senator KENNEDY. Just one question, and I thank you as well, Senator Boxer. Your approach is to strengthen Federal laws to try to deal with this issue. Can you think of additional ways that the Federal Government could help the States in terms of strengthening their laws? Maybe it is the development of a model law, which is perhaps the result of a law that is working well in a particular State. But can you think of additional ways that the Federal Government, without making it a Federal crime, might be of help and assistance to the States?

Senator BOXER. I would say we looked at all that. We came down to this bill as the best way to help the people of this country. In terms of helping the States, we certainly have ways of rewarding States that take certain measures whether it is in terms of highway safety or tougher crime enforcement. We always have that approach, Senator Kennedy, but I still believe, with 200,000 people being stalked, the Federal Government should step forward and acknowledge the significance of this situation by providing Federal protection.

Senator KENNEDY. Thank you very much.

The CHAIRMAN. Thank you.

Senator Thurmond.

Senator THURMOND. Thank you, Mr. Chairman. Mr. Chairman, I ask unanimous consent that my opening statement follow that of the ranking member.

The CHAIRMAN. Without objection, it will be done.

[The prepared statement of Senator Thurmond follows:]

PREPARED STATEMENT OF SENATOR STROM THURMOND

MR. CHAIRMAN:

Today, the Committee is considering an issue of major importance to women and men across this Nation. This issue is "stalking", where individuals are pursued and harassed repeatedly by menacing persons. Stalking gained our Nation's attention through the publicity of several brutal murders which occurred after lengthy periods of harassment.

The attention given to stalking is well deserved, because it is not an isolated problem, but appears to have increased in numbers. Statistics indicate that five percent of all women in this Nation may be victims of stalking at some period in their lives. There may be as many as 200,000 perpetrators in this country who are currently stalking someone. The goal of anti-stalking legislation is to stop these persons before it is too late and more lives are needlessly lost.

In an effort to address the problem of stalking, at least 29 States have enacted anti-stalking laws which vary greatly in how they define stalking and how they punish offenders. Some of these State laws have been challenged as too broad, while others have been criticized for being too narrow. Last year we passed legislation introduced by Senator Cohen directing the National Institute of Justice to evaluate the anti-stalking legislation in the States and report its findings and conclusions. In addition, the legislation charged the NIJ with creating a constitutional and enforceable model anti-stalking law that can be used by the States. Because of the importance of this issue, our federal government should take all possible steps to assist the States in ensuring the basic rights to safety and protection for all of our citizens.

In conclusion, Mr. Chairman, I want to welcome Senator Boxer, Mrs. Krueger and the other witnesses and to thank each of them for their time in appearing before the Committee this morning.

Senator THURMOND. Senator Boxer, please give us your thoughts on whether it is desirable to pass Federal antistalking legislation prior to receiving the report on State legislation being prepared by the National Institute of Justice pursuant to the legislation we passed last year.

Senator BOXER. I would answer this way: If the Senate doesn't believe that this is a very serious and timely and urgent matter, then we can wait for reports. However, I don't think there is really anything in conflict because the type of bill that I have put forward and the one that may emerge from this committee wouldn't conflict with further study.

With 200,000 of our citizens being stalked, it is hard to think of another circumstance that affects so many of our citizens, so I think we ought to act quickly and send a signal that we are a law-abiding society and refuse to allow stalking and its related tragedies to take place.

Senator THURMOND. Now, ordinarily, law enforcement is the responsibility of the States, except when there is Federal jurisdiction, and normally I would want to continue the States' traditional role. However, here these stalkers can go from State to State. So for that reason, I would not oppose an appropriate Federal bill.

Senator BOXER. I am pleased to hear that.

Senator THURMOND. Now, would you discuss your view on the need or importance of federalizing crimes that are subject to State law?

Senator BOXER. I am sorry. Would you repeat the question?

Senator THURMOND. Would you discuss your view on the need or importance of federalizing crimes that are subject to State law?

Senator BOXER. I would just repeat the answer I gave to the chairman when he asked about this. Rather than get into a philosophical discussion about all laws, I would like to address our bill which really doesn't federalize stalking crimes but complements State law. Our bill says that if a crime occurs on Federal land, S. 470 applies. It says that if a means of interstate commerce is used—the mails, the phones—there is a Federal remedy. We clearly realize and accept the need for State laws, but we give an added punch to prosecutors.

Senator THURMOND. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Feinstein.

Senator FEINSTEIN. Senator Boxer, as you know, the State law has just toughened its sentence, obviously indicating that there is a need to do so. In California the sentence now is 16 months, 2 or 3 years, and a fine up to \$10,000, for which the individual would probably do about one-half of the time.

What I very much like about your bill is the fact that it gives an additional element to this. Somebody could be convicted under State law, be released, go back and do the same thing again, which I think is likely, and then be apprehended under Federal law. As I understand your Federal law, it is 2 to 4 years?

Senator BOXER. Yes. There are differences—first offenders, second offenders, and then offenders who are acting in violation of a restraining order. But we offer tough penalties, even tougher than

California's first-offense penalty. Massachusetts, as I mentioned earlier, has tough penalties.

Senator FEINSTEIN. Do you happen to recall what that is?

Senator BOXER. Yes. In Massachusetts, it is up to 5 years and a \$1,000 fine for a first offense. We have up to 2 years. Most of the States have up to 6 months for a first offense, which I think is far too little because we know that these people are going to continue to stalk.

Senator FEINSTEIN. Do you make any provision for States, or would you consider making a provision for States that have stalking laws that the State stalking law be used first and then the Federal law come into play?

Senator BOXER. I would leave that up to the good judgment of this committee and its legal beagles to decide. I feel that in some cases the States can act and at other times Federal law might be more effective. As far as I am concerned, whatever is going to work, whatever is going to make sure that these people are stopped—and if that is the State law, if it is a harsher, tougher, swifter law, that is terrific. This, in some cases, will be the only law there is. Remember, there are still 20 States without any law whatsoever.

Senator FEINSTEIN. The other point, and I hope you would agree and I would be interested to know is you do agree, is did your findings indicate that protective orders make little difference?

Senator BOXER. Yes.

Senator FEINSTEIN. For a woman to get a protective order—I know with mine just the legal fees to get the protective order, I think, were \$2,000. Many people can't afford to pay that, and there is an instance in San Francisco where a stalking case just resulted in an individual's death and this individual couldn't get a protective order. So I am just wondering what your thoughts are on that.

Senator BOXER. Well, I am just in full agreement that we are finding it isn't working; the system isn't working. I was unaware, to be perfectly candid with you, that you had to pay \$2,000 to get a protective order. I mean, that is extraordinary. There aren't many people who can afford that.

Senator FEINSTEIN. That is correct.

Senator BOXER. So I think you are making an excellent point that helps the case for our bill or a bill that you on this committee will craft.

Senator FEINSTEIN. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Cohen.

Senator COHEN. Thank you, Mr. Chairman. Senator Boxer, thank you for your testimony. One of the difficulties we have in analyzing stalking legislation is that the more that you lower the threshold where the law becomes effective, the greater the likelihood that you are inducing a challenge to the constitutionality of the law.

Senator Biden quoted Justice Brandeis about the right to be let alone. There is a corresponding right in the Constitution with the right to move freely in our society, and most lawyers learn in their first year of law school the old saw about my right to swing my fist stops where your nose begins. The question here is when does my right to walk and to be and to stand intrude upon your right to be left alone?

That is one of the reasons why Senator Biden and I called upon the National Institute of Justice to try and analyze these issues so that we don't just rush forward and pass a law only to have that law nullified somewhere down the road. Now, it may be that we can call upon the Justice Department to expedite its work and come up with some recommendations more quickly than on the time schedule they are currently using, and that would be very helpful.

But the proper threshold is an issue that we can't dismiss because the courts will not dismiss it and they will look very carefully at exactly the language that we use to see whether or not it is going to withstand constitutional scrutiny. I assume, for example, that your proposed legislation is based on the California statute.

Senator BOXER. Yes.

Senator COHEN. I have heard from Mr. John Lane, who is a lieutenant and head of the threat management division of the LAPD. He indicated that California's law was too narrow in order to protect against many types of stalking. So we may, in fact, want to broaden it beyond that. I think we have got to move expeditiously, but we also have to be very careful as to how we construct this because many States are rushing to pass laws and they may find out that down the line they are totally nullified by the courts.

That is the reason why we have exercised some caution to date. I hope that after this hearing perhaps we can call upon the Justice Department to speed up its investigative process.

Senator BOXER. If I just might respond to you, Senator, some legal beagle is going to wind up writing this. You know, we are all human beings, we are all going to use our best brains to figure this out. Now, I think that the States have done a pretty good job in trying to define this in such a way to meet the standard that they must meet. This isn't a brandnew area.

But let me make it perfectly clear, I want us to have the best law we can have, and I want to say that it doesn't do us any good if it is thrown out. The Constitution is pretty old. We can look at the words and figure this one out. This committee has faced similar challenges before, and I know that you share this view that we can't afford to wait too long for this. So I hope we can move expeditiously, Mr. Chairman, on this.

Senator COHEN. Thank you.

The CHAIRMAN. Thank you.

Senator Simon.

OPENING STATEMENT OF SENATOR SIMON

Senator SIMON. Yes; we ought to thank you, Senator Boxer, for elevating this issue. There are concerns, obviously, that have been expressed here in how we move on this. I would add one other reason for the law, whether it is State or Federal.

In the only experience I have had working with someone who has been stalked, there were also death threats. No one could ever prove who made the death threats. My guess is the death threats were tied in with the stalker. Even though you may not be able to prove the death threats, if you have stalking legislation then you have a handle for getting hold of someone who probably was involved in the death threats.

But, again, I want to join in commending you for elevating this issue here in the Senate and in the Nation.

Senator BOXER. Senator Simon, one of the most compelling things was when Senator Krueger explained that in order to get any action under the Texas law, there had to be a specific death threat made, and very specific. I mean, if a person said, I think I am going to kill you, that wasn't enough. It wasn't until it was explicitly, "I am going to come over at such and such a"—I mean, it is unbelievable that our system would have to wait so long.

So I just want to say in conclusion, Mr. Chairman, my deepest thanks to you for all you are doing to move these kinds of issues forward, and to the committee for its bipartisan way. I think it is really important that this be viewed as bipartisan because we all care about this deeply. I want to work with this committee and hope that it moves quickly on this matter.

Senator SIMON. If I could just add, Mr. Chairman, it does seem to me that Senator Feinstein brought up an important point that our staff ought to research, and that is whatever is passed in State or Federal legislation shouldn't be available just to people who can afford the legal fees. It ought to be available to every citizen.

The CHAIRMAN. Well, Senator, as you know, in most States you are allowed to proceed pro se, which means you do not need a lawyer. The vast majority of States in America do not require—in the State of Delaware, you are not required to come in with a lawyer, and in most every State in the Nation. All you need do is show up in the court of competent jurisdiction.

Now, it is obviously easier, if you are able, if the court is not user-friendly, and some courts are not as user-friendly as other courts are, to have an advocate with you who actually—it is a frightening thing for a woman or anyone to find themselves in a circumstance where they are being stalked seeking redress in a system that is complicated out of necessity—it is almost impossible to eliminate all the complication in the system—whereby they have to walk into a building, into a crowded area, walk up to a desk, find out who they go to and how they get to a judge and what they do, in the same sense that it is difficult and confusing to file your income tax. You walk into a big building, a big place, and it is a problem.

But there is no requirement in the vast majority of States that you must have legal counsel. You can do it all by yourself. People seek legal counsel to allow them to facilitate the system more easily and because they quite frankly don't know where to go, they don't know how to do it. But it is not a legal requirement, although it is in many cases a practical requirement, and so the point the Senator makes is a valid one.

Senator SIMON. And I would just add—and unfortunately I wasn't listening to you completely; I was listening to Senator Feinstein.

The CHAIRMAN. Well, you were making a wise judgment in listening to Senator Feinstein. [Laughter.]

Senator SIMON. If the stalker is represented by an attorney and you go in and you are not familiar with court procedure and everything, you know, theoretically you have the right, but that really becomes almost a theoretical right.

The CHAIRMAN. It is a very valid point, and that is why in the legislation that I have introduced along with Senator Cohen and the legislation today that I am talking about, what we try to do is we provide funding a small amount, an encouragement for the State courts to train their judges, to actually have training sessions for judges and the courts to accommodate this legitimate concern expressed by you and by Senator Feinstein.

It is legitimate; it is real; it works that way. It is difficult for people. I am in no way diminishing the value of having counsel with you and how that expedites things. I was just making a response to your specific question to have the staff determine what legal impediments existed. Some courts—and we are going to hear from the chief judge of the Family Court of the State of Delaware today—some courts in this Nation have systems whereby they actually provide help for people seeking redress from stalkers or seeking stay-away orders and they actually have people, like the program we have for battered children where you have a court-assigned person to follow that child through the system. But not all courts do; not all systems do. That is why we are trying to change this. It is a distinct and separate but important problem that must be dealt with.

Senator, I would like to invite you, if you would like, and I know you are very busy, to join us if you would like as an ad hoc member of this committee. With permission of my colleagues, I would ask unanimous consent that Senator Boxer, if she chooses to join us, be able to ask questions of the witnesses, if that is all right with my colleagues.

Senator BOXER. Thank you, Mr. Chairman. I am going to sit in the audience and listen to the witnesses, and I again thank you all and look forward to working with you.

The CHAIRMAN. Well, thank you very, very much.

Now, let me introduce the next panel that we are going to bring up. Our first witness, and if you will please come up, Ms. Krueger, is Kathleen Krueger. For the last 8 years, she and her family have been the target of a stalker, a former pilot of the Krueger's campaign plane. He was pilot during their 1984 campaign for the U.S. Senate.

Ms. Krueger happens to have a husband who is a U.S. Senator, and we will not hold that against her here in this hearing, and probably would not be in this position were that not the case, but I welcome you, Ms. Krueger. Again, understand that this is a user-friendly hearing room. We are here to listen to you at your pace in any way you would like to proceed.

Also, Judge Vincent Poppiti is the chief judge of the Delaware Family Court. Prior to his appointment as chief judge, he served as a superior court judge, a family court judge, and State solicitor. He has a wide range of experience in this area and he has an extensive legal background, and we are lucky to have him in my State and it is nice to have him join us today. Thank you for coming down, Judge Poppiti, if you will take a seat next to Ms. Krueger.

Accompanying him is, in my view, one of the two or three leading law enforcement officers in the State of Delaware, the number two person in our county police force, Ms. Scibelli. Sherri is here to ac-

company the judge, along with Ed Pollard and Michael Arrington, Delaware court record experts who are available to answer any technical questions we may have.

We want to particularly thank Helen Lardner, an attorney here in Washington. She is the sister of Kristin Lardner, who was tragically killed by her stalker last year in Boston. Ms. Lardner is also a member of the National Criminal Justice Association's research group working with the National Institute of Justice to develop model antistalking legislation for the States. This project is the product of Senator Cohen's antistalking bill last year which became law in October. Ms. Lardner, we welcome you and I know you must have very mixed emotions being here. You can testify in the capacity of someone working to find the model legislation, but also we have, as I said earlier, no illusions about the emotional difficulty of your being here to testify about your sister's tragic murder.

Ruth Jones is currently a staff attorney with the NOW Legal Defense Fund. Ms. Jones has served as a prosecutor in the Manhattan district attorney's office where she prosecuted domestic violence and stalking cases. Also, she has extensively studied the issue of stalking and is prepared to share some of her thoughts with us today. Thank you for being here today, Ms. Jones.

Now, again, we will proceed at as leisurely a pace as you are comfortable. Ms. Krueger, I would like to invite you to be our lead-off witness and, again, thank you for being willing to go public with this committee on this legislation.

PANEL CONSISTING OF KATHLEEN KRUEGER, NEW BRAUNFELS, TX; HELEN M. LARDNER, WASHINGTON, DC; RUTH JONES, STAFF ATTORNEY, NATIONAL ORGANIZATION FOR WOMEN LEGAL DEFENSE FUND, NEW YORK, NY; AND VINCENT J. POPPITI, CHIEF JUDGE, FAMILY COURT OF THE STATE OF DELAWARE, WILMINGTON, DE

STATEMENT OF KATHLEEN KRUEGER

Ms. KRUEGER. Thank you so much, Mr. Chairman, distinguished members of this committee. I am Kathleen Krueger. I am from New Braunfels, TX. I am one woman among thousands whose family has known the terror of being stalked. What happened to us happens to families all over America every day. It is for them that I speak.

In 1984, as my husband, Senator Bob Krueger of Texas, was campaigning, a man named Thomas Humphrey piloted the small plane we used for appearances around the State. When we lost the election, Tom Humphrey seemed unable to recover. For months, he came to our house every day in apparent grief and depression. After Bob told him directly but politely several times that all of us must get on with our lives and respect each other's privacy, Tom Humphrey snapped. I would like you to remember that what I am about to tell you started over 8 years ago and continues today.

First came calls in the middle of the night with a crazed Tom Humphrey shouting obscenities, assuming other personalities, and rambling pointlessly. He kept returning to our house. I would cower alone, refusing to open the door, while he repeatedly rang the door bell and just stood there sometimes for up to 20 minutes.

What followed seems like a blur now—the pleas with Humphrey's parents to get their son help, meetings with our lawyer, the county attorney, the policy, the FBI. In every meeting, law enforcement officers and the attorneys were concerned and sympathetic, but they were helpless, as were we. Time and again, they admitted, we can't do anything until he physically tries to hurt you.

Humphrey's messages became increasingly threatening and violent. He broke a restraining order. The justice of the peace who issued it admitted that it was, in his words, just a piece of paper. Humphrey was arrested and jailed overnight. Within 2 days, he was at it again even more fiercely. He would call as many as 120 times a day to the office and to our home.

In 1987, Bob and I fulfilled our dream of having children. When I was 10 weeks pregnant, Humphrey left a message on our answering machine saying, I am going to kill you, I am going to kill you; I have hired a killer to put a .22 caliber to your head while you lay sleeping next to your wife.

Four years after the harassment began, his threats were finally specific enough for the FBI to act. FBI agents who went to arrest him could not find him. For 3 days, the FBI, our hometown police, Bob and I, 3 months pregnant, feared he was on his way to Texas. I believed I might give birth as a widow. That was almost 5 years ago.

These are some of the answering machine tapes and letters we have received. This is what he sounds like.

[Transcription of a tape recording follows:]

You know about me, Bob, and this is the truth. If I feel that I've been wrongly discriminated against in this case, the first thing I'm going to do is go to the first person I think who's wrong, then I'll blow his ——— brains out. I go to the second person who I think has wronged me I'll blow his ——— brains out. I'll go to the third person who I think has wronged me, then I'll blow his ——— brains out. And it's up to you to protect yourself from that, but I don't think you can because I'm 95 percent smarter than everybody else. But I'll tell you one thing, I'll carry out the job, so you better be scared of that, you ——— little ———, and you better get me before I get you. That's honest, honest.

[End of tape transcription.]

Ms. KRUEGER. FBI agents found Tom Humphrey, arrested him and charged him with death threats and extortion. He pled guilty and was put in Federal prison. I wish I could tell you that that was the end of the story, but it was not. I gave birth to our second daughter 18 months after our first. The week she was born, Humphrey was released the first time. The second time he was convicted, he was sentenced to 2 years, was scheduled to serve 6 months. But, in fact, he was released only 4 short weeks later. Today, he is in Federal prison for the third time for death threats against my husband.

Each time he has been paroled, he served his supervised release, as it is called in Austin, 45 minutes from our home. Last summer during release from prison, 8 years after this was all begun, he put a letter in our mailbox. It said, look how close I can get to you; see, I could kill you right now if I wanted to.

How has this affected me and the way I live? I don't know that words could accurately describe it. We have an unlisted home phone number now. We also installed a security system and put flood lights which automatically turn on at night around the entire

perimeter of our house. Most of all, I am afraid to be alone, alone in my home, whether it be day or night, alone with our children, whether it be in our backyard or walking to New Braunfels Square.

Bob has always done a lot of traveling for his work and I am still terrified of being alone with out two little girls. We try to make sure someone is with me day and night. We have shared our home with someone each year, this year with a college student who comes home nights and weekends. That is the way I have tried to deal with my fear and to give myself and my children a sense of security without resorting to armed bodyguards, which would make any semblance of a normal life impossible.

The U.S. attorney handling our case said something I will never forget. He said, in all of my years of law enforcement there have only been one or two times that I have stood next to a defendant in a courtroom and felt this is a killer. He said, later on I came to find out that, yes, that person had killed someone in the past or they soon thereafter went on the kill someone. The U.S. attorney paused and then said, I don't have a good feeling about Tom Humphrey.

In a few months, Thomas Michael Humphrey will be out of prison again. He will be basically free to go where he wishes and to do what he wants. Please, I urge you to pass a strong antistalking law for our sake and for the thousands of victimized families across this Nation.

Thank you very much.

[The prepared statement of Ms. Krueger follows:]

STATEMENT
BY
KATHLEEN KRUEGER
SENATE JUDICIARY COMMITTEE
17 MARCH 1993

Mr. Chairman -- distinguished members of this committee, thank you for inviting me to speak today.

I come before you as one woman among thousands in the state of Texas whose family has known the terror of being stalked.

Nine years ago, as my husband -- Senator Bob Krueger of Texas -- was beginning to campaign for the U.S. Senate, our campaign manager hired a man named Thomas Michael Humphrey to pilot the small plane needed to make campaign appearances around the huge state. The following 12 months of association with Mr. Humphrey were unremarkable in every way. We treated him with professional courtesy. He was obviously content with his job and was a reliable employee.

When we lost that election in May of 1984, we began to go on with our lives, but it was obvious that Tom Humphrey was unable to go on with his. He seemed unable to recover and would come to our house daily, at about supper time, in apparent grief and depression over our loss. After a couple months, the person who seemed to be just a troubled employee was beginning to cause us real concern.

My husband proceeded to tell him very directly, but courteously, "Tom, we have our lives to live and you have yours. You must respect our privacy and we will respect yours. You must go on with your life as we have ours."

When this gentle nudging took place, Mr. Humphrey snapped and the true degree of his mental instability was revealed.

This episode began over 8 years ago and it still goes on today. The series of events that happened next are something I would not wish on anyone. What happened to my family happens to families all over the country on a daily basis. It is for them, the voices that you will not hear today, that I speak.

First came the calls in the middle of the night. My husband and I would awaken to the startling sound of a phone ringing through the darkness; terror-stricken with the thought that perhaps a loved one had been harmed. But, on the other end was a crazed Tom Humphrey shouting obscenities, assuming other personalities, and rambling pointlessly; sometimes relating to current events in the news or characters in the latest movie.

Mr. Humphrey also continued to come to our house at odd times of the day. I would cower alone, refusing to open the door while he repeatedly rang the doorbell and just stood there, sometimes for as long as 20 minutes before leaving. Other times Mr. Humphrey left cryptic or rambling notes in our door. It was apparent that he was losing control. And, the worst was yet to come.

What followed on our side was a maze, almost a blur now, of meetings with private attorneys, the Comal County Attorney, the police and the FBI. We begged for help from the legal system. Mr. Humphrey's messages were becoming more and more threatening and violent. The years of his stalking were taking their toll. In every meeting with the law enforcement or the legal community we were met with real and genuine sympathy, but always with the

words, "we can't do anything until he physically tries to hurt you." They felt as helpless as we did.

We made attempts to halt Mr. Humphrey's actions through letters from our attorneys and even a restraining order which he promptly violated. He was arrested and jailed overnight. We thought the impact of the arrest would stop Mr. Humphrey. But it did not. Within two days he was at it again more fiercely. The Justice of the Peace in Comal County who issued the restraining order forlornly admitted that a peace bond was, after all, "just a piece of paper."

In the meantime, we periodically contacted Mr. Humphrey's parents -- to plead with them that they get their son the help he needed. They were profusely apologetic, but said they were unable to control their own son.

During these years, Tom Humphrey would call as many as 120 times a day to the home and office. We tried to go on with a normal life and spoke about this matter only to our closest friends and family. We were determined not to let it dominate our lives, but my fear was growing more and more intense.

In 1987, Bob and I decided to fulfill our long-held dream of having children. We rejoiced when I became pregnant. It should have been a time of pure bliss for us but the shadow of Tom Humphrey still hung over our lives.

At the beginning of my pregnancy, we got a new unlisted phone number. We live in a house that my husband grew up in. It was the first time in 45 years that the home phone number was unlisted. Throughout the years Bob served in the Congress and as Ambassador, his home phone number was public information. Tom Humphrey made that tradition impossible. I told my husband that, while I was pregnant, I didn't want to feel fear every time the phone rang.

When I was ten weeks pregnant, Humphrey left the following message on our answering machine at Bob's office in New Braunfels, Texas: "I'm going to kill you, I'm going to kill you... I've hired a Mexican killer to put a 22 caliber to your head while you lay sleeping next to your wife." And he ended, "You won't be much of an Ambassador with a hole in your head."

Four years after his harassment began, law enforcement authorities were finally able to act. His threat was finally "specific enough." It was ascertained that Humphrey made the calls from his home in California. FBI agents who went to his house to make an arrest could not find him. For three days, the FBI, the New Braunfels Police, Bob and I -- nearly three months pregnant -- feared that he was on his way to Texas to carry out his gruesome threats. I felt the terror of believing that I might give birth as a widow.

That was five years ago. These are some of the answering machine tapes and letters we've received since. (Show tapes).

Here is a typical message. (Play tape).

FBI agents located Tom Humphrey holed up in a hotel. He was arrested and charged with making death threats and extortion, because he also recorded statements that he would leave us alone if we paid him \$25,000. He plead guilty and was put in federal prison.

I wish I could tell you that was the end of the story - but it was not. I wish I could tell you that was the end of his threats and harassment - but, it was not. Mr. Humphrey has been

in and out of jail and is now in federal prison for the third time for making death threats against my husband.

During that time, I gave birth to our second daughter eighteen months after our first. The week she was born, Humphrey was released the first time. Each time he was released after serving only part of his actual sentence. This last time he was sentenced to two years, but due to various penal code computations, he was to serve only six months. In fact, he served four short weeks.

After each release, Humphrey has served his probation or "supervised release," as it is called, in Austin, a 45 minute drive from our town. And he knows where our home is.

Last summer, during release from prison, Mr. Humphrey came into our yard. We live on a quiet dead-end street in New Braunfels surrounded by a lot of open land and a river behind us. He put a letter in our mailbox. It stated, "Look how close I can get to you. See, I could kill you right now if I wanted to."

That was last summer - eight long years after this all began. Humphrey's obsession is as keen today as it was in the beginning.

How has this affected me and the way I live? I don't know that words could accurately describe it.

As I mentioned, we have an unlisted home phone number now. We also installed a security system and put flood lights which automatically turn on at night around the perimeter of our house.

Most of all I am afraid to be alone -- alone in my home, whether it be day or night. Alone with our children, whether it be in our backyard or walking the New Braunfels square.

Bob has always done a lot of traveling for his work and I am still terrified of being alone with our two little girls. We try to make sure that someone is with me day and night. We've shared our home with someone each year -- this year, with a full-time college student who comes home at night and on weekends.

That's the way I have tried to deal with my fear and to give myself and my children a sense of security without resorting to armed body guards, which would make any semblance of a normal life impossible.

Recently, Bob and I had lunch with the U.S. Attorney assigned to our case. The attorney said something I will never forget. He said, "In all my years of law enforcement, I have only two or three times stood next to a defendant and thought 'This is a killer.' In every case I have come to find out that yes that person had killed someone or, soon after, did kill someone."

Then he paused and said, "I don't have a good feeling about Tom Humphrey."

In a few months, Thomas Michael Humphrey will be released again. In a few months he will be free to go where he wishes and do what he wants.

Legally, Bob and I will be virtually starting from scratch.

Please, I urge you to pass a strong anti-stalking law for our sake and for the sake of thousands of victimized families.

Thank you.

The CHAIRMAN. Thank you, Ms. Krueger.

I think maybe we should go to Ms. Lardner first and hear from them both, and then hear how the courts actually function and interview Ms. Jones on what we should be doing.

As I said, Ms. Lardner, I realize it is difficult for you to be here, but you are doing a real service being here and we appreciate it.

STATEMENT OF HELEN M. LARDNER

Ms. LARDNER. Thank you, Mr. Chairman. I have focused my testimony on the courts checking criminal case—

The CHAIRMAN. I hate to ask you this. Would you mind pulling that microphone up as close as you can? It makes it cumbersome to see your notes, but you have to speak right into this thing. The acoustics aren't very good.

Ms. LARDNER. All right. Can you hear me now?

The CHAIRMAN. That is good.

Ms. LARDNER. OK, thanks. I have focused my testimony on the courts' lack of looking at records of the person who killed my sister because that was my understanding of—

The CHAIRMAN. Yes; that is what we would like to hear.

Ms. LARDNER. The man who killed my sister was on probation and had a long criminal history. She was shot to death in broad daylight on a busy street in Boston by a man who should have been in prison when she went to court to get a temporary restraining order and then a permanent injunction against him. If the courts had checked his record or spoken to police when she sought help, he would have been locked up rather than set loose to kill her.

She had dated the man for about 2 months before breaking up with him on April 16, 1992. That evening, he followed her down the street, beat her senseless, and left her lying on the curb.

The CHAIRMAN. Take your time.

Ms. LARDNER. Excuse me. Two men passing in a car saw her there, checked her I.D., and took her home. It was not until May when she realized that he was not going to return a piece of exercise equipment that he had purchased using her credit card or stopped bothering her that she sought help from the court.

She went to the Brookline, MA, police on May 11. By the time she got there, it was late in the day and the courthouse next door was closed. She spoke to an officer, Sgt. Robert G. Simmons, about the man who was stalking her, Michael Cartier. He then showed her Cartier's record. He had killed cats, beat up ex-girlfriends, and had even been caught in one incident where he injected his own blood into a restaurant ketchup bottle. In fact, at the time Michael Cartier was stalking Kristin, he was on probation for having attacked a previous girlfriend with scissors. He had been sentenced to prison in that case because his attack on her was a violation of a previous probation.

Afraid that Kristin would not return to press charges, Sergeant Simmons made an application himself and got a night judge to sign a 1-day emergency order. The sergeant also sent paperwork to the courthouse calling for a complaint to be issued charging the man with assault and battery, larceny, intimidation of a witness, and violation of the domestic violence law. This paperwork was sitting in the clerk magistrate's in box when Kristin was killed.

The next day, May 12, Kristin returned to court to ask for a TRO. The judge who heard her that day was unaware of the man's criminal history and the fact that he was on probation for having beat up a previous girlfriend, and even of the papers sent to the courthouse the night before by Sergeant Simmons. The judge therefore issued a TRO and scheduled a hearing for the following week for a permanent injunction, which would then be heard by a different judge. After my sister's death, the judge expressed regret that he had not checked Cartier's record when issuing the TRO. If he had, he would have realized the danger Cartier represented and pressed for a warrant and immediate arrest.

Cartier's probation officer in Boston knew of his attack on Kristin because Kristin called her and told her about it. The officer told Kristin to go to court and get an order, but took no action herself. Rather than take any steps to revoke probation, the probation officer called Cartier and told him about Kristin's call and that he should return the exercise equipment. She ordered a psychiatric evaluation and did nothing more.

The chief probation officer, John Tobin, claims his office could not have done anything further because Kristin would not give her name. Incredibly, he also claims his office would have done nothing in any event because Kristin was not the woman in the case they were supervising. The fact remains that Cartier's probation officer in Boston knew what was going on, could have found out that an order had been issued in Brookline against Cartier for violence against another woman, and never bothered to lift up the phone to inquire about it.

When Kristin returned to court on May 19 for a permanent injunction, a different judge also treated the proceeding in a routine manner and did not check Cartier's record. He was also unaware of the application for complaint the police officer had sent to the clerk's office on May 11. He issued an order which was to prevent Cartier from any contact with Kristin and—

Senator THURMOND. If you don't mind, bring your microphone a little bit closer so we can hear you better.

The CHAIRMAN. Would staff help move the—

Ms. LARDNER. I am sorry, Senator.

The CHAIRMAN. That is OK. That silver microphone is the one that—that is it.

Ms. LARDNER. Is this better?

The CHAIRMAN. That is better.

Senator HATCH. You are doing fine.

The CHAIRMAN. You are doing fine.

Ms. LARDNER. He issued an order which was to prevent Cartier from any contact with Kristin and to stay 200 yards away from her. Ironically, on May 18 a Massachusetts law went into effect making stalking a crime, especially if the stalking occurred in violation of a restraining order.

At midnight, about 12 hours before the May 19 hearing, Cartier violated that law and the restraining order by calling Kristin in an attempt to get her not to get the permanent injunction. Kristin called the police, who came to her apartment at about 1:10 a.m. The officer who spoke to her that evening filed a criminal complaint application against Cartier for violation of the existing TRO

when he returned to headquarters. This second complaint was also sitting in the clerk magistrate's in box when Kristin was killed.

At the May 19 hearing, Kristin did not tell the judge about the midnight call because her correct understanding of the law was that the order she was getting against Cartier was enough on its own to have him incarcerated based on his record.

I can't help but think that my sister might be alive today if the judge at the TRO hearing had checked Cartier's record, the judge at the hearing for permanent injunction had checked Cartier's record, or Cartier's probation officer had followed up on any of the substantial information she had.

Since Kristin's death, the Massachusetts Legislature passed a bill establishing a statewide registry of domestic violence offenses that also includes the past criminal histories of offenders. Each judge is required to consult this information when handling cases which involve restraining orders, and I think every State should do the same.

[Ms. Lardner submitted the following:]

TESTIMONY OF HELEN M. LARDNER
BEFORE THE SENATE JUDICIARY COMMITTEE

March 17, 1993

It is my understanding that the focus of these hearings is to explore the merits of information sharing among states and local jurisdictions in the areas of domestic violence and stalking. The story of my sister Kristin as it relates to this subject is tragically on point. The man who killed her was on probation and had a long criminal history. My sister Kristin was shot to death in broad daylight on a busy street in Boston by a man who should have been imprisoned when she went to court to get a temporary restraining order (TRO) and then a permanent injunction against him. If the courts had checked his record or spoken to police when she sought help, he would have been locked up rather than set loose to kill her.

She had dated the man for about 2 months before breaking up with him on April 16, 1992. That evening he followed her down the street, beat her senseless, and left her lying on a curb. Two men in a passing car saw her there, checked her ID, and took her home. It was not until May, when she realized that he was not going to return an expensive piece of exercise equipment that he had purchased using her credit card or stop bothering her, that she sought help from the court.

She went to the Brookline, Massachusetts, police on May 11. By the time she got there, the courthouse next door was closed. She spoke to an officer, Sergeant Robert G. Simmons, about the man who was stalking her, Michael Cartier. He then showed her Cartier's record: he had killed cats, beat up ex-girlfriends and had even been caught injecting his own blood into a restaurant ketchup bottle. In fact, at the time Michael Cartier was stalking Kristin, he was on probation for having attacked a previous girlfriend with scissors. He had been sentenced to prison in that case because his attack on her was a violation of a previous probation. Afraid that Kristin would not return to press charges, Sergeant Simmons made an application himself and got a night judge to sign a one-day emergency order. The sergeant also sent paperwork to the courthouse calling for a complaint to be issued charging the man with assault and battery, larceny, intimidation of a

witness and violation of the domestic violence law. This paperwork was sitting in the clerk-magistrate's in-box when Kristin was killed.

The next day, May 12, Kristin returned to the court to ask for a TRO. The judge who heard her that day was unaware of the man's criminal history and the fact that he was on probation for having beat up a previous girlfriend and even of the papers sent to his courthouse the night before by Sergeant Simmons. The judge therefore issued the TRO and scheduled a hearing for the following week for a permanent injunction which would be heard by a different judge. After my sister's death, the judge expressed regret that he had not checked Cartier's record when issuing the TRO. If he had, he would have realized the danger Cartier represented and pressed for a warrant and immediate arrest.

Cartier's probation officer in Boston knew of his attack on Kristin because Kristin called and told her about it. The officer told Kristin to go to court and get an order but took no action herself. Rather than take any steps to revoke probation, the probation officer called Cartier and told him about Kristin's call and that he should return the exercise equipment. She ordered a psychiatric evaluation and did nothing more. The Chief Probation Officer, John Tobin, claims his office could not have done anything further because Kristin would not give her name. Incredibly, he also claims that the office would have done nothing in any event because Kristin was not the woman in the case they were supervising. The fact remains that Cartier's probation officer in Boston knew what was going on and could have found that an order had been issued in Brookline against Cartier for violence against another woman and yet never bothered to lift up the phone and inquire about it.

When Kristin returned to court on May 19 for a permanent injunction, a different judge also treated the proceeding in a routine manner and did not check Cartier's record. He was also unaware of the application for complaint the police officer had sent to the clerk's office on May 11. He issued an order which was to prevent Cartier from any contact with Kristin and to stay 200 yards away from her. Ironically, on May 18, a Massachusetts law went into effect making stalking a crime, especially if the stalking occurred in violation of a restraining order. At midnight, about 12 hours before the May 19 hearing, Cartier violated

that law and the restraining order by calling Kristin in an attempt to convince her not to get the permanent injunction. Kristin called the police who came to her apartment at about 1:10 A.M. The officer who spoke to her that evening filed a criminal complaint application against Cartier for violation of the existing TRO when he returned to his headquarters. This second complaint was also sitting in the clerk-magistrate's in-box when Kristin was killed. At the May 19 hearing, Kristin did not tell the judge about the midnight call because her correct understanding was that the order she was getting against Cartier was enough, on its own, to have him incarcerated based on his record.

My sister might be alive today if:

- 1) The judge at the TRO hearing checked Cartier's record;
- 2) The judge at the hearing for permanent injunction had checked Cartier's record;
- 3) Cartier's probation officer had followed up on any substantial information she had.

Since Kristin's death, the Massachusetts legislature passed a bill establishing a statewide registry of domestic violence offenses that also includes the past criminal histories of offenders. Each judge is required to consult this information when handling cases which involve restraining orders. Each state should do the same.

The Stalking Of Kristin

The Law Made It Easy For My Daughter's Killer

By George Lardner Jr.

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 sobbed. "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 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 Greta Garbo, played one of the witches in "Macbeth" and had a

George Lardner is a Washington Post reporter.

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women



The Boston Gl
THURSDAY, JUNE 1, 1978

...regrets he didn't
see Cartier's record



Kristin Lardner, 21, a Washington-born art student whose murder in Boston revealed a criminal justice system that looks the other way at the evil done to women.

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 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 Mu-

seum 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.

See KRISTIN, C2 Col 1

Boston Authorities Knew the Killer Liked to Prey on Women

KRISTIN. From C1

"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."

'I Told Her That He Could KILL Her'

Kristin wrote that essay last November for a course at Tufts taught by Ross Ellenborn, who also happens to be a counselor at Emerge, an educational program for abusive men. He had once mentioned this to his students. He would hear from my daughter in April, after she met Michael Carlier.

By then, Kristin had been dating Carlier, 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 looked her to the ground and started kicking her over and over," reads a Brookline 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 reminiscent to her legs and recurring headaches from the kicks."

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

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

"I said, 'Are you on probation?'" Ellenborn 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, Carlier 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," Ellenborn says. "He knew what kind of conviction would be made." Michael Carter was, of course, on probation for attacking another woman.

Carlier preyed on women. Clearly disturbed, he once talked of killing his mother. When he was 5 or 6, he remembered a pet rabbit. When he was 21, he tortured and killed a kitten. In a bizarre 1969 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 Carlier 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."

Carlier 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 had a bad deal his whole life," she said. "That nobody loved him and I was the only one who could help him."

Carlier 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 Carlier beat Ryan up. She got angry with him for "jodding 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."

Carlier 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 Carlier-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 Carlier'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, Carlier 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." She said, "Get out. This guy's crazy. They were taking him out in handcuffs."

Three months later, Carlier, already on probation, pleabargained 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 Carlier. "But after the [jury] hearing" he told me. "Oh yeah, nothing happened. They slapped my wrist."

'He Was Born That Way'

When Michael Carlier was born in Newburyport, Mass., his mother was 17. Her husband, then 19, left them six months later. Gene Carlier has since remarried twice. Her son, Penny Carlier 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 Carlier asserted. "When he was five or six, he had a rabbit. He ripped its legs out [with] his fists."

"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 Carlier denies this—as a child abused at an early age. "That's

the worst childhood I've ever seen," agrees Rich DeAngela, 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-sworded skinhead, amputating into the newroomer of the Lawrence Eagle-Tribune with his bald friends in June 1989 to complain of the bad press and "neo-Nazi" labels skinheads usually got. "The state supported me all my life, with free doctors and dentists and everything," Cartier told columnist Kathie Nefi. "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]."

Nefi said Cartier cut a especially striking figure, walking on crutches and wearing a patch on one eye. He had just survived a serious car accident that produced what seems to have 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.

'No Acute Mental Disorder'

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,"



Michael Cartier: "Why do I always hurt the people I love?"

Boston's trolley train and subway system, Cartier followed her—and accosted her at the Government Center station with a pair of scissors. She ducked the scissors and Cartier punched her in the mouth.

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

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

Rose Ryan said Cartier threatened to kill her several times after they broke up in December, and in a chance encounter in March, told her he had a gun. The Ryan sisters called his probation officer in Brighton, Tom Casey. He told Rose to get a restraining order and on March 23, 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. Sulken 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 likeminded 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 commuted 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, Carlier was released early, on Nov. 5, 1991. "He's been a very good prisoner and we're over-crowded," 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, Carlier 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 last for a 1968 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."

Carlier 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.

Portrait of My Daughter

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 Carce, 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 Corbin, 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 next year. 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 Carlier last Jan. 30 at a Boston nightclub called Aunz, having gone there with Lauren Mace, Kristin's roommate and best friend, and Lauren's boyfriend. At Aunz, Kristin recognized Carlier as someone she'd seen at Bunratty's, a hard-rock club where Carlier had been a bouncer. Carlier 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 Carlier 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 Carlier was a bouncer at Bunratty's and had a tattoo.

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

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

Charlie, who had just entered college after a few years of job-hopping, job 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 a 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. Carlier was irrationally jealous, accusing her of going out with men who stopped by just to talk. During one argument, apparently over her art, Carlier hit her, then did his "usual thing" and started crying.

Carlier, 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 lod-godge 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. Carlier . . . 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 Carlier 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, Carlier 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.

Carlier'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. Carlier'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 Carter 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."

'Call Your Daughter'

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.

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 Bunratty's.

Rosemary: He does what?

Kristin: He works at Bunratty'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 locked 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 trouble. 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 puff-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 odd 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."

A Call for Help

On May 7, the same day Cartier sent flowers to Kristin, he told her that he was going to cheer 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: say, 'Get your pronouns straight. You should not be worrying about the weight machine. You should be worrying

See KRISTIN, C3, C6, 1.

He Said He Planned to Kill Kristin

KRISTIN, From C2

about your safety . . . Get to Brookline court, seek an assault complaint, a larceny complaint, whatever it takes . . . and get a restraining order."

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

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

The next day, Friday, May 8, instead of moving to revoke Carter's probation, Moeller called Carter 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 any more. 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."

Carter did all that while planning Kristin's murder.

When Carter 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 brother Ross Ellenhorn and now Carter'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 Carter 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 [Carter'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 entering.' 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 Carter 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, unexcusably, 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 Carter'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 thug in the Commonwealth accused under the 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 Carter 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."

I Had This Gut Feeling

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. Carter's probation officer knew that the anonymous female caller lived in Brookline; a call to officials there would have made clear that Carter had once again violated probation by beating up an ex-girlfriend. No such call was made.

Apparently, the probation officer didn't ask Carter for the details either. According to a state official who asked not to be identified, Diane Moeller met with Carter 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 Carter 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, Carter 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, 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. Carter 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. Carter 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.



Nude self-portrait; angry colors and a large leg bruise.

We waited a long time. He kept walking in and out of the courtroom. I think he was staring at her."

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

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

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

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

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

The judge told him to patronize some other liquor store, but not before more argument from Cartier about how he would have to "walk further down the street" and about how close it was to Bunratty's, only half a block away.

McGill ended the hearing by ordering Cartier to avoid any contact with Kristin, to stay at least 200 yards away from her and not to talk to her if he had to come closer when entering his home or the nightclub. And with that, Cartier walked out scot-free. Yet, Massachusetts law, enacted in 1990, provides for mandatory arrest of anyone a law enforcement officer has probable cause to believe violated a temporary or permanent restraining order. In addition, a state law making "stalking" a crime, especially in violation of a restraining order, had been signed by

Gov. Weld just the day before, May 16, 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 Coaners' 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."

'What a Weirdo'

Kristin, who now had 11 days to live, talked enthusiastically about going to Europe after graduation, only a year away. After that she was hoping to go to graduate school. She had lost interest in boys, wanting to concentrate on her art.

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

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

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

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

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

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

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

He couldn't handle rejection either. Cartier told his friends that she broke up with him because she wanted to see other people. "Belky 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 boy-friends 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."

My Daughter's Death

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

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

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

"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 what she was doing 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 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 as she passed by him. Witnesses said he came out of the doorway 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.

A Killer's Farewell

He killer fled down the alley, which took him to Glenview 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 shell 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 at Boston Municipal Court as scheduled on June 19, a warrant was issued for his arrest. It is still outstanding.

The CHAIRMAN. Thank you. Your family should be very proud of you.

Ms. Jones.

STATEMENT OF RUTH JONES

Ms. JONES. Mr. Chairman and members of the committee, thank you for the opportunity to speak with you this morning.

I am Ruth Jones, a staff attorney with the NOW Legal Defense and Education Fund. The NOW Legal Defense and Education Fund is a nonprofit women's rights legal organization devoted to eliminating sex discrimination and achieving equality for women.

For the last several years, a major focus of our work has been addressing violence against women, working to ensure that women are free from the fear of violence that keeps them from becoming fully participating members of our community. My testimony today, however, is also based upon my previous experience as an assistant district attorney. Prior to joining the NOW Legal Defense Fund, I spent 5 years as an assistant district attorney in New York County prosecuting misdemeanor and felony domestic violence cases. In this capacity, I represented many women who were the victims of domestic violence and sought to leave their abusers.

Unfortunately, for many women leaving their abusers was not enough to escape the violence. The abuser often continued to harass the woman by following her, sending her threatening letters, making threatening phone calls, and engaging in other intimidating behavior. Until recently, the absence of specific laws prohibiting this type of campaign of terror, better known as stalking, meant that law enforcement officials were powerless to act until a victim had been injured or even killed.

Recently enacted State antistalking laws seek to criminalize the array of behavior that forces stalking victims to live in constant fear for their lives. These laws, which often provide for criminal sanctions and issuance of orders of protection, have given law enforcement officials an important tool in the battle against violence against women.

However, enactment of stalking laws is only part of the solution to ending the terror that besieges stalking victims. A critical concern that most victims have is not simply that there is a law designed to protect them, but that the law can be enforced to prevent the stalker from being able to harm them. Without the defendant being detained while a stalking case is proceeding or given an adequate jail sentence once convicted, victims are still at risk for physical abuse or injury.

In one of my cases as an assistant district attorney, a woman sought and was given an order of protection while the criminal case against her abuser proceeded. On several occasions, he violated that order of protection by phone calls and letters, but I was never able to make the court understand the gravity of the situation. Ultimately, he failed to return to court and a bench warrant was issued. In fact, he ceased communication with the woman.

Before he could be arrested on that warrant, however, he stabbed and killed this woman in front of her son and shocked onlookers at a grocery store. She trusted the system and the system failed her. The system failed her because the court couldn't discern that

the letters and the phone calls were a precursor to violence. It is not enough that we simply pass stalking laws without ensuring that their enforcement will result in real protection for stalking targets.

Courts will be asked to make bail and sentencing decisions in stalking, as in other criminal cases. The lack of timely and accurate information about the defendant's prior criminal history from all States prevents courts from knowing the full extent of the danger faced by victims. A court should know if the defendant has engaged in a pattern of harassment which has escalated from phone calls to physical violence, and a court should know if a defendant has a history of failing to return to court.

Giving courts access to the defendant's records from other States will allow them to make a more realistic assessment of the potential danger in each individual stalking case. Allowing all courts charged with enforcing these laws information on a defendant's criminal history is a task that is well suited to Federal legislation.

Another area that is particularly well suited to Federal intervention is the development of model antistalking legislation. The speed with which States have responded to this crisis and enacted new legislation is laudable, but in some instances State antistalking legislation has raised constitutional concerns. Stalking laws must be carefully crafted to avoid the constitutional problems of vagueness and overbreadth.

The passage last year of the law directing the Attorney General, through the National Institute of Justice, to develop model antistalking legislation should be of tremendous assistance to States seeking to draft constitutional stalking laws, but we must also learn how these laws are being enforced, what types of cases are being brought, and what difficulties are being presented in the prosecution of these cases.

The notion of Federal antistalking legislation is a bit more problematic. While it is true that State and local authorities have traditionally been slow to respond to domestic violence victims, because stalking laws have only recently been enacted, it is unclear how they will enforce the stalking laws that currently exist. There have not been a great number of prosecutions under these State laws to discern what gaps exist which can best be filled by Federal legislation. Thus, it might be prudent to postpone any Federal legislation until there has been sufficient time to learn the results of the State laws.

Stalking is a national problem. Antistalking laws are necessary to ensure that action can be taken before there is a tragedy, but it will take a strong collaborative effort between Federal and local law enforcement authorities to make the laws work to truly protect victims.

[The prepared statement of Ms. Jones follows:]

STATEMENT OF
NOW LEGAL DEFENSE AND EDUCATION FUND
ON ANTI-STALKING LEGISLATION

Mr. Chairman and members of the Committee, thank you for the opportunity to speak with you this morning. I am Ruth Jones, a staff attorney with the NOW Legal Defense and Education Fund.

The NOW Legal Defense and Education Fund is a national non-profit women's rights legal organization devoted to eliminating sex discrimination and achieving equality for women. Since its founding as a separate organization in 1970 by leaders of the National Organization for Women, NOW LDEF has worked for equal opportunity in the workplace, the schools, the courts and the family. For the last several years a major focus of NOW LDEF has been addressing violence against women; working to ensure that women are free from the fear of violence that keeps them from becoming fully participating members of the community.

My testimony is also informed by my previous experience as an assistant distant attorney. Prior to joining NOW LDEF, I spent five years as an assistant district attorney in the New York County District Attorney's Office, prosecuting misdemeanor and felony domestic violence cases. In this capacity I represented many women who were the victims of domestic violence and sought to leave their abusers. Unfortunately, for many women leaving their abuser was not enough to escape the violence. The abuser often continued to harass the woman by following her, sending her threatening letters, making threatening phone calls and engaging in other intimidating behavior. Until recently the absence of specific laws prohibiting this type of campaign of terror, better known as stalking, meant that law enforcement officials were powerless to act until the victim had been injured or killed.¹

¹ Although anyone can be the victim of stalking, the majority of victims are women stalked by an ex-lover or ex-husband. Melinda Beck, Murderous Obsession, Newsweek, July 13, 1992, at 60. The risk of assault is greatest when a woman leaves or threatens to leave an abusive relationship. Angela Browne, When Battered Women Kill. New York: The Free Press p.114 (1987).

In the last three years thirty-two states have enacted legislation addressing the problem of stalking,² and fifteen states currently have anti-stalking legislation pending.³ These laws seek to criminalize the array of behavior that forces stalking victims to live in constant fear for their lives. These laws, which often provide for criminal sanctions and issuance of orders of protection, have given law enforcement officials an important tool in the battle against violence against women. However, enactment of stalking laws is only part of the solution to ending the terror that besieges stalking victims. A critical concern that most victims have is not simply that there is a law designed to protect them, but that the law can be enforced to prevent the stalker from being able to harm them. Even before the states passed stalking laws, victims could sometimes secure civil protective orders and restraining orders from criminal courts⁴ to keep stalkers away from their homes, workplaces or even a certain distance from them. But in far too many instances these orders were

² Those states which have passed laws relating to stalking include: Alabama, Arizona, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Mississippi, Nebraska, New Jersey, New York, North Carolina, Oklahoma, Ohio, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Virginia, Washington, West Virginia, Wisconsin, Wyoming. For some relevant statutory cites, see AZ Legis 241 (Westlaw 1992) (slip) to be codified at Ariz. Rev. Stat. Ann. §13-2921 (1991); Cal. Penal Code §646.9 (1992) & 1991 CA S.B. 1342 (Westlaw 1992); CO LEGIS H.B. 92-1189 (Westlaw 1992) to be codified at Colo. Rev. Stat. §18-9-111; CT LEGIS 92-237 (Westlaw 1992); DE LEGIS 250 (Westlaw 1992) to be codified at Del. Code Ann. tit. 11, §1312A; FL LEGIS 92-208 (Westlaw 1992) to be codified at Fla. Stat. §784.048; ID LEGIS 227 (Westlaw 1992) to be codified at Idaho Code §18-7905; Illinois Public Act 87-870 to be codified at Ill. Rev. Stat. ch. 38. §12-7.3; LA LEGIS H.F. 2025 (Westlaw 1992) to be codified at Iowa Code §708.11; KS LEGIS 298 (Westlaw 1992) to be codified at Kan. Crim. Code Ann §8-1567; KY LEGIS 443 (Westlaw 1992); LA LEGIS 80 (1992) to be codified at La. Rev. Stat. Ann. §40.2, MA LEGIS 31 (Westlaw 1992) to be codified at Mass. Gen. L. ch. 31, §43, MA LEGIS 532 (Westlaw 1992); NE LEGIS 1098 (Westlaw 1992); NY LEGIS 345 (Westlaw 1992) to be codified at New York Penal Law §120.25-.30; OK LEGIS 42 to be codified at Okla. Stat. tit. §1173; SC LEGIS 417 (Westlaw 1992) to be codified at S.C. Code Ann. §16-3-1070; SD LEGIS 162 (Westlaw 1992); TN LEGIS 795 (Westlaw 1992); UT LEGIS 188 (Westlaw 1992) to be codified at Utah Code Ann. §76-5-106.5; VA LEGIS 888 (Westlaw 1992) to be codified at Va. Code Ann. §18.2-60.3; WA LEGIS 186 (Westlaw 1992); WV LEGIS 52 (Westlaw 1992) to be codified at W. Va. Code §61.2-91; WI LEGIS 194 (Westlaw 1992) to be codified at Wis. Stat. §29.05.

³ Alaska, Arkansas, Georgia, Indiana, Maine, Minnesota, Missouri, Nevada, New Hampshire, New Mexico, North Dakota, Oregon, Pennsylvania, Texas, and Vermont.

⁴ Under civil law, a stalking victim can petition the court for a restraining order to keep stalkers away from them. There are numerous problems in securing and enforcing such an order. A civil proceeding requires the victim to hire and pay an attorney and court costs. Also, these orders are not self-enforcing and thus violations of the order would not subject the offender to immediate arrest but require the victim to return to court and get the stalker held in contempt.

The difficulty in using existing criminal laws against stalking is that frequently, stalking conduct does not rise to the level of a criminal violation. When the behavior does violate a state criminal law, it is often a misdemeanor crime such as trespass and the penalties are fines and short jail sentences.

nothing more than a piece of paper. Particularly in the domestic violence context, without the defendant being detained while the case is proceeding or given an adequate jail sentence once convicted, victims were still at risk for physical abuse or injury. In one of my cases as an assistant district attorney, a woman sought and was given an order of protection while the criminal case against her abuser proceeded. On several occasions he violated the order of protection and he ultimately failed to return to court and a bench warrant was issued for his arrest. Before he could be arrested on the warrant, he stabbed and killed the woman in front of her son and shocked onlookers at a grocery store.

It is not enough that we simply pass stalking laws without analyzing if their enforcement will result in real protection for stalking targets. This is an issue which has not been addressed by most of the current stalking legislation. One exception is legislation passed in Illinois⁵. Illinois has realized that stalking involves a continuous risk to the victim and has authorized a procedure to make a realistic bail assessment. Under the Illinois stalking legislation, the legislators specified that bail can be denied where the court, after a hearing, determines that the release of the defendant would pose a real and present threat to the physical safety of the alleged victim of the offense and denial of bail is necessary to prevent fulfillment of the threat upon which the charge is based. In making its determination the court must consider a number of factors,⁶ including the defendant's prior criminal history indicative of violent, abusive or assaultive behavior.

Even in the absence of a specific statute authorizing denial of bail in stalking cases, courts are forced to make bail decisions in stalking, as in other criminal cases. The lack of timely and accurate information about the defendant's prior criminal history from all states prevents courts from knowing the full extent of the danger faced by victims. A court should know if the defendant has been engaged in a pattern of harassment which has escalated from phone calls to physical violence and a court should know if a defendant has a history of failing to return to court. Giving courts access to

⁵ Illinois Public Act 87-870 to be codified at Ill. Rev. Stat. Ch. 38

⁶ The court may deny bail to defendant, when after a hearing, it determines that: (1) the proof is evident or the presumption great that the defendant has committed the offense of stalking or aggravated stalking; (2) the defendant poses a real and present threat to the physical safety of the alleged victim of the offense; (3) the denial of release on bail or personal recognizance is necessary to prevent fulfillment of the threat upon which the charge is based, and (4) the court finds that no condition or combination of conditions set forth in subsection (B) of § 110-10 of this code, including mental health treatment at a community mental health center, hospital, or facility of the Department of Mental Health and Developmental Disabilities, can reasonably assure the physical safety of the alleged victim of the offense. Illinois Public Act 87-870 to be codified at Ill. Rev. Stat. Ch. 38, Par. 110-6.3.

the defendant's record from other states allows them to make a more realistic assessment of the situation. Allowing all courts charged with enforcing stalking laws access to all information on a defendant's criminal history is a task that is well suited to federal legislation.

Another area that is particularly well suited to federal intervention is the development of model anti-stalking legislation. The speed with which states have responded to this crisis and enacted new legislation is laudable but in some instances state anti-stalking legislation has raised constitutional concerns. Stalking laws must be carefully crafted to avoid the constitutional problems of vagueness and overbreadth.⁷ The passage last year of the law directing the Attorney General, through the National Institute of Justice, to develop model anti-stalking legislation, should be of tremendous assistance to states seeking to draft constitutional stalking laws.

The notion of federal anti-stalking legislation is a bit more problematic. While it is true that states and local authorities have traditionally been slow to respond to domestic violence victims,⁸ because these laws have only recently been enacted, it is unclear how they will enforce the stalking laws. There have also not been a great number of prosecutions under these state laws to discern what gaps exist which can best be filled by federal legislation.⁹ Thus, it might be prudent to postpone any federal legislation until there has been sufficient time to study the results of the state laws.

Conclusion

Stalking is a national problem. Anti-stalking laws are necessary to ensure that action can be taken before there is a tragedy, but it will take a strong collaborative effort between federal and local law enforcement authorities to make the laws work to truly protect victims.

⁷ The due process clause of the Constitution requires laws to be sufficiently specific so that an individual can know whether his behavior constitutes criminal conduct. If the law is not clear, it will be ruled unconstitutional for vagueness. *Winters v. New York*, 333 U.S. 507 (1948); *Parker v. Levy*, 417 U.S. 773, 774-75 (1974).

A stalking statute may be overbroad if it criminalizes expression protected by the First Amendment as well as unprotected expression. *R.A.V. v. City of St. Paul*, 112 S. Ct. 2538, 2550 (1992).

⁸ Courts have held local governments liable for police failure to respond to battered women's calls for assistance. *Bruno v. Codd*, 90 Misc.2d 1047, 396 N.Y.S.2d 974 (Sup. Ct. N.Y. Co. 1977); *Thurman v. City of Torrington*, 595 F. Supp. 1521 (D. Conn. 1984).

⁹ Under the Florida stalking law cases have ranged from a 12 year-old boy who allegedly sent threatening notes to a seventh grade classmate, to a sixty-six year old man who called the victim repeatedly and appeared uninvited at her door but who, according to the victim, "never threatened her." *Boy 12, Accused in Stalking Case*, *The Washington Times*, Dec. 17, 1992, at B5; Andy Friedberg, *Elderly Man May Be First Charged Under Florida Stalking Law*, *The Houston Chronicle*, July 12, 1992, at 16.

In Chicago, the first stalking trial resulted in an acquittal of a man charged with harassing and threatening his former wife, Curtis Lawrence, *1st Stalking Trial Results in Acquittal*, *Chicago Tribune*, Dec. 19, 1992 at 5.

The CHAIRMAN. Thank you very much, Ms. Jones.
Judge Poppiti.

STATEMENT OF VINCENT J. POPPITI

Judge POPPITI. Mr. Chairman, distinguished members of the U.S. Senate Committee on the Judiciary, I am both pleased and privileged to have been offered the opportunity to express my views on the importance of information availability and information-sharing throughout the criminal and civil national justice system against the backdrop of this committee's discussion of Federal antistalking legislation, Senate bill 470 and House bill 840.

In June of 1984, as Chair of a team of individuals who serve in Delaware's criminal justice system, a team consisting of representatives from the bench, the Administrative Office of the Courts, the Department of Justice, the Delaware State Police, the Office of the Public Defender, the Department of Corrections, the Delaware Justice Information System, and others, I had the occasion to make a statement prefacing the report issued by the team. I respectfully submit that that statement addresses, in part, important matters before you today.

I said then the issue is not computers, but information, information needed to protect the public safety and provide for a just society within our State of Delaware. We have come to believe that the soul of justice is wisdom and the essence of wisdom knowledge. We have become singularly aware that the raw material of knowledge is information, and of information data. If we aspire to justice and wisdom, therefore, it must be achieved on a bedrock foundation of enterprise data carefully constructed and painstakingly maintained and nourished.

The executive summary of that plan, a copy of which I would be happy to provide to staff of the committee if they would find it helpful, reads in part,

Information is a basic resource of government, as it is in business. Whether sent by smoke signal or by space satellite, it is the need for information by business and government that has driven the development of faster communication technology in our society. The State of Delaware has invested substantial sums of money in providing the tools of communication to its agencies and courts from carbon paper to computers. While such tools are essential to effective operations, it is the information delivered by these tools that is the essence of effective management. The agencies and courts involved in criminal justice are separate operations functioning in an interdependent process called the criminal justice system. The efficiency of this complex system depends upon how well these separate but interdependent efforts are coordinated in the timely exchange of information.

Fortunately, I am not before you today to grade how well or how poorly the information system plan has been implemented. Rather, by providing you with some snapshots from scenes in Delaware courtrooms, I can throw a tight spotlight on the critical need for access to information that has heretofore not been readily available to the players in the criminal justice system.

Senator, rather than focusing on the unique nature of the family court in Delaware—and it is unique because we have both civil and criminal jurisdiction, and you would expect that within one courthouse we can talk to ourselves in terms of how information is presented and shared. And if you can magnify that problem, and I will describe those problems, to the *n*th degree in other jurisdictions

where you don't have that unique singular family court, I think it is perhaps more important for me to move to some examples where the system failed rather than talk about what Delaware Family Court looks like.

What happens when a judge lacks the most current information? These are real examples. They pale, however, in significance to the live testimony from the persons to my right and left.

One judicial officer is taking a plea for terroristic threatening from an estranged husband who threatens to kill his wife and children in the family court in the State of Delaware. In the same building, a civil petition for emergency custody is being processed by the civil unit of the same court, but without knowledge of the judicial officer presiding over the criminal case. The deputy attorney general is unaware of the numerous complaints to which the police have responded at the home of the litigants that had never resulted in an arrest prior to the terroristic threatening.

The defendant receives a fine and is ordered to have no contact with his wife. The husband later receives notice of the petition for emergency custody. That evening, the wife and three children, including a neighbor's child, die as the house is set ablaze. The husband is arrested.

In one building, a judicial officer was not aware of what matters were pending. A deputy attorney general was not aware of what complaints had been made against the defendant. Problem: In short, there was a wealth of information that should have demanded caution, but there was no information system available to give access to that information. The players were simply not aware.

Response: Formation of a fatal incident response team for Delaware's Family Court to analyze the court's involvement in any fatality with domestic violence overtones; in progress, the development of an automated system that will give access to all of the court's civil filings and orders. An ad hoc committee was formed to address the need for a coordinated approach to dealing with domestic violence. One of the goals of that committee is to establish a statewide model, a statewide protocol, a statewide method, as to how information is gathered from arrest and shared from arrest through disposition.

A second example. It is 3 a.m. and a mother and father walk into the lobby of a justice of the peace court. Both claim that they have custody of the children and came to the court only after the police responded because the two were fighting. Neither the police nor the magistrate are able to ascertain who has been granted custody. Without access to family court information, the magistrate is expected to exercise the wisdom of Solomon.

Problem: Each court's information is self-contained and there is no access to the information unless there can be human contact between the courts to verify the existence of court orders. Family court is open 40 hours per week, and that means for 128 hours per week in Delaware there is no access by a magistrate to family court files, orders, et cetera. The magistrate must have information in order to make an informed decision. Response: An automated information system that would give every court access to information contained in other courts that would necessarily improve the decisionmaking process.

A third example. A husband has been harassing his wife who resides in Delaware while he lives in the neighboring State of New Jersey, clearly a separated couple. There were numerous complaints of harassment when the parties lived together in New Jersey. Since most of the current harassment has been by telephone, there is little willingness on the part of the police to act.

The husband comes to Delaware to visit relatives and begins to follow his wife. The town police have no knowledge of the harassment complaints made to the State police and the State police are unaware that he has come to Delaware. As a result, the town police are not aware that this is a continuing problem of growing severity and do not see the seriousness of the situation.

Problem: While Delaware's criminal courts may have limited access to out-of-State criminal histories via NCIC, they do not have access to complaints or to civil orders of restraint or custody that may have been issued in other States. Neighboring police departments must often rely on the alleged victim to supply them with a complaint history, since complaint information is often not data entered into the criminal complaint file.

Response: The courts and law enforcement must realize the need to input information in a timely and complete manner into existing information systems. Both civil and criminal courts need access to criminal history information for not only their State, but as it relates to domestic violence in other States.

There are numerous other instances in which a lack of shared information can result in untoward consequences. Example: A judge sentences a defendant to probation. Right before the judge leaves the courtroom, the defendant is arrested for a violation of probation on a prior offense. The judge, the deputy attorney general, the public defender were not aware that the defendant was even wanted.

A father appears for a support hearing and argues with his wife. She later complains to the mediator she doesn't know how or why he is allowed to harass her since a judge in another State issued a restraining order four months ago.

In sum, our court has problems with the sharing of information within the court between our civil and criminal divisions, each of which may be dealing with the same litigants; between the various courts of our State which may be attempting to deal with some of these same litigants; between the court and law enforcement which has investigated complaints by these litigants; and between our court and the courts of other States.

Senators and Mr. Chairman, the Biden SAFVE Act proposals to enhance information-sharing between the civil justice system, restraining orders, and the criminal justice system, bail through sentencing and disposition, is a step in the right direction and long overdue, and places the issue of information-sharing under the spotlight at center stage in real time.

What you may be about to do is what Delaware committed to do in 1984 and remains committed to do and to achieve in the future, get the right information to the right people at the right time to make the right decision.

Thank you.

[The prepared statement of Judge Poppiti follows:]

**REMARKS OF VINCENT J. POPPITI, CHIEF JUDGE OF THE
FAMILY COURT OF THE STATE OF DELAWARE, TO THE
SENATE COMMITTEE ON THE JUDICIARY**

Wednesday, March 17, 1993

Mr. Chairman, distinguished members of the United States Senate Committee on the Judiciary, I am both pleased and privileged to have been offered the opportunity to express my views on the importance of information availability and information sharing throughout the criminal and civil national justice system -- against the backdrop of this committee's discussions of the federal Anti-Stalking legislation -- Senate Bill 470 sponsored by Senators Boxer and Krueger and House Bill 840 sponsored by Representative Kennedy and others.

In June of 1984, as Chair of a team of individuals who serve in Delaware's criminal justice system -- a team consisting of representatives from the Bench, the Administrative Office of the Courts, the Department of Justice, the Delaware State Police, the Office of the Public Defender, the Department of Correction, the Delaware Justice Information System and others -- I had the occasion to issue a statement prefacing the report issued by the team. I respectfully submit that that statement addresses in part the issues before you today. I said then:

" . . . the issue is not computers -- but information -- information needed to protect the public safety and provide for a just society within our State of Delaware. We have come to believe that the soul of justice is wisdom and the essence of wisdom -- knowledge. We have become singularly aware that the raw material of knowledge is information and of information -- DATA. If we aspire to justice and wisdom, therefore, it must be achieved on a bedrock foundation of enterprise data carefully constructed and painstakingly maintained and nourished."

The Executive Summary to the Plan -- a copy of which I would be happy to provide to staff of the committee if they would find it helpful - reads in part:

"Information is a basic resource of government as it is of business. Whether sent by smoke signal or by space satellites, it is the need for information by business and government that has driven the development of faster communication technology in our society. The State of Delaware has invested substantial sums of money in providing the tools of communication to its agencies and courts from carbon paper to computers. While such tools are essential to effective operations, it is the information delivered by these tools that is the essence of effective management. The agencies and courts involved in criminal justice are separate operations functioning in an interdependent process called the criminal justice system. The efficiency of this complex system depends upon how well these separate but interdependent efforts are coordinated in the timely exchange of information."

Fortunately, I am not before you today to grade how well or how poorly the Information Systems Plan of 1984 has been implemented. Rather, by providing you with some snapshots from scenes in Delaware courtrooms, I can throw a tight spotlight on the critical need for access to information that has heretofore not been readily available to the players in the criminal justice system.

Permit me to set the stage from my vantage point as Chief Judge of Delaware's unique statewide Family Court. In short, by focusing on Delaware's experience, I expect committee members may see the magnitude of the problem existing in other states, where courts are not similarly organized, as well as among and between states.

Delaware's Family Court is a court of Statewide jurisdiction. The issues which are handled by our Court provide a nearly unique jurisdiction in this country. (Only the states of Rhode Island and Hawaii have family courts with comparable jurisdiction.) The Family Court's mandate is to provide "such control, care and treatment as will best serve the interests of the public, the family and the offender, to the end that the home will, if possible, remain unbroken and the family members will recognize and discharge their legal and moral responsibilities to the public and to one another." This is the stated

purpose of Delaware's Family Court. To that end, the Court has been granted civil and criminal jurisdiction over all family and child matters and over nearly all criminal offenses involving children or family members which arise in the State of Delaware.

Thus, Family Court of Delaware decides cases of divorce as well as all ancillary matters flowing from divorce, such as child support, child custody and visitation, alimony and property division. Other civil matters which the Court determines are cases of child neglect, dependency or abuse, cases involving allegations of imperiling family relations by a family member, termination of parental rights, paternity and adoption. Progressing along the continuum of the Court's jurisdiction, juvenile delinquency, a hybrid case-type with criminal and civil characteristics, is a major issue determined by the Family Court. This jurisdiction includes all criminal acts committed by a person under the age of 18, except for the most serious offenses and those juveniles deemed non-amenable to Family Court processes. Lastly, the Court handles misdemeanor-level crimes committed by a family member against another family member, whether child or adult. Thus, it can be said that the jurisdiction of Delaware's Family Court is of some breadth and affects the citizens who come to its courthouses in their most private and closest personal relationships.

Delaware has a distinct advantage over most states. What Delaware does under one roof is, in forty-seven states, done under several. Despite this, we have problems with communicating information in our own court. This problem, I must speculate, is even greater for those states where several courts deal either civilly or criminally with the same litigants and is compounded when these issues and the people involved move across the state line.

Judicial Officers of our Court -- Judges and Masters -- hear both criminal and civil matters involving family life [the definition of which members of the committee may

want to discuss with me after my opening remarks]. Indeed it is not uncommon for our judicial officers to claim that they live with a family -- for the life of a family. But at any one time as a matter comes to center stage for attention -- how complete -- how timely -- how accurate -- is the information provided to the judicial officers? My snapshots should suggest some answers which should cause concern and prompt you to action.

What happens when a judge lacks the most current information:

1. One judicial officer is taking a plea for terroristic threatening from an estranged husband who threatened to kill his wife and children. In the same building a civil petition for emergency custody is being processed by the civil unit of the same court but without knowledge of the judicial officer presiding over the criminal case. The deputy attorney general is unaware of the numerous complaints to which the police have responded at the home of the litigants that had never resulted in an arrest prior to the terroristic threatening.

The defendant receives a fine and is ordered to have no contact with his wife. The husband later receives notice of the petition for emergency custody. That evening the wife and 3 children, including a neighbor's child, die as the house is set ablaze. The husband is arrested.

- In one building a judicial officer was not aware of what other matters were pending;
- A deputy attorney general was not aware of what complaints had been made against the defendant.

Problem:

In short there was a wealth of information that should have demanded caution, but there was no information system available to give access to that information. The players were simply not aware.

Response:

Formation of a Fatal Incident Response Team for Delaware's Family Court to analyze the Court's involvement in any fatality with domestic violence overtones.

The Family Court's Fatal Incident Response Team was formed to respond to any fatality occurring in the State of Delaware which has domestic violence overtones. The Team had dual purposes: 1) to develop a response to possible media inquiries and 2) to evaluate the Family Court's involvement in a case, by assessing the propriety of the Court's actions, and to develop a critique of the Court's performance for the purpose of informing staff and enhancing training.

- In progress, development of an automated system that will give access to all of the Court's civil filings and orders.
 - An ad hoc committee was formed to address the need for a coordinated approach to dealing with domestic violence. One of the goals of the committee is to establish a state-wide method as to how information is gathered and shared from arrest through disposition.
2. It is 3:00 a.m. and a mother and father walk into the lobby of a Justice of the Peace Court. Both claim that they have custody of the children and came to the Court only after the police responded because the two were fighting. Neither the police nor the magistrate are able to ascertain who has been granted custody. Without access to Family Court's information, the magistrate is expected to exercise the wisdom of Solomon.

Problem:

Each court's information is self-contained and there is no access to the information unless there can be human contact between the courts to verify the existence of court orders. Family Court is open 40 hours per week and that means for 128 hours per week in Delaware there is no access by a

magistrate to Family Court's files, orders, etc. The magistrate must have information in order to make an informed decision.

Response:

An automated information system that would give every court access to information contained in other courts that would necessarily improve the decisionmaking process.

3. A husband has been harassing his wife who resides in Delaware while he lives in the neighboring state of New Jersey. There were numerous complaints of harassment when the parties lived together in New Jersey. Since most of the current harassment has been via telephone, there is little willingness on the part of the police to act. The husband comes to Delaware to visit relatives and begins to follow his wife. The town police have no knowledge of the harassment complaints made to the state police and the state police are unaware that he has come to Delaware. As a result, the town police are not aware that this is a continuing problem of growing severity and do not see the seriousness of the situation.

Problem:

- While Delaware's criminal courts may have limited access to out-of-state criminal histories via NCIC, they do not have access to complaints or to civil orders of restraint or custody that may have been issued in other states.
- Neighboring police departments must often rely on the alleged victim to supply them with a complaint history since complaint information is often not data entered into the criminal complaint file.

The police, whenever they respond to an incident, complete a report. In Delaware the DELJIS system has given the police community the capability to store this information in a complaint file. However, the percentage of police officers taking advantage of that capability is less than desired. If entered, this complaint file would be available to the courts and other law enforcement agencies.

Response:

- The courts and law enforcement must realize the need to input information in a timely and complete manner into existing information systems.
- Both civil and criminal courts need access to criminal history information for, not only their state, but as it relates to domestic violence in other states.

There are numerous other instances in which a lack of shared information can result in untoward consequences.

- A judge sentences a defendant to probation. But before the judge leaves the courtroom, the defendant is arrested for a violation of probation on a prior offense. The judge, deputy attorney general, and public defender were not aware that the defendant was even wanted.
- A father appears for a support hearing and argues with his wife. She later complains to the mediator that she does not know why he is allowed to harass her since a judge in another state issued a restraining order 4 months ago.

In sum, our court has problems with the sharing of information:

- within the court between our civil and criminal divisions each of which may be dealing with the same litigants;
- between the various courts of our state which may be attempting to deal with some of these same litigants;

- between the court and law enforcement which has investigated complaints made by these litigants;
- between our court and the court of other states.

Within our Court we are fortunate in that:

- we will soon have access to FAMIS, an automated Family Court civil case management system that will give us the capability of cross referencing all civil actions involving the same litigants;
- both our civil and criminal divisions have access to DELJIS which contains all criminal histories and warrant files but which in many cases lacks recent dispositions and suffers from the users' failure to enter data in a timely or complete manner. DELJIS provides us in turn with NCIC access.
- the JIS (Judicial Information System) provides capabilities to manage our caseload.
- the State has seen the importance of information sharing and is currently involved in an integrated project which may eventually lead to the integration of all of the above as well as integration with systems that deal with the Department of Corrections and Motor Vehicles.

Senators, Mr. Chairman, the Biden proposals to enhance information sharing between the civil justice system [restraining orders] and the criminal justice system [bail and sentencing decision] is a step in the right direction and places the issue of information sharing under the spotlight at center stage. What you may be about to do is what Delaware committed to do in 1984 and remains committed to achieve in the future.

- Get the right information
- To the right people
- At the right time
- To make the right decision

The Ad Hoc committee is focused upon a multi-agency approach to domestic violence. A primary goal of this committee was to develop a model procedure as a guide for all agencies dealing with domestic violence. To facilitate the applied object of assessing information which is both accurate and timely, a prototype, uniform crime report has been created for use by police upon initial response to all calls of domestic violence/stalking. This prototype police report incorporates risk assessment as well as mandatory NCIC fields of information.

The CHAIRMAN. Thank you very much, Judge.

Let me say at the outset that I—and maybe I will ask you this, Ms. Jones and Judge Poppiti. As the frustration grows on the part of people who are harassed and the families of those persons harassed, and as those people and families become convinced that the system does not lend itself to solving their problem, I would think we would see arise a vigilante approach to this problem.

I sit here and I listen to Ms. Lardner and I sit and listen to Ms. Krueger. I sat and listened to that lovely woman from Maine who was here last time and talked about her daughter, and I admit to not having the purest of thoughts. I suspect I would think about either myself or physically hiring someone to take care of my problem. I shouldn't even say that publicly, but seriously I would think that thought would have to cross people's minds.

Now, all of you are out there going, that is silly, but I don't think I am so different than the average middle-class person out there. I think I would be hard-pressed, with my 11-year-old daughter here in this audience—if she had to change her entire life because the system didn't change, I admit to you that I would consider resigning this job and taking care of it myself. That is not the right thing to do, but if I think it, I don't think I am so abnormal. I think one of the things that I am, unfortunately, is quintessentially a middle-class American.

I am not proud of that thought. I am not proud of what my instinct would tell me to do, but I know what it is like to lose a child, I know what it is like to have a child, and I know I would not let it stand. Now, I can't believe that I am the exception, that I am the only ill-thinking person in America, and I just wonder—what are you trying to tell me here? My staff won't even let me tell you what I think.

There is an example. She is pointing out that a person being stalked decided that the law wouldn't take care of it for them, so they started to carry a weapon and they decided to take out that weapon and pulled out a handgun and shot this individual twice in the abdomen. I guess it is beginning to answer my own questions here.

What I wanted to know is, from your experiences in the court and your experiences in your days as a prosecutor, do people give vent to the frustration that I expressed, and hopefully would contain. But did you find in the Manhattan D.A.'s office or in the family court system that people are seeking redress other than through the court system which is obviously not serving their interest, for whatever reasons, legitimate or illegitimate?

Ms. JONES. Well, I think in most instances middle class, lower middle class, whatever class of the victims, they certainly try to work with us, and unfortunately the targets of stalkers tend to be people, as we have heard today and in other hearings, who try to work with the system. So I don't think currently we have a huge problem of people carrying guns.

But what I can tell you is that these people currently have an ongoing frustration. They try to do the right thing. They come to court when they are asked to come to court, which is often frequently, several times, and each time they come to court they leave without the knowledge that they are safe. So, I certainly think to

the extent that the criminal justice system and the civil system do not address their needs, we are looking at people doing what they have to do to be safe.

The CHAIRMAN. Judge.

Judge POPPITI. Senator, the system is not user-friendly. I certainly can't comment on the frustration level of people coming into the family court system.

The CHAIRMAN. I mean, I wonder if you are seeing an aberration the other way, within the court system, of people who are acting out on their own to try to deal and they end up before you.

Judge POPPITI. I can't speak to that, but I can suggest that you certainly see the frustration of the people coming through a system that fails, and we have two people here that have already attested to the failures in the system. We need to make the system much more user-friendly.

There was a comment about having to hire attorneys to literally hold the hands of people who walk through the system. I can tell you that in our State, in one county, namely, New Castle County, we have got a group of 40 women, nonlawyer types, that will be trained and will volunteer their time to help those women through the front door, at least up to the front counter of a court, help them prepare the papers and walk them to the front door of the courtroom, where their responsibilities have to stop, so that the system becomes much more user-friendly than it is because the system is frustrating.

The CHAIRMAN. Well, it seems to me that in every instance where there is a legitimate societal problem that the government cannot provide redress for, people tend to move in directions different than they otherwise would in order to resolve it, and I guess what I am just suggesting is sounding the alarm. I do not think this is going to be a unique circumstance where other desperate victims have taken to packing their own weapons.

A 27-year-old filed numerous futile complaints of her former co-worker. Last month when this individual allegedly accosted her in a parking lot and ordered her into a car, she pulled out a handgun and shot him twice in the abdomen. I cannot believe that that kind of circumstance, as it becomes more apparent to people that they are not alone, that they are not the only victims out there—and one of the negative byproducts of us bringing this to the attention of the American people this way if we do not redress it is that people are reinforced with the notion that we don't do a very good job of it now, and I just think that this creates a sense of urgency on our part to have to do something sooner than later.

Now, Ms. Krueger—and I will end my questioning here—Ms. Krueger, you indicated that the individual in your case was ultimately arrested, is now in prison, will shortly be released from prison. As I understand it, the way in which the Federal Government was able to get into this case was because this individual was in California. Am I not correct?

Ms. KRUEGER. That is right.

The CHAIRMAN. And you were in Texas; correct?

Ms. KRUEGER. Yes.

The CHAIRMAN. Now, I understand that the way in which the Federal system was able to be engaged was issuing threats over the telephone, in violation of existing Federal law. Is that correct?

Ms. KRUEGER. Apparently, that was it, and it had to be a specific death threat. The tape that you all heard earlier was not a tape that he was arrested for. What he said on the tape that you heard was not a crime. The death threat that he made from California was so specific—I am going to kill you, I am going to kill you—that the specificity of it, whatever the word is—

The CHAIRMAN. Specificity.

Ms. KRUEGER. Thank you. We English majors stumble on our words sometimes.

The CHAIRMAN. No, no. You are under a good deal more pressure than I am in this hearing. Let me suggest to you that in the legislation that is being considered that has been introduced by the distinguished Senator from California and your husband, any credible threat now is covered by the Federal law, as is the case in the case of the person who stalked you and threatened you over the telephone, who is now in prison.

But what is added—and this is the point I wish to make and we are going to have to discuss this in the committee at some length. The law federalizing this crime doesn't do anything other than add harassment to that. That doesn't mean that is not important. I am not in any way suggesting it is not significant, but I want to make it clear now that you are able to—if someone is harassing you, is issuing death threats over the telephone across State lines, as in the case here, there is a Federal cause of action that exists now. This would add to that cause of action, harassment.

And then we get into the problem that Ms. Jones pointed out of whether or not there is vagueness or overbreadth, which are lawyers' terms for meaning is the law precise enough to be constitutional, and they are things we are going to grapple with here.

But I wanted to make sure I understood that this person was in California, is now in Federal prison, did use the telephone, did issue—in addition to those God-awful tapes that you have, hundreds of them there, or tens of them, at least, did issue a death threat over the telephone. Is that correct?

Ms. KRUEGER. That is right.

The CHAIRMAN. Now, Ms. Lardner, one of the purposes of the legislation that I am introducing in the next couple of days relating to information-sharing is right now courts do not have the ability, intrastate, most of them—my State and others are attempting to—for example, notwithstanding all the good intentions and prodding of the chief judge of our family court, our State still hasn't done it, which is outrageous, in my view.

I mean, I am going to get in trouble back home for saying it is outrageous. Delaware is not being as responsible as it should be. In a State as small as ours, we should be able to do that and we should spend the money to do that. We are not California with hundreds—it seems like a whole country. What do you have, 30 million, 32 million?

Senator FEINSTEIN. Thirty-two.

The CHAIRMAN. Thirty-two million people; it is a country. My State has less than 700,000 people. So part of the thing that Sen-

ator Cohen and I are trying to do is get model legislation that enables States to be able to not only share information, but pass laws that are constitutional across the board.

Now, what I am trying to do in this other piece of legislation—we have a large network out there. These two fancy—they all have acronyms, but the NCIC and the III are systems now that do not allow the State courts to access civil complaints out there, civil restraining orders, and do not let civil courts access criminal records.

What is needed here—and you may very well be right. Had there been a system in place or had the probation moved or had the court been aware of what that sergeant or the police officer had done and it was sitting in the in box, things may have been different now.

What we are trying to do in this legislation, while we determine whether to go federally and/or go with model State legislation—what we are trying to do is to see to it that more information is, in fact, able to be accessed, as the judge said. But we have got to get States to be willing to pump into this system their information and we have got to change the law allowing States to access this Federal information system so that they would know that that thug that killed your sister was what he was long before he beat your sister the first time. This was not a guy new to this, and had the courts known it we may have had a different circumstance.

So I can't promise you, Ms. Lardner, that this will never happen again, and nothing is going to change what happened to you and your family, but one thing has been brought to light through the willingness of your father to write about it and you to testify about it, and that is maybe we can change the system just enough that we will be able to, in the immediate term, provide for greater access to information on the part of judges making life-and-death judgments, and begin to know that they are making life-and-death judgments, in fairness to them, because they are unaware up to now that either a civil restraining order, a pattern of behavior existed, and/or a criminal case, because most States don't even have the luxury of having the civil and criminal court relating to these issues residing in one courthouse under the authority of one set of judges. Most States are totally separate.

So I want to thank you for being willing to come and testify, and thank your father for being willing to write about it because he has hopefully helped change the landscape for the tens of thousands of women out there who are in harm's way, are in jeopardy, like your sister was.

Ms. LARDNER. Thank you, Mr. Chairman. The only thing I would like to say is I don't know if it is in your bill, but what you just mentioned—judges should also be required every time to access the information.

The CHAIRMAN. That is part of the bill. The hardest part is going to be, and what we are going to hear when we go to the floor with this legislation is the cost. The States are going to come back and tell us that they don't want the responsibility, they don't want any more mandates. All governors want from us is money and not mandates. I don't blame them for not wanting the mandates, but we have got a difficult situation here of figuring out how we get the States to do what everyone acknowledges, including the judge, is important and could impact upon the physical safety of individuals

and save lives and save injuries. But it costs a lot of money to pop this stuff into a computer, to make sure it is all there. It costs a lot of money nationally for us to do that as well, but I, for one, think it is money extremely well spent.

As the judge pointed out, no judge can make an informed decision without having that information, and they may very well make a fundamentally different decision relative to a defendant or a person against whom a civil complaint has been filed if they had all the information about the background of this individual, both civil orders existing and criminal charges having been brought against that person.

I have gone on too long. I will yield—

Senator BOXER. Mr. Chairman, I know it is highly unusual. I wonder if I could speak for another 30 seconds on a point you raised.

The CHAIRMAN. Yes, Senator. Please come forward.

Senator BOXER. Mr. Chairman, I feel that you made an important point but you made it in passing. You picked up on the fact that Senator Krueger and his wife finally got justice in this case—although we are very concerned because this gentleman will be released soon—because their stalker finally made a threat on the telephone which, as you correctly noted, is covered by current law.

But up until that point, because nothing like S. 470 is in existence, the stalker's actions were not considered a threat. So I just leave this hearing hoping that you will realize that S. 470's use of the word "harassment" could have spared the Kruegers' 7 years worth of agony.

I just want to leave the hearing underscoring that point and, again, thank all of you for your open attitude.

The CHAIRMAN. Well, you are welcome, Senator. Let me yield to my colleague by saying that the whole purpose of the legislation and the reason why we asked for the National Institute of Justice to look at this is we want to make sure that we define with precision a constitutionally acceptable definition of what constitutes harassment, because the whole purpose of this is to end the harassment, end the terrorism before it has to get to the point where it is patently clear that someone's life is in danger because the individual stalking them so states. We want to do everything short of that; we want to stop it well before that.

Let me yield to—

Senator THURMOND. Mr. Chairman.

The CHAIRMAN. Yes?

Senator THURMOND. I have another appointment. I have got to go. Could we ask that a few questions be answered for the record?

The CHAIRMAN. Without objection, they will be answered for the record.

Senator THURMOND. I want to commend all the witnesses here, and thank you for coming. Your testimony has been very helpful.

Senator HATCH. Well, I think so, too, and I think we can solve the constitutional problem. There is no question in my mind that if you have 200,000 people-plus being stalked, then we ought to be able to find the money here in the Federal Government so that it is no longer a mandate. We just can't keep putting mandates on the States without helping them to pay for them. Frankly, this is

that important. If there are 200,000 women and men in this country, mainly women, who are being stalked, then we have got to find an answer to it.

Ms. Krueger, I just want to thank you and Ms. Lardner for coming in and telling these startling stories about the experiences that you have had. I think you have done the whole Nation a favor here, but it is a lot more than that, isn't it? It isn't just the terror of having somebody who you know is emotionally unbalanced, who really has snapped, who is continuously harassing you, who is threatening your life, who is leaving messages on the your answering machine. It is a lot more than that. When you make these complaints, you have got to go down and appear somewhere, don't you?

Ms. KRUEGER. That is right.

Senator HATCH. You have got to hire an attorney, don't you?

Ms. KRUEGER. That is right.

Senator HATCH. That costs you money, doesn't it?

Ms. KRUEGER. Right.

Senator HATCH. The average person probably just thinks it through and thinks maybe I can just get through because I don't have the money to spend for attorneys, to spend to go to court to do the things that have to be done. Then when the charges are brought, if you go for a TRO you generally have to go to court and testify, right?

Ms. KRUEGER. Yes; that was one of a string of traumatic experiences. Last summer, it was necessary for Bob and me to appear in court with Tom Humphrey, and to have to see him again and allow him to see us again was very difficult.

Senator HATCH. And to have even more fomentation of his emotional imbalance, having you right there in court.

Ms. KRUEGER. Right.

Senator HATCH. And then you get a temporary restraining order, then you have to go get a permanent restraining order, then you have to go to the court with regard to the breaking of the criminal law. You find yourself spending an awful lot of time in court with attorneys at great expense, at great loss of time, with all the terror renewed and with face-to-face confrontations with the people who are bothering you. Isn't that true?

Ms. KRUEGER. Yes, exactly.

Senator HATCH. That adds to the story that you have told here today, and a lot of people in our country don't seem to understand how really involved this is, how really difficult it is. And then in your case he has gone to jail three times, so you have had to go through all of that three times.

Ms. KRUEGER. And it was the 4-year-long wait until he could finally be convicted that was also so difficult.

Senator HATCH. Sure, and now he is going to be released and you don't know what he is going to do from that point on.

Ms. KRUEGER. That is right.

Senator HATCH. Well, it is a continual terrorist thing to the family and to you personally, to your husband, to your children, the worries that you have for your children, and it is something that just doesn't go away because somebody goes to jail for 4 weeks, as you indicated in the worst situation here, other than the current one.

Ms. KRUEGER. Exactly.

Senator HATCH. Well, I want to commend you because it takes a lot of guts to come in here and talk about things like that, especially when you know there are people out there who are emotionally unbalanced and you are the wife of a U.S. Senator. So I want to thank you for being here. We will try and do something about this.

Ms. KRUEGER. Thank you.

Senator HATCH. Ms. Lardner, I want to thank you, too. I know this is very difficult testimony for you to give, and to have had that happen after your sister was beaten up, left in the street and had to receive assistance from others, and then she had to go to the police station, to court for temporary restraining orders, et cetera, et cetera, and then finally losing her life—I just want to personally express our sorrow to you on behalf of every citizen of this country, and certainly the U.S. Senate, and our respect for you for coming in and testifying here today. We appreciate it.

Ms. LARDNER. Thank you, Senator.

Senator HATCH. Judge Poppiti, about the need for information, you have given a very important set of statements here today that I think are important for everybody who is interested in this issue because as much as your State has done, as much as you have tried to do and other judges on your court, which is a family court, still a lot of people don't have the information and a lot of judges don't have the information and they really can't be sure in some of these serious situations. Isn't that right?

Judge POPPITI. That is correct.

Senator HATCH. And it is not only that, but a lot of attorneys don't understand about stalking laws even though 32 States now have stalking laws, including my own. They have only come into existence in the relatively recent time.

Judge POPPITI. Ours is almost 1 year old, Senator.

Senator HATCH. Ours is, also, and so a lot of attorneys don't even know about these laws and a lot of the people don't know about these laws and they are still frustrated and don't know what to do. So your suggestions here today are taken under advisement with a great deal of respect and we appreciate your spending the time with us.

Judge POPPITI. Thank you, Senator.

Senator HATCH. I would just like to ask Ms. Jones a couple of questions because you have been a prosecutor, you have seen these cases time after time. Have I overdone it in asking these questions to Ms. Krueger about the time that has to be spent by these people, the fears and the worries and the travail?

Ms. JONES. Yes; I think the statements that we have heard really paint a very eloquent picture of the type of terror and the proceedings. I would like to just clarify a little bit, however, the nature of the proceedings.

Senator HATCH. Sure.

Ms. JONES. There are actually three courts that can be involved in issuing orders of protection or protective orders. It can be the civil court, the criminal court, or the family court, and in some States family court will have concurrent jurisdiction with civil and criminal laws.

It is in the context of the civil court proceedings in which individuals go to court to get temporary restraining orders in which they are required to hire their own attorneys and have civil proceedings, and in which it has been difficult to seek enforcement because you can't really get immediate arrest if the order is violated.

Under the stalking laws, most of those are criminal, so generally you will have a prosecutor, an assistant district attorney or State attorney, who will represent the State, but, in fact, represents the interests of the victim for that case. But even with an assistant district attorney, we cannot negate the fact that witnesses will have to come to court, they will have to face their accuser. Unfortunately, the criminal justice system tends to move slowly. I have had people, particularly people who find it particularly difficult to take off days and days and days to come to court, and each time getting no closer to an ultimate solution.

Senator HATCH. And in some of the large urban areas like you have represented, they can go to court and sit there all day before their case is even called up, isn't that right?

Ms. JONES. That is quite——

Senator HATCH. They might even have the case put over until the next day.

Ms. JONES. That is certainly true.

Senator HATCH. And that would allow the stalker to do even worse things if the stalker was so inclined. So in some of the large urban areas there may be even less sensitivity than we have seen here from Judge Poppiti here today. Is that a fair statement?

Ms. JONES. That is totally a fair statement.

Senator HATCH. And in a lot of cases the average citizen just doesn't know what to do, isn't that true?

Ms. JONES. I think that is very true. I think in my office what my colleagues and I saw was that, in fact, every Friday afternoon like clockwork we could expect to get a phone call from a woman who knew that this might be the day. Her husband had perhaps gotten paid that day or been drinking and the women were perhaps most at risk, and they would call me to try to get the precinct to intervene or they would call the precinct, but it was very clear they didn't know what to do.

Unfortunately for many victims, they can't change their identities; they can't move, they can't send their children away. The only recourse they have is what we can offer them and what the judicial system can offer them.

Senator HATCH. And in many cases they don't have enough facts or information to really cause you to have to take action anyway, isn't that correct?

Ms. JONES. Well, in many of these cases that was before the stalking law. What we are looking at now and I think what needs to be evaluated is, under these stalking prosecutions, what type of evidence has been used to get convictions; what type of evidence do you need, what type of support do the victims need. In addition to just prosecuting cases and putting defendants in jail, what can we do for the victims to make their lives easier as they move through the system?

Senator HATCH. Well, I think I could ask a lot of other questions about how difficult this is for women, how difficult it is—some-

times, insensitive judges sit on benches. I suspect you have seen that as well.

Ms. JONES. I have seen that, and I think insensitivity is one problem, but I think another greater problem is lack of knowledge and lack of understanding. I think too often, particularly in a domestic violence context, these cases are not treated seriously because I don't think judges are fully aware of the real potential for violence.

Senator HATCH. Well, those are good comments. Judge Poppiti, just one last question, and I think it is an important one, and that is that you have mentioned the sorts of systems that you would like to see, that you have seen in some areas and that you are trying to implement there in Delaware. But with regard to some of the initiatives that you are talking about, do you view it as a question of dollars or more as a question of community commitment, or both?

Judge POPPITI. It has to be both, Senator. There is no question that it is going to cost dollars.

Senator HATCH. Right.

Judge POPPITI. I think that the community sensitivity is heightened. It certainly was heightened last week when there were—perhaps the week before last when there was testimony before this committee by the present Attorney General suggesting that we are not going to get a handle on violence in the country until we begin to get a handle on violence within the households of the country. I think with that kind of emphasis literally from the top down, if you will, households in the United States have to be much more sensitive and committed.

Senator HATCH. Well, I thank you. I want to thank all of you for being here, and appreciate especially you two women who have testified about your personal experiences.

The CHAIRMAN. Thank you, Senator. Let me, before I yield to Senator Feinstein, indicate that there is supposed to be a vote on the floor of the Senate that was supposed to take place at noon, but obviously it is running late. I yield to the Senator and then what we will do, for the convenience of the witnesses, rather than have you come back at 2 for us to recess, the Senator from California will ask her questions and then if we have to go and vote we will recess and come back if we have to, if it takes too long, and then we will continue with those Senators who still have questions. We may, with your permission, submit a few questions to you in writing so we don't have to keep you beyond the lunch hour.

Senator.

Senator FEINSTEIN. Thank you, Mr. Chairman. Mr. Chairman, I am of the opinion that serious, prolonged, chronic stalking is going to be like serial murder in this country. It is now out there. It has given every kind of mentally aberrant person an idea and it goes on, and I believe it is going to increase and I believe it is extraordinarily serious. I think it should be a felony in the State. I think there should be a Federal law because some way people have to learn how serious this is.

Now, I want to ask the two victims just a couple of questions. Do you believe, in the instance of your experience, that a fine would make a difference to the stalker, a monetary fine?

Ms. LARDNER. No.

Ms. KRUEGER. No.

Senator FEINSTEIN. Nor do I, and it is in the bill and I think it is just ridiculous. I don't think it makes any difference at all. The second question is, with respect to the restraining order, do you believe the restraining order would make any difference to the perpetrator?

Ms. KRUEGER. It didn't in our case. He was overnight in jail one night and by the next day when he was released he was back at it again.

Ms. LARDNER. I think it actually provoked him to do what he did.

Senator FEINSTEIN. That is exactly my point. I think the restraining order can be provocative. I think the appearance of the victim to the perpetrator is provocative, and I think the way you can avoid that is what I did, getting an attorney so you don't have to face them directly. Everybody can't do that.

I am supportive of this legislation. I believe that, if properly defined, it should be a Federal offense. You know, in my case the restraining order was only because the individual was on parole and it gave them some opportunity, if he violated the restraining order, to return that individual to State prison, which he did do and he was returned to State prison. Now, he is out, and he is out without any kind of supervision; all right, if he takes his medication, not all right if he doesn't take his medication.

But I really believe that for the average person out there, elevating this to the level of a Federal crime is vital—the serious, chronic stalker, I believe, is going to be violent, and if you can prevent a murder it is worth making it a Federal crime.

I, too, want to thank the women who are here. This is not something that I think anyone likes to be faced with, and particularly faced with it for a long period of your life, and I just want you to know that I, for one, will fight the good fight.

Thank you very much.

Ms. KRUEGER. Thank you.

Ms. LARDNER. Thank you.

The CHAIRMAN. Senator Cohen.

Senator COHEN. Well, thank you very much, Mr. Chairman. I would like to follow up on some of the statements made by the chairman and also by Senator Feinstein. It seems to me that something has gone desperately wrong in our society. It used to be—perhaps this is a bit romantic on my part, but it seems that law-abiding citizens once could be assured that those who were engaged in what Senator Moynihan has called socially deviant behavior, would be removed from the streets so that the law-abiding citizens could enjoy the fruits of living in a free and democratic society.

I couldn't help but notice in Senator Moynihan's article for the American Scholar that he talked about the St. Valentine's Day Massacre making the World Book of Knowledge on two occasions. It probably would be located somewhat below the fold on the metro section of the Washington Post today because we have become so inured to pain and suffering and violence.

I think our tolerance for deviant behavior, this threshold for pain that is being inflicted by violent or mentally unbalanced or retarded individuals, has reached levels which have turned the rules

of civilized behavior upside down. Today, most people live in fear of burglaries, of muggings, of car-jackings, of drive-by shootings, of stalkings.

As Senator Biden stated, now we are authorized, even in the District of Columbia, to change our normal way of behaving to an abnormal way of behaving. We are authorized to carry mace now. Maybe we will carry stun guns in the future. Criminals have turned society upside down.

You can't walk out on the streets in Washington at night without looking over your shoulder. You always look over your shoulder, watch when you get in your car, lock your doors, and you don't stop at stop lights if you are the first car in line in an area that might otherwise be deemed to be questionable or unsafe.

So they have changed the rules. It is upside down today, and they are taking over and forcing us to alter our behavior. The deviant ones are forcing us to change our way of behaving in a normal, civilized society. It seems to me what is going to happen—I will say, Judge, we have always talked about law and order. I fear, however, that we are going to evolve into a system which will insist upon order and then law. There will be an inversion of law and order. We will have to make compromises on some of our heretofore cherished civil liberties because the rules of the game have been changed by our tolerance for violence in our society.

I would like to pick up on a theme just expressed by Senator Feinstein. We have got to stop the violence. I could carry on and talk about the role that perhaps the media plays, television plays, the movies play, but we have tolerated a level of violence in our society which I think is causing us to reduce the standards of civilized society. We have defined deviance, in Senator Moynihan's words, down, and as a result of that we are all being taken down to a level of barbaric behavior which ought to be insufferable, and it is not.

To Ms. Lardner, I want to say that part of the difficulty has been that none of us, our courts, our judges, our law enforcement officers, have been sensitive enough—and I know, Ms. Jones, you just talked about this, sensitive enough to this issue. We have characterized it as a domestic dispute; we don't want to get involved.

Thirty percent of all the women murdered in 1990 were killed by their husbands or boyfriends in domestic violence incidents. As many as 90 percent were killed by husbands or boyfriends who stalked them prior to killing them—90 percent. Yet, most women find if they go to a court it is a domestic type of dispute and the courts and the police don't want to get involved.

Well, I think, Ms. Lardner, as a result of what happened to your sister, and you, Ms. Krueger, and thousands of others, this issue is being raised to a level that says we are not going to take this anymore; it has got to stop. And so stalkers indeed are going to have to be punished, not through fines and not through restraining orders, but by being put away, taken off the streets, and the longer, the better.

So, Mr. Chairman, I hope to work with you and the other members of this committee to fashion a law that will survive constitutional scrutiny; that we not just rush in and pass it because we are emotionally involved. For those whose family members or relatives

or friends have been the victims of stalkers, we need to understand exactly the emotion involved. But we also have to make sure that we don't just pass something and have it struck down several months or years from now.

So, thank you very much for your testimony. I have a number of questions, but I want to reserve time for Senator Moseley-Braun to examine you as well.

The CHAIRMAN. Thank you, Senator. Let me point out that things are changing. When I first raised this issue in 1984, no one wanted to pay any attention to it when I raised this issue in 1984. Civil libertarians told me, and I consider myself one, that it was a problem. The religious right indicated domestic violence was not the province of the government to be involved in.

It has been 6 years before anybody started to pay attention. In the 1984 crime bill, again when I introduced this legislation and similar legislation in 1986, in 1988, in 1990—now, people are starting to pay attention. Domestic violence—there is nothing domestic about it.

There are certain things we do know and one of the things we know is the likelihood that those people who commit serious violent crime have in many, many instances been the victims of violence themselves when they were young. As Senator Moynihan also points out, we have an obligation to go far beyond building additional jails, which we must do to take people off the street.

Every major piece of criminal legislation that has been written since 1979, I have either authored or coauthored in this body, every single one. But the other part of it we are not willing to face up to, and that is we have to deal with the social consequences of what produces this kind of behavior.

Sixty-three percent of the people in the United States of America who are—25 percent of all the children born in America today will be born out of wedlock. One in four children will not have one parent, will be, by the old definition, illegitimate. There is no family structure.

In 1988 when I introduced this legislation, I talked about the fact that in the city of New York there are more children under the age of 15 who are in the total care of a grandparent, not single a parent—have no parent, mother or father—with the rise of the use of crack and cocaine, in particular, leaving essentially homeless children. Those grandmothers are dying off. There ain't nobody there. We are on the verge of a Brazil-type circumstance where there are hordes of young people with absolutely no supervision.

We know the perpetrators of violence and domestic violence have been victims of violence themselves. Half of all the violent offenses against a woman are done in the presence of a child watching it take place.

So I hope we wake up about a lot of it. This is going to help us start, but there ain't nothing domestic about domestic violence. It is raw, and there ain't nothing quiet about stalking; it is raw. I know your testimony here is going to further heighten the awareness of this so that I think now when we reintroduce this legislation and the crime bill, we will not hear on the 700 Club or others that this is an intrusion into familial relationships between mothers and fathers, husbands and wives, sons and daughters.

I yield to my friend who was a prosecutor in the Federal court system and who is now a member of this committee, Senator Moseley-Braun.

OPENING STATEMENT OF SENATOR MOSELEY-BRAUN

Senator MOSELEY-BRAUN. Thank you very much, Senator Biden. Senator Cohen talked about being emotionally involved and, quite frankly, I have sat here during this hearing with my stomach very much in a knot because, like Senator Feinstein, I have been a victim of being stalked myself by a former employee whom I fired.

Quite frankly, there is the fear of being stalked on the one hand, which is bad enough, but then there is the gut-wrenching frustration of not being able to do anything about it. There is no recourse, and I am sorry to say, Senator Biden, I am from Chicago, but self-help is not an option. Getting somebody's kneecaps busted is not an option, even though that is a very normal human reaction. You want to do something, but, quite frankly, the way the system is presently constructed there is nothing that you can do.

So I not only empathize, although I cannot—I mean, I know how terrifying my own situation has been, and I want to thank the chairman because he said he would help me work through this, but I cannot even begin to fathom the horror that you, Ms. Lardner and Ms. Krueger, must be going through. It is terrifying.

One of the things that occurred to me sitting here listening and thinking about this situation is two very popular movies over the last—and you mentioned the movies, Senator Cohen—"Play Misty for Me" and "Fatal Attraction"—one of the reasons those fictionalized reports were so terrifying is because it pointed to the horror of this kind of situation.

But there was an unreality about those fictionalized reports in that the victims there were men. Unfortunately, the fact is that the statistics show that most of the victims are women. And so taking up where you were talking, Senator Biden, about the response that this legislation has gotten over time, I think, if anything, the change in attitude and the beginning to take this issue seriously is a function of our system beginning to value women's lives, women having something to say about the way the laws get made, so that these real-life experiences about which most of us have just kind of twisted in the wind and felt further helpless and more helpless and less empowered, we now feel we have the possibility of changing.

So I want to congratulate you, Mr. Chairman, for the sensitivity and the responsiveness of this legislation. It seems to me if we have a single charge in our job as lawmakers and as public servants, it is to provide protection for vulnerable citizens and to define unacceptable behavior, Senator Cohen, and to make certain that it is not only defined as unacceptable behavior, but there is recourse in the law that self-help does not have to be the only escape hatch, the only option, and that we have mechanisms so that the system, as the judge puts it, becomes more user-friendly so that people feel that the legal system is here to protect the interests of law-abiding citizens, people who want to live in peace; that our domestic security really is something that has meaning in terms of what it is we do as lawmakers.

And so I want to congratulate you, Mr. Chairman, and whatever I can do to be supportive and to help working through this—you mentioned my background in the law. I very much want to work so that we have a definition. I asked one of the staffers about the availability of the commitment statutes because most of the commitment statutes in most States say that you can commit someone if they are dangerous to themselves or to others.

It was pointed out to me that the way those laws are drawn is so narrow that even that does not address this situation. So, clearly, legislation in this area is needed. Clearly, we need to have a response so that we can reassure law-abiding citizens that the law is there to protect them, to protect their interests, and that the deviants have not really taken control of our situation altogether.

Mr. Chairman, I have a statement I would like to insert into the record.

The CHAIRMAN. Without objection, it will be so included.

[The prepared statement of Senator Moseley-Braun follows:]

STATEMENT OF SENATOR CAROL MOSELEY-BRAUN
SENATE JUDICIARY COMMITTEE
HEARING ON ANTI-STALKING PROPOSALS
MARCH 17, 1993

MR. CHAIRMAN, I WANT TO THANK YOU FOR CONVENING THESE HEARINGS ON THIS ALL-IMPORTANT TOPIC. WITH YOUR SPONSORSHIP OF THE VIOLENCE AGAINST WOMEN ACT AND YOUR LEADERSHIP ON THIS ISSUE, YOU HAVE DISTINGUISHED YOURSELF IN THE FIGHT AGAINST THE EPIDEMIC OF VIOLENCE AGAINST WOMEN.

LET ALL OF US BE CLEAR ABOUT THE TERROR THAT STALKING REPRESENTS. WHILE STALKING MAY NOT ALWAYS LEAD TO PHYSICAL VIOLENCE, IT IS ONE OF THE MOST FRIGHTENING AND POWERFUL TOOLS AVAILABLE TO EXERCISE CONTROL OVER A WOMAN'S LIFE. A STALKER HOVERS, IN THE BACKGROUND, SOMETIMES CLOSE, SOMETIMES FAR --- BUT ALWAYS THERE. IN MANY WAYS, MR. CHAIRMAN, A STALKER IS A WOMAN'S WORST NIGHTMARE.

THESE HEARINGS TODAY WILL BE CRITICAL IN EXPLORING SOME OF THE ISSUES THAT HAVE ARISEN AS WE HERE IN WASHINGTON AND STATE LEGISLATURES AROUND THE COUNTRY HAVE STRUGGLED TO DEAL WITH THIS PROBLEM. ARE COURTS AND POLICE OFFICERS TAKING THE STALKING ISSUE SERIOUSLY ENOUGH? HOW DO WE DEFINE STALKING? WHAT KIND OF DATABASE DO WE NEED? HOW DO WE BEST PROTECT STALKING VICTIMS?

I HAVE BEEN WORKING FOR SOME WEEKS NOW WITH CONGRESSMAN JOE KENNEDY, WHO HAS INTRODUCED ANTI-STALKING LEGISLATION IN THE HOUSE. I HOPE TO INTRODUCE LEGISLATION SHORTLY INCORPORATING THE BEST FEATURES OF CONGRESSMAN KENNEDY'S BILL, AND I LOOK FORWARD TO TODAY TO EXPLORING OTHER PROPOSALS FOR DEALING WITH THIS DISTURBING PHENOMENON.

I ALSO WELCOME OUR DISTINGUISHED WITNESSES AND LOOK FORWARD TO THEIR TESTIMONY.

THE HEARING IN BRIEF

THE HEARING IS PRIMARILY TO SHOWCASE BIDEN'S PROPOSAL, WHICH ENCOURAGES STATES TO REPORT STALKING CRIMES TO THE ALREADY-EXISTING NATIONAL CRIMINAL COMPUTER DATABASE, AND GIVES THEM SOME MONEY TO DO SO. THERE ARE NO "STICKS" TO THE BIDEN APPROACH.

THE JOE KENNEDY BILL, WHICH YOU AGREED TO INTRODUCE IN THE SENATE IN SOME FORM, MANDATES THAT STATES ADOPT ANTI-STALKING LEGISLATION OR FACE THE LOSS OF SOME LAW ENFORCEMENT FUNDS. IT ALSO MANDATES THAT THEY SET UP A CENTRAL STATE REGISTRY FOR STALKING CRIMES. THE PROBLEM WITH THE KENNEDY BILL IS THAT 32 STATES ALREADY HAVE SUCH LEGISLATION (AND 14 HAVE IT PENDING), AND IT USES A BIG (25%) PENALTY TO TRY AND GET ALL OF THE STATES TO ADOPT ITS MODEL LAW.

BARBARA BOXER IS ALSO GOING TO TESTIFY TODAY ABOUT HER BILL, WHICH WOULD MAKE STALKING A FEDERAL CRIME. THIS APPROACH APPARENTLY HAS VERY LITTLE SUPPORT.

THE WITNESSES INCLUDE SENATOR KRUGER'S WIFE, WHO HAS BEEN THE VICTIM OF A STALKER (THEIR EX-CAMPAIGN PILOT) AND THE SISTER OF THE LARDNER WOMAN WHO WAS KILLED IN MASSACHUSETTS WHEN HER FORMER BOYFRIEND WAS ABLE TO IGNORE RESTRAINING ORDERS. A DELAWARE JUDGE AND A NOW ATTORNEY WILL ALSO TESTIFY ABOUT TECHNICAL ASPECTS OF ANTI-STALKING PROPOSALS.

WE ONLY RECEIVED TESTIMONY AND WITNESSES LATE TUESDAY, SO I WILL HAVE TO PREPARE QUESTIONS AT THE HEARING.

Senator COHEN. Senator Biden, could I ask just one question of Ms. Lardner?

You are on that board of advisers of the National Institute of Justice. Could you tell us how you are progressing? You just had your first meeting, I think, in February?

Ms. LARDNER. Yes; I just got in the mail the list of tasks. It is quite long. They are really doing a complete job of trying to draft a constitutional law.

Senator COHEN. Are you satisfied that they are making a real strong effort?

Ms. LARDNER. Oh, yes. They are doing a great job.

Senator COHEN. OK.

The CHAIRMAN. Well, I just want to make it clear to all of you who have taken the time to testify, this committee will produce a law. This committee will pass legislation. This committee will deliver to the floor of the Senate competent legislation. This committee will do its best to make sure that what we deliver to our colleagues will pass constitutional muster, that it will work, that it will make a difference.

This committee also, with the help of the new Attorney General who has vast experience in this area, is going to put a great deal more emphasis on the issue of violence and the youth of this country. The last 12 years, we have taken it on ourselves to take the juvenile justice function and all that is related to juvenile justice and absolutely decimate it. We spend little time or money or effort.

There are only a few things we know for sure about violence; there are only a few things we know. I have spent probably 60 percent of my time over the last 15 years in this job focusing on violence and nothing else. There are certain things we know. We know those patterns are set early. We know they are a consequence of being abused as a child. We know that abuse spawns abuse. We know that victims of abuse become the abusers, and we do nothing about it—we do little about it; let me put it that way. So there are certain things we know.

One of the things the American public should know and you all should know, and I know you do, is that we will pass laws, but laws will require the expenditure of more money. Let us assume all 200,000 stalkers are guilty of a felony and we pass a law saying it is a felony, and let us assume we convict all 200,000 stalkers. Do you realize that will increase fivefold the total Federal prison population?

Senator FEINSTEIN. Well—

The CHAIRMAN. Not "well"; that is exactly what it will do if that were the case. We should all face up to it. I don't want any of my colleagues here when I come with a prison construction bill telling me they are not going to pay for it, they are not going to vote for it, because the fact of the matter is there are over 1 million prisoners in our system and the State system, only roughly 50,000 in the Federal system.

If we federalize the law and we convict people under the law, which I think is an appropriate thing to do, we have to be ready to be honest with the American public; a little truth in lending here, truth in legislating here. There is no cheap way to do this. I think we should take them off the streets.

For the last 8 years, I have introduced legislation to build more prisons, in addition to doing other things, but don't anyone think that we can federalize these laws, convict people, take them off the street, and not pay more money. I think we should do it, but we should understand it, we should understand it. It is a big number, a big number.

Yes, Judge, and we will close out.

Judge POPPITI. Mr. Chairman, one other comment if I could focus on your SAFVE proposal in terms of information. When staff goes to advise members of the committee what information should be captured and then what information should be shared, I would respectfully suggest that they consider the information that is called complaint files in many police departments; that is, information collected by a police officer that may not result in an arrest. There is a wealth of information there.

The reason why it may not result in an arrest is because many women are afraid to press it further. We in Delaware are pushing for that kind of information to be part of our State system, and I would suggest that when you look at the kind of information that you call criminal history information, you may want to consider broadening it. That is more expensive in terms of broadening it.

The CHAIRMAN. I think that is a very useful suggestion. As you know, with the other legislation which my colleagues on this committee have also cosponsored relating to violence against women and relating to the omnibus crime bill, what we tried to do there is—we found where there is a complaint filed, where there is domestic violence or in the case of a stalking case resulting in violence at the time, lots of times the woman, as you point out, does not want to bring the charge, and understandably.

The guy is standing there. He is 6 feet 2 inches, 230 pounds. She is 5 feet 3 inches, 105 pounds. He has just beaten the living devil out of her. She has called for help. The help has arrived, it is on the scene. Now, she is for the moment safe, and the police officer turns to her and says, do you wish to swear out a warrant for the arrest of John Doe here? John Doe looks at her in a menacing way and she knows he is going to get out on bail in the next 24 hours or 2 hours, and she decides that discretion is the better part of valor and she doesn't swear out a complaint.

In jurisdictions where they have made it a presumption on the part of the police—you know, if two men are fighting on the street and they are in a fist fight and a police officer comes by, the cop arrests them both. He doesn't wait for one to swear out a warrant against the other. He arrests them both because under our system, in our State system and Federal system, a police officer witnessing the commission of a crime, or there being clear evidence that a crime has been committed, need not have a complainant to swear the warrant.

So I wrote in this legislation a requirement that if the States want extra help with money, they put in a presumption that the police officer must arrest because we find that once the police officer actually does the arresting, then the burden is taken off the woman. The woman then says, I didn't do it, I didn't swear out the complaint, and she finds it a heck of a lot easier to go into court because now she is a material witness and the prosecutor can say

to her, you must testify. She then has at least some rationale to go forward. We need to help the victim.

There are a thousand things we can do, but what we cannot do any longer is we cannot treat domestic violence—I wish we would get rid of the whole phrase “domestic violence.” It is like there is some kind of domesticated cat or something, less dangerous. We cannot treat violence against women in this society as if it is something different, and that is how it has been treated.

In our State of Delaware, do you realize we have a law that says—I am ashamed of this. I am the guy, along with Birch Bayh, who wrote the law saying for the first time a man could be found guilty of raping his wife. Up to that time, there was no such law. At the time we passed the law, there was an uproar that that was somehow an intrusion into the marital circumstances.

In the State of Delaware, if you are a significant other—what is the actual phrase—a voluntary social companion—you can rape your voluntary social companion and you cannot be charged with first-degree rape; it is second-degree. If you are not my voluntary social companion and a man just rapes you, that man can be charged with first-degree rape. The laws of the States are littered with treating women as second-class citizens when it comes to violence.

For the first couple of years, Judge, I couldn't even get some of the women's organizations to support domestic violence legislation, the Violence Against Women Act. So all these folks, not my colleagues here, who are now coming to this issue as if somehow they always supported it, it has been one hell of a fight because we treat violence perpetrated by someone you know in a different category than violence perpetrated by a stranger.

After tens of hours of hearings here with leading psychiatrists in this country testifying before us, they all point out that the victim is further victimized—the same physical act, the same violent act committed by a stranger and committed by someone you know, the recovery rate emotionally is much higher if it is committed by a stranger than if it is committed by someone you know. Why people can't figure that out is beyond me, but they haven't been able to figure that out, and the reason is simple.

A woman who is raped by someone she knows, who is battered by someone she knows, spends her time not only dealing with being battered, but dealing with her own self-confidence and judgment. Why did I not know? There must be something wrong with me. I should have known. How could I have had such poor judgment to accept the ride home with Charlie, my coworker? The emotional scars that are left over are much more severe than if someone leaped out of a corner from behind a trash can and did the same violent act against you. At least there is no attendant feeling of unintended—it should not exist, but nonetheless does exist—self-guilt about what happens. We have got to change the way we think about this and we have got to change it real quick, but it has been a long, long time in coming.

I hope we don't have to have any more circumstances like yours, Ms. Lardner, of your sister, or any more circumstances like yours, Ms. Krueger, that require us to begin to act. Domestic violence is

hard-core, serious, vicious violence that is no different than violence committed by a total stranger.

Senator MOSELEY-BRAUN. Mr. Chairman, I have to leave. I have another engagement, so I wanted to take my leave to thank the witnesses for their courage and for coming in for the testimony. Again, I look forward to working with you in this area.

The CHAIRMAN. Thank you. I apologize for the emotional investment I have in this. Maybe I have just been doing this too long and it is getting increasingly frustrating—us not acting more rapidly, but we have to do it by the numbers so we don't go through exercise, pass a law, Ms. Lardner, that makes women think that the circumstance has changed, only to find that it doesn't work, further eroding the confidence that women in this society have in the system which is designed to protect them.

That is why Senator Cohen and I believe so strongly we must do this by the numbers, and that is why the committee on which you are serving is such an important piece of this process, so when we do act we know we have acted thoroughly, we know we have passed constitutional muster, and we know it will work.

But the most important thing is women starting to be empowered, beginning to speak up and understand there is no circumstance whatsoever, no circumstance, that any man has a right under any circumstances to lay a hand upon that person. Once people start to recognize that—I say this and I will end with this frightening statistic. A survey done in the State of Rhode Island in 1989 surveying sixth-, seventh-, and eighth-grade children throughout the State asked the following question. If a man spends \$10 on a date taking out a woman, does he have a right to demand sex from her and, if she refuses, force it? Thirty-three percent of the young men answering that survey said yes, and 26 percent of the young women said yes. This is a lot deeper than us just passing a law.

We stand adjourned.

[Whereupon, at 12:36 p.m., the committee adjourned.]

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ISBN 0-16-041527-6



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